

ORIGINAL
IN THE COURT OF CLAIMS
STATE OF OHIO

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COURT OF CLAIMS
OF OHIO

2015 JUN 15 AM 11:18

TRIAD COMMUNICATIONS, INC.,
2006 Fourth Street,
Cuyahoga Falls, Ohio 44221,

Plaintiff,

vs.

OHIO DEPARTMENT OF
TRANSPORTATION,
1980 West Broad Street,
Columbus, Ohio 43223,

Defendant.

) CASE NO.:

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JUDGE

2015-00575

COMPLAINT

Plaintiff, TRIAD Communications, Inc. ("Plaintiff"), states and avers as follows for its Complaint against Ohio Department of Transportation ("Defendant"):

PARTIES

1. Plaintiff is a corporation organized under the laws of the State of Ohio with its principal place of business at the address stated in the caption of this Complaint.
2. Upon information and belief, Defendant was and is a Department of the State of Ohio, having responsibility for and control over Ohio state highways and interstates, and the attendant rest areas and welcome centers.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this matter, and is the appropriate venue for this matter, pursuant to Ohio Revised Code § 2743.03 *et seq.*, in that this is a civil action against a Department of the State of Ohio.

FACTS

4. Plaintiff is a full service marketing and advertising agency known for its innovative marketing and communications solutions, including online, interactive marketing programs.
5. On or about May 21, 2012, Defendant issued a Request for Proposal #507-12 (SMART 1) (the "RFP") to seek a prime contractor to act as ODOT's exclusive representative and contractor to plan, implement and deliver a comprehensive rest area advertising and sponsorship program, including, but not limited to, the marketing and sale of various advertising and sponsorships at rest areas and travel centers identified in the RFP.
6. In response to the RFP, Travelers Marketing, LLC ("Travelers Marketing"), a Massachusetts-based limited liability company, communicated with Plaintiff and SFC Graphics, Inc. ("SFC"), an Ohio company that specializes in graphic design and display, for the purpose of preparing a response to the RFP.
7. Ultimately, Travelers Marketing, together with Plaintiff and SFC, submitted a response to the RFP on or about July 24, 2012.
8. Defendant awarded a contract based upon the response of Travelers Marketing, Plaintiff and SFC, which was executed on August 29, 2012 (the "Contract"). A true and accurate copy of the contract is attached hereto as Exhibit "A".
9. Pursuant to the Contract, Travelers Marketing would act as Defendant's exclusive representative and contractor regarding the development, marketing and sale of advertising and sponsorship at the rest areas and travel centers identified in the Contract, utilizing Plaintiff and SFC to install and maintain display infrastructure, and to supply advertising content.

10. Moreover, under the Contract terms, Travelers Marketing, Plaintiff and SFC were to have the “exclusive right...to develop, market, and sell advertising at [Defendant’s] rest areas and travel centers” identified in the Contract.
11. In reliance upon the Contract, and in accordance with its subcontract with Travelers Marketing, Plaintiff supplied, installed and maintained display infrastructure that included, but is not necessarily limited to, video screens, kiosks, and wireless connectivity, in furtherance of the Contract.
12. Moreover, Plaintiff expended great effort to solicit advertisers to purchase the right to display advertisements through the interactive kiosks that it supplied.
13. Plaintiff incurred costs of no less than One Hundred Sixty-Eight Thousand Two Hundred Seventy-Seven and 62/100 Dollars (\$168,277.62) in supplying, installing, maintaining, and marketing the display infrastructure.
14. However, unbeknownst to Plaintiff, the Ohio Development Services Agency (“ODSA”) and Ohio Division of Travel and Tourism (“ODTT”) complained to Defendant that it had “closed” the rest areas and welcome centers to advertising previously placed there by these other agencies.
15. As a result, Defendant – in violation of the “exclusivity” requirement of the Contract and without the knowledge or consent of Travelers Marketing, Plaintiff, or SFC – entered into a “side” agreement with ODSA and ODTT to permit them to retain and sell competing advertising materials at the subject rest areas and welcome centers.
16. Upon information and belief, Defendant received a financial incentive from ODSA, ODTT or the private advertisers solicited by ODSA or ODTT as a result of the “side”

agreement that it did not share with Plaintiff, Travelers or SFC, also in violation of the exclusivity requirement of the Contract.

17. ODSA and ODTT then contacted advertisers who had begun advertising at the rest areas and welcome centers through Plaintiff's display infrastructure and instructing them to discontinue any advertising purchases with Plaintiff in favor of continuing their traditional advertising through ODSA and ODTT.
18. As a result, Plaintiff's work pursuant to the Contract, and its subcontract with Travelers Marketing, was thwarted, and it was unable to recover the cost expended in reliance upon the Contract, or the profits originally projected for its work.
19. Plaintiff's display infrastructure conformed to the Contract requirements and Plaintiff faithfully performed all of its work in a good and workmanlike manner, and Defendant never informed Plaintiff that its display infrastructure or services were deficient in any manner.
20. Plaintiff has on numerous occasions requested Defendant to reimburse it for the equipment and labor it furnished in connection with the Contract.
21. However, despite Plaintiff's performance of all work and provision of all equipment in a good and workmanlike manner in accordance with the Contract, Defendant has failed to pay Plaintiff all monies due and owing in the known amount of \$168,277.62.
22. Defendant is also required to compensate Plaintiff for amounts resulting from, among other things, lost profits, in an amount in excess of \$25,000.00.
23. On April 10, 2015, with Defendant's consent, Travelers Marketing assigned the Contract to Plaintiff and SFC, to be held jointly, and Plaintiff now brings a direct action for,

among other things, breach of contract. A true and accurate copy of the Assignment is attached hereto as Exhibit "B".

COUNT I
(Breach of Contract)

24. Plaintiff hereby incorporates by reference each and every allegation contained in the preceding paragraphs of this Complaint as if fully rewritten herein.
25. Plaintiff fully performed its obligations under the Contract.
26. Defendant materially breached the parties' agreement by, among other things, failing to honor the exclusivity provisions of the Contract as described above.
27. Moreover, by its actions and that of its members, officers and/or directors, Defendant has breached the implied duty of good faith and fair dealing.
28. As a direct and proximate result of Defendant's breach, Plaintiff has sustained damage in an amount in excess of \$25,000.00 to be proven at trial.

COUNT II
(Promissory Estoppel)

29. Plaintiff hereby incorporates by reference each and every allegation contained in the preceding paragraphs of this Complaint as if fully rewritten herein.
30. Defendant made a clear and unambiguous promise that, in consideration for its work under the Contract, it would grant Plaintiff, together with Travelers and SFC, exclusivity to develop, market, and sell advertising at the subject rest areas and travel centers.
31. Plaintiff reasonably and foreseeably relied upon Defendant's promises and representations.
32. As a direct result of Plaintiff's reliance upon Defendant's promises and representations, Plaintiff has sustained damage in an amount in excess of \$25,000.00 to be proven at trial.

COUNT III
(Unjust Enrichment)

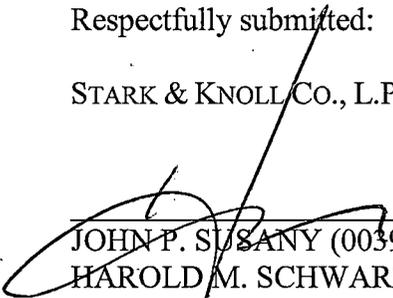
33. Plaintiff hereby incorporates by reference each and every allegation contained in the preceding paragraphs of this Complaint as if fully rewritten herein.
34. Plaintiff conferred a benefit upon Defendant by providing labor, materials and equipment pursuant to the Contract.
35. Defendant knew of and received the benefits conferred upon them by Plaintiff.
36. Defendant has retained the benefits of Plaintiff's work without full payment or reimbursement to Plaintiff.
37. Defendant's continued retention and use of the display infrastructure without payment of the reasonable value for the improvements is unjust and inequitable under the circumstances.
38. As a direct and proximate result of Defendant's conduct, Plaintiff has sustained damage in an amount in excess of \$25,000.00 to be determined at trial.

WHEREFORE, Plaintiff demands Judgment against the Defendant as follows:

- A. For actual, compensatory, consequential and incidental damages, including lost profits, in an amount to be proven at trial in excess of \$25,000.00;
- B. For costs, attorneys' fees, pre-judgment and post-judgment interest; and
- C. For such other and further relief as this Court deems just and appropriate.

Respectfully submitted:

STARK & KNOLL CO., L.P.A.



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Attorneys for Plaintiff

**Agreement for Exclusive Advertising and Sponsorship Rights at Ohio Department of
Transportation's Interstate Rest Areas and Welcome Centers**

THIS AGREEMENT ("Agreement") is entered into as of August 29, 2012 (the "Effective Date"), by the State of Ohio, by and through the Ohio Department of Transportation ("ODOT"), having its principal office at 1980 West Broad Street, Columbus, Ohio 43223 and Travelers Marketing LLC ("Contractor") whose address is 47 Church St. Wellesley, MA 02482.

WHEREAS, ODOT is the owner of, and operates, the rest areas and travel centers identified in Exhibit A; and

WHEREAS, ODOT, pursuant to O.R.C. 5515.08, may contract to sell commercial advertising and sponsorship space within or on the outside surfaces of any building located within a roadside rest area under its jurisdiction in exchange for cash payment ; and

WHEREAS, ODOT and Contractor agree that, subject to the terms and conditions set forth in this Agreement, Contractor will act as ODOT's exclusive representative and Contractor regarding the development, marketing and sale of advertising and sponsorship at the rest areas and travel centers identified in Exhibit A; and

WHEREAS, Contractor desires to develop, market and sell commercial advertising and sponsorship as specified in this Agreement in accordance with the terms and conditions specified in this Agreement; and

WHEREAS, ODOT recognizes that Contractor shall have the exclusive right, except as specifically provided otherwise in this Agreement, to develop, market, and sell advertising at ODOT's rest areas and travel centers identified in Exhibit A; and

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, ODOT and Contractor agree as follows:

I. DESCRIPTION OF SERVICES.

Contractor will plan, implement, and deliver a comprehensive, high quality rest area advertising and sponsorship program (the "PROGRAM") in accordance with the terms and conditions of its July 24, 2012 proposal in response to the RFP #507-12 Smart 1 (the "Proposal") incorporated herein and made a part hereof and that complies with the requirements set forth below including, but not limited to marketing, sales, development of fee schedules and collection of revenue. In the event of any conflict between the provisions of this Agreement and the Proposal, the provisions of this Agreement shall control.

A. General Requirements:



1. Contractor must, at all times, represent the best interest of and endeavor to obtain the most competitive compensation for ODOT for the advertising and sponsorship rights granted by this Agreement.
2. Unless specifically provided otherwise in writing by ODOT, Contractor shall obtain approval of the designated ODOT official for all promotional content, announcements, advertisements, signage, display infrastructure and related marketing materials prior to use, which approval shall not be unreasonably withheld and shall be considered approved, if not denied or conditionally approved within ten (10) business days of Contractors request.
3. ODOT contracts separately with a private company to provide real time average speeds (updated every minute) in the following six metropolitan areas: Columbus, Cleveland, Cincinnati/Northern Kentucky, Dayton, Akron/Canton, and Toledo. This speed data is used by ODOT to create estimated travel times. This speed/travel time information is available for use by Contractor. ODOT will cooperate with Contractor in using this information.
4. ODOT manages a dynamic traveler information website. This system provides updated traveler information including: roadway conditions, accidents, road closures, road construction and weather related events. This website/information is available for use by Contractor. ODOT will cooperate with Contractor in using this information in the program.
5. Contractor shall not impose a fee upon visitors of any rest area or welcome center.

B. Specific Advertising and Sponsorship Requirements:

1. Available space for advertising and sponsorship includes interior and exterior building signage and other advertising areas within the rest area and welcome center grounds and on highway right-of-way acknowledgement signs as defined and permitted by the Federal Manual of Uniform Traffic Control Devices Section 2H.08 and FHWA Order 5160.1 (attached as Exhibit B). All exterior advertising and sponsorship must be shielded so it is not visible from the main traveled way except signage identified in the above cited Federal Manual of Uniform Traffic Control Devices.
2. ODOT will consider all forms of display infrastructure including, but not limited to, video screens, kiosks, electronic banners, and the use of wireless connectivity. Contractor shall be responsible for supplying all display infrastructures including any necessary data requirements. Contractor shall be responsible for all damages/repairs caused by affixing display infrastructure to an ODOT fixed asset.
3. Contractor shall be responsible for any renovations or modifications to ODOT facilities. Renovation or modification means a physical change to an ODOT facility necessary to accommodate the installation of display infrastructure including but not limited to the reconfiguration of the facility or the addition of electrical circuits, or the installation of other items that would be considered fixtures pursuant to the law of Ohio. Installation of display infrastructure shall not be considered renovation or modification. ODOT will provide electricity without charge to any display infrastructure during the term of this agreement. All

renovations and modifications of ODOT facilities must be pre-approved by ODOT's District Office of Facilities Management before construction begins. All renovations and modifications performed by Contractor will become the property of ODOT upon completion. Contractor must pay prevailing wage for any renovations or modifications to ODOT property.

4. All advertising and sponsorship display infrastructure and content must be approved by ODOT.
5. All advertising and sponsorship display infrastructure installed by Contractor shall be owned by Contractor except for right-of-way acknowledgement signs which shall be owned by ODOT. ODOT shall be responsible for maintenance and replacement of highway right of way acknowledgment signs. Contractor shall be responsible for the installation, repair and maintenance of acknowledgment sign logo panels only. In the event Contractor becomes aware of a right-of-way acknowledgement that has been damaged or destroyed, it shall notify ODOT in writing. ODOT shall repair or replace the sign within thirty (30) days. If ODOT does not repair or replace the sign within thirty (30) days Contractor may repair or replace the sign and withhold the cost of the work from revenue due to ODOT. Contractor shall use an ODOT prequalified sign contractor for all work within the right of way.
6. ODOT agrees to work with Contractor to remove existing signs and other items that interfere with Contractor's ability to install sponsorship and advertising ODOT agrees to limit items excluded pursuant to paragraph 10 below to a reasonable level.
7. ODOT is committed to creating and maintaining goodwill with the traveling public. All use of the rights granted by this Agreement will be in the best interest of ODOT and the State of Ohio, as solely determined by ODOT. Sponsorship and advertising may not imply in any way that ODOT or the State endorses the product or service promoted by the sponsorship or advertisement or makes any representation about the accuracy of the sponsorship or advertisement or the quality or performance of the product or service promoted by the sponsorship or advertisement.
8. Federal and State laws and rules regulate the use of rest area advertising. Contractor shall ensure that all signage is installed in accordance with state and federal regulations including but not limited to 23 U.S.C. 131(i), 23 C.F.R. 752.7 (c) and (d), 23 C.F.R. 752.8 (2),(3), and (4), and O.R.C. 5515.08.
9. Contractor must screen potential advertisers for compliance with ODOT's sponsorship and advertising policy as such may be amended from time to time. A draft version of ODOT's sponsorship and advertising policy is attached as Exhibit C.
10. It is the intent of this Agreement to allow the Contractor to leverage any advertising, sponsorship and marketing activities visible by the public within or upon any interior or exterior space of a rest area or welcome center, and on highway right-of-way Acknowledgement Signs as defined and permitted by the above mentioned Federal Manual

of Uniform Traffic Control Devices, from which revenue may be generated. Such activities shall exclude the following:

a. Any state agency's proprietary media, publications, products and/or promotional material distributed or displayed at ODOT rest areas and welcome centers unless specifically authorized by said agency.

b. ODOT proprietary media, publications, products and/or promotional materials unless specifically authorized by ODOT including, but not limited to, publications; marketing promotions, electronic media utilizing ODOT's websites and related content (including any web advertising).

II. **TERM OF AGREEMENT.** This Agreement shall be in effect from the date it is last signed by both parties to June 30, 2013, the "Initial Term," and shall automatically be renewed for the first Renewal Term, as herein provided, at the discretion of the Contractor. With respect to subsequent Renewal Terms, Contractor shall have the right to extend this Agreement, subject to approval by ODOT, which may be withheld only for material breach or failure to meet revenue targets of at least fifty percent (50%) of the projected revenue identified in Exhibit D, for four (4) additional terms of two (2) years, each a "Renewal Term". The Initial Term and the Renewal Terms are hereinafter referred to, collectively, as the "Term". Each Renewal Term shall be on the same terms and conditions as set forth herein. Contractor shall notify ODOT, in writing, of its request to renew or not renew this Agreement, at least sixty (60) days prior to the expiration of the then current term. ODOT shall notify Contractor of its approval of Contractor's renewal request or ODOT's election to terminate the agreement within ten (10) days of receipt of Contractor's notice of renewal.

III. **PROGRAM MANAGEMENT FEE.** Contractor shall be able to retain as compensation for services rendered, the percentage of Program revenue identified below (the "Program Management Fee"). ODOT acknowledges and agrees that Contractor may use subcontractors for various Program components as identified in Contractor's proposal. Contractor has currently subcontracted with SFC Ltd. ("SFC") and Triad Communications ("Triad"). ODOT agrees that Contractor may remove or replace said subcontractors during the term of this Agreement and that Contractor has no liability for payment if no Program revenue is being generated. The capital cost of installing highway right-of-way acknowledgement signs shall not be considered Program revenue. If the signs are installed by Contractor, Contractor shall be able to retain, in addition to any amount identified below, an amount equal to the actual cost of installation of said signs. Contractor shall use an ODOT prequalified contractor for all work within the right of way. If the signs are installed by ODOT, ODOT shall not be entitled to receive any compensation in addition to the amounts identified below.

ODOT acknowledges and agrees that Contractor shall be entitled to retain forty (40) percent of the revenue generated by all Rest Area and Safe Phone Zone sponsorship sales, including but not limited to sponsorship of the rest area or travel center facility and/or specific amenities at a facility.

ODOT acknowledges and agrees that Contractor shall be entitled to retain fifty (50) percent of all revenue generated by SFC or a subsequent replacement subcontractor for the sale of all printed environmental graphics advertisements including but not limited to windows, walls, parking lot, sidewalk and other advertising areas within the rest area and welcome center grounds in Year 1 and forty (40) percent in all subsequent contract years.

ODOT acknowledges and agrees that Contractor shall be entitled to retain sixty (60) percent of the revenue generated by Triad or a subsequent replacement subcontractor for the sale of digital display advertisements or other electronic advertisements, including but not limited to Wi-Fi, website or mobile phone advertising regarding these facilities in Year 1, and thirty-five (35) percent in all subsequent contract years.

The Program Management Fee for revenue generated from the sale of advertising or sponsorship not contemplated above shall be set by mutual agreement of the parties.

- IV. PROGRAM MANAGEMENT / PAYMENT. Contractor will manage all financial responsibilities associated with the Program including but not limited to, establishment of a separate account with coding necessary to produce detailed revenue, expense and other financial information and reports. Contractor will be solely responsible for the management and collection of all revenue and expenses associated with sale of advertising and sponsorship. Contractor will submit all revenue to ODOT, less the Program Management Fee, twice yearly on June 15 and December 15. Each payment will be accompanied by a summary reconciliation report and supporting documentation necessary for ODOT to recalculate and validate the payment remitted. Any and all fees charged by Contractor for participation in the Program shall be considered program revenue.
- V. EXCLUSIVITY. Except as otherwise provided in this Agreement, Contractor shall be the exclusive representative of ODOT, for the development, marketing and sale of commercial advertising and sponsorship at the facilities identified in Exhibit A.
- VI. USE OF ODOT FACILITIES. Contractor's employees, contractors, subcontractors, and agents who are performing services shall have access to ODOT's properties as is reasonably necessary to perform the services. Contractor shall be responsible for Contractor's personnel, observing all of ODOT's Policies and Procedures related to operations at rest areas and welcome centers. Contractor's services shall not interfere with the operations of ODOT or the traveling public.
- VII. TERMINATION.
- A. FOR DEFAULT. Either party may terminate this Agreement if any of the following occur: (i) all or a substantial portion of the assets of the other party are transferred to an assignee for the benefit of creditors or to a receiver or a trustee in bankruptcy; (ii) a proceeding is commenced by such party for relief under bankruptcy laws and such proceeding is not terminated or withdrawn within 90 days of its commencement; (iii) a proceeding is commenced against such party for relief under bankruptcy laws and such

proceeding is not terminated or withdrawn within 90 days of its commencement; or (iv) the other party breaches a material provision of this Agreement and such breach continues for 30 days after written notice thereof from the non-breaching party. Notwithstanding the foregoing, any failure to make payments due hereunder shall be considered a material breach of this Agreement if such failure is not cured within 10 days of written notice that such payment is due.

B. Upon termination of this Agreement Contractor shall remove all advertising, sponsorship and display infrastructure owned by Contractor and restore ODOT facilities to the same or better condition as those facilities existed prior to the installation of any display infrastructure, advertising or sponsorship. Alternatively, with ODOT approval, Contractor may allow all display infrastructure, advertising and sponsorship installed pursuant to this Agreement to remain in place. In the event Contractor elects to allow display infrastructure and advertising to remain, all display infrastructure and advertising shall become the property of ODOT.

Contractor recognizes that it will not be entitled to any compensation and hereby waives any claim it may be entitled to pursuant to Ohio Revised Code Chapter 163.

VIII. AUDIT / SAFEGUARDING PROGRAM REVENUE.

A. Contractor shall maintain all books, documents, papers, program agreements, accounting records, and other evidence pertaining to this Agreement, its revenues and expenditures, and shall provide such information upon request of ODOT or its designee and shall permit ODOT to examine said books, records, and the accounting procedures and practices of the Contractor relevant to this Agreement. The financial records shall be kept in accordance with Generally Accepted Accounting Principles (GAAP). The records shall be retained for three years after the last remittance to ODOT.

B. Contractor shall maintain the project records and files for the project. All project records are to be considered the property of ODOT and shall be made available to ODOT staff on or off the premises for review and audit within the state of Ohio. Upon termination of the Agreement, Contractor shall deliver all project records and files to ODOT in a format to be determined by ODOT or otherwise shall dispose of them as directed by ODOT.

C. Contractor shall provide the name and version of all financial software, program software, and inventory software to be used in providing services pursuant to this Agreement. Contractor must also demonstrate sound IT security and data retention policies, and comprehensive data recovery and back up plans to prevent unauthorized access or destruction of data.

D. Contractor shall, in administering the PROGRAM, ensure that appropriate segregation of duties exists to guard against fraud, theft, waste and abuse.

E. For the duration of this agreement, Contractor shall use the state fiscal year, which begins July 1 and ends June 30, as the fiscal reporting basis for presenting all revenues, expenses, and programmatic and financial reports to ODOT.

F. ODOT reserves the right to periodically request and receive current audited financial statements.

IX. STANDARD TERMS AND CONDITIONS.

A. **ASSIGNMENT.** Contractor shall not sell, transfer, assign, or otherwise dispose of the Agreement or any portion thereof, or of its right, title, or interest therein, without the prior written consent of ODOT, which consent shall not be unreasonably withheld, conditioned or delayed

B. **MECHANIC'S LIENS.** Contractor shall defend, indemnify, and hold ODOT harmless from any liens and encumbrances arising from any work performed or materials furnished by or at the direction of Contractor.

C. **NON-INTERFERENCE WITH ODOT.** Any construction, reconstruction, maintenance, repair, replacement and operation of Contractor's equipment shall be performed and arranged in a manner which will not materially interfere with ODOT's use of its Property and the free and safe flow of traffic.

D. **NO RECORDATION.** The parties hereto agree that neither party shall record any memorandum or instrument pertaining to this Agreement. However, both parties understand and agree that this agreement is subject to Public Records laws found in Ohio Revised Code §149.43.

E. APPLICABLE LAWS.

1. This Agreement and any claims arising out of this Agreement shall be governed by the laws of the State of Ohio. Any provision of this Agreement prohibited by the law of Ohio shall be deemed void and of no effect. Any litigation arising out of or relating in any way to this Agreement or the performance thereunder shall be brought only in the courts of Ohio, and the Contractor hereby irrevocably consents to such jurisdiction. To the extent that ODOT is a party to any litigation arising out of or relating in any way to this Agreement or the performance thereunder, such an action shall be brought only in a court of competent jurisdiction in Franklin County, Ohio.

2. Contractor shall comply with all federal, state, and local laws, ordinances, and rules applicable to the construction and operation of the program provided for in the Agreement.

F. **SUPPLEMENTAL AGREEMENT AND REMEDIES.** Contractor and ODOT may exercise those legal remedies as may be available to them in connection with any dispute arising out of this Agreement which cannot be settled by the parties hereto by supplemental agreement.

G. INDEMNITY AND INSURANCE.

1. Contractor agrees to indemnify, save, and hold harmless ODOT and the State of Ohio and all of its agents and employees from any and all claims, demands, actions, or causes of action of any nature or character arising out of, or by reason of, the administration of the PROGRAM, and further agrees to defend at its sole cost and expense any action or proceeding commenced for the purpose of asserting any claim of any character arising as a result of Contractor's administration of the Program whether or not such action or claim alleges negligence of the ODOT or the State of Ohio, its agents or employees, in supervision or approval of Contractor's activities, or failure to discover and/or prevent the Contractor's negligence.

ODOT is self-insured. Nothing in this Agreement shall be construed as an indemnification by ODOT for liabilities of the other party or third parties for property loss or damage or personal injury or death arising out of and/or during the activities and Services described in this Agreement. ODOT accepts all responsibility for any loss, liability, damages, or claims for injury, death, or whatever nature to any person, property, or business caused by or resulting from any event or occurrence in, on, or about any Property resulting from the negligent activities of ODOT, its agents, servants, employees.

2. It is hereby understood and agreed that any and all Contractor employees and all other persons employed by Contractor in the administration of the Program as provided for under this Agreement shall not be considered employees of ODOT or the State of Ohio and that any and all claims that may or might arise under the Workers Compensation Act of the State of Ohio on behalf of said employees while so engaged and any and all claims made by any third party as a consequence of any act or admission on the part of said employees while engaged in the administration of the Program shall in no way be the obligation or responsibility of ODOT or the State.

3. Contractor, at its own expense, shall carry and keep in force during the full term of this Agreement including any extensions or renewals thereof, a policy or policies of insurance which shall also name ODOT as an additional insured, in the minimum amounts and of the types as follows:

- (i) Commercial General Liability insurance, including bodily injury and property damage, with limits of not less than \$1,000,000 per occurrence, \$2,000,000 General Aggregate.
- (ii) Additional Umbrella insurance in the amount of \$2,000,000.
- (iii) Workers compensation insurance in a form and amount as required by state law.

4. The policy or policies for public liability insurance shall cover the administration of the PROGRAM, and Contractor shall furnish ODOT's designated contract officer with certificates of insurance evidencing such coverage. These certificates shall also provide that the insurance will not be modified or canceled without prior written notice to ODOT. Failure by Contractor to procure and maintain the insurance as set forth above shall be considered a default and cause for termination. Contractor shall, at least fifteen (15) calendar days prior to the expiration date or dates of expiring policies, deposit certified copies of renewal, or new policies, or other acceptable evidence of insurance with ODOT.

H. DRUG FREE WORKPLACE. Contractor agrees to comply with all applicable state and federal laws regarding drug-free workplace. Contractor shall make a good faith effort to ensure that its employees, while working on state property, will not purchase, transfer, use or possess illegal drugs or alcohol or abuse prescription drugs in any way.

I. EQUAL EMPLOYMENT OPPORTUNITY

1. In carrying out this contract, Contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, disability, sexual orientation, gender identity, genetic information, or age. Contractor will ensure that applicants are hired and that employees are treated during employment without regard to their race, religion, color, sex, national origin, disability, sexual orientation, gender identity, genetic information, or age. Such action shall include, but not be limited to, the following: Employment, Upgrading, Demotion, or Transfer; Recruitment or Recruitment Advertising; Layoff or Termination; Rates of Pay or other forms of Compensation; and Selection for Training including Apprenticeship.

2. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. Contractor will, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, national origin, disability, sexual orientation, gender identity, genetic information, or age. Contractor shall incorporate the foregoing requirements of this paragraph in all of its contracts for any of the work prescribed herein (other than subcontracts for standard commercial supplies or raw materials) and will require all of its subcontractors for any part of such work to incorporate such requirements in all subcontracts for such work.

3. Contractor agrees to fully comply with Title VI of the Civil Rights Act of 1964, 42 USC Sec. 2000. Contractor shall not discriminate on the basis of race, color, or national origin in its programs or activities. The Director of Transportation may monitor the Contractor's compliance with Title VI.

J. OHIO ETHICS AND ELECTION LAW REQUIREMENTS.

1. Contractor agrees that it is currently in compliance and will continue to adhere to the requirements of Ohio Ethics law as provided by Section 102.03 and 102.04 of the Ohio Revised Code.

2. Contractor affirms that, as applicable to it, no party listed in Division (I) or (J) of Section 3517.13 of the Revised Code or spouse of such party has made, as an individual, within the two previous calendar years, one or more contributions totaling in excess of \$1,000.00 to the Governor or to his campaign committees.

K. BANNING THE EXPENDITURE OF PUBLIC FUNDS ON OFFSHORE SERVICES

1. Contractor affirms to have read and understands Executive Order 2011-12K issued by Ohio Governor John Kasich and shall abide by those requirements in the performance of this Contract, and shall perform no services required under this Contract outside of the United States. The Executive Order is provided as an attachment and also is available at the following website: (<http://governor.ohio.gov/ExecutiveOrders.aspx>).

2. Contractor also affirms, understands, and agrees to immediately notify the State of any change or shift in the location(s) of services performed by the Contractor or its subcontractors under this Contract, and no services shall be changed or shifted to a location(s) that are outside of the United States.

3. Termination, Sanction, Damages:

(i) If Contractor or any of its subcontractors perform services under this Agreement outside of the United States, the performance of such services shall be treated as a material breach of the Agreement. The State is not obligated to pay and shall not pay for such services. If Contractor or any of its subcontractors perform any such services, Contractor shall immediately return to the State all funds paid for those services. The State may also recover from the Contractor all costs associated with any corrective action the State may undertake, including but not limited to an audit or a risk analysis, as a result of the Contractor performing services outside the United States.

(ii) State may, at any time after the breach, terminate the Agreement, upon written notice to the Contractor. The State may recover all accounting, administrative, legal and other expenses reasonably necessary for the preparation of the termination of the Agreement and costs associated with the acquisition of substitute services from a third party.

(iii) If the State determines that actual and direct damages are uncertain or difficult to ascertain, the State in its sole discretion may recover a payment of liquidated damages in the amount of 0% of the value of the Agreement.

(iv) The State, in its sole discretion, may provide written notice to Contractor of a breach and permit the Contractor to cure the breach. Such cure period shall be no longer than 21 calendar days. During the cure period, the State may buy substitute services from a third party and recover from the Contractor any costs associated with acquiring those substitute services.

(v) Notwithstanding the State permitting a period of time to cure the breach or the Contractor's cure of the breach, the State does not waive any of its rights and remedies provided the State in this Agreement, including but not limited to recovery of funds paid for services the Contractor performed outside of the United States, costs associated with corrective action, or liquidated damages.

L. WAIVERS AND AMENDMENTS. No provisions of this Agreement shall be deemed waived, amended or modified by either party, unless such waiver, amendment or modification is in writing and signed by the authorized representative of the party against whom such waiver, amendment or modification is enforced.

M. SEVERABILITY. The provisions of this Agreement are severable. If a court of competent jurisdiction rules that any provision of this Agreement is invalid or unenforceable, such provision shall be replaced by another provision which is valid and enforceable and

most closely approximates and gives effect to the intent of the invalid or unenforceable provision. Furthermore, such ruling shall not affect the validity or enforceability of any other provision of this Agreement.

N. SURVIVAL. The terms, conditions and warranties contained in this Agreement shall survive the termination or expiration of this Agreement.

O. COUNTERPARTS. This Agreement may be executed in any number of counterparts, any of which may be executed and transmitted by facsimile or other electronic method, and each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

P. SIGNATORY AUTHORITY. The individual or individuals signing on behalf of any corporation, partnership, trust or other entity signing this Agreement represents to all parties to this Agreement that he or she has full authority to do so, has received all required consents, and that his or her signature (together with the signature or signatures of any other individual signing below on behalf of such corporation, partnership, trust or other entity) is (are) the only signatures required to bind the person on whose behalf he or she is signing this Agreement.

Q. ENTIRE AGREEMENT. This Agreement, any exhibits specifically referred to herein and attached hereto contemporaneously with the execution hereof, and any and all executed written requests for optional services constitutes the entire agreement between the parties with respect to the subject matter hereof. All prior agreements, representations, statements, negotiations, understandings and undertakings are superseded by this Agreement.

R. Contractor affirmatively represents that it is not subject to a Finding for Recovery under R.C. 9.24. Contractor agrees that if this representation is deemed to be false, the contract shall be void ab initio as between the parties to this contract, and any funds paid by ODOT hereunder shall be immediately repaid to ODOT, or an action for recovery may be immediately commenced by ODOT for recovery of said funds.

S. NOTICES. All notices under this Agreement and any individual site agreements must be in writing and shall be deemed validly given if sent by overnight delivery or regular certified mail, return receipt requested, effective the third day following the date the notice is postmarked. Notices should be addressed as follows:

ODOT: Ohio Department of Transportation
Office of Facilities Management
1980 West Broad Street, 4th Floor
Columbus, Ohio 43223
Attention: Steve Masters
Telephone: (614) 752-0415

Travelers Marketing:
Travelers Marketing

Attn. David E. Stein
47 Church St. Suite 301
Wellesley, MA 02482
Telephone: 781.416.5000

Either party may change the designated recipient of notices and the address by so notifying the other party in writing.

IN WITNESS WHEREOF, the Parties have entered into this Contract as of the last date written below.

**CONTRACTOR
CONTRACTOR**

**STATE OF OHIO
Department of Transportation**

By: _____
David E. Stein

By: Jerry Wray
Jerry Wray

Title: Managing Partner

Director

Date: _____

Date: 8-29-12

Approved as to form and legality

BY: [Signature]

Attorney for ODOT

ASSIGNMENT

This agreement ("ASSIGNMENT") made this 10th day of ^{April} March, 2015, ("Effective Date") among Travelers Marketing, LLC, located at 47 Church St. Wellesley, MA 02482 ("TM"), Triad Communications, Inc., located at 2006 Fourth Street, Cuyahoga Falls, OH 44221 ("Triad") and SFC Graphics, Inc., located at located at 110 E. Woodruff Ave. Toledo, OH 42604- ("SFC" together with Triad "Assignees").

RECITALS

WHEREAS, the Ohio Department of Transportation ("ODOT") on May 21, 2012 issued a Request for Proposal #507-12 (SMART 1), (the "RFP") to seek a prime contractor to act as ODOT's exclusive representative and contractor to plan, implement and deliver a comprehensive rest area advertising and sponsorship program, including, but not limited to, the marketing and sale of various advertising and sponsorships at rest areas and travel centers as depicted in the RFP (the "Program");

WHEREAS, TM, with the assistance of the Assignees, submitted a response to the RFP, dated July 24, 2012 (the "Proposal") and was awarded a contract by ODOT, executed and dated August 29, 2012, to act as ODOT's exclusive representative and contractor to implement the Program (the "Prime Contract" attached herewith as Exhibit A). The RFP and the Proposal are incorporated herein by reference.

WHEREAS, TM executed individual subcontractor agreements with the Assignees and now desire to assign all its rights, title, interests and obligations in and under to the Prime Contract to the Assignees to be held jointly by them, and the Assignees desire to accept such assignment and assume all the Prime Contract's rights, title interests and obligations, and

WHEREAS, the Prime Contract permits such an assignment with ODOT's approval and ODOT has approved such assignment as indicated herein.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

1. As of the Effective Date of this Agreement, TM hereby assigns, transfers, and sets over to the Assignees all its right, title, interest ("Rights") and all its responsibilities and obligations ("Obligations") in and under the Prime Contract to be held jointly by the Assignees.



ALL-STATE LEGAL®

EXHIBIT

B

2. The Assignees hereby accept and assume all Rights and Obligations in and under the Prime Contract.

3. This Assignment may be executed in any number of counterparts, any of which may be executed and transmitted by facsimile or other electronic method, and each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

4. This Assignment and any claims arising out of this Assignment shall be governed by the laws of the State of Ohio. Any litigation arising out of or relating in any way to this Assignment shall be brought only in the courts of Ohio, and the all parties to this Assignment hereby irrevocably consent to such jurisdiction. To the extent that ODOT is a party to any litigation arising out of or relating in any way to this Assignment such an action shall be brought only in a court of competent jurisdiction in Franklin County, Ohio.

IN WITNESS WHEREOF, the parties hereto have caused this Assignment to be executed the day and year first above written.

Travelers Marketing, LLC

David E Stein
Signature

Name: DAVID E STEIN
Title: MANAGING PARTNER

SFC Graphics, Inc.

Michael J. Regan
Signature

Name: Michael J. Regan
Title: Executive Vice President

Triad Communications, Inc.

Signature

Name:
Title:



2. The Assignees hereby accept and assume all Rights and Obligations in and under the Prime Contract.
3. This Assignment may be executed in any number of counterparts, any of which may be executed and transmitted by facsimile or other electronic method, and each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
4. This Assignment and any claims arising out of this Assignment shall be governed by the laws of the State of Ohio. Any litigation arising out of or relating in any way to this Assignment shall be brought only in the courts of Ohio, and the all parties to this Assignment hereby irrevocably consent to such jurisdiction. To the extent that ODOT is a party to any litigation arising out of or relating in any way to this Assignment such an action shall be brought only in a court of competent jurisdiction in Franklin County, Ohio.

IN WITNESS WHEREOF, the parties hereto have caused this Assignment to be executed the day and year first above written.

Travelers Marketing, LLC

Signature

Name:

Title:

SFC Graphics, Inc.

Signature

Name: Michael J. Regan

Title: Executive Vice President

Triad Communications, Inc.

Signature

Name:

Title:



1. As of the Effective Date of this Agreement, TM hereby assigns, transfers, and sets over to the Assignees all its right, title, interest ("Rights") and all its responsibilities and obligations ("Obligations") in and under the Prime Contract to be held jointly by the Assignees.
2. The Assignees hereby accept and assume all Rights and Obligations in and under the Prime Contract.
3. This Assignment may be executed in any number of counterparts, any of which may be executed and transmitted by facsimile or other electronic method, and each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
4. This Assignment and any claims arising out of this Assignment shall be governed by the laws of the State of Ohio. Any litigation arising out of or relating in any way to this Assignment shall be brought only in the courts of Ohio, and the all parties to this Assignment hereby irrevocably consent to such jurisdiction. To the extent that ODOT is a party to any litigation arising out of or relating in any way to this Assignment such an action shall be brought only in a court of competent jurisdiction in Franklin County, Ohio.

IN WITNESS WHEREOF, the parties hereto have caused this Assignment to be executed the day and year first above written.

Travelers Marketing, LLC

Signature

Name:

Title:

SFC Graphics, Inc.

[Redacted]

Signature

Triad Communications, Inc.

Richard Kerzala, President
Signature

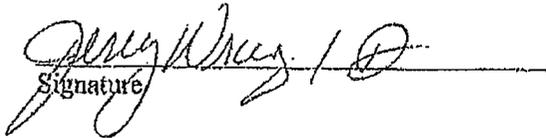
WRITTEN CONSENT AND WAIVER

Pursuant to Paragraph IX(A) of the Prime Contract, ODOT hereby consents to the foregoing Assignment.

Additionally, in accordance with IX(L), ODOT hereby irrevocably waives the following provisions of the Prime Contract as assigned:

- The entirety of Paragraph IV, requiring the Contractor to manage the financial responsibilities with the Program;
- The entirety of the first paragraph of Paragraph IX(G)(1), requiring the Contractor to indemnify, save and hold harmless ODOT and the State of Ohio; and
- The entirety of Paragraph IX(G)(3)(i) and (ii) and Paragraph IX(G)(4), requiring Contractor to procure, carry and keep in force a commercial general liability insurance policy or policies and additional umbrella insurance.

State of Ohio
Department of Transportation


Signature

JERRY WRAY
Name:

Title: DIRECTOR

Date: 17 APR 2015



STARK & KNOLL

EXPECT EXCELLENCE

FILED
COURT OF CLAIMS
OF OHIO

2015 JUN 15 AM 11:18

HAROLD M. SCHWARZ, ESQ.
Email: hschwarz@stark-knoll.com
330.376.3300 - Phone
330.572.1316 - Direct Dial
330.572.1266 - Direct Facsimile

June 12, 2015

2015-00575

VIA FEDEX

Court of Claim of Ohio
65 S. Front St., #1
Columbus, OH 43215

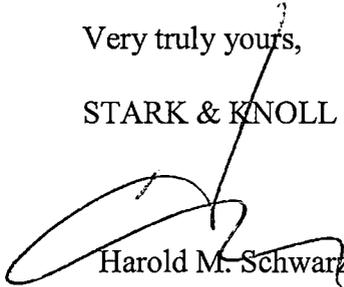
RE: Triad Communications, Inc. v. Ohio Department of Transportation

Dear Sir or Madam:

Enclosed please find an original and three (3) copies of a *Complaint* which I ask that you file with your Court and return a time-stamped copy to our office in the self-addressed, stamped envelope provided. I have also enclosed a check in the amount of \$25.00 for the filing fee. */a*

Very truly yours,

STARK & KNOLL CO., L.P.A.


Harold M. Schwarz, Esq.

Enclosure

HMS/emm

3475 Ridgewood Road • Akron, Ohio • 44333-3163

Telephone: 330.376.3300 • Facsimile: 330.376.6237 • Website: stark-knoll.com

Stark & Knoll Co., A Legal Professional Association