



INFORMATIONAL MEMORANDUM

TO: **Public Safety Committee**
FROM: **Bruce Linton, Chief of Police**
BY: **Bruce Linton, Chief of Police**
CC: **Mayor Ekberg**
DATE: **07/09/2020**
SUBJECT: **School Speed Zone Automated Safety Camera Contract**

ISSUE

A contract between the City of Tukwila and NovaGlobal, Inc. to install and assist the city in the administration and operation of systems to monitor and report school zone speed violations, in accordance with applicable laws and ordinances, is required to conduct school speed zone enforcement.

BACKGROUND

Ordinance No. 2612 codified in [Chapter 9.53 \(link\)](#) of The Tukwila Municipal Code authorized the use of automated traffic safety cameras in school speed zones pursuant to the authority granted to it under RCW 46.63.

The [Informational Memo dated 7/10/19 \(link\)](#) describes the School Speed Zone Program in great detail. Additional background about the City Council's decision-making process can be found in the [7/22/19 Committee of the Whole \(link\)](#) and [8/5/19 Regular Meeting \(link\)](#) minutes.

NovaGlobal was selected as the contract awardee after successfully demonstrating the requisite expertise in implementing and managing Automated Traffic Enforcement Programs during the Request for Proposal (RFP) process.

ANALYSIS

Using automated safety cameras will increase efficiencies in the areas of traffic enforcement, education and the overall traffic and pedestrian safety within our city. They will provide more efficient service with no immediate additional FTE's. Traffic Safety cameras are non-discriminatory, and the Tukwila Municipal Court has indicated that it maintains the authority, will consider, and mitigate the financial impact of fines to our vulnerable community with alternative enforcement strategies.

NovaGlobal will collaborate with the police department to initiate pre-operational outreach prior to system implementation. The Tukwila Police Department reached out to the community over time and garnered the support leading up to the approval of [Ordinance 2612 \(link\)](#).

- Former Public Safety Committee
- Tukwila School Board
- Community Oriented Police Citizens Advisory Board
- Tukwila International Boulevard Action Committee
- Equity and Social Justice Committee
- Tukwila Reporter Newspaper
- Hazelnut Publication
- City of Tukwila Website linked to Police Department Website

FINANCIAL IMPACT

Consistent with normal Red-Light and School Zone Camera Vendor business models, there are no upfront costs. The equipment is leased from the vendor, and the program is self-funding (two citations per day per camera will mitigate the lease costs). Pricing for NG Safety systems relating to fixed speed photo enforcement shall be as follows:

- \$3,999.00 per system per month, with less than 400 citations issued by the City per month.
- \$4,900.00 per system per month, with between 400 and 800 citations issued by the City per month.
- \$5,700.00 per system per month, with more than 800 citations issued by the City per month.

This is a 3-year contract, and the per-year contractual cost would range from approximately \$96,000 to 137,000 based on the pricing range associated with the volume levels indicated above.

RECOMMENDATION

Forward to the Council for approval of the 3-year Pilot Program proposal for the School Speed Zone Cameras to the August 10, 2020 Committee of The Whole Meeting and subsequent August 17, 2020 Regular Meeting.

ATTACHMENTS

Services Agreement Between the City of Tukwila and NovaGlobal, Inc.

**SERVICES AGREEMENT
BETWEEN THE CITY OF TUKWILA, WASHINGTON
AND NOVOAGLOBAL, INC. FOR
TRAFFIC INFRACTION DETECTION & ENFORCEMENT PROGRAM**

This **AGREEMENT** (the “**Agreement**”) made this ____ day of March, 2020, by and between NovoaGlobal, Inc. (formerly known as Sensys America, Inc.), a Delaware corporation having a place of business at 8018 Sunport Drive, Suite 203, Orlando, Florida 32809 (“**NG**”), and the City of Tukwila, a municipal corporation of the State of Washington, having an address at 6200 Southcenter Boulevard, Tukwila, WA 98188 (the “**City**” and together with NG, the “**Parties**” and each singularly a “**Party**”).

WITNESSETH:

WHEREAS, pursuant to the Municipal Code of the City of Tukwila, Washington, Title 9: Automated Traffic Safety Cameras in School Zones, Chapter 9.53, §9.53 as amended, the City may implement an automated photo enforcement program;

WHEREAS, NG has the knowledge, possession, and ownership of certain equipment, licenses and processes, referred to collectively as the NG Safety System (the “**System(s)**”);

WHEREAS, the City desires to use the Systems to monitor and enforce school zone speed violations in accordance with applicable laws and ordinances;

WHEREAS, the Parties desire to enter into this Agreement, whereby NG will (i) install and assist the City in the administration and operation of the Systems, as described in more detail on *Exhibit A* to this Agreement at the locations within the City’s jurisdiction, and provide to the City 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 City.

NOW, **THEREFORE**, in consideration of the mutual terms, covenants, and conditions contained herein, and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

1. **RECITALS AND EXHIBITS.** The foregoing recitals are true and correct and are hereby incorporated in *haec verba*. All exhibits attached to this Agreement contain additional terms of this Agreement and are hereby incorporated in *haec verba*.
2. **SERVICES**
 - 2.1. NG agrees to install and provide to the City for the Term, the Systems (the “**Equipment**”) and software (the “**Software**”) to be supplied and installed by NG in accordance with *Exhibit A* (including the provision of all construction drawings, permit applications and other documents required by applicable law for the

installation and operation of the System(s)). In addition, if and to the extent set forth in *Exhibits A, B, C, and D*, NG shall also supply to the City:

- 2.1.1. Citation preparation processes that assist the City in complying with current applicable City, State, and Federal law;
 - 2.1.2. Training of personnel designated by the City involved with the operation of the Systems and/or the enforcement and disposition of citations;
 - 2.1.3. Expert witness testimony regarding the operation and functionality of the System; and
 - 2.1.4. Other support services for the System as set forth in *Exhibit A*.
- 2.2. If and to the extent the City has or obtains during the Term custody, possession or control over any of the Equipment or Software, the City agrees:
- 2.2.1. Such Software, if manufactured or licensed by NG, is supplied under the license set forth in *Exhibit B* (the “**License**”) to which the City agrees;
 - 2.2.2. Such Software, if manufactured by third parties, is supplied under third-party licenses accompanying the Software, which licenses the City acknowledges receiving and to which it hereby agrees; and
 - 2.2.3. Such Equipment is supplied under the lease terms set forth in *Exhibit C* (the “**Lease**”) to which the City hereby agrees.
- 2.3. The City understands and agrees that (i) NG may, subject to the prior approval of the City, which approval shall not be unreasonably delayed, conditioned or withheld, subcontract with third parties for the provision or installation of part or parts of the Systems or Services and (ii) installation of the Systems requires the City’s cooperation and compliance with NG’ reasonable instructions (including but not limited to City’s provision of the personnel, equipment, engineering plans, and other resources as described in *Exhibit A* or as otherwise reasonably requested by NG) and reasonable access by NG (or such third parties) to City premises and systems and (iii) the City will provide all of the foregoing in Section 2.3(ii) to NG.
- 2.4. The City understands and agrees that the Systems will be owned by NG (or its designees). The City shall use its best efforts to assist NG to identify any third-party who is responsible for damage to the Systems or any part thereof.
- 2.5. NG shall coordinate its work with the City’s Police and Public Works Departments.

3. TERM

- 3.1. The effective date of this Agreement shall be the date first written above (the “**Effective Date**”). The initial term (the “**Initial Term**”) of this Agreement, the

License and the Lease shall begin upon the Effective Date, following full execution of the Agreement by the Parties, and shall continue until the third (3rd) anniversary of the Installation Date (the “**Installation Date**”).

- 3.2. The City shall have the option to extend this Agreement, the License and the Lease for two (2) additional three (3) year terms (each, a “**Renewal Term**”), on the same terms and conditions specified herein except that the amounts due pursuant to Section 5 hereof shall be adjusted in accordance with the change in the Consumer Price Index – All Urban Consumers – U.S. City Average (“**CPI**”) by multiplying said amounts by the percentage change in the CPI from the beginning of the immediately preceding term to the end of the immediately preceding Term. (Each Renewal Term, if any, together with the Initial Term, the “**Term**”). The “**Installation Date**” shall be the latest date that a System becomes installed and operational at any of the originally selected locations described in Sections 1.A or 1.B of *Exhibit A*.

4. **TERMINATION AND EXPIRATION**

- 4.1. This Agreement may be terminated by mutual written consent of the Parties.
- 4.2. This Agreement may be terminated for cause, by either Party if the other Party fails in any material way to perform its obligations under the Agreement or otherwise defaults in the performance of any obligation under this Agreement and such failure or default continues for more than forty-five (45) days after written notice thereof to the defaulting Party.
- 4.3. NG may terminate this Agreement, without liability, on thirty (30) days advance written notice if NG concludes in its reasonable discretion that (i) potential or actual liability of NG to third parties (other than persons claiming to own Intellectual Property required for the operation of the System) arising out of or in connection with the System makes the program impractical, uneconomical or impossible to continue.
- 4.4. The City may terminate this Agreement on thirty (30) days advance written notice if the City concludes in its reasonable discretion that (i) potential or actual liability of the City to third parties arising out of or in connection with the System makes the program impractical, uneconomical, legally contested or impossible to continue; and/or (ii) the Systems cannot be installed.
- 4.5. Upon termination or expiration of this Agreement, either for default or because it has reached the end of its term, the Parties recognize that the City will have to process violations in the “pipeline,” and that NG accordingly must assist the City in this accord. Accordingly, the Parties shall take the following actions during the

wind-down period, and shall have the following obligations, which obligations shall survive termination or expiration of the Agreement:

4.5.1. The City shall cease using the Software and Equipment in its possession, custody or control and shall (a) immediately allow NG a reasonable opportunity to remove such Equipment not to exceed sixty (60) days and (b) immediately deliver to NG or irretrievably destroy, or cause to be so delivered or destroyed, any and all copies of such Software in whatever form and any written or other materials relating to such Software in the City's possession, custody or control and within sixty (60) days deliver to NG a certification thereof.

4.5.2. Unless directed by the City not to do so, NG shall continue to process all images taken by the City before termination and provide all services associated with processing in accordance with this Agreement, and shall be entitled to reasonable fees specified in the Agreement as if the Agreement were still in effect.

4.6. Notwithstanding anything to the contrary contained herein, or in the License or the Lease, but except as provided in Section 21, the License and the Lease shall terminate upon the termination or expiration of this Agreement.

5. FEES AND PAYMENT

The City agrees to pay NG a monthly fee as follows (the "**Monthly Fees**"):

5.1. **Monthly Fees** (pro-rated for any partial month) as described in *Exhibit D* (Compensation & Pricing) in arrears with respect to each approach at which a System has been installed. Such payment shall commence on the first business day of the month following Commencement of Operations of each System and shall continue on the first business day of each month for the Term or until this Agreement is sooner terminated or such payment is modified in accordance with Section 3.2. For purposes of this Agreement, "**Commencement of Operations**" shall mean the first full day that the System captures events for processing and issuance of notices of violation.

5.2. The City, being a Municipal Corporation, shall pay sales tax in accordance with WAC 458-20-189. Accordingly, NG shall add sales tax to the invoices provided to the City in compliance with Washington State Law.

5.3. In the event that the United States Postal Service increases applicable First Class Mail and/or Certified Mail postage, NG may invoice the City for the increased postage actually paid by NG in connection with this Agreement. For example, if

First Class Mail postage were increased by \$0.02, and NG mailed 1,000 notices, NG would invoice the City \$20.00.

- 5.4. Payment of all fees and other charges owed pursuant to this Agreement is due as set forth above, and, to the extent invoice is required, within forty-five (45) days after receipt of the invoice. Invoices will be sent to the City at:

SafetyCams@TukwilaWa.gov

- 5.5. Notwithstanding anything in this Agreement to the contrary, if amounts due to NG pursuant to Section 5.1 in any month during the Term plus any amounts due to NG pursuant to this Section 5.5 (“**Monthly Photo Enforcement Fees**”) exceed the revenue generated by operation of the Systems and actually received by the City during that same month (“**Monthly Photo Enforcement Revenue**”) then the City shall pay to NG for such month only the amount of Monthly Photo Enforcement Revenue. In such case, the difference between Monthly Photo Enforcement Fees and Monthly Photo Enforcement Revenue (a “**Payment Shortfall**”) shall be accumulated and added to the Monthly Photo Enforcement Fees for the following month. Payment Shortfalls, if any, shall accumulate from month-to-month until paid in full, provided that under no circumstances shall the City ever be required to make a payment of Monthly Photo Enforcement Fees to NG except from Monthly Photo Enforcement Revenue. At the final expiration of this Agreement (last day of validity of the agreement including any extensions) any accumulated Payment Shortfalls shall be forfeited.

6. RESPONSIBILITIES OF THE CITY

- 6.1. The City shall provide NG with any “as built” drawings in electronic format that are available at no cost to the City and shall consider for approval NG’s engineering drawings.
- 6.2. The City shall not levy any fees. However, if municipal ordinance requires the assessment of fees by the City, said assessment shall be limited to permit fees as required by the City’s Municipal code. The City does not control fees for Public Utilities or electrical permits for service. Levy of those fees for permits regarding electrical service are outside the scope of this contract.
- 6.3. The City shall diligently prosecute citations in court at its own expense. NG shall, at its own expense, participate in any proceeding challenging the use of the System, the validity of the System’s results, and/or use of the U.S. Mail to deliver a citation.

- 6.4. The City will cooperate with NG in obtaining electrical connections at the roadside and NG shall pay all costs associated with such connection and shall pay for all power required by the System.
- 6.5. To allow for proper operation of the System, when known to the City, the City shall provide NG with advance written notice of any modifications proposed to roadways after installation of a System. In the event any such roadway modification requires a material change to the System, the City shall pay the costs reasonably incurred by NG to adapt the affected video monitoring system(s) or fixed speed enforcement unit(s) to make such video monitoring system(s) or fixed speed enforcement unit(s) compatible therewith. Notwithstanding the above, NG makes no guarantee that it will be able to make any such adaptation. In the event that NG is unable to adapt the affected System, then both parties shall be relieved of any further obligations under this Agreement with respect only to the affected System.
- 6.6. During the Term, except as expressly permitted by this Agreement the City shall not use the System, or allow the System's use by a third party, without the prior written permission of NG.

7. LIMITED WARRANTY AND LIMITATION ON DAMAGES

- 7.1. NG warrants that the System's functionality will conform in all material respects to the description of the System set forth on *Exhibit A*.
- 7.2. EXCEPT AS SPECIFICALLY PROVIDED HEREIN, NG HEREBY DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THE SERVICES AND SYSTEM, INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, NON-INTERFERENCE WITH ENJOYMENT, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE AND ALL WARRANTIES IMPLIED FROM ANY COURSE OF DEALING OR USAGE OF TRADE. THE CITY ACKNOWLEDGES THAT EXCEPT AS EXPRESSLY PROVIDED HEREIN NO OTHER WARRANTIES HAVE BEEN MADE TO MUNICIPALITY BY OR ON BEHALF OF NG OR OTHERWISE FORM THE BASIS FOR THE BARGAIN BETWEEN THE PARTIES.
- 7.3. The City acknowledges and agrees that:
 - 7.3.1. The Systems may not detect every speeding violation;
 - 7.3.2. Since the System may flag as a violation conduct that is in fact not a violation, the output of the System will require review, analysis and

approval by personnel appropriately qualified and authorized by the City under applicable law prior to the issuance of any citation;

- 7.3.3. The System has no control over, and relies on the proper functioning of equipment provided by entities other than NG;
- 7.3.4. The proper functioning of the System requires the City's full and complete compliance with the Systems' operating instructions, which it hereby agrees to do; and
- 7.3.5. NG shall not be responsible for the configuration and/or operation of any intersection traffic light systems and NG shall have no liability or obligations with respect thereto.

8. INDEMNIFICATION AND INSURANCE

- 8.1. NG shall at all times comply with all federal, state and local laws, ordinances and regulations and shall comply with the maintenance procedures and manufacturer's recommendations for operation of the Systems which affect this Agreement and shall defend, indemnify and hold harmless the City against any claims, injuries, damages, losses, or suits including attorney fees, arising from NG's violation of any such laws, ordinances and regulations or any claims arising from NG's performance of this Agreement, including as a result of the negligence, recklessness, or willful misconduct of NG, its officers and directors, agents, attorneys, and employees, but excluding any employees or agents of City.
- 8.2. NG agrees to indemnify, defend, and hold harmless the City from any and all claims, damages, injuries, losses, or suits including attorney fees, by a third party arising from either (a) a finding that the System infringes any validly issued United States patent or (b) NG's willful misconduct, recklessness, or negligence, provided that such claim of damages, except for injuries and damages caused by the sole negligence of the City, which is not attributable to (i) any act or omission set forth in Section 8.3 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 NG is obligated to indemnify, the use of the System by the City is prevented, in whole or in part, by an injunction, NG's sole obligation to the City as a result of such injunction shall be, at NG's option, either to (i) replace such part as has been enjoined, or (ii) procure a license for NG or the City to use same, or (iii) remove same and terminate this Agreement at no additional cost to the City.
- 8.3. Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily

injury to persons or damages to property caused by or resulting from the concurrent negligence of the NG and the City, its officers, officials, employees, and volunteers, the NG's liability hereunder shall be only to the extent of the NG's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the NG's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

- 8.4.** Notwithstanding anything in this Agreement to the contrary, NG assumes no obligation or liability for any claim of damages (including the payment of reasonable attorneys' fees) by a third party arising from or related to (i) any modification of the System made by the City, (ii) the sole negligence or willful misconduct of the City, (iii) the failure to function properly of any hardware, software or equipment of any kind used by, in or on behalf of the City (other than that supplied by NG), or (iv) the review and analysis of the System data output by the City personnel for citation preparation.
- 8.5.** The rights of the City to seek indemnification under this Section 8 shall be conditioned upon (i) the City notifying NG promptly upon receipt of the claim or action for which indemnification is sought and (ii) the City's full cooperation with NG in the settlement or defense of such claim or action at no cost to the City. The City agrees not to charge NG for the time of the City's personnel engaged in such cooperation. Such cooperation shall include, but not be limited to, the City providing access for, and permission to, NG for the purpose of the replacement of such part or parts of Systems as NG may deem necessary or desirable. The City may participate in the defense of any indemnified matter through counsel of its own choice and at its own expense provided that NG shall remain in, and responsible for, control of the matter. This Section 8 states the entire liability and obligation and the exclusive remedy of the City 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.
- 8.6.** NG shall maintain the following minimum scope and limits of insurance:
 - 8.6.1.** Comprehensive general liability insurance with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate. Commercial General Liability insurance shall be at least as broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop-gap, products-completed operations, independent contractors, personal injury and advertising injury, and liability assumed under an insured contract. The City shall be named as an additional insured under NG'S

Commercial General Liability insurance policy with respect to the work performed for the City using an additional insured endorsement at least as broad as ISO CG 20 26. Workers Compensation coverage as required by the Industrial Insurance laws of the State of Washington; and

- 8.6.2. Comprehensive Automobile Liability Insurance for all owned, non-owned and hired automobiles and other vehicles used by NG with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident. Automobile Liability insurance shall cover all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.
- 8.6.3. Other Insurance Provision. The Consultant's Automobile Liability and Commercial General Liability insurance policies are to contain, or be endorsed to contain that they shall be primary insurance with respect to the City. Any Insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Consultant's insurance and shall not be contributed or combined with it.
- 8.6.4. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.
- 8.6.5. Verification of Coverage. Consultant shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Contractor before commencement of the work. Upon request by the City, the Consultant shall furnish certified copies of all required insurance policies, including endorsements, required in this Agreement and evidence of all subcontractors' coverage.
- 8.6.6. Notice of Cancellation. The Consultant shall provide the City with written notice of any policy cancellation, within two business days of their receipt of such notice.
- 8.6.7. Failure to Maintain Insurance. Failure on the part of the Consultant to maintain the insurance as required shall constitute a material breach of contract, upon which the City may, after giving five business days notice to the Consultant to correct the breach, immediately terminate the contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid

to the City on demand, or at the sole discretion of the City, offset against funds due the Consultant from the City.

8.7. The City shall be named as additional insured on the comprehensive general liability policies provided by NG under this Agreement. NG shall require any subcontractors doing work under this Agreement to provide and maintain the same insurance, which insurance shall also name the City and its officers, employees, and authorized volunteers as additional insured.

8.8. Certificates showing NG is carrying the above described insurance, and evidencing the additional insured status specified above, shall be furnished to the City within thirty (30) calendar days after the date on which this Agreement is made. Such certificates shall show that the City shall be notified of all cancellations of such insurance policies. NG shall forthwith obtain substitute insurance in the event of a cancellation.

8.9. 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 Washington and shall name as additional insured the City. NG will furnish the City with Certificates of Insurance and applicable endorsements for all such policies promptly upon receipt of them. NG may effect for its own account insurance not required under this Agreement.

9. CHANGE ORDERS OR ADDITIONAL SERVICES. Changes to Services and additional Systems may be added to this Agreement by mutual consent of the Parties in writing as an addendum to this Agreement. The City and NG agree that should legislation or local ordinance be enacted to enable new photo enforcement solutions within the City's jurisdiction, the City shall have the option to negotiate services and fees and issue a change order to cover such services.

9.1. The City will appoint a project manager, which shall be an administrative ranked City Police Officer who will have oversight of the installation and implementation of the NG systems. The project manager has the authority to make daily operational management decisions. Only the Mayor or his/her designee has the authority to authorize additional systems exceeding the original agreement, change orders, request additional services, and extensions.

10. CONFIDENTIAL AND PROPRIETARY INFORMATION; PUBLIC RECORDS LAW COMPLIANCE.

10.1. The Parties agree that they shall comply with the public records disclosure provisions of the Revised Code of Washington, Chapter 42.56, Public Records Act and RCW 46.63.170(1)(g).

10.2. NG agrees that:

- 10.2.1.** All information obtained by NG through operation of the Systems shall be made available to the City at any time during the Tukwila Municipal Court's normal business hours which are 08:30am to 5:00pm pacific time, excluding Proprietary Information not reasonably necessary for the prosecution of citations or fulfillment of the City's obligations under this Agreement.
- 10.2.2.** It shall not use any information acquired from the performance of the Services contemplated in this Agreement, including without limitation, information with respect to any violations, violators, information obtained from recorded images or information concerning the City's law enforcement activities for any purpose other than for the benefit of the City.
- 10.2.3.** No information given by NG to the City will be of a confidential nature, unless specifically designated in writing as "**Proprietary Information**" and expressly exempt from public records disclosures required by the Revised Code of Washington, Chapter 42.56, Public Records Act.
- 10.2.4.** As used in this Agreement, the term "Proprietary Information" shall mean all trade secrets or confidential or proprietary information designated as such by NG, whether letter or by the use of an appropriate proprietary stamp or legend, prior to or at the time any such trade secret or confidential or proprietary information is disclosed by NG to the City. In addition, the term "**Proprietary Information**" shall be deemed to include: (a) any notes, analyses, compilations, studies, interpretations, memoranda or other documents prepared by the Recipient which contain, reflect or are based upon, in whole or in part, any Proprietary Information furnished to the Recipient.
- 10.2.5.** The City shall use the Proprietary Information only for the purpose of fulfilling its duties hereunder (the "**Purpose**") and such Proprietary Information shall not be used for any other purpose without the prior written consent of NG. "Purpose" shall be deemed to not include any disclosure of the Proprietary Information to any person or entity. The City shall hold in confidence, and shall not disclose to any person or entity, any Proprietary Information nor exploit such Proprietary Information for its own benefit or the benefit of another without the prior written consent of NG.
- 10.2.6.** Notwithstanding anything contained in this Agreement to the contrary, this Agreement shall not prohibit the City from disclosing Proprietary Information to the extent required in order for the City to comply with

applicable laws and regulations, provided that the City provides prior written notice of such required disclosure to NG.

11. INDEPENDENT CONTRACTOR; NO AGENCY.

11.1. It is understood that NG is an independent contractor and not an agent or employee of the City for any purpose including, but not limited to, federal tax and other state and federal law purposes. Nothing in this Agreement shall be considered to create the relationship of employer and employee between the parties hereto. Neither Contractor nor any employee of Contractor shall be entitled to any benefits accorded City employees by virtue of the services provided under this Agreement. The City shall not be responsible for withholding or otherwise deducting federal income tax or social security or contributing to the State Industrial Insurance Program, or otherwise assuming the duties of an employer with respect to the Contractor, or any employee of the Contractor. NG specifically assumes responsibility for payment of all federal, state and local taxes imposed or required of NG under unemployment insurance, Social Security and income tax laws for the duration of this contract. NG shall be solely responsible for any worker's compensation insurance required by law and shall provide the City with proof of insurance upon demand. The parties agree that the City shall not:

- 11.1.1.** Pay dues, licenses or membership fees for NG;
- 11.1.2.** Require attendance by NG, except as otherwise specified herein;
- 11.1.3.** Control the method, manner or means of performing Services under this Agreement, except as otherwise specified herein; or
- 11.1.4.** Restrict or prevent NG from working for any other Party.

11.2. Neither Party has the right or the power to enter into any contract or commitment on behalf of the other Party, including entering into agreements with third parties, exercising incidents of ownership with respect to property owned by the Party or executing contracts binding upon the other Party.

12. NOTICES.

12.1. Any notices or demands which, under the terms of this Agreement or under any statute, must or may be given or made by NG or the City shall be in writing and shall be given or made by personal service, first class mail, FedEx, or by certified or registered mail to the Parties at the following addresses:

Notices to the City of Tukwila shall be sent to the following address:

City Clerk, City of Tukwila

6200 Southcenter Blvd

Tukwila, WA 98188

Notices to NG shall be sent to the following address:

NovoaGlobal, INC

8018 Sunport Drive Suite 203

Orlando, FL 32809

- 12.2.** 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 (3) 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 section 12.1, above, in each case to the President of NG or the Mayor of the City.
- 13. ASSIGNMENT.** Except as specifically provided in this Agreement, neither Party may assign, or delegate performance of its obligations under, this Agreement, without prior express written consent of the other Party, except that NG may assign or otherwise encumber this Agreement, the License and the Lease for the purpose of obtaining financing; provided, however, that this Agreement may be assigned to any Person that acquires all or substantially all of NG' assets in one transaction.
- 14. AMENDMENT AND MODIFICATION.** 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.
- 15. NON WAIVER.** 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.
- 16. FORCE MAJEURE.** 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 terrorism, acts of the Government (other than the City in the case of the City) in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, acts or omissions of (i) non-

subcontractor third-parties and (ii) third party equipment, telecommunications and software suppliers, and unusually severe weather. When any such circumstance(s) exist, NG 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 City), as well as among departments and affiliates of NG, without any liability to the City.

17. DISPUTE RESOLUTION AND REMEDIES.

17.1. All disputes arising out of or in connection with the Agreement shall be attempted to be settled through good-faith negotiation between the City's appointed Project Manager and the President of NG, followed, if necessary, within thirty (30) calendar days, by professionally-assisted mediation. Any mediator so designated must be acceptable to each party and must be a certified mediator in the State of Washington. The mediation will be conducted as specified by the mediator and agreed upon by the Parties. The Parties agree to discuss their differences in good faith and to attempt, with the assistance of the mediator, to reach an amicable resolution of the dispute. The mediation will be treated as a settlement discussion and therefore will be confidential. The mediator may not testify for either party in any later proceeding relating to the dispute. No recording or transcript shall be made of the mediation proceedings. Each party will bear its own costs in the mediation. The fees and expenses of the mediator will be shared equally by the Parties.

17.2. Failing resolution through negotiation or mediation, all actions, disputes, claims and controversies under common law, statutory law or in equity of any type or nature whatsoever, whether arising before or after the date of this Agreement, and whether directly or indirectly relating to: (a) this Agreement and/or any amendments and addenda hereto, or the breach, invalidity or termination hereof; (b) any previous or subsequent agreement between the parties; and/or (c) any other relationship, transaction or dealing between the parties (collectively the "**Disputes**"), will be subject to and resolved by binding arbitration pursuant to the Commercial Arbitration Rules of American Arbitration Association. Any award or order rendered by the arbitrator may be confirmed as a judgment or order in any state or federal court of competent jurisdiction within the federal judicial district which includes the residence of the Party against whom such award or order was entered. The prevailing Party in any arbitration shall be entitled to reasonable attorney fees and costs.

18. GOVERNING LAW; JURISDICTION; VENUE. The parties agree that this Agreement is consummated, entered into, and delivered in King County, Washington. Notwithstanding conflicts of laws provisions, this Agreement has been and is to be governed by, construed,

interpreted and enforced in accordance with the laws of the State of Washington. In the event that any litigation is commenced by either party to enforce this Agreement, the action will be filed and litigated, if necessary, solely and exclusively in a court of competent jurisdiction located in King County, Washington. The parties waive any and all rights to have this action brought in any place other than King County, Washington, under applicable venue laws. The Parties hereby irrevocably waive any and all rights to have this action brought in any place other those stated herein. The Parties hereby irrevocably waive any claim that any such action has been brought in an inconvenient forum.

19. ATTORNEY’S FEES AND COSTS. In the event arbitration is commenced to enforce this Agreement, costs of said suit including reasonable attorney’s fees in all proceedings, trials, investigations, appearances, appeals and in any bankruptcy proceeding or administrative proceeding shall be paid to the prevailing Party by the other Party.

20. DISCRIMINATION PROHIBITED. NG, with regard to the work performed by it under this Agreement, will not discriminate on the grounds of race, religion, creed, color, national origin, age, veteran status, sex, sexual orientation, gender identity, marital status, political affiliation, the presence of any disability, or any other protected class status under state or federal law, in the selection and retention of employees or procurement of materials or supplies.

21. GENERAL AND MISCELLANEOUS.

21.1. Time shall be of the essence of this Agreement.

21.2. In this Agreement, wherefore the singular and masculine are used, they shall be construed as if the plural or the feminine or the neuter had been used, where the context or the party or parties so requires, and the rest of the sentence shall be construed as if the grammatical and the terminological changes thereby rendered necessary had been made.

21.3. Paragraph headings are provided as an organizational convenience and are not meant to be construed as material provisions of this Agreement.

21.4. Preparation of this Agreement has been a joint effort of the Parties and the resulting document shall not, solely as a member of judicial construction, be construed more severely against one of the parties than the other.

21.5. This Agreement may be executed in counterparts, each constituting a duplicate original, but such counterparts shall constitute one and the same Agreement.

21.6. The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the Parties to this Agreement from and after the Effective Date.

- 21.7.** Each Party to this Agreement agrees to do, execute, acknowledge, and deliver or cause to be done, executed, acknowledged and delivered, all such further acts, and assurances in a manner and to the degree allowed by law, as shall be reasonably requested by the other party in order to carry out the intent of and give effect to this Agreement. Without in any manner limiting the specific rights and obligations set forth in this Agreement or illegally limiting or infringing upon the governmental authority of the City, the Parties declare their intention to cooperate with each other in effecting the purposes of this Agreement, and to coordinate the performance of their respective obligations under the terms of this Agreement.
- 21.8.** 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.
- 21.9.** 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.
- 22. SURVIVABILITY.** Termination or expiration of this Agreement shall not relieve either Party of their respective obligations, which are expressly noted to survive termination or expiration or under the following sections which shall survive termination and expiration: Sections 4.5, 5, 7.2, 7.3, 8, 10, 17, 18, 19, 20, and this Section 21. Sections 4, 7 and 8 (but only to the extent Section 8 corresponds to Sections of the Agreement which survive) of the License and Sections 3, 4, 5, 6, 7 and 8 (but only to the extent Section 8 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.
- 23. SEVERABILITY.** If any covenant or provision of this Agreement is, or is determined to be, invalid, illegal or unenforceable by a court of competent jurisdiction, then such covenant or provision will be ineffective only to the extent of such prohibition or invalidity. 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. The invalidity of any provision of this Agreement or any covenant herein contained on the part of any party shall not affect the validity of any other provision or covenant hereof or herein contained which shall remain in full force and effect.

24. Each party acknowledges that it has read this Agreement and understands the terms and conditions herein. Further, the Parties have caused this Agreement to be executed on its behalf by the authorized officer whose signature appears below under its name, to be effective as of the date written above.

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

NovoaGlobal, Inc.

Carlos Lofstedt
President and CEO

City of Tukwila, Washington

Allan Ekberg
Mayor

EXHIBIT A SERVICES

NG shall provide the City with the Systems. In connection with furnishing the Systems, NG shall provide the following to the City, each of which is more fully described below:

1. SITE INSTALLATION PLANNING; DESIGN AND EQUIPMENT INSTALLATION
2. TRAINING AND SUPPORT
3. CITATION PREPARATION AND PROCESSING SERVICES
4. MAINTENANCE
5. PUBLIC EDUCATION CAMPAIGN
6. EXPERT WITNESS TESTIMONY AND COURT TRAINING
7. REPORTING

1. **SITE INSTALLATION PLANNING, DESIGN AND EQUIPMENT INSTALLATION**

1.1. *The Systems.*

1.1.1. NG will initially install two (2) Systems (which shall remain property of NG), monitoring such locations as the City and NG shall mutually agree. Up to fifty (50) additional Systems may be added at the option of the City with NG's consent. None of the quantities mentioned under this paragraph shall be interpreted as mandatory quantities. The actual quantities to be installed can only be approved by the City. The installation of any system will require the written approval of the Mayor or his/her designee. Each System shall comprise of equipment capable of monitoring violations at a single approach to a school zone for up to five lanes of traffic. NG will install new Systems upon mutual agreement of the Parties. School zone fixed speed enforcement systems will conduct enforcement while beacon systems are in an activated state within the identified school zone. NG will ensure school zone fixed speed enforcement systems are integrated with City's school zone flashing beacons, if present.

1.1.2. Automated traffic safety cameras shall only take pictures of the vehicle and vehicle license plate. The image must not display the face of the driver or of passengers in accordance with RCW 46.63.170(1)(d).

1.1.3. The Systems shall include all equipment located on each roadway or in the right of way, telecommunications equipment, and Software and shall have the capability of transferring images from the roadside in accordance with RCW 46.63.170 to be accessed at the City's Police Department processing facility.

- 1.1.4. Substitution, Relocation, or Addition of a Site. If NG or the City reasonably determines that one or more sites selected for installation of a System 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 location), then alternate location(s) may be substituted by written consent of the Parties. If the average monthly violation collected from any individual system does not meet the level required for the individual system to be cost neutral for a period of twelve (12) consecutive months, the City shall have the right to request relocation of the system to a more effective location. This request must be in writing and before twenty four (24) months of the expiration of the contract or any of its extensions. In response to said request, NG shall have the option to comply with the request, reduce the fee temporarily, or permanently reduce the fee to a level equal to the violation (revenue) collected from that individual system.
- 1.1.5. Timeframe for Installation of the System. NG shall install and activate the Systems in accordance with an installation timeline to be mutually agreed to by NG and the City, which installation shall conclude within sixty (60) days after all necessary permits and approvals are received by NG. NG shall endeavor to install the System in accordance with the schedule set forth in the Implementation Plan. The City agrees that the estimated dates of installation and activation of the System set forth in the Implementation Plan are subject to delay based on conditions beyond the control of NG and are not guaranteed.
- 1.1.6. Installation/Ownership of the System. NG shall procure, install and provide support of installed equipment at each of the agreed upon locations. As between NG and the City, all components for the System will remain the property of NG.

1.2. Installation

- 1.2.1. NG shall submit plans and specifications to the City for review and approval.
- 1.2.2. All cameras and other equipment shall be enclosed in lockable, weather and vandal-resistant housing. All wiring shall be internal to equipment (not exposed) and if commercially reasonable and if capacity exists, underground in existing conduits, except where required to directly interface with existing electrical service. Separate conduits or other methods, as approved by the City or electrical service provider, may be used by NG if existing conduit(s) are at capacity.

- 1.2.3. NG will not enter City’s traffic signal control boxes without permission and/or authorization of the City’s Public Works Department.
 - 1.2.4. The provision, installation, and maintenance of all necessary electronic system communication equipment will be the sole responsibility of NG.
 - 1.2.5. The System may be mounted on or utilize support of existing traffic signal poles, arms or other City-owned structures where possible, subject to City review and approval.
 - 1.2.6. The System poles, foundations, signs, and new infrastructure, as required, shall conform to applicable law.
- 1.3. Restoration of Roadways and/or Right of Way. Upon termination or expiration of the Agreement, NG shall remove the System and restore the affected public facilities including returning the roadway and/or right of way to their original condition; provided, however, that NG 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 NG thereby will be the responsibility of NG.
- 1.4. Compliance with Law. NG shall design and install the System in compliance with all currently existing federal, state and local laws and regulations. NG covenants and agrees that its Systems shall, at all times, comply with all applicable laws, regulations, rules and orders (“Legal Requirements”). NG shall continuously monitor the status of such Legal Requirements to ensure continuous compliance. In the event of any change in the Legal Requirements, NG shall modify or replace (at its sole cost) all or any portion of its non-compliant Systems. Any such modification shall be effected by NG in a reasonable period of time (not to exceed ninety (90) days for modification or one hundred eighty (180) days for complete system replacement) and NG’s failure to effect such modification or replacement in a timely manner shall be grounds for the City to terminate this Agreement for cause. Any such termination shall not relieve NG of its obligation to restore each site to its original condition.
2. **TRAINING OF CITY PERSONNEL.** After System installation, NG shall provide up to eight (8) hours of training for up to ten (10) persons at two (2) sessions at the City’s facilities to acquaint City 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 NG at NG’s expense. NG shall make all such training services available to the City prior to the end of the thirty (30) day period following the Installation Date. If the City requests additional courses or training, NG shall provide these on a cost reimbursement basis.

Additionally, NG will provide and maintain a web-based training service that includes basic operation instructions as well any system or procedure changes to ensure continuity for court personnel and law enforcement end users.

3. CITATION PREPARATION AND PROCESSING SERVICES

- 3.1. Citation Preparation and Processing. NG shall (1) perform the initial review of all data generated at the roadside, (2) process and format violations utilizing a computerized traffic citation program that shall store all information required for citation processing required by state law, local law, and in accordance with court of jurisdiction's specifications, and (3) transfer the citations to the Police Department's computer for review and decision on whether or not to issue a citation. If NG is permitted by applicable law or regulation to do so, NG shall also review all Washington State Department of Licensing information and print and mail citation forms. NG 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, NG shall obtain a certification of mailing issued by the U.S. Post Office. Notwithstanding anything to the contrary in the foregoing provisions of this Section 3.1, NG will shall not process nor support any citations not captured by the System and/or approved by the City.
- 3.2. Officer Discretion. NG recognizes and agrees that the decision to issue or dismiss a citation shall be the sole and exclusive decision of a sworn officer of the City's Police Department. In no event shall any NG employee or representative have the ability to authorize or dismiss any citations.
- 3.3. Mailing of Citations. Citations shall be mailed to the violator as soon as is reasonably practicable, and in no event longer than ten (10) business days after being approved by the City and NG has been notified of such approval. The form of citation shall be subject to the approval of the City.
- 3.4. Cooperation With Police and the Courts. NG shall be responsible for, and pay for, the cost of issuing and the mailing citations in accordance with applicable law. NG shall coordinate with the City and the courts and shall comply with the applicable law and court procedures regarding the mailing and other requirements necessary for the issuance and processing of traffic citations. All citations shall be reviewed and approved by the City's Police Department prior to mailing. In addition, NG will cooperate with the courts to set up the necessary communications systems for processing. It is agreed that the Tukwila Municipal Court will be solely responsible for processing delinquent notices.

- 3.5. With respect to each violation authorized by the City, within five (5) business days after NG's receipt of such authorization, NG shall file with the Tukwila Municipal Court, a copy (electronic or otherwise) of the citation. NG acknowledges that Washington State law requires all citations be filed within five days of issuance (i.e., date signed by Police Officer) or the infraction is subject to dismissal under court rule. Filing of citations within five days of issuance shall be considered a material provision of this Agreement. This paragraph only applies in case that the City chooses to use JIS. If the City elects to use NG's Back Office then no filing would be required.
- 3.6. Rental car and business vehicles. NG will coordinate with the City and Courts to establish an acceptable procedure to streamline and coordinate the processing, notification, and accountability of rental car violation and corporate vehicle violations.
- 3.7. Preparation of Evidence Packages. NG shall provide electronic copies of evidence packages in such form as may be reasonably agreed upon with the courts to enable the City to enforce its citations in court.
- 3.8. Access to License Information. NG shall maintain the ability to access the license information and the registered owner residence address for all U.S. registered vehicles, and the per-request fee for information, if any, shall be paid by NG. If possible, NG will identify rental vehicle and corporate vehicle violations to migrate and merge original violation with rental and business nomination for appropriate processing needs. If NG is unable to access such information, NG shall provide the make and license plate number of each violator to the City, which will obtain and input the information into the System, or provide such information to NG within a reasonable period of time.
- 3.9. Numbering System. NG, in coordination with the City, shall develop and implement an independent numbering system for automated safety camera speeding citations. This numbering system should be at least 9 digits and start with the two letters SC (denoting Safety Camera). The final 7 digits should be numeric.
- 3.10. Transmission of Information. NG shall make all citation information available to the City via an electronic file using comma separated value files on a secure FTP site. NG shall maintain a documented chain of custody for all electronically transmitted information while the information is under NG's control.

4. MAINTENANCE

- 4.1. Maintenance of System. Except as provided herein, NG shall Maintain the System (as such term is defined below); provided however, that NG shall not be responsible

for any maintenance, repair or replacement required as a result of (i) the negligence or intentional act of the City, its employees, agents or independent contractors (other than NG) and/or (ii) any equipment or software not provided by NG. NG shall maintain a maintenance log that documents all service issues. To “Maintain the System” shall mean to keep the System in a state of operation such that the System’s functionality and operation conforms in all material respects to the description of the System set forth in this Exhibit. All problems shall be documented, and repairs commenced within seventy-two (72) business hours after the time NG receives notice thereof. NG shall also install all software revisions for Systems as and when developed and made commercially available by NG. NG is responsible to ensure systems are operational. NG will repair and upgrade as needed, including any vandalized equipment, and maintain a reasonably clean appearance and in a graffiti-free condition. Graffiti shall be removed within 7 days of notice to NG.

- 4.2. Equipment Checks. When possible, NG shall perform remote camera and equipment checks to confirm proper operation of computers, cameras and communications network. In-field camera equipment inspection will be done as needed or when remote camera and equipment checks are not possible. The System shall have the capability of on-line monitoring of all cameras in each school zone.
- 4.3. NG will conduct routine testing, evaluation, and monitor the system to ensure the system is operational. If a deficiency, malfunction, or failure of the system is detected, NG will notify the City’s Police Department within 72 hours by written or electronic notification. If the system cannot be restored or repaired to full functional capability within 7 consecutive calendar days, NG will reduce the fee to reflect the time the system is deficient, malfunctioning, or failing. The fee reduction shall be applied to the affected billing cycle and continue until the system is restored to full operation. This reduction shall be identified on the billing statement to the City’s Police Department.

5. PUBLIC EDUCATION CAMPAIGN

- 5.1. Public Awareness Program. NG shall assist the City with a Public Awareness Program. Such assistance shall consist of:
 - 5.1.1. Paying for and installing all signage required by State law and local ordinance or as otherwise required by resolution of the City’s Council
 - 5.1.2. Reasonable assistance for a media event to launch the community education program

- 5.1.3. Preparing, publishing, and printing brochures in as many languages as possible, but at least in English and Spanish
- 5.1.4. A reasonable amount of training for City staff.
- 5.1.5. Providing a multi-lingual (including English and Spanish) toll-free customer service hotline which shall be staffed sufficiently during all regular business hours.

6. EXPERT WITNESS TESTIMONY AND COURT TRAINING

- 6.1. Expert Witness Testimony. NG shall provide expert witness testimony at its sole expense, as necessary, to testify regarding the accuracy and technical operation of the System as necessary for court challenges to the operation of the System.
- 6.2. Court Training. NG shall conduct a one-day workshop-orientation session for Municipal Court judges (and/or their designees), hearing officers, other appropriate court officials and the City prosecutor. NG will provide and maintain a web-based training service to the City that includes information regarding basic operation and any system or procedure changes to ensure continuity for court staff end users.

7. REPORTING

- 7.1. Bi-Monthly Report. NG shall submit to the City a Bi-Monthly Report on project results within fifteen (15) days after the end of two-week period and provide web access to such reports.
- 7.2. Monthly Report. NG shall submit to the City's Public Works Department a monthly Report on statistical information regarding traffic volumes, average speed, and traffic congestion within thirty (30) days after the end of calendar month. Web access to such reports shall also be provided to City's Public Works Department.
- 7.3. Annual Report. NG shall submit an annual report of the number of citations issued for each camera system and any other relevant information about the automated traffic safety cameras the City deems appropriate for the City's web page.
- 7.4. 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.
- 7.5. Database. NG shall maintain a database with the following information per violation:
 - 7.5.1. Location, date and time

- 7.5.2. Speed of vehicle
 - 7.5.3. Vehicle description including license plate state and number
 - 7.5.4. Applicable vehicle code section violated (if available to NG)
 - 7.5.5. Citation prepared or reason for not preparing citation (if available to NG)
 - 7.5.6. Registered vehicle owner's name and address, and related information required to prepare citations where violation is made by a driver other than registered owner (if available to NG) (i.e., Affidavit of Non-Liability)
 - 7.5.7. Status of citation (outstanding, cancelled, reissued, paid, bail forfeited, traffic school, warrants issued, etc.) (if available to NG)
- 7.6. NG shall maintain, at its sole expense, all records, including, but not limited to all video recordings, which it generates or receives as a result of the performance of services pursuant to the Agreement for the period of time required by, and otherwise in accordance with, the Revised Code of Washington, Chapter 42.56, Public Records Act and Revised Code of Washington 46.63.170 as same may be amended from time to time. Upon receipt of a request from the City for a copy of any record being maintained by NG, NG shall provide the requested record to the City within a reasonable time following such request, but in no event later than seven (7) days following the date the request is received by NG.
- 7.7. Additional Services (if requested by the City in writing):
- 7.7.1. School Zone Assessment Program. NG will generate a video-based analysis of school zones designed to evaluate the frequency of school zone speed violations for each approach to the targeted school zone. The video media will contain up to 16 hours of video monitoring assuming the equipment remains installed at the school zone 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 City. There is no charge for the initial 16 approaches or any future system placement requests to be evaluated by NG pursuant to this Agreement.

EXHIBIT B
LICENSE AGREEMENT FOR NG SAFETY SYSTEM SOFTWARE

This LICENSE AGREEMENT (the “License”) is part of an agreement (the “Agreement”) (to which a copy of this License is attached as Exhibit B) between the City named in the Agreement and NovoaGlobal, Inc. (“NG”) for the NG 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 the City by NG. Any software provided along with the SOFTWARE PRODUCT that is associated with a separate license agreement is licensed to the City under the terms of that license agreement. By execution of the Agreement, the City has agreed to be bound by the terms of this License. Such agreement by the City is an express condition to its ability to use the SOFTWARE PRODUCT.

1. GRANT OF LICENSE. The SOFTWARE PRODUCT is licensed, not sold. This License grants the City only the following rights: The City may use those copies of the SOFTWARE PRODUCT as installed by NG on its network (“Network”).
2. DESCRIPTION OF OTHER RIGHTS AND LIMITATIONS. The City 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 unless so installed by NG. The City may not rent, lease, transfer or lend the SOFTWARE PRODUCT. This License does not grant the City any rights in connection with any trademarks or service marks of NG. Without prejudice to any other rights, NG may terminate this License if the City fails to comply with the terms and conditions of this License.
3. SUPPORT SERVICES AND UPGRADES. NG may provide the City 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 the City 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 the City provides to NG as part of the Support Services, NG may use such information for its business purposes, including for product support and development. In particular, NG will not utilize such technical information in a form that personally identifies the City or any motor vehicle, tag or person. If the SOFTWARE PRODUCT is labeled as an upgrade, the City must be properly licensed to use a product identified by NG 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 the City’s eligibility for the upgrade. The City 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 the City 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 NG or its suppliers. As between the City and NG, all title and intellectual property rights in and to the images and information which may be generated through use of the SOFTWARE PRODUCT is the City’s property. All rights not expressly granted are reserved by NG.

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

6. COMPLIANCE WITH LAW AND EXPORT RESTRICTIONS. The City represents and agrees that it does 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, the City agrees that it will not export or re-export the SOFTWARE PRODUCT to any country, person, entity or end user subject to U.S. export restrictions. The City specifically agrees 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 the City knows or has 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.

7. OTHER PROVISIONS. Sections 3, 4, 7, 10, 17, 18, 19, 20, and 22 of the Agreement are hereby incorporated by reference as if herein set forth in full.

EXHIBIT C
LEASE AGREEMENT FOR NG SAFETY SYSTEMS

This LEASE AGREEMENT (the “Lease”) is part of an agreement (the “Agreement”) (to which a copy of this Lease is attached as Exhibit C) between the City named in the Agreement (“City”) and NovoaGlobal, Inc (“NG”) (collectively, the “Parties”). The Parties hereto agree as follows:

1. LEASE. NG hereby leases to the City and the City hereby leases from NG, subject to the terms and conditions of this Lease, 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 the City obtains possession, custody or control of pursuant to the Agreement.
2. USE AND LOCATION. The Equipment shall be used and operated by the City only in connection with the operation of the System by qualified employees of and in accordance with all applicable operating instructions, and applicable governmental laws, rules and regulations. The City shall not part with control or possession of the Equipment without NG’s prior written consent.
3. CONDITION. NG shall maintain the Equipment in good condition and working order in accordance with Section 4 of Exhibit A. The City shall not damage the Equipment or make any alterations, additions or improvements to the Equipment without NG’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 NG, 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, the City shall allow NG reasonable access to remove the Equipment at NG’s expense.
5. OWNERSHIP, LIENS. The Equipment is and shall at all times be the property of NG. The City agrees to take all action necessary or reasonably requested by NG 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 the City any interest in the Equipment other than its interest as a lessee hereunder. If at any time during the term hereof, NG wishes to place on the Equipment labels, plates or other markings evidencing ownership, security or

other interest therein, the City shall allow NG reasonable access therefore and keep the same displayed on the Equipment.

6. NO CITY SUBLEASE; ASSIGNMENT. The City 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 NG.
7. OTHER PROVISIONS. Sections 3, 4, 7, 10, 17, 18, 19, 20, and 22 of the Agreement are hereby incorporated by reference as if herein set forth in full.

EXHIBIT D
COMPENSATION AND PRICING

MONTHLY FEE

Pricing for NG Safety Systems relating to fixed speed photo enforcement shall be as follows:

- \$3,999.00 per system per month, with less than 400 citations issued by the City per month.
- \$4,900.00 per system per month, with between 400 and 800 citations issued by the City per month.
- \$5,700.00 per system per month, with more than 800 citations issued by the City per month.

NG acknowledges school zone fixed speed photo enforcement systems will only function during specified times throughout the day and in accordance with City's flashing beacon system, if available.

Additionally, NG acknowledges that schools often take breaks for more than seven (7) consecutive calendar days. These school breaks do not constitute a temporary suspension, as defined below. Consequently, NG shall bill the City monthly fees for all months of the year, but shall reduce the monthly fees for all School Zone Systems by twenty five percent (25%).

Temporary Suspensions. In the event construction by the City causes a disruption of service under the Agreement, upon NG's written request, the term of the Agreement may be extended at the City's sole discretion. For every two (2) months, (per individual system) of disrupted service the Agreement can be extended for a one-month period.

BUSINESS ASSUMPTIONS FOR ALL PRICING OPTIONS

1. Except where a balance remains unpaid due to a deficit in the gross cash received as described herein, City agrees to pay NG within forty-five (45) days after the invoice is received. A monthly late fee of 1.5% is payable for amounts remaining unpaid sixty (60) days from date of invoice or monthly report if such delay is the responsibility of the City.
2. Required Payment Convenience Fees will not be considered to be revenue received and are the responsibility of the violator.
3. Required Refund Fees will not be considered to be revenue received and are the responsibility of the violator.
4. Violations sent to a collection agency will have an additional charge as negotiated with the chosen collection agency in mutual agreement with the City and the applicable court.