

THIS AGREEMENT made this _____ day of _____, 2022

BETWEEN:

(hereinafter referred to as the "Contractor")
OF THE FIRST PART

- and -

THE CITY OF BRANDON

(hereinafter referred to as the "City")
OF THE SECOND PART

WHEREAS the City issued a proposal call for the selling and maintaining of advertising space in frames in and on, Bus Shelters that are owned by the City of Brandon for its public transportation system and on any Bus Shelters that the contractor supplies; and

WHEREAS the Contractor submitted a proposal to provide said services to the City, which proposal was accepted by the City; and

WHEREAS the City wishes the Contractor to provide the said services under the terms and conditions of the proposal as outlined herein and the Contractor agrees to provide said services to the City; and

THEREFORE in consideration of the premises and the covenants and Agreements hereinafter set forth, the parties agree as follows:

1.00 DEFINITIONS AND INTERPRETATION

- (a) EXTRAORDINARY BUS SHELTER FRAME: means any innovative advertising which may require separate fastening onto a bus shelter, for example, illuminated portions of exterior bus shelter posters;
- (b) GROSS REVENUE: shall mean all billings made by the Contractor to its advertisers for sales of advertising space, whether frame or advertising on vinyl wraps, pursuant to the Agreement less:
 - (i) standard advertising industry commissions deducted by or payable to advertising agencies and other advertising companies with respect to advertising space sold by the Contractor through such agencies, but in no case shall any commission be deducted in respect to advertising obtained by the Contractor is in anyway financially interested, direct from advertising. The maximum allowable commission is fifteen percent (15%), in respect of advertising agencies;
 - (ii) bad debts deducted in accordance with and subject to the following provisions, namely that the Contractor shall have the right to write off as bad debts accounts billed by the Contractor hereunder which are three or more months in arrears, provided that any recovery of or assignments of the said bad debts shall be accounted for by the Contractor and credited to the Municipality in its next following instalment payment;
 - (iii) net production costs on production included sales contracts and other standard advertising industry discounts;

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- (iv) prompt payment discounts allowed to the Contractor's clients, not to exceed two percent (2%);
- (v) the Contractor may, from time to time, offer bonus advertising space to its clients at no cost or leave advertisements in place on the bus shelters without having commitments or contracts with the advertisers. No revenue or value will be placed on such arrangements for the purpose of calculating the gross billings. In addition, the Contractor may, from time to time, offer reduced seasonal prices to advertisers in order to generate additional business; and
- (vi) Manitoba Retail Sales Tax (RST) and Goods and Services Tax (GST) should not be included in Gross sales;

2.00 GRANT AND TERM

- 2.01 Subject to the terms and conditions hereinafter set forth, the City grants to the Contractor, the exclusive right to sell and install frame or advertising panels in and on all bus shelters that are capable of accepting advertising frames. Subject to the terms and conditions hereinafter set forth, the City further grants to the Contractor the exclusive right to provide vinyl wrap advertising on bus shelters owned or operated by the City.
- 2.02 This Agreement shall be for a term of five (5) years commencing on the 1st day of January 01, 2023 and terminate on the 31st day of December 2027.
- 2.03 The Contractor shall ensure that all contracts with advertisers shall either terminate or be terminable on or before the date upon which this Agreement expires or is terminated.

3.00 FRAME ADVERTISING

The frame advertising space granted by this Agreement shall consist of the following:

- 3.01 INTERIOR OF BUS SHELTERS
- 3.02 EXTERIOR OF BUS SHELTERS
 - (a) Such other spaces, or extra ordinary frames on the exterior of said bus shelters and future bus shelters that are added to the list, as may be mutually agreed upon between the City of Brandon and the Contractor. Any requests by the Contractor for changes must be accompanied by written cost estimates.

4.00 FRAME SUPPLY

- 4.01 All interior frames that already exist in the bus shelters shall be used if they are in good shape. It is the Contractors responsibility to repair or add frames if they are needed. All frames remain the property of the City.
- 4.02 All exterior bus shelter frames shall be supplied by the Contractor. All exterior frames become the property of the City upon affixing to bus shelter exteriors.

5.00 MAINTENANCE AND INSTALLATION OF FRAMES

- 5.01 The City shall be responsible for the cleaning and maintenance of the aforementioned bus shelter frames, however, maintenance of the advertising posters in the frames or racks shall be the responsibility of the Contractor.

- 5.02 The Contractor shall be responsible for the installation of all advertising material which shall include the mounting of advertising posters into the bus shelters interior and exterior frames and the removal of such posters from frames. Installation activity shall include the removal, replacing, transporting, holding, disposal and/or returning of advertising posters not in use within designated spaces.
- 5.03 The Contractor will provide all labour and materials, including but not restricted to spring clips, in connection with the installation and replacement of bus shelter advertising posters in the said frames and at all times will keep and maintain the said advertising posters in a safe, neat, tidy and attractive appearance and condition, without damaging the bus shelters. The Contractor shall be liable for any damage to the bus shelters in the course of carrying out their obligations as stated in this Agreement.
- 5.04 The installation and removal of advertising posters in and on bus shelters shall be conducted at such times as the bus shelters are not in use, or at low night frequency; and must not interfere with the operation of the buses. For these purposes the employees of the Contractor shall have reasonable access to the transit bus shelters of the City and the designated authority shall provide permission.
- 5.05 The Contractor and its employees shall abide by all applicable operational safety policies, rules and regulations and shall comply with all applicable Provincial and Federal Safety Legislation.

6.00 ADVERTISING RIGHTS

- 6.01 The exclusive right of advertising granted herein shall consist of two advertising formats, namely: advertising in and on bus shelters in frames and vinyl wrap advertising on bus shelters. Only the Contractor's advertisements shall be placed in or on bus shelters with the exception of the following:
 - (a) The within rights granted to the Contractor are subject to the reasonable use of frames or racks by the City for its customary warning and other informational notices to the public in or on the bus shelters;
 - (b) Excluding vinyl wrap bus shelters, the City reserves to itself the unfettered right of use of up to two interior spaces and the exterior of the bus shelter for its advertising purposes relating to its business or activities, at no cost to itself save installation charges if installed by the Contractor;
 - (c) Further to Paragraph 6.01 (b) herein, the City shall also have their right to any additional unused interior or exterior advertising space available in or on bus shelters for its advertising purposes relating to its business or activities at no cost to itself save installation charges if installed by the Contractor; provided that the City must relinquish use of this space when reasonable required by the Contractor for the sale of this space to the Contractor's advertisers;
 - (d) In accordance with Paragraph 7.00 herein, the City reserves the right to utilize one bus shelter for the City's vinyl wrap promotional purposes; and
 - (e) If any advertising category is added or deleted by Federal or Provincial Legislation from the rights in this Agreement the minimum guaranteed sums will be subject to negotiation between the City and the Contractor. Any such adjustments shall be at the sole and final discretion of the City.

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7.00 VINYL WRAP ADVERTISING

- 7.01 Any vinyl wraps will be provided as part of the revenue share and must receive approval from Brandon Transit.

8.00 ADVERTISEMENT CONTENT

8.01 Any advertisement to be placed in or on the bus shelters of the City shall be of a moral and reputable character and the Contractor agrees that it will forthwith remove from any bus shelter any advertisement which the City in the reasonable exercise of its discretion, hereby desires removed.

Within forty-eight (48) hours of providing notice of removal to the Contractor, the City may, if the Contractor fails to remove any advertising as directed, remove such advertising and the Contractor shall pay to the City, the amount of all expenses incurred by the City for such removal.

8.02 The contents of advertising material shall comply with the Advertising Standards Council of the Canadian Advertising Advisory Board.

- (a) All advertisements and any representations made therein shall conform with Federal and Provincial Laws, Regulations and Orders now in force or amended or promulgated hereafter.
- (b) All federal or provincial political advertising will indicate that the advertisement is paid for by a party or candidate so as to avoid giving the impression that the City is supporting a given party or candidate.
- (c) No Municipal political advertising is permitted.

9.00 INSURANCE AND INDEMNITY

9.01 The Contractor agrees to indemnify and hold harmless the City, and its servants, agents, employees and contractors from and against loses, claims, demands, payments, suits, judgments or expenses of any nature and description arising out of or in consequence of this Agreement, except for claims arising out of the sole negligence of the City, its employees, agents and servants.

9.02 In particular, but without restricting the generality of the foregoing, the Contractor shall indemnify and hold harmless the City, its servants, agents, employees and contractors from, against any and all losses, claims, demands, payments, suits, judgments, charges, expenses, actions, causes of action and costs in respect to any defamatory statement, breach of trademark, copyright or other proprietary right in any advertisement.

9.03 Throughout the term of this Agreement, the Contractor shall maintain in full force and effect the following insurance coverages:

- (a) Comprehensive General insurance in an amount not less than Two Million Dollars (\$2,000,000.00) per occurrence for personal injury and/or property damage. This policy shall be endorsed to provide coverage for:
 - (i) Contractual Liability (including this Agreement);
 - (ii) Products and Completed Operations;
 - (iii) Independent Contractors;
 - (iv) Employees as Additional Insured;
 - (v) Cross Liability; and
 - (vi) Non-owned Automobiles.

With such policy to contain a waiver by the insured of any right of claim or recovery by way of subrogation or otherwise against the City, its employees, agents and servants. The amount of insurance shall not limit the Contractors obligations under this Agreement.

- (b) Automobile Liability insurance in an amount not less than Two Million Dollars (\$2,000,000.00) per accident for bodily injury and/or property damage.
- (c) Workers Compensation Number _____ is current and will remain in good standing for the length of this Agreement.

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9.04 The aforementioned insurance coverages shall be in a form and with insurers acceptable to the City, and such policy shall be endorsed to provide the City with thirty (30) days prior written notice of cancellation or material change. A Certificate of Insurance shall be provided to the City by the Contractor or Contractor's broker; and evidence of renewal or coverage shall be provided to the City prior to its expiry.

10.00 PAYMENT TO CITY

10.01 The consideration payable by the Contractor to the City for the rights and privileges for advertising in and on bus shelters, hereby granted to it during the term of this Agreement and any renewal thereof and during the term of any contract between the Contractor and any advertiser, shall be the annual amount as specified in 10.02.

10.02 The minimum annual guarantee (MAG) for each Agreement Year is listed in 10.02(a) below. The MAG shall be paid in accordance with the provisions provided herein. Failure to pay the MAG shall result in a Default of this Agreement, subject to any applicable notice requirements and cure provisions:

- (a) Brandon Transit has 52 shelter locations available for advertising sales.
- (b) The guaranteed annual minimum per each calendar year shall be \$ _____ plus GST. Payment to be paid in twelve equal monthly payments of \$ _____ plus GST.

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11.00 PROGRESS PAYMENTS

11.01 Payments made pursuant to Paragraph 10.02 (a) shall be paid in monthly instalments, commencing no later than the ___ day of _____, 2023 and continuing no later than the 20th day of each month thereafter for the term of this Agreement, the last payment of be made on or before January 20, 2027.

11.02 The City reserves the right, upon giving fourteen (14) days written notice, to request and receive sales or other relevant financial information from the Contractor.

11.03 In addition to all payments stated in Paragraphs 10 and 12 the Contractor shall remit to the City all applicable Federal or Provincial taxes at the Legislated rate.

11.04 The City may examine all books of account, and records of Contractor through any representative named by the City and shall be given all facilities reasonable necessary to check the correctness of such statements of gross revenue or amounts payable to the City pursuant to the Agreement.

11.05 Within 60 days of the end of each calendar year, the Contractor shall have prepared an invoice statement of the Gross Advertising Revenue showing all deductions therefrom as well as a statement of all amount payable to the City which statement shall include comment as to its accuracy by a firm of Accountants, and the City shall have the right to inspect such statement at any time. Any and all adjustments with respect to amounts to be paid by the Contractor to the City, if applicable, shall be made forthwith.

12.00 CHANGE TO TRANSIT BUS SHELTERS

12.01 The City shall notify the Contractor in writing immediately upon any change in the number of Bus Shelters and the effective date of such change.

13.00 TERMINATION

13.01 Without incurring any liability for termination nor foregoing any of the rights and obligations due to the City by the Contractor, in addition to all other legal rights or remedies, if the Contractor defaults in the performance of any of its obligations under this Agreement, including but not limited to the payment of any amounts owing, the City may give the Contractor written notice of such default and the Contractor will have ten (10) business days to rectify the default or commence rectification to the satisfaction of the City, failing which the City may:

- (a) remedy such default itself and charge the cost thereof to the Contractor; or
- (b) terminate this Agreement without further notice to the Contractor.

13.02 Without incurring any liability for termination nor foregoing any of the rights and obligations due to the City by the Contractor, in addition to all other legal rights or remedies, this Agreement may be terminated by the City immediately upon written notice to the Contractor if the contractor becomes bankrupt or insolvent, a receiver is appointed in respect of the Contractor's assets or operations, or a general assignment is made in favour of Creditor(s) of the Contractor.

13.03 Upon the expiration of the term or within ten (10) business days of the earlier termination of this Agreement for any reason, the Contractor shall remove all advertising material from City bus shelters, all at the sole cost and expense of the Contractor, and in a safe and neat manner without damaging the bus shelters.

13.04 In the event that the Contractor fails to remove advertising material or arrange for repainting of the bus shelters in accordance with Paragraph 14.03 of this Agreement, the City may remove advertising material or repaint the vinyl wrap bus shelters or both, on its own initiative and at the sole cost and expense of the Contractor.

14.00 MISCELLANEOUS

14.01 This Agreement shall inure to the benefit of and be binding upon the parties hereto and their successors, administrators, and permitted assigns.

14.02 This Agreement may not be assigned by the Contractor without the written consent of the City, such consent not to be unreasonably withheld.

14.03 This Agreement shall be deemed to have been made in and shall be construed in accordance with the laws of the Province of Manitoba and for the purposes of all legal proceedings, this Agreement shall be deemed to have been performed in the said Province.

14.04 Words importing the singular or masculine only also include the plural or feminine or body corporate where the context requires.

14.05 The headings in the Agreement shall not be deemed to be part of this Agreement or be taken into consideration in interpretation of the Agreement.

14.06 Any notice required to be given pursuant to this Agreement shall be deemed to have been received by the addressee on the date when served by hand or courier, or five (5) days after the same has been mailed in a prepaid envelope by single registered mail addressed to the Director of Transportation Services, City of Brandon, 900 Richmond Avenue East, Brandon, Manitoba, R7A 7M1, and to the Contractor at _____ or such other address as the parties provide to each other in writing. In the event of postal disruption, notice may only be given by personal delivery or courier.

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14.07 The designated representative of the City for the Agreement shall be the Director of Transportation Services or designate.

14.08 Neither the granting of any time nor any other indulgence by one party to the other nor the failure of a party to insist upon the strict performance of any covenant, term or

condition hereof, or to enforce any rights hereunder shall be construed as a waiver of such party's rights or remedies hereunder and the same shall continue to be in full force and effect. A waiver of any default hereunder shall not operate as a waiver of any subsequent default. All waivers shall be in writing and delivered to the other party.

14.09 Any term, condition or provision of this Agreement, which is or shall be deemed to be void, prohibited or unenforceable, shall be severable herefrom and be ineffective to the extent of such voidance, prohibition or unenforceability without in any way invalidating the remaining terms, conditions or provisions hereof.

14.10 It is agreed that this Agreement does not constitute the Contractor as the agent or legal representative of the City for any purpose whatsoever. The Contractor is not granted any right or authority to assume or create any obligation or responsibility, express or implied, on behalf or in the name of the City or to bind the City in any manner or thing whatsoever.

14.11 This Agreement shall not be modified or amended except by an instrument in writing signed by the parties hereto.

IN WITNESS WHEREOF the parties hereto have executed this Agreement the day and year first above written.

Date

Name:
Title:
"I am authorized to bind the Contractor"

Name: Carla Richardson
Title: Director of Transportation
"I am authorized to bind the City"

THIS AGREEMENT made this _ day of _____ 2022

BETWEEN:

(hereinafter called the "Contractor"),
OF THE FIRST PART,

- and -

THE CITY OF BRANDON
(hereinafter called the "City"),
OF THE SECOND PART.

BUS SHELTER ADVERTISING AGREEMENT

THE CITY OF BRANDON
Transportation Services
900 Richmond Avenue East
Brandon, Manitoba R7A 7M1

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Director of Transportation Services

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