

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

This Third Addendum is made and entered into this ___ day of _____, 2008 ("Effective Date") by and between Nestor Traffic Systems, Inc., a Delaware corporation ("NTS") and the City of Costa Mesa, a municipal corporation ("City" or "Municipality").

WHEREAS, NTS and City entered into an agreement dated July 15, 2002 for traffic signal violations video-monitoring services, as amended on April 30, 2003, and July 31, 2003, (the "Agreement"); and

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

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

1. Section 2 of the Agreement is hereby amended to provide that the Installation Date shall be deemed to be December 1, 2003 (at installation of Anton and Bristol intersection cameras). For existing Installed Approaches, upon expiration of the Initial Term, December 1, 2008, the parties hereby agree to extend the term of the Agreement for three additional years, to and including December 1, 2011 on the terms of the Agreement as modified herein. From and after January 1, 2012, the term of the Agreement for the currently existing Installed Approaches shall be from month to month, subject to thirty (30) days' written notice of termination. The Initial Term of the Agreement, as amended, with respect to each of the new approaches provided for in this Addendum shall be five (5) years after the System becomes installed and operational at each such new approach.

2. Section 3.4 of this Agreement is hereby deleted and replaced by the following:

"3.4 Either Nestor or Municipality may terminate this Agreement, or provision of any Service or any part of the System, without liability, and with no termination or cancellation fee charge to Municipality, on thirty (30) days' advance notice, if either Nestor or Municipality reasonably concludes that potential or actual liability of Nestor or Municipality to third parties arising out of or in connection with the System makes the program impractical, uneconomical, or impossible to continue."

2. Section 4.1 of the Agreement is hereby deleted and replaced by the following:

"4.1 The Municipality shall pay Nestor a monthly fee (the "Monthly Per Approach Fee") for each Installed Approach per table below.

Approach Type	Existing Approaches
Primary Enforcement Camera	\$ 3,500
Primary & Secondary Enforcement Camera	\$ 4,800

Approach Type	New Approaches
Primary Enforcement Camera	\$ 4000
Primary & Secondary Enforcement Camera	\$ 5,300

A primary enforcement camera system is the first camera at an approach and can cover up to three lanes of traffic, depending on intersection configuration limitations and as determined by City. The camera may enforce straight, left and right traffic flow depending on the intersection. A secondary enforcement camera system is a second camera at an approach which may be used if configuration and volumes at an intersection require a second enforcement camera system to effectively enforce a specific traffic flow at an approach (such as a dedicated left or right turn or very large intersections).

The per approach fees set forth above shall take effect for all existing cameras/installed approaches, regardless of upgrade status, as of December 1, 2008. These fees shall be effective for all new installations upon commencement of full operations (i.e., following completion of warning period).

"Installed Approach" shall mean any enforced direction of travel on an individual access road or street to any intersection that is monitored by the System and through which the Municipality has commenced issuing citations, either through use of a primary enforcement camera or a secondary enforcement camera or both. If and to the extent that (1) an Installed Approach subject to a Monthly Per Approach or Camera Fee is not capable of detecting violations and/or issuing Transmitted Violations; or (2) Nestor is unable to print and/or mail Citations, in either case, for a period of more than one (1) consecutive day in any calendar month as a result of system malfunctions not caused by the Municipality or an event described in section 9.9 of the Agreement (collectively and each individually, an "Event"), Nestor shall allow a credit against the Monthly Per Approach Fee for that month equal to: the respective approach's, camera's or the System's (as applicable) Monthly Per Approach Fee multiplied by the total number of days the approach, camera or System, as the case may be, was incapable of detecting violations, issuing Transmitted Violations and/or printing and mailing Citations (as applicable) in the month as a result of the Event and divided by thirty (30) days.

If the City is unable to issue citations from an intersection as a result of legislative, judicial, or similar reasons, the City may request that the operation of the respective intersection be suspended. During the suspension period, the City shall have the option to either: (i) pay Nestor a monthly fee for each suspended approach of \$1,950.00, or (ii) suspend the Term as it relates to that suspended approach and add the number of months the approach is suspended to the end of the Initial Term for that approach. The City shall advise Nestor in writing of the option being selected on or prior to suspension

of operation at the respective approach. No fees shall be charged by NTS for the initial 30 day warning period, if used for a new approach, and this 30 day warning period shall not be considered part of the "Term" as it relates to the new approach.

This program will be operated as a safety program. In addition, most communities regularly look for ways to create efficiencies and control spending. For these reasons, NTS shall perform an initial annual financial review of the program, and every twelve months after the first annual review, and agrees to negotiate in good faith regarding its service fees (down or up, but not to exceed the service fees in Section 4.1) if it is determined that fees paid to NTS exceed net program revenues being realized. If requested by NTS, the Municipality agrees to provide alternate intersection approaches and, subject to mutual agreement, support the relocation of under performing approaches. If the parties are unable to agree on a renegotiated fee, the City shall have the right to terminate the agreement upon thirty (30) days' written notice with no termination or cancellation fee.

3. Section 4.3 of the Agreement is hereby deleted and replaced by the following:

“

4.3 Municipality acknowledges and agrees that:

- (i) In the event this Agreement is terminated by Nestor pursuant to Section 3.1, or the Municipality pursuant to Section 3.9 prior to the expiration of the Initial Term, the termination and cancellation fee shall be \$3,500.00 per installed approach multiplied by one half (1/2) the number of months in 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 whole number of months from the Installation Date to the date of termination.
- (ii) In the event this Agreement is terminated pursuant to section 3.7 or 3.8 prior to thirty six (36) months from the Installation Date, there shall be a termination and cancellation fee of \$3,500.00 per installed approach multiplied by one half (1/2) the number of months in the Remaining Term. In the event this Agreement is terminated pursuant to Section 3.7 or 3.8 subsequent to the expiration of the 36 month anniversary of the Installation Date, there shall be no termination or cancellation fee. “

4. Section 5.5 of the Agreement is hereby deleted and replaced by the following:

“5.5. (a) Except as otherwise required by law, during the term of this Agreement, the Municipality shall not modify the yellow or all red phases of a traffic signal over which it has control without advising Nestor in advance of such modification; provided, however, that in the event of an emergency, the Municipality may make such modifications, provided it provides notice to Nestor within forty-eight (48) hours after any such modification. In the event that CalTrans modifies the yellow or all red phases of any traffic signal over which it has primary control, the Municipality shall notify Nestor within forty-eight (48) hours of learning of such modification. In the event any such modification materially adversely affects any Installed Approach(es) as reasonably determined by Nestor and upon written notice from Nestor, then (i)

upon the Municipality's written direction, Nestor shall relocate the affected Installed Approaches to other intersections if the system still complies with the law as a whole, for which relocation the Parties shall share the costs equally, or if such written direction is not given within ninety (90) days after Municipality receives written notice from Nestor, (ii) this Agreement with respect to such Installed Approach(es) shall be deemed terminated without any termination or cancellation fee.

(b) If relocation of an Installed Approach is mandated by State law, Municipality has the option of either terminating the Agreement at no cost with respect to the affected Installed Approach, allowing Nestor to relocate the cameras to another location which meets the minimum criteria for installation of cameras as part of the system, within City's boundaries, at Nestor's sole expense (in which event, such installation shall be treated as a newly installed approach), or of relocating the system installed at that Installed Approach to another agreed upon location within the City's boundaries, for which the Parties shall share the cost of relocation equally (in which event, the date of installation at the original location shall be deemed to be the Installation Date for the relocated approach). All design work, permits and installation requirements for relocation shall be performed by Nestor or its subcontractors.

5. The City agrees to expand the current number of Installed Approaches to a minimum of twenty (20) approaches. The parties agree that there are currently fifteen (15) Installed Approaches, with a total of twelve (12) primary and three (3) secondary cameras. The City has been billed for thirteen (13) Installed Approaches. Future billings for the existing Installed Approaches shall be made in accordance with Section 4.1, as amended, as applied to the camera placement/location set out in Exhibit A (as modified herein). Seven (7) additional Installed Approaches/primary cameras will be added at four (4) new intersections. Additional billed approaches in excess of (twenty two) 22 may be added by mutual agreement. Installation of additional approaches shall not change the Installation Date provided for herein or extend the Initial Term of the Agreement as it relates to previously Installed Approaches. Existing approaches (except those at Newport Boulevard and 17th and Newport Boulevard and 19th) identified in Exhibit A (as modified herein) shall be upgraded to Nestor's digital system no later than November 1, 2008. The approaches located at Newport Boulevard and 17th and Newport Boulevard and 19th shall be upgraded within thirty (30) days of receiving CalTrans approval of the plans for such upgrades. Nestor shall submit upgrade plans to CalTrans for approval for these approaches no later than sixty (60) days after the effective date of this amendment. Upgrading the existing approaches shall not be considered to be a new installation date as to existing approaches/cameras. New approaches identified in Exhibit A (as modified herein) shall be installed on or before the dates to be mutually agreed upon.

6. The parties agree that City shall be entitled to a total discount of \$224,000.00 against fees to be paid pursuant to this amendment. The discount has been calculated to reflect the period from February 11, 2005 to June 8, 2005 when citations could not be issued at the approaches at Newport Boulevard and Seventeenth Street, Newport Boulevard and Nineteenth Street and a credit of \$21,000.00, reflecting the period from February 11, 2005 to March 14, 2005 when citations could not be issued at the approaches on Bristol and Anton. The total discount of \$245,000.00 shall be amortized and applied to City's monthly fees during the period

commencing on June 1, 2008 and ending on December 1, 2011, requiring a discount to the City in the amount of \$5,833.33 per month (42 payments) during this period.

7. Neither party shall assign its obligations under this Agreement to any other person or entity without the written consent of the other party.

8. Exhibit A to the Agreement shall be modified as follows:

Section 1.1 is hereby deleted and replaced with the following:

“1.1 The System. The System shall be comprised of equipment capable of monitoring the following traffic approaches at the following intersections:

<u>Intersections</u>	<u>Approach Enforced</u>	<u>Camera(s) (lanes)</u>
EXISTING INSTALLED APPROACHES:		
Harbor & Adams	Northbound	Primary (straight)
	Eastbound	Primary (straight)
	Eastbound	Secondary (left)
Bristol & Anton	Northbound	Primary (straight)
	Southbound	Primary (straight)
	Westbound	Primary (left)
Newport & 17 th	Northbound	Primary (straight)
	Southbound	Primary (straight)
	Westbound	Primary (straight)
	Eastbound	Primary (left)
	Eastbound	Secondary (straight)
	Southbound	Secondary (left)
Newport & 19 th	Northbound	Primary (straight)
	Southbound	Primary (straight)
	Eastbound	Primary (straight)
	Eastbound	Secondary (left)
	Southbound	Secondary (left)

NEW INSTALLED APPROACHES:

Harbor & Gisler	Northbound	Primary (straight/left)
	Southbound	Primary (straight/left)
Harbor & South Coast	Northbound	Primary (straight/left)
	Southbound	Primary (straight/left)
Harbor & Baker	Southbound	Primary (straight/left)
Victoria & Placentia	Northbound	Primary (straight/left)
	Westbound	Primary (straight/left)

Section 1.5.1 is hereby deleted and replaced with the following:

1.5.1 Nestor shall submit plans and specifications to the Municipality for review and approval of the general placement of poles and cabinets within City right-of-way, which review and approval shall not be unreasonably withheld, delayed or conditioned. These plans and specifications shall be signed and stamped as approved by a professional engineer licensed to

practice in the State in which the Municipality is located. Nestor shall provide Municipality with at least three sets of drawings showing the Geometric layout and pole installation plans. Nestor shall also provide Municipality with at least one set of drawings of the wiring for the System Circuitry and shall also transmit said drawings to Municipality in AutoCAD format for City's records. The City review of plans and specifications excludes review or approval of the system's internal circuitry, or electronic / technical / operational configuration and camera/lighting assemblies, which are exclusively Nestor's responsibility.

Section 1.5.2 is hereby deleted and replaced with the following:

1.5.2 If commercially reasonable and if "Capacity" (as that term is defined below) exists, all wiring shall be internal to equipment (not exposed) and underground in existing conduits or, if no Capacity exists in existing conduits, in conduits to be furnished and installed by Nestor at its own expense. Use of existing City conduit shall be authorized solely at the determination of the City per specific installation. Should Nestor's use of City conduit capacity be required for a future City improvement, Nestor shall remove and separate System wiring upon City request at Nestor's sole expense.

Section 1.5.4 is hereby deleted and replaced with the following:

1.5.4 The system shall not be mounted on City traffic signal poles.

Section 1.5.5 is hereby deleted and replaced with the following:

1.5.5 The System poles and foundations shall conform to current CalTrans' standards. Nestor shall be responsible for all costs associated with installing/upgrading/replacing any poles and foundations necessary to install the System equipment to meet CalTrans' requirements.

Section 1.5.8 is hereby added:

1.5.8 In the event that any system equipment, foundations, poles and/or electrical connection is required to be relocated due to street widening, street reconstruction, or other modification to the streets or intersections where particular portions of the system are installed, the City or other public entity with ownership of the affected streets shall bear the cost of the street widening, street reconstruction or modification, but Nestor shall bear the cost of relocating its foundations, poles, electrical connection and system equipment which would be required, in the reasonable judgment of the City Engineer, to be relocated at the time of such street widening,

street reconstruction or modification. The parties shall coordinate their work to minimize the disruption in the use of the affected street and in the use of the system equipment. Any work in the public right of way owned or controlled by CalTrans shall be subject to any permit requirements of CalTrans. Any work in the public right of way owned or controlled by the City shall be subject to any permit requirements of the City, but the City shall waive any City fees which Nestor would otherwise be required to pay for such work

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

10. All other terms, conditions and provisions of the Agreement, as amended by the First and Second Addendums thereto, not in conflict with this Third Addendum shall remain in full force and effect.

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

NESTOR TRAFFIC SYSTEMS, INC.

By: Clarence D. Davis
Name: Clarence Davis
Title: Chief Executive Officer

CITY OF COSTA MESA

By: _____
Mayor

APPROVED AS TO CONTENT

By: _____
Project Manager

APPROVED AS TO FORM

By: _____
City Attorney