

RESOLUTION NO. 29392

A RESOLUTION AUTHORIZING THE ADMINISTRATOR FOR THE DEPARTMENT OF TRANSPORTATION TO RENEW THE SERVICES AGREEMENT, IN SUBSTANTIALLY THE FORM ATTACHED, WITH SENSYS AMERICA, INC. FOR THE TRAFFIC INFRACTION DETECTION AND ENFORCEMENT PROGRAM FOR ONE (1) YEAR.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA,
That it is hereby authorizing the Administrator for the Department of Transportation to renew the Services Agreement, in substantially the form attached, with Sensys America, Inc. for the Traffic Infraction Detection and Enforcement Program for one (1) year.

ADOPTED: March 27, 2018

/mem

**SERVICES AGREEMENT
BETWEEN THE CITY OF CHATTANOOGA, TENNESSEE AND
SENSYS AMERICA, INC. FOR TRAFFIC INFRACTION DETECTION &
ENFORCEMENT PROGRAM**

This **AGREEMENT** (the "Agreement") made this 16th day of April, 2012, by and between Sensys America, Inc., a Delaware corporation having a place of business at 80 SW 8th Street, 20th Floor, Miami, Florida 33130 ("**Sensys**"), and the City of Chattanooga, Tennessee, a municipal corporation of the State of Tennessee, having an address at 101 East 11th St., Room 100, Chattanooga, TN 37402 (the "**City**" and together with Sensys, the "**Parties**" and each singularly a "**Party**").

WITNESSETH:

WHEREAS, pursuant to Tenn. Code Ann. § 55-8-198, the City may implement an unmanned traffic camera enforcement program;

WHEREAS, the City adopted Ordinance No. 11886, which enacted Chattanooga City Code § 24-273, as amended, providing for a traffic infraction camera enforcement program;

WHEREAS, Sensys has the knowledge, possession, and ownership of certain equipment, licenses and processes, referred to collectively as the Sensys Safety System;

WHEREAS, City desires to use the Sensys Safety System to monitor and enforce red light and speeding violations in accordance with applicable laws and ordinances;

WHEREAS, the Parties desire to enter into this Agreement, whereby Sensys will (i) install and assist the City in the administration and operation of the Sensys Safety Systems, for traffic signal violation and speed detection systems, each described in more detail on *Exhibit A* to this Agreement (the "**System(s)**") at locations within the City, and provide to the City the services (the "**Services**"), all as more fully described on *Exhibit A*, and (ii) in connection with the Services, license certain software and lease certain equipment to the City.

NOW, THEREFORE, in consideration of the mutual terms, covenants, and conditions contained herein, and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

1. **RECITALS AND EXHIBITS.** The foregoing recitals are true and correct and are hereby incorporated in *haec verba*. All exhibits attached to this Agreement contain additional terms of this Agreement and are hereby incorporated in *haec verba*. The following documents shall be incorporated into the Agreement as if fully set forth herein: 1) Request for Proposals ("**RFP**") dated August 5, 2011; 2) Addendum #1 to RFP dated August 18, 2011; 3) Addendum #2 to RFP dated August 23, 2011; 4) Sensys' Proposal dated August 29, 2011; and 5) Sensys letter regarding demonstration dated October 22, 2011.¹ In the event of a conflict among the documents comprising this Agreement, the

¹ Sensys warrants that representations in Sensys' Proposal dated August 29, 2011 and letter dated October 22, 2011 were true on the date made, and to the extent relevant to purchases or leases in this Agreement, those statements remain true. The parties agree that Sensys undertakes no obligation to maintain

order of priority for purposes of resolving the conflict is: 1) the terms in this Agreement; 2) Sensys' proposal; and 3) the City's RFP dated August 5, 2011 to include the Addendums.

2. **SERVICES.**

A. Sensys agrees to use commercially reasonable efforts to install and provide to the City for the Term the Systems (the "**Equipment**") and software (the "**Software**") to be supplied and installed by Sensys in accordance with *Exhibit A* (including the provision of all construction drawings, permit applications and other documents required by applicable law for the installation and operation of the System). In addition, if and to the extent set forth in *Exhibits A, B, and C*, Sensys shall also supply to the City:

- (1) citation preparation processes that assist the City in complying with current applicable law;
- (2) training of personnel designated by the City involved with the operation of the Systems and/or the enforcement and disposition of citations;
- (3) expert witness testimony regarding the operation and functionality of the System; and
- (4) other support services for the System as set forth in *Exhibit A*.

B. If and to the extent the City has or obtains during the Term custody, possession or control over any of the Equipment or Software, the City agrees:

- (1) such Software, if manufactured or licensed by Sensys, is supplied under the license set forth in *Exhibit B* (the "**License**") to which the City agrees;
- (2) such Software, if manufactured by third parties, is supplied under third-party licenses accompanying the Software, which licenses the City acknowledges receiving and to which it hereby agrees; and
- (3) such Equipment is supplied under the lease terms set forth in Exhibit C (the "**Lease**") to which the City hereby agrees.

C. The City understands and agrees that (i) Sensys may, subject to the prior written approval of the City, which approval shall not be unreasonably delayed, conditioned or withheld, subcontract with third parties for the provision or installation of part or parts of the Systems or Services and (ii) installation of the Systems requires the City's cooperation and compliance with Sensys' reasonable instructions (including but not limited to City's provision of the personnel, equipment, engineering plans, and other resources as described in *Exhibit A* or as

capabilities or functionality mentioned in the Proposal, except to the extent relevant to purchases or leases pursuant to this Agreement.

otherwise reasonably requested by Sensys) and reasonable access by Sensys (or such approved third parties) to City premises and systems and which the City agrees to provide as required.

- D. The City understands and agrees that the Systems will be owned by Sensys (or its designees) unless otherwise agreed to between the Parties. The City shall use reasonable efforts to assist Sensys in identifying any third-party who is responsible for damage to the Systems or any part thereof.
- E. Sensys shall coordinate its work with the City's police, public works, engineering and finance departments and the city court and city court clerk's office, and, as necessary or required, with the Tennessee Department of Transportation and any other department of the State of Tennessee, as requested.

3. **TERM**

- A. The effective date of this Agreement shall be the date first written above (the "**Effective Date**"). The initial term of this Agreement, the License and the Lease shall begin upon the Effective Date, following authorization by all appropriate authorities and full execution of the Agreement by the Parties, and shall continue until the third (3rd) anniversary of the Installation Date (the "**Initial Term**").
- B. The City shall have the option to extend this Agreement, the License and the Lease for one additional two (2) year term followed by one (1) additional one (1) year term (each, a "**Renewal Term**"), on the same terms and conditions specified herein. (Each Renewal Term, if any, together with the Initial Term, the "**Term**"). The "**Installation Date**" shall be the latest date that a System becomes installed and operational.

4. **TERMINATION AND EXPIRATION**

- A. This Agreement may be terminated by mutual written consent of the Parties.
- B. This Agreement may be terminated for cause, by either Party if the other Party fails in any material way to perform its obligations under the Agreement or otherwise defaults in the performance of any obligation under this Agreement and such failure or default continues for more than forty-five (45) days after written notice thereof to the defaulting Party.
- C. Sensys may terminate this Agreement, without liability, on thirty (30) days advance written notice if Sensys concludes in its reasonable discretion that (i) potential or actual liability of Sensys to third parties (other than persons claiming to own Intellectual Property required for the operation of the System) arising out of or in connection with the System makes the program impractical, uneconomical or impossible to continue.
- D. The City may terminate this Agreement on thirty (30) days advance written notice if City concludes in its reasonable discretion that (i) potential or actual liability of

City to third parties arising out of or in connection with the System makes the program impractical, uneconomical or impossible to continue; (ii) a change in state or federal law arising out of or in connection with the System makes the program impractical, uneconomical or impossible to continue; (iii) the Systems cannot be installed; and/or (iv) if any person or entity acquires all or substantially all of Sensys' assets or its United States customers in one (1) transaction.

E. Upon termination or expiration of this Agreement, either for default or because it has reached the end of its term, for any reason other than payment default by the City, the Parties recognize that the City will have to process all remaining and/or unprocessed violations and that Sensys accordingly must assist the City in this regard. Accordingly, the Parties shall take the following actions during the wind-down period, and shall have the following obligations, which obligations shall survive termination or expiration of the Agreement:

- (1) The City shall cease using the Software and Equipment in its possession, custody or control and shall (a) immediately allow Sensys a reasonable opportunity to remove such Equipment within but not to exceed sixty (60) days and (b)(i) immediately deliver to Sensys or irretrievably destroy, or cause to be so delivered or destroyed, any and all copies of such Software in whatever form and any written or other materials relating to such Software in the City's possession, custody or control and within sixty (60) days deliver to Sensys a certification thereof or (ii) allow Sensys reasonable access to the System(s) on which such Software is loaded and permission to Sensys to remove such Software and documentation.
- (2) Unless directed by the City not to do so, Sensys shall continue to process all images taken by the City before termination and provide all services associated with processing in accordance with this Agreement, and shall be entitled to Fees specified in the Agreement as if the Agreement were still in effect until all remaining and/or unprocessed images have been processed.
- (3) Sensys shall supply to the City, in a mutually agreeable file format, the contents of its database, including, but not limited to all citations and information records whether open or closed, provided however, that all violation images and video may be supplied on separate media as long as the database contains a "pointer" to the associated image or video file.

F. Notwithstanding anything to the contrary contained herein, or in the License or the Lease, but except as provided in Section 23, the License and the Lease shall terminate upon the termination or expiration of this Agreement.

5. FEES AND PAYMENT

A. Subject to Section 5.B below, the City agrees to pay Sensys a monthly fee as follows (the "**Monthly Fees**"):

- (1) A base lease fee of One Thousand Six Hundred Dollars (\$1,600) per month per fixed System and One Thousand Four Hundred Dollars (\$1,400) per month per mobile speed system in arrears (pro rated for any partial month) commencing on the first business day of the month following the date of Commencement of Operations with respect to such System. Invoicing shall begin for each system after acceptance of the installation. Invoices shall be produced at the end of each month and shall detail charges for each system, showing each component (lease period, citations issued, citations paid) and shall include a summary invoice. Payment is due no later than thirty (30) days provided, however, that any disputed amounts shall not be due until resolved in writing (email or re-invoiced). For purposes of this Agreement, “**Commencement of Operations**” shall mean the first full day that the System captures events for processing and issuance of notices of violation.
 - (2) A variable lease fee of Fourteen Dollars (\$14) per *paid* violation, payable monthly in arrears based on the number of violations actually paid in the immediately preceding month during the Term (including any wind-down period). To facilitate the direct payment to Sensys of violations by credit card, debit card, or check, Sensys shall install a payment kiosk in the lobby of the Office of the City Court Clerk for the convenience of walk-in customers at no charge to the City. Sensys agrees to maintain said kiosk in proper working condition.
 - (3) A variable processing fee of Seven Dollars (\$7) per *issued* citation, payable monthly in arrears based on the number of violation notices actually issued in the immediately preceding month during the Term (including any wind-down period).
- B. Notwithstanding anything in this Agreement to the contrary, if amounts due to Sensys pursuant to Section 5.A in any month during the Term plus any amounts due to Sensys pursuant to this Section 5.B (“**Monthly Photo Enforcement Fees**”) exceed the revenue generated by operation of the Systems and actually received by the City during that same month (“**Monthly Photo Enforcement Revenue**”) then the City shall pay to Sensys for such month only the amount of Monthly Photo Enforcement Revenue. In such case, the difference between Monthly Photo Enforcement Fees and Monthly Photo Enforcement Revenue (a “**Payment Shortfall**”) shall be accumulated and added to the Monthly Photo Enforcement Fees for the following month. Payment Shortfalls, if any, shall accumulate from month-to-month until paid in full, provided that under no circumstances shall the City ever be required to make a payment of Monthly Photo Enforcement Fees to Sensys except from Monthly Photo Enforcement Revenue. Any Payment Shortfall not paid from Monthly Photo Enforcement Revenue during the Term shall be forfeited as of termination or expiration of the Agreement.
- C. In the event that the City elects to obtain non-functioning System Shells (described below), the City may:

- (1) purchase a System Shell for Twenty Thousand Dollars (\$20,000) fully installed. An installed System Shell includes installation of poles, conduit, electricity and communications such that the System Shell is immediately available for operation upon installation of System components. In lieu of purchasing a System Shell as described in this Section 5.C(1), the City may lease such System Shell for Six Hundred Dollars (\$600) per month; or
 - (2) lease a partially installed System Shell for Three Hundred Dollars (\$300) per month fully installed. Lease of a partially installed System Shell shall comprise a photo enforcement enclosure, concrete foundation and pole, but shall not include conduit, electricity and communications and shall not be immediately available for operation. The City agrees that it shall not request any such systems in excess of the number of mobile speed Systems leased by the City at the time of such request, excluding System Shells left behind pursuant to Section 5.D.
 - (3) In the event the City elects to convert a leased System Shell into an operational System, there will be no additional charges to the City except that the City will be responsible for the Monthly Fees with respect to such System. In the event that the City has previously purchased said System Shell, the lease cost for the System at that location will be One Thousand Dollars (\$1,000.00) per month.
- D. The City shall have the option to relocate a System from its existing location to a different location of the City's choosing without penalty or additional charge to the City. If the City exercises this option, it will perform the relocation and installation with its own manpower, and Sensys agrees to provide as much technical assistance as the City requires to perform the relocation. In the event that the City does not wish to perform the relocation itself, the City agrees to pay Seven Thousand Four Hundred Seventy-Five Dollars (\$7,475) to Sensys, which represents half the cost of relocation. In the event that a System is relocated, the City shall have the option to leave the System Shell at the existing location by leasing it in accordance with Section 5.C(2).
- E. Sensys will deliver and install the Systems in accordance with this Agreement and guarantees that the Systems will operate in accordance with all applicable laws, ordinances, rules and orders ("**Legal Requirements**"). Sensys acknowledges that some software development may be necessary to ensure that the Systems comply with such Legal Requirements, and all such software development shall be completed at Sensys' sole expense. In addition, Sensys acknowledges that the City may desire some customization of the System's software to accommodate City preferences. Accordingly, Sensys will provide the City with forty (40) hours of software development at not cost to the City. Any additional requested software customization requested by the City that does not fall into one of the aforementioned categories shall be billed to the City at the rate of \$150 per hour, plus reasonable travel and expenses if necessary. If additional software

customization is necessary, Sensys shall submit an estimate for said software customization, which shall also include an estimate for reasonable travel and expenses, and shall be pre-approved by the City prior to any work being done.

- F. Sensys agrees to maintain all required City and state licenses and agrees to file all required City and state business reports. The City is a tax-exempt entity and is exempt from the payment of sales tax; as such, the City will provide a Tennessee Sales or Use Tax Government Certificate of Exemption to Sensys for its use to the extent permitted by law.
- G. Sensys agrees to maintain all required City and state licenses and agrees to file all required City and state business reports.
- H. Payment of all fees and other charges owed pursuant to this Agreement is due as set forth in Section 5 above, and, to the extent invoice is required, within thirty (30) days after receipt of the invoice. Invoices will be sent to the City at:

City of Chattanooga
101 East 11th Street
Room 101
Chattanooga, TN 37402

Attention: Accounts Payable

Alternatively, invoices may be emailed to acctspayable@chattanooga.gov.

6. RESPONSIBILITIES OF THE CITY

- A. The City shall provide Sensys with any “as built” drawings of applicable enforcement locations in electronic format (AutoCad) that are available to the City and shall consider for approval Sensys’ engineering drawings without unusual or unreasonable cost or delay.
- B. The City shall diligently prosecute citations in court at its own expense. Sensys shall, at its own expense, participate, whether in the form of providing expert testimony or otherwise, in any proceedings related to the operation and functionality of the System, challenging the use of the System or validity of its results and/or use of the U.S. Mails to deliver the citation.
- C. The City will cooperate with Sensys in obtaining electrical connections for the System and Sensys shall pay all costs associated with such connection, including securing electrical permits, and shall pay for all power required by the System.
- D. To allow for proper operation of the System the City shall provide Sensys with advance written notice of any modifications proposed to intersections or roadways, including traffic signal operations, after installation of a System which could reasonably be expected to affect the operation on the system. In the event any such intersection or roadway modification requires a material change to the

System, Sensys shall pay the costs reasonably incurred by Sensys to adapt the affected video monitoring system(s) or fixed speed enforcement unit(s) to make such video monitoring system(s) or fixed speed enforcement unit(s) compatible therewith. Notwithstanding the above, Sensys makes no guarantee that it will be able to make any such adaptation. In the event that Sensys is unable to adapt the affected System, then the Parties shall be relieved of any further obligations under this Agreement with respect only to the affected System. In addition, Sensys does not, and will not, make recommendations or otherwise manage the configuration or operation of the intersection traffic light system.

- E. During the Term, except as expressly permitted by this Agreement the City shall not use the System, or allow the System's use by a third party, without the prior written permission of Sensys. Such permission shall not be unreasonably withheld by Sensys.

7. LIMITED WARRANTY AND LIMITATION ON DAMAGES

- A. Sensys warrants that the System's functionality will conform in all material respects to the description of the System set forth on *Exhibit A*. This warranty is subject to the conditions of Section 7.C.
- B. EXCEPT AS SPECIFICALLY PROVIDED HEREIN, SENSYS HEREBY DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THE SERVICES AND SYSTEM, INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, NON-INTERFERENCE WITH ENJOYMENT, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE AND ALL WARRANTIES IMPLIED FROM ANY COURSE OF DEALING OR USAGE OF TRADE. CITY ACKNOWLEDGES THAT EXCEPT AS EXPRESSLY PROVIDED HEREIN NO OTHER WARRANTIES HAVE BEEN MADE TO CITY BY OR ON BEHALF OF SENSYS OR OTHERWISE FORM THE BASIS FOR THE BARGAIN BETWEEN THE PARTIES.
- C. The City acknowledges and agrees that:
 - (1) The Systems may not detect every violation;
 - (2) Since the System may flag as a violation conduct that is in fact not a violation, the output of the System will require review, analysis and approval by personnel appropriately qualified and authorized by the City under applicable law prior to the issuance of any citation;
 - (3) The System has no control over, and relies on the proper functioning of equipment for signal light changes, which equipment is provided by entities other than Sensys;
 - (4) The proper functioning of the System requires the City's full and complete compliance with the Systems' operating instructions, which it hereby agrees to do; and

- (5) Sensys shall not be responsible for the configuration and/or operation of any intersection traffic light systems and Sensys shall have no liability or obligations with respect thereto.

8. INDEMNIFICATION AND INSURANCE

- A. Sensys shall at all times comply with all federal, state and local laws, ordinances, rules and regulations and shall comply with the maintenance procedures and manufacturer recommendations for operation of the Systems which affect this Agreement, and shall indemnify and save harmless the City against any claims, arising from Sensys' violation of any such laws, ordinances and regulations or any claims arising from Sensys' performance of this Agreement, including as a result of the negligence or willful misconduct of Sensys, its officers and directors, agents, attorneys, and employees, but excluding any employees or agents of City.
- B. Sensys agrees to indemnify, defend, and hold harmless the City from any claim, suits, causes of action, losses, of damages (including the payment of reasonable attorneys' fees and costs) by a third party arising solely from either (a) a finding that the System infringes any validly issued United States patent or (b) Sensys' negligence, provided that such claim of damages is not attributable to (i) any act or omission set forth in Section 8.C or (ii) any third-party software or other third-party products used with, required for use of, or supplied under their own names with or as part of the System. If, as a final result of any litigation of which Sensys is obligated to indemnify, the use of the System by City is prevented, in whole or in part, by an injunction, Sensys' sole obligation to the City as a result of such injunction shall be, at Sensys' option, either to (i) replace such part as has been enjoined, or (ii) procure a license for Sensys or the City to use same, or (iii) remove same and terminate this Agreement at no additional cost to the City.
- C. Notwithstanding anything in this Agreement to the contrary, Sensys assumes no obligation or liability for any claim of damages (including the payment of reasonable attorneys' fees) by a third party arising from or related to (i) any modification of the System made by the City, (ii) the negligence or intentional act of City (except to the extent that Sensys contemporaneously commits a negligent or intentional act and/or is at fault), (iii) the failure to function properly of any hardware, software or equipment of any kind used by, in or on behalf of the City (other than that supplied by Sensys), (iv) the review and analysis of the System data output by City personnel for citation preparation, or (v) the City's use and/or administration of any traffic signal.
- D. The rights of the City to seek indemnification under Section 8.B shall be conditioned upon (i) the City notifying Sensys within a reasonable time after receipt of the claim or action for which indemnification is sought (but the failure to do so shall not relieve Sensys of its obligations under Section 8.B unless it is, and then only to the that extent it is materially prejudiced thereby) and (ii) the City's full cooperation with Sensys in the settlement or defense of such claim or action at no cost to the City. The City agrees not to charge Sensys for the

reasonable time of the City's personnel engaged in such cooperation. Such cooperation shall include, but not be limited to, the City providing access for, and permission to, Sensys for the purpose of the replacement of such part or parts of Systems as Sensys may deem necessary or desirable. The City may participate in the defense of any indemnified matter through counsel of its own choice and at its own expense provided that Sensys shall remain in, and responsible for, control of the matter. This Section 8 states the entire liability and obligation and the exclusive remedy of the City with respect to any actions or claims (i) of alleged infringement relating to or arising out of the subject matter of this Agreement or (ii) otherwise the subject of this paragraph.

- E. Sensys shall maintain the following minimum scope and limits of insurance
- (1) Comprehensive general liability insurance including but not limited to coverage for bodily injury, property damage, premises and operations, products/completed operations, personal and advertising injury, and contractual liability, with a combined single limit of \$1 million per occurrence, with an aggregate liability per occurrence of \$2 million. Such insurance shall include the City, its officers, directors, employees, and elected officials as additional insured for liability arising from Contractor's operation.
 - (2) Workers Compensation as required by applicable state law; and
 - (3) Comprehensive Automobile Liability Insurance for all owned, non-owned and hired automobiles and other vehicles used by Sensys with a minimum \$1 million per occurrence combined single limit bodily injury and property damage.
- F. The City, its elected officials, officers, employees, agents and representatives, shall be named as additional insured on the comprehensive general liability policies provided by Sensys under this Agreement. Sensys shall require any subcontractors doing work under this Agreement to provide and maintain the same insurance, which insurance shall also name the City and its officers, employees, and authorized volunteers as additional insured.
- G. Certificates showing Sensys is carrying the above described insurance, and evidencing the additional insured status specified above, shall be furnished to the City's Director of General Services with a copy to the City Attorney within thirty (30) calendar days after the date on which this Agreement is made. Such certificates shall show that the City shall be notified of all cancellations or modifications of such insurance policies. Sensys shall forthwith obtain substitute insurance in the event of a cancellation.
- H. All insurance required by express provision of this Agreement shall be carried by an insurance company with an A.M. Best rating of "A" or better that is licensed to do business in the State of Tennessee and shall name as additional insured the

City, its elected officials, officers, employees, agents and representatives. Sensys will furnish City with Certificates of Insurance and applicable endorsements for all such policies promptly upon receipt of them. Sensys may effect for its own account insurance not required under this Agreement.

9. **CHANGE ORDERS OR ADDITIONAL SERVICES.** Changes to Services and additional Systems may be added to this Agreement by mutual consent of the Parties in writing as an addendum to this Agreement.

10. **CONFIDENTIAL AND PROPRIETARY INFORMATION; PUBLIC RECORDS LAW COMPLIANCE.**

A. The Parties acknowledge and agree that they shall comply with the public records disclosure provisions of Tenn. Code Ann. § 10-7-503, or any successor provision. In the event of a public records request, Sensys agrees to fully cooperate in the provision of any records which are in its possession, provided that Sensys shall have the right, directly or through the City, to invoice the party making the public records request for its costs to the same extent that the City could if it were in possession of the requested records.

B. Sensys agrees that:

(1) All information obtained by Sensys through operation of the Systems shall be made available to the City at any time during Sensys' normal business hours, excluding Proprietary Information not reasonably necessary for the prosecution of citations or fulfillment of the City's obligations under this Agreement.

(2) It shall not use any information acquired from the performance of the Services contemplated in this Agreement, including without limitation, information with respect to any violations, violators, information obtained from recorded images or information concerning the City's law enforcement activities for any purpose other than for the benefit of the City.

C. No information given by Sensys to the City will be of a confidential nature, unless specifically designated in writing as "Proprietary Information" and expressly exempt from public records disclosures required by Tenn. Code Ann. § 10-7-503, or any successor provision.

D. As used in this Agreement, the term "**Proprietary Information**" shall mean all trade secrets or confidential or proprietary information designated as such by Sensys, whether letter or by the use of an appropriate proprietary stamp or legend, prior to or at the time any such trade secret or confidential or proprietary information is disclosed by Sensys to the City. In addition, the term "**Proprietary Information**" shall be deemed to include: (a) any notes, analyses, compilations, studies, interpretations, memoranda or other documents prepared by

the Recipient which contain, reflect or are based upon, in whole or in part, any Proprietary Information furnished to the Recipient.

- E. The City shall use the Proprietary Information only for the purpose of fulfilling its duties hereunder (the “**Purpose**”) and such Proprietary Information shall not be used for any other purpose without the prior written consent of Sensys. “**Purpose**” shall be deemed to not include any disclosure of the Proprietary Information to any person or entity. The City shall hold in confidence, and shall not disclose to any person or entity, any Proprietary Information nor exploit such Proprietary Information for its own benefit or the benefit of another without the prior written consent of Sensys.
- F. Notwithstanding anything contained in this Agreement to the contrary, this Agreement shall not prohibit the City from disclosing Proprietary Information to the extent required in order for the City to comply with applicable laws and regulations, provided that the City provides prior written notice of such required disclosure to Sensys.

11. AUDIT PROVISION.

- A. The City or its assign may audit all financial and related records (including digital) associated with the terms of the Agreement including timesheets, reimbursable out of pocket expenses, materials, goods, and equipment claimed by Sensys. The City may further audit any Sensys records to conduct performance audits (to identify waste and abuse or to determine efficiency and effectiveness of the Agreement) or to identify conflicts of interest.
- B. Sensys shall at all times during the term of the Agreement and for a period of five years after the end of this Agreement, keep and maintain all records auditable pursuant to Section 11.A or 11.D of this Agreement. All such records shall be maintained in accordance with best business practices and financial records shall be maintained in accordance with accounting principles consistently applied. Sensys shall at its own expense make such records available for inspection and audit (including copies and extracts of records as required) by the City during normal business hours with at least forty-eight (48) business hours advanced written notice.
- C. Sensys agrees to cooperate fully with any audit which is conducted by the City or its assign, including the provision of files in electronic format if requested by the City.
- D. The obligations of this Section shall be explicitly included in any subcontracts or agreements formed between Sensys and any subcontractors or suppliers of goods or services to the extent that those subcontracts or agreements relate to fulfillment of the Sensys’ obligations to the City.
- E. Costs of any audits conducted under the authority of this section and not addressed elsewhere will be borne by the City unless the audit identifies

significant findings that would benefit the City. Sensys shall reimburse the City for the total costs of an audit that shows that the City has overpaid Sensys by more than 5%. The City shall not retain any third party auditor whose compensation is based, in whole or in part, on discovery of facts that would benefit the City.

- F. This Section shall not be construed to limit, revoke, or abridge any other rights, powers, or obligations relating to audit which the City may have by Federal, State, or Municipal law, whether those rights, powers, or obligations are express or implied.

12. INDEPENDENT CONTRACTOR; NO AGENCY.

- A. It is understood that Sensys is an independent contractor and not an agent or employee of the City for any purpose including, but not limited to, federal tax and other state and federal law purposes. Sensys assumes responsibility for payment of all federal, state and local taxes imposed or required of Sensys under unemployment insurance, Social Security and income tax laws. Sensys shall be solely responsible for any worker's compensation insurance required by law and shall provide the City with proof of insurance upon demand. The Parties agree that the City shall not:
- (1) Pay dues, licenses or membership fees for Sensys;
 - (2) Require attendance by Sensys, except as otherwise specified herein;
 - (3) Control the method, manner or means of performing Services under this Agreement, except as otherwise specified herein; or
 - (4) Restrict or prevent Sensys from working for any other party;
 - (5) Be responsible for the payment of any tax, license, fee or payment owed by Sensys.
- B. Neither Party has the right or the power to enter into any contract or commitment on behalf of the other Party, including entering into agreements with third parties, exercising incidents of ownership with respect to property owned by the Party or executing contracts binding upon the other Party.
- C. Sensys is an independent contractor providing services to the City and the employees, agents and servants of Sensys shall in no event be considered to be the employees, agents, or servants of the City. Except as expressly provided herein, this Agreement is not intended to create an agency relationship between Sensys and the City.

13. NOTICES.

- A. Any notices or demands which under the terms of this Agreement or under any statute must or may be given or made by Sensys or City shall be in writing and shall be given or made by personal service, telegram, first class mail, FedEx, or by certified or registered mail to the Parties at the following address:

CITY

City of Chattanooga
100 East 11th Street
Suite 200
Chattanooga, TN 37402
Attn: City Attorney

CONTRACTOR

Sensys America, Inc.
80 SW 8th St., 20th Floor
Miami, Florida 33130
Attn: Carlos Lofstedt

- B. Except as otherwise specified, all notices, payments and reports hereunder shall be deemed given and in effect as of the date of mailing or transmission, as the case may be, when sent by next day delivery or courier service, postage pre-paid, or three days after the date of mailing when sent by first class mail, postage pre-paid, addressed in all such cases to the Parties as set forth in the preamble to this Agreement directed in each case to the President of Sensys at the address in the preamble or the Chief of Police of the City at the address in the preamble, or to such other addresses as the Parties may from time to time give written notice of as herein provided.
14. **NONDISCRIMINATION.** Sensys hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Agreement or in the employment practices of Sensys on the grounds of handicap and/or disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. Contractor shall, upon request, show proof of compliance with this provision.
15. **ASSIGNMENT.** Except as specifically provided in this Agreement, neither Party may assign, or delegate performance of its obligations under, this Agreement, without the express written consent of the other Party, except that Sensys may assign or otherwise encumber this Agreement, the License and the Lease for the purpose of obtaining financing; *provided, however,* that this Agreement may be assigned to any Person that acquires all or substantially all of Sensys' assets in one transaction.
16. **AMENDMENT AND MODIFICATION.** This Agreement may be modified or amended from time to time by the Parties, provided, however, that no modification or amendment hereto shall be effective unless it is stated in writing, specifically refers to this Agreement and is executed on behalf of the Party against whom enforcement of such modification or amendment is sought.
17. **NON WAIVER.** The failure of either Party to require performance of any provision of this Agreement shall not affect the right to subsequently require the performance of such provision or any other provision of this Agreement. The waiver of either Party of a breach of any provision shall not be taken or held to be a waiver of any subsequent

breach of that provision or any subsequent breach of any other provision of this Agreement.

18. **FORCE MAJEURE.** Neither Party shall be liable to the other for failure or delay in meeting any obligations hereunder which arises in whole or in part from causes which are unforeseen by, or beyond the control of, such Party, including without limitation, acts of God or of a public enemy, acts of terrorism, acts of the Government (other than the City in the case of the City) in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, acts or omissions of (i) non-subcontractor third-parties and (ii) third party equipment, telecommunications and software suppliers, and unusually severe weather. When any such circumstance(s) exist, Sensys shall have the right, in its sole discretion, to allocate its available production, deliveries, services, supplies and other resources among any and all buyers (whether or not including the City), as well as among departments and affiliates of Sensys, without any liability to the City.

19. DISPUTE RESOLUTION AND REMEDIES.

- A. All disputes arising out of or in connection with the Agreement shall be attempted to be settled through good-faith negotiation between the City and Sensys, followed if necessary within thirty (30) calendar days by professionally-assisted mediation. Any mediation shall take place in the City of Chattanooga, and any mediator so designated must be acceptable to each Party. The mediation will be conducted as specified by the mediator and agreed upon by the Parties. The Parties agree to discuss their differences in good faith and to attempt, with the assistance of the mediator, to reach an amicable resolution of the dispute. The mediation will be treated as a settlement discussion and therefore will be confidential. The mediator may not testify for either Party in any later proceeding relating to the dispute. No recording or transcript shall be made of the mediation proceedings. Each Party will bear its own costs in the mediation. The fees and expenses of the mediator will be shared equally by the Parties.
- B. Unless the Parties agree otherwise, mediation shall be a condition precedent to the exercise of any legal remedy other than a proceeding seeking an immediate injunction or restraining order to protect the rights of a Party pending litigation. Notwithstanding the issuance of an injunction or restraining order or the refusal of a court to issue such an order, the dispute shall continue to be subject to mediation. Failing resolution through negotiation or mediation, each Party to this Agreement shall be entitled to seek enforcement of this Agreement against the other Party and shall have all remedies available at law or in equity, including the remedy of specific performance and all forms of injunctive relief.

20. **GOVERNING LAW; JURISDICTION; VENUE.** The Parties agree that this Agreement is consummated, entered into, and delivered in Hamilton County, Tennessee. Notwithstanding conflicts of laws provisions, this Agreement has been and is to be governed by, construed, interpreted and enforced in accordance with the laws of the State of Tennessee. In the event that any litigation is commenced by either Party to enforce this

Agreement, the action will be filed and litigated, if necessary, solely and exclusively in a State or Federal court of competent jurisdiction located in Hamilton County, Tennessee. The Parties waive any and all rights to have this action brought in any place other than Hamilton County, Tennessee, under applicable venue laws. The Parties hereby irrevocably waive any and all rights to have this action brought in any place other those stated herein. The Parties hereby irrevocably waive any claim that any such action has been brought in an inconvenient forum.

21. **ATTORNEY'S FEES AND COSTS.** In the event suit is commenced to enforce this Agreement, costs of said suit including reasonable attorney's fees in all proceedings, trials, investigations, appearances, appeals and in any bankruptcy proceeding or administrative proceeding shall be paid to the prevailing Party by the other Party.

22. **GENERAL AND MISCELLANEOUS.**

- A. Time shall be of the essence of this Agreement.
- B. In this Agreement, wherefore the singular and masculine are used, they shall be construed as if the plural or the feminine or the neuter had been used, where the context or the party or parties so requires, and the rest of the sentence shall be construed as if the grammatical and the terminological changes thereby rendered necessary had been made.
- C. Paragraph headings are provided as an organizational convenience and are not meant to be construed as material provisions of this Agreement.
- D. Preparation of this Agreement has been a joint effort of the Parties and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.
- E. This Agreement may be executed in counterparts, each constituting a duplicate original, but such counterparts shall constitute one and the same Agreement.
- F. The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the Parties to this Agreement from and after the Effective Date.
- G. Each Party to this Agreement agrees to do, execute, acknowledge, and deliver or cause to be done, executed, acknowledged and delivered, all such further acts, and assurances in a manner and to the degree allowed by law, as shall be reasonably requested by the other Party in order to carry out the intent of and give effect to this Agreement. Without in any manner limiting the specific rights and obligations set forth in this Agreement or illegally limiting or infringing upon the governmental authority of the City, the Parties declare their intention to cooperate with each other in effecting the purposes of this Agreement, and to coordinate the performance of their respective obligations under the terms of this Agreement.

- H. Except as set forth in this Agreement and the Exhibits hereto, no representation, statement, understanding or agreement, whether written or oral, has been made and there has been no reliance on anything done, said or any assumption in law or fact with respect to this Agreement for the duration, termination or renewal of this Agreement other than as expressly set forth in this Agreement and there has been no reliance upon anything so done or said that in any way tends to change or modify the terms or subject matter of this Agreement or to prevent this Agreement from becoming effective.
 - I. This Agreement supersedes any agreements and understandings, whether written or oral, entered into by the Parties hereto prior to the effective date of this Agreement.
23. **SURVIVABILITY.** Termination or expiration of this Agreement shall not relieve either Party of their respective obligations, which are expressly noted to survive termination or expiration or under the following sections which shall survive termination and expiration: Sections 4.E, 5, 7.B, 7.C, 8, 10, 19, 20,21, and 22. Sections 4, 7, 8 and 9 (but only to the extent Section 9 corresponds to Sections of the Agreement which survive) of the License and Sections 3, 4, 5, 6, 7 and 9 (but only to the extent Section 9 corresponds to Sections of the Agreement which survive) of the Lease shall survive any expiration or termination of this Agreement, the License or the Lease.
24. **SEVERABILITY.** If any covenant or provision of this Agreement is, or is determined to be, invalid, illegal or unenforceable by a court of competent jurisdiction, then such covenant or provision will be ineffective only to the extent of such prohibition or invalidity. All remaining covenants and provisions of this Agreement shall nevertheless remain in full force and effect, and no covenant or provision of this Agreement shall be deemed to be dependent upon any covenant or provision so determined to be invalid, illegal or unenforceable unless otherwise expressly provided for herein. The invalidity of any provision of this Agreement or any covenant herein contained on the part of any Party shall not affect the validity of any other provision or covenant hereof or herein contained which shall remain in full force and effect.
25. **CHANGES IN STATE LAW.** Pursuant to Tenn. Code Ann. § 55-8-198, the Parties agree that this contract must conform to any revision in Tennessee law regarding unmanned traffic enforcement cameras. To the extent that there is a change in Tennessee law, the Parties agree to amend this contract to comply therewith except to the extent that either Party believes that the change in the law amounts to a substantial impairment of the contract within the meaning of the Tennessee Constitution, the United States Constitution and/or applicable case law.

Each Party acknowledges that it has read this Agreement and understands the terms and conditions herein. Further, the Parties have caused this Agreement to be executed on its behalf by the authorized officer whose signature appears below under its name, to be effective as of the date written above.

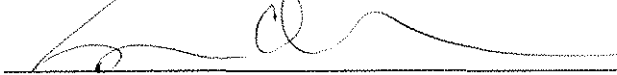
IN WITNESS WHEREOF, the Parties hereto have set their hands by their duly authorized representatives as of the day and year first above written.

SENSYS AMERICA, INC.



Carlos Lofstedt
President and CEO

CHATTANOOGA, TN



Steve Leach
Administrator, Public Works

EXHIBIT A SERVICES

Sensys shall provide the City with the Systems. In connection with furnishing the Systems, Sensys shall provide the following, each of which is more fully described below:

1. SITE INSTALLATION PLANNING; DESIGN AND EQUIPMENT INSTALLATION
2. USER TRAINING AND SUPPORT
3. NOTICE OF VIOLATION PREPARATION AND PROCESSING SERVICES
4. MAINTENANCE AND SUPPORT
5. PUBLIC EDUCATION CAMPAIGN
6. EXPERT WITNESS TESTIMONY AND COURT TRAINING
7. VIOLATION REVIEW
8. REPORTING
9. MEETINGS

1. SITE INSTALLATION PLANNING, DESIGN AND EQUIPMENT INSTALLATION

A. The Systems.

- (1) Sensys will install up to forty (40) Systems (which shall remain property of Sensys), monitoring such locations as the City and Sensys shall mutually agree. Up to forty (40) additional Systems may be added upon mutual written agreement of the Parties. Each System shall comprise equipment capable of monitoring red light and/or speeding violations at a single approach to an intersection for up to four (4) lanes of traffic. Sensys will install new Systems upon mutual agreement of the Parties.
- (2) The City hereby orders the following Systems, each to be installed as promptly as possible in accordance with the City's instructions:
 - (a) Four (4) Mobile Speed Safety Systems, including two (2) tripod mounts and four (4) vehicle mounts.*
 - (b) Three (3) Fixed (pole mounted) Speed Safety Systems.
 - (c) Four (4) Red Light Safety Systems with Speed on Green Capabilities (with visible flash).†
- (3) Any System used for the purpose of mobile speed enforcement shall include either (a) an in-vehicle mounting system together with installation, wiring, and other required hardware, or (b) a tripod mount together with all cabling, and other required hardware. All fixed systems shall include

* The cost of the tripods, vehicle mounts and associated hardware is nominal and included in the lease of the Systems.

† The Red Light Safety Systems all have Speed on Green functionality as a core feature. The additional cost for the enhanced use is covered by the "per paid citation" fee specified in 5.A(2) of the Agreement.

all poles, cabling, power, and all other hardware necessary for the installation and operation of such Systems at no additional charge.

- (4) Sensys will provide the City with up to four (4) computers, and, if necessary, telecommunications equipment and Software that shall have the capability of transferring images from the roadside to the City's Police Department processing facility;
- (5) Nothing in this Section or Agreement shall obligate the City to purchase a minimum number of Systems or lease any additional Systems other than those listed in 1.A(2).

B. Substitution or Addition of Location. If Sensys or the City reasonably determines that one (1) or more enforcement locations selected for installation of a System is for any reason not appropriate for the System (and such determination is made at least fifteen (15) days prior to the commencement of installation of the System at any such intersection), then alternate intersection(s) may be substituted by written consent of the Parties.

C. Timeframe for Installation of the System. Sensys shall install and activate the Systems in accordance with an Implementation Plan to be mutually agreed to by Sensys and the City, which installation shall, at minimum, conclude within sixty (60) days after all necessary permits and approvals are received by Sensys. Sensys shall use reasonable commercial efforts to install the System in accordance with the schedule set forth in the Implementation Plan. The City agrees that the estimated dates of installation and activation of the System set forth in the Implementation Plan are subject to delay based on conditions beyond the control of Sensys and are not guaranteed.

D. Installation/Ownership of the System. Sensys shall procure, install and provide support of Equipment at each of the agreed upon locations. Unless otherwise agreed to between Sensys and the City, all components for the System will remain the property of Sensys.

E. Installation

- (1) Sensys shall submit plans and specifications to the City for review and approval, which review and approval will not be unreasonably withheld, conditioned or delayed. These plans and specifications shall be signed and stamped as approved by a professional engineer licensed to practice in the State in which the City is located if the same is required by law. Sensys shall provide at least three (3) sets of drawings of the wiring for the System circuitry.
- (2) All cameras and other equipment shall be enclosed in lockable, weather and vandal-resistant housing. All wiring shall be internal to equipment (not exposed) and if commercially reasonable and if capacity exists, underground in existing traffic signal conduits, except where required to

directly interface with the traffic signals and electrical service. Separate conduits or overhead wiring may be used by Sensys if existing conduit(s) are at capacity. If existing conduits are used, the City will not unreasonably withhold, condition or delay consent to such use.

(3) The System may be mounted on or utilize support of existing traffic signal poles, arms or other intersection structures where possible, subject to City review and approval, such review and approval not to be unreasonably withheld, conditioned or delayed.

(4) The System poles, foundations and new infrastructure, as required, shall conform to applicable laws, rules and ordinances.

F. Restoration of Enforcement Locations. Upon termination or expiration of the Agreement, Sensys shall remove the System and restore and repair, if necessary, the affected public facilities including returning the intersections to their original condition; provided, however, that Sensys shall not be required to remove any conduit, in-ground fixture, underground wiring or other infrastructure that will require excavation or demolition. All costs incurred by Sensys thereby will be the responsibility of Sensys.

G. Compliance with Law. Sensys shall design and install the System in compliance with all currently existing federal, Tennessee and municipal laws, rules, regulations and ordinances. Sensys covenants and agrees that its Red Light Safety Systems shall, at all times, comply with all applicable laws, regulations, ordinances, rules and orders ("Legal Requirements"). Sensys shall continuously monitor the status of such Legal Requirements to ensure continuous compliance. In the event of any change in the Legal Requirements, Sensys shall modify or replace (at its sole cost) all or any portion of its non-compliant Red Light Safety Systems. Any such modification shall be effected by Sensys in a reasonable period of time (not to exceed 90 days for modification or 180 days for complete system replacement) and Sensys' failure to effect such modification or replacement in a timely manner shall be grounds for the City to terminate this Agreement for cause. Any such termination shall not relieve Sensys of its obligation to restore and/or repair each site to its original condition.

2. **PRODUCTION OF VIDEO FILES.** Sensys shall produce digital video files of each red light violation, capable of identifying vehicles traveling through the intersection during the red light phase.

3. **TRAINING OF CITY PERSONNEL.** After System installation, Sensys shall provide up to eight (8) hours of training for up to ten (10) persons at two (2) sessions at the City's facilities to acquaint City personnel with System operation. Training shall consist of instructional and operational training as well as hands-on equipment exercises with an instructor. All necessary training materials and documentation will be provided by Sensys at Sensys' sole expense. Sensys shall make all such training services available to the City prior to the end of the thirty (30) day period following the Installation Date. If

the City requests additional courses or training, Sensys shall provide these on a cost reimbursement basis.

4. CITATION PREPARATION AND PROCESSING SERVICES

A. Citation Preparation and Processing. Sensys shall perform the initial review of all data generated at the roadside, process and format violations utilizing a computerized traffic citation program that shall store all information required for citation processing by Tennessee and City law (“**Ticket Agent**”), and transfer the citations to the Police Department’s computer for review and decision on whether or not to issue a citation. If Sensys is permitted by applicable law or regulation to do so, Sensys shall also review all Department of Motor Vehicles (“DMV”) information and print and mail citation forms. Sensys shall pay all mailing and postage costs, and such other miscellaneous costs and expenses as may be reasonably necessary to issue a citation and deliver it by U.S. mail. To the extent required by applicable law, Sensys shall obtain a certification of mailing issued by the Post Office. Notwithstanding anything to the contrary in the foregoing provisions of this Section 4.A, Sensys will not process nor support any citations not captured by the System and/or approved by the City.

- (1) Mailing of Citations. Sensys shall mail an original color Citation and one black and white reminder notice. Citations shall be mailed to the violator as soon as is reasonably practicable, and in no event longer than five (5) business days after being approved by the City and Sensys has been notified of such approval. Up to three (3) reminder notices will be mailed in a time frame consistent with law and the City’s direction. The form of citation shall be subject to the approval of the City, which approval may not be unreasonably delayed, conditioned or withheld. All notices of violation or citations shall have a Chattanooga, Tennessee return address, and all responses and payments shall be directed to be mailed to a Chattanooga, Tennessee address.
- (2) Cooperation With Police and the Courts. Sensys shall be responsible for, and pay for the cost of issuing and the mailing (via first class mail) Notices of Violation in accordance with applicable law. Sensys shall coordinate with the City and the Courts, and shall comply with the applicable law regarding the mailing and other requirements necessary for the issuance of Notices of Violation. All citations shall be reviewed and approved by the City’s Police Department prior to mailing. In addition, Sensys will cooperate with the Courts to set up the necessary communications and procedures that will enable Sensys to send delinquent notices to those registered owners/drivers for whom such notices are appropriate.
- (3) Preparation of Evidence Packages. Sensys shall prepare evidence packages in such form as may be reasonably agreed upon to enable the

City to enforce its citations in court, and in a form that is admissible in any state court in accordance with the Tennessee Rules of Evidence.

- B. Access to Drivers License Information. Sensys shall maintain the ability to access the driver's license information and the registered owner residence address for all US registered vehicles, and the per-request fee for information, if any, shall be paid by Sensys. If Sensys is unable to access such information, Sensys shall provide the make and license plate number of each violator to the City, which will obtain and input the information into the System, or provide such information to Sensys, within a reasonable period of time. Any costs incurred by the City in obtaining this information (including personnel costs) shall be reimbursed by Sensys.
- C. Numbering System. Sensys, in coordination with and in a manner acceptable to the City, shall develop and implement an independent numbering system for automated red light citations.
- D. Transmission of Information. Sensys shall make all citation information available via an electronic file using comma separated value files on a secure FTP site. Sensys shall maintain a documented chain of custody for all electronically transmitted information while the information is under Sensys' control. Sensys agrees to take measures to protect any confidential or protected information which comes into Sensys' possession.
- E. Customer Service. Sensys shall provide an automated customer service telephone number to the public. Customer Service Representatives will be available Monday through Friday, from 10:00 a.m. to 4:00 p.m. local time (of the City), excluding holidays, in order to schedule violation video viewing appointments for the Police Department and to answer basic questions regarding the City's program.

5. MAINTENANCE AND HOT SWAP

- A. Maintenance of System. Except as provided herein, Sensys shall Maintain the System (as such term is defined below); provided however, that Sensys shall not be responsible for any maintenance, repair or replacement required as a result of (i) the negligence or intentional act of the City, its employees, agents or independent contractors (other than Sensys) and/or (ii) any equipment or software not provided by Sensys. Sensys shall maintain a maintenance log that documents all service issues. To "Maintain the System" shall mean to keep or promptly return the System to a state of operation such that the System's functionality and operation conforms in all material respects to the description of the System set forth in this Exhibit. All problems shall be documented immediately and repairs commenced within twenty-four (24) hours of the time Sensys receives notice thereof. Sensys shall also install all software revisions for Systems and Ticket Agent as and when developed and made commercially available by Sensys.

- B. Equipment Checks. Sensys shall use commercially reasonable efforts to perform remote camera and PC equipment checks to confirm proper operation of computers, cameras and communications network. Routine in-field camera equipment inspection will be done as needed. The System shall have the capability of on-line monitoring of all cameras at each intersection.
- C. Hot Swap Units. Sensys shall maintain and if necessary deploy one (1) fully functional Mobile Speed System and one (1) fully functional Fixed System (which can perform, red light, speed on green and fixed speed services) in reserve to support any System that is not functioning for any reason (casualty, malfunction, calibration, etc.).

6. PUBLIC EDUCATION CAMPAIGN

- A. Public Awareness Program. Sensys shall assist the City with a Public Awareness Program. Such assistance shall consist of:
 - (1) Paying for all signage required by law or as otherwise required by resolution of the City Council;
 - (2) Reasonable assistance for a media event to launch the community education program;
 - (3) Preparing, publishing and printing a brochure for distribution;
 - (4) A reasonable amount of training for the City's Director of Media Relations and/or other designee(s); and
 - (5) Providing a toll-free customer service hotline which shall be staffed sufficiently during all regular business hours.

7. EXPERT WITNESS TESTIMONY AND COURT TRAINING

- A. Expert Witness Testimony. Sensys shall provide expert witness testimony at its sole expense, as reasonably necessary, to testify regarding the accuracy and technical operation of the System as necessary for the prosecution of violations or for court challenges to the operation of the System. The City anticipates and Sensys acknowledges that there will likely be a demand for expert witness testimony (1-2 times per month) during the first twelve (12) months of the Initial Term.
- B. Court Training. Sensys shall conduct a one-day workshop-orientation session for City Court judges (and/or their designees), hearing officers, other appropriate court officials and the City Attorney or his/her designee.

8. REPORTING

A. Monthly Report. Sensys shall submit to the City a Monthly Report on project results within twenty (20) days after the end of each calendar month. The Monthly Report shall include information for each violation recorded by the System as well as the following items:

- (1) Number of violations recorded by type;
- (2) Number of non-issued violations by type;
- (3) Breakdown of reasons for non-issuance or rejection, including whether it was equipment error, user/operator error or otherwise;
- (4) Number of citations issued by type;
- (5) Court hearings scheduled and held;
- (6) Results of court hearings;
- (7) Number of calls for information;
- (8) Number of violation video viewing appointments scheduled; and
- (9) A financial summary, which includes detail on credit card payments, daily deposits, lock box payments, NSF transactions and payments made.

B. Additional Reports or Information. Sensys agrees to provide at no additional charge any reports and information requested by the City that are reasonably necessary for the City to evaluate the effectiveness of the System, respond to press inquiries, evaluate the effectiveness of the City's photo enforcement program or to respond to report requests from the City's legislative, executive or judicial officials. Additional reports which the City may request shall include financial, technical, historical, violation, engineering or others as required.

C. Database. Sensys shall maintain a database with the following information per violation:

- (1) Location, date and time;
- (2) Number of seconds of yellow traffic signal and speed of vehicle;
- (3) Type of violation;
- (4) Vehicle description including license plate state and number;
- (5) Applicable vehicle code section violated (if available to Sensys);

- (6) Citation prepared or reason for not preparing citation (if available to Sensys);
- (7) Registered vehicle owner's name and address, driver's license number and related information required to prepare citations where violation is made by a driver other than registered owner (if available to Sensys) (Affidavit of Non-Liability);
- (8) Status of citation (outstanding, cancelled, reissued, paid, bail forfeited, traffic school, warrants issued, etc.) (if available to Sensys);
- (9) Sensys shall maintain at its sole expense all records, including, but not limited to all infraction video recordings, which it generates or receives as a result of the performance of services pursuant to the Agreement for the period of time required by the City, and otherwise in accordance with Tennessee Statutes and City ordinances, as same may be amended from time to time. Upon receipt of a request from the City for a copy of any record being maintained by Sensys, Sensys shall provide the requested record to the City within a reasonable time following such request, but in no event later than seven (7) days following the date the request is received by Sensys. Sensys shall be responsible for all costs associated with the providing the requested records to the City;
- (10) Accounting records necessary to support Sensys invoices shall be kept for three (3) years from issuance date, and shall be available to the City or its authorized representative at mutually convenient times; and
- (11) All records which are requested by or otherwise sent to the City pursuant to this section shall be sent in electronic format, if reasonably practicable.

9. Additional Services (if requested by the City in writing):

- A. Payment Processing Services. Sensys shall use reasonable commercial efforts to receive citation fees from violators, deposit amounts collected into an appropriate bank account, provide accounting records to the City, and remit the amounts received as instructed by the City. In addition, Sensys will provide an online payment portal for violators. Sensys shall have the right to charge the violator a convenience fee (not to exceed \$2.50) for internet or telephonic payments. All violations which remain unpaid and/or uncollected by Sensys for a period of six (6) months shall be returned to the City, and Sensys shall not invoice the City for citations which are subsequently paid under any subsequent collection method, provided, however, that if the collection rate for violations so returned exceeds 2%, the City and Sensys agree to negotiate in good faith a modification to this Section 9.A to take into account the increased collection rate.
- B. Intersection Assessment Program. Sensys will provide all equipment, including cameras, recording devices, detectors, and technical assistance to the City in order for the City to generate a video-based analysis of an

intersection designed to evaluate the frequency of red-light violations for each approach at the targeted intersection. Sensys shall provide the type of media and for the duration required by the City to comply with Tenn. Code Ann. § 55-8-198(g), but not to exceed two (2) weeks for each intersection. There is no charge for the initial twenty (20) intersection approaches for which Sensys provides equipment pursuant to this Agreement.

- C. Sensys will install optional Video Monitoring Systems (VMS) in connection with any System at the request of the City. Such VMS shall include a IP addressable digital video camera inside a secure virtual private network, video streaming to the police department via secure, encrypted network to a supplied digital video recording device capable of storing at least sixty (60) days of video. Pricing for this option will be negotiated based on the City's selection of options (such as zoom cameras, PTZ cameras, license plate recognition and the like).
- D. All citation data will be kept for a period of time consistent with the state of Tennessee's requirements for public records.

EXHIBIT B
LICENSE AGREEMENT FOR RED LIGHT SAFETY SYSTEM SOFTWARE

This LICENSE AGREEMENT (the "License") is part of an agreement (the "Agreement") (to which a copy of this License is attached as Exhibit B) between the City named in the Agreement and Sensys America, Inc. ("Sensys") for the Sensys software product identified above, which includes computer software and may include associated media, printed materials, and "online" or electronic documentation (the "SOFTWARE PRODUCT"). The SOFTWARE PRODUCT also includes any updates and supplements to the original SOFTWARE PRODUCT provided to the City by Sensys. Any software provided along with the SOFTWARE PRODUCT that is associated with a separate license agreement is licensed to the City under the terms of that license agreement. By execution of the Agreement, the City has agreed to be bound by the terms of this License. Such agreement by the City is an express condition to its ability to use the SOFTWARE PRODUCT.

1. GRANT OF LICENSE. The SOFTWARE PRODUCT is licensed, not sold. This License grants the City only the following rights: The City may use those copies of the SOFTWARE PRODUCT as installed by Sensys on any City network ("Network"). A license for the SOFTWARE PRODUCT may not be shared or used concurrently on different Networks.

2. DESCRIPTION OF OTHER RIGHTS AND LIMITATIONS. The City may not reverse engineer, decompile, or disassemble the SOFTWARE PRODUCT, except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation. The SOFTWARE PRODUCT is licensed as a single product. Its component parts may not be separated for use on more than one computer unless so installed by Sensys. The City may not rent, lease, transfer or lend the SOFTWARE PRODUCT. This License does not grant the City any rights in connection with any trademarks or service marks of Sensys. Without prejudice to any other rights, Sensys may terminate this License if the City fails to comply with the terms and conditions of this License. In such event, the City must permit Sensys reasonable access to its computer system for the purpose of removing all copies of the SOFTWARE PRODUCT or deliver to Sensys or destroy all copies of the SOFTWARE PRODUCT and all of its component parts.

3. SUPPORT SERVICES AND UPGRADES. Sensys may provide the City with support services related to the SOFTWARE PRODUCT ("Support Services"). Use of Support Services is governed by the Agreement. Any supplemental software code provided to the City as part of the Support Services shall be considered part of the SOFTWARE PRODUCT and subject to the terms and conditions of this License. With respect to technical information the City provides to Sensys as part of the Support Services, Sensys may use such information for its business purposes, including for product support and development. In particular, Sensys will not utilize such technical information in a form that personally identifies the City or any motor vehicle, tag or person. If the SOFTWARE PRODUCT is labeled as an upgrade, the City must be properly licensed to use a product identified by Sensys as being eligible for the upgrade in order to use the SOFTWARE PRODUCT. A SOFTWARE PRODUCT labeled as an upgrade replaces and/or supplements the product that formed the basis for the City's eligibility for the upgrade. The City may use the resulting upgraded product only in accordance with the terms of this License. If the

SOFTWARE PRODUCT is an upgrade of a component of a package of software programs that the City licensed as a single product, the SOFTWARE PRODUCT may be used and transferred only as part of that single product package and may not be separated for use on more than one computer.

4. COPYRIGHT. All title and intellectual property rights in and to the SOFTWARE PRODUCT (including but not limited to any images, photographs, animations, video, audio, music, text, and “applets” incorporated into the SOFTWARE PRODUCT), the accompanying printed materials, and any copies of the SOFTWARE PRODUCT are owned by Sensys or its suppliers. As between the City and Sensys, all title and intellectual property rights in and to the images and information which may be generated through use of the SOFTWARE PRODUCT is the City’s property. All rights not expressly granted are reserved by Sensys.

5. DUAL-MEDIA SOFTWARE. The City may receive the SOFTWARE PRODUCT in more than one (1) medium. Regardless of the type or size of medium the City receives, the City may use only one (1) medium that is appropriate for its Network. The City may not use or install the other medium on another Network. The City may not loan, rent, lease, lend or otherwise transfer the other medium to another user.

6. BACKUP COPY. After installation of one (1) copy of the SOFTWARE PRODUCT pursuant to this License, the City may keep the original media on which the SOFTWARE PRODUCT was provided by Sensys solely for backup or archival purposes. If the original media is required to use the SOFTWARE PRODUCT on the COMPUTER, the City may make one (1) copy of the SOFTWARE PRODUCT solely for backup or archival purposes. Except as expressly provided in this License, the City may not otherwise make copies of the SOFTWARE PRODUCT or the printed materials accompanying the SOFTWARE PRODUCT.

7. COMPLIANCE WITH LAW AND EXPORT RESTRICTIONS. The City represents and agrees that it does not intend to and will not use, disseminate or transfer in any way the SOFTWARE PRODUCT in violation of any applicable law, rule or regulation of the United States, or any State of the United States or any foreign country of applicable jurisdiction. Without limiting the foregoing, the City agrees that it will not export or re-export the SOFTWARE PRODUCT to any country, person, entity or end user subject to U.S. export restrictions. The City specifically agrees not to export or re-export the SOFTWARE PRODUCT: (i) to any country to which the U.S. has embargoed or restricted the export of goods or services, which currently include, but are not necessarily limited to Cuba, Iran, Iraq, Libya, North Korea, Sudan and Syria, or to any national of any such country, wherever located, who intends to transmit or transport the products back to such country; (ii) to any end-user who the City knows or has reason to know will utilize the SOFTWARE PRODUCT or portion thereof in the design, development or production of nuclear, chemical or biological weapons; or (iii) to any end-user who has been prohibited from participating in U.S. export transactions by any federal agency of the U.S. government.

8. OTHER PROVISIONS. Sections 3, 4, 7, 10, 18, 19, 20, 21, and 23 of the Agreement are hereby incorporated by reference as if herein set forth in full.

EXHIBIT C
LEASE AGREEMENT FOR CAMERA ENFORCEMENT SYSTEMS

This LEASE AGREEMENT (the "Lease") is part of an agreement (the "Agreement") (to which a copy of this Lease is attached as Exhibit C) between the City named in the Agreement and Sensys America, Inc. The Parties hereto agree as follows:

1. LEASE. Sensys hereby leases to City and City hereby leases from Sensys, subject to the terms and conditions of this Lease, such items of System equipment (together with all attachments, replacements, parts, additions, substitutions, repairs, accessions and accessories incorporated therein and/or affixed thereto, the "Equipment") that City obtains possession, custody or control of pursuant to the Agreement.

2. USE AND LOCATION. The Equipment shall be used and operated by City only in connection with the operation of the System by qualified employees of City and in accordance with all applicable operating instructions, and applicable governmental laws, rules and regulations. City shall not part with control or possession of the Equipment without Sensys' prior written consent.

3. CONDITION. Sensys shall maintain the Equipment in good condition and working order in accordance with Section 5.A of Exhibit A. City shall not damage the Equipment or make any alterations, additions or improvements to the Equipment without Sensys' prior written consent unless such alterations, additions or improvements do not impair the commercial value or the originally intended function or use of the Equipment and are readily removable without causing material damage to such Equipment so as to return the Equipment to its original state, less ordinary wear and tear. Any alteration, addition or improvement not removed prior to the return of the Equipment shall without further action become the property of Sensys, provided, however, that any alterations, additions and improvements which would reduce the value of the Equipment must be removed prior to the return of such Equipment.

4. RETURN. Upon the expiration or earlier termination of the Agreement, City shall allow Sensys reasonable access to remove the Equipment at Sensys' expense.

5. OWNERSHIP, LIENS. The Equipment is and shall at all times be the property of Sensys, unless otherwise agreed to by the parties. City agrees to take all action necessary or reasonably requested by Sensys to ensure that the Equipment shall be and remain personal property. Nothing in this Lease, the Agreement or any Exhibit shall be construed as conveying to City any interest in the Equipment other than its interest as a lessee hereunder. If at any time during the term hereof, Sensys wishes to place on the Equipment labels, plates or other markings evidencing ownership, security or other interest therein, City shall allow Sensys reasonable access therefore and keep the same displayed on the Equipment.

6. NO CITY SUBLEASE; ASSIGNMENT. City shall not assign or in any way dispose or otherwise relinquish possession or control of all or part of its rights or obligations under this lease or enter into any sub-lease of all or any part of the equipment without the prior written consent of Sensys.

7. OTHER PROVISIONS. Sections 3, 4, 7, 10, 18, 19, 20, 21, and 23 of the Agreement are hereby incorporated by reference as if herein set forth in full.