

AGENDA REPORT

SUBJECT: CONSIDER APPROVAL OF AGREEMENT
NO. 01-101 WITH NESTOR TRAFFIC SYSTEMS,
INC., TO DIGITALLY MONITOR
SIX INTERSECTION APPROACHES FOR THE
ENFORCEMENT OF RED SIGNAL LIGHT
VIOLATIONS

PENDING COUNCIL'S APPROVAL, IT IS
ANTICIPATED THE RED LIGHT CAMERA
ENFORCEMENT PROGRAM WOULD BE
IMPLEMENTED BY MARCH 2002

DATE: September 4, 2001

SECTION: PUBLIC HEARINGS

ITEM NO.: A

FILE I.D.: PDT905

DEPT.: POLICE

REASON FOR CONSIDERATION: The Police Department is desirous of implementing automated digital red signal light violation enforcement. When this matter was brought before the City Council on August 6, 2001, staff was unaware that California Vehicle Code Section 21455.6 mandates a public hearing be held prior to the award of any contract for automated enforcement systems.

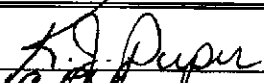
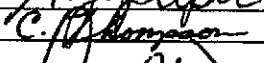
BACKGROUND: Over the past year, the Police Department and the Public Safety Committee have been discussing the issue of traffic safety and the perceived increase in red light violations. To reduce the number of red light violations, the Police Department researched a variety of red light camera enforcement programs designed to produce photographic evidence of vehicles that illegally run red lights.

After careful review of each vendor, Nestor Traffic Systems was found to be the vendor most capable of providing a system that meets the needs of the City of Montclair.

Nestor Traffic Services Program Overview

Nestor Traffic Systems has more than four years experience in the digital/video traffic-monitoring industry and provides services to a number of California and non-California cities. CrossingGuard, Nestor Traffic Systems' red light monitoring system, captures red light runners through a digital video sequence of a violation, recording the full context of each red light running event.

The digital video provides solid evidence of the violation and the identity of the vehicle so that it can be successfully defended in court, if necessary. Moreover, Nestor Traffic Systems' equipment monitors both the front and rear images of violating vehicles to ensure that the license plate is recorded. Currently, at least 20 percent of California vehicles do not display the required front license plate.

Prepared by: 
Reviewed by: 

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Amended: _____

The CrossingGuard system can automatically detect a vehicle that is violating the red traffic signal and can measure and record the time of the violation, the preceding amberphase time, and the elapsed time between the onset of the red light and the time of the violation. This information is captured by the CrossingGuard equipment at the intersection, transmitted in real time to a central monitoring facility, and stored in a violation database. The CrossingGuard system operates day and night, under a variety of weather and visibility conditions, to provide 24-hour, seven-day-a-week monitoring. Approaches from north-, south-, east-, or westbound traffic, including left-hand turn signals, can be monitored. The estimated time frame for system implementation from date of approval is between 90 and 120 days.

Financial Considerations

This system would require entering into a contract with Nestor Traffic Systems for a five-year period, based on a per paid citation fee for two intersections. At one intersection, two directions of traffic, commonly referred to as "approaches," will be monitored; and at one intersection, four different approaches of traffic will be monitored.

Nestor Traffic Systems will charge the City approximately \$99 for every paid citation. Nestor Traffic Systems has also established monthly minimums it must receive per monitored intersection. Nestor Traffic Systems' monthly minimum per approach is \$4084, an amount the City is obligated under this contract to pay for three years should citation generation fail to provide revenues equal to or greater than this amount, the City abandons the program, or for other reasons beyond the control of Nestor Traffic Systems. During the initial 30-day period of the program and in the event of certain system or roadway conditions outside the control of the City or Nestor Traffic Systems, Nestor Traffic Systems has agreed to waive its monthly minimum fee requirements. Nestor Traffic Systems has also agreed that this minimum monthly fee shall only be applicable during the first three years of the five-year contract.

The Red Light Camera Enforcement Program should be self-funding through revenue received from red light citations. The share of the fines the City should receive per violation is approximately \$35 per red light citation. The Police Department recommends that any additional revenue received as a result of the program be placed in a special fund to be used to offset program costs, as well as to expand the program to other locations.

Safety Feature

CrossingGuard incorporates the unique feature of predicting that an approaching vehicle will run a red light and can extend the red phase for cross traffic to prevent collisions, provided the cross phase has not already turned to green. Should a violation and collision occur, CrossingGuard will have captured the collision in digital images for viewing.

Site Selection

Nestor Traffic Systems will conduct an engineering analysis of the candidate intersections to determine the extent of the red light violations and to assess system installation requirements. As a part of this analysis, Nestor Traffic Systems will review available data on traffic flows, traffic patterns, peak traffic times, and violation and crash data. This information will help provide a snapshot of violation behavior that will aid in a "before and after" analysis to document the program's effectiveness on an intersection-by-intersection basis. Staff believes, based upon traffic volume data and collision data, the initial implementation of the system should incorporate the monitoring of two intersections within the City limits. North-, south-, east-, and westbound traffic should be monitored at Central Avenue and Moreno Street. North- and southbound traffic should be monitored at Central Avenue and Holt Boulevard, a total of six intersection approaches.

Equipment Installation

The CrossingGuard installation makes use of two different kinds of video cameras at an intersection to capture red light violations. All video camera equipment will be mounted under a 9-inch camera dome suspended from pole mast arms over the roadway. Nestor Traffic Systems will provide poles approved by the California Department of Transportation that meet the City's requirements or will use existing poles.

CrossingGuard's communication equipment, known as a Roadside Station, performs the vehicle detection and violation enforcement and is housed in a standard traffic controller cabinet that is weatherproof, vandalproof, and lockable. A benefit of this aboveground system is that it does not rely on inductive loops; and, as a result, no roadway surface will be disturbed or damaged.

During the life of the contract, Nestor Traffic Systems has agreed to maintain and operate the CrossingGuard equipment.

Program Efficiency

As a result of glare from the sun, extreme weather conditions, missing license plates, or unclear photos of the driver, the issuance rate for red light violations is 40 percent. Typically, 70 percent of violators pay the citation.

For the program to be cost effective, each monitored "approach" should detect a minimum of five to six violations per day. Taking the issuance and actual payment rate into consideration, the number of paid violations per approach per day needed for maximum efficiency is 1.7. If, for any reason, the number of citations issued drops significantly, making the program inefficient, the City would have the option to relocate the equipment to an alternative intersection at a cost of \$70,000 to \$90,000 per dual approach.

Citation Processing

Nestor Traffic Systems' citation-processing system includes citation preparation and citation mailing specially tailored to meet the needs of the City. Nestor Traffic Systems will provide all citation preparation and processing services, which include the preparation of violation data and retrieval of DMV data for the approval of law enforcement. No citation will be issued for mailing without approval of the Montclair Police Department. Electronic copies and all citation files and associated violation video will also be available at the Montclair Police Department for public review.

The citation form will be generated subject to Court approval and in the format required by State law. The form will contain all required information about the actual violation, the registered owner information, color copies of the image frames depicting the violation, and payment information. Changes to the content, format, or design can easily be modified to meet the City's needs.

Warning Period

In conformance with the California Vehicle Code, Nestor Traffic Systems will operate the CrossingGuard system for the first 30 days to issue warnings to drivers caught running red lights at monitored intersections. No citations will be issued during this warning period. The CrossingGuard system will operate at no charge to the City during the 30-day warning period.

Court Support/Expert Witness Testimony

For those citations that are contested in court, Nestor Traffic Systems will prepare and provide a complete evidence packet for court support. The evidence packet will include a color printed copy of the citation, as mailed to the violator; a certificate of mailing; as well as all associated electronic files of video information from which the citation violation images were selected. The evidence packet will also contain a record of equipment test data and relevant electronic log files certifying proper equipment operation at the time of violation.

Nestor Traffic Systems will also provide law enforcement with adequate training to ensure that members are thoroughly prepared to testify about the principles of the CrossingGuard equipment, operation, and citation-processing steps. If necessary, Nestor Traffic Systems can provide additional expert witness testimony to support law enforcement needs.

Public Education Campaign and Outreach

Nestor Traffic Systems will work closely with the City to develop a public-education program that will both inform the public and build support for the new traffic-enforcement system. The public-education campaign will highlight features of the red

light camera system, location of the cameras, ticketing process and penalties, and the goal to improve intersection safety.

Methods of informing the public may include, but are not limited to the following; Roadway signage at monitored intersections in the City, press releases, City publications, inserts in utility bills, cable television, informational meetings, and the City's web page.

FISCAL IMPACT: The enforcement of red light violations commonly goes through variations depending on conditions, generally dropping from the initial startup levels. Nestor Traffic Systems will provide an analysis for the City to determine the suitability of each approach for this type of enforcement. However, using the minimum revenue figures required by the vendor, the estimated annual revenue to the City's General Fund should exceed \$100,000.

Operating Analysis			
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City of Montclair Financial Obligation			
Contract Obligation	Number of Approaches	Monthly Obligation	Annual Obligation
\$4,084 Per Month Per Approach	6	\$24,504 per month	294,048

Citation Revenue Distribution		
Revenue per Citation	Nestor Fee	City Revenue
\$134	\$99	\$35

Paid Citations Required To Fund The Program						
Paid Citations Required Per Approach Per Day	Number of Approaches	Citations Per Year	Nestor Portion	Nestor Revenue	City Portion	City Revenue
1.36	6	2979	\$99	\$294,921	\$35	\$104,265

Figures rounded to nearest dollar

RECOMMENDATION: Staff recommends the City Council approve Agreement No. 01-101 with Nestor Traffic Systems, Inc., to digitally monitor six intersection approaches for the enforcement of red signal light violations. Revenue accumulated from operation of this system shall be restricted for use in expansion of this program, development of other traffic-safety systems, or for use in other traffic-safety endeavors.

Pending Council's approval, it is anticipated the Red Light Camera Enforcement Program would be implemented by March 2002.

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**NESTOR TRAFFIC SYSTEMS, INC.
MUNICIPALITY OF MONTCLAIR, CA
TRAFFIC SIGNAL VIOLATION VIDEO-MONITORING
SYSTEM AGREEMENT**

~~August~~^{September} This AGREEMENT (the "Agreement") made this 4th day of ~~August~~^{September}, 2001, by and between Nestor Traffic Systems, Inc., a Delaware corporation having a place of business at One Richmond Square, Providence, RI 02906 ("Nestor"), and the Municipality of Montclair, a municipal corporation having an address of 5111 Benito Street, Montclair, CA 91763 (the "Municipality" and together with Nestor, the "Parties" and each singularly a "Party").

WHEREAS, the Parties desire to enter into this Agreement whereby Nestor will supply to the Municipality the system (the "System") and services (the "Services") as general described in Section 1.1 of this Agreement, subject to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants between the Parties, it is agreed as follows:

1. SYSTEM, SERVICES AND INSTALLATION

1.1 Nestor shall supply the equipment, license the software, and provide the services to the Municipality, and the Municipality shall accept the System and the Services as set forth and described in Exhibits A and B to this Agreement (the "Deliverables"). To the extent set forth in Exhibit A, the Deliverables shall include:

- (i) the equipment and software described in Exhibit A, to be installed by Nestor in accordance with that Exhibit A,
- (ii) citation preparation processes that comply with current applicable California Law as further described in Exhibit A,
- (iii) training (as described in Exhibit A) of Municipality personnel involved with the operation of System and/or the disposition of citations, and
- (iv) support services for the System as set forth in Exhibit A (the "Support Services").

1.2 The Municipality understands and agrees that (i) Nestor may subcontract with third parties for the provision or installation of part or parts of the Deliverables 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 the Deliverables - Exhibit A) 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. Estimated delivery and installation dates are set forth in Exhibit A, but are subject to conditions beyond the control of Nestor and are not guaranteed.

1.3 Notwithstanding anything to the contrary that may be stated or implied in this Agreement, any part of the Deliverables which is software is licensed, and not sold, to the Municipality. To the extent such software is Nestor software, it is supplied under license, a copy of which is attached in Exhibit B (the "License"). To the extent such software is third party software (the "Third-Party Software"), it is supplied to the Municipality under license from such third parties, copies of which licenses the Municipality acknowledges receiving.

1.4 Risk of loss to each part or parts of the System including warranty or maintenance covered events shall remain with Nestor. The Municipality will reimburse Nestor for any damage done to the System resulting from Municipality-financed projects. The Municipality will use its best efforts to assist Nestor to identify and obtain compensation from any party who is responsible for damage to a System.

1.5 If and to the extent this Agreement incorporates by reference any provision of the Request for Proposals or the Proposal, such provision shall be deemed a part of this Agreement. Nevertheless, if there is any conflict among the terms and conditions of this Agreement and those of any such provision or provisions so incorporated by reference, this Agreement shall govern over both the Proposal and the Request for Proposals and the Proposal shall govern over the Request for Proposals.

2. TERM

The term of this Agreement and the License shall begin upon date of this Agreement and shall continue until expiration on date five (5) years from the latest date Nestor notifies the Municipality that a System is installed and operational (the "Installation Date"), unless previously extended by a written agreement signed by both parties.

3. TERMINATION AND EXPIRATION

3.1 This Agreement and the License may be terminated by either Party:

a. 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; or

b. at any time but on thirty (30) days advanced notice to the other Party should changes to state and/or federal legislation or judicial decisions make the program impractical illegal or impossible to continue.

3.2 If this Agreement is terminated by Nestor pursuant to section 3.1a or the Municipality pursuant to section 3.1b, the Municipality shall be responsible and pay to Nestor on demand the termination and cancellation fee set forth in Exhibit A. Termination of this Agreement pursuant to section 3.1a shall not relieve the breaching Party of any liability it may have under this Agreement or pursuant to law to the non-breaching Party.

3.3 Nestor may terminate this Agreement and the License, or its provision of any part of the System, without liability of Nestor to the Municipality, on thirty (30) days advance notice if Nestor concludes in its sole discretion that potential or actual liability of Nestor to third parties arising out of or in connection with the System makes the program impractical, uneconomical or impossible to continue.

3.4 This Agreement and the License may be terminated by Municipality on thirty (30) days written notice and without liability to either Party if the Municipality duly, timely and validly rejects the System in accordance with the acceptance procedures set forth in the Exhibit A.

3.5 Upon termination or expiration of the License, the Municipality shall immediately cease using the System and shall (at Nestor's election) (i) immediately deliver to Nestor or irretrievably destroy, or cause to be so delivered or destroyed, any and all copies of such software in whatever form and any written or other materials relating to such software in the Municipality's possession, custody or control and within thirty (30) days deliver to Nestor a certification thereof or (ii) allow Nestor access to the system(s) on which such software is loaded and permission to Nestor to remove or destroy such software.

4. PRICE, OTHER FEES AND PAYMENT

4.1 The Municipality shall pay for Deliverables as set forth in Exhibit A. Payments are due as set forth in Exhibit A or, if not so set forth, within thirty (30) days after invoice date.

Invoices will be sent to the Municipality at:
Montclair Police Dept.
P.O. Box 2308
5111 Benito Street
Montclair, CA 91763

4.2 Unless expressly set forth in the Exhibit, prices do not include federal or state excise, sales, use or other similar taxes or charges. The Municipality agrees to indemnify and hold Nestor harmless from any liability arising out of any such tax or charge. Such taxes or charges may be invoiced at any time.

5. LIMITED WARRANTY AND LIMITATION ON DAMAGES

5.1 Nestor warrants that the System, if properly used, shall be free from defects in material or workmanship during the term of this Agreement. Nestor's sole and exclusive liability under this warranty will be, at Nestor's option, to repair or replace, or credit the Municipality with the price paid for, any component which fails during the warranty period provided (i) the Municipality has promptly notified in writing Nestor with a description of the deficiency and (ii) Nestor has, upon verification, found such component to be defective and under warranty. All replaced System parts will become Nestor's property. This warranty does not cover any part of the System which has been subjected to unusual physical or electrical stress, or on which the original identification marks have been removed or altered, or which is damaged due to accident, misuse, neglect, alteration, repair, improper installation or testing or unauthorized modification. This warranty also does not apply (i) if the System is installed in or at placements and approaches to be monitored which have not been approved in writing by Nestor or (ii) if any hardware, software or equipment of any kind used with or in connection with the System fails to function properly or be fit for its or their intended purposes or (iii) if the Municipality has failed to make all payments to Nestor required by this Agreement or (iv) as set forth in, and is subject to the conditions of, section 5.4. THE RIGHTS CONTAINED IN THIS PARAGRAPH EXTEND ONLY TO THE MUNICIPALITY. THESE RIGHTS ARE THE MUNICIPALITY'S SOLE AND EXCLUSIVE REMEDY, WHETHER IN TORT, CONTRACT, OR OTHERWISE, AND THEY ARE IN LIEU OF, AND NESTOR EXPRESSLY DISCLAIMS, ANY AND ALL OTHER WARRANTIES, EXPRESS OR

IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

5.2 Year 2000 Readiness Disclosure. Nestor will treat a failure of the System to be Year 2000 ready (as hereinafter defined) as a covered event under the limited warranty set forth in section 5.1, subject to the terms, conditions and limitations contained in that section. For these purposes only, that warranty's expiration date shall be March 31, 2000 or the date set forth in section 5.1, whichever is later.

A System is Year 2000 ready if it is capable of correctly processing, providing and/or receiving date data within and between the 20th and 21st centuries, provided that (i) the System is used properly and in accordance with its associated documentation (including any updates to that documentation posted on Nestor's WEB site), (ii) all error fixes and upgrades then previously made available by Nestor have been properly installed and are functioning and (iii) all other products (for example, hardware, software and firmware) which are directly or indirectly used, connected or interconnected with the product properly exchange accurate date data with it. The foregoing definition of year 2000 ready is subject to the following limitations and qualifications: (i) the use of user customizable features, such as macros or custom programming or formatting features, may produce results that are not Year 2000 ready and are at the Municipality's sole risk and expense; (ii) The use by the Municipality of two digit year date fields is not considered accurate date data and (iii) Nestor makes no representation or warranty regarding the Year 2000 ready status of the Third-Party Software or any other third-party products recommended for use with, required for use of or supplied under their own names with or as part of the System.

5.3 REGARDLESS OF WHETHER ANY REMEDY SET FORTH HEREIN FAILS OF ITS ESSENTIAL PURPOSE, IN NO EVENT WILL NESTOR BE LIABLE TO THE MUNICIPALITY FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE OR OTHER SIMILAR DAMAGES (INCLUDING ANY DAMAGES FOR LOSS OF INFORMATION, PROFITS, OR SAVINGS, OR BUSINESS INTERRUPTION) ARISING OUT OF THE DELIVERABLES OR THE MUNICIPALITY'S USE OF OR INABILITY TO USE THEM, EVEN IF NESTOR OR AN AUTHORIZED NESTOR REPRESENTATIVE IS AWARE, OR SHOULD HAVE BEEN AWARE, OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL NESTOR BE LIABLE TO BUYER FOR ANY REASON FOR ANY AMOUNT IN EXCESS OF THE PORTION OF PRICE PAID BY BUYER FOR THE PART OR PARTS OF THE DELIVERABLES IN QUESTION. IN THE EVENT THE APPLICATION TO BUYER OF THE LIMITATION OF WARRANTY IS PROHIBITED BY THE LAWS OF ITS JURISDICTION, ANY TERM OF IMPLIED WARRANTIES IS LIMITED TO THE PERIOD OF THE WARRANTY SET FORTH ABOVE IN 5.1.

5.4 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 which is in fact not a violation, the output of the System will require review, analysis and approval by personnel appropriately qualified by the Municipality under applicable law prior to the issuance of any summons;

(c) The System may not detect every event for which it is desirable to recommend extension of the red light phase;

(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 5.1 is not intended to, and shall not, be construed as a warranty of the level of performance of the System; and

(f) The proper functioning of the System requires the Municipality's full and complete compliance with Nestor instructions, which it hereby agrees to do.

6. INDEMNITY

6.1 Nestor agrees to indemnify, defend, and hold harmless the Municipality from any claim of damages by a third party solely arising from Nestor's negligence, provided that such liability is not attributable to (i) any act or omission set forth in 6.3. or (ii) any Third-Party Software or other third-party products recommended for use with, required for use of, or supplied under their own names with or as part of the System.

6.2 If, as a final result of any litigation of which Nestor is obligated to indemnify, the use by Municipality of, or any part of, the System is prevented by an injunction, Nestor's sole obligation to the Municipality as a result of such injunction shall be, at its option, either to (i) replace such part as has been enjoined, or (ii) procure a license for the Municipality to use same, or (iii) remove same at no cost to the Municipality.

6.3 Anything to the contrary notwithstanding, Nestor assumes no obligation or liability for, and the Municipality will indemnify, defend, and hold harmless Nestor, its officers, directors, shareholders, agents, and employees from any claim of damages by a third party arising from (i) Nestor's compliance with any designs, specifications, or instructions mandated by the Municipality, (ii) in whole or in part arising out of or relating

to any modification of Deliverables (unless made by Nestor), (iii) the negligence or intentional act of Municipality, (iv) failure of the Municipality to use the materials, goods, or equipment in the manner described by Nestor, (v) the failure to function properly of any hardware, software or equipment of any kind used by, in or on behalf of the Municipality (other than that supplied by Nestor), (vi) the review and analysis of the System data output by Municipality personnel for summons preparation, (vii) the Municipality's use and/or administration of the System and (viii) an allegation regarding the permissibility under the law of the use of photo citation systems or the System.

6.4 The rights of a Party seeking indemnification under this section 6 shall be conditioned upon (i) the indemnified Party notifying the indemnifying Party promptly of the claim or action for which indemnification is sought (but in any event prior to ten (10) days before the first answer or other response therein is due) and (ii) the indemnified Party's full cooperation with the indemnifying Party in the settlement or defense of such claim or action at no cost to the indemnifying Party (except for reasonable out-of-pocket traveling expenses). Such cooperation shall include, but not be limited to, the Municipality providing access for, and permission to, Nestor for the purpose of the replacement of such part or parts of System as Nestor may deem necessary or desirable. An indemnified Party may participate in the defense of any indemnified matter through counsel of its own choice and at its own expense provided that the indemnifying Party shall remain in, and responsible for, control of the matter. This section 6 states the entire liability and obligation and the exclusive remedy of the Parties with respect to any actions or claims (i) of alleged infringement relating to or arising out of the subject matter of this Agreement or (ii) otherwise the subject of this paragraph.

7. INSURANCE

Nestor represents that it and its employees are protected against the risk of loss by the following insurance coverage:

a. Comprehensive general liability insurance with a combined single limit of \$3,000,000 per occurrence;

b. Workers Compensation as required by applicable state law; and

c. Comprehensive Automobile Liability Insurance for all owned, non-owned and hired automobiles and other vehicles used by Nestor with a minimum \$3,000,000 per occurrence combined single limit bodily injury and property damage.

8. MISCELLANEOUS

8.1 Except as specifically provided in this Agreement, this Agreement may not be assignable, nor may performance be delegated, by either Party without the express written consent of the other Party, except to permit financing of the transactions contemplated herein.

8.2 The headings and captions used in this Agreement are for convenience only and are not to be used in the interpretation of this Agreement.

8.3 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.

8.4 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.

8.5 This Agreement has been entered into, delivered and is to be governed by, construed, interpreted and enforced in accordance with the laws of the California (without giving reference to choice-of-law provisions) from time to time in effect.

8.6 Except as set forth in this Agreement and the Exhibit hereto, no representation, statement, understanding or agreement, whether written or oral, has been made and there has been no reliance on anything done, said or 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.

8.7 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.

8.9 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 at the Municipality or to such other addresses as the Parties may from time to time give written notice of as herein provided.

8.10 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, 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.

8.11 Any dispute, controversy or claim arising out of or relating to this Agreement or a breach thereof or the Municipality's use of the System, shall be settled by arbitration before three neutral arbitrators (selected from a panel of persons having experience with and knowledge of the computer or transportation businesses, provided at least one of which arbitrators shall (i) be an attorney and (ii) have experience with and knowledge of each such business) in San Bernardino County, CA or, if no American Arbitration Association office is located, then in Los Angeles, California and administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules. Any provisional or equitable remedy which would be available from a court of law shall be available from the arbitrators to the Parties. In any such proceeding limited civil discovery shall be permitted for the production of documents, which shall be governed by the Federal Rules of Civil Procedure (without reference to any local rules of a particular

court). All issues regarding discovery requests shall be decided by the arbitrators. Judgment upon the award of the arbitrators may be enforced in any court having jurisdiction thereof. The Parties hereby consent to the non-exclusive jurisdiction of the courts of the State of California or to any Federal Court located within the State of California for any action (i) to compel arbitration, (ii) to enforce the award of the arbitrators or (iii) prior to the appointment and confirmation of the arbitrators, for temporary, interim or provisional equitable remedies and to service of process in any such action by registered mail, return receipt requested, or by any other means provided by law.

8.12 All DMV information and other data used by Nestor for the sole purpose of citation preparation is then and shall remain the property of the City. The City has access to this data and can obtain copies of the same as required. Nestor shall not use this information in any manner other than citation preparation without the prior approval of the City. Within reason Nestor should be unrestricted in its use of all other data of which uses could include but should not be limited to both statistical and marketing purposes.

9. Responsibilities of the Municipality

9.1 The Municipality shall be responsible for providing Nestor with "as built" drawings required by Nestor for the preparation of drawings for the installation of the System.

9.2 The Municipality shall not levy any permit fees or, if municipal ordinance requires the assessment of fees, the Municipality shall waive or be responsible for such fees associated with the installation of the System.

9.3 The Municipality agrees it shall diligently prosecute each Citation and shall defend any challenge in any court of competent jurisdiction to the use of the System or validity of its results and/or the use of the U.S. Mails to deliver the Citation. In addition, Nestor may, at its own expense, participate 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.

9.4 Municipality shall provide all electrical power required by the Systems, except that Nestor shall be responsible for connecting the System to the source of the electrical power at the intersection.

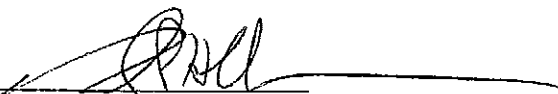
9.5 The Municipality shall not modify traffic signal operations in effect at the time of the Proposal without advising Nestor in advance of such change and without consideration of the impact of the change on the Program.

9.6 Nestor is conducting business for the City of Montclair on behalf of the Municipality. Therefore the Municipality will agree to meet with appropriate officials when necessary, support the system and utilize its overall best efforts to assist Nestor in obtaining all required information from the Court(s) where Citations are filed from the ETRS system (or any other court system), on line or in a batch mode on a nightly basis, so that Nestor can track payments on the Municipality's behalf and provide for proper invoicing and reporting for the Municipality.

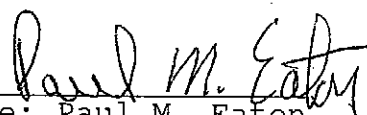
9.7 During the term of this Agreement or any extension thereof, the Municipality agrees that it cannot use the System, or allow the System's use by a third party, for enforcement or studies without the prior written permission of Nestor. In addition, Nestor will not process nor support any Notices for Violations not captured by Nestor's System.

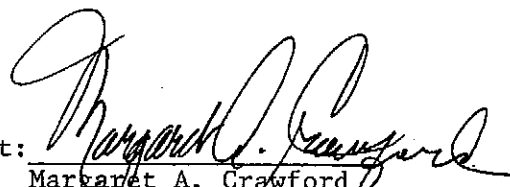
IN WITNESS WHEREOF, the Parties hereto have set their hands by their duly authorized representatives as of the day and year first above written.

Nestor Traffic Systems, Inc.

By: 
Name: Nigel P. Hebborn
Title: Chief Financial Officer

Municipality of Montclair, CA

By: 
Name: Paul M. Eaton
Title: Mayor

Attest: 
Margaret A. Crawford
City Clerk

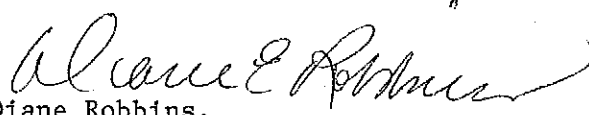
Approved as to Form:

Diane Robbins,
City Attorney

EXHIBIT A

The Deliverables (section 1):

Location(s) of System(s):

Initial Intersections Considered

Central Avenue & Holt Boulevard (2 approaches)

Central Avenue & Moreno Street (4 approaches)

If any and/or all of the above intersections upon further evaluation are deemed not to be enforceable for any reason utilizing the Nestor system than alternate intersections may be substituted by mutual written consent of the City and Nestor. Additional intersections may also be added by mutual written consent.

Equipment (hardware):

- Procurement, installation and support of traffic signal violation detection equipment (computer hardware, software, cameras, camera housing and mounts, communications equipment, roadside controller cabinets as specified in the proposal) at each of the designated intersections provided for above. Underground conduit and power source is available for Nestor use at each location.
- Procurement, installation and support of computer hardware and software at the Municipality's central processing facility for receiving, viewing and managing violation images, managing the roadside-located violation detection stations and for communicating online with a remote citation processing computer system.
- Supervision of the procurement and installation of communications services between each designated intersection and the Municipality's central processing facility (the cost of the acquisition of all of such services are not included within this Agreement and are for the Municipalities account).

Nestor Software:

- CrossingGuard (current version)
- Citation Composer (current version)

Installation (section 1.1 (i)):

If the placement of the System and the approaches monitored by the cameras are not herein set forth, such placement and approaches shall be subject to subsequent agreement by the Parties. This Agreement and the License may be terminated by Nestor on written notice to, but without liability to, the Municipality if (i) the Parties fail to reach agreement on such placement or approaches or (ii) after such placement and approaches have been agreed to (either in this Agreement or subsequently), there is any change to the area or environment in which any part of the System is to be installed which in Nestor's sole judgment may adversely effect the functioning of the System or the cost to install or operate it.

Summons Preparation Processes (section 1.1 (ii))

- Daily pickup of mail from local PO Box, where applicable
- Daily bank deposits to a Municipality designated bank account, with monthly wire transmittal with reports, where applicable
- Daily input of citation and registered owner information into the citation processing system
- Retrieval of DMV record information to the extent permitted by law and available if outside California
- Printing (including violation images) and First Class mailing of citations with a certificate of mailing, if necessary, and delinquent notices, where applicable
- Customized verbiage for payment instructions (where applicable) or contesting instructions
- Second summonses/delinquent notices for leased and rented vehicles, where applicable
- Second summonses/delinquent notices for partial payments and returned checks, where applicable
- Second summonses/delinquent notices and/or Affidavit of Non-Liability input, where applicable for vehicle ownership, leased and rented vehicles and address changes
- Toll-free "800" telephone hotline (9:00 AM to 5:00 PM, Monday-Friday, WST) for citation inquiries
- Interactive Voice Response system with pre-recorded information during "non-staffed" hours
- Monthly statistical and managerial reports

Training (section 1.1 (iii))

- After system installation, eight hours of training at the Municipality's facilities to acquaint Municipality personnel with system operation; training consists of instructional and operational training as well as hands-on equipment exercises with an instructor present.
- Training materials including tutorial material, system operating instructions and procedures, application reference guides and problem resolution materials consisting of troubleshooting and recovery procedures

Support Services (section 1.1 (iv))

- Designated contacts for any required system maintenance and product support
- Factory dial-in for on-line user assistance in troubleshooting, system remote diagnostics
- Annual inspection of camera assemblies and computer systems, at which time camera calibration will be checked and computer system filters cleaned or replaced
- 72 hour availability of replacement parts

Acceptance Procedures (section 3.4):

Acceptance Criteria

System documentation

- All documentation is to be provided in paper form, with text and diagrams of sufficient detail to permit new system users to be trained by the Municipality or other contract personnel.
- The Users' Manual shall be sufficient to ensure that, when followed, system components will operate properly when used in accordance with the documentation.
- Diagnostics shall be provided which will provide adequate information for a trained user to determine if Nestor service is required

System Installation

- If requested, a functional block diagram and functional description of all installed hardware components shall be provided
- Installation documentation shall include "red line" modified blue line drawings of each intersection site, including all intersection modifications. Municipality will provide current intersection documentation before commencement of work.

- If requested, a complete parts list shall be provided for each intersection site and the host system located in the Police Department building

Citation issuance

- All citation information shall be delivered to the Municipality/City/County in electronic form
- All issued citations shall be stored in electronic form and retrieved in electronic form using a method which permits citation access for a minimum period of 1 year from date of citation issue

Final System Test

If the System is to be installed at more than one location, the final System test will be based on the first installed System location covered by this Agreement. The test shall run for a period of thirty (30) days following notice of installation by Nestor and, unless a material system error (a material failure to comply with the Acceptance Criteria above) is reported in writing by the Municipality, the System will be deemed accepted. If written notice is received by Nestor within the time period allowed, Nestor will use reasonable efforts to correct the problem. Thirty days after written notice of an error, the System will be either (i) accepted by the Municipality, or (ii) rejected by the Municipality.

System deliveries beyond the initial System will be deemed accepted by the Municipality upon written notice from Nestor that the system is installed and capable of issuing citations.

Price, Fees and Payment Terms (section 4):

Per Citation Fee: \$ 99.26

For each citation issued by the System and receiving a Final Disposition through the court system, the Municipality shall pay to Nestor ninety nine dollars and twenty six cents (\$99.26), to be paid in the month following the Final Disposition of the citation.

Final Disposition means as to issued citations: (i) payment of the assessed fine, including bail forfeitures, with respect to a citation, (ii) plea of guilty or no contest with respect to a citation, (iii) conviction with respect to a citation, and (iv) any disposition, including dismissals as a result of successful completion of a traffic violator school course. Final

Disposition shall not mean a finding of not guilty with respect to a citation.

Monthly Minimum Citation Fee: \$ 4083.75/approach

For any month for which the Citation Fees paid to Nestor by the Municipality are less than Four Thousand, Eighty Three Dollars and Seventy Five Cents per approach enforced (\$4083.75/approach) (the "Monthly Minimum"), the Municipality shall pay to Nestor the difference between the Citation Fees actually paid and the Monthly Minimum. The monthly minimum citation fee per approach will only apply for the first 36 months of the five year program commencing from the date that the approach starts live enforcement and/or the installation acceptance date at each approach.

On a monthly basis the total monthly minimum will be calculated as an aggregate of all installed approaches. There will be no monthly minimum applied during the initial 30-day warning period. If, through no fault of the Municipality or its agents, an approach is inoperable for 14 or more consecutive days within a month, the Monthly Minimum related to that approach shall not be included in the respective month's total Monthly Minimum. In addition, if any approach is inactivate due to a System Relocation, as discussed below, then the Monthly Minimum for that approach will not be included in the respective month's total Monthly Minimum until the approach is relocated and operating.

Termination and Cancellation Fee (section 3.2):

The Termination and Cancellation fee shall equal the Monthly Minimum times the difference of the number of months in the initial term of the agreement (60 months) less the number of whole months from the Installation Date to the date of termination. The Termination and Cancellation fee only applies during the first 36 months from the live enforcement date and/or the installation acceptance date of each approach.

System Relocation Fee:

The Municipality shall have an option to relocate the existing traffic signal violation System to alternate locations (such locations to be mutually agreed to between the City and Nestor) in the event that the number of violations issued by a particular System drop to less than 50 citations per approach enforced per month on average over a three month or longer period. The

Relocation Fee to be paid by the City is subject to determination by Nestor based, in part, on the alternate intersection agreed to, but in any event will not exceed \$70,000 per Dual Approach System if existing conduit is available at the new intersection, or \$95,000 if new conduit is required.

EXHIBIT B

LICENSE AGREEMENT FOR NESTOR 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 a 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 one copy of the SOFTWARE PRODUCT 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 one copy 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.

need 1028.04

**NESTOR TRAFFIC SYSTEMS, INC.
MUNICIPALITY OF MONTCLAIR, CALIFORNIA
ADDENDUM NUMBER ONE
TO THE
TRAFFIC SIGNAL VIOLATION VIDEO-MONITORING
SYSTEM AGREEMENT**

WHEREAS, Nestor Traffic Systems, Inc., a Delaware corporation having a place of business at One Richmond Square, Providence, RI 02906 ("Nestor"), and the Municipality of Montclair, California, a municipal corporation, having an address of 5111 Benito Street, Montclair, CA 91763 (the "Municipality" and together with Nestor, the "Parties" and each singularly a "Party") entered into a Traffic Signal Violation Video-Monitoring System Agreement dated the 4th day of September, 2001 (the "Agreement"); and

WHEREAS, the Town desires to modify the Agreement to add an additional enforced approach to the intersection of Central Avenue & Holt Boulevard;

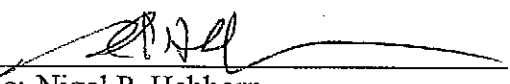
The Parties hereby agree to enter into this Addendum Number One ("Addendum One") dated this __ day of April, 2002.

NOW, THEREFORE, in consideration of the mutual covenants between the Parties, it is agreed as follows:

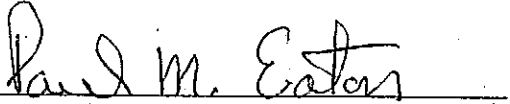
- 1. The Initial Intersections Considered in Exhibit A to the Agreement shall be amended to read: "Central Avenue & Holt Boulevard (3 approaches) and Central Avenue & Moreno Street (4 approaches)".

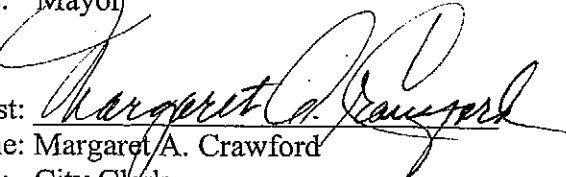
IN WITNESS WHEREOF, the Parties hereto have set their hands by their duly authorized representatives as of the day and year first above written.

Nestor Traffic Systems, Inc.


By: 
Name: Nigel P. Hebborn
Title: EVP – Chief Financial Officer

Municipality of Montclair, CA

By: 
Name: Paul M. Eaton
Title: Mayor

Attest: 
Name: Margaret A. Crawford
Title: City Clerk

Approved as to form

By: 
Name: Diane Robbins
Title: City Attorney

recd 10-28-04

**NESTOR TRAFFIC SYSTEMS, INC.
MUNICIPALITY OF MONTCLAIR, CALIFORNIA
ADDENDUM NUMBER ONE
TO THE
CROSSING GUARD PROCEDURES & POLICIES**

WHEREAS, Nestor Traffic Systems, Inc., a Delaware corporation having a place of business at 400 Massasoit Ave, Suite 200, East Providence, RI 02914 ("Nestor"), and the Municipality of Montclair, California, a municipal corporation, having an address of 5111 Benito Street, Montclair, CA 91763 (the "Municipality" and together with Nestor, the "Parties" and each singularly a "Party") entered into a Traffic Signal Violation Video-Monitoring System Agreement dated the 4th day of September, 2001 and amended April 15, 2002; and

WHEREAS, the City desires to modify the Procedures & Policies to address retention periods for citation data;

The Parties hereby agree to terminate, in its entirety, Section 8.7 Purge Procedures, and to enter into this Addendum Number One ("Addendum One") dated this 24 day of November 2003.

NOW, THEREFORE, in consideration of the mutual covenants between the Parties, it is agreed as follows:

- (1) Notwithstanding Section 6253 of the California Government Code, or any other provision of law, photographic records made by the System shall be confidential, and shall be made available only to governmental agencies, law enforcement agencies, the registered owner or the individual identified by the registered owner as the driver of the vehicle at the time of the alleged violation, as instructed by the Municipality.
- (2) Information obtained from the Department of Motor Vehicles for the administration or enforcement of the program shall be held confidential by Nestor, and may not be used for any other purposes.
- (3) Except for court records described in Section 68152 of the California Government Code, the confidential records and information described in paragraphs (1) and (2) of this Amendment One may be retained for up to six months from the date the information is first obtained, or until final disposition of the citation, whichever date is later, after which time the information shall be destroyed, as soon as economically practical, in a manner that will preserve the confidentiality of any person included in the record or information.

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.

By: Jennifer J. Rehoreg
Name: Jennifer Rehoreg
Title: Project Manager

City of Montclair, CA

By: K. J. Pipia
Name: Kevin Pipia
Title: Police Captain