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**AGREEMENT**

**29007**

**THIS AGREEMENT** is made and entered, in duplicate, as of December 1, 2004, for reference purposes only, pursuant to a minute order adopted by the City Council of the City of Long Beach at its meeting held on November 23, 2004, by and between NESTOR TRAFFIC SYSTEMS, INC., a Delaware corporation, with a place of business at 400 Massasoit Avenue, Suite 200, East Providence, Rhode Island, 02914 ("NTS"), and the CITY OF LONG BEACH, a municipal corporation ("City").

**1. SCOPE OF SERVICES, PROCEDURES AND PAYMENT.**

A. NTS shall provide and maintain video detection units and all hardware associated therewith at each intersection approach listed in Exhibit "A" attached hereto (each, an "Installed Approach").

B. Within thirty (30) days of the Effective Date of this Agreement, NTS shall submit plans to City for the installation of the most recently upgraded video detection equipment (as of the date of this Agreement) at each Installed Approach. Within sixty (60) days of City's approval of such plans, NTS shall complete installation of the upgraded equipment at each Installed Approach.

C. Within thirty (30) days after any future upgraded CrossingGuard equipment or software is made available to customers of NTS, NTS shall submit plans to City fore installation of such upgraded equipment at each Installed Approach. Within sixty (60) days of City's approval of such plans, NTS shall complete installation of such upgraded equipment at each Installed Approach. Notwithstanding the foregoing, NTS shall not be obligated to install such upgraded equipment or software during any three (3) month period immediately prior to a date on which this Agreement will terminate by its own terms or could be terminated by City or NTS pursuant to the termination rights described in Sections 9.C or 9.D. NTS shall remain obligated to make the installations described above if at any time during the term of this Agreement (including any

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1 extension periods) when the conditions stated in the immediately foregoing  
2 sentence are not satisfied.

3 D. NTS shall furnish the services described in Exhibit "B" attached  
4 hereto and incorporated herein by this reference, in accordance with the  
5 standards of the profession, and NTS and City administer the red light  
6 enforcement program in accordance with the policies and procedures set forth in  
7 the CrossingGuard Procedures and Policies for Long Beach, CA then in effect.

8 E. City shall pay NTS \$2,000 per month for each Installed Approach  
9 until the first anniversary of the Effective Date of this Agreement, at which time a  
10 new fixed monthly payment shall be mutually agreed upon in writing by the  
11 parties hereto, subject to the provisions of Sections 9.C and 9.D and the  
12 approval of City's City Council, and such mutually agreed upon monthly payment  
13 shall be payable until the second anniversary of the Effective Date of this  
14 Agreement, at which time a new fixed monthly payment shall be mutually agreed  
15 upon in writing by the parties hereto, subject to the provisions of Sections 9.C  
16 and 9.D and the approval of City's City Council, for the balance of the term of  
17 this Agreement. If any Installed Approach is relocated to a new approach at the  
18 request of City, City shall pay \$3,750 per month for such relocated Installed  
19 Approach until the first anniversary of the Effective Date of this Agreement, at  
20 which time a new fixed monthly payment shall be mutually agreed upon by the  
21 parties hereto as provided above. Notwithstanding anything to the contrary  
22 contained herein, if 1) any Installed Approach is incapable of detecting violations  
23 or 2) NTS is unable to issue citations, in either case, for a period of more than  
24 three (3) days in any monthly payment period and such Installed Approach  
25 malfunction or inability to perform by NTS is not caused by City or an event  
26 described in Section 29, then City's payment obligations hereunder for such  
27 monthly period shall be reduced pro rata based upon the total number of days  
28 during such monthly period that the Installed Approach was inoperable.

1 F. NTS has requested to receive regular payments. City shall pay  
2 NTS in the month following the provision of services. NTS shall certify on an  
3 invoice submitted to City that NTS has performed the services in full  
4 conformance with this Agreement and is entitled to receive payment. Invoices  
5 will be paid within thirty (30) days of mailing.

6 G. Within thirty (30) days of the Effective Date of this Agreement, NTS  
7 shall submit plans to City for 1) removal of all video detection equipment and all  
8 hardware associated therewith located at any approach which is not an Installed  
9 Approach and 2) restoration of affected public facilities in accordance with  
10 CALTRANS specifications. Within ninety (90) days of City's approval of such  
11 plans, NTS shall complete removal of the equipment at all subject approaches.

12 **2. TERM.**

13 The term of this Agreement shall begin on January 1, 2004 ("Effective Date"), and  
14 shall end at midnight three (3) years from such date, unless extended or sooner terminated  
15 as provided herein. City has the option to extend the initial term of this Agreement by two  
16 one-year extension periods. City shall exercise each option by delivering written notice of  
17 its election to extend to NTS not later than the date which is sixty (60) days prior to  
18 termination date then in effect. City's exercise of its first option to extend shall not obligate  
19 City to exercise its second option to extend. If City fails to deliver a written extension notice  
20 to NTS, this Agreement shall automatically terminate upon the expiration date then in  
21 effect.

22 **3. INDEPENDENT CONTRACTOR.**

23 In performing services hereunder, NTS is and shall act as an independent contractor  
24 and not as an employee, representative, or agent of City. NTS shall have control of NTS's  
25 work and the manner in which it is performed. NTS shall be free to contract to provide  
26 similar services for others during the term of this Agreement. NTS acknowledges and  
27 agrees that a) City will not withhold taxes of any kind from NTS's compensation, b) City will  
28 not secure workers' compensation or pay unemployment insurance to, for or on NTS's

1 behalf, and c) City will not provide and NTS is not entitled to any of the usual and  
2 customary rights, benefits or privileges of City employees. Neither NTS nor any of NTS's  
3 employees or agents shall represent themselves to be employees or agents of City.

4 **4. INSURANCE.**

5 As a condition to the effectiveness of this Agreement, NTS shall procure and  
6 maintain the following insurance at NTS's expense for the duration of this Agreement and  
7 any extensions, renewals or holding over thereof, from insurance companies that are  
8 admitted to write insurance in the State of California or from authorized nonadmitted  
9 insurance companies that have ratings of or equivalent to A: VIII by A.M. Best Company:

10 A. Commercial general liability (equivalent in scope to ISO form CG 00  
11 01 11 85 or 11 88) in an amount not less than Two Million Dollars (\$2,000,000) per  
12 occurrence and Four Million Dollars (\$4,000,000) general aggregate. Such  
13 coverage shall include but shall not be limited to broad form contractual liability,  
14 independent contractor liability, cross liability, and products and completed  
15 operations liability. The City of Long Beach, its officials, employees and agents  
16 shall be named as additional insureds by endorsement (equivalent in scope to ISO  
17 form CG 20 10 11 85 or CG 20 26 11 85), and this insurance shall contain no  
18 special limitations on the scope of protection afforded to City, its officials,  
19 employees, and agents.

20 B. Commercial automobile liability (equivalent in scope to ISO form CA  
21 00 01 06 92), covering Auto Symbol 1 (Any Auto), in an amount not less than One  
22 Million Dollars (\$1,000,000) combined single limit per accident for bodily injury and  
23 property damage.

24 C. Professional liability in an amount not less than One Million Dollars  
25 (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) general  
26 aggregate.

27 D. Workers' compensation as required by the Labor Code of the State  
28 of California, and Employer's Liability with minimum limits of One Million Dollars (US

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1 \$1,000,000) per accident. Such policy shall be endorsed to provide (1) that the  
2 insurer agrees to waive all rights of subrogation against City, its officials, employees,  
3 and agents for loss paid under the terms of the policy which arise from work  
4 performed by NTS for City, and (2) that the policy shall not be cancelled,  
5 nonrenewed or materially changed to coverage by either party except after thirty  
6 (30) days' prior written notice to City.

7 Any subcontractor which NTS may use in the performance of this Agreement shall  
8 be required to maintain insurance in compliance with the provisions of this Section 4 unless  
9 otherwise agreed in writing by City's Risk Manager or designee.

10 Any self-insurance program, self-insured retention, or deductible must be approved  
11 separately in writing by City's Risk Manager or designee and shall protect City and its  
12 officials, employees, and agents in the same manner and to the same extent as they would  
13 have been protected had the policy or policies not contained retention provisions.

14 In addition to any other endorsements required herein, each liability insurance policy  
15 required herein shall be endorsed to provide that (1) the policy shall not be cancelled,  
16 nonrenewed or materially changed in coverage by either party except after thirty (30) days'  
17 prior written notice to City, (2) that the policy shall apply separately to each insured who is  
18 seeking coverage or against whom a claim is made or a suit is brought, except with respect  
19 to the insurer's limit of liability, and (3) that coverage shall be primary and not contributing  
20 to any other insurance or self-insurance maintained by City.

21 Prior to the start of performance under this Agreement, NTS shall deliver to City  
22 certificates of insurance and required endorsements evidencing the insurance coverage  
23 required by this Agreement for approval as to sufficiency and form, including any insurance  
24 required of NTS's subcontractors. The certificates and endorsements shall contain the  
25 original signature of a person authorized by that insurer to bind coverage on its behalf. In  
26 addition, NTS shall, at least thirty (30) days prior to expiration of such policies, furnish City  
27 with certificates of insurance and endorsements evidencing renewal of the insurance  
28 required herein. City reserves the right to require complete certified copies of all insurance

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1 policies of NTS or any of NTS's subcontractors at any time.

2 NTS agrees to make available to City all books, records and other information  
3 relating to the insurance coverage required by this Agreement during normal business  
4 hours.

5 The insurance required herein shall not be deemed to limit NTS's liability relating to  
6 performance under this Agreement. The procuring of insurance shall not be construed as  
7 a limitation of liability or as full performance of the indemnification and hold harmless  
8 provisions of this Agreement.

9 Any modification or waiver of the insurance requirements herein shall be made only  
10 with the written approval of City's Risk Manager or designee.

11 **5. ASSIGNMENT AND SUBCONTRACTING.**

12 This Agreement contemplates the personal services of NTS and NTS's employees,  
13 and the parties acknowledge that a substantial inducement for City to enter into this  
14 Agreement was and is the professional reputation and competence of NTS and NTS's  
15 employees. Except as a result of a merger, sale of assets, or other business combination,  
16 NTS shall not assign its rights or delegate its duties hereunder, or any interest herein, or  
17 any portion hereof, without the prior approval of City except that NTS may assign any  
18 monies due or to become due to NTS hereunder. Any attempted assignment or delegation  
19 shall be void, and any assignee or delegate shall acquire no right or interest by reason of  
20 such attempted assignment or delegation. Furthermore, NTS shall not subcontract any  
21 portion of the performance required hereunder without the prior approval of City, nor  
22 substitute an approved subcontractor without the prior approval of City. Approvals  
23 requested of City under this Section 5 shall not be unreasonably withheld by City. Nothing  
24 stated in this Section 5 shall prevent NTS from employing as many employees as NTS  
25 deems necessary for performance of this Agreement.

26 **6. SUBCONTRACTORS.**

27 NTS agrees to and shall bind every subcontractor to the terms of this Agreement  
28 provided, however, that nothing herein shall create any obligation on the part of City to pay

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1 any subcontractor except in accordance with a court order in an action to foreclose a stop  
2 notice. Failure of NTS to comply with this Section 6 shall be deemed a material breach of  
3 this Agreement.

4 **7. MATERIALS.**

5 NTS shall furnish all labor and supervision, supplies, material, tools, machinery,  
6 equipment, appliances, transportation, and services necessary to or used in the  
7 performance of NTS's obligations hereunder.

8 **8. OWNERSHIP OF DATA.**

9 All information, including but not limited to, Department of Motor Vehicle records,  
10 video tape evidence, photographic evidence and signal timing information, contained in any  
11 citations or used to prepare citations by NTS as contemplated by this Agreement (the "City  
12 Data") shall be the exclusive property of City. City hereby grants NTS, its affiliates and  
13 consultants a non-exclusive, royalty free, perpetual license (i) to copy and use internally  
14 the City Data for product and marketing development purposes and (ii) to copy, use and  
15 disclose the City Data in aggregated form provided that such disclosure does not identify  
16 individual violators or City as the source of the City Data.

17 **9. TERMINATION.**

18 A. Either party to this Agreement shall have the right to terminate if the  
19 other party defaults in the performance of any obligation under this Agreement and  
20 such default continues for more than thirty (30) days after notice thereof to the  
21 defaulting party.

22 B. Either party to this Agreement shall have the right to terminate if  
23 legislation or court case law prohibits its operation.

24 C. NTS may elect to terminate this Agreement if the parties at any time  
25 fail for any reason to mutually agree upon a monthly payment to be made by City  
26 to NTS pursuant to Section 1.E.

27 D. City may elect to terminate this Agreement if the parties at any time  
28 fail to mutually agree upon a monthly payment to be made by City to NTS pursuant

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1 to Section 1.E because, based upon revenue and cost projections associated with  
2 the services provided hereunder and calculated by City in its sole discretion, City  
3 determines that the payment terms offered by NTS will result in a net operating loss  
4 to City.

5 E. Upon termination of this Agreement, NTS shall submit plans and  
6 specifications for the removal of its video detection equipment and restoration of  
7 affected public facilities in accordance with CALTRANS specifications to City or its  
8 designee for approval. Such approval will not be unreasonably withheld by City.  
9 NTS shall at all times utilize its best efforts in returning each intersections to its  
10 original condition. Notwithstanding the foregoing, NTS shall not be required to  
11 remove any underground conduit, equipment, or wiring. All costs associated with  
12 removal and restoration shall be the responsibility of NTS. NTS shall complete the  
13 equipment removal and restoration process within ninety (90) days of approval of  
14 the restoration plan by City.

15 F. NTS and City hereby acknowledge that certain services provided by  
16 NTS hereunder cannot be completed on or before the termination date hereof,  
17 including without limitation the review, processing and distribution of citations for  
18 violations that occurred during the term hereof, and that therefore NTS will continue  
19 to process citations for violations that occurred during the term of this Agreement  
20 at no additional cost to City. City agrees to cooperate with NTS while NTS  
21 completes its obligations hereunder. In no event shall NTS be obligated to provide  
22 services under this paragraph for more than ninety (90) days after termination of this  
23 Agreement.

24 **10. CONFIDENTIAL INFORMATION.**

25 NTS shall hold all City Data as confidential. NTS shall not release the City Data to  
26 outside parties without the written consent of City. The foregoing notwithstanding, NTS  
27 may disclose City Data in aggregated form provided that such disclosure does not identify  
28 individual violators or City as the source of the City Data. To the extent permitted by law,



1 City shall hold all software and documentation provided by NTS as confidential. City shall  
2 not release or provide access to said software and documentation to outside parties  
3 without written consent of NTS. City and NTS shall apply the same level of protection  
4 against disclosure of the other's confidential information as it does for its own.

5 **11. BREACH OF CONFIDENTIALITY.**

6 NTS shall not be liable for a breach of confidentiality with respect to City Data that:

- 7 A. NTS demonstrates NTS knew prior to the time City disclosed it; or  
8 B. Is or becomes publicly available without breach of this Agreement by  
9 NTS; or  
10 C. A third party who has a right to disclose does so to NTS without  
11 restrictions on further disclosure; or  
12 D. Must be disclosed pursuant to subpoena or court order.

13 **12. AMENDMENT.**

14 This Agreement, including all exhibits, shall not be amended, nor any provision or  
15 breach hereof waived, except in writing signed by the parties hereto which expressly refers  
16 to this Agreement.

17 **13. GOVERNING LAW.**

18 This Agreement shall be governed by and construed pursuant to the laws of the  
19 State of California (except those provisions of California law pertaining to conflicts of laws).  
20 Any action involving this Agreement shall be brought in the Los Angeles County Superior  
21 Court, Long Beach District.

22 **14. ENTIRE AGREEMENT.**

23 This Agreement, including all exhibits, constitutes the entire understanding between  
24 the parties and supersedes all other agreements, oral or written, with respect to the subject  
25 matter contained herein.

26 **15. INDEMNITY.**

- 27 A. NTS shall protect, defend, indemnify and hold City, its officials,  
28 employees, and agents (collectively in this Section 15 and Section 21 referred to as

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1 "City") harmless from and against any and all alleged claims, demands, causes of  
2 action, damages, and liabilities (collectively, "Claims"), incurred by or made against  
3 City, which may arise from any negligent or intentionally tortious act, omission or  
4 material misrepresentation by NTS, or from any negligent act, omission or material  
5 misrepresentation by NTS's employees or agents, in connection with the  
6 performance of NTS's obligations under this Agreement.

7 B. NTS shall have the exclusive right to defend and, subject to the  
8 approval of City's City Council, to settle any Claim tendered by City and against  
9 which NTS is obligated to indemnify City. City agrees to fully cooperate with NTS  
10 in the defense of any Claim. If City unreasonably rejects a settlement proposal that  
11 is acceptable to NTS, NTS shall be liable under this indemnification provision for the  
12 payment of any judgment or award against City up to the amount of proposed  
13 settlement only and shall not defend City against the Claim after City's rejection of  
14 the settlement.

15 C. NTS shall indemnify City for all reasonable expenses and attorneys'  
16 fees incurred by or imposed upon City in connection with any claim for which NTS  
17 is obligated to indemnify City as provided in this Agreement except NTS shall not  
18 be obligated to reimburse City for those fees and expenses incurred by City after  
19 the refusal by City of a defense offered by NTS.

20 D. City shall protect, defend, indemnify and hold NTS, its officers,  
21 employees, and agents harmless from and against any and all Claims incurred by  
22 or made against NTS, which may arise from any negligent or intentionally tortious  
23 act or omission by City in connection with the performance of City' obligations under  
24 this Agreement, except City shall not be obligated to reimburse NTS for those fees  
25 and expenses incurred by NTS after the refusal by NTS of a defense offered by  
26 City.

27 E. Neither party shall be obligated to indemnify against any special,  
28 indirect, incidental or consequential damages or losses.

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1 F. Each party shall promptly notify the other of any Claim made which  
2 may give rise to a duty to indemnify as provided herein, and neither party shall be  
3 responsible for any expense, loss, damage, or liability incurred in responding to any  
4 Claim which expense, loss, damage, or liability is incurred more than thirty (30) days  
5 prior to the receipt of such notice.

6 **16. AMBIGUITY.**

7 In the event of any conflict or ambiguity between this Agreement and any exhibit,  
8 the provisions of this Agreement shall govern.

9 **17. ATTORNEY FEES.**

10 If there is any legal proceeding between the parties to enforce or interpret this  
11 Agreement or to protect or establish any rights or remedies hereunder, the prevailing party  
12 shall be entitled to its court costs and reasonable attorneys' fees.

13 **18. CHANGES AND EXTRA SERVICES.**

14 Upon mutual written agreement, the parties may make changes within the general  
15 scope of work under this Agreement provided, however, that any changes so made shall  
16 not result in an increase of the amount of compensation paid to NTS under Section 1.D  
17 without the approval of City's City Council.

18 **19. NONDISCRIMINATION.**

19 In connection with performance of this Agreement and subject to applicable rules  
20 and regulations, NTS shall not discriminate against any employee or applicant for  
21 employment because of race, religion, national origin, color, age, sex, sexual orientation,  
22 AIDS, AIDS related condition, handicap, disability, or Vietnam Era veteran status. NTS  
23 shall ensure that applicants are employed, and that employees are treated during their  
24 employment, without regard to these bases. Such actions shall include, but not be limited  
25 to, the following: Employment, upgrading, demotion or transfer, recruitment or recruitment  
26 advertising, layoff or termination, rates of pay or other forms of compensation, and  
27 selection for training, including apprenticeship.

28 It is the policy of City to encourage the participation of Disadvantaged, Minority and

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1 Women-owned Business Enterprises in City's procurement process, and NTS agrees to  
2 use its best efforts to carry out this policy in the award of all approved subcontracts to the  
3 fullest extent consistent with the efficient performance of this Agreement. NTS may rely  
4 on written representations by subcontractors regarding their status. City's policy is  
5 attached as Exhibit "C" hereto.

6 **20. NOTICES.**

7 Any notice or approval required hereunder by either party shall be in writing and  
8 personally delivered or deposited in the U.S. Postal Service, certified, return receipt,  
9 addressed to NTS at the address first stated above, and to City at 333 West Ocean  
10 Boulevard, Long Beach, California 90802, Attention: City Manager. Notice of change of  
11 address shall be given on the date shown on the return receipt or on the date personal  
12 service is obtained, whichever first occurs.

13 **21. PATENT PROTECTION.**

14 A. To the extent that the articles and materials delivered hereunder are not  
15 manufactured pursuant to designs originated by City, NTS guarantees that the sale  
16 and/or use of any or all articles or materials delivered hereunder will not infringe any  
17 United States or foreign patents, and NTS will defend, indemnify, and save City  
18 harmless from any loss, damage or claim in which such infringement is alleged,  
19 including reasonable attorneys' fees and other associated expenses provided,  
20 however, that:

- 21 1) NTS shall not be obligated to indemnify City against any special,  
22 indirect, incidental or consequential damages or losses;
- 23 2) Each party shall promptly notify the other of any Claim made against  
24 City which may give rise to NTS's duty to indemnify City as provided herein,  
25 and NTS shall not be responsible for any expense, loss, damage, or liability  
26 incurred by City in responding to any Claim which expense, loss, damage,  
27 or liability is incurred more than thirty (30) days prior to the receipt of such  
28 notice by NTS; and

1           3)     NTS shall have the exclusive right to defend and, subject to the  
2           approval of City's City Council, to settle any Claim tendered by City and  
3           against which NTS is obligated to indemnify City. City agrees to fully  
4           cooperate with NTS in the defense of any Claim. If City unreasonably rejects  
5           a settlement proposal that is acceptable to NTS, NTS shall be liable under  
6           this indemnification provision for the payment of any judgment or award  
7           against City up to the amount of proposed settlement only and shall not be  
8           responsible for attorneys' fees and costs expended or incurred to defend City  
9           against the Claim after City's rejection of the settlement.

10          B.     NTS shall indemnify City for all reasonable expenses and attorneys' fees  
11          incurred by or imposed upon City in connection with any claim for which NTS is  
12          obligated to indemnify City as provided in this Agreement except NTS shall not be  
13          obligated to reimburse City for those fees and expenses incurred by City after the  
14          refusal by City of a defense offered by NTS.

15          **22.     COVENANT AGAINST CONTINGENT FEES.**

16          NTS warrants that NTS has not employed or retained any entity or person to solicit  
17          or obtain this Agreement and that NTS has not paid or agreed to pay any entity or person  
18          any fee, commission, or other monies based on or from the award of this Agreement. If  
19          NTS breaches this warranty, City shall have the right to terminate this Agreement  
20          immediately, or, in its discretion, to deduct from payments due under this Agreement or  
21          otherwise recover the full amount of such fee, commission, or other monies.

22          **23.     WAIVER.**

23          The acceptance of any services or the payment of any money by City shall not  
24          operate as a waiver of any provision of this Agreement, or of any right to damages or  
25          indemnity stated in this Agreement. The waiver of any breach of this Agreement shall not  
26          constitute a waiver of any other or subsequent breach of this Agreement.

27          **24.     CONTINUATION.**

28          Termination or expiration of this Agreement shall not affect rights or liabilities of the

1 parties which arose under Sections 11, 15, 17, 21, 27, 31 and 32, prior to termination or  
2 expiration of this Agreement, and shall not extinguish any warranties hereunder.  
3 Termination or expiration of this Agreement shall not affect rights or liabilities of the parties  
4 under Sections 8, 9 and 10.

5 **25. TAX REPORTING.**

6 As required by federal and state law, City is obligated to and will report the payment  
7 of compensation to NTS on Form 1099-Misc. NTS shall be solely responsible for payment  
8 of all federal and state taxes resulting from payments under this Agreement. NTS's  
9 Federal Tax Identification Number is [REDACTED].

10 **26. ADVERTISING.**

11 NTS shall not use the name of City, its officials, or employees in any advertising or  
12 solicitation for business, nor as a reference, without the prior approval of City or designee.  
13 NTS may list City as a customer as of the date of execution of this Agreement.

14 **27. AUDIT.**

15 City shall have the right at all reasonable times during the term of this Agreement  
16 and for a period of five (5) years after termination or expiration of this Agreement to  
17 examine, audit, inspect, review, extract information from, and copy all books, records,  
18 accounts, and other documents of NTS relating directly to this Agreement.

19 **28. THIRD PARTY BENEFICIARY.**

20 This Agreement is intended by the parties hereto to benefit the parties hereto only  
21 and is not in any way intended or designed to or entered for the purpose of creating any  
22 benefit or right for any person or entity of any kind that is not a party to this Agreement.

23 **29. FORCE MAJEURE.**

24 Neither party hereto shall be considered in default in the performance of its  
25 obligations under this Agreement to the extent that performance of such obligations is  
26 prevented or delayed by any cause, existing or future, which is beyond the reasonable  
27 control of such party. Any delays beyond the control of either party hereto shall  
28 automatically extend the time schedules as set forth in this Agreement by the period of any

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1 such delay.

2 **30. LIMITATION OF LIABILITY.**

3 In no event shall either party hereto be liable for any special, indirect, incidental or  
4 consequential damages or for loss of City Data or use, loss of profits, goodwill or business,  
5 even if advised of the possibility of such damages or losses.

6 **31. WARRANTIES AND CERTAIN DISCLAIMERS.**

7 Except as set forth in this Agreement, NTS makes no other warranties, express or  
8 implied, including without limitation, any warranties of merchantability or fitness for a  
9 particular purpose.

10 **32. JOINT EFFORT.**

11 This Agreement has been created as a joint effort of the parties hereto and shall not  
12 be interpreted against either party as the drafter.

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IN WITNESS WHEREOF, the parties hereto have caused these presents

to be duly executed with all of the formalities required by law as of the date first stated herein.

NESTOR TRAFFIC SYSTEMS, INC., a Delaware corporation

December 8, 2004

By [Signature]

Title President + CEO

December 8, 2004

By [Signature]

Title CEO

"NTS"

CITY OF LONG BEACH, a municipal corporation

1/3, 2004<sup>5</sup>

By Christine J. Shippey ASSISTANT City Manager

"City" EXECUTED PURSUANT TO SECTION 301 OF THE CITY CHARTER.

The foregoing Agreement is hereby approved as to form this 17<sup>th</sup> day of December, 2004.

ROBERT E. SHANNON, City Attorney

By [Signature]  
Richard F. Anthony,  
Deputy City Attorney

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**EXHIBIT "A"**

**INSTALLED APPROACHES**

1. North Redondo at 7<sup>th</sup> Street
2. South Redondo at 7<sup>th</sup> Street
3. East 7<sup>th</sup> Street at Redondo
4. West 7<sup>th</sup> Street at Redondo
5. North Bellflower at Willow
6. East Artesia at Cherry
7. North Long Beach Boulevard at Wardlow
8. South Long Beach Boulevard at Wardlow
9. North Long Beach Boulevard at Anaheim
10. South Long Beach Boulevard at Anaheim

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**EXHIBIT "B"**

**SCOPE OF SERVICES**

Nestor Traffic Systems, Inc., ("NTS") shall provide the City of Long Beach ("City") with the following services:

- ◆ Site installation planning and design, and equipment installation
- ◆ User training and support
- ◆ Citation preparation and processing services
- ◆ Maintenance, self-test and support
- ◆ Expert witness testimony and court training
- ◆ Violation review station
- ◆ Reporting
- ◆ Meetings
- ◆ Other Optional Services
- ◆ VIP Analysis

**Site Installation Planning, Design and Equipment Installation**

NTS shall monitor a minimum of ten (10) traffic approaches with camera systems at each of the Installed Approaches defined in Exhibit "A".

The Installed Approaches will be upgraded per the terms of this Agreement. If any and/or all of the above intersections, upon further evaluation, are deemed not to be enforceable for any reason utilizing the NTS system, then alternate intersections may be substituted by mutual written consent of City and NTS.

NTS will procure, install and provide support of traffic signal violation detection equipment, computer hardware, software, cameras, camera housing and mounts, communications equipment and roadside controller cabinets as specified in the proposal at each of the designated intersections provided for above. All Red Light Enforcement equipment will remain the property of NTS.

1 All wiring shall be internal to equipment (not exposed) and underground in existing  
2 traffic signal conduits, if capacity exists, except where required to directly interface with the  
3 traffic signals and electrical service. Separate conduits may be required if existing conduit  
4 is at capacity. Use of existing conduits requires the approval of City but will not be  
5 unreasonably withheld.

6 City shall waive any permit or licensing fees for any construction and installation  
7 being done. However, NTS is still responsible for obtaining a Temporary Street Occupancy  
8 Permit from the Engineering Bureau Construction Division and must comply with applicable  
9 insurance and construction-area traffic control requirements.

10 NTS shall submit plans and specifications to the City Engineer for review and  
11 approval. These plans and specifications shall be signed and stamped as approved by  
12 a professional engineer licensed to practice in the State of California. NTS shall provide  
13 at least three (3) sets of drawings of the wiring for the upgraded Red Light Enforcement  
14 ("RLE") circuitry, if any, including all connections.

15 The RLE system shall be electrically isolated from the traffic signal system.

16 RLE equipment can be mounted on existing traffic signal poles where possible  
17 subject to City review and approval, not to be unreasonably withheld.

18 RLE poles and foundations shall conform to Caltrans Standard Plans and  
19 Specifications. However, NTS will not be responsible for remediation that may be required  
20 due to current conditions not caused by NTS.

21 NTS cabinets shall be installed in a manner that meets or exceeds ADA  
22 requirements.

23 NTS shall notify the Traffic and Transportation Bureau at least forty-eight (48) hours  
24 prior to interfacing with traffic signal equipment. NTS shall be responsible for pulling all  
25 wiring into City cabinets.

26 NTS shall produce digital video files of the red light violation capable of identifying  
27 vehicles traveling through the intersection during the red light phase. The violation video  
28 shall capture the driver's view of the traffic signal, the driver of the vehicle and either a front

1 or rear view of the vehicle license plate.

2 NTS shall produce digital video that is encrypted at the roadside location prior to  
3 being electronically transferred to the processing center.

4 NTS has automated camera control to capture violations occurring in a range of  
5 lighting conditions, including day and night, as well as under different visibility conditions  
6 caused by weather-related factors, however, performance cannot be guaranteed over  
7 every possible condition at every possible location.

8  
9 **User Training and Support**

10 NTS will annually provide one (1) day of up to eight (8) hours of formal training for  
11 up to four (4) persons at City's facilities to acquaint City personnel with system operation;  
12 training consists of instructional and operational training as well as hands-on equipment  
13 exercises with an instructor present. All necessary training materials and documentation  
14 will be provided by NTS. If City requests additional training, NTS will provide the additional  
15 training and materials to City and shall bill City up to \$100/hr. for such additional training.

16  
17 **Citation Preparation and Processing Services**

18 NTS will process violations utilizing a computerized traffic citation program  
19 commonly referred to as "Citation Composer", including printed forms, mailing of forms,  
20 mailing and postage costs and such other miscellaneous costs and expenses as may be  
21 reasonably necessary to issue a Citation and deliver it by U.S. mail. The certificate of  
22 mailing, required by CVC 40518, must be a certification issued by the United States Post  
23 Office.

24 NTS shall work closely with the Long Beach Police Department (the "Police  
25 Department") and the Los Angeles County Superior Court (the "Superior Court") in the  
26 issuance of violations. NTS shall submit information needed to issue violation notices to  
27 the Police Department. All citations must be reviewed and approved by the Police  
28 Department.

1 Citations shall be mailed to the violator within two (2) business days after being  
2 approved and transmitted to the processing center by the Police Department. The Notice  
3 to Appear must be on forms approved by the Judicial Council.

4 NTS shall directly access the driver license information and the registered owner  
5 residence address from the California Department of Motor Vehicles ("DMV").

6 NTS, in coordination with the Superior Court, will develop and implement an  
7 independent numbering system for automated red light citations.

8 NTS will download all citation information via an electronic file into the Superior  
9 Court database.

10 NTS shall maintain a documented chain of custody for all electronically transmitted  
11 information.

12 NTS will provide an automated customer service telephone number to the public.  
13 Customer Service Representatives will be available Monday through Friday, from 8:30 a.m.  
14 to 5 p.m. PST, excluding holidays, in order to schedule violation video viewing  
15 appointments for the Police Department and answer basic questions regarding City's  
16 program.

17 NTS will work with the Superior Court to set up the necessary communications that  
18 will enable NTS to send delinquent notices to those registered owners/drivers for whom  
19 such notices are appropriate.

20 NTS will work with City and the Superior Court in order to establish an agreement  
21 with the DMV to allow use of section 40509.1 CVC to make notification of failure to appear.  
22 The DMV will place a hold on the violator's driver's license or automobile registration. The  
23 violator must go to court in order to have their license or registration reinstated. At that  
24 time the violator will be required to sign a promise to appear on the red light citation. If the  
25 violator still does not pay their citation or appear in court, there is a "signed promise to  
26 appear" and a warrant can be issued.

27 All City Data contained in red light citations shall be retained for a period of six (6)  
28 months from the date the information was first obtained, or until final disposition of the

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1 citation, whichever date is later, after which time the information shall be destroyed.

2 The method of destruction of all City Data shall be in a manner such that it cannot  
3 be reproduced or identified in any physical or electronic form. Said method of destruction  
4 of all City Data shall be approved by City. City or its authorized representative, upon  
5 reasonable notice, shall have the right, during normal business hours, to examine and audit  
6 any and all records, books, papers, and documents related to the destruction of City Data  
7 by NTS to the extent City believes necessary to assure verification and compliance.

8

9 **Maintenance, Self-Test and Support**

10 NTS shall maintain the entire NTS System, including but not limited to enforcement  
11 equipment (i.e. cameras, poles, wiring, roadside computer). NTS will use reasonable  
12 commercial efforts to repair systems, including vandalism and graffiti removal, within  
13 seventy-two (72) hours of notification.

14 NTS shall perform multiple remote camera and PC equipment checks daily to  
15 confirm proper operation of computers, cameras and communications network. A  
16 maintenance log shall be kept documenting all service issues. Routine in-field camera  
17 equipment inspection shall be done on a monthly basis.

18 NTS will work with City to select a mutually acceptable testing laboratory and have  
19 annual equipment inspections as required.

20 There will be no liquidated damages to City for the failure of NTS equipment.

21 Interruption in the operation of NTS equipment due to a third party will not be the  
22 responsibility of City. However City will use reasonable efforts to assist NTS in identifying  
23 and locating the third party responsible for the damage.

24 NTS shall be responsible for maintenance and repair/replacement of all computer  
25 workstation equipment and software under normal working conditions. NTS shall not be  
26 responsible for any maintenance or repair/replacement required as a result of an act of  
27 negligence by City.

28

1 **Expert Witness Testimony and Court Training**

2 NTS will provide expert witness testimony, as reasonably necessary, to testify  
3 regarding the accuracy and technical operation of the NTS equipment. After the first six  
4 (6) months of the program there will be an additional fee based upon an hourly rate of  
5 \$175/hour.

6  
7 **Violation Review Station**

8 NTS will provide one (1) desktop workstation, one (1) laptop workstation, one (1)  
9 computer monitor and one (1) color printer for citation approval, violation video viewing  
10 appointments and court hearings.

11  
12 **Reporting**

13 NTS shall submit to City monthly reports on project results within thirty (30) days of  
14 the end of each calendar month. The data collection includes, but is not limited to, tracking  
15 the following relevant information for each violation recorded by the photo enforcement  
16 system. The reports shall include the following mandatory items:

- 17 1) Number of violations recorded
- 18 2) Number of non-issued violations
- 19 3) Breakdown of reasons for non-issuance
- 20 4) Number of citations issued
- 21 5) Court hearings scheduled and held
- 22 6) Number of calls for information
- 23 7) Number of violation video viewing appointments scheduled
- 24 8) Number of image viewing appointments scheduled and held
- 25 9) Yellow time report by approach
- 26 10) System access log by intersection
- 27 11) Citation data purged

28 City shall continue to receive monthly the Long Beach CrossingGuard Performance

1 Report and the Long Beach Citation Report in the same format that NTS has previously  
2 provided to City. Other reports not described above and ad hoc reports are not part of this  
3 Agreement and the preparation and delivery of such reports may result in additional fees.

4 NTS shall maintain a database with the following information per violation:

- 5 1) Location, date and time
- 6 2) Number of seconds of red traffic signal
- 7 3) Type of violation
- 8 4) Vehicle description including license plate state and number
- 9 5) California Vehicle Code section violated
- 10 6) Citation prepared or reason for not preparing citation
- 11 7) Registered vehicle owner's name and address, driver's license number and  
12 related information required to prepare citations where the violation is made by a  
13 driver other than registered owner (Affidavit of Non-Liability)
- 14 8) Status of citation (outstanding, cancelled, reissued, paid, bail forfeited, traffic  
15 school, warrants issued, etc.)

### 16 Meetings

17  
18 NTS representative(s) will meet with the Police Department, Department of  
19 Transportation and Public Works and other representatives, as determined by City, on a  
20 monthly basis.

### 21 Optional Services

22  
23 Live monitoring is an optional service for City's consideration. Live monitoring will  
24 be available at a frame rate consistent with the available bandwidth of the communications  
25 installed to link the intersection equipment with the NTS server at the Police Department.  
26 City is responsible for the communications interconnect between the intersection and the  
27 Police Department. Live intersection monitoring will be available on the NTS computer  
28 equipment provided. Additional monitoring workstations are available and can be



1 purchased separately.

2  
3 **VIP Analysis**

4 At City's request, NTS will use its Video-based Intersection Profiling ("VIP") process  
5 to analyze the occurrence of red light violations at given intersections. NTS shall conduct  
6 two (2) VIP analyses at intersections of City's choosing and provide the results to City at  
7 no cost to City. City shall pay \$850 for each subsequent VIP analysis.

8  
9 **Responsibilities of the City of Long Beach**

10 City shall be responsible for providing NTS with "as built" drawings if in electronic  
11 form required by NTS for the preparation of drawings for installation of the system  
12 upgrades and will process NTS' engineering drawings without unusual cost or delay.

13 City shall not levy any permit fees or, if municipal ordinance requires the  
14 assessment of fees, City shall waive or be responsible for such fees associated with the  
15 installation of the system and/or upgrades made thereto.

16 City shall prosecute each citation and defend any challenge to the use of the system  
17 or validity of its results and/or use of the U.S. mail to deliver the citation, when in the  
18 exercise of discretion, vested solely in City, such prosecution or defense is warranted and  
19 serves in the interest of justice. In addition, NTS may, at its own expense, participate in  
20 any proceeding challenging the use of the system or validity of its results and/or use of the  
21 U.S. mails to deliver the citation.

22 City shall provide all electrical power required by the systems, except that NTS shall  
23 be responsible for connecting the system to the source of the electrical power at the  
24 intersection.

25 Although City retains the authority to make safety improvements at the affected  
26 intersections it shall not modify traffic signal operations in effect at the time of the Proposal  
27 without advising NTS in advance of such change and without consideration of the impact  
28 of the change on the program.

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1 City shall have an option to relocate the existing traffic signal violation system to  
2 alternate locations (such locations to be mutually agreed to between City and NTS) in the  
3 event that the number of violations issued by a particular system drop to less than 50  
4 citations per approach enforced per month on average over a three-month or longer period.

5 City shall assist NTS in obtaining all required information from the Court(s) where  
6 citations are filed from the ETRS system (or any other court system), on line or in a batch  
7 mode on a nightly basis, so that NTS can track payments on City's behalf and provide for  
8 proper invoicing and reporting for City.

9 During the term of this Agreement or any extension thereof, City agrees that it  
10 cannot use the system, or allow the system's use by a third party for enforcement or  
11 studies without the prior written permission of NTS. In addition, NTS will not process nor  
12 support any Notices for Violations not captured by NTS's system.

EXHIBIT "C"

CITY EMPLOYMENT POLICIES

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## **CITY'S POLICY FOR DISADVANTAGED, MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISES**

The City of Long Beach is an equal opportunity employer and requires all Consultants to comply with policies and regulations concerning equal employment opportunity.

The City of Long Beach subscribes to the following goals concerning awards for equipment, material, supplies, and services.

Fifteen percent (15%) DBE/MBE Participation

Fifteen percent (15%) WBE Participation.

Whenever possible, the CONSULTANT should seek to accomplish these goals.