

City of Waukesha
Contract to Provide Bus Advertising Sales

This Contract is by and between the City of Waukesha, a Wisconsin municipal corporation, 201 Delafield Street, Waukesha, Wisconsin 53188, referred to herein as the City; and the following Contractor:

Contractor Name: Houck Transit Advertising, Inc.
Authorized Representative of Contractor: Justin Houck
Contractor Address: 1025 Tomlyn Avenue, Suite 100, Shoreview, MN 55126
Contractor Telephone: 800.777.7290
Contractor Email: justin@houckads.com

Recitals

The City published a Request for Proposals, referred to as the RFP, for providing bus advertising sales. 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 shall sell advertisements on the outside and inside of the City's buses and provide payment to the City for a portion of the revenue generated from these activities as prescribed in section 4, Revenue Payments. The Contractor shall be responsible for collecting and retaining all money and compensation paid or agreed to be paid by third parties for any and all advertising on and in the City buses.
 - b. The Contractor will have the right to set the rates for advertising on the buses and length of contracts. The Contractor will be responsible for executing all bus ad contracts with advertisers.
 - c. The Contractor will be required to submit a monthly report to the City that will include detail by advertiser of the following:
 - (i) Name of Advertiser
 - (ii) Number and Size of Signs
 - (iii) Duration of Contract
 - (iv) Gross Billings and Net Collections
 - (v) Total Gross Billings and Net Collections per Month

The successful Bidder shall maintain records of all transactions and make such records (including all advertising contracts) available to the Transit Commission within a reasonable amount of time upon written notification.

- d. The contractor will be responsible for handling the transition of all transit advertisers with existing contracts with the current Bus Advertising Contractor and will assume all active transit advertising contracts held the current contract on the starting date.
- e. The contractor is required to create, install, maintain and remove all advertisements on or in the City of Waukesha Transit Commission's fixed and paratransit bus fleet. The Contractor is solely responsible for all labor and expense of creation, application and removal of each advertisement. It shall be the responsibility of the Contractor to ensure that all advertisements are maintained in a neat and proper condition. The City at its sole option, may direct the Contractor to repair or replace ads that are worn or damaged and the Contractor will be responsible for all costs associated with these repairs.

All exterior advertising shall be constructed of direct application exterior vinyl of a high quality (ex. 3M or Avery). The materials used must be easy to apply and remove, be durable, and readable. The Contractor is permitted to set ad sizes, but is encouraged to use industry standard sized ads where applicable. Custom sized ads are also acceptable and there is no cap on the number of full or partial bus wraps sold.

All advertisements and other items affixed to or in the City's buses by the Contractor shall not interfere with the normal operation, safety, or routine maintenance of said buses. Full and partial bus wraps with ad material that covers bus windows must be designed to allow passengers to see outside of the bus.

The contractor must comply with all policies stated within this document when at the Transit Operations Facility. Installation and removal of advertising signs performed at the Transit Operations Facility must be completed between the hours of 7 am to 5 pm Monday – Friday. Changes to these hours may occur upon approval of the Maintenance Director. Installation and removal may occur at an offsite location at the discretion of the Transit Manager.

The Contractor must maintain a record of all interior and exterior advertising posted and removed by bus number.

If any damage occurs to the bus as a result of installation, maintenance or removal of an advertisement, the Contractor will be responsible for restoring the buses to their original condition, including repainting and reapplying of any signs or equipment damaged, etc. if necessary. If any advertisement is damaged for any reason, including but not limited to accident, vandalism, or routine washing, the Contractor shall be responsible for all labor and expense in performing touch-ups or repairs. The City and/or its agents, insurance carriers, etc. may assist the Contractor in attempts to recover the cost of replacement/repairs to ad signs caused by other parties.

- f. The Contractor must agree 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. A copy of the City's policy on transit advertising is available in Exhibit A. The Contractor must also comply with all other applicable local, state and federal regulations including federal regulations as outline in Appendix A.
- g. The Contractor will be responsible for marketing the sale of advertisements on the City's buses. The City will assist in providing information on the Waukesha Metro website regarding bus advertising with information provided by the Contractor. In addition, the Contractor should provide the City with the contact information for the Contractor's ad sales staff that transit staff can direct interested advertisers to contact.
- h. The Contractor may propose to the City additional sales ventures for consideration throughout this contract (e.g., ads at the Downtown Transit Center, on service vehicles, on fare media, digital

advertisements, etc.). Any revenue generated from additional sales ventures shall not be included in the guaranteed revenue minimum specified in this contract. The Contractor and the City shall negotiate in good faith and agree, in writing, the sharing of revenue from additional ventures.

- i. The City reserves the right to use any unused bus ad space for advertisements for Waukesha Metro Transit. All costs associated with creation, installation and removal of these ads should be paid to the Contractor by the City. The Contractor is under no obligation to maintain any amount of ad space for the City and the use of the space would be only as available.
 - j. Upon termination of the Contract for any reason or upon the expiration of this Agreement, the Contractor agrees that it will furnish to the City, for the City's own use or delivery to a successor Contractor, a list of all advertisers which were under contract immediately prior to the termination or expiration, including with respect to each such advertiser: (i) its name, (ii) the principal contact at the advertiser for purposes of negotiating an advertising contract, (iii) its address and, if different, the address of the principal contact, and (iv) its phone number and, if different the phone number of its principal contact. Along with this list, the Contractor shall provide to the City, to the extent not previously provided, a copy of the most recent contract between each identified advertiser and the Contractor.
2. **Term.** The term of this Contract shall be for three years commencing on April 1, 2019 and terminating March 31, 2021. This Contract may be renewed or extended by the express written agreement of the parties for a maximum of two additional years, with compensation as described in Section 4 of this Contract. Contractor may, upon execution of this Contract, begin sales activities for bus advertising space that will be open from April 1, 2019 and beyond.
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 Payments.** The Contractor will be required to pay the City the monthly minimum percentage of gross monthly receipts from the sale or rental of space whichever is greater specified below.

Year 1 \$3,800/monthly or 50% of gross monthly receipts
Year 2 \$3,900/monthly or 50% of gross monthly receipts
Year 3 \$4,100/monthly or 50% of gross monthly receipts

Option Year 1 \$4,200/monthly or 50% of gross monthly receipts
Option Year 2 \$4,300/monthly or 50% of gross monthly receipts

Payments must be made by the 30th of the month following the month of which the payment is based.

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 caused by the Contractor's negligent acts or omissions in the performance of its obligations under this contract, including court costs and reasonable 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. **Termination.** This Contract may be terminated by the City at any time, in its sole discretion, upon written notice 30 days in advance of termination date, to the Contractor. In the event of termination, the Contractor shall retain its share of revenue as outlined in section 4, Revenue Payments, to the date of the termination.
 11. **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, which shall not be unreasonably withheld, conditioned or delayed.
 12. **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.
 13. **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.
 14. **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.
 15. **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.
 16. **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.

17. **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.

Houck Transit Advertising, Inc.

Print name: _____
Title: _____
Date: _____

Print name: _____
Title: _____
Date: _____

City of Waukesha

Shawn N. Reilly, Mayor
Date: _____

Attest: Gina L. Kozlik, City Clerk
Date: _____

Exhibit A

City of Waukesha Metro Transit Commission Bus Advertisement Policy

- 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

Appendix A

Required Federal Certifications and Clauses

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Notification of Federal Participation

This project is expected to be funded in part by the Federal Transit Administration (FTA) as authorized under 49 U.S.C. § 5307, 5337 and/or 5339. This notification of federal participation will be included in each subcontract financed in whole or in part with federal assistance provided by FTA.

1. Full and Open Competition

In accordance with 49 U.S.C. § 5325(h), all procurement transactions shall be conducted in a manner that provides full and open competition.

2. Prohibition Against Exclusionary or Discriminatory Specifications

Apart from inconsistent requirements imposed by Federal statute or regulations, the proposer shall comply with the requirements of 49 USC § 5323(h)(2) by refraining from using any FTA assistance to support procurements using exclusionary or discriminatory specifications.

3. Compliance with Federal Regulations

Any contract entered pursuant to this solicitation shall contain the following provisions: All USDOT-required contractual provisions, as set forth in FTA Circular 4220.1F, are incorporated by reference. Anything to the contrary herein notwithstanding, FTA mandated terms shall control in the event of a conflict with other provisions contained in this Agreement. Proposer shall not perform any act, fail to perform any act, or refuse to comply with any grantee request that would cause the municipal corporation to be in violation of FTA terms and conditions. Proposer shall comply with all applicable FTA regulations, policies, procedures and directives, including, without limitation, those listed directly or incorporated by reference in the Master Agreement between the municipal corporation and FTA, as may be amended or promulgated from time to time during the term of this contract. Proposer's failure to so comply shall constitute a material breach of this contract.

4. Federal Changes

Proposer 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 Master Agreement between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Proposer's failure to so comply shall constitute a material breach of this contract.

5. Disadvantaged Business Enterprise

(a) This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The Waukesha Transit Commission's goal for participation of Disadvantaged Business Enterprises (DBE) is 1.5%.

(b) The Proposer shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The Proposer shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this contract. Failure by the Proposer to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the municipal corporation deems appropriate. Each subcontract the Proposer signs with a Subcontractor must include the assurance in this paragraph (see 49 CFR § 26.13(b)).

(c) If a separate contract goal has been established, Proposers/Offerors are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR § 26.53.

(d) If no separate contract goal has been established, the successful Proposer/Offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

(e) The Proposer must promptly notify the Recipient whenever a DBE Subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE Subcontractor to perform at least the same amount of work. The Proposer may not terminate any DBE Subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the Recipient.

Prompt Payment and Return of Retainage

The Proposer is required to pay its Subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the Proposer's receipt of payment for that work from the Recipient. In addition, the Proposer may not hold retainage from its Subcontractors or must return any retainage payments to those Subcontractors within 30 days after the Subcontractor's work related to this contract is satisfactorily completed or must return any retainage payments to those Subcontractors within 30 days after incremental acceptance of the Subcontractor's work by the Recipient and Proposer's receipt of the partial retainage payment related to the Subcontractor's work.

6. Incorporation of Federal Transit Administration (FTA) Terms

The preceding provisions include, in part, certain Standard Terms & Conditions required by USDOT, whether or not expressly stated in the preceding contract provisions. All USDOT-required contractual provisions, as stated 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 Proposer shall not perform any act, fail to perform any act, or refuse to comply with any request that would cause the Recipient to be in violation of FTA terms and conditions.

7. Civil Rights Requirements

(a) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 USC § 2000d, Sec. 303 of the Age Discrimination Act (1975), as amended, 42 USC § 6102, Sec. 202 of the Americans with Disabilities Act (1990), 42 USC § 12132, and 49 USC § 5332, Proposer shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age or disability. Proposer shall also comply with applicable Federal implementing regulations and other requirements.

(b) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

(i.) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 USC § 2000e, and 49 USC § 5332, Proposer shall comply with all applicable equal employment opportunity requirements of USDOL, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, USDOL," 41 CFR Part 60-1 et seq., (implementing Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 USC § 2000e), and any applicable Federal statutes, executive orders, regulations, and policies that may in the future affect construction activities undertaken in the course of the project. Proposer shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to

their race, color, creed, national origin, sex or age. Such action shall 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. In addition, Proposer shall comply with any implementing requirements FTA may issue.

(ii.) Age - In accordance with Sec. 4 of the Age Discrimination in Employment Act (1967), as amended, 29 USC § 623 and 49 USC § 5332, Proposer shall refrain from discrimination against present and prospective employees for reason of age. Proposer shall also comply with any implementing requirements FTA may issue.

(iii.) Disabilities - In accordance with Sec. 102 of the Americans with Disabilities Act (ADA), as amended, 42 USC § 12112, Proposer shall comply with the requirements of US Equal Employment Opportunity Commission (EEOC), Regulations to Implement Equal Employment Provisions of the Americans with Disabilities Act, 29 CFR § 1630, pertaining to employment of persons with disabilities. Proposer shall also comply with any implementing requirements FTA may issue.

(c) Proposer shall include these requirements in each subcontract financed in whole or in part with FTA assistance, modified only if necessary to identify the affected parties.

8. Interest of Members or Delegates to Congress

No members of, or delegates to, the US Congress shall be admitted to any share or part of this contract nor to any benefit arising therefrom.