

ORDINANCE NO. 6-2016

**AN ORDINANCE AMENDING CHAPTER 13, VEHICLES AND
TRAFFIC, ARTICLE XIII, AUTOMATED TRAFFIC LAW
ENFORCEMENT SYSTEM, OF THE EVERGREEN PARK
MUNICIPAL CODE**

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AN ORDINANCE AMENDING CHAPTER 13, VEHICLES AND TRAFFIC, ARTICLE XIII, AUTOMATED TRAFFIC LAW ENFORCEMENT SYSTEM, OF THE EVERGREEN PARK MUNICIPAL CODE

WHEREAS, the Village of Evergreen Park ("Village") is a home rule municipal corporation duly existing under the Constitution and laws of the State of Illinois;

WHEREAS, the Village, pursuant to 625 ILCS 5/11-208.6, enacted an ordinance (Ordinance No. 23-2007) providing for an automated traffic law enforcement system to enforce State and local traffic control signal laws and regulations through the use of electronic monitoring devices and by imposing liability on registered vehicle owners violating such State laws and local provisions; and

WHEREAS, significant changes have been made to 625 ILCS 5/11-208.6 since the Village passed Ordinance No. 23-2007, and the Village is desirous of amending the Evergreen Park Municipal Code to reflect and implement those changes.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Board of Trustees of the Village of Evergreen Park, Cook County, Illinois, as follows:

Section 1

That Chapter 13, Vehicles and Traffic, of the Evergreen Park Municipal Code, be amended by changing Article XIII, Automated Traffic Law Enforcement System, to read as follows:

ARTICLE XIII. AUTOMATED TRAFFIC LAW ENFORCEMENT SYSTEM

Sec. 13.500. Definitions.

As used in this article, words or terms shall have the following meaning unless the context or usage clearly indicates another meaning was intended:

(a) *Administrator* means the Village's Traffic Compliance Administrator and/or his/her designee.

(b) *Automated traffic law enforcement system* means a device within the Village of Evergreen Park with one or more motor vehicle sensors working in conjunction with a red light signal to produce recorded images of motor vehicles entering an intersection against a steady or flashing red signal indication in violation of Section 11-306 of the Illinois Vehicle Code ("Code"), 625 ILCS 5/11-306, or similar violation of the Evergreen Park Municipal Code. The automated traffic law enforcement system shall not be used to enforce speed regulations.

(c) *Automatic traffic law violation* means a “disregarding a traffic control device” violation or a “no turn on red” violation, as those terms are defined in this section.

(d) *Certified report* means a report to the Illinois Secretary of State concerning five (5) or more unsatisfied automated traffic law violations.

(e) *Code* means Illinois Vehicle Code, 625 ILCS 5/1-100, *et seq.*

(f) *Disregarding a traffic control device* means a failure to stop and remain stopped before an intersection that is controlled by a red signal as provided for in Section 11-306 of the Code. Disregarding a traffic control device, for purposes of the automated traffic law enforcement system, shall not include: 1) those instances when a motor vehicle comes to a complete stop and does not enter the intersection, as defined by Section 1-132 of the Code, during the cycle of the red signal unless one or more pedestrians or bicyclists are present, even if the motor vehicle stops at a point past a stop line or crosswalk where the driver is required to stop, as specified in Section 11-306(c) of the Code, or similar violation of the Evergreen Park Municipal Code; or 2) those instances where a motorcyclist enters an intersection against a red signal indication when the red signal fails to change to green within a reasonable period of time because of a signal malfunction or because the signal has failed to detect the arrival of the motorcycle due to the motorcycle’s size or weight.

(h) *No turn on red* means failure to stop and remain stopped, and not proceeding to turn right at, an intersection controlled by both a sign indicating “No turn on red,” or other similar language, and a red signal as provided for in Section 11-306 of the Code.

(i) *Recorded images* means images produced by the automated traffic law enforcement system, which consist of either: two (2) or more photographs; two (2) or more microphotographs; two (2) or more electronic images; or a video recording showing the motor vehicle and, on at least one (1) image or portion of the recording, clearly identifying the registration plate number of the motor vehicle.

(j) *Village* means the Village of Evergreen Park, Cook County, Illinois.

Sec. 13-501. System Established.

There is established within the Village an automated traffic law enforcement system program.

(a) The Village shall have the discretion to locate individual automated traffic law enforcement systems at such intersections as may be deemed appropriate.

(b) An intersection equipped with an automated traffic law enforcement system shall be posted with a sign visible to approaching traffic indicating that the intersection is being monitored by an automated traffic law enforcement system.

(c) The Village shall provide notice to drivers on its website of the location of all intersections equipped with an automated traffic law enforcement system. Any intersection equipped with an automated traffic law enforcement system shall have a yellow change interval that conforms to the Illinois Manual on Uniform Traffic Control Devices (IMUTCD) published by the Illinois Department of Transportation.

(d) The Village shall conduct a statistical analysis to assess the safety impact of each automated traffic law enforcement system at an intersection following installation of the system. The statistical analysis shall be based upon the best available crash, traffic, and other data, and shall cover a period of time before and after installation of the system sufficient to provide a statistically valid comparison of safety impact. The statistical analysis shall be consistent with professional judgment and acceptable industry practice. The statistical analysis also shall be consistent with the data required for valid comparisons of before and after conditions and shall be conducted within a reasonable time period following the installation of the automated traffic law enforcement system. If the statistical analysis for the thirty-six (36) month period following installation of the system indicates that there has been an increase in the rate of accidents at the approach to the intersection monitored, additional studies shall be undertaken to determine the cause and severity of the accidents, and the Village may take any action that it determines is necessary or appropriate to reduce the number or severity of the accidents at the intersection.

Sec. 13-502. Office of Traffic Compliance Administrator.

There is hereby established the office of Traffic Compliance Administrator, which shall be filled by appointment of the Mayor with the advice and consent of the Trustees. The Administrator, or his or her designee, shall be authorized to adopt, distribute and process violation notices and other notices required by this article and the Code, collect money paid as fines and penalties for automated traffic law violations, and administer the administrative adjudication system for automated traffic law violations. The Administrator is also authorized to draft and issue any certified reports to the Illinois Secretary of State as required by this article and the Code. The Administrator shall make the recorded images of a violation accessible to an alleged violator by providing the alleged violator with a website address, accessible through the Internet.

Sec. 13-503. Violations.

It shall be unlawful to “disregard a traffic control device” or violate a “no turn on red” as those terms are defined in this article.

Sec. 13-504. Violation Notice.

(a) When the automated traffic law enforcement system records a motor vehicle violating section 13-503 of this article, the Administrator shall issue a written violation notice to the registered owner of the vehicle, which shall be delivered by U.S. mail within thirty (30) days after the Illinois Secretary of State notifies the Village of the identity of the registered owner of the vehicle, and in no event later than ninety (90) days following the violation. If any notice to an

addressee is returned as undeliverable, a second notice shall be sent to the last known address recorded in a United States Post Office approved database of the owner of the cited vehicle. The second notice shall be made *via* first class mail postage prepaid.

(b) No person who is the lessor of a motor vehicle pursuant to a written lease agreement shall be liable for an automated traffic law enforcement system violation involving such motor vehicle during the period of the lease; provided that upon the request of the Administrator received within 120 days after the violation occurred, the lessor provides within sixty (60) days after such receipt the name and address of the lessee. The driver's license number of a lessee may be subsequently individually requested by the Administrator if needed for enforcement purposes. Upon the provision of information by the lessor, the Administrator shall issue the violation notice to the lessee of the vehicle in the same manner as it would issue a violation notice to a registered owner, and the lessee may be held liable for the violation, and all other provisions applicable to owners in this article shall apply to the lessee.

(c) Before a violation notice is issued, a determination must be made by a technician employed or contracted by the Village that, based on the inspection of recorded images generated by the system, the motor vehicle was being operated in violation of section 13-503 of this article. Upon determination that the recorded image captures a violation, a violation notice shall be issued and served upon the registered vehicle owner in the manner provided for above. If the technician determines that the vehicle entered the intersection as part of a funeral procession or in order to yield the right-of-way to an emergency vehicle, a citation shall not be issued. The Administrator, or his/her designee shall retain a copy of all violation notices, recorded images and other correspondence mailed to the registered owner of the motor vehicle. Such documents shall be kept in the ordinary course of business. Each violation notice and the recorded images shall constitute evidence of the facts contained in the notice and is admissible in any proceeding relative to the violation, and shall be *prima facie* evidence of a violation.

- (d) The violation notice shall include the following information:
- (i) the name and address of the registered owner or lessee of the vehicle, as indicated by the records of the Secretary of State, or, if such information is outdated or unattainable, then the last known address recorded in a United States Post Office approved database;
 - (ii) the make (only if discernable) and registration number of the motor vehicle involved in the violation;
 - (iii) the violation charged;
 - (iv) the location where the violation occurred;
 - (v) the date and time of the violation;
 - (vi) a copy of the recorded images;

- (vii) the amount of the civil fine imposed, and the date on which the civil fine should be paid;
- (viii) a statement that recorded images constitute *prima facie* evidence of a violation;
- (ix) a statement that a failure to pay the civil fine, or to contest liability in a timely fashion, is an admission of liability and may result in the suspension of driving privileges of the registered owner of the vehicle, as well as the imposition of additional penalty of \$100 for failure to pay the original fine in a timely manner;
- (x) a statement that the person may elect to proceed by: paying the fine, or challenging the charge in court, by mail, or by administrative hearing;
- (xi) a statement that the payment of any fine, and the payment of any applicable penalty for late payment, shall operate as a final disposition of the violation;
- (xii) a statement of how an administrative hearing may be requested; and
- (xiii) a website address, accessible through the Internet, where the person may view the recorded images of the violation.

Sec. 13.505. Hearing.

(a) The registered owner or lessee of a motor vehicle being operated in violation of section 13.503 of this article may request a hearing in persona to challenge the evidence or contest the citation by mail. The violation notice shall be *prima facie* evidence of a violation, subject to rebuttal on the basis of applicable defenses. Formal rules of evidence will not apply at the hearing. Hearings shall be recorded, and the hearing officer shall be empowered to administer oaths and to secure by subpoena both the attendance and testimony of witnesses and the production of relevant book and papers. Persons appearing at the hearing may be represented by counsel at their own expense. A registered owner or lessee that fails to appear at a hearing which he/she has requested will be found in default and a final determination will be entered.

(b) The following defenses are the only defenses that may be considered by the Hearing Officer for a violation of section 13.503 of this article:

- (i) the operator of the vehicle was issued a Uniform Traffic Control Citation by a police officer for the same incident;
- (ii) the motor vehicle or registration plates of the motor vehicle were stolen before the violation occurred and not under the control of or in the possession of the owner at the time of the violation. Provided, however, to demonstrate that the motor vehicle or the registration plates were stolen

before the violation occurred and were not under the control or possession of the owner at the time of the violation, the owner must submit proof that a report concerning the stolen motor vehicle or registration plates was filed with a law enforcement agency in a timely manner;

- (iii) the vehicle was leased to another, and within sixty (60) days after the citation was mailed to the lessor, lessor submitted to the Village, together with a copy of the lease agreement, the lessee's driver's license number, and any additional information as may be required;
- (iv) the vehicle was an authorized emergency vehicle;
- (v) the operator of the vehicle passed through the intersection when the light was red in order to yield the right-of-way to an emergency vehicle or as part of a funeral procession; or,
- (vi) the respondent was not the registered vehicle owner or lessee of the cited vehicle at the time of the violation.

(c) Individuals who have been served with a Notice of Violation may contest the validity of the violation, using the same available defenses as stated above, without personally appearing at the administrative hearing. To do so, the individual must complete, in full, the "Request for Hearing – Non-Appearance" portion of the Notice of Violation. Additionally, the individual shall submit a notarized statement of the facts that he is relying upon to establish any one of the defenses referenced in section 13-503 of this article. The individual may also submit documentary evidence to be considered by the Hearing Officer. By signing the "Request for Hearing – Non-Appearance" portion of the Notice of Violation, the individual acknowledges that he is waiving the right to appear personally before the Hearing Officer.

Any individual wishing to avail himself of this section must submit the "Request for Hearing – Non-Appearance," and any other documentation to be considered by the Hearing Officer, to the Village, by the respond-by date listed on the Notice of Violation. The Administrator shall forward all timely-submitted materials to the Hearing Officer for review and determination. The Hearing Officer shall make an adjudication based upon the facts set forth in the notarized statement of facts filed, any additional documentary evidence, and the facts contained in the Notice of Violation. Notice of the determination of the Hearing Officer shall be served *via* first class mail, postage prepaid, addressed to the address set forth in the statement of facts submitted. Service of the notice shall be complete on the date the notice is placed in the United States mail. Any individual may seek review of the Hearing Officer's determination through the mechanisms provided in this article.

(d) No additional fee shall be charged to an alleged violator for exercising the right to an administrative hearing.

Sec. 13.506. Final Determination of Liability.

A final determination of an automated traffic law violation liability shall occur under the following circumstances:

- (i) upon the failure to pay the fine or penalty after the Hearing Officer's determination of liability and the exhaustion of or failure to exhaust administrative review; or
- (ii) where a person fails to appear at a hearing to contest the alleged violation in the time and manner specified, the Hearing Officer's determination shall become final upon the denial of a timely petition to set aside a determination, or upon the expiration of the period for filing the petition without a filing having been made.

Sec. 13.507. Final Determination of Violation Liability Notice.

A final determination of an automated traffic law violation notice shall be sent following the final determination of automated traffic law violation liability and the conclusion of judicial review. The notice shall include the following information:

- (i) a statement that the unpaid fine or penalty is a debt due and owing the Village of Evergreen Park; and
- (ii) a warning that a failure to pay any fine or penalty due and owing the Village of Evergreen Park may result in the filing of a petition in the Circuit Court of Cook County to have unpaid fine or penalty rendered as a judgment or may result in the suspension of the person's driver's license for failure to pay fines or penalties for five (5) or more automated traffic law violations.

Sec. 13.508. Petition to Set Aside Determination.

(a) A petition to set aside determination of an automated traffic law violation must be filed with or mailed to the Administrator within ten (10) days of the date of mailing of the final determination of liability notice. The grounds for the petition are limited to:

- (i) the person was not the owner or lessee of the cited vehicle on the date of the violation occurred;
 - (ii) the person has paid the fine or penalty for the violation in question; or
 - (iii) excusable failure to appear at or request a new date for a hearing.
- (b) Upon receipt of a timely petition to set aside the determination of liability, the

Administrator, or his designee, shall review the petition to determine if sufficient cause has been shown to set aside the determination. If cause has been shown, the Administrator shall forward to the petitioner a new hearing date on which the petitioner must appear to present his case on the underlying violation. The Administrator shall notify the petitioner of his decision to grant a hearing or deny the petition within fourteen (14) days of his decision.

Sec. 13.509. Notice of Impending Driver's License Suspension.

(a) A notice of impending driver's license suspension shall be sent to the person liable for failing to pay any fine or penalty that remains due and owing on five (5) or more automated traffic law violations. The notice shall state the following information:

- (i) the failure to pay the fine or penalty owing within forty-five (45) days of the notice's date will result in the Administrator notifying the Illinois Secretary of State that the person is eligible for initiation of suspension proceedings under Section 6-306.5 of the Code; and
- (ii) a statement that the person may obtain a photostatic copy of the original ticket imposing a fine or penalty by sending a self-addressed, stamped envelope to the Administrator along with a request for the copy.

(b) The notice shall be sent *via* first class mail, postage prepaid, to the address recorded with the Illinois Secretary of State or, if any notice to that address is returned as undeliverable, to the last known address recorded in a United States Post Office approved database.

Sec. 13.510. Driver's License Suspension.

(a) The Administrator, by certified report, shall request that the Illinois Secretary of State suspend the driving privileges of an owner of a registered vehicle or lessee who has failed to pay any fine or penalty due and owing the Village of Evergreen Park as a result of five (5) automated traffic law violations. The report shall be certified and contain the following information:

- (i) the name, last known address as recorded with the Illinois Secretary of State, as provided by the lessor of the cited vehicle at the time of lease, or as recorded in a United States post office approved database if any notice sent under this Section is returned as undeliverable, and driver's license number of the person who failed to pay the fine or penalty, or who has defaulted in a payment plan, and the registration number of any vehicle known to be registered to such person in the State of Illinois;
- (ii) the name of the municipality making the report;
- (iii) a statement that a suspension notice has been sent to the person named in the report at the address recorded with the Illinois Secretary of State or at

the last address known to the lessor of the cited vehicle at the time of the lease or, if any notice is returned as undeliverable, at the last known address recorded at a United States Post office approved database; the date on which such notice was sent; and address to which such notice was sent; and,

- (iv) an unique identifying reference number for each request of suspension.

(b) The Administrator shall notify the Illinois Secretary of State whenever a person named in the certified report has paid the previously recorded fine or penalty, whenever the person has entered into a payment plan pursuant to which the Village has agreed to terminate the suspension, or whenever the Village determines that the original report was in error. A certified copy of such notification shall also be given to the person named therein upon request and at no additional charge.

Sec. 13.511. Challenging the Accuracy of a Certified Report.

(a) If the Administrator provides a suspension notice and subsequently makes a certified report to the Illinois Secretary of State, the vehicle owner may challenge the accuracy of the certified report in writing.

(b) The vehicle owner shall submit to the Administrator a written statement under oath, together with any supporting documentation, establishing one of the following grounds for challenging the accuracy of the certified report:

- (i) that the person was not the owner or lessee of the subject vehicle or vehicles receiving five (5) or more automated traffic law violations on the date or dates such violation(s) occurred; or
- (ii) that the person already paid the fine or penalty owing indicated on the certified report.

(c) A statement challenging the accuracy of a certified report shall be sent to the Administrator *via* certified mail, return receipt requested, or hand-delivered to the Administrator within five (5) days after the person receives notice from the Illinois Secretary of State that the person's driver's license will be suspended at the end of a specified period of time unless the secretary is presented with notice from the Village certifying that the fines or penalties due and owing have been satisfied or that the inclusion of the person's name on the certified report was in error.

Sec. 13.512. Penalty.

(a) Any person violating section 13.503 of this article shall be fined \$100 for each offense.

(b) If a person fails to request a hearing and does not otherwise pay the applicable

fine indicated in the violation notice by the date specified (*i.e.*, thirty (30) days after the violation notice date, or fails to pay the original fine within thirty (30) days after an administrative hearing, an additional penalty of \$100 will be automatically assessed against the violator.

Secs. 13-513 – 13-599. Reserved.

Section 2

This article shall be implemented through Chapter 13, Motor Vehicles and Traffic, Article X, Administrative Adjudication of Violations of Traffic Regulations Concerning the Standing, Parking or Condition of Vehicles. Provided, however, in the event that a procedural provision of this article conflicts with a procedural provision of Article X, the procedural provision set forth in this article shall control.

Section 3

If any section, paragraph, clause or provision of this ordinance shall be held invalid, the invalidity thereof shall not affect any of the other provisions of this ordinance.

Section 4

All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed insofar as they conflict herewith.

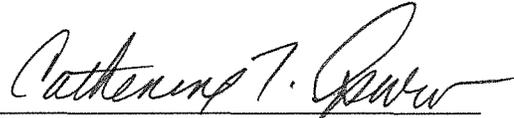
Section 5

The Photo Enforcement Program Agreement, in substantially the same form as Exhibit "A," between the Village of Evergreen Park and SafeSpeed, L.L.C., is hereby approved. The Mayor and Village Clerk are hereby directed and authorized to execute the Photo Enforcement Program Agreement and all other documents necessary to effectuate the intention of the parties thereto.

Section 6

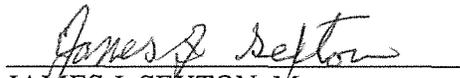
This ordinance shall be immediately in full force and effect after passage, approval and publication. This ordinance is authorized to be published in pamphlet form.

This ordinance was passed and deposited in the office of the Village Clerk of the Village of Evergreen Park this 7th day of March, 2016.



CATHERINE T. APARO, Village Clerk

APPROVED by me this 7th
day of March, 2016.


JAMES J. SEXTON, Mayor

I DO HEREBY CERTIFY that this ordinance was, after its passage and approval, published in pamphlet form by authority of the Village of Evergreen Park, in accordance with law, this 7th day of March, 2016.


CATHERINE T. APARO, Village Clerk

AUTOMATED TRAFFIC LAW ENFORCEMENT AGREEMENT

THIS AGREEMENT (Agreement) is made and entered into this _____ () day of March, 2016 by and between the Village of Evergreen Park ("Village"), an Illinois municipal corporation, and SafeSpeed, LLC. ("Contractor"), a limited liability company organized under the laws of the State of Illinois. For the purposes of convenience Village and Contractor may be referred to individually as "Party" and collectively as "Parties."

WITNESSETH

WHEREAS, pursuant to the Illinois Vehicle Code ("Code"), 625 ILCS 5/1-100, et seq., Village is authorized to provide for "automated traffic law enforcement systems" ("Systems") as that phrase is defined in Section 11-208.6 of the Illinois Vehicle Code;

WHEREAS, Contractor has the expertise and ability to furnish, install, operate and maintain the Systems, and to provide related services necessary for its implementation;

WHEREAS, the Village is desirous of contracting with Contractor to provide equipment, processing and other services to enable it to use Systems to enforce its traffic laws where permissible; and,

WHEREAS, the Village finds that Systems will benefit the public's health, safety and welfare by reducing the incidence of red light running and the number of red light running accidents, which often result in injury or death.

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

ARTICLE 1: ACCEPTANCE OF CONTRACT

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

ARTICLE 2: DEFINITIONS

As used in this Agreement, words or terms shall have the following meanings unless the context or usage clearly indicates that another meaning is intended:

- 2.1 "Agreement" means this Automated Traffic Light Enforcement Agreement entered into between the Village and Contractor.
- 2.2 "Approach" means any number of lanes of traffic at a roadway intersection in a single direction of vehicular travel.
- 2.3 "Automated Traffic Law Enforcement System" (System) means a device with one (1) or more motor vehicle sensors, cameras, controllers and related networking devices working in conjunction with a traffic-control signal displaying a steady red signal indication to produce Recorded Images of motor vehicles entering an intersection against a steady red light signal in violation of Section 11-306 of the Code (625 ILCS 5/11-306) or a similar provision of the Evergreen Park Municipal Code and is designed to obtain a clear recorded image of the motor vehicle and the motor vehicle's license plate.
- 2.4 "Automated Traffic Law Violation" (Violation) means a violation described in Section 11-208.6 of the Code (625 ILCS 5/11-208.6) of a motor vehicle entering an intersection against a traffic-control device displaying a steady red signal indication in violation of Section 11-306 of the Code (625 ILCS 5/11-306) or a similar provision of the Evergreen Park Municipal Code evidenced by the Recorded Images produced by an Automated Traffic Law Enforcement System.
- 2.5 "Automated Traffic Law Violation Fine" (Fine) means the civil penalty authorized by Section 11-208.6(j) of the Code (615 ILCS 5/11-208.6(j)) imposed on the Automated Traffic Law Violator due to an Automated Traffic Law Violation pursuant to Sections 11.208.3 and 11-208.6 of the Code (625 ILCS 5/11-208.3 and 5/11-208.6) and pursuant to the provisions of the Evergreen Park Municipal Code.
- 2.6 "Automated Traffic Law Violation Notice" (Violation Notice) means a written notice of Violation issued pursuant to Sections 11-208.3 and 11-208.6 of the Code (625 ILCS 5/11-208.3 and 5/11-208.6) and pursuant to the provisions of the Evergreen Park Municipal Code.
- 2.7 "Automated Traffic Law Violation Review Officer" (Review Officer) means the Administrator appointed by the Mayor with the advice and consent of the Village Board of Trustees pursuant to Section 15-182 of the Evergreen Park Municipal Code that reviews the Recorded Images produced by a System to determine whether a violation as described in Section 11-208.6 of the Code (625 ILCS 5/11-208.6) of a motor vehicle entering an intersection against a traffic-control device displaying a red signal indication in violation of Section 11-306 of the Code (625 ILCS 5/11-306) or a similar provision of the Evergreen Park Municipal Code.
- 2.8 "Automated Traffic Law Violator" ("Violator") means a person who has been issued a Violation Notice.

- 2.9 "Effective Date" of Agreement means the date on which the first (or only) Red Light Camera begins capturing Potential Automated Traffic Law Violations.
- 2.10 "Initial Screening" ("Screening") means employees of Contractor review all images that may be Violations for clarity and to eliminate any incidents in which the camera malfunctioned in any way, the driver of the vehicle did not actually run a red light, there was no license plate on the vehicle, the license plate was unreadable, or the vehicle going through the red light was yielding the right of way to an emergency vehicle or was part of a funeral procession.
- 2.11 "Potential Automated Traffic Law Violations" ("Potential Violations") means the Recorded Images that have been initially screened before the Review Officer has reviewed them.
- 2.12 "Recorded Images" means images showing the time, date and location of a Violation recorded by a System on: (i) two (2) or more photographs, (ii) two (2) or more microphotographs, (iii) two (2) or more electronic images or (iv) a video recording showing the motor vehicle and, on at least one (1) image or portion of the recording, clearly identifying the registration plate number of the motor vehicle.
- 2.13 "Red Light Incident" means the digital photographic and video recording of a motor vehicle crossing a clearly marked stop line, but if there is no such stop line, before entering the crosswalk on the near side of the intersection, or if there is no such crosswalk, then before entering the intersection when (i) facing a steady circular red signal being displayed by a traffic-control signal or (ii) facing a steady red arrow signal making a movement indicated by the arrow being displayed by traffic-control signal.
- 2.14 "Service Fees and Charges" means all amounts owed to Contractor for services performed under this Agreement as outlined and listed in Exhibit A and made a part hereof.

ARTICLE 3: SCOPE OF WORK

In accordance with the terms of this Agreement:

- 3.1 Contractor shall perform all necessary traffic and engineering studies, obtain all permits, furnish all labor materials and equipment, and furnish, install and maintain the Systems at its sole expense.
- 3.2 Contractor will support all educational and public information initiatives Village chooses to undertake, if any, in order to launch a System program by providing content for written materials (in English and Spanish upon request), and appearing at public hearings related to Systems. Contractor will also train all Village personnel in use of Systems including the adjudication module.

- 3.3 Contractor shall record and provide live video feed as well as still digital photographs of the rear of vehicles, specifically capturing images of license plates on those vehicles thought to have committed a Violation, to Village's Review Officer(s) after having performed an Initial Screening. These images will be delivered via the internet.
- 3.4 Upon receipt of Review Officer determination that a violation has/violations have occurred, Contractor will process all Violation Notices, to include, but not limited to retrieval of vehicle registration from the Illinois Secretary of State.
- 3.5 Contractor will perform all printing and mailing of Violation Notices, provide a toll free number and provide customer service.
- 3.6 Contractor will process payment of fines from persons issued Violation Notices via the U.S. Postal Service, on-line payment and/or at the Village, account for, report and remit the net amount collected after deducting Contractor's service fees. Additionally, Contractor will aid and assist any collection agency or agent that is retained by Village to collect any fines not paid through Contractor or Village.
- 3.7 Contractor will provide support to Village's adjudicative process. Such support will include use of Contractor's "Adjudication Module" which allows for viewing of violation photographs and streaming video, as well as in-person or remote technical assistance at the time of hearing(s) and full support services for "Contests by Mail."

ARTICLE 4: EQUIPMENT

- 4.1 Contractor will install Systems at mutually agreed upon approaches; however, these approaches must be approved by the Illinois Department of Transportation (IDOT) before any installation(s) can proceed whether or not the Parties want and or believe Systems should be installed unless said Systems are to be installed on a road outside of IDOT's jurisdiction. The Parties may agree to modify locations where Systems shall be installed and maintained, such modification(s) shall be in writing and made a part of Attachment B. Contractor agrees to modify locations where Systems are installed and maintained upon written notice to Contractor by Village. Attached hereto and made a part hereof is Attachment B which sets forth those approaches the Parties have agreed upon.
- 4.2 Each System operated by Contractor shall provide the Village with rear license plate photos and a wide-angle intersection view capable of showing the violator vehicle both before and after entering the intersection. All installation, maintenance, services and repairs on the Systems are included in the established fee for the Systems.
- 4.3 Each intersection approach monitored by Systems will have a communication enclosure, helix-based pole, camera units, detection cameras, communication antennas, inductive coils and the associated cable in conduits; if wireless magnetic

sensor detectors are used, a small receiver will be clamped around the pole and wireless sensors would replace in-ground coils.

- 4.4 The System interfaces with the traffic controller. Upon the approval of the Village Board of Trustees, and once costs thereof are determined, the Village shall be responsible for all Pedestrian Countdown Signal Heads, including, but not limited to Light Emitting Diode (LED) upgrades and attendant costs and expenses (this is an IDOT Requirement). Such upgrades will be handled by Meade Electric Company, Inc. and costs may be financed over a twelve (12) month period with payment deducted in twelve (12) equal installments from Violation Fine payments made to the Village.
- 4.5 All equipment, including equipment provided to Village personnel to review, analyze and process Potential Violations, as well as intellectual property shall remain the property of Contractor. Contractor hereby grants the Village a non-exclusive, non-transferable license to access and use the System software for the purpose of reviewing Potential Violations, the issuance of Violation Notices, the prosecution of Violations and the collection of Violation Fines.
- 4.6 Electric utility charges, if any, to operate Systems shall be the responsibility of Village.

ARTICLE 5: CHANGE OF LOCATION

If Contractor and the Village collectively determine that the maintenance of a System at a certain location is no longer in furtherance of the public health, safety and welfare, the Contractor may remove said System from service upon thirty (30) days written notice to the Village and with the Village's prior written consent, which shall not be unreasonably withheld; or, the System may be moved to a new location at the expense of the Contractor and upon mutual agreement as to the new location so long as approval has been granted by Illinois Department of Transportation (IDOT) if moving System to an IDOT road. All new locations will be evidenced in writing and made a part hereof and appended hereto. If no suitable new location is found, Contractor shall remove the System at no expense to Village and no termination fee shall apply.

ARTICLE 6: SIGNAGE

Contractor, at its expense, shall acquire or fabricate all signage to be placed in advance of each enforced Approach. The content and location of such signage shall comply with Section 11-208.6(k) of the Code (625 ILCS 5/11-208.6(k)) and the Illinois Manual on Uniform Traffic Control Devices.

ARTICLE 7: VIOLATION DETERMINATION AND PROCESSING

- 7.1 Village will review all video and photographic evidence of possible Violations within ten (10) days of receiving such evidence; and, Village will have ultimate

responsibility for determining whether a Violation occurred and a Violation Notice should issue.

- 7.2 Village will appoint one (1) or more Review Officers to review all Potential Violations and determine whether Violations did, in fact, occur. Contractor shall provide the Review Officer(s) with access to the Recorded Images of the Potential Violations.
- 7.3 The Review Officer(s) shall review the Recorded Images of the Potential Violations within ten (10) days of receiving the Recorded Images to determine whether a Violation Notice shall be issued. The Review Officer(s) shall have ultimate responsibility for determining whether a Violation has occurred and whether a Violation Notice should issue. The decision to issue a Violation Notice shall be the sole, unilateral and exclusive decision of the Review Officer(s). The Review Officer(s) shall communicate each such determination to Contractor by entering his or her decision into Contractor's electronic database.
- 7.4 For each Potential Violation the Review Officer(s) determines a Violation Notice is to be issued, Contractor shall retrieve from the Illinois Secretary of State's database of motor vehicle owners the name and address of the registered owner of the motor vehicle to whom the Violation Notice is to be sent. Village will provide Contractor with access to Illinois Secretary of State's database of registered motor vehicle owners for the purpose of processing and issuing Violation Notices.
- 7.5 Contractor shall prepare, print and mail Violation Notice to the Violator. Such Notice shall contain such information as required by Evergreen Park Municipal Code, including:
 - The name and address of the registered owner of the motor vehicle according to the information supplied by the Illinois Secretary of State or similar office of vehicle registration in foreign states;
 - Copies of Recorded Images depicting the Violation which shall include a minimum of three (3) images showing the motor vehicle entering the intersection with the controlling traffic-control device displaying a steady red signal, and a close-up view of the rear of the motor vehicle with license plate;
 - A statement that the Recorded Images are evidence of an Automated Traffic Law Violation;
 - Registration number;
 - Violation charged;
 - Date, time and location of Violation;
 - Vehicle Make (if readily discernable);
 - Information regarding the availability of a hearing to contest the Violation on its merits, specifying the time and manner that such a hearing may be had;
 - The fine imposed, the date of required payment and penalty assessed for late payment;

- Website address, accessible through the internet, where the violator may review the Recorded Images.
 - A warning that failure to pay the penalty imposed, or to timely contest the Violation, is an admission of liability and may result in suspension of the driving privileges of the registered owner of the vehicle;
 - A statement that the Violator may proceed by paying the Fine or challenging the Fine in an administrative hearing or by mail (if a non-resident) or following the administrative hearing, in court; and,
 - A statement that payment of the Fine and any applicable late payment penalty shall dispose of the Violation with finality.
- 7.6 Contractor shall prepare, print, mail within thirty (30) days after receipt of the necessary registered owner information from the Illinois Secretary of State, and in no event, not later than ninety (90) days after the date of violation.
- 7.7 Contractor shall prepare, print and mail a Second Notice of Violation (Second Notice) to the Violator if Violator fails to respond timely to the first Violation Notice. This Second Notice will demand payment of Fine and penalty.
- 7.8 If Violator ignores Second Notice and becomes delinquent in payment to Village of Fine, Contractor will work with Village's choice of "Collection Agency" or "Collection Agent" in order to capture payment of Delinquent Fines.

ARTICLE 8: ADJUDICATIVE PROCESS

- 8.1 Village shall at its sole expense prosecute through its administrative hearing process all Violations which are contested by the Violator whether written or in-person.
- 8.2 Contractor will provide all electronic documents to Village that are necessary in the prosecution of Violations (Contractor will also provide hard copy documents if requested). Contractor will provide access to Contractor's website for the purpose of replaying and displaying Recorded Images at Village's administrative hearing. Contractor will provide in-person technical support or "on-call" support for the administrative process.
- 8.3 Contractor will provide a web based software package to Village for Payment Processing.

ARTICLE 9: SERVICE FEES

In accordance with Exhibit A, attached hereto and incorporated herein by reference, the Village shall compensate Contractor as follows:

- 9.1 Contractor shall be paid a flat fee of One Hundred Dollars (\$100.00) per month, per System, for each of the following services: (i) Maintenance, Service and Repair of System(s); (ii) Incident Capture and Violation Screening; (iii) Violation Processing

and Registration Retrieval; (iv) Printing of, and, Violation Notice Mailing; (v) Adjudicative Support Services.

- 9.2 Contractor will be paid Forty Dollars (\$40.00) for each and every initial Payment Processed with respect to Violation Notices. Contractor will be paid Forty-Eight Dollars (\$48.00) for each and every Second Notice Violation Payment Processed. Contractor will be paid Five Dollars (\$5.00) for any subsequent/partial Payments Processed with respect to Violation Notices.
- 9.3 Contractor shall be paid Forty-Eight Dollars (\$48.00) for each and every Initial Payment made to any collection agency or agent Village has chosen to work with to help collect outstanding Fines not paid through Contractor or Village; this fee is for Payment Processing. Contractor will be paid Five Dollars (\$5.00) for any subsequent/partial Payments Processed with respect to Violation Notices.
- 9.4 In any instance in which the Collected Fines related to a System are not in the aggregate, over Five Hundred Dollars (\$500.00) in a month, Contractor will waive all fees set out in Article 9.1 herein and above, for that given month.
- 9.5 A Thirty-Five Dollar (\$35.00) charge will be assessed to anyone making payment on a Violation Notice whose check is returned due to Non-Sufficient Funds (NSF). *At the time of a NSF, all processing fees and remittances will be reversed.*
- 9.6 In the event of any conflict between this Article 9 and Exhibit A, Exhibit A shall control.

ARTICLE 10: REVENUES AND REMITTANCE

- 10.1 Contractor shall process all fines, whether paid by check, money order or electronic payment. All payments whenever or wherever made, including at the Village, through the Adjudicative Branch, or through "collections" will be deemed to have been processed by Contractor. Contractor remains entitled to full payment of its Payment Processing fees as outlined in Exhibit A as attached hereto and made a part hereof (and as referenced in Article 9 above).
- 10.2 All Payments Processed by Contractor through electronic medium and/or Lockbox, during a calendar month, less the initial deduction of Contractor's Service Fees, shall be remitted to Village within forty-five (45) days after the end of said calendar month. All Payments Processed by Contractor through the Village itself, including the Adjudicative process, as well as through Collections, will be made to Contractor as an adjustment to that owing Contractor from Village at the end of each month through a reconciliation process.
- 10.3 Contractor, at its expense, shall maintain and operate a website which allows Violators to pay Fines by use of credit card. Contractor shall also maintain lockbox services for the collection of Fines paid by mail.

- 10.4 Contractor shall keep true and accurate records of Fines paid and service fees incurred along with associated program statistics. All revenue collected from Fines will be accounted for in accordance with generally accepted accounting principles. Contractor will provide a written report of accounting to Village within forty-five (45) days after the end of each calendar month in which Fines have been paid.
- 10.5 During the term of this Agreement and thereafter for so long as Village is entitled to payments hereunder, Village or its authorized agent, shall have the right, at any time, upon reasonable notice (such notice shall be defined as forty-eight (48) hours or more), to examine Contractor's books and records in connection with all monies handled by Contractor on behalf of Village, or in any way associated with this Agreement. Any such inspection may be conducted by Village, or its authorized agents, at Contractor's corporate offices during Contractor's normal business hours.
- 10.6 Notwithstanding anything herein to the contrary, including exhibits, Village shall not be liable or responsible to Contractor for any monetary amount due and owing under this Agreement that exceeds the amounts collected in fines and penalties.

ARTICLE 11: TERM, RENEWAL, MODIFICATION, TERMINATION

- 11.1 The term of this Agreement shall be for a period of four (4) years (the Initial Term) with two (2) two (2) year renewals (each a Renewal Term, and collectively with the Initial Term, the Full Term) commencing on the Effective Date under the same terms and conditions, by mutual agreement of the Parties. The Parties acknowledge and agree that the Agreement is not one for the conveyance of personal services and shall survive the expiration of the term of the duly elected officials of the Village. In the event the Village decides not to renew for this Agreement for a Renewal Term, or upon the expiration of this Agreement, the obligations of the Parties under this Agreement shall remain effective, and Contractor shall continue to capture and process Automated Traffic Law Violations on a month-to-month basis, until such time as Contractor has been instructed by the Village to remove its cameras and equipment. Contractor shall submit all applicable permits for the removal of its equipment to any required governmental body or agency no later than thirty (30) days after expiration of then current term, and upon receipt of such permits, shall proceed to remove its equipment in a reasonably expeditious manner. Contractor shall remove all of its equipment and return all Red Light Camera sites within the Village to their original condition at no cost to Village.
- 11.2 If Contractor intends to continue to provide services as outlined in "Article 3: Scope of Work" herein, after the Full Term of this Agreement, Contractor will present a new Agreement to Village for its consideration at least ninety (90) days prior to the expiration of the Agreement. The Village shall notify Contractor no later than thirty (30) days before the expiration of the Agreement if it does not intend to enter into a new Agreement with Contractor for the services as set forth in the new Agreement.

If Contractor does not intend to continue to provide services to Village as outlined under "Article 3: Scope of Work" herein after the Full Term of the Agreement, Contractor shall notify Village, in writing, at least one hundred twenty (120) days before the term of this Agreement is set to expire.

- 11.3 Notwithstanding anything contained in this Agreement to the contrary, if any changes in the law in effect as of the Effective Date of the Agreement, whether via the enactment of legislation or decisions rendered by courts of competent jurisdiction, make it impossible to use the Systems in exactly the same manner as that which was permitted by law as of the Effective Date, then this Agreement may be terminated immediately by either of the Parties upon written notice setting forth the reasons for said termination. In such case, Contractor retains the right to remove any and all Systems and all other property of the Contractor in the possession or control of the Village. In this instance, no termination fee will apply no matter when termination may be required.
- 11.4 Village may terminate this Agreement for Cause at any time. In this case, "Cause" is defined as: Contractor's inability to erect a fully functioning Systems within eighteen (18) months from the date of execution of this Agreement; an uncured Event of Default under this Agreement; and/or embezzlement, misappropriation of funds, other acts of dishonesty, and/or significant activities willfully engaged in by Contractor that are materially harmful to Village's reputation.
- 11.5 Contractor may terminate this Agreement for Cause. In this case, "Cause" is defined as: embezzlement, misappropriation of funds, other acts of dishonesty, and/or significant activities willfully engaged in by Village, to and including, any of its officials that are materially harmful to Contractor's reputation.
- 11.6 The Village may terminate this Agreement without cause, and without recourse or liability, after three hundred sixty-five (365) days of the execution of this Agreement, upon ninety (90) days prior written notice to Contractor and, in such event, Village shall not be deemed in breach or responsible for any Termination Fee or consequential damages of Contractor. Termination by Village without cause within three hundred sixty-five (365) days of the execution of this Agreement shall be deemed a material breach of this Agreement and, upon such breach, Contractor may immediately remove any and all Systems and other property of Contractor's in the possession or control of Village. In the event Village terminates this Agreement without cause within three hundred sixty-five (365) days of execution of this Agreement (each Amendment to the Agreement shall be bound by the same terms), Contractor shall be entitled to recover from Village the lesser of its actual investment in time and installation costs Fifty Thousand Dollars (\$50,000.00) ("Termination Fee") as well as recover its equipment from Village. The obligation of Village to pay Contractor the Termination Fee is the mandatory debt and obligation of Village that shall be paid sixty (60) days after written demand by Contractor after the tender of proof of actual costs. The Termination Fee is not a limitation of damages or remedies, but is in addition to any and all other damages

that may be incurred by Contractor in the event of termination. Contractor retains and does not waive any remedies available to it at law or in equity against Village in the event of termination of this Agreement without cause by Village.

ARTICLE 12: WARRANTY

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

ARTICLE 13: COMPLIANCE WITH LAWS

Contractor shall comply with all applicable federal, state, county and local laws, ordinances, regulations and codes (including procurement or required permits or certificates) in Contractor's performance under this Agreement. This includes any applicable state or local law, rule or regulation affecting safety and health. Contractor agrees to defend, indemnify and hold harmless Village, its officials, officers, agents and employees for any loss, damage, penalty, fine or liability sustained because of Contractor's noncompliance with this Agreement or provisions under the law.

ARTICLE 14: INSURANCE

14.1 Contractor shall procure and maintain throughout the duration of this Agreement insurance against claims for injuries to persons or damage to property which may arise from or in connection with products, materials, Systems and services supplied to Village. Failure to maintain such insurance will be considered a material breach.

14.2 The insurance companies providing coverage shall be rated A- or better. Coverage Limits shall not be written at less than that specified as follows:

- Workers Compensation: \$1,000,000 Each Accident, \$1,000,000 Policy Limit, \$1,000,000 Each Employee
- General Liability: \$2,000,000 Aggregate, \$1,000,000 Each Occurrence, \$1,000,000 Products and Completed Operations, \$50,000 Damage to Premises Rented, \$5,000 Medical Expense
- Umbrella: \$5,000,000 Each Occurrence, \$5,000,000 Aggregate

ARTICLE 15: INDEMNIFICATION

- 15.1 Contractor agrees to indemnify, defend, save and hold harmless the Village, its Agents, assigns, employees, officers and officials from and against all claims, demands, liabilities, suits, judgments, decrees, losses, costs and expenses of any kind or nature whatsoever (including attorneys' fees and costs), which may be incurred on account of injuries to, or death of, any person or persons or damage to any property occurring directly or indirectly from, or which may in any way be related to, the gross negligence or willful misconduct of Contractor or any of its employees, agents, servants, associates or subcontractors.
- 15.2 Village agrees to indemnify, defend, save and hold harmless Contractor, its Agents, assigns, employees, officers and officials from and against all claims, demands, liabilities, suits, judgments, decrees, losses, costs and expenses of any kind of nature whatsoever (including attorneys' fees and costs), which may be incurred on account of injuries to, or death of, any person or persons or damage to any property occurring directly or indirectly from, or which may in any way be related to, the gross negligence or willful misconduct of Village or any of its employees, agents, servants, associates, or subcontractors.

ARTICLE 16: REPRESENTATIONS & WARRANTIES

- 16.1 Contractor hereby represents and warrants to the Village, as of the Effective Date of this Agreement, as follows:
- a) Contractor is a duly organized and existing limited liability company and is in good standing under the laws of the State of Illinois. Contractor is qualified to do business in the State of Illinois, is authorized to conduct business as it is presently being conducted, is not in violation of any provision of its organizational or operating agreements, and has the power and authority to enter into this Agreement;
 - b) the execution, delivery and performance of this Agreement by Contractor does not constitute and will not upon giving of notice or lapse of time or both, constitute a breach or default under any other agreement to which Contractor is a Party or may be bound under;
 - c) no event has occurred and no condition exists that upon execution of this Agreement would constitute a default or Event of Default, as hereinafter defined. Contractor is not in violation of, and has not received notice of any claimed violation, of any term of any agreement or other instrument to which it is a Party or by which it or its property may be bound, which violation could materially and adversely affect the financial or legal condition of Contractor or the ability of Contractor to perform its obligations under this Agreement;
 - d) Contractor has not made a general assignment for the benefit of creditors, filed any voluntary petition in bankruptcy or suffered the filing of an involuntary petition by its creditors, suffered the appointment of a receiver to take possession of all or part of its assets, suffered the attachment or other judicial seizure of all or part of its assets, admitted its inability to pay debts

as they come due or made an offer of settlement, extension or composition to its creditors generally, and Contractor is not anticipating the occurrence of any of the aforementioned acts.

- 16.2 The Village hereby represents and warrants to the Contractor, as of the Effective Date of this Agreement, as follows:
- a) the Village has the authority to execute and deliver this Agreement and to perform its obligations hereunder;
 - b) the Village has taken all legislative action necessary to approve this Agreement and to authorize its execution and delivery, and the implementation thereof; and
 - c) the execution, delivery and performance by the Village of this Agreement does not constitute and will not, upon giving this notice or lapse of time or both, constitute a breach or default under any other agreement to which the Village is a Party or may be bound.

ARTICLE 17: DEFAULTS & REMEDIES

- 17.1 For purposes of this Agreement, the occurrence of any one (1) or more of the following shall constitute an 'Event of Default':
- a) if, at any time, any warranty, representation, or statement made or furnished by a Party to the other Party is not true and correct in any material respect; and
 - b) if either Party fails (in whole or in part) to fulfill any of its obligations under this Agreement or to materially perform, observe or comply with any of the covenants, agreements or obligations hereunder after notice and opportunity to cure the same.
- 17.2 If an Event of Default occurs, the defaulting Party shall, upon written notice from the aggrieved Party, proceed to cure or remedy such default or breach within thirty (30) calendar days after receipt of such notice (the 'Cure Period'); provided, however, that if such default is incapable of being cured within said Cure Period, and the defaulting Party commences to cure the default within said Cure Period, provides a written request to extend the Cure Period, and proceeds with due diligence to cure the same, such Cure Period shall be extended (not unreasonably) for the length of time reasonably necessary to cure the default.
- 17.3 At any time during the Cure Period (or extension thereof), the aggrieved Party may request a written report on the status of the steps taken to cure the Event of Default, which shall be complied with by the breaching Party within ten (10) calendar days after receipt of the original request. At all times during a Cure Period or extension thereof, the defaulting Party, shall diligently follow through to completion all such steps necessary to remedy the Event of Default within the shortest possible time. Failure of a Defaulting Party to respond to a request for information as set forth herein shall be considered a failure to diligently undertake the cure of the Event of Default and shall be deemed a waiver of the defaulting Party's opportunity to cure.

In case such action is not taken or diligently pursued or the Event of Default is not cured or remedied within the aforementioned period, the aggrieved Party may exercise any rights or institute such proceedings at law or in equity as may be necessary or desirable in its opinion to cure and remedy such Event of Default, including termination of this Agreement.

- 17.4 The rights and remedies of the Parties, whether provided by law or in this Agreement, shall be cumulative and the exercise by any Party of any one or more of such remedies shall not preclude the exercise by such Party at the same time or different times, of any other remedies for the same Event of Default by the defaulting Party.
- 17.5 Any delay by any Party in instituting or prosecuting any actions or proceedings or asserting its rights under this Agreement shall not operate as a waiver of such rights in any way (it being the intent of this provision that such Party should not be constrained so as to avoid the risk of being deprived of or limited in the exercise of the remedies provided in this Agreement because of the Event of Default involved).
- 17.6 No waiver made by any Party with respect to any specific Event of Default by the other Party under this Agreement shall be construed as a waiver of rights with respect to any other Event of Default except to the extent specifically waived in the extent specifically waived in writing.

ARTICLE 18: SEVERABILITY

The provisions of this Agreement shall be deemed to be severable and the invalidity or unenforceability of any one or more provisions contained herein shall not affect the validity and enforceability of the other provisions hereof, and the remainder of this Agreement shall continue to be valid and enforceable to the fullest extent permitted by law.

ARTICLE 19: COUNTERPARTS & FACSIMILE TRANSMISSION

This Agreement may be executed in counterpart originals, each of which shall be deemed to be an original with the same effect as if the signatures thereto were on the same instrument. A signature affixed to this Agreement and submitted by facsimile or electronic mail shall have the same effect as an original signature.

ARTICLE 20: GOVERNING LAW

This Agreement shall be governed as to performance and interpretation in accordance with the laws of the State of Illinois. The Parties submit themselves to the exclusive jurisdiction of those courts located in Cook County, Illinois with regard to any controversy arising out of, relating to, or in any way concerning the execution or performance of this Agreement.

ARTICLE 21: FORCE MAJEURE

Notwithstanding any other provision of this Agreement, Contractor shall not be liable or held responsible for any failure to perform or for delays in performing its obligations under this Agreement, including but not limited to, the scope of services set forth herein, which result from circumstances or causes beyond Contractor's reasonable control, including without limitation, fire or casualty, acts of God, strikes or labor disputes, war or violence, order or requirement of any government agency or authority (collectively, as well as separate and apart, are each and all "Event(s) of Force Majeure). Notwithstanding the foregoing, Contractor shall be required to use reasonable efforts to mitigate the effects of an Event of Force Majeure, and in no event shall Contractor's financial condition or inability to fund or obtain funding or financing constitute an Event of Force Majeure.

ARTICLE 22: NO RESPONSIBILITY FOR LOSS

Notwithstanding any other provisions of this Agreement, Contractor is not responsible for any monetary losses to Village due to System malfunction or failure at any time.

ARTICLE 23: EQUAL EMPLOYMENT OPPORTUNITY

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

ARTICLE 24: COMMUNICATION AND NOTICES

No verbal communication between the Parties shall change any of the terms and conditions of this Agreement. Nothing stated herein shall be construed as a waiver or modification of the requirements for notice or service of process of litigation as set forth in the Illinois Code of Civil Procedure, rules of the Circuit Court of Cook County. Any and all notices, demands, requests, consents, approvals, communications or other instruments required or permitted to be given under this Agreement shall be in writing (unless otherwise set forth herein) and shall be executed by a Party or an officer, agent or attorney of the Party, and shall be deemed to have been duly received upon:

- a) actual receipt if personally delivered and the sender received written confirmation of personal delivery;
- b) receipt as indicated by the written or electronic verification of delivery when delivered by overnight courier;
- c) three (3) calendar days after the sender posts notice with the U.S. Post Office when sent by certified mail, return receipt requested; or
- d) when delivery is refused.

Notices shall be sent to the addresses set forth below, or to such address as any Party may specify in writing:

President

SafeSpeed, LLC.

150 N. Wacker, 8th Floor

Chicago, Illinois 60606

Fax: (877) 237-2302

Mayor

Village of Evergreen Park

9418 S. Kedzie Ave.

Evergreen Park, Illinois 60805

Fax: (708) 422-7818

The Parties, by notice given hereunder, may designate any further or different address to which subsequent notices, certificates, approvals, consents or other communications shall be sent.

ARTICLE 25: ASSIGNMENT OF AGREEMENT

Notwithstanding anything to the contrary in this Agreement, Contractor shall have the right to make, with Village's prior written consent, any assignment of this Agreement to: (a) any entity with which, or into which, Contractor may consolidate or merge; or, (b) any entity acquiring all or substantially all of the assets of Contractor.

ARTICLE 26: UNABLE TO CONTINUE

In the event Contractor is legally or logistically unable to continue to maintain and support the System(s), Contractor will advise Village of same in writing giving a minimum of sixty (60) days' notice to Village. Village may then proceed to enter into contract with another vendor for the same and/or similar services. There will be no penalty to either party.

ARTICLE 27: NO WAIVER

The waiver by either Party of any breach or failure to enforce any of the terms and conditions of this Agreement at any time shall not in any way affect, limit or waive such Party's right thereafter to enforce and compel strict compliance with every term and condition of the Agreement.

ARTICLE 28: PARTNERSHIP NOT INTENDED NOR CREATED

Nothing in this Agreement is intended nor shall be deemed a partnership or joint venture between Contractor and the Village.

ARTICLE 29: EFFECTIVE DATE

The Effective Date of this Agreement shall be the date on which the first (or only) Red Light Camera begins capturing Potential Automated Traffic Law Violations.

ARTICLE 30: CONFIRMATION AND AUTHORITY

The Village and Contractor for themselves and their successors, executors, administrators and assigns agree to the full performance of this Agreement. The persons signing below on behalf of the Village and Contractor certify that each is an agent possessed of authority to bind the Village and Contractor to this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date set forth above.

The Village of Evergreen Park

SafeSpeed, LLC.

By: _____

By: Nikki M. Zollar

Name: James J. Sexton

Name: Nikki M. Zollar

Title: Mayor

Title: President

AUTOMATED TRAFFIC LAW ENFORCEMENT AGREEMENT

EXHIBIT A

FEES

Contractor compensation is based on "Fee Per Services" as set forth herein. The following Fee Schedule is hereby attached and made a part of the Automated Traffic Law Enforcement Agreement. Payment of Contractor's compensation by Village shall only be made to the amount of revenue received from Violation Fines and Penalties in any given month. Cost neutrality is ensured. Under no circumstances shall the Village be required to pay Contractor in excess of actual revenue from Violation fines and Penalties.

MONTHLY FEES PER SYSTEM

Maintenance, Service and Repair of System	\$100.00 Flat Monthly
Potential Violation Capture & Initial Screening	\$100.00 Flat Monthly
Violation Processing & Registration Retrieval	\$100.00 Flat Monthly
Printing & Violation Notice Mailing	\$100.00 Flat Monthly
Adjudicative Support Services	\$100.00 Flat Monthly

PAYMENT PROCESSING FEES

Payment Processing	\$40.00 per Initial Payment
Payment Processing	\$48.00 per Second Notice Payment
Payment Processing	\$5.00 per Subsequent/Partial Payment
Payment through Collections Process	\$48.00 per Initial Payment
Payment through Collections Process	\$5.00 per Subsequent/Partial Payment

SERVICES AT NO CHARGE

Installation of System	No Charge
Public/Community Relations Campaign	No Charge
Training on Use of System	No Charge
Lockbox Service	No Charge
1-800 Customer Service	No Charge
Signage	No Charge
30 Day Archived Video	No Charge
Live Streaming Video Access	No Charge
Relocation of System	No Charge
Software Licensing	No Charge

PASS-THROUGH CHARGES

Utility

Monthly

Non-Sufficient Funds (NSF)

Variable

Light-Emitting Diode Upgrades

Construction and Hardware Costs

Variable May be Financed

OPTIONAL EQUIPMENT

Payment Kiosk

\$7,000.00 May be Financed

To include all equipment, software,
installation and training of Village Personnel
on use of Kiosk

ACTIVITY DESCRIPTIONS

Maintenance, Service and Repair of System: Contractor will be solely responsible for the installation of all System Equipment at agreed upon location(s) (See Exhibit B attached hereto and made a part hereof) including, but not limited to: communication enclosure, helix-based pole, camera units, detection cameras, communication antennas, inductive coils and associated cable in conduits; if wireless – magnetic sensor detectors and receiver. Additionally, Contractor warrants it will maintain Systems and associated equipment in good working order and will respond to Systems within sixty (60) hours of identified equipment failure. Systems will be returned to service within an additional forty-eight (48) hours or advise Village of the reason for delay in returning equipment to service.

Note: Should equipment be destroyed or put out of service due to unforeseen circumstances such as weather, motor vehicle accident, non-scheduled IDOT construction or vandalism, Contractor shall not be subject to the above requirements, however, Contractor will make best efforts to return equipment to service as soon thereafter as practicable.

Potential Violation Capture & Violation Screening: Contractor will provide digital camera Systems capable of reliably capturing clear, photographs of the rear of vehicles, specifically capturing images of license plates on those vehicles whose drivers may have committed red light violations (Potential Violation Capture). Live video feed of each intersection will also be provided to the Village for surveillance purposes.

Contractor's reviewers will look at all Potential Violations in order to send those images to Village for Review and Determination as to whether a Violation was committed. Before the Images are sent to The Village, Contractor's reviewers will look at all images that are Potential Violations for clarity and to eliminate any Potential Violations which fall within one of the "exceptions" below.

Exceptions:

- Driver did not actually run red light, e.g., driver clearly put on brakes and stopped before entering the intersection
- No license plate on vehicle
- License plate unreadable
- Emergency vehicles
- Funeral Processions
- Unable to identify vehicle's registered owner
- Vandalism
- Weather
- System Malfunction (including Flash Malfunction)

All Potential Violations that are not screened "out" during Violation Screening will be sent by electronic medium to the Village for review by The Village's duly appointed Review

Officers. Review Officers will make ALL determinations as to whether a Potential Violation will be deemed a Violation.

Violation Processing & Registration Retrieval: Contractor will process all actual Violations sent to it by The Village using web-based software. For each Violation processed, Contractor will retrieve registered vehicle owner information from the Department of Motor Vehicle (DMA)/Secretary of State (SOS).

Note: Village must provide Contractor access to all DMV/SOS records and/or database.

Printing & Violation Notice Mailing: Contractor will print and mail all Violation Notices, including both First and Second Violation Notices.

Included on each Violation Notice will be:

- Date
- Location Code
- Violation Identification
- Image Number/Unique Identifier
- Lane
- Direction of Travel
- Camera ID

Additionally, each Violation Notice shall also include, among other items, all information listed in Section 7.5 of the Agreement including, a minimum of three (3) images showing the vehicle approaching the intersection with the controlling traffic signal red, the vehicle in the intersection with the controlling traffic signal red, and a close up view of the rear of the vehicle with license plate.

Contractor will perform a Second Notice Violation mailing if Violator has not responded to the First Violation Notice in a timely manner. *Note: If Violator does not pay the Fine and Penalty demanded in the Second Notice in a timely manner, Contractor will support the efforts of Village's Collection Agency/Agent to recover payment of Fine(s) and Penalty(ies).*

Adjudicative Support Services: Contractor will provide support to Village's Adjudicative Process. Such support will include use of Contractor's "Adjudication Module" which allows for viewing of Violation photographs and streaming video, as well as in-person or remote technical assistance at the time of hearing(s) and full support services for "Contests by Mail."

Note: Administrative Hearings must be conducted by an attorney licensed to practice law in the State of Illinois for at least three (3) years and shall have all the powers granted to

him or her under 65 ILCS 5/1-2.1-4. Administrative Hearings and court costs are the sole responsibility of Village and are not shared by Contractor.

Payment Processing: All payments made in response to a Violation Notice, whether it be First or Second Notice, whether such payment is made through Lockbox service, on-line, at Village, in response to Administrative Finding or through efforts of Collection Agency/Agent, will be electronically captured by Contractor's Payment Processing System. Contractor will process full and partial payments.

Public/Community Relations Campaign: Contractor will support all educational and public information initiatives Village chooses to undertake in order to launch a System program by providing "Content" for written materials in English (and Spanish upon request). Contractor will appear at public hearings and events related to System program during the Public/Community Relations Campaign period which can be up to and including sixty (60) days.

Training on Use of System: Contractor will train all Village personnel identified by System Program Administrator on any and all parts of System Program, to include, but not limited to: review of Streaming Video, use of Scanners, use of Electronic Hearings Processes (including for "Written Contests"), and Inputting of Fines. Training will be done as frequently as requested by Village and/or needed.

License Plate Look-Up with Secretary of State: Contractor will interface with the Department of Motor Vehicles/Secretary of State in order to secure information related to the registered owner of the Vehicle driven at the time of Violation. Contractor will assume the costs for all License Plate Look-Ups.

Lockbox Service: Contractor will maintain a Lockbox service with a third Party institution (F.D.I.C. Bank) for the purpose of taking in all payments of Fines made to the Village by check which are not made directly at the Village Hall or other appointed location.

1-800 Customer Service: Contractor shall provide a toll-free telephone number with English and Spanish speaking operators available for the purpose of answering inquiries concerning the System Program as well as Violation Notices. Contractor shall insure that all inquiries will be handled timely and professionally.

Signage: Contractor, shall acquire or fabricate, install and maintain all signage to be placed in advance of each enforced Approach. The content and location of the signage shall

comply with Section 11-208.6(k) of the Code (625 ILCS 5/11-208.6 (k)) and the Illinois Manual on Uniform Traffic Control Devices.

30 Day Archived Video: Contractor will maintain Video of all enforced Approaches for 30 days so that Village may review and/or use any images captured for any purposes it chooses.

Live Streaming Access: Contractor will provide Village Administrators access to Contractor's live video streaming twenty-four hours a day, seven days a week. With this, Village will be able to monitor any activity within camera range.

Supporting Village-wide Surveillance System: Contractor will allow Village to utilize infrastructure at camera locations to support a village-wide camera surveillance system. Contractor will provide power, housing, internet connection and networking support for no additional charge. Village will provide its own equipment related to the surveillance system at its own cost. Contractor will work with Village to provide a direct connection through Contractor's VPN tunnel from the Police station to camera location(s). Village will be responsible for the configuration, setup and ongoing support of its own equipment. Access for Village equipment maintenance will be provided per scheduled request with 24-Hour advanced notice.

Relocation of System: Should System need to be relocated for any reason as outlined in this Agreement, all costs associated with such relocation will be the sole responsibility of Contractor.

Software Licensing: All costs normally associated with the use of Contractor's software are waived for purposes of this Agreement.

2-37-0

AUTOMATED TRAFFIC LAW ENFORCEMENT AGREEMENT

EXHIBIT B

It is the intention of the Parties to install and to have installed Systems at the following approaches, pending approval by IDOT (where necessary):

- Intersection(s)