

COORDINATED CITY DIGITAL SIGN PROGRAM AGREEMENT

BETWEEN

THE CITY OF CHICAGO

AND

INTERSTATE JCDECAUX, LLC

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COORDINATED CITY DIGITAL SIGN PROGRAM AGREEMENT

This Coordinated City Digital Sign Program Agreement is entered into as of the 1st day of January, 2013 (the “**Commencement Date**”), by and between Interstate JCDecaux, LLC, a Delaware limited liability company (the “**Contractor**”), and the City of Chicago, a municipal corporation and home rule unit of local government existing under the Constitution of the State of Illinois, (the “**City**”), at Chicago, Illinois.

RECITALS

WHEREAS, the City has negotiated with the Contractor with respect to the design, manufacture, assembly, installation, maintenance, programming, operation, removal and dismantlement of a coordinated City-wide digital sign program and network, including public service messaging and emergency communications services (the “**City Digital Network**”), at no cost to the City, in exchange for the City’s allowing the Contractor to place advertising on and share in certain revenues from such City Digital Network, in accordance with (i) the ordinance passed by the City Council of the City of Chicago on December 12, 2012 and published in the Journal of Proceedings of the City Council for such date at pages _____ through _____ (the “**Project Ordinance**”), (ii) this Agreement, (iii) the City Digital Sign Ordinances (as hereinafter defined), and (iv) all other applicable laws and ordinances; and

WHEREAS, the Contractor, in consideration of such advertising rights and sharing in revenues, has agreed to be responsible for the design, manufacture, assembly, installation, maintenance, programming, operation, removal and dismantlement of the City Digital Network and the fixtures and equipment appurtenant thereto, which shall be installed at the sites owned or controlled by the City listed in Exhibit 1C, and, as to any replacement and additional sites, as otherwise agreed to by the parties in accordance with Section 4.3 of this Agreement, at no cost to the City; and

WHEREAS, the Contractor’s obligation to pay the Guaranteed Initial Fees and the Guaranteed Annual Fees (as defined in Article 2) to the City is independent of the Contractor’s obligations under this Agreement with respect to the design, manufacture, assembly, installation, maintenance, operation, removal and dismantlement of the City Digital Network and the fixtures and equipment appurtenant thereto; and

WHEREAS, the Contractor’s obligation to pay the Guaranteed Initial Fees and the Guaranteed Annual Fees to the City is also independent of the shared revenues that the Contractor may generate from the City Digital Network; and

WHEREAS, the Contractor represents that it has, or its Subcontractors have, the professional experience and expertise to design, manufacture, assemble, install, maintain, program, operate, remove and dismantle the City Digital Network and the fixtures and equipment appurtenant thereto, to transmit the City Public Service Messages and emergency communications, and to successfully place advertising on such City Digital Network, and further warrants that it is ready, willing and able to perform its other obligations in accordance with the terms and conditions as set forth in this Agreement.

NOW, THEREFORE, the City and the Contractor agree as follows:

TERMS AND CONDITIONS

ARTICLE 1 INCORPORATION OF RECITALS

The Recitals above are hereby incorporated by this reference as if fully set forth herein. In the event of any conflict between such Recitals and the other terms and conditions of this Agreement, such other terms and conditions shall control. The recitals and public purpose findings set forth in the Project Ordinance are also incorporated herein by reference as if fully set forth herein.

ARTICLE 2 DEFINITIONS

2.1 Definitions.

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

“**Ad Panel**” means an advertising display face located on a City Digital Sign on which the Contractor shall display digital advertisements in accordance with the terms of this Agreement. Such Ad Panels shall comply with regulations in the Zoning Ordinance expressly applicable to City Digital Signs. No Ad Panels shall exceed 1,200 square feet. All Ad Panels shall be located solely at locations along and facing expressways or tollways designated by CDOT.

“**Affiliates**” means any individual, corporation, limited liability company, partnership, trustee, administrator, executor or other legal entity that directly or indirectly owns, or controls, or is owned or controlled by, or is under common ownership or control with Contractor. Notwithstanding the foregoing, for purposes of the use of “Affiliate” in the definition of “City Share of Gross Revenues”, and the determination of an Other CDN Agreement thereunder, an Affiliate shall not include any legal entity in which the Contractor, or any of its Affiliates, holds only a minority interest without a right of control and shall exclude CBS Outdoor JCDecaux Street Furniture, LLC and Miami Airport

Concession, LLC. In no event shall CBS Outdoor, Inc. and Clear Channel Outdoor Inc. be considered an affiliate of JCDecaux North America, Inc. or the Contractor.

“**Agreement**” means this Coordinated City Digital Sign Program 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.

“**Approved Transferee**” means an outdoor advertising company or media company which (i) based on annual gross revenues from sign faces owned or operated by such company, is one of the ten (10) largest outdoor advertising companies or media companies in the United States or one of the ten (10) largest outdoor advertising companies or media companies in the world, (ii) prior to the transfer, has experience owning and operating digital signs, (iii) will purchase the Contractor's assets or a majority and controlling ownership interest for an arms-length, commercially reasonable price (and in connection with such purchase, also complies with clause (v) below), (iv) prior to the transfer, provides to the City replacement bonds, guarantees and assurances required by this Agreement that are as creditworthy and reliable, or more creditworthy and reliable, than those provided by the Contractor, (v) assumes this Agreement in writing, pursuant to an assignment and assumption agreement, the form and substance of which are reasonably satisfactory to the City (vi) is prepared to perform the Contractor's obligations hereunder, and (vii) has a net worth, as evidenced by its most recent audited financial statements, of not less than \$100 million. A special purpose entity owned and controlled by a company described above shall also be deemed an Approved Transferee. Any lender providing Permitted Lender Financing shall also be deemed an Approved Transferee. Notwithstanding the foregoing, no person or entity shall be an Approved Transferee if it (or its principal officers or directors) submits an Economic Disclosure Statement that discloses material violations or is otherwise in material violation of any City laws. Furthermore, no person or entity (other than a lender providing Permitted Lender Financing) shall be deemed an Approved Transferee prior to January 1, 2020.

“**BOE**” means the Board of Education of the City of Chicago.

“**Bonded Obligations**” has the meaning given such term in Section 3.19(a)(i).

“**Capitalized Costs**” means, as to each City Digital Sign, the costs directly and specifically attributable to both (a) purchasing, manufacturing, assembling and installing the sub-surface foundation, steel columns and structural supports, scaffolding and additional infrastructure necessary to support such City Digital Sign, and (b) purchasing, manufacturing, assembling and installing such Ad Panel sign face, including, without limitation, the LED lights included in such sign face, the internal mechanical, electrical and digital technology and components, and the design, software, programming and digital technology necessary to such sign's operation, which costs must, under GAAP, be accounted for as capital costs, and not as expenses. In determining such costs, the Contractor shall elect, when permissible, to expense rather than to capitalize costs. The Contractor

shall certify to the City under oath as to the Capitalized Costs attributable to each City Digital Sign reasonably promptly after installation of such City Digital Sign. No such Capitalized Costs shall be included in any calculation provided for in Exhibit 2 until such certification has been made and delivered to the City. In no event shall the Capitalized Costs for an architecturally designed 60 sign face network exceed Thirty Million and No/100 Dollars (\$30,000,000) (e.g., not more than approximately \$500,000 per installed sign face, subject to such aggregate amount) nor shall such Capitalized Costs for a traditionally designed 60 sign face network exceed Twenty-Seven Million and No/100 Dollars (\$27,000,000) (e.g., not more than approximately \$450,000 per installed sign face, subject to such aggregate amount). An architecturally designed network shall mean one where the City requests that the Contractor design and fabricate stylized signs that incorporate architectural and other treatments that increase the costs of such signs, but only to the extent of such documented additional, incremental costs. The aggregate Capitalized Costs for the City Digital Signs are subject to recovery in accordance with Exhibit 2 to this Agreement and the other terms and conditions hereof.

Subject to the foregoing, a portion of the design, software, programming and other costs not directly and specifically attributable to a single City Digital Sign, but directly and specifically attributable to the City Digital Network as a whole, shall be ratably allocated to a City Digital Sign for purposes of such Capitalized Cost certifications and recovery under Exhibit 2. For illustrative purposes, if there are One Million Two Hundred Dollars (\$1,200,000) of such costs attributable to the City Digital Network as a whole, and sixty (60) sign faces, then Twenty Thousand Dollars (\$20,000) of such system-wide costs shall be allocated to each City Digital Sign for purposes of the Contractor's cost certification for each such City Digital Sign. Capitalized Costs shall also include costs incurred with respect to the refurbishment(s) and upgrade(s) required pursuant to Section 3.21, Section 5.3, and Exhibit 1E of this Agreement, to the extent provided for in Exhibit 2. Capitalized Costs shall also include property acquisition costs described in Section 4.3(a)(iii). Capitalized Costs shall also include costs of installing back-up power sources described in Section 4.4(a) and such costs shall be included in Capitalized Costs even if such inclusion causes the applicable aggregate Capitalized Costs cap set forth above to be exceeded. Capitalized Costs shall not include any amounts rebated to the Contractor by the Ad Panel vendor under the terms of the Ad Panel contract between the Contractor and such vendor.

“CDN Intellectual Property” has the meaning given such term in Section 3.12.

“CDOT” means the Chicago Department of Transportation.

“Central Business District” shall mean the area of the City bordered by Chicago Avenue on the north, Congress Parkway/Expressway on the south, Lake Shore Drive on the east, and the Dan Ryan/Kennedy Expressway on the west; provided, however, that such western border shall instead be N. Halsted Street north of the point at which the Kennedy Expressway veers to the northwest and is located to the west of N. Halsted Street.

“CFO” means the Chief Financial Officer of the City of Chicago as defined in Chapter 2-32-055(f) of the Municipal Code.

“Change in Law” shall mean and refer to the enactment, amendment, modification, repeal, decision, order or ruling by a Governmental Authority after the date of this Agreement of any Law which is applicable to the performance of the Work; it being expressly understood and agreed by the parties hereto that a change in any income tax Law or any Law by which a tax is levied or assessed on the basis of the Contractor’s income, profits, revenues or gross receipts which is generally applicable to all businesses in the City shall not be a Change in Law and a change in any Law relating to any of the other taxes described in Section 10.1(b) shall not be a Change in Law unless the Contractor would be entitled to an abatement of Contractor Fees in relation to such Change in Law, as specifically described in Section 10.1(b).

“Change of Control of Contractor” has the meaning given such term in Section 12.1(d)(vii).

“Chief Procurement Officer” or **“CPO”** means the Chief Procurement Officer of the City of Chicago, and any representative duly authorized in writing to act on such officer’s behalf.

“City Council” means the City Council of the City.

“City Digital Network” has the meaning given such term in the Recitals.

“City Digital Sign” means a “City Digital Sign” as defined under Section 17-17 of the Zoning Ordinance (a copy of which definition is attached as Exhibit 1B) as the same may be amended from time to time, which meets the Minimum Sign Design Requirements set forth in Exhibit 1A and which is developed and operated in accordance with the terms of this Agreement, including, without limitation, Section 4.6(b), the City Digital Sign Ordinances, and other applicable Laws. In no instance shall there be more than 60 sign faces in the City Digital Signs comprising the City Digital Network, subject to Section 13.5. In no instance shall City Digital Signs be located in the Central Business District. In no instance shall a City Digital sign exceed seventy-five feet (75’) in height, measured from the base of the structure supporting such City Digital Sign to the top of the City Digital Sign face, unless the Contractor establishes to the reasonable satisfaction of the Chief Financial Officer and the Commissioner of CDOT that a greater height (but in no event greater than one hundred feet (100’), as so measured), is required to insure the commercial viability of the sign due to its location and site specific characteristics, and that such additional height and the display of advertising and City Messages from such sign does not pose a threat to public safety.

“City Digital Sign Exclusivity Provision” has the meaning given such term in Section 4.6(a)(i).

“City Digital Sign Ordinances” means the Project Ordinance, and such other ordinances as shall be adopted by the City Council from time to time to enable and implement the City Digital Network program.

“City Digital Sign Sites” means, initially, the sites identified on Exhibit 1C this Agreement on which the Contractor shall install and operate either a single face, a two-faced, or a three-faced City Digital Sign, as reflected on such Exhibit 1C, so as to establish a 60 sign face City Digital Network. After the date hereof, if one or more of such sites is eliminated either (a) at the City’s written direction to Contractor based upon and specifying one or more of the factors specified in Section 4.3(a)(iv) below, or (b) due to infeasibility as mutually agreed upon by the City and the Contractor in their respective commercially reasonable discretion (including, without limitation, because it is not commercially viable), the parties shall agree on a replacement sign site in accordance with Section 4.3 and, upon such agreement, such replacement sign site shall be deemed a City Digital Sign Site, so that at all times the parties cooperate to use all commercially reasonable efforts to assure that there are sufficient sites to establish and operate a 60 sign face City Digital Network.

"City Emergency Messages" means emergency notifications from the City (such as, for example, AlertChicago messages being sent simultaneously by OEMC) or, at the City’s direction, from another Governmental Authority (such as, for example, the Department of Homeland Security, Federal Bureau of Investigation, and Amber Alert notices), severe weather warnings and similar messages of an urgent nature affecting the public's immediate health and safety.

"City Messages" means either a City Emergency Message or a City Public Service Message, or both, as the context may require.

“City Public Service Message” means information or other communicative content (including art, such as for example, artwork from children in Chicago Public Schools, or initiatives arising from the Chicago Cultural Plan) supplied by the City (or, at the City’s direction, another Governmental Authority, such as, for example, IDOT, the Illinois Tollway Authority, the Cook County Sheriff's Office, the CTA, the CPD, or the BOE) for placement on a City Digital Sign including, without limitation, information concerning laws, services and events of the City or such Governmental Authority, public service information and public health and safety announcements made on behalf of the City (such as, for example, NotifyChicago communications being simultaneously sent by OEMC) or such other Governmental Authority.

“City Share of Gross Revenues” shall mean the distributions payable to the City pursuant to Exhibit 2 to this Agreement, and the other terms and conditions hereof, as applicable from time to time, after the prior payment to the City of the Guaranteed Initial Fee(s) and the Guaranteed Annual Fee(s) but taking into account the prior payment of the scheduled Guaranteed Annual Fees in connection with the annual reconciliation described in Section 6.1(a)(iv) hereof applicable to the determination of the City Share of Gross Revenues.

As noted in Exhibit 2, the \$25,000,000 sharing threshold, at which the City’s 50% sharing in Distributable Gross Revenues (as provided for under Exhibit 2) declines to a 40% sharing in

Distributable Gross Revenues, and the \$30,000,000 sharing threshold, at which the City's 40% sharing in Gross Revenues declines to a 30% sharing in Gross Revenues, are further subject to adjustment as follows:

(i) there shall no adjustment to such sharing threshold amounts until Distributable Gross Revenues exceed \$25,000,000;

(ii) once such Distributable Gross Revenues exceed \$25,000,000, then, starting with the year in which such threshold is exceeded, the following analysis shall occur each year:

(a) if the Gross Revenues for such year increased by 3.5% or more over the prior year's Gross Revenues, the sharing threshold amounts applicable to such year shall increase by 1.75% (non-compounded, i.e., always \$437,500) with both the \$25,000,000 sharing threshold and the \$30,000,000 sharing threshold increasing, so that such thresholds always remain \$5,000,000 apart;

(b) if the Gross Revenues for such year decrease by 3.5% or more over the prior year's Gross Revenues, the sharing threshold amounts applicable to such year shall decrease by 1.75% (non-compounded, i.e., always \$437,500) with both the \$25,000,000 sharing threshold and the \$30,000,000 sharing threshold, as the same may have been previously adjusted, decreasing, so that such thresholds always remain \$5,000,000 apart, provided, however, that in no event shall such sharing thresholds ever decrease below the starting \$25,000,000 and \$30,000,000 levels; and

(c) if the Gross Revenues for such year declined by less than 3.50% and increased by less than 3.50% over the prior year's Gross Revenues, the sharing threshold amounts shall remain unchanged.

The above sharing threshold adjustments shall occur so long as the City continues to honor the City Digital Sign Exclusivity Provision in Section 4.6(a)(i) on and after January 1, 2020. The intent of the adjustments provided for above is not to extend the exclusivity provision beyond January 1, 2020, but to provide additional compensation to the City in the event that the City voluntarily elects to honor such exclusivity provision after the January 1, 2020 expiration date (the City having no legal obligation under this Agreement to do so). If the City does not elect to continue to honor such exclusivity provision after such expiration date (i.e., it enters into an agreement which, if entered into prior to January 1, 2020, would have violated the City Digital Sign Exclusivity Provision), the sharing threshold adjustments described above shall cease, and the sharing threshold amounts shall remain fixed as of the date that a digital sign that is inconsistent with such exclusivity provision becomes operational.

“**Commissioner of CDOT**” means the Commissioner of CDOT, and any representative authorized in writing to act on such Commissioner’s behalf.

“**Complete Sign Permit Application**” means a fully and properly completed sign permit application which meets the standards established by DOB and the City for processing and issuance of a City permit to install a City Digital Sign and which is otherwise in form and substance reasonably acceptable to the City, including the submittals specified in Section 4.3(a)(vii) below.

“**Consulting Parties**” has the meaning given such term in Section 11.5(b)(i).

“**Contractor**” has the meaning given such term in the Preamble.

“**Contractor Share of Gross Revenues**” shall mean the distributions payable to the Contractor pursuant to Exhibit 2 to this Agreement, and the other terms and conditions hereof, as applicable from time to time.

“**CPD**” means the Chicago Park District.

“**CTA**” means the Chicago Transit Authority.

“**Cure Notice**” has the meaning given such term in Section 12.2(b).

“**Default**” has the meaning given such term in Section 12.1.

“**Default Rate**” shall mean (a) the greater of ten percent (10%) per annum, or (b) the six-month United States Treasury Bill rate, plus six (6%), but in no event an interest rate higher than the highest rate permitted by law.

“**Deliverables**” has the meaning given such term in Section 3.8 (a).

“**Distributable Gross Revenues**” shall mean the Gross Revenues remaining for distribution to pay the City Share of Gross Revenues and the Contractor Share of Gross Revenues in a calendar year after the prior return to the Contractor of any scheduled annual Guaranteed Initial Fee recovery amount and any scheduled Capitalized Costs recovery amount, as the case may be.

“**DOB**” means the Chicago Department of Buildings.

“**Environmental Laws**” shall mean collectively, all applicable federal, state and local environmental, safety or health laws and ordinances and rules or applicable common law, including OSHA, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. §9601 et seq.), the Hazardous Materials Transportation Authorization Act of

1994 (49 U.S.C. §5101 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. §6901 et seq.), the Toxic Substances Control Act of 1976, as amended (15 U.S.C. §2601 et seq.), the Clean Air Act (42 U.S.C. §7401 et seq.), the Clean Water Act (33 U.S.C. §1251 et seq.), the Safe Drinking Water Act (42 U.S.C. §300(f) et seq.) as any of the foregoing may later be amended from time to time; any rule or regulation pursuant to them, and any other present or future law, ordinance, rule, regulation, permit or permit condition, order or directive addressing environmental, health or safety issues of or by the federal government, or any state or other political subdivision of it, or any agency, court or body of the federal government, or any state or other political subdivision of it, exercising executive, legislative, judicial, regulatory or administrative functions.

“Event of Default” has the meaning given such term in Section 12.2(b).

“Event of Default Notice” has the meaning given such term in Section 12.2(b).

“Excusable Event” has the meaning given such term in Section 12.5(d).

“GAAP” means generally accepted accounting principles, consistently applied, as applicable from time to time.

“Governmental Authority” means any United States national, federal, state, county, municipal (including, without limitation, the City) or local government (including, without limitation, the BOE, CPD or CTA), agency, authority or court, or any department, board, bureau or instrumentality thereof.

“Gross Revenues” means the gross revenues together with any additional revenues otherwise attributable to the City Digital Signs directly or indirectly received (i.e., collected, net of actual refunds) by the Contractor from the sale or marketing of advertising space on the City Digital Signs (whether marketed directly by the Contractor, or through an advertising agency or a media buyer). Gross Revenues shall not include, however, commercially reasonable advertising commissions paid by the Contractor to third parties that are not employees or Affiliates of the Contractor.

“Guaranteed Annual Fee(s)” has the meaning given such term in Section 6.1(a)(ii).

“Guaranteed Initial Fee(s)” has the meaning given such term in Section 6.1(a)(i).

“Guarantor” shall have the meaning given in Section 3.20.

“Guaranty” shall have the meaning given in Section 3.20.

“Hazardous Materials” shall mean, but shall not be limited to, any oil, petroleum product and any hazardous or toxic waste or substance or any substance which because of its quantitative

concentration, chemical, radioactive, flammable, explosive, infectious or other characteristics, constitutes or may reasonably be expected to constitute or contribute to a danger or hazard to public health, safety or welfare or to the environment, including, without limitation, any asbestos (whether or not friable) and any asbestos-containing materials, lead paint, waste oils, solvents and chlorinated oils, polychlorinated biphenyls (PCBs), toxic metals, explosives, reactive metals and compounds, pesticides, herbicides, radon gas, urea formaldehyde foam insulation and chemical, biological and radioactive waste or any other similar materials which are included under or regulated by any Environmental Law.

“IDOT” means the Illinois Department of Transportation, or any successor State department or agency thereto with respect to the administration of 92 Illinois Administrative Code Part 550.

“Indemnitees” has the meaning given such term in Section 9.1(b).

“Installation Bond” has the meaning given such term in Section 3.19(a)(ii)(A).

“Installation Deadline” has the meaning given such term in Section 5.2(c).

“Installation Schedule” means the schedule for the installation of the City Digital Signs, attached hereto as Exhibit 1D.

“Key Personnel” has the meaning given such term in Section 3.14(b).

“Law” means any constitution, charter, statute, act, law, regulation, code, rule, order, ordinance (including, without limitation, the City Digital Sign Ordinances and the Project Labor Agreement Ordinance), decree, permit, judgment, directive, ruling, decision, guideline, resolution, executive order or declaration of any Governmental Authority, or any interpretation or application thereof by any such Governmental Authority, including, without limitation, the Federal Highway Beautification Act (23 USC 131 et seq.) and the regulations promulgated thereunder, the Highway Advertising Control Act of 1971 (225 ILCS 440/1 et seq.) and the regulations promulgated thereunder, Environmental Laws and laws applicable to the regulation of Hazardous Materials.

“Legal Challenge” has the meaning given such term in Section 9.1(c).

“Losses” has the meaning given such term in Section 9.1(b).

“Minimum Design Requirements” means the minimum design requirements applicable to the City Digital Signs specified on Exhibit 1A to this Agreement.

“OAAA” means the Outdoor Advertising Association of America, Inc., or any successor organization, the primary trade association for the outdoor advertising industry.

“**OEMC**” means the Chicago Office of the Emergency Management and Communications.

“**OSHA**” means the Occupational Safety and Health Act of 1970, as amended (29 U.S.C. §651 et seq.), and the regulations and rulings promulgated pursuant thereto.

“**Out-Sourced Costs**” has the meaning given such term in Section 3.15.

“**Payment and Performance Bonds**” has the meaning given such term in Section 3.19(a).

“**Permitted Lender Financing**” has the meaning given such term in Section 3.4. The financing and security documents for such Permitted Lender Financing shall be subject to the reasonable review and approval of the City to confirm that such documents comply with the Project Ordinance and are consistent with the terms and conditions of this Agreement. Such review and approval may include a requirement that the lender providing such financing enter into an attornment agreement, non-disturbance agreement, recognition agreement or similar lender/City agreement, the purpose of which is to assure that if the lender exercise its rights under its financing and security documents, the City Digital Network shall at all times continue to operate in accordance with the terms of this Agreement, including the payment priorities set forth in Exhibit 2, and the lender shall cooperate with the City to assure such continued operation. Notwithstanding the foregoing, a lender who provides Permitted Lender Financing who succeeds to the Contractor’s rights under this Agreement shall not be required to make any Guaranteed Annual Fee payments required during the first six (6) months following such succession; provided, however, that any such required payments shall be deemed tolled, and not waived, and shall be payable after such six (6) month period.

“**Permitted Transfer**” has the meaning given such term in Section 12.1(d)(vii).

“**Phase I**” means Phase I of the Installation Schedule for the City Digital Sign Sites identified in Exhibit 1D attached hereto.

“**Phase II**” means Phase II of the Installation Schedule for the City Digital Sign Sites identified in Exhibit 1D attached hereto.

“**Plans and Specifications**” has the meaning given such term in Section 3.11.

“**Prevailing Wage Act**” has the meaning given such term in Section 10.3(e).

“**Project Labor Agreement Ordinance**” means that certain Multi-Project Labor Agreement With Various Agreements ordinance adopted by the City Council on February 9, 2011 and published in the Journal of Proceedings of the City Council for such date at pages 111741 through 111777.

“**Project Manager**” means the project manager designated by the City from time to time as its project manager for the City Digital Network implemented pursuant to this Agreement.

“**Project Ordinance**” has the meaning given such term in the Recitals.

“**Quarterly Distribution Date**” shall mean each of April 15th, July 15th, October 15th and January 15th in each calendar year during the term of this Agreement (and, after the term of this Agreement until all amounts earned during such term from advertising on Ad Panels have been received).

“**Quarterly Gross Revenues**” shall mean the Gross Revenues received by the Contractor during the applicable three calendar months prior to the month in which the Quarterly Distribution Date falls.

“**Removal Bond**” has the meaning given such term in Section 3.19(a)(ii)(B).

“**Required Governmental Approvals**” shall mean, as to each City Digital Sign, (a) the approval by City Council for (i) the Project Ordinance (and this Agreement) adopted by the City Council of the City on December 12, 2012 and published in the Journal of Proceedings of the City Council for such date at pages _____ through _____, (ii) the requisite City Council ordinance (commonly referred to as a sign order) for signs larger than 100 square feet other than for those signs listed in Exhibit 1C (such initial City Council ordinances for such signs in Exhibit 1C having been approved (or deemed approved or exempted) by the City Digital Sign Ordinances), (iii) any required public way grant of privilege or approval for any sign that is located within or projects into the public way other than for those signs listed in Exhibit 1C (such initial grants and approvals for such signs in Exhibit 1C having been approved (or deemed approved or exempted) by the City Digital Sign Ordinances), to the extent such grant or approval is not otherwise provided for by separate ordinance), and (b) the City's approval of the Complete Sign Permit Application and any additional City permits, licenses, and approvals necessary to install and operate a given City Digital Sign, (c) if applicable, any IDOT permits applicable to City Digital Signs located within 660 feet of a federal interstate highway, or subject to regulation as a federal-aid, primary route, (d) if applicable, any Federal Aviation Administration Approvals applicable to LED lights within four miles (or such other proximity restriction as may apply) of O'Hare International Airport or Midway International Airport, or City Digital Sign infrastructure subject to wind shear regulations, and (e) any other required governmental approvals.

“**Revenue Reports**” has the meaning given in Section 3.8(d).

“**Satisfactory Performance**” means, for the purpose of the extension period described in Section 5.3 of this Agreement, if any, the following: (i) the Contractor has made all payments to the City required by this Agreement as of the determination date; (ii) the Contractor has installed all City

Digital Signs required and authorized by this Agreement and, except as otherwise permitted under this Agreement, all such City Digital Signs are operational, or are in the process of being repaired, refurbished or upgraded in accordance with the terms of this Agreement; (iii) the Contractor has maintained, refurbished and upgraded all City Digital Signs as required and authorized by this Agreement; (iv) the Contractor has complied with the requirements of Section 3.15 and Exhibit 3 to this Agreement relating to the minority and women’s business enterprises commitment; (v) the City has not sent a currently outstanding Cure Notice pursuant to Section 12.2 (b) of this Agreement (or if the City has sent such a Cure Notice, the applicable cure period has not lapsed); (vi) an Event of Default does not exist, and (vii) the total payments paid to and received by the City under this Agreement, during the 2016-2030 time period, were not less than 115% of the total Guaranteed Annual Fees due and owing by the Contractor during such 2016-2030 time period pursuant to the terms of this Agreement (e.g., which amount would be 115% of One Hundred Fifty-Five Million Four Hundred Thousand and No/100 Dollars (\$155,400,000) during such 2016-2030 time period, as presently set forth in Exhibit 2, assuming all 60 sign faces in the network are installed pursuant to the terms of this Agreement). The parties shall at all times cooperate and use commercially reasonable efforts to establish and operate a 60 sign face City Digital Network.

“**Status Report**” has the meaning given such term in Section 3.8(c).

“**Subcontractor**” means any person or entity who has a contract, agreement or other arrangement with Contractor to perform a portion of the Work or to supply materials, equipment or other items in relation to the Work and, when required under applicable Laws, includes subcontractors of any tier, suppliers and materials providers, whether or not in privity with the Contractor, who perform such Work or supply such items.

“**Total Contract Price**” has the meaning given such term in Section 3.15.

“**Unrecovered GIF Advance Amount**” has the meaning given such term in Section 9.1(c).

“**Work**” means, collectively, the design (including architectural and engineering services), manufacture, assembly, procurement, installation, maintenance, operation, programming, connecting to existing City information and communication networks posting of City Messages, procuring of advertisers, sale of ads, cooperation with media buyers and brokers, removal and dismantlement of the City Digital Signs, maintenance and restoration of the underlying and other property affected by the Work and other services and items that are necessary to execute and complete the obligations of the Contractor described in this Agreement and shall include, without limitation, all such services and items which are specifically required by this Agreement and any and all work necessary to complete or carry out the work fully and to the standard of performance required in this Agreement.

“**Zoning Ordinance**” means the Zoning Ordinance of the City, currently codified as Chapter 17 of the Municipal Code, as amended from time to time.

2.2 Interpretation.

- (a) The term “**include**” (in all its forms) means “include, without limitation” unless the context clearly states otherwise.
- (b) 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.
- (c) Words importing persons include firms, associations, partnerships, trusts, corporations and other legal entities, including public bodies, as well as natural persons.
- (d) 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 of reference and do not constitute a part of this Agreement, nor do they affect the meaning, construction or effect of this Agreement.
- (e) Words importing the singular include the plural and vice versa, as the context may require. Words of the masculine gender include the correlative words of the feminine and neuter genders.
- (f) All references to a number of days mean calendar days, unless expressly indicated otherwise.

2.3 Incorporation of Exhibits.

The following attached Exhibits are incorporated herein and made a part of this Agreement:

Exhibit 1A	Description of City Digital Signs, Including Minimum Design Specifications
Exhibit 1B	City Digital Sign Definition
Exhibit 1C	City Digital Sign Sites
Exhibit 1D	Installation Schedule (Phase I and Phase II)
Exhibit 1E	Maintenance and Operation Standards
Exhibit 2	Distributions and Gross Revenue Sharing Provisions
Exhibit 3	MBE/WBE Special Conditions and Schedules
Exhibit 4	Disclosure Affidavits
Exhibit 5	Evidence of Insurance
Exhibit 6	Form of Performance and Payment Bond
Exhibit 7	List of Key Personnel and Schedule of Availability
Exhibit 8	Specifications Relating to Work to be Performed on the Public Way
Exhibit 9	Form of Revenue Report
Exhibit 10	Prevailing Wage Rates

Exhibit 11	Contractor's Advertising Policy
Exhibit 12	Form of Affiliate Guaranty

ARTICLE 3

GENERAL CONDITIONS FOR PERFORMANCE OF WORK

3.1 **Intent of Agreement.** The intent of this Agreement is that, in consideration of the City's grant of certain rights to the Contractor to sell and display advertising on City Digital Signs, the Contractor will: (a) have the right and the obligation to design, manufacture, assemble, install, maintain, operate, program, remove and dismantle the City Digital Signs and maintain and restore the underlying and other surrounding property affected by the Work, (b) pay to the City the Guaranteed Initial Fee(s); (c) pay to the City the Guaranteed Annual Fees during the term of the Agreement; (d) pay to the City the City Share of Gross Revenues during the term of this Agreement; and (e) cooperate with the City in programming and operating the City Digital Signs as a coordinated City-wide City Digital Network. Further, the Contractor must take all action reasonably necessary to perform its obligations pursuant to this Agreement. In consideration of the foregoing, the Contractor shall be entitled to place advertising on the City Digital Signs, initially receive the sales revenues from such advertising, and retain the amounts payable to the Contractor pursuant to Exhibit 2, or as otherwise expressly provided for in this Agreement.

3.2 **Qualified Personnel.** The Contractor must ensure that all Work that requires the exercise of professional skills or judgment is accomplished by professionals qualified and competent in the applicable disciplines and appropriately licensed, as required by Law. The Contractor upon reasonable notice must provide copies of any such licenses to the City. The Contractor remains responsible for the professional and technical accuracy of all Work and Deliverables (as defined below) performed or furnished, whether performed or furnished by the Contractor or its Subcontractors or others on its behalf. The Contractor shall at all times employ or retain sufficient personnel to install and operate the City Digital Sign and sell advertising thereon and reasonably cooperate with the City in operating the City Digital Network in order to display the City Messages pursuant to this Agreement.

3.3 **City Review.** Any review, supervision, consent, approval or acceptance in relation to any of the Work by the City does not relieve the Contractor of its responsibility for the professional skill and care and technical accuracy of its Work and Deliverables. This provision in no way limits the City's rights against the Contractor either under this Agreement, at law or in equity.

3.4 **Contractor to Pay for All Items of Work.** The Contractor acknowledges and agrees that it must perform all Work and pay all amounts due and payable related to the operation of the City Digital Signs and City Digital Network (including, without limitation, advertising commissions) without any payments by the City, and that the Contractor's sole source of payments under this Agreement is from the revenues due to the Contractor pursuant to Exhibit 2 and the other terms and conditions hereof. In furtherance and confirmation of the foregoing, the Contractor acknowledges and

agrees that the City has not made, and does not intend to make, any appropriations in relation to this Agreement. The Contractor further covenants and agrees that it must provide and pay for all items or services reasonably necessary for the proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated into the Work, including, but not limited to, all design, manufacturing, assembly, engineering, procurement, installation, construction, programming, marketing, maintenance, operation, removal and dismantlement services, the maintenance and restoration of the underlying and other surrounding property affected by the Work, all administration, management, training and coordination services, all information technology software design, programming and connectivity requirements, all labor, materials, furnishings, equipment, supplies, insurance, bonds, permits, licenses, tests, inspections, tools, machinery, water, heat, utilities consumed in performance of the installation, maintenance, operation and removal of the City Digital Signs and restoration relating thereto and transportation, and all other items, facilities and services, including off-site office space, maintenance vehicles, warehouse space, computers, digital network equipment and other ancillary operational facilities, equipment and services related to the Contractor's performance of its obligations under this Agreement.

Neither the Contractor nor any subcontractor shall have any legal authority or ability, nor any contractual right, to claim, levy, attach, record or impose any lien or claim of lien right upon or against the City Digital Sign Sites, which are and shall at all times continue to be public property. The Contractor covenants that it shall not record any instrument purporting to establish any such lien and shall promptly cause any subcontractor that records an instrument purporting to establish any such lien to promptly record a release of such lien. Notwithstanding the foregoing, the Contractor shall have the right to grant a chattel mortgage with respect to the City Digital Signs, to consent to the grant of a security interest in and the filing of a financing statement with respect to City Digital Signs, and otherwise execute security documents in favor of a third party lender providing Permitted Network Financing, as described in the Project Ordinance (such financing, "**Permitted Lender Financing**"); provided, however, that in all instances such encumbrance shall attach solely to the Contractor's personal property interest in the City Digital Sign and shall in no instance attach to the City Digital Sign Sites or any public property.

3.5 Site and Local Physical Conditions. Subject to the provisions of this Section 3.5, the Contractor will bear the full risk of site and local physical conditions at locations where the Work shall be performed and the Contractor will not be entitled to an adjustment to the payments due to the Contractor pursuant to Exhibit 2 or any extension in time for its performance of the Work as a result of the same, unless such conditions constitute an Excusable Event. The Contractor acknowledges and agrees that it will bear the full risk of installing the City Digital Signs. Notwithstanding the foregoing, if the Contractor discovers or experiences unanticipated and unusual site and local physical conditions (e.g., the need to erect a sign to a given height in order to assure visibility shall never be deemed unanticipated or unusual site and local physical conditions) at a location at which the Contractor is obligated to install a City Digital Sign, and such site or local physical conditions will necessarily cause the cost of installing such City Digital Sign to exceed 115% of the average cost of installing the

same type of City Digital Sign, the Contractor may initiate the following procedures:

The Contractor may file a report with the Project Manager, documenting the site or local physical conditions at such location and describing in detail the cost impact of such conditions on the Contractor's cost of installing the City Digital Sign. Such report must be filed by the Contractor with the Project Manager no later than sixty (60) days after Contractor's receipt of all Required Governmental Approvals for the relevant site. If the Contractor does not file a report within such 60-day period, the Contractor will be deemed to have waived its right to file a report relating to such site and the Contractor must proceed with the installation of the City Digital Sign at such site and bear all costs thereof.

After the Contractor files the report described in Section 3.5 above, the parties shall mutually determine in writing whether to eliminate the site and install the City Digital Sign at an alternate location listed on Exhibit 1C, taking into account the distribution needs for the City Digital Network, or a replacement site, or to install the City Digital Sign at the original location. Any replacement site shall be selected in accordance with Section 4.3(a)(iv), subject to authorization by City Council, if necessary.

If the parties agree to proceed with the installation of the City Digital Sign at the original location, then the difference between the Contractor's actual and reasonable costs of installing such City Digital Sign and 115% of the Contractor's budgeted cost of installing such City Digital Sign, as reasonably determined by the City in writing, shall be added to the Capitalized Cost (even if this would cause the otherwise applicable cap to be exceeded). The Contractor must forward copies of all records evidencing the cost of the installation of such City Digital Sign to the City upon request.

During the course of installing a City Digital Sign, the Contractor shall lawfully dispose of any soil or spoils removed in connection with the subsurface foundation work. In the event that the Contractor determines that the site has an environmental condition that renders it unsuitable for installing and operating a City Digital Sign, the Contractor shall notify the City in writing, the Contractor shall cease further work on the site (other than refilling any excavated portion of the site with clean fill), and such site shall be removed from the list of City Digital Sign Sites unless the parties otherwise agree in writing. The City and Contractor shall thereafter cooperate in identifying a replacement site in accordance with Section 4.3(a). Apart from the lawful disposal of such removed soils or spoils, which shall be at the Contractor's sole cost and expense (but which, if a capital expense under GAAP, may be included in the Capitalized Costs), the Contractor shall have no duty to remediate such site. The City, as owner of the site, agrees to cooperate in signing such disposal manifests as may be legally required to enable the Contractor to dispose of any removed materials.

3.6 Permits. The Contractor must apply for, diligently pursue, and obtain all necessary permits, licenses or other necessary forms of approval or authorization, for construction, installation, maintenance and removal work and the Contractor must diligently and promptly file all necessary applications and plans with the appropriate City department and if applicable, IDOT and any other

Governmental Authority. The City will endeavor to process Complete Sign Permit Applications, including coordinating the Board of Underground distribution in a timely basis. The Contractor must install the City Digital Sign in compliance with plans approved by CDOT. Subject to the Contractor's providing multiple original plans, and DOB policies and procedures, the City shall cooperate with the Contractor to provide a stamped set of approved permit drawings for use of the site.

3.7 Correction of Work. The Contractor must, at the reasonable earliest practical opportunity, correct Work (including any drawings, plans, specifications, programs, software, items of construction, assembly or installation, or any other product constituting a part or component of the Work) (i) that the City reasonably rejects as defective or failing to conform to this Agreement (whether arising from a design, construction or other defect, error, omission or deficiency) or (ii) that is otherwise known by the Contractor or any Subcontractor to be defective or failing to conform to this Agreement. If other portions of the Work are materially adversely affected by or are damaged by such defective Work, the Contractor must, at its sole cost and expense and at the earliest reasonable practical opportunity, correct, repair or replace such affected or damaged Work, as well as any other property damaged by such defective or nonconforming Work. The Contractor will bear all costs of correcting such defective or nonconforming Work, including additional testing and inspections and any design or engineering services and expenses made necessary thereby. If, after the Contractor is notified by the City or otherwise becomes aware of defective or nonconforming Work, the Contractor fails to correct such defective or nonconforming Work, as described above, or any damaged Work or other property, the City may correct it and charge to the Contractor the reasonable cost of the same incurred by the City.

3.8 Deliverables.

(a) *Deliverables in General.* In carrying out its Work, the Contractor must prepare and provide to the City the Deliverables. The "**Deliverables**" are the following: (i) quarterly reports documenting compliance with installation, operation, maintenance and other standards set forth in this Agreement; (ii) Status Reports (as defined below); and (iii) Revenue Reports (as defined below). All Deliverables must be prepared in a form and content reasonably satisfactory to the City and delivered in a timely manner consistent with the requirements of this Agreement.

(b) *Additional Documents.* In addition to the Deliverables, the City may request from time to time that the Contractor provide additional reports, studies, data, recommendations, reviews, models, samples, analyses and similar documents or other work product. The Contractor must use all reasonable efforts to provide such additional items; provided, however, that the Contractor's failure to produce any such additional items will not be considered a Default by the Contractor pursuant to Article 12. Furthermore, upon the request of the City, within 120 days of the end of a calendar year, the Contractor must provide compiled annual financial statements for the Contractor, including a balance sheet and income and expense statements, for each calendar year (or 52 week period) that completely or partially falls during the term of this Agreement prepared by an independent, certified

public accountant. The financial statements must separately state, at a minimum, the total Gross Revenues received in each such calendar year (or 52 week period) the Capitalized Costs certified under this Agreement (less amortization), and the distributions made pursuant to Exhibit 2 of this Agreement, and such total Gross Revenues, Capitalized Costs, and distributions shall be separately audited and certified to the City by an independent certified public accountant (unless the compiled financial statements described above are audited statements that separately certify as to such matters).

(c) *Status Reports.* Within five (5) business days after the expiration of each calendar month (or four week period) throughout the duration of this Agreement, the Contractor must prepare and submit to the City a status report (each, a “**Status Report**”), which Status Report must be prepared in a manner and format reasonably satisfactory to the City and must include (i) a reasonably detailed description of the progress of the Work, including a critical path chart illustrating the progress which has been made, (ii) a statement of any significant Work issues that remain unresolved, and a list of the Contractor’s observations and suggested recommendations or resolutions as to the same, (iii) an updated report as to the Contractor’s adherence to the Installation Schedule, and specifically addressing whether the design, manufacture, assembly, and installation is on schedule or behind schedule and actions being taken to correct schedule delays, (iv) a summary of any significant Work events that are scheduled to occur during the following 30 days, (v) complaint logs, and (vi) product manuals, if available.

(d) *Revenue Reports.* Within five (5) business days after the expiration of each calendar month (or four week period) through the duration of this Agreement, the Contractor must prepare and submit to the City a revenue report in the Form of Exhibit 9 (each, a “**Revenue Report**”). In the event of a public offering of securities related to the operation of the Contractor's business, or to the extent other otherwise applicable under securities laws or regulations, the Contractor, by written notice to the City citing such applicable law (whether “quiet period” restrictions, prohibitions against forward looking guidance, or similar restrictions), may withhold such written Revenue Reports but shall, to the extent permitted by law, make the relevant financial information available to the City in another format or by another means.

(e) *Real-Time Reporting and Access.* The City shall at all times have access to all of the Contractor’s accounting, maintenance, advertising, information technology systems (as they relate to the programming of the City Digital Network) and other information maintained by the Contractor relating to the maintenance and operation of the City Digital Sign, accounts receivable and collections data with respect to advertising sales and the receipt of Gross Revenues from advertising on the City Digital Signs, excluding only internal proprietary information. Such access shall be on a “real-time” reporting basis so that the City at all times has current information as to the status of all operational aspects of the City Digital Network. The Contractor’s initial contact person for providing the City with such information shall be Pablo Brezman, phone (312) 456-2990, email pablo.brezman@jcdecauxna.com.

(f) *Rejection of Deliverables.* The City may reject Deliverables that do not include relevant information or data, or do not include all documents or other materials required by this Section 3.8 or reasonably necessary for the purpose for which the City intends to use the Deliverables. If the City determines the Contractor has intentionally failed to comply with the foregoing standards, it may consider such failure to be a Default by the Contractor for the purposes of Article 12 and subject to the time period for curing such a Default stated therein.

(g) *Partial or Incomplete Deliverables.* Partial or incomplete Deliverables may be accepted for review only when required for a specific and well-defined purpose and when consented to in advance by the City. Such Deliverables will not be considered as satisfying the requirements of this Agreement and partial or incomplete Deliverables in no way relieve the Contractor of its commitments under this Agreement.

(h) *Quarterly Meetings.* At either party's request, the parties shall meet on a quarterly basis to review the City Digital Network's operation and any issues arising under this Agreement. The Contractor shall also make available Pablo Breznan or another Chicago-based key person to address any City Digital Sign issues with Aldermen in a timely manner.

3.9 **Records and Audits.**

(a) *Records.* The Contractor must deliver or cause to be delivered to the City all documents, including but not limited to all Deliverables prepared for the City under the terms of this Agreement, promptly in accordance with the time limits prescribed in this Agreement, and if no time limit is specified, then upon reasonable written demand for them or upon termination or completion of the Work under this Agreement. In the event of the failure by the Contractor to make such delivery upon demand, then and in that event, the Contractor must pay to the City any damages the City incurs by reason of the Contractor's failure.

The Contractor must maintain any such records including Deliverables not delivered to the City or demanded by the City for a period of 5 years after the expiration or termination of this Agreement, whichever is later, to the extent that such records relate to documenting or determining the Capitalized Costs, Gross Revenues, payments pursuant to Exhibit 2, or as otherwise required under the Illinois Local Records Act, 205 ILCS 5/1 *et seq.*. The Contractor must not dispose of such documents following the expiration of this period without notification of and written approval from the City.

(b) *Audits.* The Contractor and, where required by applicable Laws, all Subcontractors must permit the City to review information that may be requested pertaining to the performance and cost of the Work and the gross revenues received. The Contractor must maintain records showing actual revenues generated and expenditures incurred in relation to City Digital Signs and this Agreement, including, without limitation, the Revenue Reports. The Contractor must keep books,

documents, paper, records and accounts in connection with the Work open to audit, inspection, copying, abstracting and transcriptions and must make these records available to the City, at reasonable times during normal business hours during the performance of its Work at the Chicago office of the Contractor. In addition, the Contractor must retain such records in a safe place and make them available for audit, inspection, copying and abstracting for at least 5 years after expiration or termination of this Agreement, whichever is later, subject to this Section 3.9(b).

- (i) The Contractor must maintain its books, records, documents and other evidence and adopt accounting procedures and practices sufficient to reflect properly all costs of whatever nature claimed to have been incurred and reasonably anticipated to be incurred, and revenues received or to be received, in connection with the performance of this Agreement. This system of accounting must be in accordance with GAAP.
- (ii) No provision in this Agreement granting the City a right of access to records and documents is intended to impair, limit or affect any right of access to such records and documents that the City would have had in the absence of such provisions.

If the City's audit for a given calendar year (or 52 week period) determines that the Contractor's prior determination of Gross Revenues or Distributable Gross Revenues previously reported or utilized for purpose of determining Quarterly Distributions or payments pursuant to Exhibit 2 is more than five percent (5%) less than the amount determined pursuant to such audit, the following provisions shall apply: (i) the Contractor shall pay for the cost of such audit; (ii) provided that (A) the Contractor pays for the cost of such audit, (B) promptly pays and distributes the shortfall amount pursuant to Exhibit 2, and (C) separately pays to the City an amount equal to five percent (5%) of the shortfall amount, such audit discrepancy shall not, in the absence of fraud or intentional misrepresentation, give rise to a Default or Event of Default or otherwise permit the City to terminate this Agreement.

If the City's audit for a given calendar year (or 52 week period) determines that the Contractor's prior determination of Gross Revenues or Distributable Gross Revenues previously reported or utilized for purpose of determining Quarterly Distributions or payments pursuant to Exhibit 2 is less than five percent (5%) less than the amount determined pursuant to such audit, the following provisions shall apply: (i) the City shall pay for the cost of such audit; and (ii) provided that the Contractor promptly pays and distributes the shortfall amount pursuant to Exhibit 2, such audit discrepancy shall not, in the absence of fraud or intentional misrepresentation, give rise to a Default or Event of Default or otherwise permit the City to terminate this Agreement.

3.10 **Confidentiality.**

- (a) *Confidentiality of Documents.* All Deliverables and reports, data, studies, findings,

specifications and other documents or information, regardless of form, prepared, assembled or encountered by or provided by the Contractor under this Agreement, are the property of the City and are confidential, except as specifically authorized in this Agreement or as may be required by Law. The Contractor may retain copies of Deliverables for its records and its use in performing the Work and the Agreement, but the Contractor must not allow the Deliverables to be made available to any other individual or organization without the prior written consent of the City. Further, all reports, data, studies, findings, specifications and other documents or information, regardless of form, provided to the Contractor by the City, are confidential and must not be made available to any other individual or organization without the prior written consent of the City. Notwithstanding the foregoing, the City agrees that the Contractor may make the Deliverables and information provided by the City available to approved Subcontractors of the first tier, legal counsel to the Contractor and accountants for the Contractor, to the extent reasonably required for the performance of the Work or the performance of the Contractor's obligations under this Agreement or to enable such legal counsel and accountants to provide professional services to the Contractor. The City further agrees that the Contractor may share Deliverables and information that would be subject to production pursuant to a Freedom of Information Act request with third parties, including representatives of other governmental bodies considering a City Digital Network program, provided that prior to sharing such information, the Contractor reviews such disclosure with the City to confirm such production. The Contractor must implement such measures as may be necessary to ensure that its staff, legal counsel, accountants and Subcontractors are bound by the confidentiality provisions in this Agreement. The Contractor acknowledges and agrees that it is entrusted with or has access to valuable and confidential information and records of the City and with respect to such City information, the Contractor agrees to be held to the standard of care of a fiduciary.

(b) *Publicity.* The Contractor must not unilaterally issue any publicity or news releases or voluntarily grant press interviews, and except as may be required by Law during or after the performance of this Agreement, may not disseminate any information regarding its Work or the project to which the Work pertains without the prior written consent of the press secretary to the Mayor of the City. The foregoing sentence shall not be construed, and Section 3.10(a) shall not be construed, to prohibit the Contractor from discussing the City Digital Network with media buyers, advertisers, agencies, other Governmental Authorities, lenders providing Permitted Lender Financing, prospective Approved Transferees or other parties in the ordinary course of business and the marketing of Ad Panels to such parties, or from making any legally required disclosures under any applicable securities laws or regulations.

(c) *Document Request.* If the Contractor is presented with a request for documents by any administrative agency or with a subpoena duces tecum regarding any records, data or documents that may be in the Contractor's possession by reason of this Agreement or its performance of the Work, the Contractor must, unless restricted by applicable Law, promptly give notice to the Corporation Counsel and the CFO, with the understanding that the City will have the opportunity to contest such process by any means available to them before the records or documents are submitted to a court or other third party, such contest being at the City's sole cost and expense. The Contractor, however, is not obligated to withhold the delivery beyond the time ordered by the court or administrative agency, unless the subpoena or request is quashed or the time to produce is otherwise extended.

3.11 Ownership of Documents.

(a) *City Materials.* The City shall own all right, title, and interest in and to any documents, materials, data, information, or other works of authorship provided by the City to Contractor (collectively, "**City Materials**").

(b) *City Work Product.* All Deliverables and reports, data, findings or information in any form originally prepared or assembled by the Contractor under this Agreement are property of the City, including all copyrights inherent in any such works of authorship (including any drafts thereof) to the extent such works are applicable to the City Digital Network (collectively, "**City Work Product**").

(c) *Plans and Specifications (Excluding City Work Product).* The Contractor will own the other plans, specifications, and designs (digital and structural) for the City Digital Signs and the City Digital Network (i.e., other than the City Work Product and CDN Intellectual Property, as hereinafter defined) (the "**Plans and Specifications**"), including all copyrights and patents therein, to be produced by the Contractor pursuant to this Agreement. The Contractor hereby grants to the City, its successors and Permitted Assigns (as hereinafter defined) an irrevocable (absent an uncured City default in its obligations under this Agreement, as described in Section 12.5 hereof), non-exclusive (except as stated below), non-transferable (except to the City's successors and Permitted Assigns), perpetual, royalty-free, paid-up license to use the Plans and Specifications at all times during the term of this Agreement for the City Digital Signs and the City Digital Network, and after the expiration or termination of this Agreement, so that at all times the City possesses adequate legal rights to use the Plans and Specifications to operate the City Digital Signs and the City Digital Network. A "**Permitted Assign**" means any lender or other entity to which the City assigns, pledges, or grants a lien in any rights or intangible property hereunder for financing purposes, or in the revenues payable to the City under this Agreement.

(d) *Contractor Use of City Work Product.* The Contractor may retain copies of Deliverables and other City Work Product for its records and its use in performing its obligations under this Agreement. The City hereby grants to the Contractor, its successors and Permitted Assigns, a perpetual (absent a Contractor Event of Default under this Agreement), royalty-free, paid-up license to

use such Deliverables and other City Work Product as required to perform under this Agreement and, for such purposes and in connection with the development of the digital signage installed and/or related digital networks by the Contractor outside of Cook County, provided that, as to any use outside of Cook County the Contractor shall pay to the City a reasonable royalty rate.

(e) *Risk of Loss.* During performance of its Work, the Contractor is responsible for any loss or damage to the Deliverables, Plans and Specifications, reports, data, findings or information while in the Contractor's or any Subcontractor's possession. Any such lost or damaged Deliverables, Plans and Specifications, reports, data, findings or information must be restored at the expense of the Contractor. If not restorable, the Contractor must bear the cost of replacement and of any loss suffered by the City on account of the destruction.

3.12 **Intellectual Property Rights.**

(a) *Ownership of CDN Intellectual Property.* Except as otherwise agreed to by the parties in writing, in the event that, in performing its Work hereunder, any Intellectual Property Rights (as defined below) vest in Contractor arising from any inventions (whether or not patentable) or from the creation of any new software (including source code) or other technology for the City pursuant to this Agreement (to the extent that the foregoing does not constitute works of authorship that are City Work Product and owned by the City pursuant to Section 3.11(b) above) and provided that none of the foregoing constitute an Improvement (as defined below) (collectively, any "**CDN Intellectual Property**"), such CDN Intellectual Property shall be owned by the City. Contractor hereby assigns to the City any Intellectual Property Rights or other ownership interests it may have in and to any CDN Intellectual Property. "**Intellectual Property Rights**" mean all patents, trademarks, copyrights or other similar intellectual property or industrial property rights that are recognizable under applicable Law and which are owned by a party hereunder. "**Improvement**" means any extensions, enhancements, derivative works (as defined in 17 U.S.C. § 101), improvements, or further developments to a Contractor Background IP, provided that any City Work Product shall not be considered to be an Improvement. "**Contractor Background IP**" means all Intellectual Property Rights that (a) are owned or controlled by a Contractor prior to the Effective Date of this Agreement; or (b) become owned or controlled by Contractor independently of the performance of this Agreement. The City shall use such CDN Intellectual Property solely for the City's (or its successor's or Permitted Assign's) operation of the City Digital Signs or City Digital Network or for other, related City projects (e.g., an expansion of the City Messages component to other City digital signs in the City). The intent of Section 3.11 and this Section 3.12 is to assure that at all times the City possesses adequate rights to use the CDN Intellectual Property to lawfully operate the City Digital Signs and City Digital Network, and to enforce the City's rights and remedies pursuant to this Agreement, to facilitate the City planning and budgeting purposes and, upon expiration or termination of this Agreement, to allow for the continued operation of the City Digital Signs and the City Digital Network or similar programs implemented or considered by the City. The Contractor hereby grants to the City, its successors and assigns, a non-exclusive (except as stated below), non-transferable

(except to the City's successors and Permitted Assigns), perpetual, royalty-free, paid-up license to use any Contactor Background IP or Improvements that may be necessary for the use of any CDN Intellectual Property in accordance with this Agreement. The Contractor's sole and exclusive remedy for a purported breach by the City of the restrictions set forth in this paragraph is to seek injunctive relief (to the extent available pursuant to applicable Law).

(b) *License Back – CDN Intellectual Property.* The City hereby grants to the Contractor, its successors and assigns, (i) a royalty-free, paid-up license to use any CDN Intellectual Property during the term of this Agreement as required to perform the Contractor's obligations under this Agreement, and (ii) an irrevocable and perpetual (absent a Contractor Event of Default) license to use any CDN Intellectual Property in connection with the development of digital signage and/or related digital networks installed by the Contractor outside of Cook County, provided that, as to any use outside of Cook County, Contractor shall pay to the City a reasonable royalty rate.

(c) *License to Third Party Intellectual Property; Post-Termination Assistance.* The Contractor hereby grants to the City and its successors and Permitted Assigns, a non-exclusive (except as stated below), non-transferable (except as to such successors and Permitted Assigns), royalty-free, paid-up license during the term hereof to use any third party software or technology embodied in the City Digital Signs and/or City Digital Network as necessary to allow the City to use such software and technology to lawfully operate the City Digital Signs and City Digital Network or for other, related City projects (e.g., an expansion of the City Messages component to other City digital signs in the City). In addition, in order to realize the intended objectives described in Section 3.12(a) above, on and after the date of this Agreement, Contractor (i) shall, in negotiating all applicable third party and technology licenses and contracts applicable to the City Digital Signs and the City Digital Network, use commercially reasonable efforts to require that such licenses and contracts include express language identifying the City as an intended third party beneficiary of such licenses and contracts and entitling the City to assume or otherwise receive the benefit of such licenses and contracts upon any expiration or termination of this Agreement or of the Contractor's rights under such licenses and contracts, subject to the City's payment of such license fees and other customary payments as are due with respect to such licenses and contracts under the terms and conditions thereof; in the event that, notwithstanding such commercially reasonable efforts, the Contractor is unable to secure the inclusion of such third party beneficiary and assumption language in a license or contract, the Contractor shall give the City notice of such inability; (ii) to the extent permissible under applicable third party software or technology licenses and as requested by the City, shall upon the expiration or termination of this Agreement (other than arising from a City Event of Default) assign to the City any third party licenses to any such third party software or technology to enable to the City to continue to use such third party technology or software in accordance with the terms and conditions of such licenses (including, without limitation, the payment of any fees associated with any such assignment and/or continued use of such software or technology), and (iii) upon the City's reasonable request within twelve (12) months prior to the expiration or termination of this Agreement, shall provide the City with reasonable information and assistance to enable the City to itself procure licenses for any other

third party software or technology used in the City Digital Signs or City Digital Network to enable the City to use such software or technology for the City Digital Signs or City Digital Network following the expiration or termination hereof. The parties shall further cooperate during such twelve (12) month period to transfer such institutional and operational knowledge as may be reasonably necessary for the City to operate the City Digital Signs and City Digital Network, provided, however, that the forgoing shall not be construed to obligate the Contractor to deliver any leased space, Contractor computers or equipment (other than the City Digital Signs and structural fixtures and utilities associated therewith) to the City.

(d) *Further Assurances.* The Contractor will, and will cause all of its Subcontractors, employees, agents and other persons within its control to, execute all documents and perform all acts that the City may reasonably request in order to assist the City in perfecting its rights in the Plans and Specifications, the CDN Intellectual Property City Digital Signs, and the City Digital Network so as to assure the City can use such Plans and Specifications and CDN Intellectual Property for the continued operation of the City Digital Network at all times, including after an Event of Default and, if requested by the City, otherwise in connection with the expiration or termination of this Agreement, as to the City Digital Signs, a bill of sale, quitclaim deed as to such signs, or other appropriate instrument of conveyance.

(e) *Grant of Rights to Plans and Specifications.* Consistent with the grant, assignment and transfer provisions in Section 3.11 and Section 3.12(a) above, within 30 days of execution of this Agreement or as soon as is commercially practicable, the Contractor must deliver all appropriate documentation to the City (e.g., relevant license of intangible property) to further evidence the City's rights so that, if for example, an Event of Default occurs pursuant to Article 12, and the City elects to continue to use the City Digital Signs and City Digital Network as provided herein, the City may reasonably establish to third parties such prior grant, assignment and transfer and the right of the City, its successors, and assigns to utilize the Plans and Specifications and CDN Intellectual Property and any pre-existing and incorporated intellectual property rights and all goodwill relating to them, in operating the City Digital Signs and City Digital Network, free and clear of any liens, claims or other encumbrances.

(f) *Warranties.* The Contractor warrants to the City and its successors that the Contractor is and will be the lawful owner of good and marketable title in and to the City Digital Signs and the City Digital Network and has the legal rights to grant a license to use them, and that the Contractor has a legal right and interest in the Plans and Specifications and in any Contractor Background IP sufficient to grant the interests described above. The Contractor further warrants that the structural design of the City Digital Signs shall not be used by Contractor for any other party in Cook County and that the Contractor shall not construct digital signs in Cook County which appear to the viewing public to be of a similar distinctive, architectural design as the design utilized in the City Digital Network. The Contractor warrants and represents that the Plans and Specifications and the CDN Intellectual Property are complete, entire and comprehensive, and that the Plans and Specifications and CDN Intellectual Property constitute either works of original authorship or, in the case of

Contractor Background IP, pre-existing and incorporated intellectual property rights. Contractor has a license of use from the author of the pre-existing and incorporated intellectual property rights. Notwithstanding the foregoing, the Contractor shall also be permitted to grant a lender providing financing for the City Digital Network a security interest in the Plans and Specifications, the City Digital Signs, the City Digital Network pursuant to documents evidencing and securing such Permitted Lender Financing, provided, however, that in no instance shall such a lender acquire greater rights than the rights of the Contractor under this Agreement. The Contractor may also make use of the Plans and Specifications and CDN Intellectual Property in connection with the development of the digital signage installed by the Contractor outside of Cook County, provided that as to any CDN Intellectual Property, Contractor shall pay to the City a reasonable royalty fee. The terms and provisions of this Section 3.12 shall survive the termination or expiration of this Agreement.

3.13 Royalties, Related Fees and Indemnification for Infringement. The Contractor must pay all royalties and other fees for any patents, trademarks, copyrights or other proprietary rights related to the Plans and Specifications, the City Digital Signs, the City Digital Network and the CDN Intellectual Property and necessary for the execution and completion of the Work and the programming and operation of the City Digital Signs and the City Digital Network. The Contractor must indemnify, defend and hold harmless the City from and against any and all Losses (as hereinafter defined) arising or resulting from any claim or legal action that any materials, supplies, equipment, processes or other portions of the Work furnished by the Contractor under this Agreement, or the use thereof, or the programming and operation of the City Digital Signs and the City Digital Network constitutes an infringement and/or violation of any patent, trademark, copyright, trade secret, intellectual property right or other proprietary right. If any such item is held to constitute an infringement, and the use of such item is enjoined, the Contractor must, at its own expense, either procure the right to use the infringing item, or replace the same with a substantially equal but non-infringing item, or modify the same to be non-infringing, provided that any substitute or modified item must meet all the requirements and be subject to all the provisions of this Agreement and the approval of the City. The terms and provisions of this Section 3.13 shall survive the termination or expiration of this Agreement; provided, however, that such survival provision shall not be construed to obligate the Contractor to pay any royalties or other fees after such termination or expiration.

3.14 Personnel.

(a) *Adequate Staffing.* The Contractor covenants to assign and maintain an adequate staff of competent personnel that is properly equipped, licensed as appropriate, available as needed, qualified and assigned to perform the Work so as to maximize gross revenues from the City Digital Signs and to at all times operate the City Digital Network, including coordinating the programming of City Public Service Messages, and the ability, on a 24/7/365 basis, to coordinate the transmission of City Emergency Messages. The covenants in the preceding sentence go to the essence of the parties' agreement. The Contractor must include among its staff the Key Personnel described below. The level of staffing may be revised from time to time with advance notice to the Project Manager.

(b) *Key Personnel.* “**Key Personnel**” means those persons assigned to those positions (in accordance with this Section), set forth in Exhibit 7. The Project Manager may at any time, for good cause shown, notify the Contractor in writing that the City will no longer accept performance of Work under this Agreement by one or more Key Personnel. Good cause shall include, without limitation, acts of dishonesty, fraud, repeated failure to perform responsibilities resulting in repeated Defaults and the City's sending of a Cure Notice in connection therewith, and similar recurring negative conduct materially detrimental to the parties' performance under this Agreement. Upon such a notice, the Contractor must promptly suspend the services of such Key Personnel and must replace such Key Personnel in accordance with the terms of this Agreement. In addition, the Contractor may remove Key Personnel from time to time, so long as the Contractor uses all reasonable efforts to maintain continuity in the Key Personnel during the term of this Agreement. The City has the right to approve in writing the replacement for any Key Personnel, regardless of the reason for replacement, which approval will not be unreasonably withheld or delayed. At least one of the Key Personnel must be available by telephone or text or electronic messaging system (at the numbers set forth in Exhibit 7) 24/7/365 basis. In addition, the Contractor must have Key Personnel within the City of Chicago on the days and at the times set forth in the schedule of availability that is attached hereto as Exhibit 7.

(c) *Chicago Office.* The Contractor must maintain an adequately staffed business office within the City of Chicago in order to facilitate contact between the Contractor and the City and to have contact with Chicago-based advertising companies, and media buyers. Such office must be equipped as necessary to accept and respond to questions, concerns, complaints (including 311 calls to the City, which the City forwards to the Contractor) and reports relating to the City Digital Signs. Key Personnel with an asterisk beside their name in Exhibit 7 must be based in the office in the City of Chicago.

(d) *Benefits.* The Contractor and Subcontractors are solely responsible for the compensation, benefits, contributions and taxes, if any, of all of their employees including, with respect to the Contractor, the Key Personnel. The Contractor and Subcontractors must at their own expense comply with all applicable workers' compensation, unemployment insurance, employer's liability, tax withholding, minimum wages and hours, and other Laws.

(e) *Responsibility.* The Contractor is financially and otherwise responsible to the City, for acts and omissions of the Contractor, Subcontractors, their respective agents and employees, and any other persons performing portions of the Work, or claiming by, through or under the Contractor, and is financially and otherwise responsible to the City, for any Losses resulting from such acts or omissions.

3.15 Minority and Women's Business Enterprises Commitment. In the performance of this Agreement, including the procurement and lease of materials or equipment, the Contractor must abide by the minority and women's business enterprise commitment requirements of the Municipal Code of Chicago, Chapter 2-92, Sections 2-92-420 *et seq.*, except to the extent waived by the Chief Procurement Officer. Notwithstanding Exhibit 3 to this Agreement, for purposes of such

performance, the work required under this Agreement shall be deemed to be a construction contract and, as such, shall have an MBE contract goal of 24% and a WBE contract goal of 4% (in lieu of the 25% MBE and 4% WBE contract goals set forth in Exhibit 3). No later than July 1, 2013, the Contractor must submit Schedules C and D to the Chief Procurement Officer evidencing its compliance with this requirement with respect to the assembly and installation (but not manufacturing or fabricating) of the City Digital Signs for the period beginning on March 1, 2013, and ending on December 31, 2014 (or such later date as such assembly and installation shall be complete). Commencing on July 1, 2013 and thereafter, the Contractor must submit completed Schedules C-1 and D-1 to the Chief Procurement Officer, evidencing its compliance with this requirement with respect to assembly and installation of the City Digital Sign on each January 1 and July 1 while assembly and installation is still being performed by the Contractor. Schedules C and D submitted on each January 1 must evidence compliance with this requirement during the period beginning on the succeeding April 1 and ending on the succeeding September 30, and Schedules C and D submitted on each July 1 must evidence compliance with this requirement during the period beginning on the succeeding October 1 and ending on the succeeding March 31. Such Schedules C and D will be deemed automatically incorporated into this Agreement in Exhibit 3 upon acceptance by the Chief Procurement Officer. In addition, the Contractor must submit to the Chief Procurement Officer additional Schedules C and D relating to the maintenance and removal of the City Digital Signs (if applicable) no later than the date the Contractor installs the first City Digital Signs, which Schedules C and D will be updated and resubmitted to the Chief Procurement Officer no less than every three months thereafter throughout the term of this Agreement. Such Schedules C and D will be deemed automatically incorporated into this Agreement in Exhibit 3 upon acceptance by the Chief Procurement Officer. Failure by the Contractor to submit Schedules C and D, as required by this Section 3.15, constitutes an Event of Default by the Contractor pursuant to Article 12 of this Agreement. During the assembly and installation of the City Digital Signs during Phases I and II, the Contractor must utilize minority and women's business enterprises in percentages equal to or exceeding the greater than 24% for MBEs and 4% for WBEs with respect to the Total Contract Price (as defined below) applicable to the assembly and installation of City Digital Signs. For purposes of such MBE/WBE testing and the Special Conditions Regarding Minority Business Enterprise Commitment and Women's Business Enterprise Commitment, "**Total Contract Price**" means, with respect to the assembly and installation of the City Digital Signs during Phases I and II, all Out-Sourced Costs (as defined below) incurred by the Contractor in the assembly and installation of City Digital Signs, excluding, however, costs related to the manufacturing, fabricating and integrating of the Ad Panels, for which no Chicago-based supplier exists. During the maintenance and removal (if applicable) of the City Digital Signs, the Contractor must utilize minority and women's business enterprises in percentages equal to or exceeding than 24% for MBEs and 4% than WBEs with respect to the Total Contract Price applicable to all Out-Sourced Costs of maintenance and removal of such City Digital Signs incurred by the Contractor in the performance of this Agreement. For purposes of such MBE/WBE testing and the Special Conditions Regarding Minority Business Enterprise Commitment and Women's Business Enterprise Commitment, "**Total Contract Price**" means, with respect to the maintenance and removal of City Digital Sign, all Out-Sourced Costs incurred by the

Contractor in the maintenance and removal of City Digital Sign. “**Out-Sourced Costs**” means all costs incurred by the Contractor in its performance of the applicable portion of the Work (i.e., installation and assembly, or maintenance and removal), excluding costs of Work performed by employees of the Contractor or its Affiliates (and, in the case of the installation and assembly phase, also excluding the cost of manufacturing the Ad Panels).

In addition to the above commitments, throughout the term of the Agreement, the Contractor shall provide any Chicago-based MBE or WBE business entity which is a manufacturer of large format out-of-home digital displays that meet the requirements set out in any Request for Proposal issued by the Contractor in connection with the Chicago Digital Network with an opportunity to bid for the provision of such digital displays at such time as the City Digital Signs shall require replacement or refurbishment, as when provided for under this Agreement.

3.16 Safety. The Contractor is responsible for initiating, maintaining and supervising comprehensive safety precautions and programs in connection with the performance of this Agreement, including, without limitation, appropriate precautions and programs for areas in and around the performance of the Work under OSHA and other applicable Laws. The Contractor must erect and maintain, as required by existing conditions and the performance of this Agreement, all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notifying the public and owners and users of adjacent sites and utilities. The Contractor must promptly remedy damage and loss to property to the extent caused in whole or in part by the Contractor, a Subcontractor or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable, including, without limitation, any damage to buried utilities arising from the Contractor's performance of any subsurface excavation, boring or foundation work, or any damage to overhead utilities arising from Contractor's installation of the City Digital Signs. The foregoing obligations of the Contractor are in addition to the Contractor's indemnity obligations hereunder.

3.17 Assignments and Subcontracts.

(a) Standards for Assignments and Subcontracts.

- (i) Except as permitted under Section 12.1(d)(vii) and (viii), Section 13.9, and the definitions of “Approved Transferee”, “Permitted Lender Financing”, and “Permitted Transfer”, the Contractor must not assign, delegate, or otherwise transfer all or any part of its rights or obligations under this Agreement or any part of it, without the express written consent of the CFO, which consent shall be in the CFO's sole discretion; provided; however, that the Contractor may assign certain Ad Panel manufacturing and contracting and subcontracting duties (e.g., excavation, sign erection, ongoing landscaping maintenance) to third parties in connection with the construction and operation of the City

Digital Network. The Contractor acknowledges that it was selected based on its unique expertise and ability to design, manufacture, assemble, install, program and successfully operate the City Digital Network, both with respect to maximizing Gross Revenues, the display of City Public Service Messages, and the transmission of City Emergency Messages. The Contractor may not knowingly enter into a contract or arrangement with, or otherwise permit, any Subcontractor to perform any portion of the Work if such Subcontractor is barred or prohibited from contracting with the City or has been found to be nonresponsive by the Chief Procurement Officer. The absence of such a provision or written consent voids the attempted assignment, delegation, subcontracting or transfer and is of no effect as to the Work or this Agreement.

No approvals given by the CFO operate to relieve the Contractor of any of its obligations or liabilities under this Agreement; provided, however, that if a permitted successor or permitted assignee executes and delivers to the CFO a written assumption agreement assuming the Contractor's obligations under this Agreement in form and substance reasonably satisfactory to the City, upon the effectiveness of such a written assumption agreement, the Contractor shall be released from any further obligations under this Agreement after the effective date of such assumption agreement. Transfers constituting Permitted Transfers or transfers of security interests to a lender pursuant to a Permitted Lender Financing shall be deemed expressly permitted by this Agreement, subject to the terms and conditions applicable to such transfers (including those set forth in the definitions of Approved Transferee and other applicable definitions).

- (ii) The City expressly reserves the right to assign or otherwise transfer all or any part of its interests under this Agreement to any successor or Permitted Assignee, so long as such successor or Permitted Assignee is not an Approved Transferee.
- (iii) All subcontracts and all approvals of Subcontractors are, regardless of their form, considered conditioned upon performance by the Subcontractor in accordance with the terms and conditions of this Agreement. If any Subcontractor fails to observe or perform the terms and conditions of this Agreement to the reasonable satisfaction of the City, the City has the absolute right upon written notification to immediately rescind approval and to require the performance of this Agreement by the Contractor personally or through any other City-approved Subcontractor. Any approval for the use of Subcontractors in the performance of the Work under this Agreement under no circumstances operates to relieve the Contractor of any of its obligations or liabilities under this Agreement.

- (iv) Upon the request of the CFO, the Contractor must furnish the CFO with copies of its subcontract agreements with Subcontractors of the first tier. All subcontracts relating to Subcontractors of the first tier must contain provisions that (A) require the Work to be performed in strict accordance with the applicable requirements of this Agreement, and (B) ensure the Subcontractors are subject to all applicable terms of this Agreement. If the agreements do not prejudice any of the City's rights under this Agreement, such agreements may contain different provisions than are provided in this Agreement with respect to matters not affecting the quality of the Work or Contractor's obligations to the City.

(b) *Third Party Beneficiaries.* Subcontractors are not third party beneficiaries of this Agreement, except as otherwise provided in the Municipal Code of Chicago, ch. 2-92, Sections 2-92-420 *et seq.*, the Minority-Owned and Women-Owned Business Enterprise Procurement Program.

3.18 **Warranty.** The Contractor warrants to the City that all Work will be performed in accordance with generally accepted industry standards for each category of Work (including, without limitation, any applicable OAAA standards), that all Work provided under this Agreement will be performed in a good and workmanlike manner (including, without limitation, the assembly and installation work, which must also be performed in accordance with sound construction practices), that all City Digital Signs and materials, supplies and equipment furnished under this Agreement will be of good quality and new, that the Work (including, without limitation, each item of equipment incorporated therein) will be of good and workmanlike quality and free from faults, defects and deficiencies, and that the Work will conform with the requirements of this Agreement. During the term of this Agreement, the Contractor must promptly correct any failure to comply with this warranty or breach of this warranty, which corrective action must include, without limitation, any necessary removal, disassembly, reinstallation, repair, replacement (including replacement of any LED lights or City Digital Sign components or Ad Panels that may need replacement prior to the end of their anticipated useful life or scheduled refurbishment pursuant to Section 3.21 below), reassembly, reconstruction, retesting and/or reinspection of any part or portion of the Work, without cost to the City. Costs incurred with respect to such remedial or corrective actions shall not be or become Capitalized Costs. Contractor shall obtain not less than a ten year warranty from the manufacturer of the Ad Panels or an industry-recognized warranty provider. Such warranty shall not, however, limit the Contractor's obligations under this Section 3.18 and Contractor shall remain ultimately responsible for the continuous operation of the City Digital Signs in accordance with the terms of this Agreement.

3.19. **Payment and Performance Bond.**

(a) *Amount of Bond and Obligations to be Covered.* The Contractor must deliver to the CFO payment and performance bonds (such bonds and all replacements thereof being collectively referred to herein as the "**Payment and Performance Bonds**") described below, no later than the day

the Contractor begins manufacturing (or places an order for the manufacturing of) the City Digital Signs, except as otherwise provided below with respect to the Removal Bond. Each Payment and Performance Bond shall cover and secure any and all claims made relating to Bonded Obligations while each such Payment and Performance Bond is in effect (prior to the applicable expiration date) and any other claims required to be covered by applicable Law.

- (i) The Payment and Performance Bonds must secure the faithful performance by the Contractor of all contractual obligations relating to the manufacturing, assembly, installation, maintenance and operation of the City Digital Signs, any additional City Digital Signs requested by the City during the term of this Agreement, and the removal and dismantlement of the City Digital Signs and the restoration of all property affected by the removal of City Digital Signs upon the termination or expiration of this Agreement, whichever is earlier, and all other obligations of the Contractor pursuant to this Agreement (except as provided in the following sentence) (collectively, the “**Bonded Obligations**”). The Payment and Performance Bonds shall not secure the Contractor’s obligations to pay the Guaranteed Initial Fee, the Guaranteed Annual Fees or the City Share of Gross Revenues, so long as the guarantee provided in Section 3.20 secures the payment of such amounts; provided, however, that if an Event of Default exists under this Agreement, as a result of a failure to pay any such payment obligations to the City, the Payment and Performance Bonds shall continue to secure all Bonded Obligations of the Contractor pursuant to this Agreement and as may be otherwise provided by applicable Law, in the limits of such Payment and Performance Bonds, notwithstanding the occurrence and continuation of such Event of Default. The Contractor must maintain the Payment and Performance Bonds in effect during the entire term of the Agreement (except as otherwise expressly provided herein) and until the Contractor has satisfied all of its Bonded Obligations pursuant to this Agreement, including any such Bonded Obligations extending beyond the term of this Agreement.
- (ii) The Contractor may obtain a single performance bond or separate Payment and Performance Bonds to cover the Bonded Obligations, as follows:
 - (A) A Payment and Performance Bond in the amount of Ten Million and No/100 Dollars (\$10,000,000) (the “**Installation Bond**”) as security for the faithful performance by the Contractor of its obligations to manufacture, assemble, install and maintain the City Digital Signs, as provided in this Agreement. The coverage afforded by the Installation Bond with respect to the manufacture, assembly and installation of the City Digital Signs shall continue until the Contractor has

successfully completed installation of the City Digital Signs required under this Agreement and all such signs are operational. Such Installation Bond has been sized in anticipation of the Contractor's installation of approximately ten City Digital Sign faces at a time. In the event that such Installation Bond should ever be called upon and the surety required to perform under it, then to the extent that there are additional City Digital Signs that remain to be installed, the Contractor shall provide a replacement bond (or cause the amount under such initial bond to be increased) so that at all times during the installation process there is bond coverage sufficient to insure the installation of all signs remaining to be installed. Thereafter, such bond shall assure only the performance of the Contractor's maintenance obligations under this Agreement; provided, however, that if such maintenance obligations are covered by both a manufacturer's warranty and separate service agreement, and no such bond is required under applicable Laws, then no continuing maintenance bond shall be required. If the City elects to install additional City Digital Signs requested by the City during the term of this Agreement, the City may require a separate Installation Bond with respect to such additional signs.

(B) If demolition or removal of a City Digital Sign (or signs) is required pursuant to Section 4.7, then at such time a Payment and Performance Bond in the amount of Five Million and No/100 Dollars (\$5,000,000) (the "**Removal Bond**") as security for the faithful performance by the Contractor of its obligations to remove and dismantle the City Digital Signs and restore all property affected by the removal of City Digital Signs upon the termination or expiration of this Agreement, whichever is earlier. The Contractor acknowledges and agrees that it must at all such times maintain a Removal Bond as otherwise required under 330 ILCS 550/1 *et seq.*

(iii) The Payment and Performance Bonds must collectively secure all Bonded Obligations and must all be provided by the same surety, unless otherwise approved by the City.

(b) *Renewal of Payment and Performance Bonds.* The Payment and Performance Bonds

must collectively secure the performance of all Bonded Obligations of the Contractor for a period of no less than one year and must cover all claims made relating to the Bonded Obligations of the Contractor during such period. In confirmation and furtherance of the foregoing, each replacement Payment and Performance Bond will cover any and all claims relating to Bonded Obligations made or arising during the term of such Payment and Performance Bond, regardless of when such claim accrues. No less than 90 days prior to the expiration of the period covered by the Removal Bond provided hereunder, the Contractor must deliver to the CFO a replacement Removal Bond covering at least the one-year period beginning on the date of the expiration of the period covered by the then-current Removal Bond. The replacement Removal Bond must be substantially identical to the Removal Bond being replaced and must be issued by a surety satisfying the requirements of this Section 3.19. In confirmation and furtherance of the foregoing, the Contractor must provide the Payment and Performance Bonds as described herein during the entire term of the Agreement (except as otherwise provided herein with respect to the Installation Bond) and until the Contractor has satisfied all Bonded Obligations pursuant to this Agreement, including any such Bonded Obligations extending beyond the term of this Agreement. The last Installation Bond and Removal Bond provided by the Contractor hereunder shall each cover all claims relating to Bonded Obligations made after the date of issuance of each such Bond, regardless of when such claim accrues (except that Installation Bonds shall not apply to claims relating to the manufacturing, assembly and installation accruing more than one year after the installation of the final Phase I and Phase II City Digital Sign).

(c) Requirements of Payment and Performance Bonds and Surety.

- (i) The Payment and Performance Bonds provided by the Contractor must comply with the provisions of 30 ILCS 550/1 *et seq.*, as amended, and of Chapter 2, Section 2-92-030 of the Municipal Code of Chicago, as amended and be in such form as the bond form included in Exhibit 6. The surety issuing the Payment and Performance Bonds must meet all requirements under this Section 3.19 and applicable Law and must be acceptable to the City Comptroller in his reasonable discretion. The surety for the Payment and Performance Bonds must be listed in the most recently published (as of the date of issuance of the Payment and Performance Bonds) “Listing of Approved Sureties” of the U.S. Department of the Treasury, with underwriting limitations in excess of the total Payment and Performance Bonds amount.
- (ii) In case of neglect, failure, or refusal of the Contractor to provide a satisfactory surety and Payment and Performance Bonds by the date specified in Section 3.19(a), replace the Payment and Performance Bonds as required herein and maintain such surety and Payment and Performance Bonds in place until the Contractor has satisfied all Bonded Obligations pursuant to this Agreement (including any such Bonded Obligations extending beyond the term of this Agreement), the CFO may declare the Contractor in default of this Agreement. The City will not require any payment or performance by the surety pursuant to

the Payment and Performance Bonds solely by reason of any such default if the Contractor is continuing to perform all Bonded Obligations. Notwithstanding the foregoing, any such default will not release Contractor or its surety from any claim relating to a Bonded Obligation which may be made after the date of issuance of the Payment and Performance Bonds in effect at the time of the default.

- (iii) If at any time the surety upon the Payment and Performance Bonds becomes insolvent, or is, in the reasonable opinion of the CFO, financially unsatisfactory (e.g., experiences a downgrade in its rating or is no longer listed on the aforementioned listing of approved sureties), or unable to respond to damages in case of liability on such bond, the CFO will notify the Contractor and direct that Payment and Performance Bonds issued by a reasonably satisfactory surety be provided forthwith.
- (iv) To the extent the Contractor has not provided satisfactory Payment and Performance Bonds as required herein because the Contractor is unable to obtain satisfactory Payment and Performance Bonds due to changed market conditions occurring after the Commencement Date, the Project Manager and the Contractor will use reasonable efforts to determine whether the City is legally authorized to accept alternate security from the Contractor to secure the Bonded Obligations, such as a letter of credit or similar liquidity facility. In such event, the Project Manager will use reasonable efforts to obtain the authorization of City Council, if necessary, to permit the City to accept such a form of alternate security. If the Contractor is unable to provide satisfactory Payment and Performance Bonds as required herein due to changed market conditions occurring after the Commencement Date, the Contractor must so notify the City on the earlier of (A) 5 days after being notified that the Contractor's surety will not provide or renew the Payment and Performance Bonds, and (B) 90 days prior the expiration of the then-current Payment and Performance Bonds.
- (v) The Payment and Performance Bonds (including each renewal thereof) must remain on deposit with the CFO permanently (or until termination or replacement in accordance with the terms of this Agreement). The fact that the Payment and Performance Bonds remain on deposit with the CFO shall not expand the responsibilities of the surety beyond those described in this Agreement and in the Payment and Performance Bonds. It is understood and agreed that upon the expiration of any Installation Bond or Removal Bond all liability relating to claims not made while such bonds are in effect, including replacements, shall be released in full; provided, however, that, the liability under the last Installation Bond and Removal Bond provided by the Contractor

hereunder shall expire as provided by applicable Law, the terms of such bonds and as otherwise provided in this Agreement.

(d) *City's Rights.*

- (i) The rights reserved to the City with respect to the Payment and Performance Bonds are in addition to all other rights reserved by the City pursuant to this Agreement or by Law, and no action, proceeding or right with respect to the Payment and Performance Bonds will affect any other legal rights, remedies or causes of action belonging to the City.
- (ii) The City has the right, without legal proceedings, to claim against the surety under the Payment and Performance Bonds any amount due and owing for the payment of any money which may be due the City as a result of the Contractor's failure to perform the Work in accordance with this Agreement (after allowing the surety any opportunity to cure permitted by the terms of the Payment and Performance Bonds).
- (iii) If the amount of the Payment and Performance Bonds is insufficient to cover any costs or damages to the City, the Contractor is liable for the shortfall and must pay such shortfall to the City upon demand.

3.20 **Affiliate Guaranty.** Simultaneously with the execution of this Agreement, the Contractor shall provide a guaranty of JCDecaux North America, Inc. (the "**Guarantor**") in the form attached hereto as Exhibit 12 (the "**Guaranty**") with such changes as may be approved by the City, guaranteeing the Contractor's obligation to pay (a) the Guaranteed Initial Fees, up to a maximum of Twenty-Five Million and No/100 Dollars (\$25,000,000), and (b) the Guaranteed Annual Fees, as and when payable in accordance with Exhibit 2, up to a maximum of One Hundred Fifty-Five Million Four Hundred Thousand and No/100 Dollars (\$155,400,000). For each calendar year during the term of this Agreement, the Guarantor must provide audited financial statements to the Project Manager not later than 180 days after the end of each calendar year. To the extent the City reasonably determines that the Guarantor has suffered a material adverse change in its financial condition, the City may require the Contractor to provide a letter of credit or similar security to cover the obligations secured by the guaranty of such entity. Notwithstanding the foregoing, the Guarantor's obligation under such guaranty shall be automatically reduced by any amounts paid by, or on behalf of, the Contractor for the Guaranteed Initial Fees and the Guaranteed Annual Fees, and is subject to termination upon full and final payment of such amounts, as described in the Guaranty.

If JCDecaux North America, Inc. transfers its interest in the Contractor in a transfer permitted under this Agreement, then, prior to the effective date of such transfer, the Contractor and JCDecaux North America, Inc. shall deliver to the City a replacement guaranty in substantially the same form as the Guaranty from a replacement guarantor having a creditworthiness equal to or greater than the

creditworthiness of JCDecaux North America, Inc., as determined by the CFO in the CFO's reasonable discretion, guaranteeing any remaining unpaid Guaranteed Initial Fees and Guaranteed Annual Fees. Upon the CFO's determination of such creditworthiness, and delivery of such an executed replacement guaranty (which shall become the Guaranty under this Agreement), JCDecaux North America, Inc. may transfer its interest in Contractor. Any transfer in violation of this Section 3.20 or failure to provide such a replacement guaranty shall constitute an immediate Default without any required Cure Notice (as defined in Section 12.2(b)), and, if not cured within ten (10) days of such transfer, shall constitute an Event of Default (as defined in Section 12.2(b)), and notwithstanding any such transfer, JCDecaux North America, Inc., shall remain obligated under the Guaranty.

3.21 Required City Digital Sign Refurbishment and Upgrade. No later than nine years after the date of installation of a City Digital Sign, the Contractor shall, at the Contractor's sole cost, refurbish and upgrade such City Digital Sign so as to restore such sign to an equivalent functionality comparable to digital sign technology then being sold in the outdoor advertising market. If necessary, such refurbishment and upgrade requirement may require the complete replacement of the Ad Panel, including LED lights, fixtures, wiring and sign components, addition of light diffusing or controlling features, incorporation of new solar, energy savings or similar "green" features, and similar improved technologies. Such ninth anniversary date is subject to a one year extension as described in Section 5.1 below. Such refurbishment and upgrade costs, which shall not be less than One Hundred Thousand and No/100 Dollars (\$100,000) per sign face, shall be subject to recovery in accordance with the distribution provisions of Exhibit 2 in the same manner as the initial Capitalized Costs.

In the event that the CFO determines that Satisfactory Performance exists so as to entitle the Contractor to the one-time extension period described in Section 5.3 below, a second refurbishment and upgrade of the City Digital Signs shall occur on or before the date that is nine years after the date established for the first refurbishment and upgrade pursuant to Section 5.1 below, subject to a possible one-year extension as provided for in Section 5.1. Such second refurbishment and upgrade costs, which shall not be less than One Hundred Thousand and No/100 Dollars (\$100,000) per sign face, shall be subject to recovery in accordance with the distribution provisions of Exhibit 2 in the same manner as the initial Capitalized Costs.

The refurbishments and upgrades may be done on a rolling basis, taking into account the installation date and performance of a given City Digital Sign, so long as all such refurbishments and upgrades are done no later than ten (10) years from the date of the installation of such sign.

ARTICLE 4 COORDINATED CITY DIGITAL SIGN PROGRAM AND RELATED SERVICES

4.1 Design of City Digital Signs.

(a) *Design.* The Contractor will provide City Digital Signs designed in accordance with the design drawings set forth on Exhibit 1A attached hereto, as the same may be amended with the

consent of the CFO and the Commissioner of CDOT. Such designs shall include as part of the City Digital Sign structure stylized or ornamental border and/or panel treatments or other distinctive design features so as to distinguish the City Digital Signs to the public and ensure that they are recognized as part of the City's City Digital Network.

(b) *Inspection by City.* Upon reasonable advance notice, the City shall have the right at its discretion (but not the obligation) to inspect the Plans and Specifications and similar items relating to the design of the City Digital Signs during the design, engineering, manufacturing, assembly and installation process during normal business hours. The Contractor must respond promptly to any concerns, questions or comments raised by the City. The City may reject defective Work in accordance with Section 3.7. The Contractor must give the City no less than 30 days' written notice prior to beginning the manufacturing of the City Digital Signs, and the City may request minor design changes until the Contractor begins manufacturing as specified in the notice. No inspection by the City shall operate to relieve the Contractor of any of its obligations or liabilities under this Agreement or give the City any liability or responsibility for the design of the City Digital Signs, including any errors or omissions relating thereto.

4.2 Manufacture of City Digital Signs.

(a) *Inspection by City.* Upon reasonable advance notice, the City shall have the right at its discretion (but not the obligation) to inspect the City Digital Signs during the manufacturing, assembly, and installation process. The Contractor must respond promptly to any concerns, questions or comments raised by the City. The City may reject defective Work in accordance with Section 3.7. No inspection by the City shall operate to relieve the Contractor of any of its obligations or liabilities under this Agreement or give the City any liability or responsibility for the manufacturing, assembly and installation of the City Digital Signs, including any errors or omissions relating thereto.

(b) *Assembly in City.* The Contractor must assemble and install all City Digital Signs on-site or within the City of Chicago. Such assembly obligation shall not apply to the assembling of the Ad Panel and associated digital sign face components and related fabrication and integration work.

4.3 Installation of City Digital Signs.

(a) *Site Selection and Installation.*

(i) The Contractor shall submit initial Complete Sign Permit Applications for sites comprising 10 sign faces out of the 30 total Phase I sign face sites listed in Exhibit 1C no later than thirteen (13) weeks after the Commencement Date of this Agreement, and shall submit Complete Sign Permit Applications for all of the remaining Phase I sign faces sites no later than twenty-three (23) weeks after such Commencement Date. Such dates are subject to an equitable extension if either (A) at the City's written direction to Contractor based upon

and specifying one or more of the factors specified in Section 4.3(a)(iv) below, or (B) due to infeasibility as mutually and reasonably agreed upon by the City and the Contractor in their respective commercially reasonable discretion (including, without limitation, because it is not commercially viable, or as described in Section 3.5), an initially designated sign drops out and cannot be replaced by an alternate sign face site listed on Exhibit 1C. Such equitable extension shall take into account, if necessary, such time as may be necessary to obtain City Council approval for an additional site. The Contractor shall install and begin operation of such Phase I signs, on a rolling basis, no later than ten (10) months for the first (1st) sign face and twelve (12) months for the thirtieth (30th) sign face, as measured from the Commencement Date, subject to delays for Excusable Events.

- (ii) The Contractor shall submit Complete Sign Permit Applications for sites comprising 10 sign faces out of the remaining 30 Phase II sign face sites listed in Exhibit 1C no later than twenty-eight (28) weeks after the Commencement Date of this Agreement, and shall submit Complete Sign Permit Applications for all of the remaining Phase II sign face sites no later than thirty-seven (37) weeks after such Commencement Date. Such dates are subject to an equitable extension as described in Section 4.3(a)(i) above). The Contractor shall install and begin operation of all such Phase II signs, on a rolling basis, no later than thirteen (13) months for the thirty-first (31st) sign face and sixteen (16) months for the sixtieth (60th) sign face, as measured from the Commencement Date, subject to delays for Excusable Events.
- (iii) If, the City directs the Contractor not to install a City Digital Sign at a Phase I or Phase II site, or an initially designated site proves to be infeasible for reasons described in Section 4.3(a)(i) above, the CFO shall cooperate with the Contractor to identify a replacement site to add to Exhibit 1C, so that at all times the parties are cooperating to make commercially reasonable efforts to assure that there are sufficient City Digital Sign Sites to support a 60 sign face City Digital Network. The parties shall cooperate to identify additional sites based on the criteria set forth in Section 4.3(d)(iv) below and mutually agree in writing upon such replacement sites. The Contractor may, at the Contractor's initial expense, and with the City's prior written consent, purchase a parcel of property and deed it to the City in order to establish a replacement site. In such case, the purchase price of the property shall be included as a Capitalized Cost and subject to recovery over an eight (8) year recovery period in the same manner as other Capitalized Costs.
- (iv) In identifying replacement sites pursuant to this Section 4.3 above, the parties will take into account the following considerations: (A) zoning; (B) existing

neighborhood signage; (C) aldermanic concerns (it being understood that the addition of a replacement or additional sign shall require an aldermanic approval letter confirming the acceptability of the replacement site); (D) commercial viability; (E) legal issues; (F) location; (G) network distribution requirements; and (H) other factors deemed relevant by the parties. The City and the Contractor will use all reasonable efforts to agree on replacement sites and additional sites in a timely manner so as to permit the Contractor to fulfill its obligations, and the parties to realize the City Digital Network goals and objectives under this Agreement. The parties shall, from time to time, obtain additional City Council approval (i.e., sign orders, or additional ordinance approval) for replacement sites to be added to Exhibit 1C so that all times all City Digital Sign Sites consist of sites approved by the City Council.

- (v) The Contractor may propose sites to the City for additional City Digital Signs at any time and the City may accept or reject such sites in its sole discretion. If the City approves an increase in the number of City Digital Signs included in the City Digital Network beyond 60 sign faces, the Contractor and the City shall mutually and reasonably cooperate with one another in the expansion of the network, subject to the terms and conditions of this Agreement, including Section 13.5, as such Agreement may be amended in connection with such expansion, including seeking any necessary City Council approval for such amendment.
- (vi) The Contractor's ability to install a City Digital Sign on any City Digital Sign Site shall be subject to the provisions of the Municipal Code of Chicago, to the extent not exempted, waived or modified by the City Digital Sign Ordinances, this Agreement, or other ordinances passed after the date of this Agreement.
- (vii) Prior to commencing installation of each City Digital Sign, the Contractor must submit a Complete Sign Permit Application to DOB, including the required site plan and renderings for the following reviews and approvals: (A) public way usage, if applicable; (B) zoning; (C) structural; and (D) electrical. The Contractor must obtain any applicable permits and approvals relating to such City Digital Sign, to the extent not exempted, waived or modified by the City Digital Sign Ordinances, this Agreement or other ordinances passed after the date of this Agreement.
- (viii) The Complete Sign Permit Application dates established pursuant to Section 4.3(a)(i), Section 4.3(a)(ii) and Exhibit 1C assume that, apart from the City Digital Sign Ordinances, and the approval of this Agreement, no further amendments to the Municipal Code or City Council approvals are required to

lawfully install the City Digital Signs at the locations listed on Exhibit 1C. The Contractor represents and warrants to the City that it has done sufficient due diligence to verify the reasonableness of such assumption (i.e., the viability of the Phase I and Phase II sites from a City zoning and IDOT permitting perspective).

(b) *Time for Installation.* Upon receipt of the Required Governmental Approvals for a given City Digital Sign, the Contractor must promptly commence manufacturing (or cause such manufacturing to commence), assembling and installing such City Digital Sign so as ensure compliance with the Installation Schedule. The Contractor covenants and agrees that it will comply with the Installation Schedule, which schedule may only be adjusted as described in Section 4.3(a) and Section 12.5.

(c) *Additional City Digital Sign Sites.* The CFO and the Contractor may amend Exhibit 1C in accordance with the City Digital Sign Ordinances and Section 13.5 to add additional City Digital Sign Sites, so as to achieve a 60 sign face network so long as such sites and the City Digital Signs to be constructed thereon meet the requirements for a “City Digital Sign” as permitted under the City Digital Sign Ordinances, and subject to receipt of a City Council ordinance approving such new site(s).

(d) *Conditions of Installation.* All City Digital Signs must be installed in conformity with the Installation Schedule and the requirements described in Exhibit 8. A sign permit for each City Digital Sign shall be obtained prior to the installation of such City Digital Sign. The Contractor must also comply with requirements of the Municipal Code of Chicago generally applicable to construction projects and, as applicable, to work in the public way, including all applicable CDOT and DOB rules and regulations, except to the extent expressly exempted, waived or modified by the City Digital Sign Ordinance, other ordinances passed after the date of this Agreement, or this Agreement.

(e) *Inspection by City.* The City shall have the right at its discretion (but not the obligation) at all times to inspect the City Digital Signs during the installation process. The Contractor must respond promptly to any concerns, questions or comments raised by the City. The City may reject defective Work in accordance with Section 3.7. No inspection by the City shall operate to relieve the Contractor of any of its obligations or liabilities under this Agreement or give the City any liability or responsibility for the installation of the City Digital Signs, including any errors or omissions relating thereto.

(f) *Accessibility.* The Contractor warrants that all installation, removals or alteration undertaken by the Contractor under this Contract will be performed in accordance with all Laws applicable to the Contractor and to the City regarding accessibility standards for disabled or environmentally limited persons, including but not limited to the following: Americans with Disabilities Act. (42 U.S.C. 12101 *et seq.*) and the ADAAG; The Architectural Barriers Act., P.L. 90-480 (1968) and the UFAS; and the Illinois Environmental Barriers Act, 410 ILCS 25/1 *et seq.* (1989),

and the regulations promulgated thereto at 71 Ill. Adm. Code Ch. 1, Sec. 400.110, to the extent applicable, if at all. In the event that the above cited standards are inconsistent, the Contractor warrants that it will comply with the standard providing greater accessibility. If the Contractor fails to comply with the foregoing standards, the Contractor must perform again at Contractor's expense all work required to be performed as a direct or indirect result of such failure.

4.4 **Electricity for City Digital Signs.**

(a) *Provision of Electricity.* The Contractor must provide and install in each City Digital Sign all necessary wiring, infrastructure and connections to power sources in order to provide continuous and uninterrupted electricity to the City Digital Sign, to support both the advertising, the City Public Service Messages and the City Emergency Messages. Such obligation shall, where feasible in strategic locations, but in no event with respect to less than one City Digital Sign per expressway and tollroad, include a back-up power source sufficient to enable City Emergency Messages to still be displayed in a type face format (i.e., without colors or graphics) in the event of a general disruption of power for a period of at least twenty-four (24) hours after a power outage. The costs of such back-up power source shall be Capitalized Costs and recovered as such in accordance with the terms of such definition and this Agreement. The City shall cooperate with the Contractor in obtaining the cooperation of Com Ed to any such electrical connection work. In order to minimize trenching on City streets, the City will, when feasible, allow the Contractor to connect its City Digital Signs to the closest City-designated street light controller box, or alternate City-designated power source, subject to the Contractor's obtaining approval of CDOT's Bureau of Electricity and a permit in accordance with the Municipal Code, which permit the City will not unreasonably withhold. The Contractor will be responsible for the installation cost (including separate metering) and ongoing cost of electricity for the City Digital Signs.

(b) *Requirements for Electrical Work.* In performing electrical work pursuant to this Agreement, the Contractor must comply with all applicable Laws and requirements of the City, including without limitation, the following standards: (i) all electrical installation must meet all applicable standards of the City's Electrical Code; (ii) all electrical work must be performed by a licensed electrical contractor; (iii) each City Digital Sign must be fed from a ground-fault circuit interrupter-type circuit breaker (i.e., a GFCI circuit breaker); (iv) proper grounding is required. Each City Digital Sign with metal components must be grounded and bonded to a driven copper-clad steel ground rod; (v) each City Digital Sign must be equipped with a suitable means of disconnecting all current carrying conductors (hot conductors) and the disconnect switch (i.e., toggle switch) must be accessible and within sight of each unit; (vi) all light fixtures, outlets, timing devices, photo-cells and similar devices must be approved by Underwriters Laboratories or another certifying agency or authority reasonably acceptable to the City; (vii) all conduit must be properly sized for the relevant cable and all cable must be properly sized for the load; (viii) conduit must be galvanized rigid steel and must be a minimum of 30 inches below grade; (ix) a cut-out box with breakers must be located between the load and the service and the Contractor must provide any additional appropriately-sized breakers reasonably required by the City; (x) all cable must be rated for outdoor and wet conditions

and all cable must be color coded red for hot, white for neutral and green for grounded; and (xi) if deemed necessary by the City, the Contractor must become a member of CDOT's Board of the Underground.

4.5 Maintenance of City Digital Signs.

(a) *Maintenance Standards.* Throughout the term of this Agreement, the Contractor must maintain the City Digital Signs and City Digital Network in good working order in accordance with the maintenance standards set forth in Exhibit 1E. The City shall have no responsibility for maintenance or inspection of the City Digital Signs or the City Digital Network.

(b) *Inspection by City.* The City shall have the right at its discretion (but not the obligation) at all times to inspect the City Digital Sign or the City Digital Network during the maintenance process. The Contractor must promptly respond to any concerns, questions or comments raised by the City. No inspection by the City shall operate to relieve the Contractor of any of its obligations or liabilities under this Agreement or give the City any liability or responsibility for the maintenance of the City Digital Signs or the City Digital Network, including any errors or omissions relating thereto.

4.6 Advertising on City Digital Signs.

(a) *Grant of Right.*

(i) In consideration of the Contractor's performance of the Work, the Contractor's other obligations under this Agreement, and the Contractor's payment obligations under Section 6.1 below, the City hereby grants to the Contractor the exclusive right following the Commencement Date and during the term of this Agreement to sell and place advertising on the City Digital Signs subject to the terms of this Agreement and the Project Ordinance. To the extent not prohibited by Law, prior to January 1, 2020, unless this Agreement is sooner terminated, or the Contractor's rights under this Agreement are sooner terminated), the City shall not itself contract with any party to place changing-image digital advertising in a format equal to or greater than 336 square feet on City-owned land or on the public way (the "**City Digital Sign Exclusivity Provision**"). Until a City Digital Network having sixty (60) sign faces is established under this Program Agreement, the City shall not offer City-owned land or the right to use public way owned by the City, or controlled by the City pursuant to an intergovernmental agreement, and located along an expressway or tollroad designated by the Commissioner of CDOT to a private party for a digital sign site unless such land or public way has first been offered to the Contractor for a possible City Digital Sign Site. The limitations set forth in the preceding two sentences in no way limits the City's ability to authorize static digital advertising, non-digital advertising, or digital advertising on City-owned land or on the public way in a format less than 336 square feet (subject to compliance with Section 4.6(a)(ii) below), and also does not alter the City's ability to continue to authorize programs or renew or expand the following existing programs including, without limitation, the JCDecaux street furniture program, the City's banner program, the

City's advertising bench program, advertising placed or authorized to be placed by the CPD on CPD property, the BOE on BOE property (notwithstanding that such property may be nominally titled in the City, in Trust For The Use of Schools), or the CTA on CTA property (including advertising panels at subway entrances or on trestles), current or future sponsorship agreements between the City and the CTA and their respective sponsors, temporary signage associated with festivals (e.g., Taste of Chicago), City-wide events (e.g., the Air and Water Show), athletic and sporting competitions (e.g., the Accenture Chicago Triathlon, the Bank of America Chicago Marathon), international events (e.g., the Olympics, a NATO or G-8/G-20 conference), national events (e.g., Democratic National Convention), the City's bike sharing program, and advertising on taxi cabs and other vehicles traveling in the public way. Such limitation does not affirmatively authorize or entitle the Contractor to place advertising on anything in any location other than on the City Digital Sign Sites provided for under this Agreement.

The foregoing exclusivity provision also shall not apply to any advertising on City-owned land or right of way used or otherwise held for the operation of O'Hare International Airport or Midway International Airport.

The City shall not separately market its rights to place City Messages on the City Digital Signs for private commercial purposes for profit, so as to compete with the Contractor. However, the City shall be entitled to enter into sponsorship agreements with sponsors of City events who, in consideration of such sponsorship, acquire naming rights with respect to such event, and shall be entitled to include reasonable sponsorship identification as part of City Public Service Messages announcing such event. For example, if Walgreens sponsored a health education fair including free flu shots, the City would be entitled to broadcast a City Public Service Message identifying the "Walgreens Free Flu Shot City Health Fair," or a similar message so long as the sponsor identification is in reasonable proportion to the remainder of the public service message and consistent with customary practices.

(ii) If after the Commencement Date and prior to July 1, 2020, the City desires to contract with a third party to place additional changing-image digital advertising in a format equal to or greater than 200 square feet but less than or equal to 336 square feet on either City-owned land or on the public way (in addition to the City Digital Signs provided by the Contractor pursuant to this Agreement and subject to the general exceptions described in Section 4.6(a)(i), above), the City may solicit bids, proposals or quotes from other vendors or contractors to supply the additional changing-image digital advertising signage desired by the City and the Contractor may respond and submit a bid in response to such solicitation. If the Contractor (or its Affiliate) submits a bid, proposal or quote, and the City receives a bid, proposal or quote which, as determined by the CFO, is more favorable to the City than the Contractor's proposal, the City shall advise the Contractor of such more favorable bid, proposal or quote, and the Contractor shall then have ten (10) business days to match such offer, in writing, and to agree to perform under the other terms of such offer, after which time (unless Contractor, or such Affiliate, has exercised such right of first refusal) the City shall be free to accept such other respondent's bid, proposal or quote. In connection with such a solicitation, the City may in

its sole discretion, at any point in time, including after receipt and review of the respondents' responses, including the Contractor's (or its Affiliate's) proposal, reject any or all bids, proposals or quotes, including the Contractor's (or its Affiliate's), if the City elects not to go forward with the signage program contemplated by the solicitation. The Contractor's election to not exercise its right of first refusal as to one solicitation shall not constitute a waiver of the Contractor's right of first refusal as to any other solicitation.

(b) *Placement of Advertising.*

- (i) The Contractor may only sell and place advertising on the City Digital Signs as permitted by the Project Ordinance. Advertising must be placed on City Digital Sign, and such sign must at all times be illuminated in such a manner as to not impair public safety and to comply with all applicable Laws, including, without limitation, the federal Highway Beautification Act and the regulations promulgated thereunder at 23 CFR Part 750, and so as to not otherwise cause a visual nuisance.
- (ii) The Contractor must operate each City Digital Sign on a 7 day a week basis for not less than 17 hours per day or such other lesser customary duration as may be required to assure that advertisers pay the highest rate card percentage that is commercially reasonable and that Ad Panel vacancy rates are minimized to the greatest extent commercially reasonable. All City Digital Signs shall be put into a "sleep" or "inactive" mode between 12:00 a.m. and 5:00 a.m. so as to minimize night-time light diffusion and excluding the broadcasting of City Emergency Messages.

(c) *Restrictions on Advertising.* The Contractor must adhere to its advertising policy attached hereto as Exhibit 11 when placing advertising on Ad Panels. In addition, the Contractor may not place advertising on Ad Panels that violates sponsorship agreements in effect as of the Commencement Date between the City and its sponsors. Subject only to the restrictions expressly set forth in this Section 4.6, which the City shall have the right to enforce at all times, the Contractor has the right to make all decisions regarding the acceptance of advertising for the City Digital Signs pursuant to its own advertising policy and goals, and shall be solely responsible for such decisions. It is the City's express intent, and the City Digital Network shall at all times be so operated, that the City Digital Signs and the City Digital Network and the City property on which they are located are not designated public forums for purposes of any First Amendment forum analysis. This requirement is a material inducement to the City's execution of this Agreement and is not severable.

If the City unilaterally acts to restrict or prohibit alcohol advertising on the City Digital Network, then the parties shall adjust the City Share of Gross Revenues downward, based on an actual before-and-after analysis of the impact of such prohibition on Gross Revenues for the two (2) years prior to such restriction or prohibition. If there have not been two (2) years of historical Gross

Revenues prior to such City action, the reduction shall be five percent (5%) of the City Share of Gross Revenues (i.e., from 50% to 45%, from 40% to 35%, and from 30% to 25%, as applicable). Such fixed five percent (5%) reduction shall be applied during each year that such restriction or prohibition remains in effect. If, however, there have been two (2) years of historical Gross Revenues prior to such City action, the parties shall in good faith negotiate a mutually agreed to adjustment in such sharing percentages, but in no event shall such adjustment be less than two percent (2%) (i.e., from 50% to 48%, from 40% to 38%, and from 30% to 28%) or more than five percent (5%) (i.e., as explained above) of the City Share of Gross Revenues. Such adjusted sharing percentage shall thereafter apply during each year such restriction or prohibition remains in effect. Such adjustment shall take into account such relevant historical factors as the Gross Revenues from alcohol advertising, the percentage share of overall Gross Revenues contributed by alcohol advertising, any premium rates associated with such advertising, Ad Panel vacancy rates before and after such restriction or prohibition, the nature of such restriction or prohibition (e.g., a total prohibition vs. a restriction, a “hard liquor only” restriction vs. a no alcohol restriction, a “not on Sunday” restriction vs. an entire restriction, etc.), the actual income from non-alcohol advertising obtained in replacement of such alcohol advertising, and the duration of such restriction or prohibition. After such initial determination, either party may seek a readjustment of such adjustment if the City subsequently acts unilaterally to restrict or prohibit alcohol advertising (or to reverse the effect of any prior restriction or prohibition).

In the event that there is a restriction or prohibition of alcohol advertising on the Digital Sign Network imposed by any Governmental Authority other than the City, instead of such sharing percentage adjustment, the parties shall adjust the Guaranteed Annual Fees set out in Exhibit 2 downward based on an actual before-and-after analysis of the impact of such restriction or prohibition on Gross Revenues. If there have not been two (2) years of Gross Revenues prior to such other governmental action, the reduction of Guaranteed Annual Fees shall be five percent (5%) of the scheduled Guaranteed Annual Fee otherwise payable during each calendar year such restriction or prohibition remains in effect. For example, if such restriction or prohibition occurred in calendar year 2014, and if the scheduled Guaranteed Annual Fee for calendar year 2014 was \$3,000,000, the Guaranteed Annual Fee would drop from \$3,000,000 to \$2,850,000. The practical effect of such adjustment would mean that the computation and sharing of Gross Revenues for such year would be calculated after a \$2,850,000 Guaranteed Annual Fee (i.e., there will be another \$150,000 for distribution under the then applicable sharing percentages). If there have been more than (2) years of historical Gross Revenues, then the reduction shall be the average of the percentage of Gross Revenues attributable to alcohol advertising during the last two year period (averaged), but in no event shall such adjustment be more than five percent (5%) of the Guaranteed Annual Fee amount. For example, if alcohol advertising contributed 7% and 11% of Gross Revenues in 2018 and 2019, respectively, and a government action prohibiting alcohol advertising occurred in 2020, dropping alcohol advertising in such year to zero percent 0% of Gross Revenues, such average reduction would have been nine percent (9%) $(7\% + 11\%/2)$, and the five percent (5%) cap on such adjustment would therefore apply. If alcohol advertising contributed 7% and 11% of Gross Revenues in 2018, and a government action restricting, but not prohibiting alcohol advertising, occurred in 2020, dropping

alcohol advertising in such year to 6% of Gross Revenues, then the adjustment would be three percent (3%) (7% + 11%/2, minus 6%), and a three percent (3%) adjustment would apply. Following any adjustment pursuant to this paragraph or the above paragraph, the parties will enter into an amendment to this Agreement to document such adjustment. After such initial determination, either party may seek a readjustment of such adjustment only if a Governmental Authority other than the City subsequently acts to restrict or prohibit alcohol advertising (or to reverse the effect of any prior restriction or prohibition).

Notwithstanding the foregoing provisions of this Section 4.6(c), and without triggering the adjustment provisions described in this Section 4.6, the Contractor covenants that alcohol-related advertising shall be displayed on a non-discriminatory basis on the City Digital Network, so that no portion of the City Digital Network displays a disproportionate share of such advertising. The Contractor shall, upon request of the City, provide data establishing such non-discriminatory display of alcohol-related advertising. In no instance shall (i) more than 20% of the advertisements displayed on the City Digital Network during the course of a year consist of alcohol-related advertising, or (ii) alcohol-related ads from competing companies run back-to-back during a given loop of advertising.

Furthermore, in no instance shall more than 20% of the advertisements displayed on the City Digital Network during the course of a year promote gambling. Such gambling-related advertising shall also be displayed on a non-discriminatory basis on the City Digital Network, so that no portion of the City Digital Network displays a disproportionate share of such advertising.

(d) *City Messages.* The Contractor must accept City Messages for display free of charge during the term of this Agreement on Ad Panels as required by the City Digital Sign definition attached as Exhibit 1B. City Public Service Messages shall display on a continuous basis (i.e., every day, and throughout the course of each day, except 12:00 a.m. to 5:00 a.m.), and unless circumstances otherwise warrant, shall generally run as one of the eight turns in each eight turn rotation, and, in any event, not less frequently than once every four minutes. Subject to the foregoing, and to the City's absolute right to override all advertising in the event of the need to transmit a City Emergency Message, the City and Contractor shall have flexibility to schedule the City Public Service Messages to take into account seasonal activities, major events, and other hourly, daily, weekly and monthly programming variables. In addition to the foregoing, the Contractor shall make available at no charge to the City all uncommitted advertising time and rotations to the City for additional City Public Service Messages, provided, however, that the City shall not be entitled to more than twenty-five percent (25%) of the total advertising time (e.g., two turns in an eight turn rotation, or one turn in a four turn rotation). The City acknowledges that "committed" time and rotations may include sign-promotion usage, including time and temperature information and Contractor's own public service messaging. When the Contractor makes available uncommitted advertising time or rotations to the City for additional City Public Service Messages, the Contractor may replace such additional City Public Service Messages with paid advertising upon written notice to the City.

The City agrees to indemnify the Contractor against any losses, damages and reasonable costs, payments, and expenses (such as, but not limited to, court costs and reasonable attorney's fees and disbursements), incurred by the Contractor and proximately caused by the content of a City Message (e.g., a message that the City causes to be displayed that directs traffic into a closed exit resulting in an accident).

(e) *New Technology.* Nothing in this Agreement shall prevent the Contractor from proposing and implementing new technologies for City Digital Signs, the City Digital Network, or advertising displays, subject to the approval of the CFO.

(f) *Localized Messages.* The City Digital Network shall be designed and programmed to allow the City to communicate City Public Service Messages and City Emergency Messages on a network-wide basis, or on a localized basis (i.e., on a sign-by-sign basis). For example, at a given point in time, the City Digital Network shall operate so as to allow one City Digital Sign to announce a ward clean-up day, while another City Digital Sign simultaneously announces a street closure for a parade, a third City Digital Sign simultaneously announces a hazardous materials recycling event, and so on. The City and the Contractor shall cooperate to establish protocols for the communication of City Public Service Messages and City Emergency Messages.

(g) *Additional Features.* At the City's request, at the City's expense, and so long as such fixtures and equipment do not interfere with the operation of the City Digital Signs, as determined by Contractor in its sole discretion, or materially detract from the appearance of the City Digital Signs, as mutually agreed to by the parties, the Contractor agrees to allow the City to attach and operate surveillance, law enforcement, traffic monitoring and other public purpose cameras and equipment to and from the City Digital Signs. Any revenues derived from the attachment of such public purpose fixtures and equipment, if any, shall belong to the City.

By mutual agreement of the City and the Contractor, the parties may also agree to the attachment and operation of cellular site antennae and equipment and other third party proprietary fixtures and equipment (including new technologies developed during the term of this Agreement), so long as so long as such fixtures and equipment do not interfere with the operation of the City Digital Signs or materially detract from the appearance of the City Digital Signs, as mutually agreed to by the parties. Any revenues derived from the attachment of such third party proprietary fixtures and equipment, if any, shall be paid 80% to the City, and 20% to the Contractor. The party receiving such payment shall make payment to the other party of its applicable share within sixty (60) days of receipt of such third party's payment.

The City agrees to indemnify the Contractor against any losses, damages and reasonable costs, payments, and expenses (such as, but not limited to, court costs and reasonable attorney's fees and disbursements), incurred by the Contractor and proximately caused by the installation or operation of any public purpose fixtures and equipment installed and operated pursuant to the first paragraph of this Section 4.6(g).

4.7 Removal of City Digital Signs at Termination or Expiration of Agreement. No later than the date of termination or expiration of this Agreement, or, if sooner, upon a City Digital Sign becoming permanently non-operational, whichever is earlier, the Contractor must remove all advertising from all City Digital Signs (or as to such a single, permanently non-operational sign(s)), unless the City directs otherwise in writing. As soon as reasonably possible and no later than six months after the termination or expiration of this Agreement (except as provided below), or upon a City Digital Sign becoming permanently non-operational, the Contractor must dismantle and remove all City Digital Signs (or such a single, permanently non-operational sign(s)) at the direction of the City and restore the underlying and surrounding property (including, without limitation, surrounding landscaping, sidewalks, curbs, pavement and utilities) to a condition at least as good as that in which such property existed prior to the installation of the City Digital Signs, ordinary wear and tear excepted, at the Contractor's sole cost and expense. Such removal shall include a removal of subsurface infrastructure (but not spread footings no deeper than eighteen (18) inches) to a depth of eighteen (18) inches. Notwithstanding the foregoing, at the City's election upon the scheduled expiration of the term of this Agreement, or upon the earlier termination of this Agreement by the City pursuant to Article 12, the City may elect to continue to operate the City Digital Signs and the City Digital Network and, in such event, the Contractor will not remove or dismantle the City Digital Signs and shall reasonably cooperate with the City in transferring the Plans and Specifications, City Digital Signs, City Digital Network, and CDN Intellectual Property and operations to the City and, if applicable, any successor contractor or network operator. If the City elects to continue to operate the City Digital Network using only certain City Digital Signs, as soon as reasonably possible and no later than three months after the expiration of the term of this Agreement, the Contractor must dismantle and remove only the City Digital Signs designated for removal by the City and restore the underlying and surrounding property as described in the first sentence of this Section 4.7, at the Contractor's sole cost and expense. In either case, the City may direct the Contractor to dismantle and remove the City Digital Signs in phases, at the discretion of the City. In addition, the Contractor must coordinate removal of the City Digital Signs with installation of any new signs by a subsequent contractor or network operator authorized or retained by the City, as reasonably directed by the City. The Contractor acknowledges and agrees that all obligations of the Contractor relating to the City Digital Signs will continue until the Contractor has dismantled and removed all City Digital Signs and restored the underlying and other surrounding property affected by the Work, in accordance with this Agreement. Upon transfer of the City Digital Signs and the City Digital Network to the City upon the termination or expiration of the Agreement, the City shall assume all obligations incidental to the ownership and operation of such signs and network.

4.8 Ownership of City Digital Signs. All City Digital Signs are the exclusive personal property of the Contractor and the Contractor must have full responsibility therefore, subject to the provisions of this Agreement applicable to the transfer of ownership of such City Digital Signs to the City upon termination or expiration of this Agreement. Until such transfer, the City shall not have installation or maintenance obligations with respect to the City Digital Signs pursuant to this Agreement. Notwithstanding the method of attachment, the City Digital Signs, including all infrastructure (including below grade infrastructure) and fixtures related thereto, shall at all times

constitute personal property and shall not be deemed a part of the City real property on which such signs are located, or to give the Contractor any real property interest therein, other than the license interest associated with the permits granted with respect to the City Digital Signs; provided, however, that such license interest shall not be deemed to be subject to the Personal Property Lease Transactions Tax under Chapter 3-32 of the Municipal Code. The Contractor shall have the right to grant a lender providing Permitted Lender Financing a security interest in the Contractor's personal property interest in such City Digital Signs.

ARTICLE 5 TERM OF PERFORMANCE

5.1 **Term of Performance.** This Agreement commences as of the Commencement Date and ends on December 31, 2032 unless sooner terminated or extended as provided herein. The parties may, without further City Council approval, by written agreement, extend the term by two, one-year extensions, in connection with their respective review as to the condition of the City Digital Signs as hereafter described. Eight years and six months after the installation of each City Digital Sign, the parties shall cause an inspection to be made of the City Digital Signs to determine whether such signs' required refurbishment under this Agreement should occur on or before the ninth full year of such sign's operation or whether such refurbishment date may be extended an additional one (1) year. If the parties mutually and reasonably agree in writing that such a one-year extension of the required refurbishment and upgrade is appropriate because the signs are still operating with an appearance and functionality consistent with the performance requirements of this Agreement, then the parties shall execute an amendment to this Agreement extending the term of this Agreement to December 31, 2033. A similar review shall be made by the parties eight years and six months after the first refurbishment of a City Digital Sign. If the parties mutually and reasonably agree in writing that such a one-year extension of the required refurbishment and upgrade is appropriate because the signs are still operating with an appearance and functionality consistent with the performance requirements of this Agreement, then the parties shall execute an amendment to this Agreement extending the term of this Agreement by one year. Subject to an extension pursuant to Section 5.3 below, no further extensions of the term may be granted without the approval of the City Council; provided, however, that in the event a Legal Challenge occurs and either (a) if such Legal Challenge occurs during the installation phase, the Contractor elects to defer the further installation of City Digital Signs until such Legal Challenge is resolved and such installation may resume, or (b) after such installation phase, the Legal Challenge enjoins the further operation of the City Digital Signs, then the term of this Agreement shall be ratably extended based on the length of any such deferral or injunction. In either such event, any other impacted dates for performance, and any dates for the payment of scheduled Guaranteed Annual Fees, shall be similarly ratably adjusted and the parties shall execute an amendment to this Agreement to memorialize such adjusted dates. For example, if clause (a) occurs, and it takes one year to favorably resolve such Legal Challenge and resume installation, all Guaranteed Annual Fee payments shall be pushed back one year, installation deadlines shall be pushed back one year, refurbishment dates shall be pushed back one year, any other applicable

performance based dates shall be pushed back one year, and the term of this Agreement shall be extended one year.

5.2 **Timeliness of Performance.**

(a) *Contractor's Performance.* The Contractor must design, manufacture, assemble, program, install, maintain, operate, and, (if directed by the City) remove and dismantle the City Digital Signs and maintain and restore the underlying and other surrounding property affected by the Work, and provide the Deliverables during the term and within the time limits required under this Agreement, including, without limitation, Exhibits 1C and 1D, subject to the equitable extensions provided for in Section 4.3(a) and Section 12.5.

(b) *City Not Responsible for Delays.* Neither the Contractor nor the Contractor's agents, employees or subcontractors are entitled to any damages from the City, nor is any party entitled to be reimbursed by the City, for damages, charges or other losses or expenses incurred by the Contractor by reason of delays or hindrances in the performance of the Work, whether or not caused by the City.

(c) *Liquidated Damages for Delay.* The City and the Contractor agree that it would be extremely difficult and impracticable under the presently known and anticipated facts and circumstances to ascertain and fix with precision the actual damages that the City would incur should the Contractor delay in installing the City Digital Signs beyond the dates specified on Exhibit 1C (each such date, as applicable to a given City Digital Sign pursuant to Section 4.3(a)(i) and Section 4.3(a)(ii) (the "**Installation Deadline**"), and accordingly the parties hereby agree that if the Contractor fails to install any City Digital Sign by the applicable Installation Deadline (except to the extent such date has been extended pursuant to Section 4.3(a) or Section 12.5), the City shall be entitled to recover from the Contractor as liquidated damages for such delay, and not as a penalty, the sum of \$250 per day for each City Digital Sign face that is not installed by the Installation Deadline. The City and the Contractor agree that such liquidated damages are not a penalty, but instead are a good faith and reasonable estimate of the damages and loss the City would suffer in the event the Contractor fails to install any City Digital Sign by the Installation Deadline. The liquidated damages shall be due and payable by the Contractor to the City upon demand. Any amounts paid as such liquidated damages shall be credited against the Contractor's Guaranteed Annual Fee payment obligation.

5.3 **Agreement Extension Option; City Termination Right.** If the CFO reasonably determines there has been Satisfactory Performance by the Contractor, and the Contractor provides evidence of readily available funds sufficient to pay for a second refurbishment and upgrade of the City Digital Signs at the start of such extension period in an amount not less than One Hundred Thousand and No/100 Dollars (\$100,000) per sign face, the CFO shall, with the approval of City Council, upon the Contractor's written request, extend the original term of this Agreement (as described in Section 5.1 above) for one additional nine-year period under the same terms and conditions as those set forth in this original Agreement, (but without any one-year extension period at the end of such extension period), except as otherwise provided in this Agreement, by notice in

writing to the Contractor. If the CFO reasonably determines there has not been Satisfactory Performance, the CFO may, with the approval of City Council, nonetheless extend the term of this Agreement under such terms and conditions as the CFO and the City Council deem necessary or appropriate. Subject to the two one-year extension periods provided for in Section 5.1, under no circumstances shall the original term (as described in Section 5.1 above) of this Agreement be extended for more than one nine-year period without further approval of the City Council of the City. If applicable, the Contractor shall request such extension no less than six months prior to the date on which the Agreement is due to terminate. Upon receipt of such notice, the CFO shall confirm her reasonable determination as to such Satisfactory Performance, or in the alternative, shall cite the basis for finding no such Satisfactory Performance. If the CFO confirms such agreement, then the Contractor must provide to the CFO within 45 days Payment and Performance Bonds reasonably acceptable to the City which satisfy the requirements of Section 3.19 and secure the performance of all then-existent Bonded Obligations, if any, for a period of no less than one year (or as otherwise required pursuant to Section 3.19) after the beginning of the extension period and cover all liabilities of the Contractor arising during such period, unless such Payment and Performance Bonds are already on deposit with the CFO. If the Contractor does not provide the Payment and Performance Bonds required by the preceding sentence within such 45-day period, the CFO may in her sole discretion revoke her decision to extend the term. After notification by the CFO of a decision to extend the term and receipt of the required Payment and Performance Bonds, this Agreement will be administratively amended to reflect such time extension. Refurbishment and upgrade costs for such second sign turn, which shall not be less than One Hundred Thousand and No/100 Dollars (\$100,000) per sign face shall again be subject to recovery in accordance with the distribution provisions of Exhibit 2 in the same manner as the initial Capitalized Costs.

Notwithstanding the foregoing, after December 31, 2031 (or December 31, 2032, if a one-year extension has been previously granted), and notwithstanding the Contractor's Satisfactory Performance, the CFO shall have a one-time option to terminate this Agreement without cause for any reason, in the CFO's sole discretion, but subject to City Council approval, by written notice to Contractor delivered no later than June 30, 2032 (or June 30, 2033, if applicable) ("**City's Termination Notice**"). Upon such notice, the term of the Agreement shall expire on December 31, 2032 (or December 31, 2033, if applicable) and the Contractor shall fulfill its surrender obligations in accordance with the applicable provisions of this Agreement. In the event of any such early termination by the City under this paragraph, the City shall pay to Contractor a special termination payment in an amount equal to the sum of: (i) a sum equal to the Capitalized Costs not previously recovered by the Contractor pursuant to the distribution provisions of Exhibit 2; plus (ii) a sum equal to the Distributable Gross Revenues paid to the Contractor with respect to calendar year 2031 (i.e., taking into account the distribution provisions of Exhibit 2 and any required "true up" reconciliation adjustments required with respect to such calendar year). The City shall remit such special termination payment to the Contractor on or before December 31, 2032, (or December 31, 2033, if applicable). The special termination payment shall be in addition to the Contractor's Share of Gross Revenues distribution payable with respect to such calendar year pursuant to Exhibit 2.

ARTICLE 6
FEES

6.1 **Amounts Due City.** The Contractor must make the payments to the City as described in this Section 6.1 for the right and privilege of selling and maintaining advertisements on the City Digital Signs pursuant to this Agreement. The Contractor's obligation to make such payments to the City as provided in this Section 6.1 is independent of the Contractor's obligation to perform the Work and is not affected by the types or quantities of City Digital Signs that the Contractor actually designs, manufactures, assembles, programs, installs, maintains, operates, removes or dismantles, except as expressly set forth in this Agreement. The Contractor's obligation to make such payments to the City shall continue through the term of this Agreement (and any extension period pursuant to Section 5.3).

(a) Guaranteed Fees.

(i) *Guaranteed Initial Fees.* Upon the Contractor's receipt of all Required Governmental Approvals necessary for the installation of one or more City Digital Signs on a City Digital Sign Site, the Contractor shall from time to time pay to the City an initial license fee applicable to such site in an amount equal to the product of (A) a fraction, the numerator of which is the Category Coefficient (as defined in Exhibit 2) assigned to the value of the applicable sign face, as set forth on Exhibit 1C, and the denominator of which is one hundred eighty two (182), times (B) Twenty-Five Million and No/100 Dollars (\$25,000,000) (the "**Guaranteed Initial Fee(s)**"). Such fees shall be paid from time to time within thirty (30) days of the final such Required Governmental Approval for a given site, subject to the paragraph below. For purposes of clarity, if the contemplated sixty (60) City Digital Sign faces receive the Required Governmental Approvals, the Guaranteed Initial Fees shall total Twenty-Five Million and No/100 Dollars (\$25,000,000). In the event a City Digital Sign Site listed on Exhibit 1C as of the date hereof is subsequently eliminated and replaced in accordance with Section 4.3, the Guaranteed Initial Fees shall be adjusted based on the Category Coefficient assigned to the eliminated sign face(s) on such site and the Category Coefficient(s) assigned by the mutual agreement of the parties to the sign face(s) on the replacement site if such replacement sign face(s) grade is lower. If the Category Coefficient of the replacement sign face(s) is higher, however, the Guaranteed Initial Fees shall not be adjusted, but such additional Category Coefficient(s) may be used to offset any subsequent replacement sign face(s) that have lower Category Coefficients than the eliminated sign face(s). In no event shall the total Guaranteed Initial Fees exceed Twenty-Five Million and No/100 Dollars (\$25,000,000) even if the aggregate Category Coefficient

value of the sign faces of the City Digital Network exceeds 182 points. See Exhibit 2 for examples demonstrating such calculations.

Notwithstanding the above paragraph, the Contractor shall not pay more than Fifteen Million and No/100 Dollars (\$15,000,000) to the City as Guaranteed Initial Fees in calendar year 2013, and shall pay the remaining Guaranteed Initial Fees in calendar year 2014 (assuming all Required Governmental Approvals for the City Digital Sign Sites have been approved by such date, or such later date as may be applicable based on the date of receipt of such Required Governmental Approvals).

- (ii) *Guaranteed Annual Fees.* For 2014 and each calendar year thereafter during the term of the Agreement (and any extension period, if applicable, with any such extension period Guaranteed Annual Fees to be mutually agreed to by the parties, but in no event less than \$10,000,000 per year, subject to the adjustments applicable to the Guaranteed Annual Fees during the initial term), the Contractor shall pay to the City the quarterly license fee payments in the amounts set forth in Exhibit 2 to this Agreement (the “**Guaranteed Annual Fee(s)**”), subject to the calculation described therein. The Guaranteed Annual Fees shall be paid in four, equal quarterly installments on the Quarterly Distribution Dates and shall be paid regardless of whether any Gross Revenues are received, except as expressly otherwise provided for under this Agreement. In the event a City Digital Sign listed on Exhibit 1C as of the date hereof is subsequently eliminated and replaced in accordance with Section 4.3, the Guaranteed Annual Fees shall be adjusted based on the Category Coefficient(s) assigned to the eliminated sign face(s) on such site and the Category Coefficient(s) assigned by the mutual agreement of the parties to the sign face(s) on the replacement site if such replacement sign face(s) Category Coefficient is lower. If the Category Coefficient of the replacement sign face(s) is higher, however, the Guaranteed Annual Fees shall not be adjusted, but such additional Category Efficient points may be used to offset any subsequent replacement sign face(s) that have lower Category Coefficient points than the eliminated sign face(s). In no event shall the total Guaranteed Annual Fees exceed the total amounts listed on Exhibit 2.
- (iii) *City Share of Gross Revenues.* During the term of this Agreement, the Contractor shall also pay to the City the City Share of Gross Revenues in accordance with the payment priorities and sharing percentages then applicable, as set forth in Exhibit 2. The City Share of Gross Revenues shall be paid from Quarterly Gross Revenues on the Quarterly Distribution Dates, subject to the prior payment of the Guaranteed Initial Fee and Capitalized

Costs recovery amounts set forth in Exhibit 2 and the Guaranteed Annual Fee.

- (iv) *Annual Reconciliation.* No later than 120 days after the end of each calendar year during the term of the Agreement (and any extension period, if applicable), the Contractor shall deliver to the City a certified audited statement of the Gross Revenues earned during the prior calendar year (or 52 week period). Such certified audited statement shall include a “true up” or reconciliation of all payments made pursuant to Exhibit 2 during the most recent annual (or 52 week) period, which reconciliation shall include sufficient detail to show the application of all Gross Revenues pursuant to the priority payment provisions of Exhibit 2, subject to the provisions of Section 9.1(c), or as otherwise appropriate to establish the proper payment of such funds in accordance with the terms of this Agreement. Based on such reconciliation, if it is determined that, after application of Gross Revenues to all higher priority payments, the City and Contractor did not receive, for such annual (or 52 week period), their required share of Gross Revenues, appropriate adjustments and payments shall be made between the parties so as to properly adjust for and redistribute such Gross Revenues.
- (v) *Additional Payment.* If in 2013, 2014, or 2015, the Contractor or any of its Affiliates (which shall be deemed to include Foster Interstate Media, Inc. and its Affiliates) either (a) obtain the requisite legislative approval for an Other CDN Agreement (as hereinafter defined) from a Governmental Authority and execute such Other CDN Agreement, or (b) execute such Other CDN Agreement (if no such prior legislative approval is required for such agreement), then the Contractor shall make, from time to time, the payment(s) described below. An "Other CDN Agreement" shall mean an agreement establishing a digital sign network within the jurisdiction of a Governmental Authority (which, in the case of a municipality, shall have a population of not less than 200,000 people) including at least either 10 sign locations or 15 sign faces that is substantially similar to the network established under this Agreement (i.e., an integrated network including digital outdoor advertising signs for both private advertising and for the public service messaging, including, but not limited to cultural information, and emergency communications of such other Governmental Authority, where the sign faces in such network are 200 square feet or greater) pursuant to a written agreement substantially similar to this Agreement (subject to such deal specific economic and business terms as may be applicable to such location and network). Notwithstanding the foregoing, the following shall not constitute Other CDN Agreements: (i)

an agreement entered into with a Governmental Authority with whom the Contractor or its Affiliates were negotiating, or to whom the Contractor or its Affiliates had made a marketing presentation, in either event prior to October 15, 2012 with respect to a proposed city digital network, as reasonably established by documentation provided by the Contractor to the City; (ii) an establishing a digital sign network located solely on airport property shall not constitute an Other CDN Agreement; and (iii) an agreement with the (A) the city of New York City or the city of Philadelphia, acting through any of such city's departments, bureaus, or offices, or (B) the state of California, the state of New Jersey, the state of Massachusetts, the state of Pennsylvania, the state of New York, or the state of Florida, acting through any state-level department, bureau, office, or authority (including, without limitation any state port authority).

Upon the commencement of operation of the first digital sign in the network that is the subject of such Other CDN Agreement, the Contractor shall pay the City an amount equal to the product of (x) either (i) two percent (2%), if such agreement is the result of a sole source award, or (i) one percent (1%) if such agreement is the result of a request for qualifications, request for proposals, or a similar competitive bidding process, and (y) the Distributable Gross Revenues for the year in which the Other CDN Agreement was executed. Notwithstanding the foregoing, if such Distributable Gross Revenues in 2013, 2014 or 2015 are less than \$5,000,000 (as is anticipated in 2013), then in lieu of such formula, a flat fee of either \$200,000, if such agreement is the result of a sole source award, or \$100,000, if such agreement is the result of a request for qualifications, request for proposals, or a similar competitive bidding process, shall instead be paid.

If during 2013, 2014, or 2015, more than one Other CDN Agreement is executed, such payment for each such Other CDN Agreement shall be separately calculated and paid. In no instance, however, shall the aggregate payments for a given calendar year (i.e., for each of 2013, 2014, and 2015) exceed an amount equal to the lesser of five percent (5%) of the Distributable Gross Revenues applicable to such calendar year, or if the payments are made as flat fees, the flat fee amounts specified above.

6.2 Method of Payment. All payments due from the Contractor hereunder must be made by cashier's check delivered to the City's Office of Budget Management (attention: Director of Capital Programs) or by other method of payment approved in advance in writing by the City's Office of Budget Management.

6.3 **Late Payments.** Any late payments by the Contractor will bear interest, beginning on the 10th day after the date on which the payment was due, at a rate per annum equal to the Default Rate.

ARTICLE 7 DISPUTES

7.1 Dispute Resolution.

(a) *Presentation of Disputes to CFO.* The Contractor must initially bring any dispute concerning a question of fact arising under this Agreement, which is not otherwise disposed of, to the CFO. The CFO shall make a decision regarding the appropriate resolution of the dispute after a hearing based upon written submissions of the parties with 14 days of the CFO's receipt of such written submissions. The CFO will render his or her decision to writing and mail or otherwise furnish a copy of it to the Contractor. The decision of the CFO is final, subject to the parties' rights below in this Section 7.1. Failure of the CFO to timely render such a decision shall entitle either party to proceed to mediation pursuant to Section 7.1(b).

(b) *Mediation.* Absent circumstances that, in either party's reasonable judgment, render mediation inappropriate, after the CFO's initial decision, in the event of a continuing material dispute between the parties pertaining to this Agreement, before bringing a legal action in the U.S. District Court for the Northern District of Illinois or the Circuit Court of Cook County, the parties agree to engage in mediation before a mediator mutually agreed to by the parties in writing in order to attempt to resolve such dispute without such litigation. Each party shall pay one-half of the costs of such mediation. If the City and Contractor cannot agree upon a mediator, each party shall select a mediator, and such two mediators shall mutually agree in writing upon a third mediator who shall mediate such dispute.

(c) *Prerequisite to Appeal.* After complying with Section 7.1(a) and (b) above, if a continuing material dispute remains, either party may appeal the decision to the U. S. District Court for the Northern District of Illinois or the Circuit Court of Cook County.

(d) *Matters Requiring Immediate Relief.* Notwithstanding the above, matters requiring the filing of, or the responding to, a temporary restraining order, preliminary injunction, or other legal action seeking immediate relief, may be brought by either party as an initial matter in a suit filed with the U.S. District Court for the Northern District of Illinois or the Circuit Court of Cook County.

ARTICLE 8 INSURANCE

8.1 Insurance.

(a) *Insurance Limits.* The Contractor must provide and maintain at the Contractor's own expense, during the term of this Agreement and during any time period following the expiration or termination of the Agreement if the Contractor is required to return and perform any additional Work, the insurance coverages and requirements specified below insuring all operations related to this Agreement. All such insurance policies must indicate that as respects the insureds (whether named or otherwise), cross-liability and severability of interests must exist for all coverages provided thereunder.

- (i) Workers' Compensation and Employers' Liability. Workers' Compensation Insurance, as prescribed by applicable Law and covering all employees who are to provide a service under this Agreement, and Employers Liability coverage with limits of not less than \$100,000 (or, if greater, any then applicable statutory coverage limit) for each accident or illness.
- (ii) Commercial General Liability (Primary and Umbrella). Commercial General Liability Insurance or equivalent with limits of not less than \$5,000,000 per occurrence for bodily injury, personal injury, and property damage liability. Coverage must include the following: All premises and operations, products/completed operations (for a minimum of two years following the end of the term of this Agreement, as extended, if at all), explosion, collapse, underground, separation of insureds, defense, and contractual liability (with no limitation endorsement). The City must be named as additional insured on a primary, non-contributory basis for any liability arising directly or indirectly from the Work.
- (iii) Automobile Liability (Primary and Umbrella). When any motor vehicles (owned, non-owned and hired) are used in connection with work to be performed, the Contractor must provide Automobile Liability Insurance with limits of not less than \$1,000,000 per occurrence for bodily injury and property damage.
- (iv) Professional Liability. When any architects, engineers, construction managers or other professional Contractors perform work in connection with this Agreement, professional liability insurance covering acts, errors or omissions must be maintained with limits of not less than \$2,000,000. Coverage must include contractual liability. When policies are renewed or replaced, the policy retroactive date must coincide with, or precede, start of work on this

Agreement. A claims-made policy which is not renewed or replaced must have an extended reporting period of two years.

- (v) Property Insurance/Installation Floater. All Risk Property Insurance, at replacement cost, for all loss or damage to any structure, machinery, equipment, building materials or supplies, being used with and during the course of the manufacturing, assembly, installation, maintenance and operation of the City Digital Signs. A Subcontractor performing such portion of the Work may carry such insurance in lieu of the Contractor's carrying such insurance.
- (vi) Railroad Protection Liability Insurance. When any Work is to be done adjacent to or on railroad or transit property, the Contractor must provide, with respect to the operations that the Contractor or Subcontractors perform, Railroad Protective Liability Insurance in the name of the railroad or transit entity. The policy must have limits of not less than \$2,000,000 per occurrence and \$6,000,000 in the aggregate for losses arising out of injuries to or death of all persons, and for damage to or destruction of property, including the loss of use thereof.

(b) *Loss or Damage to Personal Property.* The Contractor is responsible for all loss or damage to the City Digital Signs and City Digital Network and to personal property (including but not limited to material, equipment, tools and supplies), owned, used, leased or rented by the Contractor.

(c) Additional Insurance Requirements.

- (i) The Contractor must furnish to the City of Chicago, Department of Finance, City Hall, Room 600, 33 North LaSalle Street, Chicago, Illinois 60602, original Certificates of Insurance, or such similar evidence, to be in force on the Commencement Date, and Renewal Certificates of Insurance, or such similar evidence, if the coverages have an expiration or renewal date occurring during the term of this Agreement. The Contractor must submit evidence of insurance on the City of Chicago Insurance Certificate Form (a copy of which is attached hereto as Exhibit 5) or equivalent prior to the date of this Agreement. The receipt of any certificate does not constitute agreement by the City that the insurance requirements in this Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with all requirements of this Agreement. The failure of the City to obtain certificates or other insurance evidence from Contractor is not a waiver by the City of any requirements for the Contractor to obtain and maintain the specified coverages. The Contractor must advise all insurers of the provisions

of this Agreement regarding insurance. Non-conforming insurance does not relieve Contractor of the obligation to provide insurance as specified herein. Nonfulfillment of the insurance conditions may constitute a violation of this Agreement, and the City retains the right to stop work until proper evidence of insurance is provided, or this Agreement may be terminated.

- (ii) The insurance must provide for 60 days' prior written notice to be given to the City in the event coverage is substantially changed, canceled, or non-renewed.
- (iii) Any deductibles or self-insured retentions on referenced insurance coverages must be borne by Contractor.
- (iv) The Contractor agrees that insurers waive their rights of subrogation against the City, its employees, elected officials, agents, or representatives.
- (v) The insurance coverages and limits furnished by Contractor in no way limit the Contractor's liabilities and responsibilities specified within this Agreement or by Law.
- (vi) Any insurance or self-insurance programs maintained by the City do not contribute with insurance provided by the Contractor under this Agreement.
- (vii) The required insurance to be carried is not limited by any limitations expressed in the indemnification language in this Agreement or any limitation placed on the indemnity in this Agreement given as a matter of law.
- (viii) The Contractor must require all Subcontractors to provide the insurance required herein, or the Contractor may provide the coverages for such Subcontractors. All Subcontractors are subject to the same insurance requirements of the Contractor unless otherwise specified in this Agreement.
- (ix) If the Contractor or a Subcontractor desire additional coverage, the party desiring the additional coverage is responsible for the acquisition and cost.
- (x) The City Risk Management Department maintains the right to modify, delete, alter or change these requirements.

ARTICLE 9

INDEMNIFICATION

9.1 Contractor's Indemnification.

- (a) *Obligation.* The Contractor must defend, indemnify, keep and hold harmless the

Indemnitees (as defined below) from and against any and all Losses, including those related to:

- (i) injury (including any libel or advertising-based injury) death or damage of or to any person or property;
- (ii) any infringement or violation of any property right, whether real, personal, CDN Intellectual Property or intangible;
- (iii) failure to pay or materially perform, or cause to be paid or materially performed, the Contractor's covenants and obligations as and when required under this Agreement or otherwise to pay or perform its obligations to any Subcontractor;
- (iv) the City's exercise of its rights and remedies under Section 12.2 of this Agreement; and
- (v) injuries to or the death of any employee of the Contractor or any Subcontractor under any workers' compensation statute.

(b) *Indemnitees and Losses.* “**Indemnitees**” means, collectively, the City, and its respective officers, representatives, elected and appointed officials, agents and employees. “**Losses**” means, individually and collectively, actual liabilities of every kind, including actual losses, damages and reasonable costs, payments and expenses (such as, but not limited to, court costs and reasonable attorneys’ fees and disbursements), including due to third party claims, demands, actions, suits, proceedings, judgments or settlements, any or all of which in any way arise out of or relate to the acts or omissions of the Contractor, its employees, agents and Subcontractors, or otherwise arising out of the rights and obligations of such parties hereunder. “Losses” shall not include, however, special, consequential, punitive or indirect damages.

(c) *Defense of Suits.* At the City Corporation Counsel’s option (and subject to the City's obligation to defend against a Legal Challenge), the Contractor must defend all suits brought upon all such Losses against the City and must pay all reasonable costs and expenses incidental to them, but the City has the right, at its option, to participate, at its own cost, in the defense of any suit, without relieving the Contractor of any of its obligations under this Agreement. The Contractor shall have the right to select the counsel to defend such suit, subject to the City’s reasonable consent. The Contractor, if not named a party, may seek to intervene in such suit in order to defend against such claim for Losses. Any settlement must be made only with the prior written consent of the City Corporation Counsel if the settlement requires any payment (which payment may, depending on the amount, also require the approval of the City Council) or action on the part of the City, or would affect the City's ability to enforce the Zoning Ordinance or other portions of the Municipal Code.

The City shall give written notice to the Contractor of any claim for indemnification under this Article 9 within one year of the City's actual notice of the event giving rise to such indemnification obligation, provided, however, that such one year period shall be tolled during such time as the City has agreed to forbear the exercise of its rights under this Article 9 or its remedies under Article 12 in an effort to settle a disputed matter or so as to allow the Contractor additional time to cure a Default. Delivery of a Cure Notice shall be deemed to satisfy the written notice obligation described in the preceding sentence.

In the event a third party files a suit seeking a declaration as to the invalidity or unenforceability of this Agreement as a whole, or challenging the legality of one or more of the City Digital Sign Ordinances, which challenge if successful, would prohibit the operation of one or more of the City Digital Signs in the City Digital Network, or seeking zoning rights which, if granted, would deprive Contractor of the benefit of the City Digital Sign Exclusivity Provision (i.e., give such plaintiff the right to install and operate changing-image digital signs in a format of 336 square feet or more along expressways and toll roads in locations authorized under the Project Ordinance)(any such event, a "**Legal Challenge**"), then upon and after the filing of such a Legal Challenge, and until its dismissal or a final non-appealable judgment defeating such Legal Challenge, all Gross Revenues available for distribution shall, notwithstanding the provisions of Exhibit 2, be paid as follows: *first*, to the reasonable legal fees and expenses of outside counsel and any expert witnesses retained by the City in defending against such Legal Challenge; *second*, to the reasonable legal fees and expenses outside counsel and any expert witnesses retained by the Contractor in defending against such Legal Challenge; *third*, to the Contractor until such time as the Contractor has been paid an amount equal to the Contractor's Capitalized Costs, as substantiated by certificates delivered to the City in accordance with the "Capitalized Costs" definition, taking into account all prior payments to the Contractor under Exhibit 2 (and this Section 9.1(c)) in recovery of such costs; and *fourth*, to the Contractor, an amount equal to the aggregate Guaranteed Initial Fees paid to the City to date, taking into account all prior payments to the Contractor under Exhibit 2 (and this Section 9.1(c)) in recovery of such advanced fees (such fourth priority payment amount, the "**Unrecovered GIF Advance Amount**"). Thereafter, additional Gross Revenues available for distribution shall be paid in accordance with Exhibit 2. Upon dismissal or defeat of such a Legal Challenge, the parties shall equitably adjust the payments made to date, including pursuant to this Section 9.1(c), to restore the parties to the position where they would have been had such Legal Challenge not occurred, subject to the tolling provision set forth in Section 5.1 and any ratable adjustment of dates pursuant thereto. In the event such Legal Challenge is not dismissed or defeated, or is settled by the City, and, in any such event, the parties are no longer able to operate the City Digital Network or the Contractor advises the City that in its reasonable judgment it has been deprived of the benefit of the City Digital Sign Exclusivity Provision, the City shall refund to the Contractor an amount equal to the Unrecovered GIF Advance Amount, after taking into account all prior payments to the Contractor under Exhibit 2 (and this Section 9.1(c)), in recovery of such advanced fees). Except for the mitigation measures set forth in this paragraph, the Contractor shall have no further claim for any damages, compensation, unjust enrichment, reimbursement or recovery from the City, whether at law, at equity, or otherwise, with respect to any previously paid Guaranteed Initial Fees or unrecovered Capital Cost amounts in the event of a Legal

Challenge or otherwise. Contractor acknowledges that the City has separately bargained for the allocation of risk set forth in this Section 9.1(c), that the Contractor's agreement to such allocation of risk is a material inducement to the City's execution of this Agreement, and that this Section 9.1(c) is not severable or otherwise subject to revision by a reviewing court without materially altering the parties' agreement. In the event that less than all of the City Digital Signs shall be affected by a Legal Challenge, the above provisions shall be ratably and equitably adjusted for application to such circumstance. In the event of a Legal Challenge, the City shall defend such litigation. The Contractor, if not named a party, may seek to intervene in such suit in order to protect its rights under this Agreement.

(d) *Waiver of Limitation.* To the extent permissible by Law, the Contractor waives any limits to the amount of its obligations to indemnify, defend or contribute to any sums due under any Losses, including any claim by any employee of the Contractor that may be subject to the Workers Compensation Act, 820 ILCS 305/1 *et seq.* or any other related Law or judicial decision (such as *Kotecki v. Cyclops Welding Corporation*, 146 Ill. 2d 155 (1991)). The City, however, does not waive any limitations it may have on its liability under the Illinois Workers' Compensation Act, the Illinois Pension Code or any other statute.

(e) *Admiralty Waiver.* The Contractor waives the right to receive the benefits of or to invoke the protection afforded by any and all maritime statutory limitations of liability, including the Limitation of Vessel Owner's Liability Act, 48 U.S.C. § 183 *et seq.*, that could act to diminish the liability of the Contractor for any harm or damage arising from Contractor's performance of its obligations under this Agreement in any manner or for any and all claims or other costs arising from or occasioned by its operations on any waterways, including Lake Michigan, the Chicago River, and the Calumet River. This provision is not intended to avoid or waive federal jurisdiction under the applicable admiralty Laws. This waiver extends only to the Indemnitees, and not to third parties seeking recovery for claims solely against the Contractor. Without limiting its waiver, the Contractor specifically consents to pay any and all sums in respect of any claims against the Indemnitees and other costs suffered by the Indemnitees arising from or occasioned by Contractor's operations in or on waterways, including the following:

- (i) Loss or damage to any other ship, vessel or boat caused proximately or otherwise by the Contractor's vessel, or loss of the cargo or other ship, vessel or boat;
- (ii) Loss of life or personal injury, or for any cost of life salvage;
- (iii) Loss or damage to any harbor, dock, building, graving or otherwise, slipway, pontoon, pier, quay, tunnel, jetty, stage, buoy, cables of any kind, or other fixed or movable object or property whatsoever;
- (iv) The cost of the removal, raising or destruction of the wreck of any vessel employed by the Contractor in performing its obligations under this Agreement;

(v) If a vessel is disabled or otherwise, the cost of towage or other salvage of any vessel employed by the Contractor in performing its obligations under this Agreement;

(vi) Loss or damage to the bottom, banks, or shoreline of the waterway.

(f) *Construction.* The provisions of this Article 9 will not be construed in a manner that would violate the Illinois Construction Contract Indemnification for Negligence Act, 740 ILCS 35/1 *et seq.*

(g) *Survival.* The provisions in this Article 9 survive expiration or termination of this Agreement for matters occurring or arising while this Agreement is in effect or as the result of or during the Contractor's performance of Work beyond the term of this Agreement as to claims for which notice was given prior to the termination or expiration of such term and, in addition, as to claims for which written notice is given within one year of such termination or expiration. The Contractor acknowledges that the requirements set forth in this Section 9.1 to indemnify, keep and save harmless and defend the City are apart from and not limited by the Contractor's duties under this Agreement, including the insurance requirements under Article 8.

(h) *Offset for Insurance Proceeds.* Any claim for Losses payable by Contractor pursuant to this Article 9 shall be reduced by an amount equal to any insurance proceeds paid to the City with respect to the event giving rise to such Claim.

ARTICLE 10 COMPLIANCE WITH LEGAL REQUIREMENTS

10.1 General.

(a) *Compliance with Laws.* The Contractor must comply with all applicable Laws in its performance of the Work and operation of the City Digital Network. Notwithstanding anything in this Agreement to the contrary, references to a Law are considered to be a reference to (i) the Law as it may be amended from time to time, except as expressly limited by this Agreement; (ii) all regulations and rules pertaining to or promulgated pursuant to the Law; and (iii) all future Laws pertaining to the same or similar subject matter, except as expressly limited by this Agreement.

(b) *Taxes.* The Contractor must pay all applicable existing and future sales, consumer, use, excise, value added, real estate, personal property, transaction, nontitled use, employers' expense and other taxes, duties and tariffs (whether direct or indirect), including, without limitation, all duties, tariffs and taxes (whether foreign or otherwise) related to the import or export of machinery, equipment, materials and supplies in connection with the City Digital Signs. The parties agree that this Agreement does not convey, and the Contractor shall not have, any interest in any real estate

owned by the City other than a mere right to place City Digital Signs at the locations designated by the City, during the term of this Agreement. The payments made by the Contractor pursuant to the terms of this Agreement shall not be construed as “rent” for any interest in real estate and the Contractor shall not as a result of such payments acquire any leasehold or other interest in City real estate, and any amounts paid to or revenues received by the Contractor for advertising on Ad Panels shall not be construed as consideration or revenues from the lease or rental of personal property so as to be subject to the Personal Property Lease Transactions Tax under Chapter 3-32 of the Municipal Code. If the City Digital Signs become subject to any state or City ad valorem general real estate tax (or similar tax hereafter imposed in lieu of such ad valorem general real estate tax), then the Contractor will be responsible for paying such tax as required and the Contractor will be granted a credit against the City Share of Gross Revenues payable to the City in each calendar year equal to the amount of any City tax actually paid by the Contractor in each such calendar year as described in Section 6.1. In addition, to the extent the City imposes after the Commencement Date a new City tax on the Contractor applicable to the City Digital Signs or performance of the Work that is generally applicable to advertising signs or similar businesses within the City (or not generally applicable, and specific only to the Contractor and the City Digital Network), the Contractor will be granted a credit against the City Share of Gross Revenues payable to the City in each calendar year equal to the amount of any such new City tax actually paid by the Contractor in each such calendar year as described in Section 6.1. In such event, the Contractor must provide written evidence satisfactory to the City of the payment of such City tax.

(c) *Licenses and Authorizations.* The Contractor must observe and comply with, and must cause its Subcontractors to observe and comply with, and obtain all licenses, certificates and other authorizations required by all applicable Laws and must give all notices pertaining thereto.

(d) *Disclosure Affidavit.* The Contractor must execute and must cause all Subcontractors of the first tier (and other Subcontractors as may be required by applicable Law) to execute a Disclosure Affidavit (including disclosure of retained parties) in the form attached to this Agreement as Exhibit 4.

10.2 Federal Requirements.

(a) *Employment Practices.* In performing its Work under this Agreement, the Contractor must not engage in unlawful employment practices, such as (1) failing or refusing to hire or discharging any individual, or otherwise discriminating against any individual with respect to compensation or the terms, conditions, or privileges of the individual’s employment, because of the individual’s race, color, religion, sex, age, handicap/disability or national origin; or (2) limiting, segregating or classifying the Contractor’s employees or applicants for employment in any way that would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect the individual’s status as an employee, because of the individual’s race, color, religion, sex, age, handicap/disability or national origin.

(b) *Civil Rights.* Contractor must comply with, and the procedures the Contractor utilizes and the Work the Contractor provides under this Agreement must comply with the Civil Rights Act of 1964, 42 U.S.C. sec. 2000 *et seq.* (1981), as amended, and the Civil Rights Act of 1991, P.L. 102-166. Attention is called to: Exec. Order No. 11246, 30 Fed. Reg. 12,319 (1965), reprinted in 42 U.S.C. 2000(e) note, as amended by Exec. Order No. 11375, 32 Fed. Reg. 14,303 (1967) and by Exec. Order No. 12086, 43 Fed. Reg. 46,501 (1978); Age Discrimination Act, 42 U.S.C. §§ 6101-6106 (1981); Age Discrimination in Employment Act, 29 U.S.C. §§621-34; Rehabilitation Act of 1973, 29 U.S.C. §§793-794 (1981); Americans with Disabilities Act, 42 U.S.C. §12101 *et seq.*; 41 C.F.R. Part 60 *et seq.* and all other applicable Laws.

(c) *Patriot Act Certification.* Contractor represents and warrants that neither Contractor nor any Affiliate (as hereafter defined) thereof is listed on any of the following lists maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the Bureau of Industry and Security of the U.S. Department of Commerce or their successors, or on any other list of persons or entities with which the City may not do business under any applicable Laws: the Specially Designated Nationals List, the Denied Persons List, the Unverified List, the Entity List and the Debarred List. As used in this Section, an “Affiliate” shall be deemed to be a person or entity related to Contractor that, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with Contractor, and a person or entity shall be deemed to be controlled by another person or entity, if controlled in any manner whatsoever that results in control in fact by that other person or entity (or that other person or entity and any persons or entities with whom that other person or entity is acting jointly or in concert), whether directly or indirectly and whether through share ownership, a trust, a contract or otherwise.

10.3 State Requirements.

(a) *Illinois Human Rights Act.* The Contractor must comply with, and the procedures the Contractor utilizes and the Work the Contractor provides under this Agreement must comply with the Illinois Human Rights Act, 775 ILCS 5/1-101 *et seq.* (1990), as amended and any rules and regulations promulgated in accordance with it, including the Equal Employment Opportunity Clause, 44 Ill. Admin. Code § 750 Appendix A. Furthermore, the Contractor must comply with the Public Works Employment Discrimination Act, 775 ILCS 10/0.01 *et seq.*, as amended, and all other applicable Laws.

(b) *Veterans Preference.* The Contractor will comply with the provisions of 330 ILCS 55/0.01 *et seq.* which requires that a preference be given to veterans in the employment and appointment to fill positions in the construction, addition, or alteration of all public works. In the employment of labor (except executive, administrative and supervisory positions) preference will be given to veterans of the Vietnam era and disabled veterans; however, this preference may be given only where the individuals are available and qualified to perform the Work to which the employment relates. The Contractor will insure that the provisions of this Section are inserted in all subcontracts entered into with any Subcontractors and labor organizations which furnish skilled, unskilled and craft

union skilled labor, or which may provide any material, labor, or services in connection with this Agreement.

(c) *Steel Products.* The Contractor will comply with all applicable provisions of the Steel Products Procurement Act, 30 ILCS 565/1 *et seq.*, if any, as it may be amended from time to time.

(d) *Employment of Illinois Laborers.* The Contractor will use only Illinois laborers in the performance of this Agreement, to the extent, if any, (i) required by the Employment of Illinois Laborers on Public Works Projects Act 30 ILCS 570/0.01 *et seq.*, as amended from time to time, and (ii) otherwise permitted by Law.

(e) *Prevailing Wage.* The Contractor will comply with 820 ILCS 130/0.01 *et seq.*, as it may be amended (the “**Prevailing Wage Act**”), so long as the Prevailing Wage Act is in effect, in order to ensure that such persons covered by the Prevailing Wage Act are paid the prevailing wage rate as ascertained by the Illinois Department of Labor. The specified rates to be paid to all laborers, workers, and mechanics for such craft or type of worker or mechanic as of the Commencement Date are included in Exhibit 10 attached hereto. If the Illinois Department of Labor revises such prevailing wage rates, the revised rates will apply to this Agreement.

10.4 City Requirements.

(a) *Chicago Human Rights Ordinance.* The Contractor must comply with, and the procedures the Contractor utilizes and the Work the Contractor provides under this Agreement must comply with, the Chicago Human Rights Ordinance, ch. 2-160, Section 2-160-010 *et seq.* of the Municipal Code of Chicago, as amended. Further, the Contractor must furnish and must cause each of its Subcontractor(s) to furnish such reports and information as requested by the Chicago Commission on Human Relations, and all other applicable City ordinances and rules.

(b) *Chicago “Living Wage” Ordinance.* Section 2-92-610 of the Municipal Code of Chicago requires eligible contractors and their subcontractors to pay a living wage (as of the Commencement Date, \$11.18 per hour minimum base wage) to covered employees employed in the performance of this Agreement. The Contractor is an eligible contractor if, at any time during the performance of this Agreement, the Contractor has 25 or more full-time employees. If the Contractor is or becomes eligible, the Contractor and the Contractor’s subcontractors must pay at least the base wage to covered employees. Covered employees are: security guards (but only if the Contractor and the Contractor’s subcontractors employ in the aggregate 25 or more of them), and, in any number, parking attendants, day laborers, home and health care workers, cashiers, elevator operators, custodial workers and clerical workers. Section 2-92-610 does not apply to not-for-profit corporations with federal 501(c)(3) tax exempt status. Also, if the Work is subject to payment of prevailing wages, and the prevailing wages are higher than the base wage, then prevailing wage rates apply and must be paid.

(c) *Cooperation with Office of Inspector General and Legislative Inspector General.* It is the duty of Contractor and any bidder, proposer, contractor, subcontractor, and every applicant for certification of eligibility for a City contract or program, and all officers, directors, agents, partners, and employees of any such grantee, subgrantee, bidder, proposer, contractor, subcontractor or such applicant to cooperate with the Legislative Inspector General in any investigation or hearing undertaken pursuant to Chapter 2-55 of the Municipal Code, and to cooperate with the Inspector General in any investigation or hearing undertaken pursuant to Chapter 2-56 of the Municipal Code. Contractor represents and warrants that it understands and will abide by all provisions of Chapter 2-55 and Chapter 2-56 of the Municipal Code and that Contractor will inform its contractors and Subcontractors of this provision and require their compliance.

(d) *MacBride Ordinance.*

- (i) The City, through the passage of the MacBride Principles Ordinance, seeks to promote fair and equal employment opportunities and labor practices for religious minorities in Northern Ireland and provide a better working environment for all citizens in Northern Ireland.
- (ii) In accordance with Section 2-92-580 of the Municipal Code of the City, if the primary contractor conducts any business operations in Northern Ireland, the contractor must make all reasonable and good faith efforts to conduct any business operations in Northern Ireland in accordance with the MacBride Principles for Northern Ireland as defined in Illinois Public Act 85-1390 (1988 Ill. Laws 3220).

(e) *Business Relationships.* Contractor acknowledges (a) receipt of a copy of Section 2-156-030 (b) of the Municipal Code of Chicago, (b) that it has read such provision and understands that pursuant to such Section 2-156-030 (b) it is illegal for any elected official of the City, or any person acting at the direction of such official, to contact, either orally or in writing, any other City official or employee with respect to any matter involving any person with whom the elected City official or employee has a “Business Relationship” (as defined in Section 2-156-080 of the Municipal Code of Chicago), or to participate in any discussion in any City Council committee hearing or in any City Council meeting or to vote on any matter involving the person with whom an elected official has a Business Relationship, and (c) notwithstanding anything to the contrary contained in this Agreement, that a violation of Section 2-156-030 (b) by an elected official, or any person acting at the direction of such official, with respect to any transaction contemplated by this Agreement shall be grounds for termination of this Agreement and the transactions contemplated hereby. Contractor hereby represents and warrants that no violation of Section 2-145-030 (b) has occurred with respect to this Agreement or the transactions contemplated hereby.

(f) *Employment of City Residents.* The Contractor must comply with the Chicago Residency Ordinance, Section 2-92-330 of the Chicago Municipal Code, including the following provisions:

(i) Except as otherwise prohibited by Law, the Contractor and all Subcontractors performing work on the assembly and installation of the City Digital Signs will comply with the minimum percentage of total worker hours performed by actual residents of the City of Chicago specified in Section 2-92-330 of the Municipal Code of Chicago (at least 50 percent of the total worker hours will be performed by actual residents of the City of Chicago). Provided, however, that in addition to complying with this percentage, the Contractor and all Subcontractors will make good faith efforts to utilize qualified residents of the City of Chicago in both unskilled and skilled labor positions.

(ii) The Contractor may request a reduction or waiver of this minimum percentage level of Chicagoans as provided for in Section 2-92-330 in accordance with standards and procedures developed by the CPO.

(iii) “Actual residents of the City of Chicago” will mean persons domiciled within the City of Chicago. The domicile is an individual’s one and only true, fixed and permanent home and principal establishment.

(iv) The Contractor will provide for the maintenance of adequate employee residency records to ensure that actual Chicago residents are employed on the project. The Contractor and Subcontractors will maintain copies of personal documents supportive of every Chicago employee’s actual record of residence.

(v) Weekly certified payroll reports (U.S. Department of Labor Form WH-347 or equivalent) submitted to the commissioner of each supervising department, in triplicate, will identify clearly the actual residence of every employee on each submitted certified payroll. The first time that an employee’s name appears on a payroll, the date the company hired the employee should be written in after the employee’s name.

(vi) Full access to the Contractor’s employment records and the employment records of Subcontractors of the first tier will be granted to the CPO, the commissioner of each supervising department, the Superintendent of the Chicago Police Department, the Inspector General, or any duly authorized representative thereof. The Contractor and Subcontractors of the first tier will maintain all relevant personnel data and records for a period of at least three years after final acceptance of the initial Work related to assembling and installing the City Digital Signs.

(vii) At the direction of a supervising department, affidavits and other supporting documentation will be required of the Contractor to verify or clarify an employee's actual address when doubt or lack of clarity has arisen, to the extent permitted by Law.

(viii) Good faith efforts on the part of the Contractor to provide utilization of actual Chicago residents (but not sufficient for the granting of a waiver request as provided for in the standards and procedures developed by the CPO) will not suffice to replace the actual, verified achievement of the requirements of this Section concerning the worker hours performed by actual Chicago residents.

(ix) When the initial Work relate to assembling and installing the City Digital Signs is complete, in the event that the City has determined that the Contractor failed to ensure the fulfillment of the requirement of this Section concerning the worker hours performed by actual Chicago residents or failed to report in the manner as indicated above, the City will thereby be damaged in the failure to provide the benefit of demonstrable employment to Chicagoans to the degree stipulated in this Section. Therefore, in such a case of non-compliance it is agreed that 1/20 of one percent, or 0.0005, of the value of this Agreement, as determined by the CPO, will be surrendered by the Contractor to the City in payment for each percentage of shortfall toward the stipulated residency requirement. Failure to report the residency of employees entirely and correctly will result in the surrender of the entire liquidated damages as if no Chicago residents were employed. The willful falsification of statements in the certification of payroll data may subject the Contractor or Subcontractors or employee to prosecution.

(x) Nothing herein provided will be construed to be a limitation upon the Notice of Requirements For Affirmative Action To Ensure Equal Employment Opportunity, Executive Order 11246 and Standard Federal Equal Employment Opportunity, Executive Order 11246 or other affirmative action required for equal opportunity under the provisions of this contract. The Contractor will include this provision in all subcontracts with Subcontractors of the first tier.

(g) *Equal Employment.* Section 2-92-390 of the Municipal Code of Chicago is deemed applicable to this Agreement. The Contractor will complete all forms required by the City relating to Section 2-92-390.

(h) *Prohibition on Certain Contributions-Mayoral Executive Order No. 2011-4.* Contractor agrees that Contractor, any person or entity who directly or indirectly has an ownership or beneficial interest in Contractor of more than 7.5 percent (as used in this Section 10.4(h), "Owners"), spouses and domestic partners of such Owners, Contractor's contractors (i.e., any person or entity in direct contractual privity with Contractor regarding the subject matter of this Agreement) (as used in this

Section 10.4(h) “Contractors”), any person or entity who directly or indirectly has an ownership or beneficial interest in any Contractor of more than 7.5 percent (as used in this Section 10.4(h) “Sub-owners”) and spouses and domestic partners of such Sub-owners (Contractor and all the other preceding classes of persons and entities are together the “Identified Parties”), shall not make a contribution of any amount to the Mayor of the City of Chicago (the “Mayor”) or to his political fundraising committee (a) after execution of this Agreement by Contractor, (b) while this Agreement or any Other Contract (as hereinafter defined) is executory, (c) during the term of this Agreement or any Other Contract, or (d) during any period while an extension of this Agreement or any Other Contract is being sought or negotiated. This provision shall not apply to contributions made prior to May 16, 2011, the effective date of Executive Order 2011-4.

Contractor represents and warrants that from the later of (a) May 16, 2011, or (b) the date the City approached Contractor, or the date Contractor approached the City, as applicable, regarding the formulation of this Agreement, no Identified Parties have made a contribution of any amount to the Mayor or to his political fundraising committee.

Contractor agrees that it shall not: (a) coerce, compel or intimidate its employees to make a contribution of any amount to the Mayor or to the Mayor’s political fundraising committee; (b) reimburse its employees for a contribution of any amount made to the Mayor or to the Mayor’s political fundraising committee; or (c) bundle or solicit others to bundle contributions to the Mayor or to his political fundraising committee.

Contractor agrees that the Identified Parties must not engage in any conduct whatsoever designed to intentionally violate this provision or Mayoral Executive Order No. 2011-4 or to entice, direct or solicit others to intentionally violate this provision or Mayoral Executive Order No. 2011-4.

Notwithstanding anything to the contrary contained herein, Contractor agrees that a violation of, non-compliance with, misrepresentation with respect to, or breach of any covenant or warranty under this Lease or violation of Mayoral Executive Order No. 2011-4 constitutes a breach and default under this Agreement, and under any Other Contract for which no opportunity to cure will be granted, unless the City, in its sole discretion, elects to grant such an opportunity to cure. Such breach and default entitles the City to all remedies (including, without limitation, termination for default) under this Agreement, and under any Other Contract, at law and in equity. This provision amends any Other Contract and supersedes any inconsistent provision contained therein.

If Contractor intentionally violates this provision or Mayoral Executive Order No. 2011-4 prior to the Closing, the City may elect to decline to close the transaction contemplated by this Agreement.

For purposes of this provision:

(a) “Bundle” means to collect contributions from more than one source, which contributions are then delivered by one person to the Mayor or to his political fundraising committee.

(b) “Other Contract” means any other agreement with the City to which Contractor is a party that is (i) formed under the authority of Chapter 2-92 of the Municipal Code of Chicago; (ii) entered into for the purchase or lease of real or personal property; or (iii) for materials, supplies, equipment or services which are approved or authorized by the City Council.

(c) “Contribution” means a “political contribution” as defined in Chapter 2-156 of the Municipal Code of Chicago, as amended.

(d) Individuals are “domestic partners” if they satisfy the following criteria:

(i) they are each other's sole domestic partner, responsible for each other's common welfare; and

(ii) neither party is married; and

(iii) the partners are not related by blood closer than would bar marriage in the State of Illinois; and

(iv) each partner is at least 18 years of age, and the partners are the same sex, and the partners reside at the same residence; and

(v) two of the following four conditions exist for the partners:

(1) The partners have been residing together for at least 12 months.

(2) The partners have common or joint ownership of a residence.

(3) The partners have at least two of the following arrangements:

(A) joint ownership of a motor vehicle;

(B) joint credit account;

(C) a joint checking account;

(D) a lease for a residence identifying both domestic partners as tenants.

(4) Each partner identifies the other partner as a primary beneficiary in a will.

(e) “Political fundraising committee” means a “political fundraising committee” as defined in Chapter 2-156 of the Municipal Code of Chicago, as amended.

(i) *Waste Ordinance Provisions.* In accordance with Section 11-4-1600(e) of the Municipal Code of Chicago, Contractor warrants and represents that it, and to the best of its knowledge, its contractors and subcontractors, have not violated and are not in violation of any provisions of Section 7-28 or Section 11-4 of the Municipal Code (the “**Waste Sections**”). During the period while this Agreement is executory, Contractor’s, any general contractor’s or any subcontractor’s violation of the Waste Sections, whether or not relating to the performance of this Agreement, constitutes a breach of and an event of default under this Agreement, for which the opportunity to cure, if curable, will be granted only at the sole designation of the Chief Procurement Officer. Such breach and default entitles the City to all remedies under the Agreement, at law or in equity. This Section does not limit Contractor’s, general contractor’s and its subcontractors’ duty to comply with all applicable federal, state, county and municipal laws, statutes, ordinances and executive orders, in effect now or later, and whether or not they appear in this Agreement. Non-compliance with these terms and conditions may be used by the City as grounds for the termination of this Agreement, and may further affect the Contractor’s eligibility for future contract awards.

(j) *Failure to Maintain Eligibility to do Business with City.* Failure by Contractor or any controlling person (as defined in Section 1-23-010 of the Municipal Code of Chicago) thereof to maintain eligibility to do business with the City of Chicago as required by Section 1-23-030 of the Municipal Code of Chicago shall be grounds for termination of this Agreement and the transactions contemplated thereby. Contractor shall at all times comply with Section 2-154-020 of the Municipal Code of Chicago.

10.5 **Subcontractors.**

(a) *Provisions of Subcontracts.* The Contractor must expressly include all provisions of this Article 10 in all agreements or subcontracts entered into with any Subcontractors of the first tier.

(b) *Assignment of Subcontracts.* Concurrent with the execution of any subcontract with a Subcontractor of the first tier, the Contractor must collaterally assign such subcontract to the City. Such assignment must be automatically effective upon the CFO’s declaring the Contractor in default.

ARTICLE 11
SPECIAL CONDITIONS

11.1 Representations and Warranties. In connection with the execution and performance of this Agreement, the Contractor represents and warrants that:

(a) it is appropriately licensed under all applicable Law to perform the Work required under this Agreement and will not perform Work for which a professional license is required by Law if the Contractor is not appropriately licensed; and

(b) it is financially solvent; it and each of its employees, agents and Subcontractors are competent to perform the Work required under this Agreement; and is legally authorized to execute and perform or cause to be performed this Agreement under the terms and conditions stated in this Agreement; and

(c) it will not knowingly use the services of any ineligible contractor or Subcontractor for any purpose in the performance of its Work under this Agreement; and

(d) Contractor and its Subcontractors are not in default at the time this Agreement is signed, and have not been deemed by the Chief Procurement Officer to have, within 5 years immediately preceding the Commencement Date, have been in default on any contract awarded by the City; and

(e) it has carefully examined and analyzed the provisions and requirements of this Agreement; it understands the nature of the work required; from its own analysis has satisfied itself as to the general nature of all things needed for the performance of this Agreement; has confirmed that the performance of this Agreement is feasible in accordance with all of its provisions and requirements, and it can and will perform, or cause to be performed, the Work in strict accordance with the provisions and requirements of this Agreement, subject to such additional site information that the Contractor may obtain in the course of implementing the terms of this Agreement, such as, for example, as the Contractor receives Board of Underground responses and identifies existing subsurface utilities, and as the Contractor determines actual soil conditions through borings in connection with preparing to install City Digital Signs and performing its obligations hereunder.

(f) to the best of its knowledge, its Subcontractor's are not in violation of the provisions of Section 2-92-320 of Chapter 2-92 of the Municipal Code of Chicago, and in connection with it, and additionally in connection with the Illinois Criminal Code, 720 ILCS 5/33E as amended, and the Illinois Municipal Code, 65 ILCS 5/11-42.1-1; and

(g) acknowledges that any certification, affidavit or acknowledgment made under oath in connection with this Agreement is made under penalty of perjury and, if false, is also cause for termination pursuant to Article 12.

11.2 **Ethics.** In addition to the foregoing warranties and representations, the Contractor warrants:

(a) No officer, agent or employee of the City is employed by the Contractor or has a financial interest directly or indirectly in this Agreement or the compensation to be paid under this Agreement except as may be permitted in writing by the Board of Ethics established pursuant to the Municipal Code of Chicago (Chapter 2-156);

(b) No payment, gratuity or offer of employment will be made in connection with this Agreement by or on behalf of any Subcontractors to the Contractor or higher tier Subcontractors or anyone associated with them, as an inducement for the award of a subcontract or order; and

(c) The Contractor further acknowledges that any Agreement entered into, negotiated or performed in violation of any of the provisions of Chapter 2-156 is voidable as to the City.

11.3 **Joint and Several Liability.** If the Contractor, or its successors or assigns, if any, is not a corporation and is not a limited liability company, but is instead comprised of more than one individuals or legal entities (or a combination of them), then under this Agreement, each and every obligation or undertaking in this Agreement to be fulfilled or performed by the Contractor is the joint and several obligation or undertaking of each such individual or other legal entity. If the Contractor is not so comprised, there shall be no such joint and several liability. If any person or entity other than Contractor executes a limited joinder to this Agreement, such person or entity shall be jointly and severally liable as to the undertakings set forth in such limited joinder.

11.4 **Business Documents.** At the request of the City, the Contractor must provide copies of its latest articles of incorporation, by-laws and resolutions, or partnership or joint venture agreement, as applicable.

11.5 **Prohibited Conflicts.**

(a) *No Personal Interest.* No member of the governing body of the City or other unit of government and no other officer, employee or agent of the City or other unit of government who exercises any functions or responsibilities in connection with the Work to which this Agreement pertains is permitted to have any personal interest, direct or indirect, in this Agreement. No member of or delegate to the Congress of the United States or the Illinois General Assembly and no alderman of the City or City employee is allowed to be admitted to any share or part of this Agreement or to any financial benefit that arises from it.

(b) *No Conflict of Interest.*

(i) The Contractor covenants that it, and to the best of its knowledge, its Subcontractors if any (collectively, the “**Consulting Parties**”), presently have no direct or indirect interest and will not acquire any interest, direct or indirect,

in any project or contract that would conflict in any manner or degree with the performance of its Work under this Agreement. For example, the Contractor and such Subcontractors shall not enter into a contract with another unit of government that would result in the Contractor assisting in the development of a City Digital Network within the metropolitan Chicago market that would compete with the City Digital Network.

- (ii) The Contractor further covenants that, in the performance of this Agreement, no person having any conflicting interest will be assigned to perform any Work or have access to any confidential information, as described in Section 3.10 of this Agreement. If the City, by the CFO in her reasonable judgment, determines any of the Contractor's work for others conflict with the Work the Contractor is to render for the City under this Agreement, the Contractor must terminate such other work immediately upon request of the City.

(c) *Disclosure.* If necessary to confirm the Contractor's compliance with Section 11.5(a) above or compliance with other City conflict of interest or ethical regulations, upon the request of the City, the Contractor must disclose to the City its past client list and the names of any clients with whom it has an ongoing relationship. The Contractor is not permitted to perform any Work for the City on applications or other documents submitted to the City by any of the Contractor's past or present clients. If the Contractor becomes aware of such a conflict, it must immediately stop work on the assignment causing the conflict and notify the City.

(d) *Consulting Parties.* Without limiting the foregoing, if the Consulting Parties assisted the City in determining the advisability or feasibility of a project or in recommending, researching, preparing, drafting or issuing a request for proposals or bid specifications for a City Digital Network project, the Consulting Parties must not participate, directly or indirectly, as a prime, subcontractor or joint venturer in the Work while this Agreement is in effect or afterwards. The Consulting Parties may, however, assist the City in reviewing the proposals or bids for the project if none of the Consulting Parties have a relationship with the persons or entities that submitted the proposals or bids for that project.

(e) *Federal Lobbying Restrictions.* If any federal funds are to be used to compensate or reimburse the Contractor under this Agreement, the Contractor represents that it is and will remain in compliance with federal restrictions on lobbying set forth in Section 319 of the Department of the Interior and Related Agencies Appropriations Act for Fiscal year 1990, 31 U.S.C. § 1352, and related rules and regulations set forth at 54 Fed. Reg. 52,309 ff. (1989), as amended. If federal funds are to be used, the Contractor must execute a Certification Regarding Lobbying, which will be attached as an exhibit and incorporated by reference as if fully set forth here.

11.6 No Liability of Public Officials. Contractor and any assignee or Subcontractor of the Contractor must not charge any official, employee or agent of the City personally with any liability or

expenses of defense or hold any official, employee or agent of the City personally liable to them under any term or provision of this Agreement or because of the City's execution, attempted execution or any breach of this Agreement.

11.7 **City Representation and Warranty.** In connection with the execution and performance of this Agreement, the City represents and warrants that it has the authority as a home rule unit of local government to execute and deliver this Agreement, and that such execution and delivery has been authorized by the Project Ordinance.

ARTICLE 12 EVENTS OF DEFAULT, REMEDIES, TERMINATION, SUSPENSION AND EXCUSABLE EVENTS

12.1 **Defaults Defined.** Each of the following constitutes default (a "**Default**") by the Contractor under this Agreement:

- (a) Any material misrepresentation, whether negligent or willful and whether in the inducement or in the performance, made by the Contractor to the City;
- (b) The Contractor admits in writing its inability or unwillingness to pay its debts as they become due;
- (c) The breach of any material representation or warranty made by the Contractor herein;
- (d) The Contractor's failure to perform any of its obligations under this Agreement including, without limitation, the following:
 - (i) A material failure to perform the Work in accordance with the requirements of this Agreement;
 - (ii) Failure to pay the City amounts due in accordance with the terms of this Agreement;
 - (iii) Failure to correct Work that is materially defective within the earliest reasonable practical opportunity pursuant to Section 3.8;
 - (iv) Discontinuance of the Work for more than (fifteen) 15 consecutive days for reasons within the Contractor's reasonable control;
 - (v) Failure of the Contractor or the Work to comply with a material term of this Agreement, including, but not limited to, the provisions concerning insurance,

nondiscrimination and minority and women's business enterprises commitment;

- (vi) Failure to materially comply with the Installation Schedule, maintenance standards and schedule of availability set forth in Exhibits 1C, 1D and 7, respectively, subject to the City's obligation to cooperate in good faith and in a timely manner in identifying replacement sites pursuant to Section 4.3, to the Excusable Event provisions, and to any other provisions of this Agreement expressly providing for an extension of time for performance;
- (vii) Any change in majority ownership or control of the Contractor (a "**Change of Control of Contractor**"), without the prior written consent of the CFO, which consent shall be in the CFO's sole discretion. Notwithstanding the foregoing, (A) an acquisition, merger or consolidation of the Contractor's business operations by or into an Approved Transferee, (B) an initial public offering of the securities of the Contractor, (C) the admission of a minority member, stockholder, partner or owner, who does not acquire (and who, in aggregate with any other persons or parties acquiring minority interests, does not acquire), a majority or controlling interest in the Contractor, or (d) a transfer of ownership interests by either member of the Contractor to an entity or personal trust that is controlled or wholly-owned, directly or indirectly, by the transferring member or the beneficial owner of such personal trust, shall be deemed a "**Permitted Transfer**" pursuant to this Agreement, and shall not be a Change of Control of Contractor or require the consent of the CFO;
- (viii) Any attempted or actual assignment, conveyance or transfer by the Contractor of this Agreement or any interest herein without the CFO's prior written consent, excluding, however, in connection with an assignment, conveyance or transfer to an Approved Transferee, or in connection with a Permitted Transfer, or grants of security interests or collateral assignments in the City Digital Signs to a lender providing Permitted Lender Financing;
- (ix) The Contractor's default under any other agreement it may presently have or may enter into with the City during the term of this Agreement. The Contractor acknowledges and agrees that in the event of a default under this Agreement the City may also declare a default under any such other Agreements; and
- (x) Inability to perform the Work satisfactorily or pay the amounts due the City pursuant to this Agreement as a result of insolvency, filing for bankruptcy or assignment for the benefit of creditors.

12.2 Remedies.

(a) *Events of Default and Maximum Time for Cure.* The occurrence of any Default described in Section 12.1 permits the City, at the City's sole option, to declare the Contractor in Default of this Agreement. The Contractor will have an opportunity to cure a Default within the applicable cure period pursuant to Section 12.2(b) below. The CFO has sole discretion as to whether to declare the Contractor in default of this Agreement.

(b) *Notice of Default and Determination of Cure Period; Remedies.* If the CFO declares the Contractor in Default of this Agreement, she will give the Contractor written notice of a Default in the form of a cure notice (the "**Cure Notice**"). If the Default is a monetary default (i.e., a failure to timely pay any amount due to the City under this Agreement), then the Contractor must cure such Default within ten (10) days of its receipt of the City's Cure Notice, as determined under Section 13.13 below. If the Default is a non-monetary default (i.e., a failure to perform an obligation of the Contractor under this Agreement other than a failure to pay any amount due the City), then the Contractor must cure such Default within thirty (30) days of its receipt of the City's Cure Notice. Notwithstanding the preceding sentence, if the Default is a non-monetary default, at the written request of the Contractor, the CFO may grant the Contractor longer than thirty (30) days, but not more than ninety (90) days, to cure such Default if, in her sole discretion, the following requirements are satisfied: (i) Contractor has (promptly upon its receipt of the Cure Notice) diligently begun and is diligently and continuously proceeding to cure such Default, and (ii) such default is reasonably susceptible to cure within ninety (90) days. Upon the lapse of the applicable cure period described in the preceding sentences, if the Contractor has failed to effect a cure, an "**Event of Default**" shall exist. An Event of Default shall also exist upon the occurrence of the events described in the second paragraph of Section 3.20 of this Agreement (i.e., failure to provide a replacement guaranty) upon the lapse of the cure period provided therein. In any such event, the CFO may give the Contractor a written Event of Default notice ("**Event of Default Notice**"). In such event, the Contractor must discontinue any Work, unless otherwise directed in the notice, and deliver all materials accumulated in the performance of this Agreement, whether completed or in the process, to the City. After or contemporaneously with the giving of an Event of Default Notice, the City may invoke any or all of the following remedies:

- (i) The right to take over and complete the Work, or any part of it, at the Contractor's expense and as agent for the Contractor, either directly or through others. If the City exercises such right, it shall bill the Contractor for the cost of the Work and all related expenses incurred by the City in completing the Work, and the Contractor must pay the City the total amount of each bill within ten (10) days of notice from the City;
- (ii) The City may use the Contractor's or Subcontractor's materials and equipment to complete the Work as indicated herein. Upon the City's written notification to the Contractor that it intends to invoke this remedy, any and all rights the

Contractor may have in or under its subcontracts will be deemed assigned to the City. The sole obligation accepted by the City under such subcontracts will be to pay for Work satisfactorily performed after the date of the assignment. In the event a conditional assignment has not been executed, the Contractor must execute, or cause to be executed, any assignment, agreement, or other document which may be necessary, in the sole opinion of the City's legal counsel, to evidence or effect compliance with this provision. The Contractor must promptly deliver such documents upon the City's request therefore. In the case of any subcontract so assigned and accepted by the City, the Contractor must remain liable to the Subcontractors for any payment already invoiced to and paid by the City, and for any claim, suit, or cause of action based on or the result of any error, omission, negligence, fraud, willful or intentionally tortuous conduct, or any other act or omission, or breach of contract by the Contractor, its officers, employees, agents, and other Subcontractors, arising prior to the date of assignment to the City, when such claim, suit, or cause of action has not been discharged, disposed of, or otherwise resolved as of that date. The Contractor must notify its Subcontractors of these requirements;

- (iii) The right to terminate this Agreement as to any or all of the Work yet to be performed, effective at a time specified by the City;
- (iv) The right of specific performance, an injunction or any other appropriate equitable remedy;
- (v) The right to actual money damages incurred by the City arising from amounts unpaid under this Agreement through the date of the termination of this Agreement (but without accelerating any Guaranteed Annual Fees or City Share of Gross Revenues payments that are or may be due and payable after such termination, and excluding any indirect, consequential, special or punitive damages);
- (vi) The right to consider the Contractor non-responsible with respect to future contracts to be awarded by the City; and
- (vii) The right to right to take ownership of the City Digital Signs and an assignment of all agreements and property related to the operation of the City Digital Network (including, without limitation, agreements and property described in Section 3.11 and Section 3.12 of this Agreement), and to operate the City Digital Network, and to retain all Gross Revenues realized from the operation thereof, subject to the terms of any written agreement between the City and a lender providing Permitted Lender Financing.

(c) If the CFO considers it to be in the City's best interests, she may elect not to declare a default or terminate this Agreement. The parties acknowledge that this provision is solely for the benefit of the City and that if the City permits the Contractor to continue to provide the Work or sell advertising on the City Digital Signs and operate the City Digital Network despite one or more events of default, the Contractor is in no way relieved of any of its responsibilities, duties or obligations under this Agreement, nor does the City waive or relinquish any of its rights.

(d) The remedies provided to the City under the terms of this Agreement are not intended to be exclusive of any other remedies provided, but each and every such remedy is cumulative and is in addition to any other remedies, existing now or later, at law, in equity and/or by statute. No delay or omission by the City in exercising any right or power accruing upon any event of default impairs any such right or power, nor is it a waiver of any event of default nor acquiescence in it, and every such right and power may be exercised from time to time and as often as the City considers necessary or appropriate. In addition to the payment of any money damages recoverable hereunder, the City shall be entitled to interest thereon at the Default Rate from and after the date at which any costs were incurred by the City, or after which any amounts were payable to the City, until receipt of full payment therefor. Notwithstanding this Section 12.2(d), in the event that an Event of Default occurs, and the City exercises its remedies against Contractor, and the Contractor or Guarantor pays the City damages (e.g., unpaid Guaranteed Annual Fees), and the City subsequently recovers such same amounts from a successor in interest to the Contract as operator of the City Digital Network, then the City shall not be entitled to a double-payment of such previously paid amounts and, upon the City's receipt of such amounts from such successor, the City shall reimburse the Contractor or Guarantor, as the case may be, for such amounts.

(e) The Contractor waives all claims against the City for any equitable, actual, consequential, special, incidental, exemplary, economic, direct, indirect or punitive damages or attorneys' fees, regardless of whether any such claim arises out of breach of contract or warranty, tort, product, liability, indemnity, contribution, strict liability, unjust enrichment, quantum meruit, or other legal theory arising out of the existence of this Agreement, subject to the Contractor's limited rights under Section 12.6 below. The Contractor covenants and agrees that it will obtain a written waiver of claims against the City identical to the waiver set forth in the preceding sentence, from each Subcontractor performing any portion of the Work.

12.3 Suspension.

(a) *City's Right to Suspend Work.* The City may at any time reasonably request that the Contractor suspend the installation of City Digital Signs (or some portion of them) in connection with public way or utility work associated with another City project, or a temporary City special event, by giving 15 days' prior written notice to the Contractor or upon informal oral, or even no notice, in the event of emergency. The City shall not be responsible for any costs incurred in connection with such suspension. The Contractor must promptly resume its installation of City Digital Signs under the

same terms and conditions as stated in this Agreement upon written notice by the CFO and such equitable extension of time as may be mutually agreed upon by the CFO and the Contractor when necessary for continuation or completion of the Work. No suspension of this Agreement is permitted to exceed the duration of such emergency, public way or utility work, or temporary City special event.

(b) *City Right to Terminate City Digital Sign.* If necessary or appropriate to the sale of land on which a City Digital Sign is located (such as, for example, the permanent closure of a police or fire station that is to be relocated, resulting in such site becoming excess inventory of the City), or the use of such land for a public project (such as, for example, a project involving a relocation of the public way or expansion of the public right of way), or in connection with a Legal Challenge, the City may elect to terminate Contractor's use of a City Digital Sign site and require that the Contractor remove one or more City Digital Signs. In such event, to the extent feasible, the parties shall cooperate in identifying a replacement site in writing accordance with Section 4.3. In addition, the City shall be required to pay, but only out of the City Share of Gross Revenues distributable to the City under Exhibit 2, an amount equal to the sum of (i) the unreturned Capitalized Costs attributable to such sign (provided, however, that if the sign face can be removed and reused for another City Digital Sign, the portion of the unreturned Capitalized Costs allocable to such sign face shall not be included in such amount), and (ii) the actual removal costs for the removal of such City Digital Sign, less the salvage value realized from such removal. The Contractor acknowledges that it shall at all times hold its interest in the City Digital Signs and the City Digital Network subject to the public trust doctrine, as applied under applicable Illinois law, and subject to the City's authority to control the use of the public land and public way on which the City Digital Signs are located, subject to the foregoing terms with respect to a termination by the City of a City Digital Sign Site or City Digital Sign.

(c) *Contractor Right to Terminate City Digital Sign.* The Contractor may, with the prior written consent of the City, which shall be granted upon the Contractor's reasonably establishing to the CFO that one of the following factors is satisfied, elect to terminate its use of a City Digital Sign Site and remove one or more City Digital Signs due to: (i) the failure of the Contractor to obtain within six (6) month of all requisite submittals, or the revocation of (except if such failure to obtain is because a City Digital Sign Site does not comply with City, state and federal zoning and sign permitting requirements, or such revocation is due to a default by the Contractor), Required Governmental Approvals for a City Digital Sign; (ii) a Change in Law, the direct and specific effect of which is to materially and adversely affect the further use of the City Digital Sign so as to make the further operation of such sign infeasible (provided, however, that this clause (ii) shall not be construed to apply to zoning changes or other changes of Law that affect other properties, the effect of which may be to permit development in a manner that may obstruct or limit the view to the City Digital Sign); (iii) the City's inability to establish its legal title or control over a site so as to grant to the Contractor all necessary rights for the Contractor to operate the City Digital sign; (iv) a permanent detour and relocation of a street or traffic flow on a street (e.g., turning a two-way street with a two-faced City Digital Sign on it into a one-way street), the effect of which is to materially and adversely limit the view to the City Digital Sign; (v) an inability to establish, or the permanent termination of (except if such termination is due to a default by the Contractor) electrical service to the City Digital

Sign; (vi) a reasonable determination that the City Digital Sign has or may have a material adverse effect on traffic safety (e.g., due to driver distraction or obstruction of sight lines) or otherwise imposes an immediate threat to public health and safety (e.g., due to an unstable foundation); or (vii) a material, permanent obstruction of the view of the Ad Panel due to a new development after the date of this Agreement constructed between the Ad Panel and the expressway to which the Ad Panel faces.

In such event, to the extent feasible, the parties shall cooperate in identifying a replacement site in writing in accordance with Section 4.3. In addition, the City shall be required to pay, but only out of the City Share of Gross Revenues distributable to the City under Exhibit 2, an amount equal to the sum of (i) the unreturned Capitalized Costs attributable to such sign (provided, however, that if the sign face can be removed and reused for another City Digital Sign, the portion of the unreturned Capitalized Costs allocable to such sign face shall not be included in such amount), and (ii) the actual removal costs for the removal of such City Digital Sign, less the salvage value realized from such removal.

(d) *Inability to Replace City Digital Sign.* If, after payment of the Guaranteed Initial Fee, the use of a City Digital Sign Site is terminated pursuant to Section 12.3(b) or (c), and an alternate or replacement site cannot be identified in accordance with Section 4.3 within one (1) year of the date of removal, the City shall also refund to the Contractor the Guaranteed Initial Fee applicable to the sign face(s) on such original site, taking into account all prior payments to the Contractor under Exhibit 2 or any other applicable provision of this Agreement in recovery of such Guaranteed Initial Fee(s). If such an alternate or replacement site is identified within such time period, no additional Guaranteed Initial Fee(s) shall be paid with respect to such alternate or replacement City Digital Sign face(s) (assuming such replacement site is of comparable or lesser value), and the original Guaranteed Initial Fee(s) paid with respect to the original site shall be retained by the City and shall continue to amortize in accordance with Exhibit 2, subject to the other terms and conditions of this Agreement.

12.4 Payment of Excess Costs. In connection with performance under this Agreement, the Contractor must pay the City, within five days of the City's providing written notice to the Contractor, an amount equal to any reasonable excess costs incurred by the City in the event of termination of this Agreement for default or otherwise resulting from the Contractor's failure to perform in accordance with the provisions of this Agreement or if the City exercises any of the remedies available to it under Section 12.2. This right is in addition to and not a limitation of any other remedies available to the City pursuant to this Agreement, at law or in equity.

12.5 Excusable Events and Schedule and Fee Adjustments. The Contractor will be granted an extension with respect to the dates set forth in the Installation Schedule attached as Exhibit 1C or other time schedules relating to performance of the Work set forth in this Agreement in relation to an Excusable Event only as described in this Section 12.5.

(a) *Adjustments in Schedule for Performance Relating to Excusable Event.* The Contractor will be granted an extension in the Installation Schedule, or other time schedules relating to performance of the Work set forth in this Agreement only under the following circumstances: (a) a

delay occurs in the progress of the Work as a result of one of the Excusable Events identified below in Sections 12.5(d), and (b) the Contractor has complied with the terms and conditions of the following subsections:

- (i) The Contractor, as soon as reasonably possible and in no event later than ten (10) business days after the date upon which the Contractor has knowledge of the Excusable Event, notifies the City in writing of the occurrence of the event and the approximate number of days the Contractor expects to be delayed as a result of such event; and the Contractor makes a written request for an extension of time to the City within five (5) business days after the cessation of the Excusable Event specifying the number of days the Contractor believes that its activities will in fact be delayed as a result of the event. The Contractor will not be entitled to any extension in schedule for any period of time prior to the date on which the Contractor gives notice to the City of the relevant Excusable Event.
- (ii) The Contractor can demonstrate, to the reasonable satisfaction of the City, that the activity claimed to have been delayed was in fact delayed (or will be delayed) by the Excusable Event, and that the delay in such activity will result in a delay in the progress of the Work.
- (iii) The initial notice provided by the Contractor under subsection (i) above must describe the efforts that have been (or will be) undertaken by the Contractor to overcome or remove the Excusable Event and to minimize the potential adverse effect on the time for performance of the Work resulting from such Excusable Event.

(b) *Adjustments in Schedule for Performance Relating to City Delay.* If the City does not process and issue a permit for the installation of a City Digital Sign within thirty (30) days of the Contractor's submission of a Complete Sign Permit Application, the Contractor will be entitled to an extension in the Installation Schedule and the Installation Deadline for such City Digital Sign of one day for every day between such thirtieth (30th) day and the date on which the City actually issues such permit. If the City's delay in issuance of such permits results in the City issuing a substantial number of permits within a very short time (for example, twenty permits in a single week), the City and the Contractor shall negotiate in good faith to determine and agree upon in writing what additional extension to the Installation Deadline may be appropriate, subject to the Contractor's reasonably establishing that such substantial issuance of permits materially impairs the Contractor's ability to comply with the Installation Deadline such as, for example, due to the Ad Panel manufacturer's need to process such a large order of signs.

(c) *Compliance is Prerequisite to Adjustment Relating to Excusable Event.* Compliance with this Section 12.5 is a condition precedent to receipt of an extension in the Contractor's time for

performance of the Work (including, without limitation, an adjustment to the Installation Deadline. In the event of a failure to comply with this Section 12.5, the Contractor will not be entitled to an extension of time for performance of the Work (including, without limitation, an adjustment to the Installation Deadline). Upon satisfaction by the Contractor of the terms and conditions in Section 12.5(a) or (b), if the Contractor is seeking a schedule adjustment, the City and the Contractor will use good faith efforts to agree on the extent to which the Work has been delayed on account of an Excusable Event as provided and such determination must be confirmed in writing signed by both parties. If the Contractor does not agree with such determination, it may dispute the City's decision in accordance with Article 7.

(d) *Excusable Events.* “**Excusable Event**” shall mean any of the following acts, events, conditions or occurrences to the extent that the same are beyond the Contractor’s reasonable control, are not caused by the Contractor or its Subcontractors, could not have been either foreseen or avoided by the exercise of due diligence and which has an adverse effect on the Contractor’s ability to perform its obligations hereunder or, with respect to events described in Section 12.5(d)(ii) below, which has an adverse effect on visibility or existence of Ad Panels:

- (i) Acts of God, fires, explosions, floods, acts of terrorism (as reasonably determined by the City), acts of vandalism to the City Digital Signs, damage to City Digital Signs caused by a vehicle, earthquakes, hurricanes, tornadoes, other severe storm damage causing power outages, epidemics, civil disturbances, war, riots, sabotage strikes/lockouts/labor disputes (but only to the extent not targeted at the Contractor or Subcontractors), unforeseen, materially adverse soil conditions, and unanticipated environmental remediation, to the extent any such event prevents the Contractor from installing the City Digital Signs or, after such installation, from operating such City Digital Signs, for a period of more than fourteen (14) days;
- (ii) the occurrence of a Change in Law, including any temporary restraining order, preliminary injunction or permanent injunction or Legal Challenge, that prohibits the installation or operation of any City Digital Signs, or the Contractor’s ability to sell advertising for placement on Ad Panels, or a suspension described in Section 12.3(a), or the occurrence of an event that would give the Contractor the right to terminate a City Digital Sign as described in Section 12.3(c) (as applicable only to the affected sign);
- (iii) Board of Underground responses that are not returned within forty-five (45) days of the Contractor's submission of a complete Board of Underground application; a delay of more than forty-five (45) days in (A) IDOT's processing of a sign permit application from the date of the Contractor's submission of such application, or (B) the Federal Aviation Administration's processing of any other Required Governmental Approval from the date of the Contractor's

submission of such application; a delay of more than thirty (30) days in the processing of any other Required Governmental Approval for a City digital Sign; or the failure of a utility provider (e.g., Com Ed) to respond to a work order request related to providing the electrical connection necessary to power the City Digital Sign within thirty (30) days of the Contractor's written submission of a request for such work.

None of the foregoing events shall be deemed an Excusable Event to the extent that performance of the Work would have been suspended, delayed or interrupted by any other cause, including the fault or negligence of the Contractor (such as, for example, by submitting an incomplete or inaccurate application), the Subcontractors or any other person for whom they may be liable. In the event of an Excusable Delay, the Contractor will be entitled to an extension in the Installation Schedule and the Installation Deadline for such City Digital Sign of one day for every day beyond the specified fourteen (14) day period in subparagraph (i), one day for every day during which the prohibition in subparagraph (ii) is in effect, and (iii) one day for every day beyond the specified period in subparagraph (iii) (as applied separately to the three events described in subparagraph (iii), if more than one such delay exists).

(e) *Rights Limited.* The rights and remedies set forth in this Section 12.5 shall be the Contractor's sole and exclusive rights and remedies in the event of an occurrence of an Excusable Event. The Contractor hereby waives all other rights and remedies at law and/or in equity that it might otherwise have against the City on account of an Excusable Event or the failure of the City to issue a permit for the issuance of a City Digital Sign within thirty (30) days of the Contractor's submission of a Complete Sign Permit Application.

12.6 Default By City or Inability to Perform. In the event that the City defaults in, or is otherwise unable to perform any of its obligations under this Agreement, the City shall have the same notice and cure period rights applicable to a Default by the Contractor under Section 12.2 above, depending on the nature of the default or non-performance. The Contractor's sole remedies for any such default or non-performance, however, shall be either (i) injunctive relief, in the event the City default involves the City's performance of an action that is not permitted under this Agreement; (ii) specific performance, in the event that the default involves the City's failure to perform an action required under this Agreement (unless a Legal Challenge prevents such performance, or a portion thereof, in which case the specific performance right shall apply to all actions that the City has the ability to perform), or (iii) the right to terminate this Agreement. Notwithstanding the Contractor's waiver in Section 12.2(e), such waiver shall not apply to limit the Contractor's right to seek specific performance of: (i) the City's indemnification obligation under Section 4.6(d); (ii) the adjusted distribution, payment and refund provisions described in Section 9.1(c); (iii) the credit provision described in Section 10.1(b); (iv) the City's obligation to make the special termination payment described in Section 5.3; and (v) the Contractor's right to receive the payments described in Section 12.3(b), Section 12.3(c), and Exhibit 2.

ARTICLE 13
MISCELLANEOUS

13.1 **Entire Agreement.** This Agreement, the Guaranty and the exhibits attached to the Agreement and incorporated in it, together with the terms and conditions of the Project Ordinance, constitute the entire agreement between the parties, and no other warranties, inducements, considerations, promises or interpretations are implied or impressed upon this Agreement that are not expressly addressed in this Agreement. This Agreement supersedes all prior or contemporaneous communications, representations or agreements, whether oral or written, relating to the Work and the Agreement. No party is an intended third party beneficiary of this Agreement.

13.2 **No Collateral Agreements.** The Contractor acknowledges that, except only for those representations, statements or promises expressly contained in this Agreement, the Guaranty and any exhibits attached to it and incorporated by reference in it, no representation, statement or promise, oral or in writing, of any kind whatsoever, by the City, its officials, agents or employees, has induced the Contractor to enter into this Agreement or has been relied upon by the Contractor, including any with reference to: (i) the meaning, correctness, suitability or completeness of any provisions or requirements of this Agreement; (ii) the nature of the Work to be performed; (iii) the nature, quantity, quality or volume of any materials, equipment, labor and other facilities needed for the performance of this Agreement; (iv) the general conditions which may in any way affect this Agreement or its performance; (v) the compensation provisions of this Agreement; or (vi) any other matters, whether similar to or different from those referred to in (i) through (vi) immediately above, affecting or having any connection with this Agreement, its negotiation, any discussions of its performance or those employed or connected or concerned with it.

13.3 **No Omissions.** The Contractor acknowledges that the Contractor was given ample opportunity and time and was requested by the City to review thoroughly all documents forming this Agreement before signing this Agreement in order that it might request inclusion in this Agreement of any statement, representation, promise or provision that it desired or on which it wished to place reliance. The Contractor did so review those documents, and either every such statement, representation, promise or provision has been included in this Agreement or else, if omitted, the Contractor relinquishes the benefit of any such omitted statement, representation, promise or provision and is willing to perform this Agreement in its entirety without claiming reliance on it or making any other claim on account of its omission.

13.4 **Counterparts.** This Agreement is comprised of several identical counterparts, each to be fully signed by the parties and each to be considered an original having identical legal effect.

13.5 **Amendments.** No changes, amendments, modifications or discharge of this Agreement, or any part of it are valid unless in writing and signed by the Commissioner of CDOT and the CFO of the City or their respective successors and assigns, and approved as to form and legality by the Corporation Counsel, and signed by the Contractor. The Commissioner of CDOT and the CFO

shall have the administrative authority to amend the Exhibits to this Agreement from time to time (other than Exhibit 1B, the amendment of which would require a further text amendment to the Zoning Ordinance) based on the final siting, installation, and operation of the City Digital Signs, so long as such administrative amendments are materially consistent with the terms and conditions of this Agreement. Such administrative authority shall include the right to add up to three additional City Digital Sign faces to the City Digital Network (i.e., so as to establish a City Digital Network with sixty-three (63) sign faces).

13.6 Approval. Whenever in this Agreement the Contractor is required to obtain prior written approval, the effect of any approval that may be granted pursuant to the Contractor's request is prospective only from the later of the date approval was requested or the date on which the action for which the approval was sought is to begin. In no event is approval permitted to apply retroactively to a date before the approval was requested.

13.7 Governing Law and Jurisdiction. This Agreement is governed as to performance and interpretation in accordance with the Laws of the State of Illinois, without regard to conflicts of law principles. The Contractor irrevocably submits itself to the original jurisdiction of the federal court located within the Northern District of Illinois, or the Circuit Court of Cook County, with regard to any controversy arising out of, relating to, or in any way concerning the execution or performance of this Agreement. Service of process on the Contractor may be made, at the option of the City, either by registered or certified mail addressed to the applicable office as provided for in this Agreement, by registered or certified mail addressed to the office actually maintained by the Contractor, or by personal delivery on any officer, director, or managing or general agent of the Contractor. Service of process on the City shall be effected in accordance with 735 ILCS 5/2-211, with required courtesy copies of any suit also being personally delivered to the City notice parties identified in Section 13.13. If any action is brought by the Contractor against the City concerning this Agreement, the action must be brought only in the federal court for the Northern District of Illinois or in the Circuit Court of Cook County.

13.8 Severability. If any provision of this Agreement is held to be or is in fact invalid, illegal, inoperative or unenforceable as applied in any particular case in any jurisdiction or in all cases because it conflicts with any other provision or provisions of this Agreement or of any Law or public policy, or for any other reason, those circumstances do not have the effect of rendering the provision in question invalid, illegal, inoperative or unenforceable in any other case or circumstances, or of rendering any other provision or provisions in this Agreement invalid, illegal, inoperative or unenforceable to any extent whatsoever. The invalidity, illegality, inoperativeness or unenforceability of any one or more phrases, sentences, clauses or sections in this Agreement does not affect the remaining portions of this Agreement or any part of it, except to the extent an essential element of this Agreement is held to be or is in fact invalid, illegal, inoperative or unenforceable. The Contractor acknowledges and agrees that the Contractor's sole and exclusive remedy for a Change in Law or other Excusable Event is as provided in Section 12.5.

13.9 **Assigns.** All of the terms and conditions of this Agreement are binding upon and inure to the benefit of the parties and their respective legal representatives, permitted successors and assigns, provided that the Contractor shall not assign this Agreement without the prior written consent of the CFO, which consent shall be in the CFO's sole discretion. Notwithstanding the foregoing, the CFO's consent shall not be required with respect to a Permitted Transfer, or in connection with the grant of a security interest or collateral assignment to a lender providing Permitted Lender Financing, or as permitted under Section 3.17 or Section 12.1(d)(vii) and (viii), or the transfer to an Affiliate of the Contractor, including a personal or family trust for estate planning purposes, which personal or family trust is affiliated with an Affiliate of the Contractor, or to a trustee or beneficiary of an Affiliate of the Contractor.

13.10 **Cooperation.** The Contractor must at all times cooperate fully with the City and act in the City's best interests. If this Agreement is terminated for any reason, or if it is to expire on its own terms, the Contractor must make every effort to assure an orderly transition to another provider of the Work, if any; orderly demobilization of its own operations in connection with the Work; uninterrupted provision of Work during any transition period and must otherwise comply with the reasonable requests and requirements of CDOT and the CFO in connection with the termination or expiration. The City will reasonably cooperate with the Contractor to provide access to the City Digital Sign Sites to allow the Contractor to trim vegetation and remove obstructions that materially interfere with the visibility of the City Digital Signs.

13.11 **Waiver.** Nothing in this Agreement authorizes the waiver of a requirement or condition contrary to Law or that would result in or promote the violation of any Law. Whenever under this Agreement the City by a proper authority waives the Contractor's performance in any respect or waives a requirement or condition to either the City's or the Contractor's performance, the waiver so granted, whether express or implied, only applies to the particular instance and is not a waiver forever or for subsequent instances of the performance, requirement or condition. No such waiver is a modification of this Agreement regardless of the number of times the City may have waived the performance, requirement or condition. Such waivers must be provided to the Contractor in writing.

13.12 **Independent Contractor Status.**

(a) This Agreement is not intended to and will not constitute, create, give rise to, or otherwise recognize a joint venture, partnership, corporation or other formal business association or organization of any kind between the Contractor and the City. The rights and the obligations of the parties are only those expressly set forth in this Agreement. The Contractor must perform under this Agreement as an independent contractor and not as a representative, employee, agent, or partner of the City.

(b) Nothing provided for under this Agreement constitutes or implies an employer-employee relationship between the City and the Contractor (or its employees, Key Personnel and Subcontractors) such that:

- (i) The City will not be liable under or by reason of this Agreement for the payment of any employee's or worker's compensation award or damages in connection with the Contractor performing the Work required under this Agreement;
- (ii) Contractor is not entitled to membership in any pension fund, group medical insurance program, group dental program, group vision care, group life insurance program, deferred income program, vacation, sick leave, extended sick leave, or any other benefits ordinarily provided to individuals employed and paid through the regular payrolls of the City; and
- (iii) The City is not required to deduct or withhold any taxes, FICA or other deductions from any compensation provided to the Contractor.

13.13 **Notices.** Notices provided for in this Agreement, unless expressly provided for otherwise in this Agreement, must be given in writing and may be delivered personally or by placing in the United States mail, first class and certified, return receipt requested, with postage prepaid and addressed as follows:

If to the City: Department of Finance
 Room 600
 33 North Lasalle Street
 Chicago, Illinois 60602
 Attention: Chief Financial Officer

and Chicago Department of Transportation
 30 North Lasalle Street
 Room 1100
 Chicago, Illinois 60602
 Attention: Commissioner

and Office of the Mayor of the City of Chicago
 Room 406, City Hall
 121 North Lasalle Street
 Chicago, Illinois 60602
 Attention: Municipal Marketing Project Manager

With a copy to: Department of Law

Room 600, City Hall
121 North LaSalle Street
Chicago, Illinois 60602
Attention: Corporation Counsel

If to the Contractor: Interstate JCDecaux, LLC
3959 South Morgan Street
Chicago, Illinois 60609

With copies to: JCDecaux North America, Inc.
3 Park Avenue, 33rd Floor
New York, New York 10016
Attn: Co-Chief Executive Officer
And
Legal Department

And

Interstate Outdoor Advertising, Inc.
905 North Kings Hwy
Cherry Hill, NJ 08034
Attn: Drew Katz, CEO
and
Foster Interstate Media, Inc.
1111 Broadway, Suite 1515
Oakland, CA 94607
Attn: John Foster, President

Changes in these addresses must be in writing and delivered in accordance with the provisions of this Section 13.13. Notices delivered by mail are considered received three days after mailing in accordance with this Section 13.13. Notices delivered personally are considered effective upon receipt. Refusal to accept delivery has the same effect as receipt.

13.14 Rights Cumulative. The rights and remedies available to the City as set forth in this Agreement are cumulative with and in addition to, and not in limitation of, any other rights or remedies available to the City at law and/or in equity, and in addition, any specific right or remedy conferred upon or reserved to the City in any provision of this Agreement shall not preclude the concurrent or consecutive exercise of a right or remedy provided for in any other provision hereof.

13.15 Authority. Execution of this Agreement by the Contractor is authorized by a resolution of its Board of Directors, if a corporation, or similar governing document, and the signature(s) of each person signing on behalf of the Contractor have been made with complete and full authority to commit the Contractor to all terms and conditions of this Agreement, including each

and every representation, certification and warranty contained in it, including the representations, certifications and warranties collectively incorporated by reference in it.

13.16 Shakman Accord. The City is subject to the May 31, 2007 Order entitled “Agreed Settlement Order and Accord” (the “**Shakman Accord**”) and the August 16, 2007 “City of Chicago Hiring Plan” (the “**City Hiring Plan**”) entered in *Shakman v. Democratic Organization of Cook County*, Case No 69 C 2145 (United States District Court for the Northern District of Illinois). Among other things, the Shakman Accord and the City Hiring Plan prohibit the City from hiring persons as governmental employees in non-exempt positions on the basis of political reasons or factors.

Contractor is aware that City policy prohibits City employees from directing any individual to apply for a position with Contractor, either as an employee or as a subcontractor, and from directing Contractor to hire an individual as an employee or as a subcontractor. Accordingly, Contractor must follow its own hiring and contracting procedures, without being influenced by City employees. Any and all personnel provided by Contractor under this Agreement are employees or subcontractors of Contractor, not employees of the City of Chicago. This Agreement is not intended to and does not constitute, create, give rise to, or otherwise recognize an employer-employee relationship of any kind between the City and any personnel provided by Contractor.

Contractor will not condition, base, or knowingly prejudice or affect any term or aspect to the employment of any personnel provided under this Agreement, or offer employment to any individual to provide services under this Agreement, based upon or because of any political reason or factor, including, without limitation, any individual’s political affiliation, membership in a political organization or party, political support or activity, political financial contributions, promises of such political support, activity or financial contributions, or such individual’s political sponsorship or recommendation. For purposes of this Agreement, a political organization or party is an identifiable group or entity that has as its primary purpose the support of or opposition to candidates for elected public office. Individual political activities are the activities of individual persons in support of or in opposition to political organizations or parties or candidates for elected public office.

In the event of any communication to Contractor by a City employee or City official in violation of the second paragraph of this Section 13.16, or advocating a violation of the third paragraph of this Section 13.16, Contractor will, as soon as is reasonably practicable, report such communication to the Hiring Oversight Section of the City’s Office of the Inspector General (“**IGO Hiring Oversight**”), and also to the head of the relevant City Department utilizing services provided under this Agreement. Contractor will also cooperate with any inquiries by IGO Hiring Oversight or the *Shakman* Monitor’s Office related to the contract.

[Signature page follows.]

SIGNED at Chicago, Illinois:

CITY OF CHICAGO, an Illinois municipal corporation and home rule unit of government

By: _____
Rahm Emanuel, Mayor

By: _____
Lois Scott, Chief Financial Officer

Approved as to form and legality:

Corporation Counsel

INTERSTATE JCDECAUX, LLC, a Delaware limited liability company

By: _____
Manager

By: _____
Manager

By: _____
Manager

By: _____
Manager

By: _____
Manager

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Stephen Patton, Corporation Counsel, pursuant to and as proxy for Rahm Emanuel, in his capacity as the Mayor of the City of Chicago, a municipal corporation (the “City”), and Lois Scott, in her capacity as the Chief Financial Officer of the City, personally known to me to be the same people whose names are subscribed to the foregoing instrument, appeared before me this day in person, and being first duly sworn by me, acknowledged that as proxy for said Mayor and said Chief Financial Officer, respectively, they signed and delivered the foregoing instrument pursuant to authority given by the City of Chicago, as their free and voluntary acts, and as the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein set forth.

Given under my hand and notarial seal on December ____, 2012.

Notary Public

STATE OF _____)
) SS.
COUNTY OF _____)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that _____, in his capacity as a Manager of Interstate JCDecaux, LLC, a Delaware limited liability company (the “Company”) personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person, and being first duly sworn by me, acknowledged that as said Manager he signed and delivered the foregoing instrument pursuant to authority given the Company, as his free and voluntary act, and as the free and voluntary act and deed of said Company, for the uses and purposes therein set forth.

Given under my hand and notarial seal on December ____, 2012.

Notary Public

STATE OF _____)
) SS.
COUNTY OF _____)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that _____, in his capacity as a Manager of Interstate JCDecaux, LLC, a Delaware limited liability company (the "Company") personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person, and being first duly sworn by me, acknowledged that as said Manager he signed and delivered the foregoing instrument pursuant to authority given the Company, as his free and voluntary act, and as the free and voluntary act and deed of said Company, for the uses and purposes therein set forth.

Given under my hand and notarial seal on December ____, 2012.

Notary Public

STATE OF _____)
) SS.
COUNTY OF _____)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that _____, in his capacity as a Manager of Interstate JCDecaux, LLC, a Delaware limited liability company (the "Company") personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person, and being first duly sworn by me, acknowledged that as said Manager he signed and delivered the foregoing instrument pursuant to authority given the Company, as his free and voluntary act, and as the free and voluntary act and deed of said Company, for the uses and purposes therein set forth.

Given under my hand and notarial seal on December ____, 2012.

Notary Public

STATE OF _____)
) SS.
COUNTY OF _____)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that _____, in his capacity as a Manager of Interstate JCDecaux, LLC, a Delaware limited liability company (the "Company") personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person, and being first duly sworn by me, acknowledged that as said Manager he signed and delivered the foregoing instrument pursuant to authority given the Company, as his free and voluntary act, and as the free and voluntary act and deed of said Company, for the uses and purposes therein set forth.

Given under my hand and notarial seal on December ____, 2012.

Notary Public

STATE OF _____)
) SS.
COUNTY OF _____)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that _____, in his capacity as a Manager of Interstate JCDecaux, LLC, a Delaware limited liability company (the "Company") personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person, and being first duly sworn by me, acknowledged that as said Manager he signed and delivered the foregoing instrument pursuant to authority given the Company, as his free and voluntary act, and as the free and voluntary act and deed of said Company, for the uses and purposes therein set forth.

Given under my hand and notarial seal on December ____, 2012.

Notary Public

EXHIBIT 1A

Description of City Digital Signs, Including Minimum Design Specifications

[See Attachment]

EXHIBIT 1B

City Digital Sign Definition

“City Digital Sign” shall mean a sign that satisfies all of the following conditions:

(a) the city digital sign is installed at the city’s express direction and is located on land or public way owned by the city, or controlled by the city pursuant to an intergovernmental agreement approved by the city council, that is located within 660 feet of an expressway or tollroad, as designated by the Chicago Department of Transportation;

(b) the sign is capable of receiving and transmitting both programmed and real-time digital images and messages and is operated as a changing image sign;

(c) the sign is integrated into the city’s emergency response network, and to other city digital signs in an integrated network, so as to enable the city to interrupt and override, on either a city-wide or localized basis, any regularly programmed messaging in order to communicate city emergency information (or emergency information from a federal, state, county, local or other unit of government);

(d) the sign is integrated with other city digital signs in an integrated network, so as to enable the city to communicate, on either a city-wide or a localized basis, both programmed and real-time city public service messages, information or content (or public service messages, information or content from a federal, state, county, local or other unit of government);

(e) the City has a legal right to both (i) not less than ten percent (10%) of the regularly scheduled programmable time for such sign (for example, one rotation during each eight rotation loop) for the city’s (or another governmental unit’s) public service messages, information or content, (ii) other available programmable time (or a portion thereof) when the operator of the integrated network of city digital signs otherwise has no advertising commitments, and (iii) the emergency information override and broadcast rights described in subparagraph (c) above; and

(f) the operator of the integrated network of city digital signs has entered into a written agreement with the City setting forth the operational requirements for such city digital signs and network, including, without limitation, requirements regulating sign design, light intensity, mitigating light pollution, energy conservation, and similar environmental and public health and safety concerns, which agreement has been approved by the city council.

EXHIBIT 1C

City Digital Sign Sites

[See Attachment]

The attached list sets forth the City Digital Sign Sites based on initial due diligence. Actual siting is dependent upon receipt, review and approval of title evidence, surveys, site, plans, satisfaction of Board of Underground and utility issues, Illinois Department of Transportation Approval, and compliance with the Federal Highway Beautification Act, the State of Illinois Highway Advertising Control Act of 1971, and other applicable laws and regulations. Siting of a City Digital Sign on a location that is not listed on this Exhibit 1C is subject to the further approval by the City Council of such additional site. The foregoing note is for informational purposes and shall not be construed to modify any provision in the foregoing Program Agreement.

EXHIBIT 1D
Installation Schedule
(Phase I and Phase II)
[See Attachment]

EXHIBIT 1E

Maintenance and Operation Standards

Note that all standards described in this Exhibit 1E apply 24 hours per day, 7 days per week, 365 days until the termination or expiration of this Agreement.

Maintenance and Operation Standards Applicable to All City Digital Signs

A. The Contractor must professionally maintain and repair all City Digital Signs in a first-class manner. Maintenance requirements for City Digital Signs include the following:

The Contractor will develop and install hardware and software for a computerized inventory and information sharing system on the City Digital Network, which system will utilize first-class technology acceptable to the City. If any special equipment is required, the Contractor will supply the City with a computer, which will be linked to a high availability server at the Contractor's Data Center through a dedicated and secure connection. Such secure connection shall include such features as a City portal with user log-in authentication, encryption, and restricted password access. The City and Contractor shall cooperate in developing protocols and security measures to assure such system security and to prevent any third party from "hacking" into and programming unauthorized messages. The system will have a mapping capability, allowing the City to instantly locate any structure.

The Contractor will provide, at its sole expense, a suitable 24 hour per day, 7 day per week connection mechanism to the City of Chicago's Office of Emergency Communications 911 and 311 system. The City must at all times have access to the City Digital Network, and to the Contractor's chartist, scheduler or information manger, so as to be able to have City Emergency Messages on the City Digital Network displayed within ten (10) minutes of the City's initial contacting of such person. The Contractor must also promptly respond to the City's Work Order and Repair System, which is connected directly to the local 311 system as well as a 24-hour City service number, with respect to any complaints registered concerning the City Digital Network (e.g., signs operating during "dark" hours).

The Contractor must maintain all City Digital Signs in first-class condition throughout the life of the contract (ordinary wear and tear excepted), including refurbishing, reconditioning, and if necessary replacing worn City Digital Signs no later than nine (9) years after the installation of the City Digital Sign, unless, not later than eight years and six (6) months after the installation of the City Digital Sign, after an inspection of the sign's condition, the parties agree to extend such initial sign life term for one year. All maintenance techniques shall be environmentally safe. Any and all replacements of parts or features and maintenance techniques will be accomplished using the most modern standard features and technologies available at the time of replacement.

The Gross Revenue sharing percentages have been set on the assumption that the Contractor will substantially refurbish and upgrade (and, if necessary or appropriate to maintaining good-as-new, state-of-the-art City Digital Signs, replace) the City Digital Signs at the time determined under terms and conditions of Section 21 of this Agreement, which refurbishment and upgrade will cost not less than One Hundred Thousand and No/100 Dollars (\$100,000). In the event such substantial refurbishment and upgrade does not occur by time determined under Section 21 of this Agreement, the City's Share of Gross Revenues shall be increased to seventy-five percent (75%) of Gross Revenues until such substantial refurbishment and upgrade has been completed as to all City Digital Signs, at which time the priority distribution and sharing percentages set forth on Exhibit 2 shall then apply.

The Contractor must implement a notification process that insures quick response to reports of damage. The City must be able to direct complaints, including without limitation complaints that the City receives through its 311 phone number, to a 24-hour contractor notification system. The Contractor must post the 311 phone number on a plate or placard permanently attached to each City Digital Sign to allow the public to report vandalism or damages and each such plate or placard shall identify the City Digital Sign by a unique identification number.

The Contractor must comprehensively inspect the City Digital Sign as necessary, not less than once per year (or as required under applicable Laws), for structural integrity (footing, seams, welds, loose bolts, bent/broken frame or panel, leaning structure, sign face damage, burned out LED lights).

The Contractor must maintain surfaces adjacent to and underlying all City Digital Signs, keeping such surfaces in a safe, clean, attractive and sanitary condition and in good order and repair. If there is evidence of nesting, squatting, or other bird activity creating an unsightly or unhealthy condition, the Contractor shall take such actions as are reasonably necessary to deter such activity.

The Contractor guarantees 24-hour maintenance of all City Digital Signs. All repairs and replacement of parts must be completed within 24 hours after report of condition requiring repair.

The Contractor must, at its sole cost and expense, remove and replace any damaged City Digital Sign, if such sign face become inoperative and is not restored to operation within ninety (90) days. The City shall not unreasonably withhold its agreement to an extension of such period if there are unusual and unforeseeable circumstances and grants an extension in such time frame upon the request of the Contractor.

In addition to the Deliverables required by the Agreement, the Contractor must maintain accurate records and databases, accessible by the City including: (a) a Contractor maintained database of City Digital Signs that can be electronically mapped at any time and that includes information regarding installation, maintenance, repair and response times for online review at any time by the City; (b) monthly maintenance/repair logs and a monthly written report (provided in hard copy and electronic format) that includes a description of repair work on any City Digital Sign, response time, cost of repair, cost of individual parts for repair, cost of labor and reports of emergencies (e.g., car accidents, destruction of City Digital Sign, loose footings, injuries to public, etc.) and response times.

Routine maintenance shall be coordinated with the fire chief, station commander or other responsible City manager when done with respect to signage located on land where a City asset (e.g., a fire station or police station) is located. The Contractor must not obstruct traffic when performing maintenance at any time without a required permit or other approval or authorization issued by the City.

The Contractor must perform a visual electrical inspection as necessary, no less than three times per year, with periodic testing of electrical systems and grounding test after installation as necessary, no less than once every four years thereafter, and shall check the lighting system at night as necessary, no less than twice per month at half month intervals.

Maintenance Standards Applicable to City Digital Signs

A. Contractor must regularly clean, maintain and, and must diligently repair, the exterior of the City Digital Signs and must remove therefrom all unauthorized posters, graffiti and dirt. Contractor's maintenance obligations include repairs and maintenance to City Digital Signs necessitated by any cause, including vandalism.

B. If the City determines work is required to eliminate imminent physical danger to the public, or for other reasons of public safety requiring emergency response, then it may carry out such work immediately and give notice of the same forthwith to the Contractor and the City may recover its reasonable costs from the Contractor. Payment is due upon demand by the City.

Mentoring, Training and Display Opportunities

In addition to the above maintenance and operation standards, the Contractor shall after the City Digital Signs become operational, work with local public schools and City Colleges, such as Kennedy-King and Malcolm X, to:

- 1) develop or expand internship programs, whereby students of such institutions will have the opportunity to obtain volunteer experience at the Contractor's Chicago office in the areas of digital design, media buying, operational programming and other marketing and administrative aspects of Contractor's business operations; and
- 2) display digital design creative developed by such students that will be incorporated into the City Public Service Messages on the Chicago Digital Network.

EXHIBIT 2

Distribution and Gross Revenues Sharing Provisions

[See Attachment]

EXHIBIT 3

MBE/WBE Special Conditions

[See Attachment]

EXHIBIT 4

**Disclosure Affidavit
(Including Disclosure of Retained Parties)**

[See Attachment]

EXHIBIT 5

Evidence of Insurance

[See Attachment]

Exhibit 6

Performance and Payment Bond(s)

[See Attachment]

EXHIBIT 7

List of Key Personnel and Schedule of Availability

Key Personnel:

Name	Title	Phone
Drew Katz	Chief Executive Officer Interstate Outdoor Advertising, L.P.	856-667-6620
John Foster	President Foster Interstate Media, Inc.	415-538-7070
Jeffery Gerber	Chief Operating Officer Interstate Outdoor Advertising, L.P.	856-667-6620
Dave Neglio	President of Sales Marketing and Operations Interstate Outdoor Advertising, L.P.	856-667-6620
Mark Macey	Chief Financial Officer Interstate Outdoor Advertising, L.P.	856-667-6620
Lars Skugstad	Vice-President Foster Interstate Media, Inc.	415-538-7070
Blake Custer	Strategic Advisor	856-667-6620
Bernard Parisot	President and Co-Chief Executive Officer JCDecaux North America, Inc.	646-834-1300
Jean-Luc Decaux	Co-Chief Executive Officer JCDecaux North America, Inc.	646-834-1313
Nicolas Clochard-Bossuet	Chief Operating Officer JCDecaux North America, Inc.	646-834-1325
Paul G. Ryan	Chief Financial Officer	646-834-1318

	JCDecaux North America, Inc.	
Faith Garbolino	Vice President, Sales JCDecaux North America, Inc.	646-834-1342
Heather Krieger	Director, Sales Administration JCDecaux North America, Inc.	646-834-1307
Pablo Brezman*	Director, Chicago Operations JCDecaux North America, Inc.	312-456-2990
Justin Albert*	Project Manager JCDecaux North America, Inc.	312-456-2999
Dan Helmin*	National Account Executive JCDecaux North America, Inc.	312-456-2989
Guillaume Tarayre	Vice President, Information Technology JCDecaux North America, Inc.	646-834-1383
Roman Kosinov	Director, Digital Signage JCDecaux North America, Inc.	646-834-1373

Schedule of Availability:

Mr. Brezman will be available 24 hours per day, seven days per week.

EXHIBIT 8

Specifications Relating to Work to be Performed on the Public Way

Work in the public way shall comply with IDOT's "Standard Specifications for Road and Bridge Construction", IDOT's "Illinois Manual on Uniform Traffic Control Devices," and CDOT's "Regulations For Openings, Constuction and Repair in the Public Way," all as in effect on the Commencement Date and as the same may be amended from time to time.

EXHIBIT 9

Form of Revenue Report

[See Attachment]

EXHIBIT 10

Prevailing Wage Rates

[See Attachment]

EXHIBIT 11

Contractor's Advertising Policy

Advertising or promotional materials displayed on City Digital Signs shall be appropriate for display to the general public of all ages and may not contain material or information that:

1. is false, misleading, or deceptive;
2. is libelous or defamatory;
3. promotes unlawful or illegal products, services or activities;
4. infringes on any copyright, trade or service mark, patent, trade secret or other intellectual property right of any person or entity;
5. implies or declares an endorsement by the City of Chicago of any product, service or activity, except upon the written consent of the City of Chicago;
6. is obscene, pornographic, or sexually-explicit material, including, but not limited to, the depiction of nudity, sexual conduct, or sexual excitement;
7. promotes or depicts tobacco or tobacco-products, or their use, or advertises entities whose business is substantially derived from the sale of tobacco or tobacco products;
8. promotes or depicts alcoholic beverages or the use of alcoholic beverages if such advertisement or promotional material is within a 500-foot radius of a school up through the level of high school, a house of worship or a playground (other than a playground located adjacent to a linear park that is more than one mile in length and is located within the public way);
9. advertises entities whose business is substantially derived from the sale of firearms;
10. supports or opposes a political message, or a public issue or cause;
11. advocates imminent lawlessness or violent action, or contains graphic depictions of violence; or
12. supports or opposes a religion or religious denomination, creed, tenet or belief, atheism or agnosticism, or that contains a religious message, symbol or endorsement.

The terms “nudity” “sexual conduct” and “sexual excitement” have the same meanings herein as in 7210 ILCS 5/11-21(a) (2011) and as such law may be amended, modified or supplemented. The term “obscene” has the meaning set forth in 720 ILCS 5/11-20(b) (2011) and as such law may be amended, modified or supplemented.

EXHIBIT 12

Form of Guaranty

GUARANTY

THIS GUARANTY (the "Guaranty") is given as of the 1st day of January, 2013 by JCDecaux North America, Inc., a Delaware corporation ("Guarantor"), to the City of Chicago, a municipal corporation and home rule unit of government (hereinafter "City"). Capitalized terms not otherwise defined herein shall have the meaning given in the Agreement (as defined in Recital B below).

RECITALS

- A. Guarantor is the forty-nine percent (49%) owner of Interstate JCDecaux, LLC ("Affiliate"), a Delaware limited liability company ("Affiliate").
- B. Affiliate and City are, simultaneously with the execution of this Guaranty, entering into that Coordinated City Digital Sign Network Program Agreement (the "Agreement"), dated as of January 1, 2013.
- C. It is in the best interest of the Guarantor to execute this Guaranty because Guarantor will derive substantial direct benefits from the Agreement, namely, the Contractor's receipt of the Contractor Share of Gross Revenues. Guarantor has, therefore, agreed to provide this Guaranty as a material inducement to the City's execution of the Agreement.

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and as a material inducement to City to enter into the Agreement, Guarantor agrees as follows:

AGREEMENTS

1. Incorporation of Recitals. The above recitals are incorporated herein by reference and constitute a material part of this Guaranty.

2. Guaranty of Payment. Guarantor hereby irrevocably and unconditionally guarantees to City the complete and timely payment to City of both (a) the Guaranteed Initial Fees, as and when payable from time to time under the Agreement, and (b) the Guaranteed Annual Fees, as and when payable from time to time under the Agreement and set forth on Schedule 1 to this Guaranty, which Schedule is incorporated herein and forms part of this Guaranty (each such payment obligation separately, and collectively, the "Guaranteed Obligations"). In the event that Affiliate fails to pay any of such outstanding Guaranteed Obligations, as the same may become due and payable from time to time under the Agreement, Guarantor will promptly and fully from time to time make payments to satisfy such outstanding Guaranteed Obligations in the place of Affiliate until such time as the Guarantor has paid to the City all such outstanding Guaranteed Obligations. Except as set forth above, nothing contained herein shall be construed as obligating Guarantor to perform any obligations of Affiliate, or pay any other amounts due and payable by Affiliate.

3. Guarantor's Guaranteed Obligations Are Absolute.

(a) This Guaranty is an absolute, irrevocable and unconditional guaranty of payment and performance (as to payment of the Guaranteed Obligations only) and is not a guaranty of collection. Guarantor shall be liable for the payment of the Guaranteed Obligations as set forth in this Guaranty, as a primary obligor. This Guaranty shall be effective as a waiver of, and Guarantor hereby expressly waives, any and all rights to which Guarantor may otherwise have been entitled under any warranty, suretyship or letter of credit laws in effect from time to time; including any right or privilege,

whether existing under statute, at law or in equity, to require City to take prior recourse or proceedings against any warranty, collateral, security or person whatsoever.

(b) Guarantor hereby agrees that in the event of (i) an Event of Default by Affiliate under the Agreement (provided that any cure period permitted by the Agreement has passed and the Event of Default has not been cured); (ii) the dissolution or insolvency of Affiliate; or (iii) the institution of any proceeding by or against Affiliate in bankruptcy or for a reorganization or an arrangement with creditors, or for the appointment of a receiver, trustee or custodian for Affiliate or for any of its properties (provided if such proceeding is instituted against Affiliate, then such proceeding shall not cause the Guaranteed Obligations to be immediately due and payable if such proceeding is dismissed within one hundred twenty (120) days of filing), then in any such event, the Guaranteed Obligations, for purposes of this Guaranty, shall be deemed immediately due and payable at the election of City and Guarantor shall, on demand and without presentment, protest, notice of protest, further notice of nonpayment or of dishonor or of default or nonperformance, or notice of acceleration or of intent to, or any other notice whatsoever, without any notice having been given to Guarantor previous to such demand of the acceptance by City of this Guaranty, and without any notice having been given to Guarantor previous to such demand of the creating or incurring of such indebtedness or of such obligation to perform, all such notices being hereby waived by Guarantor, pay the Guaranteed Obligations to City, as and when the same become due and payable. It shall not be necessary for City, in order to enforce payment or performance by Guarantor of its obligations under this Guaranty, first to institute suit or pursue or exhaust any rights or remedies against Affiliate, or any Other Obligated Party (as hereafter defined) with respect to the Guaranteed Obligations, or to institute suit or pursue or exhaust any rights or remedies against Affiliate, or any other guarantor, surety, warrantor, service contractor, letter of credit

issuer or other party obligated with respect to the Guaranteed Obligations or having obligations with respect to the performance of the Work (each and all such other parties, an “Other Obligated Party”), or to enforce any rights against any security that shall ever have been given to secure the Guaranteed Obligations, or to join Affiliate, or any Other Obligated Party in any action to enforce this Guaranty, or to resort to any other means of obtaining payment of the Guaranteed Obligations.

(c) Suit may be brought or demand may be made against the Guarantor, and any Other Obligated Party, without impairing the rights of City against Guarantor or any Other Obligated Party under any contract.

4. Waivers.

(a) Except to the extent the Guaranteed Obligations have been satisfied, Guarantor hereby agrees that neither City's rights or remedies nor Guarantor's obligations under the terms of this Guaranty shall be released, diminished, impaired, reduced or affected by anyone or more of the following events, actions, facts, or circumstances, and the liability of Guarantor under this Guaranty shall be absolute and unconditional irrespective of:

(i) any claim or defense that this Guaranty was made without consideration or is not supported by adequate consideration;

(ii) the taking or accepting of any other security, guaranty, bond, warranty, service contract, letter of credit or right of recourse (“Other Security Documents”) with respect to any or all of the Guaranteed Obligations or the performance of the Work required under the Agreement;

(iii) the availability to Guarantor of any exemption or defense under applicable law or at equity;

(iv) any release, surrender, abandonment, exchange, alteration, sale or other

disposition, subordination, deterioration, waste, failure to protect or preserve, impairment, or loss of, or any failure to create or perfect any lien or security interest with respect to, or any other dealings with, any collateral or security at any time existing or purported, believed or expected to exist in connection with any or all of the Guaranteed Obligations or the Work required under the Agreement, including any impairment of Guarantor's recourse against any person or collateral;

(v) whether express or by operation of law, any partial release of the liability of Guarantor hereunder, or if one or more other guaranty, are now or hereafter obtained by City from any Other Obligated Party covering all or any part of the Guaranteed Obligations or the Work required under the Agreement, any complete or partial release of any Other Obligated Party under any Other Security Documents, or any complete or partial release of or settlement with Affiliate;

(vi) the insolvency, bankruptcy, dissolution, liquidation, termination, receivership, reorganization, merger, consolidation, change of form, structure or ownership, sale of all assets, or lack of corporate, partnership or other power of Affiliate or any Other Obligated Party at any time liable for the payment of any or all of the Guaranteed Obligations or the performance of the Work required under the Agreement;

(vii) either with or without notice to or consent of Guarantor: any renewal, extension, modification or rearrangement of the terms of any or all of the Guaranteed Obligations and/or the Work required under the Agreement, or any waiver, termination, or release of, or consent to departure from, the Agreement or any other guaranty of any or all of the Guaranteed Obligations, or any adjustment, indulgence, forbearance, or compromise that may be granted from time to time by City to Affiliate, Guarantor, and/or any Other Obligated Party liable for all or any portion of the Guaranteed Obligations or the performance of the Work required under the Agreement;

(viii) any neglect, lack of diligence, delay, omission, forbearance, failure, or refusal of City

to take or prosecute (or in taking or prosecuting) any action for the collection or enforcement of any of the Guaranteed Obligations, or to take or prosecute any action upon any security therefor, or to exercise (or in exercising) any other right or power with respect to any security therefor, or to take or prosecute (or in taking or prosecuting) any action in connection with the Agreement, or any failure to sell or otherwise dispose of in a commercially reasonable manner any collateral securing any or all of the Guaranteed Obligations;

(ix) any failure of City to notify Guarantor of any creation, renewal, extension, rearrangement, modification, supplement, subordination, or assignment of the Guaranteed Obligations, or any part thereof, or of the Agreement or the Work required to be performed thereunder, or of any release of or change in any security, or of any other action taken or refrained from being taken by City against Affiliate or any Other Obligated Party, or any security or other recourse, or of any new agreement between City and Affiliate or between City and any Other Obligated Party, it being understood that, except with respect to the requirements for the service of process required to commence a lawsuit against Guarantor. City shall not be required to give Guarantor any notice of any kind under any circumstances with respect to or in connection with the Guaranteed Obligations or the Work required under the Agreement, any and all rights to notice Guarantor may have otherwise had being hereby waived by Guarantor, and the Guarantor shall be responsible for obtaining for itself information regarding Affiliate, including, but not limited to, any changes in the business or financial condition of Affiliate, and Guarantor acknowledges and agrees that City shall have no duty to notify Guarantor of any information which City may have concerning Affiliate;

(x) any requirement for any reason that City is required to refund any payment by Affiliate to any other party liable for the payment or performance of any or all of the Guaranteed Obligations or the Work required under the Agreement or pay the amount thereof to someone

else;

(xi) the existence of any claim, counterclaim, set-off, recoupment, reduction or defense based upon any claim or other right that Guarantor may at any time have against Affiliate, City, or any other person, whether or not arising in connection with this Guaranty or the Agreement;

(xii) the unenforceability of all or any part of the Guaranteed Obligations against Affiliate or the performance of the Work by the Affiliate under the Agreement (as the same relates to the payment of the Guaranteed Obligations), whether because the Guaranteed Obligations exceed the amount permitted by law or violate any usury law, or because the act of creating the Guaranteed Obligations or requiring the Affiliate's performance of the Work, or any part thereof, is ultra vires, or because the officers or persons creating same acted in excess of its authority, or because of a lack of validity or enforceability of or defect or deficiency in the Agreement or because Affiliate has any valid defense, claim or offset with respect thereto, or because Affiliate's obligation ceases to exist by operation of law, or because of any other reason or circumstance, it being agreed that Guarantor shall remain liable hereon regardless of whether Affiliate, or any other person be found not liable on the Guaranteed Obligations, or any part thereof, for any reason (and regardless of any joinder of Affiliate or any other party in any action to obtain payment of any or all of the Guaranteed Obligations or performance of any or all of the Work required under the Agreement);

(xiii) any order, ruling or plan of reorganization emanating from proceedings under Title 11 of the United States Code with respect to Affiliate, or any other person, including any extension, reduction, composition, or other alteration of the Guaranteed Obligations, whether or not consented to City; or

(xiv) any partial payment of the Guaranteed Obligations (except that to the extent the City has been paid a portion of such Guaranteed Obligations, as required hereunder, in which case the Guarantor's obligations shall be reduced by the amount of such partial payment), or any partial

performance of the Work required under the Agreement by any party obligated with respect to such performance;

(b) Guarantor hereby waives (i) notice of acceptance of this Guaranty; (ii) notice of any advances made by City in connection with the Agreement; (iii) notice of any waiver, amendment, modification, postponement, release, renewal, extension, accrual or termination of any of the Guaranteed Obligations or the Work required under the Agreement; (iv) notice of the reliance of City upon this Guaranty; (v) notice of the occurrence, existence or continuance of any event of default, or failure of payment or performance under the Agreement; (vi) demand for payment, diligence, presentment, filing of claims with a court in the event of receivership or bankruptcy of the Affiliate, protest or notice with respect to the Guaranteed Obligations or the Work required under the Agreement, and all demands whatsoever; and (vii) any other notice, demand, protest or formality which would otherwise be legally required to charge Guarantor with liability hereunder; and Guarantor covenants and agrees that this Guaranty will not be discharged, except by complete payment of the Guaranteed Obligations.

(c) In the event any payment by Affiliate or any other person to City with respect to the Guaranteed Obligations is held to constitute a preference, fraudulent transfer or other voidable payment under any bankruptcy, insolvency or similar law or, if, for any other reason, City is required to refund such payment or pay the amount thereof to any other party, such payment by Affiliate or any other party to City shall not constitute a release of Guarantor from any liability hereunder, and this Guaranty shall continue to be effective or shall be reinstated (notwithstanding any prior release, surrender or discharge by City of this Guaranty or of Guarantor), as the case may be, with respect to, and to the extent this Guaranty-covered any amounts so refunded or paid, this Guaranty shall apply to, any and all amounts so refunded by City or paid by City to another person (which amounts shall constitute part of the Guaranteed Obligations), and any interest paid by City and any attorneys' fees, costs and expenses paid or incurred by City in connection

with any such event. It is the intent of Guarantor and City that the obligations and liabilities of Guarantor hereunder are absolute and unconditional under any and all circumstances and that until the Guaranteed Obligations are fully and finally paid and performed, and until one hundred twenty (120) days have elapsed thereafter without the filing of a claim for refund or disgorgement, the obligations and liabilities of Guarantor hereunder shall not be discharged or released, in whole or in part, by any act or occurrence that might, but for the provisions of this Guaranty, be deemed a legal or equitable discharge or release of Guarantor.

(d) If acceleration of the time for payment of any amount payable by Affiliate under the Agreement is stayed or delayed by any law or tribunal, all such amounts shall nonetheless (to the extent same constitute Guaranteed Obligations) be payable by Guarantor on demand by City.

5. Term. This Guaranty, provided in connection with the terms and conditions of the Agreement, is not limited to any period of time, but shall continue in full force and effect until the Guaranteed Obligations have been fully paid, or otherwise discharged by Affiliate, or Guarantor, as applicable, provided, however, except that notwithstanding any return of this Guaranty to Guarantor, this Guaranty shall continue in effect (i) with respect to any of the Guaranteed Obligations that survive the discharge of the Guaranteed Obligations, (ii) with respect to all obligations and liabilities of Guarantor under Section 7, and (iii) as provided in Section 4(c).

6. Representations, Warranties and Covenants of Guarantor. Guarantor hereby represents, warrants and covenants that (a) Guarantor has an ownership and financial interest in Affiliate and will derive a material and substantial benefit, directly and indirectly, from the execution of the Agreement by Affiliate and the making of this Guaranty by Guarantor; (b) this Guaranty has been duly authorized pursuant to resolutions duly adopted by its Board of Directors, a true and correct copy of which is attached hereto as Exhibit A, and is binding upon and enforceable against Guarantor; (c) Guarantor is not, and the

execution, delivery and performance by Guarantor of this Guaranty will not cause Guarantor to be, in violation of or in default with respect to any law or in default (or at risk of acceleration of indebtedness) under any document, indenture, agreement or restriction by which Guarantor is bound or affected; (d) Guarantor is duly organized and is validly existing and in good standing under the laws of Delaware and has full power and authority to enter into and perform this Guaranty; (e) except as set forth in the financial statements of Guarantor, there is no material litigation pending or, to the knowledge of Guarantor, threatened before or by any tribunal against or affecting either Guarantor; (f) all financial statements heretofore disclosed by Guarantor to City fully and accurately present the financial condition of Guarantor as of its dates and the results of Guarantor's operations for the periods therein specified (furthermore, there has been no material adverse change in circumstances since the date such financials were submitted); (g) after giving effect to this Guaranty, Guarantor is solvent, is not engaged or about to engage in business or a transaction for which the properties of Guarantor constitute an unreasonably small capital, and do not intend to incur or believe that they will incur debts that will be beyond its ability to pay as such debts mature; (h) City has no duty at any time to investigate or inform Guarantor of the financial or business condition or affairs of Affiliate or any change therein, and Guarantor will keep fully apprised of Affiliate's financial and business condition; (i) Guarantor acknowledges and agrees that Guarantor may be required to pay and perform the Guaranteed Obligations in full without assistance or support from Affiliate or any other person; and (j) Guarantor has read and fully understand the provisions contained in the Agreement. Guarantor's representations, warranties and covenants are a material inducement to City to enter into the Agreement and shall survive the execution thereof and any bankruptcy, foreclosure, transfer of security or other event affecting Affiliate, Guarantor or any other party.

7. Attorney Fees. In addition to the amounts guaranteed under this Guaranty, Guarantor agrees to pay actual reasonable attorney's fees and all other reasonable costs and expenses

incurred by the City in any action or proceeding arising out of or relating to this Guaranty, including any action instituted to determine the respective rights and obligations of the parties hereunder and any action to enforce a judgment relating to this Guaranty (regardless of the venue of such action), whether or not suit is filed thereon, or whether in connection with bankruptcy, insolvency or appeal, provided, that and to the extent that the City is the prevailing party in such action or proceeding.

8. Governing Law. This Guaranty is and shall be deemed to be a contract entered into in and pursuant to the laws of the State of Illinois and shall be governed and construed in accordance with the laws of Illinois without regard to its conflicts of laws rules for all purposes, including, but not limited to, matters of construction, validity and performance. Guarantor hereby irrevocably submits generally and unconditionally for itself and in respect of its property to the jurisdiction of any United States federal court, sitting in the Northern District of Illinois, over any suit, action or proceeding arising out of or relating to this Guaranty or the Guaranteed Obligations. The registered office of Guarantor in the State of Illinois shall be care of JCDecaux Chicago, LLC, 3959 South Morgan Street, Chicago, Illinois 60609 and the registered agent for service of process on Guarantor at the registered office shall be [INSERT NAME AND ADDRESS OF REGISTERED AGENT]. Guarantor shall not change its registered agent for so long as this Guaranty is in effect unless such registered agent ceases to exist in which case the Guarantor will immediately notify the City of a replacement agent to be located in Illinois. Guarantor hereby irrevocably waives to the fullest extent permitted by law, any objection that Guarantor may now or hereafter have to the laying of venue in any such court and any claim that any such court is an inconvenient forum. Guarantor hereby agrees and consents that, in addition to any methods of service of process provided under applicable law, all service of process in any such suit, action or proceeding may be made by certified or registered mail, return receipt requested, directed, at City's election, either (a) to Guarantor's registered agent at the address specified above or (b) to Guarantor at the address set forth in Section 13, or at a

subsequent address in the continental United States of which City received actual notice from Guarantor in accordance with Section 13, and service so made shall be complete five (5) days after the same shall have been so mailed, whether or not such service has been accepted or refused. Nothing herein shall affect the right of City to serve process in any manner permitted by law or limit the right of City to bring proceedings against Guarantor in any other court or jurisdiction.

9. Severability. If any portion of this Guaranty is held to be invalid or unenforceable, such invalidity shall have no effect upon the remaining portions of this Guaranty, which shall be severable and continue in full force and effect to the maximum extent permitted by law or equity.

10. Binding on Successors. This Guaranty shall inure to the benefit of the City and its successors and assigns. The Guarantor may not transfer, convey or assign this Guaranty, or any interest therein, without the prior written consent of the City. The Guaranty shall be binding upon Guarantor and its successors and permitted assigns, including transferee(s) of substantially all of its assets and its shareholder(s) in the event of its dissolution or insolvency. Guarantor waives notice by the City of any transfer or assignment of rights to the Guaranteed Obligations, or any part thereof, and Guarantor agrees that failure to give notice will not affect the liabilities of Guarantor hereunder.

11. Authority. Guarantor represents and warrants that it has the power and authority to give this Guaranty, that its execution of this Guaranty has been authorized by all necessary action under its organizational documents and applicable law, and that the person or persons signing this Guaranty on its behalf have the authority to do so.

12. Subordination. Any claims Guarantor may have against Affiliate are hereby subordinated to any and all claims of the City against Affiliate until such time as the obligations of Affiliate to the City are fully satisfied and discharged.

13. Notices. Notice shall be given in writing, deposited in the U.S. mail, registered or

certified, first class postage prepaid, addressed as follows:

To the Guarantor: JCDecaux North America, Inc.
3 Park Avenue
New York, New York 10016
Attn: Co-Chief Executive Officer and
Legal Department

with a copy to: JCDecaux Chicago, LLC
3959 South Morgan Street
Chicago, Illinois 60609
Attn: Co-Chief Executive Officer and
Legal Department

To City: City of Chicago
Chief Financial Officer
33 North La Salle Street, 7th Floor
Chicago, IL 60602

with a copy to: City of Chicago
Corporation Counsel
City Hall, Room 600
121 North La Salle Street
Chicago, IL 60602

Nothing in this Guaranty shall preclude or waive any notices to Affiliate for breach or default and opportunity to cure any breach or default which are required to be given pursuant to the Agreement, and copies of any such notices given to Affiliate for breach or default shall be copied to Guarantor at the address provided above; provided, however, this section shall not be construed in any way to affect or impair any waiver of notice or demand provided in this Guaranty or in the Agreement or to require giving of notice or demand to or upon any other person in any situation or for any reason.

14. Cumulative Rights. The exercise by City of any right or remedy hereunder or under the Agreement, or at law or in equity, shall not preclude the concurrent or subsequent exercise of any other right or remedy. City shall have all rights, remedies and recourses afforded to City by reason of this Guaranty or the Agreement or by law or equity or otherwise, and the same (a) shall be cumulative and

concurrent, (b) may be pursued separately, successively or concurrently against Guarantor, or any Other Obligated Party, or Affiliate, or against any one or more of them, or against any security or otherwise, at the sole discretion of City, (c) may be exercised as often as occasion therefor shall arise, it being agreed by Guarantor that the exercise of, discontinuance of the exercise of or failure to exercise any of such rights, remedies, or recourses shall in no event be construed as a waiver or release thereof or of any other right, remedy or recourse, and (d) are intended to be, and shall be, nonexclusive. No waiver of any default on the part of Guarantor or of any breach of any of the provisions of this Guaranty shall be considered a waiver of any other or subsequent default or breach, and no delay or omission in exercising or enforcing the rights and powers granted herein or in any other document shall be construed as a waiver of such rights and powers, and no exercise or enforcement of any rights or powers hereunder or under any other document shall be held to exhaust such rights and powers, and every such right and power may be exercised from time to time. The granting of any consent, approval or waiver by City shall be limited to the specific instance and purpose therefor and shall not constitute consent or approval in any other instance or for any other purpose. No notice to or demand on Guarantor in any case shall in and of itself entitle Guarantor to any other or further notice or demand in similar or other circumstances. No provision of this Guaranty or any right, remedy or recourse of City with respect hereto, or any default or breach, can be waived, nor can this Guaranty or Guarantor be released or discharged in any way or to any extent, except specifically in each case by a writing intended for that purpose (and which refers specifically to this Guaranty) executed, and delivered to Guarantor, by City.

15. Entire Agreement. This Guaranty embodies the entire agreement between City and Guarantor with respect to the guaranty by Guarantor of the Guaranteed Obligations. This Guaranty supersedes all prior agreements and understandings, if any, with respect to guaranty by Guarantor of the Guaranteed Obligations. No condition or conditions precedent to the effectiveness of this Guaranty exist.

This Guaranty shall be effective upon execution by Guarantor and delivery to City. This Guaranty may not be modified, amended or superseded except in a writing signed by City and Guarantor referencing this Guaranty by its date and specifically identifying the portions hereof that are to be modified, amended or superseded.

Notwithstanding the above paragraph, in the event that, under the terms of the Agreement, the Guaranteed Initial Fees or Guaranteed Annual Fees are adjusted in accordance with the underlying terms of such Agreement, including, without limitation, pursuant to Section 5.2, Section 6.1(a)(i), Section 6.1(a)(ii) or Section 12.3(d), such adjustments shall also be given effect under this Guaranty to modify the Guarantor's obligations with respect to the Guaranteed Obligations so adjusted.

16. WAIVER OF JURY TRIAL. GUARANTOR HEREBY WAIVES TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO WHICH GUARANTOR OR CITY MAY BE PARTIES ARISING OUT OF, IN CONNECTION WITH, OR IN ANY WAY PERTAINING TO, THIS GUARANTY OR THE AGREEMENT. IT IS AGREED AND UNDERSTOOD THAT THIS WAIVER CONSTITUTES A WAIVER OF TRIAL BY JURY OF ALL CLAIMS AGAINST ALL PARTIES TO SUCH ACTIONS OR PROCEEDINGS, INCLUDING CLAIMS AGAINST PARTIES WHO ARE NOT PARTIES TO THIS GUARANTY. THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY GUARANTOR, AND GUARANTOR HEREBY REPRESENTS THAT NO REPRESENTATIONS OF FACT OR OPINION HAVE BEEN MADE BY ANY INDIVIDUAL TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. GUARANTOR FURTHER REPRESENTS AND WARRANTS THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS GUARANTY AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THIS WAIVER WITH COUNSEL.

17. Consent to Jurisdiction. Guarantor irrevocably submits generally and unconditionally for itself and in respect of its property to the nonexclusive jurisdiction of the courts specified in Section 8 hereof. Final, non-appealable judgment in any suit, action or proceeding brought in any such Court shall be conclusive and binding upon Guarantor and may be enforced in any court within or outside the United States of America, in which Guarantor is subject to jurisdiction, by a suit upon such judgment provided that service of process is effected upon Guarantor as permitted herein or by applicable law. Guarantor hereby releases, to the extent permitted by applicable law, all errors and all rights of exemption, appeal, stay of execution, inquisition, and other rights to which the Guarantor may otherwise be entitled under the laws of the United States of America or any state, possession or territory of the United States of America, now in force or which may hereinafter be enacted. The authority and power to appear for and enter judgment against the Guarantor shall not be exhausted by one or more exercises thereof or by any imperfect exercise thereof and shall not be extinguished by any judgment entered pursuant thereto. Such authority may be exercised on one or more occasions or from time to time in the same or different jurisdiction as often as City shall deem necessary and desirable, for all of which this Guaranty shall be sufficient warrant.

[SIGNATURES APPEAR ON NEXT PAGE]

IN WITNESS WHEREOF, Guarantor has executed this Guaranty as of the day and year first

above written.

JCDecaux North America Inc.,
a Delaware corporation

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

Schedule 1

**Schedule of Guaranteed Annual Fees¹, to be paid in
quarterly installments pursuant to the Agreement**

Calendar Year Maximum Guaranteed Annual Fee for Each Calendar Year1 (in U.S. dollars)

2014	2,400,000
2015	4,000,000
2016	6,000,000
2017	6,000,000
2018	8,000,000
2019	8,000,000
2020	8,000,000
2021	8,000,000
2022	10,000,000
2023	10,000,000
2024	10,000,000
2025	10,000,000
2026	10,000,000
2027	10,000,000
2028	10,000,000
2029	10,000,000
2030	10,000,000
2031	10,000,000
6 months ended June 30, 2032	5,000,000

¹ Guaranteed Annual Fee for each calendar year will be adjusted on a monthly pro-rata basis subject to the number and quality of faces that are constructed and operational as specified in the Agreement.