

Contract Number C003407
NEW YORK STATE DEPARTMENT OF TRANSPORTATION ("NYSDOT")
AND TRANSCOM
AGREEMENT FOR REGIONAL ARCHITECTURE
AND TRANSMIT INSTALLATION
AND OPERATIONS AND MAINTENANCE

SUPPLEMENTAL AGREEMENT #1

THIS SUPPLEMENTAL AGREEMENT entered into this 26th day of FEBRUARY, 2013, by and between the People of the State of New York (hereinafter referred to as ("State")), acting by and through the Commissioner of Transportation (hereinafter referred to as "Commissioner") whose office is located at: 50 wolf Road, 6th Floor, Albany, New York 12232 party of the first part, and the TRANSCOM (hereinafter referred to as "Contractor").

WITNESSETH:

WHEREAS, the New York State Department of Transportation and Contractor have entered into Contract C003407 dated January 1, 2006 and effective March 1, 2004; and

WHEREAS, Contract C003407, as amended, has a term commencing on March 1, 2004 and ending December 31, 2010; and

WHEREAS, the parties desire to add funding and extend the term of the contract an additional two (2) years, commencing January 1, 2011 and ending December 31, 2012 ; and

WHEREAS, the parties desire to add Schedule A-1, a Budget for calendars year 2011 and 2012;

WHEREAS, the parties desire to add Schedule A-2, a request for an encumbrance for the period October 1, 2010 through December 31, 2012;

NOW, THEREFORE, in consideration of the mutual covenants herein set forth, the State and the Contractor agree as follows:

1. Attached hereto:
 - a. Schedule A-1 is the Budget for the years January 1, 2011 – December 31, 2011 and January 1, 2012 – December 31, 2012.
 - b. Schedule A-2 is the requested encumbrance for the period commencing October 1, 2010 and ending December 31, 2012.
 - c. Appendix A – Standard Clauses for New York State Contracts
 - d. Appendix A-1- Supplemental Title VI Provisions (Civil Rights Act)
 - e. Appendix 2-S – Iran Divestment Act
2. All other sections of Contract C003407 not expressly amended herein shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officials as of the date first above written.

TRANSCOM, INC.

By: Matthew Edelman

Print Name: MATTHEW Edelman

Title: Executive Director

STATE OF New Jersey)
)ss.:
COUNTY OF Hudson)

On the 26TH day of FEBRUARY in the year 2013 before me, the undersigned, personally appeared MATTHEW EDELMAN, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within agreement and acknowledge to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the agreement, the individual(s), or the person upon behalf of which the individual(s) acted, executed the agreement.

[Signature]
GREGORY SOSNOWSKI
Notary Public of New Jersey
ID # 2050170
(Signature and office of individual taking acknowledgment)
My Comm. Expires Sept. 8 2013

APPROVED FOR NYSDOT:

By: [Signature]
For Commissioner of Transportation

Agency Certification: In addition to the acceptance of this contract I also certify that original copies of this signature page will be attached to all other exact copies of this contract.

Date: JUN 17 2013

APPROVED AS TO FORM
STATE OF NEW YORK ATTORNEY GENERAL

JUN 19 2013

[Signature]
LORRAINE I. REMO
PRINCIPAL ATTORNEY

By: _____
Assistant Attorney General

COMPROLLER'S APPROVAL APPROVED
DEPT. OF AUDIT & CONTROL

JUL 30 2013

By: [Signature]
For the New York State Comptroller
Pursuant to State Finance Law §112

SCHEDULE A-1

TRANSCOM budget for January 1, 2011 – December 31, 2011

TRANSCOM CY 2011
Analysis of Budget Category B
Attachment I - Exhibit C

OR	15K flat Fee
TRANSMIT Rate (3hr /mo)	\$106.79
TRANSMIT Rate (1hr /mo)	\$106.79

XCM Maintained
Agency Maintained

Agency	Project	Contract Status	# of Sites	Yearly Hours	Rate	Labor	Overhead	Labor & Overhead	Telecomm	2011 Total
CTDOT	OR					\$7,837	\$7,163	\$15,000		\$15,000
MTA B&T	OR	Executed	6	216	\$106.79	\$23,510	\$21,490	\$45,000		\$45,000
	Transmit					\$12,051	\$11,016	\$23,067	\$23,795.00	\$46,862
	OR					\$7,837	\$7,163	\$15,000		\$15,000
MTA NYCT	OR					\$7,837	\$7,163	\$15,000		\$15,000
MTA	Transmit	Executed	40	1440	\$106.79	\$80,339	\$73,438	\$153,778	\$33,220.00	\$186,998
NJ DOT	Transmit	Executed	3	108	\$106.79	\$6,025	\$5,508	\$11,533	\$54,441.00	\$65,974
NJTA (GSP)	OR					\$7,837	\$7,163	\$15,000		\$15,000
NJ TRANSIT	Transmit	Pending	4	144	\$106.79	\$8,034	\$7,344	\$15,378	\$80,422.00	\$95,800
	OR					\$7,837	\$7,163	\$15,000		\$15,000
NYSBA	OR					\$7,837	\$7,163	\$15,000		\$15,000
NYS DOT Albany	OR	Executed	6	216	\$106.79	\$12,051	\$11,016	\$23,067	\$46,284.00	\$69,331
NYS DOT R-6	Transmit					\$7,837	\$7,163	\$15,000		\$15,000
	OR					\$7,837	\$7,163	\$15,000		\$15,000
NYS DOT R-10	Transmit	Executed	37	444	\$106.79	\$24,771	\$22,643	\$47,415	\$26,422.00	\$73,837
NYS DOT R-11	Transmit	Executed	60	1620	\$106.79	\$90,382	\$82,618	\$173,000	\$225,717.00	\$398,717
	OR					\$7,837	\$7,163	\$15,000		\$15,000
	Transmit	Flat per Contract				\$3,088	\$2,822	\$5,910	\$0.00	\$5,910
NYSTA	OR					\$7,837	\$7,163	\$15,000		\$15,000
NYCDOT	OR					\$7,837	\$7,163	\$15,000		\$15,000
NYCOM	OR					\$7,837	\$7,163	\$15,000		\$15,000
PATH	OR					\$5,356	\$4,896	\$10,252	\$70,585.00	\$80,847
PANYNJ	Transmit	Draft	8	96	\$106.79	\$23,510	\$21,490	\$45,000		\$45,000
	OR									
TOTAL						\$375,319	\$343,079	\$718,398	\$560,876	\$1,279,274

Summary

Unit Cost per Month

Agency	Contract Status	Labor	Overhead	Labor & Overhead	Telecomm	Total
TRANSMIT		\$133,222	\$121,778	\$255,000	\$0	\$255,000
Server to Server		\$242,097	\$221,301	\$463,398	\$560,876	\$1,024,274
Server to Field		\$375,319	\$343,079	\$718,398	\$560,876	\$1,279,274
Server to Field- wireless						
NJ Field Sites						
NY Field Sites						

SCHEDULE A-1

TRANSCOM budget for January 1, 2012 – December 31, 2012

TRANSCOM CY 2012
Analysis of Budget Category B
Attachment I-Exhibit C

OR	15K flat Fee	XCM Maintained
TRANSMIT Rate (3hr /mo)	\$110.85	Agency Maintained
TRANSMIT Rate (1hr /mo)	\$110.85	

Agency	Project	Contract Status	# of Yearly Sites	Hours	Rate	Labor	Overhead	Labor & Overhead	Telecomm	2012 Total
CTDOT	OR					\$7,867	\$7,133	\$15,000		\$15,000
MTA B&T	OR	Executed	6	216	\$110.85	\$23,602	\$21,388	\$45,000		\$45,000
	Transmit					\$12,558	\$11,385	\$23,944	\$22,500.00	\$46,444
MTA NYCT	OR					\$7,867	\$7,133	\$15,000		\$15,000
MTA	OR	Executed	32	1152	\$110.85	\$66,977	\$60,722	\$127,699	\$24,115.00	\$151,814
NJ DOT	Transmit	Executed	3	108	\$110.85	\$6,279	\$5,683	\$11,972	\$61,560.00	\$63,532
NJTA (GSP)	Transmit	Executed	3	108	\$110.85	\$7,867	\$7,133	\$15,000		\$15,000
NJ TRANSIT	OR	Pending	4	144	\$110.85	\$8,372	\$7,590	\$15,962	\$73,200.00	\$89,162
	Transmit					\$7,867	\$7,133	\$15,000		\$15,000
NYSBA	OR					\$7,867	\$7,133	\$15,000		\$15,000
NYSDOT Albany	OR	Executed	6	216	\$110.85	\$12,558	\$11,385	\$23,944	\$44,400.00	\$68,344
NYSDOT R-8	Transmit					\$7,867	\$7,133	\$15,000		\$15,000
NYSDOT R-10	OR	Executed	37	444	\$110.85	\$25,814	\$23,403	\$49,217	\$25,535.00	\$74,752
NYSDOT R-11	Transmit	Executed	72	2592	\$110.85	\$150,689	\$138,624	\$287,323	\$227,265.00	\$514,588
	OR					\$7,867	\$7,133	\$15,000		\$15,000
NYSTA	Transmit	Flat per Contract				\$5,191	\$4,707	\$9,898		\$9,898
	OR					\$7,867	\$7,133	\$15,000		\$15,000
NYCDOT	OR					\$7,867	\$7,133	\$15,000		\$15,000
NYCOM	OR					\$7,867	\$7,133	\$15,000		\$15,000
PATH	OR					\$7,867	\$7,133	\$15,000		\$15,000
PANYNJ	OR	Draft	12	432	\$110.85	\$25,117	\$22,771	\$47,887	\$63,430.00	\$111,317
	Transmit					\$23,802	\$21,398	\$45,000		\$45,000
	OR									
TOTAL						\$455,180	\$412,666	\$867,846	\$532,005	\$1,399,851

Unit Cost per Month	Summary	Labor	Overhead	Labor & Overhead	Telecomm	Total
TRANSMIT		\$141,613	\$128,387	\$270,000	\$0	\$270,000
Server to Server	OR	\$313,567	\$284,280	\$597,846	\$532,005	\$1,129,851
Server to Field	Transmit	\$455,180	\$412,666	\$867,846	\$532,005	\$1,399,851
Server to Field - wireless						
NJ Field Sites						
NY Field Sites						

SCHEDULE A-2

Requested increase in funding to reimburse TRANSCOM for approved expenditures

Fiscal Year 2010: (Fourth quarter only and reimbursable under existing contract)	\$ 136,688.25
Fiscal Year 2011: (Reimbursable under the extension)	\$ 622,504.29
Fiscal Year 2012: (First three quarters only and reimbursable under the extension)	\$ 504,794.23
Fiscal Year 2012: (Fourth quarter estimate to be reimbursable under the extension)	<u>\$ 400,000.00*</u>
* The actual amount of reimbursement will be based on the invoices submitted and payment will not be made until the invoices have been reviewed.	
Requested Supplemental Contract amount:	\$ 1,678,986.77

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

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STANDARD CLAUSES FOR NYS 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 State's previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller's approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments 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 \$50,000 (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. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law Section 163.6.a).
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. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

7. NON-COLLUSIVE BIDDING CERTIFICATION. In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms 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 contract'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 purposes 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, 110 State Street, Albany, New York 12236.

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN. In accordance with Section 312 of the Executive Law and 5 NYCRR 143, 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 the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(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, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts 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. 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 Department of Economic Development's 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 11-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 Section 165 of the State Finance Law, (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 St -- 7th Floor
Albany, New York 12245
Telephone: 518-292-5220
Fax: 518-292-5884
<http://www.empire.state.ny.us>

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

NYS Department of Economic Development
Division of Minority and Women's Business Development
30 South Pearl St -- 2nd Floor
Albany, New York 12245
Telephone: 518-292-5250
Fax: 518-292-5803
<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. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

22. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW. If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4-g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

24. PROCUREMENT LOBBYING. To the extent this agreement is a "procurement contract" as defined by State Finance Law Sections 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law Sections 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or

intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.

To the extent this agreement is a contract as defined by Tax Law Section 5-a, if the contractor fails to make the certification required by Tax Law Section 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

APPENDIX A-1: SUPPLEMENTAL TITLE VI PROVISIONS (CIVIL RIGHTS ACT)

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

- (1) **Compliance with Regulations:** The contractor shall comply with the Regulation relative to nondiscrimination in Federally-assisted programs of the Department of Transportation of the United States, Title 49, Code of Federal Regulations, Part 21, and the Federal Highway Administration (hereinafter "FHWA") Title 23, Code of Federal Regulations, Part 200 as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
- (2) **Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin, sex, age, and disability/handicap in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR, section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- (3) **Solicitations for Subcontractors, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin, sex, age, and disability/handicap.
- (4) **Information and Reports:** The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by NYSDOT or the FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to NYSDOT's Office of Civil Rights or FHWA, as appropriate, and shall set forth what efforts it has made to obtain the information.
- (5) **Sanctions for Noncompliance:** In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, NYSDOT shall impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
 - (a.) withholding of payments to the contractor under the contract until the contractor complies, and/or
 - (b.) cancellation, termination or suspension of the contract, in whole or in part.
- (6) **Incorporation of Provisions:** The contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

The contractor shall take such action with respect to any subcontractor or procurement as NYSDOT or the FHWA may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request NYSDOT to enter into such litigation to protect the interests of NYSDOT, and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

APPENDIX 2-S

IRAN DIVESTMENT ACT

As a result of the Iran Divestment Act of 2012 (Act), Chapter 1 of the 2012 Laws of New York, a new provision has been added to the State Finance Law (SFL), § 165-a, effective April 12, 2012. Under the Act, the Commissioner of the Office of General Services (OGS) will be developing a list (prohibited entities list) of "persons" who are engaged in "investment activities in Iran" (both are defined terms in the law). Pursuant to SFL § 165-a(3)(b), the initial list is expected to be issued no later than 120 days after the Act's effective date, at which time it will be posted on the OGS website.

By entering into a renewal or extension of this Contract, Contractor (or any assignee) certifies that once the prohibited entities list is posted on the OGS website, it will not utilize on such Contract any subcontractor that is identified on the prohibited entities list.

Additionally, Contractor understands that during the term of the Contract, should NYSDOT receive information that a person is in violation of the above-referenced certification NYSDOT will offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment which is in violation of the Act within 90 days after the determination of such violation, then NYSDOT shall take such action as may be appropriate including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

NYSDOT reserves the right to reject any renewal, extension or request for assignment for an entity that appears on the prohibited entities list hereafter and to pursue a responsibility review with respect to any entity that is granted a contract extension/renewal or assignment and appears on the prohibited entities list thereafter.