

October 7, 2009

**VIA FEDERAL EXPRESS**

Mr. Bill Emlen  
City Manager  
City of Davis, California  
23 Russell Blvd.  
Davis, CA 95616

**Re: *Notice of Assignment re American Traffic Solutions Acquisition of Nestor Traffic Systems***

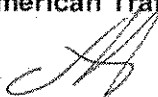
Dear Mr. Emlen:

This letter is to notify you of American Traffic Solution's ("ATS") recent acquisition of Nestor Traffic Systems, Inc. ("Nestor"). As you are aware, Section 8 of the City of Davis, California's contract with Nestor dated August 1, 2005 grants ATS the right to assignment of Nestor's contractual rights and obligations. Please acknowledge receipt of this Notice of Assignment by signing in the space provided below, and return the signed Notice of Assignment in the enclosed prepaid envelope.

We look forward to working with you. If you have any question or require any additional information, please do not hesitate to contact me at your convenience.

Sincerely,

**American Traffic Solutions, Inc.**



Adam Tuton  
Executive Vice President and Chief Operating Officer

**CITY OF DAVIS, CALIFORNIA**

By: Bill Emlen  
Name: B. H. Emlen  
Date: 10/20/09

**NESTOR TRAFFIC SYSTEMS, INC.  
AND  
THE CITY OF DAVIS, CALIFORNIA  
TRAFFIC SIGNAL VIOLATION VIDEO-ENFORCEMENT SYSTEM  
LEASE AND SERVICES AGREEMENT**

**ADDENDUM NUMBER ONE**

This Amendment Number One (the "**Amendment**") is made this 7th day of April, 2009 ("**Effective Date**") by and between Nestor Traffic Systems, Inc., a Delaware corporation having a principle place of business at 42 Oriental Street, Providence, RI 02908 ("**Nestor**"), and the City of Davis, California, a municipal corporation of the State of California, having an address of 23 Russell Boulevard, Davis, CA 95616 (the "**Municipality**", and together with Nestor, the "**Parties**", and each singularly, a "**Party**").

WHEREAS, the Parties entered into that certain Traffic Signal Violation Video-Enforcement System Lease and Services Agreement dated August 1, 2005 (the "**Agreement**"); and

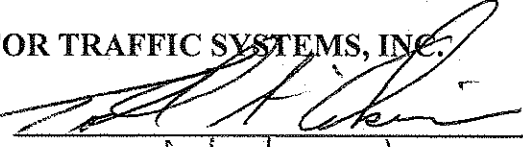
WHEREAS, the Parties desire to amend the Agreement.


NOW, THEREFORE, in consideration of the mutual promises contained herein, the Parties, intending to be legally bound, agree as follows:

1. The term of the Agreement is hereby extended to December 31, 2009 (the "**Extended Term**"). Thereafter, the Agreement shall automatically renew for consecutive one-year terms, with any negotiated modifications or amendments. After the Extended Term, either Party may terminate the Agreement upon 30 days' written notice to the other Party.
2. The Municipality shall pay Nestor a fixed monthly fee of \$2,500.00 per approach as full remuneration for performing all of the services contemplated by the Agreement. Specifically, First Street at E Street and Sycamore Lane at Russell Boulevard will be the only two approaches that will be enforced pursuant to the Agreement, as hereby amended, for a total of \$5,000.00 due from the Municipality to Nestor each month for the services rendered.
3. The approaches located at Mace Boulevard at Chiles Road and Pole Line Road at Fifth Street will be shut down and will no longer be enforced pursuant to the Agreement. Nestor will be responsible for the removal of the equipment and poles at these intersections, if the Municipality determines that such materials should be removed.
4. Section 4.5 of the Agreement is deleted in its entirety.
5. All terms not defined herein shall have the same meaning and use as set forth in the Agreement.

6. All other terms, conditions and provisions of the Agreement, not in conflict with this Addendum Number One shall remain in full force and effect.

IN WITNESS WHEREOF, the Parties hereto have set their hand by their duly authorized representative as of the day and year first written above.

NESTOR TRAFFIC SYSTEMS, INC.  
By:   
Name: Todd A Etkinas  
Title: COO

CITY OF DAVIS, CALIFORNIA  
By:   
Name: Bill Emlen  
Title: City Manager

**NESTOR TRAFFIC SYSTEMS, INC.**  
**CITY OF**  
**DAVIS, CALIFORNIA**  
**TRAFFIC SIGNAL VIOLATION VIDEO-ENFORCEMENT SYSTEM**  
**LEASE & SERVICES AGREEMENT**

This AGREEMENT (the "Agreement") made this 1st day of August, 2005, by and between Nestor Traffic Systems, Inc., a Delaware corporation, having a place of business at 400 Massasoit Avenue, Suite 200, East Providence, RI 02914 ("Nestor"), and the City of Davis, a municipal corporation of the State of California, having an address of 23 Russell Boulevard, Davis, CA 95616 (the "Municipality" and together with Nestor, the "Parties" and each singularly a "Party").

WHEREAS, the Municipality has issued a request for proposals dated November 8, 2004 (the "Request for Proposals"); and

WHEREAS, Nestor submitted on November 19, 2004, a Proposal (the "Proposal") in response to the Request for Proposals; and

WHEREAS, the Parties desire to enter into this Agreement, whereby Nestor will:  
(i) install and assist the Municipality in the administration and operation of a traffic signal violation detection system (the "System") at the intersections located within the Municipality indicated on Exhibit A attached hereto and by this reference incorporated herein, and provide to the Municipality the services (the "Services"), all as more fully described on Exhibit A; and  
(ii) in connection with the Services, license certain software and lease certain equipment to the Municipality; and

WHEREAS, on August 1, 2005, the City Council duly set a public hearing to be held on August 1, 2005, 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 agreement with Nestor Traffic Systems, Inc. for a Traffic Signal Violation Video-Enforcement System; and

WHEREAS, on August 1, 2005, the City Council held a public hearing pursuant to Section 21455.6 of the California Vehicle Code to consider entering into an agreement with Nestor Traffic Systems, Inc., for a Traffic Signal Violation Video-Enforcement System, and all persons who wished to speak were provided an opportunity to do so at the public hearing.

NOW, THEREFORE, the Parties, intending to be legally bound, agree as follows:

**1. SERVICES**

1.1 Nestor shall provide to the Municipality the Services described in Exhibit A, which generally include:

- a. provision of the equipment, as further defined in Exhibit C (the "Equipment"), and software, as further defined in Exhibit B (the "Software"), to be supplied and installed by Nestor in accordance with Exhibit A;
- b. citation preparation processes that assist the Municipality in complying with current applicable law;
- c. training of Municipality personnel involved with the operation of the System and/or the disposition of citations; and
- d. other support services for the System.

1.2 If and to the extent the Municipality has or obtains during the Term (as hereinafter defined) custody, possession, or control over any of the Equipment or Software, the Municipality agrees:

- a. such Software, if manufactured by Nestor, is supplied under the license set forth in Exhibit B (the "License"), attached hereto and by this reference incorporated herein, to which the Municipality agrees;
- b. such Software, if manufactured by third parties, is supplied under third-party licenses accompanying the Software, which licenses the Municipality may agree to; and
- c. such Equipment is supplied under the lease terms set forth in Exhibit C (the "Lease"), attached hereto and by this reference incorporated herein, to which the Municipality hereby agrees.

1.3 The Municipality understands and agrees that: (i) Nestor may subcontract with third parties for the provision or installation of part or parts of the System or Services with the Municipality's prior approval as set forth in Section 8 of this Agreement; and (ii) installation of the System requires the Municipality's cooperation and compliance with Nestor's instructions (including but not limited to Municipality's provision of the personnel, equipment, engineering plans, and other resources as described in Exhibit A or as otherwise agreed to by the Parties) and access by Nestor (or such third parties) to Municipality premises and systems and the Municipality agrees to provide all of the foregoing to Nestor. Nestor shall make all reasonable efforts to meet the estimated dates of installation and activation of the System set forth in Exhibit A (or incorporated therein), but the Municipality acknowledges and understands that such dates may be subject to conditions beyond the control of Nestor and are not guaranteed.

1.4 The Municipality understands and agrees that the System will be owned by Nestor (or its designees). The Municipality agrees to reimburse Nestor for costs incurred to repair any damage to the System caused by the Municipality or any of the Municipality's employees, agents, or independent contractors (other than Nestor, Nestor's employees, contractors, or designees). The Municipality agrees that it will use its best efforts to assist Nestor to identify and obtain compensation from any third-party who is responsible for damage to the System or any part thereof.

1.5 The Request for Proposals and the Proposal shall be deemed a part of this Agreement. To the extent there is any conflict among the terms and conditions of this Agreement, the Request for Proposals, and the Proposal, this Agreement shall govern over both the Proposal and the Request for Proposals; and the Proposal shall govern over the Request for Proposals.

1.6 Nestor is acting hereunder as an independent contractor and not as an agent, representative, or employee of the Municipality. Nestor shall not represent or otherwise hold out itself or any of its directors, officers, partners, employees, or agents to be an agent or employee of the Municipality. Nestor acknowledges and agrees that (a) the Municipality will not withhold taxes of any kind from Nestor's compensation, (b) the Municipality will not secure workers' compensation or pay unemployment insurance to, for, or on Nestor's behalf, and (c) the Municipality will not provide and Nestor is not entitled to any of the usual and customary rights, benefits or privileges of the Municipality's employees.

## **2. TERM**

The initial term of this Agreement, the License, and the Lease shall begin upon the date of this Agreement. The term of this Agreement, the License, and the Lease shall be individual as to each intersection described in Section 1.1 and 1.2 of Exhibit A and shall continue for each particular intersection for three years from the Installation Date (the "Term"). For purposes of this Agreement, including the exhibits attached hereto and incorporated herein,, the "Installation Date" shall be the date that the System becomes operational. Thereafter, this Agreement and the License may be extended by up to two (2) one-year terms, upon mutual consent of the parties, with any negotiated modifications (the "Renewal Term(s)").

## **3. TERMINATION AND EXPIRATION**

3.1 This Agreement may be terminated by either Party if the other Party defaults in the performance of any obligation under this Agreement and such default continues for more than thirty (30) days after notice thereof to the defaulting Party. This Agreement may also be terminated by either Party if legislation or court case law prohibits its operation and/or a legal action is brought challenging the legality of this Agreement.

3.2 Except as prohibited by a court of competent jurisdiction, or by written agreement of the Parties, upon termination or expiration of this Agreement, the Municipality shall immediately cease using the Software and the Equipment in its possession, custody, or control and shall: (a)(i) immediately deliver to Nestor such Equipment and (ii) immediately deliver to Nestor or irretrievably destroy, or cause to be so delivered or destroyed, any and all copies of the Software in whatever form and any written or other materials relating to the Software in the Municipality's possession, custody or control and within thirty (30) days deliver to Nestor a certification thereof or (b) allow Nestor access to the system(s) on which the Software is loaded and grant permission to Nestor to remove the Equipment and Software.

3.3 Termination or expiration of this Agreement shall not relieve the Municipality of any obligation to pay fees or other amounts due or accrued prior to such installation or termination subject to the payment terms set forth in Section 4.3 of this Agreement. This Section

3.3, as well as Sections 3.2, 4.3, 6.2, 6.3, 6.4, 7, and 11 of this Agreement, Sections 4, 7, 8, and 9 (but only to the extent Section 9 corresponds to Sections of the Agreement which survive) of the License, and Sections 3, 4, 5, 6, 7, and 8 (but only to the extent Section 8 corresponds to Sections of the Agreement which survive) of the Lease shall survive any expiration or termination of this Agreement, the License, or the Lease.

3.4 Notwithstanding anything to the contrary contained herein, or in the License or the Lease, but except as provided in the last sentence of Section 3.3, the License and the Lease shall terminate upon the termination or expiration of this Agreement.

#### 4. FEES AND PAYMENT

4.1 The Municipality shall pay Nestor a fixed monthly fee as full remuneration for performing all of the services contemplated in this Agreement. The Municipality shall begin incurring the fixed monthly fees after the 30th day following the Installation Date. During the initial thirty (30) days following the Installation Date, warnings, but not citations, will be issued. The monthly fee shall be equal to:

a. \$975.00 for each Installed Approach for the Equipment in accordance with the Lease Agreement attached as Exhibit C hereto, and

b. \$4,490.00 for each Installed Approach for the Services and Software (exclusive of the Equipment) as described in Exhibits A & B hereto.

4.2 "Installed Approach" shall mean a signalized direction of travel on an individual access road or street to any intersection that is monitored by the System. If and to the extent that (1) an Installed Approach subject to a Monthly Fee is not capable of detecting violations or (2) Nestor is unable to print and/or mail citations, in either case, for three (3) or more days in any calendar month as a result of system malfunctions not caused by Municipality or an event described in Section 11.8 of this Agreement (collectively and each individually, an "Event"), Nestor will allow a credit against the monthly fee for Equipment, Services and Software for such Installed Approach for that month equal to: such Installed Approach's monthly fee for Equipment, Services and Software multiplied by: (a) the total number of days the approach was incapable of detecting violations, and/or printing and mailing Citations (as applicable) in the month as a result of the Event, divided by (b) thirty (30) days.

4.3 In the event of termination of this Agreement due to a breach by the Municipality during the Term of this Agreement, the termination and cancellation fee for each Installed Approach shall equal the product of (a) \$975.00 multiplied by (b) the Remaining Term. The "Remaining Term" shall equal thirty six (36) minus the number of whole months from the date that the Installed Approach in question became operational to the date of termination.

4.4 Payment of all fees and other charges owed pursuant to this Agreement is due within ninety (90) days after invoice date. Invoices will be sent to the Municipality at:

City of Davis  
Attention: Police Chief  
Police Department

2600 5th Street  
Davis, CA 95616

4.5 This program will be operated as a safety program. Nestor will perform an initial annual financial review of the program, and every six months after the first annual review, agrees to renegotiate its service fees (down or up, but not to exceed the service fees in Section 4.1) if it is determined that fees incurred pursuant to Section 4.1 exceed net program revenues being realized. If the parties are unable to agree on a renegotiated fee, either Party will have the right to terminate this Agreement. For the sake of clarity, such termination, by either Party, shall be considered neither a breach of this Agreement nor an inability to cure following default.

4.6 In the event that the Agreement ends or is terminated and an invoiced balance is still owed to Nestor, all subsequent receipts from automated red light violations for a period of twelve (12) months from date of termination will be applied to such balance and paid to Nestor.

4.7 At the time of execution of this Agreement, it is the understanding of the parties that Nestor's services provided hereunder are not subject to federal or state excise, sales, use, property, or other similar taxes or charges. Nestor agrees to be fully responsible for any such tax or charge if charged against Nestor, but the Municipality agrees that so long as Nestor provides reasonable notification to the Municipality of any such tax or charge to allow the Municipality an opportunity to request a waiver, the Municipality shall seek such a waiver.

## **5. RESPONSIBILITIES OF THE MUNICIPALITY**

5.1 The Municipality shall provide Nestor with such "as built" drawings in AutoCAD electronic format as Nestor may reasonably require for the preparation of drawings for the installation of the System and shall approve Nestor's engineering drawings in the same manner as it would other engineering drawings submitted to the City.

5.2 To the maximum extent permitted by law, the Municipality shall waive any permit and licensing fees for any System construction and installation, and to the extent such fees are not waivable, the Municipality shall reimburse Nestor for such fees but in no event shall the Municipality be required to reimburse such fees earlier than nine months after the Installation Date of the Installed Approach to which such fees relate. Nestor shall be responsible for acquiring, if applicable, a city business license and paying any city business tax at the sole expense of Nestor.

Nestor understands and agrees that the payment or waiver of City fees for a project considered a "public work" under Labor Code sections 1720 *et seq.* requires prevailing wages to be paid to contractors. Nestor shall indemnify, hold harmless and defend (with counsel reasonably acceptable to the Municipality) the Municipality against any claim for damages, compensation, fines, penalties, or other amounts arising out of the failure of Nestor or its contractors to pay prevailing wages as required by law or to comply with the other applicable provisions of Labor Code Sections 1720 *et seq.* and implementing regulations of the Department of Industrial Relations in connection with construction performed pursuant to this Agreement. The indemnity provided for in this Section 5.2 is expressly limited as follows: (i) the indemnity does not include any improvements where the Municipality has represented in writing to Nestor



that such improvements are not, or should not be considered, public works under Labor Code Section 1720 *et seq.*; and (ii) the indemnity does not include any improvements where the Municipality contracted for the work directly.

5.3 Subject to the Municipality's right of prosecutorial discretion, solely vested in the Municipality, the Municipality shall prosecute each citation and defend any challenge in any court to the use of the System or validity of its results and/or the use of the U.S. Mails to deliver the citation. Nestor may, at its own expense, intervene in any proceeding challenging the use of the System or validity of its results and/or use of the U.S. Mails to deliver the citation.

5.4 The Municipality shall provide all necessary electrical connections at the roadside and pay for power required by the System.

5.5 To allow for proper operation of the System, the Municipality shall provide Nestor with advance written notice of any modifications proposed to intersections, including traffic signal operations, after installation of the System. In the event any such intersection modification requires a material change to the System, the Municipality shall pay the costs reasonably incurred by Nestor to adapt the affected Installed Approach(es) to make such Installed Approach(es) compatible therewith or another intersection may be substituted in accordance with Section 1.2 of Exhibit A. Notwithstanding the above, Nestor makes no guarantee that it will be able to make any such adaptation. In addition, Nestor does not, and will not, make recommendations or otherwise manage the configuration or operation of the intersection traffic light system. In the event that Nestor is unable to make such adaptation, this Agreement shall be terminated, with no penalty incurred by either party, with respect to that Installed Approach; and the parties agree to locate an alternative approach or intersection in accordance with Section 1.2 of Exhibit A.

5.6 The Municipality shall provide such assistance as may be required for Nestor to obtain any information and approvals from the Court(s), other governmental instrumentalities, or entities necessary or desirable for Nestor to provide the Services.

5.7 During the term of this Agreement, except as expressly permitted by this Agreement, the Municipality shall not use the System, or allow the System's use by a third party, without the prior written permission of Nestor.

## **6. LIMITED WARRANTY AND LIMITATION ON DAMAGES**

6.1 Nestor warrants that the System's functionality will conform in all material respects to the description of the System set forth in Exhibit A. This warranty does not apply if the Municipality has failed to make all payments to Nestor required by this Agreement or as set forth in, and is subject to the conditions of, Section 6.4.

6.2 Except as specifically provided herein, the services and system are not error free and are being provided "as is" without warranty of any kind, and Nestor hereby disclaims all other warranties, whether express or implied, oral or written, with respect to the services and system, including, without limitation, all implied warranties of accuracy, merchantability or fitness for any particular purpose and all warranties implied from any course of dealing or usage of trade. Municipality acknowledges that except as expressly provided herein, no other

warranties have been made to Municipality by or on behalf of Nestor or otherwise form the basis for the bargain between the Parties.

6.3 Regardless of whether any remedy set forth herein fails of its essential purpose, in no event will either Party be liable to the other for indirect, incidental, consequential, special, punitive or other similar damages (including damages for loss of information, profits, or savings, or business interruption) arising out of the System, the services or the use or inability to use the System or the services. In no event will Nestor be liable to Municipality for any reason for any amount in excess of the fees actually paid by Municipality to Nestor in accordance with Sections 4.1 or 4.2 during the twelve months immediately preceding the event(s) or circumstance(s) giving rise to Nestor's liability to Municipality. Nothing in Section 6 of this Agreement shall be construed to limit any liability of either party hereto to a third party.

6.4 The Municipality acknowledges and agrees that:

- a. The System may not detect every red light violation;
- b. Since the System may flag as a violation conduct that is in fact not a violation, the output of the System will require review, analysis, and approval by personnel appropriately qualified and authorized by the Municipality under applicable law prior to the issuance of any citation;
- c. The System may not detect every event for which it is desirable to recommend extension of the red light phase, if such feature is used;
- d. The System has no control over, and relies on the proper functioning of Municipality-supplied equipment for signal light changes;
- e. The warranty set forth in Section 6.1 is not intended to, and shall not, be construed as a warranty of the level of performance of the System;
- f. The proper functioning of the System requires the Municipality's full and complete compliance with the System's operating instructions, which Municipality hereby agrees to do; and
- g. The Municipality shall be responsible for the configuration and/or operation of all intersection traffic light systems, and Nestor shall have no liability or obligations with respect thereto.

## 7. INDEMNIFICATION AND LIABILITY.

7.1 Indemnification by Nestor. Subject to Section 7.3, Nestor hereby agrees to defend (by counsel reasonably satisfactory to the city attorney pursuant to Section 7.3) and indemnify the Municipality, councilpersons, managers, officers, directors, employees, agents, representatives, volunteers, successors, permitted assignees and each of their affiliates, and all persons acting by, through, under, or in concert with them, or any of them (individually a "Municipality Party" and collectively, the "Municipality Parties") against, and to protect, save and keep harmless the Municipality Parties from, and to pay on behalf of or reimburse the

Municipality Parties as and when incurred for, any and all liabilities, obligations, losses, damages, penalties, demands, claims, actions, suits, judgments, settlements, costs, expenses and disbursements (including reasonable attorneys', accountants' and expert witnesses' fees) of whatever kind and nature (collectively, "Losses"), which may be imposed on or incurred by any Municipality Party arising out of or related to (a) any material misrepresentation, inaccuracy or breach of any covenant, warranty or representation of Nestor contained in this Agreement; (b) the conduct of Nestor, its employees or agents which result in death or bodily injury to any natural person (including third parties) or any damage to any real or tangible personal property (including the personal property of third parties), except to the extent caused by the willful misconduct of any Municipality Party; (c) any and all claims, causes of action, proceedings, and judgments arising out of any allegation that this Agreement is inconsistent with or fails to meet the requirements of Vehicle Code section 21455.5(g)(1) except that Nestor shall not be responsible for the repayment of any revenues received by the Municipality pursuant to this Agreement; (d) any claim, action or demand caused by Nestor's failure to perform its obligations under this Agreement; and (e) any claim, action or demand challenging Nestor's failure to maintain the Nestor System or any portion thereof.

7.2 Indemnification by Municipality. Subject to Section 7.3, the Municipality hereby agrees to defend and indemnify Nestor and its affiliates, shareholders or other interest holders, managers, officers, directors, employees, agents, representatives and successors, permitted assignees and all persons acting by, through, under or in concert with them, or any of them (individually a "Nestor Party" and collectively, the "Nestor Parties") against, and to protect, save and keep harmless the Nestor Parties from and to pay on behalf of or reimburse the Nestor Parties as and when incurred for, any, and all Losses which may be imposed on or incurred by any Nestor Party arising out of or in any way related to (a) any material misrepresentation, inaccuracy or breach of any covenant, warranty or representation of the Municipality contained in this Agreement, (b) the willful misconduct of the Municipality, its employees, contractors or agents which result in death or bodily injury to any natural person (including third parties) or any damage to any real or tangible personal property (including the personal property of third parties), except to the extent caused by the willful misconduct of any Nestor Party, (c) any modification to the Nestor system made by the Municipality without the consent of Nestor, (d) failure of the Municipality to use the Nestor System in the manner described, in writing, by Nestor, and (e) the review and analysis of the Nestor System data output by Municipality personnel for citation preparation.

7.3 Indemnification Procedures. In the event any claim, action or demand (a "Claim") in respect of which any party hereto seeks indemnification from the other, the party seeking indemnification (the "Indemnified Party") shall give the party from whom indemnification is sought (the "Indemnifying Party") written notice of such Claim promptly after the Indemnified Party first becomes aware thereof, provided, however, that failure to give such notice shall not preclude indemnification with respect to such Claim except to the extent of any additional or increased Losses or other actual prejudice directly caused by such failure. The Indemnifying Party shall have the right to choose counsel to defend such Claim (subject to the approval of such counsel by the Indemnified Party, which approval shall not be unreasonably withheld, conditioned or delayed), and to control, compromise and settle such Claim, and the Indemnified Party shall have the right to participate in the defense at its sole expense; provided, however, the Indemnified Party shall have the right to take over the control of the defense or

settlement of such Claim at any time if the Indemnified Party irrevocably waives all rights to indemnification from and by the Indemnifying Party. The Indemnifying Party and the Indemnified Party shall cooperate in the defense or settlement of any Claim, and no party shall have the right to enter into any settlement agreement that materially affects the other party's material rights or material interests without such party's prior written consent, which consent will not be unreasonably withheld or delayed.

## 8. ASSIGNMENT AND SUBCONTRACTING

This Agreement contemplates the personal services of Nestor and Nestor's employees and the parties acknowledge that a substantial inducement for the Municipality to enter into this Agreement was and is the professional reputation and competence of Nestor and Nestor's employees. Except as a result of merger, sale of assets, or other business combination, Nestor shall not assign its rights or delegate its duties hereunder, or any interest herein, or any portion hereof, without the prior approval of the Municipality except that Nestor may assign any monies due or to become due to Nestor hereunder. Any attempted assignment or delegation shall be void, and any assignee or delegate shall acquire no right or interest by reason of such attempted assignment or delegation. Furthermore, Nestor shall not subcontract any portion of the performance required hereunder without the prior approval of the Municipality, nor substitute an approved subcontractor without the prior approval of the Municipality. Approvals requested of the Municipality under this Section 8 shall not be unreasonably withheld by the Municipality. Nothing stated in this Section 8 shall prevent Nestor from employing as many employees as Nestor deems necessary for performance of this Agreement.

## 9. INSURANCE

9.1. Insurance. As a condition to the effectiveness of this Agreement, Nestor shall procure and maintain the following insurance at Nestor's expense for the duration of this Agreement and any extensions, renewals or holding over thereof, from insurance companies that are admitted to write insurance in the State of California:

9.1.1 Commercial General Liability. Nestor shall maintain commercial general liability insurance in an amount not less than One Million Dollars (\$1,000,000) combined single limit per occurrence for bodily injury and property damage. Such coverage shall include but shall not be limited to broad form contractual liability, independent contractor liability, cross liability, and products and completed operations liability. The Municipality, its officials, employees and agents shall be named as additional insureds by endorsement, and this insurance shall contain no special limitations on the scope of protection afforded to the Municipality, its officials, employees, and agents.

9.1.2 Commercial Automobile Liability. Nestor shall maintain commercial automobile liability insurance in an amount not less than One Million Dollars (\$1,000,000) combined single limit per accident for bodily injury and property damage, including but not limited to coverage for all automobiles owned by Nestor, hired by Nestor, and owned by third parties.

9.1.3 Professional Liability. Nestor shall maintain professional liability insurance in an amount not less than One Million Dollars (\$1,000,000) per occurrence.

9.1.4 Workers' Compensation. Nestor shall maintain workers compensation as required by the Labor Code of the State of California, and Employer's Liability with minimum limits of One Million Dollars (US \$1,000,000) per accident. Such policy shall be endorsed to provide (1) that the insurer agrees to waive all rights of subrogation against the Municipality, its officials, employees, and agents for loss paid under the terms of the policy which arise from work performed by Nestor for the Municipality, and (2) that the policy shall not be cancelled, nonrenewed or materially changed in coverage by either party except after thirty (30) days' prior written notice to the Municipality.

9.2 Subcontractor's Insurance. Any subcontractor which Nestor may use in the performance of this Agreement shall be required to maintain insurance in compliance with the provisions of this Section 9 unless otherwise agreed in writing by the Municipality's Risk Manager or designee.

9.3 Self-Insurance. Any self-insurance program, self-insured retention, or deductible must be approved separately in writing by Municipality's Risk Manager or designee and shall protect Municipality and its officials, employees, and agents in the same manner and to the same extent as they would have been protected had the policy or policies not contained retention provisions; provided, however, that any self-insured retention or deductible as is typical for policies of similar scope and coverage in the ordinary course of business shall not require such approval.

9.4 Endorsement. In addition to any other endorsement required herein, each liability insurance policy required herein shall be endorsed to provide that (1) the policy shall not be cancelled, nonrenewed or materially changed in coverage by either Party except after thirty (30) days prior written notice to the Municipality, (2) that the policy shall apply separately to each insured who is seeking coverage or against whom a claim is made or a suit is brought, except with respect to the insurer's limit of liability, and (3) that coverage shall be primary and not contributing to any other insurance or self-insurance maintained by the Municipality.

9.5 Certificates of Insurance. Prior to the start of performance under this Agreement, Nestor shall deliver to the Municipality certificates of insurance and required endorsement evidencing the insurance coverage required by this Agreement for approval as to sufficiency and form, including any insurance required of Nestor's subcontractors. The certificates and endorsement shall contain the original signature of a person authorized by that insurer to bind coverage on its behalf. In addition, Nestor shall, at least thirty (30) days prior to expiration of such policies, furnish Municipality with certificates of insurance and endorsement evidencing renewal of the insurance required herein. Municipality reserves the right to require complete certified copies of all insurance policies of Nestor or any of Nestor's subcontractors at any time. Nestor agrees to make available to Municipality all books, records and other information relating to the insurance coverage required by this Agreement during normal business hours.

9.6 Liability. The insurance required herein shall not be deemed to limit Nestor's liability relating to performance under this Agreement. The procuring of insurance shall not be

construed as a limitation of liability or as full performance of the indemnification and hold harmless provisions of this Agreement. Nestor may effect for its own account insurance not required under this Agreement.

9.7 Modification. Any modification or waiver of the insurance requirement herein shall be made only with the written approval of the Municipality's Risk Manager or designee.

## 10. CONFIDENTIALITY

10.1 Confidential Information. As set forth in California Vehicle Code Section 21455.5, Nestor shall hold all Department of Motor Vehicle Records, video tape evidence, and photographic records ("Confidential Data") as confidential. Nestor shall use Confidential Data only for the purposes of this Agreement and shall not release Confidential Data to outside parties without the written consent of the Municipality. To the extent permitted by law, the Municipality shall hold all software and documentation provided by Nestor as confidential. The Municipality shall not release or provide access to said software and, to the extent permitted by law, shall not release or provide access to said documentation to outside parties without written consent of Nestor. The Municipality and Nestor shall apply the same level of protection against disclosure of the other's confidential information as it does for its own.

10.2 Record Retention. Nestor shall retain Confidential Data for a period of six (6) months from the date the information was first obtained, or until final disposition of the citation, whichever date is later, after which time the information shall be destroyed by Nestor. The method of destruction of Confidential Data shall be in such a manner that it cannot be reproduced or identified in any physical or electronic form. Said method of destruction of all Confidential Data shall be approved by the Municipality. The Municipality or its authorized representative, upon reasonable notice, shall have the right, during normal business hours, to examine and audit any and all records, books, papers, and documents related to the destruction of Confidential Data by Nestor to the extent the Municipality believes necessary to assure verification and compliance

10.3 Breach of Confidentiality. Nestor shall not be liable for a breach of confidentiality with respect to Confidential Data that:

- a. Nestor had knowledge of prior to the time the Municipality disclosed it; or if the Confidential Data is, or becomes, publicly available without a breach of this Agreement by Nestor; or
- b. A third party, who has a right to disclose, discloses to Nestor without restrictions on further disclosure; or
- c. Must be disclosed pursuant to subpoena or court order.

## 11. MISCELLANEOUS

11.1 Headings for Convenience Only. The headings and captions used in this Agreement and the Exhibits are for convenience only and are not to be used in the interpretation of this Agreement.

11.2 No Waiver. The failure of either Party to require performance of any provision of this Agreement shall not affect the right to subsequently require the performance of such provision or any other provision of this Agreement. The waiver of either Party of a breach of any provision shall not be taken or held to be a waiver of any subsequent breach of that provision or any subsequent breach of any other provision of this Agreement.

11.3 Severability. If any covenant or provision of this Agreement is, or is determined to be, invalid, illegal or unenforceable, all remaining covenants and provisions of this Agreement shall nevertheless remain in full force and effect, and no covenant or provision of this Agreement shall be deemed to be dependent upon any covenant or provision so determined to be invalid, illegal or unenforceable unless otherwise expressly provided for herein.

11.4 Governing Law and Choice of Forum. This Agreement has been entered into, delivered and is to be governed by, construed, interpreted and enforced in accordance with the laws of the State of California. Any dispute, controversy, or claim arising out of or in relation to this Agreement, or any breach or alleged breach of this Agreement, as between the parties shall be resolved in the Superior Court of the State of California, County of Yolo.

11.5 Integration. Except as set forth in this Agreement, which includes the Exhibits hereto, the Proposal, and the Request for Proposals, no representation, statement, understanding or agreement, whether written or oral, has been made; and there has been no reliance on anything done or said or on any assumption in law or fact with respect to this Agreement for the duration, termination or renewal of this Agreement other than as expressly set forth in this Agreement; and there has been no reliance upon anything so done or said that in any way tends to change or modify the terms or subject matter of this Agreement or to prevent this Agreement from becoming effective. This Agreement supersedes any agreements and understandings, whether written or oral, entered into by the Parties hereto prior to the effective date of this Agreement.

11.6 Modification or Amendment. This Agreement may be modified or amended from time to time by the Parties, provided, however, that no modification or amendment hereto shall be effective unless it is stated in writing, specifically refers to this Agreement and is executed on behalf of both Parties hereto.

11.7 Notice. Except as otherwise specified, all notices, payments, and reports hereunder shall be deemed given and in effect as of the date of mailing or transmission, as the case may be, when sent by next day delivery or courier service, postage pre-paid), or three days after the date of mailing when sent by first class mail, postage pre-paid, addressed in all such cases to the Parties as set forth in the preamble to this Agreement directed in each case to the President of Nestor or the Finance Director at the Municipality or to such other addresses as the Parties may from time to time give written notice of as herein provided.


11.8 Force Majeure. Except for the obligation to make any payment of money, neither Party shall be liable to the other for failure or delay in meeting any obligations hereunder which arises in whole or in part from causes which are unforeseen by, or beyond the control of, such Party, including without limitation, acts of God or of a public enemy, acts of the Government (other than the Municipality in the case of the Municipality) in either its sovereign or contractual capacity, acts of terrorism, fires, floods, epidemics, quarantine restrictions, strikes, freight

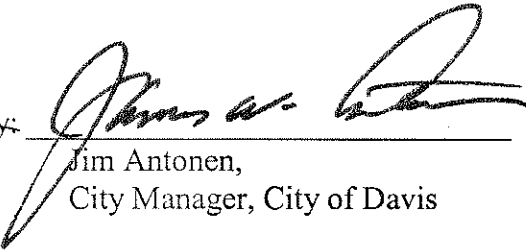
embargoes, acts or omissions of subcontractors and other third-parties and unusually severe weather. When any such circumstance(s) exist, Nestor shall have the right, in its sole discretion, to allocate its available production, deliveries, services, supplies and other resources among any and all buyers (whether or not including the Municipality), as well as among departments and affiliates of Nestor, without any liability to the Municipality.

IN WITNESS WHEREOF, the Parties hereto have set their hands by their duly authorized representatives as of the day and year first above written.

NESTOR TRAFFIC SYSTEMS, INC.

CITY OF DAVIS, CALIFORNIA

By:   
Nigel P. Hebborn  
President & CEO

By:   
Jim Antonen,  
City Manager, City of Davis

APPROVED AS TO FORM:

CITY ATTORNEY

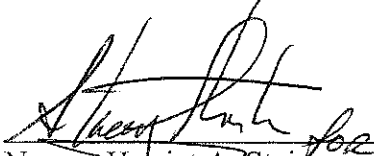
  
Name: Harriet A. Steiner



Exhibit A  
SERVICES

Nestor shall provide the Municipality with the following Services, each of which is more fully described below:

1. Site Installation Planning; Design and Equipment Installation
2. User Training and Support
3. Citation Preparation and Processing Services
4. Maintenance and Support
5. Public Education Campaign
6. Expert Witness Testimony and Court Training
7. Violation Review Station
8. Reporting
9. Meetings

1. Site Installation Planning, Design and Equipment Installation

1.1 The CrossingGuard® System. Nestor shall install CrossingGuard® video monitoring systems including but not limited to pan-tilt –zoom weather-dome cameras, supplementary intersection lighting (if needed), camera poles, extensions (if needed) and a secure roadside equipment cabinet containing the CrossingGuard® roadside computers and communications equipment ("the System") as set forth in the Nestor Proposal for Automated Red Light Enforcement Services ("the Proposal"). Nestor and the Municipality agree to conduct a survey of the Municipality's intersections and select no more than fifteen (15) approaches that could potentially be subject to this Agreement. Video monitoring systems shall initially monitor a minimum of four (4) approaches to be designated in writing by mutual agreement of the Municipality and Nestor. Additional video monitoring systems may be added at the option of the Municipality.

1.2 Substitution or Addition of an Intersection. If, after the parties agree on the approach(es) or intersection(s) for which a video monitoring system will be installed but at least fifteen (15) days prior to the commencement of installation of the System, Nestor or the Municipality determines that one or more of the approaches or intersections is not, for any reason, appropriate for the System then an alternate approach(es) or intersection(s) may be substituted by written consent of the Municipality and Nestor.

After the Installation Date, the Parties may mutually agree to relocate any existing and operating System for an individual intersection to an alternate location (to be mutually agreed to by the Municipality and Nestor) in the event that the number of citations issued at the intersection is less than one hundred and twenty (120) citations per Installed Approach at that intersection per month, averaged over a three month or longer period. If such relocation occurs, this Agreement shall be terminated with respect to the individual intersection; this Agreement shall then apply, commencing on the Installation Date, and as further specified in Section 2 of the Agreement, to the new intersection. The parties further agree that they shall meet and confer on at least a monthly basis following the date of the first Installation Date, to discuss the number of citations issued at the Affected Approaches and to evaluate whether retaining the System on all of the Affected Approaches is financially feasible for the Municipality.

1.3 Timeframe for Installation of the System. The above intersections will be installed and activated in phases in accordance with an Implementation Plan to be mutually agreed to by Nestor and the Municipality. Nestor shall make all reasonable efforts to install the System in accordance with the schedule set forth in the Implementation Plan. The Municipality agrees that the estimated dates of installation and activation of the System set forth in the Implementation Plan may be subject to conditions beyond the control of Nestor and are not guaranteed. Nestor agrees that, in accordance with Section 2 of the Agreement, the Municipality does not have a duty to pay Nestor until the equipment becomes operational on the Installation Date.

1.4 Installation/Ownership of the System. Nestor will procure, install and provide support of traffic signal violation detection equipment (computer hardware, software, cameras, camera housing and mounts, communications equipment, and roadside controller cabinets) as specified in the Proposal at each designated intersection. As between Nestor and the Municipality, all components for the System will remain the property of Nestor.

#### 1.5 Installation

1.5.1 Nestor shall submit plans and specifications to the Municipality for review and approval, which review and approval will not be unreasonably withheld, delayed or conditioned. Nestor shall provide at least three sets of drawings of the wiring for the System circuitry.

1.5.2 If commercially reasonable and if capacity exists, all wiring shall be internal to equipment (not exposed) and underground in existing traffic signal conduits, except where required to directly interface with the traffic signals and electrical service. Separate conduits or overhead wiring may be used by Nestor if existing conduit(s) are at capacity. If existing conduits are used, the Municipality will not unreasonably withhold, delay, or condition consent to such use.

1.5.3 The System shall be electrically isolated from the traffic signal system using industry-standard practice and methods. In the event that Nestor and the Municipality cannot agree on the method of isolation, the Municipality shall procure, at its own expense, such equipment or means to accomplish the isolation.

1.5.4 The System may be mounted on, or utilize support of, existing traffic signal poles, arms, or other intersection structures where possible, subject to Municipality review and approval, which shall not be unreasonably withheld, delayed or conditioned. The Municipality shall be solely responsible for remediation or replacement that may be required with respect to existing poles, arms or other intersection structures in the event that such remediation or replacement is required due to conditions not caused by Nestor, Nestor's employees, agents or independent contractors.

1.5.5 The System poles, foundations and new infrastructure, as required, shall conform to applicable law.

1.5.6 Nestor shall be solely responsible for remediation or replacement of any equipment or software installed by Nestor in the event that such remediation or replacement is required due to conditions not caused by the Municipality or any of the Municipality's employees, agents, or independent contractors (other than Nestor). The Municipality agrees that it will use its best efforts to assist Nestor to identify and obtain compensation from any third-party that is responsible for such damage.

1.5.7 Nestor shall notify the Municipality at least forty-eight (48) hours prior to interfacing with traffic signal equipment. Nestor shall be responsible for installing all its wiring into Municipality cabinets.

1.5.8 To the maximum extent permitted by law, and as further specified in Section 5.2 of the Agreement, the Municipality shall waive any permit and licensing fees for any System construction and installation, and to the extent such fees are not waivable, Municipality shall reimburse Nestor for such fees from revenues to which the Municipality is entitled to receive through the collection of automated red light citations. Nestor shall be responsible for, if applicable, the payment of prevailing wages, as specified further in Section 5.2 of the Agreement, acquiring, if applicable, a city business license, and paying any city business tax at the sole expense of Nestor. Nestor shall apply for any and all permits that may be required from the California Department of Transportation (CALTRANS) relating to installation of the System at intersections requiring such permits at the sole expense of Nestor.

1.6 Production of Video Files. Nestor shall produce digital video files of red light violations ("Violation Video"), capable of identifying vehicles traveling through the intersection during the red light phase as specified in the Proposal. The Violation Video shall capture a view of the traffic signal from the direction in which the driver is approaching, the approaching vehicle as viewed from the intersection, an image of the driver, and a front and rear view of the vehicle's license plates.

1.7 Restoration of Intersections. Upon termination or expiration of the Agreement, Nestor shall remove the System and restore the affected public facilities, including returning the intersections to their original condition; provided, however, that Nestor shall not be required to remove any of the following, which if not removed shall become the property of the Municipality upon termination: conduits, in-ground fixtures, underground wiring, or other infrastructure that will require excavation or demolition. All costs incurred by Nestor thereby will be the responsibility of Nestor.

## 2. User Training and Support.

2.1 Training of Municipality Personnel. After System installation, Nestor shall initially provide eight (8) hours of training for up to ten (10) persons at two (2) sessions at the Municipality's facilities to acquaint Municipality personnel with System operation at no cost to Municipality. Training shall consist of instructional and operational training, field training, and hands-on equipment exercises with an instructor as specified in the Proposal. All necessary training materials and documentation will be provided by Nestor. If the Municipality requests additional courses or training, Nestor shall provide, to the extent commercially reasonable, such additional training at no cost.

2.2 Preparing Law Enforcement for Court Appearances. Nestor shall train the Municipality's law enforcement personnel to testify about the principles of the System operation and citation processing steps as specified in the Proposal. Nestor shall provide all necessary visual aids for equipment and process description. Nestor shall also review with law enforcement personnel the types of questions or challenges typically raised in court regarding the System and provide the technical information necessary to address such questions or challenges.

## 3. Citation Preparation and Processing Services.

3.1 Citation Preparation and Processing. Nestor shall provide preparation and processing services for approved red light violations utilizing a computerized traffic citation program ("Citation Composer") as specified in the Proposal. Nestor shall perform such citation processing seven (7) days a week. Nestor shall cooperate with the Municipality's Police Department in the issuance of citations. The Municipality shall develop and provide to Nestor at its sole discretion criteria for screening and issuing citations. Nestor shall forward electronically the information needed to make a citation decision to the Municipality's Police Department for review and approval before a citation is issued.

3.1.1 Approval by Police Department. All citations shall be reviewed and approved by the Municipality's Police Department prior to mailing. NESTOR HEREBY ACKNOWLEDGES AND AGREES THAT THE DECISION TO ISSUE A CITATION SHALL BE THE SOLE, UNILATERAL, AND EXCLUSIVE DECISION OF THE MUNICIPALITY AND SHALL BE MADE IN THE MUNICIPALITY'S DISCRETION. IN NO EVENT SHALL NESTOR HAVE THE ABILITY OR AUTHORIZATION TO MAKE A CITATION DECISION.

3.1.2 Mailing and Postage. In processing violations, Nestor shall print and mail citation forms. Nestor shall pay all mailing and postage costs, and such other miscellaneous costs and expenses as may be reasonably necessary to issue a citation and deliver it by U.S. Mail. To the extent required by applicable law, Nestor will obtain a certification of mailing issued by the Post Office. Nestor will not process nor support any citations not captured by the System and/or approved by the Municipality.

3.1.3 Mailing of Citations. Citations shall be mailed to the violator as soon as is practical after being approved by the Municipality and transmitted to the processing center (managed by Nestor or such third party, to whom Nestor has delegated such operation, on behalf

of the Municipality and with the Municipality's approval) but in no event later than the time required by law. The form of citation shall be subject to the approval of the Municipality, which approval may not be unreasonably delayed, conditioned or withheld.

3.1.4 Transmission of Information. Nestor shall download all citation information via an electronic file into a Court database not later than twenty four (24) hours after mailing of the citation. Nestor shall maintain a documented chain of custody for all electronically transmitted information while the information is under Nestor's control.

3.1.5 Numbering System. Nestor, in coordination with the Courts, will develop and implement an independent numbering system for automated red light citations.

### 3.2 Adjudication.

3.2.1 Court Training. Nestor shall conduct a one-day workshop-orientation session for Court judges (and/or their designees), other appropriate court officials and the Municipality, or other appropriate, prosecutor to familiarize such persons with the System.

3.2.2 Adjudication Support. Nestor shall develop a court support binder for each enforced intersection which shall provide an easy reference tool for police officers during court trials as specified in the Proposal. Nestor shall also develop a spreadsheet with available court dates and authorizing officer availability.

3.2.3 Transmission of Evidence. Nestor shall establish a system by which supporting electronic video files will be provided, together with a laptop PC, to enable court personnel to access the violation video and electronic citation information for each contested citation as specified in the Proposal. Nestor shall work with the court and judiciary officials to develop an approved process for providing a copy of the citation along with an affidavit designed to authenticate and ensure the admissibility of the citation.

3.2.4 Expert Witness Testimony. Nestor shall provide expert witness testimony, as reasonably necessary, to testify regarding the accuracy and technical operation of the System.

3.3 Access to Drivers License Information. To the extent Nestor is able and permitted under the law, Nestor shall directly access the drivers license information and the registered owner residence address from the State department that regulates the use and operation of motor vehicles (the "DMV"). If Nestor is unable to access such information, Nestor shall provide the license plate number of violators to the Municipality, which will provide such information to Nestor within a reasonable period of time.

3.4 Delinquent Notices. Nestor shall set up the necessary communications and procedures that will enable Nestor to send delinquent notices to those registered owners/drivers for whom such notices are appropriate.

3.5 Customer Service. Nestor will provide an automated customer service telephone number to the public. Customer Service Representatives will be available Monday through Friday, from 9:00 a.m. to 5:00 p.m. Pacific Standard Time/Pacific Daylight Time, excluding

holidays, in order to schedule violation video viewing appointments for the Police Department and to answer basic questions regarding the Municipality's program.

#### 4. Maintenance

4.1 Maintenance of System. Nestor shall monitor the System continually twenty-four (24) hours a day, seven (7) days a week for service problems. Nestor shall Maintain the System (as defined below); provided however, that Nestor shall not be responsible for any maintenance, repair, or replacement required as a result of (i) the negligence or intentional act of the Municipality, its employees, agents or independent contractors (other than Nestor) and/or (ii) any equipment or software not provided by Nestor. Nestor shall maintain a maintenance log that documents all service issues. To "Maintain the System" shall mean to keep the System, including but not limited to enforcement equipment (i.e. cameras, poles, wiring, roadside computers), the workstation equipment, and software, in such a state of operation that the System's functionality conforms in all material respects to the description of the System set forth in this Exhibit and in the Proposal.

4.2 Equipment Checks. Nestor shall perform remote camera and PC equipment checks on a daily basis to confirm proper operation of computers, cameras, and the communications network. Nestor shall make specialized third-party technicians approved by the Municipality, which approval shall not be unreasonable withheld, available for on-site service when needed. Such third-party technicians shall also perform on-site inspection and preventative maintenance on a routine basis, including cabinet and camera dome cleaning.

#### 5. Public Education Campaign.

5.1 Public Awareness Program. Nestor shall assist the Municipality with a Public Awareness Program as specified in the Proposal beginning at least thirty (30) days prior to the issuance of citations. Such assistance shall include the services described below.

5.1.1 Press Releases and Press Conferences. At the Municipality's option, Nestor shall prepare a series of press releases informing the local media and the public about the installation of the red light cameras, the benefits of red light cameras, and the results of the installation. In coordination with the Municipality, Nestor shall also arrange at least two press conferences featuring key Nestor personnel and Municipal officers.

5.1.2 Training of Municipality's Staff. Nestor shall provide presentation materials (Power Point presentations) and training to Municipality's staff on giving public presentations regarding the System to the community as set forth in the Proposal.

5.1.3 Informational Videos. Nestor shall provide the Municipality with general informational videos relating to the System and the problems associated with the running of red lights.

5.1.4 Roadway Signage. Nestor shall provide warning signs (as described in section 5.2) for installation by the Municipality.

5.1.5 Warning Period. Nestor shall process and prepare warning notices to violators for the first thirty (30) days of the Program (the "Warning Period").

5.2 Warning Signs. Nestor shall provide the Municipality with warning signs for each Installed Approach that clearly indicate the System's presence and are visible to traffic approaching from all directions. The signs shall be in compliance with applicable law. The Municipality shall be responsible for installation of the signs and regular inspection and maintenance. Nestor shall recommend appropriate installation locations that comply with the law.

## 6. Violation Review Station

6.1 Provision of Equipment. Nestor will provide one (1) laptop workstation, printer, and connectivity (which shall remain the property of Nestor) to be used by the Municipality for citation approval, Violation Video viewing appointments, and court hearings. Nestor shall further provide the software licenses and install the software necessary for law enforcement personnel to access the System for citation approval and/or Violation Video viewing appointments from at least five computer desktops owned and provided by the Municipality's Police Department; provided, however, that the Municipality shall provide such access and interface to such desktops and its networks for such installation.

## 7. Reporting

7.1 Weekly Report. Nestor shall provide a weekly report to the Municipality's Police Department and the Court during the Warning Period. The report shall include the number of violations recorded per Installed Approach.

7.2 Monthly Report. Within thirty (30) days of the end of each calendar month, Nestor shall submit to the Municipality a monthly Financial Report, Status Performance Report, Completed Citation Summary Report, Non-issued Violations Summary Report, and Violations Supported by Time Report as specified in the Proposal. The data collection includes, but is not limited to, tracking the following relevant information for each violation recorded by the System. The reports shall include the following mandatory items:

- a. Number of violations recorded
- b. Number of non-issued violations
- c. Breakdown of reasons for non-issuance
- d. Number of citations issued
- e. Court hearings scheduled and held
- f. Number of calls for information
- g. Number of Violation Video viewing appointments scheduled

- h. Citation data purged

Nothing in this section shall preclude the Parties from agreeing to an alternative reporting arrangement.

7.3 Additional Reports or Information. Nestor shall make available to the Municipality an Overall Operations Report on a regular (weekly, monthly, or quarterly) or as-needed basis profiling operation activities over a specified time period as set forth in the Proposal. Any other reports and information are not part of the Agreement and the preparation and delivery of any other such reports or information may result in additional fees.

7.4 Database. Subject to the data retention limits set forth in Section 10.2 of the Agreement and California Vehicle Code Section 21455.5, Nestor shall maintain a database with the following information (if available to Nestor) per violation:

- a. Location, date and time
- b. Number of seconds of red traffic signal
- c. Type of violation
- d. Vehicle description including license plate state and number
- e. Applicable vehicle code section violated
- f. Citation prepared or reason for not preparing citation
- g. Registered vehicle owner's name and address, driver's license number and related information required to prepare citations where violation is made by a driver other than registered owner (Affidavit of Non-Liability)
- h. Status of citation (outstanding, cancelled, reissued, paid, bail forfeited, traffic school, warrants issued, etc.)

8. Meetings

Nestor shall establish a qualified project team to oversee the implementation of the Program. It is intended by the Parties that Julie Dixon shall be the Program Manager and will be fully dedicated to the Program during all stages of implementation as set forth in the Proposal. Julie Dixon or Nestor representative(s) agreeable to the Municipality shall be made reasonably available to meet with the Police Department, and other representatives of the Municipality as determined by the Municipality, on a bi-weekly basis during program implementation and at a minimum on a monthly basis once the program is fully operational. Subject to approval and agreement by both parties, telephonic or other acceptable means may be used to conduct such meetings.

9. Additional Services (at the Municipality's request):



a. CrossingGuard VIP Program – If requested by the Municipality, Nestor will generate a video-based analysis of an intersection designed to evaluate the frequency of red-light violations for up to four approaches at the targeted intersection. The video media will contain up to 16 hours of VIP monitoring assuming the equipment remains installed at the intersection during the course of monitoring, but not to exceed three consecutive calendar days. A report summarizing the results, along with the media generated will be provided to the Municipality. The VIP Program Fee is \$850 for each intersection approach evaluated and includes 16 hours of evaluation. Additional 16-hour evaluation blocks may be ordered at 50% of the VIP Program Fee for each block, assuming equipment remains installed at the intersection between blocks. The VIP Program Fee for an intersection is due upon ordering the service. If the Municipality selects the intersection for a full CrossingGuard System installation within one month of delivery of the VIP report, Nestor will allow a credit equal to 100% of the intersection's VIP Program Fee paid against the initial Ticket Processing Fees charged for the intersection. Any VIP monitoring performed by Nestor prior to execution of this Agreement was performed at Nestor's sole cost and expense.

To order a CrossingGuard VIP analysis, the Municipality should provide a written request for the analysis to Nestor, including a description of the intersection(s) selected, and a check for the ordered VIP Program Fee.

- a. Collision Avoidance services and connections, no additional cost.
- b. Intersection Video Monitoring Services utilizing current fixed overview camera positions, or dedicated camera subject to customer control, fee to be determined.

## EXHIBIT B

### LICENSE AGREEMENT FOR CROSSINGGUARD SOFTWARE

This License Agreement (the "License") is a legal agreement between you (the contracting counter- party in an agreement (the "Agreement") to which a copy of this License is attached as an Exhibit ) and Nestor, Inc. ("Nestor") for the Nestor software product identified above, which includes computer software and may include associated media, printed materials, and "online" or electronic documentation (the "SOFTWARE PRODUCT"). The SOFTWARE PRODUCT also includes any updates and supplements to the original SOFTWARE PRODUCT provided to you by Nestor. Any software provided along with the SOFTWARE PRODUCT that is associated with a separate license agreement is licensed to you under the terms of that license agreement. By execution of the Agreement, you have agreed to be bound by the terms of this License. Such agreement by you is an express condition to your ability to use the SOFTWARE PRODUCT.

1. GRANT OF LICENSE. The SOFTWARE PRODUCT is licensed, not sold. This License grants you only the following rights: You may install and use six copies of the SOFTWARE PRODUCT, each on a single computer, including a workstation, terminal or other digital electronic device ("COMPUTER"). You may also store or install a copy of the SOFTWARE PRODUCT on a storage device, such as a network server, used only to install or run the SOFTWARE PRODUCT on your other COMPUTERS over an internal network; however, you must acquire and dedicate a license for each separate COMPUTER on or from which the SOFTWARE PRODUCT is installed, used, accessed, displayed or run. A license for the SOFTWARE PRODUCT may not be shared or used concurrently on different COMPUTERS.

2. DESCRIPTION OF OTHER RIGHTS AND LIMITATIONS. You may not reverse engineer, decompile, or disassemble the SOFTWARE PRODUCT, except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation. The SOFTWARE PRODUCT is licensed as a single product. Its component parts may not be separated for use on more than one computer. You may not rent, lease, transfer or lend the SOFTWARE PRODUCT. This License does not grant you any rights in connection with any trademarks or service marks of Nestor. Without prejudice to any other rights, Nestor may terminate this License if you fail to comply with the terms and conditions of this License. In such event, you must destroy all copies of the SOFTWARE PRODUCT and all of its component parts.

3. SUPPORT SERVICES AND UPGRADES. Nestor may provide you with support services related to the SOFTWARE PRODUCT ("Support Services"). Use of Support Services is governed by the Agreement. Any supplemental software code provided to you as part of the Support Services shall be considered part of the SOFTWARE PRODUCT and subject to the terms and conditions of this License. With respect to technical information you provide to Nestor as part of the Support Services, Nestor may use such information for its business purposes, including for product support and development. Nestor will not utilize such technical information in a form that personally identifies you. If the SOFTWARE PRODUCT is labeled

as an upgrade, you must be properly licensed to use a product identified by Nestor as being eligible for the upgrade in order to use the SOFTWARE PRODUCT. A SOFTWARE PRODUCT labeled as an upgrade replaces and/or supplements the product that formed the basis for your eligibility for the upgrade. You may use the resulting upgraded product only in accordance with the terms of this License. If the SOFTWARE PRODUCT is an upgrade of a component of a package of software programs that you licensed as a single product, the SOFTWARE PRODUCT may be used and transferred only as part of that single product package and may not be separated for use on more than one computer.

4. COPYRIGHT. All title and intellectual property rights in and to the SOFTWARE PRODUCT (including but not limited to any images, photographs, animations, video, audio, music, text, and "applets" incorporated into the SOFTWARE PRODUCT), the accompanying printed materials, and any copies of the SOFTWARE PRODUCT are owned by Nestor or its suppliers. All title and intellectual property rights in and to the content which may be accessed through use of the SOFTWARE PRODUCT is the property of the respective content owner and may be protected by applicable copyright or other intellectual property laws and treaties. This License grants you no rights to use such content. All rights not expressly granted are reserved by Nestor.

5. DUAL MEDIA SOFTWARE. You may receive the SOFTWARE PRODUCT in more than one medium. Regardless of the type or size of medium you receive, you may use only one medium that is appropriate for your single computer. You may not use or install the other medium on another computer. You may not loan, rent, lease, lend or otherwise transfer the other medium to another user.

6. BACKUP COPY. After installation of six copies of the SOFTWARE PRODUCT pursuant to this License, you may keep the original media on which the SOFTWARE PRODUCT was provided by Nestor solely for backup or archival purposes. If the original media is required to use the SOFTWARE PRODUCT on the COMPUTER, you may make one copy of the SOFTWARE PRODUCT solely for backup or archival purposes. Except as expressly provided in this License, you may not otherwise make copies of the SOFTWARE PRODUCT or the printed materials accompanying the SOFTWARE PRODUCT.

7. U.S. GOVERNMENT RESTRICTED RIGHTS. If you are acquiring the SOFTWARE PRODUCT (including the related documentation) on behalf of any part of the United States Government, the following provisions apply. The SOFTWARE PRODUCT and documentation are provided with RESTRICTED RIGHTS. The SOFTWARE PRODUCT is deemed to be "commercial software" and "commercial computer software documentation," respectively, pursuant to DFAR Section 227.7202 and FAR 12.212, as applicable. Any use, modification, reproduction, release, performance, display or disclosure of the SOFTWARE PRODUCT (including the related documentation) by the U.S. Government or any of its agencies shall be governed solely by the terms of this License and shall be prohibited except to the extent expressly permitted by the terms of this License. Manufacturer is Nestor; its address is set forth in the Agreement.

8. COMPLIANCE WITH LAW AND EXPORT RESTRICTIONS. You represent and agree that you do not intend to and will not use, disseminate or transfer in any way the

SOFTWARE PRODUCT in violation of any applicable law, rule or regulation of the United States, or any State of the United States or any foreign country of applicable jurisdiction. Without limiting the foregoing, you agree that you will not export or re export the SOFTWARE PRODUCT to any country, person, entity or end user subject to U.S. export restrictions. You specifically agree not to export or re export the SOFTWARE PRODUCT: (i) to any country to which the U.S. has embargoed or restricted the export of goods or services, which currently include, but are not necessarily limited to Cuba, Iran, Iraq, Libya, North Korea, Sudan and Syria, or to any national of any such country, wherever located, who intends to transmit or transport the products back to such country; (ii) to any end user who you know or have reason to know will utilize the SOFTWARE PRODUCT or portion thereof in the design, development or production of nuclear, chemical or biological weapons; or (iii) to any end user who has been prohibited from participating in U.S. export transactions by any federal agency of the U.S. government.

9. OTHER PROVISIONS. Sections 2, 3, 6, 7 and 9 of the Agreement are hereby incorporated by reference as if herein set forth in full.

## EXHIBIT C

### LEASE AGREEMENT FOR CROSSINGGUARD SYSTEM

This Lease Agreement (the "Lease") is part of an agreement (the "Agreement") (to which a copy of this Lease is attached as an Exhibit) between the Municipality and Nestor. The Parties hereto agree as follows:

1. LEASE. Nestor hereby leases to Municipality and Municipality hereby leases from Nestor, subject to the terms and conditions of this Lease, such items of System equipment (together with all attachments, replacements, parts, additions, substitutions, repairs, accessions and accessories incorporated therein and/or affixed thereto, the "Equipment") that Municipality obtains possession, custody or control pursuant to the Agreement.

2. USE AND LOCATION. The Equipment shall be used and operated by Municipality only in connection with the operation of the System by qualified employees of Municipality and in accordance with all applicable operating instructions, and applicable governmental laws, rules and regulations. Municipality shall not part with control or possession of the Equipment without Nestor's prior written consent.

3. CONDITION. Municipality shall keep the Equipment in good condition and working order, ordinary wear and tear from proper use excepted. Municipality shall not make any alterations, additions or improvements to the Equipment without Nestor's prior written consent unless such alterations, additions or improvements do not impair the commercial value or the originally intended function or use of the Equipment and are readily removable without causing material damage to such Equipment so as to return the Equipment to its original state, less ordinary wear and tear. Any alteration, addition or improvement not removed prior to the return of the Equipment shall without further action become the property of Nestor, provided, however, that any alterations, additions and improvements which would reduce the value of the Equipment must be removed prior to the return of such Equipment.

4. RETURN. Upon the expiration or earlier termination of the Agreement, Municipality shall return the Equipment in the same condition as when delivered to Municipality, ordinary wear and tear excepted, to Nestor at the location specified by Nestor.

5. OWNERSHIP, LIENS. The Equipment is, and shall at all times be, the property of Nestor. Municipality agrees to take all action necessary or reasonably requested by Nestor to ensure that the Equipment shall be and remain personal property. Nothing in this Lease, the Agreement or any Exhibit shall be construed as conveying to Municipality any interest in the Equipment other than its interest as a Municipality. If at any time during the term hereof, Nestor supplies Municipality with labels, plates, or other markings evidencing ownership, security, or other interest therein, Municipality shall affix and keep the same displayed on the Equipment. Municipality shall, at its expense, keep the Equipment free and clear of all liens, charges, claims and other encumbrances.

6. NO MUNICIPALITY SUBLEASE; ASSIGNMENT. MUNICIPALITY SHALL NOT ASSIGN OR IN ANY WAY DISPOSE OR OTHERWISE RELINQUISH POSSESSION OR CONTROL OF ALL OR PART OF ITS RIGHTS OR OBLIGATIONS UNDER THIS LEASE OR ENTER INTO ANY SUB-LEASE OF ALL OR ANY PART OF THE EQUIPMENT WITHOUT THE PRIOR WRITTEN CONSENT OF NESTOR.

7. FINANCING STATEMENTS; FURTHER ASSURANCES. Nestor and Municipality intend this transaction to be a leasing transaction only, but to the extent, at any time or from time to time, this Lease is construed to be a transaction intended as security, Nestor retains and Municipality hereby grants a security interest in all the Equipment, the proceeds of any sale, assignment, lease or sublease thereof, any insurance proceeds, and any other rights of Municipality in and to the Equipment, this Lease and/or their proceeds. Municipality, at the request of Nestor and at Municipality's expense, agrees to execute and deliver to Nestor any financing statements, fixture filings or other instruments necessary for perfecting the interests and title of Nestor in the Equipment, and Municipality agrees that Nestor may, in Nestor's sole discretion, file a copy of the Agreement, this Lease and any Exhibits in lieu of a financing statement. Municipality agrees, at Nestor's expense, to promptly execute and deliver such further documents and take any and all other action reasonably requested by Nestor from time to time, for the purpose of fully effectuating the intent and purposes of this Lease, and to protect the interests of Nestor, its successors and permitted assignees.

8. OTHER PROVISIONS. Sections 2, 3, 6, 7 and 9 of the Agreement are hereby incorporated by reference as if herein set forth in full.