

Rec'd 8-10-11

CITY OF SAN BERNARDINO - REQUEST FOR COUNCIL ACTION

From: Michael A. Billdt, Chief of Police
Dept: Police Department
Date: January 5, 2009

Subject: Resolution of the City of San Bernardino authorizing an amendment to the Lease and Services Agreement with Nestor Traffic Systems, Incorporated.
M/CC DATE: January 20, 2009

Synopsis of Previous Council Action:

- 4-21-2008 Resolution No. 2008-135 - Contract Expansion Amendment with Nestor Traffic Systems.
- 3-24-2008 Motion to set a public hearing for April 7, 2008 to authorize an amendment to the Lease and Services Agreement with Nestor Systems, Inc.
- 5-4-2006 Resolution No. 2005-107 - Contract with Nestor Traffic Systems
- 5-4-2006 Resolution No. 2005-107A - Contract with Cal-Trans for State Signal Access

Recommended Motion:

Adopt Resolution.



 MICHAEL A. BILLDT, CHIEF OF POLICE

Contact person: Captain Theodis Henson Phone: 384-5609

Supporting data attached: Yes Staff Report/Resolution Ward: All

FUNDING REQUIREMENTS: Amount: None
Source:

Finance

Council Notes:

Agenda Item No. 22

1-20-09

CITY OF SAN BERNARDINO - REQUEST FOR COUNCIL ACTION

Staff Report

Subject

Resolution of the City of San Bernardino authorizing an amendment to the Lease and Services Agreement with Nestor Traffic Systems, Incorporated.

Background

On May 4, 2005, the Mayor and Common Council approved Resolution No. 2005-107, authorizing a Lease and Services Agreement with Nestor Traffic Systems, Inc., for a Traffic Signal Violation System. The goal of this program is to improve our traffic safety program to reduce the number of traffic accidents caused by red light violations. We do this by following the Federal Highway Administration's (FHA) suggestion to train against aggressive driving habits and inattention by using red light camera systems as a force multiplier to enforce red light laws. Exhibit A of the Lease specified that video monitoring systems would monitor a minimum of eight (8) approaches at the following four (4) intersections selected by mutual agreement of City and Nestor.

On April 21, 2008, the Mayor and Common Council approved Resolution No. 2008-135 that amended the Lease and Services Agreement with Nestor Traffic Systems, Inc., to include seven new enforcement locations and add supporting staff to the Police Department's Traffic Bureau.

On November 21, 2008, the Appellate Division of the Orange County Superior Court issued a local (Orange County) decision voiding the contract between the City of Fullerton, California, and Nestor Traffic Systems, Inc., because of a "cost neutral" clause in their Lease and Services Agreement. In their decision, (Orange County Superior Court Case 30-2008-93057), Judge Robert J. Moss reversed the local traffic court's conviction on a Red Light Camera Enforcement System citation because of a cost neutral clause allowing the City of Fullerton and Nestor Traffic Systems, Inc., to negotiate down on the cost of the services agreement. Currently, the Orange County Superior Court decision applies only to their jurisdiction. However, the same "cost neutral" language exists in our Lease and Services Agreement with Nestor Traffic Systems, Inc. The ruling could be used by a San Bernardino County Superior Court judge to invalidate our agreement and halt our Red Light Camera Video Enforcement safety project.

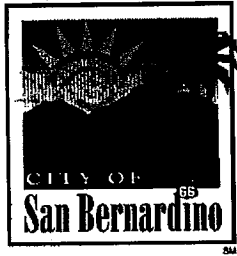
It is recommended that the City of San Bernardino and Nestor Traffic Systems amend the existing contract by removing the "cost neutral" paragraph. The removal of this paragraph is justified for two reasons. First, the "cost neutral" adjustment feature has never been used by the City of San Bernardino. In the spirit of California Vehicle Code Section 21455, the City has never looked to lower costs of this safety project based on the number of citations issues or the amount of revenue produced by the project. Second, while not tested at the State level, the decision of the Orange County Superior Court suggests that removing the option provides another safeguard against inappropriate actions by our system vendor (Nestor Traffic Systems).

Financial Impact

None. This is a no cost change to the existing contract.

Recommendations

Adopt Resolution.



CITY OF SAN BERNARDINO

300 N. "D" Street
San Bernardino, CA 92418
Website: www.sbcity.org

Mayor Patrick J. Morris

Council Members:

*Esther Estrada
Dennis J. Baxter
Tobin Brinker
4th Ward - Vacant
Chas Kelley
Rikke Van Johnson
Wendy McCammack*

MINUTES
MAYOR AND COMMON COUNCIL AND
COMMUNITY DEVELOPMENT COMMISSION
OF THE CITY OF SAN BERNARDINO

JOINT REGULAR MEETING
JANUARY 20, 2009
COUNCIL CHAMBERS

The joint regular meeting of the Mayor and Common Council and Community Development Commission of the City of San Bernardino was called to order by Mayor/Chairman Morris at 1:36 p.m., Tuesday, January 20, 2009, in the Council Chambers of City Hall, 300 North "D" Street, San Bernardino, California.

Roll Call

Present: Mayor/Chairman Morris; Council Members/Commissioners Estrada, Baxter, Kelley, Johnson, McCammack; City Attorney Penman, Interim City Manager Weinberg, City Clerk Clark.

Absent: Council Member/Commissioner Brinker.

Vacant: Fourth Ward

Council Member/Commissioner Brinker arrived at 3:26 p.m.

1. **Closed Session**

Pursuant to Government Code Section(s):

A. Conference with legal counsel - existing litigation - pursuant to Government Code Section 54956.9(a):

Recreation and Community Services FY 2008/09 budget and reduce landscape contracts (Account No. 001-382-5506) by \$100,000, and to also reduce EDA revenue reimbursement (Account No. 001-000-4670) in a like amount of \$100,000, with no net impact to the City's budget. The motion carried unanimously with the Fourth Ward vacant.

20. **RES. 2009-6 - Resolution of the Mayor and Common Council of the City of San Bernardino authorizing the Interim City Manager to execute Amendment No. 1 to the Vendor Service Agreement with Service Scape, and the Director of Finance to increase the following contracts in an amount not to exceed \$64,000 in the aggregate: Contract Nos. 09-050 (Area "A" - \$12,500); 09-051 (Area "B" - \$34,500); 09-054 (Area "E" - \$6,700); and 09-055 (Area "C" - \$10,300) issued to Service Scape to cover the costs of supplemental work in Landscape Maintenance District Areas "A", "B", "C", and "E".**

Council Member/Commissioner Johnson made a motion, seconded by Council Member/Commissioner Baxter, that said resolution be adopted. Resolution No. 2009-6 was adopted unanimously with the Fourth Ward vacant.

21. **Resolution of the Mayor and Common Council authorizing the execution of a Services Agreement with Paramount Protective Services, Inc. to provide jail staffing for FY 2008-09.**

Staff requested that this matter be tabled.

Council Member/Commissioner McCammack made a motion, seconded by Council Member/Commissioner Kelley, that the matter be tabled. The motion carried unanimously with the Fourth Ward vacant.

22. **RES. 2009-7 - Resolution of the City of San Bernardino authorizing an amendment to the Lease and Services Agreement with Nestor Traffic Systems, Incorporated.**

Council Member/Commissioner Johnson made a motion, seconded by Council Member/Commissioner Baxter, that said resolution be adopted. Resolution No. 2009-7 was adopted unanimously with the Fourth Ward vacant.

23. **Set a public hearing on March 2, 2009 at 4:00 p.m., for the placement of liens on delinquent refuse collection accounts**

Council Member/Commissioner Estrada requested that the department break down the delinquent commercial accounts separately from the delinquent residential accounts in their report.