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AGREEMENT NO. 477002  
FEDERAL ID NO. 25-1823631

**AGREEMENT FOR INTELLIGENT TRANSPORTATION SYSTEM  
INTEGRATED SURVEILLANCE AND DATA MANAGEMENT  
INFRASTRUCTURE**

THIS AGREEMENT, made this 13<sup>TH</sup> day of November, 1999, by and between the Commonwealth of Pennsylvania, acting through the Department of Transportation ("COMMONWEALTH"),

and

traffic.com, Inc., a Pennsylvania corporation, with its principal place of business at 207 House Avenue, Suite 104, Camp Hill, Pennsylvania 17011 ("TRAFFIC.COM").

WITNESSETH:

WHEREAS, Section 5117(b)(3) of the federal Transportation Equity Act for the 21st Century ("TEA-21"), Pub. L. 105-178, provides funding for a program to advance the deployment of an operational intelligent transportation infrastructure system for the measurement of various transportation system activities ("Deployment Program") to aid in transportation and analysis while making a significant contribution to the intelligent transportation system ("ITS") program; and,

WHEREAS, Section 5117(b)(3) of TEA-21 provides further that this Deployment Program shall be initiated in the two largest metropolitan areas in the State of Pennsylvania at a federal cost of \$2,000,000 per metropolitan area; and,

WHEREAS, Section 5117(b)(3) of TEA-21 requires further that the Deployment Program provide private technology commercialization initiatives to generate revenues which will be shared with the COMMONWEALTH pursuant to the Task Order, as defined more fully below; and,

WHEREAS, federal funding will cover eighty percent of the cost of the Deployment Program, \$2,000,000 per metropolitan area, the balance of the funding to come from state, local government or private sector partners; and,

WHEREAS, the United States Department of Transportation ("USDOT"), Federal Highway Administration ("FHWA"), pursuant to the mandate of Section 5117(b)(3) of TEA-21, issued a Request for Proposals ("RFP") under the USDOT Information Technology Omnibus Procurement ("ITOP") program for the development, deployment, maintenance and operation of an ITS integrated surveillance and data management infrastructure system ("System"), in four metropolitan areas ("Project"), including the Pittsburgh and Philadelphia metropolitan areas ("PA Project"); and,

WHEREAS, the FHWA's purpose in issuing the RFP under the ITOP was to enter into a partnership with the private sector and state departments of transportation to develop and deploy the System to enhance data available for transportation operations, planning, analysis and maintenance purposes; and,

WHEREAS, the FHWA expected the offeror to propose a System that would satisfy both local needs and its own needs for commercialization purposes, the FHWA's intent being to spur the deployment of systems that will ultimately be self-supporting through commercial initiatives; and,

WHEREAS, the FHWA selected Signal Corporation ("Signal") pursuant to the RFP and issued Task Order T990021, signed April 13, 1999, for the PA Project ("Task Order"),

which provides \$2,000,000 of federal funding for each metropolitan area to complete the PA Project; and,

WHEREAS, the Task Order also serves as the notice to proceed and sets forth the due dates for the deliverables on the PA Project and the schedule for submission of invoices to the FHWA, which will pay Signal directly; and,

WHEREAS, Signal has selected TRAFFIC.COM, formerly known as Argus Networks Inc., which is in the business of systems integration, as its subcontractor for the PA Project; and,

WHEREAS, TRAFFIC.COM will be responsible for the actual design, implementation and long-term operation and management of the ITS infrastructure system for the PA Project, while Signal's activities on the PA Project will consist primarily of oversight and facilitation with the FHWA; and,

WHEREAS, TRAFFIC.COM is investing its own capital in the installation of the infrastructure; and,

WHEREAS, the COMMONWEALTH desires to participate in the PA Project by providing the necessary twenty percent match for it; and,

WHEREAS, the COMMONWEALTH is willing to provide funding to TRAFFIC.COM, as the entity with actual responsibility for design, implementation and long-term operation and management of the System, in conformity with the schedule of tasks and deliverables established by the Task Order and in accordance with the terms and conditions set forth below.

NOW, THEREFORE, for and in consideration of the foregoing premises and the mutual promises set forth below, the parties agree, with the intention of being legally bound, to the following:

1. **RECITALS**--The foregoing recitals are incorporated by reference as a material part of this Agreement.

2. **INDEPENDENT CONTRACTORS**--The parties to this Agreement are independent contracting parties, and nothing in this Agreement shall be deemed to create a business partnership for purposes of sharing profits and losses, notwithstanding the sharing of revenue as provided below in Paragraph 16.

3. **GENERAL**--TRAFFIC.COM shall perform the PA Project in accordance with the Task Order; the Task Order's attachments, consisting of the Statement of Work (Attachment 1) and the Existing Conditions (Attachment 2); and all applicable terms, conditions and attachments of the ITOP contract under which the RFP was issued, designated as Contract DTOS59-96-D-00421. The Task Order and its attachments are incorporated by reference into this Agreement as if physically attached to it.

4. **DELIVERABLES**--TRAFFIC.COM agrees to provide all PA Project deliverables in accordance with the Schedule of Deliverables set forth at Page 3 of the Task Order.

5. **PAYMENT**--(a) At the same time that invoices are submitted to the FHWA upon completion of the applicable milestones set forth at Pages 5-6 of the Task Order, for payment of the federally-funded portion of the PA Project expenses, TRAFFIC.COM shall submit invoices to the COMMONWEALTH for payment of the state-funded portion. The payment to be made by the COMMONWEALTH to TRAFFIC.COM upon completion of each milestone is set forth on Exhibit "A" attached to and made part of this Agreement. This is a fixed price contract for state funds for each metropolitan area of five hundred thousand and

no/100 dollars (\$500,000.00), for a total contract ceiling of one million and no/100 dollars (\$1,000,000.00) in state funds. Any costs in excess of the payments to be made under this Agreement and the Task Order shall be the responsibility of TRAFFIC.COM.

(b) Because this Agreement, by law, cannot take effect until it has been executed by all necessary COMMONWEALTH officials, including legal and fiscal officials, and because performance of the FHWA Contract has already begun, TRAFFIC.COM understands and agrees that the COMMONWEALTH may not reimburse it for any PA Project deliverables completed or any PA Project tasks commenced before the effective date of this Agreement. In that event, the COMMONWEALTH agrees to adjust the payment schedule, through an amendment to this Agreement, so as to accomplish the payment of a total of five hundred thousand and no/100 dollars (\$500,00.00) for each metropolitan area.

6. **PERFORMANCE AND PAYMENT BONDS**--If it has not done so already, TRAFFIC.COM, at its sole cost, shall furnish a performance bond, with sufficient surety or sureties, in the amount of one million two hundred thousand and no/100 dollars (\$1,200,000.00). The bond shall specify that the work on the PA Project shall be completed in a matter satisfactory to the COMMONWEALTH and that the COMMONWEALTH shall not be liable for any expenses incurred through the failure to complete the work as specified. A corporate surety, legally authorized to transact business in Pennsylvania and satisfactory to the COMMONWEALTH, shall execute the bond. In addition, TRAFFIC.COM shall take such measures as it deems appropriate to secure its statutory obligation to pay subcontractors and suppliers.

7. **INSURANCE**--If it has not done so already, TRAFFIC.COM shall purchase and maintain, at its sole expense, for the duration of this Agreement as set forth below in Paragraph 20, the following types of insurance issued by companies acceptable to the COMMONWEALTH:

(a) Workers' compensation insurance sufficient to cover all of TRAFFIC.COM's employees and those of any subcontractor working to perform this Agreement, as required by the Workmen's Compensation Act of 1915, as amended.

(b) Public liability insurance for bodily injury, including death, and property damage, in the minimum amounts of five hundred thousand and no/100 dollars (\$500,000.00) per person and two million and no/100 dollars (\$2,000,000.00) per occurrence. These coverages shall be occurrence-based. The policy(ies) shall name the COMMONWEALTH as an additional insured and shall contain a provision that the coverages afforded shall not be cancelled or reduced unless the COMMONWEALTH has been given at least thirty (30) days prior written notice. Before the commencement of work under this Agreement, TRAFFIC.COM shall furnish the COMMONWEALTH with a current certificate(s) of insurance showing the required coverages and provisions.

8. **SAVE HARMLESS**--TRAFFIC.COM shall indemnify, save harmless and (if requested) defend the COMMONWEALTH, the Department of Transportation, the FHWA and all of their officers, agents and employees from all suits, actions or claims of any character, name or description, brought for or on account of any injuries or damages received or sustained by any person, persons or property, arising out of, resulting from or connected with the design, construction, use and/or maintenance of the PA Project and/or any other activities relating to the PA Project, by TRAFFIC.COM and/or its subcontractors and/or suppliers and their officers, agents and employees, whether the same be due to defective materials, defective workmanship, neglect in safeguarding the work, or by or on account of any act, omission, neglect or misconduct of TRAFFIC.COM and/or its subcontractors and/or suppliers and their officers, agents and employees, during the performance of the work or thereafter, or to any other cause whatever.

9. **BOARD OF CLAIMS JURISDICTION**--TRAFFIC.COM agrees to be bound by the Act of May 20, 1937 (P.L. 728, No. 193), as amended by the Act of October 5, 1978 (P.L. 1104, No. 260) and subsequent enactments, 72 P.S. Section 4651-1 et seq., which

provides, in substance, that the Board of Claims shall have jurisdiction of claims against the COMMONWEALTH arising from contracts and the power to order the interpleader or impleader of other parties, when necessary for a complete determination of any claim or counterclaim in which the COMMONWEALTH is a party.

10. **REVIEW RIGHTS**--The COMMONWEALTH and the FHWA shall have the right to review and inspect all PA Project activities at all times.

11. **AUDITS**--The COMMONWEALTH shall have the right, at reasonable times and at TRAFFIC.COM's principal office, to audit TRAFFIC.COM's books, documents and records to the extent that the books, documents and records relate to costs or pricing data for the PA Project. TRAFFIC.COM agrees to maintain records which will support the prices charged and costs incurred for the PA Project. TRAFFIC.COM shall preserve books, documents and records that relate to costs or pricing data for the PA Project for a period of three (3) years from the date of final payment. TRAFFIC.COM shall give full and free access to all records to the COMMONWEALTH and its authorized representatives.

12. **INSTALLATIONS ON PUBLIC RIGHTS-OF-WAY AND STRUCTURES**--TRAFFIC.COM shall comply with the following requirements in installing the components of the PA Project on public rights-of-way and structures:

(a) TRAFFIC.COM shall obtain the prior written approval, which shall not be unreasonably withheld, of the COMMONWEALTH before installing any components of the PA Project within public rights-of-way or on public structures, including signs, under the jurisdiction of the COMMONWEALTH. Such approval shall be given for both the location and the manner of installation. The District Traffic Engineers for Engineering Districts 6-0 and 11-0 shall serve as the points of contact and coordinators for review of the proposed installations. The plans for the proposed installations, the installation activities, the items installed and their subsequent maintenance shall all be in accordance with the applicable provisions of 67 Pa. Code Chapter 459 (relating to the occupancy of highways by utilities); the COMMONWEALTH

Design Manual Parts 2 (relating to roadways), 3 (relating to plans presentation), 4 (relating to structures) and 5 (relating to utilities); and such other manuals, policies, procedures, publications and criteria of the COMMONWEALTH as relate to either roadways, structures or utilities. A professional engineer shall stamp all of TRAFFIC.COM's plans. In addition, the actual placement of the installations within the rights-of-way or on structures shall be in compliance with 75 Pa. C.S. § 6123 (relating to erection of traffic-control devices while working); the applicable provisions of 67 Pa. Code Chapter 203 (relating to work zone traffic control); any restrictions imposed by either Engineering District regarding lane closures on the affected highways; the COMMONWEALTH Specifications, Publication 408 or 408M (current edition); and the Act of December 10, 1974, P.L. 852, as amended, 73 P.S. § 176 et seq. (relating to excavation work that might damage underground utility facilities and the One Call System). The COMMONWEALTH recognizes that the components of the PA Project are not utility facilities as defined in 67 Pa. Code Chapter 459. Nevertheless, they are most closely analogous to utility facilities for purposes of the COMMONWEALTH's regulatory authority.

(b) TRAFFIC.COM may not attach PA Project components to existing Intelligent Transportation System equipment or facilities owned by the COMMONWEALTH without specific authorization by the appropriate Engineering District. In no event shall the COMMONWEALTH authorize TRAFFIC.COM to attach PA Project components to high-mast light poles.

(c) The COMMONWEALTH cannot authorize installations within rights-of-way and on structures outside its jurisdiction or ownership. For installations within public rights-of-way and on structures under the jurisdiction of other governmental or quasi-governmental entities and on privately-owned real property and structures, including utility facilities situated within COMMONWEALTH rights-of-way, TRAFFIC.COM shall be responsible for obtaining prior approval from the owner of the right-of-way, structure or other property.



(d) TRAFFIC.COM shall be responsible for securing the electrical power and telecommunications sources required to operate and maintain the components, including payment of all fees and costs. TRAFFIC.COM may not use electrical and telecommunications facilities and services provided to the COMMONWEALTH in any manner or for any purpose. Electrical and telecommunications facilities and equipment providing operational capabilities and power to the PA Project components and installed within the right-of-way shall be considered part of the installation and must be included in the plans for the installation. For installations within limited access right-of-way, the electrical and telecommunications facilities and equipment shall be designed so as to occupy as little of the right-of-way as possible while allowing for reasonable growth and expansion of the PA Project.

(e) TRAFFIC.COM shall require its contractor(s) to certify to the COMMONWEALTH in writing that each completed installation complies with the plans and specifications; all applicable COMMONWEALTH statutes, regulations, manuals, policies, procedures, publications and criteria as set forth above in Paragraph 12(a); and all other applicable codes, standards and criteria, including those generally accepted in the industry. The COMMONWEALTH reserves the right to conduct spot inspections of completed installations with its own forces or by contract. However, such spot inspections shall not relieve TRAFFIC.COM of its obligation to require its contractor(s) to provide certifications.

(f) This Agreement does not create any property interest in TRAFFIC.COM with respect to the approvals granted pursuant to this paragraph. TRAFFIC.COM shall maintain the approvals granted by the COMMONWEALTH as a permanent record. Upon completion of the PA Project, TRAFFIC.COM shall submit as-built plans for the approved installations to the COMMONWEALTH, which shall maintain them as a permanent record.

(g) At the COMMONWEALTH's direction, TRAFFIC.COM shall remove or relocate its installations from COMMONWEALTH rights-of-way or structures at its sole expense, within sixty (60) days after receiving written notice, when such removal or relocation is necessary to accommodate COMMONWEALTH projects or enhance public safety.

(h) TRAFFIC.COM shall be responsible for obtaining all other necessary approvals, permits and licenses as may be required for completion of the PA Project and operation and maintenance of the deployed PA Project. TRAFFIC.COM shall comply with all applicable statutory and regulatory requirements governing safety and permitting in performing the PA Project and maintaining and operating the deployed PA Project.

13. **OPERATION AND MAINTENANCE OF SYSTEM**--Upon completion of the PA Project deliverables, TRAFFIC.COM shall own, operate and maintain, at its expense, the deployed PA Project, including all of the equipment, devices, cables or lines installed within the public rights-of-way or on public structures with the approval of the COMMONWEALTH. Neither the COMMONWEALTH nor the FHWA shall be responsible for operation and maintenance activities or for their cost, including electrical and telecommunications services. The continued occupancy and use by TRAFFIC.COM of rights-of-way and structures under the jurisdiction of the COMMONWEALTH shall be contingent upon the satisfactory maintenance of the PA Project and the delivery of data in a form and at a level of quality acceptable to the COMMONWEALTH, as shall be set forth in the to be completed and accepted Systems Requirements Document.

14. **INTELLECTUAL PROPERTY RIGHTS**--Rights to the intellectual property used or created within the PA Project and the licensing of those rights shall be the property of TRAFFIC.COM, except as modified by the provisions of Paragraph 15 below.

15. **DATA RIGHTS AND EXCLUSIVITY**--(a) TRAFFIC.COM shall make available to the COMMONWEALTH, the FHWA and other public agencies all privately collected data gathered by the PA Project for their own public purposes and applications, whether the data are utilized by the agencies' own personnel or by contractors and consultants retained by them. Whenever the COMMONWEALTH so desires, it shall be able to receive raw data from the PA Project in a form as provided in Paragraph 15(c) below, for real-time applications, so long as such applications do not make the data generally available in a form

which could be commercially exploited in real-time applications. Permissible usages of the data include, but are not limited to, incident detection and response, congestion management, traffic signal operation, safety, planning, analysis, design, construction, maintenance and modal integration. The COMMONWEALTH agrees that it may not market, distribute or donate the privately collected real-time data to non-governmental entities. Furthermore, the COMMONWEALTH agrees that it may not, nor may it authorize its contractors or consultants to, market or otherwise commercially exploit any privately collected data to which they gain access. However, the COMMONWEALTH shall be able to provide traffic count data to non-governmental entities when requested in accordance with COMMONWEALTH procedures regarding recoupment of administrative costs incurred in the provision of such data. Examples of traffic count data include, but are not limited to, average daily traffic counts, peak hour traffic counts, peak hour factors, any and all hourly volumes, K factors and classifications.

(b) Furthermore, TRAFFIC.COM shall not require exclusivity of the use of data collected by the COMMONWEALTH or other public agency and incorporated into the System. The COMMONWEALTH or other public agency providing data to the System shall retain all ownership rights to that data, subject to the right of TRAFFIC.COM to market that data to other private sector organizations in accordance with Paragraph 15(a) above.

(c) With regard to the Pittsburgh portion of the PA Project exclusively, TRAFFIC.COM and the COMMONWEALTH shall exchange real-time raw Remote Traffic Microwave Sensor data by providing such data in the form in which each party generates its data. Said data shall be accessible by TRAFFIC.COM and the COMMONWEALTH via direct telephone lines from the Metropolitan Traffic Area facility to the respective parties and vice versa. The installation and other monthly costs associated with the telephone lines necessary for transmitting and receiving said data shall be the responsibility of the respective transmitting and receiving party. However, it shall be the responsibility of TRAFFIC.COM to ensure the existence of compatible interfaces for such telephone lines. The COMMONWEALTH and TRAFFIC.COM shall address the exchange of data within the Philadelphia portion of the PA Project through an amendment to this Agreement. It is anticipated that the amendment shall

impose responsibility on each party for its respective facilities necessary for transmitting and receiving data within the Philadelphia portion in a manner consistent with the responsibility established with regard to the Pittsburgh portion.

(d) If TRAFFIC.COM transfers ownership of all or any portion of the PA Project to another private entity, it shall require its successor in interest to afford the COMMONWEALTH and other public agencies the same rights with respect to both the privately collected and publicly collected data.

16. **REVENUE SHARING--TRAFFIC.COM** agrees to share with the COMMONWEALTH any revenue received by it from the sale or marketing of information obtained from the operation of the deployed PA Project and existing and future PA Project-related ITS systems to other private sector organizations in accordance with the following conditions:

(a) TRAFFIC.COM shall share any annual revenue in accordance with the following formula established by the FHWA, which shall be applied separately for each metropolitan area and which shall not be subject to periodic renegotiation by the parties:

- (1) 0% for gross revenue up to \$250,000
- (2) 5% for gross revenue between \$250,000.01 and \$1,000,000
- (3) 10% for gross revenue above \$1,000,000

For example, if the gross annual revenue is \$1,500,000, the COMMONWEALTH's share will be \$87,499.98, calculated as follows:

(1) from \$0 to \$250,000	=	\$250,000.00	x	0%	=	\$ 0.00
(2) from \$250,000.01 to \$1,000,000	=	\$749,999.99	x	5%	=	\$37,499.99
(3) from \$1,000,000.01 to 1,500,000	=	\$499,999.99	x	<u>10%</u>	=	<u>\$49,999.99</u>
				TOTAL		\$87,499.98

(b) TRAFFIC.COM shall pay the COMMONWEALTH its share of the revenue annually, on the basis of TRAFFIC.COM's fiscal year, which runs from January 1 to December 31, on or before May 1 of each year. Supporting documentation demonstrating how the COMMONWEALTH's share of the revenue was calculated shall accompany the payment.

(c) Because of restrictions on the expenditure of funds by the COMMONWEALTH over more than one fiscal year, TRAFFIC.COM, if so requested by the COMMONWEALTH, shall deposit the COMMONWEALTH's share of the revenue into an escrow account, in lieu of making the annual payments. TRAFFIC.COM shall make such deposits on or before May 1 of each year, and shall furnish the supporting documentation described above in Paragraph (b) to the COMMONWEALTH. The COMMONWEALTH's share of the revenue shall remain in the escrow account until the COMMONWEALTH directs TRAFFIC.COM to pay all or a portion of the amount escrowed over to it. If necessary, the parties shall enter into a separate agreement to address the escrowing of funds.

(d) If requested, TRAFFIC.COM shall make available to the COMMONWEALTH and its representatives books, documents, records and all other information pertinent to this revenue sharing arrangement, for inspection, copying and audit. TRAFFIC.COM shall preserve books, documents and records and all other information that relate to the sharing of revenue for a period of three (3) years from the date of each payment. TRAFFIC.COM shall give full and free access to all records to the COMMONWEALTH and its authorized representatives.

(e) The COMMONWEALTH shall expend the revenues received exclusively for needs and activities related to either the PA Project or other ITS-related activities or equipment interconnected with or interrelated to the PA Project within the Philadelphia and Pittsburgh metropolitan areas. Examples of acceptable expenditures include, but are not limited to, operation and maintenance of existing ITS equipment as described above in this subparagraph, defrayal of costs related to integration of legacy and new systems and data,

installation of additional sensors and different technologies to the PA Project. The COMMONWEALTH shall consult with TRAFFIC.COM concerning potential expenditures; provided, however, that the ultimate determination about expenditures shall rest with the COMMONWEALTH.

(f) The COMMONWEALTH shall not be liable for any costs, including, but not limited to, promotional activities, advertising, operations, distribution and liability costs, resulting from TRAFFIC.COM's marketing efforts.

17. **OFFSET PROVISION--**TRAFFIC.COM agrees that the COMMONWEALTH may offset the amount of any state tax or COMMONWEALTH liability of TRAFFIC.COM or its affiliates and subsidiaries that is owed to the COMMONWEALTH against any payments due TRAFFIC.COM under this or any other contract with the COMMONWEALTH.

18. **STANDARD COMMONWEALTH CONTRACT PROVISIONS--**TRAFFIC.COM shall comply with the following standard COMMONWEALTH contract provisions, collectively attached as Exhibit "B" (consisting of 3 pages) and made part of this Agreement: Contractor Integrity Provisions, Provisions Concerning the Americans with Disabilities Act, Commonwealth Nondiscrimination/Sexual Harassment Clause and Contractor Responsibility Provisions.

19. **YEAR 2000 COMPLIANCE--**(a) TRAFFIC.COM represents and warrants that each hardware, software and firmware product delivered (or service performed) under this Agreement, including enhancements, shall be able to accurately process, provide, and receive date/time data (including, but not limited to, calculating, comparing, and sequencing) from, into and between the 20<sup>th</sup> and the 21<sup>st</sup> centuries, the years 1999 and 2000 and the years 2000 and 2001, including leap year calculations, when used in accordance with the product documentation provided by TRAFFIC.COM, provided that all listed or unlisted products (e.g.

hardware, software, firmware, etc.) used in combination with such product properly exchange date/time data.

(b) No hardware, software, firmware or service provided under this Agreement shall change the status of a hardware, software and firmware product from Year 2000 compliant to Year 2000 noncompliant. TRAFFIC.COM must notify the COMMONWEALTH of any Year 2000 noncompliant hardware, software and firmware product located by TRAFFIC.COM during the course of performance of this Agreement, design a plan of remediation to create Year 2000 compliance, and provide an estimate of the cost, if any, to the COMMONWEALTH to achieve Year 2000 compliance.

(c) TRAFFIC.COM shall not deliver any third party hardware, software, firmware, or service to the COMMONWEALTH which has not been represented and warranted in writing by the third-party manufacturer to be Year 2000 compliant, as described above. TRAFFIC.COM shall pass through the third-party representation and warranty from the third-party manufacturer to the COMMONWEALTH.

(d) Any modifications or changes made by the COMMONWEALTH or any of its third parties to any hardware, software, or firmware provided under this Agreement that alters Year 2000 compliance shall void the Year 2000 warranty of the product.

(e) This Year 2000 Compliance representation and warranty shall be in effect until the later of December 31, 2002 or the termination of this Agreement. In any event this representation and warranty shall survive termination of this Agreement and shall run until December 31, 2002. In no event will the acceptance by the COMMONWEALTH of any hardware, software or firmware product or service delivered to the COMMONWEALTH, by or through TRAFFIC.COM, or any payment by the COMMONWEALTH to TRAFFIC.COM under this Agreement limit the effectiveness or survival of this Year 2000 Compliance representation and warranty.

20. **DURATION OF AGREEMENT**--All PA Project deliverables shall be completed by December 31, 2000. The revenue sharing obligation shall continue until the PA Project is deactivated or removed by agreement of the parties.

21. **TERMINATION**--The COMMONWEALTH has the right to terminate this Agreement for any of the reasons and in accordance with the conditions that follow:

(a) The COMMONWEALTH may terminate this Agreement in whole or part for cause at any time, which termination shall be effective upon thirty (30) days' written notice; provided, however, that, if the reason for termination is nonperformance, the COMMONWEALTH shall first give TRAFFIC.COM written notice of any deficiency and a period of ten (10) days (or more if specified by the notice) after receipt of the notice to remedy such deficiency. If the COMMONWEALTH terminates this Agreement for cause, it shall have all right and remedies available to it under this Agreement and the law, including, without limitation, the right to seek damages. Furthermore, in the event of termination for cause, the COMMONWEALTH may procure, upon such terms and in such manner as it determines, services similar or identical to those so terminated; and TRAFFIC.COM shall be liable to the COMMONWEALTH for any reasonable excess costs for such similar or identical services included within the terminated part of this Agreement.

(b) The COMMONWEALTH may terminate this Agreement if state or federal funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal year period.

(c) If the COMMONWEALTH terminates this Agreement under Subparagraph (b) above, it shall pay TRAFFIC.COM for work satisfactorily completed prior to the effective date of the termination, up to the maximum reimbursement contained in Paragraph 5(a) of this Agreement, calculated separately for each metropolitan area. Any such termination shall be subject to an equitable settlement of both parties' accrued rights and obligations up to the point of termination. In no event shall TRAFFIC.COM be entitled to reimbursement for



anticipated revenues, loss of profits, loss of the use of funds, interest or carrying expenses, debt service costs, lost opportunity costs, interference with other contractual relationships, damage to business reputation or any other intangible elements. To be eligible for reimbursement upon termination, TRAFFIC.COM shall furnish to the COMMONWEALTH, not later than thirty (30) days from the effective date of termination, details for the items of work for which compensation is sought. The reimbursement shall be due and payable in a lump sum at the time of termination, unless the General Assembly has not funded or appropriated the payment. For purposes of this subparagraph, TRAFFIC.COM shall make available to the COMMONWEALTH and its representatives books, documents, records and all other information pertinent to any items of work for which compensation is sought by TRAFFIC.COM, for inspection, copying and audit. TRAFFIC.COM shall make the books, documents, records and other information available to the COMMONWEALTH upon ten (10) days' notice without charge at the offices of TRAFFIC.COM or its counsel, maintained within Pennsylvania. The provisions of this subparagraph shall remain in effect for a period of two (2) years following the termination or expiration of this Agreement.

(d) If the COMMONWEALTH terminates this Agreement for either of the reasons set forth above, disposition of any equipment, devices, cables and lines purchased with public funds prior to the date of termination that have been or will be installed as part of the PA Project shall proceed in the manner set forth below in Paragraph 23.

22. **FORCE MAJEURE**—(a) Neither party will incur any liability to the other if its performance of any obligation under this Agreement is prevented or delayed by causes beyond its control and without the fault or negligence of either party. Causes beyond a party's control may include, but are not limited to, acts of God or war, changes in controlling law, regulations, orders or the requirements of any governmental entity, severe weather conditions, civil disorders, natural disasters, fire, epidemics and quarantines, general strikes throughout the trade and freight embargoes.

(b) TRAFFIC.COM shall notify the COMMONWEALTH orally within five (5) days and in writing within ten (10) days of the date on which TRAFFIC.COM becomes aware, or should have reasonably become aware, that such cause would prevent or delay its performance. Such notification shall (i) describe fully such cause(s) and its (their) effect upon performance, (ii) state whether performance under the Agreement is prevented or delayed and (iii) if performance is delayed, state a reasonable estimate of the duration of the delay. TRAFFIC.COM shall have the burden of proving that such cause(s) delayed or prevented its performance despite its diligent efforts to perform and shall produce such supporting documentation as the COMMONWEALTH may reasonably request. After receipt of such notification, the COMMONWEALTH may elect either to cancel the Agreement or to extend the time for performance as reasonably necessary to compensate for TRAFFIC.COM's delay.

(c) In the event of a declared emergency by competent governmental authorities, the COMMONWEALTH by notice to TRAFFIC.COM may suspend all or a portion of the Agreement.

23. **DISPOSITION OF EQUIPMENT**--If TRAFFIC.COM ceases to operate, maintain and manage the PA Project deployed pursuant to this Agreement and does not transfer ownership of the PA Project to another private entity, it shall dispose of equipment, devices, cables and lines (collectively "equipment") installed as part of the PA Project in the following manner:

(a) For equipment purchased by TRAFFIC.COM, the COMMONWEALTH shall have right of first refusal to purchase at fair market value any equipment used in the PA Project that was deployed under this Agreement.

(b) For equipment purchased for the PA Project with public funds, the COMMONWEALTH shall have the right of first refusal to the equipment at no cost.

(c) To distinguish between equipment purchased for the PA Project with private funds and equipment purchased for the PA Project with public funds, TRAFFIC.COM shall submit to the COMMONWEALTH, upon completion of the PA Project, a list of all equipment installed for each metropolitan area, the value of each item and an indication whether it was purchased with private, federal or state funds.

(d) To the extent any equipment for the PA Project is purchased with a combination of TRAFFIC.COM's own funds and COMMONWEALTH funds, the COMMONWEALTH may exercise its right of first refusal by a payment determined in accordance with the percentage of TRAFFIC.COM's funds used for the purchase multiplied by the fair market value.

24. **NOTICES**--Any notices or communications required or permitted by this Agreement or given in connection with it, including invoices and payments, shall be in writing and made by certified mail, overnight courier service, first-class mail, postage prepaid, or personal delivery, to the following addresses:

for the COMMONWEALTH:

Pittsburgh portion

District Traffic Engineer  
Engineering District 11-0  
Pennsylvania Department of Transportation  
45 Thoms Run Road  
Bridgeville, PA 15107

Philadelphia portion

District Traffic Engineer  
Engineering District 6-0  
Pennsylvania Department of Transportation  
200 Radnor-Chester Road  
St. Davids, PA 19087

for TRAFFIC.COM:

invoices and payments

President  
traffic.com, Inc.  
207 House Avenue, Suite 104  
Camp Hill, PA 17011

all other matters

Director of Programs  
traffic.com, Inc.  
207 House Avenue, Suite 104  
Camp Hill, PA 17011

25. **SUCCESSORS AND ASSIGNS**--All covenants and promises contained in this Agreement by or on behalf of TRAFFIC.COM and the COMMONWEALTH shall bind and inure to the benefit of their respective successors and assigns, whether so expressed or not, except that responsibility for compliance with the terms of this Agreement cannot be assigned or transferred without the prior approval of the COMMONWEALTH in writing.

26. **ENTIRE AGREEMENT**--Upon execution, this document, together with all exhibits and attachments annexed to it, constitutes the entire agreement between the parties. All prior or contemporaneous agreements are hereby merged into this document. No amendment or modification of this Agreement shall be valid unless it is in writing and duly executed and approved by the parties.

IN WITNESS WHEREOF, the parties have executed this Agreement the date first above written.

ATTEST:

TRAFFIC.COM, INC.

David Dammetha 10/25/99  
Title: SECRETARY DATE

BY David Dammetha 10/25/99  
Title: PRESIDENT DATE

*If a Corporation, the President or Vice-president must sign and the Secretary, Treasurer, Assistant Secretary or Assistant Treasurer must attest; if a sole proprietorship, only the owner must sign; if a partnership, only one partner need sign; if a limited partnership, only the general partner must sign. If a Municipality, Authority or other entity, please attach a resolution.*

**DO NOT WRITE BELOW THIS LINE--FOR COMMONWEALTH USE ONLY**

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF TRANSPORTATION

BY M.M. Ryan 10/28/99  
Deputy Secretary DATE  
of Transportation

APPROVED AS TO LEGALITY  
AND FORM

PRELIMINARILY APPROVED

BY [Signature] 10/29/99  
Chief Counsel DATE

BY Audrey Gunnar-Oliver 10/28/99  
Assistant Counsel DATE

BY [Signature] 11/12/99  
Deputy Attorney General DATE

RECORDED NO. 477002  
CERTIFIED FUNDS AVAILABLE UNDER  
ACTIVITY PROGRAM 243  
SYMBOL 010-008-140-99-1  
AMOUNT \$1,000,000

BY [Signature] 11/9/99  
Deputy General Counsel DATE

BY [Signature] 11-9-99  
Signature DATE

Comptroller  
Title

Payment schedule

<u>Task</u>	<u>Pittsburgh</u>	<u>Philadelphia</u>
1 - System Requirements Definition	43.498	29.970
2 - Sensor Network Design	41.921	39.958
3 - Info System Software Development	73.429	71.352
4 - Database Development	50.565	46.997
5 - Hardware Development	4.990	1.895
6 - Hardware Acquisition	16.906	13.767
7 - Compliance with Permit/Zoning	5.729	5.708
8 - System Installation	166.460	193.868
9 - System Start-up Support	<u>96.502</u>	<u>96.485</u>
	500.000	500.000



# EXHIBIT "B"

Page 1 of 3

## STANDARD CONTRACT PROVISIONS

### CONTRACTOR INTEGRITY PROVISIONS

12/20/91

1. Definitions.
  - a. Confidential information means information that is not public knowledge, or available to the public on request, disclosure of which would give an unfair, unethical, or illegal advantage to another desiring to contract with the Commonwealth.
  - b. Consent means written permission signed by a duly authorized officer or employee of the Commonwealth, provided that where the material facts have been disclosed, in writing, by prequalification, bid, proposal, or contractual terms, the Commonwealth shall be deemed to have consented by virtue of execution of this agreement.
  - c. Contractor means the individual or entity that has entered into this agreement with the Commonwealth, including directors, officers, partners, managers, key employees, and owners of more than a five percent interest.
  - d. Financial interest means:
    - (1) ownership of more than a five percent interest in any business; or
    - (2) holding a position as an officer, director, trustee, partner, employee, or the like, or holding any position of management.
  - e. Gratuity means any payment of more than nominal monetary value in the form of cash, travel, entertainment, gifts, meals, lodging, loans, subscriptions, advances, deposits of money, services, employment, or contracts of any kind.
2. The contractor shall maintain the highest standards of integrity in the performance of this agreement and shall take no action in violation of state or federal laws, regulations, or other requirements that govern contracting with the Commonwealth.
3. The contractor shall not disclose to others any confidential information gained by virtue of this agreement.
4. The contractor shall not, in connection with this or any other agreement with the Commonwealth, directly or indirectly, offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for the decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty by any officer or employee of the Commonwealth.
5. The contractor shall not, in connection with this or any other agreement with the Commonwealth, directly or indirectly, offer, give, or agree or promise to give to anyone any gratuity for the benefit of or at the direction or request of any officer or employee of the Commonwealth.
6. Except with the consent of the Commonwealth, neither the contractor nor anyone in privity with him or her shall accept or agree to accept from, or give or agree to give to, any person, any gratuity from any person in connection with the performance of work under this agreement except as provided therein.
7. Except with the consent of the Commonwealth, the contractor shall not have a financial interest in any other contractor, subcontractor, or supplier providing services, labor, or material on this project.
8. The contractor, upon being informed that any violation of these provisions has occurred or may occur, shall immediately notify the Commonwealth in writing.
9. The contractor, by execution of this agreement and by the submission of any bills or invoices for payment pursuant thereto, certifies and represents that he or she has not violated any of these provisions.
10. The contractor, upon the inquiry or request of the Inspector General of the Commonwealth or any of that official's agents or representatives, shall provide, or if appropriate, make promptly available for inspection or copying, any information of any type or form deemed relevant by the Inspector General to the contractor's integrity or responsibility, as those terms are defined by the Commonwealth's statutes, regulations, or management directives. Such information may include, but shall not be limited to, the contractor's business or financial records, documents or files of any type or form which refer to or concern this agreement. Such information shall be retained by the contractor for a period of three years beyond the termination of the contract unless otherwise provided by law.
11. For violation of any of the above provisions, the Commonwealth may terminate this and any other agreement with the contractor, claim liquidated damages in an amount equal to the value of anything received in breach of these provisions, claim damages for all expenses incurred in obtaining another contractor to complete performance hereunder, and debar and suspend the contractor from doing business with the Commonwealth. These rights and remedies are cumulative, and the use or nonuse of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the Commonwealth may have under law, statute, regulation, or otherwise.

### PROVISIONS CONCERNING THE AMERICANS WITH DISABILITIES ACT

2/3/93

During the term of this contract, the Contractor agrees as follows:

1. Pursuant to federal regulations promulgated under the authority of The Americans With Disabilities Act, 28 C.F.R. § 35.101 et seq., the Contractor understands and agrees that no individual with a disability shall, on the basis of the disability, be excluded from participation in this contract or from activities provided for under this contract. As a condition of accepting and executing this contract, the Contractor agrees to comply with the "General Prohibitions Against Discrimination," 28 C.F.R. § 35.130, and all other regulations promulgated under Title II of The Americans With Disabilities Act which are applicable to the benefits, services, programs, and activities provided by the Commonwealth of Pennsylvania through contracts with outside contractors.
2. The Contractor shall be responsible for and agrees to indemnify and hold harmless the Commonwealth of Pennsylvania from all losses, damages, expenses, claims, demands, suits, and actions brought by any party against the Commonwealth of Pennsylvania as a result of the Contractor's failure to comply with the provisions of paragraph 1. above.



## **EXHIBIT "B"**

**Page 2 of 3**

### **NONDISCRIMINATION/SEXUAL HARASSMENT CLAUSE**

Each contract entered into by a governmental agency shall contain the following provisions by which the contractor agrees:

1. In the hiring of any employee(s) for the manufacture of supplies, performance of work, or any other activity required under the contract or any subcontract, the contractor, subcontractor, or any person acting on behalf of the contractor or subcontractor shall not, by reason of gender, race, creed, or color, discriminate against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.

2. Neither the contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate against or intimidate any employee involved in the manufacture of supplies, the performance of work, or any other activity required under the contract on account of gender, race, creed, or color.

3. Contractors and subcontractors shall establish and maintain a written sexual harassment policy and shall inform their employees of the policy. The policy must contain a notice that sexual harassment will not be tolerated and employees who practice it will be disciplined.

4. Contractors shall not discriminate by reason of gender, race, creed, or color against any subcontractor or supplier who is qualified to perform the work to which the contracts relates.

5. The contractor and each subcontractor shall furnish all necessary employment documents and records to and permit access to their books, records, and accounts by the contracting agency and the Bureau of Contract Administration and Business Development, for purposes of investigation, to ascertain compliance with provisions of this Nondiscrimination/Sexual Harassment Clause. If the contractor or any subcontractor does not possess documents or records reflecting the necessary information requested, the contractor or subcontractor shall furnish such information on reporting forms supplied by the contracting agency or the Bureau of Contract Administration and Business Development.

6. The contractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract so that such provisions will be binding upon each subcontractor.

7. The Commonwealth may cancel or terminate the contract, and all money due or to become due under the contract may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause. In addition, the agency may proceed with debarment or suspension and may place the contractor in the Contractor Responsibility File.



## EXHIBIT "B"

Page 3 of 3

### CONTRACTOR RESPONSIBILITY PROVISIONS

For the purpose of these provisions, the term contractor is defined as any person, including, but not limited to, a bidder, offeror, loan recipient, grantee, or subgrantee, who has furnished or seeks to furnish goods, supplies, services, or leased space, or who has performed or seeks to perform construction activity under contract, subcontract, grant, or subgrant with the Commonwealth, or with a person under contract, subcontract, grant, or subgrant with the Commonwealth or its state-affiliated entities, and state-related institutions. The term contractor may include a permittee, licensee, or any agency, political subdivision, instrumentality, public authority, or other entity of the Commonwealth.

1. The contractor must certify, in writing, for itself and all its subcontractors, that as of the date of its execution of any Commonwealth contract, that neither the contractor, nor any subcontractors, nor any suppliers are under suspension or debarment by the Commonwealth or any governmental entity, instrumentality, or authority and, if the contractor cannot so certify, then it agrees to submit, along with the bid/proposal, a written explanation of why such certification cannot be made.

2. The contractor must also certify, in writing, that as of the date of its execution, of any Commonwealth contract it has no tax liabilities or other Commonwealth obligations.

3. The contractor's obligations pursuant to these provisions are ongoing from and after the effective date of the contract through the termination date thereof. Accordingly, the contractor shall have an obligation to inform the contracting agency if, at any time during the term of the contract, it becomes delinquent in the payment of taxes, or other Commonwealth obligations, or if it or any of its subcontractors are suspended or debarred by the Commonwealth, the federal government, or any other state or governmental entity. Such notification shall be made within 15 days of the date of suspension or debarment.

4. The failure of the contractor to notify the contracting agency of its suspension or debarment by the Commonwealth, any other state, or the federal government shall constitute an event of default of the contract with the Commonwealth.

5. The contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of State Inspector General for investigations of the contractor's compliance with the terms of this or any other agreement between the contractor and the Commonwealth, which results in the suspension or debarment of the contractor. Such costs shall include, but shall not be limited to, salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The contractor shall not be responsible for investigative costs for investigations that do not result in the contractor's suspension or debarment.

6. The contractor may obtain a current list of suspended and debarred Commonwealth contractors by either searching the internet at <http://www.dgs.state.pa.us/debarment.htm> or contacting the:

Department of General Services  
Office of Chief Counsel  
603 North Office Building  
Harrisburg, PA 17125  
Telephone No: (717) 783-6472  
FAX No: (717) 787-9138

**AMENDMENT TO AGREEMENT FOR INTELLIGENT TRANSPORTATION  
SYSTEM INTEGRATED SURVEILLANCE AND DATA MANAGEMENT  
INFRASTRUCTURE**

THIS AGREEMENT, made this ~~20<sup>th</sup>~~ day of *December*, 2000, by and between the Commonwealth of Pennsylvania, acting through the Department of Transportation ("COMMONWEALTH"),

a n d

traffic.com, Inc., a Pennsylvania corporation, with its principal place of business at 207 House Avenue, Suite 104, Camp Hill, Pennsylvania 17011 ("TRAFFIC.COM").

W I T N E S S E T H:

WHEREAS, the parties entered into Agreement No. 477002, dated November 12, 1999 ("Agreement"), relating to the development, deployment, maintenance and operation of an ITS integrated surveillance and data management infrastructure system by TRAFFIC.COM in the Pittsburgh and Philadelphia metropolitan areas ("PA Project") and the financial participation of the COMMONWEALTH in the PA Project; and,

WHEREAS, funding for the PA Project comes from the following sources: (a) federal funds provided by Section 5117(b)(3) of the federal Transportation Equity Act for the 21st Century ("TEA-21"); Pub. L. 105-178; (b) state funds; and TRAFFIC.COM's own capital; and,

WHEREAS, the federal cost, as provided by Section 5117(b)(3) of TEA-21, is \$2,000,000 per metropolitan area; and,

WHEREAS, the COMMONWEALTH-funded portion, representing a twenty percent match to the federal funding, is \$500,000 per metropolitan area; and,

WHEREAS, the Agreement provides for the completion of all PA Project Deliverables by December 31, 2000; and,

WHEREAS, although TRAFFIC.COM has made significant progress in developing and deploying the PA Project, it will not be able to complete all deliverables by December 31, 2000, as originally intended by the parties; and,

WHEREAS, certain other rights and obligations of the parties with respect to the PA Project do not arise until after completion of the PA Project deliverables; and,

WHEREAS, it is in the best interests of the COMMONWEALTH and TRAFFIC.COM and of the public in general to proceed with the completion on the deliverables; and,

WHEREAS, the parties desire to amend the Agreement to extend the time for completion of the deliverables.

NOW, THEREFORE, for and in consideration of the foregoing premises and the mutual promises set forth below, the parties agree, with the intention of being legally bound, to amend the Agreement as follows:

1. **RECITALS**--The foregoing recitals are incorporated by reference as a material part of this Agreement.

2. **TIME EXTENSION**—The first sentence of Paragraph 20 of the Agreement is amended by extending the time for completion of all PA Project deliverables from December 31, 2000 to December 31, 2001.

3. **OTHER TERMS AND CONDITIONS**—All other terms and conditions of Agreement No. 477002, which are not modified by this Amendment, remain in full force and effect and are hereby ratified and confirmed.

[Remainder of page left blank intentionally]

IN WITNESS WHEREOF, the parties have executed this Amendment the date first above written.

ATTEST:

TRAFFIC.COM, INC.

BY David Tammeth 12/11/00  
Title: EVP DATE

BY Rahel P. Pinsky 12/11/00  
Title: President & CEO DATE

*If a Corporation, the President or Vice-president must sign and the Secretary, Treasurer, Assistant Secretary or Assistant Treasurer must attest; if a sole proprietorship, only the owner must sign; if a partnership, only one partner need sign; if a limited partnership, only the general partner must sign. If a Municipality, Authority or other entity, please attach a resolution.*

**DO NOT WRITE BELOW THIS LINE--FOR COMMONWEALTH USE ONLY**

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF TRANSPORTATION

BY J. M. Kuny 12/13/00  
Deputy Secretary of Transportation DATE

APPROVED AS TO LEGALITY AND FORM

PRELIMINARILY APPROVED

BY Michael H. Quire 12/13/00  
for Chief Counsel DATE

BY Michael H. Quire 12/12/00  
Assistant Counsel DATE

BY John M. Hall 12/26/00  
Deputy Attorney General DATE

RECORDED NO. \_\_\_\_\_  
CERTIFIED FUNDS AVAILABLE UNDER ACTIVITY PROGRAM \_\_\_\_\_  
SYMBOL \_\_\_\_\_  
AMOUNT \_\_\_\_\_

BY Charles E. Robinson 12/18/00  
Deputy General Counsel DATE

BY Linda K. Conrad 12/13/00  
Signature DATE  
Comptroller  
Title

**AMENDMENT NO. 2 TO AGREEMENT FOR INTELLIGENT  
TRANSPORTATION SYSTEM INTEGRATED SURVEILLANCE AND DATA  
MANAGEMENT INFRASTRUCTURE**

THIS AMENDMENT, made this 12<sup>th</sup> day of December, 2001, by and between the Commonwealth of Pennsylvania, acting through the Department of Transportation ("COMMONWEALTH"),

and

Mobility Technologies, Inc., formerly known as traffic.com, Inc., a Pennsylvania corporation, with its principal place of business at 207 House Avenue, Suite 104, Camp Hill, Pennsylvania 17011 ("MOBILITY"). The COMMONWEALTH and MOBILITY are hereinafter called the parties.

WITNESSETH:

WHEREAS, the parties entered into Agreement No. 477002, dated November 12, 1999 ("Agreement"), relating to the development, deployment, maintenance and operation of an ITS integrated surveillance and data management infrastructure system by MOBILITY, then known as traffic.com, Inc., in the Pittsburgh and Philadelphia metropolitan areas ("PA Project") and the financial participation of the COMMONWEALTH in the PA Project; and,

WHEREAS, funding for the PA Project comes from the following sources: (a) federal funds provided by Section 5117(b)(3) of the federal Transportation Equity Act for the 21st Century ("TEA-21"), Pub. L. 105-178; (b) state funds; and (c) MOBILITY's own capital; and,

WHEREAS, the federal cost, as provided by Section 5117(b)(3) of TEA-21, is \$2,000,000 per metropolitan area; and,

WHEREAS, the COMMONWEALTH-funded portion, representing a twenty percent match to the federal funding, is \$500,000 per metropolitan area; and,

WHEREAS, the Agreement provided for the completion of all PA Project Deliverables by December 31, 2000; and,

WHEREAS, the parties, by Agreement No. 477002A, dated December 26, 2000 ("Amendment"), amended the Agreement to extend the time for completion of the deliverables to December 31, 2001; and,

WHEREAS, MOBILITY, by action of its board of directors dated May 24, 2001, changed its corporate name from traffic.com, Inc. to Mobility Technologies, Inc., effective on or about August 16, 2001, but did not change its corporate structure or ownership; and,

WHEREAS, the change of MOBILITY's corporate name is evidenced by the Certificate of Amendment filed with the Secretary of State of the State of Delaware and the Application for an Amended Certificate of Authority—Foreign Corporation filed with the Secretary of State of the Commonwealth, copies of which are attached as Exhibit "A" (consisting of 5 pages) and made part of this Amendment; and

WHEREAS, although MOBILITY has made significant progress in developing and deploying the PA Project, it may not be able to complete all deliverables by December 31, 2001; and,

WHEREAS, certain other rights and obligations of the parties with respect to the PA Project do not arise until after completion of the PA Project deliverables; and,

WHEREAS, it is in the best interests of the COMMONWEALTH and MOBILITY and of the public in general to proceed with the completion on the deliverables; and,

WHEREAS, the parties desire to amend the Agreement further to extend the time for completion of the deliverables until June 30, 2002.

NOW, THEREFORE, for and in consideration of the foregoing premises and the mutual promises set forth below, the parties agree, with the intention of being legally bound, to amend the Agreement further as follows:

1. **RECITALS**--The foregoing recitals are incorporated by reference as a material part of this Agreement.

2. **TIME EXTENSION**—The first sentence of Paragraph 20 of the Agreement is amended further by extending the time for completion of all PA Project deliverables from December 31, 2001 to June 30, 2002.

3. **REFERENCES TO TRAFFIC.COM**—All references in the Agreement, as amended, to traffic.com, Inc. are understood to refer with equal force and effect to Mobility Technologies, Inc.

4. **OTHER TERMS AND CONDITIONS**—All other terms and conditions of Agreement No. 477002, as amended, which are not modified by this Amendment, remain in full force and effect and are hereby ratified and confirmed.

[Remainder of page left blank intentionally]



IN WITNESS WHEREOF, the parties have executed this Amendment the date first above written.

ATTEST:

MOBILITY TECHNOLOGIES, INC.

Joe DeWitt  
Title: VP Finance DATE 11/27/01

BY David Darnette 11/27/01  
Title: President DATE

*If a Corporation, the President or Vice-president must sign and the Secretary, Treasurer, Assistant Secretary or Assistant Treasurer must attest; if a sole proprietorship, only the owner must sign; if a partnership, only one partner need sign; if a limited partnership, only the general partner must sign. If a Municipality, Authority or other entity, please attach a resolution.*

**DO NOT WRITE BELOW THIS LINE--FOR COMMONWEALTH USE ONLY**

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF TRANSPORTATION

BY J. M. King 11/28/01  
Deputy Secretary of Transportation DATE

APPROVED AS TO LEGALITY  
AND FORM

PRELIMINARILY APPROVED

BY Michael D. Line  
for Chief Counsel DATE 11/28/01

BY \_\_\_\_\_  
Assistant Counsel DATE

BY John F. Hall 12/12/01  
Deputy Attorney General DATE

RECORDED NO. 477002B  
CERTIFIED FUNDS AVAILABLE UNDER  
ACTIVITY PROGRAM \_\_\_\_\_  
SYMBOL \_\_\_\_\_  
AMOUNT NON ENCUMBERED

BY Th. Scott Ray 12/04/01  
Deputy General Counsel DATE

BY Linda Y. Zeigler 11-29-01  
Signature DATE

Comptroller  
Title

State of Delaware  
Office of the Secretary of State PAGE 1

---

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF AMENDMENT OF "TRAFFIC.COM, INC.", CHANGING ITS NAME FROM "TRAFFIC.COM, INC." TO "MOBILITY TECHNOLOGIES, INC.", FILED IN THIS OFFICE ON THE SIXTEENTH DAY OF AUGUST, A.D. 2001, AT 9 O'CLOCK A.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE NEW CASTLE COUNTY RECORDER OF DEEDS.



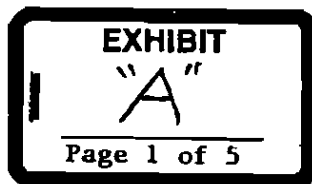
*Harriet Smith Windsor*  
Harriet Smith Windsor, Secretary of State

2958878 8100

AUTHENTICATION: 1299799

010402654

DATE: 08-16-01



AUG. 16. 2001 7:48AM 215 PARCELS INC. DMM PEILA  
AUG 15 00:04:51P Erin Kerry Reardon

NO. 807 DELIMIN  
610-725-0822 SECRETARY OF STATE, E  
DIVISION OF CORPORATIONS  
FILED 09:00 AM 08/16/2001  
010402654 - 2958878

STATE OF DELAWARE  
CERTIFICATE OF AMENDMENT OF  
SECOND AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION

Traffic.com, Inc. (the "Corporation"), a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware, DOES HEREBY CERTIFY THAT:

1. Article FIRST of the Second Amended and Restated Certificate of Incorporation of the Corporation is hereby amended and restated to read as follows (the "Amendment"):

FIRST: The name of the corporation is Mobility Technologies, Inc. (hereinafter, the "Corporation")."

2. The Amendment was duly adopted by the Board of Directors and the stockholders of the Corporation in accordance with the provisions of Section 242(b) of the General Corporation Law of the State of Delaware.

3. The capital of the Corporation shall not be reduced under or by reason of the Amendment.

IN WITNESS WHEREOF, the Corporation has caused this Certificate of Amendment to be signed by its duly authorized officer this 31 day of May, 2001.

TRAFFIC.COM, INC.

by David L. Jannetta  
David L. Jannetta, Secretary

08/18/2001 WED 16:52 [TX/RX NO 6291] @602

EXHIBIT  
"A"  
Page 2 of 5

Microfilm Number \_\_\_\_\_

Filed with the Department of State on \_\_\_\_\_

Entity Number \_\_\_\_\_

Secretary of the Commonwealth

### APPLICATION FOR AN AMENDED CERTIFICATE OF AUTHORITY FOREIGN CORPORATION

DSCR:15-4126/6126 (Rev 90)

Indicate type of corporation (check one):

Foreign Business Corporation (15 Pa.C.S. § 4126)

Foreign Nonprofit Corporation (15 Pa.C.S. § 6125)

In compliance with the requirements of the applicable provisions of 15 Pa.C.S. (relating to corporations and unincorporated associations), the undersigned foreign corporation, desiring to receive an amended certificate of authority hereby states that:

1. The name under which the corporation currently holds a certificate of authority to do business within the Commonwealth of Pennsylvania is: Traffic.com, Inc.

2. The name of the jurisdiction under the laws of which the corporation is incorporated is: Delaware

3. The address of its principal office under the laws of the jurisdiction in which it is incorporated is:

<u>c/o CT Corporation</u> <u>1208 Orange Street</u>	<u>Wilmington</u>	<u>Delaware</u>	<u>19801</u>	<u>Kent</u>
Number and Street	City	State	Zip	County

4. The (a) address of this corporation's registered office in this Commonwealth or (b) name of its commercial registered office provider and the county of venue is:

<u>(a) 207 House Avenue, Suite 104</u>	<u>Camp Hill</u>	<u>Pennsylvania</u>	<u>17011</u>	<u>Cumberland</u>
Number and Street	City	State	Zip	County

(b) c/o: \_\_\_\_\_  
 Name of Commercial Registered Office Provider \_\_\_\_\_ County \_\_\_\_\_

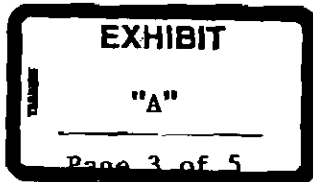
For a corporation represented by a commercial registered office provider, the county in (b) shall be deemed the county in which the corporation is located for venue and official publication purposes.

(Check if applicable):

The foregoing reflects a change in Pennsylvania registered office.

5. The corporation desires that its certificate of authority be amended to change the name under which it is authorized to transact business in the Commonwealth of Pennsylvania to:

Mobility Technologies, Inc.



(If the name set forth in Paragraph 5 is not available for use in this Commonwealth, complete the following):

The fictitious name which the corporation adopts for use in transacting business in this Commonwealth is:

The corporation shall do business in Pennsylvania only under such fictitious name pursuant to the attached resolution of the board of directors under the applicable provisions of 15 Pa.C.S. (relating to corporations and unincorporated associations) and the attached form OSOB:54-911 (Application for Registration of Fictitious Name).

(Check one of the following as applicable):

The change of name reflects a change effected in the jurisdiction of incorporation.

Documents complying with the applicable provisions of 15 Pa.C.S. § 4123(b) or 6123(b) (relating to exception: name) accompany this application.

IN TESTIMONY WHEREOF, the undersigned corporation has caused this Application for an Amended Certificate of Authority to be signed by a duly authorized officer thereof, this \_\_\_\_\_ day of August, 2001.

Traffic.com, Inc.

Name of Corporation

BY: David Jannetta  
David L. Jannetta (Signature)

TITLE: President

11/87427.1

EXHIBIT

"A"

Page 4 of 5

Docketing Statement (Changes)  
DSCB:15-134B

**BUREAU USE ONLY:**

Revenue       Labor & Industry  
 Other \_\_\_\_\_

File Code \_\_\_\_\_ Filed Date \_\_\_\_\_

**Part I. Complete for each filing:**

Current name of entity or registrant <i>survivor or new entity if merger or consolidation:</i> traffic.com, Inc.	
Entity number, if known: 2842772	Incorporation/qualification date in PA: Oct. 26, 1998
State of Inc: Delaware	Federal EIN: _____ Specified effective date, if any: _____

**Part II. Check proper box:**

<input checked="" type="checkbox"/> Amendment (complete Section A)	<input type="checkbox"/> Merger, Consolidation or Division (complete Section B, C or D)
<input type="checkbox"/> Consolidation (complete Section C)	<input type="checkbox"/> Division (complete Section D)
<input type="checkbox"/> Conversion (complete Section A & E)	<input type="checkbox"/> Correction (complete Section A)
<input type="checkbox"/> Termination (complete Section H)	<input type="checkbox"/> Revival (complete Section G)
<input type="checkbox"/> Dissolution before Commencement of Business (complete Section F)	

<input type="checkbox"/> Section A - Check box(es) which pertain to changes: <input checked="" type="checkbox"/> Name: Mobility Technologies, Inc.	
<input type="checkbox"/> Registered Office: Number & street/RD number & box number      City      State      Zip      County	
<input type="checkbox"/> Purpose:	
<input type="checkbox"/> Stock (aggregate number of shares authorized): _____	<input type="checkbox"/> Effective date: _____
<input type="checkbox"/> Term of Existence: _____	<input type="checkbox"/> Other: _____

<input type="checkbox"/> Section B - Merger Complete Section A if any changes to surviving entity: Merging Entities are: (attach sheet for additional merging entities)	
Name: _____	Entity #, if known: _____
Effective date: _____	Inc./qual. date in PA: _____ State of Inc: _____
Name: _____	Entity #, if known: _____
Effective date: _____	Inc./qual. date in PA: _____ State of Inc: _____

**EXHIBIT**

"A"

Attachment 2 A-3  
Device Types

Device Type	Manufacturer	Model
Permanent DMS	Daktronics	VP-1000
		VF-1000-27-105-18-W
		VF-1000-3-7X90-18F
		VF-2020-27X105-18-A
		VF-2000-27X75-full matrix
	Dambach, Inc.	Fiberoptic - Vario
	Display Solutions	VMS-LED-F-LM-3L-5x7-66
	SES America (formerly FDS)	Sylvia 320
		Sylvia 450
		Messenger 600 series - M6100
		Sylvia Fiberoptic - MFSLY 2
Adaptive Microsystems	AX8700-27X54-18A	
American Signal Co.		
ADDCO	AFO-2S3A4-0805H	
LedStar		
Portable DMS	Display Solutions	8030-9180-3SP
	Daktronics	VP-1300
	ADDCO	
	Precision Solar Controls	SMC-1000
		SMC-2000
	American Signal Co.	T-330
		T-331
HAR	Highway Information Systems	Black Max DRTXM3 AM
		Black Max DR1500
		Black Max DRTXM2 AM
	Information Station Specialists	AP-55
CCTV	Bosch	ENVT120P Dome
		Envirodome - LTC 0928/25C
		Envirodome - VGA 322 ECS OP
		Dome - ENVE 2460P
		Dome - ENVD 2460P
		Barrel - LTC 7960-60-20XPM
	COHU	3920 Series Dome 23Xzoom
	Vicon Inc.	Surveyor 2000
		S2-CW22
		VC284-48
	Pelco	
	Philips	Digital 600 - LTC 0600/60
Barrel - LTC 7960-60-20XPM		
Detection systems & Engineering Co.	Dual Cam - DSE-5000	
Detectors	Econolite	Autoscope - 706110
		Microwave - RTMS-X2
		Microwave - RTMS-X3