

# PROFESSIONAL SERVICES AGREEMENT FOR MARKETING SERVICES

## DRAFT

### RFP 24-0101

This Agreement (the “Agreement”) is made and entered into this XX day of XXX, 2024, by and between The Central Midlands Regional Transit Authority, a regional transportation authority with its principal place of business located at 3613 Lucius Road in Columbia, South Carolina 29201 (“The COMET”) and XXX, whose mailing address is XXX (“Contractor”) (collectively, the “Parties”).

## RECITALS

- A. Contractor provided a Proposal Submittal and Price Proposal in response to The COMET's RFP (the “Response”), a copy of which is attached hereto and incorporated herein by reference as Exhibit B; and
- B. Contractor is specially trained, experienced, and competent to perform the professional services (the “Services”) required by this Agreement.
- C. Contractor possesses the skill, experience, ability, background, certification, licensure, and knowledge to provide the Services described in this Agreement on the terms and conditions specified herein.
- D. The COMET intends to retain Contractor to render the Services set forth in this Agreement.

## AGREEMENT

1. Scope of Services. Contractor shall perform the Services described in Exhibit B attached hereto and incorporated herein by reference (the “Scope of Services”) and pursuant to the terms and conditions contained in the request for proposal dated XXXX, and Contractor’s proposal dated XXXX. Each separate Service to be performed will be specifically requested in writing by The COMET. The Contractor shall perform the Services pursuant to the terms and conditions contained in the RFP and the Response, a copy of each of which is attached hereto and incorporated herein by reference as Exhibit A, respectively, as may be amended by this.

2. Schedule of Services. The services of the Contractor are to commence upon execution of this Agreement by The COMET and will be undertaken and completed in a prompt and timely manner, pursuant to the schedule outlined in the Scope of Services.

3. Compensation. Contractor shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in the Exhibit A. Contractor agrees that the prices in its Cost Proposal will not change during the term of this Agreement, subject to Paragraph 5. The total compensation shall not exceed XXX dollars (\$XXX) annually without prior written approval from The COMET’s Executive Director/CEO. Between XXXX and XXXX, Contractor compensation shall not exceed XXXXXX (\$XXXXX dollars).

4. Method of Payment. Contractor shall submit monthly billings to The COMET specifying and describing the work performed during the preceding month. Contractor's bills shall include a brief description of the Services performed, the date the Services were performed, the number of hours expended and by whom, and a description of any reimbursable expenditures. The COMET shall pay Contractor no later than 30 days after approval of the monthly invoice by The COMET staff. Payments may be delayed by The COMET if Contractor fails to provide services in accordance with the schedule outlined in the Scope of Services unless The COMET has provided prior written consent to any delay in the schedule.

5. Changes in Scope of Services. The Parties may, from time to time, request changes in the Scope of Services. Such changes, including any increase or decrease in the amount of Contractor's compensation must be authorized in advance by The COMET and Contractor in writing. Mutually agreed-upon changes shall be incorporated in written amendments to this Agreement.

6. Term. The initial term of this Contract shall be for two (2) years with three (3) one-year options. The COMET, at its sole discretion, has the option to renew this Agreement for one-year increments. Such notification will be provided by within 60 days of the end of the current Agreement period.

7. Termination. Should the Contractor be found to be deficient in performing the Services according to the terms of this Agreement, The COMET will provide written notice of such deficiency to the Contractor. The Contractor shall have, from the receipt of the written notice, thirty (30) business days to cure the deficiency. If the Contractor fails to cure the deficiency, The COMET may terminate this Agreement immediately for cause. In the event that The COMET determines to terminate the Agreement pursuant to this Section 8, Contractor agrees that it will continue to provide the Services, if requested to do so by The COMET, pursuant to the Agreement until the effective date of a new service agreement with another service provider.

8. Termination for Convenience or Mutual Agreement. The COMET may terminate this Agreement for convenience with a written notice of not less than thirty (30) days. The parties have the right to termination upon mutual written agreement. Upon termination for convenience or mutual termination, The COMET shall pay the Contractor for all work performed, including Contractor's costs, contract close-out costs, and profit on work performed up to the time of termination as provided for in Exhibit C attached hereto. The COMET shall not be responsible for any other termination costs as a result of The COMET's election to terminate for convenience.

9. Availability of Funds. Continuation of this Agreement is subject to the availability of funding. The COMET will rely on funds approved by the Board on an annual basis. If sufficient funds are not approved by the Board to fund this Agreement, The COMET can terminate this Agreement upon written notice to the Contractor.

10. Independent Contractor; Control and Payment of Subordinates. Contractor and The COMET are separate legal entities and enter into this Agreement as independent contractors and not as an employee of either entity. All employees, agents, contractors or subcontractors hired or retained by the Contractor, if any, are employees, agents, contractors or subcontractors of the Contractor and not of The COMET. Conversely, all employees of The COMET are not employees, agents, contractors or subcontractors of the Contractor. Contractor shall have no power or authority by this Agreement to bind The COMET in any respect. The Parties hereby agree that nothing in this Agreement shall be construed to void the independent contractor status of both Parties and their respective employees.

Each party is solely responsible for all employment matters at its own expense. Each party shall be responsible for providing any wages or other employment-related benefits to its employees. Each party is

responsible for compliance with all federal, state and local laws, rules, regulations, and ordinances that apply to employment status or employment relationship with its employees.

Neither The COMET nor Contractor shall be obligated in any way to pay any wage claims or other claims made against the other by any such employees, agents, contractors or subcontractors, or any other person resulting from performance of this Agreement.

11. Coordination of Scope of Services. Contractor agrees to work closely with The COMET staff and other Contractors and staff at all reasonable times. The COMET agrees to work closely with Contractor's staff in the performance of the Scope of Services and shall be available to Contractor's staff at all reasonable times. The COMET's project manager for overseeing this Agreement shall be The COMET's Director of Marketing & Community Affairs.

12. Qualification. Contractor agrees and represents that it is qualified to properly provide the Services in a manner which is consistent with the generally accepted standards of Contractor's profession. Contractor further represents and agrees that it will perform said Services in conformance with applicable federal, state, and local laws, regulations and guidelines.

13. Insurance. The Contractor shall procure general liability and property damage liability insurance from a company that is authorized to write insurance in the state of South Carolina and is in good standing with the South Carolina Insurance Commissioner to protect The COMET, its Board, officials, employees, agents, and volunteers, as well as the Contractor and its employees. The Contractor shall maintain limits of no less than:

- a. Workers' Compensation Statutory Amount
- b. Comprehensive General Liability \$1,000,000 – Combined Single Limit
- c. Comprehensive Auto Liability \$1,000,000 – Combined Single Limit
- d. Umbrella Liability \$1,000,000 – Combined Single Limit

The Contractor shall provide The COMET with evidence of such insurance; together with an appropriate endorsement that such insurance will not be cancelled without thirty (30) days prior written notice to The COMET (cancellation of insurance shall constitute an event enabling The COMET to immediately terminate this Agreement).

14. Ownership of Documents; Confidentiality.

a. All plans, designs, displays, drawings, computer program data, documents, and any other writings or data prepared by or for Contractor, its officers, employees, agents, and subcontractors in the course of implementing this Agreement, except working notes and internal documents, shall become the property of The COMET upon payment to Contractor for such work. The COMET shall have the sole right to use such materials in its discretion without further compensation to Contractor or to any other party. Contractor shall, at Contractor's expense, provide such plans, designs, displays, documents and any other writings or data to The COMET upon written request by The COMET. Contractor shall not be responsible for any unauthorized modification or use of such information for other than its intended purpose.

b. All plans, designs, displays, drawings, computer program data, documents, and any other writings or data, either created by or provided to Contractor in connection with the performance of this Agreement, shall be held confidential by Contractor. These materials shall not, without The COMET's prior written consent, be used by Contractor for any

purposes other than the performance of the Services under this Agreement nor shall these materials be disclosed to any person or entity not connected with the performance of Services under this Agreement. Nothing furnished to Contractor that is otherwise known to Contractor, or is generally known, or has become known to the related profession or public, shall be deemed confidential. Contractor shall not use The COMET's name or insignia, photographs relating to the purpose for which Contractor's Services are rendered, or any publicity pertaining to the Contractor's Services under this Agreement in any magazine, trade paper, newspaper, television or radio production, or other similar medium without The COMET's prior written consent.

15. Contractor's Books and Records.

a. Contractor shall maintain all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for Services, or expenditures and disbursements charged to The COMET, for a minimum period of three years, or for any longer period required by law, from the date of final payment to Contractor under this Agreement.

b. Contractor shall maintain all records that document performance under this Agreement for a minimum period of three years, or for any longer period required by law, from the date of termination or completion of this Agreement.

c. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit upon reasonable notice during regular hours, upon written request by The COMET Executive Director/CEO or his designee. Copies of such documents shall be provided to The COMET for inspection at The COMET headquarters when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Contractor's address specified in Section 22 of this Agreement.

d. Where The COMET has reason to believe that records or documents may be lost or discarded due to the dissolution or termination of Contractor's business, The COMET may, by written request, require that custody of the records be given to The COMET and that the records and documents be maintained in The COMET Headquarters. Access to these records and documents shall be granted to any party authorized by Contractor, Contractor's representatives, or Contractor's successor-in-interest.

16. Professional Ability of Contractor.

a. The COMET is relying upon the professional training and ability of Contractor to perform the Services hereunder as a material inducement to enter into this Agreement. Contractor shall therefore provide properly qualified personnel to perform all Services under this Agreement.

b. The primary contact for the Services required by this Agreement shall be the XXX title. A list of other individuals who may provide Services will be provided to The COMET for its review and approval, and these individuals shall not be replaced without The COMET's prior written consent.

17. Compliance with Laws and Regulations. Contractor agrees that all services provided pursuant to this Contract shall be in conformance with applicable federal, state and local statutes, codes, ordinances, and regulations.

18. Licenses. Contractor represents and warrants to The COMET that it has all licenses, permits, qualifications, insurance, and approvals that are legally required of Contractor to practice its profession in South Carolina, or such other jurisdiction Contractor may be providing Services for The COMET. Contractor represents and warrants to The COMET that Contractor shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement, any licenses, permits, insurance, and approvals that are legally required of Contractor to practice its profession.

19. Financial Transparency. Upon written request from The COMET, Contractor shall provide The COMET any and all documents, data, and financial records, in written or electronic form, if they are so kept, relating to amounts billed by or paid to Contractor under this Agreement. Such information shall be provided within five (5) business days, unless otherwise agreed upon in writing by The COMET or its designee, of its request at no cost to The COMET. Such information shall be available for public disclosure by The COMET as provided for in the SCFOIA S.C. Code Ann. § 30-4-10, et seq. (2014) and S.C. Code Ann. § 11-35-410 (2011). Contractor agrees to and shall insure that this financial transparency provision is included in each contract that it has with a subcontractor to perform work under this Agreement.

20. Freedom of Information Act (SCFOIA). To the extent that the South Carolina Freedom of Information Act, S.C. Code Ann. §§ 30-4-10 (2017) (SCFOIA) and S.C. Code Ann. § 11-35-410 require the production and release of public records, The COMET has a statutory duty to comply with SCFOIA and is subject to civil suit, including the award of costs and attorney's fees for failure to comply therewith. Contractor acknowledges that The COMET, in its sole discretion, must determine what a public record is and what The COMET is required to release. In the event there is a dispute regarding what constitutes a public record and whether it is exempt from disclosure pursuant to S.C. Code Ann. § 30-4-40 or § 11-35-410, The COMET will give Contractor five (5) business days' notice prior to releasing such information, during which time Contractor shall take whatever action it deems necessary to challenge the release. Further, if any legal actions are brought against The COMET as a result of Contractor refusal to provide or failure to cooperate with a The COMET request for information, Contractor shall reimburse to The COMET all costs and attorneys' fees incurred by The COMET in connection with such an action.

21. Indemnification and Hold Harmless. Notwithstanding any limitation in this Agreement, and to the fullest extent permitted by law, Contractor shall defend and hold harmless Indemnitees for and against any and all suits or claims of any character (and all related damages, settlement payments, attorneys' fees, costs, expenses, losses or liabilities) by a third party which are attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property arising out of or in connection with the goods or services acquired hereunder or caused in whole or in part by any act or omission of Contractor, its subcontractors, their employees, workmen, servants, agents, or anyone directly or indirectly employed by them or anyone for whose acts any of them may be liable, regardless of whether or not caused in part by an Indemnitee, and whether or not such claims are made by a third party or an Indemnitee; however, if an Indemnitee's negligent act or omission is subsequently determined to be the sole proximate cause of a suit or claim, the Indemnitee shall not be entitled to indemnification hereunder. Contractor shall be given timely written notice of any suit or claim. Contractor obligations hereunder are in no way limited by any protection afforded under workers' compensation acts, disability benefits acts, or other employee benefit acts. This clause shall not negate, abridge, or reduce any other rights or obligations of indemnity which would otherwise exist. The obligations of this paragraph shall survive termination, cancelation, or expiration of the parties' agreement. This provision shall be construed fairly and reasonably, neither strongly for nor against either party, and without regard to any clause regarding insurance. As used in this clause, "The COMET" means itself, its member agencies, departments, Board of Directors, and all their respective officers, agents, and employees. Any term or condition is void to the extent it requires The COMET to

indemnify, defend, or pay attorney's fees to anyone for any reason for any reason based on the South Carolina Tort Claims Act.

22. Notices. Any notice required to be given under this Agreement shall be in writing and either served personally or sent prepaid, first-class mail. Any such notice shall be addressed to the other party at the address set forth below. Notice shall be deemed communicated within 48 hours from the time of mailing if mailed as provided in this section.

If to The COMET:	Executive Director/CEO The Central Midlands Regional Transit Authority 3613 Lucius Road Columbia, SC 29201
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If to Contractor:	Owner
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23. Entire Agreement. This Agreement constitutes the complete and exclusive statement of Agreement between The COMET and Contractor. All prior written and oral communications, including correspondence, drafts, memoranda, and representations, are superseded in their entirety by this Agreement.

24. Amendments. This Agreement may be amended only by a written document executed by both Contractor and The COMET and approved as to form by The COMET General Counsel.

25. Assignment and Subcontracting. The Parties recognize that a substantial inducement to The COMET for entering into this Agreement is the professional reputation, experience, and competence of Contractor. Assignments of any or all rights, duties, or obligations of the Contractor under this Agreement will be permitted only with the express prior written consent of The COMET. Contractor shall not subcontract any portion of the work to be performed under this Agreement without the prior written authorization of The COMET. If The COMET consents to such subcontract, Contractor shall be fully responsible to The COMET for all acts or omissions of the subcontractor. Nothing in this Agreement shall create any contractual relationship between The COMET and subcontractor nor shall it create any obligation on the part of The COMET to pay any monies due to any such subcontractor other than as may be required by law. All FTA terms, conditions, assurances and certifications shall flow through to the subcontractor. The COMET shall be provided copies of all subcontractor agreements upon reasonable request.

26. Contractor Solely Responsible for Performance/Subcontractors. The Contractor will be solely responsible for performance under this Agreement. The COMET will rely upon the Contractor for full, complete, and satisfactory performance under the terms and conditions of this Agreement. If the Contractor's services provided hereunder include services, equipment or materials supplied by a subcontractor, the Contractor must assume full responsibility for any subcontractor's performance. The Contractor will be considered the sole point of contact with regard to all situations, including payment of all charges and the meeting of all requirements.

27. Prompt Payment. The Contractor must pay its subcontractors performing work related to this Agreement for satisfactory performance of that work no later than 30 days after Contractor's receipt of payment for that work from The COMET.

28. Waiver. Waiver of any breach or default under this Agreement shall not constitute a continuing waiver of a subsequent breach or default of the same or any other provision under this Agreement.

29. Severability. If any provision of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

30. Controlling Law; Venue. This Agreement and all matters relating to it shall be governed by the laws of the State of South Carolina, and any legal action relating to this Agreement shall take place in Richland County, South Carolina.

31. Force Majeure. Contractor shall not be liable for non-performance or delays of Service caused by strikes, lockouts or other labor disturbances, riots, authority of law, acts of God, fire, flood, tornado, hurricane, earthquake or means beyond the Contractor control.

32. Resolution of Agreement Controversies. Any controversy between The COMET and Contractor including but not limited to controversies based upon breach of contract, mistake, misrepresentation, or other cause for Agreement modification or rescission shall be governed by the laws of the State of South Carolina, and any legal action relating to this Agreement shall take place in the Richland County Court of Common Appeals.

33. Disputes.

(1) Choice of Forum. All disputes, claims, or controversies relating to the Agreement will be resolved in accordance with The COMET's Procurement and Contract Administration Policy, as then in effect, provided that either party shall have the right to litigate any claim pursuant to Section 32.

(2) Service of Process. Contractor consents that any papers, notices, or process necessary or proper for the initiation or continuation of any disputes, claims, or controversies relating to the Agreement; for any court action or contract controversy in connection therewith; or for the entry of judgment on any award made, may be served on Contractor by certified mail (return receipt requested) addressed to Contractor at the address provided under Section 22 of the Agreement or by personal service or by any other manner that is permitted by law, in or outside South Carolina. Notice by certified mail is deemed duly given upon deposit in the United States mail.

34. Litigation Expenses and Attorney's Fees. If either party to this Agreement commences any legal action against the other party arising out of this Agreement, the prevailing party shall be entitled to recover its reasonable litigation expenses, including court costs, expert witness fees, discovery expenses, and attorney's fees.

35. Execution. This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy has been signed by both parties.

36. Authority to Enter Agreement. Contractor warrants that it has all requisite power and authority to conduct its business and to execute, deliver, and perform this Agreement. Each party warrants to the other that the signatories to this Agreement have the legal power, right, and authority to enter into this Agreement and to bind each party.

37. Legal Relationship. The Contractor is an independent contractor and is not the legal representative or agent of The COMET. The Contractor and The COMET have a business relationship based entirely on and circumscribed by this Agreement. No partnership, joint venture, agency, fiduciary, or employment relationship is intended or created by reason of this Agreement.

38. Prohibited Interests.

a. Contractor warrants that it has not employed or retained any person, other than a bona fide employee working solely for Contractor, to solicit or secure this Agreement. Further, Contractor warrants that it has neither paid nor agreed to pay any person, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, brokerage fee, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. For any breach or violation of this warranty, The COMET shall have the right to rescind this Agreement without liability.

b. For the term of this Agreement, no member, officer, or employee of The COMET, during the period of his or her Service with The COMET, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

39. Non-Discrimination Requirement. Contractor will not discriminate on the basis of race, color, religion, national origin, age, gender, sexual orientation, veteran status, disability and/or any other protected class under the law in the performance of this Agreement.

a. Title VI of the Civil Rights Act of 1964. Contractor agrees to comply with all requirements of Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, USDOT regulations, "Nondiscrimination in Federally-Assisted Programs of the USDOT, 49 CFR Part 21.

b. Equal Employment Opportunity (EEO). The Contractor may not discriminate against any employee or prospective for employment because of race, color, religion, national origin, age, gender, sexual orientation, military or veteran status, disability and/or any other protected classes under the law. Such action will 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. Contractor shall insert the foregoing provision (modified only to show the particular contractual relationship) in all of its third-party contracts associated with the Agreement resulting from the RFP, except contracts for standard commercial supplies or raw materials and construction contracts. Further, Contractor shall require all such subcontractors to insert a similar provision in all subcontracts, except contracts for standard commercial supplies or raw materials and construction contracts. The Contractor shall provide semi-annual reports on a schedule as determined by The COMET to ensure compliance of this section should an EEO for this Agreement be established.

c. Access Requirements for Individuals with Disabilities. Offeror must comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §§ 12101 et seq. and 49 U.S.C. § 322; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794; Section 16 of the Federal Transit Act, as amended, 49 U.S.C. app. § 1612; and other applicable federal and state statutes, rules, and regulations.

d. Disadvantaged Business Enterprise (DBE). This Agreement is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation (DOT) Financial Assistance Programs. The national overall goal for participation of Disadvantaged Business Enterprises is 10%. The COMET's overall goal for DBE participation is 5%. A separate goal of 10% has been established for this Agreement. The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the



Contractor to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as The COMET deems appropriate. Each subcontract the Contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)). The Contractor shall provide semi-annual reports on a schedule as determined by The COMET to ensure compliance of this section should a DBE goal for this Agreement be established.

40. Immigration Law Compliance. By executing and entering into this Agreement, the Contractor is formally acknowledging without exception or stipulation that it is fully responsible for complying with the provisions of the Immigration Reform and Control Act of 1986 as located at 8 U.S.C. 1324, et. seq., and regulations relating thereto, as either may be amended. Failure by the Contractor to comply with the laws referenced herein shall constitute a breach of this Agreement and The COMET shall have the discretion unilaterally to terminate this Agreement immediately.

41. Federally-Required Clauses. Any Federally-required contract clauses not otherwise contained in this Agreement shall be identified on Exhibit C which is attached hereto and incorporated herein by reference.

42. System for Awards Management (SAMs). In order to submit a proposal to The COMET, Contractor must have not been debarred or suspended from participating in federally funded procurements. A copy of the Contractor's SAM registration must be included in the proposal submission.

43. Precedence. In case of conflict between the Request for Proposal dated XXX and this Agreement (including exhibits), this Agreement shall control and take precedence over the terms of the Award, and any other documents from the Contractor used to implement the Services. In case of a conflict between the form of this Agreement or exhibits thereto, this Agreement shall control and take precedence over the exhibits.

**TO EFFECTUATE THIS AGREEMENT**, each of the Parties has caused this Agreement to be executed by its duly authorized representative as of the date set forth in the introductory paragraph on page 1 above.

The Central Midlands Regional  
Transit Authority:

Contractor:

By: \_\_\_\_\_  
Its: Executive Director/CEO

By: \_\_\_\_\_  
Its: Title

**EXHIBIT A  
THE AWARD**

**EXHIBIT B**  
**RFP**

**EXHIBIT C  
FEDERAL CLAUSES**