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May 4, 2011

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City of San Bernardino
Attn: Chief Keith L. Kilmer
P.O. Box 1559
San Bernardino, CA 92402

Re: Purported Termination of Red Light Camera Agreement

Dear Chief Kilmer:

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 of your letter dated April 11, 2011, purporting to terminate the Traffic Signal Violation Video-Enforcement System Lease and Services Agreement (the "Agreement") between the City of San Bernardino and Nestor Traffic Systems, Inc. ("Nestor," since assumed by ATS). ATS disagrees with your interpretation of the Agreement and the City's purported termination.

There is no dispute that the terms of the Agreement control termination. On May 4, 2005, Nestor and the City of San Bernardino (the "City") entered into the Agreement, now assumed on Nestor's behalf by ATS. On April 21, 2008, the parties amended the Agreement to add additional intersection approaches and to provide for expiration dates for enforcement at each intersection. As you know, those expiration dates are varied, with the latest currently extending to July 13, 2014.

Contrary to the position taken in your letter, the Agreement does not contain any provision permitting the City to unilaterally terminate the Agreement. Rather, Section 3.1 permits either party to terminate the Agreement "if the other Party defaults in the performance of any obligation under this Agreement and such default continues for more than thirty (30) days after notice thereof to the defaulting party." Here, the City has not notified ATS that ATS is in default and, as such, the City has no termination right at this time.

Further, the City cites Section 4.4 as the basis for paying a termination and cancellation fee. However, the termination/cancellation fee is inapplicable here because Section 4.4 specifically provides for a termination and cancellation fee only "in the event of termination . . . due to a breach by the Municipality." Thus, Section 4.4 applies only where ATS elects to terminate the Agreement pursuant to Section 3.1 based upon a breach by the City. The language of Section 3.1



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is permissive, providing that the Agreement “may be terminated” by ATS in the event of the City’s breach. Importantly, ATS is not *required* to terminate the Agreement, but would simply have the option to do so in the event of a breach by the City. As you are well aware, ATS has not terminated the Agreement and, therefore, Section 4.4 is inapplicable.

Furthermore, pursuant to Section 3.3 of the Agreement, the City remains obligated to pay fees or other amounts accrued prior to termination, and the City is to continue to accrue fees until the Agreement is *validly* terminated. Finally, the City’s obligation to pay those fees survives any future termination or expiration of the Agreement. As such, the City’s current obligations under the Agreement continue unless and until it is validly terminated, which has not occurred to date.

Should the City wish to negotiate a contract termination for convenience provision, the parties would have to amend the contract to allow for such termination. The City would be required to pay \$1,896,202.05, the cost of running out the contract to the end of its original term, as well as any outstanding balances owed under the Agreement, and the installation costs of the four approaches at San Bernardino and Tippecanoe that were installed but never turned on.

If you have any questions or concerns, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read "Van Soriano Power".

Vanessa Soriano Power

cc: American Traffic Solutions, Inc.