

**RESOLUTION R-2018-23**

**A RESOLUTION APPROVING AN AGREEMENT BETWEEN OPTOTRAFFIC, LLC AND THE VILLAGE OF WINDHAM.**

WHEREAS, the Council of the Village of Windham has considered advisability of enacting legislation to impose civil liability upon the registered owners of vehicles for failure of an operator to strictly comply with posted speed limits and other traffic laws; and

WHEREAS, after consideration the Council of the Village of Windham enacted Chapter 307 of the Village Ordinances to establish such a civil liability law;

WHEREAS, to administer such a law the Council of the Village of Windham has determined it is necessary to enter into a contract with Optottraffic, LLC.

NOW, THEREFORE, BE IT RESOLVED, by the Council of the Village of Windham, two thirds of the members thereto elected concurring that:

Section 1: That an Agreement with Optottraffic, LLC providing for assistance in the administration of Chapter 307 of the Windham Codified Ordinances in substantial conformity with the Exhibit attached hereto, and marked for identification as Exhibit "A", is hereby approved, and the Mayor and the Fiscal Officer are authorized and directed to execute the Agreement on behalf of the Village of Windham.

Section 2: It is hereby found and determined that all actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal actions were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

First Reading August 24, 2018  
Second Reading September 25, 2018  
PASSED IN COUNCIL on Third Reading October 23, 2018.

Vote of Council:      Ayes: 6  
                                     Nays: 0

ATTEST:

APPROVED:

\_\_\_\_\_  
Fiscal Officer – Cheree Taylor

\_\_\_\_\_  
Deborah Blewitt, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Village Solicitor – Thomas Reitz

**SERVICE AGREEMENT BY AND  
BETWEEN VILLAGE OF WINDHAM  
AND OPTOTRAFFIC, LLC**

**This Service Agreement** (the "Agreement") is made and entered this \_\_\_\_\_ day of \_\_\_\_\_ 2018 (the "Effective Date"), by and between OPTOTRAFFIC, LLC, a Maryland Limited Liability Company with offices at 4600 Forbes Boulevard, Lanham, MD 20706 ("OPTOTRAFFIC"), and The Village of Windham, Ohio, 9083 North Main Street, Windham Ohio, 44288 ("CLIENT").

**Background:**

**Whereas**, OPTOTRAFFIC is in the business of providing automated traffic violation detection, imaging and administrative services to authorized municipalities and government agencies using OPTOTRAFFIC'S proprietary system (as more specifically described herein below, the "Services"); and

**Whereas**, CLIENT is an authorized municipality or government agency with a need for such Services; and

**Whereas**, CLIENT now desires to contract with OPTOTRAFFIC for the provision of such Services;

**NOW, THEREFORE**, for good and valuable consideration, the sufficiency of which is hereby acknowledged, CLIENT and OPTOTRAFFIC agree as follows:

**1. Services.** During the Term of this Agreement, and in consideration of the Fees specified in Schedule A OPTOTRAFFIC shall use reasonable commercial efforts to provide the Services to CLIENT in accordance with the terms and conditions of this Agreement. Services shall include the following:

- a) Detection and Recording of Potential Traffic Violations. OPTOTRAFFIC will make available to CLIENT certain traffic violation detection systems, which work in conjunction with a photographic, video, or electronic camera and may also include certain equipment provided by third parties, to measure the speed of vehicles or detect other traffic violations and produce photographs, video or digital images of vehicles potentially violating traffic laws, and which may include, but are not limited to, portable, mobile and or fixed site camera systems ("Monitoring System") to detect and record potential traffic violations at the service locations(s) selected by CLIENT ("Recorded Events"). CLIENT agrees to operate the Monitoring System in a manner consistent with the terms and conditions of this Agreement. The CLIENT also agrees to operate all systems in compliance with applicable and prevailing laws of the State, and/or local jurisdiction.
- b) Initial Validation of Recorded Events. OPTOTRAFFIC will promptly perform a preliminary review of Recorded Events data for the sole purpose of attempting to filter Recorded Event data that is of insufficient quality for further use. For example, and without limitation, OPTOTRAFFIC may filter Recorded Events data in which no motor vehicle

registration plate information or only partial information is reasonably discernible from the Recorded Event. CLIENT will have the sole and exclusive responsibility for the final review of Recorded Events data not filtered by OPTOTRAFFIC and the authorization and issuance of a citation thereafter.

- c) Motor Vehicle Records. OPTOTRAFFIC will promptly retrieve applicable Bureau of Motor Vehicles ("BMV") records from Ohio and other states' databases for motor vehicles photographed in Recorded Events using registration plate information from such vehicles, where such information is reasonably discernible from the Recorded Event. CLIENT agrees to provide OPTOTRAFFIC with the required authorizations and applicable access codes for OPTOTRAFFIC to effectuate such retrieval of BMV records. The retrieval of BMV records by OPTOTRAFFIC is solely for the purpose of presenting such information to CLIENT and CLIENT shall be responsible for confirming the accuracy of and matching the information to the subject motor vehicle in each instance. OPTOTRAFFIC agrees that it will use all BMV databases in accordance with any use limitations and restrictions imposed by the owner of the database, any government or CLIENT. Notwithstanding this provision or any other provision of this Agreement, the CLIENT is not required to, and shall not, provide OPTOTRAFFIC access to the Law Enforcement Automated Data System (LEADS).
- d) Access to Website. After OPTOTRAFFIC has completed its preliminary review of Recorded Events data, OPTOTRAFFIC shall post Recorded Events data not filtered by OPTOTRAFFIC to OPTOTRAFFIC'S Internet website. OPTOTRAFFIC will provide CLIENT with access to OPTOTRAFFIC'S proprietary **VioView™** software via the Internet to allow for CLIENT'S review of Recorded Events on OPTOTRAFFIC'S website and authorization and issuance of citations. Availability of the Website and **VioView™** software will be generally twenty-four (24) hours per day, seven (7) days per week; provided, however, that such availability is subject to change without advance notice as a result of system maintenance, unplanned downtime, and other factors and circumstances beyond OPTOTRAFFIC'S control. OPTOTRAFFIC will not be responsible for any such reasonable unavailability or downtime. CLIENT'S use of the website and the **VioView™** software is governed by the terms of this Agreement and the Terms of Service posted on the website.
- e) Payments by Mail and Online. Citation payments may be made by check, money order, or credit card. OPTOTRAFFIC, directly and or through OPTOTRAFFIC'S third party processor, will process payments made by mail and, at no additional cost to CLIENT, provide the capability for individuals receiving citations to view and pay citations online by credit card. All citations and delinquent notices will expressly state that all payments of fines are to be made payable to CLIENT at the designated physical or website address. All payments of citations will be deposited into the Lockbox Account described in Section 7 below. Payments of citations will be tracked using the system of record, **VioView™ Financial Tracking System ("VioView FTS")**.
- f) Citations and Delinquent/Final Notices. Printing and Mailing. OPTOTRAFFIC, directly or through OPTOTRAFFIC'S printing services provider, at no additional cost to CLIENT, will print and mail a Notice of Liability issued by CLIENT or CLIENT'S Approving Authorities (as defined in Section 2(f) below), and one delinquent (or one Final) notice for

outstanding citation (collectively, "Notices") to the registered owner/lessee/other of motor vehicles bearing State of Ohio plates and out-of-state plates to whom a citation has been approved by CLIENT. Such Notices will be in a fixed, standardized format pre-approved by CLIENT. Delinquent or Final notices will include notification of any Related Fees as defined on Schedule A of this Agreement. CLIENT will be responsible for ensuring that the format and content of Notices comply with all applicable laws, rules and regulations. Notices will be mailed to the individual and address specified on the Issued citations, which shall be the name, and address of the registered owner/lessee/other of the vehicle as shown on the vehicle registration records.

Delinquent or Final notice(s) will be mailed to the address on the issued citation, unless and updated address becomes available to OPTOTRAFFIC. OPTOTRAFFIC will provide set up of initial Notice of Liability, Late Notice, Amnesty Notice, and Court Notice. The CLIENT will reimburse OPTOTRAFFIC for any additional changes to Notices after the initial set up and approval of violations have been obtained during the onboarding process. The CLIENT agrees that OPTOTRAFFIC will deduct the reimbursement for all changes directly from the CLIENTS bi-weekly disbursement in full.

- g) Speed Sensor Calibration. OPTOTRAFFIC, upon CLIENT's request, will provide CLIENT a signed certificate of calibration pertaining to the Monitoring System's speed sensor(s) used in the detection and recording of Recorded Events hereunder. Such certificate of calibration will be issued by an independent calibration laboratory prior to the initial deployment of the speed sensor(s) and annually thereafter. OPTOTRAFFIC will enable and cause its Monitoring Systems or third party monitoring systems to perform a system daily self-test and calibration verification of accuracy and provide CLIENT with electronic copies of such daily self-test reports. These self-test reports may be used by CLIENT during hearing reviews and other proceedings as deemed necessary by CLIENT. In the event the Monitoring System's speed sensor(s) are damaged by any cause, or for any reason, OPTOTRAFFIC agrees to recalibrate the Monitoring System's speed sensor(s) and provide a replacement signed certificate of calibration to the CLIENT at no charge to the CLIENT.
- h) Field Accuracy Verification. Depending on which Monitoring System(s) is deployed, OPTOTRAFFIC, upon CLIENT's request will provide one (1) Field Accuracy Verification of deployed equipment by a qualified expert. The CLIENT will reimburse OPTOTRAFFIC for any additional Field Accuracy Verifications requested. Such reimbursements include but are not limited to any costs incurred in making such expert available for testing including reasonable travel, lodging and related expenses and time at the expert's then-current hourly rate. In the event the Field Accuracy Verification of the deployed equipment is damaged or compromised by any cause, or for any reason, OPTOTRAFFIC agrees to reestablish the Field Accuracy Verification of the deployed equipment for the CLIENT at no charge to the CLIENT.
- i) Hearings. OPTOTRAFFIC will make available a qualified expert representative to attend and provide testimony for the initial court hearing for Notices of Liability provided that OPTOTRAFFIC receives at least thirty (30) days prior written notice of each such hearing. OPTOTRAFFIC is not responsible for the outcome of any such hearing. Although

OPTOTRAFFIC is not responsible for the outcome of any such hearing, if the expert testimony of the qualified expert representative supplied by OPTOTRAFFIC under this provision does not convince the court that the OPTOTRAFFIC Monitoring System can be relied upon for all evidentiary purposes, this shall be grounds for an event of Default by OPTOTRAFFIC under Paragraph 9c. of this Agreement. In the event CLIENT requests additional expert testimony, CLIENT will reimburse OPTOTRAFFIC for costs incurred in making such expert available to testify, including reasonable travel, lodging and related expenses and time at the expert's then-current hourly rate. The CLIENT agrees that OPTOTRAFFIC will deduct the reimbursement for all charges directly from the CLIENT's bi-weekly disbursement in full.

- j) Maintenance and Support. OPTOTRAFFIC will, in a timely and prompt manner, maintain and service the Monitoring System and assist CLIENT personnel who operate the Monitoring System. OPTOTRAFFIC will be available to assist CLIENT at the start and end of each deployment. OPTOTRAFFIC will be on call to correct any malfunction that renders the Monitoring System inoperable during enforcement hours. Any and all maintenance records shall be considered Confidential Information (defined hereafter) and shall not be disclosed to CLIENT or anyone else, except as provided in Section 8 of this Agreement.
- k) Training. OPTOTRAFFIC, at no additional charge to CLIENT, will be responsible to train CLIENT to operate the Monitoring System.
- i) Service locations. OPTOTRAFFIC shall provide to CLIENT, without charge, technical advice as to the feasibility of proposed Service locations.
- m) Citizen Inquiries. OPTOTRAFFIC shall provide, and include on Notices of Liability, a telephone number to which recipients of notices may call Monday-Friday, 8:00 a.m. to 5:00 p.m. (EST), excluding legal holidays, and other factors or circumstances beyond OPTOTRAFFIC'S reasonable control, to speak with a knowledgeable attendant to make inquiries and receive prompt informed answers to questions regarding such notices, billing and payment procedures and status of payments and hearing dates. OPTOTRAFFIC may employ the services of a custom service call center; CLIENT specifically agrees that such call center's representatives may access and view any and all information relevant and/or necessary for the provision of the Services described hereunder.
- n) Hearing Dockets. Unless agreed otherwise by the parties, on not less than a monthly basis, OPTOTRAFFIC, in consultation with CLIENT, shall prepare and submit to the applicable hearing officer or Court all paperwork and other documentation necessary for scheduling of hearings on all citations then ripe for review or adjudication. OPTOTRAFFIC shall only send a notice to appear at a hearing for recipients of citations who have made a timely hearing request.
- o) Collections Support. The CLIENT acknowledges that OPTOTRAFFIC shall place the collection of unpaid citations issued pursuant to the terms and conditions of this Agreement and past due debt owed to CLIENT resulting from past due citations and Related Fees with a third party, for purposes of filing collection actions against any motorist and/or debtor who fails to pay amounts due and owing under any citations. In association with contractual agreements referenced hereunder, OPTOTRAFFIC is hereby authorized to provide a third party with whom OPTORAFFIC contracts to provide debt collection services, with any and all information relevant and/or necessary for the collection of unpaid citations, including personal Information of

the recipients of the citations. OPTOTRAFFIC'S obligations to cooperate and provide information to a third party with whom the OPTOTRAFFIC contacts to provide debt collections services shall continue throughout the term of this Agreement and for a period of twenty-four months following the termination of this Agreement. CLIENT agrees to authorize OPTOTRAFFIC to add a reasonable Processing and Administration fee as in Schedule B, to be retained in full by OPTOTRAFFIC, to citations in collections, to be paid for by the motorist and/or debtor, for providing information and administrative services needed for the third party collections effort.

- 2. CLIENT'S Responsibilities.** CLIENT acknowledges that certain aspects of the Service require the participation and cooperation of CLIENT, without which OPTOTRAFFIC'S performance of the Services may be significantly impaired or delayed. CLIENT is responsible for the following:
- a) Service location. CLIENT will select the location(s) at which the Monitoring System will detect and record potential violations ("Service location(s)"). After the commencement of service at a Service location, CLIENT may elect to change the Service location by notifying OPTOTRAFFIC. OPTOTRAFFIC shall provide to CLIENT, without charge, technical advice as to the feasibility of CLIENT proposed non-mobile Service Locations.
  - b) CLIENT may not use the Services for any purpose not allowed by law.
  - c) Preserve the Monitoring System. CLIENT acknowledges that the Monitoring System used to detect and record Recorded Events consists of valuable personal and intellectual property of OPTOTRAFFIC. CLIENT agrees to use its best efforts to safely operate, protect and preserve the Monitoring System during the term of this Agreement, including, but not limited to, restricting movement of and access to the Monitoring System by anyone other than CLIENT and OPTOTRAFFIC personnel. OPTOTRAFFIC and CLIENT agree that criminal damaging and vandalism to the Monitoring System will not result in an additional financial obligation of the CLIENT, although these crimes will be investigated and prosecuted as all other criminal acts within the jurisdiction of the CLIENT.
  - d) Operate the Traffic Monitoring System. After installation, the CLIENT has the sole responsibility to operate the traffic Monitoring System, subject to equipment maintenance and the functions outlined in this Agreement as the responsibility of OPTOTRAFFIC.
  - e) Complete Operator Training. CLIENT will complete training by OPTOTRAFFIC in the procedures for setting up and operating the Monitoring System. OPTOTRAFFIC, at no additional cost to CLIENT, will issue upon request a signed certificate to CLIENT on completion of training. The CLIENT agrees to attend annual training on Automated Enforcement Equipment provided by OPTOTRAFFIC at no cost to the CLIENT to maintain agency accreditation for Automated Speed Enforcement.
  - f) Maintain Daily Self-Test Log. CLIENT will maintain a daily self-test log when applicable to record the Monitoring System's self-test results.
  - g) Designate Citation Approving Authorities. CLIENT shall select and designate certain sworn officers or other duly authorized approving authorities ("Approving Authorities") who shall review Recorded Events, identify traffic violations, and lawfully authorize and issue citations for such identified violations using the **VioView™** software and Website. CLIENT has sole responsibility for ensuring that the designated approving authorities are duly and lawfully authorized to receive and view BMV records and issue citations for the pertinent traffic violations. OPTOTRAFFIC will assign those authorities a login-ID for accessing **VioView™**

software and Website. The parties agree that OPTOTRAFFIC shall not be the Approving Authority.

- h) Comply with Statutory Timeframes. CLIENT acknowledges that certain applicable laws may require the citations resulting from Recorded Events must be mailed within prescribed time frames. To ensure compliance with such requirements, CLIENT is solely responsible for ensuring that all Recorded Events are reviewed and approved or rejected within seven (7) working days after receipt from OPTOTRAFFIC.
- i) Safeguard Login Information. CLIENT will receive one (1) login-ID to **VioView™** per Approving Authority. CLIENT acknowledges that **VioView™** login-IDs allow full access to Recorded Event data, including but not limited to, information derived from DMV records, and allows the ability to authorize and issue citations. CLIENT shall be solely and exclusively responsible for safeguarding **VioView™** login-IDs and ensuring that unauthorized individuals do not gain access to VioView™. OPTOTRAFFIC will also provide CLIENT one (1) **VioView** FTS login-ID for the exclusive use by individuals authorized by CLIENT to view citations and financial information. It shall be the CLIENT'S responsibility to safeguard the **VioView** FTS login-ID as issued. CLIENT will immediately notify OPTOTRAFFIC of any compromise or suspected compromise of any login-ID within its knowledge. Use of **VioView™** FTS is governed by the terms of service posted on the **VioView™** Website.
- j) Collection of Citation Payments by CLIENT. CLIENT shall not collect citation payments in any manner that is inconsistent with the provisions of this Agreement. CLIENT shall instruct individuals to either pay online or mail all such payments to the Lockbox Account described in Section 7.

**3. Credit Card Payment Processing.** OPTOTRAFFIC will provide the capability for individuals receiving citations to pay their citations by credit card at no additional charge to CLIENT. OPTOTRAFFIC will provide individuals receiving citations access to its website via the Internet to view and pay citations online. OPTOTRAFFIC is solely responsible for the functionality, security and maintenance of the payment system and will ensure that it conforms to all federal, local and state laws, rules and regulations, as well as any and all banking rules and regulations that pertain to all forms of credit card payment. Credit card processing costs will be paid by OPTOTRAFFIC; OPTOTRAFFIC is authorized to charge a reasonable credit card convenience fee to individuals who pay by credit card and such credit card convenience fees are not considered revenue under this Agreement and will be retained in full by OPTOTRAFFIC.

**4. System Ownership, Operation, Maintenance and Modifications.**

- a) OPTOTRAFFIC does not convey any equipment or system to CLIENT. Equipment or system or any part of the equipment or system provided or used by OPTOTRAFFIC in connection with the provision of Services under this Agreement is and shall remain the exclusive property of OPTOTRAFFIC.
- b) In the event OPTOTRAFFIC determines, in its sole discretion, that CLIENT is not utilizing all or any part of the Monitoring System in a sufficient manner, OPTOTRAFFIC may recall all or any of its Monitoring System and CLIENT agrees to make such recalled portion of the Monitoring System immediately available for retrieval by OPTOTRAFFIC.

- c) Monitoring System or equipment replacement, repairs, upgrades or modifications which, in the reasonable opinion of OPTOTRAFFIC, are required as a result of misuse while in the CLIENT'S Possession, including without limitation a repair arising from or in connection with the use of software other than software provided by OPTOTRAFFIC, shall be made at the sole expense of CLIENT, including but not limited to, the actual cost of the repair or replacement of said system, along with labor (at OPTOTRAFFIC'S then-current hourly rate), shipping, and travel expenses, as applicable. Otherwise, all such Monitoring System or equipment replacement, repairs, upgrades or modifications shall be made at the sole expense of OPTOTRAFFIC.
  - d) Upgrades to OPTOTRAFFIC'S Systems and/or reinstallations and/or modifications of hardware or software which are requested in writing by the CLIENT but reasonably not deemed necessary or required for proper system operation by OPTOTRAFFIC, shall be made at the sole expense of CLIENT. This includes, but is not limited to, the actual cost of the upgrades, modification, or replacements of said system, hardware or software, along with shipping expenses, travel expenses if required, and labor costs at OPTOTRAFFIC'S then-current hourly rate. These costs and expenses must be pre- approved by CLIENT and conform to CLIENT'S billing practices.
5. **Software Training and Support.** Throughout the Term of this Agreement, OPTOTRAFFIC at no additional cost to CLIENT, agrees to provide training for OPTOTRAFFIC'S **VioView™** and **VioView FTS** software and website. OPTOTRAFFIC will provide a reasonable number of reference manuals describing the features and operations for VioView™ and **VioView FTS**. OPTOTRAFFIC will endeavor to provide updates to **VioView™** and **VioView FTS** software within a reasonable time after they become generally available; provided, however, that OPTOTRAFFIC has no obligation under this Agreement to update or modify its software in any way. Throughout the Term of this Agreement, reasonable technical assistance will be available by telephone at no charge to CLIENT during the hours of 8:00 a.m. to 5:00 p.m. (EST), Monday through Friday (with the exception of all state and nationally recognized holidays).
6. **OPTOTRAFFIC Fees.** In exchange for the Services described in this Agreement, CLIENT agrees to pay OPTOTRAFFIC the fees set forth in Schedule A.
7. **Distribution of Funds.** As an administrative convenience to the CLIENT and to ensure accurate and complete tracking of program funds, OPTOTRAFFIC will establish a bank account with lockbox service ("Lockbox Account") for the purpose of accepting deposits of citation payments, including credit card payments and returned check processing costs. CLIENT and OPTOTRAFFIC will equally share the cost of bank charges associated with the cost of the Lockbox Account. On a monthly basis commencing 60 days after enforcement begins, CLIENT expressly authorizes OPTOTRAFFIC to distribute to CLIENT funds deposited net of the Fees set forth in Schedule A. In the event that the lockbox funds are insufficient to satisfy the Fees, CLIENT shall remain not be responsible for unpaid Fees. In the event that Fees, as set forth in this Paragraph 7 are ordered by a court of competent jurisdiction to be disgorged by OPTOTRAFFIC, CLIENT shall not remain financially obligated to OPTOTRAFFIC or responsible for Fees incurred by CLIENT under this Agreement to the extent of the court ordered disgorgement.



**8. Confidentiality.** CLIENT and OPTOTRAFFIC agree not to disclose Information related to performance of the Services under this Agreement, including but limited to the Information identified in Paragraphs l(d) and l(f) of this Agreement, to anyone except as required by Law, or by mutual agreement.

**9. Term, Commencement of Service, and Termination.**

- a) Term. This agreement shall start on the Effective Date and remain in effect for a period of one (1) year ("Initial Term"). On each anniversary of the Effective Date, and on each anniversary date thereafter, this Agreement will automatically renew for a one-year period upon the same terms and conditions ("Renewal Term"). If either CLIENT or OPTOTRAFFIC elects not to renew, it must notify the other party in writing of its intention not to renew this Agreement at least ninety (90) days prior to any such anniversary date, in which case this Agreement shall terminate on such anniversary date.
- b) Commencement of Service. OPTOTRAFFIC and CLIENT shall make reasonable efforts to enable commencement of services as soon as practicable upon the Effective Date of this Agreement.
- c) Termination for Default. Either party shall be entitled to terminate this Agreement in the event of a failure by the other party to perform any of its material obligations under this Agreement if such breach is not cured within thirty (30) days after receipt of notice thereof from the non-defaulting party or within ten (10) days after receipt of such notice if such breach relates to the non-payment of Fees or other amounts owed hereunder or a breach by CLIENT which materially compromises the security of the Services or Confidential Information.
- d) Termination by CLIENT for Convenience. Notwithstanding subsection (a) above, CLIENT may terminate this Agreement for Convenience upon sixty (60) days prior written notice to OPTOTRAFFIC and declare the effective date of such termination. If the CLIENT terminates this Agreement for convenience at any time within the Initial Term or any Renewal Term, then the CLIENT must pay OPTOTRAFFIC a fee in the amount of \$1500 per month per enforcement system for each month that remains in the applicable Initial Term or Renewal Term as of the termination date. The parties shall reconcile amounts owed and/or to which each is entitled under this Agreement up to the date of termination of this Agreement and any subsequent Initial or Renewal Term runout, if applicable.
- e) Effect of Termination. In the event of any termination of this Agreement, CLIENT will suspend operations of the Monitoring System and return to OPTOTRAFFIC such Monitoring System upon providing or receiving a notice of termination. CLIENT will return to OPTOTRAFFIC within five (5) working days of the termination date all manuals, documentation and all other property and materials of OPTOTRAFFIC provided to CLIENT hereunder. Upon the return of all such property and materials to OPTOTRAFFIC, and providing that there are no outstanding invoices, OPTOTRAFFIC will provide CLIENT with all of the Event Records, defined in Section 18 below, pertaining to CLIENT in OPTOTRAFFIC'S possession, such as Event Records to be provided to CLIENT In Portable Document Format, at no cost to CLIENT. OPTOTRAFFIC and CLIENT for a period of 24 months after the termination date will continue the collection and distribution of revenue in accordance to this Agreement. Furthermore, OPTOTRAFFIC may cooperate with a third party with whom the

CLIENT contracts to provide debt collections services, in connection with their collection efforts relating to any citations.

- f) Suspension of Monitoring Operations. The CLIENT and OPTOTRAFFIC reserve the right to suspend immediately any and all traffic monitoring operations if continuation of such operations creates an unsafe condition. Upon notification from OPTOTRAFFIC or the CLIENT, in writing, OPTOTRAFFIC and CLIENT will suspend such operations until the parties agree to and resolve the condition(s) that led to the suspension. OPTOTRAFFIC shall be obligated to continue the processing of Recorded Events prior to the notice of suspension or termination of monitoring operations, and receive payment for, all citations issued based upon such Recorded Events.
- g) Survival of Certain Terms. The provisions of Sections 6, 7, 8, 12, and 16 shall survive any suspension or revocation or operations or termination of this Agreement. No termination of this Agreement by either party for any reason shall serve to cancel, waive or otherwise affect any fees due to OPTOTRAFFIC or CLIENT hereunder resulting from Recorded Events having accrued on or before the effective date of any such termination.

#### **10. Representations and Warranties.**

- a) CLIENT represents and warrants that:
  - i. CLIENT is a tax-exempt entity under the rules of the Internal Revenue Service and will provide OPTOTRAFFIC with a copy of its tax exempt status upon request;
  - ii. CLIENT will comply with all applicable laws, rules and regulations in the use of the Services and in the performance of its obligations under and in connection with this Agreement, including, but not limited to, the receipt and use of BMV information and the authorization and issuance of Notices of Liability.
- b) OPTOTRAFFIC represents and warrants that it will perform the Services with care, skill, and diligence, in a commercially reasonable and professional manner, and shall be responsible for the professional quality and technical accuracy of the Services furnished under this Agreement. OPTOTRAFFIC shall comply with all applicable laws, rules and regulations fulfilling OPTOTRAFFIC'S obligations under this Agreement.
- c) OPTOTRAFFIC owns and has the right to use, and make available for use by CLIENT, **VioView™**, **VioView FTS™** and any similar software for the purposes of providing Services under this Agreement, and that such use will not violate or infringe upon the title or rights of use of such software by others.
- d) **No Other Warranties. EXCEPT AS EXPRESSLY PROVIDED ABOVE, OPTOTRAFFIC MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY CONCERNING MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OR ANY WARRANTY REGARDING THE PRODUCTIVITY OF THE SYSTEM OF OPTOTRAFFIC.**

**11. Insurance and Limitation of Liability.** OPTOTRAFFIC shall purchase and maintain during the entire term of this Agreement, comprehensive general liability Insurance and workers' compensation insurance with limits of not less than those set forth below.

- a) Comprehensive General Liability Insurance. Personal injury liability insurance with a limit of \$1,000,000 each occurrence/ aggregate; Property damage liability insurance with limits of \$500,000 each occurrence/aggregate. All insurance shall include completed operations and contractual liability coverage.
- b) Automobile Liability Coverage. Automobile fleet insurance \$1,000,000 for each occurrence/aggregate; property damage \$500,000 for each occurrence/aggregate.
- c) Workers' Compensation Insurance. OPTOTRAFFIC shall comply with the requirements and benefits established by the State of Maryland for the provision of Workers' Compensation Insurance. OPTOTRAFFIC shall provide workers' compensation insurance meeting the statutory limits for Maryland and Employers' Liability limits of \$500,000. All corporations are required to provide Workers' Compensation Certificates of Insurance.

OPTOTRAFFIC covenants to maintain insurance, in these amounts, which will insure all activities undertaken by OPTOTRAFFIC on behalf of the CLIENT under this Agreement.

**OPTOTRAFFIC'S MAXIMUM CUMULATIVE LIABILITY TO CLIENT, IN EXCESS OF INSURANCE COVERAGE PROVIDED UNDER THIS PARAGRAPH 11, ARISING FROM OR IN CONNECTION WITH THIS AGREEMENT WILL NOT EXCEED THE AMOUNT OF THE TOTAL FEES PAID TO OPTOTRAFFIC BY CLIENT HEREUNDER AND IN NO EVENT WILL OPTOTRAFFIC BE LIABLE TO CLIENT FOR ANY PUNITIVE, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES OF ANY KIND IN CONNECTION WITH THIS AGREEMENT, EVEN IF OPTOTRAFFIC HAS BEEN INFORMED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES.**

- 12. Compliance with Laws.** OPTOTRAFFIC and CLIENT each agree to comply with all applicable laws governing this Agreement and the performance of its terms, Including laws governing the confidentiality of information. OPTOTRAFFIC and CLIENT further agree that, unless authorized by CLIENT, the information provided by CLIENT and/or the BMV, including the names and addresses and associated information of persons and entities that have received a citation, shall remain confidential and shall not be sold or shared with any other non-party, company or entity for any purpose ,including but not limited to marketing, sales, and/or solicitations.
- 13. Force Majeure.** OPTOTRAFFIC shall not be liable for any delays or failures in the system of OPTOTRAFFIC or otherwise in the performance of the Services, which delays, or failures are directly or indirectly caused by vandalism, flood, storm, lightning, earthquake, tornado, other Acts of God, or war, riot, sabotage, strike, utility outage or other factors or circumstances beyond OPTOTRAFFIC'S reasonable control.
- 14. Independent Contractors.** With respect to each other, OPTOTRAFFIC and CLIENT are independent contractors, and neither party, nor their respective officers, agents, employees, shall be deemed to be employees by the other party for any purpose. Further, OPTOTRAFFIC and CLIENT shall not be deemed to be partners, agents, joint ventures, or anything other than independent contractors.
- 15. Governing Law.** This Agreement and the rights and obligations of the parties and their successors and assigns hereunder shall be interpreted, construed, and enforced in accordance with the laws of the State of Ohio without regard to its choice and/or conflict of law's provisions. Any legal action

resulting from, arising under, out of or in connection with, directly or indirectly, this Agreement shall be commenced exclusively in the state or federal courts in the State of Ohio. All parties to this Agreement hereby submit themselves to The Village of Windham of any such court, and agree that service of process on them in any such action, suit or proceeding may be affected by the means by which notices are to be given under this Agreement. In the event of litigation by a party hereto to enforce its rights hereunder, the prevailing party shall be entitled to recover its reasonable attorney's fees, costs and disbursements.

**16. Notices.** All notices, requests, demands and other communications required or permitted hereunder shall be in writing and shall be deemed to have been duly given if delivered by hand or mailed, express, certified or registered mail, return receipt requested, with postage prepaid, or sent priority next day delivery by a nationally recognized overnight courier service that regularly maintains records of items picked up and delivered to the parties at the addresses first set forth above or to such other person or address as a party shall notify the other in writing. Notices delivered personal shall be deemed communicated as of the date of actual receipt, mailed notices shall be deemed communicated as of the date three (3) business days after mailing, and notices sent by courier shall be deemed communicated as of the date two (2) business days after pick-up.

**17. Retention of Records by OPTOTRAFFIC.** OPTOTRAFFIC will store recorded images associated with issued citations and related citation information ("Event Records") developed for CLIENT in the course of providing Services under this Agreement in accordance with the following rules:

- a) OPTOTRAFFIC will store Event Records for a minimum of 24 months from the Event date.
- b) OPTOTRAFFIC will store Event Records for paid citations in Portable Document Format (PDF).
- c) After 24 months from the Recorded Event date, OPTOTRAFFIC will delete Event Records.

In the event that CLIENT desires to retain any such Event Records beyond 24 months, OPTOTRAFFIC will provide CLIENT with such Event Records in OPTOTRAFFIC'S possession, provided that OPTOTRAFFIC receives at least thirty (30) days prior written notice. OPTOTRAFFIC will provide such Event Records to CLIENT and CLIENT will compensate OPTOTRAFFIC for, materials, shipping expenses, travel expenses if required, and labor costs at OPTOTRAFFIC'S then-current hourly rate.

OPTOTRAFFIC is neither a "public office", "state agency", nor a "public official" and OPTOTRAFFIC does not "act under any law, ordinance, resolution, order, or other pretension to official right, power, or authority," as the foregoing terms are defined in O.R.C. Section 149.011 or any successor statute. CLIENT has not hired OPTOTRAFFIC, nor does OPTOTRAFFIC serve, in any capacity as a custodian of CLIENTS' records. Should this affirmative representation by OPTOTRAFFIC that it is not a "public office", "state agency", nor a "public official" be challenged, in any form or forum, OPTOTRAFFIC will defend, indemnify and hold the CLIENT harmless as to all costs, awards, fees (including reasonable attorney fees) associated with the challenge.

**18. Entire Agreement.** This Agreement contains the entire agreement between the parties as to the subject matter herein and supersedes and replaces all prior contemporaneous agreements, oral and written,

between the parties hereto. This Agreement may be modified only by a written instrument signed by both parties.

**19. Counterparts.** This Agreement may be executed in counterparts of each which shall be deemed an original and all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of this Agreement by facsimile shall be equally as effective as delivery of a manually executed counterpart of this Agreement.

IN WITNESS WHEREOF, the duly authorized representatives of the parties hereto have affixed their signatures below:

**OPTOTRAFFIC, LLC**

**JURISDICTION**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**SCHEDULE A  
TO THE SERVICE AGREEMENT BY AND BETWEEN  
JURISDICTION  
AND OPTOTRAFFIC, LLC**

1. **Service Location:** enforcement zones as directed by CLIENT
  
2. **Fee due to OPTOTRAFFIC:** For the provisioning, deployment, maintenance & service of each Monitoring System, along with our full suite of back office services such as event processing, printing, mailing, lockbox payment processing, court docket preparation, training, expert witness testimony, call center agents, etc. CLIENT shall pay OPTOTRAFFIC the following Fixed Fee per paid Notice of Liability.

Monitoring System	Fixed Rate
Dragon Cam (Handheld Speed)	\$32.50
Mobile Trailer (Mobile Speed)	\$32.50
Silverhawk (Fixed Speed)	\$32.50
Redhawk (Red Light)	\$32.50

**SCHEDULE B  
TO THE SERVICE AGREEMENT BY AND BETWEEN  
JURISDICTION  
AND  
OPTOTRAFFIC, LLC**

- 1. **Service Location:** enforcement zones as directed by CLIENT
  
- 2. **Fee due to OPTOTRAFFIC:** For the processing and administration of unpaid violations as set forth in Section 1(o) Collections Support, of this Agreement.

Processing and Administration Fee	
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