



Addendum No. 2

The Regional Metropolitan Transit Authority of Omaha d/b/a Metro

REQUEST FOR PROPOSALS: Vehicle Advertising Services

Date Issued: November 10, 2022

To: All Interested Parties

This Addendum forms a part of the RFQ Documents issued on **October 24, 2022**. The Proposer shall acknowledge receipt of this Addendum on Exhibit "H" *Acknowledgement of Addendum* provided in the RFP and include in final submittal.

Failure to acknowledge receipt may subject the Bidder to disqualification.

This Addendum consists of the following:

Metro's Advertisement Services Contract.
Question and Answer date extension to November 11, 2022.
Responding to the questions of vendor.

Total Addendum Pages: seventeenth (22) Including Cover

2022 Metro Transit Advertising RFP Question Responses

1. Question:

Appendix B lists approximately 113 fixed route buses available for exterior/interior ads and 26 paratransit vehicles available for advertising. Our understanding is Metro is in plans to retire, and not replace, a significant portion of its fixed route fleet in 2022 and 2023. Can you please clarify out of the 144 buses stated in the entire fleet how many revenue buses will be available for advertising under this contract?

Response:

As we have busses meeting their useful life and with long lead times for replacements, we would not maintain 113 fixed route busses during the 2022-23 year. As a result of this we would set a minimum for the contract as 96 fixed route busses for interior advertising. Exterior advertising would not include our current electric busses (3) or ORBT busses (10). Therefore, that number would be 83 fixed route busses. Our paratransit vehicles would be 26.

2. Question:

2.5 Item 5 asks to provide details of financial status and asks for firm's financial statement - As a private organization we are uncomfortable submitting our financial information in a format that will become public record as it will become available to competitors and other companies. Will Metro accept alternative details and information on financial status and health?

Response:

Financials can be sent under confidential cover. They will be protected from records disclosures.

3. Question:

There is conflicting information regarding how Metro would like the proposal laid out (Scope of Work/2.5 Proposal Format [pg 9] vs. RFP Solicitation/5.2 Proposal Format [pg 28], 5.3 Proposal Content [pgs 28-29]). Please clarify which section takes precedence or if proposers should use their best judgement.

Response:

Please use the format from the Scope of Work section (2.5).

4. Question:

Delete:

8.1 (b) professional liability, advertisers liability, and errors and omissions insurance.

Modify:

2.3 in the last sentence: "Metro shall not reduce the number and type of aggregate Fleet vehicles eligible for Advertising Services below the number and type of Fleet vehicles . . ."

2.5 Add: Metro shall pay to Contractor all production and installation charges for production and installation of Metro's advertisements and promotions.

5.1 insert: "In addition to the Compensation Contractor is entitled to receive from Gross Revenues, Contractor shall be entitled to bill and collect from advertising customers its production and installation fees and costs which shall not be part of Gross Revenue."

5.2 Add: "Provided, however, if the Contractor has a guaranteed minimum annual payment to Metro, Metro shall be paid 1/12 of the guaranteed minimum annual payment each month whether or not there are sufficient Gross Revenues for such purposes and promptly after the end of each Contract year Metro shall be paid the amount, if any, by which the contract percentage of Gross Revenues exceeds the guaranteed minimum annual payment." delete the rest of that first sentence.; Modify: If the Proposal includes a guarantee to Metro, the guarantee will be renegotiated if Metro's Fleet or the specific type of Fleet that is eligible for Advertising Purposes is reduced by five percent (5%) or more at any time during the Term from that existing as of the Effective Date (a "Reduction Event"). If a Reduction Event occurs, the monthly payment based on the guaranteed minimum annual payment shall be suspended and no longer apply and Contractor shall pay to Metro the contract percentage of Gross Revenues until the parties renegotiate new payment terms.

7.1 (b) any act or omission by or on behalf of Contractor or any of its officers, agents, servants, employees, Subcontractors in its or their performance under or in respect of this Contract except to the extent caused by Metro's negligence or willful misconduct.

10.1(b) modify (i) as follows: "all Compensation due under Article V in respect to Advertising Services performed by Contractor or Subcontractor(s) through the date of Termination and all production and installation costs and charges for Metro advertisements, . . ."; And modify (ii) as follows: subject to the provisions of Section 10.1, those amounts necessary to reimburse Contractor for the actual, reasonable and necessary costs incurred by Contractor in terminating its agreement, if not assumed by Metro, with any Subcontractors, and all close out costs and expenses that will be incurred as a result of the termination for convenience and all out of pocket costs which cannot be simultaneously terminated and will continue thereafter, including, but not limited to, rent and tenant expenses on any office and/or equipment lease entered into by Contractor to perform its obligations, severance compensation and benefits costs, unused material costs, and travel and lodging expenses;

10.2 (e) Add: During any Suspension, the monthly payment of the guaranteed minimum annual payment shall immediately cease and be suspended, provided that to the extent payments from advertising customers are received during any Suspension, Contractor will continue to receive its percentage share of Gross Revenues and Metro shall pay to Contractor all of its costs associated with this Contract, including but not limited to employee and independent contractor compensation and benefits and necessary and ordinary business expenses, material costs, rent on office, equipment, or tooling, and telephone and other utility costs, which Contractor will invoice to Metro on a weekly basis. Except as specifically provided herein, (then continue with what's in there now)

10.3(a) (vii) any failure of any material representation made by Contractor . . . (ix) after written notice and failure to cure within 15 days, the failure of Contractor to properly maintain, provide . . .(x) after written notice and failure to cure within 15 days, the failure of Contractor . . .

10.3 (b) (F) the failure or refusal by Contractor to correct any Services within a reasonable time designated by Metro for such purposes

10.5 change title to Contractor Remedies. Modify to state: Upon any breach of this Contract by Metro, Contractor shall be entitled to enforce its rights under this Contract and recover all damages and exercises all remedies available under applicable law.

RESPONSE:

The following changes were made:

8.1 – Not removed; amended

2.3 – Amended as proposed

2.5 – No contract change; however, this can be a part of the pricing proposal in the RFP which will be added as an additional exhibit to the contract.

5.1 – Amended

5.2 – Amended

7.1 (b) – Amended as proposed

10.1 (b) – Amended

10.2 (e) – Amended

10.3 (a) – Amended

10.3 (b) – Amended

10.5 – Amended

5. QUESTION:

Shelters are mentioned in Scope of Work/ 2.1 Project Scope. Could you provide more information on the number and locations (lats/longs) of any shelters available for advertising?

RESPONSE:

Metro will allow the advertising contractor to sell up to ten (10) exterior shelter advertising panels. Metro will retain the use of the interior advertising panel and the small frame on shelters. Not all Metro shelters have advertising panels at this time. If shelters with advertising panels are added or subtracted, Metro reserves the right to change the amount of exterior shelter advertising panels the contractor can sell – this change must be given with at least sixty (60) days' notice.

Additionally, please see the attached list for available shelters.

6. QUESTION:

The project term mentioned in the Proposal Form (Submission Documents/pg 3) is two years. Please confirm contract term is five years with two one-year options.

RESPONSE:

The term will be five years with two one-year options.



| Location | 4-Digit Code | Route(s) | Corner | Direction | Responsibility | Latitude | Longitude |
|---------------------------|--------------|-------------|-----------|------------|----------------|-------------|--------------|
| 102nd & Nicholas | 1267 | 4,5,14 | Midblock | Northbound | Contractor | 41.266347 | -96.071364 |
| 110th & J St | 2319 | 55 | Northwest | Southbound | Metro | 41.21502419 | -96.08443264 |
| 120th & Center | 2057 | 15,94 | Southwest | Eastbound | Metro | 41.233909 | -96.101917 |
| 122nd & Center | 2035 | 15 | Northeast | Westbound | Metro | 41.234158 | -96.104251 |
| 132nd & Center | 2053 | 15, 94 | Southeast | Eastbound | Contractor | 41.23399478 | -96.11893497 |
| 139th & Center | 2050 | 15,94 | Southwest | Eastbound | Metro | 41.233844 | -96.129507 |
| 13th & Bert Murphy | 2588 | 13 | Northeast | Northbound | Contractor | 41.22398698 | -95.93319813 |
| 13th & Nicholas | 3367 | 13 | Northwest | Westbound | Metro | 41.27006344 | -95.93353571 |
| 20th & Farnam | 1974 | 15,30 | Northwest | Westbound | Metro | 41.257731 | -95.94288 |
| 23rd & Cumming | 3060 | 4 | Northeast | Westbound | Metro | 41.26813871 | -95.94608062 |
| 24th & L St | 3035 | 24 | Northwest | Southbound | Contractor | 41.212504 | -95.947186 |
| 30th & California | 1619 | 30,35 | Southwest | Southbound | Metro | 41.264507 | -95.956831 |
| 30th & Ellison | 1467 | 30 | Northwest | Southbound | Metro | 41.30991861 | -95.95670767 |
| 30th & Fort | 1468 | 30 | Northwest | Southbound | Metro | 41.306817 | -95.956687 |
| 30th & Fort | 1647 | 30 | Northeast | Northbound | Metro | 41.30687411 | -95.9564443 |
| 30th & Patrick | 1483 | 30 | Southwest | Southbound | Metro | 41.27804679 | -95.95667398 |
| 30th & Patrick | 1634 | 30 | Northeast | Northbound | Contractor | 41.27845367 | -95.95644555 |
| 30th & Upland Pkwy | 2871 | 24 | Northeast | Northbound | Metro | 41.19738966 | -95.95761518 |
| 30th & Webster | 1627 | 30 | Southeast | Northbound | Metro | 41.265626 | -95.956417 |
| 38th & Cumming | 1021 | 4 | Northeast | Westbound | Contractor | 41.26811016 | -95.96882351 |
| 42nd & Dewey | 1339 | 3,15 | Northwest | Southbound | Metro | 41.256164 | -95.975886 |
| 42nd & Dewey | 1407 | 3,15 | Southeast | Northbound | Metro | 41.25588103 | -95.9756526 |
| 42nd & William | 1401 | 3,15 | Northeast | Northbound | Contractor | 41.246214 | -95.975675 |
| 52nd & NW Radial | 2987 | 4 | Northwest | Westbound | Metro | 41.284828 | -95.99526 |
| 55th & Center | 2095 | 15 | Southwest | Eastbound | Metro | 41.23861478 | -95.99826313 |
| 63rd & Q St | 2638 | 13 | Southwest | Eastbound | Metro | 41.205118 | -96.011967 |
| 68th & Mercy Rd | 2004 | 11,13,15,55 | Northwest | Westbound | Metro | 41.23792903 | -96.01820597 |
| 68th & Mercy Rd | 2088 | 15,18,55 | Southwest | Eastbound | Metro | 41.23785099 | -96.01802803 |
| 72nd & Lawndale | 2533 | 18 | Southwest | Southbound | Contractor | 41.297115 | -96.024059 |
| 72nd & Mercy Rd | 2086 | 15,18,55 | Southeast | Eastbound | Metro | 41.237782 | -96.023281 |
| 90th & Blondo | 1492 | 5 | Northwest | Southbound | Contractor | 41.278053 | -96.052785 |
| 93rd & Maple | 1087 | 4 | Southeast | Eastbound | Metro | 41.28494 | -96.055392 |
| 96th & Q St | 3079 | 55 | Southwest | Eastbound | Contractor | 41.205203 | -96.062373 |
| E 21st & Locust | 1727 | 16 | Northwest | Southbound | Metro | 41.28515317 | -95.9036843 |
| Park Ave & Woolworth | 1809 | 35 | Southeast | Northbound | Metro | 41.245036 | -95.955682 |
| Turner Blvd & Leavenworth | 2289 | 11 | Southwest | Eastbound | Metro | 41.25229812 | -95.96276804 |
| VA Medical Center | 1400 | 3 | Southwest | Eastbound | Metro | 41.24621 | -95.975673 |



Advertising Services Contract

THIS ADVERTISING SERVICES CONTRACT (“**Contract**”) is made and entered into as of _____, 202_ (“**Effective Date**”) by and between the Regional Metropolitan Transit Authority of Omaha d/b/a/ Metro, a political subdivision of the State of Nebraska (“**Metro**”) and _____, a _____ (“**Contractor**”).

WHEREAS, Metro issued a Solicitation and Request for Proposals (as defined in Section 13.7(s) “**RFP**”) from qualified responsible, responsive contractors for purposes of providing Metro with certain Advertising Services; and

WHEREAS, following its review and analysis of all responsive proposals received in furtherance of the RFP, Metro has elected to award this Contract to Contractor; and

WHEREAS, it is the purpose of this Contract to set forth the covenants, terms, conditions and other provisions pursuant to which Contractor is hereby engaged to provide and perform the Advertising Services during the term of this Contract.

NOW, THEREFORE, in consideration of the mutual promises and covenants hereinafter contained, Metro and Contractor agree as follows:

**ARTICLE I
TERM OF CONTRACT**

1.1 **Term; Extension of Term.** Subject in all cases to Metro’s rights to terminate or suspend this Contract as more particularly set forth in Article X, the term (“**Term**”) of this Contract shall be the five (5) year period that commences as of the Effective Date. Metro may elect to extend the Term for two (2) consecutive one year period years by written notice to Contractor not later than one hundred eighty (180) days prior to the expiration of the then current Term. Any reference in this Contract to Term shall mean and refer to the original Term as may be extended by Metro pursuant to this Section 1.1 or as may otherwise have been extended by application of Section 10.2.

**ARTICLE II
CONTRACTOR’S PERFORMANCE**

2.1 **Performance of Advertising Services.** During the Term, Contractor shall be responsible for and shall perform, at Contractor’s sole cost and expense (except as expressly provided for in this Contract), all Work necessary to provide, deliver and otherwise perform all **Advertising Services** (as defined in Section 13.7(a)). Whether performed by Contractor or, to the extent permitted by this Contract, by a Subcontractor, Advertising Services shall be performed without interference with any Metro operations: (a) using a standard of professional ethics, quality and degree of skill, care and diligence normally employed by industry professionals performing the same or similar Advertising Services; (b) subject to the use, placement, location, area, spacing, quality, and other restrictions, qualifications, limitations, requirements, provisions of, and otherwise in full compliance with, attached Exhibit B; and (c) in full compliance with this Contract, the Proposal, all Governmental Requirements and Laws. For avoidance of any doubt, Advertising Services shall include the obligation of Contractor, at its sole cost and expense, to keep current and install, place, post, remove, repair, replace and dispose of all advertising copy, artwork, signs, displays, promotions, graphics, content and related matter documentation and media, whether allowed or rejected by Metro (regardless of source and including those constituting the property of Metro) from all Fleet and Facilities. Advertising Services shall be completed to the reasonable satisfaction of Metro performed and completed in the order/progression as may be determined by Metro from time to time in its sole discretion. Without limitation or prejudice to any other provision of this Contract, including any provision contained in Article X, whenever requested by Metro, Contractor will



re-perform and otherwise remedy any Advertising Services not meeting the foregoing requirements, whether performed by Contractor or Subcontractor, without any additional **Compensation** (as defined in Section 5.1).

2.2 **Compliance with Advertising Policy.** All advertisers, and all advertising copy, artwork, signs, displays, promotions, graphics, content (in whatever form, manner, means or medium) shall be subject to prior review by and written approval from Metro and shall fully conform to the **Advertising Policy** (as defined in Section 13.7(b)).

2.3 **Modification of Fleet and Facilities eligible for Advertising Services.** Advertising Services shall be limited to eligible Fleet (as defined in Section 13.7(i)) and eligible Facilities (as defined in Section 13.9(h)); provided, Metro reserves the right at any time during the Term by written notice to Contractor to (a) increase, decrease and otherwise modify the Facilities and Fleet eligible for Advertising Services, and (b) to limit, restrict, expand or decrease the placement, location, nature, and extent of interior or exterior space made available by Metro for Advertising Services as to any eligible Facilities and Fleet, in any of which events, Contractor shall promptly comply. Notwithstanding anything to the contrary contained in Section 2.3(b), other than because a Fleet vehicle has been taken out of service (whether temporarily or permanently) by Metro for reasons related to accident, injury, maintenance, replacement or other similar purposes or otherwise because of any Governmental Requirement, Metro shall not reduce the number and type of aggregate Fleet vehicles eligible for Advertising Services below the number and type of Fleet vehicles that were eligible for Advertising Services as of the Effective Date.

2.4 **Expanded Advertising Medium.** For avoidance of any doubt, nothing in this Contract, including in the Advertising Services or in the Advertising Policy, shall be construed to preclude Metro from implementing or rejecting any form, manner, means or medium of advertising for the Fleet or Facilities, in any case whether interior or exterior in any of which events, Contractor shall promptly comply.

2.5 **Metro Exclusive Use of Certain Advertising Space.** Notwithstanding anything in this Contract to the contrary, for purposes of advertising promotion and information concerning Metro its programs and services, during the Term, unless first consented to in writing by the Metro Financing Director, Metro shall have exclusive use of (a) no more than fifteen (15) percent of each type of permitted exterior Fleet advertising and (b) not less than eight (8) interior cards in each Fleet vehicle; and, throughout the Term, Metro shall have the additional right to the right to use any unsold exterior or interior Fleet or Facility advertising space for the same purposes.

2.6 **Contractor Program Relating to Non-Profit Agencies.** Contractor shall promptly develop and during the Term Contractor shall maintain, implement and adhere to, an advertising program whereby Contractor shall discount the cost of posting advertising for Persons qualifying under the Laws as non-profit. Such program shall require that when unsold eligible advertising space becomes available, Contractor shall execute and perform contracts and agreements with such Persons in respect of Advertising Services on terms similar in all material respects with Contractor's for-profit advertising clients; provided, that Contractor may require that such non-profit Persons shall reimburse Contractor for its actual out of pocket costs and expenses incurred by Contractor to produce and install the related advertising.

2.7 **Advertising Fees/Charges.** During the Term, all rates, fees, and other applicable charges (regardless of the nature of the same) for Advertising Services shall be in the nature of and in the amounts set forth in the Proposal, as the modified or amended by the Parties any time during the Term. Nothing in this Section 2.7 shall be require Metro to negotiate or achieve agreement is respect of any such amendment or modification.

2.8 **Contractor Books and Records.** During the Term and thereafter for the two (2) year period following the expiration of the Term or the earlier termination of this Contract, Contractor shall prepare and maintain appropriate records, documentation, and accounts pertaining to or relating to all Advertising Services required as may be necessary to document, to the satisfaction of Metro (a) the performance of all Advertising Services performed by Contractor and all Subcontractors, and (b) to assure the full complete and proper accounting, calculation and determination pertaining to, relating to and supporting all payments to Metro and all payments/retention of **Compensation**. Without limitation to the generality of the foregoing, all such records and accounts shall include contemporaneously maintained records,



documentation, and accounts related to or pertaining to Advertising Services, including those relating to or pertaining to (i) all billings, invoices, costs and expenses of Contractor, (ii) the use of, and payments to, Subcontractors, and the basis for the same, (iii) the use of, and payments to Contractor's own personnel, (iv) all commissions paid to advertising agencies or Contractor's personnel, and the basis for the same, (v) any out of pocket costs and expenses incurred by Contractor for such purposes, (vi) all costs and expenses related to Compensation to Contractor, (vii) all costs and expenses related to all amounts to be paid to Metro, (viii) bad debt write-off and the basis for the same, and (ix) such other records, documentation, and accounts as may be required by Metro from time to time to assist its monitoring/administration of this Contracts. All such records, documentation and accounts shall be prepared in accordance with GAAP and shall be regularly maintained in the business offices of Contractor in such form and in such detail as may be necessary and sufficient, as determined by Metro in its reasonable discretion, to identify and account for all of the foregoing in respect of Advertising Services and all costs and expenses pertaining or relating thereto. All such records, documentation and accounts shall be made available to Metro for audit and other purposes promptly upon request by Metro at any time during regular business hours of Contractor and as may be also set forth in the Contract. Provider shall cause the requirements of this Section 3.1 to be included in and made a part of all agreements between Provider and its Subcontractors.

ARTICLE III INTELLECTUAL PROPERTY

3.1 **Metro Intellectual Property.** Contractor agrees that Metro owns and retains all right, title and interest in and to any Metro Trademarks, copyrights and any related technology utilized by Metro or Contractor under or in connection with this Agreement, including all of its **Intellectual Property** (as defined in Section 13.7(l) together with all rights or interest associated therewith. No title to or ownership of any of Metro's Intellectual Property is granted or otherwise transferred to Contractor or any other Person under this Contract. Contractor covenants that it will not, and that it will not permit any other Person, to reverse engineer, disassemble, decompile or otherwise attempt to discover the source code or trade secrets of any Metro Intellectual Property for any purpose. Any feature suggested by or built for the use of Contract, its advertiser's or any other Person, including without limitation any related Intellectual Property, will be exclusively owned by Metro.

ARTICLE IV DUTIES OF METRO

4.1 **Metro Contact Personnel.** Subject to Metro's right to re-designate another individual by notice in writing to Contractor, Metro hereby designates William Clingman, Metro Finance Director, as its contact person for all purposes under this Contract, who shall be responsible for providing any written authorizations, approvals or consents from Metro as may be required by Metro from time to time to commence Advertising Services and to proceed or perform in respect to any related matters under or respect of this Contract.

ARTICLE V COMPENSATION AND PAYMENT

5.1 **Compensation to Contractor.** Subject to all related covenants terms, conditions and other provisions of this Contract, including Section 2.1, Contractor shall be compensated for performing Advertising Services on a monthly basis in accordance with and in such amount or amounts or at such rate of compensation as set forth in the Proposal ("**Compensation**"); provided, however, all Compensation, whether expressed in the Proposal as a specific amount or as a percentage of revenues shall be paid, to the extent available, solely from Gross Revenues derived from Advertising Services provided by Contractor. For purposes of this Contract, "**Gross Revenues**" means gross cash sums actually received by Contractor as payment from advertisers for the display of advertisements on the Fleet or Facilities, less the sum of (a) any amounts paid by Contractor as a commission to any Person in respect of such advertisement, to the extent and only to the extent set for in the Proposal, plus (b) the amount of any and all sales, use, gross receipts, and similar taxes imposed upon Contractor in respect to the advertisement, but excluding in all cases, property taxes, any excess profits fees or taxes, franchise fees or taxes, gift taxes, capital stock taxes, inheritance and succession taxes,



estate taxes, federal and state income taxes and other taxes applied or measured by Contractor's general or net income, and all similar taxes; plus (c) the amount of Contractor's actual direct out of pocket cost and expenses incurred for production and installation of such advertisements, including all production and installation costs and charges for Metro advertisements if Contractor is allowed to recover such costs and charges from Metro under the Proposal. For clarity, in no event shall Metro be obligated to pay or otherwise be liable for any Compensation due to Contractor.

5.2 **Payment to Metro.** Metro shall be compensated by Contractor on a monthly basis in accordance with, and in such amount or amounts or at such rate of compensation equal to the percentage of Gross Revenues set forth in, the Proposal; provided, however, if the Contractor has guaranteed a minimum annual payment to Metro, Metro shall be paid 1/12 of such of the guaranteed minimum annual payment whether or not there are sufficient Gross Revenues (monthly or annually) for such purposes, and promptly after the end of each Contract year (i.e. the yearly period commencing as of the Effective Date and after the first Contract year the yearly period commencing as of the anniversary of Effective Date; "**Contract Year**") Metro shall be paid the amount, if any, by which the percentage of Gross Revenues set forth in the Proposal for such Contract Year exceeds the guaranteed annual payment for such Contract Year. Subject to Section 2.3, if the Proposal includes an annual guarantee to Metro for a Contract Year, the amount of such guarantee will be renegotiated if Metro's Fleet that is eligible for Advertising Purposes is reduced by seven and one-half percent (7.5%) or more at any time during the Term from that required by the last sentence of Section 2.3, and for the period from and after such reduction, as Contractor's sole and exclusive remedy therefor, the minimum annual payment shall be suspended and Contractor shall pay Metro the percentage of Gross Revenues set forth in the Proposal.

5.3 **No Trade/Barter or other forms of Payments allowed for Advertising Services.** No Trade/Barter or other forms of payments are permitted for Advertising Services without the prior written consent of the Finance Director.

5.4 **Monthly Reports/Statement of Compensation and Metro Payments.** During the Term, Contractor shall furnish written monthly reports to Metro required by Exhibit B containing all documentation and information thereby required together with all information and documentation relating to and supporting (a) all payments to Metro (to be paid to Metro contemporaneously with the delivery of the monthly report and (b) all payments/retention of **Compensation** for such period, in each case sufficient and in such detail as may be necessary to permit Metro to determine the basis for all payments contemplated by clauses a and b of this Section 5.4; provided such reports shall include at a minimum all information identified in those records/accountants/documentation required to be maintained by Contractor pursuant to Section 2.8 that pertain to or related to such payment.

ARTICLE VI OWNERSHIP

6.1 **Intellectual Property used in Advertising Services.** Without limitation to any other representation or warranty made by Contractor in this Contract or any disclaimer in respect thereof or any limitation of liability therefor, Contractor represents and warrants to Metro that it has all right, title or interest, or valid license to use any Intellectual Property used in all advertising copy, artwork, signs, displays, promotions, graphics, content (in whatever form, manner, means or medium) in respect of any Advertising Services, and that its grant of rights associated therewith do not violate the intellectual property or other proprietary rights of any third-Person.

6.1 **Deliverables and Other Materials Related to Advertising Services.** All work, materials, studies, analysis, reports, recommendations, subject data and other deliverable materials, documents or records contemplated to be produced or provided pursuant to the terms of this Contract, whether by Contractor or any Subcontractor, shall be and become the sole property of Metro and may not be used by Contractor or any Subcontractor at any time for any purpose. To the extent any Contractor may have any right, title, license, copyright, patent right, or other Intellectual Property interest therein of any nature whatsoever, Contractor (on behalf of itself, its agents, successors and assigns, other than Metro) hereby waives, relinquishes and assigns to Metro (subject to the rights of the United States therein, if any) any such interest in whole and without qualification or reservation, it being understood and agreed that the Compensation paid to Contractor under this Contract shall be sufficient consideration for such purposes. Contractor



shall cause the requirements of this Section 6.1 to be included in and made a part of all agreements between Contractor and its Subcontractors.

**ARTICLE VII
INDEMNITY**

7.1 **Contractor Indemnity.** Except to the extent directly caused by the negligent acts, errors or omissions of or intentional willful misconduct of Metro Indemnified Party/ies, or Metro’s uncured default in, or breach of, this Contract, Contractor agrees, to the fullest permitted by Law, to defend, indemnify and hold Metro (including members of its governing board, its officers and employees, FTA and DOT; collectively, “Metro Indemnified Party/ies”) harmless from and against any and all costs, expenses, judgments, loss, liability, claims (including claims for personal injury, death or property damage), allegations, demands, actions, causes of action, debts, controversies, damages, and other liability of any nature (including reasonable attorneys' fees and other litigation expenses) in any such case, of any nature whatsoever (whether direct, indirect, special, incidental, remedial and consequential) and under any theory of recovery whatsoever (including contract, tort, contribution and indemnity) that may directly or indirectly, in whole or in part, caused by, arise or result from, out of or in connection with:

- (a) any alleged or claimed defect in the merchandise supplied by Contractor, whether latent or patent, including allegedly improper construction or design, failure of merchandise to comply with specifications; any express or implied warranties by Contractor; or any violation of Law related to the manufacture or sale of the merchandise.
- (b) any act or omission by or on behalf of Contractor or any of its officers, agents, servants, employees, Subcontractors in its or their performance under or in respect of this Contract except to the extent directly caused by Metro’s negligence or willful misconduct.
- (c) any act or omission by or on behalf of Contractor or any of its officers, agents, servants, employees, invitees, or Subcontractors when such act or omission would obligate Metro to indemnify a third party pursuant to the terms and conditions of any agreement referenced in the Contract Documents.
- (d) any claim of patent, trademark or copyright infringement or any Intellectual Property right or interest in connection with the Advertising Services, including all Work, all Work products provided under this Contract by Contractor or any of its officers, agents, servants, employees, or Subcontractors.
- (e) the breach of any warranty or representation and the failure of any warranty or representation of Contractor made in any Contract Document to be true, accurate or complete in all material respects.
- (f) Contractor’s and any of its Subcontractor’s (a) (i) negligent performance of, (ii) failure or refusal to perform, or (iii) failure to properly perform, in any case any of the Advertising Services; (b) Event of Default, (c) other breach of or default under this Contract, including Contractor’s failure to fully comply with any covenant, term, condition or other provision of this Contract; and
- (g) Metro Indemnified Party/ies successful efforts to enforce this indemnity provision.

**ARTICLE VIII
INSURANCE**

8.1 **Policies of Insurance.** Contractor shall procure and maintain, and Contractor shall cause each Subcontractor to procure and maintain, throughout the Term or such longer period as this Article shall require, policies of insurance providing the following coverages in the amounts required by this Section 8.2:

- (a) Comprehensive general liability insurance including, blanket contractual liability (which shall include coverage in respect to the indemnity obligations as set forth above in this Contract), broad



form property damage, personal injury, premises medical payments, interest of employees as additional insured's, and broad form general liability endorsement, written on an occurrence basis covering as insured, Contractor, and as additional insured, Metro, with policy limits of not less than One Million Dollars (\$1,000,000.00), per occurrence, and Two Million Dollars (\$2,000,000.00) in the aggregate per year.

- (b) Professional Liability, Advertisers Liability, or Errors and Omissions insurance liability insurance written on an occurrence basis, with Metro as an additional insured, claims made basis covering legal liability caused by any error, omission or negligent act, errors and omissions of Contractor (including its Subcontractors, agents, officers, or employees) arising out of the performance of Advertising Services or otherwise occurring while on any premises owned, operated or controlled by Metro under this Contract, with policy limits of not less than One Million Dollars (\$1,000,000.00), per occurrence, and Two Million Dollars (\$2,000,000.00) in the aggregate per year. Such policy of professional liability insurance shall be kept in force for a minimum of two (2) years after the date that the Contract has been terminated.
- (c) Comprehensive automobile liability insurance covering, on an occurrence basis, all owned, non-owned or hired automobiles to be used by Contractor (including its Subcontractors, agents, officers, or employees) in the amount of One Million Dollars (\$1,000,000.00), per occurrence for bodily injury, One Million Dollars (\$1,000,000.00), per occurrence for property damage, or in the amount of One Million Dollars (\$1,000,000.00), per occurrence of combined single limit covering as insured, Contractor, and as additional insured, Metro. Such policies shall include uninsured motorist/underinsured motorist coverage per year in the same amounts.
- (d) Workers' compensation insurance as required by Nebraska law in the minimum amount of \$100,000, or the maximum amount required by Law, whichever is greater. Employers' liability insurance, including all states endorsement, in the amounts required by Law.

All such policies of insurance shall be maintained with responsible insurance carriers licensed to do business in the State of Nebraska having an AM Best Financial Size Category (FSC) rating of A-VII or greater. Except as otherwise expressly required in this Section 8.2, all policies of insurance shall be kept in force until the date that Metro has accepted the full and complete performance of all Advertising Services to be performed pursuant to this Contract. As soon as practicable after the Effective Date, but in all events prior to commencing any performance of Advertising Services, Contractor shall deliver to Metro, and shall cause each Subcontractor to deliver to Metro, certificates of insurance evidencing the insurance required by this to be in effect. All such certificates of insurance shall also evidence that Metro is an additional insured under such policy of insurance as specified. All policies of insurance shall require at least thirty (30) days written notice to Metro prior to the cancellation of any policy of insurance required by this Contract. Contractor shall provide at least thirty (30) days written notice to Metro prior to any material changes in any policy of insurance required by this Contract.

ARTICLE IX SUBCONTRACTORS

9.1. **Limited use of Subcontractors.** Contractor may engage Subcontractors (as defined in Section 13.7(u) to perform Advertising Services provided, that a Subcontractor's right to perform Advertising Services shall be limited to those Advertising Services for which it had been designated or approved as contemplated by Section 13.7(u). Subject to Contractor's right to be paid from Gross Revenues under this Contract, Contractor shall be solely responsible for any amounts required to be paid to a Subcontractor for its performance of all Advertising Services.



**ARTICLE X
SUSPENSION AND TERMINATION OF CONTRACT**

10.1 Termination for Convenience by Metro.

- (a) This Contract may be terminated by Metro for no reason or any reason, as determined by Metro in its sole and absolute discretion, at any time during the Term upon written notice to Contractor (“**Notice of Termination for Convenience**”). Termination shall be effective as of the date of Contractor’s receipt of Notice of Termination for Convenience. Unless otherwise permitted in the Notice of Termination for Convenience, Contractor shall immediately cease performance of all Services upon receipt thereof and shall promptly notify each Subcontractor to cease all Services. In the event of any Termination pursuant to this Section 10.1, neither Contractor nor any of its Subcontractors shall have any claim, right, remedy or entitlement for damages, Compensation or otherwise under any theory of law whatsoever for early termination of this Contract other than as expressly permitted in Section 10.2.

- (b) In the event this Contract is terminated by Metro pursuant to Section 10.1, then and in such event subject to all other provisions of Section 10.1, Metro shall be obligated to pay to Contractor an amount equal to (i) all Compensation due under Article V in respect to Advertising Services performed by Contractor or Subcontractor(s) through the date of Termination, without allocation of profit or overhead for any unperformed, remaining or incomplete Services, but only to the extent such Compensation has not been paid by allocation of any payments from advertisers to Contractor through the date of Termination (and subject to Contractor’s assignment to Metro all of Contractor’s rights and remedies in respect of any payments to Contractor under any advertiser/advertising contract); plus, (ii) all production and installation costs and charges for Metro advertisements if Contractor is allowed to recover such costs and charges from Metro under the Proposal; plus, (iii) those amounts necessary to reimburse Contractor for the actual, reasonable and necessary out of pocket costs incurred by Contractor in terminating its agreement, if not assumed by Metro, with any Subcontractors entered into by Contractor solely and exclusively for the purposes of providing the Services; provided, however, Contractor shall not be paid for any Services performed by any Subcontractor, or for any costs incurred by any Subcontractor, in either case, after Contractor’s receipt of Notice of Termination for Convenience; plus, (v) for the actual out of pocket costs and expenses reasonably and necessarily incurred by Contractor to terminate any agreement, if not assumed by Metro, entered into by Contractor solely and exclusively for the purposes of providing the Services. Contractor shall submit an invoice conforming to the requirements of Article V for any amounts for which Contractor claims to be entitled by application of the provisions of Section 10.1. Unless disputed in good faith by Metro, Contractor shall be paid such amounts within thirty (30) Business Days after Contractor has delivered to Metro all materials contemplated to be provided to Metro under Article V or Article VI, whether completed or not completed, in the then current form, free and clear of all liens or encumbrances of any nature together with any agreement with any Subcontractor, duly assigned, that Metro is willing to assume.

- (c) Except to those matters set forth in Section 10.1 for which Metro is liable, Contractor (for and on behalf of itself, its agents successors and assigns) hereby expressly waives any right, remedy or recourse Contractor may have, now or in the future, against Metro, FTA or DOT in respect to any and all costs, expenses, judgments, loss, liability, claims, allegations, demands, actions, causes of action, debts, controversies or damages, in any such case, of any nature whatsoever (whether direct, indirect, special, incidental, remedial, consequential or punitive) and under any theory of recovery whatsoever (including contribution and indemnity) that is or that may be, directly or indirectly, caused by or that may arise or result from, out of, or in connection with the early termination of this Contract by Metro.



10.2 **Suspension by Metro.**

- (a) At any time during the Term, upon written notice to Contractor (“**Notice of Suspension**”), Metro may suspend, delay, or interrupt the performance of Services (i.e. a “**Suspension**”) for no reason or any reason as determined by Metro in its sole and absolute discretion.
- (b) The period of Suspension shall commence as of the date that is seven (7) days after Contractor’s receipt of the Notice of Suspension. Suspension may be withdrawn by Metro by written notice (“**Notice of Withdrawal of Suspension**”) to Contractor; provided, however, that unless the Suspension is so withdrawn by Metro by the date that is one hundred eighty (180) days from the date of Contractor’s receipt of the Notice of Termination, this Contract shall automatically be deemed to have been terminated for convenience by Metro and all applicable provisions of Section 10.1 shall be deemed to apply.
- (c) In the event a Suspension is timely withdrawn by Metro, Contractor and its Subcontractors shall commence the performance of Services within five (5) Business Days after Contractor’s receipt of Notice of Withdrawal of Suspension.
- (d) In the event of a Suspension, then, unless the context shall otherwise require, whenever used in this Contract the word “Term” shall mean the date corresponding to the date of the expiration of the original Term as extended by the number of Business Days corresponding to period of Suspension.
- (e) Whether or not withdrawn by Metro, no Suspension shall be construed to entitle Contractor or any Subcontractor to perform any Services or receive any additional Compensation for Services; provided, however, that during the period of Suspension, Contractor shall be entitled to collect Gross Revenues for Services previously performed, but Contractor shall be obligated to pay Metro on a monthly basis such amount or amounts at such rate of compensation equal to the percentage of Gross Revenues as set forth in the Proposal for all Gross Revenues received during such period of Suspension.

10.3 **Termination for Default by Metro.**

- (a) Upon the occurrence of any of the following events, Metro may terminate the Contract effective immediately or as of any other date specified in a written notice of Termination (“**Immediate Notice of Termination**”), which Immediate Notice of Termination shall specify such event: (i) the insolvency of Contractor; (ii) the filing of a meritorious petition of bankruptcy by or against Contractor or the filing of any petition by Contractor seeking protection under Chapters 7, 11 or 13 of the United States Bankruptcy Code; (iii) the conviction of Contractor of a felony committed in connection with any matter related to the Contract, Contractor’s response to the Solicitation Document (“Contractor’s Response”), the Services or this Contract; (iv) the failure of Contractor to materially comply with any Law; (v) any attempt by Contractor to evade any material provision of the Contract or to practice any fraud or deceit upon Metro; (vi) the failure of Contractor to deliver provide any required bond within ten (10) days of executing the Contract; (vii) any failure of any representation made by Contractor in Contractor’s Response or in this Contract to be true, accurate or complete in all material respects at the time made or at any time during the Term; (viii) Contractor assigns or attempts to assign this Contract or any Services other than as expressly allowed by this Contract; (ix) **INTENTIONALLY DELETED**; and (x) the failure of Contractor or any Subcontractor to permit Metro, the FTA, DOT or any other public authority access to any books,



records, accounts, information, documentation or materials required by, or as required by, this Contract or that may be related to this Contract.

- (b) (i) The occurrence of any of the following shall constitute an event of default (“**Event of Default**”) under this Contract: (A) the failure of Contractor or a Subcontractor to perform Services in a manner conforming to the Laws; (B) the failure of Contractor or a Subcontractor to promptly pay any sums due to Metro within five (5) Business Days after the same is due; (C) the failure of or refusal by Contractor to commence Services within ten (10) Business Days after the Effective Date; (D) the failure of or refusal by Contractor or a Subcontractor to commence any Services within ten (10) Business Days after being so instructed by Metro; (E) the failure of Contractor to properly maintain or provide any books, records, accounts, information, documentation or materials required by Section 2.8 or as otherwise required by this Contract within fifteen (15) days after written request from Metro to Contractor; (F) the failure of or refusal by Contractor to correct any Services within a reasonable time, but in no event after ten (10) days after receipt of written notice from Metro for such purposes; (G) the failure of Contractor to cure any breach of or default under any other covenant, term, condition or provision of this Contract, whether or not specified in this Section 10.3(b) within fifteen (15) days after written notice thereof to Contractor.
- (ii) Upon the occurrence of an Event of Default, Metro may terminate this Contract effective as of the date specified in a written notice of Termination (“**Notice of Termination**”), unless such Event of Default is cured to the satisfaction of Metro on or before the date specified for cure in such Notice of Termination, which date shall not be earlier than fifteen days after Contractor’s receipt of the Notice of Termination; provided, however, whenever the Event of Default is of the same character as that for which a Notice of Termination has been previously issued to Contractor, then Metro may terminate this Contract immediately as of the date of the Notice of Termination without according Contractor any opportunity to cure such Event of Default.
- (c) Any Termination by Metro pursuant to this Section 10.3 shall be without prejudice to Metro pursuing any other right, remedy or recourse of Metro, including the right to seek damages (whether direct, indirect, special, incidental, remedial and consequential.)

10.4 **Wrongful Termination by Metro.**

- (a) In the event Metro has wrongfully terminated the Contract, then, unless the Parties shall otherwise agree in writing to re-instate or otherwise continue the Contract in accordance with its terms, (i) Metro’s wrongful termination of this Contract shall be deemed to be a Termination for convenience as permitted by Section 10.1, (ii) the Notice of Termination or Immediate Notice of Terminated shall be deemed to be a Notice of Termination for Convenience, and (iii) Contractor shall be entitled only to such recovery as permitted under Section 10.1 in respect to such wrongful termination.
- (b) Except as contemplated by Section 10.1, Contractor (for and on behalf of itself, its agents successors and assigns) hereby expressly waives any right, remedy or recourse Contractor may have, now or in the future, against Metro, FTA or DOT in respect to any and all costs, expenses, judgments, loss, liability, claims, allegations, demands, actions, causes of action, debts, controversies or damages, in any such case, of any nature whatsoever (whether direct, indirect, special, incidental, remedial, consequential or punitive) and under any theory of recovery whatsoever (including contribution and indemnity) that is or that may be, directly or indirectly, caused by or that may arise or result from, out of, or in connection with any wrongful termination of this Contract by Metro.



10.5 **No Right for Contractor to Terminate Contract; Notice of Default.** Contractor shall not be entitled to terminate this Contract for any reason. Subject to Contractor's obligations to first comply with the provisions of Article XI, Contractor shall not commence any judicial action or proceeding to enforce any right, remedy or recourse of Contractor against Metro for any breach of or default by Metro of any covenant, term, condition or provision of this Contract unless Metro has failed to cure such breach or default within thirty (30) days after written notice to Metro from Contractor specifying such breach or default. Provided, however, if Metro commenced to cure such specified breach or default the same during such thirty (30) day period, but the specified default or breach has not been cured, then Contractor shall not commence any judicial action or proceeding against Metro for such period as may be reasonably necessary to cure the specified default or breach but only if Metro continues to diligently pursue cure. For avoidance of any doubt, any Termination or Suspension of this Contract as permitted by or contemplated by this Contract, including by any of Sections 10.1, 10.2, 10.3, or 10.4, shall not be deemed to be a breach of or default of this Contract by Metro.

10.6 **Subcontractor Agreements for Services.** Contractor shall cause all provisions in this Article X to be included in and made a part of all agreements between Contractor and its Subcontractors.

ARTICLE XI DISPUTE RESOLUTION

11.1 **Dispute; Notice of Dispute; Related Procedures.** In the event of any dispute between Metro and Contractor arising prior to the expiration of the Term or any Termination with respect to the (a) interpretation of this Contract, (b) any required Compensation/compensation or other amount required to be paid under this Contract or (c) performance of a Party under or required by this Contract (a "Dispute"), the aggrieved Party shall notify the other in writing of the Dispute then existing (the "Dispute Notice"). In order for a Party to proceed under this Section 11.1, the Dispute Notice must specifically state that the aggrieved Party is invoking the Dispute procedure of this Section 11.1. The Parties shall then make a good faith attempt to resolve the Dispute, first through direct discussions between their respective designated representatives. In the event the designated representatives are unable to reach agreement then upon the written request of either Party, each of the Parties shall appoint a designated executive whose task it shall be to meet for the purpose of endeavoring to resolve such dispute. The designated executives shall meet in Omaha, Nebraska as often as the Parties deem necessary in order to gather and furnish to the other all information with respect to the matter in issue which the Parties believe to be appropriate and germane in connection with its resolution. Such executives shall discuss the problem and/or negotiate in good faith in an effort to resolve the dispute without the necessity of any formal proceeding relating thereto. No action for the resolution of such dispute outside of these procedures shall be taken by either Party until one of the designated executives concludes in good faith that amicable resolution through continued negotiation of the matter in issue does not appear likely and so notifies the other designated executive in writing. Subject to the provisions of Article X, either Party, in its sole discretion, may then invoke litigation; provided that failure to invoke litigation at such time shall not be a waiver of any such Dispute.

11.2 **Continued Performance.** During the course of any Dispute, the Parties shall continue to otherwise perform in accordance with the Contract; provided that nothing in Section 11.1 or Section 11.2 shall be construed to preclude any right of Metro to terminate or suspend the Contract as permitted by Article X.

11.3 **No Right to Dispute Termination or Suspension.** Nothing in this Contract shall be construed to permit Contractor or any Subcontractor to dispute any Suspension or Termination by Metro.

ARTICLE XII REQUIRED FEDERAL CLAUSES/PROVISIONS

12.1 **Certain Governmental Requirements.** The provisions of the Section 4 of the RFP include or reference certain provisions required by FTA/DOT regulations to be included in any agreement funded in whole or in part by FTA/DOT grant or related funds, whether or not the same may apply to this Contract. Some of those requirements are expressly set forth in Article X and Article XI of this Contract. Whether or not expressly included herein, this Contract



shall be deemed to include not only any such required provisions that would apply to this Contract, but also to include those provisions that are required by FTA/DOT to be included in this Contract, whether or not expressly applying to this Contract and whether or not actually set forth in Section 4 of the RFP or in this Article X or Article XI, or otherwise expressly referenced in this Article XII, each of which shall be deemed to be integrated into and made a part of this Contract by this reference. Anything to the contrary in this Contract notwithstanding, in the event of a conflict with any other covenant, term, condition or other provision contained in this Contract, then whenever any Governmental Requirement shall so require, the FTA/DOT mandated terms or conditions shall be deemed to control, otherwise those provisions determined by Metro, in its sole and absolute discretion, to be in the best interest of Metro shall be deemed to prevail. In addition, Contractor shall not perform any act nor fail to perform any act nor refuse to comply with any requests by Metro, to the extent the same may cause Metro to be in violation of any mandated terms or conditions or other Governmental Requirement of any Governmental Authority, including FTA/DOT. Contractor shall cause all clauses and provisions in Section 4 of the RFP, including those set forth in Article X and Article XI, to be included in and made a part of all agreements between Contractor and its Subcontractors entered into in connection with, or in furtherance of this Contract, whether or not financed in whole or in part with assistance provided by the FTA. Contractor further agrees that such clause(s) and provisions shall not be modified, except to identify the name of the Subcontractor(s).

12.2 **No Obligation by the Federal Government.** Without limitation to the provisions of Section 12.1, the following provisions of Section 4 of the RFP are integrated into and made a part of this Contract: Sections 4.1 through 4.4, inclusive; Sections 4.6 through 4.9, inclusive, and Sections 4.11 through 4.19. To the extent the provisions of Article X or Article XI are inadequate to satisfy the Governmental Requirements of Sections 4.5, and 4.10, respectively, the Governmental Requirements of Sections 4.5, and 4.10 are integrated into and made a part of this Contract.

ARTICLE XIII MISCELLANEOUS PROVISIONS

13.1 **Entire Agreement.** This Contract contains the entire understanding and agreement of the Parties with respect to the subject matter hereof and supersedes any other oral or written understandings and agreements between the Parties. Without limitation to the generality of the preceding sentence and, notwithstanding anything to the contrary contained therein, except as otherwise expressly provided in this Contract, the covenants, terms, conditions and other provisions of this Contract (including the Contract Documents) shall govern, prevail and control over any the covenants, terms, conditions and other provisions of the RFP. In the event of any conflict among any covenants, terms, conditions and other provisions of any Contract Documents, the provision deemed by Metro, in its sole judgment and absolute discretion, to be in its best interest shall govern, prevail and control. There are no oral and, except as expressly stated in the Contract, other agreements, understandings, representations, or warranties in respect to the same.

13.2 **No Amendment Except in Writing.** No modification, alteration, or amendment of this Contract and no waiver of any provision of this Contract shall be valid or effective unless made in writing expressing that the effect of the writing is intended to amend or modify the Contract and is executed by a duly authorized representative of each Party; provided, however, that nothing in this Section 13.2 shall be construed to limit or prohibit any right of Metro reserved or set forth in this Contract to unilaterally do so or to amend or otherwise modify any Contract Documents.

13.3 **No Prohibited Interest.** No elected or appointed director, official, officer or employee of Metro shall have a financial interest, direct or indirect, in this Contract. Contractor hereby represents and covenants to Metro that neither the award of the Contract to Contractor, nor its performance under or in respect of this Contract, has resulted in, nor will result in, any direct or indirect conflict of interest that is prohibited under the (a) the Master Agreement, (b) Neb Rev Stat. §§49-1401 to 1444 and 49-1493 to 14,104, as the same may be applicable, (c) Neb. Rev. Stat §§14-1816 and 18-811 nor (d) in any other Governmental Requirement or applicable Law, including any such conflict referenced or described in Section 7 or Section 8(a)(5) of FTA Circular 4220.1E. Contractor further covenants and represents that (x) neither it nor any Subcontractor, including any owner, officer, employee or director of either, has, as of the Effective Date, any direct or indirect interest of any nature whatsoever, nor shall any of the same directly or indirectly



acquire any such interest, that, in any event would conflict with Contractor's or Subcontractor's performance under this Contract, and (y) neither it nor any Subcontractor shall employ any person having or acquiring at any time any such direct or indirect interest. Without limitation to any other Metro related right, remedy or recourse, any violation of this Section 13.3 shall render this Contract voidable by the Metro.

13.4 **Assignment.** This Contract shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns; provided that Contractor may not license or assign or, whether in whole or in part, any of its rights, liabilities, responsibilities or performance or other obligations under this Contract without the express prior written consent of Metro, which consent may be withheld in its sole and absolute discretion. Nothing in this Section 13.4 shall be construed to prohibit Contractor from using any Subcontractor to perform any Advertising Services to the extent allowed in or by application of any provision of, this Contract.

13.5 **Strict Compliance.** All provisions of this Contract and all Contract Documents shall be attached shall be complied with as written, and no substitution or change shall be made except by an Amendment hereof, or whenever permitted hereunder at the written direction from an authorized officer of Metro.

13.6 **Future Breach not Waived.** No waiver by Metro of any Event of Default nor any other breach of or default under any provision of this Contract by Contractor or a Subcontractor shall operate or be construed to operate as a waiver of any other existing or future Event of Default or any other existing or future breach of or default under this Contract, whether of a similar or different character. Notwithstanding anything in Section 13.5, the failure of Metro to insist upon strict performance of any provision under this Contract shall not constitute a waiver of, or estoppel against Metro to assert the right to require strict performance of any other provision of this Contract or the same provision in the future, nor shall a waiver or estoppel in any one instance constitute a waiver or estoppel with respect to a later Event of Default or default of or breach under this Contract. No delay or omission of Metro to exercise any right under this Contract shall impair the exercise of any such right, or any like right, accruing to it thereafter.

13.7 **Captions; Definitions.** Captions used in this Contract are for convenience and are not used in the construction of this Contract. Words of any gender used in this Contract shall be held and construed to include any other gender, and words in the singular number shall be held to include plural, and vice versa, unless the context requires otherwise. Whenever used in this Contract, unless the context shall otherwise require, all capitalized terms or phrases used in, but not otherwise defined in, this Contract shall be accorded the meaning ascribed thereto in the RFP, and all capitalized terms or phrases used in, and defined in, this Contract shall be accorded the meaning herein ascribed. Without limitation to the generality of the preceding sentence, whenever used in this Contract, and notwithstanding the same, the following words and phrases shall be accorded the following meaning: (a) **"Advertising Services"** means each and all of the performance and other services to be provided, delivered and otherwise performed by Contractor as the same are more particularly set forth in and identified in (i) attached Exhibit A and (ii) the Proposal, as the same may be amended, modified, supplemented or otherwise revised at any time during the Term by the Parties; (b) **"Advertising Policy"** means Metro's Advertising Policy attached as Exhibit B, as the same may be amended, modified, supplemented or otherwise revised at any time during the Term by Metro in its sole judgment and absolute discretion; (c) **"Business Day"** means any calendar day other than (i) a Saturday, (ii) a Sunday, (iii) a day designated by the State of Nebraska as a State holiday, or (iv) a day designated as a federal holiday; (d) **"Contract"** means this instrument, including all Exhibits and Schedules, and all Contract Documents; (e) **"Contract Documents"** means the Contract, the RFP (to the extent necessary to give effect to and the Proposal, each of which is integrated into and made a part of the Contract; (f) **"Exhibit"** and **"Schedules"** means each Exhibit and Schedule attached to, or otherwise referenced in, the Contract; (g) **"include", "includes", "included", "including"** and words of similar import shall be construed as if followed by the phrase **"without limitation"** or **"but be not limited to"** as the context may require, whether or not sometimes so stated; (h) **"Facilities"** means the Administrative Office and all transit centers, all ORBIT and other Fleet stations, and all passenger waiting shelters used by Metro during the Term in connection with its public transportation services; provided, however, no Facilities shall be available for Advertising Services except to the extent so designated from time to time during the Term by Metro in its discretion, (i) **"Fleet"** means all buses, paratransit vans and other passenger transportation vehicles used by Metro for public transportation purposes during the Term; provided, however no ORBT buses or electrical buses shall be construed to be part of Metro's Fleet for



which Advertising Services shall apply except to the extent so designated from time to time during the Term by Metro in its discretion; (j) **“Governmental Authority”** means any governing body (including any governmental (and quasi-governmental), federal, state, and local subdivision or unit of such governing body, together with their respective officials, authorities, agencies, departments, and divisions) that has jurisdiction, whether in whole or in part, over any matter that, at any time, may relate to or pertain to any matter to which any Governmental Requirement may govern or apply. Governmental Authority includes the United States Department of Transportation (**“DOT”**) and the Federal Transit Administration (**“FTA”**); (k) **“Governmental Requirement”** means any applicable Master Agreement required to be executed between Metro and the FTA (**“Master Agreement”**) and any other requirement of any Governmental Authority that is, or that at any time during the Term may become, effective or applicable to this Contract, the Project, the Advertising Services, the Work or to Contractor’s performance under and in respect of the Contract, together with all regulations, rules, orders, directives, standards, and other requirements issued or promulgated thereunder by any Governmental Authority that Metro may be at any time be required to implement, observe, execute, follow or adhere to, whether by application of the provisions of the Master Agreement, any Laws, Regulatory Approvals, other Governmental Requirement or otherwise. For avoidance of any doubt, **Governmental Requirement** includes all applicable **Laws** and **Regulatory Approvals**; (l) **“Intellectual Property”** means all (i) copyrights (including the right to reproduce, distribute copies of, display and perform the copyrighted work and to prepare derivative works), copyright registrations and applications, trademark rights (including registrations and applications), patent rights, trade names, mask-work rights, trade secrets, moral rights, author’s rights, privacy rights, publicity rights, algorithms, rights in packaging, goodwill and other proprietary rights, and all renewals and extensions thereof, regardless of whether any of such rights arise under Laws; (ii) intangible legal rights or interests evidenced by or embodied in any idea, design, concept, technique, invention, discovery, enhancement or improvement, regardless of patentability, but including patents, patent applications, trade secrets, and know-how; and (iii) all derivatives of any of the foregoing; (m) **“Law(s)”** means all existing, future federal, State and local statutes, ordinances, resolutions, laws, codes, standards and other requirements together with, in all cases, all regulations, rules, orders, directives, policies, procedures, issued or promulgated thereunder by any federal, state or local agency, council, commission, employee, administrative or judicial court or similar body, or department of any Governmental Authority charged with enforcement of any Laws, as any such Laws may be from time to time amended, supplemented or supplanted. Law(s) include the Code of Federal Regulations (**“CFR”**), the Federal Transportation Act, and all Laws pertaining to the environment; (n) **“Party”** means Metro or Contractor (including their respective permitted assigns), individually and **“Parties”** means Metro and Contractor (including their respective permitted assigns), collectively; (o) **“Person”** means a natural person/individual, partnership (general or limited), corporation, limited liability company, association or other form of business organization (whether or not regarded as a legal entity under applicable Law), trust, estate or any other entity; (p) **“Project”** means the Project contemplated by the RFP. Project is sometimes used interchangeably with **“Advertising Services”** and **“Work”** and in such instances also shall be ascribed that definition; (q) **“Proposal”** means and refers to Contractor’s written response to Metro conforming in all respects to the requirements of the RFP setting forth, among all other matters, the prices and costs (including the cost of any Regulatory Approval or Governmental Requirement or otherwise payable by Contractor under or in respect of this Contract), fees, charges, Commissions (in all cases as set forth in the Proposal applicable to the Work, the Advertising Services and Contractor’s performance under or in respect of the Contract, including all amounts applicable to Advertising Services that are set forth in the Proposal to be payable to Contractor. The Proposal includes all attachments, documents, instruments, forms, submissions, exhibits and schedules attached thereto or referenced therein or otherwise executed, submitted, completed or furnished (or required to be submitted or furnished) to Metro at any time by Contractor in furtherance of its Proposal or the RFP, in all cases as any of the same has been duly amended, modified, supplemented, negotiated or otherwise revised prior to, and in furtherance of, Metro’s award of this Contract to Contractor; (r) **“Regulatory Approval”** means any and all approvals, licenses, permits, consents, registrations or authorizations, certificates, forms and licenses of any Governmental Authority that is, or that at any time during the Term may become, effective or applicable to this Contract, the Project, the Advertising Services, the Work or to Contractor’s performance under and in respect of the Contract; (s) **“RFP”** means and refers to the solicitation and Request for Proposals issued by Metro on October 24, 2022 in furtherance of the Project and the Work, as amended, modified, supplemented, or otherwise revised by any Addenda; (t) **“Section”, “subsection”, “clause”** or **“sub clause”** means or refers to a Section, subsection, clause or sub clause of this Contract; (u) **“Subcontractor(s)”** means and refers only to those Person(s) identified by Contractor in the Proposal or, following the Effective Date,



approved by Metro in writing, to provide, deliver and otherwise perform specific Advertising Services; (v) “**Termination**” means and refers to any termination of this Contract by Metro pursuant to Article X; and (w) “**Work**” means and refers to all supervision, direction, employees and other labor, all materials, supplies, services, work, machinery, transportation, tools, equipment, the general mobilization of equipment required, in all cases, for the completion of the foregoing and all other tasks and incidentals necessary to fabricate, assemble, install and otherwise perform and complete the Advertising Services and the Contract, as and when required in conformity with this Contract.

13.8 **Severability.** The unenforceability or invalidity of any provision of this Contract shall not affect the enforceability or validity of any other provision which shall remain in full force and effect and be enforceable to the fullest extent permitted by law.

13.9 **Counterparts.** This Contract may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute the same instrument.

13.10 **Time of Essence.** Time shall be considered to be of the essence in respect to all performance or other matters related to this Contract.

13.11 **No Adverse Construction.** Notwithstanding the fact that this Contract may have been prepared by counsel for one of the Parties, the Parties confirm that they and their respective counsel have reviewed, negotiated and adopted this Contract as the joint agreement and understanding of the Parties. This Contract is to be construed as a whole and any presumption that ambiguities are to be resolved against the primary drafting Party shall not apply.

13.12 **Survival.** Whether or not otherwise expressly stated in this Contract, all covenants, terms, conditions and other provisions in this Contract shall survive the expiration of the Term and any Suspension or Termination as may be necessary in order to give full force and effect to this Contract and each covenant, term, condition and other provision of this Contract. Without limitation to and without prejudice to the preceding sentence, all rights to payments of Compensation/compensation to Metro, however limited, all causes of action, all waivers, all limitations attributable to events occurring prior to such expiration or Termination, all representations, warranties, indemnifications, confidentiality, audit rights, information protection and the provisions of this Contract applicable after such expiration or Termination shall survive. For avoidance of any doubt, and without limitation to the generality of the foregoing, Contractor shall remain responsible for and liable and shall continue to pay Metro all compensation due to Metro under Article V of this Contract following the expiration of the Term or Termination hereof and during any Suspension. The provisions of this Section 13.12 shall survive the expiration of the Term and any Termination.

13.13 **Notices.**

(a) All notices required by or contemplated by this Contract shall be sent by certified or registered mail, return receipt requested, or may be sent by Federal Express or other overnight courier (but shall require a signature upon delivery) or by email or fax transmission addressed as follows:

For Contractor:

Attn: _____
Fax: _____
Email: _____

For Metro:



Regional Metropolitan Transit Authority of Omaha d/b/a/ Metro
2222 Cuming Street
Omaha NE 68102
Attn: _____,
Fax: (402)342/0949
Email: _____

(b) If so sent, a notice shall be deemed to be received as of the day occurring three (3) Business Days after mailing, and in the case of overnight courier or email, on the date actually delivered to the intended Party, except for notice(s) that advise the other Party of a change of address of the Party sending such notice, which notice shall not be deemed to be received until actually received by the Party to whom such notice is addressed or delivery of such notice is refused by such Party. Notices on behalf of the respective Parties may be given by their attorneys and such notices shall have the same effect as if in fact subscribed by the Party on whose behalf it is given.

(c) Notwithstanding the foregoing provisions of this Section 13.13, notices served by facsimile shall be deemed given upon receipt if received at or prior to 5:00 p.m. Central (Standard/Daylight) Time on a Business Day and on the next Business Day if received after 5:00 p.m. Central (Standard/Daylight) Time on a Business Day.

13.14 **No Relationship other than Independent Contractors.** Neither this Contract nor any provision of this Contract shall create between Contractor and Metro any partnership, joint venture, agency, employment or any other legal relationship or organization other than as independent contractors. Neither Party shall have any authority to bind the other Party in respect to or in furtherance of this Contract, except as otherwise expressly provided in this Contract.

13.15 **Nebraska Public Records Act.** Contractor acknowledges that Metro is a public body subject to the **Nebraska Public Records Act** (i.e., Neb. Rev. Stat. §§84-712 to 84-712.09, inclusive). Contractor may attempt to restrict the disclosure of documents or records that are provided or otherwise disclosed to Metro at any time during the Term. Contractor wishing to protect any such documents or records from public disclosure by application of the Nebraska Public Records Act by: (a) at the time of disclosure of the same to Metro marking each page of each such document/record prominently in at least 16-point font with the words “Proprietary Information”, (b) printing each page of each such document/record in a different color paper than the paper which the remainder of the any other document/record is printed; and (c) segregating each page of each such document/record in a sealed envelope, which shall prominently display, on the outside, the words “Proprietary Information” in at least 16-point font, along with the name and address of Contractor. If access to documents marked “Proprietary Information” (and otherwise complying with clauses (a) through (c), inclusive, is requested pursuant to the Nebraska Public Records Act, Metro will notify Contractor of such request. Contractor and not Metro shall have the burden to establish that such documents/records are exempt from disclosure under the Nebraska Public Records Act. Metro shall not be responsible to undertake any act or action to prevent any such disclosure. Notwithstanding the foregoing, Metro reserves the right to release any documents requested pursuant to the Nebraska Public Records Act if Metro determines that such information is a public record under the Nebraska Public Records Act. Notwithstanding anything to the contrary in this Section 13.15, no document/record/information furnished to Metro pursuant to Section 2.8 or Section 5.4 shall be deemed to be exempt from disclosure under the Nebraska Public Records Act.

**SIGNATURE PAGES TO FOLLOW
INTENTIONALLY LEFT BLANK**



IN WITNESS WHEREOF, the Parties have caused this Contract to be duly authorized, executed and delivered as of the Effective Date.

CONTRACTOR

Regional Metropolitan Transit Authority of Omaha

| | |
|--------------|--------------|
| By: _____ | By: _____ |
| Name: _____ | Name: _____ |
| Title: _____ | Title: _____ |

| | |
|--------------|-----------|
| By: _____ | By: _____ |
| Name: _____ | |
| Title: _____ | |

By: _____