

ORDINANCE 2018-14
VILLAGE OF NEW RICHMOND, OHIO

Council for the Village of New Richmond, Ohio met in regular session this 24th day of July, 2018 with the following members present:

Richard Feldkamp,
Melanie Slade

Mary Allen,
Amanda Davidson,

Paul Vanderbosch,
Gary Skeene

Councilperson Feldkamp moved for adoption of the following:

**AN ORDINANCE AUTHORIZING THE ENACTMENT OF A VILLAGE SPEED
CAMERA ENFORCEMENT PROGRAM AND A CONTRACT WITH SENSYS GATSO
USA, INC., WITH RESPECT TO SUCH PROGRAM**

WHEREAS, Ohio law allows municipalities to enact speed camera enforcement programs; and

WHEREAS, speeding is one of the major causes of accidents, deaths, and injuries; and

WHEREAS, studies show that speed cameras significantly reduce the number of speeding violations and crashes; and

WHEREAS, traditional enforcement forces police officers to follow and stop a violator in order to cite the violator, but traffic volume and safety considerations mean that police officers can only apprehend a fraction of the violators, putting officers, motorists, and pedestrians at risk; and

WHEREAS, the Village of New Richmond believes that use of speed cameras will help prevent speeding and will benefit the public's health, safety, and welfare as well as the health, safety, and welfare of the residents and employees of the Village of New Richmond.

NOW, THEREFORE, BE IT RESOLVED, that the Council of the Village of New Richmond, Ohio, with 5 of its members concurring:

Section 1: Authorizes the enactment of a speed camera enforcement program to deter speeding, red-light running, etc., and increase traffic safety within the Village of New Richmond.

Section 2: Does hereby authorize the Village Administrator and/or Mayor on behalf of the Village to execute the contract with Sensys Gatso USA, Inc., attached hereto as Exhibit "A" to install cameras at Village locations for the purpose of enforcing speeding, red-light running, etc.

Section 3: That it is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Resolution were taken in an open meeting of this Board, and that all deliberations of this Council and any of its committees that resulted in such formal action were taken in meetings open to the public, in compliance with all legal requirements including §121.22 of the Ohio Revised Code.

Councilperson Skeene seconded the motion to adopt the foregoing Ordinance and upon roll call the vote was as follows:

Richard Feldkamp	<u>yes</u>
Mary Allen	<u>yes</u>
Paul Vanderbosch	<u>no</u>
Melanie Slade	<u>yes</u>
Amanda Davidson	<u>yes</u>
Gary Skeene	<u>yes</u>

First Reading
Second Reading
Third Reading

6-25-2018
7-10-2018
7-24-2018

Adopted:

7-24-2018
Date

ATTEST:

Kelly Painter
CLERK OF COUNCIL, Kelly Painter

Ramona Carr
MAYOR, Ramona Carr

Approved as to form ~~and content~~:

[Signature]
SOLICITOR, Scott Sollmann

CERTIFICATION OF VILLAGE FISCAL OFFICER

I hereby certify that funds are available and have been lawfully appropriated, authorized or directed for the purposes identified in the attached resolution, and are in the treasury or in the process of collection to the credit of the appropriate fund, free from any previous encumbrance.

Dated: 9-25-18

Lynn Baird
Lynn Baird, Village Fiscal Officer

Customer Agreement

This Customer Agreement ("Agreement") is made on January 01, 2019 (the "Effective Date"), between Sensys Gatso USA, Inc., a Delaware corporation with a principal business address at 900 Cummings Center, Suite 222-T, Beverly, Massachusetts 01915 ("Sensys Gatso") and the Village of New Richmond, with a principal business address at 102 Willow St. New Richmond, OH. (the "Village").

WHEREAS, the Village wishes to retain the technology and business services of Sensys Gatso to provide an automated speed and red-light enforcement program as further defined in Section 3.2 of this Agreement (the "Services"), as part of the Village's automated traffic law enforcement program; and

WHEREAS, Sensys Gatso agrees to provide the Services, including the hardware and software to provide and implement an automated speed and red-light enforcement system ("System"), pursuant to the terms of this Agreement;

NOW THEREFORE, the parties mutually agree as follows:

1. AGREEMENT TERM; TERMINATION

- 1.1. Initial Term; Extensions. The Agreement shall commence on the Effective Date and continue for a period of five year(s) (the "Initial Term"). Upon expiration of the Initial Term, the Agreement will automatically renew for two subsequent two-year terms (each a "Renewal Term" and, collectively with the Initial Term, the "Term"), unless either party provides a written notice to terminate not later than thirty (30) days prior to expiration of the then-current Initial Term or Renewal Term. Renewal Terms are subject to renewal pricing which shall be mutually agreed upon by the parties no less than sixty (60) days prior to the expiration of the then-current Initial Term or Renewal Term.
- 1.2. Termination By Agreement. This Agreement may be terminated at any time by the mutual written agreement of Sensys Gatso and the Village.
- 1.3. Termination For Cause. Either party may terminate this Agreement for cause if: (a) the other party has breached its obligations under this Agreement; (b) applicable law is amended, or the Ohio Department of Transportation adopts a rule or other requirement, to prohibit or substantially restrict the operation of automated traffic law enforcement systems, including the System being provided by Sensys Gatso; or (c) any court of competent jurisdiction rules that the System, or other similar systems, violates applicable law or cannot otherwise be used to enforce notices of violation or citations issued hereunder. The terminating party must provide thirty (30) days advance written notice to the other party of its intent to terminate, which notice must include the reasons for the termination. In the case of a breach of this Agreement, the notice must provide the other party with an opportunity to cure the breach within thirty (30) days after receipt of the notice. No termination fee shall be required with respect to termination for cause under this paragraph. Notwithstanding the foregoing, in the event of termination based upon (b) or (c) above, Sensys Gatso or the Village may suspend the System and all associated Services immediately upon the effective date of such amendment or ruling, as applicable.
- 1.4. Termination By the Village For Convenience. The Village may terminate this Agreement at any time one (1) year after the System has become operational, at its convenience by giving written notice to Sensys Gatso not less than sixty (60) days prior to the termination date. If the Village terminates this Agreement for convenience at any time within the Initial Term, then the Village



must pay Sensys Gatso a fee in the amount of \$520 per month per Fixed Location Enforcement unit, as defined in Section 3.2, for each month that remains in the Initial Term as of the Effective Date or Termination, as defined in Section 1.5 (the "Termination Fee"). The Termination Fee must be paid within thirty (30) days after the Effective Date of Termination as defined in Section 1.5. There is no Termination Fee if the Village terminates at the end of the Initial Term or during any Renewal Term.

- 1.5. Cessation of Activities Except Pending Violations. On the first day after the termination date or expiration of this Agreement ("Effective Date of Termination"), the image capture activities provided by Sensys Gatso under this Agreement shall cease immediately. Nevertheless, unless otherwise prohibited by law, all photo-enforcement violations in process or captured prior to the Effective Date of Termination, will continue until final disposition is reached on the violations and Sensys Gatso will continue to provide Services related to the process leading to such judgment, if any.
- 1.6. Removal Of Hardware, Equipment; Restoration. Upon the termination of this agreement, Sensys Gatso shall promptly retrieve all Fixed Location Enforcement units, as defined in Section 3.2, which retrieval shall be completed no later than forty-five (45) days after the Effective Date of Termination. The Village shall not charge any storage fees for any Speed or Red-Light Enforcement units during this forty-five (45) day period.

2. COMPENSATION

- 2.1. Amount. The Village shall pay to Sensys Gatso the following fee for the System and related Services: A "Per Citation Fee" of \$37.00 per paid citation for automated speed or red-light enforcement violations detected by either a Fixed Location Enforcement unit, as defined in Section 3.2.
- 2.2. Fee Payment.
 - 2.2.1. Invoicing. Sensys Gatso shall provide an itemized statement to the Village within ten (10) days of each infraction fees sweep from the Master Account to the Village-designated account as described in Section 3.13. Each invoice shall indicate the total amount collected and the revenue fee deducted by Sensys Gatso from such amounts.
 - 2.2.2. Fees are Sole Compensation. The fees required pursuant to this Section 2, shall be Sensys Gatso's sole compensation for the Service described herein. Except as explicitly set forth herein, all costs and expenses associated with the supply, installation, commissioning, operation, maintenance, repair, replacement, and removal of the System and all related hardware and equipment shall remain the responsibility of Sensys Gatso.

3. SCOPE OF WORK

- 3.1. Sensys Gatso Project Manager. Sensys Gatso will designate one Sensys Gatso employee as the Village's principal contact at Sensys Gatso ("Sensys Gatso Project Manager").
- 3.2. The System. The System provided by Sensys Gatso to the Village will consist of one (1) or more fixed location speed or red-light enforcement units installed at locations as set forth in

Section 3.3 (each a "Fixed Location Enforcement unit"), and all technology required for violation package processing described herein.

- 3.3. Location of Fixed Location Enforcement Units. Fixed Location Enforcement units will be installed by Sensys Gatso on Village owned or controlled poles at the locations identified by the Village and agreed in writing by Sensys Gatso. The Village will provide Sensys Gatso with access to such poles and electricity for operation of the Fixed Location Enforcement units on such poles at no charge to Sensys Gatso. Each Fixed Location Enforcement unit installed on a Village owned or controlled pole will remain installed in a single location for the Term. If no Village owned or controlled pole is available at a location identified by the Village and agreed in writing by Sensys Gatso, then Sensys Gatso shall be solely responsible for the installation, including, but not limited to, construction costs, of the Fixed Location Enforcement units, subject to the additional terms set forth in Exhibit A.
- 3.4. Signage. If required by State legislation or local governing ordinance, Sensys Gatso will provide and install signage at no cost to the Village informing inbound traffic that the Village utilizes traffic law photo-enforcement devices to enforce traffic laws.
- 3.5. 24-Hour Operation. Sensys Gatso shall operate the server components of the System on a continuous, 24-hour basis, seven (7) days per week, except for reasonable scheduled and unscheduled downtime, including System maintenance and repairs as set forth in Section 3.6, and Force Majeure as set forth in Section 5.4.
- 3.6. System Maintenance; Repairs; Logs. Sensys Gatso shall maintain the System and shall promptly repair or replace any damaged or defective equipment at its own expense except if the damage was caused by the negligence of the Village personnel. Sensys Gatso will perform annual calibration of the Fixed Location Speed Enforcement units on an annual basis and shall provide the Village with reports showing the results of the calibration testing, confirming that the calibration is accurate. At least quarterly during the Term, the Village police personnel will verify calibration of the Fixed Location Speed Enforcement units using a Sensys Gatso-supplied, GPS-enabled, speed sensor box. Sensys Gatso shall perform preventative maintenance and cleaning of System components on a regularly scheduled basis, including review, cleaning and testing of camera settings and operation, communications, and other System components. Sensys Gatso will use commercially reasonable efforts to notify the Village and initiate repairs to the System within seventy-two (72) hours after identification of any damage, defect, or material issues relating to calibration or accuracy of speed measurement.
- 3.7. System Upgrades. In the event Sensys Gatso makes upgrades to the software or related performance capabilities of the System generally available to its customers, Sensys Gatso will provide such upgrades without charge to the Village.
- 3.8. Village Personnel Training. Sensys Gatso will provide System training, including training documentation, to Village personnel designated by the Village.
- 3.9. Images and Data; Violation Package. Sensys Gatso will upload encrypted violation images and embedded violation data to a Sensys Gatso server in a timely manner. Sensys Gatso shall correlate images and data with DMV records, and shall assemble the images and data into an electronic violation package (a "Violation Package") in such a manner so as to allow the Village to carry out those responsibilities set forth in Section 4.3 of this Agreement.
- 3.10. Processing Of Violation Package. Sensys Gatso shall process Violation Packages through a system that utilizes commercially reasonable security protocols and that shall be accessible by the Village's Police Department ("PD") through the internet to review, and approve or reject, each violation before a notice of violation is issued related to that violation. Sensys Gatso shall

notify the Village of the list of supported web browsers for accessing this system. Sensys Gatso will use commercially reasonable efforts to process violation images and send a Violation Package to the PD for review within ten (10) business days after the violation has occurred. Sensys Gatso shall provide reasonable aid and assistance in the prosecution of citations issued hereunder, including the provision of fact witnesses, as may be required in a court or quasi-judicial panel of competent jurisdiction, at no charge to the Village.

- 3.11. Notices of Violation. After the Village's review and approval of a violation as set forth in Section 4.3, Sensys Gatso shall issue a notice of violation with images and data related to the notice of violation by mail within ten (10) days. The citation shall include images of the alleged traffic law infraction and shall be in a form mutually agreed upon by the parties. The System shall allow the registered owner or owners of a cited vehicle to review the images and data related to the notice of violation, through the web-portal by using a unique identifier code issued as part of the notice of violation. Additionally, Sensys Gatso will maintain a toll-free telephone number for registered owners to discuss notices of violation and make payments, with hours of 8:00 a.m. to 5:00 p.m. (Eastern) Monday through Friday, not including state and federal holidays. With respect to any registered owner who has not paid the citation within thirty days of mailing of the notice of violation, Sensys Gatso shall send a 2nd notice, in a form mutually agreed upon by the parties.
- 3.12. Payment Methods; Collection of Infraction Fees. Sensys Gatso shall provide the registered owner or owners of a cited vehicle the following payment methods: "pay by web," "pay by telephone," and "pay by mail" for the payment of notices of violation issued through the System. Sensys Gatso may pass through to violators any reasonable credit card convenience fees imposed upon Sensys Gatso by its suppliers for violations paid by credit card ("Credit Card Convenience Fee"). Any registered owner that does not wish to pay the Credit Card Convenience Fee may remit payment to Sensys Gatso by mail in the form of a money order or check drawn upon a U.S. bank. The Village shall have no obligation for the payment of any Credit Card Convenience Fees.
- 3.13. Deposit of Infraction Fees. Sensys Gatso will collect infraction fees from those who voluntarily pay in response to notices issued by Sensys Gatso and shall place such fees in a separate account with a banking institution approved by the Village ("Master Account"). The Master Account shall be established in a manner which permits: (a) funds to be swept to a Village-designated bank account by Sensys Gatso; and (b) and for the Village to have viewing rights to the Master Account. Sensys Gatso will sweep infraction fees collected from the Master Account to the Village-designated bank account on or around the 1st and the 15th of each month, provided, however, that Sensys Gatso shall deduct from each fund sweep amounts owed for Services pursuant to Section 2.2.
- 3.14. Further Action by the Village. If a registered owner disputes responsibility for a violation and a different violator is identified by the recipient of the notice of violation, then Sensys Gatso will reissue the citation to that different violator within ten (10) days after such identification
- 3.15. Storage Of Violation Packages. Sensys Gatso will store all captured violation data and images for three (3) years after final adjudication of such violation. The Village shall have reasonable access to the Violation Packages during the storage period.
- 3.16. NLETS Requirements. All authorized Sensys Gatso or personnel reviewing the vehicle registration information obtained via the National Law Enforcement Telecommunications System ("NLETS") on behalf of the Village shall comply with all applicable State of Ohio and NLETS requirements.

3.17. Reports. Sensys Gatso shall provide to the Village functionality to run reports with regard to the functioning of the System, including but not limited to the number of captured violations, the number of violations sent for PD approval, the number of notices of violation issued, the number of notices of violation paid, the aggregate amount paid regarding said notices of violation, the number of contested notices of violation, the amount of scheduled and unscheduled downtime of the System, and such other data as may be reasonably requested by the Village.

3.18. Public Awareness. Sensys Gatso shall assist and support the Village's efforts in public education and awareness programs, by providing information including, but not limited to, violation statistics and violation statistic improvements. Sensys Gatso shall provide the Village with a pamphlet that the Village may reproduce and distribute to the Village residents; such pamphlet shall include a description of the operation of the System in non-technical terms.

3.19. Insurance. Sensys Gatso shall, during the Term of this Agreement, maintain insurance coverage in at least the minimum amounts set forth in this Section 3.19.

3.19.1. Workers' Compensation and Employer's Liability with limits not less than:

Workers' Compensation:	statutory
Employer's Liability:	\$500,000 ea. accident-injury
	\$500,000 ea. employee-disease
	\$500,000 disease-policy

This insurance shall provide that coverage applies to the State of Ohio

3.19.2. Comprehensive Motor Vehicle Liability with limits for vehicles owned, non-owned, or rented of not less than \$1,000,000 Bodily Injury and Property Damage Combined Single Limit.

3.19.3. Comprehensive General Liability with limits not less than \$1,000,000 Bodily Injury and Property Damage Combined Single Limit.

3.19.4. Umbrella Liability with limits not less than \$2,000,000 Bodily Injury and Property Damage Combined Single Limit. This policy shall apply in excess of the limits stated in 3.19.1 through 3.19.3 above.

3.19.5. Sensys Gatso shall list the Village as an additional insured under all of the policies described in this Section 3.19 and shall file with the Village certificates of insurance reflecting the minimum insurance coverage and limits provided in this Section 3.19 prior to commencing work on the System.

4. **VILLAGE RESPONSIBILITIES**

4.1. Village Project Manager. The Village will designate one Village employee as Sensys Gatso's principal contact at the Village ("Village Project Manager").

4.2. Cooperation. The Village will cooperate with Sensys Gatso during all aspects of the planning, installation, implementation, and operation of the System and perform any other Village obligations set forth in this Agreement.

4.3. Review of Violations. The Village will provide sworn Village police officers, community service officers or any other Village employee designated by the Village to carefully review each

Violation Package to determine whether: (a) the violation is approved and notices of violation can be mailed; or (b) the violation is rejected. If the violation is rejected, the Village Project Manager will report to Sensys Gatso the basis for the rejection. The Village is solely responsible for determining which violations identified by Sensys Gatso are issued as citations.

- 4.4. Access to Information Services. To the extent required by NLETS, the Village will provide written authorization (in a form reasonably acceptable to the Village) for Sensys Gatso and its subcontractors to perform Motor Vehicle Division (Ohio Bureau of Motor Vehicles) inquiries on behalf of the Village.
- 4.5. Collection of Unpaid Fines. In the event a violator fails to pay or contest a notice of violation as set forth in Section 3, the Village may refer such matters to a third-party collections agency or law firm to recover all costs of the fines, including collections costs and expenses for failure to pay in a timely manner. Any amounts collected pursuant to this Section 4.5 will be deemed infraction fees collected for the purposes of Section 2.1 and subject to the Per Citation Fee set forth in Section 2.1. In the event that the Village fails to timely engage a collections agency, Sensys Gatso may, at its option and expense, retain such an agency to recover such fines and costs.
- 4.6. The Village shall ensure that any stop-bar at an intersection enforced by a Fixed Location Red Light Enforcement unit will be freshly painted and clearly visible throughout the Term.

5. GENERAL PROVISIONS

5.1. Indemnification Obligations.

5.1.1 To the extent not prohibited by the constitution or laws of the State of Ohio, the Village shall indemnify, defend, and hold harmless Sensys Gatso and its affiliates, shareholders or other interest holders, managers, officers, directors, employees, agents, representatives and successors, permitted assignees and all persons acting by, through, under or in concert with them (including but not limited to equipment suppliers and installers) (the "Sensys Gatso Indemnitees") from and against any and all third party claims arising out of or related to:

- a. any material breach of the representations and warranties of the Village set forth in Section 5.3.2;
- b. negligence or misconduct of the Village or its employees, contractors, or agents that results in bodily injury to any natural person (including third parties) or any damage to any real or tangible personal property (including the personal property of third parties), except to the extent caused by the negligence or misconduct of any Sensys Gatso Indemnitee;
- c. the validity of the results of the Village's use of the System or any portion thereof; or the validity of any citation issued, prosecuted, and collected as a result of the Village's use of the System except to the extent caused by Sensys Gatso's failure to comply with the terms of the Agreement.

5.1.2 Sensys Gatso shall indemnify, defend, and hold harmless the Village and its elected officials, officers, employees, agents, attorneys, representatives, and permitted

assignees and all persons acting by, through, under or in concert with them (the "Village Indemnites") from and against any and all third-party claims arising out of or related to:

- a. any material breach of the representations and warranties of Sensys Gatso set forth in Section 5.3.1;
- b. negligence or misconduct of Sensys Gatso or its employees, contractors, or agents that results in bodily injury to any natural person (including third parties) or any damage to any real or tangible personal property (including the personal property of third parties), except to the extent caused by the negligence or misconduct of any Village Indemnitee; or
- c. a claim that the System infringes the copyright or U.S. patent of a third party. In the event such a claim is made or appears likely to be made, Sensys Gatso will either: (a) enable the Village to continue to use the System, (b) modify the System to render it non-infringing; or (c) replace the System with a replacement System at least functionally equivalent. If Sensys Gatso determines that none of these alternatives is reasonably available, Sensys Gatso shall have the right to terminate this Agreement effective immediately.

5.1.3. In the event of any third-party claim, action, or demand for which a party seeks indemnification from the other pursuant to this Section 5.1 (each a "Claim"), the Indemnified Party must give the Indemnifying Party written notice of such Claim promptly after the Indemnified Party first becomes aware of it. The Indemnifying Party will have the right to choose counsel to defend against the Claim (subject to approval of such counsel by the Indemnified Party, which approval may not be unreasonably withheld, conditioned, or delayed) and to control and settle the Claim. The Indemnifying Party will have the right to participate in the defense of the Claim at its sole expense.

5.2. LIMITATION OF LIABILITY. EXCEPT FOR AMOUNTS PAYABLE WITH RESPECT TO THE INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 5: (A) NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR LOST PROFITS OR FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES IN CONNECTION WITH THE AGREEMENT, THE SERVICES, OR THE SYSTEMS, HOWEVER CAUSED, UNDER ANY THEORY OF LIABILITY; AND (B) THE AGGREGATE LIABILITY OF EITHER PARTY FOR DIRECT DAMAGES ARISING OUT OF THE AGREEMENT AND THE TRANSACTIONS CONTEMPLATED HEREBY SHALL BE LIMITED TO THE FEES PAID OR PAYABLE BY THE PARTIES HEREUNDER PURSUANT TO SECTION 2.1 DURING THE TWELVE (12) MONTHS PRIOR TO THE EVENT GIVING RISE TO SUCH CLAIM. NOTWITHSTANDING THE FOREGOING, THE AGGREGATE LIABILITY OF THE VILLAGE WITH RESPECT TO THE INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 5.1.1 SHALL BE LIMITED TO \$500,000.00.

5.3. Representations and Warranties.

5.3.1. Sensys Gatso represents and warrants that at all times during the Term:

- a. it has the legal power to enter into the Agreement;

- b. the System is provided and will continue to perform in accordance with this Agreement;
- c. the Services described herein will be performed in a workmanlike and professional manner with due care and skill;
- d. it will perform the Services described herein in compliance with all applicable federal, State of Ohio, and local laws including without limitation the Fair Labor Standards Act; any statutes regarding qualification to do business; any statutes prohibiting discrimination because of, or requiring affirmative action based on, race, creed, color, national origin, age, sex, or other prohibited classification including without limitation the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101 *et seq*;
- e. it is not barred by law from contracting with the Village or with any other unit of state or local government as a result of (a) a delinquency in the payment of any tax administered by the Ohio Department of Taxation unless Sensys Gatso is contesting, in accordance with the procedures established by the appropriate revenue act, its liability for the tax or the amount of the tax or (b) any finding of recovery made against Sensys Gatso by the Ohio Auditor of State;
- f. the only persons, firms, or corporations interested in this Agreement as principals are those disclosed to the Village prior to the execution of this Agreement and that this Agreement is made without collusion with any other person, firm, or corporation. If at any time it shall be found that Sensys Gatso, in procuring this Agreement, has colluded with any other person, firm, or corporation, then Sensys Gatso will be liable to the Village for all loss or damage that the Village may suffer thereby, and this Agreement will be null and void, at the Village's option; and
- g. neither it nor any of its principals, shareholders, members, partners, or affiliates, as applicable, is a person or entity named as a Specifically Designated National and Blocked Person (as defined in Presidential Executive Order 13224) and that it is not acting, directly or indirectly, for or on behalf of a Specifically Designated National and Blocked Person. Sensys Gatso further represents and warrants to the Village that Sensys Gatso and its principals, shareholders, members, partners, or affiliates, as applicable, are not, directly or indirectly, engaged in, and are not facilitating, the transactions contemplated by this Agreement on behalf of any person or entity named as a Specifically Designated National and Blocked Person.

5.3.2. The Village represents and warrants that at all times during the Term:

- a. it has the legal power to enter into the Agreement and that it has complied with any and all applicable federal, State of Ohio, and local procurement requirements in connection therewith; and
- b. it will utilize the System in compliance with all applicable federal, State of Ohio and local laws.

5.3.3. EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION 5.3:

- a. THE PARTIES EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT AS WELL AS ALL WARRANTIES ARISING BY USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE.
 - b. SENSYS GATSO MAKES NO WARRANTY THAT THE SERVICES AND/OR SYSTEM WILL MEET THE VILLAGE'S REQUIREMENTS, OR THAT THE SERVICES AND/OR SYSTEMS WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR FREE; NOR DOES SENSYS GATSO MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICES AND/OR SYSTEM.
- 5.4. Force Majeure. Neither party shall be liable for delays in the performance of its obligations hereunder due to a Force Majeure Event. "Force Majeure Event" means conditions or other circumstances, such as acts of God, that: (i) were not foreseen, and could not have been reasonably foreseen, by the party obligated to perform, (ii) are beyond the control of the party obligated to perform, and (iii) materially hinder or interfere with the ability of the party obligated to perform to complete performance; provided, however, that no such condition or circumstance will be a Force Majeure Event if it is the result of the fault, negligence, or material breach of this Agreement by the party obligated to perform. Examples of Force Majeure events include wars, floods, strikes and labor disputes, unusual delay in transportation, epidemics abroad, earthquakes, severe adverse weather conditions not reasonably anticipated, and delays in permitting.
- 5.5. Relationship between Sensys Gatso and the Village. Sensys Gatso is an independent contractor. This Agreement does not create, and nothing in this Agreement may be deemed, construed, or applied to create, a partnership, joint venture or the relationship of principal and agent or employer and employee between the parties. Further, this Agreement does not permit either party to incur any debts or liabilities or obligations on behalf of the other party, except only as specifically provided herein.
- 5.6. Assignment. Neither party may assign this Agreement, in whole or in part, without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, Sensys Gatso may assign the Agreement to an affiliate or in connection with a merger or sale of substantially all of the assets related to the Agreement. The Agreement shall bind and inure to the benefit of the parties hereto and their respective successors and permitted assigns.
- 5.7. Escalation Procedure. The following procedure will be followed if resolution is required to a conflict arising during the performance of this Agreement.
- 5.7.1. When a conflict arises between the Village and Sensys Gatso, the project team members will first strive to work out the problem internally.
 - 5.7.2. If the project team cannot resolve the conflict within five (5) business days, the Village Project Manager identified pursuant to Section 4.1 and the Sensys Gatso Project Manager identified pursuant to Section 3.1 will meet to resolve the issue.

- 5.7.3.If the conflict is not resolved within five (5) business days after being escalated to the Project Managers, a senior executive of Sensys Gatso will meet with the Village Mayor and/or Fiscal Officer within five (5) days to resolve the issue.
- 5.7.4.If the conflict remains unresolved as described in Section 5.7.3, the parties may mutually agree to terminate the Agreement pursuant to Section 1.2.
- 5.7.5.During any conflict resolution, Sensys Gatso agrees to provide those Services relating to items not in dispute, to the extent practicable pending resolution of the conflict. The Village agrees to pay invoices per the Agreement.
- 5.8. Applicable Law; Jurisdiction and Venue. This Agreement is governed by and construed in all respects in accordance with the laws of the State of Ohio, without regard to any conflicts of laws rules. Any lawsuit arising out of or in connection with this Agreement must be filed in the Butler County Common Pleas Court, Butler County, Ohio, and both parties specifically agree to be bound by the jurisdiction and venue of such courts.
- 5.9. Entire Agreement; Amendment. This Agreement and its exhibits constitutes the entire agreement between the parties about the Services and supersedes all prior and contemporaneous agreements or communications. This Agreement and its exhibits may only be amended by a writing specifically referencing this Agreement which has been signed by authorized representatives of the parties.
- 5.10. Counterparts. This Agreement may be signed in one or more counterparts, each of which will be deemed to be an original and all of which when taken together will constitute the same Agreement. Any copy of this Agreement made by reliable means (for example, photocopy or facsimile) is considered an original.
- 5.11. Enforceability. If any term in this Agreement is found by competent judicial authority to be unenforceable in any respect, the validity of the remainder of this Agreement will be unaffected, provided that such unenforceability does not materially affect the parties' rights under this Agreement.
- 5.12. Waiver. An effective waiver under this Agreement must be in writing signed by the party waiving its right. A waiver by either party of any instance of the other party's noncompliance with any obligation or responsibility under this Agreement will not be deemed a waiver of subsequent instances.
- 5.13 Notices. Any notices provided pursuant to this Agreement shall be effective three days after deposit in the U.S. Mail if sent by Certified Mail Return Receipt Requested at the addresses first set forth above, or immediately if by confirmed facsimile or electronic mail, to the parties at the following email addresses:

If to the Village: groberts@newrichmond.org; and

If to Sensys Gatso: a.noble@sensysgatso.com.

Remainder of Page Intentionally Left Blank

IN WITNESS WHEREOF, Sensys Gatso and New Richmond, Ohio have caused this Agreement to be executed by their properly authorized representatives as of the Effective Date.

Agreed to:
Sensys Gatso USA, Inc.

By _____
Authorized signature

Andrew Noble
President

Date:

Agreed to:
The Village of New Richmond, Ohio

By Ramona Carr
Authorized signature

Name: Ramona Carr
Title: Mayor

Date: 1-8-2019

Attested to:

By _____
Authorized signature

Name (type or print):

Date:

Attested to:

By Greg Roberts
Authorized signature

Name (type or print): Greg Roberts

Date: 1-8-2019

EXHIBIT A

Additional Terms and Conditions for Installation of Camera Poles

In the event that Sensys Gatso is required to install one (1) or more camera poles pursuant to Section 3.3, the following additional terms and conditions shall apply:

- A. Obtaining Permits. Sensys Gatso shall prepare all permit applications, design drawings or other related documents as may be reasonably required by the Village or any other governmental entities for the installation and operation of the camera poles. The Village will provide to Sensys Gatso, at no cost, all Village permits necessary for the operation of the System and provision of the Services provided Sensys Gatso meets the minimum requirements for such permits. Sensys Gatso will use commercially reasonable efforts to obtain any other necessary permits for the camera poles from applicable agencies and shall pay all permit or other fees charged by such governmental entities in connection with the installation and operation of the System. The Village will reasonably assist Sensys Gatso in securing necessary permits from other governmental agencies, as required.
- B. Installation. Sensys Gatso will commence installation of the camera poles within ten (10) business days after any and all necessary State of Illinois, County, and Village permit applications have been approved and such permits have been received. Sensys Gatso shall not be responsible for any delays associated with the failure of any state or local government to promptly provide applicable permits. In the event any permitting agency requires one (1) or more upgrades to any Village owned or controlled equipment at any intersection where the System will be installed, such upgrades shall be the sole responsibility of the Village. Sensys Gatso may elect to add a separate circuit breaker to the traffic control system power source to obtain electric power for the System. Sensys Gatso will use commercially reasonable efforts to complete installation of the System in a timely manner.
- C. Removal Of Hardware, Equipment; Restoration. Upon any expiration or termination of this Agreement, Sensys Gatso shall remove any poles and related equipment and restore such intersections to substantially the same condition as existed prior to this Agreement. Notwithstanding the foregoing, Sensys Gatso will not remove any pole foundation, which shall be left approximately flush with grade with no exposed bolts or other hazards. Installed underground conduit and other equipment shall not be required to be removed. Sensys Gatso shall use commercially reasonable efforts such that removal and restoration activities occur within forty-five (45) days after the Effective Date of Termination and do not unreasonably interfere with or adversely affect traffic flow.