



City of Millbrae
621 Magnolia Avenue, Millbrae, CA 94030

WAYNE J. LEE
Mayor

ROBERT G. GOTTSCHALK
Vice Mayor

MARGE COLAPIETRO
Councilwoman

ANNE OLIVA
Councilwoman

REUBEN D. HOLOBER
Councilman

July 25, 2014

American Traffic Solutions
1330 W. Southern Ave, Suite 101
Tempe, AZ 85282

Re: Customer ID MILLBR001

The City of Millbrae is in receipt of invoices number INV00015907 & INV00016136. However, in light of the stop payment notice filed by [REDACTED] J [REDACTED] on June 3, 2014, the City is legally obligated to withhold \$\$92,654.57 from progress payments until the matter is resolved. Accordingly, invoices number INV00015907 & INV00016136 cannot be paid at this time.

Sincerely,


Manuel Sandoval
Financial Services Manager
City of Millbrae

City Council/City Manager/City Clerk
(650) 259-2334

Fire
(650) 259-2400

Building Division/Permits
(650) 259-2330

Police
(650) 259-2300

Community Development
(650) 259-2341

Public Works/Engineering
(650) 259-2339

Finance
(650) 259-2350

Recreation
(650) 259-2360



500 Capitol Mall, Suite 1600
Sacramento, California 95814
main 916.447.0700
fax 916.447.4781
www.stoel.com

August 11, 2014

ANTHONY J. DECRISTOFORO
Direct (916) 319-4670
ajdecristoforo@stoel.com

VIA CERTIFIED MAIL/RETURN RECEIPT REQUESTED

Stephanie Beauchaine
City of Millbrae
621 Magnolia Avenue
Millbrae, CA 94030

Re: American Traffic Solutions, Inc./ [REDACTED] J [REDACTED] Stop Payment Notice

Dear Ms. Beauchaine:

We represent American Traffic Solutions, Inc. ("ATS"). Pursuant to California Civil Code § 9400 et seq., ATS hereby serves an affidavit demanding the release of any and all funds that have been withheld improperly as the result of the Stop Payment Notice filed by [REDACTED] J [REDACTED] on or about June 2, 2014.

Thank you for your courtesy and cooperation.

Very truly yours,

[REDACTED SIGNATURE]

Anthony J. DeCristoforo
AJD:ipc

cc: Bryan Berthiaume, Foundation for Fair Contracting
David Gehrig, Esq.

Affidavit of Raymond L. Pedrosa In Response To Stop Payment Notice Filed By [REDACTED]
J [REDACTED] and Requesting the Release of Funds To American Traffic Solutions

I, Raymond L. Pedrosa, hereby declare under penalty of perjury the following:

1. I am a Senior Account Manager for American Traffic Solutions, Inc. ("ATS"). I have personal knowledge of the facts stated herein, and if called as a witness, could and would testify truthfully and competently thereto. This affidavit is submitted pursuant to California Civil Code section 9400, *et seq.*

2. ATS is a corporation duly registered under the laws of the State of Kansas. Its registered agent for service of process is Corporation Service Company, 2900 SW Wanamaker Drive, Suite 204, Topeka, Kansas 66614. Its principal place of business is 1330 W. Southern Avenue, Suite 101, Tempe, Arizona 85258. For purposes of service within this state in connection with this matter, ATS can be contacted through its attorney, Anthony DeCristoforo, Stoel Rives LLP, 500 Capitol Mall, Suite 1600, Sacramento, CA 95814.

3. On or about June 6, 2014, ATS received a copy of a Stop Payment Notice ("Notice") purportedly filed with the City of Millbrae ("City") on behalf of a former ATS employee named [REDACTED] J [REDACTED]. The Notice directed the City to set aside the amount claimed, plus interest and certain costs, from amounts to be paid by the City to ATS for services related to the City's red light camera program. A true and correct copy of the Notice is attached hereto as **Exhibit 1**.

4. The Notice identifies Mr. J [REDACTED] as a "worker" for ATS who has furnished "labor" for the red light photo program. The Notice does not indicate the specific basis for Mr. J [REDACTED]'s claim. It simply states, in conclusory terms, that there is the unpaid amount of \$92,654.57 (plus interest) owed to Mr. J [REDACTED]. There is no indication as to how this amount is computed. However, based upon the form of the Notice, ATS assumes that Mr. J [REDACTED] claims that the red light camera program is a public works project subject to California's prevailing wage laws. If Mr. J [REDACTED] is advancing this claim, ATS alleges that the red light camera program is not a public works project. As detailed below, any maintenance or other work performed by Mr. J [REDACTED] on ATS' behalf in connection with the program is incidental to the true purpose of ATS' agreement with the City, which is to provide red light monitoring and enforcement services to the City using ATS' Axisis™ System.

5. Mr. J [REDACTED] was employed as a Field Service Technician for ATS from February 1, 2010 to April 2, 2014. Mr. J [REDACTED]'s duties included performing maintenance work on the cameras and other components of the photo enforcement systems. Mr. J [REDACTED]'s rate of pay was \$20 per hour and he was paid the appropriate overtime rate for work he performed in excess of eight hours in a day or 40 hours in a week, as required by state and federal law. Mr. J [REDACTED] was not paid the prevailing wage rate because the red light photo program was not and is not a public works project.

6. Pursuant to the statutory provisions applicable to stop payment notices, the term “public works contract” has the meaning provided in Section 1101 of the California Public Contract Code. (Civil Code section 8038.) Under Public Contract Code section 1101, “public works contract” means an agreement for the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind. The agreement between the City and ATS is not a public works contract as that term is defined in Public Contract Code section 1101. First, the agreement is for the provision of services relating to the red light camera program, rather than for the erection, construction, alteration, repair or improvement of a public structure, building, road, or other public improvement. Second, Public Contract Code section 1101 requires the relevant work to be on a public structure, building, road, or other public improvement. The maintenance work performed by Mr. Ja [redacted] on the cameras does not represent work on any public structure. The cameras are owned by ATS. Thus, Mr. Ja [redacted] performed maintenance on ATS’ privately-owned cameras and related components. Upon the end of the Agreement’s term, the cameras will be removed and retained by ATS.

ATS’ Professional Services Agreement With the City for Services Related To Monitoring of Red Light Traffic Violations.

7. In 2006, ATS entered into a Professional Services Agreement (“Agreement”) with the City to provide a broad range of services related to the monitoring of red light traffic violations. A true and correct copy of the Agreement is attached hereto as **Exhibit 2**. This Agreement was amended in part on December 31, 2009 (the “2009 Amendment”), which is attached hereto as **Exhibit 3**.

8. The Agreement provides that it was to run for five years beginning on the date of first issued and payable notice of violation and could be automatically extended for one additional five year period. The City entered into the Agreement to use the Axis™ System to monitor red light violations, traffic speed or other traffic movements and to issue citations for traffic violations.

9. Exhibit A of the Agreement sets forth the scope of work to be provided by ATS under the Agreement. Those services include:

- Intersection violation analysis at the intersection approaches itemized in Exhibit D of the Agreement;
- Providing the City with an automated, web-based citation processing program;
- Sending citations and reminder notices to violators;
- Transmission of an electronic file to San Mateo County Superior Court with periodic updates of all citation notices issued;
- Provision of in-state vehicle registration information necessary to issue citations resulting from the Axis™ System;

- Provision of and online access for retrieval of an evidence package to the City for each citation which is contested and requires a hearing;
- Necessary and reasonable training for persons designated by the City as authorized to operate the System; and
- Providing the City with a local expert witness to testify as to the accuracy, technical operations, and effectiveness of the Axisis™ System.

10. Exhibit B sets forth the scope of work to be performed by the City under the Agreement. Under that section, the City appoints a project manager who coordinates the City's responsibility under the Agreement. Those responsibilities involve administrative tasks unrelated to the operation of the cameras, such as providing verification to the Department of Motor Vehicles indicating that ATS is acting as an agent of the City when ATS accesses vehicle ownership data (Agreement, Exhibit B, at Section 15.). The City also designates a primary court contact to manage the court related aspects of the integration and operation of the Agreement. (Agreement, Exhibit B, at Section 7.)

11. The City makes payments to ATS under Exhibit C of the 2009 Amendment, a section entitled, "Project Service Fees — Dual Stationary Camera System." Pursuant to that section, the fee schedule obligates the City to pay ATS a monthly Service Fee for red light camera system monitoring in the amount of \$5,200 for up to 4 lanes. Pursuant to the fee schedule, public funds from the City do not pay for any work associated with the installation of red light cameras. Instead, they represent monthly service fees for ATS' provision of the following specifically enumerated services:

Axisis RLC-300 Red Light Camera System monitoring front and rear images up to 4 lanes, image processing, data entry, In State, registered owner acquisition, final quality control review, access to web-based Axisis VPS for Police Review, 1st notice printing in color, postage and mailing, electronic notice file transmission to court system, evidence packages for scheduled hearings.¹

12. At no time has the City informed ATS that the Agreement is a public works contract requiring the payment of prevailing wages to Mr. Ja [redacted] or any other employees. In fact, it has been the parties' understanding that the Agreement is not a public works contract. Although the Department of Industrial Relations has issued an administrative coverage determination that a similar agreement between ATS and another city is a public works contract,

¹ The fee schedule does contain one exception for service fees at the left turn from Millbrae Avenue southbound onto Rollins Road, which was added under the 2009 Amendment. But for this specific arrangement, the fee schedule in the 2009 Amendment is identical to the fee schedule in the Agreement.

the issue remains unsettled because, to ATS' knowledge, no court has ruled that red light camera programs are public works projects.

Assuming Mr. Ja [REDACTED] Is Claiming The Agreement is for a Public Works Project, Mr. Ja [REDACTED] Is Incorrect Because The Agreement Is For Services.

13. Under the Agreement, ATS does perform routine maintenance to its cameras and related equipment in order to carry out the objectives of the Agreement. The Agreement provides that ATS will, among other things, repair non-functional cameras, and provide preventative maintenance such as lens cleaning, camera cleaning, and other general maintenance. Mr. Ja [REDACTED] performed maintenance work on red light cameras under the Agreement.

14. This maintenance work does not constitute an "improvement to a public structure, building, road or other public improvement," as required in order to fall under the definition of "public works contract" for purposes of the stop notice law. The maintenance work performed by Mr. Ja [REDACTED] was to camera systems and related equipment owned by ATS, not the City.

15. Additionally, even assuming the cameras owned by ATS were a public structure, building, road or other public improvement, California law clearly dictates that where a contract specifies that payments made by a public entity are for operational services rather than maintenance, the maintenance is not a "public work." See *McIntosh v. Aubry*, 14 Cal.App.4th 1576, 1586 (1993) (superceded by statute on other grounds) (holding that construction of a residential care facility was not a "public work" where the payment of public funds was made for later operational services, not construction).

16. The City did not enter into the Agreement to have ATS perform maintenance work on public property, such as a city office. The City entered into the Agreement for ATS, "to use the Axis™ System to monitor red light violations, traffic speed or other traffic movements and to issue citations for traffic violations." (Agreement, pg. 1).

Even Assuming The Agreement Is For A Public Works Project, Mr. Ja [REDACTED] Has Not Provided Basis for the Amount of His Claim.

17. Mr. Ja [REDACTED] claims that the value of the work he provided was \$137,114.57, that he was paid the sum of \$44,460.00, leaving an unpaid balance of \$92,654.57. There is no basis provided for the amount of this claim. Mr. Ja [REDACTED] has provided no information as to the rate of pay he should have received if the Agreement was a public works contract, nor the number of hours he claims to have worked pursuant to the Agreement for which he was not paid the appropriate wage. Without this detail, it is impossible to evaluate Mr. Ja [REDACTED]'s claim.

Demand For The Release of All Funds That Are Being Withheld Pursuant To Mr. Ja [REDACTED]'s Stop Payment Notice.

Pursuant to Civil Code section 9402(b), ATS hereby demands the release of all of the funds that are being withheld improperly pursuant to the Notice.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true to the best of my knowledge.

Signed on August 6, 2014 at Los Angeles County California

A horizontal grey rectangular box redacting the signature of the affiant.

Raymond L. Pedrosa
American Traffic Solutions
[Name of Affiant]

EXHIBIT 1



RECEIVED
CITY OF MILLBRAE

JUN 3 2014

VIA FACSIMILE (650) 697-8459 – CERTIFIED MAIL/RETURN RECEIPT

June 2, 2014

Stephanie Beauchaine
City of Millbrae
621 Magnolia Avenue
Millbrae, CA 94030

RE: Worker: [REDACTED] JA [REDACTED]
Prime Contractor: American Traffic Solutions, Inc.
Project: Red Light Photo Program
FFC Case No.: 367SJ

Dear Ms. Beauchaine:

Per Civil Code Section 8500 et seq., please withhold monies in accordance with the enclosed stop notice filed by a worker on the above project. **The Stop Payment Notice supersedes any and all previous Stop Payment Notices filed by the above worker on this project. Please retain said monies until a formal release is filed by the claimant.** These matters are currently under investigation.

"Notice of claim" means any written or oral notification to an insurer or its agent that reasonably apprises the insurer that the claimant wishes to make a claim against a policy or bond issued by the insurer and that a condition giving rise to the insurer's obligations under that policy or bond may have arisen. For purposes of these regulations the term "notice of claim" shall not include any written or oral communications provided by an insured or principal solely for information or incident reporting purposes.

We will keep you informed of the status of this claim. Please call with questions, comments, or clarifications.

Sincerely,

Bryan Berthiaume
Executive Director

Enclosures

Case: 367Sj

cc: [REDACTED] Je [REDACTED]

marcia Raines – City of Millbrae – Fax: (650) 259-2415
James D. Tuton – American Traffic Solutions, Inc. – Fax: (480) 807-0901 – Certified Mail/Return Receipt

FOUNDATION FOR FAIR CONTRACTING
3807 Pasadena Avenue, Suite 150 – Sacramento, CA 95821
(916) 487-7871 – Fax (916) 487-0306
www.ffccalifornia.com

STOP PAYMENT NOTICE - PUBLIC WORKS
LEGAL NOTICE TO WITHHOLD CONSTRUCTION FUNDS
(CA CIVIL CODE " 8044, 9350 et seq.)

TO:	PUBLIC ENTITY (CA Civ. Code §§ 8036, 9354)	DIRECT CONTRACTOR (CA Civ. Code § 8018)	CONSTRUCTION LENDER, if any (CA Civ. Code § 8008)
NAME:	<u>City of Millbrae</u>	<u>American Traffic Solutions</u>	_____
ADDRESS:	<u>621 Magnolia Ave Millbrae, CA 94030</u>	<u>7681 East Gray Road Scottsdale, AZ 85260</u>	_____

YOU ARE HEREBY NOTIFIED THAT (Claimant):

Name (Use correct legal name): [Redacted] JA [Redacted]

Address: [Redacted] CA [Redacted]

Relationship to the parties of the one giving this notice (subcontractor, supplier, describe if otherwise): worker

HAS FURNISHED WORK, LABOR, SERVICES, EQUIPMENT OR MATERIAL OF THE FOLLOWING GENERAL DESCRIPTION:
Labor

FOR THE BUILDING, STRUCTURE OR OTHER WORK OF IMPROVEMENT LOCATED AT THE FOLLOWING ADDRESS OR SITE OTHERWISE DESCRIBED SUFFICIENTLY FOR IDENTIFICATION:

Address: Millbrae Avenue - Millbrae, CA

or Description: Red light photo program

THE PERSON OR FIRM TO WHOM SUCH WORK, LABOR, SERVICES, EQUIPMENT OR MATERIAL IS PROVIDED:

Name: American Traffic Solutions, Inc.

Address: 7681 East Gray Road - Scottsdale, AZ 85260

THE VALUE OF THE WHOLE AMOUNT OF WORK, LABOR, SERVICES, EQUIPMENT AND/OR MATERIALS TO BE PROVIDED IS:

Amount: \$ 137,114.57

THE VALUE OF WORK, LABOR, SERVICES, EQUIPMENT OR MATERIAL PROVIDED TO DATE IS:

Amount: \$ 137,114.57

CLAIMANT HAS BEEN PAID THE SUM OF \$ 44,460.00
AND THERE REMAINS UNPAID AFTER DEDUCTING ALL JUST CREDITS AND OFFSETS THE SUM OF \$ 92,654.57
TOGETHER WITH INTEREST AT THE RATE OF 10 % PER ANNUM, FROM May 29, 2014 (date).

UNDER CALIFORNIA CIVIL CODE § 9358 YOU ARE REQUIRED TO SET ASIDE SUFFICIENT FUNDS TO SATISFY THIS CLAIM WITH INTEREST, COURT COSTS AND REASONABLE COSTS OF LITIGATION, AS PROVIDED BY LAW. YOU ARE ALSO NOTIFIED THAT CLAIMANT CLAIMS AN EQUITABLE LIEN AGAINST ANY CONSTRUCTION FUNDS FOR THIS PROJECT WHICH ARE IN YOUR HANDS.

DATE: May 29, 2014 NAME OF CLAIMANT: [Redacted] JA [Redacted]

BY: [Redacted Signature]
(Signature of Claimant or Authorized Agent)

VERIFICATION

I, [Redacted] JA [Redacted], state: I am the _____ (Owner of, President of, Authorized Agent of, Partner of, etc.) the claimant named in the foregoing STOP PAYMENT NOTICE - PUBLIC WORKS. I have read said STOP PAYMENT NOTICE - PUBLIC WORKS and know the contents thereof; the same is true of my own knowledge.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on May 29, 2014 (date), at [Redacted] (City), CA (State).

[Redacted Signature]
(Signature of Claimant or Authorized Agent)

PROOF OF SERVICE DECLARATION
(CA Civil Code §§ 8100-8118)

I, EVA Huerta, declare that I served copies of the above STOP PAYMENT NOTICE - PUBLIC WORKS, (check appropriate box):

- a. By personally delivering copies to _____ (name(s) and title(s) of person served) at _____ (address), on _____ (date), at _____ m. (time)
- b. By Registered or Certified Mail, Express Mail or Overnight Delivery by an express service carrier, addressed to each of the parties at the address shown above on _____ (date).
- c. By leaving the notice and mailing a copy in the manner provided in § 415.20 of the California Code of Civil Procedure for service of Summons and Complaint in a Civil Action.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on June 2, 2014 (date), at Sacramento (City), CA (State).

Eva Huerta
(Signature of Person Making Service)

EXHIBIT 2

PROFESSIONAL SERVICES AGREEMENT
"AGREEMENT"

Dual Red Light Photo Enforcement System

THIS AGREEMENT made this 19th day of June, 2006 between AMERICAN TRAFFIC SOLUTIONS, INC. (herein "ATS"), a corporation duly registered under the laws of the State of Kansas with its principal place of business at 14861 North Scottsdale Road, Suite 109, Arizona, County of Maricopa, State of Arizona, and the City of Millbrae, California (herein "Customer"), with principal offices at 621 Magnolia Avenue, Millbrae, CA 94030

WITNESSETH:

WHEREAS, ATS has the exclusive knowledge, possession and ownership of certain equipment, licenses, and processes, referred to collectively as the "Axis™ System", and

WHEREAS, Customer desires to use the Axis™ System to monitor red light violations, traffic speed or other traffic movements and to issue citations for traffic violations.

NOW THEREFORE, the parties agree:

1. DEFINITIONS:

As used in this Agreement, the following words and terms shall, unless the context otherwise requires, have the respective meanings provided below:

"Citation" means a citation issued by a competent state or municipal law enforcement agent or agency or by a court of competent jurisdiction relating to a violation documented or evidenced by the Axis™ System.

"Person" or "persons" means any individual, partnership, joint venture, corporation, trust, unincorporated association, governmental authority or political subdivision thereof or any other form of entity.

"Dual Stationary Camera System" means a photo-traffic monitoring device consisting of one front and one rear camera and a traffic monitoring device capable of accurately detecting a traffic infraction on up to four lanes and which records such data on an image of such vehicle. "Stationary Camera System" shall, where the sense requires, also include any enclosure or cabinet in which the Axis™ is stationed.

"Approach" is defined as one direction of travel of one or more lane on a road or a traffic intersection.

"Violation" means failure to obey an applicable traffic law or regulations, including, without limitation, failure to obey a traffic signal, operating a motor vehicle in excess of the posted speed limit, and operating a motor vehicle without displaying a valid license plate.

"Operational Time" means the actual time that a Stationary Camera System is monitoring traffic.

"VIMS Analysis" is a statistical assessment of violations rates at suspected problem intersections and approaches to determine the need for a red light system.