

## BUS SHELTER FRANCHISE AGREEMENT

THIS AGREEMENT, made and entered into this 26 day of September, 2005, by and between the municipal corporation known as the DISTRICT OF COLUMBIA ("District") through the District Department of Transportation ("DDOT") and CLEAR CHANNEL ADSHEL, INC. ("Franchisee"), (collectively the "Parties") for the design, fabrication, installation, maintenance, operation and dismantling of Bus Shelters in the District of Columbia (hereinafter referred to as "the Agreement") provides that:

WHEREAS, the District pursuant to D.C. Law 3-67, the "District of Columbia Bus Shelter Act of 1979" (D.C. Law 3-67; 27 DCR 1266) as amended, and the Request for Proposals (RFP) issued on March 5, 2004, and its amendments, proposes to enter into an exclusive Bus Shelter Franchise Agreement for the design, fabrication, installation, maintenance, operation and dismantling of Bus Shelters in the District of Columbia in exchange for the District granting the exclusive right to sell and manage commercial advertising on certain Bus Shelters as outlined in this Agreement;

WHEREAS, on August 3, 2004 the Franchisee was selected by the District as the awardee of the exclusive Bus Shelter franchise issued pursuant to D.C. Law 3-67 and the RFP No.: POKA-2004-R-0001-CB;

NOW, THEREFORE, the parties hereto, for the consideration hereinafter set forth, mutually agree as follows:

## ARTICLE I. - DEFINITIONS

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

“ADA” means the Americans with Disabilities Act 42 U.S.C. 12101 et seq., or any other applicable law(s) dealing with disability access.

“Advertising Display” means a backlit advertising box measuring between 22 and 26 square feet installed at Bus Shelters that display commercial advertising.

“Agreement” means this Bus Shelter Franchise Agreement, including all exhibits and attachments attached hereto, and all amendments, modifications or revisions made in accordance with its terms.

“Bus Map Program” means a route-tailored bus map system for Bus Shelters throughout the District.

“Bus Shelter” means a structure authorized by this Agreement providing shelter for passengers waiting for buses or other modes of transportation, including but not limited to light rail transit, mass transit and exclusive travel lanes. Bus Shelters include new structures that are to be installed pursuant to the terms of this Agreement as well as Franchisee's present Bus Shelters in Public Space that were installed prior to the Commencement Date.

“Bus Shelter Technical Advisory Committee” means a stakeholder group selected by DDOT that shall be comprised of community members who are interested in issues involving bus shelters in the District who will assist in advising the Franchisee regarding the needs and desires of the community regarding this Agreement.

“Bus Stop” means a WMATA pre-designated location indicating where a bus will stop.

“Central Business District” means the area that falls along both sides of the streets and within the boundary created by 23<sup>rd</sup> Street, NW on the west; M Street, NW on the north; North Capitol Street on the east; and M Street, SW on the south.

"Commencement Date" means the date that the last signature of the Parties is affixed to this Agreement.

“Community Meeting Process” means a minimum of eight (8) public meetings conducted by the Franchisee to facilitate meaningful community participation in the choice of the new designs of Bus Shelters to be installed pursuant to this Agreement and to provide other programmatic information to the public as directed by the District.

“Contract Year” means a one-year period during the term of this Agreement. The first Contract Year begins on the Commencement Date and ends the day prior to the one-year anniversary thereof. Each subsequent Contract Year shall begin on the immediately following anniversary of the Commencement Date and end on the day prior to the next anniversary thereof.

“Damages” means the assessment of monetary Damages against the Franchisee for any costs incurred by the District to cure any and all Events of Default of the Franchisee in connection with this Agreement.

“DDOT” means the Department of Transportation or its successor within the government of the District of Columbia.

“Deliverables” means all of Franchisee’s obligations in this Agreement or that are a part of this Agreement.

“Design Elements” means, but is not limited to: coloration; name identification panels; decorative pavers; emblems; silk screened decals and glass.

“Director DDOT” means the Director of the District of Columbia Department of Transportation acting as the Contract Officer and any representative duly authorized in writing to act on his or her behalf.

“Event of Default” means any material act or omission by Franchisee that is in violation of this Agreement and that is not corrected, remedied or appealed by the Franchisee within the time specified by this Agreement.

“Gross Advertising Receipts” means payments received by the Franchisee, its agents or designees, from advertisers, less reasonable commissions paid by the Franchisee to the advertisement brokerage agencies involved, in connection with the display of advertising material on the Bus Shelters.

“Heritage Trail and Way Finding Signs” means the existing sign programs or their successors that direct pedestrians and vehicles to historic sites, popular destinations and Metro stations throughout the District.

“In-Kind Revenue” means the promotional opportunities provided to the District as listed in Attachments E and F, by Franchisee through its sister divisions within Clear Channel Communications, or its successors.

“Key Personnel” means the personnel from both the Franchisee and DDOT responsible for supervising the performance of the critical tasks and obligations covered by this Agreement.

“Material Breach” means the failure of Franchisee to make a timely payment or any other failure of an obligation contained in this Agreement as specifically identified as such herein.

“NextBus™” means a real-time bus arrival information system incorporated into Bus Shelters that will be provided upon mutual agreement of WMATA.

“Payment Bond” means a bond to ensure that Franchisee makes prompt payment to all of its subcontractors and suppliers in connection with this Agreement.

“Performance Bond” means a bond for the maintenance and repair of Bus Shelters.

“Permit” means a permit issued by DDOT that shall authorize the Franchisee to install and/or replace seven hundred and eighty eight (788) Bus Shelters in Public Space in the District of Columbia pursuant to the terms and specifications as indicated in this Agreement and in accordance with the laws of the District of Columbia.

“Proposal” means all the documents submitted by Franchisee to DDOT in response to the RFP, up to and through the selection date.

“Public Space” means land owned by the District or in which the District has any interest, subject to a permit being issued by any District agency or department that is part of the public right-of-way reserved for transportation (e.g. roads, alleys and sidewalks).

“Request for Proposals” or “RFP” means the Open Market Invitation No.: POKA-2004-R-0001-CB, issued and published by the District on March 5, 2004 as amended on April 6, 2004; April 16, 2004; April 22, 2004; and May 7, 2004.

“Security Deposit” means a deposit of TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000.00) by the Franchisee in a depository designated by the District of Columbia to be used to reimburse the District of Columbia for any financial loss incurred by reason of any Event of Default or any other Material Breach by the Franchisee as provided in Article XIII of this Agreement.

“SmartBike™” means Franchisee’s trade marked system of automated public bike rental storage and maintenance.

“SmartColumn™” means the component of the "Cibeles" bus shelter, as described in Section 1 of Attachment C, that provides i-plus™, Internet-ready information and public access terminals.

“Wayfarer Totem” means the non-advertising, neighborhood-specific display panel unit, provided by franchisee, either on a stand-alone basis or as an integrated component of the "WayFarer" Bus Shelter design option as described in Section 1 of Attachment C.

“Web Based Portal” means a fully integrated Internet site, or its replacement as technology advances, with different levels of access for public and DDOT accessibility, which provides up-to-date information on each individual Bus Shelter construction, maintenance and management.

“WMATA” means the Washington Metropolitan Area Transportation Authority or its successor.

## **ARTICLE II. - CONDITIONS OF PERFORMANCE**

**Section 1.** The intent of this Agreement is that, in consideration of the District’s grant of certain rights to the Franchisee to sell and place advertising on certain Bus Shelters as described herein, the Franchisee will pay to the District certain Public Space rental payments for Bus Shelters located in Public Space as authorized under D.C. Code §10-1141.03 (2001 ed.) and D.C. Code §10-1141.04 (2001 ed.), which shall be calculated based on advertising proceeds as defined and outlined in Attachment G of this Agreement and have the right and the obligation to design, fabricate, install, maintain, operate and dismantle the Bus Shelters and maintain and

restore the underlying and surrounding property affected by the work, or cause the Bus Shelters to be designed, fabricated, installed, maintained, operated, removed and dismantled and cause the maintenance and restoration of the underlying and other surrounding property affected by the work, in accordance with and subject to the terms of this Agreement and any and all applicable District or Federal laws. Further, the Franchisee must take all necessary steps to perform the obligations of the Franchisee pursuant to the terms of this Agreement.

**Section 2.** The Franchisee 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 Franchisee upon reasonable notice must provide copies of any such licenses to the District. The Franchisee remains responsible for the professional and technical accuracy of all work and Deliverables performed or furnished, regardless of whether performed or furnished by the Franchisee or its subcontractors or others on its behalf or its assignees.

**Section 3.** DDOT shall have the right to approve Franchisee's Key Personnel assigned to this project by Franchisee in order to ensure the fulfillment of the terms and obligations covered or contemplated by this Agreement.

**Section 4.** Any review, supervision, consent, approval or acceptance by the District in relation to any of the work, does not relieve the Franchisee of its independent responsibility for the professional skill, care and technical accuracy of its work and Deliverables. This provision in no way limits the District's rights against the Franchisee under this Agreement, at law or in equity.

**Section 5.** The Franchisee acknowledges and agrees that it must perform all work

without any payments by the District. In furtherance and confirmation of the foregoing, the Franchisee acknowledges and agrees that the District does not have nor does it intend to seek any appropriations in relation to this Agreement. The Franchisee further covenants and agrees that it must provide and pay for all items or services necessary for the proper execution and completion of the work, whether temporary or permanent, including, but not limited to, all design, engineering, procurement, installation, construction, maintenance, removal and dismantlement services, the maintenance and restoration of the underlying and surrounding property affected by the work, all administration, management, training and coordination services, all labor, materials, furnishings, equipment, supplies, insurance, bonds, permits, licenses, tests, inspections, tools, machinery, water, heat, utilities consumed in performance of the installation, maintenance and removal of the Bus Shelters and restoration relating thereto.

**Section 6.** Franchisee shall provide uniformity in the quality of the Bus Shelter designs, and its performance of maintenance, installation and construction of all Bus Shelters throughout the District.

**Section 7.** Franchisee shall offer to the District, at Franchisee's own expense, upgrades to the District's Bus Shelters to provide for technological advances and aesthetic improvements in order to ensure that the District's Bus Shelters are state-of-the-art for the duration of this Agreement.

### **ARTICLE III. - COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT AND OTHER APPLICABLE LAWS**

It shall be the duty and responsibility of the Franchisee to maintain compliance throughout the term of this Agreement with any and all applicable laws concerning disabled

persons including, but not limited to, the ADA. The Franchisee shall perform all installations, removals or alterations undertaken by the Franchisee under this Agreement in accordance with all laws applicable to the Franchisee and to the District regarding accessibility for disabled persons.

#### **ARTICLE IV. - DESIGN**

**Section 1.** The Franchisee and the District agree to make a final selection of the new Bus Shelter designs within six (6) months of the Commencement Date of this Agreement, unless extended by mutual agreement. Further, any such agreed upon designs shall be consistent with the Proposal, and shall be the designs for the Bus Shelters installed throughout the District pursuant to this Agreement.

**Section 2.** At the direction of the Director DDOT, the Franchisee shall conduct a minimum of eight (8) public meetings, at its own expense, in order to receive input from the community and interested stakeholders in the selection of the designs of the Bus Shelters to be provided under this Agreement, the timeline for installations, the number and general locations thereof and other Bus Shelter program information. In addition, at its own expense, the Franchisee will meet with the Bus Shelter Technical Advisory Committee to assist Franchisee and DDOT in effectively implementing the final selection of Bus Shelter designs pursuant to the Community Meeting Process.

**Section 3.** The goals of the Community Meeting Process are to receive community input regarding the design attributes for the new Bus Shelters so that the designs are compatible with neighborhood design and aesthetics and to provide information to the community about design options.

**Section 4.** The Community Meeting Process shall begin within one (1) month from the

Commencement Date and be concluded within four (4) months of the Commencement Date, unless extended by the Parties by mutual agreement.

**Section 5.** Franchisee, at its own expense, shall develop location maps for the Bus Shelters that Franchisee will construct and install pursuant to this Agreement. The Bus Shelter installations depicted in the location maps will be respectful of Public Space availability, pedestrian flow, safety, and will be developed as a result of input from the Community Meeting Process and shall consider the surrounding characteristics of the each neighborhood. The locations maps will also illustrate each location where a Bus Shelter will be placed, the type of Bus Shelter to be installed, and the type of advertising for display. The District will coordinate and approve all location maps created pursuant to this Agreement and section C.2 of the RFP.

**Section 6.** The Franchisee shall ensure that the minimum amount of advertising necessary to provide the proposed amenities and proposed economic return to the District as specified in this Agreement and any applicable attachments hereto is used on the Bus Shelters.

**Section 7.** Franchisee's Bus Shelter program shall pursuant to the Proposal include the installation of ADA compliant Braille signs. In addition, DDOT may, at its sole discretion, require Franchisee, in conjunction with the NextBus™ program and pursuant to Attachments D and E, to install ADA compliant audible message systems, including but not limited to “Talking Signs” and “Push to Listen” signs in Bus Shelters in strategic locations throughout the District.

**Section 8.** Franchisee shall be fully responsible for coordinating the design, fabrication, and installation of the Bus Shelters with public utilities and any and all relevant Federal and District agencies.

**Section 9.** Franchisee's Bus Shelters shall pursuant to the Proposal provide a Bus Map

Program, “NextBus™”-ready capabilities, and an option for “SmartColumn™”, each of which is intended to improve the environment of individuals waiting for buses throughout the District.

The Franchisee shall print, install and maintain bus maps for the Bus Map Program, in sufficient numbers, in order to fulfill the terms of this Agreement pursuant to Section 1 of Attachment C as follows: (i) produce from camera-ready art as supplied by WMATA one (1) two-sided bus map once every twelve (12) months for each bus shelter location; (ii) install, maintain and replace bus maps that have been removed, damaged or vandalized; and (iii) install, maintain and replace an enclosed frame affixed to each Bus Shelter to protect each bus map.

**Section 10.** Franchisee also shall create a Bus Shelter program, pursuant to Section 1 of Attachment C that includes a system of automated public bike rental, storage and maintenance known as “SmartBike™” (or any similar programs that may be instituted in the future based on improved technology).

**Section 11.** Franchisee also shall create a Bus Shelter program that includes a Heritage Trail and Way Finding Sign Management and Maintenance Program pursuant to Sections 1 and 3 of Attachment C.

**Section 12.** Franchisee also shall create a Bus Shelter program, pursuant to Section 1 of Attachment C, which includes an option for neighborhood-specific information on bus shelters (i.e. the “Wayfarer Totem”).

**Section 13.** The details of the requirements set forth above and other design details of the Bus Shelters shall conform to section C.2 of the RFP and Attachments C, D and E.

**Section 14.** The details of the requirements set forth in this Article and other design details of the Bus Shelters shall be subject to the approval of the District, in coordination with

relevant District and Federal agencies.

**Section 15.** Franchisee acknowledges that the designs of the Bus Shelters are the product of collaborative efforts between, and creative input provided by, both the Franchisee's architectural designers and community stakeholders. As a result of this design process, the Franchisee agrees that the District's Bus Shelters will have unique Design Elements that may not be used anywhere else in the world without express written permission from the Director DDOT. The Design Elements that shall be determined by the Parties to be unique to the District shall be agreed upon by the Parties as part of the final approved Bus Shelter designs.

**Section 16.** The District shall have the right, at its sole discretion, but not at its obligation, at all times to inspect the Bus Shelters during the installation process in conjunction with reviewing all notices submitted in connection with the Franchisee's installation of Bus Shelters undertaken pursuant to Article VIII, Section 4 of this Agreement and all the terms and conditions of the Permit issued pursuant to this Agreement. The Franchisee must respond promptly to any concerns, questions or comments raised by the District. The District may reject defective work and Franchisee must then cure any defects, at its own expense, prior to completion of installation of said Bus Shelter. No inspection by the District shall operate to relieve the Franchisee of any of its obligations or liabilities under this Agreement or give the District any liability or responsibility for the installation of the Bus Shelters, including any errors or omissions relating thereto.

#### **ARTICLE V. - NUMBER AND LOCATION OF SHELTERS**

**Section 1.** Pursuant to this Agreement, the Franchisee shall use its best efforts to fabricate and install seven hundred and eighty eight (788) Bus Shelters, which includes the replacement of

approximately four hundred (400) existing Bus Shelters previously installed throughout the District prior to the Commencement Date. The District shall determine whether Franchisee has used its best efforts by Franchisee submitting on a quarterly basis the number and location of all Bus Shelters installed and those planned to be installed within the next twelve (12) months. Franchisee's installation shall ensure that the minimum number of Bus Shelters are installed in order to meet the requirements set forth in this Agreement. Advertising shall be displayed on a minimum of ninety percent (90%) of Bus Shelters. A minimum of ten (10) percent of all Bus Shelters installed shall not display advertising of any kind, however Franchisee shall not reduce the number of such non-advertising Bus Shelters because of any reduction in the number of advertising Bus Shelters. No more than seven hundred eighty eight (788) Bus Shelters shall be installed during the term of this Agreement unless by mutual agreement of the Parties that number is increased. Franchisee shall fairly and reasonably install Bus Shelters, pursuant to this Agreement, throughout the geographic areas of the District with particular emphasis on providing Bus Shelters first in areas that are determined by the District to have fewer Bus Shelters than other geographic areas.

**Section 2.** Pursuant to Attachment G, Bus Shelters installed and/or replaced within a 4000 foot radius of a new baseball stadium in the District bounded by N Street, SE, Potomac Avenue, SE, South Capitol Street, SE and 1<sup>st</sup> Street, SE, shall be in addition to the aforementioned seven hundred eighty eight (788) Bus Shelters authorized by this Agreement.

**Section 3.** Franchisee, at its own expense, shall develop site plans for the seven hundred and eighty eight (788) Bus Shelters and any additional shelters installed pursuant to this Agreement. The site plans shall identify exact street locations, roadway and sidewalk dimensions, and relate

the proposed shelters to existing topographical features. During construction and thereafter Franchisee shall ensure that all sites provide safe pedestrian access.

## **ARTICLE VI. - RELOCATION OF SHELTERS**

**Section 1.** It is the understanding of the Parties that WMATA MetroBus Shelters may already occupy sites designated for a Bus Shelter. Franchisee may install its Bus Shelters at any WMATA location that exists on the District's Public Space with the permission of the District. Before installing a Bus Shelter on such a site, Franchisee shall relocate the existing MetroBus Shelter to a new site as designated by the District and WMATA. Franchisee shall bear all the costs associated therewith. In the event that the District, in consultation with WMATA, is unable to find a suitable location for any removed MetroBus Shelter, then the Franchisee shall deliver said removed Bus Shelter to a WMATA facility as designated by the District and the Franchisee shall bear all the associated costs therewith. Damage to MetroBus Shelters that existed prior to relocation shall not be the responsibility of the Franchisee. Damage to MetroBus Shelters caused during the relocation shall be the responsibility of the Franchisee.

**Section 2.** Due to changes in Metrobus route alignments and/or stop locations some of the Franchise Bus Shelter sites may become unnecessary. The Franchisee shall relocate any such Bus Shelters to a new site as designated by the District and Franchisee shall bear all the costs associated with the relocation.

**Section 3.** Franchise shall relocate, at the District's request, all Bus Shelters that must be relocated due to street or sidewalk construction/repairs. Franchise shall document and submit to the District its actual expenditures for relocation costs due to street or sidewalk construction/repairs. The District shall pay the actual relocation costs to the Franchisee directly

or indirectly through a deduction by Franchisee from the District's quarterly revenue proceeds.

**Section 4.** Franchise shall remove, at the District's request, any Bus Shelters in order to accommodate construction by private developers as follows: Franchisee shall provide documentation to the private developer, with a copy to the District, establishing its actual relocation costs for such Bus Shelters and no Bus Shelter shall be removed until Franchisee's receipt of payment by the private developer(s) of Franchisee's actual relocation costs.

#### **ARTICLE VII. - TIME FOR PERFORMANCE**

**Section 1.** Franchisee shall complete its fabrication and installation of all Bus Shelters authorized in this Agreement, including the removal and replacement of all existing District Bus Shelters within the time limits established in Franchisee's construction management schedule, as more fully described in Section 1 of the Proposal and Section 2 herein. Delays in the construction management schedule, to the extent caused by a lack of cooperation from utility companies may be excused to the extent that Franchisee has used its best efforts to coordinate and cooperate with any such companies and/or the District.

**Section 2.** Franchisee shall, within thirty (30) calendar days after the completion of the Community Meeting Process, develop and submit a construction management schedule to the District that identifies target dates for each site development. Within thirty (30) calendar days thereafter, as part of the Bus Shelter program, Franchisee will create and make available at no cost to the District, a Web Based Portal containing the required information for each Bus Shelter covered by this Agreement.

**Section 3.** Franchisee shall install all Bus Shelters in replacement of the existing inventory no later than twenty-four (24) months following the District's issuance of a Permit,

which shall be issued within sixty (60) days of the full execution of this Agreement or within sixty (60) days of being presented with the final design plans for the Bus Shelters that are the subject of this Agreement, whichever ever occurs last, to install new Bus Shelters in the designs that were approved in the design selection process set forth in Article IV hereof. Franchisee shall cooperate with the District and upon receipt of its Permit notify the District and each effected Advisory Neighborhood Commissioner of each location five (5) business days prior to the date it intends to install a new Bus Shelter or replace an existing Bus Shelter.

**Section 4.** Within ten (10) business days of the Commencement Date, the District shall provide to the Franchisee a complete up-to-date location list for the Heritage Trail and Way Finding Sign programs. Within ten (10) business days thereafter, Franchisee shall pursuant to Sections 1 and 3 of Attachment C and Attachments D and E, assume management and maintenance for the Heritage Trail and Way Finding Sign programs.

**Section 5.** Franchisee shall have the SmartBike™ program fully operational within twelve (12) months after its submission of the construction management schedule to the District.

**Section 6.** Franchisee shall within three (3) months of the Commencement Date devise a mutually acceptable process for the District to access In-Kind Revenue sources from the appropriate divisions of Clear Channel Communications offered to the District in Attachment E.

#### **ARTICLE VIII. - CONSTRUCTION OF SHELTERS**

**Section 1.** Franchisee shall fabricate and install the Bus Shelters in accordance with the appropriate provisions of the Standard Contract Provisions For Use With District of Columbia Bus Shelter Franchise Agreement, 2005 (attached hereto as Attachment F) that is hereby incorporated by reference into this Agreement. Franchisee shall construct and install Bus

Shelters in a manner so as to ensure that they are fair and reasonably distributed throughout all the geographic areas of the District. The District reserves the right to determine whether Bus Shelter have been distributed in a fair and reasonable manner.

**Section 2.** The Franchisee shall be fully responsible for coordinating the fabrication and installation of the Bus Shelters with the public utility companies and the relevant Federal and District agencies. Franchisee shall be given a Permit for the installation of all Bus Shelters contemplated by this Agreement. However, Franchisee shall not install any Bus Shelters without first notifying the District and each effected Advisory Neighborhood Commissioner at least five (5) business days before any Bus Shelter is installed or removed.

**Section 3.** Franchisee shall install each Bus Shelter on a concrete platform set back from the roadway. If the area is fully paved, the Bus Shelter may be anchored directly into the existing concrete sidewalk.

**Section 4.** The Parties agree that Franchisee may install replacement bus shelters, to the extent permitted by the ADA, and all other applicable laws concerning disabled persons, in the same locations as the existing Bus Shelters installed prior to the Commencement Date.

**Section 5.** Franchisee shall construct and install Bus Shelters in order to meet the following requirements:

- A. The maximum height of all Bus Shelters shall be nine (9) feet.
- B. The minimum dimension for sidewalks in which full-size Bus Shelters will be mounted is eleven (11) feet, unless the District specifically authorizes otherwise. If a sidewalk is less than eleven (11) feet wide and the Franchisee desires to install a full-size Bus Shelter at that individual site, it shall submit such request in writing as

a apart of either its location maps, pursuant to Article IV, Section 5, or as soon thereafter as practicable in order for the District to make a determination as to whether the installation of a full-size Bus Shelter will be permitted. If a specific request is not made to install a full size Bus Shelter on a sidewalk less than eleven (11) feet or if such a request is denied, then a Narrow Bus Shelter shall be install provided that there is sufficient clearance from the front of the Bus Shelter to the curb. On larger sidewalks, longer Bus Shelters may be considered and may be desirable if more weather protection is needed and/or if other amenities need to be accommodated. The roof of a Bus Shelter, including any overhang, shall be set back from the curb line a minimum distance of two (2) feet.

- C. All Bus Shelters shall be located as close as possible to the Bus Stop, but no less than ten (10) feet from the Bus Stop, unless it is deemed impractical due to physical obstructions or impediments. If a Bus Shelter has only one enclosed end, it should be situated toward the head of the Bus Stop.
- D. Unless otherwise provided or permitted under this Agreement, and except where functionality dictates otherwise, the walls of all Bus Shelters shall be transparent and made of clear tempered safety glass.
- E. All Bus Shelters shall provide adequate illumination of the interior of the Bus Shelter, as well as the immediately adjacent sidewalk. The illumination should not project light beyond a five (5) foot area surrounding the Bus Shelter.
- F. All seating in Bus Shelters must prevent reclining. The District may, at any time, require Franchisee to install or remove seating in Bus Shelters at the Franchisee's

own expense.

- G. All Bus Shelters shall contain an area or areas for the conspicuous display of bus route maps, street maps, the name of the Bus Stop, street identification and other public information. Bus Stop name and street identification shall be designed in such a manner as to maximize the visibility of such name and identification for passengers on buses approaching the particular Bus Stop. The District reserves the exclusive right to name Bus Stops should it choose to do so.

#### **ARTICLE IX. - ILLUMINATION OF SHELTERS**

**Section 1.** Franchisee shall illuminate Bus Shelters with advertising panels unless the DDOT Director directs otherwise. Franchisee will illuminate the Bus Shelters utilizing artificial lighting whenever artificial lighting is provided to the public street where the Bus Shelter will be erected, or on an adjacent public street. Franchisee shall use its best efforts to erect Bus Shelters as close as possible to electrical sources. Where there is no electrical source, Franchisee will, as practically possible, illuminate Bus Shelters using SEPCO (or similar) solar powered illumination. In the event that a public street is provided with electric street lighting after a Bus Shelter is erected, the District shall have the right to require Franchisee to illuminate such Bus Shelters with appropriate artificial lighting. Franchisee's conventional lighting systems shall utilize advanced technologies that minimize energy consumption at each Bus Shelter location while providing ample illumination.

**Section 2.** Franchisee shall be responsible for installation, maintenance, repair and/or replacement of all electrical cables, conduits, and illuminating devices installed in accordance with this Agreement.

**Section 3.** Franchisee shall pay all utility costs relating to illumination of the Bus Shelters. Franchisee shall pay these utility costs directly to the respective utility companies.

#### **ARTICLE X. – MAINTENANCE**

**Section 1.** Franchisee must maintain all Bus Shelters in first-class, like-new condition throughout the life of this Agreement, including refurbishing, reconditioning, and if necessary replacing worn Bus Shelters. Franchisee must utilize the most modern and standard features available at the time of replacement for any and all maintenance and replacements of parts or features made pursuant to this Agreement.

**Section 2.** Franchisee shall be, solely and at its own expense, responsible for the complete operation, maintenance, repair, replacement and inventory of the Bus Shelters. Franchisee shall ensure that, at all times, the Bus Shelters are in excellent working order and are operated and maintained in accordance with the highest industry standards, including at a minimum the maintenance standards set forth in Section 3 of the Proposal and any and all industry standards of safety.

**Section 3.** Franchisee shall establish, operate and maintain a maintenance and operations center in the District of Columbia for the purpose of managing and monitoring the installation, maintenance and operation of the Bus Shelters, including the ability to receive and respond to complaints, comments, reports and concerns regarding the installation, maintenance and operation of the Bus Shelters. Franchisee shall create and make available at no cost to the District a Web Based Portal that will provide, throughout the term of this Agreement, up-to-date information about the Bus Shelter construction and maintenance schedule for each Bus Shelter including citizen complaints. As improvements in technology become available, Franchisee shall

implement such improvements in order to enhance the Web Based Portal, including incorporating improvements in the Web Based Portal from other aspects of the Bus Shelter program. In addition to other specifications, all Bus Shelters shall conspicuously display the telephone number of the Franchisee's maintenance and operations center, together with instructions to the public to report any damage, vandalism, graffiti, malfunction, problems, complaints, comments or concerns to such maintenance and operations center and the web site for Web Based Portal.

**Section 4. Maintenance Standards**

A. Duty to Repair or Replace Bus Shelters. To ensure that the Bus Shelters are maintained, at all times, in the best possible condition and in accordance with the highest industry standards, Franchisee shall promptly and diligently, and in all cases within the minimum standards and timeframes set forth in this Article, replace any parts or components of the Bus Shelters that are broken, deteriorated, damaged, vandalized or defaced, regardless of the nature or cause of such conditions. Franchisee shall completely replace, at its own expense, a Bus Shelter where such structures cannot reasonably be maintained in accordance with the highest standards and the objectives of this Agreement without complete replacement. All such complete replacements and replacements of parts or components shall be in accordance with the design most recently approved by the Director DDOT, and shall adhere to the same construction and material specifications.

B. Removal of Vandalized Bus Shelters. In the event that during a consecutive six (6) month period any shelter is vandalized to the extent that the cumulative expenses of all repairs exceed the cost of the original construction thereof, the Franchisee may seek the Director

DDOT's approval to remove the vandalized shelter(s) without replacement. At least fifteen (15) business days prior to Franchisee's proposed removal of the vandalized Bus Shelter(s), the Franchisee must submit to the Director DDOT, for approval, a written request for removal of the vandalized Bus Shelter along with bona fide invoices and receipts which document the cumulative expenses of all repairs. No Bus Shelter may be removed without the express written approval of the Director DDOT. Any Bus Shelters removed pursuant to this provision shall be at the Franchisee's sole expense. In conjunction with such removal, the Franchisee shall restore the respective sidewalks and curbs to the current District standard as approved for that location, at the Franchisee's sole expense.

C. Franchisee's Response to Maintenance, Repairs and Replacement Complaints and Requests.

1. Franchisee shall respond promptly and diligently to all complaints and/or notifications regarding the maintenance and operation of the Bus Shelters, and shall, at a minimum, respond within the applicable standards and timeframes set forth in the maintenance standards and in accordance with the complaint procedure set forth below and in Section G6 and G7 of the RFP.
2. Franchisee shall respond to observations or complaints for clean up or removal of safety hazards, such as broken glass, within two (2) hours of receipt of the complaint or observation and shall during that period secure and make safe any such location. Franchisee shall respond to observations or complaints for non-safety hazard repairs, maintenance and replacements within twenty-four (24) hours after its receipt of the complaint or observation.

However, should it not be possible for the Franchisee to cure any particular non-safety related deficiency within twenty four (24) hours, Franchisee shall provide an explanation of same to the District and a mutually agreeable extension period to cure any particular non-safety related deficiency may be granted.

D. Damages Resulting from Maintenance, Repairs and Replacement Defaults.

1. The Franchisee and the District acknowledge that public health and safety are of utmost importance and that the District has considered and relied on the Franchisee's representations as to its quality of service commitment in awarding the franchise to it. It is further recognized that some quantified standards of performance are necessary and appropriate to ensure consistent and reliable service and performance. Should the Franchisee fail to achieve the maintenance and repair standards set forth in this Article, the District and its residents will suffer Damages. Therefore, without prejudice to the District's right to treat such non-performance as incidents of default of the Franchisee, Franchisee agrees to pay any actual costs incurred by the District (hereinafter referred to as "Damages") to cure any and all incidences of default. The Franchisee agrees that in addition to the Franchisee paying to the District its actual costs incurred as Damages under this Agreement, the District may seek additional damages and other remedies available to it at law or in equity including Performance Bond and Security Deposit draw downs.

- a. Prior to assessing Damages and/or pursuing other remedies that the

District has under this Agreement, including all applicable laws, Performance Bond and/or Security Deposit draw downs, the District shall give the Franchisee written notice pursuant to Article XXVII of this Agreement, describing the location of the incident(s) of default and/or non-performance, the nature of the incident(s) of default and/or non-performance, and shall provide notice that the Franchisee must remedy the deficiencies described therein within twenty-four (24) hours of the receipt of the notice, except in situations where a shorter remedial period is provided in this Agreement or is necessary to protect the health and safety of the public. However, if Franchisee fails to cure any particular non-safety or non-health related deficiency within twenty-four (24) hours, Franchisee shall provide an explanation of this failure to the District and the District may grant a mutually agreeable extension period to cure any particular non-safety or non-health related deficiency. Other than such mutually agreed upon extension periods, Franchisee has twenty-four (24) hours to cure the deficiencies described in the notice or provide notice within twenty-four (24) hours of its intent to appeal to the Director DDOT.

- b. Should Franchisee appeal the District's Damages and/or the District's notice that it intends to pursue other remedies it has under this Agreement, or under the law, the Director DDOT will provide Franchisee with a written explanation of his/her determination in

connection with each incident and/or non-performance prior to authorizing the assessment of Damages. The Director DDOT's decision shall be final unless Franchisee appeals in writing to the Mayor or his/her designee within twenty-four (24) hours of Franchisee's receipt of the Director DDOT's decision with an explanation of the basis for appeal and Franchisee submits a non-refundable Five Hundred Dollar (\$500.00) appeal fee, which shall be payable in the next quarterly payment. The Mayor or his/her designee will provide Franchisee with a written explanation of his/her determination and that determination shall be final.

- c. Franchisee shall pay any Damages assessed by the District within ten (10) business days after the final determination authorizing such Damages has been made. If Franchisee fails to pay Damages within ten (10) business days following the due date, this failure shall be considered a Material Breach in which case the District, after written notice to Franchisee, may proceed to collect the damages under the Performance and/or Security Deposit provisions of this Agreement or proceed to terminate this Agreement and pursue all remedies available to it at law or in equity
- d. In the event Franchisee fails to perform its maintenance requirements under this Agreement, fails to attend to any major maintenance item, or repeatedly fails to attend to ordinary maintenance requirements, it shall

be considered a Material Breach, in which case the District, after written notice to Franchisee, may either proceed to collect the damages under the Performance Bond and/or Security Deposit provisions of this Agreement or proceed to terminate this Agreement and pursue all other available remedies at law or in equity.

**Section 5.** Franchisee shall compile and maintain a log of public complaints or comments received, together with documentation and a detailed account of Franchisee's response in each instance. Franchisee shall make this information available on the Web Based Portal within seven (7) business days of its receipt of any such information, for review by the District and the public. Franchisee shall ensure that any such information posted remains publicly available on the Web Based Portal for one (1) year and then Franchisee shall archive and maintain this information for review by the District for the lifetime of this Agreement.

**Section 6.** Franchisee agrees that, throughout the term of this Agreement, any warranted replacement of parts, obligations, and/or features covered in this Agreement will be accomplished using the most modern features and technologies available at the time of replacement (and at a minimum shall be fitted with the current technologies being used in similar projects by Franchisee), to the extent such technologies are applicable. Franchisee shall bear all costs and expenses associated therewith.

**Section 7.** The warehouse and maintenance facility to support the Franchisee's Bus Shelter program shall be located within the District of Columbia. Failure to maintain these facilities in the District shall constitute a Material Breach of this Agreement.

## **ARTICLE XI. – SAFETY**

The Franchisee is responsible for initiating, maintaining and supervising the performance of this Agreement, including, without limitation, ensuring the appropriate safety precautions and programs are implemented for areas in and around the areas where work pursuant to this Agreement will be performed. The Franchisee 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, and notifying the public and owners and users of adjacent sites and utilities. The Franchisee must promptly remedy damage and loss to property to the extent caused in whole or in part by the Franchisee, a subcontractor or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable. The foregoing obligations of the Franchisee are in addition to the Franchisee's indemnity obligations as set forth in Section 6 of Attachment F.

## **ARTICLE XII. - ADVERTISING**

**Section 1.** Franchisee shall provide the quality of advertising throughout the District pursuant to this Agreement that will gain the highest level of revenue possible for Bus Shelter advertisements in the District. The Franchisee shall not provide unpaid promotional advertising space on Bus Shelters within the District to any other governmental entity without written permission of the Director DDOT.

**Section 2.** Franchisee shall have the exclusive right during the term of this Agreement to sell and place commercial advertising on Bus Shelters in the District. Each Bus Shelter shall incorporate no more than two static or stationary Advertising Displays. Franchisee shall submit to the District for its consideration and approval any proposed Bus Shelter designs that use advertising media different from those set forth in this section.

**Section 3.** Franchisee shall make ten (10%) percent of the total available Bus Shelter advertising space in each Contract Year available for public service announcements and advertisements regarding community, art, cultural, educational, governmental, and other similar events. Franchisee shall determine the amount of such public service announcements and advertisements each month by the total number of hours advertisements are displayed during that month. Franchisee shall seek to evenly distribute public service announcements and advertisements throughout all geographic areas of the District. The Director DDOT or his designee reserves the right to choose or designate which public service announcements and/or advertisements shall be displayed should he/she choose to exercise this authority.

**Section 4.** No more than thirty-seven percent (37%) of the advertisements posted in a month shall relate to alcoholic products. Franchisee shall determine the amount of alcohol related advertisements each month by the total number of hours advertisements are displayed on Bus Shelters during that month. Outside of the Central Business District, Franchisee shall limit alcohol advertisements to locations that are not within a five hundred (500)-foot radius of a school, up to and including the level of high school, houses of worship or playgrounds. Inside the Central Business District, Franchisee shall apply this same standard to the extent it determines it is reasonable to do so.

**Section 5.** Franchisee shall not permit advertising that the District, pursuant to its review and approval under Article XII, Section 8, has determined to be obscene or sexually explicit (defined as depicting nudity (male or female genitals, pubic areas or buttocks with less than a fully opaque covering, female breasts with less than a fully opaque covering on any part of the areola or nipples, or the covered genitals in a discernibly turgid or other recognizable state) or

sexual intercourse or other sexual acts).

**Section 6.** Franchisee shall ensure that a minimum of ten percent (10%) of all Bus Shelters installed are without advertising of any kind, however Franchisee shall not reduce the number of such non-advertising Bus Shelters because of a reduction in the number of advertising Bus Shelters. Franchisee shall provide to the District a quarterly accounting of the percentage of Bus Shelters in the District that are without advertising of any kind in order to ensure compliance with is this provision. Franchisee shall fairly and reasonably distribute, as determined by the District, the construction and installation of non-advertising Bus Shelters throughout all the geographic areas of the District.

**Section 7.** Franchisee shall not install, except at Bus Shelter locations installed prior to the Commencement Date of this Agreement, advertising on Bus Shelters that are located in residentially zoned areas pursuant to the District's Zoning Regulations.

**Section 8.** Franchisee shall submit all advertisements to the District for review and approval immediately upon receipt from all prospective advertisers and prior to displaying the advertisement. The District shall have the right to reject the posting of any advertisement which the District determines to be deceptive, misleading, untruthful, obscene, sexually explicit or in violation of the District of Columbia Consumer Protection Procedures Act effective July 22, 1976 (D.C. Law 1-76; D.C. Code § 28-3905(i)(3) 2001 ed.). Franchisee shall not display any advertisement rejected by the District. If already displayed, Franchisee shall remove the advertisement as soon as reasonably possible, but in no case longer than twenty (24) hours after written notification from the District to do so. The Director DDOT shall have the exclusive authority to approve or disapprove advertising on Bus Shelters.

**Section 9.** No later than the date of termination or expiration of this Agreement, whichever is earlier, the Franchisee must remove all advertising from all Bus Shelters.

### **ARTICLE XIII. - SECURITY DEPOSIT**

**Section 1.** As security for performance by the Franchisee of its obligations hereunder, the Franchisee shall deposit into an interest bearing escrow account, within thirty (30) business days after the Commencement Date, the sum of TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000.00). The Franchisee shall establish an escrow account in a federally insured financial institution, depository, and enter into a tripartite escrow agreement with the depository, as escrow agent, and the Government of the District of Columbia.

**Section. 2.** These funds shall be maintained at such depository as designated by the District pursuant to the District of Columbia Depository Act of 1977, effective October 26, 1977 (D.C. Law 2 -2; D.C. Code Sec 47-341 et seq.) and shall bear interest to the Franchisee. The District and the Franchisee shall have joint signatory authority in the escrow account. The Franchisee shall submit bank statements for the escrow account to the District bi-annually.

**Section. 3.** The escrow agreement shall contain the following minimum requirements:

- A. The Franchisee shall maintain at least \$250,000.00 in the account at all times.
- B. Funds in the escrow account shall be used to reimburse the District of Columbia for any financial loss incurred by reason of any Event of Default as defined in Article I of this Agreement or any other Material Breach by the Franchisee as defined in Article I of this Agreement, or for the cost of moving shelters as required in Article VI of this Agreement if the Franchisee does not move them when required to do so.
- C. The District shall provide the Franchisee and escrow agent with written notice and

opportunity to cure as described in Article X, Sections 4.C and 4.D of this Agreement of the District's intent to withdraw funds from the escrow account and the reason therefore.

- D. Upon the expiration of this Agreement, the un-obligated sum or deposit including any and all interest accrued shall be returned to the Franchisee.

If the District pursuant to this section draws down any funds, Franchisee shall within thirty (30) days replenish any such funds required in order to maintain the required principal amount (defined as the minimum amount required less interest) for the Security Deposit.

#### **ARTICLE XIV. - BUSINESS OFFICE, BOOKS, AND RECORDS**

**Section 1.** The Franchisee shall maintain a business office in the District of Columbia. Such office shall be a principal place of business for the Franchisee for purposes of this Agreement where the District may serve all notices, directions, orders, complaints and requests. The Franchisee shall at all times keep, at this business office, complete and accurate books of account and records of its business and operation in connection with this Agreement. Franchisee shall keep its books of account and records in accordance with generally accepted accounting practices and procedures. Franchisee shall send to the District annually copies of its annual audited financial statements prepared using generally accepted accounting principles by a independent reputable accounting firm pertaining to the franchise Bus Shelter program in the District of Columbia showing all advertising revenue, SmartBike™ revenue, and In-Kind Revenue collected pursuant to this Agreement and all payments made thereto.

**Section 2.** Representatives from DDOT, the Office of the Inspector General, and any other designated District or Federal agencies shall have access to these books and records upon

reasonable written notice to determine the correctness of the Franchisee's payments to the District under this Agreement. At any time with three (3) business days written notice, the District shall have the right to audit the financial records of the Franchisee as they pertain to this Agreement and the franchise Bus Shelter program.

#### **ARTICLE XV. - CONTRACT REVIEW**

The District and Franchisee agree to engage in a formal review of the performance obligations covered and contemplated by this Agreement every two (2) years in order to ensure that Franchisee is performing in good faith and is meeting all of its obligations in this Agreement. In the event any deficiencies are found. Franchisee shall cure such deficiencies in accordance with the provisions set forth in Article X, Section 4 D.

#### **ARTICLE XVI. - COMPENSATION AND PAYMENTS TO THE DISTRICT**

**Section 1.** The Franchisee shall pay to the District compensation that shall be rental payments for the use and occupancy of Bus Shelters located in the Public Space as authorized by this Agreement. Such rental payments shall be equal to: (a) certain guaranteed annual minimum fees (“Annual Minimum Fee”); (b) certain lump sum cash bonus payments (“Bonus Payments”); (c) certain percentages of annual advertising revenues (“Revenue Sharing Payments”); and (d) In-Kind Revenue from Clear Channel Communications (“In-Kind Revenue”) each in the amounts and in the method and manner as more particularly described in Attachments F and H attached hereto (collectively referred to as “Payments”). Franchisee shall at no time reduce any compensation described herein regardless of whether or not Franchisee has fabricated and installed the minimum number of Bus Shelters authorized by this Agreement, except as provided for in the aforementioned Attachment G.

**Section 2.** Further Franchisee, pursuant to its Proposal, shall at no time and under no circumstances over the life of this Agreement reduce Payments to the District as a result of any expenses related to the design, fabrication, installation, operation or maintenance of the Bus Map Program, and the NextBus<sup>™</sup>, SmartBike<sup>™</sup>, SmartColumn<sup>™</sup>, or Wayfarer Totem programs, or the management and maintenance of the Heritage Trail and Way Finding sign program, pursuant to the Proposal, it is the obligation of the Franchisee to provide the foregoing to the District at no cost to the District for the life of the Agreement.

**Section 3.** In the event that the Franchisee fails to make required monetary payments required under this Agreement within thirty (30) days of the due date, the Franchisee shall pay the same with interest effective as of the thirty-first (31st) day at the rate of eighteen percent (18%) per annum or prime plus two percent (2%), if higher, until fully paid. Such interest shall not accrue with respect to disputed items being contested in good faith by the Franchisee.

**Section 4.** Franchisee shall make its Payments to the District under this Agreement to the District's account at such office or bank as the District may notify the Franchisee for this purpose. Franchisee shall make Payments on the due date, except as provided for in Attachment G, without set-off, counterclaim, abatement or reduction of any kind. Failure by the Franchisee to make a Payment within ten (10) business days of the due date for payment, and/or bankruptcy by the Franchisee, shall constitute a Material Breach of this Agreement, entitling the District to immediately terminate this Agreement by notice to the Franchisee as more fully set forth in Section 5 of the Standard Contract Provisions attached hereto as Attachment F. Upon such termination, the District shall have the right to pursue all remedies available to it at law or in equity, or otherwise pursuant to the terms of the Agreement, including monetary Damages.

**Section 5.** Franchisee shall ensure that all monetary payments, except Bonus Payments and In-Kind Revenues, are to be made quarterly in accordance with Attachment G and shall be made on October 25, January 25, April 25, and July 25 for the preceding three (3) calendar month periods. The first Bonus Payment shall be made to the District within ten (10) business days following the effective date of the Bus Shelter Amendment Act of 2005, which amends the Bus Shelter Act of 1979, to allow for a twenty (20) year term.

Franchisee shall make all checks for compensation payable to the "D.C. Treasurer" as compensation received for the rent and occupancy of Public Space in the District and mailed or delivered to the Director DDOT, or its successor agency, to the address designated by the Director DDOT.

**Section 6.** Franchisee shall ensure that a statement, executed by an authorized corporate officer, showing the amount of revenue for the period covered by the payment and explaining how the revenues were calculated is accompanied with its quarterly payments. Franchisee's statement shall also be of sufficient detail to confirm the limits on liquor advertising, to calculate the percentage of public service announcements and to determine the revenue generated and due the District from the SmartBike™ program. Acceptance by the District of any compensation due under this Agreement shall not be deemed to be a waiver by the District of any amount that is subsequently determined to be due, or from collecting any balance due to the District.

## **ARTICLE XVII. – IN-KIND REVENUE TO THE DISTRICT**

**Section 1.** Within three (3) months of the Commencement Date Franchisee shall provide the District with a mutually acceptable process in order to enable the District to make an

informed decision about Franchisee's offer pursuant to the Proposal of the use and/or removal of Clear Channel's Washington, DC outdoor advertising displays. Franchisee shall also within three (3) months of the Commencement Date develop and provide to the District a mutually acceptable process to enable the District to avail itself of all aspects of the offer including all poster-printing services, installation, maintenance and removal, for the life of the Agreement.

**Section 2.** Within three (3) months of the Commencement Date Franchisee shall provide the District with a mutually acceptable process in order for the District to access Franchisee's In-Kind Revenue offer pursuant to the Proposal for District self-promotion in any Clear Channel Outdoor advertising market around the world including poster-printing services, installation, maintenance and removal, for the life of the Agreement. Said process shall also include a description of the procedure for establishing the exact advertising locations, formats and availability for the District's advertising displays.

**Section 3.** Within three (3) months of the Commencement Date Franchisee shall provide the District with a mutually acceptable process in order to enable the District to access the Franchisee's In-Kind Revenue offer pursuant to the Proposal for District self-promotion on Clear Channel's Washington DC region radio stations, including a description of the procedure for determining broadcast times, formats and production details, for the life of the Agreement.

**Section 4.** Within three months of the Commencement Date Franchisee shall provide the District with mutually acceptable process in order to enable the District to access the Franchisee's In-Kind Revenue offer pursuant to the Proposal for Clear Channel's Washington DC region entertainment venues, including tickets for entertainment events and promotion in event brochures and related printed literature, for the life of the Agreement.

**ARTICLE XVIII. - INSURANCE AND BONDS**

**Section 1.** The District shall cause Franchisee to, procure and maintain, at its expense, the following insurance coverage:

- A. Commercial General Liability Insurance. A comprehensive commercial general liability insurance policy issued to and covering the liability for all work and operations under or in connection with this Agreement. Coverage shall include Products, Completed Operations and Contractual Liability coverage. The Care, Custody and Control exclusion shall be eliminated. The coverage under such insurance policy or policies shall have not less than the following limit:

Personal Injury and Property Damage Liability  
\$1,000,000 Combined Single Limit Each Occurrence.

The District shall be included as an additional insured under the coverage for commercial general liability insurance with respect to all activities under this Agreement.

- B. Worker's Compensation. A policy complying with the requirements of the District of Columbia, and if there is any exposure to any of the Franchisee's personnel with the U.S. Longshoremen's and Harbor Workers' Act, the Jones Act, Admiralty Laws, or the Federal Employers' Liability Act, the Contractor will provide coverage for these requirements. The coverage under such policy shall be as follows:

<b>Policy</b>	<b>Coverage</b>
Worker's Compensation	Statutory
Employer's Liability	

Each Accident	\$500,000
Disease Policy Limits	\$500,000
Disease-Each Employee	\$500,000

C. Automobile Liability Insurance. An insurance policy covering the use of all owned, non-owned, hired, rented or leased vehicles bearing, or under the circumstances which they are being used, required by the Motor Vehicle Laws of the District of Columbia to bear plates and not covered under the Franchisee's Commercial General Liability Insurance aforementioned. The coverage under such policy shall have a Combined Single Limit for bodily injury liability and property damage liability of \$1,000,000 per occurrence. The District shall be an additional insured.

**Section 2.** Insurance companies providing the coverage required by this Article must be rated by A.M. Best or a comparable rating company and carry at least an "A" rating. All insurance shall be procured from insurance companies licensed and authorized to do business in the District of Columbia.

**Section 3.** All policies and bonds required by this Article shall be in a form satisfactory to the District and provided by companies approved by the Department of Insurance Securities and Banking of the District of Columbia. Each policy or bond shall contain an endorsement requiring the insurance or bonding company to give the District thirty (30) calendar days advance notice in writing of any reduction or cancellation of the policy or bond.

**Section 4.** The Security Deposit pursuant to Article XIII of this Agreement or any monies due or to become due by the Franchisee under this Agreement may be retained by the District as necessary to satisfy any outstanding claim that the District may have against the

Franchisee.

**Section 5.** Prior to the execution of this Agreement, the Franchisee shall provide to the District a Performance Bond in the amount of two million dollars (\$2,000,000.00), and a Payment Bond in the amount of one million dollars (\$1,000,000.00), which shall be maintained throughout the term of this Agreement and any extensions thereto. The Performance Bond is intended to ensure that the Franchisee shall maintain and repair all of the Franchisee's Bus Shelters in the District in compliance with this Agreement. The Payment Bond is intended to insure that the Franchisee makes prompt payment to all subcontractors and suppliers in connection with this Agreement.

**Section 6.** The contracting officer may accept any of the following types of security:

- A. A bond provided by a surety licensed to do business in the District of Columbia.
- B. A certified check or irrevocable letter of credit issued by an insured financial institution in the equivalent amount of the security: or
- C. United States government securities that are assigned to the District, which pledge the full faith and credit of the United States.

**Section 7.** Upon termination of this Agreement, the District shall promptly take the appropriate action necessary for the release of the Performance Bond and Payment Bond and the Security Deposit pursuant to Article XIII of this Agreement except to the extent that the Performance and Payment Bond and/or Security Deposit is needed to cover any pending claim the District may have against the Franchisee.

**Section 8.** The District shall provide the Franchisee with written notice and an

opportunity to cure as described in Article X, Sections 4C and 4D of this Agreement of the District's intent to draw down from the Performance Bond and/or Payment Bond and the reason(s) therefore.

#### **ARTICLE XIX. - TERM OF FRANCHISE AGREEMENT**

This Agreement shall be for a period of twenty (20) years from the effective date of the Bus Shelter Amendment Act of 2005 that amends the Bus Shelter Act of 1979, to allow for a twenty (20) year term.

#### **ARTICLE XX. - OWNERSHIP OF BUS SHELTERS**

Upon expiration of this Agreement or termination as described above, the Bus Shelters installed pursuant to this Agreement shall become the property of the District of Columbia, without any additional cost to the District of Columbia. The District may at its sole discretion require the Franchisee to remove any or all Bus Shelters upon the expiration or termination of this Agreement. If the District elects to have any or all Bus Shelters removed, the Franchisee must restore the respective sidewalks and curbs to current District standards as approved for that location, at Franchisee's sole expense.

#### **ARTICLE XXI. APPLICABLE WAGE RATES**

**Section. 1.** The design, fabrication, installation, maintenance and operation of all Bus Shelters constitute "services" under the United States Department of Labor's Services Contract Act (SCA) in accordance with the applicable provisions of 29 CFR, Part 4, and incorporate Wage Determination No.: 1994-2103, Revision No.: 32, date of last Revision: 05/27/2004. In accordance with the SCA, multi-year contracts shall apply new SCA wage rates bi-annually. DDOT shall notify the Franchisee of new SCA Wage Determinations at the appropriate times

during the life of this Agreement.

**Section. 2.** This clause applies to contracts subject to area prevailing wage determinations and contracts subject to collective bargaining agreements.

A. The wage determination, issued under the Service Contract Act of 1965, as amended, (41 U.S.C. 351, et seq.), by the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, current on the anniversary date of a multiple year contract or the beginning of each renewal option period, shall apply to this contract. If no such determination has been made applicable to this Agreement, then the Federal minimum wage as established by section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended, (29 U.S.C. 206) current on the anniversary date of a multiple year contract or the beginning of each renewal option period, shall apply to this Agreement.

B. The Franchisee shall notify the Director DDOT of any increase claimed under this clause within thirty (30) days after receiving a new wage determination unless the Director DDOT extends this notification period in writing. The Franchisee shall promptly notify the Director of any decrease under this clause, but nothing in the clause shall preclude the Government from asserting a claim within the period permitted by law. The Franchisee shall continue performance pending agreement on or determination of any such adjustment and its effective date.

C. The Director DDOT or an authorized representative shall have access to and the right to examine any directly pertinent books, documents, papers and records of the Franchisee until the expiration of three (3) years after final payment under the Agreement.

## **ARTICLE XXII. - ASSIGNMENTS AND SUBCONTRACTS**

The Franchisee must not subcontract, 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 Director DDOT, which consent shall not be withheld arbitrarily or capriciously. The Franchisee 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 District or has been found to be non-responsible by the Director DDOT. The absence of such written consent voids the attempted delegation, subcontracting or transfer. No approvals given by the Director DDOT operate to relieve the Franchisee of any of its obligations or liabilities under this Agreement.

## **ARTICLE XXIII. - ADDITIONAL CONTRACT DOCUMENTS**

The following documents are appended to this Agreement and made a part hereof by reference:

- Attachment A -- The Request for Proposals (Open Market Invitation No.: POKA-2004-R-0001-CB, issued and published by the District on March 5, 2004 as amended on April 6, 2004; April 16, 2004; April 22, 2004; and May 7, 2004.).
- Attachment B -- The "District of Columbia Bus Shelter Act of 1979" (D.C. Law 3-67; 27 DCR 1266) as amended.
- Attachment C -- The Bus Shelter Proposal submitted by the Franchisee, dated May 14, 2004 as specifically referenced herein.
- Attachment D -- The Questions and Answers to the Bus Shelter Proposal submitted or

responded to by Franchisee, on June 25, 2004 as specifically referenced herein.

Attachment E -- The Best and Final Offer to the Bus Shelter Proposal submitted by the Franchisee, dated July 9, 2004 as specifically referenced herein.

Attachment F -- Standard Contract Provisions For Use With District of Columbia Bus Shelter Franchise Agreement, 2005.

Attachment G -- Payment and Compensation Schedule.

#### **ARTICLE XXIV. - ORDER OF PRECEDENCE**

In the event of any inconsistency between provisions of this Agreement, the inconsistency shall be resolved by giving precedence in the following order:

- a) The “District of Columbia Bus Shelter Act of 1979” (D.C. Law 3-67; 27 DCR 1266) as amended (Attachment B) ;
- b) This Agreement;
- c) Standard Contract Provisions For Use With District of Columbia Bus Shelter Franchise Agreement, 2005 (Attachment F);
- d) Payment and Compensation Schedule (Attachment G);
- e) The Request for Proposals (Open Market Invitation No.: POKA-2004-R-0001-CB, issued and published by the District on March 5, 2004 as amended on April 6, 2004; April 16, 2004; April 22, 2004; and May 7, 2004.) (Attachment A);
- f) The Best and Final Offer to the Bus Shelter Proposal submitted by the Franchisee, dated July 9, 2004 as specifically referenced herein (Attachment

E);

- g) The Bus Shelter Proposal submitted by the Franchisee, dated May 14, 2004 as specifically referenced herein (Attachment C);
- h) The Questions and Answers to the Bus Shelter Proposal submitted or responded to by Franchisee, on June 25, 2004 as specifically referenced herein (Attachment D).

#### **ARTICLE XXV. - INTEGRATION CLAUSE**

This Agreement sets forth the entire Agreement and understanding between the parties as to the subject matter hereof and merges all prior discussions between them, and neither of the parties shall be bound by any conditions, definitions, warranties, understandings or representations with respect to such subject matter other than as expressly provided herein or as provided by applicable District or Federal law, rule or regulation.

#### **ARTICLE XXVI. - MISCELLANEOUS**

**Section 1.** All dates and times stated herein are of the essence. This Agreement shall inure to and be binding upon the parties hereto, their heirs, executors, administrators, and successors and assigns. However, nothing in this Agreement grants the Franchisee the right and/or privilege to assign any portion of its responsibilities or duties described herein to any third party.

**Section 2.** Either the District or Franchisee may offer proposed amendments to this Agreement. All proposed amendments must be in writing and must, if approved by the non-offering party, be signed by both the District and Franchisee before becoming a part of this Agreement.

**Section 3.** Should any provision(s) of this Agreement be deemed illegal or unenforceable by a Court of competent jurisdiction, such term or provision shall remain in force and effect to the extent allowed by such ruling and all other terms and provisions of this Agreement or the application of this Agreement to other situations shall remain in full force and effect. Notwithstanding the foregoing, if any material term or provision of this Agreement or the application of such material term or condition to a particular situation is finally found to be void, invalid, illegal or unenforceable by a court of competent jurisdiction, then the District and Franchisee agree to work in good faith and fully cooperate with each other to amend this Agreement to carry out its intent.

**Section 4.** The District and Franchisee agree that all fiscal matters pertaining to this Agreement shall be in accordance with and governed by generally accepted accounting procedures.

#### **ARTICLE XXVII. - NOTICE**

Whenever any written notice is required to be given to either the District or the Franchisee under this Agreement, it shall be given by (a) depositing in the United States mail, postage prepaid, return receipt requested, certified or registered mail, or (b) by delivery by messenger or (c) by a reputable, nationally known overnight delivery service; and with (d) a facsimile copy transmitted to each recipient, which in all cases shall correctly be addressed to each addressee as follows:

(1) If to the District of Columbia:

Director DDOT  
District Department of Transportation

2000 14th Street, NW, Sixth Floor  
Washington, DC 20009  
Telephone: 202-673-6873  
Facsimile: 202- 671-0127

(2) If to the Franchisee:

President  
Clear Channel Adshel Inc.  
1401 I Street, NW, Suite 401  
Washington, DC 20005  
Telephone: 202-289-3220  
Facsimile: 202-289-0050

With a copy to:

Washington DC Franchise Contract Administrator  
Clear Channel Adshel Inc.  
110 East 42nd Street, 18th Floor  
New York, NY 10017  
Telephone: 212-972-0515  
Facsimile: 212-818-0618

Notice shall be deemed received when actually received or when the addressee has refused the proffered Notice. The signature of an employee, servant or agent of the addressee shall be determinative on the issue of actual receipt.

Notice shall be deemed received when actually received or when the addressee has refused the proffered Notice. The signature of an employee, servant or agent of the addressee shall be determinative on the issue of actual receipt.

IN WITNESS WHEREOF, the District and Franchisee hereto have executed this Agreement and affixed their seals as of the day and year first above written.

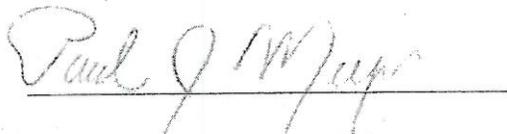
District of Columbia:



Name Anthony A. Williams

Date September 26, 2005

Clear Channel Adshel Inc.



Name Paul J. Meyer, CEO

Date July 13, 2005

## Attachment G - Payment and Compensation Schedule

### A. **Payments to the District for the Installation of Seven Hundred and Sixteen (716) Bus Shelters with Advertising**

1. Franchisee shall make Lump Sum Bonus Payments to the District as follows:

- a. \$24 million in year one (1) shall be paid to the District within ten (10) business days following the effective date of the Bus Shelter Amendment Act of 2005 that amends the Bus Shelter Act of 1979 to allow for a twenty (20) year term.
- b. \$25 million in year ten (10) shall be paid to the District on the first (1<sup>st</sup>) day of the twelfth (12<sup>th</sup>) month of the tenth (10<sup>th</sup>) year following the Commencement Date, unless it is reduced in whole or in part as provided for in Section C below.

2. Schedule of Guaranteed Annual Minimum Fee Payments

Franchisee shall make all guaranteed Annual Minimum Fee payments quarterly on or before October 25, January 25, April 25, and July 25 for the preceding three (3) calendar month periods during each year in accordance with Article XVI, Section 5 of the Agreement.

3. Schedule of Revenue Sharing Payments

Franchisee shall make all Revenue Sharing Payments quarterly, pursuant to the applicable annual percentage rates, on or before October 25, January 25, April 25, and July 25 for the preceding three (3) calendar month periods during each year in accordance with Article XVI, Section 5 of the Agreement.

4. Franchisee's Payments to the District shall be based on the following Schedule:

Contract Year	Guaranteed Revenue Payments incl. Lump Sum Cash Bonus	Annual Revenue Sharing Rate
1	\$24,000,000	30%
2	\$2,091,000	30%
3	\$2,526,000	30%
4	\$3,097,000	30%
5	\$3,465,000	30%
6	\$4,204,000	35%
7	\$4,372,000	35%
8	\$4,547,000	35%
9	\$4,728,000	35%
10	\$29,918,000	35%
11	\$5,114,000	35%
12	\$5,319,000	35%
13	\$5,531,000	35%
14	\$5,753,000	35%
15	\$5,983,000	35%
16	\$7,777,000	35%
17	\$8,089,000	35%
18	\$8,412,000	35%
19	\$8,749,000	35%
20	\$9,098,000	35%
	<b>\$152,773,000</b>	

5. Amount of Projected Gross Revenue exceeding Guarantee

The Franchisee in their Best and Final Offer estimate the amount of projected gross revenue exceeding the guarantee to be: **\$14,172,200.**

**B. The Parties' Obligations to Enable the Installation of Seven Hundred and Sixteen (716) Bus Shelters with Advertising**

1. Pursuant to the terms and conditions of the Agreement, the Parties agree that the installation of new and/or replacement Bus Shelters with advertising is predicated on the District fulfilling its obligation to issue a Permit to install all Bus Shelters pursuant to the Agreement.
2. Should the District in violation of the Agreement fail, refuse or otherwise not authorize Franchisee to install a minimum of seven hundred and sixteen (716) Bus Shelters with advertising within twenty-four (24) months of the Commencement Date, the Parties agree that there shall be an Abatement Schedule for the purpose of enabling the Franchisee to recoup a portion of its

Bonus Payments and/or Annual Minimum Fees that were predicated on the Franchisee's expectation that its revenues and payments to the District would be derived from seven hundred and sixteen (716) advertising Bus Shelters within the first twenty-four (24) months of the Commencement Date.

**C. Abatement Procedure for the District's Failure to Authorize the Installation of Seven Hundred and Sixteen (716) Bus Shelters with Advertising**

1. In the event that the District in violation of the Agreement has failed, refused, or has otherwise not authorized Franchisee to install seven hundred and sixteen (716) Bus Shelters with advertising by the first day of the twenty-fifth (25<sup>th</sup>) month following the Commencement Date, then the Parties agree that the Franchisee may abate payments to the District in the method and manner as described below.
2. Should abatements appear to be necessary, then the Franchisee shall inform the District in writing no later than the first day of the twenty-third (23<sup>rd</sup>) month following the Commencement Date that Franchisee intends to cease, or reduce as is appropriate in its next quarterly payment to the District, Franchisee's Annual Minimum Fee and, if applicable, its Bonus Payment in year 10, as a result of the District's refusal in violation of the Agreement to authorize Franchisee to install seven hundred and sixteen (716) Bus Shelters with advertising by the end of the twenty-fourth (24<sup>th</sup>) month following the Commencement Date.
3. Franchisee shall provide to the District thirty (30) days notice prior to the end of any quarter for the life of the Agreement should further abatements in any quarter be necessary.
4. Abatement Rate. The Parties shall determine the rate of abatement by dividing seven hundred and sixteen (716) Bus Shelters into the total scheduled guaranteed Annual Minimum Fee payment and/or Bonus Payment, if applicable, in any quarter ("the Abatement Rate"). This calculation shall derive the Abatement Rate, which shall be used to calculate the total abatement amount per quarter.
5. Abatement Amount. The quarterly abatement amount shall be calculated by multiplying the Abatement Rate by the total number of Bus Shelter advertising installations below seven hundred and sixteen (716) in any quarter (hereinafter referred to as the "Abatement Amount") that are attributable to the District's failure to authorize installations in violation of the Agreement.
6. Sample Abatement Calculation
  - a. The calculation to determine an Abatement Rate for any quarter is as follows:

Quarterly payment amount due to the District = Abatement Rate  
716 Bus Shelters

- b. The calculation to determine an Abatement Amount by which quarterly payments may be reduced is as follows:

Abatement Rate multiplied by the number of Bus Shelters below 716 =  
Abatement Amount

- c. Hypothetical Illustration

Assumption: If 135 of 716 Bus Shelters have not yet been authorized by the District in the year 3, Q1 and a \$631,500 quarterly payment is due the District, then the calculation to determine the Abatement Amount would be as follows:

\$631,500 quarterly payment = \$881.98 (Abatement Rate)  
716 Bus Shelters

\$881.98 x 135 Bus Shelters = \$119,067.30 (Abatement Amount)

\$631,500.00  
-\$119,067.30  
\$512,432.70 = Abated Payment Due the District in Year 3, Q1.

**D. Additional Compensation to the District for the Installation of Bus Shelters with Advertising Provided in conjunction with the New Washington Nationals Baseball Stadium**

1. As described in the Ballpark Omnibus Financing and Revenue Act of 2004, construction of a new baseball stadium approximately bounded by N Street, SE, Potomac Avenue, SE, South Capitol Street, SE and 1<sup>st</sup> Street, SE (hereinafter referred to as the "Stadium") is scheduled to be built for the Washington Nationals baseball team.
2. Following the completion of the Stadium, the Parties agree that an enhanced Revenue Share Payment percentage of seventy-five percent (75%) shall be made to the District for any Bus Shelters with advertising installed within a radius of 4,000 feet surrounding the Stadium (hereinafter referred to as the "Stadium Zone").
3. The enhanced Revenue Share Payment shall be made to the District in the first applicable quarterly payment.
4. All other terms and conditions of the Agreement shall apply to Bus Shelters installed and/or replaced in the Stadium Zone.

**E. Additional Compensation to the District for the Installation of Bus Shelters with Advertising Provided in conjunction with the Anacostia Waterfront Initiative**

1. The Parties agree that an enhanced Revenue Share Payment percentage of fifty percent (50%) shall be made to the District for any Bus Shelters with advertising installed within the Anacostia Waterfront Initiative as defined in the DC CODE § 2-1223 (1) (A).
2. The enhanced Revenue Share Payment shall be made to the District in the first applicable quarterly payment.
3. All other terms and conditions of the Agreement shall apply to Bus Shelters installed and/or replaced in conjunction with the Anacostia Waterfront Initiative.

**F. In-Kind Compensation to the District**

1. Franchisee shall make available to the District In-Kind Revenue in the amounts described in Attachment E hereof.
2. In-Kind Revenue provided to the District shall from year-to-year be adjusted for inflation pursuant to the Consumer Price Index for All Urban Consumers (CPI-U) in the Washington-Baltimore area.
3. In-Kind Revenue provided to the District shall reflect the lowest price available to any of Franchisee's other clients.