



THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF TRANSPORTATION
MASSACHUSETTS HIGHWAY DEPARTMENT

EOT

DEVAL L. PATRICK
GOVERNOR

TIMOTHY P. MURRAY
LIEUTENANT GOVERNOR

BERNARD COHEN
SECRETARY

LUISA PAIEWONSKY
COMMISSIONER

Agreement Modification Notice

December 3, 2008

Travelers Marketing
568 Washington Street
Wellesley, MA 02482

Agreement Number: 9544
Action Item #: 23
Action Item Date: December 3, 2008

Dear Sir or Madam,

Enclosed is a signed copy of your Agreement Modification between the Massachusetts Highway Department and Travelers Marketing relative to an extension of the completion date to July 31, 2013 regarding the MassHighway HELP Program, Statewide.

Please insert this modification into the original agreement.

Thank you,

Tanya M. Barros
Director of Contracts & Records

TMB/shsc

cc: Michelle Maffeo, ITS Programs
Carol Cox, ITS Programs
Contracts & Records

**The Commonwealth of Massachusetts
Massachusetts Highway Department
CONTRACT/AGREEMENT MODIFICATION**

Type of Modification: "Extended Term" Renewal Option

Type of Contract/Agreement: Sponsorship Contract/Agreement #: 9544

Division: Highway Operations Project I.D. #: N/A

Project/Location: N/A

Vendor/Party Name and Address: Travelers Marketing

568 Washington Street, Wellesley, MA 02482

Account No: N/A Federal Aid No.: N/A

Description:

MassHighway and the Commerce Insurance Company ("CIC") have agreed to a renewal of their agreement for an additional five years, through July 31, 2013. Therefore MassHighway has exercised its discretion to renew the agreement with Travelers Marketing TM for another five ^{1/2} year period through July 31, 2013.

The parties to the Agreement intend to modify certain of the terms and conditions of the Agreement as set forth in this Amendment and Restatement.

Current Contract/Agreement Information

Start Date: November 13, 2002

End Date: JANUARY 1, 2008

Maximum Obligation: 0

Proposed Contract/Agreement Information
("N/C" for no change)

End Date: JULY 31, 2013

Net Time Change: 5 1/2 YEARS

Maximum Obligation: 0

Net Dollar Change: 0

Approvals:

Michelle Maffeo 11/14/08
Submitted by Date

[Signature] 11/14/08
Head of Originating Division Date

Sanya P. Barros 12-3-08
Budget/C.E.P.O. Date

Contracts & Records Date

Paul A. Tannery 12/2/08
Chief Engineer Date

Margellen [Signature] 11/2/08
Chief Counsel Date

[Signature] 12/3/08
Commissioner Date

N/A
Secretary Date

**Amendment and Restatement
Of
Agreement
By and Between
The Massachusetts Highway Department
And
Travelers Marketing**

This Amendment and Restatement of Agreement (the "Agreement") is made as of this 3rd day of ~~December~~ 2008 by and between the Massachusetts Highway Department (MassHighway) and Travelers Marketing (TM) of 568 Washington Street, Wellesley, MA 02482.

Recitals

WHEREAS, MassHighway has been supporting a Motorist Assistance Program (MAP), formerly called the Highway Emergency Locator Patrol (HELP), for the purposes of providing emergency assistance to stranded motorists and disabled vehicles, reducing traffic congestion by facilitating rapid clearance of disabled vehicles and/or debris accidents, and reducing the risk of additional injuries by taking steps to reduce traffic congestion; and,

WHEREAS, MassHighway has entered into agreements with various entities to provide for the vehicles, personnel, emergency equipment and supplies, and other materials required for the successful operation of MAP; and

WHEREAS, MassHighway and The Commerce Insurance Company ("CIC") have agreed to a renewal of their agreement for an additional five ~~1/2~~ years, through July 31, 2013; and

WHEREAS, MassHighway has exercised its discretion to renew the agreement with TM for another five ~~1/2~~ year period through July 31, 2013; and

WHEREAS the parties to the Agreement intend to modify certain of the terms and conditions of the Agreement as set forth in this Amendment and Restatement;

NOW THEREFORE, in consideration of the mutual promises, terms and covenants contained herein, the parties to the agreement do hereby agree as follows:

Scope of Services

TM shall be responsible, in conjunction with Mass Highway, for the branding, promotion

advertising and public awareness of the MAP program, including the following program management services:

- Conduct quarterly team meetings with MassHighway
- Publish quarterly activity reports and provide those reports to MassHighway
- Manage the billing, collection and payment to MassHighway
- Analyze and Catalogue customer Comment cards
- Review monthly performance reports and communicate status to MassHighway
- Coordinate annual program evaluation meeting with MassHighway and CIC
- Under the direction of MassHighway, communicate with CIC regarding Program elements, including, but not limited to promotions, Comment cards and signage.
- Under the direction of MassHighway, develop draft press releases and other marketing materials as requested, including a “Re-Launch Event”.
- Under the direction of MassHighway, identify and coordinate three (3) to five (5) annual special events promoting public awareness of the MAP Program
- Under the direction of MassHighway, assist in the development and conduct of MAP Program driver training.

TM’S participation in promotional and driver training activities is to be coordinated through MassHighway. The total cost of these efforts, including the MAP personnel cost to participate, will be a factor in MassHighway’s decision to undertake any of these activities. Decisions about which marketing/public awareness/training activities should be pursued remains entirely within the control of MassHighway.

Sponsorship Components

MAP Program Fleet

The MAP Program consists of a 22 vehicle fleet to be increased to 25 vehicles on or about January 1, 2009; which will include 21 vans and 4 ramp/tow trucks. Sponsorship space is available on both vehicle types.

Promotional-items

Such items may include duffel bags, first aid kits and other promotional items that would carry the MAP Program name, MassHighway and the CIC Logo. The cost of any promotional items will be paid for by TM and CIC. Any promotional items will need the prior written approval of MassHighway before purchase and distribution.

Service Hours

The MAP fleet daily service hours are from 6:30 AM to 9:30AM and 3:30 PM to 6:30PM, Monday through Friday and will be increased to 6:00AM to 10:00AM and from 3:00PM to 7:00PM beginning on or about January 1, 2009.

Introduction of Additional Advertising Venues/Partnerships

MassHighway reserves the right to request Travelers Marketing to recommend pricing structures or charges for, and identify advertising sponsorship of additional advertising venues. These might include, but are not limited to:

- Branding, signs, posters, promotional pamphlets/brochures, special event collateral etc.

As directed by MassHighway, Travelers Marketing shall from time to time bring to MassHighway's attention, for its consideration, with appropriate decision time-frame, new and alternative advertising, co-op or promotional opportunities for MassHighway's participation.

In furtherance of the above, TM will present the results of further research into program ideas such as (a) selling advertising on the official road maps; (b) developing new sales and marketing strategies and pricing for the TODS and LOGO board program and (c) creation of other sponsorship program models. TM understands and agrees that the fee TM receives under this Amendment and Restatement of the Agreement, includes TM's services under this task and TM will be ineligible to participate financially in any program that it assists in developing.

Indemnification

Travelers Marketing agrees to indemnify, defend and hold harmless MassHighway against and from any and all claims, damages and judgments brought or asserted by or on behalf of any person, firm or corporation arising during (even though asserted after) the term of the Agreement, from the conduct or management of or from any work or thing done in connection with Travelers Marketing's right to find a sponsor for MassHighway's MAP Program. Travelers Marketing will further indemnify, defend and hold harmless MassHighway from any and all claims, damages and judgments arising or asserted from any breach or default on the part of Travelers Marketing in the performance of any covenant or agreement which Travelers Marketing must perform under the term of this Amendment and Restatement of Agreement.

In addition, Travelers Marketing's obligation to indemnify, defend and hold harmless MassHighway shall include but not be limited to the following claims, damages, or judgments:

- Libelous or controversial advertisements, notices or publications, and all actions or decisions pertaining thereto, whether actual or alleged, arising out of or in any

manner connected with the exercise of the rights, powers and privileges granted to Travelers Marketing.

- Injunctions as well as damages for infringement of any copyrights, trademarks, or patents by the use of any advertisement, notice publication, device, process or equipment in connection with the exercise of the rights, powers and privileges granted to Travelers Marketing.
- Failure of Travelers Marketing to comply with any requirement of any public authority or with any provision of any state, federal or local statute, ordinance or regulation applicable to Travelers Marketing or to its use of MassHighway's MAP Program within thirty days of notification that it is not in compliance with such provision.

In addition, Travelers Marketing will defend MassHighway against any claim, damage or judgment arising or asserted from its right to find a sponsor for MassHighway's MAP Program and will indemnify and hold harmless MassHighway from all reasonable costs, counsel fees, expenses and liabilities incurred in connection with or in defending any such claim, damage or judgment in any action or proceeding. This provision shall be waived by MassHighway, if such claim, damage or judgments arises from actions taken solely by MassHighway at any time prior to or during the term of this agreement.

Term of the Agreement

The Agreement shall remain in effect until July 31, 2013, unless terminated earlier in accordance with the terms of this Agreement.

Assignment Transfers of Agreements for Advertising

Upon expiration of the term of the agreement, or upon earlier termination not attributable to default by the Travelers Marketing, Travelers Marketing shall immediately assign and transfer to MassHighway, all agreements for sponsorship of the MassHighway MAP Program, which are in effect, and such agreements shall there upon become the property of MassHighway.

Annual Fee

All payments are due on January 1st, April 1st, July 1st, and October 1st for the preceding quarter immediately following. Checks will be made payable to the Commonwealth of Massachusetts. The first payment to MassHighway will be made at the first payment due date following the signing of the Amendment and Restatement of the Agreement.

Gross Revenue wherever used in the Agreement shall mean the total dollar amount of all invoices issued to CIC and/or their agents by Travelers Marketing during a specified period for MassHighway sponsorship sales, prior to commissions or sales allowances of

any kind. For the purpose of calculating the revenue split between MassHighway and Travelers Marketing any "extraordinary" expense to be deducted for Gross Billings must be authorized in writing by MassHighway. Travelers Marketing shall not have the right to accept payment from advertisers in the form of goods, services, or other non-cash reimbursements.

The Gross Revenue will be split to parallel the level of effort and associated costs over the contract term. As a result, it is determined that TM shall receive a flat fee of 10% of the Gross Revenue collected from CIC during each year of the renewal term and MHD shall receive 90% of the Gross Revenue.

Annual Accounting

At the close of each contract year, there shall be an annual accounting, the purpose of which shall be to verify the total money due MassHighway in the contract year.

Travelers Marketing shall bear the cost of and provide to MassHighway a certified, statement of Gross Billings for the MAP Program prepared in conformance with generally accepted auditing standards and accompanied by an opinion rendered by a Certified Public Accountant for each contract year. Prior to such engagement, MassHighway must approve the selected Certified Public Accountant and the audit scope. The audit scope will not extend beyond billings related to the MAP Program. Said statement shall be delivered to MassHighway, ITS Programs Unit, within ninety days of the end of each contract year.

Travelers Marketing shall keep full and accurate accounting books and records of the items of revenue and expense of the service to be provided under this agreement in accordance with Generally Accepted Accounting Principles. All documents shall be preserved for at least three years after final payment pursuant to this Agreement. Travelers Marketing further agrees to make all said accounting books and records, and any other written or printed matter pertaining to the service, available to MassHighway or its duly appointed representatives and to cause its officers or employees to cooperate fully with MassHighway in explanation of any and all items therein.

The Commissioner of MassHighway, or his/her designee, shall have the right at reasonable times and upon reasonable notice to examine the books, records, and other compilations of data of Travelers Marketing which pertain to the performance of the provisions and requirements of this Agreement.

MassHighway will verify the accuracy of the monies paid in the agreement year by multiplying the Gross Billings, per the audited financial statement, by the quoted percentage. If it is determined that additional monies are owed by Travelers Marketing, Travelers Marketing shall remit payment including any interest, to MassHighway upon notification by MassHighway. Outstanding balances will be assessed at prime plus 1% plus interest to be compounded monthly, beginning 31 days following the six month

period in which the obligation was created. The rate will be the Prime Rate, as published by Bank of America on the next business day following the close of the Agreement Year. If it is determined that MassHighway has been overpaid by Travelers Marketing, all monies refundable, as determined, will be due from MassHighway and payable to Travelers Marketing within 30 days of determination. No interest will be earned on amounts determined refundable.

Default by Travelers Marketing

In the event that Travelers Marketing shall default in making any of the payments herein required to be made by it as and when the same shall become due and payable and such default shall continue for 20 days after written demand for such payment; or if Travelers Marketing shall default in the performance of any of its other responsibilities hereunder and such default shall continue for 30 days after written demand for performance; or if Travelers Marketing shall be adjudged bankrupt or a receiver or trustee shall be appointed for the Travelers Marketing's property and such adjudication or appointment shall not be vacated within 30 days; or if Travelers Marketing shall become insolvent or make a general assignment for the benefit of creditors or files a voluntary petition in bankruptcy or for reorganization, then MassHighway may terminate the contract immediately and without further notice.

Examination and Audit of Travelers Marketing's Records

The Commissioner of MassHighway or his/her designated agent shall have the right at any time to examine the agreements and arrangements of Travelers Marketing relating to sponsorship of the MAP Program of MassHighway and to examine and audit the billings, Accounts Receivable/Accounts Payable records of service to advertisers and books of account of the advertising business of Travelers Marketing to the extent deemed by the Commissioner of MassHighway or his/her designated agent to be necessary in order to determine the facts relevant and material to the rights of MassHighway under the Agreement.

Travelers Marketing, upon reasonable notice by MassHighway, agrees to make available to MassHighway personnel all of the financial records which pertain to the Agreement.

Insurance to be carried by Travelers Marketing

Travelers Marketing will carry and maintain, throughout the term of this Amendment and Restatement of the Agreement all insurance required under this section and MassHighway will be named as an additional insured on all such policies.

- Commercial General Liability Insurance -Travelers Marketing shall carry and maintain Commercial General Liability Insurance for personal injury, bodily injury and property damage, with limits not less than \$1,000,000 per occurrence; \$1,000,000 annual aggregate, covering all work and services performed under the

contract. Such insurance shall include all operation of the insured, shall include contractual liability covering this Agreement, and shall be written on an occurrence basis (as opposed to a claims made basis).

- Umbrella Liability Insurance - Travelers Marketing shall carry and maintain Umbrella Liability Insurance with limits not less than \$1,000,000 per occurrence and annual aggregate, covering all work and services performed under the Agreement. Such insurance shall be written on an occurrence basis.

Notice

Unless otherwise specified, any notice hereunder shall be in writing and shall be deemed given when delivered to either party of deposited in the U.S. mail, postage prepaid and addressed as follows:

To MassHighway:

Massachusetts Highway Department
10 Park Plaza, Room 7111
Boston, MA 02116
Attn: Michelle Maffeo
Director, ITS
Programs

To Travelers Marketing:

Travelers Marketing
568 Washington Street
Wellesley, MA 02482
Attn: Rita Gallagher

Severability

If any term, clause or provision hereof is held invalid or unenforceable by a court of competent jurisdiction, such invalidity shall not affect the validity or operation of any other term, clause or provision and such invalid term, clause or provision shall be deemed to be severed from the Amendment and Restatement of the Agreement

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective authorized offices as of the year and day written.

Massachusetts Highway Department

By: 

Commissioner

Date: 12/3/08

Travelers Marketing

By: 

11/10/08