



File No. 04-1000-20-2016-229

July 20, 2016

s.22(1)

Dear s.22(1)

Re: Request for Access to Records under the Freedom of Information and Protection of Privacy Act (the "Act")

I am responding to your request of June 28, 2016 for:

Contracts and any amendments made from January 1, 2002 through to June 28, 2016 to support the 20 year Transit Shelter and Street Furniture Advertising contract awarded to Viacom Decaux LLC in August of 2002.

All responsive records are attached.

Under section 52 of the Act you may ask the Information & Privacy Commissioner to review any matter related to the City's response to your request. The Act allows you 30 business days from the date you receive this notice to request a review by writing to: Office of the Information & Privacy Commissioner, <a href="mailto:info@oipc.bc.ca">info@oipc.bc.ca</a> or by phoning 250-387-5629.

If you request a review, please provide the Commissioner's office with: 1) the request number assigned to your request (#04-1000-20-2016-229); 2) a copy of this letter; 3) a copy of your original request for information sent to the City of Vancouver; and 4) detailed reasons or grounds on which you are seeking the review.

Please do not hesitate to contact the Freedom of Information Office at <u>foi@vancouver.ca</u> if you have any questions.

Yours truly,

Barbara J. Van Fraassen, BA Director, Access to Information

City Clerk's Department, City of Vancouver

Encl.

:kt



## CITY OF VANCOUVER STREET FURNITURE AGREEMENT RFP NO. PS02004

THIS AGREEMENT dated for reference December 10, 2002

#### **BETWEEN:**

# VIACOM OUTDOOR JCDECAUX STREET FURNITURE CANADA LIMITED PARTNERSHIP

c/o Suite 800-885 West Georgia Street Vancouver, British Columbia, V6C 3H1

(hereinafter called the "Contractor")

OF THE FIRST PART

#### AND:

CITY OF VANCOUVER 453 West 12th Avenue Vancouver, British Columbia V5Y 1V4

(hereinafter called the "City" when referring to the corporate entity and "City of Vancouver" when referring to the geographical location)

OF THE SECOND PART

#### WHEREAS:

- A. Pursuant to the RFP (as hereinafter defined) the City invited qualified proponents to submit proposals to respond to the City's request for a contract to, inter alia, provide Street Furniture (as hereinafter defined) in the City of Vancouver and to provide for a plan to generate and share revenues with the City from display advertising on or within the Street Furniture;
- B. The Contractor submitted a proposal in response to the RFP; and
- C. The City approved the Contractor's proposal in principle and conditionally awarded the Contractor the Exclusive Right of Street Furniture Advertising (as hereinafter defined), subject to the execution and delivery of this Agreement.

NOW THEREFORE THIS AGREEMENT WITNESSES THAT in consideration of the sum of Two Dollars (\$2.00), the covenants and agreements herein contained and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged and agreed to by the parties) the parties hereto hereby covenant and agree as follows:

# ARTICLE 1 INTERPRETATION

#### 1.1 Definitions

Unless the context otherwise specifies or requires, for the purposes of this Agreement, including the Schedules hereto, the terms defined in this Section 1.1 shall have the following meaning:

"Agreement" means this Agreement, together with the Schedules and attachments hereto, all as may be amended in writing from time to time;

"Advertising Agency Commission(s)" means standard agency commissions deducted by, or paid or payable to, a bona fide advertising agency with respect to advertising placed with the Contractor by such agencies other than:

- (a) Any commissions paid in respect of advertising obtained directly by the Contractor, or any Affiliate of the Contractor (including without limitation Viacom Outdoor and JCDecaux); and
- (b) Any commission which exceeds 15% of the price of the advertising at the time of the sale, or, with the City's consent (such consent not to be unreasonably withheld), such other percentage of the price of the advertising at the time of the sale that exceeds industry standard commissions applicable to the Greater Vancouver Area as they may be from time to time;

"Advertising Panels" or "Ad Panels" means the scrolling or static display areas containing advertising or other messages which are formatted to the current industry standard for bus shelter advertising panels of approximately 4'x6' and if and when applicable, column advertising panels of approximately 4.5'x11.5';

"Advertising Protocol" means the minimum standards and criteria applicable to the form, content and size of the proposed advertising and each Advertising Panel, attached hereto as Schedule "A";

"Affiliate" means, with respect to the Contractor:

- (a) Any corporation which is directly or indirectly controlled by the Contractor.
- (b) If the Contractor is a corporation, "Affiliate" also means:
  - (i) any corporation which directly or indirectly controls the corporate Contractor; and
  - (ii) any corporation which is directly or indirectly controlled by a corporation which controls the corporate Contractor.
- (c) If the Contractor is a partnership or a limited partnership, "Affiliate" also means:
  - (i) any partner of the partnership or any corporation which directly or indirectly controls that partner; and

(ii) any corporation which is directly or indirectly controlled by a corporation which controls that partner.

For the purposes of the foregoing definition, a corporation is controlled by another Person if:

- (A) shares of the corporation carrying more than 50% of the votes for the election of directors are held, other than by way of security only, by or for the benefit of that Person, and
- (B) the votes carried by the shares mentioned in paragraph (A) are sufficient, if exercised, to elect a majority of the directors of the corporation;
- "Amendment" means the amending document to the RFP issued by the City as Amendment No. 1 dated April 25, 2002;
- "Applicable Laws" means in respect of any Person, all provisions of constitutions, statutes, rules, regulations, ordinances, by-laws, requirements, orders, published policies and interpretations of Authorities applicable to such Person including without limitation environmental and land use requirements and all orders and decrees of all courts and arbitrators in proceedings or actions to which the Person in question is a party or by which such person is bound;
- "Authorities" means all federal, provincial and municipal government, judicial, public or statutory authority, bodies, boards, commissions regulatory agencies, councils, tribunals, departments and other divisions thereof having jurisdiction over the Work or this Agreement;
- "Authorization" means with respect to any Person, any authorization, order, permit, approval, grant, consent, waiver, license, right, franchise, privilege, certificate, judgment, writ, injunction, award, determination, direction, decree, by-law, rule or regulation of any Authority having jurisdiction over such Person, whether or not having the force of law;
- "Automated Public Toilets" means the freestanding public toilets with a self cleaning mechanism required to be provided, installed and maintained by the Contractor pursuant to this Agreement;
- "Business Associations" means any local association approved or recognized by the City including associations which organize and manage business improvement areas within the City of Vancouver, as well as other neighborhood groups organized within the City of Vancouver;
- "Business Day" means any day which is not a Saturday or a Sunday, or a day observed as a holiday under any of the laws of the Province of British Columbia or the laws of Canada applicable to the Province of British Columbia;
- "City Annual Revenue Share" means, in any given Fiscal Year, the greater of the Percentage of Gross Revenues and the Guaranteed Minimum Annual Revenue;
- "City Council" means the council of elected councilors of the City and the mayor of the City;
- "City Designated Representatives" means the City's employees or representatives who are authorized by the General Manager of Engineering Services to deal with the Contractor on behalf of the City in connection with this Agreement, the Work and to otherwise make decisions in connection with this Agreement;

"City Designees" means any not-for-profit community organizations or City governmental entities which the General Manager of Engineering Services or the General Manager of Community Services designates in writing to the Contractor, from time to time, as the designated recipient of the Public Use Panels;

"City Furniture" means the street furniture currently owned by the City, which is currently placed and sited in the Public Realm. The descriptions of the City Furniture to be included under this Agreement are detailed in Schedule "B" attached hereto;

"Claim" means any demand, liability, obligation, debt, cause of action, suit, proceeding, judgment, award, assessment and re-assessment;

"Confidential Information" means, with respect to each Party, as disclosing Party, any oral or written data and information, now or hereafter existing during the currency of this Agreement, relating to the business and management of the disclosing Party, including without limitation:

- (a) any proprietary or trade-secret technology, knowledge, know-how, copyright, trademark or trade name owned or licensed by that Party or its Affiliate, including, where the Contractor is the disclosing Party:
  - inventions, devices, discoveries, concepts, ideas, formulae, know-how, processes, techniques, systems and methods of the disclosing Party or its Affiliates and any and all improvements, enhancements and modifications thereto, whether patented or not;
  - (ii) enhancements, modifications, additions or other improvements to the intellectual property or assets owned, licensed, sold marketed or used by the disclosing Party or its Affiliates; and
  - (iii) trade-marks, trade names, business names, logos, design marks and other proprietary marks owned, licensed, sold, marketed or used by the disclosing Party or its Affiliates; and
- (b) any record or report, document, policy, practice, agreement, account, ledger or other data or information relating to the business operations of the disclosing Party or its Affiliates,

to which access is granted or obtained by the other Party as receiving Party, but excluding any data or information which:

- (c) was possessed by receiving Party prior to its receipt from disclosing party, other than through prior disclosure by the disclosing Party;
- (d) is published or available to the general public otherwise than through a breach of this Agreement;
- (e) is obtained by receiving Party from a third party with a valid right to disclose it, provided that the third party is not under a confidentiality obligation to disclosing Party; or

(f) disclosure of which is required by law.

"Costs" means all costs, expenses, damages, Claims, penalties, fines, charges, obligations and outlays;

"Commencement Date" means January 1, 2004, provided the Installation Permits have been issued for at least 90% of the Modular Bus Shelters with Ad Panels as set out for the Pre-Term Period in the Street Furniture Rollout Schedule and provided the City is in compliance with Section 3.1 hereof;

"C.P.I." means the "All Items Consumer Price Index" for Vancouver, British Columbia, as published by Statistics Canada, provided that:

- (a) if the C.P.I. ceases to use the time base of "One Hundred (100) equals the average C.P.I. for 1992" as the basis of the C.P.I. calculation, then the C.P.I. will be adjusted to the figure that would have been arrived at had the change in the time base not occurred; and
- (b) if the C.P.I. is not available, the Contractor and the City agree that a comparable replacement index satisfactory to both parties shall be chosen as soon thereafter as practicable;

"Director of Legal Services" means the chief administrator from time to time of the Law Department of the City of Vancouver and her successors in function and their respective nominees;

"Downtown Peninsula" means that area of the City of Vancouver shown outlined in bold black line on Schedule "C";

"Effective Date" means December 10, 2002;

"Exclusive Right of Street Furniture Advertising" means the exclusive rights conferred upon the Contractor under Section 3.3;

"Financial Terms" means the Guaranteed Minimum Annual Revenue and the Percentage of Gross Revenues applicable to the Pre-Term Period, the Term and the Post-Term Period, as described in Schedule "D";

"Fiscal Year" means each consecutive 12 month period following the Commencement Date over the Term;

"Force Majeure" means any circumstance or act beyond the reasonable control of a party to this Agreement claiming Force Majeure, including, an intervening act of God or public enemy, an act or acts of terrorism, war, blockade, civil commotions, forest fire, epidemic, quarantine restriction, a stop work order or injunction issued by a court or Authority having jurisdiction, governmental embargo, all or any of which delays the performance of any obligation under this Agreement, provided such circumstance or act is not otherwise expressly dealt with under this Agreement or does not arise by reason of:

- (a) the gross negligence or wilful misconduct of the party claiming Force Majeure or those for whom it is responsible at law;
- (b) any act or omission by the party (or those for whom it is responsible at law) claiming
   Force Majeure in breach of the provisions of this Agreement; and

(c) an inability by the Contractor to satisfy its financial obligations under this Agreement, except to the extent that such inability results from an event of Force Majeure which prevents the Contractor from installing permitted Ad Panels or from selling advertising thereon;

"Free Standing Advertising Displays" means displays containing Advertising Panels that are not attached to any Street Furniture, all as described in the Advertising Protocol;

"General Manager of Community Services" means the chief administrator from time to time of the Community Services Division of the City and her successors in function and their respective nominees:

"General Manager of Engineering Services" means the chief administrator from time to time of the Engineering Department of the City of Vancouver and his successors in function and their respective nominees;

"Gross Revenues" means, for the Pre-Term Period, in any given Fiscal Year, or during the Post-Term Period, as the case may be, the total revenues received by the Contractor from the sale of advertising on the Advertising Panels less Advertising Agency Commissions and Refunded Monies;

"GST" means goods and services tax as provided for in the Excise Tax Act, R.S.C. 1985, c. E-15, as amended, or any successor or parallel legislation that imposes a tax on the recipient of goods and services supplied under this Agreement and any taxes or fees that may be imposed in replacement or substitution for, or in addition to, such taxes;

"Guaranteed Minimum Annual Revenue" means, in any given Fiscal Year, or during the Post-Term Period, the minimum guaranteed sum which is payable and shall be paid by the Contractor to the City without deduction or set-off except as provided for in Section 8.4 hereof and in accordance with the Financial Terms. For greater certainty, the Guarantee Minimum Annual Revenue in respect of the Post-Term Period is based on a 12 month period;

"Installation Permits" means the Authorizations required to be issued by the General Manager of Engineering Services for the installation of the Street Furniture Elements during the Pre-Term Period and the Term;

"Loss" means any loss whatsoever, including Costs, Claims, demands, liabilities, interest and any and all legal fees and disbursements;

"Mid Term Election Date" means the last day of the 10th Fiscal Year of the Term;

"Modular Bus Shelters" means the modular bus shelters, with or without Advertising Panels, designed and submitted as part of the Street Furniture Design Drawings as approved by the General Manager of Engineering Services;

"Parties" means the City and the Contractor;

"Percentage of Gross Revenues" means, during the Pre-Term Period, in any given Fiscal Year, or during the Post-Term Period, the percentage of Gross Revenues which is payable and shall be paid by the Contractor to the City without deduction or set-off except as provided for in Section 8.4 herein and in accordance with the Financial Terms of this Agreement;

"Person" means an individual, corporation, partnership, joint venture, association, trust, pension fund, union, governmental agency, board, tribunal, ministry, commission or department and the heirs, beneficiaries, executors, legal representatives or administrators of an individual;

"Post-Term City Revenue Share" means, in respect of the Post-Term Period, the greater of the Guaranteed Minimum Annual Revenue, pro-rated in respect of the actual Post-Term Period, and the Percentage of Gross Revenues for the Post-Term Period;

"Post-Term Period" means that period of time directly following the Termination Date of this Agreement to be determined by the General Manager of Engineering Services and which in any event, will not be less than 6 months;

"Pre-Term City Revenue Share" means 20% of the total revenues received by the Contractor from the sale of advertising on the Advertising Panels less Advertising Agency Commissions and Refunded Monies during the Pre-Term Period which is payable and shall be paid by the Contractor to the City without deduction or set-off except as provided for in Section 8.4 hereof and in accordance with the Financial Terms;

"Pre-Term Installations" means the Street Furniture to be delivered and installed during the Pre-Term Period in accordance with the Street Furniture Rollout Schedule as specified in Schedule "E";

"Pre-Term Period" means that period of time from the Effective Date to the Commencement Date;

"PST" means the tax as provided for in the Social Services Tax Act, R.S.B.S. 1996, chap. 431;

"Public Realm" means all the spaces in public ownership and for the purposes of this Agreement, Public Realm means all public streets from property line to property line inclusive of sidewalks and roadways;

"Public Use Panels" means at any given time during the Term, 10% of the Advertising Panels, or as otherwise provided for in the Agreement, to be made available by the Contractor to the City for use by the City or the City Designees and which are to be administered, located and maintained, in accordance with this Agreement. The City and the City Designees shall not sell their rights to Public Use Panels to any Person;

"Refunded Monies" means any revenues received by the Contractor in respect of this Agreement which are refunded by the Contractor in the ordinary course of the Contractor's business or packaging advertising sales;

"RFP" means the Request for Proposal issued by the City as "Proposal No. PS02004";

"Site Plans" means scaled plans showing each Street Furniture Element to be installed by the Contractor in the Public Realm;

"Street Furniture" means any and all Street Furniture Elements provided by the Contractor (with or without Advertising Panels) including Modular Bus Shelters; column kiosks; vending kiosks; Freestanding Advertising Displays; benches; litter receptacles; recycling receptacles; multiple publication news racks; modular pay telephone booths; modular information kiosks; modular bike lockers; bike racks; Automated Public Toilets; and pedestrian-oriented map stands;

"Street Furniture Design Drawings" means a line drawing and/or rendering with dimensions of each Street Furniture Element;

"Street Furniture Elements" means the individual street furniture items provided by the Contractor set out in the definition of Street Furniture;

"Street Furniture Rollout Schedule" means the schedule during the Pre-Term Period and the Term in respect of the rollout and installation of the Street Furniture Elements, all as specified in Schedule "E" attached hereto;

"Technical Standards and Specifications" means any and all design and/or construction requirements, specifications, standards, directives, protocols, guidelines, policies and statements and procedures issued, utilized or adopted from time to time by any Authorities applicable to the Work or any part thereof, including those requirements, specifications and standards expressly set out or referred to in Schedule "F", as such requirements, specifications and standards may be amended, supplemented or replaced from time to time by the applicable Authorities;

"Term" means twenty years following the Commencement Date;

"Term Installations" means the Street Furniture to be delivered and installed during the Term in accordance with the Street Furniture Rollout Schedule as specified in Schedule "E";

"Termination Date" means the last day of the twentieth Fiscal Year; and

"Work" means all specifications and requirements (general and otherwise) pertaining to the provision of Street Furniture and Advertising Panels, and to the equipment, goods, materials and services required to be delivered or otherwise provided by the Contractor as set out in this Agreement together with all such other services and work as are necessary for or incidental thereto including supplying all labour, supervision management, overhead, supplies, freight, handling, customs, insurance, and transportation.

## 1.2 Interpretation

In this Agreement, except as otherwise expressly provided or as the context otherwise requires:

- (a) headings are solely for convenience of reference and are not intended to be complete or accurate descriptions of content or to be guides to interpretation of this Agreement or any part of it;
- (b) the words "including" or "includes", when following a general statement or term, mean "including (or includes) without limitation" and are not to be construed as limiting the general statement or term to any specific item or matter set forth or to similar items or matters, but rather as permitting the general statement or term to refer to all other items or matters that could reasonably fall within its broadest possible scope;
- (c) the phrase "the aggregate of", "the total of", "the sum of", or a phrase of similar meaning means "the aggregate (or total or sum), without duplication, of";

- (d) in the computation of periods of time from a specified date to a later specified date, unless otherwise expressly stated, the word "from" means "from and including" and the words "to" and "until" each mean "to but excluding";
- (e) an accounting term not otherwise defined herein will be interpreted in accordance with accounting principles generally accepted in Canada as defined in the Canadian Institute of Chartered Accountants, Section 1000, applied on a consistent basis, which principles may be herein referred to as "GAAP" as it applies to the outdoor advertising industry in Canada;
- (f) a reference in this Agreement or any agreement contemplated herein to currency means Canadian currency;
- (g) a reference to a statute includes all regulations made thereunder, all amendments to the statute or regulations in force from time to time, and every statute or regulation that supplements or supersedes such statute or regulations;
- (h) a reference to an entity includes any successor to that entity;
- (i) a word importing the masculine gender includes the feminine and neuter, a word in the singular includes the plural, a word importing a corporate entity includes an individual, and vice versa; and
- (j) persons will be considered as dealing with each other at arm's length if they would be so considered for the purposes of the *Income Tax Act* (Canada) in effect on the date hereof;

#### 1.3 Schedules

The following are the Schedules attached to and forming part of this Agreement:

Schedule "A" - Advertising Protocol

Schedule "B" - Street Furniture Inventory/Requirement

Schedule "C" - Map of Downtown Peninsula

Schedule "D" - Financial Terms

Schedule "E" - Street Furniture Rollout Schedule

Schedule "F" - Street Furniture Designs

Schedule "G" - Insurance

# ARTICLE 2 EFFECTIVE DATE AND TERM

### 2.1 Effective Date

The rights and obligations of the City and the Contractor under this Agreement shall come into existence and be enforceable on the Effective Date.

### 2.2 Term

The Term of this Agreement shall commence upon the Commencement Date and shall end on the Termination Date, subject only to the earlier termination in accordance with the terms of this Agreement.

# ARTICLE 3 OBJECTIVES AND REQUIREMENTS

## 3.1 Transition and Removal of Pattison Equipment.

The City shall:

- (a) cause its existing contractor providing bus shelter service to remove its bus shelters (set forth on the "Pattison Bus Shelter Schedule" to be provided by the City by April 15, 2003) commencing April 15, 2003; and
- (b) shall deliver all existing bus shelter sites no later than June 1, 2003.

The Contractor shall not be obligated to commence Pre-Term Installations until existing bus shelters have been removed. The Commencement Date and Contractor's financial obligations shall be adjusted accordingly if installation is postponed due to the failure to remove the existing bus shelters.

## 3.2 Objectives

Each of the Contractor and the City acknowledge an intention to enter into this Agreement in furtherance of, inter alia, the following objectives, namely:

- (a) to implement coordinated suites of the Street Furniture to standards specified under this Agreement;
- (b) to allow the Contractor to offset the cost of the supply, installation, service and maintenance of the Street Furniture by allowing limited and controlled advertising on some Street Furniture Elements; and
- (c) to generate a revenue stream for the City which is consistent with the projections contained in the Financial Terms.

### 3.3 Requirements

In furtherance of the broadly stated objectives in this Article 3 and without limiting the application of the provisions contained in this Agreement, the Contractor shall at all times during the Pre-Term Period, the Term and the Post-Term Period:

- (a) perform the Work including the installation of the Street Furniture Elements set forth on Schedule "E" attached hereto; and
- (b) maintain a first class standard of care, skill and diligence in performing the Work and warrant that the Work shall be performed and maintained to the high standards as provided herein.

The City shall, at all times during the Pre-Term Period and the Term, confer upon the Contractor the exclusive right to advertise on Modular Bus Shelters and Automated Public Toilets, and shall have the exclusive right to advertise on other Street Furniture subject to prior written approval of the City. For greater certainty, the City shall not advertise nor shall the City grant advertising rights in respect of the Street Furniture to any third party.

# ARTICLE 4 DESIGN AND FABRICATION

## 4.1 Design of Street Furniture

The Contractor shall, at its cost, undertake and complete, or cause to be undertaken and completed, the construction drawings of the Street Furniture in accordance with the Street Furniture Design Drawings and the following conditions:

- (a) all Street Furniture Elements required under this Agreement, but not attached as part of Schedule "F" shall be designed in accordance with the Viacom Decaux Design Lines as submitted in response to the RFP or other such designs as the Parties may agree to from time to time; and
- (b) the Parties will consult with each Business Association before finalizing the street furniture designs for any elements being installed in their area of jurisdiction. The City acknowledges that the Downtown Business Association has been consulted and has accepted the City Line Modular Bus Shelter design as shown on Schedule "F". The City shall use reasonable commercial efforts to approve all street furniture designs by no later than June 1, 2004.

## 4.2 Compliance

The design of the Street Furniture shall comply with Applicable Laws, including for certainty all relevant City by-laws and the British Columbia Building Code, particularly in respect to accessibility and safety issues pertaining to people with disabilities and special needs.

## 4.3 Approval of Construction Drawings

Notwithstanding the issuance of the Installation Permits, the construction drawings and specifications for each Street Furniture Element must be submitted to the General Manager of Engineering Services for approval. Upon receipt of such drawings and specifications, the General Manager of Engineering Services will, within 15 days, review and provide comments to the Contractor or grant his approval in respect thereof. If the General Manager of Engineering Services provides comments to the Contractor, the Contractor shall make such changes and amendments to the said plans and specifications as are stated by the General Manager of Engineering Services, providing such changes and amendments are reasonable and do not substantially alter the Street Furniture Design Drawings, and the Contractor shall thereafter re-submit said plans and specifications within 15 days to the General Manager of Engineering Services for review. This process shall continue until the General Manager of Engineering Services gives his final approval to such drawings and specifications. The City shall be responsible for the costs incurred by the General Manager of Engineering Services in reviewing the construction drawings and specifications for the Street Furniture.

# 4.4 Post Production Changes to Street Furniture Elements

Following the production and/or installation of any Street Furniture Element, the Contractor shall and the City may, from time to time, review the functionality of such Street Furniture Element. In the event that the Contractor or the City, as the case may be, identify changes that would improve the functionality of any Street Furniture Element, then provided the City and the Contractor agree on such changes, the Contractor will forthwith make such changes at its sole cost.

## 4.5 Design Responsibility

Notwithstanding that the General Manager of Engineering Services may:

- (a) require the Contractor to make reasonable changes to the plans, drawings and specifications concerning the Street Furniture or any elements pursuant to Section 4.3;
- (b) inspect the Street Furniture, or elements; and
- (c) approve or accept the plans, drawings and specifications concerning the Street Furniture pursuant to Section 4.3,

all design and construction responsibility and supervisory responsibility shall remain exclusively with the Contractor and no such responsibility shall rest with the General Manager of Engineering Services or other City officials, officers, employees, servants or agents and neither the City, nor its officials, officers, employees, servants or agents shall be liable to the Contractor for the safety, adequacy or soundness of the Street Furniture by reason of any inspections made, changes required or approvals given with respect to the Street Furniture. Any approval given by and any inspection carried out by the General Manager of Engineering Services, the City or its officials, officers, employees, servants or agents pursuant to this Agreement or concerning the Street Furniture shall be for the purposes only of ensuring compliance with this Agreement from the point of view of the City as contracting party, and no inspection or approval given by the General Manager of Engineering Services, the City or its officials, officers, employees, servants or agents shall relieve the Contractor from its obligation to comply with the terms of this Agreement nor shall the giving of any approval constitute a waiver or release by the General Manager of Engineering Services, the City of any duty or liability owed to the City or of any indemnity given by the Contractor to the City, its officials, officers, employees, servants or agents.

# ARTICLE 5 PROVISION, DELIVERY AND INSTALLATION

## 5.1 Schedule

The Contractor shall, subject to the provisions herein contained, provide, deliver and install:

- (a) the Pre-Term Installations during the Pre-Term Period; and
- (b) the Term Installations during the Term,

all in the quantities and types as set forth and in accordance with the Street Furniture Rollout Schedule.

## 5.2 Adjustment to Schedule

Within that period of time which is between the 12th and the 6th month prior to the beginning of any Fiscal Year, the City may request an increase or decrease in the quantities and types of Street Furniture Elements, save and except for Modular Bus Shelters with Advertising Panels, that are otherwise required to be installed during the following Fiscal Year as set out in the Street Furniture Rollout Schedule. The Contractor will in each case review such requests and provide the City with an amended rollout proposal in respect of any such Fiscal Year for consideration by the General Manager of Engineering Services. In preparing the amended rollout proposal, the Contractor will consider the projected costs of the element(s) being increased and/or decreased. For example, if the City wants to increase the quantities of one element, then the quantity of another element may be decreased according to its relative cost. If the City agrees and accepts the amended rollout proposal, then the Contractor will formally amend the Street Furniture Rollout Schedule and such amended schedule will form part of this Agreement.

## 5.3 Installation Requirements and Criteria

The Contractor shall provide, deliver and install the Street Furniture Elements as required under the Street Furniture Rollout Schedule, all to the satisfaction of the General Manager of Engineering Services and in accordance with the following requirements and criteria:

- (a) in addition to the construction drawing approval requirements under Section 4.3, the General Manager of Engineering Services may request the Contractor to provide Site Plans, images and other pertinent information for approval prior to the placement or installation of any Street Furniture Elements in the Public Realm. Such drawings, images and other pertinent information shall be submitted to the City within 90 calendar days of the date upon which the placement or installation is anticipated or scheduled to occur, or as otherwise agreed to by the General Manager of Engineering Services and the Contractor;
- (b) Street Furniture is to be installed only at locations approved by the General Manager of Engineering Services and the Contractor and the City shall agree on the location of a minimum of 675 Modular Bus Shelter sites to contain Ad Panels or Free Standing Advertising Displays out of the total 900 Modular Bus Shelter sites to be designated by the City. The location and economic viability of each Ad Panel is an essential component to the program described herein and therefore, the City shall act reasonably with respect to locating Ad Panels;
- (c) the Contractor shall liaise in a timely manner with all third party service providers identified by the General Manager of Engineering Services (e.g. pay telephone provider) to ensure a coordinated installation program and to minimize the periods of time, if any, where services are expected or required but not available;
- (d) the Contractor shall not be precluded from installing Street Furniture Elements, including required utility connections, on distinctive or historic pavement by any reasonable or proper method. The Contractor shall procure and store or otherwise guarantee the supply of sufficient quantities of materials of the same or equivalent

standard necessary to repair, restore or replace the pavement to its original condition on the termination of this Agreement or upon the earlier removal of the Street Furniture Elements. All sub-grade repair will be to the standards contained in the City's "Street Restoration Manual";

- (e) in the event that the placement of any Street Furniture Element and required services results in damage to distinctive or historic pavement, such pavement shall be restored to its original condition by the Contractor. If the Contractor fails to perform this duty after being notified by the General Manager of Engineering Services, the City may, but shall not be obligated to undertake all rectification work and the Contractor shall pay for all work done and invoiced by the General Manager of Engineering Services, plus an overhead amount equal to 20% of the invoiced cost of such work; and
- (f) the Contractor shall be responsible for keeping the General Manager of Engineering Services properly and adequately advised of the progress of construction, delivery and installation of the Street Furniture, and for providing the General Manager of Engineering Services periodically, as he may require, with schedules and progress reports, and for ensuring the overall coordination of the construction, delivery and installation of the Street Furniture.

The City shall provide the Contractor with lists of sites, including complete descriptions, underground locations for City utilities and any other pertinent information related to the required Street Furniture Rollout Schedule, and all required City approvals and permits, in accordance with the following requirements and criteria:

- (g) no later than 60 days following the Effective Date, the Parties shall determine a preliminary list of potential Street Furniture sites by Street Furniture type, to be installed during the Pre-Term Period. The City agrees that within 60 days of delivery of the preliminary list, a City Designated Representative will meet at each site with the Contractor in order to finalize all Site Plans required pursuant to Section 5.3(a) hereof; and
- (h) no later than 90 days prior to the beginning of each Fiscal Year, the Parties shall determine a preliminary list of all potential Street Furniture sites by Street Furniture type, to be installed during that Fiscal Year. The City agrees that within 60 days of delivery of the preliminary list, they will meet at each site with the Contractor in order to finalize all Site Plans required pursuant to Section 5.3(a); and
- (i) within 30 days following the receipt of each Site Plan, the General Manager of Engineering Services shall either provide the respective Installation Permit or, acting reasonably, provide the Contractor with a marked-up Site Plan for the Contractor's consideration. Provided the Contractor receives the respective Installation Permit, and both Parties have mutually agreed to any revised Site Plans within 14 days of the receipt of said Site Plan, the Street Furniture Rollout Schedule will govern the installation obligations of the Contractor. If Installation Permits are not received as required herein, and both Parties have acted diligently and in good faith, the Parties shall mutually agree to revise the Street Furniture Rollout Schedule.

## 5.4 Site Preparation and Utilities

The Contractor shall provide:

- (a) the necessary power and electrical connections to the Street Furniture Elements from the City's street lighting circuits or a power supply provided by B.C. Hydro after obtaining all necessary approvals from the City and the City will cooperate in assisting the Contractor, where possible, in securing a preferable rate of power and obtaining all such approvals. The Contractor shall notify BC Hydro regarding equipment attached to any circuits owned or operated by B.C. Hydro. The Contractor shall reimburse the City for any power consumption off the City's street lighting circuits based on a schedule of rates supplied by BC Hydro.
- (b) the Contractor shall provide all utility connections and support or base pads on which all the Street Furniture Elements will be anchored. If modifications to City Furniture support or base pads are required due to design changes or other requirements, such modifications shall be undertaken by the Contractor at its cost;
- (c) specifications for all support or base pads shall be prepared by the Contractor and certified by a professional engineer and submitted to the General Manager of Engineering Services prior to construction for City approval in respect of design and siting. Subsequent maintenance of these support or base pads shall be the responsibility of the Contractor, for the duration of the Term. The support or base pads will become the property of the City on the Termination Date; and
- (d) all utility connections must be installed underground. No overhead connections will be permitted.

# ARTICLE 6 MAINTENANCE AND OPERATION

## 6.1 General

The Contractor shall repair and maintain the Street Furniture Elements in accordance with this Section 6.1 and without limitation commencing on the date of installation of such Street Furniture Elements:

- (a) the Contractor shall keep the Street Furniture in first class condition and good working order for the duration of the Term. For greater certainty, the Street Furniture shall be kept structurally sound, free of noticeable sagging, distortion or displacement and weather tight. Internal and external surfaces are to be damage free and there is to be no discolouration or corrosion of the surfaces. All surfaces of Street Furniture shall be kept clean and free of graffiti. All functional components and equipment of Street Furniture including mechanical, electrical and lighting, are to be kept in good working order. The Contractor shall not be responsible for cleaning the inside of multiple publication news racks;
- (b) maintenance shall be all inclusive, covering all programmed and emergency maintenance including repairs and replacements, parts, labour, overhead, materials, cleaning, and graffiti removal;

- (c) the Contractor shall be responsible for the payment of energy, water and sewage costs incurred in respect to the operation of the Street Furniture Elements that utilize these services. The Contractor shall pay all service costs directly to the respective service providers. Notwithstanding the foregoing, the Contractor shall not be obligated to install any Automated Public Toilets if any such installation is estimated to exceed \$40,000 per Automated Public Toilet (subject in each Fiscal Year after the first Fiscal Year to an annual adjustment based on the C.P.I.). Installation costs shall include all trenching, excavating, connections to water, sewer and electrical utilities and all other costs associated with the installation at a particular site.
- (d) the Contractor shall maintain or replace the City Furniture set forth on Schedule "B" effective on June 1, 2003, or on a date mutually agreed to by the Parties. Prior to the Contractor taking over such maintenance and replacement responsibilities, the Parties will inspect the condition of the City Furniture and mutually agree on the maintenance standards and potential replacements, provided that replacements shall not exceed the quantities set out in the Street Furniture Rollout Schedule;
- (e) prior to placing any Street Furniture, the Contractor may be directed by the General Manager of Engineering Services to restore the sites to their original condition or to provide a new Street Furniture Element pursuant to the Street Furniture Rollout Schedule and provide a new support or base pad if required;
- (f) the Contractor shall not charge the City, a pay telephone service provider, an information kiosk provider or any other third party provider ("Third Party Providers") for attaching a telephone or computer device to any Street Furniture Elements; however, all costs associated with bringing data lines to the Street Furniture, on-going telephone or other service during the Term, or changes to technical and service requirements at the request of the City or any Third Party Providers during the Term which results in the Contractor incurring costs, including but not limited to electrical service and connections, and modifications to the Street Furniture Elements, are to be at the cost of the respective Third Party Providers;
- (g) the General Manager of Engineering Services may, but shall not be obligated to carry out an inspection program on a random sampling or other basis to confirm or otherwise compliance by the Contractor of its maintenance obligations hereunder and the due performance by the Contractor of its obligations in relation to the standard and timeliness of maintenance and repairs, cleaning and graffiti removal;
- (h) if at any time during the Term, any deficiency, failure, breakdown or deterioration in workmanship or material should be discovered in the goods or services furnished by the Contractor, or if the goods or services do not conform to the terms and conditions of the Agreement, the City may at its option:
  - require the Contractor to commence correcting the defective or nonconforming goods or services at no expense to the City within 7 days of receipt of written notification from the City, or such other time as mutually agreed to by the Parties;
  - (ii) replace or correct the defective goods and services and charge the Contractor with all expenses incurred by the City; and

- (i) the Contractor shall perform the Work in a proper and workmanlike manner and in accordance with the requirements of this Agreement and maintain the Street Furniture against any defects arising from faulty installation, material or workmanship during the Term and make good in a permanent manner satisfactory to the General Manager of Engineering Services any defects arising from any of these causes. Should the Contractor fail to commence correcting the defects within 7 days after being notified by the General Manager of Engineering Services, the General Manager of Engineering Services at his option may do so and the total costs, charges and expenses so incurred may be deducted or collected by the City as provided in Section 10.3. If the City determines, in its discretion, the defects to be dangerous and that an emergency situation exists, upon notice to the Contractor of such damage or emergency situation, the Contractor shall either:
  - (i) temporarily remove such Street Furniture Element; or
  - (ii) secure such Street Furniture Element in order to protect any uses for the public,

and if the Contractor does not perform such remediation within 24 hours from written notice, the City, at the City's discretion will effect repairs immediately and the whole costs, charges and expenses so incurred may be deducted or collected by the City as provided in Section 10.3. The decision of the General Manager of Engineering Services shall be final as to the necessity of repairs or of any work done or required to be done under the provisions of this Agreement and for the amounts expended thereunder.

### 6.2 Removal and Relocation

From time to time during the Pre-Term Period and the Term, the General Manager of Engineering Services may direct the Contractor to remove or relocate Street Furniture for the reasons set forth below. The Contractor and the General Manager of Engineering Services shall agree upon a schedule of approximate costs (not to exceed \$40,000 per annum subject in each Fiscal Year after the first Fiscal Year to an annual adjustment based on the C.P.I.) for typical removals and relocations, which costs shall among other things take into account costs of removals and relocations:

- (a) to accommodate changing needs;
- (b) to enable construction, maintenance or repairs to public utilities or public works; or
- (c) to address security concerns that may exist in the opinion of the General Manager of Engineering Services.

Except as provided herein, no compensation shall be paid by the City to the Contractor, for any Loss or damage of any kind including loss of advertising revenue foregone as a result of any removal or relocation of Street Furniture.

For each Fiscal Year of the Term, the Contractor shall allocate the sum of \$40,000 (subject in each Fiscal Year after the first Fiscal Year to an annual adjustment based on the C.P.I.) for the removal and relocation of Street Furniture, and such sum shall not be carried over to a subsequent Fiscal Year.

If Street Furniture with Advertising Panels are temporarily removed for a period of greater than 30 days, the City will provide the Contractor with the use of an equivalent number of Public Use Panels with an equivalent advertising value, for the period following the 30 days for which the Advertising Panels are removed.

### 6.3 Restoration

If the Contractor is required to remove Street Furniture pursuant to Section 6.2 or upon termination of this Agreement, the support or base surface of the site of that Street Furniture shall be restored by making good the surface of the location to substantially the same condition and using substantially the same materials as the adjoining surface, at the time of installation. If the materials on the surface, adjoining the location have been replaced with different materials, the Contractor shall use materials of that type. If the materials are not available, the Contractor shall use such materials as are approved by the City.

All costs of restoring the site following removal of the Street Furniture shall be borne by the Contractor.

#### 6.4 Post-Term Period

The Contractor will submit a plan to the General Manager of Engineering Services within that period of time which is between the 90<sup>th</sup> and the 45<sup>th</sup> day prior to the Termination Date, establishing a schedule for the removal of the Street Furniture during the Post-Term Period. The Contractor agrees that:

- (a) within 6 months prior to the Termination Date, the General Manager of Engineering Services will decide whether the Exclusive Right of Street Furniture Advertising shall extend or apply during the Post-Term Period and for certainty, during the Post-Term Period, the City may confer non-exclusive advertising rights to any third parties; and
- (b) the Contractor shall implement a plan for the orderly removal of Street Furniture in accordance with a schedule to be approved by the General Manager of Engineering Services. If the Contractor defaults in respect of the removal of Street Furniture, then the City may, but shall not be obligated to remove such Street Furniture and the City may charge the Contractor with all reasonable expenses incurred by the City in respect of such removal of Street Furniture.

## 6.5 Mid Point Upgrade

At any time within 90 days prior to the Mid Term Election Date and at the City's option, the General Manager of Engineering Services may request that the Contractor provide a new street furniture proposal to modernize and refit the then existing Street Furniture. Within 90 days following receipt of such request, the Contractor will submit, at its sole cost, a proposal to upgrade, refit or modernize the then existing Street Furniture, together with a detailed written analysis of the economic proposal required to implement such new street furniture proposal and the revenue sharing set forth in this Agreement will be amended by agreement of the Parties.

# ARTICLE 7 ADVERTISING

#### 7.1 General

- (a) The Contractor agrees that advertising on the Street Furniture shall only be permitted on the Modular Bus Shelters, the Automated Public Toilets and on such other Street Furniture as the City may approve, in advance, from time to time, all in accordance with the Advertising Protocol;
- (b) the City may request that the Contractor remove certain advertising materials if in the City's reasonable judgement such advertising violates the Advertising Protocol Applicable Laws or the standards and policies of the Canadian Advertising Council;
- (c) the Contractor shall carry out the advertising program in accordance with the Advertising Protocol. All costs and expenses (including overhead and other general, administrative and third party expenses) incurred by the Contractor in connection with the advertising program shall be borne exclusively by and paid by the Contractor;
- (d) the Contractor agrees to provide the City or the City Designees with 10% of all Advertising Panels that are operational during the Pre-Term and the Term at no cost to the City and in accordance with the Advertising Protocol. Any advertising for display on the Public Use Panels shall be provided to the Contractor in a format specified by the Contractor. Any advertising for display in each Public Use Panel shall not contain more than 10% of a commercial logo, symbol or message; and
- (e) in consideration of performance of the financial obligations of the Contractor, the City shall approve a minimum number of 1,380 Ad Panels; that number shall include Ad Panels on 675 Modular Bus Shelters, of which 280 Ad Panels shall be located in the Downtown Peninsula and for which the City shall issue Installation Permits no later than June 1, 2004, 138 Ad Panels shall be dedicated as Public Use Panels and 30 Ad Panels shall be located on pedestrian-oriented map stands.

## 7.2 2010 Olympic Games

The City acknowledges that the Contractor proposes to enter into an agreement with The Vancouver 2010 Bid Corporation ("Bidco") whereby, inter alia, the Contractor will grant to Bidco an option to purchase Ad Panels from the Contractor for the purpose of reducing ambush marketing during the 2010 Olympic Games (the "Bidco Agreement"). Such option rights must be exercised by Bidco on or before December 31, 2007. The Contractor agrees that:

- (a) Notwithstanding the termination provisions set out in the Bidco Agreement, the Bidco Agreement shall be deemed to have terminated upon the termination of this Agreement, whether the termination of this Agreement occurs before or after the Bidco option is exercised under the terms of the Bidco Agreement;
- (b) In the event a dispute between Bidco and the Contractor occurs which may result in Bidco and the Contractor, or either of them, availing themselves of the dispute resolution provisions contained in the Bidco Agreement, and notwithstanding the termination of the Bidco Agreement, the Contractor shall first provide written notice

to the City of such dispute and the Contractor will afford the City the opportunity to intervene to facilitate settlement of such dispute prior to the Contractor proceeding with the dispute resolution process under the Bidco Agreement. For greater certainty, the Contractor shall not engage in or advance any dispute resolution proceedings under the Bidco Agreement unless and until the City is notified in writing and the City is given a reasonable opportunity to facilitate settlement all as aforesaid; and

(c) The Contractor shall not amend the Bidco Agreement without the prior written consent of the City, which consent shall not be unreasonably withheld.

## 7.3 Promotional Advertising - City of Vancouver

The Contractor shall make available, for the purpose of promoting the City of Vancouver only, 1,000 Advertising Panels in at least 50 world class cities (where Contractor or its affiliates have contracts which permit such displays) outside North America (to be selected by the City and the Contractor acting reasonably) for a total of one week per Ad Panel at any time during the Term and 1,000 Advertising Panels throughout North America for a total of 1 week per Ad Panel at any time during the Term. The City shall provide promotional materials in a format specified by Contractor. The City shall not be permitted to sell or transfer the promotional rights described herein.

# ARTICLE 8 FINANCIAL ARRANGEMENT AND REVENUE SHARING

#### 8.1 Pre-Term Period Revenue Share

The Contractor shall pay the Pre-Term City Revenue Share within 15 days of the end of each month during the Pre-Term Period. Adjustments will be made for Refunded Monies within 90 days of the end of the Pre-Term Period.

## 8.2 City Annual Revenue Share

During the Term, the Contractor shall pay to the City the City Annual Revenue Share, on the following terms and in accordance with the Financial Terms:

- (a) the Contractor will pay to the City the Guaranteed Minimum Annual Revenue for each Fiscal Year during the Term of this Agreement in four equal quarterly installments, save and except for the first Fiscal Year of the Term, which amount will be paid in one installment on January 15, 2004 in the amount of \$380,000;
- (b) if the applicable percentage of Gross Revenues for the Term as set out in Schedule "D" hereto exceeds the Guaranteed Minimum Annual Revenue for any Fiscal Year, then the Contractor will pay to the City the difference between the Guaranteed minimum Annual Revenue and the City Annual Revenue Share, for each Fiscal Year during the Term of this Agreement within 90 days of the end of each Fiscal Year;
- (c) subject to the approval of the General Manager of Engineering Services and the General Manager of Community Services, the Contractor may charge a user fee for the use of the Automated Public Toilets and modular bike lockers;

- (d) GST will apply to this Agreement as required by the Excise Tax Act (Canada);
- (e) if requested by the City, the Contractor shall assist the City to obtain an advantageous treatment of PST; and
- the City reserves the right to conduct an independent audit and review at its own (f) expense of the Contractor's books and records following the payment of the Percentage of Gross Revenues in respect of the Pre-Term Period, any Fiscal Year during the Term or the Post-Term Period, as the case may be, to confirm and verify the amount of Gross Revenues payable to the City for the Pre-Term Period, any given Fiscal Year or for the Post-Term Period. At the sole discretion of the City, the Contractor shall provide to the City, an annual audited statement by a chartered accountant or a certified general accountant, verifying the Gross Revenues for the Pre-Term Period, any given Fiscal Year or for the Post-Term Period. In this regard and to facilitate such audit and review by the City, the Contractor shall keep proper books, accounts and records of all advertising commissions paid, all Refunded Monies and all revenues received, owed and/or refunded in connection with this Agreement and in connection with the determination of Gross Revenues in particular, and all invoices, receipts and vouchers relating thereto. The City may exercise its audit right only once per Fiscal Year. Such right may be exercised by the City within 90 days of Contractor's delivery of the Pre-Term City Revenue Share, the City's Annual Revenue Share or the Post-Term City Revenue Share, as the case may be, and upon reasonable notice to the Contractor. Notwithstanding the foregoing, if the City's audit in respect of the Pre-Term Period, any Fiscal Year, or the Post-Term Period confirms that the Contractor is legally obligated to pay, in respect of such period, an amount which is equal to or exceeds 3% of the amount actually paid in respect of such period, then all costs of that audit shall be paid by the Contractor upon the written notice of the City.

## 8.3 Post-Term Period Revenue Share

The Contractor shall pay the Post-Term City Revenue Share within 15 days of the end of each month during the Post-Term Period. Adjustments will be made for Refunded Monies within 90 days after the end of the Post-Term Period.

### 8.4 Other Fees and Taxes

The Contractor will not be assessed or charged property taxes or any other fees for the Street Furniture or Ad Panels (or advertising displayed thereon) (collectively, "New Impositions") by the City except as provided for within this Agreement. Should another level of government impose any tax or fee on the Street Furniture (including the use of the underlying City property) or the conducting of the Contractor's business on the Street Furniture or other New Imposition that is not in existence as of the Effective Date, then the Contractor may deduct such payment from the Gross Revenues, for the purposes of calculating the City Annual Revenue Share.

# ARTICLE 9 REPRESENTATIONS AND WARRANTIES

## 9.1 Representations and Warranties

The Contractor hereby represents and warrants to the City as follows, and confirms that the City is relying upon the accuracy of each of such representations and warranties in connection with this Agreement and the completion of the transactions hereunder:

# (a) Partnership:

- (i) The Contractor has been formed and is existing as a limited partnership under the *Partnership Act*, R.S.B.C. 1996, c. 348. the general partner(s) of the Contractor, Viacom Outdoor JCDecaux Street Furniture Canada Ltd. ("the General Partner") is (are) a corporation duly incorporated and validly subsisting in all respects under the laws of its jurisdiction of incorporation. The General Partner has good right, full corporate power and absolute authority to enter into this Agreement and to perform all of the Contractor's obligations under this Agreement. The General Partner and its board of directors have taken all necessary or desirable actions, steps and corporate and other proceedings to approve or authorize, validly and effectively, the entering into of, and the execution, delivery and performance of, this Agreement. This Agreement is a legal, valid and binding obligation of the Contractor and the General Partner, enforceable against each of them in accordance with its terms subject to:
  - (A) bankruptcy, insolvency, moratorium, reorganization and other laws relating to or affecting the enforcement of creditors' rights generally; and
  - (B) the fact that equitable remedies, including the remedies of specific performance and injunction, may only be granted in the discretion of a court;
- (ii) The Contractor is not under any obligation, contractual or otherwise to request or obtain the consent of any Person, and no permits, licences, certifications, authorizations or approvals of, or notifications to, any Authorities are required to be obtained by the Contractor in connection with the execution, delivery or performance by the Contractor of this Agreement or the completion of any of the transactions contemplated herein;
- (iii) The execution, delivery and performance of this Agreement and each of the other agreements contemplated or referred to herein by the Contractor, and the completion of the transactions contemplated hereby, will not constitute or result in a violation or breach of or default under:
  - (A) Any term or provision of any of the limited partnership agreement in respect of the Contractor;

- (B) the terms of any indenture, agreement (written or oral), instrument or understanding or other obligation or restriction to which the Contractor is a party or by which it is bound, or
- (C) any term or provision of any licences, registrations or qualification of the Contractor or any order of any court, governmental authority or regulatory body or any Applicable Laws.
- (b) Work:
- (c) The Contractor warrants and represents that the equipment, goods or services delivered by the Contractor to the City in connection with this Agreement shall be:
  - (i) free from defects in materials or workmanship and will conform to the Street Furniture Designs as approved by the City;
  - (ii) fit and sufficient for their intended purpose, shall be of merchantable quality and shall be manufactured from new and unused materials;
  - (iii) in compliance with the standards set forth by Authorities;
  - (iv) capable of operating as necessary with reasonable continuity throughout the expected life of the equipment and the Term without breakdown, excessive wear of parts or other evidence of faulty design or manufacture;
  - (v) free and clear of all charges, liens, claims or encumbrances; and
  - (vi) if designated as hazardous or controlled materials, handled and shipped in accordance with any Applicable Laws, including any environmental protection laws and regulations;
- (d) General:
- (e) The Contractor further warrants and represents that:
  - (i) it is not a party to or bound by any indenture, agreement (written or oral), instrument, license, permit or understanding or other obligation or restriction under the terms of which the execution, delivery nor performance of this Agreement does or will constitute or result in a violation or breach or default;
  - (ii) the Contractor will comply, and make all reasonable efforts to ensure that all of its employees and subcontractors comply, with all Applicable Laws in carrying out its obligations hereunder;
  - (iii) if any Applicable Laws mentioned in the Subsection immediately above require the City to act at variance with the terms of this Agreement and the City so acts, then the same shall not constitute a breach of this Agreement (the City is not aware of any law that requires the City to act at variance with the terms of this Agreement);

(iv) the Contractor's employees have the qualifications, experience, knowledge, skills and abilities necessary to carry out the Work and that the Work will be performed in a competent, efficient and professional matter.

## ARTICLE 10 LETTER OF CREDIT AND INSURANCE

### 10.1 Letter of Credit

- (a) Within 30 days after the Effective Date, the Contractor shall provide a standby letter of credit in the amount of \$500,000 (hereinafter called the "Letter of Credit");
- (b) The Letter of Credit must be clean, unconditional, irrevocable, payable at sight and permit partial drawings issued in favour of the City by a *Bank Act* (Canada) Schedule I bank, including:
  - (i) Bank of Montreal;
  - (ii) Bank of Nova Scotia;
  - (iii) Canadian Imperial Bank of Commerce;
  - (iv) National Bank of Canada;
  - (v) RBC Financial Group; and
  - (vi) Toronto-Dominion Bank,

or one of the following Bank Act (Canada) Schedule II banks:

- (vii) UBS Bank of Canada (Switzerland);
- (viii) Chase Manhattan Bank of Canada;
- (ix) Deutsche Bank of Canada;
- (x) J.P Morgan Canada;
- (xi) Citibank Canada;
- (xii) HSBC Bank of Canada;
- (xiii) Societe Generale Canada (France); and
- (xiv) Banque Nationale de Paris Canada,
- (c) The Letter of Credit must be on terms satisfactory to the Director of Legal Services and the first Letter of Credit shall have an expiry date of the last day of the first Fiscal Year;
- (d) The Letter of Credit shall be automatically and extended for successive one year periods for each of the second, third, fourth and fifth Fiscal Years, without reduction,

and subject in each such Fiscal Year to an annual adjustment based on the C.P.I.. For the 6th through 10th Fiscal Years, provided the Contractor is not in default under this Agreement, the Letter of Credit may be reduced in annual increments of \$50,000. Prior to the occurrence of the Eleventh Fiscal Year, and thereafter for the balance of the Term and the Post-Term Period, the Letter of Credit shall be maintained at the amount in effect as of the 10th Fiscal Year, subject to an adjustment in each Fiscal Year thereafter based on the C.P.I. The Letter of Credit will under no circumstances be for less than \$250,000 at any time during the balance of the Term. Failure to renew the Letter of Credit 30 calendar days prior to the first anniversary of the Commencement Date or any future expiration date shall entitle the City to cash the Letter of Credit and hold the proceeds for application in accordance with this Agreement. In such an event, the City shall not be responsible for, nor shall it pay to the Agreement, any interest on the proceeds;

The Letter of Credit shall provide that the City may draw it to reimburse the City for any losses or damages suffered by the City as a result of any breach of the Agreement, including breaches of representation and warranties. The cost associated with the provision of the Letter of Credit shall be borne by the Contractor.

## 10.2 Calling Upon the Letter of Credit

The City may cash the Letter of Credit in part or in whole in any of the following events:

- (a) if, at any time until it is returnable to the Contractor under this Agreement, the balance of the term remaining on the Letter of Credit is less than 30 days and a replacement letter of credit has not been issued;
- (b) if the Contractor makes a general assignment for the benefit of creditors, or if the Contractor institutes proceedings to have itself adjudicated as bankrupt or insolvent, including, without limitation, any application or order under the Companies' Creditors Arrangement Act (Canada) (or any legislation in pari material therewith) or, if the Contractor becomes the subject of bankruptcy or insolvency proceedings, or if a judgment, decree or order be entered by a court of competent jurisdiction judging the Contractor bankrupt or insolvent, or if the Contractor or its directors shall pass any resolution authorizing the dissolution or winding up of the Contractor, or if a receiver, interim receiver, manager, receiver-manager, trustee or liquidator of all or any part of the Contractor's property shall be appointed or applied for by the Contractor or by one or more of the Contractor's creditors; or
- (c) if, at any time after notice and an opportunity to cure, as defined herein, the Contractor continues to breach any provision of this Agreement or defaults in carrying out any of its obligations under the terms of this Agreement to any extent the General Manager of Engineering Services considers material.

## 10.3 Application of Funds

If the City cashes the Letter of Credit pursuant to Section 10.2, then the City may apply the proceeds so far as possible, towards:

- (a) completion of the works or the obligations of the Contractor, or any combination thereof; and
- (b) if there remains an unused balance of proceeds, such balance may be held pending the completion of any other obligations of the Contractor to the City in respect of which the Contractor is in default, as determined by the General Manager of Engineering Services.

The City may, but shall not be obligated to carry out any of the works hereinbefore described, including construction of the Works, at such times and to such standard as the General Manager of Engineering Services, in his sole discretion, deems appropriate. If the proceeds from any letter of credit are not sufficient to pay all costs and expenses, plus the City's normal overhead charges, which shall not exceed 20% of such costs and expenses, incurred by the City in completing the Works, or any portion thereof, the Contractor shall pay to the City the difference upon receipt from the City of invoices for the same.

#### 10.4 Insurance

- (a) The Contractor shall provide, maintain and pay for the insurance as set out in accordance with the requirements set forth in Schedule "G" attached hereto.
- (b) The Contractor shall provide the City with certified copies of all certificates of insurance to be provided by the Contractor prior to the Effective Date. The Contractor shall also provide certified copies of all such policies of insurance on the written request of the City. Approval of any policies of insurance by the City shall in no way relieve the Contractor of its obligations hereunder.
- (c) If the Contractor fails to provide, maintain or pay for the insurance required by this Section, then the City shall have the right, but not the obligation to provide, maintain and pay for such insurance, in which case the cost thereof shall, at the City's option, be payable by the Contractor on demand or the City may deduct such costs from moneys which are then or thereafter become due and payable to the Contractor under this Agreement or otherwise.

## ARTICLE 11 WORKERS' COMPENSATION

## 11.1 Workers' Compensation Board

The Contractor shall:

- (a) at its own expense procure and carry or cause to be procured and carried and paid for, full Workers' Compensation Board coverage for itself and all workers, employees, servants and others engaged by the Contractor in or upon any work or service which is the subject of this Agreement;
- (b) provide the City with the Contractor's Workers' Compensation Board registration number and letter from the Workers' Compensation Board confirming that the Contractor is registered in good standing with the Workers' Compensation Board

and that all assessments have been paid to the date thereof prior to the City having any obligation to pay monies under this Agreement; and

(c) comply with Worker's Compensation Board rules.

#### 11.2 Prime Contractor

The Contractor agrees that it is the prime contractor for the purposes of the Workers' Compensation Board Occupational Health and Safety Regulation for the Province of British Columbia. The Contractor shall have a safety program that meets the requirements of the Workers' Compensation Board, shall provide first aid services, and shall ensure that all Workers' Compensation Board safety rules and regulations are observed during performance of this Agreement, not only by the Contractor but by all subcontractors, workers, material men and others engaged by the Contractor in the performance of this Agreement. Prior to commencement of construction, the Contractor shall complete and file a "Construction Notice of Project" with the Workers' Compensation Board and shall provide a copy of the same to the General Manager of Engineering Services confirming that the Contractor shall be the prime contractor responsible for coordination of safety and health under 20.2 - Notice of Project; 20.3 - Co-ordination of Multiple Employer Workplaces; and Section 118 - Co-ordination at Multiple Employer Workplaces of the Worker's Compensation Board Occupational Health and Safety Regulations.

## 11.3 Indemnity

The Contractor shall indemnify the City and hold harmless the City from all manner of Claims, demands, Costs, Losses, sanctions and penalties and proceedings arising out of or in any way related to unpaid Workers' Compensation Board assessments owing from any person or corporation engaged by the Contractor in the performance of this Agreement or arising out of or in any way related to the failure to observe safety rules, regulations and practices of the Workers' Compensation Board, including penalties levied by the Workers' Compensation Board.

## ARTICLE 12 OCCUPATIONAL HEALTH AND SAFETY

### 12.1 Occupational Health and Safety

The Contractor and the Contractor's sub-contractors shall conform to all health and safety laws, by-laws or regulations of the Province of British Columbia including any regulations requiring installation or adoption of safety devices or appliances. The City may, on twenty-four (24) hours written notice to the Contractor, suspend the work hereunder as a result of failure to install such devices or because the conditions of immediate danger exist that would be likely to result in injury to any person. Such suspension will continue until the default or failure is corrected. The Contractor shall not be entitled to any additional time or monetary compensation for completion of any portion of this Agreement for reasons of the Agreement being suspended as provided in this Section 12.1 notwithstanding any other provisions herein.

# ARTICLE 13 INDEMNITY

## 13.1 Indemnity

Without limiting the generality of any other indemnities granted by the Contractor herein, the Contractor shall indemnify and save harmless the City and its respective officers (including the City Designated Representatives), employees and agents, from and against all Costs, expenses (including counsel fees and other expenses of suits, whether groundless or not), damages, Losses, Claims and judgements on account of any damage to the property or injury or to property (including death) to any person (including damage or injury to the City or any agent or employee thereof) which may be caused or be alleged to have been caused as a direct or indirect result of any act or omission of the Contractor, its agents or employees, or as a result of the breach of any covenant, representation or warranty, or which may occur or be alleged to have occurred by reason of any defects, deficiencies or malfunctioning of the Street Furniture. The Contractor hereby assumes all risk of damage or injury to the Contractor's own property, agents and employees from whatever cause.

The City shall indemnify, and save harmless the Contractor and its respective officers, employees and agents, from and against all Costs, expenses (including counsel fees and other expenses of suits, whether groundless or not), damages, Losses, Claims and judgments or liability associated with the City Furniture or Street Furniture to the extent such Claim, Loss, damages, injury, expense, judgment, or liability is caused by the willful or negligent act or omission of the City, its employees, officers, representatives and agents.

#### 13.2 No Limitation

This indemnity shall not affect or prejudice the City from exercising any other rights that may be available to it at law.

#### 13.3 Responsibility for City Property

The Contractor shall indemnify and save the City harmless from and against all Loss of or damage to any property of the City while in the custody of the Contractor resulting in whole or in part from the negligent act or omission of the Contractor or any agent or employee thereof and the Contractor shall pay and discharge all Costs, expenses, Losses, damages or obligations suffered or incurred by the City in connection therewith.

#### 13.4 Conduct of Proceedings

- (a) In the event that a Claim is made against the City which, pursuant to the terms of the Agreement, requires the Contractor to indemnify any or all of the City, the City Designated Representatives, its representatives, officers, employees and agents, then the City shall give note of such Claim to the Contractor and, subject to Article 13.4(b), the Contractor shall have the right, upon written notice to the City, to conduct the proceedings in defence of the Claim;
- (b) Article 13.4(a) shall not apply and the City shall have the unilateral and paramount right to conduct the defence of any Claim described in Article 13.4(a) in the following circumstances:

- (i) where the General Manager of Engineering Services determines in his sole discretion that the proper administration of the municipal government requires that decisions with respect to the Claim and the proper defence thereof be made by the City and not the Contractor;
- (ii) where the General Manager of Engineering Services determines that the public interest requires that the matter be resolved in an open and public way; or
- (iii) where, in the opinion of the General Manager of Engineering Services, the Claim is of a nature where decisions with respect to settling or defending it would create a precedent with respect to other existing or potential Claims affecting or involving the City.

Provided however that if the City wishes to settle any Claim, the City shall not do so without the prior consent of the Contractor, which consent shall not be unreasonably withheld. In conducting any defence or making any settlement, the City shall act in a manner reasonably consistent with the manner in which the City would act in connection with the defence or settlement of Claims, suits, demands, actions or proceeding which would not be indemnified against under the provisions of this Article 13.4(b); and furthermore, the City shall not oppose the Contractor if it seeks to intervene in any lawsuit in which its rights or interests may be affected; and

(c) regardless of whether the Claim is being defended under Section 13.4(a) or Section 13.4(b), the party having conduct of the proceedings will, upon written request of the other party, provide all information in its possession relating to the proceedings which may be properly disclosed at law. If the party not having conduct of the proceedings so requests in writing in a timely fashion, the party having conduct of the proceedings will join the other party as a third party to the proceedings.

# ARTICLE 14 GENERAL

### 14.1 Compliance with Laws

In carrying out its obligations, the Contractor shall familiarize itself and comply with all:

- (a) Applicable Laws, and shall obtain all necessary licences, permits and registrations as may be required by Applicable Laws; and
- (b) the Contractor shall pay and discharge all wages, fees, salaries, charges, Costs and expenses due and accruing to any of its employees, agents, suppliers and subcontractors and shall make and remit to the proper authorities all deductions as required by Applicable Laws.

## 14.2 No Partnership or Agency

It is understood and agreed that:

- (a) nothing contained in this Agreement shall constitute or be deemed to create a partnership, joint venture or principal and agent relationship between or among the City and the Contractor, and the officers, directors, shareholders, partners, personnel, affiliates and agents of the Contractor; and
- (b) the Contractor shall not purport to enter into any agreement on behalf of the City, or otherwise act on its behalf; and the Contractor hereby acknowledges that the City shall not be required on its behalf to make remittances, filings or payments required by statute of employers, and that the Contractor shall not be entitled to the fringe benefits provided by the City to its employees.

#### 14.3 Subcontractors

Except where otherwise set out, the Contractor will furnish all personnel required to:

- (a) perform its obligations hereunder, and all such personnel shall be competent and qualified to perform and satisfy such obligations;
- (b) the Contractor shall provide the City with a list of its subcontractors;
- (c) the Contractor shall administer, coordinate, and manage all work of subcontractors, and will assume full responsibility to the City for all work performed by the subcontractors; and
- (d) the Contractor shall be solely responsible for paying the fees and expenses of all subcontractors engaged by it in connection with the Agreement and the City shall have no liability whatsoever in connection therewith.

## 14.4 Confidentiality

(a) The Contractor acknowledges that in performing the Work, the Contractor and its representatives will Confidential Information of the City and such Confidential Information is and shall remain the exclusive property of the City and the Contractor shall at all times hold such Confidential Information in trust for the City. The Contractor shall, and shall cause its representatives to treat as confidential all such Confidential Information received by reason of its position as Contractor, and agrees not to disclose such Confidential Information to any third party either during performance of the Work or after the Work have been rendered under the Agreement.

Without limiting the generality of the foregoing, the Contractor will exercise a degree of care in protecting the confidentiality of such Confidential Information that is at least equivalent to that which the Contractor uses to protect its own Confidential Information of like sensitivity and importance. The Contractor agrees that this obligation of confidentiality will survive the termination of the Agreement.

(b) The City acknowledges that in performing its obligations under this Agreement, the City and City Designated Representatives will acquire Confidential Information of the Contractor, and such Confidential Information is and shall remain the exclusive property of the Contractor and the City shall at all times hold such Confidential Information in trust for the Contractor. The City shall, and shall cause City Designated Representatives to treat as confidential all such Confidential Information received by reason of its position as the City, and agrees not to disclose such Confidential Information to any third party during performance of its obligations under this Agreement.

- (c) Without limiting the generality of the foregoing, the City will exercise a degree of care in protecting the confidentiality of such Confidential Information that is at least equivalent to that which the City uses to protect its own Confidential Information of like sensitivity and importance. The City agrees that this obligation of confidentiality will survive the termination of the Agreement.
- (d) Each Party will promptly advise the other Party in writing if any unauthorized use or disclosure or any anticipated use or disclosure of all or any portion of the other Party's Confidential Information and will take all reasonable steps to stop such unauthorized or anticipated use or disclosure.
- (e) The City is subject to the *Freedom of Information and Protection of Privacy Act* (British Columbia) (the "Act"). Subject to the terms of this Agreement and the Act and regulations made in respect thereof, all physical copies of documents submitted to the City in connection with this Agreement become the property of the City, will be received and held in accordance with this Agreement and the information will not be disclosed except to the extent required or permitted under this Agreement. The Contractor declares that the financial terms of the Agreement and all financial information provided by the Contractor to the City may be commercial financial information that is confidential information of the Contractor, explicitly supplied to the City in confidence and the disclosure of such confidential information could reasonably be expected to harm significantly the competitive position or interfere significantly with the negotiating position of the Contractor and could reasonably be expected to result in undue financial loss to the Contractor.

# 14.5 Assignment

The Contractor shall not assign this Agreement or subcontract to any Person any right, duty or obligation hereunder without the prior written consent of the City which consent may be unreasonably or arbitrarily withheld. Any assignment or subcontract without such consent shall be null and void and of no effect.

Notwithstanding the foregoing, City approval shall not be required for:

- (a) a transfer of this Agreement to an Affiliate of the Contractor; and
- (b) a change in form of the entity of the Contractor (e.g., from a partnership to a limited liability company or to a corporation), provided that there shall be no adverse effect on the recourse or remedies that the City might have under this Agreement with respect to the new entity as it relates to its predecessor, whether at law or in equity;

provided that in either case, management of the Contractor remains substantially the same as management existed prior to such a proposed assignment and there is no material adverse change in the financial strength of the Contractor, having regard to the financial strength of the Contractor prior to the proposed assignment. If an event under Section 14.5(a) or (b) is contemplated by the

Contractor, then the Contractor will provide advance written notice and sufficient information to the City to allow the City to satisfy itself as to the continuity of management and financial viability of the new entity as set out above.

## 14.6 Builders Liens and Holdbacks

- (a) The Contractor shall not at any time suffer or permit any liens to be registered against or to exist on any City property, the Street Furniture or any other asset or matter supplied under this Agreement. The Contractor agrees to forthwith cause all such liens to be fully paid, satisfied and released;
- (b) If the Director of Legal Services or any City Designated Representative so requires, before any payments to the Contractor under this Agreement are made, the Contractor shall furnish evidence satisfactory to the Director of Legal Services that all governmental liabilities have been paid in full to date;
- (c) The Contractor hereby agrees to make payment and take all other steps which may be necessary to insure that all monies payable under this Agreement, the City property (including the City Furniture and the City Furniture Sites) and the Street Furniture, and every part thereof, shall be and remain at all times free from and not liable to any lien or charge at law or in equity, or to any Claim of liability under the Builders Lien Act, or to any attachment for debt, garnishee process or otherwise, and the Contractor and his sureties, as well as its respective successors and permitted assigns, shall fully indemnify and save harmless the City and all its officers, servants and employees from any and all such liability, and shall, on demand, immediately cause any such lien, charge, Claim or attachment to be removed or released from the records of any Land Title Office or Court in which the same may appear; and
- (d) Notwithstanding anything to the contrary contained in this Agreement or the Contract Documents, the City shall not be under any circumstances obliged to pay any monies to the Contractor if and for so long as any liens exist against the City property or the Street Furniture.

### 14.7 Default and Termination

The Contractor shall be considered to be in default of this Agreement if the Contractor:

- (a) refuses or fails to perform the Work after written notice and a reasonable opportunity to cure, as required by the City or as otherwise stated in this Agreement;
- (b) is adjudged as bankrupt;
- (c) makes a general assignment for the benefit of creditors;
- (d) has a receiver appointed on account of its insolvency;
- (e) persistently disregards laws, policies, procedures or instructions of the City; or
- (f) fails to observe or is in breach after written notice and an opportunity to cure, as defined herein, of any of the provisions of this Agreement.

In the event of default, the City may, without prejudice to any other right or remedy, serve written notification upon the Contractor of the City's intention to terminate this Agreement. Such notification shall contain the reasons for such intention to terminate. If, within 30 days after service of such notice, no meaningful and effective arrangements by the Contractor for the correction thereof are made by the Contractor to the satisfaction of the City, this Agreement shall upon the expiration of the 30 days, cease and terminate. In the event of termination under this Section the City shall be at liberty to secure the performance of the Work from another contractor and the Contractor shall permit the City to use its Street Furniture for a period up to 18 months after termination. If the cost to the City exceeds the cost pursuant to this Agreement and provided the City has made reasonable efforts to mitigate its damages, the excess cost shall, at the City's sole discretion, be charged to and collected from the Contractor or against the Letter of Credit, as the case may be. The foregoing provisions are in addition to and not in limitation of any other rights or remedies available to the City, whether at law or in equity.

### 14.8 Traffic Control

- (a) The Contractor shall ensure that the proposed methods of traffic control are in compliance with all Applicable Laws, including Provincial Standards in effect from time to time;
- (b) The Contractor shall provide, install and maintain in accordance with all Applicable Laws and to the satisfaction of the General Manager of Engineering Services, all necessary barricades, cones, signs, flashing and other lights, and such other devices as are necessary for the safe and efficient control of vehicular and pedestrian traffic on all streets and sidewalks affected by the construction both within and outside the site limits;
- (c) The Contractor shall from the Effective Date, assume responsibility for the barricading and signing of hazards resulting from any work associated with the placement of any Street Furniture Element;
- (d) Unless ordered otherwise by the General Manager of Engineering Services, the Contractor shall inspect the barricades and warning signs of unattended placement or construction areas at least once per day; and
- (e) As part of its implementation plan, the Contractor shall adhere to all relevant requirements as stated in the "Noise Control By-law No: 6555".

## 14.9 Non-Resident Withholding Tax

If the Contractor is, at any time, a non-resident of Canada, within the meaning of the *Income Tax Act* (Canada) as amended, then, and the Contractor hereby so agrees, the City may deduct from all monies payable under the Agreement and remit to the Receiver-General of Canada, the Government of Canada or Revenue Canada, Taxation sums not greater than the greater of:

- (a) 25% of all monies payable under the Agreement; and
- (b) sums required to be withheld and remitted by the *Income Tax Act* (Canada) as amended.

The City shall receive a further credit under the Agreement for monies withheld as of and from the date of the withholding (regardless of when or whether remitted) and no interest shall be payable by the City on sums withheld, not remitted as aforesaid and later paid directly to the Contractor.

## 14.10 Permits and Approvals

For work related to the installation and maintenance of the Street Furniture, the Contractor shall apply for and obtain all permits and approvals required by the Authorities and/or the City, to enable the Contractor to do the Work and all other things necessary to fully perform its obligations under this Agreement. Contractor shall be exempt from paying fees for such permits and approvals required by the City.

## 14.11 Non-Waiver of Rights

Any failure by the City to enforce or require the strict keeping and performance of any of the terms and conditions contained in the Agreement shall not constitute a waiver of such terms and conditions and shall not affect or impair such terms and conditions in any way or the City's right at any time to avail itself of such remedies as the City may have for any breach or breaches of such terms and conditions.

### 14.12 Notice

All notices which are required or permitted to be given or made pursuant to the Agreement shall be given or made in writing and shall be delivered personally or by courier with a copy sent by telecopier to:

(a) in the case of the City, at:

Address:

City Engineering Department

453 West 12th Avenue

Vancouver, British Columbia

V5Y 1V4

Attention:

General Manager of Engineering Services

Fax Number: (604) 871-6191

with a copy to:

Address:

Law Department

401-515 West 10th Avenue Vancouver, British Columbia

V5Z 4A8

Attention:

Director of Legal Services

Fax Number: (604) 873-7445

(b) in the case of the Contractor, at:

Address:

Viacom Outdoor JCDecaux Street Furniture Canada LP

377 Horner Avenue

Toronto Ontario M8W126

Attention:

Blair Murdoch

Fax Number: (416) 255-2063

with a copy to: Viacom Outdoor JCDecaux Street Furniture Canada LP

Address:

c/o JCDecaux North America Inc.

3 Park Avenue

33rd Floor

New York, New York 10016

Attention:

Francois Nion

Fax Number: (212) 834-1201

with a copy to:

Address:

Viacom Outdoor JCDecaux Street Furniture Canada LP

c/o Viacom Outdoor Inc. 405 Lexington Avenue

New York, New York 10174

Attention:

Amy Berlin, Esq.

Fax Number: (212) 338-9795

with a copy to:

Address:

Greenberg Traurig LLP

200 Park Avenue, 14th Floor New York, New York 10166

Attention:

Edward C. Wallace, Esq.

Fax Number: (212) 805-9299

#### 14.13 Arbitration

In the event of any dispute, Claim, question or difference arising out of or relating to this Agreement or any breach thereof, the Parties shall use their best endeavors to settle such dispute, Claim, question or difference. To this effect, they shall consult and negotiate with each other, in good faith and understanding of their mutual interests, to reach a just and equitable solution satisfactory to all Parties.

Except as is expressly provided in this Agreement, if the Parties do not reach a solution then upon written notice by a Party to the other, the dispute, Claim, question or difference shall be finally settled by arbitration in accordance with the provisions of the Commercial Arbitration Act (British Columbia) and any amendments thereto, based upon the following:

- (a) the arbitration tribunal shall consist of one arbitrator appointed by mutual agreement of the Parties, or in the event of failure to agree, within 10 Business Days after the date of delivery of the written notice, the Parties shall each appoint a nominee who together shall appoint a single arbitrator, failing which any Party may apply to a judge of the Supreme Court of British Columbia to appoint an arbitrator. The arbitrator shall be qualified by education and training to pass upon the particular matter to be decided, including, without limitation, knowledge of the real estate industry;
- (b) the arbitrator shall be instructed that time is of the essence in proceeding with the determination of any dispute, Claim, question or difference and, in any event, the arbitration award must be rendered within 30 days of the submission of such dispute to arbitration;
- (c) in the arbitration award, the arbitrator may award any remedy for any breach of this Agreement that might have been awarded by the Supreme Court of British Columbia except where the remedy for such breach has been expressly limited by this Agreement;
- (d) the arbitration shall take place in Vancouver, British Columbia;
- (e) the arbitration award shall be given in writing and shall be final and binding on the Parties, not subject to any appeal, and shall deal with the question of Costs of arbitration and all matters related thereto; and
- (f) judgement upon the award rendered may be entered in any court having jurisdiction, or, application may be made to such court for a judicial recognition of the award or an order of enforcement thereof, as the case may be.

#### 14.14 Costs

Except as otherwise provided in this Agreement, each of the City and the Contractor shall be responsible for its own fees, expenses and other Costs incurred in connection with carrying out its obligations under this Agreement.

#### 14.15 Ownership of Street Furniture

The Contractor shall own all Street Furniture Elements.

#### 14.16 Severability

The invalidity of any portion of this Agreement shall not affect the validity of the remainder of this Agreement provided that the spirit and intent of the Agreement is not violated.

#### 14.17 Time of the Essence

With respect to the Contractor's financial obligations under this Agreement (including the Financial Terms), time shall be of the essence of this Agreement, subject only to Force Majeure and provided that the City shall give the Contractor a written notice of a failure to satisfy its obligations and a 3 Business Day opportunity to cure such failure.

### 14.18 Entire Agreement

The provisions herein contained and the documents referred to and incorporated herein by reference constitute the entire Agreement between the parties and supersede all previous communications, representations and agreements whether verbal or written between the parties with respect to the subject matter hereof. The Contractor hereby acknowledges that it is not relying on any representations of the City as to the performance of the Work, except as stated expressly herein.

### 14.19 Governing Law and Attornment

This Agreement shall be governed by and construed in accordance with the laws of the Province of British Columbia, which shall be deemed to be the proper law hereof. The courts of British Columbia shall have jurisdiction (but not exclusive jurisdiction) to entertain and determine all disputes and Claims, whether for specific performance, injunction, declaration or otherwise arising out of or in any way connected with the constructions, branch, or alleged, threatened or anticipated breach of this Agreement and shall have jurisdiction to hear and determine all questions as to the validity, existence or enforceability hereof. For the purposes of any legal actions or proceedings brought by the City in respect of this Agreement, the Contractor hereby irrevocably submits and attorns to the jurisdiction of the courts of British Columbia and acknowledges their competence and the convenience and proprietary of the venue and agrees to be bound by any judgment thereof and not to seek, and hereby waives, any review of its merits by the courts of any jurisdiction.

#### 14.20 Further Acts

The Parties shall do or cause to be done all such further acts and things as may be reasonably necessary or desirable to give full effect to this Agreement. Without limiting the foregoing, the Contractor will at any time and from time to time execute and deliver or cause to be executed and delivered such further instruments and take such further actions as may be reasonably requested by the City in order to cure any defect in the execution and/or delivery of this Agreement.

#### 14.21 Counterparts

This Agreement may be executed in any number of counterparts. Any party hereto may send the copy of its executed counterpart to the other party hereto by facsimile transmission instead of delivering a signed original copy of such counterpart. Each executed counterpart (including each copy sent by facsimile transmission) shall be deemed to be an original and all such executed counterparts taken together shall constitute one and the same agreement, and notwithstanding the date of execution shall be deemed to bear the same date as written above on this Agreement.

#### 14.22 Enurement

This Agreement shall enure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

IN WITNESS WHEREOF the parties hereto have executed and delivered this Contract as of the day and year first above written.

### **CITY OF VANCOUVER**

Name: Frances J. Connell

Title: Director of Legal Services

# VIACOM OUTDOOR JCDECAUX STREET

FURNITURE CANADA LIMITED PARTNERSHIP,

by its General Partner, Viacom Outdoor JCDecaux Street Furniture Canada Ltd.

By:

Name: Blair Murdoch

Title: Co-CEO

By: \_\_\_\_\_

Name: François Nion

Title: Co-CEO

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IN WITNESS WHEREOF the parties hereto have executed and delivered this Contract as of the day and year first above written.

#### CITY OF VANCOUVER

By:

Name: Frances J. Connell

Title: Director of Legal Services

## VIACOM OUTDOOR JCDECAUX STREET FURNITURE CANADA LIMITED PARTNERSHIP.

by its General Partner, Viacom Outdoor JCDecaux Street Furniture Canada Ltd.

By: Name: Blair Murdoch

Title: Co-CEO

Name: François Nion

Title: Co-CEO

#### Schedule "A"

## Street Furniture Agreement dated as of December 10, 2002 between Viacom Outdoor JCDecaux Street Furniture Canada Limited Partnership and City of Vancouver

### **Advertising Protocol**

### A. General

- 1. Advertising is permitted on Modular Bus Shelters, Free Standing Advertising Displays, Automated Public Toilets, or on any other equipment as authorized by the City, in accordance with the requirements set out below:
  - (a) all advertisements must meet the standards set out by the Canadian Advertising Standards Council and any Applicable Laws; audio, olfactory (smell) and video advertising will not be used except where prior approval has been given by the General Manager of Engineering Services;
  - (b) any type of advertising which is false or misleading, which promotes unlawful or illegal goods, services or which is otherwise offensive or obscene as determined by the Canadian Advertising Standards Council or by Federal and Provincial law, shall not be used; and
  - (c) any advertising displayed which is deemed to be in contravention of Applicable Laws in place on the Effective Date of this Agreement, shall be removed immediately by the Contractor upon notification by the General Manager of Engineering Services. Failure to do so within 24 hours of notification will entitle the General Manager of Engineering Services to remove the prohibited material. All costs associated with this removal will be reimbursed by the Contractor.
- 2. The Contractor shall be responsible to carry out all functions associated with advertising and sponsorship including but not limited to:
  - (a) using its best efforts to maximize gross revenues through a well managed sales program for the available advertising space;
  - (b) installing and removing Contractor supplied advertisements on Modular Bus Shelters and Automated Public Toilets:
  - (c) using its best efforts to minimize interference to the City's operations while installing or removing advertisements;
- 3. The introduction of new technology solutions such as flat panel digital screens and electronic ink technology to replace printed Advertising Panels, will be considered by the General Manager of Engineering Services. All new advertising

- media proposed will be subject to the approval by the General Manager of Engineering Services.
- 4. The Contractor shall be limited to a maximum number of 2 Advertising Panels per item of Street Furniture for each standard size of Modular Bus Shelters, Free Standing Advertising Displays, and Automated Public Toilets. Advertising Panels in excess of this on any item of Street Furniture require the prior approval by the General Manager of Engineering Services. Notwithstanding the limitation described above, it is understood by the Parties that a scrolling Advertising Panel is counted as one Advertising Panel.
- 5. The Contractor shall use one double sided Advertising Panel in preference to two single sided Advertising Panels. Where two single sided Advertising Panels are to be used, these locations must be approved by the General Manager of Engineering Services. On narrow sidewalks, or where other site constraints exist that requires a Modular Bus Shelter without side panels, a Free Standing Advertising Display may be located at a mutually agreed to location by the General Manager of Engineering Services and the Contractor. For greater certainty, Free Standing Advertising Displays may only be established with the approval of the General Manager of Engineering Services.

### B. Public Use Panels

- 1. The Contractor shall, at no cost to the City, provide community advertising space (Public Use Panels) for use by the City and the City Designees. The availability of Public Use Panels will be established at 10% of all Advertising Panels except as otherwise required herein.
- 2. Public Use Panels shall be distributed equitably throughout the City of Vancouver at the various locations of Modular Bus Shelters, Free Standing Advertising Displays, and Automated Public Toilets, as the case may be.
- 3. All Public Use Panel locations will be available to the City without interruption, except where the City fails to notify the Contractor of a booking within 30 days of the beginning of the following month. In the event the Contractor is not notified of a booking for Public Use Panels as required herein, the Contractor will be at liberty to use such Public Use Panels for commercial advertising for that month only.

Schedule 'B' - Street Furniture Inventory / Requirement

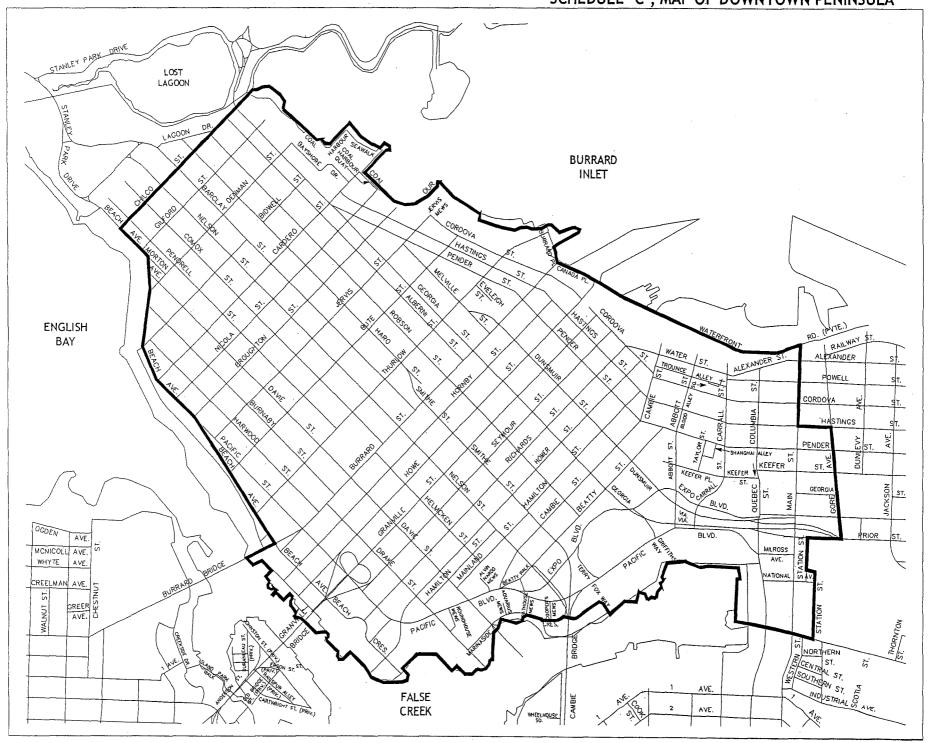
	Item description	Existing City street furniture	Quantities requiunder Schedule Street Furniture Rollout	'F' –
1	Modular bus shelters [with advertising]		675	
2	Modular bus shelters [without advertising]	252 104*	225	900**
3	Single benches	450	890	
4	Double benches	269*	95	985
5	40-litre Litter receptacles	800	640	
6	80-litre Litter receptacles	425*	800	1440
7	Recycling receptacles			20
8	Multiple publication newsracks	_		104
9	Modular pay telephone booths	_		60
10	Modular information kiosks	<u> </u>		29
11	Modular bike lockers			235
12	Bike racks (2 bikes)	690	100	100
12	Bike racks (3 Bikes)	217*	75	175
13	Automated public toilets - large	_	5	17
14	Automated public toilets -small		12	17
14	Standard map-stands		30	01-
15	Narrow map-stands		180	210
16	Aqua-bus shelters	3		

<sup>\* -</sup> Estimated existing quantities in BIA areas [Excluding DVBIA]

Note: The modular pay telephone booths and Modular information kiosks to be installed in the Modular bus shelters.

<sup>\*\* - 780</sup> Modular bus shelters to be of the 'Cityline' design

# SCHEDULE "C", MAP OF DOWNTOWN PENINSULA



Schedule "D". Financial Terms

	Years	Guaranteed Minimum	Percentage of
		Annual Revenue	Gross Revenue
	2003 Pre-term Period	N/A	20%
1	2004	\$380,000	20%
2	2005	\$547,081	20%
3	2006	\$675,098	20%
4	2007	\$810,748	20%
5	2008	\$957,775	20%
6	2009	\$1,005,034	20%
7	2010	\$1,055,443	20%
8	2011	\$1,109,003	20%
9	2012	\$1,164,138	20%
10	2013	\$1,222,424	20%
11	2014	\$1,283,860	20%
12	2015	\$1,348,447	20%
13	2016	\$1,416,184	20%
14	2017	\$1,487,072	20%
15	2018	\$1,561,110	20%
16	2019	\$2,049,844	25%
17	2020	\$2,152,237	25%
18	2021	\$2,260,538	25%
19	2022	\$2,372,778	25%
20	2023	\$2,490,924	25%
	2024 Post-Term Period	\$2,179,148	25%
	Total:	\$29,528,884	- · · · · · · · · · · · · · · · · · · ·

# Schedule E - Rollout Schedule

Street Furniture :: 4.5.5.5	e de la compa		Pre-ter	onna			Year 1	* Nance		e sintales	Year 2	onne .					3 K T 1 K T			ir 3 - Yc	ລະນາ				i i i i i i i i i i i i i i i i i i i	
Elements 2227 12			jected h			Pro			ons :	Proj		tallations							Project							
	Total		P2.	P3/		epis.		1-P3		PI I	F2.	P3 # = 1	24	Yr. 3	Yr 4	Yr. 5	Yr. 6						Yr. 12 Y	6 13 Y	r. 14 Yr. 1	5 - 20
Modular Bus Shelters	67,5		120	140	130	100	70	66	49												•					
(with advertising panels)	01.0		120	140	130	100																				
Modular Bus Shelters	225		5		5		5		5	50	50	50	50	5												
(without advertising panels)																										
Total per period	900	0	125	140	135	100	75	66	54	50	50	50	50	5												
Total per Year			·		400				295				200	5												
Cumulative installation	**************************************	Management of the Control		NAME OF TAXABLE PARTY.		Notice and the later of the lat		a negration	695				895	900				All group (manufacture)								Caynow idea
Benches Single 19, 12, 14, 14	* 890		(2.60)	<b>2 - 6</b> 0	40	= 50	50	25.250	50		10		- 6	30	330	201	330	30	30	30	30	00]	ar. 30] :	30)	230 5,02	140
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Litter Receptacles - 80 Litre	800		70	70	70		140	140	140		10	10	10	20	20	20	20	20	20	20			•			
Total per Year					400				800				40	30	30	30	30	30	30	20						
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Modular Telephone Booth .	, 260	Last	Maria.			9,5,00	. (c.10)	10.05		4, 4, 6	235 J.	(65) ee	1.5	5 5	25-5											
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Modular Information Kiosk	29					6	6	6	6	5																
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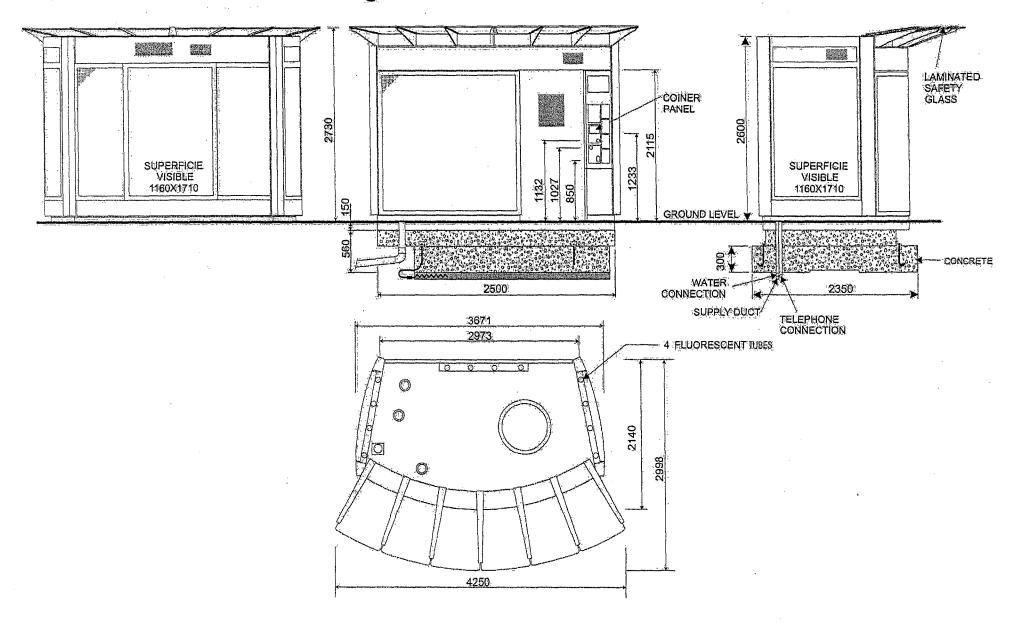
# Schedule E - Rollout Schedule

Single and the second						
Parkers and Parker			ZE: BYG-HBYG-LFF; K. 15 K. 15 H. 15 K. 17			
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Automated Public Toilet - Large 5			1	1	t t	::
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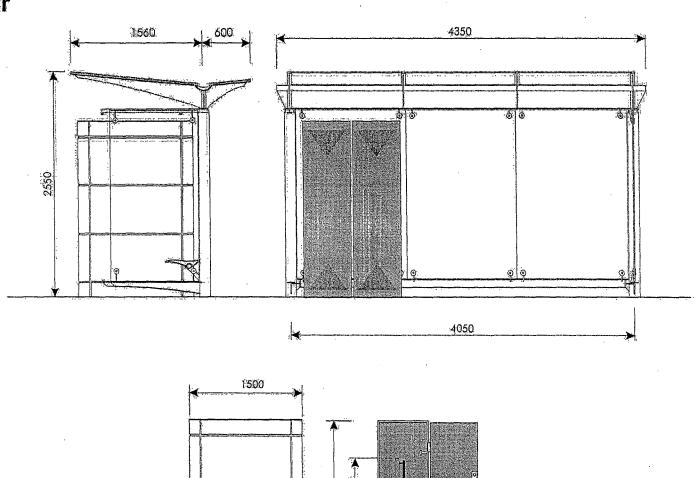
# SCHEDULE "F" Street Furniture Designs

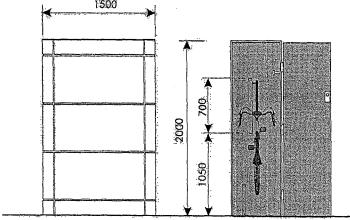
(see attached)

# **Automated Public Toilet - Large**



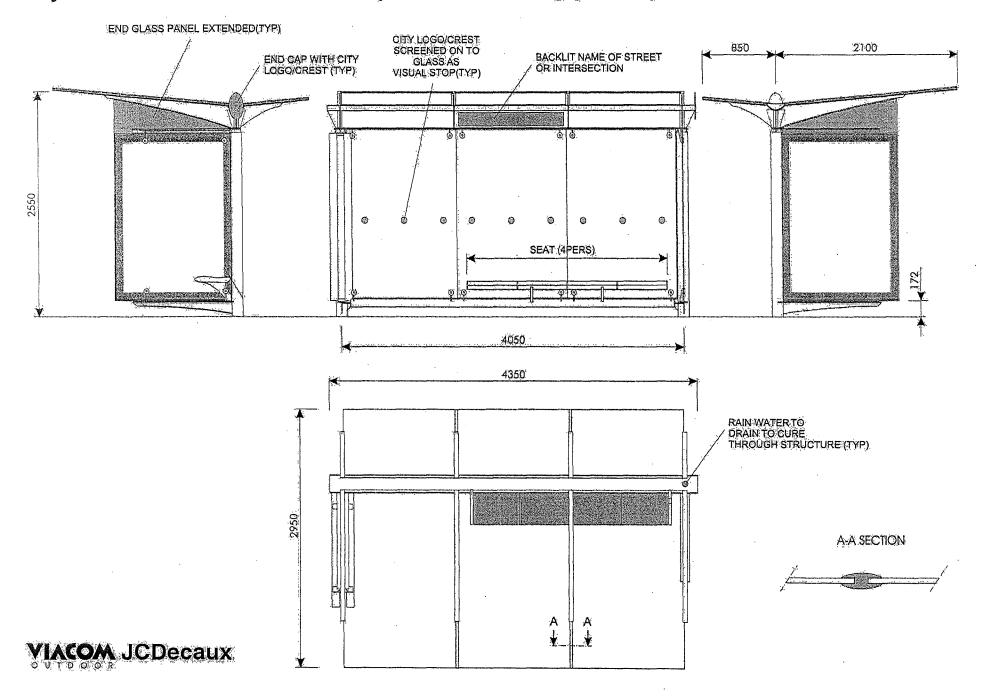
# City Line Modular Bus Shelter (with bike locker) Bike Locker



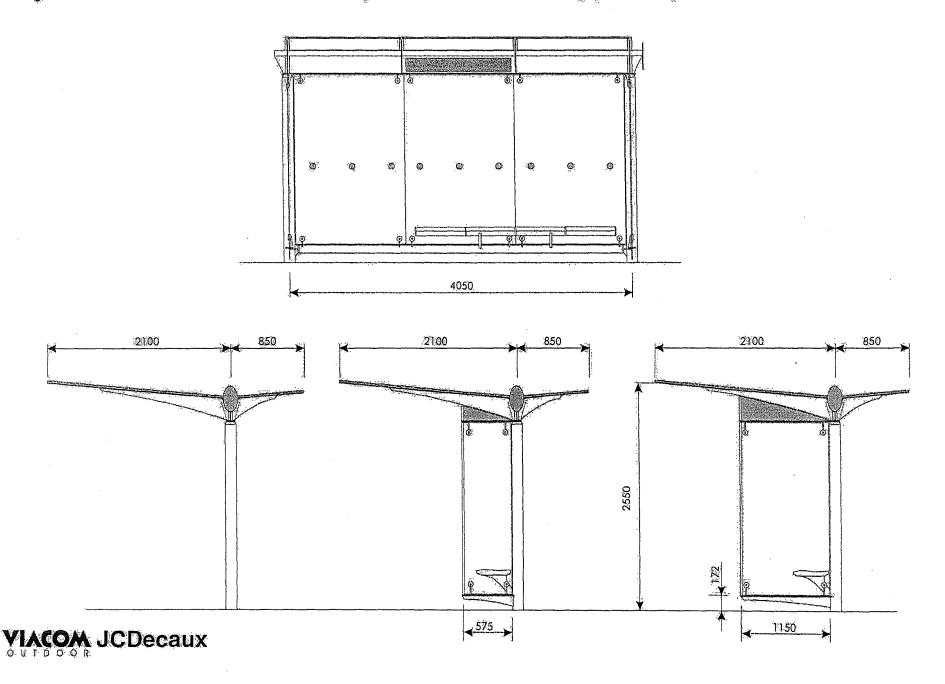




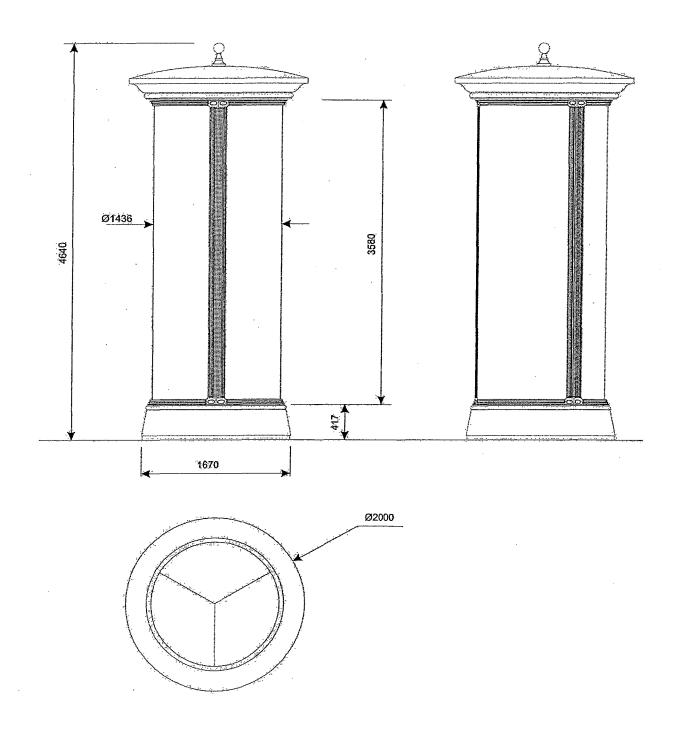
# City Line Modular Bus Shelter (with advertising panels) - Wide



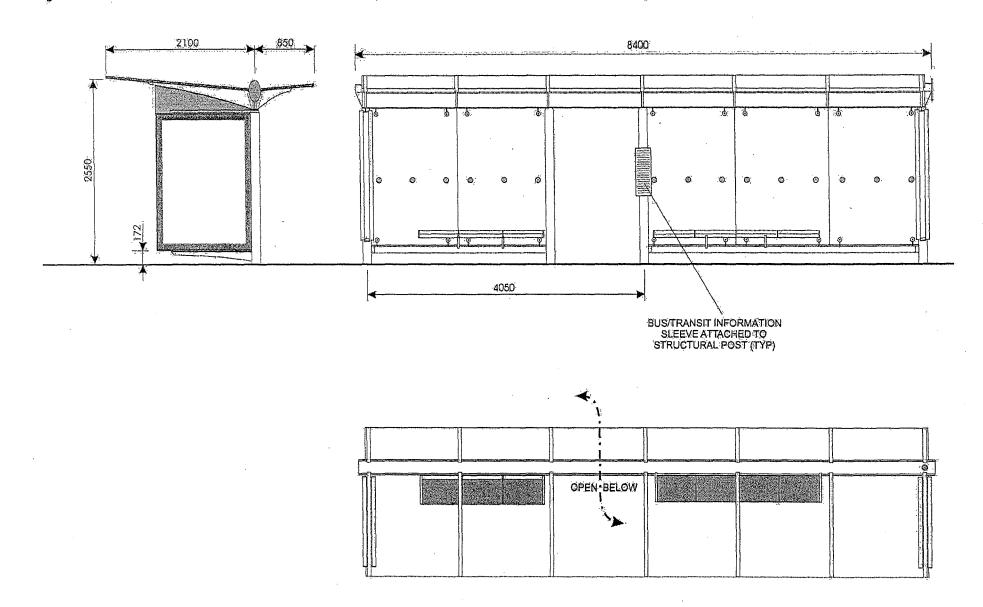
# City Line Modular Bus Shelter (without advertising panels) - Wide



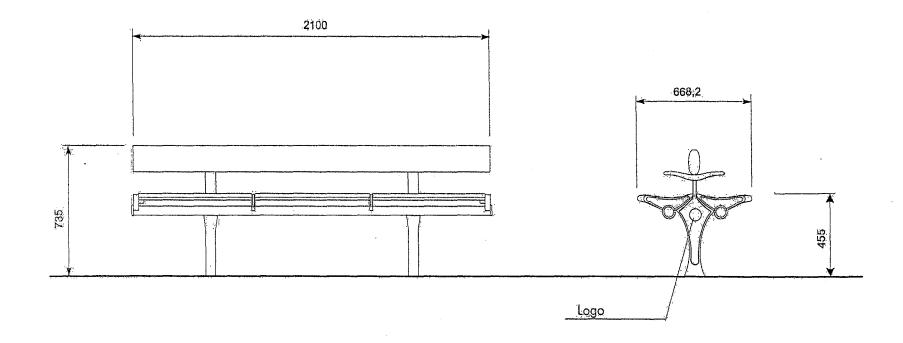
# Column Kiosk



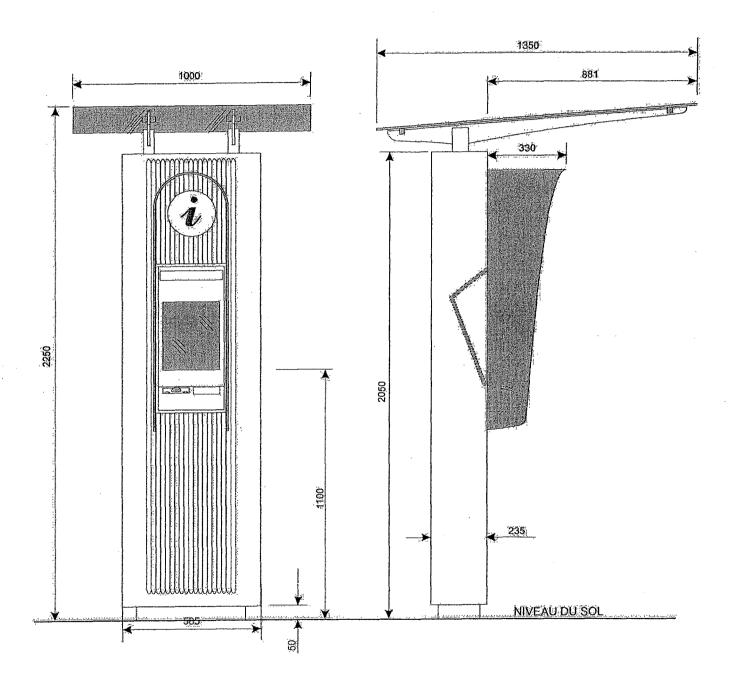
# City Line Modular Bus Shelter (with advertising panels) - Wide, double length



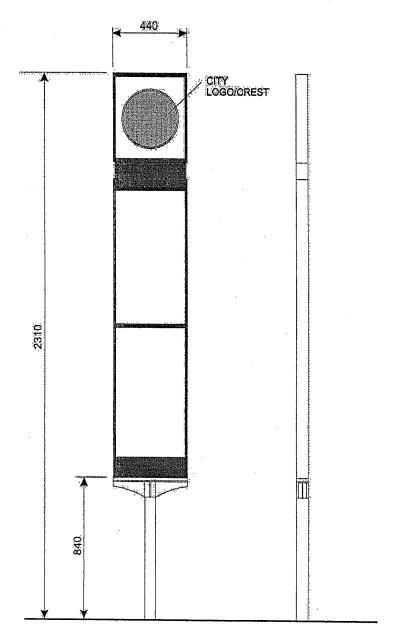
# **Double Bench**



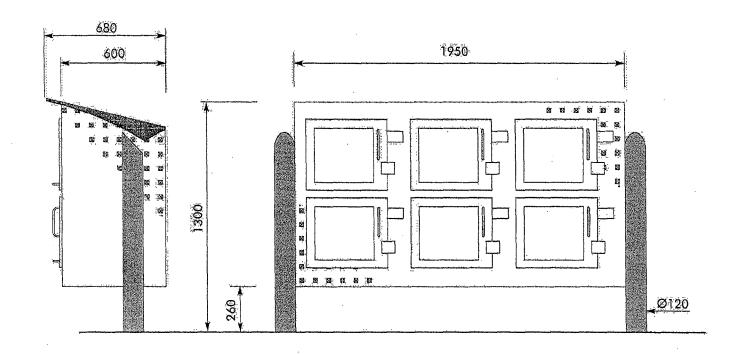
# Modular Information Kiosk



# **Map Stand - Narrow**

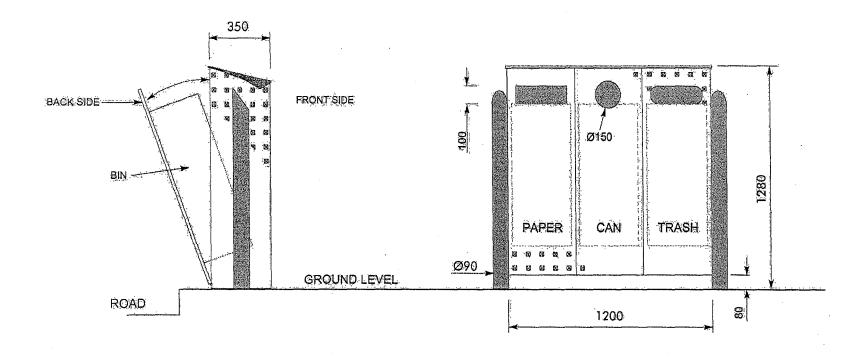


# **Multiple Publication Newsrack**



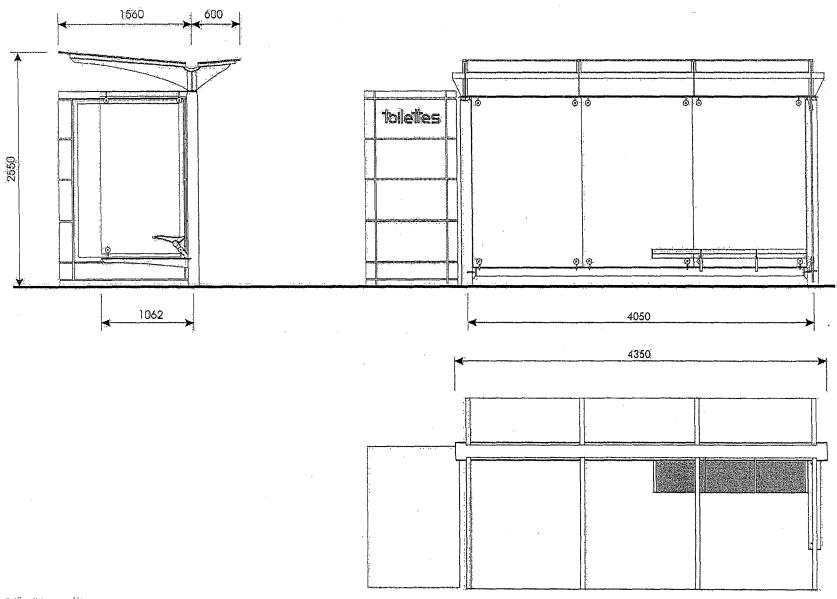


# **Recycling Receptacle**



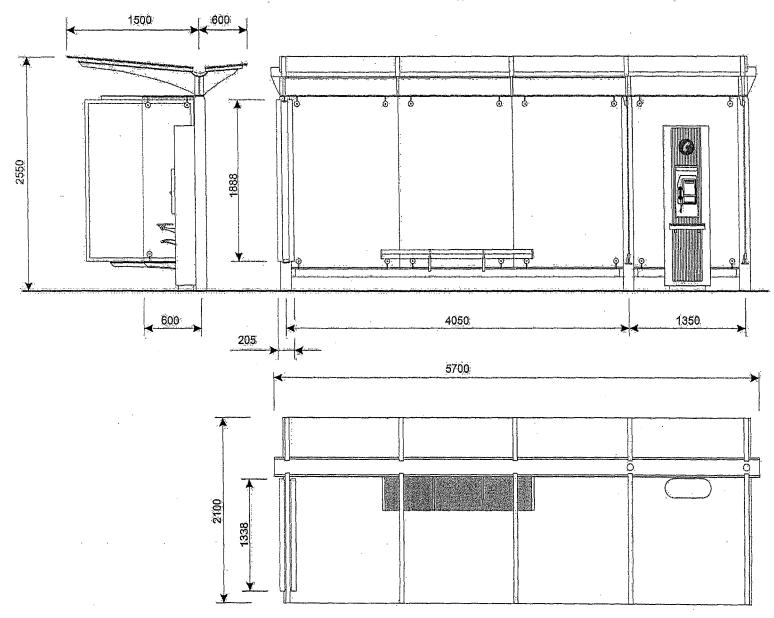


# City Line Modular Bus Shelter (with small automated public toilet) - Standard

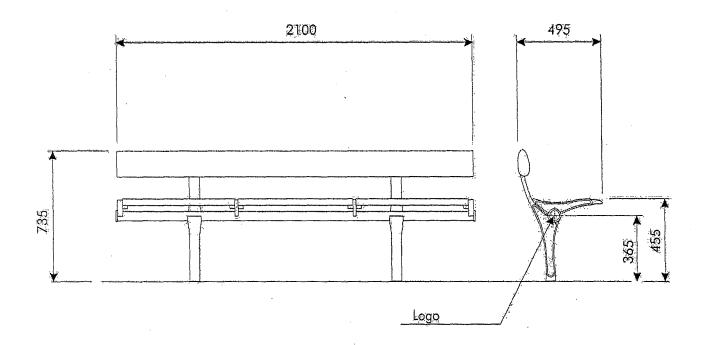


YIACOM JCDecaux

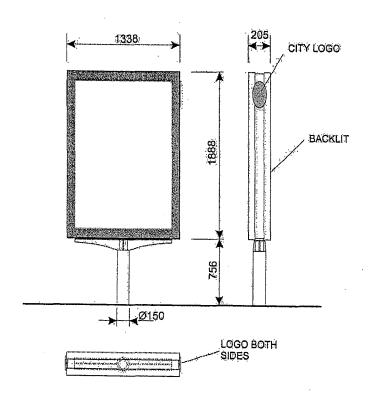
# City Line Modular Bus Shelter (with Modular Pay Telephone Booth) - Standard



# Single Bench

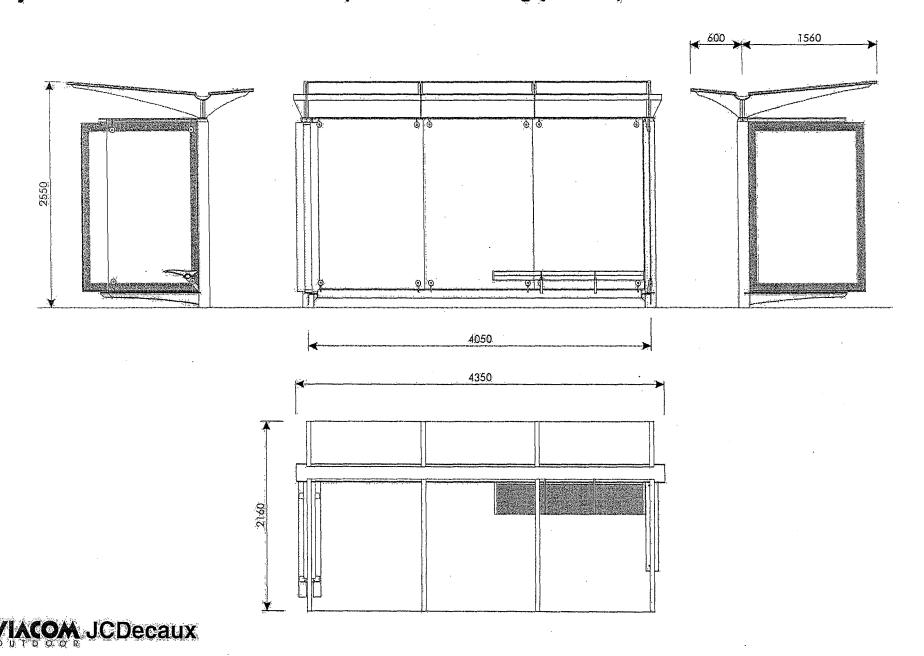


# Map Stand - Standard Free Standing Advertising Displays





# City Line Modular Bus Shelter (with advertising panels) - Standard



### Schedule "G"

## Street Furniture Agreement dated as of December 10, 2002 between Viacom Outdoor JCDecaux Street Furniture Canada Limited Partnership and City of Vancouver

#### Insurance

NOTE:

THE "CERTIFICATE OF LIABILITY INSURANCE" ATTACHED TO THIS SCHEDULE MUST BE COMPLETED AND SUBMITTED BY THE CONTRACTOR PRIOR TO THE EFFECTIVE DATE.

### A. General

- 1. Without limiting any of its obligations or liabilities under the Agreement, the Contractor and its subcontractors shall obtain and continuously carry during the Pre-Term Period, the Term and the Post-Term Period, at their own expense and cost, the following insurance coverages with minimum limits of not less than those shown in the respective items set out below.
- 2. All insurance policies shall be in a form and in amounts satisfactory from time-to-time and with insurers acceptable to the General Manager of Engineering Services and the City Director of Risk Management and shall provide the City with 60 days prior written notice of material change, lapse or cancellation. Notice must identify the Agreement, number, policy holder, and scope of work.
- 3. The Contractor and each of its subcontractors shall provide at its cost any additional insurance which he is required by law to provide or which it considers necessary.
- 4. Neither the providing of insurance by the Contractor in accordance with the requirements hereof, nor the insolvency, bankruptcy or the failure of any insurance company to pay any claim accruing shall be held to relieve the Contractor from any other provisions of this Agreement with respect to liability of the Contractor or otherwise.
- 5. The insurance coverage shall be primary insurance as it pertains to the City. Any insurance of self-insurance maintained by or on behalf of the City, its officers, officials, employees, servants or agents shall be excess of this insurance and shall not contribute with it.

#### B. Evidence of Insurance

1. Prior to the Effective Date, the Contractor shall provide the City with evidence of all required insurance to be taken out in the form of a detailed Certificate of Insurance as attached, supported by certified copy(ies) of the certificates of insurance. The Contractor will also deliver certified copies of the policy(ies) of insurance upon the request of the City. The certificate of insurance shall not contain any disclaimer whatsoever. At all times thereafter, during Pre-Term Period, the Term and the Post-

Term Period, the Contractor shall covenant and agree to comply with all its insurance obligations described herein. Proof of insurance, in the form of a certificate of insurance or certified copies of all insurance policies shall be made available to the City Risk and Emergency Management at any time upon request.

2. The Contractor shall provide in its agreements with its subcontractors clauses in the same form as those found herein. Upon request, the Contractor shall deposit with the General Manager of Engineering Services and the City Director of Risk Management detailed certificate of insurance for the policies it has obtained from its subcontractors and a copy of the insurance clauses so provided in the said agreements.

# C. Commercial General Liability Insurance

- 1. The Contractor shall maintain insurance in sufficient amounts and description to protect the Contractor, its subcontractors, the City and its respective officers, officials, employees, servants and agents against claims for damages, personal injury including death, bodily injury and property damage which may rise under the Agreement.
- 2. The limit of commercial general liability insurance shall be not less than \$5,000,000 per occurrence inclusive for personal injury, death, bodily injury or property damage and in the aggregate with respect to products and complete operations.
- 3. The policy of insurance shall:
  - (a) be on an occurrence form;
  - (b) add the City and its officials, officers, employees and agents as additional insureds;
  - (c) contain a cross-liability of severability of interest clause;
  - (d) extend to cover non-owned automobile, contingent employer's liability, blanket Contractual liability, Contractor's protective liability, broad form property damage, broad form property damage, broad form completed operations and operations of attached machinery.

#### D. Motor Vehicle Insurance

1. Motor vehicle liability insurance for owned and leased licensed vehicles with limits of \$5,000,000 inclusive for accidental injury to or death of one or more persons or damage to or destruction of property as a result of any one accident. Where the policy has been issued pursuant to a government operated automobile insurance system, the Contractor shall provide the General Manager of Engineering Services and the City Director of Risk Management with confirmation of the automobile insurance coverage for all automobiles registered in the name of the Contractor and its subcontractors used in connection with the Work.

### E. Workers' Compensation Board Coverage

1. The Contractor agrees that it is the principal Contractor for the purposes of the Workers' Compensation Board Industrial health and Safety Regulations for the Province of British Columbia. The Contractor shall have a safety program acceptable to the WCB and shall ensure that all WCB safety rules and regulations are observed during performance of the Agreement, not only by the Contractor but by all subcontractors, workers, materialmen and others engaged in the performance of the Agreement.

### F. All risk Insurance

1. Insurance covering all risks of physical loss or damage to the Street Furniture Elements and all components thereof in an amount of not less than the full purchase price of these Street Furniture Elements during the Pre-Term Period, the Term and the Post-Term Period and which shall include a waiver of subrogation against all unissued parts and a deductible of no more than \$5,000 for each and every claim and which insurance shall terminate on safe delivery to and acceptance by the City of the Street Furniture Elements at the site.

media proposed will be subject to the approval by the General Manager of Engineering Services.

- 4. The Contractor shall be limited to a maximum number of 2 Advertising Panels per item of Street Furniture for each standard size of Modular Bus Shelters, Free Standing Advertising Displays, and Automated Public Toilets. Advertising Panels in excess of this on any item of Street Furniture require the prior approval by the General Manager of Engineering Services. Notwithstanding the limitation described above, it is understood by the Parties that a scrolling Advertising Panel is counted as one Advertising Panel.
- 5. The Contractor shall use one double sided Advertising Panel in preference to two single sided Advertising Panels. Where two single sided Advertising Panels are to be used, these locations must be approved by the General Manager of Engineering Services. On narrow sidewalks, or where other site constraints exist that requires a Modular Bus Shelter without side panels, a Free Standing Advertising Display may be located at a mutually agreed to location by the General Manager of Engineering Services and the Contractor. For greater certainty, Free Standing Advertising Displays may only be established with the approval of the General Manager of Engineering Services.

### B. Public Use Panels

- 1. The Contractor shall, at no cost to the City, provide community advertising space (Public Use Panels) for use by the City and the City Designees. The availability of Public Use Panels will be established at 10% of all Advertising Panels except as otherwise required herein.
- 2. Public Use Panels shall be distributed equitably throughout the City of Vancouver at the various locations of Modular Bus Shelters, Free Standing Advertising Displays, and Automated Public Toilets, as the case may be.
- 3. All Public Use Panel locations will be available to the City without interruption, except where the City fails to notify the Contractor of a booking within 30 days of the beginning of the following month. In the event the Contractor is not notified of a booking for Public Use Panels as required herein, the Contractor will be at liberty to use such Public Use Panels for commercial advertising for that month only.

Schedule 'B' - Street Furniture Inventory / Requirement

	Item description	Existing City street furniture	Quantities requiunder Schedule Street Furniture Rollout	'F' -
1	Modular bus shelters [with advertising]		675	
2	Modular bus shelters [without advertising]	252 104*	2 <b>2</b> 5	900**
3	Single benches	450	890	
4	Double benches	269*	95	985
5	40-litre Litter receptacles	800	640	
6	80-litre Litter receptacles	425*	800	1440
7	Recycling receptacles	_		20
8	Multiple publication newsracks	-		104
9	Modular pay telephone booths	_		60
10	Modular information kiosks	_		29
11	Modular bike lockers	_		<b>23</b> 5
12	Bike racks (2 bikes)	690	100	
12	Bike racks (3 Bikes)	217*	75	175
13	Automated public toilets - large	-	5	17
14	Automated public toilets -small		12	17
14	Standard map-stands	_ [	30	
15	Narrow map-stands		180	210
16	Aqua-bus shelters	3		

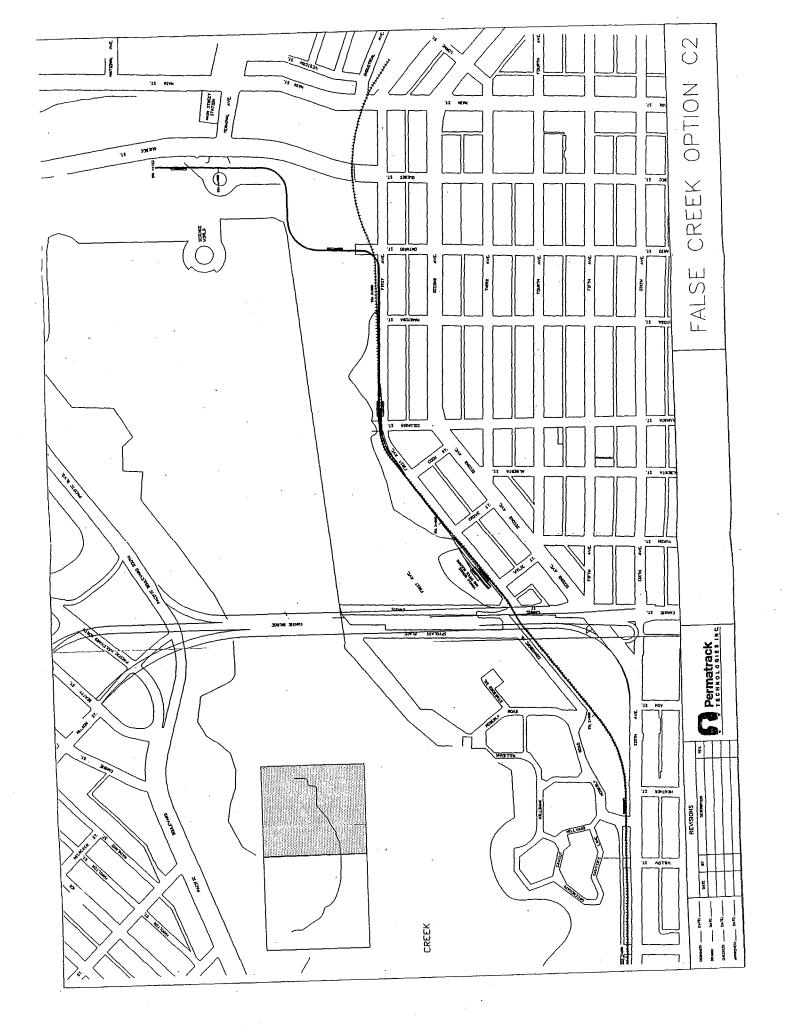
<sup>\* -</sup> Estimated existing quantities in BIA areas [Excluding DVBIA]

Note: The modular pay telephone booths and Modular information kiosks to be installed in the Modular bus shelters.

<sup>\*\* - 780</sup> Modular bus shelters to be of the 'Cityline' design

Schedule "D". Financial Terms

	Years	Guaranteed Minimum	Percentage of
		Annual Revenue	Gross Revenue
	2003 Pre-term Period	N/A	20%
1	2004	\$380,000	20%
2	2005	\$547,081	20%
3	2006	\$675,098	20%
4	2007	\$810,748	20%
5	2008	\$957,775	20%
6	2009	\$1,005,034	20%
7	2010	\$1,055,443	20%
8	2011	\$1,109,003	20%
9	2012	\$1,164,138	20%
10	2013	\$1,222,424	20%
11	2014	\$1,283,860	20%
12	2015	\$1,348,447	20%
13	2016	\$1,416,184	20%
14	2017	\$1,487,072	20%
15	2018	\$1,561,110	20%
16	2019	\$2,049,844	25%
17	2020	\$2,152,237	25%
18	2021	\$2,260,538	25%
19	2022	\$2,372,778	25%
20	2023	\$2,490,924	25%
	2024 Post-Term Period	\$2,179,148	25%
	Total:	\$29,528,884	



# CERTIFICATE OF INSURANCE

AUTOMOBILE LIABILITY including:	Owned Vehicles	Leased Vehicles
INSURER:	LIMITS OF LIABILITY:	
POLICY NUMBER:	Combined Single Limit	\$
POLICY PERIOD: From:to		
UMBRELLA LIABILITY	EXCESS LIABILITY	
INSURER:	LIMITS OF LIABILITY: (Bodily Injury and Prop	erty Damage Inclusive)
POLICY NUMBER:	Per Occurrence:	\$
POLICY PERIOD:	Aggregate:	\$
	Self-Insured Retention:	\$
POLICY PROVISIONS (ALL LINES except Auto	omobile Liability Insurance):	
POLICY PROVISIONS (ALL LINES except Auto These policies comply with the insurance of or license with the City of Vancouver. It is contract/permit or license, the City of Van have been added as an additional insured cancellation of any of the policies listed h	omobile Liability Insurance): requirements of the governing con s understood and agreed that when ncouver, its officials, officers, emp and that SIXTY (60) days notice o	tract, agreement, lease, permit e required by the governing ployees, servants and agents f any material change or
POLICY PROVISIONS (ALL LINES except Auto These policies comply with the insurance of or license with the City of Vancouver. It is contract/permit or license, the City of Van have been added as an additional insured cancellation of any of the policies listed h the holder of this certificate. With the City of Vancouver, all the forgoin	omobile Liability Insurance): requirements of the governing con s understood and agreed that when ncouver, its officials, officers, emp and that SIXTY (60) days notice of serein, either in part or in whole we ag insurance shall be primary and	tract, agreement, lease, permit e required by the governing ployees, servants and agents f any material change or ill be given by the insurers to insurance or self-insurance
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# CERTIFICATE OF INSURANCE

	ANCOUVER, PURCHASING SERVICES, 453 WER, BC, V5Y 1V4, ATTENTION: SUSANNE SI	,
NAMED INSURED:		
MAILING ADDRESS:		
LOCATION ADDRESS:		
And certifies that policies of insurance as herein are in full force and effect as of the effective do DESCRIPTION OF OPERATIONS/CONTRACT:		d insured (s) and
PROPERTY (All Risks Coverage incl. Earthquake & Flood)	PROPERTY REPLACEMENT COST INSUI	RED VALUES:
INSURER:	Building incl. Tenants Imp.: \$	
TYPE OF COVERAGE:		
POLICY NUMBER:	Deductible/Accident: \$	
POLICY PERIOD: From:to		
<ul> <li>COMMERCIAL GENERAL LIABILITY including:</li> <li>Occurrence Form</li> <li>Personal Injury</li> <li>Products and Completed Operations</li> <li>Cross Liability or Severability of Interest</li> </ul>	LIMITS OF LIABILITY: Bodily Injury and Property Damage Incl Per Occurrence: \$	
<ul> <li>Employees as Additional Insureds</li> <li>Blanket Contractual</li> </ul>	Aggregate: \$	
Non-Owned Automobile	All Risk Tenant's Legal Liability:\$	
INSURER:	Deductible Per Occurrence: \$	
POLICY NUMBER:	<u> </u>	
POLICY PERIOD: From:to		

## City of Vancouver



# Inter-Office Correspondence

200001659 Pls refer to original agreement & 20000544

Law File No. 07-0026

### LAW DEPARTMENT

MEMO TO:

Syd Baxter, City Clerk

COPY TO:

Grant Woff, Engineering Services

Tom Hamell, Engineering Services

FROM:

Bill H. Aujla, Solicitor

DATE:

February 26, 2007

SUBJECT:

Amending Agreement to Street Furniture Agreement

Law File 07-0026

### Attached please find the following documents for filing:

TYPE OF AGREEMENT	One (1) originally signed Amending Agreement
DATE OF AGREEMENT	September 27, 2006
(if this date is execution date and there is more than one date, use the latest date as the date of the agreement)	
PARTIES	CITY OF VANCOUVER
(complete names)	and CBS OUTDOOR JCDECAUX STREET FURNITURE CANADA LIMITED (formerly VIACOM OUTDOOR JCDECAUX STREET FURNITURE CANADA LIMITED PARTNERSHIP)
CIVIC ADDRESS	N/A
(no abbreviations - must be searchable)	
LEGAL DESCRIPTION	N/A
(no abbreviations - must be searchable)	
EXPIRY DATE	December 31, 2015
(indicate "N/A" if there is no expiry date)	

RETENTION DATE -  (if there is an expiry date, fill in the date that the City Clerk may send this document to Records - usually one year after expiry date)	N/A
REMINDER DATE  (if there are no expiry/retention dates, THIS MUST BE FILLED IN - the lawyer can help to determine when this agreement could possibly be sent to Records - City Clerk's will use this date to remind us to review the agreement to determine whether it can be sent to Records)	January 1, 2015
WHO TO NOTIFY:  (this may be more than one person) [make sure you indicate the person's name, department (including division) and telephone number]	Bill Aujla, Solicitor, Legal Services (604) 871-6913  Grant Woff, Engineering Services (604) 871 6966
FILE NUMBER (Law Department file number)	07-0026

Bill H. Aujla /cab Attachment



This amendment dated for reference September 27, 2006

#### Between:

CBS Outdoor JCDecaux Street Furniture Canada Limited Partnership 1451 Adanac Street Vancouver, BC V5L 2C4

(Hereinafter called the "Contractor")

and

The City of Vancouver 453 West 12<sup>th</sup> Avenue Vancouver, BC V5Y 1V4

(Hereinafter called the "City")

The contractor submits the following attachments to act as an amendment to the Street Furniture Agreement dated December 10, 2002 as per Section 5.2, Adjustment to Schedule.

The Contractor and the City hereby agree that:

- a) "Schedule E Rollout Schedule Revised August 2006" attached to this amendment will replace "Schedule E Rollout Schedule" included in the Street Furniture Agreement; and
- b) The "2006 City of Vancouver Trade-off Schedule" attached to this amendment has been agreed to and accepted by both parties and is now added to the Street Furniture Agreement; and,
- c) A discrepancy exists between the number of bike lockers in Schedule B and "Schedule E Rollout Schedule" of the Street Furniture Agreement. The Contractor and the City agree to change the quantity to 183.

Tom Timm, City Engineer

City of Vancouver

Nick Arakgi, Co-CEO

CBS Outdoor JCDecaux-Street Furniture Canada

Limited Partnership

François Nion, Co-CEO

CBS Outdoor JCDecaux Street Furniture Canada Limited Partnership

1451 Adanac Street, Vancouver, B.C., Canada V5L 2C4 (604) 630-1090 Fax (604) 255-6580

Schedule E - Rollout Schedule - Revised Aug 2006

Street Furniture			Pre-ten				Year 1					- 2005								r 3 - Yea						
Elements		HIPOTOTOTOTOTOTO	jected li	isiwidoidalisione	editional and the same		ADDRESS STREET, SAN	nstallati		7 21 22 24 21 21 21 21 22	displace number	nstalla	110 -2210 A122110			ı			- C C C C C C C C	ted Insta						
	Total	P1	P2	P3	P4	P1	P2	P3	P4	P1	P2	P3	P4	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018 <b>-</b> 22
Modular Bus Shelters	675		120	140	130	100	70	66	49	Ī																
(with advertising panels)										ļ				Ь.,												
Modular Bus Shelters	225		. 5		5		5		5	50	50	50	50	5												
(without advertising panels)																										
Total per period	900	0	125	140	135	100	75	66	54	50	50	50	50	5												
Total per Year					400				295				200	5												
Cumulative installation									695				895	900												
Benches - Single	890		60	60	40	50	50	50	50	10	10		5 5	30	30	30	30	30	30	30	30	30	30	30	30	140
Benches - Double	95		20	10	10	15	15	15	10																	
Total per Year					200				255				30	30	30	30	30	30	30	30	30	30	30	30	30	140
Cumulative installation									455				485	515	545	575	605	635	665	695	725	755	785	815	845	985
Litter Receptacles CityLine & BIA	1300		130	130	140		260	260	280				100													
Litter Receptacles																										
Total per Year					400				800				100													
Cumulative installation									1200				1300													
Recycling Racks (Replaces Receptacies)	924												924													
Total per Year	924								0				924													
Bike Racks - 2 bikes	100		3	3	3	2	2	2	2	5	5		5 3	15	15	5	5	5	5	5	5	3	2			
Bike Racks - 3 bikes	75		3	2	1	2	2	2	1	3	3	; ;	3 3	10	10	5	5	5	5	5	3	2				
Total per Year					15				15				30	25	25	10	10	10	10	10	8	5	2			
Cumulative installation									30				60	85	110	120	130	140	150	160	168	173	175			
Map Stand - Standard	30														30											
Map Stand - Narrow	180														60	20	20	20	20	20	20					
Total per Year									0				0	0	90	20	20	20	20	20	20					
Cumulative installation									0				0	0	90	110	130	150	170	190	210					
Modular Newsracks - 3 columns	104													2	102											
Total per Year					0				0				0													
Cumulative installation									0				0	2	104											
Modular Telephone Booth	49															10	10	10	10	9						
Total per Year (-11 Tradeoff 2006)					0				0				0	0	0	10	10	10	10	9						
Cumulative installation									0				0	0	0	10	20	30	40	49						
Modular Information Kiosk	29													0	0	10	10	9								
Total per Year					0				0				0	].		10	10	9								
Cumulative installation									0				0			10	20	29								
Automated Public Tollet - Small	11					1	1	1	C	1	C		1 0	1	0	0	0	1	0	1	o	1	1	1		
Total per Year (-1 Tradeoff 2008)					0				3				2	1	0	0	0	1	0	1	0	1	1	1		
Cumulative installation									3				5	6	6	6	6	7	7	8	8	9	10	11		
Automated Public Tollet - Large	5		Τ					1							1		1		1		1					
Total per Year			•		0				1	T			0	0	1	o	1	0	1	0	1					
Cumulative installation					<del>-</del> -				1	T			1	1	2	2	3	3	4	4	5					
Bike Lockers	130					0	0	0	c		C			0		30	30	-	35							
Total per Year (-53 Tradeoff 2006)					0				0				0	200230000000000000000000000000000000000	ō	30	30	35	35							
Cumulative installation									0				7		0	30	60	95	130							

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			,		
Original	Proposed	Change	Unit Value	Total Value	Comments
Contract	Quantity				
, , , , , , , , , , , , , , , , , , , ,					
0	924	924	0.09	83.2	
		Total - Inc	reases	83.2	
			M		
183	130	-53	0.48	-25.4	From revised qty of 183. Will leave same number as in original rollout schedule.
20	0	-20	0.72	-14.4	
60	49	-11	0.27	-3.0	
12	11	-1	40.28	-40.3	
		Total - Dec	creases	-83.1	
JCL	Jeca	NUX			
				İ	
	183 20 60 12	Contract Quantity  0 924  183 130  20 0 60 49 12 11	Contract Quantity  0 924 924  Total - Inc  183 130 -53  20 0 -20 60 49 -11 12 11 -1  Total - Dec  Total - Dec	O   924   924   0.09     Total - Increases     183   130   -53   0.48     20   0   -20   0.72     60   49   -11   0.27     12   11   -1   40.28     Total - Decreases     Total - Decreases	Contract Quantity  0 924 924 0.09 83.2  Total - Increases 83.2  183 130 -53 0.48 -25.4  20 0 -20 0.72 -14.4 60 49 -11 0.27 -3.0 12 11 -1 40.28 -40.3  Total - Decreases -83.1