

**FIRST AMENDMENT TO
CONTRACT FOR PROFESSIONAL SERVICES
FOR MANAGEMENT OF AN ADVERTISING PROGRAM ON BRATS BUSES
BETWEEN MCNUTT & COMPANY, LLC,
AND THE BALDWIN COUNTY COMMISSION**

This First Amendment is made and entered into by and between McNutt & Company, LLC (hereinafter “Provider”), and the Baldwin County Commission (hereinafter “County”), amending that certain Agreement between Provider and the County (the “Agreement”) entered into on the 8th day of December, 2017.

RECITALS

Whereas, under the Agreement between the parties, the Provider serves as the manager and advertising broker for the interior and exterior advertising space on BRATS buses; and

Whereas, the interior advertising space has historically been underutilized, and, as of the date of this Amendment, there are no revenue producing interior ads on BRATS buses; and

Whereas, the parties desire to amend the Agreement to transfer management responsibility of the interior advertising space from the Provider to the County.

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained in this First Amendment and the Agreement, the sufficiency of which being hereby acknowledged, the County and the Provider do hereby agree as follows:

1. The Scope of Work set forth in Attachment B to the Agreement is hereby deleted and replaced with the revised Attachment B, included herein.
2. This First Amendment may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument.
3. Except as expressly amended by this First Amendment, the Agreement, and all attachments, terms, and conditions contained therein, shall continue in full force and effect.
4. This First Amendment shall become effective upon the execution of both the County and the Provider.

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment by those officers and officials duly authorized to execute same, and the First Amendment is deemed to be dated and to be effective on the date hereinafter stated as the date of its review by the State Local Transportation Engineer, Modal Programs.

Baldwin County Commission

McNutt & Company, LLC

Charles F. Gruber
Chairman

John McNutt

Date: _____

Date: _____

Attest:

REVIEWED BY:

Wayne Dyess
County Administrator

D.E. Phillips, Jr., P.E.
State Local Transportation Engineer

Date: _____

Date: _____

***NOTARY PAGE TO FOLLOW**

State of Alabama)
County of Baldwin)

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

Given under my hand and official seal, this the _____ day of _____, 2019.

Notary Public
My Commission Expires

State of Alabama)
County of Baldwin)

I, _____, Notary Public in and for said County, in said State, hereby certify that, John McNutt, as _____ of McNutt & Company, LLC, an individual whose name is known to me, acknowledged before me on this day that, being informed of the contents of this First Amendment, he, as such and with full authority, executed the same knowingly and with full authority to do so on behalf of said limited liability company.

Given under my hand and official seal, this the _____ day of _____, 2019.

Notary Public
My Commission Expire

Attachment B
Baldwin County Commission Scope of Work
Baldwin Regional Area Transit System's Advertising Program

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

OUTLINE OF SCOPE OF SERVICES

OPERATION OF AN EXTERIOR BUS ADVERTISING PROGRAM

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

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

1. Installation Procedures

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

2. Advertising Space

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

3. Interior Advertising Space

BRATS will manage the interior advertising space within its buses. Management of the interior areas of the bus is excluded from the Provider's scope of work.

4. Use of Unsold Advertising Space

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

5. Reserved Advertising Space

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

Contractor shall honor previous commitments to businesses for advertising until December 31, 2018. The contractor must notify said businesses 30 days prior to the December 31, 2018 expiration date and handle all further negotiations and aspects of said advertising including pricing, collection, placement, removal and repair of signage.

6. BRATS Review of Advertising

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

7. Removal of Advertising

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

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

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

8. Advertising Content

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

The following advertising is prohibited on all BRATS vehicles:

- a. False, misleading, or deceptive advertising
- b. Promotes unlawful or illegal goods, services, or activities (Illegal drugs, murder, violence, or vandalism)
- c. Implies or declares an endorsement by BRATS of any goods, services or activities
- d. Contains any lewd or obscene matter (No nudity, profanity or crudeness)
- e. Contains any image or description, which, if furnished, exhibited, or sent to a minor would give rise to a violation of BRATS policy or be the basis of an injunction against BRATS
- f. Is libelous
- g. Promotes the sale of tobacco or tobacco-related products
- h. Promotes the sale of liquor, wine; beer, or distilled spirits (alcohol)
- i. Implication of BRATS in support or opposition of a candidate for public office (whether elected or appointed), a political, moral, or social issue or any ballot measure, or any other matter which is the subject of an election (No political candidates or issues.)
- j. Implicates BRATS in the support or opposition of a religious denomination, creed, doctrine, or belief (No issue of abortion, pro or con)
- k. Displays any word, phrases, character or symbol likely to interfere with, mislead or distract traffic, or conflict with any traffic control device. Incorporates any rotating, or flashing devices or any other moving parts.

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

9. Schedule of Rates

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

10. Repair of Damage to BRATS Vehicles

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

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

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

Posted advertisements shall be maintained in satisfactory, presentable condition. Faded, torn or in a state of disrepair shall be repaired or replaced by the Contractor at Contractor's expense. Contractor shall install and maintain BRATS information, promotion and BRATS partnership advertising at no additional cost to BRATS. BRATS will work with the Contractor giving at least a (7) seven business day advance notice for installation. BRATS name, phone number and public transportation wording should remain visible and not covered by advertising.

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

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

12. Installation procedures

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

13. Shop and Storage Space

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

14. Financial Compensation

Vendor agrees to pay BRATS 50%/50% split of profit after material cost and allowable Overhead costs not to exceed \$41,000 annually or 7% of Gross Revenue Annually for exterior advertising on the buses. The payment will be paid quarterly (90 days) to Baldwin Regional Area Transit System.

15. BRATS Responsibility and Project Manager

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

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

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

The Contractor shall keep and provide a quarterly and accurate accounting of its sales, revenue, and collections including a statement of size, installation date, vehicle number installed, ending date of advertisement and type of display contracted for each advertiser. Any payment not made when due is subject to a

late charge of one and one half percent (1.5%) per month.

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

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

16. Time and Performance

A thirty-six (36) month contract will be established to begin on the date that the contract is executed. Any successive contract(s) must have the written approval of both the County and the Contractor no later than thirty (30) days prior to the expiration of the original contract.

RESPONSIBILITIES, TASKS TO BE PERFORMED AND GENERAL PROVISIONS

I. Services to be Provided.

1. Scope of services shall incorporate suggestions/consideration BRATS raised in the BALDWIN COUNTY COMMISSION RFP supplied via email on August 11, 2011. Contractor's proposal has addressed these points formally from the BRATS RFP. Any considerations not covered in this proposal will be addressed, negotiated and incorporated into an amended document to be approved by Contractor and BRATS.
2. Contractor warrants that all services described in this agreement will be performed in a competent, professional and satisfactory manner in accordance with typical and prevalent industry standards.
3. All goods, equipment, supplies and labor regarding the advertising initiative for Transportation Advertising will be provided by Contractor.
4. All advertising placed for display on the Transportation Advertising system falling under the jurisdiction of this agreement will be authorized by Contractor and BRATS.
5. Contractor shall begin the advertising immediately upon the same date as its full execution and same shall terminate upon both the expiration of thirty-six (36) months or either by giving thirty (30) days written notice of such to the other party. [Nothing herein

stated shall prohibit the parties from otherwise terminating this Contract according to the provisions herein.]

6. Contractor shall provide and furnish and be solely responsible for all aspects of the day to day management and operation of the Transportation Advertising initiative including but not limited to the following:
 - Recruitment of all commercial advertisers from local, regional and national markets.
 - Sale of all advertising space on the Transportation Advertising initiative.
 - Solicitation for all materials needed or to be used in the development of advertising for these advertisers.
 - Design, layout and production of all advertising for these advertisers.
 - Securing approval from advertisers as well as BRATS for the advertising to be displayed on the Transportation Advertising system.
 - Production of self-adhesive vinyl banners to be used on the sides and back of the Transportation Advertising system.
 - Installation, maintenance and removal of vinyl banners.
 - Invoicing of advertisers for advertising / collection of all revenue.
 - Payment of any expense incurred for/by the Transportation Advertising initiative.
 - Consistent reporting of revenue/expenses to BRATS for record keeping purposes in regard to the Transportation Advertising initiative.
 - Compensation to BRATS for profit generated after costs by the Transportation Advertising initiative.
 - Providing any and all other activities necessary to ensure a reliable, efficient, effective and profitable Transportation Advertising initiative.
 - Contractor will keep current and compliant with any and all County policies as well as State and Federal regulations regarding display advertising.
 - Contractor will apply for and keep current and compliant its vendor status with Baldwin County.
 - Contractor will comply with current County policy regarding “Character & Image” as it applies to the Transportation Advertising initiative.
 - Contractor will work with BRATS to honor any and all existing advertising agreements with current Transportation Advertisers.
 - Contractor will work with BRATS to honor any and all existing “PSA” advertising agreements with current Transportation Advertisers.

- Contractor will work to ensure County “PSA’s” are incorporated additionally as a component of the Transportation Advertising initiative.
 - Contractor will work through BRATS to ensure compliance throughout the advertising approval process.
7. Contractor will at all times act as an independent Contractor and not as an employee of BRATS. Any employee of Contractor assigned to perform any services pertaining to the Transportation Advertising initiative is solely an employee of Contractor.
 8. Contractor acting as an independent Contractor shall not be provided with any benefits including but not limited to: health insurance, liability insurance or indemnification, vacation or sick leave or pension benefits.

II. Advertising Content Provided by Contractor.

1. Advertisers must pass existing BRATS policy regarding topics such as: political, religion, drug and alcohol, nightclubs and bars, entertainment and general philosophies. NO advertiser will be permitted to infringe on existing BRATS policy. BRATS will have final approval on all advertisers / advertising to be incorporated and displayed in the Transportation Advertising initiative.
2. Contractor will ensure that no advertisers will be permitted to infringe on current advertising agreements currently in place with Baldwin County and/or BRATS.
3. Contractor will consult with BRATS before entering into any formal agreement with any advertiser that is deemed “questionable” regarding the policies of “Character & Image”.
4. Contractor will make it known that BRATS in no way endorses or promotes any product or service displayed in the Transportation Advertising initiative.
5. Contractor will label all advertisements, where applicable, with the following tagline: *“Proceeds from the placement of this advertisement benefit the Baldwin County Commission, Baldwin County Regional Area Transit System and the citizens of Baldwin County.”*
6. Contractor will not permit any contracted advertiser to violate any policy set forth by the Baldwin County Commission and/or BRATS.
7. Contract will assume all obligations and responsibility for content in the Transportation Advertising initiative.

EXAMPLES OF MATERIALS COST / BASIC DIMENSIONS

Material Costs (Cost of Goods Sold – Advertiser Reimbursed)

Advertisers 1-time fee will cover material's cost. Is potential retail pricing for materials.

Exterior Vinyl	\$7.50 Square Foot	(\$23 Square Foot)
Exterior PVC	\$13.25 Square Foot	(\$43 Square Foot)
Max Metal	\$10.75 Square Foot	(\$35 Square Foot)
Banner	\$4.25 Square Foot	(\$12 Square Foot)
Coroplast	\$4.25 Square Foot – 1 side / \$6.75 Square Foot 2 sides (\$12 Square Foot / \$21 Square Foot)	

Estimated Monthly Expenses (Fixed Costs)

Allowable Overhead Costs (Not to exceed \$41,000 or 7% of Gross Revenue Annually)

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

Total of Allowable Overhead cost \$ 3,400.00