

AGREEMENT

THIS AGREEMENT, made and entered into this _____ day of _____, 2019, by and between the Lexington-Fayette Urban County Government, an urban county government of the Commonwealth of Kentucky pursuant to KRS 67A (hereinafter "GOVERNMENT"), whose mailing address is 200 East Main Street, Lexington, Kentucky 40507, and GROUP CJ, LLC, (hereinafter "CONTRACTOR"), whose mailing address is 314 Old Vine Street, Lexington, Kentucky 40507.

WITNESSETH:

WHEREAS, GOVERNMENT has been awarded federal funds from the Commonwealth of Kentucky, Transportation Cabinet under the federal Surface Transportation Block Grant--Lexington program for the administration of a Project designed to conduct an alternative transportation marketing campaign,

WHEREAS, GOVERNMENT'S approved project provides for a public awareness campaign to increase the use of alternative transportation that reduces energy consumption, congestion and air pollution; on behalf of the Lexington Metropolitan Area Planning Organization (MPO);

WHEREAS, GOVERNMENT selected CONTRACTOR to perform the hereindescribed services in Fiscal Year 2020, in response to RFP #46-2017, with a provision for two one-year renewal terms upon successful completion of work, and upon agreement of the design of a new marketing campaign;

WHEREAS, GOVERNMENT has agreed to retain the services of the CONTRACTOR for the period July 1, 2019 through June 30, 2020;

WHEREAS, the GOVERNMENT'S responsibility for ensuring compliance with all grant requirements necessitates a written AGREEMENT with CONTRACTOR;

NOW, THEREFORE, in consideration of the foregoing and mutually agreed upon promises, conditions, and covenants hereinafter set forth, pursuant to grant requirements, the parties hereto agree as follows:

ARTICLE I

General Terms:

1. The term of this AGREEMENT shall be for a period beginning July 1, 2019, and continuing until June 30, 2020 unless within that period GOVERNMENT gives CONTRACTOR thirty (30) days written notice of termination of this AGREEMENT in which case this AGREEMENT shall terminate thirty (30) days from the date notice is given to CONTRACTOR.
2. The total amount of grant funds available for distribution by the GOVERNMENT for the support of the herein-described services shall be \$100,000 for the alternative transportation marketing campaign;

ARTICLE II

Obligation of GOVERNMENT:

To provide up to \$100,000 in grant funds for the support of the herein-described contractual obligations.

ARTICLE III

Obligations of CONTRACTOR:

1. CONTRACTOR shall design and execute an efficient and cost-effective marketing campaign for the Lexington Area MPO, as outlined in the Request for Proposals made a part of this AGREEMENT by reference and in the Scope of Services, attached by reference.
2. CONTRACTOR shall submit to the GOVERNMENT invoices requesting payment for services provided. Invoices shall include evidence of services provided.
3. The CONTRACTOR shall comply with the regulations of the Transportation Cabinet, Department of Highways, relative to nondiscrimination in Federally Assisted Programs of the Transportation Cabinet, Department of Highways (49 CFR, Part 21) which are herein incorporated by reference and were made a part of this contract.

CONTRACTOR shall comply with all non-discriminatory requirements imposed by Title VI of the Civil Rights Act of 1964 (78 Stat. 252) and all applicable Federal and State requirements, including Executive Orders. The Recipient shall not discriminate on the basis of race, color, national origin, disability, gender, gender identity, religion, age, sexual orientation, income, , limited-English proficiency or veteran status.

During the performance of this contract, the CONTRACTOR, for itself, its assignees and successors in interests agrees as follows:

- a. **Compliance with Regulations:** The CONTRACTOR (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally assisted programs of the U.S. Department of Transportation, Federal Highway Administration, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
- b. **Nondiscrimination:** The CONTRACTOR with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project or program set forth in Appendix B of 49 CFR Part 21.

- c. Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding, or negotiation made by the CONTRACTOR for work to be performed under a subcontract, including procurements of materials or leases of equipment each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to nondiscrimination on the grounds of race, color or national origin.
- d. Information and Reports:** The CONTRACTOR will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the GOVERNMENT or the Federal Highway Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the GOVERNMENT or the Federal Highway Administration, as appropriate and will set forth what efforts it has made to obtain the information.
- e. Sanctions for Noncompliance:** In the event of a CONTRACTOR's noncompliance with the nondiscrimination provisions of this contract, the GOVERNMENT will impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:

 - 1. withholding payments to the contractor under the contract until the contractor complies; and/or
 - 2. cancelling, terminating, or suspending a contract, in whole or in part.
- f. Incorporation of Provisions:** The CONTRACTOR will include the provisions of paragraphs 5(a) through 5(e) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

The CONTRACTOR will not discriminate against any employee or applicant for employment because of race, religion, color, national origin, sex, sexual orientation, gender identity, age, income, limited-English proficiency or veteran status. The CONTRACTOR further agrees to comply with the provisions of the Americans with Disabilities Act (ADA), Public Law 101-336, and applicable Federal regulations relating thereto prohibiting discrimination against otherwise qualified disabled individuals under any program or activity. The CONTRACTOR agrees to provide, upon request, needed reasonable

accommodations. The CONTRACTOR will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, national origin, sex, sexual orientation, gender identity, age or disability. Such action shall include, but not be limited to the following: Employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensations and selection for training, including apprenticeship. The CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

The CONTRACTOR will, in all solicitations or advertisements for employees placed by or on behalf the of the CONTRACTOR, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, national origin, sex, sexual orientation, gender identity, age. disability, income, limited-English proficiency or veteran status.

The CONTRACTOR will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising the said labor union or workers' representation of the CONTRACTOR's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment. The CONTRACTOR shall take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance.

The CONTRACTOR will comply with all provisions of Executive Order No. 11246 of September 24, 1965 as amended, and of the rules, regulations and relevant orders of the Secretary of Labor. The CONTRACTOR will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

In the event of the CONTRACTOR 's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations or orders, this contract may be cancelled, terminated or suspended in whole or in part and the CONTRACTOR may be declared ineligible for further government contracts or federally-assisted construction contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended, and such other sanctions may be imposed and remedies invoked as provided in or as otherwise provided by law.

The CONTRACTOR will include the provisions of paragraphs (1) through (7) of section 202 of Executive Order 11246 in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor, issued pursuant to section 204 of Executive Order No.11246 of September 24, 1965, as amended, so that such provisions will be binding upon each subrecipient or vendor. The CONTRACTOR will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in

the event a CONTRACTOR becomes involved in, or is threatened with, litigation with a subrecipient or vendor as a result of such direction by the agency, the CONTRACTOR may request the United States to enter into such litigation to protect the interests of the United States.

4. The CONTRACTOR agrees to comply with the provisions of the Americans with Disabilities Act of 1990 (ADA) and Section 504 of the Rehabilitation Act of 1973, P.L. 93-112, and other applicable Federal regulations relating hereto, issued by the U.S. Department of Transportation. The ADA prohibits discrimination against otherwise qualified individuals under a program or activity receiving federal financial assistance covered by this AGREEMENT, and imposes requirements that affect the design, construction, and maintenance of all transportation projects to provide access to all facilities.
5. The CONTRACTOR agrees to comply with the Disadvantaged Business Enterprise (DBE) requirements contained within 49 C.F.R Part 26. The CONTRACTOR and its subcontractors shall not discriminate on the basis of race, color, national origin, or sex in the performance of this AGREEMENT. The CONTRACTOR shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of USDOT-assisted contracts. Failure by the CONTRACTOR to carry out these requirements is a material breach of this AGREEMENT, which may result in the termination of this AGREEMENT or such other remedy as the GOVERNMENT deems appropriate. Each contract signed with a subcontractor must include this provision. . In this regard the CONTRACTOR or subcontractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform contracts. The CONTRACTOR will make every effort to located DBEs to purchase materials and services for use in this AGREEMENT. The CONTRACTOR shall document the steps it has taken to obtain DBE participation, including, but not limited to the following:
 - A. The names, addresses, and telephone numbers of DBEs that were contacted;
 - B. A description of the information provided to DBEs regarding the type of work to be performed.

The CONTRACTOR must abide by 49 C.F.R. Part 26.29 with regard to prompt payment mechanisms and retainage payment. If Applicable, all sub contractors must be paid with ten (10) working days after the CONTRACTOR has been paid by the GOVERNMENT for work performed or services delivered

6. CONTRACTOR shall retain all records pertinent to expenditures incurred under this AGREEMENT, for a period of (3) three years after the termination of all activities funded under this AGREEMENT. CONTRACTOR shall also provide officials of the GOVERNMENT, officials of the U.S. Department of Transportation, and the Comptroller General of the United States, or any of their authorized representatives, access to any pertinent books, documents, papers, or other records of CONTRACTOR which are pertinent to funds expended under the terms of the AGREEMENT, in order to make audits, examinations, excerpts and transcripts. The right of access shall be for the period in which records are retained. Notwithstanding the above, if there is litigation, claims, audits, negotiations or other actions that involve any of the records cited and that have started before

the expiration of the three-year period, then such records must be retained until completion of the actions and resolution of all issues, or the expiration of the three-year period, whichever occurs later.

CONTRACTOR agrees to defend, indemnify, and hold harmless GOVERNMENT from any and all losses or claims of whatever kind, that are in any way incidental to, or connected with, or that arise or alleged to have arisen, directly or indirectly, in whole or in part, from the execution, performance, or breach of this AGREEMENT by CONTRACTOR, including any environmental problems, including, without limitation, soil and/or water contamination, and remedial investigations and feasibility studies thereof, which exist at or prior to the contract commencement date, regardless of which such losses or claims are made or incurred. This indemnity agreement shall in no way be limited by a financial responsibility, or loss control requirements below, and shall survive the termination of this AGREEMENT;

For the purposes of this Indemnity Provision:

- A. The word “defend” includes, but is not limited to, investigating, handling, responding to, resisting, providing a defense for, and defending claims, at CONTRACTOR’S expense, using attorneys approved in writing by GOVERNMENT, which approval shall not be unreasonably withheld.
 - B. The word “claims” includes, but is not limited to, claims, demands, liens, suits, notices of violation from Governmental agencies, and other causes of action of whatever kind.
 - C. The word “losses” includes, but is not limited to: attorney fees and expenses; costs of litigation; court or administrative costs; judgments; fines; penalties; interest; all environmental cleanups and remediation costs of whatever kind; and any liability arising from death, injury, or damage of any kind, to any person, including employees and agents of CONTRACTOR and GOVERNMENT, and damage to, or destruction of, any property, including the property of GOVERNMENT.
8. The CONTRACTOR certifies, in accordance with Executive Order 12549 (Debarment and Suspension February 18, 1986) that to the best of its knowledge and belief, that it, its principals, and its subcontractors:

Are not presently debarred, suspended, proposed for debarment, declared negligible, or voluntarily excluded from covered transactions or contract by and Federal department or agency for noncompliance with the Federal Labor Standards, Title VI of the Civil Rights Act of 1964 as amended, Executive Order 11246 as amended or any other federal law;

- a. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of federal or state antitrust statues or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

- b. Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (a) of this certification; and
 - c. Have not within a three-year period preceding this proposal had one or more public (Federal, State, or local) transactions or contracts terminated for cause or default.
9. CONTRACTOR shall provide Worker's Compensation insurance coverage for all its employees involved in the performance of this AGREEMENT.

ARTICLE IV

Additional Terms:

1. This AGREEMENT, in accordance with 49 CFR 18.43, may be terminated by the GOVERNMENT upon thirty days written notice, if CONTRACTOR materially fails to comply with any term of the AGREEMENT.
2. This AGREEMENT, in accordance with 49 CFR 18.44 may be terminated for convenience upon thirty days written notice by the GOVERNMENT.
3. GOVERNMENT and CONTRACTOR each binds himself and his partners, successors, executors, administrators, assigns and legal representatives of such other party, in respect to all covenants, agreements, and obligations of the AGREEMENT.
4. The SUBRECIPIENT shall not enter into any subcontracts with any agency or individual in the performance of this AGREEMENT without the written consent of the GOVERNMENT prior to the execution of such agreement.
5. If this AGREEMENT results in any copyrightable material or inventions, the GOVERNMENT and/or grantor agency reserves the right to royalty-free, non exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use, the work or materials for government purposes.
6. This AGREEMENT contains the entire and complete understanding of the parties and neither party has relied upon any representation not contained herein.
7. This AGREEMENT, or any part hereof, may be amended from time to time hereafter only in writing executed by the GOVERNMENT and CONTRACTOR.

[SPACE INTENTIONALLY LEFT BLANK. SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties have executed this AGREEMENT at Lexington, Kentucky, the day and year first above written.

LEXINGTON-FAYETTE URBAN COUNTY
GOVERNMENT

BY: _____
Linda Gorton, Mayor

ATTEST:

Clerk of Urban County Council

GROUP CJ, LLC

BY: _____
Connie Jo, Miller, Agency Owner