

**FAYETTE COUNTY REGIONAL ECONOMIC DEVELOPMENT  
PUBLIC – PRIVATE PARTNERSHIP AGREEMENT**

This Public – Private Partnership Agreement (the “Agreement”), made effective as of September 26, 2011, by and between the **Fayette County Tennessee Industrial Development Board**, (“**IDB**”), 13095 North Main Street, PO Box 218, Somerville, Tennessee 38068, and the **City of Piperton**, (“**Piperton**”), 3725 Hwy 196 Suite B | Piperton, TN 38017, and **WCA Development, Inc.** (“**WCA**”), with principal offices at 50 Highway 196 South, Piperton, TN 38017.

**Background**

A. The Fayette County Industrial Development Board, as the Lead Public Agency “LPA” for a TIGER III GRANT application and shall be the administering agency for any awarded Tiger III Grant funds pursuant to the regulation and guidelines set forth by the Tennessee Department of Transportation and the Federal Department of Transportation. The Federal Department of Transportation Tiger III Grant criteria encourages the application for Tiger III funded projects be solicited via a Public – Private Partnership.

B. **WCA** desires to work with **IDB** as the public sector Lead Agency of a proposed DOT Tiger III Grant project, and **IDB** is willing to participate in the DOT Tiger III Program as the Lead Agency, with the City of Piperton and **WCA** for the proposed project further described in this Agreement.

**NOW, THEREFORE**, in consideration of the foregoing and the mutual promises and the covenants and agreements set forth below, the parties agree as follows:

**1. TIGER III GRANT Program Requirements**

1.1 **WCA** shall abide by all applicable rules, regulations, and requirements of the DOT TIGER III GRANT Program. Failure of **WCA** to do so shall result in the termination of this Agreement, at which time **WCA** shall immediately repay to [public sponsor] and/or DOT all grant funds **WCA** received in connection with the TIGER III GRANT Program, together with any interest or penalties that may be assessed as a result of **WCA**’s failure to comply with applicable requirements. Notwithstanding the foregoing, if and to the extent repayment of grant funds is affirmatively waived by the Department of Transportation and the Federal Highway Administration (FHWA), **WCA** shall not be required to repay amounts covered by such a waiver.

- 1.2 Without limiting the generality of the foregoing, **WCA** shall abide by all federal requirements pertaining to DOT TIGER III GRANT and all related TIGER III GRANT Program rules and regulations. At the request of [public sponsor] or TDOT, **WCA** shall certify in writing to TDOT that **WCA** has complied in all aspects with the TIGER III GRANT Program requirements as they relate to the Fayette County PPP Project; such certification shall be signed by an officer of **WCA.TIGER III Project**

This Public Private Partnership intends to apply for a grant from the DOT TIGER III Program to support the following TIGER III Project: The Fayette County Tennessee Intermodal Regional Partnership (FCIP)

### **3. Roles and Responsibilities of *Public Sector Partner***

3.1 **IDB** shall coordinate with TDOT and PPP as required to facilitate administration of any grants DOT may award to PPP through the TIGER III Program. This coordination may include, but not be limited to, any of the following tasks and duties as required:

- (a) Acting as project sponsor for PPP;
- (b) Acting as a fiduciary pass-through agent to administer TIGER III funds for PPP;
- (c) Monitoring compliance with TIGER III Program and TIGER III Program rules, including, but not limited to, procurement in accordance with federal requirements and performance by the PPP of ongoing obligations to use funds in active use in the location specified by the TIGER III grant agreement;
- (d) Monitoring compliance with TIGER III Program requirement to improve the transportation infrastructure with the TIGER III Program funding;
- (e) Assisting TDOT in various other administrative tasks which may be required by the TIGER III Program.
- (f) As the LPA, TDOT or the United States government may legitimately request from time to time, the **Public sponsor** agrees to make available for inspection and/or reproduction by the LPA, ODOT or United States government, all records, books, and documents of every kind and description that relate to this Agreement. All such books, documents, and records shall be kept for a period of at least three years after the PPP's Project completion.
- (g) Adherence to all conditions and provisions set forth in the "LPA TIGER III Federal Project Agreement" executed with TDOT.

#### **4. Roles and Responsibilities of Private Sector Partner (the WCA)**

4.1 **WCA** shall coordinate with the **Public Sponsor** as necessary and useful to ensure compliance with requirements of the TIGER III Program. Such coordination may include, but is not limited to, any of the following tasks:

- (a) Complying with any and all requirements of the TIGER III;
- (b) Providing the matching share of funding as required by the TIGER III Program.
- (c) Provide for all required funds to complete the approved project in the event that the approved project costs exceed the amount of grant funds awarded for the project.
- (d) The LPA, TDOT or the United States government may legitimately request from time to time, the **WCA** agrees to make available for inspection and/or reproduction by the LPA, TDOT or United States government, all records, books, and documents of every kind and description that relate to this Agreement. All such books, documents, and records shall be kept for a period of at least three years after DOT approves the LPA's completion of the project.

#### **7. Termination**

The terms and conditions of this Agreement shall remain in force and effect until the terms and conditions of any TIGER III Program grant funding received by PPP, including, but not limited to, ongoing compliance obligations under the TIGER III Program rules, expire.

#### **8. Miscellaneous**

8.1 Assignment. Neither this Agreement, nor any rights, duties or obligations described in this Agreement, shall be assigned or subcontracted by PPP members without the prior written consent of **IDB**, and/or if necessary TDOT, and DOT, which shall not be unreasonably withheld. In the event that the **IDB**, and if necessary TDOT, and Federal DOT approve an assignment, each and all of the terms and conditions of this Agreement shall extend to the benefit of the successors and assigns of PPP members.

8.2 Governing Law. This Agreement shall be governed by the laws of the United States and the State of Tennessee as to all matters, including but not limited to matters of validity, construction, effect and performance.

8.3 Forum and Venue. All actions regarding this Agreement shall be forumed and venued in a court of competent subject matter jurisdiction in Fayette County, Tennessee.

8.4 Entire Agreement. This Agreement and any documents referred to herein constitute the complete understanding of the parties and merge and supersede any and all other discussions, agreements and understandings, either oral or written, between the parties with respect to the subject matter hereof.

8.5 Severability. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions of this Agreement.

8.6 Nondiscrimination. In carrying out this Agreement, the Public Sponsor and the WCA shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, ancestry, age, or disability as that term is defined in the American with Disabilities Act. The Public Sponsor and the WCA shall ensure that applicants are hired and that employees are treated during employment without regard to their race, religion, color, sex, national origin, ancestry, age, or disability. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship.

8.7 Relationship. This Agreement does not establish an agent/principal/employee relationship between the signers of this agreement. The relationship of the parties is that of an independent contractor and shall be treated as an independent contractor for all purposes, including but not limited to federal and state taxation, withholding, unemployment insurance and workers' compensation insurance.

**IN WITNESS WHEREOF**, the Fayette County Intermodal Regional Partnership, parties have caused this Agreement to be executed by their authorized representatives effective as of the date first above written.

**PRIVATE SECTOR PARTNER  
SPONSOR:**

BY: \_\_\_\_\_

PRINT NAME: William Adair \_\_\_\_\_

TITLE: President, WCA \_\_\_\_\_

DATE: \_\_\_\_\_

**PUBLIC SECTOR PARTNERS WCA:**

BY: \_\_\_\_\_

PRINT NAME: \_\_\_\_\_

TITLE: Chairperson, Fayette County IDB

DATE: \_\_\_\_\_

**PUBLIC SECTOR PARTNER  
Member:**

BY: \_\_\_\_\_

PRINT NAME: Henry Coates \_\_\_\_\_

TITLE: Mayor, The City of Piperton, TN

DATE: \_\_\_\_\_

**DRAFT**  
**FAYETTE COUNTY INTERMODAL REGIONAL PARTNERSHIP**  
**PUBLIC – PRIVATE PARTNERSHIP AGREEMENT**

This Public – Private Partnership Agreement (the “Agreement”), made effective as of September 26, 2011, by and between the **Fayette County Tennessee Industrial Development Board**, (“IDB”), [Address], Somerville, TN [Zip], and the **City of Piperton**, (“Piperton”), [Address], Piperton, TN [Zip], and the **William Adair Company** (“WAC”), with principal offices at 50 Hwy 196 South, Piperton, TN  
38017

**Background**

A. The Fayette County Industrial Development Board, as the Lead Public Agency “LPA” for a TIGER III GRANT application and shall be the administering agency for any awarded Tiger III Grant funds pursuant to the regulation and guidelines set forth by the Tennessee Department of Transportation and the Federal Department of Transportation. The Federal Department of Transportation Tiger III Grant criteria encourages the application for Tiger III funded projects be solicited via a Public – Private Partnership.

B. **WAC** desires to work with **IDB** as the public sector Lead Agency of a proposed DOT Tiger III Grant project, and **IDB** is willing to participate in the DOT Tiger III Program as the Lead Agency, with the City of Piperton and **WAC** for the proposed project further described in this Agreement.

**NOW, THEREFORE**, in consideration of the foregoing and the mutual promises and the covenants and agreements set forth below, the parties agree as follows:

**1. TIGER III GRANT Program Requirements**

1.1 **WAC** shall abide by all applicable rules, regulations, and requirements of the DOT TIGER III GRANT Program. Failure of **WAC** to do so shall result in the termination of this Agreement, at which time WAC shall immediately repay to [public sponsor] and/or DOT all grant funds WAC received in connection with the TIGER III GRANT Program, together with any interest or penalties that may be assessed as a result of WAC’s failure to comply with applicable requirements. Notwithstanding the foregoing, if and to the extent repayment of grant funds is affirmatively waived by the Department of Transportation and the Federal Highway Administration (FHWA), **WAC** shall not be required to repay amounts covered by such a waiver.

- 1.2 Without limiting the generality of the foregoing, **WAC** shall abide by all federal requirements pertaining to DOT TIGER III GRANT and all related TIGER III GRANT Program rules and regulations. At the request of [public sponsor] or TDOT, **WAC** shall certify in writing to TDOT that **WAC** has complied in all aspects with the TIGER III GRANT Program requirements as they relate to the Fayette County PPP Project; such certification shall be signed by an officer of **WAC**. **TIGER III Project**

This Public Private Partnership intends to apply for a grant from the DOT TIGER III Program to support the following TIGER III Project: The Fayette County Tennessee Intermodal Regional Partnership (FCIP)

### 3. **Roles and Responsibilities of *Public Sector Partner***

3.1 **IDB** shall coordinate with TDOT and PPP as required to facilitate administration of any grants DOT may award to PPP through the TIGER III Program. This coordination may include, but not be limited to, any of the following tasks and duties as required:

- (a) Acting as project sponsor for PPP;
- (b) Acting as a fiduciary pass-through agent to administer TIGER III funds for PPP;
- (c) Monitoring compliance with TIGER III Program and TIGER III Program rules, including, but not limited to, procurement in accordance with federal requirements and performance by the PPP of ongoing obligations to use funds in active use in the location specified by the TIGER III grant agreement;
- (d) Monitoring compliance with TIGER III Program requirement to improve the transportation infrastructure with the TIGER III Program funding;
- (e) Assisting TDOT in various other administrative tasks which may be required by the TIGER III Program.
- (f) As the LPA, TDOT or the United States government may legitimately request from time to time, the **Public sponsor** agrees to make available for inspection and/or reproduction by the LPA, ODOT or United States government, all records, books, and documents of every kind and description that relate to this Agreement. All such books, documents, and records shall be kept for a period of at least three years after the PPP's Project completion.
- (g) Adherence to all conditions and provisions set forth in the "LPA TIGER III Federal Project Agreement" executed with TDOT.

#### **4. Roles and Responsibilities of Private Sector Partner (the WAC)**

4.1 **WAC** shall coordinate with the **Public Sponsor** as necessary and useful to ensure compliance with requirements of the TIGER III Program. Such coordination may include, but is not limited to, any of the following tasks:

- (a) Complying with any and all requirements of the TIGER III;
- (b) Providing the matching share of funding as required by the TIGER III Program.
- (c) Provide for all required funds to complete the approved project in the event that the approved project costs exceed the amount of grant funds awarded for the project.
- (d) The LPA, TDOT or the United States government may legitimately request from time to time, the **WAC** agrees to make available for inspection and/or reproduction by the LPA, TDOT or United States government, all records, books, and documents of every kind and description that relate to this Agreement. All such books, documents, and records shall be kept for a period of at least three years after DOT approves the LPA's completion of the project.

#### **7. Termination**

The terms and conditions of this Agreement shall remain in force and effect until the terms and conditions of any TIGER III Program grant funding received by PPP, including, but not limited to, ongoing compliance obligations under the TIGER III Program rules, expire.

#### **8. Miscellaneous**

8.1 Assignment. Neither this Agreement, nor any rights, duties or obligations described in this Agreement, shall be assigned or subcontracted by PPP members without the prior written consent of IDB, and/or if necessary TDOT, and DOT, which shall not be unreasonably withheld. In the event that the IDB, and if necessary TDOT, and Federal DOT approve an assignment, each and all of the terms and conditions of this Agreement shall extend to the benefit of the successors and assigns of PPP members.

8.2 Governing Law. This Agreement shall be governed by the laws of the United States and the State of Tennessee as to all matters, including but not limited to matters of validity, construction, effect and performance.

8.3 Forum and Venue. All actions regarding this Agreement shall be forumed and venued in a court of competent subject matter jurisdiction in Fayette County, Tennessee.

8.4 Entire Agreement. This Agreement and any documents referred to herein constitute the complete understanding of the parties and merge and supersede any and all other discussions, agreements and understandings, either oral or written, between the parties with respect to the subject matter hereof.

8.5 Severability. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions of this Agreement.

8.6 Nondiscrimination. In carrying out this Agreement, the Public Sponsor and the WAC shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, ancestry, age, or disability as that term is defined in the American with Disabilities Act. The Public Sponsor and the WAC shall ensure that applicants are hired and that employees are treated during employment without regard to their race, religion, color, sex, national origin, ancestry, age, or disability. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship.

8.7 Relationship. This Agreement does not establish an agent/principal/employee relationship between the signers of this agreement. The relationship of the parties is that of an independent contractor and shall be treated as an independent contractor for all purposes, including but not limited to federal and state taxation, withholding, unemployment insurance and workers' compensation insurance.

IN WITNESS WHEREOF, the Fayette County Intermodal Regional Partnership, parties have caused this Agreement to be executed by their authorized representatives effective as of the date first above written.

**PRIVATE SECTOR PARTNER  
SPONSOR:**

BY: \_\_\_\_\_

PRINT NAME: William Adair

TITLE: President, WAC

DATE: \_\_\_\_\_

**PUBLIC SECTOR PARTNERS WAC:**

BY: 

PRINT NAME: \_\_\_\_\_

TITLE: Chairperson, Fayette County IDB

DATE: \_\_\_\_\_

**PUBLIC SECTOR PARTNER  
Member:**

BY: \_\_\_\_\_

PRINT NAME: Henry Coates

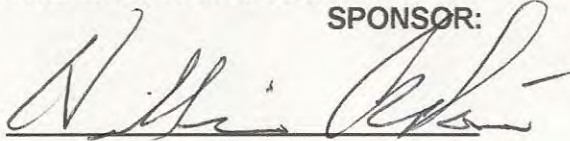
TITLE: Mayor, The City of Piperton, TN

DATE: \_\_\_\_\_

IN WITNESS WHEREOF, the Fayette County Intermodal Regional Partnership, parties have caused this Agreement to be executed by their authorized representatives effective as of the date first above written.

**PRIVATE SECTOR PARTNER**

**SPONSOR:**

BY: 

PRINT NAME: William Adair

TITLE: President, WCA

DATE: 10-28-11

**PUBLIC SECTOR PARTNERS WCA:**

BY: \_\_\_\_\_

PRINT NAME: \_\_\_\_\_

TITLE: Chairperson, Fayette County IDB

DATE: \_\_\_\_\_

**PUBLIC SECTOR PARTNER  
Member:**

BY: \_\_\_\_\_

PRINT NAME: Henry Coates

TITLE: Mayor, The City of Piperton, TN

DATE: \_\_\_\_\_

IN WITNESS WHEREOF, the Fayette County Intermodal Regional Partnership, parties have caused this Agreement to be executed by their authorized representatives effective as of the date first above written.

**PRIVATE SECTOR PARTNER  
SPONSOR:**

BY: \_\_\_\_\_

PRINT NAME: William Adair

TITLE: President, WCA

DATE: \_\_\_\_\_

**PUBLIC SECTOR PARTNERS WCA:**

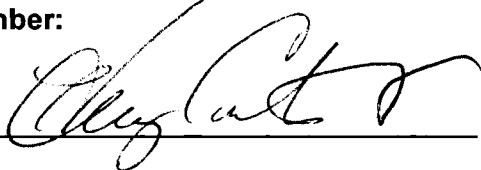
BY: \_\_\_\_\_

PRINT NAME: \_\_\_\_\_

TITLE: Chairperson, Fayette County IDB

DATE: \_\_\_\_\_

**PUBLIC SECTOR PARTNER  
Member:**

BY:  \_\_\_\_\_

PRINT NAME: Henry Coates

TITLE: Mayor, The City of Piperton, TN

DATE: 10/31/11