

RESOLUTION NO. 17-553

A RESOLUTION AUTHORIZING THE CONTRACT BETWEEN THE TOWN OF MOUNT CARMEL, TENNESSEE, AND REDFLEX TRAFFIC SYSTEMS, INC.

WHEREAS, Mount Carmel Municipal Code §1-202 authorizes the Mayor to enter into contracts; and

WHEREAS, the Town of Mount Carmel wishes to enter into a contract with Redflex Traffic Systems, Inc.;

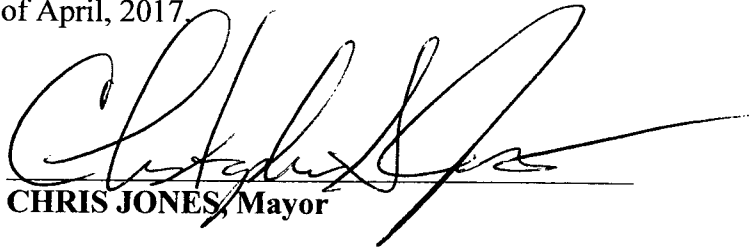
WHEREAS, it is the best interest of the citizens of the Town of Mount Carmel, Tennessee, to enter into such an agreement for traffic control.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF MAYOR AND ALDERMEN OF THE TOWN OF MOUNT CARMEL, TENNESSEE, as follows:

SECTION I. The Mayor for the Town of Mount Carmel, Tennessee, is authorized to execute on behalf of the Town the Contract attached hereto as Exhibit A; and

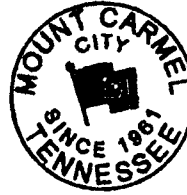
SECTION II. This Resolution shall take effect upon its passage as the law requires.

A D O P T E D this the 25th day of April, 2017.


CHRIS JONES, Mayor

ATTEST:

Marian L. Sandidge
MARIAN SANDIDGE, City Recorder



APPROVED AS TO FORM:

John E. Pevy
JOHN PEVY, ATTORNEY

AGREEMENT BETWEEN THE TOWN OF MOUNT CARMEL, TENNESSEE AND REDFLEX
TRAFFIC SYSTEMS, INC. FOR AN AUTOMATED PHOTO ENFORCEMENT PROGRAM

This Agreement (this "Agreement") is made as of this ____ of _____ 2017 ("Effective Date") between Redflex Traffic Systems, Inc., a Delaware Corporation ("Redflex"), and the Town of Mount Carmel, Tennessee, a municipal corporation (the "Customer" and/or the "Town"), for an Automated Photo Enforcement Program.

RECITALS

- A. Violations of T.C.A. § 55-8-110 or municipal codes consistent with T.C.A. § 55-8-198 for failing to stop for a red light or failing to stop for a red arrow have been shown to pose a significant risk to life and property;
- B. It is the objective of the Automated Photo Enforcement Program to reduce the incidents of vehicle collisions at the traffic intersections and reduce traffic violations on Town streets subject to the Program;
- C. Redflex has exclusive knowledge, possession and ownership of certain equipment, licenses, applications, and citation processes related to the Automated Photo Enforcement Program; and
- D. The Town desires Redflex furnish and Redflex desires to furnish all equipment, licenses, applications and back office processing related to the Automated Photo Enforcement Program, including digital traffic enforcement cameras and equipment for the monitoring and enforcement of laws regulating traffic.

The Parties accordingly agree as follows:

AGREEMENT

1. **DEFINITIONS.** In this Agreement, the words and phrases capitalized below shall have the following meanings:
 - 1.1. "Authorized Employee" means the Project Manager or such other individual(s) as the Customer shall designate to review Potential Violations and to authorize the Issuance of Citations.
 - 1.2. "Authorized Violation" means each Potential Violation in the Violation Data for which authorization to issue a citation in the form of an Electronic Signature is given by the Authorized Employee by using the Redflex System.
 - 1.3. "Automated Photo Enforcement Program" or "the Program" are interchangeable and synonymous and mean the process by which the monitoring, identification and enforcement of Violations or law enforcement monitoring by the Town is facilitated by the use of certain equipment, applications and back office processes of Redflex, including but not limited to cameras, flashes, central processing units, signal controller interfaces and sensor arrays which, collectively, are capable of detecting Violations and recording Violation Data in the form of photographic images of motor vehicles
 - 1.4. "Citation" means the notice of a Violation, which is mailed or otherwise delivered by Redflex on behalf of the Town to the violator on the appropriate Enforcement Documentation for each Authorized Violation.
 - 1.5. "Confidential or Private Information" means, with respect to any Person, any information, matter or thing of a secret, confidential or private nature, whether or not so labeled, which is connected with such Person's business or methods of operation or concerning any of such Person's suppliers, licensors, licensees, customers or others with whom such Person has a business relationship, and which has current or potential value to such Person or the unauthorized disclosure of which could be detrimental to such Person, including but not limited to:
 - 1.5.1. Matters of a business nature, including but not limited to information relating to development plans, costs, finances, marketing plans, data, procedures, business opportunities, marketing methods, plans and strategies, the costs of construction, installation, materials or components,

- the prices such Person obtains or has obtained from its clients or customers, or at which such Person sells or has sold its services; and
- 1.5.2. Matters of a technical nature, including but not limited to product information, trade secrets, know-how, formulae, innovations, inventions, devices, discoveries, techniques, formats, processes, methods, specifications, designs, patterns, schematics, data, access or security codes, compilations of information, test results and research and development projects. For purposes of this Agreement, the term "trade secrets" shall have the meaning provided under Tennessee law.
- 1.5.3. Notwithstanding the foregoing, Confidential Information will not include information that: (i) was generally available to the public or otherwise part of the public domain at the time of its disclosure, (ii) became generally available to the public or otherwise part of the public domain after its disclosure and other than through any act or omission of a Party in breach of this Agreement, (iii) was lawfully disclosed to a Party by a person other than a Party, (iv) was required by a court of competent jurisdiction to be disclosed, or (v) was required by applicable state law to be disclosed.
- 1.6. "Designated Intersection Approaches" means the Intersection Approaches that the Parties mutually agree on from time to time. See Exhibit A for the number and type of approaches.
- 1.7. "Electronic Signature" means the method through which the Authorized Employee indicates his or her approval of the issuance of a Citation for a Potential Violation using the Redflex System.
- 1.8. "Enforcement Documentation" means the necessary and appropriate documentation related to the Program, including but not limited to warning letters, Citation notices (using the specifications of the Judicial Council and the Town, a numbering sequence for use on all citation notices (in accordance with applicable court rules), instructions to accompany each issued Citation (including in such instructions a description of basic court procedures, payment options and information regarding the viewing of images and data collected by the Redflex System), chain of custody records, criteria regarding operational policies for processing Citations (including for coordinating with the applicable vehicle registry), and technical support documentation for applicable court and judicial officers.
- 1.9. "Equipment" means any and all approach cameras, sensors, equipment, components, products, software and other tangible and intangible property relating to the Program.
- 1.10. "Fine" means a monetary sum assessed for a Citation, including but not limited to bail forfeitures, but excluding suspended fines.
- 1.11. "Governmental Authority" means any domestic or foreign government, governmental authority, court, tribunal, agency or other regulatory, administrative or judicial agency, commission or organization, and any subdivision, branch or department of any of the foregoing.
- 1.12. "Installation Date" means the date on which Redflex completes the construction, installation of at least one (1) Intersection Approach and has completed the Warning Period in accordance with the terms of this Agreement so that such Intersection Approach is fully operational for the purposes of functioning with the Program.
- 1.13. "Intellectual Property" means, for any Person, any and all now known or later known tangible and intangible (a) rights associated with works of authorship throughout the world, including but not limited to copyrights and mask-works, (b) trademark and trade name rights and similar rights, (c) trade secrets rights, (d) patents, designs, algorithms and other intellectual or industrial property rights, (e) all other intellectual and industrial property rights (of every kind and nature throughout the universe and however designated), whether arising by operation of law, contract, license, or otherwise, and (f) all registrations, initial applications, renewals, extensions, continuations, divisions or reissues in force (including any rights in any of the foregoing), of such Person.
- 1.14. "Intersection Approach" means a conduit of travel with up to four (4) contiguous lanes from the curb (e.g., northbound, southbound, eastbound or westbound) on which at least one (1) system has been installed for the purposes of facilitating the Program by the Customer.
- 1.15. "Operational Period" means the period of time during the Term, commencing on the Installation Date, during which the Program is functional in order to permit the issuance of Citations using the Redflex System.

- 1.16. "Person" means a natural individual, company, Governmental Authority, partnership, firm, corporation, legal entity or other business association.
- 1.17. "PLATESCAN® System" means the license plate scanning system of Redflex.
- 1.18. "Potential Violation" means for any motor vehicle passing through a Designated Intersection Approach, the data collected by the Redflex System concerning such motor vehicle, which data shall be processed by the Redflex System for the purposes of allowing the Authorized Employee to review such data and determine whether a traffic violation has occurred.
- 1.19. "Project Manager" means the project manager appointed by the Customer in accordance with this Agreement, which shall be an Authorized Employee and shall be responsible for overseeing the installation of the Intersection Approaches and the implementation of the Program, and which manager shall have the power and authority to make management decisions relating to the Customer's obligations pursuant to this Agreement, including but not limited to change order authorizations.
- 1.20. "Proprietary Property" means for any Person, any written or tangible property owned or used by such Person in connection with such Person's business, whether or not such property is copyrightable or also qualifies as Confidential Information, including without limitation products, samples, equipment, files, lists, books, notebooks, records, documents, memoranda, reports, patterns, schematics, compilations, designs, drawings, data, test results, contracts, agreements, literature, correspondence, spread sheets, computer programs and software, computer print outs, other written and graphic records and the like, whether originals, copies, duplicates or summaries thereof, affecting or relating to the business of such Person, financial statements, budgets, projections and invoices.
- 1.21. "Redflex Marks" means all trademarks registered in the name of Redflex or any of its affiliates, such other trademarks as are used by Redflex or any of its affiliates on or in relation to the Program at any time during the Term, service marks, trade names, logos, brands and other marks owned by Redflex, and all modifications or adaptations of any of the foregoing.
- 1.22. "Redflex Project Manager" means the project manager appointed by Redflex in accordance with this Agreement, who shall be responsible for overseeing the construction and installation of the Redflex System and related equipment at the Designated Intersection Approaches and the implementation of the Program, and who shall have the power and authority to make management decisions relating to Redflex's obligations pursuant to this Agreement, including but not limited to change order authorizations.
- 1.23. "Redflex System" means, collectively, the Salus® System, SMARTcam® System, the SMARTscene® System, REDFLEXred® System, REDFLEXradar® System, SMARTops® System, the Program, and all of the other equipment, applications, software, hardware, back office processes, servers, off-site backup systems, cameras, sensors, components, motor vehicles and other related tangible and intangible property, to enable Redflex to enforce a minimum of one lane of travel at a designated location.
- 1.24. "REDFLEXradar®" means the detection and tracking system of Redflex relating to the Program.
- 1.25. "REDFLEXrail® System" means the proprietary digital railroad grade crossing photo enforcement system of Redflex.
- 1.26. "REDFLEXred® System" means the proprietary digital red light photo enforcement system of Redflex relating to the Program.
- 1.27. "REDFLEXslimline® System" means the proprietary photo enforcement system of Redflex.
- 1.28. "Salus® System" means the proprietary software that controls the systems of Redflex relating to the Program.
- 1.29. "REDFLEXspeed® System" means the proprietary speed enforcement system of Redflex.
- 1.30. "REDFLEXstop® System" means the proprietary stop sign enforcement system of Redflex.
- 1.31. "SMARTcam® System" means the proprietary software system that controls the systems of Redflex relating to the Program.
- 1.32. "SMARTops® System" means the proprietary back-office processes of Redflex relating to the Program.
- 1.33. "SMARTscene® System" means the proprietary digital video camera unit, hardware and software required for providing supplemental violation data relating to the Program.
- 1.34. "Traffic Signal Controller Boxes" means the signal controller interface and vehicle detection owned and operated by the Customer. This includes the Town's traffic controller, the Town's

vehicle detection equipment, the Town's communication equipment, and the Town's controller cabinet.

- 1.35. "Violation" means any traffic violation as provided for in any applicable rule, regulation or law of any Governmental Authority, including but not limited to operating a motor vehicle contrary to traffic signals, and operating a motor vehicle without displaying a valid license plate or registration.
 - 1.36. "Violation Criteria" means the standards and criteria by which Potential Violations will be evaluated by Authorized Employees of the Customer, which standards and criteria shall include, but are not limited to, the duration of time that a traffic light must remain red prior to a Violation being deemed to have occurred, and the location(s) in an intersection which a motor vehicle must pass during a red light signal prior to being deemed to have committed a Violation, all of which shall be in compliance with all applicable laws, rules and regulations of Governmental Authorities. Should physical criteria change which requires additional modification to the Program or its detection equipment, any costs incurred in connection with such modifications shall be the responsibility of the Customer.
 - 1.37. "Violations Data" means the images and other Violations data gathered by the Redflex System at the Designated Intersection Approaches.
 - 1.38. "Warning Period" means the period of time after the installation and activation of the first Designated Intersection Approach during which period only warning notices shall be issued for a period of thirty (30) days.
2. **TERM.** This Agreement shall commence on the Installation Date and continue for a period of five (5) years (the "Initial Term"), unless terminated earlier as provided for in this Agreement. The Town shall have the option to extend the Initial Term for one (1) additional and consecutive five (5) year time period ("Renewal Term") (The Initial Term together with the Renewal Term is collectively the "Term"). The Renewal Term shall commence automatically and without any required notice or action deemed to have been exercised unless either party provides the other party written notice in accordance with Section 9 of its election not to extend at least ninety (90) days prior to the expiration of the Initial Term.
 3. **SERVICES.** Redflex shall provide the following services in connection with the Program:
 - 3.1. INSTALLATION. With respect to the construction and installation of the Designated Intersection Approaches and the installation of the Redflex System at such Designated Intersection Approaches, the Customer and Redflex shall have the respective rights and obligations set forth on Exhibit B.
 - 3.2. MAINTENANCE. With respect to the maintenance of the Redflex System at the Designated Intersection Approaches, the Customer and Redflex shall have the respective rights and obligations set forth on Exhibit C.
 - 3.3. VIOLATION PROCESSING. During the Operational Period, Violations shall be processed as follows:
 - 3.3.1. All Violations Data shall be stored on the Redflex System;
 - 3.3.2. The Redflex System shall process Violations Data gathered from the Designated Intersection Approaches into a format capable of review by the Authorized Employee via the Redflex System;
 - 3.3.3. The Redflex System will be accessible by Authorized Staff through a secure and encrypted connection by use of a confidential user account on a computer equipped with a high-speed Internet connection and an approved web browser;
 - 3.3.4. Redflex shall provide the Authorized Employee with access to the Redflex System for the purposes of reviewing the pre-processed Violations Data within six (6) days of the gathering of the Violations Data from the applicable Designated Intersection Approaches;
 - 3.3.5. The Customer shall cause the Authorized Employee to review the Violations Data and to determine whether a Citation shall be issued with respect to each Potential Violation captured within such Violations Data, and transmit each such determination in the form of an Electronic Signature to Redflex using the software or other applications or procedures provided by Redflex on the Redflex System for such purpose. REDFLEX ACKNOWLEDGES AND AGREES THAT THE DECISION TO ISSUE A CITATION SHALL BE THE SOLE, UNILATERAL AND EXCLUSIVE DECISION OF THE AUTHORIZED EMPLOYEE AND SHALL BE MADE IN SUCH AUTHORIZED

EMPLOYEE'S SOLE DISCRETION (A "CITATION DECISION"), AND IN NO EVENT SHALL REDFLEX HAVE THE ABILITY OR AUTHORIZATION TO MAKE A CITATION DECISION;

- 3.3.6. For each Authorized Violation, Redflex shall print and mail a Citation within five (5) days after Redflex's receipt of such authorization; provided, however, during the Warning Period, warning violation notices only shall be for all Authorized Violations;
- 3.3.7. Redflex shall provide a toll-free telephone number for the purposes of answering citizen inquiries;
- 3.3.8. Redflex shall permit the Authorized Employee to generate reports using the Redflex Standard Report System;
- 3.3.9. Upon Redflex's receipt of a written request from the Customer and in addition to the Standard Reports, Redflex shall provide, without cost to the Customer, reports regarding the processing and issuance of Citations, the maintenance and downtime records of the Designated Intersection Approaches and the functionality of the Redflex System to the Customer in such format and for such periods as mutually agreed upon;
- 3.3.10. During the six (6) month period following the Installation Date and/or upon Redflex's receipt of a written request from the Customer at least fourteen (14) calendar days in advance of a court proceeding, Redflex shall provide expert witnesses for use by the Customer in prosecuting Violations; provided, however, the Customer shall use reasonable best efforts to seek judicial notice in lieu of requiring Redflex to provide such expert witnesses. After the initial 6 month period, the Town shall be obligated to reimburse Redflex for the cost of expert witnesses provided at the Town's request.
- 3.3.11. During the three (3) month period following the Installation Date, Redflex shall provide training to Customer personnel as shall be reasonably necessary to allow Town personnel to act as expert witnesses on behalf of the Town.
- 3.4. RECORDS RETENTION. Redflex shall retain Violations Data in accordance with all applicable law as outlined in the Business Rules.
- 3.5. PROSECUTION AND COLLECTION; COMPENSATION. The Customer shall diligently prosecute Citations and the collection of all Fines related to the Citations. Redflex shall have the right to receive, and the Customer shall be obligated to pay Redflex, the compensation set forth on Exhibit D.
- 3.6. TAXES. Where obligated by applicable law, Redflex shall timely pay all taxes relating to or arising out of the Program. Unless otherwise indicated, the Town agrees to pay any applicable taxes including but not limited to use, property or sales taxes required at the municipal, county, state or any other taxing authority level on all applicable consumer services and materials purchased and/or leased. No charge by the Town shall be made for federal excise taxes and Town agrees to furnish Redflex with an exemption certificate where appropriate for any applicable sales and/or use taxes. For the avoidance of doubt, it is the Parties intent that this Agreement does not alter the tax liability of either Party under the applicable law.
- 3.7. OTHER RIGHTS AND OBLIGATIONS. In addition to all of the other rights and obligations set forth in this Agreement, Redflex and the Customer shall have the respective rights and obligations set forth on Exhibit E.
- 3.8. CHANGE ORDERS.
 - 3.8.1. The Customer may from time to time request changes to the work required to be performed or the addition of products or services to those required pursuant to the terms of this Agreement by providing written notice to Redflex, setting forth in reasonable detail the proposed changes (a "Change Order Notice"). Upon Redflex's receipt of a Change Order Notice, Redflex shall deliver a written statement describing the cost, if any (the "Change Order Proposal"). The Change Order Proposal shall include (i) a detailed breakdown of the charge and any schedule impact, (ii) a description of any resulting changes to the specifications and obligations of the Parties, (iii) a schedule for the delivery and other performance obligations, and (iv) any other information relating to the proposed changes reasonably requested by the Customer. Following the Customer's receipt of the Change Order Proposal, the Parties shall negotiate in good faith and agree in writing to a plan and schedule for implementation of the proposed changes, the time, manner and amount of payment or price increases or decreases, as the case may be, and any other matters relating to the proposed changes; provided, however, in the event that any proposed change involves only the addition

of equipment or services to the existing Designated Intersection Approaches, or the addition of Intersection Approaches to be covered by the terms of this Agreement, to the maximum extent applicable, the pricing terms set forth in Exhibit D shall govern. Any failure of the Parties to reach agreement with respect to any of the foregoing as a result of any proposed changes shall not be deemed to be a breach of this Agreement provided each Party acted in good faith.

- 3.8.2. In the event that the change outlined in the Change Order Notice and the Change Order Proposal, and approved by the Parties, concerns moving an installed Redflex System to a new Designated Intersection Approach, then the Town shall be responsible for the costs associated with the removal and reinstallation of the Redflex System and the Term of this Agreement shall be temporarily suspended for the period of time in which the Redflex System at issue is inactive, if that period of time is fourteen (14) or more calendar days, unless the Town has a Fixed Monthly Fee and chooses to continue paying the Fixed Monthly Fee for the inactive Designated Intersection Approach, as outlined in Exhibit D.
- 3.9. ROAD REPAIRS AND CONSTRUCTION PROJECTS. The Term shall be temporarily suspended as a result of any road repairs, street improvements or stop work order that interrupts, impedes, obstructs or interferes with the successful performance of Redflex System at any Designated Intersection Approach for a period of fourteen (14) or more calendar days, unless the Customer has a Fixed Monthly Fee and chooses to continue paying the Fixed Monthly Fee for the impacted Designated Intersection Approach, as outlined in Exhibit D.
- 3.10. OWNERSHIP OF NON-VIOLATOR DATA. The Parties agree that Redflex shall have exclusive ownership of all Non-Violator Data generated as a result of the Program. "Non-Violator Data" shall include incident data, infraction rates, average speeds and other categories of data as mutually agreed by Redflex and the Town. Non-Violator Data shall not include any data identifying the registered owner or the violator, or relating in any way to the registered owner's identity or the violator's identity. During the term of this Agreement, the Town shall have a non-exclusive royalty free license to use the Non-Violator Data. This license shall terminate upon termination or expiration of this Agreement.
- 3.11. FUTURE SERVICES. If Tennessee law allows, now or in the future, a Governmental Authority to suspend the ability to register a vehicle, as controlled by the Tennessee Department of Transportation, for Persons with delinquent or unpaid fines, whether criminal or civil, the Parties have the option to execute an amendment to this Agreement for Redflex to provide the Town certain automated scofflaw services under its ASP and ASP2 Programs, as applicable, to implement such law.
4. **LICENSE; RESERVATION OF RIGHTS.**
- 4.1. LICENSE. Subject to the terms and conditions of this Agreement, Redflex grants the Customer, and the Customer accepts from Redflex, a non-exclusive, non-transferable license during the Term to: (a) solely within the Town, access and use the Redflex System for the sole purpose of reviewing Potential Violations and authorizing the issuance of Citations pursuant to the terms of this Agreement, and to print copies of any related content posted on the Redflex System, (b) disclose that Redflex is providing services to the Customer in connection with Program pursuant to the terms of this Agreement, and (c) use and display the Redflex Marks on or in marketing, public awareness or education, or other publications or materials relating to the Program, so long as any and all such publications or materials are approved in advance by Redflex.
- 4.2. RESERVATION OF RIGHTS. The Customer acknowledges and agrees that: (a) Redflex is the sole and exclusive owner of the Redflex System, the Redflex Marks, all Intellectual Property arising from or relating to the Redflex System, and any and all related Equipment, (b) the Customer neither has nor makes any claim to any right, title or interest in any of the foregoing, except as specifically granted or authorized under this Agreement, and (c) by reason of the exercise of any such rights or interests of Customer pursuant to this Agreement, the Customer shall gain no additional right, title or interest.
- 4.3. RESTRICTED USE. The Customer covenants and agrees that it shall not (a) make any modifications to the Redflex System, including but not limited to any Equipment, (b) alter, remove or tamper with any Redflex Marks, (c) use any of the Redflex Marks in any way

which might prejudice their distinctiveness, validity or Redflex's goodwill, (d) use any trademarks or other marks other than the Redflex Marks in connection with the Customer's use of the Redflex System pursuant to the terms of this Agreement without first obtaining the prior consent of Redflex, or (e) disassemble, de-compile or otherwise perform any type of reverse engineering to the Redflex System, the Redflex Program, including but not limited to any Equipment, or to any Intellectual Property or Proprietary Property of Redflex, or cause any other Person to do any of the foregoing.

- 4.4. PROTECTION OF RIGHTS. Redflex shall have the right to take whatever action it deems necessary or desirable to remedy or prevent the infringement of any Intellectual Property of Redflex, including without limitation the filing of applications to register as trademarks in any jurisdiction any of the Redflex Marks, the filing of patent application for any of the Intellectual Property of Redflex, and making any other applications or filings with appropriate Governmental Authorities. The Customer shall not take any action to remedy or prevent such infringing activities, and shall not in its own name make any registrations or filings with respect to any of the Redflex Marks or the Intellectual Property of Redflex without the prior written consent of Redflex.
- 4.5. INFRINGEMENT. The Customer shall give Redflex prompt notice of any activities or threatened activities of any Person of which it becomes aware that infringes or violates or potentially infringes or violates the Redflex Marks or any of Redflex's Intellectual Property or that constitute or potentially constitute a misappropriation of trade secrets or act of unfair competition that might dilute, damage or destroy any of the Redflex Marks or any other Intellectual Property of Redflex. Redflex shall have the exclusive right, but not the obligation, to take action to enforce its rights to its Marks and Intellectual Property and to make settlements relating to its Marks and Intellectual Property. In the event that Redflex commences any enforcement action relating to its Marks or Intellectual Property, the Customer shall provide Redflex with any reasonable cooperation and assistance that Redflex requests. Redflex shall be entitled to any damages or other monetary amount that might be awarded provided that after deduction of Redflex's actual costs and attorney's fees; Redflex shall reimburse the Customer for any reasonable costs incurred in providing such cooperation and assistance.
- 4.6. INFRINGING USE. The Customer shall give Redflex prompt written notice of any action or claim, whether threatened or pending, against the Customer alleging that the Redflex Marks, or any other Intellectual Property of Redflex, infringes or violates any patent, trademark, copyright, trade secret or other Intellectual Property of any other Person, and the Customer shall provide to Redflex reasonable cooperation and assistance as is requested by Redflex; provided, that Redflex shall reimburse the Customer for its reasonable costs incurred in providing such cooperation and assistance. If Redflex determines, in the exercise of its sole discretion, that an infringement may exist, Redflex shall have the right, but not the obligation, to procure for the Customer the right to keep using the allegedly infringing items, modify them to avoid the alleged infringement or replace them with non-infringing items.
- 4.7. UNAUTHORIZED REFERENCES TO REDFLEX. The Customer shall not utilize, make use of and/or make any reference to Redflex, its name or likeness, its affiliated, parent or subsidiary companies or corporations, its logos, insignias, trademarks, trade names, brand, websites, property, assets, products or services, including, but not limited to: "PLATESCAN® System"; "REDFLEXradar® System"; "REDFLEXrail® System"; "REDFLEXred® System"; "REDFLEXslimline® System"; "REDFLEXspeed® System"; "REDFLEXstop® System"; "Redflex Student Guardian® System"; "Salus® System"; "SMARTcam® System"; "SMARTops® System"; "SMARTscene® System"; and/or and any and all combinations, variants and derivatives of the foregoing, for any reason or purpose without the prior written approval of Redflex which may be withheld, denied, delayed, rejected and/or refused, by Redflex in its sole discretion.

5. REPRESENTATIONS AND WARRANTIES.

5.1. REDFLEX REPRESENTATIONS AND WARRANTIES.

- 5.1.1. Authority. Redflex warrants and represents that it has all right, power and authority to execute and deliver this Agreement and perform its obligations.

- 5.1.2. Professional Services. Redflex warrants and represents that any and all services that it provides pursuant to this Agreement shall be performed in a professional and workmanlike manner and in compliance with applicable law and by agreed upon specifications.
- 5.2. CUSTOMER REPRESENTATIONS AND WARRANTIES.
- 5.2.1. Authority. The Customer warrants and represents that it has all legal right, power and authority to execute and deliver this Agreement and perform its obligations. Customer further warrants and represents that it has complied with all applicable laws and regulations in entering into this Agreement and will comply with all applicable laws and regulations in performing under this Agreement.
- 5.2.2. Professional Services. The Customer warrants and represents that any and all services that it provides pursuant to this Agreement shall be performed in a professional and workmanlike manner and in compliance with applicable law and by agreed upon specifications.
- 5.3. LIMITED WARRANTIES. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, REDFLEX MAKES NO WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE REDFLEX SYSTEM OR ANY RELATED EQUIPMENT OR SOFTWARE, OR WITH RESPECT TO THE RESULTS OF THE PROGRAM. THE CUSTOMER ACKNOWLEDGES THAT AT TIMES THE REDFLEX SYSTEM MAY MALFUNCTION OR OTHERWISE NOT OPERATE AS ANTICIPATED. REDFLEX SHALL DILIGENTLY ENDEAVOR TO CORRECT ANY SUCH MALFUNCTION IN A TIMELY MANNER.

6. TERMINATION.

- 6.1. TERMINATION: Any Party shall have the right to terminate this Agreement by written notice to the other Parties if (i) state statutes are amended or otherwise changed to prohibit or substantially change the operation of the Program; (ii) the highest appellate court for the State of Tennessee rules that the Violations Data are inadmissible in evidence; or (iii) another Party commits a material breach of this Agreement. In this event, the breaching Party shall have the right to remedy or cure the material breach within forty-five (45) calendar days (or within such other time period as the Parties shall mutually agree, which agreement shall not be unreasonably withheld or delayed) after receipt of written notice from the terminating Party setting forth in reasonable detail the facts giving rise to the material breach.. Termination of this Agreement based upon an alleged material breach shall not be enforceable or effective unless the terminating Party mails this written notice to the breaching Party not less than forty-five (45) calendar days before the termination date and provides to the breaching Party the opportunity to remedy or cure the breach within the time period provided above. The right to terminate this Agreement shall be without prejudice to any other right or remedy of any Party with respect to the breach concerned (if any) or any other breach of this Agreement except as otherwise provided in this Agreement.
- 6.2. PROCEDURES UPON TERMINATION. The termination of this Agreement shall not relieve either Party of any liability that accrued before termination. Except as set forth in Section 6.2, upon the termination of this Agreement, all of the provisions of this Agreement shall terminate and:
- 6.2.1. Redflex shall (i) immediately cease to provide services, including but not limited to work in connection with the construction or installation activities and services in connection with the Program, (ii) promptly deliver to the Customer any and all Proprietary Property or Confidential Information of the Customer provided to Redflex pursuant to this Agreement, (iii) promptly deliver to the Customer a final report to the Customer regarding the collection of data and the issuance of Citations. The final report shall be in a format and for a period of time mutually agreed upon by Redflex and the Customer, (iv) promptly deliver to the Customer a final invoice for all amounts owed by Customer to Redflex for work performed and Citations issued by Redflex prior to the termination, and (v) provide such assistance as the Customer may reasonably request from time to time in connection with prosecuting and enforcing Citations issued prior to the termination of this Agreement. Except as required by applicable law or as mutually agreed by Redflex and the Customer, Redflex shall have no obligation to retain Violations Data after termination of this Agreement. At termination and

upon the Town's prior written request, Redflex will transfer the Violations Data to the Town in accordance with a mutually agreed upon method of transfer. The Town shall be responsible for all costs associated with the transfer of the Violations Data including but not limited to administrative costs, storage media and storage media authoring device costs, and internet bandwidth costs incurred in transferring the Violations Data. Upon completion of the transfer of the Violations Data to the Town, Redflex shall have no obligation or responsibility concerning the Violations Data. Redflex makes no warranty or representation regarding the success of a transfer of the Violations Data and shall no liability or responsibility for any errors or failures that occur during a transfer of the Violations Data.

- 6.2.2. The Customer shall (i) immediately cease using the Program, accessing the Redflex System and using any other Intellectual Property of Redflex, (ii) promptly deliver to Redflex any and all Proprietary Property or Confidential Information of Redflex provided to the Customer pursuant to this Agreement, and (iii) promptly pay Redflex any and all fees, charges and amounts that the Customer owes Redflex for work performed and Citations issued prior to the termination, as outlined in Exhibit D.
 - 6.2.3. Unless the Customer and Redflex have agreed to enter into a new agreement relating to the Program or have agreed to extend the Term, Redflex shall remove any and all Equipment or other Redflex materials installed in connection with Redflex's performance of its obligations under this Agreement, including but not limited to housings, poles and camera systems, and Redflex shall restore the Designated Intersection Approaches to substantially the same condition that the Designated Intersection Approaches were in immediately prior to this Agreement; provided however, that Redflex's financial obligation under this provision shall not exceed \$5,000 in the aggregate for any Designated Intersection Approach.
 - 6.2.4. The Customer shall continue to pay to Redflex a pro rata share of all monies or revenue generated, collected and/or received by Customer after the termination of the Agreement that are, in any way, a result of, associated with and/or attributable to, in whole or in part, the products or services that Redflex provided to the Town pursuant to this Agreement.
 - 6.3. SURVIVAL. Notwithstanding the foregoing, the definitions provided for in Section 1 and each of the following Sections shall survive the termination of this Agreement: (i) Sections 4.2 (Reservation of Rights), 5.1 (Redflex Representations and Warranties), 5.2 (Customer Representations and Warranties), 5.3 (Limited Warranties), 7 (Confidentiality), 8 (Indemnification and Liability), 9 (Notices), 10 (Dispute Resolution), 11.1 (Assignment), 11.17 (Injunctive Relief; Specific Performance), 11.18 (Applicable Law) and 11.19 (Jurisdiction and Venue), and (ii) any Section in this Agreement which states, or evidences the intent of the Parties, that the Section survives the expiration or termination of the Agreement, or must survive to give effect to the Section.
7. CONFIDENTIALITY. During the Term and for a period of three (3) years after its expiration or termination, neither Party shall disclose to any third person, or use for itself in any way, any Confidential Information learned from the other Party during the course of the negotiations for this Agreement or during the Term. Upon termination of this Agreement, each Party shall return to the other all tangible Confidential Information of such Party. Each Party shall retain in confidence and not disclose to any third party any Confidential Information without the other Party's express written consent, except (a) to its employees who are reasonably required to have the Confidential Information, (b) to its agents, representatives, attorneys and other professional advisors that have a need to know such Confidential Information, provided that such Parties undertake in writing (or are otherwise bound by rules of professional conduct) to keep such information strictly confidential, and (c) pursuant to, and to the extent of, a request or order by any Governmental Authority, including laws relating to public records.
 8. INDEMNIFICATION AND LIABILITY.
 - 8.1. Indemnification by Redflex. Subject to Section 8.3, Redflex hereby agrees to defend and indemnify the Customer, and its affiliates, shareholders, managers, officers, directors, employees, agents, representatives and successors, permitted assignees and each of their affiliates, and all persons acting by, through, under or in concert with them, or any of them (individually a "Customer Party" and collectively, the "Customer Parties") against, and to protect, save and keep harmless the Customer Parties from, and to pay on behalf of or reimburse the Customer Parties as and when incurred for, any and all liabilities, obligations,

losses, damages, penalties, demands, claims, actions, suits, judgments, settlements, costs, expenses and disbursements (including reasonable attorneys', accountants' and expert witnesses' fees) of whatever kind and nature (collectively, "Losses"), which may be imposed on or incurred by any Customer Party arising out of or related to (a) any material misrepresentation, material inaccuracy or material breach of any covenant, warranty or representation of Redflex contained in this Agreement or (b) the willful misconduct of Redflex, its employees or agents which results in death or bodily injury to any person or any damage to any real or tangible personal property (including the personal property of third parties), except to the extent caused by the willful misconduct or negligence of any Customer Party.

- 8.2. Indemnification by Customer. Subject to Section 8.3, the Customer hereby agrees to defend and indemnify Redflex and its affiliates, shareholders, managers, officers, directors, employees, agents, representatives and successors, permitted assignees and all persons acting by, through, under or in concert with them, or any of them (individually a "Redflex Party" and collectively, the "Redflex Parties") against, and to protect, save and keep harmless the Redflex Parties from, and to pay on behalf of or reimburse the Redflex Parties as and when incurred for, any and all Losses which may be imposed on or incurred by any Redflex Party arising out of or in any way related to (a) any material misrepresentation, material inaccuracy or material breach of any covenant, warranty or representation of the Customer contained in this Agreement, (b) the willful misconduct of the Customer, its employees, contractors or agents which result in death or bodily injury to any person or any damage to any real or tangible personal property (including the personal property of third parties), except to the extent caused by the willful misconduct of any Redflex Party, , or (c) any claim, action or demand challenging the Customer's use of the Redflex System or any portion thereof, the validity of the results of the Customer's use of the Redflex System or any portion thereof, or the validity of the Citations issued, prosecuted and collected as a result of the Customer's use of the Redflex System or any portion thereof.

- 8.3. Indemnification Procedures. In the event any claim, action or demand (a "Claim") for which any Party seeks indemnification from the other Party, the Party seeking indemnification (the "Indemnified Party") shall give the Party from whom indemnification is sought (the "Indemnifying Party") written notice of the Claim promptly after the Indemnified Party first becomes aware of the Claim; provided, however, that failure so to give such notice shall not preclude indemnification with respect to such Claim except to the extent of any additional or increased Losses or other actual prejudice directly caused by such failure. The Indemnifying Party shall have the right to choose counsel to defend such Claim (subject to the approval of such counsel by the Indemnified Party, which approval shall not be unreasonably withheld, conditioned or delayed), and to control, compromise and settle such Claim, and the Indemnified Party shall have the right to participate in the defense at its sole expense; provided, however, the Indemnified Party shall have the right to take over the control of the defense or settlement of such Claim at any time if the Indemnified Party irrevocably waives all rights to indemnification from and by the Indemnifying Party. The Indemnifying Party and the Indemnified Party shall cooperate in the defense or settlement of any Claim, and no Party shall have the right enter into any settlement agreement that materially affects the other Party's material rights or material interests without such Party's prior written consent, which consent will not be unreasonably withheld or delayed.

- 8.4. LIMITED LIABILITY. Notwithstanding anything contrary in this Agreement, neither Party shall be liable to the other Party for any special, incidental, indirect, consequential or punitive damages however caused and on any theory of liability arising out of or relating to this Agreement. In the event of any breach of this Agreement by Customer, Redflex is entitled to recover its expectation damages from the Customer, which are defined as the amounts that Redflex would have received under the Agreement had the Customer fully performed pursuant to the terms and conditions of this Agreement.

9. NOTICES. Any notices required by this Agreement shall be in writing, and shall be deemed to have been given (a) upon delivery, if delivered by hand, (b) three (3) days after being mailed either first class, certified mail, return receipt requested, postage and registry fees prepaid, or (c) one Business Day after

being delivered to a reputable overnight courier service, excluding the U.S. Postal Service, prepaid, marked for next day delivery. in each case addressed or sent as follows:

9.1. Notices to Redflex:

Redflex Traffic Systems, Inc.
Attn: Legal Department
5651 W. Talavi Blvd., Suite 200
Glendale, Arizona 85306
E-Mail: legaldepartment@redflex.com

9.2. Notices to the Customer:

Town of Mount Carmel
100 Main Street East
Mount Carmel, TN 37645
Facsimile: (423) 357-7311
Email:

10. **DISPUTE RESOLUTION.** The Parties shall engage in informal, good faith discussions and attempt to resolve any dispute or disagreement between the Parties arising out of or relating to this Agreement before initiating litigation. In connection with those informal discussions, each Party shall appoint a designated officer and the designated officers of the Parties shall meet in person for the purpose of attempting to resolve and dispute. The designated officers shall meet as often as the Parties shall determine to be reasonably necessary. If the Parties are unable to resolve the dispute, and any Party concludes in good faith that amicable resolution through continued negotiation is not reasonably likely to result in resolution of the dispute, the Parties may mutually agree to submit the dispute to binding or nonbinding arbitration or mediation for resolution. If the Parties do not mutually agree to submit the dispute to binding or nonbinding arbitration or mediation, any Party may initiate litigation.

11. **MISCELLANEOUS.**

- 11.1. **ASSIGNMENT.** Neither Party may assign all or any portion of this Agreement without the prior written consent of the other, which consent shall not be unreasonably withheld or delayed.
- 11.2. **RELATIONSHIP BETWEEN REDFLEX AND THE CUSTOMER.** Nothing in this Agreement shall create, or be deemed to create, a partnership, joint venture or the relationship of principal and agent or employer and employee between the Parties. The relationship between the Parties shall be that of independent contractors, and nothing contained in this Agreement shall create the relationship of principal and agent or otherwise permit either Party to incur any debts or liabilities or obligations on behalf of the other Party (except as specifically provided in this Agreement).
- 11.3. **AUDIT RIGHTS.** Each of Parties hereto shall have the right to audit the books and records of the other Party (the "Audited Party") solely for the purpose of verifying the payments, if any, payable pursuant to this Agreement. Any such audit shall be conducted upon not less than forty-eight (48) hours' prior notice to the Audited Party, at mutually convenient times and during the Audited Party's normal business hours. Except as otherwise provided in this Agreement, the cost of any such audit shall be borne by the non-Audited Party. In the event any such audit establishes any underpayment of any payment payable by the Audited Party to the non-Audited Party pursuant to this Agreement, the Audited Party shall promptly pay the amount of the shortfall, and in the event that any such audit establishes that the Audited Party has underpaid any payment by more than twenty five percent (25%) of the amount of actually owing, the cost of such audit shall be borne by the Audited Party. If the audit establishes any overpayment by the Audited Party of any payment made pursuant to this Agreement, the non-Audited Party shall promptly refund to the Audited Party the amount of the overpayment.

- 11.4. FORCE MAJEURE. No Party will be liable to the other or be deemed to be in breach of this Agreement for any failure or delay in rendering performance arising out of causes beyond its reasonable control and without its fault or negligence. Such causes may include but are not limited to, acts of God, war, terrorism, significant fires, floods, earthquakes, epidemics, severe weather, quarantine restrictions, strikes, freight embargoes, or Governmental Authorities approval delays which are not caused by any act or omission of Redflex, . The Party whose performance is affected agrees to notify the other promptly of the existence and nature of any delay.
- 11.5. ADDITIONAL SERVICES. This Agreement may be amended, in accordance with Section 11.6, to add additional Redflex systems and products, including, but not limited to, school bus stop arm enforcement and school zone speed enforcement.
- 11.6. ENTIRE AGREEMENT. This Agreement represents the entire Agreement between the Parties, and there are no other agreements (other than invoices and purchase orders), whether written or oral, which affect its terms. This Agreement may be amended only by a subsequent written agreement signed by both Parties.
- 11.7. SEVERABILITY. If any provision of this Agreement is held by any court or other competent authority to be void or unenforceable in whole or part, this Agreement shall continue to be valid as to its other provisions and the remainder of the affected provision.
- 11.8. WAIVER. Any waiver by either Party of a breach of any provision of this Agreement shall not be considered as a waiver of any subsequent breach of the same or any other provision of this Agreement.
- 11.9. CONSTRUCTION. This Agreement shall be construed as having been fully and completely negotiated by both Parties and neither the Agreement nor any of its provision shall be construed more strictly against either Party.
- 11.10. HEADINGS. The headings of the sections contained in this Agreement are included for reference purposes only, solely for the convenience of the Parties, and shall not in any way be deemed to affect the meaning, interpretation or applicability of this Agreement or any of its terms, conditions or provisions.
- 11.11. EXECUTION AND COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, and such counterparts together shall constitute only one instrument. Any one of such counterparts shall be sufficient for the purpose of proving the existence and terms of this Agreement, and no Party shall be required to produce an original or all of such counterparts in making such proof.
- 11.12. COVENANT OF FURTHER ASSURANCES. All Parties to this Agreement shall, upon request, perform any and all acts and execute and deliver any and all certificates, instruments and other documents that may be necessary or appropriate to carry out any of the terms, conditions and provisions of this Agreement.
- 11.13. REMEDIES CUMULATIVE. Each and all of the several rights and remedies provided for in this Agreement shall be construed as being cumulative and no one of them shall be deemed to be exclusive of the others or of any right or remedy allowed by law or equity, and pursuit of any one remedy shall not be deemed to be an election of such remedy, or a waiver of any other remedy.
- 11.14. BINDING EFFECT. This Agreement shall inure to the benefit of and be binding upon all of the Parties and their respective executors, administrators, successors and permitted assigns.
- 11.15. COMPLIANCE WITH LAWS. Nothing contained in this Agreement shall be construed to require any act contrary to law, and whenever there is a conflict between any term, condition or provision of this Agreement and any present or future statute, law, ordinance or regulation, the latter shall prevail, but in such event the term, condition or provision of this Agreement affected shall be modified or limited only to the extent necessary to bring it within the requirement of the law, provided that such modification or limitation is consistent with the intent of the Parties as expressed in this Agreement.
- 11.16. NO THIRD PARTY BENEFIT. Nothing contained in this Agreement shall be deemed to confer any right or benefit on any Person who is not a Party to this Agreement.
- 11.17. INJUNCTIVE RELIEF; SPECIFIC PERFORMANCE. The Parties agree and acknowledge that a breach of Sections 4.1 (License), 4.3 (Restricted Use) or 7 (Confidentiality) of this Agreement would result in severe and irreparable injury to the other

Party, which injury could not be adequately compensated by an award of money damages, and the Parties therefore agree and acknowledge that they shall be entitled to injunctive relief in the event of any breach of these Sections, or to enjoin or prevent such a breach.

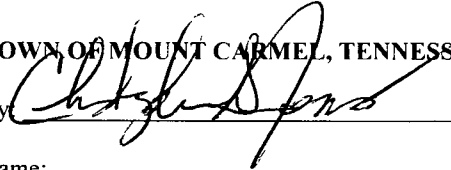
11.18. APPLICABLE LAW. This Agreement shall be governed solely by and construed, in all respects, in accordance with the laws of the State of Tennessee.

11.19. JURISDICTION AND VENUE. Any conflict, claim or dispute between the Parties affecting, arising out of or relating to the subject matter of this Agreement shall be filed only in and litigated solely in the United States District Court for the District of Tennessee and all Parties specifically consent and agree to the exclusive jurisdiction of that court; provided however, if the United States District Court for the District of Tennessee does not have subject matter jurisdiction over a dispute, the dispute shall be filed and brought exclusively by the state courts of Tennessee located in Hawkins County and the Parties consent and agree to the jurisdiction of those courts.

11.20. ATTORNEYS' FEES. In the event any legal action is commenced to enforce or interpret this Agreement, the prevailing Party is entitled to reasonable attorney's fees, costs, and expenses incurred.

"The Town"

TOWN OF MOUNT CARMEL, TENNESSEE

By: 

Name:

Title:

"Redflex"

REDFLEX TRAFFIC SYSTEMS, INC.,

By: _____

Name: Michael R. Finn

Title: President and Chief Executive Officer

EXHIBIT "A"

New Red Light Photo Enforcement Systems

The Agreement is for the implementation of up to six (6) red light Intersection Approaches. Identification of the enforced Intersection Approaches will be based on mutual agreement between Redflex and the Town as warranted by community safety and traffic needs. The Town will designate the proposed intersections under consideration prior to formal project kick-off to the designated Redflex Project Manager.

Other Photo Enforcement Devices

The Town has the option to add collision preemption technology (REDFLEXhalo®), mobile speed enforcement, automatic license plate reader, and handheld speed enforcement equipment to the Program as mutually agreed to in writing by Redflex and the Town.

EXHIBIT "B"

Construction and Installation Obligations

Timeframe for Installation: Automated Photo Enforcement Program:

Redflex will have each Designated Intersection Approach installed and activated in phases in accordance with an implementation plan to be mutually agreed to by Redflex Traffic Systems and the Customer.

Redflex will use reasonable commercial efforts to install the Redflex System and the Designated Intersection Approaches in accordance with the schedule set forth in the implementation plan that will be formalized upon project commencement.

Redflex will use reasonable commercial efforts to install and activate the Designated Intersection Approaches within sixty (60) days subsequent to formal project kick-off and receipt of the required customer approved program business rules. The Customer agrees that the estimated timeframe for installation and activation are subject to conditions beyond the control of Redflex and are not guaranteed.

In order to provide the Customer with timely completion of the Program, Redflex requires that the Customer assist with obtaining timely approval of permit requests. The Customer acknowledges the importance of the safety program and undertakes that in order to keep the project on schedule the Customer will provide engineering review(s) of Redflex permit requests and all documentation in a timely manner.

1. REDFLEX OBLIGATIONS. Redflex shall do or cause to be done each of the following (in each case, unless otherwise stated below, at Redflex's sole expense):
 - 1.1. Appoint the Redflex Project Manager and a project implementation team;
 - 1.2. Request current "as-built" electronic engineering drawings for the Designated Intersection Approaches (the "Drawings") from the Town traffic engineer;
 - 1.3. Develop and submit to the Customer for approval construction and installation specifications in reasonable detail for the Designated Intersection Approaches, including but not limited to specifications for all radar sensors, pavement loops, electrical connections and traffic controller connections, as required;
 - 1.4. Seek approval from the relevant Governmental Authorities having authority or jurisdiction over the construction and installation specifications for the Designated Intersection Approaches (collectively, the "Approvals"), which will include compliance with Town permit applications;
 - 1.5. Finalize the acquisition of the Approvals;
 - 1.6. Apply for and pay the business tax and registration tax for a business license, in accordance with Mount Carmel Municipal Code;
 - 1.7. Assist the Customer in developing a public awareness strategy, which may include media and educational materials;
 - 1.8. Develop the Violation Criteria in consultation with the Customer;
 - 1.9. Develop the Enforcement Documentation for approval by the Customer, which approval shall not be unreasonably withheld;
 - 1.10. Complete the installation and testing of all necessary Equipment, including hardware and software, at the Designated Intersection Approaches;
 - 1.11. Cause an electrical sub-contractor to complete all reasonably necessary electrical work at the Designated Intersection Approaches, including but not limited to the installation of all related Equipment and other detection sensors, poles, cabling, telecommunications equipment and wiring, which work shall be performed in compliance with all applicable local, state and federal laws and regulations;
 - 1.12. Install and test the functionality of the Designated Intersection Approaches with the Redflex System and establish fully operational Violation processing capability with the Redflex System;
 - 1.13. Implement the use of the Redflex System at each of the Designated Intersection Approaches;
 - 1.14. Deliver the Materials to the Customer;
 - 1.15. Citation processing and citation issuance/re-issuance for Authorized Violations;
 - 1.16. Once a year, provide training (i) for up to fifteen (15) personnel of the Customer, including but not limited to the persons who Customer shall appoint as Authorized Employees and other persons

- involved in the administration of the Program, (ii) for up to sixteen (16) hours in the aggregate, (iii) regarding the operation of the Redflex System and the Program, which training shall include training with respect to the Redflex System and its operations, strategies for presenting Violations Data in court and judicial proceedings and a review of the Enforcement Documentation;
- 1.17. Provide all necessary communication, broadband and telephone services to the Designated Intersection Approaches will be the sole responsibility of Redflex;
 - 1.18. Pay for electrical power to the Redflex Systems installed at the Designated Intersection Approaches;
 - 1.19. Pay for monthly Internet usage fees used by the Redflex Systems installed at the Designated Intersection Approaches.
 - 1.20. Establish an interface by utilizing Town's ability, as a government entity, to access the records data of the Department of Motor Vehicles. Redflex will assist the Town in the design and implementation of a batch file to be provided by the Department of Motor Vehicles;
 - 1.21. Interact with court and judicial personnel to address issues regarding the implementation of the Redflex System, the development of a subpoena processing timeline that will permit the offering of Violations Data in court and judicial proceedings, and coordination between Redflex, and the Customer; and
 - 1.22. The Redflex Project Manager (or a reasonable alternate) shall be available to the Authorized Officers each day, on a reasonable best efforts basis.
2. CUSTOMER OBLIGATIONS. The Customer shall do or cause to be done each of the following (in each case, unless otherwise stated below, at Customer's sole expense):
- 2.1. Appoint the Project Manager;
 - 2.2. Assist Redflex in obtaining the Drawings from the relevant Governmental Authorities;
 - 2.3. Notify Redflex of any specific requirements relating to the construction and installation of any Intersection Approaches or the implementation of the Program;
 - 2.4. Provide ongoing assistance to Redflex in obtaining access to the records data of the Department of Motor Vehicles in Redflex's capTown as an independent contractor to the Customer;
 - 2.5. Assist Redflex in seeking the Approvals;
 - 2.6. Provide reasonable access to the Customer's properties and facilities in order to permit Redflex to install and test the functionality of the Designated Intersection Approaches and the Program;
 - 2.7. Provide reasonable access to the personnel of the Customer and reasonable information about the specific operational requirements of such personnel for the purposes of performing training;
 - 2.8. Seek approval or amendment of Awareness Strategy and provide written notice to Redflex with respect to the quantity of media and program materials (the "Materials") that the Customer will require in order to implement the Awareness Strategy during the period commencing on the date on which Redflex begins the installation of any of the Designated Intersection Approaches and ending one (1) month after the Installation Date;
 - 2.9. Assist Redflex in developing the Violation Criteria;
 - 2.10. Seek approval of the Enforcement Documentation;
 - 2.11. Customer shall be solely responsible for the fabrication of any signage, notices or other postings required pursuant to any law, rule or regulation of any Governmental Authority ("Signage"), including but not limited to the applicable State statute. Customer shall submit design drawings to the appropriate local authority for approval. Customer shall be solely responsible for installing required Signage. Any changes or modifications to Signage requirements will be the responsibility of the Customer;
 - 2.12. The Customer shall provide on an agreed upon frequency, without cost to Redflex, reports regarding the prosecution of Citations, the collection of fines, fees and other monies and available collision data, in such format and for such periods as Redflex may reasonably request;
 - 2.13. Yellow Light Timing Review: The Customer is responsible to ensure that the yellow or amber light phase timing at all photo enforced intersections meets minimum standards according to Federal, State, and local laws, guidelines, and/or rules;
 - 2.14. Provide on-going adequate electrical power in order to operate the Designated Intersection Approaches;
 - 2.15. The Customer will allow Redflex to use existing conduit space as available;

- 2.16. The Customer shall be responsible to provide and install LED traffic signal lights (yellow and red) at all enforced locations; and
- 2.17. Customer is responsible for all computer hardware, web browsers and high speed Internet access necessary to operate the systems.

EXHIBIT "C"

Maintenance

1. All repair and maintenance of the Program and related equipment will be the sole responsibility of Redflex, including but not limited to maintaining the casings of the cameras included in the Redflex System and all other Equipment in reasonably clean and graffiti-free condition.
2. Redflex shall not open the Traffic Signal Controller Boxes without a representative of Town Traffic Engineering present.
3. In the event that images of a quality suitable for the Authorized Employee to identify Violations cannot be reasonably obtained without the use of flash units, Redflex shall provide and install such flash units.
4. Redflex may assign specific personnel to provide follow up assistance to the Customer in the form of the HELPDESK, a designated Customer Service Representative and a Director of Accounts.
5. Redflex will make commercially reasonable efforts to promote Customer's successful utilization of the System, including but not limited to providing Customer with user guides, online help, online training and presentations (as available). Redflex will respond to helpdesk requests for support within 8 hours of the request except where circumstances beyond its control preclude a response within that time. Redflex will use commercially-reasonable efforts to respond to all other support requests within 24 hours for requests received during the period of 8 am to 5 pm Central Standard Time, Monday through Friday. The e-mail support specialist shall be responsible for receiving Customer reports of errors in the System, and, to the extent practicable over email or telephone, making commercially-reasonable efforts to assist the Customer in resolving the Customer's reported problems. If the problem cannot be resolved telephonically, Redflex will use commercially-reasonable efforts to restore functionality in accordance with System specifications within 72 hours of Redflex's receipt of the reported problem.
6. Redflex must promptly make available to the Town any and all upgrades and technology modifications, including but not limited to software, hardware, camera systems, violation detection systems upon the produces general availability (GA release readiness and not in alpha, beta and testing phases) as Redflex and the Town mutually agree. The upgrades and enhancements must be provided to the Town at no cost within thirty (30) days of Town's acceptance of the upgrade or enhancement.
7. In the event a camera system is knocked down or suffers vandalism rendering the approach inoperative, the Town will secure the camera system by removing the system from the scene and storing it in a secure location. Redflex must pay the Town for the cost of a Town maintenance team to secure their camera system when an after-hours callout is required. Redflex is not required to reimburse the Town when a Town maintenance team secures a camera system during regular business hours.
8. The Town shall notify Redflex as soon as possible if any camera system is knocked down or subject to vandalism.
9. Roadway/Intersection improvement projects: Customer shall reimburse Redflex the costs of replacing and or modification of operational system approaches necessitated or caused by roadway or intersection improvement projects.

EXHIBIT "D"

COMPENSATION & PRICING

PRICING PROVISIONS AND OPTIONS:

1. Pricing and Compensation for New Red Light Camera System. The Town agrees to pay Redflex a per paid Citation fee of Twenty-Eight Dollars (\$28.00) per paid Citation per month for Violations recorded at each Intersection Approach installed pursuant to this Agreement.
2. Pricing and Compensation for Speed Enforcement Devices (if added). If the Town and Redflex mutually agree to add to the Program any device for the purpose of enforcing Violations related to speed, the Town agrees to pay Redflex a per paid Citation fee of at least Twenty-Seven Dollars (\$27.00) per paid Citation per month, the actual amount to be mutually agreed to between the parties.

BUSINESS ASSUMPTIONS FOR ALL PRICING PROVISIONS AND OPTIONS:

1. Each year, on the anniversary date of the contract, the pricing will increase by the CPI. CPI will be derived from the publication of the U.S. Department of Labor Consumer Price Index for U.S. Town average.
2. Customer agrees to pay Redflex within thirty (30) days after the invoice is received. A monthly late fee of 1.5% is payable for amounts remaining unpaid 60 days from date of invoice.
3. Redflex will be responsible for payment of any Credit Card Fees.
4. Online convenience fees are not considered revenue received or as payment toward the Fixed Monthly Fee or Per Paid Citation Fee to be paid by the Town. Online convenience fees are the responsibility of the violator and are passed solely onto Redflex.
5. Redflex shall be responsible for any monthly lockbox or merchant account fees, if the Parties decide to implement such services.
6. At the Town's request, Redflex can implement a default collection process managed by a third party collections expert with the aim of increasing violator compliance.

EXHIBIT "E"

Additional Rights and Obligations

Redflex and the Customer shall respectively have the additional rights and obligations set forth below:

1. Redflex shall assist the Customer in public information and education efforts, including but not limited to the development of artwork for utility bill inserts, press releases and schedules for any public launch of the Program (actual print and production costs are the responsibility of Redflex).
2. The Customer shall not access the Redflex System or use the Program in any manner other than prescribed by law and which restricts or inhibits any other Person from using the Redflex System or the Program with respect to any Intersection Approaches constructed or maintained by Redflex for such Person, or which could damage, disable, impair or overburden the Redflex System or the, and the Customer shall not attempt to gain unauthorized access to (i) any account of any other Person, (ii) any computer systems or networks connected to the Redflex System, or (iii) any materials or information not intentionally made available by Redflex to the Customer by means of hacking, password mining or any other method whatsoever, nor shall the Customer cause any other Person to do any of the foregoing.
3. The Customer shall maintain the confidentiality of any username, password or other process or device for accessing the Redflex System or using the Program.
4. Redflex and the Customer shall advise each other in writing with respect to any applicable rules or regulations governing the conduct of the other on or with respect to the property of such other Party, including but not limited to rules and regulations relating to the safeguarding of confidential or proprietary information, and when so advised, Redflex and the Customer shall obey any and all such rules and regulations.
5. The Customer shall promptly reimburse Redflex for the cost of repairing or replacing any portion of the Redflex System, or any property or equipment related thereto, damaged directly or indirectly by the Customer, or any of its employees, contractors or agents.
6. The Parties shall agree on specific Business Rules governing the function and operation of the Redflex System.

EXHIBIT "F"

Insurance

1. Redflex shall procure and maintain at Redflex's sole cost and expense the following insurance coverage in connection with the performance of work or services pursuant to this Agreement by Redflex, and each of Redflex's subcontractors, agents, representatives and employees:
 - Commercial General Liability Insurance. Commercial General Liability Insurance with coverage limits of not less than One Million Dollars (\$1,000,000) combined single limit per occurrence for bodily injury and property damage, Two Million Dollars (\$2,000,000) Products-Completed Operations Aggregate and Two Million Dollars (\$2,000,000) General Aggregate;
 - Business Automobile Liability Insurance. Business Automobile Liability Insurance with coverage of not less than One Million Dollars (\$1,000,000) combined single limit per accident for bodily injury or property damage, including but not limited to coverage for all automobiles owned, non-owned and hired by Redflex;
 - Professional Liability (Errors and Omissions) Insurance. Redflex will use its commercial best efforts to procure and maintain Professional Liability (Errors and Omissions) Insurance with coverage of not less than Two Million Dollars (\$2,000,000) each and every claim and in the Aggregate; and
 - Workers' Compensation and Employer's Liability Insurance. Workers' Compensation Insurance with coverage of not less than that required by the Labor Code of the State of Tennessee, and Employer's Liability Insurance with coverage of not less than:
 - \$1,000,000 Bodily Injury by Accident – Each Accident
 - \$1,000,000 Bodily Injury by Disease – Policy Limit
 - \$1,000,000 Bodily Injury by Disease – Each Employee
2. With respect to the Commercial General Liability Insurance the following additional provisions shall apply:
 - The Customer or Customers shall be named as additional insureds with respect to the Commercial General Liability insurance; and
 - The Commercial General Liability insurance shall be the primary insurance with respect to the Customer or Customers in connection with this Agreement, and any insurance or self-insurance maintained by the Customer or Customers shall be in excess, and not in contribution to, such insurance; and
 - The Commercial General Liability insurance shall include "Separation of Insureds" wording which states that such insurance coverage shall apply separately with respect to each insured against whom claim is made or suit is brought, except with respect to the limits of insurance or any rights or duties specifically assigned to Redflex in such insurance policies.
3. With respect to the insurance described above, Redflex shall not cancel or materially reduce the coverage without providing the Town thirty (30) days prior written notice by certified mail.
4. With respect to the insurance described above, if any of the Redflex Parties are notified by any insurer that such coverage will be materially reduced or cancelled, Redflex shall provide written notice within ten (10) business days of receipt of such notice to the Customer or Customers and shall take all necessary actions to correct such cancellation in coverage limits, and shall provide written notice to the Customer or Customers of the date and nature of such correction. If Redflex, for any reason, fails to maintain the insurance coverage required pursuant to this Agreement, such failure shall be deemed a material breach of this Agreement, and the Customer or Customers shall have the right, but not the obligation and exercisable in its/their sole discretion, to either (i) terminate this Agreement and seek damages from Redflex for such breach, or (ii) purchase such required insurance, and without further notice to Redflex, deduct from any amounts due to Redflex pursuant to this Agreement, any premium costs advanced by the Customer or Customers for such insurance. If the premium costs advanced by the Customer or Customers for such insurance exceed any amounts due to Redflex pursuant to this Agreement, Redflex shall promptly remit such excess amount to the Customer or Customers upon receipt of written notice thereof.

5. Redflex shall provide certificates of insurance evidencing the insurance required pursuant to the terms of this Agreement, which certificates shall be executed by an authorized representative of the applicable insurer, and which certificates shall be delivered to the Customer or Customers prior to Redflex commencing any work pursuant to the terms of this Agreement.