

INDEPENDENT CONTRACTOR AGREEMENT
TRANSIT ADVERTISING SALES PLACEMENT SERVICES FOR
WEBB COUNTY AGUILA TRANSIT FLEET

WHEREAS, Webb County provides public transportation services through El Aguila and desires to generate revenue by advertising on the buses operated by El Aguila; and

WHEREAS, Hachar Bus Ads is in the business of soliciting and placing advertisements on buses; and

WHEREAS, the Commissioners Court finds the said Agreement would generate revenues for Webb County by contracting with Hachar Bus Ads to solicit and secure advertising contracts as agreed to below; and

NOW THEREFORE it is mutually agreed between Webb County and Hachar Bus Ads as follows:

This Agreement ("Agreement") is entered into as of _____, 2024 between Webb County, a political subdivision of the State of Texas (for the benefit of the Webb County Aguila Transit System)(hereinafter collectively referred to as "Webb County" or "County") and Hachar Bus Ads. ("Contractor").

1. Documents

- a. The following documents (collectively, "Contract Documents") are hereby incorporated into and made part of this Agreement.
 - 1. Schedule of Services ("Services") and duties to be performed by Contractor. the total amount of compensation for said Services and duties, and compensation provisions and schedule (if any) (Exhibit A).

2. Scope of Services

- a. Contractor shall perform the Services as specified in the Contract Documents and under the general direction of Webb County. Unless otherwise specified herein Contractor and County agree that the scope of work is a description of Contractor's obligations and responsibilities, and is deemed to include preliminary considerations and prerequisites, and all labor, materials, equipment, and tasks which are integral and inseparable part of the work described in the Contract Documents; to the exclusion of which would render performance by Contractor impractical, illogical or unconscionable.
- b. The Contractor will perform such Services in a diligent and workmanlike manner consistent with industry standards and in accordance with the schedule, if any, set forth in the Contract Documents.
- c. By signing this Agreement, the Contractor represents that it has thoroughly reviewed the Contract Documents incorporated into this Agreement by reference and that it accepts the description of the Work and the conditions under which the Work is to be performed and completed.

3. Independent Contractor; Personnel

- a. Contractor enters into this Agreement as an independent contractor. All Services shall be performed only by Contractor and Contractor's employees. Under no circumstances shall Contractor, or any of Contractor's employees, look to Webb County as his/her employer, or as a partner, agent or principal. Neither Contractor nor any of Contractor's employees shall be entitled to any benefits accorded to Webb County employees, including without limitation worker's compensation, disability insurance, vacation or sick pay. Contractor shall be responsible for providing, at Contractor's expense, and in Contractor's name, unemployment, disability, worker's compensation, and other insurance, as well as any and all licenses and permits usual or necessary for conducting the Services contemplated herein. Contractor shall be responsible for paying all applicable local, state, and federal taxes.
- b. Contractor represents and warrants to Webb County that its employees performing Work hereunder will have sufficient expertise, training, licensure (if applicable), and experience to accomplish the Services.
- c. Contractor shall not subcontract any portion of the work required by this Agreement, except as provided in the Contract Documents. Webb County may terminate this Agreement, effective immediately, if there is any assignment, or attempted assignment, transfer, or encumbrance, by Contractor of this Agreement or any right or interest herein without Webb County's written consent. In the event the Contractor engages any subcontractor in the performance of this Agreement, the Contractor shall ensure that all of the Contractor's subcontractors perform in accordance with the terms and conditions of this Agreement. Contractor shall be fully responsible for all of the Contractor's subcontractors' performance, and liable for any of the Contractor's subcontractors' non-performance and all of the Contractor's subcontractors' acts and omissions.

4. Discrimination. No one will, on the grounds of race, creed, color, national origin, disability, age, sexual orientation or gender be subject to discrimination in the performance of this Agreement.

5. Advertisements. The Contractor agrees, binds itself, and guarantees Webb County to follow the Advertising Policy set out below:

- a. Webb County places the following restrictions on all advertising placed on its equipment and facilities displaying advertising. These Standards for Acceptable Advertising apply to all advertisements, announcements, or any other display for goods or services on Webb County buses, including:
 - 1.commercial advertising,
 - 2.advertising by non-profit and governmental entities, and
 - 3.Public Service Announcements.
- b. Webb County will not accept ad material, announcements, or any other display for goods or services on Webb County Buses that are:

1. False, misleading or deceptive;
 2. Clearly defamatory or likely to hold up to scorn or ridicule a person or group of persons;
 3. Obscene or pornographic;
 4. In advocacy of imminent lawlessness or violent action;
 5. Promoting alcohol or tobacco products;
 6. Political advertisements or ads that advocate for an issue, candidate, political fundraising, political position or changes to public policy.
- c. Webb County reserves the right to approve all advertising, exhibit material, announcements, or any other display and their manner of presentation **prior to installation**. Electronic versions or hard copies of proposed ads should be provided to the Webb County Director (“Director”) of the Webb County Community Action Agency (“CAA”) prior to ad production. Reasonable proof or clarification of statements contained in any advertisement, exhibit material, announcement, or any other display may be required by the Director of the before approval. Determinations of the acceptability of ads will be initially made by the Director.
- 6. Appeal Process for Denial of Advertising.**
- a. When an advertisement is not accepted by the Director of CAA then an individual, firm, and/or organization presenting the advertisement shall be notified of the decision by letter from the Director, informing the individual, firm, or organization of their right to appeal the decision to the Webb County Commissioners Court.
 - b. A firm and/or organization may appeal the decision of the Commissioners Court on the acceptability of any ad and shall be submitted to the Commissioners Court by and through the Director of the CAA at a regular or special commissioners court meeting. The decision of the Webb County Commissioners Court shall be final.
- 7. Reserved Interior Space for Public Service Announcements.**
- a. Up to 15% of the interior space of each bus shall be reserved by Webb County for Public Service Announcements.
- 8. Term of Agreement.**
- a. The initial contract period shall commence upon Webb County Commission approval and shall end on September 30, 2024, With the option for two (2) additional one (1) year terms. The continuation of this Agreement beyond the end of such fiscal year shall be subject to both the appropriation and the availability of funds, Webb County will notify the Contractor of its determination, in writing, at least ninety (90) days before the end of the base term or option term.
- 9. Record Retention/Audit.**

- a. Harchar Bus Ads shall retain records of all contracts, receipts, and invoices for 5 years after this contract is either terminated or for 5 years after this Agreement has been termed; whichever is later. Webb County reserves the right and Contractor shall allow review of all records related to this Agreement by either the Webb County Auditor or Webb County's designee.

10. Compensation.

- a. The Contractor shall pay Webb County Fifty Percent (50%) of collected gross sales revenue. Gross sales revenue is defined as collected revenue before expenses. The contractor will provide payment to Webb County through the El Aguila Transit System on a quarterly basis along with backup files and documentation detailing revenue and contracts. Webb County is allowed to audit all contractor accounting records related to this contract at its convenience. All payments shall be made payable to **Webb County, Texas** with "Bus Ad. Contract" written in the Memorandum/Notes when payment is remitted.

11. Insurance.

- a. The Contractor shall furnish proof of insurance requirements as indicated below. The coverage is to remain in force at all times during the contract period. The following minimum insurance coverage is required. The commercial general liability insurance policy shall name Webb County, Texas, as an "additional insured." Any costs for adding the County as an additional insured" shall be at the Contractor's expense.
- b. Webb County shall be given notice ten (10) days prior to cancellation or modification of any required insurance. The insurance provided shall be endorsed or amended to comply with this notice requirement. In the event that the insurer is unable to accommodate, it shall be the responsibility of the Contractor to provide the proper notice. Such notification will be in writing by registered mail, return receipt requested, and addressed to the Procurement Services Division.
- c. The Contractor's insurance must be provided by an A.M. Best, rated "A-" or better insurance company that is authorized to issue insurance policies in the State of Texas, subject to approval by Webb County Department of Safety and Risk Management. Any exclusions or provisions in the insurance maintained by the Contractor that exclude coverage for work contemplated in this Agreement shall be deemed unacceptable and shall be considered a breach of contract.

1. Workers' Compensation and Employers' Liability Insurance

Minimum Limits Consistent with Texas Worker's Compensation Act (Section 401):

1. \$100,000 bodily injury each accident
2. \$500,000 bodily injury by disease policy limit
3. \$100,000 Bodily injury by disease each employee

Any firm performing work for or on behalf of Webb County must provide Workers Compensation insurance.

2. Commercial General Liability Insurance

1. Covering premises operations, products-completed operations, independent contractors, and contractual liability.
2. Limits: Combined single limit bodily injury/property damage \$1,000,000.00.
3. This coverage must include, but not limited to:
 - a. Coverage for the liability assumed by the contractor under the indemnity provision of the contract.
 - b. Coverage for Premises/Operations
 - c. Products/Completed Operations
 - d. Broad Form Contractual Liability
 - e. Independent Contractors

3. Automobile Liability Insurance

Covering all owned, hired and non-owned automobile equipment.

Limits: Bodily Injury	\$250,000 each person. \$500,000 each occurrence
Property damage	\$100,000 each occurrence

12. Termination

- a. **Termination for Cause.** The aggrieved party may terminate this Agreement for cause if the Company in breach has not corrected the breach within thirty (30) days after written notice from the aggrieved party identifying the breach. Webb County may also terminate this Agreement upon such notice as Webb County deems appropriate under the circumstances in the event that Webb County determines that termination is necessary to protect the public health or safety. This Agreement may be terminated for cause for reasons including, but not limited to, Contractor's repeated (whether negligent or intentional) submission for payment of false or incorrect bills or invoices, failure to perform the Work to Webb County satisfaction; or failure to continuously perform the work in a manner calculated to meet or accomplish the objectives as set forth in this Agreement.
- b. **Termination Without Cause.** Webb County may terminate this agreement without cause provided that Webb County provides 60 days' notice of its intent to terminate this Agreement. Any contracts the Contractor has entered into with individuals or entities shall remain effective until the end of their initial term or renewal term of the advertising contract. No other contracts may be entered into at the time of notice is received by the Contractor.

1. For purposes of this section, advertising contracts shall mean active contracts to advertise on Webb County Buses that the Contractor.
 2. Exercising the right to terminate without cause by Webb County shall not permit the Contractor to withhold or refuse to pay the negotiated fees that the County is to be paid according to this Agreement.
- c. Force Majeure.** The County and Contractor will be excused from the performance (“Excuse of Performance”) of their respective obligations under this Agreement when and to the extent that their performance is delayed or prevented by any circumstances beyond their control including, fire, flood, explosion, strikes, or other labor disputes, act(s) of God, public emergency, war, riot, civil commotion, malicious damage, act or omission of any governmental authority, delay, failure, or shortage of any type of transportation, equipment, or service from a public utility needed for their performance, provided that:
1. The non-performing party gives the other party prompt written notice describing the particulars of the Force Majeure including, but not limited to, the nature of the occurrence and its expected duration, and continues to furnish timely reports with respect thereto during the period of the Force Majeure:
 1. The Excuse of Performance is of no greater scope and of no longer duration than is reasonably necessary when considered in light of the Force Majeure;
 2. No obligations of either party that arose before the Force Majeure causing the Excuse of Performance are excused as a result of the Force Majeure; and
 3. The non-performing party uses its best efforts to remedy its inability to perform.
 2. Notwithstanding the above, performance shall not be excused under this Section for a period in excess of sixty (60) days, provided that in extenuating circumstances, the County may excuse performance for a longer term. Economic hardship of the Contractor will not constitute Force Majeure. The term of the agreement shall be extended by a period

13. Materiality and Waiver of Breach.

- a. Webb County and Contractor agree that each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement and that each is, therefore, a material term hereof. Webb County failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

14. Miscellaneous Provisions.

- a. Successors and Assigns.** All of the provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, if any, successors, and assigns.
- b. Choice of Law.** The laws of the state of Texas shall govern the validity of this Agreement, the construction of its terms, and the interpretation of the rights and duties of the parties hereto.
- c. No Waiver of Governmental Immunity.** NOTHING IN THIS SECTION SHALL BE CONSTRUED TO WAIVE THE COUNTY'S GOVERNMENTAL IMMUNITY FROM LAWSUIT, WHICH IMMUNITY IS EXPRESSLY RETAINED TO THE EXTENT IT IS NOT CLEARLY AND UNAMBIGUOUSLY WAIVED BY STATE LAW.
- d. Assignment.** Contractor shall not assign any of Contractor's rights under this Agreement, or delegate the performance of any of Contractor's duties hereunder, without the prior written consent of Webb County.
- e. Modification or Amendment.** No amendment, change or modification of this Agreement shall be valid unless in writing signed by all the parties hereto.
- f. Venue.** This Agreement and any and all matters arising directly or indirectly here from shall be governed by and construed and enforced in accordance with the Laws of the State of Texas, with the State Courts of Webb County, Texas having jurisdiction.
- g. Dispute.** If at any time there is a dispute between or among the Parties with respect to any matter arising directly or indirectly from this Agreement (an "Agreement Matter"), the Parties agree that, prior to seeking judicial remedy, they will engage in face-to-face negotiations in an attempt to resolve such dispute and shall, upon failing to negotiate a mutually-satisfactory resolution, choose a mutually agreeable neutral third party to mediate such dispute. Mediation shall be non-binding and shall be confidential.
- h. Notices.** Any and all notices, demands, or other communications required or desired to be given hereunder by any party shall be in writing and shall be validly given or made to another party if personally served, or if deposited in the United States mail, certified, or registered, postage prepaid, return receipt requested. If such notice or demand is served personally, notice shall be deemed constructively made at the time of such personal service. If such notice, demand or other communication is given by mail, such notice shall be conclusively deemed given five calendar days after deposit thereof in the United States mail addressed to the party for whom such notice, demand, or other communication is to be given as follows:

If to Contractor:

**Hachar Bus Ads
4100 San Bennardo Ave., Suite E-7
Laredo, Texas 78041**

If to Webb County:

**Webb County
Re: Hachar Bus Ad's Agreement Aguila
1000 Houston St. 3rd Floor
Laredo, Texas 78040**

- i. Copyright, Trademarks, Original Works, AI-Generated Works and Patents.** The Contractor represents and warrants that he/she has the rights to create advertisements and shall warrant to Webb County that the Contractor shall not and will not violate any copyright, trademarks, original works, Artificial intelligence ("AI")-generated works, and/or patents when performing its contractual duties under this Agreement. The Contract further represents and warrants that he/she has the right to utilize and distribute the designs created for the customers that will be placed on County Buses and that such designs are not owned by anyone else to the Contractor's knowledge. In the event that the Contractor does not have these rights, the Contractor will repay any associated damages the County may experience or the Contractor will take responsibility for such violation so that the County does not experience any loss or damages.
- j. Delay, Loss, Damages.** Webb County shall not be responsible for any loss in revenues or profits if a bus that has been contracted to have an advertisement is inoperable for any reason. This paragraph shall be required to be placed on advertising contracts that are secured by Hachar Bus Ads for advertisements on Webb County buses. As such Hachar Bus Ads shall include language in contracts with customers seeking to advertise that notifies the customer that there is a possibility that a bus may become inoperable and/or incapable of being driven.
- k. Headings.** The headings used herein are for convenience of reference only and shall not constitute a part hereof or affect the construction or interpretation hereof.
- l. Terminology and Definitions.** All personal pronouns used herein, whether used in the masculine, feminine, or neutral, shall include all other genders; the singular shall include the plural, and the plural shall include the singular.
- m. Rule of Construction.** The parties hereto acknowledge that each party and its legal counsel have reviewed and revised this agreement, and the parties hereby agree that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this agreement or any amendments or exhibits hereto.
- n. Entire Understanding.** This document and Exhibit A attached hereto constitute the entire understanding and agreement of the parties, and any and all prior agreements, understandings, and representations are hereby terminated and canceled in their entirety and are of no further force and effect.
- o. Unenforceability of Provisions.** If any provision of this Agreement, or any portion thereof, is held to be invalid and unenforceable, then the remainder of this Agreement shall nevertheless remain in full force and effect; unless the unenforceable provision changes the subject matter of this Agreement. In such an

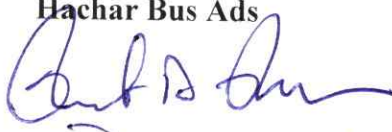
event both parties will negotiate in good faith to reconcile the change required by law and the intent of this Agreement.

15. Disclosure. Contractor is required to immediately or timely, as the case may be, disclose to Webb County and Appropriate Texas State Agency the following:

- a.** If any Person who is an employee or director of Contractor is required to register as a lobbyist under Texas Government Code Chapter 305, at any time during the term hereof, Contractor shall provide Webb County and the appropriate State Agency timely copies of all reports filed with the Texas Ethics Commission as required by Chapter 305;
- b.** If any Person who is an employee, Sub-Service Provider, or director of Contractor is or becomes an elected official (i.e., an elected or appointed state official or member of the judiciary, or a United States congressman or senator), during the term hereof;
- c.** Report any actions or citations by federal, state, or local governmental agencies that may affect Contractor or Subcontractor licensure status or its ability to provide services hereunder.

IN WITNESS WHEREOF the undersigned have executed this Agreement as of the day and year first written above.

[Signature Page Follows]

Harchar Bus Ads	Date
	3.01.2024
<u>ROBERT D. HARCHAR</u>	<u>MARCH 01, 2024</u>
CEO – President	

WEBB COUNTY	Date
_____	_____
Tano E. Tijerina Webb County Judge	

ATTESTED:

Margie Ramirez-Ibarra
Webb County Clerk

APPROVED AS TO FORM:

Jorge L. Treviño, Jr.
Assistant General Counsel
Civil Legal Division
The General Counsel, Civil Legal Division's Office may only advise or approve contracts or legal documents on behalf of its clients. It may not advise or approve a contract or legal document on behalf of other parties. Our review of this document was conducted solely from the legal perspective of our client. Our approval of this document was offered solely for the benefit of our client. Other parties should not rely on this approval, and should seek review and approval of their own respective attorney(s).

Passed and approved by the Webb County Commissioners Court
On 2024 item No.