



CITY COUNCIL AGENDA REPORT

MEETING DATE: January 6, 2009

ITEM NUMBER: **VI-19**

SUBJECT: AMENDMENT OF NESTOR RED LIGHT CAMERA AGREEMENT

DATE: DECEMBER 29, 2008

FROM: CITY ATTORNEY'S OFFICE

PRESENTATION BY: KIMBERLY HALL BARLOW, CITY ATTORNEY

FOR FURTHER INFORMATION CONTACT: KIMBERLY HALL BARLOW, 714-754-5399

RECOMMENDATION:

That the Council approve Addendum Number Four to the Nestor agreement.

BACKGROUND:

The purpose of this item is to approve a short amendment to the Nestor Red Light Camera agreement. The Appellate Division of the Superior Court issued a judgment on November 21, 2008 dismissing a red light camera citation issued by another City because the Appellate Panel judge concluded that a provision in that City's contract improperly gave a financial incentive to Nestor to increase the number of citations issued and paid through the use of the red light camera equipment. While the City involved in that decision is evaluating whether any steps can or should be taken with respect to the Judgment, we recommend that a similar provision in Costa Mesa's contract with Nestor to the one which the court found objectionable be suspended in its operation until the decision is corrected or a revised contract provision can be negotiated.

ANALYSIS:

The Council approved a contract amendment to the Nestor agreement, referred to as Addendum Number Three, in June 2008. Part of that addendum included a provision for an annual financial review of the red light camera safety program, with the parties agreeing to renegotiate service fees and/or take other steps to insure that the program operates as a safety program. This is the portion of the Agreement similar to that which the appellate division's ruling addressed, determining that the language "indirectly ties" fees to Nestor to the revenue generated by the program. While the other City assesses what steps it may take with respect to the ruling, we felt it would be prudent and appropriate to suspend the language to which the Court objected and provide alternative language to be included in the agreement to meet the City's needs of ensuring the program operates as intended.

