

RESOLUTION No. 2009-188-1134

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, APPROVING THE FORM EASEMENT AGREEMENT TO BE UTILIZED BY THE CITY'S AGENT, AMERICAN TRAFFIC SOLUTIONS (ATS) FOR THE INSTALLATION OF RED LIGHT CAMERAS AND EQUIPMENT, IN SUBSTANCE FORM AS THAT AGREEMENT ATTACHED HERETO AS EXHIBIT "A;" PROVIDING FOR THE ADOPTION OF REPRESENTATIONS; PROVIDING AN EFFECTIVE DATE.

WHEREAS, in accordance with Resolution No. 2007-177-683, the City entered into an agreement with American Traffic Solutions (ATS) for the implementation of a Red Light Camera Program within the City, and

WHEREAS, the City has encountered some difficulties with being able to access easements from the Florida Department of Transportation, and

WHEREAS, as such, the City is being required to install the necessary equipment on private properties, and

WHEREAS, in order for the City to install the equipment, the City is required to execute easement agreements with the property owners, and

WHEREAS, it is necessary for City Council to approve the form of the easement agreement to be utilized by the City through its contractor, ATS,

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, AS FOLLOWS:

Section 1. ADOPTION OF REPRESENTATIONS: The foregoing Whereas paragraphs are hereby ratified and confirmed as being true, and the same are hereby made a specific part of this Resolution.

Section 2. AUTHORIZATION: The City Council of the City of Miami Gardens hereby authorizes the City Manager to execute an easement agreement in substantial form as that attached hereto as Exhibit A.

Section 3. EFFECTIVE DATE: This Resolution shall take effect immediately upon its final passage.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS AT ITS REGULAR MEETING HELD ON OCTOBER 14, 2009.


SHIRLEY GIBSON, MAYOR

ATTEST:


RONETTA TAYLOR, MMC, CITY CLERK

PREPARED BY: SONJA KNIGHTON DICKENS, ESQ.
CITY ATTORNEY

SPONSORED BY: DANNY CREW, CITY MANAGER

MOVED BY: Councilwoman Watson
SECOND BY: Vice Mayor Gilbert

VOTE: 7-0

Mayor Shirley Gibson	<u>X</u> (Yes)	___ (No)
Vice Mayor Oliver Gilbert, III	<u>X</u> (Yes)	___ (No)
Councilman Melvin L. Bratton	<u>X</u> (Yes)	___ (No)
Councilman Aaron Campbell	<u>X</u> (Yes)	___ (No)
Councilwoman Barbara Watson	<u>X</u> (Yes)	___ (No)
Councilwoman Sharon Pritchett	<u>X</u> (Yes)	___ (No)
Councilman André Williams	<u>X</u> (Yes)	___ (No)



City of Miami Gardens Agenda Cover Memo

Council Meeting Date:	October 14, 2009		Item Type: <small>(Enter X in box)</small>	Resolution Y	Ordinance	Other	
Fiscal Impact: <small>(Enter X in box)</small>	Yes	No	Ordinance Reading: <small>(Enter X in box)</small>	1st Reading		2nd Reading	
		X		Public Hearing: <small>(Enter X in box)</small>	Yes	No	Yes
Funding Source:	N/A		Advertising Requirement: <small>(Enter X in box)</small>		Yes		No
				X			
Contract/P.O. Required: <small>(Enter X in box)</small>	Yes	No	RFP/RFQ/Bid #:	N/A			
	X						
Sponsor Name	Danny Crew, City Manager		Department:	<i>City Manager's Office</i>			

Short Title:

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MIAMI GARDENS, FLORIDA, APPROVING THE FORM EASEMENT AGREEMENT TO BE UTILIZED BY THE CITY'S AGENT, AMERICAN TRAFFIC SOLUTIONS (ATS) FOR THE INSTALLATION OF RED LIGHT CAMERAS AND EQUIPMENT, IN SUBSTANCE FORM AS THAT AGREEMENT ATTACHED HERETO AS EXHIBIT "A;" PROVIDING FOR THE ADOPTION OF REPRESENTATIONS; PROVIDING AN EFFECTIVE DATE

Staff Summary:

Background

Over the past several months, the City has made great strides in addressing what is considered to be a quality of life issue by implementing a red light camera program. To date, cameras have been installed at various intersections deemed to be among the most dangerous in terms of speeding and red light running.

Current Situation

It has been determined that installation of said equipment on private property is easier than dealing with other governmental agencies that own the public right-of-way. However, as City staff continues to

**ITEM J-12) CONSENT AGENDA
RESOLUTION
Easement Agreement**

work with American Traffic Solutions (ATS) on the installation of additional camera locations, we have encountered some skepticism and resistance on the part of property owners on whose property the red light camera equipment would need to be installed. In reviewing the methodology used by ATS, staff has determined that property owner's concerns arise from the contractual agreement (easement) required between ATS and the property owner. Some owners have expressed an uncertainty as to the viability of ATS as a company and thus are reluctant to authorize the use of a portion of their property to ATS or its successors.

City staff has therefore determined that to address property owner concerns, the City will seek to enter into an easement agreement with the desired property owners in order to install the red light camera equipment. In this manner, the property owners are assured that the use of the easement will be in keeping with the City's red light camera program, and will not compromise the property for a use that is not deemed to be a public benefit.

The attached resolution seeks Council approval to authorize the City Manager to execute a standard easement agreement with property owners that the City deems necessary in order to further the installation of additional red light cameras.

Proposed Action:

Staff recommends approval of the proposed resolution authorizing the City Manager to execute a standard easement agreement with the desired property owners.

Attachment:

- Easement agreement

This instrument prepared by:
Sonja Dickens, City Attorney
City of Miami Gardens
1515 NW 167th Street
Building 5, Suite 200
Miami Gardens, FL 33169

Parcel Identification No.: Folio#

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT (this "Easement Agreement") is made this ____ day of _____, 2009, by _____ ("Grantor"), having an address of _____ Miami Gardens, Florida, to the City of Miami Gardens ("Grantee"), having and address of 1515 NW 167th Street, Building 5, Suite 200, Miami Gardens, Florida 33169.

1. **Grant of Easement.** Grantor is the fee simple owner of that certain property described in Exhibit "A" attached hereto (the "Easement Property"). For good and valuable consideration paid by Grantee to Grantor, receipt of which is hereby acknowledged, Grantor hereby grants and conveys to Grantee, its agents, heirs, successors and assigns forever, a nonexclusive easement upon and under the Easement Property for purposes of constructing, operating, maintaining, adding or removing any and all cameras, sensors, equipment, components, products, software and other tangible and intangible property relating to Grantee's Photo Red Light System and other current or future lines of business, including, but not limited to, all camera systems, housings, sensor arrays, transmission and communications equipment, severs and poles (hereinafter, the "Equipment"), together with appurtenant facilities to support said Equipment, and related items as the Grantee may from time to time deem necessary in the conduct of its business. Grantor further agrees to support Grantee's intended use upon, over, along, and under a portion of the lands located in Miami-Dade, County, Florida, and, to the fullest extent the Grantor has the power to grant, upon, over, along, and under the roads, streets, or highways adjoining or through said property. Said Easement shall include the right to allow any other person, firm, or corporation to attach supporting facilities or other appurtenances "the Appurtenances" upon, over, and under said easement to support Grantee's intended use; ingress and egress to and from said easement at all times; the right, but not the obligation, to clear the easement and keep it cleared of all trees, undergrowth, or other obstructions that interfere or may interfere with Grantee's intended use; the right, but not the obligation, to trim and cut and keep trimmed and cut all dead, weak, leaning, or dangerous trees or limbs outside the easement which might interfere with Grantee's intended use; and the right to relocate Equipment and related Appurtenances. All Equipment and Appurtenances shall remain the sole property of Grantee.

Grantor hereby covenants and agrees that it has no right to and it shall not use, alter, remove, touch, modify or in any way tamper with any Equipment or Appurtenances or cause any other person to do any of the foregoing. In addition, Grantor or any occupiers of the easement area or adjoining land shall not be permitted to erect or maintain any permanent or temporary barriers, fences, or obstructions of any kind or nature to the free

and unhampered use of this easement by Grantee, nor shall any building or other structures be constructed or permitted upon or obstructing any part of this easement.

Said easement is more particularly described as follows: a 3 (three) foot easement along the boundary of the Easement Property. A sketch showing the easement is attached hereto as Exhibit "B."

2. **Hold Harmless.** Grantee shall hold the Grantor harmless against all liability for any such loss, damage, injury or death, caused by the negligence of the Grantee, its agents or employees, during the construction and maintenance of the foregoing described Equipment or by the maintenance and repair thereof, or by its presence or use on the property where the easement is located, subject to the protections of Section 768.28, Florida Statutes.
3. **Maintenance, Repair and Replacement.** It shall be the Grantee's sole obligation to install, construct, maintain, repair and replace all Improvements on the Easement Property at no expense whatsoever to the Grantor. In the event that Grantee installs, constructs, maintains, repairs or replaces any of the Improvements, Grantee shall be obligated to restore the surface condition of the Easement Property and Grantor's property and improvements thereon existing prior to such construction, installation, maintenance, repair and/or replacement. If the Grantor constructs any improvements in violation of this agreement, Grantee will not be obligated to repair same.
4. **Attorneys Fees.** In the event any action, suit or proceeding is commenced to enforce the terms of this easement, the prevailing party shall be entitled to recover all costs, expenses and fees, including reasonable attorneys fees expended or incurred in connection therewith, up through and including any appeals.
5. **Termination of Easement.** In the event that Grantee notifies Grantor that Grantee has ceased to use the Improvements on the Easement Property for the purposes as set forth herein, or in the event Grantee otherwise abandons the use of the Easement Property, this Easement Agreement herein shall terminate automatically and shall have no further force and effect. This Easement Agreement shall further terminate upon recordation in the public records of Miami-Dade County, Florida, of an agreement terminating the easement executed by Grantor and Grantee or their respective successors, assigns, or transferees.
6. **Notices.** All notices, demands, statements, and requests required or permitted to be given under this easement must be in writing and shall be deemed to have been properly given or served as of the date the same are (i) deposited in the United States mail, prepaid, by registered or certified mail, return receipt requested, addressed, (ii) delivered by a recognized overnight courier (i.e Federal Express or United Parcel Service) or (iii) hand delivered to the address set forth below:

As to Grantor:

With copy to:

As to Grantee: City of Miami Gardens

Attn: Danny Crew, City Manager
1515 N.W. 167th Street, Suite 200, Bldg. 5
Miami Gardens, Florida 33169

With copies to: Sonja K. Dickens, City Attorney
City of Miami Gardens
1515 N.W. 167th Street, Suite 200, Bldg. 5
Miami Gardens, Florida 33169

And American Traffic Solutions, Inc.
Attn: George Hittner, General Counsel
7681 E. Gray Road
Scottsdale, Arizona 85260

The refusal to accept delivery service shall be deemed delivery on the date of such refusal.

7. **Binding Effect.** The obligations, responsibilities and duties as set forth in this Easement Agreement shall be binding on Grantee and its successors and assigns and subsequent owners of the Grantee's Property and shall also be binding on Grantor and its successors and assigns and subsequent owners of the Easement Property. This easement shall run with the Easement Property and shall be binding on the owner of the Easement Property and its successors and assigns. All references to Grantor herein shall be deemed to apply to Grantor and its successors and assigns. All references to Grantee herein shall be deemed to apply to Grantee and its successors and assigns and subsequent owners of the Easement Property. All references to Grantee herein shall be deemed to refer to Grantee and its successors and assigns and subsequent owners of the Grantee's Property. Each person signing this easement on behalf of either party individually warrants that he or she has full legal power to execute this easement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this easement.

8. **General Provisions.** Failure of either party to insist upon strict performance of any covenant or condition of this easement, or to execute any right herein contained, shall not be construed as a waiver or relinquishment for the future of any such covenant, condition or right, but the same shall remain in full force and effect. It is acknowledged that the preparation of this Agreement has been a joint effort of the parties, and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other. It is the parties' further intention that this Agreement be construed liberally to achieve its intent. If any provision of this easement or application thereof to any person or situation shall to any extent, be held invalid or unenforceable, the remainder of this easement, and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable shall not be affected thereby, and shall continue in full force and effect, and be enforced to the fullest extent permitted by law, except that this provision shall not be deemed to deprive any party of any legal remedy, including termination. This easement shall be governed by the laws of the State of Florida. This easement represents the entire and integrated easement between Grantor and

Grantee and supersedes all prior negotiations, representations or easements, either written or oral.

IN WITNESS WHEREOF, the parties have caused this Easement Agreement to be duly signed in the manner set forth below.

GRANTOR:

Name:

By Its President

Name: _____

_____ Print Name

STATE OF FLORIDA)
)SS:
COUNTY OF MIAMI-DADE)

The foregoing instrument was acknowledged before me this _____ day of _____, 2009 by _____. He or she is personally known to me or has produced _____ as identification.

Notary Public, State of Florida At Large

My Commission Expires:

GRANTEE:

CITY OF MIAMI GARDENS, FLORIDA

Attest:

Ronetta Taylor, City Clerk

By _____
Shirley Gibson, Mayor

Reviewed for Legal Sufficiency

Sonja K. Dickens, City Attorney

EXHIBIT A

EXHIBIT B

EXHIBIT C