

NEW YORK STATE THRUWAY AUTHORITY

Agreement for Personal Services Second Amendment

TRANSCOM, Inc.

This SECOND AMENDMENT (hereinafter "Second Amendment") is made this 4th day of June, 2012, by and between the New York State Thruway Authority (hereinafter "Authority"), a public corporation organized and existing pursuant to Article 2, Title 9 of the New York State Public Authorities Law, as amended, whose principal office is located at 200 Southern Boulevard, Albany, New York 12209 (Mailing Address: P.O. Box 189, Albany, New York 12201-0189), and TRANSCOM, Inc. (hereinafter "TRANSCOM"), a not-for-profit corporation duly organized and existing under the laws of the State of New Jersey, having its principal office at Newport Financial Center, 111 Town Square Place – 6th Floor, Jersey City, New Jersey 07310-1755.

WITNESSETH:

WHEREAS, the Authority is statutorily responsible for financing, constructing, reconstructing, improving, developing, maintaining and operating a 570-mile superhighway system known as the Thruway; and

WHEREAS, in furtherance of these responsibilities, the Authority requires operation and maintenance of the TRANSMIT traffic detection system; and

WHEREAS, in conformance with the Authority's Procurement Policy, the Authority has determined that it is more beneficial for such services to be contracted for than performed by employees of the Authority; and

WHEREAS, in accordance with the Authority's Procurement Policy, the Authority's Executive Director has determined that waiving competition in the procurement of these services is in the best interests of the Authority; and

WHEREAS, on September 14, 2006 at Meeting No. 653, the Authority Board adopted Resolution No. 5545 which approved a Procurement Policy that authorizes the Authority's Executive Director to: execute personal service contracts for expenditures in an amount not to exceed \$150,000; approve an increased expenditure not to exceed \$150,000 for any personal service contract previously approved by the Authority Board; and approve or extend personal service contracts for a period in excess of one year provided such contract or extension does not exceed \$150,000; and

WHEREAS, pursuant to such authorization, on February 25, 2010, the Executive Director executed an Agreement ("Agreement") with TRANSCOM for operation and maintenance of the TRANSMIT traffic detection system; and

WHEREAS, such Agreement had an initial term of three years with the option to renew for two additional one-year terms and TRANSCOM provided an Advanced Traffic Management System for and on behalf of the Authority pursuant to the terms of the Agreement but the term was due to expire and the need for the operation and maintenance of the TRANSMIT traffic detection system continued; and

WHEREAS, pursuant to prior Board authorization, on April 12, 2011, the Executive Director executed a First Amendment ("First Amendment") to the Agreement with TRANSCOM to perform the aforementioned services for the first additional one-year period; and

WHEREAS, TRANSCOM has provided an Advanced Traffic Management System for and on behalf of the Authority pursuant to the terms of the Agreement and First Amendment but the term is due to expire and the need for the operation and maintenance of the TRANSMIT traffic detection system continues; and

WHEREAS, TRANSCOM and the Authority are desirous of amending the Agreement to extend the term for the second additional one-year period;

NOW, THEREFORE, the parties hereto, for the consideration hereinafter named, do agree as follows (material to be deleted is in [], material to be added is underscored); all terms and conditions of the Agreement not amended as follows remain in full force and effect:

ARTICLE II – COMPENSATION FOR SERVICES

Section 2.1 – Overall Compensation

For the performance of services described in Article 1.1, the Authority will pay TRANSCOM on a quarterly basis, an amount equal to the charges set forth below in this section, and TRANSCOM agrees to accept such amount as full compensation for such services. The Authority's obligation to pay for such services is contingent upon the Authority's finding that TRANSCOM has performed in a competent and professional manner satisfactory to the Authority. In no event shall total payment pursuant to this Agreement exceed \$145,000.

- A. For **Routine Repair and Maintenance**, the Authority shall pay TRANSCOM pursuant to a monthly lump sum fee schedule for the period based on the number of TRANSMIT sites being maintained by TRANSCOM.

<u>Time Period</u>	<u>Amount</u>
1/1/08 – 12/31/08	# of sites * \$286.35 per month
1/1/09 – 12/31/09	# of sites * \$291.87 per month
1/1/10 – 12/31/10	# of sites * \$303.54 per month
1/1/11 – 12/31/11	# of sites * \$320.37 per month
1/1/12 – 12/31/12	# of sites * \$322.55 per month

- B. For **Non-Routine Repair and Maintenance**, the Authority shall pay TRANSCOM's labor costs at a Burdened Hourly Rate according to the schedule set forth below multiplied by the amount of time devoted to a particular matter. A Burdened Hourly Labor Rate includes TRANSCOM's overhead rate of [88.97%] 90.66%. The overhead rate is annually established in TRANSCOM's Budget. Such hourly rates shall not be applicable to time spent in travel status.

<u>Time Period</u>	<u>Burdened Hourly Labor Rate</u>
1/1/08 -12/31/08	\$ 95.45
1/1/09 -12/31/09	\$ 97.29
1/1/10 -12/31/10	\$101.18
1/1/11 –12/31/11	\$106.79
1/1/12 –12/31/12	\$110.85

The Authority shall reimburse TRANSCOM for materials and equipment at the actual receipted costs; no mark-up shall be allowed on such costs.

All Non-Routine Repair and Maintenance must be pre-approved by the Authority.

- C. **Communications.** The Authority shall reimburse TRANSCOM a pass-through charge from MCI/Verizon for a PVC charge between the Tarrytown server and the TRANSCOM location in Jersey City. TRANSCOM receives a monthly bill from the above company. This monthly bill is to be included with the invoices that TRANSCOM provides.
- D. **Transition Services.** The Authority shall pay TRANSCOM pursuant to a one-time lump sum fee for the transition of the 13 original TRANSMIT sites to the Authority's maintenance program.

Transition Amount: \$788.00

- E. **Troubleshooting.** Once the transition services described in Section D, above, have been performed, an annual fee will be charged. This fee provides for TRANSCOM remotely assisting the Authority with troubleshooting any issue at any TRANSMIT site owned by the Authority that the Authority cannot resolve.

<u>Time Period</u>	<u>Amount</u>
1/1/09 -12/31/09	\$ 3,200.00
1/1/10 -12/31/10	\$ 3,320.00

1 /1/11 – 12/31/11	\$ 3,420.00
<u>1/1/12 – 12/31/12</u>	<u>\$ 3,550.00</u>

These charges will be prorated, based on the amount of time left in that calendar year, at transition.

- F. **Monitoring.** TRANSCOM will remotely monitor the Authority's TRANSMIT server in Tarrytown and workstations located in Suffern and Albany. TRANSCOM will assist the Authority with remote support and troubleshooting problems that occur with the server and workstations for an annual fee.

<u>Time Period</u>	<u>Amount</u>
1/1/08 -12/31/08	\$ 1,212.00 per workstation
1/1/09 -12/31/09	\$ 1,250.00 per workstation
1/1/10 -12/31/10	\$ 1,295.00 per workstation
1/1/11 -12/31/11	\$ 1,389.00 per workstation

- G. **Training.** For the Albany server, TRANSCOM will provide three days of onsite server training for a one time lump sum payment. During this time, the WINDOWS 2000 TRANSMIT server shall also be upgraded with the new TRANSMIT application.

<u>Time Period</u>	<u>Amount</u>
1/1/09 -12/31/09	\$ 3,300.00 training & upgrade

- H. **Remote Server Support.** Once the services described in Section II. G are performed, an annual fee will be charged. This fee provides for TRANSCOM remotely assisting the Authority with troubleshooting problems that occur with the Albany [or Buffalo] TRANSMIT server[s] that the Authority cannot resolve. [At the onset of this contract, only the Albany server will be included. However, the Authority may decide to add the Buffalo server at any time to this contract with 30 days prior notice to TRANSCOM.]

<u>Time Period</u>	<u>Amount</u>
1/1/09 -12/31/09	\$ 3,340.00 per server
1/1/10 -12/31/10	\$ 3,460.00 per server
1/1/11 -12/31/11	\$ 3,700.00 per server
<u>1/1/12 -12/31/12</u>	<u>\$ 3,840.00 per server</u>

Once the services described in Section II.G, above, have been performed, this charge will be prorated, based on the amount of time left in that calendar year at transition.

- I. **Onsite Server Support or Field Equipment.** TRANSCOM will make onsite visits for the TRANSMIT system servers and field equipment as requested by the

Authority based on the following geographical regions. These visits must be pre-approved by the Authority.

TRANSCOM Region – Authority's New York Division
[(Visits to the Tarrytown Server are included in Section F, above.)]

<u>Time Period</u>	<u>Amount</u>
1/1/09 -12/31/09	\$ 865.00 per visit
1/1/10 -12/31/10	\$ 890.00 per visit
1/1/11 -12/31/11	\$ 930.00 per visit
<u>1/1/12 – 12/31/12</u>	<u>\$ 965.00 per visit</u>

Authority's Albany Division

<u>Time Period</u>	<u>Amount</u>
1/1/09 -12/31/09	\$ 2,150.00 per visit
1/1/10 -12/31/10	\$ 2,225.00 per visit
1/1/11 -12/31/11	\$ 2,325.00 per visit
<u>1/1/12 – 12/31/12</u>	<u>\$ 2,415.00 per visit</u>

Authority's Buffalo and Syracuse Divisions

<u>Time Period</u>	<u>Amount</u>
1/1/09 -12/31/09	\$ 2,950.00 per visit
1/1/10 -12/31/10	\$ 3,050.00 per visit
1/1/11 – 12/31/11	\$ 3,190.00 per visit
<u>1/1/12 – 12/31/12</u>	<u>\$ 3,300.00 per visit</u>

ARTICLE III – TIME AND MANNER OF PERFORMANCE

Section 3.1 – Term of Agreement

This Agreement shall be deemed to have commenced on January 1, 2008 and shall have a term of [four (4)] five (5) years, ending on December 31, [2011] 2012. [The Authority shall have the option, in its sole discretion to extend this Agreement for one (1) additional one-year term, if required, by written notice no later than sixty (60) days before the end of the current term. The rates would be increased, per year, by the annual increase approved by TRANSCOM's Board in that year's annual budget.]

IN WITNESS WHEREOF, the parties hereto have executed this Second Amendment on the date first above written:

NEW YORK STATE THRUWAY AUTHORITY TRANSCOM, Inc.

Tom Ryan
Thomas J. Ryan, Chief of Staff

Matthew Edelman
Matthew Edelman, Executive Director

6/4/12
Date



Approved as to Availability of Funds:

[Signature]
Authority Chief Financial Officer
dh Bm 689
Res 5908
12-13-11

NEW YORK STATE
APPROVED AS TO FORM
NYS ATTORNEY GENERAL
Approved as to Form:
JUN 11 2012
[Signature]
Attorney General
BENJAMIN L. MAGGI
ASSISTANT ATTORNEY GENERAL

Date

Approved as to Policy:

Thomas P. DiNapoli
State Comptroller

[Signature]
Director of Purchasing

By **APPROVED**
DEPT. OF AUDIT & CONTROL

JUL 27 2012
Date

Recommended By:
[Signature]
Director of Maintenance and Operations

[Signature]
THE STATE COMPTROLLER

**Contract C100889
Second Amendment**

Authority Certification

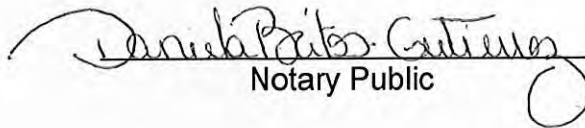
In addition to the acceptance of this amendment, I certify that all original signature pages will be attached to all other counterparts of this amendment.

[Signature]
Assistant Purchasing Agent

**NEW YORK STATE THRUWAY AUTHORITY
Contract C100889
Second Amendment**

STATE OF NEW YORK)
) SS:
COUNTY OF ALBANY)

On this 4th day of June, 2012, before me personally came Thomas J. Ryan, to me known and known to me to be the CHIEF OF STAFF of the NEW YORK STATE THRUWAY AUTHORITY, who being by me duly sworn, did depose and say that he is the CHIEF OF STAFF of the NEW YORK STATE THRUWAY AUTHORITY, located at 200 Southern Boulevard, Albany, New York 12209, the public corporation described in and which executed the foregoing instrument; that the Board constituting the NEW YORK STATE THRUWAY AUTHORITY has authorized him to execute the foregoing instrument; and that he signed his name thereto by such authority.


Notary Public

DANIELA BRITOS-GUTIERREZ
Notary Public, State of New York
Albany County - No. 01BR6103484
Commission Expires: 12/29/16