

**CONSULTING AGREEMENT
BY AND BETWEEN**

**AND
ROAD COMMISSION FOR OAKLAND COUNTY**

This Consulting Agreement (the "Agreement"), made and entered into this date of Mar. 25, 2000, by and between [REDACTED] Inc (the "CONSULTANT"), with offices at [REDACTED] and the Road Commission for Oakland County (the "RCOC"), with offices at 31001 Lahser Road, Beverly Hills, MI 48025;

WHEREAS, the RCOC as part of federally funded Intelligent Transportation System Project IVH 9226(001) (FAST-TRAC) maintains its Traffic Operations Center (TOC), located at 1200 N. Telegraph Road, Bldg. W-49, Pontiac, MI 48341; and

WHEREAS, the TOC collects and analyzes traffic data and manages the FAST-TRAC traffic system; and

WHEREAS, the CONSULTANT is in the business of providing traffic, news, weather, sports and other information to television, radio and other receivers of such information; and

WHEREAS, the CONSULTANT wishes to utilize the TOC facilities and available data in conjunction with CONSULTANT's traffic information service; and

WHEREAS, the RCOC will be able to utilize the SERVICES of CONSULTANT to provide an operator or operators for the RCOC's traffic management system, (The SERVICES).

NOW THEREFORE, in consideration of the mutual benefits set forth herein, the parties agree as follows:

1. SERVICES

The Scope of SERVICES to be performed by CONSULTANT under this Agreement shall be as set forth in Exhibit A attached hereto.

2. CONSULTANT's Obligations

- A. CONSULTANT shall provide at least one traffic surveillance operator (CONSULTANT's Operator) during the hours of 6:00 a.m. – 9:00 a.m. and

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4:00 p.m. – 6:00 p.m., Monday through Friday excluding holidays.
Additional time may be mutually agreed upon by the parties.

- B. CONSULTANT's Operator shall enter the RCOC's traffic data into collection, distribution and retention systems provided by the RCOC as more particularly described in Exhibit A.
- C. CONSULTANT's Operator shall note "alerts" of technical difficulties and other indicators of traffic problems reflected on the FAST-TRAC Scats/Autoscope network screens and immediately advise appropriate TOC personnel.
- D. CONSULTANT's Operator shall receive emergency notifications of system breakdowns and other traffic emergencies and immediately advise appropriate TOC personnel.
- E. CONSULTANT's Operator will work under the direction of the FAST-TRAC Project Manager or his designee, and comply with work area procedures of the RCOC.
- F. CONSULTANT's Operator may perform such other duties as may be mutually agreed.
- G. CONSULTANT will bear the costs associated with broadcasting Metro Networks information out of the TOC, Internet connection, any dedicated telephone line and providing its personnel with equipment and furniture required for said equipment, including an Etak workstation.
- H. Subject to space, availability and weather, mechanical and air traffic control, CONSULTANT will provide up to one helicopter or fixed wing airplane ride per week to the RCOC for traffic assessment or like purposes during regularly scheduled helicopter hours as agreed to by the parties. Only persons (public employees or officials) designated by specific request and authorization of the RCOC Managing Director, Deputy Managing Director or FAST-TRAC Project Manager shall be afforded rides. Persons riding the helicopter will provide CONSULTANT a Waiver of Liability as a condition of the ride.
- I. Pertinent information gathered by CONSULTANT regarding Oakland County traffic will be shared with the RCOC, provided the RCOC agrees

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not to directly or indirectly release such information in a format packaged by CONSULTANT to other information source providers. The RCOC agrees to cooperate with CONSULTANT to resolve issues as necessary so that release of CONSULTANT's information is not detrimental to CONSULTANT's business.

3. RCOC Obligations

- A. The RCOC shall furnish for the CONSULTANT such standards and other information as may be needed by the CONSULTANT to provide the SERVICES to the RCOC.
- B. The RCOC will provide CONSULTANT's Operator, at no charge to CONSULTANT, sufficient workspace at the TOC, including reasonable use of telephone and fax. The size of the workspace will be mutually agreed to by CONSULTANT and RCOC in accordance with CONSULTANT's normal technical specifications and requirements, attached hereto, but will need to accommodate no less than one traffic surveillance operator, one computer workstation and appropriate broadcast equipment.
- C. RCOC will permit CONSULTANT's Operator access to FAST-TRAC generated traffic data, Oakland County based cameras, which data is available at the TOC, for CONSULTANT's use. The CONSULTANT may utilize and broadcast (via television, cable, satellite, internet or other media) video images available at the TOC originating in Oakland County and from the FAST-TRAC traffic surveillance camera system, either directly or via CONSULTANT's clients.
- D. The parties agree that while at the TOC, CONSULTANT's Operator may also engage in certain broadcast activities related to CONSULTANT's business while performing the SERVICES to the RCOC as set forth herein.

4. Term:

This Agreement shall commence when executed by both parties and remain in effect for an initial period of one (1) year. After the initial term, this Agreement shall automatically renew for additional one (1) year terms unless either party notifies the

other in writing by certified mail at least ninety (90) days prior to the expiration of the then-current term that it does not wish to renew. Should such notice be furnished, this Agreement shall automatically expire at the end of the then-current term.

5. Non-Interference

- A. CONSULTANT agrees that the operation of the TOC as a public facility is at all times the primary function. Under no circumstances shall CONSULTANT's employees, including CONSULTANT's Operator, interfere with or restrict RCOC operations, and CONSULTANT's employees shall, when requested relinquish space, and if necessary in emergency conditions, remove themselves from the premises.
- B. CONSULTANT's employees, including CONSULTANT's Operator, shall not alter or otherwise access the TOC computer programs, except as specifically instructed for data input.

6. Termination

- A. Either party may terminate this Agreement upon thirty (30) days prior written notice of a breach of any material term of this Agreement by the other party and such other party's failure to cure such breach within such thirty (30) day period. At the time of notice of breach, the RCOC may, at its sole discretion, require CONSULTANT to cease operations at the TOC until the breach is corrected.

7. Audit - Valuation

The CONSULTANT shall follow standard accounting practices and permit representatives of the RCOC, MDOT and FHWA to audit and inspect its PROJECT books and records at a mutually agreeable time. Such records are to be sufficient to substantiate matching funds for the FAST-TRAC Project and to be kept available for three (3) years from the date of the completion of SERVICES.

The value of the contribution (SERVICES provided) is estimated to be approximately \$75,000.

8. Compliance with Applicable Laws and Regulations

The CONSULTANT specifically agrees that the performance of SERVICES herein enumerated by it, or by an approved subcontractor, or anyone acting in its

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behalf, will comply with any and all applicable State, Federal, and Local statutes, ordinances, and regulations, and with RCOC regulations.

Additionally, the CONSULTANT shall comply with, and shall require any contractor or subcontractor to comply with the following:

- A. In connection with the performance of this agreement, the CONSULTANT (hereinafter in Appendix "A" referred to as the "contractor") agrees to comply with the State of Michigan provisions for "Prohibition of Discrimination in State Contracts", as set forth in Appendix "A", attached hereto and made a part hereof.
- B. During the performance of this Agreement, the CONSULTANT for itself, its assignees, and successors in interest (hereinafter in Appendix "B" referred to as the "contractor") agrees to comply with the Civil Rights Act of 1964, being P.L. 88-352, 78 Stat. 241, as amended, being Title 42 USC Sections 1971, 1975a - 1975d, and 2000a - 2000h-6, and the Regulations of the United States Department of Transportation (49 CFR Part 21) issued pursuant to said Act, including Appendix "B" attached hereto and made apart hereof.
- C. The parties hereto further agree that they accept MDOT's Disadvantaged Business Enterprises/Minority Business Enterprises/Women's Business Enterprises (DBE/MBE/WBE) Program with respect to the PROJECT and will abide by the provisions set forth in Appendix "C" attached hereto and made a part hereof, being an excerpt from Title 42 CFR Part 23, more specifically 23.43 (a)(1) and (2) thereof.
- D. The CONSULTANT agrees to comply with the assurances – non construction Program (2 pages: Standard Form 4219-1881 prescribed by OMB Circular 2-102 as said assurances may be applicable, with the "Certification Regarding Lobbying" attached thereto (1 page) and with "Addendum B, General Agreement for Federal Aid Projects, dated 5/18/93 as said provisions may be applicable (5 pages) (Appendix D).
- E. 1) The signature of an authorized officer of the CONSULTANT on this Agreement constitutes its certification of "status" under penalty of perjury

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under the laws of the United States in respect to 49 CFR Part 29 pursuant to Executive Order 12549.

2) The certification which is outlined as a part of this Agreement as Attachment A, is Appendix A of 49 CFR Part 29, and applies to the CONSULTANT (referred to in Appendix A as "the prospective primary participant").

3) The CONSULTANT is responsible for obtaining the same certification from all subcontractors under this Contract by inserting the following paragraph in all subcontracts:

The Subcontractor's signature on this Contract constitutes the subcontractors' certification of "status" under penalty of perjury under the laws of the United States in respect to 49 CFR, Part 29, pursuant to Executive Order 12549. The certification which is included as a part of this Contract as Attachment B, is Appendix B of 49 CFR, Part 29.

9. Indemnification and Insurance

A. The CONSULTANT shall hold harmless, represent, defend and indemnify the BOARD OF COUNTY ROAD COMMISSIONERS of Oakland County, its officers and employees, the Michigan State Transportation Commission, the Michigan Department of Transportation; and the local units of government, within which the PROJECT is located; against all claims for damages to public or private property and/or for injuries to persons, or for any other claims arising out of the negligent performance, improper performance or non-performance of the contracted work, whether during the progress and/or after the completion thereof.

Further, the CONSULTANT shall acquire and maintain statutory workers' compensation insurance coverage, auto liability, comprehensive general liability insurance coverage and professional liability insurance coverage. The limits and deductible applicable to both comprehensive general liability and professional liability shall be as described in the attached Exhibit B.

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Certificates of insurance for each policy, providing for 30 days notice to the RCOC of cancellation, termination or material change, shall be provided to the RCOC.

- B. The CONSULTANT shall indemnify and save RCOC harmless from damages arising from actions brought against RCOC based upon a claim that any intellectual property as provided by CONSULTANT infringes a patent, copyright or trademark, provided that RCOC gives CONSULTANT prompt written notice of any alleged infringement and affords CONSULTANT the opportunity of sole defense and settlement of any such allegation.
- C. RCOC shall indemnify and hold CONSULTANT, its employee and agents harmless from claims arising out of the intentional misconduct or gross negligence of the RCOC, its employees, arising out of the performance, non-performance or improper performance of obligations assured pursuant to this Agreement.
- D. Title and risk of loss for broadcast equipment and associated personal property, and personal property of CONSULTANTS, its agents and employees, shall remain in CONSULTANT and said employee's name. CONSULTANT shall be responsible, at its option, of insuring said property.

10. Government Function

It is declared that the SERVICES performed under this Agreement are a governmental function. It is the intention of the parties hereto that this Agreement shall not be construed to waive the RCOC's defense of governmental immunity.

11. Third Parties

This Agreement is not for the benefit of any third party.

12. Choice of Law

In interpretation of this Agreement, the laws of the State of Michigan, USA, shall apply. Venue shall lie in the County of Oakland, State of Michigan.

13. Severability

The invalidity of any portion of this Agreement shall not affect the enforceability of the remaining portions of this Agreement, and in the event that portions of this

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Agreement shall be declared invalid, this Agreement shall be construed as if such invalidated portion had not been inserted.

14. Notices

All notices and documents desired or required to be given to either party hereunder must be in writing and shall be deemed given on the date received, via certified mail, return receipt requested, to the other party's respective address set forth below or to such other address as either party shall designate to the other in writing.

All notices required to be given to the RCOC hereunder shall be sent to:

Road Commission for Oakland County
Traffic Operations Center
1200 North Telegraph Road, Building W-49
Pontiac, MI 48341
Attention: Gary Piotrowicz

and all notices to [REDACTED] shall be sent to:

[REDACTED]
[REDACTED]
[REDACTED]
Attention: President

with a copy to

[REDACTED] Inc.
[REDACTED]
[REDACTED]
Attention: Director of Operations

15. Changes

Any material change in scope or character of the SERVICES, cost, compensation, or term of this Agreement shall be by execution of a written amendment to this Agreement by the parties hereto.

16. Counterparts

This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute the same instrument.

EXHIBIT A

SCOPE OF SERVICES

[REDACTED] Operator

[REDACTED] will provide, at its sole cost, an operator or operators to work under the direction of the RCOC, Monday through Friday excluding holidays between the hours of 6 – 9 a.m. and 4 – 6 p.m. Additional hours may be agreed upon between the parties. Security checks will be performed for [REDACTED] employees working at the TOC.

The operator will carry out the following duties:

- Gather and organize available traffic data in Oakland County from MDOT, RCOC and [REDACTED] sources.
- Input construction and congestion causing incident data into the Transportation Information Management System (TIMS).

[REDACTED] Costs

[REDACTED] will bear the following costs:

- Costs of broadcasting
- Internet connection required for CONSULTANT's broadcasting
- Any dedicated telephone lines required for CONSULTANT'S broadcasting function
- Equipment and furniture required for CONSULTANT's broadcasting function, including an Etak workstation
- All salaries, benefits, including workers' compensation insurance related to all [REDACTED] personnel, including the operator.

[REDACTED] and Misc.

- [REDACTED] will share data it gathers pertinent to Oakland County traffic management and planning with the RCOC, provided the RCOC does not provide the data as formatted by [REDACTED] directly to other information service providers. The RCOC may share the information with other agencies.
- Metro Networks will assist the RCOC in the RCOC's provision of cable television traffic information
- CONSULTANT will provide up to one helicopter or fixed wing aircraft ride per week to the RCOC for traffic assessment or like purposes, during such helicopter's normal operating hours as mutually agreed by the Parties. Only persons (public employees or officials) designated by specific request and authorization of the RCOC Managing Director, Deputy Managing Director or FAST-TRAC Project Manager shall be afforded rides. Such individuals shall sign CONSULTANT's stand form of release as a condition of the ride.

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RCOC Commitments

- RCOC will permit CONSULTANT's Operator access to FAST-TRAC generated traffic data, and data from Oakland County based cameras regarding Oakland County available at the TOC, said data to be used and broadcasted by ██████████ at CONSULTANT's option
- The RCOC will make available space at the TOC for CONSULTANT's Operator, including the reasonable cost of utilities, at the RCOC's discretion
- The RCOC will provide hardware costs for the web page or cable equipment, at its discretion.