

## HARPOLE PHILLIPS, LLC AGENCY OF RECORD CONTRACT

February 28, 2006

This agreement is for provision of professional services to Jonesboro Economical Transportation System (J.E.T.S.), with administrative offices located Jonesboro, Arkansas, herein referred to as Client, by Harpole Phillips, LLC located at 401 South Main Street, 2<sup>nd</sup> Floor, herein referred to as Agency.

The terms of this agreement extend from March 22 , 2006 through December 31, 2008.

The parties acknowledge that this is a binding legal agreement, and its terms cannot be modified except by mutual agreement of the parties.

### I. Appointment of Agency

Client hereby appoints Agency, and Agency hereby agrees to serve as, the Client's Agency of Record for advertising/marketing/public relations/(etc.). As such, the Agency is authorized to purchase media and outside services on the Client's behalf as the Client's Agent, pending Client's approval of such purchases.

To that end, Agency agrees to devote its best efforts to furthering the Client's interests and endeavor in every way to make their communications successful. The Agency will supervise all media, graphic design, packaging, collateral and promotional materials (etc.) for appearance, accuracy, timeliness, position, size and mechanical reproduction. The Client will credit and pay all proper bills incurred on behalf of the Client's account, then reimburse the Agency for its costs as well as pay all applicable commissions directly to the Agency. The Agency will make no commitment or disbursements or incur any obligations for the Client's account without proper authorization or approval from the Client.

The Agency therefore will require the Client's written approval on all project estimates and media authorizations before ordering production material, making commitments with suppliers or making reservations for media space or time. The Client will designate in writing who within their organization may sign such estimates or authorizations.

The Client may request changes or cancellations, or stop any work in progress, provided these are within the Agency's contractual obligations. Where previously approved work has already incurred charges, Client agrees to reimburse the Agency for unrecoverable charges or expenses arising from requested changes or cancellations.

The Agency will submit to the Client for approval all copy, layouts, artwork, drawings, storyboards, scripts and media schedules.

## II. Confidentiality

The Agency shall not, without the Client's express written permission, reveal or otherwise make available to any person or persons any confidential, privileged information or trade secrets regarding the Client's products, business, customers or methods of operation learned by the Agency during the term of the contract.

## III. Exclusivity

During the term of this agreement, the Agency will not act as the communications firm for any other client selling products or services competitive with the Client's present products or services in Client's trade market area without prior written consent; and the Client agrees not to engage the services of any other communications firm without the Agency's prior consent.

## IV. Agency Compensation

The Client agrees to a Professional Services Fee of \$23.06 per hour for 20 billable hours per week (due by the 10<sup>th</sup> of the month) over the life of the agreement, with more billable hours added as needed upon agreement between the Client and the Agency. Agency will provide a designated staff representative (account manager) on-site at the J.E.T.S. offices for up to 20 hours per week. The designated representative will be the primary contact for J.E.T.S. and will coordinate all media buys and ad sales with the Harpole Phillips team. They will also be responsible for attending all required meetings of J.E.T.S. as deemed necessary for the successful implementation of this agreement, and for the timely reporting of all activities and strategies to the J.E.T.S. management. While there will be a designated primary contact and on-site representative, the entire creative and administrative team at Harpole Phillips will be committed to this project.

The agency will also retain all applicable agency commissions for media purchases as paid by the media, and will retain profits above and beyond the required selling price for advertising space related to client as pre-determined by agreement between client and agency.

Projects such as collateral material are billed for creative and production time per the Agency's standard hourly rate schedule and same may be modified by subsequent agreement between the Client and the Agency. State sales tax, shipping charges, delivery charges, overnight delivery service and other expenses that may accrue to a project but cannot be

accurately estimated in advance of production are not included in estimates and are billed separately.

## V. Billing Procedures

### Media Billing:

Advertising media are invoiced on or about the first (1<sup>st</sup>) of each month of the closing date for said media or at least ten (10) days before non-cancelable media contracts take effect. The Agency checks all media advertising before payments to media is approved.

All media placement requests shall name the Client as Advertiser and the Agency as the Client's Agent. The Client assumes full financial responsibility for remitting payment to the media in a timely manner.

This agreement shall remain in effect until such time that the Client notifies local media that the Client/Agency relationship has been discontinued and until all payments due have been satisfied by the Client.

The Agency shall not be entitled to commissions with respect to space, time, facilities, materials or services as to advertising published, broadcast or otherwise used in media after the termination date of this agreement, except as to such advertising prepared with name media for publication in specified issues, for broadcast or presentation on specified dates where substantially all such material has actually been completed by the Agency, approved by the Client and delivered to the media for publication or readied for broadcast or presentation.

### General Billing:

Agency terms are net thirty (30) days from receipt of invoice. Interest at prevailing rates will be charged on accounts past due thirty (30) days.

In the event of default in payment, the Client shall pay the Agency all costs and expenses, including attorney's fees, the fees of collection agencies and other expenses incurred in enforcing any of the terms or conditions thereof. The venue for any such legal action shall be (designated district court).

The Agency shall use its best efforts to guard against any loss to the Client through failure of media or suppliers to properly execute their commitments, but the Agency shall have no responsibility for any failure on their part.

## VI. Indemnification

- A. The Agency agrees to exercise its best judgment in the preparation and placement of all advertising and publicity for the Client, with a view to avoiding any claims, proceedings or suits being made or instituted against the Client of Agency. It is mutually agree, however, that the Client will indemnify the Agency against any loss it may incur as a result of any claims, proceedings or suits made or brought against it based upon any advertising or publicity the Agency prepared for the Client, and which was approved by the Client prior to publication or broadcast.
- B. The Client will also indemnify the Agency against any loss it may sustain as a result of a claim, proceeding or suit made or brought against it based upon any advertising element (i.e., photographs, artwork, etc.) furnished by the Client, and which allegedly violates the personal or property rights of any person or persons if Client approved in writing the use of said element before its publication or broadcast. Indemnification under this provision shall survive termination of this agreement.
- C. The Agency shall not be held liable for the failure of media or suppliers to meet their obligations.
- D. The Agency shall not be liable for delay, omission or error in any advertisement in the absence of willful fault or neglect.
- E. Nothing in this agreement shall be deemed to require the Agency to undertake any campaign or prepare any advertising or publicity which is in the Agency's judgment misleading, libelous, unlawful, indecent or otherwise prejudicial to the Agency or to the Client's interest.
- F. The Agency shall hold for a period not to exceed three (3) years, original production vehicles of all client materials; the Agency shall not be responsible for the destruction of the same through fire, theft or natural disaster.

#### VII. Right of Termination

This agreement may be cancelled by ninety (90) days prior written notice given by the Agency to the Client, or by the Client to the Agency.

All services performed and materials prepared by the Agency during the ninety (90) days prior to termination of this agreement shall be billed to the Client within five (5) days of completion, and shall be due and payable by the Client upon receipt. The Agency shall deliver to the Client, upon payment of all outstanding obligations, all papers, digital files, photographs and other materials related to the work performed on or before the termination date, and as well as any work performed, invoiced and paid for during the 90 days termination period.

The Client shall own any layouts, copy, artwork, drawings, films, video tapes, photo negatives and other materials prepared by or

purchased by the Agency for the Client and for which the Client has paid, regardless of whether such materials were published, displayed, or otherwise presented prior to the termination of the agreement. The Client shall not own any videotape, photo negative or other such item for which the Agency has only paid a fee for the "rights of use."

Any unused or rejected marketing, public relations, advertising or other graphic design programs, plans, designs, and ideas prepared by the Agency will remain the property of the Agency, and shall regarding the Client's business or methods of operation.

Non-cancelable contracts to which the Agency has committed on behalf of the Client and with the Client's approval/authorization, shall be taken over and paid for by the Client, in accordance with the provisions of this agreement and the client will indemnify the Agency against any claims thereof.

#### VIII. Modification

This writing contains the entire agreement of the parties. No representations were made or relied on by either party, other than Those expressly set forth. No agent, employee, or other representative of either party, is empowered to alter any of the terms hereof, unless done in writing and signed by an executive officer of both parties. No modification of either party which would have the effects of modifying the obligations of the other party (except as to lessen the same) shall be effective unless a memorandum regarding same is executed by an executive officer of both parties.

This agreement is subject to review of thirty (30) days prior to the end date noted on this agreement. Adjustments to fee/rate schedules may be negotiated at time of review. Any change in ownership of the Client business would be cause for immediate review of this agreement and the terms and conditions herein stated.

In WITNESS WHEREOF, the above parties have set their hands and seals this \_\_\_\_\_ day \_\_\_\_\_ (month), (year).

For the Agency:

\_\_\_\_\_  
Authorized Signature:

Title: \_\_\_\_\_

\_\_\_\_\_  
Authorized Signature

Phillip Crego

Title: Attorney, City of Jonesboro

\_\_\_\_\_  
Authorized Signature

Joel Gardner

Title: Transportation Co-Ordinator, JETS