

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

ADDENDUM NUMBER ONE

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

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

WHEREAS, the Parties desire to amend the Agreement.

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

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

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

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

NESTOR TRAFFIC SYSTEMS, INC.

By: 

Name:

Title:

Todd A Etkinas
COO

CITY OF DAVIS, CALIFORNIA

By: 

Name: Bill Emlen

Title: City Manager

From the 2005 contract

2600 5th Street
Davis, CA 95616

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

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

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

5. RESPONSIBILITIES OF THE MUNICIPALITY

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

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

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