

RESOLUTION NO. 2020 - 125

**A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, AUTHORIZING THE COUNTY ADMINISTRATOR, OR DESIGNEE, TO EXECUTE A CONTRACT WITH HYBRID DESIGN, INC. FOR MANAGEMENT OF AN ADVERTISING PROGRAM ON PUBLIC TRANSPORTATION VEHICLES FOR SJC GROWTH MANAGEMENT TRANSPORTATION DEVELOPMENT DIVISION UNDER RFP NO. 19-47R FOR PUBLIC TRANSPORTATION BUS ADVERTISING SERVICES.**

**RECITALS**

**WHEREAS**, the County desires to enter into contract with Hybrid Design, Inc. for the management of an advertising program on public transportation vehicles for the SJC Growth Management Transportation Development Division in accordance with RFP No. 19-47R; and

**WHEREAS**, the scope of the services will be to provide any and all labor, materials, equipment, transportation, and supervision necessary for the management of the advertising program on public transportation vehicles in St. Johns County with the primary goal of selling available space for advertisements as possible at the highest possible rates, in accordance with RFP No. 19-47R; and

**WHEREAS**, through the County's formal RFP process, Hybrid Design, Inc. was selected as the highest ranked respondent to enter into contract with the County to perform the work referenced above; and

**WHEREAS**, on November 5, 2019 the Board of County Commissioners of St. Johns County, Florida approved Resolution 2019-380 authorizing the County Administrator, or designee, to enter into negotiations with Hybrid Design, Inc. and to execute a contract as negotiated; and

**WHEREAS**, the County reviewed the terms, provisions, conditions and requirements of the negotiated contract, and finds that entering into contract to complete the work services serves a public purpose; and

**WHEREAS**, the contract will be finalized after board approval.

**NOW, THEREFORE BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA**, as follows:

Section 1. The above Recitals are incorporated by reference into the body of this Resolution and such Recitals are adopted as finds of fact.

Section 2. The County Administrator, or designee, is hereby authorized to enter into contract with Hybrid Design, Inc. to provide the scope of services specifically provided in RFP No. 19-47R.

Section 3. To the extent that there are typographical and/or administrative errors that do not change the tone, tenor, or concept of this Resolution, then this Resolution may be revised without subsequent approval by the Board of County Commissioners.

**PASSED AND ADOPTED** by the Board of County Commissioners of St. Johns County, Florida, this 7<sup>th</sup> day of April, 2020.

**BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA**

By: [Signature]  
Job S. Smith, Chair

**ATTEST:** Brandon Patty, Clerk  
By: [Signature]  
Deputy Clerk

**RENDITION DATE APR 9 2020**





**CONTRACT AGREEMENT**  
**RFP NO: 19-47R; Public Transportation Bus Advertising Services**  
**Master Contract #: 19-MAS-HYB-11078**

This Contract Agreement, ("Agreement") is made as of this 10<sup>th</sup> day of February, 2020, by and between St. Johns County, FL ("County"), a political subdivision of the State of Florida, with principal offices located at 500 San Sebastian View, St. Augustine, FL 32084, and Hybrid Design, Inc. ("Contractor"), authorized to do business in the State of Florida, with offices located at One News Place, Suite F, St. Augustine, FL 32084; Phone: (904) 814-7790; and Email: [kerry@hybridstudios.net](mailto:kerry@hybridstudios.net).

In consideration of the mutual promises contained herein, the County and the Contractor agree as follows:

**ARTICLE 1 – DURATION and EXTENSION**

This Agreement shall become effective upon the Effective Date shall be in effect for a period of three(3) calendar years, and may be renewed for up to one (1) three-year renewal period. This Agreement may be renewed, upon satisfactory performance by the Contractor, mutual agreement by both parties, and the availability of funds. While this Agreement may be renewed as stated in this Article, it is expressly noted that the County is under no obligation to extend this Agreement. It is further expressly understood that the option of extension is exercisable only by the County, and only upon the County's determination that the Contractor satisfactorily performed the Services noted in the Contract Documents.

**ARTICLE 2 - ENUMERATION OF CONTRACT DOCUMENTS**

The term "Contract Documents" shall include all RFP Documents and any addenda/exhibits thereto; all Specifications; this Agreement, Federal Transit Administration (FTA) Required Contract Clauses (Exhibit "C"), Title 49, Ch. 53 Code of Federal Regulations (Exhibit "D") any duly executed amendments, addenda, and/or exhibits hereto; and any and all Change Orders.

**ARTICLE 3 - SERVICES**

The Contractor's responsibility under this Agreement is to provide any and all labor, materials, equipment, transportation, and supervision necessary for the management of the advertising program on public transportation vehicles in St. Johns County with the primary goal of selling available space for advertisements as possible at the highest possible rates, as specified in the Scope of Work, proposed by the Contractor, approved by the County in accordance with RFP No: 19-47R and as otherwise provided in the Contract Documents. Notwithstanding the foregoing, for sign installation and or removal only, County shall deliver advertising vehicles to Contractor's contracted sign company, B & S Signs, 2764 S. Collins Ave., St. Augustine, FL 32084.

Services provided by the Contractor shall be under the general direction of St. Johns County Transportation Development Division or other authorized County designee, who shall act as the County's representative throughout the duration of this Agreement.

**ARTICLE 4 – SCHEDULE**

The Contractor shall perform the required Services according to the schedule submitted and approved by the County. No changes to said schedule shall be made without prior written authorization from the County's representative.

**ARTICLE 5 – COMPENSATION/REVENUE TO COUNTY**

- A. The Contractor shall compensate the County seventy percent (70%) of gross advertising revenues plus applicable Sales Tax, based on the revenue proposal as submitted and attached hereto as Exhibit A-1 without set off, deduction, diminution, reduction, abatement or counterclaim, except as expressly provided herein.
- B. The Contractor shall provide monthly reports detailing all contracts and billing collection activities well as monthly (and total) net revenue earned by the advertising vehicles, and medium, during that monthly reporting period, as well as the number of months contracted and number of months left on the contract. This will include a report breakdown by different fixed route bus sizes, and by proposed and implemented established rate card categories and future opportunities. The report shall include a copy of all fully executed space advertising sales contracts. The contracts

should detail the amount of advertising purchases including the size and duration of the buy. Report data relating to sales and billings shall be provided in both electronic and written form. Contractor is authorized to use a Certified Public Accountant that Contractor uses for bookkeeping and or tax work, provided such accountant is a separate person or entity from Contractor and Contractor has no ownership or control of such person or entity.

- C. The Contractor agrees to use its best efforts to obtain the fair market value for the display of all advertising material.
- D. The Contractor agrees to include in all its contracts for the display of advertising material a standard provision requiring that should the Contractor be held in default under this agreement, the Contractor shall assign and transfer to the successor contractor all applicable contracts for advertising on the Sunshine Bus fleet items (i.e., buses internal and external), and such contracts shall thereupon become the property of the successor contractor.
- E. Compensation shall be sent to the County monthly within thirty (30) days after the end of the month except in the case of the last payment when compensation shall be paid within thirty (30) days after the termination, cancellation or expiration of this Contract. Each payment shall be based on the gross receipts for the month immediately preceding the date of payment.
- F. Payments of compensation made by the Contractor to the County pursuant to the provisions of this Contract shall not be considered in any manner to be in the nature of a tax, but shall be in addition to all taxes of whatsoever kind or description which are now or which may thereafter be required to be paid by any ordinance or local law of St Johns County or any municipality or city within the County, or any law of the State of Florida or any law of the Federal Government of the United States. Payment of compensation shall be in addition to any permit fees required by law.
- G. In the event the Contractor fails to pay any of the monies required to be paid under this contract within thirty (30) days after same shall become due, interest at the rate of 1.5% per month, or eighteen percent (18%) per annum, shall accrue against the delinquent payment(s) from due date until same are paid. Implementation of this provision shall not preclude the County from terminating this contract for default for nonpayment, or from enforcing any other provisions contained herein.
- H. The County reserves the right to remove vehicles from service, substitute vehicles, reassign vehicles, or otherwise deploy vehicles as needed for the safe and efficient operation of the transit system regardless of the impact to the advertising program, however, this Agreement is intended to apply to all County passenger transportation vehicles, including fixed route buses and paratransit buses. The County shall provide monthly reports to the Contractor of all revenue hours and revenue miles for all such transportation vehicles.
- I. In the event a bus is out-of-service for a period of ten (10) continuous operating days or longer, the monthly fee shall be reduced proportional to the number of service days in which the bus was not operational. In the event a reduction is due in the last month of the contract, the County will issue a refund.
- J. Unless otherwise notified, revenue remittance should be delivered to:  

St. Johns County Transportation Development Division  
Attn: Transit Grant Specialist  
4040 Lewis Speedway  
St. Augustine, FL 32084
- K. **FINAL PAYMENT:** In order for the County and the Contractor to reconcile/close their books and records, the Contractor shall clearly indicate "**Final Payment**" on the Contractor's final payment remittance to the County. Such indication establishes that all services have been satisfactorily performed and that all advertising revenues have been remitted to the County and that there is no further Work to be performed under this Agreement.

#### **ARTICLE 6 – TRUTH-IN-NEGOTIATION CERTIFICATE**

The signing of this Agreement by the Contractor shall act as the execution of a truth-in-negotiation certificate certifying that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current as of the date of this Agreement.

The original contract price and any additions thereto shall be adjusted to exclude any significant sums by which the County determines the contract price was increased due to inaccurate, incomplete, or noncurrent wage rates and other

factual unit costs. All such contract adjustments shall be made within one (1) year following the end of the Agreement.

#### **ARTICLE 7 – ARREARS**

The Contractor shall not pledge the County's credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgement, lien, or any form of indebtedness. The Contractor further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.

#### **ARTICLE 8 – TERMINATION**

- A. This Agreement may be terminated by the County without cause upon at least thirty (30) calendar days advance written notice to the Contractor of such termination without cause.
- B. This Agreement may be terminated by the County with cause upon at least fourteen (14) calendar days advance written notice of such termination with cause. Such written notice shall indicate the exact cause for termination.

#### **ARTICLE 9 – NOTICE OF DEFAULT/RIGHT TO CURE**

- A. Should the County fail to perform (default) under the terms of this Agreement, then the Contractor shall provide written notice to the County, which such notice shall include a timeframe of no fewer than seven (7) business days in which to cure the default. Failure to cure the default within the timeframe provided in the notice of default (or any such amount of time as mutually agreed to by the parties in writing), shall constitute cause for termination of this Agreement.
- B. Should the Contractor fail to perform (default) under the terms of this Agreement, then the County shall provide written notice to the Contractor, which such notice shall include a timeframe of no fewer than fourteen (14) calendar days in which to cure the default. Failure to cure the default within the timeframe provided in the notice of default (or any such amount of time as mutually agreed to by the parties in writing), shall constitute cause for termination of this Agreement.
- C. Consistent with other provisions in this Agreement, Contractor shall be paid for services authorized and satisfactorily performed under this Contract up to the effective date of termination.
- D. Upon receipt of a notice of termination, except as otherwise directed by the County in writing, the Contractor shall:
  - 1. Stop work on the date to the extent specified.
  - 2. Terminate and settle all orders and subcontracts relating to the performance of the terminated work.
  - 3. Transfer all work in process, completed work, and other material related to the terminated work to the County. Notwithstanding the foregoing, the parties acknowledge that all artwork, graphics, fonts, logos, phrases, and all other such physical and digital property pertaining to signage are the intellectual property of the advertisers and are not intended to be a part of this Agreement.
  - 4. Continue and complete all parts of the work that have not been terminated.

#### **ARTICLE 10 – PERSONNEL**

The Contractor represents that it has, or shall secure at its own expense, all necessary personnel required to perform the Work as provided in the Contract Documents. It is expressly understood that such personnel shall not be employees of, or have any contractual relationship with the County.

All Work required hereunder shall be performed by the Contractor, or under its supervision. All personnel engaged in performing the Work shall be fully qualified and, if required, authorized or permitted under federal, state and local law to perform such Work.

Any changes or substitutions in the Contractor's key personnel must be made known to the County's representative and written approval granted by the County before said change or substitution can become effective.

The Contractor warrants that all Work shall be performed by skilled and competent personnel to the highest professional standards in the field. The Contractor is responsible for the professional quality, technical accuracy, and timely completion of all work performed hereunder, and shall correct or revise any errors or deficiencies in the Work, without additional compensation.

#### **ARTICLE 11 – SUBCONTRACTING**

The County reserves the right to approve the use of any subcontractor, or to reject the selection of a particular subcontractor, and to inspect all facilities of any subcontractors in order to make a determination as to the capability of the subcontractor to perform the Work described in the Contract Documents. The Contractor is encouraged to seek minority and women business enterprises for participation in subcontracting opportunities.

If a subcontractor fails to satisfactorily perform in accordance with the Contract Documents, and it is necessary to replace the subcontractor to complete the Work in a timely fashion, the Contractor shall promptly do so, subject to approval by the County.

The County reserves the right to disqualify any subcontractor, vendor, or material supplier based upon prior unsatisfactory performance.

#### **ARTICLE 12 – FEDERAL AND STATE TAX**

In accordance with Local, State, and Federal law, the County is exempt from the payment of Sales and Use Taxes. The County shall provide a tax exemption certificate to the Contractor upon request. The Contractor shall not be exempt from the payment of all applicable taxes in its performance under this Agreement. It is expressly understood by the County and by the Contractor that the Contractor shall not be authorized to use the County's Tax Exemption status in any manner.

The Contractor shall be solely responsible for the payment and accounting of any and all applicable taxes and/or withholdings including but not limited to Social Security payroll taxes (FICA), associated with or stemming from Contractor's performance under this Agreement.

#### **ARTICLE 13 – AVAILABILITY OF FUNDS**

The County's obligations under this Agreement are contingent upon the lawful appropriation of sufficient funds, for that purpose, by the St. Johns County Board of County Commissioners. Pursuant to the requirements of Section 129.07, Florida Statutes, payment made under this Agreement shall not exceed the amount appropriate in the County's budget for such purpose in that fiscal year. Nothing in this Agreement shall create any obligation on the part of the Board of County Commissioners to appropriate such funds for the payment of services provided under this Agreement during any given County fiscal year. Moreover, it is expressly noted that the Contractor cannot demand that the County provide any such funds in any given County Fiscal Year.

#### **ARTICLE 14 - INSURANCE**

The Contractor shall not commence work under this Agreement until he/she has obtained all insurance required under this section and such insurance has been approved by the County. All insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida. The Contractor shall furnish proof of Insurance to the County prior to the commencement of operations. The Certificate(s) shall clearly indicate the Contractor has obtained insurance of the type, amount, and classification as required by contract and that no material change or cancellation of the insurance shall be effective without thirty (30) days prior written notice to the County. Certificates shall specifically include the County as Additional Insured for all lines of coverage except Workers' Compensation and Professional Liability. A copy of the endorsement must accompany the certificate. Compliance with the foregoing requirements shall not relieve the Contractor of its liability and obligations under this Agreement.

Certificate Holder Address:     St. Johns County, a political subdivision of the State of Florida  
  500 San Sebastian View  
  St. Augustine, FL 32084

The Contractor shall maintain during the life of this Agreement, Comprehensive General Liability Insurance with minimum limits of \$1,000,000 per occurrence, \$2,000,000 aggregate to protect the Contractor from claims for damages for bodily injury, including wrongful death, as well as from claims of property damages which may arise from any operations under this Agreement, whether such operations be by the Contractor or by anyone directly employed by or contracting with the Contractor.

The Contractor shall maintain during the life of this Agreement, Professional Liability or Errors and Omissions Insurance with minimum limits of \$1,000,000.

The Contractor shall maintain during the life of this Agreement, adequate Workers' Compensation Insurance in at least such amounts as are required by the law for all of its employees (if three or more) per Florida Statute 440.02.

In the event of unusual circumstances, the County Administrator, or his designee, may adjust these insurance requirements.

#### **ARTICLE 15 - INDEMNIFICATION**

The Contractor shall indemnify and hold harmless the County and its officers and employees from claims, liabilities, damages, losses, and costs, including court costs, expert witness and professional consultation services, and attorneys' fees, arising out of the Contractor's errors, omissions, or negligence. The Contractor, its subcontractors, agents, and employees and advertisers shall not be liable to, nor be required to indemnify the County for, any portions of damages arising out of any error, omission, or negligence of the County or its officers and employees and the Contractor, its subcontractors, agents, and employees, and advertisers, shall not be liable to the County for bodily injuries sustained by any passenger on the transportation vehicles except to the extent that such bodily injuries arise out of the Contractor's errors, omissions, or negligence.

#### **ARTICLE 16 – SUCCESSORS AND ASSIGNS**

The County and the Contractor each binds itself and its partners, successors, executors, administrators and assigns to the other party of this Agreement and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement. Except as above, neither the County nor the Contractor shall assign, sublet, convey or transfer its interest in this Agreement without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of the County, which may be a party hereto, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the County and the Contractor.

#### **ARTICLE 17 – NO THIRD PARTY BENEFICIARIES**

It is expressly understood by the County, and the Contractor, and this Agreement explicitly states that no third party beneficiary status or interest is conferred to, or inferred to, any other person or entity.

#### **ARTICLE 18 – REMEDIES**

No remedy herein conferred upon any party is intended to be exclusive, or any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party or any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

In any action brought by either party for the enforcement of the obligations of the other party, the prevailing party shall be entitled to recover reasonable attorney's fees.

#### **ARTICLE 19 – CONFLICT OF INTEREST**

The Contractor represents that it presently has no interest and shall acquire no interest, either directly or indirectly, which would conflict in any manner with the performance of services required hereunder. The Contractor further represents that no person having any interest shall be employed for said performance.

The Contractor shall promptly notify the County, in writing, by certified mail, of all potential conflicts of interest for any prospective business association, interest or other circumstance, which may influence or appear to influence the Contractor's judgment or quality of services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work that the Contractor may undertake and request an opinion of the County, whether such association, interest, or circumstance constitutes a conflict of interest if entered into by the Contractor.

The County agrees to notify the Contractor of its opinion by certified mail within thirty (30) days of receipt of notification by the Contractor. If, in the opinion of the County, the prospective business association, interest or circumstance would not constitute a conflict of interest by the Contractor, the County shall so state in the notification and the Contractor shall, at his/her option enter into said association, interest or circumstance and it shall be deemed not in conflict of interest with respect to services provided to the County by the Contractor under the terms of this Agreement.

#### **ARTICLE 20 – EXCUSABLE DELAYS**

The Contractor shall not be considered in default by reason of any delay in performance if such delay arises out of causes

reasonably beyond the Contractor's control and without its fault or negligence. Such cases may include, but are not limited to: acts of God; the County's omissive and commissive failures; natural or public health emergencies; freight embargoes; and severe weather conditions.

If delay is caused by the failure of the Contractor's subcontractor(s) to perform or make progress, and if such delay arises out of causes reasonably beyond the control of the Contractor and its subcontractor(s) and is without the fault or negligence of either of them, the Contractor shall not be deemed to be in default.

Upon the Contractor's request, the County shall consider the facts and extent of any delay in performing the work and, if the Contractor's failure to perform was without its fault or negligence, the Contract Schedule and/or any other affected provision of this Agreement shall be revised accordingly; subject to the County's right to change, terminate, or stop any or all of the Work at any time.

#### **ARTICLE 21 – DISCLOSURE AND OWNERSHIP OF DOCUMENTS**

The Contractor shall deliver to the County for approval and acceptance, and before being eligible for final payment of any amounts due, all documents and materials prepared by and for the County under this Agreement. Provided that the content of advertising materials is approved by the advertiser prior to installation, once approved and or accepted by the County, the Contractor shall not be liable to County for the content of the materials. Notwithstanding the foregoing, the Contractor shall be bound by all other provisions of this Agreement pertaining to its performance hereunder, including indemnification and prohibited activities such as lobbying, or any illegal or unfair business practices. All written and oral information not in the public domain, or not previously known, and all information and data obtained, developed, or supplied by the County, or at its expense, shall be kept confidential by the Contractor and shall not be disclosed to any other party, directly or indirectly, without the County's prior written consent, unless required by a lawful order. All drawings, maps, sketches, and other data developed, or purchased under this Agreement, or at the County's expense, shall be and remains the County's property and may be reproduced and reused at the discretion of the County.

The County and the Contractor shall comply with the provisions of Chapter 119, Florida Statutes (Public Records Law).

All covenants, agreements, representations and warranties made herein, or otherwise made in writing by any party pursuant hereto, including but not limited to, any representations made herein relating to disclosure or ownership of documents, shall survive the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby.

#### **ARTICLE 22 – INDEPENDENT CONTRACTOR RELATIONSHIP**

The Contractor is, and shall be, in the performance of all work services and activities under this Agreement, an independent Contractor, and not an employee, agent, or servant of the County. All persons engaged in any of the work or services performed pursuant to this Agreement shall at all times and in all places be subject to the Contractor's sole direction, supervision, and control.

The Contractor shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the Contractor's relationship and the relationship of its employees to the County shall be that of an independent contractor and not as employees or agents of the County. The Contractor does not have the power or authority to bind the County in any promise, agreement or representation other than specifically provided for in this Agreement.

#### **ARTICLE 23 – CONTINGENT FEES**

Pursuant to Section 287.055(6), Florida Statutes, the Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Contractor to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the Contractor, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement.

Violation of this section shall be grounds for termination of this Agreement. If this Agreement is terminated for violation of this section, the County may deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift, or other consideration.

**ARTICLE 24 – ACCESS AND AUDITS**

The Contractor shall maintain adequate records to justify all charges, expenses, and costs incurred in performing the work for at least three (3) years after completion of this Agreement. The County shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit during normal business hours, at the County's cost, upon five (5) days written notice.

**ARTICLE 25 – NONDISCRIMINATION**

The Contractor warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, physical handicap, sex, age or national origin.

**ARTICLE 26 – ENTIRETY OF CONTRACTUAL AGREEMENT**

The County and the Contractor agree that this Agreement, signed by both parties sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein, or are incorporated by reference into this Agreement. None of the provisions, terms, conditions, requirements, or responsibilities noted in this Agreement may be amended, revised, deleted, altered, or otherwise changed, modified, or superseded, except by written instrument, duly executed by authorized representatives of both the County, and the Contractor.

**ARTICLE 27 – ENFORCEMENT COSTS**

If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of this Agreement, the successful or prevailing party or parties shall be entitled to recover reasonable attorney's fees, court costs and all reasonable expenses even if not taxable as court costs (including, without limitation, all such reasonable fees, costs and expenses incident to appeals); incurred in that action or proceedings, in addition to any other relief to which such party or parties may be entitled.

**ARTICLE 28 – COMPLIANCE WITH APPLICABLE LAWS**

Both the County and the Contractor shall comply with any and all applicable laws, rules, regulations, orders, and policies of the County, State, and Federal Governments.

**ARTICLE 29 – AUTHORITY TO PRACTICE**

The Contractor hereby represents and warrants that it has and shall continue to maintain all licenses and approvals required to conduct its business, and that it shall at all times, conduct its business activities in a reputable manner.

**ARTICLE 30 – SEVERABILITY**

If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such items or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.

**ARTICLE 31 - AMENDMENTS AND MODIFICATIONS**

No amendments or modifications of this Agreement shall be valid unless in writing and signed by each of the parties.

The County reserves the right to make changes in the work, including alterations, reductions therein or additions thereto. Upon receipt by the Contractor of the County's notification of a contemplated change, the Contractor shall: (1) if requested by the County, provide an estimate for the increase or decrease in cost due to the contemplated change; (2) notify the County of any estimated change in the completion date; and (3) advise the County in writing if the contemplated change shall effect the Contractor's ability to meet the completion dates or schedules of this Agreement. If the County instructs in writing, the Contractor shall suspend work on that portion of the project, pending the County's decision to proceed with the change. If the County elects to make the change, the County shall issue a Change Order for changes, or a contract change order, if the original contract is to be changed or amended the Contractor shall not commence work on any such change until such written change order has been issued and signed by each of the parties.

**ARTICLE 32 – FLORIDA LAW & VENUE**

This Agreement shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce this Agreement shall be held in St. Johns County, Florida.

**ARTICLE 33 – ARBITRATION**

The County shall not be obligated to arbitrate or permit any arbitration binding on the County under any of the Contract



Documents or in connection with the project in any manner whatsoever.

#### **ARTICLE 34 - NOTICES**

All notices required in this Agreement shall be sent by certified mail, return receipt requested, and if sent to the County shall be mailed to:

St. Johns County Purchasing Department  
Attn: Jaime T. Locklear, MPA, CPPO, CPPB, Purchasing Manager  
500 San Sebastian View  
St. Augustine, FL 32084

and if sent to the Contractor shall be mailed to:

Hybrid Design, Inc.  
Attn: Kerry Tustin, President  
One News Place, Suite F  
St. Augustine, FL 32084

#### **ARTICLE 35 - HEADINGS**

The heading preceding the articles and sections herein are solely for convenience of reference and shall not constitute a part of this Agreement, or affect its meaning, construction or effect.

#### **ARTICLE 36 - PUBLIC RECORDS**

- A. The cost of reproduction, access to, disclosure, non-disclosure, or exemption of records, data, documents, and/or materials, associated with this Agreement shall be subject to the applicable provisions of the Florida Public Records Law (Chapter 119, Florida Statutes), and other applicable State and Federal provisions. Access to such public records, may not be blocked, thwarted, and/or hindered by placing the public records in the possession of a third party, or an unaffiliated party.
- B. In accordance with Florida law, to the extent that Contractor's performance under this Contract constitutes an act on behalf of the County, Contractor shall comply with all requirements of Florida's public records law. Specifically, if Contractor is expressly authorized, and acts on behalf of the County under this Agreement, Contractor shall:
- (1) Keep and maintain public records that ordinarily and necessarily would be required by the County in order to perform the Services;
  - (2) Upon request from the County's custodian of public records, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost as provided in Chapter 119, Florida Statutes, or as otherwise provided by law;
  - (3) Ensure that public records related to this Agreement that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by applicable law for the duration of this Agreement and following completion of this Agreement if the Contractor does not transfer the records to the County; and
  - (4) Upon completion of this Agreement, transfer, at no cost, to the County all public records in possession of the Contractor or keep and maintain public records required by the County to perform the Services.

If the Contractor transfers all public records to the County upon completion of this Agreement, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of this Agreement, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the County, upon request from the County's custodian of public records, in a format that is compatible with the County's information technology systems.

Failure by the Contractor to comply with the requirements of this section shall be grounds for immediate, unilateral termination of this Agreement by the County.

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO ITS DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: 500 San Sebastian View, St. Augustine, FL 32084, (904) 209-0805, [publicrecords@sjcfl.us](mailto:publicrecords@sjcfl.us)**

**ARTICLE 37 – USE OF COUNTY LOGO**

Pursuant to, and consistent with, County Ordinance 92-2 and County Administrative Policy 101.3, the Contractor may not manufacture, use, display, or otherwise use any facsimile or reproduction of the County Seal/Logo without express written approval St. Johns County, Florida.

**ARTICLE 38 – SURVIVAL**

It is explicitly noted that the following provisions of this Agreement, to the extent necessary, shall survive any suspension, termination, cancellation, revocation, and/or non-renewal of this Agreement, and therefore shall be both applicable and enforceable beyond any suspension, termination, cancellation, revocation, and/or non-renewal: (1) Truth-in-Negotiation; (2) Federal and State Taxes; (3) Insurance; (4) Indemnification; (5) Access and Audits; (6) Enforcement Costs; and (7) Access to Records.

**ARTICLE 39 – AUTHORITY TO EXECUTE**

Each party represents that it has the lawful authority to enter into this Agreement and has authorized the execution of this Agreement by the party's authorized representative shown below.

-----

RFP No: 19-47R; Public Transportation Bus Advertising Services  
Master Contract #: 19-MAS-HYB-11078

IN WITNESS WHEREOF, authorized representatives of the County and Contractor have executed this Contract Agreement on the day and year below noted.

**COUNTY:**

St. Johns County, FL  
Full Name

By:   
Signature - County Representative

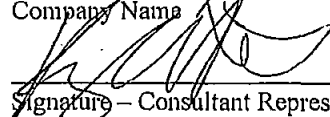
Jaime T. Locklear, MPA, CPPO, CPPB,  
Printed Name - County Representative

Purchasing Manager  
Printed Title - County Representative

2/10/2020  
Date of Execution

**CONSULTANT:**

Hybrid Design, Inc.  
Company Name

  
Signature - Consultant Representative

Kerry Tustin, president  
Printed Name & Title


2/7/2020  
Date of Execution

**ATTEST:**  
**ST. JOHNS COUNTY, FL**  
**CLERK OF COURT**

\_\_\_\_\_  
Deputy Clerk

\_\_\_\_\_  
Date of Execution

**LEGALLY SUFFICIENT**

  
Deputy County Attorney

2/11/2020  
Date of Execution

ST JOHNS COUNTY

FEB 07 '20

PURCHASING

**RFP NO: 19-47R; PUBLIC TRANSPORTATION BUS ADVERTISING SERVICES**

**EXHIBIT "A"**  
**BASIS OF COMPENSATION**

Basis of compensation shall be made in accordance with the ~~minimum monthly~~ payment as submitted on the proposal, which is 70% of gross advertising revenues, without set off, deduction, diminution, reduction, abatement or counterclaim, except as expressly provided herein, in accordance with Section C.2 – Compensation to St. Johns County of the Scope of Services (Exhibit "C")

Requests for additional services or additional line items shall be submitted in writing and approved by St. Johns County prior to any work being implemented and shall be added to the applicable Contract Amendment.

REP NO: 19-47R; PUBLIC TRANSPORTATION BUS ADVERTISING SERVICES

EXHIBIT "A-1"  
OFFICIAL REVENUE PROPOSAL FORM

**Revenue Proposal**

CONTRACTOR shall provide revenue sharing to ST. JOHNS COUNTY calculated as shown below:

CONTRACTOR shall pay 70% of gross advertising revenues to the County as defined in Article 5, A. of the Master Contract #: **19-MAS-HYB-11078**

**RFP NO: 19-47R; PUBLIC TRANSPORTATION BUS ADVERTISING SERVICES**

**EXHIBIT "B"**  
**CONTRACT SCHEDULE**

The Contract Period for this scope of work shall be as follows:

*Initial Contract* – Shall become effective on upon signature by all parties, and shall remain in effect for a period of three (3) calendar years.

*Contract Renewal/s* – The contract may be renewed, at the discretion of the County, for one (1), three (3) year renewal option, upon satisfactory performance by the Consultant, mutual agreement by all parties, the availability of funds and the continued need of the County for services.

**RFP NO: 19-47R; PUBLIC TRANSPORTATION BUS ADVERTISING SERVICES**

**EXHIBIT "C"**  
**SCOPE OF SERVICES**

**SERVICE REQUIREMENTS**

**A. GENERAL INFORMATION**

The purpose of this solicitation is to acquire services from qualified and experienced firms who will be responsible for the management of the advertising program on public transportation vehicles in St. Johns County. The primary goal of the contract is to sell available space for advertisements as possible at the highest possible rates. These services include sales, installation, invoicing, maintenance, customer service, and removal of ads on the exterior of vehicles in the public transportation fleet. The scope of work for this project shall include furnishing all labor, materials, supervision, equipment and other items necessary to fulfill the contract.

St Johns County (County) contracts with the St. Johns County Council on Aging (COA) for the day-to-day operation of the public transportation system. The services provided by the COA are in the form of two modes; the Sunshine Bus Fixed Route and the Paratransit service.

**B. AREA PROFILE:**

St. Johns County, in northeast Florida, is a highly-desirable, amenity-rich location. Bordered by the scenic Atlantic Ocean and St. Johns River, St. Johns County embraces its historic heritage and uniquely diverse communities such as the City of St. Augustine — the Nation's Oldest City; St. Augustine Beach, Ponte Vedra, and Hastings — the Potato Capital of Florida; which have attracted visitors for centuries. Capitalizing on its global appeal, St. Johns County is poised for economic growth through its strategic location, favorable climate, local economic development incentives, and outstanding community services.

St. Johns County is the 14th fastest-growing County in the United States with a 3.7% growth rate. Between 2010 and 2017, the total population in St. Johns County grew to an estimated 243,812 in 2017, a 28% increase in the past seven years, compared to Florida's growth rate of 8%.

**C. PROJECT REQUIREMENTS**

This project involves providing advertising services for the public transportation system. Although this is not a contract to procure services using Federal Transit Administration (FTA) funds, the County, as an FTA recipient, is required to follow FTA regulations regarding all procurement and contracting. Consequently, certain federal requirements (such as equal employment opportunity provisions) will apply to the contract for this project. The FTA requirements are contained in Exhibit "C".

**I. TRANSIT ADVERTISING SERVICES**

1.a The scope of work is a general guide and is not intended to be a comprehensive list of all work, tasks, or material necessary to provide the supply of goods or services. The program will be limited to on-vehicle advertising including exterior and interior space, and may include graphic formats such as wraps. The Contactor shall provide, install, maintain, and replace at its own cost, all interior advertising displays hardware (frame, racks, moldings, card spring, etc.) as approved. The Contractor shall furnish all necessary sales, installation and maintenance personnel, and an account representative, authorized to act hereunder on behalf of the Contractor. The responsibilities of the Contractor shall include:

- Solicit and procure advertisers for available advertising space on the COA transit fleet.
- Aggressive sales of advertising display space on Sunshine Bus, Paratransit buses.
- Produce all sales pieces (rate cards, etc.).
- Geographic advertising sales will not be permitted. The fleet is assigned based on a variety of considerations and assigning vehicles to keep certain signs in certain parts of the service area

will not be permitted.

- Billing for and collection of sold advertising space.
  - Preparation and submission of related financial and operating reports.
  - Placement and maintenance of advertising materials, including preparing of advertising materials for installation, scheduling of work and removing expired materials, to be performed at Contractor's sole expense.
  - Installations and removals must be done in a timely manner due to the limited number of spare vehicles and the critical nature of running the routes on schedule and on time.
- 1.b All advertising materials, advertisements and manner of presentation shall be subject to prior approval by the County Administrator. The Contractor shall not place advertising which is libelous, slanderous, obscene, salacious, false, violent, or unlawful. Advertising, advertisements, or a manner of presentation which negatively impacts the transit system is not permitted. Advertising for tobacco, electronic vaporizers, any illegal product, alcoholic beverages of any type, adult entertainment or establishments, firearms, political messages, or any other inappropriate advertising is prohibited.
- 1.c All permissible exterior formats are shown in Exhibit "B" – Vehicle (Bus) List and Sample Bus Diagrams.
- 1.d The Contractor's advertising standards shall be incorporated into any resulting Contract and shall be made a part hereof. The Contractor shall solely be responsible for the implementation and enforcement of said advertising standards. The Contractor shall not modify or amend its advertising standards, which are to be submitted with the proposal and shall become a part of this Contract, without first obtaining the prior written consent of the County. This may require an amendment to the Contract prior to implementation.
- 1.e At their sole discretion, the County Administrator and the COA Executive Director, or their designee(s), may disapprove at any time any items found to be in violation of the standards stated in Section 1.d above. As soon as practicable, but in no instance more than five (5) days after receipt of notice, the Contractor, at its sole cost and expense, shall remove from County property any item which is not approved. Any items previously approved, which may subsequently be considered objectionable shall likewise be removed after notice to the Contractor by the County.
- If the disapproved material is not removed within the time prescribed, the County may cause said material to be removed and the Contractor shall pay all costs and expenses incurred to have said material removed. The County shall not be liable for any damages in connection therewith. Refusal by the Contractor to remove said material shall be considered a default of this Contract. The Contract shall then be considered as terminated by the corrective action on the part of the County including reimbursement of all costs and expenses to the County.
- If, after prior County approval, the ad content is subsequently deemed to be unacceptable, the Contractor shall have the capability to recoup its costs for production and installation of the disapproved material. Contractor shall have the right to deduct these amounts from its monthly payment to the County.
- 1.f All dated messages or messages featuring a special event shall be removed within seven (7) days of the date shown on the advertisement or date of the event.
- 1.g The Contractor shall at all times comply with any policy, program, rule, ordinance or resolution adopted or enacted by the County, and as may be amended from time to time, relating to the COA's policy on advertising/speech on the bus fleet. In the event that the County or the COA shall determine that no Public Service Announcements may be made and/or that only commercial speech shall be permitted, the Contractor shall adhere to and enforce the County's and/or the COA's policy and shall



take all steps necessary to remove any non-conforming advertisements, statements, exhibits, etc.

- 1.h The Contractor shall not solicit or engage in any form of advertising on bus stop signs, bus shelters, benches, trash receptacles, or any other fixed bus stop amenities.

## 2. COMPENSATION TO ST. JOHNS COUNTY

- 2.a On a monthly basis, the Contractor shall pay the agreed percentage of gross advertising revenues, as set forth in Article 5, A to St. Johns County (County), without set off, deduction, diminution, reduction, abatement or counterclaim, except as expressly provided herein. The Contractor shall provide monthly reports detailing all contracts and billing collection activities well as monthly (and total) net revenue earned by the advertising vehicles, and medium, during that monthly reporting period, as well as the number of months contracted and number of months left on the contract. This will include a report breakdown by different fixed route bus sizes, and by proposed and implemented established rate card categories and future opportunities. The report shall include a copy of all fully executed space advertising sales contracts. The contracts should detail the amount of advertising purchases including the size and duration of the buy. Report data relating to sales and billings shall be provided in both electronic and written form.
- 2.b The gross advertising revenues referred to above shall be the gross revenues derived by the Contractor for media space and placement on all advertising vehicles that are the subject of this Agreement and shall not include revenues for design, production and materials costs, graphics, taxes and usage fees collected, copyright work, or any other services or functions of the Contractor. The gross revenues shall be calculated on the basis of total amounts contracted for by the advertisers for the display of advertising materials, whether paid directly to the Contractor, to a subsidiary or affiliate of the Contractor, or to a third party. Agency fees or any other fees, whether actually paid by the Contractor or whether deducted from the amount of revenue received by the Contractor shall not be deducted from gross advertising revenues. The gross revenues shall include any amount, the equivalent of which the Contractor, a subsidiary or affiliate of the Contractor, or a third party may have received from the advertiser in the form of materials, services, or other benefits, tangible or intangible. All agreements made by the Contractor in connection with the display of advertising material on or in said buses shall provide that the U.S. Department of Transportation, the Comptroller General, or the County shall have access to the books of account and records of all parties to such agreements for the purpose of ascertaining the correctness of gross advertising revenues.

The Contractor agrees to use its best efforts to obtain the fair market value for the display of all advertising material.

The Contractor agrees to include in all its contracts for the display of advertising material a standard provision requiring that should the Contractor be held in default under this agreement, the Contractor shall assign and transfer to the successor contractor all applicable contracts for advertising on the Sunshine Bus fleet items (i.e., buses internal and external), and such contracts shall thereupon become the property of the successor contractor.

Compensation shall be sent to the County monthly within thirty (30) days after the end of the month except in the case of the last payment when compensation shall be paid within thirty (30) days after the termination, cancellation or expiration of this Contract. Each payment shall be based on the gross receipts for the month immediately preceding the date of payment, which will include the percentage of gross advertising revenue as identified in 2.a.

Payments of compensation made by the Contractor to the County pursuant to the provisions of this Contract shall not be considered in any manner to be in the nature of a tax, but shall be in addition to all taxes of whatsoever kind or description which are now or which may thereafter be required to be

paid by any ordinance or local law of St Johns County or any municipality or city within the County, or any law of the State of Florida or any law of the Federal Government of the United States. Payment of compensation shall be in addition to any permit fees required by law.

In the event the Contractor fails to pay any of the monies required to be paid under this contract within thirty (30) days after same shall become due, interest at the rate of 1.5% per month, or eighteen percent (18%) per annum, shall accrue against the delinquent payment(s) from due date until same are paid. Implementation of this provision shall not preclude the County from terminating this contract for default for nonpayment, or from enforcing any other provisions contained herein.

The County reserves the right to remove vehicles from service, substitute vehicles, reassign vehicles, or otherwise deploy vehicles as needed for the safe and efficient operation of the transit system regardless of the impact to the advertising program.

In the event a bus is out-of-service for a period of ten (10) continuous operating days or longer, the monthly fee shall be reduced proportional to the number of service days in which the bus was not operational. In the event a reduction is due in the last month of the contract, the County will issue a refund.

### 3. REPORTING REQUIREMENTS

- 3.a The Contractor shall submit to the County for approval, a proposed record and reporting system to substantiate billing, sales, commissions and payments.
- 3.b On or before the fifteenth (15) day following the end of each calendar month throughout the term of this Contract or any extension thereof, the Contractor shall furnish to the County a report of gross billings; display type; total space availability; total space sold; advertisement expiration date(s); and total space used for public service advertisement.
- 3.c The Contractor shall, within ninety (90) days of each anniversary date of this Contract, submit to the County, a report prepared and signed by an independent Certified Public Accountant, as to the Contractor's operations under this Contract. Contractor is authorized to use a Certified Public Accountant that Contractor uses for bookkeeping and or tax work, provided such accountant is a separate person or entity from Contractor and Contractor has no ownership or control of such person or entity. Said report shall be prepared in conformance with the American Institute of Certified Public Accountants' requirements for special reports. The first such report shall contain twelve (12) full calendar months of operation and any fraction of the first month. The last such report shall include the last day of operation.

### 4. RATES

- 4.a The Contractor shall establish rates and charges for the sale of the rental of advertising space in and on buses. All rates and charges shall be provided to the County and are subject to review and approval by the County.
- 4.b The County recognizes that the sale of advertising display space is frequently subject to negotiation. Therefore, the Contractor may enter, with prior approval, into advertising contracts which deviate from the approved sales rate, provided the deviation is within normal and customary practices of the advertising industry. The County will not be responsible to the Contractor for any loss of anticipated profits or subsequent damages resulting from an inaccurate estimate of annual sales rates.

5. **BUS ADVERTISING MEDIA**

- 5.a Specific to exterior bus wraps: windows to use 50/50 perforated vinyl suitable for vehicle windows. Exterior media shall be a 3M or equivalent approved vinyl, as approved by the County, which is either removable or changeable on fleet vehicles. Any change of vinyl product shall be approved by the County Administrator or his/her designee.

6. **MAINTENANCE BY CONTRACTOR**

- 6.a The Contractor shall not deface or damage any County property or deposit or scatter any rubbish, waste or litter caused by any of its representatives or employees during the performance of this Contract.
- 6.b The Contractor shall maintain all advertising devices, defined for purposes of this Agreement, as vinyls and keep them in good repair during the term of this Agreement. Notwithstanding the foregoing, the Contractor shall not be liable for defacement, intentional cutting, graffiti or other intentional actions defacing advertising devices on advertising vehicles that are in the possession of the County.
- 6.c The Contractor shall reimburse the County for the cost of repairs for any damage to the bus or any other property which is caused by Contractor, its employees, and agents during the installation or removal of any advertising media, excluding paint peels caused by the removal and or installation of signage on the transportation vehicles that are caused by problems with the paint. The Contractor acknowledges that the vinyls' must be heated at a low heat in order to lift the adhesive. In the event a paint peel occurs during the process of removal or installation of a vinyl, the Contractor shall cease work and request instruction from the County as to how to proceed. The cost of the repairs shall include all material and labor. Labor cost shall be at the current rate plus fringe benefits.
- 6.d The County shall make space available to the Contractor for the application and maintenance of advertising.

7. **MANAGEMENT OF PRE-EXISTING ADVERTISING CONTENT CONTRACTS**

- 7.a The Contractor will not be required to provide management services for all previously existing advertising contracts which are scheduled to continue beyond the starting date of the contract resulting from this RFP. Refer to Exhibit "B" for a listing of buses currently under contract and the corresponding expiration dates.
- 7.b Upon termination of this Contract, the Contractor agrees to assign to its successor advertising contractor all active advertising content contracts on the County's buses and such content contracts shall thereupon become property of the successor advertising contractor.
- 7.c The Successful Proposer will be engaged to perform services under an agreement as an independent contractor, and not as an agent of the County.

8. **BUS EXTERIOR ADVERTISING**

The Sunshine Bus runs nine (9) fixed routes Monday through Saturday from 5:30 AM to 8:05 PM and serves the cities of St. Augustine, St. Augustine Beach, Hastings, Flagler Estates, the I-95 outlet mall area and the U.S. 1 corridor to the Avenues Mall in Jacksonville. It is a flag down system and has regular stops. See Exhibit "A", Route map and Vehicle List. For further information: <http://sunshinebus.net/>.

The Paratransit system operates within the entire county and runs six days per week, Monday through Saturday from 4:30 am to 6:30 pm.

The buses are located at the County's transit facility at 2595 Old Moultrie Road, St Augustine, Florida, 32086. The Transit Center functions as both administrative offices and fleet maintenance garage, as well as a locked parking lot.

Measuring for installations are performed on site at the Transit Center, however, the County shall deliver the transportation vehicles to the Contractor's subcontractor B & S Signs presently located at 2764 S. Collins Ave., St. Augustine, FL 32084 for installations and removals. The Contractor must schedule installations and removals of ads in advance with the COA and the County. Due to the limited number of spare buses available, installations and removals should be completed in no more than two days, and up to two buses at a time.

Availability of interior and / or exterior advertising space on dedicated buses, vans or any other advertising space may change during the period of this agreement for reasons including, but not limited to, the procurement of new buses, vans, or other vehicles and the retiring of old buses, vans, or other vehicles, and the implementation of any new advertising opportunities as implemented and approved by the COA and the County.

Throughout the implementation of the service plan, the Contractor shall preserve the Sunshine Bus brand image and take every reasonable measure to maintain a high graphic standard for all materials that will be displayed on the fleet. These standards must maintain the brand image to the extent that the brand is recognizable to the passengers along the route using the flag-down system. All materials must be pre-approved by the County Administrator prior to use.

- 8.a The Sunshine Bus Fixed route fleet has approximately 15 buses in rotation and available for exterior advertising. These are typical cutaway buses, approximately 27', but may vary in size. (There are two 22' Ford Transits.) Current advertising sizes are approximate and are subject to change.

19" x 24"	Access Doors (Curb Side)
20" x 24"	Rear Panels

- 8.b The Paratransit fleet consists of 26 buses that are typically 23' length overall, and approximately 15' L X 7' H, (including windows), however the buses may vary in size. Current advertising sizes are approximate and are subject to change. Since the paratransit fleet doesn't operate on a fixed route, they have a potentially greater area of visibility and are ideal for full wraps.

19" x 24"	Access Doors (Curb Side)
20" x 24"	Rear Panels
95" x 22"	Side Panel (Curb/Small Side)
155" x 22"	Side Panel (Street and/or Curb Side)

9. **BUS INTERIOR ADVERTISING**

Interior space is limited. The buses do not have abundant space for advertising. Respondents should carefully review the salability of the inventory in advance of proposal.

10. **LEGAL REQUIREMENTS:**

St. Johns County is the recipient of Federal Transit Administration (FTA) public transportation funding and

from the Florida Department of Transportation (FDOT) and other state and local sources. As a recipient of these funds, St. Johns County is responsible for maintaining compliance with Title 49, Ch. 53 Code of Federal Regulations (Exhibit "D" of the RFP Document) as well as Termination and Dispute requirements for contracts.

RFP NO: 19-47R; PUBLIC TRANSPORTATION BUS ADVERTISING SERVICES

EXHIBIT "D"

FEDERAL TRANSIT ADMINISTRATION (FTA) REQUIRED CONTRACT CLAUSES

ENERGY CONSERVATION REQUIREMENTS

42 U.S.C. 6321 et seq.

49 CFR Part 18

The CONTRACTOR agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

CLEAN WATER REQUIREMENTS

33 U.S.C. 1251

The CONTRACTOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to the Purchaser and understands and agrees that the purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. The CONTRACTOR also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

LOBBYING

31 U.S.C. 135249

CFR Part 1949

CFR Part 20

The undersigned [CONTRACTOR] certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a member of congress, an officer or employee of congress, or an employee of a member of congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a member of congress, an officer or employee of congress, or an employee of a member of congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96). Note: Language in Paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, et seq.)]
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction

imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

#### **ACCESS TO RECORDS AND REPORTS**

49 U.S.C. 5325  
18 CFR 18.36 (i)  
49 CFR 633.17

In accordance with 49 C.F.R. 633.17, the **CONTRACTOR** agrees to provide the purchaser, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving Federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.

#### **FEDERAL CHANGES**

49 CFR Part 18

The **CONTRACTOR** shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the agreement (Form FTA MA (24) dated October 1, 2017) between purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. **CONTRACTOR's** failure to so comply shall constitute a material breach of this contract.

#### **CLEAN AIR**

42 U.S.C. 7401 et seq  
40 CFR 15.61  
49 CFR Part 18

The **CONTRACTOR** agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The **CONTRACTOR** agrees to report each violation to the purchaser and understands and agrees that the purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. The **CONTRACTOR** also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

#### **RECYCLED PRODUCTS**

42 U.S.C. 6962  
40 CFR Part 247  
Executive Order 12873

These regulations apply to all procurement actions involving items designated by the EPA, where the procuring agency purchases \$10,000 or more of one of these items in a fiscal year, or when the cost of such items purchased during the previous fiscal year was \$10,000.

The **CONTRACTOR** agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

### NO GOVERNMENT OBLIGATION TO THIRD PARTIES

1) The purchaser and **CONTRACTOR** acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the purchaser, **CONTRACTOR**, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) The **CONTRACTOR** agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

### PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

31 U.S.C. 3801 et seq.  
49 CFR Part 31 18 U.S.C. 1001  
49 U.S.C. 5307

(1) The **CONTRACTOR** acknowledges that the provisions of 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 its actions pertaining to this project. Upon execution of the underlying contract, the **CONTRACTOR** certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the **CONTRACTOR** further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the **CONTRACTOR** to the extent the Federal Government deems appropriate.

(2) The **CONTRACTOR** also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

(3) The **CONTRACTOR** agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

### GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

49 CFR Part 29  
Executive Order 12549

The Recipient agrees to the following: (1) It will comply with the requirements of 2 C.F.R. part 180, subpart C, as adopted and supplemented by U.S. DOT regulations at 2 C.F.R. part 1200, which include the following: (a) It will not enter into any arrangement to participate in the development or implementation of the Project with any Third Party Participant that is debarred or suspended except as authorized by: 1 U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 C.F.R. part 1200, 2 U.S. OMB, "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180, including any amendments thereto, and 3 Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note, (b) It will review the U.S. GSA "System for Award Management," <http://https.www.sam.gov.proxy1.semalt.design> if required by U.S. DOT regulations, 2 C.F.R. part 1200, and (c) It will include, and require each of its Third Party Participants to include, a similar provision in each lower tier



covered transaction, ensuring that each lower tier Third Party Participant: 1 Will comply with Federal debarment and suspension requirements, and 2 Reviews the "System for Award Management" at <http://https.www.sam.gov.proxy1.semalt.design> if necessary to comply with U.S. DOT regulations, 2 C.F.R. part 1200, and (2) If the Recipient suspends, debars, or takes any similar action against a Third Party Participant or individual, the Recipient will provide immediate written notice to the: (a) FTA Regional Counsel for the Region in which the Recipient is located or implements the Project, (b) FTA Project Manager if the Project is administered by an FTA Headquarters Office, or (c) FTA Chief Counsel.

### PRIVACY ACT

5 U.S.C. 552

#### **Contracts Involving Federal Privacy Act Requirements**

The following requirements apply to the **CONTRACTOR** and its employees that administer any system of records on behalf of the Federal Government under any contract:

(1) The **CONTRACTOR** agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the **CONTRACTOR** agrees to obtain the express consent of the Federal Government before the **CONTRACTOR** or its employees operate a system of records on behalf of the Federal Government. The **CONTRACTOR** understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

(2) The **CONTRACTOR** also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

### CIVIL RIGHTS REQUIREMENTS

29 U.S.C. § 623, 42 U.S.C. § 2000

42 U.S.C. § 6102, 42 U.S.C. § 12112

42 U.S.C. § 12132, 49 U.S.C. § 5332

29 CFR Part 1630, 41 CFR Parts 60 et seq.

#### **Civil Rights**

The following requirements apply to the underlying contract:

(1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the **CONTRACTOR** agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the **CONTRACTOR** agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the **CONTRACTOR** agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and

Federal policies that may in the future affect construction activities undertaken in the course of the project. The **CONTRACTOR** agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the **CONTRACTOR** agrees to comply with any implementing requirements FTA may issue.

(b) Age - In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the **CONTRACTOR** agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the **CONTRACTOR** agrees to comply with any implementing requirements FTA may issue.

(c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the **CONTRACTOR** agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the **CONTRACTOR** agrees to comply with any implementing requirements FTA may issue.

- (3) The **CONTRACTOR** also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

### **BREACHES AND DISPUTE RESOLUTION**

49 CFR Part 18  
FTA Circular 4220.1F

#### **Disputes**

Disputes arising in the performance of this contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of **ST JOHNS COUNTY**. This decision shall be final and conclusive unless within [ten (10)] days from the date of receipt of its copy, the **CONTRACTOR** mails or otherwise furnishes a written appeal to **St. Johns County Administration**. In connection with any such appeal, the **CONTRACTOR** shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the **St. Johns County Administration** shall be binding upon the **CONTRACTOR** and the **CONTRACTOR** shall abide by the decision.

#### **Performance During Dispute**

Unless otherwise directed by **ST JOHNS COUNTY**, the **CONTRACTOR** shall continue performance under this contract while matters in dispute are being resolved.

#### **Claims for Damages**

Should either party to the contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury of damage.

#### **Remedies**

Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between **ST JOHNS COUNTY** and the **CONTRACTOR** arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which **ST JOHNS COUNTY** is located.

#### **Rights and Remedies**

The duties and obligations imposed by the contract documents and the rights and remedies available thereunder shall be

in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by **ST JOHNS COUNTY**, or **CONTRACTOR** shall constitute a waiver of any right or duty afforded any of them under the contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

**DISADVANTAGED BUSINESS ENTERPRISE (DBE)**  
**49 CFR Part 26**

St Johns County has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the US Department of Transportation (DOT), 49 CFR Part 26. The County has received Federal financial assistance from the DOT, and as a condition of receiving this assistance, the Count has signed an assurance that it will comply with 49 CFR Part 26. It is the policy of the County to ensure that DBEs, as defined in part 26, have an equal opportunity to receive and participate in DOT assisted contract. It is also our policy:

- To ensure nondiscrimination in the award and administration of DOT assisted contracts;
- To create a level playing field on which DBEs can compete fairly for DOT assisted contracts; To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
- To ensure that only forms that fully meet 49 CFR Part 26 eligibility standard are permitted to participate as DBEs;
- To help remove barriers to the participation of DBEs in DOT assisted contract; and
- To assist the development of firms that can compete successfully in the market place outside the DBE Program.

St Johns County has not set a specific goal for this project. The agency's overall goal for DBE participation for the period October 1, 2015-September 30, 2018 is 3.1%. This goal represents those elements of work under this Contract performed by qualified Disadvantaged Business Enterprises for amounts totaling not less than 3.1% of the total Contract price. Failure to meet the stated goal at the time of proposal submission may render the Bidder/Offeror non-responsive.

If the bidder is DBE certified they must submit a state of Florida Department of Transportation Disadvantaged Business Enterprise (DBE) Certification. If the bidder is not a DBE firm the contractor entering into an agreement for this project must meet the following criteria:

1. Achieve the DBE participation GOAL as specified **OR**
2. Submit documentation detailing the Good Faith Efforts made in researching potential DBE Firms

**AMERICANS WITH DISABILITIES ACT (ADA)**

Federal Protections for Individuals with Disabilities. The Americans with Disabilities Act of 1990, as amended (ADA), 42 U.S.C. Sections 12101 *et seq.*, prohibits discrimination against qualified individuals with disabilities in programs, activities, and services, and imposes specific requirements on public and private public and private entities. Third party contractors must comply with their responsibilities under Titles I, II, III, IV, and V of the ADA in employment, public services, public accommodations, telecommunications, and other provisions, many of which are subject to regulations issued by other Federal agencies.

**INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS**

**FTA Circular 4220.1F**

**Incorporation of Federal Transit Administration (FTA) Terms**

The preceding provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth

in FTA Circular 4220.1F, dated April 15, 1996, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this agreement. The CONTRACTOR shall not perform any act, fail to perform any act, or refuse to comply with any St Johns County requests which would cause St Johns County to be in violation of the FTA terms and conditions.

#### TERMINATION

49 U.S.C. Part 18

FTA Circular 4220.1F

#### **Applicability to Contracts**

All contracts (with the exception of contracts with nonprofit organizations and institutions of higher education,) in excess of \$10,000 shall contain suitable provisions for termination by the grantee including the manner by which it will be effected and the basis for settlement. (For contracts with nonprofit organizations and institutions of higher education the threshold is \$100,000.) In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

#### **Flow Down**

The termination requirements flow down to all contracts in excess of \$10,000, with the exception of contracts with nonprofit organizations and institutions of higher learning.

**Termination for Convenience (General Provision)** The COUNTY may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to St. Johns County to be paid the Contractor. If the Contractor has any property in its possession belonging to St. Johns County, the Contractor will account for the same, and dispose of it in the manner St. Johns County directs.