

AGREEMENT

THIS AGREEMENT, made and entered into this 26th day of October, 2011, 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 AD-SUCCESS, (hereinafter "CONTRACTOR"), whose mailing address is 121 Prosperous Place, Town Office II, Lexington, Kentucky 40509.

WITNESSETH:

WHEREAS, GOVERNMENT has been awarded federal funds from the Commonwealth of Kentucky, Transportation Cabinet under the federal Surface Transportation Program Metropolitan Lexington program for the administration of a Project designed to contribute to the attainment of national ambient air quality standards,

WHEREAS, GOVERNMENT's approved projects provide for a mobility office marketing campaign;

WHEREAS, GOVERNMENT issued a Request for Proposals (RFP 46-2010) from firms capable of designing and executing an efficient and cost effective marketing campaign for the project;

WHEREAS, GOVERNMENT selected CONTRACTOR to perform the hereindescribed services in Fiscal Year 2011; with a one-year renewal provision 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, 2011 through June 30, 2012;

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, 2011, and continuing until June 30, 2012 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 \$40,400 for the mobility office marketing campaign;

ARTICLE II

Obligation of GOVERNMENT:

To provide up to \$44,400 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 Mobility Office, as outlined in the Request for Proposals and in the CONTRACTOR'S proposal, both documents are made a part of this Agreement by reference. CONTRACTOR shall also document a minimum of \$26,400 of in-kind value of Public Service Announcements.

2. CONTRACTOR shall submit to the GOVERNMENT invoices requesting payment for services provided. Invoices shall include evidence of services provided.
3. CONTRACTOR agrees to comply with Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and with Executive Order 11246 as amended by Executive Order 11375 and 12086.
4. CONTRACTOR will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability or other handicap, or age. The CONTRACTOR shall take affirmative action to insure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex, national origin, age, or handicap. CONTRACTOR will take affirmative action to insure that all employment practices include, but are not limited to, the following: hiring, upgrading, demotion, transfer, recruitment, recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection of training, including apprenticeship.
5. A Compliance with Civil Rights Act of 1964. During the performance of this AGREEMENT, the CONTRACTOR agrees as follows:
 - A. CONTRACTOR will comply with the regulations relative to nondiscrimination in federally assisted programs of the U.S. Department of Transportation (Title 49, Code of Federal Regulations, Part 21, hereinafter referred to as the REGULATIONS), which are herein incorporated by reference and made a part of this AGREEMENT.
 - B. Nondiscrimination: The CONTRACTOR with regard to the work performed by it after award and prior to completion of the AGREEMENT work will not discriminate on the ground of race, color, or national origin in the selection and retention of subcontractors including procurement of materials and leases of equipment. The CONTRACTOR will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the REGULATIONS, including employment practices when the AGREEMENT covers a program set forth in Appendix B of the REGULATIONS.
 - C. Solicitations for Subcontractors, including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiations made by the CONTRACTOR for work to be performed under a subcontract including procurement of materials or equipment, each potential subcontractor or supplier shall be notified by the CONTRACTOR or the CONTRACTOR's obligations under this AGREEMENT with the REGULATIONS relative to nondiscrimination on the ground of race, color, or national origin.
 - D. Information and Reports: the CONTRACTOR will provide all information and reports required by the REGULATIONS, or orders and instructions 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 to be pertinent to ascertain compliance with such REGULATIONS orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the CONTRACTOR will so certify to the GOVERNMENT as appropriate, and shall set forth what efforts it has made to obtain the information.
 - E. Sanctions for Noncompliance: In the event of the CONTRACTOR's noncompliance with the nondiscrimination provisions of this AGREEMENT, the GOVERNMENT will impose such contract sanctions as it may determine to be appropriate, including but not limited to:
 - 1) Withholding payment to the CONTRACTOR under the AGREEMENT until the CONTRACTOR complies; and/or
 - 2) Cancellation, termination or suspension of the AGREEMENT, in whole or in part.
6. It is the policy of the U.S. Department of Transportation that disadvantaged business enterprises as defined in 49 CFR Part 23 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this AGREEMENT. Consequently the DBE requirements of 49 CFR Part 23 apply to this

AGREEMENT.

DBE Obligation. The CONTRACTOR or its subcontractors agree to ensure that disadvantaged business enterprises as defined in 49 CFR Part 23 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this AGREEMENT. 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 and the subcontractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of U. S. DOT – assisted

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.
7. 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.
8. 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.

9. 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 statutes 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.
10. 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.

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: _____
Jim Gray, Mayor

ATTEST:

Clerk of Urban County Council

AD-SUCCESS

BY:  _____

Sharalee Scanlon, Co-Owner

DBE Woman-Owned Business
2010 Certificate KY Dept of Transportation