

**AGREEMENT FOR BUS ADVERTISING SALES AND SERVICE**

**BLANKET PURCHASE ORDER NUMBER #BP\_\_21200023**

**THIS AGREEMENT** made and entered into this 1<sup>st</sup> day of February, 2021.

**BY AND BETWEEN**

Houck Transit Advertising, Inc.  
hereinafter referred to as  
"VENDOR"

**AND**

The City of Wichita, Kansas,  
a Kansas municipal corporation,  
hereinafter referred to as "CITY"

**WHEREAS, VENDOR** is engaged in the business of selling advertising in and on motor vehicles, and **CITY** is engaged in the transportation business in the City of Wichita, Kansas, and more specifically, in the operation of a bus line.

**NOW, THEREFORE,** in consideration of the mutual promises and covenants hereinafter set forth, the parties hereto agree:

1. Subject to the conditions herein contained and provided, **CITY**, for itself, its successors and assigns, has let and by these presents does lease, give and grant unto **VENDOR** the sole and exclusive advertising rights and privileges in and on the interiors and exteriors of all of its buses and vans now or hereafter owned, operated or controlled by the City of Wichita, Kansas, for and during a period of three (3) years commencing February 1, 2021, and terminating on January 31, 2024, with an option to renew for two (2) additional one (1)-year periods, and additional renewals as permitted by law, and by mutual agreement, unless written notice is given by either of the parties at least 30 days prior to the contract anniversary date. Notice by either party to the other party shall be as provided in paragraph 18.
2. **VENDOR** shall maintain sufficient sales representation in Wichita, Kansas, to assure sales of as high a level of space possible.
3. The parties hereto agree that the advertising rights and privileges herein granted to **VENDOR** in and on the buses are those inside spaces on the sides immediately below the ceilings upon which are affixed racks or moldings for advertising cards and for such other spaces and locations both inside and outside said vehicle as **CITY** may, from time to time by letter or other writing, designate and permit for such use in and on its buses.
4. In consideration of the exclusive advertising privileges granted herein, the **VENDOR** agrees to pay the **CITY** a Guaranteed Amount of \$50,000.00 for year one of this Agreement and a monthly percentage amount of fifty percent (50%) of its total monthly gross receipts from the sale of all local and national advertising placed on the **CITY**'s vehicles. See Exhibit B for additional yearly guaranteed payment amounts with the monthly percentage amount remaining at fifty percent (50%) for term of Agreement.

"Gross receipts" shall mean the total sums of money actually collected by **VENDOR** from advertisers for the display of advertising after payment of agency commissions, wherever applicable, which commission shall not exceed fifteen percent (15%) of the amount billed in each instance.

The VENDOR shall furnish to the Director of Transit of Wichita Transit, a CITY department, by the 20th day of the second and each succeeding month during, and the next month after expiration of this Agreement, VENDOR's payment for the preceding month accompanied by a verified statement of revenue and collections for said month, which statement shall include Advertiser, contract period, number and size of signs, billing, collections and unpaid balance for each contract.

VENDOR shall not be obligated to pay any rentals to the CITY during any month or months for advertising unsold advertising space, and shall not be responsible to CITY for the cancellation of any contract or lease by an advertiser.

The minimum amount ("Minimum Guarantee") which shall be paid by VENDOR to the CITY during each contract year during the term hereof shall be as per Exhibit B.

At the end of each six (6)-month period, effective beginning February 1, 2021, there shall be a semi-annual accounting covering the period February 1, 2021 through August 1, 2021, and an annual accounting covering the period February 1, 2021, through February 1, 2022, the purpose of which shall be to determine whether the minimum annual guarantee shall be applicable for that period. Should remittance to the CITY through any six (6)-month period fall below fifty percent (50%) of the annual minimum guarantee, VENDOR shall remit to the CITY within 20 days of the end of the six (6)-month period the difference between actual remittance and the required annual minimum guarantee.

5. The VENDOR agrees to furnish to the CITY, when requested, a report showing the standing and condition of all accounts concerning any advertising contract involving the vehicles of the CITY, and it is further agreed that the CITY shall have the right at all times during the term of this Agreement by any agent or agents it may select, to examine at its own expense, all contracts, books and records of the VENDOR concerning any advertising contract involving the buses of the CITY. The CITY shall furnish to the VENDOR upon request, information showing daily number of vehicles in operation each month and number of passengers carried daily each month.

VENDOR shall keep true and complete records and accounts of all gross revenue and business transacted, including bank deposits, and annually furnish a true and accurate statement of the preceding lease year, of all such gross revenue and business transacted during such preceding year, which statements shall be certified by an authorized representative of the VENDOR to be correct. Such annual statement shall include all gross revenue attributable to said lease year.

6. VENDOR shall furnish the Director of Transit of Wichita Transit, a CITY department, with a schedule of advertising rates and charges. Should the VENDOR deem it necessary to change the above rate schedule, then it will immediately notify the Director of Transit of this change.
7. VENDOR hereby further covenants that it will not at any time display any advertisements which would tend to disparage or discourage riding in any of CITY's buses or which are of a disreputable or otherwise objectionable character, and the CITY shall have the sole discretion to determine what is objectionable and shall have the right to remove such objectionable advertising. An advertising proof shall be provided to transit's marketing contact prior to finalizing advertising agreements.
8. The VENDOR shall at all times maintain advertising in a neat, clean and attractive condition to the best of its ability. The CITY shall, at all reasonable times, give the employees or agents of VENDOR free access to its facilities for the purpose of placing, changing or removing the aforesaid advertisements. CITY shall use reasonable care in protecting the property belonging to VENDOR.

The CITY shall make available to VENDOR, reasonable space for the VENDOR's work on its property in connection with its operations hereunder at no expense to VENDOR.

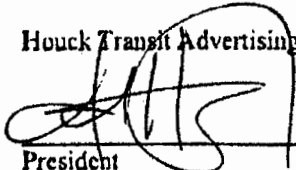


11. In the event VENDOR is unable to sell any advertising space, or spaces, in or on said buses for any particular month or months during the life of this Agreement or any renewal thereof, CITY may use such space for its own purposes so long as it shall receive no compensation therefore. VENDOR shall, however, furnish cards for such personal charitable or civic use as CITY shall desire at the same prices it furnished such cards to other advertisers, but CITY reserves the right to obtain competitive bids should it so elect.
12. Notwithstanding the provision herein contained for the payment by the VENDOR to the CITY of sums based upon a percentage of gross receipts as above provided, it is expressly understood and agreed that the CITY shall not be construed or held to be a partner, associate, or joint venturer of the VENDOR in the conduct of its business, but the VENDOR shall at all times have the status of an independent contractor, without the right or authority to impose tort or contractual liability upon the CITY.
13. Transition: If VENDOR is not selected for the next contract or is not granted renewal periods under this agreement, and if VENDOR has fully paid all annual minimum guarantees and is not otherwise in default of this Agreement, VENDOR is entitled to 20% of gross receipts on all contracts it signs for a period of six (6) months after its contract with CITY expires or until client advertising contract expires or is terminated, whichever comes first. For purposes of this provision, CITY will collect actual payments from advertisers directly.
14. In the event that VENDOR shall default in making any of the payments herein required to be made by it as and when the same shall become due and payable and such default shall continue for ten (10) days after written demand for such payment; or if VENDOR shall default in the performance of any of its other covenants hereunder and such default shall continue for thirty (30) days after written demand for performance; or if VENDOR shall be adjudged bankrupt or a receiver or trustee shall be appointed for VENDOR's property and such adjudication or appointment shall not be vacated within thirty (30) days; or if VENDOR shall become insolvent or make a general assignment for the benefit of creditors or file a voluntary petition in bankruptcy or for reorganization, the CITY may terminate this Agreement immediately and without further notice. In the event of any such termination, the CITY shall be entitled to receive all advertising rentals directly from advertisers, and CITY agrees to perform duties of VENDOR. VENDOR agrees to take whatever steps are necessary, including assignment of said advertising contracts to CITY or its designee.
15. The Minimum Guarantee referred to on Page 2 shall be reduced pro rata in the event that on a quarterly basis the CITY either (i) reduces its scheduled service mileage in excess of twenty-five percent (25%); (ii) reduces the number of its in service fixed-route buses and paratransit vans in excess of twenty-five percent (25%); or (iii) reduces the number of spaces for signs on its buses and paratransit vans by more than ten percent (10%). For the purposes of this provision, quarterly total fixed-route bus service mileage as of December 31, 2020, is 410,000 miles per quarter. The total quarterly service miles for paratransit vans are 154,000 miles as of December 31, 2020. In the event of such reduction, either party shall have the option to cancel this contract as of the close of any contract year by giving written notice at least three (3) months before the commencement of the next contract year.
16. In the event of a natural disaster, labor strike, civil unrest, acts of terror, acts of God, national epidemic, global pandemic, economic recession lasting two (2) consecutive quarters, or any other event that VENDOR or CITY has no control over that would negatively affect the performance of VENDOR's duties under the Agreement, certain terms or conditions of the Agreement affected by any of the listed events may be renegotiated or temporarily changed to provide relief to either party.
17. This Agreement and all its terms, conditions and covenants and other provisions herein contained shall, according to their meaning and intent, be binding upon the parties hereto and upon their respective successors, assigns and legal representatives.

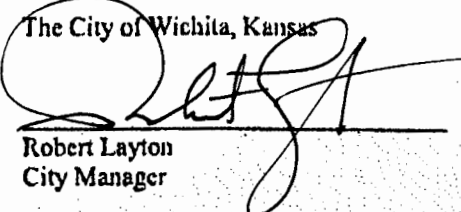
18. The VENDOR covenants and agrees not to assign, sublet, pledge, or transfer its rights in this Agreement, in whole or in part, nor grant any license or concession hereunder, without the prior written approval of the CITY.
19. No waiver of any provision of this Agreement on any occasion shall be deemed to be a waiver of such provision on any other occasion or a waiver of any other provision of this Agreement on any occasion.
20. All notices required to be given to the CITY hereunder shall be given by certified mail, return receipt requested, addressed to the Director of Transit, Wichita Transit, 777 E. Waterman, Wichita, Kansas, 67202-4615. All notices required to be given to the VENDOR hereunder shall be served personally or sent by certified mail, return receipt requested. The effective date of such service of any such notice shall be the date such notice is mailed or delivered to the VENDOR or Director of Transit as aforesaid.
21. The VENDOR, during the term of this Agreement, shall secure and maintain all required business licenses or permits required by the State of Kansas and the City of Wichita, including a license for vehicular advertising as required by Chapter 3.64 of the Wichita City Code.

WITNESS our hands and seals the date and year first above written.


Houck Transit Advertising Inc.

  
\_\_\_\_\_  
President  
Vendor

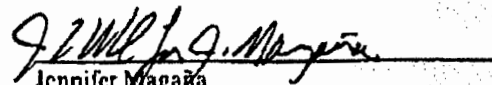
The City of Wichita, Kansas

  
\_\_\_\_\_  
Robert Layton  
City Manager

ATTEST:

  
\_\_\_\_\_  
Karen Sublett  
City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Jennifer Magaña  
City Attorney and Director of Law

## EXHIBIT A

### CITY OF WICHITA MANDATORY CONTRACTUAL PROVISIONS ATTACHMENT

1. **Terms Herein Controlling Provisions.** The terms of this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the Agreement.
2. **Choice of Law.** This Agreement shall be interpreted under and governed by the laws of the State of Kansas. Any dispute or cause of action that arises in connection with this Agreement will be brought before a court of competent jurisdiction in Sedgwick County, Kansas.
3. **Termination Due To Lack of Funding Appropriation.** If, in the judgment of the City's Director of Finance, sufficient funds are not appropriated to continue the function performed in this Agreement and for the payment of the charges hereunder, City may terminate this Agreement at the end of its current fiscal year. City agrees to give written notice of termination to Contractor at least thirty (30) days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided for in the Agreement, except that such notice shall not be required prior to ninety (90) days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided to City under the Agreement. City will pay to Contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any related equipment. Upon the effective termination of the Agreement by City, title to any such equipment shall revert to Contractor. The termination of the Agreement pursuant to this paragraph shall not cause any penalty to be charged to the City or the Contractor.
4. **Disclaimer of Liability.** City shall not hold harmless or indemnify any Contractor beyond that liability incurred under the Kansas Tort Claims Act (K.S.A. 75-6101 *et seq.*).
5. **Acceptance of Agreement.** This Agreement shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
6. **Arbitration, Damages, Jury Trial and Warranties.** The City does not ever accept binding arbitration or the payment of damages or penalties upon the occurrence of a contingency, and expressly denies such acceptance for this Agreement. The City never consents to a jury trial to resolve any disputes that may arise hereunder, and expressly denies such consent for this Agreement. Contractor waives its right to a jury trial to resolve any disputes that may arise hereunder. No provision of any document within the Agreement between the Parties will be given effect which attempts to exclude, modify, disclaim or otherwise attempt to limit implied warranties of merchantability and fitness for a particular purpose.
7. **Representative's Authority to Contract.** By signing this Agreement, the representative of the Contractor thereby represents that such person is duly authorized by the Contractor to execute this Agreement on behalf of the Contractor and that the Contractor agrees to be bound by the provisions thereof.
8. **Federal, State and Local Taxes.** Unless otherwise specified, the proposal price shall include all applicable federal, state and local taxes. Contractor shall pay all taxes lawfully imposed on it with respect to any product or service delivered in accordance with this Agreement. City is exempt from state sales or use taxes and federal excise taxes for direct purchases. These taxes shall not be included in the Agreement. Upon request, City shall provide to the Contractor a certificate of tax exemption.

City makes no representation as to the exemption from liability of any tax imposed by any governmental entity on the Contractor.

9. **Insurance.** City shall not be required to purchase any insurance against any liability loss or damage to which this Agreement relates, nor shall this Agreement require the City to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 *et seq.*), Contractor shall bear the risk of any loss or damage to any personal property to which Contractor holds title.
10. **Conflict of Interest.** Contractor shall not knowingly employ, during the period of this Agreement or any extensions to it, any professional personnel who are also in the employ of the City and providing services involving this Agreement or services similar in nature to the scope of this Agreement to the City. Furthermore, Contractor shall not knowingly employ, during the period of this Agreement or any extensions to it, any City employee who has participated in the making of this Agreement until at least two years after his/her termination of employment with the City.
11. **Confidentiality.** Contractor may have access to private or confidential data maintained by City to the extent necessary to carry out its responsibilities under this Agreement. Contractor must comply with all the requirements of the Kansas Open Records Act (K.S.A. 42-215 *et seq.*) in providing services and/or goods under this Agreement. Contractor shall accept full responsibility for providing adequate supervision and training to its agents and employees to ensure compliance with the Act. No private or confidential data collected, maintained or used in the course of performance of this Agreement shall be disseminated by either party except as authorized by statute, either during the period of the Agreement or thereafter. Contractor must agree to return any or all data furnished by the City promptly at the request of City in whatever form it is maintained by Contractor. Upon the termination or expiration of this Agreement, Contractor shall not use any of such data or any material derived from the data for any purpose and, where so instructed by City, shall destroy or render such data or material unreadable. The parties accept that City must comply with the Kansas Open Records Act, and will produce upon written request all documents pertaining to this Agreement other than those covered by express exceptions to disclosure listed in the Act.
12. **Cash Basis and Budget Laws.** The right of the City to enter into this Agreement is subject to the provisions of the Cash Basis Law (K.S.A. 10-1112 and 10-1113), the Budget Law (K.S.A. 79-2935), and all other laws of the State of Kansas. This Agreement shall be construed and interpreted so as to ensure that the City shall at all times stay in conformity with such laws, and as a condition of this Agreement the City reserves the right to unilaterally sever, modify, or terminate this Agreement at any time if, in the opinion of its legal counsel, the Agreement may be deemed to violate the terms of such laws.
13. **Anti-Discrimination Clause.** Contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 *et seq.*) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 *et seq.*) and the applicable provisions of the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin, ancestry, or age in the admission or access to, or treatment or employment in, its programs and activities; (b) to include in all solicitations or advertisements for employees the phrase "equal opportunity employer;" (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the Contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the Agreement may be cancelled, terminated or suspended, in whole or in part by City, without penalty thereto; and (f) if it is determined

that the Contractor has violated applicable provisions of the ADA, such violation shall constitute a breach of the Agreement and the Agreement may be cancelled, terminated or suspended, in whole or in part by City, without penalty thereto.

Parties to this Agreement understand that the provisions of this paragraph 13 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of this Agreement or whose contracts with the City cumulatively total \$5,000 or less during the City's fiscal year.

14. **Suspension/Debarment.** Contractor acknowledges that as part of the Code of Federal Regulations (2 C.F.R. Part 180) a person or entity that is debarred or suspended in the System for Award Management (SAM) shall be excluded from federal financial and nonfinancial assistance and benefits under federal programs and activities. All non-federal entities, including the City of Wichita, must determine whether the Contractor has been excluded from the system and any federal funding received or to be received by the City in relation to this Agreement prohibits the City from contracting with any Contractor that has been so listed. In the event the Contractor is debarred or suspended under the SAM, the Contractor shall notify the City in writing of such determination within five (5) business days as set forth in the Notice provision of this Agreement. City shall have the right, in its sole discretion, to declare the Agreement terminated for breach upon receipt of the written notice. Contractor shall be responsible for determining whether any sub-contractor performing any work for Contractor pursuant to this Agreement has been debarred or suspended under the SAM and to notify City within the same five (5) business days, with the City reserving the same right to terminate for breach as set forth herein.
15. **Compliance with Law.** Contractor shall comply with all applicable local, state and federal laws and regulations in carrying out this Agreement, regardless of whether said local, state and federal laws are specifically referenced in the Agreement to which this Exhibit is incorporated.



EXHIBIT B

<b>YEAR</b>	<b>Guaranteed Net Annual Revenue to Wichita Transit</b>	<b>% To Wichita Transit</b>	<b>Est. Gross Revenue</b>	<b>Estimated Net Annual Revenue to Wichita Transit</b>
<b>1</b>	<b>\$50,000</b>	<b>50%</b>	<b>\$125,000</b>	<b>\$62,500</b>
<b>2</b>	<b>\$55,000</b>	<b>50%</b>	<b>\$135,000</b>	<b>\$67,500</b>
<b>3</b>	<b>\$60,000</b>	<b>50%</b>	<b>\$150,000</b>	<b>\$75,000</b>
<b>4</b>	<b>\$70,000</b>	<b>50%</b>	<b>\$160,000</b>	<b>\$80,000</b>
<b>5</b>	<b>\$75,000</b>	<b>50%</b>	<b>\$170,000</b>	<b>\$85,000</b>
<b>Total</b>	<b>\$310,000</b>	<b>50%</b>	<b>\$740,000</b>	<b>\$370,000</b>