

ORDINANCE NO. 17-460

AN ORDINANCE TO AMEND THE CODE OF ORDINANCES TO PROVIDE FOR TRAFFIC CONTROL PHOTOGRAPHIC SYSTEMS; TO FIX A PENALTY FOR THE VIOLATION OF THIS ORDINANCE; AND TO FIX THE EFFECTIVE DATE OF THIS ORDINANCE.

WHEREAS, Mount Carmel Municipal Code's Title 15, MOTOR VEHICLES TRAFFIC AND PARKING, Chapter 8, Automated Enforcement, provides for automated traffic enforcement through a mounted speed camera; and

WHEREAS, the Tennessee Legislature limited the use of such speed cameras in March of 2017; and

WHEREAS, repeated accidents at the intersection of Hammond Avenue and Highway 11W have demonstrated that this is a high-risk intersection in need of further traffic control measures; and

WHEREAS, the Board of Mayor and Alderman of the Town of Mount Carmel unanimously wish to implement traffic control enforcement at the red light at the intersection of Hammond Avenue and Highway 11W for increased safety at said intersection; and

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF MAYOR AND ALDERMEN OF THE TOWN OF MOUNT CARMEL, TENNESSEE AS FOLLOWS:

Section 1. That the Town of Mount Carmel Municipal Code, Title 15, MOTOR VEHICLES TRAFFIC AND PARKING, Chapter 8, AUTOMATED ENFORCEMENT is hereby deleted entirely, and replaced with the following:

Sec. 15-801. Definitions. The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Citations, which include documents entitled "notice of violation," may include:

- (1) The name and address of the registered owner of the vehicle;
- (2) The registration plate number of the motor vehicle involved in the violation;
- (3) The violation charged;
- (4) The location of the violation;
- (5) The date and time of the violation;
- (6) A copy of the recorded image;
- (7) The amount of the civil penalty imposed and the date by which the civil penalty should be paid;

- (8) A personal or electronically signed statement by a P.O.S.T. certified member of the police department that, based on inspection of recorded images, the motor vehicle was being operated in violation of this division;
- (9) Information advising the person alleged to be liable under this division of the manner and time in which liability alleged in the citation occurred and that the citation may be contested in a city court and that failure to contest in the manner and time provided shall be deemed an admission of liability and that a default judgment may be entered thereon; and
- (10) Other information required by T.C.A. § 55-8-198.

In operation means operating in good working condition.

Owner or vehicle owner means the person identified as the registered owner of the vehicle.

Recorded images means images recorded by a traffic enforcement camera system on a photographic, micropictograph, electronic image, videotape or any other medium or means including digital or digitally stored and at least one image, identifying the registration plate number of the motor vehicle.

System location means the approach to an intersection toward which a photographic, video or electronic camera is directed and is in operation.

Traffic enforcement camera system includes an unmanned traffic enforcement camera and is an electronic system consisting of a photographic, video or electronic camera and a vehicle sensor installed to work in conjunction with an official traffic control sign, signal or device to automatically produce photographs, video or digital images of each vehicle violating a standard traffic control sign, signal or device.

Sec. 15-802. Penalties.

- (a) Any violation of this division shall subject the responsible person or entity to a penalty of \$50.00, and as may be permitted by T.C.A. § 55-8-198, court costs, for each violation. Such penalty and court costs shall not be suspended, reduced, or altered for a violation of this division. Such penalty and court costs shall be imposed even if the responsible person is granted defensive driving school, driver education or improvement course or any diversion by the court. Such penalty and court costs shall be in addition to any cost required for the school. The imposition of a civil penalty under the provisions of this division shall not prevent the revocation of any permit or license or taking of other punitive or immediate remedial action as called for

or permitted under the provisions of the Town's Municipal Code or other applicable law.

- (b) If the person or entity receiving the summons or citation is in violation of this division solely upon evidence obtained from an unmanned traffic enforcement camera that has been installed to enforce or monitor traffic violations, the violation shall be considered a nonmoving traffic violation.

Sec. 15-803. Procedure.

- (a) The city police department or an agent of the police department shall administer the traffic enforcement camera system and shall maintain a list of system locations where traffic enforcement camera systems are installed.
- (b) A citation alleging that the violation of this division occurred, sworn to and by statement signed personally or electronically by a P.O.S.T. certified member of the police department, based on inspection of recoded images produced by a traffic enforcement camera system, shall be issued in accordance with T.C.A. § 55-8-198 and shall be admissible in any proceeding alleging a violation under this division. The citation shall be sent by first-class mail to the owner's address as given on the motor vehicle registration. Personal service of process on the owner shall not be required.
- (c) Signs to indicate the use of traffic enforcement camera systems shall be posted as set out in T.C.A. § 55-8-198.

Sec. 15-804. Offenses.

- (a) Except when directed to proceed by a police officer or traffic control signal, every driver shall stop when facing a red signal light at the stop line, or if none before entering the crosswalk on the near side of the intersection and it shall be unlawful for a vehicle to cross the stop line at a system location when facing a red signal light or for a vehicle to violate any other traffic regulation specified in this chapter. No citation shall be issued based solely upon evidence obtained from a traffic enforcement camera that has been installed to enforce or monitor traffic violations of T.C.A. § 55-8-110(a)(3), unless the evidence collected shows the target vehicle with its front tire or tires before the stop line when the signal is red and subsequently shows the same vehicle with its rear tire or tires past the stop line while the signal is red. A traffic enforcement camera system may be used to issue a traffic citation for an unlawful right turn on a red signal at an intersection that is clearly marked by a "No Turn On Red" sign erected by the city. Any other

traffic citation for failure to make a complete stop at a red signal before making a permitted right turn based solely upon evidence obtained from an unmanned traffic enforcement camera shall be deemed invalid. A traffic citation based solely upon evidence obtained from an unmanned traffic enforcement camera shall be deemed invalid if the registration information of the motor vehicle for which such citation is issued is not consistent with the evidence recorded by such traffic enforcement camera.

- (b) The provisions of this division shall be construed, interpreted and shall be conformed so as to comply with the requirements of T.C.A. § 55-8-198.

Sec. 15-805. Uncontested payment or court contest.

A person who receives a citation under this division may pay the civil penalty, in accordance with instruction on the citation, directly to the city court, or contracted collection agent or system vendor or contest the matter in city court.

Sec. 15-806. Owner of vehicle presumed liable; exception.

- (a) Except as otherwise provided in this section, the registered owner of the motor vehicle shall be responsible by strict liability for a violation under this division and shall be responsible for payment of any citation issued as the result of the traffic control monitoring system.
- (b) An owner of a vehicle shall not be responsible for the violation if, on or before the designated court date, the owner furnishes the court an affidavit stating the name and address of the person or entity that leased, rented or otherwise had care, custody or control of the motor vehicle at the time of the violation.
- (c) If a motor vehicle or its plates were stolen at the time of the alleged violation, the registered owner must provide an affidavit denying the owner was an operator and provide a certified copy of the police report reflecting such theft.
- (d) An affidavit alleging theft of a motor vehicle or its plates must be provided by the registered owner of a vehicle receiving a notice of violation within 30 days of the mailing date of the notice of violation.

Sec. 15-806. Affirmative defenses.

It shall be an affirmative defense to the liability under this division, proven by a preponderance of the sworn evidence that:

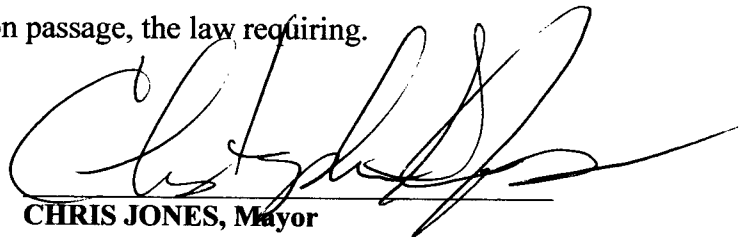
- (1) The operator of the motor vehicle was acting in compliance with a lawful order of a police officer;
- (2) The operator of a motor vehicle violated the instructions of the traffic control signal so as to yield the right-of-way to an immediately approaching authorized emergency vehicle; or
- (3) The person who received the citation was not the owner of the motor vehicle at the time of the alleged violation, provided such person supplies proof of the transfer of ownership, and the person provides the name and address of the purchaser or transferee.

Sec. 15-807. Vehicles exempt from receiving a citation.

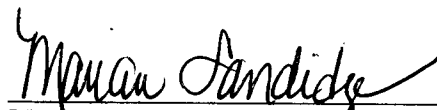
The following vehicles are exempt from receiving a citation for a violation of this division:

- (1) Emergency vehicles with active emergency lights;
- (2) Vehicles moving through the intersection to avoid or clear the way for a marked emergency vehicle;
- (3) Vehicles under police escort; and
- (4) Vehicles in a funeral procession.

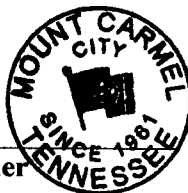
Section 2. This ordinance shall take effect upon passage, the law requiring.


CHRIS JONES, Mayor

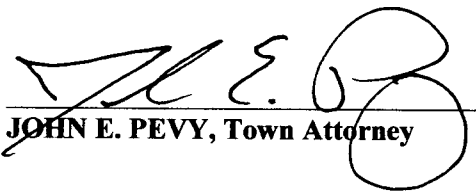
ATTEST:



MARIAN SANDIDGE, City Recorder



APPROVED AS TO FORM:


JOHN E. PEVY, Town Attorney

MOTION: Alderman Margaret Christian			
SECOND: Alderman Jennifer Williams			
FIRST READING	AYES	NAYS	OTHER
ALDERMAN DIANE ADAMS	X		
ALDERMAN EUGENE CHRISTIAN	X		
ALDERMAN MARGARET CHRISTIAN	X		
ALDERMAN WANDA DAVIDSON	X		
ALDERMAN JENNIFER WILLIAMS	X		
VICE-MAYOR CARL WOLFE	X		
MAYOR CHRIS JONES	X		
TOTALS	7	0	0

PASSED FIRST READING: September 26, 2017

MOTION: Alderman Eugene Christian			
SECOND: Vice-Mayor Carl Wolfe			
SECOND READING	AYES	NAYS	OTHER
ALDERMAN DIANE ADAMS	X		
ALDERMAN EUGENE CHRISTIAN	X		
ALDERMAN MARGARET CHRISTIAN	X		
ALDERMAN WANDA DAVIDSON	X		
ALDERMAN JENNIFER WILLIAMS	X		
VICE-MAYOR CARL WOLFE	X		
MAYOR CHRIS JONES	X		
TOTALS	7	0	0

PASSED SECOND READING: October 24, 2017

MILLIGAN & COLEMAN PLLP

ATTORNEYS AT LAW

230 WEST DEPOT STREET

GREENEVILLE, TENNESSEE 37743

MAILING ADDRESS

P. O. BOX 1060

GREENEVILLE, TN 37744-1060

TELEPHONE (423) 639-6811

FAX (423) 639-0278

MILLIGANCOLEMAN.COM

THOMAS L. KILDAY
RONALD W. WOODS
JEFFREY M. WARD
THOMAS J. GARLAND, JR.
JOHN E. PEVY

S. J. MILLIGAN
1889-1982
JAMES W. FLETCHER
1924-1991
N.R. COLEMAN, JR.
1922-2012
—
GENE P. GABY
RETIRED

October 31, 2017

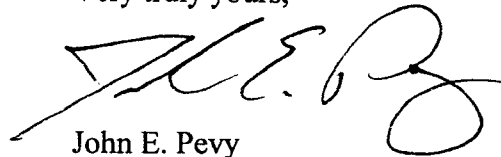
Marian Sandidge
Mount Carmel City Recorder
100 E. Main St. East
Mt. Carmel TN 37645

Re: *Mount Carmel*
Our File No. 16-600

Dear Marian:

Please find enclosed herewith a letter from Redflex for signature by Mayor Jones. Once he has signed this letter, please mail it back to me in the enclosed, self-addressed, postage prepaid envelope. Thanks! As always, if you have any questions or concerns, please do not hesitate to let me know.

Very truly yours,



John E. Pevy
MILLIGAN & COLEMAN

JEP/sw
Enclosure



Redflex Traffic Systems Inc.
5651 West Talavi Boulevard, Suite 200
Glendale AZ 85306-1893
Tel: 623 207 2000
Web: www.redflex.com

October 31, 2017 ~~September 29, 2017~~

VIA U.S. FIRST CLASS CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

Chief Jeff Jackson
Mount Carmel Police Department
100 Main Street East
P.O. Box 1421
Mount Carmel, TN 37645

Subject: Payment and Reimbursement - Traffic Study at the Intersection of US 11/SR 1 and Hammond Avenue.

Dear Chief Jackson,

This letter ("Letter") confirms the agreement between Redflex Traffic Systems, Inc. ("Redflex") and the Town of Mount Carmel, Tennessee (the "Town") regarding payment for and reimbursement of the traffic study at the Intersection of US 11/SR 1 and Hammond Avenue (the "Study"). Redflex agrees to pay to the Town's vendor, CDM Smith ("CDM"), Eleven Thousand Five Hundred Fifty Dollars (USD \$11,550) at the completion of the Study as outlined in CDM's letter to the Mount Carmel Police Department dated July 10, 2017 attached to this Letter as Exhibit A. The Town agrees to reimburse Redflex for the cost of the Study in the amount of Eleven Thousand Five Hundred Fifty Dollars (USD \$11,550) to be paid from the Town's portion of fines generated by the Town's photo enforcement program according to the following schedule:

Month	Amount of Payment
February 2018	\$ 2,887.50
March 2018	\$ 2,887.50
April 2018	\$ 2,887.50
May 2018	\$ 2,887.50

Unless expressly stated otherwise, all other terms of the Agreement Between the Town of Mount Carmel, Tennessee and Redflex Traffic Systems, Inc. for Photo Speed Enforcement Program dated November 27, 2007, together with any amendments thereto, shall remain in full force and effect. Nothing in this Letter shall be construed as authorizing Redflex to participate in the Study, and the Town certifies it has selected and negotiated with CDM independent of Redflex.

Please indicate the Town's agreement to the terms of this Letter by having the appropriate official sign in the space provided below. Thank you.

Sincerely,

Michael Finn
President and CEO
Redflex Traffic Systems, Inc.

TOWN OF MOUNT CARMEL, TENNESSEE

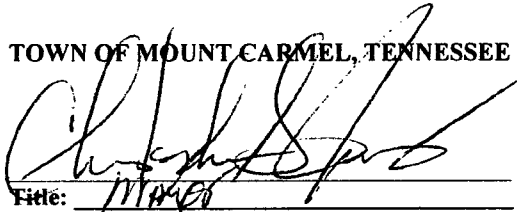

Title: Mayor

EXHIBIT A

Letter from CDM Smith to the Mount Carmel Police Department Dated July 10, 2017



Redflex Traffic Systems Inc.
5651 West Talavi Boulevard, Suite 200
Glendale AZ 85306-1893
Tel: 623 207 2000
Web: www.redflex.com

July 17, 2018

VIA U.S. FIRST CLASS CERTIFIED MAIL,
RETURN RECEIPT REQUESTED

Chief Jeff Jackson
Mount Carmel Police Department
100 Main Street East
P.O. Box 1421
Mount Carmel, TN 37645

Subject: Payment and Reimbursement - Traffic Study at the Intersection of US 11/SR 1 and Hammond Avenue.

Dear Chief Jackson,

This letter confirms the agreement between Redflex Traffic Systems, Inc. ("Redflex") and the Town of Mount Carmel, Tennessee (the "Town") regarding payment for and reimbursement of the traffic study at the Intersection of US 11/SR 1 and Hammond Avenue (the "Study"). At the Town's request, Redflex paid the Town's vendor, CDM Smith ("CDM"), Eleven Thousand Five Hundred Fifty Dollars (USD \$11,550) to complete the Study as outlined in CDM's letter to the Mount Carmel Police Department dated July 10, 2017, attached to this Letter as Exhibit A. The Town agrees to reimburse Redflex for the cost of the Study in the amount of Eleven Thousand Five Hundred Fifty Dollars (USD \$11,550) to be paid from the Town's portion of fines generated by the Town's photo enforcement program according to the following schedule:

Date	Amount of Payment
October 2018	\$ 2,887.50
November 2018	\$ 2,887.50
December 2018	\$ 2,887.50
January 2019	\$ 2,887.50

Unless expressly stated otherwise, all other terms of the Agreement Between the Town of Mount Carmel, Tennessee and Redflex Traffic Systems, Inc. for Photo Speed Enforcement Program dated October 12, 2017, together with any amendments thereto, shall remain in full force and effect. Nothing in this Letter shall be construed as authorizing Redflex to participate in the Study, and the Town certifies it selected and negotiated with CDM independent of Redflex.

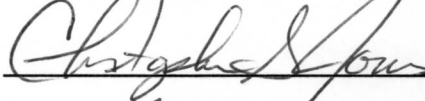
Please indicate the Town's agreement to the terms of this Letter by having the appropriate official sign in the space provided below. Thank you.

Sincerely,



Michael Finn
Vice President
Redflex Traffic Systems, Inc.

TOWN OF MOUNT CARMEL, TENNESSEE



Title: MAYOR



EXHIBIT A

Letter from CDM Smith to the Mount Carmel Police Department Dated July 10, 2017



1100 Marion St., Suite 300
Knoxville, Tennessee 37921
tel: 865.963.4300
fax: 865.524.5311

July 10, 2017

Chief Jeff Jackson
Mount Carmel Police Department
100 Main Street East
P.O. Box 1421
Mount Carmel, TN 37645

**RE: RED LIGHT RUNNING ENFORCEMENT, US 11/SR 1 AND HAMMOND
AVENUE, MT CARMEL, TN.**

Dear Chief Jackson:

In response to your request, CDM Smith is pleased to offer this professional services proposal to prepare a study for the signalized intersection of US 11/SR 1 and Hammond Avenue for camera enforcement. The study will address the current traffic conditions, including traffic volumes, speed, accidents, and red-light violations. Traffic data will be collected to evaluate the current traffic volumes, signal operations, and possible accidents exposure. Accident history will be evaluated to determine any causational factors and possible mitigation. This history will include an evaluation of the impact on prevailing speeds on US 11/SR 1 with the town's removal of its photo enforcement of the speed limit on this state highway. Red light violations will be documented and evaluated to determine the need for greater enforcement of the red light on US 11/SR 1, which photo enforcement would provide. This study would be conducted in accordance with the State requirement and the traffic engineering industry for possible photo enforcement of the traffic signal at the intersection of US 11/SR 1 and Hammond Avenue.

Scope of Services

The scope of work for the traffic study is as follows:

- 1) Meet with the Mount Carmel Police Department and discuss the scope and obtain traffic data including signal timing and any accident data available from the department.
- 2) Collect traffic data, including:
 - i) Video count of red-light running violations
 - ii) Obtain from TDOT (TRIMS) accident data





Chief Jeff Jackson
Mount Carmel Police Department
July 10, 2017
Page 2

- iii) 24-hr mechanical traffic volume and speed count for US 11/SR 1 approaches to the intersection
 - iv) Peak-hour intersection turning movement count (TMC)
 - v) Conduct an intersection capacity and level of service analysis to ascertain the current signalized intersection operation
 - vi) Field inventory of the current traffic control for the intersection of US 11/SR 1 and Hammond Avenue and its approaches
- 3) Conduct an analysis of the accident history to determine accident patterns, rates, the significance of the accident rates calculated.
- 4) Review the traffic signal timing to determine the adequacy of the timing and the required clearance time intervals.
- 5) Conduct a spot speed radar study for US 11/SR 1 in the vicinity of its intersection with Hammond Avenue. Review the radar spot speed and the mechanical speed data to determine the prevailing speeds and compliance with the posted speed limit.
- 6) Prepare a letter report outlining the study methodology, findings, and recommendations with a technical appendix containing analyses and data collected for submittal to the Town of Mount Carmel.

Schedule and Fee

We can undertake the study immediately after receipt of notice of acceptance of this proposal and your specific authorization to begin work. We will work to complete the study for submittal to the Mount Carmel in approximately three (3) to five (5) weeks. CDM Smith proposes to undertake these professional services for the following lump-sum fee of \$11,550.00 due at the completion of the study. This fee by task is as follows:

Meeting/Data Collection.....	\$ 4,350.00
Reconcile and Analysis of Traffic Data.....	\$ 2,900.00
Report.....	\$ 4,300.00
TOTAL.....	\$11,550.00



Chief Jeff Jackson
Mount Carmel Police Department
July 10, 2017
Page 3

Any additional meetings not identified in the scope can be attended at your request for a per-diem fee at CDM Smith's current rate schedule.

CDM Smith, again, sincerely appreciates the opportunity to submit this proposal and trust it is fully responsive to your needs. Should you find it and the attached Terms and Conditions fully acceptable, please sign the enclosed copies in the space provided and return one for our files. This will serve an attachment to the contract and as authorization to proceed.

If you have any questions regarding this proposal or wish to discuss the proposed scope, please call me.

Sincerely,

CDM SMITH INC.

John F. Gould, P.E.
Senior Transportation Engineer

Enclosure: Terms and Conditions

AUTHORIZATION:

CDM Smith, Inc. 7/10/2017
Date

Mount Carmel 7/30/18
Date

**TERMS AND CONDITIONS
TO THE AGREEMENT BETWEEN
CDM Smith Inc.
AND CLIENT**

1. *Authorization to Proceed* - Execution of this AGREEMENT by the CLIENT and CDM Smith will be authorization for CDM Smith to proceed with the work, unless otherwise provided for in this AGREEMENT. Use of Purchase Order to authorize work will not alter the terms of this AGREEMENT.

2. *Use of Documents* - The CLIENT agrees that CDM Smith's services are on behalf of, and for the exclusive use of, the CLIENT for this Project and that all documents furnished to the CLIENT are instruments of service and shall be utilized solely for this Project. Any reuse without written verification or adaptation by CDM Smith for other than the specific purpose intended will be at CLIENT's sole risk and without liability or legal exposure to CDM Smith or CDM Smith's independent consultants from, all claims, damages, losses and expenses including all attorney's fees arising from such reuse.

3. *Limitation of Liability* - Notwithstanding any provision to the contrary contained in this AGREEMENT, CDM Smith's total liability for any and all injuries, claims, losses, expenses or damages whatsoever from any cause or causes, including but not limited to CDM Smith's negligence, errors, omissions, strict liability or breach of contract, or breach of warranty, shall not exceed the total amount of \$50,000.

4. *Consequential Damages* - Notwithstanding any language to the contrary contained in this AGREEMENT, neither party shall be liable to the other for lost profits or any consequential, special, or indirect damages in any way arising out of this AGREEMENT however caused under a claim of any type or nature based on any theory of liability (including but not limited to contract, tort, or warranty) even if the possibility of such damages has been communicated.

5. *Independent Contractor* - CDM Smith is an independent contractor and is responsible for the means and methods used in performing its services under this AGREEMENT.

6. *Standard of Care* - The standard of care applicable to CDM Smith services will be the degree of skill and diligence normally employed by professional engineers or consultants performing similar services at the same time, in the same locale, and under similar circumstances. The CLIENT agrees that services provided will be rendered without any other warranty, expressed or implied.

7. *Payment to CDM Smith* - CDM Smith will submit monthly invoices for services rendered and expenses incurred. The invoices will be based upon CDM Smith's total services actually completed at the time of billing. The CLIENT shall make payment with thirty (30) days in response to CDM Smith's monthly invoice. Successive invoices may include interest charges of one and one-half percent (1-1/2%) per month on unpaid balances. CLIENT agrees to pay all charges including attorney's fees involved in collection of unpaid balances.

8. *Termination* - The obligation to provide further services under this AGREEMENT may be terminated by either party for cause in the event of failure by the other party to perform in accordance with the terms thereof. Such termination by either party requires seven (7) days' written notice. In the event of termination, CDM Smith shall be paid for services rendered to date of termination.

9. *Severability and Reformation* - Any provision of this AGREEMENT held to be void or unenforceable shall be deemed stricken. All remaining provisions shall continue to be valid and binding. The parties agree that this AGREEMENT may be reformed to replace such stricken provision or part thereof with a valid and enforceable provision which comes as close as possible to expressing the intention of the stricken provision.