



HISTORIC
FRANKLIN
TENNESSEE

ITEM #15
WRKS 09/28/2010

MEMORANDUM

September 28, 2010

TO: Board of Mayor and Aldermen

FROM: Eric Stuckey, City Administrator *Eric*
Erin Reinders, Long Range Planning Supervisor
Kristen Corn, Staff Attorney

SUBJECT: Acknowledgement of Amendment #2 to Agreement for the Purchase of Transit Services between the Franklin Transit Authority and the Transportation Management Association Group

Purpose

The purpose of this memorandum is to provide information to the Board of Mayor and Aldermen (BOMA) regarding the second amendment to the contract between the Franklin Transit Authority and The TMA Group.

Background

The Franklin Transit Authority had its triennial review by the Federal Transportation Administration on August 11-12, 2010. The Federal Transportation Administration noticed that some of its required standard terms and conditions were not in the original agreement between the Franklin Transit Authority and the TMA Group. Although it was the belief of the Franklin Transit Authority and the TMA Group that these were not required to be expressly included, the Federal Transportation Administration explained otherwise. Therefore, this amendment was drafted to include these missing clauses and bring the agreement into full compliance with the requirements of the Federal Transportation Administration.

Both the Franklin Transit Authority and The TMA Board have approved this amendment. A copy of the signed amendment is provided to you for informational purposes.

Financial Impact

No financial impact is anticipated.

Recommendation

There is no action to be taken by the Board.

**AMENDMENT #2 TO
AGREEMENT FOR THE PURCHASE OF TRANSIT SERVICES**

This Amendment is the Second Amendment to the AGREEMENT, made and entered into on the _____ day of _____, 2010, by and between the FRANKLIN TRANSIT AUTHORITY ("FTA") and THE TRANSPORTATION MANAGEMENT ASSOCIATION GROUP, a non-profit 501(c)(3) organization ("Contractor").

WHEREAS, the parties wish to amend the Agreement to include certain necessary supplementary terms and conditions as required by the Federal Transit Administration;

NOW, THEREFORE, the parties AGREE as follows:

1. A new Article 15 of the Agreement shall be added and approved to read as follows:

**ARTICLE 15 –FEDERAL SUPPLEMENTARY CONDITIONS TO THE
CONTRACT**

Section 15.1. Project Implementation.

a. No Federal Government Obligations to Third Parties.

- (1) The Contractor acknowledges and agrees 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 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.

b. Federal Changes - 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 Grant Agreement, 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.

c. Suspension and Debarment

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

By signing this agreement, the Contractor certifies as follows:

The certification in this clause is a material representation of fact relied upon by the Client. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to remedies available to the Client, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Contractor agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

d. False or Fraudulent Statements or Claims.

- (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, as amended, 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.

Section 15.2. Incorporation of FTA Terms

- a. 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, 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 MTA requests which would cause MTA to be in violation of the FTA terms and conditions.

Section 15.3. ENVIRONMENTAL, RESOURCE CONSERVATION, AND ENERGY REQUIREMENTS

Energy Requirements

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

Clean Water

- (1) 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.

(2) 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.

Clean Air

(1) 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.

(2) 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.

Section 15.4. DRUG AND ALCOHOL TESTING

The Drug and Alcohol testing provisions apply to Operational Service Contracts.

Drug and Alcohol Testing

Drug and Alcohol Testing

The contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 653 and 654, produce any documentation necessary to establish its compliance with Parts 653 and 654, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency or MTA, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 653 and 654 and review the testing process. The contractor agrees further to certify annually its compliance with Parts 653 and 654 before March 1st and to submit the Management Information System (MIS) reports before March 1st to Pat Downs, Capital Grants Administrator, 130 Nestor Street, Nashville, TN 37210. To certify compliance the contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.

Section 15.5. TRANSIT EMPLOYEE PROTECTIVE AGREEMENTS

The Transit Employee Protective Provisions apply to each contract for transit operations performed by employees of a Contractor recognized by FTA to be a transit operator. (Because transit operations involve many activities apart

from directly driving or operating transit vehicles, FTA determines which activities constitute transit "operations" for purposes of this clause.)

(1) The Contractor agrees to comply with applicable transit employee protective requirements as follows:

(a) General Transit Employee Protective Requirements - To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 CFR Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's project from which Federal assistance is provided to support work on the underlying contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letters. The requirements of this subsection (1), however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), ~~or for~~ projects for nonurbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (b) and (c) of this clause.

(b) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5310(a)(2) for Elderly Individuals and Individuals with Disabilities - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body subrecipient for which work is performed on the underlying contract, the Contractor agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 CFR Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. The Contractor agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL letter.

(c) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5311 in Nonurbanized Areas - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, the Contractor agrees to comply with the terms and

conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

(2) The Contractor also agrees to include the any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

Section 15.6. CHARTER BUS and SCHOOL BUS REQUIREMENTS

Charter Service Operations – The contractor agrees to comply with 49 USC 5323 9d) and 49 CFR Part , which provides that recipients and subrecipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions at 49 CFR 604.9. Any charter service provided under one of the exceptions must be “incidental,” i.e., it must not interfere with or detract from the provision of mass transportation.

The School Bus requirements apply to the following type of contract:
Operational Service Contracts.

Pursuant to 69 U.S.C. 5323(f) and 49 CFR Part 605, recipients and subrecipients of FTA assistance may not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, recipients and subrecipients may not use federally funded equipment, vehicles, or facilities.

Section 15.7. CERTIFICATION REGARDING LOBBYING

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.]

The Contractor certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. A 3801, *et seq.*, *apply* to this certification and disclosure, if any.

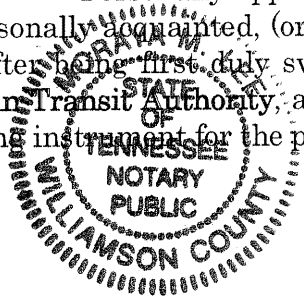
2. This Amendment #2, together with the AGREEMENT and the first Amendment, constitutes the entire agreement between the parties and supersedes any prior or contemporaneous communications, representations or agreements between the parties, whether oral or written, regarding the subject matter of this Amendment. The terms and conditions of this Amendment may not be changed except by a separate amendment expressly referencing this Amendment and signed by an authorized representative of each party.

In WITNESS WHEREOF, the parties hereto have caused this Amendment to be made, effective and executed as of the 16 day of September, 2010, by their respective authorized officials.

Preston Elliott
Franklin Transit Authority
Chairman

STATE OF TENNESSEE)
COUNTY OF WILLIAMSON)

Personally appeared before me, Preston Elliott, with whom I am personally acquainted, (or proved to me on the basis of satisfactory evidence), and who, after being first duly sworn, acknowledged himself to be the **Chairman of the Franklin Transit Authority**, and that as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained.

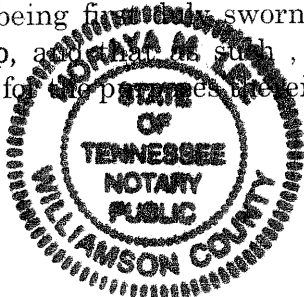


Moraya H. Lee
Notary Public
My Commission expires: January 26, 2010

Julian Bibb
The TMA Group, Chairman

STATE OF TENNESSEE)
COUNTY OF WILLIAMSON)

Personally appeared before me, Julian Bibb with whom I am personally acquainted, (or proved to me on the basis of satisfactory evidence), and who, after being first duly sworn, acknowledged herself to be the **Chairman of The TMA Group**, and that as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained.



Moraya H. Lee
Notary Public
My Commission expires: January 26, 2014

Attest:

Eric Stuckey, City Administrator
City of Franklin, TN

John Schroer, Mayor
City of Franklin, TN