

LAW

Law No. 15-PW-019B
Ver. 3-30-2012

**RED LIGHT CAMERA SAFETY PROGRAM ENFORCEMENT
Second Amendment of Agreement
and
Exercise of Option**

This Second Amendment ("Second Amendment") of an Agreement ("Agreement" or "Contract") is between the County of Suffolk ("the County"), a municipal corporation of the State of New York, acting through its duly constituted Department of Public Works ("the Department"), located at 335 Yaphank Ave, Yaphank, NY 11980; and

Xerox ACS STATE & LOCAL SOLUTIONS, INC. ("Contractor" or "ACS" or "Vendor"), a New York corporation duly authorized to do business in New York and having its principal office at Xerox ACS State & Local Solutions, Inc., located at 12410 Milestone Center Dr., Germantown, MD 20876 ("ACS").

The parties hereto desire to continue to make available to the County all required professional services to plan, design, bid, implement, operate, maintain, and manage a Red Light Camera System in specified locations in Suffolk County in accordance with applicable State and County laws, rules and regulations.

Term of Contract: Pursuant to the County's option to renew the Contract, at its sole discretion, the County hereby exercises such option and the Term of the Contract shall accordingly be extended through March 31, 2015.

Total Cost of Contract: Shall be as set forth in Article IV of the Agreement, as amended February 15, 2011 by Amendment No. One (Amendment No. One) and as amended by this Second Amendment.

Terms and Conditions: Shall be as set forth in Articles 1 - IV and Exhibits 1 and 2 of the Agreement, as amended by Amendment No. One and as amended by this Second Amendment.

In Witness Whereof, the parties hereto have executed this Second Amendment as of the latest date written below.

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Bar Code 14064

Law No. 15-PW-019B
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Xerox
ACS STATE & LOCAL SOLUTIONS, INC.

By: [Signature]
Name: Martin Abbott
Title: Vice President
Fed. Tax ID #: 13-1976647
Date: 4/13/2012

Approved as to Legality:
Dennis M. Cohen, County Attorney

By: [Signature]
Phyllis Seidman
Deputy Bureau Chief
Date: 4/20/12

COUNTY OF SUFFOLK

By: [Signature]
Name: Regina Calcaterra
~~Chief~~
Title: Chief Deputy County Executive
Date: 4-25-12

Approved:
Department of Public Works

By: [Signature]
Name: Gilbert Anderson, P.E.
Title: Commissioner
Date: 4/17/12

WH

Law No. 15-PW-019B
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Xerox

ACS STATE & LOCAL SOLUTIONS, INC.

By: [Signature]
Name: Mark Talbot
Title: Vice President
Fed. Tax ID #: 13-1998647
Date: 4/13/2012

Approved as to Legality:
Dennis M. Cohen, County Attorney

By: [Signature]
Phyllis N. Seidman
Deputy Bureau Chief
Date: 4/20/12

COUNTY OF SUFFOLK

By: _____
Name: Regina Calcaterra
Title: Chief Deputy County Executive
Date: _____

Approved:
Department of Public Works

By: [Signature]
Name: Gilbert Anderson, P.E.
Title: Commissioner
Date: 4/17/12

WH

Second Amendment of Agreement

Whereas, pursuant to Section 1111-b of the New York State Vehicle and Traffic Law, the County has the authority to adopt a program imposing monetary liability on the owner of a vehicle for failure of an operator thereof to comply with traffic-control indications through a system of traffic-control signal photo violation-monitoring devices ("Red Light Camera Program"); and

Whereas, Suffolk County Local Law No. 20-2009 authorizes the implementation of a Red Light Camera Program through the utilization of automated image capture technologies; and

Whereas, the County and ACS entered into an original Agreement (15-PW-019) last dated March 31, 2010 for a term of two (2) years with an option to renew through March 31, 2015 at the County's sole option and in accordance with applicable State law; and

Whereas, the parties entered into Amendment No. One of the Agreement (15-PW-019A) last dated February 15, 2011; and

Whereas, the County and the Contractor desire to enter into this Second Amendment to modify certain terms and conditions of the Agreement and Amendment No. One and to exercise the option period for the period from April 1, 2012 through March 31, 2015.

Now therefore, in consideration of the mutual provisions and covenants hereafter set forth, the parties hereto agree as follows:

I. All terms and conditions of the Agreement and Amendment No. One shall remain in full force and effect as if set forth fully herein except as otherwise expressly provided for below.

II. **Paragraph 2 of Article I** of the Agreement shall be deleted in its entirety and replaced with the following paragraph:

2. RFP and RFP Response Incorporated Herein by Reference

The terms set forth in ACS' *Proposal for Professional Services for a Countywide Red Light Violation Camera System for Suffolk County ("Proposal")* in Response to RFP #09-90022 advertised on August 13, 2009 and the Terms of the RFP, both of which are on file at the Department at the address set forth on page 1 of this Agreement, shall be incorporated by reference herein. To the extent that any of the terms of the RFP and the Proposal conflict, the terms of the Proposal shall supersede. To the extent that the terms of either the RFP or the Proposal conflict with the terms set forth in this Agreement, the terms of this Agreement shall supersede. Specific responsibilities and obligations of the parties not set forth in the RFP otherwise mutually agreed upon by the parties shall be in writing upon implementation of the specific services or in accordance with this Agreement, as the case may be.

III. Paragraphs 4.7, 4.17 and 4.20 of Section 4 of Article I of the Agreement shall be deleted in their entirety and replaced with the following paragraphs:

- 4.7 Conduct a site analysis at up to 100 potential intersections within the first 4 months after the contract execution date and prepare a final list, in writing, of Designated Sites that meet ACS' basic site analysis criteria for installation of Vendor Equipment, for approval by the County in accordance with the timeline set forth in the implementation schedule referenced in subparagraph 4.1 above. The goal of the program is to install a minimum of 100 cameras at 50 intersections. In the event that we do not use all 50 authorized locations, ACS will evaluate additional intersections if the County receives authorization for non-New York state owned traffic signals. Notwithstanding anything to the contrary set forth above, ACS will provide additional Enforcement Systems, Vendor Equipment and Vendor Systems at ten new Approaches as set forth in **paragraph 6.4 of Section 6 of Article I**.
- 4.17 Obtain access to the records data of the New York State Department of Motor Vehicles (NYSDMV), the National Law Enforcement Telecommunications System (NLETS) or the Parking Regulation Electronic Enforcement & Disposition (PREED) Program as necessary for this Agreement.
- 4.20 a. ACS will perform the customary and reasonable tasks that will enable the County and any tribunal adjudicating notices of liability under state and local law to enter default judgments against motor vehicles owners who have not answered or who have otherwise failed to duly respond to a notice of liability or any tribunal determination, directive or order. Such tasks shall include, but not be limited to, preparation of reports listing violations for which default are existing; preparation in a final form, mailing confirmations duly sworn to by ACS or its designee; creation of the litigation calendars satisfactory to a hearing tribunal needed by such tribunal for its purposes to enable it to enter default judgments; preparation of reports listing violations for which defaults have been entered; preparation of reports listing those owners of motor vehicles and their license plate numbers who have three or more defaults in any 18 month period. ACS will perform all reasonable and necessary programing to effectuate these deliverables. Without limiting the generality of the foregoing, it is the County's burden of proof in a default proceeding to obtain and present evidence of motor vehicle ownership to the tribunal's satisfaction, and to provide to the tribunal any necessary attorney affirmations.
- b. Provide for Second Notices of Liability as set forth at **Paragraph 19 of Article III** herein.

IV. Paragraph 6.4 of Section 6 of Article I, of the Agreement as amended by Amendment No. One shall be deleted in its entirety and replaced with the following paragraph:

6.4 ACS agrees to construct, at its cost, no less than ten (10) new Designated Sites, so long as the Minimum Criteria ("Minimum Criteria") is met for each of the ten (10) new Designated Sites for rotation of existing enforcement systems as follows:

a. ACS agrees, at its cost, to conduct video validations of twenty-five (25) potential Approaches identified by the Department and to share the results of such surveys and validations with the Department. Prior to conducting video validation, ACS shall review the constructability, the impacts of future New York State Department of Transportation (NYSDOT) projects, and shall perform those tasks incorporated from the RFP by reference as set forth in Paragraph 2 of Article I, as amended, on each approach to the satisfaction of the Department. Any video validations beyond twenty-five (25) shall be paid for by the County. This work shall be completed within thirty (30) days of execution of this Second Amendment; provided, however, that both parties agree that the (30) day completion date for the work set forth above may be delayed by events beyond ACS' control due to New York Department of Transportation (NYDOT) deliverable schedules for all requested information.

b. The Minimum Criteria shall be twenty-five (25) video validated violations in a sixteen (16) hour period.

c. Based upon the results of such validations, the Department shall select ten (10) new Approaches (the "New Approaches") for rotation and shall provide notice to ACS identifying such selected New Approaches no later than June 30, 2012

d. ACS shall construct each New Approach forthwith after receiving notice from the Department identifying such New Site, provided, however, that reasonable allowances may be made to extend the time for installation due to unforeseen events beyond ACS' control, including, but not limited to, weather, issuance of government permits, government approval of installations, the failure of third parties to provide goods or services in a timely manner, or the interference of third parties in the performance of the Agreement. Full documentation, including equipment order dates, plan submissions, required form submissions, proof of payment to subcontractors/vendors/utilities and other relevant documents, as required by the County, must be provided by ACS to

substantiate any delay that ACS asserts is beyond its control.

e. As allowed by the involved agencies, sufficient infrastructure shall remain at a Designated Site from which an enforcement system is rotated out in order to accommodate a subsequent rotation of an enforcement system back into the original Designated Site. Such rotations back into an original Designated Site shall be based upon mutual agreement of the parties.

f. At that time when the Enforcement Systems on all of the affected Approaches at a new intersection are constructed and ready for operation, the New Approaches shall be activated in coordination with the deactivation of the Approaches at the existing intersection identified by the Department, as soon as practicable. Prior to the activation or deactivation of any camera, ACS shall supply a procedure and schedule to the Department for approval detailing the activation and deactivation. At no time shall there be less than one hundred Approaches actively recording violations except however that physical transition to a new Designated Site shall require a maximum of one (1) week to complete and the parties agree that this shall be considered an exception to the forgoing.

V. Paragraph 19 of Article III of the Agreement as amended by Amendment No. One shall be deleted in its entirety and replaced with the following paragraph:

19. If no response is received to a Notice of Liability within thirty-five (35) days of the mail date of such Notice of Liability, on day thirty-six (36) the County shall impose a twenty-five dollar (\$25.00) late penalty and ACS shall mail a second Notice of Liability including the penalty in the amount due.

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VI. Paragraph 3.2 of Section 3 of Article IV of the Agreement as amended by Amendment No. One shall be deleted in its entirety and replaced with the following paragraph:

3.2 County Revenue

- a. The revenue reserved by the County for paid violations shall be based upon a two tier system as follows:

Number of Paid Violations Per Enforcement System/Per Month Collected by ACS	Amount per Violation Retained by the County
Citations 1-90 amount paid for each citation for the first 90 citations paid per Enforcement System each month	\$13.00
Citations 91+ amount paid for each citation that is paid after 90 citations per Enforcement System per month are paid	\$33.00

- b. The twenty-five dollar (\$25) penalty collected by ACS from violators, who fail to timely respond to a Notice of Liability, as set forth in Paragraph 19 of Article III herein, shall be paid in full to the County by ACS.
- c. Payment transfer from ACS to the County, and deposit and reporting requirements shall be as set forth in Article III herein.

VII. Paragraph 3.3 of Section 3 of Article IV of the Agreement as amended by Amendment No. One shall be deleted in its entirety and replaced with the following paragraph:

3.3 ACS Revenue

- a. The revenue due to ACS for paid violations shall be based upon a two-tier system as follows:

Number of Paid Violations Per Enforcement System/Per Month Collected by ACS	Amount per Violation Due to ACS
Citations 1-90 amount due for each citation for the first 90 citations paid per Enforcement System each month	\$37.00
Citations 91+ amount due for each citation that is paid after 90 citations per Enforcement System per month are paid	\$17.00

VIII. Section 3 of Article IV is amended to add a new Paragraph 3.5 as follows:

3.5 Upon the termination or expiration of the Term, ACS shall continue to process all Notices of Violation and support the Services under the Agreement, Amendment No. One and this Second Amendment for a period of one (1) year from the date of expiration or termination, unless sooner terminated by the County, subject to the same payment obligations from County which are in place at the time of such termination or expiration.

IX. Paragraph 9(a) of Exhibit 1 of the Agreement is deleted in its entirety and replaced with the following paragraph:

a. **Thirty Days Termination**

The County shall have the right to terminate the Contract without cause, for any reason, at any time, upon such terms and conditions it deems appropriate, provided, however, that no such termination shall be effective unless ACS is given at least thirty (30) days' notice. Upon such termination, County agrees to reimburse ACS for reasonable, actual unamortized costs of ACS for the installation of New Approaches pursuant to Paragraph 6.4 as set forth in this Second Amendment.

X. Exhibit 2 of the Agreement is deleted in its entirety and replaced with this Exhibit 2.

Exhibit 2
Suffolk County Legislative Requirements

1. **Contractor's/Vendor's Public Disclosure Statement**

It shall be the duty of the Contractor to read, become familiar with, and comply with the requirements of section A5-7 of Article V of the Suffolk County Code.

Unless certified by an officer of the Contractor as being exempt from the requirements of section A5-7 of Article V of the Suffolk County Code, the Contractor represents and warrants that it has filed with the Comptroller the verified public disclosure statement required by Suffolk County Administrative Code Article V, section A5-7 and shall file an update of such statement with the Comptroller on or before the 31st day of January in each year of the Contract's duration. The Contractor acknowledges that such filing is a material, contractual and statutory duty and that the failure to file such statement shall constitute a material breach of the Contract, for which the County shall be entitled, upon a determination that such breach has occurred, to damages, in addition to all other legal remedies, of fifteen percent (15%) of the amount of the Contract.

Required Form:

Suffolk County Form SCEX 22; entitled "Contractor's/Vendor's Public Disclosure Statement"

2. Living Wage Law

It shall be the duty of the Contractor to read, become familiar with, and comply with the requirements of Chapter 575, of the Suffolk County Code.

This Contract is subject to the Living Wage Law of the County of Suffolk. The law requires that, unless specific exemptions apply, all employers (as defined) under service contracts and recipients of County financial assistance, (as defined) shall provide payment of a minimum wage to employees as set forth in the Living Wage Law. Such rate shall be adjusted annually pursuant to the terms of the Suffolk County Living Wage Law of the County of Suffolk. Under the provisions of the Living Wage Law, the County shall have the authority, under appropriate circumstances, to terminate the Contract and to seek other remedies as set forth therein, for violations of this Law.

Required Forms:

Suffolk County Living Wage Form LW-1; entitled "Suffolk County Department of Labor – Living Wage Unit Notice of Application for County Compensation (Contract)."

Suffolk County Living Wage Form LW-38; entitled "Suffolk County Department of Labor – Living Wage Unit Living Wage Certification/Declaration – Subject To Audit."

3. Use of County Resources to Interfere with Collective Bargaining Activities

It shall be the duty of the Contractor to read, become familiar with, and comply with the requirements of Article I of Chapter 803 of the Suffolk County Code.

County Contractors (as defined by section 803-2) shall comply with all requirements of Chapter 803 of the Suffolk County Code, including the following prohibitions:

- a. The Contractor shall not use County funds to assist, promote, or deter union organizing.
- b. No County funds shall be used to reimburse the Contractor for any costs incurred to assist, promote, or deter union organizing.
- c. No employer shall use County property to hold a meeting with employees or supervisors if the purpose of such meeting is to assist, promote, or deter union organizing.

If the Services are performed on County property, the Contractor must adopt a reasonable access agreement, a neutrality agreement, fair communication agreement, non-intimidation agreement, and a majority authorization card agreement.

If the Services are for the provision of human services and are not to be performed on County property, the Contractor must adopt, at the least, a neutrality agreement.

Under the provisions of Chapter 803, the County shall have the authority, under appropriate circumstances, to terminate the Contract and to seek other remedies as set forth therein, for violations of this Law.

Required Form:

Suffolk County Labor Law Form DOL-LO1; entitled "Suffolk County Department of Labor -- Labor Mediation Unit Union Organizing Certification/Declaration - Subject to Audit."

4. Lawful Hiring of Employees Law

It shall be the duty of the Contractor to read, become familiar with, and comply with the requirements of Article II of Chapter 353 of the Suffolk County Code.

This Contract is subject to the Lawful Hiring of Employees Law of the County of Suffolk. It provides that all covered employers, (as defined), and the owners thereof, as the case may be, that are recipients of compensation from the County through any grant, loan, subsidy, funding, appropriation, payment, tax incentive, contract, subcontract, license agreement, lease or other financial compensation agreement issued by the County or an awarding agency, where such compensation is one hundred percent (100%) funded by the County, shall submit a completed sworn affidavit (under penalty of perjury), the form of which is attached, certifying that they have complied, in good faith, with the requirements of Title 8 of the United States Code Section 1324a with respect to the hiring of covered employees (as defined) and with respect to the alien and nationality status of the owners thereof. The affidavit shall be executed by an authorized representative of the covered employer or owner, as the case may be; shall be part of any executed contract, subcontract, license agreement, lease or other financial compensation agreement with the County; and shall be made available to the public upon request.

All contractors and subcontractors (as defined) of covered employers, and the owners thereof, as the case may be, that are assigned to perform work in connection with a County contract, subcontract, license agreement, lease or other financial compensation agreement issued by the County or awarding agency, where such compensation is one hundred percent (100%) funded by the County, shall submit to the covered employer a completed sworn affidavit (under penalty of perjury), the form of which is attached, certifying that they have complied, in good faith, with the requirements of Title 8 of the United States Code Section 1324a with respect to the hiring of covered employees and with respect to the alien and nationality status of the owners thereof, as the case may be. The affidavit shall be executed by an authorized representative of the contractor, subcontractor, or owner, as the case may be; shall be part of any executed contract, subcontract, license agreement, lease or other financial compensation agreement between the covered employer and the County; and shall be made available to the public upon request.

An updated affidavit shall be submitted by each such employer, owner, contractor and subcontractor no later than January 1 of each year for the duration of any contract and upon the renewal or amendment of the Contract, and whenever a new contractor or subcontractor is hired under the terms of the Contract.

The Contractor acknowledges that such filings are a material, contractual and statutory duty and that the failure to file any such statement shall constitute a material breach of the Contract.

Under the provisions of the Lawful Hiring of Employees Law, the County shall have the authority to terminate the Contract for violations of this Law and to seek other remedies available under the law.

The documentation mandated to be kept by this law shall at all times be kept on site. Employee sign-in sheets and register/log books shall be kept on site at all times during working hours and all covered employees, as defined in the law, shall be required to sign such sign-in sheets/register/log books to indicate their presence on the site during such working hours.

Required Forms:

Suffolk County Lawful Hiring of Employees Law Form LHE-1; entitled "Suffolk County Department of Labor – Notice Of Application To Certify Compliance With Federal Law (8 U.S.C. Section 1324a) With Respect To Lawful Hiring of Employees."

Suffolk County Lawful Hiring of Employees Law Form LHE-2; entitled "Affidavit Of Compliance With The Requirements Of 8 U.S.C. Section 1324a With Respect To Lawful Hiring Of Employees"

Suffolk County Lawful Hiring of Employees Law Form LHE-6; entitled "Notice of Non-Applicability For Compliance With Federal Law (8 U.S.C. Section 1324A) With Respect To Lawful Hiring Of Employees."

5. Gratuities

It shall be the duty of the Contractor to read, become familiar with, and comply with the requirements of Chapter 664 of the Suffolk County Code.

The Contractor represents and warrants that it has not offered or given any gratuity to any official, employee or agent of the County or the State or of any political party, with the purpose or intent of securing an agreement or securing favorable treatment with respect to the awarding or amending of an agreement or the making of any determinations with respect to the performance of an agreement.

6. Prohibition Against Contracting with Corporations that Reincorporate Overseas

It shall be the duty of the Contractor to read, become familiar with, and comply with the requirements of sections A4-13 and A4-14 of Article IV of the Suffolk County Code.

The Contractor represents that it is in compliance with sections A4-13 and A4-14 of Article IV of the Suffolk County Code. Such law provides that no contract for consulting services or goods and services shall be awarded by the County to a business previously incorporated within the U.S.A. that has reincorporated outside the U.S.A.

7. Child Sexual Abuse Reporting Policy

It shall be the duty of the Contractor to read, become familiar with, and comply with the requirements of Article II of Chapter 880 of the Suffolk County Code.

The Contractor shall comply with Article II of Chapter 880, of the Suffolk County Code, entitled "Child Sexual Abuse Reporting Policy," as now in effect or amended hereafter or of any other Suffolk County Local Law that may become applicable during the term of the Contract with regard to child sexual abuse reporting policy.

8. Non Responsible Bidder

It shall be the duty of the Contractor to read, become familiar with, and comply with the requirements of Article II of Chapter 189 of the Suffolk County Code.

Upon signing the Contract, the Contractor certifies that it has not been convicted of a criminal offense within the last ten (10) years. The term "conviction" shall mean a finding of guilty after a trial or a plea of guilty to an offense covered under section 189-5 of the Suffolk County Code under "Nonresponsible Bidder."

9. Use of Funds in Prosecution of Civil Actions Prohibited

It shall be the duty of the Contractor to read, become familiar with, and comply with the requirements of Article III of Chapter 893 of the Suffolk County Code.

The Contractor shall not use any of the moneys, in part or in whole, and either directly or indirectly, received under the Contract in connection with the prosecution of any civil action against the County in any jurisdiction or any judicial or administrative forum.

10. Youth Sports

It shall be the duty of the Contractor to read, become familiar with, and comply with Article III of Chapter 730 of the Suffolk County Code.

All contract agencies that conduct youth sports programs are required to develop and maintain a written plan or policy addressing incidents of possible or actual concussion or other head injuries among sports program participants. Such plan or policy must be submitted prior to the award of a County contract, grant or funding. Receipt of such plan or policy by the County does not represent approval or endorsement of any such plan or policy, nor shall the County be subject to any liability in connection with any such plan or policy.

11. Work Experience Participation

If the Contractor is a not-for-profit or governmental agency or institution, each of the Contractor's locations in the County at which the Services are provided shall be a work site for public-assistance clients of Suffolk County pursuant to Chapter 281 of the Suffolk County Code at all times during the Term of the Contract. If no Memorandum of Understanding ("MOU") with the Suffolk County Department of Labor for work experience is in effect at the beginning of the Term of the Contract, the Contractor, if it is a not-for-profit or governmental agency or institution, shall enter into such MOU as soon as possible after the execution of the Contract and failure to enter into or to perform in accordance with such MOU shall be deemed to be a failure to perform in accordance with the Contract, for which the County may withhold payment, terminate the Contract or exercise such other

remedies as may be appropriate in the circumstances.

12. Suffolk County Local Laws Website Address

Suffolk County Local Laws, Rules and Regulations can be accessed on the homepage of the Suffolk County Legislature.

End of Text for Second Amendment