

AGREEMENT
BETWEEN
CITY OF MIAMI BEACH, FLORIDA
AND
ALCHEMY MIAMI BEACH LLC
FOR THE IMPLEMENTATION, MANAGEMENT AND OPERATION OF
CITY MUNICIPAL PARKING GARAGE ADVERTISING SERVICES
PURSUANT TO RFP 2017-081-WG

**AGREEMENT BETWEEN
THE CITY OF MIAMI BEACH, FLORIDA AND
ALCHEMY MIAMI BEACH LLC
FOR THE IMPLEMENTATION, MANAGEMENT AND OPERATION OF
CITY MUNICIPAL PARKING GARAGE ADVERTISING SERVICES
(RFP 2017-081-WG)**

THIS AGREEMENT (the "Agreement") is made on _____, 2017 ("Effective Date"), between the **CITY OF MIAMI BEACH**, a municipal corporation of the State of Florida, having its principal address at 1700 Convention Center Drive, Miami Beach, Florida 33139 (hereinafter called the "City"), and **ALCHEMY MIAMI BEACH LLC**, a Delaware limited liability company authorized to do business in Florida, with offices at 1384 Broadway, Suite 804, New York, NY 10018 (hereinafter called "Alchemy").

RECITALS:

WHEREAS, the City desires to generate advertisement revenues from its municipal parking garages as may be permitted pursuant to City guidelines and regulations; and

WHEREAS, the City has considered, in its proprietary capacity, to award an interior advertising contract for municipal parking garage facility, the proceeds of which will be utilized to supplement funding for the City's public schools; and

WHEREAS, on January 11, 2017, the Mayor and City Commission adopted Resolution No. 2017-29699, accepting the recommendation of the Finance and Citywide Projects Committee and authorizing the Administration to issue Request for Proposals No. 2017-081-WG for City Municipal Parking Garage Advertising Services (the "RFP"); and

WHEREAS, on April 26, 2017, the Mayor and City Commission adopted Resolution No. 2017-29835, approving the award of the RFP to Lambda Lambda Sigma LLC d/b/a Alchemy Media Alchemy, which is a wholly owned subsidiary of Alchemy Media Holdings LLC, a Delaware limited liability company, as the top ranked proposer for Group II for interior advertising and advertising visible from the right of way; and authorizing the Administration to negotiate an agreement, subject to advance approval of the Mayor and City Commission; and

WHEREAS, accordingly, the City and Alchemy, which is a wholly owned subsidiary of Alchemy Media Holdings LLC, a Delaware limited liability company, have negotiated the following Agreement granting Alchemy, at its sole cost and expense, the exclusive right (subject to the exclusions set forth in Subsection 3.1) to implement, manage and operate advertising services in nine (9) municipal garages (the "City Garages") throughout the City (the "Program").

NOW THEREFORE, in consideration of the premises and the mutual covenants and conditions herein contained and other good and valuable consideration, the receipt and adequacy of which are hereby conclusively acknowledged, it is agreed by the parties hereto as follows:

SECTION 1. RECITALS.

The recitals set forth above are true and correct and are incorporated herein by reference.

SECTION 2. TERM.

- a) The initial term of this Agreement shall be for three (3) Contract Years, commencing on Operational Rollout Date. The "Operational Rollout Date" shall be sixty (60) days from the date in which Alchemy secures the final building permit for all of the signs to be placed in the City Garages. **No signs may be placed in any of the Advertising Spaces until such time as Alchemy has secured the building permits for all of the signs to be placed in the City Garages.** Alchemy shall provide the City Manager or his designee with written notice within ten (10) days from the date in which Alchemy secures all of the final building permits.
- b) The City Manager, at his sole and absolute discretion, and provided further that Alchemy is not in default under this Agreement, may extend the term of this Agreement for up to two (2) additional one (1) year terms.
- c) For purposes of this Agreement, a "Contract Year" shall be defined as that certain 365 day period commencing on the Operational Rollout Date.
- d) For purposes of this Agreement, "Term" shall mean the initial term and any renewal term, if approved by the City Manager.

SECTION 3. ADVERTISING SPACE(S).

Subject to the exclusions set forth in Subsection 3.1, the City hereby grants to Alchemy the exclusive right, during the Term of this Agreement, to operate the Program, as described herein, generally, in the following City Garages and, specifically, upon the following Advertising Spaces (hereinafter such spaces shall be referred to individually as an Advertising Space, or collectively as the Advertising Spaces):

3.1 Exclusions.

3.1.1 **City Advertising.** The City shall have a right to advertise, on its own behalf (excluding third party advertising) anywhere in the City Garages, which has not been designated as an Advertising Space for Alchemy. Without limiting the foregoing, all elevator doors and windows are reserved exclusively for use by the City and specifically excluded as Advertising Space for use by Alchemy.

3.1.2 **Existing Agreements.** Additionally, this Agreement shall be subject to existing agreements ("Existing Agreements") between the City and contractors for the provision of goods and/or services in the City Garages, under which agreements contractors have the ability to display contractor's logo or the brand names or product identity associated with the goods and/or services being provided including, without limitation, that certain concession agreement between the City and Communitel, Inc. for the operation of automated teller machines and that certain concession agreement between the City and Bettoli Trading Corp for the operation of snack machines. The City shall not amend any Existing Agreements to (i) permit said contractors to provide advertising services on behalf of third parties in the City Garages; or allow any advertising on any vending

boxes, ATM machines or encasements for any goods and/or services in the City Garages.

- 3.1.3 **Future Agreements.** The City will not be prohibited from entering into future agreements (including new agreements with existing contractors) for the provision of goods and/or services in the City Garages, which agreements may permit the display of the contractor's name, logo or the brand names or product identity associated with the goods and/or services being provided, so long as: (i) said future agreements do not permit said contractors to provide advertising services on behalf of third parties in the City Garages; and (ii) any vending boxes, ATM machines or encasements for any goods and/or services in the City Garages do not contain advertisement.

3.2 **City Garages.**

The Program shall be operated in the nine (9) City parking garages (individually referred to as a "City Garage" or collectively as the "City Garages"), as more particularly delineated in **Exhibit A**, incorporated herein by reference and attached hereto. Any modification to the list of City Garages shall be subject to the prior written approval of the City Commission, in its sole and absolute discretion.

3.3 **Advertising Space(s).**

The Advertising Spaces shall be defined as the areas within each City Garage, as more particularly described in **Exhibit B** (the "Advertising Spaces"), incorporated herein by reference and attached hereto, to be used exclusively for the Program. Any change requested by Alchemy in the location of the Advertising Spaces shall be subject to the prior written approval of the City Manager, in the City Manager's sole and absolute discretion.

SECTION 4. USES.

4.1 **Advertising Services.**

The City herein approves the Media Plan for all the City Garages, containing a total of **14,482.00** square feet of advertising space, which includes the location of the Advertising Spaces, as well as the size of each advertising panel and type of sign for the Advertising Spaces, as described in **Exhibit B** (collectively, the "Media Plan"). The Media Plan includes advertising panels, identified as types A B, B2 and H, which are interior signs which may be visible from the exterior of the City Garages (the "MediaVision") and advertising panels, identified as types C, C2, D, E, F, F2 and G, which are interior signs which are not visible from the exterior of the City Garages, (the "Interior signs"). Any change to the Media Plan shall require the written approval of the City Manager, in the City Manager's sole and absolute discretion. Any approved modification to the Media Plan can never exceed the total square footage of 15,000 square feet (the "Media Plan ceiling"). The City Manager, at the City Manager's sole discretion, may Change (as defined in Subsection 5.1) the Media Plan, upon providing Alchemy with thirty (30) days notice; however, said Change will trigger a reduction in the Minimum Guarantee, as more particularly set forth in Subsection 5.1. Alchemy shall ensure that any advertisement placed in any of the Advertising Spaces is not prohibited by the City's Advertising Standards set forth in Section 4.3, or prohibited by any

applicable laws including, without limitation, Federal, State, or local laws, as may be amended from time to time.

4.2 Design, Permitting, Delivery, Acceptance, Installation, Maintenance, and Operation of the Advertising Space Improvements.

4.2.1 Alchemy, at its sole cost and expense, shall be responsible for designing, permitting, delivery, acceptance, installation, maintenance, and operation of all advertising panels and supporting fixtures and utility connections (the "Advertising Space Improvements"). **THE EXPENSE TO ANY ALTERATION THAT IS REQUIRED TO ANY BUILDING OR FACILITY EITHER TO ACCOMMODATE OR AS A DIRECT RESULT OF A SIGN INSTALLATION SHALL BE THE RESPONSIBILITY OF ALCHEMY.**

4.2.2 Alchemy accepts the City Garages in "As Is" condition and shall be responsible, at its sole cost and expense, to make any alteration or installation (including electrical boxes) which may be required in connection with the installation of the Advertising Space Improvements.

4.2.3 **Notwithstanding the City's proprietary approval, Alchemy acknowledges and agrees that it will secure, at its sole cost and expense, all required permits from the City, in its regulatory capacity.**

4.2.4 Alchemy shall not suffer or permit the City Garages or any part thereof to be used in any manner, or anything to be done therein, or suffer or permit anything to be brought into or kept therein, which would in any way (i) violate any legal requirements or insurance requirements; (ii) cause structural injury to the City Garages' structure or any part thereof; (iii) constitute a public or private nuisance; (iv) create a public health, safety or general welfare risk; (v) materially impair or interfere with the regular operations of the City Garage; (vi) or impair or interfere with the physical convenience of any of the occupants of the City Garage. Alchemy understands that this Agreement is limited to building and/or floor mounted advertising panels and gate arm advertising. **NOTWITHSTANDING THE PRECEDING, HOWEVER, (I) NO ADVERTISING SIGN SHALL BE PLACED ON A CITY GARAGE FAÇADE, EXCEPT AT A GARAGE ENTRANCE OR EXIT, AND II) NO ADVERTISING SIGN ABOVE THE FIRST FLOOR SHALL BE PLACED IN ANY LOCATION WHERE SUCH SIGN MAY BE VISIBLE FROM RIGHT-OF-WAY.**

4.3 Advertising Standards.

Alchemy agrees that it shall not place any advertisement on the Advertising Spaces included in any of the following categories:

- A. Advertisement of information, which promotes unlawful or illegal goods, services or activities;
- B. Advertisement of tobacco or tobacco products;
- C. Advertisement of firearms;

- D. Advertisement of sexual services, programs or products;
- E. Political advertisements including those that espouse or oppose the election of any candidate or party or public office and/or espouse or oppose the position or policy of any political party;
- F. Advertisement of any non-alcoholic beverage brands which are in direct competition with Coca-Cola for the duration of that certain exclusive non-alcoholic beverage agreement with Coca-Cola North America, a division of The Coca-Cola Company, dated March 14, 2012; and
- G. Advertisement relating to medical marijuana.

Advertising for alcoholic beverages shall be permitted, except within 250 feet of any school, day care or house of worship.

Any prohibited material displayed or placed shall be immediately removed by Alchemy upon receipt of written notice from the City Manager or City Manager's designee. In the event Alchemy fails to remove any prohibited material within forty-eight hours of receipt of written notice from the City, the City may, at its sole option and discretion, (i) terminate this Agreement for cause upon written notice to Alchemy, without liability to the City, or (ii) remove the prohibited material and charge Alchemy for the actual cost thereof.

4.4 Diminution for City's Repair.

- 4.4.1 Alchemy releases the City for any diminution of rental value or by reason of inconvenience, annoyance or interference with Alchemy's operation of the Program arising from the City' or its agents making any repairs, replacements, alterations, decorations, additional or improvements in or to any portion of the City Garage, or in or to fixtures, appurtenances or equipment thereof (collectively, "City Repairs"). Notwithstanding the preceding, however, if any individual City Garage is completely closed as a result of City Repairs for a period in excess of thirty (30) consecutive calendar days (the "Closed City Garage"), Alchemy, at its sole discretion, and upon written notice to the City, may remove the Closed City Garage from the Media Plan during the time the Closed City Garage is not open to the public. In such case, Alchemy shall remove all ads from the Advertising Spaces in the Closed City Garage and the MG will be adjusted, effective as of the date all ads are removed from the Closed City Garage, in accordance with Subsection 5.1, as if the City had requested the removal of all the advertising panels in the Closed City Garage. Upon the Closed City Garage reopening to the public, Alchemy, at its option, may add the Closed City Garage to the Media Plan.

4.5 Copyright, Patents & Royalties.

Alchemy shall indemnify and hold harmless the City, its officers, employees, contractor and/or agents from liability of any nature or kind, including costs and expenses for, or on account of, any copyrighted, patented, or unpatented invention, process, or article manufactured or used in the performance of the Agreement, including its use by the City of Miami Beach, Florida. If Alchemy uses any design, device or materials covered

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by letters, patent, or copyright, it is mutually understood and agreed, without exception, that the proposed prices shall include all royalties or cost arising from the use of such design, device, or material used in connection with the Program. This indemnity shall survive the expiration or termination of this Agreement.

4.6 Construction Insurance.

4.6.1 The City shall not be liable for any claims, losses or damages suffered by third parties arising from Alchemy's, or its officers', agents', employees' or contractors' fabrication, construction, and installation of the advertising panels.

4.6.2 Alchemy shall maintain, or require that its contractor(s) maintain, the following insurance coverages in connection with the installation of the advertising panels:

- A. Worker's Compensation insurance in at least the minimum amounts required by Florida law; and
- B. Commercial General Liability on a comprehensive basis, including Contractual Liability, Products/Completed Operations, in an amount not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage. The City of Miami Beach, Florida shall be included as an additional insured with respect to this coverage.
- C. Automobile Insurance shall be provided covering all owned, leased, and hired vehicles and non-ownership liability for not less than the following limits:

Bodily Injury	\$1,000,000 per person
Bodily Injury	\$1,000,000 per accident
Property Damage	\$1,000,000 per accident

4.6.3 The policies of insurance referred to above shall not be subject to cancellation or changing coverage except upon at least thirty (30) days prior written notice to the City, and then only subject to the prior written approval of the City Manager or his/her designee. Prior to the commencement of the installation of the advertising panels, Alchemy shall provide the City with Contractor's Certificate of Insurance for the insurance requirements contained in Subsection 4.6.2. All such policies shall be obtained from companies authorized to do business in the State of Florida with the following qualifications:

The company must be rated no less than "B+" as to management, no less than "Class VII" as to financial strength, by the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwich, New Jersey, or its equivalent, subject to the approval of the City Risk Management Division.

CERTIFICATE HOLDER MUST READ:

City of Miami Beach
1700 Convention Center Drive, 3rd Floor
Miami Beach, Florida 33139

SECTION 5. ADVERTISING REVENUE.

- 5.1 Minimum Guarantee ("MG"). Commencing on the Operational Rollout Date, the following sums shall be due and payable by Alchemy to the City within fifteen (15) days following the end of each calendar month (during each Contract Year throughout the Term) through the end of the Term (including all extensions to this Agreement).

The Minimum Guarantee (MG) shall be Two Hundred Fifty thousand dollars (\$250,000.00) per year, payable in monthly payments of Twenty Thousand Eight Hundred and Thirty-Three Dollars (\$20,833.00). The stated MG is based on the amount and the location of the advertising panels detailed in Exhibit B (the "Media Plan"). In the event there are reductions in the number of advertising panels and/or changes in their location as detailed in Exhibit B (a "Change") by Alchemy, there will not be any change in the stated MG. In the event of a Change requested by the City, it will trigger a reduction in the stated MG, in direct proportion to the loss of rental value associated with the Change, as compared to the total rental value for the entire Media Plan, which reduction shall be documented by Alchemy. For purposes of an example, based upon the stated MG of \$250,000, if at the time of the Change the monthly rental income of the media plan is \$1,000,000 and the City requests that a 6' x 8' sign be removed from the approved Media Plan and the monthly rental income of that sign is \$15,000, the Change equals .015 (1.5%) so the reduction in the stated MG would be \$3,750.00 (1.5% of \$250,000), with the adjusted stated MG equaling \$246,250, payable in monthly payments of \$20,520.83.

- 5.2 Interest on Late Payments.

Any payment which Alchemy is required to make to the City which is not paid within ten (10) days from the respective date provided for in this Agreement shall be subject to interest at the rate of eighteen percent (18%) per annum, or the maximum interest allowable pursuant to Florida law, whichever is less, from the due date of payment until such time as payment is actually received by the City.

- 5.3 Sales and Use Tax.

Any required Florida State Sales and Use Tax shall be paid by Alchemy directly (upon presentment of resale certificate or other form of evidence, acceptable to the City Manager or designee, at his sole discretion, confirming compliance with Florida State Sales and Use Tax laws), or added to the payments. It is the City's intent that it is to receive all payments due from Alchemy as net of such Florida State Sales and Use Tax.

- 5.4 Utility Charges. Alchemy shall pay twelve and 50/100 (\$12.50) Dollars per month plus applicable sales tax for each advertising panel requiring lighting.

- 5.5 Payment Remittance. All payments due to the City hereunder shall be sent to the following address:

City of Miami Beach Office of Communications Department
Attention: Tonya Daniels, Director
1701 Meridian Avenue, 5th Floor
Miami Beach, Florida 33139

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SECTION 6. MAINTENANCE AND EXAMINATION OF RECORDS.

6.1 Alchemy shall maintain current, accurate, and complete financial records (on an accrual basis) related to its operations herein. Systems and procedures used to maintain these records shall include a system of internal controls and all accounting records shall be maintained in accordance with generally accepted accounting principles and shall be open to inspection and audit by the City Manager or the City's Contract Manager, upon reasonable prior notice, whether verbal or written, and during normal business hours. Such records and accounts shall include, at a minimum, a breakdown of gross receipts, expenses, and profit and loss statements. In the event Alchemy accepts cash as a form of payment, it shall maintain accurate receipt-printing cash registers or the like which will record and show the payment for every sale made or service provided in the Concession Areas; and such other records shall be maintained as would be required by an independent CPA in order to audit a statement of annual gross receipts and profit and loss statement pursuant to generally accepted accounting principles.

6.2 Maintenance Reports.

Upon the request of the City Manager or Contract Manager, Alchemy shall submit annually, as requested by the City, a maintenance report reflecting routine maintenance performed on the Concession Area Improvements, including any repairs performed.

SECTION 7. INSPECTION AND AUDIT.

Alchemy shall maintain its financial records pertaining to its operations herein for a period of three (3) years after the expiration or other termination of this Agreement, and such records shall be open and available to the City Manager or Contract Manager, as deemed necessary by them. Alchemy shall maintain all such records at its principal office, but will make the records available to the City, at the City's address, at Alchemy's expense, upon reasonable prior notice, whether verbal or written, and during the City's normal business hours.

The City Manager or Contract Manager shall be entitled to audit Alchemy's records pertaining to its operations, as often as he deems reasonably necessary throughout the Term of this Agreement, and three (3) times within the three (3) year period following termination of the Agreement (regardless of whether such termination results from the natural expiration of the Term or for any other reason). The City shall be responsible for paying all costs associated with such audits, unless the audit(s) reveals a deficiency of five (5%) percent or more in any adjustments made to the stated MG, in which case Alchemy shall pay to the City, within thirty (30) days of the audit being deemed final by the City, the cost of the audit and a sum equal to the amount of the deficiency revealed by the audit, plus interest.

SECTION 8. TAXES. ASSESSMENTS.

8.1 Alchemy agrees and shall pay before delinquency all taxes and assessments of any kind levied or assessed upon an Advertising Space or Advertising Spaces (or portion thereof), and/or on Alchemy by reason of this Agreement, or by reason of Alchemy's business and/or operations within an Advertising Space or Spaces. Alchemy will have the right, at its own expense, to contest the amount or validity, in whole or in part, of any tax by appropriate proceedings diligently conducted in good faith. Alchemy may refrain from paying a tax to the extent it is contesting the imposition of same in a manner that is in accordance with law. However, if, as a result of such

contest, additional delinquency charges become due, Alchemy shall be responsible for such delinquency charges, in addition to payment of the contested tax, if so ordered.

Alchemy shall also be solely responsible (at its sole cost and expense) for obtaining and maintaining current any applicable licenses or permits, as required for the operations contemplated in this Agreement including, without limitation, any occupational licenses required by law for the proposed uses contemplated in Section 3 and for each Advertising Space (if required).

8.2 Procedure If Ad Valorem Taxes Assessed.

If ad valorem taxes are assessed against an Advertising Space or the Advertising Spaces (or any portion thereof) or any City Garages by reason of Alchemy's business and/or operations thereon, Alchemy shall be solely responsible for prompt and timely payment of same.

SECTION 9. EMPLOYEES AND INDEPENDENT CONTRACTORS.

9.1 Alchemy's Employees.

- 9.1.1 Alchemy shall select, train and employ such number of employees or contractors as is necessary or appropriate for Alchemy to satisfy its responsibilities hereunder with a workforce located within Miami-Dade County, Florida. Alchemy shall be the sole authority to hire, terminate and discipline any and all personnel employed by Alchemy.
- 9.1.2 Alchemy shall designate a competent full-time employee, to oversee the day-to-day operations, and who shall act as the contract administrator for the Program and serve as Alchemy's primary point-person with the City. This individual shall have the requisite amount of experience in operating, managing, and maintaining the Program and operations contemplated herein. The employee shall be accessible to the City Manager or his designee at all reasonable times during normal business hours to discuss the management, operation and maintenance of the Program, and within a reasonable time frame during non-business hours in the event of an emergency. Consistent failure by the employee to be accessible shall be reported to Alchemy's principal(s), and if not rectified, shall be grounds for replacement of the employee.
- 9.2 Alchemy's employees and/or contractors shall wear identification badges and uniforms approved by the City Manager or his/her designee, during all hours of operation when such employee or contractor is acting within the scope of such employment or such contractor relationship. All employees and/or contractors shall observe all the graces of personal grooming. Alchemy shall hire people to work in its operation who are neat, clean, well groomed, and who shall comport themselves in a professional and courteous manner.
- 9.3 Alchemy shall use commercially reasonable efforts to hire employees and/or contractors for the Program from among unemployed workers in the City of Miami Beach workforce.
- 9.4 The City approves City Media Advertising, LLC as Alchemy's Interior Media subcontractor for purposes of this Agreement.

- 9.5 City's Contract Manager/City Manager's designee. Except for those responsibilities expressly set forth in this Agreement for, respectively, the City Commission and/or the City Manager, the City Contract Manager/City Manager's designee, for this Agreement, who shall serve as the City's day to day representative and point person for Alchemy with respect to the Agreement, shall be the City's Communication's Department Director or his or her designee.

SECTION 10. IMPROVEMENTS, MAINTENANCE, REPAIR AND OPERATION.

Alchemy accepts the use of any and all Advertising Spaces provided in this Agreement "**AS IS**," "**WHERE IS**," and "**WITH ALL FAULTS**," existing as of the Effective Date.

10.1 Improvements.

Alchemy shall be solely responsible (including cost) and shall pay for the design, fabrication, construction and installation of the Advertising Space Improvements.

10.2 Maintenance/Repair.

Alchemy shall maintain, at its sole cost and expense, all Advertising Spaces or Advertising Space Improvements contained thereon.

Alchemy shall be solely responsible for the day-to-day operation, maintenance and repair of all Advertising Spaces and Advertising Space Improvements contained thereon. Alchemy shall maintain the Advertising Space Improvements in good working order and condition. Alchemy shall keep all advertising panels and the area within five (5) feet of the Advertising Space free of graffiti. Additionally, Alchemy shall repair any damage to the City Garages caused by Alchemy, its employees, agents, or contractors.

10.3 Orderly Operation.

Alchemy shall conduct a neat and orderly operation at all times and shall be solely responsible for the necessary maintenance services to properly maintain the Advertising Space Improvements. Alchemy shall make available all equipment within the Advertising Space for examination by the City Manager or his/her designee upon reasonable verbal and/or written notice from the City.

10.4 No Dangerous Materials.

Alchemy agrees not to use or permit the storage and/or use of gasoline, fuel oils, diesel, illuminating oils, oil lamps, combustible powered electricity producing generators, turpentine, benzene, naphtha, propane, natural gas, or other similar substances, combustible materials, or explosives of any kind, or any substance or thing prohibited in the standard policies of fire insurance companies in the State of Florida, on or within any of the Advertising Spaces, or on any City property and/or right of way.

Alchemy shall indemnify and hold City harmless from any loss, damage, cost, or expense of the City, including, without limitation, reasonable attorney's fees, incurred as a result of, arising from, or connected with the placement by Alchemy of any "hazardous substance" or "petroleum products" on, under, in or upon the Advertising Spaces as those terms are defined by applicable Federal and State Statute, or any environmental

rules and environmental regulations promulgated thereunder; provided, however, Alchemy shall have no liability in the event of the willful misconduct or gross negligence of the City, its agents, servants or employees. The provisions of this Subsection 8.4 shall survive the termination or earlier expiration of this Agreement.

10.5 Security.

Alchemy may, at its sole option, employ or provide reasonable security measures, as it may deem necessary to protect the Advertising Space Improvements and any equipment thereon. Alchemy shall not employ any recorded video surveillance without the prior written approval of the City Manager.

Under no circumstances shall the City be responsible for any stolen or damaged equipment, nor shall City be responsible for any stolen or damaged personal property of Alchemy's employees, contractors, agents, and/or other third parties.

10.6 Inspection.

Alchemy agrees that any Advertising Space (including, without limitation, any equipment thereon) may be inspected at any time by the City Manager or his/her designee.

SECTION 11. INSURANCE.

11.1 Alchemy shall maintain, at its sole cost and expense, the following types of insurance coverage at all times throughout the Term of this Agreement:

- (a) Comprehensive General Liability in the minimum amount of One Million Dollars (\$1,000,000.00) per occurrence for bodily injury and property damage.
- (b) Workers Compensation Insurance shall be required in accordance with the laws of the State of Florida and Employer's Liability Insurance in an amount not less than \$1,000,000.
- (c) Automobile Insurance shall be provided covering all owned, leased, and hired vehicles and non-ownership liability for not less than the following limits:

Bodily Injury	\$1,000,000 per person
Bodily Injury	\$1,000,000 per accident
Property Damage	\$1,000,000 per accident

- (d) Professional Liability Insurance in an amount not less than \$1,000,000.

The policies of insurance referred to above shall not be subject to cancellation or changing coverage except upon at least thirty (30) days prior written notice to the City, and then only subject to the prior written approval of the City Manager or his/her designee. Prior to the Commencement Date of this Agreement, Alchemy shall provide City with a Certificate of Insurance for each such policy. ALL POLICIES SHALL NAME THE CITY OF MIAMI BEACH, FLORIDA AS AN ADDITIONAL NAMED INSURED. All

such policies shall be obtained from companies authorized to do business in the State of Florida with the following qualifications:

The company must be rated no less than "B+" as to management, no less than "Class VII" as to financial strength, by the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwich, New Jersey, or its equivalent, subject to the approval of the City Risk Management Division.

CERTIFICATE HOLDER MUST READ:

City of Miami Beach
1700 Convention Center Drive, 3rd Floor
Miami Beach, Florida 33139

Should Alchemy fail to obtain, maintain or renew the policies of insurance referred to above, in the required amounts, the City may, at its sole discretion, obtain such insurance, and any sums expended by City in obtaining said insurance, shall be repaid by Alchemy to City, plus ten percent (10%) of the amount of premiums paid to compensate City for its administrative costs. If Alchemy fails to repay City's expenditures within fifteen (15) days of demand such failure shall be deemed an event of default, and the total sum owed shall accrue interest at the rate of eighteen (18%) per annum percent until paid.

Compliance with the insurance requirements in this Section, shall not relieve Alchemy of the liabilities and obligations under this Section or under any other portion of this Agreement, and the City shall have the right to obtain from Alchemy specimen copies of the insurance policies in the event that submitted certificates of insurance are inadequate to ascertain compliance with required coverage. Alchemy represents and warrants that any insurance protection required by this Agreement or otherwise provided by its contractors and subcontractors shall in no way limit the responsibility to indemnify, keep and save harmless and defend the City or its officers, employees, contractors, consultants, agents, and instrumentalities as herein provided.

11.2 Subrogation.

The terms of insurance policies referred to in Subsection 11.1 (a) and (c) shall preclude subrogation claims against Alchemy, the City and their respective officers, employees, contractors, agents, and servants.

SECTION 12. INDEMNITY.

- 12.1 In consideration of a separate and specific consideration of Ten (\$10.00) Dollars and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, Alchemy shall indemnify, hold harmless and defend the City, its officials, directors, members, employees, contractors, agents, and servants from and against any and all actions (whether at law or inequity), claims, liabilities, losses, and expenses, including, but not limited to, attorneys' fees and costs, for personal, economic or bodily injury, wrongful death, loss of or damage to property, which may arise or be alleged to have arisen from: (1) wholly or in part from the

negligent acts, errors, omissions or other misconduct of Alchemy, its officers, director, members, employees, agents, contractors, subcontractors, or any other person or entity acting under Alchemy's control or supervision; (2) Alchemy's breach of the terms of this Agreement or its representations and warranties herein; (3) the operation of the Program; or (4) the use of the Advertising Space. To that extent, Alchemy shall pay all such claims and losses and shall pay all such costs and judgments which may issue from any lawsuit arising from such claims and losses, and shall pay all costs and attorneys' fees expended by the City in the defense of such claims and losses, including appeals.

- 12.2 Subsection 12.1 shall survive the termination or expiration of this Agreement. Subsection 12.1 shall not apply, however, to any such liability that arises as a result of the willful misconduct or gross negligence of the City or its officers, employees, contractors, agents and servants.

SECTION 13. FORCE MAJEURE.

- 13.1 Neither party shall be obligated to perform hereunder and neither party shall be deemed to be in default if performance is prevented by:
- (a) Any act or chain of related acts resulting in destruction, vandalism or theft which render at least fifty percent (50%) of the City Garages unusable at any one point in time and which is not caused by negligence of Alchemy;
 - (b) earthquake; hurricane; flood; act of God; direct act of terrorism; or civil commotion occurring which renders at least fifty percent (50%) of the City Garages unusable;
 - (c) any law, ordinance, rule, regulation or order of any public or military authority stemming from the existence of economic or energy controls, hostilities, or war which renders at least fifty percent (50%) of the City Garages unusable.

13.2 Labor Dispute.

In the event of a City employee labor dispute which results in a strike, picket or boycott affecting at least fifty (50%) percent of the City Garages, Alchemy shall not thereby be deemed to be in default or to have breached any part of this Agreement, unless such dispute shall have been caused by illegal labor practices or violations by Alchemy of applicable collective bargaining Agreements (and there has been a final determination of such fact which is not cured by Alchemy within thirty (30) days).

13.3 Waiver of Loss from Hazards.

Alchemy hereby expressly waives all claims against the City for loss or damage sustained by the Alchemy resulting from any Force Majeure contemplated in Subsection 13.1 and Labor Dispute in Subsection 13.2 above, and Alchemy hereby expressly waives all rights, claims, and demands against the City and forever releases and discharges the City from all demands, claims, actions and causes of action arising from any of the aforesaid causes.

SECTION 14. DEFAULT AND TERMINATION.

Subsections 14.1 through 14.5 shall constitute events of default under this Agreement. An event of default by Alchemy shall entitle the City to exercise any and all remedies described as City's remedies under this Agreement.

14.1 Bankruptcy.

If either the City or Alchemy shall be adjudged bankrupt or insolvent, or if any receiver or trustee of all or any part of the business property of either party shall be appointed, or if any receiver of all or any part of the business property shall be appointed and shall not be discharged within ninety (90) days after appointment, or if either party shall make an assignment of its property for the benefit of creditors, or shall file a voluntary petition in bankruptcy, or insolvency, or shall apply for reorganization or arrangement with its creditors under the bankruptcy or insolvency laws now in force or hereinafter enacted, Federal, State, or otherwise, or if such petitions shall be filed against either party and shall not be dismissed within ninety (90) days after such filing, then the other party may immediately, or at any time thereafter, and without further demand or notice, terminate this Agreement without being prejudiced as to any remedies which may be available to it for breach of contract.

14.2 Default in Payment.

In the event Alchemy fails to submit any payment within fifteen (15) days of its due date, and such failure continues fifteen (15) days after written notice thereof, then the City may, without further demand or notice, terminate this Agreement without being prejudiced as to any remedies which may be available to it for breach of contract.

14.3 Non-Monetary Default.

Except to the extent otherwise specified in this Agreement, in the event that Alchemy or the City fails to reasonably perform or observe the non-monetary covenants, terms or provisions under this Agreement, and such failure continues thirty (30) days after written notice thereof from the other party hereto, such non-defaulting party may immediately or at any time thereafter, and without further demand or notice, terminate this Agreement without being prejudiced as to any remedies which may be available to it for breach of contract. In the event that a default is not reasonably susceptible to being cured within such period, the defaulting party shall not be considered in default if it shall, within such period, commence with due diligence and dispatch to cure such default and thereafter completes with dispatch and due diligence the curing of such default, but in no event shall such extended cure period exceed ninety (90) days from the date of written notice thereof. In the event Alchemy cures any default pursuant to this Subsection, it shall promptly provide the City Manager with written notice of same.

- 14.4 Failure to Remove Graffiti. In the event that Alchemy fails to remove graffiti from any portion of the Advertising Space or surrounding area within five (5) feet of an Advertising Space and such failure continues for a period of five (5) calendar days after written notice thereof from the City, said failure shall constitute a graffiti violation under this Agreement. If Alchemy shall have graffiti violations in the performance of its obligations under this subsection of the Agreement of five (5) or more times during any Contract Year during the Term hereof, then the City may immediately or at any time

thereafter, and without further demand or notice, terminate this Agreement without being prejudiced as to any remedies which may be available to it for breach of contract. Alchemy acknowledges that the purpose of this provision is to prevent repetitive defaults by Alchemy under the Agreement, which work a hardship upon the City, and deprive the City of the timely performance by Alchemy hereunder.

- 14.5 Repetitive Default. If Alchemy shall have defaulted in the performance of any (but not necessarily the same) term or condition of this Agreement for five (5) or more times during any Contract Year during the Term hereof, then such conduct shall, at the election of the City, represent a separate event of default which cannot be cured by Alchemy. In such case, the City may immediately or at any time thereafter, and without further demand or notice, terminate this Agreement without being prejudiced as to any remedies which may be available to it for breach of contract. Alchemy acknowledges that the purpose of this provision is to prevent repetitive defaults by Alchemy under the Agreement, which work a hardship upon the City, and deprive the City of the timely performance by Alchemy hereunder.

14.6 City's Remedies for Alchemy's Default.

If any of the events of default, as set forth in this Section, shall occur, the City may, after expiration of the cure periods, as provided above, at its sole option and discretion, institute such proceedings as in its opinion are necessary to cure such defaults and to compensate the City for damages resulting from such defaults, including but not limited to the right to give to Alchemy a notice of termination of this Agreement. If such notice is given, the term of this Agreement shall terminate upon the date specified in such notice from City to Alchemy. On the date so specified, Alchemy shall then quit and surrender the Advertising Space(s) to City pursuant to the provisions of Subsection 12.8. Upon the termination of this Agreement, all rights and interest of Alchemy in and to the Advertising Space(s) and to this Agreement, and every part thereof, shall cease and terminate and City may, in addition to any other rights and remedies it may have, retain all sums paid to it by Alchemy under this Agreement, including but not limited to, the Performance Bond in Section 15 herein.

In addition to the rights set forth above, the City shall have the rights to pursue any and all of the following:

- 14.6.1 The right to injunction or other similar relief available to it under Florida law against Alchemy; and/or
- 14.6.2 The right to maintain any and all actions at law or suits in equity or other proper proceedings to obtain damages resulting from Alchemy's default.
- 14.7 If an event of default by the City shall occur, Alchemy may, after expiration of the cure periods, as provided above, terminate this Agreement upon written notice to the City. Said termination shall become effective upon receipt of a written notice of termination by the City, but in no event shall Alchemy specify a termination date that is less than sixty (60) days from the date of the written termination notice. On the date specified in the notice, Alchemy shall quit and surrender the Advertising Space(s) to City pursuant to the provisions of Subsection 14.8.



14.8 Surrender of Advertising Spaces/Removal by Alchemy of equipment/Improvements.

Upon expiration, or earlier termination of this Agreement, Alchemy shall surrender the Advertising Spaces in the same condition as the Advertising Spaces were prior to the Effective Date. Alchemy shall, at its sole expense and at no charge to the City, remove all advertising panels from the Advertising Spaces, (as well as any other permanent or fixed improvements) and restore the Advertising Spaces and any surrounding areas, including repairing any damage caused from the removal of the Advertising Space Improvements, no later than sixty (60) days after the conclusion of the Term (or from the date of other termination of this Agreement) unless a longer time period is agreed to, in writing, by the City Manager or his/her designee.

Alchemy's obligation to observe or perform this covenant shall survive the expiration or other termination of this Agreement. Continued occupancy of any Advertising Spaces after expiration or termination of the Agreement (unless otherwise agreed to pursuant to the signed Removal Schedule) shall constitute trespass by Alchemy, and may be prosecuted as such. In addition, Alchemy shall pay to the City One Thousand (\$1,000.00) Dollars per day as liquidated damages for such trespass and holding over.

14.9 Substitute Performance.

In the event that Alchemy fails to properly perform the removal of any Advertising Space Improvements and restoration of the Advertising Spaces to their original condition in accordance with the terms of the Agreement, then the City shall have the right to undertake and/or purchase, as the City Manager deems appropriate, any such supplies, materials, services, etc., covered herein and to charge Alchemy for all actual costs thereby incurred by the City. Alchemy shall be responsible for paying all of said costs.

SECTION 15. BOND OR ALTERNATE SECURITY.

Alchemy shall, within thirty (30) days from the Effective Date, furnish to the City Manager or his/her designee a Bond in the sum stated below for the payment of which Alchemy shall bind itself for the faithful performance of the terms and conditions of this Agreement. A Bond, in the amount of One Hundred and Twelve Thousand Five Hundred Dollars (\$112,500.00) shall be provided by Alchemy in faithful observance of this Agreement. A cash deposit, irrevocable letter of credit, or certificate of deposit may also suffice, as determined by the City Manager or his/her designee, in consultation with Alchemy. The form of the Bond or alternate security shall be approved by the City's Chief Financial Officer. In the event that a Certificate of Deposit is approved, it shall be a One Hundred and Twelve Thousand Five Hundred Dollars (\$112,500.00) one-year Certificate of Deposit in favor of the City, which shall be automatically renewed, the original of which shall be held by the City's Chief Financial Officer. Alchemy shall be so required to maintain said Bond or alternate security in full force and effect throughout the Term of this Agreement. Alchemy shall have an affirmative duty to notify the City Manager or his/her designee, in writing, in the event said Bond or alternate security lapses or otherwise expires. All interest that accrues in connection with any financial instrument or sum of money referenced above shall be the property of Alchemy, except in an event of default, in which case the City shall be entitled to all interest that accrues after the date of default.

SECTION 16. ASSIGNMENT AND SUBCONTRACTING.

Alchemy shall not assign this Agreement or all or any portion of its costs or obligations (including subcontracting) under this Agreement without the prior written consent of the City Manager, in the City Manager's sole discretion. Alchemy shall notify the City Manager of any proposed assignment, in writing, at least sixty (60) days prior to the proposed effective date of such assignment. In the event that any such assignment is approved by the City, the assignee shall agree to be bound by all the covenants of this Agreement required of Alchemy. Notwithstanding the foregoing, the approval by an affiliate of Alchemy, as a subcontractor, shall not be unreasonably withheld, conditioned or delayed.

Alchemy, before making any subcontract for any portion of Alchemy's responsibilities under this Agreement, will state in writing to the City Manager's designee the name of the proposed subcontractor, the portion of the services which the subcontractor is to do, the place of business of such subcontractor, and such other information as the City may require. The provisions of this Agreement will apply to such subcontractor and its officers, agents and employees in all respects as if it and they were employees of Alchemy; and Alchemy will not be in any manner thereby discharged from its obligations and liabilities hereunder, but will be liable hereunder for all acts and negligence of the Subcontractor, its officers, agents, and employees, as if they were employees of Alchemy. The services performed by the subcontractor will be subject to the provisions hereof as if performed directly by Alchemy. The City Manager reserves the right to withdraw his or her consent to a subcontractor based upon substandard performance of the Agreement.

SECTION 17. NO IMPROPER USE.

Alchemy will not use, nor suffer or permit any person to use in any manner whatsoever, any Advertising Space Improvements, for any illegal or improper purpose, or for any other purpose in violation of any Federal, State, County, or municipal ordinance, rule, order or regulation, or of any governmental rule or regulation now in effect or hereafter enacted or adopted. Alchemy will protect, indemnify, and forever save and keep harmless the City, its officials, employees, contractors, and agents from and against damage, penalty, fine, judgment, expense or charge suffered, imposed, assessed or incurred for any violation, or breach of any law, ordinance, rule, order or regulation occasioned by any act, neglect or omission of Alchemy, or any official, director, agent, contractor, or servant regarding the Program. In the event of any violation by Alchemy, or if the City or its authorized representative shall deem any conduct on the part of Alchemy to be illegal or improper, the City shall have the right to suspend Alchemy's operations, should Alchemy fail to correct any such violation, conduct, or practice to the satisfaction of the City Manager or his designee within two (2) days, following written notice of the nature and extent of such violation, conduct, or practice. Such suspension to continue until the violation is cured to the satisfaction from the City Manager or his/her designee.

SECTION 18. NOTICES.

All notices from the City to Alchemy shall be deemed duly served upon receipt, or on the next business day after delivery to a nationally recognized business courier prior to their deadline for next day delivery to Alchemy at the following address:



ALCHEMY MIAMI BEACH LLC
1384 Broadway, Suite 804
New York, NY 10018
Attention: Michael Freedman

With copies to:

Alfredo J. Gonzalez
Greenberg Traurig, PA
333 Avenue of the Americas
Suite 4400
Miami, FL 33131

All notices from Alchemy to the City shall be deemed duly served upon receipt, or on the next business day after delivery to a nationally recognized business courier prior to their deadline for next day delivery to the City at the following addresses:

City Manager
City of Miami Beach
1700 Convention Center Drive
Miami Beach, FL 33139

With copy to:

City of Miami Beach
1700 Convention Center Drive
Miami Beach, FL 33139
Attn: Office of Communications, Tonya Daniels, Director

With copy to:

City of Miami Beach
1700 Convention Center Drive
Miami Beach, FL 33139
Attn: Procurement Department, Alex Denis, Director

Alchemy and the City may change the above mailing address at any time upon giving the other party written notification. All notices under this Agreement must be in writing.

SECTION 19. LAWS.

19.1 Compliance.

Alchemy shall comply with all applicable City, County, State, and Federal ordinances, statutes, rules and regulations, including but not limited to all applicable environmental City, County, State, and Federal ordinances, statutes, rules and regulations.



19.2 Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. Any civil action arising in any way from this Agreement or the activities of the parties under this Agreement shall be brought only in a court of competent jurisdiction located in Miami-Dade County, Florida.

19.3 Equal Employment Opportunity.

Neither Alchemy nor any affiliate of Alchemy performing services hereunder, or pursuant hereto, will discriminate against any employee or applicant for employment because of race, creed, sex, color, national origin, sexual orientation, and disability (as defined in Title I of ADA). Alchemy will take affirmative steps to utilize minorities and females in the workforce and in correlative business enterprises.

19.4 No Discrimination.

In connection with the performance of the agreement, Alchemy shall not exclude from participation in, deny the benefits of, or subject to discrimination anyone on the grounds of race, color, national origin, sex, age, disability, religion, income or family status.

Additionally, Alchemy shall comply fully with the City of Miami Beach Human Rights Ordinance, codified in Chapter 62 of the City Code, as may be amended from time to time, prohibiting discrimination in employment, housing, public accommodations, and public services on account of actual or perceived race, color, national origin, religion, sex, intersexuality, gender identity, sexual orientation, marital and familial status, age, disability, ancestry, height, weight, domestic partner status, labor organization membership, familial situation, or political affiliation.

19.5 Equal Benefits For Domestic Partners.

Alchemy acknowledges that if this Agreement is valued at over \$100,000 and Alchemy maintains 51 or more full time employees on their payroll during 20 or more calendar work weeks, Section 2-373, of the Miami Beach City Code, "Requirement for city contractors to provide equal benefits for domestic partners" ("Ordinance"), is applicable. If applicable, said Ordinance requires any contractor doing business with the City of Miami Beach, which are awarded a contract pursuant to competitive proposals, to provide "Equal Benefits" to their employees with domestic partners, as they provide to their employees with spouses. Additionally, if applicable, this Ordinance applies to all employees of Alchemy who work within the City limits of the City of Miami Beach, Florida, and Alchemy's employees located in the United States, but outside the City of Miami Beach limits, who are directly performing work on the Agreement within the City of Miami Beach.

Pursuant to said Ordinance, Alchemy warrants and represents and/or acknowledges as follows:

- a) Alchemy certifies and represents that during the performance of this Agreement, Alchemy will comply with this Ordinance;
- b) The failure of Alchemy to comply with this Ordinance shall be deemed to be a material breach of this Agreement;
- c) If Alchemy fails to comply with this Ordinance, the City may terminate this Agreement and all monies due or to become due under this Agreement may be retained by the



- City. The City may also pursue any and all other remedies at law or in equity for any breach;
- d) If the City Manager or his designee determines that Alchemy has set up or used its contracting entity for the purpose of evading the requirements of this Ordinance, the City may terminate this Agreement;
 - e) Failure to comply with this Ordinance may subject Alchemy to the procedures set forth in Division 5 of Article 2 of the City Code "Debarment of Contractors from city work".

SECTION 20. MISCELLANEOUS.

20.1 No Partnership.

Nothing contained in this Agreement shall constitute or be construed to be or create a partnership or joint venture between the City and Alchemy.

20.2 Modifications.

This Agreement cannot be changed or modified except by Agreement in writing executed by all parties hereto. Alchemy acknowledges that no modification to this Agreement may be agreed to by the City unless approved by the Mayor and City Commission except where such authority has been expressly provided herein to the City Manager or his/her designee.

20.3 Complete Agreement.

This Agreement, together with all exhibits incorporated hereto, constitutes all the understandings and Agreements of whatsoever nature or kind existing between the parties with respect to Alchemy's operations, as contemplated herein.

20.4 Headings.

The section, subsection and paragraph headings contained herein are for convenience of reference only and are not intended to define, limit, or describe the scope or intent of any provision of this Agreement.

20.5 Binding Effect.

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

20.6 Clauses.

The illegality or invalidity of any term or any clause of this Agreement shall not affect the validity of the remainder of the Agreement, and the Agreement shall remain in full force and effect as if such illegal or invalid term or clause were not contained herein unless the elimination of such provision detrimentally reduces the consideration that either party is to receive under this Agreement or materially affects the continuing operation of this Agreement.

20.7 Severability.

If any provision of this Agreement or any portion of such provision or the application thereof to any person or circumstance shall be held to be invalid or unenforceable, or shall become a violation of any local, State, or Federal laws, then the same as so applied shall no longer be a part of this Agreement but the remainder of the Agreement, such provisions and the application thereof to other persons or circumstances, shall not be affected thereby and this Agreement as so modified shall.

20.8 Not a Lease.

It is expressly understood and agreed that no part, parcel, building, facility, equipment or space is leased to Alchemy, that it is a Alchemy and not a lessee; that Alchemy's right to operate the Program shall continue only so long as this Agreement remains in effect.

20.9 Procedure for Approvals and/or Consents by the City.

In each instance in which the approval or consent of the City Manager or his/her designee is allowed or required in this Agreement, it is acknowledged that such authority has been expressly provided herein to the City Manager or his/her designee by the Mayor and City Commission of the City. In each instance in which the approval or consent of the City Manager or his/her designee is allowed or required in this Agreement, Alchemy shall send to the City Manager a written request for approval or consent (the "Approval Request").

The City Manager or his/her designee shall use reasonable efforts to provide written notice to Alchemy approving of consent to, or disapproving of the request, as quickly as possible but in any event within thirty (30) days from the date of Approval Request (or within such other time period as may be expressly set forth for a particular approval or consent under this Agreement). However, the City Manager or his/her designee's failure to consider such request within this time provided shall not be deemed a waiver, nor shall Alchemy assume that the request is automatically approved and consented to. The City Manager or his/her designee shall not unreasonably withhold, delay or condition any such approval or consent. This subsection shall not apply to approvals required herein by the Mayor and City Commission.

20.10 No Waiver.

It is mutually covenanted and agreed by and between the parties hereto that the failure of the City to insist upon the strict performance of any of the conditions, covenants, terms or provisions of this Agreement, or to exercise any option herein conferred, will not be considered or construed as a waiver or relinquishment for the future of any such conditions, covenants, terms, provisions or options but the same shall continue and remain in full force and effect. A waiver of any term expressed herein shall not be implied by any neglect of the City to declare a forfeiture on account of the violation of such term if such violation by continued or repeated subsequently and any express waiver shall not affect any term other than the one specified in such waiver and that one only for the time and in the manner specifically stated.

The receipt of any sum paid by Alchemy to the City after breach of any condition, covenant, term or provision herein contained shall not be deemed a waiver of such

breach, but shall be taken, considered and construed as payment for use and occupation, and not as rent, unless such breach be expressly waived in writing by the City.

20.11 No Third Party Beneficiary.

Nothing in this Agreement shall confer upon any person or entity, including, but not limited to subcontractors, other than the parties hereto and their respective successors and permitted assigns, any rights or remedies by reason of this Agreement.

20.12 No Lien.

In the event any notice or claim of lien shall be asserted against the interest of the City on account of or arising from any work done by or for Alchemy, or any person claiming by, through or under Alchemy, or for improvements or work, the cost of which is the responsibility of Alchemy, Alchemy agrees to have such notice or claim of lien cancelled and discharged within thirty (30) days after notice to Alchemy by City. In the event Alchemy fails to do so, City may terminate this Agreement for cause without liability to City.

20.13 Proposal Documents. Proposal Documents shall mean the RFP with all amendments thereto, issued by the City in contemplation of this Agreement (the "RFP"), and Alchemy's proposal in response thereto (the "Proposal"), all of which are hereby adopted by reference and incorporated herein as if fully set forth in this Agreement. Accordingly, Alchemy agrees to abide by and be bound by any and all of the Proposal Documents; provided, however, that in the event of an express conflict between the Proposal Documents and this Agreement, the following order of precedent shall prevail: (i) this Agreement; (ii) the RFP; and (iii) the Proposal; and further provided that in any case, the precedence will be given to that term/provision which allows the City to enforce this Agreement in the strictest possible terms, and/or in accordance with the term(s) most favorable for the City.

SECTION 21. LIMITATION OF LIABILITY.

The City desires to enter into this Agreement placing the operation and management of the Advertising Space(s) in the hands of a private management entity only if so doing the City can place a limit on its liability for any cause of action for breach of this Agreement, so that its liability for any such breach never exceeds the sum of Fifty Thousand Dollars (\$50,000.00). Alchemy hereby expresses its willingness to enter into this Agreement with a Fifty Thousand Dollars (\$50,000.00) limitation on recovery for any action for breach of contract. Nothing contained in this paragraph or elsewhere in this Agreement is in any way intended to be a waiver of limitation placed upon the City's liability as set forth in Florida Statutes, Section 768.28.

SECTION 22. JURY TRIAL WAIVER.

CITY AND ALCHEMY HEREBY KNOWINGLY AND INTENTIONALLY WAIVE THE RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING THAT CITY AND ALCHEMY MAY HEREIN AFTER INSTITUTE AGAINST EACH OTHER WITH RESPECT TO ANY MATTER ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE ADVERTISING SPACE(S).

SECTION 23. CONFLICT OF INTEREST.

Alchemy agrees to adhere to and be governed by the Miami-Dade County Ethics and Conflict of Interest laws, as same may be amended from time to time, and by the City of Miami Beach Charter and Code, as same may be amended from time to time, in connection with the performance of the Services.

Alchemy must disclose the name(s) of any officer, director, agent, or immediate family member (spouse, parent, sibling, and child) who is also an employee of the City of Miami Beach. Further, Alchemy must disclose the name of any City employee who owns, either directly or indirectly, an interest of ten percent (10%) or more in the Proposer entity or any of its affiliates.

SECTION 24. FLORIDA PUBLIC RECORDS LAW.

- (A) Contractor shall comply with Florida Public Records law under Chapter 119, Florida Statutes, as may be amended from time to time. Records made or received in connection with this Agreement are public records under Florida law, as defined in Section 119.011(12), Florida Statutes.
- (B) Pursuant to Section 119.0701 of the Florida Statutes, if the Contractor meets the definition of "Contractor" as defined in Section 119.0701(1)(a), the Contractor shall:
 - (1) Keep and maintain public records required by the City to perform the service;
 - (2) Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law;
 - (3) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law, for the duration of the contract term and following completion of the Agreement if the Contractor does not transfer the records to the City;
 - (4) Upon completion of the Agreement, transfer, at no cost to the City, all public records in possession of the Contractor or keep and maintain public records required by the City to perform the service. If the Contractor transfers all public records to the City upon completion of the Agreement, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Agreement, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.
- (C) REQUEST FOR RECORDS; NONCOMPLIANCE.
 - (1) A request to inspect or copy public records relating to the City's contract for services must be made directly to the City. If the City does not possess the requested records, the City shall immediately notify the Contractor of the request, and the Contractor must provide the records to the City or allow the records to be inspected or copied within a reasonable time.

- (2) Contractor's failure to comply with the City's request for records shall constitute a breach of this Agreement, and the City, at its sole discretion, may: (1) unilaterally terminate the Agreement; (2) avail itself of the remedies set forth under the Agreement; and/or (3) avail itself of any available remedies at law or in equity.
- (3) A Contractor who fails to provide the public records to the City within a reasonable time may be subject to penalties under s. 119.10.

(D) CIVIL ACTION.

- (1) If a civil action is filed against a Contractor to compel production of public records relating to the City's contract for services, the court shall assess and award against the Contractor the reasonable costs of enforcement, including reasonable attorney fees, if:
 - a. The court determines that the Contractor unlawfully refused to comply with the public records request within a reasonable time; and
 - b. At least 8 business days before filing the action, the plaintiff provided written notice of the public records request, including a statement that the Contractor has not complied with the request, to the City and to the Contractor.
- (2) A notice complies with subparagraph (1)(b) if it is sent to the City's custodian of public records and to the Contractor at the Contractor's address listed on its contract with the City or to the Contractor's registered agent. Such notices must be sent by common carrier delivery service or by registered, Global Express Guaranteed, or certified mail, with postage or shipping paid by the sender and with evidence of delivery, which may be in an electronic format.
- (3) A Contractor who complies with a public records request within 8 business days after the notice is sent is not liable for the reasonable costs of enforcement.

(E) **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

**CITY OF MIAMI BEACH
ATTENTION: RAFAEL E. GRANADO, CITY CLERK
1700 CONVENTION CENTER DRIVE
MIAMI BEACH, FLORIDA 33139
E-MAIL: RAFAELGRANADO@MIAMIBEACHFL.GOV
PHONE: 305-673-7411**

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.

IN WITNESS WHEREOF, the parties hereto have caused their names to be signed and their seals to be affixed, all as of the day and year first above written, indicating their Agreement.

Attest:

CITY OF MIAMI BEACH, FLORIDA

Rafael E. Granado, City Clerk

By: _____
Philip Levine, Mayor

Date: _____

Attest:

ALCHEMY MIAMI BEACH LLC

_____
Signature

By: _____
Michael A. Freedman, Manager

Alfredo J. Gonzalez / Attorney
Print Name/Title

Date: 9-25-17

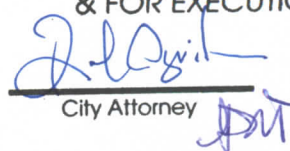

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION
_____
City Attorney 
9/26/17
Date

Exhibit A

LIST OF CITY GARAGES

MAF

List of City Garages

- **Garage 1 (G1):** 270 7 Street, Miami Beach, Florida 33139
- **Garage 2 (G2):** 512 12 Street, Miami Beach, Florida 33139
- **Garage 3 (G3):** 1301 Collins Avenue, Miami Beach, Florida 33139
- **Garage 4 (G4):** 1500 Collins Avenue, Miami Beach, Florida 33139
- **Garage 5 (G5):** 640 17 Street, Miami Beach, Florida 33139
- **Garage 6 (G6):** 400 42 Street, Miami Beach, Florida 33140
- **Garage 7 (G7):** 1755 Meridian Avenue, Miami Beach, Florida 33139
- **Garage 9 (G9):** 500 17 Street, Miami Beach, Florida 33139
- **Garage 10 (G10):** 1900 Bay Road, Miami Beach, Florida 33139

msf

Exhibit B

MEDIA PLAN

MRB

Exhibit B

MEDIA PLAN

MR