

**CITY OF PASADENA
TRAFFIC SIGNAL VIOLATION VIDEO-MONITORING SYSTEM
SERVICES AGREEMENT NO. 17,712**

This AGREEMENT (the "Agreement") made this 24th day of June, 2002, by and between Nestor Traffic Systems, Inc., a Delaware corporation having a place of business at 400 Massasoit Avenue, Suite 200, East Providence, RI 02914-2020 ("Nestor"), and the City of Pasadena, a municipal corporation of the State of California (the "Municipality" and together with Nestor, the "Parties" and each singularly a "Party").

WHEREAS, the Municipality has issued a request for proposals dated on or about April 15, 2001 (the "Request for Proposals" incorporated herein as Exhibit D);

WHEREAS, Nestor submitted on May 17, 2001, a Proposal (the "Proposal" incorporated herein as Exhibit E) in response to the Request for Proposals; and

WHEREAS, the Parties desire to enter into this Agreement (to embody the relationship contemplated by the Request for Proposals and the Proposal, as amended, modified and set forth in 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 to this Agreement, 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.

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

1. SERVICES

1.1 Nestor agrees to use reasonable commercial efforts to provide to the Municipality the Services, as more fully described in Exhibit A. If and to the extent set forth in Exhibits A, B, and C, the Services shall include:

- (i) the equipment (the "Equipment") and software (the "Software"), to be supplied and installed by Nestor in accordance with Exhibit A;
- (ii) citation preparation processes that assist the Municipality in complying with current applicable law;
- (iii) training of Municipality personnel involved with the operation of the System and/or the disposition of citations; and
- (iv) 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:

- (i) such Software, if manufactured by Nestor, is supplied under the license set forth in Exhibit B (the "License") to which the Municipality agrees;

(ii) such Software, if manufactured by third parties, is supplied under third-party licenses accompanying the Software, which licenses the Municipality acknowledges receiving and to which it hereby agrees; and

(iii) such Equipment is supplied under the lease terms set forth in Exhibit C (the "Lease") 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 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 reasonably requested by Nestor) 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. The Municipality further agrees that the estimated dates of installation and activation of the System set forth in Exhibit A (or incorporated therein) are 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 shall be responsible and reimburse Nestor for any damage to the System caused by the Municipality or any of the Municipality's employee's, 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 who is responsible for damage to the System or any part thereof.

1.5 If and to the extent this Agreement incorporates by reference any provision of the Request for Proposals or the Proposal dated May 17, 2001, 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 initial term of this Agreement, the License and the Lease shall begin upon the date of this Agreement and shall continue until the fifth (5th) anniversary of the Installation Date (as defined below) (the "Initial Term"). Thereafter, this Agreement, the License and the Lease shall continue in effect on a month to month basis, unless either Party shall have provided 90 days prior written notice to the other Party of such Party's intention to terminate this Agreement, the License and the Lease (the "Renewal Term" and together with the Initial Term, the "Term"). The "Installation Date" shall be the latest date that the System becomes installed and operational at any of the intersections described in Sections 1.1 or 1.2 of Exhibit A.

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.

3.2 Nestor may terminate this Agreement, or its provision of any Service or any part of the System, without liability, 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. The Municipality may terminate this Agreement on thirty (30) days advance notice if Municipality concludes in its sole discretion that potential or actual liability of

Municipality to third parties arising out of or in connection with the System makes the program impractical, uneconomical or impossible to continue.

3.3 If this Agreement is terminated by Nestor pursuant to Section 3.1 or the Municipality pursuant to Section 3.2, the Municipality shall be responsible and pay to Nestor on demand the termination and cancellation fee set forth in Section 4.2. Termination of this Agreement pursuant to Section 3.1 shall not relieve the breaching Party of any liability it may have under this Agreement or pursuant to law to the non-breaching Party.

3.4 Upon termination or expiration of this Agreement, the Municipality shall immediately cease using the Software and 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 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 (b) allow Nestor access to the system(s) on which such Software is loaded and permission to Nestor to remove such Equipment and Software. 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. This Section 3.4, as well as Sections 3.3, 4.2, 4.4, 6.2, 6.3, 6.4, 7 and 9 of this Agreement, Sections 2, 3, 4, 5, 6, 7, 8 and 9 (but only to the extent Section 9 corresponds to Sections of the Schedule or the contract which survive) of the License and Sections 3, 4, 5, 6, 7 and 9 (but only to the extent Section 9 corresponds to Sections of the Schedule or the Contract which survive) of the Lease shall survive any expiration or termination of this Agreement, the License or the Lease. Nestor shall cooperate with the Municipality in the processing and orderly transfer to the Municipality of citations issued prior to the termination date.

3.5 Notwithstanding anything to the contrary contained herein, or in the License or the Lease, but except as provided in the last sentence of Section 3.4, 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 monthly fee (the "Monthly Per Approach Fee") for each Installed Approach as follows:

Schedule 1: Average (over all Installed Approaches) of < 100 citations issued per Installed Approach per month - \$ 7,750 per Installed Approach

Schedule 2: Average (over all Installed Approaches) of 100 to 150 citations issued per Installed Approach per month - \$ 9,250 per Installed Approach

Schedule 3: Average (over all Installed Approaches) of > 150 citations issued per Installed Approach per month - \$ 12,000 per Installed Approach

Should the Municipality elect to proceed with "Phase 2" as set forth in Exhibit A, Section 1.3 and once Nestor has completed the installation of all 10 approaches and/or expansion beyond the initial 10 approaches as mutually agreed upon then the Municipality shall pay Nestor a monthly fee (the "Monthly Per Approach Fee") for each Installed Approach as follows:

Schedule 1a : Average (over all Installed Approaches) of < 100 citations issued per Installed Approach per month - \$ 7,000 per Installed Approach

Schedule 2a: Average (over all Installed Approaches) of 100 to 150 citations issued per Installed Approach per month - \$ 9,000 per Installed Approach

Schedule 3a: Average (over all Installed Approaches) of > 150 citations issued per Installed Approach per month - \$11,000 per Installed Approach

"Installed Approach" shall mean any enforced direction of travel on an individual access road or street to any intersection that is monitored by the System and through which the Municipality has commenced issuing citations. If and to the extent that (1) an Installed Approach subject to a Monthly Per Approach Fee is not capable of detecting violations or (2) Nestor is unable to print and/or mail Citations, in either case, for more than three (3) consecutive days in any calendar month as a result of system malfunctions not caused by the Municipality or an event described in section 9.5 of the Agreement (collectively and each individually, an "Event"), Nestor will allow a credit against the Monthly Per Approach Fee for that month equal to: the respective approach's, or the System's (as applicable) Monthly Per Approach Fee multiplied by the total number of days the approach or System, as the case may be, was incapable of detecting violations, and/or printing and mailing Citations (as applicable) in the month as a result of the Event and divided by thirty (30) days.

4.2 Except for termination of this Agreement by Nestor pursuant to Section 3.2 or by the Municipality pursuant to Section 3.1, the termination and cancellation fee shall equal the product of (a) \$75,000 times the number of Installed Approaches multiplied by (b) the Remaining Term in months divided by the Initial Term (60 months). The "Remaining Term" shall equal the number of months in the Initial Term of this Agreement from the Installation Date (i.e., 60 months) minus the number of whole months from the Installation Date to the date of termination.

4.3 Except for any termination and cancellation fee and other charges owed pursuant to Sections 4.2 or 4.4, which is due on demand, payment of all fees and other charges owed pursuant to this Agreement is due within thirty (30) days after invoice date. Invoices will be sent to the Municipality at:

Norman Baculiniao - Department of Transportation - Room 212
100 N. Garfield Avenue - Pasadena - CA 91101

4.4 Unless the Municipality provides Nestor with evidence of an exemption therefrom, prices do not include federal or state excise, sales, use or other similar taxes or charges. The Municipality agrees to indemnify and hold harmless Nestor from any liability arising out of any such tax or charge if charged against Nestor. If incurred, such taxes or charges may be invoiced at any time. Nestor will notify the Municipality in writing promptly upon learning of any such taxes being assessed. Nestor will be responsible for any penalties or late fees incurred on such taxes between the time Nestor was, or should have been, aware of such taxes and the time of notification to the Municipality.

5. Responsibilities of the Municipality

5.1 The Municipality shall provide Nestor with such "as built" drawings in electronic format as Nestor, in Nestor's sole discretion, may require for the preparation of drawings for the installation of the System and shall process Nestor's engineering drawings without unusual or unreasonable cost or delay.

5.2 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.

5.3 The Municipality shall timely process citations submitted by Nestor for review and approval.

5.4 The Municipality shall provide all electrical connections and power required by the System.

5.5 The Municipality shall provide Nestor with advance written notice of any modifications proposed to intersections, including traffic signal operations, after installation of a System. In the event of any such intersection modification, 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. 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.

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, to the extent permitted by law.

5.7 During the Term of this Agreement, the Municipality shall operate the System as provided in this Agreement or in an amendment hereto. During the term of this Agreement, the Municipality shall not allow the System's use or operation by a third party, without the express 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 the Proposal and on Exhibit A. Nestor warrants that it believes that the citations to be issued by the system materially comply with now existing applicable California law. This warranty is subject to and conditioned on the Municipality's: (i) operation of the system in full compliance with California law, (ii) acknowledgement that applicable California law is subject to change at any time (either legislatively or judicially) and (iii) agreement that its sole remedy for breach of this warranty is its right to terminate this Agreement as set forth in Section 3.2. **IN NO EVENT WILL NESTOR BE LIABLE FOR DAMAGES OF ANY TYPE (WHETHER DIRECT, INDIRECT, SPECIAL, CONSEQUENTIAL, PUNATIVE OR OTHERWISE) TO THE MUNICIPALITY FOR BREACH OF THIS WARRANTY.** This warranties set forth in this Section 6.1 do not apply if the Municipality has failed to make all payments to Nestor required by this Agreement or as set forth in, and are subject to the conditions of Section 6.4.

6.2 **EXCEPT AS PROVIDED IN THIS SECTION 6, 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 TITLE, NON-INFRINGEMENT, NON-INTERFERENCE WITH ENJOYMENT, 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 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 SYSTEM, THE SERVICES OR THE USE OF OR INABILITY**

TO USE THE SYSTEM OR THE SERVICES, 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 MUNICIPALITY FOR ANY REASON FOR ANY AMOUNT IN EXCESS OF THE FEES ACTUALLY PAID BY MUNICIPALITY TO NESTOR IN ACCORDANCE WITH SECTIONS 4.1 FOR THE TWELVE MONTHS IMMEDIATELY PRECEDING THE EVENT(S) OR CIRCUMSTANCE(S) GIVING RISE TO NESTOR'S LIABILITY TO MUNICIPALITY.

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;

(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 Systems' operating instructions, which it 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. INDEMNITY

7.1 Nestor agrees to indemnify, defend, and hold harmless the Municipality from any claim of damages (including the payment of reasonable attorneys' fees) by a third party arising solely from (a) a finding that the System infringes any validly issued United States patent or (b) Nestor's negligence, provided that such liability is not attributable to (i) any act or omission set forth in Section 7.2 or (ii) any third-party software or other third-party products used with, required for use of, or supplied under their own names with or as part of the System. If, as a final result of any litigation of which Nestor is obligated to indemnify, the use of the System by Municipality is prevented, in whole or in part, by an injunction, Nestor's sole obligation to the Municipality as a result of such injunction shall be, at Nestor's option, either to (i) replace such part as has been enjoined, or (ii) procure a license for Nestor or the Municipality to use same, or (iii) remove same at no additional cost to the Municipality and terminate this Agreement. If Nestor fails to take the actions in the immediately preceding sentence, after any such injunction is final, the Municipality may terminate this Agreement without payment of any cancellation or termination fees as calculated under Section 4.2.

7.2 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 (including the payment of reasonable attorneys' fees) by a third party arising from or related to (i) Nestor's compliance with any designs, specifications, or instructions of the Municipality, (ii) any modification of the System made by the Municipality, (iii) the negligence or intentional act of Municipality, (iv) failure of the Municipality to use the System 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 citation preparation, (vii) the Municipality's use and/or administration of the System and/or any traffic signal, and (viii) an allegation regarding the permissibility under the law of the use by the Municipality of photo citation systems or the System.

7.3 The rights of a Party seeking indemnification under this Section 7 shall be conditioned upon (i) the indemnified Party notifying the indemnifying Party promptly upon receipt of the claim or action for which indemnification is sought (but the failure to do so shall not relieve the indemnifying Party of its obligations under this Section 7 unless and then only to the extent that, it is materially prejudiced thereby) 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 7 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 Section 7.

8. [This Section is intentionally omitted]

9. MISCELLANEOUS

9.1 Except as specifically provided in this Agreement, this Agreement may not be assigned by either Party without the express written consent of the other Party, except that Nestor may assign or otherwise encumber this Agreement or the Agreement (a) for the purpose of financing the costs of the System contemplated to be implemented hereby, (b) to any entity owned or controlled by Nestor or (c) to any third party that acquires all or substantially all of Nestor's business relating to the System.

9.2 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.

9.3 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.

9.4 Except as set forth in the Contract, this Agreement and the Exhibits 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.

9.5 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.

9.6 It is understood that in the performance of the services herein provided for, Nestor shall be, and is, an independent contractor, and is not an agent or employee of Municipality and shall furnish such services in its own manner and method except as required by this Agreement. Further, Nestor has and shall retain the right to exercise full control over the employment, direction, compensation and discharge of all persons employed by Nestor in the performance of the services hereunder. Nestor shall be solely responsible for, and shall indemnify, defend and save Municipality harmless from all matters relating to the payment of its employees, including compliance with social security, withholding and all other wages, salaries, benefits, taxes, exactions, and regulations of any nature whatsoever. Nestor acknowledges that Nestor and any subcontractors, agents or employees employed by Nestor shall not, under any circumstances, be considered employees of the Municipality, and that they shall not be entitled to any of the benefits or rights afforded employees of Municipality, including, but not limited to, sick leave, vacation leave, holiday pay, Public Employees Retirement System benefits, or health, life, dental, long-term disability or workers' compensation insurance benefit.

9.7 Nestor shall comply with all Federal, State, County and Municipality laws, ordinances, rules and regulations, which are, as amended from time to time, incorporated herein and applicable to the performance hereof, including but without limitation the Pasadena Living Wage Ordinance.

9.8 If any action at law or in equity is brought to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, costs and necessary disbursements in addition to any other relief to which such party may be entitled.

9.9 This Agreement, and the rights and duties of the parties hereunder (both procedural and substantive), shall be governed by and construed according to the laws of the State of California, without regard to choice of law principles.

9.10 This Agreement may only be changed by written amendment signed by an authorized officer of Nestor and the Municipality Manager or other authorized representative of the Municipality, subject to any requisite authorization by the City Council. Any oral representations or modifications concerning this Agreement shall be of no force or effect.

9.11 If any provision in this Agreement is held by any court of competent jurisdiction to be invalid, illegal, void, or unenforceable, such portion shall be deemed severed from this Agreement, and the remaining provisions shall nevertheless continue in full force and effect as fully as though such invalid, illegal, or unenforceable portion had never been part of this Agreement.

9.12 The parties hereby agree that this Agreement is to be enforced in accordance with the laws of the State of California, is entered into in the City of Pasadena and that all claims or controversies arising out of or related to performance under this Agreement shall be submitted to and resolved in a forum within the County of Los Angeles at a place to be determined by the rules of the forum.

9.13 There shall be two (2) fully signed copies of this Agreement, each of which shall be deemed an original.

9.14 Nestor shall obtain, and pay any and all reasonable costs associated therewith, any Pasadena

Business License, which may be required by the Pasadena Municipal Code.9.15 The Municipality, or its authorized auditors or representatives, shall have access to and the right to audit and reproduce any of the Nestor's records to the extent the Municipality deems necessary to insure it is receiving all money to which it is entitled under the Agreement and/or is paying only the amounts to which Nestor is properly entitled under the Agreement or for other purposes relating to the Agreement. The Nestor shall maintain and preserve all such records for a period of at least 3 years after termination of the Agreement.

9.15 Nestor hereby represents, warrants and certifies that no member, officer or employee of the Nestor is a director, officer or employee of the City of Pasadena, or a member of any of its boards, commissions or committees, except to the extent permitted by law.

9.16 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.

10. ADDITIONAL ASSURANCES

10.1 Affirmative Action: Fair Employment Practices. Nestor shall comply fully with the Municipality's Affirmative Action in Contracting Ordinance (Pasadena Municipal Code , Chapter 4.09), as amended from time to time, and the rules and regulations promulgated thereunder, and to this end:

10.2 Nestor certifies and represents that, during the performance of this Agreement, Nestor and any other party with whom it may subcontract shall adhere to equal opportunity employment practices to assure that applicants and employees are treated equally and are not discriminated against because of their race, religious creed, color, national origin, ancestry, handicap, sex or age. Nestor further certifies that it will not maintain any segregated facilities:

10.3 Nestor shall, in all solicitations or advertisements for applicants for employment placed by or on behalf of Nestor, state that Nestor is an "Equal Opportunity – Affirmative Action employer" or that all qualified applicants will receive consideration for employment without regard to their race, religious creed, color, national origin, ancestry, handicap, sex or age.

10.4 Nestor shall, if requested to do so by the Municipality, certify that it has not, in the performance of this Agreement, discriminated against applicants or employees because of their membership in a protected class.

10.5 If requested to do so by the Municipality through its awarding authority or its Director of Affirmative Action, Nestor shall provide the Municipality with access to and copies of all of its records pertaining to or relating to its employment practices, except to the extent such records or portions of such records are confidential or privileged under state or federal law.

10.6 Nestor shall recruit vigorously and encourage businesses owned and controlled by persons who are members of protected classes to bid subcontracts.

10.7 Nestor agrees to recruit Pasadena residents initially and give them preference, if all other factors are equal, for any new positions which result from performance of this Agreement and which are performed within the Municipality.

10.8 Nothing contained in this Agreement shall be construed in any manner so as to require or permit any act, which is prohibited by law.

10.9 Nestor shall include Sections 10.2 through 10.8, inclusive, of this Agreement in each of its subcontracts.

10.10 A finding by the State Fair Employment and Housing Commission that Nestor has engaged in any unlawful employment practice (as defined in California Government Code, Sections 12900 et seq.) during the term of this Agreement shall be deemed a breach of this Agreement, and Nestor shall pay to Municipality,

five hundred dollars (\$500.00) liquidated damages for each such breach committed under this Agreement.

10.11 Nestor shall forfeit as a penalty to Municipality Twenty-Five Dollars (\$25.00) for each laborer, workman, or mechanic employed in the execution of this Agreement by Nestor, or any subcontractor under it, for each calendar day during which such laborer, worker, or mechanic is required or permitted to work at other than a rate of pay provided by law in violation of the provisions of Sections 1810-1815 of the California Labor Code.

11. MAINTENANCE AND INSPECTION OF RECORDS

11.1 The Municipality, or its authorized auditors or representatives, shall have access to and the right to audit and reproduce any of Nestor's records to the extent the Municipality (I) deems reasonably necessary to insure it is receiving all money to which it is entitled under the Agreement and/or is paying only the amounts to which Nestor is properly entitled under the Agreement or for other purposes relating to the Agreement, and (II) has identified the specific nature of such records in writing within 30 days of execution of this Agreement.


11.2 Nestor shall maintain and preserve all such identified records for a period of at least three (3) years after termination of the Agreement.

11.3 Nestor shall, upon request, promptly deliver the records to the Municipality or reimburse the Municipality for all reasonable and extra costs incurred in conducting the audit at a location other than the City of Pasadena, including, but not limited to, such additional (out of the Municipality) expenses for personnel, salaries, private auditors, travel, lodging, meals and overhead.

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 PASADENA

By: 
Name: Nigel P. Hebborn
Title: Executive Vice President - CFO

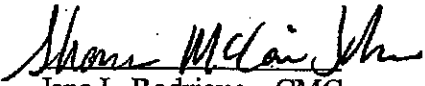
By: 
Cynthia J. Kurtz
City Manager


Date: June 14, 2002

Date: _____

ATTEST:

APPROVED AS TO FORM:

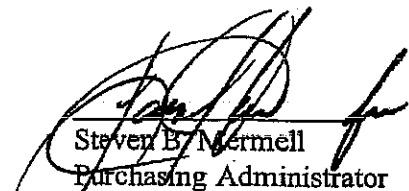

Jane L. Rodriguez, CMC
City Clerk


Nicholas George Rodriguez
Assistant City Attorney

Date: 6/27/02

Date: 6/27/02

REVIEWED:


Steven B. Mermell
Purchasing Administrator

Date: 6-20-02



June 20, 2002

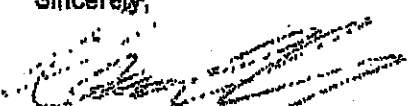
Norman Baculiniao
Traffic Engineer
City of Pasadena Department of Public Works
City Hall
100 North Garfield Avenue
Room 212
Pasadena, CA 91109

Dear Mr. Baculiniao:

Please let this letter serve to inform the City of Pasadena that Nigel P. Hebborn, Executive Vice President and Chief Financial Officer of Nestor, Inc. and Nestor Traffic Systems, Inc. is authorized to sign contracts, agreements and other legal tender on behalf of the Corporation, as stipulated in Article IV, Section 2 of the By-Laws of the Corporation (see attached). Mr. Hebborn was acting within the authority assigned to him by the Corporation's board of directors in signing the CrossingGuard contract by and between the City of Pasadena and Nestor Traffic Systems, Inc.

Should you require additional information, please contact me at 401-434-5522, ext. 713.

Sincerely,



David Fox
President and CEO

DF/mab
Enclosure

ARTICLE IV

OFFICERS

SECTION 1. OFFICERS.--The officers of the corporation shall be a President, a Treasurer, and a Secretary, all of whom shall be elected by the Board of Directors and who shall hold office until their successors are elected and qualified. In addition, the Board of Directors may elect a Chairman, one or more Vice-Presidents and such Assistant Secretaries and Assistant Treasurers as they may deem proper. None of the officers of the corporation need be directors. The officers shall be elected at the first meeting of the Board of Directors after each annual meeting. More than two offices may be held by the same person.

SECTION 2. OTHER OFFICERS AND AGENTS.--The Board of Directors may appoint such other officers and agents as it may deem advisable, who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Board of Directors.

SECTION 3. CHAIRMAN.--The Chairman of the Board of Directors, if one be elected, shall preside at all meetings of the Board of Directors and he shall have and perform such other duties as from time to time may be assigned to him by the Board of Directors.

SECTION 4. VICE CHAIRMAN.--The Vice Chairman shall have and perform such duties as shall be assigned to him by the Board of Directors.

SECTION 5. PRESIDENT.--The President shall be the chief executive officer of the corporation and shall have the general powers and duties of supervision and management usually vested in the office of President of a corporation. He shall preside at all meetings of the stockholders if present thereat, and in the absence or non-election of the Chairman of the Board of Directors, at all meetings of the Board of Directors, and shall have general supervision, direction and control of the business of the corporation. Except as the Board of Directors shall authorize the execution thereof in some other manner, he shall execute bonds, mortgage and other contracts in behalf of the corporation, and shall cause the seal to be affixed to any instrument requiring it and when so affixed the seal shall be attested by the signature of the Secretary or the Treasurer or an Assistant Secretary or an Assistant Treasurer.

SECTION 6. VICE-PRESIDENT.--Each Vice-President shall have such powers and shall perform such duties as shall be assigned to him by the directors.

SECTION 7. TREASURER.--The Treasurer shall have the custody of the corporate funds and securities and shall keep full and accurate account of receipts and disbursements in books belonging to the corporation. He shall deposit all moneys and

Exhibit A to the AGREEMENT

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 System. Video monitoring systems shall be installed initially, monitoring a minimum of ten (10) approaches at a maximum of five (5) intersections to be designated in writing by mutual agreement of the Municipality and Nestor. The System shall be comprised of equipment capable of monitoring the following traffic approaches at the following intersections:

<u>Intersections</u>	<u>Approaches Enforced</u>
TBD	TBD

1.2 Substitution or Addition of an Intersection. If Nestor or the Municipality reasonably determines that one or more of the above intersections is not for any reason appropriate for the System (and such determination is made at least fifteen (15) days prior to the commencement of installation of the System at any such intersection), then alternate intersection(s) may be substituted by written consent of the Municipality and Nestor.

After the commencement of installation activities, the Municipality may request that Nestor 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 sixty (60) citations per Installed Approach at that intersection per month, averaged over a three month or longer period. The Relocation Fee to be paid by the Municipality is subject to determination by Nestor based, in part, on the alternate intersection agreed to, but in any event will not exceed \$75,000 per Dual Approach System if existing conduit is available at the new intersection, or \$95,000 if new conduit is required.

1.3 Timeframe for Installation of the System. The System will be installed and activated within the above intersections in two separate phases ("Phase 1 " and "Phase 2") in accordance with an Implementation Plan to be mutually agreed to by Nestor and the Municipality.

(i) Phase 1 shall consist of Nestor's installation and activation of the System within the first four approaches.

(ii) Within twelve months (365) days after Nestor has completed the installation and activation required in Phase 1, the Municipality shall inform Nestor of its election to either (a) proceed with the installation and activation required in Phase 2 or (b) opt out of Phase 2.

(iii) Phase 2 shall consist of Nestor's installation and activation of the System within the next six approaches.

In the event the Municipality elects to opt out of Phase 2, the Municipality shall not be required to pay Nestor any additional fee or charge, and any calculations made pursuant to this Agreement, such as the termination and cancellation fee formula set forth in Section 4.2, shall only apply to those intersections into which an Installed Approach has been installed and activated.

Nestor will use commercially reasonable efforts to install the Systems in accordance with the schedule to be set forth in the Implementation Plan. Within ten (10) days after the Municipality elects to proceed with Phase 2, the parties shall prepare a mutually agreeable implementation plan for such phase that contains substantially similar time frames for similarly configured intersections as those set forth in the Implementation Plan for Phase 1. The Municipality agrees that the estimated dates of installation and activation of the Systems set forth in this Section 1.3 are subject to conditions beyond the control of Nestor and are not guaranteed.

1.4 Installation/Ownership of the System. Subject to the operational supervision of the Municipality, 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 of the designated intersections provided for above. 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. These plans and specifications shall be signed and stamped as approved by a professional engineer licensed to practice in the State in which the Municipality is located. 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 shall 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 or to meet the requirements of such. Nestor shall provide a separate cabinet for any Nestor equipment requiring cabinet storage, except for any equipment related to and needed for traffic signal sensing functions, which will be installed in the Municipality's cabinet if required by Nestor.

1.5.4 The System may be mounted on or utilize support of existing traffic signal poles or other intersection structures where possible, subject to Municipality review and approval, such review and approval not to be unreasonably withheld, delayed or conditioned.

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

1.5.6 Subject to the operational supervision of the Municipality, Nestor shall notify the Municipality at least 48 hours prior to interfacing with traffic signal equipment. Nestor shall be responsible for installing all its wiring into Municipality cabinets.

1.5.7 To the maximum extent permitted by law, the Municipality shall waive any permit and licensing fees for any System construction and installation.

1.5.8 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 functionality as described in the Proposal or this Exhibit) 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.

1.6 Production of Video Files. Subject to the operational supervision of the Municipality, Nestor shall produce digital video files of each red light violation, capable of identifying vehicles traveling through the intersection during the red light phase. The violation video shall capture the driver's view of the traffic signal, [the driver of the vehicle] and either a front or rear view of the vehicle license plate.

1.7 Restoration of Intersections. Upon termination or expiration of the Agreement, Nestor will use commercially reasonable efforts to 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 conduit, in-ground fixture, 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 will provide up to eight (8) hours of training for up to ten (10) persons at one (1) session at the Municipality's facilities to train Municipality personnel in the operation of the System. Training shall consist of instructional and operational training as well as hands-on equipment exercises with an instructor. All necessary training materials and documentation will be provided by Nestor. If the Municipality requests additional courses or training, Nestor will provide these on a fully cost reimbursable basis.

3. Citation Preparation and Processing Services

3.1 Citation Preparation and Processing. Subject to the operational supervision of the Municipality, Nestor will process approved violations utilizing a computerized traffic citation program ("Citation Composer"). 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. Notwithstanding anything to the contrary in the foregoing

provisions of this Section 3.1, Nestor will not process nor support any citations not captured by the System and approved by the Municipality.

3.1.1 Mailing of Citations. Subject to the operational supervision of the Municipality, Citations shall be mailed to the violator as soon as is reasonably practicable 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). The form of citation shall be subject to the approval of the Municipality, which approval may not be unreasonably delayed, conditioned or withheld.

3.1.2 Cooperation With Police and the Courts. Subject to the operational supervision of the Municipality, Nestor shall cooperate with the Municipality's Police Department and the Courts in the issuance of violations. Nestor shall submit mutually agreed information necessary to issue violation notices to the Police Department. All citations shall be reviewed and approved by the Municipality's Police Department prior to mailing. In addition, Nestor will cooperate with the Courts to 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.

3.2 Access to Drivers License Information. Subject to the operational supervision of the Municipality, to the extent Nestor is able, Nestor shall access directly 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.

3.3 Numbering System. Subject to the operational supervision of the Municipality, Nestor, in coordination with the Courts, will develop and implement an independent numbering system for automated red light citations.

3.4 Transmission of Information. Subject to the operational supervision of the Municipality, Nestor will download all citation information via an electronic file into the Court database. Nestor shall maintain a documented chain of custody for all electronically transmitted information while the information is under Nestor's control.

3.5 Customer Service. Subject to the operational supervision of the Municipality, Nestor will provide an automated customer service telephone number to the public. Customer Service Representatives will be available Monday through Friday, from 8:30 to 5 p.m. local time (at the Municipality), excluding holidays, in order to schedule violation video viewing appointments for the Police Department and to answer basic questions regarding the Municipality's program.

3.6 Notification of Failure to Appear. The Municipality shall use its best efforts to establish with the DMV an agreement or procedure to compel to the maximum extent permitted by a law a violator who has failed to appear in Court to make such appearance.

4. Maintenance

4.1 Maintenance of System. Except as provided herein, Nestor shall use commercially reasonable efforts to 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 in such a state of operation such that the System's functionality conforms in all material respects to the description of the System set forth in this Exhibit.

4.2 Equipment Checks. Nestor shall use commercially reasonable efforts to perform remote camera and PC equipment checks on a daily basis to confirm proper operation of computers, cameras and communications network, and to respond to camera failures within one business day from detection. Routine in-field camera equipment inspection will be done as needed.

5. Public Education Campaign

5.1 Public Awareness Program. Nestor shall assist the Municipality with a Public Awareness Program. Such assistance shall consist of:

- a) Reasonable assistance for a media event to launch the community education program
- b) A reasonable amount of training for a Municipality staffed speaker's bureau
- c) The production of warning signs (as described in section 5.2) for installation by Municipality
- d) Preparation and issuance of warning notices mailed to violators for the first 30 days of the program
- e) A toll-free customer service hotline as described in section 3.5

5.2 Warning Signs. Nestor shall provide one (1) warning sign per Installed Approach. The signs shall be in compliance with applicable law. The Municipality will be responsible for installation and Nestor will recommend appropriate installation locations.

6. Expert Witness Testimony and Court Training

6.1 Expert Witness Testimony. Subject to the operational supervision of the Municipality, Nestor will provide expert witness testimony, as reasonably necessary, to testify regarding the accuracy and technical operation of the System. For any such testimony required after 180 day(s) following the Warning Period, the Municipality shall pay Nestor a fee for the time (including time spent for preparation, travel and attendance in Court) of such expert witness based upon Nestor's then current hourly rate for such services (currently \$175/hour for a Senior Engineer, \$125/hour for a Program Manager, or \$90/hour for a Field Technician) subject to a maximum charge per day of \$750, plus all reasonable and direct out-of-pocket expenses.

6.2 Court Training. Subject to the operational supervision of the Municipality, Nestor will conduct a one-day workshop-orientation session for Court judges (and/or their designees), other appropriate court officials and the Municipality prosecutor.

7. Violation Review Station

7.1 Provision of Equipment. Nestor will provide one (1) laptop workstation and printer (which shall remain the property of Nestor) to be used by the Municipality for citation approval, violation video viewing appointments and court hearings.

8. Reporting

8.1 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.

8.2 Monthly Report. Nestor shall submit to the Municipality a Monthly Report on project results within thirty (30) days of the end of each calendar month. To the extent reasonably commercially practical, the Monthly Report shall include information for each violation recorded by the System as well as the following 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) Report log of downtime by approach of System

8.3 Additional Reports or Information. 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.

8.4 Database. 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.)

9. Meetings

Nestor representative(s) 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 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.

10. Additional Services (at the Municipalities request):

1. Payment Processing Services – Subject to the operational supervision of the Municipality, Nestor shall use reasonable commercial efforts to receive citation fees from violators, deposit amounts collected into an appropriate bank account, provide accounting records to the Municipality, and remit the amounts received as instructed by the Municipality. Monthly Per Approach Fee set forth in Section 4.1 of the Agreement shall be increased by an amount equal to \$ 1_____.

Accepted _____ Rejected _____ (Please initial)

2. CrossingGuard VIP Program – 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 \$3,500 for each intersection 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 50% of the intersection's VIP Program Fee paid against the initial Monthly Per Approach Fee charged for the intersection.

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.

EXHIBIT B to the AGREEMENT

LICENSE AGREEMENT FOR CROSSINGGUARD SOFTWARE

This License Agreement (the "License") is a legal agreement between you (the contracting counterparty 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 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 Afghanistan, 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, 4, 5, 6, 7 8 and 9 of the Agreement are hereby incorporated by reference as if herein set forth in full.

EXHIBIT C to the AGREEMENT

LEASE AGREEMENT FOR CROSSINGGUARD SYSTEM

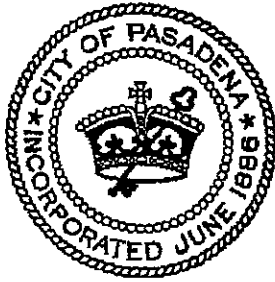
This Lease Agreement (the "Lease") is part of an agreement (the "Agreement") (to which a copy of this Lease is attached as an Exhibit) between the Municipality and Nestor. The Parties hereto agree as follows:

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. **INSURANCE.** Municipality shall, at all times prior to the return of the Equipment to Nestor in accordance with Section 4 hereof, carry and maintain, at its expense, physical damage insurance providing "all risks" coverage for the Equipment and public liability and property damage insurance in amounts and with insurance companies satisfactory to Nestor, but in no event shall the all risk insurance be for an amount less than the replacement cost of the Equipment.

7. 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.

8. 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.

9. OTHER PROVISIONS. Sections 3, 4, 5, 6, 7 and 9 of the Agreement are hereby incorporated by reference as if herein set forth in full.



Purchasing & Payables Division

100 N. Garfield Ave., Room 328

Pasadena, CA 91101

(626) 744-6755

(626) 744-6757 Fax

Internet: www.ci.pasadena.ca.us/purchasing

Vendor List Questionnaire (Form AA-1) Affidavit of Equal Opportunity Employment & Non-segregation

In order to be placed to the City's vendor list and be eligible to receive City business, you must provide the following information except where indicated as "optional". By submitting this form you are declaring under penalty of perjury under the laws of the State of California and the laws of the United States that the information is true and correct. Furthermore, you are certifying that your firm will adhere to equal opportunity employment practices to assure that applicants and employees are not discriminated against because of their race, religion, color, national origin, ancestry, disability, sex or age. And, your firm does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained.

Name of Company Nestor Traffic Systems, Inc. Business Telephone 401-434-5522

Address 400 Massasoit Avenue; Suite 200 Fax number 401-434-5809

City East Providence State RI Zip 02914
(Optional)

Contact Person Nigel P. Hebborn E-mail Address hebborn@nestor.com

Tax ID Number (or Social Security Number) 06-1470869
(Optional)

Remit Address (if different) _____

Please state clearly and concisely the type(s) of goods and services your company provides:

Red light violation video-based enforcement services.

The following section is OPTIONAL and is for statistical reporting purposes only. Ownership (please check all that apply):

African-American _____ Asian _____ Armenian _____ Hispanic _____
Native American _____ Disabled _____ Female _____

Living Wage Compliance Certification

This contract is subject to the City of Pasadena's Living Wage Ordinance, Pasadena Municipal Code Chapter 4.11. The Ordinance requires that contractors providing labor or services to the City under contracts in excess of \$25,000:

- ◆ Pay no less than seven dollars and twenty-five cents (\$7.25) per hour plus medical benefits of no less than one dollar and twenty-five cents (\$1.25) per hour, or eight dollars and fifty cents (\$8.50) per hour without medical benefits to all employees who spend any of their time providing labor or delivering services to the City of Pasadena.
- ◆ Notify employees who spend any of their time providing labor or delivering services to the City of Pasadena who make less than twelve dollars (\$12) per hour of their possible right to the federal Earned Income Tax Credit (EITC) under § 32 of the Internal Revenue Code of 1954, 26 U.S.C. § 32, and making available to such employees forms required to secure advance EITC payments.

The selected contractor will be required to evidence compliance with the Living Wage Ordinance by submitting payroll records as requested by the City. Each record shall include the full name of each employee performing labor or providing services under the contract; job classification; rate of pay and benefit rate.

I, Nigel P. Hebborn, Executive Vice President & Chief Financial Officer
(Name, Title and Signature)

do hereby certify and declare under penalty of perjury that if awarded the contract for which this bid/proposal is made Nestor Traffic Systems, Inc. will comply with the
(Name of Company)

requirements of the Pasadena Living Wage Ordinance, Pasadena Municipal Code Chapter 4.11 and the rules and regulations promulgated thereunder. I understand that failure to comply with the provisions of the Pasadena Living Wage Ordinance may result in termination of the contract as well as other penalties as stated in Pasadena Municipal Code Chapter 4.11.

IMPORTANT NOTICE: Contractors with collective bargaining agreements covering those employees assigned to contract are exempt from the wage requirements of the Living Wage Ordinance. If claiming an exemption on this basis please complete the following:

I, _____
(Name, Title and Signature)

do hereby certify under penalty of perjury that there exists between _____
(Name of Company)

and those employees to be assigned to the subject contract a collective bargaining agreement which sets forth salary and/or benefit rates. I hereby agree to provide a copy of said agreement to the City if so requested.

Please return this form with your bid/proposal. Questions concerning the Living Wage Ordinance should be directed to the Department of Finance - Purchasing Division 626.744.6755.

**ADDENDUM NUMBER ONE
TO
TRAFFIC SIGNAL VIOLATIONS VIDEO-MONITORING SYSTEM SERVICES
AGREEMENT**

This Addendum is made and entered into this 30th day of June, 2005 ("Effective Date") by and between Nestor Traffic Systems, Inc., a Delaware corporation ("Nestor") and the City of Pasadena, a municipal corporation ("City").

WHEREAS, Nestor and City entered into an agreement dated June 24, 2002 for traffic signal violations video-monitoring services (the "Agreement"); and

WHEREAS, Nestor and City now wish to amend the Agreement to amend the fixed monthly fee and the Term of the Agreement;

NOW, THEREFORE, for valuable consideration the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Section 4.1 of the Agreement is hereby deleted effective on the installation of the fifth (5th) approach under the Agreement and replaced by the following:

"4.1 The Municipality shall pay Nestor a monthly fee (the "Monthly Per Approach Fee") for each Installed Approach of \$4,900.00.

"Installed Approach" shall mean any enforced direction of travel on an individual access road or street to any intersection that is monitored by the System and through which the Municipality has commenced issuing citations. If and to the extent that (1) an Installed Approach subject to a Monthly Per Approach Fee is not capable of detecting violations or (2) Nestor is unable to print and/or mail Citations, in either case, for more than three (3) consecutive days in any calendar month as a result of system malfunctions not caused by the Municipality or an event described in section 9.5 of the Agreement (collectively and each individually, an "Event"), Nestor will allow a credit against the Monthly Per Approach Fee for that month equal to: the respective approach's, or the System's (as applicable) Monthly Per Approach Fee multiplied by the total number of days the approach or System, as the case may be, was incapable of detecting violations, and/or printing and mailing Citations (as applicable) in the month as a result of the Event and divided by thirty (30) days."

2. Sections 4.5, 4.6, and 4.7 to the Agreement are hereby added:

"4.5 A thirty (30) day warning period shall be provided for upon the installation of each new Installed Approach. The Monthly Fee per Section 4.1 shall not apply to the warning period.

4.6 During the life of the Agreement, Nestor will be willing to relocate an Installed Approach to different locations at Nestor's sole cost provided the new contract term for the relocated Installed Approaches is mutually agreed to by Nestor and the City.

4.7 The City hereby elects to proceed with Phase 2 of the Agreement and install systems at a minimum of nine (9) up to a maximum of eleven (11) Installed Approaches in accordance with Section 1.1 and 1.3 of Exhibit A."

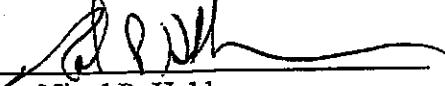
3. Section 1.2 of Exhibit A to the Agreement is hereby deleted in its entirety.

4. All terms not herein defined shall have the same meaning and use as set forth in the Agreement.

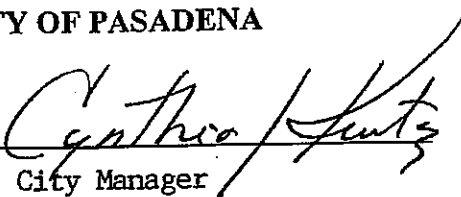
5. All other terms, conditions and provisions of the Agreement not in conflict with this Addendum shall remain in full force and effect.

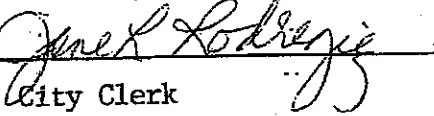
IN WITNESS WHEREOF, the parties hereto have set their hand by their duly authorized representative as of the day and year first above written.

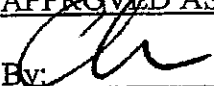
NESTOR TRAFFIC SYSTEMS, INC.

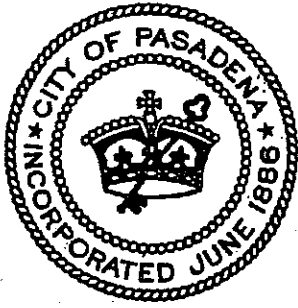
By: 
Name: Nigel P. Hebborn
Title: President & CEO

CITY OF PASADENA

By: 
City Manager

ATTEST 6/30/05
By: 
City Clerk

APPROVED AS TO FORM
6/23/05
By: 
City Attorney
AIST



Agenda Report

TO: CITY COUNCIL **DATE:** June 13, 2005

THROUGH: PUBLIC SAFETY COMMITTEE

FROM: CITY MANAGER

SUBJECT: AMENDMENT TO SERVICES AGREEMENT NO. 17,712
BETWEEN THE CITY AND NESTOR TRAFFIC SYSTEMS, INC.
TO EXPAND THE AUTOMATED RED LIGHT CAMERA
ENFORCEMENT PROGRAM

RECOMMENDATION

It is recommended that the City Council:

Authorize the City Manager to amend Traffic Signal Violation Video-Monitoring Services Agreement No. 17,712 with Nestor Traffic Systems, Inc. to incorporate the conditions outlined in the background section of this report for the expansion of the automated red light camera enforcement program.

BACKGROUND

On July 23, 2001, the City Council authorized the City Manager to enter into a service agreement with Nestor Traffic Systems, Inc. (NTS) to provide Automated Red Light Camera Enforcement Services in the City at five intersections. The agreement was executed on June 24, 2002 and, as negotiated, included a Phase 1 pilot program at two intersections with an option to expand the system under Phase 2 to an additional three intersections depending on the system's performance after 12 to 18 months of evaluation. This limited the City's financial exposure, while gaining valuable experience during its initial deployment.

The first Red Light Camera (RLC) was activated on June 10, 2003 for the north and south approaches of Lake Avenue at Union Street and the second was activated on December 16, 2003 for the north and south approaches of Marengo Avenue at Union Street.

A review of traffic collision history for the first four approaches after RLC activation revealed mixed results. There was a slight overall reduction of broadside collisions. However, documented evidence from other agencies has shown that the program can significantly improve traffic safety in the long term. For example, the City of Long Beach has experienced as much as a 35% reduction of total collisions at RLC locations after four years. Based on this, staff is recommending the continuance and expansion of the program.

It is anticipated that the expansion of the program will require one new FTE police officer to support the program.

CONDITIONS

In the existing agreement, the fees are tiered, ranging from \$7,750 to \$12,000 per month, per approach, depending on the number of average monthly citations issued. In September 2003, Assembly Bill 1022 became law and required that automated red light camera vendors be paid a flat monthly fee, which cannot be based on the number of citations issued. This law essentially made the current tiered monthly fee noncompliant. To reduce the fees and comply with AB 1022, staff negotiated a flat monthly fee with NTS for \$4,900 a month per RLC approach, pursuant to the following mutually agreed upon conditions.

- 1) The new monthly per approach fee will apply to all new approaches activated up to a total of 11 approaches including the existing RLC locations under Phase 1.
- 2) The Phase 1 monthly approach fee for the four existing approaches at Lake/Union and Union/Marengo under the current agreement will continue and will be adjusted to the \$4,900 monthly approach fee after the activation of the first new approach under the Phase 2 expansion.
- 3) The new contract will include a 30-day warning period beginning with the activation date for each new RLC approach.
- 4) The five year contract term will commence after the activation of the last approach of at least nine and up to 11 approaches.
- 5) During the life of the agreement, NTS will be willing to relocate the RLC cameras to different locations at NTS's sole cost provided the new agreement term for the relocated equipment is mutually agreed to by the City.
- 6) The above conditions would supersede any conflicting provisions of the current agreement and remaining pertinent conditions will still apply.

NEW RLC LOCATIONS

On March 28, 2005 Public Safety Committee meeting, staff presented potential locations for new RLC installations based on two criteria. The first criterion is based on a safety need: where the intersection ranks in terms of the highest number of traffic collision types (broadside, 90-degree collisions) that are susceptible to correction by the RLC. The second criterion is based on projected violations so that the program can remain cost neutral; projected violation fines will pay for the cost of running the program.

The Committee agreed with the criteria and methodology used for selection. Subsequent to that meeting, staff met with our RLC vendor to determine the feasibility of installing RLC at other locations that are within the top High Incidence Intersection Report but were not previously considered due to physical design constraints such as proximity with freeway bridges, and other factors. Our field investigations revealed that additional locations are feasible and were further explored. Staff is recommending that RLC be installed at the following RLC approaches:

- 1) Westbound Union Street at Marengo Avenue
- 2) Northbound San Gabriel Boulevard at Foothill Boulevard
- 3) Southbound San Gabriel Boulevard at Foothill Boulevard
- 4) Northbound Marengo Avenue at Corson Street
- 5) Eastbound Corson Street at Marengo Avenue
- 6) Eastbound Walnut Street at Pasadena Avenue

It should be noted that approaches 4 through 6 are Caltrans-owned intersection, and will be subject to a Caltrans encroachment permit. Upon approval of this amendment to the agreement, staff anticipates that the first three new RLC installations can be activated in August 2005.


FISCAL IMPACT

Upon approval of this amendment to the agreement, the revenue and expenses for the expansion of the RLC program will be included in the FY 2006 Recommended Operating Budget for the Department of Transportation, as presented to the Finance Committee. This budget will include expanded program costs for NTS, electrical and administration costs. The request for one new FTE police officer is already included in the recommended budget for the Police Department. The increased costs will be offset by the projected increase in RLC revenues.

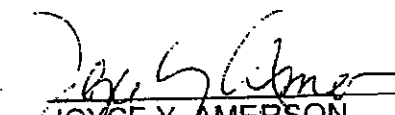
Respectfully submitted,


CYNTHIA J. KURTZ
City Manager

Prepared by:


NORMAN BACULINAO
Traffic Engineering Manager

Approved by:


JOYCE Y. AMERSON
Director of Transportation

**ADDENDUM NUMBER TWO
TO
TRAFFIC SIGNAL VIOLATION VIDEO-MONITORING SYSTEM SERVICES
AGREEMENT**

This Addendum Number Two is made and entered into this 16th day of July, 2010, by and between American Traffic Solutions, Inc. ("ATS") and the City of Pasadena, a municipal corporation ("City" and together with ATS, the "Parties" and each singularly a "Party").

WITNESSETH:

WHEREAS, on June 24, 2002, the City and Nestor Traffic Systems, Inc., now ATS, entered into a Traffic Signal Violation Video-Monitoring System Services Agreement, as amended on June 30, 2005 ("Agreement");

WHEREAS, the City and ATS desire to further amend the Agreement to redefine the number of installed camera systems, fees paid and the term of the Agreement; and

NOW THEREFORE, for and in consideration of the mutual covenants and promises contained in this Second Addendum, the City and ATS do hereby agree as set forth below:

1. The above recitals are true and correct and are incorporated herein.
2. Section 2 "Term" of the Agreement is hereby deleted and replaced with the following:

"2. The term of this Agreement shall begin July 1, 2010 and end June 30, 2011.
3. Section 4.1 "Fees and Payment" of the Agreement is hereby deleted and replaced with the following:

"4.1. The parties agree the monthly flat fee paid to ATS should be \$3,000 per camera per month for the seven (7) installed approaches"
4. Section 4.7 of the Agreement is hereby deleted and replaced with the following:


"4.7 The parties agree that ATS shall provide support services for the fee specified in section 4.1 above for the seven (7) installed approaches":

 - Northbound and Southbound approaches of Lake Avenue and Union Street (two approaches)
 - Northbound, Southbound and Westbound approaches at Marengo Avenue and Union Street (three approaches)
 - Northbound and Southbound approaches at San Gabriel Boulevard and Foothill Boulevard (two approaches).

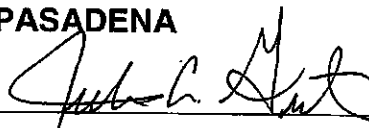
5. ATS agrees to assume all obligations, rights and duties of the Nestor Traffic Signal Violation Video-Monitoring System Services Agreement, as amended, arising on or after October 7, 2009 (the "assignment date").
6. The parties agree to amend the Original Agreement and any Addendums thereto, so that all references to "Nestor Traffic Systems, Inc." or "Nestor" are hereby deleted and replaced with "American Traffic Solutions, Inc." or "ATS" where applicable.
7. Except as specifically modified by this Second Addendum, the Agreement, as amended shall continue in full force as initially executed by the parties. Nothing herein shall be deemed or construed to amend or modify any other contract or undertaking between the City and ATS other than as defined above.

IN WITNESS WHEREOF, the parties hereto have executed this Addendum Number Two to the Agreement.

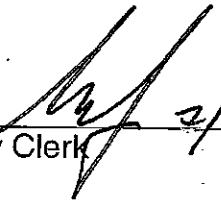
AMERICAN TRAFFIC SOLUTIONS

By: 
Name: Adam E. Tuton
Title: Chief Operating Officer

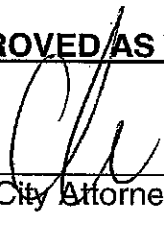
CITY OF PASADENA

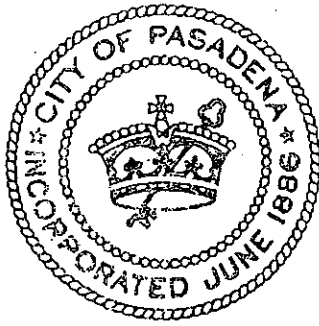
By: 
Name: _____
Title: City Manager

ATTEST:

By:  2/29/10
City Clerk

APPROVED AS TO FORM:

By:  2/27/10
City Attorney



Agenda Report

July 12, 2010

TO: City Council
FROM: Department of Transportation
SUBJECT: AMENDMENT TO CONTRACT #17,712 WITH NESTOR TRAFFIC SYSTEMS TO REDUCE THE SCOPE OF THE AUTOMATED RED LIGHT CAMERA ENFORCEMENT PROGRAM

RECOMMENDATION:

It is recommended that the City Council:

Authorize the City Manager to amend Traffic Signal Violation Video-Monitoring Services Agreement No. 17,712 with American Traffic Solutions, Inc. (formerly Nestor Traffic Systems, Inc.) to incorporate the following changes in the Automated Red Light Camera (RLC) Enforcement Program:

1. Reduce monthly fees from \$34,300 for seven (7) approaches to \$21,000 per month (a decrease in the monthly per approach fee from \$4,900 to \$3,000)
2. Extend the contract by approximately seven (7) months to a completion date of June 30, 2011

BACKGROUND:

In June 24, 2002 the City entered into a contract with Nestor Traffic Systems, (NTS) Inc. to provide Automated Red Light Camera (RLC) enforcement services at ten intersection approaches within the City. City staff worked diligently to have all approved locations installed with RLC. However, by November 2005, only seven of the ten approved approaches were completed due to construction delays and permitting requirements at three approaches within the jurisdiction of State of California Department of Transportation (CALTRANS). The seven installed RLC approaches are at the following locations:

1. Northbound and southbound approaches at Lake Avenue and Union Street (two approaches)
2. Northbound, southbound, and westbound approaches at Marengo Avenue and Union Street (three approaches)

3. Northbound and southbound approaches at San Gabriel Boulevard and Foothill Boulevard (two approaches)

The RLC program succeeded in modifying driver behavior, red light running violations declined and related traffic collisions were reduced at the above locations. While it is positive that the program works, reduced violations also resulted in declining citation revenue, which is used to fund the RLC program. The City pays a flat monthly fee per approach for maintaining the program and as citations declined, revenues became inadequate to cover the monthly service fee. However, review of the number of citations issued in the last year indicates that red-light running, while reduced from prior years, continues to occur at a rate that warrants continued use of the RLC program. With this information in hand, staff undertook an effort to reduce the Department's operating costs through adjustments to the contract with NTS that would make the RLC program more cost-effective.

In the course of negotiating adjustments with NTS to achieve a more cost-effective contract, NTS filed for Chapter 11 of the US Bankruptcy Code to seek protection during reorganization of the firm. NTS was assigned into a receivership process by the Federal Courts that culminated with the acquisition of NTS by American Traffic Solutions (ATS), Inc. Under a full assignment clause in the City of Pasadena's contract with NTS, ATS assumed the contract for the City of Pasadena's RLC program.

After review of the City's program and in conjunction with staff's request to renegotiate the contract terms, ATS offered the following changes to the contract, subject to City approval:

1. Reduce monthly fees from \$34,300 for seven approaches to \$21,000 per month (a change in the monthly per approach fee from \$4,900 to \$3,000)
2. Extend the contract by approximately seven months to a completion date of June 30, 2011

Pasadena Police Department staff has been briefed and is supportive of the ATS proposal.

Staff is seeking City Council's approval to effect the above changes to the program. The recommended changes provide one more year of automated RLC enforcement services at a reduced cost and also provide additional time to carefully plan and evaluate options for the future of the RLC automated enforcement program.

COUNCIL POLICY CONSIDERATION:

The proposed action is consistent with the following goals of the Strategic Plan:

- Maintain Fiscal Responsibility and Stability – the proposed contract changes would reduce the overall cost of the Automated Red Light Camera Enforcement Program.

- Ensure Public Safety – the proposed changes would maintain the operation of the Automated Red Light Camera Enforcement Program in a cost effective manner.

ENVIRONMENTAL ANALYSIS:

The Automated Red Light Camera Enforcement program has been determined to be exempt from CEQA pursuant to Section 15308 and 15061 (b)(3).

FISCAL IMPACT:

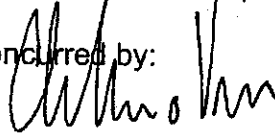
If adopted, and made effective August 1, 2010, the amended Automated Red Light Camera Enforcement Program's monthly fee will be reduced to \$21,000 from \$34,300 for a savings of \$146,300 over the length of the extended contract period.

Respectfully submitted,



Frederick C. Dock
Director
Department of Transportation

Concurred by:



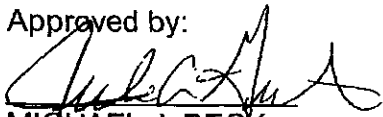
Christopher O. Vicino
Interim Police Chief
Pasadena Police Department

Prepared by:



Norman Baculinao
Traffic Engineering Manager

Approved by:



MICHAEL J. BECK
City Manager

September 18, 2009

Mr. Norman Baculinao
Traffic Engineer Manager
City of Pasadena
221 E. Walnut Street
Pasadena, CA 91101

Re: Update Re ATS Acquisition of Nestor Traffic Systems

Dear Mr. Baculinao:

As you are aware, Nestor Traffic Systems was placed into Receivership on June 4, 2009. This is to confirm that on Thursday, September 10, 2009 American Traffic Solutions, Inc. acquired Nestor's assets at a court-approved auction. ATS has retained the Nestor operational staff to ensure that the transition will be seamless and non-disruptive to the City of Pasadena.

ATS is a leading provider of advanced products and services that enhance traffic safety and is one of the largest Photo Traffic Safety & Enforcement companies in North America. ATS is well capitalized and has been profitable and financially stable since inception. The company currently supports red light and speed camera programs for over 200 US and Canadian municipalities, which are serviced by more than 700 ATS employees. We are confident that the City of Pasadena will benefit from the range of quality people, technology and services that ATS can offer.

Our customers such as Memphis, Seattle, St. Louis, Houston, New York City and Washington, DC can attest to the quality of our systems and services and the inherent culture of innovation and award-winning service levels which we deliver. ATS will deliver an equally impressive solution to your city.

The acquisition of Nestor was more rapid than expected, but the transition and integration process has been smooth and cooperative. Our promise to you and our current client cities is that there will be no disruption of service, and you will continue to be served by the same staff members who have served the City prior to the transition and will be retained by ATS throughout and after the transition phase.

This letter is intended as an initial introduction, but we would like to schedule a meeting with you and any other members of the City or Police Department who would like to learn more about ATS and understand how this acquisition/transition will benefit the City of Pasadena.

Sincerely,

American Traffic Solutions, Inc.


James D. Tuton
President/CEO

Attachment
cc: Mariela Pacheco

**ADDENDUM NUMBER THREE
TO
TRAFFIC SIGNAL VIOLATION VIDEO-MONITORING SYSTEM SERVICES AGREEMENT**

This Addendum Number Three is made and entered into this ___ day of June, 2011, by and between American Traffic Solutions, Inc. ("ATS") and the City of Pasadena, a municipal corporation ("City" and together with ATS, the "Parties" and each singularly a "Party").

WITNESSETH:

WHEREAS, on June 24, 2002, the City and Nestor Traffic Systems, Inc., now ATS, entered into a Traffic Signal Violation Video-Monitoring System Services Agreement, as amended on June 30, 2005 and on July 16, 2010 ("Agreement");

WHEREAS, the City and ATS desire to extend the term of the Agreement for another year; and

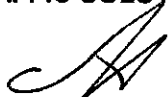
NOW THEREFORE, for and in consideration of the mutual covenants and promises contained in this Third Addendum, the City and ATS do hereby agree as set forth below:

1. The above recitals are true and correct and are incorporated herein.
2. Section 2 "Term" of the Agreement is hereby deleted and replaced with the following:

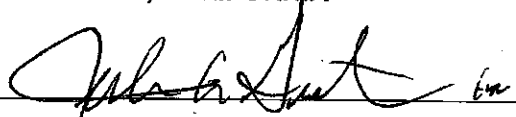
"2. The term of this Agreement beginning July 1, 2011 shall be in effect on a month-to-month basis, unless either Party shall have provided thirty (30) days prior written notice to the other Party of such Party's intent to terminate this Agreement.
3. Except as specifically modified by this Third Addendum, the Agreement, as amended shall continue in full force as initially executed by the parties. Nothing herein shall be deemed or construed to amend or modify any other contract or undertaking between the City and ATS other than as defined above.

IN WITNESS WHEREOF, the parties hereto have executed this Addendum Number Three to the Agreement.

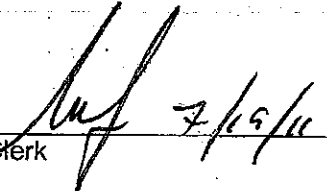
AMERICAN TRAFFIC SOLUTIONS, INC

By: 
 Name: Adam E. Tuton
 Title: Executive Vice President

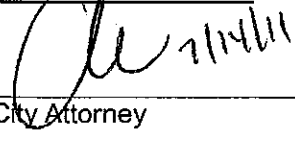
CITY OF PASADENA, CALIFORNIA

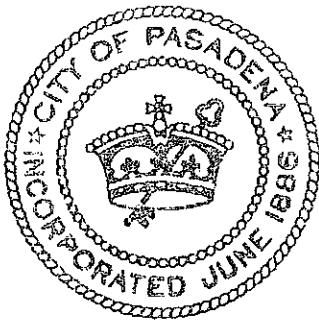
By: 
 Name: _____
 Title: City Manager

ATTEST:

By: 
 City Clerk

APPROVED AS TO FORM:

By: 
 City Attorney



Agenda Report

June 20, 2011

TO: Honorable Mayor and City Council
FROM: Department of Transportation
SUBJECT: CONTRACT EXTENSION WITH AMERICAN TRAFFIC SOLUTIONS, INC.
TO PROVIDE AUTOMATED RED-LIGHT CAMERA SYSTEM SERVICES

RECOMMENDATION:

It is recommended that the City Council:

1. Find that the extension of contract number 17,712-2 with American Traffic Solutions, Inc. (ATSI) is exempt from the California Environmental Quality Act ("CEQA") pursuant to STATE CEQA Guidelines Section 15061 (b) (3); and
2. Authorize the City Manager to extend contract number 17,712-2 with ATSI on a month-to-month basis for a maximum of 12 months.

BACKGROUND:

On July 12, 2010, the City Council approved the amendment of contract with ATSI to reduce the monthly fees to cover automated red light camera (RLC) services and to set a specific contract termination date of June 30, 2011. The three locations with RLC system include 1) Lake Avenue and Union Street, 2) Marengo Avenue and Union Street, and 3) Foothill Boulevard and San Gabriel Boulevard.

The RLC program was originally designed as a violator-funded safety program. Since its first installation in 2003 through 2005, the RLC system has steadily improved traffic safety records at these three RLC intersections.

The following changes in collision patterns occurred at the three intersections with photo red light cameras over the five years since installation:

- Broadside collisions decreased an average of 52%
- Other collisions decreased an average of 13%
- Total collisions decreased an average of 40%

Concurrent with the above change, analysis of the same five years of collision data at 11 similar and adjacent intersections without the RLC system showed the following:

- Broadside collisions decreased by an average of 5%
- Other types of collisions increased an average of 3%
- Total collisions decreased an average of 9%

The collision data shows that the RLC program is effective in reducing the number of broadside collisions and has been able to accomplish that change without creating an increase in related rear-end crashes. The level of success is attributed to the system's ability to change driving behaviors at the RLC locations.

Because of the change in driver behavior caused by the RLC system, concurrent with the reduction in collisions, there has been a reduction in the number of traffic citations issued at these locations from an average of 75 per approach per month in 2006 to an average of 35 per approach per month in 2010.

The declining rate of citation issuance has made the self-sustaining nature of the program difficult to maintain. The first amendment to the contract with ATS, Inc. (formerly Nestor Traffic System) allowed for a fee reduction to reflect the lowered rate of citation issuance.

Staff is currently in the process of evaluating the effectiveness of the RLC program so as to present a robust set of program statistics to the Public Safety Committee for consideration of whether the RLC program should be continued for another five-year period and whether modifications to the program are appropriate should it be continued.

The changing climate within the courts for overall disposition of RLC citations has increased the time demands on the Pasadena Police Officers that are required to provide testimony in these cases. Recent Appellate Court rulings, actions in other communities with RLC programs, and pending legislation in Sacramento have added complications to the process of developing the information necessary for the Public Safety Committee to make an informed decision.

The requested one-year contract term extension is to allow staff adequate time to fully address the effectiveness of the program in light of the changes noted above. Staff anticipates having the material for presentation to the Public Safety Committee by September 2011. Should the City Council ultimately decide to continue the RLC program, it would be necessary to undertake a Request for Proposals process, which would require a minimum of four months.

In the absence of any action to extend the current contract, the RLC system, along with the City of Pasadena's ability to issue an automated red light violation, will cease operation on June 30, 2011.

COUNCIL POLICY CONSIDERATION:

The proposed action is consistent with the following goals of the Strategic Plan:

- Ensure Public Safety – the proposed changes would maintain the operation of the Automated Red Light Camera Enforcement Program.


ENVIRONMENTAL ANALYSIS:

The proposed amendment of the contract with ATSI is categorically exempt from the California Environmental Quality Act (CEQA) under section 15061 (b) (3), the General Rule that CEQA only applies to projects which have the potential for causing a significant effect on the environment.


FISCAL IMPACT:

The cost of this action will be \$21,000 per month or \$252,000 annually. Funding for this action will be addressed by the utilization of existing budgeted appropriations in Department of Transportation's Traffic Engineering account 8114-101-773101 Photo Red Light Program included in the FY 2012 budget. It is anticipated that all of the cost will be spent during the FY 2012 fiscal year. Indirect and support costs for the Pasadena Police Department are anticipated to be \$84,000 for the fiscal year and will be addressed by the utilization of existing budgeted appropriations in Police Department's Traffic Division account 8007-101-402200. The RLC program is anticipated to generate \$300,000 in fines in FY 2012 which will offset the majority of this cost.

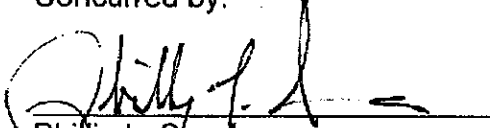
Respectfully submitted,


for FREDERICK C. DOCK
Director
Department of Transportation

Prepared by:


Norman Baculinao, PE
Traffic Engineering Manager

Concurred by:


Philip L. Sanchez
Police Chief
Police Department

Approved by:


for MICHAEL J. BECK
City Manager

**Disclosure Pursuant to the
City of Pasadena Taxpayer Protection Amendment
Pasadena City Charter, Article XVII**

Contractor/Organization hereby discloses its trustees, directors, partners, officers, and those with more than 10% equity, participation, or revenue interest in Contractor/Organization, as follows:

(If printing, please print legibly. Use additional sheets as necessary.)

1. Contractor/Organization Name:
American Traffic Solutions, Inc.

2. Type of Entity:
 non-government nonprofit 501(c)(3), (4), or (6)

3. Name(s) of trustees, directors, partners, officers of Contractor/Organization:

<u>Jim Tuton</u>
<u>Adam Tuton</u>
<u>Adam Dratkin</u>
<u>Don Petrozza</u>
<u>Robert Alpert</u>

4. Names of those with more than a 10% equity, participation or revenue interest in Contractor/Organization:

<u>Goldman Sachs</u>
<u>Jim Tuton</u>
<u>Adam Tuton</u>
<u>Adam Dratkin</u>

Prepared by: Amey L. Resor
Title: Associate General Counsel
Phone: 661 480-596-4627
Date: 6/22/10



ASSOCIATED PRESS

A U.S. MAP covered with thousands of Scout badges is being auctioned to benefit families of the Alaskan troop members killed last week. Amanda Oliver of Docupak, the group organizing the auction, works on the map.

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"Have we done everything we have ever wanted to do? Not exactly. But we have done an awful lot." House Speaker Dennis Hastert said.

The energy, highway and veterans health-care measures all won final approval in the Senate on Friday.

Congress also sent Bush the first two spending bills for the next budget year, covering money for Congress itself, the Interior Department and the Environmental Protection Agency.

The energy bill awards tax breaks totaling \$14.5 billion over the next years to encourage new

oil and natural gas drilling, stimulate a rebirth of nuclear power and encourage development of clean-coal technologies and renewable energy sources.

It also requires gasoline refiners to double their use of ethanol and extends daylight-saving time by a month beginning in 2007.

Nine appropriations bills — including defense, agriculture and health and human services — face lawmakers upon their return. Few expect they will be completed by Oct. 1, when the government's new fiscal year begins. Until they are, these programs will continue to operate at current spending levels.

PUBLIC NOTICE

On Monday, August 1, 2005, a new RED LIGHT CAMERA will go live westbound on Union Street at the intersection of Marengo Avenue.

Motorists running through red lights will have their faces, and their vehicles' front and back license plates, recorded on digital video.

The first 30 days of operation will be warning period where courtesy notices will be mailed to violators. After 30 days, actual citations, which carries a minimum fine of \$351 plus one point against the driver's records will be issued.

The Red Light Camera Program is a traffic safety measure intended to reduce crashes at signalized intersections.

City of Pasadena Department of Transportation, (626) 744-4194.



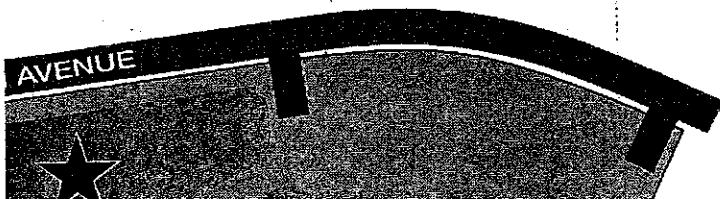
July 31, 2005

Pasadena Star News, p. A12 (SVGN)

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AROUND PASADENA

PASADENA STAR-NEWS A3

ASSOCIATE EDITOR ROBERT RECTOR • (626) 578-6300, Ext. 4439 • robert.rector@sgvn.com

July 30, 2003

Smile! You've just run a red light

By Marshall Allen
STAFF WRITER

PASADENA — A new system to photograph and ticket drivers who run red lights will go live on Monday, one of 10 additional units the city will install in coming months.

For the first month, a digital video will capture any vehicle that runs a red light on westbound Union Street at Marengo Avenue, but drivers will not be cited. Instead, violators will be mailed courtesy notices, city officials said.

Actual citations, which carry a \$51 minimum fine and a point against the driver's record, will

be sent after the grace period. The city currently has two photo systems to catch red-light violations, at Lake Avenue and Union, and on north- and southbound Marengo at Union. The cameras face the intersection and record the face of any driver who runs through a red light, plus a close-up of the license plates.

Lt. Eric Mills of the Pasadena Police Department's traffic section said the units are placed at intersections where roadside traffic collisions are most common.

The following are sites approved for additional cameras:

- North- and southbound San Gabriel Boulevard at Foothill Boulevard.

- The north- and eastbound lanes at Marengo and Corson Street.

- The eastbound lane and eastbound left-turn lane at Pasadena Avenue and Walnut Street.

Mills said the Police Department gets occasional calls from citizens who complain about the steep fine. He said the fine

amount is set by the state.

Other critics have complained about the timing of yellow lights. The minimum phase for the yellow light settings is mandated by the state according to the posted speed limit, Mills said. The city always errs in the driver's favor when setting yellow light phases, he said. For instance, at Lake and Union the yellow-light phase is required to last 3.1 seconds and is set at 3.6 seconds, he said.

Mills said it's impossible to know how many red lights are run in Pasadena every year

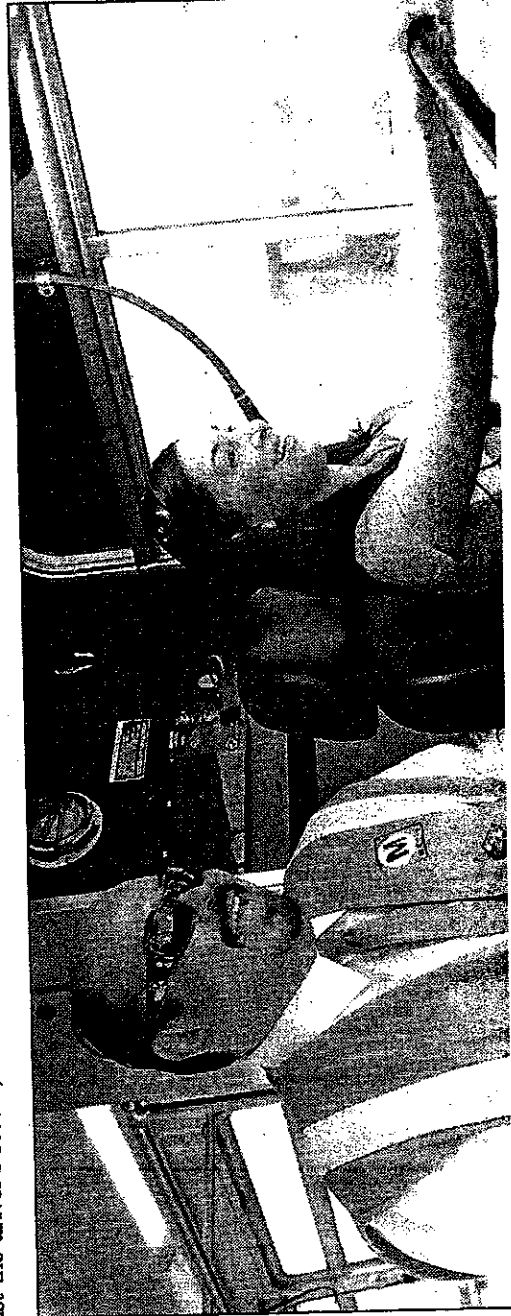
because the police only know about the drivers they catch. But he estimated the number to be as high as 20,000.

Every month, about 400 people are ticketed for violations at Lake and Union and about 100 at Marengo and Union, police said. Lake Avenue may have a higher number of violations because it's a regional traffic artery, compared to Marengo which is mostly traveled by locals who learn about the photo systems, Mills said.

Marshall Allen can be reached at (626) 578-6300, Ext. 4461, or by e-mail at marshall.allen@sgvn.com.

Water volcanoes on moon of Saturn?

City News Service



	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.	
Backups	<p>a) A process will be run weekly by NTS to discard non-violation events and backup the database to disk.</p> <p>b) The backup files will be periodically copied by NTS to tape and stored off-site.</p>	✓
Records Ownership	The City of Pasadena possesses ownership of all available violation records. Any request to view or obtain any violation records shall be subject the usual discovery process. All requests shall be directed to the City of Pasadena's Police Department-Traffic Section.	✓
Archival	Monthly archival of citations with a COURT Date over one year old is planned by NTS on behalf of the Police Department. Status records will remain in the database maintained by NTS, but videos and citation images will be stored outside the database. The full record may be made available with a one weeks advance notice to NTS.	✓

Purge Procedures

Discarded Violations (Updated 12/29/03)	Red light violations that do not meet initial issuance criteria, and are subsequently discarded, shall be purged from the electronic database within sixty (60) days from the date of discard, or, in the case of an appeal or challenge, sixty (60) days from the termination of the appeal or challenge.	✓
Dismissed Citations (Updated 12/29/03)	All City Data contained in red light citations that are initially issued and later dismissed either by a reviewing officer or by the COURT (unless pending appeal), shall be destroyed within sixty (60) days from the date of dismissal.	✓
Complete Citations (Updated 12/29/03)	All City Data contained in red light citations in which the citation is paid, bail is forfeited, or after trial, shall be retained for a period of three (3) years from the date of issuance and then destroyed within six (6) months of the end of such three (3) year period.	✓
Purge Method (Updated 12/29/03)	The method of destruction of all citation City Data should be in a manner such that it cannot be reproduced or identified in any physical or electronic form. The City shall approve said method of destruction of all City Data. The City may request an affidavit for the destruction of said city Data. The City 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 City Data by NTS to the extent the City believes is necessary to assure verification and compliance.	✓