

ADDENDUM NUMBER ONE
TO THE EXISTING AUTOMATED TRAFFIC ENFORCEMENT AND CITATION
PROCESSING PILOT PROGRAM AGREEMENT

WHEREAS, Nestor Traffic Systems, Inc. a Delaware corporation having a place of business at 400 Massasoit Avenue, Suite 200, East Providence, Rhode Island, 02914 ("Nestor"), and the City of Cerritos, California, a public corporation, having an address of Post Office Box 3130, Cerritos, California, 90703 (the "City" and together with Nestor, the "Parties" and each singularly a "Party") entered into a Traffic Signal Violation Video-Monitoring System Agreement dated the 11th day of July 2002 (the "Agreement"); and

WHEREAS, the City desires to modify the Agreement to address retention periods for citation data.

NOW, THEREFORE, the Parties hereby agree to enter into this Addendum Number one ("Addendum One") dated this 11th day of September, 2003.

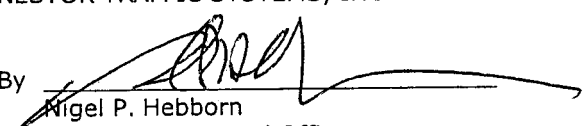
BE IT FURTHER RESOLVED that in consideration of the mutual covenants between the Parties, it is agreed as follows:

1. All Citation Information or copies, duplicates, or back-ups thereof (including, but not limited to, violator information and video evidence) ("Data") contained in or created as a result of red light citations that do not meet initial citation issuance criteria, and are subsequently discarded, shall be purged from the electronic database, and destroyed within sixty (60) days from the date of discard.
2. All Data contained in or created as a result of red light citations that result in an initial citation issuance and are 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.
3. All Data contained in or created as a result of red light citations in which the citation is paid, bail is forfeited, or after trial or appeal, shall be retained for a period of three years from the date of issuance and then destroyed not later than six (6) months of the end of such three-year period.
4. The method of destruction of all citation Data shall be in a manner such that it cannot be reproduced or identified in any form, including but not limited to physical or electronic form. Said method of destruction of all Data and documentation of destruction shall be approved by and provided to the City or its authorized representative, upon reasonable notice, and the City shall have the right, during normal business hours, to examine and audit any and all records, books, papers, and documents related to the maintenance or destruction of Data by Nestor to the extent City believes necessary to assure verification and compliance thereof.

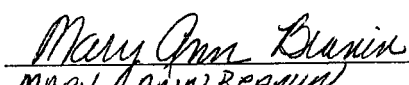
IN WITNESS WHEREOF, the Parties hereto have set their hands by their duly authorized representatives as of the day and year first above written.

NESTOR TRAFFIC SYSTEMS, INC.

By

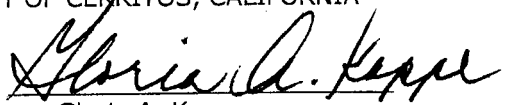

Nigel P. Hebborn
EVP-Chief Financial Officer

Attest
Name
Title



MARY ANN BRANIN
Executive Secretary

CITY OF CERRITOS, CALIFORNIA

By


Gloria A. Kappe
Mayor

Attest


Josephine Triggs
City Clerk

Nestor Agreement
No Addendum 2

AGREEMENT

This Agreement governed by the Laws of the State of California made and entered into this 11th day of July, 2002 by and between the CITY OF CERRITOS, a public corporation, hereinafter "CITY" and NESTOR TRAFFIC SYSTEMS, INC. hereinafter "NESTOR".

RECITALS

- A. Traffic accidents caused by motorists failing to stop at red indications at signalized intersections throughout the CITY.
- B. Red light violations result in significant personal and property damage.
- C. Recent State of California law allows local jurisdictions to implement automated traffic signal enforcement programs to reduce personal and property damage.
- D. The CITY intends to implement an automated traffic signal enforcement and citation processing system pilot program at four locations within the CITY ("Project").
- E. The CITY wishes to engage a qualified Consultant to develop, construct, and assist in the operation and maintenance of the Project.
- F. The CITY shall operate the Project and have ultimate control over how it is administrated.

NOW, THEREFORE, in consideration of the performance by the parties of the covenants and conditions herein contained, the parties hereto agree as follows:

ARTICLE 1 RESPONSIBILITIES OF NESTOR

1.1 The NESTOR shall perform any and all work reasonably necessary for the completion of the tasks and services set forth in Attachment "A" - NESTOR's Proposal, Attachment "B" - the CITY's Request for Proposal (excluding sample agreement), and Attachment "C" - Description of Services.

1.2 The NESTOR represents that all tasks and services required herein will be performed by the NESTOR, or personnel under its supervision, and that all personnel engaged in such work shall be fully qualified and shall be authorized and permitted under applicable State and local law to perform such tasks and services.

1.3 The NESTOR shall not subcontract any portion of the required work herein without prior written approval of the CITY, which approval shall not be unreasonably withheld.

1.4 The NESTOR shall work closely with the Deputy City Manager/Public Works or his/her designated representative, who shall be the liaison representative of the CITY. NESTOR shall comply with CITY directives and regulations regarding the operation of the Project consistent with the contract documents.

1.5 The NESTOR designates as its representative for supervision of the tasks and services required by this Agreement, the following Project Manager: Ms. Julie Dixon. Said representative shall not be replaced by the NESTOR without prior written notice to the CITY.

1.6 The NESTOR shall comply with all applicable Federal, State, and local laws, ordinances and regulations.

1.7 The NESTOR shall make no change in the character or extent of the work required by this Agreement, except as may be authorized in writing by the CITY. Such supplemental authorization shall set forth the specific changes of work to be performed and any related extension of time and/or adjustment of fee to be paid to the NESTOR by the CITY.

1.8 The CITY understands and agrees that the traffic signal violation detection system ("System") will be owned by NESTOR (or its designees).

1.9 If and to the extent the CITY has or obtains during the Term (as hereinafter defined) custody, possession or control over any of the Equipment or Software to be supplied or installed by NESTOR in accordance with Attachment "C", the CITY agrees:

1.9.1 such Software, if manufactured by NESTOR, is supplied under the license set forth in a license agreement ("License") concurrently entered into by NESTOR and the CITY (Attachment "D");

1.9.2 such Software, if manufactured by third parties, is supplied under third-party licenses accompanying the Software, which licenses the CITY acknowledges received; and

1.9.3) such Equipment is supplied under the lease agreement ("Lease") concurrently entered into by NESTOR and the CITY (Attachment "E").

ARTICLE 2 TERM

2.1 The initial term of this Agreement, with license entered into concurrently herewith, and the Lease shall begin upon the date of this Agreement and shall continue until the third (3rd) anniversary of the installation date of the System (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 Section 1.1 or 1.2 of Attachment "C".

**ARTICLE 3
BASIC SERVICES OF NESTOR**

3.1 The NESTOR shall provide to the CITY, any and all services in accordance with Attachments "A", "B", "C", "D" and "E" and as set forth in this Agreement.

3.2 Priority of Contract Documents. The contract documents consist of and shall be given the following priority: 1) Agreement, including Attachment "C"; 2) the Lease; 3) the License; 4) CITY's Request for Proposals (excluding sample agreement); and 5) the Proposal submitted by NESTOR.

**ARTICLE 4
RESPONSIBILITIES OF THE CITY**

4.1 The CITY shall provide full information regarding its requirements as outlined in this Agreement and its Attachments for the Services, and shall furnish without charge to the NESTOR, any and all information, data, reports, maps, and records which are available within the offices of the CITY and are necessary for the NESTOR to provide and perform the tasks and services set forth herein. NESTOR shall be entitled to rely upon their accuracy and completeness.

4.2 The CITY shall designate the Deputy City Manager/Public Works as its authorized representative.

4.3 The CITY 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.

4.4 The CITY shall diligently prosecute each citation and defend any challenge in any court to the use of the System or validity of its results and/or the use of the U.S. Mails to deliver the citation. NESTOR may, at its own expense, 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. The parties acknowledge that although NESTOR is supplying the system to the CITY, it is the CITY's responsibility to implement, monitor, supervise, run and oversee the System and Project.

4.5 The CITY shall provide all electrical connections and power required by the System.

4.6 The CITY 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 CITY 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.

4.7 The CITY 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.

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

ARTICLE 5 COMPENSATION

5.1 The CITY shall pay NESTOR a citation fee equal to \$77.75 (the "Per Citation Fee") for each citation issued. As used herein, "Issued Citation" means a citation mailed to the registered owner of the vehicle photographed and/or videotaped running a red light after the CITY or its designated law enforcement agency reviews the information provided by NESTOR to determine that the CITY should proceed with the citation.

5.2 Notwithstanding Section 5.1 above, from and after the issuance of the first citation issued pursuant to the System, the CITY shall pay NESTOR a monthly fee equal to the greater of (A) the product of (a) the Per Citation Fee, multiplied by (b) the number of Issued Citations in such month or (B) the Monthly Minimum. ~~The Monthly Minimum shall equal \$3,986.50 times the number of Installed Approaches monitored during the month in question (partial months shall be pro rated). "Installed Approach" shall mean a direction of travel for any individual access road or street to any intersection that is monitored by the System.~~

5.3 Except for any termination and cancellation fee and other charges owed pursuant to Sections 7.1, 7.2, 7.3 or 7.4, payment of all fees and other charges owed pursuant to this Agreement is due within (30) days after invoice date. Invoices will be sent to the CITY at:

CITY OF CERRITOS
P.O. Box 3130
Cerritos, California 90703
Attention: Hal Arbogast

ARTICLE 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 on Attachment "C".

6.2 EXCEPT AS SPECIFICALLY PROVIDED HEREIN IN SECTION 6.1, THE SERVICES AND SYSTEM 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. CITY ACKNOWLEDGES THAT EXCEPT AS EXPRESSLY PROVIDED HEREIN, NO OTHER WARRANTIES HAVE BEEN MADE TO CITY BY OR ON BEHALF OF NESTOR OR OTHERWISE FORM THE BASIS FOR THE BARGAIN BETWEEN THE PARTIES.

6.3 The CITY acknowledges and agrees that:

6.3.1 The System may not detect every red light violation;

6.3.2 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 CITY under applicable law prior to the issuance of any citation;

6.3.3 The System has no control over, and relies on the proper functioning of CITY supplied equipment for signal light changes;

6.3.4 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;

6.3.5 The proper functioning of the System requires the CITY compliance with the Systems' operating instructions, which it hereby agrees to do; and

6.3.6 The CITY 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.

ARTICLE 7

~~TERMINATION OR SUSPENSION OF AGREEMENT~~

7.1 This Agreement may be terminated by either party if the other party defaults in the performance of any material obligation under this Agreement and such default continues for more than thirty (30) days after notice thereof to the defaulting party.

7.2 The CITY may terminate this Agreement upon (A) notice of default if NESTOR breaches any material provisions of this Agreement, including cessation of services as a result of a bankruptcy filing, and does not cure such breach within thirty (30) days' notice, or (B) determination by a Court of competent jurisdiction that the Program or System is illegal or unenforceable. If this

Agreement is terminated pursuant to Section (A) of this paragraph, NESTOR shall be paid for the services provided as stated in Section 7.4. If this Agreement is terminated pursuant to Section (B) of this Section, NESTOR shall be paid for the services provided at 50 percent of the termination and cancellation fee calculated pursuant to Section 7.5.

7.3 NESTOR's right to terminate the Agreement upon notice for default is limited to the following reasons: (A) if the CITY breaches any material provision of the Agreement or the Specifications for the Project and does not cure such breach within thirty (30) days' notice. If this Agreement is terminated pursuant to this paragraph, NESTOR shall be paid for the services provided as stated in Section 7.5.

7.4 In the event of the discontinuation, suspension or termination of this Agreement pursuant to paragraph 7.2, NESTOR shall be paid for the reasonable value of any unpaid and earned services provided up to the time of such discontinuation, suspension or termination and no other expenses or costs shall be due or owing or paid. Lost profits or overhead will not be paid if the Agreement is terminated. Upon receiving notice of discontinuation, suspension or termination, NESTOR shall exercise all reasonable controls to terminate all activity and mitigate further costs to the CITY.

7.4.1 NESTOR shall keep adequate records to substantiate the cost claimed and shall provide copies of original records.

7.4.2 Prior to receiving the pro-rata payments upon discontinuation, suspension or termination, NESTOR shall deliver all reports, data or other materials to the CITY.

~~7.5~~ If this Agreement is terminated due to the CITY's default pursuant to Section 7.3, the termination and cancellation fee shall equal the product of (a) the Monthly Minimum as calculated in Section 5.2 for the month before the Agreement is terminated, multiplied by (b) the Remaining Term. The Remaining Term shall equal the number of months in the Initial Term of this Agreement minus the number of whole months from the Installation Date to the date of termination.. If this Agreement is terminated pursuant to Section 7.2(B), the termination and cancellation fee shall be 50 percent of the calculation in the prior sentence. This fee shall be paid within sixty (60) days from the termination of the Agreement assuming an invoice is submitted within fifteen (15) days from such termination. If no invoice is received, this fee shall be paid within ninety (90) days from the Agreement's termination.

7.6 Upon termination or expiration of this Agreement, the CITY shall immediately cease using the Software and equipment in its possession, custody or control and shall, at NESTOR's direction, either (A) immediately return to NESTOR its Equipment and immediately deliver to NESTOR or irretrievably destroy, or cause to be so delivered or destroyed, any and all copies of Software in the CITY's possession, custody or control and within thirty (30) days deliver to NESTOR a certificate thereof or (B) allow NESTOR access to the System(s) on which such Software is loaded and grant permission to NESTOR to remove such Equipment and Software.

**ARTICLE 8
EMPLOYMENT PRACTICES OF NESTOR**

8.1 In providing for the performance of the tasks and services required by this Agreement, NESTOR shall not discriminate against any employee or applicant for employment on the basis of race, religion, color, sex, disability or national origin.

8.2 NESTOR shall take affirmative actions to ensure that applicants are employed and employees are treated during their employment without regard to race, religion, color, sex, disability or national origin.

8.3 Affirmative actions shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

These provisions shall be included in any subcontract for the services provided under this Agreement awarded by NESTOR.

**ARTICLE 9
CONFLICTS OF INTEREST**

9.1 No officer or employee of the CITY shall have any interest, direct or indirect, in this Agreement, the Project or the proceeds thereof during his/her tenure with the CITY or for a period of one (1) year thereafter.

9.2 NESTOR hereby covenants that it has, at the time of the execution of this Agreement, no interest, direct or indirect, which would conflict in any manner or degree with the performance of services required under this Agreement, nor shall it acquire any such interest at any time during such performance of services. NESTOR further covenants that during the performance of this Agreement, no person having any such interest shall be employed by NESTOR.

9.3 The CITY and NESTOR hereby covenant and agree that to their best knowledge, no member of the City Council, nor any officer or employee of the CITY has any interest, whether contractual, non-contractual, financial or otherwise direct or indirect, in this Agreement or in the ~~business of subcontracting work required under this Agreement;~~ and that if any such interest comes to the attention of either party at any time during the performance of this Agreement, a full and complete disclosure of such information shall be made in writing to the other party, even if such interest would not be considered a conflict of interest under applicable laws and the Parties shall take such action, if any, as required by law to eliminate the conflict of interest.

9.4 NESTOR hereby covenants that it has not employed or retained any person or company to solicit or secure this Agreement; and that it has not paid or agreed to pay any person or company any fee, commission, percentage, brokerage fee, gift, or other compensation, contingent upon or resulting from the award of making of this Agreement. For breach or violation of this

covenant, the CITY shall have the right to annul this Agreement without liability, or in its discretion to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

ARTICLE 10 INSURANCE

10.1 NESTOR's attention is directed to the insurance requirements below. It is highly recommended that NESTOR confer with its respective insurance carriers or brokers to determine in advance of proposal submission the availability of insurance certificates and endorsements as prescribed and provided herein. If NESTOR fails to comply strictly with the insurance requirements, then the Agreement may be terminated in accordance with Section 7.1.

NESTOR shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property that may arise from or in connection with NESTOR's performance. The cost of such insurance shall be borne by NESTOR. Failure to procure and/or maintain the proper insurance is grounds for termination of this Agreement.

10.2 Minimum Scope of Insurance shall be at least as broad as:

10.2.1 Occurrence-based Broad Form Comprehensive General Liability.

10.2.2 Worker's Compensation insurance as required by the Labor Code of the State of California and Employer's Liability Insurance.

10.2.3 Hold harmless and additional insured endorsements.

10.3 NESTOR shall maintain limits no less than:

10.3.1 General Liability: \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance with a general aggregate limit is used, either the general aggregate limit shall apply separately to this Agreement, or NESTOR shall receive written permission by the CITY for variation.

10.3.2 Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the Labor Code of the State of California and Employers Liability.

10.4 Any deductibles or self-insured retentions must be declared to the CITY. At the option of the CITY, either; the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the CITY, its officials, officers, employees and agents; or NESTOR shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expense.

10.5 The policies are to contain, or be endorsed to contain, the following provisions:

10.5.1 General Liability: The CITY, its officials, officers, employees and agents are to be covered as additional insureds. The coverage shall contain no special limitations on the scope of protection afforded to the CITY, its officials, officers, employees or agents.

10.5.2 The NESTOR's insurance coverage shall be primary insurance as respects the CITY, its officials, officers, employees and agents. Any insurance or self-insurance maintained by the CITY, its officials, officers, employees or agents shall be in excess of the NESTOR's insurance and shall not contribute with it.

10.5.3 Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the CITY, its officials, officers, employees or agents.

10.5.4 Coverage shall state that the CITY's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

10.6 Workers' Compensation and Employers Liability Coverage: The insurer shall agree to waive all rights of subrogation against the CITY, its officers, officials, employees and agents for losses.

10.7 All Coverages: Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the CITY.

10.8 Acceptability of Insurers: Insurance is to be placed with insurers with a Best's rating of no less than A:VII.

10.9 Verification of Coverage: NESTOR shall furnish the CITY with certificates of insurance and with original endorsements effecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The CITY reserves the right to require complete, certified copies of all required policies at any time.

ARTICLE 11 INDEMNITY

11.1 NESTOR agrees to indemnify, defend, and hold harmless the CITY from any claim of damages (including the payment of reasonable attorney's fees and costs) 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 or intentional act, provided that liability is not attributable to (a) any act or omission set forth in Section 11.2 or (b) 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 that are installed at NESTOR's, and not the CITY's request. If, as a final result of any litigation of which NESTOR is obligated to indemnify the CITY, the use of the System by CITY is prevented, in whole or in part, by an injunction, NESTOR's sole obligation to the CITY as a result of such injunction shall be, at NESTOR's option, either to (A) replace such part of the system as has been enjoined, or (B) procure a license for NESTOR or the CITY to use a replacement part or system, or (C) remove the enjoined part or system at no additional cost to the CITY or (D) terminate this Agreement. Any replacement part or system should have equal functionality, usage and reliability as the system originally installed. If not, the CITY can terminate this Agreement at no additional cost to the CITY. Any payment to NESTOR owed upon termination pursuant to this paragraph shall be as provided in paragraph 7.4.

11.2 The CITY 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 (A) NESTOR's compliance with any designs, specifications, or instructions of the CITY, (B) any modification of the System made by the CITY, (C) the negligence or intentional act of CITY, (D) failure of the CITY to use the System in the manner described by NESTOR, (E) the failure of any hardware, software or equipment of any kind used by, in or on behalf of the CITY (other than that supplied by NESTOR) to function properly, (F) the review and analysis of the System data output by CITY personnel for citation preparation, (G) the CITY's use and/or administration of the System and/or any traffic signal, and (H) an allegation regarding the permissibility under the law of the use of photo citation or the System.

11.3 The rights of a Party seeking indemnification under this Article shall be conditioned upon (A) 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 Article unless and then only to the extent it is materially prejudiced thereby) and (B) 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 CITY providing access for, and permission to, NESTOR for the purpose of the replacement of such party 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 Article states the entire liability and obligation and the exclusive remedy of the Parties with respect to any actions or claims (A) of alleged infringement relating to or arising out of the subject matter of this Agreement or (B) otherwise the subject of this paragraph.

ARTICLE 12 MISCELLANEOUS

12.1 The execution of this Agreement by the parties hereto does not constitute an authorization to proceed with the work specified in said Agreement. The Deputy City Manager/Public Works of the CITY shall separately authorize NESTOR to proceed on each phase, as listed in Attachment "C", and each such phase shall be completed within the time limits mutually agreed upon by the parties as set forth in this Agreement. NESTOR shall have no claims for compensation for services on all or part of any phase of work upon which the Deputy City Manager/Public Works has not authorized NESTOR to proceed.

12.2 NESTOR is an independent contractor and is not an employee of the CITY:

12.3 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 (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. Consent to an assignment of this Agreement shall be expressly conditioned upon the assignee's execution of such documents as reasonably required by CITY including, without limitation, any and all documents reasonably deemed necessary by CITY to provide for said assignee's assumption of all of the obligations of NESTOR hereunder.

12.4 The CITY acknowledges and agrees that (A) NESTOR's work products are instruments of professional services, ~~(B) all work product including reports, investigations, data, and computations prepared under this Agreement and all Software and know-how used or supplied pursuant to this Agreement shall be and remain the property of the NESTOR (or its licensors), whether or not the services for which they are prepared are completed. Nevertheless, all citations prepared by the System (whether or not issued) and all data contained therein (collectively, the "Citation Information") are and shall be, as between NESTOR and the CITY, the property of the CITY. The CITY hereby grants to NESTOR a perpetual, fully paid-up, royalty free, world wide, non-exclusive right and license to (A) copy and use the Citation Information internally to NESTOR for any purpose whatsoever and (B) copy, use, publish, disseminate and otherwise disclose the Citation Information so long as such disclosure is in aggregated form and does not disclose to third parties the identities of any individual who received a citation. In the event NESTOR's materials are misplaced, lost, destroyed, stolen, or misused by third parties, NESTOR's sole and exclusive remedy against the CITY shall be the replacement of the materials. Nothing in this Section shall limit, hinder or alter the CITY's obligation under a public records request.~~

12.5 All disputes, claims, or other matters in question arising out of or relating to this Agreement or the breach thereof shall be decided by means of legal action provided by California law, and any and all attorneys' fees and associated costs arising from such legal action shall be paid to the successful party.

12.6 NESTOR shall begin work upon receipt of the "Notice to Proceed" and shall perform the services required of it by this Agreement.

12.7 Records of NESTOR's expenses pertaining to the performance of additional services under this Agreement, and records of accounts between the CITY and NESTOR shall be kept on a generally recognized accounting basis and shall be available to the CITY or its authorized representative at mutually convenient times for inspection.

12.8 No waiver of any breach of this Agreement shall be held to be a waiver of any other subsequent breach. All remedies afforded in this Agreement shall be taken and construed as cumulative, that is, in addition to every other remedy provided therein or by law. The failure of either Party to enforce at any time any of the provisions of this Agreement, or to require at any time performance by the other Party of any of the provisions, therefore, shall in no way be construed to be a waiver of such provisions, nor in anyway affect the validity of this Agreement or any part thereof or the right of any Party to thereafter enforce each and every such provision.

12.9 Whenever it shall be necessary for either party to serve notice on the other respecting this Agreement, such notice shall be served by personal delivery or by certified mail addressed at the following address, unless and until different addresses may be furnished in writing by either party to the other, and such notice shall be deemed to have been served within seventy-two (72) hours after the same has been deposited in a United States Post Office by certified mail or has been delivered personally, and shall be valid and sufficient service of notice for all purposes:

CITY OF CERRITOS
P.O. Box 3130
Cerritos, California 90703
Attention: Hal Arbogast

NESTOR TRAFFIC SYSTEMS, INC.

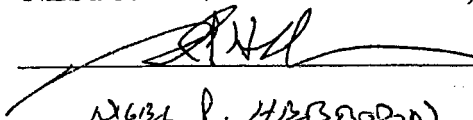
400 Massasoit Avenue, Suite 200
East Providence, RI 02914
Attention: President

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

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first above written.

CITY OF CERRITOS

NESTOR TRAFFIC SYSTEMS, INC.



MAYOR

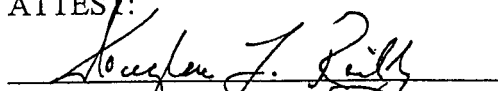
NGR P. HERRON
Executive Vice President - CFO

ATTEST:

ATTEST:



CITY CLERK



Douglas L. Reilly
Executive Vice President - CEO

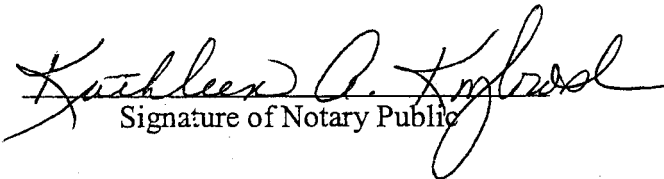
Contract awarded by the Cerritos City Council on September 10, 2001

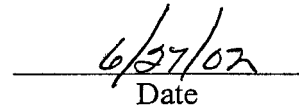
State of Rhode Island
County of Providence

On June 27, 2002 before me, Kathleen A. Kozlowski, Notary Public, personally appeared Nigel Hebborn, CFO, and Douglas Reilly, COO.

Personally known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS hand and official seal.


Signature of Notary Public


Date

ATTACHMENT "A"



July 18, 2001

Hal Arbogast, Assistant City Engineer
City of Cerritos
Engineering Division
18125 Bloomfield Avenue
Cerritos, CA 90703

Dear Mr. Arbogast:

Nestor Traffic Systems is pleased to propose its CrossingGuard® video-based traffic light enforcement and intersection safety system in response to Cerritos' request for proposals for an automated enforcement system for red light violators.

CrossingGuard is a non-invasive, video-based traffic monitoring system for automated enforcement of red light violations and for red-light-running collision avoidance. CrossingGuard uses video cameras and advanced computer-vision technology to monitor intersections and detect violations, to record violation images, to transmit digital images electronically in real-time, and to issue citations.

CrossingGuard's digital video imaging technology not only provides the most efficient process for violation data capture, real-time communication and review, it also captures the most effective evidence of what happened at the intersection. With the ability to view an "instant replay" of the incident, law enforcement officials have the information and tools they need to ensure that citations are issued only when they are warranted. ~~This is the basis for maintaining program credibility and the public's confidence in the fairness of the program and the integrity of the City's goals for safer intersections.~~

CrossingGuard also offers an optional, unique intersection-safety feature. Through its advanced video detection technology, *CrossingGuard can predict red light violations before they happen*, and signal the traffic controller to briefly extend the red light for cross traffic *to reduce the chances of a collision*. Studies have shown that more than 70% of red-light violations occur within 1.5 seconds of the light change. Predicting such violations and invoking an all-red extension can help to prevent broadside collisions.

Additionally, CrossingGuard offers advanced ITS (Intelligent Transportation System) functionality for improved intersection safety. Its video cameras can be used to help officials assess and respond to traffic or emergency situations at any CrossingGuard-equipped intersection. ~~CrossingGuard's video and computer vision technology provides a platform for future capabilities for traffic data collection and automated incident alert functionality.~~

NTS offers CrossingGuard as a full turnkey system including a comprehensive suite of services to meet Cerritos' automated enforcement program requirements.

This binder contains both CrossingGuard program information as well as a specific response to the requirements outlined in the City's Request for Proposals. The binder includes:

- | | |
|---|---|
| CrossingGuard Overview | - general information on CrossingGuard operation and features |
| CrossingGuard Program Description | - general information on the program support available from NTS |
| Sample Reports, Citations & Images | - samples of CrossingGuard management reports, captured violation images and image sequences and sample citations |
| CrossingGuard Program Team | - information on NTS and its program subcontractors, including qualifications and experience |
| Additional Program Information | - additional information on future CrossingGuard functionality and other NTS products |
| Proposal | - a specific response to the City's requirements as stated in the RFP, along with CrossingGuard program fees, any completed RFP forms and a sample CrossingGuard contract |
| Financial & Insurance Information | - company financials and insurance coverage |
| Equipment Specifications | - technical specifications on CrossingGuard components |

NTS will be happy to answer any questions you may have as you review the enclosed information. We would appreciate the opportunity to discuss any issues or program elements in any detail as you move forward with your vendor selection process. NTS looks forward to the opportunity to provide CrossingGuard for the City of Cerritos.

Yours truly,



Rob Kerr
Vice President
West Coast
Nestor Traffic Systems, Inc.

CROSSING GUARD

A PROGRAM FOR AUTOMATED ENFORCEMENT OF RED LIGHT VIOLATIONS AND TRAFFIC SAFETY AT INTERSECTIONS

PROGRAM DESCRIPTION



***Nestor
Traffic
Systems***

10145 Pacific Heights Blvd.,
Suite 510
San Diego, CA 92121

Tel: 858-657-9390
Fax: 858-657-9392
Web: www.nestor.com

With the exception of Section 6 of this document, "Proposal, Fees and Sample Contract", all other sections of this document contain general information on the CrossingGuard system and program services and are intended as an overview and guide only. By supplying these document sections with, or by making reference to them in a response ("Response") to any request for proposals ("RFP"), Nestor Traffic Systems does not intend to make them, and ~~these sections shall not be deemed, a part of any contract which is~~ contemplated by such RFP or Response. Any such reference is intended as exemplary only. Nothing in these document sections shall constitute a warranty or guarantee of any kind.

