

11. First Amendment to Agreement with Focus Media Group, Inc., for the Placing of Advertisements and Maintenance of Bus Shelters

Department(s):

Recommended Action: Authorize the City Manager to execute the first amendment to agreement with Focus Media Group, Inc., for the placing of advertisements and maintenance of bus shelters (Agreement No. A-2025-XXX).



City of Santa Ana
20 Civic Center Plaza, Santa Ana, CA 92701
Staff Report
February 4, 2025

TOPIC: Agreement Amendment for Bus Shelter Advertising and Maintenance

AGENDA TITLE

First Amendment to Agreement with Focus Media Group, Inc., for the Placing of Advertisements and Maintenance of Bus Shelters

RECOMMENDED ACTION

Authorize the City Manager to execute the first amendment to agreement with Focus Media Group, Inc., for the placing of advertisements and maintenance of bus shelters (Agreement No. A-2025-XXX).

GOVERNMENT CODE §84308 APPLIES: Yes.

DISCUSSION

On January 18, 2022, the City Council awarded an agreement to Focus Media Group, Inc. (FMG) for bus shelter advertising and maintenance services. The agreement allows FMG to sell advertisements on City-owned bus shelters throughout the City while sharing advertising revenue with the City and performing routine bus stop maintenance, including trash removal and the cleaning of bus stop amenities. To ensure FMG does not display advertisements that contain unacceptable content (lewd, profane, obscene, or indecent material), a comprehensive list of prohibitions and restrictions was included in the agreement.

Recently, staff identified that certain provisions within the restrictions in the agreement may be overly vague or otherwise untenable in practice. To avoid potential legal conflicts and still ensure public decency of advertisements on City owned bus shelters, staff recommends amending the existing agreement (Exhibit 1).

ENVIRONMENTAL IMPACT

There is no environmental impact associated with this action.

FISCAL IMPACT

There is no fiscal impact associated with this action.

EXHIBIT(S):

1. Amendment to Agreement with Focus Media Group, Inc.

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Submitted By: Nabil Saba, P. E. Executive Director – Public Works Agency

Approved By: Alvaro Nuñez, City Manager

**FIRST AMENDMENT TO AGREEMENT WITH FOCUS MEDIA GROUP, INC. FOR
THE INSTALLATION, MAINTENANCE, REPAIR AND ADVERTISING OF BUS
SHELTERS, BUS BENCHES AND KIOSKS**

THIS FIRST AMENDMENT to the above-referenced agreement is entered into on February 4, 2025, by and between Focus Media Group, Inc. ("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").

RECITALS

- A. On January 18, 2022, the Parties entered into Agreement #A-2022-010, by which Company agreed to provide services related to selling advertising through out-of-home media assets – specifically, street furniture, and the installation, maintenance, janitorial services and operation of advertising-supported bus shelters, bus benches and kiosks. The Agreement is active and has a ten-year initial term.
- B. Certain sections of the Agreement discuss the content of advertisements and procedures under which such content may be restricted. It has come to the Parties' attention that portions of these policies may be overly vague or otherwise untenable in practice.
- C. The Parties now wish to amend the Agreement to clarify the scope and procedure of the "unacceptable content" policies contained therein. No other changes are contemplated by this First Amendment.

The Parties therefore agree:

- 1. **Exhibit "A"**, subsection "Advertising Standards" is hereby amended, and replaced with the following:

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 alcohol, cannabis and/or tobacco products of any kind within 1,000 feet of any school.
 - 4. Contains "off-site business identification signs." 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.

c. The City may make a demand to Company for the removal of any advertisement, commercial or noncommercial, which does not conform to this policy. Such demand shall be in writing and shall state the reasonable grounds for the demand. Company agrees to remove said advertising within twenty-hour (24) hours of demand by the City.

2. **Exhibit "D"** is hereby amended, and replaced with the following:

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, as defined generally under California *Penal Code* sections 311 and 313, 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 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;
- 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;
 - 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;
 - 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.
3. Except as modified by this First Amendment, all terms and conditions of the Agreement shall remain in full force and effect.

[signature page to follow]

ATTEST


CITY OF SANTA ANA

JENNIFER L. HALL
City Clerk


ALVARO NUNEZ
City Manager

APPROVED AS TO FORM
Sonia R. Carvalho
City Attorney

FOCUS MEDIA GROUP, INC.

By: 

KYLE NELLESEN
Assistant City Attorney



LIZ GAYFORD
President and CEO

RECOMMENDED FOR APPROVAL

Nabil Saba  Digitally signed by Nabil
Saba
Date: 2025.01.22 14:21:04
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NABIL SABA
Executive Director
Public Works Agency