

## MASTER SALES AGREEMENT

This Master Sales Agreement (“Master Agreement”), entered into this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, (“Execution Date”), by and between the City of Santa Monica (“City”) and [Click here to enter text.](#) (“Agency”), is made with reference to the following:

### RECITALS:

- A. The City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the statutes of the State of California and the Charter of the City.
- B. Agency is qualified to do business, and is doing business, in the State of California.
- C. The City and Agency desire to enter into an agreement for City to license advertising space on the City’s Big Blue Buses and on other transit buses to Agency on behalf of \_\_\_\_\_ (“Advertiser”) pursuant to the terms and conditions set forth below.

NOW, THEREFORE, it is mutually agreed by and between the undersigned parties as follows:

### TERMS AND CONDITIONS

- 1. **Term.** This Master Agreement commences on the Execution Date, and terminates on XXXXX, 2019 (“Termination Date”). No Advertising Insertion Order (“Order”) may extend beyond the Termination Date.
- 2. **Sale of Advertising Space.** Subject to the terms and conditions contained herein, the City agrees to sell available advertising space to Agency. At any time after the Execution Date, Agency may purchase available advertising space by submitting to the City a completed Order, in the form attached hereto as Exhibit A or as later amended by City.
- 3. **Advertising Insertion Orders.** Agency must provide the City’s Big Blue Bus with the requested start date, end date, and number and type of advertisements to determine if the City has available advertising inventory. If the City has available advertising inventory, the Big Blue Bus will complete an Order and forward the Order to Agency. Agency must sign and return the Order to the Big Blue Bus to reserve the advertising inventory for the Order.
- 4. **Installation of Advertising Media.**
  - 4.1. Thirty days prior to the start date indicated on an Order, Agency must submit a digital image (in .jpeg format) of the creative for the Order (“Creative”). The Big Blue Bus will review the Creative for compliance with the City’s advertising policy (“Policy”). If the Creative complies with the Policy, the Big Blue Bus will acknowledge receipt of the Creative; if it does not comply, the Big Blue Bus will inform Agency why the Creative is not in compliance.

- 4.2. Fourteen days prior to the start date indicated on the Order, Agency must provide the final advertising media (“Media”) to the City’s designee for posting. Any delay in the receipt of the Media may result in a delay in the start date for the Order.
- 4.3. The City will cause all Media to be installed within three days of the start date indicated on each Order. Upon complete installation, the Big Blue Bus will send Agency a posting complete notice, location list and photographs of installed Media.
5. **Compensation.** City will invoice Agency within 30 days of the start date on each Order. Agency must pay the City for advertising space in accordance with each Order. In the event Agency fails to pay City for advertising space in accordance with any Order issued under this Agreement, the City reserves the right, in its sole and absolute discretion, and in addition to any other remedy which may be available in law or equity, to refuse to sell advertising space to Agency until all due and outstanding payments have been received.
6. **Liability for Compensation; City as Beneficiary of Agreement between Agency and Advertiser.** Agency shall be solely liable for payments to the City to the extent those specific proceeds have been paid by Advertiser to Agency. Notwithstanding the foregoing, City and Agency acknowledge and agree that City is the intended recipient of any payment made by Advertiser for advertising space on the City’s Big Blue Buses pursuant to this Agreement. In the event Agency does not receive such payment from Advertiser, Agency shall notify City of Advertiser’s failure to pay, and make all reasonable commercial efforts to obtain payment on City’s behalf. If Agency is unable to obtain payment from Advertiser, Agency agrees that City has the right to pursue payment directly from Advertiser.
7. **Notices.** All notices, demands, requests or approvals to be given under this Master Agreement must be given in writing and will conclusively be deemed served when delivered personally or on the third business day after deposit in the United States mail, postage prepaid, registered or certified, addressed as follows:
  - 7.1. All notices, demands, requests or approvals from Agency to City must be addressed to City at:

Big Blue Bus  
City of Santa Monica  
1660 7th Street  
Santa Monica, California 90401  
Attention: Planning and Community Engagement Manager

with a copy to:

Santa Monica City Attorney’s Office

1685 Main Street, Room 310  
Santa Monica, California 90401  
Attention: City Attorney

- 7.2. All notices, demands, requests or approvals from City to Agency must be addressed to Agency at:

[Click here to enter text.](#)

[Click here to enter text.](#)

**Attention:**

- 7.3. Either City or Agency may, from time to time by notice in writing served upon the other party, designate a different address or a different individual to whom all notices, demands, requests or approvals are thereafter to be addressed.
8. **Independent Parties.** Both parties to this Master Agreement will be acting in an independent capacity and not as agents, employees, partners, or joint venturers of one another.
9. **Integrated Contract.** This Master Agreement, and each Order submitted pursuant to this Master Agreement, represents the full and complete understanding of every kind or nature whatsoever between the parties hereto, and all preliminary negotiations and agreements of whatsoever kind or nature are merged herein. No oral agreement or implied covenant may be held to vary the provisions hereof. Any modifications of this Master Agreement will be effective only by written modification signed by both the City and Agency, and approved as to form by the City Attorney.
10. **Advertising Policy.** The Policy is attached hereto as Exhibit B and incorporated by this reference. Agency acknowledges that the City cannot accept any Order that does not comply with the Policy. Agency further acknowledges that the City may amend the Policy from time to time, and that such amendment may occur without notice to Agency. Upon request, the City will provide Agency with a copy of the current Policy.
11. **Cost of Litigation.** If any legal action is necessary to enforce any provision of this Master Agreement, or any Order, or for damages by reason of any alleged breach of any provision of this Master Agreement, or any Order, the prevailing party is entitled to receive from the losing party all reasonable costs, disbursements and expenses, and such amount as the court may adjudge to be reasonable attorney's fees.
12. **Defense, Indemnification and Hold Harmless.** Agency agrees to indemnify, defend and hold harmless the City from and against any and all claims, damages, losses, expenses or liabilities, including, but not limited to, reasonable attorneys' fees, arising out

of or resulting from any patent, copyright and other infringement claim by any third party in connection with any Order issued pursuant to this Master Agreement. This section survives the termination of this Master Agreement.

**13. Prohibition against Transfers.**

12.1. Agency may not assign, hypothecate, or transfer this Master Agreement or any interest therein directly or indirectly, by operation of law or otherwise without the prior written consent of City. Any attempt to do so without City's consent is null and void, and any assignee, hypothecatee or transferee acquires no right or interest by reason of such attempted assignment, hypothecation or transfer.

12.2. The sale, assignment, transfer or other disposition of any of the issued and outstanding capital stock of Agency or of any general partner or joint venturer or syndicate member of Agency, if a partnership or joint venture or syndicate exists, which results in changing the control of Agency, is an assignment of this Master Agreement. Control means fifty percent (50%) or more of the voting power of the corporation.

14. **Waiver.** A waiver by either party to this Master Agreement of any breach of any term, covenant, or condition cannot be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition contained herein.

**15. Default and Termination.**

15.1. If Agency fails to perform any of the provisions of this Agreement, including, but not limited to, Section 5, Compensation, and if the default is not cured within a period of five days after the City's written notice of default specifying the nature of the default, the City may immediately terminate this Agreement by written notice to Agency.

15.2. Either party may, without cause, terminate this Master Agreement by giving 30 days' written notice to the other party.

15.3. Upon termination of this Master Agreement for any reason, Agency will pay to the City any compensation owed and unpaid up to the effective date of termination.

16. **Compliance with Law.** Agency must comply with all laws of the State of California and the United States, and all ordinances, rules and regulations enacted or issued by City. If such ordinances, rules or regulations enacted or issued by City after the effective date of this Master Agreement significantly impact Agency's performance of its obligations under this Master Agreement, equitable adjustment may be made to the time of performance, the compensation, or both, as appropriate.

17. **Records.** The City will maintain complete and accurate records of each Order issued pursuant to this Master Agreement with respect to costs, expenses, receipts and other

such information required for any services provided. Upon Agency's reasonable request, the City will make such records available to Agency and/or Agency's broker or designee for inspection.

18. **Standard of Care.** The City will perform all services hereunder in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions.
19. **Force Majeure.** The City or Agency will not be in violation of this Master Agreement if any of the following prevent performance of any obligation: severe weather, storms, earthquakes or other natural occurrences; strikes or other labor unrest; power failures, nuclear or other civil or military emergencies; or acts of legislative, judicial, executive or administrative authorities.
20. **Governing Law.** This Master Agreement will be construed in accordance with and governed by the laws of the State of California, without regard to its choice of law provisions.
21. **Venue and Jurisdiction.** The parties agree that the Services will take place in Los Angeles County. Any litigation arising out of this Master Agreement must be brought in either the United States District Court, Central District of California, or the Superior Court of California, County of Los Angeles, West District, as appropriate. The parties agree that venue exists in either court, and each party expressly waives any right to transfer to another venue. The parties further agree that either court will have personal jurisdiction over the parties to this Master Agreement.
22. **Authority.** Agency represents and warrants that it is authorized to enter into this Agreement, and any Insertion Order issued pursuant to this Agreement, on behalf of Advertiser.
23. **Exhibits.** The following exhibits are incorporated by reference into this Agreement as through fully set forth herein.
  - Exhibit A      Advertising Insertion Order Form
  - Exhibit B      Advertising Guidelines

In witness whereof, the parties have caused this Master Sales Agreement to be executed the day and year first above written.

ATTEST:

CITY OF SANTA MONICA,  
a municipal corporation

\_\_\_\_\_  
DENISE ANDERSON-WARREN  
City Clerk

By: \_\_\_\_\_  
RICK COLE  
City Manager

APPROVED AS TO FORM:

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MARSHA JONES MOUTRIE  
City Attorney

AGENCY

By: \_\_\_\_\_  
Name: [Click here to enter text.](#)  
Title:

EXHIBIT A  
ADVERTISING INSERTION ORDER FORM  
(ATTACHED)

ADVERTISING INSERTION ORDER NO. **Order Number**

To:	<b>Agency Name</b> <b>Street Address</b> <b>City, State Zip Code</b>	From:	City of Santa Monica Big Blue Bus 1660 7th Street Santa Monica, CA 90401
Phone:	<b>Phone Number</b>	Phone:	(310) 458-5854
Email:	<b>Email Address</b>	Email:	Teri.plummer@smgov.net

This Advertising Insertion Order is governed by and is subject to all terms and conditions contained in the Master Sales Agreement between Advertiser and the City executed on month, date, year. This Advertising Insertion Order is not valid until signed and returned to the Big Blue Bus.

Display Type:	<b>Display Type</b>	No. of Units:	<b>Number of Units</b>
Display Specs:	<b>Display Specifications</b>	Price Per Unit:	<b>Price per Unit</b>
Start Date:	<b>Campaign Start Date</b>	Contract No.:	<b>Contract Number</b>
End Date:	<b>Campaign End Date</b>	Term:	<b>Number of days/weeks</b>

Total Contract Price: **No. of Units × Price Per Unit**

Thirty days prior to Start Date, Advertiser must forward Creative to the Big Blue Bus for Advertising Guidelines compliance review. Fourteen days prior to Start Date, Advertiser must forward Media to: Outdoor Service Providers 1609 W. Anaheim Street Long Beach, CA 90813. Bryan Papp (562) 239-4322

Cancellation Deadline: Contract is non-cancellable within 60 days of start date.

City will invoice Advertiser within thirty days of the Start Date. Advertiser must pay invoice within thirty days of receipt.

Special Instructions: **Enter any special instructions**

Client Signature: \_\_\_\_\_

Date: \_\_\_\_\_



**EXHIBIT B**  
**CITY OF SANTA MONICA BIG BLUE BUS POLICY FOR ADVERTISEMENTS ON**  
**BUS EXTERIORS**

This bus advertising policy was approved by the Santa Monica City Council on February 9, 2016. Its purpose is to maximize bus ridership, maintain governmental neutrality and avoid actual or perceived discrimination in advertising, respect First Amendment rights, avert harm or abuse to bus riders and buses and to the City's transit system, maximize advertising revenues, and preserve marketability of advertising space on City bus exteriors.

In order to achieve these purposes, the City allows all types of exterior bus advertising, without regard to content, except advertising that falls within the following categories which were approved in *American Freedom Defense Initiative v. King County*, 796 F.3d 1165 (9<sup>th</sup> Cir. 2015) for exclusion from exterior bus advertising:

1. Political campaign speech;
2. Adult-related products and services, alcohol, firearms, and tobacco, smoking, smoking materials, including electronic smoking or "vapping";
3. Sexual or excretory subject matter;
4. False, misleading or deceptive;
5. Copyright, trademark, or otherwise unlawful;
6. Illegal activity;
7. Profanity or violence;
8. Demeaning or disparaging;
9. Harmful or disruptive to transit system;
10. Lights, noise and special effects; and
11. Unsafe transit behavior

2/9/16