



# Staff Report

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DATE: April 21, 2010  
TO: Honorable Mayor and City Council  
FROM: Steven T. Mattas, City Attorney  
SUBJECT: RESOLUTION APPROVING AGREEMENT BETWEEN THE CITY OF SOUTH SAN FRANCISCO AND THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN MATEO

## RECOMMENDATION

**It is recommended that the City Council adopt the attached resolution approving an agreement with the Superior Court of California, County of San Mateo concerning the processing of refunds for fines and fees previously paid on citations under the red-light photo enforcement program.**

## BACKGROUND/DISCUSSION

On March 25, 2009 and March 29, 2009, the Superior Court of California, County of San Mateo ("Court") issued court orders dismissing all traffic citations issued pursuant to the red light photo enforcement program. These court orders encompassed all citations issued between August 14, 2009 and February 28, 2010. In addition to ordering dismissal of all citations issued, the Court ordered that motorists be refunded all fines and fees paid under the red light photo enforcement program.

In order to facilitate prompt refund of fines paid, the City negotiated an agreement with the Court to advance the funds necessary to issue the refunds and then for the City to recover those advanced funds from the portion of future traffic citation revenues that would otherwise be payable to the State and County.

The Court does not retain fine revenues for more than a month. By law, those fine revenues must be distributed to designated state and local government agencies. Thus, the majority of the fines previously paid have already been sent to the respective state and local agencies. In order to begin issuing refunds soon, the agreement provides that the City will advance the Court \$1,500,000 ("Advance Payment"). This Advance Payment will be used by the Court to pay refunds to motorists who received citations and paid fines for the citations that were later dismissed as part of the two court orders referenced above. The Advance Payment funds will be used to fund the portion of the fine refund allocated to payments made to the State and County. The Court will return the full Advance Payment to the City after the Court has withheld fine and fee distributions otherwise payable to the County and State from future traffic citations. The City will also continue to receive its normal portion of any traffic citations fines for citations issued in the future.

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County of San Mateo

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The City will also return to the Court the portion of the fines that it has previously received related to the dismissed citations. This amount is \$237,143.


Pursuant to the agreement, the Court will "use all reasonable efforts" to issue the refunds within sixty (60) days of receipt of the Advance Payment from the City, the initial payment for court administrative costs and the City's refund of the portion of the citations fines previously sent to the City. Staff will make these payments to the Court within five days of approval of this agreement.

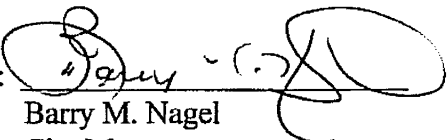
The agreement also provides that the City is responsible for paying the motorists directly for interest payments required by law on any Court-issued refund. However, in order to facilitate this, the Court will, at least on a monthly basis, provide the City with a list of each refunded amount, the date of the refund, the name of the person receiving the refund and the applicable citation number. The agreement also contains a provision that the City pay refunds for traffic school costs incurred by the motorists. The City is already processing these refunds.

The City is also responsible for any "actual and necessary" administrative costs connected with the issuance of the refunds. Under the agreement the City will provide an initial payment of \$250,000 to cover administrative costs associated with the Court refunding the fines and fees. Within forty-five (45) business days the Court will provide the City with an accounting of administrative costs incurred, and a monthly written accounting thereafter. If, the administrative costs exceed the initial \$250,000 reimbursement, the City will be invoiced monthly. If administrative costs do not reach \$250,000, the difference will be refunded to the City.

CONCLUSION

It is recommended that the City Council adopt the attached resolution approving the agreement with the Superior Court of California, San Mateo.

By:   
for Steven T. Mattas  
City Attorney

Approved:   
Barry M. Nagel  
City Manager

Attachments:  
Resolution  
Agreement

RESOLUTION NO. \_\_\_\_\_

CITY COUNCIL, CITY OF SOUTH SAN FRANCISCO, STATE OF CALIFORNIA

A RESOLUTION APPROVING AN AGREEMENT  
BETWEEN THE SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF SAN MATEO AND THE CITY OF SOUTH  
SAN FRANCISCO

WHEREAS, the City instituted a red-light photo enforcement program, and began issuing citations on August 14, 2009 as part of that program; and

WHEREAS, the People of the State of California, on behalf of the City, in the furtherance of justice and equity, filed motions requesting dismissal of the citations; and

WHEREAS, on March 25, 2010, the Superior Court of California, San Mateo ordered that all citations be dismissed, and motorists be refunded all fines and fees paid on citations issued from August 14, 2009 through January 27, 2010. On March 29, 2010, the Superior Court of California, San Mateo ordered that all citations be dismissed, and motorists be refunded all fines and fees paid on citations from January 28, 2010 through February 28, 2010; and

WHEREAS, staff recommends that the City Council approve the attached agreement between the City and the Superior Court of California, San Mateo concerning the processing of refunds for fines and fees paid on citations under the red-light photo enforcement program.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of South San Francisco that the City Council hereby approves the agreement with the Superior Court of California, San Mateo attached hereto as Exhibit A.

\* \* \* \* \*

I hereby certify that the foregoing Resolution was regularly introduced and adopted by the City Council of the City of South San Francisco at a regular meeting held on the \_\_\_\_ day of \_\_\_\_\_, 2010 by the following vote:

AYES: \_\_\_\_\_  
\_\_\_\_\_

NOES: \_\_\_\_\_

ABSTAIN: \_\_\_\_\_

ABSENT: \_\_\_\_\_

ATTEST: \_\_\_\_\_  
City Clerk

1410287.1

**Agreement Concerning Traffic Refunds  
Related to Red-Light Photo Enforcement**

This Agreement Concerning Traffic Refunds Related to Red-Light Photo Enforcement (the "Agreement") is made by, and entered into between, the Superior Court of California, County of San Mateo (the "Court") and City of South San Francisco, a political subdivision of the State of California, (the "City") (each, a "Party" and both collectively the "Parties"), on April 22, 2010 (the "Effective Date").

**Recitals**

City instituted a red-light photo enforcement program at the intersections of (1) Hickey Boulevard and El Camino Real, and (2) Westborough Boulevard/Chestnut Avenue and El Camino Real. As part of that program, on August 14, 2009, City began issuing citations to motorists for allegedly violating Vehicle Code section 21453 by failing to stop for a red traffic light.

Subsequently City determined that its contract with the red-light photo enforcement vendor, American Traffic Solutions, Inc. ("ATS"), had not been formally ratified by the City Council as required by State law. The City Council ratified City's contract with ATS at a public meeting on January 27, 2010.

By January 27, 2010, however, City's red-light photo enforcement program had generated over 6,000 citations to motorists. Since these citations had been issued before the City Council formally ratified the ATS Contract, the People of the State of California, on behalf of City, filed a motion requesting their dismissal in furtherance of justice. On March 25, Court granted that motion and ordered dismissal of the citations. Court also ordered that motorists be refunded all fines and fees paid under the red-light photo enforcement program for citations issued from August 14, 2009 through January 27, 2010.

On March 29, 2010, the People of the State of California, on behalf of City, filed a second motion requesting dismissal of more than 800 red-light photo enforcement citations that were issued between January 28, 2010 through February 28, 2010. The Motion sought dismissal in the furtherance of justice on equity grounds because City's police department had decided to stop issuing citations and, instead issue warning notices pending a City hearing on whether to continue the red light photo enforcement program, and in light of alleged legal deficiencies concerning the program. Court granted the second motion on March 29, 2010 and ordered that motorists be refunded all fines and fees paid on citations issued under the red-light photo enforcement program from January 28, 2010 through February 28, 2010.

Court, however, does not retain fine and fee revenues for more than a month. By law, those fine and fee revenues must be distributed to designated recipients in local and state government. Court therefore does not have sufficient funds available to make the requested refunds.

In addition, the Parties acknowledge that the work that will be required of Court to process the dismissals and issue refunds will create a significant financial and administrative burden, at a time when its resources already are severely stretched from recent statewide funding cuts to the judicial branch budget and related staff lay-offs. Preliminarily, Court has had to invest considerable personnel time in (1) communicating with City, to evaluate the scope of the problems and discuss the steps needed to remedy them, (2) communicating with county and state officials to arrange the return of distributions of citation payments that Court made to those entities or reach agreement about offsetting Court's distributions against future distributions, and (3) responding to members of the public, who have called, written, and visited Court with questions about the status of their traffic citations.

To process the dismissals and related refunds, Court will have to incur (1) vendor programming costs to identify affected traffic cases and delay their processing so that further financial charges are not assessed and there is no further impact on motorists' driving records, and (2) staff costs, including overtime and possible part-time temporary work, to, among other things, identify affected cases, retrieve case files, enter dismissals in Court's case management system, generate and mail dismissal letters as necessary, create and provide reports and updated abstracts to the Department of Motor Vehicles (DMV), manually update certain DMV records, determine and verify refund amounts (including the amounts of the citation payments and any application fees or bank financial charges incurred as a result of on-line or credit card payments), and generate and mail refund checks. In addition, issuance of the unauthorized citations caused Court unnecessary expense, in the amount of a \$4.81-per-citation financial charge, which it paid the vendor that ordinarily processes its traffic citations.

The Parties now seek to ensure that necessary dismissals are entered and refunds provided as promptly as possible, and that Court is properly compensated for the described financial and administrative burdens that result from City's decision to seek dismissal of the citations issued under the program from August 14, 2009 through February 28, 2010.

### ***Agreement***

In consideration of the recitals above, and the mutual promises contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree, voluntarily and with the advice of counsel, as follows:

1. **Defined Terms.** The following defined (capitalized) terms in this section 1 apply to the performance obligations of the Parties as set forth in section 2 ("Obligations of the

Parties”). All other capitalized terms in this Agreement have the meanings set forth in the respective provisions in which they first appear.

- a. **“Advance Payment”** means City’s payment of \$1,500,000 to Court to enable Court to refund to motorists that portion of Distributed Funds that currently are in the possession of County and the state.
- b. **“ATS”** means American Traffic Solutions, Inc., City’s red-light photo enforcement vendor.
- c. **“County”** means the County of San Mateo.
- d. **“Court Administrative Costs”** means all actual and necessary administrative costs, described above in paragraphs 6–7 of the Recitals, that the Court or its payment/processing agents actually incurred with respect to the Dismissed Citations and associated refunds, including, but not limited to, all vendor programming/processing costs and court personnel costs. “Court Administrative Costs” does not include Court’s actual refund payments to motorists but only any actual and necessary administrative costs.
- e. **“Dismissed Citations”** means citations that City issued to motorists between August 14, 2009 and February 28, 2010 as part of its Program (see definition below in paragraph 1h), collectively dismissed by Court orders issued on March 25 and 29, 2010.
- f. **“Distributed Funds”** means fine and fee distributions that motorists paid Court on Dismissed Citations, which Court distributed to local and state government recipients as required by law.
- g. **“Effective Date”** means the date on which the Parties entered into this Agreement.
- h. **“Program”** means the red-light photo enforcement program implemented by City at the intersections of (1) Hickey Boulevard and El Camino Real, and (2) Westborough Boulevard/Chestnut Avenue and El Camino Real, pursuant to which City issued citations to motorists between August 14, 2009 and February 28, 2010.

## 2. Obligations of the Parties

- a. City has provided to the Court lists of citations that City issued as part of its Program between August 14, 2009 and February 28, 2010, with the following information: citation numbers; citation dates; and the names and addresses of the cited motorists. These lists are contained in Exhibit A to the Motions To Dismiss filed under seal on March 15, 2010 and March 29, 2010. Court acknowledges that it has copies of the exhibits filed with said Motions to Dismiss. In the event there are discrepancies between the City’s lists and the Court’s records regarding the citations at issue, the parties will cooperate to

provide each other sufficient information to ensure all eligible cases are dismissed and any related refunds are made.

- b. City shall provide a financial statement showing all Distributed Funds that it received from Court for the Dismissed Citations.
- c. Within five (5) business days of execution of this Agreement, City shall return to Court the Distributed Funds that it received from Court, because the law does not permit City to retain those funds following dismissal of the underlying citations. Additionally, Court shall hold any current or future fine and fee payments that it receives on the Dismissed Citations, and will not distribute those payments to the City. The Court shall pay to the City its share of any future fine and fee payments that the Court receives on future citations other than the Dismissed Citations.
- d. To assist Court in refunding to motorists that portion of Distributed Funds currently held by the County and the state, City shall transfer the Advance Payment to Court within five (5) business days of execution of this Agreement. Court agrees that it will return the full Advance Payment to City after Court has withheld fine and fee distributions corresponding to that portion of the Distributed Funds that originally was forwarded to the County and the state. The parties acknowledge and agree that the City transfer of the Advance Payment to the Court shall not constitute, and shall not be interpreted or implied as, any admission by the City that it is financially responsible for the refund of the Distributed Amounts in any amount greater than the One Hundred and Thirty-Nine Dollars and Seventy-five Cents (\$139.75) per each Dismissed Citation for which funds have been distributed by the Court to the City.
- e. City agrees that it will be financially liable for, and will directly pay to the motorists, any interest payments required by law on any Court-refunded bail forfeiture/fine, penalties, fees and assessments including traffic administrative fee distributions, including interest that is payable under Vehicle Code section 42201.6(c). Court shall not be responsible for making any such interest payments. However, Court shall provide City, on not less than a monthly basis, a list of each refunded amount, the date of the refund, the name of the person receiving the refund and the applicable citation number.
- f. City shall, following City's receipt of the executed release form from the affected motorist, reimburse motorists who were issued Dismissed Citations for any fee or tuition that the motorists paid directly to a traffic school, plus



interest at seven percent per annum for the period between the date of the original payment to the traffic school and the date of the City refund.

- g. Finally, City agrees to reimburse Court for all Court Administrative Costs. Within five (5) business days of the Effective Date, City shall advance \$250,000 to Court as partial reimbursement for initial Court Administrative Costs incurred prior to the Effective Date of this Agreement and during the first month of the term of this Agreement. Within forty-five (45) business days of the Effective Date, Court shall provide a written accounting to City of Court Administrative Costs incurred by that date, with sufficient detail, and any supporting documentation, to substantiate the costs. Court shall hold any remaining portion of the advance payment of \$250,000 paid by City for Court Administrative Costs, to be applied as payment to Court Administrative Costs accrued after the first month of this Agreement and shall provide to the City a monthly written accounting of such costs in accordance with the above provision. If the total Court Administrative Costs under this Agreement are less than \$250,000, Court shall reimburse City an amount equal to the difference between \$250,000 and the Court Administrative Costs. To the extent that City's initial advance payment of \$250,000 has been depleted and there are further Court Administrative Costs, Court shall provide City an invoice each month listing the Court Administrative costs that Court incurred in the prior month. Court shall ensure that each such invoice provides sufficient detail and attaches any supporting documentation to substantiate included costs. City agrees to pay such invoiced costs within thirty (30) calendar days of receiving Court's invoice. City's liability for any invoiced but unpaid Court Administrative Costs shall survive the expiration or termination of this Agreement.
- h. Court will be responsible for requesting reimbursement of the Distributed Funds or withholding future distributions in amounts equal to the total of the Distributed Funds that it paid to the state and County and will provide an accounting to City of such received reimbursements thirty days prior to the expiration of this Agreement.
- i. City, and all its departments and divisions (including but not limited to the City's Police Department), shall obtain Court's written consent before issuing any public statement, correspondence directed to motorists, or press release that mentions the Court. City shall provide Court with any such draft text at least three (3) business days before the communication is to be released, for Court's review and written approval. Court's written approval or disapproval

will only address the acceptability of the communication's reference to the Court, and shall not constitute legal advice.

- j. Court shall use all reasonable efforts to issue refunds to motorists of all payments made under the Dismissed Citations within sixty (60) days of receipt of the Advance Payment, the initial Court Administrative Costs payment, and reimbursement of Distributed Funds (under Section 2.c.) from the City.

### 3. General Terms and Conditions

- a. **Term.** This Agreement has a term commencing on the Effective Date, and expiring on April 23, 2011. This Agreement may be terminated by Court, without cause, upon thirty days prior written notice, provided however that any termination without cause shall not relieve the Court of its obligation to issue refunds of all payments made under the Dismissed Citations pursuant to Court order and return the Advanced Funds to the City in accordance with Section 2.d. A party may terminate this Agreement for cause, in whole or in part, if the other party materially breaches any provision of this Agreement and does not cure such breach within thirty days after receipt of a notice of breach stating the party's intent to terminate. The Parties agree to use all reasonable efforts to fulfill their respective obligations under this Agreement, within the term.
- b. **Indemnification.** City shall, and hereby does, protect, defend, indemnify and hold harmless Court and the Administrative Office of the Courts (AOC), and their officers, agents, and employees (collectively "Indemnitees") from and against any and all loss, cost, damage, expense, and liability of any and every kind or nature, including without limitation, attorney fees and court costs (herein "Claims") arising from or in any way connected with the subject matter of this Agreement and the performance or nonperformance by City of its obligations under this Agreement except to the extent that such claims arise out of or relates to the gross negligence or willful misconduct of the Indemnitees. In the event any legal action(s) or any other proceeding(s) may be brought against the Indemnitees by reason of any such Claims, City, upon written notice from Court, shall promptly defend Indemnitees at City's sole cost and expense, subject to the requirements of rule 10.201-10.203 of the California Rules of Court.

The foregoing indemnity obligations shall survive the expiration or termination of this Agreement.

**c. Dispute Resolution**

**i. Continued Performance.** Whenever City and Court disagree as to any matter governed by this Agreement, the dispute resolution process set forth herein shall govern. While the dispute is pending, the Parties shall continue to perform their respective obligations as set forth herein.

**ii. Request for Meeting.** The Parties shall cooperate and use their best efforts to promptly resolve any dispute. If, after seven (7) days, Court and City cannot informally resolve any dispute, either Party may give the other Party a written request for a meeting between Court's designated representative and City's designated representative for the purpose of resolving a disagreement between the Parties. Such meeting shall be held within ten (10) days of the receipt of such request. If the meeting fails to resolve the disagreement, nothing in this Agreement shall preclude the Parties from exercising their legal remedies.

**d. Jurisdiction and Venue.** Any legal proceeding commenced by either party shall be filed and heard in the Superior Court of California, County of San Mateo.

**e. Entire Agreement.** This Agreement, including any exhibits, schedules or attachments to this Agreement, contains the entire and complete understanding of the Parties hereto and supersedes any and all other previous agreements, negotiations or discussions oral or written.

**f. Amendment.** No addition to or alteration of the terms of this Agreement shall be valid unless made in the form of a written amendment to this Agreement, approved and executed by the Parties' Designated Representatives, as provided in section 3.s.

**g. Time of Performance.** Unless specifically stated to the contrary, all references to days herein shall be deemed to refer to calendar days. If the final date for payment of any amount or performance of any act falls on a Saturday, Sunday or Court holiday, such payment shall be made or act performed on the next-succeeding business day.

**h. Further Assurances.** Each Party hereto agrees to cooperate with the other, and to execute and deliver, or cause to be executed and delivered, all such other instruments and documents, and to take all such other actions as may be reasonably requested of it from time to time, in order to effectuate the provisions and purposes of this Agreement.

- i. **Time of the Essence.** Time is of the essence in each and all of the provisions of this Agreement.
- j. **Assignment.** City and Court agree that neither party shall assign any interest in this Agreement, or subcontract any of the obligations that either is to perform hereunder without the prior written consent from the other Party.
- k. **Notices.** Any notices required or permitted hereunder shall be in writing and may be (a) personally delivered; (b) mailed by depositing such notice in the United States mail, first class postage prepaid; or (c) sent by overnight delivery service; addressed as follows or to such other place as each Party hereto may designate by subsequent written notice to the other Party:

If to City:

City of South San Francisco

Attention: City Manager

Address: 400 Grand Avenue

City of South San Francisco, CA 94080

Phone: 650-877-8500

With a copy to: Steven T. Mattas, City Attorney, 400 Grand Avenue, City of South San Francisco, CA 94080

If to Court:

Superior Court of California, County of San Mateo

Attention: Mr. John Fitton, Court Executive Officer

Address: 400 County Center

Redwood City, CA 94063

Phone: 650-599-1763

With a copy to: Ms. Rodina Catalano, Deputy Court Executive Officer of Court Operations, 400 County Center, Redwood City, CA 94063

Phone: 650-363-4863

- l. **Waiver.** Any waiver by either Party hereto of a breach of any of the terms of this Agreement shall not be construed as a waiver of any succeeding breach of the same or other term of this Agreement.
- m. **Binding.** This Agreement shall be binding upon the successors and permitted assigns of Court and City.
- n. **Counsel and Drafting.** Each Party hereto, by its due execution of this Agreement, represents to the other Party that it has reviewed each term of this Agreement with its counsel, or has had the opportunity for such review with its counsel. No Party shall deny the validity of this Agreement on the ground that such Party did not have the advice of counsel. Each Party hereto has had the opportunity to participate in drafting and preparation of this Agreement. The provisions and terms of this Agreement shall be interpreted in accordance with the plain meaning thereof, and shall not be construed in favor or against either Party.
- o. **Counterparts.** This Agreement may be executed in one or more counterparts, all of which together shall constitute one and the same Agreement.
- p. **Severability.** In the event any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, or is otherwise inconsistent with the Governing Law (as that term is defined in the next paragraph), then upon the request of either Party, the Parties shall promptly meet and confer to determine how to amend the affected term or terms of this Agreement in a manner consistent with the Governing Law, but in any event, all parts of this Agreement not affected shall remain in full force and effect.
- q. **Governing Law.** This Agreement shall be construed under the laws of the State of California, without regard to its conflict of law provisions.
- r. **Certification, Representation and Warranty of Authority to Execute this Agreement.** City and Court each certifies, represents and warrants that the individual(s) signing below on its behalf, has authority to execute this Agreement on behalf of the Party, and may legally bind the Party to the terms and conditions of this Agreement and any attachments hereto.
- s. **Designated Representatives.** Court and City shall each identify and appoint a designated representative who shall have the authority to bind Court and City, respectively, for all matters and approvals related to this Agreement. As of the Effective Date of this Agreement, the designated representative for Court is:

John Fitton  
Court Executive Officer  
Superior Court of California, County of San Mateo  
("Court Designated Representative")

and the designated representative for City is:

Name: Barry M. Nagel  
Title: City Manager  
("City Designated Representative")

Court and City each may change its respective Designated Representative by written notice to the other in accordance with the notice provisions set forth in this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF SAN MATEO

CITY OF SOUTH SAN FRANCISCO,  
a political subdivision of the State of California

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: John Fitton  
Title: Court Executive Officer

Name: Barry M. Nagel  
Title: City Manager

1410536.1