

ATTACHMENT 5

RESOLUTION NO. 2009-7

RESOLUTION OF THE CITY OF SAN BERNARDINO AUTHORIZING AN AMENDMENT TO THE LEASE AND SERVICES AGREEMENT WITH NESTOR TRAFFIC SYSTEMS, INCORPORATED.

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

SECTION 1: The Mayor of San Bernardino 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: This amendment shall not take effect or become operative until fully signed and executed by the parties and no party shall be obligated hereunder until the time of such full execution. No oral agreements, amendments, modifications or waivers are intended or authorized and shall not be implied from any act or course of conduct of any party.

SECTION 4: This Resolution is rescinded if the parties to the contract fail to execute it within sixty (60) days of the passage of this Resolution.

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RESOLUTION NO. _____

RESOLUTION OF THE CITY OF SAN BERNARDINO AUTHORIZING AN AMENDMENT TO THE LEASE AND SERVICES AGREEMENT WITH NESTOR TRAFFIC SYSTEMS, INCORPORATED.

I HEREBY CERTIFY that the foregoing Resolution was duly adopted by the Mayor and Common Council of the City of San Bernardino at a joint regular meeting thereof, held on the 20th day of January, 2009, by the following vote, to wit:

Council Members:	AYES	NAYS	ABSTAIN	ABSENT
ESTRADA	<u>X</u>	_____	_____	_____
BAXTER	<u>X</u>	_____	_____	_____
BRINKER	<u>X</u>	_____	_____	_____
VACANT	_____	_____	_____	_____
KELLEY	<u>X</u>	_____	_____	_____
JOHNSON	<u>X</u>	_____	_____	_____
MCCAMMACK	<u>X</u>	_____	_____	_____

Rachel G. Clark
Rachel G. Clark, City Clerk

The foregoing Resolution is hereby approved this 21st day of January, 2009.

Patrick J. Morris
Patrick J. Morris, Mayor
City of San Bernardino

Approved as to Form:

James F. Penman
James F. Penman, City Attorney

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AMENDMENT TO AGREEMENT

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This Amendment to Agreement is entered this 20th day of January, 2009

by and between Nestor Traffic Systems, Inc., ("Nestor") and the City of San Bernardino ("Municipality").

RECITALS

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

Whereas, on April 21, 2008, the Agreement was amended in writing by Municipality and Nestor (Agreement as amended is hereinafter referred to as "Agreement"); and

Whereas, Nestor and Municipality have agreed to amend the Agreement to address concerns created by an adverse legal interpretation of paragraph 4.3 of the Agreement.

Now, therefore, in consideration of the mutual covenants contained in the Agreement, Nestor and Municipality agree as follows:

1. Section 3.3 of the Agreement is hereby amended by deleting therefrom the reference to Section 4.3 of the Agreement.

2. Section 4.3 of the Agreement is hereby amended by deleting the language of that Section from the Agreement in its entirety. That section shall now read "Deleted."

3. All other provisions of the Agreement are reaffirmed as originally adopted.

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AMENDMENT TO AGREEMENT

IN WITNESS THEREOF, the parties hereto have executed this Amendment to Agreement on the day and date first above written.

Dated: 2/4/09, 2009. Nestor Traffic Systems Inc.

By: [Signature]
Clarence Davis, President and CEO
MICHAEL C. JAMES

Dated: 1/22/09, 2009. CITY OF SAN BERNARDINO.

By: [Signature]
Mark F. Weinberg, City Manager

ATTEST:

Rachel B. Clark
Rachel Clark, City Clerk

Approved as to Form:

By: [Signature]
James F. Penman, City Attorney