

AGREEMENT FOR TRANSIT ADVERTISING

THIS AGREEMENT is made, executed, and entered into effective the 1st day of April 2021 by and between **THE CITY OF MINOT, NORTH DAKOTA**, a municipal corporation, hereinafter referred to as “City” and ZZ Food Group, LLC, DBA JL Beers hereinafter referred to as “Contractor”.

Section 1 - Recitals

City and Contractor agree that this Agreement herein is made in accordance with the following recitals:

Subsection A. City is the owner of certain transit vehicles which operate as part of the Minot area transit system and desires to allow Contractor, to utilize said transit vehicles for the purpose of exterior display of advertising materials in accordance with the terms and conditions set forth herein.

Subsection B. City and Contractor agree that the performance of this Agreement is necessarily contingent upon continued federal, state and local funding of City’s operation of transit vehicles as a part of the Minot area transit system.

Subsection C. City and Contractor agree that it is mutually advantageous for them to set forth their respective obligations and agreements in their entirety in writing in this Agreement.

Section 2 - Term

The contract shall be for an initial term of **three (3) years commencing on April 1, 2021 and continuing for a period of thirty-six (36) months**, at which time may be renewed, year by year upon agreement of both parties.

Section 3 - Advertising Fee

City and Contractor agree that the fee for Contractor advertising on the City’s transit vehicles shall be determined in accordance with the following.

Subsection A - Fee The Contractor agrees to pay to the City \$650/month/Bus for the thirty six-month term of the contract, for advertising utilized on both sides of one transit bus in the City of Minot, based on the fee structure outlined in Appendix #2 and based upon the fleet inventory, as the same may change from time to time. The current fleet inventory as of the effective date of this agreement is attached as Appendix #3.

Payments shall be made monthly. The City shall provide an invoice by the 15th of each month with payment due no later than the last day of that month. All payments shall be

made to City at the following address: **Public Works Department, City of Minot, PO Box 5006, Minot, ND 58702** and shall specify by reference that said payment is applicable to the Transit Department. The obligation of Contractor to make payments shall be absolute and unconditional in all events notwithstanding any dispute between City and Contractor or between Contractor and any other person or entity. Contractor shall make all payments required hereunder when due and shall not withhold any payment pending final resolution of such dispute nor shall Contractor assert any right of set off or counterclaim against its obligation to make such payments.

Contractor shall be responsible for any damages to the buses due to wrap installation or removal as per Section 15 of this agreement.

Subsection B - Suspension of Work. In the event of a temporary service interruption for more than two (2) weeks by fifty percent (50%) or more of City's buses by reason of a labor dispute, fire, act of God, or other public emergency, the payments shall be reduced proportionately for the period of service interruption.

Section 4 - Conditions

City and Contractor agree that Contractor shall be allowed to utilize the City's transit vehicles under this Agreement for the purpose of exterior display of advertising materials to the following conditions:

Subsection A - Advertisement Subject to Approval. The size, form, wording, illustration, and style of all advertisements to be placed on City's transit vehicles pursuant to this Agreement shall at all times be subject to the advance approval of the City, and the City reserves the right to reject any advertisement. Any advertisement of an objectionable character which is placed in or on a transit vehicle shall be immediately removed by Contractor at the request of the City at the expense of Contractor. City and Contractor hereby agree to certain restrictions as to advertising and a list of preapproved advertisers which are set forth in Appendix #1 which is attached to and incorporated by reference in this Agreement as if set forth in full. It is agreed between City and Contractor that this Appendix may from time to time be amended by the City at City's sole and exclusive discretion.

Subsection B - Advertising Space. City shall make available to Contractor exterior space for the purpose of displaying advertising wraps. Should there remain advertising space which is unsold; the City may utilize this space for public spirited messages which expense shall be borne by the City or the party displaying the message. If the City does not use the unused space for public spirited messages, Contractor may use the space for public spirited messages which expense shall be borne by Contractor or the party displaying the message. This contract shall not apply to advertising within the interior of the bus and the City retains all rights with respect to such interior advertising or advertising on any other exterior portions of the bus. The City also retains all rights with respect to exterior advertising on buses not utilized by the Contractor as per this contract.

The Contractor at the sole and exclusive expense of the Contractor shall install any vinyl wrap advertising on the bus. No part of said wrap can cover the side or front destination signs, or any windows or mirrors utilized by the driver including, specifically, rear windows on paratransit vehicles and windows on the front door and the first window on the passenger loading side next to the front door on fixed-route buses. Any vinyl wraps placed over side windows of the bus must allow passengers to be able to clearly see out the windows. The City has the right to request the vinyl wrap be removed or adjusted to provide access to areas of the bus for safety and maintenance purposes. Any bus wrap or advertisement that covers or obscures view of City identified information or transit information must include such information on the wrap. Bus wraps shall not be placed over any mechanical apparatus or access in such a way that it would limit the function of that item or access to it. For mechanical access panels, doors, fluid caps, et cetera, any advertising application must be cut out in such a way that the access panels are easily accessible.

All advertisements shall be maintained by the Contractor to retain a pleasant, neat and clean appearance. The City may request the Contractor to repair or replace advertisements that the City deems to be unkempt, peeling, faded or the like. Any repairs or replacements will be scheduled within two (2) weeks of receipt of a written request from the City, such repairs or replacements shall be at the sole and exclusive expense of the Contractor. Contractor will endeavor to promptly remove dated advertisements, such as ads for events that have expired or already occurred. Repairs will be made by Contractor or their agent at the City of Minot Public Works Bus Department.

Subsection C - Access to Vehicles. For the purposes of ad placement, the Contractor shall be provided access to transit vehicles at the City's garage facility during reasonable hours, based on fleet availability to meet route service. The Contractor is required to give the City garage personnel at least three (3) days advance notice of the date, bus unit number, and number of hours needed for ad placement.

Subsection D - Ownership of Bus Wrap Material. Upon termination of the agreement, or upon expiration of the term of this agreement, any bus wrap material shall immediately revert to the ownership of the City or be removed by Contractor within ten (10) working days.

Subsection E – Condition of Advertising Wrap. If it is determined by the Minot Transit Superintendent that the bus wrap has deteriorated to a condition that requires the wrap to be repaired or replaced the advertising client (ZZ Food Group, LLC) may either:

- 1) Replace the wrap at the advertising client's expense and sign a 3-year (36 month) contract extension.
- 2) Be allowed to terminate the current contract without fee or penalty.

Section 5 - Default

If either party hereto shall default in the performance of any of the terms and conditions of this Agreement, then the other party may terminate this Agreement by giving the defaulting party a written notice of intention to terminate thirty (30) days in advance of the actual date of termination. Upon termination of this Agreement, as provided for herein, only upon request of the City the defaulting party shall immediately remove all advertising placards and wraps placed on City's transit vehicles pursuant to this Agreement from such vehicles, and, on the failure of the defaulting party promptly to remove such placards and wraps, the party terminating this Agreement may remove them at the expense of the defaulting party.

Section 6 - Termination

All advertising contracts between the Contractor and City will expire thirty-six months from the time the advertisement is first available on the transit bus unless renewed prior to this time. Contracts may also be terminated if the following arise:

Subsection A - Insufficient Federal, State, or Local Funding. City shall have the right to terminate this Agreement in the event the City Council of the City of Minot determines at any time insufficient federal, state, or local funding exists for the City to operate its transit vehicles as part of the Minot area transit system.

Subsection B - Legal Impossibilities/Regulatory Prohibition. City shall have the right to terminate this Agreement in the event the City Council of the City of Minot determines at any time not to operate transit vehicles as part of the Minot area transit system due to legal impossibilities or regulatory prohibitions imposed by state or federal agencies or commission.

Subsection C - Best Interest of City. City shall have the right to terminate this Agreement in the event the City Council of the City of Minot determines at any time that it is not in the best interest of the City to operate its transit vehicles as part of the Minot area transit system.

Section 7 - Compliance with Laws and Regulation

Contractor accepts this Agreement subject to all federal, state and municipal laws and regulations with respect to the advertising matter to be displayed. In the event such advertising becomes illegal or a request is received to terminate the advertising from any federal, state or local agency or commission, City reserves the right to terminate same.

Section 8 - Indemnification

Contractor agrees to indemnify and save harmless the City from and against all liability, damages, penalties, judgments, or claims of whatever nature arising from injury to person or

property sustained by anyone arising out of Contractor's utilization of City's transit vehicles for displaying advertising materials, including claims for infringement of trademarks, trade names, copyrights, invasion of rights of privacy, defamation, illegal competition or unfair trade practices. City shall defend, indemnify and hold Contractor harmless against any liability from any cause whatsoever arising from or relating to acts performed by the City's prior advertising contractor, including without limiting the generality thereof, such damage or loss resulting from advertising contracts whose term exceeded the City's contract to past, current or potential advertisers; defectively installed bus wraps and damage to any transit vehicle.

Section 9 - Assignment

Contractor shall not by operation of law or otherwise assign any of its obligations, duties, or responsibilities under this Agreement to any other person, party or entity without City's prior written consent in each instance.

Section 10 - Successors and Assigns

City and Contractor agree that this Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties there in any statutes, regulations, ordinances, City Code provisions, or City Charter provisions applicable thereto.

Section 11 - Written Notices of Other Correspondence

Any written notice or other correspondence to be provided by or between the City and Contractor in accordance with this Agreement shall be either hand delivered or mailed by registered or certified mail to the following addresses:

City: City of Minot – Public Works
 Dan Jonasson, Director of Public Works
 PO Box 5006
 515 2nd Ave. SW
 Minot, ND 58702

Contractor: ZZ Food Group, LLC DBA JL Beers

Section 12 - Waiver of Default

Any waiver by City or Contractor of a default under the provisions of this Agreement shall not operate or be construed as a waiver of a subsequent default. No waiver shall be valid unless reduced to writing and signed by each of the parties.

Section 13 - Invalidity of Provisions

If any term or provision of this Agreement or any application hereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement

or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected hereby and each term and provision of the Agreement shall be valid and be enforced to the fullest extent permitted by law.

Section 14 - Entire Agreement

This Agreement herein contains the entire and only agreement between the City and Contractor and no oral statements or representations or prior written matter not contained in this Agreement shall have any force or effect. This Agreement shall not be modified in any way except in writing executed by both City and Contractor.

Section 15 - Damages

Contractor shall be responsible for any damage to buses from installation or removal of wraps, such as but not limited to paint removed or damaged, windows and rubber gaskets cut or damaged or any current striping or lettering on the existing buses.

In the event of an accident or incident that causes damage to the Contractor's advertising material it shall be the sole responsibility of the Contractor to repair or replace the advertising materials at their cost. At no time shall the City be responsible to incur any costs for any damages to the Contractors advertising material.

Section 16 - Governing Law

This Agreement shall be governed by the provisions hereof and by the laws of the State of North Dakota, as the same from time to time exists.

IN WITNESS WHEREOF, the undersigned hereto have set their hands as of the day and year first above written.

CITY OF MINOT:

By _____

Shaun Sipma, Mayor

Attest _____

Kelly Matalka, City Clerk

CONTRACTOR:

ZZ Food Group, LLC dba JL Beers

By _____

Jesse Zwak

APPENDIX #1

The following types of advertising will specifically not be permitted:

1. Political, religious, moral, or social issues.
2. Hygiene products of a very personal nature.
3. Sexual overtone messages (x-rated movies, massage parlors, etc.)
4. Direct or overt anti-transit advertisements.
5. Advertising found to be in violation of federal, state, or local laws

The following is a pre-approved listing of potential advertisers:

1. St. Alexius and its affiliates
2. Jessica Declercq, State Farm Insurance
3. Educational messages.

APPENDIX #2

FEES PAID TO THE CITY

The first payment of \$650.00 for the first month of the contract period should be made by the last day of that month and all subsequent monthly fees should be paid to the City by the last day of the each month for the twelve-month term of the contract.

APPENDIX #3

FLEET INVENTORY

The following listed buses are available for use under this contract as of the effective date of this agreement. This list may be amended from time to time by the City of Minot.

MINOT

List of Available Inventory

<u>Vehicle Description</u>	<u>License Plate #</u>	<u>Year/Make/Model</u>
EIDorado	G17293	2010 EZ Rider II
EIDorado	G17294	2010 EZ Rider II
EIDorado		2014 EZ Rider II
EIDorado		2015 EZ Rider II
EIDorado		2018 EZ Rider II