



COUNTY COMMISSION

BALDWIN COUNTY
312 Courthouse Square, Suite 12
Bay Minette, Alabama 36507
(251) 580-2564
(251) 580-2500 Fax
agary@baldwincountyal.gov
www.baldwincountyal.gov

ANU GARY
Records Manager

MONICA E. TAYLOR
Assistant Records Manager

March 26, 2015

Mr. John McNutt
McNutt & Company, LLC
Post Office Box 2708
Auburn, Alabama 36831

**RE: Baldwin Rural Area Transportation System (BRATS) Advertising Program
Contract for Services**

Dear Mr. McNutt:

Please find enclosed a **fully executed original** *Contract for Services* approved during the October 7, 2014, Baldwin County Commission meeting with McNutt and Company, LLC, for advertising broker services for the Baldwin Rural Area Transportation System's (BRATS) Advertising Program.

This *Contract* commenced on November 1, 2014, and shall expire on October 31, 2017.

If you have any questions or need further assistance, please do not hesitate to contact Chandra Middleton, Assistant BRATS Director, at (251) 972-8577.

Sincerely,

ANU GARY, Records Manager
Baldwin County Commission

AG/met Item GA1

cc: Chandra Middleton
Taylor Rider
Cal Markert

ENCLOSURE

State of Alabama)
County of Baldwin)

RECEIVED
OCT 30 2014
BY: MEH

CONTRACT FOR SERVICES

This Contract for Services is made and entered into by and between the County of Baldwin (hereinafter called "COUNTY") acting by and through its governing body, the Baldwin County Commission and McNutt & Company, LLC, (hereinafter referred to as "PROVIDER").

WITNESSETH:

Whereas, the COUNTY offers, through their BRATS Department, safe, affordable, and reliable transportation and related services to the general citizenry of Baldwin County in order to help promote a strong economy, protect the environment, conserve energy, and enhance lives; and

Whereas, at its regular held meeting on Tuesday, October 7, 2014, the COUNTY authorized staff to enter into a contract with McNutt & Company, LLC.

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained the sufficiency of which being hereby acknowledged, PROVIDER and COUNTY do hereby agree as follows:

- I. Definitions. The following terms shall have the following meanings:
 - A. COUNTY: Baldwin County, Alabama
 - B. COMMISSION: Baldwin County Commission
 - C. PROVIDER: McNutt & Company, LLC

- II. Obligations Generally. The COUNTY hereby employs, and the PROVIDER agrees to perform for the COUNTY, those services as hereinafter set forth. This document shall serve as the binding contract for the services of PROVIDER. PROVIDER shall immediately commence performance of the services outlined herein upon full execution of this Contract. All work shall be commenced and completed in a timely manner as, and at the times, herein set out.

- III. Recitals Included. The above recitals and statements are incorporated as part of this Agreement, and shall have the effect and enforceability as all other provisions herein.

- IV. Professional Qualifications. For the purpose of this contract, the PROVIDER represents and warrants to the COUNTY that it possesses the professional, technical, and administrative personnel with the specific experience and training necessary to provide the professional services required herein.

- V. No Prohibited Exclusive Franchise. The COUNTY neither perceives nor intends, by this Contract, a granting of an exclusive franchise or violation of Art. I, Section 22 of the Alabama Constitution.



- VI. Representation/Warranty of Certifications, Etc. PROVIDER represents and warrants that PROVIDER is presently certified, licensed and otherwise permitted under all necessary and applicable laws and regulations to perform the services herein, and that PROVIDER shall renew, maintain, and otherwise ensure that all such certifications, licenses, and permits are current and valid, without interruption, for and through completion of the services. The representation and warranty aforesaid is a material inducement to the COUNTY in entering this Contract, and the parties agree that the breach thereof shall be deemed material at the County's option.
- VII. Legal Compliance. PROVIDER shall at all times comply with all applicable Federal, State, local and municipal laws and regulations without limitations. Federal clauses may be reviewed in Attachment A.
- VIII. Independent Contractor. PROVIDER acknowledges that it is an independent contractor, and PROVIDER shall at all times remain as such in performing the services under this Contract. PROVIDER is not an employee, servant, partner, or agent of the COUNTY and has no authority, whether express or implied, to contract for or bind the COUNTY in any manner. The parties agree that PROVIDER shall be solely responsible for and shall have full and unqualified control over developing and implementing its own means and methods, as it deems necessary and appropriate in providing the aforementioned services, and that the COUNTY's interests herein are expressly limited to the results of said services. PROVIDER is not entitled to unemployment insurance benefits, and PROVIDER is responsible for and obligated to pay any and all federal and state income tax on any monies paid pursuant to this Contract.
- IX. No Agency Created. It is neither the express nor the implied intent of PROVIDER or COUNTY to create an agency relationship pursuant to this Agreement. Therefore, the PROVIDER does not in any manner act on behalf of COUNTY, and the creation of such a relationship is prohibited and void.
- X. Unenforceable Provisions. If any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality or unenforceability shall not affect any other provision hereof. This Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
- XI. Entire Agreement. This agreement represents the entire and integrated agreement between COUNTY and PROVIDER and supersedes all prior negotiations, representations, or agreements, either written or oral. This agreement may be amended only by written instrument signed by all parties.
- XII. Failure to Strictly Enforce Performance. The failure of the COUNTY to insist upon the strict performance of any of the terms, covenants, agreements and conditions of this Contract shall not constitute, and shall never be asserted by PROVIDER as constituting, a default or be construed as a waiver or relinquishment of the right of the COUNTY to thereafter enforce any such term, covenant, agreement, or condition, but the same shall continue in full force and effect.

XIII. Assignment. This Contract or any interest herein shall not be assigned transferred or otherwise encumbered by PROVIDER without the prior written consent of the COUNTY, which may be withheld or granted in the sole discretion of the COUNTY.

XIV. Ownership of Documents/Work. The COUNTY shall be the owner of all copyright or other intellectual property rights in reports, documents and deliverables produced and paid for under this Contract, and to the extent permitted by Alabama law, any such material may be reproduced and reused at the discretion of the COUNTY without payment of further consideration.

PROVIDER shall not transfer, disclose, or otherwise use such information for any purpose other than in performance of the services hereunder, without the COUNTY's prior written consent, which may be withheld or granted in the sole discretion of the COUNTY.

XV. Notice. All notices provided for under this agreement must be hand delivered or sent by certified mail, return receipt requested. Such notice shall be sent to the following addresses:

For the Baldwin County Commission:
B. Taylor Rider
Director of Transportation (BRATS)
Baldwin County Commission
P.O. Box 907
Robertsdale, AL 36567

For the Provider:
Mr. John McNutt
McNutt & Company, LLC
P.O. Box 2708
Auburn, AL 36831

Either of these parties may change the address or person to which notices are sent by providing written notification of such change to the other party hand delivered or sent by certified mail, return receipt requested.

XVI. Services to be Rendered. PROVIDER is retained by the COUNTY as a professionally-qualified Contractor. The general scope of work for the services shall include all the terms and Conditions of Scope of Work, the same being expressly incorporated herein by reference, and without limitation will encompass:

**“Attachment B - Scope of Work for Baldwin Rural Area
Transportation System’s Advertising Program”**

A. PROVIDER will provide ongoing communications with COUNTY regarding this service, including updates, emails and etc. as requested. Additionally, PROVIDER will meet with COUNTY as needed or requested.

- B. PROVIDER is responsible for the professional quality, technical accuracy, timely completion and coordination of all services furnished by or in relation to this Contract.
- C. PROVIDER represents and warrants that its services shall be performed within the limits and standards provided by the COUNTY, in a manner consistent with the level of care and skill ordinarily exercised by similar providers under similar circumstances at the time the services are performed.

ATTACHMENTS:

The exhibits and/or attachments listed below are specifically included as a necessary part of this agreement and the same shall not be complete without such items, to wit:

- A. Federal Clauses
- B. Scope of Work for Baldwin Rural Area Transportation System's Advertising Program
- C. Estimated Materials Cost and Estimated Monthly Expenses

County and Provider/Contractor jointly shall cause such items as listed above to contain dates, signatures of the parties with authorization to make such signatures, and sufficient marks and references back to this Agreement noting their inclusion and attachment hereto. In any event of a conflict between this document and the attachments referenced above, this document shall govern.

XVII. General Responsibilities of the COUNTY.

- A. The COUNTY shall provide reasonable notice to PROVIDER whenever the COUNTY actually observes or otherwise actually becomes aware of any development that affects the scope or time of PROVIDER's services hereunder or any defect or nonconformance in the work of PROVIDER.
- B. The COUNTY shall pay to PROVIDER the compensation as, and subject to the terms set out below.

XVIII. Termination of Services. The COUNTY or PROVIDER may terminate this contract, with or without cause or reason, by giving thirty (30) days written notice of such to the other party. Upon receipt of such notices, PROVIDER shall discontinue its work to the extent specified in the notice.

In the event of termination, the COUNTY shall pay PROVIDER for all services satisfactorily rendered, and for any expenses deemed by COUNTY to be a reimbursable expense incurred pursuant to this Contract and prior to the date of termination.

XIX. Compensation Limited. The compensation to be paid to the PROVIDER shall be the full compensation for all work performed by PROVIDER under this Contract. Any and all additional expenditures or expenses of PROVIDER, not listed in full within this

Contract, shall not be considered as a part of this Agreement and shall not be demanded by PROVIDER or paid by COUNTY.

- XX. Method of Payment.** PROVIDER shall submit monthly and accurate accounting reports of its sales, revenue, expenses, and collections including a statement of size and type of display contracted for each advertiser to the COUNTY.

PROVIDER agrees to compensate BRATS on a quarterly (90 day) basis. Compensation to the COUNTY shall be paid based on a 50% - 50% split of profit after deducting allowable expenses, as determined below, and applicable taxes only.

PROVIDER shall invoice advertisers on a monthly (30 day) basis, and revenues shall be collected within said 30 day period. Payments made to BRATS shall be based on invoices paid during said quarter (90 day period). Statements will be provided by PROVIDER to outline any and all outstanding balances due.

PROVIDER will obtain a cost (base) per square foot on vinyl for production of advertising. This vinyl cost along with allowable monthly expenses (not to exceed \$41,000 or 7% of gross revenue annually, whichever is less) as set forth in Attachment C will be the basis for establishing the expenses incurred. Any variation or increase in this base amount of vinyl will be provided to BRATS to reestablish vinyl cost. PROVIDER and BRATS will renegotiate this cost of vinyl prior to the next payment scheduled.

Payment shall be made by the PROVIDER to the COUNTY by the 20th day of the month following the previous quarter.

- XXI. Effective and Termination Dates.** This Contract shall be effective on November 1, 2014, and shall be effective for a thirty six (36) month period.
- XXII. Force Majeure.** The Parties hereto shall incur no liability to the other if performance becomes impossible or impracticable by reason on an event or effect that the parties could neither have anticipated nor controlled. This allowance shall include both an act of nature and acts of third parties. Any costs that would otherwise be incurred and/or necessitated by the provisions herein shall be alleviated for either party by such event or effect.
- XXIII. Indemnification.** Provider shall indemnify, defend and hold County and its Commissioners, affiliates, employees, agents, and representatives (collectively "County") harmless from and against any and all claims, demands, liabilities, damages, losses, judgments, costs, and expenses including, without limitations, attorneys' fees, for any and all personal injury (including death) and property damage of any kind or nature whatsoever, incurred by, asserted against, or imposed upon County, as a result of or in any manner related to provision of services hereunder, or any act or omission, by Provider. Contractor shall provide the COUNTY with proof of general liability coverage including the COUNTY as an additional insured. This indemnification shall survive the expiration or termination of this agreement.
- XXIV. Number of Originals.** This Agreement shall be executed with three originals; each will be equally valid as an original.

XXV. Governing Law. This Contract in all respects, including without limitation its formation, validity, construction, enforceability and available remedies, shall be governed by the laws of the State of Alabama, without regard to Alabama conflict of law principles.

XXVI. Insurance. Prior to performing services pursuant to this Agreement, Provider shall carry, with insurers satisfactory to County, throughout the term of hereof, Auto Liability Insurance, including owned, hired and non-owned vehicles, with limits of not less than \$150,000, combined single limit, for both bodily injury liability and property damage liability each occurrence; Commercial General Liability Insurance, including all contractual liability hereunder, with limits not less than \$1,000,000, combined single limit, for both bodily injury liability and property damage liability each occurrence; and Worker's Compensation Insurance, meeting the statutory limits of the State of Alabama and Employer's Liability Insurance fully covering all employees and supervisors participating in the work at the subject property site. All liability insurance shall name the County as an additional insured. Prior to commencing operations hereunder, a Certificate of Insurance evidencing such coverage, satisfactory to County, shall be furnished to County, which shall specifically state that such insurance shall provide for at least ten (10) days' notice to County in the event of cancellation, termination or any change in such insurance policies. The workers compensation certificate shall bear an endorsement clearly evidencing a waiver of the right of subrogation against County and County Representatives. Should Provider fail to furnish current evidence upon demand of any insurance required hereunder, or in the event of cancellation, termination or change in any such insurance, County may, at its option, suspend this Agreement until insurance is obtained, terminate this Agreement immediately without further action, or hold Provider in material default and pursue any and all remedies available

IN WITNESS WHEREOF, the parties hereto have executed this contract on the last day of execution by the COUNTY as written below.

COUNTY:

Charles F. Gruber /Date 11/7/14
Charles F. Gruber
Chairman

ATTEST:

David A. Z. Brewer /Date 11/7/2014
David A. Z. Brewer
County Administrator

PROVIDER:

By: Mr. John McNutt /Date 10/29/14
Mr. John McNutt
Member and Manager
McNutt & Company, LLC, an Alabama Limited Liability Company

REVIEWED BY:

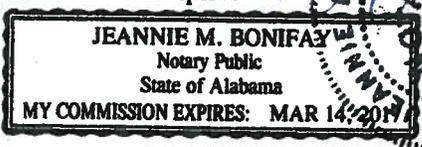
Mr. Robert Jilla /Date 3/16/15
Mr. Robert Jilla
Alabama Department of Transportation



State of Alabama)
County of Baldwin)

I, Jeannie M Bonifay, Notary Public in and for said County, in said State, hereby certify that, Charles F. Gruber, Chairman of the Baldwin County Commission, an individual whose name is known to me, acknowledged before me on this day that, being informed of the contents of the Contract for Services, he, as such and with full authority, executed same knowingly and with full authority to do so.

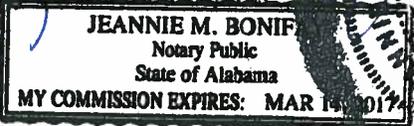
Given under my hand and official seal, this the 7 day of November, 2014.

Jeannie M Bonifay
Notary Public
My Commission Expires


State of Alabama)
County of Baldwin)

I, Jeannie M Bonifay, Notary Public in and for said County, in said State, hereby certify that, David A. Z. Brewer, County Administrator of the Baldwin County Commission, an individual whose name is known to me, acknowledged before me on this day that, being informed of the contents of the Contract for Services, he, as such and with full authority, executed same knowingly and with full authority to do so.

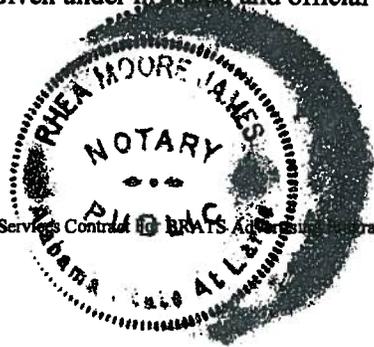
Given under my hand and official seal, this the 7 day of November, 2014.

Jeannie M Bonifay
Notary Public
My Commission Expires


State of Alabama)
County of Baldwin)

I, Rhea Moore James, Notary Public in and for said County, in said State, hereby certify that, John McNutt, Member and Manager, of McNutt & Company, LLC, an Alabama Limited Liability Company, an individual whose name is known to me, acknowledged before me on this day that, being informed of the contents of the Contract for Services, he, as such and with full authority, executed same knowingly and with full authority on said limited liability company.

Given under my hand and official seal, this the 29th day of October, 2014.



Rhea Moore James
Notary Public
My Commission Expires 12/12/2015

State of Alabama)
County of Baldwin)

I, _____, Notary Public in and for said County, in said State, hereby certify that, Robert Jilla of Alabama Department of Transportation, an individual whose name is known to me, acknowledged before me on this day that, being informed of the contents of the Contract for Services, he, as such and with full authority, executed same knowingly and with full authority to do so.

Given under my hand and official seal, this the ____ day of _____, 2014.

Notary Public
My Commission Expires

Attachment A
MISCELLANEOUS FEDERAL CLAUSES

No Federal Government Obligations to Third Parties.

In connection with the Project, the Recipient agrees that, absent the Federal Government's express written consent, the Federal Government shall not be subject to any obligations or liabilities to any subrecipient, lessee, third party contractor, or other participant at any tier of the Project, or other person or entity that is not a party to the Grant Agreement or Cooperative Agreement for the Project. Notwithstanding that the Federal Government may have concurred in or approved any solicitation, subagreement, lease, third party contract, or arrangement at any tier, the Federal Government has no obligations or liabilities to any entity other than the Recipient, including any subrecipient, lessee, third party contractor, or other participant at any tier of the Project. (*Master Agreement §2.f*)

False or Fraudulent Statements or Claims.

The Recipient acknowledges and agrees that:

- (1) **Civil Fraud.** The Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 *et seq.*, and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to the Recipient's activities in connection with the Project. By executing the Grant Agreement or Cooperative Agreement for the Project, the Recipient certifies or affirms the truthfulness and accuracy of each statement it has made, it makes, or it may make in connection with the Project. In addition to other penalties that may apply. The Recipient also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission. Certification assurance or representation to the Federal Government. The Federal Government reserves the right to impose on the Recipient the penalties of the Program Fraud Civil Remedies Act of 1986, as amended. to the extent the Federal Government deems appropriate.
- (2) **Criminal Fraud.** If the Recipient makes a false, fictitious, or fraudulent claim, statement, submission. certification, assurance, or representation to the Federal Government or includes a false, fictitious, or fraudulent statement or representation in any agreement with the Federal Government in connection with a Project authorized under 49 U.S.C. chapter 53 or any other Federal law, the Federal Government reserves the right to impose on the Recipient the penalties of 49 U.S.C. § 5323(1), 18 U.S.C. § 1001, or other applicable Federal law to the extent the Federal Government deems appropriate. (*Master Agreement §3.f*)

Access to Third Party Contract Records.

The Recipient agrees to require and assures that its subrecipients require, their third party contractors and third party subcontractors at each tier to provide to the U.S. Secretary of Transportation and the Comptroller General of the United States or their duly authorized representatives, access to all third party contract records as required by 49 U.S.C. § 5325(g). The Recipient further agrees to require, and assures that its subrecipients require, their third party contractors and third party subcontractors, at each tier, to provide sufficient access to third party procurement records as needed for compliance with Federal laws and regulations or to assure proper Project management as determined by FTA. (*Master Agreement § 15.t*)

Access to Records of Recipients and Subrecipients.

The Recipient agrees to permit, and require its subrecipients to permit, the U.S. Secretary of

Transportation, the Comptroller General of the United States, and to the extent appropriate, the State, or their authorized representatives, upon their request to inspect all Project work, materials, payrolls, and other data, and to audit the books, records, and accounts of the Recipient and its subrecipients pertaining to the Project, as required by 49 U.S.C. § 5325(g). (*Master Agreement §8.d.*)

Federal Laws, Regulations, and Directives.

The Recipient agrees that Federal laws and regulations control Project award and implementation. The Recipient also agrees that Federal directives, as defined in this Master Agreement, provide Federal guidance applicable to the Project, except to the extent that FTA determines otherwise in writing. Thus, FTA strongly encourages adherence to applicable Federal directives. The Recipient understands and agrees that unless the recipient requests Federal Transit Administration approval in writing, the Recipient may incur a violation of Federal laws or regulations, it's Grant Agreement or Cooperative Agreement, or this Master Agreement if it implements an alternative procedure or course of action not approved by FTA.

The Recipient understands and agrees that Federal laws, regulations, and directives applicable to the Project and to the Recipient on the date on which the FTA Authorized Official awards Federal assistance for the Project may be modified from time to time. In particular, new Federal laws, regulations, and directives may become effective after the date on which the Recipient executes the Grant Agreement or Cooperative Agreement for the Project, and might apply to that Grant Agreement or Cooperative Agreement. The Recipient agrees that the most recent of such Federal laws, regulations, and directives will apply to the administration of the Project at any particular time, except to the extent that FTA determines otherwise in writing.

FTA's written determination may take the form of a Special Condition, Special Requirement, Special Provision or Condition of Award within the Grant Agreement or Cooperative Agreement for the Project, a change to an FTA directive, or a letter to the Recipient signed by the Federal Transit Administrator or his or her duly authorized designee, the text of which modifies or conditions a specific provision of the Grant Agreement or Cooperative Agreement for the Project or this Master Agreement To accommodate changing Federal requirements, the Recipient agrees to include in each agreement with each subrecipient, each lease, each third party contract, and other similar document implementing the Project notice that Federal laws, regulations, and directives may change and that the changed provisions will apply to the Project, except to the extent that FTA determines otherwise in writing. All standards or limits in the Grant Agreement or Cooperative Agreement for the Project, and in this Master Agreement are minimum requirements, unless modified by FTA. (*Master Agreement §2.c. (1)*)

Civil Rights.

The Recipient agrees to comply with all applicable civil rights laws and regulations, in accordance with applicable Federal directives, except to the extent that the Federal Government determines otherwise in writing. These include, but are not limited to, the following:

- a. **Nondiscrimination in Federal Public Transportation Programs.** The Recipient agrees to comply, and assures the compliance of each subrecipient, lessee, third party contractor, or other participant at any tier of the Project, with the provisions of 49 U.S.C. § 5332, which prohibit discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibits discrimination in employment or business opportunity.

- b. Nondiscrimination - Title VI of the Civil Rights Act. The Recipient agrees to comply, and assures the compliance of each subrecipient, lessee, third party contractor, or other participant at any tier of the Project, with all provisions prohibiting discrimination on the basis of race, color, or national origin of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000d *et seq.*, and with U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act," 49 C.F.R. Part 21. Except to the extent FTA determines otherwise in writing, the Recipient agrees to follow all applicable provisions of the most recent edition of Ff A Circular 4702.1A, "Title VI and Title VI-Dependent Guidelines for Federal Transit Administration Recipients," and any other applicable Federal directives that may be issued.
- c. Equal Employment Opportunity. The Recipient agrees to comply, and assures the compliance of each subrecipient, lessee, third party contractor, or other participant at any tier of the Project, with all equal employment opportunity (EEO) provisions of 49 U.S.C. § 5332, with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.*, and implementing Federal regulations and any later amendments thereto. Except to the extent Ff A determines otherwise in writing, the Recipient also agrees to follow all applicable Federal EEO directives that may be issued. Accordingly:
- (1) General. The Recipient agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, sex, disability, age, or national origin. The Recipient agrees to take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex, disability, age, or national origin. Such action shall include, but not be limited to, employment, upgrading, demotions or transfers, recruitment or recruitment advertising, layoffs or terminations; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
 - (2) Equal Employment Opportunity Requirements for Construction Activities. For activities determined by the U.S. Department of Labor (U.S. DOL) to qualify as "construction", the Recipient agrees to comply and assures the compliance of each subrecipient, lessee, third party contractor, or other participant, at any tier of the Project, with all requirements of U.S. DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 *et seq.*; with implementing Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order No. 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note, and with other applicable EEO laws and regulations, and also agrees to follow applicable Federal directives, except as the Federal Government determines otherwise in writing.
- d. Disadvantaged Business Enterprise. To the extent authorized by Federal law, the Recipient agrees to facilitate participation by Disadvantaged Business Enterprises (DBEs) in the Project and assures that each subrecipient, lessee, third party contractor, or other participant at any tier of the Project will facilitate participation by DBBs in the project to the extent applicable as follows:

- (1) The Recipient agrees and assures that it shall comply with section 1101 (b) of SAFETEA-LU, 23 U.S.C. § 101 note, and U.S. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 C.F.R. Part 26.
 - (2) The Recipient agrees and assures that it shall not discriminate on the basis of race, color, sex, or national origin in the award and performance of any subagreement, lease, third party contract, or other arrangement supported with Federal assistance derived from U.S. DOT in the administration of its DBE program and shall comply with the requirements of 49 C.F.R. Part 26. The Recipient agrees to take all necessary and reasonable steps as set forth in 49 C.F.R. Part 26 to ensure nondiscrimination in the award and administration of all subagreements, leases, third party contracts, and other arrangements supported with Federal assistance derived from U.S. DOT. As required by 49 C.F.R. Part 26, the Recipient's DBE program approved by U.S. DOT, if any, is incorporated by reference and made part of the Grant Agreement or Cooperative Agreement for the Project. The Recipient agrees that it has a legal obligation to implement its approved DBE program, and that its failure to carry out that DBE program shall be treated as a violation of the Grant Agreement or Cooperative Agreement for the Project and this Master Agreement. Upon notification by U.S. DOT to the Recipient of the Recipient's failure to implement its approved DBE program, U.S. DOT may impose the sanctions as set forth in 49 C.F.R. Part 26 and may, in appropriate cases, refer the matter to the appropriate Federal authorities for enforcement under 18 U.S.C. § 1001, or the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801 *et seq.*, or both.
- e. Nondiscrimination on the Basis of Sex. The Recipient agrees to comply with all applicable requirements of Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. §§ 1681 *et seq.*, and with implementing U.S. DOT regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. Part 25, that prohibit discrimination on the basis of sex.
- f. Nondiscrimination on the Basis of Age. The Recipient agrees to comply with all applicable requirements of:
- (1) The Age Discrimination Act of 1975, as amended, 42 U.S.C. §§ 6101 *et seq.*, and with implementing U.S. Health and Human Services regulations, "Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance," 45 C.F.R. Part 90, which prohibit discrimination against individuals on the basis of age in the administration of programs or activities receiving Federal financial assistance.
 - (2) The Age Discrimination in Employment Act (ADEA) 29 U.S.C. §§ 621 through 634 and with implementing U.S. Equal Employment Opportunity Commission (U.S. EEOC) regulations, "Age Discrimination in Employment Act." 29 C.F.R. Part 1625, which prohibits discrimination against individuals on the basis of age.

g. Access for Individuals with Disabilities. The Recipient agrees to comply with 49 V.S.C § 5301(d), which states the Federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities. The Recipient also agrees to comply with all applicable provisions of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of disability in the administration of programs or activities receiving Federal financial assistance; with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 *et seq.*, which requires that accessible facilities and services be made available to individuals with disabilities; with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 *et seq.*, which requires that buildings and public accommodations be accessible to individuals with disabilities; and with other laws and amendments thereto pertaining to access for individuals with disabilities that may be applicable. In addition, the Recipient agrees to comply with applicable implementing Federal regulations and any later amendments thereto, and agrees to follow applicable Federal implementing directives, except to the extent FTA approves otherwise in writing. Among those regulations and directives are:

- (1) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;
- (2) U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;
- (3) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. A TBCB)/U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 C.F.R. Part 1192 and 49 C.F.R. Part 38;
- (4) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;
- (5) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;
- (6) U.S. General Services Administration (U.S. GSA) regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;
- (7) U.S. EEOC, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;
- (8) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F. .R. Part 64, Subpart F;
- (9) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194;

- (10) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609; and
 - (11) Federal civil rights and nondiscrimination directives implementing the foregoing Federal laws and regulations, except to the extent the Federal Government determines otherwise in writing.
- h. Drug or Alcohol Abuse-Confidentiality and Other Civil Rights Protections. To the extent applicable, the Recipient agrees to comply with the confidentiality and civil rights protections of the Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. §§ 1101 *et seq.*, the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. §§ 4541 *et seq.*, and the Public Health Service Act of 1912, as amended, 42 U.S.C. §§ 290dd through 290dd-2, and any amendments thereto.
 - i. Access to Services for Persons with Limited English Proficiency. The Recipient agrees to facilitate compliance with the policies of Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," 42 U.S.C. § 2000d-1 note, and follow applicable provisions of U.S. DOT Notice, "DOT Policy Guidance Concerning Recipients' Responsibilities to Limited English Proficiency (LEP) Persons," 70 *Fed. Reg.* 74087, December 14, 2005, except to the extent that FTA determines otherwise in writing.
 - j. Environmental Justice. The Recipient agrees to facilitate compliance with the policies of Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 42 U.S.C. § 4321 note, except to the extent that the Federal Government determines otherwise in writing.
 - k. Other Nondiscrimination Laws. The Recipient agrees to comply with applicable provisions of other Federal laws and regulations, and follow applicable Federal directives prohibiting discrimination, except to the extent the Federal Government determines otherwise in writing. (*Master Agreement* §12)

Federal Standards.

The Recipient agrees to comply with applicable third party procurement requirements of 49 U.S.C. chapter 53 and Federal laws in effect now or subsequently enacted; with applicable U.S. DOT third party procurement regulations at 49 C.F.R. § 18.36 or 49 C.F.R. §§ 19.40 through 19.48, and with other applicable Federal regulations pertaining to third party procurements and later amendments thereto. The Recipient also agrees to follow the provisions of the most recent edition and revisions of FTA Circular 4220.1F, "Third Party Contracting Guidance," and any later revision thereto, except to the extent FTA determines otherwise in writing. The Recipient agrees that it may not use assistance to support its third party procurements unless its compliance with Federal laws and regulations is satisfactory. Although the FTA "Best Practices Procurement Manual" provides additional third party contracting information, the Recipient understands and agrees that the FTA "Best Practices Procurement Manual" may omit certain Federal requirements applicable to specific third party contracts. (*Master Agreement* §15.a.)

Prompt Payment of the Local Share.

The Recipient agrees to provide the proportionate amount of the local share promptly as it incurs Project costs or Project costs become due, except to the extent that the FTA determines otherwise in writing. (*Master Agreement* §5.c.)

Right of the Federal Government to Terminate.

Upon written notice, the Recipient agrees that the Federal Government may suspend or terminate all or any part of the Federal assistance to be provided for the Project if the Recipient has violated the terms of the Grant Agreement or Cooperative Agreement for the Project including this Master Agreement, or if the Federal Government determines that the purposes of the laws authorizing the Project would not be adequately served by the continuation of Federal assistance for the Project. The Recipient understands and agrees that any failure to make reasonable progress on the Project or any violation of the Grant Agreement or Cooperative Agreement for the Project, or this Master Agreement that endangers substantial performance of the Project shall provide sufficient grounds for the Federal Government to terminate the Grant Agreement or Cooperative Agreement for the Project. In general, termination of Federal assistance for the Project will not invalidate obligations properly incurred by the Recipient before the termination date to the extent those obligations cannot be canceled. If however, the Federal Government determines that the Recipient has willfully misused Federal assistance by failing to make adequate progress, by failing to make reasonable and appropriate use of Project property, or by failing to comply with the terms of the Grant Agreement or Cooperative Agreement for the Project including this Master Agreement, the Federal Government reserves the right to require the Recipient to refund the entire amount of Federal assistance provided for the Project or any lesser amount as the Federal Government may determine. Expiration of any Project time period established for the Project does not, by itself, constitute an expiration or termination of the Grant Agreement or Cooperative Agreement for the Project. (*Master Agreement § 11*)

Debarment and Suspension.

The Recipient agrees to comply, and assures the compliance of each subrecipient, lessee, third party contractor, or other participant at any tier of the Project, with Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note, and U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. Part 1200, which adopts and supplements the provisions of U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Government wide Debarment and Suspension (Nonprocurement)," 2 C.F.R. Part 180. The Recipient agrees to, and assures that its subrecipients, lessees, third party contractors, and other participants at any tier of the Project will, review the "Excluded Parties listing System" at <http://epls.gov/> before entering into any subagreement, lease, third party contract, or other arrangement in connection with the Project (*Master Agreement §3.h*)

Disputes, Breaches, Defaults, or Other Litigation.

The Recipient agrees that FTA has a vested interest in the settlement of any dispute, breach, default, or litigation involving the Project. Accordingly:

- a. **Notification to FTA.** The Recipient agrees to notify Federal Transit Administration in writing of any current or prospective major dispute, breach, default, or litigation that may affect the Federal Government's interests in the Project or the Federal Government's administration or enforcement of Federal laws or regulations. If the Recipient seeks to name the Federal Government as a party to litigation for any reason, in any forum, the Recipient agrees to inform Federal Transit Administration in writing before doing so. At a minimum, each notice to FTA under Section 54 of this Master Agreement shall be provided to the FTA Regional Counsel within whose Region the Recipient operates its public transportation system or implements the Project.
- b. **Federal Interest in Recovery.** The Federal Government retains the right to a proportionate share of any proceeds derived from any third party recovery, based on the percentage of the Federal share awarded for the Project, except that the Recipient may return liquidated damages recovered to its Project Account in lieu of returning the Federal share to the Federal Government.

- c. Enforcement. The Recipient agrees to pursue its legal rights and remedies available under any third party contract or available under law or regulations.
- d. FTA Concurrence. FTA reserves the right to concur in any compromise or settlement of any claim involving the Project and the Recipient.
- e. Alternative Dispute Resolution. FT A encourages the Recipient to use alternative dispute resolution procedures, as may be appropriate. (*Master Agreement §54*)

Lobbying Restrictions.

The Recipient agrees that:

- (1) In compliance with 31 U.S.C. § 1352(a), it will not use Federal assistance to pay the costs of influencing any officer or employee of a Federal agency, Member of Congress, officer of Congress or employee of a member of Congress, in connection with making or extending the Grant Agreement or Cooperative Agreement;
- (2) In addition, it will comply with other applicable Federal laws and regulations prohibiting the use of Federal assistance for activities designed to influence Congress or a State legislature with respect to legislation or appropriations, except through proper, official channels; and
- (3) It will comply, and will assure the compliance of each subrecipient, lessee, third party contractor, or other participant at any tier of the Project with U.S. DOT regulations, "New Restrictions on Lobbying," 49 C.F.R. Part 20, modified as necessary by 31 U.S.C. § 1352, as amended. (*Master Agreement §3.d.*)

Air Quality.

Except to the extent the Federal Government determines otherwise in writing, the Recipient agrees to comply with all applicable Federal laws and regulations and follow applicable Federal directives implementing the Clean Air Act, as amended, 42 U.S.C. §§ 7401 through 7671q. Specifically:

- (1) The Recipient agrees to comply with the applicable requirements of subsection 176(c) of the Clean Air Act, 42 U.S.C. § 7506(c); to comply with U.S. EPA regulations, "Determining Conformity of Federal Actions to State or Federal Implementation Plans," 40 C.F.R. Part 93, Subpart A; and to comply with any other applicable Federal conformity regulations that may be promulgated at a later date. To support the requisite air quality conformity finding for the Project, the Recipient agrees to implement each air quality mitigation or control measure incorporated in the applicable documents accompanying approval of the Project. The Recipient further agrees that any Project identified in an applicable State Implementation Plan (SIP) as a Transportation Control Measure will be wholly consistent with the design concept and scope of the Project described in the SIP.
- (2) U.S. EPA also imposes requirements implementing the Clean Air Act, as amended, that may apply to public transportation operators, particularly

operators of large public transportation bus fleets. Accordingly, to the extent they apply to the Project, the Recipient agrees to comply with U.S. EPA regulations, "Control of Air Pollution from Mobile Sources," 40 C.F.R. Part 85; U.S. EPA regulations, "Control of Air Pollution from New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines," 40 C.F.R. Part 86; and U.S. EPA regulations "Fuel Economy of Motor Vehicles," 40 C.F.R. Part 600, and any revisions thereto.

- (3) The Recipient agrees to comply with the notice of violating facility provisions of section 306 of the Clean Air Act, as amended, 42 U.S.C. § 7414, and facilitate compliance with Executive Order No. 11738, "Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans," 42 U.S.C. § 7606 note. (*Master Agreement §25.b.*)

Clean Water.

Except to the extent the Federal Government determines otherwise in writing, the Recipient agrees to comply with all applicable Federal laws and regulations and follow applicable Federal directives implementing the Clean Water Act, as amended, 33 U.S.C. §§ 1251 through 1377.

Specifically:

- (1) The Recipient agrees to protect underground sources of drinking water in compliance with the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. §§ 300f through 300j-6.
- (2) The Recipient agrees to comply with the notice of violating facility provisions of section 508 of the Clean Water Act, as amended, 33 U.S.C. § 1368, and facilitate compliance with Executive Order No. 11738, "Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans," 42 U.S.C. § 7606 note. (*Master Agreement §25.c.*)

Clean Air and Clean Water.

The Recipient agrees to include in each subagreement, lease, third party contract, or other arrangement exceeding \$100,000, adequate provisions to ensure that each Project participant will agree to:

- (1) Report the use of facilities placed on or likely to be placed on the U.S. EPA "List of Violating Facilities,"
- (2) Refrain from using any violating facilities,
- (3) Report violations to PTA and the Regional U.S. EPA Office, and
- (4) Comply with the inspection and other applicable requirements of:
 - (a) Section 306 of the Clean Air Act, as amended, 42 U.S.C. § 7606, and other applicable provisions of the Clean Air Act, as amended, 42 U.S.C. §§ 7401 through 7671q; and
 - (b) Section 508 of the Clean Water Act, as amended, 33 U.S.C. § 1368, and other applicable requirements of the Clean Water Act, as amended, 33 U.S.C. §§ 1251 through 1377. (*Master Agreement §15.1.*)

Fly America.

The Recipient understands and agrees that the Federal Government will not participate in the costs of international air transportation of any individuals involved in or property acquired for the Project unless that air transportation is provided by U.S.-flag air carriers to the extent such service is available, in compliance with section 5 of the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 U.S.C. § 40118, and U.S. GSA regulations, "Use of United States Flag Air Carriers," 41 C.F.R. §§ 301-10.131 through 301-10.143. (*Master Agreement §14.c.*)

Seismic Safety.

The Recipient agrees to comply with the Earthquake Hazards Reduction Act of 1977, as amended, 42 U.S.C. §§ 7701 *et seq.*, in accordance with Executive Order No. 12699, "Seismic Safety of Federal and Federally-Assisted or Regulated New Building Construction," 42 U.S.C. § 7704 note, and comply with implementing U.S. DOT regulations, "Seismic Safety," 49 C.F.R. Part 41 (specifically, 49 C.F.R. § 41.1-17). (*Master Agreement §23.e.*)

Patent Rights.

- a. **General.** If any invention, improvement, or discovery of the Recipient or of any subrecipient, lessee, third party contractor, or other participant at any tier of the Project is conceived or first actually reduced to practice in the course of or under the Project, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Recipient agrees to notify PTA immediately and provide a detailed report in a format satisfactory to PTA.
- b. **Federal Rights.** The Recipient agrees that its rights and responsibilities, and those of each subrecipient, lessee, third party contractor, or other participant at any tier of the Project, pertaining to that invention, improvement, or discovery will be determined in accordance with applicable Federal laws and regulations, including any waiver thereof. Absent a determination in writing to the contrary by the Federal Government, the Recipient agrees to transmit to FTA those rights due the Federal Government in any invention, improvement, or discovery resulting from that subagreement, third party contract, third party subcontract, or arrangement, as specified in 35 U.S.C. §§.200 *et seq.*, and U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401, irrespective of the status of the Recipient, subrecipient, lessee, third party contractor or other participant in the Project (*i.e.*, a large business, small business, State government, State instrumentality, local government, Indian tribe, nonprofit organization, institution of higher education, or individual).
- c. **License Fees and Royalties.** FTA considers income earned from license fees and royalties for patents, patent applications, and inventions produced under the Project to be program income. Except to the extent FTA determines otherwise in writing, as provided in 49 C.F.R. Parts 18 and 19, the Recipient has no obligation to the Federal Government with respect to that program Income, apart from compliance with 35 U.S.C. §§ 200 *et seq.*, which applies to patent rights developed under a research project. (*Master Agreement §17*)

Right in Data and Copyrights.

- a. **Definition.** The term "subject data," as used in this Section 18 of this Master Agreement means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the Grant Agreement or Cooperative Agreement for the Project. Examples include, but are not limited to: computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information. "Subject data," as used in this Section 18, does not include financial reports, cost analyses, or other similar information used for Project administration.
- b. **General.** The following restrictions apply to all subject data first produced in the performance of the Grant Agreement or Cooperative Agreement for the Project:
- (1) Except for its own internal use, the Recipient may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may the Recipient authorize others to do so, without the prior written consent of the Federal Government, unless the Federal Government has previously released or approved the release of such data to the public.
 - (2) The restrictions on publication of Subsection 18.b(1) of this Master Agreement, however, do not apply to a Grant Agreement or Cooperative Agreement with an institution of higher learning.
- c. **Federal Rights in Data and Copyrights.** The Recipient agrees to provide to the Federal Government a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use, for Federal Government purposes the subject data described in this Subsection 18.c of this Master Agreement. As used herein, "for Federal Government purposes," means use only for the direct purposes of the Federal Government. Without the copyright owner's consent, the Federal Government may not provide or otherwise extend to other parties the Federal Government's license to:
- (1) Any subject data developed under the Grant Agreement or Cooperative Agreement for the Project, or under a subagreement, lease, third party contract or other arrangement at any tier of the Project, supported with Federal assistance derived from the Grant Agreement or Cooperative Agreement for the Project, whether or not a copyright has been obtained; and
 - (2) Any rights of copyright to which a Recipient, subrecipient, lessee, third party contractor, or other participant at any tier of the Project purchases ownership using Federal assistance.
- d. **Special Federal Rights in Data for Research.** Development, Demonstration, and Special Studies Projects. In general, FTA's purpose in providing Federal assistance for a research, development, demonstration, or special studies Project is to increase transportation knowledge, rather than limit the benefits of the Project to Project participants. Therefore, when the Project is completed, the Recipient agrees to provide a Project report that FTA may publish or make available for publication on the Internet. In addition, the Recipient agrees to provide other reports pertaining to the Project that FTA may request. The Recipient agrees to identify clearly any specific

confidential, privileged, or proprietary information it submits to FTA. In addition, except to the extent that FTA determines otherwise in writing, the Recipient of Federal assistance to support a research, development, demonstration, or a special studies Project agrees that, in addition to the rights in data and copyrights that it must provide to the Federal Government as set forth in Subsection 18.c of this Master Agreement, FTA may make available to any FTA recipient, subrecipient, third party contractor, third party subcontractor or other participant at any tier of the Project, either FTA's license in the copyright to the subject data or a copy of the subject data. If the Project is not completed for any reason whatsoever, all data developed under the Project shall become subject data as defined in Subsection 18.8 of this Master Agreement and shall be delivered as the Federal Government may direct. This Subsection 18.d, however, does not apply to adaptations of automatic data processing equipment or programs for the Recipient's use when the costs thereof are financed with Federal assistance through an FTA capital program.

- e. License Fees and Royalties. FTA considers income earned from license fees and royalties for copyrighted material, or trademarks produced under the Project to be program income. Except to the extent FTA determines otherwise in writing, as provided in 49 C.F.R. Parts 18 and 19, the Recipient has no obligation to the Federal Government with respect to that program income, apart from compliance with 35 U.S.C. §§ 200 *et seq.*, which applies to patent rights developed under a research project.
- f. Hold Harmless. Except as prohibited or otherwise limited by State law or except to the extent that FTA determines otherwise in writing upon request by the Federal Government, the Recipient agrees to indemnify, save, and hold harmless the Federal Government and its officers, Agents, and employees acting within the scope of their official duties against any liability, including costs and expenses resulting from any willful or intentional violation by the Recipient of proprietary rights, copyrights or right of privacy arising out of the publication, translation. Reproduction, delivery use or disposition of any data furnished under the Project. The Recipient shall not be required to indemnify the Federal Government for any such liability caused by the wrongful acts of Federal employees or agents.
- g. Restrictions on Access to Patent Rights. Nothing in Section 18 of this Master Agreement pertaining to rights in data shall either imply a license to the Federal Government under any patent or be construed to affect the scope of any license or other right otherwise granted to the Federal Government under any patent.
- h. Data Developed Without Federal Funding or Support. In connection with the Project, the Recipient may find it necessary to provide data to FTA developed without any Federal funding or support by the Federal Government. The requirements of Subsections 18.b, 18.c, and 18.d of this Master Agreement do not apply to data developed without Federal funding or support by the Federal Government, even though that data may have been used in connection with the Project. Nevertheless, the Recipient understands and agrees that the Federal Government will not be able to protect data from unauthorized disclosure unless that data is clearly marked "Proprietary" or "Confidential."
- i. Requirements to Release Data. To the extent required by U.S. DOT regulations, "Uniform Administrative Requirements for Grants and Agreements with Institutions

of Higher Education, Hospitals, and Other Non-Profit Organizations," at 49 C.F.R. § 19.36(d), or other applicable Federal laws or Federal regulations, the Recipient understands and agrees that the data and information it submits to the Federal Government may be required to be released in accordance with the Freedom of Information Act (or another Federal law or Federal regulation providing access to such records). (*Master Agreement §18*)

Energy Conservation.

The Recipient agrees to comply with applicable mandatory energy efficiency standards and policies of applicable State energy conservation plans issued in accordance with the Energy Policy and Conservation Act, as amended, 42 U.S.C. §§ 6321 *et seq.*, except to the extent that the Federal Government determines otherwise in writing. To the extent applicable, the Recipient agrees to perform an energy assessment for any building constructed, reconstructed, or modified with FTA assistance, as provided in FTA regulations, "Requirements for Energy Assessments," 49 C.F.R. Part 622, Subpart C. (*Master Agreement §26*)

Special Notification Requirements for States.

To the extent required by Federal law, the State agrees that in administering any Federal Assistance Program or Project supported by the underlying Grant Agreement or Cooperative Agreement, any request for proposals, solicitation, grant application, form, notification, press release, or other publication involving the distribution of FTA assistance for the Program or the Project shall indicate that FTA is the Federal agency that is providing the Federal assistance, the Catalog of Federal Domestic Assistance Number of the program from which the Federal assistance is authorized, as may be applicable, and the amount of Federal assistance FTA provided. (*Master Agreement §38*)

Attachment B
Baldwin County Commission Scope of Work
Baldwin Rural Area Transportation System's Advertising Program

The overall goal of this Scope of Work is to establish a contract to be used by the Baldwin County Rural Area Transportation System (BRATS) for an advertising program for the BRATS fleet.

OUTLINE OF SCOPE OF SERVICES

OPERATION OF AN INTERIOR AND EXTERIOR BUS ADVERTISING PROGRAM

OVERVIEW - Proposals are hereby requested by the Baldwin County Commission, for the services of an **Advertising Broker for Interior/Exterior Bus Advertising Program** to handle all advertising on 40 vehicles/buses or more in the BRATS' fleet. The advertising broker will serve the following functions:

- set and control the price of advertising space on the buses;
- control the use of specified advertising space on the buses;
- solicit and negotiate contracts for bus advertising;
- refuse objectionable, inappropriate and illegal advertising content;
- arrange the placement, removal and repair of signs;
- handle all aspects of advertising contracts including invoicing, collection, and legal issues;

1. Installation Procedures

Any application process approved by BRATS will be permitted on all specified vehicles. Application materials shall not damage vehicle during installation /removal. Contractor shall be responsible for expenses related to damage to vehicles due to installation/ removal of advertising products. Advertising shall not interfere with or obstruct the emergency operation of the windows and doors.

2. Advertising Space

The maximum usable advertising space is limited to specific interior areas and the back and sides of the bus. It will be the contractor's responsibility to develop uniform sizes of advertisement signage for each unique vehicle so that advertisements will have style consistency when applied to various vehicle types.

3. Interior Advertising Space

BRATS will make selected interior space available for advertising purposes where applicable. (Some vehicles do not have interior advertising space). The interior space available for advertising is a 20 inch wide by 30 inch wide plexi-glass area behind the driver seat. The advertising on this area must not block the driver view and will require material which is see-through from the driver's side. BRATS or the contractor at a fair market value may produce advertisement materials promoting transit services. The contractor at no cost to BRATS will install these advertisements. All interior advertising is confined to BRATS approved spaces. The contractor's duty to replace/remove interior advertisement shall exist regardless of whether the advertisement materials were negligently or intentionally damaged or subject to malicious mischief or acts of vandalism. Contractor's obligation to replace/remove advertisement is absolute and is not dependent upon any notification by BRATS; however, Contractor agrees to replace/remove any damaged advertisement materials immediately upon receipt of written notice from BRATS within seventy-two (72) hours after notice. Contractor will remove dated advertisements from buses within two (2) weeks/fourteen (14) days after they expire. Listed below are the fleet specifics for bus type available for advertising

Type of Bus

1. Modified Van
2. Cutaway Bus

4. Use of Unsold Advertising Space

Any unsold advertising space shall be made available to BRATS and will be posted by the Contractor with BRATS and BRATS partnership supplied artwork. BRATS will provide Contractor with BRATS artwork to be produced and placed on vehicles. BRATS will pay the production cost for advertising materials. Installation will be done by Contractor at no cost to BRATS. Unless Contractor is notified in writing all such posting of unsold advertising displays shall be subject to preemption for paying advertiser.

5. Reserved Advertising Space

BRATS shall retain free advertising space on and in its vehicles in the following quantities: up to six (6) interior cards per bus, all brochure racks on board the buses, and up to ten (10%) of exterior space each year of the contract. BRATS will pay only the cost of producing advertising materials. BRATS will give ten (10) business days notice of needed free advertising space to contractor in an effort to coordinate all advertising space be utilized lucratively each year in the best interest of BRATS.

Contractor shall honor previous commitments to businesses for advertising until December 31, 2014. The contractor must notify said businesses 30 days prior to the December 31, 2014 expiration date and handle all further negotiations and aspects of said advertising including pricing, collection, placement, removal and repair of signage.

6. BRATS Review of Advertising

BRATS shall review all advertising designs to be placed on or inside BRATS buses. BRATS will provide advance approval of each advertisement that complies with established design rules. It shall be the Contractor's responsibility to transport, or have the designs delivered to and from BRATS office. Electronic transmission via e-mail is allowed. Contractor will allow BRATS a five (5) business day evaluation period for each design approval process.

7. Removal of Advertising

Advertisements which do not comply with the rules set in Section 8 "Advertising Content," and the rules and conditions set out elsewhere in the contract documents are not allowed on BRATS vehicles.

Advertisements which are placed on vehicles and are later determined by BRATS not to comply with rules established, shall be immediately removed by the Contractor, at the Contractor's expense upon receiving written/verbal notice from BRATS to do so.

The Contractor understands that a partnership exists between BRATS and the Contractor to make public transportation attractive and more respected within the community. Contractor agrees to maintain high advertising industry standards relative to advertising copy and graphic design.

8. Advertising Content

It is the policy of the BRATS Transit to allow commercial and non-commercial advertising on the exterior and interior of BRATS buses. "Commercial advertising" means advertising promoting a legal business, product, or service where the primary purpose of the advertising is to generate profit from the operation of the business of the sale of the product or the performance of service.

The following advertising is prohibited on all BRATS vehicles:

- a. False, misleading, or deceptive advertising
- b. Promotes unlawful or illegal goods, services, or activities (Illegal drugs, murder, violence, or vandalism)
- c. Implies or declares an endorsement by BRATS of any goods, services or activities
- d. Contains any lewd or obscene matter (No nudity, profanity or crudeness)
- e. Contains any image or description, which, if furnished, exhibited, or sent to a minor would give rise to a violation of BRATS policy or be the basis of an injunction against BRATS
- f. Is libelous
- g. Promotes the sale of tobacco or tobacco-related products

- h. Promotes the sale of liquor, wine; beer, or distilled spirits (alcohol)
- i. Implication of BRATS in support or opposition of a candidate for public office (whether elected or appointed), a political, moral, or social issue or any ballot measure, or any other matter which is the subject of an election (No political candidates or issues.)
- j. Implicates BRATS in the support or opposition of a religious denomination, creed, doctrine, or belief (No issue of abortion, pro or con)
- k. Displays any word, phrases, character or symbol likely to interfere with, mislead or distract traffic, or conflict with any traffic control device. Incorporates any rotating, or flashing devices or any other moving parts.

BRATS reserves the right to change the rules related to the type and location of advertising, which is prohibited or allowed on BRATS vehicles and property, by giving written notice to Contractor of such change. The change shall be applicable to all advertising for which a binding commitment for display has not been entered into at the time Contractor receives notice of change.

9. Schedule of Rates

The rates for various advertising mediums are the prerogative of the Contractor and shall be published. A copy of these rates shall be kept on file at BRATS throughout the term of the agreement. The Contractor shall submit its rate schedule with its proposal. The Contractor shall provide written notice of any advertising rate change prior to the effective date of the rate change. The charges for material and labor shall not change during the duration of this contract unless substantial cause can be shown to BRATS and approval granted of such change. Additionally, the Contractor shall provide BRATS with written details for any variation from posted rates, as well as justification for variation.

10. Repair of Damage to BRATS Vehicles

The contractor shall be responsible for repair of all damages caused to BRATS property or vehicles as a result of any performance associated with this contract. These repairs will be the sole responsibility of the Contractor. All repairs being made will be inspected and must be approved as satisfactory by the BRATS Director of Transportation or his/her designee.

11. Posting, Maintenance, Removal, and Disposal of Displays

Except as provided for removal for damaged interior advertisement; the Contractor shall remove dated advertisements within (2) two weeks/ (14) fourteen days after their expiration. Advertising material, which has exceeded the period for which they are paid to be posted, shall be removed and replaced with paid advertisement. Contractor is responsible for the removal and proper disposal of used material from BRATS premises.

Posted advertisements shall be maintained in satisfactory, presentable condition. Faded, torn or in a state of disrepair shall be repaired or replaced by the Contractor at Contractor's expense. Contractor shall install and maintain BRATS information, promotion and BRATS partnership advertising at no additional cost to BRATS. BRATS will work with the Contractor giving at least a (7) seven business day advance notice for installation.

Contractor shall be allowed reasonable access to the vehicles for the purpose of providing its services. The Contractor's employees shall obey all safety signs and posted rules on the BRATS premises. Contractor or Contractor's staff shall notify Director of Transportation or his/her designee when on-site prior to visit or as soon as they arrive if visit is of an urgent nature. Contractor vehicles shall be clearly marked and all personnel must have proper identifiable clothing and/or ID badges or other identification that will identify them as Contractor or sub-contractor.

Contractor's employees shall not operate BRATS vehicles at any time. Should a BRATS vehicle need to be moved during the installation/maintenance activity, a BRATS employee shall be informed and he/she will facilitate the move.

12. Installation procedures

Installation of approved advertisements will be scheduled seven (7) business days in advance. Coordination with the Director of Transportation or his/her designee is required. A minimum three (3) hour time limit will be given for each removal/installation process per vehicle. In special circumstances with written pre-approval by the Director of Transportation or his/her designee additional time allowances will be given for installation/removal of advertisement materials.

13. Shop and Storage Space

No storage space at BRATS properties shall be available to the Contractor under the terms of the agreement. Production that is specific to BRATS transit advertisement materials may be shipped directly to BRATS for storage and installation at a later time.

14. Financial Compensation

Vendor agrees to pay BRATS in accordance with the Contract for Professional Services executed between the parties.

15. BRATS Responsibility and Project Manager

The Contractor shall pay BRATS on a quarterly (90 day) basis. The contractor shall invoice advertiser on a monthly (30 day) basis and revenues shall be collected within said 30-day period. Payments made to BRATS shall be based on invoice paid during the said quarter (90 day period). Statements will be provided by Contractor to outline any and all outstanding balances due.

"No deduction shall be permitted for 'rep commissions' or 'finder fees.'" The Contractor may not charge a commission to an advertiser; in no case shall the Contractor pay a commission to or retain a person or a firm in which the Contractor is in any way financially interested. All net billing shall be made due to any other dept.

The Contractor shall inform BRATS of the dollar value received from advertiser if the Contractor accepts any non-cash goods, services, or things of value in lieu of all or some of its net billings and include such things as part of the gross billing in the calculated amount due BRATS.

The Contractor shall keep and provide a quarterly and accurate accounting of its sales, revenue, and collections including a statement of size, installation date, vehicle number installed, ending date of advertisement and type of display contracted for each advertiser. Any payment not made when due is subject to a late charge of one and one half percent (1.5%) per month.

The Contractor shall keep and make those records available for inspection to BRATS or audit by BRATS or its authorized agent, in order to verify monthly and annual statements at any reasonable time throughout the period of this agreement and three years after termination of this agreement. Audits shall be conducted in accordance with generally accepted auditing standards and/audit procedures and guidelines of BRATS. Contractor shall fully cooperate with BRATS or its auditor(s) during audits and inspections and provide all requested documentation in a timely manner. If the audit reveal discrepancies in amounts due to BRATS, the Contractor shall be responsible for the additional amounts due within 30 days of audit findings.

BRATS will be responsible for providing direction to the Contractor. Formal and informal communication following the contract award shall be directed to BRATS Assistant Director of Transportation, or other person(s) that may be designated by BRATS Director of Transportation.

16. Time and Performance

A thirty-six (36) month contract will be established to begin on the date that the contract is executed. Any successive contract(s) must have the written approval of both the

County and the Contractor no later than thirty (30) days prior to the expiration of the original contract.

**RESPONSIBILITIES, TASKS TO BE PERFORMED
AND GENERAL PROVISIONS**

I. Services to be Provided.

1. Scope of services shall incorporate suggestions/consideration BRATS raised in the BALDWIN COUNTY COMMISSION RFP supplied via email on August 11, 2011. Contractor's proposal has addressed these points formally from the BRATS RFP. Any considerations not covered in this proposal will be addressed, negotiated and incorporated into an amended document to be approved by Contractor and BRATS.
2. Contractor warrants that all services described in this agreement will be performed in a competent, professional and satisfactory manner in accordance with typical and prevalent industry standards.
3. All goods, equipment, supplies and labor regarding the advertising initiative for Transportation Advertising will be provided by Contractor.
4. All advertising placed for display on the Transportation Advertising system falling under the jurisdiction of this agreement will be authorized by Contractor and BRATS.
5. Contractor shall begin the advertising initiative starting on or about November 1, 2014.
6. Contractor shall provide and furnish and be solely responsible for all aspects of the day to day management and operation of the Transportation Advertising initiative including but not limited to the following:
 - Recruitment of all commercial advertisers from local, regional and national markets.
 - Sale of all advertising space on the Transportation Advertising initiative.
 - Solicitation for all materials needed or to be used in the development of advertising for these advertisers.
 - Design, layout and production of all advertising for these advertisers.
 - Securing approval from advertisers as well as BRATS for the advertising to be displayed on the Transportation Advertising system.
 - Production of self-adhesive vinyl banners to be used on the sides, back and interiors of the Transportation Advertising system.
 - Installation, maintenance and removal of vinyl banners.
 - Invoicing of advertisers for advertising / collection of all revenue.

- Payment of any expense incurred for/by the Transportation Advertising initiative.
 - Consistent reporting of revenue/expenses to BRATS for record keeping purposes in regard to the Transportation Advertising initiative.
 - Compensation to BRATS for profit generated after costs by the Transportation Advertising initiative.
 - Providing any and all other activities necessary to ensure a reliable, efficient, effective and profitable Transportation Advertising initiative.
 - Contractor will keep current and compliant with any and all County policies as well as State and Federal regulations regarding display advertising.
 - Contractor will apply for and keep current and compliant its vendor status with Baldwin County.
 - Contractor will comply with current County policy regarding “Character & Image” as it applies to the Transportation Advertising initiative.
 - Contractor will work with BRATS to honor any and all existing advertising agreements with current Transportation Advertisers.
 - Contractor will work with BRATS to honor any and all existing “PSA” advertising agreements with current Transportation Advertisers.
 - Contractor will work to ensure County “PSA’s” are incorporated additionally as a component of the Transportation Advertising initiative.
 - Contractor will work through BRATS to ensure compliance throughout the advertising approval process.
7. Contractor will at all times act as an independent Contractor and not as an employee of BRATS. Any employee of Contractor assigned to perform any services pertaining to the Transportation Advertising initiative is solely an employee of Contractor.
8. Contractor acting as an independent Contractor shall not be provided with any benefits including but not limited to: health insurance, liability insurance or indemnification, vacation or sick leave or pension benefits.

II. Advertising Content Provided by Contractor.

1. Advertisers must pass existing BRATS policy regarding topics such as: political, religion, drug and alcohol, nightclubs and bars, entertainment and general philosophies. NO advertiser will be permitted to infringe on existing BRATS policy. BRATS will have final approval on all advertisers / advertising to be incorporated and displayed in the Transportation Advertising initiative.

2. Contractor will ensure that no advertisers will be permitted to infringe on current advertising agreements currently in place with Baldwin County and/or BRATS.
3. Contractor will consult with BRATS before entering into any formal agreement with any advertiser that is deemed "questionable" regarding the policies of "Character & Image".
4. Contractor will make it known that BRATS in no way endorses or promotes any product or service displayed in the Transportation Advertising initiative.
5. Contractor will label all advertisements, where applicable, with the following tagline: *"Proceeds from the placement of this advertisement benefit the Baldwin County Commission, Baldwin County Rural Area Transportation and the citizens of Baldwin County."*
6. Contractor will not permit any contracted advertiser to violate any policy set forth by the Baldwin County Commission and/or BRATS.
7. Contractor will assume all obligations and responsibility for content in the Transportation Advertising initiative.

ATTACHMENT C.

EXAMPLES OF MATERIALS COST / BASIC DIMENSIONS

Material Costs (Cost of Goods Sold - Advertiser Reimbursed)

Advertiser's 1-time fee will cover material's cost. (\$) is potential retail pricing for materials.

Exterior Vinyl	\$6.50 sqft	(\$23 sqft)	
Interior/Exterior PVC	\$12.25 sqft	(\$43 sqft)	
Max Metal	\$9.75 sqft	(\$35 sqft)	
Banner	\$3.25 sqft	(\$12 sqft)	
Coroplast	\$3.25 sqft - 1 side / \$5.75 2 sides		(\$12 sqft / \$21 sqft)

Estimated Monthly Expenses (Fixed Costs)

Allowable Overhead Costs (Not To exceed \$41,000 or 7% of Gross Revenue Annually, whichever is less)

Travel / Lodging	\$1,500
Phone / Internet	\$200
Professional Services	\$1,000
Marketing / Advertising	\$250
Insurance	\$150
Taxes	\$250
Licenses / Dues	\$50

(NOTE: McNutt & Company shall not deduct any cost for sales, contracts, salaries or commissions which are not allowable overhead costs.)

McNutt & Company, LLC - BRATS Advertising Initiative Potential Revenue Projections		
Year 1 Projection	Year 2 Projection	Year 3 Projection
AVAILABILITY	AVAILABILITY	AVAILABILITY
Corporate Sponsorships / Naming Rights	Corporate Sponsorships / Naming Rights	Corporate Sponsorships / Naming Rights
Signage / Promotions / Events	Signage / Promotions / Events	Signage / Promotions / Events
Electronic Media	Electronic Media	Electronic Media
Revenue = 74,750	Revenue = 188,875	Revenue = 489,888
Material Cost = (6,980)	Material Cost = (14,950)	Material Cost = (37,875)
Fixed Costs = (10,465)	Fixed Costs = (26,000)	Fixed Costs = (26,000)
Profit = 56,305	Profit = 145,925	Profit = 400,113
Loss 50% = (29,162)	Loss 50% = (72,962)	Loss 50% = 208,000
Amount Due BRATS = 29,162	Amount Due BRATS = 72,962	Amount Due BRATS = 208,000

(NOTE: Financial projections are for estimating purposes only and are not guaranteed as actual revenue but rather are to be interpreted as benchmarks and/or sales goals.)

Monica Taylor

From: B.Taylor Rider
Sent: Tuesday, March 24, 2015 3:25 PM
To: Monica Taylor
Cc: Chandra Middleton; Anu Gary; Keri Green; Ronald Cink; Cal Markert
Subject: RE: McNutt & Company, LLC - Advertising Program Contract for Services

Most of the time someone else signs for him (Mr. Stroup normally) and they did not notarize three years ago so I would consider this complete. Please copy us for our file.

Thanks,

Taylor Rider
Baldwin County Commission
Director of Transportation
(251) 972-8576
Fax (251) 972-6841
Cell (251) 404-6473
btrider@baldwincountyal.gov

From: Monica Taylor
Sent: Monday, March 23, 2015 9:30 AM
To: B.Taylor Rider
Cc: Chandra Middleton; Anu Gary; Monica Taylor; Keri Green; Ronald Cink; Cal Markert
Subject: McNutt & Company, LLC - Advertising Program Contract for Services

Good morning Taylor:

I am in receipt of the signed McNutt & Company Advertising Program Contract from ALDOT; however, Mr. Jilla did not sign the contract (someone else signed for him) and the signature was not notarized. I do not remember if ALDOT has to have their signature notarized or not. Will you contact ALDOT and see if this agreement (with someone signing for Mr. Jilla and no notary) is considered fully executed?

Thanks
M.

Monica E. Taylor
Assistant Records Manager
Baldwin County Commission
mtaylor@baldwincountyal.gov
(251) 580-1696
(251) 580-2500 (fax)

