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May 2, 2018

Honorable Luke Ferguson  
Chief Prosecuting Attorney – 20<sup>th</sup> Judicial District  
510 S. German Lane – P.O. Box 550  
Conway, AR 72033

*VIA EMAIL and U.S. MAIL*

**Re: *In the Matter of the City of Damascus of the State of Arkansas – Compliance with the “Arkansas Speed Trap Law” – FORMAL REQUEST FOR REVIEW AND RELIEF***

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Dear Luke,

As you are undoubtedly aware, when your predecessor in office, Cody Hiland, levied certain sanctions against the City of Damascus (hereinafter “City”) due to alleged violations of the Arkansas Speed Trap Law (Ark. Code Ann. Section 12-8-401 et seq.), the language of the sanctions and the underlying findings of fact provided for the City to request relief from the sanctions within a year of their issuance on May 10, 2017.

This letter is sent on behalf of the City, in my capacity as City Attorney and in my capacity as retained counsel for the City in its pending lawsuit against the 20<sup>th</sup> Judicial District Prosecuting Attorney’s Office and the Arkansas State Police (hereinafter the “Lawsuit”, more specifically styled as *The City of Damascus, Arkansas et al v. 20<sup>th</sup> Judicial District Prosecuting Attorney’s Office et al*, Faulkner County Circuit No. 23CV-17-499), in furtherance of the pursuit of such relief, and we thank you in advance for your consideration hereof.

In support of this correspondence, on or about October 17, 2017, you issued a memorandum styled as a “Determination of the Prosecuting Attorney of the Twentieth Judicial District Regarding the Status of Sanctions Previously Imposed Due to a Finding that the City of Damascus Was in Violation of the ‘Arkansas Speed Trap Law.’” In reaching your conclusion therein that the sanctions were to remain in effect until December 31, 2018, despite Attorney Hiland’s appointment to the U.S. Attorney position for the Eastern District of Arkansas, you concluded this memorandum by noting that you further “affirm[ed] the continued applicability of all other terms as contained in Hiland’s decision, including the availability of a review of this matter after one year has elapsed from the issuance of the original opinion.” Consistent with the terms of the original opinion and your memorandum thereafter, this letter represents the City’s request for an expedient review and for relief from the sanctions.

Our reasons for requesting such review are multifarious and are offered with the understanding that certain matters germane to the findings and sanctions remain yet to be fully adjudicated Lawsuit. I am sending this correspondence several days in advance of the one-year anniversary date of the sanctions being levied, May 10, 2018, so that you may have adequate time to consider whether the relief requested herein should be granted.

We request such a determination, if at all administratively feasible, by Friday, May 11, 2018, so that I can adequately and fully advise City officials as to the viability of continuing to pursue the pending claim in the Lawsuit. While the presiding judge in the Lawsuit, the Honorable Chris Carnahan, has previously dismissed the City's claims that the Speed Trap Law is unconstitutionally vague and arbitrary in nature, he has withheld a ruling on whether the financial data utilized by the State Police and Hiland to arrive at their findings and sanctions was properly interpreted and utilized.

With this issue still pending, we nonetheless are arriving at the one-year anniversary date for your review to be undertaken, and we believe strongly that this good faith proposal by the City will help facilitate a positive resolution to this matter. The relevant terms and underlying factual and legal bases of this proposal are as follows:

**Proviso No. 1: The City of Damascus in early 2017 terminated then-Police Chief Rick Perry for cause and abolished the chief of police position altogether, consolidating administrative control of the department under the Mayor of the City.** Shortly after the implementation of these sanctions, the City Council unanimously agreed to terminate then-Chief Rick Perry and administratively abolished the position of Police Chief pursuant to statutory authority, which consolidated the City police department's control in the Office of the Mayor.

The City has previously asserted in ongoing correspondence with Legislative Audit, arising from a criminal investigation of Perry's conduct and expenditures during his tenure, and has publicly stated many times that this change has already been, and will continue to be, an effective means of exercising more control and oversight of the police department, not simply from a law enforcement standpoint but also with regard to matters of budgeting, allocation of resources, personnel decisions, and other matters germane to the operation of an effective municipal law enforcement agency. The City will continue to operate in this fashion and, should circumstances arise in which the City deems that reinstating the police chief position will be advisable for the public welfare and safety, will present the 20<sup>th</sup> Judicial District Prosecuting Attorney's Office with formal notice of its intent to exercise such action. For the immediate future, however, it appears that the City can effectively function with a police department led by a senior officer rather than a designated chief, and with the mayor of the City exercising departmental authority.

**Proviso No. 2: The City of Damascus, out of financial necessity and in the interest of ensuring a more efficient operational department, has greatly downsized its personnel and will agree to do so for a finite period.** The City will maintain an operational police department consisting of no more than two (2) full-time officers and two (2) part-time officers for a period of at least one (1) year from the date hereof. At various times during my eight years serving as City Attorney, the number of officers employed by the City has varied wildly due to attrition and turnover, disciplinary actions, and other factors, with as many as seven or eight full- and part-time officers working for the department as recently as five years ago.

By implementing a fair, reasonable limitation on the number of officers employed by the City for the prescribed period, it will allow for a smaller, but more functional and consistent police department to operate and serve the community most effectively. For current context, the City's police force has been substantially trimmed to a single part-time officer at present, and that has obviously placed the department in peril with respect to the department's ability to honor its oath and obligation.

**Proviso No. 3: Due to the concerns about the Damascus Police Department's alleged abuse of police power in generating revenue for the City, the City will agree to additional auditing and accounting measures for a finite period.** The City will present the 20th Judicial District Prosecuting Attorney's Office with financial data, voluntarily and as a means of verifying its genuine mission to maintain traffic safety rather than generate revenue, each fiscal year for the next three (3) years, beginning with the 2018 calendar year and then providing the same information for 2019 and 2020. Such data shall include the general revenue and expenditure information that is utilized to determine whether a municipal police department is in violation of the Arkansas Speed Trap Law and shall be provided by the City no later than March 31 of the year following.

**Proviso No. 4: As a means of more effectively regulating the voluminous traffic in the City, its elected officials and its City Attorney will continue to pursue funding for a traffic signal to be installed at the intersection of Highways 65 and 124.** Faulkner County Judge Jim Baker has already made a request to the Arkansas State Highway Department for such an improvement to be funded and erected, as implemented as an exhibit to Hiland's findings and sanctions.

While we remain committed to the belief that Arkansas Speed Trap Law was not properly applied to the City's specific case and further maintain the strong opinion that the Arkansas General Assembly must revisit this 23-year-old legislation and make dramatic, sweeping changes to the law for a variety of reasons, we also agree that traffic control on the affected highways in Damascus cannot be entirely performed by the City's police department. Accordingly, while we can make no affirmative promises as to whether the Arkansas Highway Commission will see to it that such an expenditure is needed, we pledge to support this initiative in any way as further evidence that the City's position has always been, first and foremost, one of protecting the public rather than enriching the government.

It is our belief that regardless of the outcome of the civil matter, the City has already taken several steps to ensure that its reputation and that of its employees is safeguarded. The City is unique in that its relatively small geographic footprint and modest population belie the inordinate volume of high-speed traffic that moves through the community daily. The citizens of Damascus have, by and large, been very supportive of a well-trained and fair-minded police department that works hard to regulate this traffic, and these sanctions have understandably had a dramatic effect on the department's ability to carry out its duties. As the summer season is upon us, traffic associated with recreational and leisure activities will undeniably increase, and the City understandably desires to be able to monitor this and responsibly initiate traffic stops and issue citations where appropriate and advisable.

With the Mayor, City Attorney, City Council, and Police Department all being very much attuned to the issues that led to these unfortunate sanctions being implemented, we hope that this proposal will sufficiently assuage concerns about lifting the sanctions, and that the City's police department can gradually resume full operations subject to these terms and conditions.

Thank you, as always, for your careful consideration of the requests herein. We appreciate that you assumed authority over a very unusual and divisive issue when you were sworn in as Hiland's appointed successor, and we eagerly await your decision regarding this request for review.

Sincerely,



Beau Wilcox, Attorney at Law

cc: Mayor L.B. Pavatt; City Clerk Pam Mahan; Court Clerk Melissa Hallman