

Home

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NESTOR TRAFFIC SYSTEMS, INC. UNIFORM AUTOMATED TRAFFIC ENFORCEMENT CONTRACT

This is an Agreement between us, Nestor Traffic Systems, Inc. and you, the state, city, municipality or other political subdivision as identified on the Signature page to this Agreement. In this Agreement we refer to Nestor Traffic Systems, Inc. as "we", "us", "our" or "NTS." You are referred to as "you" or the "Municipality."

What Services Will We Provide to You?

Red Light Enforcement Services

- Red Light Enforcement
- 10 Minimum Number of Approaches
- Maximum Number of Approaches

Enforcement Specifications

- Operator Photograph Required
- Front Plate Photograph Required

Additional Services

- Citation Processing/Back Office
- Collision Avoidance
- Real Time Monitoring

The Services selected above are based on your best estimate of what will be required. Once this Agreement is signed, we will begin the process of finalizing the specifics related to the actual services that make sense in your community. Once finalized, you and we will execute the Specifications of Service described below.

What is the Specifications of Service?

Within a few days after this Agreement is signed, one of our representatives will arrange to meet with you and work with you to determine the exact location(s) of red light approaches, design and construction specifications, final Services determinations and all other factors related to our relationship. The final result will be the Specifications of Service, which will be signed by you and us and will act as an addendum to this Agreement.

How Long does this Agreement Last?

This Agreement lasts for an initial period of three years and may be extended by you for two additional one year periods. This Agreement may be terminated by you upon thirty days' written notice. Note that you may be liable for a termination fee if you terminate this Agreement during the initial term. (See *How Is This Agreement Ended?* Below)

How Much Will It Cost?

There are no up-front costs to you for any of our Services. All of our programs are intended to be entirely violator funded. You will incur direct costs only if you terminate this contract without cause before we have recouped our installation costs. (See *How Do We Recover Our Installation Costs?* below).

For the Services you selected above, you will be charged:

- A Monthly Flat Fee per Approach of \$4,500.00
- Dedicated Right Turn Enforcement \$1,200.00
- Dedicated Left Turn Enforcement \$600.00
- Collision Avoidance \$No Charge

In the event that aggregate money collected by you from paid citations (less any costs that you are required to pay out of fees from paid citations - i.e. court costs) from all enforced approaches in any calendar month is less than the aggregate amount due from you to us in that month, you are required to pay only the amount that you received and the difference shall be carried forward and added to the next month's invoice. At the end of each calendar year, all amounts carried forward that remain unpaid shall be forgiven.

The above amounts will be fixed for the term of our Agreement (including any extensions exercised by you). We will begin invoicing you for each approach *only* after we have completed a 30 day warning period. Payment is expected within 30 days after invoice. You will be entitled to a credit of 1% of monthly charges for each percentage point that:

- The Aggregate Monthly Citation Issuance Rate is below 50%; and/or
- The Aggregate Monthly System Up-Time is below 95%

"Aggregate Monthly Citation Issuance Rate" means total number of citations mailed for a calendar month divided by the total number of citable violations (not including violations discarded by you for discretionary reasons, or discarded for missing or obstructed license plates, obstructed driver image, DMV mismatch and similar circumstances, and right turn violations unless you have installed dedicated right turn enforcement.

"Aggregate Monthly System Up-Time" means the total number of hours all red light systems operated during a calendar month divided by the total number of hours in that month multiplied by the number of systems operating under the red light program. Routine system maintenance and testing is deemed to be operational system time. The number of hours of any system down-time caused by a circumstance beyond Nestor's reasonable control (such as vandalism, extreme weather, automobile accidents, acts of God, labor strikes, interruption in third party service, etc.) is excluded from both the numerator and denominator of the calculation.

You will also pay us 30% of the face amount of any citation issued by us with respect to non- Red Light infractions (e.g., inspection sticker violations, improper license plate display, etc.) if you should call upon us to enforce them.

How Does the Program Work?

Once you sign this Agreement, depending upon the Services you have selected and the details and we agree on the Specifications of Service, we will:

- Obtain and maintain the appropriate business license applicable to the Services, at our expense.
- Install Fixed Red Light Enforcement Units at selected approaches (completed within 60 days after all permits and approvals have been received with respect to each approach).
- Take care of equipment and software maintenance and repair or replacement of equipment damaged or destroyed by accident, casualty, vandalism or otherwise. (All repairs will be completed within two business days unless circumstances beyond our control prevent that)
- Process and mail all citations issued by our equipment
- Provide access to our proprietary software which will allow you to generate reports of all citations issued.
- Provide reasonable training for your personnel.
- Provide reasonable training for court personnel.
- Provide a fully staffed customer/violator support line.
- Provide you with the tools and data to produce a complete evidence package for each citation.
- Provide expert testimony if required
- Provide assistance with public education and public relations.
- Coordinate with your police, public works and engineering departments and with your State's Department of Transportation.

After approaches at any intersection have been in operation for one full year, provided that such approaches were initially approved by us, you may select a new intersection at which we will install a new approach at our sole expense and remediate the existing approach provided that the term of this agreement with respect to such new approach shall extend for a period of three years (with options for two additional one year terms) from the date that such new approach becomes operational.

How is this Agreement Ended?

This Agreement will end at the expiration of the initial term or any extension (See *How Long does this Agreement Last?*) You can terminate this Agreement at any time upon thirty days' written notice to the address specified on the Signature Page to this Agreement. In all cases, upon termination, we will remove any equipment installed in connection with this Agreement. Either you or we can terminate this agreement for cause upon 30 days' written notice.

Termination for Cause

If you terminate this Agreement because we have breached a material provision of it and failed to correct it in a reasonable and timely manner after you have identified the breach, then you will pay only for Services rendered up to the date of termination.

If we terminate this Agreement because you have breached a material provision of it and failed to correct it in a reasonable and timely manner (which, with respect to payment obligations, shall be 10 days or fewer), then you will pay for Services rendered up to the date of termination and for the unamortized portion of Installation Costs (described below).

Termination Without Cause

If you terminate this Agreement without cause during the Amortization Period (described below in *How Do We Recover Our Installation Costs?*), then you will pay for Services rendered up to the date of termination and for the unamortized portion of Installation Costs (described below in *How Do We Recover Our Installation Costs?*).

If we terminate this Agreement without cause, then you will pay only for Services rendered up to the date of termination.

Termination for Legal Reasons

If the Services are made or declared illegal by law, order or judicial decree, then this Agreement will terminate immediately, and you will pay only for Services rendered up to the date of termination.

How Do We Recover Our Installation Costs?

Although this Agreement can be terminated by you at any time, we make a substantial investment in the construction and installation of approaches. Part of our determination of the appropriate price for Services (see *How Much Will It Cost?*) includes recovering our Installation Costs.

Installation Costs

Our Installation Costs include engineering, design, site preparation, construction, installation, equipment, software and software customization costs. We also include in our Installation Costs the amount we estimate it will cost to remove our equipment and restore the site upon completion of this Agreement. The Specifications of Service will specify our estimated Installation Costs including our removal cost estimate.

(Continued on Next Page)

Once we complete all installations specified in the Specifications of Service, we will provide you with a statement of our actual costs (which will not be more than 110% of our estimate contained in the Specifications of Service) and this amount, plus our estimated removal costs, will be the Installation Costs.

Amortization Period

The Amortization Period for fixed red light/speed Approaches is three years from the date that installation and activation of all Approaches is completed.

What Are the Municipality's Obligations?

While this Agreement is in effect, you must:

- Pay or reimburse us any sales and use taxes, property taxes, permit fees required for implementation of our Services and any other fees, taxes or assessments imposed by you related to the Services, other than any tax on our income.
- Provide electric service to each Approach.
- Provide "as built" plans for each intersection where a fixed red light unit will be installed.
- Prosecute citations in court at your expense.
- Defend at your expense any challenge in any court or other tribunal to our Services.
- Assist us in obtaining any approvals required for our Services.
- Assist us as necessary to obtain and maintain the appropriate business license applicable to the Services, at our expense.
- Use reasonable best efforts, including the use of an outside collection agency, to collect amounts owed for issued citations.

Who Owns the Equipment and Software?

All of the equipment we install or use in connection with the Services is and will remain at all times our sole and exclusive property. It is delivered to you as our licensee only for so long as this Agreement is effective. At the conclusion of this Agreement, we will remove all equipment that we have installed and you agree to give us reasonable access to do so.

The first time any user of our software logs on, he or she will be required to agree to the terms and conditions of our Software License Agreement. You may review the terms of this Software License Agreement any time by logging on to our system.

Do We Provide a Warranty for our Services?

We warrant that our Services will be provided in a professional manner and that our equipment will function as intended to detect violations of speeding and/or red light laws, as applicable. We do not warrant that we will detect every red light violation. In addition, our equipment may detect conduct which does not, in fact, rise to the level of a violation, and our output will require review, analysis and approval by your personnel appropriately qualified and authorized to authorize the issuance of a citation. Finally, our equipment requires strict compliance with our operating instructions. Your personnel will have to follow our instructions carefully.

Except as set forth above (including in *How Much Will It Cost?*), we disclaim all other warranties, express or implied, with respect to our Services and equipment, including title, non-infringement, accuracy, merchantability or fitness for a particular purpose.

Are There Any Indemnification Provisions?

We will indemnify you for any claims made or damages awarded (including reasonable attorney fees) against you by a third party as a result of:

- Any of our equipment or Services infringing on any third party's intellectual property rights.
- Our negligence or willful misconduct (but only to the extent that our negligence or willful misconduct actually caused the damages for which you seek indemnification).

You will indemnify us for any claims made or damages awarded (including reasonable attorney fees) against us by a third party as a result of:

- Our compliance with any of your instructions, designs or specifications.
- Any modification to any of our equipment made by you.
- Your negligence or willful misconduct (but only to the extent that your negligence or willful misconduct actually caused the damages for which we seek indemnification).
- Any allegation regarding the permissibility under the law of the use of photographic citation systems.

What is Our Insurance Coverage?

We carry the following insurance with reputable insurance carriers qualified to conduct business in your State:

- Comprehensive general liability insurance with a combined single limit of \$1 million per person due to loss arising from a single occurrence.
- Workers' Compensation as require by your State law.
- Comprehensive automobile insurance (\$1 million combined single limit.)

What Other Provisions Apply to This Agreement?

Assignment

Neither you nor we may assign this contract without the other's consent, except that we may assign our rights and duties for the purpose of financing, or to any affiliate or to any entity that acquires us or substantially all of our assets. We and you agree that we will be reasonable and timely with respect to any requested consent and that neither we nor you will impose any unreasonable conditions on consent.

Amendment

Neither we nor you may modify or amend this Agreement except in writing signed by both parties.

Governing Law

This Agreement is governed by the laws of the State in which you are located, without regard to any of its conflicts of laws provisions.

Notice

Any notice required by this Agreement must be in writing to the address specified on the Signature Page of this Agreement. Notice will be effective upon receipt or upon delivery or attempted delivery by a recognized national overnight carrier.

Confidentiality

In the course of this Agreement, certain of our Confidential Information may be disclosed to you. You are obligated to keep that information strictly confidential and not to disclose that information to any third party (except as required by law or legal process). Confidential Information means our trade secrets or confidential or proprietary information designated by us as such.

We and you have entered into this Agreement and intend to be legally bound by the terms and conditions set forth in this Agreement. We indicate our acceptance of the terms and conditions of this Agreement by the signature of our and your duly authorized representative below. This Agreement is not valid until it has been signed by you and us and is effective as of the latest date of any party's signature below.

NESTOR TRAFFIC SYSTEMS, INC.

CITY OF HEMET, CALIFORNIA

By: Clarence A. Davis
Name: Clarence A. Davis
Title: Chief Executive Officer
Date: December 11, 2008

By: Len Wood
Name: LEN WOOD
Title: INTERIA CITY MANAGER
Date: JANUARY 8, 2009

Notice Address:

Nestor Traffic Systems, Inc.
42 Oriental Street
Providence, Rhode Island 02908
Attention: President

Notice Address:

445 E. FLORIDA AVE
HEMET CA 92343

Attention: _____

CONSULTANT SERVICES AGREEMENT

By and Between

**THE CITY OF HEMET,
a municipal corporation**

and

**NESTOR TRAFFIC SYSTEMS, INC.,
a Delaware corporation**

**AGREEMENT FOR CONSULTANT SERVICES
BETWEEN
THE CITY OF HEMET, CALIFORNIA
AND
NESTOR TRAFFIC SYSTEMS, INC.**

This Agreement for Consultant Services ("Agreement") is entered into as of this 7th day of May, 2008 by and between the City of Hemet, a municipal corporation ("City") and Nestor Traffic Systems, Inc., a Delaware corporation ("Consultant"). City and Consultant are sometimes hereinafter individually referred to as "Party" and hereinafter collectively referred to as the "Parties."

RECITALS

A. Consultant is in the business of installing, operating and maintaining automated red light enforcement systems ("Automated Enforcement Systems") in municipalities such as the City.

B. City desires to determine whether Automated Enforcement Systems would be an effective means of enforcing red light running violations and improving safety within the City ("System Effectiveness").

C. Consultant has developed a Vehicle Intersection Profiling ("VIP") study to determine System Effectiveness at any given intersection approach.

D. Consultant was selected by the City to perform VIP studies, which are more particularly defined and described in Section 2 of this Agreement.

E. Pursuant to the City of Hemet's Municipal Code, City has authority to enter into this Consultant Services Agreement and the City Manager has authority to execute this Agreement.

F. The Parties desire to formalize the selection of Consultant for performance of the services defined and described particularly in Section 2 of this Agreement and desire that the terms of that performance be as particularly defined and described herein.

OPERATIVE PROVISIONS

NOW, THEREFORE, in consideration of the mutual promises and covenants made by the Parties and contained here and other consideration, the value and adequacy of which are hereby acknowledged, the Parties agree as follows:

SECTION 1. TERM OF AGREEMENT.

Subject to the provisions of Section 20 "Termination of Agreement" of this Agreement, the scope of services set forth in Exhibit "A" "Scope of Services" shall be completed pursuant to the schedule specified in Exhibit "A." Should the scope of services not be completed pursuant to

that schedule, the Consultant shall be deemed to be in Default of this Agreement pursuant to Section 21 of this Agreement. The City, in its sole discretion, may choose not to enforce the Default provisions of this Agreement and may instead allow Consultant to continue performing the scope of services until such services are complete.

SECTION 2. SCOPE OF SERVICES.

Consultant agrees to perform the services set forth in Exhibit "A" "Scope of Services" and made a part of this Agreement.

SECTION 3. ADDITIONAL SERVICES.

Consultant shall not be compensated for any services rendered in connection with its performance of this Agreement which are in addition to or outside of those set forth in this Agreement or listed in Exhibit "A" "Scope of Services," unless such additional services are authorized in advance and in writing by the City Council or City Manager of City. Consultant shall be compensated for any such additional services in the amounts and in the manner agreed to by the City Council or City Manager.

SECTION 4. COMPENSATION AND METHOD OF PAYMENT.

(a) Subject to any limitations set forth in this Agreement, City agrees to pay Consultant the amounts specified in the manner specified in Exhibit "B" "Compensation" and made a part of this Agreement. The total compensation, including reimbursement for actual expenses, shall not exceed twenty-three thousand four hundred dollars (\$23,400.00), unless additional compensation is approved in writing by the City Council or City Manager.

(b) Consultant shall furnish to City an **original** invoice for all work performed and expenses incurred in the manner and for such amounts as are specified in Exhibit "B." The invoice shall detail charges by the following categories: labor (by sub-category), travel, materials, equipment, supplies, and sub-consultant contracts. Sub-consultant charges shall be detailed by the following categories: labor, travel, materials, equipment and supplies. City shall independently review each invoice submitted by the Consultant to determine whether the work performed and expenses incurred are in compliance with the provisions of this Agreement. In the event that no charges or expenses are disputed, the invoice shall be approved and paid according to the terms set forth in subsection (c). In the event any charges or expenses are disputed by City, the original invoice shall be returned by City to Consultant for correction and resubmission, provided that the City shall pay the undisputed portion of any invoice.

(c) Except as to any charges for work performed or expenses incurred by Consultant which are disputed by City, City will use its best efforts to cause Consultant to be paid within forty-five (45) days of receipt of Consultant's correct and undisputed invoice.

(d) Payment to Consultant for work performed pursuant to this Agreement shall not be deemed to waive any defects in work performed by Consultant.

SECTION 5. INSPECTION AND FINAL ACCEPTANCE.

City may inspect and accept or reject any of Consultant's work under this Agreement, either during performance or when completed. City shall reject or finally accept Consultant's work within sixty (60) days after submitted to City. City shall reject work by a timely written explanation, otherwise Consultant's work shall be deemed to have been accepted. City's acceptance shall be conclusive as to such work except with respect to latent defects, fraud and such gross mistakes as amount to fraud. Acceptance of any of Consultant's work by City shall not constitute a waiver of any of the provisions of this Agreement including, but not limited to, sections 16 and 17, pertaining to indemnification and insurance, respectively.

SECTION 6. OWNERSHIP OF DOCUMENTS.

All original maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files and other documents provided to the City by Consultant in connection with the services set forth in Exhibit "A" remain the exclusive property of Consultant and are confidential and proprietary. The City shall not disclose the contents of such maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files and other documents to any person or entity that is not employed or otherwise engaged by the City to assess System Effectiveness. In the event that the City does not contract with Consultant for the provision of Automated Enforcement Systems, the City shall return all maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files and other documents to Consultant and destroy any copies thereof.

The City shall not utilize the maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files and other documents provided to the City by Consultant in the course of providing any services pursuant to the Agreement for any purpose not related to this Agreement without Consultant's prior written consent. If and to the extent that City utilizes for any purpose not related to this Agreement any maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files or other documents prepared, developed or discovered by Consultant in the course of providing any services pursuant to this Agreement, Consultant's guarantees and warrants related to Standard of Performance and found in Section 9 of this Agreement shall not extend to such use of the maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files or other documents.

SECTION 7. CONSULTANT'S BOOKS AND RECORDS.

(a) Consultant shall maintain any and all documents and records demonstrating or relating to Consultant's performance of services pursuant to this Agreement. Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, or other documents or records evidencing or relating to work, services, expenditures and disbursements charged to City pursuant to this Agreement. Any and all such documents or records shall be maintained in accordance with generally accepted accounting principles and shall be sufficiently complete and detailed so as to permit an accurate evaluation of the services provided by Consultant pursuant to this Agreement. Any and all such documents or records shall be

maintained for three years from the date of execution of this Agreement and to the extent required by laws relating to audits of public agencies and their expenditures.

(b) Any and all records or documents required to be maintained pursuant to this section shall be made available for inspection, audit and copying, at any time during regular business hours, upon request by City or its designated representative. Copies of such documents or records shall be provided directly to the City for inspection, audit and copying when it is practical to do so; otherwise, unless an alternative is mutually agreed upon, such documents and records shall be made available at Consultant's address indicated for receipt of notices in this Agreement.

(c) Where City has reason to believe that any of the documents or records required to be maintained pursuant to this section may be lost or discarded due to dissolution or termination of Consultant's business, City may, by written request, require that custody of such documents or records be given to the City and that such documents and records be maintained by the requesting party. Access to such documents and records shall be granted to City, as well as to its successors-in-interest and authorized representatives.

SECTION 8. STATUS OF CONSULTANT.

(a) Consultant is and shall at all times remain a wholly independent contractor and not an officer, employee or agent of City. Consultant shall have no authority to bind City in any manner, nor to incur any obligation, debt or liability of any kind on behalf of or against City, whether by contract or otherwise, unless such authority is expressly conferred under this AGREEMENT or is otherwise expressly conferred in writing by City.

(b) The personnel performing the services under this Agreement on behalf of Consultant shall at all times be under Consultant's exclusive direction and control. Neither City, nor any elected or appointed boards, officers, officials, employees or agents of City, shall have control over the conduct of Consultant or any of Consultant's officers, employees, or agents except as set forth in this Agreement. Consultant shall not at any time or in any manner represent that Consultant or any of Consultant's officers, employees, or agents are in any manner officials, officers, employees or agents of City.

(c) Neither Consultant, nor any of Consultant's officers, employees or agents, shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to City's employees. Consultant expressly waives any claim Consultant may have to any such rights.

SECTION 9. STANDARD OF PERFORMANCE.

Consultant represents and warrants that it has the qualifications, experience and facilities necessary to properly perform the services required under this Agreement in a thorough, competent and professional manner. Consultant shall at all times faithfully, competently and to the best of its ability, experience and talent, perform all services described herein. In meeting its obligations under this Agreement, Consultant shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing services similar to those required of Consultant under this Agreement.

If and to the extent that City utilizes for any purpose not related to this Agreement any maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files or other documents prepared, developed or discovered by Consultant in the course of providing any services pursuant to this Agreement, Consultant's guarantees and warranties related to Standard of Performance shall not extend to such use of the maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files or other documents.

SECTION 10. COMPLIANCE WITH APPLICABLE LAWS; PERMITS AND LICENSES.

Consultant shall keep itself informed of and comply with all applicable federal, state and local laws, statutes, codes, ordinances, regulations and rules in effect during the term of this Agreement. Consultant shall obtain any and all licenses, permits and authorizations necessary to perform the services set forth in this Agreement. Neither City, nor any elected or appointed boards, officers, officials, employees or agents of City, shall be liable, at law or in equity, as a result of any failure of Consultant to comply with this section.

SECTION 11. PREVAILING WAGE LAWS

It is the understanding of City and Consultant that California prevailing wage laws do not apply to this Agreement because the Agreement does not involve any of the following services subject to prevailing wage rates pursuant to the California Labor Code or regulations promulgated thereunder: Construction, alteration, demolition, installation, or repair work performed on public buildings, facilities, streets or sewers done under contract and paid for in whole or in part out of public funds. In this context, "construction" includes work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work.

SECTION 12. NONDISCRIMINATION.

Consultant shall not discriminate, in any way, against any person on the basis of race, color, religious creed, national origin, ancestry, sex, age, physical handicap, medical condition or marital status in connection with or related to the performance of this Agreement.

SECTION 13. UNAUTHORIZED ALIENS.

Consultant hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act, 8 U.S.C.A. §§ 1101, et seq., as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Consultant so employ such unauthorized aliens for the performance of work and/or services covered by this Agreement, and should the any liability or sanctions be imposed against City for such use of unauthorized aliens, Consultant hereby agrees to and shall reimburse City for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorneys' fees, incurred by City.

SECTION 14. CONFLICTS OF INTEREST.

(a) Consultant covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of City or which would in any way hinder Consultant's performance of services under this Agreement. Consultant further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express written consent of the City Manager. Consultant agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of City in the performance of this Agreement.

(b) City understands and acknowledges that Consultant is, as of the date of execution of this Agreement, independently involved in the performance of non-related services for other governmental agencies and private parties. Consultant is unaware of any stated position of City relative to such projects. Any future position of City on such projects shall not be considered a conflict of interest for purposes of this section.

(c) City understands and acknowledges that Consultant will, perform non-related services for other governmental agencies and private parties following the completion of the scope of work under this Agreement. Any such future service shall not be considered a conflict of interest for purposes of this section.

SECTION 15. CONFIDENTIAL INFORMATION; RELEASE OF INFORMATION.

(a) All information gained or work product produced by Consultant in performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Consultant. Consultant shall not release or disclose any such information or work product to persons or entities other than City without prior written authorization from the City Manager, except as may be required by law.

(b) Consultant, its officers, employees, agents or subcontractors, shall not, without prior written authorization from the City Manager or unless requested by the City Attorney of City, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement. Response to a subpoena or court order shall not be considered "voluntary" provided Consultant gives City notice of such court order or subpoena.

(c) If Consultant, or any officer, employee, agent or subcontractor of Consultant, provides any information or work product in violation of this Agreement, then City shall have the right to reimbursement and indemnity from Consultant for any damages, costs and fees, including attorneys fees, caused by or incurred as a result of Consultant's conduct.

(d) Consultant shall promptly notify City should Consultant, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed thereunder. City retains the right, but has no obligation, to represent Consultant or be present at any deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with City and to

provide City with the opportunity to review any response to discovery requests provided by Consultant. However, this right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

SECTION 16. INDEMNIFICATION.

(a) Indemnification for Professional Liability. Where the law establishes a professional standard of care for Consultant's Services, to the fullest extent permitted by law, Consultant shall indemnify, protect, defend and hold harmless City and any and all of its officials, employees and agents ("Indemnified Parties") from and against any and all losses, liabilities, damages, costs and expenses, including attorney's fees and costs to the extent same are caused in whole or in part by any negligent or wrongful act, error or omission of Consultant, its officers, agents, employees or sub-consultants (or any entity or individual that Consultant shall bear the legal liability thereof) in the performance of professional services under this Agreement.

(b) Indemnification for Other than Professional Liability. Other than in the performance of professional services and to the full extent permitted by law, Consultant shall indemnify, protect, defend and hold harmless City, and any and all of its employees, officials and agents from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including attorneys fees and costs, court costs, interest, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Agreement by Consultant or by any individual or entity for which Consultant is legally liable, including but not limited to officers, agents, employees or sub-contractors of Consultant.

(c) General Indemnification Provisions. Consultant agrees to obtain executed indemnity Agreements with provisions identical to those set forth here in this section from each and every sub-contractor or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. In the event Consultant fails to obtain such indemnity obligations from others as required here, Consultant agrees to be fully responsible according to the terms of this section. Failure of City to monitor compliance with these requirements imposes no additional obligations on City and will in no way act as a waiver of any rights hereunder. This obligation to indemnify and defend City as set forth here is binding on the successors, assigns or heirs of Consultant and shall survive the termination of this Agreement or this section.

(d) Limitation of Indemnification. Notwithstanding any provision of this Section 16 [Indemnification] to the contrary, design professionals are required to defend and indemnify the City only to the extent permitted by Civil Code Section 2782.8, which limits the liability of a design professional to claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the design professional. The term "design professional," as defined in Section 2782.8, is limited to licensed architects, licensed landscape architects, registered professional engineers, professional land surveyors, and the business entities that offer such services in accordance with the applicable provisions of the California Business and Professions Code.

(e) The provisions of this section do not apply to claims occurring as a result of City's sole negligence. The provisions of this section shall not release City from liability arising from gross negligence or willful acts or omissions of City or any and all of its officials, employees and agents.

SECTION 17. INSURANCE.

Consultant agrees to obtain and maintain in full force and effect during the term of this Agreement the insurance policies set forth in Exhibit "C" "Insurance" and made a part of this Agreement. All insurance policies shall be subject to approval by City as to form and content. These requirements are subject to amendment or waiver if so approved in writing by the City Manager. Consultant agrees to provide City with copies of required policies upon request.

SECTION 18. ASSIGNMENT.

The expertise and experience of Consultant are material considerations for this Agreement. City has an interest in the qualifications of and capability of the persons and entities who will fulfill the duties and obligations imposed upon Consultant under this Agreement. In recognition of that interest, Consultant shall not assign or transfer this Agreement or any portion of this Agreement or the performance of any of Consultant's duties or obligations under this Agreement without the prior written consent of the City Council. Any attempted assignment shall be ineffective, null and void, and shall constitute a material breach of this Agreement entitling City to any and all remedies at law or in equity, including summary termination of this Agreement. City acknowledges, however, that Consultant, in the performance of its duties pursuant to this Agreement, may utilize subcontractors.

SECTION 19. CONTINUITY OF PERSONNEL.

Consultant shall make every reasonable effort to maintain the stability and continuity of Consultant's staff and subcontractors, if any, assigned to perform the services required under this Agreement. Consultant shall notify City of any changes in Consultant's staff and subcontractors, if any, assigned to perform the services required under this Agreement, prior to and during any such performance.

SECTION 20. TERMINATION OF AGREEMENT.

(a) City may terminate this Agreement, with or without cause, at any time by giving thirty (30) days written notice of termination to Consultant. In the event such notice is given, Consultant shall cease immediately all work in progress.

(b) Consultant may terminate this Agreement for cause at any time upon thirty (30) days written notice of termination to City.

(c) If either Consultant or City fail to perform any material obligation under this Agreement, then, in addition to any other remedies, either Consultant, or City may terminate this Agreement immediately upon written notice.

(d) Upon termination of this Agreement by either Consultant or City, all property belonging exclusively to City which is in Consultant's possession shall be returned to City.

Consultant shall furnish to City a final invoice for work performed and expenses incurred by Consultant, prepared as set forth in Section 4 of this Agreement. This final invoice shall be reviewed and paid in the same manner as set forth in Section 4 of this Agreement.

SECTION 21. DEFAULT.

In the event that Consultant is in default under the terms of this Agreement, the City shall not have any obligation or duty to continue compensating Consultant for any work performed after the date of default. Instead, the City may give notice to Consultant of the default and the reasons for the default. The notice shall include the timeframe in which Consultant may cure the default. This timeframe is presumptively thirty (30) days, but may be extended, though not reduced, if circumstances warrant. During the period of time that Consultant is in default, the City shall hold all invoices and shall, when the default is cured, proceed with payment on the invoices. In the alternative, the City may, in its sole discretion, elect to pay some or all of the outstanding invoices during the period of default. If Consultant does not cure the default, the City may take necessary steps to terminate this Agreement under Section 20. Any failure on the part of the City to give notice of the Consultant's default shall not be deemed to result in a waiver of the City's legal rights or any rights arising out of any provision of this Agreement.

SECTION 22. EXCUSABLE DELAYS.

Consultant shall not be liable for damages, including liquidated damages, if any, caused by delay in performance or failure to perform due to causes beyond the control of Consultant. Such causes include, but are not limited to, acts of God, acts of the public enemy, acts of federal, state or local governments, acts of City, court orders, fires, floods, epidemics, strikes, embargoes, and unusually severe weather. The term and price of this Agreement shall be equitably adjusted for any delays due to such causes.

SECTION 23. COOPERATION BY CITY.

All public information, data, reports, records, and maps as are existing and available to City as public records, and which are necessary for carrying out the work as outlined in the Exhibit "A" "Scope of Services," shall be furnished to Consultant in every reasonable way to facilitate, without undue delay, the work to be performed under this Agreement.

SECTION 24. NOTICES.

All notices required or permitted to be given under this Agreement shall be in writing and shall be personally delivered, or sent by telecopier or certified mail, postage prepaid and return receipt requested, addressed as follows:

To City: City of Hemet
 Attn: City Manager
 445 E. Florida Avenue
 Hemet, CA 92543

To Consultant: Nestor Traffic Systems
42 Oriental Street
Providence, RI 02908
Attn: General Counsel

Notice shall be deemed effective on the date personally delivered or transmitted by facsimile or, if mailed, three (3) days after deposit of the same in the custody of the United States Postal Service.

SECTION 25. AUTHORITY TO EXECUTE.

The person or persons executing this Agreement on behalf of Consultant represents and warrants that he/she/they has/have the authority to so execute this Agreement and to bind Consultant to the performance of its obligations hereunder.

SECTION 26. BINDING EFFECT.

This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the parties.

SECTION 27. MODIFICATION OF AGREEMENT.

No amendment to or modification of this Agreement shall be valid unless made in writing and approved by the Consultant and by the City Council. The parties agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void.

SECTION 28. WAIVER.

Waiver by any party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any party of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision nor a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by City of any work or services by Consultant shall not constitute a waiver of any of the provisions of this Agreement.

SECTION 29. LAW TO GOVERN; VENUE.

This Agreement shall be interpreted, construed and governed according to the laws of the State of California. In the event of litigation between the parties, venue in state trial courts shall lie exclusively in the County of Riverside, California. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Central District of California, in Los Angeles.

SECTION 30. ATTORNEYS FEES, COSTS AND EXPENSES.

In the event litigation or other proceeding is required to enforce or interpret any provision of this Agreement, the prevailing party in such litigation or other proceeding shall be entitled to an award of reasonable attorney's fees, costs and expenses, in addition to any other relief to which it may be entitled.

SECTION 31. ENTIRE AGREEMENT.

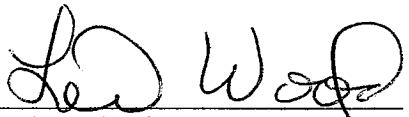
This Agreement, including the attached Exhibits "A" through "C", is the entire, complete, final and exclusive expression of the parties with respect to the matters addressed therein and supersedes all other Agreements or understandings, whether oral or written, or entered into between Consultant and City prior to the execution of this Agreement. No statements, representations or other Agreements, whether oral or written, made by any Party which are not embodied herein shall be valid and binding. No amendment to this Agreement shall be valid and binding unless in writing duly executed by the parties or their authorized representatives.

SECTION 32. SEVERABILITY.


If any term, condition or covenant of this Agreement is declared or determined by any court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement shall not be affected thereby and the Agreement shall be read and construed without the invalid, void or unenforceable provision(s).

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

CITY OF HEMET

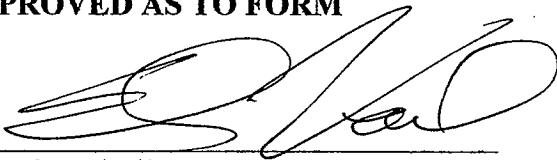
By: 
Len Wood, City Manager

ATTEST:



~~Stephen Clayton~~ Sarah McComas
City Clerk


Deputy

APPROVED AS TO FORM

By: 
Eric S. Vail
City Attorney

NESTOR TRAFFIC SYSTEMS, INC.

By: 
Name: Brian R. Haskell
Title: V.P. and General Counsel

By: 
Name: Todd Eikinas
Title: V.P. and Chief Operating Officer

NOTE: CONSULTANT'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO DEVELOPER'S BUSINESS ENTITY.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF RHODE ISLAND

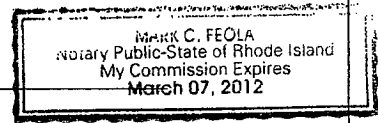
COUNTY OF PROVIDENCE

On May 7th, 2008 before me, Mark Feola, personally appeared Todd Eikinas,

X personally known to me - OR - proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Mark C Feola
(SIGNATURE OF NOTARY)



OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form

CAPACITY CLAIMED BY SIGNER	DESCRIPTION OF ATTACHED DOCUMENT
<input type="checkbox"/> INDIVIDUAL	
X CORPORATE OFFICER <u>Vice President and COO</u> TITLE(S)	<u>CONSULTANT SERVICES AGREEMENT</u> TITLE OR TYPE OF DOCUMENT
<input type="checkbox"/> PARTNER(S) <input type="checkbox"/> LIMITED <input type="checkbox"/> GENERAL	<u>10 Pgs. (Inc. Signature Page + 2 Appendices</u> NUMBER OF PAGES
<input type="checkbox"/> ATTORNEY-IN-FACT	
<input type="checkbox"/> TRUSTEE(S)	
<input type="checkbox"/> GUARDIAN/CONSERVATOR	<u>May 7, 2008</u> DATE OF DOCUMENT
<input type="checkbox"/> OTHER _____	

SIGNER IS REPRESENTING:
(NAME OF PERSON(S) OR ENTITY(IES))
Nestor Traffic Systems, Inc.

Brian R. Haskell
SIGNER(S) OTHER THAN NAMED ABOVE

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF RHODE ISLAND

COUNTY OF PROVIDENCE

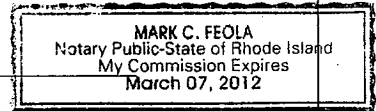
On May 7th, 2008 before me, Mark Feola, personally appeared Brian R. Haskell,

personally known to me - OR - proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Mark C Feola

(SIGNATURE OF NOTARY)



OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form

CAPACITY CLAIMED BY SIGNER	DESCRIPTION OF ATTACHED DOCUMENT
<input type="checkbox"/> INDIVIDUAL <input checked="" type="checkbox"/> CORPORATE OFFICER <u>Vice President and General Counsel</u> TITLE(S)	<u>CONSULTANT SERVICES AGREEMENT</u> TITLE OR TYPE OF DOCUMENT
<input type="checkbox"/> PARTNER(S) <input type="checkbox"/> LIMITED <input type="checkbox"/> GENERAL	<u>10 Pgs. (Inc. Signature Page + 2 Appendices)</u> NUMBER OF PAGES
<input type="checkbox"/> ATTORNEY-IN-FACT <input type="checkbox"/> TRUSTEE(S) <input type="checkbox"/> GUARDIAN/CONSERVATOR <input type="checkbox"/> OTHER _____	<u>May 7, 2008</u> DATE OF DOCUMENT

SIGNER IS REPRESENTING:
 (NAME OF PERSON(S) OR ENTITY(IES))
Nestor Traffic Systems, Inc.

Todd Eikinas
 SIGNER(S) OTHER THAN NAMED ABOVE

EXHIBIT "A"
SCOPE OF SERVICES

Consultant shall perform or cause to be performed VIP studies at each of the Identified Approaches within 60 days after the date of this Agreement. Each VIP study comprises approximately 16 hours of video monitoring and recording, approximately 14 hours of video review and production of a complete report and recommendation for each Identified Approach.

Identified Approaches

X = monitored approach

<i>Intersection</i>	<i>Approach Direction</i>
Florida (Rt 74) & Buena Vista	<input type="checkbox"/> Northbound
	<input type="checkbox"/> Southbound
	<input checked="" type="checkbox"/> Eastbound
	<input checked="" type="checkbox"/> Westbound
State & Stetson	<input checked="" type="checkbox"/> Northbound
	<input checked="" type="checkbox"/> Southbound
	<input checked="" type="checkbox"/> Eastbound
	<input checked="" type="checkbox"/> Westbound
Sanderson & Menlo	<input type="checkbox"/> Northbound
	<input type="checkbox"/> Southbound
	<input checked="" type="checkbox"/> Eastbound
	<input checked="" type="checkbox"/> Westbound
Sanderson & Florida (Rt 74)	<input checked="" type="checkbox"/> Northbound
	<input checked="" type="checkbox"/> Southbound
	<input checked="" type="checkbox"/> Eastbound
	<input checked="" type="checkbox"/> Westbound
Sanderson & Stetson	<input checked="" type="checkbox"/> Northbound
	<input checked="" type="checkbox"/> Southbound
	<input checked="" type="checkbox"/> Eastbound
	<input checked="" type="checkbox"/> Westbound
Stetson & Buena Vista	<input type="checkbox"/> Northbound
	<input type="checkbox"/> Southbound
	<input checked="" type="checkbox"/> Eastbound
	<input checked="" type="checkbox"/> Westbound

	<input type="checkbox"/> Northbound <input type="checkbox"/> Southbound <input type="checkbox"/> Eastbound <input type="checkbox"/> Westbound
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The Scope of Services, including services, work products, and personnel, are subject to change by mutual Agreement. In the absence of mutual Agreement regarding the need to change any aspects of performance, Consultant shall comply with the Scope of Services as indicated above.

EXHIBIT "B"
COMPENSATION

1. **Costs.** Consultant shall perform or cause to be performed the services set forth in Exhibit "A" within 60 days after the date of this Agreement. After completion of the services, Consultant will submit to the City a statement of the cost together with its report and recommendation for each approach. The cost for the services will be determined as follows:
 - Site Recording Fee\$1,000 per approach (i.e. *not* per intersection)
 - Video Review and Report Preparation \$25 per hour
2. **Responsibility for Costs.** The cost of the services shall be borne solely by Consultant *unless*, (a) the City enters into a contract for Automated Enforcement Systems with any person or entity other than Consultant within 12 months after the completion of the services or (b) the City issues a request for proposals for Automated Enforcement Systems ("RFP") within 12 months after the completion of the services, Consultant timely responds to such RFP and Consultant is not the successful bidder with respect to such, in either of which cases, the City shall be responsible for and agrees to pay the costs of providing the services in accordance with Paragraph 3. Under no circumstances shall Consultant make reference to, or incorporate into its response to any RFP, the existence or cost of any of the Services provided hereunder.
3. **Payment for Services** If the City is required by operation of Paragraph 2 to pay the costs of providing the services, the City shall pay Consultant the entire amount of the statement of costs within 30 days after the date of the event which triggers the City's obligation to pay. Except as specifically set forth in Paragraph 2, the City shall have no obligation to pay to Consultant the costs of the services.

EXHIBIT "C"
INSURANCE

A. Insurance Requirements. Consultant shall provide and maintain insurance, acceptable to the City Manager or City Counsel, in full force and effect throughout the term of this Agreement, against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by Consultant, its agents, representatives or employees. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII. Consultant shall provide the following scope and limits of insurance:

1. Minimum Scope of Insurance. Coverage shall be at least as broad as:

(1) Insurance Services Office form Commercial General Liability coverage (Occurrence Form CG 0001).

(2) Insurance Services Office form number CA 0001 (Ed. 1/87) covering Automobile Liability, including code 1 "any auto" and endorsement CA 0025, or equivalent forms subject to the written approval of the City.

(3) Workers' Compensation insurance as required by the Labor Code of State of California and Employer's Liability insurance and covering all persons providing services on behalf of the Consultant and all risks to such persons under this Agreement.

(4) Professional liability insurance appropriate to the Consultant's profession. This coverage may be written on a "claims made" basis, and must include coverage for contractual liability. The professional liability insurance required by this Agreement must be endorsed to be applicable to claims based upon, arising out of or related to services performed under this Agreement. The insurance must be maintained for at least 3 consecutive years following the completion of Consultant's services or the termination of this Agreement. During this additional 3-year period, Consultant shall annually and upon request of the City submit written evidence of this continuous coverage.

2. Minimum Limits of Insurance. Consultant shall maintain limits of insurance no less than:

(1) General Liability: \$1,000,000 general aggregate for bodily injury, personal injury and property damage.

(2) Automobile Liability: \$1,000,000 per accident for bodily injury and property damage. A combined single limit policy with aggregate limits in an amount of not less than \$2,000,000 shall be considered equivalent to the said required minimum limits set forth above.

(3) Workers' Compensation and Employer's Liability: Workers' Compensation as required by the Labor Code of the State of California and Employers Liability limits of not less than \$1,000,000 per accident.

(4) Professional Liability: \$1,000,000 per occurrence.

B. Other Provisions. Insurance policies required by this Agreement shall contain the following provisions:

1. All Policies. Each insurance policy required by this Agreement shall be endorsed and state the coverage shall not be suspended, voided, cancelled by the insurer or either party to this Agreement, reduced in coverage or in limits except after 30 days' prior written notice by Certified mail, return receipt requested, has been given to City.

2. General Liability and Automobile Liability Coverages.

(1) City, and its respective elected and appointed officers, officials, and employees and volunteers are to be covered as additional insureds as respects: liability arising out of activities Consultant performs; products and completed operations of Consultant; premises owned, occupied or used by Consultant ; or automobiles owned, leased, hired or borrowed by Consultant. The coverage shall contain no special limitations on the scope of protection afforded to City, and their respective elected and appointed officers, officials, or employees.

(2) Consultant's insurance coverage shall be primary insurance with respect to City, and its respective elected and appointed, its officers, officials, employees and volunteers. Any insurance or self insurance maintained by City, and its respective elected and appointed officers, officials, employees or volunteers, shall apply in excess of, and not contribute with, Consultant's insurance.

(3) Consultant'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.

(4) Any failure to comply with the reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to City, and its respective elected and appointed officers, officials, employees or volunteers.

3. Workers' Compensation and Employer's Liability Coverage. Unless the City Manager otherwise agrees in writing, the insurer shall agree to waive all rights of subrogation against City, and its respective elected and appointed officers, officials, employees and agents for losses arising from work performed by Consultant.

C. Other Requirements. Consultant agrees to deposit with City, at or before the effective date of this contract, certificates of insurance necessary to satisfy City that the insurance provisions of this contract have been complied with. The City Attorney may require that Consultant furnish City with copies of original endorsements effecting coverage required by this Section. The certificates and endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. City reserves the right to inspect complete, certified copies of all required insurance policies, at any time.

1. Consultant shall furnish certificates and endorsements from each subcontractor identical to those Consultant provides.

2. Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City or its respective elected or appointed officers, officials, employees and volunteers or the Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration, defense expenses and claims.

3. The procuring of such required policy or policies of insurance shall not be construed to limit Consultant's liability hereunder nor to fulfill the indemnification provisions and requirements of this Agreement.