

1 AGREEMENT

2 30189

3 THIS AGREEMENT is made and entered, in duplicate, as of June 15, 2007
4 for reference purposes only, pursuant to an order of the Long Beach City Council at its
5 meeting held on June 5, 2007, by and between PROFORCE MARKETING, INC., a
6 California corporation, whose address is 655H North Berry Street, Brea, CA 92821
7 ("CONTRACTOR") and the City of Long Beach ("CITY").

8 WHEREAS, the CITY authorized the City Manager to enter a contract with
9 CONTRACTOR for furnishing and delivering tasers and accessories;

10 NOW, THEREFORE, in consideration of the mutual terms and conditions
11 herein contained, the parties agree as follows:

12 1. CONTRACTOR shall sell, furnish and deliver to the Long Beach Police
13 Department Training Academy, a minimum of one hundred and fifty-three (153) tasers
14 and accessories.

15 2. CITY shall pay CONTRACTOR for the tasers and accessories an
16 amount not to exceed \$200,000.00, ~~as more fully delineated on Exhibit "A", attached and~~
17 ~~incorporated by reference.~~ This price includes California State Sales Tax and any
18 municipal or county sales taxes. Because items sold to municipalities are exempt from
19 the Federal Excise Tax Law, this price does not include these taxes and none will be
20 charged to the City.

21 3. Payment will be made in due course of payments of the City after
22 delivery and acceptance of the tasers and accessories by the City Manager or his
23 authorized representative and after receipt of an invoice in triplicate from the Contractor.

24 4. All notices shall be in writing and personally delivered or deposited in the
25 U. S. Postal Service, first class, postage prepaid, addressed to the Contractor at the
26 address first stated herein, and to the City at 333 W. Ocean Blvd., Long Beach, CA
27 90802 Attn: City Manager. Change of address shall be given as provided here for
28 notices. Notice shall be effective on the date of mailing or on the date personal delivery

OFFICE OF THE CITY ATTORNEY
ROBERT E. SHANNON, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

OFFICE OF THE CITY ATTORNEY
ROBERT E. SHANNON, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

1 is obtained, whichever occurs first.

2 5. Neither this Agreement nor any of the moneys which may become due
3 to Contractor hereunder may be assigned by Contractor without the prior written consent
4 of the City.

5 6. The acceptance of the tasers and accessories by the City or the
6 payment of any money by the City shall not operate as a waiver of any provision of this
7 Agreement, or of any power reserved to the City, or of any right to damages. The waiver
8 of any breach of this Agreement, or any default, shall not be held to be a waiver of any
9 other or subsequent default or breach.

10 7. Contractor warrants that the equipment against defects in workmanship
11 for one year after acceptance by the City, which warranty includes repair, and against
12 defects in materials for 90 days after acceptance by the City, which warranty includes
13 replacement (parts and labor) at no cost to the City.

14 8. This Agreement, ~~including the Exhibits~~ shall not be amended, nor any
15 provision waived, except in writing that refers to this Agreement and is signed by the
16 parties. This Agreement shall be governed by and construed in accordance with the laws
17 of the State of California and no conflict of laws provisions shall apply. This Agreement
18 constitutes the entire understanding of the parties and supersedes all other agreements,
19 oral or written, with respect to the subject matter in this Agreement. The waiver of any
20 breach of this Agreement shall not constitute a waiver of any other or subsequent breach.
21 If there is any legal proceeding between the parties to enforce or interpret this Agreement
22 or to protect or establish any rights or remedies, the prevailing party shall be entitled to its
23 costs and expenses, including reasonable attorney's fees and court costs.

24 9. In conjunction with its sale of the equipment to the City, Contractor
25 grants to the City a worldwide, non-exclusive license to use the software provided with
26 the equipment. Contractor warrants that it has the right to grant this license, whether as
27 the owner of the software or as a licensee of a third party supplier of the software and
28 Contractor shall defend, indemnify and hold the City and its employees harmless from

OFFICE OF THE CITY ATTORNEY
ROBERT E. SHANNON, City Attorney
333 West Ocean Boulevard, 11th Floor
Long Beach, CA 90802-4664

1 and against all claims, demands, loss, liability, causes of action, damage, penalties, fines,
2 costs and expenses, including attorney's fees, arising from a breach of this warranty.
3 City shall not disassemble or otherwise modify the software without the written
4 authorization of Contractor, except as permitted by law. City shall not copy the software
5 onto any public or distributed network.

6 IN WITNESS WHEREOF, the parties have caused this document to be duly
7 executed with all formalities required by law as of the date first written above.

8
9
10 7/5, 2007

PROFORCE MARKETING INC., a California
corporation
By *Jim Miller*
President

11
12 7/5, 2007

Jim Mulolier
(Type or Print Name)
By *A.K.*
Secretary
Larry Massimo
(Type or Print Name)

13
14
15
16
17 August 3, 2007

"Contractor"
CITY OF LONG BEACH **ASSISTANT**
By *Christine J. Shipper*
City Manager

**EXECUTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER.**

18
19
20 This Agreement is approved as to form on July 12, 2007.

21
22 ROBERT E. SHANNON, City Attorney
23 By *Ang J. Anderson*
24 Deputy

25
26
27
28 GJA/lkm 06-14/07
07-02765