

EXHIBIT A

CONCESSION AGREEMENT

This Concession Agreement (“**Agreement**”) is entered into as of the _____ day of December, 2014 (“**Agreement Date**”) by and between Titan Outdoor LLC, a Delaware Limited Liability Company, with its primary place of business at 100 Park Avenue, 6th Floor, New York, NY 10017, (“**Concessionaire**”); and the City of Philadelphia (the “**City**”), acting through and the Department of Public Property and the Procurement Department.

BACKGROUND INFORMATION

WHEREAS, the City, as part of its commitments to promoting the use of public transportation and improving amenities and information for pedestrians and transit riders in the public right-of-way, issued a request for proposals for a comprehensive street furniture and advertising program;

WHEREAS, the City received and evaluated competitive proposals from providers of street furniture and advertising programs, and determined that the proposal from the Concessionaire would yield the best value for the City;

WHEREAS, the Concessionaire and the City have agreed to the implementation of a street furniture and advertising program, at the Concessionaire’s sole cost, that will improve the public right-of-way for transit riders and pedestrians and will provide significant revenue to the City;

NOW, THEREFORE, the City and the Concessionaire, for good and valuable consideration, the receipt of which is acknowledged by the Parties, and intending to be legally bound, agree as follows:

ARTICLE 1. INCORPORATION OF BACKGROUND INFORMATION

The Background Information set forth above is incorporated and made a part of this Agreement by reference.

ARTICLE 2. DEFINITIONS, INTERPRETATION, REPRESENTATIONS AND WARRANTIES

2.1 Definitions

The following words and phrases have the following meanings for purposes of this Agreement:

“ADA” means the applicable provisions of the Americans with Disabilities Act of 1990, 42 U.S.C. 12132, and any additional applicable federal, state and local laws relating to accessibility for persons with disabilities and any rules or regulations promulgated thereunder, as such laws, rules or regulations may from time to time be amended.

“Ad Panel” means the area on Street Furniture used for the posting of advertisements.

“Agreement” means this agreement, including all Exhibits attached to it and incorporated in it by reference, and all amendments, modifications or revisions made in accordance with its terms.

“Agreement Date” means the date appearing in the first paragraph of this Agreement has been fully executed by the Parties.

“Applicable Law” means all applicable present and future federal, state or local laws, ordinances, executive orders, rules, regulations and all court orders, injunctions, decrees and other official interpretations thereof of any federal, state or local court, administrative agency or governmental body, including the City, the Commonwealth and the United States of America. Applicable Law includes, without limitation, The Philadelphia Home Rule Charter, as amended from time to time and The Philadelphia Code, as amended from time to time.

“Art Commission Approval Date” means the date on which the Art Commission approves the final design of the Street Furniture.

“Arts Information Kiosk (or Kiosk)” means a stand-alone structure with at least two sides, which functions primarily to promote arts, culture and public information.

“Arts Information Kiosk (Kiosk) Location” means the site at which one or more Kiosk(s) are located, typically referenced by the property name as well as the street on which the Kiosk is sited, the nearest cross street and compass corner (e.g. 16th Street and Market Street SE corner)

“Arts Panels” The area on Kiosks and Market East Shelters reserved for the posting of arts, culture and public information.

“Bench” means a stand-alone structure to provide seating without cover for at least two persons.

“Bench Location” means the site at which one or more Bench(es) are located, typically referenced by the street on which the Bench is sited, the nearest cross street and compass corner (e.g. 16th Street and Market Street, SE corner).

“CCD” means Center City District.

“City” means the municipal government of Philadelphia, Pennsylvania.

“City Advertising Policy” means the policy set forth in Exhibit D.

“City Delay” means a delay as described in Section 6.7.3.

“**City Parties**” means the City, its officials, employees, officers, agents, contractors, subcontractors, agents and invitees (each, a “**City Party**” and, collectively, the “**City Parties**”).

“**Charter**” means the Philadelphia Home Rule Charter, as amended.

“**Code**” means the Philadelphia Code, a codification of City ordinances.

“**Commencement Date**” means January 1, 2015.

“**Concession Fees**” means the MAG and Revenue Share, collectively.

“**Concessionaire**” means Titan Outdoor LLC.

“**Concessionaire Party**” means the Concessionaire, its employees, officers, agents, contractors, subcontractors and invitees (each, a “**Concessionaire Party**” and, collectively, the “**Concessionaire Parties**”).

“**Contract Year**” means the period commencing on or after January 1 and ending December 31 of any year during the term.

“**Day**” means calendar day.

“**Department**” means the Department of Public Property or other department designated by the City, acting through the Public Property Commissioner or other designated City official.

“**Digital Gross Revenue**” means the sum of any user fees, advertising revenues or other types of revenue obligated to be paid to the Concessionaire (and its subsidiaries, partners, affiliates) as a result of the installation of digital advertising on Street Furniture. Digital Gross Revenues will be calculated on the basis of amounts contracted for by advertisers and other service providers and will not be calculated on the ability of the Concessionaire to collect. Digital Gross Revenue will not be adjusted to reflect commissions, labor expense or other charges. Digital Gross Revenue does not include any agency fees actually incurred or paid by Concessionaire to unrelated third parties up to a maximum of Sixteen and Two-thirds percent (16.67%). For the avoidance of doubt, Digital Gross Revenue shall also be considered Gross Revenue, except to the extent that Digital Gross Revenue is Excess Digital Gross Revenue.

“**Event of Default**” means those events identified in Section 8.1 and 8.2.

“**Excess Digital Gross Revenue**” shall have meaning ascribed in Section 5.2.2.

“**Governmental Approvals**” means licenses, permits and other approvals as required by the City in its capacity of regulating business and other activities within the City’s jurisdiction.

“**Gross Revenue**” means the sum of any user fees, advertising revenues or other types of revenue obligated to be paid to the Concessionaire (and its subsidiaries, partners, affiliates) as a result of the installation of advertising or other means to deliver advertising on Street Furniture.

Gross Revenues will be calculated on the basis of amounts contracted for by advertisers and other service providers and will not be calculated on the ability of the Concessionaire to collect. Gross Revenue also includes any form of materials, services, or other benefits (tangible or intangible) or barter transactions received by the Concessionaire (and its subsidiaries, partners, affiliates) as a result of the installation of advertising on Street Furniture. Gross Revenue will not be adjusted to reflect commissions, labor expense or other charges. Gross Revenue does not include any (i) print production at customary and reasonable rates or (ii) agency fees actually incurred or paid by Concessionaire to unrelated third parties up to a maximum of Sixteen and Two-thirds percent (16.67%).

“Head House” means the seven (7) structures that access underground transit concourses on Market Street (between Juniper and 10th Streets) located on the northwest and northeast corners of 13th and Market, the northwest corner of 12th and Market, in the middle of the 1100 block of Market and two are located in the middle of the 1000 block of Market.

“Key Personnel” means Concessionaire’s employees who manage Concessionaire’s day to day operations under this Agreement. Key Personnel as of the Commencement Date shall include the individuals listed on Exhibit E.

“Materials” means any materials or supplies used in the provisions of Services.

“Minimum Annual Guaranty” or **“MAG”** has the meaning ascribed to it in Section 5.2.

“Market East Shelters” means Transit Shelters on Market Street between 7th Street and 13th Street.

“Newspaper Condos” or **“Condo”** means stand-alone structure with at least four cubbies and doors that functions primarily to facilitate the distribution of free publications.

“Newspaper Condo (or Condo) Location” means the site at which one or more Condo(s) are located, typically reference by the street on which the Condo is sited, the nearest cross street and compass corner (e.g. 16th Street and Market Street SE corner).

“Panel” means Area(s) on street furniture designated for advertising, including both Ad Panel and Arts Panel.

“Party” means the City or the Concessionaire.

“Parties” mean the City and the Concessionaire.

“Permitted Transfer” such transfers as defined in Section 9.2.

“Program” means Concessionaire’s program to design, remove, install, implement, operate and maintain Street Furniture for use by the public, and to plan, program, operate, manage and

administer a fully coordinated commercial advertising concession as further described in Article 4 and Exhibit A.

“Public Issue Advertisement” An Advertisement expressing or advocating an opinion, position or viewpoint on matters of public debate about economic, political, religious or social issues.

“Revenue Share” means the percentage of Gross Revenue that Concessionaire shall pay to the City.

“Services” means generally the Concessionaire’s duties for design, fabrication, removal, installation, operations and maintenance of the Program as more fully described in Section 4.2.1 and Exhibit A.

“Shelter” means Transit Shelter as defined herein.

“Street Furniture” means the physical structures designed, fabricated, installed or maintained through this Agreement, including, but not limited to Shelters, Kiosks, Head Houses, Condos and Benches.

“Street Furniture Plans” means plans, designs, specifications and construction drawings related to the Street Furniture.

“Subcontract” means an agreement made between Concessionaire and a Subcontractor for providing for the completion of some part or parts of the Services or Materials by a Subcontractor.

“Subcontractor” means a person performing under an agreement with Concessionaire some part of the provision of Services or Materials.

“Term” means the term of this Agreement, as described in Section 3.1.

“Transit Shelter” (or “Shelter”) means structure located at or near a transit stop, which functions to provide a structure for transit riders to await a vehicle.

“Transit Shelter (or Shelter) Location” means the site at which one or more transit shelter(s) are located, typically reference by the street on which the shelter is sited, the nearest cross street and compass corner (e.g. 16th Street and Market Street, SE corner).

“Uncontrollable Circumstances” means an event not under the control or influence of the Parties in the nature of a hurricane, tornado, other severe weather related events which cause transit services in Philadelphia to be suspended, earthquake, war, terrorism, riot, embargo and strikes or other labor actions (except strikes /labor actions Concessionaire’s own employees or subcontractors) or a City Delay.

2.2 Interpretation

The term “include” (in all its forms) means, “include, without limitation” unless the context clearly states otherwise. All references in this Agreement to Articles, Sections or Exhibits unless otherwise expressed or indicated are to the Articles, Sections or Exhibits of this Agreement. Any headings preceding the text of the Articles and Sections of this Agreement, and any table of contents or marginal notes appended to it, are solely for convenience or reference and do not constitute a part of this Agreement, nor do they affect the meaning, construction or effect of this Agreement. Words importing the singular include the plural and vice versa. Words of the masculine gender include the correlative words of the feminine and neuter genders. All references to a number of days mean calendar days, unless indicated otherwise.

2.2.1 Incorporation of Exhibits. All Exhibits referenced to or attached are made a part of this Agreement.

2.2.2 Order of Precedence. In the event of any conflict or inconsistency of terms among the various documents that at any given time, constitute this Agreement, the order of precedence that shall apply is as follows, with each listed document or type of document superseding and prevailing over any subsequently listed document or type of document, and with later-executed documents prevailing over earlier documents of the same type, each solely to the extent of any irreconcilable conflict or inconsistency of the terms and condition thereof: (i) the terms and conditions set forth in the Articles of this Agreement; (ii) the Scope of Services in Exhibit A; and (iii) any other Exhibits to this Agreement.

2.2.3 Liquidated Damages. This Agreement provides for the payment by the Concessionaire of Liquidated Damages in certain circumstances of documented non-performance, breach and default, including failure to comply with mutually agreed upon maintenance and operations plans set forth in Section 4(f) of Exhibit A, beyond any applicable notice and cure periods. Each Party agrees that the City’s actual damages in each such circumstance would be difficult or impossible to ascertain (particularly with respect to the public harm that would occur as a result of such non-performance, breach or default of Concessionaire), and that the Liquidated Damages in the amount of \$100 unit of Street Furniture per day, are intended to place the City in the same economic position as it would have been in had the circumstance not occurred. In the event that one specific incident of non-performance provides a basis for the assessment of multiple Liquidated Damages items (i.e., more than one item among the items listed in Exhibit A), only one item of Liquidated Damages identified in Exhibit A per unit of Street Furniture per day may be assessed with respect to that incident of non-performance. The total sum of liquidated damages that the Concessionaire may be assessed for those Liquidated Damages identified in Exhibit A within each Contract Year shall not exceed \$200,000. For the avoidance of doubt, the Liquidated Damages in this Section 2.2.3 are separate and apart from the Liquidated Damages for installation delays set forth in Section 4.6.6

2.3 Representations and Warranties

2.3.1 Representations and Warranties of Concessionaire. Concessionaire makes the following representations, warranties and covenants upon which the City has relied as a material consideration for the execution and delivery by the City of this Agreement. The representations, warranties, and covenants stated below shall continue throughout the Term of this Agreement. In the event said representations, warranties, and covenants are or become untrue or inaccurate, Concessionaire shall promptly give notice thereof to the City, specifying the manner in which said representation, warranty, or covenant is untrue or inaccurate.

2.3.1.1 Existence and Powers. The Concessionaire is duly organized and validly existing as a corporation under the laws of Delaware and is authorized to do business in the Commonwealth of Pennsylvania, with full legal right, power and authority to enter into and perform its obligations under this Agreement.

2.3.1.2 Due Authorization and Binding Obligation. The Concessionaire has duly authorized the execution and delivery of this Agreement. This Agreement has been duly executed and delivered by the Concessionaire and constitutes the legal, valid and binding obligation of the Concessionaire, enforceable against the Concessionaire in accordance with its terms except insofar as such enforcement may be affected by bankruptcy, insolvency, moratorium and other laws affecting creditors' rights generally.

2.3.1.3 No Conflict. Neither the execution nor the delivery by the Concessionaire of this Agreement nor the performance by the Concessionaire of its obligations hereunder (i) conflicts with, violates or results in a breach of any law or governmental regulation applicable to the Concessionaire, (ii) conflicts with, violates or results in a breach of any term or condition of any judgment, decree, agreement (including, without limitation, the certificate of incorporation of the Concessionaire) or instrument to which the Concessionaire is a party or by which the Concessionaire or any of its properties or assets are bound, or constitutes a default under any such judgment, decree, agreement or instrument, or (iii) will result in the creation or imposition of any lien or encumbrance of any nature whatsoever upon any of the properties or assets of the Concessionaire.

2.3.1.4 No Litigation. There is no action, suit or other proceeding as of the Agreement Date, at law or in equity, before or by any court or governmental authority, pending or, to the Concessionaire's best knowledge, threatened against the Concessionaire which is likely to result in an unfavorable decision, ruling or finding which would materially and adversely affect the execution or delivery of this Agreement or the validity or enforceability of this Agreement or any other agreement or instrument entered into by the Concessionaire in connection with the transactions contemplated hereby.

2.3.1.5 City Rights in Plans. The designers of all plans that will be used for Street Furniture have agreed to allow the City to use those designs for the purpose of facilitating the placement of bus shelters, benches, kiosks and newspaper condos within the City of Philadelphia at no charge beyond the design fees that may be paid by Concessionaire for those plans. Further, Concessionaire will not contract with designers that do not agree to this use by the City.

2.3.2 Representations and Warranties of the City. The City represents and warrants that:

2.3.2.1 Existence and Powers. The City is a body corporate and politic validly existing under the Constitution and laws of the Commonwealth of Pennsylvania with full legal right, power and authority to enter into and perform its obligations under this Agreement.

2.3.2.2 Due Authorization and Binding Obligation. The City has duly authorized the execution and delivery of this Agreement and this Agreement has been duly executed and delivered by it and constitutes a legal, valid and binding obligation of City, enforceable against City in accordance with its terms.

2.3.2.3 No Conflict. Neither the execution nor the delivery by it of this Agreement, nor its performance of its obligations in connection with the transactions contemplated hereby nor its fulfillment of the terms or conditions hereof (i) conflicts with, violates or results in a breach of any Applicable Laws, or (ii) conflicts with, violates or results in a breach of any term or condition of any judgment or decree, or any agreement or instrument, to which City is a party or by which City or any of its properties or assets are bound, or constitutes a default thereunder.

2.3.2.4 No Litigation. There is no action, suit or other proceeding as of the Agreement Date, at law or in equity, before or by any court or governmental authority, pending or, to the City's best knowledge, threatened against the City which is likely to result in an unfavorable decision, ruling or finding which would materially and adversely affect the execution or delivery of this Agreement or the validity or enforceability of this Agreement or any other agreement or instrument entered into by the City in connection with the transactions contemplated hereby.

ARTICLE 3. TERM

3.1 Term

The Term of this Agreement shall commence on January 1, 2015 (the “**Commencement Date**”) and shall continue for twenty (20) years through the end of December 31, 2035, unless terminated earlier in accordance with the terms of this Agreement.

3.2 City Control at End of Term and Upon Termination

Upon termination of the Agreement, whether for cause or the end of the Term, Concessionaire shall promptly relinquish control of the Street Furniture to the City. In the event of termination due to an Event of Default, the City shall follow the procedures more fully set forth in Article 8 of the Agreement.

The City may, alternatively, request that the Concessionaire remove any or all of the Street Furniture and restore the sites to a Street Furniture free condition at the sole expense of the Concessionaire.

ARTICLE 4. DUTIES AND RESPONSIBILITIES OF CITY AND CONCESSIONAIRE

4.1 City Obligations

4.1.1 Grant of Access. The City, for and in consideration of the payment by Concessionaire as set forth in this Agreement, and of the performance by Concessionaire of all the covenants, conditions and obligations in this Agreement, hereby grants to Concessionaire the non-assignable access to various locations and improvements thereon throughout the City of Philadelphia for the removal, installation and maintenance of Street Furniture. The existing and potential locations for Street Furniture are more fully described in Exhibit A.

4.1.2 Grant of Advertising Rights. The City further grants Concessionaire the right to sell advertisements to be displayed on the Ad Panels that are attached to certain Street Furniture, such sale and display to be in accordance with the terms of this Agreement. The existing and potential locations are more fully described in Exhibit A.

4.1.3 As Is Condition. The Street Furniture and Panels shall be taken in an “as is” condition subject to and including all defects latent and patent and shall be improved, revised, maintained and operated at Concessionaire's sole cost and expense.

4.1.4 No Other Rights Conveyed. It is understood and agreed that this Agreement shall not provide any other rights or privileges other than those specifically stated. Without limiting the generality of the previous sentence, it is strictly agreed that no other equipment, devices or other objects shall be placed in, on, or about any Street Furniture, without written approval of the Department.

4.1.5 City Not Obligated to Make Appropriations. Notwithstanding any other provision of this Agreement, this Agreement does not obligate the City to appropriate or spend money for any reason whatsoever.

4.1.6 Governmental Approvals. City shall cooperate with and assist the Concessionaire in obtaining Government Approvals which the Concessionaire is responsible for obtaining.

4.2 Concessionaire Responsibilities

4.2.1 Scope of Work

4.2.1.1 Generally. As more fully set forth in Exhibit A, the purpose of this Agreement is for Concessionaire to design, remove, install, implement, operate and maintain Street Furniture for use by the public, and to plan, program, operate, manage and administer a fully coordinated Program. Physical components of the Program may also be referred to in this Agreement as “Materials” and the remaining portion of the Program may be referred to as “Services.” Subject to the terms and conditions of this Agreement, Concessionaire must: (i) Maintain all Street Furniture and Panels to the highest standards through the life of the Agreement in compliance with standards specified in Exhibit A.; (ii) Replace existing Shelter inventory; and add additional Shelters and other new Street Furniture as specified in Exhibit A; and (iii) Manage the placement of advertising on applicable Street Furniture and ensure that all advertisements are in compliance with any and all Applicable Laws and the Advertising Policy specified in Exhibit D; (iv) Remove Street Furniture at the request of the City and restore the sidewalk.

4.2.1.2 Services. Concessionaire must provide the Services described in Exhibit A., and work and services not specifically delineated in this Agreement, but consistent with, and reasonably inferable to be within, the scope of this Agreement and necessary for the delivery and operation of the Program. Concessionaire shall provide all technical expertise, qualified personnel, tools, and materials to safely and competently accomplish all of the Services. In performing the Services, Concessionaire must at all times take appropriate advantage of and incorporate best business practices, unless expressly directed otherwise by City.

4.2.1.3 Performance Requirements and Schedule. All performance must be in accordance with Exhibit A. Concessionaire shall complete all of its obligations hereunder in a timely manner and in accordance with the applicable dates set forth in the Performance Schedule.

4.2.2 Standard Operations and Maintenance Procedures. Procedures for operations and maintenance for the Street Furniture are identified in Exhibit A. Modifications to this Exhibit may be made only with prior review and written approval of the Department.

4.2.3 Program Management

4.2.3.1 Maintenance/Repair Facility. Concessionaire shall have and maintain a facility located in the City of Philadelphia for maintenance and repair of Street Furniture throughout the Term of this Agreement.

4.2.3.2 Office and Staffing. Concessionaire shall maintain and adequately staff a management office in the City of Philadelphia. That office shall be open, at a minimum, during normal business hours and shall answer questions and receive complaints regarding Street Furniture. In addition, Concessionaire shall maintain a twenty-four hour per day emergency

telephone service to receive complaints regarding Street Furniture. To all Street Furniture there shall be affixed a conspicuous notice, in form approved by the City, setting forth the Concessionaire's name, regular and emergency telephone numbers. Concessionaire shall maintain a log of all questions and complaints received and shall submit to the City a monthly written report regarding such questions and complaints and the time and manner of their resolution.

4.2.3.1 Advertising. Subject to the Agreement, the City grants to Concessionaire permission to display advertising on or in designated portions of Street Furniture consistent with the specifications in Exhibit A. and the City Advertising Policy set forth in Exhibit D. The City shall have approval rights over the content, material and location of all advertisements, as further described in Exhibit A. and the City Advertising Policy set forth in Exhibit D.

4.2.3.2 Digital Advertising. In the event that the Department approves digital advertising, the City will have sole discretion over the placement of digital advertising displays, including reasonable limitation on brightness and frequency of advertisement rotation. Slow motion advertising may be allowed on non-street facing digital displays. No animation will be allowed on any digital displays facing on-coming traffic. Other restrictions based on recent studies and peer reviewed safety studies may be instituted to insure the safety of the public. The maximum number of digital ads allowed on a display will be at a rate of seven (7) per minute with ten (10) percent of airtime at all times for the display of art, cultural and public information at no cost to the City.

4.2.3.3 Coordination with Center City District. The Concessionaire shall coordinate with Center City District in accordance with or as set forth in Exhibit A.

4.2.3.4 Unsold Panels. The City reserves the right to fill all unsold Panels with public service announcements and advertisements regarding community, art, cultural, educational, and similar events. The City will continually provide Concessionaire with a minimum of 200 posters to be displayed in unsold Panels. The material to be displayed will be provided to Concessionaire who shall place and maintain the material. Concessionaire shall have no obligation to post a display at a location and time requested by the City if Concessionaire is subsequently able to secure a paid advertisement for such location and time. In the event the City produces the public service announcements or advertisements regarding community, art, cultural, educational, and similar events, the City shall utilize the Concessionaire to print such Public Service Advertisements and the Concessionaire shall charge at or below market rate for printing.

4.2.3.5 Agreement Administration. The Parties may modify the Exhibits by mutual written agreement as may be required for the Program, provided that any such modifications do not decrease the MAG, Revenue Share or other payments due to the City; materially change Concessionaire's obligations under Section 9.12; or materially increase the City's obligations.

4.3 Relationship of the Parties.

The Parties agree that Concessionaire, and any agents and employees of Concessionaire, in the performance of this Agreement, shall act in an independent capacity and not as officers, employees, or agents of the City. Neither the Concessionaire nor its employees or Subcontractors shall in any way represent that they are acting as employees, officials or agents of the City.

4.4 Ownership of Street Furniture

4.4.1 Concessionaire Ownership of Street Furniture

The Concessionaire will own the Street Furniture during the Term of the Agreement.

4.5 INTENTIONALLY DELETED

4.6 Street Furniture Installation

4.6.1 Installation Phasing. The installation and replacement of Street Furniture will be implemented in stages during the Term. Concessionaire shall install Street Furniture in accordance with the schedules and as further described in Exhibit A.

4.6.2 Necessary Permits Obtained. Before installing any Street Furniture, Concessionaire shall obtain all necessary permits, authorizations, approvals, consents, licenses, site agreements, and certifications required for the Street Furniture.

4.6.3 Damage to Streets or Sidewalks. Concessionaire shall place or install all Street Furniture in such a manner to prevent any unplanned damage to any sidewalk or street paving. If such unplanned damage occurs and upon notification by the City, Concessionaire shall repair such damage not later than seventy-two (72) hours after the occurrence.

4.6.4 Street Furniture Site Approval. The Concessionaire shall use its best efforts in seeking the approvals for Street Furniture sites including, but not limited to, necessary permits and licenses. The City shall cooperate with Concessionaire and facilitate Concessionaire's efforts.

4.6.5 Complete Installation of a Shelter. An installation shall be deemed completed installed at an approved location in accordance with approved plans and specifications and the sidewalk is in good repair and functioning lighting.

4.6.6 Delays in the Installation. Should the Concessionaire fail to install the required Street Furniture by the end of the fifth year of the Agreement and such failure is not due to an Uncontrollable Circumstance, the Concessionaire may request a one-year extension based on

documented delays in fabrication and installation. The City shall not unreasonably deny a request for an extension not to exceed one year. Should the Concessionaire not request an extension, or should the City, in its reasonable discretion, not approve an extension, or at the conclusion of any extension, the Concessionaire shall pay as Liquidated Damages the sum of four hundred dollars (\$400) per month for each Shelter not installed. For the avoidance of doubt, the Liquidated Damages in this Section 4.6.6 are separate and apart from the Liquidated Damages for performance, breach and default and the cap related thereto set forth in Section 2.2.3.

4.7 Benches

The Concessionaire will design, fabricate, install, maintain and operate Benches at the request of the City to be installed at locations determined by the City. The Benches may or may not include advertising, at the Concessionaire's discretion.

4.8 Non-Concessionaire Capital Investments

On occasion public or private funds may become available to purchase and install Street Furniture and/or Transit Head Houses. The Concessionaire shall be permitted to purchase and install such structures using public or private funds, and to install advertising on such structures purchased with public or private funds, and if the City does so, those structures shall become "**Street Furniture**" and/or "**Transit Head Houses**" under the Concession Agreement. Without limitation, if requested by the City, Concessionaire shall operate and maintain such structures purchased with public or private funds and remit advertising revenue from those structures to the City as they do for other Street Furniture and/or Transit Head Houses under to the Concession Agreement.

ARTICLE 5. COMPENSATION

5.1 Capital Investment

The Concessionaire has identified \$12,400,000 as the minimum amount of investment over five years necessary to design, fabricate and install the Street Furniture identified in the Scope of Work. This investment is a material inducement to the City to enter into this Agreement. Notwithstanding anything to the contrary hereto, the amount of Concessionaire's minimum investment may be less, as long as the minimum investment is sufficient to design, fabricate and install the Street Furniture identified in the Scope of Work.

5.2 Concession Fees

In consideration for the privileges granted to the Concessionaire herein, the Concessionaire agrees to pay to the City the MAG and Revenue Share as defined and set forth in this Article 5 and elsewhere in this Agreement.

5.2.1 Minimum Annual Guarantee and Revenue Share

Concessionaire shall pay to the City, during the Term of the Agreement, the following amounts of MAG and Revenue Share for both Shelters and Head Houses, regardless of whether the Street Furniture has been deployed in accordance with the Installation Schedule in Exhibit A, as well as the Revenue Share for Kiosks, Condos and Benches:

Payment Schedule

Year	MAG Shelters and Head Houses	MAG Monthly Payment	Revenue Share (Shelters & Head Houses)	Revenue Share (Kiosks, Condos and Benches)
1 (2015)	\$1,425,000	\$118,750	17.5%	50.0%
2	\$1,525,000	\$127,083	17.5%	50.0%
3	\$1,625,000	\$135,417	17.5%	50.0%
4	\$1,725,000	\$143,750	17.5%	50.0%
5 (2019)	\$1,825,000	\$152,083	17.5%	50.0%
6	\$1,900,000	\$158,333	17.5%	50.0%
7	\$2,000,000	\$166,667	17.5%	50.0%
8	\$2,295,000	\$191,250	22.0%	50.0%
9	\$2,375,000	\$197,917	22.0%	50.0%
10 (2024)	\$2,575,000	\$214,583	23.0%	50.0%
11	\$2,655,000	\$221,250	23.0%	50.0%
12	\$2,745,000	\$228,750	23.0%	50.0%
13	\$2,900,000	\$241,667	25.0%	50.0%
14	\$2,985,000	\$248,750	25.0%	50.0%
15 (2029)	\$3,075,000	\$256,250	25.0%	50.0%
16	\$3,515,000	\$292,917	27.0%	50.0%
17	\$3,620,000	\$301,667	27.0%	50.0%

18	\$3,730,000	\$310,833	27.0%	50.0%
19	\$3,830,000	\$319,167	27.0%	50.0%
20 (2034)	\$3,945,000	\$328,750	27.0%	50.0%

5.2.2 Digital Advertising. In the City’s sole discretion, the Concessionaire may be permitted to install digital advertising on Shelters with limited motion displays. In that event, Concessionaire will pay the City fifty (50%) percent of any Digital Gross Revenue in excess of the amounts detailed in the chart below in each contract year (the “Excess Digital Gross Revenue”).

Year	Digital Net Revenue Goal
1 (2015)	\$1,395,000
2	\$2,090,000
3	\$2,745,000
4	\$3,440,000
5 (2019)	\$4,095,000
6	\$4,220,000
7	\$4,305,000
8	\$4,390,000
9	\$4,475,000
10 (2024)	\$4,565,000
11	\$4,660,000
12	\$4,750,000
13	\$4,845,000
14	\$4,945,000

15 (2029)	\$5,040,000
16	\$5,145,000
17	\$5,245,000
18	\$5,350,000
19	\$5,455,000
20 (2034)	\$5,565,000

5.2.3 Additional Shelters & MAG. If the City and Concessionaire agree to install a greater number of Shelters than required to be provided by this Agreement, each additional Shelter shall result in a pro rata increase in the MAG.

5.2.4 Shelter Panel Unavailability. At any point following the installation of the first three hundred (300) Shelters required by this Agreement, should there be fewer than ninety-five percent (95%) of Panels available for sale due to causes outside of the control of the Concessionaire, there shall be a corresponding *pro rata* decrease in the MAG amounts provided in the table above. Such MAG decrease shall take effect at the end of the quarter in which fewer than ninety-five percent of Panels were available for sale and apply only as long as any such Shelters are not available for sale.

5.2.5 Head House Unavailability. In the event the seven (7) Head Houses are not available for sale of advertising due to causes outside of the control of the Concessionaire, the monthly MAG will be decreased by 0.44% per Head House for each month that the Head House is not available for the display of advertising.

5.2.6 INTENTIONALLY DELETED

5.2.7 Personal Device Advertising Network. In the event that the City permits the installation of a system to allow advertising messages to be transmitted to personal electronic devices (“Mobile Advertising”), advertisers may be required to pay an access fee in addition to the cost of advertising. All revenue whether from access fees or, Mobile Advertising will be subject to a revenue share to be mutually agreed by the City and the Concessionaire.

5.3 Payment of Fees

All payments to the City will be made in accordance with the following payment terms:

5.3.1 Payment of MAG. On or before the 20th day of each calendar month, the Concessionaire shall pay to the City the MAG monthly payment (1/12th of the annual payment)

for the previous month. By way of example, the payment on February 20th shall be for the month of January.

5.3.2 Quarterly Payment of Revenue Share. Within thirty (30) days after (i) the end of each calendar quarter and (ii) the end of the Term, Concessionaire shall pay to the City the Revenue Share for such previous calendar quarter.

5.3.3 Deductions for Benches. The fabrication and installation costs of benches requested by the City, where no advertising will be displayed, may be taken as a credit against payments due to the City no earlier than for the month in which the installation was completed.

5.3.4 Manner of Payment. Payment shall be made by check payable to the City of Philadelphia, sent to the Commissioner, Department of Public Property, City Hall Room 790, Philadelphia, PA 19107, or in such other manner as the Department shall direct. Concessionaire may also make payments by wire with the consent of the City.

5.4 City Inspections/Audits

5.4.1 Audits. The City, through its duly authorized representative, shall have the right to inspect Concessionaire's books of account, inventory management system, and other records at all reasonable times during normal business hours. The City reserves the right to audit Concessionaire's books and records or receipts for the purpose of verifying Gross Revenues. If, as a result of such audit, it is established that Concessionaire has understated the Gross Revenues received by it from all operations under this Agreement by five percent (5%) or more (after the deductions and exclusions provided for herein), the entire expense of said audit shall be borne by Concessionaire. Upon written notice by the City, any additional percentage rentals due shall be paid by Concessionaire within thirty (30) days of notice, with interest and late charges thereon. Such interest shall not accrue with respect to disputed items being contested in good faith by Concessionaire, but if decided against Concessionaire, the aforesaid right of interest shall prevail from the date the dispute is decided against Concessionaire.

5.4.2 Certification of Payments. Concessionaire shall, within ninety (90) days after the end of each calendar year, or at such other intervals as the City may prescribe, submit to the City a written statement certified by an independent certified public accountant that, in the accountant's opinion, payments for all rentals and charges due hereunder for the preceding calendar year were made in accordance with the terms of this Agreement.

5.5 Taxes

The City is not subject to federal, state or local sales or use taxes or federal excise tax. To the extent that any sales or use tax has been paid by Concessionaire, then Concessionaire hereby assigns to the City all of its right, title and interest in any sales or use tax which may be refunded as a result of any materials, including any Materials, purchased or services, including any

Services, rendered in connection with this Agreement and unless directed otherwise by the City, Concessionaire shall not file a claim for any sales or use tax refund subject to this assignment. Concessionaire authorizes the City, in its own name or the name of Concessionaire, to file a claim for a refund of any sales or use tax subject to this assignment.

ARTICLE 6. PERFORMANCE STANDARDS

6.1 Standard of Performance – General

Concessionaire must perform all Services required of it under this Agreement with skill, care and diligence. Any review, approval, acceptance of Services by the City does not relieve Concessionaire of its responsibility for the professional skill and care and technical accuracy of its Services.

6.2 Professional and Technical Accuracy

Concessionaire shall be responsible for the professional and technical accuracy of all Services performed, whether by the Concessionaire or its Subcontractors or others on its behalf. In no event shall any review, approval, comment, or evaluation by the City relieve the Concessionaire of any liability or responsibility under this Agreement, it being ultimately understood that the City is relying upon the Concessionaire's skill, knowledge, and professional training and experience to complete the Services.

6.3 Safety

The Concessionaire shall be responsible for initiating, maintaining, and supervising reasonable safety precautions and programs in connection with the performance of this Agreement. The Concessionaire shall take all reasonable precautions for safety of, and shall provide reasonable and appropriate protection to prevent damage, injury, or loss to (i) employees on the Services and other persons who may be affected thereby; and (ii) the Services and Materials to incorporated therein. Concessionaire shall develop and provide safety training for its employees.

6.4 Licensing.

Concessionaire and its Subcontractors must be appropriately licensed to perform the Services, if required by law, and must ensure that all Services that require the exercise of professional skills or judgment are accomplished by professionals qualified and competent in the applicable discipline and appropriately licensed as may be required by law. Upon request of the City, Concessionaire must provide copies of any such licenses.

6.5 Standard of Performance – Program Management

Concessionaire shall ensure, absent Uncontrollable Circumstances, that the Program is fully operational consistent with service level commitments set forth in Exhibit A.

6.6 Performance Failures and Liquidated Damages

If Concessionaire fails to comply with the maintenance and operating requirements set forth in Exhibit A and such failure is covered by Liquidated Damages, then Concessionaire shall pay the Liquidated Damages as set forth therein, subject to the Cap described in Section 2.2.3.

6.7 Performance Excused

6.7.1 Uncontrollable Circumstances. Concessionaire shall be excused from compliance with any obligation or limitation under the Agreement other than any obligation for the payment of money (including, without limitation, the Concession Fee) where (i) compliance with the obligation or limitation is rendered impossible by Uncontrollable Circumstances and (ii) Concessionaire cannot reasonably make alternative arrangements to comply with the obligation or limitation despite the unexpected event. Concessionaire shall be excused from compliance with any obligation or limitation under the Concession Agreement because of an Uncontrollable Circumstance only for the duration of the Uncontrollable Circumstance or until Concessionaire can sooner reasonably make alternative arrangements to enable its compliance. If the Uncontrollable Circumstance renders impossible Concessionaire's compliance with a material obligation or limitation under the Agreement, and if the Uncontrollable Circumstance continues for sixty (60) days or longer, then the City may terminate the Agreement in the City's sole discretion without liability to the Concessionaire, except that City shall reimburse the Concessionaire for the unamortized portion of the capital it has expended on the installation and fabrication of any Street Furniture that has not been lost or damaged by the Uncontrollable Circumstance.

6.7.2 Uncontrollable Circumstances Exclusions. Under no condition do any of the following constitute an Uncontrollable Circumstance: (i) changes in economic conditions, market conditions, interest rates, inflation rates, wage rates, commodity prices, currency values, or exchange rates; (ii) changes in financial condition; (iii) labor requirements or demands; (iv) changes in taxes or rates (except for City taxes); (v) failure to obtain any patent, license, or rights to use intellectual property; and (vi) failure of equipment, unless caused by an Uncontrollable Circumstance.

6.7.3 City Delay. A delay in a decision by a City office or agency, the approval of which is a condition to a Concessionaire's right or obligation under this Agreement, does not constitute a City Delay unless the delay is beyond the normal period in which the agency or office generally acts with respect to the type of decision being sought and only if the Concessionaire has taken and continues to take all reasonable steps to pursue such decision (and in any event the period of Uncontrollable Circumstances ends with the City agency's or office's final decision).

6.8 Documentation

The Concessionaire and its Subcontractors shall furnish the City, upon the City's request, with the documentation and information necessary for the City to determine the compliance with the standards for performance under the Agreement. The provisions of this Section are not intended to supersede or limit the provisions of the Agreement including the Exhibits related to furnishing information or documents to the City.

ARTICLE 7. INSURANCE, INDEMNIFICATION AND PERFORMANCE SECURITY

7.1 General Insurance Requirements

Unless otherwise approved by the City's Risk Management Division in writing, Concessionaire shall procure and maintain, or cause to be procured and maintained, in full force and effect, the types and minimum limits of insurance specified below, covering Concessionaire's performance of the Services and the delivery of Materials and other deliverables. Concessionaire shall procure, or cause to be procured, all insurance from reputable insurers admitted to do business on a direct basis in the Commonwealth of Pennsylvania or otherwise acceptable to the City. All insurance herein, except Professional Liability insurance, shall be written on an "occurrence" basis and not a "claims-made" basis. In no event shall Concessionaire perform any Services or other work until Concessionaire has delivered or caused to be delivered to the City's Risk Management Division the required evidence of insurance coverages. All insurance coverages shall provide for at least thirty (30) days prior written notice to be given to the City in the event coverage is materially changed, cancelled, or non-renewed. The City, its officers, employees, and agents, shall be named as additional insureds on the General Liability and Umbrella Liability Insurance policies. Concessionaire shall also deliver or cause to be delivered to the City an endorsement stating that the coverage afforded the City and its officers, employees and agents, as additional insureds, will be primary to any other coverage available to them and that no act or omission of the City, its officers, employees or agents shall invalidate the coverage.

7.1.1 Liability Not Limited by Insurance. The insurance requirements set forth herein are not intended and shall not be construed to modify, limit or reduce the indemnifications made in this Agreement by Concessionaire to the City, or to limit Concessionaire's liability under this Agreement to the limits of the policies of insurance required to be maintained by Concessionaire hereunder.

7.2 Workers' Compensation and Employers' Liability

Coverage must be in effect prior to the employment of any individuals by the Concessionaire.

(i) Workers' Compensation: Statutory Limits

(ii) Employers' Liability: \$500,000 Each Accident - Bodily Injury by Accident; \$500,000 Each Employee - Bodily Injury by Disease; and \$500,000 Policy Limit - Bodily Injury by Disease.

(iii) Other states insurance including Pennsylvania.

7.3 General Liability Insurance

Limit of Liability: \$1,000,000 per occurrence combined single limit for bodily injury (including death) and property damage liability; \$1,000,000 advertising injury; \$2,000,000 general aggregate and \$1,000,000 aggregate for products and completed operations. The City may require higher limits of liability if, in the City's sole discretion, the potential risk warrants.

Coverage: Premises operations; blanket contractual liability; personal injury liability; products and completed operations; independent contractors, employees and volunteers as additional insureds; cross liability; and broad form property damage (including completed operations).

7.4 Automobile Liability Insurance

(i) Limit of Liability: \$1,000,000 per occurrence combined single limit for bodily injury (including death) and property damage liability.

(ii) Coverage: Owned, non-owned, and hired vehicles.

7.5 Excess Insurance

Umbrella Liability with limits of liability totaling \$2,000,000 per occurrence when combined with insurance required under Sections 7.2, 7.3 and 7.4 above.

7.6 Professional Liability Insurance

(i) Limit of Liability: \$1,000,000 with a deductible not to exceed \$100,000.

(ii) Coverage: errors and omissions including liability assumed under the Concession Agreement.

(iii) Coverage for occurrences happening during the performance of the Services required under the Concession Agreement shall be maintained in full force and effect under the policy or "tail" coverage for a period of at least two (2) years after the completion of the Services.

7.7 Evidence of Insurance Coverage. Certificates of insurance evidencing the required coverages must specifically reference the City Agreement number for which they are being submitted. The original certificates of insurance must be submitted to the City's Risk Manager at the following address:

The City of Philadelphia
Office of the Director of Finance
Division of Risk Management
1515 Arch Street, 14th Floor
Philadelphia, PA 19102-1579
(Fax No.: 215-683-1705).

A copy of the certificates of insurance shall be submitted to the Responsible Official at the address of the Department set forth in the Notice Section of the Concessionaire Agreement. Both submissions must be made at least ten (10) days before work is begun and at least ten (10) days before each Additional Term. The City, in its sole discretion, may waive the ten (10) day requirement for advance documentation of coverage in situations where such waiver will benefit the City, but under no circumstances shall Concessionaire actually begin work (or continue work, in the case of an Additional Term) without providing the required evidence of insurance. The actual endorsement adding the City as an additional insured must specifically reference the City Agreement number and be submitted to the City's Risk Management Division at the above address. The City reserves the right to require Concessionaire to furnish certified copies of the original policies of all insurance required under this Agreement at any time upon ten (10) days written notice to Concessionaire.

7.8 Indemnification

The Concessionaire shall, and shall cause its contractors and subcontractors to, indemnify, defend and hold harmless the City Parties from and against any and all actions, proceedings, causes of action, suits, demands, controversies, losses, judgments, damages, penalties, fines, claims, liabilities, costs and expenses of any nature whatsoever, including, without limitation, litigation costs, settlement fees and expenses, and attorneys', investigators' and experts' fees, costs and expenses (collectively, "**Claims**"), arising out of or resulting in whole or in part from the performance of the work under the Concession Agreement and/or arising out of or resulting in whole or in part from the use of any Street Furniture or Transit Head Houses for the purposes under this Concession Agreement, including, but not limited to, Claims in connection with loss of life, bodily injury, personal injury, damage to property, contamination or adverse effects on the environment, intentional acts, failure to maintain a drug-free work site and workforce, any infringement or violation of any proprietary right (including but not limited to patent, copyright, trademark, service mark and trade secret), and any breach of the Concession Agreement, regardless of the inherent nature of the work and regardless of whether or not such Claim is caused in whole or in part by the negligent act or omission of a City Party. This obligation shall not be construed to negate, abridge or reduce other rights or obligations of indemnity which would otherwise exist as to a City Party, Concessionaire, its contractors or subcontractors. The Concessionaire shall further indemnify, defend and hold harmless the City Parties from and against all Claims asserted against any City Party by Concessionaire, any of Concessionaire's contractors, subcontractors or suppliers on account of or relating to the furnishing of services, work, labor, materials or equipment under the Concession Agreement.

In Claims against any City Party indemnified under this Section 7.9 by an employee of the Concessionaire, its contractors, subcontractors, anyone directly or indirectly employed by the Concessionaire, its contractors, subcontractors or anyone for whose acts the Concessionaire, its

contractors or subcontractors may be liable, the indemnification obligation under this Section 7.9 shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for the Concessionaire or a contractor or Subcontractor under workers compensation acts, disability benefit acts or other employee benefit acts.

7.9 Security for Performance

To protect the City upon Concessionaire's failure to perform its obligations under this Agreement, the City requires three (3) forms of assurance:

(i) When Concessionaire enters into any contract for goods or services for which the contractor or subcontractor has the right to file a mechanics' lien against any Street Furniture or Transit Head House, a payment bond in the amount of \$200,000 shall be provided to ensure that the Concessionaire makes prompt payment to those contractors and suppliers. This amount may be reduced by mutual agreement if Concessionaire has demonstrated that the amounts contracted for which are subject to mechanics' liens are less than \$200,000.

(ii) A performance bond in the amount of \$6,000,000, which may be reduced semiannually by the value of capital investments made to date, but never less than one year's worth of maintenance costs, which amount shall ensure Concessionaire's performance of its maintenance obligations.

(iii) A Security Deposit in the initial amount of \$500,000 (which amount the City may increase from time to time in its reasonable discretion) to cover any financial losses the City may suffer.

ARTICLE 8. EVENTS OF DEFAULT AND REMEDIES

8.1 Events of Default.

Each of the following shall be a Concessionaire Event of Default under this Agreement, subject to the notice and cure provisions herein:

8.1.1 Concessionaire Payment. The failure of the Concessionaire to pay to the City the MAG, Revenue Share or other payment required under this Agreement (or relevant portion thereof) on the date due;

8.1.2 Security for Performance. The failure of the Concessionaire to obtain or maintain in full force and effect, or renew within thirty (30) days prior to expiration, any security instrument required by Section 7.10 as security for performance of this Agreement;

8.1.3 Performance Requirements.

8.1.3.1 Street Furniture Installation. The failure of Concessionaire to install the following minimum number of units:

By the first anniversary of the Art Commission Approval Date: 50 Shelters

By the second anniversary of the Art Commission Approval Date: 125 Shelters

By the third anniversary of the Art Commission Approval Date: 200 Shelters

By the fourth anniversary of the Art Commission Approval: 350 Shelters

By the fifth anniversary of the Art Commission Approval: 500 Shelters

8.1.3.2 Operations and Maintenance. The repeated failure of the Concessionaire to meet the performance requirements described in Exhibit A, (notwithstanding the payment by the Concessionaire of Liquidated Damages or the performance of any other related obligation to be paid or performed in connection with any such failure), such that the cap on Liquidated Damages in Section 2.2.3 is exceeded in two successive Contract Years.

8.1.4 Insurance. The failure of the Concessionaire, its contractors or subcontractors to obtain or maintain the required insurance. The City shall have the right to treat such failure as a default and to exercise all appropriate rights and remedies. The insurance shall provide for at least thirty (30) days' prior written notice (10 days' for nonpayment of premium) to be given to the City in the event coverage is materially changed, canceled or not renewed.

8.1.5 Non-Compliance with General Terms and Conditions. The failure of Concessionaire to comply in any material respect with the provisions of Article 9.

8.1.6 Intentional Misrepresentation. The intentional falseness or material inaccuracy of any warranty or representation of Concessionaire contained in this Agreement or in any other document submitted to the City by Concessionaire;

8.1.7 Chapter 17-1400. Any act, omission, or misrepresentation which renders the Concessionaire ineligible for a City agreement or renders the Agreement voidable under Chapter 17-1400 of the Code;

8.1.8 Misappropriation. Misappropriation by Concessionaire of any funds provided under this Agreement or failure by Concessionaire to notify the City upon discovery of any misappropriation;

8.1.9 Failure to Make Payments to Subcontractors or Employees. The Concessionaire fails, refuses or otherwise defaults in its duty to pay any undisputed amount required to be paid to Subcontractors or employees under this Agreement within sixty (60) days following the due date for such payment;

8.1.10 Insolvency. The insolvency of the Concessionaire as determined under the United States Bankruptcy Code;

8.1.11 Voluntary Bankruptcy. The filing by the Concessionaire of a petition of voluntary bankruptcy under the Bankruptcy Code; the consenting of the Concessionaire to the filing of any bankruptcy or reorganization petition against the Concessionaire under the Bankruptcy Code; or the filing by the Concessionaire of a petition to reorganize the Concessionaire pursuant to the Bankruptcy Code; in each case only if such bankruptcy, proceeding or other event, in the reasonable discretion of the City, renders Concessionaire unable to continue to provide the Services in accordance with this Agreement;

8.1.12 Involuntary Bankruptcy. The issuance of an order of a court of competent jurisdiction appointing a receiver, liquidator, custodian or trustee of the Concessionaire or of a major part of the Concessionaire's property, respectively, or the filing against the Concessionaire of a petition to reorganize the Concessionaire pursuant to the Bankruptcy Code, which order shall not have been discharged or which filing shall not have been dismissed within Ninety (90) days after such issuance or filing, respectively; in each case only if such bankruptcy, proceeding or other event, in the reasonable discretion of the City, renders Concessionaire unable to continue to provide the Services and Materials in accordance with this Agreement;

8.1.13 Criminal Behavior.

8.1.13.1 In the event there is a violation of law which results in a guilty plea, a plea of *nolo contendere*, or conviction for a criminal offense by Concessionaire (i) directly or indirectly relating to this Agreement or the Services or Materials provided under this Agreement and (ii) which adversely affects the performance of this Agreement; or

8.1.13.2 In the event the Concessionaire shall fail to promptly terminate its relationship with its director or employee who is convicted of a criminal offense (where such conviction is a final, non appealable judgment or the time of such appeal has passed) (i) directly or indirectly relating to this Agreement or the Services or Materials provided under this Agreement and (ii) which adversely affects the performance of this Agreement.

8.1.14 Adverse Governmental Determinations. Debarment or suspension of Concessionaire or any employee or Subcontractor of Concessionaire under a federal, state or local law, rule or regulation (i) directly or indirectly relating to this Agreement or the Services or Materials provided under this Agreement and (ii) which adversely affects the performance of this Agreement;

8.2 Notice and Cure

The City shall not exercise any right or remedy because of any Concessionaire Event of Default unless the City shall have first given written notice of the Concessionaire Event of Default to Concessionaire, and Concessionaire, within a period of ten (10) business days thereafter, or such additional cure period as the City may authorize, shall have failed to correct the Concessionaire Event of Default, or shall have failed to provide a plan reasonably acceptable to the City to correct the Concessionaire Event of Default. Notwithstanding anything to the contrary hereto, if the nature of such Event of Default is such that although curable, the breach cannot reasonably be cured within the ten (10) business day period, an Event of Default shall not exist if Concessionaire shall commence to cure such Event of Default and thereafter rectifies and cures such Event of Default with due diligence

No such notice from the City shall be required nor shall the City permit any period for cure if:

(i) Concessionaire fails to cure the Event of Default within the cure period specified in the written notice from the City of the Event of Default;

(ii) Concessionaire has temporarily or permanently ceased providing all material Services or Materials;

(iii) The Concessionaire Event of Default creates an emergency which requires, as determined by the City in the City's reasonable discretion, immediate exercise of the City's rights or remedies.

The City's failure or delay in providing written notice of an Event of Default to Concessionaire does not relieve or excuse the Concessionaire from any liability arising from or related to the Event of Default and does not waive any of the City's rights or remedies upon delivering written notice to the Concessionaire of the Event of Default and Concessionaire's failure to cure the Event of Default in the applicable cure period and, if applicable, or immediately and without notice in the case of an Event of Default that poses a threat of imminent harm to persons or property.

8.3 Remedies

8.3.1 City Remedies for Concessionaire Default In the event Concessionaire has committed or permitted an Event of Default, has been notified thereof in accordance with Section 8.2 above, and failed to cure or provide a plan pursuant to 8.2, then the City may, but shall not be obligated to, with notice to Concessionaire and without waiving or releasing Concessionaire from any of its obligations under this Agreement:

(i) Require a third party to perform this Agreement, in whole or in part, during the Term of the Agreement. Concessionaire shall be liable to the City for all sums paid by the City and all expenses incurred by the City (or the third party) thereon from the date the City or its agent incurs such costs. The City shall not in any event be liable for inconvenience, expense or

other damage incurred by Concessionaire by reason of the third party's performance or paying such costs or expenses, and the obligations of Concessionaire under this Agreement shall not be altered or affected in any manner by the City's exercise of its rights under this Section;

(ii) collect, foreclose or realize upon any bond, collateral, security or insurance provided by or on behalf of Concessionaire.

The City may draw on the financial security described in Section 7.10 to pay for (or reimburse itself for) such damages, costs and expenses. If the City so draws on any financial security, Concessionaire shall restore that financial security described in to the levels described in Section 7.10 within thirty (30) days following demand.

8.3.2 Termination or Suspension by City. In the event Concessionaire has committed or permitted an Event of Default and the Concessionaire has been notified, and any applicable cure periods have expired, then the City may, but shall not be obligated to, without waiving or releasing Concessionaire from any of its obligations under this Agreement, terminate or suspend this Agreement in whole or in part. In the event of partial termination or suspension, Concessionaire shall continue the performance of this Agreement to the extent not terminated or suspended. If this Agreement is terminated, the City shall issue a written termination notice to Concessionaire which shall set forth the effective date of the termination. There shall be no liability, cost or penalty to the City for such termination or suspension of this Agreement.

8.4 Concurrent Pursuit of Remedies; No Waiver.

City may exercise any or all of the remedies set forth in this Article, each of which may be pursued separately or in conjunction with such other remedies as City may determine. No extension or indulgence granted by the City to Concessionaire shall operate as a waiver of any of the City's rights in connection with this Agreement. The rights and remedies of the City as described in this Article and as described elsewhere in this Agreement shall not be exclusive and are in addition to any other rights or remedies available to the City under this Agreement at law or in equity.

8.5 Concessionaire Responsibilities Upon Termination or Suspension

8.5.1 Upon the City's delivery of a termination notice or a suspension notice under any provision of this Agreement, Concessionaire and its agents, employees and Subcontractors, shall (i) take immediate action in an orderly manner to discontinue Services and Materials, and demobilize work forces to minimize the incurrence of costs; and (ii) upon request by the City by notice to Concessionaire, collect, assemble and transmit to the City all Materials in such state of completion as may exist as of the effective date of the termination or suspension. All such Materials shall be clearly labeled and indexed to the satisfaction of the Department and delivered to the Department by Concessionaire on or before the date set forth in the termination notice for delivery of the Materials or, if no such date is set forth in the termination notice, then before the

effective date of termination set forth in the termination notice. Concessionaire waives and releases any and all right to any retaining or charging liens or similar right or remedy in favor of Concessionaire.

8.5.2 Accrued Liabilities. The City's termination or suspension of this Agreement shall not affect any obligations or liabilities of either Party accruing prior to the effective date of such termination or suspension.

ARTICLE 9. GENERAL TERMS AND CONDITIONS

9.1 Subcontracts.

Except as identified in this Agreement, Concessionaire shall not delegate or enter into any Subcontract for the performance of any of its obligations under this Agreement, in whole or in part, without on each occasion first obtaining the written consent of the Department, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding anything to the contrary hereto, the Subcontractors listed on Exhibit E are hereby approved by the Department. Any changes to Subcontracts that are part of the Concessionaire's Economic Opportunity Plan are subject to the review of the City's Office of Economic Opportunity Plan consistent with the Economic Opportunity Plan.

9.1.1 Subcontractor Requirements. All Subcontractors working in the City of Philadelphia shall be licensed to do business in the City of Philadelphia and shall, if required by law, have the necessary licenses to provide specific services that require addition licensure. Concessionaire shall submit to Department copies of all proposed Subcontract(s) to be entered into by Concessionaire, along with Concessionaire's written request for the City's consent. All such Subcontracts must specify that:

- (i) Work performed by Subcontractor shall be in conformity with the terms of this Agreement;
- (ii) Nothing contained in such Subcontract shall be construed to impair the rights of the City under this Agreement;
- (iii) The City's consent to or approval of any Subcontract shall not create any obligation of the City to any Subcontractor;
- (iv) Nothing contained in such Subcontract, or under this Agreement, shall create any obligation of the City to Subcontractor;
- (v) The City shall be expressly designated a third party beneficiary of the Subcontract.

9.1.2 Subcontractor Bound by Agreement. Subcontractor shall be bound by the applicable terms, covenants and conditions as Concessionaire under this Agreement; including, without limitation, confidentiality, maintenance and preservation of records, and audit by government representatives, under this Agreement.

9.1.3 Assignment of Tax Refunds. Subcontractor shall, effective on the date of the Subcontract, presently, fully and unconditionally assign, transfer and set over to the City all of Subcontractor's right, title and interest in and to any sales and use tax which may be refunded as a result of a claim for refund for any materials purchased in connection with the Subcontract or this Agreement, and Subcontractor shall covenant and agree that, (i) other than as directed by the City, it will not file a claim for refund for any sales or use tax which is the subject of this assignment; and (ii) the City, in its own name or in the name of Subcontractor, may file a claim for a refund of any sales or use tax covered by this assignment.

9.1.4 No Subcontractor Indebtedness. Subcontractor shall not be indebted to the City (to satisfy this requirement, Concessionaire shall include the following in all Subcontracts that are entered into for work to be performed pursuant to this Agreement).

“Subcontractor hereby certifies and represents that Subcontractor and Subcontractor's parent company(ies) and subsidiary(ies) are not currently indebted to the City and will not at any time during the term of the Agreement, including any extensions or renewals thereof, be indebted to the City, for or on account of any delinquent taxes (including, but not limited to, taxes collected by the City on behalf of the School District of Philadelphia), liens, judgments, fees or other debts for which no written agreement or payment plan satisfactory to the City has been established. In addition to any other rights or remedies available to the City at law or in equity, Subcontractor acknowledges that any breach or failure to conform to this certification may, at the option and direction of the City, result in the withholding of payments otherwise due to Subcontractor for services rendered in connection with the Agreement and, if such breach or failure is not resolved to the City's satisfaction within a reasonable time frame specified by the City in writing, may result in the offset of any such indebtedness against said payments otherwise due to Subcontractor and/or the termination of Subcontractor for default (in which case Subcontractor will be liable for all excess costs and other damages resulting from the termination).”

9.1.5 Exclusionary Organizations. Subcontractors shall comply with 9.4.1. Concessionaire shall include Section 9.4.1 with appropriate adjustments for the identity of the parties, in all Subcontracts that are entered into for work to be performed pursuant to this Agreement.

9.1.6 Business Interests Requirements. Subcontractors shall comply with Sections 9.5, 9.6 and 9.7. Concessionaire shall include Sections 9.5, 9.6 and 9.7 in all Subcontracts that are entered into for work to be performed pursuant to this Agreement.

9.1.7 Concessionaire Responsibility for Work. No permitted Subcontract shall relieve Concessionaire of any obligation under this Agreement. Concessionaire shall be as fully responsible for the acts and omissions of its Subcontractors and Persons either directly or indirectly employed or retained by them as it is for the acts and omissions of Concessionaire and Persons directly or indirectly employed or retained by Concessionaire.

9.1.8 Subcontracts Void. Any purported Subcontract made in violation of this Section or of any other Section in this Agreement shall be null and void.

9.1.9 Subcontracts and Termination of Concessionaire. In the event that the City has exercised its right to terminate this Agreement for cause as set forth in Article 8, the City shall have the right, at its election, to take over and operate the Program, either directly or through any third parties, including Subcontractors.

9.1.10 Non-Suspension; Debarment.

Concessionaire and all of the individuals acting on Concessionaire's behalf including, without limitation, Subcontractors, are not under suspension or debarment from doing business with the Commonwealth of Pennsylvania, any other state, or the federal government, or any department, agency or political subdivision of any of the foregoing. If Concessionaire cannot so warrant, then Concessionaire shall submit to the Responsible Official a full, complete written explanation as to why Concessionaire cannot so warrant. Concessionaire shall reimburse the City for the reasonable cost of investigation incurred by the City or the Commonwealth of Pennsylvania Office of Inspector General for investigation of Concessionaire's compliance with the terms of this or any other Agreement between Concessionaire and the City which results in the suspension or debarment of Concessionaire. Such costs shall include, but are not limited to, salaries of investigators, including overtime, travel and lodging expenses, expert witness and documentary fees and attorney fees and expenses. Concessionaire shall not be responsible for costs of investigations which do not result in Concessionaire's suspension or debarment.

9.1.11 Subcontractor Payments. All payments to Subcontractors shall be made in accordance with the subcontracts or as otherwise provided for in this Agreement. Upon the City's reasonable request, Concessionaire will make available for City's inspection payment receipts from the Subcontractors confirming that Subcontractor payments are being kept current. The City may make reasonable inquiries to all Subcontractors regarding the timing of payments by Concessionaire to the Subcontractors.

9.2 Assignment

9.2.1 Assignment by Concessionaire. Concessionaire shall not assign this Agreement, or any part of this Agreement, or delegate performance of this Agreement, without obtaining the prior written consent of the City which consent shall not be unreasonably withheld, conditioned or delayed, provided, however, that the City's consent shall not be required in the event of any transfer by Concessionaire to (i) any entity controlling, controlled by or under common control of Concessionaire, (ii) any successor to Concessionaire by merger, asset sale, consolidation or reorganization, provided that at least one Key Personnel remains with the Concessionaire in the same or substantially the same role with Concessionaire or (iii) any successor to Concessionaire by merger, asset sale, consolidation or reorganization made at any time that the Concessionaire is not in material breach of or default under the Agreement that, in the good faith discretion of the City, would not reasonably be expected to result in (A) the Concessionaire no longer being in a financial position to meet all of its applicable obligations under the Concession Agreement or (B) the Concessionaire no longer possessing the requisite skills and qualifications, or having skills and qualifications, or being able to utilize personnel under its control who have such skills and qualifications, necessary to successfully provide the specific services then provided or anticipated to be provided by the Concessionaire as of the time of the proposed transfer ("**Permitted Transfer**"). Concessionaire shall send the City written notice of any Permitted Transfer. Such notice shall be for informational purposes only, and shall contain information regarding the identity of the successor and the effective date of the transaction. In assignments where written consent is required, the decision whether to consent to an assignment, the timing of consent (if any), and conditions to such consent, if any, shall each be at the City's sole discretion. Any consent to the assignment of any monies to be paid under this Agreement shall not relieve Concessionaire from the faithful performance of any of its obligations under this Agreement or change any of the terms and conditions of this Agreement. Any purported assignment in violation of this provision shall be void and of no effect. The City's consent to an assignment shall not release the assignor from any liability accrued or thereafter accruing under this Agreement. Any assignment or purported assignment shall be in writing and shall contain an express assumption by the assignee of all liability accrued or thereafter accruing under this Agreement. Consent by the City to any assignment shall not be deemed a course of conduct, dealing or performance with respect to any other assignment or proposed assignment. For purposes of this Section (Assignment by Concessionaire), an assignment includes the acquisition of Concessionaire, or a controlling interest therein, through a corporate or other merger, and the appointment of a receiver or bankruptcy trustee, and the transfer of this Agreement or Concessionaire in any bankruptcy or other insolvency proceeding.

9.2.2 Applicability in Case of Bankruptcy or Insolvency. A receiver or trustee of or for Concessionaire in any federal or state bankruptcy, insolvency or other proceedings concerning Concessionaire shall comply with the requirements set forth in Section 9.2.1 above.

9.2.3 Assignment by the City. The City may, assign its rights and obligations under this Agreement, without the consent of the Concessionaire, to another Governmental Body if

such assignee assumes, and is legally and financially capable of discharging, the duties and obligations of the City hereunder.

9.3 No Waiver

The failure of Concessionaire or the City to insist upon the strict performance of the terms and conditions hereof shall not constitute or be construed as a waiver or relinquishment of any Party's right to thereafter enforce the same in accordance with this Agreement in the event of a continuing or subsequent default on the part of Concessionaire or the City.

9.4 Nondiscrimination

This Agreement is entered into under the terms of the Charter, the Fair Practices Ordinance (Chapter 9-1100 of the Code) and the Mayor's Executive Order No. 04-86 (the "Executive Order"), as they may be amended from time to time, and in performing this Agreement, Concessionaire shall not discriminate or permit discrimination against any individual because of race, color, religion or national origin. Nor shall Concessionaire discriminate or permit discrimination against individuals in employment, housing and real property practices, and/or public accommodation practices whether by direct or indirect practice of exclusion, distinction, restriction, segregation, limitation, refusal, denial, differentiation or preference in the treatment of a person on the basis of actual or perceived race, ethnicity, color, sex, sexual orientation, gender identity, religion, national origin, ancestry, age, disability, marital status, source of income, familial status, genetic information or domestic or sexual violence victim status, Human Immunodeficiency Virus (HIV) infection, or engage in any other act or practice made unlawful under the Charter, Chapter 9-1100, the Executive Order, or under the nondiscrimination laws of the United States or the Commonwealth of Pennsylvania. In the event of any breach of this Section the City may, in addition to any other rights or remedies available under this Agreement, at law or in equity, suspend or terminate this Agreement.

9.4.1 Chapter 17-400 of the Philadelphia Code: Exclusionary Private

Organizations. Concessionaire agrees that its payment or reimbursement of membership fees or other expenses associated with participation by its employees in an exclusionary private organization, insofar as such participation confers an employment advantage or constitutes or results in discrimination with regard to hiring, tenure of employment, promotions, terms, privileges or conditions of employment on the basis of race, color, sex, sexual orientation, religion, national origin or ancestry, constitutes a substantial breach of this Agreement entitling the City to all rights and remedies provided in this Agreement or otherwise available at law or in equity.

9.4.2 Limited English Proficiency. Concessionaire understands and agrees that no individual who is limited in his or her English language proficiency shall be denied access to Services provided under this Agreement on the basis of that limitation. As a condition of accepting and executing this Agreement, Concessionaire shall comply with all provisions of Title

VI of the Civil Rights Act of 1964, Executive Order No. 12250 of the President of the United States, publication of the Mayor of the City of Philadelphia entitled, "Access to Federally Funded City Programs and Activities for Individuals with Limited English Proficiency" dated September 29, 2001, and all regulations promulgated thereunder, as the Act and regulations may be amended from time to time, which are applicable (i) to Concessionaire, (ii) to the benefits, services, activities and programs provided in connection with this Agreement, (iii) to the City, or the Commonwealth of Pennsylvania, and (iv) to the benefits, services, activities and programs of the City or of the Commonwealth, and if any funds under this Agreement are provided by the federal government, which are applicable to the federal government and its benefits, services, activities and programs. Without limiting the applicability of the preceding sentence, Concessionaire shall comply with 45 C.F.R. 80 et. seq. and all other regulations promulgated under Title VI of the Civil Rights Act of 1964, as they may be amended from time to time, which are applicable to the benefits, services, programs and activities provided by the City through agreements with outside contractors.

9.4.3 Equal Benefits. This is a "Service Agreement" as that term is defined in Section 17-1901(4) of the Code. If the Service Agreement is in an amount in excess of \$250,000, then pursuant to Chapter 17-1900 of the Code, Concessionaire shall, for any of its employees who reside in the City, or any of its employees who are non-residents subject to City wage tax under Section 19-1502(1)(b) of the Code, extend the same employment benefits the Concessionaire extends to spouses of its employees to life partners of such employees. Concessionaire certifies that (i) it is in compliance with the requirements of Chapter 17-1900, (ii) its employees have been notified of the employment benefits available to life partners pursuant to Chapter 17-1900, and (iii) such employment benefits are currently, or will be made available within the time required by Section 17-1902(2), or that the Concessionaire does not provide employment benefits to the spouses of married employees.

9.5 Salaries and Wages

9.5.1 Philadelphia 21st Century Minimum Wage and Benefits Standard. This Agreement is subject to Chapter 17-1300 of the Code, "Philadelphia 21st Century Minimum Wage and Benefits Standard," and all regulations and procedures adopted thereunder and in effect on the Effective Date of this Agreement. Concessionaire and its Subcontractors at any tier (e.g., the subcontractors of the Subcontractors) will comply with the requirements of Chapter 17-1300 of the Code as they exist on the date when the Concessionaire entered into this Agreement or as they exist on the date when any amendment is executed to this Agreement. The Concessionaire will promptly provide to the City documents and information verifying its compliance with the requirements of Chapter 17-1300. The Concessionaire and Subcontractors will notify its affected employees with regard to the wages that are required to be paid and benefits required pursuant to Chapter 17-1300. The Office of Labor Standards may grant a partial or total waiver of Section 17-1300 based on the specific stipulated reasons elaborated in Section 17-1304 of the Code.

9.5.2 Timely Payments. Concessionaire and Subcontractors must pay all salaries and wages due all employees performing Services under this Agreement unconditionally and at least once a month without deduction or rebate on any account, except only for those payroll deductions that are mandatory by law or are permitted under applicable law and regulations. The Parties acknowledge that this clause is solely for the benefit of the City and that it does not grant any third party beneficiary rights.

9.6 Business Interests in Northern Ireland, Sudan and Iran

In accordance with Section 17-104 of the Code, Concessionaire by execution of this Agreement certifies and represents that:

9.6.1 Northern Ireland Certification. Concessionaire (including any parent company, subsidiary, exclusive distributor or company affiliated with Concessionaire) does not have, and will not have at any time during the Term (including any extensions thereof), any investments, licenses, franchises, management agreements or operations in Northern Ireland, unless Concessionaire has implemented the fair employment principles embodied in the MacBride Principles, and no product to be provided by Concessionaire will originate in Northern Ireland, unless the Concessionaire has implemented the fair employment principles embodied in the MacBride Principles; and

9.6.2 Sudan and Iran Certification. Concessionaire (including any parent company, subsidiary, exclusive distributor or company affiliated with Concessionaire) does not, and will not at any time during the Term (including any extension thereof), do any business in Iran or Sudan, and no product to be provided under this Agreement were, are or will be manufactured by an entity doing business in Iran or Sudan, unless a federal override with respect to Iran or Sudan, as applicable, is in place or unless an exclusion from disqualification applies.

9.6.3 Subcontractor Interests. In the performance of this Agreement, Concessionaire agrees that it will not utilize any suppliers or Subcontractors at any tier: (i) Who have or whose parent(s), subsidiary(ies), exclusive distributor(s) or company affiliate(s) have any investments, licenses, franchises, management agreements or operations in Northern Ireland, or who will provide products originating in Northern Ireland unless said supplier or Subcontractor has implemented the fair employment principles embodied in the MacBride Principles; or (ii) Who do or whose parent(s), subsidiary(ies), exclusive distributor(s) or company affiliate(s) do business in Iran or Sudan during the Term, or who will provide products manufactured by an entity doing business in Iran or Sudan, as applicable, unless a federal override with respect to Iran or Sudan, as applicable, is in place or unless an exclusion from disqualification applies.

9.6.4 Cooperation with Director of Finance. Concessionaire agrees to cooperate with the City's Director of Finance in any manner, which such Director deems reasonable and necessary to carry out the Director's responsibilities under Section 17-104 of the Philadelphia Code. Concessionaire expressly understands and agrees that any false certification or

representation in connection with this section and/or any failure to comply with the provisions of this section shall constitute a substantial breach of this Agreement entitling the City to all rights and remedies provided in this Agreement or otherwise Applicable Law (including, but not limited to, Section 17-104 of the Philadelphia Code or equity). In addition, it is understood that false certification or representation is subject to prosecution under Title 18 Pa. S. C. A. § 4904.

9.7 Business, Corporate, and Slavery Era Insurance Disclosure

9.7.1 Affidavit. In accordance with Section 17-104 of the Philadelphia Code, Concessionaire, after execution of the Agreement agrees to complete an affidavit certifying and representing that Concessionaire (including any parent company, subsidiary, exclusive distributor or company affiliated with Concessionaire) has searched any and all records of Concessionaire or any predecessor company regarding records of investments or profits from slavery or slaveholder insurance policies during the slavery era. The names of any slaves or slaveholders described in those records must be disclosed in the affidavit.

9.7.2 False Certification. Concessionaire expressly understands and agrees that any false certification or representation in connection with this paragraph and/or any failure to comply with the provisions of this paragraph shall constitute a substantial breach of the Agreement entitling the City to all rights and remedies provided in the Agreement and otherwise available in law (including, but not limited to, Section 17-104 of the Philadelphia Code) or equity and the contract will be deemed voidable. In addition, it is understood that false certification or representation is subject to prosecution under Title 18 Pa.C.S.A § 4904.

9.8 Concessionaire Integrity Provisions

9.8.1 Concessionaire Integrity Required. Concessionaire shall maintain the highest standards of integrity in the performance of this Agreement and shall take no action in violation of Applicable Laws or requirements that govern contracting with the City.

9.8.2 No City Employee or Officer Benefit. Concessionaire shall not, in connection with this Agreement or any other contract with the City, directly or indirectly, offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for the decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty by any officer or employee of City.

9.8.3 No Gratuity. Concessionaire shall not, in connection with this Agreement or any other contract with the City, directly or indirectly, offer, give, or agree or promise to give to anyone any gratuity for the benefit of or at the direction or request of any officer or employee of City.

9.8.4 Inspector General Inquiries. Concessionaire, upon the inquiry or request of the Inspector General of the City or any of that official's agents or representatives, shall provide, or

if appropriate, make promptly available for inspection or copying, any information of any type or form necessary for a determination by the Inspector General as to the contractor's integrity or responsibility, as those terms are defined by City's statutes, regulations, or management directives. Such information may include, but shall not be limited to, the contractor's business or financial records, documents or files of any type or form, which refer to or concern this Agreement. Such information shall be retained by the Concessionaire for a period of five (5) years beyond the termination of the Agreement unless otherwise provided by law.

9.8.5 Violation of Integrity Provisions. For violation of any of the above provisions, the City may terminate this and any other Agreement with the Concessionaire, claim liquidated damages in an amount equal to the value of anything received in breach of these provisions, and claim damages for all expenses incurred in obtaining another contractor to complete performance hereunder, and the City may debar and suspend the Contractor from doing business with the City. These rights and remedies are cumulative, and the use or nonuse of any one shall not preclude the use of all or any other. These rights and remedies are in addition to those the City may have under the law, statute, regulation, or otherwise.

9.9 Audits, Inspection Rights and Records

9.9.1 General. Concessionaire shall certify that all materials, equipment and labor charged to the City are accounted for and shall keep such full and detailed accounts as may be necessary for proper financial management under this Agreement.

9.9.2 Retention of Records. The Concessionaire shall retain, and shall provide the City and its representatives access, to all records, books of account, correspondence, instructions, shop drawings, receipts, vouchers, memoranda, and similar data and documentation pertaining to the Agreement for a period of five (5) years following final payment, or earlier termination of the Agreement, or for such longer period as may be required by law; however, if any litigation, claim or audit is commenced prior to the expiration of said five (5) year period, then records shall be retained until all litigation, claims or audit findings have been completely terminated or resolved, without right of further appeal, or if Applicable Law requires a longer period, then the record shall be retained for such longer period.

9.9.3 Audits. From time to time during the performance of the work under the Agreement, and for a period of five (5) years after the completion of the work under the Agreement, the City may audit any and all aspects of the Concessionaire's performance under the Agreement, including but not limited to its billing and invoices. Audits may be conducted by representatives, agents or contractors of the City, including, without limitation, the City Controller. If requested by the City, the Concessionaire shall submit all vouchers, or invoices presented for payment pursuant to this Agreement, all cancelled checks, work papers, books, records and accounts upon which the vouchers or invoices are based, and any and all documentation and justification in support of expenditures or fees incurred pursuant to this

Agreement. All books, invoices, vouchers, records, reports, cancelled checks and other materials related to Concessionaire's obligations under this Agreement shall be subject to periodic review or audit by the City.

9.9.4 Availability of Records. The Concessionaire shall make available within the City at reasonable times during the performance of work hereunder and for period set forth above in this paragraph, all records pertaining to the Agreement for the purpose of inspection, audit or reproduction by any authorized representative of the City (including any agent or contractor and the City Controller), the Commonwealth Auditor General, and any other federal or state auditors, as may be applicable, at no additional cost to the City.

9.9.5 Confidential Records. Concessionaire may, by a written statement signed by a representative of the Concessionaire, assert that a record or document provided by Concessionaire pursuant to this Agreement contains a trade secret or confidential proprietary information. If Concessionaire provides such a written statement, the City will endeavor to maintain the record as confidential to the extent permitted by Applicable Law.

9.10 Right-To-Know

The Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104, applies to this Agreement.

9.11 Notices

All notices from either Party to the other shall be effective only if in writing and signed by the Party giving notice and given by being delivered personally or sent electronically or by registered or certified mail, return receipt requested, postage prepaid, or delivered to a nationally recognized express mail service, charges prepaid, receipt obtained, to the address shown below or to such other persons or addresses as are specified by similar notice.

If to Concessionaire:

TITAN Outdoor LLC
Scott E. Goldsmith
EVP & Chief Commercial Officer
100 Park Avenue, 6th Floor
New York, NY 10017

If to City:

City of Philadelphia
Commissioner of Public Property
City Hall, Room 790
Philadelphia, PA 19107

And

City of Philadelphia
Law Department
1515 Arch Street, 17th Floor
Philadelphia, PA 19102-1595
Attention: City Solicitor

9.12 Economic Opportunity Plan

9.12.1 EOP Required. In accordance with the Code Section 17-1600 et seq., as it exists on the Commencement Date, the City has established a requirement for Economic Opportunity Plan(s) (“**EOP**”) for this Agreement. The EOP attached hereto as Exhibit A constitutes the entire EOP approved by the Office of Economic Opportunity for this Agreement. Concessionaire agrees to comply with and abide by the EOP.

9.12.2 EOP Disclosure Requirements. In accordance with Section 17-1402(f) of the Code, Concessionaire shall during the Term of the Agreement, disclose the name and title of each City officer or employee who directly or indirectly advised the Concessionaire, any officer, director or management employee of the Concessionaire, or any person representing the Concessionaire that a particular Person could be used by the Concessionaire to satisfy any goals established in the Agreement for participation of minority, women, disabled or disadvantaged business enterprises. The Concessionaire shall also disclose the date the advice was provided, and the name of such particular Person. Such disclosure shall be made on a form provided by the City, and the form shall be signed and filed with the Department within five Business Days after the Concessionaire as so advised. The Department of the City receiving the disclosure form shall forward copies to the President and Chief Clerk of Council, and to the Mayor, Finance Director, Procurement Department, and the Department of Records.

9.13 Approvals by the City

9.13.1 Approval Not a Guarantee or Warranty. The City’s review, approval or acceptance under this Agreement of plans and specifications and any other document, work, matter, or thing, shall not constitute a representation, warranty or guaranty by the City as to the substance, accuracy, or quality of such document, matter, or thing. At all times, Concessionaire, its officials, officers, employees, agents, contractors and subcontractors, must each use their own independent judgment as to the substance, accuracy and quality of all such documents, work, matter, and other things.

9.13.2 Approvals Under Applicable Law. No consent, approval, or agreement of the City under this Agreement shall be deemed a consent, approval or agreement of any City board, agency, department, or commission whose consent, approval, or agreement is or may be required

under Applicable Law, including but not limited to the City of Philadelphia Department of Licenses and Inspections, the Fairmount Park Commission, the City of Philadelphia Historical Commission, and the City of Philadelphia Art Commission. The decisions of any City board, agency, department or commission required under Applicable Law regarding any matter arising under this Agreement shall be governed solely by Applicable Law.

9.14 Contributions and Other Mandatory Disclosures

Concessionaire confirms on behalf of itself and its Subcontractor(s) that no contribution(s) have been made, and agrees that none shall be made during the Term of this Agreement, and any additional term, by Concessionaire, any Subcontractor, or any party from which a contribution can be attributed to the Concessionaire or Subcontractor, that would render the Concessionaire or Subcontractor, as applicable, ineligible to apply for or enter into a Non-Competitively Bid Agreement under the provisions of Sections 17-1404(1) and 17-1405 of the Code; and that disclosures made as part of its application to receive a Non-Competitively Bid Agreement contain no material misstatements or omissions. Breach of this covenant shall constitute an event of default and render the Agreement voidable at the City's option, and, as to contributions made by or attributable to Concessionaire, shall make the Concessionaire liable for liquidated damages to the City in the amount of ten percent (10%) of the maximum payments to the Concessionaire allowed under the Agreement, regardless whether actually paid. The City may exercise any or all of the remedies set forth in this (Contributions and Other Mandatory Disclosures), each of which may be pursued separately or in conjunction with such other remedies as the City in its sole discretion shall determine. No extension or indulgence granted by the City to Concessionaire shall operate as a waiver of any of the City's rights in connection with this Agreement. The rights and remedies of the City as described in this Section, and as described elsewhere in this Agreement, shall not be exclusive and are in addition to any other rights or remedies available to the City under this Agreement at law or in equity.

9.14.1 Duty of Continuing Disclosures. Concessionaire shall, during the term of the Agreement, any Additional Term, and for one year thereafter, disclose any contribution of money or in-kind assistance the Concessionaire, or any Subcontractor or Subcontractor utilized by Concessionaire in connection with this Agreement, has made, or any individual or entity has made if such contributions can be attributed to Concessionaire, or such Subcontractor or Subcontractor pursuant to the attribution rules of Section 17-1405, during such time period to a candidate for nomination or election to any public office in the Commonwealth of Pennsylvania or to an individual who holds such office, or to any political committee or state party in the Commonwealth of Pennsylvania, or to any group, committee or association organized in support of any such candidate, office holder, political committee or state party, and the date and amount of such contribution.

9.14.2 Form and Manner of Disclosures. Such disclosure shall be made on a form provided by the Department awarding the Agreement, and the form shall be signed and filed with

such Department within five (5) business days of the contribution. The Department receiving the disclosure form shall forward copies to the President and Chief Clerk of Council, and to the Mayor, Finance Director, Procurement Department, and the Department of Records. The attribution rules of Section 17-1405 shall apply to determine what contributions must be disclosed under this provision as contributions of the Concessionaire or of a Subcontractor.

9.14.3 Failure of Subcontractor to Disclose. It shall not be a violation of this Section if Concessionaire fails to disclose a contribution made by a Subcontractor because the Concessionaire was unable to obtain such information from the Subcontractor, provided the Concessionaire demonstrates that it used reasonable efforts to attempt to obtain such information, including, at a minimum:

(i) Entering into a written agreement with the Subcontractor for such Subcontractor's services, before the filing of the application for the Agreement, and before the Subcontractor communicated with a City department or office, official or employee on behalf of the Concessionaire;

(ii) Including in such agreement a provision requiring the Subcontractor to provide the Concessionaire in a timely manner with all information required to be disclosed under the provisions of Chapter 17-1400 of the Code, and providing, in effect, that the agreement will be terminated by the Concessionaire if the Subcontractor fails to provide all required information on a timely basis and that no further payments, including payments owed for services performed prior to the date of termination, will be made to the Subcontractor by or on behalf of the Concessionaire as of the date of such termination;

(iii) Communicating regularly with the Subcontractor concerning the Subcontractor's obligations to provide timely information to permit the Concessionaire to comply with the provisions of Chapter 17-1400; and

(iv) Invoking the termination provisions of the written agreement in a full and timely manner.

9.15 Participation by Other Local Government Agencies

Other local government agencies may be eligible to participate in this Agreement pursuant to the terms and conditions of this Agreement if such agencies are authorized, by law or their governing bodies, to execute such agreements, and if such authorization is allowed by the City, and if such purchases have no net adverse effect on the City, and result in no diminished services from the Operator to the City. The City will not be responsible for payment of any amounts owed by any other Local Government Agencies, and will have no liability for the acts or omissions of any other Local Government Agency.

9.16 The Americans with Disabilities Act

Concessionaire understands and agrees that, pursuant to federal regulations promulgated under the authority of the Americans With Disabilities Act, 28 C.F.R. § 35.101 *et seq.*, no individual with a disability shall, on the basis of the disability be excluded from participation in the Agreement or from activities or services provided under the Agreement. As a condition of accepting and executing the Agreement, Concessionaire shall comply with all provisions of the Americans With Disabilities Act (the “ADA”), 42 U.S.C. §§ 12101-12213, and all regulations promulgated thereunder, as the ADA and regulations may be amended from time to time, which are applicable to: (i) the Concessionaire; (ii) the benefits, services, activities, facilities and programs provided in connection with the Agreement; (iii) the City or the Commonwealth; and the benefits, services, activities, facilities and programs of the City or of the Commonwealth, and, (d) if any funds for payments or otherwise under the Agreement are provided by the federal government and its benefits, services, activities, facilities and programs the benefits. Without limiting the applicability of the preceding sentence, Concessionaire shall comply with the “General Prohibition Against Discrimination,” 28 C.F.R. Part 35,130, and all other regulations promulgated under Title II of the ADA, as they may be amended from time to time, which are applicable to the benefits, services, programs and activities provided by the City through contracts with outside contractors.

ARTICLE 10 MISCELLANEOUS PROVISIONS

10.1 Entire Agreement. This Agreement, when executed, together with the Exhibits attached hereto or to be attached hereto, as provided for by this Agreement shall contain all the agreements, conditions, understandings, undertakings, representations, covenants, promises and warranties made between the Parties hereto with respect to the subject matter hereof and supersedes all prior negotiations and proposals (either written or oral).

10.2 Headings. Headings and subtitles used throughout this Agreement are for the purpose of convenience only, and no heading or subtitle shall modify or be used to interpret the text of any section.

10.3 Amendments; Waiver. Except as provided in Subsection 4.2.3.3.1 for the modification of Exhibits, this Agreement may not be amended, supplemented, altered, modified or waived, in whole or in part, except by a written amendment signed by the Parties or as elsewhere provided in this Agreement. Except to the extent that the Parties may have otherwise agreed in writing in an amendment, no waiver, whether express or implied, by either Party of any provision of the Agreement shall be deemed: (i) to be a waiver by that Party of any provision in the Agreement; or (ii) to be a waiver by that Party of any breach by the other Party of its obligations under the Agreement. Any forbearance by a Party in seeking a remedy for any noncompliance or breach

by the other Party shall not be deemed to be a waiver of rights and remedies with respect to such noncompliance or breach.

10.4 Further Documents. The Parties shall execute and deliver all documents and perform all further acts that may be reasonably necessary to effectuate the provisions of this Agreement.

10.5 Order of Precedence. If any conflicts or discrepancies should arise in the terms and conditions of this Agreement or the interpretation thereof and the attached Exhibits, the terms of this Agreement shall control.

10.6 Governing Law and Venue. This Agreement shall be deemed to have been made in Philadelphia, Pennsylvania. The Agreement and all disputes arising under the Agreement shall be governed, interpreted, construed and determined in accordance with the laws of the Commonwealth without regard to the choice of law doctrine theory. Any suit brought to enforce any of the rights and obligations under this Agreement shall be brought in the state or federal court situated in Philadelphia, Pennsylvania.

10.7 Severability. In the event that any clause or provision of this Agreement or any part thereof shall be declared invalid, void, or unenforceable by any court having jurisdiction, such invalidity shall not affect the validity or enforceability of the remaining portions of this Agreement unless the result would be manifestly inequitable or unconscionable.

10.8 Waiver of Jury Trial. The Parties hereby mutually waive any rights that either may have to request a jury trial in any proceeding at law or in equity in any court of competent jurisdiction.

10.9 Third Party Beneficiaries. Nothing in the Agreement, express or implied, is intended or shall be construed to confer upon or give to any person, other than the Parties, any rights, remedies, or other benefits, including but not limited to third-party beneficiary rights, under or by reason of the Agreement. The Agreement shall not provide any third party with any remedy, claim, liability, reimbursement, cause of action or other right other than any such remedy, claim, etc. existing without reference to the term of or the existence of the Agreement.

[Signature Pages, Exhibits follow]

EXHIBITS

EXHIBIT A - SCOPE OF WORK

1. Street Furniture Elements

(a) Transit Shelters

The Concessionaire is required to design, fabricate, install, maintain and operate a minimum of 318 new (replacement) transit shelters and approximately 282 additional (new) transit shelters.

i. Shelter Design: Shelter design must include amenities for the public in the form of ADA-compliant seating that by design provides lighting, panels for the posting of map and schedule information, and protection from inclement weather and prevents reclining. At least three standard sizes of Shelters will be required:

- (A) Average ridership location – comfortably accommodate five (5) customers
- (B) High ridership location – comfortably accommodate 15 customers
- (C) Narrow sidewalk – provide shelter while being no more than three feet wide.

Shelters in categories other than (C) should have panels or screens on one of the short sides of the Shelter and the long side of the Shelter furthest from the curb. The curbside frontage should be completely open to permit unfettered access to and from transit vehicles. The Shelters should provide at least 7.5 feet of headroom and have a maximum height of no more than 8 feet. A minimum floor clearance area of 2.5 by 4 feet connected by a pedestrian route to the boarding area is required. Shelters must be accessible to individuals with disabilities and in compliance with all City, State, and Federal standards.

Transit service information must be integrated with the physical structure of the Shelter. Fascia panels on the exterior of the Shelter must provide space for transit information including stop identification numbers (a 5 digit number provided by SEPTA), transit logo identification, and route numbers. A two-sided frame, with a maximum size of 4 feet x 4 feet, must be provided for transit and map information and will be divided as follows: the interior face will provide a protected frame for bus route maps/headway grid information, and for other public information. The exterior-facing side of the frame will be for a street map or public information.

Each Shelter will have an Ad Panel. The panel should be an integral part of the structure and be a maximum size of 4.5 feet by 6.0 feet. Shelters may also be wrapped, as long as customers using the Shelter have a line of sight in and out of the Shelter and the wrap does not interfere with other Shelter amenities, including but not limited to Historic/Map Panels.

The Shelter design must be approved by the Commissioner of Public Property.

ii. Existing Shelter Locations: Existing Shelter Locations. Please refer to Exhibit B for a map and list of the 318 existing Shelter locations.

Market East Shelters. On the Shelters on Market Street between 7th Street and 13th Street the Concessionaire will maintain/replace the 21 two-sided, back-lit panels parallel to the street as Arts Panels.

Chestnut Street Shelters. Eleven (11) of the 318 existing Shelters are located on Chestnut Street between 7th and 17th Streets. These Shelters currently have no advertising panels and instead contain art installations that were created as a component of the City's Chestnut Street Reconstruction Project. These will be maintained under the terms of the Concession Agreement until such time that the Concessionaire replaces these Shelters.

iii. Additional Shelter Locations: The City and Concessionaire will work together to identify 282 new locations for Shelters including:

- (A) 121 between Girard Avenue and Washington Avenue and Columbus Boulevard and 30th Street
- (B) 17 between Oregon Avenue and Kitty Hawk Avenue and 7th Street and 20th Street
- (C) 17 on City Avenue
- (D) 12 between Lincoln Drive and Domino Lane and Main Street and Henry Avenue
- (E) 25 between the Northeast border of the City and the Tacony Creek
- (F) 12 in Chestnut Hill bound by Cresheim Valley Drive on the South, Stenton Avenue on the East, City limits on the North and Fairmont Park on the West
- (G) 78 in other areas and the areas listed above except for (A).

(b) Arts Information Kiosks

Arts Information Kiosk. Concessionaire will design, fabricate, install, maintain and operate 100 stand-alone structures with at least two sides, which functions primarily to promote arts, culture and public information.

i. **Kiosk Design:** Kiosk designs and materials must coordinate with other Street Furniture to provide the desired cohesive-looking streetscape. Kiosks will include at least one Arts Panel and may also include an Ad Panel; at no time shall the number of Ad Panels be greater than the number of Arts Panels. The Kiosk design shall be approved by the Commissioner of Public Property.

ii. **Kiosk Locations:** The City and Concessionaire shall work together to identify 100 locations for the installation of Kiosks.

(A) **City-owned property:** The City is committed to working with the Concessionaire to facilitate the installation of Kiosks on City-owned property. There is no guarantee that the City will approve placement of a Kiosk on any City-owned property and the City can refuse to allow Kiosks at any City-owned property in its sole and absolute discretion. The Kiosk design must be approved by the Commissioner of Public Property.

(B) **Private property:** The City is committed to creating opportunities to install Kiosks on sidewalks owned by third parties. If permitted by the City, Concessionaire shall install, operate and maintain Kiosks on sidewalks owned by third parties and remit advertising revenue from those Kiosks to the City as it does for other Kiosks installed pursuant to the Concession Agreement. All Kiosk Locations must be approved by the Streets Department.

(c) **Honor Box Condos:** The Concessionaire is required to design, fabricate, install, maintain and operate Honor Box Condos in Center City for the distribution of free publications. The street-facing part of the Honor Box Condo may include an advertising panel. No rental fees shall be charged to publications distributed from the Condos.

i. **Honor Box Condo Design:** Honor Box Condo design that coordinates with other elements of the Street Furniture program and includes an advertising panel parallel to the street. The Condo design shall approved by the Commissioner of Public Property.

ii. **Honor Box Condo Locations:** The City and Concessionaire shall work together to identify 100 locations for the installation of Condos.

(d) **City Transit Head Houses:** The Concessionaire will be responsible for the installation, maintenance and sale of the advertising as well as the general maintenance of the Transit Head Houses. All advertising shall be transparent from the interior of the Head House and no less than fifty percent (50%) transparent from the exterior, except that vinyl advertising may be used on the metal awnings of each Transit Head House.

i. **Head House Locations:** The City controls the seven (7) Head Houses that access underground transit concourses on east Market Street (between City Hall and 10th Street) located on the northwest and northeast corners of 13th and Market, the northwest corner of 12th and Market, in the middle of the 1100 block of Market and two are located in the middle of the 1000 block of Market. The Concessionaire has the opportunity to sell advertising on these seven (7) Transit Head Houses.

(e) **Benches:** The Concessionaire will design, fabricate, install, maintain and operate Benches at the request of the City to be installed at locations determined by the City. The Benches may or may not include advertising, at the Concessionaire's discretion. The

fabrication and installation costs of Benches requested by the City, where no advertising will be displayed, may be taken as a credit against payments due to the City no earlier than for the month in which the installation was completed. The cost of fabrication and installation of the Benches shall be paid for by the City. The Bench design must be approved by the Commissioner of Public Property.

i. Bench Locations: The concessionaire will fabricate and install Benches at the City's direction.

2. Coordination with CCD

The Concessionaire will be responsible with coordinating with the Center City District (CCD) for the successful implementation of an Arts Advertising Program. The CCD will have the right to manage the sale of advertising to non-profit arts and cultural institutions on Arts Panels. The Concessionaire will be responsible for coordinating with CCD and posting advertisements in Arts Panels as often as the CCD and the Concessionaire mutually agree. The Concessionaire may charge a posting fee to the CCD for posting advertisements and replacements in the event that an advertisement is damaged or defaced. Should the Concessionaire be permitted to install digital advertising within Center City, 10 percent of airtime on digital panels on Shelters located within the boundaries of the Center City District will be available at all times for the display of art, cultural and public information. CCD will be responsible for sale of this arts and cultural advertising portion of digital ads, as well as for providing Titan with the digital ad for posting.

Center City District with the permission of the City produces panels with Historic Information and Transit Maps for installation on Transit Shelters within CCD. The Concessionaire will be responsible for coordinating with CCD to post Historic/Map Panels on Shelters at no cost to CCD or the City. These cannot be covered by advertising or removed without the written permission of the Department.

3. Advertising

Subject to the Agreement, the City grants to Concessionaire permission to display commercial and public service on or in designated portions of Street Furniture consistent with the City Advertising Policy (set forth in Exhibit D). The placement and types of all advertising shall be subject to all current or future laws, statutes, ordinances and regulations and to any requirements, restrictions or prohibitions imposed by any entity having jurisdiction over the premises upon which the advertising is sought to be placed.

4. Installation

(a) Installation Plan/Schedule: The Concessionaire shall be responsible for the installation of 318 Shelters to replace Shelters installed as of the Commencement Date and 282 additional

shelter locations, 100 Kiosks and 100 Honor Box Condos in accordance with the following schedule:

Calendar year Street Furniture installations

<u>Year</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>Total</u>
Shelters	100	125	125	125	125	600
Kiosks	34	16	17	16	17	100
Honor Box Condos	34	16	17	16	17	100

Calendar year Street Furniture in service:

<u>Year</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020-2035</u>
Shelters	365	424	483	541	600	600
Kiosks	34	51	67	84	100	100
Honor Box Condos	34	51	67	84	100	100

Calendar year number of panels in service:

<u>Year</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020-2035</u>
Shelters	730	848	966	1,082	1,200	1,200
Kiosks	68	102	134	168	200	200
Honor Box Condos	34	51	67	84	100	100

(b) Process for site selection

This section describes the general process and requirements on Concessionaire for the installation of Street Furniture, specific siting requirements and City approvals are enumerated in sub-sections (c) and (d).

i. Shelters: The City and Concessionaire will work together to identify the order of installation sites for replacement Shelters and new Shelters. Criteria for the installation schedule will include, but not be limited to:

- A. Condition of current Shelters
- B. Ridership at location
- C. Advertising Value
- D. City, SEPTA or public requests

E. Proximity to senior and/or community centers

The Concessionaire will create a website where the public may submit requests for Shelters and information about where Shelters are located and planned is available. The City will have access to the data collected via this website.

In each year of the installation schedule no fewer than six (6) Shelters shall be replaced or installed in each of the 10 City Council Districts.

ii. Arts Information Kiosks: The City and Concessionaire will work with arts and cultural institutions to develop a list of most desired installation locations. The City and Concessionaire will make best efforts to site Kiosks in these locations.

iii. Honor Box Condos: The City and Concessionaire will work with publishers and the Center City District to develop a list of the desire installation locations. The City and Concessionaire will make best efforts to site Kiosks in these locations.

iv. Benches: The City and Concessionaire will work together to identify the order of installation sites for Benches. Criteria for the installation schedule will include, but not be limited to:

- A. Ridership at location
- B. City, SEPTA or public requests
- C. Proximity to senior and/or community centers

The Concessionaire will create a website where the public may submit requests for Benches and information about where Shelters are located and planned is available. The City will have access to the data collected via this website.

(c) Installation Requirements

i. Street Furniture may not be placed in the following locations:

- A. In any fire lane or alleyway.
- B. On any median strips or traffic islands.
- C. In front of any steps in a manner that would inhibit the ingress to or egress from any building.
- D. On any grating, manhole cover or steam vents.
- E. On any surface where the Street Furniture will cause damage or interfere with any pipes, conduits, vault areas or utility cables or wires.
- F. On any landscaped setting where the public's use of the Street Furniture will cause damage to lawns, flowers, shrubs and trees (without the community's consent).

ii. Street Furniture sites must allow for the following setbacks and clearances:

- A. Pedestrian clear traffic space must be a minimum of 6 feet in the case of Shelters and free-standing Benches and a minimum of 8 feet or one half the total sidewalk width, whichever is greater, for all other Street Furniture. The minimum clear pedestrian traffic space for new Street Furniture locations along high-volume corridors such as Market Street and Broad Street (from Glenwood to Oregon) 10 feet or half the total sidewalk width, whichever is greater. All other proposed new (non-replacement) Street Furniture must have a minimum clearance of 6 feet or half the total sidewalk width, whichever is greater. Replacement of some current Street Furniture may be exempted from this requirement.
- B. Roof overhangs must provide a minimum clearance height of 8 feet above the sidewalk.
- C. Street Furniture must be located a minimum of
 - a. 18 inches from the curb
 - b. 15 feet from fire hydrants
 - c. 10 feet or more from any marked or unmarked crosswalk, fire lane, alley or driveway
 - d. 5 feet or more from a loading zone, handicap ramp, from the point of curvature of curb cuts
 - e. 4 feet from any other structures in the Right of Way
 - f. 10 feet or more from transit Head Houses (whether owned by the City or anyone else)
 - g. Greater setbacks may be required by the Streets Department if necessary to provide for adequate sight lines or direct pedestrian pathway. Exceptions may be permitted by the Streets Department

iii. Street Furniture must meet ADA accessibility guidelines for public rights of way.

Sidewalk in and around the Street Furniture must be in or made to be in good and ADA accessible/smooth condition.

iv. Electrical Connections: All electric connections and/or lighting for Shelters and Kiosks will be at the sole cost and expense of the Concessionaire. If necessary, the Concessionaire may connect to Streets Department owned street lights with the approval of the Streets Department. In order to connect the Concessionaire will be required to:

- (A) Inform the Streets Department of the location to determine if any special engineering is required.

(B) Hire a Pennsylvania Department of Transportation approved electrical/traffic signal contractor.

(C) Construct conduit to connect to the street light.

(D) Build a new foundation for the street light that includes a breaker between the street light and the Street Furniture.

(E) Register with PA One Call in order to be notified of future work that may impact the connection.

(d) Permit and Approval Procedures: The design, construction and location of all new Street Furniture, and the design and placement of all advertisements on new or existing Street Furniture must be approved by the relevant City departments, commissions and agencies prior to installation. The Concessionaire will be required to obtain, at its own expense, all necessary licenses, permits, approvals and authorizations from relevant City, state or federal departments, commissions and agencies. The City shall cooperate with the Concessionaire during the permit approval process. The City will provide a venue for all of the required City approval bodies to meet with the Concessionaire on a regularly-scheduled basis to facilitate the approval process. Approvals currently required by the City related to Street Furniture are described below:

i. **Department of Public Property:** The Department will be responsible for the management of the Agreement with the Concessionaire. It will ensure that the Street Furniture is properly maintained and that appropriate policies and procedures are in place during the Term of the Concession Agreement. The Department shall also have approval rights over the content, material and location of all advertisements, as further described in the Advertising Policy.

ii. **Streets Department:** The Streets Department through its Right of Way Unit is responsible for assuring that Street Furniture within the right of way allows for acceptable pedestrian flow and adequate sight lines for pedestrians and vehicular traffic and will review and approve the placement (before and after installation) of Street Furniture. Other sections of the Streets Department will be responsible for reviewing the Street Furniture structures, including the design suitability of materials.

iii. **Department of Parks and Recreation:** The Department of Parks and Recreation has permitting jurisdiction for any site on or within 200 feet of the Benjamin Franklin Parkway. It also has jurisdiction over the City's seven major watershed parks and several Center City squares.

iv. **Philadelphia Art Commission:** The Art Commission reviews the design of all structures on public property or located within the public right of way. The Street Furniture design must be approved by the Art Commission.

(e) Submission of Installation Request: Concessionaire will work with the Department to establish a Street Furniture installation process. A form, such as the one below will initiate the approval process for installation. Note, this form is accompanied by a larger more detailed plan from the Concessionaire.

Sample Street Furniture Inspection Request Form

THIS IS NOT A PERMIT

Application Date: _____

Reserved for TITAN info

Type of furniture: _____

Corner _____ Location: _____ Zip Code: _____

Legal Width _____

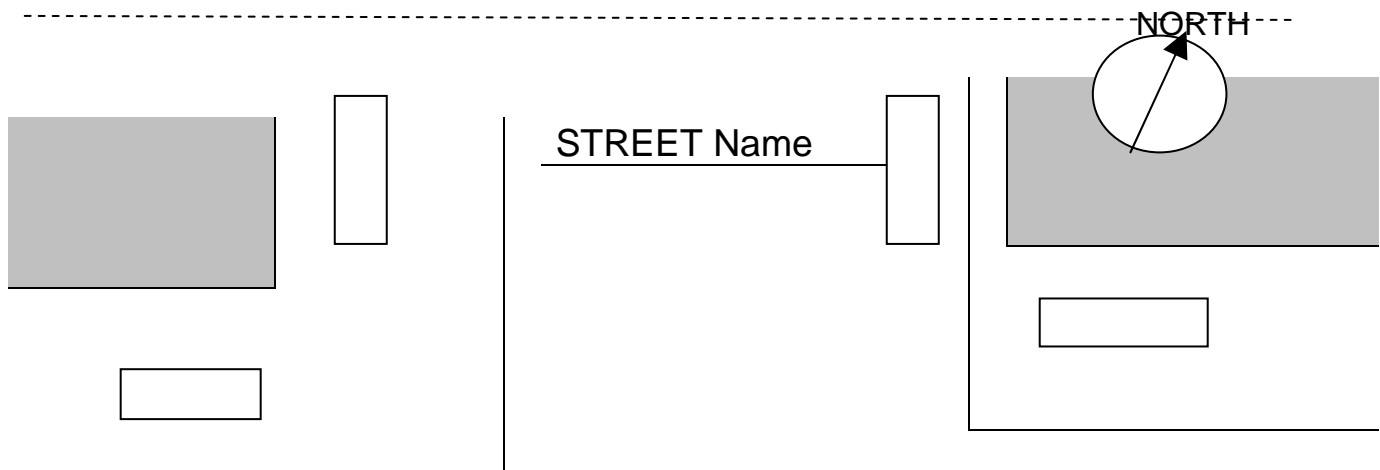
Bus Shelter Tracking Number _____ Status: (New or Existing?) _____

Width _____

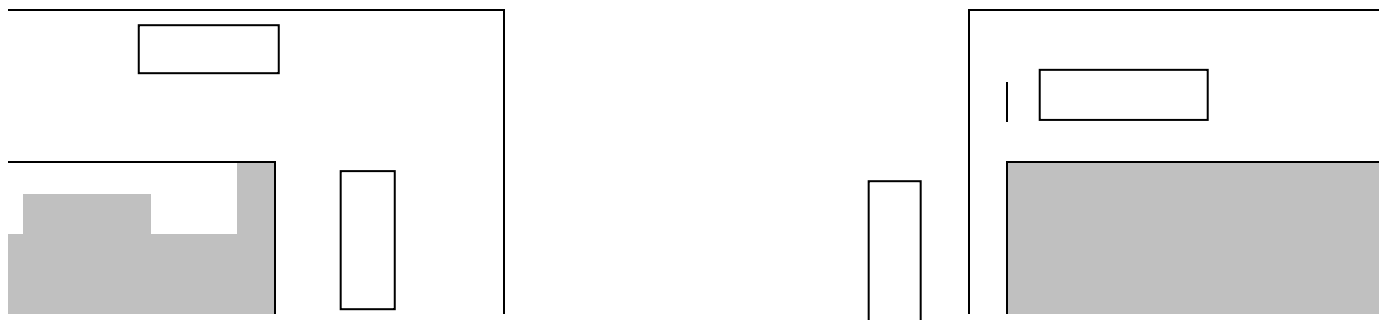
Electrified? _____

Length _____

Bus Route (s) _____



STREET Name _____



Streets Department:	Inspector:	_____
Application # _____	Inspection Date:	_____
Decision: _____	Comments:	_____

Guidelines how to fill this out:

Corner: NE = Northeast, SE =southeast, NW=Northwest, SW=Southwest

Location: State what street the Shelter is actually on, @ nearest intersection

Legal Width of ROW: Call 215 686 5565 (City plans) to Obtain this will be 12-26-12 format

In the sample Intersection, mark the location of the Street Furniture.
An additional site plan with specific measurements and pavement repairs should be attached to this form.

Bus Shelter Tracking #, If MOTU has one enter here

Policy:

Bus Shelters will not be approved if the remaining sidewalk does not meet Complete Streets handbook guidelines. Min 6 foot remaining (possibly more req'd).

Bus Shelters must be placed a minimum 18" from Curb.

This approval does not approve placement of underground facilities.

This application is for new or replacement Street Furniture locations, once approved, a Lane Closure permit is required.

This approval will allow the lane Closure permit to be processed.

(f) Maintenance

i. Maintenance Plan

(A) **General:** The Street Furniture shall be kept in safe, clean and complete condition and in good order and repair, with any damage to be promptly repaired at the Concessionaire's expense. (Damage includes graffiti.) Concessionaire agrees to promptly service, repair or replace any Street Furniture that is damaged or vandalized. This includes repairs and maintenance of sidewalks, or the portions of which are damaged due to provision of electrical connections - or an accident.

Concessionaire should have a plan for regular cleaning and timely response to damaged Street Furniture.

(B) **Cleaning:** Concessionaire shall, at a minimum, adhere to the following cleaning and preventive maintenance schedules for the Street Furniture:

- a. Once each week all display panels shall be cleaned on the outside surface and all other glass panels shall be cleaned on both surfaces.
- b. Once each week the sidewalk underneath the Shelters and Honor Box Condos shall be cleaned, including a 4 foot swath around the Shelter, and trash and debris removed.
- c. Four times a year, or more often if necessary, non-glass support structures, the ceiling (including the ceiling fixture) and the roof shall be cleaned.
- d. Posters, pamphlets and other material not a part of the formal advertising or display or SEPTA notifications shall be removed from Street Furniture panels as quickly as possible, but no later than the time of the next regularly scheduled cleaning required by A. and B. above.
- e. All lighting components shall be maintained to ensure lights function appropriately.

(C) **Maintenance:** Concessionaire shall, at a minimum, adhere to the following preventive maintenance schedules for the Street Furniture: Weekly inspections for structural integrity (footings, exposed or loose bolts, leaning structures, bent, broken, or rusted out frame), leaks, broken light bulbs, loose fixtures, etched or broken glass, advertisements, and removal of graffiti, paint, markers, stickers, posters and other unauthorized postings.

(D) **Snow and Ice Removal:** Concessionaire shall develop and implement a snow and ice removal procedure. The City requires that a four foot wide path be cleared to provide access to and from Shelters and Benches to the closest intersection (if within 30 feet) (including curb ramps) and that plowed snow be removed from the curb line. A path should also be cleared from on and around Benches and Honor Box Condos to allow for access. Snow and ice removal must

begin within one hour after the final accumulation of snow fall be completed at all structures within 24 hours.

(E) **Hazardous Conditions:** Concessionaire shall inspect a report of broken glass or other hazardous condition, such as exposed electrical wires, an obstruction of the sidewalk or access to an abutting building within two hours of notice. The broken glass or other hazardous conditions must be removed within 4 hours and replaced within 24 hours. If a piece of Street Furniture is destroyed, the Concessionaire shall remove the structure remains within 24 hours of notification and replace the structure within 15 days. In conjunction with such removal, the Concessionaire shall, at its own expense, restore the affected sidewalk.

(F) **Notifications:** Concessionaire should accept reports of maintenance problems and hazardous conditions by phone.

(G) **Failure to Comply:** In the event that the Concessionaire fails to comply with this Section 4(f), the City shall first give written notice of the Concessionaire's failure to comply. The Concessionaire shall have 48 hours, or such additional cure period as the City may authorize, to correct the Concessionaire's failure to comply. If the Concessionaire fails to cure or fails to provide a plan reasonably acceptable to the City to correct the failure, it will be subject to liquidated damages of \$100 per day per effected item of Street Furniture, subject to the cap detailed in Section 2.2.3 of the Concession Agreement. In the event that one specific incident of non-performance provides a basis for the assessment of multiple Liquidated Damages items (i.e., more than one item among the items listed in Exhibit A), only one item of Liquidated Damages identified in Exhibit A per unit of Street Furniture per day may be assessed with respect to that incident of non-performance.

(G) Operations

i. Office and Staffing. Concessionaire shall maintain and adequately staff a management office in the City of Philadelphia. That office shall be open, at a minimum, during normal business hours and shall answer questions and receive complaints regarding Street Furniture. In addition, Concessionaire shall maintain a twenty-four hour per day emergency telephone service to receive complaints regarding Street Furniture. On all Street Furniture there shall be affixed a conspicuous notice, in form approved by the City, setting forth the Concessionaire's name, and emergency telephone numbers. Concessionaire shall maintain a log of all questions and complaints received and shall submit to the City a monthly written report regarding such questions and complaints and the time and manner of their resolution.

ii. Maintenance/Repair Facility. It is understood and agreed that Concessionaire shall have and maintain a facility located in the City of Philadelphia for maintenance and repair of Street Furniture throughout the Term of this Agreement.

iii. Monthly Reports. On or before the 25th day of each month Concessionaire shall submit to the City, in form and with reasonable detail satisfactory to the City, a statement of its Gross Revenue for each type of Street Furniture for the preceding month upon which the percentage payments to the City are computed. This statement shall be signed by a responsible accounting officer of Concessionaire. Any false statement made knowingly by Concessionaire constitutes a material default. This statement should include the inventory list of Street Furniture in service, highlighting any additions or reductions to ad panels from that quarter. In addition, monthly status reports shall be distributed electronically to the Department to provide a monthly and year-to-date summary of the services provided. The Monthly Status Report is due on the fifth of each month prior to close of business or, if this day falls on a weekend or City holiday, on the following business day. The report shall specifically include but not be limited to maintenance and repair logs, response times, reports of emergencies, damage to structures, replacement of parts, as well as the number and specific locations where Street Furniture was installed.

EXHIBIT B
STREET FURNITURE LOCATIONS

EXHIBIT C
ECONOMIC OPPORTUNITY PLAN

3 | EQUAL OPPORTUNITY PLAN

THE SENIOR MANAGERS OF TITAN HAVE AN EXEMPLARY RECORD OF PROACTIVE OEO/ MBE/WBE/DBE ("OEO") INVOLVEMENT IN OUR ADMINISTRATION OF CONTRACTS. WE ARE COMMITTED TO MAXIMIZING OEO PARTICIPATION IN ALL OUR BUSINESS DEALINGS. THIS IS A CORPORATE COMMITMENT THAT WE TAKE VERY SERIOUSLY. AS SHOWN BELOW, WE ARE CURRENTLY IN FULL COMPLIANCE WITH (AND IN ALL CASES EXCEEDING) OUR CONTRACTUAL OEO PARTICIPATION GOALS IN CONNECTION WITH EACH OF THE CONTACTS THAT HAVE SET A GOAL. WE WILL CONTINUE THIS COMMITMENT IF AWARDED THE NEW CONTRACT AND WILL EXCEED THE STATED GOAL.

We have completed and signed the Economic Opportunity Plan on the following pages. Titan will be proactive in maximizing OEO/MBE/WBE/DBE participation if we awarded the New Concession and will exceed the stated goals. The following subcontractors in Philadelphia will support us at if we are awarded the New Concession:

The following subcontractors in Philadelphia will continue to support us if we are awarded the New Concession:

Subcontractor	Service Provided	
Aquarius Enterprises LLC	Installations and repair/fabrication services	WBE
Metropolitan Service and Maintenance	Bus Shelter Maintenance	MBE
Russell Cress Co., Inc.	Miscellaneous Durable Goods Merchant/Wholesaler and Fabricator	WBE
Moon Electric, Inc.	Electrical Services	MBE

**City of Philadelphia
Economic Opportunity Plan
for
[STREET FURNITURE]**

I. Introduction and Definitions

A. Executive Orders 03-12 and 14-08 establish an antidiscrimination policy relating to the participation of Minority (MBE), Woman (WBE) and Disabled (DSBE) Owned Business Enterprises (collectively referred to hereafter as M/W/DSBEs) in City Contracts (the "Antidiscrimination Policy"). Executive Order 14-08 disestablished the Minority Business Enterprise Council and transferred its administrative functions under Executive Order 03-12 to the Office of Economic Opportunity ("OEO"). The purpose of the Antidiscrimination Policy is to provide equal opportunity for all businesses and to assure that City funds are not used directly or indirectly, to promote, reinforce or perpetuate discriminatory practices. In support of the City's Antidiscrimination Policy, Chapter 17-1600 of The Philadelphia Code requires the development and implementation of "Economic Opportunity Plan(s)" for certain classes of contracts and covered projects as defined in Section 17-1601. The Economic Opportunity Plan ("Plan") memorializes the successful Respondent's best and good faith efforts to provide meaningful and representative opportunities for M/W/DSBEs in contracts and covered projects and identifies the successful Respondent's outreach and hiring activities for employing an appropriately diverse building trades workforce in connection with the contract or covered project. The City encourages M/W/DSBEs to respond as prime proposers or as joint venture partners, where the M/W/DSBE partner's financial and business contribution is commercially acceptable.

This Request For Proposals ("RFP") and any resulting Project are subject to the Plan requirements as described in Section 17-1603 (2). Accordingly, by submission of its Proposal, a responsible Respondent makes a legally binding commitment to abide by the provisions of this Plan which include Respondent's commitment to exercise its best and good faith efforts throughout the contract term to provide meaningful and representative contracting opportunities for M/W/DSBEs and to employ an appropriately diverse workforce of tradespeople, including minority and female persons, in all phases of the contract awarded under this RFP.

Respondent hereby verifies that all information submitted to the City including without limitation, the Plan and all forms and attachments thereto, are true and correct and is notified that the submission of false information by Respondent is subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn falsification to authorities.

B. For the purposes of this Plan, MBE, WBE and DSBE shall refer to businesses so recognized by the City of Philadelphia by its Office of Economic Opportunity ("OEO"). For this Plan, the term "Best and Good Faith Efforts," the sufficiency of which shall be in the sole determination of the City, means: a Respondent's efforts, as evaluated by the City, the scope, intensity and appropriateness of which are designed and performed to achieve meaningful business opportunities for M/W/DSBEs and building trades employment opportunities for journey person and apprentice minorities and females. The following are examples of Best and Good Faith Efforts:

EOP-Street Furniture(revised)
City of Philadelphia
Office of Economic Opportunity

- Respondent seeks assistance from the Philadelphia area building trades, pre-apprenticeship and workforce development programs to conduct employment outreach and identify minority and female tradespeople for work on the project.
- Respondent adheres to a published policy of nondiscrimination in the hiring, retention and promotion of employees which includes communication of that policy to Respondent's contractor(s) and their project forepersons.
- Respondent makes commitments to use MBEs, WBEs and DSBEs in its contract for commercially acceptable subcontracted services and material supply even when the Respondent might otherwise prefer to perform/supply these items without subcontracting.
- Respondent timely solicits through all reasonable and available means the interest of certified businesses that have the capability to perform the work of the contract. Such efforts include use of the OEO Registry of Certified Firms, solicitation through pre-bid meetings and job fairs, advertising in minority focused publications, written mailings to M/W/DSBEs. The Respondent must determine with certainty if the M/W/DSBEs are interested by taking appropriate steps to follow up on initial solicitations; one time contact, without any follow up, is not acceptable.
- Respondent provides interested MBEs, WBEs and DSBEs adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
- Respondent provides arms length business assistance to interested M/W/DSBEs which may include access or introduction to major manufacturer/suppliers, lending institutions and union halls.
- Respondent negotiates in good faith with interested M/W/DSBEs. A Respondent using good business judgment would consider a number of factors in negotiating with subcontractors, including M/W/DSBE subcontractors, and would take a firm's price and capabilities as well as the objectives of Chapter 17-1600 into consideration.

II. Economic Opportunity Plan Commitments

A. M/W/DSBE Participation

1. Participation Ranges

As a benchmark for the Respondent's expression of its Best and Good Faith Efforts to provide meaningful and representative opportunities for M/W/DSBEs in this contract, the following participation ranges have been developed. These participation ranges represent, in the absence of discrimination in the solicitation and selection of M/W/DSBEs, the percentage of MBE, WBE and DSBE participation that is reasonably attainable on this contract through the exercise of Respondent's best and good faith efforts. These ranges are based upon an analysis of factors such as the size and scope of the contract and the availability of MBEs, WBEs and DSBEs to perform various elements of the contract. For this contract, participation ranges are established for two phases of the contract: 1. Design, Fabrication and Installation (e.g., architectural,

construction) and 2. Operations and Maintenance (e.g., advertising sales, art display, trash hauling, janitorial services):

RFP	MBE	WBE	DSBE
PHASE One Design Fabrication Installation	20%-25%	10%-15%	0%
RFP	MBE	WBE	DSBE
PHASE Two Operations Maintenance	22%-25%	13%-15%	0%

a. Documentation of Best and Good Faith Efforts

Respondent shall respond to the Participation Ranges by completing the *Documentation of Best and Good Faith Efforts Form* ("BGFE Form") in Section VI, documenting its solicitations and commitments with M/W/DSBEs, and detailing its exercise of best and good faith efforts to include M/W/DSBEs in the contract. The submission of the BGFE Form is an element of responsiveness and failure to include this form may result in the rejection of the proposal.

(1) The BGFE Form must include the company name, address, contact person, telephone number, facsimile number and OEO registry number of each M/W/DSBE firm solicited for participation under this RFP (regardless of the response by the firm), a detailed description of the services or the supply effort solicited/quoted and the dollar amount and percentage of contract commitments made to M/W/DSBE firms. Respondent must avoid using one-word descriptions of the services or supply effort and is required to submit copies of the supporting quotation(s) or letter(s) of intent. If no commitments are made, or if quotes were not received from M/W/DSBE firms solicited by the Respondent, Respondent must provide an explanation. Only firms that are recognized by OEO as certified M/W/DSBEs by the time of award will receive credit as a Best and Good Faith Effort. A list of M/W/DSBEs is maintained by the OEO and is available online at www.phila.gov/mbec/directory or in printed format at the OEO offices, located in the Municipal Services Building, 1401 JFK Blvd. Suite 330, Philadelphia, PA. 19102-1666.

(2) The Respondent's identified commitment to use an M/W/DSBE on the BGFE Form constitutes a representation by Respondent that the M/W/DSBE is capable of completing the subcontract with its own workforce, and that the Respondent has made a legally binding commitment with the firm. The listing of the M/W/DSBE firm by Respondent further represents that if Respondent is awarded the contract, Respondent will subcontract (or partner, in the case of a joint venture) with the listed firm(s) for the work or supply effort described and the dollar/percentage amount(s) set forth on the BGFE Form. The Successful Respondent must maintain its M/W/DSBE percentage commitments throughout the term of the contract, as it may be amended from time to time, and shall continue to exercise Best and Good Faith Efforts for the duration of the contract.

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City of Philadelphia
Office of Economic Opportunity

(3) A Respondent that enters into a subcontract with an M/W/DSBE shall be considered to have made a Best and Good Faith Effort only if the M/W/DSBE subcontractor performs a commercially acceptable function ("CAF"). An M/W/DSBE is considered to perform a CAF when it engages in meaningful work or supply effort that provides for a distinct element of the subcontract, where the distinct element is worthy of the dollar amount of the subcontract and where the M/W/DSBE carries out its responsibilities by actually performing, managing and supervising the work involved. The City may evaluate the amount of work subcontracted, industry practices and any other relevant factors in determining whether the M/W/DSBE is performing a CAF and in determining the amount of credit the Respondent receives towards the participation ranges. For example, a Respondent using an M/W/DSBE non-stocking supplier (i.e., a firm that does not manufacture or warehouse the materials or equipment of the general character required under the contract) to furnish equipment or materials will only receive credit towards the participation ranges for the fees or commissions charged, not the entire value of the equipment or materials furnished.

(4) In calculating the percentage of M/W/DSBE participation, Respondent shall apply the standard mathematical rules in rounding off numbers. In the event of inconsistency between the dollar and percentage amounts listed on the BGFE Form, the percentage will govern. For this contract, the percentage of M/W/DSBE participation will relate to the Respondent's Offer of Compensation which is both a fixed guaranteed annual minimum fee and a percentage of annual gross revenues.

(5) Upon award, the letters of intent, quotations and any other accompanying documents regarding solicitation and commitments with MBEs, WBEs and DSBEs, including the BGFE Form, become part of the contract. M/W/DSBE percentage commitments are to be maintained throughout the term of the contract and shall apply to the total contract value (including amendments). Any change in commitment, including but not limited to substitutions for the listed firms, changes or reductions in the work and/or listed dollar/percentage amounts, must be pre-approved in writing by OEO. Throughout the term of the contract, Respondent is required to continue its Best and Good Faith Efforts.

B. Employment of a Diverse Workforce

1. Employment Benchmarks and Outreach

Respondent agrees to exhaust its Best and Good Faith Efforts to employ minority persons and females in its workforce. As evidence of its Best and Good Faith Efforts, Respondent shall establish and maintain a current list of minority and female recruitment sources and provide written notification to these recruitment sources, to community organizations and the trades unions when Respondent has employment opportunities available. Respondent shall maintain a record of the organizations' responses. Respondent agrees to contact the Diversity Apprenticeship Program, Careerlink Philadelphia, Opportunity Industrial Center, Greater Philadelphia Urban Affairs Coalition, Lucien Blackwell Apprenticeship Program and similar programs to identify tradespersons and employees. Respondent is encouraged to sponsor minority and female apprentices and consider working with representatives of trades unions to create apprenticeship

opportunities for Philadelphia residents. Respondent is obligated to exhaust its Best and Good Faith Efforts to employ¹:

Minority Apprentices – 50% of all hours worked by all apprentices
Minority Journeymen – 32% of all journey hours worked across all trades
Female Apprentices – 7% of all hours worked by all apprentices
Female Journeypersons 7% of all hours worked across all trades

Respondent agrees that when a union with which Respondent has a collective bargaining agreement has impeded Respondent's efforts to meet its obligations hereunder, Respondent shall immediately refer this information to the City Official designated in the contract.

2. Training

If Respondent operates on-the-job training programs and/or participates/funds union administered training programs, Respondent is required to expressly include opportunities for minority persons, females and Philadelphia residents to participate in such programs, including apprenticeship and trainee programs relevant to Respondent's employment needs. Subject to any applicable journeyman-to-apprentice ratios, Respondent is required to maximize the use of apprentices on the project.

III. Evaluation of Responsiveness and Responsibility

A. Evaluation and Determination

1. The City, acting through its OEO, will evaluate the responsiveness of the Respondent's Plan to these requirements. OEO reserves the right to request further documentation and/or clarifying information at any time prior to the award of the contract which may result in Respondent's amendment to its BGFE Form.

2. Best and Good Faith Efforts will be evaluated on the basis of Respondent's BGFE Form and any other information requested from Respondent by the City.

B. Administrative Reconsideration

1. If the OEO determines that the Respondent has not made sufficient Best and Good Faith Efforts, the Respondent will be notified and may file a written appeal with OEO within forty-eight (48) hours of the date of notification. The decision of OEO may be appealed in writing within forty-eight (48) hours of the date of OEO's decision to Chief Operating Officer of the Commerce Department or his designee whose decision shall be final. If it is determined that the Respondent did not make sufficient Best and Good Faith Efforts, its Proposal will be rejected.

2. Notwithstanding compliance with the requirements set forth herein, the City reserves the right to reject any or all proposals as deemed in the best interest of the City.

¹ These goals are the recommendations of the Mayor's Commission on Construction Industry Diversity.
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City of Philadelphia
Office of Economic Opportunity

IV. Compliance and Monitoring of Best and Good Faith Efforts

A. The Successful Respondent agrees to cooperate with OEO in its compliance monitoring efforts, and to submit, within the time limits prescribed by OEO, all documentation which may be requested by OEO relative to the awarded contract, including the items described below. The Successful Respondent must provide as required and maintain the following contract documentation for a period of three (3) years following the expiration or earlier termination of the contract:

- Copies of signed contracts and purchase orders with M/W/D/S/B/E subcontractors;
- Evidence of payments (cancelled checks, invoices, etc.) to subcontractors and suppliers to verify participation;
- Telephone logs and correspondence relating to M/W/D/S/B/E commitments.

B. The Successful Respondent shall submit, on a quarterly basis for the duration of the contract and in a form acceptable to the City, reports which document the utilization and actual payments to committed M/W/D/S/B/E and hourly employment of minority persons and females in connection with Phase One and Phase Two of this contract ("Quarterly Reports").

C. Prompt Payment of M/W/D/S/B/E

1. The Successful Respondent shall pay its M/W/D/S/B/E within five (5) business days after acceptance of work or materials from an M/W/D/S/B/E.
2. The Quarterly Reports shall reconcile actual dollar amounts paid to M/W/D/S/B/E with M/W/D/S/B/E commitments presented in the BGFE Form.

D. Oversight Committee

1. For this project, OEO establishes a Project Oversight Committee consisting of representatives from the Successful Respondent's company, representatives of City Council, OEO, and any other appropriate individuals ("Committee"). The Committee will meet regularly and no less than bi-annually, to provide advice for the purpose of facilitating compliance with the Plan.
2. The Oversight Committee will meet no later than one (1) month after conformance of the contract.

V. Remedies and Penalties for Non-Compliance


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City of Philadelphia
Office of Economic Opportunity

A. The Successful Respondent agrees that its compliance with the requirements of the Plan is material to the contract. Any failure to comply with these requirements may constitute a substantial breach of the contract. It is further agreed and understood that in the event the City determines that the Successful Respondent hereunder has failed to comply with these requirements the City may, in addition to any other rights and remedies the City may have under the contract, or any bond filed in connection therewith or at law or in equity, exercise one or more of the remedies discussed below, as deemed applicable, which shall be deemed cumulative and concurrent:

- a. Terminate the contract, in whole or in part.
- c. Suspend the Successful Respondent from proposing and/or participating in any future City contracts for a period of up to three (3) years.
- d. Recover as liquidated damages, one percent of the total dollar value of the contract (MAG plus anticipated share of gross revenue) for each one percent (or fraction thereof) of the commitment shortfall.

The remedies enumerated above are for the sole benefit of the City and City's failure to enforce any provision or the City's indulgence of any non-compliance with any provision hereunder, shall not operate as a waiver of any of the City's rights in connection with any contract resulting from this RFP nor shall it give rise to actions by any third parties including identified M/W/DSBE subcontractors. No privity of contract exists between the City and the M/W/DSBE subcontractor identified in any contract resulting from this RFP. The City does not intend to give or confer upon any such M/W/DSBE subcontractor(s) any legal rights or remedies in connection with subcontracted services under any law or Executive Order or by any reason of any contract resulting from the RFP except such rights or remedies that the M/W/DSBE subcontractor may seek as a private cause of action under any legally binding contract to which it may be a party.

VI. Documentation of Best and Good Faith Efforts [See Forms on following pages; these Forms, as completed by Respondent, should be submitted with the RFP as a matter of Responsiveness and Responsibility]



11/24/14

SIGNATURE OF BIDDER AND TITLE

DATE

Scott E. Goldsmith

Executive Vice President and Chief Commercial Officer



11/25/2014

ANGELA DAVID-BURTON, Executive Director, Office of Economic Opportunity DATE

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City of Philadelphia
Office of Economic Opportunity

Metropolitan Service and Maintenance [MBEC]	_____
Moon Electric, Inc.	_____
_____	_____
_____	_____
Aquarius Enterprises LLC [WBE]	_____
_____	_____
_____	_____
_____	_____
Russell Cress Co., Inc. [DSBE]	_____
_____	_____
_____	_____

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 City of Philadelphia
 Office of Economic Opportunity

9
 ECONOMIC OPPORTUNITY PLAN (EOP)

CITY OF PHILADELPHIA – BUSINESS, CORPORATE AND SLAVERY ERA INSURANCE ORDINANCE

A Business Entity entering into a Contract with the City must complete an Affidavit disclosing any and all records of Participation or Investment in, or Profits derived from Slavery, including Slaveholder Insurance Policies, during the Slavery Era. The Business Entity must complete and submit the Affidavit and any attachments to the Procurement Department. This is required only of the Business Entity actually selected for award of a Contract. It must be done after the Contract or Contract amendment has been executed. Questions regarding the Affidavit may be directed to the Procurement Department Customer Service at bid.info@phila.gov.

City Department Awarding Agreement _____ Department Contact Person _____

AFFIDAVIT DISCLOSING SLAVERY ERA PARTICIPATION, INVESTMENTS, OR PROFITS

1. I, Scott E. Goldsmith, am authorized to bind contractually the Business Entity identified below.

2. Information about the Business Entity entering into a Contract with the City is as follows:

<u>Titan Outdoor LLC</u>	<u>212-891-5688</u>	<u>212-644-2010</u>
Business Entity Name	Phone	Fax
<u>100 Park Avenue, Suite 610</u>	<u>New York, NY</u>	<u>10017</u>
Street Address	City	State Zip

3. Has the Business Entity submitted the Slavery Affidavit previously? NO YES Date of prior submission: _____ If "NO," complete Section 4, 5, and 6. If "YES," list the date of prior submission and skip to Section 6 and execute the form.

4. The Business Entity came into existence in 1999 (year).

5. The Business Entity has searched its records and those of any Predecessor Companies for information relating to Participation or Investments in, or Profits derived from Slavery or Slaveholder Insurance Policies. Based on that research, the Business Entity represents that:

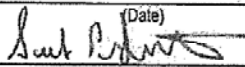
The Business Entity found no records that the Business Entity or any of its Predecessor Companies had any Participation or Investments in, or derived Profits from, Slavery or Slaveholder Insurance Policies during the Slavery Era.


_____ The Business Entity found records that the Business Entity or its Predecessor Companies Participated or Invested in, or derived Profits from Slavery during the Slavery Era. The nature of that Participation, Investment, or Profit is described on the attachment to this Affidavit and incorporated herein.

_____ The Business Entity found records that the Business Entity or its Predecessor Companies bought, sold, or derived Profits from Slaveholder Insurance Policies during the Slavery Era. The names of any Enslaved Persons or Slaveholders under the Policies are listed on the attachment to this Affidavit and incorporated herein.

6. I declare under penalty of perjury under the laws of the Commonwealth of Pennsylvania that the representations made herein are true and correct to the best of my knowledge.

Executed on November 24, 2014 at New York, New York
(Date) (City) (State)

Signature:  Title: EVP and Chief Commercial Officer

Notary:  Linda Ochutsky
 No. 02856261993
 Exp. 5/21/16 DEFINITIONS

City means the City of Philadelphia.

Business Entity means any individual, domestic corporation, foreign corporation, association, syndicate, joint stock company, partnership, joint venture, or unincorporated association, including any parent company, subsidiary, exclusive distributor or company affiliated therewith, engaged in a business or commercial enterprise.

Contract means any agreement, franchise, lease or concession including an agreement for any occasional professional or technical personal services, the performance of any work or service, the provision of any materials or supplies or rendering of any service to the City of Philadelphia or the public, which is let, awarded or entered into with or on behalf of the City of Philadelphia or any Department or Agency of the City.

Enslaved Person means any person who was wholly subject to the will of another and whose person and services were wholly under the control of another and who was in a state of enforced compulsory service to another during the Slavery Era.

Investment means to make use of an Enslaved Person for future benefits or advantages.

Participation means having been a Slaveholder during the Slavery Era. Predecessor Business Entity means an entity whose ownership, title and interest, including all rights, benefits, duties and liabilities were acquired in an uninterrupted chain of succession by the Business Entity.

Profit means any economic advantage or financial benefit derived from the use of Enslaved Persons.

Slaveholder means holders of Enslaved Persons, owners of business enterprises using Enslaved Persons, owners of vessels carrying Enslaved Persons or other means of transporting Enslaved Persons, merchants or financiers dealing in the purchase, sale or financing of the business of Enslaved Persons.

Slaveholder Insurance Policies means policies issued to or for the benefit of Slaveholders to insure them against the death of, or injury to, Enslaved Persons.

Slavery means the practice of owning Enslaved Persons.

Slavery Era means that period of time in the United States of America prior to 1865.



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Search »

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- Certified Vendors
- Users
- Contracts
- Outreach Campaigns
- PO Payments
- Certification Apps
- Search Results »**

Reporting »

Create »

Tools »

Settings »

Help & Support »

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City of Philadelphia

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[Users](#) | [Vendors](#) | [Contracts](#) | [Outreach](#) | [Payments](#)

Listed below are all of the vendors that match your search criteria. Use the sort and filter functions of the table to reduce the size of the list. You can view listings by using the navigation line at the bottom of the table.

To resort, click on column title.

<u>Business Name</u>	<u>Phone Number</u>	<u>Location</u>	<u>Certification</u>	<u>Act</u>
All ▼				
Russell Cress Company Inc.	718- 786- 0099	Monroe, NY	Philadelphia DSBE (Deactivated) PAUCP DBE (Active)	20043342 QuickView Contract

1 - 1 of 1 record displayed: Page [1](#) ▼

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[Add to Vendor List](#) [Export](#)
[Send Certification Letters](#)
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Economic Opportunity Plan Addendum

Titan Outdoor LLC

November 28, 2014

I. Equity Ownership

"Economic Opportunity Plans," to require that each Economic Opportunity Plan include information concerning the Equity Ownership (as defined) of (1) the contractor, developer and/or recipient of financial assistance required to submit the Plan; (2) participants (as defined) engaged by the contractor, developer and/or recipient of financial assistance; and (3) the eventual owner or owners of the project or contract to which the Plan relates; and requiring periodic reports for the purpose of updating Equity Ownership information; all under certain terms and conditions.

Identify the current equity owners of the project.

Type of Ownership	% Minority Owned	% Women-Owned	% Disabled Persons
Sole Proprietorship			
Partnership			
Corporation	0%	Less than 1%	0%

If the project is privately owned, the following individuals will become the anticipated Equity Owners upon completion.

Type of Ownership	% Minority Owned	% Women-Owned	% Disabled Persons
Sole Proprietorship			
Partnership			
Corporation	0%	Less than 1%	0%

Following the completion of the project, the project owner is responsible for meeting the reporting guideline identified in the Philadelphia Code.¹

II. Diversity Practices

In compliance with Chapter 17-1603 entitled Equal Opportunity Plan: Contents The Economic Opportunity Plan shall contain a statement from the contractor, developer and/or recipient of financial assistance summarizing past practices by identifying and describing examples of processes used to develop diversity at any/all levels of its organization including, but not limited to, Board and managerial positions. This statement shall also summarize strategic business plans specific to current or past practices of M/W/DSBE utilization on government and non-government projects and procurement. Where appropriate, such a statement should contain:

¹ Philadelphia Code 17-1603.

<p>Describe employment and recruitment policies used to achieve diversity in your workforce.</p>	<p>At Titan, diversity is part of our culture. We believe it is imperative that we bring a genuine and deep understanding of the markets in which we deliver our client's message. To do this, our organization must be comprised of a staff that reflects the communities we serve who bring unique and creative perspectives to solving problems for our clients. By respecting and encouraging the unique experiences and talents of people from diverse backgrounds, we enhance our thinking, creative energies and capabilities. Diversity expresses itself in many different ways- age, gender, race, nationality, culture, marital status, sexual orientation, religion, education or disability, among others. We strive to maximize the potential of our employees by harnessing these differences and creating a productive, inclusive environment in which everyone feels respected and valued, where their talents are fully utilized, and in which company goals are achieved. It is our goal to recruit, engage and develop outstanding people from a wide range of backgrounds and skills and to create an inclusive environment where all employees can contribute to their fullest potential. Tapping the skills, ideas and perspectives of a diverse workforce will make us a better company. It is Titan's policy to:</p> <ul style="list-style-type: none"> • Ensure that everyone receives equal treatment in all aspects of employment policies and working practices. • Foster an open working environment free from discrimination and harassment. • Employ a workforce that reflects the diverse communities in which we operate. • Raise employee awareness by designing and delivering sustainable diversity initiatives.
<p>Provide the race, gender, and residential (local) status of your</p> <ol style="list-style-type: none"> a) Board of Directors b) Management c) General Workforce 	<ol style="list-style-type: none"> a). Titan's Board of Directors is comprised of 5 individuals. They are all male and are Caucasian. b). Titan's management is comprised of 37 individuals. There are 30 men and 7 women. 29 are white, 3 are African American, 3 are Hispanic and 2 are Asian/pacific islander. c). Titan's general workforce is comprised of 413 individuals. 281 are male and 132 are female. 235 are white, 72 are African American, 78 are Hispanic and 27 are Asian or Pacific Islander and 1 is American Indian/Alaskan Native.

<p>Identify your organization's methods of solicitation and utilization of Minority, Woman and Disabled Businesses (M/W/DSBEs). Please be specific in describing outreach and any procurement policies that are focused on creating or sustaining business relationships with M/W/DSBEs.</p>	<p>Titan is deeply committed to advancing the participation of Minority, Woman and Disabled Businesses (M/W/DSBEs) in the performance of our Transit and Municipal contracts. We are committed to maximizing M/W/DSBE participation in all our business dealings. This is a corporate commitment that we take very seriously. We have committed to the stated goals established for the RFP and agree that all M/W/DSBEs will have a fair opportunity to participate in the performance of the Concession Agreement. We will utilize locally based certified M/W/DSBE by purchasing goods and services from them.</p>														
<p>What percentage of your company's total spend with vendors and suppliers is attributable to M/W/DSBEs? Please include a list of the largest M/W/DSBEs used by your organization in the last 12 months.</p> <p>a) Identify the type of goods or services purchased</p> <p>b) Amount of the contract.</p> <p>c) Indicate if any of these M/W/DSBEs are listed in the City of Philadelphia's Office of Economic Opportunity Registry.</p> <p>d) Are these companies certified as M/W/DSBEs? Do you rely on any particular certifying agency?</p> <p>e) If there is no previous M/W/DSBE utilization, the Plan shall contain a statement that explains the reason for the lack of M/W/DSBE participation in past contract(s) or project(s).</p>	<p>We purchase the following good and services from M/W/DSBE contractors in Philadelphia. All of our contractors are listed in the City of Philadelphia's Office of Economic Opportunity Registry</p> <ul style="list-style-type: none"> • Electrical contracting • Maintenance and repair • Posting of ads and cleaning of street furniture • Auto repair and servicing • Fabrication of parts <p>We are currently in full compliance with (and in all cases exceeding) our contractual M/W/DSBEs participation goals in connection with the following contracts.</p> <table border="1" data-bbox="657 997 1177 1480"> <thead> <tr> <th>Contract</th> <th>M/W/DSBE Participation (Controllable Expenses as of June, 2014)</th> </tr> </thead> <tbody> <tr> <td>SEPTA</td> <td>60%</td> </tr> <tr> <td>City of Philadelphia Bus Shelters</td> <td>84%</td> </tr> <tr> <td>Massachusetts Bay Transportation Authority</td> <td>44%67% WBE</td> </tr> <tr> <td>Los Angeles DOT</td> <td>94% MBE,</td> </tr> <tr> <td>Chicago Transit Authority</td> <td>83%</td> </tr> <tr> <td>New Jersey Transit</td> <td>59%</td> </tr> </tbody> </table>	Contract	M/W/DSBE Participation (Controllable Expenses as of June, 2014)	SEPTA	60%	City of Philadelphia Bus Shelters	84%	Massachusetts Bay Transportation Authority	44%67% WBE	Los Angeles DOT	94% MBE,	Chicago Transit Authority	83%	New Jersey Transit	59%
Contract	M/W/DSBE Participation (Controllable Expenses as of June, 2014)														
SEPTA	60%														
City of Philadelphia Bus Shelters	84%														
Massachusetts Bay Transportation Authority	44%67% WBE														
Los Angeles DOT	94% MBE,														
Chicago Transit Authority	83%														
New Jersey Transit	59%														

Describe any initiatives made by your organization to increase investment and promote equity ownership by minorities and women.	Titan is owned by a private equity company and members of the senior management team. We have promoted women and minorities from within in an effort to increase investment and equity ownership in our company.
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III. Disclosure of Women as Board Members and Executive Staff

As required by Section 17-104 of The Philadelphia Code entitled "Prerequisites to the Execution of City Contracts," Section 17-104(3) requires project owners to complete and submit this form. If the project owners believes that these requirements do not apply (e.g., project owner is a single-member Limited Liability Company), please disclose this information below with an explanation.

If these requirements do not apply to project owner, provide an explanation below.

Disclosure of Women as Board Members and Executive Staff

Pursuant to Section 17-104(3) (a) (i) of The Philadelphia Code, please provide the following information:

1. Current percentage of female executive officers in bidder's company:	20%
2. Current percentage of women on the executive board of the bidder's company:	14%
3. Current percentage of women on the full board of the bidder's company:	0%

Aspirational Goals for Women as Board Members and Executive Staff

Pursuant to Section 17-104(3) (a) (ii) of The Philadelphia Code, please provide the following information:

1. Percentage goal for female executive officers in bidder's company:	40%
2. Percentage goal for women on the executive board of the bidder's company:	30%
3. Percentage goal of women on the full board of the bidder's company:	25%

Identify Below Any Efforts to Achieve the Aforementioned Goals:

Titan is committed to participation of women in our executive team and board. We actively seek women in recruiting and have worked diligently to promote women into executive positions from within the company.

Estimated Expense Breakdown for Years 1-5

Subcontractor	Work to be Performed	Estimated Amount in Contract Year 1	Percentage of Total Controllable Expenses	Estimated Amount in Contract Year 2	Percentage of Total Controllable Expenses	Estimated Amount in Contract Year 3	Percentage of Total Controllable Expenses	Estimated Amount in Contract Year 4	Percentage of Total Controllable Expenses	Estimated Amount in Contract Year 5	Percentage of Total Controllable Expenses	Estimated Amount in Contract Year 1 - 5	Percentage of Total Controllable Expenses
Aquarius Enterprises	Installation & Repair	\$951,600	45%	\$316,704	32%	\$316,104	30%	\$316,704	27%	\$316,104	25%	\$1,917,216	32%
Metropolitan	Maintenance and Snow Removal	\$200,000	14%	\$250,000	26%	\$275,000	26%	\$300,000	26%	\$315,000	25%	\$1,340,000	23%
Russell Cress Co. Inc.	Fabrication of parts	\$17,148	1%	\$25,228	3%	\$31,055	3%	\$36,882	3%	\$42,710	3%	\$153,023	3%
Moon Electric	Electrical	\$532,100	37%	\$258,550	27%	\$257,900	24%	\$258,550	22%	\$257,900	21%	\$1,585,000	27%
Total OEO Expenses		\$1,400,848	96%	\$850,482	87%	\$880,059	83%	\$912,136	79%	\$931,714	75%	\$4,975,239	84%
Total Controllable Expenses		\$1,455,209	100%	\$974,700	100%	\$1,065,715	100%	\$1,159,231	100%	\$1,250,247	100%	\$5,905,102	100%

EXHIBIT D
ADVERTISING POLICY

CITY POLICY FOR MUNICIPAL ADVERTISING ON STREET FURNITURE INCLUDED IN THE STREET FURNITURE CONCESSION AGREEMENT

This policy addresses commercial and public service advertising on Street Furniture, defined below. Any advertising space on Street Furniture, or as authorized under any contract with the City, is a nonpublic forum.

1. General Definitions.

Advertisement: Sign, display, or other notice designed to attract public attention or patronage.

City: The City of Philadelphia.

Street Furniture: Any structure included in the Street Furniture Concession Agreement on which the Concessionaire has the right to place Advertisements.

Commercial Advertisement: An Advertisement for which a private individual or entity pays a fee to display that Advertisement on Street Furniture.

Public Property Commissioner: The Public Property Commissioner of the City of Philadelphia or his/her designee.

Department of Public Property: The Department of Public Property of the City of Philadelphia.

Public Service Advertisement: An Advertisement that is issued by the City, the Commonwealth of Pennsylvania, or the Federal Government.

2. Public Property Commissioner Approval Required.

No person shall post or display any Advertisement on Street Furniture without the express written consent of the Public Property Commissioner or their designee and in such a manner as prescribed by the Public Property Commissioner or his/her designee.

3. Commercial Advertisements. Street Furniture may display Commercial Advertisements subject to the following guidelines.

The Department of Public Property will not accept the following Commercial Advertisements for display on Street Furniture:

- i) Advertisements that do not relate primarily to the economic interests of the publisher or its audience nor direct attention to a business, industry, profession, commodity, service, activity, institution, product or entertainment offered for sale;
- ii) Advertisements relating to the sale or use of alcohol, tobacco products, or firearms;
- iii) Advertisements that relate to sexually-oriented businesses or products;
- iv) Advertisements that are obscene or pornographic;
- v) Advertisements relating to political campaigns or ballot measures;

EXHIBIT E
KEY PERSONNEL