

July 31, 1998 Desired

REPORT TO THE COMMITTEE ON PUBLIC
SAFETY AND NEIGHBORHOOD SERVICES

CONTRACT BETWEEN THE CITY OF SAN DIEGO AND UNITED STATES PUBLIC
TECHNOLOGIES, INC. FOR RED LIGHT CAMERA ENFORCEMENT

INTRODUCTION

At the Public Safety & Neighborhood Services Committee meeting of June 17, 1998, Assistant Chief Keith Enerson and Sergeant Boyd Long of the San Diego Police Department (SDPD) reported to the Committee on the status of a contract entered into between the City and United States Public Technologies, Inc. (USPT) for the provision of "red light camera enforcement" technology and services at selected intersections throughout the City. In response to the presentation by Chief Enerson and Sergeant Long, the Committee members asked the City Attorney to report back to the Committee with answers to several questions about the background and terms of the contract, and other matters related to the use of red light camera enforcement. The specific questions and responses are set forth below.

DISCUSSION

1. Please explain the circumstances that led to extending the pilot program to five years, instead of the one- or two-year term as originally contemplated in the City Manager's Report of July 3, 1996?

The City Manager's Report No. 96-136, dated July 3, 1996, recommended a one-year pilot program with an optional one-year extension, to install sixteen cameras at intersections throughout the City. By Resolution No. R-287600, adopted July 8, 1996, the City Council authorized the City Manager to negotiate a contract consistent with the Manager's Report. On September 25, 1997, the City and USPT entered into a one-year contract for these services.

Before any action was taken to implement the program called for in the contract, however, the SDPD sought to re-negotiate several terms in the contract. As a result, the first contract was never performed, and was rescinded and replaced by the new, five-year contract that was recently presented to the Committee. The terms that were changed include:

- (a) Improved financial terms for the City. The fee that was to be paid to USPT was reduced from \$117 per citation, to either \$70 per citation or 50 percent of the revenue received by the City from a citation, whichever is less. Thus, for example, if the City receives \$140 from a citation, USPT will receive \$70, but if the City receives only \$100 from a citation, USPT will receive only \$50.

- (b) Elimination of "percentage increase" provisions that could have increased the amount per citation owed to USPT. As set forth above, that amount is now fixed at no more than \$70 per citation.
- (c) Increase in the interest-free grace period for payment to USPT, from thirty days to sixty days.
- (d) Elimination of an "early termination penalty fee" that would have required the City to pay no less than \$160,000 to USPT, regardless of any actual damages suffered by USPT, if the City terminated the contract before the end of the term.
- (e) Elimination of any role for USPT in the criminal prosecution process. The previous contract included a pledge by the City to diligently prosecute all citations issued by USPT's system. Such a pledge would have contravened the prosecutor's professional responsibility and hampered the City's ability to make critical determinations about the prosecution of these cases, potentially at great cost to the City.

In exchange for these changes, and in recognition of the substantial capital investment USPT is making to fulfill its obligations under the contract, the City agreed to extend the term of the contract to five years. As with the original contract, there is no cost to the City to enter into this contract.

2. Under what circumstances may the contract be terminated sooner than five years?

The termination provision in the contract allows the City to terminate the contract earlier than five years, if either of these contingencies occur:

- (a) any court of last appeal rules that red light camera results are inadmissible or otherwise contrary to the law, or
- (b) the operation of a unit is determined by a court to be hazardous to the health and safety of the public.

3. May the City also contract with another provider of the same or similar services during the term of the contract with USPT?

During the term of the contract, USPT "shall be the preferred provider" of red light camera enforcement services to the City. The use of the word "preferred" instead of "exclusive" or "only" suggests that another contract for the same or similar services could be entered into with another provider. However, no such contract should give to the other provider the same benefits, cover the same intersections, or include the same number of units as are covered by the contract with USPT.

In a nutshell, any other contract should clearly and demonstrably leave USPT in a "preferred" position with respect to both the services provided under a red light enforcement

contract, and the benefits received under such a contract.

4. Is the "wet film" technology proposed by USPT accepted by the courts?

The technology proposed by USPT has been accepted by courts. In the event a USPT citation is challenged in court, USPT will provide an official to testify, lay the foundation for the admissibility of the photographic evidence, and provide expert witness testimony regarding the accuracy and technical operation of the USPT system and equipment.

5. What is the feasibility of using digital technology to provide red light camera enforcement services?

The legal test used by courts to determine the reliability and admissibility of evidence produced by new scientific technique is known as the *Kelly-Frye* test, named for the two court cases that set forth the test. Under the *Kelly-Frye* test, the court must:

- (a) determine the relevant scientific community (i.e. what kinds of experts can attest to the reliability of the technique),
- (b) evaluate the substance of the evidence (i.e. what is it the expert will be evaluating), and
- (c) determine whether the experts find this technique to be reliable.

If all three elements are undertaken and a court finds that they are satisfied, then the evidence will be accepted and admitted.

We are not aware of any court in the United States that has ruled for or against the reliability or admissibility of digital red light photo enforcement. If the City were to use this technology, it would have to engage the experts and establish for the court that the *Kelly-Frye* test is met.

6. What current legislation exists regarding red light camera enforcement technology?

California Vehicle Code section 21455.5 allows the use of a "traffic signal automated enforcement" system to cite drivers who run red lights, if the system is identified by signs at the intersection, clearly indicating the system's presence and visible to traffic approaching from all directions, or if signs are posted at all major entrances to the city, including, at a minimum, freeways, bridges, and state highway routes. This section was set to expire on January 1, 1999, however, recent legislation removed this "sunset clause" and the authorization for using such systems will now continue in the Vehicle Code indefinitely.

The laws do not specify what type of technology may be used. Accordingly, the type of technology used should be based on its accuracy, effectiveness, and admissibility in court.

CONCLUSION

The system called for in USPT's contract has been accepted by the courts. The five-year term of the contract was negotiated in exchange for a number of financial and other changes in favor of the City. The City may enter into contracts with other providers for this service, but must ensure that USPT remains the "preferred" provider of such services during the terms of its contract with the City.

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submitted,

Respectfully

CASEY GWINN
City Attorney

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