

## **PARKING RAMPS ADVERTISING AGREEMENT**

This Parking Ramps Advertising Agreement (the "Agreement"), dated as of \_\_\_\_\_, 2005, is by and between the City of Madison, a Wisconsin municipal corporation (the "City") and Adams Outdoor Advertising Limited Partnership, a Minnesota limited partnership ("Contractor").

### **WITNESSETH:**

**WHEREAS**, the City desires to hire an experienced company to sell and manage advertising services for spaces within City-owned parking ramps; and

**WHEREAS**, the City desires to engage Contractor to provide advertising services, and Contractor agrees to provide advertising services on behalf of the City;

**NOW, THEREFORE**, in consideration of the mutual promises contained herein, the City and Contractor agree as follows:

### **I. SCOPE OF SERVICES**

#### **1.1 Services by Contractor**

Contractor shall sell and manage advertising services for the City's Parking Utility in accordance with the terms of this Agreement. Contractor shall install, maintain, repair, modify and reconstruct, as necessary, visual advertising ("Signs") in spaces set aside for this purpose in existing City-owned parking ramps (the "Parking Ramps"). Contractor shall also undertake and administer all accounting, sales and billing required in the selling of the advertising. A list of the Parking Ramps is attached hereto as Exhibit A. The number of Parking Ramps in which Signs may be installed may increase or decrease during the term of this Agreement due to City disposal of existing ramps or construction of new ramps. New Parking Ramps shall automatically be included under this Agreement upon the City Traffic Engineer and Contractor agreeing, in writing, upon the number, location and size of Signs to be installed in any new ramp.

#### **1.2 Restrictions on Signs**

It is Contractor's duty to ensure that all Signs placed in the Parking Ramps comply with the Madison Parking Utility Policy on Leased Advertising Space currently in effect and as amended from time to time (the "Policy"). A copy of the Policy is attached hereto as Exhibit B and incorporated herein. The Policy provides that the City will accept all copy, graphics and photos except those which are obscene, libelous, fraudulent or those which advertise tobacco, tobacco-related products or alcohol products. Any Sign which may interfere with the safe

operation of the Parking Ramps or with the placement or safe operation of City equipment is strictly prohibited. Signs that contain flashing lights, sound markers, mirrors or other special effects are prohibited. Changeable Message signs will be approved by the City Traffic Engineer on a case by case basis. The determination as to whether any Sign violates the Policy or interferes with the safe operation of the Parking Ramps shall be within the sole discretion of the City's Traffic Engineer or his/her designee.

It shall be Contractor's responsibility to forward to the City for approval any advertisement that might violate one or more of the restrictions listed in the Policy. Contractor will remove, within two (2) working days of receiving verbal notice, at its own expense, any Sign found by the City to violate the Policy or this Agreement. Contractor, immediately upon verbal notice by the City, shall remove any Sign which interferes with the safety of the general public or of Parking Utility employees. The City reserves the right to remove any Sign which is an immediate safety hazard without advance notification to Contractor.

### 1.3 Installation of Signs

Contractor is responsible for installation and removal of all Signs. Installation of Signs may occur at any time. The location of Signs within each Parking Ramp shall be designated by the City Traffic Engineer or his/her designee. All Contractor activities relating to the installation and removal of Signs shall be undertaken and conducted so as not to interfere with safe and orderly parking operations by the City.

It shall be Contractor's responsibility to supply, at its own expense, any bolts, frames, brackets, or other equipment required to install the Signs. It shall be Contractor's duty to ensure that all Signs are designed and installed so as to fit safely and securely into the surface provided. It shall be the obligation of Contractor to remove any such Signs, if installed in error, and any damaged or deteriorated Signs which interfere with public safety.

### 1.4 Lighting of Advertising

The Contractor shall be responsible for lighting any advertisements which in their determination require lighting. The Contractor will be required to install electrical conduit with power service to an electrical service meter. This service meter is the responsibility of the Contractor. Electricity purchased as determined by the meter will be the responsibility of the Contractor.

The Contractor will be responsible for all costs associated with the engineering, designing, locating, permitting, construction and maintenance of the electrical service. No

electrical work will be located or done without the approval of the City Traffic Engineer or his/her designee.

Any electrical conduit or service installed in a ramp and found to be in conflict with any current or future Utility operation will be removed or relocated at the Contractor's expense.

#### 1.5 Maintenance and Repair

All Signs installed by or on behalf of Contractor in the Parking Ramps shall at all times be and remain the property of Contractor. Contractor agrees to maintain the Signs in good repair and to promptly replace any damaged Sign or clean any Sign marred by graffiti. Damaged signs or signs marred by graffiti shall be replaced or cleaned within twenty-four (24) hours of Contractor receiving verbal notice from the City Traffic Engineer or his/her designee. Damaged sign casings or fixtures shall be replaced or repaired within forty-eight (48) hours of Contractor receiving verbal notice from the City Traffic Engineer or his/her designee.

#### 1.6 Public Service Signs

The City and the Contractor reserve the right to provide free advertising space to non-profit organizations and units of government in those parking ramp locations which are not sold to advertisers by the Contractor. Such non-profit advertising (the "Public Service Signs") shall be selected and approved by the Contractor, with guidance from the City Traffic Engineer or his/her designee, and installed and maintained in accordance with the Policy. Any production costs or expenses associated with the Public Service Signs shall be the expense of the non-profit and/or units of government and not the City or the Contractor.

## **II. COMPENSATION**

#### 2.1 Monthly Revenues

Contractor shall pay to the City on or before the 20<sup>th</sup> day of each calendar month compensation in the amount \$4,166.67 (the "Monthly Cash Guarantee") which represents one-twelfth (1/12) of the Annual Cash Guarantee for the number, size and location of Signs proposed in Exhibit A attached hereto. The first payment of the Monthly Cash Guarantee shall be due on the 20th day of the second month after the placement of the second Sign listed on Exhibit A is installed and powered. The final payment will be the greater of the following less previous payments made for the calendar year: the Annual Cash Guarantee of \$50,000.00 or 25 percent (25%) of the gross billings (minus agency commissions) when such amount exceeds the Annual Cash Guarantee. Contractor agrees to pay the City the Monthly Cash Guarantee each month even if Contractor sells less advertising space than is designated on Exhibit A. If Contractor sells advertising space in any Parking Ramp over and above the square footage listed on Exhibit A,

and if Contractor sells advertising space in a new Parking Ramp, the Monthly Cash Guarantee shall increase by \$4.26 for each square foot of additional advertising space sold. Such increase shall be effective and charged to Contractor on the date each additional Sign is installed.

## 2.2 Free Parking Provision

The City of Madison shall provide the Contractor a mechanism that allows for free passage in and out of the parking ramps. These cards will be used to maintain the Parking Ramp Advertising structures, but also allow the Contractor the ability to show and sell the product to their prospective clientele.

### **III. TERM AND TERMINATION**

#### 3.1 Term

Unless terminated earlier in accordance with Sections 3.2 or 3.3, the term of this Agreement shall be five (5) years, commencing upon the date set forth on page 1. This Agreement may not be renewed.

#### 3.2 Termination

This Agreement shall terminate upon the earliest to occur of the following: (a) the expiration of the term; (b) at the election of either party to terminate, upon 180 days prior written notice to the other party; or (c) upon either party's election to terminate following an Event of Default as defined in Section 3.3.

#### 3.3 Default

Any of the following events shall constitute an "Event of Default" under this Agreement:

a. if a party shall become insolvent, or become the subject of any bankruptcy, insolvency or similar proceeding, which has not been terminated, stayed, or dismissed within sixty (60) business days after its was commenced;

b. if any material representation made under this Agreement shall have been materially false or misleading, when made; or

c. if a party shall default in the payment or performance of any obligation under this Agreement and such nonpayment or nonperformance shall continue for thirty (30) days after the non-breaching party has provided written notice to cure.

#### 3.4 Remedies

Following an Event of Default, the party not in default may exercise one or more of the following remedies:

- a. Terminate this Agreement in which event Contractor shall, at its sole expense, cause the removal of the Signs and the restoration of the Parking Ramps to their pre-installation condition;
- b. Cure the Event of Default and obtain reimbursement from the other party;
- c. Sue for damages resulting from the Event of Default;
- d. Exercise any other remedy available at law or in equity.

#### **IV. INSURANCE AND INDEMNIFICATION**

##### **4.1 Insurance**

a. Contractor will insure, and will require each subcontractor to insure, as indicated, against the following risks to the extent stated:

i. Worker's Compensation and Employer's Liability: Securing compensation for the benefit of the employees of Contractor and the employees of each subcontractor, as required by Wisconsin Worker's Compensation Law.

ii. Commercial General Liability: Covering as insured Contractor and naming the City as an additional insured, with no less than the following limits of liability: bodily injury, death and property damage of \$1,000,000 in the aggregate. This policy shall also be endorsed for contractual liability in the same amount. Any subcontractor shall maintain a similar policy covering as insured each subcontractor.

iii. Automobile Liability: Covering as insured Contractor and naming the City as an additional insured, with no less than the following limits of liability: \$1,000,000 combined single limits for bodily injury, and property damage. Any subcontractors shall maintain a similar policy covering as insured each subcontractor. This policy shall apply only to personal, company and rental cars used by Contractor or any subcontractors in conjunction with the scope of work activities outlined in this Agreement.

b. All policies shall contain an endorsement providing that written notice shall be given to the City at least thirty (30) days prior to termination, cancellation or reduction in coverage in the policy. Notices shall be given to the City by registered mail, return receipt requested. All coverage afforded shall apply as primary with the City, its boards, commissions, agents, officers, employees and representatives named as additional insured. All notices shall name Contractor and identify the Agreement.

In the event that the insurance coverages required herein are not maintained, the City shall have the right, in addition to any other remedies, to terminate this Agreement even if this Event of Default has been remedied at the time or receipt of the City's notice of cancellation of the coverage.

c. The foregoing requirements as to types and limits of insurance coverage to be maintained by Contractor are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by Contractor pursuant to this Agreement, including but not limited to Contractor's liability pursuant to Section 4.2 below.

#### 4.2 Indemnification

Contractor shall be liable to and hereby agrees to indemnify, defend and hold harmless the City, its officers, agents, officials and employees from and against all loss or expense, including liability costs and attorneys' fees, by reason of any claim or suit, or of liability imposed by law upon the City or its agents or employees for damages because of bodily injury, including death at any time resulting therefrom, sustained by any person or persons or on account of damages to property, including loss of use thereof, arising from, in connection with, caused by or resulting from Contractor's and subcontractor's acts or omissions in the performance of this Agreement, whether caused by or contributed by the City or its agents or employees.

### **V. GENERAL TERMS**

#### 5.1 Records and Reports

Contractor shall, without charge to the City, maintain such records and make such reports to the City regarding the services provided hereunder as the City may reasonably require from time to time during the term of the Agreement. Contractor shall, without charge to the City, make such records available for inspection and copying by the City at any time during normal business hours.

#### 5.2 Notices

All notices, certificates or other communications under the Agreement shall be sufficiently given and shall be deemed given when personally delivered or when mailed by first class mail postage prepaid with proper addresses indicated below. The City and Contractor may, by written notice given by each to the other, designate any address or addresses to which notices, certificates or other communications to them shall be sent when required as contemplated herein. Until otherwise provided by the respective parties, all notices, certificates and communications to each of them shall be addressed as follows:

TO THE CITY: The City of Madison, Wisconsin  
Attention: David C. Dyer, City Traffic Engineer  
215 Martin Luther King, Jr. Blvd., Room 100  
Madison, WI 53703

COPY TO: The City of Madison, Wisconsin  
Attn: Michael P. May, City Attorney  
210 Martin Luther King Jr. Blvd., Room 401  
Madison, WI 53703

TO CONTRACTOR: Randall F. Romig, Vice President of Real Estate  
Adams Outdoor Advertising  
2802 Paces Ferry Road SE Suite 200  
Atlanta, Georgia 30339

COPY TO: Chris J. Eigenberger, General Manager  
Adams Outdoor Advertising  
102 East Badger Road  
Madison, Wisconsin 53713

### 5.3 Binding Effect

This Agreement shall inure to the benefit of and shall be binding upon the City and Contractor and their respective successors and assigns.

### 5.4 No Assignment

This Agreement may not be assigned by Contractor, in whole or in part, without the express prior written approval of the City.

### 5.5 Severability

In the event any provision of the Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holdings shall not invalidate or render unenforceable any other provision.

### 5.6 Amendments, Changes and Modifications

Except as otherwise provided herein, the Agreement may not be effectively amended, changed or modified by the City or Contractor except by written amendment approved and executed by the City and Contractor.

### 5.7 Counterparts

The Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

#### 5.8 Choice of Law

This Agreement shall be governed by and construed and interpreted in accordance with the laws of the State of Wisconsin.

#### 5.9 No Waiver

No failure to exercise, and no delay in exercising, any right, power or remedy hereunder on the part of the City or Contractor shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy. No express waiver shall affect any event or default other than the event or default specified in such waiver, and any such waiver, to be effective, must be in writing and shall be operative only for the time and to the extent expressly provided by the City or Contractor therein. A waiver of any covenant, term or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition.

#### 5.10 Non-Discrimination

In the performance of work under this Agreement, Contractor agrees not to discriminate against any employee or applicant for employment because of race, religion, marital status, age, color, sex, handicap, national origin or ancestry, income level or source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, political beliefs or student status. Contractor further agrees not to discriminate against any subcontractor or person who offers to subcontract on this Agreement because of race, religion, color, age, disability, sex, or national origin.

#### 5.12 Compliance with Applicable Laws

Contractor shall become familiar with, and shall at all times comply with and observe all federal, state, and local laws, ordinances, and regulations which in any manner affect the services or conduct of Contractor and its agents and employees.



IN WITNESS WHEREOF, the parties hereto have caused this Parking Ramps Advertising Agreement to be duly executed as of the date written above.

**ADAMS OUTDOOR ADVERTISING  
LIMITED PARTNERSHIP  
a Minnesota limited partnership**

\_\_\_\_\_  
Contractor

By: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**CITY OF MADISON**  
a Wisconsin municipal corporation

By: \_\_\_\_\_  
David J. Cieslewicz, Mayor

Attest: \_\_\_\_\_  
Ray Fisher, City Clerk

**APPROVED:**

\_\_\_\_\_  
Dean Brassler  
City Comptroller

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Michael P. May  
City Attorney

The Agreement was authorized by Resolution No. 61921, ID No. 36722, adopted by the Common Council on September 21, 2004.

**EXHIBIT A**

<b>RAMP NAME</b>	<b>PROPOSED ADVERTISEMENTS</b>	<b>TOTAL SQ. FT.</b>	<b>MONTHLY CASH GUARANTEE</b>	<b>ANNUAL CASH GUARANTEE</b>
Capitol Square North	11	184	\$ 783.75	\$ 9,405
Civic Center	12	210	\$ 894.58	\$10,735
Government East	6	118	\$ 502.92	\$ 6,035
State Street Capitol	10	186	\$ 792.50	\$ 9,510
State Street Campus (Lake Street)	4	60	\$ 255.42	\$ 3,065
State Street Campus (Frances St.)	13	220	\$ 937.50	\$11,250
<b>TOTAL</b>		978	\$4,166.67	\$50,000

**EXHIBIT B**

***MADISON PARKING  
UTILITY***

**POLICY ON LEASED ADVERTISING SPACE**

Prepared by  
Madison Parking Division

ADOPTED BY THE TRANSIT AND PARKING COMMISSION 6/8/04

## I. INTRODUCTION

The purpose of this policy is to establish guidelines for the interior vertical surface advertising in Madison Parking Utility Ramps. The Transit and Parking Commission is responsible for the adoption of this advertising policy and any amendments.

### REASONS FOR ACCEPTING ADVERTISING:

#### **Paid Advertising**

Madison leases paid advertising space on the interior of its ramps in order to raise revenues for the Parking Utility system.

#### **Free Advertising**

Madison provides free space to not-for-profit organizations (see Appendix A). The City recognizes that many public service ads support worthy causes that improve life in the community.

## II. POLICY ON USE OF PARKING UTILITY ADVERTISING SPACE

Madison's policy is to restrict advertising as little as possible while still responding to operational safety concerns.

### ADVERTISING RESTRICTIONS:

#### **Paid Advertising**

##### *Copy Standards*

The Parking Utility will accept all copy, graphics and photos except those that are obscene, libelous, or fraudulent. The Parking Utility will not accept any advertisements for tobacco, tobacco related products and alcohol products in the advertising space provided in the ramps operated by the City of Madison.

##### *Medium Restrictions*

Any advertising that might interfere with safe, timely, convenient operation of the ramps or safety of ramp users or the general public will not be allowed in the ramps. This includes advertising that contains flashing lights, sound makers, mirrors and other special effects. Distribution of flyers, prizes, and the like as an advertising medium is prohibited under Madison's policy on distribution and collection of information (Reference MGO 3.14(2)(f)).

##### *Responsibility for Compliance*

The firm responsible for selling advertising space in the ramps will be notified of these standards and restrictions. It will be that firm's responsibility to forward to the Parking Utility for approval any advertisement that might violate one or more restrictions. Furthermore, the firm will promptly remove any already-posted advertisement found to violate a restriction.

#### **Free Advertising**

Madison may provide free advertising space to non-profit organizations and units of government as defined in Appendix A for public service ads subject to the following conditions:

##### *General Regulations and Procedures*

Existing advertising space will be available for public service ads subject to the demand for paid advertising space. The actual distribution of these spaces will be at the Parking Utility's discretion. Public service ads will be placed for at least 30 days. Continuation of an ad for more than 30 days will

be approved only if there is no public service or paid ads waiting to be placed. Public service ads may be removed at any time if the space has been sold to a paying advertiser.

A non-profit organization or unit of government that wants to place public service ads must provide the printed advertisement at its own expense. The ads must conform to the Utility's standards for size, weight and other physical characteristics. The organization must also pay for the installation and removal. It is the organization's responsibility to deliver and reclaim ads in a timely fashion.

### ***Copy Standards for Free Public Service Advertising***

- The ad must be directed toward promoting an organization's services to the community or a substantial segment of the community. Ads that are for internal promotion (e.g., honoring employees) or are designed primarily for the benefit of an organization (e.g., soliciting donations) are not eligible for free space. The ad is required to bear the following legend if the sponsor is not readily or easily identifiable from the content or copy of the proposed advertisement: "This message is sponsored by \_\_\_\_\_."
- Ads which promote partisan political activity (e.g., campaign ads or party fund-raisers) or which advocate positions on political issues are not eligible for free space.
- All free ads also must comply with the copy standards set forth on Page 1 in this policy for paid advertising.

### ***Medium Restrictions***

- All free ads must comply with the medium restrictions set forth for paid advertising.

## **III. IMPLEMENTATION AND APPEAL PROCESS**

The City Traffic Engineer or Mayoral designee will designate the staff person responsible for approving paid advertisements, approving eligible not-for-profit organizations and public service advertisements.

The firm responsible for selling advertising space in the ramps may appeal the designated staff person's decision on the acceptability of any paid ad by contacting the City Traffic Engineer or Mayoral designee. The City Traffic Engineer's or Mayoral designee's decision may be appealed at the next regular meeting of the Transit and Parking Commission. This appeal must be in writing to the City Traffic Engineer or Mayoral designee, who will schedule the appeal before the Transit and Parking Commission. The decision of the Transit and Parking Commission may be appealed to the Common Council in accordance with the Madison General Ordinances.

An organization may appeal the designated staff person's decision either with respect to that organization's not-for-profit status or the eligibility of an ad for free space by contacting the City Traffic Engineer or Mayoral designee. The City Traffic Engineer's or Mayoral designee's decision may be appealed at the next regular meeting of the Transit and Parking Commission. This appeal must be in writing to the City Traffic Engineer or Mayoral designee, who will schedule the appeal before the Transit and Parking Commission. The decision of the Transit & Parking Commission may be appealed to the Common Council in accordance with the Madison General Ordinances.

When an advertisement is not accepted, the firm and/or organization presenting the advertisement shall be notified of the appeals procedure in writing. At any point in the appeals process, a decision may be made to refer the decision on the advertisement directly to the Transit and Parking Commission.

## APPENDIX A

Not-for-Profit Organization means an organization exempted from Federal taxes under Section 501(c)(3) of the Internal Revenue Code, neighborhood associations or other community organizations with a primary civic purpose or a unit of government. Section 501(c)(3) describes a not-for-profit organization as:

“Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation [except as otherwise provided in subsection (h)], and which does not participate in, or intervene in (including the publishing or distributing of statement), any political campaign on behalf of any candidate for public office.”