



Interoffice Memorandum

February 14, 2020

TO: Mayor Jerry L. Demings
and Board of County Commissioners

FROM: Joseph C. Kunkel, P.E., Director, Public Works Department

Handwritten signature of Joseph C. Kunkel in black ink.

CONTACT PERSON: Humberto L. Castellero, P.E., PTOE, Interim Manager
Traffic Engineering Division

Handwritten signature of Humberto L. Castellero in black ink.

PHONE NUMBER: (407) 836-7890

SUBJ: Authorization to Access Real Time Traffic Signal Data Agreement

The Traffic Engineering Division requests approval and execution of an Agreement of Authorization to access real-time traffic signal data between Orange County and Traffic Technology Services, Inc. (TTS). The intended use of the data is for a connected vehicle application to improve travel safety and efficiency. This application provides drivers information on the remaining green time for the vehicles approaching a traffic signal, and using the vehicle velocity and location, the driver is provided a suggested speed to avoid stopping.

Under this agreement, the County will provide TTS reasonable, non-exclusive, non-transferable, non-sub licensable, limited, and royalty free access to its real time traffic signal data. TTS shall provide the County with reports of vehicle-based signal performance metrics from their customer systems, at no charge to the County.

Staff recommends approval and execution of the Agreement. This Agreement has been approved as to form by the County Attorney's Office and Risk Management Division.

Action Requested: Approval and execution of Agreement of Authorization to Access Real Time Traffic signal Data between Orange County and Traffic Technology Services, Inc. All Districts.

JCK/HLC/HE/nad

Attachments



Agreement of Authorization
to Access Real Time Traffic Signal Data

THIS IS AN AGREEMENT between ORANGE COUNTY, a charter county and political subdivision of the State of Florida, whose address is P.O. Box 1393, Orlando, FL, 32802-1393 (COUNTY) and **TRAFFIC TECHNOLOGY SERVICES, INC.**, a Delaware Corporation, whose address is 17933 NW Evergreen Pkwy, Suite 240, Beaverton, OR, 97006, (CONTRACTOR). Both the COUNTY and CONTRACTOR are each sometimes referred in the agreement as "Party" and both the COUNTY and CONTRACTOR are sometimes referred in this Agreement together as "Parties". This agreement sets forth the understanding between the above-named parties related to the authorization of CONTRACTOR access to certain data.

WHEREAS, CONTRACTOR is in the business of developing technologies, strategies, and systems for use in maximizing the efficiency of transportation end users and thus the overall capacity of existing transportation networks; and

WHEREAS, COUNTY routinely collects Real Time Traffic Signal Data and Traffic Signal Timing Data (both defined hereinbelow, and sometimes collectively referred to as "Data"); and

WHEREAS, CONTRACTOR has a significant business interest in accessing such Data for input into its proprietary and patented processes; and

WHEREAS, access to such Data may be made available to CONTRACTOR at no cost to COUNTY; and

WHEREAS, the Data are not confidential, nor do they identify any transportation end user specifically in any manner; and

WHEREAS, CONTRACTOR desires permission to access the Data for use in conjunction with its business; and

WHEREAS, CONTRACTOR agrees to provide related inventories, signal performance metrics, and other formatted data products in exchange for access to the Data; and

WHEREAS, COUNTY agrees to provide CONTRACTOR with access to the Data, subject to the terms and conditions in this Agreement;

NOW THEREFORE, CONTRACTOR and COUNTY agree as follows:

Section 1. Definitions:

“Real Time Traffic Signal Data” means signal status and states, demand status and states, and other information available from the traffic signal controller and/or COUNTY’s central signal system or COUNTY’s Advanced Traffic Management System (ATMS).

“Traffic Signal Timing Data” means signal timing plans, as-built intersection design, traffic signal plans, signal control plans, and/or other documents that identify the time-of-day plans.

“Product” means the data derived by Contractor from the Real Time Traffic Signal data and Traffic Signal Timing Data, to be marketed, distributed, and sold by Contractor as “Personal Signal Assistant®.”

Section 2. Authorized Representatives

The COUNTY Public Works Director, or that person’s designee, is designated by COUNTY as the authorized representative (COUNTY Agent).

The Director of Government Accounts is designated by CONTRACTOR as the authorized representative (CONTRACTOR Agent).

Section 3. Purpose and Scope

CONTRACTOR desires access to the Real Time Traffic Signal Data, and Traffic Signal Timing Data. CONTRACTOR will use the Data in patented, proprietary processes to produce Product for use by CONTRACTOR customers and other interested parties. CONTRACTOR sells this Data to the automotive industry, commercial fleets, telematics integrators, insurance companies, and other transportation service providers.

The intended use of the Product is for connected vehicle applications to improve the traveler safety, vehicle performance, and/or efficiency; improve ride comfort for driver and/or operator and passengers; provide information to the driver or operator; monitor driving behaviors; or apply to automated features. CONTRACTOR shall limit, and shall ensure that its customers limit, its customers’ applications of the derived Product for applications that do not violate any local, state, or federal laws, rules, or regulations. CONTRACTOR shall not violate any signal system or ATMS software agreements. The use of any Data, or CONTRACTOR derived Product, that encourages driver behavior deemed undesirable by COUNTY is strictly prohibited.

The Product is not permitted, marketed, promoted, sold, or otherwise made available for insurance claims or traffic law enforcement.

Section 4. Access to Traffic Signal Timing Data

COUNTY hereby agrees to provide CONTRACTOR reasonable access to its Traffic Signal Timing Data. CONTRACTOR will work with COUNTY to obtain data in the most efficient and non-intrusive manner, as determined by COUNTY, which may, but is not obligated to, include access to COUNTY's central system or ATMS.

Section 5. Access of Real Time Traffic Signal Data

COUNTY hereby agrees to provide CONTRACTOR reasonable, non-exclusive, non-transferable, non-sublicensable, limited, and royalty free access to its Real Time Traffic Signal Data. CONTRACTOR will be provided with access to this Real Time Signal Data at no cost, except CONTRACTOR will be responsible for any costs associated with access to the Data. CONTRACTOR will be responsible for all vendor costs associated with COUNTY's ATMS vendor making system modifications to make the Real Time Signal Data available to CONTRACTOR. CONTRACTOR shall have the right to use the data in any manner it deems appropriate in furtherance of its business purposes, including without limitation providing the derivatives of the data and Product to third parties, subject to the terms of this Agreement and in strict compliance with federal, state, and local laws, rules, and regulations. COUNTY reserves the right to make available the same Data and/or additional data, for other parties that request access to COUNTY Data.

COUNTY will allow CONTRACTOR reasonable access to the signal system and/or ATMS system facilities for equipment maintenance and troubleshooting upon request, and with the prior written approval of COUNTY, during normal business hours. Coordination with COUNTY and COUNTY's Regional Computerized Signal System employee will be required for access. COUNTY and the COUNTY's Signal Maintenance employee may require up to 5 business days' notice prior to allowing access to the facilities with security measures.

Section 6. Ownership of and Rights to Data

The COUNTY retains all rights to the raw data, or Real Time Traffic Signal Data, being provided to CONTRACTOR. CONTRACTOR shall own all rights to Product and any formatted, predictive, or derivative data generated from the raw data.

Section 7. Reporting

CONTRACTOR shall provide COUNTY with reports of vehicle-based signal performance metrics, as data become available from CONTRACTOR customer systems, at no charge to the COUNTY. Vehicle-based data is currently under development; CONTRACTOR intends for this data to be freely-available without restriction for use by COUNTY and local partners.

Section 8. Indemnification

The risk of use of the Data is the sole responsibility of CONTRACTOR and CONTRACTOR shall indemnify, defend, save, and hold harmless COUNTY and its officials, employees, and agents from all claims, including but not limited to claims that arise from or relate to (i) any breach of CONTRACTOR's representations and warranties, (ii) any personal injury, death or property damage caused by any alleged act, omission, error, fault, mistake or negligence of CONTRACTOR, its employees, agents, and/or representatives in connection with or incident to CONTRACTOR's performance under or related to this Agreement, and (iii) the infringement of any patent, copyright, trademark, trade secret or other proprietary right of any third party by CONTRACTOR's use of the COUNTY Data provided under this Agreement.

CONTRACTOR agrees to hold COUNTY harmless for any loss in service or degradation in quality of services that may arise.

COUNTY assumes no responsibility for any equipment or property placed in COUNTY's signal system and/or ATMS system facility and CONTRACTOR hereby expressly relieves and discharges COUNTY from any and all liability for any loss, injury, or damage to persons and property that may be sustained by reason of the use or occupancy of the COUNTY facility. CONTRACTOR must receive written approval by COUNTY prior to placement of any equipment, hardware, software, or property in the COUNTY's signal system and/or ATMS system facility. CONTRACTOR agrees to immediately remove or relocate, at its sole expense, any or all of the equipment, hardware, software, and/or property at the request of the COUNTY. CONTRACTOR shall provide a fully trained contact person acceptable to County who is solely responsible for the operation and maintenance of any CONTRACTOR equipment and all activities associated with this Agreement. The COUNTY shall have no responsibility to provide any training or supervision of the CONTRACTOR contact person associated with this AGREEMENT, but agrees, when reasonable and preferable, to allow the contact person to attend all briefings and/or training sessions provided by the COUNTY which relate to the equipment, hardware, or software.

CONTRACTOR agrees that it will not install or operate any equipment, hardware, software, and/or property that may interfere with COUNTY's communications equipment or other COUNTY electronic systems. In the event any such interference occurs, as determined solely by County in its discretion, CONTRACTOR shall immediately remedy all problems caused by such interference to County's satisfaction, including removal of equipment, hardware, software, and/or property, as directed by County. CONTRACTOR further agrees that COUNTY shall have the right to disconnect and/or deactivate any equipment, hardware, software, and/or property causing such interference and waives any claim it might otherwise assert as a result of such disconnection and/or deactivation.

Section 9. No Warranties

COUNTY makes no warranties concerning the quality or accuracy of the data provided under this Agreement. COUNTY does not warrant it will be able to continuously provide access to the Data without interruption and expressly reserves the right to discontinue the data stream at any time. Notwithstanding anything seemingly or actually to the contrary herein, COUNTY reserves the right to immediately discontinue the COUNTY Data stream without notice and at COUNTY discretion upon evidence of tampering or other unauthorized interference with the COUNTY Data. Except as expressly provided for herein, COUNTY makes no other representations or warranties.

Section 10. Term

Unless terminated earlier in accordance with Section 12, this Agreement will begin on the latest date of the authorized agent signature (the "Effective Date") and continue for three (3) years (the "Initial Term"). This Agreement will automatically renew on the anniversary of the Effective Date for successive one (1) year periods unless either party provides written notice of non-renewal at least thirty (30) days before the end of the then-current term (collectively, "Renewal Terms"). The Agreement may be renewed for a maximum of two (2) successive one (1) year periods. The Term of this Agreement may not exceed five (5) years in any circumstance. The "Term" will consist of the Initial Term and all Renewal Terms, if any.

Section 11. Limitation of Liability

. Notwithstanding anything seemingly or actually to the contrary in this Agreement, the COUNTY does not agree to indemnify CONTRACTOR, CONTRACTOR's agents, and/or CONTRACTOR's representatives. COUNTY does not waive its sovereign immunity protection provided under Section 768.28, Florida Statutes, nor the provisions thereof.

Section 12. Termination

Each Party shall have the right to terminate this Agreement without cause by providing written notice to the other Party within thirty (30) days, unless identified otherwise in this Agreement.

Section 13. Notices

Absent notice to the contrary in writing, all communications to CONTRACTOR shall be sent to:

Traffic Technology Services, Inc.
Attn: Contracts and Agreements
17933 NW Evergreen Place, Suite 240
Beaverton, OR 97006

or email: suppliers@traffictechservices.com

Absent notice to the contrary in writing, all communications to the COUNTY shall be sent to:

Orange County, Florida Public Works Department
Manager, Traffic Engineering Division
4200 South John Young Parkway
Orlando, FL 32839

or at any other address as any Party may, from time to time, designate by notice given in compliance with this Section.

Section 14. Assignment

Neither Party shall assign, transfer, subcontract, or delegate all or any part of this Agreement, or any interest therein, without the other Party's prior written consent, which shall not be unreasonably withheld.

Section 15. Agreement Binding

This Agreement shall be binding upon the successors of COUNTY and CONTRACTOR.

Section 16. Personal Liability

Nothing in this Agreement may be construed to create any personal liability on the part of any officer or agent of either Party to this Agreement.

Section 17. Choice of Law

This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. In the event of a conflict between any portion of the Agreement and Florida law, the laws of Florida shall prevail.

Section 18. Choice of Forum

Venue for any and all actions arising out of or in any way related to the interpretation, validity, performance, or breach of the Agreement that are not otherwise resolved to the mutual satisfaction of the parties shall lie exclusively in the Circuit Court of the 9th Judicial Circuit of Florida, in and for Orange County, Florida. CONTRACTOR hereby consents to the personal jurisdiction, waives any objection to venue, and waives any claim of inconvenience. In no way may this section or any other term of this Agreement be construed as a waiver by the COUNTY of any form of defense or immunity.

Section 19. Waiver

Any waiver of any breach of any condition or covenant herein contained to be kept and

performed by either Party shall not be deemed or considered as a continuing waiver, and shall not operate to bar or prevent the non-breaching Party from declaring a default for any succeeding breach, either of the same condition or covenant or otherwise.

Section 20. Severability

If any term (or part of a term) of this Agreement is invalid, illegal, or unenforceable, the rest of the Agreement will remain in effect.

Section 21. Interpretation of the Agreement

The Parties acknowledge that each of the Parties have participated in the drafting of this agreement. No Party shall be considered to be the drafter of this Agreement for the purposes of interpretation.

Section 22. Parties in Interest

Nothing herein shall be construed to be to the benefit of any third party, nor is it intended that any provision shall be for the benefit of any third party.

Section 23. Force Majeure

Neither Party will be liable for failure or delay in performance to the extent caused by circumstances beyond that Party's reasonable control.

Section 24. Entire Agreement

This writing embodies the entire Agreement and understanding between the parties hereto and there are no other Agreements and understanding, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby. No modifications, alterations, changes, or waiver to this Agreement or any of its terms shall be valid or binding unless accomplished by a written amendment signed by both Parties.

Section 25. E-Verify

CONTRACTOR:

- (1) shall utilize the U.S. Department of Homeland Security's E Verify system to verify the employment eligibility of all new employees hired by the CONTRACTOR or COUNTY during the term of the contract; and
- (2) shall expressly require any subcontractors performing work or providing services pursuant to the state contract to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the CONTRACTOR during the contract term.

(See Form #375-040-68, E-Verify)

Section 26. Inspector General Compliance

The Parties agree to comply with §20.055(5), Florida Statutes, and to incorporate in all subcontracts the obligation to comply with §20.055(5), Florida Statutes.

Section 27. Public Records

Florida has a very broad public records law and certain records of local government may be considered public records. Accordingly, CONTRACTOR shall comply with Chapter 119, Florida Statutes. Specifically, CONTRACTOR shall:

1. Keep and maintain all information that may be determined to constitute public records required to perform the service.
2. Upon request from a member of the public or from COUNTY, provide the party making such request with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
3. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law, for the duration of the contract term and following completion of the contract if CONTRACTOR does not transfer the records to the COUNTY.
4. Upon termination or completion of the Agreement, transfer, at no cost, to COUNTY all public records in possession of CONTRACTOR. Once CONTRACTOR transfers all public records to the COUNTY, CONTRACTOR shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. CONTRACTOR shall transfer all public records to the COUNTY and destroy any duplicate public records that are exempt or confidential within thirty (30) days of the termination or completion of the agreement. All public records stored electronically must be provided to the COUNTY, upon request from the COUNTY's custodian of public records, in a format that is compatible with the information technology systems of the COUNTY.

Failure by CONTRACTOR to comply with Chapter 119, Florida Statutes, shall be grounds for immediate unilateral termination of this Agreement by the COUNTY.

IF CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT County's Agent.

IN WITNESS OF THIS, the Parties hereby execute this Agreement through their authorized representatives.

CONTRACTOR:
Traffic Technology Services, Inc.

Kiel R. Ova

Authorized Signature

KIEL R. OVA

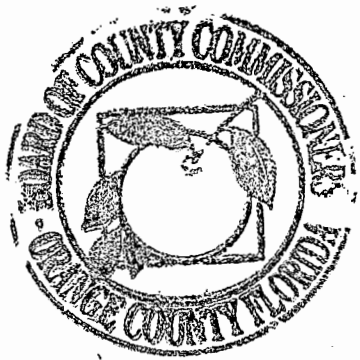
Printed Name:

HEAD OF GOVERNMENT AFFAIRS

Title

1/20/2020

Date



COUNTY

ORANGE COUNTY, FLORIDA
By: Board of County Commissioners

By: *Jerry L. Demings*

Jerry L. Demings
Orange County Mayor

Date: 10 March 2020

ATTEST: Phil Diamond, CPA, County Comptroller
As Clerk of the Board of County Commissioners

By: *Katie Smith*
Deputy Clerk

Print name: Katie Smith