

# Choice Outdoor Advertising

11805 I-27 Amarillo, TX. 79119 Mailing: P.O. Box 773, Canyon, TX. 79015

806-352-6585 806-352-1267 fax

## Outdoor Advertising Agreement/Contract

Client Name: West Texas A&M University- Office of Communication attn. Kelly Carper Polden

Address: Box 60766, Canyon, TX. 79016 Phone: 806-651-2125 kpolden@wtamu.edu

The undersigned (Customer/Client) authorizes Choice Outdoor Advertising to paint/post maintain billboard displays consisting of 5 space(s), listed below, for a period of 6 months, beginning on or about 06-25-2022. The Customer/Client may at its option give written notice at least thirty days in advance of the expiration date of this agreement/contract, a one-time option to renewal, with the same terms and conditions contained in this agreement/contract at an increased monthly rate not to exceed 10 %. The rate will be decided and agreed on at that time. At expiration of original contract, business will continue on a month to month basis under same conditions until either party cancels with 30 day notice.

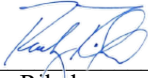
In consideration of this advertising space(s) and service(s), Customer/Client agrees to pay Choice Outdoor Advertising in monthly installments, at the rate of \$2,500 net monthly for the period mentioned above. It is understood that bills are to be paid at the beginning of each month and Customer/Client agrees to make payment within 10 days of due date. Payments past due over sixty (60) days from the date of billing should bear interest at one and one-half (1-1/2%) percent of computed monthly on the 11th day of each month.

In the event of default in the payment of any of the installments contained in this agreement/contract, Choice Outdoor Advertising may cancel this agreement/contract and declare the full consideration due and payable and use the sign for any other purpose(s). Customer/Client assumes liability for all copy and agrees not to hold Choice Outdoor Advertising responsible for any claim(s). Choice Outdoor Advertising reserves the right to reject any copy, pictorial or otherwise, which is considered to be in violation of existing laws or is offensive to the moral standard of the community, or which is false or misleading.

If use of any location listed herein becomes not practical through loss of lease, obstruction of view, or for any other cause, such lost location may be replaced by another location equally valuable; otherwise the contract will be terminated. It is also expressly agreed that Choice Outdoor Advertising shall not be bound by any stipulations, representations, or agreements not embodied in this contract.

It is also agreed that Choice Outdoor Advertising shall not be held liable for loss or damage on account of delays due to strikes, fires, accidents, governmental or municipal laws or any other causes beyond Choice Outdoor Advertising's control.

Location (s)	Size	Monthly lease	Lights
<b>5 Digital billboards of client's choice, space available</b>	<b>variable</b>		<b>Digital</b>
<b>Gold packages on each: 672 commercials per day</b>			<b>\$2,500 per month</b>

Choice Outdoor Representative: Brad Tooley Client 

Date: 06-08-2022

Print name: Randy Rikel

VP for Business and Finance

**WEST TEXAS A&M UNIVERSITY  
ADDENDUM TO VENDOR'S CONTRACT FORM**

West Texas A&M University, a member of The Texas A&M University System and an agency of the State of Texas ("WTAMU") and Choice Outdoor Advertising ("Vendor") are this day entering into an agreement (collectively the "Parties") and, for their mutual convenience, the Parties are using the standard contract form provided by the Vendor, including all incorporated policies and guidelines (referred to hereafter as the "Vendor's Contract Form").

This Addendum, duly executed by the Parties, is incorporated into the Vendor's Contract Form and made an integral part thereof.

Certain standard clauses that may appear in the Vendor's Contract Form cannot be accepted by WTAMU because of its status as an agency of the State of Texas and other terms require amendment or supplementation. In consideration for the convenience of using the Vendor's Contract Form instead of negotiating a separate contract document, the parties agree that the Vendor's Contract Form is amended in accordance with this Addendum and may not be waived or modified except by written agreement between the parties. As used herein, the term "Agreement" means the Vendor's Contract Form, this Addendum, and the purchase order (if any), together with any other addenda or exhibits constituting part of the written contract between the parties. To the extent the language in the Vendor's Contract Form is in conflict with any language in this Addendum or the purchase order (if any), the language in this Addendum and the purchase order (if any) shall control.

Vendor agrees that it will maintain compliance with the Payment Card Industry Data Security Standards ("PCI DSS"). Vendor acknowledges responsibility for the security of cardholder data it possesses or otherwise stores, processes or transmits on behalf of WTAMU, or to the extent that Vendor could impact the security of the cardholder data environment.

**In accordance with Texas Education Code Section 51.9335(h), any provision required by applicable Texas law to be included in the Agreement shall be deemed to be automatically incorporated into the Agreement by operation of law.**

1. Inapplicable Provisions. Without limiting any other inapplicable provisions, none of the provisions listed below as they may appear in the Vendor's Contract Form shall have any effect or be enforceable against WTAMU:
  - a. Releasing, waiving, or limiting the Vendor or any entity or person from its legal liability for unlawful or negligent conduct or failure to comply with any duty recognized or imposed by applicable law.
  - b. Requiring any total or partial compensation or payment for lost profit, consequential, punitive or liquidated damages by WTAMU.
  - c. Requiring WTAMU to indemnify or hold the Vendor harmless for any act or omission.
  - d. Requiring that WTAMU pay taxes.
  - e. Obligating WTAMU to pay costs of collection or attorneys' fees.
  - f. Changing the time period within which claims can be made or actions can be brought under the laws of the State of Texas, i.e. statutes of limitation.

- g. Binding WTAMU to any arbitration or to the decision of any arbitration board, commission, panel or other entity.
- h. Granting the Vendor a security interest in any property of WTAMU or subjecting any property of WTAMU to a statutory, contractual, or constitutional lien.
- i. Requiring payments or assessing interest other than in accordance with the Texas Prompt Payment Act, Chapter 2251, *Texas Government Code*.
- j. Requiring WTAMU to maintain any type of insurance either for WTAMU benefit or for the Vendor's benefit.
- k. Automatically renewing or extending the contract term.
- l. Requiring the application of the law of any state other than Texas in interpreting or enforcing the Agreement or requiring that any dispute under the Agreement be resolved in the courts of any state other than Texas.
- m. Requiring that the Agreement be "accepted" or endorsed by the home office or by any other officer of the Vendor subsequent to execution by an official of WTAMU before the Agreement is considered in effect.
- n. Prohibiting WTAMU from recovering its lawful damages incurred as a result of a breach of the Agreement.
- o. Limiting the liability of the Vendor for property damage or personal injury.
- p. Permitting unilateral modification of the Agreement by the Vendor.
- q. Delaying the acceptance of the Agreement or its effective date beyond the date of execution by WTAMU.

2. Required Certifications.

- a. **Delinquent Child Support Obligations.** "Under Section 231.006, *Texas Family Code*, the vendor or applicant certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate."
- b. **Payment of Debt or Delinquency to the State.** Pursuant to Section 2252.903, *Texas Government Code*, Vendor agrees that any payments owing to Vendor under this Agreement may be applied directly toward certain debts or delinquencies that Vendor owes the State of Texas or any agency of the State of Texas regardless of when they arise, until such debts or delinquencies are paid in full.
- c. **Franchise Tax Certification.** If Vendor is a taxable entity subject to the Texas Franchise Tax (Chapter 171, *Texas Tax Code*), then Vendor certifies that it is not currently delinquent in the payment of any franchise (margin) taxes or that Vendor is exempt from the payment of franchise (margin) taxes.
- d. **Prohibited Bids and Agreements.** "Under Section 2155.004, *Texas Government Code*, the vendor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate."

- e. **Certification Regarding Debarment, Suspension, and Other Responsibility Matters.** WTAMU is federally mandated to adhere to the directions provided in the President's Executive Order (EO) 13224, Executive Order on Terrorist Financing – Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism, effective 9/24/2001 and any subsequent changes made to it via cross-referencing respondents/vendors with the Federal General Services Administration's Excluded Parties List System (EPLS, <http://www.epls.gov>), which is inclusive of the United States Treasury's Office of Foreign Assets Control (OFAC) Specially Designated National (SDN) list. Vendor certifies that it is eligible to participate in this Agreement and has not been subjected to suspension, debarment, or similar ineligibility determined by any federal, state or local governmental entity and that Vendor is in compliance with the State of Texas statutes and rules relating to procurement and that Vendor is not listed on the federal government's terrorism watch list as described in Executive Order 13224.
- f. **Conflict of Interest.** By executing this Agreement, Vendor and each person signing on behalf of Vendor certifies, and in the case of a sole proprietorship, partnership or corporation, each party thereto certifies as to its own organization, that to the best of their knowledge and belief, no member of The A&M System or The A&M System Board of Regents, nor any employee, or person, whose salary is payable in whole or in part by The A&M System, has direct or indirect financial interest in the award of this Agreement, or in the services to which this Agreement relates, or in any of the profits, real or potential, thereof.
- g. **Prohibition on Contracts with Companies Boycotting Israel.** By executing this Agreement, Vendor certifies it does not and will not, during the performance of this contract, boycott Israel. Vendor acknowledges this Agreement may be terminated if this certification is inaccurate.
- h. **Certification Regarding Business with Certain Countries and Organizations.** Pursuant to Subchapter F, Chapter 2252, Texas Government Code, Vendor certifies it is not engaged in business with Iran, Sudan, or a foreign terrorist organization. Vendor acknowledges this Agreement may be terminated if this certification is inaccurate.
- i. **Access to Agency Data.** Pursuant to Section 2054.138, Texas Government Code, Vendor shall implement and maintain appropriate administrative, technical, and physical security measures, including without limitation, the security controls available at <https://www.wtamu.edu/it/information-technology-information-controls-catalog.html>, as may be amended from time to time, (the "Security Controls"), to safeguard and preserve the confidentiality, integrity, and availability of WTAMU's data. Vendor shall periodically provide WTAMU with evidence of its compliance with the Security Controls within thirty (30) days of WTAMU's request.
- j. **Cloud Computing Services.** As of the Effective Date, Vendor represents and warrants that it complies with the then-current requirements of the risk and authorization management program established by the Texas Department of Information Resources ("RAMP").

Pursuant to Section 2054.0593, Texas Government Code, Vendor shall maintain RAMP compliance and certification, as may be amended from time to time, throughout the Term, including any renewal term of this Agreement. Vendor shall provide WTAMU with evidence of its RAMP compliance and certification within thirty (30) days of WTAMU's request and at least thirty (30) days prior to the start of any renewal term of this Agreement.

3. Loss of Funding. Performance by WTAMU under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the "Legislature"). If the Legislature fails to appropriate or allot the necessary funds, WTAMU will issue written notice to Vendor and WTAMU may terminate this Agreement without further duty or obligation hereunder. Vendor acknowledges that appropriation of funds is beyond the control of WTAMU.
4. State Auditor's Office. Vendor understands that acceptance of funds under this Agreement constitutes acceptance of the authority of the Texas State Auditor's Office, or any successor agency (collectively, "Auditor"), to conduct an audit or investigation in connection with those funds pursuant to Section 51.9335(c), *Texas Education Code*. Vendor agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation, providing all records requested. Vendor will include this provision in all contracts with permitted subcontractors.
5. Dispute Resolution. The dispute resolution process provided in Chapter 2260, *Texas Government Code*, and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall be used by WTAMU and Vendor to attempt to resolve any claim for breach of contract made by Vendor that cannot be resolved in the ordinary course of business. Vendor shall submit written notice of a claim of breach of contract under this Chapter to the Vice President of Finance & Administration of WTAMU, who shall examine Vendor's claim and any counterclaim and negotiate with Vendor in an effort to resolve the claim.
6. Governing Law. The validity of this Agreement and all matters pertaining to this Agreement, including but not limited to, matters of performance, non-performance, breach, remedies, procedures, rights, duties, and interpretation or construction, shall be governed and determined by the Constitution and the laws of the State of Texas.
7. Venue. Notwithstanding any other provision of this Agreement, pursuant to Section 85.18, *Texas Education Code*, venue for any suit filed against WTAMU shall be in the county in which the primary office of the chief executive officer of WTAMU is located.
8. Force Majeure. Neither party will be in breach of its obligations under this Agreement/Contract or incur any liability to the other party for any losses or damages of any nature whatsoever incurred or suffered by that other party if and to the extent that it is prevented from carrying out those obligations by, or such losses or damages are caused by, a Force Majeure event (as defined below), except to the extent that the relevant breach of its obligations would have occurred, or the relevant losses or damages would have arisen, even if the Force Majeure event had not occurred. "Force Majeure event" is defined as: 1) acts of God; 2) war; 3) act(s) of terrorism; 4) fires; 5) explosions; 6) natural disasters, to include without limitation, hurricanes, floods, and tornadoes; 7) failure of transportation; 8) strike(s); 9) loss or shortage of transportation facilities; 10) lockout, or commandeering of materials, products, plants or facilities by the government or other order (both federal and state); 11) interruptions by government or court orders (both federal and state); 12) present and future orders of any regulatory body having proper jurisdiction;

13) civil disturbances, to include without limitation, riots, rebellions, and insurrections; 14) epidemic(s), pandemic(s), or other national, state, or regional emergency(ies); and 15) any other cause not enumerated in this provision, but which is beyond the reasonable control of the party whose performance is affected and which by the exercise of all reasonable due diligence, such party is unable to overcome. Such excuse from performance will be effective only to the extent and duration of the Force Majeure event(s) causing the failure or delay in performance and provided that the affected party has not caused such Force Majeure event(s) to occur and continues to use diligent, good faith efforts to avoid the effects of such Force Majeure event(s) and to perform its obligation(s). Written notice of a party's failure or delay in performance due to Force Majeure must be given within a reasonable time after its occurrence and must describe the Force Majeure event(s) and the actions taken to minimize the impact of such Force Majeure event(s). For the avoidance of doubt, the COVID-19 pandemic and any governmental changes or closures related thereto shall be deemed Force Majeure events, even to the extent reasonably foreseeable by either party as of the effective date of the Agreement/Contract.

9. Entire Agreement; Modifications; Assignment. The Agreement supersedes all prior agreements, written or oral, between WTAMU and the Vendor and constitutes the entire Agreement and understanding between the parties with respect to the subject matter hereof. The Agreement and each of its provisions will be binding upon the parties and may not be waived, modified, amended, altered, or assigned except by a writing signed by WTAMU and the Vendor.

10. Independent Contractor. In Vendor's performance under the Agreement, the Vendor acts and will act as an independent contractor, and not as an agent or employee of WTAMU.

11. Limitations. The Vendor is aware that there are constitutional and statutory limitations on the authority of WTAMU (a state agency) to enter into certain terms and conditions that may be part of the Agreement, including, but not limited to, those terms and conditions relating to liens on WTAMU's property; disclaimers and limitations of warranties; disclaimers and limitations of liability for damages; waivers, disclaimers and limitations of legal rights, remedies, requirements and processes; limitations of periods to bring legal action; granting control of litigation or settlement to another party; liability for acts or omissions of third parties; payment of attorneys' fees; dispute resolution; indemnities; and confidentiality (collectively, the "Limitations"), and terms and conditions related to the Limitations will not be binding on WTAMU except to the extent authorized by the laws and Constitution of the State of Texas. Neither the execution of the Agreement nor any conduct, action or inaction of any representative of WTAMU relating to the Agreement constitutes or is intended to constitute a waiver of WTAMU's or the state's sovereign immunity to suit.

12. Public Information.

(a) Vendor acknowledges that WTAMU is obligated to strictly comply with the Public Information Act, Chapter 552, Texas Government Code, in responding to any request for public information pertaining to this Agreement, as well as any other disclosure of information required by applicable Texas law.

(b) Upon WTAMU's written request, Vendor will provide specified public information exchanged or created under this Agreement that is not otherwise accepted from disclosure under chapter 552, Texas Government Code, to WTAMU in a non-proprietary format acceptable to WTAMU. As used in this provision, "public information" has the meaning assigned Section 552.002, Texas Government Code, but only includes information to which WTAMU has a right of access.

(c) Vendor acknowledges that WTAMU may be required to post a copy of the fully executed Agreement on its Internet website in compliance with Section 2261.253(a) (1), Texas Government Code.

13. Notice. Any notices, consents, approvals, demands, requests or other communications provided for or permitted to be given under any of the provisions of the Agreement must be in writing and shall be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address set out below. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, email or other commercially reasonable means and will be effective when actually received. WTAMU State University and the Vendor can change their respective notice address by sending to the other party a notice of the new address. Notices should be addressed as follows:


If to WTAMU: WTAMU  
WT Box 610001  
Canyon, Texas 79016  
Attn: contracts@wtamu.edu

If to Vendor: Choice Outdoor Advertising  
11805 I-27  
P.O. Box 773  
Amarillo, Texas 79015  
Attn: Brad Tooley

14. Severability. Each provision of this Agreement is severable. If any provision is rendered invalid or unenforceable by statute or regulation or declared null and void by a court of competent jurisdiction, the remaining provisions will remain in full force and effect if the essential terms of this Agreement remain valid, legal, and enforceable.
15. Indemnification - Vendor agrees to indemnify, defend and hold harmless WTAMU from any action brought against WTAMU with respect to any claim, demand, cause of action, loss, expense, or liability, including reasonable attorney's fees arising out of Vendor's intentional misconduct or violation of any law under this Agreement.

IN WITNESS WHEREOF, the parties have caused this Addendum to be duly executed, intending thereby to be legally bound.

**WTAMU**

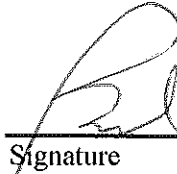
  
\_\_\_\_\_  
Signature

6-27-22  
\_\_\_\_\_  
Date

Randy Rikel  
\_\_\_\_\_  
Printed Name

Vice President of Business and Finance  
\_\_\_\_\_  
Printed Title

**Choice Outdoor Advertising**

  
\_\_\_\_\_  
Signature

6-9-2022  
\_\_\_\_\_  
Date

Brad Tooley  
\_\_\_\_\_  
Printed Name

President  
\_\_\_\_\_  
Printed Title