

A. recd 10-29-05 1 of 16

AGREEMENT

THIS AGREEMENT ("Agreement") made and entered into this 25 day of November, 2003 is by and between Transol USA Inc., ("TRANSOL") and The City of Santa Fe Springs, California ("City").

WITNESSETH

WHEREAS, the City desires to contract for the provision of equipment, processing and other services to enable it to use red light camera systems to enforce its traffic laws;

WHEREAS, City Council finds that the use of an automated traffic enforcement system will benefit the public's health, safety and welfare;

WHEREAS, TRANSOL holds itself out to the City as having the expertise and experience to furnish, install, operate and maintain an automated red light camera enforcement system and its related services; and

NOW THEREFORE, for and in consideration of mutual promises and covenants contained herein, the sufficiency of which is mutually acknowledged, the parties hereto agree as follows:

ARTICLE 1: ACCEPTANCE OF CONTRACT

This Agreement, including all Exhibits attached hereto, contains the entire understanding of the parties. Accordingly, the Agreement supercedes any prior commitments, promises and/or negotiations between the parties unless otherwise provided herein, and it may be amended only in writing, as agreed by the parties.

ARTICLE 2: SCOPE OF WORK

In accordance with the terms of this Agreement, TRANSOL shall furnish all units, labor, materials, equipment, and maintenance related to the installation and ongoing operation of an automated traffic enforcement system and its associated services in the City. The exact materials, equipment and services to be provided by TRANSOL to City under this Agreement are described in greater detail in the document attached hereto as Exhibit A, incorporated by this reference. (All of the materials, equipment to be installed by TRANSOL under this Agreement shall hereinafter be referred to as the "System," and all services to be provided by TRANSOL shall hereinafter be referred to as the "Services.")

ARTICLE 3: DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

- 3.1 The City agrees to use due diligence in working with TRANSOL to acquire in a timely manner the necessary permits, approvals and other necessary documentation to enable the System's installation after the submission of the plans.
- 3.2 TRANSOL agrees to commence the installation of the System within 14 days after all permits have been approved (the date all permits are approved shall hereinafter be referred to as the "Approval Date"). The Approval Date shall be marked by the issuance of a signed writing from TRANSOL to City, stating that all permits have been approved.
- 3.3 TRANSOL agrees to have all installation work completed and have the System fully operational no later than 120 days from the Approval Date.
- 3.4 The time schedule may be extended by reason of delay, changes, additions, deletions, or other reasons if approved by the City in writing.

ARTICLE 4: EQUIPMENT ORDER

- 4.1. TRANSOL shall install the red light photo enforcement System at all the locations, and for all the approaches, described in the document attached hereto as Exhibit A. In addition to the locations described in Exhibit A, the parties may agree from time to time to add, subtract or modify locations where the System shall be installed and maintained. A System installed at a new location shall be in operation for a minimum of one year at that location, unless the parties agree otherwise in writing.
- 4.2. Each directional System installed by TRANSOL shall provide City with front driver and rear license plate photos, and a wide-angle intersection view capable of showing the violator vehicle both before and after entering the intersection. All installation, maintenance, Services and repairs on the Systems are included in the established fee for the Systems.
- 4.3. The specific Systems being ordered by City under this Agreement, the intersections where the Systems will be installed, the directions and/or approaches of traffic to be monitored for violations, are all described in detail in the document attached as Exhibit A.

ARTICLE 5: EQUIPMENT AND SERVICES FEE

- 5.1 The City agrees to pay TRANSOL a fee (the "Fee") for the installation, operation, and maintenance of the photo enforcement System, for the supply of notice processing Services and for other Services, all in accordance with the fee schedule attached hereto as Exhibit A, incorporated herein by this reference (the "Fee Schedule.").
- 5.2 The Fee to be paid TRANSOL is hereby waived for the first 30 days after the Installation Date. This initial 30 day period shall be used for testing the System and for the issuance of Warning Letters as required by California Vehicle Code §21455.5(a). The City shall pay a five (\$5.00) dollar per ticket processing fee for any Warning Letters reviewed and approved by the Whittier PD that are processed, printed and mailed by TRANSOL during this first 30 days.

ARTICLE 6: PROCESSING SERVICES SCHEDULE

- 6.1 The Services to be provided by TRANSOL shall include a processing service. The processing service will include: computer generated images of each potential violation, batched and submitted to the City's Police Department daily. The City will carefully review each potential violation to determine which violations should properly be issued. Thereafter, the City shall confirm with an electronic signature those images that are deemed to be official violations. For each approved violation, TRANSOL shall prepare and mail a Warning Letter or citation notice to alleged violators, in a form approved by the City. The City will notify TRANSOL if a summons and complaint is required, and TRANSOL will print and mail or transmit the summons and complaint to the City for personal service.
- 6.2 TRANSOL will provide the City with daily updates of all citation notices issued, and will Update these lists as notified by the City of payments received or cases otherwise handled.
- ✓ 6.3 The City agrees to submit, or confirm the report if issued by the Los Angeles County Superior Court, each month a list of the monthly paid citation fees, and include the Payment due TRANSOL for those paid fees, by the 10th day of each month for the proceeding month.

ARTICLE 7: TERM, RENEWAL AND TERMINATION

- 7.1 The term of this Agreement shall be for a period of five years, beginning 30 days after the installation date. For the first 30 days from the installation date, warning letters shall be issued as required by California Vehicle Code §21455.5(a).
- X 7.2 Should the City elect to add additional intersection Systems, they shall be included within the current Term and shall be subject to the same terms and conditions of this Agreement. Notwithstanding the foregoing, any System that is installed at a new intersection shall be in operation a minimum of one year.
- 7.3 Notwithstanding anything contained in this Agreement to the contrary, if for any reason automated red light enforcement is no longer legally enforceable in the State of California, or if legislation or court decisions makes it reasonably impossible to operate the System as originally contemplated by the parties, or if the continued use of the System would impair the City's access to federal funding or other benefits to which it might otherwise be entitled, this Agreement may be terminated by the City upon providing TRANSOL with 30 days written notice of termination. In such case, TRANSOL agrees to terminate this Agreement and remove the entire System within 30 days of the receipt of any such notice.
- 7.4 The City may terminate this Agreement during the term, by giving TRANSOL 30 days written notice of termination, under the following circumstances, after which TRANSOL shall remove the System at its expense, within 30 days of the receipt of such notice of termination: (a) For material breach or cause, at any time during the term; or (b) without cause, in the City's sole discretion, at any time during the 30 day period following the date occurring one year after the date of completion of installation of the System (the "Anniversary Date"), and at any time during each 30 day period following each year's Anniversary Date throughout the term.
- 7.5 On the Anniversary Date of this Agreement, and on the same date each year thereafter for the duration of this Agreement, the City shall have the right (for a period of thirty days following the anniversary date) to change the payment structure from the per violation fee to a straight lease fee as described in the document attached as Exhibit B, incorporated herein by this reference.

ARTICLE 8: WARRANTY

TRANSOL warrants that the goods and services supplied hereunder will be of good workmanship and of proper materials, free from defects and in accordance with manufacturer's specifications. TRANSOL shall perform its services with care, skill, and diligence, in accordance with the applicable professional standards currently recognized by such profession, and shall be responsible for the professional quality, technical accuracy, completeness, and coordination of all reports, designs, drawing, plans, information, specifications, and other items and services furnished under the contract. TRANSOL shall comply with all applicable federal, state, and local laws, ordinances, codes, and regulations in performing its services. If TRANSOL fails to meet applicable professional standards, TRANSOL shall without additional compensation correct or revise any errors or deficiencies in its reports, drawings, specifications, designs, and other items or services.

ARTICLE 9: COMPLIANCE WITH LAWS

TRANSOL shall comply with all applicable federal, state, county, and local laws, ordinances, regulations, and codes (including procurement of required permits or certificates) in TRANSOL's performance under this Agreement, irrespective of whether a specification is furnished. This includes any applicable state or local law, rule or regulation affecting safety and health. If any materials, equipment, Systems, or Services to be furnished are required to be constructed, packaged, labeled, or registered in a prescribed manner, TRANSOL shall comply with federal law and, in addition, with applicable state or local law. TRANSOL agrees to defend, indemnify, and hold harmless the City, its officials, officers, agents, and employees, for any loss, damage, penalty, fine or liability sustained because of a TRANSOL noncompliance with this Agreement or under law.

ARTICLE 10: MATERIALMAN LIENS

In the event TRANSOL fails or neglects to pay for any product installation, maintenance or other Service obligations incurred under this Agreement and a demand or request is made on the City for payment, the City shall have the right to make such payments and deduct the sum from any amount that may be due to TRANSOL. The City's decision to take such action in one situation, shall not create an obligation on the part of the City to take similar action in another situation, nor shall it constitute a waiver of the City's right to prosecute any other legal remedy it may have against TRANSOL. TRANSOL shall indemnify and hold harmless the City from any and all liens.

ARTICLE 11: FORCE MAJEURE

In the event that TRANSOL is delayed at any time in the progress of the work due to labor disputes, fire, abnormal weather conditions not reasonably anticipated, unavoidable casualties or causes beyond the control of TRANSOL, then the completion time shall be extended by Change Order for such reasonable time as the City may determine.

ARTICLE 12: INSURANCE

12.1 TRANSOL shall procure and maintain throughout the duration of this Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with products, materials, Systems and Services supplied to City. TRANSOL shall provide current evidence of the required insurance in a form acceptable to City and shall provide replacement evidence for any required insurance which expires prior to the completion, expiration or termination of this Agreement.

Nothing in this section shall be construed as limiting in any way, the Indemnification and Hold Harmless clauses contained herein in Section 12.2, or the extent to which TRANSOL may be held responsible for payments of damages to persons or property.

12.2 TRANSOL shall maintain the following minimum scope and limits of insurance:

- 1) Commercial General Liability Insurance in a form at least as broad as ISO Form #CG 00 01 ED. 11/88, with a combined single limit of \$1,000,000 per occurrence.
- 2) Workers Compensation as required by applicable state law, and Employers' Liability insurance with limits of not less than \$1,000,000 each accident;
- 3) Comprehensive Business Automobile Liability Insurance for all owned, non-owned and hired automobiles and other vehicles used by TRANSOL with a minimum \$1,000,000 per occurrence combined single limit bodily injury and property damage.

12.3 All insurance required by express provision of this Agreement shall be carried only in responsible insurance companies authorized to do business by the Insurance Commissioner in the State of California with a Best's

rating of no less than B+, Class X. At the sole discretion of the City, insurance provided by non-admitted or surplus carriers of proven reputation and minimum Best's rating of no less than A-, Class X may be accepted if TRANSOL evidences the need to the sole satisfaction of the City.

12.4 All insurance policies required by this Agreement shall be endorsed as hereinafter provided:

- 1) Commercial General and Automobile Liability policies shall be endorsed as follows:
 - (i) The City, its elected officials, officers, employees, agents and representatives, shall be named as additional insureds as respects liability arising out of activities performed by or on behalf of TRANSOL; products and completed operations of TRANSOL. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Civil Code §2782(b).
 - (ii) TRANSOL's insurance shall be primary and non-contributory to any insurance or self insurance held by City;
 - (iii) Coverage shall not be suspended, voided, cancelled, reduced in coverage or limits except after thirty (30) days prior written notice has been given to City. In addition, all such insurance:
 - (iv) That coverage shall contain no special limitations on the scope of protection afforded to City, its elected officials, officers, employees, agents and representatives;
 - (v) shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the Insurer's liability;
- 2) Workers Compensation and Employer's Liability policies, shall be endorsed to state that the insurer agrees to waive all rights of subrogation against the City, its elected officials, officers, employees, agents and representatives, for losses arising from the operation of TRANSOL in the performance of this Agreement. It shall also be endorsed to state that coverage shall not be suspended, voided, cancelled, reduced in coverage or limits except after thirty (30) days prior written notice has been given to City.

12.5 At the inception of this Agreement, and on a quarterly basis thereafter for the term of this Agreement, TRANSOL shall furnish City with a Loss Run report and certificates of insurance which bear original signatures of authorized agents and which reflect insurers names and addresses, policy numbers, coverage, limits, deductibles and self-insured retentions. TRANSOL shall be responsible for ensuring that its current insurance broker (and any subsequent broker during the term of this Agreement) agrees in writing to provide the abovementioned information to the City on a quarterly basis. TRANSOL's insurance broker shall have an affirmative duty to notify City of any material reduction in policy limits. In addition to the preceding, at the inception of this Agreement, TRANSOL shall furnish the City with certified copies of all policy endorsements required herein. All certificates and endorsements must be received and approved by City before work commences or products and materials are delivered. City reserves the right to require at any time complete, certified copies of any or all required insurance policies and endorsements. Any deductibles or self-insured retentions must be declared to and approved by City.

ARTICLE 13: INDEMNIFICATION

TRANSOL agrees to indemnify, defend, save and hold harmless the City, its agents, assigns, employees, officers and officials from and against all claims, demands, liabilities, suits, judgments and decrees, losses and costs and expenses of any kind or nature whatsoever (including attorneys fees and costs), which may be incurred on account of injuries to or death of any person or persons or damage to any property occurring directly or indirectly from, or which may in any way be related to, the performance of the duties and obligations set forth hereunder by TRANSOL or any of its employees, agents, servants, associates or subcontractors however such injuries or death or damage to property may be caused.

ARTICLE 14: REMEDIES

TRANSOL and City agree that both parties have all the Uniform Commercial Code rights, duties and remedies available as well as all remedies allowed by law and the Agreement.

ARTICLE 15: EQUAL EMPLOYMENT OPPORTUNITY

TRANSOL agrees that on the selection of any subcontractor or the use of workmen or employees that he will not in any way discriminate against any person, company or corporation due to race, nationality or origin.

ARTICLE 16: PROTECTION OF WORK

TRANSOL agrees to adequately and properly protect his work and to adhere to and shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Work and shall comply with all OSHA requirements.

ARTICLE 17: EQUIPMENT CLEANING

TRANSOL shall, at its expense, at all times keep the premises free from accumulation of debris, waste material and rubbish, and at the completion of the work. Workers shall remove their tools and equipment and all surplus materials, debris, waste material and rubbish and shall leave the premises in a neat and clean condition. If TRANSOL does not attend to such cleaning immediately upon request, City shall have the right to have the work done by others and deduct the cost thereof from the payment due TRANSOL thereunder.

ARTICLE 18: ASSIGNMENT

It is understood that TRANSOL, upon notice to City, may assign installation, maintenance, and local printing and mailing of the violations to a subcontractor. The City, however, must approve the subcontractor in writing before any work begins, such approval not to be unreasonably withheld. The subcontractor must also agree to abide by the terms of this Agreement, including the duty to maintain the required levels of insurance and the duty to indemnify the City. At all times, TRANSOL shall be responsible for overseeing the activities of all subcontractors to ensure their compliance with this Agreement. If the City is dissatisfied with a particular subcontractor's performance, the City in its sole (but reasonable) discretion shall have the right to demand that the subcontractor be replaced by TRANSOL with another subcontractor.

ARTICLE 19: PROTECTION OF PROPERTY AND PERSONS

TRANSOL will adequately protect work performed hereunder from damage, will protect the City's property from injury or loss, and will take all necessary precautions during the progress of the work to protect all persons and the property of others from injury or damage. TRANSOL will assume full responsibility for all its tools and equipment and all materials to be used in connection with the completion of the work. Damage to existing utilities or site improvements caused by TRANSOL are the full responsibility of TRANSOL, and shall be repaired or replaced at its cost, subject to City's approval.

ARTICLE 20: EVALUATION OF SITES

The sites where the red light photo enforcement Systems will be installed were selected by the City, after a careful analysis by the City's police traffic bureau. Based on that analysis, the City has determined that each of these intersections have a high incidence of intersection accidents, there is an extreme difficulty in identifying violators, and that other traffic-light changes/modifications would be ineffective in resolving these problems. Accordingly, the City determined that photo enforcement was the best solution to the dangers posed by these intersections.


ARTICLE 21: PERMITS, LICENSES AND COMPLIANCE WITH LAW

In connection with the work to be performed, TRANSOL at its sole expense shall procure all necessary permits, approvals and licenses necessary to install, operate, maintain and Service the System. TRANSOL further agrees to comply with all laws, ordinances, codes and regulations applicable to the performance of work hereunder.

ARTICLE 22: WAIVER OF CLAIMS, LIENS, ETC.

TRANSOL individually and on behalf of the TRANSOL subs, material men and workmen hereby waives and agrees to indemnify and save harmless the City from all attachments, claims and liens against City and City's property by reason of labor or materials or both, furnished for the work under this Agreement.

ARTICLE 23: CHANGE OF LOCATION

 Should the reduction in traffic violations at a particular chosen location fall to a level that does not warrant the system, upon agreement between the parties the equipment, at the expense of TRANSOL, may be moved to a new location.

ARTICLE 24: INSPECTION

The City shall have access to and the right to inspect all work in the course of construction.

ARTICLE 25: INDEPENDENT CONTRACTOR

TRANSOL agrees to perform the work as an Independent Contractor and not as a Subcontractor, agent or employee of City. TRANSOL shall at all times act as an Independent Contractor in performing the work under this contract, including any additions thereon, and shall furnish all supervision and direction required to complete the work.

ARTICLE 30: GOVERNING LAW

This Agreement shall be governed by and interpreted under the laws of the State of California. Any dispute or legal proceeding arising out of this Agreement shall be brought in Los Angeles County, California with the prevailing party to be awarded its costs and fees, including attorney fee.

ARTICLE 31: TAXES

City is exempt from Federal Excise and State sale taxes; therefore, TRANSOL is prohibited from delineating a separate line item for any sales or service taxes. The City does not intend to imply that a bidder has no independent tax liability.

ARTICLE 32: CHANGES

This Agreement, including all attached exhibits, contains the entire understanding of the parties, supersedes any prior commitments, promises and/or negotiations between the parties and may be amended only in writing, as agreed upon by the parties.

ARTICLE 33: WINDING DOWN

Upon termination of this Agreement, either for breach or because it has reached the end of its term, the parties recognize that the City will have to deal with traffic law violations in the "pipeline," and that TRANSOL accordingly must assist the City in this regard. Accordingly, the parties shall take the following actions, and shall have the following obligations, which survive termination during the wind-down period: City shall cease using equipment, shall return equipment to TRANSOL within a reasonable time, and shall not generate further images to be processed. Unless directed by the City not to do so, TRANSOL 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 due the fee specified in the Agreement as if the Agreement were still in effect. At termination, TRANSOL shall forward to the City all film images, and shall continue to do so during the wind-down period.

ARTICLE 34: CONFIRMATION AND AUTHORITY

34.1 The City and TRANSOL for themselves and their successors, executors, administrators, and assigns agree to the full performance of this agreement.

34.2 The person signing below on behalf of TRANSOL certifies that he or she is an agent of TRANSOL possessed of authority to bind TRANSOL to this Agreement.

IN WITNESS WHEREOF we have executed the agreement on the date written below.

Date: 11-25-03

CITY OF SANTA FE SPRINGS:

Approved:

Gustavo R. Velasco
Gustavo R. Velasco, Mayor

Attest:

Marilyn Jannak
Marilyn Jannak, City Clerk

11-25-03
Date

Approved as to Form:

SA
Steve Skolnik, City Attorney

TRANSOL USA INC.

William Kroske
William Kroske, Ph.D., Director USA Operations

12/11/03
Date

EXHIBIT A

SCOPE OF WORK AND FEE AGREEMENT

Equipment Order and System Fee: The City requests that Transol install dual red light enforcement system (System) at the following intersection(s) and identified lanes to be monitored:

1. The intersection at Telegraph Road and Bloomfield Avenue.

Fee for this System: The greater of 32% of the City's share of the fine paid or \$15 dollars.

2. The intersection at Florence Avenue and Bloomfield Avenue.

Fee for this System: The greater of 32% of the City's share of the fine paid or \$15 dollars.

3. The intersection at Bloomfield Avenue and Lakeland Road.

Fee for this System: The greater of 32% of the City's share of the fine paid or \$15 dollars.

4. The intersection at Shoemaker Avenue and Lakeland Road.

Fee for this System: The greater of 32% of the City's share of the fine paid or \$15 dollars.

Each directional system shall provide front driver and rear license plate photos, and a wide angle intersection view showing the violator vehicle both before and after entering the intersection. All installation, maintenance, service and repairs on the systems are included in the per violation fee. **The City of Santa Fe Springs Engineering Department will determine the amount of approaches necessary after reviewing the identified sites.**

FEE AGREEMENT:

The City agrees to lease the following products, and shall pay TRANSOL on a per citation basis:

The Per Citation Fee shall be the greater of 32% of the City's share of the fine paid or \$15 dollars, approved and issued by the City. See Exhibit B for an optional fee arrangement (if elected by City).

The per-citation fee covers the supply, installation, implementation, operations and maintenance costs for all camera technologies and all citation processing technologies and services. This shall include, but not be limited to, the following:

- The supply, installation, operation and maintenance of RI-RLC™ Digital Red Light Dual-Camera systems at the agreed locations (each system to monitor between one and four lanes per approach, with lanes being either straight or turning lanes, as agreed with the City).
- All required installation equipment, works and services relating to the camera system installation.

All required violation processing services and the mailing of the approved citations (including adjudication, documentation and Reports services). Notwithstanding the foregoing, the parties understand that only those citations and warnings that have been first been reviewed and approved by authorized members of the City's police department shall be delivered to violators.

- All required Courts Service materials and appearance if necessary.
- Training programs for City/PD/Courts personnel.
- Community Relations resources, if requested.

The City agrees to vigorously pursue payments of tickets with service of follow-up letters or summons as required.

The parties agree that the fee will be payable only upon actual payment of the fine by the violator. The fee will not be due from the City to TRANSOL if, for any reason, the fine is not paid, or the citation is dismissed (including but not limited to a dismissal which results from a lack of evidence, or as a result of traffic school completion). Notwithstanding the foregoing, the fee would still be due if the court validates a violation, but elects to waive the fine for a different or lesser penalty.

TERM:

A Five (5) year term as described in Article 7 of the Agreement.

CONFIRMATION AND AUTHORITY

The City and TRANSOL for themselves and their successors, executors, administrators, and assigns agree to the full performance of this agreement. The person signing below on behalf of TRANSOL certifies that he or she is an agent of TRANSOL possessed of authority to bind TRANSOL to this Agreement.

EXHIBIT B

LEASE PAYMENT OPTIONS:

1. At the end of each 12 months of operation, the City has the option of converting from the current per ticket fee to a straight lease payment plan. Also both parties are aware that there are two pending photo enforcement bills in California. The passage of bill AB 1022 will eliminate the option of a per violation payment upon the renewal of the contract. These are the pre-established lease fees per approach and the number of lanes being monitored with or without the passage of AB 1022:

a. DUAL-CAMERA SYSTEM – driver photo and rear vehicle photos

1 lane only	\$4,700
2 lanes	\$5,200
3 lanes	\$5,700
4 lanes	\$6,200

There will also be a *Processing fee* of \$5.00 per processed and mailed violation that has been approved and authorized by the Whittier PD.

b. Under the initial contract the lease fees would be:

(1) Telegraph Road and Bloomfield Avenue (Cost reflected in Section 1.a, above).

(2) Telegraph Road and Bloomfield Avenue (Cost reflected in Section 1.a, above).

(3) Bloomfield Avenue and Lakeland Road (Cost reflected in Section 1.a, above).

(4) Shoemaker Avenue and Lakeland Road (Cost reflected in Section 1.a, above).

a. REAR VIEW CAMERAS ONLY – rear license and intersection views

1 lane only	\$3,900
2 lanes	\$4,300
3 lanes	\$4,800
4 lanes	\$5,200

There will also be a *Processing fee* of \$5.00 per processed and mailed violation that has been reviewed, approved and authorized by the Whittier PD.