

City Hall East  
200 N. Main Street  
Room 800  
Los Angeles, CA 90012

(213) 978-8100 Tel  
(213) 978-8312 Fax  
CTrutanich@lacity.org  
www.lacity.org



CARMEN A. TRUTANICH  
City Attorney

REPORT NO. R 11 - 0 3 2 7

AUG 1 6 2011

REPORT RE:

**THE REQUIREMENT OF A SUPPLEMENTAL AGREEMENT TO ACCOMPLISH THE  
PHASE-OUT OF THE PHOTO RED LIGHT PROGRAM**

The Honorable City Council  
of the City of Los Angeles  
Room 395, City Hall  
200 North Spring Street  
Los Angeles, California 90012

Council File No. 11-1015

Honorable Members:

You have requested that this Office review Contract No. C-109495, an agreement between the City of Los Angeles and American Traffic Solutions for an Automated Photo Red Light Enforcement System, and advise you "whether or not any amendment or supplemental contract, or no action at all, other than a demand letter to the contractor, is necessary" in order to conduct the phase-out segment of the Photo Red Light Program.

Background

On February 6, 2006, the City of Los Angeles and Nestor Traffic Systems, Inc. executed Contract No. C-109495 (hereinafter the "Agreement") to provide Automated Photo Red Light Enforcement Program Services. In September of 2009, American Traffic Solutions (hereinafter "ATS" or "Contractor") purchased Nestor's assets in receivership proceedings. The assignment of the Agreement to ATS was subsequently approved by your Honorable Body. The Agreement expired on July 31, 2011, and the cameras that captured digital video images of red light violations ceased to operate at 11:59 p.m. on that date. It is the City's intent to prosecute all violations captured by the

cameras up to the point of expiration of the Agreement. According to the Los Angeles Police Department (hereinafter "LAPD"), in order to accomplish the City's objective of prosecuting the violators and collecting the citation revenue, a transition or phase-out period is required during which the captured digital video images are reviewed and approved, the citations are processed and issued, officer training is conducted, access to the Contractor's database using the Contractor's equipment is maintained and the necessary trial support for successful prosecutions continues to be provided. The prosecution of individuals who have received red light citations may include a trial requiring the preparation of a "court case package" (color digital video images, maintenance and calibration records, certificate of mailing, etc.) by the Contractor and depending on the asserted defense and the presiding bench officer, the Contractor may need to appear in court and offer "expert testimony." The question presented is which of these obligations is the Contractor legally required to continue to perform at no additional cost to the City and which of these "transition" costs must be borne by the City pursuant to the terms of the Agreement?

#### Contractor's Obligations Pursuant to the Terms of the Agreement

In interpreting a contract, the law requires that the "whole of a contract is to be taken together, so as to give effect to every part, if reasonably practicable, each clause helping to interpret the other." (California Civil Code section 1641, enacted in 1872) California law is well-settled in this regard. The California Supreme Court has firmly stated that "It is a primary rule of interpretation that contracts must be construed as a whole that is, from their four corners, and the intention of the parties is to be collected from the entire instrument and not detached portions thereof, it being necessary to consider all of the parts to determine the meaning of any particular part as well as of the whole. Individual clauses and particular words must be considered in connection with the rest of the agreement, and all of the writing and every word of it will, if possible, be given effect." (Hunt v. United Bank & Trust Co. (1930) 210 Cal. 108, 115; see also Stewart Title Co. v. Herbert (1970) 6 Cal. App. 3d 957, 963.)

Section 20.0 of the subject Agreement entitled CONCLUSION OF AGREEMENT states "At the conclusion of this Agreement, Contractor shall complete all PROGRAM work associated with the final violation images captured by the system on the last day of the Agreement. Such work shall include, but not be limited to, citation processing, citation approval procedures, violation viewings, preparation of court case packages, and court appearances, as identified in Appendix B." Section 20.0 read alone may seem to establish the intention of the contracting parties; but a careful legal analysis makes it essential to review the entire Agreement to accurately ascertain the parties' intentions and to correctly interpret the Agreement. The California Supreme Court has emphasized that although, "the language of the agreement, if clear and explicit and not conducive to an absurd result, must govern its interpretation . . . . This does not mean that a portion only of a written instrument, although it is clear and explicit, may be selected as furnishing conclusive evidence of the intention of the parties. Section 1641

of the California Civil Code embraces the true rule in providing that "[t]he whole of a contract is to be taken together . . . ." (Universal Sales Corp. v. California Press Mfg. Co. (1942) 20 Cal. 2d 751, 760.) Accordingly, it is essential to consider the language found in other sections of the Agreement, including the introductory or recitals section of the Agreement, Section 2.0 CONTRACTOR SERVICES TO BE PROVIDED, and the language of Appendix B which is incorporated into the Agreement by reference.

The term "PROGRAM" is defined in the Agreement's second recital (Agreement, page 1) and obligates the Contractor "to install automated photo red light enforcement cameras at a maximum of thirty-two (32) intersections, process digital images of red light violations, mail citations approved by the LAPD, interface with the Los Angeles Superior Court computer system, develop and supply management information reports, and to provide technical support to CITY management and staff (hereinafter referred to as the "PROGRAM")." Arguably, this definition of "PROGRAM" appears to limit the scope of "PROGRAM work" as referenced in section 20.0 of the Agreement. Considering section 2.0 of the Agreement entitled CONTRACTOR SERVICES TO BE PROVIDED, it specifies that "Contractor shall perform the work set forth in Appendix B, Statement of Work." The relevant portions of Appendix B are discussed below.

Considering the language of the entire Agreement, the above-referenced sections and Appendix B, the Statement of Work, it is clear that the Contractor is obligated at no additional cost to the City to process the violations captured by the cameras up to the time of expiration of the Agreement. These obligations include Citation Processing, the Citation Approval Process, and arguably, at least for some reasonable period of time, the provision of a toll-free number to answer citation related questions. The Citation Processing procedures include electronically interfacing with the Department of Motor Vehicles to determine the registered owner's information, maintaining a chain of custody for all documents (secure record keeping and evidence storage), a quality check of each violation, printing all citations, mailing all citations, and processing the digital video images of each violation. (Appendix B, page 5, Citation Processing.)

The Contractor's continuing obligations regarding the Citation Approval Process are also described in detail in Appendix B. Those obligations include making the citations available for online approval by LAPD, electronically transmitting a completed notice of violation to LAPD, electronically generating a digitized signature of an LAPD officer on each LAPD – approved citation, electronically processing all approved and mailed citations with the Los Angeles County Superior Court System, and downloading all citation information to the Los Angeles County Court computer database via the Expanded Traffic Records System (ETRS). (Appendix B, page 6, Citation Approval Process.)

According to very specific and unambiguous language in Appendix B, following expiration of the Agreement, the Contractor is **not** required to continue to do the following at no additional cost: (1) conduct training of LAPD staff to prepare officers to testify in court, (2) provide an expert witness to testify in court as to the operation of the camera system, collection and processing of the photographed evidence or (3) prepare a "court case package" which the Agreement states is to be "made available to LAPD within five (5) days prior to the scheduled court date." It should be noted that the scheduled court dates for violations captured during the last month of the Agreement's term may not occur for another year.

The section of Appendix B entitled "Training" limits the period of time that the Contractor is obligated to perform and states unequivocally "**Throughout the term of this entire Agreement**, Contractor shall provide training to all primary and backup personnel assigned to the Automated Photo Red Light Program as request[ed] by LAPD. The training shall provide an overview of all aspects of the automated program, including the technical information necessary to testify in court." (Appendix B, page 6-7, Training.)

Similarly, Sub-section I of the Appendix B section entitled "Court" clearly limits the time period of performance of the Contractor's obligations and reads "**Throughout the term of this entire Agreement**, Contractor shall provide . . . an expert witness to testify in court as to the operation of the camera system, collection and processing of the photographed evidence submitted to the court." Sub-section II repeats the same phrasing and states: "**Throughout the term of this entire Agreement**, Contractor shall prepare a court case package that shall contain front and rear color digital video images of the violation, a certified copy of the maintenance or calibration records covering the period prior to and immediately after the photographed violation, a certificate of mailing stamped by the United States Postal Service indicating the citation was mailed within eleven (11) days of the violation, and an affidavit by Contractor that outlines the duties performed throughout the entire processing of the violation. Court case information shall be available to the LAPD within five (5) working days prior to the scheduled court date." (Appendix B, page 7, Court, Sub-sections I and II.)

#### City's Retention of Contractor's Equipment and DSL Lines

During the term of the Agreement, LAPD had the possession and use of five (5) of the Contractor's computer workstations in order to access the Contractor's database using the Contractor's proprietary software, "Citation Viewer" and "Citation Composer". LAPD wants to retain the Contractor's computer workstations to continue such access during the close-out phase of the Photo Red Light Program. Section 15.0 Equipment of the Agreement states that all equipment owned and provided by the Contractor including computer workstations will be returned to the Contractor at the end of the contract period. Given these clearly stated contractual conditions, we are not aware of any legal precedent that would allow the City to retain the Contractor's equipment

without the Contractor's consent and reasonable compensation by the City for the continued use or purchase of the equipment.

In addition to the computer hardware equipment, City requires that Contractor leave in place during the phase-out period three (3) Digital Subscriber Lines (hereinafter "DSL") that facilitate LAPD's access to the Contractor's database. According to LAPD, the Contractor pays the costs to maintain the DSL. The DSL can reasonably be characterized as Contractor's equipment. Based on the terms of the entire Agreement, there is no legal basis to argue that Contractor is required to continue to provide those DSL connections at no additional cost to the City.

### Conclusion

"The law is well established that "[t]he language of a contract is to govern its interpretation, if the language is clear and explicit, and does not involve an absurdity." (California Civil Code section 1638, enacted in 1872; Pierce v. Merrill (1900) 128 Cal. 464, 472; Apra v. Aureguy (1961) 55 Cal. 2d 827, 830; Estate of Wemyss (1975) 49 Cal. App. 3d 53, 59.) Considering the clear and explicit language of the entire Agreement, it is reasonable to conclude that the terms of the Agreement clearly obligate the Contractor to continue to provide certain services related to citation processing and the citation approval process at no additional costs to the City. Applying the same primary principles of contract interpretation, leads to the conclusion that the terms are just as clear that other obligations only existed "**throughout the term of the Agreement**" and ended upon the Agreement's expiration. Based on our review and analysis of the entire Agreement, the Contractor has no obligation to continue to provide training, expert testimony/court appearances, court case packages, or computer workstations, DSL lines, use of its proprietary software or access to its database without the expectation of reasonable additional compensation from the City.

As the Agreement has expired, a supplemental agreement, rather than an amendment to an existing contract, is required to set forth the contractual obligations that the City would like the Contractor to continue to perform as the City's Photo Red Light Program is being phased out. The supplemental agreement should also specify the itemized costs for any work or equipment not covered by the original Agreement.

If you have any questions regarding this matter, please contact Assistant City Attorney Terry Martin-Brown at (213) 978-8134 or Chief Assistant City Attorney Pedro B. Echeverria at (213) 978-8748. They or another member of this Office will be present when you consider this matter to answer any questions you may have.

Very truly yours,

CARMEN A. TRUTANICH, City Attorney

By   
PEDRO B. ECHEVERRIA  
Chief Assistant City Attorney

PBE:TMB:ac  
Transmittal