

# MANATEE COUNTY GOVERNMENT

## AGENDA MEMORANDUM

6  
revised

<b>SUBJECT</b>	Red Light Cameras	<b>TYPE AGENDA ITEM</b>	Consent
<b>DATE REQUESTED</b>	December 20, 2011	<b>DATE SUBMITTED/REVISED</b>	December 19, 2011
<b>BRIEFINGS? Who?</b>	None	<b>CONSEQUENCES IF DEFERRED</b>	Not applicable
<b>DEPARTMENT/DIVISION</b>	County Attorney's Office	<b>AUTHORIZED BY TITLE</b>	Tedd N. Williams, Jr., County Attorney <i>TNW</i>
<b>CONTACT PERSON TELEPHONE/EXTENSION</b>	Maureen S. Sikora, Deputy County Attorney; Ext. 3750	<b>PRESENTER/TITLE TELEPHONE/EXTENSION</b>	Maureen S. Sikora, Deputy County Attorney; Ext. 3750
<b>ADMINISTRATIVE APPROVAL</b>		<i>TNW 12/19/11</i>	

### ACTION DESIRED

INDICATE WHETHER 1) REPORT; 2) DISCUSSION; 3) FORM OF MOTION; OR 4) OTHER ACTION REQUIRED

- Motion authorizing County staff to discontinue negotiations regarding Agreement for Automated Red Light Enforcement System and Services and authorizing County Attorney to send letter to ACS State and Local Solutions, Inc.
- Motion directing County staff to bring back the issue of red light cameras after the conclusion of the 2012 legislative session.

### ENABLING/REGULATING AUTHORITY

Federal/State law(s), administrative ruling(s), Manatee County Comp Plan/Land Development Code, ordinances, resolutions, policy

Chapter 2010-80, Laws of Florida.

### BACKGROUND/DISCUSSION

On August 11, 2009, Manatee County entered into an Agreement for Automated Red Light Enforcement System and Services with ACS State and Local Solutions, Inc., to provide for implementation and enforcement of County ordinances relating to red light running. The Florida Legislature subsequently enacted Chapter 2010-80, Laws of Florida, effective July 1, 2010, which preempted the County ordinances and established uniform state requirements and procedures for operation of red light cameras. Since that time, the County and ACS have unsuccessfully attempted to negotiate a contract amendment or a new agreement for enforcement of the state law.

By letter dated November 29, 2011, ACS provided notice claiming that Manatee County is in breach of the Agreement or, in the alternative, that ACS is terminating the Agreement for cause. The County Attorney's Office has prepared a letter responding to the ACS allegations and setting forth the County's position. Board action is requested authorizing the County Attorney to send the attached letter and discontinuing further contract negotiations with ACS.

### COUNTY ATTORNEY REVIEW

**APPROVED IN OPEN SESSION**

DEC 20 2011

<b>Check appropriate box</b>	
<input type="checkbox"/>	<b>REVIEWED</b> Written Comments: <input type="checkbox"/> Attached <input type="checkbox"/> Available from Attorney (Attorney's initials: _____)
<input type="checkbox"/>	<b>NOT REVIEWED (No apparent legal issues.)</b>
<input type="checkbox"/>	<b>NOT REVIEWED (Utilizes exact form or procedure previously approved by CAO.)</b>
<input checked="" type="checkbox"/>	<b>OTHER</b> (CAO Item)

**BOARD OF COUNTY COMMISSIONERS  
MANATEE COUNTY, FLORIDA**

<b>ATTACHMENTS:</b> (List in order as attached)		<b>INSTRUCTIONS TO BOARD RECORDS:</b> <i>MR 12/21/11</i>	
1. Letter from ACS State and Local Solutions, Inc., dated November 29, 2011. 2. Letter from County Attorney dated December 20, 2011.		Return stamped copy of this Agenda Memorandum to County Attorney's Office.	
<b>COST:</b>	Not applicable	<b>SOURCE (ACCT # &amp; NAME):</b>	Not applicable
<b>COMMENTS:</b>	Not applicable	<b>AMT./FREQ. OF RECURRING COSTS: (ATTACH FISCAL IMPACT STATEMENT)</b>	Not applicable

Replaced

# MANATEE COUNTY GOVERNMENT AGENDA MEMORANDUM

6

<b>SUBJECT</b>	Red Light Cameras	<b>TYPE AGENDA ITEM</b>	Consent
<b>DATE REQUESTED</b>	December 20, 2011	<b>DATE SUBMITTED/REVISED</b>	December 14, 2011
<b>BRIEFINGS? Who?</b>	None	<b>CONSEQUENCES IF DEFERRED</b>	Not applicable
<b>DEPARTMENT/DIVISION</b>	County Attorney's Office	<b>AUTHORIZED BY TITLE</b>	Tedd N. Williams, Jr., County Attorney <i>TNW</i>
<b>CONTACT PERSON TELEPHONE/EXTENSION</b>	Maureen S. Sikora, Deputy County Attorney; Ext. 3750	<b>PRESENTER/TITLE TELEPHONE/EXTENSION</b>	Maureen S. Sikora, Deputy County Attorney; Ext. 3750
<b>ADMINISTRATIVE APPROVAL</b>		<i>Jul 12/14/11</i>	

<b>ACTION DESIRED</b> INDICATE WHETHER 1) REPORT; 2) DISCUSSION; 3) FORM OF MOTION; OR 4) OTHER ACTION REQUIRED
Motion authorizing County staff to discontinue negotiations regarding Agreement for Automated Red Light Enforcement System and Services and authorizing County Attorney to send letter to ACS State and Local Solutions, Inc.

<b>ENABLING/REGULATING AUTHORITY</b> Federal/State law(s), administrative ruling(s), Manatee County Comp Plan/Land Development Code, ordinances, resolutions, policy
Chapter 2010-80, Laws of Florida.

<b>BACKGROUND/DISCUSSION</b>
<p>On August 11, 2009, Manatee County entered into an Agreement for Automated Red Light Enforcement System and Services with ACS State and Local Solutions, Inc., to provide for implementation and enforcement of County ordinances relating to red light running. The Florida Legislature subsequently enacted Chapter 2010-80, Laws of Florida, effective July 1, 2010, which preempted the County ordinances and established uniform state requirements and procedures for operation of red light cameras. Since that time, the County and ACS have unsuccessfully attempted to negotiate a contract amendment or a new agreement for enforcement of the state law.</p> <p>By letter dated November 29, 2011, ACS provided notice claiming that Manatee County is in breach of the Agreement or, in the alternative, that ACS is terminating the Agreement for cause. The County Attorney's Office has prepared a letter responding to the ACS allegations and setting forth the County's position. Board action is requested authorizing the County Attorney to send the attached letter and discontinuing further contract negotiations with ACS.</p>

<b>COUNTY ATTORNEY REVIEW</b>	
<b>Check appropriate box</b>	
<input type="checkbox"/>	<b>REVIEWED</b> Written Comments: <input type="checkbox"/> Attached <input type="checkbox"/> Available from Attorney (Attorney's initials: _____)
<input type="checkbox"/>	<b>NOT REVIEWED (No apparent legal issues.)</b>
<input type="checkbox"/>	<b>NOT REVIEWED (Utilizes exact form or procedure previously approved by CAO.)</b>
<input checked="" type="checkbox"/>	<b>OTHER</b> (CAO Item)

<b>ATTACHMENTS:</b> (List in order as attached)		<b>INSTRUCTIONS TO BOARD RECORDS:</b>	
1. Letter from ACS State and Local Solutions, Inc., dated November 29, 2011. 2. Letter from County Attorney dated December 20, 2011.		Return stamped copy of this Agenda Memorandum to County Attorney's Office.	
<b>COST:</b>	Not applicable	<b>SOURCE (ACCT # &amp; NAME):</b>	Not applicable
<b>COMMENTS:</b>	Not applicable	<b>AMT./FREQ. OF RECURRING COSTS: (ATTACH FISCAL IMPACT STATEMENT)</b>	Not applicable



A xerox  Company

James Haddow, Jr.  
Associate Corporate Counsel  
ACS, A Xerox Company

ACS State & Local Solutions, Inc.  
8260 Willow Oaks Corp. Dr.  
Fairfax, VA 22031

James.haddow@acs-inc.com  
Tel 703.891.8833

MANATEE COUNTY  
PUBLIC WORKS

NOV 30 2011

RECEIVED

November 29, 2011

Manatee County Government  
Public Works Department  
Attn: Director, Ron Schulhofer  
10222 26th Avenue East  
Bradenton, FL 34208

Dear Mr. Schulhofer:

ACS State & Local Solutions, Inc. (ACS) continues to have concerns about the status of the Agreement for Automated Red Light Enforcement System and Services which was entered into on August 11, 2009. In accordance with our Agreement and in reliance upon County actions, ACS installed the first three systems over a year ago, substantially completed construction of a fourth system and invested considerable efforts in configuring the back office software application for the County. ACS has as a result of these actions been ready to begin enforcement for the past year. However, despite the passage of 17 months since the passage of new legislation, the County has still not entered into an amendment with ACS that would allow enforcement to commence. Because of the delay in implementation created by the County, ACS continues to incur substantial expense without any compensation for its investment.

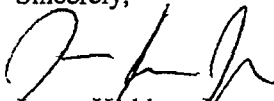
ACS therefore considers the County to be in breach of the contract. The time that the County has delayed in entering into an amendment or in beginning enforcement is considered by ACS the County's notice to terminate this agreement. In the alternative ACS hereby provides the County the required 30 days of notice to terminate the contract for cause. ACS respectfully requests that the County finalize the contract termination and pay ACS for the items listed in Article 5.

Specifically, Section 5b requires the County to compensate ACS for actual and reasonable termination fees. These fees include ACS' work in progress and unamortized costs. ACS has incurred approximately \$603,344.38 in costs to date that are subject to compensation from the County to ACS under Section 5b. This amount does not include additional ACS expenses that will be accumulated until the conclusion of contract termination. Accordingly, these additional expenses will need to be added to the amount above to account for the time that elapses while the County and ACS finalize the contract termination.

Once the termination is finalized ACS will remove the existing equipment that was installed for the photo enforcement system.

Please feel free to contact me if you have any questions or concerns.

Sincerely,



James Haddow, Jr.

Associate Corporate Counsel

CC:

Mr. Ed Hunzeker  
*County Administrator*  
1112 Manatee Avenue West  
Bradenton, FL 34205

Via email

Larry Bustle, District One  
Michael Gallen, District Two  
John R. Chappie, District Three  
Robin DiSabatino, District Four  
Donna Hayes, District Five  
Chairman Carol Whitmore, At Large  
Joe McClash, At Large



# **MANATEE COUNTY**

## **OFFICE OF THE COUNTY ATTORNEY**

Tedd N. Williams, Jr., County Attorney

James A. Minix, Chief Deputy County Attorney  
Maureen S. Sikora, Deputy County Attorney \*  
Robert M. Eschenfelder, Deputy County Attorney  
Rodney C. Wade, Deputy County Attorney \*  
William E. Clague, Deputy County Attorney  
James R. Cooney, Deputy County Attorney  
Sarah A. Schenk, Deputy County Attorney \*

Certified Mail, Return Receipt Requested

December 20, 2011

ACS State & Local Solutions, Inc.  
Attn: James Haddow, Jr.  
12410 Milestone Center Drive, Fourth Floor  
Germantown, MD 20876

RE: Agreement for Automated Red Light Enforcement System and Services

Dear Mr. Haddow:

Your letter to Public Works Director Ron Schulhofer dated November 29, 2011, has been referred to the County Attorney's Office. Manatee County disputes the statements in your letter. The County is neither in breach of the subject contract nor responsible for the delay in the implementation of the red light camera program. The County's position, which was explained in previous letters from County Administrator Ed Hunzeker, to Allen Shutt, Vice President of Operations, is based on the grounds set forth herein.

Manatee County and ACS State & Local Solutions, Inc., entered into the above-referenced Agreement on August 11, 2009, following Request for Proposals RFP #08-2728FL, competitive selection and competitive negotiation procedures. This Agreement provided for implementation and enforcement of Manatee County Ordinance No. 08-39, as amended by Ordinance No. 09-45, relating to red light running.

The services to be performed by ACS under the Agreement included, but were not limited to: installing, reviewing, maintaining, operating, repairing and replacing camera systems and related detection equipment; engineering and conducting site analysis of intersections; locating underground facilities; designing, installing, maintaining, operating, repairing and replacing communication linkages, field and office equipment; keeping maintenance logs; posting signs; monitoring cameras for violations; processing citations and collections; issuing written warnings; printing, preparing and mailing notices for violations; collecting and

\*Board Certified City, County & Local Government Law

depositing payments; referring unpaid citations to collection agency; accounting and keeping records of revenues and expenses; coordinating hearings of citations; receiving appeal requests; scheduling appeal hearings; preparing documentary evidence and background information; maintaining chain of evidence; providing factual and expert witness testimony; training personnel; preparing training manuals; providing customer service; responding to public inquiries; developing public awareness and education campaign; printing information pamphlets, brochures and other materials; assisting with media relations; providing public service announcements and written copy; compiling and printing statistical reports; paying for initial equipment, start-up and maintenance costs, electrical service, as well as applicable taxes.

In consideration for all these services, the Agreement provided for County to pay ACS the price of \$36.50 per paid citation fee for on-time and delinquent payments, plus \$3.70 for each certified mail, \$4.95 convenience fee for each citation processed electronically, and 30% of revenue collected on delinquent citations.

It is my understanding that ACS installed cameras at three intersection approaches and started but did not complete construction at a fourth approach under the Agreement.

Before any notices were issued for violation of the County ordinance, the Florida Legislature enacted Chapter 2010-80, Laws of Florida, which became effective July 1, 2010. This law preempted Manatee County Ordinance Nos. 08-39 and 09-45 and established uniform state requirements and procedures for the operation of red light cameras. Some (but not all) of the significant changes resulting from Chapter 2010-80 which impacted the Agreement between Manatee County and ACS are listed below:

1. Enforcement of the Manatee County Ordinance Nos. 08-39 and 09-45 was prohibited. Chapter 2010-80 mandates that running a traffic light constitutes a violation of Section 316.074(1) and Section 316.075(1)(c)1., Florida Statutes (the "Statutes").
2. The fine established by the County for running a red light in the amount of \$150.00 for a first offense and \$225.00 for a repeat offense was invalidated. Chapter 2010-80 imposes a penalty of \$158.00 for violation of the Statutes.
3. Manatee County was forbidden from keeping the total amount of the fine. Chapter 2010-80 requires the County to remit \$83.00 from each penalty to the State of Florida.
4. County staff or private contractors were prohibited from issuing second notices or referring unpaid fines for collection. Chapter 2010-80 requires traffic infraction enforcement officers or law enforcement officers employed by the Manatee County Sheriff's Office to issue traffic citations for violations of the Statutes. The County Sheriff is an independent elected constitutional officer who does not work for the Board of County Commissioners. Therefore, the terms upon which the



Sheriff's personnel participate must be acceptable to the Sheriff. In addition, Chapter 2010-80 requires the Clerk of the Circuit Court to process unpaid citations for violations of the Statutes, in the same manner as other traffic offenses.

5. The Code Enforcement special magistrate was forbidden from hearing appeals of red light running ordinance violations. Chapter 2010-80 requires violators to contest traffic citations issued for violations of the Statutes in County Court.
6. Chapter 2010-80 does not specify an acceptable manner or basis for payment by a local government to a vendor but, payment of a per-ticket fee or compensation to ACS based on the number of violations was invalidated.

The passage of Chapter 2010-80, Laws of Florida, made the original Agreement between ACS and the County impossible to perform. The underlying legal basis provided by the County ordinances for the red light camera program was voided by the enactment of Chapter 2010-80. Any postponement or delay in the implementation of the red light camera program is a direct consequence of the Legislature's action and covered by Article 18 of the Agreement relating to Force Majeure. This article expressly states: "Neither party shall be considered in default in performance of its obligations hereunder to the extent that performance of such obligations or any of them is delayed or prevented by Force Majeure." The definition of Force Majeure in Article 18 encompasses "any law, proclamation, regulation, ordinance or other act of government, . . .; provided that the cause, whether or not enumerated in this Article, is beyond the control and without the fault or negligence of the party seeking relief under this Article."

Your letter attributes the delay in negotiating a new agreement to the County. However, much of the delay in negotiation of a new or amended agreement is directly attributable to ACS. As pointed out in the letter from Ed Hunzeker dated September 13, 2011, ACS continually responded to the County's draft documents by making significant revisions without stating any explanation or justification. Some of the modifications in the last version changed provisions that had previously been accepted by ACS. In contrast, the draft amendments and restated agreements prepared by the County Attorney's Office included underlines and strike-throughs in the text as well as notes in brackets describing the reasons for the revised language.

The letter from Ed Hunzeker dated May 5, 2011, provided written notice to ACS that Manatee County has no agreement with ACS. The correspondence from Ed Hunzeker outlined the conditions necessary to implement the red light camera program after Chapter 2010-80 became effective. One of these conditions involved negotiating an interlocal agreement with the Manatee County Sheriff's Office for the issuance of citations. The scope of work as well as the amount of payment demanded by the Sheriff changed substantially in the negotiation process. At the Sheriff's insistence, if the program were to proceed, the County would have to fund one-full time officer (who would only issue citations and not notices of violations) in addition to all other costs and expenses incurred by the Sheriff (including overtime for the full-time officer). The County would also be required to hire new personnel who would issue notices of violation.

ACS State & Local Solutions, Inc.  
Attn: James Haddow, Jr.  
December 20, 2011

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These requirements, which are beyond the County's control, diminished the financial feasibility of the proposed program.

Since Chapter 2010-80 took effect last year; Manatee County and ACS have been negotiating proposed revisions to the original Agreement and/or a proposed new Agreement. These negotiations have occurred without an updated Request for Proposals and without a competitive selection process. Nothing in the Agreement dated August 11, 2009, obligated either party to enter into an amendment or a subsequent contract if the original Agreement was invalidated by action of the Florida Legislature. Based on the latest draft Agreement received from ACS, it is financially infeasible for Manatee County to undertake the program at this time. The program will require the County to hire additional personnel and pay additional costs to the Sheriff's Office. Such expenses have not been included in the current budget adopted by the Board of County Commissioners.

Your letter requests payment of termination fees in excess of \$600,000.00 under Article 5 Section B of the Agreement. Even assuming ACS has a basis for claiming such sums, which we deny, the amount claimed by ACS exceeds the price of the contract contrary to Article 5 Section B and attempts to increase the compensation of ACS in violation of Article 3.

Moreover, your letter ignores the dispute resolution procedures set forth in Article 12 of the Agreement. The County's Purchasing Department Director has not received any written claim with the basis for the dispute as required by Article 12.

Because the parties have been unable to come to a meeting of the minds after more than one year, the Board of County Commissioners has authorized Manatee County staff to discontinue further negotiations regarding the Agreement. Since your letter dated November 29, 2011, constitutes notice by ACS of intent to terminate the Agreement, ACS has a duty to mitigate any damages or costs. You are hereby notified that ACS should contact the Manatee County Public Works Department upon receipt of this letter to make arrangements for immediate removal of its cameras from the County's intersections.

Your attention to this matter is appreciated.

Sincerely,

TEDD N. WILLIAMS, JR.  
County Attorney

ACS State & Local Solutions, Inc.

Attn: James Haddow, Jr.

December 20, 2011

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cc: Board of County Commissioners  
Ed Hunzeker, County Administrator  
Karen Windon, Deputy County Administrator  
Cheri Coryea, Director, Neighborhood Services Department  
John Barnott, Director, Building and Development Services Department  
Ron Schulhofer, Director, Public Works Department  
Rob Cuthbert, Manager, Purchasing Division, Financial Management Department  
James A. Minix, Chief Deputy County Attorney  
Allen Shutt, Vice President of Operations, ACS State & Local Solutions, Inc.