

FILED
OFFICE OF THE CITY CLERK
OAKLAND

CITY OF OAKLAND 2013 DEC -5 PM 12:54

AGENDA REPORT

TO: DEANNA J. SANTANA,
CITY ADMINISTRATOR

FROM: David McPherson,
Revenue & Tax Administrator

SUBJECT: Spending Authority for the ACS/Xerox
Parking Citation Management Contract

DATE: November 5, 2013

City Administrator
Approval:

Deanna Santana

Date:

11/28/13

Council District: City-Wide

RECOMMENDATION

Adopt A Resolution (1) Establishing Spending Authority On The Existing Contract With ACS State And Local Solutions Inc./Xerox, In An Annual Amount Not to Exceed Nine Hundred Thousand Dollars (\$900,000) For Parking Citation Administration and Revenue Collection Services; And (2) Authorizing An Appropriation Upon Receipt Of Collection Fee Revenues In An Annual Amount Not To Exceed Two Million Eight Hundred Thousand Dollars (\$2,800,000), As Required And Equal To The Thirty Percent (30%) Special Collections Fee On All Assigned Citations, Which Is Imposed By The Contractor In Addition To The Motorist's Outstanding Citation.

OUTCOME

Adoption of the attached resolution will establish the necessary spending authority required to fulfill the City's contractual fiscal responsibilities regarding the Contract between the City of Oakland and ACS/Xerox for parking citation administration and revenue collection services.

BACKGROUND/LEGISLATIVE HISTORY

At the February 16, 2010 regular meeting of the Oakland City Council, the Council approved Resolution 82531¹ authorizing the City Administrator to negotiate and execute a contract ("Contract") between ACS/Xerox to provide a parking citation administration and revenue reconciliation system ("CARR"). The City Council authorized a contract term of three years with two one-year options for renewal. The initial three-year term expired March 31, 2013, and the City exercised a one-year renewal option that expires March 31, 2014. There is one renewal option remaining for the term of April 1, 2014 through March 31, 2015, at which point the City will be required to advertise a Request for Proposals regarding these services.

¹ Reso 82531-Resolution Authorizing the City Administrator to Negotiate and Execute a Contract Between the City of Oakland and ACS State & Local Solutions, Inc., to Provide a Parking Citation Administration and Revenue Reconciliation System (CARRS) at an Estimated Cost of Nine Hundred Thousand Dollars (\$900,000) Per Year for a Term of Three Years Beginning March 1, 2010 with Two One-Year Options to Renew.

Item: _____
Finance and Management Committee
December 17, 2013

ANALYSIS

In 2010, the Parking Division (whose financial functions are now housed in the Revenue Division) estimated the costs under the Contract at \$900,000.² The Parking Division's annual expenditure estimate was accurate in reflecting the costs related to the *CARR system*, but did not reflect the collection component of the Contract which is referenced in Section 4.b. (6) of the Contract and stipulates a collection fee equal to 30% of successful parking citation recovery.³ ("Collection Fee") The Collection Fee is imposed by ACS/Xerox in addition to the parking citation fee. To maintain adherence to generally accepted accounting practices, the Contract requires ACS/Xerox to remit all collected funds to the City, including their Collection Fee, and then invoice the City separately (i) for payment of the Collection Fee, and (ii) for the CARR system.

The Collection Fee is fluid and dependent upon successful collection of delinquent parking tickets by ACS/Xerox. For example, in Fiscal Year 2012, the Collection Fee was \$867,848; and in Fiscal Year 2013, the Collection Fee was \$1,959,714. This is in addition to the \$900,000 annual Contract value for the CARR system. Thus, the adopted resolution (82531C.M.S.) does not provide sufficient budget authority to make annual payments under the Contract as it only speaks to the CARR system costs and does not address the Collection Fee.

It is important to note that there is a correlation between an increase in ACS' Collection Fee and an increase in the City's delinquent parking citation revenues. (Table 1)

Table 1

	ACS Collection Revenue	
	FY 2012	FY 2013
Total Collection Remitted to the City	\$ 3,240,642	\$ 7,550,047
Less ACS 30% Collection Fee	\$ (867,848)	\$ (1,959,714)
Net Collection Revenue to City	\$ 2,372,794	\$ 5,590,333

Staff is requesting spending authority for the Collection Fee be authorized at an annual amount not to exceed \$2.8 million. This value was calculated by averaging the three highest collection months in Fiscal Year 2013 and extrapolating the average over a twelve-month contract term. The Collection Fee is imposed by ACS/Xerox in addition to the parking citation fee, and does not reduce City revenues. However, it is important that the Council authorize sufficient spending authority to ensure the Collection Fee can be remitted to ACS/Xerox in accordance with the Contract. Furthermore, failure to fulfill contractual obligations could jeopardize collaborative

² Specifically, Resolution 82531's title and resolved section state, "[] at an *estimated* nine hundred thousand dollars per year. "

³ 4.b (6) Special Collections. Contractor is authorized to add and collect a 30 percent contingency fee on all assigned citations updated or uploaded to eTIMS, so long as the cited party rather than the City is responsible for such fee. If the City voids any citation or citations three or more weeks after an account is initially assigned to ACS for collection activity the City will be responsible for the 30% collection fees upon submitting documentation to the City showing that collection activities have been initiated. If the City voids any citation or citations less than three weeks after an account is assigned to ACS for collection activity, ACS will not be entitled to the 30% collection fee.

efforts to improve the management of parking citations and to increase citation collections through the proposed scofflaw-booting program.

PUBLIC OUTREACH/INTEREST

This item does not require any additional public outreach.

COORDINATION

This report was prepared in coordination between the Administrative Services Department and the City Attorney's Office.

COST SUMMARY/IMPLICATIONS

This action has negligible fiscal impact, as it only requires the use of City resources (the sunk costs of staff time and supplies) to process 12 additional invoices per Contract year.

SUSTAINABLE OPPORTUNITIES

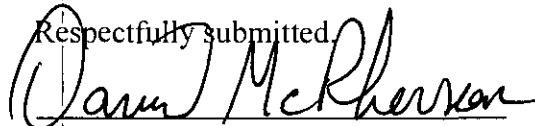
Economic: No direct economic opportunities have been identified.

Environmental: No direct environmental opportunities have been identified.

Social Equity: No social equity opportunities have been identified.

For questions regarding this report, please contact David McPherson, Revenue and Tax Administrator, at 510-238-6650.

Respectfully submitted,



David McPherson,
Revenue & Tax Administrator

Prepared by:
Margaret O'Brien,
Principal Revenue Analyst, Revenue Division

Attachments: ACS Contract
Resolution

Approved as Form and Legally

FILED
OFFICE OF THE CITY CLERK
OAKLAND

[Signature]
City Attorney

2010 FEB 25 PM 2:41

OAKLAND CITY COUNCIL

RESOLUTION No. 82581 C.M.S.

RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE AND EXECUTE A CONTRACT BETWEEN THE CITY OF OAKLAND AND ACS STATE & LOCAL SOLUTIONS, INC., TO PROVIDE A PARKING CITATION ADMINISTRATION AND REVENUE RECONCILIATION SYSTEM (CARRS) AT AN ESTIMATED COST OF NINE HUNDRED THOUSAND DOLLARS (\$900,000) PER YEAR FOR A TERM OF THREE YEARS BEGINNING MARCH 1, 2010 WITH TWO ONE-YEAR OPTIONS TO RENEW

WHEREAS, the City of Oakland wishes to enter into an agreement with ACS State & Local Solutions, Inc. to Provide a Parking Citation Administration and Revenue Reconciliation System (CARRS); and

WHEREAS, the City's Purchasing Ordinance, Oakland Municipal Code ("OMC") Chapter 2.04, requires that the City conduct a competitive process (Request for Proposals/ Request for Qualifications) for professional services agreements in excess of \$25,000; and

WHEREAS, a competitive Request for Proposals was issued August 7, 2009 and two companies submitted proposals responsive to the City's request; and

WHEREAS, upon the City's request, the two companies submitted their "best and final offers" on January 29, 2010; and

WHEREAS, through both an internal and external rating process the proposal submitted by ACS State & Local Solutions, Inc. was determined to best meet the needs of the City; and

WHEREAS, ACS State & Local Solutions, Inc., is qualified and able to provide an integrated parking citation management system for the City of Oakland within the requirements set forth by the City; and

WHEREAS, the City Council finds that the service is professional in nature; and

WHEREAS, the City Council finds that the agreement shall not result in the loss of salary or employment by any person having permanent status in the competitive service; and

WHEREAS, funds for the agreement are available in the Finance and Management Agency Parking Administration adopted FY 2009-2011 budget in the General Purpose Fund (1010), Organization (08911); now, therefore, be it

RESOLVED: That the City Administrator is hereby authorized to negotiate and execute a Professional Service Agreement between the City of Oakland and ACS State & Local Solutions, Inc., to provide a Parking Citation Administration and Revenue Reconciliation System (CARRS) at an estimated cost of Nine Hundred Thousand Dollars (\$900,000) per year for a term of three years beginning March 1, 2010 with two one-year options to renew; and be it

FURTHER RESOLVED: That the agreement authorized hereunder is subject to City Attorney approval for form and legality and shall be placed on file in the Office of the City Clerk.

FEB 16 2010

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2010

PASSED BY THE FOLLOWING VOTE:

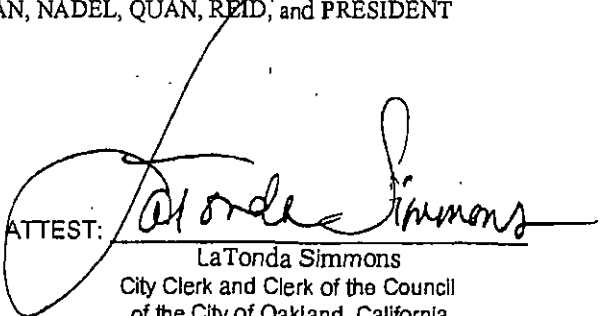
AYES - ~~BRUNNER, DE LA FUENTE~~, KAPLAN, KERNIGHAN, NADEL, QUAN, REID, and PRESIDENT BRUNNER - 6

NOES - Brooks, De La Fuente - 2

ABSENT - 0

ABSTENTION - 0

ATTEST:


LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE CITY OF OAKLAND
AND ACS STATE & LOCAL SOLUTIONS, INC.**

This Professional Services Agreement ("Agreement") is entered into on this 2nd day of April 2010 ("Effective Date") by and between the CITY OF OAKLAND, a California municipal corporation, acting by and through its Finance and Management Agency ("City"), and ACS STATE & LOCAL SOLUTIONS, INC., a New York corporation ("Contractor").

RECITALS

WHEREAS, the City desires to provide a comprehensive system for managing parking citations and enforcement within the City of Oakland; and

WHEREAS, the City's Purchasing Ordinance requires that the City conduct a competitive process (Request for Proposals/ Request for Qualifications) for professional services agreements in excess of \$25,000 [(OMC section 2.04.051(A)); and

WHEREAS, a competitive Request for Proposals for a Parking Citation Administration and Revenue Reconciliation System ("System") was issued August 7, 2009 and two companies submitted proposals responsive to the City's request; and

WHEREAS, through both an internal and external rating process the proposal submitted by Contractor was determined to best meet the needs of the City; and

WHEREAS, Contractor is qualified and able to provide an integrated parking citation management system for the City of Oakland within the requirements set forth by the City; and

WHEREAS, on February 16, 2010, the City Council of the City of Oakland authorized the City Administrator to negotiate and execute an agreement with Contractor; and

WHEREAS, Contractor is highly qualified to perform the services required hereunder by virtue of its substantial experience with large municipalities; and

WHEREAS, the parties hereto wish to enter into an agreement pursuant to which Contractor provides the System and services as described herein for the consideration and under the terms provided herein;

NOW, THEREFORE, in consideration of the promises and covenants set forth herein, the parties hereto covenant and agree as follows:

1. Exhibits

The articles and the exhibits set forth below are attached to and form a part of this Agreement. In the event of any conflict in the definition or interpretation of any word, responsibility, service schedule, or contents of a deliverable product between the Agreement and exhibits, or between exhibits, said conflict or inconsistency shall be resolved by giving precedence first to the

Agreement, then to Exhibit A, Modifications to Contractor's Proposal, then to Exhibit B, the City's Request for Proposals, and then to Exhibit C, Contractor's Proposal.

EXHIBIT A – Modifications to Contractor's Proposal

EXHIBIT B - Request for Proposals dated August 7, 2009

EXHIBIT C - Contractor's proposal

2. Scope of Services

Contractor will perform the services required by this Agreement and as specified in Contractor's proposal (Exhibit C), as modified by Modifications to Contractor's Proposal (Exhibit A). Contractor will comply with all provisions of the City's RFP (Exhibit B). Contractor will not directly collect payments from persons to whom City has issued citations, except if authorized so in writing by the City if and when the City elects to use the "lock box" optional service offered by Contractor, and except after an account has been assigned to collections. Contractor will not directly respond to inquiries from persons to whom City has issued citations, except after an account has been assigned to collections.

The Project Manager for the City shall be Thomas DiSanto, Administrative Services Manager. The Project Manager for Contractor will be Renee Jordan. If a Party wishes to change its Project Manager, that Party will notify the other in writing.

Contractor's Project Manager will meet with the City on a monthly basis, or more often if requested by the City, to review reports on citation processing and payment, and to discuss Contractor performance related to citation processing and collections.

3. Time of Performance

The period of performance under this Agreement shall commence upon the Effective Date, and shall expire after an initial period of three (3) years from the Effective Date, if not extended as provided herein. City shall have the option, in its sole discretion, to extend this Agreement for two additional one-year terms ("Option Terms") upon ninety (90) days' notice to Contractor prior to the commencement of the additional term. By mutual consent, City and Contractor may continue this Agreement on a month-to-month basis after the expiration of the initial term of contract including the possible Option Terms.

4. Compensation and Method of Payment

a. Compensation shall be made in monthly payments, within 20 days of receipt of vendor invoice, for each month of work, unless the City determines services have not been performed in full compliance with Exhibit B (City's RFP), Exhibit C (Contractor's Proposal) and Exhibit A, Modifications to Contractor's Proposal. If there are disagreements on the services performed between the City and the Contractor, the City and the Contractor will attempt to resolve them expeditiously. To ensure control of expenditures and to improve the reporting of deliverables and services provided by Contractor and received by City, Contractor will submit to City's Project Manager a monthly invoice in accordance with Scope of Services of this Agreement, which shall include but is not limited to the following information: (1) Description of services and or deliverables rendered during the period; and (2) Detailed accounting of billable services rendered during the period. All invoices submitted by Contractor for payment must have the approval of City's Project Manager or her/his designee. Approval for payment will not be unreasonably withheld. If a portion of an invoice is disputed, City shall notify Contractor of the amount in

dispute and shall approve for payment that portion of the invoice that is not in dispute. City will authorize payment for all sums not under dispute within thirty days of the receipt of the invoice.

b. The breakdown of charges associated with this agreement are as follows:

(1) Price per ticket. Per citation processing cost is \$.99 per citation issued (updated or uploaded to the eTIMS system) if the City uses a dedicated server, or \$.93 if the City uses Internet connection, with the following tiered pricing conditions based on annual ticket processing costs to City:

- \$0-\$520,000 in ticket processing costs are \$.99 (\$.93 internet)
- over \$520,000 in ticket processing costs are \$ 0.95 per ticket (\$.90 internet)

Only those tickets first assigned to Contractor after the \$520,000 threshold have been reached will be invoiced as \$0.95 per ticket (\$.90 internet). All tickets assigned to Contractor prior to reaching the \$520,000 threshold shall be invoiced at \$0.99 (\$.93 internet).

(2) Reimbursable Costs. Reimbursement for actual cost incurred as approved by City and included in Exhibit B (City's RFP), Exhibit C (Contractor's Proposal), and/or Exhibit A, Modifications to Contractor's Proposal, such as handheld ticket stock, envelopes, postage, credit card fees, etc.

(3) Lock Box Payment Processing- Optional Service. City may retain Contractor to provide the lockbox payment processing function offered in Contractor's Proposal. City may also purchase or lease-to-purchase payment processing equipment.

Upon City's written request, Contractor will process lockbox payments on an overflow basis on behalf of the City, in one of two ways, as determined by City:

- Lockbox payment processing by a financial institution with costs not to exceed \$0.44 per payment
- Lockbox payment processing by Contractor lockbox operation with costs not to exceed \$0.41 per payment

If the City wishes to assign all lockbox operations to Contractor on a permanent basis, City will give Contractor thirty days notice thereof.

(4) Mail Processing Equipment. Contractor shall be reimbursed for actual cost of mail/citation payment processing equipment provided to the City. Contractor will facilitate payment processing equipment vendors to demonstrate equipment for purchase or lease options that is at a lower price than the option Contractor proposed in Exhibit C.

(5) Consultation Services. Hourly billing for additional consultation services beyond the Request for Proposal project scope, \$23-75 per hour. Any additional consultation services provided by the Contractor must first be approved in writing by the City's Project Manager.

(6) Special Collections. Contractor is authorized to add and collect a 30 percent contingency collection fee on all assigned citations updated or uploaded to eTIMS, so long as the City is not responsible for such fee. If the City voids any citation or citations

Processing
Per
\$500,000

three or more weeks after an account is initially assigned to ACS for collection activity, the City will be responsible for the 30% collection fee upon submitting documentation to the City showing that collection activities have been initiated. If the City voids any citation or citations less than three weeks after an account is assigned to ACS for collection activity, ACS will not be entitled to the 30% collection fee.

c. City reserves the right to change any portion of the work required under this Agreement, or amend such other terms and conditions which may become necessary. For any change that does not significantly affect the scope of work as set forth in the Statement of Work, the period of performance, payments, or any term or conditions included under this Agreement, a Change Notice shall be prepared and signed by City's Project Manager and Contractor's Project Manager. Contractor is entitled to an equitable adjustment for any such change which negatively impacts Contractor financially. Contractor may request an equitable adjustment by submitting a claim to the City's Project Manager which shall include back-up for any claimed adjustment. The details of any equitable adjustment shall be subject to the Parties' mutual agreement and good faith negotiations. For any revision that significantly affects the scope of work, period of performance, payments, or any term or condition included in this Agreement, a negotiated Modification to the Agreement shall be subject to approval of Council and execution by the Project Managers.

5. Independent Contractor

a. Rights and Responsibilities. It is expressly agreed that in the performance of the services necessary to carry out this Agreement, Contractor shall be, and is, an independent contractor, and is not an employee of the City. Contractor has and shall retain the right to exercise full control and supervision of the services, and full control over the employment, direction, compensation and discharge of all persons assisting Contractor in the performance of Contractor's services hereunder. Contractor shall be solely responsible for all matters relating to the payment of his/her employees, including compliance with social security, withholding and all other regulations governing such matters, and shall be solely responsible for Contractor's own acts and those of Contractor's subordinates and employees. Contractor will determine the method, details and means of performing the services described in Exhibit A and Exhibit C.

b. Contractor's Qualifications. Contractor represents that Contractor has the qualifications and skills necessary to perform the services under this Agreement in a competent and professional manner without the advice or direction of The City. This means Contractor is able to fulfill the requirements of this Agreement. Failure to perform all of the services required under this Agreement will constitute a material breach of the Agreement and may be cause for termination of the Agreement. Contractor has complete and sole discretion for the manner in which the work under this Agreement is performed. Prior to execution of this agreement, Contractor shall complete Schedule M ("Independent Contractor Questionnaire"), attached hereto.

c. Payment of Income Taxes. Contractor is responsible for paying, when due, all income taxes, including estimated taxes, incurred as a result of the compensation paid by the City to Contractor for services under this Agreement. On request, Contractor will provide the City with proof of timely payment. Contractor will indemnify the City for any claims, costs, losses, fees, penalties, interest or damages suffered by the City resulting from Contractor's failure to comply with this provision.

d. Non-Exclusive Relationship. Contractor may perform services for, and contract with, as many additional clients, persons or companies as Contractor, in his or her sole discretion, sees fit.

e. Tools, Materials and Equipment. Contractor will supply all tools, materials and equipment required to perform the services under this Agreement.

f. Cooperation of the City. The City will comply with all reasonable requests of Contractor necessary to the performance of Contractor's duties under this Agreement.

g. Extra Work. Contractor will do no extra work under this Agreement without first receiving prior written authorization from the City.

6. Notices

The City's Project Manager, or her/his designee, shall execute all notices or demands authorized or required to be given under this Agreement on behalf of City. All notices of demands required or permitted to be given or made hereunder shall be in writing and shall be deemed to have been given if made by hand delivery with signed receipt; or when mailed by first class registered or certified mail, postage prepaid, addressed to City and/or Contractor at their addresses designated below; or at such other address that City or Contractor, as the case may be, shall have furnished in writing to the other.

If to City:

Noel Pinto
Director of Parking, City of Oakland
250 Frank Ogawa Plaza, Suite 6300
Oakland, CA 94612
510-986-2688

With a copy to:

John A. Russo
City Attorney
City of Oakland
1 Frank Ogawa Plaza, 6th Floor
Oakland, CA 94612
510-238-3601

If to Contractor:

ACS State & Local Solutions
Attn.: Doris Cariick
255 California St., Suite 550
San Francisco, CA 94111
415-486-3334

With a copy to:

ACS State & Local Solutions, Inc.
Attn.: Contracts Department
12410 Milestone Center Drive
Germantown, MD 20876

7. Proprietary of Confidential Information of the City

Contractor understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, Contractor may have access to private or confidential information which may be owned or controlled by the City and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to the City. Contractor agrees that all information disclosed by the City to Contractor shall be held in confidence and used only in performance of the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary data.

8. Ownership of Results

Any interest of Contractor or its Subcontractors, in specifications, studies, reports, memoranda, computation documents prepared by Contractor or its Subcontractors in drawings, plans, sheets or other connection with services to be performed under this Agreement shall be assigned and transmitted to the City. However, Contractor may retain and use copies for reference and as documentation of its experience and capabilities.

9. Copyright

Contractor shall execute appropriate documents to assign to the City the copyright to works created pursuant to this Agreement.

10. Audit

a. Contractor shall maintain (a) a full set of accounting records in accordance with generally accepted accounting principles and procedures for all funds received under this Agreement; and (b) full and complete documentation of performance related matters such as benchmarks and deliverables associated with this Agreement.

b. Contractor shall (a) permit the City to have access to those records for the purpose of making an audit, examination or review of financial and performance data pertaining to this Agreement; and (b) maintain such records for a period of four years following the last fiscal year during which the City paid an invoice to Contractor under this Agreement.

c. In addition to the above, Contractor will comply with all audit, inspection, record-keeping and fiscal reporting requirements set forth in Schedule S, *Audit Inspection and Fiscal Reporting Requirements*, which is attached hereto and incorporated by reference.

11. Agents/Brokers

Contractor warrants that Contractor has not employed or retained any subcontractor, agent, company or person other than bona fide, full-time employees of Contractor working solely for Contractor, to solicit or secure this Agreement, and that Contractor has not paid or agreed to pay any subcontractor, agent, company or persons other than bona fide employees any fee, commission, percentage, gifts or any other consideration, contingent upon or resulting from the award of this Agreement. For breach or violation of this warranty, the City shall have the right to rescind this Agreement without liability or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage or gift.

12. Assignment

Contractor shall not assign or otherwise transfer any rights, duties, obligations or interest in this Agreement or arising hereunder to any person, persons, entity or entities whatsoever without the prior written consent of the City and any attempt to assign or transfer without such prior written consent shall be void. Consent to any single assignment or transfer shall not constitute consent to any further assignment or transfer.

13. Publicity

Any publicity generated by Contractor for the project funded pursuant to this Agreement, during the term of this Agreement or for one year thereafter, will make reference to the contribution of the City of Oakland in making the project possible. The words "City of Oakland" will be explicitly stated in all pieces of publicity, including but not limited to flyers, press releases, posters, brochures, public service announcements, interviews and newspaper articles.

City staff will be available whenever possible at the request of Contractor to assist Contractor in generating publicity for the project funded pursuant to this Agreement. Contractor further agrees to cooperate with authorized City officials and staff in any City-generated publicity or promotional activities undertaken with respect to this project.

14. Title of Property

a. Title to all property, real and personal, acquired by Contractor from City funds shall vest in the name of the City of Oakland and shall be accounted for by means of a formal set of property records. Contractor acknowledges it is responsible for the protection, maintenance and preservation of all such property held in custody for the City during the term of the Agreement. The Contractor shall, upon expiration or termination of this Agreement, deliver to the City all of said property and documents evidencing title to same. In the case of lost or stolen items or equipment, Contractor shall immediately notify the Police Department, obtain a written police report and notify the City in accordance with "Notice" section of this Agreement.

b. Contractor shall provide to the City Auditor all property-related audit and other reports required in Schedule S and under this Agreement. In the case of lost or stolen items or equipment, Contractor shall immediately notify the Police Department, obtain a written police report and notify the City in accordance with the "Notice" section of this Agreement.

c. Prior to the disposition or sale of any real or personal property acquired with City funds, Contractor shall obtain approval by the City Council and City Administrator in accord with the requirements for disposal or sale of real or personal surplus property set forth in the Oakland City Charter and/or Oakland Municipal Code Title 2.04, Chapter 2.04.120. *Surplus supplies and equipment – Disposal or Destruction.*

15. Insurance

Unless a written waiver is obtained from the City's Risk Manager, Contractor must provide the insurance listed in Schedule Q. Schedule Q is attached and incorporated herein by reference.

16. Indemnification

a. Notwithstanding any other provision of this Agreement, Contractor shall indemnify and hold harmless (and at City's request, defend) City, and each of their respective Councilmembers, officers, partners, agents, and employees (each of which persons and organizations are referred to collectively herein as "Indemnitees" or individually as "Indemnitee") from and against any and all liabilities, claims, lawsuits, losses, damages, demands, debts, liens, costs, judgments, obligations, administrative or regulatory fines or penalties, actions or causes of action, and expenses (including reasonable attorneys' fees) caused by or arising out of any:

- (i) Breach of Contractor's obligations, representations or warranties under this Agreement;
- (ii) Negligent or wrongful acts or omissions in the course of performance by Contractor under this Agreement;
- (iii) Claim for personal injury (including death) or property damage to the extent based on the strict liability or caused by any negligent act, error or omission of Contractor;
- (iv) Unauthorized use or disclosure by Contractor of Confidential Information as provided in Section 7 above; and
- (v) Claim of infringement or alleged violation of any United States patent right or copyright, trade secret, trade mark, or service mark or other proprietary or intellectual property rights of any third party.

b. For purposes of the preceding Subsections (i) through (vi), the term "Contractor" includes Contractor, its officers, directors, employees, representatives, agents, servants, sub-consultants and subcontractors.

c. City shall give Contractor prompt written notice of any such claim of loss or damage and shall cooperate with Contractor, in the defense and all related settlement negotiations to the extent that cooperation does not conflict with City's interests.

d. Notwithstanding the foregoing, City shall have the right if Contractor fails or refuses to defend City with Counsel acceptable to City to engage its own counsel for the purposes of participating in the defense. In addition, if Contractor fails to assume the defense of any claim Contractor is obligated to defend pursuant to this Section 16, City shall have the right to withhold any payments due Contractor in the amount of anticipated defense costs. In no event shall Contractor agree to the settlement of any claim described herein without the prior consultation with the City.

e. Contractor acknowledges and agrees that it has an immediate and independent obligation to indemnify and defend Indemnitees from any action or claim which falls within this indemnification provision, which obligation shall arise at the time any action or claim is tendered to Contractor by City and continues at all times thereafter. Notwithstanding anything to the contrary contained herein, Contractor's liability under this Agreement shall not apply to any action or claim arising from the sole negligence, active negligence or willful misconduct of an Indemnitee.

f. All of Contractor's obligations under this Section 16 are intended to apply to the fullest extent permitted by law (including, without limitation, California Civil Code Section 2782) and shall survive the expiration or sooner termination of this Agreement.

g. The indemnity set forth in this Section 16 shall not be limited by the City's insurance requirements contained in Schedule Q hereof, or by any other provision of this Agreement. City's liability under this Agreement shall be limited to the payment to Contractor in accord to the terms and conditions under this Agreement and shall exclude any liability whatsoever for consequential or indirect damages even if such damages are foreseeable. Contractor's liability under this Agreement shall be limited to the payment received from the City under this Agreement or two million dollars (\$2,000,000.00) whichever is greater. The limitation of liability shall not apply to Contractor's intentional misconduct, gross negligence, or any breach of the confidentiality obligation of Section 7, or any infringement claim under Section 16 a. (v), of this Agreement.

17. Right to Offset Claims for Money

All claims for money due or to become due from City shall be subject to deduction or offset by City from any monies due Contractor by reason of any claim or counterclaim arising out of i) this Agreement, or ii) any purchase order, or iii) any other transaction with Contractor.

18. Termination on Notice

a. Either party shall have the right to terminate this Agreement without cause, at no cost except as set forth herein, at any time by giving a minimum of ninety (90) days notice of such termination to the other party. In the event Oakland shall give such notice of termination, Contractor shall immediately cease rendering services pursuant to this Agreement or conform to such other reasonable schedule for "disengagement" as shall be approved by the Project Managers. In the event Oakland shall give such notice of termination and in addition to compensation provided for in Subsection (e) below, Contractor shall be entitled to payment by Oakland equal to a pro-rated portion of the contract inducement payment (on the basis of \$100,000 per year) and compensation for Contractor's unamortized costs associated with the project.

b. Contractor shall deliver copies of all writings prepared by it pursuant to this Agreement. The term "writings" shall be construed to mean and include: handwriting, typing, printing, photocopying and every other means of recording, including pictures, drawings, sounds, symbols or combinations thereof.

c. Oakland shall have full ownership and control of all such Oakland peculiar writings delivered by Contractor pursuant to this Agreement.

d. Contractor shall accomplish data and file transfers as per Section 16.0 "Conversion Procedures."

e. Oakland shall pay Contractor the reasonable value of services rendered by Contractor pursuant to this Agreement; provided, however, that Oakland shall not in any manner be liable for lost profits that might have been made by Contractor had Contractor completed the services required by this Agreement. In this regard, Contractor shall furnish to Oakland such financial information as in the judgment of Oakland's Project Manager is necessary to determine the reasonable value of the services rendered by Contractor. In the event of a dispute as to the

reasonable value of the services rendered by Contractor, the decisions of the Project Manager shall be final. However, the foregoing is cumulative and does not affect any right or remedy that either party may have in law or equity.

f. Notwithstanding the above, in the event that either party is in breach of this Agreement, the non-breaching party may deliver a notice of breach and request to cure such breach within thirty (30) calendar days of receipt of said notice. The breaching party shall provide a cure plan within ten (10) calendar days of receipt of the notice of breach. In the event the breach remains uncured within thirty (30) calendar days of receipt of the notice of termination, the non-breaching party may deliver to the breaching party a notice of termination for cause, the notice period will be ninety (90) calendar days after receipt of written notice by the Project Manager for either party. Cause shall be defined as a substantial breach of this Agreement including, but not limited to, substantial departure from the Performance Standards herein, payment obligations, of timely compliance with necessary data or information submissions that preclude the execution of this Agreement for a period exceeding nine calendar days. Cause shall not include *force majeure* or any event beyond the control of either party.

19. Conflict of Interest

a. Contractor

The following protections against conflict of interest will be upheld:

- i. Contractor certifies that no member of, or delegate to the Congress of the United States shall be permitted to share or take part in this Agreement or in any benefit arising therefrom.
- ii. Contractor certifies that no member, officer, or employee of the City or its designees or agents, and no other public official of the City who exercises any functions or responsibilities with respect to the programs or projects covered by this Agreement, shall have any interest, direct or indirect in this Agreement; or in its proceeds during his/her tenure or for one year thereafter.
- iii. Contractor shall immediately notify the City of any real or possible conflict of interest between work performed for the City and for other clients served by Contractor.
- iv. Contractor warrants and represents, to the best of its present knowledge, that no public official or employee of City who has been involved in the making of this Agreement, or who is a member of a City board or commission which has been involved in the making of this Agreement whether in an advisory or decision-making capacity, has or will receive a direct or indirect financial interest in this Agreement in violation of the rules contained in California Government Code Section 1090 *et seq.*, pertaining to conflicts of interest in public contracting. Contractor shall exercise due diligence to ensure that no such official will receive such an interest.

- v. Contractor further warrants and represents, to the best of its present knowledge and excepting any written disclosures as to these matters already made by Contractor to City, that (1) no public official of City who has participated in decision-making concerning this Agreement or has used his or her official position to influence decisions regarding this Agreement, has an economic interest in Contractor or this Agreement, and (2) this Agreement will not have a direct or indirect financial effect on said official, the official's spouse or dependent children, or any of the official's economic interests. For purposes of this paragraph, an official is deemed to have an "economic interest" in any (a) for-profit business entity in which the official has a direct or indirect investment worth \$2,000 or more, (b) any real property in which the official has a direct or indirect interest worth \$2,000 or more, (c) any for-profit business entity in which the official is a director, officer, partner, trustee, employee or manager, or (d) any source of income or donors of gifts to the official (including nonprofit entities) if the income or value of the gift totaled more than \$500 the previous year. Contractor will promptly disclose to City in writing any information it may receive concerning any such potential conflict of interest. Contractor's attention is directed to the conflict of interest rules applicable to governmental decision-making contained in the Political Reform Act (California Government Code Section 87100 *et seq.*) and its implementing regulations (California Code of Regulations, Title 2, Section 18700 *et seq.*).
- vi. Contractor understands that in some cases Contractor or persons associated with Contractor may be deemed a "city officer" or "public official" for purposes of the conflict of interest provisions of Government Code Section 1090 and/or the Political Reform Act. Contractor further understands that, as a public officer or official, Contractor or persons associated with Contractor may be disqualified from future City contracts to the extent that Contractor is involved in any aspect of the making of that future contract (including preparing plans and specifications or performing design work or feasibility studies for that contract) through its work under this Agreement.
- vii. Contractor shall incorporate or cause to be incorporated into all subcontracts for work to be performed under this Agreement a provision governing conflict of interest in substantially the same form set forth herein:

b. No Waiver

Nothing herein is intended to waive any applicable federal, state or local conflict of interest law or regulation

c. Remedies and Sanctions

In addition to the rights and remedies otherwise available to the City under this Agreement and under federal, state and local law, Contractor understands and agrees that, if the City reasonably determines that Contractor has failed to make a good faith effort to avoid an improper conflict of interest situation or is responsible for the conflict situation, the City may (1) suspend payments under this Agreement, (2) terminate this Agreement, (3) require reimbursement by Contractor to the City of any amounts disbursed under this Agreement. In addition, the City may suspend payments or terminate this Agreement whether or not Contractor is responsible for the conflict of interest situation.

20. Non-Discrimination/Equal Employment Practices

Contractor shall not discriminate or permit discrimination against any person or group of persons in any manner prohibited by federal, state or local laws. During the performance of this Agreement, Contractor agrees as follows:

- a. Contractor and Contractor's subcontractors, if any, shall not discriminate against any employee or applicant for employment because of age, marital status, religion, gender, sexual preference, race, creed, color, national origin, Acquired-Immune Deficiency Syndrome (AIDS), AIDS-Related Complex (ARC) or disability. This nondiscrimination policy shall include, but not be limited to, the following: employment, upgrading, failure to promote, demotion or transfer, recruitment advertising, layoffs, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- b. Contractor and Contractor's Subcontractors shall state in all solicitations or advertisements for employees placed by or on behalf of Contractor that all qualified applicants will receive consideration for employment without regard to age, marital status, religion, gender, sexual preference, race, creed, color, national origin, Acquired-Immune Deficiency Syndrome (AIDS), AIDS-Related Complex (ARC) or disability.
- c. Contractor shall make its goods, services, and facilities accessible to people with disabilities and shall verify compliance with the Americans with Disabilities Act by executing Schedule C-1 ("Declaration of Compliance with the Americans with Disabilities Act,") attached hereto and incorporated herein.
- d. If applicable, Contractor will send to each labor union or representative of workers with whom Contractor has a collective bargaining agreement or contract or understanding, a notice advising the labor union or workers' representative of Contractor's commitments under this nondiscrimination clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

21. Intentionally Omitted

22. Living Wage Ordinance

If the contract amount of this Agreement is equal to or greater than \$25,000 annually, then Contractor must comply with the Oakland Living Wage Ordinance. The Living Wage Ordinance requires that nothing less than a prescribed minimum level of compensation (a living wage) be paid to employees of service contractors (consultants) of the City and employees of CFARs (Ord. 12050 § 1, 1998). The Ordinance also requires submission of the Declaration of Compliance attached and incorporated herein as Schedule N and made part of this Agreement, and, unless specific exemptions apply or a waiver is granted, the consultant must provide the following to its employees who perform services under or related to this Agreement:

- a. Minimum compensation – Said employees shall be paid an initial hourly wage rate of \$10.83 with health benefits or \$12.45 without health benefits. These initial rates shall be upwardly adjusted each year no later than April 1 in proportion to the increase at the immediately preceding December 31 over the year earlier level of the Bay Region Consumer Price Index as published by the Bureau of Labor Statistics, U.S. Department of Labor. Effective July 1st of each year, Contractor shall pay adjusted wage rates.

- b. Health benefits – Said full-time and part-time employees paid at the lower living wage rate shall be provided health benefits of at least \$1.56 per hour. Contractor shall provide proof that health benefits are in effect for those employees no later than 30 days after execution of the contract or receipt of City financial assistance.
- c. Compensated days off – Said employees shall be entitled to twelve compensated days off per year for sick leave, vacation or personal necessity at the employee's request, and ten uncompensated days off per year for sick leave. Employees shall accrue one compensated day off per month of full time employment. Part-time employees shall accrue compensated days off in increments proportional to that accrued by full-time employees. The employees shall be eligible to use accrued days off after the first six months of employment or consistent with company policy, whichever is sooner. Paid holidays, consistent with established employer policy, may be counted toward provision of the required 12 compensated days off. Ten uncompensated days off shall be made available, as needed, for personal or immediate family illness after the employee has exhausted his or her accrued compensated days off for that year.
- d. Federal Earned Income Credit (EIC) – Contractors shall inform said employees that he or she may be eligible for EIC and shall provide forms to apply for advance EIC payments to eligible employees. There are several web sites and other sources available to assist you. Web sites include but are not limited to: (1) <http://www.irs.gov> for current guidelines as prescribed by the Internal Revenue Service and (2) The 2007 Earned Income Tax Outreach Kit: www.cbpp.or/eic2007.
- e. Contractor shall provide to all employees and to the Office of Contract Compliance, written notice of its obligation to eligible employees under the City's Living Wage requirements. Said notice shall be posted prominently in communal areas of the work site(s) and shall include the above-referenced information.
- f. Contractor shall provide all written notices and forms required above in English, Spanish or other languages spoken by a significant number of employees within 30 days of employment under this Agreement.
- g. Reporting – Contractor shall maintain a listing of the name, address, hire date, occupation classification, rate of pay and benefits for each of its employees. Contractor shall provide a copy of said list to the Office of Contract Compliance, on a quarterly basis, by March 31, June 30, September 30 and December 31 for the applicable compliance period. Failure to provide said list within five days of the due date will result in liquidated damages of five hundred dollars (\$500.00) for each day that the list remains outstanding. Contractor shall maintain employee payroll and related records for a period of four (4) years after expiration of the compliance period.
- h. Contractor shall require subcontractors that provide services under or related to this Agreement to comply with the above Living Wage provisions. Contractor shall include the above-referenced sections in its subcontracts. Copies of said subcontracts shall be submitted to the Office of the City Administrator, Contract Compliance & Employment Services Division.

23. Equal Benefits Ordinance

a. This Agreement is subject to the Equal Benefits Ordinance of Chapter 2.232.010 of the Oakland Municipal Code and its implementing regulations. The purpose of this Ordinance is to protect and further the public, health, safety, convenience, comfort, property and general welfare by requiring that public funds be expended in a manner so as to prohibit discrimination in the provision of employee benefits by City contractors (consultants) between employees with spouses and employees with domestic partners, and/or between domestic partners and spouses of such employees. (Ord. 12394 (part), 2001)

b. The following contractors are subject to the Equal Benefits Ordinance: Entities which enter into a "contract" with the City for an amount of twenty-five thousand dollars (\$25,000.00) or more for public works or improvements to be performed, or for goods or services to be purchased or grants to be provided at the expense of the City or to be paid out of moneys deposited in the treasury or out of trust moneys under the control of or collected by the city; and Entities which enter into a "property contract" pursuant to Section 2.32.020(D) with the City in an amount of twenty-five thousand dollars (\$25,000.00) or more for the exclusive use of or occupancy (1) of real property owned or controlled by the city or (2) of real property owned by others for the city's use or occupancy, for a term exceeding twenty-nine (29) days in any calendar year.

c. The Ordinance shall only apply to those portions of a contractor's operations that occur (1) within the city; (2) on real property outside the city if the property is owned by the city or if the city has a right to occupy the property, and if the contract's presence at that location is connected to a contract with the city; and (3) elsewhere in the United States where work related to a city contract is being performed. The requirements of this chapter shall not apply to subcontracts or subcontractors of any contract or contractor

d. The Equal Benefits Ordinance requires among other things, submission of the attached and incorporated herein as Schedule N-1 – Equal Benefits-Declaration of Nondiscrimination.

24. City of Oakland Campaign Contribution Limits

This Agreement is subject to the City of Oakland Campaign Reform Act of Chapter 3.12 of the Oakland Municipal Code and its implementing regulations if it requires Council approval. The City of Oakland Campaign Reform Act prohibits contractors that are doing business or seeking to do business with the City of Oakland from making campaign contributions to Oakland candidates between commencement of negotiations and either 180 days after completion of, or termination of, contract negotiations.

If this Agreement requires Council approval, Contractor must sign and date an Acknowledgment of Campaign Contribution Limits Form attached hereto and incorporated herein as Schedule O.

25. Nuclear Free Zone Disclosure

Contractor represents, pursuant to Schedule P ("Nuclear Free Zone Disclosure Form"), that Contractor is in compliance with the City of Oakland's restrictions on doing business with service providers considered nuclear weapons makers. Prior to execution of this agreement, Contractor shall complete Schedule P, attached hereto.

26. Political Prohibition

Subject to applicable State and Federal laws, moneys paid pursuant to this Agreement shall not be used for political purposes, sponsoring or conducting candidate's meetings, engaging in voter registration activity, nor for publicity or propaganda purposes designed to support or defeat legislation pending before federal, state or local government.

27. Religious Prohibition

There shall be no religious worship, instruction, or proselytization as part of, or in connection with the performance of the Agreement.

28. Business Tax Certificate

Contractor shall obtain and provide proof of a valid City business tax certificate. Said certificate must remain valid during the duration of this Agreement.

29. Abandonment of Project

The City may abandon or indefinitely postpone the project or the services for any or all of the project at any time. In such event, the City shall give thirty (30) days written notice of such abandonment. In the event of abandonment prior to completion of the final drawings, if applicable, and cost estimates, Contractor shall have the right to expend a reasonable amount of additional time to assemble work in progress for the purpose of proper filing and closing the job. Prior to expending said time, Contractor shall present to the City a complete report of said proposed job closure and its costs, and the City may approve all or any part of said expense. Such additional time shall not exceed ten percent (10%) of the total time expended to the date of notice of termination. All charges thus incurred and approved by the City, together with any other charges outstanding at the time of termination, shall be payable by the City within thirty (30) days following submission of a final statement by Contractor.

Should the project or any portion thereof be abandoned, the City shall pay Contractor for all services performed thereto in accordance with the terms of this Agreement.

30. Validity of Contracts

This Agreement shall not be binding or of any force or effect until it is: i) approved by resolution of the City Council as required by the Oakland City Charter, Oakland Municipal Code Title 2.04 and Oakland City Council Rules of Procedure, ii) approved for form and legality by the Office of the City Attorney, and iii) signed by the City Administrator or his or her designee.

31. Attorneys' Fees

If either party prevails against the other in a legal action concerning any aspect of this Agreement, such successful party shall be entitled to recover its reasonable attorney's fees and costs incurred in such action from the losing party.

32. Governing Law

This Agreement shall be governed by the laws of the State of California.

33. Entire Agreement of the Parties

This Agreement supersedes any and all agreements, either oral or written, between the parties with respect to the rendering of services by Contractor for the City and contains all of the representations, covenants and agreements between the parties with respect to the rendering of those services. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not contained in this Agreement, and that no other agreement, statement or promise not contained in this Agreement will be valid or binding.

34. Modification

Any modification of this Agreement will be effective only if it is in a writing signed by all parties to this Agreement.

35. Severability/Partial Invalidity

If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a particular situation, shall be finally found to be void, invalid, illegal or unenforceable by a court of competent jurisdiction, then notwithstanding such determination, such term or provision shall remain in force and effect to the extent allowed by such ruling and all other terms and provisions of this Agreement or the application of this Agreement to other situation shall remain in full force and effect.

Notwithstanding the foregoing, if any material term or provision of this Agreement or the application of such material term or condition to a particular situation is finally found to be void, invalid, illegal or unenforceable by a court of competent jurisdiction, then the Parties hereto agree to work in good faith and fully cooperate with each other to amend this Agreement to carry out its intent.

36. Time of the Essence

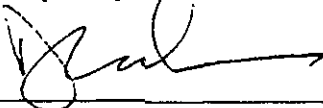
Time is of the essence in the performance of this Agreement.

[Signatures on following page]

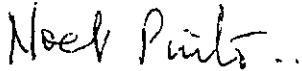
IN WITNESS HEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorized representatives.

CITY

CITY OF OAKLAND,
a municipal corporation



Dan Lindheim
City Administrator
Date: 4/2/10



Noel Pinto
Parking Director

Date: 4/2/10

Approved as to form and legality:

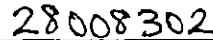


Alix A. Rosenthal
Deputy City Attorney

CONTRACTOR

ACS STATE & LOCAL SOLUTIONS, INC
a New York corporation

Name
Title
Date:



Business Tax Certificate No.



Resolution Number



Accounting Number

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

CITY:

CITY OF OAKLAND,
a municipal corporation

Dan Lindheim
City Administrator
Date: _____

Noel Pinto
Parking Director

Date: _____

Approved as to form and legality:

Alix A. Rosenthal
Deputy City Attorney

CONTRACTOR:

ACS STATE & LOCAL SOLUTIONS, INC.,
a New York corporation

Name: *Mark J. Tallpo*
Title: *Vice President*
Date: *3/29/10*

Business Tax Certificate No.

Resolution Number

Accounting Number

Exhibit A

Modifications to Contractor's Proposal

1. Contract Inducement

Contractor will pay City \$300,000 within thirty (30) calendar days of executing this Agreement for the initial three-year term of the contract. Contractor shall make additional payments to the City of \$100,000 for each Option Term provided for in the Agreement. For each Option Term, Contractor shall pay the City within thirty (30) calendar days following Contractor's receipt of written notice of the City's exercise of the Option Term. The maximum contract inducement payment made by Contractor hereunder is \$500,000 for a minimum of a full five year contract term.

2. Collection Assignment Criteria (Modified San Francisco plan)

Collection Assignment criteria shall be as follows:

- Contractor shall be assigned all unpaid citations meeting one of the following conditions: (i) DMV hold rejects (upon rejection from DMV), (ii) aged DMV holds (defined as citations still unpaid one month after annual registration anniversary); and (iii) citations issued to vehicles with out of state plates; rental and fleet vehicles with outstanding citations unpaid 45 days past the date of issuance. Other Citations may be assigned as determined by the City's Parking Director. At time of assignment, citations will have a 30% collection fee added.
- Contractor will remove the 30% collection fee prior to sending the citations to FTB for tax intercept marking. City will reimburse Contractor for SSN acquisition fees and FTB filing fees (at Contractor cost without-mark-up). If citation is still unsatisfied after FTB process is complete, Contractor will resume collection activities with 30% fee reapplied to the citation balance due.

3. Collection Rate Target

Contractor will employ collection techniques as described in the RFP and City will fulfill commitments listed below in Section 4 of this Exhibit A. Contractor will increase the City's current 68% collection rate¹ to 80% after 24 months as follows:

¹ Collection rate shall be defined as the percentage of valid citations uploaded to Contractor's system in a given period for which a payment has been received; Valid citations shall not include voids.

All citations issued updated to database:	Evaluated as of: (time periods set forth below begin to run upon the conclusion of the initial three month period)	Minimum Collection Rate Targets:
Starting in operating month three (3)	After 6 months	72%
	After 12 months	74%
	After 18 months	78%
	After 24 months	80%

The first operating month shall be defined as the first full calendar month during which new citations are processed on Contractor's system.

The current City collection rate will be verified by Contractor and City within three months from contract implementation. That shall become the baseline rate for evaluating Contractor's performance relative to the Collection Rate Targets. The foregoing Collection Rate Targets may be adjusted relative to the actual baseline collection rate if it proves to be different than 67.7%. The City and Contractor will mutually agree on methodology to calculate current collection rate and will mutually agree to any changes to the minimum collection rate targets defined above.

4. Collection Program:

The collection rate targets presented above are expressly conditioned upon the following:

- Contractor will be authorized to utilize its full complement of collection techniques (as described in its Proposal), including but not limited to: collection noticing, DMV holds, outbound calling, credit bureau marking, tax intercepts, and other sanctions as provided for by California state law.
- City ticket dismissal rate, currently estimated at 4%, will not increase by more than one percentage point (i.e. to 5%).
- If the City makes significant changes to payment programs that impact payment behavior, such as amnesty programs, fine or penalty reductions, the City will work with Contractor to make adjustments to the minimum collection rate targets specified above.
- City's booting program and towing programs will be maintained at current or greater resource levels.
- Collection assignments will be system generated weekly based upon criteria specified in Section 2 (Collection Assignment Criteria) of this Exhibit A.

5. Credit Assessments for Contractor's failure to meet Collection Rate Targets

Contractor shall provide a credit to the City on the Operating Quarter's citation processing invoice for each percentage point that the Collection Rate (rounded up to the highest percentage point) fails to meet the collection rate target for that quarter as follows:

For each percentage point Contractor misses the collection target per the chart in #3 above, Contractor will be assessed 1.5% of its citation processing invoice for the quarter.

The maximum credit assessment in any quarter over the contract term is 10%. A collection rate of 80% will be considered compliant.

For example:

- Citations on the data base for 6 months will be expected to have a Collection Rate of 72% after six months as measured in the following quarter. If instead, they only achieve a collection rate of 70% by the end of following quarter, Contractor shall grant the City a credit equal to 3% of the total amount of its citation invoices for that quarter.
- Citations on the data base for 12 months will be expected to have a Collection Rate of 74% after 12 months as measured in the following quarter. If instead, they only achieve a collection rate of 73% by the end of following quarter, Contractor shall grant the City a credit equal to 1.5% of the total amount of its citation invoices for that quarter.

6. Communication lines

To reduce costs, City will access Contractor's client server via the internet for a trial period of one month from "go live" date, at a processing cost of \$0.93 per citation. Contractor will order T-1 communication lines when the Notice to Proceed is issued, in case internet connectivity is not satisfactory to City at the end of the trial period. If Internet connectivity is satisfactory to City, processing costs will remain at \$0.93 per citation and Contractor will cancel the T-1 line order. If the City is not satisfied with internet connectivity, Contractor will promptly activate T-1 lines in order for the City to connect to Contractor's client system and City processing fee will increase to \$0.99 rate upon installation.

7. General Liquidated Damages

If Contractor does not meet Performance Standards as listed, accepted and clarified in Section 6.3.4.9 of the RFP and Contractor's proposal, Contractor will pay City a penalty not to exceed 10% of total monthly citation processing fees invoiced to the City. Contractor will be subject to and pay these liquidated damages above and beyond the Credit Assessment identified in Section 5 of this Exhibit A.

8. Kiosks

Contractor will provide four payment kiosks as offered in Contractor's Proposal. These kiosks will be accessible to Spanish and Chinese language speakers, in addition to English. Contractor will be responsible for all maintenance and repair of these kiosks.

Exhibit B

City of Oakland Request for Proposals dated August 7, 2009

Exhibit C

Proposal of ACS State & Local Solutions, Inc.

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2013 DEC -5 PM 12:54

OAKLAND CITY COUNCIL

Approved as to Form and Legality


City Attorney

RESOLUTION No. _____ C.M.S.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OAKLAND ESTABLISHING SPENDING AUTHORITY ON THE EXISTING CONTRACT WITH ACS STATE AND LOCAL SOLUTIONS INC., IN AN ANNUAL AMOUNT NOT TO EXCEED NINE HUNDRED THOUSAND DOLLARS (\$900,000) FOR PARKING CITATION ADMINISTRATION AND REVENUE COLLECTION SERVICES, AND AUTHORIZING AN APPROPRIATION UPON RECEIPT OF COLLECTION FEE REVENUES IN AN ANNUAL AMOUNT NOT TO EXCEED TWO MILLION EIGHT HUNDRED THOUSAND DOLLARS (\$2,800,000), AS REQUIRED AND EQUAL TO THE THIRTY PERCENT (30%) SPECIAL COLLECTION FEE ON ALL ASSIGNED CITATIONS, WHICH IS IMPOSED BY THE CONTRACTOR IN ADDITION TO THE MOTORIST'S OUTSTANDING CITATION.

WHEREAS, at the February 16, 2010 regular meeting of the City Council of the City of Oakland, the City Council adopted Resolution 82531 C.M.S., authorizing the City Administrator to negotiate and execute a Contract between the City of Oakland and ACS State & Local Solutions, Inc. ("ACS"), to provide a parking citation administration and revenue reconciliation system ("CARR"); and

WHEREAS, the Contract was for a three-year term commencing April 2, 2010, with two one-year options to renew; and

WHEREAS, the initial three-year term expired March 31, 2013, and the City exercised a one-year renewal option beginning April 1, 2013 through March 31, 2014; and

WHEREAS, there is an additional one-year renewal option available should the City choose to exercise it for the term of April 1, 2014 through March 31, 2015; and

WHEREAS, Resolution 82531 C.M.S. resolved that the Contract was for an estimated annual amount of Nine Hundred Thousand Dollars (\$900,000) per year; and

WHEREAS, the estimated \$900,000 annual Contract cost is for the CARR system and is inclusive of; (i) per citation processing costs; (ii) reimbursable costs; (iii) lock box payment processing; (iv) mail processing equipment; and (v) as needed consultation services; and

WHEREAS, the City's expenditure estimate was accurate in reflecting the costs for the CARR system but did not reflect the Special Collection Fee component of the Contract memorialized in Section 4.b.(6) Special Collections: Contractor is authorized to add and collect a 30 percent (30%) contingency collection fee ("Collection Fee") on all citations updated or uploaded to eTIMS, so long as the City is not responsible for such fee; and

WHEREAS, the Collection Fee is imposed by the Contractor, is separate from and in addition to the cost of the citation, and is calculated by multiplying the citation fee by 30 percent (30%); and

WHEREAS, ACS collects and remits all collected parking citation fees, including the Collection Fee, to the City and then invoices the City separately for (i) CARR system services rendered and (ii) the Collection Fee in accordance with the Contract; and

WHEREAS, the annual value of the Collection Fee is fluid and dependent upon successful collection of delinquent parking tickets by ACS, for example, in Fiscal Year 2012, the Collection Fee passed through to ACS was \$867,848, and in Fiscal Year 2013, the Collection Fee passed through to ACS was \$1,959,714; and

WHEREAS, there is a correlation between an increase in ACS' Collection Fee and an increase in the City's delinquent parking citation revenues, Fiscal Year 2012 revenues net of Collection Fee were \$2,372,794 and in Fiscal Year 2013 revenues net of Collection Fee were \$5,590,333; and

WHEREAS, Resolution 82531 C.M.S does not provide sufficient spending authority for the Collection Fee, which necessitates adoption of a Resolution authorizing an appropriation of such funds as required and equal to the Collection Fee and not to exceed \$2,800,000 annually; and

WHEREAS, funds for the Contracted CARR system are available in the Department of Administrative Services Fiscal Years 2014 and 2015 adopted budget in the General Purpose Fund (1010), Organization (08921); and

WHEREAS, funds collected for the Special Collection Fee will be received as revenue into the General Purpose Fund (1010), appropriated as an offsetting expenditure in an amount equal to the collection fee received, but not to exceed \$2,800,000 annually, and remitted to ACS; now, therefore, be it

RESOLVED: That by adoption of this Resolution the City Council of the City of Oakland hereby establishes spending authority on the existing contract with ACS State and Local Solutions Inc., to an amount not to exceed Nine Hundred Thousand Dollars (\$900,000) per year for the remaining terms of the Contract for parking citation administration and revenue reconciliation system; and be it further

RESOLVED: That the City Council of the City of Oakland hereby authorizes an appropriation not to exceed Two Million Eight Hundred Thousand Dollars (\$2,800,000) as required and equal to the Thirty Percent (30%) Collection Fee on all assigned citations, which is imposed by the Contractor and is in addition to the motorist's outstanding citation.

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, GALLO, GIBSON MCELHANEY, KALB, KAPLAN, REID, SCHAAF and PRESIDENT KERNIGHAN

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____

LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California