

NEW YORK STATE THRUWAY AUTHORITY

Agreement for Personal Services

TRANSCOM, INC.

This AGREEMENT (hereinafter "Agreement" or "Contract") is made this 6th day of March, 2014, 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, Suite 695, 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, the Authority desires TRANSCOM to perform the aforementioned services and TRANSCOM is ready, willing and able to perform such services; and

WHEREAS, on September 22, 2010 at Meeting No. 682, the Authority Board adopted Resolution No. 5851 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.

NOW, THEREFORE, the parties hereto, for the consideration hereinafter named, do agree as follows:

ARTICLE I – SERVICES TO BE PROVIDED

1.1 General Services

TRANSCOM shall provide professional services for the operation and maintenance of the Authority's TRANSMIT system. TRANSMIT equipment includes Electronic Toll and Traffic Management Equipment, a radio communications network and ancillary equipment. The purpose of the TRANSMIT system is to detect traffic flow by reading the E-ZPass tags of passing vehicles at the readers and then calculating travel times once vehicles have passed subsequent TRANSMIT readers. This information is electronically transferred to the Thruway Statewide Operations Center in Albany, New York. Previous agreements for these services covered 1998-2000, 2001-2003, 2004-2006, 2007, and 2008-2012.

The effort will include 24 months of support for the following activities. The proposed Operation and Maintenance work effort is based upon the efforts conducted during the previous Operations and Maintenance periods as noted above, for which TRANSCOM provided support services to the Authority at their request. As noted above, a series of tasks are required to be conducted in order to ensure the unfettered use and availability of the TRANSMIT system by the Authority.

- A. Site Operational Status Monitoring and Review: Daily site inspection/observation via remote connection is conducted to ensure the operational integrity of each field site. The Authority Field sites, over 100 in total, are located in all Thruway Authority Divisions. These regular inspections ensure that data is properly flowing from the site to the appropriate TRANSMIT agency server.

Seeking to achieve the higher level of operation availability for the TRANSMIT field sites to ensure maximum uptime capability requires consistent monitoring of all field sites. To support this task, dedicated TRANSMIT field staff monitor and test all of the TRANSMIT field sites using various tools and software that have been designed to support the equipment deployed.

TRANSMIT field staff are on-site at TRANSCOM's office starting at 5 AM and continuing through 7 PM. This coverage is maintained for all weeks Monday through Friday. This approach is utilized to ensure coverage is maintained through all peak traffic rush hour periods, when NYSTA's highest demand for travel time information is requested.

- B. Remote systems troubleshooting/support: If issues are discovered during monitoring, the first step to resolution is to reach out to the site to determine if it can be addressed from the TRANSCOM office. If the issue cannot be resolved remotely, a field visit is scheduled and will be conducted by Authority staff.

TRANSCOM Support staff utilizes site-monitoring software to determine if a location has gone offline in real-time. When a site is identified to be offline and not transmitting travel time values, TRANSCOM staff remotely access the site and verify that both power and communications are running to the site. Additional checks are then conducted to ensure that the TRANSMIT Reader Service is operating correctly. Based on these checks, TRANSCOM staff can recycle power/communications/Kapsch equipment as necessary in an attempt to restart the site.

ARTICLE II – COMPENSATION FOR SERVICES

Section 2.1 – Overall Compensation

For the performance of services described in Article I, the Authority will pay TRANSCOM on a quarterly basis, an amount equal to 25% of the estimated charges set forth below in this section. 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 \$24,000.

<u>TASK</u>	<u>2013</u>	<u>2014</u>	<u>Total</u>
Yearly Operations and Maintenance Contract Services	\$11,024.03	\$10,838.00	\$21,861.03

Section 2.2 – Exemption from Sales and Compensating Use Taxes

The Authority is exempt from the payment of all sales and compensating use taxes otherwise imposed by New York State and municipalities located therein. The Authority will not pay TRANSCOM sales and compensating use taxes on any services TRANSCOM provides to the Authority pursuant to this Agreement.

Section 2.3 – Payment Methodology

To receive payment, TRANSCOM must submit an itemized invoice to the Authority documenting the services rendered and providing a description of all disbursements and expenses itemized by category with appropriate receipts for travel expenses. The invoice should be submitted to: Joneen Romines, Department of Maintenance and Operations, New York State Thruway Authority, P.O. Box 189, Albany, New York 12201-0189. TRANSCOM agrees to provide the Authority with such detailed documentation substantiating fees and disbursements as the Authority may request.

ARTICLE III – TIME AND MANNER OF PERFORMANCE

Section 3.1 – Term of Agreement

This Agreement shall be deemed to have commenced on January 1, 2013 and shall terminate on December 31, 2014.

Section 3.2 – Personnel, Equipment and Supplies

TRANSCOM shall provide all resources, personnel, equipment and supplies necessary to perform the services set forth in Article I. If in order to provide the services set forth in Article I TRANSCOM must make an external connection to the Authority's data communications infrastructure and/or access Authority information systems, TRANSCOM shall in all respects comply with all Authority policies and procedures regarding such connections and information systems access and undertake whatever actions are necessary in the discretion of the Authority to ensure such compliance. TRANSCOM shall be responsible for all costs associated with ensuring that its own network security measures comply with all Authority policies and procedures regarding external connections.

TRANSCOM's key management and supervisory staff assigned to this Agreement shall be as follows: Matthew Edelman, Tom Batz, Ken Francis, and Robert Glantzberg. TRANSCOM may not make any changes to such key management and supervisory staff without the Authority's prior approval.

At the request of the Authority, TRANSCOM shall promptly remove from assignment to Authority projects any of its employees performing services pursuant to this Agreement. The Authority recognizes that such removal of an employee from Authority projects will not necessarily result in the termination or demotion of such employee.

Section 3.3 – Standards of Performance

TRANSCOM warrants that it possesses the experience, knowledge, character and licenses necessary to perform the services described in Article I. TRANSCOM shall perform such services in a competent and professional manner to the satisfaction of the Authority. The Authority shall have the right to inspect the performance of such services at any time and TRANSCOM shall fully and promptly cooperate with the Authority in the execution of such inspections.

Section 3.4 – Independent Contractor

TRANSCOM is and shall be, in all respects, an independent contractor in performing services pursuant to this Agreement. In accordance with its status as an independent contractor, TRANSCOM covenants and agrees that neither it nor its agents and/or employees will hold itself or themselves out as or claim to be an officer or employee of

the Authority, and that neither TRANSCOM nor its agents and employees shall make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the Authority, including, but not limited to Workers' Compensation coverage, Unemployment Insurance benefits, Social Security coverage or Retirement System membership or credit.

Section 3.5 – Subcontracting

TRANSCOM may, with the prior written approval of the Authority, utilize subcontractors to perform some of the services that TRANSCOM is to provide pursuant to Article I. Prior to awarding any work to a subcontractor, TRANSCOM shall submit to the Authority a written statement containing the proposed work subcontractor is to perform, the qualifications of subcontractor's personnel that will be providing the services, the fees subcontractor will charge for such work, and such other information as the Authority may require. If the Authority approves the use of a subcontractor, TRANSCOM shall incorporate all of the terms of this Agreement into its contract with the subcontractor and shall pay subcontractor for work performed pursuant to such contract promptly. TRANSCOM shall be fully responsible to the Authority for the acts and omissions of its subcontractors, and of persons either directly or indirectly employed by them, just as TRANSCOM is fully responsible to the Authority for the acts and omissions of persons directly employed by TRANSCOM. Nothing contained in this Agreement shall create any contractual relationship between a subcontractor and the Authority.

ARTICLE IV – INSURANCE REQUIREMENTS

Section 4.1 – Insurance Conditions

TRANSCOM must procure prior to commencement of work under this Agreement, and maintain until this Agreement is completed and the Authority has accepted all work performed thereunder, insurance of the kinds and in the amounts specified herein, covering all services and operations under this Agreement, whether performed by the TRANSCOM or its subcontractors, in accordance with the following conditions:

- A. All insurance required by this Agreement shall be obtained at the sole cost and expense of TRANSCOM
- B. All insurance required by this Agreement shall be maintained with insurance carriers licensed to do business in New York State, and acceptable to the Authority, with an A.M. Best rating of "A-" or better.
- C. All insurance required by this Agreement shall be primary to any Authority insurance policy or Authority self-insurance program, which shall be excess and non-contributory.
- D. TRANSCOM shall furnish the Authority with Certificate(s) of Insurance on ACORD Form 25, accompanied by the Authority Supplemental Insurance

Certificate (Exhibit 1 – TA-W51343-9), for each insurance carrier involved. Such Certificate(s) shall be executed by a duly authorized representative of the insurance carrier, certifying such authorization and showing compliance with the Authority's insurance requirements set forth herein. TRANSCOM shall furnish the Authority with a copy of each Endorsement required herein. For work to be performed within New York State, proof of Workers' Compensation and Disability Benefits Insurance shall be indicated on the appropriate Workers' Compensation Board form; generally C-105.2 for Workers' Compensation and DB-120.1 for NYS Disability Benefits.

- E. All policies, by specific Endorsement, shall provide for written notice to the Authority no less than thirty (30) days prior to the cancellation, nonrenewal, or material alteration of any insurance policies referred to therein. Any such notice shall be sent by certified mail to: Insurance Compliance Section, Office of Investments and Asset Management, New York State Thruway Authority, P.O. Box 189, Albany, New York 12201-0189.
- F. If insurance policies utilized for Authority projects contain Deductibles or Self-Insured Retentions (SIRs), they must be declared as such with applicable levels on the Certificate(s) of Insurance and the Authority Supplemental Insurance Certificate. The Authority has the option to accept or reject the Deductibles or SIRs, or TRANSCOM itself, or to impose additional security or other requirements, in view of the Authority's preference that insurance policies utilized for Authority projects have no Deductibles or SIRs.
- G. TRANSCOM shall provide certified copies of all declarations pages or of the insurance policies themselves, upon request by the Authority, within twenty (20) days of such request.
- H. Failure of the Authority to demand such certificates, policies, endorsements, or other evidence of full compliance with the Authority's insurance requirements, or failure of the Authority to identify a deficiency from evidence that is provided, shall not constitute or be construed as a waiver of TRANSCOM's obligation to maintain such insurance.
- I. Failure to maintain the required insurance, and failure to provide proof of such coverage to the Authority at its request, may, in the Authority's sole discretion, result in termination of this Agreement, or in delay or stoppage of payments.
- J. If TRANSCOM fails to maintain the required insurance, the Authority shall have the right, but not the obligation, to purchase said insurance at TRANSCOM's expense. TRANSCOM agrees that all premiums, costs, and expenses associated with such purchase, or the recovery of those purchase amounts by the Authority, shall be deducted from TRANSCOM's payments under this Agreement, or by any other lawful means, including deduction from any current or future contract with the Authority.

- K. By requiring insurance, the Authority does not represent that certain coverages and limits will necessarily be adequate to protect TRANSCOM, and such coverages and limits shall not be deemed a limitation on TRANSCOM's liability under the indemnities granted to the Authority under any provision of this Agreement.
- L. TRANSCOM and its subcontractors shall waive all rights against the Authority and its agents, officers, directors, and employees, for recovery of damages to the extent these damages are covered by the CGL policy.
- M. TRANSCOM shall provide a copy of the Authority's Insurance Requirements to its insurance producer(s) and insurance carrier(s).
- N. TRANSCOM shall require that any approved subcontractors carry insurance with the same limits and provisions set forth herein.

Section 4.2 - Required Insurance Coverages

The specific types and amounts of insurance that TRANSCOM must provide pursuant to this Agreement are as follows:

- A. Commercial General Liability Insurance - TRANSCOM shall maintain Commercial General Liability (CGL), with no less than the following limits and coverages:
 - Each Occurrence Limit: \$1,000,000
 - General Aggregate: \$2,000,000
 - Products/Completed Operations Aggregate: \$2,000,000
 - Personal/Advertising Injury Liability: \$1,000,000
 - Fire Damage Legal Liability: \$ 100,000
 - Medical Expense: \$ 5,000

CGL Insurance shall cover liability arising from premises, operations, independent contractors, products/completed operations, personal injury, advertising injury, and contractual liability.

The Authority shall be included as an Additional Insured, using ISO Additional Insured Endorsement CG 20 10 11 85 or its equivalent, under the CGL policy.

- B. Workers' Compensation & NYS Disability Benefits Insurance --- This Agreement shall be void and of no force and effect unless TRANSCOM shall provide and

maintain coverage during the life of this Agreement for the benefit of such employees as are required to be covered by the Workers' Compensation/Disability Benefits Law. TRANSCOM must provide proof of exemption, certified by the Workers' Compensation Board, to obtain a waiver from the requirements of this provision.

ARTICLE V – LIABILITY, ETHICS, CONFIDENTIALITY AND REQUIRED CERTIFICATIONS

Section 5.1 – Liability

TRANSCOM shall be responsible for all damage to life and property due to negligent or otherwise tortious acts, errors or omissions of TRANSCOM in connection with its services under this Agreement. Further, it is expressly understood that TRANSCOM shall indemnify and save harmless the Authority and/or the State of New York, as their interests may appear, from claims, suits, actions, damages, and costs of every name and description resulting from the negligent performance of the services of TRANSCOM or the quality of goods provided under this Agreement, and such indemnity shall not be limited by reason of enumeration of any insurance coverage herein provided. However, TRANSCOM shall not be required to indemnify the Authority for that portion of any claim, suit, action, damage or cost which arises due to the negligent act or omission of the Authority and shall not be required to indemnify the State of New York for that portion of any claim, suit, action, damage or cost which arises due to the negligent act or omission of the State. The provisions of this section shall survive the expiration or termination of this Agreement.

Section 5.2 – Ethics

During the term of the Contract TRANSCOM shall not engage any person who is, or has been at any time, in the employ of the Authority or New York State to perform services under the Contract in violation of: the provisions of the Public Officers Law, other laws applicable to the service of current or former Authority or New York State employees, and/or the rules, regulations, opinions, guidelines or policies promulgated or issued by the New York Joint Commission on Public Ethics), (collectively, "Ethics Provisions"). TRANSCOM certifies that all of its employees who are former employees of the Authority or New York State and who are assigned to perform services under the Contract shall be assigned in accordance with all Ethics Provisions. Further, during the term of the Contract, no person who is employed by the Proposer and who is disqualified from providing services under the Contract pursuant to any Ethics Provision may share in any net revenues the Proposer derives from the Contract.

TRANSCOM shall identify and provide the Authority with notice of those TRANSCOM employees who are former employees of the Authority or New York State and will be assigned to perform services under the Contract. The Authority may request that TRANSCOM provide it with whatever information the Authority deems appropriate about each such person's engagement, work cooperatively with the Authority to solicit advice

from the New York Joint Commission on Public Ethics, and, if deemed appropriate by the Authority, instruct any such person to seek the opinion of the New York Joint Commission on Public Ethics. The Authority shall have the right to cancel or terminate the Contract at any time if any work performed under the Contract is in conflict with any Ethics Provision.

Section 5.3 – Confidentiality and Non-Disclosure

- A. "Confidential Information" means any information not generally known to the public, whether oral or written, that the Authority claims is confidential and discloses to TRANSCOM so that TRANSCOM can provide services to the Authority pursuant to this Agreement. Confidential Information may include, but is not limited to, operational and infrastructure information relating to: bid documents, plans, drawings, specifications, reports, product information and data; business and security processes and procedures; personnel and organizational data, and financial statements; information system IP addresses, passwords, security controls, architectures and designs; and such other data, information and images that the Authority deems confidential. The Authority will identify written Confidential Information by marking it with the word "Confidential" and will identify oral Confidential Information as confidential at the time of disclosure to TRANSCOM
- B. Confidential Information does not include information which, at the time of the Authority disclosure to TRANSCOM: (a) is already in the public domain or becomes publicly known through no act of TRANSCOM; (b) is already known by TRANSCOM free of any confidentiality obligations; (c) is information that the Authority has approved in writing for disclosure; or (d) is required to be disclosed by TRANSCOM pursuant to law so long as TRANSCOM provides the Authority with notice of such disclosure requirement and an opportunity to defend prior to any such disclosure.
- C. TRANSCOM may use Confidential Information solely for the purposes of providing services to the Authority pursuant to this Agreement. TRANSCOM shall not make copies of any written Confidential Information without the express written permission of the Authority. TRANSCOM may share Confidential Information with third parties that agree to the confidentiality provisions of this Agreement and are necessary to TRANSCOM provision of services to the Authority pursuant to this Agreement (e.g. consultants and subcontractors); however, TRANSCOM shall share only that Confidential Information that is necessary to the third party's development of its contribution to TRANSCOM's provision of services to the Authority pursuant to this Agreement. The Authority's disclosure of Confidential Information to TRANSCOM shall not convey to TRANSCOM any right to or interest in such Confidential Information and the

Authority shall retain all right and title to such Confidential Information at all times.

D. TRANSCOM shall hold Confidential Information confidential to the maximum extent permitted by law. TRANSCOM shall safeguard Confidential Information with at least the same level of care and security, using all reasonable and necessary security measures, devices and procedures that TRANSCOM uses to maintain its own confidential information.

E. Upon the written request of the Authority, TRANSCOM shall return all written Confidential Information to the Authority.

Section 5.4 – New York State Finance Law §§ 139-j and 139-k Certification

By execution of this Agreement, TRANSCOM certifies that all information TRANSCOM has provided to the Authority with respect to New York State Finance Law §§ 139-j and 139-k is complete, true and accurate.

Section 5.5 - Iran Divestment Act

By signing this contract, each person and each person signing on behalf of any other party certifies, and in the case of a joint bid or partnership each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief, that each person is not on the list created pursuant to paragraph (b) of subdivision 3 of Section 165-a of the State Finance Law.

ARTICLE VI – MISCELLANEOUS

Section 6.1 – Public Announcements

TRANSCOM shall not make public announcements or issue news releases pertaining to this Agreement without the Authority's prior written consent. TRANSCOM understands and accepts that generally the Authority will not grant permission for public announcements or news releases and will limit the use of the Authority's name to references only.

Section 6.2 – Interchange of Data

All available information and documentation relating to the performance of services described in Article I existing in the offices of the Authority or TRANSCOM shall be made available to the other party to this Agreement without expense to such other party.

Section 6.3 – Environmental Review

The Authority reserves the right to be "lead agency" for any compliance with the New York State Environmental Quality Review Act (SEQRA) and/or the National

Environmental Policy Act (NEPA), as may be required for this Agreement or any activity undertaken by TRANSCOM pursuant to this Agreement.

Section 6.4 – Damages for Delay

TRANSCOM agrees that it shall not make any charges or claims for damages against the Authority for any delays or hindrances from any cause whatsoever during the progress of any portion of the services specified in this Agreement.

Section 6.5 – Suspension, Abandonment and Termination

Subject to the specific provisions of Section 6.6 B. and Section 6.6 C hereof, which address suspension and termination for non-responsibility, the Authority shall have the right, in its sole discretion, to postpone, suspend, abandon or terminate this Agreement at any time and for any reason, and such action shall in no event be deemed a breach of contract. This includes the Authority's right to terminate this Agreement in the event the Authority finds that the certification made by TRANSCOM in accordance with New York State Finance Law §§ 139-j and 139-k was intentionally false or intentionally incomplete. This also includes the Authority's right to terminate this Agreement at any time in the event the Authority finds that TRANSCOM is non-responsible or has failed to accurately disclose vendor responsibility information. If the Authority exercises its right to terminate on account of a breach of this Agreement, the Authority may complete the contractual requirements in any manner it deems advisable and pursue available legal or equitable remedies for breach.

In the event the Authority exercises its right to postpone, suspend, abandon or terminate this Agreement, TRANSCOM must within ten (10) days of such postponement, suspension, abandonment or termination deliver to the Authority all records, documents and data pertaining to services rendered under this Agreement.

In the event the Authority exercises its right to postpone, suspend, abandon or terminate this Agreement for convenience, due to no fault of TRANSCOM, the Authority will fix the value of the work performed as of such postponement, suspension, abandonment or cancellation date, as verified by audit, and compensate TRANSCOM accordingly.

Section 6.6 - Responsibility Provisions

A. General Responsibility Obligations

The Contractor shall at all times during the Contract term remain responsible. The Contractor agrees if requested by the Executive Director of the Authority, or his or her designee, to present evidence of his continuing legal authority to do business in New York State, integrity, experience, ability, prior performance and organizational and financial capacity.

B. Suspension of Work for Non-Responsibility

The Executive Director of the Authority, or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the Executive Director, or his or her designee, issues a written notice authorizing a resumption of performance under the Contract.

C. Termination for Non-Responsibility

Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate Authority officials or staff, the Contract may be terminated by the Executive Director of the Authority, or his or her designee, at the Contractor's expense where the Contractor is determined by the Executive Director of the Authority, or his or her designee, to be non-responsible. In such event, the Executive Director of the Authority, or his or her designee, may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

Section 6.8 – Severability Clause

If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be effected, but shall remain binding and effective as against all parties hereto.

Section 6.9 - Standard Contract Clauses and Appendices Incorporated by Reference


TRANSCOM agrees to comply with all of the terms and conditions set forth in or Appendices A, B, C, and/or W if applicable and Exhibit 1 which are attached hereto and expressly made a part of this Agreement as fully as if set forth at length herein.

Appendix A	Standard Clauses
Appendix C	Inventions Policy
Appendix D	Network Connection Requirements (TAP-372)
Appendix W	Web Site Development
Exhibit 1	Authority Supplemental Insurance Certificate (TA-W51343-9)

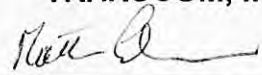
IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first above written:

NEW YORK STATE THRUWAY AUTHORITY

TRANSCOM, INC.



Thomas J. Madison, Jr., Executive Director



Matthew Edelman, Executive Director

3/6/14
Date



Approved as to Availability of Funds:



Authority Chief Operating and
Financial Officer


KMO BM 701
Res 5979
12/16/13

Approved as to Policy:



Director of Purchasing

Recommended By:

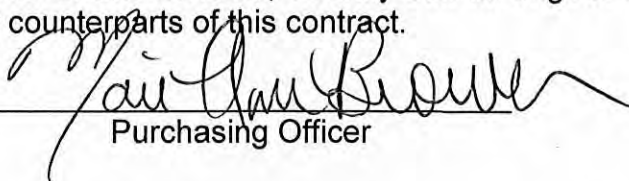


Director of Maintenance and Operations

Contract C010093

Authority Certification

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

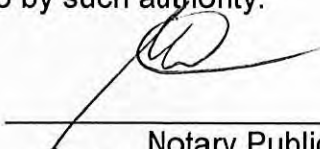


Purchasing Officer

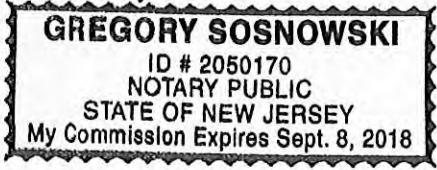
CONTRACTOR
Contract C010093

STATE OF *NJ*)
) **SS:**
COUNTY OF *Hudson*)

On this *24th* day of *February*, 2014, before me personally came MATTHEW EDELMAN, to me known and known to me to be the EXECUTIVE DIRECTOR of TRANSCOM, INC. who being by me duly sworn, did depose and say that he is the EXECUTIVE DIRECTOR of TRANSCOM, INC., located at Newport Financial Center, 111 Town Square Place – 6th Floor, Jersey City, New Jersey 07310-1755 the not-for-profit described in and which executed the foregoing instrument; that TRANSCOM, INC.'s governing body has authorized MATTHEW EDELMAN to execute the foregoing instrument; and that he signed his name thereto by such authority.



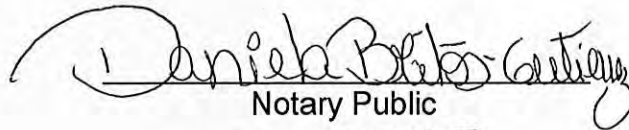
Notary Public



NEW YORK STATE THRUWAY AUTHORITY
Contract C010093

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

On this 6 day of March, 2014, before me personally came THOMAS J. MADISON, JR., to me known and known to me to be the EXECUTIVE DIRECTOR of the NEW YORK STATE THRUWAY AUTHORITY, who being by me duly sworn, did depose and say that he is the EXECUTIVE DIRECTOR 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: 12/29/15

APPENDIX A
Standard Clauses

APPENDIX A

Standard Clauses For New York State Thruway Authority And
New York State Canal Corporation Procurement Contracts

The parties to the attached contract, license, lease, amendment or other agreement of any kind ("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 and its agents, successors and assigns, other than the Thruway Authority ("Authority") or Canal Corporation ("Corporation"), whether a contractor, licensor, licensee, lessor, lessee or any other party):

1. NON-ASSIGNMENT CLAUSE. This contract may not be assigned by the Contractor nor may its right, title or interest therein be assigned, transferred, conveyed, subcontracted, sublet or otherwise disposed of without the previous consent, in writing, of the Authority/Corporation and any attempts to assign the contract without the Authority's/Corporation's written consent are null and void.

2. COMPTROLLER APPROVAL. Unless otherwise provided by resolution of the Authority or Corporation Board, if this contract involves the expenditure of funds for goods or services in excess of \$50,000, or the expenditure of funds for any other purpose in excess of \$15,000, or if, by this contract, the Authority/Corporation agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$10,000, this contract shall not be valid, effective or binding upon the Authority/Corporation until it has been approved by the State Comptroller and filed in his office.

3. WORKERS' COMPENSATION AND DISABILITY BENEFITS. 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 State Workers' Compensation Law. If employees will be working on, near or over navigable waters, a U.S. Longshore and Harbor Workers' Compensation Act endorsement must be included.

4. NON-DISCRIMINATION REQUIREMENTS. To the extent required by Article 15 of the State 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, military status, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with State Labor Law §220-e, 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 State Labor Law §230, then, in accordance with §239 thereof, the 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. The Contractor is subject to fines of \$50 per person per day for any violation of State Labor Law §§220-e or 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

5. WAGE AND HOURS PROVISIONS. If this is a public work contract covered by Article 8 of the State Labor Law or a building service contract covered by Article 9 thereof, neither the 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 State Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, the 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 State Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the New York State 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 New York State Labor Law shall be a condition precedent to payment by the Authority/Corporation of any Authority/Corporation approved sums due and owing for work done on the project.

6. NON-COLLUSIVE BIDDING CERTIFICATION. In accordance with State Public Authorities Law §2878, if this contract was awarded based upon the submission of bids, the Contractor warrants, under penalty of perjury, that its bid was

arrived at independently and without collusion aimed at restricting competition. The Contractor further warrants that, at the time the Contractor submitted its bid, an authorized and responsible person executed and delivered to the Authority/Corporation a non-collusive bidding certification on the Contractor's behalf.

7. INTERNATIONAL BOYCOTT PROHIBITION. In accordance with State Labor Law §220-f, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of this 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. §§2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of the 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 Authority/Corporation within five (5) business days of such conviction, determination or disposition of appeal.

8. SET-OFF RIGHTS. The Authority/Corporation shall have rights of set-off. These rights shall include, but not be limited to, the Authority's/Corporation'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 by the Contractor to the Authority/Corporation with regard to this contract, or any other contract with the Authority/Corporation, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the Authority/Corporation for any other reason including, without limitation, monetary penalties, adjustments, fees, or claims for damages by the Authority/Corporation and third parties in connection therewith.

9. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (collectively, "Records") for a period of six (6) years (or any other longer period required by law) following final payment or the termination of this contract, whichever is later, and any extensions thereto. The Authority/Corporation, State Comptroller, State Attorney General and any other person or entity authorized to conduct an examination shall have access to the Records during normal business hours at an office of the Contractor within New York State, or, if no such office is available, at a mutually agreeable and reasonable venue within the State, during the contract term, any extensions thereof and said six (6) year period thereafter, for purposes of inspection, auditing and copying. As used in this clause, "termination of this contract" shall mean the later of

completion of the work of the contract or the end date of the term stated in the contract. The Authority/Corporation will take reasonable steps to protect from public disclosure those Records which are exempt from disclosure under State Public Officers Law §87 ("Statute") provided that: (i) the Contractor shall timely inform an appropriate Authority/Corporation official, in writing, that said records should not be disclosed; (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 Authority's/Corporation's right to discovery in any pending or future litigation.

10. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION. 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 the Authority/Corporation 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.

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 State Tax Law §5. Disclosure of this information by the seller or lessor to the Authority/Corporation 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 State Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law.

The above personal information is maintained at the New York State Thruway Authority/Canal Corporation, Department of Finance and Accounts, P.O. Box 189, Albany, New York 12201.

11. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN. In accordance with State Executive Law §312, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000, whereby the Authority/Corporation 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

Authority/Corporation; or (ii) a written agreement in excess of \$100,000 whereby the Authority/Corporation 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 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, or major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this contract 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, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on Authority/Corporation 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. As used in this clause, "affirmative action" shall mean recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, lay-off or termination, and rates of pay or other forms of compensation.

(b) At the request of the Authority/Corporation, 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.

(c) The Contractor shall state, in all solicitations or advertisements for employees, that in the performance of this 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.

The Contractor shall include the provisions of (a), (b) and (c) above in every subcontract over \$25,000 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon except where such 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 Authority/Corporation will consider compliance by a Contractor or its subcontractor with the requirements of any Federal law concerning equal

employment opportunity which effectuates the purpose of this section. The Authority/Corporation 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 Authority/Corporation may waive the applicability of Section 312 of the Executive Law to the extent of such duplication or conflict. The Contractor shall 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 thereto.

12. 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.

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

14. LATE PAYMENT. Timeliness of payment and any interest to be paid to the Contractor for late payment shall be governed by State Public Authorities Law §2880 and 21 NYCRR Part 109.

15. 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.

16. SERVICE OF PROCESS. In addition to the methods of service allowed by the State Civil Practice Law & Rules, the Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon the Contractor's actual receipt of process or upon the Authority's/Corporation's receipt of the return thereof by the United States Postal Service as refused or undeliverable. The Contractor must promptly notify the Authority/Corporation, in writing, of each and every change of address to which service of process can be made. Service by the Authority/Corporation to the last known address shall be sufficient. The Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

17. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS. The Contractor certifies and warrants that all wood products to be used under this contract 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 Authority/Corporation.

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 State Finance Law §165. Any such use must meet with the approval of the Authority/Corporation; 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 Authority/Corporation.

18. 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 State Finance Law §165), and shall permit independent monitoring of compliance with such principles.

19. 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, NY 12245
Phone: (518) 292-5220
Fax: (518) 292-5884
<http://www.esd.ny.gov>

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

NYS Department of Economic Development Minority and Women's Business Development Division
30 South Pearl Street – 2nd Floor
Albany, NY 12245
Phone: (518) 292-5250
Fax: (518)292-5803
<http://www.esd.ny.gov>

The Omnibus Procurement Act of 1992 requires that by signing this bid proposal or contract, as applicable, the Contractor certifies 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 Authority/Corporation;

(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 NYS 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 Authority/Corporation upon request; and

(d) The Contractor acknowledges notice that the Authority/Corporation may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the Authority/Corporation in these efforts.

20. 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 (Chapters 684 and 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.

21. NON-PUBLIC PERSONAL INFORMATION.

The 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). In addition to any relief or damages that may be imposed pursuant to the provisions of this Act, the Contractor shall be liable for the costs imposed upon the Authority which are associated with breach of the Act if caused by Contractor's negligent or willful acts or omissions, or the negligent or willful acts or omissions of the Contractor's agents, officers, employees or subcontractors.


22. **OBSERVANCE OF LAWS.** The Contractor agrees to observe all applicable Federal, State and local laws and regulations, and to procure all necessary licenses and permits.

23. **NO WAIVER OF PROVISIONS.** The Authority's/Corporation's failure to exercise or delay in exercising any right or remedy under this contract shall not constitute a waiver of such right or remedy or any other right or remedy set forth therein. No waiver by the Authority/Corporation of any right or remedy under this contract shall be effective unless made in a writing duly executed by an authorized officer of the Authority/Corporation, and such waiver shall be limited to the specific instance so written and shall not constitute a waiver of such right or remedy in the future or of any other right or remedy under this contract.

24. **ENTIRE AGREEMENT.** This contract, together with this Appendix A and any other appendices, attachments, schedules or exhibits, constitutes the entire understanding between the parties and there are no other oral or extrinsic understandings of any kind between the parties. This contract may not be changed or modified in any manner except by a subsequent writing, duly executed by the parties thereto.

APPENDIX C

Inventions Policy

 <p style="text-align: center;">GENERAL POLICY</p>	SECTION TITLE	NUMBER 25-1-10
	POLICIES – ADMINISTRATIVE	
<p>APPROVED</p> <p>BOARD MEETING NUMBER: 651 RESOLUTION NUMBER: 5519 DATE: July 6, 2006</p>	SUBJECT INVENTIONS – THRUWAY AUTHORITY	

GENERAL POLICY

A. PURPOSE

The New York State Thruway Authority ("Authority") recognizes that inventions of value to the public will be made by persons working in its facilities. The purpose of this Policy is to encourage creativity and to take appropriate steps to ensure that the public receives the benefits of inventions conceived or reduced to practice by Authority employees and contractors. Appropriate steps include identifying inventions, securing appropriate patents and copyright registrations, and marketing inventions through licensing and other arrangements. These activities are undertaken in a spirit of cooperation with governmental agencies, private enterprise and staff as part of the Authority's mission and statutory obligations.

B. SCOPE

This Policy shall apply to all of the Authority's employees and contractors, provided that nothing herein shall preclude the contractor from otherwise using the related or underlying general knowledge, skills, ideas, concepts, techniques and experience developed under a project in the course of the contractor's business.

C. POLICY

All inventions, as defined below, shall be the property of the Authority. The inventor, when so instructed by Authority officials, shall make timely application for statutory protection (such as patent, copyright or similar forms of protection) of an invention at the Authority's expense. The inventor shall assign all resulting statutory protection to the Authority. Additionally, the Authority shall have all rights to all inventions conceived or reduced to practice in the course of projects under contract to the Authority.

SECTION: **POLICIES -- ADMINISTRATIVE**
SUBJECT: **INVENTIONS -- THRUWAY
AUTHORITY**



NUMBER: **25-1-10**

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DATE

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1. Invention

For the purposes of this Policy, an "invention" shall include products, technical innovations, improvements, inventions, discoveries, devices, methods, computer software, videos, as well as writings and other information in various forms not generally known, whether or not protectable by patent or copyright, when they result from Authority work performed by the inventor, or when they are conceived or reduced to practice by persons using Authority equipment, facilities, time, material, money or personnel.

2. Inventor

An inventor is an employee, former employee, contractor or former contractor of the Authority who conceives of an invention, as defined above, or who reduces such invention to practice. The intent of this Policy is to include former employees and former contractors as inventors with respect to inventions they conceived or reduced to practice while employed by, or under contract to, the Authority.

D. IMPLEMENTING PROVISIONS

1. Disclosure of Invention

Inventions are considered trade secrets of the Authority and are thereby designated as confidential. Inventions must be promptly disclosed to the Authority and shall not be published or disclosed to anyone outside the employ of the Authority without written permission from the Authority.

2. Copyright

The inventor, or author, when so instructed by the Authority or when the inventor, or author, deems it appropriate, shall put a copyright notice on computer software, written procedures, manuals, videos and other information in various forms by including the word "Copyright", the year of first publication and "New York State Thruway Authority" on the material.

SECTION: **POLICIES – ADMINISTRATIVE**

SUBJECT: **INVENTIONS – THRUWAY
AUTHORITY**



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3. Ownership of Patents and Copyrights

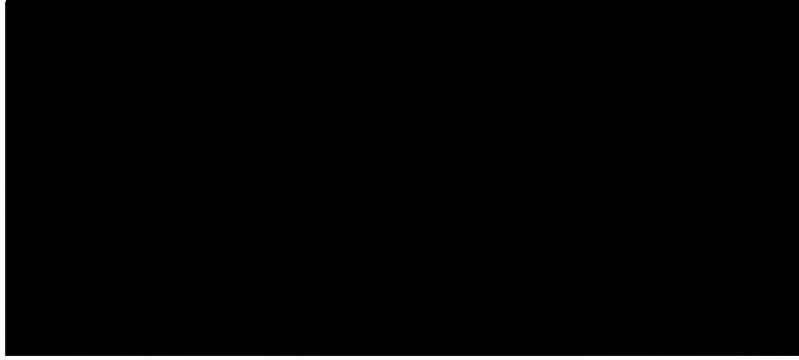
The inventor shall assign all inventions, applications for patent protection, copyrights and registrations to the Authority and shall execute all other required documents to pursue applications and to vest title in the Authority. The processing costs for obtaining patent or copyright protection shall be the responsibility of the Authority (except see 4 below). When a question is raised regarding ownership of an invention, the matter shall be referred to the Executive Director of the Authority or the Executive Director's designee. The Executive Director or designee shall review the circumstances under which the invention was made. If the Executive Director or designee determines that the invention is not covered by this Policy, the Authority will assert no claim to the invention and will advise the inventor accordingly in writing.

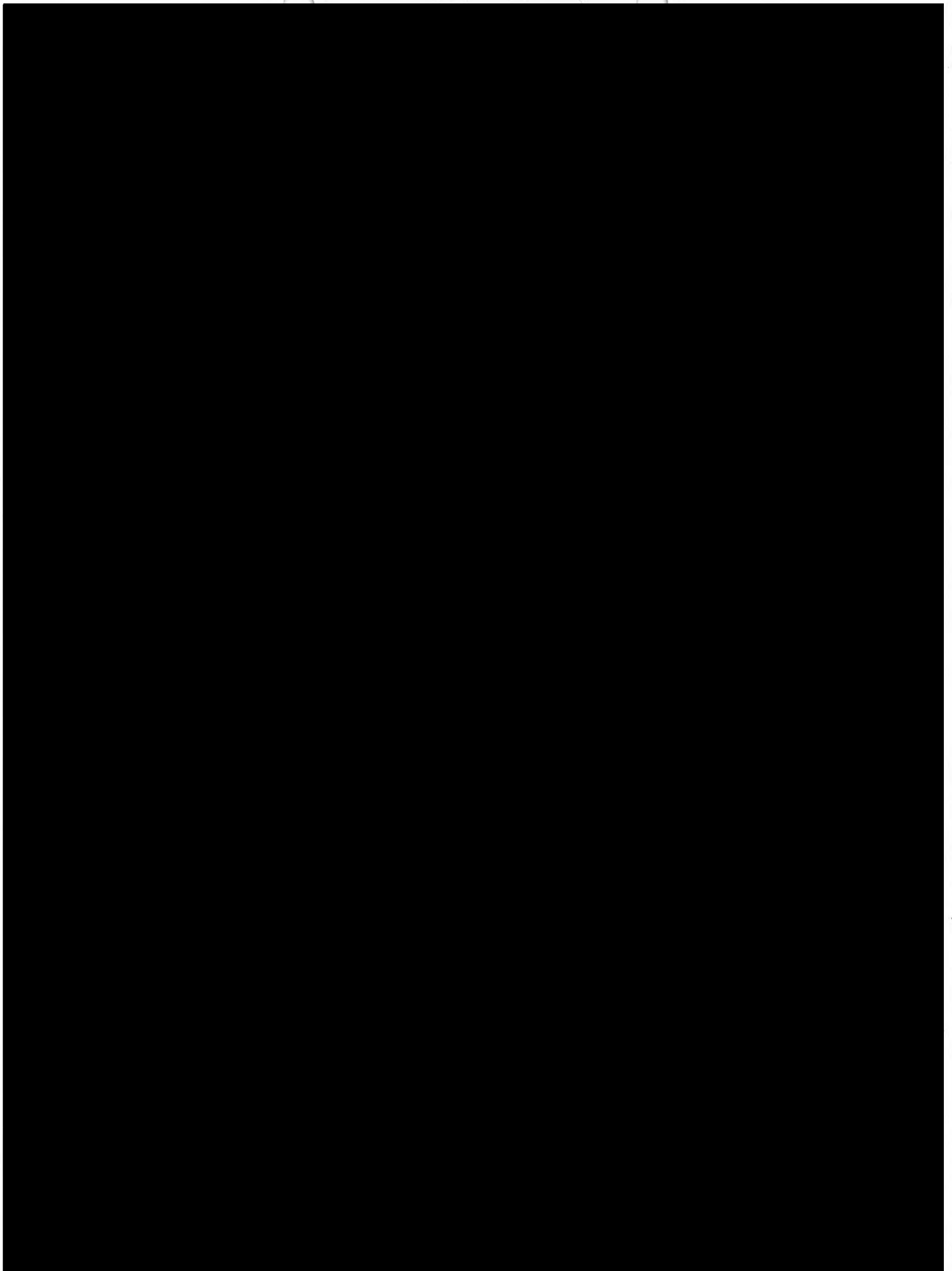
4. Release of Invention to Inventor

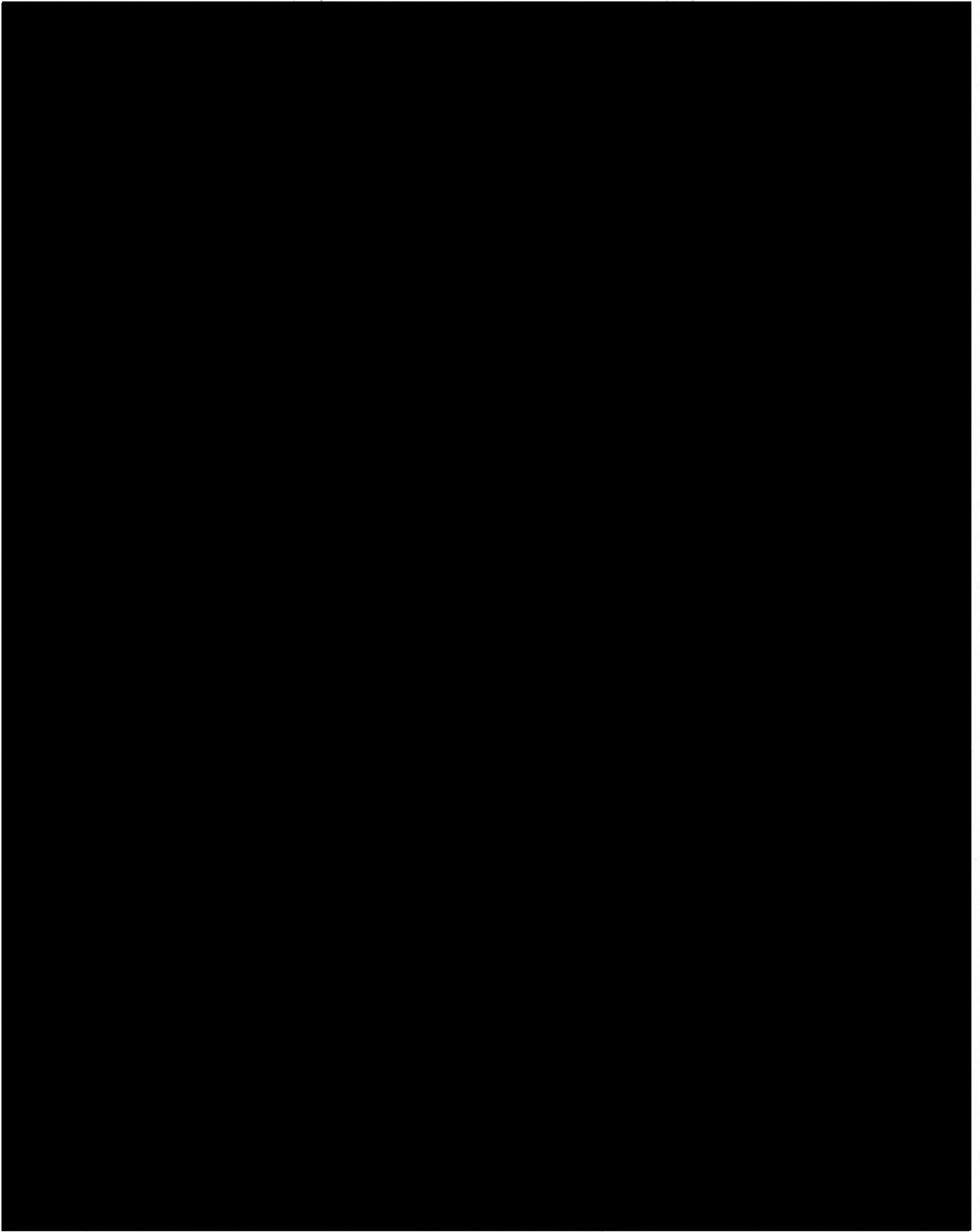
The Executive Director or designee will decide whether or not to patent and whether or not to commercialize any invention. The inventor will be notified if it is determined that the Authority will not apply for patent protection for an invention. The inventor may then request in writing that the invention be released. If the request is granted, all of the Authority's rights to the invention shall be released to the inventor, subject to a reservation by the Authority of a nonexclusive, irrevocable, paid-up license to practice or use the invention or to have the invention practiced or used on behalf of the Authority. Such license shall include the right to grant sublicense(s) to other government entities. The inventor may then apply for patent protection at the inventor's own expense.

5. Administration of Policy

The Executive Director may interpret, implement and administer this Policy, including the development of operational and/or administrative procedures necessary to carry out its intent. In addition, the Executive Director or designee shall have the authority to waive the application of all or any portion of this Policy where it is in the Authority's best interests. Any such waiver shall be in writing.









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APPENDIX W

Web Site Development

APPENDIX W – STANDARD PROVISIONS FOR WEBSITE CONTRACTS

The Contractor providing website development and/or hosting services to the New York State Thruway Authority/New York State Canal Corporation (Authority/Corporation) pursuant to this Agreement must strictly adhere to the following provisions, which are incorporated by reference into this Agreement. (The word “Contractor” herein refers to any party and its agents, successors and assigns, other than the Authority/Corporation.)

I. GENERAL PROJECT MANAGEMENT RESPONSIBILITIES

Management of this website project shall be conducted as follows:

1. The Authority/Corporation’s Director of Public Affairs will assign one person to be the Authority/Corporation’s website project contact. All communications and correspondence from the Contractor regarding the development of the website must be directed to this person.
2. The Contractor will assign one person to be the Contractor’s project contact. The Authority/Corporation will direct its communications and correspondence regarding the development of the website to this person.
3. Prior to the start of any website development project, the Contractor must meet with the Authority/Corporation to develop specific project objectives and timetables for completion of the project.
4. The design, construction and documentation of the website must be approved by the Director of Public Affairs prior to the start of any website development.
5. The Contractor must maintain regular communication throughout the project with the Authority/Corporation. If requested by the Authority/Corporation, the Contractor must provide periodic written progress reports and be available upon reasonable notice at mutually convenient times for meetings.

II. WEBSITE DESIGN AND PERFORMANCE

A. Design and Content Requirements. The Contractor must produce a website for the Authority/Corporation that complies with the following requirements:

1. Any web-based intranet and internet information and applications development, or programming delivered pursuant to this Agreement must comply with the New York State Office for Technology Policy P04-002, Accessibility of New York State Web-based Intranet and Internet Information and Applications, as such policy may be amended, modified or superseded, regarding the accessibility of web-based intranet and internet information and applications to persons with disabilities.

2. Satisfies all requirements of the New York State Office for Technology Cyber Security Policy P03-002, Information Security Policy, as such policy may be amended, modified or superseded.
3. Contains the Authority/Corporation's Internet Privacy Policy.
4. Utilizes small (fast loading) graphics.
5. Utilizes official logos only as supplied by the Authority/Corporation.
6. Utilizes other photos and graphic images (e.g. web palette GIF and JPEG images) only as approved by the Authority/Corporation.
7. Utilizes style sheets to reflect the "look and feel" of the Authority/Corporation's official websites. By attaching style sheets to structured documents on the Web (e.g. HTML), the presentation of documents will be consistent without sacrificing device-independence or adding new HTML tags for background color, text and link colors, and typestyle.
8. Utilizes a maximum of 800x600-screen resolution, unless otherwise required or approved by the Authority/Corporation.
9. Contains no spelling, grammatical or contextual errors.
10. Contains no advertisements, including logos or references to the Contractor, unless approved by the Authority/Corporation.
11. Contains no "metatags" or other buried material, unless required or approved by the Authority/Corporation.
12. Does not utilize HTML frames, unless required or approved by the Authority/Corporation.
13. Contains the New York State common Web banner, as required by the Authority/Corporation.
14. States how to contact the webmaster or entity responsible for the operation of the site.

B. Specifications for Home Page. The website will consist of a home page (the first page of the website) that can be reached by typing into a Web browser one or more Uniform Resource Locators (URLs) that the Authority/Corporation has registered for the website.

C. Performance. Users of the Authority/Corporation's websites include a broad range of the Internet population. Websites targeted towards the general population should be quick loading and should not require special software (plug-ins) to run. On average, each website page should load in 15 seconds or less with a 28.8 modem connection or comparable time with a different speed connection. The Contractor must:

1. Test website pages with many browsers and platforms. Because this technology is continuously changing, the Contractor must meet with the Authority/Corporation to determine which browser releases should be supported (e.g. Internet Explorer, Netscape Navigator, and Lynx) for any given Authority/Corporation website.
 2. Verify that the website runs without errors and is free of malicious code, including, but not limited to, viruses, worms and trojans.
- D. Accessibility of Website During Construction.** The Contractor must make the website accessible to the Authority/Corporation throughout the construction of the prototype and the final website. The Contractor must use its best efforts to ensure that, until final acceptance and approval by the Authority/Corporation, the website is not accessible to anyone other than authorized representatives of the Authority/Corporation. The Contractor must not under any circumstances publish or otherwise disseminate website content developed pursuant to this Agreement without first obtaining the approval of the Authority/Corporation.
- E. Submission to Index Sites.** The Contractor shall register the URLs of the website with Alta Vista, Lycos, Google, Yahoo and Excite search engines and any other comparable entities as requested by the Authority/Corporation.
- F. Submission of Deliverables.** Upon the Authority/Corporation's acceptance testing and approval of the final website, or upon termination of this Agreement, whichever occurs earlier, the Contractor must submit all Deliverables to the Authority/Corporation including all changes or additions (enhancements) made thereto along with all items provided by the Authority/Corporation as they existed as of the date of termination. Deliverables means: 1) all drafts, working and final copies of code, documentation and other materials developed by the Contractor in the course of its performance under this Agreement; and 2) any other items necessary for the operation of the website with the exception of third-party operating system software, third-party networking software, Web Browsers, and hardware. For the purposes of this section, Deliverables may include, but are not limited to: a description of the functional and design specifications, user interface requirements, operational flowcharts, software descriptions, training materials and documentation, network accessibility information, interactive elements, information-capturing capabilities, browser and platform compatibilities, electronic commerce requirements, audio/video format requirements, linking structures, database structure requirements, code standards, screen and file layouts, and general "look and feel" elements.

The Contractor must submit all code in an electronic format and all documentation and other materials in an electronic and printed format as prescribed and approved by the Authority/Corporation.

III. WEB SITE HOSTING

If this Agreement requires that the Contractor maintain the website on its Web server, and make maintenance modifications to the website from time to time in accordance with the Authority/Corporation's directions, the provisions of this Article shall apply to the Contractor's performance under this Agreement.

A. Server Hosting. The Contractor must make the website available to Internet users 24 hours per day, seven (7) days per week. The Contractor must back-up the website at least once every two weeks, and store said back-up materials in a safe and secure environment not located at the same location as the Contractor's Web server. The Contractor agrees to use its best efforts to ensure reasonable response times for users accessing the Web to the website; a website page should load, on average, in no more than 15 seconds with a 28.8 modem connection or comparable time with a different modem speed connection. After the Authority/Corporation approves the final website and any modification thereof, the Contractor must not make any changes to the website unless the Authority/Corporation approves such changes.

B. Security. The Contractor must supply to the Authority/Corporation a copy of the procedures used to identify system vulnerabilities and apply software patches and fixes. Further, the Contractor must provide to the Authority/Corporation a copy of the security policy in place for the systems and equipment that will be hosting the Authority/Corporation website, which security policy must, at a minimum, meet the following requirements:

1. Apply software patches and fixes to the Web-hosting equipment as soon as tested and accepted in the user community.
2. Test application and server software to verify that all sample code has been removed.
3. Verify that open ports are legitimate and identify the services that are using those ports.
4. Implement a file integrity system to ensure that file changes are authorized.
5. Provide a copy of incident response procedures to determine how the Contractor identifies malicious activity and recovers promptly from an attack.

C. Security Incident and Resolution Reporting. Upon discovering that the confidentiality, integrity or availability of the Web server or the website's information resources is threatened or compromised, the Contractor must report the security incident to the Authority/Corporation. For purposes of this section the following events are considered security incidents:

1. Unauthorized access that is either successful or unusually persistent.

2. Instances of any malicious code that either has a widespread impact throughout the Contractor's organizational Web environment or has specifically affected the Authority/Corporation's Web server or website.
3. Denial of service attack that is either successful and adversely affects website access or is unusually persistent.
4. Scans and probes that precede or are related to a security incident listed above.
5. The Contractor shall contact the Authority/Corporation via telephone and supply the following information when initially reporting the discovery of a security incident:
 - a. Name, phone/pager/cell number and e-mail address of the individual making the report.
 - b. Type of security incident(s) – unauthorized access, malicious code, denial of service, probes, scans and/or other suspected activity that could result in a significant adverse impact.
 - c. Location of affected system – street address, floor/room number and city/state.
 - d. Detailed description of the security incident.
 - e. Date and time the security incident occurred.
 - f. Date and time the security incident was detected.
 - g. How the security incident was detected.
 - h. Business impact/criticality of the security incident.
 - i. Other relevant information.
6. The Contractor shall contact the Authority/Corporation via telephone and supply the following information upon investigation and resolution of the security incident.
 - a. Systems affected – OS, software, release level, etc.
 - b. Specific nature of account or information resource access/compromise.
 - c. Attack source details – source IP address, attack method, vulnerability exploited, etc.
 - d. Actions taken to isolate/contain, investigate and remediate the security incident.

- e. Planned follow-up activities.
- f. Overall impact of the service outage.
- g. Resources required to resolve the incident - staff or consultant time, new server, etc.

D. Transference and Back-Up. Upon the Authority/Corporation's request at any time, or in the event of the Authority/Corporation's termination of this Agreement, Contractor agrees to electronically transfer to the Authority/Corporation a complete copy of the current website, including all elements, drafts and working copies. In the event such transfer is a result of the Authority/Corporation's termination of its use of the Contractor's Web server as the host for the website, the Contractor must maintain one complete electronic version of the website, including all code related thereto (and must "delete" all other versions thereof off of its computers and media, including back-up copies), until the Authority/Corporation informs the Contractor in writing that the transferred files appear to be complete, at which time the Contractor must "delete" its final copy of the website off of its computers and media.

E. Transaction Logging. During the time that the website is located on the Contractor's server, the Contractor must, free of charge, provide the Authority/Corporation with access to all log files for the website. In addition, on a monthly basis at no charge to the Authority/Corporation, the Contractor must provide in a mutually agreeable electronic form a complete transaction log history containing the date, time, source IP address, and file, graphic, or other material accessed for each Web page accessed during the preceding month.

IV. CONFIDENTIALITY

A. Duty to Maintain Confidentiality and Restrict Access. The Contractor must keep all work performed, and all Authority/Corporation information gathered to perform work under this Agreement, confidential and shall not disclose any such information or work to any third party without the prior written consent of the Authority/Corporation. Except for such staff members designated as "need-to-know" and expressly authorized by the Contractor to have access to the Authority/Corporation's information, the Contractor must take all appropriate and necessary measures to ensure that no other person or entity has access to the information. The Authority/Corporation reserves the right to inspect the Contractor's facilities, without prior notice, to ascertain whether or not the Contractor is adhering to the confidentiality provisions of this Agreement.

B. Duty to Advise All Employees. The Contractor must advise its entire staff, including permanent and temporary employees, involved in providing services pursuant to this Agreement of the confidentiality requirements hereunder and the Contractor must ensure that such employees adhere to such requirements.

C. Survivability. The provisions of this Article shall survive termination or expiration of this Agreement.

V. OWNERSHIP AND RIGHTS

- A. Ownership of Work Product.** Except as set forth in Section C of this Article: (1) the Contractor hereby assigns, transfers and sets over to the Authority/Corporation all of the right, title and interest for the entire world in and to all elements of the Deliverables and the copyright therein; and (2) the Authority/Corporation shall exclusively own all United States and international copyrights and all other intellectual property rights in the Deliverables.
- B. Vesting of Rights.** With the sole exception of any preexisting works identified in Section C of this Article, upon creation of each element of each Deliverable the Contractor shall automatically assign to the Authority/Corporation ownership of all United States and international copyrights and all other intellectual property rights in each element of the Deliverable. From time to time, upon the Authority/Corporation's request, the Contractor and/or its personnel must confirm such assignments by execution and delivery of an assignment or other written instruments as the Authority/Corporation may request. The Authority/Corporation shall have the right to obtain and hold in its own name all copyright registrations and other evidence of rights that may be available for the Deliverables and any portion(s) thereof.
- C. Preexisting Works.** In the event that any portion of the Deliverables will constitute a preexisting work for which the Contractor cannot grant to the Authority/Corporation the rights set forth in sections (A) and (B) of this Article, before commencing work, the Contractor must provide written notification to the Authority/Corporation of: (1) the nature of such preexisting work; (2) its owner; (3) any restrictions or royalty terms applicable to the Contractor's or the Authority/Corporation's use of such preexisting work or the Authority/Corporation's exploitation of the Deliverables as a derivative work thereof; and (4) the source of the Contractor's authority to employ the preexisting work in the preparation of the Deliverables. Preexisting works, either so notified in advance by the Contractor or otherwise coming to the attention of the Authority/Corporation, may be used in the construction of the Deliverables only if expressly approved in writing by the Authority/Corporation prior to their use, which approval shall be within the sole discretion of the Authority/Corporation. The Contractor hereby grants to the Authority/Corporation a non-exclusive, royalty free, irrevocable license to use, copy, transmit, perform, and modify the preexisting works relative to the operation of the website.

VI. REPRESENTATIONS AND WARRANTIES

The Contractor makes the following representations and warranties for the benefit of the Authority/Corporation:

- A. Ownership Rights.** The Contractor represents and warrants that: (1) it is and will be the sole author of all works it employs in preparing any and all Deliverables other than preexisting works; (2) it has and will have full and sufficient right to assign or grant the rights and/or licenses granted in the Deliverables and any

preexisting works pursuant to this Agreement; (3) all elements of the Deliverables other than preexisting works have not been and will not be published under circumstances that would cause a loss of copyright therein; and (4) all elements of the Deliverables, including all preexisting works, do not and will not infringe any patents, copyrights, trademarks or other intellectual property rights (including trade secrets), privacy, or similar rights of any person or entity, nor has any claim (whether or not embodied in an action, past or present) of such infringement been threatened or asserted, nor is such a claim pending against the Contractor or, insofar as the Contractor is aware, against any entity from which the Contractor has obtained such rights.

B. Conformity, Performance, and Compliance. The Contractor represents and warrants that all work will be performed in a competent and professional manner consistent with generally accepted industry standards, that no conflict of interest exists or will arise with respect to the performance by the Contractor of all work contemplated by this Agreement and that all elements of the Deliverables will conform to the specifications and functions set forth in this Agreement. The Contractor will repair free of charge any Deliverable that does not meet this warranty within a reasonable period of time.

EXHIBIT 1

Authority Supplemental Insurance Certificate



SUPPLEMENTAL INSURANCE CERTIFICATE



This form supplements ACORD 25 CERTIFICATE OF LIABILITY INSURANCE and/or Workers' Compensation/NYS Disability documentation as specified by contract/permit. For additional information, please contact the NYSTA's Insurance Compliance Section at (518) 436-2891.

Contractor/Vendor/Policyholder: _____

All Work under NYSTA/NYSCC Project/Agreement/Permit Number: _____ (If NYSTA/NYSCC Permit, leave line blank unless Permit Number is known.)

Complete/check appropriate boxes:
I. Commercial General Liability (CGL) Insurance
a. Does the General Aggregate reflect a per-project aggregate endorsement (CG 25 03 11 85 or equivalent)?
b. Does the CGL provide coverage for:
1. Explosion, Collapse and Underground Hazards (XCU)?
2. Products & Completed Operations Liability?
3. Injury to Contractor's/Subcontractor's employees (Labor Law claims)?
4. Contractual liability for the indemnification language in this Project/Agreement/Permit?
5. Contractors' means and methods?
6. Independent contractor's (Subcontractor's) operations?
c. Is the CGL policy written on ISO form CG 00 01 01 96 or an equivalent form?
II. Owners/Contractors Protective Liability Insurance - Is coverage provided as required by contract?
III. Builders' Risk Insurance - Is coverage provided as required by contract?
IV. Workers' Compensation
a. Does Workers' Comp. apply to federally-regulated employment (i.e. Jones Act, USL & H)?
b. Is Workers' Comp. from a New York State licensed insurance provider?
c. If sole proprietorship, partnership, or corporation with one or two shareholders, is Workers' Comp. coverage provided for owners?
V. Environmental Insurance (EI) (including Asbestos & Lead Abatement)
Professional Liability Insurance (PLI) (Including Errors & Omissions)
a. Does EI cover the scope of services listed in the Project/Agreement/Permit?
b. Do EI defense costs reduce liability limits?
c. If EI is on a claims-made basis, what is the retroactive date?
d. Does PLI cover the scope of services listed in the Project/Agreement/Permit?
e. Do PLI defense costs reduce liability limits?
f. If PLI is on a claims-made basis, what is the retroactive date?
VI. Mandatory Endorsements and Other Provisions (all policies including auto liability)
a. Is the NYSTA or NYSCC listed as an Additional Insured by ISO endorsement CG 20 10 11 85 or its equivalent, under the CGL and Umbrella policies, as required?
b. Do the Umbrella and/or Excess Liability insurance policies follow the form of the primary CGL, Commercial Auto and/or Employer's Liability as applicable?
c. Are the policies endorsed to provide 30 days advance notice to the NYSTA/NYSCC of termination/change, except for non-payment?
d. Do any of the policies on the attached ACORD 25 contain a Deductible (D) or Self-Insured Retention (SIR)?
If "Yes", indicate the specific policy, whether D or SIR, its amount, and whether it is on a per claim, per occurrence or aggregate basis:
e. Is the Automobile Liability policy endorsed to include either ISO endorsement CA 99 48 03 06 - Pollution Liability - Broadened Coverage for Covered Autos-Business Auto, Motor Carrier and Truckers Coverage Forms or ISO endorsement CA 00 12 03 06 - Truckers Coverage Form?

It is understood that the NYSTA/NYSCC has requested the CERTIFICATE(S) OF LIABILITY INSURANCE and this SUPPLEMENTAL INSURANCE CERTIFICATE as evidence of insurance coverage and compliance with the insurance specifications contained in the Agreement or Permit. The NYSTA/NYSCC is relying on the representations of coverages in the policies described.

I certify that I am an authorized agent or representative of each of the insurance companies providing insurance for the above named Policyholder, and I have the authority on behalf of each such insurer to execute this SUPPLEMENTAL INSURANCE CERTIFICATE and the CERTIFICATE(S) OF LIABILITY INSURANCE.

Signed: _____
Authorized Representative
Print Name: _____
Title: _____
Firm Name: _____
Mailing Address: _____

Date: _____
Insurer's Employee
Insurer's Agent
Insurance Broker {supply letter(s) of authorization from insurer(s)}
Telephone: () -
Fax: () -
E-mail: _____