

Contract

This Agreement, made as of January 1, 2017 by and between Houck Motor Coach Advertising, Inc., a Minnesota corporation located at 1025 Tomlin Avenue, Shoreview, MN 55126, hereafter referred to as "Contractor", and the Duluth Transit Authority, 2402 W. Michigan St., Duluth, MN, hereafter referred to as "DTA". The DTA and the Contractor are parties ("Parties") to this agreement ("Agreement").

WHEREAS, the DTA desires to utilize Contractor's professional services for Transit Advertising Services, and

WHEREAS, Contractor has represented that it is a qualified provider and is willing to perform these services under the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the Parties agree to as follows:

ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Contract and any amendments thereto; Request for Proposals (Procurement # 052-16-0304.1r) dated November 30, 2016, the General Specifications, Mandatory Clauses and Technical Specifications, and all addenda and modifications thereto issued prior to the execution of the Contract; and the Contractor's Proposal including required certificates; all as fully a part of the Contract as if attached to this Contract or repeated herein.

ARTICLE 2 Scope of Professional Services

Contractor will perform the services identified in its proposal dated November 23, 2016, (the "Proposal") attached hereto and made a part hereof, and provide other professional services generally related thereto as the DTA staff may from time to time request. In the event of any conflict between the terms of the Proposal and this Agreement, the terms and conditions of this Agreement shall be deemed controlling.

ARTICLE 3 Professional Fees and Payment

In consideration of the provision of the services referenced in Article 2 above in an acceptable manner, the Contractor shall pay the DTA in accordance with their proposal attached herein.

ARTICLE 4 Assignability

Contractor shall not in any way assign or transfer any of its rights or interests under this Agreement whatsoever without the prior written consent of the Duluth Transit Authority General Manager.

ARTICLE 5 Term

This Agreement shall be effective on January 1, 2017 and shall remain in effect until December 31, 2021, or until all obligations set forth in this Agreement have been satisfactorily fulfilled, whichever occurs first, unless terminated earlier as provided herein.

ARTICLE 6 Termination of Service

The DTA may, by giving written notice specifying the effective date thereof, terminate this Agreement in whole or in part without cause. In the event of termination, all property and finished or unfinished documents and other writings prepared by Contractor under this Agreement shall be promptly delivered to the DTA. Contractor shall be entitled to compensation for services properly performed by it to and including the date written notice of termination of this Agreement, including reimbursable expenses.

ARTICLE 7 Changes to the Contract

The DTA or the Contractor may, from time to time, request changes in the scope of the services to be performed hereunder. Such changes, including the increase or decrease in the amount of the Contractor's compensation, which are mutually agreed upon by and between the DTA and the Contractor, shall be incorporated in written amendments to the Contract.

ARTICLE 8 Standard of Performance

The Contractor agrees that all services to be provided to DTA pursuant to this Agreement shall be in accordance with generally accepted standards of the profession for provision of services of this type.

ARTICLE 9 Reports and Inspection

A. Establishment and Maintenance of Records

Records shall be maintained by the Contractor in accordance with the requirements prescribed by the DTA and with respect to all matters covered by this Agreement. Such records shall be maintained for a period of six (6) years after receipt of final payment under this Agreement

B. Documentation of Costs.

Contractor will ensure that all costs shall be supported by properly executed payrolls, time reports, invoices, contracts, vouchers, or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders or other accounting documents pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible.

C. Reports and information.

Contractor shall be responsible for furnishing to the DTA records, data and information as the DTA may require, pertaining to matters covered by this Agreement.

D. Audits and Inspections

Contractor shall ensure that at any time during normal business hours and as often as the DTA may deem necessary, there shall be made available to the DTA for examination, all of its records with respect to all matters covered by this Agreement. Contractor will also permit the DTA to audit, examine and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment, and other data relating to all matters covered by this Agreement.

E. Confidentiality of Information

Contractor must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to all data provided by the DTA under this contract, and as it applies to all data created, collected, received, stored, used, maintained or disseminated by Contractor under this contract. The civil remedies of Minnesota Statutes Section 13.08 apply to the release of the data referred to in this clause by the Contractor. If Contractor receives a request to release the data referred to in this clause, Contractor must immediately notify the DTA and consultant with the DTA as to how Contractor should respond to the request. Contractor's response to the request must comply with applicable law.

F. Ownership of Data

All notes, reports, design plans, specifications, special studies, records and other data prepared under this Agreement shall become the property of DTA when prepared and shall be delivered to the DTA upon completion or termination of the services of Contractor or at such earlier time as requested by the DTA

ARTICLE 10 Patent and Copyright Infringement

In lieu of any other warranty by the DTA or the Contractor against patent or copyright infringement, statutory or otherwise, it is agreed that the Contractor shall defend at its own expense any claim or suit against the DTA on account of any allegation that any document, property, advertising or writings prepared pursuant to this Agreement or the normal use or sale thereof arising out of the performance of this Agreement, infringes on any present existing United States letter patent or copyright, and Contractor shall pay all costs and damages finally awarded in any such suit or claim.

The Contractor will not indemnify the DTA if the suit results from the DTA's alteration of a deliverable, such that said deliverable in its altered form infringes upon any presently existing United States letters patent or copyright, or the use of a deliverable in combination with other material not provided by the Contractor when such use in combination infringes upon an existing United States letters patent or copyright.

ARTICLE 11 Indemnification

The Contractor shall defend, indemnify and save the DTA, ATE Management and First Transit, Inc. its officers, agents, servants and employees, from and against any and all claims, demands, suits, judgments,

costs and expenses asserted by any person or persons, including agents or employees of the DTA or of Contractor, by reason of death or injury to person or persons or the loss of or damage to property arising out of Contractor's performance or its obligations under this Agreement. On ten (10) days written notice from DTA, Contractor will appear and defend all lawsuits against DTA growing out of such injuries or damage. In addition, Contractor will comply with all local, state and federal laws, rules and regulations applicable to this contract and to the work to be done and things to be supplied hereunder.

ARTICLE 12 Insurance

a. Contractor shall provide the following minimum amounts of insurance from insurance companies authorized to do business in the State of Minnesota, which insurance shall indemnify Contractor, DTA and ATE Management of Duluth, Inc. and First Transit Inc., from all liability described in the paragraph above.

- (1) Workers' compensation in accordance with the laws of the state of Minnesota.
- (2) Commercial General Liability and Automobile Liability Insurance, with limits not less than **\$1,500,000** Single Limit and twice the limits provided when a claim arises out of the release or threatened release of a hazardous substance.
- (3) Professional Liability or Errors and Omission insurance, as appropriate to the profession, written on a policy form coverage specifically designed to protect against acts, errors or omissions of the Contractor and "Covered Professional Services" as designated in the policy must specifically include work performed under this Agreement. The policy limit shall not be less than \$1,500,000 per claim and in the aggregate.
- (4) DTA and ATE Management of Duluth, Inc. and First Transit Inc., shall be named as an **Additional Insured** under the General Liability, Excess/Umbrella Liability* and Automobile Liability, or as an alternate, Contractor may provide Owners-Contractors Protective policy, naming itself and the DTA and ATE Management of Duluth, Inc. Contractor shall also provide evidence of Statutory Minnesota Worker's Compensation insurance. Contractor to provide Certificate of Insurance evidencing such coverage with 30-days' notice of cancellation, non-renewal or material change provisions included. The DTA does not represent or guarantee that these types or limits of coverage are adequate to protect the Contractor's interests and liabilities.

**An umbrella policy with a "following form" provision is acceptable if written verification is provided that the underlying policy names the DTA and ATE Management of Duluth, Inc. and First Transit Inc., as an additional insured.*

- (5) If a certificate of insurance is provided, the form of the certificate shall contain an unconditional requirement that the insurer notify the DTA without fail not less than thirty (30) days prior to any cancellation, non-renewal or modification of the policy or coverages evidenced by said certificate and shall further provide that failure to give such notice to DTA will render any such change or changes in said policy or coverages ineffective as against the DTA.

b. The insurance required herein shall be maintained in full force and effect during the life of this Agreement and shall protect Contractor, its employees, agents and representatives from claims and damages including but not limited to personal injury and death and any act or failure to act by Contractor, its employees, agents and representatives in the negligent performance of work covered by this Agreement.

- c. Certificates showing that Contractor is carrying the above described insurance in the specified amounts shall be furnished to the DTA prior to the execution of this Contract and a certificate showing continued maintenance of such insurance shall be on file with the DTA during the term of this Contract.
- d. Contractor shall be required to provide insurance meeting the requirements of this Paragraph unless Contractor successfully demonstrates to the satisfaction of the City Attorney in the exercise of his or her discretion, that such insurance is not reasonably available in the market. If Contractor demonstrates to the satisfaction of the City Attorney that such insurance is not reasonably available, the City Attorney may approve an alternative form of insurance which is reasonably available in the market which he or she deems to provide the highest level of insurance protection to the DTA which is reasonably available.

ARTICLE 13 Rules and Regulations

Contractor agrees to observe and comply with all applicable laws, ordinances, rules and regulations of the United States of America, the State of Minnesota, the City of Duluth, and the DTA and their respective agencies which are applicable to its activities under this Agreement.

ARTICLE 14 Independent Contractor

It is agreed that nothing herein contained is intended or shall be construed in any manner as creating or establishing a relationship of co-partners between the Parties hereto or of constituting the Contractor as an agent, representative or employee of the DTA for any purpose or in any manner whatsoever. Contractor and any officers or employees thereof shall not be considered an employee of the DTA, and any and all claims that may or might arise under the Worker's Compensation Act of the State of Minnesota on behalf of Contractor arising out of employment or alleged employment, including without limitation, claims of discrimination against the DTA, its officers, agents, contractors and employees shall in no way be the responsibility of the DTA. Contractor and its officers, agents, contractors and employees shall not be entitled to any compensation rights or benefits of any hospital care, sick leave and vacation pay, Worker's Compensation, Unemployment Insurance, disability pay or severance pay. Furthermore, the DTA shall not in any way, be responsible to defend, indemnify or save harmless Contractor from liability or judgments arising out of the intentional or negligent acts or omissions of Contractor or its agents, representatives or employees while performing the work specified by this Agreement.

ARTICLE 15 Severability

In the event any provision herein shall be deemed invalid or unenforceable, the remaining provisions shall continue in full force and effect and shall be binding upon the Parties to this Agreement.

ARTICLE 16 Waiver

Any waiver by either party of any provision of this Agreement shall not imply a subsequent waiver of that nor any other provision.

ARTICLE 17 Communications

Communications in connection with this Contract shall be in writing and shall be delivered personally; by e-mail, facsimile, or by regular, registered, or certified mail addressed to the officer(s) or employee(s) of the DTA and of the Contractor designated to receive such communications. Telephone calls may be used to expedite communications but shall not be official communication unless confirmed in writing.

Designation for DTA

Designation for Contractor

DTA Director of Marketing

ARTICLE 18 Extent of Agreement

The Agreement document represents the entire and integrated agreement between the DTA and the Contractor and supersedes all prior negotiations, representations or agreements, either written or oral. The contract documents may be amended only by written instrument signed by both DTA and Contractor.

ARTICLE 19 Governing Law

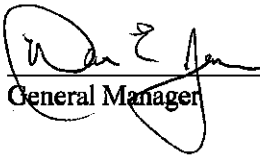
Unless otherwise specified, this Agreement shall be governed by the applicable laws of the City of Duluth and State of Minnesota. The appropriate venue and jurisdiction for any litigation hereunder shall be in the court located in St. Louis County, Minnesota. However, litigation in Federal Courts involving the Parties shall be in the appropriate federal court in the State of Minnesota.

ARTICLE 20 Cancellation


The DTA shall have the right to cancel this Agreement if the DTA's governing body does not appropriate moneys to the agency for transit operations.

This Agreement entered into as of the day and year first written above.

Duluth Transit Authority


General Manager

Contractor:


Its President