

NESTOR TRAFFIC SYSTEMS, INC.

**CITY OF
MURIETTA, CA
TRAFFIC SIGNAL VIOLATION VIDEO-ENFORCEMENT SYSTEM
LEASE & SERVICES AGREEMENT**

This AGREEMENT (the "Agreement") made this 18th day of Oct., 2005, by and between Nestor Traffic Systems, Inc., a Delaware corporation having a place of business at 400 Massasoit Avenue, Suite 200, East Providence, RI 02914 ("Nestor"), and the City of Murrieta, a municipal corporation of the State of California, having an address of 26442 Beckman Court, Murrieta, CA 92562 (the "Municipality" and together with Nestor, the "Parties" and each singularly a "Party").

WHEREAS, the Parties desire to enter into this Agreement, whereby Nestor will (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 commercially reasonable 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 agrees to reimburse Nestor for costs incurred to repair any damage to the System caused by the Municipality or any of the Municipality's employee's, agents, or independent contractors (other than Nestor). If the damage to the System is caused by a third-party, 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.

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 (the "Initial Term"). Thereafter, this Agreement and the License may be extended by up to two twelve month terms, with negotiated modifications (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 all 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 Upon termination or expiration of this Agreement, the Municipality shall immediately cease using the Software and the Equipment in its possession, custody or control and shall (a)(i) immediately deliver to Nestor such Equipment and (ii) immediately deliver to Nestor or irretrievably destroy, or cause to be so delivered or destroyed, any and all copies of the Software in whatever form and any written or other materials relating to the Software in the Municipality's possession, custody or control and within thirty (30) days deliver to Nestor a certification thereof or (b) allow Nestor access to the system(s) on which the Software is loaded and grant permission to Nestor to remove the Equipment and Software. 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 3.3, as well as Sections 3.2, 4.3, 6.2, 6.3, 6.4, 7 and 9 of this Agreement, Sections 4, 7, 8 and 9 (but only to the extent Section 9 corresponds to Sections of the Agreement which survive) of the License and Sections 3, 4, 5, 6, 7 and 9 (but only to the extent Section 9 corresponds to Sections of the Agreement which survive) of the Lease shall survive any expiration or termination of this Agreement, the License or the Lease.

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

termination or expiration of this Agreement.

4. FEES AND PAYMENT

4.1 The Municipality shall pay Nestor a monthly fee equal to

- a.) \$1,575.00 for each Installed Approach for the installed equipment in accordance with the Lease Agreement attached as Exhibit C hereto, and
- b.) \$3,275.00 for each Installed Approach for the Services and Software as described in Exhibits A & B hereto.

4.2 "Installed Approach" shall mean a signalized direction of travel on an individual access road or street to any intersection that is monitored by the System. If and to the extent that (1) an Installed Approach subject to a Monthly Fee is not capable of detecting violations or (2) Nestor is unable to print and/or mail Citations, in either case, for more than three (3) consecutive business days in any calendar month as a result of system malfunctions not caused by Municipality or an event described in Section 9.9 of the Agreement (collectively and each individually, an "Event"), Nestor will allow a credit against the monthly fee for Services and Software for such Installed Approach for that month equal to: such Installed Approach's monthly fee for Services and Software multiplied by: (a) the total number of days the approach was incapable of detecting violations, and/or printing and mailing Citations (as applicable) in the month as a result of the Event, divided by (b) thirty (30) days.

4.3 Cost neutrality is assured to the Municipality for the term of the contract. The maximum compensation that the Municipality shall be obligated to pay Nestor each month are the agreed upon fixed fees. Each month, the Municipality and Nestor shall compare the aggregate revenue received from all citations to the total amount invoiced by Nestor for the fixed fees during the previous month. If the amount invoiced exceeds the revenue, then the Municipality shall only be obligated to pay the amount of the revenue received, and Nestor shall carry over the deficit to the next month. Each month this review shall take place. If the Municipality's revenues from this program exceed the amount invoiced in any month, the Municipality shall pay such amount to Nestor if there has been any deficit in previous months and Nestor shall apply this excess revenue to the Municipality's deficit. At the end of the twelve month period following the termination of this Agreement, Nestor shall forgive any deficit amount owed Nestor by the Municipality and the Municipality shall not thereafter be obligated to pay or reimburse Nestor for such deficit amount; provided, however, that any revenues received by the Municipality during said twelve month period shall be paid to Nestor until the amount so paid is equal to the aggregate deficit owed by the Municipality to Nestor at the end of the term hereof. In addition, Nestor will perform annual reviews of the program and parties shall identify alternate intersections to relocate existing low-volume Systems, at no cost to the City, pursuant to Section 1.2 of Exhibit A, if possible.

4.4 In the event of a termination of this Agreement for a Municipality breach of this Agreement pursuant to Section 3.1, the termination and cancellation fee shall equal the product of (a) \$1,333.33 per Installed Approach multiplied by (b) the Remaining Term. 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. For the sake of clarity, any termination and cancellation fee pursuant to this Section 4.4 shall not exceed \$80,000 per approach.

4.5 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:

Finance Dept.
City of Murrieta
2644a Beckman Ct.
Murrieta, CA 92562

4.5 Unless the Municipality provides Nestor with evidence of an exemption therefrom, prices do not include federal or state excise, sales, use, property, 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.

5. Responsibilities of the Municipality

5.1 The Municipality shall provide Nestor with such "as built" drawings in AutoCad electronic format as Nestor, in Nestor's reasonable discretion, may require for the preparation of drawings for the installation of the System and shall approve 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 diligently prosecute each citation and defend any challenge in any traffic 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.

5.4 The Municipality shall provide all necessary electrical connections at the roadside and pay for power required by the System. The Municipality shall upgrade lighting existing at the intersection to the maximum wattage permitted and upgrade the yellow and red signal heads to LED lights at enforced approaches.

5.5 To allow for proper operation of the System, the Municipality shall provide Nestor with advance written notice of any modifications proposed to intersections, including traffic signal operations, after installation of a System. In the event of any such intersection modification requires a material change to the System, the Municipality shall pay the costs reasonably incurred by Nestor to adapt the affected Installed Approach(es) to make such Installed Approach(es) compatible therewith. 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.

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

6. LIMITED WARRANTY AND LIMITATION ON DAMAGES

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

6.2 EXCEPT AS SPECIFICALLY PROVIDED HEREIN, THE SERVICES AND SYSTEM ARE

NOT ERROR-FREE AND ARE BEING PROVIDED "AS-IS" WITHOUT WARRANTY OF ANY KIND AND NESTOR HEREBY DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THE SERVICES AND SYSTEM, INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF ACCURACY, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE AND ALL WARRANTIES IMPLIED FROM ANY COURSE OF DEALING OR USAGE OF TRADE. MUNICIPALITY ACKNOWLEDGES THAT EXCEPT AS EXPRESSLY PROVIDED HEREIN NO OTHER WARRANTIES HAVE BEEN MADE TO MUNICIPALITY BY OR ON BEHALF OF NESTOR OR OTHERWISE FORM THE BASIS FOR THE BARGAIN BETWEEN THE PARTIES.

6.3 REGARDLESS OF WHETHER ANY REMEDY SET FORTH HEREIN FAILS OF ITS ESSENTIAL PURPOSE, IN NO EVENT WILL 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 OR 4.2 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, if such feature is used;

(d) The System has no control over, and relies on the proper functioning of Municipality supplied equipment for signal light changes;

(e) The warranty set forth in section 6.1 is not intended to, and shall not, be construed as a warranty of the level of performance of the System;

(f) The proper functioning of the System requires the Municipality's full and complete compliance with the 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 either (a) a finding that the System infringes any validly issued United States patent or (b) Nestor's negligence, provided

that such claim of damages 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.

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 affiliates, 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 of, administration of and/or the terms upon which it obtained the System and/or any traffic signal, and (viii) an allegation regarding the permissibility under the law of the use of photo citation systems or the System or the terms hereof.

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 it is, and then only to the that extent 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 paragraph.

8. INSURANCE

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

- a. Comprehensive general liability insurance with a combined single limit of \$1,000,000 per occurrence;
- b. Workers Compensation as required by applicable state law; and
- c. Comprehensive Automobile Liability Insurance for all owned, non-owned and hired automobiles and other vehicles used by Nestor with a minimum \$1,000,000 per occurrence combined single limit bodily injury and property damage.

All insurance required by express provision of this Agreement shall be carried only in responsible insurance companies licensed to do business in the State of California and shall name as additional insured the Municipality, its elected officials, officers, employees, agents and representatives. Nestor will furnish

Municipality with Certificates of Insurance and applicable endorsements for all such policies promptly upon receipt of them. Nestor may effect for its own account insurance not required under this Agreement.

9. MISCELLANEOUS

9.1 Except as specifically provided in this Agreement, this Agreement may not be assigned, nor may performance be delegated, 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.

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

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

9.6 Except as set forth in 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.

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

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


9.9 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.


9.10 Any dispute, controversy or claim arising out of or relating to this Agreement or a breach thereof or the use of the System, shall be settled by arbitration before three neutral arbitrators (selected from a panel of persons having experience with and knowledge of the computer business, provided at least one of which arbitrators shall be an attorney, and administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules in California. Any provisional or equitable remedy which would be available from a court of law shall be available from the arbitrators to the Parties. Judgment upon the award of the arbitrators may be enforced in any court having jurisdiction thereof. The Parties hereby consent to the non-exclusive jurisdiction of the courts of the States of California and Rhode Island or to any Federal Court located within those same States for any action (i) to compel arbitration, (ii) to enforce the award of the arbitrators or (iii) prior to the appointment and confirmation of the arbitrators, for temporary, interim or provisional equitable remedies and to service of process in any such action by registered mail, return receipt requested, or by any other means provided by law.

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

Nestor Traffic Systems, Inc.

By: 
Name: MICHAEL V. HERTZBERG
Title: President
Date: October 21, 2005

City of Murrieta, CA

By: 
Name: Lori A. Moss
Title: City Manager
Date: 10-18-05


Attest: 
City Clerk

Exhibit A

SERVICES

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

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

1. Site Installation Planning, Design and Equipment Installation

1.1 The System. Video monitoring systems shall be installed initially, monitoring a minimum of ten (10) approaches at up to five (9) intersections to be designated in writing by mutual agreement of City and Nestor. Additional video monitoring systems may be added at the option of the Municipality. 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> |
|----------------------------------|----------------------------|
| Murrieta Hot Springs & Whitewood | East, West |
| Murrieta Hot Springs & Margarita | West |
| Clinton Keith & Nutmeg | West |
| 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 parties may mutually agree to relocate any existing and operating System, at no cost to the City, for an individual intersection to a new 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.

1.3 Timeframe for Installation of the System. The above intersections will be installed and activated in phases in accordance with an Implementation Plan to be mutually agreed to by Nestor and the Municipality. Nestor will use reasonable commercial efforts to install the System in accordance with the schedule set forth in the Implementation Plan. The Municipality agrees that the estimated dates of installation

and activation of the System set forth in the Implementation Plan are subject to conditions beyond the control of Nestor and are not guaranteed.

1.4 Installation/Ownership of the System. Nestor will procure, install and provide support of traffic signal violation detection equipment (computer hardware, software, cameras, camera housing and mounts, communications equipment and roadside controller cabinets) as specified in the Proposal at each 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. Nestor shall provide at least three sets of drawings of the wiring for the System circuitry.

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

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

1.5.4 The System may be mounted on or utilize support of existing traffic signal poles, arms or other intersection structures where possible, subject to Municipality review and approval, 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. The Municipality shall be solely responsible for remediation that may be required with respect to such poles, foundations and new infrastructure if such remediation is required due to conditions not caused by Nestor.

1.5.6 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, and to the extent such fees are not waivable, Municipality shall reimburse Nestor for such fees.

1.6 Production of Video Files. Nestor shall produce digital video files of red light violations, capable of identifying vehicles traveling through the intersection during the red light phase. The violation video shall capture a view of the traffic signal from the direction in which the driver is approaching, the approaching vehicle as viewed from the intersection, an image of the driver, and either a front or rear view of the vehicle's 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 acquaint Municipality personnel with System operation. 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. 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/or approved by the Municipality.

3.1.1 Mailing of Citations. 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. 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. 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. Nestor, in coordination with the Courts, will develop and implement an independent numbering system for automated red light citations.

3.4 Transmission of Information. 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. Nestor will provide an automated customer service telephone number to the

public. Customer Service Representatives will be available Monday through Friday, from 9:00 a.m. to 5:00 p.m. local time (of 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. To the extent permitted by law, such procedure shall include placing a hold on the violator's driver's license or automobile registration, requiring the violator to go to court to have such hold lifted, requiring the violator to sign a promise to appear and, if applicable, issuing a warrant for such violator.

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. 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 of warning notices 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. 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), plus all reasonable out-of-pocket

expenses.

6.2 Court Training. 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

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 Municipality's request):

- 1. 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 \$850 for each approach evaluated and includes 16 hours of evaluation. Additional 16-hour evaluation blocks may be ordered at 50% of the VIP Program Fee for each block, assuming equipment remains installed at the intersection between blocks. The VIP Program Fee for an intersection is due upon ordering the service. If the Municipality selects the approach for a full CrossingGuard System installation within two months of delivery of the VIP report, Nestor will allow a credit equal to 100% of the intersection's VIP Program Fee paid against the initial Ticket Processing Fees charged for the intersection. Any VIP monitoring performed by Nestor prior to the execution of this Agreement was performed at Nestor's sole cost and expense.

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

- 2. Collision Avoidance services and connections, no additional cost.
- 3. Intersection Video Monitoring Services utilizing current fixed overview camera positions, or dedicated camera subject to customer control, no additional cost.

EXHIBIT B

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 a express condition to your ability to use the SOFTWARE PRODUCT.

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

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

3. **SUPPORT SERVICES AND UPGRADES.** Nestor may provide you with support services related to the SOFTWARE PRODUCT ("Support Services"). Use of Support Services is governed by the Agreement. Any supplemental software code provided to you as part of the Support Services shall be considered part of the SOFTWARE PRODUCT and subject to the terms and conditions of this License. With respect to technical information you provide to Nestor as part of the Support Services, Nestor may use such information for its business purposes, including for product support and development. Nestor will not utilize such technical information in a form that personally identifies you. If the SOFTWARE PRODUCT is labeled as an upgrade, you must be properly licensed to use a product identified by Nestor as being eligible for the upgrade in order to use the SOFTWARE PRODUCT. A SOFTWARE PRODUCT labeled as an upgrade replaces and/or supplements the product that formed the basis for your eligibility for the upgrade. You may use the resulting upgraded product only in accordance with the terms of this License. If the SOFTWARE PRODUCT is an upgrade of a component of a package of software programs that you licensed as a single product, the SOFTWARE PRODUCT may be used and transferred only as part of that single product package and may not be separated for use on more than one computer.

4. **COPYRIGHT.** All title and intellectual property rights in and to the SOFTWARE PRODUCT

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

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

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

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

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

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

EXHIBIT C

LEASE AGREEMENT FOR CROSSINGGUARD SYSTEM

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

1. LEASE. Nestor hereby leases to Municipality and Municipality hereby leases from Nestor, subject to the terms and conditions of this Lease, the 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, self insure or 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.

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

EXHIBIT C MAY BE EXCHANGED FOR GE CAPITAL MASTER LEASE DOCUMENTATION