


TRANSMITTAL

To: **THE COUNCIL**

Date: JUN 20 2011

From: **THE MAYOR**

TRANSMITTED FOR YOUR CONSIDERATION. PLEASE SEE ATTACHED.

 (Janelle Erickson)

for
ANTONIO R. VILLARAIGOSA
Mayor

CITY OF LOS ANGELES

CALIFORNIA



ANTONIO R. VILLARAIGOSA

MAYOR

June 15, 2011

BOARD OF PUBLIC WORKS MEMBERS

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WILLIAM P. WEEKS
EXECUTIVE OFFICER

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#1 BSS/BCA
(of 5/13/11)

Mayor Antonio R. Villaraigosa
Room No. 305
City Hall
Attn: Pamela Finley

Subject: CITY-WIDE BUS BENCH PROGRAM

As recommended in the accompanying revised report of the Directors of the Bureaus of Street Services and Contract Administration, which this Board has adopted, the Board of Public Works requests approval and forwarding to the City Council for approval and authorization to enter into a 10-year contract with Martin Outdoor Media, LLC for a Bus Bench Program in the City of Los Angeles.

On June 16, 2010, the Board authorized the Bureau of Street Services (BSS) to solicit proposals for a 10-year Bus Bench Program. Upon receiving such authorization, BSS solicited proposals and received three proposals on the due date of August 2, 2010. Reviews of the written proposals ensued shortly thereafter and follow-up interviews with all three proposers were conducted in September of 2010. As a result of the written proposals and follow-up interviews, Martin Outdoor Media, LLC was the highest ranked proposer from the Request for Proposal (RFP) process.

FISCAL IMPACT

There will be no impact to the City's General Fund as a result of the Bus Bench Program. In accordance with the RFP, all costs associated with the installation and maintenance of the benches will be offset by revenues generated from advertising on the benches in the public right-of-way. City administrative and contract enforcement costs may also be offset by program revenues.

Respectfully submitted,

William P. Weeks, Executive Officer
Board of Public Works

WPW:mp



DEPARTMENT OF PUBLIC WORKS

BUREAU OF STREET SERVICES
 BUREAU OF CONTRACT ADMINISTRATION
 REPORT NO.#1

Date: May 13, 2011

ADOPTED BY THE BOARD
 PUBLIC WORKS OF THE CITY
 of Los Angeles California
AND REFERRED TO THE MAYOR
JUN 15 2011


 Executive Officer

CDs: All

Request Approval of a 10 Year Contract with Martin Outdoor Media, LLC for a City-wide Bus Bench Program

RECOMMENDATION:

1. Adopt the staff recommendation authorizing the President of the Board of Public Works, on behalf of the City of Los Angeles, to enter into a 10-year contract with Martin Outdoor Media, LLC for a Bus Bench Program in the City of Los Angeles and transmit the adopted report, contract, and all related attachments forthwith to the Mayor and City Council for their approval.

TRANSMITTALS:

1. Board Report requesting authorization to solicit proposals for a ten (10) year bus bench program, adopted by your Board on June 16, 2010.
2. Joint Board Report requesting authorization to Negotiate a 10-Year Contract for a Bus Bench Program adopted by your Board on January 14, 2011.
3. Board Report requesting Approval to Extend the Contract Negotiation Period with Martin Outdoor Media (MOM) for a 10-year Bus Bench Program adopted by your Board on March 9, 2011.
- * 4. Contract with Martin Outdoor Media for the Bus Bench Program. (Revised 05-12-2011)

DISCUSSION:

On June 16, 2010, this Board authorized the Bureau of Street Services (BSS) to solicit proposals for a ten (10) year bus bench program. Upon receiving such authorization, BSS solicited proposals and received three (3) proposals on the due date of August 2, 2010. Reviews of the written proposals ensued shortly thereafter and follow-up interviews with all three proposers were conducted in September, 2010. As a result of the written proposals and follow-up interviews, Martin Outdoor Media (MOM) was the highest ranked proposer from the Request for Proposal process.

On January 14, 2011, this Board adopted a recommendation to negotiate a 10 year contract with MOM. Bureau staff and MOM immediately initiated meetings to negotiate a contract. Contract negotiations were still proceeding as staff's self-imposed deadline to complete contract negotiations quickly approached so on March 9, 2011, staff requested and received authorization from this Board to extend the contract negotiation period.

DEPARTMENT OF PUBLIC WORKS

BUREAU OF STREET SERVICES
BUREAU OF CONTRACT ADMINISTRATION

REPORT NO. #1

Date : May 13, 2011

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BSS and MOM have since completed contract negotiations and both parties have now agreed to the contract language attached herein. This contract requires MOM to install bus benches at recognized bus stops within the Public Right of Way in the City of Los Angeles.

They will be responsible for all fabrication, installation, maintenance costs and liability associated with the bus benches. The contract also gives MOM the exclusive right to display advertising on the bus benches, on behalf of the City. From revenues generated through the advertising placed on the bus benches, MOM will pay the City a minimum of \$2,760,000 over the 10-year life of the contract.

The Bureau of Street Services will be the contract administrator for this contract and will closely monitor the Bus Bench Program. Within the Bureau, the Street Services Investigation and Enforcement Division will be responsible for inspecting the bus benches to ensure that they are maintained up to the stringent requirements of the contract.

This contract will be of great benefit to the City's bus riding public who will have the use of new bus benches, which will be clean and maintained regularly. There will also be more bus benches for their use, as the contract requires MOM to place a minimum of 225 bus benches in each Council District and bus benches at a minimum of 4,000 bus stop sites City-wide. MOM's bus bench itself is also an outstanding choice for the Los Angeles climate, as it has a proprietary coating that is easily cleaned and does not get hot on days with extreme temperatures. These benches will be especially helpful in the San Fernando Valley, where summertime temperatures routinely exceed 100 degrees.

MOM is currently based in the state of Florida. However, upon award of this contract, MOM has committed to relocating their base of operations to Los Angeles with several of their principal officers including the president of the company, moving from Florida to Los Angeles. They will have their administration office and several district offices within the City limits. They will also be directly hiring approximately 30 people to staff their operation in Los Angeles, and subcontracting with several local companies for other parts of the program. During the one to two year fabrication and installation portion of the contract, there will be approximately 100 jobs added to the economy. These are new jobs for our local community as well as a new business within the City which will pay business taxes and put money into the local Los Angeles economy.

DEPARTMENT OF PUBLIC WORKS

BUREAU OF STREET SERVICES
BUREAU OF CONTRACT ADMINISTRATION
REPORT NO.#1
Date : May 13, 2011

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MOM's business model was the best match for the City. They have a "one point of contact" approach that enhances the City's ability to communicate with them regarding issues of maintenance, requests for installations, and any other special requests regarding the bus benches. MOM has also committed to partnering with City staff to interact with community groups and attend community meetings to provide outreach and respond to any identified concerns or issues.

MBE/WBE/OBE Subcontractor Outreach Program

The City established a MBE/WBE/OBE Subcontractor Outreach Program for this project with anticipated MBE/WBE participation levels of 10 percent and 4 percent respectively. Martin successfully passed their Good Faith Effort portion of the RFP and received 100 points out of 100 possible points. They have listed six subcontractors that they will hire for various portions of the contract, including manufacturing, maintenance, and printing services.

Subcontractor	Gender/Ethnicity	MBE/WBE/OBE
LNI Custom Manufacturing		OBE
Waste Management		OBE
Shelter Clean		OBE
Davis Blue Print	Male/Hispanic	MBE

Contractor Performance Evaluation

In accordance with Article 13, Chapter 1, Division 10 of the City of Los Angeles Administrative Code, the appropriate City personnel responsible for quality control of this personal services contract shall submit Contractor Performance Evaluation Reports to the Bureau of Contract Administration, Special Research & Investigation Section upon completion of this contracts.

DEPARTMENT OF PUBLIC WORKS

BUREAU OF STREET SERVICES
BUREAU OF CONTRACT ADMINISTRATION
REPORT NO.#1

Date: May 13, 2011

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Contractor Responsibility Ordinance

All consultants participating in this program are subject to compliance with the requirements specified in the City of Los Angeles's Contractor Responsibility Ordinance No. 173677, [Article 14, Chapter 1, Division 10, L.A.C.C.]. Failure to comply with the requirements specified in this ordinance will render the bidder's contract subject to termination pursuant to the conditions expressed therein.

FINANCIAL IMPACT STATEMENT

There will be no impact to the City's General Fund as a result of the Bus Bench Program. In accordance with the RFP, all costs associated with the installation and maintenance of the benches will be offset by revenues generated from advertising on the benches in the public right of way. City administrative and contract enforcement costs may also be offset by program revenues.

(HL, RRO, HC, WFB)

Respectfully submitted,



NAZARIO SAUCEDA, INTERIM DIRECTOR
BUREAU OF STREET SERVICES



JOHN L. REAMER, Jr.
INSPECTOR OF PUBLIC WORKS

DEPARTMENT OF PUBLIC WORKS

BUREAU OF STREET SERVICES
BUREAU OF CONTRACT ADMINISTRATION
REPORT NO.#1

Date : May 13, 2011

Page 5

COMPLIANCE REVIEW PERFORMED
AND APPROVED BY:



HANNAH CHOI, PROGRAM MANAGER
OFFICE OF CONTRACT COMPLIANCE

Prepared by:

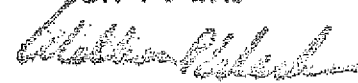
Shannon Eastenson
Engineering Division
Ext. 7-0872

DEPARTMENT OF PUBLIC WORKS

ADVISORY BOARD OF THE BOARD
PUBLIC WORKS OF THE CITY
of Los Angeles California

BUREAU OF STREET SERVICES
BUREAU OF CONTRACT ADMINISTRATION
JOINT REPORT NO. 1
Date June 16, 2010

JUN 16 2010



Secretary, Board of Public Works

CDs ALL

REQUEST TO SOLICIT PROPOSALS FOR A 10-YEAR BUS BENCH PROGRAM**RECOMMENDATION:**

That your Board authorize the Bureau of Street Services to solicit proposals for a bus bench program to succeed the Norman Bench Advertising Contract

TRANSMITTALS:

1. Contract C-98219
2. BSS Request for Proposal for a new City-wide advertising based Bus Bench Program

DISCUSSION:

The City's existing bus bench contract with Norman Bus Bench Company expired in January 2010. While there were discussions between the Bureau of Street Services (BSS) and the owner of the company, William Giamala, regarding the impending expiration of the contract prior to January 2010, there was no formal contract extension processed. The renewal and/or extension of the existing contract was hampered by the Early Retirement Incentive Program (ERIP) and the expiration date of the Contract itself, as the staff responsible for the contract administration, left City service. The existing bus bench contract renewal/extension process was further delayed as the City pursued negotiations with its Coordinated Street Furniture Program service provider CBS Decaux, LLC, to possibly provide similar bus benches in conjunction with addressing other contractual matters. Since that time, CBS Decaux has determined that adding stand alone bus benches does not fit within its business model and has declined to pursue such a program.

BSS has written a draft Request for Proposal (RFP) for a new bus bench contract which is attached herein and being submitted for your Board's authority to send forth. This request will require the successful bidder to adhere to much more stringent maintenance, appearance, and revenue sharing conditions. The RFP will also require the successful bidder to work closely with the current street furniture contract to aesthetically compliment that program. We anticipate having a new contract in place by the end of this calendar year.

All prospective service providers for the Bus Bench Program will be required to complete and/or acknowledge all of the City required forms/policies in their RFP submittals regarding: Non-discrimination, Equal Employment Practices, and Affirmative Action

Bureau of Street Services
Bureau of Contract Administration
Joint Report No. 1
June 16, 2010
Page 2

Provisions, MBE/WBE/OBE participation, City Child Care Policy, Declaration of Compliance with the City's Service Worker Retention Ordinance, Equal Benefits Ordinance and Slavery Disclosure Ordinance.

The anticipated levels of participation have been set at 10 percent MBE and four percent WBE.

There are no City resources available that could provide this service. The cost of installing and maintaining the benches would be prohibitive.

Contractor Performance Evaluation

In accordance with Article 13, Chapter 1, Division 10 of the city of Los Angeles Administrative Code, the appropriate City personnel responsible for quality control of this contract shall submit Contractor Performance Evaluation Reports to the Bureau of Contract Administration upon completion of this contract.

Contractor Responsibility Ordinance

All contractors participating in this program are subject to compliance with the requirements specified in the City of Los Angeles's Contractor Responsibility Ordinance #173677, [Article 14, Chapter 1, Division 10, L.A.C.C]. Failure to comply with the requirements specified in this ordinance will render the bidder's contract subject to termination pursuant to the conditions expressed therein.


STATUS OF FINANCING:

It is anticipated that there will be no fiscal impact to the City's general fund as a result of this Program. Costs associated with the maintenance of the Bus Bench Program will be offset by revenues generated from the advertising placed on the benches. There will be a minimal, unknown impact to the General Fund to pursue, administer, and enforce the provisions of the contract produced as a result of this RFP effort. It is anticipated that such costs will be more than offset by the foreseen revenues that will be generated by this Program.

(HSL/RRO/HC/WFB)

Respectfully submitted,


for WILLIAM A. ROBERTSON, DIRECTOR
BUREAU OF STREET SERVICES


for JOHN L. REAMER, JR.
INSPECTOR OF PUBLIC WORKS

COMPLIANCE REVIEW PERFORMED
AND APPROVED BY:


HANNAH CHOI, PROGRAM MANAGER
OFFICE OF CONTRACT COMPLIANCE

Prepared by:

Shannon Eastenson, Sr. Management Analyst
Engineering Division
(213) 84 7-0872

RECEIVED

JUN 03 2010

CITY OF LOS ANGELES
BUREAU OF STREET SERVICES
ENGINEERING DIVISION

DEPARTMENT OF PUBLIC WORKS

ADOPTED BY THE BOARD
PUBLIC WORKS OF THE CITY
of Los Angeles CaliforniaBUREAU OF STREET SERVICES
BUREAU OF CONTRACT ADMINISTRATION
REPORT NO.# 1
Date : January 7, 2011

JAN 14 2011


Executive Officer

CDs: All

Request for Authority to Negotiate a Bus Bench Program Contract for Calendar Years 2011 through 2021**RECOMMENDATION:**

Adopt the staff recommendation and authorize the Director, Bureau of Street Services, to enter into negotiations with the highest ranked proposer Martin Outdoor Media, Incorporated for an Agreement with the City of Los Angeles to establish a Bus Bench Program for a 10 year term. If after 60 days an Agreement cannot be reached, authorize the Director, Bureau of Street Services, to negotiate with the second highest ranked proposer Creative Outdoor Advertising, Incorporated, for an Agreement with the City to establish a 10 year Bus Bench Program.

TRANSMITTALS:

1. Joint Board Report authorizing the Bureau of Street Services to issue a Request for Proposal for a Bus Bench Program for the City adopted by your Board on June 16, 2010.
2. Request for Proposal – Bus Bench Program dated June 16, 2010
3. List of those firms in attendance at the Mandatory Pre-Proposal Conference on June 30, 2010.
4. Proposal Review Spreadsheet and Summary of Evaluation Rating

DISCUSSION:

On June 16, 2010, this Board adopted a recommendation to have the Bureau of Street Services issue a Request for Proposal (RFP) to solicit interested companies to establish a bus bench program. The RFP requested companies to submit their proposal for a Bus Bench Program in the City of Los Angeles. The selected company would be given the right to display advertising within the street right-of-way on behalf of the City in exchange for placing bus benches at designated bus stops, and they would be responsible for all construction, installation, maintenance costs and liability associated with the benches. The City expects to be fairly compensated for granting this right, and the proposers were required to submit a comprehensive compensation package within their proposal. It is important to note that the RFP requires the successful proposer to adhere to a very stringent plan of maintenance, appearance and revenue sharing.

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BUREAU OF STREET SERVICES
BUREAU OF CONTRACT ADMINISTRATION

REPORT NO.# 1

Date : January 7, 2011

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On June 30, 2010, a mandatory Pre-Proposal conference with qualified service providers was held at the Public Works Building.

By the due date of August 2, 2010, the Bureau had received three proposals in response to the RFP from the following firms (in alphabetical order):

- Creative Outdoor Advertising of America
- Martin Outdoor Media, Inc.
- Norman Bench Advertising, Inc.

Upon review, all proposals were deemed completed and responsive to the RFP.

An evaluation team consisting of representatives from the Bureau of Street Services, the Department of Transportation and the Planning Department reviewed the proposals and conducted interviews of each firm. The evaluations were conducted based on the following criteria:

Evaluation Factor	Maximum Points
Cert of Qualification for the City of Los Angeles Bus Bench Program	Pass/Fail
MBE/WBE/OBE Subcontractor Program	Pass/Fail
Past Performance as a Firm on Contracts of Similar Size & Scope	20
Compensation Package	25
Proposed Bus Bench Program	25
Maintenance and Service Plan	20
Franchisee's Financial Stability	10
Total	100

DEPARTMENT OF PUBLIC WORKS

BUREAU OF STREET SERVICES
BUREAU OF CONTRACT ADMINISTRATION

REPORT NO. # 1

Date : January 7, 2011

Page 3

Martin was the highest scoring proposer. The evaluation team found their proposed bus bench program, compensation package and maintenance plan exceeded the plans submitted by both of the other proposers. Martin clearly demonstrated their ability to manage the Los Angeles program with their comprehensive installation and maintenance plan. Their business model places maintenance and responsiveness to the City's requests at the forefront of their efforts. Martin has a "one point of contact" approach that makes it easy for the City to respond to requests for maintenance and service, new bench installations or any other special requests related to their bus benches. Martin has also committed itself to partnering with City staff to interact with community groups and attend community meetings to provide outreach and respond to any identified concerns or issues.

Martin further demonstrated their dedication and commitment to the City's bus bench program by stating that they are going to have several of their company principals relocate permanently to Los Angeles to run our program. Martin plans to purchase/lease office space and at least one warehouse. They will have one central administrative office and several "district" offices in order to efficiently facilitate installation and maintenance of the benches. They will also be directly hiring approximately 30 people to staff their operations in Los Angeles, and sub-contract with several local companies for other portions of their program such as bench manufacturing and printing services. These are new jobs for our local community as well as a new business which will pay business taxes and put money into the Los Angeles economy.

The Martin benches are a good match for the Los Angeles climate. In addition to their innovative and attractive styles, the steel base is coated with a new material that does not get hot on days with extreme temperatures, even in direct sunlight. This material will be especially well received in the San Fernando Valley where summer temperatures routinely exceed 100 degrees.

Martin's compensation package was the highest offer of the three proposers. They offered the City the most money, and additionally agreed in their Oral Presentation to possibly go to a higher percentage of revenue sharing during contract negotiations.

Because of their superior ranking, the evaluation team requests that the Board adopt staff's recommendation and authorize the Director, Bureau of Street Services, or his designate, to enter into negotiations with Martin Outdoor Media, Inc. to develop an Agreement for the City of Los Angeles Bus Bench Program. The anticipated term for the proposed Agreement and Program is a 10 year period. Staff will endeavor to reach a best and final

DEPARTMENT OF PUBLIC WORKS

BUREAU OF STREET SERVICES
BUREAU OF CONTRACT ADMINISTRATION

REPORT NO. # 1

Date : January 7, 2011

Page 4

Agreement within 60 days from the approval of this Board Report. If staff is unable to reach an agreement with Martin by that time, with the approval granted through this board report, they will begin negotiations with Creative Outdoor Advertising, Inc., the second highest scoring proposer.

Upon completion of negotiations, staff will report back to the Board and will request authority to execute a 10 year contract with Martin Outdoor Media, Inc., or Creative Outdoor Advertising, Inc., subject to approval by the City Council and Mayor.

City Requirements

Martin has the following documents on file and shall comply with the following requirements:

- Affirmative Action Plan/Non-Discrimination/Equal Employment Opportunity
- Child Support Obligation Ordinance
- Business Tax Registration Certificate
- Equal Benefits Ordinance
- Insurance/Bond Requirements
- Americans with Disabilities Act
- Slavery Disclosure Ordinance
- Los Angeles Residence Information
- Contract History
- Non-collusion Affidavit
- Municipal Lobby Ordinance
- Living Wage Ordinance and Service Contractor Worker Retention Ordinance

Martin has not performed work in or for the City of Los Angeles. In accordance with the Board's Bidder Responsibility Policy, the proposers Work History and Qualifications were reviewed and there are no known violations.

MBE/WBE/OBE Subcontractor Outreach Program

The City established a MBE/WBE/OBE Subcontractor Outreach Program for this project with anticipated MBE/WBE participation levels of 10 percent and 4 percent respectively. Martin successfully passed their Good Faith Effort portion of the RFP and received 100 points out of 100 possible points. They have listed six subcontractors that they will hire for various portions of the contract, including manufacturing, maintenance, and printing services.

DEPARTMENT OF PUBLIC WORKS

BUREAU OF STREET SERVICES
BUREAU OF CONTRACT ADMINISTRATION

REPORT NO. # 1

Date : January 7, 2011

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Subcontractor	Gender/Ethnicity	MBE/WBE/OBE
LNI Custom Manufacturing		OBE
Waste Management		OBE
Shelter Clean		OBE
Davis Blue Print	Male/Hispanic	MBE

Contractor Performance Evaluation

In accordance with Article 13, Chapter 1, Division 10 of the City of Los Angeles Administrative Code, the appropriate City personnel for quality control of these personal services contracts shall submit Contractor Performance Evaluation Reports to the Bureau of Contract Administration upon completion of these contracts.

Contractor Responsibility Ordinance

All contractors participating in this program are subject to compliance with the requirements specified in the City of Los Angeles's Contractor Responsibility Ordinance No. 173677, [Article 14, Chapter 1, Division 10, L.A.C.C.]. Failure to comply with the requirements specified in this ordinance will render the bidder's contract subject to termination pursuant to the conditions expressed therein.

DEPARTMENT OF PUBLIC WORKS

BUREAU OF STREET SERVICES
BUREAU OF CONTRACT ADMINISTRATION
REPORT NO.# 1

Date: January 7, 2011

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FINANCIAL IMPACT STATEMENT


There will be no impact to the City's General Fund as a result of the Bus Bench Program. In accordance with the RFP, all costs associated with the installation and maintenance of the benches will be offset by revenues generated from advertising on the benches in the public right of way. City administrative and contract enforcement costs may also be offset by program revenues.

(HL, RRO, HC, WFB)

Respectfully submitted,



WILLIAM A. ROBERTSON, DIRECTOR
BUREAU OF STREET SERVICES


JOHN L. REAMER, JR.
INSPECTOR OF PUBLIC WORKS

COMPLIANCE REVIEW PERFORMED
AND APPROVED BY:



HANNAH CHOI, PROGRAM MANAGER
OFFICE OF CONTRACT COMPLIANCE

Prepared by:

Shannon Eastenson
Engineering Division
Ext. 7-0872

DEPARTMENT OF PUBLIC WORKS

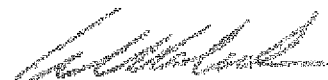
ADOPTED BY THE BOARD
PUBLIC WORKS OF THE CITY
of Los Angeles California

BUREAU OF STREET SERVICES

MAR - 9 2011

REPORT NO. #1

Date: March 9, 2011



Executive Officer

CDs: All

REQUEST APPROVAL TO EXTEND THE CONTRACT NEGOTIATION PERIOD WITH
MARTIN OUTDOOR MEDIA (MOM) FOR A 10-YEAR BUS BENCH PROGRAM

RECOMMENDATION:

Adopt staff recommendation to extend the contract negotiation period with Martin Outdoor Media for an additional sixty (60) days

TRANSMITTAL:

1. Joint Board Report Authorizing the Bureau of Street Services to Negotiate a 10-Year Contract for the Bus Bench Program adopted by your Board on January 14, 2011.

DISCUSSION:

On January 14, 2011, this Board adopted Bureau of Street Services (BSS) and Bureau of Contract Administration (BCA) Joint Report No. 1 which provided BSS 60 days to negotiate a contract with MOM for a ten (10) year bus bench program. Staff anticipated that 60 days would be an adequate amount of time for both parties to negotiate such a contract. BSS and MOM initiated the negotiation process immediately in mid-January and the contract negotiations are cordial and moving along smoothly. As the negotiations proceeded, it became apparent that a lack of staffing and time on the part of the City would cause the negotiations to extend beyond the original 60 day negotiation period. Because of this anticipated shortfall of time, staff is requesting a 60 day extension to complete its negotiations with MOM.

MOM is amenable to extending the deadline to complete our contract negotiations in the interest of allowing the City additional time. To be clear, there are no outstanding contractual issues causing the need for an extended negotiation period. The need for an extension of time is solely to accommodate the City's limited resources and time required process such a contract through the typical administrative protocols. Both MOM and City staff are of one accord on contractual matters and are confident that the contract negotiations will be complete on or before May 15, 2011.

DEPARTMENT OF PUBLIC WORKS

BUREAU OF STREET SERVICES

REPORT NO. #1

Date: March 9, 2011

Page 2

FINANCIAL IMPACT STATEMENT

There will be no impact to the City's General Fund as a result of the Bus Bench Program.

(HL, RRO)

Respectfully submitted,

Joseph G. Saucedo
 FOR NAZARIO SAUCEDA, Interim Director
 Bureau of Street Services

Prepared by:

Shannon Eastenson
 Engineering Division
 Ext. 7-0872

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Fax #	847-0975	Fax #			

TRANSMITTAL NO. 4

CONTRACT FOR
10 YEAR BUS BENCH PROGRAM

REVISED 6/14/2011

CONTRACT NO. C- []

BUS BENCH PROGRAM

CONTRACT BETWEEN

the

CITY OF LOS ANGELES

and

MARTIN OUTDOOR MEDIA, LLC

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- EXHIBIT C- CONTRACTOR'S ADVERTISING POLICY
- EXHIBIT D- APPROVED STANDARD PLOT PLANS FOR BUS BENCH
INSTALLATIONS

This Contract, including all appendices and all exhibits, hereinafter referred to as "Contract" is made and entered into this _____ day of _____, 2011, by and between the CITY OF LOS ANGELES, a municipal corporation, hereinafter referred to as the "CITY", acting by and through its Board of Public Works (the "Board") and Martin Outdoor Media, LLC, hereinafter referred to as the "CONTRACTOR" or "MARTIN" and is set forth as follows:

WTNESSETH

WHEREAS, the Department of Public Works released of a Request for Proposal (RFP) to solicit proposals from interested companies to operate a Bus Bench Program for the CITY, including the procurement, installation, and maintenance of the bus benches. It is anticipated that this program will work in concert with the current contract for transit shelters and will provide a valuable and necessary service to the bus riding patrons of the City; and

WHEREAS, the selected proposer will be granted the exclusive right to place advertising on the bus benches to offset the cost of the procurement, installation and maintenance, and provide revenue to the CITY from the gross profits from the advertising; and

WHEREAS, three proposers responded to the RFP; and

WHEREAS, an evaluation committee, consisting of representatives from the Department of City Planning, Department of Public Works, and the Department of Transportation respectively, reviewed the three proposals and unanimously rated

CONTRACTOR superior in each evaluation category including economic benefits, quality of equipment, design, and Bus Bench Program; and

WHEREAS, the Board of Public Works reviewed the selection made by the Review Team and has authorized the Bureau of Street Services, to negotiate a contract with CONTRACTOR; and

WHEREAS, the Director of the Bureau of Street Services, through his designate, has negotiated the terms and conditions of this contract with CONTRACTOR consistent with the RFP.

NOW THEREFORE, in consideration of the promises, covenants and agreements hereinafter set forth, the parties hereby agree as follows:

ARTICLE 1 - CONSTRUCTION OF PROVISIONS AND TITLES HEREIN

All titles, subtitles, or headings in this contract have been inserted for convenience, and shall not be deemed to affect the meaning or construction of any of the terms or provisions hereof. The language of this Contract shall be construed according to its fair meaning and not strictly for or against the CITY or the CONTRACTOR. The word "CONTRACTOR" herein in this Contract includes the party or parties identified in the Contract. The singular shall include the plural; if there is more than one CONTRACTOR herein, unless expressly stated otherwise, their obligations and liabilities hereunder shall be joint and several. Use of the feminine, masculine, or neuter genders shall be deemed to include the genders not used.

ARTICLE 2 – NUMBER OF ORIGINALS

The number of original texts of this Contract shall be equal to the number of parties hereto, one text being retained by each party. At the CITY'S option, one or more additional original texts of this Contract may also be retained by the CITY.

ARTICLE 3 – APPLICABLE LAW, INTERPRETATION AND ENFORCEMENT

Each party's performance hereunder shall comply with all applicable laws of the United States of America, the State of California, and the CITY including but not limited to, laws regarding health and safety, labor and employment, wage and hours and licensing laws which affect employees. This Contract shall be enforced and interpreted under the laws of the State of California without regard to conflict of law principles. CONTRACTOR shall comply with new, amended, or revised laws, regulations, and/or procedures that apply to the performance of this Contract. If the CITY adopts legislation, a regulation or procedure which has a financial impact on the business terms of this Contract once it becomes effective, either party may request to meet and confer in an effort to mitigate or eliminate such impact and may suggest any appropriate amendment that will protect the intended purpose of this Contract.

In any action arising out of this Contract, CONTRACTOR consents to personal jurisdiction, and agrees to bring all such actions exclusively in State or Federal courts located in Los Angeles County, California.

If any part, term or provision of this Contract shall be held void, illegal, unenforceable, or in conflict with any law of a federal, state or local government having jurisdiction over this

Contract, the validity of the remaining portions of provisions shall not be affected thereby.

ARTICLE 4 - DEFINITIONS

The following words and phrases which are used herein shall have the meaning set forth opposite the same:

ADA The Americans with Disabilities Act, which directs local jurisdictions to implement procedures to make public facilities accessible to all persons.

Ad Panel A commercial advertising display area located on a bus bench or waste receptacle enclosure on which CONTRACTOR may broker the leasing of advertising on behalf of the CITY.

Approval The written consent of the Director, or his/her designated agent.

Board The Board of Public Works of the City of Los Angeles.

Bureau of Street The CITY'S Department of Public Works, Bureau of Street Services Services (BSS) operating under the jurisdiction of the Board of Public Works.

Bus Bench Any CITY approved bench which is installed at Bus Stops or Bus Stop Zones for the purpose of allowing bus patrons to sit and which is designed to allow for the installation of an Ad Panel.

Bus Stop Any location within the Public Right of Way designated by transit operators as a place where bus patrons may board or disembark from a bus. Such bus stops are typically marked or denoted through the installation of a sign that identifies the specific transit operator or operators that utilize a site.

Bus Stop Zone	A section of the roadway and adjacent sidewalk area that is reserved to facilitate the approach, stopping, and departure of buses in the immediate vicinity of a bus stop. Such zones may be denoted by either a section of red curb, roadway wheel pad, roadway bus pad, or some other form of enhanced paving in the immediate vicinity of a transit operator's bus stop sign. Bus stops zones are typically 80' to 120' in length or more depending on site conditions, type of bus, and the number of bus lines that stop at the same location.
CITY	The City of Los Angeles or its subordinate bureaus or the political subdivisions referred to as the City of Los Angeles, California, other than the City Council.
City Council	The legislative body of the CITY established by the Los Angeles City Charter.
City Property	Property that is owned or under the control of the CITY.
Contractor	Martin Outdoor Media, LLC and its successors and assigns.
Director	The Director of the CITY'S Bureau of Street Services or his/her designated representative.
Effective Date	The date on which the Contract is fully executed and becomes binding on the parties.
Existing Benches	The currently installed bus benches from the preceding contract, C-98219 Norman Bench Advertising Bus Bench Program.

Gross Cash Receipts	The total compensation (including in-kind payments) actually received by CONTRACTOR for the display of advertising on Ad Panels.
MBE/WBE/OBE	Minority, Women and Other Business Enterprise as defined in the Mayoral Directive 2001-26.
Minimum Annual Fee/MAF	The payment set forth in Article 6.2.13, which CONTRACTOR must pay to City irrespective of the amount of Gross Cash Receipts as defined herein.
Percentage Fee	An additional payment by CONTRACTOR to CITY that shall be due when an agreed upon percentage of CONTRACTOR's Gross Cash Receipts exceeds the MAF due to the City within the same Program Year. The agreed upon percentage and method to determine the Percentage Fee shall be as detailed in Article 6.2.13 of this Contract.
Program	The Bus Bench Program as more fully described in this Contract.
Program Year	365 day period (or 366 day period in leap years) that starts on January 1, of one year and ends on December 31 of the same year. If this Contract is signed and implemented any time after January 1, then this "partial year" shall not count as a "Program Year" or as part of the 10 year term of this Contract. All money due to the CITY under this Contract for this "partial year" shall be a prorated amount calculated according to how many days the Contract is in place, prior to the first full year/Program Year of this Contract, and the City shall be due a prorated percentage of the first year

MAF for this partial year. This “partial year” MAF shall be due and payable to the City within 30 days of the full execution of this Contract.

Public Right of Way The Public right-of-way includes dedicated roadways, sidewalks, parkways, medians and traffic islands under the jurisdiction of the Department of Public Works.

ARTICLE 5 - PROJECT DESCRIPTION AND AWARD; GRANT OF ADVERTISING RIGHTS

5.1 Program Description

In consideration of the rights granted by CITY to CONTRACTOR set forth below, CONTRACTOR shall (1) provide, install, operate, repair, remove, relocate and maintain, on Public Right-of-Ways, Bus Benches at Bus Stops and Bus Stop Zones within the City of Los Angeles; (2) comply with all designs and technical specifications provided by CONTRACTOR and approved by CITY; (3) be subject to all the terms and conditions set forth in this Contract; and (4) pay the guaranteed Minimum Annual Fees and the applicable Percentage Fees per Article 6.2.13 of this Contract. In consideration of the obligations undertaken by CONTRACTOR, the CITY shall in good faith provide, in accordance with the procedures set forth in this Contract, a blanket permit authorizing the installation of Bus Benches at Bus Stops and Bus Stop Zones. In the event the CITY is unable, notwithstanding its good faith efforts, to approve the minimum number of sites noted in Article 6.2.1 to install the number of benches contemplated by this

Contract, the CITY shall not be in default of its obligations and CONTRACTOR'S sole remedies shall be as set forth in this Contract.

5.2 Obligation and Grant of Rights to Install, Operate and Maintain Bus Benches

The CITY hereby grants and awards to the CONTRACTOR the exclusive right and CONTRACTOR now has the obligation to provide, install, operate, and maintain Bus Benches with advertising throughout the City of Los Angeles. The CITY hereby grants to the CONTRACTOR, a license to encroach upon the CITY'S Public Right-of-Ways solely for the purposes of implementing this Contract consistent with permits issued by the CITY.

5.3 Grant of Rights to Sell Advertising

The CITY hereby grants to CONTRACTOR, and represents and warrants that CONTRACTOR shall have the exclusive right to act as CITY's agent and broker for the leasing of advertising and display this advertising on Ad Panels in the Public Right-of-Way in a format of no more than fourteen (14) square feet on bus benches. All gross receipts from advertising shall be the property of CONTRACTOR subject to CITY's right to the MAF and/or Percentage fee.

Nothing contained in this Contract shall affect the rights of the parties set forth in the existing Coordinated Street Furniture Program Contract between the CITY and CBS/Decaux, LLC.(hereinafter "Street Furniture Contract") (Contract No. 102477) and any successor Contract, provided however, that nothing shall prohibit CONTRACTOR from competing for any future Street Furniture Contract.

5.4 Use of Ad Panels for Public Service Announcements

The CITY shall have the right to require CONTRACTOR to provide CITY ten percent of the advertising panels of the total number of installed Bus Benches, for its own non-commercial use. The panels available to the CITY under this Contract may be used for the display of CITY maps, posters for the promotion of CITY, public service projects, or announcements as determined by the CITY. These panels shall be made available to the CITY by CONTRACTOR on a “space available” basis throughout the CITY. “Space Available” shall be defined as any Bus Bench which does not have a current advertisement on it or is not slated to have an advertisement installed on it for the duration of the time that the CITY wishes to use the Bus Bench for its non-commercial purpose. The City shall have the right to use any Bus Bench which does not have an existing advertisement or which is not slated to have one during the time that the CITY wishes to use the Bus Bench. CITY shall pay CONTRACTOR its costs to produce any maps, posters, or announcements intended for the CITY’s purposes or, at its option, CITY may provide CONTRACTOR with its own printed materials produced in accordance with the CONTRACTOR’s production specifications. CONTRACTOR shall install and remove all display materials in panels requested by CITY at no cost to the CITY. If a dispute arises with the selection of Bus Benches by the CITY for its use, then the outcome will be determined through the application of Article 40 – Disputes.

**ARTICLE 6- RESPONSIBILITIES OF AND TASKS TO BE PERFORMED BY THE
CONTRACTOR**

6.1 Overall Responsibility

CONTRACTOR shall perform the services and fulfill the obligations as described within this

Contract.

6.2 Scope of Services

6.2.1 CONTRACTOR Obligations

CONTRACTOR may provide, on behalf of the CITY, Bus Benches within the Public Right-of-Way at all recognized Bus Stops and Bus Stop Zones within the City of Los Angeles subject to ADA requirements, other applicable codes and policies that govern the placement of infrastructure within the Public Right-of-Way, and any limitations required by the City's existing Street Furniture Contract. Attached hereto as Exhibit B is a CITY provided diagram which is an example of how any Bus Bench installed pursuant to this Contract should be placed on the Public Sidewalk in relation to other infrastructure already in place. Any Bus Bench installed pursuant to this Contract shall meet all installation limitations per the attached Exhibit B, as well as any other code requirement not included in the CITY'S Diagram. CONTRACTOR, at a minimum, shall place a new Bus Bench at all locations which currently have an Existing Bench, provided that these locations allow for the legal installation of a Bus Bench, as shown on the list of Existing Bench locations provided by CONTRACTOR in accordance with Article 6.2.2 below. It is anticipated that at the end of the implementation schedule CONTRACTOR will have placed new Bus Benches at a minimum of 4,000 Bus Stop and Bus Stop Zone locations and a total number of new Bus Benches totaling 6,000. CONTRACTOR will also provide trash receptacles and/or recycling containers at not less than fifty percent of the Bus Bench locations. CONTRACTOR shall provide all necessary elements for the Bus Bench Program including obtaining new Bus Benches and providing for the installation, maintenance, and repair and removal services as more fully described in this Contract.

The CONTRACTOR shall pay the required Minimum Annual Fee to the CITY, including applicable Percentage Fees, broker and lease advertising on Ad Panels on behalf of the CITY and otherwise perform the services and fulfill all CONTRACTOR'S obligations described in this Contract. If CONTRACTOR installs a Bus Bench in such a manner that it violates any placement requirement as described above, the CITY shall give the CONTRACTOR written notice and the CONTRACTOR shall either reinstall the Bus Bench in a lawful manner, or if no lawful placement is possible at the particular location, CONTRACTOR shall remove the offending Bus Bench.

6.2.2 Inventory of Existing Bus Benches

Within ninety days from the date of Notice to Proceed for this Contract or earlier at CONTRACTOR'S sole choice, CONTRACTOR shall provide CITY with a computerized list of locations where Existing Benches are installed.

6.2.3 Removal of Existing Bus Benches

Upon issuance of a Notice to Proceed letter by CITY, the CONTRACTOR shall be responsible for the systematic removal of all Existing Benches in order to make way for the installation of CONTRACTOR'S new Bus Benches pursuant to Section 6.2.4. CONTRACTOR shall be responsible for providing an Existing Bench Removal Schedule to the CITY. Further, CONTRACTOR shall be responsible for recycling and/or disposal of the Existing Benches at its cost. If the CITY notifies CONTRACTOR that the prior bus bench contractor wishes to have any number of the Existing Benches salvaged for its purposes, the CONTRACTOR shall remove the designated number of Existing Benches

and deliver them to an address within the City of Los Angeles as directed by the CITY. CONTRACTOR shall only be required to deliver these salvaged bus benches to the address within the City of Los Angeles given to CONTRACTOR by the CITY according to CONTRACTOR's Existing Bench removal schedule. Both CONTRACTOR and CITY understand that there is a substantial cost for the removal of all Existing Benches in order to prepare for the installation of the CONTRACTOR's new Bus Benches. Having CONTRACTOR perform both the removal of Existing Benches and the installation of its new Bus Benches is in the best interest of the bus riding public. This method of bus bench removal and installation will have little or no impact on the bus riding public as it will allow for the least amount of time between removal of the Existing Benches and installation of the new Bus Benches. CONTRACTOR has agreed to provide this service at no cost to the CITY, which provides a substantial financial benefit to the CITY. The CITY agrees that in order to accomplish an orderly transition from the Existing Benches to the new Bus Benches at no cost to the CITY, the implementation schedule shall be completed no later than two years from the date the CITY gives the CONTRACTOR a "Notice to Proceed" under this Contract.

6.2.3.1 If the CITY takes responsibility for the removal of the Existing Benches, and provides CONTRACTOR with installation locations without any Existing Benches in place, then the CONTRACTOR shall provide the CITY with an implementation schedule which accomplishes the installation of the new Bus Benches within one year from the date that the CITY approves the implementation schedule.

6.2.3.2 If the CITY pays the CONTRACTOR the full cost of removal of the Existing

Benches, then CONTRACTOR shall provide the CITY with an implementation schedule which accomplishes both the removal of the Existing Benches and the installation of the new Bus Benches within one year from the date that the CITY approves the implementation schedule.

6.2.3.3 Accelerated Installation

At the CITY's sole discretion, CITY may require MARTIN to engage in an "accelerated installation" of the first 3,000 new Bus Benches. If the CITY chooses this "accelerated installation" option, then MARTIN shall be required to place a new Bus Bench at every location where there is an Existing Bench and there is no existing bus shelter. According to the MARTIN existing bus bench inventory, there are approximately 3,000 separate locations which currently have an Existing Bench and no bus shelter installed. Both CITY and MARTIN understand that replacing these Existing Benches in a timely fashion is a priority for the CITY. CITY recognized that this "accelerated installation" will cost MARTIN unanticipated costs for the accelerated manufacture and installation of the new Bus Benches, and, as such, the CITY agrees to receive less revenue from MARTIN, as set forth below, to compensate for the CITY's choice of the "accelerated installation" option. The CITY may select the "accelerated installation" option any time after the City Council and Mayor have approved the CONTRACT but this selection must be made at least 30 days prior to the issuance of the Notice to Proceed under this Contract to allow for the accelerated manufacturing of the new Bus Benches. Once the CITY issues the Notice to Proceed to MARTIN, MARTIN will begin the "accelerated" installation of its new

Bus Benches.

6.2.3.3.1 Time Frame for Accelerated Installation

If the CITY chooses the “accelerated installation” option, then MARTIN shall be required to install the first 3,000 Bus Benches under this Contract within 90 days after the issuance of the Notice to Proceed. It is the intent of this “accelerated installation” to place a new Bus Bench at every location where the existing contractor has removed one of its Existing Benches. However, if any of these bus bench sites is not physically capable of receiving a new Bus Bench installation (because, for example, there is no concrete pad, or there are insufficient distances for compliance with ADA requirements, etc.), then any such site shall not be required to have a new Bus Bench installed until it is in such a condition that a new Bus Bench may be lawfully installed, and the number of such unavailable sites shall reduce the number of Bus Benches required to be installed within the first 90 day period. Once the initial 3,000 new Bus Benches are installed pursuant to the Accelerated Installation Option, the remaining 3,000 new Bus Benches shall be installed as follows: MARTIN will install 110 new Bus Benches per month so that at the end of 1 (one) year from the issuance of the Notice to Proceed under this Contract, there will be approximately 4,000 new Bus Benches installed. Thereafter, MARTIN will install the remaining approximately 2,000 required new Bus Benches and all trash receptacles over the next year (approximately 167 new Bus Benches and 250 trash receptacles each month over the second year of the Contract), so that at the end of two years, there will be

approximately 6,000 new Bus Benches and 3,000 trash receptacles installed within the City of Los Angeles.

6.2.3.3.2 Accelerated Bus Bench Installation Schedule

Immediately prior to this Contract being approved by the City Council, MARTIN shall provide the CITY with an installation schedule which articulates a week by week list of which locations will receive the new Bus Benches during each week of the 90 day “accelerated installation” schedule. If, for any reason not under the control of MARTIN, the installation schedule becomes impossible to implement as provided, both CITY, through the Bureau of Street Services, and MARTIN shall meet and agree on any needed modification to the MARTIN provided schedule with the express purpose of ensuring the most rapid installation of the new Bus Benches that can be accomplished under the conditions then in effect.

6.2.3.3.3.1.1 Responsibility of CITY to Direct Existing Contractor to Remove It's Benches.

Pursuant to the preceding contract, C-98219 Norman Bench Advertising Bus Bench Program between the CITY and Norman Bench Advertising, CITY shall “direct” the existing bus bench contractor to remove its Existing Benches according to a mirror image of the MARTIN installation schedule described in Section 6.2.3.3.2, so that the Existing Benches are removed one week prior to MARTIN’s required installation on a week by week basis, during the 90 day “accelerated installation” schedule. If, for any reason the Existing Benches are not removed according to the MARTIN “accelerated installation” schedule,

MARTIN and the CITY shall meet as provided in Section 6.2.3.3.2 to modify the installation schedule to address any failure of the existing bus bench contractor to remove the Existing Benches according to the schedule “directed” by the CITY. The existing bus bench contractor shall be “directed” to begin its removal of the Existing Benches according to the CITY provided removal schedule beginning one week prior to the CITY issuing MARTIN the Notice to Proceed under the Contract.

6.2.3.3.4 Removal and Installation After the First 90 Day Period.

Commencing 60 days after the issuance of the Notice to Proceed, MARTIN shall provide the CITY with an installation schedule for Bus Benches for the next month following the first 90 day period with the specificity described in Section 6.2.3.3.2. MARTIN shall thereafter provide an installation schedule to the CITY each month thereafter until the installation of all contemplated new Bus Benches has been completed. If all the Existing Benches have not been removed by the end of the 90 Day “accelerated installation” period, the CITY shall direct the current bus bench contractor to remove the Existing Benches in the same manner described above in Section 6.2.3.3.3 such that the Existing Benches are removed one week prior to the time for the installation of the new Bus Benches in accordance with MARTIN’s installation schedule. If, for any reason not under the control of MARTIN, the installation schedule for this period of time becomes impossible to implement as provided and/or the goals set forth in Section 6.2.3.3.1 regarding the timing of the installation of all of the new Bus Benches cannot be

met as contemplated, both CITY, through the Bureau of Street Services, and MARTIN shall meet and agree on any needed modification to the MARTIN provided schedule with the express purpose of ensuring the most rapid installation of the new Bus Benches that can be accomplished under the conditions then in effect.

6.2.3.3.5 CITY to be Responsible for the Costs of the “Accelerated Installation”.

The increased cost to MARTIN to “accelerate” the manufacturing and installation of the new Bus Benches according to the CITY requested “accelerated installation” schedule, is \$416,000.00. In order to compensate MARTIN for this unanticipated increased cost, CITY agrees to forgo the MARTIN payment of the MAF and/or its possible Percentage Fee in MARTIN revenue until MARTIN recoups its increased costs as set forth above. Once MARTIN has recovered \$416,000.00 by the CITY forgoing its MAF and/or Percentage Fee, CITY shall be entitled to its MAF and Percentage Fee as provided in this Contract.

6.2.3.3.6 CITY Option For Temporary Bus Benches.

Regardless of which installation option the CITY elects to pursue, at the City’s sole option, MARTIN can install up to 450 “temporary” bus benches which are located in the Los Angeles area and are therefore accessible to be installed at a rapid pace if so requested by the CITY. These “temporary” bus benches are concrete and wood benches and are only offered to the CITY as a temporary, stop gap, option if the CITY wishes to have benches placed on the public right of way

quickly prior to having the new MARTIN Bus Benches permanently installed. Each of these “temporary” bus benches, which the CITY requests MARTIN to install, will cost the CITY \$150 per temporary bus bench. If the CITY requests MARTIN to install all 450 temporary bus benches, the total fee for the benches will be \$67,500.00. MARTIN shall recoup the cost of any CITY requested installation of these “temporary” bus benches by deducting these costs from the CITY’s MAF and/or Percentage Fee as set forth in Section 6.2.3.3.5. All costs for “temporary” bus benches shall be in addition to the costs of the “Accelerated Installation”.

6.2.3.3.7 CITY Option Not Subject to Change.

Once the CITY makes the election to have MARTIN install the new Bus Benches in accordance with the “accelerated installation” option as described in Section 6.2.3.3, the provisions of Section 6.2.3.3 shall remain in effect, notwithstanding any subsequent conduct of the current bus bench contractor; provided however, that in the event that circumstances make it unnecessary for MARTIN to expend the amount of additional costs described in Section 6.2.3.3.5, such savings shall be passed on to the CITY in the form of a reduction in the amount of MAF and Percentage Fee that the CITY is required to forego.

6.2.3.3.8 Abandonment of Existing Benches by Current Bus Bench Contractor.

If, at any time after the CITY elects the “accelerated installation” option described in Section 6.2.3.3, the current bus bench contractor abandons some or all of the

Existing Benches and the CITY grants MARTIN the right to use the abandoned Existing Benches prior to their removal, MARTIN may return to the time frame for removal of the Existing Benches and the installation of the new Bus Benches set forth in the first paragraph of Section 6.2.3; provided however that Sections 6.2.3.3.5 and 6.2.3.3.6 shall apply to any costs incurred by MARTIN up to the point where MARTIN returns to the installation schedule contained in Section 6.2.3.

6.2.4 Installation of New Bus Benches

CONTRACTOR shall provide the CITY with an implementation schedule to both remove the Existing Benches and install its new Bus Benches which is no longer than two years. This implementation schedule shall be provided to the City within 30 days of the Effective Date of this Contract, or sooner at CONTRACTOR's sole discretion.

By the end of the implementation schedule, CONTRACTOR shall have installed a minimum of 225 Bus Benches within each of the fifteen Council Districts. All remaining Bus Benches shall be placed throughout the City based on Council District requests, BSS Requests, availability of Bus Stops and Bus Stop Zones, and CONTRACTOR site desirability.

6.2.5 New Bus Bench Placement

Bus Benches must be placed in such a manner that they do not interfere with existing trees, light poles, mail boxes, electrical boxes, above ground facilities, and other street furniture elements, both above ground and those within the subgrade. These placement

requirements are set out, in general, in the CITY's diagram contained in **Exhibit B**, attached hereto. Bus Benches shall not be anchored to any of the special purpose sidewalk areas within the CITY unless approved by CITY prior to installation. Additionally, all Bus Benches located on the Hollywood Boulevard "Walk of Fame" shall be located so as not to encroach into or cover any of the "Star" locations.

The placement of all Bus Benches must comply with the requirements of the ADA and all other applicable accessibility or safety standards, codes, and policies that govern the placement of infrastructure within the Public Right-of-Way. CONTRACTOR's placement of Bus Benches shall also comply with required clearances and limitations associated with the CITY's existing Street Furniture Contract. CONTRACTOR'S noncompliance with ADA requirements, other accessibility or safety standards, codes, and policies that govern the placement of infrastructure within the Public Right-of-way, and any limitations associated with the CITY's existing Street Furniture Contract shall constitute a breach of this Contract and will be a cause for termination pursuant to ARTICLE 15, "Termination", and its applicable cure period. As set forth in Section 6.2.1, CITY shall notify CONTRACTOR in writing of any Bus Bench which is installed in violation of any requirement of this CONTRACT and CONTRACTOR shall correct any incorrect installation during the applicable cure period.

For each Bus Stop or Bus Stop Zone selected for the installation of a Bus Bench, CONTRACTOR shall place a minimum of one (1) Bus Bench per Bus Stop or Bus Stop Zone. CONTRACTOR will be allowed to place up to two (2) Bus Benches per Bus Stop

or Bus Stop Zone if no transit shelter exists at the Bus Stop or Bus Stop Zone, provided the location is able to accommodate two Bus Benches in accordance with CITY standards, codes, policies, and ADA requirements, and bus ridership levels or other related factors dictate the need for a second Bus Bench.

Within Bus Stop Zones that contain multiple Bus Stops within the same continuous Bus Stop Zone, CONTRACTOR may place one or two Bus Benches at each additional Bus Stop as noted in the previous paragraph, provided that each Bus Bench, or pair of Bus Benches, placed at each additional Bus Stop within the same Bus Stop Zone is no closer than one hundred feet (100') from another Bus Bench or pair of Bus Benches.

6.2.6 Permits

Through its approval and execution of this Contract, the CITY shall issue CONTRACTOR a blanket permit that authorizes CONTRACTOR to install and maintain Bus Benches at any recognized Bus Stop or Bus Stop Zone within the Public Right of Way. The blanket permit granted to CONTRACTOR shall include all Existing Bench locations identified by CONTRACTOR in accordance Article 6.2.2. For Bus Bench locations which do not have an Existing Bench or where the CONTRACTOR wishes to install an additional Bus Bench where there is currently only one bench installed, CONTRACTOR shall submit a list of proposed Bus Bench locations to CITY for its review and acceptance. CONTRACTOR's list of proposed locations for new Bus Benches shall provide information including: appropriate site descriptors such as street addresses, street names and intersections; a photograph of the proposed site; an indication

if a proposed site will receive one or two new Bus Benches; an indication as to whether or not a proposed site will receive a trash receptacle and/or recycling bin; and an indication that the proposed site is adjacent to an existing transit shelter. The CITY will provide CONTRACTOR with approval or denial of proposed sites as set forth in Section 8.4.

At any location where damage to the sidewalk will require repair work, or where new pavement installation, removal, or replacement might be required to facilitate the installation of a Bus Bench, CONTRACTOR shall comply with the CITY's permit requirements for an "A" Permit to perform such work as part of any installation of CONTRACTOR's Bus Benches. CONTRACTOR shall be responsible for applying and paying for any "A" Permit and all associated construction costs required to install its benches or repair the sidewalk. It is not anticipated that any other CITY permits will be required for the implementation of this Contract. The CITY shall reasonably approve and issue construction permits and other necessary authorizations and permits in accordance with the provisions of this Contract.

6.2.6.1 Bus Bench Placement on State Highways – The placement of Bus Benches on State Highways within City of Los Angeles' boundaries may be subject to State regulations. If necessary, CONTRACTOR shall comply with all State regulations and be responsible for obtaining any State permits required to facilitate the installation of its Bus Benches on State Highways.

6.2.7 Advertising

CONTRACTOR agrees to fully comply with CONTRACTOR's advertising policy and guidelines which provide among other things, that CONTRACTOR shall not display advertisements which contain tobacco, firearms, pornographic or obscene matters as more fully set forth in Exhibit C. In the event applicable law prohibits additional types of advertising, the parties shall review the impacts of such laws and make appropriate revisions to this Contract. If an advertisement that does not comply with CONTRACTOR's advertising policy and guidelines is observed by either BSS personnel, other CITY personnel, or a member of the community, CONTRACTOR shall remove the offensive advertisement within 24 hours of notification. If CONTRACTOR fails to remove the offensive advertisement within the 24 hour time period after being notified by the CITY, it will constitute a breach of this Contract and will be cause for termination pursuant to ARTICLE 15, "Termination," and its applicable cure period. If offensive material is observed more than five (5) different advertisements within a three month period, this will constitute a breach of this Contract and will be cause for termination pursuant to ARTICLE 15, "Termination," and its applicable cure period.

6.2.8 Sites with Currently Installed Transit Shelters

CONTRACTOR may place one Bus Bench at a site which has a transit shelter installed under the current Street Furniture Contract if the location can accommodate the Bus Bench in accordance with City standards and ADA requirements. The Bus Bench must be placed, at a minimum, six feet from the transit shelter on the approach side of a transit shelter. If there is insufficient room to place a Bus Bench on the approach side of an

existing transit shelter, then a Bus Bench may be placed on the departure side, if there is sufficient room. Any Bus Bench placed on the departure side of a transit shelter shall be placed a minimum of twelve (12) feet away from transit shelter. The approach and departure side of a transit shelter is defined by the direction vehicular traffic directly adjacent to the Bus Stop or Bus Stop Zone. A Bus Bench installed adjacent to a transit shelter must also be placed in a manner so that the back-side or rear legs of the Bus Bench are aligned with the back-side or rear leg of the transit shelter. If a trash receptacle placed in connection with the Street Furniture Contract is present, the Bus Bench must be six feet away from the trash receptacle. CONTRACTOR'S noncompliance with the above Bus Bench siting limitations shall constitute a breach of this Contract and will be cause for termination pursuant to ARTICLE 15, "Termination" and its applicable cure period.

6.2.9 Relocations and Removals

CONTRACTOR may, from time to time, be required to relocate and/or permanently remove Bus Benches from previously approved sites. CONTRACTOR will perform these relocations and/or removals at CONTRACTOR'S sole expense. Such relocations and/or removals may be requested for reasons including but not limited to: the Bus Stop or Bus Stop Zone has been abandoned or relocated by transit operators, the Bus Bench is not maintained up to the contractual standard, maintenance standards cannot be appropriately met due to excessive and continuous vandalism or intentional abuse by others, the Bus Bench interferes with the furniture placed in accordance with the Street Furniture Contract, the Bus Bench is obstructing new construction, or the Bus Bench's

location has a reasonable challenge against it. Any challenge by an adjoining property owner to the location of a Bus Bench under this Contract, and/or by any other person lodging a challenge against the location of a Bus Bench, if not mutually resolved, shall be subject to a hearing before the Board of Public Works. If CONTRACTOR and CITY cannot agree to the relocation of a particular Bus Bench for reasons other than a property owner challenge, CONTRACTOR may request that this matter be resolved by the Board of Public Works. All decisions made by the Board of Public Works through the hearing process on such matters shall be deemed final.

6.2.10 Maintenance

Maintenance of the Bus Benches by CONTRACTOR shall include inspecting and/or cleaning each Bus Bench site twice a week on two non-consecutive days. CONTRACTOR shall have its supervisory personnel visit sites on a roving basis each day of the normal work week as part of the above requirement. These supervisors shall be equipped to inspect, maintain, and where appropriate, repair Bus Benches that they observe to be in need of such attention. Further, the CITY shall have the right to require that CONTRACTOR increase its weekly maintenance activities at any Bus Bench site which is demonstrated to require such attention. Evidence of the need for increased maintenance activity shall include but not be limited to, need for more than weekly removal of trash or recyclables from containers at Bus Bench locations; trash appearing on the sidewalk near Bus Benches; repeated appearance of graffiti at Bus Bench locations and excessive dirt and/or spilled liquid on the sidewalk near Bus Bench locations. CONTRACTOR shall also, of its own volition, increase its maintenance activities when it

finds Bus Bench locations which it believes are in need of increased maintenance in order to keep each location, both bench and sidewalk, in a clean and maintained appearance.

6.2.10.1 Requests for Maintenance - CONTRACTOR shall place a telephone number conspicuously on the Bus Bench which will allow community members to contact CONTRACTOR if the Bus Bench is found to be dirty or in need of repair. If a complaint is registered about the cleanliness of the Bus Bench or sidewalk area immediately surrounding a Bus Bench, either by the CITY or by a bus patron/community member, CONTRACTOR shall make every effort to rectify the noted deficiency(ies) for the Bus Bench and/or sidewalk area within twenty four (24) hours and in no case not more than forty eight (48) hours of the receipt of the complaint. Bus Benches and adjacent sidewalk areas will be regularly inspected by the Bureau of Street Services to ensure compliance with installation, maintenance operational and repair requirements. If a maintenance request is received on a weekend or Holiday, Contractor shall respond to the request on the first normal work day following the weekend or Holiday. However, if the maintenance request involves a matter of public safety (the bus bench is in such a condition that it is a hazard to the public) then CONTRACTOR shall respond as soon as possible, including on weekends and Holidays.

6.2.10.2 Maintenance Requirements - Cleaning the Bus Benches, trash receptacles and/or recycling bins shall include:

- a. Removing graffiti, stickers, and debris on the bus benches and the sidewalk areas around a ten foot perimeter of the bus bench,
- b. Preventative maintenance and repair.
- c. Repairs necessary to preserve public safety, which will be performed within twenty four (24) hours of notification.

CONTRACTOR shall also be responsible for collecting refuse or recyclable materials from CONTRACTOR installed trash receptacles and/or recycling containers each time the Bus Bench is cleaned or more often if needed. Sidewalks surrounding the Bus Benches shall be steam cleaned or pressure washed at least yearly, or more frequently as needs dictate. The CITY shall have the right to request that CONTRACTOR increase its steam cleaning/pressure washing at any site that is demonstrated to require such activity to keep the site in a clean and acceptable manner. The apparatus used for the steam cleaning/pressure washing must meet all environmental guidelines for capture of the used water as well as other City guidelines or restrictions regarding water usage. At those locations where the required maintenance is not sufficient to maintain the site at an acceptable level, CONTRACTOR shall increase the frequency of maintenance at no cost to the CITY. CONTRACTOR will provide for liquidated damages related to the CONTRACTOR'S failure to perform such maintenance to the satisfaction of the CITY, as described more fully in Section 6.2.10.3 below. Repeated failure to perform such maintenance to the satisfaction of the CITY may be deemed a failure to perform by CONTRACTOR and may result in the termination of this Contract pursuant to ARTICLE 15, "Termination" and its applicable cure period. At any time during the

term of this Contract, either party may request that the other party meet to discuss possible changes to the maintenance requirements, maintenance time frames or other maintenance issues and such changes may be made to this Contract provided that they are put in writing and mutually agreed to by the Parties.

6.2.10.3 Liquidated Damages - Liquidated damages under this Contract shall be applied in the following way: If the City believes that the CONTRACTOR has failed to perform its maintenance requirements at a specific Bus Bench location according to this Contract, it shall put the CONTRACTOR on notice of such deficiency. Once CONTRACTOR has addressed the maintenance deficiency and has provided CITY with proof of its actions within the applicable time allowed under this Contract, (preferably by digital photograph), such site shall be deemed to be in full compliance. If the same site is deemed to be out of compliance in the future and the CITY notifies the CONTRACTOR, this notification shall be deemed to be a new instance and shall begin the liquidated damage process anew. If the CONTRACTOR fails to provide the CITY with proof that it has resolved a maintenance issue once it has been notified, or the maintenance issue is not resolved, then any further notice by the CITY on the same site shall be deemed to be the same instance of failed maintenance and the applicable liquidated damage amount shall apply to this second notice, and any subsequent notice for the same site, until the maintenance deficiency is demonstrated by the CONTRACTOR to be resolved.

Liquidated Damages Schedule:

1 st Notification	\$0
2 nd Notification	\$50
3 rd Notification	\$100

CITY shall put CONTRACTOR on written notice each time it assesses Liquidated Damages and shall also give CONTRACTOR written notice within 30 days of the end of a Program Year, of how much money CONTRACTOR owes to the CITY in Liquidated Damages for that Program Year. All Liquidated Damages assessed against CONTRACTOR shall be accrued over the course of a Program Year and shall be due to the CITY no later than 120 days after the end of that same Program Year. The payment shall be made to the Department of Public Works and shall be remitted in the form of an electronic wire transfer. CONTRACTOR's failure to promptly remit its payment of Liquidated Damages after the end of a given Program Year may be deemed a failure to perform by CONTRACTOR and may result in the termination of this Contract pursuant to ARTICLE 15, "Termination" and its applicable cure period.

6.2.10.4 Maintenance of Existing Benches

During the transitional time of replacement of Existing Benches, and installation of the new Bus Benches, CONTRACTOR shall be responsible for the maintenance of the Existing Benches. The CONTRACTOR shall maintain the bus bench sites which still have the Existing Benches in place, in the same manner as it maintains all Bus Bench sites. CONTRACTOR shall make its best efforts to address any new graffiti on

the Existing Benches with the understanding that the construction material used on the Existing Benches makes graffiti removal problematic. If any Existing Bench is damaged so as to cause a safety concern to the public, the damaged Existing Bench must be removed within the prescribed 24 hour response time period. If a new Bus Bench is available, CONTRACTOR shall replace the damaged Existing Bench with a new Bus Bench with the same 24 hour response period. If a new Bus Bench is not available, then the Existing Bench shall be removed and replaced once a new Bus Bench is available.

6.2.10.5 Excessive Maintenance

If a Bus Bench site constantly requires excessive maintenance, by mutual agreement between CITY and CONTRACTOR, this site may be deemed a nuisance and may be eliminated.

6.2.11 Monthly Reports

CONTRACTOR shall be responsible for compiling monthly report(s) which log all maintenance, complaints, installations, and removals. This report must include dates and times, if available in the reporting computer program, for maintenance and the response time for handling complaints. The CITY may reasonably request that additional information be included in the Monthly Reports.

6.2.12 Computerized Bus Bench Information

CONTRACTOR shall include all of the Bus Benches within the Los Angeles Bus Bench

Program within a computerized record keeping system. CONTRACTOR will provide CITY with password protected access to the information via the Internet, and the CITY shall be able to access the Los Angeles Bus Bench program information, including but not limited to, Bus Bench locations, photographs, maintenance records, and other germane Program information as agreed upon by CONTRACTOR and the CITY.

6.2.13 Fee and Payments to the CITY

CONTRACTOR shall pay fees to the CITY as follows:

Minimum Annual Fee: At the beginning of each Program Year, subject to the provisions of this Contract, CONTRACTOR shall pay the Minimum Annual Fee (MAF) in accordance with the schedule below:

Year	Minimum Annual Fee
1	\$120,000
2	\$180,000
3	\$240,000
4	\$300,000
5	\$300,000
6	\$270,000
7	\$270,000
8	\$270,000
9	\$324,000
10	\$324,000
Total	\$2,598,000

Should the CITY elect to pursue a five (5) year renewal term of this Contract in accordance with Article 9, the MAF during the renewal term shall be as follows:

Year	Minimum Annual Fee
11	\$360,000
12	\$360,000
13	\$360,000
14	\$382,500
15	\$382,500
Total	\$4,443,000

The MAF payment by CONTRACTOR shall be due on the first day of each Program Year, and paid no later than January 10, of each Program Year. The payment shall be made to the Department of Public Works and shall be remitted in the form of an electronic wire transfer. If this Contract is signed and implemented any time after January 1, then this “partial year” shall not count as a “Program Year” or as part of the 10 year term of this Contract. All money due to the CITY under this Contract for this “partial year” shall be a prorated amount calculated according to how many days the Contract is in place, prior to the first full year/Program Year of this Contract, and the City shall be due a prorated percentage of the first year MAF for this partial year. This “partial year” MAF shall be due and payable to the City within 30 days of the full execution of this Contract.

Percentage Fee: Subject to the provision of this Contract, if it is determined that nine

percent (9%) of the annual Gross Cash Receipts exceeds the MAF payment made by the CONTRACTOR for a given Program Year, CONTRACTOR shall make a payment to the CITY in the amount of the difference between the nine percent of the Gross Cash Receipt and the MAF. If such additional payment is required, the payment shall be made no later than 120 days after the end of the applicable Program Year. The payment shall be made to the Department of Public Works and shall be remitted in the form of an electronic wire transfer.

6.2.14 Maintenance of Records

CONTRACTOR shall maintain complete and accurate records with respect to Gross Cash Receipts, payments to the CITY, maintenance operations/data, complaints or notifications regarding Bus Bench maintenance, advertising operations/data, subcontractor payments, financial transactions, and other business or financial records related to the MAF, Percentage Fee, and the performance of this Contract. All financial records shall be maintained on an industry recognized accounting basis. CONTRACTOR shall provide any reports reasonably requested by the CITY regarding the performance of this Contract. CONTRACTOR shall make available to the authorized representative of the CITY all such books and records, who shall have the right to examine and audit the same during business hours at the business office in Los Angeles where records are being maintained, and to make transcripts or copies therefrom. As mutually agreed by both parties, CONTRACTOR shall maintain and allow inspection of all said books and records, including, but not limited to work data, documents, proceedings, and activities related to the performance of this Contract for a period of three (3) years following the

expiration of this Contract. Within 120 days of the end of each Program Year, including Program Year one, CONTRACTOR shall remit to BSS an annual financial statement for the program year prepared by a Certified Public Accountant. The annual financial statement shall confirm the accuracy of the CONTRACTOR end-of-year report with respect to the total actual Gross Cash Receipts received by CONTRACTOR with respect to its operations in the City of Los Angeles during the entire Program Year.

6.2.15 Performance Bond

CONTRACTOR is required to maintain a Performance Bond (or Bonds) throughout the entire Contract Term to ensure CONTRACTOR's provision and conformance with all Contract provisions and terms. All Performance Bond(s) shall be deposited with the Los Angeles City Controller to ensure the faithful performance by the CONTRACTOR of all conditions, provisions, and requirements of the Contract. Pursuant to the City Administrative Code, CONTRACTOR may post a cash or cash equivalent in lieu of an actual performance bond to guarantee its performance under this Contract. The CITY will be authorized to make withdrawals from the Performance Bond for the following reasons:

- a. CONTRACTOR's failure to pay the required MAF.
- b. CONTRACTOR's failure to pay any and all Liquidated Damages in accordance with Article 6.2.10.3 et al.
- c. CONTRACTOR's failure to cure a breach of the Contract after notice from the CITY.
- d. Any time the CITY is required to perform or fulfill any form of work or service required of CONTRACTOR as detailed in Article 6.2 - Scope of Services that is not expressly mentioned above.

The CONTRACTOR shall be required to provide and maintain its Performance Bond in the following amounts and durations as stipulated below:

- e. CONTRACTOR's Performance Bond shall be \$400,000 during the first Program Year and any partial year prior to the first Program Year. At such time as CONTRACTOR has replaced 50% of the Existing Benches, then the Performance Bond for the next full Program Year shall be reduced to \$200,000. At such time as CONTRACTOR has replaced all the Existing Benches, then the Performance Bond shall be reduced to \$100,000 for the next full Program Year through the remainder of the Term of the Contract.
- f. Should the CITY elect to exercise its option for a 5 year renewal term in accordance with Article 9, CONTRACTOR shall be required to maintain a performance bond of \$100,000 starting with Program Year 11 and continuing on through the end of Program Year 15.

6.2.16 Specifications

Unless otherwise specified, all installation work performed at the work site shall conform to the Standard Specifications for Public Works Construction (the "Green Book") and Standard Plans for Public Works Construction, adopted by the Board of Public Works for the City of Los Angeles, latest edition, including the latest supplements, as amended or revised, at the date of the contract award or as later amended during the Term of the Contract.

6.2.17 Bus Bench Design Drawings

6.2.17.1 CONTRACTOR shall submit its Bus Bench design to CITY within 30 days of the execution of this Contract or sooner at CONTRACTOR's sole discretion. CITY will either approve these bus bench designs, including color, or return them to the CONTRACTOR with comments for modifications, within two weeks of submission. If returned to CONTRACTOR for modification, CONTRACTOR shall resubmit the Bus Bench designs for approval by the CITY, until such approval is received.

6.2.17.2 All such designs, plans etc or any changes to these approved designs, plans or other drawings and/or technical data submitted by CONTRACTOR to the CITY for review, shall be stamped with a seal and signed by a California Registered Civil or Structural Engineer.

6.2.17.3 Attached hereto as Exhibit D are copies of each CITY approved standard plan (plot plan view) for the installation of new Bus Benches in 10 different installation scenarios: (1) Front or curbside installation without a Transit Shelter; (2) Back or Property line installation without a Transit Shelter; (3) Front or curbside installation with a Transit Shelter and waste receptacle in place; or (4) Back or Property Line installation with a Transit Shelter and waste receptacle in place; (5) Front or curbside installation with a Transit Shelter without a waste receptacle; (6) Back or Property Line installation with a Transit Shelter without a waste receptacle; (7) Front or curbside installation with a waste receptacle and no Transit Shelter; (8) Back or Property Line installation with a waste receptacle and no Transit Shelter (9) Back or Property Line installation on farside of Transit Shelter with no waste receptacle; and (10) Front or curbside installation on farside of Transit Shelter with no waste receptacle . CONTRACTOR shall follow these 10 standard installation plans unless it receives written approval from the CITY to deviate from their requirements.

6.2.17.4 Bus Bench Anchoring Plans

The Bus Bench Design Drawings to be submitted by the CONTRACTOR as required by Section 6.2.17.1 shall include design standards that specify the method of anchoring benches to sidewalks, either by standardized base, epoxy or cylinder bolts. Such standards shall be developed by a California Registered Civil or Structural Engineer. Bus Bench anchoring plans shall be subject to the review and acceptance by CITY in accordance with Article 6.2.17.1. Once approved by the CITY, CONTRACTOR may use this Bus Bench anchoring method for all future Bus Bench

installations in the City of Los Angeles. If CONTRACTOR wishes to modify or otherwise change the approved Bus Bench anchoring method, it shall submit the modified anchoring plan for approval by the CITY and, once approved, CONTRACTOR may use either method to anchor its future installations.

6.2.17.5 Bus Bench Materials Specifications

6.2.17.5.1 Paint/Coatings/Finishes:

- a) All metal surfaces are to be painted, coated, powder coated or finished at the factory.
- b) Bus Bench design shall include graffiti resistant paints, thermoplastic coatings, or finishes.
- c) Colors shall be submitted to the CITY for review and acceptance by CITY in accordance with Article 6.2.17.1.

6.2.17.5.2 Concrete

- a) All concrete used to repair damaged sidewalks or to install new Bus Benches shall be as specified on the CITY accepted Bus Bench Design Drawings or Class 310-A-17 per the Standard Specifications for Public Works Construction, latest adopted edition, whichever concrete type is greater.
- b) Type III cement (high early strength) may be used as specified in the Standard Specifications for Public Works Construction, latest adopted edition.

6.2.17.5.3 Dissimilar Metals

Dissimilar metals shall be insulated by painting with mastic at all contact points.

Fasteners and hardware connecting dissimilar metals shall be stainless steel or cadmium plated.

6.2.17.5.4 Restoration of Pavement

All paved surfaces cut or damaged as a result of construction, removal of Existing Benches or installation of new Bus Benches shall be replaced with similar materials and of equal thickness, color and texture to match the existing adjacent undisturbed areas.

All pavements which require partial removal for damaged sidewalk repair, removal of Existing Benches or installation of new Bus Benches, shall be neatly saw cut in straight lines before permanent replacement. All pavement restoration and other facilities shall be constructed to finish grades compatible with the adjacent undisturbed grade.

Wherever sidewalks have been removed for purposes of construction the CONTRACTOR shall place suitable temporary sidewalks promptly after backfilling and shall maintain them in satisfactory condition until the final restoration thereof has been made.

6.2.17.5.5 Anchor Bolts

Cast-in-place anchor bolts, anchor bolts for epoxy grouting, and expansion anchors or concrete wedge anchors shall be installed in hardened concrete, shall be as noted on Bus Bench Design Drawings submitted by CONTRACTOR and accepted by CITY in accordance with Article 6.2.17.1.

Anchor bolts located in splash zones subject to intermittent wetting, shall be stainless steel or galvanized and shall be epoxy grouted or cast into concrete sections.

ARTICLE 7 - KEY CONTRACTOR PERSONNEL

CONTRACTOR designates the following persons to implement the work:

Scott Martin, President

Tom Comeau, General Manager

Glenn Flutie, Operations Manager

Marlyn "Mike" Friend, General Counsel

Randall N. Smith, Chief Financial Officer

ARTICLE 8 – RESPONSIBILITIES OF AND TASKS TO BE PERFORMED BY CITY

8.1 Project Manager

CITY designates the Director of the Bureau of Street Services as its Project Manager, representing the CITY in all matters within the scope of this Contract relating to the conduct and approval of the work to be performed. Whenever the term “approval of CITY,” “consult with CITY,” “confer with CITY,” or “by mutual agreement” or similar terms are used, they shall refer to the CITY’S Project Manager. The CITY’S Project Manager may designate an assistant to act in his/her stead. The Project Manager may be changed at the direction of the Bureau of Street Services at any time, on written notice to CONTRACTOR.

8.2 CITY Technical Information

The CITY shall cooperate with and assist CONTRACTOR in obtaining all standard plans and specifications and any other information which the CITY now has in its files that may be of use to CONTRACTOR.

8.3 CITY Cooperation

The CITY shall cooperate with and assist CONTRACTOR in implementing any aspects of the Program which requires CITY approvals and other governmental coordination. CITY agrees it shall use good faith efforts to make timely approvals, issue permits, and to promptly review and approve alternate sites when Bus Benches require relocation.

8.4 Approval of New Bus Bench Sites

On receipt of the proposed list of new Bus Bench sites from the CONTRACTOR, BSS will

begin its review of the locations. Sites will be reviewed based on location; sidewalk width; ADA clearance; transit shelter siting; other sidewalk impediments, such as trees, vaults, driveways, storefront windows and doors; and any other reasonable criteria for Bus Bench placement. If the list of proposed new Bus Bench locations is submitted by the CONTRACTOR with 50 or less requested locations, BSS will complete its review of the sites and either approve, deny or ask for more information within two weeks of receiving the list from the CONTRACTOR. If the CONTRACTOR submits a list of proposed new Bus Bench locations which includes as many as 1,000 new locations, then BSS will either approve, deny or ask for more information within ninety days of receipt of the request. For location requests for new Bus Benches which are between 50 and 1,000, BSS will either approve, deny or ask for more information from the CONTRACTOR in relative time between two weeks and 90 calendar days depending on the number of submitted new locations. Once BSS has approved the locations, those locations will be incorporated into the blanket permit for all Bus Benches and CONTRACTOR will be authorized to begin the installation process. All Existing Bus Stops or Bus Stop Zones with currently installed Existing Benches shall be the subject of a "blanket" installation permit in accordance with Article 6.2.6. Accordingly, all Bus Benches placed at Existing Bus Stops or Bus Stop Zones shall not be subject to this new Bus Bench site approval process.

8.5 Annual Review

A yearly review shall be conducted by the Bureau of Street Services regarding the extent of CONTRACTOR'S compliance with maintenance standards designated in the Contract so that if compliance is determined to be insufficient remedial actions may be considered.

8.6 Five Year Review

At the end of Year Five of the Contract, the Bureau of Street Services shall review the operation of the Program, taking into account (1) the amount of Bus Benches installed; (2) the level of service being provided relative to program goals and public needs; (3) the amount of revenue being received and generated; and (4) the level of maintenance, including a review of the number of complaints received. The CITY and CONTRACTOR shall discuss the findings of the review and make such adjustments and modifications to the Program as they shall mutually agree are appropriate to achieve the service and review goals which are contemplated by this Contract. No changes shall be made to this Contract as a result of the review unless they are mutually agreed to by the CITY and CONTRACTOR and set forth in written amendment(s) to this Contract.

8.9 Ownership of Bus Benches

All bus benches become the property of the CITY upon installation. It is the intention of the CITY and CONTRACTOR that CONTRACTOR operate the Program on behalf of and for the benefit of the CITY and residents of and visitors to the CITY.

During the term of this Contract, CONTRACTOR shall have no possessory interest or ownership rights in the Bus Benches, it being the intent of the CITY and CONTRACTOR that CONTRACTOR is operating and providing a municipal services program as CITY's agent and manager for the construction, provision and operation of Bus Benches and the brokering and leasing of Ad Panels. The funding for the Program shall come from the leasing of Ad Panels. CONTRACTOR shall not own the advertising display panels nor the advertising posters, media,

or printed materials during the term of the Contract but shall act as a Manager of the CITY'S Bus Benches, its advertising display panels, and advertising posters, media, and printed materials. CONTRACTOR'S economic interest shall be limited to its right to receive payments or fees for the brokering and leasing of Ad Panels and from those payments or fees to fund the costs of the Program to the extent possible and to retain excess revenues. CONTRACTOR shall absorb the expenses for which it is obligated in the event advertising revenues are not sufficient to cover the costs of the Program. CONTRACTOR shall be responsible for paying for all sales, business, and/or income taxes, and any licensing fees incurred in the course of operating this Program on behalf of the CITY. Any new taxes not in existence on the Effective Date of this Contract imposed by the CITY after the Effective Date which apply to Bus Benches or advertising within the Public Right-of-Way shall be paid by the CITY. CONTRACTOR may credit CITY with payment of such taxes by offsetting the amount from the MAF payable to the CITY at the CITY's request. Any new taxes not in existence on the Effective Date of this Contract imposed by others after the Effective Date which apply to Bus Benches or advertising within the Public Right-of-Way shall be mutually shared by both CONTRACTOR and the CITY with each party responsible for one half of such new taxes. CONTRACTOR shall pay the full amount of the tax and deduct the CITY's portion from its annual MAF or other payment to the CITY.

ARTICLE 9 - TERM OF CONTRACT

The term of this Contract shall be ten (10) Program Years plus the prorated number of calendar days between the effective date of this Contract and December 31st of the year prior to the first day of the first Program Year. Prior to the expiration of the initial ten year term, at its sole discretion, the CITY may exercise the option to extend the contractual period with one five (5)

year renewal term. Should the CITY elect to pursue the five (5) year renewal term, the overall term of this Contract shall be fifteen (15) Program Years plus the prorated number of calendar days between the effective date of this Contract and December 31st of the year prior to the first day of the first Program Year. All contractual provisions and conditions shall remain in effect throughout the initial ten year term and a five year renewal term if so exercised by the CITY.

Unless otherwise provided, this Contract shall take effect when all of the following events have occurred:

- (a) This Contract has been signed on behalf of the CONTRACTOR by the person or persons authorized to bind the CONTRACTOR hereto;
- (b) This Contract has been approved by the City Council or by the Board, officer or employee authorized to give such approval;
- (c) The Office of the City Attorney has indicated in writing its approval of this Contract as to form; and
- (d) This Contract has been signed on behalf of the CITY by the person designated to so sign by the City Council or by the Board, Officer or Employee authorized to enter into this Contract.
- (e) Upon execution, this Contract shall remain in effect for ten (10) Program Years plus the prorated number of calendar days between the effective date of this Contract and December 31st of the year prior to the first day of the first Program Year, unless the CITY exercises its option to renew this Contract, in which case,

this Contract shall remain in effect for fifteen (15) Program Years plus the prorated number of calendar days between the effective date of this Contract and December 31st of the year prior to the first day of the first Program Year.

ARTICLE 10 - INTEGRATED CONTRACT

This Contract sets forth all of the rights and duties of the parties with respect to the subject matter hereof, and replaces any and all previous Contracts or understandings, whether written or oral, relating thereto. This Contract may be amended only as provided in Article 11 hereof.

ARTICLE 11 - AMENDMENT

All amendments to this Contract shall be in writing and signed and approved pursuant to the provisions of Article 9.

ARTICLE 12 - EXCUSABLE DELAYS

In the event that performance on the part of any party hereto is delayed or suspended as a result of circumstances beyond their reasonable control and without the fault and negligence of said party, none of the parties shall incur any liability to the other parties as a result of such delay or suspension. Circumstances deemed to be beyond the control of the parties hereunder include, but are not limited to, acts of God or of the public enemy; insurrection, acts of the Federal Government or any unit of State or Local Government in either sovereign or contractual capacity; fires; floods; earthquakes; epidemics; quarantine restrictions; strikes; freight embargoes or delays in transportation or fabrication, to the extent that they are not caused by the party's willful or negligent acts or omissions, and to the extent that they are beyond the party's reasonable control.

ARTICLE 13 – BREACH

Except for excusable delays as described in Article 12, if any party fails to perform, in whole or in part, any promise, covenant, or agreement set forth herein, or should any representation made by it be untrue, any aggrieved party may avail itself of all rights and remedies, at law or equity, in the courts of law. Said rights and remedies are cumulative of those provided for herein except that in no event shall any party recover more than once, suffer a penalty or forfeiture, or be unjustly compensated. Any such Breach under this Contract shall be subject to the cure provisions contained in ARTICLE 15, "Termination".

ARTICLE 14 – WAIVER

A waiver of a default of any part, term or provision of this Contract shall not be construed as a waiver of any succeeding default or as a waiver of the part, term or provision itself. A party's performance after the other party's default shall not be construed as a waiver of that default.

ARTICLE 15 - TERMINATION FOR BREACH OF CONTRACT

15.1 Contractor's Failure to Perform

Except for excusable delays as provided in Article 12, CONTRACTOR shall be in default under this Contract if CONTRACTOR fails to perform any of the terms, conditions or covenants as set forth herein. CITY may not terminate this Contract for any such Breach unless CONTRACTOR is afforded at least 30 days to cure any Breach for which it has received written notice from the CITY. If any noticed Default or Breach cannot reasonably be cured within 30days and

CONTRACTOR has diligently commenced to begin its cure of the noticed Breach, the cure period shall be reasonably extended to allow CONTRACTOR to complete the cure.

15.2 Contractor's Indebtedness

If a federal or state proceeding for relief of debtors is undertaken by or against CONTRACTOR, or if CONTRACTOR makes an assignment for the benefit of creditors, then the CITY may immediately terminate this Contract.

15.3 Contractor's Conduct

If CONTRACTOR engages in any material dishonest conduct related to the fraudulent performance or administration of this Contract or violates the City's lobbying policies, then the CITY may immediately terminate this Contract.

15.4 Contractor's Financial Liability to City

In the event the CITY terminates this Contract as provided in this Section, the CITY may procure, upon such terms and in such manner as the CITY may deem appropriate, services similar in scope and level of effort to those so terminated, and CONTRACTOR shall be liable to the CITY for all of its costs and damages, including, but not limited to, any excess costs for such services.

15.5 Bus Bench Status upon Contract Termination

If the CITY terminates the Contract for cause, the CONTRACTOR shall be required to leave the Bus Benches in place inasmuch as upon installation, CITY owns all Bus Benches in accordance with Article 8.9. Upon the expiration or early termination of this Contract for cause, CITY

reserves the right to enter into a new Contract for the maintenance and operations of the Program, including the advertising rights for the Bus Benches.

15.6 Rights and Remedies

The rights and remedies of the CITY provided in this Section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

ARTICLE 16 – CONTRACTOR AGENT FOR CITY

In accordance with the terms of this Contract, CONTRACTOR shall act as agent for the CITY by providing administration, construction, maintenance and repair for the Bus Benches and advertising broker and leasing services in connection with the Ad Panels on behalf of and for the benefit of the CITY. CONTRACTOR'S agency relationship with the CITY shall only be for the purpose of carrying out CONTRACTOR's obligations and responsibilities under this Contract, and shall be limited by the provisions of this Contract. CONTRACTOR's agency relationship with the CITY shall terminate upon the conclusion or termination of this Contract.

ARTICLE 17 – SUBCONTRACTORS

CONTRACTOR shall provide the CITY with a listing of the subcontractors it will use to assist in the performance of this Contract. If CONTRACTOR is required to change subcontractors during the course of the Contract, no changes may be made without the prior written approval of the CITY, which approval will not be unreasonably withheld. The CONTRACTOR shall remain responsible for performing all aspects of this Contract. The CITY has the right to approve

CONTRACTOR's subcontractors, and the CITY reserves the right to request replacement of subcontractors for good cause. The CITY does not have any obligation to pay CONTRACTOR's subcontractors, and nothing herein creates any privity between the CITY and the subcontractors. If the CONTRACTOR becomes aware that its maintenance sub-contractor(s) is not performing its work up to the standards of this Contract, it must take whatever steps it deems necessary to maintain the maintenance level of all installed Bus Benches, and shall notify the City, as soon as reasonably possible, of any actions related to the need to replace its maintenance sub-contractor(s).

ARTICLE 18 – ASSIGNMENT OR DELEGATION

CONTRACTOR may not, unless it has first obtained the written permission of the CITY:

- A. Assign or otherwise alienate any of its rights under this contract, including the Right to payment; or
- B. Delegate, or otherwise transfer any of its duties under this Contract.
- C. Nothing contained in this Article shall prevent the CONTRACTOR from financing any portion of its capital costs or other responsibilities under this Contract.

ARTICLE 19 – Licenses, Permits, and Certifications

CONTRACTOR and its directors, officers, partners, agents, employees, and subcontractors, to the extent allowed hereunder, shall obtain and maintain all licenses, (business or work related) permits, certifications and other documents necessary for CONTRACTOR'S performance

hereunder and shall pay any fees required therefore. CONTRACTOR certifies to immediately notify the CITY of any suspension, termination, lapses, non-renewals, or restrictions of licenses, permits, certificates, or other documents.

ARTICLE 20 – CLAIMS FOR LABOR AND MATERIALS

CONTRACTOR shall promptly pay when due all amounts payable for labor and materials furnished in the performance of this Contract so as to prevent any lien or other claim under any provision of law from arising against any CITY property (including reports, documents, and other tangible or intangible matter produce by CONTRACTOR hereunder), against CONTRACTOR’S rights to payments hereunder, or against the CITY, and shall pay all amounts due under the Unemployment Insurance Act with respect to such labor.

ARTICLE 21 - CURRENT LOS ANGELES CITY BUSINESS TAX REGISTRATION

CERTIFICATE REQUIRED

If applicable, CONTRACTOR represents that it has obtained and presently holds the Business Tax Registration Certificate(s) required by the CITY’S Business Tax Ordinance, Section 21.00 et seq. of the Los Angeles Municipal Code. For the term covered by this Contract, the CONTRACTOR shall maintain, or obtain as necessary, all such Certificates required of it under the Business Tax Ordinance and shall not allow any such Certificate to be revoked or suspended.

ARTICLE 22 – BONDS

All bonds which may be required hereunder shall conform to CITY requirements established by Charter, ordinance or policy, and shall be filed with the Office of the City Administrative

Officer, Risk Management for its review and acceptance in accordance with Sections 11.47 through 11.56 of the Los Angeles Administrative Code.

ARTICLE 23 – INDEMNIFICATION

A. Except for the active negligence or willful misconduct of CITY, or any of its Boards, Officers, Agents, Employees, Assigns and Successors in Interest, CONTRACTOR undertakes and agrees to defend, indemnify and hold harmless CITY and any of its Boards, Officers, Agents, Employees, Assigns and Successors in Interest from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by the CITY, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever, for death or injury to any person, including CONTRACTOR's employees and agents, or damage or destruction of any property of either party hereto or of third parties, arising in any manner by reason of the negligent acts, errors, omissions or willful misconduct incident to the performance of this Contract on the part of CONTRACTOR or its subCONTRACTORS of any tier. Rights and remedies available to the CITY under this provision are cumulative of those provided for elsewhere in this Contract and those allowed under the laws of the United States, the State of California, and the CITY. The provisions of this Article 23 shall survive expiration or termination of this Contract.

B. Except for the active negligence or intentional misconduct of the CONTRACTOR, City undertakes and agrees to defend, indemnify and hold harmless CONTRACTOR and any of its Boards, Officers, Agents, Employees, Assigns and Successors in Interest from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to,

attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by the CONTRACTOR, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever, for death or injury to any person, including CONTRACTOR's employees and agents, or damage or destruction of any property of either party hereto or of third parties, arising from or are related to the condition of any of the Existing Benches installed by the previous bus bench contractor, including the sidewalk area surrounding any Existing Bench, incident to the performance of this Contract on the part of CONTRACTOR, including any legal action which said previous contractor may bring against CONTRACTOR related to: I. the RFP for this Contract; II. the agreed upon Contract between the CITY and the CONTRACTOR and III. any actions performed by the CONTRACTOR pursuant to the terms and conditions of this Contract. Rights and remedies available to the CONTRACTOR under this provision are cumulative of those provided for elsewhere in this Contract and those allowed under the laws of the United States, the State of California, and the CITY. The provisions of this Article 23 shall survive expiration or termination of this Contract.

ARTICLE 24 – INTELLECTUAL PROPERTY INDEMNIFICATION

CONTRACTOR, at its own expense, undertakes and agrees to defend, indemnify, and hold harmless the CITY, and any of its Boards, Officers, Agents, Employees, Assigns, and Successors in Interest from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by the CITY, including but not limited to, costs of experts and consultants), damages or liability of any nature whatsoever arising out of the infringement, actual or alleged, direct or contributory, of any intellectual property rights,

including without limitation, patent, copyright, trademark, trade secret, right of publicity and proprietary information right (1) on or in any design, medium, matter, article, process, method, application, equipment, device, instrumentation, software, hardware, or firmware used by CONTRACTOR, or its subcontractors of any tier, in performing the work under this Contract; or (2) as a result of the CITY'S actual or intended use of any Work Product Rights and remedies available to the CITY under this provision are cumulative of those provided for elsewhere in this Contract and those allowed under the laws of the United States, the State of California, and the CITY. The provisions of this Article XX shall survive expiration or termination of this Contract.

ARTICLE 25 – INTELLECTUAL PROPERTY WARRANTY

CONTRACTOR represents and warrants that its performance of all obligations under this Contract does not infringe in any way, directly or contributory, upon any third party's intellectual property rights, including, without limitation, patents, copyrights, trademarks, trade secrets, rights of publicity and proprietary information.

ARTICLE 26 – INSURANCE

During the term of this Contract and without limiting CONTRACTOR'S indemnification of the CITY, CONTRACTOR shall provide and maintain at its own expense a program of insurance having the coverages and limits customarily carried and actually arranged by CONTRACTOR, but not less than the amounts and types listed on the Required Insurance and Minimum Limits sheet (Form General 146 in Exhibit 1 hereto), covering its operations hereunder. Such insurance shall conform to CITY requirements established by Charter, ordinance or policy, shall comply with the Insurance Contractual Requirements (Form General 133 in Exhibit 1 hereto) and shall

otherwise be in a form acceptable to the Office of the City Administrative Officer, Risk Management. CONTRACTOR shall comply with all Insurance Contractual Requirements shown on Exhibit 1 hereto. Exhibit 1 is hereby incorporated by reference and made a part of this Contract.

ARTICLE 27 - WARRANTY AND RESPONSIBILITY OF CONTRACTOR

CONTRACTOR warrants that the work hereunder shall be completed in a manner consistent with professional standards practiced among those firms within CONTRACTOR's profession, doing the same or similar work under the same or similar circumstances.

27.1 CONTRACTOR shall be responsible for the professional quality, technical accuracy, timely completion, and the coordination of all designs, drawings, reports, and other services furnished by CONTRACTOR under this Contract. CONTRACTOR shall, at no additional cost to CITY, correct or revise any errors, omissions, or other deficiencies in its designs, drawings, reports, and other services.

27.2 CONTRACTOR shall perform such services as may be necessary to accomplish the work required to be performed under this Contract in accordance with this Contract.

27.3 Except as otherwise provided in this Contract, the CONTRACTOR shall be and shall remain liable, in accordance with applicable law, for all damages to CITY caused by CONTRACTOR's negligent performance of any of the services furnished under this Contract, except for errors, omissions, or other deficiencies to the extent attributable to CITY or any third party.

ARTICLE 28 - NONDISCRIMINATION

Unless otherwise exempt, this Contract is subject to the non-discrimination provisions in Sections 10.8 through 10.8.2 of the Los Angeles Administrative Code, as amended from time to time. The CONTRACTOR shall comply with the applicable nondiscrimination and affirmative action provisions of the laws of the United States of America, the State of California, and the CITY. In performing this Contract, the CONTRACTOR shall not discriminate in its employment practices against any employee or applicant for employment because of such person's race, religion, national origin, ancestry, sex, sexual orientation, age, disability, marital status or medical condition. Any subcontract entered into by CONTRACTOR, to the extent allowed hereunder, shall include a like provision for work to be performed under this Contract.

Failure of CONTRACTOR to comply with this requirement or to obtain the compliance of its subcontractors with such obligations shall subject the CONTRACTOR to the imposition of any and all sanctions allowed by law, including but not limited to termination of the CONTRACTOR'S Contract with the CITY pursuant to ARTICLE 15, "Termination", and its applicable cure period.

ARTICLE 29 -- EQUAL EMPLOYEMENT PRACTICES

Unless otherwise exempt, this Contract is subject to the equal employment practices provisions in Section 10.8.3 of the Los Angeles Administrative Code, as amended from time to time.

- A. During the performance of this Contract, CONTRACTOR agrees and represents that it will provide equal employment practices and CONTRACTOR and each subcontractor hereunder will ensure that in his or her employment practices

persons are employed and employees are treated equally and without regard to or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, marital status or medical condition.

1. This provision applies to work or service performed or materials manufactured or assembled in the United States.
 2. Nothing in this section shall require or prohibit the establishment of new classifications of employees in any given craft, work or service category.
 3. CONTRACTOR agrees to post a copy of Paragraph A hereof in conspicuous places at its place of business available to employees and applications for employment.
- B. CONTRACTOR will, in all solicitations or advertisements for employees placed by or on behalf of CONTRACTOR, state that all qualified applicants will receive consideration for employment without regard to their race, religion, ancestry, national origin, sex, sexual orientation, age, disability, martial status, or medical condition.
- C. As part of the CITY'S supplier registration process, and/or at the request of the awarding authority, or the Board of Public Works, Office of Contract Compliance, CONTRACTOR shall certify in the specified format that he or she has not discriminated in the performance of CITY contracts against any employee or applicant for employment on the basis or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, martial status, or medical condition.

- ❖
- D. CONTRACTOR shall permit access to and may be required to provide certified copies of all of his/her records pertaining to employment and to employment practices by the awarding authority or the Office of Contract Compliance for the purpose of investigation to ascertain compliance with the Equal Employment Practices provision of CITY contracts. On their or either of their request CONTRACTOR shall provide evidence that he/she was or will comply therewith.
- E. The failure of any CONTRACTOR to comply with the Equal Employment Practices provisions of this Contract may be deemed to be a material breach of CITY contracts. Such failure shall only be established upon a finding to that effect by the awarding authority on the basis of its own investigation or that of the Board of Public Works, Office of Contract Compliance. No such finding shall be made or penalties assessed except upon a full and fair hearing after notice and an opportunity to be heard has been given to CONTRACTOR
- F. Upon a finding duly made that CONTRACTOR has failed to comply with the Equal Employment Practices provision of a CITY contract, the contract may be forthwith canceled, terminated or suspended, in whole or in part, by the awarding authority. In addition thereto, such failure to comply may be the basis for a determination by the awarding authority or the Board of Public Works that the CONTRACTOR is an irresponsible bidder or proposer pursuant to the provisions of Section 371 of the Charter of the City of Los Angeles. In the event of such a determination, CONTRACTOR shall be disqualified from being awarded a contract with the CITY for a period of two years, or until CONTRACTOR shall establish and carry out a program in conformance with the provisions hereof.

- G. Notwithstanding any other provision of this Contract, the CITY shall have any and all other remedies at law or in equity for any breach hereof.
- H. Nothing contained in this Contract shall be construed in any manner so as to require or permit any act which is prohibited by law.
- I. At the time a supplier registers to do business with the CITY, or when an individual bid or proposal is submitted, CONTRACTOR shall agree to adhere to the Equal Employment Practices specified herein during the performance or conduct of CITY contracts.
- K. Equal Employment Practices shall, without limitation as to the subject or nature of employment activity, be concerned with such employment practices as:
1. Hiring practices;
 2. Apprenticeships where such approved programs are functioning, and other on-the-job training for non-apprenticeable occupations;
 3. Training and promotional opportunities; and
 4. Reasonable accommodations for persons with disabilities.
- L. Any subcontract entered into by CONTRACTOR, to the extent allowed hereunder, shall include a like provision for work to be performed under this Contract. Failure of CONTRACTOR to comply with this requirement or to obtain the compliance of its subcontractors with all such obligations shall subject CONTRACTOR to the imposition of any and all sanctions allowed by law, including but not limited to termination of the CONTRACTOR'S Contract with the CITY.

ARTICLE 30 – AFFIRMATIVE ACTION PROGRAM

Unless otherwise exempt, this Contract is subject to the affirmative action program provisions in Section 10.8.4 of the Los Angeles Administrative Code, as amended from time to time.

- A. During the performance of a CITY contract, CONTRACTOR certifies and represents that CONTRACTOR and each subcontractor hereunder will adhere to an affirmative action program to ensure that in its employment practices, persons are employed and employees are treated equally and without regard to their race, religion, ancestry, national origin, sex, sexual orientation, age, disability, martial status, or medical condition.
 - 1. This provision applies to work or service performed or materials manufactured or assembled in the United States.
 - 2. Nothing in this section shall require or prohibit the establishment of new classifications of employees in any given craft, work or service category.
 - 3. CONTRACTOR agrees to post a copy of Paragraph A hereof in conspicuous places at its place of business available to employees and applicants for employment.
- B. CONTRACTOR will, in all solicitations or advertisements for employees placed by or on behalf of CONTRACTOR, state that all qualified applicants will receive consideration for employment without regard to their race, religion, ancestry, national origin, sex, sexual orientation, age, disability, martial status, or medical condition.
- C. As part of the CITY'S supplier registration process, and/or at the request of the

awarding authority, or the Board of Public Works, Office of Contract Compliance, CONTRACTOR shall certify in the specified format that he or she has not discriminated in the performance of CITY contracts against any employee or applicant for employment on the basis or because of race, religion, ancestry, national origin, sex, sexual orientation, age, disability, martial status, or medical condition.

- D. CONTRACTOR shall permit access to and may be required to provide certified copies of all of his/her records pertaining to employment and to employment practices by the awarding authority or the Office of Contract Compliance for the purpose of investigation to ascertain compliance with the Affirmative Action Program provision of CITY contracts. On their or either of their request CONTRACTOR shall provide evidence that he/she was or will comply therewith.
- E. The failure of any CONTRACTOR to comply with the Affirmative Action Program provisions of this Contract may be deemed to be a material breach of CITY contracts. Such failure shall only be established upon a finding to that effect by the awarding authority on the basis of its own investigation or that of the Board of Public Works, Office of Contract Compliance. No such finding shall be made or penalties assessed except upon a full and fair hearing after notice and an opportunity to be heard has been given to CONTRACTOR.
- F. Upon a finding duly made that CONTRACTOR has failed to comply with the Affirmative Action Program provision of a CITY contract, the contract may be forthwith canceled, terminated or suspended, in whole or in part, by the awarding

authority. In addition thereto, such failure to comply may be the basis for a determination by the awarding authority or the Board of Public Works that the CONTRACTOR is an irresponsible bidder or proposer pursuant to the provisions of Section 371 of the Charter of the City of Los Angeles. In the event of such a determination, CONTRACTOR shall be disqualified from being awarded a contract with the CITY for a period of two years, or until CONTRACTOR shall establish and carry out a program in conformance with the provisions hereof.

- G. In the event of a finding by the Fair Employment and Housing Commission of the State of California, or the Board of Public Works of the City of Los Angeles, or any court of competent jurisdiction, that CONTRACTOR has been guilty of a willful violation of the California Fair Employment and Housing Act, or the Affirmative Action Program provisions of a CITY contract, CONTRACTOR'S contract may be forthwith canceled, terminated or suspended, in whole or in part, by the awarding authority. In addition thereto, such failure to comply may be the basis for a determination by the awarding authority or the Board of Public Works that the CONTRACTOR is an irresponsible bidder or proposer pursuant to the provisions of Section 371 of the Charter of the City of Los Angeles. In the event of such a determination, CONTRACTOR shall be disqualified from being awarded a contract with the CITY for a period of two years, or until CONTRACTOR shall establish and carry out a program in conformance with the provisions hereof.
- H. Notwithstanding any other provisions of a CITY contract, the CITY shall have any and all other remedies at law or in equity for any breach hereof.

- I. Nothing contained in this Contract shall be construed in any manner so as to require or permit any act which is prohibited by law.
- K. CONTRACTOR shall submit an Affirmative Action Plan which shall meet the requirements of this chapter at the time it submits its bid or proposal or at the time it registers to do business with the CITY. The plan shall be subject to approval by the Office of Contract Compliance prior to award of the contract. The awarding authority may also require contractors and suppliers to take part in a pre-registration, pre-bid, pre-proposal, or pre-award conference in order to develop, improve or implement a qualifying Affirmative Action Plan. Affirmative Action Programs developed pursuant to this section shall be effective for a period of twelve months from the date of approval by the Office of Contract Compliance. In case of prior submission of a plan, CONTRACTOR may submit documentation that it has an Affirmative Action Plan approved by the Office of Contract Compliance within the previous twelve months. If the approval is 30 days or less from expiration, CONTRACTOR must submit a new Plan to the Office of Contract Compliance and that Plan must be approved before the contract is awarded.
- L. The Office of Contract Compliance shall annually supply the awarding authorities of the CITY with a list of contractors and suppliers who have developed Affirmative Action Programs. For each contractor and supplier the Office of Contract Compliance shall state the date the approval expires. The Office of Contract Compliance shall not withdraw its approval for any Affirmative Action Plan or change the Affirmative Action Plan after the date of contract award for the

entire contract term without the mutual agreement of the awarding authority and CONTRACTOR.

M. The Affirmative Action Plan required to be submitted hereunder and the pre-registration, pre-bid, pre-proposal or pre-award conference which may be required by the Board of Public Works, Office of Contract Compliance or the awarding authority shall, without limitation as to the subject or nature of employment activity, be concerned with such employment practices as:

1. Apprenticeship where approved programs are functioning, and other on-the-job training for non-apprenticeable occupations;
2. Classroom preparation for the job when not apprenticeable;
3. Pre-apprenticeship education and preparation;
4. Upgrading training and opportunities;
5. Encouraging the use of contractors, subcontractors and suppliers of all racial and ethnic groups, provided, however, that any contract subject to this ordinance shall require the contractor, subcontractor, or supplier to provide not less than the prevailing wage, working conditions and practices generally observed in private industries in the contractor's, subcontractor's or supplier's geographical area for such work.
6. The entry of qualified women, minority and all other journeymen into the industry; and
7. The provision of needed supplies or job conditions to permit persons with disabilities to be employed, and minimize the impact of any disability.

- N. Any adjustments which may be made in the contractor's or supplier's workforce to achieve the requirements of the CITY'S Affirmative Action Contract Compliance Program in purchasing and construction shall be accomplished by either an increase in the size of the workforce or replacement of those employees who leave the workforce by reason of resignation, retirement, or death and not by termination, layoff, demotion or change in grade.
- O. Affirmative Action Agreements resulting from the proposed Affirmative Action Plan or the pre-registration, pre-bid, pre-proposal or pre-award conferences shall not be confidential and may be publicized by the contractor at his/her discretion. Approved affirmative Action Agreements become the property of the CITY and may be used at the discretion of the CITY in its Contract Compliance Affirmative Action Program.
- P. All contractors subject to the provisions of this section shall include a like provision in all subcontracts awarded for work to be performed under the contract with the CITY and shall impose the same obligations, including but not limited to filing and reporting obligations, on the subcontractors as are applicable to the contractor. Failure of the contractor to comply with this requirement or to obtain the compliance of its subcontractors with all such obligations shall subject the contractor to imposition of any and all sanctions allowed by law, including but not limited to termination of the contractor's contract with the CITY pursuant to ARTICLE 15, "Termination", and its applicable cure period..

ARTICLE 31 – CHILD SUPPORT ASSIGNMENT ORDERS

This contract is subject to Child Support Assignment Orders Ordinance, Section 10.10 of the Los Angeles Administrative Code as amended from time to time. Pursuant to the Child Support Assignment Orders Ordinance, CONTRACTOR will fully comply with all applicable State and Federal employment reporting requirements for CONTRACTOR'S employees. CONTRACTOR shall also certify (1) that the principal owner(s) of CONTRACTOR are in compliance with any Wage and Earnings Assignment Orders and Notices of Assignment applicable to them personally; (2) that CONTRACTOR will fully comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment in accordance with California Family Code section 5230, *et seq* of the California Family Code; and (3) and CONTRACTOR will maintain such compliance throughout the term of this Contract.

Pursuant to Section 10.10(b) of the Los Angeles Administrative Code, failure of CONTRACTOR to comply with all applicable reporting requirements or to implement lawfully served Wage and Earnings Assignment Orders and Notices of Assignment or the failure of any principal owner(s) of CONTRACTOR to comply with any Wage and Earnings Assignment Orders or Notices of Assignment applicable to them personally, shall constitute a default by the CONTRACTOR under terms of this contract, subjecting this Contract to termination if such default shall continue for more than ninety (90) days after notice of such default to CONTRACTOR by City.

Any subcontract entered into by the CONTRACTOR, to the extent all. Failure of the CONTRACTOR to obtain compliance of its subcontractors shall constitute a default by the

CONTRACTOR under this contract, subjecting this Contract to termination where such default shall continue for more than ninety (90) days after notice of such default to CONTRACTOR by the City.

CONTRACTOR certifies that, to the best of its knowledge, it is fully complying with the Earnings Assignment Orders of all employees, and is providing the names of all new employees to the New Hire Registry maintained by the Employment Development Department as set forth in Section 7110(b) of the California Public Contract Code.

ARTICLE 32 – LIVING WAGE ORDINANCE AND SERVICE CONTRACTOR

WORKER RETENTION ORDINANCE

A. Unless otherwise exempt, this contract is subject to the applicable provisions of the Living Wage Ordinance (LWO), Section 10.37 *et seq.* of the Los Angeles Administrative Code, as amended from time to time, and the Service Contractor Worker Retention Ordinance (SCWRO), Section 10.36 *et seq.*, of the Los Angeles Administrative Code, as amended from time to time. These Ordinances require the following:

1. CONTRACTOR assures payment of a minimum initial wage rate to employees as defined in the LWO and as may be adjusted each July 1 and provision of compensated and uncompensated days off and health benefits, as defined in the LWO.
2. CONTRACTOR/CONTRACTOR further pledges that it will comply with federal law proscribing retaliation for union organizing and will not

retaliate for activities related to the LWO. CONTRACTOR shall require each of its Subcontractors within the meaning of the LWO to pledge to comply with the terms of federal law proscribing retaliation for union organizing. CONTRACTOR shall deliver the executed pledges from each such Subcontractor to the City within ninety (90) days of the execution of the Subcontract. CONTRACTOR'S delivery of executed pledges from each such Subcontractor shall fully discharge the obligation of CONTRACTOR with respect to such pledges and fully discharge the obligation of CONTRACTOR to comply with the provision in the LWO contained in Section 10.37.6(c) concerning compliance with such federal law.

3. CONTRACTOR, whether an employer, as defined in the LWO, or any other person employing individuals, shall not discharge, reduce in compensation, or otherwise discriminate against any employee for complaining to the City with regard to the employer's compliance or anticipated compliance with the LWO, for participating in proceedings related to the LWO, for seeking to enforce his or her rights under the LWO by any lawful means, or otherwise asserting rights under the LWO. CONTRACTOR shall post the Notice of Prohibition Against Retaliation provided by the City.
4. Any Subcontract entered into by the CONTRACTOR relating to this

Contract, to the extent allowed hereunder, shall be subject to the provisions of LWO and the SCWRO, and shall incorporate the provisions of the Living Wage Ordinance and Service Contractor Worker Retention Ordinance.

5. CONTRACTOR shall comply with all rules, regulations and policies promulgated by the CITY'S Designated Administrative Agency, which may be amended from time to time.
- B. Under the provisions of Section 10.36.3(c) and Section 10.37.5(c) of the Los Angeles Administrative Code, the CITY shall have the authority, under appropriate circumstances, to terminate this contract and otherwise pursue legal remedies that may be available if the City determines that the subject CONTRACTOR has violated provisions of the LWO and the SCWRO, or both.
 - C. Where under the LWO Section 10.37.6(d), the CITY'S Designated Administrative Agency has determined (a) that the CONTRACTOR is in violation of the LWO in having failed to pay some or all of the living wage, and (b) that such violation has gone uncured, the awarding authority in such circumstances may terminate the Contract in accordance with Article 13 Breach pursuant to ARTICLE 15, "Termination", and its applicable cure period..
 - D. CONTRACTOR shall inform employees making less than Twelve Dollars

(\$12.00) per hour of their possible right to the federal Earned Income Credit (EIC)
CONTRACTOR shall also make available to employees the forms information
them about the EIC and forms required to secure advance EIC payments from
CONTRACTOR

ARTICLE 33 - AMERICANS WITH DISABILITIES ACT

CONTRACTOR hereby certifies that it will comply with the Americans with Disabilities Act 42 U.S.C. Section 12101 *et seq.* and its implementing regulations. CONTRACTOR will provide reasonable accommodations to allow qualified individuals with disabilities who have access to and to participate in its programs, services and activities in accordance with the provisions of the Americans with Disabilities Act. CONTRACTOR will not discriminate against persons with disabilities nor against persons due to their relationship to or association with a person with a disability. Any subcontract entered into by CONTRACTOR, relating to this Contract, to the extent allowed hereunder, shall be subject to the provisions of this paragraph.

ARTICLE 34 - CONTRACTOR RESPONSIBILITY ORDINANCE

Unless otherwise exempt, this Contract is subject to the provisions of the Contractor Responsibility Ordinance, Section 10.40 *et seq.*, of the Los Angeles Administrative Code, as amended from time to time, which requires CONTRACTOR to update its responses to the responsibility questionnaire within thirty calendar days after any change to the responses previously provided if such change would affect CONTRACTOR'S fitness and ability to continue performing the Contract.

In accordance with the provisions of the Contractor Responsibility Ordinance, by signing this Contract, CONTRACTOR pledges, under penalty of perjury, to comply with all applicable federal, state and local laws in the performance of this contract, including but not limited to, laws regarding health and safety, labor and employment, wages and hours, and licensing laws which affect employees. The CONTRACTOR further agrees to: (1) notify the CITY within thirty calendar days after receiving notification that any government agency has initiated an investigation which may result in a finding that the CONTRACTOR is not in compliance with all applicable federal, state and local laws in performance of this contract; (2) notify the CITY within thirty calendar days all findings by a government agency or court of competent jurisdiction that the CONTRACTOR has violated the provisions of Section 10.40.3(a) of the Contractor Responsibility Ordinance; (3) unless exempt, ensure that its subcontractor(s), as defined in the Contractor Responsibility Ordinance, submit a Pledge of Compliance to the CITY; and (4) unless exempt, ensure that its ensure that its subcontractor(s) as defined in the Contractor Responsibility Ordinance, comply with the requirements of the Pledge of Compliance and the requirement to notify the CITY within thirty calendar days after any government agency or court of competent jurisdiction has initiated an investigation or has found that the subcontractor has violated Section 10.40.3(a) of the Contractor Responsibility Ordinance in performance of the subcontract.

ARTICLE 35 - MINORITY, WOMEN AND OTHER BUSINESS ENTERPRISE

OUTREACH PROGRAM

CONTRACTOR agrees and obligates itself to utilize the services of Minority, Women, and

Other Business Enterprise firms on a level so designated in its proposal, if any. CONTRACTOR certifies that it has complied with Mayoral Directive 2001-26 regarding the Outreach Program for Personal Services Contracts Greater than \$100,000, if applicable. CONTRACTOR shall not change any of these designated subcontractors, nor shall CONTRACTOR reduce their level of effort, without prior written approval of the CITY, provided that such approval will not be unreasonably withheld.

ARTICLE 36 - EQUAL BENEFITS ORDINANCE

Unless otherwise exempt, this Contract is subject to the provisions of the Equal Benefits Ordinance (EBO), Section 10.8.2.1 of the Los Angeles Administrative Code, this Contract is subject to the provisions of the EBO as amended from time to time.

- A. During the performance of the Contract, CONTRACTOR certifies and represents that the CONTRACTOR will comply with the EBO.
- B. The failure of CONTRACTOR to comply with the EBO will be deemed to be a material breach of the Contract by the Awarding Authority.
- C. If the CONTRACTOR fails to comply with the EBO the CITY may cancel, terminate or suspended the Contract, in whole or in part pursuant to ARTICLE 15, "Termination", and its applicable cure period.. The City may also pursue any and all other remedies at law or in equity for any breach.

- D. Failure to comply with the EBO may be used as evidence against the CONTRACTOR in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40 et seq., Contractor Responsibility Ordinance.
- E. If the CITY'S Designated Administrative Officer determines that a CONTRACTOR has set up or used its Contracting entity for the purpose of evading the intent of the EBO, the CITY may terminate the Contract. Violation of this provision may be used as evidence against the CONTRACTOR in actions taken pursuant to the provisions of Los Angeles Administrative Code Section 10.40 et seq., Contractor Responsibility Ordinance.

CONTRACTOR shall post the following statement in conspicuous places at its place of business available to employees and applicants for employment:

“During the performance of a Contract with the City of Los Angeles, the CONTRACTOR will provide equal benefits to employees with spouses and its employees with domestic partners. Additional information about the City of Los Angeles' Equal Benefits Ordinance may be obtained from the Office of the City Administrative Officer, Contractor Enforcement Section at (213) 978-7650.”

ARTICLE 37 - SLAVERY DISCLOSURE ORDINANCE

Unless otherwise exempt, this Contract is subject to the Slavery Disclosure Ordinance, Section 10.41 of the Los Angeles Administrative Code, as amended from time to time.

CONTRACTOR certifies that it has complied with the applicable provisions of this Ordinance. Failure to fully and accurately complete the affidavit may result in termination of this Contract pursuant to ARTICLE 15, "Termination", and its applicable cure period..

ARTICLE 38 – CONTACT PERSONS – PROPER ADDRESSES – NOTIFICATION

All notices shall be made in writing and may be given by personal delivery or by mail. Such notices sent by mail should be registered or certified and sent to the designated contact person for each party and addressed as follows:

To The CITY:

Contact Person: Lance Oishi, Contract Administrator
1149 South Broadway, Ste. 400
Los Angeles, CA 90015

To CONTRACTOR:

Contact Person: Scott Martin, President
150 NW 70th Avenue, Suite #3
Plantation, Florida 33317

Glenn Flutie, Operations Manager
150 NW 70th Avenue, Suite #3
Plantation, Florida 33317

Randall N. Smith, Chief Financial Officer
Marlyn A. Friend, General Counsel
1317 Beverly Estate Drive
Los Angeles, California 90210-2117

ARTICLE 39 – SEVERABILITY

Should any portion of this Contract be determined to be void or unenforceable, such shall be severed from the whole and the Contract will continue as modified.

ARTICLE 40 – DISPUTES

Should a dispute or controversy arise concerning provisions of this Contract or the performance of work hereunder, the parties agree to meet and confer in an attempt to resolve the dispute or controversy. If an amenable resolution cannot be reached through the meet and confer process, the parties may elect to submit such to a court of competent jurisdiction in accordance with Article 3 of this Contract.

40.1 Third Party Challenge

CITY and MARTIN believe that the CITY's RFP selection process for the CITY's Bus Bench Program was conducted properly and according to all applicable legal requirements. However, both parties understand that a third party could decide to challenge the process regardless of the conduct of either the CITY or MARTIN. In the unlikely event that a Court of competent jurisdiction declares this Contract between the CITY and MARTIN to be void, the parties agree to the following terms and conditions:

40.1.1 Ownership of MARTIN Installed Bus Benches

CITY understands that if this Contract is voided by a Court of competent jurisdiction, and a new RFP process is ordered by such Court, MARTIN shall be the owner of any Bus Benches which it has installed pursuant to its obligations under the voided Contract.

40.1.2 Operation of Bus Bench Program if Contract is Voided

CITY intends to continue providing the bus riding public with the benefit of the CITY's Bus Bench Program if this Contract is voided by a Court of competent jurisdiction. As such, CITY desires to have the MARTIN installed Bus Benches remain in place subject to the control of the CITY for use in the CITY's Bus Bench Program if a new RFP is required to be issued by a Court. CITY will seek an interim Bus Bench Program contractor to operate its Bus Bench Program during the period between the time this Contract is voided and when a new bus bench contract is awarded. Any such interim Bus Bench Program contractor shall have the same exclusive advertising rights that MARTIN does under this Contract. Pursuant to the following terms and conditions, MARTIN agrees to leave all of its newly installed Bus Benches in place for use by the CITY if the Contract is voided due to a challenge of the RFP process for the contract. If MARTIN is the selected interim Bus Bench Program contractor, it shall operate the program pursuant to all terms and conditions contained in this Contract, including but not limited to the obligation of MARTIN to pay the CITY the MAF and Percentage Fees described in Section 6.2.13, and MARTIN's right to keep the balance of the Gross Revenue derived from the operation of the Bus Bench Program. The benefits of this Contract shall inure to both parties as described in this Contract during the interim time.

40.1.2.1 Compensation of MARTIN During Interim Term

If MARTIN is the selected contractor during the interim time between this Contract and a new contractor chosen through a new RFP, then MARTIN shall be compensated as set forth in this Contract. Any interim contractor, other than MARTIN, shall compensate MARTIN at a rate which gives MARTIN a reasonable

return on investment of 8 percent per annum, paid quarterly, for its capital expended for the manufacturing and installation of the new Bus Benches.

40.1.3 Disposition of MARTIN Bus Benches After New RFP

In the event that a new RFP is required to be issued by a Court of competent jurisdiction, CITY recognizes that MARTIN will have expended extensive capital in the manufacturing and installation of its newly installed Bus Benches. In an effort to compensate MARTIN for leaving its newly installed Bus Benches in place for the benefit of the CITY's Bus Bench Program, CITY agrees that if MARTIN is the selected recipient of the CITY Bus Bench Contract under the new RFP, the new contract ("New Contract") will mirror, as closely as possible, this Contract and MARTIN and the CITY shall be compensated as set forth in the New Contract. If MARTIN is not the selected recipient of the new contract, then MARTIN shall be compensated for its capital and installation costs as set forth in Section 40.1.3.1.

40.1.3.1 Compensation of MARTIN after Award of any New Bus Bench Contract

Any contractor, other than MARTIN, who is selected under the new RFP shall be required by the City to compensate MARTIN for its capital investment for the manufacture and installation of the new Bus Benches. MARTIN shall be required to provide verifiable written support for all costs claimed by it for both the manufacturing and installation of the new Bus Benches ("Reimbursable Costs"). The amount of Reimbursable Costs shall be paid in full to MARTIN by the new contractor under the Bus Bench Program within 90 days of the effective date of the new

contract. In the event that MARTIN has been selected as the interim contractor to operate the Bus Bench Program as described in Section 40.1.2, the amount of Reimbursable Costs to be paid to MARTIN by any contractor other than MARTIN shall be subject to depreciation in the amount of 6.67 percent per year (that is, depreciation over a useful life of 15 years) for each full year that the Bus Benches have been installed as of the time that the New Contract is approved by the City Council and the Mayor. In the event that any contractor, other than MARTIN, is selected to operate the Bus Bench Program pursuant to a new RFP, the full amount of the Reimbursable Costs shall be paid to MARTIN by the new contractor under the Bus Bench Program within 90 days of the effective date of the new contract. Any new CITY RFP required by a Court shall contain language as set forth above, requiring any Contractor, other than MARTIN, who is selected to provide bus benches to the City to compensate MARTIN as set forth above in the event that MARTIN is not the selected CITY bus bench provider. Once MARTIN is paid for its reimbursable costs by the bus bench contractor selected through the new RFP process, the new bus benches installed by Martin shall be the property of the City.

40.1.4 Article 40.1 et seq. Shall Survive the Voiding of this Contract

Both CITY and MARTIN agree that the terms and conditions contained in Article 40.1 et seq shall survive any voiding of the Contract due to a challenge of the RFP process, between the CITY and MARTIN for new Bus Benches to be provided by MARTIN to the CITY. The preceding terms and conditions are expressly severable from any other terms and conditions and only become operable on an order of a Court of competent

jurisdiction which voids this Contract between the CITY and MARTIN for bus benches
in the City of Los Angeles.

IN WITNESS WHEREOF, the parties hereto have executed this Contract on the day and year
written below.

MARTIN OUTDOOR MEDIA, LLC.

By:

Title:

CITY OF LOS ANGELES

By:

Title : President, Board of Public Works

By:

ATTEST:

[Name], City Clerk

By:

Date:

APPROVED AS TO FORM:

CARMEN A. TRUTANICH, City Attorney

By:

Title: Assistant City Attorney

Date:

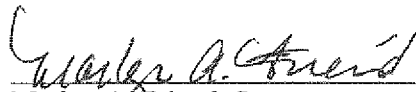
**CERTIFICATE OF SECRETARY
OF
MARTIN OUTDOOR MEDIA, LLC, A DELAWARE LIABILITY COMPANY**

THE UNDERSIGNED, Marlyn A. Friend, does hereby certify the following:

1. That she is a duly elected and acting Secretary of Martin Outdoor Media, LLC, a Delaware limited liability company (the "Company") and is authorized to execute and deliver this Certificate.
2. That the following resolution is a true copy of the resolution duly adopted by the Managers of the Company by Action by Unanimous Written Consent Without a Meeting, which resolution is in full force and effect as of the date hereof:

"NOW, THEREFORE, BE IT RESOLVED, that the Company policy regarding advertisements to be displayed on its bus benches shall be to accept professionally designed advertising, except that the advertising of tobacco, firearms, adult book stores, adult theaters, adult escort services, pornographic or obscene matters and labeled and/or branded alcohol shall be prohibited."

IN WITNESS WHEREOF, I have hereunto set my hand, to be effective on the 10th day of June, 2011.



Marlyn A. Friend, Secretary