

[REDACTED] [REDACTED]

RESOLUTION NO. 2008-135

RESOLUTION OF THE CITY OF SAN BERNARDINO AUTHORIZING AN AMENDMENT TO THE LEASE AND SERVICES AGREEMENT WITH NESTOR TRAFFIC SYSTEMS, INC., TO EXPAND THE EXISTING TRAFFIC SIGNAL VIOLATION SYSTEM.

WHEREAS, on March 24, 2008, the City Council duly set a public hearing to be held on April 7, 2008, pursuant to Section 21455.6 of the *California Vehicle Code*, by giving notice by publication in a newspaper of general circulation, to consider entering into an amended agreement with Nestor Traffic Systems, Inc. to expand the existing Traffic Signal Violation System.

WHEREAS, on April 21, 2008, the City Council held a public hearing pursuant to Section 21455.6 of the *California Vehicle Code*, to consider entering into an amended agreement with Nestor Traffic Systems, Inc. to expand the existing Traffic Signal Violation System, and all persons who wished to speak, were provided an opportunity to do so at the public hearing.

BE IT RESOLVED BY THE MAYOR AND COMMON COUNCIL OF THE CITY OF SAN BERNARDINO AS FOLLOWS:

SECTION 1: The City Manager is hereby authorized and directed to execute the "Amendment to Agreement" of the Traffic Signal Violation Video-Enforcement System Lease and Services Agreement approved May 4, 2005 with Nestor Traffic Systems, a copy of which is attached as Exhibit "A", and incorporated herein by reference. All other terms and conditions of the Lease and Services Agreement will remain in effect and unchanged.

SECTION 2: The Director of Finance is authorized and directed to issue a Purchase Order to Nestor Traffic Systems, Inc. for an amount not to exceed \$1,982,650 for FY 2008/09 and \$2,501,760.00 for FY 2009/10.

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1 **RESOLUTION OF THE CITY OF SAN BERNARDINO AUTHORIZING AN**
2 **AMENDMENT TO THE LEASE AND SERVICES AGREEMENT WITH NESTOR**
3 **TRAFFIC SYSTEMS, INC., TO EXPAND THE EXISTING TRAFFIC SIGNAL**
4 **VIOLATION SYSTEM.**

5 **SECTION 3:** This amendment shall not take effect or become operative until
6 fully signed and executed by the parties and no party shall be obligated hereunder until the time
7 of such full execution. No oral agreements, amendments, modifications or waivers are
8 intended or authorized and shall not be implied from any act or course of conduct of any party.

9 **SECTION 4:** This resolution is rescinded if the parties to the contract fail to
10 execute it within sixty (60) days of the passage of this resolution.

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AMENDMENT TO AGREEMENT

This Amendment to Agreement is entered into this 21st day of April, 2008, by and between Nestor Traffic Systems, Inc., ("Nestor") and the City of San Bernardino ("Municipality").

RECITALS

A. On May 4, 2005, the Municipality and Nestor entered into a written contract entitled "Traffic Signal Violation Video-Enforcement Agreement" ("Agreement") for the installation and assistance in the administration and operation of traffic video monitoring systems.

B. Pursuant to the Agreement, Nestor completed eight approaches at four intersections as identified on Exhibit A, attached hereto and incorporated herein by this reference.

C. Municipality and Nestor now desire to amend the Agreement to increase the number of intersections at seven locations for the installation of traffic video monitoring systems, and to increase the compensation for the services authorized in the Agreement.

AGREEMENT

In consideration of the mutual promises contained in the Agreement, the parties agree as follows:

1. Nestor shall install traffic video monitoring systems at the locations, approach directions, and compensation as set forth in Exhibit B, attached hereto and incorporated herein by this reference. Nestor shall provide services for four years from the date the monitoring systems are completed and approved in writing by Municipality.

2. Section 1, subsection 1.1 of Exhibit A of the Agreement is hereby amended to include the four intersections completed from the date of execution of the Agreement.

3. Nestor shall provide to Municipality all relevant documents under its custody and control to prepare and prosecute a contested citation at a trial. The documents shall include, but not be limited to, copies of citations, "affidavits of innocence," certifications of mailing, and operation logs for each citation. Municipality and Nestor shall meet and agree on a procedure, which shall be reduced to writing, on the procedures each party shall comply with to meet the requirements of this paragraph.

1 4. All other provisions of the Agreement are reaffirmed as originally stated therein.
2 IN WITNESS THEREOF, the parties hereto have executed this Amendment to Agreement
3 on the day and date first above written.

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5 Dated: April 2, 2008, 2008

Nestor Traffic Systems, Inc.

6
7 By: Clarence Davis
8 Clarence Davis
9 President and CEO

10 Dated: April 24, 2008

CITY OF SAN BERNARDINO

11
12 By: [Signature]
13 City Manager

14 ATTEST:

15 Rachel B. Clark
16 Rachel Clark, City Clerk

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18 Approved as to Form:

19 JAMES F. PENMAN,
20 City Attorney

21 By: [Signature]
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Exhibit A

A. Service Locations, Periods, and Periods of Service:

1. South Waterman Avenue at East Hospitality Lane, San Bernardino, California;
Enforcement Period Started: July 1, 2005;
Enforcement Period Ends: June 30, 2010;
Approaches: Two (North and South);
Approaches: Left, Right, and Straight Enforcement;
Collision Avoidance feature included for both approaches.

2. North Waterman Avenue at East 40th Street, San Bernardino, California;
Enforcement Period Started: November 17, 2006;
Enforcement Period Ends: November 16, 2011;
Approaches: Two (North and South);
Approaches: Left, Right, and Straight Enforcement.

3. East Highland Avenue at North Arden Avenue, San Bernardino, California;
Enforcement Period Started: January 1, 2007;
Enforcement Period Ends: December 31, 2011;
Approaches: Two (East and West);
Approaches: Left, Right, and Straight Enforcement.

4. North Waterman Avenue at East 30th Street, San Bernardino, California;
Enforcement Period Started: January 20, 2008;
Enforcement Period Ends: January 19, 2013;
Approaches: Two (South and West);
Approaches: Left, Right, and Straight Enforcement.

Exhibit B**A. Service Locations, Periods and Periods of Service:**

1. North University Parkway at West Kendall Drive, San Bernardino, California;
Enforcement Period: Four years from the date enforcement starts;
Approaches: Five (North, South, East and West);
Cost per Approach: \$7,015.00 per month (left, right, and straight enforcement);
Collision Avoidance feature included for all approaches.
2. South Tippecanoe Avenue at East San Bernardino Avenue, San Bernardino, California;
Enforcement Period: Four years from date enforcement starts;
Approaches: Five (North, South, East and West);
Cost per Approach: \$7,015.00 per month (left, right, and straight enforcement);
Collision Avoidance feature included for all approaches.
3. North Waterman Avenue at East 9th Street, San Bernardino, California;
Enforcement Period: Five years from date enforcement starts;
Approaches: Two (North and East);
Cost per Approach: \$7,015.00 per month (left, right, and straight enforcement);
Collision Avoidance feature included for all approaches.
4. North Waterman Avenue at East Highland Avenue, San Bernardino, California;
Enforcement Period: Five years from date enforcement starts;
Approaches: Four (North, South, East and West);
Cost per Approach: \$7,015.00 per month (left, right, and straight enforcement);
Collision Avoidance feature included for all approaches.
5. South E Street at West Orange Show Road, San Bernardino, California;
Enforcement Period: Five years from date enforcement starts;
Approaches: Two (South and East);
Cost per Approach: \$7,015.00 per month (left, right, and straight enforcement);
Collision Avoidance feature included for all approaches.
6. North Mt. Vernon Avenue at West 9th Street, San Bernardino, California;
Enforcement Period: Five years from date enforcement starts;
Approaches: Two (North and South);
Cost per Approach: \$7,015.00 per month (left, right, and straight enforcement);
Collision Avoidance feature included for all approaches.
7. South Mt. Vernon Avenue at West Rialto Avenue, San Bernardino, California;
Enforcement Period: Five years from date enforcement starts;
Approaches: Two (South and East);
Cost per Approach: \$7,015.00 per month (left, right, and straight enforcement);
Collision Avoidance feature included for all approaches.