



**AGREEMENT BETWEEN REDSPEED ILLINOIS, LLC
AND THE CITY OF AURORA FOR
TRAFFIC LAW ENFORCEMENT SYSTEM**

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**AGREEMENT BETWEEN REDSPEED ILLINOIS, LLC
AND THE CITY OF AURORA FOR
TRAFFIC LAW ENFORCEMENT SYSTEM**

This Automated Traffic Law Enforcement System Agreement (hereinafter referred to as “Agreement”) is made as of this [] day of [] 2015 by and between RedSpeed Illinois, LLC located at 400 Eisenhower Lane North, Lombard, Illinois 60148 (“RedSpeed”), and the City of Aurora, an Illinois municipal corporation, (hereinafter referred to as the “Municipality”).

RECITALS

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

WHEREAS, the Municipality 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 Municipality.

WHEREAS, the Municipality 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 Municipality pursuant to this Agreement.

WHEREAS, on [] the Corporate Authorities of the Municipality adopted an Ordinance (No. []), authorizing the execution of this Agreement.

NOW THEREFORE, in consideration of the mutual covenants contained herein, the above recitals which are by this reference incorporated herein, and for other valuable consideration received, the receipt and sufficiency of which is hereby acknowledged, the Municipality 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 Municipality by:
 - a. Installing, at designed Intersections (Exhibit “A” attached hereto and incorporated and in the Municipality automated traffic law enforcement systems);
 - b. Maintenance as set forth in Exhibit “A”; and
 - c. The Municipality may from time to time request changes to the services required to be performed or the addition of products or services to those required pursuant to the terms of this Agreement by providing written notice thereof to RedSpeed. Upon RedSpeed’s receipt of the requested change, RedSpeed shall deliver a written statement describing the effect, if any; the proposed changes would have on the pricing of this Agreement. Following the Municipality’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 Municipality 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 date hereof and shall continue for a period of six (6) years after the installation date (“Installation Date”). This Agreement shall be automatically renewed for two (2) additional consecutive and automatic three (3) year periods following the expiration of the initial six (6) year term (the “Extended Term”). The City may, in its sole discretion, decline to automatically renew this Agreement by providing written notice to RedSpeed that it shall not renew this Agreement not less than sixty (60) days prior to the last day of the initial term or any Extended Term.

4. Compensation. Compensation as set forth in Exhibit “B”.

5. Termination.

- a. Either Party shall have the right to terminate this Agreement, without cause, with Sixty (60) days written notice to the other Party.
- 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 Municipality 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 Municipality 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 Municipality 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.

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. Notwithstanding the termination or the following shall survive the termination of this Agreement:

- i. Reservation of Rights, Representations and Warranties of RedSpeed;
- ii. Representations and Warranties of Municipality;
- 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 Municipality, upon the terms and conditions herein specified, a non-exclusive, non-transferable license during the Term of this Agreement to: (i) solely within the Municipality, 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 Violations processing Agreement that the parties intend to enter into, 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 Municipality 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 Municipality 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 applications to register as trademarks in any jurisdiction any of the RedSpeed Marks, the filing of patent application for any of the Intellectual Property of RedSpeed, and making any other applications or filings with appropriate Governmental Authorities. The Municipality 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.

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 MUNICIPALITY'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 MUNICIPALITY SELECTS FOR USE, OR THAT THE OPERATION OR USE THEREOF WILL BE UNINTERRUPTED. THE MUNICIPALITY 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. Municipality Representations.

- a. The Municipality 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 Municipality hereby warrants and represents that any and all services provided by the Municipality 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.

11. Indemnification and Liability.

a. Municipality hereby agrees to defend and indemnify and hold harmless RedSpeed, 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 suppliers of equipment and installers), or any of them against, and to protect, save and keep harmless RedSpeed from, and to pay on behalf of or reimburse RedSpeed as and when incurred for, any and all Losses which may be imposed on or incurred by RedSpeed or equipment provided and/or installed by RedSpeed arising out of or in any way related to:

- i. any material representation, inaccuracy or breach of any covenant, warranty or representation of the Municipality contained in this Agreement;
- ii. the willful misconduct of the Municipality, 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 Municipality's use of the Automated Traffic Law Enforcement System or any portion thereof, the validity of the results of the Municipality'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 Municipality's use of the Automated Traffic Law Enforcement System provided by RedSpeed.

b. RedSpeed hereby agrees to defend and indemnify and hold harmless the Municipality managers, officers, directors, employees, agents, representatives and successors, permitted assignees and each of their affiliates, and all persons acting by, through, under or in concert with them, or any of them against, and to protect, save and keep harmless the Municipality Parties from, and to pay on behalf of or reimburse the Municipality 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 Municipality Party arising out of or related to:

- i. any material misrepresentation, inaccuracy or breach of an 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 any Municipality or any of its agents; or
- iii. any claim, action or demand not caused by the Municipality'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, Violation 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 RedSpeed System for the purposes of reviewing the pre-processed Violations Data within seven (7) days of the gathering of the Violations Data from the applicable Designated Intersection(s).

Thereafter, the Municipality 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 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 Municipality shall be obligated to execute all violations (citations) sent out on the Municipalities 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 LLC
1 East Wacker Drive, Suite 2610
Chicago, IL 60601

b. Notices to the Municipality:

City of Aurora

Attention:

With a copy to:

15. Relationship between RedSpeed and the Municipality.

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 Municipality 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 including, but not limited to, acknowledgments and/or consents with equipment lessors, banks, financial institutions or other similar persons or entities. The Municipality 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 financial institutions without the Municipality's prior written approval. The Municipality further acknowledges and agrees that in the event that RedSpeed provides any such acknowledgment or consent to Municipality for execution, and in the event that the Municipality fails to execute and deliver such acknowledgment or consent back to RedSpeed within ten (10) calendar days after its receipt of such request from RedSpeed to

execute such acknowledgment or consent, the Municipality shall be deemed to have consented to and approved such acknowledgment or consent and RedSpeed is granted a limited power of attorney, coupled with an interest, to execute the acknowledgment and/or consent on behalf of Municipality and deliver such document to its financial institution.

17. Injunctive Relief; Specific Performance.

The Parties hereby agree and acknowledge that a breach of License, Restricted Use 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 solely for the purpose of verifying the payments, if any, payable pursuant to this Agreement. Any such audit shall be conducted upon not less than three business hours prior notice, at mutually convenient times and during the normal business hours. In the event any such audit establishes any underpayment of any payment payable by the pursuant to this Agreement, the Audited Party shall promptly pay the amount of the shortfall. In the event any such audit establishes any overpayment by refund to the amount of the excess shall be promptly paid. Each Party shall solely pay the expenses for any audit they request.

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.

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 Municipality 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 Municipality, the Traffic Control Administrator or such other

individual(s) as the Municipality 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.
- iv. **"Cause"** as used at Paragraph 5a of this Agreement shall mean:
 - (a) The material breach by RedSpeed, its employees or agents, of any of the provisions hereof on RedSpeed's part to be kept, maintained or performed.
- v. **“Citation”** means the notice of Violation, which is mailed or otherwise delivered by RedSpeed to the violator on the appropriate Enforcement Documentation in respect of each Authorized Violation.
- vi. **“Confidential or Private Information”** means, with respect to any Person, any information, matter or thing of a secret, confidential or private nature, whether or not so labeled, which is connected with such Person’s business or methods of operation or concerning any of such Person’s suppliers, licensors, licensees, 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.

- vii. **“Designated Intersection”** means the Intersections set forth in Exhibit A attached hereto, and such additional Intersections as RedSpeed and the Municipality shall mutually agree from time to time.
- viii. **“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 (city/Village) ordinance 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 with respect to coordinating with the Department of Motor Vehicles), and technical support documentation for applicable court and judicial officers.

- ix. **“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.
- xx. **“Fine”** means monetary sums assessed for Citation, including but not limited to bail forfeitures, but excluding suspended fines.
- xi. **“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.
- xii. **“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.
- xiii. **“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 and 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.
- xiv. **“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 Municipality.
- 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 Red Light (Traffic Control) 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.
- 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 Municipality, 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. “Violations Data” means the images and other Violations 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 Section of City of Aurora Ordinance No. .

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 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 incur 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 Municipality 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.

“Municipality”

“RedSpeed”

CITY OF AURORA

REDSPEED ILLINOIS, LLC

By: _____

By _____

Name: _____

Name: Robert Liberman

Title: _____

Title: Manager

Date: _____

Date: _____

EXHIBIT “A”

Designated Intersections

RedSpeed and the Municipality will mutually agree upon the Identification of enforced intersection which agreement will be based on community safety and traffic needs as warranted. The Designated Intersections shall be set forth on a supplement to this Exhibit A.

Construction and Installation

RedSpeed will have designated intersection installed and activated in accordance with an implementation plan to be mutually agreed to by RedSpeed and the Municipality.

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 Municipality agrees that the estimated timeframe for installation and activation is not guaranteed.

The Municipality will assist with providing timely approval of Municipality permit request. The Municipality will provide city engineers to review of RedSpeed permit requests and all documentation and said review should be within two (2) business days of receipt. RedSpeed will also attempt to review and correct, if necessary, any requested changes within two business days.

Further RedSpeed shall provide training for up to ten (10) personnel of the Municipality, including but not limited to the persons who Municipality shall appoint as Authorized Officers and other persons involved in the administration of the Automated Traffic Law Enforcement System. 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 more than four (4) personnel shall be an extra cost to be agreed to by the Parties before training shall be provided.

Maintenance

All repair and maintenance of the Automated Traffic Law Enforcement System shall be the sole responsibility of RedSpeed.

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.

EXHIBIT “B”

Compensation

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

RedSpeed to remit to the Municipality the balance of all payments it collects for the Municipality 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 due to vandalism, 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 Municipality 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 Municipality at no cost with all repairs and also, there will be no additional charges for the power outage.

2. A service fee of \$11.98 shall be charged for the following services listed in subparagraphs (a) below, where applicable:
 - (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 and 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 following services listed in subparagraphs (a), (b) and (c) below, where applicable:
 - (a) For **ALL** letter handling services, including postage and color printing;
 - (b) For payment processing service, including check and credit card processing at the lock box, online or during administrative hearings; and
 - (c) For digital evidence archival (storage of evidence for 7 years) service.

4. Also the compensation has been agreed upon based on the following assumptions:
 - There shall be twenty-five (25) free warning notices given by RedSpeed at no charge to Municipality each month.
 - Collection of delinquent payments will be the sole responsibility and expense of the Municipality.
 - RedSpeed will be able to utilize existing conduit for installation where space is available, at no cost to RedSpeed;
 - All necessary electrical and high speed internet services to the Designated Intersections will be the sole responsibility and expense of RedSpeed;
 - RedSpeed will be able to utilize existing internet connections at the Municipality'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 Parties acknowledge that the Compensation as set forth in this Exhibit B is compliant with the laws of the State of Illinois.

Further, the Municipality 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 Municipality shall be included with the statement and invoice.

All citations (payments) shall be collected by RedSpeed and all work shall be monitored by RedSpeed, and approved by the Police Department of the Municipality. After citations are collected, RedSpeed shall be paid all of its compensation as set forth in this Paragraph four (4) and then the balance shall be promptly paid to the Municipality. The Municipality acknowledges that it shall have access to all records on the computer terminal provided by RedSpeed pursuant to this Agreement. If for some reason it is not available RedSpeed shall provide a paper copy of any monthly statement upon written request.



Cost Neutrality. Notwithstanding any other provision of this Agreement to the contrary on a monthly basis if any invoice for compensation owed to RedSpeed from Municipality is higher than the amount collected, the balance owed to RedSpeed will be zero. Payment will only be made by Municipality up to the amount of cash received by Municipality through the collection of Red Light Citations up to the amount currently due. Cost neutrality is assured to Municipality as the Municipality shall never have to pay RedSpeed more than the actual cash received.