

AGREEMENT FOR BUS WRAP DISPLAY ADVERTISING ON SUNTRAN BUS

THIS AGREEMENT is entered into by and between the **CITY OF OCALA**, a Florida municipal corporation ("City") and **HEART OF FLORIDA HEALTH CENTER, INC.**, a not-for-profit corporation duly organized and authorized to do business in the state of Florida (EIN: 59-3060378) ("Advertiser").

RECITALS

WHEREAS, The City of Ocala is the administrative agency for the Ocala/Marion County public transit system known as SunTran; and,

WHEREAS, the Heart of Florida Health Center, Inc., a non-profit corporation, submitted an offer to advertise on a SunTran bus, and said offer was reviewed and accepted by City staff.

NOW THEREFORE, in consideration of the matters set forth above (which are incorporated herein by reference), the parties hereto agree as follows:

TERMS OF AGREEMENT:

1. **RECITALS.** City and Advertiser hereby represent, warrant and agree that the Recitals set forth above are true and correct and are incorporated herein by reference.
2. **CONTRACT DOCUMENTS.** The Contract Documents which comprise the entire understanding between City and Contractor shall only include: (a) this Agreement; (b) those documents listed in this section as Exhibits to this Agreement; (c) the City's solicitation for bus wrap display advertising; and (d) the Advertiser's response to same. Each of these documents are incorporated herein by reference for all purposes.

A. **Exhibits to Agreement:** The Exhibits to this Agreement are as follows:

Exhibit A: Scope of Work (A-1)

Exhibit B: Specifications for Non-Removable Signs and Decals (B-1 through B-7)

Exhibit C: SunTran Advertising Policy (C-1)

If there is a conflict between the individual Exhibits regarding the scope of work to be performed, then any identified inconsistency shall be resolved by giving precedence in the following order: (1) Exhibit C, then (2) Exhibit B, then (3) Exhibit A.

3. **SERVICES.** City will provide **ONE (1)** SunTran bus for installation of bus wrap display advertising. Advertiser is responsible for the design, production, and installation of the wrap in accordance with the SunTran Advertising Policy as described in **Exhibit C – SunTran Advertising Policy**, and in accordance with **Exhibit A – Scope of Work** and **Exhibit B – Specifications for Non-Removable Signs and Decals**. The design, production, and installation cost of the bus wrap is not included in the monthly advertising cost. Advertiser is responsible for these separate expenses, which includes wrap removal at the conclusion of the contract term.

4. **COMPENSATION.** Advertiser shall pay to City **ELEVEN THOUSAND AND NO/100 DOLLARS (\$11,000)**, payable in monthly installments of **NINE HUNDRED SIXTEEN AND 67/100 DOLLARS (\$916.67 per month)** for the **12-MONTH** consecutive advertising term.

The monthly installments of \$916.67 will commence after final installation of the bus wrap and shall continue until the balance of \$11,000 is paid in full. Advertiser will be considered in default for failure to submit timely payments.

5. **TERM & TERMINATION.** This Agreement shall begin on **JULY 1, 2022** and terminate at the end of the business day on **JUNE 30, 2023**.

If the bus is inoperable for any reason during the contract term, this Agreement shall be extended for an equivalent length of time. If either party defaults in the performance of this Agreement or materially breaches any of its provisions, the non-defaulting party may, at its option, terminate this Agreement by giving written notification thereof to the other party. Termination of this Agreement shall have no effect upon the rights of the parties that accrued prior to termination.

6. **REMEDIES.** If any Event of Default occurs, City shall have the right, at its sole option, to pursue all remedies available at law or equity, including the termination of this Agreement and all rights of Advertiser hereunder. Notwithstanding City's termination of this Agreement, Advertiser shall remain liable to City for all claims and damages, costs or attorneys' fees arising prior to such termination.

7. **INDEPENDENT CONTRACTOR STATUS.** City expressly acknowledges the Advertiser is an independent contractor. Nothing in this Agreement is intended, nor shall be construed, to create an agency relationship, a partner or partnership, an employer/employee relationship, a joint venture relationship, or any other relationship allowing the City to exercise control or discretion over the manner or method by which Advertiser performs hereunder.

8. **ACCESS TO FACILITIES.** City will provide Advertiser with access to one (1) SunTran bus for purposes of installing the initial wrap advertising.

9. **ASSIGNMENT.** Neither party may assign this Agreement or the rights and obligations thereunder to any third party without the prior express written approval of the other party, which shall not be unreasonably withheld.

10. **NON-EXCLUSIVITY.** Nothing herein is intended nor shall be construed as creating any exclusive arrangement with Advertiser. This Contract shall not restrict City from acquiring similar, equal or like goods and/or services, or executing additional contracts from other entities or sources.

11. **PUBLIC RECORDS.** The Advertiser shall comply with all applicable provisions of the Florida Public Records Act, Chapter 119, Florida Statutes. Specifically, the Advertiser shall:

- A. Keep and maintain public records required by the public agency to perform the service.

- B. Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
- C. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Advertiser does not transfer the records to the public agency.
- D. Upon completion of the contract, transfer, at no cost, to the public agency all public records in possession of the Advertiser or keep and maintain public records required by the public agency to perform the service. If the Advertiser transfers all public records to the public agency upon completion of the contract, the Advertiser shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Advertiser keeps and maintains public records upon completion of the contract, the Advertiser shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the public agency, upon request from the public agency's custodian of public records, in a format that is compatible with the information technology systems of the public agency.

IF THE ADVERTISER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE ADVERTISER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: CITY OF OCALA, OFFICE OF THE CITY CLERK; 352-629-8266; E-mail: clerk@ocalafl.org; City Hall, 110 SE Watula Avenue, Ocala, FL 34471.

- 12. **TAX EXEMPTION.** City is exempt from all federal excise and state sales taxes (State of Florida Consumer's Certification of Exemption 85-8012621655C-9). The City's Employer Identification Number is 59-60000392. Advertiser doing business with City will not be exempted from paying sales tax to its suppliers for materials to fulfill contractual obligations with the City, nor will Advertiser be authorized to use City's Tax Exemption Number for securing materials listed herein.
- 13. **AUDIT.** Advertiser shall comply and cooperate immediately with any inspections, reviews, investigations, or audits relating to this Agreement as deemed necessary by the Florida Office of the Inspector General, the City's Internal or External auditors or by any other Florida official with proper authority.
- 14. **PUBLICITY.** Advertiser shall not use City's name, logo, seal or other likeness in any press release, marketing materials, or other public announcement without City's prior written approval.

15. **CONFLICT OF INTEREST.** Advertiser must have disclosed with the submission of its bid, the name of any officer, director, or agent who may be employed by the City. Advertiser must disclose the name of any City employee who owns, directly or indirectly, any interest in Advertiser or any affiliated business entity. Any additional conflicts of interest that may occur during the contract term must be disclosed to the City of Ocala Procurement Department.
16. **WAIVER.** The failure or delay of any party at any time to require performance by another party of any provision of this Agreement, even if known, shall not affect the right of such party to require performance of that provision or to exercise any right, power or remedy hereunder. Any waiver by any party of any breach of any provision of this Agreement should not be construed as a waiver of any continuing or succeeding breach of such provision, a waiver of the provision itself, or a waiver of any right, power or remedy under this Agreement. No notice to or demand on any party in any circumstance shall, of itself, entitle such party to any other or further notice or demand in similar or other circumstances.
6. **FORCE MAJEURE.** Neither party shall be liable for delay, damage, or failure in the performance of any obligation under this Agreement if such delay, damage, or failure is due to causes beyond its reasonable control, including without limitation: fire, flood, strikes and labor disputes, acts of war, acts of nature, terrorism, civil unrest, acts or delays in acting of the government of the United States or the several states, judicial orders, decrees or restrictions, or any other like reason which is beyond the control of the respective party ("Force Majeure"). The party affected by any event of force majeure shall use reasonable efforts to remedy, remove, or mitigate such event and the effects thereof with all reasonable dispatch.
- A. The party affected by force majeure shall provide the other party with full particulars thereof including, but not limited to, the nature, details, and expected duration thereof, as soon as it becomes aware.
- B. When force majeure circumstances arise, the parties shall negotiate in good faith any modifications of the terms of this Agreement that may be necessary or appropriate in order to arrive at an equitable solution. Performance shall be extended for a number of days equal to the duration of the force majeure. The affected party shall be entitled to an extension of time only and, in no event, shall the affected party be entitled to any increased costs, additional compensation, or damages of any type resulting from such force majeure delays.
17. **SEVERABILITY OF ILLEGAL PROVISIONS.** Wherever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under the applicable law. Should any portion of this Agreement be declared invalid for any reason, such declaration shall have no effect upon the remaining portions of this Agreement.
18. **INDEMNITY.** Advertiser shall indemnify City and its elected officials, employees and volunteers against, and hold City and its elected officials, employees and volunteers harmless from, all damages, claims, losses, costs, and expenses, including reasonable attorneys' fees, which City or its elected officials, employees or volunteers may sustain, or which may be asserted against City or

its elected officials, employees or volunteers, arising out of the activities contemplated by this Agreement including, without limitation, harm or personal injury to third persons during the term of this Agreement to the extent attributable to the actions of Advertiser, its agents, and employees.

19. **NO WAIVER OF SOVEREIGN IMMUNITY.** Nothing herein is intended to waive sovereign immunity by the Parties to which sovereign immunity may be applicable, or of any rights or limits of liability existing under Florida Statute § 768.28. This term shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until any proceeding brought under this Agreement is barred by any applicable statute of limitations.

20. **NOTICES.** All notices, certifications or communications required by this Agreement shall be given in writing and shall be deemed delivered when personally served, or when received if by facsimile transmission with a confirming copy mailed by registered or certified mail, postage prepaid, return receipt requested. Notices can be concurrently delivered by e-mail. All notices shall be addressed to the respective parties as follows:

If to Advertiser:

Heart of Florida Health Center, Inc.
Attn: Heather James, PR/Marketing Director
2553 E. Silver Springs Boulevard
Ocala, Florida 34470
Phone: 352-877-7142
E-mail: heather.james@myhfhc.org

If to City of Ocala:

Contracting and Procurement Department
Daphne M. Robinson, Contracting Officer
110 SE Watula Avenue, 3rd Floor
Ocala, Florida 34471
Phone: 352-629-8343 Fax: 352-690-2025
E-mail: notices@ocalafl.org

Copy to:

Robert W. Batsel Jr.
Gooding and Batsel, PLLC
1531 SE 36th Avenue
Ocala, Florida 34471
Phone: 352-579-6539
Email: rbatsel@lawyersocala.com

21. **ATTORNEYS' FEES.** If any civil action, arbitration or other legal proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any provision of this Agreement, the successful or prevailing party shall be entitled to recover reasonable attorneys' fees, sales and use taxes, court costs and all expenses reasonably incurred even if not taxable as court costs (including, without limitation,

all such fees, taxes, costs and expenses incident to arbitration, appellate, bankruptcy and post-judgment proceedings), incurred in that civil action, arbitration or legal proceeding, in addition to any other relief to which such party or parties may be entitled. Attorneys' fees shall include, without limitation, paralegal fees, investigative fees, administrative costs, sales and use taxes and all other charges reasonably billed by the attorney to the prevailing party.

22. **JURY WAIVER.** IN ANY CIVIL ACTION, COUNTERCLAIM, OR PROCEEDING, WHETHER AT LAW OR IN EQUITY, WHICH ARISES OUT OF, CONCERNS, OR RELATES TO THIS AGREEMENT, ANY AND ALL TRANSACTIONS CONTEMPLATED HEREUNDER, THE PERFORMANCE HEREOF, OR THE RELATIONSHIP CREATED HEREBY, WHETHER SOUNDING IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, TRIAL SHALL BE TO A COURT OF COMPETENT JURISDICTION AND NOT TO A JURY. EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY. NEITHER PARTY HAS MADE OR RELIED UPON ANY ORAL REPRESENTATIONS TO OR BY ANY OTHER PARTY REGARDING THE ENFORCEABILITY OF THIS PROVISION. EACH PARTY HAS READ AND UNDERSTANDS THE EFFECT OF THIS JURY WAIVER PROVISION.
23. **GOVERNING LAW.** This Agreement is and shall be deemed to be a contract entered and made pursuant to the laws of the State of Florida and shall in all respects be governed, construed, applied and enforced in accordance with the laws of the State of Florida.
24. **JURISDICTION AND VENUE.** The parties acknowledge that a majority of the negotiations, anticipated performance and execution of this Agreement occurred or shall occur in Marion County, Florida. Any civil action or legal proceeding arising out of or relating to this Agreement shall be brought only in the courts of record of the State of Florida in Marion County or the United States District Court, Middle District of Florida, Ocala Division. Each party consents to the exclusive jurisdiction of such court in any such civil action or legal proceeding and waives any objection to the laying of venue of any such civil action or legal proceeding in such court and/or the right to bring an action or proceeding in any other court. Service of any court paper may be effected on such party by mail, as provided in this Agreement, or in such other manner as may be provided under applicable laws, rules of procedures or local rules.
25. **REFERENCE TO PARTIES.** Each reference herein to the parties shall be deemed to include their successors, assigns, heirs, administrators, and legal representatives, all whom shall be bound by the provisions hereof.
26. **MUTUALITY OF NEGOTIATION.** Advertiser and City acknowledge that this Agreement is a result of negotiations between Advertiser and City, and the Agreement shall not be construed in favor of, or against, either party because of that party having been more involved in the drafting of the Agreement.

27. **SECTION HEADINGS.** The section headings herein are included for convenience only and shall not be deemed to be a part of this Agreement.
28. **RIGHTS OF THIRD PARTIES.** Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or because of this Agreement on any persons other than the parties hereto and their respective legal representatives, successors and permitted assigns. Nothing in this Agreement is intended to relieve or discharge the obligation or liability of any third persons to any party to this Agreement, nor shall any provision give any third persons any right of subrogation or action over or against any party to this Agreement.
29. **AMENDMENT.** No amendment to this Agreement shall be effective except those agreed to in writing and signed by both parties to this Agreement.
30. **COUNTERPARTS.** This Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute the same instrument.
31. **ELECTRONIC SIGNATURE(S).** Advertiser, if and by offering an electronic signature in any form whatsoever, will accept and agree to be bound by said electronic signature to all terms and conditions of this Agreement. Further, a duplicate or copy of the Agreement that contains a duplicated or non-original signature will be treated the same as an original, signed copy of this original Agreement for all purposes.
32. **ENTIRE AGREEMENT.** This Agreement, including exhibits, (if any) constitutes the entire Agreement between the parties hereto with respect to the subject matter hereof. There are no other representations, warranties, promises, agreements or understandings, oral, written or implied, among the Parties, except to the extent reference is made thereto in this Agreement. No course of prior dealings between the parties and no usage of trade shall be relevant or admissible to supplement, explain, or vary any of the terms of this Agreement. No representations, understandings, or agreements have been made or relied upon in the making of this Agreement other than those specifically set forth herein.
33. **LEGAL AUTHORITY.** Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK. SIGNATURE PAGE TO FOLLOW.]



IN WITNESS WHEREOF, the parties have executed this Agreement on
07 / 18 / 2022.

ATTEST:

CITY OF OCALA

Angel B. Jacobs

Angel B. Jacobs
City Clerk

Peter A. Lee

Peter Lee
Interim City Manager

Approved as to form and legality:

HEART OF FLORIDA HEALTH CENTER, INC.

Robert W. Batsel, Jr.

Robert W. Batsel, Jr.
City Attorney

Marla A. Tomlin

Heart of Florida
Health Center, Inc.

(Printed Name)

Interim CEO

(Title of Authorized Signatory)

The Advertiser is responsible for the design, production, and installation of the wrap in accordance with the City of Ocala advertising policy.

The design, production, and installation cost of the bus wrap is not included in the monthly advertising cost. The Advertiser is responsible for these separate expenses, which include:

- Removal of SunTran graphics prior to advertiser's installation.
- At the conclusion of the contract advertiser must remove wrap and replace SunTran graphics
- Paint/body damage due to wrap removal (if applicable).

When considering bus wrap design be mindful of the bus safety decals as well as labels that are required by law to be displayed on the bus. Pictures and dimension are provided to Advertiser within **Exhibit B- Specifications for Non- Removable Signs and Decals**. Safety decals, ADA stickers and any other the City of Ocala required bus decal will remain on the bus and wrap will be cut out to display those items. Please avoid putting logos, phone number, website address etc. on or near these areas.

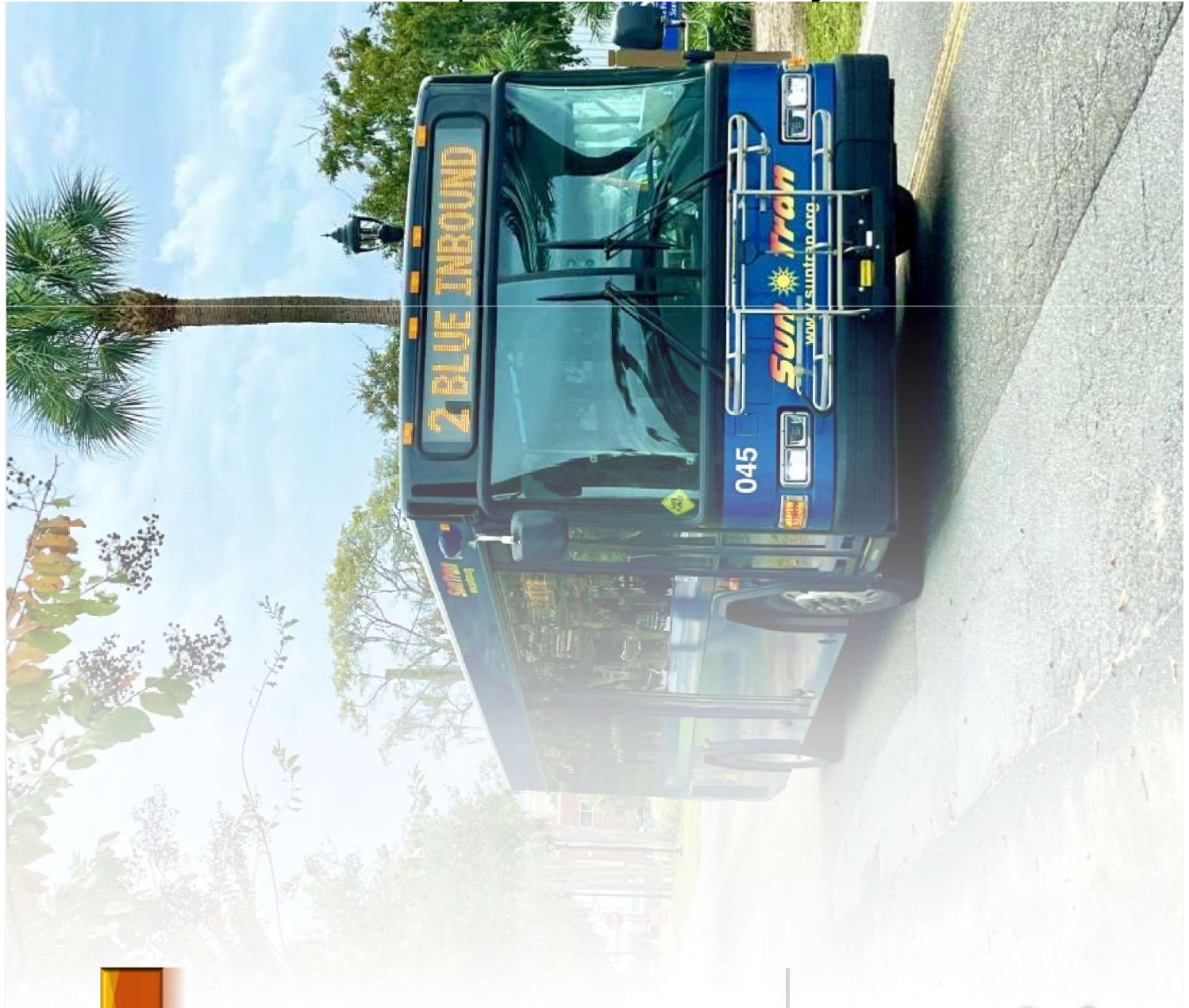
Wrap designs will be reviewed by the City staff for compliance before authorizing placement on the bus. The bus can be re-wrapped at advertiser discretion throughout the term as long as the bus is not taken offline (ex: it can be re-wrapped on Sunday). Re-wrapping and any issues pertaining to bus wrap or installation would need to be approved and scheduled through the City Transit Manager and SunTran General Manager.

Insurance

Garage keeper's insurance will be requested from bus wrap vendor.

Exhibit B

Non-Removeable Signs and Decals



Non-Removable Signs/Decals

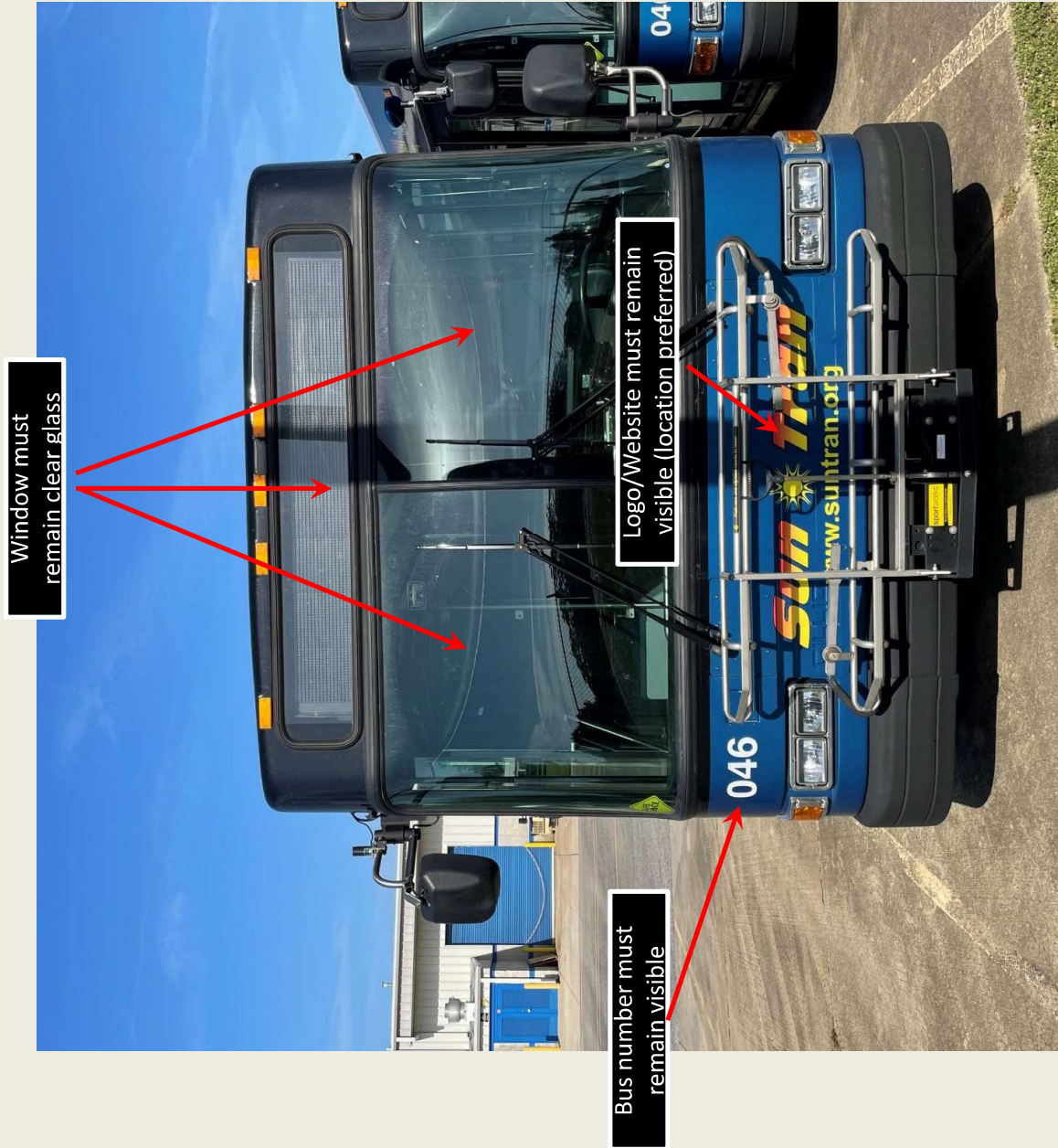
- SunTran/Website logo must be visible, the location of the logo may be changed based on specific bus wrap design.
- SunTran/Website can be blended into a design scheme.
- Final placement of SunTran/Website logos subject to city staff approval.
- If the advertisement materials cover the passenger seat windows, the materials need to be perforated for passengers looking through the windows.



www.SunTran.org

Provide Safe, Comfortable, and
Accessible Transit Service

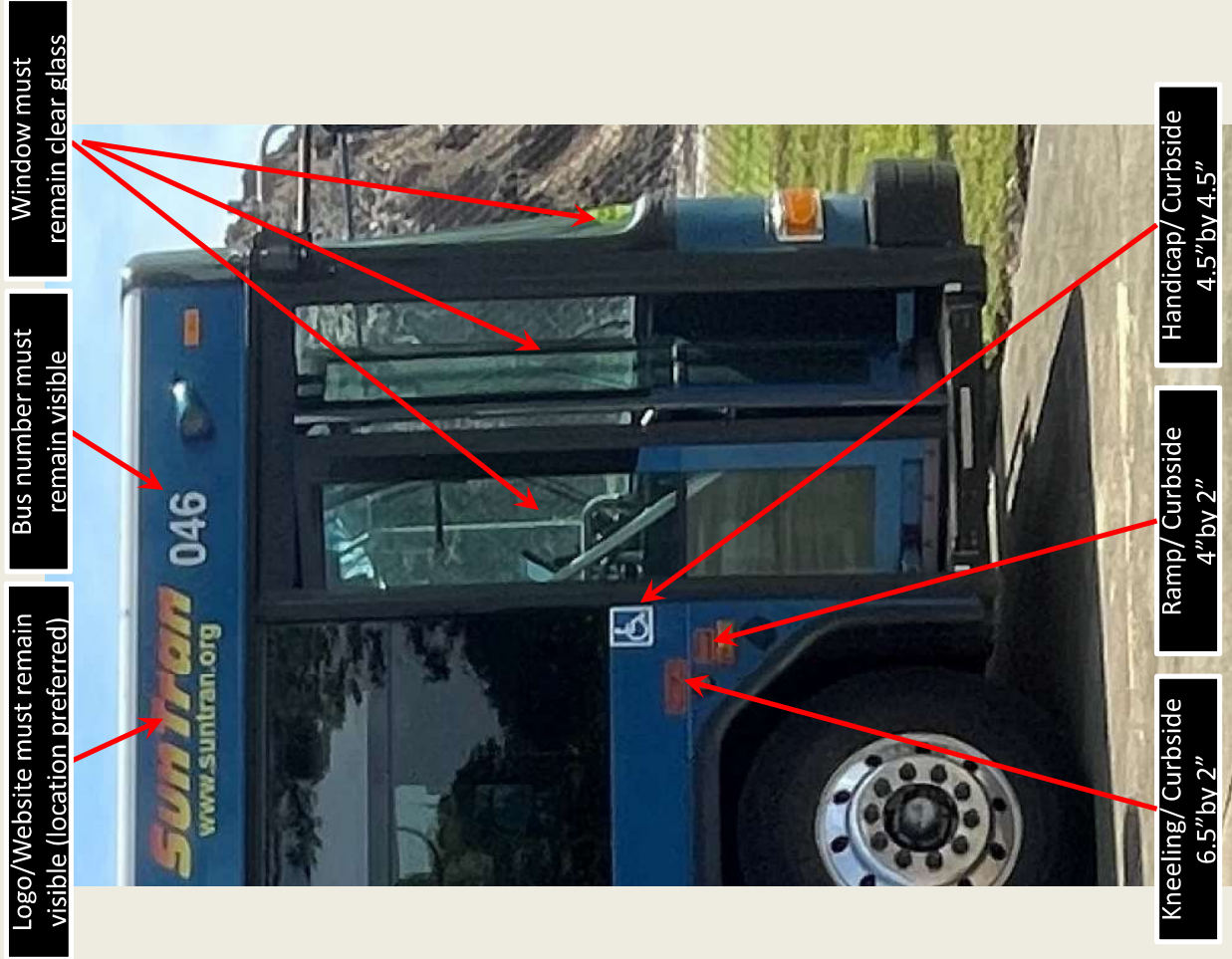
Non-Removable Signs/Decals



Provide Safe, Comfortable, and Accessible Transit Service

www.SunTran.org

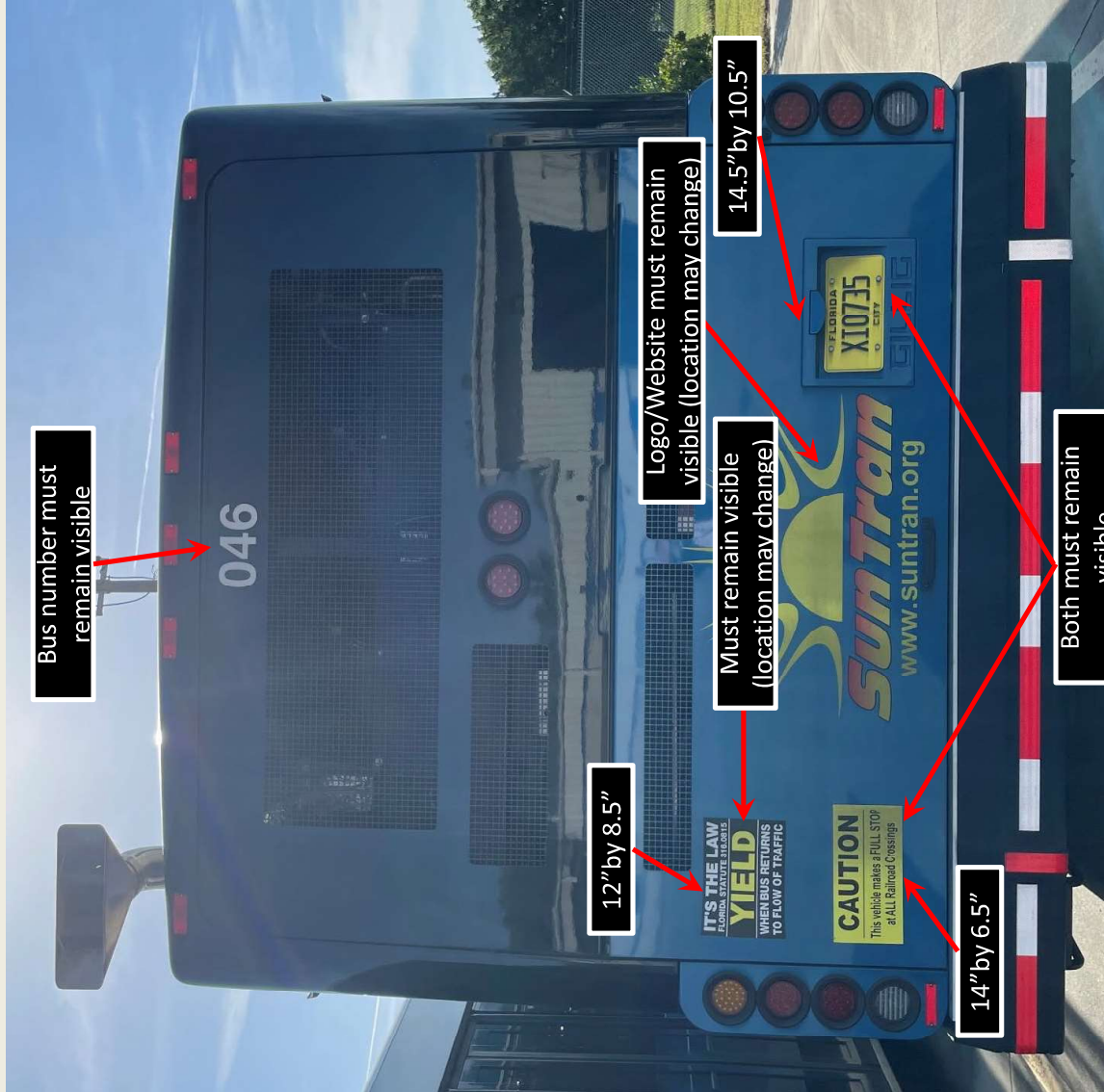
Non-Removable Signs/Decals



Provide Safe, Comfortable, and Accessible Transit Service



Non-Removable Signs/Decals



Provide Safe, Comfortable, and Accessible Transit Service

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Non-Removable Signs/Decals



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Provide Safe, Comfortable, and Accessible Transit Service



www.SunTran.org

Effective Date: 04/22/2022

The City of Ocala determines that the following advertising on or in any SunTran bus and/or at any established SunTran bus shelter is hereby prohibited:

1. Advertising that is unlawful, obscene or indecent, or contains explicit messages or graphic representations pertaining to sexual contact, or contains an offensive level of sexual overtone, innuendo, or double entendre.
2. Advertising of contraceptive products or hygiene products of an intimately personal nature.
3. Advertising of products or services with sexual overtones such as massage parlors, escort services, or establishments featuring X-rated or pornographic movies.
4. Advertising containing foul or offensive language, pictures or depictions.
5. Advertising of tobacco or alcohol products.
6. Advertising that is harmful to children or is of a nature to frighten children, either emotionally or physically.
 - a. The term "harmful to children" means language or pictures that:
 - i. describe or depict sexual contact, or nudity;
 - ii. make use of foul language;
 - iii. describe or depict violent physical torture, destruction, or death of a human being; or
 - iv. describe or depict criminal activity in a way that tends to glorify or glamorize the activity and that, with respect to children under the age of 18, has a tendency to corrupt.
 - b. The term "of a nature to frighten children, either emotionally or physically" means language or pictures that describe or depict violent or brutal activities, whether such violence or brutality was intended or not, in a manner that causes children under the age of 18 physical or emotional distress or fear for their personal safety or for the safety of others.
7. Advertising of political, social, moral or religious points of view.
8. Advertising which promotes hatred or contempt against specific classes of people because of their race, religion, sex or ethnic background.
9. Advertising that, in the opinion of the City of Ocala, is of a nature to dissuade other advertisers from advertising on SunTran buses.

TITLE	For Signature: Bus Wrap Advertising Agreement (SUN/220571)
FILE NAME	FOR SIGNATURE - A...h Center, Inc.pdf
DOCUMENT ID	34f88fa0fe2360f0da1663fbfeb4821181d48bee
AUDIT TRAIL DATE FORMAT	MM / DD / YYYY
STATUS	● Signed

Document History



06 / 23 / 2022
13:06:37 UTC-4

Sent for signature to Heart of Florida Health Center, Inc. (heather.james@myhfhc.org), Robert W. Batsel, Jr. (rbatsel@lawyersocala.com), Peter Lee (plee@ocalafl.org) and Angel Jacobs (ajacobs@ocalafl.org) from plewis@ocalafl.org
IP: 216.255.240.104



06 / 23 / 2022
13:08:11 UTC-4

Viewed by Heart of Florida Health Center, Inc. (heather.james@myhfhc.org)
IP: 65.140.191.34



07 / 15 / 2022
21:48:03 UTC-4

Signed by Heart of Florida Health Center, Inc. (heather.james@myhfhc.org)
IP: 72.209.64.153



07 / 17 / 2022
08:52:55 UTC-4

Viewed by Robert W. Batsel, Jr. (rbatsel@lawyersocala.com)
IP: 216.255.247.55

TITLE	For Signature: Bus Wrap Advertising Agreement (SUN/220571)
FILE NAME	FOR SIGNATURE - A...h Center, Inc.pdf
DOCUMENT ID	34f88fa0fe2360f0da1663fbfeb4821181d48bee
AUDIT TRAIL DATE FORMAT	MM / DD / YYYY
STATUS	● Signed

Document History



07 / 17 / 2022
08:53:32 UTC-4

Signed by Robert W. Batsel, Jr. (rbatsel@lawyersocala.com)
IP: 216.255.247.55



07 / 18 / 2022
07:07:19 UTC-4

Viewed by Peter Lee (plee@ocalafl.org)
IP: 216.255.240.104



07 / 18 / 2022
07:07:32 UTC-4

Signed by Peter Lee (plee@ocalafl.org)
IP: 216.255.240.104



07 / 18 / 2022
08:56:43 UTC-4

Viewed by Angel Jacobs (ajacobs@ocalafl.org)
IP: 216.255.240.104



07 / 18 / 2022
08:56:50 UTC-4

Signed by Angel Jacobs (ajacobs@ocalafl.org)
IP: 216.255.240.104



07 / 18 / 2022
08:56:50 UTC-4

The document has been completed.