

**AGREEMENT BETWEEN THE CITY OF SANTA ANA AND
OUTFRONT MEDIA FOR THE PROVISION FOR
DIGITAL BILLBOARDS AND DIGITAL BANNERS**

This Agreement is made and entered into this 19th day of April 2022 (“**Effective Date**”) by and between Outfront Media LLC (“**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, the development, maintenance and operation of advertising-supported digital billboards and digital banners.
- B. The City is authorized to enter into agreements for the development, maintenance, and operation of digital billboards and digital banners and otherwise regulate the use of public property and encroachments onto public property and 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 digital billboard and banner advertising services, including but not limited to applicable provisions of the City of Santa Ana Municipal Code and the California Department of Transportation (“**CalTrans**”).
- 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 Parties wish to enter into an arrangement pursuant to which Company shall develop, maintain, and operate advertising-supported digital billboards and digital banners throughout the City and shall sell advertising and share revenue with the City, from all digital billboards and digital banners developed in the City pursuant to this Agreement (collectively, the “**Advertising Inventory**”).

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 necessary to install, on mutually agreed sites, new digital billboards along freeways and digital banners throughout the City (each an **"Advertising Site"**), 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.

2. TERM & COMMENCEMENT

The Agreement shall commence on the Effective Date and continue for a period of twenty-five (25) years (the **"Term"**), unless terminated earlier in accordance with Section 18, with the option for the City to grant a one (1) ten (10) year renewal (the **"Renewal Term"**), provided that Company has paid the City at least \$50,000,000 in Revenue Share (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.

3. LICENSE

The City hereby grants to Company an exclusive license for the right to install, construct, maintain, and operate digital billboards and digital banners at Advertising Sites 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. Each Advertising Site shall be further subject to a separate, written "Advertising Site License Agreement" between the Parties that is consistent with the terms of this Agreement (each, an **"ASLA"**) and that may be approved by the City Manager or his or her designee.

Company shall not use, and shall prohibit its Agents or Invitees from using, the Advertising Inventory 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 40% of the Net Advertising Revenue. **Net Advertising Revenue** shall be defined as gross revenue received from the sale of the Advertising Inventory less bad debt only (not to exceed 2% of gross revenue).

MAG payments and a nonbinding forecast of revenue based on each Advertising Site to be developed is provided in **Exhibit B**, attached hereto and incorporated by reference. The MAG shall be increased by three percent (3%) annually. If at any time during the Term, Company and City agree to add additional Advertising Sites after the Effective Date, the Parties shall mutually agree on the MAG payments, bonus payments, and a forecast of revenue for each additional Advertising Site.

Company shall not derive revenue from any other sources other than the sale of advertising (“**Ancillary Revenue**”) without prior approval from the City Manager or their designee. In the event of such approval, Ancillary Revenue shall be referred to as “**Approved Ancillary Revenue**.” The terms of any Approved Ancillary Revenue shall be mutually agreed on by the Parties by a separate writing, provided that the revenue share for Approved Ancillary Revenue shall not be less than 40% of gross ancillary revenue received less bad debt only (not to exceed 2% of gross ancillary revenue).

Company will have the exclusive right to add telecommunications devices to the Advertising Sites, including, without limitation, third party telecommunications and computing devices (**Telecommunication Hardware**). City shall approve third party telecommunications and computing devices; such approval shall not be unreasonably withheld and shall comply with the applicable federal, state laws, regulations, and City Ordinance requirements. Revenue received by Company in consideration of third-party Telecommunication Hardware installed on any Advertising Site, shall constitute **Approved Ancillary Revenue** and will be subject to a revenue share with the City as mutually agreed upon by the Parties by a separate writing, provided that such revenue share will not be less than 40% of gross ancillary revenue received less bad debt only (not to exceed 2% of gross ancillary revenue).

5. PAYMENTS

MAG payments related to each Advertising Site shall commence when such Advertising Site becomes operational, but no later than 12 months from the date each respective ASLA is fully executed, provided there are no significant delays. “**Significant Delay**” shall refer to (i) delays with any required approvals and permits including those granted by CalTrans; or (ii) any delay resulting from acts of God; fire; earthquake; flood; explosion; action of the elements; war; invasion; insurrection; riot; mob violence; sabotage; malicious mischief; inability (notwithstanding good faith and diligent efforts) to procure (or general shortage of) labor, equipment, facilities, materials, or supplies in the open market; failure of transportation; strikes (other than any strike resulting from acts of Company); lockouts; action of labor unions; condemnation laws; requisition or order of government or civil or military or naval authorities; or any other similar cause to those stated above, not within Company’s reasonable control. Notwithstanding anything to the contrary contained herein, in no event shall financial inability constitute Significant Delay. On a quarterly basis, Company shall pay the MAG amount within fifteen (15) days of the end of each calendar quarter (the “**MAG Payment**”). The first MAG Payment will be prorated based on when the Advertising Site became operational in the quarter.

In the event the cumulative Revenue Share is greater than the cumulative MAG for a given calendar year, Company shall pay the difference between the Revenue Share and the MAG within fifteen (15) days of the end of each calendar year (the “**True-Up Payment**”).

Company shall pay an upfront one-time **Bonus Payment** equal to fifty thousand dollars (\$50,000) for each digital billboard face installed on an Advertising Site and an upfront one-time Water Tower Bonus Payment of two hundred thousand dollars (\$200,000) specifically for the Water Tower site. The Bonus Payment for each digital billboard Advertising Site associated with each fully executed ASLA shall be paid within fifteen (15) days from the date that Company receives required approvals from all government agencies including CalTrans. The Bonus Payment for any future digital billboard sites shall equal a minimum of fifty thousand dollars (\$50,000) for each digital billboard face. There

shall not be a Bonus Payment for digital banner Advertising Sites. Bonus Payments shall be non-refundable.

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 15th of the month.

6. PREVAILING WAGES

Company is aware of 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. If the services being performed are part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and the total compensation is \$1,000 or more, Company agrees to fully comply with such Prevailing Wage Laws. 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.

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 its 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 specifically for the City 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

Prior to undertaking performance of work under this Agreement, Company shall maintain and shall require its subcontractors, if any, to obtain and maintain insurance as described below:

a. Minimum Scope and Limit of Insurance

1. **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 **\$2,000,000** 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.
2. **Automobile Liability:** ISO Form Number CA 00 01 covering any auto (Code 1), or if Contractor has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limits no less than **\$1,000,000** per accident for bodily injury and property damage.
3. **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.
4. **Broader Coverage:** If 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 Company. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

b. Other Insurance Provisions

1. **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 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 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).
2. **Primary Coverage:** For any claims related to this Agreement, 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 Company's insurance and shall not contribute with it.

3. **Notice of Cancellation:** Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the City.
4. **Waiver of Subrogation:** Company hereby grants to City a waiver of any right to subrogation that 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.
5. **Self-Insured Retentions:** Self-insured retentions must be declared to and approved by the City. The City may require 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.
6. **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.
7. **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 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.
8. **Subcontractors:** Company shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Company shall ensure that City is an additional insured on insurance required from subcontractors.
9. **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 third party claim that personal injury, damages, just compensation, restitution, judicial or equitable relief is due by reason of a breach of the terms of this Agreement by the Company, its subcontractors, agents, employees, or other persons acting on its behalf. This indemnity and hold harmless agreement apply 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.

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 relating to this Agreement 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. City may exercise the audit and examination rights in this paragraph no more than once annually and in each case upon at least ten (10) days' prior written notice to Company.

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

Company shall be the exclusive construction and advertising partner to the City for all digital billboards and digital banners on City-owned or City-designated properties. 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, nor does it include digital advertising kiosks at bus shelters and bus stops.

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 construction and management of digital billboards and digital banners and selling advertising on them. 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 any one 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.

1. 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.

2. 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.

3. The failure of the Company to construct an Advertising Site and/or other related improvements pursuant to mutually agreed upon construction dates, where such failure is not due to City and/or CalTrans approvals or other causes outside of Company's control and continues for more than thirty (30) days after service of notice by the City as provided above.

4. The failure of the Company to meet the intended objective of this Agreement in constructing and operating at least one Advertising Site within three (3) years from the Effective Date.

5. The failure to maintain an Advertising Site 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.

6. 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.

7. 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 Advertising Sites; 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 Share (if greater) up to the date of termination.

b. Notwithstanding Section 18.a, an ASLA may be terminated for convenience by the City upon one hundred eighty (180) days written notice of termination, provided that (i) such termination cannot occur within the initial ten (10) years from the Effective Date of such ASLA, and (ii) such termination is to redevelop the site for another purpose at City's sole discretion. In such event, City shall be entitled to receive, and the Company shall pay City compensation for all pro-rated MAG Payments and/or the Revenue Share (if greater) due to the City up to the termination date. For the avoidance of doubt, any termination of a particular ASLA does not affect the Term of the Agreement. The Parties agree that the terms of this Section 18.b. shall appear in each ASLA between the parties.

c. At the end of the Term, Renewal Term, or an ASLA, or if the Agreement or ASLA is earlier terminated, Company shall remove the digital billboards and digital banners at its own cost and return the Advertising Sites to their original condition.

19. SECURITY FOR PERFORMANCE

The Company shall establish a bond in the sum of \$500,000 for each Digital Billboard Advertising Site and \$150,000 for each Digital Banner Advertising Site, within thirty (30) days after full execution of each respective ASLA, to insure faithful performance of Company's covenants for construction, maintenance, repair or replacement of the digital billboards and digital banners, timely payment of all revenues due the City under this Agreement, and restoration of the Advertising Sites to the condition existing prior to the construction of the digital billboards and digital banners. 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 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, the California Department of Transportation, 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 performance of Company's obligations under this Agreement 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, calamities, pandemics, public health emergencies, 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. If such a cause materially adversely impacts Company's ability to generated revenue from the Advertising Inventory or renders any Advertising Inventory

incapable of displaying advertising, the MAG for such Advertising Inventory will be equitably adjusted for the duration of the effect of such cause in proportion to its impact.

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:

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:

Katie Metz
Real Estate
Outfront Media LLC
5870 W. Jefferson Blvd
Los Angeles, CA 90016

With a copy to:

Legal Department
Outfront Media LLC
405 Lexington Avenue
New York, New York 10174

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: John M. Funk
John M. Funk
Sr. Assistant City Attorney

Andrew R. Sriubas
Andrew R. Sriubas
Chief Commercial Officer

RECOMMENDED FOR APPROVAL:

Nabil Saba
Executive Director
Public Works Agency

EXHIBIT A

SCOPE OF SERVICES

The Scope of Services includes the design, construction, maintenance, and operation of digital billboards at freeway locations and digital banners within the boundaries of the City of Santa Ana, as well as managing and selling the City's Advertising Inventory at all Advertising Sites.

1. Digital Billboards

A. Site Location

- a. The City and the Company have identified five (5) City-owned sites as potential locations for the development of digital billboards. The City maintains the right to eliminate, substitute or add locations at its own discretion, provided that the placement of any new or substituted locations is mutually agreed upon by the Parties. The City has discretion to allow additional locations provided that any new locations shall be mutually agreed upon by the Parties. A listing of the selected sites is included in Table 1, *Digital Billboard Sites Considered for Development*, below. These selected sites for digital billboards have the potential to ensure optimum return on investment and rapid results through an effective marketing strategy.
- b. The Company shall be responsible for the evaluation of all potential sites for the freeway digital billboard locations. The evaluation and the determination shall include but are not limited to the following:
 - i. Before the commencement of demolition, construction or development of any structures, digital billboards or other work of improvement upon an Advertising Site, the Company shall perform a Complete CEQA Review, subject to final approval by City. The Company shall be responsible the preparation of an Initial Study in association with the freeway digital billboards and any subsequent environmental documentation. The City shall determine the level of environmental review required. The Company shall be responsible for all costs associated with such review and compliance, if any, including noticing costs, filing fees, staff costs, administrative costs and consultant fees.
 - ii. The Company shall comply with the City's requirements and all rules and regulations for electronic signs adopted by the Federal Highway Administration, United States Department of Transportation and CalTrans, and all other applicable regulations.
 - iii. The Company's selection of Advertising Sites shall not be limited to a determination of the sites with maximal revenue generating potential based on visibility along the freeway and dwell time near the boards but shall also take into consideration environmental and aesthetic impacts, site selection, utility easements if any, and encumbrance responsibilities.

- c. The Company shall develop a comprehensive community outreach and communication plan for each location. The plan shall include three (3) or more community meetings for each location. The Company will cooperate with the City regarding the date, time, and location of each meeting and shall prepare and produce all needed outreach material and provide all necessary equipment and technology to conduct the meetings at neighborhood association locations or at various field locations. The Company shall report to the City all issues and concerns expressed by the community immediately. The Company shall address, to the satisfaction of the community and City, all questions and concerns raised at the meetings and shall document the resolution reached between the Company and the community representatives and the neighborhood association members.

C. Specifications:

- a. Current best available digital-billboard technologies are required, including but not limited to the following:
 - i. Remote diagnostic and maintenance capability
 - ii. "Amber Alert" capability
 - iii. Automatic brightness adjustment to ambient lighting conditions
 - iv. UL and IEC approved
 - v. Color calibration to ensure consistent image quality
 - vi. Remote shutdown capability
 - vii. Screen sizes and pixel dimensions
 - viii. Unless otherwise specified in the proposal, it is assumed that each digital billboard will be double-sided with the exception of the water tower, which is considered a special case due to the circular nature of the structure.
- b. Construction and operation requirements:
 - i. Regularly scheduled onsite maintenance of all components of the billboard structure and surrounding area to include the entire dedicated parcel of land
 - ii. Annual inspections, at a minimum, of all components of the billboard for structure integrity
 - iii. Internal service access for safety and improved appearance (no visible catwalks).
 - iv. Constructed to comply with all applicable CalTrans codes
 - v. Engineered foundation, anchoring mechanism, and support system
 - vi. The City reserves the right to reasonably modify construction and operation requirements at its sole discretion as necessary to comply with legal requirements
- c. Company shall maintain, repair, and upgrade the digital billboards as needed to provide the best available digital-billboard technologies during the term of the Agreement.
 - i. Company shall maintain the digital billboards in good working order and will upgrade or refresh the LED hardware as necessary during the Term to maintain adequate brightness and functionality.
 - ii. As new technology becomes available, Company shall upgrade the digital billboards from time-to-time but not less than every 9 years.

- d. At the time of this Agreement, the City is in the process of revising its off-premises commercial advertising signs ordinance ("Ordinance"). The requirements that are anticipated to be included in the Ordinance are presented below in sections C through H. Company shall comply with these requirements, as well as the requirements generally encountered on similar projects of size and scope. Once adopted, the Company shall abide by the Ordinance in effect.

C. Application Requirements

- a. Every application for the construction of a new digital billboard shall be filed with the written consent of the City on forms required by the Public Works Agency and shall be, at a minimum, accompanied by the following information:
 - i. A pictorial representation of, and other information about, the proposed digital billboard, disclosing overall dimensions, dimensions of letters and figures, colors, materials, copy, and illumination characteristics.
 - ii. A plan of the site on which the proposed digital billboard will be located, indicating the precise location of the billboard, existing and proposed landscaping, other site improvements, and proximity to the edge of pavement of an adjacent freeway.
 - iii. A vicinity map depicting the location of all existing and proposed billboards, any landmarks as designated on the General Plan that are within one thousand (1,000) feet of the proposed digital billboard, and the zoning designation of all sites within five hundred (500) feet of the boundaries of the subject property.
 - iv. Photo simulations of all proposed digital billboards showing daytime and nighttime conditions.
 - v. A three-dimensional (3D) massing study depicting proposed digital billboard. The 3D study will include any existing buildings and advertising signs within one thousand (1,000) feet of the proposed digital billboard.
 - vi. Such other information as the Executive Director of the Planning and Building Agency deems appropriate to determine compliance with the provisions of the application requirements.
- b. Each billboard will comply with City, County and State requirements. The City must approve each billboard design, and such approval shall not be unreasonably withheld.
- c. Company shall prepare all construction documents necessary to construct digital billboards.
- d. Company shall be responsible for obtaining all the necessary approvals and will construct the digital billboards at its own cost, at the mutually agreed upon Advertising Site.

D. Development Standards

- a. The City has developed the following requirements for digital billboards:
 - i. All digital billboards shall comply with standards established by CalTrans that are in effect at the time the permit is issued. Among other provisions, these standards may prohibit the construction of digital billboards in landscaped areas and/or in zones where residential uses are permitted, may limit the size and height of digital billboards and may

- require separation between billboards.
 - ii. The development standards in Table 2, *Digital Billboard Development Standards*, below shall be applicable to all new billboards.
- b. Development and commissioning of each Advertising Site shall be completed no later than 12 months from the date that each respective ASLA is fully executed, provided there are no Significant Delays.

E. Design Standards

- a. The City has the following design requirements for digital billboards:
- i. The words "Santa Ana" shall permanently appear on the billboard structure in a size large enough to be visible to drivers using the freeway. The precise location, size and font of the words shall be determined and approved by the City.
 - ii. All ground-mounted equipment shall be screened from view at street level. The entire site occupied by the billboard shall be appropriately landscaped with groundcover and shrubs to the satisfaction of the City.
 - iii. Each billboard must be oriented primarily for viewing from the freeway and shall be oriented, and adequately shielded, if necessary, to prevent the trespass of light and glare upon any residential land use, including those in mixed-use districts, as exists on the date of building permit issuance.
 - iv. The billboard shall utilize an innovative billboard format, shall creatively use the latest in technology to ensure digital image quality, and shall use innovative architectural features and materials.
 - v. All billboards shall (1) plainly display and be visible from no less than one hundred (100) feet, the name of Company and the billboard's identification number; and (2) display at the base of the sign the contact information for the Company.
 - vi. Billboards projecting over a driveway or drive aisle shall have a minimum clearance of sixteen (16) feet between the lowest point of the sign and the driveway grade. No part of any billboard shall cross onto an adjacent property.
 - vii. Billboards projecting over a pedestrian walkway shall have a minimum clearance of twelve (12) feet between the lowest point of the sign and the walkway grade.
 - viii. All billboards not projecting over drive areas or pedestrian walkways shall have a minimum clearance of twelve (12) feet between the lowest point of the billboard and ground level.

F. Lighting and Display Requirements

- a. The following lighting and display requirements apply to the digital billboards:
- i. Signs shall produce a maximum 0.3 foot-candles over ambient light levels.
 - ii. The display brightness shall be controlled by a photocell or light sensor that adjusts the brightness to the required level based on ambient light conditions without the need for human input. Use of other brightness adjustment methods, such as timer- or calendar-based systems, shall only be used as a backup system.
 - iii. The display shall be factory-certified as capable of complying with the above brightness standards. Such certification shall be provided to the satisfaction of the Executive

Director of the Planning and Building Agency, or his/her designee.

- iv. Company shall provide to the City, upon request, certification by or compensation for an independent Company to verify that the brightness levels of the electronic billboard are in compliance with the requirements of this Section.
- v. All signs shall be equipped with a control system that, in the event of a display or control malfunction, "freezes" the display on either a single, unchanging message, or a blank screen.
- vi. Any sign area not comprising the electronic display panel is prohibited. This area includes, but is not limited to, static sign area, appendages, cutout letters, and figures. A frame surrounding the display panel up to twelve (12) inches in width shall be permitted; it shall not contain any sign copy or graphics and shall not count toward the sign area.
- vii. Where screen transitions are used, such transitions shall not give the appearance of moving text or images, and should use smooth effects, such as fades, rather than abrupt transitions. The sign copy shall not use flashing, intermittent or moving lights or produce the optical illusion of movement.
- viii. Each sign copy shall be displayed for a minimum of four (4) seconds. The still images may not move or present the appearance of motion and may not use flashing, scintillating, blinking, or traveling lights or any other means not providing constant illumination. Transition or blank screen time between one still image and the next may not exceed one (1) second.
- ix. All digital billboards must comply with all applicable laws and regulations concerning brightness, including, without limitation, California Vehicle Code Section 21466.5, and as amended.

G. Prohibited Features

- a. Digital billboards shall not contain any of the following features:
 - i. Moving parts
 - ii. Appendages, cutout letters, or figures that protrude beyond the flat surface of the sign face
 - iii. Lights that flash, shimmer, glitter or give the appearance of flashing, shimmering, or glittering. Exceptions to this restriction include time, temperature, and smog index units
 - iv. Walls or screens at the base of the sign, which create a hazard to public safety or provide an attractive nuisance
 - v. Copy, which simulates any traffic sign or traffic control device in a manner that confuses the public
 - vi. Copy, which duplicates any other content, displayed on the sign
 - vii. Devices, which emit audible sound, or odor or particulate matter

H. Maintenance and Monitoring

- a. Company is responsible for maintaining each Advertising Site as initially permitted and shall comply with City, County and State requirements.
- b. Company shall ensure that the digital billboards are operational and will guarantee the digital billboards have an uptime of 92.5%.

- c. All digital billboards shall be equipped with immediate shut off functionality to allow the sign to be disabled in the event of a malfunction.
- d. Company shall not allow any digital billboard operated and maintained by the Company to remain in a condition of disrepair. Company will use commercially reasonable efforts to repair or replace the damaged billboard within three (3) business days, but in no event, more than fifteen (15) days. A billboard shall be deemed to be in a condition of disrepair if it is in need of replacement of defective or missing parts, has a broken or damaged sign face, or is in need of repainting or cleaning.
- e. Company shall submit a Lighting Monitoring Report to the Public Works Agency upon installation, and at three-year intervals thereafter to confirm conformance with the lighting requirements, herein.
- f. Complaints about lighting will be investigated by the City, and if determined necessary by the Executive Director of the Planning and Building Agency, the Company shall provide an updated Lighting Monitoring Report within 72 hours of the notice from the City. The City shall reserve the right to conduct digital billboard lighting measurements. If the measured luminance and/or illuminance exceed the data presented in the Company's Lighting Monitoring Report, the findings of the City report shall prevail. All costs related to lighting measurements and/or adjustments or repairs shall be borne by the Company.

Table 1 – Digital Billboard Sites Considered for Development

Location	Description	Number of Faces ⁽¹⁾	Number of Spots ⁽²⁾	Average Rate ⁽³⁾	Occupancy ⁽⁴⁾
1	Santa Ana Water Tower	Special design	8	\$14,941.03	75%
2	Well 38 (Santa Ana Zoo)	1	8	\$5,355.77	80%
3	SW of McFadden at SR-55	2	8	\$4,995.79	80%
4	Well 28 (Santiago Archery)	2	8	\$4,635.22	80%
5	W/O Alton at SR-55	2	8	\$4,995.79	80%

Notes:

- 1) The number of sides of the billboard / banner that will display advertising
- 2) The number of advertisements that will be sold and will run in a 4-week period
- 3) The average selling price of one advertising spot that will run over a 4-week period

4) The percent of ad spots sold out of the total ad spots available to sell

Table 2 – Digital Billboard Development Standards

Maximum Sign Area/Face	As Allowed by CalTrans
Maximum Number of Faces	Two (2)
Maximum Height	As permitted by CalTrans ⁽¹⁾
Spacing Between Billboards	1,000 Feet ⁽²⁾
Number of Vertical Supports	One (1) Vertical Support ⁽³⁾

Notes:

- 1) Measured from nearest adjacent curb level on the site on which the sign is constructed.
- 2) The minimum separation between billboards shall be one thousand (1,000) feet or standards established by the CalTrans in effect at the time the permit is issued, whichever is greater.
- 3) Only one architecturally concealed vertical support.

2. Digital Banners

A. Site Location

- a. The City and the Company have identified four potential (4) digital banner as locations within the City targeting residents and local traffic. The City maintains the right to eliminate, substitute or add locations at its own discretion, provided that the placement of any new or substituted locations is mutually agreed upon by the Parties. A listing of the potential locations is included in Table 3, *Digital Banner Sites Considered for Development*, below. These selected locations for digital banners have the potential to ensure optimum return on investment through an effective marketing strategy.
- b. Selected street digital banner locations shall not be limited to a determination of the sites with maximal revenue generating potential based on visibility along City streets and dwell time near the digital banners but shall also take into consideration environmental and aesthetic impacts, assurance for the adherence to City's requirements and compliance with all rules and regulations for electronic signs adopted by the Federal Highway Administration and the United States Department of Transportation and any other applicable regulations.
- c. In addition, the Company shall take into consideration any input and address any concern from local associations and special interest groups for the proposed locations of the digital banners and to work cooperatively with local associations and special interest groups.
- d. Before the commencement of demolition, construction or development of any structures, digital banners or other work of improvement upon an Advertising Site, the Company shall perform a Complete CEQA Review, subject to final approval by City. The Company shall be responsible the preparation of an Initial Study in association with the freeway digital

billboards and any subsequent environmental documentation. The City shall determine the level of environmental review required. The Company shall be responsible for all costs associated with such review and compliance, if any, including noticing costs, filing fees, staff costs, administrative costs and consultant fees.

- e. The Company shall develop a comprehensive community outreach and communication plan for each location. The plan shall include three (3) or more community meetings for each location. The Company shall coordinate with the City regarding the date, time, and location of each meeting and shall prepare and produce all needed outreach material and provide all necessary equipment and technology to conduct the meetings at neighborhood association locations or at various field locations. Company shall report to the City all issues and concerns expressed by the community immediately. The Company shall address, to the satisfaction of the community and City, all questions and concerns raised at the meetings and shall document the resolution reached between the Company and the community representatives and the neighborhood association members.

B. Specifications

- a. Current best available digital-banner technologies are required, including but not limited to the following:
 - i. Remote diagnostic and maintenance capability
 - ii. "Amber Alert" capability
 - iii. Automatic brightness adjustment to ambient lighting conditions
 - iv. UL and IEC approved
 - v. Color calibration to ensure consistent image quality
 - vi. Remote shutdown capability
 - vii. Screen sizes and pixel dimensions
 - viii. Unless otherwise specified in the proposal, it is assumed that each digital banner will be single-sided
- b. At the time of this Agreement, the City is in the process of revising its off-premises commercial advertising signs ordinance ("Ordinance"). The requirements that are anticipated to be included in the Ordinance are presented below in sections C through G. Company shall comply with these requirements, as well as the requirements generally encountered on similar projects of size and scope. Once adopted, the Company shall abide by the Ordinance in effect.
- c. Construction and operation requirements:
 - i. Regularly scheduled onsite maintenance in accordance with manufacturers' recommendations
 - ii. Annual inspections, at a minimum, of all components of the banner for structure integrity
 - iii. Internal service access for safety and improved appearance (no visible catwalks)
 - iv. Constructed to comply with all applicable City codes
 - v. Engineered foundation, anchoring mechanism, and support system
 - vi. The City reserves the right to reasonably modify construction and operation

requirements at its sole discretion as necessary to comply with legal requirements

- d. The Agreement will require the Company to maintain, repair, and upgrade the digital banners as needed to provide the best available digital banner technologies during the term of the Agreement.
 - i. Company shall maintain the digital banners in good working order and will upgrade or refresh the LED hardware as necessary during the Term to maintain adequate brightness and functionality.
 - ii. As technology becomes updated, Company shall upgrade the digital banners from time-to-time but not less than every 9 years.

C. Application Requirements

- a. Every application for the construction of a new digital banner will be filed with the written consent of the City on forms required by the Public Works Agency and shall be, at a minimum, accompanied by the following information:
 - i. A pictorial representation of, and other information about, the proposed digital banner, disclosing overall dimensions, dimensions of letters and figures, colors, materials, copy, and illumination characteristics.
 - ii. A plan of the site on which the proposed digital banner will be located, indicating the precise location of the banner, existing and proposed landscaping, other site improvements, and proximity to the edge of pavement of an adjacent freeway or sidewalk.
 - iii. A vicinity map depicting the location of all proposed digital banners, any landmarks as designated on the General Plan that are within one thousand (1,000) feet of the proposed digital banner, and the zoning designation of all sites within five hundred (500) feet of the boundaries of the subject property.
 - iv. Photo simulations of all proposed digital banners showing daytime and nighttime conditions.
 - v. A three-dimensional (3D) massing study depicting proposed digital banner. The 3D study will include any existing buildings and advertising signs within one thousand (1,000) feet of the proposed digital banner.
 - vi. Such other information as the Executive Director of the Planning and Building Agency deems appropriate to determine compliance with the provisions of the application requirements.
- b. Each banner will comply with city, county and state requirements. The City must approve each banner design, such approval shall not be unreasonably withheld.
- c. Company shall be responsible for obtaining all the necessary approvals and will construct the digital banners at its own cost, at the mutually agreed upon Advertising Site.

D. Development Standards

- a. Company shall adhere to general development and design standards for digital banners. Company shall obtain City approval prior to development of any banners

- b. Development and commissioning of each Advertising Site shall be completed no later than 12 months from the date that each ASLA is fully executed, provided there are no Significant Delays.

E. Lighting and Display Requirements

- a. The following lighting and display requirements apply to the digital banners:
 - i. Signs shall produce a maximum 0.3 foot-candles over ambient light levels.
 - ii. The display brightness shall be controlled by a photocell or light sensor that adjusts the brightness to the required level based on ambient light conditions without the need for human input. Use of other brightness adjustment methods, such as timer- or calendar-based systems, shall only be used as a backup system.
 - iii. The display shall be factory-certified as capable of complying with the above brightness standards. Such certification shall be provided to the satisfaction of the Executive Director of the Planning and Building Agency, or his/her designee.
 - iv. Company shall provide to the City, upon request, certification by or compensation for an independent Company to verify that the brightness levels of the electronic banner are in compliance with the requirements of this Section.
 - v. All signs shall be equipped with a control system that, in the event of a display or control malfunction, "freezes" the display on either a single, unchanging message, or a blank screen.
 - vi. Any sign area not comprising the electronic display panel is prohibited. This area includes, but is not limited to, static sign area, appendages, cutout letters, and figures. A frame surrounding the display panel up to twelve (12) inches in width shall be permitted; it shall not contain any sign copy or graphics and shall not count toward the sign area.
 - vii. Where screen transitions are used, such transitions shall not give the appearance of moving text or images, and should use smooth effects, such as fades, rather than abrupt transitions. The sign copy shall not use flashing, intermittent or moving lights or produce the optical illusion of movement.
 - viii. Each sign copy shall be displayed for a minimum of four (4) seconds. The still images may not move or present the appearance of motion and may not use flashing, scintillating, blinking, or traveling lights or any other means not providing constant illumination. Transition or blank screen time between one still image and the next may not exceed one (1) second.
 - ix. All digital banners must comply with all applicable laws and regulations concerning brightness, including, without limitation, California Vehicle Code Section 21466.5, and as amended.

F. Prohibited Features

- a. Digital banners shall not contain any of the following features:
 - i. Moving parts.
 - ii. Appendages, cutout letters, or figures that protrude beyond the flat surface of the sign face.
 - iii. Lights that flash, shimmer, glitter or give the appearance of flashing, shimmering or glittering. Exceptions to this restriction include time, temperature and smog index units.

- iv. Walls or screens at the base of the sign, which create a hazard to public safety or provide an attractive nuisance.
- v. Copy that simulates any traffic sign or traffic control device in a manner that confuses the public.
- vi. Copy that duplicates any other content, displayed on the sign.
- vii. Devices, which emit audible sound, or odor or particulate matter.

G. Maintenance and Monitoring

- a. Company is responsible for maintaining each Advertising Site as initially permitted and shall comply with City, County and State requirements.
- b. Company shall ensure that the digital banners are operational and will guarantee the digital banners have an uptime of 92.5%.
- c. All digital banners shall be equipped with immediate shut off functionality to allow the sign to be disabled in the event of a malfunction.
- d. Company shall not allow any digital banners operated and maintained by the Company to remain in a condition of disrepair. Company will use commercially reasonable efforts to repair or replace the damaged banners within three (3) business days, but in no event, more than fifteen (15) days. A banner shall be deemed to be in a condition of disrepair if it is in need of replacement of defective or missing parts, has a broken or damaged sign face, or is in need of repainting or cleaning.
- e. Company shall submit a Lighting Monitoring Report to the Public Works Agency upon installation, and at three-year intervals thereafter to confirm conformance with the lighting requirements, herein.
- f. Complaints about lighting will be investigated by the City, and if determined necessary by the Executive Director of the Planning and Building Agency, the Company shall provide an updated Lighting Monitoring Report within 72 hours of the notice from the City. The City shall reserve the right to conduct digital banner lighting measurements. If the measured luminance and/or illuminance exceed the data presented in the Company's Lighting Monitoring Report, the findings of the City report shall prevail. All costs related to lighting measurements and/or adjustments or repairs shall be borne by the Company.

Table 3 – Digital Banner Sites Considered for Development

Location	Description	Number of Faces ⁽¹⁾	Number of Spots ⁽²⁾	Average Rate ⁽³⁾	Occupancy ⁽⁴⁾
A	420 North Main Street	1	8	\$1,029.49	75%
B	310 North Birch Street	1	8	\$1,029.49	75%
C	300 East 5 th Street	1	8	\$1,029.49	75%
D	201 West 3 rd Street	1	8	\$1,029.49	75%
E	Sunflower Ave & Bristol	1	8	\$1,029.49	75%
F	Dyer Road & SR-55	1	8	\$1,029.49	75%

Notes:

- 1) The number of sides of the billboard / banner that will display advertising
- 2) The number of advertisements that will be sold and will run in a 4-week period
- 3) The average selling price of one advertising spot that will run over a 4-week period
- 4) The percent of ad spots sold out of the total ad spots available to sell

3. Digital Signage Network Security

A. Company shall control access to the digital signage network and address security concerns for the digital system through a multi-layer effort with controlled physical access and an operating system to establish and maintain a hacker-resistant system. Company shall address the following areas of digital signage network security:

a. Physical Security

- i. Restricting physical access to the network's devices.
- ii. Securing all screens, attachments, and public players
- iii. Securing all PC ports and connections
- iv. Security and password protection for the BIOS to prevent the boot order from being changed.

b. Operating System Security

- i. Restricting operating system access.
- ii. Installation of firewall to block unwanted incoming traffic.
- iii. Staying up to date with all security updates.

c. Application Security

- i. Ensuring that implemented solutions are not using insecure protocols like HTTP or FTP for critical information.
- ii. Keeping data secure by working with applications that have SSL certificates or the selection of applications that also add their own layer of encryption to all data.
- iii. Working with a software suite that uses a client-pull technology and disable listening on all ports.
- iv. Working with companies that undergo regular security tests and audits to ensure they are following current best practices.

4. Advertising Services and Standards

- A. Company shall use commercially reasonable efforts to maximize the revenue generated from the Advertising Inventory.
- a. All ad campaigns in the Advertising Inventory must have a revenue component based on market rates.
 - b. Company shall not use the Advertising Inventory to bonus ads to clients that are not purchasing ads in the Advertising Inventory.
- B. Any proposed advertising to be located on the Advertising Inventory shall not:
- a. 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.
 - b. Be comprised of rotating, revolving, or flashing lighting devices.
 - c. Promote material which the City in its sole discretion deems offensive to community standards.
 - d. Contain "off-site business identification signs" or "political advertisements." 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.
- C. Company shall not accept ads or run ads in the Advertising Inventory with content that is deemed unacceptable by the City in accordance with Section 5 below. 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.
- D. The City shall have the right to remove advertising that contains Unacceptable Content upon request. Company shall remove any prohibited content within six (6) hours upon notice from the City.
- E. If there is a dispute between Company and City as to whether any such content is prohibited, Company shall remove the disputed content until the dispute is resolved. The Executive Director of Public Works 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 six (6) hours upon notice from the City.

5. 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:

- A. 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.
- B. Contains gruesome, graphic, or disgusting accounts or imagery.
- C. Promotes the sale of products that are designed to explode and could cause damage to nearby people or property.
- D. Promotes the sale of firearms or sporting or recreational guns that can cause serious harm if misused, or that appear to be real guns.
- E. 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.
- F. Is harassing, threatening, abusive, inflammatory or otherwise objectionable.
- G. Is unlawful or that could facilitate the violation of any applicable law, regulation or governmental rule or guidance.
- H. Offers or disseminates any fraudulent goods, services, schemes or promotions.
- I. Demeaning or disparaging matter - Contains images, copy or concepts that actively denigrate, demean or disparage any individual or group.
- J. Vulgarity - Contains images, copy or concepts that are obscene, vulgar, crude, sexually suggestive, indecent, profane or scatological.
- K. 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.
- L. 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.
- M. Promotes the sale and use of alcohol.
- N. 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.

- O. Contains images, content or copy related to religion or religious ideas or viewpoints.
- P. Promotes products or services marketed as facilitating recreational drug use.
- Q. Is libelous, defamatory, knowingly false or misrepresented an individual, company or entity.
- R. Infringes upon the intellectual property rights of any third party, including copyrights, trademarks, trade names, trade secrets, or patents of such third party.
- S. Contains images, copy or concepts that actively denigrate public transportation or have negative connotations about public transportation.
- T. Contains images, copy or concepts that depict unsafe behaviors aboard buses or trains, or in or around transit stations or railroad tracks.
- U. Is harmful to the City of Santa Ana, its neighboring cities, or Orange County.

6. City Ads

- A. Company shall provide the City with free ad space equal to 15% of the Advertising Inventory, for City use. City Ads shall run evenly throughout the day in all day parts.
- B. Company shall provide design services for City Ads at no cost.
- C. Ad lead times shall be no longer than two (2) weeks - ad designed, approved, and placed in Advertising Inventory.
- D. Company shall provide the City the equivalent of fifty thousand dollars (\$50,000) of media on its billboards throughout Southern California to promote the City and/or City events.

7. Public Service Messages

- A. When requested by the City, Company shall allow the City and other authorities to preempt ads with emergency alerts and/or Public Service Announcements (PSAs) at no cost.
- B. Company shall arrange, at its own cost and expense, for design and production of the PSAs upon consultation with the City or relevant authorities.
- C. The City shall be entitled to specify certain public service messages to be displayed and shall approve all public service messages.

8. Discounts for City Businesses

- A. Company shall provide a discount of 50% to businesses operating and physically located in the City that have an active, current business license.
- B. Company shall provide to City Businesses up to 20% of the Advertising Inventory for discounted ad space.

C. Discounted ad space shall be equally distributed across all day parts.

9. Reporting

A. Company shall provide quarterly reports with each quarterly MAG Payment within thirty (30) days from the end of each calendar quarter. Each report shall detail by Advertising Site the revenue generated from the Advertising Inventory, MAG payment associated ad rates, occupancy rates, and/or the True-Up Payment. The Parties shall mutually agree on the format and content of the quarterly reports.

10. Account Executive

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

11. Meetings

A. At the City's discretion, the Parties shall meet on an as needed basis to discuss Advertising Sites to be developed.

B. At the City's discretion, the Parties shall meet on a quarterly basis to review sales performance and any other matter related to the services provided by Company.

EXHIBIT B
PAYMENTS AND FORECAST OF REVENUE

Billboard Locations (1) (2)	Operational Year 1			Operational 25 Year Total		
	Projected Gross Revenue	City will receive Revenue Share or MAG, whichever is greater		Projected Gross Revenue	City will receive Revenue Share or MAG, whichever is greater	
		Projected Revenue Share	MAG		Projected Revenue Share	MAG
1	\$1,165,400	\$466,160	\$300,000	\$42,489,600	\$16,995,850	\$10,937,780
2	\$445,600	\$178,240	\$125,000	\$16,246,200	\$6,498,500	\$4,557,410
3	\$831,300	\$332,520	\$250,000	\$30,308,600	\$12,123,430	\$9,114,820
4	\$771,300	\$284,520	\$165,000	\$25,933,500	\$10,373,390	\$6,015,780
5	\$831,300	\$332,520	\$250,000	\$30,308,600	\$12,123,430	\$9,114,820
Banner Locations (3)						
A	\$80,300	\$32,120	\$15,000	\$2,927,680	\$1,171,070	\$546,890
B	\$80,300	\$32,120	\$15,000	\$2,927,680	\$1,171,070	\$546,890
C	\$80,300	\$32,120	\$15,000	\$2,927,680	\$1,171,070	\$546,890
D	\$80,300	\$32,120	\$15,000	\$2,927,680	\$1,171,070	\$546,890
E	\$80,300	\$32,120	\$15,000	\$2,927,680	\$1,171,070	\$546,890
F	\$80,300	\$32,120	\$15,000	\$2,927,680	\$1,171,070	\$546,890

Notes:

- 1) The Water Tower billboard sign will be approximately 40'x 65' and billboard signs at locations 2 through 5 will be 14'x48'
- 2) The digital billboard Bonus Payment for location 1, Water Tower is \$200,000 and the Bonus Payments for locations 2 through 5 are \$50,000 per Face = for a total of \$550,000 for the above listed digital billboard locations
- 3) There are no Bonus Payments for the above listed digital banner locations