

STATE OF TEXAS §

COUNTY OF TRAVIS §

**AGREEMENT for SHARING
INTELLIGENT TRANSPORTATION SYSTEMS (ITS) DATA**

CONTRACTING PARTIES:

Texas Department of Transportation
Fort Worth District
City of North Richland Hills

TxDOT**Grantee**

TxDOT is the owner of Intelligent Transportation Systems (ITS) infrastructure that consists of:

- an ITS Field Network (including but not limited to sensors, cameras, signs, and communications links constructed along segments of the State highway system); and
- an ITS Business Network that has produced and produces transportation-related information that is used for the purpose of traffic management in which the State owns certain rights, title, and interests related thereto, including copyrights.

The Grantee desires TxDOT to grant rights to receive and use TxDOT transportation-related information ("Traffic Data"). TxDOT is agreeable to grant rights provided the Grantee agrees to the terms and conditions established in this agreement.

This agreement incorporates the provisions of **Attachment A**, Descriptions and Specifications of Rights Granted in Article 2, **Attachment B**, Connectivity Diagram.

BACKGROUND

TxDOT, in accordance with Texas Transportation Code, §201.205, may:

1. Apply for, register, secure, hold and protect its intellectual property, patents, copyrights, trademarks, or other evidence of protection of exclusivity; and
2. Enter into non-exclusive license agreements with any third party for the receipt of fees, royalties, or other things of monetary and non-monetary value; and
3. Waive or reduce the amount of fees if it determines that such waiver will further the goal and missions of TxDOT and result in a net benefit to TxDOT; and

Texas Transportation Code, §202.052 authorizes TxDOT to lease highway assets if the area to be leased is not needed for highway purposes during the term of the lease and TxDOT charges fair market value for the leased asset, and authorizes TxDOT to waive such fees for social, economic, and environmental mitigation purposes.

TxDOT – alone or as a stakeholder in TransVision, the regional traffic management center (TMC) – has trademark registrations on marks in accordance with the requirements of Title 15 U.S.C. Section 1051 et seq., as amended:

- Registration Number(s) hereinafter identified as 1802491, the "TxDOT Logo; and 2549559, hereinafter identified as the "TransVISION" trademark.

AGREEMENT

In consideration of the mutual promises contained in this agreement, TxDOT and the Grantee now agree as follows:

ARTICLE 1. CONTRACT PERIOD

This agreement becomes effective when signed and dated by the last party whose signing makes the agreement fully executed. This agreement shall terminate five (5) years from that date, or when otherwise modified or terminated, as hereinafter provided.

ARTICLE 2. RIGHTS GRANTED

TxDOT hereby grants the Grantee a non-exclusive right, license, and privilege worldwide to use all or portions of Traffic Data from TxDOT's ITS Field Network and ITS Business Network. The Grantee agrees that this agreement does not transfer or convey any ownership or any rights other than those rights expressly granted by the agreement.

TxDOT further agrees to provide connectivity to Grantee to access TxDOT Traffic Data as described in Attachment A to this agreement, which is attached hereto and incorporated herein for all purposes.

ARTICLE 3. PROVISION OF INFRASTRUCTURE

The Grantee is responsible for providing and maintaining any hardware, software, and additional ITS infrastructure that is necessary to obtain the Traffic Data. TxDOT may provide unused ITS infrastructure and TxDOT facilities to support the additional infrastructure when possible, and when deemed to be in the best interest of TxDOT. Grantee agrees that TxDOT does not guarantee the availability of the Traffic Data or a minimum response time to reestablish the availability of the Traffic Data due to maintenance or network or system failures. A more detailed description of ITS infrastructure to be provided by each party is shown in Attachment A. The Grantee shall not place any objects or equipment in the State Right-of-Way or on any other TxDOT property without advanced written permission from the District Engineer or designee.

ARTICLE 4. FEE

As the use of the Traffic Data will result in social, economic, and environmental mitigation, by increasing mobility and reducing congestion on public highways, TxDOT agrees to waive any monetary fee associated with the use of the Traffic Data. After the initial year, TxDOT reserves the right to charge a fee for the use of the Traffic Data by providing not less than thirty (30) days written notice to the Grantee defining the terms of the fee.

ARTICLE 5. COPYRIGHT INFRINGEMENT

The Grantee shall notify TxDOT of any infringement or potential infringement by a third party, of which it becomes aware, of the copyright or any other rights owned by TxDOT relating to the use of the Traffic Data. The Grantee shall provide TxDOT, if feasible, any information or other assistance requested by TxDOT to assist in TxDOT's prosecution of any breaches or infringements.

ARTICLE 6. TAXES AND FEES

Grantee agrees to report to the appropriate taxation authority and pay all federal, state, and local taxes or fees that may be imposed by any governmental entity for the use of the Traffic Data.

ARTICLE 7. ASSIGNMENT PROHIBITION

The Grantee is prohibited from assigning any of the rights conferred by this agreement, to any third party. Notwithstanding the foregoing, the Grantee may assign the rights of this agreement of the Traffic Data to an affiliated corporate entity or to a purchaser of substantially all its assets without TxDOT's consent, provided that TxDOT's rights under this agreement remain unaffected. Any assignments shall be subject to the terms and conditions of this agreement.

ARTICLE 8. TERMINATION

- a) Including the provisions established herein, this agreement may be terminated by any of the following conditions.
 - i) Mutual agreement and consent of the parties hereto.
 - ii) By TxDOT for reason of its own and not subject to the approval of the Grantee upon not less than thirty (30) days written notice to the Grantee.
 - iii) By the Grantee for reason of its own and not subject to the approval of TxDOT upon not less than thirty (30) days written notice to TxDOT.
 - iv) Immediately for breach of this agreement as determined by TxDOT.
- b) Termination of the agreement shall extinguish all rights, duties, obligations and liabilities of TxDOT and Grantee of this agreement. All rights granted to the Grantee shall revert to TxDOT as owner of the Traffic Data. Upon termination of this agreement, the Grantee will immediately cease transmitting, using, distributing and/or modifying the electronic signals of the Traffic Data.
- c) Termination or expiration of this agreement shall not extinguish any of the Grantee's or TxDOT's obligations under this agreement which by their terms continue after the date of termination or expiration.

ARTICLE 9. HOLD HARMLESS

Subject to the Constitution and laws of the State of Texas, the Grantee shall indemnify and save harmless TxDOT and its officers and employees from all claims and liability due to its materials or activities of itself, its agents, or employees, performed under this agreement and that are caused by or result from error, omission, or negligent act of the Grantee or of any person employed by the Grantee. Subject to the Constitution and laws of the State of Texas, the Grantee shall also indemnify and save harmless TxDOT from any and all expense, including but not limited to attorney fees that may be incurred by TxDOT in litigation or otherwise resisting the claim or liabilities that may be imposed on TxDOT as a result of such activities by the Grantee, its agents, or employees. Subject to the Constitution and laws of the State of

Texas, the Grantee agrees to indemnify and save harmless TxDOT and its officers, agents, and employees from any and all claims, damages, and attorneys' fees arising from the use of outdated Traffic Data or other information. Subject to the Constitution and laws of the State of Texas and appropriation in the then current fiscal year, the Grantee's indemnification of TxDOT shall extend for a period of three (3) years beyond the date of termination of this agreement. However, notwithstanding any of the foregoing, nothing herein shall ever be construed to require the City to create a sinking fund or to assess, levy or collect any tax to fund or satisfy any of its obligations under this agreement.

ARTICLE 10. RELATIONSHIP BETWEEN THE PARTIES

Each party acknowledges that it is not an agent, servant, or employee of the other party. Each party is responsible for its own acts and deeds and for those of its agents, servants, or employees.

ARTICLE 11. REMEDIES

Violation or breach of contract by the Grantee shall be grounds for termination of the agreement. Any increased costs arising from the Grantee's default, breach of contract or violation of contract terms shall be paid by the Grantee.

ARTICLE 12. AMENDMENTS

Any changes in the contract period, character, or agreement terms shall be enacted by a written amendment executed by both parties. Amendments must be executed during the contract period established in Article I.

ARTICLE 13. VENUE

This agreement is governed by the laws of the State of Texas.

ARTICLE 14. NOTICES

All notices to either party by the other party required under this agreement shall be delivered personally or sent by certified or U.S. Mail, postage prepaid, addressed to such party at the following respective physical addresses:

STATE: Texas Department of Transportation
ATTN: Director of Transportation Operations
2501 SW Loop 820
Fort Worth, TX 76133

GRANTEE: City of North Richland Hills
ATTN: Emergency Management Coordinator
4301 City Point Drive
North Richland Hills, TX 76180

and shall be deemed to be received by the addressee on the date so delivered or so deposited in the mail, unless otherwise provided within. Either party hereto may change the above address by sending written notice of such change to the other.

ARTICLE 15. PUBLIC INFORMATION AND CONFIDENTIALITY

A. The Grantee shall not disclose information obtained from TxDOT under this agreement without the express written consent of TxDOT, unless such disclosure is required by applicable law, rule, regulation or court order.

B. The Grantee is required to make any information created or exchanged with the state pursuant to this contract, and not otherwise excepted from disclosure under the Texas Public Information Act, available in a format that is accessible by the public at no additional charge to the state.

ARTICLE 16. COMPLIANCE WITH LAWS

The Grantee shall comply with all applicable federal, state, and local laws, statutes, ordinances, rules and regulations, and with the orders and decrees of any court or administrative bodies or tribunals in any manner affecting the performance of this agreement. When requested, the Grantee shall furnish TxDOT with satisfactory proof of this compliance. The Grantee shall provide or obtain all applicable permits, plans, or other documentation required by a federal or state entity.

ARTICLE 17. PROHIBITION AGAINST VIDEOTAPING OF TxDOT VIDEO FEED

Grantee further agrees that it shall not copy nor duplicate, or allow to be copied, any of the video feeds that are provided by TxDOT in connection with this agreement, but Grantee shall, if it is a media outlet, have permission to maintain recorded footage from the provided video feeds that became part of its regular programming.

ARTICLE 18. STATE AUDITOR'S PROVISION

The State Auditor may conduct an audit or investigation of any entity receiving funds from TxDOT directly under this agreement or indirectly through a subcontract under this agreement. Acceptance of funds directly under this agreement or indirectly through a subcontract under this agreement acts as acceptance of the authority of the State Auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. An entity that is the subject of an audit or investigation must provide the State Auditor with access to any information the State Auditor considers relevant to the investigation or audit.

ARTICLE 19. SIGNATORY WARRANTY

The signatories to this agreement warrant that each has the authority to enter into this agreement on behalf of the party they represent.

IN TESTIMONY WHEREOF, TxDOT and the Grantee have executed duplicate counterparts of this agreement.

CITY OF NORTH RICHLAND HILLS

By _____ Date _____

Mark Hindman, City Manager

ATTEST:

By: _____
Alicia Richardson, City Secretary

APPROVED TO FORM AND LEGALITY:

By: _____
Maleshia B. McGinnis, City Attorney

THE STATE OF TEXAS

Executed for the Executive Director and approved for the Texas Transportation Commission for the purpose and effect of activating and/or carrying out the orders, established policies or work programs heretofore approved and authorized by the Texas Transportation Commission.

By _____ Date _____
Loyl C. Bussell, P.E., Fort Worth Acting District Engineer

ATTACHMENT A**Descriptions and Specifications of Rights Granted**

RIGHTS GRANTED	
By TxDOT	By Grantee
1. TxDOT will make Traffic Data and traffic camera video images available to Grantee.	1. Grantee will make Traffic Data available to TxDOT. 2. Grantee will use information about TxDOT roadway conditions to better manage local roadway traffic.

PROVISION OF INFRASTRUCTURE	
By TxDOT	By Grantee
1. TxDOT will provide a connection into TxDOT's traffic management center (TMC), TransVISION, via Satellite Building #5 for Grantee to obtain all TxDOT traffic camera images. 2. TxDOT will provide equipment, switches, connections, etc. up to the TxDOT demarcation as noted on the attached communications diagram. 3. TxDOT will provide space for all equipment required to complete the video connection. 4. TxDOT will provide software and support to allow Grantee access to and selection of video images. 5. TxDOT will provide the Grantee a connection into TxDOT's Statewide portal for Grantee to obtain Traffic Data. 6. TxDOT will provide and maintain any communication links, hardware, software, and additional ITS infrastructure that is necessary to obtain Grantee's traffic data.	1. As described in Article 3-Provision of Infrastructure, the Grantee is responsible for providing and maintaining any communication links, hardware, software, and additional ITS infrastructure as noted on the attached communications diagram that is necessary to obtain the Traffic Data. 1. Grantee shall provide TxDOT with (a) verifiable, static, routable IP address(es).

NON-MONETARY COMPENSATION	
By TxDOT	By Grantee
1. none	1. none

ATTACHMENT B

Connectivity Diagram

