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600 University Street, Suite 3500
Seattle, Washington 98101
main 206.624.0900
fax 206.386.7500
www.stoel.com

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JUL 29 2011

SHIRLEY FORSLOF
WHATCOM COUNTY AUDITOR

VANESSA SORIANO POWER
Direct (206) 386-7553
vspower@stoel.com

July 29, 2011

VIA HAND DELIVERY

City of Bellingham,
c/o Mayor Dan Pike
210 Lottie St.
Bellingham, WA 98225

✓ Whatcom County and County Auditor
c/o County Auditor Shirley Forslof
311 Grand Ave., Ste. 106
Bellingham, WA 98225

WA Campaign for Liberty
c/o Katja Delavar
214 39th St.
Washougal, WA 98671

Transportation Safety Coalition
c/o Johnny Weaver
3015 Mossop Dr.
Bellingham, WA 98229

BanCams.com
c/o Nick and Tiffany Sherwood
12917 82nd Ave. Ct. E
Puyallup, WA 98573

Voters Want More Choices
c/o Tim Eyman
11913 59th Ave W
Mukilteo, WA 98275-5569

Re: *American Traffic Solutions, Inc. v. City of Bellingham et al.*

Dear All:

Enclosed please find a Summons and Complaint in the matter of *American Traffic Solutions, Inc. v. City of Bellingham et al.* In addition, the enclosed documents include American Traffic Solutions' ("ATS's") Motion for Temporary Restraining Order and Preliminary Injunction. On behalf of ATS, I intend to present this Motion before the Whatcom County Superior Court, *ex parte*, at 8:30 a.m. on August 3, 2011. Please feel free to call me if you have any questions.

Best regards,

A handwritten signature in black ink, appearing to read "Van P", with a long horizontal flourish extending to the right.

Vanessa Soriano Power

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SHIRLEY FORSLOF
WHATCOM COUNTY AUDITOR

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2011 JUL 29 PM 1:58

WHATCOM COUNTY
WASHINGTON

BY _____

SUPERIOR COURT OF THE STATE OF WASHINGTON FOR WHATCOM COUNTY

AMERICAN TRAFFIC SOLUTIONS, INC.
Plaintiff/Petitioner,

vs.

CITY OF BELLINGHAM, et al.
Defendant/Respondent.

NO. 11 2 01991 4

ASSIGNED JUDGE: IRA UHRIG

NOTE FOR MOTION DOCKET (NTMTDK)

- Civil Motion Calendar
- Domestic Calendar
- Revision of Commissioner Ruling
- Special Set

(Use separate sheet for each noting)

NOTE FOR MOTION DOCKET

Please take note that the issue in this case will be heard on the date set out in the margin and the clerk is requested to note the same on the motion docket for that day, subject to the confirmation rule.

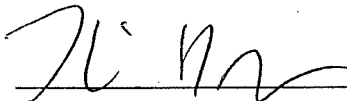
Wednesday, August 17, 2011; 9:30 a.m
Date and Time of Hearing

Nature of Hearing:

Plaintiff's Motion for Temporary Restraining Order and Preliminary Injunction

CERTIFICATE OF MAILING:

I certify under penalty of perjury under the laws of the State of Washington that I mailed a copy of this document to the parties listed below, postage prepaid on the 29th day of July, 2011


By: Signature

DATE SUBMITTED: July 29, 2011
SUBMITTED BY:

Signature of Lawyer or Party

Karin D. Jones, WSBA No. 42406

Print or Type Name; WSBA # if Attorney

Address: STOEL RIVES, LLP, 600 University Street, Suite 3600, Seattle, WA 98101

(206) 624-0900

Telephone

If Attorney, Party Represented:

Petitioner/Plaintiff Plaintiff

Respondent/Defendant

NAME (below)
City of Bellingham Office of the Mayor WSBA: _____
ADDRESS:
210 Lottie Street, Bellingham, WA 98225

Attorney for: Petitioner/Plaintiff Respondent/Defendant

NAME (below)
Katja Delavar WSBA: _____
ADDRESS:
214 39th Street, Washougal, WA 98671

Attorney for: Petitioner/Plaintiff Respondent/Defendant

NAME (below)
Nick and Tiffany Sherwood WSBA: _____
ADDRESS:
12917 82nd Avenue Ct. E, Puyallup, WA 98373

Attorney for: Petitioner/Plaintiff Respondent/Defendant

NAME (below)
Shirley Forslof, Whatcom County Auditor WSBA: _____
ADDRESS:
311 Grand Avenue, Suite 106, Bellingham

Attorney for: Petitioner/Plaintiff Respondent/Defendant

NAME (below)
Johnny Weaver WSBA: _____
ADDRESS:
3015 Mossop Drive, Bellingham, WA 98229

Attorney for: Petitioner/Plaintiff Respondent/Defendant

NAME (below)
Tim Eyman WSBA: _____
ADDRESS:
11913 59th Avenue W., Mukilteo, WA 98275-5569

Attorney for: Petitioner/Plaintiff Respondent/Defendant

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WASHINGTON

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JUL 29 2011

**SHIRLEY FORSLOF
WHATCOM COUNTY AUDITOR**

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR WHATCOM COUNTY

AMERICAN TRAFFIC SOLUTIONS,
INC., a Kansas corporation,

Plaintiff,

v.

CITY OF BELLINGHAM, a Washington
municipal corporation; WHATCOM
COUNTY, a political subdivision of the
State of Washington; SHIRLEY FORSLOF,
in her official capacity as Whatcom County
Auditor; WA CAMPAIGN FOR LIBERTY,
a Washington non-profit corporation;
TRANSPORTATION SAFETY
COALITION, an unknown entity;
BANCAMS.COM, an unknown entity; and
VOTERS WANT MORE CHOICES, an
unknown entity,

Defendants.

No.

11 2 01991 4

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF

IRA UHRIG

Plaintiff American Traffic Solutions, Inc. alleges as follows:

I. PARTIES

1. Plaintiff American Traffic Solutions, Inc. ("ATS") is a corporation incorporated under the laws of the State of Kansas, with its principal place of business in Scottsdale, Arizona.

2. Defendant the City of Bellingham (the "City") is a charter city incorporated

COMPLAINT - 1

1 pursuant to Article XI, Section 10 of the Washington State Constitution.

2 3. Defendant Whatcom County is a political subdivision of the State of Washington.

3 4. Defendant Shirley Forslof, in her official capacity, is the Auditor of Whatcom
4 County.

5 5. Defendant WA Campaign for Liberty is a non-profit corporation under the laws of
6 Washington.

7 6. Upon information and belief, Defendant Transportation Safety Coalition is
8 purportedly an organization of unknown form comprised of citizens of the state of Washington.

9 7. Upon information and belief, Defendant BanCams.com is purportedly an
10 organization of unknown form comprised of citizens of the state of Washington.

11 8. Upon information and belief, Defendant Voters Want More Choices is
12 purportedly an organization of unknown form comprised of citizens of the state of Washington.

13 9. Defendants WA Campaign for Liberty, Transportation Safety Coalition,
14 BanCams.com, and Voters Want More Choices are the sponsors of proposed Bellingham
15 Initiative No. 2011-01 ("Let the People Decide on Red Light Cameras in Bellingham").

16 **II. JURISDICTION AND VENUE**

17 10. This Court has subject matter jurisdiction over this action pursuant to RCW
18 7.24.010 *et seq.* and RCW 7.40 .010 *et seq.*.

19 11. Venue is proper in Whatcom County, Washington pursuant to RCW 4.12.025.

20 **III. FACTUAL BACKGROUND**

21 12. ATS provides automated traffic safety camera equipment ("Safety Cameras") and
22 services to municipalities across the country.

23 13. Safety Cameras are used by numerous cities in Washington as public safety
24 measures to enforce traffic safety laws, including speeding in school zones and stopping at red
25 lights.

26 14. On May 6, 2011, ATS entered into a contract with the City of Bellingham to

1 provide Safety Cameras and services pursuant to RCW 46.63.170, Bellingham Ordinance No.
2 2010-12-064, and Bellingham Municipal Code 11.16 (the "Contract"). Under the Contract, the
3 City agreed to pay ATS fees in exchange for ATS's equipment and services.

4 15. The Contract became effective on May 6, 2011 and is effective for a term of three
5 years (with a one-year trial period), beginning on the date of the first issued and payable notice
6 of a violation, with the option of three-year renewable terms.

7 16. Pursuant to the Contract, ATS is scheduled to install Safety Cameras at six
8 locations in Bellingham in 2011.

9 17. On or about January 24, 2011, Defendants WA Campaign for Liberty,
10 Transportation Safety Coalition, Voters Want More Choices, and BanCams.com (the "Initiative
11 Sponsors") commenced an initiative petition for proposed Bellingham Initiative No. 2011-01.

12 18. Proposed Bellingham Initiative No. 2011-01 seeks enactment of a new chapter of
13 the Bellingham Municipal Code. The proposed initiative would have the effect of:

- 14 a. Requiring a majority vote of the City Council and a majority vote of the people
15 before the City, or "for-profit companies contracted by the City of Bellingham"
16 may install or use Safety Cameras;
- 17 b. Limiting the fines that the City of Bellingham may assess for traffic violations
18 determined through the use of Safety Cameras; and
- 19 c. Requiring that all Safety Cameras installed or in use in the city limits of
20 Bellingham be removed within thirty days following the effective date of the new
21 law.

22 19. On June 30, 2011, Whatcom County Auditor Shirley Forslof issued a Certificate
23 of Sufficiency, certifying that the Initiative Sponsors submitted the requisite number of
24 signatures to permit the placement of proposed Bellingham Initiative No. 2011-01 on the
25 November 2011 local ballot, pursuant to Title 1, Chapter 02.050, of the Bellingham Municipal
26 Code.

COMPLAINT - 3

1 20. On July 11, 2011, the Bellingham City Council voted to take no action with
2 respect to proposed Bellingham Initiative No. 2011-01. Pursuant to Title 1, Chapter 02.080, of
3 the Bellingham Municipal Code, the City Council's decision to take no action will result in the
4 inclusion of proposed Bellingham Initiative No. 2011-01 on the November 2011 local ballot.

5 21. ATS seeks a declaration that proposed Bellingham Initiative No. 2011-01 is
6 invalid because it exceeds the scope of the local initiative power and violates the Contract Clause
7 of the United States Constitution and the Washington State Constitution.

8 22. ATS seeks injunctive relief to prevent inclusion of proposed Bellingham Initiative
9 No. 2011-01 on the general election ballot on November 8, 2011.

10 **IV. FIRST CAUSE OF ACTION**
11 **IMPROPER IMPAIRMENT OF CONTRACT PURSUANT TO ART. 1, SECTION 1**
12 **OF UNITED STATES CONSTITUTION AND ART. 1, SECTION 23 OF THE**
13 **WASHINGTON STATE CONSTITUTION**
14 **(Initiative Sponsor Defendants)**

15 23. The preceding paragraphs are incorporated by reference as if set forth fully
16 herein.

17 24. Article 1, section 10 of the United States Constitution mandates that “[n]o state
18 shall . . . pass any . . . law impairing the obligation of contracts. . . .” This prohibition reaches
19 any form of legislative action, including direct action by the people.

20 25. Article 1, section 23 of the Washington State Constitution states that “[n]o. . . law
21 impairing the obligation of contracts shall ever be passed.” This prohibition reaches any form of
22 legislative action, including direct action by the people.

23 26. The City entered into a written and binding contract with ATS for Safety Camera
24 equipment and services.

25 27. Proposed Bellingham Initiative No. 2011-01 will have the effect of limiting the
26 City's ability to use Safety Cameras under the Contract with ATS. Among other things, it would
preclude ATS from installing or using Safety Cameras in the City of Bellingham unless the

1 system is approved by a majority vote of the City Council and a majority vote of the people at an
2 election, and it would require the removal of all Safety Cameras installed by ATS in the City of
3 Bellingham as of the effective date of the new law. This substantially impairs ATS's and the
4 City's rights and obligations under the Contract, and directly harms ATS.

5 28. Such impairment is not reasonable or necessary to serve a legitimate public
6 purpose.

7 **V. SECOND CAUSE OF ACTION**
8 **DECLARATORY RELIEF**
9 **(All Defendants)**

10 29. The preceding paragraphs are incorporated by reference as if set forth fully
11 herein.

12 30. A controversy exists between Plaintiff and Defendants regarding whether the
13 subject matter of proposed Bellingham Initiative No. 2011-01 is within the scope of the initiative
14 power.

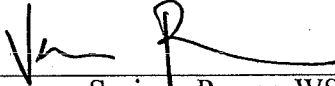
15 31. Proposed Bellingham Initiative No. 2011-01 usurps authority granted to the
16 Bellingham City Council by the Washington State Legislature, pursuant to RCW 46.36.170, and
17 therefore exceeds the scope of the initiative power.

18 32. Proposed Bellingham Initiative No. 2011-01 involves administrative actions,
19 rather than legislative actions, and is therefore not within the scope of the initiative power.

20 33. A controversy exists between Plaintiff and Defendants regarding whether
21 proposed Bellingham Initiative No. 2011-01 violates the Contracts Clause of the United States
22 and Washington Constitutions, as set forth in Paragraphs 23 through 28, above.

23 34. ATS seeks a declaration that proposed Bellingham Initiative No. 2011-01 is
24 invalid because it is beyond the scope of the initiative power and violates the Contracts Clause of
25 the United States and Washington Constitutions.
26

1 DATED: July 28, 2011.

2
3 
4 _____
5 Vanessa Soriano Power, WSBA No. 30777
6 Karin D. Jones, WSBA No. 42406
7 Stoel Rives LLP
8 600 University St., Ste. 3600
9 Seattle, WA 98101
10 Phone: (206) 624-0900
11 Fax: (206) 386-7500
12 Email: vspower@stoel.com
13 Email: kdjones@stoel.com

14 Attorneys for Plaintiff
15 American Traffic Solutions, Inc.

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5 **SHIRLEY FORSLOF**
6 **WHATCOM COUNTY AUDITOR**

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WHATCOM COUNTY
WASHINGTON

BY _____

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10 **SUPERIOR COURT**
11 **STATE OF WASHINGTON**
12 **COUNTY OF WHATCOM**

13 AMERICAN TRAFFIC SOLUTIONS, INC., a
14 Kansas corporation,

15 Plaintiff,

16 v.

17 CITY OF BELLINGHAM, a Washington
18 municipal corporation; WHATCOM COUNTY, a
19 political subdivision of the State of Washington;
20 SHIRLEY FORSLOF, in her official capacity as
21 Whatcom County Auditor; WA CAMPAIGN
22 FOR LIBERTY, a Washington non-profit
23 corporation; TRANSPORTATION SAFETY
24 COALITION, an unknown entity;
25 BANCAMS.COM, an unknown entity; and
26 VOTERS WANT MORE CHOICES, an
unknown entity,

Defendants.

NO. **11 2 01991 4**

SUMMONS (20/60 Day)

CR 4 (b)

(SM)

IRA UHRIG

24 **TO THE DEFENDANT: WHATCOM COUNTY, a political subdivision of the**
25 **State of Washington**

SUMMONS (20/60 Day)

(SM) CR 4 (b) - 1

70820838.1 0009610-00017

STOEL RIVES LLP
ATTORNEYS
600 University Street, Suite 3600, Seattle, WA 98101
Telephone (206) 624-0900

1 A lawsuit has been started against you in the above entitled court by American Traffic
2 Solutions, plaintiff. Plaintiff's claim is stated in the written complaint, a copy of which is served
upon you with this summons.

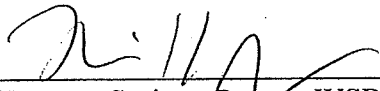
3 In order to defend against this lawsuit, you must respond to the complaint by stating your
4 defense in writing, and by serving a copy upon the person signing this summons within 20 days
after the service of this summons (or 60 days if served outside the State of Washington),
5 excluding the day of service, or a default judgment may be entered against you without notice.
A default judgment is one where plaintiff is entitled to what he asks for because you have not
6 responded. If you serve a notice of appearance on the undersigned person, you are entitled to
7 notice before a default judgment may be entered.

8 You may demand that the plaintiff file this lawsuit with the court. If you do so, the
demand must be in writing and must be served upon the person signing this summons. Within
9 14 days after you serve the demand, the plaintiff must file this lawsuit with the court, or the
service on you of this summons and complaint will be void.

10 If you wish to seek the advice of an attorney in this matter, you should do so promptly so
11 that your written response, if any, may be served on time.

12 This summons is issued pursuant to Rule 4 of the Superior Court Civil Rules of the State
of Washington.

13 Dated: 7/28/11


14 Vanessa Soriano Power, WSBA No. 30777
15 Karin D. Jones, WSBA No. 42406
16 Stoel Rives LLP
17 600 University Street, Ste. 3600
Seattle, WA 98101
18 Phone: (206) 624-0900
19 Fax: (206) 386-7500
Email: vspower@stoel.com
Email: kdjones@stoel.com

20 Attorneys for Plaintiff American Traffic
21 Solutions, Inc.

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WHATCOM COUNTY
WASHINGTON

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JUL 29 2011

**SHIRLEY FORSLOF
WHATCOM COUNTY AUDITOR**

**SUPERIOR COURT
STATE OF WASHINGTON
COUNTY OF WHATCOM**

AMERICAN TRAFFIC SOLUTIONS, INC., a
Kansas corporation,

Plaintiff,

v.

CITY OF BELLINGHAM, a Washington
municipal corporation; WHATCOM COUNTY, a
political subdivision of the State of Washington;
SHIRLEY FORSLOF, in her official capacity as
Whatcom County Auditor; WA CAMPAIGN
FOR LIBERTY, a Washington non-profit
corporation; TRANSPORTATION SAFETY
COALITION, an unknown entity;
BANCAMS.COM, an unknown entity; and
VOTERS WANT MORE CHOICES, an
unknown entity,

Defendants.

NO. 11 2 01991 4

SUMMONS (20/60 Day)

CR 4 (b)

(SM)

IRA UHRIG

**TO THE DEFENDANT: SHIRLEY FORSLOF, in her official capacity as
Whatcom County Auditor**

SUMMONS (20/60 Day)
(SM) CR 4 (b) - 1

70820860.1 0009610-00017

STOEL RIVES LLP
ATTORNEYS
600 University Street, Suite 3600, Seattle, WA 98101
Telephone (206) 624-0900

1 A lawsuit has been started against you in the above entitled court by American Traffic
2 Solutions, plaintiff. Plaintiff's claim is stated in the written complaint, a copy of which is served
3 upon you with this summons.

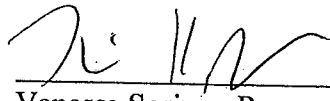
4 In order to defend against this lawsuit, you must respond to the complaint by stating your
5 defense in writing, and by serving a copy upon the person signing this summons within 20 days
6 after the service of this summons (or 60 days if served outside the State of Washington),
7 excluding the day of service, or a default judgment may be entered against you without notice.
8 A default judgment is one where plaintiff is entitled to what he asks for because you have not
9 responded. If you serve a notice of appearance on the undersigned person, you are entitled to
10 notice before a default judgment may be entered.

11 You may demand that the plaintiff file this lawsuit with the court. If you do so, the
12 demand must be in writing and must be served upon the person signing this summons. Within
13 14 days after you serve the demand, the plaintiff must file this lawsuit with the court, or the
14 service on you of this summons and complaint will be void.

15 If you wish to seek the advice of an attorney in this matter, you should do so promptly so
16 that your written response, if any, may be served on time.

17 This summons is issued pursuant to Rule 4 of the Superior Court Civil Rules of the State
18 of Washington.

19 Dated: 7/28/11


20 Vanessa Soriano Power, WSBA No. 30777
21 Karin D. Jones, WSBA No. 42406
22 Stoel Rives LLP
23 600 University Street, Ste. 3600
24 Seattle, WA 98101
25 Phone: (206) 624-0900
26 Fax: (206) 386-7500
27 Email: vspower@stoel.com
28 Email: kdjones@stoel.com

Attorneys for Plaintiff American Traffic
Solutions, Inc.

SUMMONS (20/60 Day)
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WHATCOM COUNTY
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BY _____

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR WHATCOM COUNTY

AMERICAN TRAFFIC SOLUTIONS,
INC., a Kansas corporation,

Plaintiff,

v.

CITY OF BELLINGHAM, a Washington
municipal corporation; WHATCOM
COUNTY, a political subdivision of the
State of Washington; SHIRLEY FORSLOF,
in her official capacity as Whatcom County
Auditor; WA CAMPAIGN FOR LIBERTY,
a Washington non-profit corporation;
TRANSPORTATION SAFETY
COALITION, an unknown entity;
BANCAMS.COM, an unknown entity; and
VOTERS WANT MORE CHOICES, an
unknown entity,

Defendants.

No. **11 2 01991 4**

DECLARATION OF AMY RASOR IN
SUPPORT OF PLAINTIFF'S MOTION
FOR TEMPORARY RESTRAINING
ORDER AND PRELIMINARY
INJUNCTION

IRA UHRIG

I, AMY RASOR, declare as follows:

1. I am Deputy General Counsel of Defendant American Traffic Solutions, Inc. ("ATS"). I am over the age of eighteen and competent to testify to the facts contained herein.
2. ATS is a corporation incorporated under the laws of the State of Kansas, having its principal place of business in Scottsdale, Arizona.

DECLARATION OF AMY RASOR - 1

1 3. ATS provides automated traffic safety camera equipment and services to cities
2 across the country.

3 4. Attached as Exhibit "A" is a true and correct copy of Bellingham Municipal
4 Ordinance No. 2010-12-064, passed by the Bellingham City Council on December 6, 2010.

5 5. Attached as Exhibit "B" are true and correct copies of relevant excerpts of
6 Bellingham Municipal Code 11.16, which can be viewed at the City of Bellingham's website at:
7 <http://www.cob.org/web/bmcode.nsf/CityCode?OpenView> (last visited July 26, 2011).

8 6. On May 6, 2011, ATS entered into a contract to provide automated traffic safety
9 camera equipment and services to the City of Bellingham. Attached as Exhibit "C" is a true and
10 correct copy of the contract entered into between ATS and the City of Bellingham.

11 7. Attached as Exhibit "D" are true and correct copies of excerpts from Bellingham
12 Municipal Code 1.02, which can be viewed at the City of Bellingham's website at:
13 <http://www.cob.org/web/bmcode.nsf/CityCode?OpenView> (last visited July 26, 2011).

14 8. Attached as Exhibit "E" is a true and correct copy of the initiative petition for
15 proposed Bellingham Initiative No. 2011-01, "Let the People Decide on Red Light Cameras in
16 Bellingham."

17 9. Attached as Exhibit "F" is a true and correct copy of the notice letter provided to
18 the Bellingham City Council on January 24, 2011, by the sponsors of proposed Bellingham
19 Initiative No. 2011-01, notifying the City of their intent to commence an initiative petition, as
20 viewed at the website of one of the Initiative Sponsors, BanCams.com, at:
21 <http://bancams.com/petition/bellingham/> (last visited July 26, 2011).

22 10. Attached as Exhibit "G" is a true and correct copy of the Certificate of
23 Sufficiency issued on June 30, 2011 by Whatcom County Auditor Shirley Forslof with respect to
24 proposed Bellingham Initiative No. 2011-01.

25 11. Attached as Exhibit "H" is a true and correct copy of the "City Council Agenda
26 Follow Up" regarding the Bellingham City Council's meeting of July 11, 2011, as viewed at the

DECLARATION OF AMY RASOR - 2

1 City of Bellingham's website at:

2 [http://www.cob.org/web/COUNCIL.NSF/\\$vAIIByUnid/987A13A5F52A6CD2882578CB001D3](http://www.cob.org/web/COUNCIL.NSF/$vAIIByUnid/987A13A5F52A6CD2882578CB001D3)

3 [CEC?OpenDocument](#) (last visited July 26, 2011).

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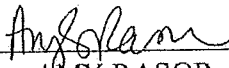
5 I declare under penalty of perjury under the laws of the State of Washington and the State
6 of Arizona that the foregoing is true and correct to the best of my ability.

7

8 SIGNED this 27 day of July, 2011 at Scottsdale, Arizona.

9

10



AMY RASOR

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DECLARATION OF AMY RASOR - 3

ORDINANCE NO. 2010-12-064

AN ORDINANCE ADDING A NEW CHAPTER BMC 11.16 TO THE BELLINGHAM MUNICIPAL CODE TO AUTHORIZE AND REGULATE AUTOMATED TRAFFIC SAFETY CAMERAS

WHEREAS, the City of Bellingham prosecutes, under its own laws and within its own municipal court, all traffic offenses occurring within the City of Bellingham; and

WHEREAS, RCW 46.63.170 allows for the use of automated traffic safety cameras for stoplight, railroad crossing, and school speed zone violations; and

WHEREAS, RCW 46.63.170 provides that the local legislative authority must enact an ordinance for the use of automated traffic safety cameras to regulate stoplight, railroad crossing, and school zone violations; and

WHEREAS, the City of Bellingham wishes to protect the public health and safety and promote the general welfare of the community by enhancing the enforcement of the traffic code through automated traffic safety cameras;

NOW THEREFORE, THE CITY OF BELLINGHAM DOES ORDAIN:

Section 1. A new chapter 11.16 is added to the Bellingham Municipal Code Title 11, which shall read as follows:

11.16 – Automated Traffic Safety Cameras

Section 2. A new section 11.16.010 is added to BMC chapter 11.16, which shall read as follows:

11.16.010 – Definition of Automated Traffic Safety Camera. For purposes of this chapter, “automated traffic safety camera” means a device that uses a vehicle sensor installed to work in conjunction with an intersection traffic control system, a railroad grade crossing control system, or a speed measuring device, and a camera synchronized to automatically record one or more sequenced photographs, microphotographs or electronic images of the rear of a motor vehicle at the time the vehicle fails to stop when facing a steady red traffic control signal or an activated railroad grade crossing control signal, or exceeds a speed limit in a school speed zone as detected by a speed measuring device.

Ordinance adding BMC 11.16
Automated Traffic Safety Cameras - 1

City of Bellingham
City Attorney
210 Lottie Street
Bellingham, Washington 98225
360-778-8270

EXHIBIT A

Section 3. A new section 11.16.020 is added to BMC chapter 11.16, which shall read as follows:

11.16.020 – Authorized Use of Automated Traffic Safety Cameras and Restrictions

- A.** Consistent with the authority granted in RCW 46.63.170, law enforcement officers of the City of Bellingham and persons commissioned by the Chief of Police for the City of Bellingham are authorized to use automated traffic cameras and related automated systems to detect one or more of the following: (1) stoplight violations, (2) railroad crossing violations, and (3) school speed zone violations.
- B.** The use of automated traffic safety cameras is subject to the following restrictions:
1. Use of automated traffic safety cameras is restricted to two-arterial intersections, railroad crossings, and school speed zones only.
 2. For stoplight violations, the use of automated traffic safety cameras shall be limited to the following intersections: westbound E. Holly at N. Forest; northbound Ellis St. at Lakeway Drive; northbound Meridian St. at Telegraph Road; southbound Samish Way at 36th St., and northbound 36th St. at Samish Way.
 3. For school speed zone violations, the use of automated traffic safety cameras shall be limited to the following locations: Shuksan Middle School on Northwest Ave between W. Maplewood Ave and Alderwood Ave, and Roosevelt Elementary on Alabama St. between Michigan St. and Woburn St.
 4. Automated traffic safety cameras may only take pictures of the vehicle and vehicle license plate and only while an infraction is occurring. Pictures taken by automated traffic safety cameras may not reveal the face of the driver or the passengers in the vehicle.
- C.** The City shall clearly mark all locations where automated traffic safety cameras are in use by placing signs in locations that clearly indicate to a driver that he or she is entering a zone where traffic laws are enforced by an automated traffic safety camera.
- D.** Notwithstanding any other provision of law, all photographs, microphotographs, or electronic images prepared under this chapter are for the exclusive use of law enforcement in the discharge of duties under this chapter and are not open to the public and may not be used in court in a pending action or proceeding unless the action or proceeding relates to a violation under this chapter. No photograph, microphotograph, or electric image may be used for any

purpose other than enforcement of violations under this chapter nor retained longer than necessary to enforce this section.

Section 4. A new section 11.16.030 is added to BMC chapter 11.16, which shall read as follows:

11.16.030 – Notice of Infraction

A. Whenever any vehicle is photographed by an automatic traffic safety camera, a notice of infraction under this chapter must be mailed to the registered owner of the vehicle within fourteen days of the violation, or to the renter of the vehicle within fourteen days of establishing the renter's name and address under this section.

B. The law enforcement officer issuing the notice of infraction shall include with it a certificate or facsimile thereof, based upon inspection of photographs, microphotographs, or electronic images produced by an automated traffic safety camera, stating the facts supporting the notice of infraction. This certificate or facsimile is prima facie evidence of the facts contained in it and is admissible in a proceeding charging a violation under this chapter. The photographs, microphotographs, or electronic images evidencing the violation must be available for inspection and admission into evidence in a proceeding to adjudicate the liability of the infraction. A person receiving notice of the infraction based on evidence detected by an automated traffic safety camera may respond to the notice by mail.

C. If the registered owner of the vehicle is a rental car business, the Bellingham Police Department shall, before a notice of infraction is issued, provide a written notice to the rental car business that a notice of infraction may be issued to the rental car business if the rental car business does not, within eighteen (18) days of receiving the written notice, provide to the Bellingham Police Department by return mail:

- 1.** A statement under oath stating the name and known mailing address of the individual driving or renting the vehicle when the infraction occurred; or
- 2.** A statement under oath that the business is unable to determine who was driving or renting the vehicle at the time the infraction occurred because the vehicle was stolen at the time of the infraction. A statement provided under this subsection must be accompanied by a copy of a filed police report regarding the vehicle theft; or
- 3.** In lieu of identifying the vehicle operator, the rental car business may pay the applicable penalty.

Timely mailing of this statement to the issuing law enforcement agency relieves a rental car business of any liability under this chapter for the notice of infraction.

Section 5. A new section 11.16.040 is added to BMC chapter 11.16, which shall read as follows:

11.16.040 – Request for Hearing. A person receiving a notice of infraction based on evidence detected by an automated traffic safety camera may respond to the notice by mail. The person receiving the infraction may also request a hearing in the Bellingham Municipal Court consistent with the procedures, rules, and regulations governing other infractions.

Section 6. A new section 11.16.050 is added to BMC chapter 11.16, which shall read as follows:

11.16.050 – Presumption of Committed Infraction

A. Consistent with RCW 46.63.075, in a traffic case involving an infraction detected through the use of an automated traffic safety camera, proof that the particular vehicle described in the notice of infraction was involved in a stoplight violation, railroad crossing violation and/or school speed zone violation, together with proof that the person named in the notice of traffic infraction was at the time of the violation the registered owner of the vehicle, constitutes in evidence a prima facie presumption that the registered owner of the vehicle was the person in control of the vehicle at the point where, and for the time during which, the violation occurred.

B. This presumption may be overcome only if the registered owner states, under oath, in a written statement to the court or in testimony before the court that the vehicle involved was, at the time, stolen or in the care, custody, or control of some person other than the registered owner.

Section 7. A new section 11.16.060 is added to BMC chapter 11.16, which shall read as follows:

11.16.060 – Infractions Processed. Infractions detected through the use of automated traffic safety cameras are not part of the registered owner's driving record under RCW 46.52.101 and 46.52.120. Additionally, infractions generated by the use of automated traffic safety cameras under this section shall be processed in the same manner as parking infractions, including for the purposes of RCW 3.46.120, 3.50.100, 35.20.220, 46.16.216, and 46.20.270(3).

Section 8. A new section 11.16.070 is added to BMC chapter 11.16, which shall read as follows:

11.16.070 – No Limitation on Authority. Nothing in this chapter prohibits a law enforcement officer from issuing a notice of infraction to a person in control of a vehicle at the time a violation occurs under RCW 46.63.030(1), (b), or (c).

Section 9. A new section 11.16.080 is added to BMC chapter 11.16, which shall read as follows:

11.16.080 – Monetary Penalty. The monetary penalty for a violation of this chapter shall not exceed \$250.00 consistent with the authority of RCW 46.63.170 (2) and shall be consistent with penalties set by state law for stoplight and school speed zone violations.

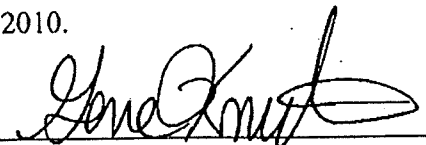
Section 10. A new section 11.16.090 is added to BMC 11.16, which shall read as follows:

11.16.090 – Use of Electronic Signature Authorized. In connection with the automated traffic safety camera program for stoplight violations, railroad crossing violations, and school speed zone violations, the Police Chief and/or his or her designee is authorized to utilize electronic signatures in accordance with the provisions of Chapter 19.34 RCW.

Section 11. A new section 11.16.100 is added to BMC 11.16, which shall read as follows:

11.16.100 – City Council Review. City Council shall review the use of the automated traffic safety cameras no later than one year from the date of authorization to determine whether the program shall continue and/or other locations should be considered for use of automated traffic safety cameras.

PASSED by the Council this 6th day of December, 2010.



Council President

APPROVED by me this 9th day of December, 2010.

Daniel V. R.
Mayor

ATTEST: [Signature]
Finance Director

APPROVED AS TO FORM:

[Signature]
Office of the City Attorney

Published:

December 10, 2010



«11.15.500 -
Penalty

11.16.020 - Authorized Use of Automated Traffic
Safety Cameras and Restrictions »»

City of Bellingham Municipal Code

Title 11 VEHICLES AND TRAFFIC
Chapter 16 AUTOMATED TRAFFIC SAFETY CAMERAS

**11.16.010 - DEFINITION OF AUTOMATED TRAFFIC
SAFETY CAMERA**

For purposes of this chapter, "automated traffic safety camera" means a device that uses a vehicle sensor installed to work in conjunction with an intersection traffic control system, a railroad grade crossing control system, or a speed measuring device, and a camera synchronized to automatically record one or more sequenced photographs, microphotographs or electronic images of the rear of a motor vehicle at the time the vehicle fails to stop when facing a steady red traffic control signal or an activated railroad grade crossing control signal, or exceeds a speed limit in a school speed zone as detected by a speed measuring device.

[Ord. 2010-12-064]

EXHIBIT B



«11.16.010 - Definition of Automated Traffic Safety Camera

11.16.030 - Notice of Infraction »»

City of Bellingham Municipal Code

Title 11 VEHICLES AND TRAFFIC
Chapter 16 AUTOMATED TRAFFIC SAFETY CAMERAS

11.16.020 - AUTHORIZED USE OF AUTOMATED TRAFFIC SAFETY CAMERAS AND RESTRICTIONS

A. Consistent with the authority granted in RCW 46.63.170, law enforcement officers of the City of Bellingham and persons commissioned by the Chief of Police for the City of Bellingham are authorized to use automated traffic cameras and related automated systems to detect one or more of the following: (1) stoplight violations, (2) railroad crossing violations, and (3) school speed zone violations.

B. The use of automated traffic safety cameras is subject to the following restrictions:

1. Use of automated traffic safety cameras is restricted to two-arterial intersections, railroad crossings, and school speed zones only.
2. For stoplight violations, the use of automated traffic safety cameras shall be limited to the following intersections: westbound E. Holly at N. Forest; northbound Ellis St. at Lakeway Drive; northbound Meridian St. at Telegraph Road; southbound Samish Way at 36th St., and northbound 36th St. at Samish Way.
3. For school speed zone violations, the use of automated traffic safety cameras shall be limited to the following locations: Shuksan Middle School on Northwest Ave between W. Maplewood Ave and Alderwood Ave, and Roosevelt Elementary on Alabama St. between Michigan St. and Woburn St.
4. Automated traffic safety cameras may only take pictures of the vehicle and vehicle license plate and only while an infraction is occurring. Pictures taken by automated traffic safety cameras may not reveal the face of the driver or the passengers in the vehicle.

C. The City shall clearly mark all locations where automated traffic safety cameras are in use by placing signs in locations that clearly indicate to a driver that he or she is entering a zone where traffic laws are enforced by an automated traffic safety camera.

D. Notwithstanding any other provision of law, all photographs, microphotographs, or electronic images prepared under this chapter are for the exclusive use of law enforcement in the discharge of duties under this chapter and are not open to the public and may not be used in court in a

pending action or proceeding unless the action or proceeding relates to a violation under this chapter. No photograph, microphotograph, or electric image may be used for any purpose other than enforcement of violations under this chapter nor retained longer than necessary to enforce this section.

[Ord. 2010-12-064]



«11.16.070 - No Limitation on Authority 11.16.090 - Use of Electronic Signature Authorized.»»

City of Bellingham Municipal Code

Title 11 VEHICLES AND TRAFFIC
Chapter 16 AUTOMATED TRAFFIC SAFETY CAMERAS

11.16.080 - MONETARY PENALTY

The monetary penalty for a violation of this chapter shall not exceed \$250 consistent with the authority of RCW 46.63.170 (2) and shall be consistent with penalties set by state law for stoplight and school speed zone violations.

[Ord. 2010-12-064]

PROFESSIONAL SERVICES AGREEMENT
"AGREEMENT"

THIS AGREEMENT made this 6th day of May, 2011 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 7681 E. Gray Road, Scottsdale, Arizona 85260, County of Maricopa, State of Arizona, and the City of Bellingham WA, herein "Customer", a municipal corporation of the State of Washington with principal offices at 210 Lottie St. Bellingham, WA 98225.

WHEREAS, The City of Bellingham desires to implement and operate a turnkey traffic safety camera system pursuant to Washington State Law RCW 46.63.170; and

WHEREAS, the City of Bellingham wishes to obtain the services of a contractor that has photo enforcement implementation and operations experience; and

WHEREAS, the City of Seattle awarded a contract to American Traffic Solutions, Inc. for the provision implementation and operation of a traffic safety camera system; and

WHEREAS, pursuant to the Interlocal agreement with the City of Seattle, the City of Bellingham wishes to contract directly with the American Traffic Solutions, Inc. on terms similar to the terms of the agreement between the City of Seattle and American Traffic Solutions, Inc.; and

WHEREAS, The City of Bellingham Police Department has evaluated other potential providers of turnkey traffic safety camera systems through the results of the City of Seattle's competitive negotiation process which involved evaluation and selection of responses to its Request for Proposal; and

WHEREAS, The City of Bellingham finds that the American Traffic Safety Solutions, Inc. is the most qualified company to perform the necessary services and provide the necessary equipment on terms most advantageous

NOW THEREFORE, the parties herein do mutually agree as follows:

1. DEFINITIONS:

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

"Approach" is defined as one direction of travel of one or more lanes on a road or a traffic intersection up to four (4) contiguous lanes controlled by up to two (2) signal phases.

"Camera System" means a photo-traffic monitoring device consisting of one (1) rear camera, strobe, and traffic monitoring device capable of accurately detecting a traffic infraction on up to four contiguous lanes controlled by up to two (2) signal phases and which records such data with one or more images of such vehicle. "Camera System" shall also, where the sense requires, include any enclosure or cabinet and related appurtenances in which the Axis™ is stationed.

"Citation" means a citation or notice of violation or equivalent instrument 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 Axis™.

"Owner" means the owner(s) of a motor vehicle as shown by the motor vehicle registration records of the motor vehicle department or the analogous agency of another state or country.

"Paid Citation" means a situation where the person cited has entered a plea of guilty and paid any portion of the fine and applicable court costs associated with the particular citation.

"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.

"Recorded Image" means an image digitally recorded by a Camera System.

"Axis System" means the Axis Violation Processing System which is a hosted application owned, maintained and managed by ATS from its facilities.

"Traffic Control Signal" means a traffic control device that displays alternating red, yellow and green lights intended to direct traffic when to stop at or proceed through and intersection.

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

"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.

2. ATS IMPLEMENTATION

- 2.1 ATS agrees to provide a turnkey solution for Red Light Stationary Camera Systems to the City of Bellingham (herein after the "City" or COB) where in all reasonably necessary elements required to implement and operate the system are the responsibility of ATS, except for those items identified in Section 5 titled "City Scope of Work". ATS and the City understand and agree that new or previously unforeseen requirements may, from time to time, be identified and that the parties shall negotiate in good faith to assign to the proper party the responsibility and cost for such items. In general, if work is to be performed by the City, unless otherwise specified, City shall not charge ATS for the cost. All other in scope work, external to the City, is the responsibility of ATS.
- 2.2 ATS agrees to make every effort to adhere to the Project Time Line outlined in Schedule 3.
- 2.3 ATS agrees to provide the City with AxisC RLC-300 Red Light Stationary Camera Systems.
- 2.4 ATS will assist the City with video evaluation of candidate sites using the Axis VIMS system.
- 2.5 ATS will install Camera Systems at a number of approaches, to be agreed upon between ATS and the City after completion of site analysis. In addition to the initial locations, after completion of the one year pilot program, the parties may agree from time to time, by additional work order(s) to add to the quantities and locations where Camera Systems are installed and maintained.
- 2.6 No ATS technician shall enter a traffic signal cabinet without the presence of a City Transportation and/or Communications Technician.
- 2.7 ATS will operate each Camera System on a 24 hour basis, barring downtime for maintenance and normal servicing activities.

- 2.8 ATS agrees to commence the installation of the System Identified in Schedule 2 – Initial Work Order, within 14 days after all approvals and required permits have been approved (the date all permits are approved shall hereinafter be referred to as the "Approval Date"). The Approval Date shall be marked by the issuance of a signed letter from ATS to the City, stating that permits from a particular site or set of sites have been approved.
- 2.9 ATS agrees to have all agreed-upon installation work completed and have the System fully operational according to the Project Time Line mutually agreed to by the parties.
- 2.10 ATS agrees to provide necessary training for persons designated by the City and to assist the City with development of public information and outreach campaigns.
- 2.11 ATS agrees to provide a secure web site (www.violationinfo.com), (hereinafter referred to as "violation information website"), accessible to citation recipients by means of a Notice # and a PIN, which will allow a violation image review and entry of affidavits of non-liability of the registered owner for the violation.
- 2.12 The City and ATS will complete the Project Business Process Work Flow design within 30 calendar days of contract signature. It is assumed that the business needs and requirements have already been established, including all fees, and all requirements for accessing the system for administration purposes.
- 2.13 ATS normally shall provide technician site visits to each Stationary Camera System once per month to perform preventive maintenance checks consisting of camera enclosure lens cleaning; camera, strobe and controller enclosure cleaning; inspection of exposed wire; and general system inspection and maintenance.
- 2.14 ATS shall repair a non-functional Stationary Camera System within 72 hours of determination of a malfunction.
- 2.15 ATS shall repair the Axis™ VPS system within one business day from the time of the outage. Outages of City internet connections or infrastructure are excluded from this service level.

3. ATS OPERATIONS

- 3.1 ATS shall provide the city with an optional one-time warning period up to 30 days in length and at the outset of the program.
- 3.2 As the party responsible for initial contact with the red light violator, ATS shall provide the City with an automated web-based citation processing system (Axis™ VPS) including image processing, color printing, and mailing of at least one citation for Notice of Violation per chargeable event. Each citation and Notice of Violation shall be delivered by First Class mail to the registered owner within the statutory period. Subsequent mailings to drivers identified in affidavits of non-liability or by rental car companies are also included. For mail not delivered due to address problems, ATS will mail the citation of Notice of Violation again if the City provides it with better information.
- 3.3 ATS shall apply an electronic signature to the citation when authorized to do so by an approving law enforcement officer.
- 3.4 ATS shall obtain in-state vehicle registration information necessary to issue citations assuming that it is named as the City's agent.

- 3.5 Where obtainable, ATS shall provide out of state vehicle registration necessary to issue citations at no cost to the City.
- 3.6 ATS will designate rental car companies as registered owners. Notice of Violation (not citations) shall initially be issued to rental car companies. ATS will receive and review responses and documentation from rental car companies and will enter new driver information into Axis or otherwise designate that the rental car company or other party previously identified as the responsible party is not the responsible party. Citations may be issued to a rental car company if the rental car company does not provide information required by RCW 46.63.170 or to designated drivers if the rental car company identifies the driver.
- 3.7 Should the City request daily file transmittals on a daily basis (or as otherwise agreed), ATS shall transmit to the City of Bellingham Municipal Court (Court) a text file containing all citation and Notice of Violation information issued, for uploading into the Court computer system.
- 3.8 On a daily basis (or as otherwise agreed), ATS shall receive from the Court the status of citations based on the latest disposition following a contested hearing, indicating cases closed, Dismissed or otherwise resolved.
- 3.9 The Axis™ VPS system, which provides the City with ability to run and print a report (no cost), shall include the following:
- Program Statistics Report
 - Location Performance Summary Report
 - Location Performance Detail Report
 - Violation Reject Report
 - Document Aging Report
- 3.10 ATS shall provide the City with, or train a local expert witness able to testify in Court on matters relating to the accuracy, technical operations, and effectiveness of the Axis System. The expert witness' time testifying in court, traveling to and from court, and preparing for testimony will not be charged to the City as an additional cost on top of the Service Fee Schedule (Schedule 1). As used in this subsection, "local expert witness" is not necessarily to be construed as meaning a Bellingham Police Officer. The City may at its discretion call Bellingham Police officers to testify at contested hearings on citations consistent with their experience and training on the Axis System. Otherwise, expert witness requirements for Court hearings will be provided by ATS consistent with this subsection. However, it is not contemplated that every hearing will need an expert witness as the violation notices are prima facie evidence. In those instances where damage to a Camera System or sensors is caused by negligence on the part of the City or its authorized agent(s), ATS will provide an estimate of the cost of repair. Upon authorization to proceed with the repairs or replacement, ATS shall replace or repair any damaged equipment and invoice the City for the pre-approved repair cost. ATS shall bear the cost to replace or repair equipment damaged in all other circumstances.
- 3.11 ATS shall provide a website and help line to help the City resolve any problems encountered regarding its Red Light Camera System and/or citation processing. The help line shall function during normal business hours.
- 3.12 As part of its turnkey system, ATS shall provide the violator with the ability to view the violation on the violation information website. This online viewing system shall include a link for online payment as described in subsection 4.4 and an opportunity to download an

affidavit of non-liability. Online affidavits of non-liability shall be directed to and processed by ATS;

- 3.13 ATS shall provide data collection support to the Transportation and Communications section of the City Public Works Department. Such data collection support is to include access to any automated traffic volume count data and all other data collected by the system and shall be at no cost to the City.

4. COURT SERVICES

The following services are provided for in this contract. Fees for these services are identified on Schedule 1 - Service Fee Schedule.

- 4.1 Issuance of second notice upon expiration of unpaid first citation. ATS shall issue a second citation notice including a payment coupon and return payment envelope within 5 days of determination that no payment on a first citation was received. The second notice shall be due within 14 days of issuance and shall contain language advising the violator that collections action will ensue immediately unless payment is received.
- 4.2 Affidavit/Transfer of Liability Processing. ATS shall process all inbound affidavits of non-liability and transfer of liability forms, rental car driver identification forms and new or change of address items and reissue a new citation to the identified party.
- 4.3 Lockbox payment processing services. ATS shall operate a lockbox payment processing service for the program and shall process all checks, money orders and cashier's checks on behalf of the City.
- 4.4 City will establish a public demand deposit account bearing the title, "City of Bellingham" at US Bank. All funds collected on behalf of the City will be deposited in this account and transferred by ACH transfer or wire the first business day of each week to the City's primary deposit bank, US Bank. All banking fees, except chargeback/NSF fees, associated with this account will be paid by ATS. The City will identify the account to receive funds transferred from ATS. Reconciliation reports identifying each paid citation and summary information will be available from the system.
- 4.5 Electronic online payments. ATS shall operate an electronic payment portal for the purposes of accepting debit card, electronic check (ACH) and Visa and MasterCard credit card payments over the internet. Funds collected through this portal will be deposited in the City's public deposit account at US Bank. The fees for these transactions are paid by the user through the application of a convenience fee. ATS represents and warrants that for the life of the contract, the software and services used for processing photo enforcement citation transactions shall be compliant with standards established by the PCI Security Standards Council (<https://www.pcisecuritystandards.org/index.shtml>). ATS shall defend and indemnify the City Pursuant to paragraph 14 of this Agreement for claims, as defined in paragraph 14, arising out of or relating to any loss of City customer credit card information managed, retained or maintained by ATS, including but not limited to fraudulent or unapproved use of such credit card or identity information.
- 4.6 Collections services. Upon expiration of the first citation, or, if applicable, upon expiration of the second citation notice, ATS will provide citation fine collection services and shall be compensated for said collection services as described in Schedule 1.
- 4.7 ATS will handle inbound and outbound phone calls and correspondence from defendants who have questions about issues relating to Notices of Violation, citation issuance,

citation processing, payments, and Axisis™ technology processes via websites and/or toll-free telephone numbers provided by ATS for that purpose.

- 4.8 ATS will retain infraction notice related records in accordance with the RCW and City requirements for retention and destruction. Prior to execution of the agreement, ATS will provide the City with its data storage, backup, and disaster recovery plans for City data.

5. CITY SCOPE OF WORK

5.1 General Implementation Requirements.

- 5.1.1 Within 7 business days of contract execution, the City shall provide ATS with the name and contact information for a project manager with authority to coordinate City responsibilities under the Agreement.
- 5.1.2 Within 7 business days of contract execution, the city shall provide ATS with the name and contact information for a Court manager responsible for oversight of all Court related program requirements.
- 5.1.3 The City shall make every effort to adhere to the Project Time Line mutually agreed to by the parties.
- 5.1.4 The City shall direct the Chief of Police or approved alternate to execute the ATS DMV Subscriber Services Agreement (Schedule 2) to provide verification to the Washington State Department of Licensing, National Law Enforcement Telecommunications System, or appropriate authority indicating that ATS is acting as an Agent of the Customer for the purposes of accessing vehicle ownership data pursuant to the list of permissible uses delineated in the Drivers Privacy Protection Act 18 USC§.
- 5.1.5 The City and ATS shall complete the Project Business Process Work Flow design within 30 calendar days of contract signature, using the outlines in Schedules 1 through 3 as the basis for the final work flow design.

5.2 PUBLIC WORKS OPERATIONS - TRANSPORTATION AND COMMUNICATION

- 5.2.1 The City will design, fabricate, install and maintain red light camera warning signs.
- 5.2.2 The City shall provide access to traffic signal phase connections according to approved design. Only City Traffic Signal Technicians will perform wiring connections within the traffic signal cabinet to accomplish the red light camera installation.
- 5.2.3 The City may allow ATS to use existing street furniture, poles, and available conduit for the purposes of installing and operating its Camera Systems, according to approved design. A City Traffic and/or Communications Technician must be present during installation for the Camera Systems using existing street furniture, poles and conduit at the intersections.
- 5.2.4 The City shall not require ATS to provide installation drawings stamped by a licensed civil engineer. However, ATS work product and drawings shall conform to professional norms and reflect the details of installation work to be completed.

5.2.5 The City shall approve or reject ATS's submitted plans within 7-10 business days of receipt. If after 10 business days, or good faith effort, the City has not rejected ATS's plans, they will be deemed acceptable.

5.2.6 The City shall process street use and pole attachment permit requests prepared by ATS in accordance with its established criteria.

5.3 POLICE DEPARTMENT OPERATIONS

5.3.1 The City of Bellingham Police Department (BPD) shall process each potential violation in accordance with Washington State Laws and City Ordinances. Processing of a potential violation will normally occur within 3 business days of its appearance in the Police Review Queue, using Axis™ to view images online and determine which violations will be issued as citations or Notices of Violation.

5.3.2 BPD workstation computer monitors for violation review and approval should provide resolution of 1280 x 1024.

5.3.3 For optimal data throughput, BPD workstations should be connected to a high-speed internet connection with a bandwidth of T-1 or greater.

5.3.4 BPD shall provide signatures of all authorized police users who will review events and approve citations on forms provided by ATS.

5.4 JUDICIAL SERVICES (JS)

5.4.1 The City shall provide a judge or hearing officer and Municipal Court facilities to schedule and hear disputed citations.

5.4.2 On a daily basis (or as otherwise agreed), The City shall enter into the ATS Axis™ system the status of citations based on the latest disposition following a contested hearing, indicating cases closed, dismissed or otherwise resolved.

5.4.3 The City shall provide the specific text required to be placed on citations and Notices of Violation to be issued by ATS within 30 calendar days of contract signature. The Washington Administrative Office of the Courts (AOC) must approve the citation text. JS shall make reasonable efforts to expedite the approval process but cannot guarantee that AOC will communicate approval within 30 days of contract signature.

5.4.4 The City shall provide at least one City standard PC and will provide secured access to the violation information website to be used by defendants to view their violations online. The PC will have standard City security/AV software installed. The location of the PC shall be determined by the City.

5.4.5 JS will handle inbound and outbound phone calls and correspondence from defendants who have questions about hearings and issues relating to in-court adjudication.

5.5 INFORMATION TECHNOLOGY SERVICES (IT)

5.5.1 In the event that remote access to the ATS Axis™ VPS System is blocked by City network security infrastructure, IT shall coordinate with ATS to facilitate appropriate communications while maintaining required security measures.

5.6 ACCEPTANCE UPON COMPLETION OF INSTALLATION AND TESTING

- 5.6.1 Upon completion of all installation, ATS shall perform an end to end test for each of the contracted approaches.
- 5.6.2 Upon completion of installation and testing of all contracted approaches, ATS shall notify the City that the system is ready for acceptance.
- 5.6.3 City shall conduct an acceptance test in accordance with specifications mutually agreed upon by the parties.
- 5.6.4 Upon successful completion of the acceptance test, the City shall issue certificate of acceptance.

5.7 PAYMENT SCHEDULE

- 5.7.1 Upon certification of acceptance and consistent with Section 11 (Request for Payment), the City shall commence monthly payments.

6. ENGAGEMENT OF ATS/CONTRACTOR

- 6.1 Except for items specifically described as City responsibility under Section 5 (City Scope of Work) ATS shall furnish all services, labor, materials, documentation, equipment, and software to install and test the Camera System, and to provide the specified training warranties and maintenance for the System.
- 6.2 The Contractor shall perform all work described in Sections 2, 3, and 4 (Work) in a competent and professional manner consistent with the terms and conditions of the Agreement and with all applicable laws, ordinances, and regulations.
- 6.3 The City may revise the scope of work and the compensation only by a written Change Order signed by the Mayor or his designee, which shall become incorporated into this Agreement.

7. COMMENCEMENT OF PERFORMANCE OF WORK

- 7.1 Work shall commence when the City issues a notice to proceed and it shall be completed no later than 90 days after the receipt of the last installation permit, unless the completion date is extended in writing by the City.
- 7.2 The execution of this Agreement shall constitute the City's notice to ATS to proceed with the Work described in Sections 2, 3, and 4. Work outside the scope of what is described in Sections 2, 3, and 4 will require additional work orders.

8. ADDITIONAL WORK ORDERS

- 8.1 Additional work orders issued under this Agreement may be generated by the City for the following purposes:
 - a. Implementation of cameras or any other items related to the red light traffic safety system or speed camera system at additional locations identified by the City; and

- b. Upgrade(s) of equipment, software, or change(s) of any deliverable provided hereunder; and
 - c. Any other items related to the red light traffic safety system or speed camera system for locations where the City has already authorized Work or issued a work order.
- 8.2. For any work order(s) requested by either party subsequent to commencement of the Work described in Sections 2, 3, and 4, ATS shall submit to the City for its review and approval a detailed proposal for the scope, implementation plan, milestones, test and acceptance procedures, as well as the cost consistent with previous work orders. Once this proposal is received and approved by the City, a work order will be issued for the change or additional work and invoiced for the change or additional work consistent with the City's approval notice and the terms and conditions of this Agreement.

9. PAYMENT TERMS

9.1 Compensation.

- 9.1.1 The total compensation to be paid to Contractor, including all services and expenses, shall not exceed the fees indicated on Schedule 1 - Service Fee Schedule, which shall be full compensation for the Work.
- 9.1.2 Compensation for any additional work orders shall conform to Schedule 1 Service Fee Schedule, or as agreed upon in writing by both parties.
- 9.1.3 Pricing shall be fixed and firm through the Contract Term, assuming the City elects to continue the project.
- 9.1.4 For service charge adjustment beyond the Initial Term of three (3) years, the basis for adjustment shall:
 - a. Be fixed and adjusted annually by City of Bellingham CPI appropriate to the particular product herein;
 - b. Clearly identify the items impacted by the increase;
 - c. Be accompanied by documentation acceptable to the City sufficient to warrant the price increase request and shall be no greater than the total of charges to the CPI Index for Whatcom County; and
 - d. Remain firm for a minimum of 365 days.
- 9.1.5 This contract includes no reimbursable expenses.

9.2 FLEXIBLE PAYMENT PLAN

During the term of the contract, payments by the Customer may be made to ATS under a Flexible Payment Plan. Under the Flexible Payment Plan, the Customer may defer certain payments to ATS until the Customer has collected sufficient funds pursuant to the terms of the contract. If, at the end of the term of the contract, sufficient funds have not been collected by the Customer to pay the balance then due to ATS, ATS agrees to waive its right to recovery of any outstanding balance. For purposes of this clause, the term "funds" means the revenue retained by the Customer according to the distribution methods applicable under this contract and law.

This clause will be applied as follows:

ATS will maintain an accounting of any net balances owed to ATS. If the amount collected during a billing period exceeds the amount of ATS invoices during the same period, the Customer shall pay ATS the total amount due. If the amount collected during a billing period is less than the amount of ATS invoices during the same period, the Customer shall pay ATS the amount collected, and may defer payment of the remaining balance. Payments due to ATS shall be reconciled by applying future funds collected, first to the accrued balance, and then to the invoice for the current billing period. At any time that ATS invoices, including any accrued balance, are fully repaid, the Customer will retain all additional funds collected during that billing period. Such additional funds (whether reserved in cash or not by the Customer) will be available to offset future ATS invoices.

- 9.2.1 The Flexible Payment Provision as applied in this section shall not apply should the City elect not to enforce illegal right turn on red violations where the violator clearly makes no meaningful action to stop before making a turn (i.e. fast right turn) or if the City elects not to pursue collections on unpaid violations, or if City directs ATS to install a camera at a site with an initial starting violation rate of less than 0.66 violations per hour based on VIMS analysis data collected for at least 7 or more hours that include the AM or PM peak hour, or fewer than 8 violations per day, or if the City or BPD waives more than 15 percent of valid violations forwarded to the Police for acceptance according to business rules.

10. TERM, TERMINATION and PILOT PROGRAM:

The term of this Agreement shall be for three (3) years beginning on the date of first issued and payable notice of a violation from the last installed Camera System (the "Start Date") and may be automatically extended for two additional three (3) year periods. However, Customer may terminate this Agreement at the expiration of any term by providing written notice of its intent not to extend the Agreement at least 60 days prior to the expiration of the current term.

Year one shall be a "pilot program" to determine the effects of the program. Pilot Program Terms: With at least 60 days written notice of the first anniversary of the *Start Date*, either party shall have the option to terminate this Agreement. The option to terminate pursuant to this paragraph shall expire except as otherwise provided herein. There shall be no penalty or additional assessment if the city elects to terminate at the end of the Pilot program.

The annual fee shall be increased or decreased by the amount that the Consumer Price Index-All Urban Consumers (CPI-U) for the Seattle-Tacoma-Bremerton WA Area shall have increased or decreased for the twelve-month period immediately prior to the renewal date of this agreement.

This contract shall be effective on the last signature date at the end of this agreement.

11. REQUEST FOR PAYMENT

- 11.1 Not more than once every thirty days, ATS shall file its request for payment, accompanied by evidence satisfactory to the City justifying the request for payment, including a report of violations paid during the month. Invoices must show a breakdown of violations paid during the billing period.

- 11.2 All requests for payment should be sent to:

Deputy Chief Flo Simon
Bellingham Police Department
505 Grand Avenue
Bellingham, WA, 98225

12. TERMINATION OF CONTRACT

- 12.1 For Cause: The City may terminate this Contract if the Contractor is in material breach of any terms of this Contract, and such breach has not been corrected according to established standards and agreed upon designs indicated in a valid Work Order within 30 days from notice of breach. For purposes of this subsection, a material breach is defined as a failure to perform any work described in Sections 2, 3, and 4 or in any Initial or Additional Work Order.
- 12.2 For City Convenience: The City may terminate this Contract in the event that state or local legislation, state or local initiative, state or local referendum, or a decision by a court of competent jurisdiction prohibits the enforcement of Violations using image-capture technology or in any way effects the terms of this agreement, however the Contractor shall be given the opportunity to petition a court of competent jurisdiction to determine the legality of any such state or local legislation, state or local initiative, state or local referendum, before the City may terminate the Agreement under this section 12.2; and during such time the City may suspend the program pending the outcome of Vendor's petition. "Suspend" means all operations of the automated traffic safety program will stop, including but not limited to the operation of cameras, issuance and enforcement of tickets, holding and scheduling of court hearings, and payments to Contractor. The City will have no obligations or duty to perform during the suspension period. In any termination for convenience, ATS shall retain its fees paid up to the date of termination and there shall be no further penalty or additional assessment of any kind to the City. . Notwithstanding the above provisions, the City retains the right to terminate this Agreement under paragraph 10. The City can terminate without cause at the end of the first year of the Agreement (the "pilot program" year) or with the appropriate notice at the end of the 3 year contract term.
- 12.3 Acts of Insolvency: The City may terminate this Contract by written notice to Contractor if the Contractor becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets, becomes subject to any proceeding under any bankruptcy or insolvency law whether domestic or foreign, or is wound up or liquidated voluntarily or otherwise.
- 12.4 Notice: The City is not required to provide advance notice of termination. Notwithstanding, the City may issue a termination notice with an effective date later than the termination notice itself. In such case, the Contractor shall continue to provide products and services as required by the City until the effective date provided in the termination notice.

13. ASSIGNMENT OF CONTRACT - SUBCONTRACTORS

- 13.1 ATS shall not assign this contract or sub-contract or assign any of the Work without prior written consent of the City.

14. INDEMNIFICATION

- 14.1 The Contractor shall defend and indemnify the City from any and all Claims arising out of or in any way relating to Contractor's negligent acts, errors or omissions in the performance of this Agreement; provided, however, the requirements of this section shall not apply to that portion of such Claim that reflects the percentage of negligence of the City compared to the total negligence of all persons, firms or corporations that resulted in the Claim.
- 14.2 Contractor agrees that the provisions of this section apply to any Claim of injury or damage to the persons or property of Contractor's employees. As to such claims and with respect to the City only, Contractor waives any right of immunity, which it may have under industrial insurance (title 51 RCW and any amendment thereof or substitution therefore). THIS WAIVER IS SPECIFICALLY NEGOTIATED BY THE PARTIES AND IS SOLELY FOR THE BENEFIT OF THE CITY AND CONTRACTOR.
- 14.3 As used in this section: (1) "City" includes the City's officers, employees, agents, and Representatives; (2) "Contractor" includes employees, agents, representatives, and any sub contractors; and (3) "Claims" include, but is not limited to, any and all losses, claims, causes of action, demands, expenses, attorney's fees and litigation expenses, suits, judgments, or damage arising from injury to persons or property.
- 14.4 Contractor shall ensure that each sub-Contractor shall agree to defend and indemnify the City to the extent an on the same terms and conditions as the Contractor pursuant to this section. The provisions of this section shall survive for up to three years after the expiration or termination of this Agreement with respect to any event occurring prior to such expiration or termination.

15. INSURANCE

- 15.1 Contractor shall comply with the following conditions and procure and keep in force at all times during the term of this Agreement, at Contractor's expense, the following policies of insurance with companies authorized to do business in the State of Washington. The Contractor's insurance shall be rated by A.M. Best Company at least "A" or better with a numerical rating of no less than seven (7) and otherwise acceptable to the City.
- 15.2 Workers' Compensation Insurance as required by Washington law and Employers Liability Insurance with limits not less than \$1,000,000 per occurrence. If the City authorizes sublet work, the Contractor shall require each sub-Contractor to provide Workers' Compensation Insurance for its employees, unless the Contractor covers such employees.
- 15.3 Commercial General Liability Insurance on an occurrence basis in an amount not less than \$1,000,000 per occurrence and at least \$2,000,000 in the annual aggregate, including but not limited to premises/operations (including off-site operations), blanket contractual liability and broad form property damage.
- 15.4 Business Automobile Liability Insurance in an amount not less than \$1,000,000 per occurrence, extending to any automobile. A statement certifying that no vehicle will be used in accomplishing this Agreement may be substituted for this insurance requirement.
- 15.5 Each policy shall contain a provision that the policy shall not be cancelled or materially changed without 45 days prior written notice to the City.

- 15.6 Upon written request to the City, the insurer will furnish, before or during performance of any Work, a copy of any policy cited above, certified to be a true and complete copy of the original.
- 15.7 Before the Contractor performs any Work, Contractor shall provide the city with a Certificate of Insurance acceptable to the City Attorney evidencing the above-required insurance and naming the City of Bellingham, its officers, employees and agents as Additional Insured's on the Commercial General Liability Insurance policy and the Business Automobile Liability Insurance policy with respect to the operations performed and services provided under this Agreement and that such insurance shall apply as primary insurance on behalf of such Additional Insured's. Receipt by the City of any certificate showing less coverage than required is not a waiver of the Contractors obligations to fulfill the requirements. The Certificate of Insurance shall be issued within 24 hours of receipt of the signed Agreement.
- 15.8 Contractor shall comply with the provisions of Title 51 of the Revised Code of Washington before commencing the performance of the Work. Contractor shall provide the City with evidence of Workers' Compensation Insurance (or evidence of qualified self-insurance) before any Work is commenced.
- 15.9 In case of the breach of any provision of this section, the City may provide and maintain at the expense of Contractor insurance in the name of the Contractor and deduct the cost of providing and maintaining such insurance from any sums due to Contractor under this Agreement, or the City may demand Contractor to promptly reimburse the City for such cost.

16. INDEPENDENT CONTRACTOR

- 16.1 The Contractor is an Independent Contractor responsible for complying with all obligations of an employer imposed under federal or state law. Personnel employed by Contractor shall not acquire any rights of status regarding the City.

17. EMPLOYMENT

- 17.1 The Contractor warrants that it did not employ or retain any company or person, other than bona fide employee working solely for the Contractor, to solicit or secure this Agreement or pay or agree to pay any such company or person any consideration, contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the City shall have the right either to terminate this Agreement without liability or to deduct from the Agreement price or consideration or to otherwise recover, the full amount of such consideration.

18. AUDITS AND INSPECTIONS

- 18.1 The Contractor shall make available to the City during normal business hours and as the City deems necessary for audit and copying all of the Contractor's records and documents with respect to all matters covered by this Agreement. The Contractor shall retain these records for three years.

19. LICENSING

- 19.1 Contractor shall obtain a City of Bellingham business license before performing any work.

20. TAXES, FEES, OTHER LICENSES

- 20.1** Taxes: Where required by state statute, ordinance or regulation, Contractor shall pay for and maintain in current status all taxes that are necessary for contract performance. Unless otherwise indicated, the City agrees to pay State of Washington sales or use taxes on all applicable consumer services and materials purchased. No charge by the Contractor shall be made of federal excise taxes and the City agrees to furnish Contractor with an exemption certificate where appropriate.
- 20.2** Fees and Licenses: Contractor shall pay for and maintain in a current status, any license fees, assessments, permit charges, etc., which are necessary for contract performance. It is the Contractor's sole responsibility to monitor and determine any changes or the enactment of any subsequent requirements for said fees, assessments, or charges and to immediately comply with said changes during the entire term of this Contract. Contractor shall take all necessary actions to ensure that materials or equipment purchased are expedited through customs. City agrees to waive any license fees, assessments, permit charges, etc. for Contractor, where permitted by law.

21. REPRESENTATIONS AND WARRANTIES

- 21.1** Contractor represents and warrants that it has the requisite training, skill and experience necessary to provide Work and is appropriately accredited and licensed by all applicable agencies and governmental entities.
- 21.2** Contractor warrants that all materials, equipment, and/or services provided under this Contract shall be fit for the purpose(s) for which intended, for merchantability, and shall conform to the requirements and specifications herein. Acceptance of any service and inspection incidental thereto by the City shall not alter or affect the obligations of the contractor or the rights of the City.

22. INSPECTION

- 22.1** Work shall be subject, at all times to inspection by and with approval of the City, but the making (or failure or delay in making) such inspection or approval shall not relieve the Contractor of responsibility for performance of the Work in accordance with this Contract, notwithstanding the City's knowledge of defective or non-complying performance, its sustainability of the ease of its discovery. Contractor shall provide sufficient, safe, and proper facilities and equipment for such inspection and free access to such facilities.

23. CONFIDENTIAL INFORMATION

- 23.1** If the City notifies the Contractor of a public disclosure request, and the Contractor believes records are exempt from disclosure, it is the Contractor's responsibility to pursue a lawsuit under ROW 42.56.540 to enjoin disclosure. The Contractor must obtain the injunction and serve it on the City before the close of business on the tenth business day after the City sent notification to the Contractor. It is the contractor's discretionary decision whether to file the lawsuit.
- 23.2** If the Contractor does not timely obtain and serve an injunction, the Contractor is deemed to have authorized releasing the record. If the City has notified the Contractor of a public disclosure request, and the Contractor has not obtained an injunction and served the City with that injunction by the close of business on the tenth business day after the City sent notice, the City will then disclose the record, if in the City's belief such disclosure is permitted by law.

23.3 Notwithstanding the above, the Contractor must not take any action that would affect (a) the City's ability to use goods and services provided under this Agreement or (b) the Contractor obligations under this Agreement.

23.4 The Contractor will fully cooperate with the City in identifying and assembling records in case of any public disclosure request.

24. DISPUTES

24.1 Any dispute or misunderstanding that may arise under this contract concerning Contractor's performance shall first be resolved, if mutually agreed to be appropriate, through negotiations between the Contractor's Project Manager and the City's Project Manager, or if mutually agreed, referred to the City's named representative and the Contractor's senior executive(s). Either party may decline or discontinue such discussions and may then pursue other means to resolve such disputes, or may by mutual agreement pursue other dispute alternatives such as alternate dispute resolution processes. Nothing in this dispute process shall in any way mitigate the rights, if any, of either party to terminate the contract in accordance with the termination provisions herein.

24.2 Notwithstanding above, if the City believes in good faith that some portion of Work has not been completed satisfactorily, the City may require Contractor to correct such work prior to payment. In such event, the City must clearly and reasonably provide to Contractor an explanation of the concern and the remedy that the City expects. The City may withhold from any payment that is otherwise due, an amount that the City in good faith finds to be under dispute, or if the Contractor does not provide a sufficient remedy, the City may retain the amount equal to the cost to the City for otherwise correction or remedying the work not properly completed.

25. CONFLICT OF INTEREST

25.1 Contractor confirms that Contractor does not have a business interest or a close family relationship with any City officer or employee who was, is, or will be involved in the Contractor's selection, negotiation, drafting, signing, administration, or evaluating the Contractor's performance.

26. COMPLIANCE WITH FEDERAL STATE AND LOCAL LAWS

26.1 Contractor, at its sole cost and expense, shall comply with and obey all federal, state and local laws, regulations, and ordinance applicable to the operation of its business and to its performance of the Work. The terms of this contract shall be governed by federal, state, and local laws, regulations and ordinances.

27. NON-WAIVER OF REMEDIES

27.1 Any waiver by the Contractor of the City of the breach of any provision of this Agreement by the other party will not operate, or be construed, as a waiver of any subsequent breach by either party or prevent either party from thereafter enforcing any such provisions. Remedies under this Contract are cumulative; the use of one remedy shall not be taken to exclude or waive the right to use another.

28. LIENS, CLAIMS AND ENCUMBRANCES

- 28.1 All materials, equipment, or services shall be free of all liens, claims or encumbrances of any kind and if the City requests a formal release of same it shall be delivered to the City within five days of such request.

29. COMPLETE AGREEMENT

- 29.1 This Agreement including exhibit(s), contains the complete and integrated understanding and agreement between the parties and supersedes any understanding, agreement or negotiation whether oral or written not set forth herein.

30. MODIFICATION OF AGREEMENT

- 30.1 This Agreement may be modified by a Change order or by a written amendment that is signed by authorized representatives of the City and Contractor. The parties specifically agree to modification(s) that would significantly expand Municipal Court operations and services, with a resulting reduction in service fees to be paid by the City, should Municipal Court's circumstances change significantly before the end of the term of the contract as set forth in Section 10 of this Agreement. One example of such circumstances is completion of the Washington State Judicial Information Services data exchange project. Any reduction in service fees shall be mutually agreed to in writing by the parties.

31. SEVERABILITY

- 31.1 If any part of this Agreement is found to be in conflict with applicable laws, such part shall be inoperable, null and void, insofar as it is in conflict with said laws and the remainder of this Agreement shall remain in full force and effect.

32. NOTICES

- 32.1 Notices to the City of Bellingham shall be sent to the following contact and address:

Deputy Chief Flo Simon
Bellingham Police Department
505 Grand Avenue
Bellingham, WA 98225

- 32.2 Notices to the Contractor shall be sent to the following address:

American Traffic Solutions, Inc.
Chief Operating Officer
7684 E. Gray Road
Scottsdale, AZ 85260

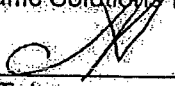
33. JURISDICTION AND VENUE

This Agreement shall be governed by the laws of the State of Washington and venue for any lawsuit arising out of this Agreement shall be in Whatcom County.

IN WITNESS WHEREOF, the City and Contractor has executed this Agreement as of the date first shown above written.

Corporation:

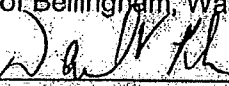
American Traffic Solutions, INC.

By 
Adam E. Tufon
Its Chief Operating Officer

Date _____

City:

City of Bellingham, Washington

By 
Dan Pike, Mayor

Date 5/6/11

Department Head:

Attest:

By 
John Carter, Finance Director

Date 5/6/11

By 
Todd G. Ramsay, Chief of Police

Date 5/4/11

Approved as to form:

By 
Office of the City Attorney

**Schedule 1
Service Fee Schedule**

The City Agrees to pay ATS the Fee(s) as Itemized below

Monthly Service Fee per Intersection Approach or School Zone Fixed Camera site

Red Light Camera Enforcement Solution	Monthly fee
<p>Axis RLC-300 (or newer generation) Red Light Camera system, Axis LIVE digital video system for monitoring 1 direction of travel; training, public information, and outreach; monitoring rear images up to 4 lanes; image processing; data entry; in and out of state registered owner acquisition; final quality control review; access to web-based Axis VPS for Police review, 1st and subsequent citation/notice of violation printing in color, postage and mailing; online viewing by violators; lockbox and E-payment payment processing services; electronic notice file transmission to court system or use of ATS court system module; expert witnesses and evidence packages for scheduled hearings; phone calls/questions; data collection; help line.</p> <p>*The monthly fee shall be per camera per approach paid in twelve monthly installments per year.</p>	<p>\$4,750*</p>
<p>Speed Programs Fixed Site Speed Camera for School Zone Enforcement</p> <p>Fee includes up to a 4-lane site and 800 issued citations per month per camera; a \$5.00 per citation issued over 800 issued per month to cover overage service and mailing; *The monthly fee shall be per camera per approach paid in twelve monthly installments per year.</p>	<p>\$4,750*</p>
<p>Collections Delinquency collections services (fee expressed as a percentage of recovered delinquent account revenue in addition to normal monthly fees)</p>	<p>30%</p>

**Schedule 2
Initial Work Order**

RED LIGHT PHOTO ENFORCMENT - Initial locations for consideration

E Holly W/B at Forest

Ellis N/B @ Lakeway

Meridian N/B @ Telegraph

Samish S/B @ 36 St - 36 St N/B @ Samish

FIXED SITE SCHOOL ZONE SPEED PHOTO ENFOROMENT - Initial locations

Northwest between W. Maplewood and Alderwood - Birchwood Elementary

Alabama between Michigan and Woburn - Roosevelt Elementary

**Schedule 3
Workflow Diagrams**

[To be added after consultation with Police and Court]

**Schedule 4
Project Timeline**

**Photo Enforcement Program
Timeline for Implementation**

Duration of task phase and estimated date of completion

Site Review by ATS - Two weeks

Engineering Plans by ATS - Two to four weeks

City review/approval of plans - One week

System construction and IT networking (ATS) Six to eight weeks

30 day warning period/Public info -4 weeks

Fully operational photo enforcement/Infractions issued after all tasks completed - 2011

"All timelines in this Schedule 4 are conditional on both parties prompt and timely review and approval of plans and permits. Delays due to Force Majeure may excuse the Customer and ATS from the performance of their respective obligations under this Schedule when and to the extent that their performance is delayed or prevented by any circumstances beyond their control including, fire, flood, explosion, strikes or other labor disputes, act of God or public emergency, war, riot, civil commotion, malicious damage, act or omission of any governmental authority, delay or failure or shortage of any type of transportation, equipment, or service from a public utility. Both parties may mutually agree to change scheduled tasks and timelines."

**Schedule 5
DMV Subscriber Agreement**

ATS requires that your agency certify the intended use of the information made available to your agency through our services and that such uses are in compliance with the Federal Driver's Privacy Protection Act Title XXXI and other applicable laws governing dissemination of public records. Based on your agency's intended use of such information, ATS will either grant permission to use the service or deny the application. Please specify any of the following permissible uses under §2721 that apply:

- (1) For use by any government agency, including any court or law enforcement agency, in carrying out its functions, or any private person or entity acting on behalf of a Federal, State or local agency in carrying out its functions.
- (4) For use in connection with any civil, criminal administrative, or arbitral proceeding in any Federal, State, or local court or agency or before any self-regulatory body, including the service of process, investigation in anticipation of litigation, and the execution or enforcement of judgments and orders, or pursuant to an order of a Federal, State, or local court.
- (7) For use in providing notice to the owners of towed or impounded vehicles.
- (10) For use in connection with the operation of private toll transportation facilities.

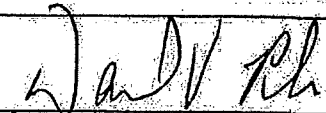
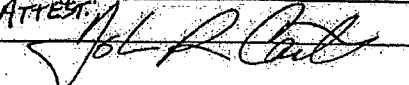
In consideration of ATS making its Services available, Subscriber agrees to:

- i) utilize ATS provided data only for the purpose(s) specified above; and
- ii) request such information only for the Subscriber's exclusive use in the ordinary course of Subscriber's business and not for resale.

I certified that I am authorized to execute the Subscribe Use Certification on behalf of the Subscriber listed below. On behalf of such Subscriber, I certify that the above statements are true and correct. Subscriber acknowledges and agrees that ATS may from time to time audit Subscriber's use of ATS's Services to ensure that such use is consistent with the intended uses set forth above and with all applicable laws.

This agreement shall be for _____ year(s) commencing on the date below and shall automatically renew annually. This agreement may be terminated within thirty (30) days notice of the anniversary date, annually.

SUBSCRIBER INFORMATION					
Subscriber Agency/Name:		City of Bellingham			
NLETS Agency ORI:					
Name of Authorized Representative:		Daniel V. Pike			
Title of Authorized Representative:		Mayor			
Mailing Address:		210 Lottie St.			
City:	Bellingham	State:	WA	Zip Code:	98205
Telephone:	(360)718-8100	Fax:	(360)718-8101	Email:	mayors.office@cob.org

Signature of Authorized Representative:	
Date Signed: 5/10/11	ATTEST: 



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
03/15/2011

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Marsh Risk & Insurance Services 4445 Eastgate Mall, Suite 300 California License: 0437153 San Diego 92121 Attn: San Diego, CertRequest@Marsh.com; Fax: 212-948-4374 511395-10-11	CONTACT NAME: _____	
	PHONE (A/C No. Ext): _____	FAX (A/C No.): _____
E-MAIL ADDRESS: _____		
PRODUCER CUSTOMER ID #: _____		
INSURER(S) AFFORDING COVERAGE		NAIC #
INSURER A: Wausau Business Insurance Co.		26069
INSURER B: N/A		N/A
INSURER C:		
INSURER D:		
INSURER E:		
INSURER F:		

COVERAGES **CERTIFICATE NUMBER:** LOS-001287574-02 **REVISION NUMBER:** 5

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
	GENERAL LIABILITY <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO. <input type="checkbox"/> LOC					EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS & COM/OP AGG \$	
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS					COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$ \$	
	UMBRELLA LIAB: <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DEDUCTIBLE RETENTION \$					EACH OCCURRENCE \$ AGGREGATE \$ \$ \$	
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input type="checkbox"/> Y/N <input checked="" type="checkbox"/> N (Mandatory In NH) If yes, describe under DESCRIPTION OF OPERATIONS below.	N/A	WCK291455947-010	12/31/2010	12/31/2011	<input checked="" type="checkbox"/> NO STATUS-TORRY LIMITS <input type="checkbox"/> OTHER EL: EACH ACCIDENT \$ 1,000,000 EL: DISEASE - EA EMPLOYEE \$ 1,000,000 EL: DISEASE - POLICY LIMIT \$ 1,000,000	

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks, Schedule, if more space is required)

CERTIFICATE HOLDER CITY OF BELLINGHAM, WA C/O BELLINGHAM POLICE DEPARTMENT 505 GRAND AVENUE BELLINGHAM, WA 98225	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE of Marsh USA Inc. Rebecca Anderson <i>Rebecca Anderson</i>
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CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
03/14/2011

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Willis of Arizona, Inc. 26 Century Blvd. P. O. Box 305191 Nashville, TN 37230-5191	CONTACT NAME: PHONE (A/C NO. EXT): 877-945-7378 FAX (A/C NO.): 888-467-2378 E-MAIL ADDRESS: certificates@willis.com
	INSURER(S) AFFORDING COVERAGE INSURER A: Nausau Business Insurance Co. NAIC#: 26069-001 INSURER B: INSURER C: INSURER D: INSURER E: INSURER F:
INSURED American Traffic Solutions, Inc. 7681 E Gray Road Scottsdale, AZ 85260	

COVERAGES **CERTIFICATE NUMBER:** 15624828 **REVISION NUMBER:**

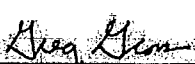
THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADD'L SUBR NRSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	X	YXRZ91453113020	11/17/2010	11/17/2011	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 15,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS-COMP/OP AGG \$ 2,000,000
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALLOWED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS	X	ASKZ91453113030	11/17/2010	11/17/2011	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input type="checkbox"/> RETENTION \$					EACH OCCURRENCE \$ AGGREGATE \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input type="checkbox"/> Y/N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		N/A			WC STATUTORY LIMITS <input type="checkbox"/> OTH ER <input type="checkbox"/> E.L. EACH ACCIDENT \$ E.L. DISEASE- EA EMPLOYEE \$ E.L. DISEASE- POLICY LIMIT \$

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES (Attach Acord 101, Additional Remarks Schedule, if more space is required)
 Off-Site operations is included in General Liability.

It is agreed that City of Bellingham, its officers, employees and agents are included as Additional Insureds as respects to General Liability and Auto Liability when required by written contract.

It is further agreed that such insurance as is afforded shall be Primary with any other insurance in force for or which may be purchased by the Additional Insureds.

CERTIFICATE HOLDER City of Bellingham, WA c/o Bellingham Police Department 505 Grand Avenue Bellingham, WA 98225	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

LIBERTY DirectSolutions for Contractors

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

This endorsement modifies insurance by broadening the insurance provided by CG 00 01.

Index of modified items:

- Item 1 - REASONABLE FORCE
- Item 2 - NON-OWNED WATERCRAFT EXTENSION
- Item 3 - ALIENATED PREMISES
- Item 4 - PROPERTY IN YOUR CARE, CUSTODY OR CONTROL
- Item 5 - DAMAGE TO PREMISES RENTED TO YOU - EXPANDED COVERAGE
- Item 6 - BODILY INJURY TO CO-EMPLOYEES
- Item 7 - HEALTH CARE PROFESSIONALS AS INSURED
- Item 8 - NEWLY FORMED OR ACQUIRED ENTITIES
- Item 9 - BLANKET ADDITIONAL INSURED AND WAIVER OF SUBROGATION - MANAGERS OR LESSORS OF PREMISES
- Item 10 - EXPANDED BLANKET ADDITIONAL INSURED AND WAIVER OF SUBROGATION (FOR INSTALLATION EXPOSURES)
- Item 11 - BLANKET ADDITIONAL INSURED AND WAIVER OF SUBROGATION - PERSON OR ORGANIZATION
- Item 12 - ADDITIONAL INSURED - ARCHITECTS, ENGINEERS OR SURVEYORS
- Item 13 - ADDITIONAL INSURED - STATE, MUNICIPALITY OR POLITICAL SUBDIVISION - PERMITS
- Item 14 - ADDITIONAL INSURED AND WAIVER OF SUBROGATION - LESSOR OF LEASED EQUIPMENT
- Item 15 - KNOWLEDGE OF OCCURRENCE
- Item 16 - UNINTENTIONAL ERRORS AND OMISSIONS
- Item 17 - BODILY INJURY REDEFINITION
- Item 18 - MOBILE EQUIPMENT REDEFINITION
- Item 19 - SUPPLEMENTARY PAYMENTS
- Item 20 - LIBERALIZATION

These changes broaden the policy sections described unless differing language is separately endorsed to the coverage part.

Item 1 - REASONABLE FORCE

Exclusion a. of Coverage A is replaced by the following:

- a. **Expected or Intended Injury**
"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect persons or property.

Item 2 - NON-OWNED WATERCRAFT EXTENSION

Subparagraph g.(2) of Exclusion g. of Coverage A (Section I - Coverages) is replaced by the following:

- (2) A watercraft you do not own that is:
 - (a) Less than 55 feet long; and
 - (b) Not being used for public transportation or as a common carrier.

Item 3 - ALIENATED PREMISES

- 1. Subparagraph j.(2) of Exclusions of Section I - Coverages - Bodily Injury And Property Damage Liability is replaced by the following:

- (2) Premises you sell, give away, or abandon, if the "property damage" arises out of any part of those premises, and occurs from hazards that were known by you, or should have reasonably been known by you, at the time the property was transferred or abandoned.

Item 4. - PROPERTY IN YOUR CARE, CUSTODY OR CONTROL

1. Subparagraphs (3) and (4) of exclusion j. of coverage A. do not apply except to
- (a) borrowed equipment, or
 - (b) "property damage" to property in your care, custody and control while in transit.

This insurance does not apply to any portion of a loss for which the insured has available any other valid and collectible insurance, whether primary, excess, contingent, or on any other basis, unless such other insurance was specifically purchased by the insured to apply in excess of this policy.

2. Limits of Insurance

Subject to Paragraphs 2., 3., and 5. of Section III - Limits Of Insurance, the most we will pay for insurance provided by paragraph 1., above is:

\$10,000 Each Occurrence Limit
\$25,000 Aggregate Limit

The Each Occurrence Limit for this coverage applies to all damages as a result of any one "occurrence" regardless of the number of persons or organizations who sustain damage because of that "occurrence."

The Aggregate Limit is the most we will pay for the sum of all occurrences covered by this provision.

Item 5. - DAMAGE TO PREMISES RENTED TO YOU - EXPANDED COVERAGE

A. Fire, Lightning Or Explosion Damage

The last paragraph of 2, Exclusions under Section I - Coverage A is replaced by the following:

Exclusions c. through n. do not apply to damage to premises rented to you or temporarily occupied by you with permission of the owner when the damage is caused by fire, lightning, or explosion or subsequent damages resulting from such fire, lightning or explosion, including water damage. A separate limit of insurance applies to this coverage as described in Section III - Limits of Insurance.

B. Limits for Damage to Premises Rented to You

Paragraph 6. of Section III - Limits of Insurance is replaced by the following:

Subject to 5. above, the Damage to Premises Rented to You Limit is the most we will pay under Coverage A for any combination of:

- (a) damage caused by fire, lightning, or explosion or subsequent damages resulting from such fire, lightning or explosion, including water damage to premises rented to you or temporarily occupied by you with permission of the owner; and
- (b) "property damage" (other than damage by fire) to premises, including the contents of such premises, rented to you for a period of 7 or fewer consecutive days.

Item 6. - BODILY INJURY TO CO-EMPLOYEES

1. Subject to the Each Occurrence Limit and the General Aggregate Limit, Paragraphs 2.a.(1)(a), (b) and (c) of SECTION II - Who Is an Insured do not apply to your supervisory or management "employees" for "bodily injury" only.
2. Subject to the Each Occurrence Limit and the General Aggregate Limit, Paragraphs 2.a.(1)(a), (b) and (c) of SECTION II - Who Is an Insured do not apply to your "employees" or "volunteer workers" for "bodily injury" arising out of a Good Samaritan act to a co-"employee" or co-"volunteer worker." A Good Samaritan act means an attempt to rescue or aid a person in imminent or serious peril, provided the attempt is not recklessly made.

Damages owed to an injured co-"employee" or "volunteer worker" will be reduced by any amount paid or available to the injured co-"employee" or "volunteer worker" under any other valid and collectible insurance.

Item 7. - HEALTH CARE PROFESSIONALS AS INSURED

Paragraph 2.a. (1) (d) of Section II - Who Is An Insured is deleted unless:

- (i) You are engaged in the occupation or business of providing or offering medical, surgical, dental, x-ray or nursing services, treatment, advice or instruction; or
- (ii) The "employee" has any other insurance that would also cover claims arising under this provision, whether the other insurance is primary, excess, contingent or on any other basis.

Item 8. - NEWLY FORMED OR ACQUIRED ENTITIES

Paragraph 3. of Section II - Who Is An Insured is replaced by the following:

3. Any organization, other than a joint venture, you newly acquire or form and over which you maintain majority ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization.
 - a. Coverage under this provision is afforded only until:
 - i. the 180th day after you acquire or form the organization; or
 - ii. separate coverage is purchased for the organization; or
 - iii. the end of the policy period,whichever is earlier.
 - b. Coverage A does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
 - c. Coverage B does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

No person or organization is an insured with respect to the conduct of any past partnership, current or past joint venture or past limited liability company that is not shown as a Named Insured in the Declarations.

Item 9. - BLANKET ADDITIONAL INSURED AND WAIVER OF SUBROGATION—MANAGERS OR LESSORS OF PREMISES

A. Section II - Who Is An Insured is amended to include as an insured any manager or lessor of premises leased by you in which the written lease agreement obligates you to procure additional insured coverage, provided that:

1. the "bodily injury", "property damage" or "personal and advertising injury" giving rise to liability occurs subsequent to the execution of the agreement; and
2. the written agreement is in effect at the time of the "bodily injury", "property damage", "personal and advertising injury" for which coverage is sought.

That person or organization shall be referred to as the additional insured.

The coverage afforded to the additional insured is limited to liability in connection with the ownership, maintenance or use of the premises leased to you and caused, in whole or in part, by some negligent acts or omissions of you, your employees, your agents, or your subcontractors. There is no coverage for the additional insured for "bodily injury", "property damage" or "personal and advertising injury" arising out of the sole negligence of the additional insured or by those acting on behalf of the additional insured, except as provided below.

If the written agreement to indemnify an additional insured requires that you indemnify the additional insured for its sole negligence, then the coverage for the additional insured shall conform to that agreement, provided, however, that the contractual indemnification language of the agreement is valid under the law of the state where the agreement was formed. If the written agreement provides that a particular state's law will apply, then such provision will be honored.

B. Waiver Of Subrogation

For any additional insured that obtains insured status on this policy through paragraph A, above, we waive any right of recovery we may have against the additional insured because of payments we make for "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies.

C. Exclusions

This insurance does not apply to:

1. Any "occurrence" that takes place after you cease to be a tenant in that premises.

2. Any construction, renovation, demolition or installation operations performed by or on behalf of the Additional Insured.
3. Any premises for which coverage is excluded by endorsement.

D: Other Insurance

The insurance provided by this endorsement applies only to coverages and limits of insurance required by written agreement, but in no event exceeds either the scope of coverage or the limits of insurance available within this policy.

This insurance shall be excess over any other insurance available to the additional insured, whether such insurance is on an excess, contingent or primary basis, unless you are obligated under a written agreement to provide liability insurance for that additional insured on any other basis. In that event, this policy will apply solely on the basis required by such written agreement.

To the extent that the additional insured has the right to pursue any other insurance carrier for coverage, including a defense, we shall share that right with the additional insured.

Item 10. - EXPANDED BLANKET ADDITIONAL INSURED AND WAIVER OF SUBROGATION (FOR INSTALLATION EXPOSURES)

A. Section II - Who Is An Insured is amended to include as an insured any person or organization to whom you are obligated by a written agreement to procure additional insured coverage, provided that:

1. the "bodily injury," "property damage," or "personal and advertising injury" giving rise to liability occurs subsequent to the execution of the written agreement; and
2. the written agreement is in effect at the time of the "bodily injury," "property damage," or "personal and advertising injury" for which coverage is sought.

That person or organization shall be referred to as the additional insured.

The coverage afforded to the additional insured is limited to liability caused, in whole or in part, by the negligent acts or omissions of you, your employees, your agents, or your subcontractors, in the performance of your ongoing operations.

This insurance does not apply to "bodily injury," or "property damage," "personal and advertising injury" arising out of "your work" included in the "products-completed operations hazard" unless you are required to provide such coverage for the additional insured by the written agreement, and then only for the period of time required by the written agreement and only for liability caused, in whole or in part, by the negligent acts or omissions of you, your employees, your agents, or your subcontractors.

There is no coverage for the additional insured for "bodily injury," "property damage" or "personal and advertising injury" arising out of the sole negligence of the additional insured or by those acting on behalf of the additional insured, except as provided below.

If the written agreement to indemnify an additional insured requires that you indemnify the additional insured for its sole negligence, then the coverage for the additional insured shall conform to that agreement; provided, however, that the contractual indemnification language of the agreement is valid under the law of the state where the agreement was formed. If the written agreement provides that a particular state's law will apply, then such provision will be honored.

B. Waiver Of Subrogation

For any additional insured that obtains insured status on this policy through paragraph A, above, we waive any right of recovery we may have against the additional insured because of payments we make for "bodily injury," "property damage" or "personal and advertising injury" to which this insurance applies.

C. Exclusions

With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply:

1. to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:
 - a. The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
 - b. Supervisory, inspection, architectural or engineering activities.
2. to "bodily injury" or "property damage" that occurs during the ongoing operations of a project where you have purchased an Owners & Contractors Protective Liability or Railroad Protective Liability Policy for the additional insured.
3. when coverage is available under a consolidated (wrap up) insurance program in which you are involved.

D. Other Insurance

The insurance provided by this endorsement applies only to coverages and limits of insurance required by written agreement, but in no event exceeds either the scope of coverage or the limits of insurance available within this policy.

This insurance shall be excess over any other insurance available to the additional insured, whether such insurance is on an excess, contingent or primary basis, unless you are obligated under a written agreement to provide liability insurance for that additional insured on any other basis. In that event, this policy will apply solely on the basis required by such written agreement.

To the extent that the additional insured has the right to pursue any other insurance carrier for coverage, including a defense, we shall share that right with the additional insured.

Item 11. - BLANKET ADDITIONAL INSURED AND WAIVER OF SUBROGATION - PERSON OR ORGANIZATION

A. Section II - Who Is An Insured is amended to include as an additional insured any person or organization to whom you are obligated by a written agreement to procure additional insured coverage, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

1. In the performance of your ongoing operations, or
2. In connection with premises owned by you

provided that:

- (a) the "bodily injury", "property damage" or "personal and advertising injury" giving rise to liability occurs subsequent to the execution of the agreement; and
- (b) the written agreement is in effect at the time of the "bodily injury", "property damage", "personal injury" or "advertising injury" for which coverage is sought.

That person or organization shall be referred to as the additional insured.

There is no coverage for the additional insured for "bodily injury", "property damage" or "personal and advertising injury" arising out of the sole negligence of the additional insured or by those acting on behalf of the additional insured, except as provided below.

If the written agreement to indemnify an additional insured requires that you indemnify the additional insured for its sole negligence, then the coverage for the additional insured shall conform to that agreement provided, however, that the contractual indemnification language of the agreement is valid under the law of the state where the agreement was formed. If the written agreement provides that a particular state's law will apply, then such provision will be honored.

B. Waiver Of Subrogation

For any additional insured that obtains insured status on this policy through paragraph A., above, we waive any right of recovery we may have against the additional insured because of payments we make for "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies.

C. Exclusions

This insurance does not apply to:

1. Any premises or equipment leased to you.
2. Any construction, renovation, demolition or installation operations performed by or on behalf of you, or those operating on your behalf.

D. Other Insurance

The insurance provided by this endorsement applies only to coverages and limits of insurance required by written agreement, but in no event exceeds either the scope of coverage or the limits of insurance available within this policy.

This insurance shall be excess over any other insurance available to the additional insured, whether such insurance is on an excess, contingent or primary basis, unless you are obligated under a written agreement to provide liability insurance for that additional insured on any other basis. In that event, this policy will apply solely on the basis required by such written agreement.

To the extent that the additional insured has the right to pursue any other insurance carrier for coverage, including a defense, we shall share that right with the additional insured.

Item 12. - ADDITIONAL INSURED - ARCHITECTS, ENGINEERS OR SURVEYORS

A. Section II - Who Is An Insured is amended to include as an additional insured any architect, engineer, or surveyor engaged by you but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

1. In connection with your premises; or
2. In the performance of your ongoing operations.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusion applies:

This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or the failure to render any professional services by or for you, including:

1. The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
2. Supervisory, inspection, architectural or engineering activities.

Item 13. - ADDITIONAL INSURED - STATE, MUNICIPALITY OR POLITICAL SUBDIVISION - PERMITS

Section II - Who Is An Insured is amended to include as an additional insured any state, municipality or political subdivision with respect to any operations performed by you, or on your behalf, for which the state, municipality or political subdivision has issued a permit

However, this insurance does not apply to:

1. "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the state, municipality or political subdivision; or
2. Any "bodily injury" or "property damage" included within the "products-completed operations hazard", except when required by written contract or agreement initiated prior to loss; or
3. "Bodily injury", "property damage" or "personal and advertising injury," unless negligently caused, in whole or in part, by you or those acting on your behalf.

Item 14. - ADDITIONAL INSURED AND WAIVER OF SUBROGATION - LESSOR OF LEASED EQUIPMENT

A. Section II - Who Is An Insured is amended to include as an additional insured any person or organization from whom you lease equipment when you and such person or organization have agreed in a written agreement that such person or organization be added as an additional insured on your policy. Such person or organization is an insured only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person or organization.

There is no coverage for the additional insured for "bodily injury", "property damage" or "personal and advertising injury" arising out of the sole negligence of the additional insured or by those acting on behalf of the additional insured.

A person's or organization's status as an additional insured under this endorsement ends when the agreement with you for such leased equipment ends.

B. Waiver of Subrogation

For any additional insured that obtains insured status on this policy through paragraph A., above, we waive any right of recovery we may have against the additional insured because of payments we make for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person or organization.

C. Other Insurance

This insurance shall be excess over any other insurance available to the additional insured, whether such insurance is on an excess, contingent or primary basis, unless you are obligated under a written agreement to provide liability insurance for that additional insured on any other basis. In that event, this policy will apply solely on the basis required by such written agreement.

To the extent that the additional insured has the right to pursue any other insurance carrier for coverage, including a defense, we shall share that right with the additional insured.

Item 15. - KNOWLEDGE OF OCCURRENCE

Subparagraph 2.a., b. and c. of Condition 2, Section IV - Commercial General Liability Conditions are amended to add the following:

As used in this paragraph, the word "you" refers to an "executive officer", partner, member or legal representative, and any other "employee" with insurance or risk management responsibilities.

Item 16. - UNINTENTIONAL ERRORS AND OMISSIONS

Paragraph 6. of Section IV - Commercial General Liability Conditions is amended to add the following:

Any unintentional error or omission in the description of, or failure to completely describe, any premises or operations intended to be covered by this policy will not invalidate or affect coverage for those premises or operations. However, you must report such error or omission to us as soon as practicable after its discovery.

This provision does not affect our right to collect additional premium or exercise our right of cancellation or non-renewal.

Item 17. - BODILY INJURY REDEFINITION

The definition of "bodily injury" in Section V - DEFINITIONS section is replaced by the following:

"Bodily injury" means bodily injury, sickness or disease sustained by a person. It includes death or mental anguish, which results at any time from such physical harm, physical sickness or physical disease. Mental anguish means any type of mental or emotional illness or distress.

Item 18. - MOBILE EQUIPMENT REDEFINITION

Paragraph 12. f(1) (a), (b) and (c) of Section V - Definitions does not apply to self-propelled vehicles of less than 1000 pounds gross vehicle weight.

Item 19. - SUPPLEMENTARY PAYMENTS

Section I - Coverages, Supplementary Payments - Coverages A and B, item 1. b. and 1. d., respectively, are replaced with:

b. Up to \$2,500 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.

d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit" including substantiated loss of earnings up to \$500 a day because of time off from work.

Item 20. - LIBERALIZATION

Section IV - Commercial General Liability Conditions is amended to add the following:

10. Liberalization

If we adopt a change in our forms or rule which would broaden your coverage without an extra charge, the broader coverage will apply to this policy. This extension is effective upon the approval of such broader coverage in your state.

This endorsement is executed by the Wausau Business Insurance Co.

Premium \$

Effective Date 11/17/2010

Expiration Date 11/17/2011

For attachment to Policy No.

YYKZ91453113020

Audit Basis

Issued To American Traffic Solutions, Inc.

Dexter R. Legg
SECRETARY

Edward F. Hoff
PRESIDENT

Countersigned by

Greg Stone

Authorized Representative

Issued

Sales Office and No.

End. Serial No.

WILLIS CANCELLATION NOTICE

NAMED INSURED American Traffic Solutions, Inc.	POLICY NO. YYKZ91453113020 and ASKZ91453113030 EFFECTIVE DATE SEE PAGE 1
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Holder Name: City of Bellingham, WA

Project:

Cancellation Terms:

Should any of the above described policies be cancelled before the expiration date thereof, the Insurer will send 45 days notice of cancellation to the Certificate Holder, but failure to do so shall impose no obligation or liability of any kind upon the Insurer, its agents or representatives.

Cancellation Terms Apply to the Following Coverages:

General Liability and Auto Liability



«1.02.010 - Purpose

1.02.030 - Form of Initiative Petition»»

City of Bellingham Municipal Code

Title 1 GENERAL PROVISIONS
Chapter 02 INITIATIVE AND REFERENDUM PROCEDURES

1.02.020 - SUBMISSION OF A PROPOSED INITIATIVE PETITION

A. The principal petitioners shall submit the proposed initiative petition to the Finance Director within 12 months prior to the election the measure is to be submitted to the voters. The election date shall be the November general election date, unless the City Council authorizes a special election under RCW 29A.04.330 prior to the submission of the proposed initiative under this Section, in which case the time periods throughout this Chapter shall be calculated by reference to such special election date.

B. Upon receipt of the petition the Finance Director shall assign a number to the proposed initiative and forward it to the City Attorney.

C. Within 10 working days of receipt, the City Attorney shall review the petition with the principal petitioners, and if the petition is in proper form, the City Attorney in consultation with the principal petitioners shall write a short, concise, true, and impartial statement of the purpose of the measure. This statement shall be the ballot title.

D. The ballot title shall consist of 3 elements: (1) an identification of the enacting legislative body and a statement of the subject matter; (2) a concise description of the measure; and (3) a question. The ballot title must conform with the requirement of RCW 29A.72.050, except that the concise description must not exceed 75 words.

E. Upon completion of the ballot title, the Finance Director shall file it with the County Auditor who shall provide written acknowledgement of the filing of the ballot title.

F. Upon the filing of the ballot title of a question to be submitted to the people of the City, the County Auditor shall provide notice of the ballot title to the persons proposing the measure, the City, and to any other person requesting a copy of the ballot title. Notice of the filing of the ballot title shall be by mail, messenger, and if requested, by other electronic means.

G. Persons dissatisfied with the ballot title formulated by the City Attorney have 10 working days from the date of filing of the ballot title with the County Auditor to appeal to Whatcom County Superior Court.

H. The procedures for appeal of the ballot title shall be followed as set forth in RCW 29A.36.090.

[Ord. 2006-05-042]

EXHIBIT D



«1.02.040 - Time Limits for Filing
Signed Initiative Petitions

1.02.060 - Appeal of the
Sufficiency Determination»»

City of Bellingham Municipal Code

Title 1 GENERAL PROVISIONS
Chapter 02 INITIATIVE AND REFERENDUM PROCEDURES

**1.02.050 - SUFFICIENCY OF THE PETITION -
DETERMINATION BY AUDITOR**

- A. To be sufficient a petition must contain valid signatures of qualified registered voters, as determined by the County Auditor, in the number required by Bellingham City Charter Sect. 10.02.
- B. Petitions containing the required number of signatures shall be accepted as prima facie valid until their invalidity has been proved.
- C. A variation on petitions between the signatures on the petition and that on the voter's permanent registration caused by the substitution of initials instead of the first or middle names, or both, shall not invalidate the signature on the petition if the surname and handwriting are the same.
- D. If the County Auditor finds the same name signed to more than one petition, he or she shall reject all but the first such valid signature.
- E. Signatures followed by a date of signing that is more than 6 months prior to the date of filing of the signed initiative petition shall be stricken.
- F. The County Auditor shall verify the sufficiency of the signatures on the petition and shall transmit the written certificate of sufficiency or insufficiency to the City Finance Director with whom the petition was originally filed.

[Ord. 2006-05-042]



«1.02.060 - Appeal of the Sufficiency Determination»

1.02.080 - Initiative - Submission to the Electorate »»

City of Bellingham Municipal Code

Title 1 GENERAL PROVISIONS
Chapter 02 INITIATIVE AND REFERENDUM PROCEDURES

1.02.070 - ACCEPTANCE, REJECTION, OR DEFERRAL OF THE INITIATIVE PETITION

When a sufficiency of signatures has been determined the petition shall be deemed an initiative bill. The City Council may enact or reject any initiative bill, but may not amend or modify the same, provided that the City Council may, after rejection of any initiative bill, propose and pass a different one dealing with the same subject. In the alternative, the City Council may defer the matter to the voters which deferral shall constitute a technical rejection under the City Charter and the remaining provisions of this Chapter.

[Ord. 2006-05-042]



«1.02.070 - Acceptance, Rejection, or
Deferral of the Initiative Petition

1.02.090 - Referendum-
Petition Procedure »»

City of Bellingham Municipal Code

Title 1 GENERAL PROVISIONS
Chapter 02 INITIATIVE AND REFERENDUM PROCEDURES

**1.02.080 - INITIATIVE - SUBMISSION TO THE
ELECTORATE**

A. If the City Council defers the matter to the voters, or fails to take final action thereon within 30 days after receipt thereof, the initiative bill shall be submitted by the Finance Director to the County Auditor's Office for submission to the qualified electors for approval or rejection at the next general election, or special election date if authorized by the City Council.

B. The City Council may, after rejection of the initiative bill, pass a different bill dealing with the same subject. The alternative bill shall be submitted at the same election with the initiative bill. The ballot titles of both bills shall be printed on the official ballots so that a voter can express separately by making one choice for each of two preferences: first as between either measure and neither; and secondly, as between one and the other. Only if a majority of all votes cast favor either bill in the first proposition, shall one of the bills so proposed be adopted. The measure adopted shall be the measure receiving the greater number of votes of the alternative measures.

C. Any bill submitted to the vote of the people, which shall receive a majority of all votes cast for and against the same, shall become an ordinance of the City of Bellingham, and be in full force and effect, and be published in the City official newspaper within 10 days after the official canvass of the ballots pursuant to law.

[Ord. 2006-04-052]

LET THE PEOPLE DECIDE ON RED LIGHT CAMERAS IN BELLINGHAM



- Repeals government-imposed automatic ticketing cameras
- Requires city government to get voter approval if they try again
- Removes profit-motive by limiting fines

WARNING - Every person who signs this petition with any other than his or her true name, or who knowingly signs more than one of these petitions, or signs a petition seeking an election when he or she is not a legal voter, or signs a petition when he or she is not otherwise qualified to sign, or who makes herein any false statement, shall be guilty of a misdemeanor.

INITIATIVE PETITION FOR SUBMISSION TO THE CITY COUNCIL OF BELLINGHAM, WASHINGTON. TO: Finance Director, City of Bellingham, Washington. We, the undersigned registered voters of the City of Bellingham, Washington, respectfully direct that this petition and the proposed measure known as City of Bellingham Initiative No. 2017-0013 and entitled "This measure would prohibit Bellingham from using camera surveillance to impose fines unless two-thirds of the Council and voters approve, limit fines, repeal Ordinance #2016-12-064 allowing the machines, and mandate an advisory vote," a full, true, and correct copy of which is attached to this petition, be transmitted to the City Council of the City of Bellingham, Washington, and we respectfully petition the City Council to enact said proposed measure into law. Furthermore, if the City Council fails to enact this measure that it be submitted to a vote of the people at a regular or special election to be held on a date and in the manner required by the Revised Code of Washington; and each of us for himself or herself says: I have personally signed this petition, I am a legal voter of the City of Bellingham, Whatcom County, State of Washington, and my address is correctly stated on this petition and I have knowingly signed this petition only once.

Signature (Bellingham voters ONLY)	Print Name	Address	City	Date
1.			Bellingham	
2.			Bellingham	
3.			Bellingham	
4.			Bellingham	
5.			Bellingham	
6.			Bellingham	
7.			Bellingham	
8.			Bellingham	
9.			Bellingham	

Return signed petitions to: Transportation Safety Coalition, 3015 Mossop Dr, Bellingham, WA 98229 - Phone 360-543-5330 - www.BanCams.com/Bellingham - jonadiah@gmail.com
 Our goal is to collect signatures fast enough to qualify for the May ballot. Sponsored by: Transportation Safety Coalition, BanCams.com, WA Campaign for Liberty, & Voters Want More Choices

Proposed Ballot Title: Bellingham Initiative No. 2011-01 concerns automatic ticketing cameras. This measure would prohibit Bellingham from using camera surveillance to impose fines unless two-thirds of the Council and voters approve, limit fines, repeal Ordinance #2010-12-064 allowing the machines, and mandate an advisory vote.

Should this measure be enacted into law? Yes [] No []

Proposed Ballot Summary: This measure would prohibit the City of Bellingham or for-profit camera companies contracted by Bellingham to use automatic ticketing cameras to impose fines from camera surveillance unless it's approved by a two thirds vote of the City Council and a vote of the people at an election. This measure would also limit fines, repeal Ordinance #2010-12-064 allowing automatic ticketing cameras, and require an advisory vote of the people for machines authorized after November, 2010.

BE IT ENACTED BY THE PEOPLE OF THE CITY OF BELLINGHAM:

Section 1. A new chapter 11.16 is added to the Bellingham Municipal Code Title 11, which shall read as follows:

11.16 - Automatic Ticketing Cameras

Section 2. A new section 11.16.110 is added to BMC chapter 11.16, which shall read as follows:

11.16.110 - The city of Bellingham and for-profit companies contracted by the City of Bellingham may not install or use automatic ticketing cameras to impose fines from camera surveillance unless such a system is approved by a two-thirds vote of the City Council and a majority vote of the people at an election.

A. For the purposes of this chapter, "automatic ticketing cameras" means a device that uses a vehicle sensor installed to work in conjunction with an intersection traffic control system, or a speed measuring device, and a camera synchronized to automatically record one or more sequenced photographs, microphotographs, or electronic images of the rear of a motor vehicle at the time the vehicle fails to stop when facing a steady red traffic control signal, or exceeds a speed limit as detected by a speed measuring device.

Section 3. A new section 11.16.120 is added to BMC chapter 11.16, which shall read as follows:

11.16.120 - Fines: if two-thirds of the City Council and a majority of Bellingham voters at an election approve a system of automatic ticketing cameras to impose fines from camera surveillance, the fine for infractions committed shall be a monetary penalty of no more than the least expensive parking ticket imposed by law enforcement in the city limits of Bellingham.

Section 4. Chapter 11.16 (Ordinance #2010-12-064/Chapter BMC 11.16.010-11.16.100 allowing automatic ticketing cameras) is hereby repealed.

Section 5. Advisory Vote: Any ordinance that authorizes the use of automatic ticketing cameras enacted after November 1, 2010, must be put on the ballot as an advisory vote of the people at the next general election.

Section 6. Severability: If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Return signed petitions to: Transportation Safety Coalition, 3015 Mossop Dr, Bellingham, WA 98229 - Phone 360-543-5330 - www.BanCams.com/Bellingham - jonadiat@gmail.com
Our goal is to collect signatures fast enough to qualify for the May ballot. Sponsored by: Transportation Safety Coalition, BanCams.com, WA Campaign for Liberty, & Voters Want More Choices

Transportation Safety Coalition BanCams.com

January 24, 2011

City of Bellingham:

Mayor Dan Pike and City Councilmembers Jack Weiss, Gene Knutson, Barry Buchanan, Stan Snapp, Terry Bornemann, Michael Lilliquist, and Seth Fleetwood

RE: Bellingham Initiative No. 2011-01 -- Let The People Decide on Red Light Cameras in Bellingham

Dear Mr. Mayor and City Council members:

This letter provides you with our official notification that we will be filing our initiative tomorrow at 12 noon and we will work very hard over the coming weeks and months to collect enough signatures – at least 3880 valid ones – on petitions for Bellingham Initiative No. 2011-01 to ensure a reconsideration of Ordinance #2010-12-064 concerning automatic ticketing cameras. We are targeting the May ballot.

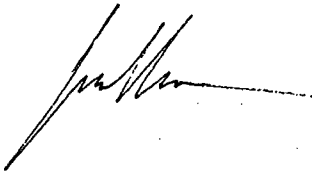
We firmly believe that Bellingham's citizens oppose this Big Brother, profit-making policy and oppose the process by which it was adopted. Our signature drive for Bellingham Initiative No. 2011-01 will give the citizens of this community the chance to decide this issue. Here's what our initiative does:

- Repeals government-imposed automatic ticketing cameras in Bellingham;
- Requires Bellingham's city government to get voter approval if they try again;
- Removes the profit-motive by limiting fines; and
- Protects democracy and due process.

The language of the petition is clear: *We, the undersigned registered voters of the City of Bellingham ... respectfully petition the City Council to enact said proposed measure into law; furthermore, if the City Council fails to enact this measure that it be submitted to a vote of the people*

Please notify us immediately by telephone at 817-713-6880 if there are any additional actions we are required to take followed by a letter providing that information. If you have any questions, please call.

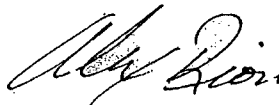
Respectively submitted,



Johnny Weaver
Trans. Safety Coalition



Nick Sherwood
BanCams.com



Alex Rion
WA Campaign for Liberty VotersWantMoreChoices.com



Tim Eyman

cc: Attorney Richard Stephens – Groen, Stephens, & Klinge Law Firm

"Those who would give up essential liberty to purchase a little temporary safety deserve neither liberty nor safety." Benjamin Franklin

Transportation Safety Coalition, 3015 Mossop Dr, Bellingham, WA, 98229
ph: 360-543-5330, fax: 425-493-1027, jonadiah@gmail.com, www.BanCams.com/Bellingham

EXHIBIT F

**WHATCOM COUNTY
AUDITOR'S OFFICE**

Whatcom County Courthouse
311 Grand Avenue, Suite 103
Bellingham, WA 98225-4038

Email: Auditor@co.whatcom.wa.us
Internet: www.whatcomcounty.us/auditor



SHIRLEY FORSLOF
COUNTY AUDITOR

DEBBIE ADELSTEIN
CHIEF DEPUTY

Phone: 360-676-6740
FAX: 360-738-4556

Certificate of Sufficiency

I hereby certify that I and members of my Election Division staff have reviewed the initiative petitions submitted to this office by Linda D. Anderson for John R. Carter, City of Bellingham Finance Department, entitled City of Bellingham Initiative No. 2011-01 (Let the People Decide on Red Light Cameras in Bellingham).

The formula utilized in determining the number of signatures necessary is as follows:

City of Bellingham: 20% of votes cast for mayor in last mayoral election

3,880 Signatures Required

The authority used for counting was:

**Bellingham City Charter
Bellingham Municipal Code**

We have verified 3,981 signatures; therefore a sufficiency of signatures is established.



Shirley Forslof
Whatcom County Auditor

Date: June 30, 2011

EXHIBIT G

Licensing
Licensing@co.whatcom.wa.us
360-676-6740

Recording
Recording@co.whatcom.wa.us
360-676-6740

Elections
Elections@co.whatcom.wa.us
360-676-6742

Administrative/Internal Audit
360-676-6744
360-676-6740 ext 50065

TTY
360-738-4555



CITY COUNCIL AGENDA FOLLOW UP: July 11, 2011

CALL TO ORDER**ANNOUNCEMENTS & UPCOMING MEETINGS:**

- On Monday, July 25 at 7:00 p.m. in City Council Chambers there will be a Public Hearing regarding changes to the Bellingham Municipal Code to change the setback requirements for buildings, parking/loading areas and landscaped areas within residential and industrial planned zones.
- On Monday, July 25, at 7:00 p.m. in City Council Chambers there will be a Public Hearing regarding the annual comprehensive plan/neighborhood plan amendment process; additional docketing review criteria; procedural changes to the docketing process; and, new plan amendment decision criteria.
- On Monday, August 1, at 7:00 p.m. in City Council Chambers there will be a Public Hearing to consider a Geneva/Idaho annexation of 6.1 acres adjacent to the eastern boundary of the city limits.

Bellingham City Council meets all requirements of the State of Washington Open Meetings Act.

PLEDGE OF ALLEGIANCE

Led by Chuck Robinson.

ROLL CALL

All present.

APPROVAL OF MINUTES

APPROVED

KNUTSON / BUCHANAN moved approval of the June 6, 2011 minutes of the regular City Council meetings as submitted. **MOTION CARRIED 7-0.**

KNUTSON / BUCHANAN moved approval of the June 20, 2011 minutes of the regular City Council meetings as submitted. **MOTION CARRIED 6-0-1, SNAPP abstained.**

PRESENTATIONS (Item 2 heard first)

AB19252 2. RESOLUTION IN SUPPORT OF AMERICAN ALPS LEGACY PROPOSAL Res. 2011-12
APPROVED

"A RESOLUTION IN SUPPORT OF AMERICAN ALPS LEGACY PROPOSAL."

FLEETWOOD / WEISS moved final approval of Resolution #2011-12. **MOTION CARRIED 7-0.**

AB19251 1. RECOGNITION OF WINNERS OF THE 2011 ESSENCE OF BELLINGHAM PHOTOGRAPHY COMPETITION Information only.

15-MINUTE PUBLIC COMMENT PERIOD

EXHIBIT H

Lake Whatcom Reservoir & Natural Resources (moved to follow Public Comment)

Members: Chair, Seth Fleetwood; Michael Lilliquist; Barry Buchanan; Gene Knutson

AB19147 1. AN ORDINANCE OF THE CITY COUNCIL REGULATING RETAIL ESTABLISHMENTS' PROVISION OF SINGLE-USE CARRYOUT BAGS 1st & 2nd APPROVED

"AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BELLINGHAM REGULATING RETAIL ESTABLISHMENTS' PROVISION OF SINGLE-USE CARRYOUT BAGS."

FLEETWOOD / KNUTSON moved approval for first and second reading. **MOTION CARRIED 7-0.**

PUBLIC HEARINGS

AB19253 1. AN ORDINANCE TO AMEND THE BELLINGHAM MUNICIPAL CODE TO CHANGE THE DEFINITIONS OF "FLOOR AREA OR SPACE" AND "FLOOR AREA RATIO" Public hearing held. 1st & 2nd APPROVED

"AN ORDINANCE RELATED TO LAND USE REGULATIONS AND AMENDING BELLINGHAM MUNICIPAL CODE 20.08.020 F. 2 AND 20.080.020 F.3 - SPECIFIC DEFINITIONS RELATING TO CHANGES TO THE FLOOR AREA OR SPACE AND FLOOR AREA RATIO DEFINITIONS TO SIMPLIFY AND COORDINATE THE TWO DEFINITIONS."

Public hearing held.

KNUTSON / BUCHANAN moved approval for first and second reading. **MOTION CARRIED 7-0.**

AB19254 2. AN ORDINANCE TO AMEND BELLINGHAM MUNICIPAL CODE TITLE 20 TO ALLOW CERTAIN STRUCTURES AND ARCHITECTURAL FEATURES TO ENCROACH INTO A BUILDING SETBACK, MODIFY THE FRONT YARD SETBACK OPTION AND REFORMAT RESIDENTIAL SETBACKS INTO TABLES. Public hearing held. 1st & 2nd APPROVED AS AMENDED

"AN ORDINANCE AMENDING BELLINGHAM MUNICIPAL CODE 20.10.080, 20.30.040 F., 20.32.040 H., 20.32.045 E., 20.32.050 D., TO ALLOW CERTAIN STRUCTURES AND ARCHITECTURAL ELEMENTS TO ENCROACH INTO A REQUIRED YARD (SETBACK), MODIFY THE FRONT YARD SETBACK OPTION TO ALLOW AN AVERAGED BUILDING SETBACK (EXCEPT FOR GARAGES AND CARPORTS) BASED ON MEETING THE 40% REQUIREMENT, AND RE-FORMAT THE RESIDENTIAL AND RESIDENTIAL-MULTI SETBACK STANDARDS INTO A TABLE FORMAT."

Public hearing held.

KNUTSON / BORNEMANN moved approval for first and second reading.

WEISS / LILLIQUIST moved to amend the ordinance to modify the single family restriction to be more permissive of cantilevered greenhouse windows on the first story only, subject to staff recommendation.

AMENDMENT MOTION CARRIED 7-0.

MAIN MOTION AS AMENDED 7-0

AB19150 3. AN ORDINANCE TO PROHIBIT SIGNS IN Public hearing

MEDIANS AND ROUNDABOUTS IN PUBLIC RIGHTS-OF-WAY IN THE CITY OF BELLINGHAM held.

1ST & 2ND
APPROVED AS
AMENDED

"AN ORDINANCE AMENDING BMC 20.12.040 TO PROHIBIT PLACEMENT OF SIGNS IN MEDIANS AND ROUNDABOUTS LOCATED WITHIN A CITY RIGHT-OF-WAY."

Public hearing held.

LILLIQUIST / KNUTSON moved to amend definitions, as recommended by staff, to: 1) amend ordinance to change "Median" to "Median Strip"; and 2) add definition: "Median Strip. A paved or planted strip dividing a highway into lanes according to direction of travel." and 3) add definition: "Roundabout. A road junction at which traffic streams circularly around a central island."

MOTION CARRIED 7-0.

LILLIQUIST / BUCHANAN moved approval for first and second reading as amended. **MOTION CARRIED 7-0**

Lake Whatcom Reservoir & Natural Resources (moved to follow Public Comment)

Public Works / Public Safety

Members: Chair, Barry Buchanan; Jack Weiss; Gene Knutson

AB19255 1. BAY TO BAKER TRAIL, MULTI-MODAL TRANSPORTATION CONNECTION AND SQUALICUM CREEK RE-ROUTE IN VICINITY OF JAMES STREET AND ORCHARD STREET

ALT. #1
APPROVED

KNUTSON / BUCHANAN moved to adopt Alternative 1: bridge at existing location with the trail located 150 feet south of the bridge centerline as recommended by staff.

MOTION CARRIED 7-0

Committee Of The Whole

Chair, Stan Snapp

AB19256 1. AN ORDINANCE AMENDING THE TIME LIMITS FOR USE OR REFUND OF IMPACT FEES

1st & 2nd
APPROVED

"AN ORDINANCE AMENDING BELLINGHAM MUNICIPAL CODE SUBSECTIONS 19.04.110 E, 19.04.120 B & C RELATED TO USE AND REFUNDS OF IMPACT FEES."

BUCHANAN / LILLIQUIST moved approval for first and second reading. **MOTION CARRIED 7-0.**

AB19257 2. AN ORDINANCE RELATING TO BMC 11.33 PARKING, STANDING, AND STOPPING, AMENDING 11.33.060A.35 AND ADDING 11.33.060A.39

1st & 2nd
APPROVED

"AN ORDINANCE AMENDING BMC 11.33 PARKING, STANDING, AND STOPPING, AMENDING SUBSECTION 11.33.060A.35 AND ADDING A NEW SUBSECTION 11.33.060A.39."

WEISS / LILLIQUIST moved approval for first and second reading. **MOTION CARRIED 7-0.**

3. APPROVAL OF CITY COUNCIL COMMITTEE AND/OR SPECIAL MEETING MINUTES

None submitted at evening meeting.

4. OLD/NEW BUSINESS

None presented.

EXECUTIVE SESSION

Report and action in regular meeting only.

1. Claim for Damages re: Ane Soriano, Claim #2011-30: APPROVED
Staff provided information on a claim for damages and seeking authorization to settle.

LILLIQUIST / BORNEMANN moved to authorize the settlement of this claim. **MOTION CARRIED 7-0.**

2. Litigation: City of Bellingham Appeal of Whatcom County SEPA threshold determinations for the Caitac Rezones, SEPA 2010-00085 and SEPA 2010-00088: APPROVED
Staff provided information on a litigation matter.

BORNEMANN / BUCHANAN moved to authorize the City to comment on and appeal all Whatcom County decisions approving the Caitac rezones, including the SEPA threshold determinations. **MOTION CARRIED 7-0.**

3. Potential Litigation: Traffic Camera Initiative: APPROVED
Staff provided information on a potential litigation matter.

BORNEMANN / FLEETWOOD moved to take no action as described in City Charter Section 10.05 (BMC 1.02.080). **MOTION CARRIED 7-0.**

4. Litigation: Whatcom County v. Ledda (City of Bellingham as intervener): APPROVED
Staff provided information regarding a Superior Court case in which the City is an intervenor.

BORNEMANN / KNUTSON moved to authorize City staff to settle this litigation. **MOTION CARRIED 7-0.**

5. Litigation: Puget Sound Energy v. City of Bellingham: NO ACTION
Staff provided an update on a litigation matter. Information only. No action taken.

6. Potential Litigation: NO ACTION
Staff provided information on a potential litigation matter. Information only. No action taken.

7. Potential Litigation: NO ACTION
Staff provided information on a potential litigation matter. Information only. No action taken.

8. Potential Litigation: APPROVED
Staff provided information on a potential litigation matter.

LILLIQUIST / KNUTSON moved to authorize the Mayor to enter into a joint representation agreement with a coalition of Washington State cities regarding the scoping of the Environmental Impact Statement for the Pacific International Terminal project. **MOTION CARRIED 7-0**

MAYOR'S REPORT

1. Standing time for briefings, updates and reports to Council by the Mayor, if needed. Information only.

Council Member Knutson left Council Chambers.

AB19258 2. MAYOR'S REAPPOINTMENT OF KEN HERTZ TO THE BELLINGHAM PUBLIC DEVELOPMENT AUTHORITY (BPDA) APPROVED

WEISS / BORNEMANN moved to authorize the Mayor's reappointment of Ken Hertz to the Bellingham Public Development Authority, term ending July 21, 2013. **MOTION CARRIED 6-0, KNUTSON excused.**

AB19259 3. MAYOR'S APPOINTMENT OF BARBARA ALTEN TO THE TRANSPORTATION COMMISSION APPROVED

WEISS / BORNEMANN moved to authorize the Mayor's appointment of Barbara Alten to the Transportation Commission, a partial term ending October 19, 2012.

MOTION CARRIED 6-0, KNUTSON excused.

AB19260 4. MAYOR'S APPOINTMENT OF RICK QUALLS AND DARLA WOOLMAN TO THE BELLINGHAM-WHATCOM COUNTY COMMISSION AGAINST DOMESTIC VIOLENCE Information only.

Information only.

AB19261 5. MAYOR'S APPOINTMENT OF JEAN HAMILTON TO THE MAYOR'S NEIGHBORHOOD ADVISORY COMMISSION Information only.

Information only.

Consent Agenda

All matters listed on the Consent Agenda are considered routine and/or non-controversial items and may be approved in a single motion. A member of the Council may ask that an item be removed from the Consent Agenda and considered separately.

AB19262 1. RESOLUTION APPROVING EMERGENCY REPAIR OF COLLAPSED SEWER MAIN ON BOULEVARD STREET. Res. 2011-13 (Consent Agenda)

Res. 2011-13 "A RESOLUTION OF THE CITY OF BELLINGHAM DECLARING THAT AN EMERGENCY EXISTED JUSTIFYING AN EXEMPTION FROM THE FORMAL BID PROCESS WITH REGARD TO EMERGENCY REPAIRS TO THE SEWER SYSTEM ON BOULEVARD STREET."

AB19263 2. AN ORDINANCE AUTHORIZING RECEIPT AND SPENDING OF 2009 STATE HOMELAND SECURITY PROGRAM GRANT OF \$42,099. 1st & 2nd (Consent Agenda)

"AN ORDINANCE RELATING TO THE 2011 BUDGET RECOGNIZING RECEIPT OF A \$42,099.00 DEPARTMENT OF HOMELAND SECURITY GRANT AND APPROPRIATING \$42,099.00 OF GRANT EXPENDITURES IN THE GENERAL FUND."

AB19264 3. AN ORDINANCE AUTHORIZING RECEIPT AND SPENDING OF 2010 STATE HOMELAND SECURITY PROGRAM GRANT OF \$39,785 1st & 2nd (Consent Agenda)

"AN ORDINANCE RELATING TO THE 2011 BUDGET RECOGNIZING RECEIPT OF A \$39,785.00 DEPARTMENT OF HOMELAND SECURITY GRANT AND APPROPRIATING \$39,785.00 FOR GRANT EXPENDITURES IN THE GENERAL FUND PLUS AN ADDITIONAL \$23,041.00 FROM ESTIMATED ENDING UNDESIGNATED RESERVES."

AB19265 4. BID AWARD FOR FIRE DEPARTMENT EMERGENCY GENERATOR INSTALLATION (Consent Agenda)

AB19266 5. AN ORDINANCE APPROPRIATING FUNDS FOR SPECIAL LEGAL COUNSEL FOR LAND USE LITIGATION 1ST & 2ND (Consent Agenda)

"AN ORDINANCE RELATING TO THE 2011 BUDGET

APPROPRIATING \$80,000.00 FROM ESTIMATED ENDING UNDESIGNATED RESERVES IN THE GENERAL FUND TO BE USED FOR UNANTICIPATED COSTS IN THE LEGAL DEPARTMENT."

AB19267 6. AUTHORIZATION OF CHECK ISSUE FOR ACCOUNTS PAYABLE FROM JUNE 10, 2011 TO JUNE 16, 2011 (Consent Agenda)

AB19268 7. AUTHORIZATION OF CHECK ISSUE FOR ACCOUNTS PAYABLE FROM JUNE 17, 2011 TO JUNE 23, 2011 (Consent Agenda)

AB19269 8. AUTHORIZATION OF CHECK ISSUE FOR ACCOUNTS PAYABLE FROM JUNE 24, 2011 TO JUNE 30, 2011 (Consent Agenda)

AB19270 9. AUTHORIZATION OF CHECK ISSUE FOR PAYROLL LABOR COSTS FROM JUNE 11, 2011 TO JUNE 24, 2011 CONSENT AGENDA APPROVED IN ITS ENTIRETY

BUCHANAN / BORNEMANN moved approval of the Consent Agenda in its entirety. **MOTION CARRIED 6-0, KNUTSON excused.**

FINAL CONSIDERATION OF ORDINANCES

AB19247 1. AN ORDINANCE AMENDING THE 2011 BUDGET APPROPRIATING AN ADDITIONAL \$59,200.00 FROM ESTIMATED ENDING DESIGNATED RESERVES IN THE CRIMINAL JUSTICE FUND FOR THE PURPOSE OF PURCHASING RIFLES FOR THE PATROL AND TRAFFIC DIVISIONS OF THE BELLINGHAM POLICE DEPARTMENT Ord. 2011-07-033 APPROVED

BUCHANAN / WEISS moved approval for third and final reading. Upon motion, said bill was placed on final passage and approved by the following roll call vote:

AYES: BORNEMANN, BUCHANAN, FLEETWOOD, LILLIQUIST, SNAPP, WEISS
 NAYS:
 ABSTENTIONS:
 EXCUSED: KNUTSON

MOTION CARRIED 6-0 and was thereafter named Ordinance #2011-07-033

Adjournment

*There being no further business, the meeting adjourned at 9:14 p.m.

**Next City Council Meeting
 Monday, July 25, 2011**

**Deadline to submit material for the public hearing for inclusion in the published agenda packet:
 Wednesday, July 20, 2011; 10 AM**

Disclaimer: This document is provided as a courtesy follow up of the City Council meeting. This document is not to be considered the minutes from the meeting rather a report of the action taken by Council. All information contained herein is subject to change upon further review of the tapes of proceedings and composure of the minutes from the meeting. Your comments and suggestions are welcome.

FILED
COUNTY CLERK

2011 JUL 29 PM 1:58

WHATCOM COUNTY
WASHINGTON

BY _____

RECEIVED

JUL 29 2011

**SHIRLEY FORSLOF
WHATCOM COUNTY AUDITOR**

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR WHATCOM COUNTY

AMERICAN TRAFFIC SOLUTIONS,
INC., a Kansas corporation,

Plaintiff,

v.

CITY OF BELLINGHAM, a Washington
municipal corporation; WHATCOM
COUNTY, a political subdivision of the
State of Washington; SHIRLEY FORSLOF,
in her official capacity as Whatcom County
Auditor; WA CAMPAIGN FOR LIBERTY,
a Washington non-profit corporation;
TRANSPORTATION SAFETY
COALITION, an unknown entity;
BANCAMS.COM, an unknown entity; and
VOTERS WANT MORE CHOICES, an
unknown entity,

Defendants.

No.

11 2 01991 4

**DECLARATION OF KARIN D. JONES
PURSUANT TO GR 17(a)(2)**

IRA UHRIG

I, KARIN D. JONES, declare as follows:

1. I am an associate at the law firm Stoel Rives LLP, counsel for Plaintiff American Traffic Solutions in this matter. I am over the age of eighteen and have personal knowledge of the facts set forth in this declaration.

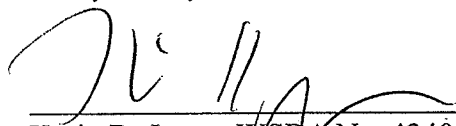
DECLARATION OF KARIN JONES PURSUANT TO GR 17(a)(2) - 1

1 2. I submit this declaration pursuant to GR 17(a)(2) as recipient of the "Declaration
2 of Amy Razor in Support of Plaintiff's Motion for Temporary Restraining Order and Preliminary
3 Injunction" received electronically for filing with the Court in this matter.

4 3. I have examined the document, determined that it consists of three pages, and that
5 it is complete and legible.

6 I declare under penalty of perjury under the laws of the state of Washington that the
7 foregoing is true and correct.

8 Signed at Seattle, Washington this 28th day of July, 2011.

9
10 
11 _____
12 Karin D. Jones, WSBA No. 42406

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WHATCOM COUNTY
WASHINGTON

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2 **RECEIVED**

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4 **SHIRLEY FORSLOF**
5 **WHATCOM COUNTY AUDITOR**

6
7
8 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
9 FOR WHATCOM COUNTY

10 AMERICAN TRAFFIC SOLUTIONS,
11 INC., a Kansas corporation,

12 Plaintiff,

13 v.

14 CITY OF BELLINGHAM, a Washington
15 municipal corporation; WHATCOM
16 COUNTY, a political subdivision of the
17 State of Washington; SHIRLEY FORSLOF,
18 in her official capacity as Whatcom County
19 Auditor; WA CAMPAIGN FOR LIBERTY,
20 a Washington non-profit corporation;
21 TRANSPORTATION SAFETY
COALITION, an unknown entity;
BANCAMS.COM, an unknown entity; and
VOTERS WANT MORE CHOICES, an
unknown entity,

Defendants.

No. **11 2 01991 4**

PLAINTIFF'S MOTION FOR
TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION

IRA UHRIG

22 This case involves proposed Bellingham Initiative No. 2011-01 ("the Initiative"). The
23 proposed Initiative would repeal existing law, and enact new law, governing Bellingham's use of
24 automated traffic safety cameras. The proposed Initiative, however, is invalid because it:
25 (1) involves matters that are reserved, pursuant to RCW 46.63.170, for the city council by the
26 state legislature; and (2) involves matters that are administrative, and not legislature, in nature.

PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION - 1

STOEL RIVES LLP
ATTORNEYS
600 University Street, Suite 3600, Seattle, WA 98101
Telephone (206) 624-0900

1 As a result, the subject matter of the proposed Initiative is beyond the scope of the local initiative
2 power and should not be included on the ballot. Consistent with well-established law limiting
3 the scope of local initiatives and permitting just this type of pre-election review, American
4 Traffic Solutions, Inc. (“ATS”), the City of Bellingham’s (the “City”) safety camera vendor,
5 seeks a temporary restraining order and preliminary injunction prohibiting the City of
6 Bellingham, Whatcom County, and the Initiative sponsors from taking action to include the
7 proposed Initiative on the November 8, 2011 ballot.¹

8 **I. STATEMENT OF FACTS**

9 **A. The Legislature Granted “Local Legislative Authorities” the Power to Enact
10 Ordinances Governing the Use and Operation of Safety Cameras.**

11 RCW 46.63 *et seq.* establishes a statewide statutory framework for the disposition of
12 certain traffic offenses, including infractions determined through the use of safety cameras. The
13 Infraction Rules for Courts of Limited Jurisdiction establish the applicable rules for local courts
14 processing such traffic offenses. RCW 46.63.170 provides, in relevant part:

15 (1) The use of automated traffic safety cameras for issuance of
16 notices of infraction is subject to the following requirements:

17 (a) The appropriate local legislative authority must first enact an
18 ordinance allowing for their use to detect one or more of the
19 following: Stoplight, railroad crossing, or school speed zone
20 violations. At a minimum, the local ordinance must contain the
21 restrictions described in this section and provisions for public
22 notice and signage.

23 **B. Pursuant to RCW 46.63.170, the City Enacted a Safety Camera Ordinance.**

24 On December 6, 2010, the Bellingham City Council enacted Ordinance No. 2010-12-064,
25 authorizing the use of Safety Cameras, establishing guidelines and procedures for their use, and
26

24 ¹ Chelan County Superior Court recently confirmed the same in a related case involving a
25 proposed initiative on the same subject matter in *City of Wenatchee, et al. v. We the People*
26 *Wenatchee, et al.*, Chelan County Superior Court Case No. 11-2-00221-1. See Appendix A
(Order Granting City of Wenatchee’s Motion for Declaratory Judgment and Injunctive Relief)
and Appendix B (Verbatim Report of Proceedings).

1 adding a new chapter to the Bellingham Municipal Code (“BMC”): BMC 11.16. Declaration of
2 Amy Razor in Support of Plaintiff’s Motion for Temporary Restraining Order and Preliminary
3 Injunction (“Razor Decl.”), Ex. A (Ordinance No. 2010-12-064); Ex. B (Excerpts of BMC
4 11.16). The current version of BMC 11.16 specifically provides, in part:

5 Consistent with the authority granted in RCW 46.63.170, law enforcement
6 officers of the City of Bellingham and persons commissioned by the Chief of
7 Police for the City of Bellingham are authorized to use automated traffic cameras
and related automated systems to detect one or more of the following: (1)
stoplight violations, (2) railroad crossing violations, and (3) speed zone violations.

8 *Id.* at Ex. B, BMC 11.16.020.

9 **C. The City Entered Into a Contract with ATS for Safety Cameras.**

10 On May 6, 2011, the Mayor of Bellingham entered into a contract on behalf of the City
11 with ATS for installation and use of Safety Cameras pursuant to the ordinance (the “Contract”).

12 *Id.* at Ex. C (Contract). Under the Contract, ATS agreed to install and assist with the City’s
13 operation of Safety Cameras at specified locations in Bellingham and to help process the
14 automated citation processing system at the City’s direction. *Id.* The Contract became effective
15 on May 6, 2011 and runs for an initial pilot term of one year from beginning on the date of the
16 first issued and payable notice of a violation, followed by renewable three-year terms. *Id.* at Ex.
17 C, ¶ 10. Under the Contract, ATS is required to install Safety Cameras at six separate locations
18 in Bellingham in 2011. *Id.* at Ex. C, Schedules 2, 4.

19 **D. The Proposed Initiative Would Repeal Existing Law and Enact New Law Governing**
20 **the City’s Use of Safety Cameras.**

21 Bellingham is a charter city that has established its own city referendum and initiative
22 procedures. *Id.* at Ex. D (Excerpts of BMC 1.02). On January 24, 2011, Defendants WA
23 Campaign for Liberty, Transportation Safety Coalition, Voters Want More Choices, and
24 BanCams.com (“the Initiative Sponsors”) notified the City of their intent to commence an
25 initiative petition for a local initiative, proposed Bellingham Initiative No. 2011-01, for inclusion
26 on the November 2011 local ballot. *Id.* at Ex. E (Initiative Petition); Ex. F (Notice Letter).

1 The proposed Initiative provides:

2 **BE IT ENACTED BY THE PEOPLE OF THE CITY OF BELLINGHAM:**

3 Section 1. A new Chapter 11.16 is added to the Bellingham Municipal Code Title 11,
4 which shall read as follows:

5 11.16 - Automatic Ticketing Cameras

6 Section 2. A new section 11.16.110 is added to BMC chapter 11.16, which shall read as
7 follows:

8 11.16.110 – The city of Bellingham and for-profit companies contracted by the City of
9 Bellingham may not install or use automatic ticketing cameras to impose fines from
10 camera surveillance unless such a system is approved by a majority vote of the City
11 Council and a majority vote of the people at an election.

12 A. For the purposes of this chapter, “automatic ticketing cameras” means a device that
13 uses a vehicle sensor installed to work in conjunction with an intersection traffic control
14 system, or a speed measuring device, and a camera synchronized to automatically record
15 one or more sequenced photographs, microphotographs, or electronic images of the rear
16 of a motor vehicle at the time the vehicle fails to stop when facing a steady red traffic
17 control signal, or exceeds a speed limit as detected by a speed measuring device.

18 Section 3. A new section 11.16.120 is added to BMC chapter 11.16, which shall read as
19 follows:

20 11.16.120 – Fines: if a majority of the City Council and majority of Bellingham voters at
21 an election approve a system of automatic ticketing cameras to impose fines from camera
22 surveillance, the fine for infractions committed shall be a monetary penalty of no more
23 than the least expensive parking ticket imposed by law enforcement in the city limits of
24 Bellingham.

25 Section 4. Chapter 11.16 (Ordinance #2010-12-064/Chapter BMC 11.16.010-100
26 allowing automatic ticketing cameras) is hereby repealed.

Section 5. Advisory Vote: Any ordinance that authorizes the use of automatic ticketing
cameras enacted after November 1, 201, must be put on the ballot as an advisory vote of
the people at the next general election.

Section 6. Severability: If any provision of this act or its application to any person or
circumstance is held invalid, the remainder of the act or the application of the provision
to other persons or circumstances is not affected.

Id. at Ex. E.

On June 30, 2011, Whatcom County Auditor Shirley Forslof issued a Certificate of
Sufficiency, certifying that the Initiative Sponsors submitted sufficient signatures required by the
City’s initiative procedures to permit the placement of the proposed Initiative on the November
2011 ballot. Razor Decl., Ex. D, BMC 1.02.050; Ex. G (Certificate of Sufficiency). The

1 Bellingham City Council voted, on July 11, 2011, to take no action with respect to the proposed
2 Initiative. *Id.* at Ex. H (City Council Agenda Follow Up). Pursuant to the BMC, the City
3 Council's decision to take no action will result in the inclusion of the proposed Initiative on the
4 November 2011 ballot. *Id.* at Ex. D, BMC 1.02.080.

5 II. STATEMENT OF ISSUE

6 Whether the proposed Initiative is invalid as a matter of law and the Court should enter a
7 temporary restraining order and a preliminary injunction enjoining Defendants from including
8 the proposed Initiative on the ballot.

9 III. EVIDENCE RELIED UPON

10 Evidence relied upon in support of this Motion is set forth in the Declaration of Amy
11 Razor and attached exhibits, as well as the records on file in this matter.

12 IV. ARGUMENT

13 A. Pre-Election Review Is Appropriate.

14 As an initial matter, this case is properly brought before the Court for pre-election review.
15 While Washington courts generally refrain from reviewing the validity of a proposed law before
16 it has been enacted, this case falls squarely within a well-established exception. Washington
17 courts have long permitted subject matter pre-election review to determine whether an initiative
18 or referendum is within the scope of the initiative or referendum power. *Chelan County v.*
19 *Andersen*, 123 Wn.2d 151, 868 P.2d 116 (1994); *City of Sequim v. Malkasian*, 157 Wn.2d 251,
20 138 P.3d 943 (2006); *Whatcom County v. Brisbane*, 125 Wn.2d 345, 884 P.2d 1326 (1994); *City*
21 *of Seattle v. Yes for Seattle*, 122 Wn. App. 382, 93 P.3d 176 (2004); *1000 Friends of Wash. v.*
22 *McFarland*, 159 Wn.2d 165, 149 P.3d 616 (2006); *Philadelphia II v. Gregoire*, 128 Wn.2d 707,
23 716-17, 911 P.2d 389, *cert. denied*, 519 U.S. 862 (1996).

24 Pre-election subject matter challenges such as this one are appropriate because they do
25 not raise concerns regarding justiciability; "postelection events do not further sharpen the issues—
26 the subject matter of the proposed measure is either proper for direct legislation or it is not."

1 *Malkasian*, 157 Wn.2d at 255. Here, at the TRO and preliminary injunction stage, ATS seeks
2 only subject matter review of the proposed Initiative – a determination of whether the proposed
3 Initiative is beyond the scope of the initiative power and thus not proper for direct legislation.
4 ATS’s motion is thus ripe and appropriate for review.

5 **B. ATS is Entitled to Injunctive Relief.**

6 ATS seeks declaratory and injunctive relief from the Court on one narrow and purely
7 legal issue: that the proposed Initiative exceeds the scope of the local initiative power.² Because
8 of the nature of the issues presented, which involve time sensitive matters related to the
9 upcoming general election ballot, the Court may rule immediately as a matter of law. *See*
10 *Coppernoll v. Reed*, 155 Wn.2d 290, 296, 119 P.3d 318 (2005); *Ruano v. Spellman*, 81 Wn.2d
11 820, 505 P.2d 447 (1973); *Bidwell v. City of Bellevue*, 65 Wn. App. 43, 827 P.2d 339 (1992). “A
12 party seeking preliminary injunctive relief must establish (1) a clear legal or equitable right, (2) a
13 well-grounded fear of immediate invasion of that right, and (3) that the acts complained of either
14 have or will result in actual and substantial injury.” *San Juan County v. No New Gas Tax*, 160
15 Wn.2d 141, 153, 157 P.3d 831, 837 (2007). As set forth below, ATS meets each of those
16 criteria.

17 **1. ATS is Likely to Prevail on the Merits because the Proposed Initiative**
18 **Exceeds the Scope of the Local Initiative Power.**

19 “In deciding whether a party has a clear legal or equitable right [warranting preliminary
20 injunctive relief], the court examines the likelihood that the moving party will prevail on the
21 merits.” *Rabon v. City of Seattle*, 135 Wn.2d 278, 285 154, 957 P.2d 621, 623 (1998). ATS’s
22 argument is grounded on clear case law supporting the conclusion that the proposed Initiative
23 unlawfully exceeds the scope of the local initiative power, both because it involves a usurpation
24

25 ² In its Complaint, ATS also states a claim for impairment of contract. ATS intends to
26 file a separate motion at a later date seeking declaratory relief on that claim.

1 of authority granted exclusively to the City and because it involves administrative, rather than
2 legislative, actions.

3 **a. Matters Delegated to a Local Legislative Body Are Not Subject to**
4 **Local Initiatives.**

5 When the Legislature grants power specifically to a local legislative body, that power is
6 not subject to direct legislation by initiative or referendum. “An initiative is beyond the scope of
7 the initiative power if the initiative involves powers granted by the legislature to the governing
8 body of a city, rather than the city itself.” *Id.* at 261.³ This is because a proposed initiative under
9 these circumstances would “interfere with the exercise of a power delegated by state law to the
10 governing body of the city.” *Priorities First v. City of Spokane*, 93 Wn. App. 406, 411, 968 P.2d
11 431 (1998). Indeed, “people cannot deprive the City’s legislative authority of the power to do
12 what the constitution and/or a state statute specifically permit it to do. . . . To allow the
13 initiatives to proceed on the basis of police power, or some other general theory, would be to
14 undermine the legislative grant of authority to the local legislative body. . . .” *Id.* at 882-83
15 (*citing King County v. Taxpayers of King County*, 133 Wn.2d 584, 608, 949 P.2d 1260 (1997)).⁴
16 For these reasons, Washington courts have consistently held that when the Legislature grants
17 authority to the governing body of a city, that authority is not subject to repeal, amendment, or
18 modification by the people through the initiative or referendum process. *Malkasian*, 157 Wn.2d

19 ³ See also *Malkasian*, 157 Wn.2d at 261; *1000 Friends of Wash.*, 159 Wn.2d at 174; *Leonard v.*
20 *City of Bothell*, 87 Wn.2d 847, 853, 557 P.2d 1306 (1976) (holding that grant of power to local legislative
21 body precluded referendum election); *State ex rel. Guthrie v. City of Richland*, 80 Wn.2d 382, 384, 494
22 P.2d 990 (1972) (holding that where general law grants authority to governing body of city, exercise of
23 that authority not subject to repeal, amendment, or modification by initiative or referendum); *State ex rel.*
24 *Bowen v. Kruegel*, 67 Wn.2d 673, 678-79, 409 P.2d 458 (1965) (holding that electorate of municipality
25 had no power to demand referendum election on annexation ordinance because powers of annexation
26 were expressly conferred by state to city’s legislative body, and not to electorate or corporate entity of
city); *Neils v. City of Seattle*, 185 Wash. 269, 276, 53 P.2d 848 (1936) (holding general law enacted by
legislature superior to all inconsistent charter provisions; charter provision with effect of limiting or
restricting legislative grant of power to legislative authority is invalid).

⁴ See also *McFarland*, 159 Wn.2d at 173-74 (“[T]he voters of [a] county [or city] cannot alter a
grant of authority to, or the imposition of responsibility onto, the local government by the state
legislature.”).

1 at 265.

2 Based on this substantial body of law, “initiatives or referenda that attempt to graft limits
3 onto a grant of power by the people of the State, or to modify obligations imposed on local
4 legislative or executive authority by the people of the State, are invalid as in conflict with state
5 law.” *McFarland*, 159 Wn.2d at 174 (citing *State ex rel. Haas v. Pomeroy*, 50 Wn.2d 23, 25,
6 308 P.2d 684 (1957), *overruled in part by Earle M. Jorgensen Co. v. City of Seattle*, 99 Wn.2d
7 861, 665 P.2d 1328 (1983)). Consistent with Chelan County Superior Court’s recent order,
8 attached at Appendix A, this Court is well within established authority to promptly exercise its
9 inherent power to keep an invalid measure off the ballot.

10 **b. The Legislature Delegated Use and Operation of Safety Cameras**
11 **Exclusively to “Local Legislative Authorities.”**

12 In this case, the Legislature specifically granted local legislative bodies with the
13 exclusive power to legislate the use and operation of safety cameras. RCW 46.63.170 provides
14 that, before a city may use safety cameras, the “appropriate *local legislative authority* must first
15 enact an ordinance allowing for their use” RCW 46.63.170(1)(a) (emphasis added).
16 Likewise, RCW 46.63.170(1)(c) provides that “[d]uring the 2009-2011 fiscal biennium,
17 automated traffic safety cameras may be used to detect speed violations for the purposes of
18 section 201(2), chapter 470, Laws of 2009 if the *local legislative authority* first enacts an
19 ordinance authorizing the use of cameras to detect speed violations.” (Emphasis added.) As
20 such, for a city to use safety cameras, the city must first enact an ordinance consistent with the
21 state statute.⁵

22
23
24 ⁵ Delegating the power to govern, use, and operate safety cameras to the respective city councils
25 allows the Legislature to implement a more “uniform and expeditious system” across the state. *See* RCW
26 46.63.010 (providing that the “legislative intent in the adoption of this chapter in decriminalizing certain
traffic offenses to promote the public safety and welfare on public highways and to facilitate the
implementation of a uniform and expeditious system for the disposition of traffic infractions.”).

1 Washington courts reviewing similar statutes that explicitly grant powers to a local
2 “legislative authority” or “legislative body” have consistently held that such statutes
3 unambiguously grant powers to the city council and mayor.⁶ Indeed, the Washington Supreme
4 Court has stated that “[i]t is well-settled that in the context of statutory interpretation, a grant of
5 power to a city’s governing body (‘legislative authority’ or ‘legislative body’) means *exclusively*
6 *the mayor and city council and not the electorate.*” *Malkasian*, 157 Wn.2d at 265 (emphasis
7 added). Thus, if the proposed Initiative would enact law regarding the use of safety cameras,
8 which it purports to do, then it is invalid as a matter of law. Under the clear language of the
9 statute, the Legislature unambiguously vested exclusive power with local legislative bodies (in
10 this case, the Bellingham City Council) to enact laws regarding the use of safety cameras. As
11 such, the matter is not subject to local initiative or referendum.

12 **c. The Proposed Initiative Is Beyond the Scope of the Local Initiative**
13 **Power Because It Usurps Authority Granted to the Bellingham City**
14 **Council Under RCW 46.63.170.**

15 Applying these legal principles to the proposed Initiative, the proposed Initiative is
16 invalid because it would amend, restrict, and modify the Legislature’s specific grant of power to
17 the Bellingham City Council to enact legislation regarding the use of safety cameras. The
18 language of the Initiative makes it clear that the effect of the Initiative would do just that.
19

20 ⁶ See, e.g., *City of Sequim*, 157 Wn.2d at 265-66 (finding that Legislature unambiguously granted
21 legislative body of city power over revenue bonds where statute stated that “legislative body” of city was
22 authorized to create special fund by ordinance and holding that initiative requiring revenue bonds
23 authorized under statute be subject to voter ratification was outside scope of initiative power); *Anderson*,
24 123 Wn.2d at 153-54 (finding that RCW 36.70A.210, which stated, among other things, “[t]he legislative
25 authority ... shall adopt a county-wide planning policy” and “[i]f a county fails for any reason to convene
26 a meeting” clearly and explicitly instructed county legislative body to take that action, thereby barring
referendum on ordinance adopting procedures to develop countywide planning) (emphasis added);
Brisbane, 125 Wn.2d 345 (holding that Legislature granted local legislative body power to implement
Growth Management Act, chapter 36.70A RCW, and thus local citizens may not exercise referendum or
initiative power to limit, modify, or overturn local legislative body’s actions under act); *McFarland*, 159
Wn.2d at 177 (“[T]he legislature may use the phrase ‘legislative authority’ and ‘county’
interchangeably.”).

- 1 • First, the proposed Initiative calls for the enactment of a new chapter of the
2 Bellingham Municipal Code “by the people of the City of Bellingham,” not the
3 Bellingham City Council. *See* Razor Decl., Ex. E. The new chapter of the
4 Municipal Code to be enacted by direct legislation would involve the City’s use,
5 and certain guidelines for the use, of safety cameras. *Id.*
- 6 • Second, the proposed Initiative would impose a new voting requirement not
7 contemplated under RCW 46.63.170, namely, that before any safety camera may
8 be installed or used, the majority of the people must first approve the system. *Id.*
- 9 • Third, the proposed Initiative would impose a limitation on the fines that may be
10 assessed by the City of Bellingham for infractions detected through the use of
11 safety cameras. *Id.*
- 12 • Finally, the proposed Initiative will directly conflict with code provisions
13 established by an existing local ordinance governing the use, and standards for the
14 use, of safety cameras. *Id.* at Exs. A, B, E.

15 An initiative “cannot interfere with the exercise of a power delegated by state law to the
16 governing body of the city.” *See, e.g., Priorities First v. City of Spokane*, 93 Wn. App. 406, 411,
17 968 P.2d 431 (1998) (affirming trial court order finding that initiative exceeded proper scope
18 when it interfered with city council’s authority under RCW 35.41 to create fund to defray costs
19 of municipally owned parking facility). The above-listed examples show that the scope of the
20 proposed Initiative goes straight to the heart of a subject matter reserved for the Bellingham City
21 Council: enactment of legislation governing the use, and standards for the use, of safety
22 cameras.

23 Washington courts have routinely declared as invalid initiatives that go beyond the scope
24 of initiative power, and stricken such measures from the ballot. *See, e.g., City of Port Angeles*,
25 145 Wn. App. at 883 (“Because the trial court ruled properly that the initiatives are invalid, we
26 will not issue a decree pursuant to RCW 35.17.290 to place the initiatives on the ballot.”); *Yes*
for Seattle, 122 Wn. App. at 388-91 (affirming trial court’s decision to strike initiative from
ballot because initiative was outside scope of initiative power); *Philadelphia II*, 128 Wn.2d at
709 (holding initiative went beyond scope of power reserved to people and should not appear on
ballot); *McFarland*, 159 Wn.2d at 173 (holding that courts may exercise their inherent power to

1 keep invalid initiatives from ballot). Consistent with this body of Washington law, the proposed
2 Initiative should be declared invalid as beyond the scope of the local initiative power and the
3 Court should prohibit inclusion of the proposed Initiative on the ballot.

4 **d. Actions Affecting Administrative Matters, Rather than Legislative**
5 **Matters, Are Not Subject to Initiative.**

6 An independently sufficient basis for declaring the proposed Initiative invalid is the fact
7 that it involves administrative, and not legislative, matters. Actions that are administrative in
8 nature, rather than legislative, are not subject to the local initiative power. *Ruano*, 81 Wn.2d at
9 823. A local government action is administrative if it involves pursuit of a plan that the local
10 government itself has adopted or of a plan adopted by some power superior to the local
11 government. *City of Port Angeles v. Our Water – Our Choice*, 170 Wn.2d 1, 239 P.3d 589
12 (2010) (holding that city’s fluoridation of its water supply was administrative action because it
13 was done pursuant to a comprehensive program set out by the State Department of Health and
14 Board of Health); *Heider v. City of Seattle*, 100 Wn.2d 874, 876, 675 P.2d 597 (1984) (holding
15 that ordinance renaming city street from Empire Way to Martin Luther King Jr. Way was
16 administrative action because it was done pursuant to framework detailed in existing City street-
17 naming ordinance).

18 Here, the Legislature has outlined a detailed program and limitations under which cities
19 and counties may use safety cameras. In RCW 46.63.170, the Legislature:

- 20 • Limits the use of safety cameras to stoplights at two-arterial crossings, school
21 speed zones, and railroad crossings;
- 22 • Limits the images taken by safety cameras to images of vehicles and license
23 plates, taken only while an infraction is occurring;
- 24 • Specifies the exact manner in which notices of infraction must be mailed;
- 25 • Specifies that relevant images must be made available for inspection in
26 proceedings to adjudicate liability;

- 1 • Specifies how a registered owner may respond to a notice of infraction;
- 2 • Requires that all images are solely for use of law enforcement, are not open to the
- 3 public, and may be used in court only in a proceeding under the statute;
- 4 • Requires all safety camera areas to be clearly marked as such;
- 5 • Specifies that a manufacturer or vendor of safety cameras may be paid only based
- 6 upon the value of the equipment and services involved, and not based upon a
- 7 portion of fines collected;
- 8 • Specifies that infractions will not be made part of a registered owner's driving
- 9 record;
- 10 • Provides a method for a registered owner to show that he or she was not using the
- 11 vehicle at the time of infraction; and
- Includes a detailed definition of safety cameras.

12 Because Bellingham Ordinance No. 2010-12-064 involves the pursuit of a plan adopted
13 by the Legislature, the ordinance may be deemed an administrative action, rather than a
14 legislative action. As such, in addition to the argument set forth it is not subject to the local
15 initiative power. The proposed Initiative addresses the same subject matter: the use of safety
16 cameras, and follows the Legislature's detailed plan for their use. Thus, the proposed Initiative
17 addresses administrative matters and is beyond the scope of the local initiative power.

18 The administrative nature of the actions here is further demonstrated by the fact that the
19 City has already entered into a contract with ATS for the installation and operation of safety
20 cameras throughout the City. In *Ruano*, the Washington Supreme Court held that where the
21 County had declared its intention to build a domed stadium and then entered into contracts for
22 that work, an initiative attempting to overturn those contracts was directed at administrative
23 matters and therefore beyond the scope of the initiative power. *Ruano*, 81 Wn.2d 820. In this
24 case, not only is the City pursuing a plan adopted by the Legislature, but the Initiative would also
25 overturn a contract that the City is currently administering. As in *Ruano*, the proposed Initiative
26

PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION - 12

1 involves an attempt to overturn a city contract directed at administrative matters and therefore
2 unlawfully exceeds the scope of the local initiative power. *See id.*

3 **2. ATS Has a Well-Founded Fear of Immediate Invasion of its Rights.**

4 The Whatcom County Auditor has already certified the proposed Initiative for inclusion
5 on the November 2011 ballot in Bellingham. The Bellingham City Council has already voted to
6 take no action with respect to the proposed Initiative, which under the City's charter means the
7 proposed Initiative is slated for inclusion on the ballot. Razor Decl., Exs. D, H. The County
8 Auditor anticipates a final deadline of approximately September 7, 2011 to print ballots for the
9 general election. By no later than August 16, 2011, the County Auditor must receive a resolution
10 from the City, requesting inclusion of the proposed Initiative on the ballot. Finally, by
11 approximately August 31, 2011, the County Auditor anticipates sending the voter's pamphlet to
12 the printer. ATS therefore has a well-founded fear of immediate invasion of its rights, as
13 placement of an invalid and unlawful Initiative on the ballot is imminent.

14 **3. Defendants' Actions Will Result in Actual and Substantial Injury to ATS.**

15 If passed, the proposed Initiative would likely have the effect of forcing the City to
16 terminate its binding contract with ATS. As a result, ATS would be caused actual and
17 substantial injury. ATS would not only lose the value of the Contract, it would also be harmed
18 by having to uninstall equipment and take other related actions, all without the direct ability to
19 recoup its costs as budgeted over the life of the Contract. *See* Razor Decl., Exs. C, E.

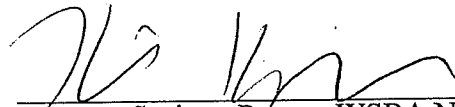
20 In any event, Washington courts have routinely granted injunctive relief without
21 requiring separate proof of harm where, as here, an initiative goes beyond the scope of the
22 initiative power. *See, e.g., Ruano*, 81 Wn.2d 820 (affirming trial court's issuance of injunctive
23 relief enjoining submission of invalid initiative); *Yes for Seattle*, 122 Wn. App. at 385, 391
24 (affirming trial court's decision to strike initiative from ballot where initiative was found to be
25 beyond initiative power); *Philadelphia II*, 128 Wn.2d at 709 (holding that although Attorney
26 General had no right to refuse to prepare ballot title and summary for initiative, court would not

1 require Attorney General to do so because initiative is beyond scope of Washington's initiative
2 power and Attorney General would likely seek injunction if court remanded case).

3 **V. CONCLUSION**

4 The Legislature's clear grant of power to local legislative authorities to enact ordinances
5 for the use of safety cameras precludes local initiatives on the subject matter. In addition,
6 initiatives dealing with purely administrative actions are not subject to the local initiative power.
7 Here, the proposed Initiative exceeds the scope of the local initiative power because it involves
8 administrative matters and, even if legislative, involves legislative matters reserved for the city
9 council. For all the foregoing reasons, the City, County, and Initiative Sponsors should be
10 enjoined from taking any action to include the proposed Initiative on the ballot.

11 DATED: July 28, 2011.

12
13 

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24 Attorneys for Plaintiff
25 American Traffic Solutions, Inc.
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FILED
MAY 20 2011
Kim Morrison
Chelan County Clerk

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CHELAN

CITY OF WENATCHEE, a Washington
municipal corporation,

Plaintiff,

AMERICAN TRAFFIC SOLUTIONS,
INC., a Kansas corporation,

Intervenor-Plaintiff,

v.

WE THE PEOPLE WENATCHEE, a
Washington Non-profit corporation; WA
CAMPAIGN FOR LIBERTY, a
Washington non-profit corporation;
VOTERSWANTMORECHOICES.COM,
an unknown entity; BANCAMS.COM, a an
unknown entity; CHELAN COUNTY, a
political subdivision of the State of
Washington; SKIP MOORE, in his official
capacity as Chelan County Auditor,

Defendants,

MATT ERICKSON, an individual,

Intervenor-Defendant.

No. 11-2-00221-1

ORDER GRANTING CITY OF
WENATCHEE'S MOTION FOR
DECLARATORY JUDGMENT AND
INJUNCTIVE RELIEF

ORDER GRANTING CITY OF WENATCHEE'S MOTION FOR
DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF - 1

1 THIS MATTER came before the Court on the City of Wenatchee's Motion for
2 Declaratory Judgment and Injunctive Relief. The Court heard the arguments of counsel and
3 considered the following:

- 4 1. City's Motion for Declaratory Judgment and Injunctive Relief ("Motion");
- 5 2. Declaration of Allison Williams;
- 6 3. Intervenor-Plaintiff American Traffic Solutions, Inc.'s ("ATS") Joinder in the
7 City's Motion;
- 8 4. Brief of Amicus Curiae, Washington State Association of Municipal Attorneys;
- 9 5. Intervenor-Defendant Matt Erickson's Opposition to City's Motion;
- 10 6. Fifth Declaration of Matt Erickson ("Erickson") in Opposition to City's Motion;
- 11 7. Erickson's Opposition to ATS's Joinder in City's Motion;
- 12 8. City's Reply in Support of Motion;
- 13 9. Declaration of Gary Owen;
- 14 10. Declaration of Jennene Ring; and
- 15 11. Records and Files herein.

16 Being fully advised, the Court hereby **ORDERS** that the City's Motion is **GRANTED**;

17 **AND**, the Court **FURTHER DECLARES** that:

- 18 1. Under RCW 46.63.170, the Washington State Legislature expressly delegated
19 power to local legislative authorities to determine a city's use and operation of automated traffic
20 safety cameras;
- 21 2. That legislative grant of authority precludes local initiatives and referenda on the
22 subject; and
- 23 3. Proposed Wenatchee Initiative No. 1 is invalid because it exceeds the scope of the
24 local initiative and referendum power.

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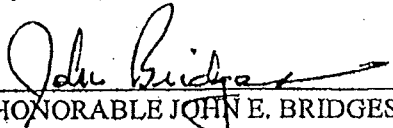
**ORDER GRANTING CITY OF WENATCHEE'S MOTION FOR
DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF - 2**

1 AND the Court FURTHER ORDERS that:

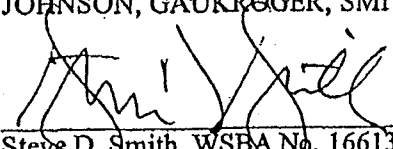
2 1. Defendants We The People Wenatchee, WA Campaign For Liberty,
3 VotersWantMoreChoices.Com, Bancams.Com, and Intervenor-Defendant Matt Erickson are
4 enjoined from ^{submitting} taking any action to include proposed Wenatchee Initiative No. 1 on the ballot;
5 *to the city of Wenatchee and/or Chelan County For inclusion on the ballot,*
and

6 2. Defendants Chelan County and Skip Moore (in his official capacity as Chelan
7 County Auditor) are enjoined from taking any action to process proposed Wenatchee Initiative
8 No. 1 or to include proposed Wenatchee Initiative No. 1 on the ballot.

9
10 DONE IN OPEN COURT this 20th day of May, 2011.

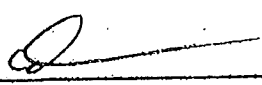
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12 HONORABLE JOHN E. BRIDGES

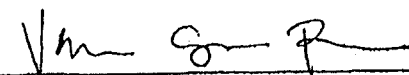
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14
15 Presented by:
16 JOHNSON, GAUKROGER, SMITH & MARCHANT, P.S.

17 
18 Steve D. Smith, WSBA No. 16613
19 Attorneys for City of Wenatchee.

Approved as to form:

20
21 STOEL RIVES LLP


22 Matt Erickson

23 
24 Vanessa Soriano Power, WSBA No. 30777
25 Gloria S. Hong, WSBA No. 36723
26 Attorneys for American Traffic Solutions, Inc.

ORDER GRANTING CITY OF WENATCHEE'S MOTION FOR
DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF - 3

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF CHELAN

CITY OF WENATCHEE, a Washington
municipal corporation,)

Plaintiff,)

AMERICAN TRAFFIC SOLUTIONS,
INC., a Kansas corporation,)

Intervenor-Plaintiff,)

vs.)

WE THE PEOPLE WENATCHEE, a
Washington non-profit corporation;)
WA CAMPAIGN FOR LIBERTY, a)
Washington non-profit corporation;)
VOTERSWANTMORECHOICES.COM, an)
unknown entity; BANCAMS.COM, an)
unknown entity; CHELAN COUNTY, a)
political subdivision of the)
State of Washington; SKIP MOORE,)
in his official capacity as)
Chelan County Auditor,)

Defendants.)

MATT ERICKSON, an individual,)

Intervenor-Defendant.)

No. 11-2-00221-1
Court's Oral Decision

RECEIVED
JUN - 1 2011
STOEL RIVES LLP

VERBATIM REPORT OF PROCEEDINGS

BE IT REMEMBERED that on the 20th day of MAY, 2011, the
above-entitled and numbered cause came on for hearing before
the HONORABLE JOHN E. BRIDGES at the Chelan County Law &
Justice Building, Wenatchee, Washington.

COPY

LuAnne Nelson, Official Court Reporter
P.O. Box 880, Wenatchee, WA 98807 509-667-6209

APPEARANCES

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FOR THE PLAINTIFF: Steve D. Smith
Johnson, Gaukroger, Smith &
Marchant
P.O. Box 19
Wenatchee, WA 98807

FOR THE INTERVENOR-PLAINTIFF: Vanessa Soriano Power
Stoel Rives
600 University Street
Suite 3600
Seattle, WA 98101

FOR THE INTERVENOR-DEFENDANT: Matt R. Erickson
1311 N. Western Avenue, #304
Wenatchee, WA 98801

REPORTED BY: Ms. LuAnne Nelson
Official Court Reporter
P.O. Box 880
Wenatchee, WA 98807

* * *

THE COURT: All right. Folks, it probably comes as no
huge surprise that normally when we have a case like this
where no one is giving testimony, the Court really needs to be
prepared to give a decision at the end of the case because I
spent hours actually reading your materials because there were
a lot of materials and also a lot of cases to review and
actually try to understand. Sometimes you can read a case and
say, I know what that says, and then sometimes you can read a
case and just get whiplash from shaking your head wondering
what they're talking about. In most cases it was the latter
situation here. But I'm prepared to give a decision now
because I think I just need to for everybody's sake so we all
know where we're at.

LuAnne Nelson, Official Court Reporter
P.O. Box 880, Wenatchee, WA 98807 509-667-6209

1 This case is before the Court today, as you folks know,
2 first of all upon the City's motion for declaratory judgment
3 and also seeking an injunction. And the case is before the
4 Court secondarily, not less importantly, upon Mr. Erickson's
5 motion for declaratory judgment and he also is asking for the
6 Court, in essence, to declare certain portions of the
7 ordinance and/or the contract between the City and ATS as
8 invalid and violating the statute we're going to talk about in
9 a moment, and he's also asking for damages and attorney's fees
10 and costs, and we'll go through those briefly in a moment.

11 The focus of the two motions in my mind is the issue of
12 the automatic -- I'm sorry, automated traffic safety cameras.
13 From Mr. Erickson's perspective as it involves the traffic
14 cameras, the issue focuses upon Wenatchee City Ordinance
15 2009-10 and, as I've said, his argument that that ordinance is
16 unlawful, if not in actuality, then as applied, and does not
17 comply with RCW 46.63.170 and that he and the other proponents
18 of what I think is known as Wenatchee Initiative Number 1
19 should be permitted to go forward with the collection of
20 signatures and thereafter submit the initiative petition to
21 the voters of the City of Wenatchee to decide, I think,
22 whether the City should use automatic traffic safety cameras
23 and, if so, particularly whether the fine should be at a
24 reduced amount, I think at the least amount imposed for any of
25 the City's parking violations.

1 On the other hand, the City of Wenatchee is asking the
2 Court to enjoin the collection of further signatures by Mr.
3 Erickson, and perhaps others, with respect to Wenatchee
4 Initiative Number 1 and declare the initiative invalid. We
5 have heard this morning a lot of argument, some pretty clear
6 and some based on the Constitution, some based on a statute
7 which incorporates portions of the Constitution as it relates
8 to initiative and referendum to the City of Wenatchee not
9 through the Constitution itself but, rather, through, I think
10 it's RCW 35A which is how the city form of government has been
11 formed, and then other more esoteric arguments relating to how
12 our courts for, oh, a number of years have looked at
13 initiatives, referendums, the Constitution, the right of the
14 people to petition for initiatives and as that may have not
15 been modified necessarily but perhaps diluted somewhat when
16 we're talking about the right as it applies to a local
17 jurisdiction like the City of Wenatchee.

18 RCW 46.63, which is the statute where this automatic
19 traffic safety camera section falls, has a title of
20 Disposition of Traffic Infractions. And when you look at the
21 table of contents for RCW 46.63, you see that there's a
22 legislative intent portion which I'm going to refer to. It
23 talks about violation of traffic infractions, notice of
24 traffic infractions, jurisdiction of the courts, training of
25 judicial officers, how people respond to notices of infraction

1 once they've been issued, how hearings are conducted and what
2 mitigation circumstances may be and how they're handled within
3 the court system and a whole host of things that relate to
4 infractions.

5 RCW 46.63.010 is the legislative intent portion of this
6 statute. Ms. Power has talked about that. And it states as
7 follows: "It is the legislative intent in the adoption of
8 this chapter in decriminalizing certain traffic offenses to
9 promote the public safety and welfare on public highways and
10 to facilitate the implementation of a uniform and expeditious
11 system for the disposition of traffic infractions." That
12 particular statement of the legislative intent of RCW 46.63
13 was first enacted in 1979.

14 Then, as we now know, in, oh, maybe 2005 -- I happen to
15 have a later version of this particular statute, but the State
16 legislature passed RCW 46.63.170, the statute which really
17 brings us here today, and that statute is subtitled Automated
18 Traffic Safety Cameras - Definition and it provides in
19 subsection (1) -- and I'm only going to go through two
20 subsections. It provides in subsection (1) as follows: "The
21 use of automated traffic safety cameras for issuance of
22 notices of infraction is subject to the following
23 requirements. Subsection (a): The appropriate local
24 legislative authority must first enact an ordinance allowing
25 for their use to detect one or more of the following:

1 Stoplight, railroad crossing, or school speed zone violations.
2 At a minimum, the local ordinance must contain the
3 restrictions described in this section and provisions for
4 public notice and signage." And then the statute goes on
5 through subsections (a), (b), (c), (d), (e), (f), (g), (h) and
6 (i), and in some respects other subsections to set forth the
7 restrictions. Subsection (5) defines automated traffic safety
8 cameras as a device that uses a vehicle sensor installed to
9 work in conjunction with an intersection traffic control
10 system. That's the statutory language.

11 It is the City's position -- again, I don't want to
12 mischaracterize, but I think principally it's their position
13 that the language in subsection (1)(a) grants to, in this case
14 the City of Wenatchee, the local legislative authority to
15 enact this statute on a local level, which the City did in
16 Ordinance 2009-10, and that because of the language of
17 subsection (1)(a), which references local legislative
18 authority, then that has taken away from the citizens of
19 Wenatchee, as voters, the right to exercise their initiative
20 rights granted to them through other state statutes.

21 The words "local legislative authority" is not just
22 something that appears in the statute. It is language that
23 has been defined by any number of cases in the State of
24 Washington and it has been defined as meaning exactly what it
25 says, that is, it becomes a term of art, in essence, and that

1 the reference to local legislative authority in fact means the
2 mayor and the city council and does not mean or is intended to
3 mean as being inclusive of the voters of the City of
4 Wenatchee.

5 I'm not going to go through a lot of cases, but I will
6 talk just briefly about some because ultimately, the only
7 guidance the Court has here, of course, is not what the Court
8 thinks specifically the law is but what the Court believes
9 higher courts say the law is. In the City of Port Angeles
10 case -- this is at the appellate level -- the Court stated
11 that pre-election review of an initiative is disfavored but
12 appropriate when the initiative is beyond the scope of the
13 initiative power. And, of course, here Mr. Smith is arguing
14 that because the Court should focus upon subsection (1) (a) of
15 RCW 46.63.170, it's clear that the initiative that Mr.
16 Erickson and others are proposing is beyond the scope of the
17 initiative power.

18 The Court also in the City of Port Angeles case, which
19 was, by the way, a fluoridation case, whether water should or
20 should not be fluoridated, said that initiative rights do not
21 extend to matters that state law delegates exclusively to
22 local legislative authorities. And not only this court but
23 any number of courts have indicated, in giving guidance to a
24 judge like me, that courts do not review initiatives for
25 whether the proposed law is good public policy but do review

1 initiatives for whether they would be lawful, if approved.
2 Unlike statewide initiatives, trial courts review the
3 substance and nature of local initiatives before they are
4 submitted to the voters because local initiatives must be
5 consistent with state laws.

6 In a case cited by Mr. Erickson, a case which is
7 entitled Coppernoll, C-o-p-p-e-r-n-o-l-l, our Supreme Court
8 stated this. I think this is at page 321. "The initiative is
9 the first power reserved by the people in the Washington
10 Constitution. Constitution Article II, Section 1(a). Adopted
11 in 1911, the right of initiative is nearly as old as our
12 Constitution itself, deeply ingrained in our state's history,
13 and widely revered as a powerful check and balance on the
14 other branches of government. Accordingly, this potent
15 vestige of our progressive era past must be vigilantly
16 protected by our courts."

17 And the Coppernoll court also -- and I don't know who
18 wrote this opinion. Justice Johnson -- stated that, "It has
19 been a long-standing rule of our jurisprudence that we refrain
20 from inquiring into the validity of a proposed law, including
21 an initiative or referendum," whereupon, our Supreme Court
22 inquired into the law, and just as they seem to always do.
23 The Coppernoll case was interesting particularly for trial
24 attorneys because there was an attempt to reduce the recovery
25 of what's called in the law noneconomic damages -- lay

1 citizens usually refer to that as general damages -- so they
2 would be limited and the Supreme Court found that that should
3 not happen. And I don't think there's any point in going
4 through the other cases because they generally follow that
5 same rationale.

6 I will indicate that one case which is -- if I can find
7 the first page of it -- the Seattle Building and Construction
8 Trades Council case -- it's a 1980 case -- at page 746 set out
9 a long list or a summary of cases involving initiatives and a
10 review of initiatives and when the Court should consider them
11 and not consider them under the context we're here today on,
12 and counsel have referred to this case, but that included
13 zoning issues; one case, I think it was the Spellman case,
14 involving whether or not the Kingdome should be built; cases
15 involving water systems; one case involving an initiative to
16 do away with a municipal charter; a whole host of bond cases
17 and other cases that dealt with what the Court ultimately
18 determined were administrative actions. And so it's not
19 uncommon for, unfortunately, courts to be involved in these
20 kinds of issues.

21 Mr. Erickson concluded his arguments today, I think,
22 that if the Court -- he didn't say this, if the Court's unable
23 to make up its mind, but if the Court was having difficulty, I
24 think, resolving this, that all doubt should be resolved in
25 favor of letting the people vote. Certainly that, I think, is

1 the correct proposition. But -- I don't know if it's a
2 function of age or that the cases are getting more difficult,
3 but things are not easy. Legal issues are not necessarily
4 easy to decide. And certainly, I think, as we get older, we
5 maybe appreciate our constitutional rights more than we did
6 when we were younger and weren't having them battered so much
7 over periods of time. Ultimately here, I think the Court has
8 to be guided not only by the cases that have been cited to the
9 Court by Mr. Smith, Ms. Power and Mr. Erickson, but also the
10 statute because you just can't put this statute aside and
11 pretend like it doesn't exist.

12 So once again, I'll say subsection (1)(a) of RCW
13 46.63.170 provides that the appropriate local legislative
14 authority must first enact an ordinance. And based on that
15 language and the cases that have been referenced to me, I'm
16 going to conclude that the state legislature specifically
17 delegated authority to operate, to set up traffic safety
18 cameras and to then impose the restrictions and/or conditions
19 upon their use only in this case to the Wenatchee City Council
20 and, of course, the mayor and not to the local citizens.

21 If the legislature -- first of all, in going through
22 statutory construction, the Court believes that if the
23 legislature intended that this particular issue of automated
24 traffic safety cameras would have been or could have been or
25 should be subject to the right of initiative, they could

1 simply have either said so or, I think more -- more
2 appropriate, not used the words "local legislative authority,"
3 but they didn't. And again, in accord with statutory
4 construction, one has to approach this statute and its
5 analysis and its interpretation with believing the legislature
6 intended to do what they did and intended to use the words
7 that they did and did not use those words inartfully. And our
8 case law, as I've said, puts significant meaning on that
9 language, local legislative authority.

10 Now, I'm not here to beat down Mr. Erickson's
11 arguments. I wouldn't do that and I can't do that, but I do
12 have to mention that Mr. Erickson, in both his oral
13 presentation and, more significantly, in his written
14 materials, has pointed out to the Court that in other parts of
15 this statute, there is a reference to county or city. The
16 first is in the same section that talks about local
17 legislative authority and that particular section says this:
18 Cities and counties using automated traffic safety cameras
19 before July 24, 2005, are subject to the restrictions
20 described in this section but are not required to enact an
21 ordinance.

22 I don't find that as necessarily persuasive language to
23 cause me to believe that the legislature was either confused
24 or was then backing up from the language they used in two
25 sentences previously, because I understand that prior to July

1 24, 2005, there were no statutes at all that either dealt with
2 or regulated automated traffic safety cameras and that the
3 corporate entities, the cities, the counties, could adopt
4 legislation or could enact ordinances providing for the use of
5 these cameras. There were no restrictions, there were no
6 standards and they just did it. And I understand that in some
7 cases, that's exactly what happened.

8 In that sentence in subsection (1)(a) that talks about
9 cities and counties, it's not saying cities and counties, you
10 have to adopt an ordinance, because they don't according to
11 the sentence and the language of this particular portion of
12 the statute. It just says cities and counties, you have to
13 impose these restrictions. And in my mind -- and I'm sorry we
14 have to cut these lines so fine, but in my mind, that is an
15 administrative action. You've got an ordinance. You've got
16 to now put some frosting on this ordinance, I guess, so to
17 speak, and put all these restrictions in that our state
18 legislature felt for some reason -- and I haven't read the
19 legislative history of this statute -- were appropriate.

20 Mr. Erickson also points out, and he's correct, that
21 subsection (1)(i) again refers to county or city. It states
22 that if a county or city has established an authorized
23 automated traffic safety camera program, then the compensation
24 paid to the manufacturer or the vendor of the equipment must
25 be based solely on the value of the equipment. Again, to me,

1 that references an administrative action of the corporate
2 entity and certainly is not specifically directed to,
3 obviously, the local legislative authority, so I think there
4 are two things going on in the statute depending upon whether
5 or not the local entity, the cities or counties, are adopting
6 the ordinance to use the camera and then the restrictions or
7 they've already got the cameras and now they have to adopt the
8 restrictions so that the state law is pretty much uniform
9 everywhere in the State of Washington.

10 It's my sense, after looking at all of the materials,
11 to include Ordinance Number 2009-10, that the City, utilizing
12 as its foundation RCW 46.63.170, adopted the use of automated
13 traffic safety cameras and the restrictions set out in the
14 statute which are required. And so the Court believes that at
15 least at this particular court level, that it simply can't
16 disregard either prior case law defining local legislative
17 authority, those terms, or the language of subsection (1)(a)
18 of RCW 46.63.170 and so the Court will grant the City's motion
19 for declaratory judgment and injunctive relief.

20 The second component of the argument here is whether or
21 not the proposed Wenatchee Initiative Number 1 would violate
22 both federal and state constitutional prohibitions on
23 impairment of contract. I'm going to not rule on that issue
24 today because I don't think I have to rule today on that
25 issue. I have before me -- I think there's four elements the

1 Court has to address to determine whether or not the contract
2 between the City and ATS has been impaired, but I think
3 actually it would be more like an advisory ruling at this
4 point, which although at least two courts, Supreme Court
5 decisions have seemingly talked about and then went ahead and
6 addressed the underlying issue but most other courts have not,
7 and I think the better approach is to not do that, so I won't.

8 Mr. Erickson, as I've indicated, has submitted his
9 declaration for declaratory judgment and injunctive relief and
10 although he has not talked about everything today in court
11 that he talked about in his written materials, I at least want
12 to summarize those arguments that he has made. First, Mr.
13 Erickson has asked the Court to declare invalid Wenatchee City
14 Ordinance Number 2009-10 as well as City Ordinance Number
15 2009-30, Wenatchee City Code 8.06.050 and Wenatchee City Code
16 Chapter 8.064 of violating RCW 46.63.170.

17 Secondly, he's asked the Court to declare that the
18 March 26, 2009 contractual agreement between the City and
19 American Traffic Solutions to install these cameras is invalid
20 for violating the statute 46.63.170 and particularly
21 subsection (1). Third, he asked the Court to dismiss with
22 prejudice the City's complaint for declaratory judgment and
23 injunctive relief. He asked the Court to dismiss with
24 prejudice American Traffic Solution, Incorporated's complaint
25 in intervention. He asked, number five, for the Court to

1 declare the current implementation of automated traffic safety
2 cameras in Wenatchee invalid and unenforceable for violating
3 the state statute we've been talking about as well as
4 subsection .030 and .085 of RCW 46.63.

5 Sixth, he asked the Court to order the City and ATS to
6 return to original owners all fees, fines and penalties that
7 were improperly collected under the illegal implementation of
8 46.63.170 and to order the City and ATS to cancel all fees,
9 fines and penalties yet owing. Seventh, he asked the Court to
10 enjoin the Chelan County District Court from enforcing the
11 city ordinance. Eighth, he asked the Court to declare that
12 RCW 46.63.170 subsection (2) prevents the amount of fine
13 issued for an infraction generated through use of the traffic
14 safety cameras from exceeding the amount of the fine issued
15 for other parking violations within the jurisdiction and to
16 really impose that fine at the lowest parking violation level.

17 Ninth, he asked the Court to declare that RCW 46.63.170
18 does not grant cities and counties or their local legislative
19 authority original power per se to use automated traffic
20 safety cameras but merely imposes requirements on cities and
21 counties which use or want to begin using the cameras as a
22 pre-condition to the use or continued use of the cameras.

23 Tenth, he asked the Court to award Intervenor-Defendant Mr.
24 Erickson with a judgment and also then to award him his costs
25 and attorney's fees and to award all attorney's fees and costs

1 pursuant to a particular court rule, CR 11. And the last two
2 is to award Mr. Erickson with his damages in the amount to be
3 determined and then to award such additional relief as the
4 Court may deem just and equitable.

5 Mr. Erickson -- I can't remember how many pages -- a
6 lot of pages. Mr. Erickson's motion was, I think, 50 pages,
7 which I've read, and then there were a series of declarations
8 that Mr. Erickson submitted which, in essence, attached some
9 exhibit type material, which I've read. And after reading all
10 of that, and the City and ATS in some sense replied to Mr.
11 Erickson's motion for declaratory judgment and injunctive
12 relief, the Court is going to deny that relief.

13 In part, I started with whether or not I felt there was
14 sufficient evidence and legal argument before the Court -- I
15 call that factual and legal argument -- to support a decision
16 that Wenatchee City Ordinance 2009-10 was invalid and/or did
17 not properly incorporate, either as drafted or as applied, the
18 proscriptions of RCW 46.63.170, and I'm not convinced that
19 this ordinance is invalid or the application of the ordinance
20 is invalid whether it relates to signage or really for any
21 other reason here and so the Court's going to dismiss Mr.
22 Erickson's claims. He's also made what I guess I would call
23 some civil rights claims, but I think in view of the Court's
24 rulings here, those will be included, so the Court's going to
25 deny Mr. Erickson's motion and grant the City's.

1 I'm not real happy with this, of course, but my job is,
2 Mr. Erickson, Mr. Smith and Ms. Power, as you know, is to
3 follow the law as best I can. I'm certainly not infallible.
4 And, Mr. Erickson, for your benefit, I mean, I have the utmost
5 respect actually for you and for your passion.

6 MR. ERICKSON: Thank you, Your Honor.

7 THE COURT: I do. And I certainly appreciate all the
8 work you've done on this. Mr. Smith, would you draft all of
9 the final pleadings, please.

10 MR. SMITH: Your Honor, we actually have an order.

11 THE COURT: Run it by Mr. Erickson.

12 MR. SMITH: Sure.

13 THE COURT: Please.

14 MR. SMITH: Your Honor, I provided Mr. Erickson with a
15 copy. We have an order denying his motion. We also have an
16 order granting the City's motion and I've provided him with
17 copies to look at, so if I may, I'd hand forward to the Court
18 a copy.

19 THE COURT: Let's see if Mr. Erickson has any problems
20 with those first because I'd like him to sign them.

21 (Pause in the proceedings)

22 MR. ERICKSON: Your Honor, I do have one question on
23 the City's motion granting -- or the order granting the City's
24 motion. It says, "And the Court" -- on the last page, page 3
25 at the top, "And the Court further orders that Defendants We

1 The People Wenatchee, Washington Campaign For Liberty,
2 VotersWantMoreChoices.Com, Bancams.Com, and Intervenor-
3 Defendant Matt Erickson are enjoined from taking any action to
4 include proposed Wenatchee Initiative Number 1 on the ballot."
5 I just wanted to clarify, the Court is ordering that?

6 THE COURT: Well, I was just thinking about that as you
7 were going through that, Mr. Erickson. I think I'd like to
8 hear some talk about not that issue so much but Mr. Erickson's
9 continued collection of signatures. I don't know what Mr.
10 Erickson is going to do, but I'm going to assume he's going to
11 appeal. If he's going to appeal, Mr. Smith and Ms. Power,
12 then my question is what, if any, harm is occasioned by the
13 continued collection of signatures as opposed to putting it on
14 the ballot?

15 MR. SMITH: We're not asking that he not collect
16 signatures. He can do whatever he wants, but we're asking
17 that it not be put on the ballot.

18 THE COURT: Mr. Erickson, that's kind of my thought
19 too. Based on my ruling, it makes some sense why you would
20 not be able to put it on the ballot right now, but it makes
21 very little sense to me why you couldn't continue to collect
22 signatures until we have a Supreme Court decision either in
23 this case or other cases that will determine whether my ruling
24 was right or wrong, and if it's wrong, then you'll be ready to
25 present it to the voters. Do you understand what my thinking

1 is here?

2 MR. ERICKSON: A little. I'm not sure fully, but I
3 guess right now then, are you saying that on this where I'm
4 enjoined from taking any action to include it on the ballot,
5 you're saying that --

6 THE COURT: Does not include the collection of
7 signatures.

8 MR. ERICKSON: Okay. So I can continue to collect --
9 by agreeing to this, I can continue to collect signatures but
10 I can't basically turn it in to the City.

11 THE COURT: Right. If there's no problem, Mr. Smith
12 and Ms. Power, we can write that in.

13 MR. SMITH: You don't have it in front of you, Your
14 Honor, so do you want to take a look at my copy. Can I see
15 your copy a minute. So what we would suggest, Your Honor, in
16 that first provision in the order at the top of page 3, that
17 right after the word -- I'll just read it. It says,
18 "Defendants We The People Wenatchee, Washington Campaign for
19 Liberty, VotersWantMoreChoices.Com, Bancams.Com and
20 Intervenor-Defendant Matt Erickson are enjoined from taking
21 any action to include proposed Wenatchee Initiative Number 1
22 on the ballot." The words "taking any action" might be too
23 broad, so what we would propose is that right after the word
24 "from," we would take out "taking any action to" so that would
25 read "enjoined from including proposed Wenatchee Initiative

1 Number 1 on the ballot."

2 MR. ERICKSON: To do what?

3 MR. SMITH: So right here we would take out the words
4 "taking any action to" so it would read "enjoined from
5 including proposed Wenatchee Initiative Number 1 on the
6 ballot" so you wouldn't be precluded from gathering
7 signatures.

8 MR. ERICKSON: What actually -- that doesn't say what
9 we can't do. I'm not --

10 MR. SMITH: It just says you can't put it on the
11 ballot.

12 MR. ERICKSON: We can't put it on the ballot. You're
13 saying we can't submit it to the City?

14 MR. SMITH: It just says you can't put it on the
15 ballot.

16 MR. ERICKSON: I don't know how we can put it on the
17 ballot.

18 MR. SMITH: The Court has ruled you can't put it on the
19 ballot.

20 MR. ERICKSON: No, I'm saying I don't know what steps
21 that entails that I can't do. I'd like to have a
22 clarification from the Court telling me what I can't do.
23 You're saying we can't submit the signatures to the City?

24 MR. SMITH: No, we wouldn't be saying that. We're just
25 saying you can't put it on the ballot that would go before the

1 citizenry of the City of Wenatchee.

2 THE COURT: Mr. Erickson, maybe we can talk about what
3 you want to do in light of the Court's ruling as far as
4 Wenatchee Initiative Number 1. I assume you want -- and I
5 don't know where you're at in your signature gathering
6 process, but let's assume, for my thinking, that you still
7 have some more to get. So you would continue to collect
8 signatures. Then what would be your next step?

9 MR. ERICKSON: If we get sufficient signatures within
10 the time constraints, I believe the next step is we turn it in
11 to the City who then passes it along to the County Auditor for
12 checking sufficiency.

13 MR. SMITH: I'm not actually sure he has to turn it in
14 to the City but it does go -- ultimately goes to the Auditor
15 for verification.

16 MR. ERICKSON: My understanding is we have to turn it
17 in to the City who passes it along to the County Auditor.

18 MR. SMITH: We don't care so much if he turns it in to
19 the City. We just don't want it on the ballot, so it needs to
20 get cut off at that point.

21 MS. POWER: The proposed order, Your Honor, does enjoin
22 the County and the Auditor as well.

23 THE COURT: I see that in subsection 2.

24 MS. POWER: That may be sufficient.

25 MR. ERICKSON: You're saying we don't need that whole

1 -- that whole paragraph number 1 then?

2 MS. POWER: I still think that that's necessary because
3 it's essentially making clear that there's not a legal right
4 at this time for you to place it on the ballot unless you get
5 other legal authority and that's specific relief that was
6 sought.

7 MR. ERICKSON: To me, if we include the paragraph
8 number 1, it has to be more specific of what we're actually
9 prevented from doing.

10 THE COURT: If we simply said -- well, I'll let you
11 folks talk first. I'm sorry to interrupt you.

12 MR. SMITH: I guess we'd like to hear your thoughts.

13 THE COURT: Well, what if we just said that Mr.
14 Erickson was enjoined from submitting the initiative petitions
15 to the County.

16 MR. ERICKSON: I believe we have to submit them to the
17 City and then the City forwards them to the County.

18 THE COURT: If you do, that's fine, that's your
19 business, but I know they have to get to the County because I
20 think --

21 MR. ERICKSON: Right.

22 THE COURT: -- it's the County that verifies the
23 signatures.

24 MR. ERICKSON: So I think you'd be enjoining the City
25 from passing it along to the County, I believe.

1 MR. SMITH: Yeah, we don't want to be in the position
2 as a city where we've got to then turn it over to the Auditor,
3 so really it needs to be enjoined at the city level. I mean,
4 there's no reason for him to turn that in to the public body
5 at that point. He can gather his signatures, but he just --
6 there's nowhere to go with it until this law changes, so I
7 think he just needs to be enjoined from submitting them to any
8 governmental body.

9 THE COURT: Well, what if we said that Mr. Erickson was
10 enjoined from submitting proposed Wenatchee Initiative Number
11 1 to the City and/or the County.

12 MR. SMITH: I'm fine with that.

13 THE COURT: He can do anything else up to that point
14 and be ready to submit.

15 MR. SMITH: If the law changes --

16 THE COURT: If I'm wrong here.

17 MR. ERICKSON: Yeah.

18 THE COURT: Because I don't want you to be delayed a
19 lot.

20 MR. ERICKSON: I'm just not -- of course, I'd rather be
21 able to submit to whoever, so it's whatever you rule.

22 THE COURT: I think that's --

23 MR. ERICKSON: I'll agree to the form once you rule.

24 MR. SMITH: That makes sense, Your Honor.

25 THE COURT: Okay. Let me see. I'm going to say --

1 let's go off the record a second.

2 (Discussion off the record)

3 THE COURT: This is how I have paragraph number 1 right
4 now, and I'll be happy to hand this down, Mr. Erickson. I'll
5 read it first and then hand it to you. "Defendants We The
6 People Wenatchee, Washington Campaign for Liberty,
7 VotersWantMoreChoices.Com, Bancams.Com and Intervenor-
8 Defendant Matt Erickson are enjoined from submitting proposed
9 Wenatchee Initiative Number 1 to the City of Wenatchee and/or
10 Chelan County for inclusion on the ballot." And number 2,
11 which I haven't changed.

12 MR. ERICKSON: Your Honor, I just have one question.
13 When it says Intervenor-Defendant Matt Erickson, is that
14 different than just Matt Erickson?

15 THE COURT: No, it's just defining you as the
16 Intervenor-Defendant in this case, which you are.

17 MR. ERICKSON: Right, but can I submit this as just
18 Matt Erickson, not a party -- can I split myself up and --

19 THE COURT: Well, I don't think so.

20 MR. ERICKSON: Okay. Just checking. I didn't know if
21 Intervenor-Defendant Matt Erickson is different legally than
22 Matt Erickson.

23 THE COURT: No, it's all the same person. It's just
24 your legal status in this case.

25 MR. ERICKSON: I didn't know if it was a different

1 legal status outside of this case where I can still turn in
2 the petition.

3 THE COURT: Oh, no, no.

4 MR. ERICKSON: Okay. Thank you.

5 THE COURT: I understand what you're saying.

6 MR. ERICKSON: Okay. So you're ordering me not in any
7 capacity to turn it in. Okay. Now, there's no place on here
8 for me to agree to form or anything.

9 THE COURT: No, but I'd like you --

10 MR. SMITH: We can add a signature line.

11 THE COURT: I'm not asking you to approve the order but
12 at least the form of the order.

13 MR. ERICKSON: There's no place where it says I approve
14 the form of the order.

15 THE COURT: Can you draw a line, Mr. Smith, please.
16 Part of this, Mr. Erickson, I mean, your appeal rights start
17 now, so I mean --

18 MR. ERICKSON: Thank you, Your Honor.

19 THE COURT: And, Mr. Smith, can you get a copy of that
20 as soon as -- Madam Clerk, when will that be in the system?

21 THE CLERK: This afternoon by 3:00.

22 THE COURT: Mr. Smith, right after 3:00 can you get a
23 copy of that to Mr. Erickson because it will be on the Liberty
24 system then.

25 MR. SMITH: Sure.

1 MR. ERICKSON: Thank you, Your Honor.

2 MR. SMITH: The only other concern I guess we have,
3 Your Honor, is to make sure the Court and Mr. Erickson are
4 okay with the findings that are spelled out here, the
5 documents that have been listed. Do you have any issue --

6 THE COURT: Mr. Smith, I didn't look at it. That's
7 just a summary of the pleadings?

8 MR. SMITH: Yeah. It's like a summary judgment motion.

9 MS. POWER: As well as the basis for the declaration so
10 it's kind of summarizing the Court's analysis under the law.
11 We just want to make sure that's consistent with your ruling.

12 MR. SMITH: It would be items 1 through 3 here at the
13 bottom of page 2.

14 THE COURT: I don't think the appellate courts are
15 going to care, however. That's my sense. They don't care why
16 I did what I did. Okay. I've signed the order granting the
17 City of Wenatchee's motion for declaratory judgment and
18 injunctive relief.

19 MR. SMITH: Okay, Your Honor, if I may, I'd hand
20 forward an order denying Matt Erickson's motion for
21 declaratory judgment and injunctive relief and he has reviewed
22 and signed that indicating he approves it as to form.

23 THE COURT: The Court is signing -- excuse me, my voice
24 is going. The Court is signing that order also. Thank you,
25 folks. Mr. Erickson, thank you.

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MR. ERICKSON: Thank you, Your Honor.

MR. SMITH: Thank you, Your Honor.

MS. POWER: Thank you.

MR. SMITH: We appreciate your hard work on this case.

(End of Court's Oral Decision)

1 STATE OF WASHINGTON)
2 County of Chelan) : ss

3 I, LuAnne Nelson, a Certified Shorthand Reporter, and
4 official reporter for Chelan County Superior Court, do hereby
5 certify:

6 That the foregoing Verbatim Report of Proceedings was
7 reported at the time and place therein stated and thereafter
8 transcribed under my direction and that such transcription is
9 a true, complete and correct record of the proceedings.

10 I further certify that I am not interested in the
11 outcome of said action, nor connected with, nor related to any
12 of the parties in said action or their respective counsel.

13
14 LuAnne Nelson
15 Official Court Reporter
CSR No. 299-06 NE-LS-OL-M464C7

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JUL 29 2011

SHIRLEY FORSLOF
WHATCOM COUNTY AUDITOR

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COUNTY CLERK

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WHATCOM COUNTY
WASHINGTON

BY _____

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR WHATCOM COUNTY

AMERICAN TRAFFIC SOLUTIONS,
INC., a Kansas corporation,

Plaintiff,

v.

CITY OF BELLINGHAM, a Washington
municipal corporation; WHATCOM
COUNTY, a political subdivision of the
State of Washington; SHIRLEY FORSLOF,
in her official capacity as Whatcom County
Auditor; WA CAMPAIGN FOR LIBERTY,
a Washington non-profit corporation;
TRANSPORTATION SAFETY
COALITION, an unknown entity;
BANCAMS.COM, an unknown entity; and
VOTERS WANT MORE CHOICES, an
unknown entity,

Defendants.

No. **11 2 01991 4**

ORDER GRANTING TEMPORARY
RESTRAINING ORDER

IRA UHRIG

This matter came before the Court on _____, 2011, on Plaintiff
American Traffic Solutions, Inc.'s ("ATS) Motion for Temporary Restraining Order and
Preliminary Injunction.

ORDER GRANTING TEMPORARY RESTRAINING ORDER - 2

1 The Court heard oral argument of counsel for ATS and _____

2 _____
3 The Court considered the following:

- 4 1. American Traffic Solutions, Inc.'s Complaint;
5 2. Plaintiff's Motion for Temporary Restraining Order and Preliminary Injunction;
6 and
7 3. Declaration of Amy Rasor in Support of Plaintiff's Motion for Temporary
8 Restraining Order and Preliminary Injunction and attached exhibits.

9 Based on the argument of counsel and the evidence presented, the Court finds:

- 10 1. ATS has demonstrated a clear legal and equitable right to the relief set forth in its
11 Complaint;
12 2. ATS will suffer immediate and irreparable injury if the Temporary Restraining
13 Order is not granted.

14 Based on the above findings, IT IS ORDERED:

- 15 1. ATS's Motion for Temporary Restraining Order is GRANTED;
16 2. Defendants City of Bellingham, Whatcom County, Whatcom County Auditor
17 Shirley Forslof, WA Campaign for Liberty, Transportation Safety Coalition, BanCams.com, and
18 Voters Want More Choices, and all other individuals and organizations in active concert and
19 participation with named Defendants, are enjoined from taking any action to place proposed
20 Bellingham Initiative No. 2011-01 on the November 2011 ballot.
21 3. This temporary restraining order shall expire on _____.
22 4. Defendants shall appear before Whatcom County Superior Court at _____
23 a.m./p.m. on _____, 2011 and show cause, if any, why they should not be
24 enjoined during the pendency of this action from the acts described in this Order.

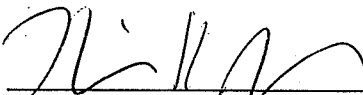
25
26
ORDER GRANTING TEMPORARY RESTRAINING ORDER - 3

1 DONE IN OPEN COURT this ____ day of _____, 2011.

2
3 _____
4 HONORABLE

5
6 Presented by:

7
8 STOEL RIVES LLP

9 
10 _____
11 Vanessa Soriano Power, WSBA No. 30777
12 Karin D. Jones, WSBA No. 42406

13 Attorneys for Plaintiff American Traffic Solutions, Inc.

14 Approved as to form: