

**AGREEMENT BETWEEN THE CITY OF SANTA ANA AND
FOCUS MEDIA GROUP, INC. FOR THE INSTALLATION, MAINTENANCE, REPAIR AND
ADVERTISING OF BUS SHELTERS, BUS BENCHES AND KIOSKS**

This Agreement is made and entered into this 18th day of January 2022 by and between Focus Media Group, Inc., an Oklahoma corporation, ("**Company**"), and the City of Santa Ana, a charter city and municipal corporation organized and existing under the Constitution and laws of the State of California ("**City**"). City and Company may at times be referred to individually as a "Party," and collectively as "Parties".

RECITALS

- A. The City desires to retain a company having special skill and knowledge in the field of selling advertising through out-of-home media assets – specifically, street furniture, and the installation, maintenance and operation of advertising-supported bus shelters, bus benches and kiosks.
- B. The City is authorized to enter into agreements for the installation, operation and maintenance of bus shelters, bus benches, and kiosks and otherwise regulate the use and encroachments into the public-right-of-way within the City's boundaries by virtue of its Charter, by its police powers, by its authority over its public rights of way and by other City powers and authority.
- C. Company represents that Company is able and willing to provide such services to the City and that it has the financial, legal and technical ability to provide the services, facilities and equipment as set forth in this Agreement.
- D. Company has agreed to comply with the applicable regulations pertaining to transit advertising services, including but not limited to applicable provisions of the City of Santa Ana Municipal Code.
- E. In undertaking the performance of this Agreement, Company represents that it is knowledgeable in its field and that any services performed by Company under this Agreement will be performed in compliance with such standards as may reasonably be expected from a professional firm in the field.
- F. The terms and conditions of this Agreement are reasonable to meet the future transit-related needs and interests of the community, taking into account the cost of meeting such needs and interests.
- G. The Parties wish to enter into an arrangement pursuant to which Company shall install, maintain, and operate advertising-supported bus stops, bus shelters and kiosks throughout the City and shall share revenue from advertising with the City.

NOW THEREFORE, in consideration of the mutual and respective promises, and subject to the terms and conditions hereinafter set forth, the Parties agree as follows:

1. SCOPE OF SERVICES

During the Term of this Agreement, Company shall perform the tasks and obligations including all labor, materials, tools, equipment, and incidental customary work required to fully and adequately complete the services described and set forth in the **Scope of Services - Exhibit A**, attached hereto and incorporated by reference. Company shall provide maintenance and cleaning services of all of the bus stops, bus shelters and kiosks in the City as required by the City. Collectively, all the advertising at City bus stops, bus shelters, and kiosks are called "**Advertising Inventory**". "**Street Furniture**" shall include but is not limited to bus stop shelters, kiosks, benches, trash receptacles, signs (including LED solar signs), posts, information map cases, schedule holders, outdoor advertising displays (both static and digital), secure bicycle racks, and ancillary equipment and structures. The Parties acknowledge that the Scope of Services for this Agreement shall be limited to Street Furniture located within a bus stop "Site Area" with the exception of kiosks and outdoor advertising displays (both static and digital) that may be located within and/or outside a bus stop Site Area. For purposes of this Agreement, ("**Site Area**") includes all area within twenty (20) feet of the outer edges of all bus stop furniture/fixtures (e.g. shelters, benches, receptacles, signs (including LED solar signs), posts, improvements, sidewalks, curbs and gutters, pavement, etc.) at each location and from right-of-way to curb face, all furniture/fixtures within the Site Area and only that area which is part of the public right of way (e.g., sidewalks and streets open to public access).

2. TERM & COMMENCEMENT

Company shall begin to provide services at a date to be determined by the City, which shall be no later than thirty (30) days after the date first written above ("Effective Date"). The Agreement shall commence on the Effective Date for a **ten (10) year term (the "Term")** with the option for the City to grant up to one (1) **five (5) year** renewal (the "**Renewal Term**"), if Company has paid the City at least \$100,000 in Revenue Share above the MAG (as defined in Section 4 below) over the Term of the Agreement. The Renewal Term must be exercised in writing by the City Manager and the City Attorney, unless terminated earlier in accordance with Section 18, below.

3. LICENSE

The City hereby grants to Company an exclusive license for the right to enter and use the Street Furniture beginning on the Effective Date, for the performance of the Scope of Services, upon the terms and conditions set forth herein in this Agreement, subject to Company's performance of all of its obligations under this Agreement. This Agreement is intended and shall be construed only as a revocable license to use the properties and not as a lease or grant of any possessory or other interest.

Company shall not use, and shall prohibit its Agents or Invitees from using, the Property other than performing the Scope of Services. The term "Agents" shall mean Company's officers, directors, members, agents, employees, invitees, subcontractors and any employees of such parties. The term "Invitees" shall mean Company's invitees, guests, customers, tenants, or business visitors.

4. COMPENSATION TO CITY

Company shall pay the City the greater of the revenue share generated from the Advertising Inventory or the minimum annual guarantee ("MAG"). The **Revenue Share** is defined as 25% of the Gross Advertising Revenue. **Gross Advertising Revenue** shall be defined as gross advertising revenue received from the sale of the Advertising Inventory without any deductions.

The MAG shall be calculated as \$60 per ad shelter or kiosk per month (\$720 per year). MAG payments shall be adjusted on a quarterly basis based on the number of bus stops with ad shelters or kiosks that are operational in such quarter. MAG payments and a forecast of revenue and payments based on the current number of bus shelters and kiosks is provided in **Exhibit B**, attached hereto and incorporated by reference. If, at any time during the Term, Company and City agree to add additional bus stops or bus shelters after the Effective Date, the MAG payment shall be increased for each additional ad shelter or kiosk by \$60 per ad shelter or kiosk per month (\$720 per year). The MAG shall be increased annually at the end of each 12-month period from the effective date of this Agreement by a percentage equal to the percentage change in the Consumer Price Index (CPI) statistics for all Urban Consumers for the Los Angeles-Long Beach-Anaheim area, as published by the United States Bureau of Labor (CUURS49ASA0). The percentage change shall be determined with reference to the year over year percentage change in CPI for the prior 12-month period ending in December.

After the Effective Date and with prior written approval from the City, Company may install up to ten (10) Company owned kiosks ("**Company Owned Kiosks**") at approved locations to generate additional income at the beginning of the Term. Company Owned Kiosks shall adhere to the City's design guidelines as provided in Exhibit A and be painted black by the Company at Company's own expense. The Parties acknowledge that, at a later date, the City, at its sole discretion, may replace the Company Owned Kiosks with City owned kiosks. All Company Owned Kiosks shall be excluded from the MAG calculation until replaced with City owned kiosks. All revenue generated by the Company Owned Kiosks shall be included in the Revenue Share calculations.

Company shall not derive revenue from any other sources other than advertising ("**Ancillary Revenue**") without prior approval from the City Council.

5. PAYMENTS

MAG payments shall commence the first full calendar month after the Effective Date of the contract. On a quarterly basis, Company shall pay the greater of the Revenue Share amount or the MAG amount within thirty (30) days of the end of each calendar quarter (the "**Revenue Payment**").

The Quarterly Maintenance Services Cost, as defined in Exhibit A, shall be subtracted from the quarterly Revenue Payment. If the difference is positive, such amount shall be paid to the City. In the event the difference is negative:

- a. The negative balance shall be carried forward for up to three (3) years and offset by the MAG or the Revenue Share.
- b. At the end of the 4th year, any remaining negative balance shall be waived.
- c. After the 4th year, any negative balance for the rest of the Term shall be waived.

Payments shall be made payable to the City at the following address: City of Santa Ana Public Works Agency, City of Santa Ana M-21, Administrative Services Manager, 20 Civic Center Plaza, PO Box 1988, Santa Ana, CA 92702. A late charge of ten percent (10%) shall be applied to any payment hereunder due but unpaid after the 30th day of each calendar quarter.

6. PREVAILING WAGES

If required by law, Company shall satisfy the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. Company shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws if so required.

7. INDEPENDENT CONTRACTOR

Company shall, during the entire term of this Agreement, be construed to be an independent contractor and not an employee of the City. This Agreement is not intended, nor shall it be construed to create an employer-employee relationship, a joint venture relationship, or to allow the City to exercise discretion or control over the professional manner in which Company performs the services which are the subject matter of this Agreement; however, the services to be provided by Company shall be provided in a manner consistent with all applicable standards and regulations governing such services. Company shall pay all salaries and wages, employer's social security taxes, unemployment insurance and similar taxes relating to employees and shall be responsible for all applicable withholding taxes.

8. OWNERSHIP OF MATERIALS

This Agreement creates a non-exclusive and perpetual license for City to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded electronically, which are prepared or caused to be prepared by Company under this Agreement ("Documents & Data"). Company shall require all subcontractors to agree in writing that City is granted a non-exclusive and perpetual license for any Documents & Data the subcontractor prepares under this Agreement. Company represents and warrants that Company has the legal right to license any and all Documents & Data. Company makes no such representation and warranty regarding Documents & Data which were provided to Company by the City. City shall not be limited in any way in its use of the Documents and Data at any time, provided that any such use not within the purposes intended by this Agreement shall be at City's sole risk.

9. INSURANCE

Company shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the

performance of the work hereunder and the results of that work by the Company, his agents, representatives, employees or subcontractors.

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

- **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$1,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
- **Automobile Liability:** ISO Form Number CA 00 01 covering any auto (Code 1), or if Company has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than **\$1,000,000** per accident for bodily injury and property damage.
- **Workers' Compensation:** as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than **\$1,000,000** per accident for bodily injury or disease.

If the Company maintains broader coverage and/or higher limits than the minimums shown above, the City requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Company. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

Additional Insured Status

The City, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Company including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Company's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of **both** CG 20 10, CG 20 26, CG 20 33, or CG 20 38; **and** CG 2037 if a later edition is used).

Primary Coverage

For any claims related to this contract, the Company's insurance coverage shall be primary coverage at least as broad as ISO CG 20 01 04 13 as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Company's insurance and shall not contribute with it.

Notice of Cancellation

Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the City.

Waiver of Subrogation

Company hereby grants to City a waiver of any right to subrogation which any insurer of said Company may acquire against the City by virtue of the payment of any loss under such insurance. Company agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

Self-Insured Retentions

Self-insured retentions must be declared to and approved by the City. The City may require the Company to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City.

Acceptability of Insurers

Insurance is to be placed with insurers authorized to conduct business in the state with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City.

Claims Made Policies (note – should be applicable only to professional liability, see below)

If any of the required policies provide claims-made coverage:

1. The Retroactive Date must be shown, and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided ***for at least five (5) years after completion of the contract of work.***
3. If coverage is canceled or non-renewed, and not replaced ***with another claims-made policy form with a Retroactive Date prior to*** the contract effective date, the Company must purchase "extended reporting" coverage for a minimum of ***five (5)*** years after completion of work.

Verification of Coverage

Company shall furnish the City with original Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language effecting coverage required by this clause) and a copy of the Declarations and Endorsement Page of the CGL policy listing all policy endorsements to City before work begins. However, failure to obtain the required documents prior to the work beginning shall not waive the Company's obligation to provide them.

The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Special Risks or Circumstances

City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

10. INDEMNIFICATION

Company agrees to defend, and shall indemnify and hold harmless the City, its officers, agents, employees, special counsel, and representatives from liability: (1) for personal injury, damages, just compensation, restitution, judicial or equitable relief arising out of claims for personal injury, including death, and claims for property damage, which may arise from the negligent operations of the Company, its subcontractors, agents, employees, or other persons acting on its behalf which relates to the services described in Exhibit A of this Agreement; and (2) from any claim that personal injury, damages, just compensation, restitution, judicial or equitable relief is due by reason of the terms of or effects arising from this Agreement. This indemnity and hold harmless agreement applies to all claims for damages, just compensation, restitution, judicial or equitable relief suffered, or alleged to have been suffered, by reason of the events referred to in this Section or by reason of the terms of, or effects, arising from this Agreement.

Company further agrees to indemnify, hold harmless, and pay all costs for the defense of the City, including fees and costs for special counsel to be selected by the City, regarding any action by a third party challenging the validity of this Agreement, or asserting that personal injury, damages, just compensation, restitution, judicial or equitable relief due to personal or property rights arises by reason of the terms of, or effects arising from this Agreement. City may make all reasonable decisions with respect to its representation in any legal proceeding. Notwithstanding the foregoing, to the extent Company's services are subject to Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Company.

11. INTELLECTUAL PROPERTY INDEMNIFICATION

Company shall defend and indemnify the City, its officers, agents, representatives, and employees against any and all liability, including costs, for infringement of any United States' letters patent, trademark, or copyright infringement, including costs, contained in the work product or documents provided by Company to the City pursuant to this Agreement.

12. RECORDS

All financial records of Company shall be maintained in accordance with generally accepted accounting principles and auditing standards for government institutions. Company shall make available for examination and copying such financial books and financial records. City shall have the right to access and examine such financial books and financial records, without charge, during normal business hours. City shall further have the right to audit such financial books and financial records, to make transcripts therefrom and to inspect all program data, documents, proceedings, and activities.

Company shall keep and maintain all such books and records separate and distinct from other records and accounts and shall maintain such books and records for at least seven (7) years after acceptance by City, or such longer period during which any legal proceeding with respect to the work may be pending.

13. CONFIDENTIALITY

If Company receives from the City information which due to the nature of such information is reasonably understood to be confidential and/or proprietary, Company agrees that it shall not use or disclose such information except in the performance of this Agreement, and further agrees to exercise the same degree of care it uses to protect its own information of like importance, but in no event less than reasonable care. "Confidential Information" shall include all nonpublic information. Confidential information includes not only written information, but also information transferred orally, visually, electronically, or by other means. Confidential information disclosed to either party by any subsidiary and/or agent of the other party is covered by this Agreement. The foregoing obligations of non-use and nondisclosure shall not apply to any information that (a) has been disclosed in publicly available sources; (b) is, through no fault of the Company disclosed in a publicly available source; (c) is in rightful possession of the Company without an obligation of confidentiality; (d) is required to be disclosed by operation of law; or (e) is independently developed by the Company without reference to information disclosed by the City.

14. CONFLICT OF INTEREST CLAUSE

Company covenants that it presently has no interests and shall not have interests, direct or indirect, which would conflict in any manner with performance of services specified under this Agreement.

15. DISCRIMINATION

Company shall not discriminate because of race, color, creed, religion, sex, marital status, sexual orientation, age, national origin, ancestry, or disability, as defined and prohibited by applicable law, in the recruitment, selection, training, utilization, promotion, termination or other employment related activities. Company affirms that it is an equal opportunity employer and shall comply with all applicable federal, state and local laws and regulations.

16. EXCLUSIVITY AND AMENDMENT

For the Term of this Agreement, Company shall be the exclusive advertising and maintenance partner to the City for its Street Furniture. Furthermore, Company shall have the exclusive right to represent, manage, and sell the Advertising Inventory. This Agreement does not include digital community kiosks that provide information of interest to residents and tourists and/or any stops or infrastructure related to the OC Streetcar that is scheduled to begin service at some time following the Effective Date of this Agreement. The rights under this Agreement may include a possible nonexclusive future digital option at future Street Furniture locations as determined by the City. This option would provide digital advertising kiosks that may be built in the future which will be serviced and compensated pursuant to mutually agreeable terms to be negotiated in writing by the parties at a later date.

This Agreement represents the complete and exclusive statement between the City and Company, and supersedes any and all other agreements, oral or written, between the parties. In the event of a conflict between the terms of this Agreement and any attachments hereto, the terms of this Agreement shall prevail.

This Agreement may not be modified except by written instrument signed by the City Manager or their designee and by an authorized representative of Company. The parties agree that any terms or conditions of any purchase order or other instrument that are inconsistent with, or in addition to, the terms and conditions hereof, shall not bind or obligate Company or the City. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which is not embodied herein.

17. ASSIGNMENT

City and Company acknowledge that Company was chosen for this Agreement due in part to its particular experience and expertise in the provision of bus shelters, bus stops and kiosks. Inasmuch as this Agreement is intended to secure the specialized services of Company, Company may not assign, transfer, delegate, or subcontract any interest herein without the prior written consent of the City and any such assignment, transfer, delegation or subcontract, without the City's prior written consent, shall be considered null and void.

Nothing in this Agreement shall be construed to limit the City's ability to have any of the services which are the subject to this Agreement performed by City personnel or by other companies retained by City.

18. TERMINATION

A. Upon the occurrence of anyone or more of the events of default hereinafter described, this Agreement shall be subject to termination. As a condition precedent thereto, the City will give Company such notice as provided below, by certified mail or personal delivery of the date set for termination thereof; the grounds therefor; and that an opportunity to be heard thereon will be afforded on or before said date, if a request is made therefor.

Events of Default:

- a. The failure of the Company to punctually make the payments herein when due, where the delinquency continues beyond ten (10) days following written notice for payment thereof.
- b. The failure of the Company to operate in the manner required by this Agreement, where such failure continues for more than thirty (30) days after written notice from the City to correct the condition therein specified.
- c. The failure of the Company to construct and/or install the bus shelters, bus benches or other improvements pursuant to mutually agreed upon installation dates, where such failure continues for more than thirty (30) days after service of notice by the City as provided above.
- d. The failure to maintain the bus shelter, bus benches, and the required improvements pursuant to this Agreement in the state of repair required, and in a clean, sanitary, safe and satisfactory condition, where such failure continues for more than thirty (30) days after written notice from the City for correction thereof, provided that where fulfillment of such obligation requires activity over a period of time and Company shall have immediately, following receipt of such notice, commenced to perform whatever may be required to cure

- the particular default and continues such performance diligently, said time limit may be waived in the manner and to the extent allowed by the City.
- e. The failure of Company to keep, perform, and observe all other promises, covenants, conditions, and agreements set forth in this Agreement, where such failure continues for more than thirty (30) days after written notice from the City for correction thereof, provided that where fulfillment of such obligation requires activity over a period of time and Company shall have commenced to perform whatever may be required to cure the particular default within ten (10) days after such notice and continues such performance diligently, said time limit may be waived in the manner and to the extent allowed by the City.
 - f. The filing of a voluntary petition in bankruptcy by the Company; the adjudication of Company as bankrupt; the appointment of any receiver of Company's assets; the making of a general assignment for the benefit of creditors; a petition or answer seeking an arrangement for the reorganization of the Company under any Federal Reorganization Act, including petitions or answers under Chapters X or XI of the Bankruptcy Act; the occurrence of any act which operates to deprive the Company permanently of the rights, powers, and privileges necessary for the proper conduct and operation of the bus shelters; the levy of any attachment or execution which substantially interferes with the Company's operations under this Agreement and which attachment or execution is not vacated, dismissed, stayed or set aside within a period of ninety (90) days.

This Agreement may be terminated by the City for any of the above-listed events of default after providing written notice to Company and if the event of default is not cured within the specified cure period provided in this Section. City shall be entitled to receive, and the Company shall pay City earned revenue from advertising in the form of the pro-rated MAG payment and/or the Revenue Payment up to the date of termination.

B. Notwithstanding subsection A. of this Section, after five (5) years from the Effective Date, this Agreement may be terminated for convenience by the City upon ninety (90) days written notice of termination. In such event, Company shall be entitled to receive and the City shall pay Company compensation for all services performed by Company prior to the termination date.

C. In the event City is paying Company for services, as a condition of such payment, Company shall provide all services paid for by the City and work product(s) completed as of the date of termination.

19. SECURITY FOR PERFORMANCE

The Company shall establish a bond in the sum of \$50,000.00 within forty- five (45) days after the effective date of this Agreement to insure faithful performance of Company's covenants for construction, maintenance, repair or replacement of the shelters, timely payment of all revenues due the City under this Agreement, and restoration of shelter and/or bench sites to the condition existing prior to installation of the shelters and/or benches, whenever a shelter and/or bench is removed or relocated. The bond shall be in a form acceptable to the City Attorney, and issued by a company licensed to do business in the State of California. Company shall not commence any work or bench installation until the surety required herein is/are supplied to and approved by the City.

20. WAIVER

No waiver of breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Agreement shall be effective unless it is in writing and signed by the party waiving the breach, failure, right or remedy. No waiver of any breach, failure or right, or remedy shall be deemed a waiver of any other breach, failure, right or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.

21. JURISDICTION - VENUE

This Agreement has been executed and delivered in the State of California and the validity, interpretation, performance, and enforcement of any of the clauses of this Agreement shall be determined and governed by the laws of the State of California. Both parties further agree that Orange County, California, shall be the venue for any action or proceeding that may be brought or arise out of, in connection with or by reason of this Agreement.

In the event suit is brought by either Party to enforce the terms and provisions of this Agreement or to secure the performance hereof, each Party shall bear the cost of its own attorney's fees.

22. PROFESSIONAL LICENSES

Company shall, throughout the term of this Agreement, maintain all necessary licenses, permits (including but not limited to encroachment permits), approvals, waivers, and exemptions necessary for the provision of the services hereunder and required by the laws and regulations of the United States, the State of California, the City of Santa Ana and all other governmental agencies. Company shall notify the City immediately and in writing of its inability to obtain or maintain such permits, licenses, approvals, waivers, and exemptions. Said inability shall be cause for termination of this Agreement.

23. NON-LIABILITY OF CITY OFFICERS AND EMPLOYEES

No officer, official, employee, agent, representative, or volunteer of the City shall be personally liable to the Company, or any successor in interest, in the event of any default or breach by the City, or for any amount which may become due to Company or its successor, or for breach of any obligation of the terms of this Agreement.

24. FORCE MAJEURE

The time within which the Company is obligated to commence and to complete the Refurbishment Program shall be extended for a period of time equal in duration to, and performance shall be excused on account of and for, and during the period of, any delay caused by strikes, threat of strikes, lockouts, war, threats of war, insurrection, invasion, acts of God, pandemic, earthquakes, calamities, violent action of the elements, fire, delays in electrical service provider permit issuance, action or adoption of any regulation, law or ordinance by any governmental agency, precluding Company's performance.

25. MISCELLANEOUS PROVISIONS

- a. Each undersigned represents and warrants that its signature herein below has the power, authority and right to bind their respective parties to each of the terms of this Agreement, and shall indemnify City fully, including reasonable costs and attorney's fees, for any injuries or damages to City in the event that such authority or power is not, in fact, held by the signatory or is withdrawn.
- b. All exhibits referenced herein and attached hereto shall be incorporated as if fully set forth in the body of this Agreement.

26. NOTICE

Any notice, tender, demand, delivery, or other communication pursuant to this Agreement shall be in writing and shall be deemed to be properly given if delivered in person or mailed by first class or certified mail, postage prepaid, or sent by fax or other telegraphic communication in the manner provided in this Section, to the following persons:

To City:

Clerk of the City Council
City of Santa Ana
20 Civic Center Plaza (M-30)
P.O. Box 1988
Santa Ana, CA 92702-1988
Fax: 714- 647-6956

With courtesy copies to:

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| Executive Director, Public Works Agency City of Santa Ana 20 Civic Center Plaza (M-21) P.O. Box 1988 Santa Ana, California 92702 Fax: 714- 647-5635 | City Attorney City of Santa Ana 20 Civic Center Plaza (M-29) P.O. Box 1988 Santa Ana, California 92702 Fax: 714- 647-6515 |
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To Company:

Michael Culver, President
Focus Media Group, Inc.
2271 W Malvern Ave., Suite 407
Fullerton, CA 92833
Fax: (714) 459-7234

A party may change its address by giving notice in writing to the other party. Thereafter, any communication shall be addressed and transmitted to the new address. If sent by mail, communication shall be effective or deemed to have been given three (3) days after it has been deposited in the United States mail, duly registered or certified, with postage prepaid, and addressed as set forth above. If sent by fax, communication shall be effective or deemed to have been given twenty-four (24) hours after the time set forth on the transmission report issued by the transmitting facsimile machine, addressed as set forth above. For purposes of calculating these time frames, weekends, federal, state, County or City holidays shall be excluded.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the date and year first above written.

ATTEST:

CITY OF SANTA ANA

Daisy Gomez
Clerk of the Council

Kristine Ridge
City Manager

APPROVED AS TO FORM:

SONIA R. CARVALHO
City Attorney

COMPANY:

By: Jose Montoya
Jose Montoya
Assistant City Attorney

Michael Culver
Michael Culver
President

RECOMMENDED FOR APPROVAL:

Nabil Saba
Executive Director
Public Works Agency

EXHIBIT A

SCOPE OF SERVICES

The Scope of Services includes managing and selling the City's Advertising Inventory and the installation, operation, and maintenance of Street Furniture located within the boundaries of the City of Santa Ana.

The Company, at its sole cost and expense, shall be responsible for installing, relocating, repairing, maintaining, and replacing (if necessary) all Street Furniture as set forth in this **Exhibit A**, and in accordance with the design standards set forth in the Shelter and Bench Design and Construction Specifications, attached hereto as **Exhibit C** and incorporated herein by this reference. The City shall supply all new bus shelters. The installation and/or relocation of all City supplied Street Furniture shall be the responsibility of the Company throughout the Term.

The Company shall be responsible for all necessary coordination with Orange County Transportation Authority (OCTA) to obtain any required approvals by OCTA for the location of Street Furniture.

Comprehensive Service Program

Upon signing the Agreement, Company shall implement a comprehensive service program which shall include maintenance and cleaning of all City bus stops in accordance with Table 1 below. Bus stops with ad shelters and non-ad shelters with kiosks shall be known as "**Group A**" and bus stops with non-ad benches shall be known as "**Group B**". All Group A and Group B bus stops shall be serviced three (3) times per week.

Group A is comprised of 143 advertising bus shelters and 30 advertising kiosks to be placed at either non advertising bus shelters or other locations approved by the City.

Group B is comprised of non-advertising bus shelters and bus stops.

Maintenance Service Costs

Group A bus stops shall be serviced at no cost to the City.

Group B bus stops shall be serviced at an estimated total annual cost of \$137,000 or \$34,250 for each quarter (the "**Quarterly Maintenance Services Cost**"). The quarterly and annual cost was calculated by multiplying the number of bus stops in Group B by the cost per visit for each bus stop in Group B, which is \$1.80 ("CPV"). The Quarterly Maintenance Services Cost shall be an offset to the quarterly revenue generated from the Advertising Inventory. The Quarterly Maintenance Services has been designed to reference the number of Group B bus stops at the time of the Effective Date. Parties recognize that the number of Group B bus stops may change over the term of the Agreement at the City's sole discretion. In the event of any such change, the Parties agree that the Quarterly Maintenance Services charge shall be adjusted based on this change and that the adjusted charge will become effective at the start date of the next following quarter. The \$1.80 CPV shall be increased annually at the end of each 12-month period from the effective date of this Agreement by a percentage equal to the percentage change in the Consumer Price Index (CPI) statistics for all Urban Consumers for

the Los Angeles-Long Beach-Anaheim area, as published by the United States Bureau of Labor (CUURS49ASA0). The percentage change shall be determined with reference to the year over year percentage change in CPI for the prior 12-month period ending in December.

Hot Spots

The City shall designate at a minimum forty-five (45) bus stops from either Group A and/or Group B, as **"Hot Spots."** Hot Spots shall be serviced a minimum of five (5) days per week, one (1) of which shall be a weekend day. City will provide a list of the hot spots to the Company that require cleaning at least (5) days per week. The list will be updated by the City by providing advance notice to Company. Company shall also evaluate on a regular basis if there are any other bus stops that need more service visits than the three (3) minimum service visits per week and shall adjust their service schedule accordingly from time-to-time at no additional cost for Group A. In the event the City requests to increase the frequency of visits to Group B bus stops, the cost per visit provided by Company shall be \$8.00 dollars (**"Cost Per Visit"**). The Cost Per Visit shall be increased annually at the end of each 12-month period from the effective date of this Agreement by a percentage equal to the percentage change in the Consumer Price Index (CPI) statistics for all Urban Consumers for the Los Angeles-Long Beach-Anaheim area, as published by the United States Bureau of Labor (CUURS49ASA0). The percentage change shall be determined with reference to the year over year percentage change in CPI for the prior 12-month period ending in December.

Refurbishment Program

Company shall incur 100% of the cost of the Refurbishment Program. Company shall review all existing bus stops and bus shelters for repairs and parts needed. Within two (2) weeks from the Effective Date of this Agreement, Company shall implement a comprehensive refurbishing program, including graffiti removal, plexiglass cleaning, broken or cracked plexiglass replacement, and repairing and painting all Street Furniture (the **"Refurbishment Program"**). Company shall provide the Refurbishment Program plan to the City before commencing. The City shall have five (5) business days to review and provide feedback on the Refurbishment Program plan.

Painting shall only be required for the older (green) Street Furniture. Company shall bear the cost of all approved replacement parts needed to repair damaged Street Furniture. The Refurbishment Program shall be completed within six (6) months of the Effective Date of this Agreement; however, painting the older Street Furniture may be completed within nine (9) months of the Effective Date.

Safety

Company shall be solely responsible for employing appropriate safety measures and taking all other actions reasonably necessary to protect the life, health, and safety of the public when it has notice of potential safety hazards that exist at the Site Areas that are subject to this Agreement.

Installation and Design Standards

- a. In its design of bus stop and bus shelter program elements, the City's focus has been and remains on the fundamentals, namely, shelter, shade, safety, and comfort. The City believes that thoughtful design can respond to needs and provide multiple benefits for all those who

share the sidewalks in the City of Santa Ana. Design should be scalable considering site-specific space constraints and varying levels of transit ridership. The installation of any device by Company without City's prior approval is forbidden.

- b. The Company shall conform to and abide by all City and Orange County ordinances, OCTA bus stop standards (including the (2004) *Bus Stop Safety and Design Guidelines*) and all applicable state and federal laws (including the requirements in the (2007) *Caltrans's Bus Rapid Transit Handbook for Partners*). Where permits and/or licenses are required, it is the responsibility of the Company to first obtain them from the regulatory agency having jurisdiction.
- c. The Company shall permanently affix in a conspicuous area on each shelter and/or bench an owner identification tag which includes the Company's business name and 24-hour service telephone number.
- d. The Company shall conform to and abide by all applicable City regulations.
- e. Company shall employ or subcontract, for services, adequate personnel to competently and timely meet all agreed on obligations. If the City determines, at any time that the conduct of an employee or representative of the Company or an authorized and approved subcontractor of the Company, while in performance of its obligations, in the reasonable belief of the City, detrimental to the interest of the City or the public, the City shall give written notice thereof to the Company. Following the City's written notice therefor, the Company shall take all reasonable actions necessary to correct such conduct and prevent it from occurring in the future including, but not limited to terminating such employee's work assignment within the City of Santa Ana.

Advertising Standards

- a. Bus shelter advertising shall be limited to one two-sided, back-to-back, backlit ad panel per shelter. Alternative advertising panel designs as required on a site by-site basis will require prior approval by the City. Any proposed advertising to be located on the shelter ad panels shall not:
 - 1. Display the words "STOP", "DRIVE-IN", "DANGER", or any other word, phrase, symbol or character which may interfere with, mislead, confuse, or direct vehicular traffic.
 - 2. Be comprised of rotating, revolving, or flashing lighting devices.
 - 3. Promotes material which the City in its sole discretion deems offensive to community standards of good taste.
 - 4. Promotes alcohol, cannabis and/or tobacco products of any kind within 1,000 feet of any school.
 - 5. Contains "off-site business identification signs" or "political endorsements." For the purpose of this Agreement, "off-site identification signs" are defined as ad panels that give specific direction to an advertiser's place of business other than the site's address.
- b. Company shall not accept ads or run ads in the Advertising Inventory with content that is deemed unacceptable by the City in accordance with Exhibit D. The Parties will agree to an ad approval

process for advertising that Company believes may be potentially deemed in violation of the City's ad standards.

- c. The City shall have the right to remove advertising that contains Unacceptable Content upon request. The Director will make the final determination on unacceptable advertising. In the event that an advertisement is determined to be unacceptable, Company agrees to remove said advertising within twenty-hour (24) hours of being noticed by the City.

Site Relocation

- a. In the event that a bus route or stop is altered or deleted such that any bus shelter will no longer serve as an active bus stop location, the Company shall, within thirty (30) days after notification from the City, relocate the bus shelter and appurtenances to a new location designated by the City. The vacated location shall be restored to its original condition, including complete replacement of the affected sidewalk sections, within that same time period by the Company at its own cost and expense.
- b. In the event a construction or roadway improvement project impacts Street Furniture, the Company shall coordinate with the City to vacate, remove, store, and reinstall the Street Furniture at its own cost and expense. Upon completion of the work, the Company shall automatically resume its operations.

Cleaning

- a. The Company shall furnish all labor, materials, water, equipment, clean-up, disposal, and services required to perform the services set forth herein.
- b. Company shall be responsible for performing the following cleaning activities with each visit to the Site Area:
 - 1. At each Site Area, the Company shall unlock and open trash container. Empty replace the trash bag in each trash receptacle and properly dispose of all debris, trash, and other associated undesirable items from the Site Area and dispose of such legally and properly, to the City's satisfaction, at the Company's expense, and if needed, wash down the affected area to eliminate any remaining residue. Close and lock trash containers.
 - 2. Cleaning all interior and exterior visible metal and concrete surfaces at each location, including all plexiglass surfaces, trash cans, trash can covers and entire benches with disinfecting cleaners (approved by the Environment Protection Agency for its effectiveness against COVID-19). The Company shall clean the entire bus stop/shelter (including but not limited to bus furniture, shelter structure, trash receptacles, posts and signs).
 - 3. Clean by sweeping all Site Area (e.g. sidewalk/boarding area, etc.) and remove all litter (including cigarette butts), waste material, debris, etc.
 - 4. Remove graffiti, stickers, decal, tape and gum from Site Area and from concrete pads and sidewalks.
 - 5. Cleaning solar panels to remove dust and grime build up (no pressure washing), cleaning the LED display, cleaning the aluminum case and replacing the polycarbonate screen protector

in the event that the solar panel is vandalized. Company shall provide and replace the polycarbonate screen protectors as needed.

6. Company shall use steam to clean the bus stops one (1) time each month. Prior to any steam cleaning, the Company shall block or seal all storm drains and clean accumulated debris and remove blocking materials when finished. Wash water shall be contained and pumped up or vacuumed and properly disposed of.

Maintenance, Replacement and Repair of Street Furniture

- a. Company shall repair, remove, or replace damage vandalism, or graffiti, including etching and other forms of graffiti and/or vandalism damage, within twenty-four (24) hours after having been found at the time of a routine maintenance call or upon notification by the City.
- b. If shelter or bench damage or vandalism is such that the public could be exposed to a dangerous situation while in or near the shelter or bench, the Company shall repair or if necessary, remove the entire shelter or bench within three (3) hours of notification, and it shall be replaced and fully operation at the same location within five (5) working days after removal.
- c. In the event that the Company determines that the Street Furniture, or any of its major components cannot be repaired and need to be fully replaced (e.g. total loss), Company shall photograph the damaged Street Furniture before its removal from the Site Area (as defined in table 2 of this Agreement) and immediately provide the photograph to the City for review. If the City determines that the damaged Street Furniture is a total loss, the City shall provide replacement furniture and/or components at City's sole cost and Company shall install at its sole cost.
- d. Company shall spray for weed control within twenty (20) feet of the outer edges of benches.
- e. Company shall maintain, repair, and replace shelter lighting, which shall be illuminated from dusk until dawn by an overhead energy efficient, lighting system, concealed in the roof structure.
- f. Company shall be responsible for all maintenance and repair, including the replacement of parts to ensure everything is in working order at its sole cost and expense.

Painting

- a. All non-galvanized (green) bus shelters shall be painted, by Company, within nine (9) months of the Effective Date.
- b. Twenty percent of the current inventory of non-galvanized bus shelters shall be painted on an annual basis. The inventory list of bus shelters to be painted annually by Company shall be approved in advance by the City.
- c. Touch up paint at bus shelters, bus stops and associated furniture and fixtures on an as needed basis.

Cleaning, Maintenance and Repair, and Painting Schedule

The frequency for cleaning and performing maintenance (including painting) at bus shelters and bus stops is presented in Table 2 below and in this Agreement.

mySantaAna App

Communication regarding maintenance or cleaning requests of the bus stops shall be handled through the City's computerized work order management system, whether presently known as the "mySantaAna" app (the "**City App**") or otherwise in the future. Company personnel shall use handheld devices such as smartphones or tablets to receive, respond to, and close maintenance requests through the City App. Company shall respond within twenty-four (24) hours to any maintenance or service requests that are received through the City App or otherwise.

Cost of Utilities

Company shall incur 100% of the cost of all electrical connections, including obtaining all service permits from Southern California Edison (SCE), running electrical conduit and for all metered electrical charges generated by the Street Furniture.

Hours of Operation

To preserve peace and quiet, maintenance, repairs and replacement of street furniture in residential areas shall be between 7:00 a.m. and 6:00 p.m. seven days per week. Hours for steam cleaning bus shelters and bus stops are between 3:00 a.m. and 9:00 p.m. Monday through Friday and between 5:00 a.m. and 9:00 p.m. on Saturday and Sunday. If complaints are received from residential units, which are at least one hundred (100) feet away from service locations, the Executive Director may direct that services shall be performed between the hours of 7:00 a.m. and 6:00 p.m. Contractor may not make exceptions to these service days and times without advanced written approval from the City.

Traffic Control

Traffic control shall be provided by Company to ensure that no personnel, equipment, and/or vehicles block lanes without proper warning signs and all required safety measures when performing services under this Agreement.

Advertising Services

- a. Company's obligation is to maximize the revenue of the Advertising Inventory. All ad campaigns in the Advertising Inventory must have a revenue component based on market rates. Company shall not use the Advertising Inventory to bonus additional ad panels to clients that are not purchasing ads in the Advertising Inventory.
- b. From time-to-time, Company shall evaluate the opportunity to replace the current static ad panels with digital panels and shall do so when it becomes economically feasible and after obtaining approval by the City.

Public Service Announcements

Company shall, at least four (4) times per year, for at least twenty-eight (28) calendar days each time, display at least one (1) public service announcement in lieu of paid advertising in up to sixteen (16) bus shelters identified by the City, or 10% of the total number of bus shelters under the agreement, whichever is greater. Company shall arrange, at its own cost and expense, for production, service and installation of the public service announcements upon consultation with the City. The City shall approve all public service messages.

City Ads

- a. Company shall provide the City with free ad space from unsold Advertising Inventory, up to 10% of available Advertising Inventory, to use for City messages and/or additional Public Service Announcements ("City Ads"). In addition, Company shall provide design services for City Ads at no cost.
- b. Ad lead times shall be no longer than two (2) weeks - ad designed, approved, and placed in Advertising Inventory.

Discounts For City Businesses

Company shall provide introductory packages that include discounts on design and production costs and shall bonus additional ad panels on a space-available basis.

Reporting

- a. Company shall provide quarterly reports with each quarterly Revenue Payment within thirty (30) days from the end of each calendar quarter. Each report shall detail the revenue generated from the Advertising Inventory, associated ad rates and occupancy rates. The report shall also include the MAG amount, the Maintenance Services Cost, and the resulting Revenue Payment for the quarter. The Parties shall mutually agree on the format of the quarterly reports.
- b. Company shall provide quarterly reports of its shelter maintenance operations in a format to be approved by the City. City may request monthly reports as needed.

Account Executive

Company shall assign an Account Executive to be the City's single point of contact for this partnership.

Meetings

At the City's discretion, the Parties shall meet on a quarterly basis or on an as needed basis to review sales performance, maintenance and cleaning performance, current Street Furniture, new potential Street Furniture, and any other matter related to the services provided by Company.

Table 1 – Estimated Maintenance Expense and Frequency of Visits

| | |
|--|----------------------------|
| Group A | Number of Bus Stops |
| Ad Shelter, Non-Ad Shelter w/Kiosk & Kiosk Locations | 173 |
| 3 Visits Per Week | 173 |
| Total Number of Visits Per Week | 519 |
| Total Annual Cost to City | No Charge ⁽¹⁾ |
| ⁽¹⁾ There will never be a cost to the City for the maintenance and cleaning of Group A bus stops by Company. | |
| Group B | Number of Bus Stops |
| Non-Ad Shelters and Non-Ad Benches | 487 |
| 3 Visits Per Week | 487 |
| Total Number of Visits Per Week | 1,461 |
| Total Annual Cost to City | \$137,000 ⁽²⁾ |
| ⁽²⁾ The annual cost to the City for non-ad shelters and non-ad benches may be adjusted by the City as provided in this Agreement. These figures represent the estimated number of non-ad bus stops at time of Agreement, subject to change. | |
| Group A and/or B | Number of Bus Stops |
| Hot-Spots | 45 |
| 5 Visits Per Week | 45 |
| Total Number of Visits Per Week | 225 |
| Total Annual Cost to City | No Charge ⁽³⁾ |
| ⁽³⁾ There will never be a cost to the City for the maintenance and cleaning of Hot-Spot locations by Company. | |

Table 2 – Frequency for Cleaning and Maintenance at Bus Shelters and Bus Stops

| Required Tasks/Activities ⁽¹⁾ | Frequency | | | | | |
|---|------------------------------------|----------------------|---------|--------------------------|----------|-------------|
| | Five times per week ⁽²⁾ | Three times per week | Monthly | Within First Nine Months | Annually | As Required |
| Unlock and open trash container. Empty replace the trash bag in each trash receptacle and properly dispose of remove all debris, trash, refuse, and other associated undesirable items from the Site Area from the area within twenty (20) feet from all directions of the bus shelter or bus stop and dispose of such legally and properly, to the City's satisfaction, at the Company's expense, and if needed, wash down the affected area to eliminate any remaining residue. Close and lock trash container. | x | x | | | | |
| Use disinfecting cleaners (approved by the Environment Protection Agency for its effectiveness against COVID-19) to wipe down trash cans, trash can covers and entire benches. | x | x | | | | |
| Clean by sweeping all Site Area ⁽³⁾ and remove all litter (including cigarette butts), waste material, debris, etc. | x | x | | | | |
| Remove graffiti, stickers, decal, tape and gum from Site Area and from concrete pads and sidewalks. | x | x | | | | |
| Cleaning all interior and exterior visible metal and concrete surfaces at each location, including all plexiglass surfaces. The Company shall clean the entire bus stop/shelter (including but not limited to bus furniture, shelter structure, trash receptacles, posts and signs). | x | | | | | |
| Cleaning solar panels to remove dust and grime build up (no pressure washing), cleaning the LED display, cleaning the aluminum case and replacing the polycarbonate screen protector in the event that the solar panel is vandalized. Company shall provide and replace the Replacement poly-carbonate screen protectors as needed. | x | | | | | |
| Touch up paint at bus shelters, bus stops and associated furniture and fixtures ⁽⁴⁾ . | | | | | | x |
| Test power to all lighting fixtures. | | | x | | | |

| Required Tasks/Activities ⁽¹⁾ | Frequency | | | | | |
|---|------------------------------------|----------------------|---------|--------------------------|----------|-------------|
| | Five times per week ⁽²⁾ | Three times per week | Monthly | Within First Nine Months | Annually | As Required |
| Spray for weed control within 20 feet of the outer edges of benches. | | | | | | x |
| Inspect ad panel plexiglass. | | | x | | | |
| Steam cleaning of bus shelters and bus stops. Prior to any steam cleaning, the Company shall block or seal all storm drains and clean accumulated debris and remove blocking materials when finished. Wash water shall be contained and pumped up or vacuumed and properly disposed of. | | | x | | | |
| Paint all non-galvanized (green) bus shelters. | | | | x | | |
| Paint twenty percent of the current inventory of non-galvanized bus shelters. | | | | | x | |
| Board up damaged ad panels. | | | | | | x |
| Repair damaged plexiglass ad panels. Repair and replace light fixtures and ad panel lights. | | | | | | x |

⁽¹⁾ If any safety issues or hazards are found, all necessary measures shall be taken to minimize or eliminate the potential risks to the workers and public. If required, the City will be notified as soon as possible, but no later than 24 hours after the bus stop has been serviced.

⁽²⁾ Company to maintain approximately thirty (30) sites clean requiring cleaning five days per week including one weekend day. The Sites are typically along the most heavily used bus routes and are referred to as "Hot Spots". City will provide a list of the Hot Spots to Company. The list will be updated by the City by providing advance notice to Company.

⁽³⁾ One Site Area is equivalent to one Bus Shelter or Bus Stop. The ("Site Area") includes all area within twenty (20) feet of the outer edges of all bus stop furniture/fixtures (e.g. shelters, benches, receptacles, signs (including LED solar signs), posts, improvements, sidewalks, curbs and gutters, pavement, etc.) at each location and from right-of-way to curb face, all furniture/fixtures within the Site Area and only that area which is part of the public right of way (e.g., sidewalks and streets open to public access).

⁽⁴⁾ Bus shelters and bus stops furniture/fixture include benches, trash receptacles, information map cases, schedule holders, free standing kiosks, outdoor advertising displays (both static and digital), secure bicycle racks.

EXHIBIT B**PROJECTED MAG PAYMENTS AND FORECASTED REVENUE & EXPENSES**

| Year | Annual MAG (173 Ad Locations x \$720) | Revenue Share | The > of MAG or Revenue Share | Maintenance Expense | Difference | Balance | Notes |
|-------------|--|--------------------------|---|--------------------------------|-------------------|----------------|--------------------|
| 1 | \$124,560 | \$101,000 | \$124,560 | \$137,000 | (\$12,440) | (\$12,440) | Roll over to yr. 2 |
| 2 | \$124,560 | \$140,284 | \$140,284 | \$137,000 | \$3,284 | (\$9,156) | Roll over to yr. 3 |
| 3 | \$124,560 | \$147,298 | \$147,298 | \$137,000 | \$10,298 | \$1,142 | Due to City |
| 4 | \$124,560 | \$154,663 | \$154,663 | \$137,000 | \$17,663 | \$17,663 | Due to City |
| 5 | \$124,560 | \$162,396 | \$162,396 | \$137,000 | \$25,396 | \$25,396 | Due to City |
| 6 | \$124,560 | \$170,516 | \$170,516 | \$137,000 | \$33,516 | \$33,516 | Due to City |
| 7 | \$124,560 | \$179,042 | \$179,042 | \$137,000 | \$42,042 | \$42,042 | Due to City |
| 8 | \$124,560 | \$187,994 | \$187,994 | \$137,000 | \$50,994 | \$50,994 | Due to City |
| 9 | \$124,560 | \$197,394 | \$197,394 | \$137,000 | \$60,394 | \$60,394 | Due to City |
| 10 | \$124,560 | \$207,263 | \$207,263 | \$137,000 | \$70,263 | \$70,263 | Due to City |

Note: Any negative balance will be rolled over in the first 3 years. Any negative balance at the end of year 4 will be waived. Any positive balance at the end of any quarter or year will be paid to the City.

MAG and Maintenance Expense will be adjusted annually based on CPI specified in the agreement.

SHELTER AND BENCH DESIGN AND CONSTRUCTION SPECIFICATIONS

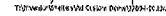


EXHIBIT D

UNACCEPTABLE CONTENT

Company shall not accept or run advertising on the Advertising Inventory that contains Unacceptable Content, as determined by the City. Unacceptable Content includes but is not limited to the following:

- Is lewd, profane, obscene, or indecent, including any content that is violent or pornographic, explicit violent or sexual material, or depictions of violent or sexual acts;
- Contains gruesome, graphic, or disgusting accounts or imagery;
- Promotes the sale of products that are designed to explode and could cause damage to nearby people or property;
- Promotes the sale of firearms or sporting or recreational guns that can cause serious harm if misused, or that appear to be real guns;
- Promotes the sale of other weapons that are designed or promoted as products that can be used to injure an opponent in sport, self-defense, or combat;
- Is harassing, threatening, abusive, inflammatory or otherwise objectionable;
- Is unlawful or that could facilitate the violation of any applicable law, regulation or governmental rule or guidance;
- Offers or disseminates any fraudulent goods, services, schemes or promotions;
- Demeaning or disparaging matter - Contains images, copy or concepts that actively denigrate, demean or disparage any individual or group.
- Vulgarity - Contains images, copy or concepts that are obscene, vulgar, crude, sexually suggestive, indecent, profane or scatological.
- Promotes the sale and use of tobacco and tobacco-related products. Tobacco means: (1) any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether smoked, heated, chewed, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, including, but not limited to cigarettes, cigars, little cigars, chewing tobacco, pipe tobacco, snuff; and (2) any electronic device that delivers nicotine or other substances to the Person inhaling from the device, including, but not limited to, an electronic cigarette, electronic cigar, electronic pipe, or electronic hookah;
- Promotes the sale and use of cannabis or cannabis product, medicinal/medical cannabis, or commercial cannabis activity and business as defined in Santa Ana Municipal Code Section 40-2;
- Political endorsements – Contains messages that are political in nature, including messages of political advocacy, that support or oppose any candidate or referendum, or that feature any current political office holder or candidate for public office, or take positions on issues of public debate.
- Religion - Contains images, content or copy related to religion or religious ideas or viewpoints.
- Promotes products or services marketed as facilitating recreational drug use;
- Is libelous, defamatory, knowingly false or misrepresented an individual, company or entity;
- Infringes upon the intellectual property rights of any third party, including copyrights, trademarks, trade names, trade secrets, or patents of such third party;

- Negative connotations of public transit - Contains images, copy or concepts that actively denigrate public transportation.
- Unsafe transit behavior – Contains images, copy or concepts that depict unsafe behaviors aboard buses or trains, or in or around transit stations or railroad tracks; or
- Is harmful to the City of Santa Ana, its neighboring cities, or Orange County.