



**RESOLUTION # 2017-05**

**RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF WEST MIAMI RATIFYING THE RETAINER AGREEMENT BETWEEN THE CITY OF WEST MIAMI AND WEISS SEROTA HELFMAN COLE AND BIERMAN, P.L. FOR SERVICES IN CONNECTION FOR LIMITED LEGAL REPRESENTATION IN CONNECTION WITH THE RED LIGHT CAMERA HEARINGS SCHEDULED FOR JANUARY 30<sup>TH</sup>, 2017 THROUGH FEBRUARY 3<sup>RD</sup>, 2017, SAID SERVICE TO BE PAID BY AMERICAN TRAFFIC SOLUTIONS, KNOWN AS ATS, PROVIDING FOR A LIMITED LEGAL RETAINER COVERING SAID SERVICE AND PROVIDING FOR EFFECTIVE DATE.**

**WHEREAS**, The City of West Miami has requested legal representation from Weiss Serota Helfman Cole and Bierman for services in connection with limited legal representation at Red Light Camera hearings scheduled between January 30<sup>th</sup>, 2017 and February 3<sup>rd</sup>, 2017; and

**WHEREAS**, American Traffic Solutions has agreed to fund the representation of the City on evidentiary hearings concerning the validity of the City's Red Light Camera Program.

**WHEREAS**, the firm's representation shall terminate automatically once matters related to the conduct of the hearing have been completed.

**NOW, THEREFORE, BE IT RESOLVED:**

**Section 1.** The aforementioned statements are true and correct and adopted as is fully stated herein.

**Section 2.** The City Manager is hereby authorized to ratify the retainer Agreement between the City of West Miami and Weiss Serota Helfman Cole and Bierman, P.L, as per the attached retainer agreement.

PASSED AND ADOPTED this 18<sup>th</sup> Day of January 2017.


APPROVED:

  
EDUARDO H. MUHIÑA, MAYOR

ATTEST:

  
ANNERY GONZALEZ, CMC  
CITY CLERK

APPROVED AS TO FORM AND SUFFICCIENCY:

  
JOSE A. VILLALOBOS, CITY ATTORNEY

ROLL CALL VOTE:

MAYOR EDUARDO H. MUHIÑA	<u>Y</u>
VICE-MAYOR CANDIDA BLANCA	<u>Y</u>
COMMISSIONER JUAN M. BLANES	<u>Absent</u>
COMMISSIONER RHONDA A. RODRIGUEZ	<u>Y</u>
COMMISSIONER LUCIANO L. SUAREZ	<u>Y</u>



# WEISS SEROTA HELFMAN COLE & BIERMAN

AT THE CROSSROADS OF BUSINESS, GOVERNMENT & THE LAW

EDWARD G. GUEDES  
[eguedes@wsh-law.com](mailto:eguedes@wsh-law.com)

January 5, 2017

Jose Villalobos, Esq. ([jose.villalobos@akerman.com](mailto:jose.villalobos@akerman.com))  
City Attorney  
City of West Miami

**Re: Retainer Agreement**

Dear Mr. Villalobos:

This letter will confirm that you have engaged our firm to represent the City of West Miami, Florida (the "City") in connection with the evidentiary hearing concerning the validity of the City's red light camera program (the "Program"), which is currently scheduled to be heard before Judge Leifman in the County Court of the 11<sup>th</sup> Judicial Circuit in and for Miami-Dade County, Florida on January 31 and February 2, 2017 (the "Hearing"). We are pleased to have this opportunity to represent the City, and we look forward to working with you in this matter.

Scope of Engagement. Our firm is retained to act as the City's lead counsel in connection with the Hearing. Please understand that by acceptance of this engagement our firm is not undertaking to represent the City or its interests in matters other than preparation for and participation in the Hearing. For this reason, if you would like for us to provide representation on other matters, we will need to confirm this by a separate agreement.

Staffing. It is anticipated that Edward G. Guedes and Samuel I. Zeskind will have primary responsibility for the City's representation, taking the lead in strategic matters, court appearances, witness preparation conferences, and other significant matters. We will involve other firm lawyers and paralegals as we believe appropriate in the circumstances. We will provide legal counsel to the City in accordance with this letter and in reliance upon information and guidance that the City provides to us. We will endeavor to keep you reasonably informed of the progress of our efforts and of any significant developments and to respond to your inquiries in the course of our engagement. This will include participating in executive sessions as requested by you.

Cooperation. To enable us to represent it effectively, the City agrees to cooperate fully with us in all matters relating to the Hearing, and to disclose to us fully and accurately all facts and documents that may be relevant or that we may otherwise request. The City agrees to make a designated representative reasonably available to attend meetings, conferences, hearings, and other proceedings, as well as make City employees who may be witnesses available for preparation for and testifying at the Hearing.

Fees and Costs. As you know, American Traffic Solutions, Inc. ("ATS") has agreed to fund the firm's representation of the City specifically in connection with the Hearing, as more fully described above. In particular, ATS will pay the reasonable and necessary fees and costs incurred by our firm in connection with our representation of the City, but solely in connection with the Hearing. As such, our firm will not look to the City to pay those fees, costs, and expenses and will look solely to ATS to do so. To signify ATS's agreement to the economic terms of our arrangement, we are asking ATS to sign this letter below agreeing to the terms in this section titled "Fees and Costs." We will provide the City with a copy of our invoices to be submitted to ATS so that it can monitor the progress of the matter.

ATS is agreeing to pay only the reasonable and necessary fees and costs incurred by our firm in connection with the Hearing. ATS is not agreeing, and does not by signing the letter agree, to pay the fees and costs of any other lawyer or law firm in connection with this Hearing. Nor is it agreeing to pay fees and costs incurred in matters other than this Hearing. To the extent the City and ATS are to agree on the payment of such other costs, such agreement must be documented in a separate writing.

We have agreed to charge and accept a discounted hourly rate of \$235 for all time expended by our attorneys. The rate multiplied by the time expended on your behalf, measured in tenths of an hour, will be the basis for determining the fee. Any paralegal working on the Hearing will be billed at an hourly rate of \$165. Should we prevail in the Hearing, the City acknowledges that we may seek an award of attorneys' fees and costs from the court at a higher rate reflecting our standard hourly rates, in addition to any "multiplier" that may be awarded, to be paid by any opposing party or his or her counsel. In the event we receive a court-ordered award of attorney's fees, that award will be applied first to reimburse ATS for the fees and costs it has paid on the City's behalf pursuant to this agreement, with our firm retaining any balance above and beyond that sum.

The firm typically incurs costs in connection with legal representation, which we will do here in accordance with ATS's billing guidelines. Such expenses may also include filing fees, deposition costs, process servers, court reporters, and witness fees. We will customarily include charges for these items in our regular invoices, payable upon your receipt. We normally do not make a separate charge for secretarial work unless there is a situation that requires overtime staff work.

We will provide ATS and you with statements after the end of every month for work performed and expenses incurred during the previous month. If any statement is not paid when due, then we must reserve the right to suspend performing legal services for you until ATS has made arrangements satisfactory to the firm for payment of any amounts due and for future services and expenses.

Because ATS is paying the fees and costs of this representation and because its interests in the Hearing are presently aligned with those of the City, we have agreed to consult with ATS on the litigation process, including concerning tactics and strategy. While we have agreed to consider ATS's opinion, ATS acknowledges that nothing contained herein shall interfere with the firm's exercise of its independent, professional judgment on the City's behalf. In addition, we will not be able to incur significant fees or expenses on the City's behalf without first having consulted

with ATS. We will provide ATS on a quarterly basis with a budget identifying the anticipated significant fee and expense items for the quarter and the fees or expenses we believe will be associated with those items.

ATS reserves the right to discontinue the payment of fees and expenses upon seven days written notice to the City if your contract with ATS for red light camera services is terminated, expires without renewal, otherwise fails to remain effective, or is breached by the City in any material respect. ATS will pay all reasonable and necessary fees expenses we incur prior to the expiration of the seven-day notice period. Upon such discontinuance, the City may continue to engage our firm as counsel in connection with the Hearing, but such engagement will be at the City's own expense.

The fees and costs relating to this matter are not predictable with certainty. Accordingly, we have made no commitment to you or ATS concerning the maximum fees and costs that will be necessary to resolve or complete this matter. Any estimate of fees and costs that we may have discussed represents only an estimate of such fees and costs. It is also expressly understood that payment of the firm's fees and costs is in no way contingent on the ultimate outcome of the matter.

Third party payment. Under the Rules Regulating the Florida Bar, our firm cannot accept compensation from a third-party (here, ATS) for representing a client (here, the City) unless (1) there is no interference with our independence of judgment or the client-lawyer relationship, (2) information concerning the lawyer-client relationship is kept confidential, and (3) the client gives informed consent. We do not perceive that our receiving compensation from ATS will interfere with our independence or the lawyer-client relationship. Both the City and ATS have a common interest in seeing red light camera programs upheld and securing the underlying principle that the City's relationship with ATS in connection with the program is permissible under law. Accordingly, the interests of the City and ATS appear to us to be aligned with respect to the subject of this engagement.

Further, we do not see any difficulty complying with our obligation to maintain client confidences with respect to this matter. Many of the facts and documents at issue in the cases are matters of public record, making the disclosure of confidential information with respect to those facts and documents unlikely. With respect to those matters that are confidential, we believe that they are adequately protected because parties who share a common legal interest may exchange attorney-client communications and work product without waiving that confidentiality where the communications are on matters related to the common interest.

Our duty of representation is first and foremost to the City; and we will advance such positions, arguments and defenses as we, in consultation with you, determine to be in the best interests of the City. Should there come a time when we, in the exercise of our independent professional judgment, determine that the City's interests in the Hearing are not aligned with those of ATS, we will immediately notify you, as well as ATS, to resolve any dispute and make a determination as to whether the current arrangement for legal representation may be continued. However, at all times, we will comply with our ethical obligation to safeguard the interests of the City as our client. Should ATS and the City be unable to reach a satisfactory resolution of any dispute, the City will retain the right, if it so desires, to continue to engage our firm in connection

Jose Villalobos, Esq.  
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with the Hearing, provided such representation is at the City's sole expense and the City's position going forward does not itself raise a conflict of interest vis-à-vis ATS.

If the City has any questions about any of the foregoing, please do not hesitate to contact me to discuss them. By signing this letter, the City agrees that it has been fully informed about our relationship with ATS and its potential implications for this engagement and that it consents to our representation in light of that knowledge.

Termination of Representation. The firm's representation shall terminate automatically once matters related to the conduct of the Hearing have been completed. The representation shall not extend to any motions for rehearing, appeals or other proceedings post-decision. The City may terminate this representation at any time by notifying us. Such termination of our services will not affect ATS's responsibility for payment of outstanding statements and accrued fees and expenses incurred before termination or incurred thereafter in connection with an orderly transition of the matter. If such termination occurs, the City's papers and property will be returned to the City promptly upon receipt of payment for outstanding fees and costs. Our own files pertaining to the matter will be retained. These firm files include, for example, firm administrative records, time and expense reports, personnel and staffing materials, credit and accounting records, and internal lawyers' work product such as drafts, notes, internal memoranda, and legal and factual research, including investigative reports prepared by or for the internal use of lawyers.

In addition, we may withdraw from representation if the City fails to fulfill its obligations under this agreement, or ATS fails to pay our fees and expenses, or as permitted or required under any applicable standards of professional conduct or rules of court, or upon our reasonable notice to the City.

Please review this letter carefully and, if it meets with the City's approval, please have an authorized representative of the City sign in the space indicated and return it to me so that we may begin work. Again, we appreciate this opportunity to be of service. Please do not hesitate to call me if you have any questions.

Very truly yours,

WEISS SEROTA HELFMAN  
COLE & BIERMAN, P.L.



Edward G. Guedes

[ACKNOWLEDGMENTS APPEAR ON THE FOLLOWING PAGE]

Accepted and agreed to this \_\_\_\_ day of January,  
2017.

**CITY OF WEST MIAMI, FLORIDA**

By: \_\_\_\_\_  
Jose Villalobos, Esq.  
City Attorney

Accepted and agreed to this \_\_\_\_ day of January,  
2017.

**AMERICAN TRAFFIC SOLUTIONS, INC.**

By: \_\_\_\_\_  
Rebecca Collins, General Counsel