

**VILLAGE OF NEW MIAMI, OHIO
COUNCIL RESOLUTION 2015-030**

**A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A SERVICE
AGREEMENT WITH BLUE LINE SOLUTIONS, LLC TO PROVIDE
AUTOMATED MOTORVEHICLE SPEED ENFORCEMENT SERVICES TO
THE VILLAGE**

WHEREAS, the ongoing problem of motorists disobeying speed limit control devices has contributed to a significant number of motor vehicle crashes in the Village of New Miami, which have resulted in death, serious personal injury and or substantial property damage; and

WHEREAS, the Village of New Miami seeks to increase compliance with traffic control devices, particularly speed limits, and thereby decrease the number of motor vehicle crashes and pedestrian injuries that are caused by such failure to comply; and

WHEREAS, an automated speed enforcement program will assist the Village in increasing compliance with traffic control devices without the disadvantages attendant to conventional traffic enforcement, such as disruptions in the flow of traffic at heavily traveled intersections, and expenses associated with increased police manpower; and

WHEREAS, the Village of New Miami implemented a civil automated speed enforcement program under Village of New Miami Ordinance 1991; and

WHEREAS, Blue Line Solutions, LLC is in the business of providing automated speeding violation detection, imaging and citation services to authorized municipalities and government agencies.

**NOW THEREFORE BE IT RESOLVED BY THE COUNCIL OF THE VILLAGE
OF NEW MIAMI, OHIO THAT:**

SECTION 1: the Mayor is authorized and directed to execute a service agreement with Blue Line Solutions, LLC. for the provision of automated speed enforcement service. A copy of said service agreement is attached hereto as Exhibit A.

SECTION 2: This Resolution shall go into effect immediately upon its adoption.

SECTION 3: It is found and determined that all formal actions of this Council concerning or relating to the adoption of this resolution were adopted in an open meeting of the Council and any of its committees that resulted in such formal actions, said meetings were open to the public, and in compliance with the legal requirements, including § 121 of the Ohio Revised Code.

Council member **Dennis Rapier** made a motion that the requirement that the Resolution be read on three different dates as required by R.C. §731.17 be suspended pursuant to R.C. §731.17 (A)(2). Council member **Barb Schick** seconded the motion, and a call of the roll on the question was held. The following vote resulted:

Ayes 5 Nays 0

Council member **Ken Flick** made a motion that the Resolution be adopted. Council member **Dennis Rapier** seconded the motion, and a call of the roll on the question of its adoption, the following votes resulted:

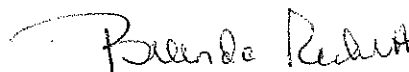
Ayes 5 Nays 0

COUNCIL MEMBER	VOTE
Ken Flick	Yes
Dennis Rapier	Yes
Vacant	---
Christine Reichert	Yes
Barbara Schick	Yes
Anna Jarvis	Yes

Robert L. Henley, Mayor

ADOPTED: December 3, 2015

I, Belinda Ricketts, Fiscal Officer for the Village of New Miami, Butler County Ohio, do hereby certify that Resolution No. 2015-30 will be posted in accordance with New Miami Ordinance No. 1691 on the 30th day of December, 2015.



Belinda Ricketts, Fiscal Officer

PHOTO LASER SYSTEM AGREEMENT

THIS AGREEMENT made this ____ day of _____ 2015, between Blue Line Solutions, LLC (herein "BLS"), and the Village of New Miami (herein "Village,") a _____ of the State of Ohio.

WITNESSED:

WHEREAS, BLS has the legal possession and processes, referred to collectively as the "Photo Laser System" (herein "PLS"), and

WHEREAS, Village desires to use the PLS to monitor excessive speeding infractions and other potential traffic violations, issue traffic notices of violations and evaluate traffic movement and safety, affirms it has no other such equipment or service provider, and has the right, power and authority to execute this Agreement.

NOW THEREFORE, the parties agree:

1. DEFINITIONS

As used in this Agreement, the following words and terms shall apply:

"Notice of Liability" means a notice of liability issued by a competent state or municipal law enforcement agency or by a court of competent jurisdiction relating to an infraction evidenced by the PLS.

"Person" or "persons" means any individual, partnership, joint venture, corporation, trust, unincorporated association, governmental authority or political subdivision thereof or any other form of entity.

"PLS" means Photo Laser System, described as photographic traffic monitoring equipment capable of accurately detecting a traffic infraction and recording such date with images of such vehicle whether manned or unmanned. Systems may include:

- a. Handheld Photo Speed Laser
- b. Trailer Photo Speed Laser
- c. Vehicle Mounted Photo Speed Laser

"Violation" means failure to obey an applicable traffic law or regulation, including, without limitation, operating a motor vehicle in excess of the posted speed limit, and operating a motor vehicle without displaying a valid license plate.

2. BLS AGREES TO PROVIDE:

The scope of work identified in Exhibit A.

3. VILLAGE AGREES TO PROVIDE:

The scope of work identified in Exhibit B.

4. TERMS AND TERMINATION

a. The term of this Agreement shall be for five years beginning on the date of the first notice of a liability is issued and payable, and may be automatically extended for one additional two (5) year period at the sole option of Village. Village may terminate this Agreement at the expiration of any term providing written notice of its intent not to extend the Agreement at least ninety (30) days prior to the expiration of the current term.

Either party shall have the right to terminate this Agreement by written notice:

- i) At any time during this term with written 30 day notice without penalty;
- ii) If applicable law is changed so as to prohibit or substantially interfere with the operation or feasibility of the PLS or the parties' obligations under this Agreement;
- iii) For cause, by either party where the other party fails in any material way to perform its obligations under this Agreement. Termination under this subsection may occur if the terminating party notifies the other party of its intent to terminate, stating the specific grounds therefore, and the other party fails to cure the default within sixty (60) days after receiving notice.

b. Upon any termination of this Agreement, the parties recognize that BLS and Village will use its best efforts to continue to process any and all pending and legitimate traffic law violations. Accordingly, the parties shall have the following obligations which continue during the termination process: Village shall cease using the PLS, shall return or allow BLS to retrieve all equipment to BLS within a reasonable time not to exceed 30 days, and shall not generate further images to be processed. Unless reasonably agreed upon otherwise by both parties, BLS and Village shall continue to process all images and notices of violation that occurred before termination in accordance with this Agreement and BLS shall be entitled to all Fees specified in the Agreement as if the Agreement were still in effect.

c. Notwithstanding any provision to the contrary this Agreement terminates automatically upon a determination by any Court of jurisdiction, State or Federal, that the PLS or the underlying Infraction are unconstitutional, illegal or otherwise prohibited. Any legislative act, State or Federal, which prohibits the use of the PLS or the enforcement of the underlying infraction, shall also automatically terminate this agreement.

5. ASSIGNMENT AND EFFECT OF AGREEMENT

Neither party may assign all or any portion of this Agreement without the prior written consent of the other, which consent shall not be unreasonably withheld or delayed; provided, however, the Village hereby acknowledges that the performance of BLS's equipment and obligations pursuant to this Agreement require a significant investment by BLS, and that, in order to finance such investment, BLS may be required to enter into certain agreements or arrangements with financial institutions or other similar entities. The Village hereby agrees that BLS shall have the right to assign or pledge its rights under this Agreement in connection with any financing subject to the Village's prior written approval, which approval shall not be unreasonably withheld or delayed. The Village further agrees that in the event BLS provides written notice to the Village that it intends to assign or pledge its rights pursuant to this Agreement, and in the event that the Village fails to provide such approval or fails to object within thirty (30) days after its receipt of such notice from BLS, then BLS shall be free to effect such transaction.

This Agreement shall inure to the benefit of and be binding upon all of the parties hereto and their respective executors, administrators, successors and assigns as permitted by law.

6. FEES AND PAYMENT

Village shall pay BLS for all equipment, services and maintenance based on the Service Fee schedule indicated in Exhibit C.

BLS shall collect and accumulate all payments to Village on a monthly basis and provide proper payment to Village on or before the 10th day of the following month. Village shall forward to BLS any payments received by Village directly from violators within three (3) days of receipt, in order for BLS to process and reconcile all payments due and owing under this Agreement.

7. AVAILABILITY OF INFORMATION

BLS agrees that all relevant information obtained by BLS through operation of the PLS shall be made available to Village at any time during BLS's normal working hours upon reasonable notice, excluding trade secrets and other confidential or proprietary information not reasonably necessary for the prosecution of notices of violation or the fulfillment of BLS's obligations to Village under this Agreement.

8. CONFIDENTIAL INFORMATION

No information provided by BLS to Village will be of a confidential nature, unless specifically designated in writing as proprietary and confidential by BLS. Provided, however, nothing in this paragraph shall be construed contrary to the terms and provisions of any "Open Records Act" or similar laws, insofar as they may be applicable.

9. OWNERSHIP OF SYSTEM

It is understood by the Village that the PLS, and all associated hardware and software being provided by BLS is, and shall remain, the sole property of BLS, unless separately procured by Village. The PLS is being provided to Village only pursuant to the terms of this Agreement. Village agrees that it shall not make any modifications to BLS's equipment, nor disassemble or perform any type or reverse engineering to the PLS, nor infringe on any property or patent rights, nor cause or allow any other Person to do any of the foregoing.

10. INDEMNIFICATION

Village shall at all times comply with all federal, state and local laws, ordinances and regulations. Village acknowledges that they reasonably believe the PLS and citation procedures comply with federal, state, and local laws and ordinances. Village shall comply with the maintenance procedures and manufacturer recommendations for operation of the PLS equipment.

Village shall indemnify and hold harmless BLS against any claims arising from:

- a. Any Lawsuits or claims alleging violations of any federal, state and local laws, ordinances and regulations arising from the Village's conduct in the issuance, subsequent prosecution and enforcement of resulting penalties of any citations arising from this agreement and/or BLS's actions taken on behalf of Village under this Agreement;
- b. Any claims arising from violations that are the result of the Village's failure to follow proper maintenance procedures and manufacturer recommendations for operation of the equipment;
- c. Any claims as a result of the negligence or willful misconduct of the Village, its officers and directors, agents, attorneys, and employees, but excluding any employees or agents of BLS.

The Village shall further indemnify, defend, and hold harmless BLS, and its officers, employees, and agents ("BLS indemnitees"), from and against any and all causes of action, claims, liabilities, obligations, judgments, or damages, including reasonable attorneys' fees and costs of litigation ("claims"), arising out of the Village's performance of its obligations under this agreement or out of the operations conducted by Village, including the Village's active or passive negligence, or the Village's lack of understanding or application of federal, state, or local laws and ordinances in regard to the MPL system and BLS services, except for such loss or damage arising from the sole negligence or willful misconduct of the BLS. In the event BLS indemnitees are made a party to any action, lawsuit, or other adversarial proceeding arising from the Village's or

BLS's performance of this agreement or their duty to the citizens within the Village's jurisdiction, the Village shall provide a defense to BLS indemnitees, or at BLS's option, reimburse the BLS indemnitees their costs of defense, including reasonable attorneys' fees, incurred in defense of such claims.

11. LIMITED LIABILITY

Notwithstanding anything to the contrary in this Agreement, neither party shall be liable to the other, by reason of any representation or express or implied warranty, condition or other term or any duty at common or civil law, for any indirect, incidental, special, lost profits or consequential damages, however caused and on any theory of liability arising out of or relating to this Agreement.

12. FORCE MAJEURE

Neither party will be liable to the other or be deemed to be in breach of this Agreement for any failure or delay in rendering performance arising out of causes beyond its reasonable control. Such causes may include but are not limited to, acts of God or the public enemy, terrorism, significant fires, floods, earthquakes, unusually severe weather, epidemics, strikes, or governmental authority approval delays or denials. The party whose performance is affected agrees to notify the other promptly of the existence and nature of any delay.

13. CORRESPONDENCE BETWEEN PARTIES

All notices required to be given under this Agreement shall be deemed provided upon the date postmarked when mailed by first class mail, or by registered mail, and addressed to the proper party at the address set forth in paragraph 19 below.

14. DISPUTE RESOLUTION

Both parties desire all disputes arising out of or in connection with this Agreement to be resolved through good-faith negotiations between the parties, and to be followed if necessary by professionally-assisted mediation within 45 days. Any such mediator must be acceptable to each party. The mediation will be conducted as specified by the mediator and agreed upon by the parties. The parties agree to attempt to reach an amicable resolution of the dispute.

The mediation will be treated as a settlement discussion and remain confidential. Each party will bear its own costs in the mediation and will equally share the fees and expenses of the mediator.

15. ADDITIONAL SERVICES

Additional systems and services may be added to this Agreement by mutual consent of the parties in writing as an addendum to this Agreement. All other terms and conditions shall remain the same.

16. VALIDITY AND CONSTRUCTION OF TERMS

In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or

unenforceability shall not affect any other provision and all remaining provisions of this Agreement shall remain in full force and effect.

17. ENTIRE AGREEMENT

This Agreement replaces any previous agreements and discussions and constitutes the entire agreement between the parties with respect to the subject matters herein. No amendments, modifications, or alterations of the terms herein shall be binding unless the same is in writing and duly executed by the parties.

18. AUDIT RIGHTS

Each party shall have the right to audit the records of the other party pertaining to the Citations issued pursuant to this Agreement solely for the purpose of verifying the accuracy of payments, if any, payable pursuant to this Agreement. Any such audit shall be conducted upon not less than forty-eight hours' notice, at mutually convenient times. The cost of any such audit shall be borne by the party requesting the audit.

19. COVENANT OF FURTHER ASSURANCES

All parties to this Agreement shall, upon request, perform any and all acts and execute and deliver any and all certificates, instrument and other documents that may be necessary or appropriate to carry out any of the terms, conditions and provisions hereto or to carry out the intent of this Agreement.

20. NO AGENCY

The relationship between the parties shall be that of independent contractors, and the employees, agents and servants of either party shall in no event be considered to be employees, agents, or servants of the other party. This Agreement shall not create an agency relationship between BLS and Village and neither party may incur any debts or liabilities or obligations on behalf of the other party, except as specifically provided herein.

21. NOTICES

Any notices or demand which under the terms of this Agreement or under any law shall be in writing shall be made by personal service, first class mail, or by certified or registered mail to the parties at the following address:

Notices to Blue Line Solutions:
Mark Hutchinson, President
Photo Speed Processing Center
6 North White St.
Athens, TN 37303

Notices to Village:
Chief Dan Gilbert
New Miami Police Department
268 Whitaker Ave
Hamilton, OH 45011

22. COMPLIANCE WITH LAWS

Nothing contained in this Agreement shall be construed to require the commission of any act contrary to law, and whenever there is a conflict between any term, condition or provision of this Agreement and any present or future statute, law, ordinance or regulation contrary to which the parties have no legal right to contract, the latter shall prevail, but in such event shall be curtailed and limited only to the extent necessary to bring it within the requirements of the law, provided it is consistent with the intent of the parties as expressed in this Agreement.

23. STATE LAW TO APPLY

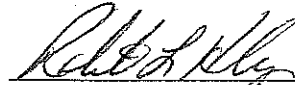
This Agreement shall be construed under and in accordance with the laws of the State of Tennessee.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date accepted by the Customer.

Blue Line Solutions, LLC.

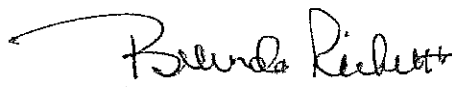
By: _____

VILLAGE OF NEW MIAMI
STATE OF OHIO



Robert L. Henley, Mayor

Approved and authorized this _____ day of _____, 2015.



Belinda Ricketts, Fiscal Officer

Exhibit A

BLS Obligations and Scope of Work

1. BLS shall provide the quantities of PLSs equipment as indicated on Exhibit D. From time to time, the parties may agree to add or subtract the number of PLSs to be provided and may modify the location(s) if the parties agree in writing. BLS and Village agree that each PLS must be in place and operating a minimum of 100 hours per month in areas of speed safety concern, barring unusual downtime for maintenance, weather, or court order.
2. BLS shall provide an automated, web-based processing program for; all valid Notices of Liability including image processing, mailing of the initial Notice and a reminder Notice, printing and mailing costs. The program shall be conducted in a timely manner to comply with any applicable statute of limitation for filing notices of liability. Subject to the approval and authorization from Village's Police Department, each Notice shall be delivered by First Class mail to the registered owner within the agreed or statutory period. Village's Municipal Court shall notify BLS of any Notice of Liability where there is no response, and a second reminder Notice, including a late fee as determined by Village, shall be sent by First Class mail after the agreed or mandated time period. Subsequent notices or collections notification may be delivered by First Class, Certified Mail-Return Receipt Requested, or by process servers for additional compensation to BLS as agreed by parties.
3. BLS shall provide reasonably available in-state vehicle registration information necessary to issue Notices of Violation resulting from the PLS assuming BLS is authorized to receive such registration data at no additional cost to the Customer.
4. BLS shall provide Village's Prosecutor and/or Police Department the ability to view and/or print an Evidence Package and shall include a set of images with related documentation for each notice of violation challenged.
5. BLS shall provide necessary training for persons designated by the Village, and provide reasonable public relations resources to Village;
6. BLS shall provide an expert witness as reasonably necessary to establish judicial notice for contested violations to establish the accuracy and technical operations of the PLS.
7. BLS shall provide Village access to an electronic file with regular updated specific Notices of Liability issued, and shall update the status of all accounts based on the disposition information provided by Village, indicating payments received, Notices of Liability outstanding, and cases otherwise closed, dismissed, or resolved.
8. BLS shall provide to Village a monthly report of PLS results within fifteen days of the end of each calendar month. The report shall include the following information:
 - i) Total number of violation events.
 - ii) Total number of actionable violation events.
 - iii) Total number of Notices of Liability issued.
 - iv) Total number of Notices of Liability paid.
 - v) Such reports on ongoing operations as are required, or such other reports and documents as are mutually agreed upon between BLS and the Village.

9. BLS shall provide all routine maintenance of PLS equipment and timely respond to equipment repairs.
10. BLS agrees upon request by the village, to provide reimbursement for overtime, or part-time officer pay to be reimbursed to the village for hours of PLS use outside of the officer's normal working hours.
- i) Personnel to be selected by the Police Department
 - ii) The PLSs and accompanying personnel shall be deployed in areas required by state or local statute and tracked daily for all court documents.
 - iii) If and when this option of deployment with personnel is exercised
 - a) The location(s) is/are to be mutually agreed upon by both BLS and the Village.
 - b) BLS will reimburse the village for officer(s) utilizing the equipment at the officer's hourly rate. Village states hourly rates:
 - a. Part-time officer – *(rate to be provided by village)*
 - b. Full-time officer Regular Time - *(rate to be provided by village)*
 - c. Normal on duty use of the PLS by on duty officers will be the responsibility of the agency.
 - d. BLS will not be held responsible for officer pay during warning period.
 - c) The Village will provide an invoice and the completed time sheet to BLS for reimbursement of officer pay by the 5th of the month following the closing of the preceding month. All payments for the deployed personnel will be delivered to the Village on or before the 15th of the month following the closing of the preceding month. The first officer pay reimbursement will accompany the agency's first 30-day cycle citation revenue check. All payments delivered to the Village's designated address as noted previously in these writings.
12. BLS will supply one or more PLS systems to the village under the agreement. BLS reserves the right to decrease the number of systems deployed at any time if each system is not used as required in Exhibit B, Section 1.
13. BLS will supply one digital speed display of BLS's choosing to the village at the end of each quarter of the program for a period of one year as long as village has complied each quarter with Exhibit B, Section 1. There shall be NO cost to the village. BLS is under no obligation to comply with this section if village has not complied.

Exhibit B

Village Obligations and Scope of Work

1. Each PLS shall be in place and operating a minimum of 100 hours per month in areas of speed safety concern, barring unusual downtime for maintenance, weather, act of God or court order.
2. Village shall diligently prosecute each valid Notice of Liability and collect all fines.
3. Village shall cause an authorized officer of the Police Department to carefully review each potential violation captured by the PLS, and shall transmit an electronic signature to each Notice of Liability approved by Village. Village hereby acknowledges and agrees that the decision to issue a Notice of Liability shall be the sole, unilateral and exclusive decision of the authorized officer in such officer's sole discretion, and in no event shall BLS have the ability or authorization to make a Notice of Liability decision.
4. Village shall provide a judge or hearing officer and court facilities to schedule and hear disputed Citations as allowed by law.
5. Village shall provide customary fine collection services for all final dispositions for contested violations. Village agrees to reasonably pursue payments of valid Notices of Liability with service of follow-up letters or summons as required for contested violations.
6. Village shall automatically transmit an electronic file in an agreed format to BLS with monthly updates of all Notice of Liability disposition information provided by the Village indicating payments received or cases otherwise closed, dismissed or resolved for contested violations.
7. Village shall provide a project manager or other designated individual with authority to execute Customer's responsibilities under the Agreement.
8. Village shall direct its departments to cooperate with BLS with respect to required system and program implementation, and provide reasonable access to Village's personnel and facilities in order to permit BLS and Village to fulfill the obligations under this Agreement.
9. The Village agrees to use due diligence in working with BLS to acquire in a timely manner any necessary permits under its control, and approvals or other necessary documentation from the Village or other government agency as necessary for the operation of the PLS.
10. Village shall provide any necessary municipal permits at no cost to BLS.
11. Village shall promptly reimburse BLS for any damage to the PLS equipment caused by Village, its employees or authorized agents.
12. As necessary, Village shall provide assistance to BLS in obtaining access to vehicle ownership records data, and if requested, provide a letter and support for BLS to use with appropriate licensing bureau agencies indicating that BLS is acting as an authorized agent of Village for the purposes of accessing vehicle ownership information on behalf of Village.
13. Village shall provide locations in which the PLS will be used and ensure compliance with state statutes.

Exhibit C

Service Fees

The Customer agrees to pay BLS the Fee(s) as itemized below:

- Revenue shall be shared between the two parties:

The Village's portion shall be 65% of all paid citations and BLS's portion shall be 35% of all paid citations, including late fees.

Pricing includes all PLS equipment, installation, maintenance, processing services, first mailed notice, second reminder mailed notice, website and Call Center Support.

- BLS will make available a Violation Information Sheet (VIS) for mailing with the violation. The VIS will include a photo of a village officer holding the laser in an enforcement position, explaining the violation was witnessed and initiated by an officer. The fee for this service will be \$2.00 per violation from gross receipts.
- DMV, payment processing services including web portal and call center support: \$3.90 per processed citation from gross receipts.

Fees Charged to Violators

- A credit card processing fee of \$4.25 to be charged to the violator using a credit/debit card (unless prohibited by state statute) for violation payment. Such processing fees shall be collected by BLS during payment of violation.
- A monthly late fee established by the village shall be charged to the violator for payments 30 days past due. Village shall ensure all fees are allowable by state law.

Exhibit D

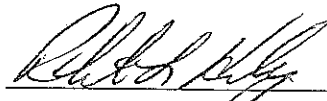
Number and Locations of PLS Equipment

The number of PLS cameras and equipment, as well as the locations for installation will be determined by the Police Department, and/or Traffic Engineering Department, considering traffic dynamics, volume and safety assessments on the Village's roadways. The Village agrees to meet the requirements of Exhibit B, Section 1 for each PLS provided by BLS. Based on such analysis, the Village has determined the following need:

Number of PLSs to be provided:

(2) Handheld DragonCam Photo Speed Laser Systems

Agreed to this date:



Robert L. Henley, Mayor

12-3-2015

Date

Blue Line Solutions, LLC Signature

Date