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June 13, 2012

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CITY ATTORNEY
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Via Electronic Mail and Federal Express

Jolene Grider
City Attorney
San Bernardino, California
300 North D Street
San Bernardino, California 92418

Re: San Bernardino, CA Caltrans Relocation Sites

Dear Ms. Grider:

This letter shall serve as ATS' formal response to the letter from Captain Raymond King, dated May 21, 2012.

We respectfully disagree with the City's interpretation of certain provisions contained in the Contract between The City of San Bernardino and ATS ("Contract") as well as the City's approach to resolving issues currently confronting the program as a result of certain positions advanced by Caltrans. Although we have made several attempts to contact members of the City to discuss these issues in the last several weeks, the City has been non-responsive to our efforts.

It is not ATS's responsibility to pay for the removal of the sites for the following reasons: (1) the Contract does not provide for a situation where Caltrans demands the removal of sites; and (2) the City has failed to exhaust all possible remedies prior to removing the cameras.

Contrary to the May 21st letter, Section 4(c)(iii) of the Contract is not applicable to this situation, even under the most liberal interpretation. That section provides that "either party may terminate for convenience in the event state legislation or decision by a court of competent jurisdiction materially interferes with the ability of a party to perform its obligations under the terms of the agreement." Caltrans is a state government department in charge of managing the state highway system, which is in no way comparable with a court of competent jurisdiction or an act passed by the California legislature

Additionally, the City has failed to exhaust all possible remedies by choosing not to appeal the Caltrans decision demanding the removal of the sites. As previously discussed, if/when the City pursues an appropriate appeal of the local Caltrans office letter, ATS may be willing to engage in good faith discussions regarding cost sharing pertaining to camera removal should such an appeal effort fail to change the determination. As you know, the revenue loss expected from the removal of these three intersections is \$385,080.00. This is far too high of a cost for the City to simply decide not to request a second review from the State Caltrans' office, while at the same time expecting ATS to cover 100% of the costs of removal which we are not contractually obligated to do.

Should the City fail to appeal, regardless of who removes or ultimately pays for the camera removal, ATS also reserves any claim for damages against the City and/or its officials for the City's action(s) or



inaction(s) in causing ATS to lose anticipated return on the substantial investment we incurred on behalf of and at the request of the City (i.e., failing to timely apply for permits, failure to appeal the Caltrans decision where there is a lack of statutory authority for Caltrans actions, etc.).

Please understand that while we are very interested in working with the City to resolve this issue, we will not agree to shoulder the removal costs or the revenue loss for the three sites if the City refuses to appeal the Caltrans decision and rejects all offers to replace the pulled sites with installations in other locations.

Please discuss this issue further with Andrea Travis-Miller as well as Captain Raymond King and let me know when we can set up a phone call to finalize the City's plan in regards to this issue. Please keep in mind we have a June 30, 2012 deadline to resolve this issue before Caltrans unilaterally removes the equipment.

Sincerely,
American Traffic Solutions, Inc.

A handwritten signature in black ink, appearing to read "George J. Hittner", is written over the typed name. The signature is fluid and cursive, with a long horizontal stroke extending to the right.

George J. Hittner
General Counsel and Corporate Secretary

cc: Andrea Travis-Miller, City Manager
Captain Raymond King, Police Department



OFFICE OF THE CITY ATTORNEY
CITY OF SAN BERNARDINO

JAMES F. PENMAN
CITY ATTORNEY

June 26, 2012

George J. Hittner
General Counsel and Corporate Secretary
American Traffic Solutions
1330 W. Southern Ave.
Tempe, AZ 85282

Re: Caltrans Controlled Intersections Camera Removal

Dear Mr. Hittner,

This letter is in response to your letter dated June 13, 2012. You state in your letter that you have made several attempts to contact members of the City to discuss these issues in the last several weeks and that the City has been non-responsive to your efforts. This statement is inaccurate. Captain King has been in constant communication with your company and has returned every phone call and email that has been sent to him.

You state that it is not ATS's responsibility to remove the camera system from the sites for two reasons. Your first reason is that the Contract does not provide for this situation. The Contract clearly states in Section 8 that the system "is, and shall remain, the sole property of ATS..." Since ATS is the sole owner of the property to be removed, the responsibility is yours to remove the equipment.

Your second reason is that the City has failed to exhaust all possible remedies prior to removing the cameras by "choosing not to appeal the Caltrans decision." The City did appeal the decision to Caltrans both in writing and in person. On February 27, 2012, the City Engineer, Robert Eisnebeisz, sent a letter to Caltrans asking them to allow us to do an independent analysis of the data to support keeping the cameras in place. We did the analysis and submitted further information to Caltrans. On March 20, 2012 Chief Robert Handy and Captain Raymond King met with District Director Ray Wolfe and his Assistant District Director. At this meeting they were told by Mr. Wolfe that the collision data did not support keeping the cameras. On April 3, 2012 the City received a letter from Mr. Wolfe that the cameras were no longer warranted at the three locations

because they were not supported by the data supplied. On April 24, 2012, Captain King requested that ATS send a letter to Caltrans, but ATS refused to do so. As you may be aware, Caltrans District 8, of which San Bernardino is a part, is requiring removal of all red light camera systems from state right of ways. Several other cities and camera companies have had to remove the systems as well.

Additionally, this request by Caltrans to remove the cameras was predicated by ATS's failure to obtain/renew the maintenance permit from the State. The permit was previously obtained by Nestor, in Nestor's name and was allowed to expire. The City should not be penalized for the failure of ATS to renew or obtain a new permit from the State.

Unfortunately, it appears that the City and ATS cannot come to a resolution that will satisfy both parties. If you have any suggestions on how we can resolve this issue without requiring us to renew the contract (the previous options given to us both required the City to renew the contract for additional years), we are more than willing to discuss them with you.

Very truly yours,



Jolena E. Grider
Senior Assistant City Attorney



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cc: jec

July 3, 2012

VANESSA SORIANO POWER
Direct (206) 386-7553
[redacted]@stoel.com

VIA E-MAIL
VIA U.S. MAIL

PURSUANT TO EVIDENCE RULE 408

James F. Penman, City Attorney
City of San Bernardino
300 North Street
San Bernardino, CA 92418

Re: American Traffic Solutions, Inc. Contract with San Bernardino

Dear Mr. Penman:

American Traffic Solutions, Inc. ("ATS") has engaged Stoel Rives LLP to assist with resolution of this matter. Please direct future correspondence to my attention.

I received a copy the City of San Bernardino's (the "City") letter dated June 26, 2012 to ATS's General Counsel, George Hittner. The purpose of this letter is to notify the City of ATS's appeal to the California Department of Transportation ("Caltrans") regarding specific cameras slated for removal by Caltrans, and to expressly reserve ATS's rights against the City. Consistent with the terms of the Vendor Services Agreement Between American Traffic Solutions, Inc. and the City of San Bernardino for Red Light Camera Services (the "Agreement"), a copy of this letter has been mailed to Lieutenant Raymond King of the San Bernardino Police Department.

As you know, the Agreement provides for 16 different camera location approaches. ATS negotiated those camera location approaches and their respective monthly fees in response to the City's request that the Agreement be economically feasible for the City over the term of the contract. ATS was responsive to the City's request. In good faith, ATS provided the City with a discount on certain monthly fees.

ATS's good faith in providing the City with a discount on monthly fees in negotiations was premised on the comprehensive package of intersection approaches agreed upon by the parties. The City's refusal to ensure that all cameras bargained for under the Agreement are fully implemented, including the three cameras challenged by Caltrans, reflects the City's failure to fully uphold its end of the Agreement. Indeed, the City's action may result in a profoundly negative impact for ATS. To that



James F. Penman
July 3, 2012
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end, ATS has directly contacted Caltrans to appeal its decision and seek compliance with Caltrans' own policy directive on permitting for red light cameras on state highways. Given the City's refusal to act, ATS reserves its rights against the City, both with respect to any action by Caltrans and related damages.

ATS seeks a prompt resolution to this dispute. Please let me know your availability for meeting, either later this week or early next week, to discuss this matter in person. I look forward to hearing from you.

Very truly yours,

Vanessa Soriano Power

cc: American Traffic Solutions, Inc.
Lieutenant Raymond King, San Bernardino Police Dept.