

Exhibit A of
Violation Processing
Service Agreement

**AGREEMENT BETWEEN REDSPEED ILLINOIS, LLC
AND THE VILLAGE OF LOMBARD FOR AN
AUTOMATED TRAFFIC LAW ENFORCEMENT
SYSTEM**

This Automated Traffic Law Enforcement System Agreement (hereinafter referred to as the "Agreement" or "Program Agreement") is made as of this 1st day of June, 2008 by and between RedSpeed Illinois, LLC, a limited liability company licensed to do business in the State of Illinois, located at 400 Eisenhower Lane North, Lombard, Illinois 60148 ("RedSpeed"), and the Village of Lombard, an Illinois municipal corporation, (hereinafter referred to as the "Village"). (RedSpeed and Village are sometimes referred to as "Party" or "Parties".)

RECITALS

WHEREAS, RedSpeed is in the business of providing and implementing automated traffic law enforcement systems and the collection of any citations issues pursuant thereto;

WHEREAS, the Village desires to engage the services of RedSpeed to provide equipment cameras hardware, software and technicians to identify and enforce violations of the traffic control signals (Red light violations only) within the Village.

WHEREAS, the Village and RedSpeed desire to enter into this Agreement for the implementation of an automated traffic law enforcement system and collection of citations for violations thereto, for certain intersections within the Village pursuant to this Agreement.

WHEREAS, on June 19 the Corporate Authorities of the Village adopted an Ordinance (No. 10-09), authorizing the execution of this Agreement.

NOW THEREFORE, in consideration of the mutual covenants contained herein, the above recitals are by this reference incorporated herein, and for valuable consideration received, the receipt and sufficiency of which is hereby acknowledged, the Village and RedSpeed agrees as follows:

1. **Recitals.** All recitals set forth above shall be deemed a part of this Agreement.
2. **Services Provided.** RedSpeed shall provide an Automated Traffic Law Enforcement System and program to the Village by:
 - a. Installing Automated Traffic Law Enforcement Systems at Designated Intersections in the Village, as provided in Exhibit "A," which is attached hereto and incorporated herein;
 - b. Installing or causing the installation of such traffic light modifications at Designated Intersections, as may be required by the Illinois Department of Transportation (the "IDOT Upgrades).

c. Maintenance as set forth in Exhibit "A"; and

d. The Village may from time to time request changes to these services or the addition of products or services to those required pursuant to the terms of this Agreement by providing written notice thereof to RedSpeed. Upon RedSpeed's receipt of the requested change, RedSpeed shall deliver a written statement describing the effect, if any, that the proposed changes would have on the pricing of this Agreement. Following the Village's receipt of the new pricing, the Parties shall negotiate to implement 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. If the Village and RedSpeed fail to reach an agreement with respect to any of the proposed changes it shall not be deemed to be a breach of this Agreement.

3. **Term.** The term of this Agreement shall commence as of the _____ day of _____, 2008 and shall continue for a period of six (6) years after the equipment is installed ("Installation"). The Village shall have the right, to extend the term of this Agreement for up to two (2) additional consecutive and automatic three (3) year periods following the expiration of the initial six (6) year term. The Village may exercise the right to extend the term of this Agreement for the three (3) year extensions by providing written notice to RedSpeed not less than sixty (60) days prior to the last day of the existing term.

4. **Compensation.** Compensation as set forth in Exhibit "B", which is attached hereto and incorporated herein.

5. **Termination.**

a. Either Party shall have the right to terminate this Agreement, without cause, upon sixty (60) days written notice to the other Party. Provided however notwithstanding the foregoing, to the contrary, if the Village terminates this Agreement without cause during the first year of the agreement, the Village shall reimburse RedSpeed in an amount equal to the cost (the "Cost"), as hereinafter defined, of the direct labor costs and direct material costs (but not including equipment costs and salvageable material costs) solely associated with the installation of Designated Intersections which have been installed prior to termination. RedSpeed shall provide an itemization, with supporting invoices and labor expense documentation, to the Village of the amount of the direct labor costs and direct material costs (but not including equipment costs and salvageable material costs) solely associated with the Designated Intersection, said amount is expected to be in the range of \$15,000 to \$30,000 per designated intersection, but in no event shall said amount exceed \$30,000 per designated intersection.

b. Either Party shall have the right to terminate this Agreement immediately by written notice to the other if (i) the Illinois Statutes are amended to prohibit or substantially change the operation of automated traffic law enforcement systems, as defined in the Illinois Vehicle Code; or (ii) any court having jurisdiction over the Village rules, or state or federal statute declares, the results from RedSpeed's automated traffic law enforcement systems are inadmissible in

evidence; or (iii) the other Party commits any material breach of any of the provisions of this Agreement which breach is not remedied within sixty (60) calendar days after written notice from the Party setting forth in reasonable detail their reasons for the alleged breach.

- c. The termination of this Agreement shall not relieve either Party of any liability that accrued prior to such termination.

The Village shall immediately cease using the Automated Traffic Law Enforcement system provided pursuant to this Agreement and also immediately stop using any other Intellectual Property of RedSpeed, deliver to RedSpeed any and all Proprietary Property of RedSpeed provided to the Village pursuant to this Agreement and promptly approve payment of any and all fees, charges and amounts due to RedSpeed for services performed prior to the termination.

Within sixty (60) days of termination, or such time as the Parties mutually agree, RedSpeed shall remove any and all Equipment, hardware and software RedSpeed installed in connection with RedSpeed's performance of its obligations under this Agreement, and shall restore the Designated Intersections to substantially the same condition they were in prior to this Agreement.

- d. The following shall survive termination of this Agreement:
 - i. Reservation of Rights, Representations and Warranties of RedSpeed;
 - ii. Representations and Warranties of Village;
 - iii. Limited Warranties;
 - iv. Confidentiality;
 - v. Indemnification;
 - vi. Dispute Resolution;
 - vii. Assignment;
 - viii. Applicable Law;
 - ix. Injunctive Relief; and
 - x. Jurisdiction and Venue;

As the Parties acknowledge they must survive to give effect to the provisions of this Agreement.

6. License.

- a. Subject to the terms and conditions of this Agreement, RedSpeed hereby grants to the Village, upon the terms and conditions herein specified, a non-exclusive, non-transferable license during the Term of this Agreement to: (i) solely within the Village, access and use of the RedSpeed Automated Traffic Law Enforcement System for the sole purpose of reviewing Potential Violations and authorizing the issuance of Citations pursuant to the terms of the Violation Processing Service Agreement that the Parties intend to enter into (the "Service Agreement") and (ii) use the name RedSpeed, with the approval by RedSpeed, on or in marketing, public awareness or education, or other publications or materials relating to the Automated Traffic Law Enforcement System.
- b. The Village hereby acknowledges and agrees that RedSpeed is the sole and exclusive owner of the Automated Traffic Law Enforcement System provided by RedSpeed, the name RedSpeed, the mark and any and all Intellectual Property arising from or relating to the System.
- c. The Village hereby covenants and agrees that it shall not make any modifications to the Automated Traffic Law Enforcement System provided by RedSpeed, alter, remove or tamper with any RedSpeed trademarks, or any other Intellectual Material; use any trademarks or other Intellectual Material in connection without first obtaining the prior written consent of RedSpeed, or perform any type of reverse engineering to the RedSpeed Automated Traffic Law Enforcement System.
- d. RedSpeed shall have the right to take whatever action it deems necessary or desirable to remedy or prevent the infringement of any Intellectual Property of RedSpeed, including without limitation the filing of applications to register as trademarks in any jurisdiction any of the RedSpeed Marks, the filing of patent applications for any of the Intellectual Property of RedSpeed, and making any other applications or filings with appropriate Governmental Authorities. The Village shall not take any action to utilize its own name or make any registrations or filings with respect to any of the RedSpeed Marks or the Intellectual Property of RedSpeed without the prior written consent of RedSpeed.
- e. **MOST FAVORED NATION CLAUSE.** If RedSpeed, at any time during this Agreement, routinely enters into agreements with other governmental units within the State of Illinois, and offers the same or substantially the same products/services offered to the Village on a basis that provides terms and conditions (including but not limited to, prices, warranties, indemnification, terms relating to posting of a bond, etc.), that are, in the aggregate and when considered as a whole, more favorable than those collective terms and conditions provided to the Village, RedSpeed shall notify the Village in writing within ten (10) business days thereafter of that offering and this Agreement shall be deemed to be automatically amended effective on the date of such written notice from RedSpeed, wherein RedSpeed shall provide the same terms and conditions to the Village unless the Village notifies

RedSpeed in writing within 10 business days of RedSpeed's written notice that the Village declines to accept such change(s), in which case such amendment shall be deemed null and void.

- f. **Non-Productive Cameras.** If the Municipality and RedSpeed mutually agree that a camera either is not economical and/or has not reached the desired safety goals, a new location will be mutually selected and the camera will be moved at NO COST to the Municipality provided that the camera was installed for a period of at least eighteen (18) months at its original location. If no further locations are mutually agreed upon, the Municipality will inform RedSpeed in writing and the camera will be removed at NO COST to the Municipality within thirty (30) calendar days after the receipt of the written notice provided that the camera was installed for a period of at least eighteen (18) months at its original location. The billing for the camera will stop immediately upon receipt of the written notice. If at the time of notice herein the Non-Productive Camera was not in its original location for a period of at least eighteen (18) months, the Municipality shall reimburse RedSpeed in an amount equal to the cost (the "Cost"), as hereinafter defined, of the direct labor costs and direct material costs (but not including equipment costs and salvageable material costs) solely associated with the installation of Designated Intersections which have been installed prior to removal. RedSpeed shall provide an itemization, with supporting invoices and labor expense documentation, to the Municipality of the amount of the direct labor costs and direct material costs (but not including equipment costs and salvageable material costs) solely associated with the Designated Intersection, said amount is expected to be in the range of \$15,000 to \$30,000 per designated intersection, but in no event shall said amount exceed \$30,000 per designated intersection. The Municipality's share of the Cost defined herein shall be paid solely through RedSpeed's collection of Citation payments as provided herein over a collection period not to exceed seven months.

7. LIMITED WARRANTY. EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT, REDSPEED 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 REDSPEED AUTOMATED TRAFFIC LAW ENFORCEMENT SYSTEM OR ANY RELATED EQUIPMENT OR WITH RESPECT TO THE RESULTS OF THE VILLAGE'S USE OF ANY OF THE FOREGOING. NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH HEREIN, REDSPEED DOES NOT WARRANT THAT ANY OF THE DESIGNATED INTERSECTION EQUIPMENT OR THE AUTOMATED TRAFFIC LAW ENFORCEMENT SYSTEM WILL OPERATE IN THE WAY THE VILLAGE SELECTS FOR USE, OR THAT THE OPERATION OR USE THEREOF WILL BE UNINTERRUPTED. THE VILLAGE HEREBY ACKNOWLEDGES THAT THE REDSPEED PHOTO AUTOMATED TRAFFIC LAW ENFORCEMENT MAY MALFUNCTION FROM TIME TO TIME, AND SUBJECT TO THE TERMS OF THIS AGREEMENT, REDSPEED SHALL DILIGENTLY ATTEMPT TO CORRECT ANY SUCH MALFUNCTION IN A TIMELY MANNER.

8. Representations.

RedSpeed Representations and Warranties.

- a. RedSpeed hereby warrants and represents that it has all right, power and authority to execute and deliver this Agreement and perform its obligations hereunder.
- b. RedSpeed hereby warrants and represents that any and all services provided by RedSpeed pursuant to this Agreement shall be performed in a professional and workmanlike manner and, with respect to the installation and operation of the RedSpeed Automated Traffic Law Enforcement System, subject to applicable law, in compliance with all specifications provided to RedSpeed.

9. Village Representations.

- a. The Village hereby warrants and represents that it has all right, power and authority to execute and deliver this Agreement and perform its obligations hereunder (i.e. the passing of a Resolution or ordinance to enter into this Agreement).
- b. The Village hereby warrants and represents that any and all services provided by the Village pursuant to this Agreement shall be performed in a professional and workmanlike manner.

10. Confidentiality. During the term of this Agreement and for a period of two (2) years thereafter, neither Party shall disclose to any third person, or use for itself in any way for pecuniary gain, any Confidential Information obtained from the other Party during the course of the negotiations for this Agreement or during the Term of this Agreement.

Upon termination of this Agreement, each Party shall return to the other all tangible Confidential Information of such Party.

Each Party shall not disclose to any third Party any Confidential Information without the other Party's express written consent. Exceptions are limited to its employees who are reasonably required to have the Confidential Information, agents, representatives, attorneys and other professional advisors that have a need to know such Confidential Information, and pursuant to, and to the extent of, a request or order by any Governmental Authority, including laws relating to public records.

11. Indemnification and Liability.

- a. Village hereby agrees to defend and indemnify and hold harmless RedSpeed and its affiliates, shareholders or other interest holders, managers, officers, directors, employees, agents, representatives and successors, permitted assignees and all persons acting by, through, under or in concert with them (including but not limited to the supplies of equipment and installers)

(collectively the "RedSpeed Parties"), or any of them against, and to protect, save and keep them harmless from, and to pay on behalf of or reimburse them as and when incurred for, any and all Losses which may be imposed on or incurred by any RedSpeed or equipment provided and/or installer arising out of or in any way related to:

- i. any material representation, inaccuracy or breach of any covenant, warranty or representation of the Village contained in this Agreement;
 - ii. the willful misconduct of the Village, its employees contractors or agents which result in bodily injury to any natural person (including third parties) 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 RedSpeed Party;
 - iii. any claim, action or demand not caused by RedSpeed's failure to perform its obligations under this Agreement; or
 - iv. any claim, action or demand challenging the Village's use of the Automated Traffic Law Enforcement System or any portion thereof, the validity of the results of the Village's use of the Automated Traffic Law Enforcement System or any portion thereof; validity of the Citations issued, prosecuted and collected as a result of the Village's use of the Automated Traffic Law Enforcement System provided by RedSpeed.
- b. RedSpeed hereby agrees to defend and indemnify and hold harmless the Village, and its appointed and elected officials, Mayor, Council Members, employees and agents managers, officers, directors, appointed and elected officials, Village President, trustees, 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 (collectively the "Village Parties") against, and to protect, save and keep harmless the Village Parties from, and to pay on behalf of or reimburse the Village 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' fees and court costs) of whatever kind and nature, which may be imposed on or incurred by any Village Party arising out of or related to:
- i. any material misrepresentation, inaccuracy or breach of any covenant, warranty or representation of RedSpeed contained in this Agreement;
 - ii. the willful misconduct of RedSpeed, its employees or agents which result in death or bodily injury to any natural person (including third parties) 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 the Village or any of its agents; or any claim, action or demand not caused by the Village's failure to perform its obligations under this Agreement.

- c. Notwithstanding anything to the contrary in this Agreement, neither Party shall be liable to the other, by reason of any representation or express or implied warranty, condition or other term or any duty at common or civil law, for any lost profits, indirect, incidental, or consequential damages, however caused.
- d. In the event any claim, action or demand in respect of which any Party hereto seeks indemnification from the other, the Party seeking indemnification shall give the Party from whom indemnification is being sought written notice of such Claim promptly after the Indemnified Party first becomes aware. The Party from whom indemnifications is being sought shall have the right to choose counsel to defend such Claim (subject to approval of such counsel by the other Party, which approval shall not be unreasonably withheld, conditioned or delayed), and to control, and settle such Claim. The Party from whom indemnifications is being sought shall have the right to participate in the defense at its sole expense.

12. Violation Processing.

Under this Agreement, Violations shall be processed as follows:

- a. All Violations Data shall be stored on the RedSpeed Automated Traffic Law Enforcement System.
- b. RedSpeed shall process the Violation Data gathered from the Designated Intersection(s) into a format capable of review by the Authorized Officer.
- c. RedSpeed shall provide the Authorized Officer with access to the Automated Traffic Law Enforcement System for the purposes of reviewing the pre-processed Violation Data within seven (7) days of the gathering of the Violation Data from the applicable Designated Intersection(s).

Thereafter, the Village shall cause the Authorized Officer to review the Violations Data and to determine whether a citation shall be issued with respect to each Potential Violation captured within such Violation Data, and transmit each such determination to RedSpeed using the software or other applications or procedures provided by RedSpeed on the RedSpeed Automated Traffic Law Enforcement System.

RedSpeed hereby acknowledges and agrees that the decision to issue a Citation shall be the sole, unilateral and exclusive decision of the Authorized Officer and shall be made in such Authorized Officer's sole discretion (a "Citation Decision"), and in no event shall RedSpeed have the ability or authorization to make a Citation Decision.

Further, the Village shall be obligated to issue all Citations for Authorized Violations sent out on the Village's behalf.

13. Dispute Resolution.

Upon the occurrence of any dispute or disagreement between the Parties hereto arising out of or in connection with any terms or provision of this Agreement, the subject matter hereof, or the interpretation or enforcement hereof (the "Dispute"), the Parties shall engage in informal, good faith discussions and attempt to resolve the Dispute. In connection therewith, upon written notice of either Party, each of the Parties will appoint a designated officer whose task it shall be to meet for the purpose of attempting to resolve such Dispute. The designated officers shall meet as often as the Parties shall deem to be reasonably necessary. Such officers will discuss the Dispute. If the Parties are unable to resolve the Dispute within ninety (90) calendar days, and in the event that either of the Parties concludes in good faith that amicable resolution through continued negotiation with respect to the Dispute is not reasonably likely, then the Parties may mutually agree to submit to binding or nonbinding arbitration or mediation.

14. Notices

Any notices to be given hereunder 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 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 the next day delivery, if the courier service obtains a signature acknowledging receipt, in each case addressed or sent to such Party as follows:

- a. Notices to RedSpeed:
RedSpeed Illinois, LLC
Attn. Robert Liberman, Manager
400 Eisenhower Lane North
Lombard, IL 60148

With a copy to:

Martin S. Korey
STONE, POGRUND & KOREY
221 N. La Salle Street, 32ND Floor,
Chicago, IL 60601

Notices to the Village:
Village Manager
Village of Lombard
255 East Wilson Avenue
Lombard, Illinois 60093
Attention: Village Manager

With a copy to:

George A. Wagner, Esq.
Klein Thorpe & Jenkins Ltd.
20 North Wacker Drive, Suite 1660
Chicago, Illinois 60606

The name and/or address to which notice is required may be amended at any time by written notice to the other party as provided herein.

15. **Relationship between RedSpeed and the Village.**

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 herein). Further, it shall also not create a revenue sharing agreement between Parties, but instead payment for services rendered, as set forth in paragraph 4 above.

16. **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. Provided, however, that the Village hereby acknowledges and agrees that delivery and performance of RedSpeed's rights pursuant to this Agreement shall require a significant investment by RedSpeed, and that in order to finance such investment, RedSpeed may be required to enter into certain agreements or arrangements with equipment lessors, banks, financial institutions or other similar persons or entities. The Village hereby agrees that RedSpeed shall have the right to assign, pledge, hypothecate or otherwise transfer its rights to the equipment but not the service provided under this Agreement, to any of the aforesaid subject to the Village's prior written approval, which approval shall not be unreasonably withheld or delayed. The Village further acknowledges and agrees that in the event that RedSpeed provides written notice to the Village that it intends to Transfer all or any of RedSpeed's rights pursuant to this Agreement, and in the event that the Village unreasonably fails to provide such approval or fails to object to such Transfer within thirty (30) calendar days after its receipt of such notice from RedSpeed, for the purposes of this Agreement, the Village shall be deemed to have consented to and approved such Transfer.

17. **Injunctive Relief; Specific Performance.**

The Parties hereby agree and acknowledge that a breach of License, Restricted Use, or 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 any material term, condition, or provision of this Agreement, or to join or prevent such a breach, including without limitation, an action for specific

performance hereof.

18. **Audit.**

Each of the Parties hereto shall have the right to audit the books and records of the other Party hereto (the "Audited Party") solely for the purpose of verifying the collection of Citation payments, the payment of compensation to RedSpeed and the payment of fines to the Village. Any such audit shall be conducted upon not less than three business hours prior notice, at mutually convenient times and during normal business hours. In the event any such audit establishes any underpayment payment by the Audited Party, the Audited Party shall promptly pay the amount of the shortfall. In the event any such audit establishes any overpayment by the Audited Party, the non-Audited Party shall promptly pay the amount of the excess to the Audited Party. The Auditing Party shall solely pay the expenses for any audit it requests, except that, in the event that any such audit establishes that the Audited Party has underpaid any payment by more than five percent (5%) of the amount actually owing, the cost of such audit shall be borne by the Audited Party.

19. **Force Majeure**

Neither 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. Said causes may include but are not limited to, acts of God, or the public enemy, terrorism, significant fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, freight embargoes, or Governmental Authorities approval delays which are not caused by any act or omission by RedSpeed, and unusually severe weather. The Party whose performance is affected agrees to notify the other promptly of the existence and nature of any delay. This Section 19 shall not apply to the Village's rights to deduct certain amounts pursuant to Exhibit B, paragraph 1.

20. **Miscellaneous.**

a. **Definitions.**

In this Agreement, the words and phrases below shall have the following meanings:

- i. **"Administrative Hearing Officer"** means the person hired by the Village to act as an impartial judge for all requests for an Administrative Appeals Hearing.
- ii. **"Authorized Officer"** means the designated employee from the Police Department of the Village, the Traffic Control Administrator or such other individual(s) as the Village shall designate to review Potential Violations and to authorize the Issuance of Citations.
- iii. **"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 Officer by using the

RedSpeed Automated Traffic Law Enforcement System.

- iv. **"Citation"** means the notice of Violation, which is mailed or otherwise delivered by RedSpeed to the vehicle owner or lessee responsible for an Authorized Violation on the appropriate Enforcement Documentation.
- v. **"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, such Person's business or methods of operation or concerning any of such Person's suppliers, licensors, licensees, Municipalities or other with whom such Person has 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 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 Municipalities, or at which such Person sells or has sold its services; and

Matters of a technical nature, including but not limited to product information, trade secrets, know-how, formulae, innovations, inventions, equipment, 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 mean the broadest and most inclusive interpretation of trade secrets; and

Notwithstanding the foregoing, Confidential or Private 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 by any Party hereto in breach of this Agreement, (iii) was subsequently lawfully disclosed to the disclosing Party by a person other than a Party hereto, (iv) was required by a court of competent jurisdiction to be described, or (v) was required by applicable state law to be described.

- vi. **"Designated Intersection"** means the Intersections set forth in Exhibit A attached hereto, and such additional Intersections as RedSpeed and the Village shall mutually agree from time to time.
- vii. **"Enforcement Documentation"** means the necessary and appropriate documentation related to the Automated Traffic Law Enforcement System, including but not limited to Citation notices

(using the specifications required by the Illinois Vehicle Code and by Village ordinance to provide a numbering sequence for use on all Citation notices in accordance with applicable court rules), instructions to accompany each issued Citation, chain of custody records, criteria regarding operational policies for processing Citations (including those with respect to coordinating with the Department of Motor Vehicles), and technical support documentation for applicable court and judicial officers.

- viii. **"Equipment"** means any and all cameras, sensors, equipment, components, products, software and other tangible and intangible property relating to the Automated Traffic Law Enforcement System(s), including but not limited to all camera systems, housings, radar units, and poles.
- ix. **"Fine"** means monetary sums assessed for Citation, including but not limited to bail forfeitures, but excluding suspended fines.
- x. **"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.
- xi. **"Installation Date of the Automated Traffic Law Enforcement System"** means the date on which RedSpeed completes the construction and installation of at least one (1) Intersection in accordance with the terms of this Agreement so that such Intersection is operational for the purposes of functioning with the Automated Traffic Law Enforcement System Program.
- xii. **"Intellectual Property"** means, with respect to any Person, any and all now known or hereafter known tangible and intangible: (a) rights associated with works of authorship throughout the world, including but not limited to copyrights, (b) trademark and trade name rights and similar rights, (c) trade secrets rights, (d) patents, designs, algorithms and other property rights, (e) all other intellectual property rights (of every kind and nature however designated), whether arising by operation of law, contract, license, or otherwise, and (f) all registrations, initial applications, renewals, extensions, continuations, divisions or reissues hereof now or hereafter in force.
- xiii. **"Intersection"** means a conduit of travel (e.g., northbound, southbound, eastbound or westbound) on which at least one (1) system has been installed by RedSpeed for the purposes of facilitating Automated Traffic Law Enforcement System by the Village.
- xiv. **Operational Camera"** means an installed camera that is operational and

performing digital captures of traffic in the Intersection. An Operational Camera shall be deemed non-operational or inactive if it is not capable of storing forty-eight (48) continuous hours of usable Violation Data or is not operating.

- xv. **"Operational Period"** means the period of time during the Term, commencing on the Installation Date, during which the Automated Traffic Law Enforcement System is functional in order to permit the identification and prosecution of Violations at the Designated Intersection Approaches and the issuance of Citations for such approved Violations using the Automated Traffic Law Enforcement System.
- xvi. **"Person"** means natural individual, company, Governmental Authority, partnership, firm, corporation, legal entity or other business association.
- xvii. **"Potential Violation"** means, with respect to any motor vehicle passing through a Designated Intersection, the data collected by the Automated Traffic Law Enforcement System with respect to such motor vehicle, which data shall be processed by the Automated Traffic Law Enforcement System for the purposes of allowing the Authorized Officer to review such data and determine whether a Violation has occurred.
- xviii. **"Proprietary Property"** means, with respect to 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. In no event shall material that the Village is required to maintain and to provide to the public under the Illinois Freedom of Information Act 5 ILCS 140/1 et. seq. or the Illinois Local Records Act 50 ILCS 205/1 et. seq. be deemed to be "Proprietary Property" under this provision.
- xix. **"RedSpeed Marks"** means all trademarks registered in the name of RedSpeed or any of its affiliates, such other trademarks as are used by RedSpeed or any of its affiliates on or in relation to Automated Traffic Law Enforcement System at any time during the Term this Agreement,

service marks, trade names, logos, brands and other marks owned by RedSpeed, and all modifications or adaptations of any of the foregoing.

- xx. **"Automated Traffic Law Enforcement System"** means, collectively, all of the other equipment, applications, back office processes and digital red light traffic enforcement cameras, sensors, components, and products, software and other tangible and intangible property relating including but not limited to the process by which the monitoring, identification and enforcement of Violations is facilitated by the use of certain equipment, applications and back office processes of RedSpeed, including but not limited to cameras, flashes, central processing units, signal controller interfaces and detectors (whether loop, radar or video loop) which, collectively, are capable of measuring Violations and recording such Violation data in the form of photographic images of motor vehicles for automated Traffic law enforcement.
 - xxi. **"Violation"** means an automated traffic law violation as defined by Section 11- 208.6 of the Illinois Vehicle Code.
 - xxii. **"Violation Criteria"** means the standards and criteria by which Potential Violations will be evaluated by the Authorized Officer and/or sworn police officers of the Village, 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, whether the vehicle in question entered an intersection in violation of a red light signal in order to yield the right of way to an emergency vehicle or as part of a funeral procession, 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.
 - xxiii. **"Violation Data"** means the images and other Violation data gathered by the Automated Traffic Law Enforcement System at the Designated Intersection(s).
 - xxiv. **"Traffic Compliance Administrator"** means the Traffic Compliance Administrator described in Chapter 73 of the Village of Lombard Code, Ordinance No. 5976.
- b. **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.

- c. **Construction.** Except as expressly otherwise provided in this Agreement, this Agreement shall be construed as having been fully and completely negotiated and neither the Agreement nor any provision thereof shall be construed more strictly against either Party.
- d. **Severability.** If any provision of this Agreement is held by any court or other competent authority to be void or unenforceable in whole or in part, this Agreement shall continue to be valid as to the other provisions thereof and the remainder of the affected provision.
- e. **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 thereof.
- f. **Headings.** The headings of the sections contained in this Agreement are included herein for reference purposes only, solely for the convenience of the Parties hereto, and shall not in any way be deemed to affect the meaning, interpretation or applicability of this Agreement or any term, condition or provision hereof.
- g. **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.
- h. **Binding Effect.** This Agreement shall inure to the benefit of and be binding upon all of the Parties hereto and their respective executors, administrators, successors and permitted assigns.
- i. **Compliance with Laws.** Nothing contained in this Agreement shall be construed to require the commission of 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 contrary to which the Parties have no legal right to contract, the latter shall prevail, but in such event the term, condition or provision of this Agreement affected shall be curtailed and limited only to the extent necessary to bring it within the requirement of the law, provided that such construction is consistent with the intent of the Parties as expressed in this Agreement.
- j. **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.

- k. **Applicable Law.** This Agreement shall be governed by and construed in all respects solely in accordance with the laws of the State of Illinois.
- l. **Jurisdiction and Venue.** Any dispute arising out of or in connection with this Agreement shall be submitted to the exclusive jurisdiction and venue of the State Courts of the State of Illinois located in the County the Village resides, and both Parties specifically agree to be bound by the jurisdiction and venue thereof.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year set forth above.

“Village”

“RedSpeed”

VILLAGE OF LOMBARD, ILLINOIS

REDSPEED ILLINOIS, LLC

By: Richard J. Tron
William J. Mueller
Village President

By: _____
Name: Robert Liberman
Title: Manager

ATTEST:

By: Brightie O'Brien
Brightie O'Brien
Village Clerk

EXHIBIT "A"
Designated Intersections

RedSpeed and the Village, through its Police Chief or his/her designee, will mutually agree upon the identification of Intersections to be enforced pursuant to this Agreement, which Intersections will be based on community safety and traffic needs as determined by the Village. The Designated Intersections shall be designated by the Parties during the term of this Agreement, and set forth on a supplement to this Exhibit A, which shall become a part of this Agreement.

Construction and Installation

RedSpeed will install and activate the Automated Traffic Law Enforcement System at Designated Intersections in accordance with an implementation plan to be mutually agreed upon by RedSpeed and the Village.

RedSpeed will use reasonable commercial efforts to install the system in accordance with the schedule set forth in the implementation plan that will be formalized upon project commencement.

RedSpeed will use reasonable commercial efforts to install and activate the first specified Intersection within the first ninety (90) days. The Village agrees that the estimated timeframe for installation and activation is not guaranteed.

The Village will use good faith efforts to assist in the timely approval of Village permit requests made by RedSpeed. The Village will provide Village engineers to review RedSpeed permit requests and all documentation. The Village and its professionals and consultants shall review RedSpeed permit requests and all documentation within ten (10) business days after receipt. RedSpeed will make any necessary revisions to such permit applications and resubmit to Villages within five (5) business days after receipt of comments by the Village.

As part of the initial installation of an Automated Traffic Law Enforcement System at any intersection under ownership and/or control of the Illinois Department of Transportation (IDOT), IDOT may require the traffic signals to be upgraded ("IDOT Upgrade"). In that event, RedSpeed shall contract with an IDOT-approved contractor to provide the necessary labor, materials and services to perform the work specifically required by IDOT. Prior to such contract by RedSpeed, it shall submit copies of IDOT's requirements, all schematic drawings, design documents, and construction documents ("Design Documents") to the Village for its review and approval, which shall not be unreasonably withheld. The costs and expenses for the IDOT Upgrade shall be paid by RedSpeed and the Municipality equally. Redspeed shall provide a copy of each invoice and pay request it receives from any contractor(s) to the Village promptly upon its receipt of same. RedSpeed shall provide the Village with a monthly accounting of all invoices and pay requests from any contractor(s). The Village's share of the IDOT Upgrade shall be paid solely through RedSpeed's collection of Citation payments as provided herein over a period of not to exceed seven (7) months. By way of example only, if the total cost of the IDOT Upgrade at a Designated Intersection is \$25,000, RedSpeed will deduct \$1,785.72 per

month, for seven (7) months, from the Municipality's portion of the Citation revenue.

Further RedSpeed shall provide training for up to four (4) personnel of the Village, including but not limited to the persons who Village shall appoint as Authorized Officers and other persons involved in the administration of the Automated Traffic Law Enforcement System (the "Originally Trained Officers".) Training shall include training with respect to the RedSpeed Automated Traffic Law Enforcement System and its operations, presenting Violations Data in court and judicial proceedings and a review of the Enforcement Documentation. Training for individuals other than the Originally Trained Officers or their replacements shall be an extra cost to be agreed to by the Parties before training shall be provided.

RedSpeed shall maintain the insurance, as provided in Exhibit C.

Maintenance

1. All repair and maintenance of the Automated Traffic Law Enforcement System shall be the sole responsibility of RedSpeed as they are the sole owner of all of the related equipment utilized in the Automated Traffic Law Enforcement System. Such maintenance shall include but not be limited to maintaining the casings of the cameras included in the RedSpeed System and all other equipment in reasonably clean and graffiti free condition.
2. The provision of all necessary communication, broadband and telephone services to the Designated Intersection, will be the sole responsibility of RedSpeed
3. In the event that images of a quality suitable for the Authorized Officer to identify violations cannot be reasonably obtained without the use of flash, RedSpeed shall provide and install such flash units.
4. The RedSpeed Project Manager (or a reasonable alternative) shall be available to the Village's designated agent each day.

EXHIBIT "B"

Compensation

The Parties agree that all citations shall be paid to a lock box, which shall be maintained by RedSpeed.

RedSpeed shall remit to the Village the balance of all Citation payments its has collected for the Village after deducting therefrom the compensation due to RedSpeed as determined below:

1. A monthly fee of \$1,499.00 for each Active Camera. This cost includes the maintenance of the camera. (Also as set forth above no cameras can be added or removed unless agreed to in writing by both Parties).

If a camera is inactive (including but not limited to vandalism, acts of god, road sensor damage, and equipment malfunction), except if the electricity to the intersection is non-operational and/or the traffic control signals are non-operational in which case no credit shall be given, the following shall be applicable:

- A \$50.00 credit shall be given to the Village for every day the camera is inactive up to fourteen (14) calendar days; and
- If more than fourteen (14) calendar days, then the entire monthly fee of \$1,499.00 shall be waived

Further, if the electricity and/or traffic control signal is not operational, RedSpeed will assist the Village at no cost with all repairs and also, there will be no additional charges for the power outage.

2. A service fee of \$5.99 shall be charged for each of the following services listed in subparagraphs (a) and (b) below, where applicable, even if there is no Citation issued:
 - (a) For digital capture, download and manual review of a violation evidence package (including three pictures and a 12 second video clip), performed by RedSpeed operators, excluding funeral processions, emergency and police vehicles.
 - (b) For registered owner name and address retrieval associated with processing a citation (utilizing Secretary of State, United States Postal Service or other 3rd-Party database);
3. A service fee of \$5.99 shall be charged for each of the services listed in subparagraphs (a), (b), (c) and (d) below, where applicable:
 - (a) For ALL letter handling services, including postage and color printing, related to an issued Citation;

- (b) For payment processing service, including check and credit card processing at the lock box, online or during administrative hearings, related to an issued Citation;
 - (c) For ALL Village services offered by RedSpeed, including: Village-specific toll free number, call center hearing scheduling, live operator violation status and payment support, related to an issued Citation;
 - (d) For digital evidence archival (storage of evidence for 7 years) service, related to an issued Citation.
4. All prices will be increased each year by the Consumer Price index (CPI) published in the U.S. Department of Labor's Consumer Price Index for U.S. City Average.
5. Also the compensation has been agreed upon based on the following assumptions:
- Collection of delinquent payments will be the sole responsibility and expense of the Village. RedSpeed shall not be entitled to compensation from, or credit for, any funds resulting from the collection of delinquent payments.
 - RedSpeed shall not be entitled to compensation from, or credit for, any funds resulting from court or administrative proceedings. RedSpeed's compensation shall derive solely from Citation payments that it collects.
 - RedSpeed will be able to utilize existing conduit for installation where space is available, at no cost to RedSpeed;
 - All necessary electrical services to the Designated Intersections will be the sole responsibility and expense of the Village;
 - RedSpeed will be able to utilize existing internet connections at the Village's Police Department and other locations where RedCheck (back-office processing software) will be installed and used, and
 - RedSpeed will be responsible for installation and maintenance of a high-speed internet connection at each designated intersection approach.

Further, the Village shall receive a statement and invoice by the 15th of every month stating the amount collected and the amount of compensation to RedSpeed for the prior month. The net amount owed to the Village shall be included with the statement and invoice. All payments of Citations shall be collected by RedSpeed, except as the Village may collect through its Administrative Adjudication process. All of RedSpeed's work shall be monitored by RedSpeed, and subject to approval by the Village's Police Department. Upon RedSpeed's receipt of payment for Citations, it shall be paid all of its compensation as set forth in this Paragraph four (4) and the balance shall be promptly paid to the Village. RedSpeed acknowledges that the Village shall have access to all records related to its collection of Citation payments on a computer terminal provided by RedSpeed pursuant to this Agreement. In the

event that access is not available on the computer, RedSpeed shall provide a paper copy of any monthly statement upon written request.

6. Video footage provided by RedSpeed at the request of the Village pursuant to Section 2.d. of this Agreement, shall be provided at no cost.

Cost Neutrality. Notwithstanding any other provision of this Agreement to the contrary, if any invoice for compensation owed to RedSpeed from the Village is higher than the amount collected, the balance owed to RedSpeed will be carried over, without any interest or carrying charge, and paid by the Village in the following month to the same extent. Payment will only be made by Village up to the amount of cash received by the Village through RedSpeed's collection of Citation payments up to the amount currently due. Cost neutrality is assured to the Village as the Village shall never have to pay RedSpeed more than the actual cash received by RedSpeed for Citation payments. Notwithstanding the foregoing language in this paragraph, the provisions of paragraphs 5.a. and 6.f. of the Agreement supersede the cost neutrality paragraph, and the Village shall be responsible to RedSpeed for any Costs due from the Village to RedSpeed under such paragraphs irrespective of a Cash receipts deficiency; and the provisions of the IDOT Upgrade paragraph of Exhibit A supersede the cost neutrality paragraph and the Village shall be responsible to RedSpeed for any Costs due from the Village to RedSpeed under such paragraph irrespective of a Cash receipts deficiency in the event that the Agreement is terminated so that the Village's share cannot be collected from Citation payments for not to exceed seven (7) months, as provided therein.

EXHIBIT "C"
Insurance

During the Term, and any extension thereof, RedSpeed shall procure and maintain, at RedSpeed's sole cost and expense, the following insurance coverage with respect to claims for injuries to persons or damages to property which may arise from or in connection with the performance of work or services pursuant to this Agreement by RedSpeed, and each of RedSpeed's subcontractors, agents, representatives and employees:

- (a) Commercial General Liability Insurance. Commercial General Liability Insurance with coverage of not less than One Million Dollars (\$1,000,000) combined single limit per occurrence for bodily injury and property damage;
- (b) Commercial Automobile Liability Insurance. Commercial Automobile Liability Insurance with coverage of not less than One Million Dollars (\$1,000,000) combined single limit per occurrence for bodily injury or property damage, including but not limited to coverage for all automobiles owned by RedSpeed, hired by RedSpeed, and owned by third parties;
- (c) Professional Liability (Errors and Omissions) Insurance. RedSpeed will use its commercial best efforts to procure and maintain Professional Liability (Errors and Omissions) Insurance with coverage of not less than One Million Dollars (\$1,000,000) per occurrence and in the aggregate, and if RedSpeed is unable to procure such coverage in compliance with this provision, it shall give Village written notice as provided in Section 14, NOTICES, of the Agreement at the time of the delivery of the certificates and policies described in Section 6 of this Exhibit E below, and the Village shall have the right to use its best commercial efforts to procure such coverage on RedSpeed's behalf and at its expense;
- (d) Workers' Compensation and Employer's Liability Insurance. Workers' Compensation Insurance with coverage of not less than the limits required by applicable Illinois Law, Employer's Liability Insurance with coverage of not less than One Million Dollars (\$1,000,000) per occurrence.

With respect to the insurance described in this Exhibit C, any deductibles or self-insured retentions must be declared to and approved by the Village, and any changes to such deductibles or self-insured retentions during the Term must be approved in advance in writing by the Village.

With respect to the Commercial General Liability Insurance described above, the following additional provisions shall apply:

- (a) The Village Parties shall be covered as named additional insureds and loss payees with respect to any liability arising from any act or omission of any RedSpeed Parties on the premises upon which any such RedSpeed Parties may perform services pursuant to this Agreement, and such coverage shall contain no special limitations on the scope of protection afforded to such named additional insureds and loss payees.
- (b) The insurance coverage procured by RedSpeed and described above shall be the primary

insurance with respect to the RedSpeed Parties in connection with this Agreement, and any insurance or self-insurance maintained by any of the Village Parties shall be in excess, and not in contribution to, such insurance.

Any failure to comply with the reporting provisions of the various insurance policies described above shall not affect the coverage provided to the Village Parties, and such insurance policies shall state that such insurance coverage shall apply separately with respect to each additional insured against whom any claim is made or suit is brought, except with respect to the limits set forth in such insurance policies.

With respect to the insurance described in this Exhibit E, each such insurance policy shall be endorsed to state that the coverage provided thereby shall not be cancelled except after thirty (30) calendar days' prior written notice to the Village. Such notices shall be given in compliance with the provisions of Section 14, NOTICES, of the Agreement. If any of the RedSpeed Parties are notified by any insurer that any insurance coverage will be cancelled, RedSpeed shall immediately provide written notice thereof to the Village and shall take all necessary actions to correct such cancellation in coverage limits, and shall provide written notice to the Village of the date and nature of such correction. If RedSpeed, 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 Village shall have the right, but not the obligation and exercisable in its sole discretion, to either (i) terminate this Agreement and seek damages from RedSpeed for such breach, or (ii) purchase such required insurance, and without further notice to RedSpeed, deduct from any amounts due to RedSpeed pursuant to this Agreement, any premium costs advanced by the Village for such insurance. If the premium costs advanced by the Village for such insurance exceed any amounts due to RedSpeed pursuant to this Agreement, RedSpeed shall promptly remit such excess amount to the Village upon receipt of written notice thereof.

RedSpeed shall provide certificates of insurance and copies of each insurance policy 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 Village prior to RedSpeed commencing any work pursuant to the terms of this Agreement. Such certificates and policies shall be provided to Village not later than thirty (30) days prior to the commencement of performance under this Agreement and the Service Agreement and annually not later than 30 days prior to the annual expiration of each such policy thereafter.