

**A RESOLUTION BY  
BY FINANCE/EXECUTIVE COMMITTEE**

~~13~~ R-0622

**A RESOLUTION AUTHORIZING THE MAYOR OR DESIGNEE ON BEHALF OF THE CITY OF ATLANTA TO EXECUTE A NO-COST TRIAL AGREEMENT WITH DRIVECAM FOR A ONE HUNDRED TWENTY (120) DAY PILOT (TRIAL) PROGRAM TO DETERMINE DRIVECAM'S ABILITY TO IMPROVE SAFETY AND HELP IDENTIFY AS WELL AS MINIMIZE RISKS ASSOCIATED WITH CITY FLEET VEHICLES; AND FOR OTHER PURPOSES.**

**WHEREAS**, the City of Atlanta (the "City") has undertaken a major initiative to reduce frequency and severity of vehicular incidents; and

**WHEREAS**, collision claims have increased over the past three years and can negatively impact the amount of claims paid by the City; and

**WHEREAS**, the Pilot Agreement will allow one hundred seventy-five (175) vehicles to utilize the DriveCam Event recorders (devices) for a period of one hundred twenty (120) days with anticipation of reducing collision claims, liability claims, Workman's Comp claims and indirect cost associated with claims; and

**WHEREAS**, the DriveCam Event Recorders (devices) will be deployed across five departments; Watershed Management Fleet vehicles will received 50 event recorders, Public Works Fleet vehicles will receive 50 event recorders, Atlanta Fire & Rescue will received 25 event recorders, Department of Parks and Recreation will received 25 event recorders and the Department of Planning and Community Development will receive 25 event recorders; and

**WHEREAS**, the Department of Finance desires to enter into an agreement with DriveCam for a term of one hundred twenty (120) day trial.

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA**, that the Mayor, or his designee be and is hereby authorized to enter into a no-cost trial agreement with DriveCam to determine if DriveCam can identify risk that could occur while driving City vehicles.

**BE IT FURTHER RESOLVED**, that the Pilot (trial) Agreement is set forth in Exhibit A & B.

**BE IT FURTHER RESOLVED**, that the City Attorney is directed to prepare and develop an appropriate Agreement consistent with terms and is substantially similar terms as provided in Exhibit A & B for execution by the Mayor should the City enter into a Contract beyond the Pilot period.

**BE IT RESOLVED**, the Department of Finance desires to enter into an agreement with DriveCam for a term of one hundred twenty (120) day trial.

**BE IT FINALLY RESOLVED**, that all services for said agreement shall not become binding on the City of Atlanta, and the City of Atlanta shall incur neither liability nor obligation thereunder until the same has been signed by the Mayor and delivered to the Contractor.

# **EXHIBIT A**





**DriveCam, Inc.**  
 8911 Balboa Ave  
 San Diego, CA 92123  
 Tel: 858.430.4000  
 Fax: 858.380.3133

Prepared for / Bill To  
 City of Atlanta, GA  
 Kathy Lloyd  
 (404) 330-6982  
 klloyd@atlantaga.gov

Quote Number: DC00003372  
 Created Date: 12/12/2012  
 Valid Until: 12/31/2012  
 Prepared By: Dustin Koch  
 Sales Rep: Dustin Koch  
 Phone: (678) 637-1773  
 Email: dkoch@drivecam.com

\*Any installation fees listed herein are charged on a per VER installation basis, subject to a minimum fee of \$1000.00 per installation day. Client shall be responsible for ensuring vehicle and VER availability per the agreed installation schedule. No refunds shall apply for vehicle installations not completed during scheduled installation due to vehicle or VER unavailability. Additional fees may apply for return sites visits.

**Implementation Assumptions:**

VER Quantity: 175      Number of Sites: 1      Installation Model: Tier 1 – Standard Install

<b>Subscription Fee</b> (per invoice period for subscription term)				
<b>Part No</b>	<b>Description</b>	<b>Qty</b>	<b>Price</b>	<b>Amount</b>
4230-0TFTS-M	Fleet Tracking Service Trial	175	\$0.00	\$0.00
4230-00TMS-M	Managed Services Trial	175	\$0.00	\$0.00
4230-TFUEL-M	Fuel Management Trial	175	\$0.00	\$0.00
			<b>TOTAL</b>	<b>\$0.00</b>

**Additional Information:**

# **EXHIBIT B**

## DRIVECAM TRIAL AGREEMENT

This Trial Agreement ("Agreement") is entered into this 12<sup>th</sup> day of August, 2012 (the "Effective Date") by and between DriveCam, Inc., a Delaware corporation, with its principal place of business at 8911 Balboa Ave, Suite 200, San Diego, California 92123 ("DriveCam") and City of Atlanta 68 Mitchell St. Suite 9100 Atlanta, GA 30303 ("Government").

### RECITALS

**WHEREAS**, DriveCam develops, markets, sells and provides driving risk management products and related services focused on improving driver safety and reducing operating costs for commercial fleets;

**WHEREAS**, Government desires to receive such products and services for evaluation purposes on a trial basis at the trial locations specified herein;

**NOW, THEREFORE**, the parties agree as follows:

#### 1. CERTAIN DEFINITIONS

"Documentation" means the written Software and Hardware related specifications DriveCam provides to Government hereunder, which shall include terms of use posted on [www.drivecam.com](http://www.drivecam.com) or other applicable DriveCam websites.

"Hardware" means DriveCam's VERs and associated hardware provided to Government hereunder.

"Managed Services" means the analysis and reporting by DriveCam of driving events captured by the Products installed in Government's vehicles.

"Products" means the Software and Hardware described on Attachment A to be provided to Government for use during the Trial Period. Attachment A also sets forth, the quantity for each Product and Service, the requested delivery schedule and the delivery location.

"Services" means the Managed Services, installation services, training services and any additional support and maintenance services to be provided hereunder.

"Software" means any software provided to Government under this Agreement, including, without limitation, the operating software embedded in the Hardware and the DriveCam Online<sup>®</sup> software (including any software made available by DriveCam for use by Government on a website hosted by or on behalf of DriveCam).

"Trial Period" means the period from the Effective Date until the date one hundred twenty (120) days from the Service Date, unless earlier terminated as provided below.

"VER" means a DriveCam video event recorder.

#### 2. PRODUCTS

All Products are provided only for the Trial Period. Title to the Products shall remain at all times with DriveCam. Government shall not encumber or otherwise permit any claims or liens to be levied against the Products. Government shall not take or permit any action inconsistent with DriveCam's ownership or allow any third party to modify, service or repair the Products. Government shall use and maintain the Products with ordinary care and only in accordance with the Documentation and any other instructions that may be provided DriveCam. Government shall not remove or alter any proprietary notice of any kind from the Products. Upon the expiration or termination of this Agreement, unless the Government enters into a separate agreement to purchase the Products, Government shall (within ten (10) days from such expiration or termination) return the Products to DriveCam in good condition.

#### 3. SERVICES

DriveCam will use commercially reasonable efforts to provide the Services. With respect to Managed Services, such services will be initiated on the first day of the second calendar month following shipment of the applicable Products ("Service Date") and shall end upon expiration or termination of the Trial Period. Government agrees to provide DriveCam with reasonable cooperation and access to all necessary Government personnel, facilities and equipment (including the Products) for the purpose of performing its obligations hereunder.

#### 4. SOFTWARE; RESTRICTIONS

4.1 Subject to the terms of this Agreement, during the Trial Period, DriveCam grants Government a nonexclusive, nontransferable license to access and use the Software and Managed Services for Government's internal fleet management purposes only, without the right to sublicense such rights, provided Government unconditionally agrees to access and use the Software and Managed Services strictly in accordance with the Documentation and this Agreement ("License"). Under the License, Government may print out, or otherwise make, printed copies ("Copies") of the reports, numeric results and other information and materials generated from Government's access and use of the Software and Managed Services for internal fleet management purposes only. Any updates, modifications, enhancements or new versions of the Software or Managed Services provided or made available to Government by DriveCam, in accordance with this Agreement, shall be considered Software and Managed Services subject to this Agreement.

4.2 Except as otherwise expressly provided in this Agreement, Government agrees to: (a) only use the Software and Managed Services in the manner, and for the purposes, expressly specified in this Agreement; (b) not decompile, disassemble analyze or otherwise examine the Software and Managed Services for the purpose of reverse engineering, or facilitate or permit a third party to do so (except to the extent this restriction is expressly prohibited by applicable law); (c) not delete or in any manner alter any notice, disclaimers or other legends contained in the Software and Managed Services or appearing on any screens, documents, reports, numeric results or other materials obtained by Government through use of the Software and Managed Services ("Notices"); (d) reproduce and display all Notices on Copies Government makes, in accordance with this Agreement; (e) not attempt to access any systems, programs or data of DriveCam that are not licensed under this Agreement; (f) not copy, reproduce,

republish, upload, post, transmit or distribute the Software or Managed Services, or any portion thereof, or facilitate or permit a third party to do so; and (g) not use any device or software to interfere or attempt to interfere with the proper operation of the Software and Managed Services.

#### 5. NO COST TRIAL

The acceptance of Products and Services for demonstration, testing, or evaluation is not to be construed in any way as an acceptance or offer to accept such Products and Services for Government use or as any promise implied that any contract to buy is to follow from the demonstration, test, or evaluation. Notwithstanding the foregoing, in the event that the evaluation results in the Government determining to acquire the Products and Services being evaluated hereunder, the Government agrees to pay for the costs of installation and training services that were provided to the Government by DriveCam during the Trial Period, subject to receipt by the Government of all necessary approvals and funding. If the Government determines not to acquire the trial Products and Services, no such fees shall be due.

#### 6. CONFIDENTIALITY; CLIENT DATA

6.1 During the term of this Agreement, each party (a "Disclosing Party") may provide the other party (a "Receiving Party") with confidential and/or proprietary materials and information ("Confidential Information"). All materials and information provided by Disclosing Party to Receiving Party shall be considered Confidential Information. The terms and pricing under this Agreement shall be deemed DriveCam's Confidential Information. Receiving Party shall maintain the confidentiality of the Confidential Information and will not disclose such information to any third party without the prior written consent of Disclosing Party. Receiving Party will only use the Confidential Information internally for the purposes contemplated hereunder. At any time, upon Disclosing Party's request, Receiving Party shall return to Disclosing Party all Disclosing Party's Confidential Information in its possession, including, without limitation, all copies and extracts thereof. Notwithstanding the foregoing, (i) DriveCam's only obligations with respect to destruction of video clips generated by VERs shall be to comply with its standard video clip retention policy (a copy of which is attached hereto as Attachment B) and (ii) Receiving Party may disclose Confidential Information to any third-party to the limited extent necessary to exercise its rights, or perform its obligations, under this Agreement; provided that, all such third parties are bound in writing by obligations of confidentiality and non-use at least as protective of the Disclosing Party's Confidential Information as this Agreement. In the event that Receiving Party is requested or required (by oral questions, interrogatories, requests for information or documents in legal proceedings, subpoena, civil investigative demand or other similar process) to disclose any Confidential Information of Disclosing Party, Receiving Party shall provide Disclosing Party with prompt written notice of any such request or requirement so that Disclosing Party may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Agreement. In the event that such protective order or other remedy is not obtained, Receiving Party agrees to furnish only that portion of the Confidential Information for which Disclosing Party has waived compliance or for which Receiving Party is advised by written opinion of counsel, reasonably satisfactory to Disclosing Party, is required by law, rule, regulation or court order. The aforementioned notice requirement shall not apply to requests for public records under the Georgia Open Records Act, except to the extent that notice may be

required under O.C.G.A. Section 50-18-72(a)(34) with respect to trade secrets.

6.2 The obligations contained in this Section 6 shall not apply to information that: (a) is or becomes generally known to the public through no act or omission of the other party; (b) was in the Receiving Party's lawful possession prior to the disclosure and was not obtained by the Receiving Party either directly or indirectly from the Disclosing Party; (c) is lawfully disclosed to the other party by a third-party without restriction on disclosure; or (d) is independently developed by the Receiving Party without use of or reference to the Disclosing Party's Confidential Information.

6.3 As between DriveCam and Government, Government shall own the information, data and content captured by the Products in Government's possession, provided that, such Products are used in accordance with the terms and conditions of this Agreement ("Data"); the Data will be Government's Confidential Information; provided that, DriveCam shall have the right to use such Data (i) in connection with its performance hereunder and (ii) internally, to improve DriveCam's products and services. DriveCam shall have the right (which shall survive termination and expiration of this Agreement) to use and disclose the non-video and non-audio meta-data components of the Data for any purposes; provided that, DriveCam does not indicate to any third party that such components were provided by, obtained from, or associated with, the Government or Government's drivers. Such usage rights shall continue and survive destruction of any video clips to which such non-video and non-audio meta-data components relate.

#### 7. TERMINATION

Either party may terminate this Agreement without cause, upon 10 days prior written notice and immediately if the other party breaches any material term or condition of this Agreement and fails to correct such breach within such thirty (30) days.

#### 8. LIMITATION OF LIABILITY

IN NO EVENT WILL DRIVECAM OR ITS LICENSORS, SUPPLIERS, OR DISTRIBUTORS, BE LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR: (I) ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES; (II) THE COST OF PROCUREMENT OF SUBSTITUTE PRODUCTS OR SERVICES; (III) FOR INTERRUPTION OF USE OR LOSS OR CORRUPTION OF DATA; OR (IV) FOR ANY AMOUNTS THAT EXCEED \$100. DRIVECAM AND ITS LICENSORS, SUPPLIERS, AND DISTRIBUTORS SHALL HAVE NO LIABILITY FOR ANY FAILURE OR DELAY DUE TO MATTERS BEYOND THEIR REASONABLE CONTROL.

#### 9. WARRANTY DISCLAIMER

ALL SERVICES AND DOCUMENTATION ARE PROVIDED "AS IS." EXCEPT FOR DRIVECAM'S STANDARD PRODUCT WARRANTY WHICH SHALL APPLY, DRIVECAM AND ITS LICENSORS, SUPPLIERS AND DISTRIBUTORS HEREBY DISCLAIM ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. DRIVECAM AND ITS LICENSORS, SUPPLIERS, AND DISTRIBUTORS MAKE NO WARRANTY THAT THE SOFTWARE WILL WORK IN COMBINATION WITH ANY HARDWARE OR

SOFTWARE PRODUCTS PROVIDED BY THIRD PARTIES, THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE, THAT ALL DEFECTS IN THE SOFTWARE CAN BE CORRECTED, OR THAT ANY SPECIFIC RESULT OR OUTCOME WILL BE ACHIEVED BY UTILIZING THE PRODUCTS OR SERVICES. FURTHER, NEITHER DRIVECAM, ITS LICENSORS, SUPPLIERS, NOR DISTRIBUTORS MAKES ANY WARRANTY THAT ACCESS TO THE SERVICES OR ASSOCIATED NETWORK COVERAGE (E.G. WIRELESS NETWORK COVERAGE) WILL BE CONTINUOUS OR UNINTERRUPTED.

**10. TRADENAMES AND TRADEMARKS**

This Agreement does not grant to any party a license to use any trademark, trade name or logo of the other party, and each party recognizes that the trademarks, trade names and logos of the other party represent valuable assets of that party and that substantial recognition and goodwill are associated with such trademarks, trade names and logos. Each party hereby agrees that it shall not use or permit any third party to use, at any time, the other party's trademarks, trade names or logos.

**11. GENERAL**

Each party shall comply with all applicable laws and regulations. DriveCam is an independent contractor under this Agreement. Nothing in this Agreement creates a partnership, joint venture, or agency relationship between

the parties. All notices under this Agreement shall be in writing, and shall be deemed given when personally delivered, when sent by confirmed fax, or three days after being sent by prepaid certified or registered U.S. mail to the address of the party to be noticed as set forth herein or such other address as such party last provided to the other by written notice. This Agreement shall be binding upon and inure solely to the benefit of the parties hereto and their respective successors and permitted assigns, and shall not be enforceable by or inure to the benefit of any third party.

The failure of either party to enforce its rights under this Agreement at any time for any period shall not be construed as a waiver of such rights. This Agreement supersedes all proposals (oral or written), negotiations, or discussions between parties relating to the subject matter of this Agreement and all past dealing or industry custom. No changes, modifications or waivers are to be made to this Agreement unless evidenced in writing and signed for and on behalf of both parties. In the event that any provision of this Agreement shall be determined to be illegal or unenforceable, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable. This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia, without regard to the conflicts of laws provisions thereof.

THE PARTIES HEREBY AGREE TO THE FOREGOING TERMS AND CONDITIONS:

DRIVECAM, INC.

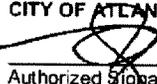
\_\_\_\_\_  
Authorized Signature

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

CITY OF ATLANTA, GA

  
\_\_\_\_\_  
Authorized Signature

Name: Jerry L. DeLoach

Title: Director, ERM

Address: 68 Mitchell St.

Suite 910

Atlanta, GA 30303

**ATTACHMENT A**  
**TRIAL PRODUCTS**

See attached quote.

**ATTACHMENT B**  
**VIDEO CLIP RETENTION POLICY**

Set forth below is DriveCam's Video Clip Retention Policy ("Policy"), which shall apply with respect to the Agreement. This Policy may be updated by DriveCam at any time.

Events shall be available online for ninety (90) days and then stored on backup media and no longer available online. DriveCam will charge its standard fee on a per-event basis to retrieve any video event file from backup storage.

Backups will be stored for the remaining portion of one (1) year (approximately 275 days). At that time, the video associated with the event will be deleted.