

**AGREEMENT BETWEEN  
THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA  
AND  
TRAFFICLAND, INC.  
PERMITTING  
THE REFORMULATION OF STREAMING VIDEO OF TRAFFIC CONDITIONS INTO  
STILL (“JPEG”) IMAGES**

This Agreement (“Agreement”) is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2008, by and between the County Board of Arlington County, Virginia, whose office is at 2100 Clarendon Blvd, Arlington, VA 22201 (“County”), and TrafficLand, Inc., a Delaware corporation, authorized to do business in the Commonwealth of Virginia, whose principal place of business is 11208 Waples Mill Road, Suite 109, Fairfax, Virginia 22030 (“TrafficLand”). County and TrafficLand sometimes are referred to in this Agreement individually as “Party” and collectively as “Parties.”

**RECITALS**

WHEREAS, in the interest of public safety, comfort and convenience, the Parties desire to provide the public at large in the Washington, D.C. metropolitan area with pertinent data concerning traffic conditions on various roads in Arlington County; and

WHEREAS, the Parties further desire that the public in Arlington County receives pertinent data concerning traffic conditions on various roads in the Washington, D.C. metropolitan area; and

WHEREAS, by this Agreement, TrafficLand desires to provide the public in the Washington, D.C. metropolitan area with traffic conditions information concerning various roads in Arlington County to improve regional mobility; and

WHEREAS, the County owns and operates a real-time, computerized traffic surveillance system presently consisting of twenty four (24) cameras that monitor traffic conditions on certain roads in Arlington County (“System”); and

WHEREAS, by this Agreement, TrafficLand desires to be permitted to obtain and reformulate streaming video of traffic conditions into still images from the County’s real-time traffic surveillance systems (JPEG IMAGERY ONLY) (“Data”) and to publish such Data on the TrafficLand public website to provide traffic information to the public.

NOW, THEREFORE, in consideration of the mutual promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. County Obligations and Grant of License.

In consideration for the obligations undertaken by TrafficLand in this Agreement:

- a. The County agrees to supply TrafficLand, without charge, access to Data generated by the System, as such System exists as of the date of execution of this Agreement. The System control center is located at 2100 Clarendon Blvd, Suite 900, Arlington, VA 22201 ("County Facility") and the System is operational on a 24-hour per day, 7 days per week basis. TrafficLand understands that the System presently is manned by County employees Monday to Friday, 9 am to 5 pm, Eastern Standard Time, excluding holidays. Neither TrafficLand nor its secondary users shall manipulate, modify or change the Data in any way, or use the Data for any purposes other than the informational purposes specifically set forth in this Agreement. TrafficLand shall specifically include this provision in all agreements between TrafficLand and all Secondary Users (as hereafter defined) of the Data.
- b. The County hereby grants to TrafficLand a limited, non-exclusive license to the Data to use and distribute the Data solely for the purposes of disseminating traffic information in accordance with this Agreement. TrafficLand is permitted to repackage, but not change, the Data and redistribute the Data, to other entities or to the public ("Secondary User(s)") for a fee. Each Secondary User will be entitled to redistribute the Data for a fee or charge to be paid to TrafficLand. TrafficLand agrees to notify the County, in writing, before the end of each calendar year during the term of this Agreement, of the identities of each Secondary User, other than individual users. TrafficLand shall require that all Secondary Users, other than individuals, advise TrafficLand, and TrafficLand shall notify the County in writing before the end of each calendar year during the term of this Agreement, of all further redistribution of the Data. Such written notification shall be marked as "Confidential Information".
- c. County will provide to TrafficLand reasonable space on an equipment rack at County Facility for the installation of TrafficLand equipment listed in Exhibit A of this Agreement, which equipment will be used by TrafficLand to access the Data in the County Facility. County shall have no responsibility or liability for any damage, loss or deterioration to the TrafficLand equipment placed in the County Facility, regardless of the cause of such damage, loss or deterioration. TrafficLand acknowledges that the placement and existence of the TrafficLand equipment in the County Facility shall be at the sole risk of TrafficLand. The County shall not be required to insure (by insurance policy or by the County self-insurance program) TrafficLand's equipment placed in the County Facility. TrafficLand shall have access to the County Facility, upon reasonable prior request with reasonable prior notice, for the purposes described in this subsection 1c.
- d. County will secure any TrafficLand Equipment that is housed in the County Facility in a reasonably safe and secure manner and, in the same manner as the County secures its own equipment in such County Facility. TrafficLand shall

keep access to the TrafficLand equipment locked at all times. County will not provide access to, or demonstrate, TrafficLand's equipment to any third parties, for any reason, without the prior written consent of TrafficLand. However, TrafficLand understands and agrees that the TrafficLand equipment located in the County Facility may be in view of tour groups and other persons visiting the County Facility. The front of the equipment rack will be visible to the public in the County Facility. While County will not specifically demonstrate TrafficLand equipment or explain the technical details of the TrafficLand equipment to any such tour groups or persons, reference may be made to the Data sharing between the Parties.

- e. The County agrees to notify TrafficLand, as soon as practicable by email to [support@trafficland.com](mailto:support@trafficland.com) or by telephone call to 703-591-1933, of the removal of cameras from the System for maintenance or repair. If the hours of operation of the County Traffic Control Center located at the County Facility are changed from the present hours, then the County will, when practicable, provide advance notice to TrafficLand of any changes in the hours of operation.
- f. The location, angles, and all other attributes of the camera views generating the streaming video from which the Data will be created by TrafficLand, shall be solely at the discretion of the County. No request for changes by telephone or otherwise in camera views shall be honored from, or to, any source including TrafficLand. The County in its sole discretion, and without liability whatsoever to TrafficLand or to others, is entitled to restrict access to, disable, or shut off, any camera for any reason.

## 2. TrafficLand Obligations.

In consideration for the obligations undertaken by County in this Agreement:

- a. TrafficLand shall provide the following services to County without license fee, royalty, charge or fee of any kind:
  - i. Implementation, operation and maintenance of a Washington, D.C. metropolitan area camera JPEG Video Distribution System ("VDS") consisting of the equipment described in Exhibit A (the "TrafficLand Equipment"). The VDS also shall consist of the dissemination of the Data, and of traffic conditions information from other Washington, D.C. metropolitan area jurisdictions, to the general public and to public entities.
  - ii. Delivery of the JPEG video imagery of the Data (the "JPEG Imagery") through the County website, and through an existing and/or separately established TrafficLand website giving free public access to the JPEG Imagery;

- iii. Five (5) JPEG VDS accounts, which accounts shall provide the County with access to the JPEG Imagery from all jurisdictions in the Washington, D.C. metropolitan area over the Internet on an enhanced priority basis;
- b. TrafficLand agrees to use the Data with timeliness and accuracy, promptly upon reformulation of the streaming video by TrafficLand. All use of such Data shall indicate clearly the County as the source of the streaming video from which TrafficLand created such Data. As used in this subsection 2b, the term “timeliness” shall mean the use and dissemination of Data in “real-time” by TrafficLand. During all uses and dissemination of the Data, TrafficLand shall refresh the Data at a minimum of one (1) frame per three (3) seconds. The County understands that TrafficLand will meet the three (3) second refresh requirement under normal operations and that the TrafficLand network has an availability rating of 99.99%. However, there are potential situations (such as camera replacement, network maintenance, hardware failure) when the video can not be refreshed at one (1) frame per three (3) seconds. In such situations, Trafficland will make best efforts to correct the failures as soon as practicable.
- c. At no cost to the County, TrafficLand, upon the effective date of this Agreement, shall give free public access to live traffic conditions information and images from Arlington County traffic cameras through the TrafficLand website ([www.trafficland.com](http://www.trafficland.com)). TrafficLand shall insure that all persons and other entities may link to the website free of charge. At no cost to the County, TrafficLand, upon the effective date of this Agreement, shall provide all video images from all jurisdictions in the Washington, D.C. metropolitan area to the County through (i) a new embedded webpage to the existing County website ([www.arlingtonva.us](http://www.arlingtonva.us)) and (ii) if only the County chooses to do so, a co-branded webpage on the County sponsored CommuterPage website ([www.commuterpage.com](http://www.commuterpage.com)). TrafficLand shall ensure that TrafficLand’s webpage, to be placed on the existing County websites, presents information in an accurate, timely and user-friendly manner. TrafficLand shall ensure that its webpage, servers, data communication links, hardware and software operate properly at all times.
- d. At no cost to the County, TrafficLand shall, at all times during the Term (as herein defined) of this Agreement, provide the County with a technical contact person who shall be available to the County by telephone and by email, Monday through Friday, 9 am to 5 pm, Eastern Standard Time. Such person shall have the expertise and authority on behalf of TrafficLand to correct TrafficLand equipment and Data use malfunctions.
- e. TrafficLand agrees to provide and maintain, at its sole cost and expense, all equipment, software, and data communications and transmission lines, necessary for interfacing the TrafficLand computer servers and the County hardware and software. This equipment shall be compatible with the County System necessary for the transmission of the Data to or from TrafficLand and the County.

TrafficLand agrees to move or alter, promptly, and at TrafficLand's sole cost and expense, any or all of its equipment, hardware, or software, as the County deems necessary to accommodate any future relocation, alterations, improvements, or other changes to the County Facility.

- f. Once the Data is created by TrafficLand, TrafficLand shall not manipulate, modify, or change the Data in any way. TrafficLand shall not use the Data for any purpose other than for the purposes specifically set forth in this Agreement.
- g. TrafficLand shall ensure that all dissemination and use of the Data by TrafficLand or by any Secondary User shall conspicuously name County as the source of the streaming video from which TrafficLand created the Data.
- h. TrafficLand is specifically prohibited by this Agreement from capturing, repackaging, redistributing or disseminating the County streaming video of traffic conditions in any format other than the Data generated by TrafficLand.
- i. Before disseminating or using the Data, TrafficLand shall train its personnel in the proper use and interpretation of the Data. Upon request from the County, TrafficLand shall send promptly TrafficLand's personnel for briefing by County staff concerning the proper use and representation of the Data.
- j. TrafficLand shall direct and route all customer comments, complaints or suggestions about the web-based video service to TrafficLand's customer service staff and not to the County or County employees. Upon request by the County, TrafficLand shall promptly provide to the County a written summary, in a form acceptable to the County, of such comments, complaints or suggestions. TrafficLand shall provide the County with periodic written feedback on the public's response to the video service.

3. Term and Termination.

- a. The initial term of this Agreement shall begin upon execution of this Agreement by both Parties and shall continue for three (3) years (the "Initial Term"). This Agreement shall automatically renew for one additional one year period ("Renewal Term"), unless the terminating Party sends written notice to the non-terminating Party at least thirty (30) days before expiration of the Initial Term or the Renewal Term that the terminating party does not wish to renew the Agreement. The "Term" of this Agreement shall consist of the Initial Term and any Renewal Term.
- b. This Agreement may be terminated without further liability on thirty (30) days prior written notice by either Party upon a breach or default of any covenant or term hereof by the other Party, which default or breach is not cured within sixty (60) days of receipt by the breaching or defaulting party of written notice of the default or breach. Upon termination of this Agreement, TrafficLand shall, at no

cost to the County, remove all of its equipment from the County Facility within thirty (30) days following termination. The County shall cease providing Data to TrafficLand upon the effective date of any termination.

- c. Notwithstanding any provisions of this Agreement to the contrary, this Agreement may be terminated by the Purchasing Agent in whole or in part without any liability or obligation whatsoever to the County, whenever the Purchasing Agent shall determine that such termination is in the County's best interest. Any such termination shall be effected by the delivery to TrafficLand of a written notice of termination at least fifteen (15) days before the effective date of termination. The notice shall specify the extent to which performance of the work under this Agreement is terminated and the date upon which such termination becomes effective. After receipt of a notice of termination, and except as otherwise directed in writing from the County, TrafficLand shall stop using the Data on the date of receipt of the notice of termination or on any other date specified in the notice. Thereafter, TrafficLand shall, at no cost to the County, remove all of TrafficLand's equipment from County Facility within thirty (30) days following termination.

4. Communication.

The Parties recognize the value and importance of clear, accurate and consistent public communications regarding the services contemplated by this Agreement. Accordingly, the Parties shall first agree in writing on the timing and content of any public announcement regarding the cooperative relationship described in this Agreement prior to either Party making any such announcement. In addition, the Parties may jointly prepare written material for use in responding to anticipated questions that each Party will likely receive from the press and the public concerning the cooperative relationship described in this Agreement.

5. Confidential Information.

TrafficLand understands that all public records in the custody and control of the County are and will be open to inspection and copying by citizens of the Commonwealth of Virginia in accordance with the Virginia Freedom of Information Act.

6. Indemnification.

TrafficLand covenants to save, defend, hold harmless, and indemnify the County, and all of its elected and appointed officials, officers, employees, agents, departments, agencies, boards, and commissions (collectively the "Indemnified Parties") from and against any and all claims, losses, damages, injuries, fines, penalties, suits, actions, judgments, costs (including court costs and attorney's fees), expenses, charges, liability, or exposure, however caused, resulting from, arising out of, or in any way connected with any negligent acts, errors or omissions, recklessness or intentionally wrongful conduct of TrafficLand, or of its employees, agents or contractors, in performance or nonperformance of its work called for by this Agreement. This indemnification shall survive the termination of this Agreement.

7. Intellectual Property Infringement.

TrafficLand shall protect, indemnify and hold harmless the Indemnified Parties from and against any and all claims, losses, damages, injuries, fines, penalties, suits, actions, judgments, costs (including court costs and attorney's fees), expenses, charges, liability, or exposure, however caused, resulting from, arising out of, or in any way connected with any negligent acts, errors or omissions, recklessness or intentionally wrongful conduct of the Indemnified Parties in any suit, including appeals, based upon or arising out of any allegation of infringement, violation, or conversion of any patent, copyright, trademark or tradename, license, proprietary right, privacy interest or other related interest in connection with or as a result of this Agreement, the System, the Data, the VDS System, or performance by TrafficLand, its employees, agents and contractors, of any of its obligations under this Agreement. This indemnification shall survive the termination of this Agreement.

8. Disclaimer of Warranties; Limitation of Liability.

Except for the warranties specifically set forth elsewhere in this Agreement, there are no warranties, whether express, implied, oral or written including but not limited to warranties of merchantability and fitness for a particular purpose, with respect to the service or services covered or furnished by the County pursuant to this Agreement.

9. No Data Warranty.

The Parties makes no warranty to each other that the Data will be provided to one another or to the public on an uninterrupted basis or manner. Data will be provided by the County to TrafficLand on an "AS IS", "WHERE IS" and "WITH ALL FAULTS" basis.

10. Compliance with Law, Enforcement.

This Agreement, and the work performed hereunder by TrafficLand, shall be governed in all respects by the law of the Commonwealth of Virginia. In performing its obligations under this Agreement, TrafficLand, its officers, employees, contractors and licensees shall comply with applicable federal, state, and local laws, ordinances and regulations. All suits and actions related to, or arising out of, this Agreement shall be brought in the Circuit Court of Arlington County, Virginia, and in no other court.

11. General.

- a. Each Party's Notice Address is set forth in the preamble to this Agreement. All notices shall be addressed to the following persons on behalf of the Parties: To the County: Director of Transportation; To TrafficLand: Director of Government Programs. All notices and other communications required or permitted under this Agreement shall be in writing and in the English language and shall be deemed to have been given to the other Party's Notice Address: (a) on the delivery date, if delivered by hand; or (b) the next business day after being deposited for delivery with a recognized overnight courier;. Either Party may, by similar notice given, change the Notice Address to which future notices or other communications shall be sent.

- b. Neither Party may transfer or assign all or any part of its interest under this Agreement, or delegate any duties, burdens, or obligations arising hereunder, without the prior written consent of the other Party.
- c. The failure of either Party at any time to enforce any right or remedy available to it under this Agreement, or otherwise, with respect to a breach or failure of the other Party shall not be construed to be a waiver of such right or remedy with respect to any other breach or failure by the other Party.
- d. The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement or as amplifying or limiting any of its content. Words in this Agreement which import the singular connotation shall be interpreted as plural, and words which import the plural connotation shall be interpreted as singular, as the identity of the Parties or objects referred to may require. Unless expressly defined herein, words having well known technical or trade meaning shall be so construed. All listing of items shall not be taken to be exclusive, but shall include other items, whether similar or dissimilar to those listed, as the context reasonably requires. Except as set forth to the contrary in the Agreement, a Party's right or remedy shall be cumulative and without prejudice to any other right or remedy, whether contained or not contained in this Agreement.
- e. This Agreement sets forth the entire understanding of the Parties and supersedes any and all prior agreements, arrangements or understandings relating to the subject matter of this Agreement. This Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of each Party.
- f. The Parties agree that no provision of this Agreement shall create in the public, or in any person or entity other than those signing this Agreement as parties hereto, rights as a third party beneficiary hereunder, or authorize any person or entity, not a party hereto, to maintain any action for personal injury, property damage, or breach of contract pursuant to the terms of this Agreement or otherwise.
- g. Notwithstanding any other provisions of this Agreement to the contrary, nothing in this Agreement nor any action taken by the Parties pursuant to this Agreement nor any document which arises out of this Agreement shall constitute or be construed as a waiver of either sovereign immunity or governmental immunity of the County, or of its elected and appointed officials, officers and employees.
- h. If any term, clause, provision, covenant or condition contained in this Agreement is adjudicated to be illegal or unenforceable, all other terms, clauses, provisions, covenants or conditions of this Agreement shall remain in force, and the term, clause, provision, covenant or condition held illegal or unenforceable shall remain in effect as far as possible in accordance with the intention of the Parties.

- i. Notwithstanding any provision in this Agreement to the contrary, the County reserves the absolute right, in its sole discretion, to sell, transfer and/or permit others to use, the County's streaming video of traffic conditions in Arlington County.
- j. The Recitals are incorporated into this Agreement.

12. Amendments and Future Agreements.

- a. By written amendment to this Agreement, additional County traffic camera images may be added upon mutual agreement of TrafficLand and County.
- b. By separate written agreement between the Parties, additional County traffic camera image/feed formats other than JPEG such as streaming video (mpeg 4 and/or h.264) may be added to TrafficLand's website.

13. Representation of TrafficLand.

TrafficLand represents and warrants to the County that:

- a. TrafficLand has full right and authority to enter in to the Agreement and that by entering into the Agreement, TrafficLand is not in violation of its organizational documents, or any law, regulation or agreement by which it is bound or to which it is subject;
- b. TrafficLand's execution, delivery and performance of the Agreement has been duly authorized by all requisite action;
- c. The persons signing the Agreement on its behalf are authorized to do so;
- d. TrafficLand is an entity duly organized, validly existing, Delaware Corporation, in good standing and authorized to do business in the Commonwealth of Virginia; and
- e. There are no actions, suits or proceedings pending or threatened against TrafficLand before any court or administrative agency that would prohibit, restrict or impair TrafficLand's performance under the Agreement.

14. Effective Date.

This agreement shall be effective upon the date when this Agreement is last executed on behalf of the Parties.

In WITNESS WHEREOF, the parties to this agreement have hereunto set their hands as of the day and year first written above.

**TRAFFICLAND, INC.**

Name: Lawren H. Nelson  
Signature:   
Title: Founder & CEO  
Date: 8/29/08

**THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA**

Name: \_\_\_\_\_  
Signature: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Approved As To Form:

\_\_\_\_\_  
County Attorney

## EXHIBIT A

### TrafficLand Equipment

<b>MFR</b>	<b>Vendor</b>	<b>Description</b>	<b>QTY</b>
APC	Provantage	Switch, Pwr Dist, Network Managed, w/8 Cont. Outlets, 1RU	1
Belkin	Dell	Connector, Data, RJ-45, 8 Conductor, Crimp, 100 Pk.	0.16
Cisco	NHR	Router, Rack Mt., 1RU	1
Cisco	Ebay	Module, T1, for Cisco 2620XM Router	1
Dell	Dell	Server, Dual Quad Core, 2.33 Ghz, w/DRAC, Rails, & Support	2
Lowell Manuf.	IEP	Panel, Filler, Rack Mt., Blk, Flanged Aluminum, 1RU	1
Mayline	Anixter	Manager, Cable, 19", Horiz D-Rings, Blk, 1RU	1
TrafficLand	IEP	Miscellaneous, Cable Ties, & Hardware.	4
West Penn	IEP	Cable, Data, Digital Integration Cat-5E, Blue, 1000'	0.1
West Penn	IEP	Cable, Data, Digital Integration Cat-5E, Gray, 1000'	0.1
West Penn	IEP	Cable, Data, Digital Integration Cat-5E, White, 1000'	0.1