

Consent Agenda

Agenda Item #	4E
Meeting Date	September 22, 2008
Prepared By	Ronald Ricucci Chief of Police
Reviewed By	Barbara B. Matthews City Manager

Discussion Item	Approval of Contract for Photo Speed Enforcement Program
Background	<p>On March 12, 2007, Montgomery County launched <i>Safe Speed</i>, Maryland's first photo speed enforcement program. The County was granted the authority to operate the cameras by the State of Maryland in 2006 as a pilot automated speed enforcement program in residential areas and school zones with speed limits of 35 mph or less. Several municipalities in the County—including Chevy Chase Village, the City of Gaithersburg, and the City of Rockville—subsequently implemented photo speed enforcement programs under the same law.</p> <p>The goal of the <i>Safe Speed</i> program is to reduce speeding on residential streets and streets near schools in an effort to prevent injuries and fatalities among pedestrians and motorists. The cameras are an additional tool available to police in speed enforcement.</p> <p>The <i>Safe Speed</i> program requires traffic surveys to be conducted to determine which locations are in most need of speed reduction efforts. The streets chosen must meet the standards set by the State of Maryland. Traffic surveys were conducted in various locations in the City during the months of August and October 2007 by ACS State and Local Solutions. The survey results were presented to the Council on October 29, 2007.</p> <p>At a subsequent worksession on March 3, 2008, the Council gave preliminary approval for the installation of two fixed cameras in Takoma Park. One camera would be installed on Ethan Allen Avenue, and the other would be installed on New Hampshire Avenue.</p> <p>The FY 2009 operating budget of the Police Department includes \$55,000 to retain a contractor for program staffing; use of a contractor is recommended in the first year of the program to define ongoing staffing needs. A corresponding revenue is included in the General Fund; by law, revenues from speed camera fines must be used for public safety programs and improving pedestrian safety.</p> <p>Staff is seeking Council approval to enter into a contract with ACS State and Local Solutions, Inc. in accordance with the terms of an existing contract between the firm and Montgomery County. ACS State and Local Solutions, Inc. is also the vendor for the cities of Rockville and Gaithersburg, and the Village of Chevy Chase.</p>
Policy	Council approval is required to enter into a contract for photo speed enforcement services.

<p>Fiscal Impact</p>	<p>The FY 2009 operating budget of the Police Department includes \$55,000 to retain a contractor for program staffing; corresponding revenue is included in the General Fund. By law, revenues from speed camera fines must be used for public safety programs and improving pedestrian safety.</p> <p>Under the terms of the contract, the contractor would receive \$16.25 per paid citation or \$2,999.00 per month per mobile unit, whichever is greater. If the total of the City's paid citation revenues are less than \$2,999.00 per month per mobile unit for two consecutive months or for any two months in a six-month period during the term of the agreement or any renewals, the contract provides for a renegotiation of the per citation rate and/or the monthly minimum compensation payable to the contractor.</p>
<p>Attachments</p>	<p>Single Reading Ordinance authorizing the City Manager to enter into a contract with ACS State and Local Solutions, Inc.</p> <p>Proposed contract between the City and ACS State and Local Solutions, Inc.</p>
<p>Recommendation</p>	<p>Staff recommends that the Council authorize the City Manager to enter into a contract with ACS State and Local Solutions for a photo speed enforcement program.</p>
<p>Special Consideration</p>	

**CITY OF TAKOMA PARK, MARYLAND
ORDINANCE NO. 2008 -**

**AN ORDINANCE AUTHORIZING THE CITY MANAGER
TO EXECUTE A CONTRACT FOR A PHOTO SPEED ENFORCEMENT PROGRAM**

WHEREAS, Maryland law allows municipalities to enact photo speed enforcement programs; and,

WHEREAS, the goal of the photo speed enforcement program set forth in Maryland law is to reduce speeding on residential streets and streets near schools in an effort to prevent injuries and fatalities among pedestrians and motorists; and,

WHEREAS, photo speed cameras are an additional tool available to police in speed enforcement; and,

WHEREAS, the FY 2009 budget includes funding for the implementation of a photo speed enforcement program in the City of Takoma Park, and,

WHEREAS, Montgomery County has competitively bid and awarded a contract for a photo speed enforcement program to ACS State and Local Solutions, Inc.; and,

WHEREAS, in accordance with the City's procurement regulations, the City Manager may enter into contracts or agreements for cooperative purchasing, without the requirement of competitive bidding.

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TAKOMA PARK, MARYLAND THAT:

SECTION 1. The City Manager is authorized to enter into a contract with ACS State and Local Solutions, Inc. for a photo speed enforcement program.

SECTION 2. This ordinance shall become effective upon adoption.

Adopted this ____ day of September, 2008.

AYES:

NAYS:

ABSTENTIONS:

ABSENT:

AGREEMENT

THIS AGREEMENT, made this _____ day of _____, 2008 by and between the CITY OF TAKOMA PARK, a municipal corporation organized under the laws of Maryland, 7500 Maple Avenue, Takoma Park, MD 20912, hereinafter referred to as the "CITY", and ACS State and Local Solutions, Inc., a New York corporation qualified to do business in Maryland, 1800 M Street, NW, Washington DC 20036, hereinafter referred to as "CONTRACTOR".

WITNESSETH

WHEREAS, the City desires a contractor to provide a Photo Speed Enforcement Program;

WHEREAS, the City desires to employ the services of the Contractor to perform said services in connection with the aforementioned program under the terms and conditions set forth herein.

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

1. **SCOPE OF WORK.** The Contractor agrees to provide all goods and services described and be bound by the terms and conditions set forth in Montgomery County Contract #7474000045-AA and all referenced exhibits except for Attachment B (RFP and Amendments), which has been modified as noted herein in section 4 of this Agreement, and Attachment C (Scope of Work), which has been modified as set forth in Revised Attachment C, which contract, including Attachments as such may have been amended herein is attached hereto and made a part hereof and identified as Exhibit A (Montgomery County Contract) to this Agreement. In the event any terms of the Montgomery County Contract conflict with this Agreement, this Agreement shall prevail.

Contractor shall perform the services described in this Agreement (a) in a timely, diligent and professional manner in accordance with recognized standards of the applicable industry or profession, and; (b) in accordance with the time periods set forth in this Agreement and in the schedule and sequencing specified by the City. Contractor shall furnish efficient business administration and superintendence and shall use its best efforts to insure that such services being performed under this Agreement are completed in the best way and in the most expeditious and economical manner consistent with the City's best interests

2. **COMPENSATION.** The Contractor shall be compensated under this Agreement at a rate of \$16.25 per paid citation or \$2,999.00 per month per mobile unit for the Program, as defined in the Montgomery County Contract, whichever is greater. The "per paid citation" rate must be a "fully paid citation", with no pro-rating for partial payments. Compensation shall be made by the City to the Contractor on a monthly basis. The Compensation rate is based upon the Contractor's provision of the goods and services as described and delineated in the Scope of Services in the Montgomery County Contract and Revised Attachment C to this Agreement; however, personnel to service the technology shall be provided five (5) days per week for two (2) six-hour shifts per day (totaling 12 hours per day), the terms of the Montgomery County Contract notwithstanding.

If the total of the City's paid citation revenues are less than \$2,999.00 per month per mobile unit for two consecutive months or for any two months in a six-month period during the term of this Agreement or any renewals, the Contractor and the City agree to renegotiate in good faith, and revise as necessary, the per citation rate and/or the monthly minimum compensation payable to Contractor under this Agreement. If the City, in its sole discretion, is not satisfied with the results of such renegotiation or with the revenues derived from the photo speed enforcement program or the City determines that photo speed enforcement is no longer an appropriate enforcement mechanism for the City, then the City may terminate this Agreement for convenience pursuant to paragraph 11,

3. **REFERENCES.** All references in the Montgomery County Contract to the "County" shall mean the City of Takoma Park. All references in the Montgomery County Contract to "Director, Office of Procurement" shall mean the City Manager or designee. All references in the Montgomery County Contract to "Program

Director, Department of Police” shall mean the Chief of Police for the City of Takoma Park. In addition, the reference to the “Automated Traffic Enforcement Unit” is eliminated and “Takoma Park Police Department” is inserted in its place.

4. ATTACHMENT B. Attachment B of the Montgomery County Contract shall apply to this Agreement with the exception of the following:

A. References to ten (10) networked workstations and ten (10) remote stations in the paragraph entitled “COUNTY/POLICE REMOTE ACCESS” on page 31 of Attachment B shall be eliminated, and in their place the following shall be inserted respectively: “one (1) workstation and one (1) cashiering work station.”

B. References to Contractor provision of public relations services shall be eliminated since Montgomery County shall provide such services for the Photo Speed Enforcement Program in its entirety.

5. REVIEW BY CITY. The Contractor agrees that the work and records covered by this Agreement will be subject to review, at reasonable times, by representatives of the City.

6. DOCUMENTS. All finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, letters and reports prepared by the Contractor or its subcontractors for this Photo Speed Enforcement Program shall become the property of the City.

7. EQUAL EMPLOYMENT OPPORTUNITY. During the performance of this Agreement, the Contractor agrees that it will comply with all applicable federal, state and local laws relating to discrimination in employment.

8. INDEMNIFICATION. In accordance with the Montgomery County Contract, the Contractor agrees to indemnify and save harmless the City against liability, claim, demand for personal injury or property damage, and other expenses or losses caused by negligent act or omission of the Contractor, its subcontractors, agents or employees incurred in the performance of this Agreement.

9. TIME OF ESSENCE. The Contractor acknowledges that time is of the essence in the providing the services under this Agreement.

10. TERMINATION FOR CAUSE. If through any cause, the Contractor shall fail to fulfill in a timely and proper manner his obligation under this Agreement, or if the Contractor shall violate any of the covenants, agreements, or stipulations of this Agreement, the City shall have the right to terminate this Agreement by giving written notice to the Contractor of such termination and specifying the effective date thereof, at least thirty (30) days before the effective date of such termination. The City of Takoma Park will provide the Contractor a written notice to cure the default. The termination for default is effective on the date specified in the City’s written notice. However, if the City determines that the default contributes to the curtailment of an essential service or poses an immediate threat to life, health, or property, the City may terminate the contract immediately upon written notice to the Contractor without any prior notice or opportunity to cure.

If the Agreement is terminated by the City as provided in this Section the Contractor shall be paid on a pro-rata basis for work performed. Notwithstanding the above, the Contractor shall not be relieved of liability to the City for damages sustained by the City by virtue of a material breach of the agreement by the Contractor, and the City may withhold any undisputed payments due the Contractor up to the full amount of the Contractor’s fee, until such a time as the exact amount of damages due the City from the Contractor is determined by any court of competent jurisdiction.

11. TERMINATION FOR CONVENIENCE. The City may terminate the Agreement for convenience by giving written notice to the Contractor of such termination and specifying the effective date thereof, at least

thirty (30) days before the effective date of such termination. If the Agreement is terminated by the City as provided in this Section the City shall pay the Contractor on a pro-rata basis for work performed.

12. **COMPLIANCE WITH LAWS.** The Contractor shall observe and comply with federal, state, county and local laws, ordinances and regulations that affect the work to be done herein, and shall indemnify and hold the City harmless, and all of its officers, agents and servants against any claim or liability from or based on the violations of any such law, ordinance or regulation, whether by the Contractor or the Contractor's agent. Notwithstanding the foregoing, in the event that the Contractor determines that a conflict exists between any applicable law, ordinance and/or regulation, the Contractor will so advise the City and the City will decide which law, ordinance and/or regulation shall be followed.

13. **SUBCONTRACTS.** None of the services covered by this Agreement shall be subcontracted without the prior written consent of the City. The Contractor will require all subcontractors to have in effect at all times insurance coverage for negligent acts, errors and omissions of subcontractors and their employees and the City shall be named as an insured party.

14. **ASSIGNMENT.** The Contractor shall not assign or transfer any interest in this Agreement without the prior written approval of the City.

15. **INSURANCE.** The Contractor shall carry insurance with limits as outlined in the Mandatory Insurance Requirements, Attachment D, of the Montgomery County Contract and shall provide to the City a certificate evidencing the same. The certificate holder shall be the City of Takoma Park, 7500 Maple Ave., Takoma Park, MD 20912. The City of Takoma Park must be named as an additional insured.

16. **CONFLICTS OF INTEREST.** The Contractor covenants that it has presently no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required to be performed under this Agreement. The Contractor further covenants that in the performance of this Agreement no person having any such interest shall be employed.

17. **DISPUTES.** All disputes arising under this Agreement must be decided under procedures 1- 4 listed below. Pending final resolution of a dispute, the Contractor must proceed diligently with contract performance. A claim must be in writing for a sum certain, and any money requested must be fully supported by all cost and pricing information.

1. All disputes, claims, questions of fact or interpretations of the contract documents not disposed of by agreement or express provision of the contract arising between the City and the Contractor after performance of the contract has commenced but before final payment and termination of the contract, are decided by the City Manager or his/her designee.
2. The City Manager or designee must give the Contractor not less than five (5) working days to submit documentation and written reasons supporting the Contractor's position in the dispute. The City Manager or designee may consider any other information or written submissions from City employees or agents and may conduct an informal, non-record hearing for receipt of testimony, evidence, and argument. The City Attorney may participate in the hearings to protect the City's interest
3. The City Manager or designee must render a decision, in writing, stating reasons for it and provide copies to the Contractor and the City Attorney. If the decision is mailed to the Contractor, it must be mailed "certified" and dated the date of mailing; otherwise, it must be dated the date of delivery to the Contractor.
4. The written decision of the City Manager must be sent to all parties. Such decision may be submitted to binding arbitration by either party under the auspices of an arbitrator appointed by the Montgomery County Bar Association.

18. **GOVERNING LAW.** This Agreement shall be construed in accordance with the laws and regulations of the State of Maryland, and the City. For purposes of litigation involving such Agreement, exclusive venue and jurisdiction shall be in the Circuit Court for Montgomery County, Maryland, or in the District Court of Maryland for Montgomery County.

19. **LICENSES AND PERMITS.** The Contractor must, without additional cost to the City, pay any necessary fees and charges, obtain any necessary licenses and permits, and comply with applicable federal, state and local laws, codes and regulations.

20. **SUCCESSORS AND ASSIGNS:** This Agreement shall be binding and inure to the benefit of all successor and assigns of the parties hereto. Notwithstanding the foregoing, this Agreement shall be considered a personal services contract and the Contractor shall not assign any right or obligation under this Agreement without the City's prior written consent.

21. **INDEPENDENT CONTRACTOR.** The Contractor shall perform this Agreement as an independent contractor and shall not be considered an agent of the City, nor shall any of the Contractor's employees or agents be subagents the City.

22. **TERM.** The effective date of this Agreement begins upon last date this Agreement is signed by the City and the Contractor as evidenced by the dates set forth on the signature page (page 8) of this Agreement. The period in which Contractor must perform all work under this Agreement begins on the Agreement's effective date and ends after a two (2) year period. The City reserves the right to renew the contract for three additional one (1) year periods contingent on contract renewal by Montgomery County.

23. **MODIFICATION.** This Agreement may be modified only by written instrument signed by both parties.

24. **PERSONAL PROPERTY.** All office equipment, electronic equipment, vehicles, and other similar types of personal property specified in this Agreement, purchased and provided by the Contractor and leased by the City under this Agreement remain the property of the Contractor upon the end of the Agreement term, or upon termination or expiration of this Agreement unless expressly stated otherwise. All personal property with the exception of the fixed site utility poles and isolated infrastructure will be removed by the Contractor within 30 days of written notification by the City to the Contractor and at no cost to the City. The Contractor shall be responsible for any damage to persons or property arising out of Contractor's negligent actions when installing, servicing or removing equipment.

25. **CONTRACTOR'S CERTIFICATION OF NON-INVOLVEMENT IN THE NUCLEAR WEAPONS INDUSTRY.** Pursuant to the requirements of Chapter 14.04 of the Takoma Park Code, Contractor's certification of non-involvement in the nuclear weapons industry is attached and made a part of this Agreement.

26. **ENTIRE AGREEMENT.** This Agreement including Exhibit A (Montgomery County Contract # 7474000045-AA), the Attachments thereto as such may be modified herein, and Revised Attachment C, which are attached and incorporated by reference herein, constitutes the entire agreement between the City and the Contractor, and the parties shall not be bound by any prior negotiation, representations or promises, not contained herein.

REVISED ATTACHMENT C

SPECIAL TERMS AND CONDITONS

The following list of responsibilities either augment or clarify items contained in the RFP as they relate to the City of Takoma Park.

Contractor Responsibilities

Schedule

1. Within 30 days of contract execution the Contractor must provide for City approval a camera maintenance schedule that details all of the maintenance logs and protocols to be used by the Contractor.
2. Within 30 days of contract execution the Contractor must provide for City approval an annul certification plan that provides for an independent camera certifier who will check and verify the equipment to ensure its accuracy and validity.
3. Within 10 days of contract execution the Contractor must provide for City approval business rules for program operation.
4. Within 21 business days of contract execution the Contractor must provide for City approval a project plan that charts the full program implementation.
5. Within 120 days of notification by the City to the Contractor, the Contractor must deploy two (2) operable stationary "fixed site" photo radar units at locations designated and approved by the City for photo speed enforcement. The systems, up to four (4), will be deployed during the first year of this contract.

Electronic

1. The Contractor is required to provide and maintain a system with a data base that is acceptable to the City and that can handle all photo speed transactions to include issued citations, payment information, archiving and images. This system must be the main processing and operational system to be used by the Contractor on behalf of the County and the City.
2. The system provided by the Contractor must be capable of maintaining all information for uncollected citations for the life of the Contract and must be available to the City upon written request. The maintaining of the system and requested reports will be at no cost to the City.
3. The Contractor must store captured violation images and data from each mobile vehicle deployed and at each fixed site, on City approved drives, in downloadable and viewable format. The City must have access to this violation data for not less than 10 days from violation capture.
4. The Contractor must provide for all cashiers (County or Contractor personnel), at no cost to the City, a common interface that accepts in-person payments and is acceptable to the City. The common interface must be WEB enabled and adhere to general accounting principles for remittances, as well as City Finance security protocols.
5. The Contractor must provide, at no cost to the City, an additional common interface to allow for acceptance of remittances by the District Court of Maryland.
6. Ad hoc reports, upon written request, must be provided at no cost to the City. The Contractor must deliver the ad hoc report(s) within ten (10) days of the request.

7. Within ninety (90) days of contract execution, the Contractor must provide a fully automated, out-of-state name and address query that is integrated with the system.
8. Software upgrades to the system must be provided by the Contractor at no cost to the City.

Vehicles and Equipment

1. The City will store in a secure facility the mobile photo speed enforcement radar vehicle(s). The Contractor must be responsible for storage of its owned equipment and any subsequent spare vehicle(s) needed to support the program. For information purposes only, the Contractor may work with the City's Department of Public Works to develop a maintenance plan for all speed enforcement vehicles.
2. The Contractor must provide, at no cost to the City, system reports on the general maintenance of the program's equipment. These reports must be available to the City both on a weekly and monthly basis and detail any issues that affect normal program operations.
3. The Contractor must install, at no cost to the City, emergency lighting equipment on all vehicles that shall be used for the program.
4. The Contractor must supply and install, at no cost to the City, one (1) radio antenna and associated cable in each deployed mobile unit. The antenna must be compatible with a radio operating in the 800 MHz range and must be affixed to the body of the vehicle. Stick on, clip on or magnetic mount antennas are not suitable. One end of the antenna cable must be equipped with a "mini" UHF connector and terminate within the passenger compartment.
5. The City will be responsible for reporting all accidents/damages to equipment in a timely manner to the Contractor. The Contractor is responsible for all insurance on all vehicles, equipment and spare equipment at no cost to the City.
6. In the event of relocation, either at the City's initiative or as required by unavoidable construction activity, ACS agrees to relocate one (1) camera enforcement site during the first two (2) contract years at no cost to the City; ACS agrees to relocate one (1) camera enforcement site during each of the subsequent extension years, if any.
7. Subject to the relocation obligations of #6 above, the Contractor shall not be responsible for new mobile speed or fixed pole installations after the first two (2) years of the contract.

Training

1. The Contractor must provide training for all City employed Photo Analysts and others as the City deems necessary, at no cost to the City. This training must be approved by the County and will result in an annual certification for City Photo Analysts who successfully meet the County or industry approved standard. This training must be provided on an "as needed" basis and will be requested in writing to the Contractor by the City.
2. The Contractor must provide all necessary training for the Department of Police, Department of Finance, and Department of Information Technology staff related to the support of the program, at no cost to the City. This training must be provided on an "as needed" basis and will be requested in writing to the Contractor by the City.

City Responsibilities

1. The City will be responsible for reporting all accidents to equipment in a timely manner to the Contractor. The Contractor is responsible for all insurance on all vehicles and equipment.
2. The City will be responsible for striping or marking of all roads that require such markings for all "fixed site" enforcement locations.

3. The City will not provide or participate in any marketing, endorsement, or solicitation on behalf of the Contractor.
4. The City will be responsible for providing a two-way radio for each deployed mobile unit.

IN WITNESS WHEREOF, the parties have set their hand and seals hereto on the date written above.

CITY OF TAKOMA PARK

By: _____
Name: _____
Title: _____
Date: _____

ATTEST - CITY OF TAKOMA PARK

By: _____
Name: _____
Title: _____
Date: _____

CITY OF TAKOMA PARK

Approved as to form and legality:
By: _____
Name: _____
Title: _____
Date: _____

ACS STATE & LOCAL SOLUTIONS, INC.

By: _____
Name: _____
Title: _____
Date: _____

ATTEST - ACS STATE & LOCAL SOLUTIONS, INC.

By: _____
Name: _____
Title: _____
Date: _____

EXHIBIT A

Montgomery County, Maryland Contract # 7474000045-AA

**CONTRACTOR'S CERTIFICATION OF NON-INVOLVEMENT IN THE
NUCLEAR WEAPONS INDUSTRY**

KNOW ALL PERSONS BY THESE PRESENTS:

Pursuant to the requirements of Chapter 14.04 of the Takoma Park Code, the Takoma Park Nuclear Free Zone Act, the undersigned person, firm, corporation or entity hereby certifies that it is not knowingly or intentionally a nuclear weapons producer.

Note: The following definitions apply to this certification per section 14.04.090:

A "nuclear weapons producer" is any person, firm, corporation, facility, parent or subsidiary thereof or agency of the federal government engaged in the production of nuclear weapons or its components.

"Production of nuclear weapons" includes the knowing or intentional research, design, development, testing, manufacture, evaluation, maintenance, storage, transportation or disposal of nuclear weapons or their components.

"Nuclear weapon" is any device the sole purpose of which is the destruction of human life and property by an explosion resulting from the energy released by a fission or fusion reaction involving atomic nuclei.

"Component of a nuclear weapon" is any device, radioactive substance or nonradioactive substance designed knowingly and intentionally to contribute to the operation, launch, guidance, delivery or detonation of a nuclear weapon.

IN WITNESS WHEREOF, the undersigned Contractor has signed this Certification this ____ day of _____, 2008.

ACS STATE AND LOCAL SOLUTIONS, INC., Contractor

By: _____ (SEAL)

Print Name: _____

Print Title: _____

State of _____, County of _____:

Subscribed and sworn to before me this ____ day of _____, 2008.

Notary Public

My commission expires: _____