

**City of Waukesha**  
**Provide, Install and Maintain bus shelters with advertising**

This Contract is by and between the City of Waukesha, a Wisconsin municipal corporation, referred to herein as the City; and the following Contractor:

Contractor name: Clear Channel Outdoor, Inc.

Authorized Representative of Contractor: Mr. David Ford, President & General Manager Milwaukee Division

Contractor address: 908 Silvernail Rd, Pewaukee, WI 53072

Contractor telephone: (262) 506-9085

Contractor email: jimbernklaou@clearchannel.com

**Recitals**

The City published a Request for Proposals, referred to as the RFP, for providing, installing and maintaining bus shelters with advertising. The RFP contained a specific scope of work to be incorporated into the successful Contractor's contract.

The Contractor submitted a proposal in response to the RFP, and was selected by the City to be awarded the contract for the Project.

The Contractor is willing to perform the services according to the requirements stated in the RFP and the Contractor's responsive Proposal, and to accept the award of the contract for the Project.

Now, therefore, the City and the Contractor agree and contract as follows:

1. **Scope of Work.** The Contractor shall perform the following Work, according to the terms and conditions of this Contract:
  - a. Contractor will propose locations of new shelters. The necessary permission for locations outside the City of Waukesha or on private property is the responsibility of the Contractor. The Contractor will be responsible for obtaining all permits necessary for the construction and installation of shelters with advertising as well as paying applicable permit fees.
  - b. Install and make fully operational any new bus shelters over the course of the contract. Fully operational is defined as the shelter properly installed, are illuminated during hours of darkness when the transit system is in operation and are being cleaned and maintained.

The shelters shall have space for transit information, and will contain the name of the bus stop fully visible to passing motorists (e.g "Main St."). Fully operational is defined as the shelter properly installed, have power, are illuminated during hours of darkness when service is in operation and are being cleaned and maintained.

Note: Solar powered illumination is acceptable provided the illumination is functional throughout bus service hours operated in darkness. Also, the City of Waukesha may not allow illumination of bus shelters in or adjacent to residential areas. These locations will be determined on a case by case basis by the City. Hours of illumination must also compliance with all applicable local ordinances.

- c. The Contractor is responsible for supplying a concrete base under the shelter and a concrete path to where the front door of the bus will stop at the shelter. Any grading or landscaping required for the placement of a bus shelter is also the Contractor's responsibility.

- d. The installation of any and all shelters with advertising must be reviewed and approved by appropriate City staff. The City will remove any existing City bus shelters that will be replaced by shelters with advertising panels. Additional reviews may be required by local or state officials for shelters outside the City of Waukesha.
- e. The Contractor is responsible for all costs and arrangements to connect with the electrical utility. Furthermore, all on-going utility costs related to the operations and illumination of the shelters with advertising panels will be paid for by the Contractor. Solar powered lighting will be acceptable but must be in working order during bus service hours operated in darkness. The Contractor must submit electrical plans that provide for compliance to all applicable codes, with particular attention paid to eliminating all electrical shock hazards. The Contractor will be required to submit an acceptable construction/installation and structure plan to the City or other approving governmental agency prior to a shelter purchase and installation. This may include multiple sites.
- f. All costs associated with purchasing, installing and maintaining the bus shelters will be the Contractor's responsibility.
- g. Contractor will agree to maintain the existing twenty-four (24) bus shelters in operation as well as any new shelters installed over the life of this agreement. The bus shelters are to remain in good repair and the Contractor shall be solely responsible for the cleaning, repairing, or replacement of any part thereof, including advertising, on a regular basis. This includes keeping the structures safe for the public to use and compliant with applicable Americans with Disabilities Act (ADA) requirements. Some of the existing shelters may need to be replaced by the end of this contract given their current age. The City will grant the Contractor the ability to refurbish an aging shelter, however the City will retain the right to have the Contractor replace a shelter that has exceeded its useful life and/or remains in a state of disrepair after refurbishing.
- h. Contractor shall remove snow within 24 hours of the snowfall and shelters must be periodically checked for ice during Winter months. In addition to normal maintenance and scheduled cleaning, the Contractor will, within 24 hours of receiving notice, remove all graffiti, unauthorized posters and excessive trash, etc. The Contractor shall, within 6 hours of notice, remove, repair, and/or replace shelter structures or parts of shelters thereof that have been damaged due to vandalism, accidents, and acts of nature. To facilitate this, the contractor must provide the city with a telephone number that is staffed during normal Contractor business hours that will receive calls and dispatch maintenance crews.
- i. The Contractor will submit a monthly report to the City that will include detail of advertising sales by advertiser including: length of contract, number of signs, gross billings and net collections, and the total for both for all activity. The Contractor must also report any variations that may occur (e.g. a bonus space, combinations with other media, and extension of the contracted time, make goods, etc.).
- j. The City shall require that at the end of the contract, the ownership of all the shelters will be transferred to the City without cost, or have their undepreciated value purchased by a successor contractor.
- k. The Contractor agrees to post ads that conform to the City policy regarding the appropriateness of advertising graphics and content as well as the total ban on tobacco product, and political advertising. See Appendix A for the Advertising Policy.
- l. For the term of the contract, at least ten (10) percent of the shelters with advertising will contain one or more frames with some form of public service advertising. The cost of production and installation of posters displaying public service ads will be the responsibility of the advertising entity or the Contractor.

- m. All shelters with advertising are permitted to have two large panels for advertising with each panel no greater than 6 feet x 4 feet. Both panels are to be illuminated (where permitted), be installed back to back, and be at the side of the shelter far side from the normal vehicle approach. Exceptions to the far side panel installation may be made for safety reasons upon approval of the City. Additional advertising panels may be granted by the City on a case by case basis provided the additional advertising panels are permitted by local municipal code/ordinance.
  - n. All shelters with advertising must conform to all applicable requirements of the Americans with Disabilities Act.
  - o. Shelters with advertising will conform in all ways with all other applicable laws, ordinances, rules, regulations, codes, etc.
2. **Term.** The term of this Agreement shall be for ten years commencing on December 1, 2017.
3. **Cooperation by City.** The City shall cooperate with Contractor in the performance of the Work, and shall respond timely to all reasonable requests for information and access.
4. **Revenue Payment.** The Contractor will be required to pay the City an annual fee of \$700 per shelter. Payments must be made no less frequently than twice a year, but more frequent payments will be permitted. Payments will accrue on new shelters starting with the first full month after the shelter is installed. The payments will be due the first day of each payment period.

At the end of each lease year, the Contractor shall provide the City with statement detailing the net collections for all shelters for the year. If 20% of net collections exceeds the annual fee of \$700 per shelter, the Contractor shall pay the excessive amount to the City within 60 days following the end of the lease year.

The Contractor may request exceptions to the annual fee of specific shelters when through no fault of their own, the shelters have to be moved, disassembled or relocated. Exceptions will not be unreasonably withheld.

The Contractor may not ask for an exception if there is an interruption of electrical power, a problem securing electrical power, or a malfunction in the connection between the shelter and the source of electrical power. It is the responsibility of the Contractor to check that electrical is properly secured, connected, and maintained for continuity and public safety. This also applies to any other power source the Contractor uses (e.g. solar, batteries, generators, etc.).

Payments shall be made to the following address:

Waukesha Metro Transit  
Attention: Kari Bloedow, Finance Director  
2311 Badger Drive  
Waukesha, WI 53188-5932

5. **Permits and Licenses.** Contractor shall be responsible, at Contractor's expense, for obtaining all permits and licenses required for the performance of the Work.
6. **Insurance.** Contractor shall maintain insurance of the following kinds and for not less than the following limits, at Contractor's sole expense, at all times during Contractor's performance of its obligations under this Contract. Contractor shall require all subcontractors to maintain equal insurance. Policies shall be occurrence, and not claims-made, policies. Contractor shall obtain an endorsement making the City and Waukesha County, and their respective officers, officials and employees, additional insureds. Contractor's insurance shall be primary, not excess, and non-contributory. All policies shall be from insurers licensed to issue such policies in

Wisconsin. Upon the execution of this Contract, Contractor shall deliver a certificate of insurance to City showing that all requirements of this section are met.

- a. Commercial general liability, \$1,000,000 per occurrence, \$2,000,000 aggregate.
  - b. Automobile liability, \$1,000,000 bodily injury, \$1,000,000 property damage.
  - c. Umbrella, \$5,000,000.
  - d. Worker compensation, statutory requirements.
7. **Indemnification.** Contractor shall indemnify and hold the City and Waukesha County, and the City's and County's officers, officials, and employees, harmless from any and all damages, causes of action, judgments, obligations and all other liabilities arising from or connected in any way with, the Contractor's performance of its obligations under this contract, including court costs and actual attorney fees.
  8. **Integration.** This Contract constitutes the agreement of the parties formed by the City's RFP and the Contractor's responsive proposal; however, in the event of any conflict between the RFP, Contractor's proposal, and this Contract, this Contract shall control. Reference may be made to the RFP and Contractor's proposal only for interpretation in the event of an ambiguity in this Contract. All other agreements and understandings of the parties with respect to the subject matter expressed in this Contract are unenforceable.
  9. **Relationship of Parties.** The City and the Contractor are independent contractors, and this Contract shall not be construed to create a partnership, joint venture or any other relationship creating vicarious liability or authority for either party to bind the other to contract.
  10. **Assignment Prohibited.** This Contract, and the Contractor's responsibility to perform the Work under this Contract, may not be assigned by the Contractor without the City's written consent.
  11. **Notices.** Notices to the Contractor shall be mailed to the address shown in the preamble to this Contract. Notices to the City shall be mailed or personally delivered to the attention of Brian Engelking, Transit Manager, Waukesha Transit Commission, 2311 Badger Drive, Waukesha, Wisconsin 53188.
  12. **Corporate Authorization.** The person executing this Contract on behalf of the Contractor represents and warrants that he or she is duly authorized to do so, and that this Contract is a binding obligation of the Contractor.
  13. **Costs of Enforcement.** The parties agree that in the event legal action is necessary to enforce any term or condition of this Contract, then the breaching party will pay the non-breaching party's costs incurred in such legal action, including actual attorney fees. If judgment is taken against the breaching party, then such actual costs of enforcement will be added to the non-breaching party's judgment.
  14. **Amendments.** No amendments, additions, or changes of any kind to this Contract will be valid unless in writing and signed by all of the parties to this Contract.
  15. **Severability.** If any term of this Contract is unenforceable under law for any reason, then to the extent the unenforceable term can be severed from the remainder of this Contract without affecting the enforceability of the remainder of this Contract or substantially frustrating its purpose, it shall be so severed, and the remainder of this Contract shall remain in effect and enforceable.
  16. **Governing Law and Jurisdiction.** This Contract will be construed and enforced according to the laws of Wisconsin. The parties agree that if a lawsuit is necessary with respect to this Contract, it will be filed in the

Circuit Court for Waukesha County, Wisconsin. The parties consent to personal jurisdiction in Wisconsin, and waive all jurisdictional defenses.

**Clear Channel Outdoor**

\_\_\_\_\_  
Print name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

\_\_\_\_\_  
Print name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**City of Waukesha**

\_\_\_\_\_  
Shawn N. Reilly, Mayor  
Date: \_\_\_\_\_

\_\_\_\_\_  
Attest: Gina L. Kozlik, City Clerk  
Date: \_\_\_\_\_

To certify that funds are available for payment:

\_\_\_\_\_  
Richard L. Abbott, Finance Director  
Date: \_\_\_\_\_

## Appendix A

### CITY OF WAUKESHA METRO TRANSIT COMMISSION POLICY ON WAUKESHA METRO TRANSIT BUS ADVERTISEMENTS

A. The following types of advertisements will not be permitted:

1. Advertising that is unlawful, obscene or indecent, or contains explicit messages or graphic representations pertaining to sexual contact, or contains an offensive level of sexual overtone, innuendo, or double entendre.

2. Advertising of contraceptive products or hygiene products of an intimately personal nature.

3. Advertising of products or services with sexual overtones such as massage parlors, escort services, or establishments featuring X-rated or pornographic movies.

4. Advertising containing foul or offensive language.

5. Advertising that is harmful to children or is of a nature to frighten children, either emotionally or physically.

a. The term "harmful to children" means language or pictures that (i) describe or depict sexual contact, or nudity; (ii) make use of foul language; (iii) describe or depict violent physical torture, destruction, or death of a human being; or (iv) describe or depict criminal activity in a way that tends to glorify or glamorize the activity and that, with respect to children under the age of 18, has a tendency to corrupt.

b. The term "of a nature to frighten children, either emotionally or physically" means language or pictures that describe or depict violent or brutal activities, whether such violence or brutality was intended or not, in a manner that causes children under the age of 18 physical or emotional distress or fear for his personal safety or for the safety of others.

6. Advertising supporting or opposing a candidate, issue, or cause.

7. Advertising of tobacco products.

B. For all advertising that is not prohibited, Waukesha Metro Transit reserves the right to approve the advertiser's proposed design, layout and format of the advertisement.

Adopted by the City of Waukesha Common Council this 17th day of June, 2003.

/s/ Carol J. Lombardi, Mayor

/s/ Thomas Neill, City Clerk