

AGREEMENT

This **AGREEMENT** is entered into pursuant to State Finance Law between the State of New York, acting by and through its Department of Transportation (hereafter "the State"), headquartered at 50 Wolf Road, Albany, NY 12232 and

TRANSCOM
(hereafter, "Contractor")

Doing business as a Corporation Partnership Individual Other

Having its principal offices at:

New Port Financial Cntr.
111 Pavonia Ave., 6th floor
Jersey City, NJ 07310

WITNESSETH:

WHEREAS, the Contractor has submitted an offer identified as the Primary Agreement for Regional Architecture and TRANSMIT Installation and O&M, which the State hereby accepts, and;

WHEREAS, the State intends to engage the services of the Contractor, and the Contractor is willing to be so engaged;

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, the State and Contractor do hereby mutually promise and agree as follows:

1. **WORK TO BE DONE** - The Contractor is being retained by the State and shall provide design, purchase, installation, power and provision of maintenance and communications services for the Regional Architecture or (hereinafter referred to as "RA") and TRANSMIT Systems at the NYSDOT facilities specified in the attached Primary Agreement.
2. **CONTRACT PERIOD** - The period of performance (contract period) shall be from March 1, 2004 through December 31, 2010. The State will endeavor to provide no less than ninety (90) days notice of its intent to extend or terminate the contract.
3. **DOCUMENTS FORMING THE CONTRACT** - The State and the Contractor agree that this Contract and the attached Primary Agreement sets forth the entire agreement between the parties, and that there are no promises or understandings other than those Stated herein. None of the provisions, terms and conditions contained herein may be added to, superseded, or otherwise modified, or altered except by written instrument executed by both parties. Notwithstanding the foregoing, the Contract shall be deemed to include *this Agreement, the attached Primary Agreement New York State Appendix A — Standard Clauses for All New York State Contracts.*
4. **ALTERATIONS AND OMISSIONS** - The said work shall be performed in accordance with the true intent and meaning of the contract documents without any further expense to the State other than the consideration named in this agreement. Notwithstanding the provisions contained in Paragraph 3 above, if the specifications so provided, the State reserves the right at any time during the progress of work, to make minor alterations or omissions to the work to be done as it may deem reasonably necessary; making allowances for additions and deductions with compensation made at reasonable negotiated rates (via written instrument – subject to the Comptroller's approval), provided said alterations or omissions do not materially alter the scope of work.
5. **COMPENSATION AND PAYMENT** - As the work progresses in accordance with the specifications, in a manner which is satisfactory to the State, the State hereby agrees to make regular payments to the Contractor therefor, as specified in this Agreement and in the case of alterations and/or omissions, based upon the approved negotiated rates. Payments under this and the attached Primary Agreement shall not exceed \$5,500,000.00, in aggregate.

The payment of interest on certain payments due and owed shall be made in accordance with the criteria established by Chapter 153, Laws of 1984 (Article 11A of New York State Finance Law).

6. **RIGHT TO SUSPEND WORK AND CANCEL CONTRACT** - If at any time during the prosecution of the work, the State shall determine that the work is not being performed according to the terms of the contract or in the best interest of the State, the execution of the work by the Contractor may be temporarily suspended by the State, who may then proceed with the work under its own direction in such manner as will accord with the specifications and be for the best interests of the State; or it may terminate the Contractor's employment under the contract while it is in progress, and thereupon proceed with the work, in affirmance of the contract, by contract negotiated or publicly let, by the use of its own forces, by calling upon the Surety (if any) to complete the work, or by a combination of such methods; or it may cancel the contract and either readvertise or relet, or complete the work under its own direction in such a manner as will accord with the specifications and be for the interests of the State. Any excess cost of completing the contract beyond the price for which it was originally awarded shall be charged to and paid by the Contractor failing to perform the work, or his Surety.
7. **INSPECTION OF SITE** - The Contractor warrants that it has examined the Statement of Work and specifications and is acquainted with all other conditions relevant to the work, the work site(s) and surroundings, and assumes the risk of variances between the actual conditions relevant to the work and the same as shown or represented in the specifications and/or exhibits.
8. **WORKPLACE SAFETY** - The Contractor acknowledges and agrees that it has assumed the sole responsibility and duty to provide a safe work place for its employees and (if any) its subcontractors' employees, and agrees that the State has no responsibility therefor, and that the Contractor shall indemnify and hold the State harmless for any claim for damages by employees of the Contractor or its subcontractors against the State alleging that the State failed to provide a safe place to work.
9. **EXCUSABLE DELAYS** - The Contractor shall be excused from, and shall not be liable for any failure or delay due to acts of God, wars, acts of public enemies or other similar cause beyond its control; or to strikes, fires or floods, including strikes, fires or floods affecting its subcontractors or material suppliers where no alternate source of supply is available to the Contractor. In such event, the Contractor shall, within ten (10) calendar days after the cause first arose which creates or will create the delay if the Contractor could reasonably foresee that the delay could occur by reason thereof; or, if the delay is not reasonably foreseeable, within five (5) calendar days after the date the Contractor first had reason to believe that a delay could result, notify the State of the delay or potential for delay, and the cause therefor. The foregoing shall constitute the Contractor's sole remedy or excuse for non-performance of work under the contract.
10. **INSURANCE AND BONDING** - The Contractor shall not commence work under this Agreement until it has obtained all necessary insurance coverage which was set forth in the specifications, and same have been accepted by the State. All insurance policies and bonds shall be issued by companies authorized to do such business in the State of New York, and each insurance carrier must be rated at least "A-" Class "VII" in the most recently published Best's Insurance Report. The Contractor shall furnish to the Engineer-In-Charge, a Certificate of Insurance in a form satisfactory to the State, with the State of New York as additional named insured, and such Certificate shall include a Statement from the insurer that policies shall not be cancelled or materially altered to reduce any coverage afforded thereunder without at least thirty (30) days written notice to the State.

IN WITNESS WHEREOF, this Agreement is executed by the State and the Contractor by their duly authorized representatives, to become effective and binding upon approval by the State Comptroller.

AGREED TO: CONTRACTOR

By: _____ Date: _____

ACKNOWLEDGMENT OF CONTRACTOR'S SIGNATURE

STATE OF _____)
)SS: _____
COUNTY OF _____)

On this ____ day of _____, 20____, before me came _____,
who being duly sworn, did depose and say that he/she is the _____ of
_____, the business entity described in and which executed
this Agreement, and that he/she is authorized to, and did sign his/her name thereto acting in this capacity.

(Notary Public)

(Notary Stamp – if required)

AGREED: NYS DEPARTMENT of TRANSPORTATION

By: _____ Date _____

**APPROVED AS TO FORM
and MANNER OF EXECUTION
ELIOT SPITZER – ATTORNEY GENERAL**

**APPROVED PURSUANT TO
§ 112 STATE FINANCE LAW
ALAN G. HEVESI – STATE COMPTROLLER**

PRIMARY AGREEMENT
REGIONAL ARCHITECTURE and TRANSMIT INSTALLATION AND O&M

General Provisions:

This Agreement between TRANSCOM Inc. (hereinafter referred to as "TRANSCOM") and the New York State Department of Transportation (hereinafter referred to as "NYSDOT") establishes the terms for the design, purchase, installation, power, and provision of maintenance and communications services for the Regional Architecture (hereinafter referred to as "RA") and TRANSMIT systems at NYSDOT facilities specified herein.

The parties hereby agree as follows:

1. Upon execution by both parties, this Agreement shall be in effect as of March 1, 2004, and shall remain in effect through December 31, 2010.
2. NYSDOT's reimbursements to TRANSCOM pursuant to this Agreement shall not, in aggregate, exceed \$5,500,000.00, as represented in Attachment 1.
3. For the purposes of this Agreement, the following definitions shall apply:
 - (A) "Routine Repair and Maintenance" shall mean repair and maintenance necessary in the absence of vandalism, accident, abuse, or an act of God.
 - (B) "Non-Routine Repair and Maintenance" shall mean repair and maintenance necessary because of vandalism, accident, abuse, or an act of God. Further, the provision of replacement equipment for any cause shall be considered Non-Routine Repair and Maintenance.
 - (C) "Direct Costs" shall mean direct labor and/or equipment costs, as follows: For Routine Repair and Maintenance, no equipment costs shall apply, and the direct labor component shall consist of an annually-calculated per-site lump-sum charge. The lump sum shall be based on TRANSCOM's applicable hourly labor rates, as established in the TRANSCOM Budget. For Non-Routine Repair and Maintenance, the labor and equipment costs shall be actual costs, calculated on a time-and-materials basis.
 - (D) "Indirect Costs" shall mean indirect labor and materials and services costs, calculated by applying TRANSCOM's overhead rate to the labor component of Direct Costs. The overhead rate is annually established in the TRANSCOM Budget; the rate for 2005 is 85.79%.
4. TRANSCOM shall submit invoices to NYSDOT, on a quarterly basis by NYSDOT Region, for services and work conducted under this Agreement. NYSDOT shall pay the invoices to TRANSCOM in accordance with New York State Requirements for prompt payment of vendors.
5. TRANSCOM will make its books and records concerning billing under this Agreement available to NYSDOT upon reasonable notice, for a period of six years after each invoice.

6. NYSDOT owns all of the RA and TRANSMIT Equipment installed at the NYSDOT facilities. As owner, NYSDOT is solely responsible for the cost of removal of RA and/or TRANSMIT Equipment. The provisions in this paragraph 6 shall survive expiration or termination of this Agreement.
7. TRANSCOM shall make available to NYSDOT all reports, documents, logs, evaluation plans and results, and other maintenance-related data.
8. TRANSCOM, or its designated representative, shall have the right to inspect the RA and/or TRANSMIT Equipment at any time upon reasonable notice.
9. No officer, director, Trustee, Commissioner, employee, or agent of either party shall be charged personally with any liability or held liable under any term or provision of this Agreement, or because of its execution or because of any breach hereof.
10. TRANSCOM shall defend, hold harmless, and indemnify NYSDOT against any claims by third parties, including its officers and employees, resulting from TRANSCOM's negligence or willful intentional acts in the installation or maintenance of the RA and TRANSMIT Equipment, but not for any claim arising out of the negligence or willful intentional acts of NYSDOT.
11. Either party may terminate this Agreement upon providing three months' written notice to the other party. Rights and obligations of the parties incurred during the period of the Agreement shall remain in full force and effect after termination.
12. Parties agree to abide by the standard clauses for New York State Contracts, Attachment 7, which are hereby incorporated and made part of this Agreement.
13. This Agreement contains the complete agreement of the parties, and no change in or modification, termination, or discharge of this Agreement in any form whatsoever shall be valid or enforceable unless it is in writing and signed by both parties.
14. This Agreement shall be construed in accordance with the laws of the State of New York.

Regional Architecture Provisions:

15. For the purposes of this Agreement, the following definitions shall apply:

- (A) "RA" shall mean the system that connects the TRANSCOM Member Agencies' Transportation Operations Centers (TOCs) and enables the TOCs to share incident, construction, and special event information, including real-time data, for public transportation management purposes, or any component portion of that system.
- (B) "NYSDOT TOCs" shall mean the following NYSDOT TOCs: Long Island City, Hudson Valley, INFORM, Albany (4 locations), and the New York State Emergency Management Office in Albany.
- (C) "RA Equipment" or "NYSDOT RA System" or "RA System" shall mean equipment for or related to the RA installed at the NYSDOT TOCs.
- (D) "Group 1" or "Group 1 System" shall mean the portion of RA that comprises the

equipment locations listed in Attachment 2 of this Agreement under "Group 1 Equipment Locations." Attachment 2 is incorporated into and made part of this Agreement.

- (E) Group 1 Equipment" shall mean RA Equipment for Group 1.
- (F) "Group 2" or "Group 2 System" shall mean the portion of RA that comprises the equipment locations listed in Attachment 2 of this Agreement under "Group 2 Equipment Locations."
- (G) "Group 2 Equipment" shall mean RA Equipment for Group 2.
- (H) "Group 3" or "Group 3 System" shall mean the portion of RA that comprises the equipment locations listed in Attachment 2 of this Agreement under "Group 3 Equipment Locations."
- (I) "Group 3 Equipment" shall mean RA Equipment for Group 3.
- (J) "Date of Activation" shall mean the date that equipment or communications is initially activated. For Group 1 locations, the Date of Activation for Long Island City, is March 1, 2002; for Hudson Valley, August 16, 2003; for INFORM, July 16, 2003; and for Albany, January 5, 2003. The remaining sites are not yet installed.
- (K) "Initial Two Years" shall mean the first two years after the Date of Activation.

16. TRANSCOM shall be responsible for system design, purchase, and installation of the Group 2 and Group 3 Equipment. TRANSCOM, or its designated representative, shall prepare installation procedures and provide such procedures to NYSDOT. NYSDOT shall be given the opportunity to comment on and to approve all procedures. All of the RA installations shall be performed without unreasonable interference with NYSDOT and/or NYSEMO operations.

17. NYSDOT shall give TRANSCOM, or its designated representative, access to the NYSDOT TOCs and at the NYSEMO TOC for the purpose of installing the RA Equipment, as follows:

- NYSDOT shall provide the appropriate personnel to accompany TRANSCOM, or its designated representatives, on TOC site surveys and equipment installation.
- NYSDOT shall be responsible for all site preparation requirements for the NYSDOT TOCs according to the list in Attachment 3, "NYSDOT Site Preparation Responsibilities," incorporated into and made part of this Agreement

18. NYSDOT shall provide power services for the entire NYSDOT RA System, and shall assume the associated costs. NYSDOT shall also provide communications services for the Long Island City, Hudson Valley, and the three NYSDOT Albany TOCs, and shall assume the associated costs. Communication costs for the NYSEMO site may be assumed by NYSDOT or by NYSEMO.

19. TRANSCOM shall perform Routine Repair and Maintenance for the RA Equipment as necessary, and shall perform Non-Routine Repair and Maintenance as requested by NYSDOT. TRANSCOM shall replace and/or repair the RA Equipment within a reasonable amount of time not to exceed fourteen calendar days after notice to TRANSCOM. TRANSCOM shall also provide for communications services for the INFORM and the New York State Office of Emergency Management TOCs.

20. Costs for the purchase and installation of the Group 2 Equipment shall be paid in a lump-sum by NYSDOT and are as follows:

Task	Cost per Site	Number of Sites	Total Cost
Equipment	\$2,500.00	3	\$7,500.00
Installation	\$5,334.31	3	\$16,002.93
Total			\$23,502.93

Note: Budget figures are valid through 12/31/2006 and are subject to change if purchased after this date.

21. Costs for the purchase and installation of the Group 3 Equipment shall be paid in a lump-sum by NYSDOT and are as follows:

Task	Cost per Site	Number of Sites	Total Cost
Equipment	\$4,000.00	1	\$4,000.00
Installation	\$6,841.66	1	\$6,841.66
Total			\$10,841.66

Note: Budget figures are valid through 12/31/2006 and are subject to change if purchased after this date

22. Costs for maintenance and replacement equipment for the Group 1 Equipment shall be covered as follows:

Routine Repair and Maintenance: During the Initial Two Years for each TOC, TRANSCOM shall assume the costs for Routine Repair and Maintenance. After the Initial Two Years, NYSDOT shall pay to TRANSCOM the Direct Costs and Indirect Costs for Routine Repair and Maintenance. Attachment 4 presents the specific calculation method for Routine Repair and Maintenance costs and an estimate of these costs.

Non-Routine Repair and Maintenance: During and after the Initial Two Years, NYSDOT has the option to retain TRANSCOM to provide Non-Routine Repair and Maintenance by submitting a request to TRANSCOM. NYSDOT shall pay to TRANSCOM the Direct Costs and Indirect Costs incurred by TRANSCOM for Non-Routine Repair and Maintenance work requested by NYSDOT. Attachment 4 presents an estimate of the cost of Non-Routine Repair and Maintenance.

Communications: During the Initial Two Years, TRANSCOM shall assume the cost of communications for the INFORM TOC. After the Initial Two Years, NYSDOT shall reimburse TRANSCOM for actual communications costs incurred by TRANSCOM for the INFORM TOC.

23. Costs for maintenance and replacement equipment for the Group 2 Equipment shall be covered as follows:

Routine Repair and Maintenance: NYSDOT shall pay to TRANSCOM the Direct Costs and Indirect Costs for Routine Repair and Maintenance. Attachment 4 presents the specific calculation method for Routine Repair and Maintenance costs and an estimate of these costs.

Non-Routine Repair and Maintenance: NYSDOT has the option to retain TRANSCOM to provide Non-Routine Repair and Maintenance by submitting a request to TRANSCOM. NYSDOT shall pay to TRANSCOM the Direct Costs and Indirect Costs incurred by TRANSCOM for Non-Routine Repair and Maintenance work requested by NYSDOT. Attachment 4 presents an estimate of the cost of Non-Routine Repair and Maintenance.

24. Costs for maintenance and replacement equipment for the Group 3 Equipment shall be covered as follows:

Routine Repair and Maintenance: NYSDOT shall pay to TRANSCOM the Direct Costs and Indirect Costs for Routine Repair and Maintenance. Attachment 4 presents the specific calculation method for Routine Repair and Maintenance costs and an estimate of these costs.

Non-Routine Repair and Maintenance: NYSDOT has the option to retain TRANSCOM to provide Non-Routine Repair and Maintenance by submitting a request to TRANSCOM. NYSDOT shall pay to TRANSCOM the Direct Costs and Indirect Costs incurred by TRANSCOM for Non-Routine Repair and Maintenance work requested by NYSDOT. Attachment 4 presents an estimate of the cost of Non-Routine Repair and Maintenance.

Communications: NYSDOT shall reimburse TRANSCOM for actual communications costs incurred by TRANSCOM for the NYSEMO TOC. Attachment 4 presents an estimate of these costs.

TRANSMIT Provisions

25. For the purposes of this Agreement, the following definitions shall apply:

- (A) "TRANSMIT" shall mean the TRANSCOM System for Managing Incidents and Traffic or any component portion of that system.
- (B) "TRANSMIT Equipment" shall mean equipment for or related to TRANSMIT, including electronic toll and traffic management equipment, a communications network, and ancillary equipment, including conduits and structures.
- (C) "Group A" or "Group A System" shall mean the portion of TRANSMIT installed on NYSDOT Facilities in Region 11 that comprises the equipment locations listed in Attachment 5 of this Agreement under "Group A Equipment Locations." Attachment 5 is incorporated into and made part of this Agreement.
- (D) "Group A Equipment" shall mean TRANSMIT Equipment for Group A.
- (E) "Group B" or "Group B System" shall mean the portion of TRANSMIT installed on NYSDOT Facilities in Region 8 that comprises the equipment locations listed in Attachment 5 of this Agreement under "Group B Equipment Locations."
- (F) "Group B Equipment" shall mean TRANSMIT Equipment for Group B.
- (G) "Group C" or "Group C System" shall mean the portion of TRANSMIT installed on NYSDOT Facilities in Region 10 that comprises the equipment locations listed in Attachment 5 of this Agreement under "Group C Equipment Locations."
- (H) "Group C Equipment" shall mean TRANSMIT Equipment for Group C.
- (I) "Group D" or "Group D System" shall mean the portion of TRANSMIT to be installed on NYSDOT Facilities in the future.
- (J) "Group D Equipment" shall mean TRANSMIT Equipment for Group D.

26. NYSDOT and TRANSCOM will review and agree upon the additional locations where Group D Equipment is to be installed. NYSDOT's Technology & Operations Committee representative, or his or her designated representative, and the TRANSCOM Deputy Executive Director are authorized to agree in writing on the Group D locations without further authorization subject to the financial constraints identified in Item #2 above.

27. TRANSCOM shall be responsible for the purchase and to support the installation of the additional locations comprising the Group D Equipment. As part of this work, TRANSCOM, or its designated representative, shall:

- a. Perform visits to the field site prior to, during, and/or after construction to confirm field conditions.
- b. Provide assistance with positioning the antenna(s) during the construction phase. TRANSCOM will work with the installers to ensure the antennas are installed so as to provide maximum coverage to read transponders. TRANSCOM will test each antenna and confirm that transponders are being read.
- c. Install the MARK IV TRANSMIT reader in a field cabinet. TRANSCOM will configure each reader so it can be integrated into the TRANSMIT network.
- d. Integrate new TRANSMIT readers into the existing TRANSMIT network. Each new TRANSMIT location will be given a unique address that will enable the TRANSMIT software to show the readers on a map and to create travel time links between readers.
- e. Integrate communications needed for new TRANSMIT readers. TRANSCOM will configure existing TRANSMIT equipment to enable a connection to each new TRANSMIT location.

28. Costs for the support of the installation and the purchase of the additional locations comprising the Group D Equipment shall be paid at a fixed fee by NYSDOT and are as follows:

Group D Task	Cost per Site*
Construction Support	\$345
Antenna Installation	\$4,888**
Reader Installation	\$611
Software Integration	\$276
Communication Integration	\$611
Field Equipment	\$15,820**
TOTAL	\$22,551

* - Note: Budget figures are valid through 12/31/2006 and are subject to change if purchased after this date.

** - Price is based on a six lane divided highway requiring four antennas. The actual cost will depend on the number of antennas required.

29. NYSDOT shall provide the appropriate personnel to accompany TRANSCOM on site surveys, field site verifications, and equipment installations for the additional locations comprising the Group D Equipment.

30. TRANSCOM shall perform Routine Repair and Maintenance for the TRANSMIT Equipment as necessary, and shall perform Non-Routine Repair and Maintenance as requested by NYSDOT. TRANSCOM shall replace and/or repair the TRANSMIT equipment within a reasonable amount of time not to exceed fourteen calendar days after notice to TRANSCOM.

31. Costs for maintenance, equipment, communications, and power for Group A, Region 11,

shall be covered as follows.

Routine Repair and Maintenance: NYSDOT shall pay the costs for Routine Repair and Maintenance, as follows: Beginning on March 1, 2004, and through the duration of this Agreement, NYSDOT shall pay to TRANSCOM the Direct Costs and Indirect Costs for Routine Repair and Maintenance. Attachment 6 presents the specific calculation method for Routine Repair and Maintenance costs and an estimate of these costs.

Communications: Beginning on March 1, 2004 and through the duration of this Agreement, NYSDOT shall reimburse TRANSCOM for actual communications costs incurred by TRANSCOM. Attachment 6 presents an estimate of the cost of Communications.

Power: NYSDOT shall provide power for Group A and shall pay all costs directly.

Non-Routine Repair and Maintenance: NYSDOT has the option to retain TRANSCOM to provide Non-Routine Repair and Maintenance by submitting a request to TRANSCOM. NYSDOT shall pay to TRANSCOM the Direct Costs and Indirect Costs incurred by TRANSCOM for Non-Routine Repair and Maintenance work requested by NYSDOT. Attachment 5 presents an estimate of the cost of Non-Routine Repair and Maintenance.

32. Costs for maintenance, equipment, communications, and power for Group B, Region 8, shall be covered as follows.

Routine Repair and Maintenance: NYSDOT shall pay to TRANSCOM the Direct Costs and Indirect Costs for Routine Repair and Maintenance. Attachment 6 presents an estimate of these costs.

Communications: NYSDOT shall reimburse TRANSCOM for actual communications costs incurred by TRANSCOM. Attachment 6 presents an estimate of the cost of Communications.

Power: NYSDOT shall reimburse TRANSCOM for actual power costs incurred by TRANSCOM. Attachment 6 presents an estimate of the cost of Power.

Non-Routine Repair and Maintenance: NYSDOT has the option to retain TRANSCOM to provide Non-Routine Repair and Maintenance by submitting a request to TRANSCOM. NYSDOT shall pay to TRANSCOM the Direct Costs and Indirect Costs incurred by TRANSCOM for Non-Routine Repair and Maintenance work requested by NYSDOT. Attachment 6 presents an estimate of the cost of Non-Routine Repair and Maintenance.

33. Costs for maintenance, equipment, and communications, and power for Group C, Region 10, shall be covered as follows.

Routine Repair and Maintenance: NYSDOT shall pay to TRANSCOM the Direct Costs and Indirect Costs for Routine Repair and Maintenance. Attachment 6 presents an estimate of these costs.

Communications: NYSDOT shall provide communications for Group C and shall pay all costs directly.

Power: NYSDOT shall provide power for Group C and shall pay all costs directly.

Non-Routine Repair and Maintenance: NYSDOT has the option to retain TRANSCOM to provide Non-Routine Repair and Maintenance by submitting a request to TRANSCOM. NYSDOT shall pay to TRANSCOM the Direct Costs and Indirect Costs incurred by TRANSCOM for Non-Routine Repair and Maintenance work requested by NYSDOT. Attachment 6 presents an estimate of the cost of Non-Routine Repair and Maintenance.

34. Costs for maintenance, equipment, and communications, and power for Group D shall be covered as follows.

Routine Repair and Maintenance: NYSDOT shall pay to TRANSCOM the Direct Costs and Indirect Costs for Routine Repair and Maintenance. Attachment 6 presents an estimate of these costs.

Communications: NYSDOT has the option to retain TRANSCOM to provide communications for future sites. If NYSDOT chooses this option, then NYSDOT shall reimburse TRANSCOM for actual communications costs incurred by TRANSCOM. Attachment 5 presents an estimate of the cost of Communications.

Power: NYSDOT has the option to retain TRANSCOM to provide power for future sites. If NYSDOT chooses this option, then NYSDOT shall reimburse TRANSCOM for actual power costs incurred by TRANSCOM. Attachment 6 presents an estimate of the cost of Power.

Non-Routine Repair and Maintenance: NYSDOT has the option to retain TRANSCOM to provide Non-Routine Repair and Maintenance by submitting a request to TRANSCOM. NYSDOT shall pay to TRANSCOM the Direct Costs and Indirect Costs incurred by TRANSCOM for Non-Routine Repair and Maintenance work requested by NYSDOT. Attachment 6 presents an estimate of the cost of Non-Routine Repair and Maintenance.

Whereupon the parties duly executed this Agreement.

TRANSCOM Inc.

**New York State Department of
Transportation**

By: _____
Matthew Edelman
Executive Director

By: _____

Name: _____

Title: _____

Date: _____

Date: _____

STATE OF _____)
COUNTY OF _____)
On the _____ day of _____
_____ in the year _____
before me, the undersigned, a Notary Public in and for said
State, _____ personally
appeared _____
_____, personally known to me on the basis of satisfactory evidence
to be the individual whose name is subscribed to the within
instrument and acknowledged to me that he/she executed the
same in his/her capacity, and that by his/her signature on the
instrument, the individual, or the person upon behalf of which
the individual acted, executed the instrument.

**REVIEWED AND APPROVED AS TO FORM:
NEW YORK STATE ATTORNEY GENERAL**

By: _____

Name: _____

Title: _____

Date: _____

(Notary Public)

**REVIEWED AND APPROVED AS TO FORM:
NEW YORK STATE COMPTROLLER**

By: _____

Name: _____

Title: _____

Date: _____

ATTACHMENT 1 –BUDGET SUMMARY

NYSDOT Budget for TRANSCOM Regional Architecture and TRANSMIT

Year	Reg. Arch.	TRANSMIT	Total
2004	\$ 759.80	\$ 203,220.84	\$ 203,980.64
2005	\$ 11,960.01	\$ 297,881.78	\$ 309,841.79
2006	\$ 49,941.79	\$ 460,217.48	\$ 510,159.26
2007	\$ 52,480.27	\$ 600,926.31	\$ 653,406.57
2008	\$ 55,711.31	\$ 720,676.70	\$ 776,388.00
2009	\$ 45,735.76	\$ 797,020.98	\$ 842,756.74
2010	\$ 49,553.20	\$ 948,214.81	\$ 997,768.01

Total NYSDOT O&M Funding	\$ 4,294,301.02
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Total Capital Costs	\$ 1,139,478.63
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Project Contingency*	\$ 66,220.35
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Total NYSDOT Budget	\$ 5,500,000.00
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* - Represents ~1.2% of value of contracted work for duration of agreement

ATTACHMENT 2 – EQUIPMENT LOCATIONS

Group 1 Locations

NYSDOT R-11, Long Island City
NYSDOT R-8, Hudson Valley TMC
NYSDOT R-10 INFORM
NYSDOT Main Office, Albany #1

Group 2 Locations

NYSDOT Main Office, Albany #2
NYSDOT Main Office, Albany #3
NYSDOT Main Office, Albany #4

Group 3 Locations

NYSEMO, Albany

ATTACHMENT 3 – NYSDOT SITE PREPARATION RESPONSIBILITIES

Note: All of the following must be provided indoors.

Physical Space

- Dedicated area for a single workstation with monitor and keyboard
- Furniture for housing workstation items

Electrical Requirements

- Duplex outlet (dedicated 15 amp circuit) located within 3 to 6 feet of the workstation

Connectivity Requirements

- Capability of running cable between the monitor location and the location of communication equipment, by means of either existing conduit, raised floor access, or drop ceiling access
- Pull string for all conduit runs (for cable run via conduit)

ATTACHMENT 4 – COST INFORMATION

CALCULATION OF ROUTINE REPAIR AND MAINTENANCE COSTS

The lump-sum amount for each calendar year (or portion thereof) will be calculated on the basis of 1 person-hour per month per TOC, using the updated hourly rates and overhead factor established in the TRANSCOM Budget for that calendar year.

However, the number of person-hours included in the calculation for each calendar year may be adjusted, as follows:

TRANSCOM shall annually assess the actual average staff time per TOC that is needed to complete Routine Repair and Maintenance. In the event that actual staff time deviates significantly from the hours set forth above and can reasonably be expected to continue that trend, NYSDOT's Technology & Operations Committee representative and the TRANSCOM Deputy Executive Director are authorized to agree in writing on a concomitant change in the number of hours to be included in the calculation of the Direct Cost for the upcoming calendar year, without further authorization.

ROUTINE REPAIR AND MAINTENANCE AND COMMUNICATIONS COST FOR Group 1

Region 8

Year	Support*	Communications	Total
2004	\$0.00	\$0.00	\$0.00
2005	\$451.31	\$0.00	\$451.31
2006	\$1,280.28	\$0.00	\$1,280.28
2007	\$1,325.09	\$0.00	\$1,325.09
2008	\$1,371.47	\$0.00	\$1,371.47
2009	\$1,419.47	\$0.00	\$1,419.47
2010	\$1,469.15	\$0.00	\$1,469.15
TOTAL	\$7,316.77	\$0.00	\$7,316.77

Region 10

Year	Support*	Communications**	Total
2004	\$0.00	\$0.00	\$0.00
2005	\$601.74	\$8,500.00	\$9,101.74
2006	\$1,280.28	\$18,500.00	\$19,780.28
2007	\$1,325.09	\$20,350.00	\$21,675.09
2008	\$1,371.47	\$22,400.00	\$23,771.47
2009	\$1,419.47	\$24,650.00	\$26,069.47
2010	\$1,469.15	\$27,100.00	\$28,569.15
TOTAL	\$7,467.20	\$121,500.00	\$128,967.20

Region 11

Year	Support*	Communications	Total
2004	\$759.80	\$0.00	\$759.80
2005	\$1,203.48	\$0.00	\$1,203.48
2006	\$1,280.28	\$0.00	\$1,280.28
2007	\$1,325.09	\$0.00	\$1,325.09
2008	\$1,371.47	\$0.00	\$1,371.47
2009	\$1,419.47	\$0.00	\$1,419.47
2010	\$1,469.15	\$0.00	\$1,469.15
TOTAL	\$8,642.78	\$0.00	\$8,642.78

Main Office #1

Year	Support*	Communications	Total
2005	\$1,203.48	\$0.00	\$1,203.48
2006	\$1,280.28	\$0.00	\$1,280.28
2007	\$1,325.09	\$0.00	\$1,325.09
2008	\$1,371.47	\$0.00	\$1,371.47
2009	\$1,419.47	\$0.00	\$1,419.47
2010	\$1,469.15	\$0.00	\$1,469.15
TOTAL	\$8,068.94	\$0.00	\$8,068.94

ROUTINE REPAIR AND MAINTENANCE AND COMMUNICATIONS COST FOR Group 2**Main Office #2**

Year	Support*	Communications	Total
2006	\$1,280.28	\$0.00	\$1,280.28
2007	\$1,325.09	\$0.00	\$1,325.09
2008	\$1,371.47	\$0.00	\$1,371.47
2009	\$1,419.47	\$0.00	\$1,419.47
2010	\$1,469.15	\$0.00	\$1,469.15
TOTAL	\$6,865.46	\$0.00	\$6,865.46

Main Office #3

Year	Support*	Communications	Total
2006	\$1,280.28	\$0.00	\$1,280.28
2007	\$1,325.09	\$0.00	\$1,325.09
2008	\$1,371.47	\$0.00	\$1,371.47
2009	\$1,419.47	\$0.00	\$1,419.47
2010	\$1,469.15	\$0.00	\$1,469.15
TOTAL	\$6,865.46	\$0.00	\$6,865.46

Main Office #4

Year	Support*	Communications	Total
2006	\$1,280.28	\$0.00	\$1,280.28
2007	\$1,325.09	\$0.00	\$1,325.09
2008	\$1,371.47	\$0.00	\$1,371.47
2009	\$1,419.47	\$0.00	\$1,419.47
2010	\$1,469.15	\$0.00	\$1,469.15
TOTAL	\$6,865.46	\$0.00	\$6,865.46

ROUTINE REPAIR AND MAINTENANCE AND COMMUNICATIONS COST FOR Group 3**NYSEMO Albany**

Year	Support*	Communications**	Total
2006	\$1,280.28	\$7,300.00 + \$400.00 (Vendor Installation Fee)	\$8980.28
2007	\$1,325.09	\$8030.00	\$9,355.09
2008	\$1,371.47	\$8,840.00	\$10,211.47
2009	\$1,419.47	\$9,730.00	\$11,149.47
2010	\$1,469.15	\$10,700.00	\$12,169.15
TOTAL	\$6,865.46	\$45,000.00	\$51,865.46

* = Inflated 3.5 %/year, beginning in 2007; ** = Inflated 10.0 %/year, beginning in 2006

**NON ROUTINE REPAIR AND MAINTENANCE AND COMMUNICATIONS COST FOR GROUPS
1, 2, and 3**

GROUP 1

Equipment = \$10,000.00, based on replacing a total of four (4) workstations @\$2,500 over the life of this Agreement.

Labor = \$9,499.32, based on replacing a total of four (4) workstations @ \$2,374.83 over the life of this Agreement.

Total = \$19,499.32

GROUP 2

Equipment = \$7,500.00, based on replacing a total of three (3) workstations @\$2,500 over the life of this Agreement.

Labor = \$7,124.49, again based on replacing a total of three (3) workstations @ \$2,374.83 over the life of this Agreement.

Total = \$14,624.49

GROUP 3

Equipment = \$4,000.00, based on replacing one (1) workstation @\$4,000 over the life of this Agreement.

Labor = \$2,374.83, based on replacing one (1) workstation @ \$2,374.83 over the life of this Agreement.

Total = \$6,374.83

Note: Budget figures are valid through 12/31/2006 and are subject to change if purchased after this date.

ATTACHMENT 5 – NYSDOT TRANSMIT EQUIPMENT LOCATIONS

Group A Equipment Locations

Equipment Item	Location
Server	Long Island City Joint TOC
Reader SI 01	Staten Island Expressway at Fingerboard Rd.
Reader SI 02	Staten Island Expressway at Glove Rd.
Reader SI 03	Staten Island Expressway at Bradley Ave.
Reader SI 04	Staten Island Expressway at Wooley Ave.
Reader SI 05	Staten Island Expressway at Richmond Ave.
Reader SI 06	Staten Island Expressway at South Ave.
Reader SI 07	West Shore Expressway at South Ave.
Reader SI 08	West Shore Expressway at Victory Blvd.
Reader SI 09	West Shore Expressway at Arden Ave.
Reader SI 10	West Shore Expressway at Bloomingdale Rd.
Reader SI 11	West Shore Expressway at Tyrellan Ave.
Reader BQ 01	Gowanus Expressway at 92 nd St.
Reader BQ 02	Gowanus Expressway at 7 th Ave.
Reader BQ 04	Gowanus Expressway at 9 th St
Reader BQ 05	Brooklyn Queens Expressway at Atlantic Ave.
Reader BQ 06	Brooklyn Queens Expressway at Concord St.
Reader BQ 07	Brooklyn Queens Expressway at Leonard St.
Reader BQ 08	Brooklyn Queens Expressway at 46 th St.
Reader BQ 09	Brooklyn Queens Expressway at Roosevelt Ave.
Reader BQ 10	Grand Central Parkway at 37 th St.
Reader BX 01	Triborough Bridge to Bronx at Major Deegan/Bruckner Expressway Split
Reader BX 02	Bruckner Expressway at Sheridan Expressway
Reader BX 03	Bruckner Expressway at Stratford Ave.
Reader BX 04	Bruckner Expressway at Castle Hill Ave.
Reader BX 05	Bruckner Expressway at Waterbury Ave.
Reader BX 06	New England Thruway at Sheridan Expressway
Reader BX 07	Hutchinson River Parkway at Lafayette Ave.
Reader BX 08	Hutchinson River Parkway at E. Tremont Ave.
Reader BX 09	Hutchinson River Parkway at S. Bartow Ave.
Reader BX 10	Hutchinson River Parkway at Watson Ave.
Reader BX 11	Bronx River Parkway at NYPD Highway
Reader BX 12	Cross Bronx Expressway at Castle Ave.
Reader BX 13	Cross Bronx Expressway at Taylor Ave.
Reader BX 14	Cross Bronx Expressway at Morris Ave.
Reader BX 15	Major Deegan Expressway at E. 138 th St.
Reader BX 16	Major Deegan Expressway at Harlem River Dr.
Reader BX 18	Major Deegan Expressway at Van Cortlandt Park

Group B Equipment Locations

Site	Location
Reader WC 02	I-287 at Rt. 100A
Reader WC 03	I-287 at Lake St.
Reader WC 04	I-287 at Corporate Park Dr.
Reader WC 05	I-287 at Boston Post Rd.
Reader WC 09	I-95 at Grace Church St.
Reader WC 10	I-87 at Hall Pl.
Reader WC 14	Sprain Brook Parkway at Tuckahoe Rd.
Reader WC 16	Sprain Brook Parkway at Hartsdale Rd.
Reader WC 17	Hutchinson River Parkway at Cross County. Parkway
Reader WC 19	Hutchinson River Parkway at Mamaroneck Ave.
Reader WC 23	Cross County. Parkway at Hutchinson River Parkway Exit
Reader WC 24	Cross County. Parkway at Hutchinson River Parkway Split

GROUP C Equipment Locations

Site	Location
Reader 1	LIE at Little Neck Parkway
Reader 2	GCP at Little Neck Parkway
Reader 3	LIE at Cross Island Parkway
Reader 4	GCP at Cross Island Parkway
Reader 5	LIE at Clearview Expressway
Reader 6	GCP at Clearview Expressway
Reader 7	Cross Island Parkway at Throgs Neck Br.
Reader 8	Cross Island Parkway at Throgs Neck Br.

ATTACHMENT 6 – COST INFORMATION AND ESTIMATES

CALCULATION OF ROUTINE REPAIR AND MAINTENANCE COSTS

The fixed fee amount for each calendar year (or portion thereof) will be calculated on the basis of 3 person-hour per month per field site, using the updated hourly rates and overhead factor established in the TRANSCOM Budget for that calendar year.

However, the number of person-hours included in the calculation for each calendar year may be adjusted, as follows:

TRANSCOM shall annually assess the actual average staff time per field site that is needed to complete Routine Repair and Maintenance. In the event that actual staff time deviates significantly from the hours set forth above and can reasonably be expected to continue that trend, NYSDOT's Technology & Operations Committee representative and the TRANSCOM Deputy Executive Director are authorized to agree in writing on a concomitant change in the number of hours to be included in the calculation of the Direct Cost for the upcoming calendar year, without further authorization.

ROUTINE REPAIR AND MAINTENANCE AND COMMUNICATIONS COST FOR Group A

Year	Support*	Power	Communications**	Total
2004 (10 months)	\$88,896.60	\$0.00	\$114,324.24	\$203,140.24
2005	\$111,957.12	\$0.00	\$44,245.08	\$256,202.20
2006	\$115,590.96	\$0.00	\$160,000.00	\$275,590.96
2007	\$119,636.64	\$0.00	\$176,000.00	\$295,636.64
2008	\$123,823.93	\$0.00	\$194,000.00	\$317,823.93
2009	\$128,157.76	\$0.00	\$213,000.00	\$341,157.76
2010	\$132,643.29	\$0.00	\$234,300.00	\$366,943.29
TOTAL	\$820,706.30	\$0.00	\$1,235,869.32	\$2,056,575.62

ROUTINE REPAIR AND MAINTENANCE, POWER AND COMMUNICATIONS COST FOR Group B

Year	Support*	Power**	Communications**	Total
2005 (3 months)	\$8,838.72	\$750.00	\$26,198.38	\$35,787.10
2006	\$37,488.96	\$3,000.00	\$61,600.00	\$102,089.96
2007	\$38,801.07	\$3,300.00	\$67,750.00	\$109,851.07
2008	\$40,159.11	\$3,700.00	\$74,550.00	\$118,409.11
2009	\$41,564.68	\$4,000.00	\$82,000.00	\$127,564.68
2010	\$43,019.44	\$4,400.00	\$90,200.00	\$137,619.44
TOTAL	\$209,871.98	\$19,150.00	\$402,298.38	\$631,320.36

ROUTINE REPAIR AND MAINTENANCE FOR Group C

Year	Support*	Power	Communications	Total
2005 (3 months)	\$5,892.48	\$0.00	\$0.00	5,892.48
2006	\$24,992.64	\$0.00	\$0.00	\$24,992.64
2007	\$25,867.38	\$0.00	\$0.00	\$25,867.38
2008	\$26,772.74	\$0.00	\$0.00	\$26,772.74
2009	\$27,709.79	\$0.00	\$0.00	\$27,709.79
2010	\$28,679.63	\$0.00	\$0.00	\$28,679.63
TOTAL	\$139,914.66	\$0.00	\$0.00	\$139,914.66

ROUTINE REPAIR AND MAINTENANCE, POWER AND COMMUNICATIONS COST FOR Group D

Year	Support*	Power**	Communications**	Total
2005	\$0.00	\$0.00	\$0.00	\$0.00
2006	\$65,605.68	\$5,250.00	\$75,600.00	\$146,455.68
2007	\$67,901.88	\$5,775.00	\$83,160.00	\$156,836.88
2008	\$70,278.45	\$6,350.00	\$91,475.00	\$168,103.45
2009	\$72,738.20	\$6,990.00	\$100,625.00	\$180,353.20
2010	\$75,284.04	\$7,685.00	\$110,685.00	\$193,654.04
TOTAL	\$351,808.25	\$32,050.00	\$461,545.00	\$845,403.25

* = Inflated 3.5 %/year, beginning in 2007

** = Inflated 10.0 %/year, beginning in 2006

NON ROUTINE REPAIR AND MAINTENANCE AND COMMUNICATIONS COST FOR GROUPS A, B, C, and D

Equipment:

Site Equipment

Three complete sets of field equipment = \$47,460.00
(Assumes a six lane divided highway requiring four antennas.)

IAG RF Module	20 @ \$1,977.51	= \$39,550.20
Power Supply	10 @ \$1,638.02	= \$16,380.20
CPU Board	1 @ \$1,308.84	= \$1,308.84
RF Control Board	1 @ \$931.40	= \$931.40
Serial Board	1 @ \$768.61	= \$768.61
Memory Board	1 @ \$1,414.70	= \$1,414.70

Server Communications Equipment

Servers (R-8 & R-11)	4 @ \$5,000	= \$20,000
Server Software	2 @ \$5,000	= \$10,000
Communications Equipment	2 @ \$5,000	= \$10,000

Site Communications Equipment

Communications Equipment 10 @ \$1,500 = \$15,000

Equipment Subtotal = \$162,813.95

Labor:

The cost of labor to install the three full sets of equipment = 40 hours/site x 3 sites x \$81.84/hour = \$9,820.80.

The cost of labor for installing the remaining replacement equipment is included in the cost for routine repair and maintenance.

Labor Subtotal = \$9,820.80

TOTAL = \$172,634.75

Note: Budget figures are valid through 12/31/2006 and are subject to change if purchased after this date.

ATTACHMENT 7 – STANDARD CLAUSES FOR ALL NEW YORK STATE CONTRACTS

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a contractor, licensor, licensee, lessor, lessee or any other party):

1. **EXECUTORY CLAUSE.** In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.
2. **NON-ASSIGNMENT CLAUSE.** In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred conveyed, sublet or otherwise disposed of without the previous consent, in writing, of the State and any attempts to assign the contract without the State's written consent are null and void. The Contractor may, however, assign its right to receive payment without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.
3. **COMPTROLLER'S APPROVAL.** In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$15,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office.
4. **WORKERS' COMPENSATION BENEFITS.** In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.
5. **NON-DISCRIMINATION REQUIREMENTS.** To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract.

If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex, or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.
6. **WAGE AND HOURS PROVISIONS.** If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law.
7. **NON-COLLUSIVE BIDDING REQUIREMENT.** In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor warrants, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further warrants that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.
8. **INTERNATIONAL BOYCOTT PROHIBITION.** In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the Federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contractor's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).
9. **SET-OFF RIGHTS.** The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.
10. **RECORDS.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during

normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that:

- (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and
- (ii) said records shall be sufficiently identified; and
- (iii) designation of said records as exempt under the Statute is reasonable.

Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.

(a) **FEDERAL EMPLOYER IDENTIFICATION NUMBER and/or FEDERAL SOCIAL SECURITY NUMBER.** All invoices or New York State standard vouchers submitted for payment for the sale of goods or services or the lease of real or personal property to a New York State agency must include the payee's identification number, i.e., the seller's or lessor's identification number. The number is either the payee's Federal employer identification number or Federal social security number, or both such numbers when the payee has both such numbers. Failure to include this number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or New York State standard voucher, must give the reason or reasons why the payee does not have such number or numbers.

(b) **PRIVACY NOTIFICATION.**

(1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purpose and for any other purpose authorized by law.

(2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in New York State's Central Accounting System by the Director of Accounting Operations, Office of the State Comptroller, AESOB, Albany, New York 12236.

12. **EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.** In accordance with Section 312 of the Executive law, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then: (a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation; (b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the contractor's obligations herein; and (c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "a", "b", and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the Work) except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State; or (iii) banking services, insurance policies or the sale of securities. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity, which effectuates the purpose of this section. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Division of Minority and Women's Business Development pertaining hereto.

13. **CONFLICTING TERMS.** In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

14. **GOVERNING LAW.** This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

15. **LATE PAYMENT.** Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article XI-A of the State Finance Law to the extent required by law.

16. **NO ARBITRATION.** Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

17. **SERVICE OF PROCESS.** In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon

Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS. The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of State Finance Law §165. (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in §165 State Finance Law. Any such use must meet with the approval of the State, otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES. In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

20. OMNIBUS PROCUREMENT ACT OF 1992. It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts. Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development
Division for Small Business
30 South Pearl Street – 7th Floor
Albany, New York 12245
Tel. 518-292-5220

A directory of certified minority and women-owned business enterprises is available from:

Department of Economic Development
Minority and Women's Business Development Division
30 South Pearl Street – 2nd Floor
Albany, New York 12245
<http://www.empire.state.ny.us>

The Omnibus Procurement Act of 1992 requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State; (b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended; (c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and (d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

21. RECIPROCITY AND SANCTIONS PROVISIONS. Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. Contact the Department of Economic Development, Division for Small Business, 30 South Pearl Street; Albany New York 12245, for a current list of jurisdictions subject to this provision.

22. PURCHASES OF APPAREL. In accordance with State Finance Law Section 162 (4-a), the State shall not purchase any apparel from any vendor unable or unwilling to certify that: (i) Such apparel was manufactured in compliance with all applicable labor and occupational safety laws, including, but not limited to, child labor laws, wage and hour laws, and workplace safety laws, and (ii) Vendor will supply, with its bid (or, if not a bid situation, prior to or at the time of signing a contract with the State), if known, the names and addresses of each subcontractor and a list of all manufacturing plants to be utilized for this contract by the bidder.

(Revised June, 2003)