

Section I. Draft DTA Advertising Policy

<DRAFT> POLICIES AND STANDARDS FOR ADVERTISING ON DULUTH TRANSIT AUTHORITY FACILITIES

The Duluth Transit Authority (“DTA”) is an authority of the City of Duluth, Minnesota, and operates a regional transit system in the Duluth metro and surrounding area, as well as in Superior, Wisconsin. The DTA owns and operates buses, vans, trolleys, service vehicles, other transit-related vehicles, bus shelters, transit terminals and facilities, parking garages, maintenance garages, electronic materials including webpages and electronic signs, and other properties (collectively referred to as “DTA Facilities”) in conjunction with its regional transit system. It is in the public interest to make advertising space available on certain designated DTA Facilities to generate revenue to augment the DTA’s operating budget.

I. PURPOSE

1.01 The primary purpose of the DTA’s transit system is to provide safe and efficient public transportation within its service area. Consistent with this purpose, the DTA places great importance on maintaining secure, safe, comfortable and convenient transit facilities and vehicles in order to, among other things, retain existing riders and attract new users of public transit services. To generate additional revenue while also accomplishing the primary objectives of transit operations, the DTA will accept advertising on its DTA Facilities only if such advertising complies with the intent of the standards and conditions of the DTA’s advertising policy (“Advertising Policy”).

1.02 Nonpublic Forum; Commercial / Proprietary Functions. The DTA will make space on its DTA Facilities available for limited types of advertising (“Permitted Advertising”). By allowing limited types of advertising on or within its DTA Facilities, the DTA will not provide or create a public forum for public discourse or expressive activity, or provide a forum for all types of advertisements. In keeping with its proprietary function as a provider of public transportation, the DTA retains control over the nature of advertisement accepted on DTA Facilities, and does not intend its acceptance of transit advertising to permit DTA Facilities to be used as open forums for public discourse or debate. The display of Permitted Advertising on designated DTA Facilities is intended only to supplement fare revenue, tax proceeds and other income that fund the regional transit system. Rather, as noted, the DTA’s fundamental purpose and intent is to accept advertising as an additional means of generating revenue to support its transit operations. In furtherance of that discreet and limited objective, the DTA retains strict control over the nature of the advertisements accepted for posting on or in DTA Facilities and maintains its advertising space as a non-public forum.

In the DTA’s experience, certain types of advertisements interfere with the advertising program’s primary purpose of generating revenue to benefit the transit system. This Advertising Policy advances the advertising program’s revenue-generating objective by prohibiting advertisements that could detract from that goal by creating substantial controversy, interfering with and diverting resources from transit operations, and/or posing significant risks of harm, inconvenience or annoyance to transit passengers, DTA personnel, and DTA Facilities. Such advertisements create an environment that is not conducive to achieving increased revenue for the benefit of the transit system or to preserving and enhancing the security, safety, comfort and convenience of its operations. The viewpoint neutral restriction in this

Advertising Policy fosters the maintenance of a professional advertising environment that maximizes advertising revenue.

1.03 This Advertising Policy is intended to provide clear guidelines as to the types of Permitted Advertising that will allow the DTA to generate revenue and enhance transit operations by fulfilling the following goals and objectives:

- Maximizing advertising revenue;
- Preventing the appearance of favoritism of the DTA;
- Preventing the risk of imposing demeaning or disparaging views on a captive audience;
- Maintaining a position of neutrality on controversial issues;
- Avoiding offense to patrons of the facility;
- Preserving the marketing potential of the advertising space by avoiding content that the community could view as demeaning, disparaging, objectionable, inappropriate or harmful to members of the public generally or to minors in particular;
- Maximizing ridership;
- Avoiding claims of discrimination and maintaining a non-discriminatory environment for riders;
- Preventing any harm or abuse that may result from running demeaning, disparaging or objectionable advertisements;
- Avoiding the use of the DTA Facilities to promote illegal activities;
- Reduce the diversion of resources from transit operations that is caused by demeaning, disparaging, objectionable, inappropriate or harmful advertisements.

DTA Facilities are a non-public forum and, as such, the DTA will only accept that Permitted Advertising that falls within the categories of acceptable advertising specified in this viewpoint neutral policy and that satisfies all other access requirements and restrictions provided herein.

The DTA reserves the right to suspend, modify, or revoke the application of any of the standards of this Advertising Policy as it deems necessary to comply with legal mandates, to accommodate its primary transportation function, or to fulfill the goals and objectives identified above.

1.04 Certain Excluded Advertising. The DTA will not accept for display on DTA Facilities the types of advertising defined in Section 2.01 of these policies and standards (“Excluded Advertising”). By not accepting Excluded Advertising the DTA can: (a) maintain a professional advertising environment that maximizes advertising revenues and minimizes interference or disruption of the commercial aspects of its regional transit system; (b) maintain an image of neutrality on political matters and other noncommercial issues that are the subject of public debate and concern; (c) protect passengers, employees and DTA Facilities from harm or damage that can result from some individual’s reactions to political or controversial materials or dissuade patrons from using DTA Facilities temporarily or permanently; and (d) help build and retain transit ridership.

1.05 Limits on Permitted Advertising. Placing reasonable limits on Permitted Advertising displayed on DTA Facilities will enable the DTA to: (a) avoid subjecting its passengers and other members of the public to material that may cause them embarrassment or discomfort and discourage them from using transit services; (b) maintain an image of professionalism and decorum; (c) avoid displaying material that is not suitable for viewing by minors who ride on DTA buses or vehicles or whose neighborhoods are served by DTA bus routes; and (d) maximize revenues by attracting and maintaining the patronage of passengers.

II. ADVERTISING POLICIES

2.01 Excluded Advertising. For the purposes of these policies and standards, the advertising described in this Section 2.01 is “Excluded Advertising.” The DTA will not accept the following Excluded Advertising for display, posting or placement on or within DTA Facilities:

- (a) ***Political or “Issues” Advertising.*** The advertising space on DTA Facilities is a nonpublic forum. The DTA therefore will not accept political or “issues” advertising of any kind. For the purposes of these policies, political or issues advertising includes: (1) advertisements, posters or other displays that promote or oppose candidates for appointive or elective offices; (2) advertising that promotes or opposes the election of any candidate or group of candidates for federal, state, local government offices, (3) political campaign material; (4) advertisements, posters or other displays that promote or oppose ballot questions, initiatives, petitions or referenda; and (5) advertisements, posters or other displays that promote, oppose or otherwise directly relate to issues of public debate on economic, political or social issues.
- (b) ***Alcoholic Beverages.*** The DTA will not accept advertisements and images soliciting or promoting the sale or use of alcoholic beverages other than beer and wine. Beer and wine advertising must contain a responsible drinking message. Copy or graphics that do not portray responsible use of beer or wine by individuals or groups, or portray use of beer or wine by individuals or groups not of legal age will not be accepted.
- (c) ***Tobacco Products.*** The DTA will not accept advertisements and images soliciting or promoting the sale or use of tobacco products including, but not limited to, cigarettes, cigars, smokeless tobacco, or electronic cigarettes.
- (d) ***Advertisements Affecting Image or Operation.*** The DTA will not accept advertisements and images that threaten or adversely affect: the public image of the DTA or its staff; the DTA’s ability to operate its Facilities; or the DTA’s ability to attract and maintain the patronage of passengers.
- (e) Advertisements violating the Standards and Restrictions set forth in Section 3.01 of this Advertising Policy.

2.02 Permitted Advertising. Subject to the viewpoint-neutral standards and restrictions contained in Section 3.01 of this Advertising Policy, the DTA will accept Permitted Advertising for display or placement on designated DTA Facilities. For the purposes of this Advertising Policy, “Permitted Advertising” is advertising that: (a) does not qualify as Excluded Advertising under Section 2.01; and (b) generally relates to the economic interests of the advertiser and its audience. Permitted Advertising typically promotes the sale, rental, distribution or availability of goods, services, food, entertainment, products or property (real or personal), but also may solicit business or promote (commercial or noncommercial) transactions, events or programs. Advertising defined in Section 3.02 also is Permitted Advertising.

2.03 Prohibitions on Literature or Product Distribution and Leafleting. The DTA’s purpose in operating a regional transit system is to meet the public’s need for efficient, effective and safe public transportation. DTA Facilities are not public forums for public discourse or expressive activity.

Literature or product distributions, leafleting and similar activities can disrupt or delay passengers who are boarding and exiting buses and transit vehicles, distract passengers, distract bus and vehicle operators, cause maintenance issues, and otherwise create safety issues for passengers, operators and surrounding traffic. Accordingly, distribution of literature, leafleting, posting of signs and other informational activities are prohibited within DTA Facilities. Notwithstanding the policies that allow the display of Permitted Advertising on designated DTA Facilities, nothing in these policies or standards authorizes or permits advertisers to post signs or business cards, distribute literature, leaflets, coupons, products, magazines, newspapers or newsletters, samples or other items within DTA Facilities. On a limited basis and in conjunction with a “partnering” opportunity approved by DTA, the DTA may allow an advertiser to distribute viewpoint-neutral items on or within DTA Facilities. Any distribution of literature, leaflets, signs or business cards, coupons, products, samples, magazines, newspapers or newsletters, or other items must be pre-approved by the DTA and must comply strictly with terms and conditions established by the DTA.

III. ADVERTISING STANDARDS AND RESTRICTIONS

3.01 Advertising Standards and Restrictions. The DTA will make available on designated DTA Facilities space for Permitted Advertising subject to the viewpoint-neutral restrictions in this Section 3.01 that limit certain forms of paid and unpaid advertising.

Advertisements will not be displayed or maintained on DTA Facilities if the advertisement or information contained in the advertisement falls within one or more of the following categories:

- (a) ***False, Misleading, Deceptive or Disrespectful Advertising.*** Advertising or any material or information in the advertising that is false, misleading or deceptive, or that is intended to be (or reasonably could be interpreted as being) disparaging, disreputable or disrespectful to persons, groups, businesses or organizations, including advertising that portrays individuals as inferior, evil or contemptible because of their race, color, creed, sex, pregnancy, age, religion, ancestry, national origin, marital status, disability, including those related to pregnancy or child birth, affectional or sexual orientation, or any other characteristic protected under federal, state or local law; and advertising material that is, or that the sponsor reasonably should have known is, fraudulent or would constitute a tort of defamation or invasion of privacy.
- (b) ***Unauthorized Endorsement.*** Advertising that implies or declares that the DTA endorses a product, service, event or program. The prohibition against endorsement does not apply to advertising for a service, event or program for which the DTA is an official sponsor, co-sponsor or participant, provided DTA’s General Manager or other designated representative gives prior written approval regarding the endorsement.
- (c) ***Obscene or Offensive Material.*** Advertising that contains obscene or offensive materials. “Obscene materials” means displays or information that, taken as a whole, appeals to the prurient interest in sex and depicts or describes in a patently offensive manner sexual conduct and which, taken as a whole, does not have serious literary, artistic, political, or scientific value, or otherwise qualifies as “obscene” as that term is defined in Minnesota Statutes section 617.241. “Offensive materials” means displays or information that would be offensive to a reasonably prudent person of average sensitivity in the community, including advertising that contains derisive, distorted, immoral, profane or disreputable language or impressions, sexual innuendo or double entendre(s). Obscene or offensive material also includes advertising that contains “pornographic work” as that

term is defined in Minnesota Statutes sections 617.246 and 617.247 or promotes pornography, including “men and women’s sophisticated magazines,” “X-rated” or adult-oriented films, “X-rated” or adult-oriented cable channels, or businesses trafficking in pornography, including the use of brand names, trademarks, slogans or other materials that are identifiable with these items, activities or services.

Offensive material also includes material that depicts or represents nudity, sexual conduct or sexual excitement, sexual or excretory organs, excretory activities, urination or defecation in any way, or is unsuitable for minors to see.

Offensive material also includes material that depicts or reasonably appears to depict, a person under the age of eighteen (18) exhibiting his or her sexual or excretory organs or engaging in sexual or excretory activities.

- (d) ***Unlawful Goods or Services.*** Advertising or any material or information in the advertising that depicts, promotes or reasonably appears to encourage the use or possession of unlawful or illegal goods or services.
- (e) ***Unlawful Conduct.*** Advertising or any material or information in the advertising that: depicts, promotes or reasonably appears to encourage unlawful or illegal behavior or conduct, including unlawful behavior of a violent or antisocial nature; is libelous or an infringement of copyright, trademark, service mark, title, or slogan; is otherwise unlawful or illegal; or is likely to subject the DTA to liability.
- (f) ***Aesthetics and Function.*** Any advertising that interferes with the aesthetics or function of a DTA Facility, including restricting visibility, inhibiting or covering identification or way finding signage, or inhibiting the proper function of the DTA Facility, including movement, ventilation, lighting, etc., or limiting the ability of electronic or radio communication to be conducted.
- (g) ***Graffiti.*** Advertising that uses images or symbols that depict or represent graffiti.
- (h) ***Firearms and Weapons.*** Advertising that contains images or depictions of firearms or other weapons, or the unlawful use of firearms or other weapons.
- (i) ***Internet Addresses and Telephone Numbers.*** Advertising that directs viewers to internet addresses or telephone numbers that contain materials, images or information that would violate this Advertising Policy if the materials, images or information were contained in advertising displayed or posted on DTA Facilities.
- (j) ***Distractions and Interference.*** Advertising that incorporates or displays any rotating, revolving, or flashing devices or other moving parts or any word, phrase, symbol or character, any of which are likely to interfere with, mislead or distract traffic or conflict with any traffic control device or motor vehicle regulation.
- (k) ***Profanity and/or Violence.*** Advertising that contains any profane language, or portrays images or descriptions of graphic violence, including dead, mutilated or disfigured human beings or animals, the act of killing, mutilating or disfiguring human beings or animals, or intentional infliction of

pain or violent action towards or upon a person or animal, or that depicts weapons or devices that appear to be aimed or pointed at the viewer or observer in a menacing manner.

- (l) ***Demeaning or Disparaging.*** Advertising that contains material that is intended to be (or reasonably could be interpreted as being) demeaning or disparaging towards an individual, group of individuals, businesses, organizations or entities, including advertising that portrays individuals as inferior, evil or contemptible. For purposes of determining whether an advertisement contains such material, the DTA will determine whether a reasonable prudent person, knowledgeable of the DTA's ridership and using prevailing community standards, would believe that the advertisement contains material that ridicules, mocks, is abusive or hostile to, or debases the dignity or stature of any individual, group of individuals, or entity.
- (m) ***Adverse to DTA:*** Advertising or any material contained in it, that is directly adverse to the commercial or administrative interests of the DTA, or that tends to disparage the quality of service provided by the DTA, or that tends to disparage public transportation generally.
- (n) ***DTA Graphics and References:*** Advertising that contains DTA graphics, logos, and representations without the express written consent of the DTA.
- (o) ***Harmful or Disruptive to DTA Facilities or Operations.*** Advertising that contains material that is so objectionable as to be reasonably foreseeable that it will result in harm to, disruption of or interference with the transportation system DTA Facilities. For purposes of determining whether an advertisement contains such material, the DTA will determine whether a reasonably prudent person, knowledgeable of the DTA's ridership and using prevailing community standards, would believe that the material is so objectionable that it is reasonably foreseeable that it will result in harm to, disruption or interference with DTA patrons and/or personnel, dissuade patrons from using DTA Facilities temporarily or permanently, disrupt or interfere with DTA safety and security procedures, the transportation system or DTA Facilities.
- (p) ***Unsafe Transit Behavior.*** Any advertisement that encourages or depicts unsafe behavior with respect to transit-related activities, such as non-use of normal safety precautions in awaiting, boarding, riding upon or debarking from transit vehicles.
- (q) ***Public Controversy.*** Advertising relating to matters of public controversy, such as pregnancy or abortion counseling, promoting or undermining religious views, racial tolerance or intolerance, political viewpoints supporting or opposing government or nonprofit actions or speech, civil rights or liberties for protected classes, or lack thereof, promoting or undermining actions of foreign governments or entities for or against its own citizens or for or against the United States, promoting or undermining the use of legal or illegal drugs, etc. ("Public Controversy"). For purposes of determining whether an advertisement contains such material, the DTA will determine whether a reasonably prudent person, knowledgeable of the DTA's ridership and using prevailing community standards, would believe that the material is so controversial that it is reasonably foreseeable that it will result in harm to, disruption or interference with DTA patrons and/or personnel, dissuade patrons from using DTA Facilities temporarily or permanently, disrupt or interfere with DTA safety and security procedures, the transportation system or DTA Facilities.

3.02 Other Permitted Advertising and Public Service Announcements. The DTA will not provide or create a public forum for public discourse or expressive activity, or to provide a forum for all types of

advertisements. The DTA may make advertising space available for Permitted Advertising proposed by governmental entities, academic institutions or tax-exempt nonprofit organizations (examples include: ads focusing on informing the public about events). Advertising from governmental entities, academic institutions and tax-exempt nonprofit organizations must be viewpoint neutral and comply with this Advertising Policy. The DTA will not accept advertising from nonprofit entities related to matters of Public Controversy, nor shall the advertising and public service announcements contain displays or messages that qualify as Excluded Advertising under Section 2.01. On a limited basis, the DTA may make unpaid advertising space available for public service announcements. Costs associated with the design, production, installation and removal of public service announcements are the responsibility of the group or organization requesting the public service announcement. The DTA explicitly reserves the right to refuse permission to government entities or nonprofit organization's advertisements that do not conform to this Section or the Advertising Policy in general. Unless the source of the advertising or public service announcement is obvious from the content or copy, the advertisement or public service announcement must specifically identify the sponsor of the advertisement or the message. Nonprofit entities must provide proof to the DTA of their tax-exempt status upon initial request for approval.

3.03 Advertising Pricing and Space Availability. The price for placing advertising on DTA Facilities is governed by the contract(s) between the DTA and its advertising contractor(s). The DTA limits the amount of space on its DTA Facilities available for advertising and does not represent that it can accommodate all requests for advertising space. Advertising space will be made available only on DTA Facilities designated by DTA. No advertising, signs and other types of postings or messages may be displayed, posted or placed on any other DTA Facilities.

3.04 The DTA explicitly reserves the right, in its sole judgement, to limit the number of advertisements from any advertiser, groups of advertisers, public or private entities, or any other Permitted Advertising similar in nature, subject matter, or content, to no more than 10% of the advertising space available in or on DTA Facilities.

3.05 Sponsor Attribution and Contact Information. Any advertising in which the identity of the sponsor is not readily and unambiguously identifiable must include the following phrase to identify the sponsor in clearly visible letters (no smaller than 72-point type for exterior and 24-point type for interiors): Paid for by _____

"Teaser ads" that do not identify the sponsor will, however, be permitted so long as a similar number of follow up advertisements are posted within eight weeks of the initial teaser ads that do identify the sponsor of those initial ads.

3.06 Reservation of Rights. The DTA reserves the right to suspend, modify, amend or revoke the application of any of these policies and standards at any time without cause. All of the provisions of this policy shall be deemed severable. Revisions or amendments will be made in writing and provided to the DTA's advertising contractor(s). Subject to any contractual obligations, the DTA reserves the right to discontinue advertising on DTA Facilities and discontinue accepting advertising for display or posting on DTA Facilities. The DTA reserves the right to limit the availability of advertising space on its DTA Facilities and remove advertising that does not comply with this Advertising Policy, and, subject to any contractual obligations, reserves the right to display advertisements and notices on DTA Facilities that pertain to the DTA's operations and its own promotions.

IV. DISCLAIMER OF ENDORSEMENT

4.01 The DTA's acceptance of any advertisement does not constitute express or implied endorsement of the content or message of the advertisement, including any person, organization, products or services, information or viewpoints contained therein, or of the advertisement sponsor itself. This endorsement disclaimer extends to and includes content that may be found via Internet addresses, quick response ("QR") codes, and telephone numbers that may appear in posted ads and that direct viewers to external sources of information.

V. APPEAL OF ADVERTISING DECISIONS

5.01 Initial Reviews. The DTA's advertising contractor(s) will make initial decisions about accepting or rejecting proposed advertising. The decisions will be based on this Advertising Policy. The DTA's Director of Administration or designee will work with the DTA's advertising contractor(s) and advertisers to resolve issues about advertisements that do not comply with this Advertising Policy. Resolution may include modification of the art, copy or both.

5.02 Appeals to Advertising Review Committee. An advertiser may appeal a decision to reject or remove an advertisement by filing a written request with the Advertising Review Committee within ten (10) business days after the rejection or removal decision. The advertiser's request must state why the advertiser disagrees with the decision in light of the DTA's Advertising Policy. The Advertising Review Committee consists of the following DTA personnel: the Finance Director, the Director of Administration, the Director of Marketing and the Director of Operations, or alternative personnel designated by the General Manager. The Advertising Review Committee may consult with legal counsel. The Advertising Review Committee will review the basis for the rejected or removed advertisement and will consider the advertiser's reasons for filing the request. The Advertising Review Committee will make a decision on the request and will notify the advertiser of its decision in writing within fifteen (15) business days after receiving the advertiser's request.

5.03 Further Review by General Manager. An advertiser who disagrees with a decision of the Advertising Review Committee may request DTA's General Manager to review the Committee's decision. The advertiser's written request for further review must be received within five (5) business days after receipt of the Advertising Review Committee's decision. The General Manager may consult with legal counsel. The General Manager may accept, reject or modify the Advertising Review Committee's decision and will notify the advertiser of the General Manager's decision within five (5) business days after the General Manager receives the advertiser's request for further review. The General Manager's decision is final.

VI. APPLICATION OF POLICY

6.01 This Advertising Policy shall be effective upon adoption, but shall not be enforced to impair the obligations of any contract in effect at the time of its approval. It shall be incorporated into any new contract for advertising on DTA Facilities.

6.02. Any advertising contractor must comply with the advertising standards set forth in this Advertising Policy, as they may be amended from time to time. Any advertising contractor must display only those advertisements that are in compliance with this Advertising Policy.

6.03 Any pilot programs or experimental advertisements must be approved by the DTA in advance.

6.04 Advertising that is removed from DTA Facilities in violation of this Advertising Policy or at the request of the DTA or its advertising contractor, shall be removed at the advertiser's sole cost and expense, with no liability to the DTA whatsoever.

6.05 The Director of Administration, the Finance Director, the Director of Operations, and the Marketing Director are responsible for the implementation of this Advertising Policy.

6.06 The DTA Advertising Policy applies to the posting of all new advertisements on DTA Facilities on or after the Effective Date. Any advertisements that would have been prohibited under this policy but which were posted pursuant to a fully executed advertising contract prior to the Effective Date of this Advertising Policy will be allowed to remain posted for the duration of that contract.