

**AGREEMENT BETWEEN  
THE LA CROSSE MUNICIPAL TRANSIT UTILITY  
AND  
HOUCK MOTOR COACH ADVERTISING**

This Agreement to be effective on the 1<sup>st</sup> day of November, 2017, is made and entered into by and between the La Crosse Municipal Transit Utility, located at City Hall, 400 La Crosse Street, La Crosse, Wisconsin 54601, hereinafter called "CITY", and Houck Motor Coach Advertising, a Minnesota Corporation, located at 4610 Milton Street North, St. Paul Minnesota, 55126, hereinafter known as "CONTRACTOR".

WITNESSETH;

**I. TERM AND PLACEMENT OF SIGNS**

The CITY hereby grants unto the CONTRACTOR the exclusive right and privilege for the solicitation and sale of advertising space provided for that purpose on 19 buses operated by the CITY for a period of two (2) years from November 1, 2017 until October 31, 2019. Advertising space provided shall be that as defined in the attached Exhibit A, "MTU FLEET ADVERTISING SPACE."

The CONTRACTOR may place the permitted advertising material on the buses between 6:30 p.m. and 11:30 p.m. on weekdays at the CITY'S facility on Isle La Plume and without interfering with transit operations.

The CONTRACTOR agrees that advertising shall be limited to speech which proposes a commercial transaction, with the exception that no advertising which advertises tobacco or intoxicating liquor as defined by Chapter 125, Wisconsin Statutes, shall be permitted. Further, any advertising shall not be in violation of any federal, state, or local regulations or laws. No advertisements shall be permitted that are false, misleading or deceptive; contain obscene material or contain profane, obscene or libelous language; promote unlawful or illegal goods, services, or activities; declare or imply an endorsement by the Transit Utility of any service, product or point of view; promote the sale of tobacco or tobacco related products, promote the sale of alcoholic beverages; depict violence or anti-social behavior or are related to products designed for use in connection with sexual activities; promote religious, political candidates or political issues; are sexually or sexually suggestive ads.

Any such ads in violation of these advertising standards shall, at the request of the Transit Manager, be immediately removed.

CONTRACTOR further agrees to abide by any reasonable rules and regulations implemented by the CITY concerning the placement, type and quality of advertisement.

All advertising shall be displayed in a neat and workmanlike manner. The CONTRACTOR shall maintain all displayed advertising to insure its neat appearance, and promptly remove all advertising that is torn or otherwise unsightly in appearance. The CONTRACTOR shall submit a list of sign material and procedures to be utilized in sign production for bus signs.

CONTRACTOR further agrees that as space is available, to allow the placement of public service announcements at no cost or at a reduced rate to the public service provider in accordance with any applicable federal, state and local laws.

If, in the CITY'S discretion, the replacement, moving or removal of any sign, sign carrier or application is desired, the CONTRACTOR will cause the same to be replaced, moved or removed at the CITY'S written request and at the CONTRACTOR'S expense.

## **II. NUMBER OF BUSES AND SERVICE AREA**

The term "buses", as used in this Agreement, shall mean all buses now and hereinafter at any time during the term of this Agreement, either directly or indirectly owned or operated as a common carrier by the CITY within the Municipal Transit Utility service area.

The CITY anticipates the operation of a bus fleet of 19 vehicles identified in Exhibit B, entitled, "MTU FLEET INFORMATION," during the term of this Agreement. It also is anticipated that such buses will be operated as shown on the attached Exhibit C, "TRANSIT SERVICE INFORMATION." The CITY shall annually notify the CONTRACTOR of: total route miles which its buses have operated over the past calendar year, the actual number of active buses in its fleet, its plans for the acquisition of new buses, and any proposed significant changes in service.

## **III. CHARGES AND CONDITIONS**

### **A. Income Guarantee:**

#### Year 4

In consideration of the exclusive advertising privileges granted herein, the CONTRACTOR agrees to pay the CITY 50% of monthly gross revenues less than or equal to \$3,500. Gross monthly revenues greater than \$3,500 will be shared 40% by MTU and 60% by the contractor, with a minimum guarantee of \$3,416.66 per month payable on the last day of the month from November 1, 2017 to October 31, 2018.

#### Year 5

In consideration of the exclusive advertising privileges granted herein, the CONTRACTOR agrees to pay the CITY 50% of monthly gross revenues less than or equal to \$3,500. Gross monthly revenues greater than \$3,500 will be shared 40% by MTU and 60% by the contractor, with a minimum guarantee of \$3,416.66 per month payable on the last day of the month from November 1, 2018 to October 31, 2019.

In the event that the CITY reduces the sum of the total of the daily route miles for all regular routes and all special weekly routes, as shown on the above-referenced forms, for 60 consecutive days by more than ten per cent (10%), it shall notify the CONTRACTOR who shall have ten (10) days in which to notify the CITY of its desire to renegotiate this agreement. If the parties to this agreement are not able to reach a new agreement within thirty (30) days from the time the CITY receives the notification that the CONTRACTOR wishes to renegotiate the contract, the CONTRACTOR may immediately declare this agreement null and void and this agreement shall become null and void as of the last day of the preceding calendar month.

### **B. Security Deposit**

To guarantee payment of the rental charge herein, the CONTRACTOR shall provide a certified check, a payment bond, or irrevocable Letter of Credit in favor of the CITY and approved as to form by the CITY'S Attorney in the sum of not less than \$5,000.00 which shall be maintained at all times during the term of this Agreement.

**C. Contractor / City Relationship:**

It is expressly understood and agreed that the CITY shall not be construed or held to be a partner, associate or joint venturer of the CONTRACTOR in the conduct of its business and that the CONTRACTOR shall at all times have the status of an independent contractor, without the right or authority to impose tort or contractual liability upon CITY.

**D. Contract Termination:**

If in the event to CONTRACTOR shall breach the terms of this Agreement to the CITY at the times or in the amount described above or by failing to comply with any other terms of this Agreement, then the CITY may, at its option, terminate and cancel this Agreement by mailing written notice of termination and cancellation to the CONTRACTOR, at any time after such breach shall remain uncorrected for more than fifteen (15) days after the CITY has mailed a written notice thereof to the CONTRACTOR in the manner hereinafter described, and cause this Agreement to be terminated on any date which is more than thirty (30) days after the mailing of written notice of such cancellation and termination to the CONTRACTOR, without any liability to the CONTRACTOR on the part of the CITY.

For the purpose of any provision of this Agreement, neither the CONTRACTOR nor the CITY shall be considered in breach of default of its obligations with respect of their obligations prescribed in the Agreement in the event of the non-performance of such obligations due to unforeseeable causes beyond its control including, but not restricted to acts of God, acts of the public enemy, acts of the Federal Government, fires, floods, epidemics, quarantine restrictions, strikes, embargoes and unusually severe weather or delays of subcontractors due to such causes, provided that the party committing the non-performance shall have first notified the other parties thereof and of the cause or causes thereof.

**E. Non-discrimination Clause:**

In connection with the performance of work under this Agreement, the CONTRACTOR agrees not to discriminate against any employee or applicant for employment because of sex, race, religion, color and national origin or ancestry, age, handicap, marital status, source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation or political beliefs.

**G. City Indemnified:**

The CONTRACTOR shall indemnify the CITY and the City of La Crosse, Wisconsin, its officers, agents and employees, against and hold them harmless from all claims and demands by third persons arising out of damage or injury to persons or property resulting from the tortuous acts or omissions of the CONTRACTOR or its employees or resulting from any breach or default by the CONTRACTOR of any of the obligations or duties assumed by or imposed upon such CONTRACTOR by this Agreement.

**H. Contractor Insurance:**

CONTRACTOR agrees to maintain and keep in force during the term of this Agreement liability and property damage insurance issued by a responsible insurance company in a form acceptable to the Attorney for the CITY for the protection of the CITY and the City of La Crosse against liabilities, judgments, causes, damages and expenses which may accrue, against, be charged to or recovered by reason of damage to the property of any person, injury to or death of any person or persons on account of any act of the CONTRACTOR in the amount of \$500,000 with respect to one person and \$1,000,000 with respect to one accident or occurrence and \$300,000 with respect to property damage. CONTRACTOR shall provide in addition advertising or copyright insurance naming the CITY and the City of La Crosse as additional insured in the sum of not less than \$1,000,000 to be maintained at all times during the term of this Agreement. Certificates of insurance naming the CITY and the City of La Crosse, Wisconsin, as additional insured shall be provided before execution of the concession agreement.

**I. Federal & State Required Clauses**

The CONTRACTOR will be required to comply with all terms and conditions prescribed for third party contractors as prescribed in current grant contracts between the City of La Crosse and FTA and WISDOT and set forth in Appendix A & B of the RFP dated March 28, 2014. Grant contracts are available for inspection at the office of the Transit Manager by appointment.

**J. Notice:**

A notice, demand or other communication under this Agreement by any party to any other party shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested or delivered personally to:

1. In the case of the CONTRACTOR:

JUSTIN HOUCK, PRESIDENT, HOUCK MOTOR BUS  
ADVERTISING, 4610 MILTON STREET NORTH, ST. PAUL  
MINNESOTA, 55126.

2. In the case of the CITY:

JAMES KRUEGER JR., INTERIM MANAGER  
MUNICIPAL TRANSIT UTILITY  
2000 MARCO DR  
LA CROSSE WI 54601

**K. Other Provisions:**

1. This Agreement shall be deemed to have been made in the State of Wisconsin and the laws of the State of Wisconsin shall govern its validity, construction, performance breach and operation. No provision of this Agreement shall be construed to require the CITY to take any action in violation of law. No right or remedy conferred hereunder is exclusive of any other right or remedy, but each such right or remedy is cumulative and in addition to any other right or remedy under or by law provided, and may be exercised without exhausting and without regard to any other such right or remedy. No waiver by the CONTRACTOR or CITY of any defect shall affect any subsequent default or breach of duty or contract or shall impair the exercise of any right or remedy accruing upon any default or the exercise thereof, nor shall it be construed as a waiver of any such default or breach of duty or contract or acquiescence therein. Failure of the CONTRACTOR or CITY to insist upon the strict performance of any of the terms, covenants or conditions here to be performed by CONTRACTOR shall not be deemed a waiver of any rights or remedies which the CONTRACTOR or CITY shall have and shall not be deemed a waiver of any subsequent default of any such terms, conditions and covenants to be performed by CONTRACTOR. Every right or remedy conferred herein upon the CONTRACTOR or CITY or by law may be enforced and exercised as often as the CONTRACTOR or CITY may deem expedient.
2. This Agreement is subject to the original Terms and Conditions outlined in the RFP dated May 28, 2014 and incorporated herein.
3. All provisions of this Agreement shall be subject to the applicable provisions of law governing the conduct of CITY business and the appropriation, borrowing and expenditure of City Funds. If any term or provision of this Agreement, or any exhibit thereto, or the application thereto to any person or circumstance, shall, to any extent, be invalid, unlawful or otherwise unenforceable, the remainder of this Agreement and exhibits, or the application of such term or provisions to the persons or circumstances other than those as to which it is invalid, unlawful or otherwise unenforceable shall not be affected thereby and every other term and provision of this agreement shall be valid and be enforced to the fullest extent permitted by law.
4. Whenever under this Agreement bids and/or proposals, authorizations, determinations, satisfactions or waivers are authorized or required, such approvals, authorizations, determinations satisfactions or waivers shall be effective and valid only when given in writing, by the officers of the CITY authorized by law to give such approval and delivered to the party to whom it is directed at the address specified hereunder.
5. This Agreement may be executed in any number of counterparts, each of which shall constitute an original.

6. This Agreement may be supplemented or amended only by written instrument executed by the parties affected by such supplement or amendment.
7. This Agreement shall inure to the benefit of and be binding upon the parties hereto.
8. If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected thereby, and such remainder shall continue to exist in compliance with the requirements of all applicable laws.
9. The parties hereto certify that all conditions precedent to the valid execution and delivery of this Agreement on their respective parts have been complied with, that all things necessary to constitute this Agreement are valid, binding, and legal, and that the execution and delivery of this Agreement and its respective parts has been in all respects authorized in accordance with law.

IN WITNESS WHEREOF, THE CITY HAS CAUSED THIS AGREEMENT TO BE DULY EXECUTED ON ITS BEHALF BY ITS PRESIDENT AND ATTESTED BY THE CITY CLERK THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2017; AND THE CONTRACTOR HAS CAUSED THIS AGREEMENT TO BE DULY EXECUTED ON ITS BEHALF BY ITS PRESIDENT AND SECRETARY, THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2017, AND ITS CORPORATE SEAL TO BE HEREUNTO AFFIXED ALL TO BE EFFECTIVE AS OF THE DATE FIRST ABOVE WRITTEN.

WITNESS:

**LA CROSSE MUNICIPAL TRANSIT UTILITY**

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\_\_\_\_\_  
Mayor Tim Kabat

\_\_\_\_\_

\_\_\_\_\_  
Teri Lehrke, City Clerk

**HOUCK MOTOR COACH ADVERTISING**

WITNESS:

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\_\_\_\_\_  
Justin Houck  
Houck Motor Coach Advertising

**A. Information for Contractors:**

**1. Fleet Information:**

The MTU system provides fixed-route public mass transportation service throughout the City of La Crosse. Service is also provided under contract to the City of La Crescent, MN, and part of the City of Onalaska, and to the Town of Campbell. In support of this service, MTU operates a fleet of 19 full-size transit buses. The fleet currently consists of the following vehicles:

<u>Year</u>	<u>Make</u>	<u>Model</u>	<u>Size</u>	<u>Quantity</u>
2001	GILLIG	Low Floor	35'x 102''	4
2002	GILLIG	Low Floor	35'x 102''	7
2007	GILLIG	Low Floor	35'x 102''	5
2013	GILLIG	Low Floor	35'x 102''	3

**2. Exterior Advertisement Space:**

Buses are equipped to accommodate exterior advertising signs as follows:

Please note: Some buses have frames and some have no frames and require vinyl sign application.

- Eleven (11) 2001/2002 GILLIG Low-Floor Buses  
(Bus numbers 1101 – 1111)
  - 30" x 144" street side frame
  - 30" x 89" curb side frame
  - 21" x 72" rear frame
  - 17" x 31" front bike rack frame
- Four (4) 2007 GILLIG Low-Floor Buses (bus numbers 1202 - 1205)
  - 30" x 144" street side vinyl
  - 30" x 89" curb side vinyl
  - 21" x 72" rear vinyl
  - 17" x 31" front bike rack frame
- One (1) 2007 GILLIG Low-Floor Bus (bus number 1201)
  - 30" x 144" street side frame
  - 30" x 89" curb side frame
  - 21" x 72" rear frame
  - 17" x 31" front bike rack frame
- Three (3) 2007 GILLIG Low-Floor Buses (bus numbers 1301- 1303)
  - 30" x 144" street side vinyl

- 30" x 89" curb side vinyl
- 21" x 72" rear vinyl
- 17" x 31" front bike rack frame

- Additionally, advertising space using direct application vinyl material on MTU buses is available. The terms of such advertising shall be negotiated on a case by case basis.

**3. Interior Advertisement Space:**

All buses are equipped with interior advertising card racks above the windows which will accommodate standard 11" X 28" cards.

**B. Transit Service Information:**

**Regular Routes:**

The La Crosse Municipal Transit Utility operates thirteen (13) buses on thirty/sixty minute headways on regular routes during daytime hours Monday through Friday. Five (5) buses operate on sixty minute headways during weekday evenings and weekends. The hours of service are shown below:

Monday – Friday	5:10 AM – 10:40 PM
Saturday	7:40 AM – 7:40 PM
Sunday	7:40 AM – 6:40 PM

No service is provided on the following holidays; New Year's Day, Memorial Day, 4<sup>th</sup> of July, Labor Day, Thanksgiving, and Christmas.

In 2014 regular route buses are scheduled to operate 187 revenue hours and 2,612 revenue miles each weekday, 77 hours and 962 miles on Saturdays, and 62 hours and 770 miles on Sundays. Regular routes are scheduled to operate a total of 55,222 revenue hours and 763,901 revenue miles in 2014.

Current routes and service area can be found on the city web site: [cityoflacrosse.org](http://cityoflacrosse.org)

**Ridership data for the La Crosse Municipal Transit Utility is as follows:**

Year	Ridership
2007	1,043,403
2008	1,179,771
2009	1,161,648
2010	1,194,884
2011	1,255,407
2012	1,223,180
2013	1,223,280