

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE CITY OF MIAMI BEACH
AND
OUTFRONT MEDIA GROUP, LLC
FOR
FOR TROLLEY ADVERTISEMENT PROGRAM SERVICES**

This Professional Services Agreement (“Agreement”) is entered into this _____ day of _____, 2024, with an effective date of May 10, 2022 (“Effective Date”), between the **CITY OF MIAMI BEACH, FLORIDA**, a municipal corporation organized and existing under the laws of the State of Florida, having its principal offices at 1700 Convention Center Drive, Miami Beach, Florida, 33139 (the “City”), and **OUTFRONT MEDIA GROUP, LLC**, a Delaware limited liability company, whose address is 90 Park Avenue, 9th Floor, New York, NY 10016 (“Contractor”).

**SECTION 1
DEFINITIONS**

- Agreement:** This Agreement between the City and Contractor, including any exhibits and amendments thereto.
- City Manager:** The chief administrative officer of the City.
- City Manager’s Designee:** The City staff member who is designated by the City Manager to administer this Agreement on behalf of the City. The City Manager’s designee shall be the Marketing and Communications Department Director or his/her designee.
- Contractor:** For the purposes of this Agreement, Contractor shall be deemed to be an independent contractor, and not an agent or employee of the City.
- Services:** All services, work and actions by the Contractor performed or undertaken pursuant to the Agreement.
- Fee:** Amount paid to the Contractor as compensation for Services.
- Risk Manager:** The Risk Manager of the City, with offices at 1700 Convention Center Drive, Third Floor, Miami Beach, Florida 33139; telephone number (305) 673-7000, Ext. 6435; and fax number (305) 673-7023.

**SECTION 2
SCOPE OF SERVICES**

2.1 In consideration of the Fee to be paid to Contractor by the City, Contractor shall provide the work and services described in **Exhibit “A”** hereto (the “Services”).

Although Contractor may receive a schedule of the available hours to provide its Services, the City shall not control nor have the right to control the hours of the Services performed by the Contractor; where the Services are performed (although the City will provide Contractor with the appropriate location to perform the Services); when the Services are performed, including how many days a week the Services are performed; how the Services are performed, or any other aspect of the actual manner and means of accomplishing the Services provided. Notwithstanding the foregoing, all Services provided by the Contractor shall be performed in accordance with the terms and conditions set forth in **Exhibit "A"** and to the reasonable satisfaction of the City Manager. If there are any questions regarding the Services to be performed, Contractor should contact the following person:

Melissa Berthier
Marketing and Communications Department Director
City of Miami Beach
1700 Convention Center Drive
Miami Beach, Florida 33139

2.2 Contractor's Services, and any deliverables incident thereto, shall be completed in accordance with the timeline and/or schedule in **Exhibit "A"**, attached hereto.

SECTION 3 **TERM**

The parties acknowledge that this Agreement is intended to provide the City with the Services from the Effective Date until such time as the City enters into a new contract for trolley advertising services, similar to the Services being performed by Contractor under this Agreement, pursuant to a public procurement process. As such, the term of this Agreement ("Term") shall commence retroactively as of the Effective Date set forth on p. 1 hereof, and shall have an initial term of three (3) months, automatically renewing for consecutive three (3) month renewal periods and terminable by the City, at the City Manager's sole option and discretion, pursuant to Section 5.2.

Notwithstanding the Term provided herein, Contractor shall adhere to any specific timelines, schedules, dates, and/or performance milestones for completion and delivery of the Services, as same is/are set forth in the timeline and/or schedule referenced in **Exhibit "A"** hereto.

SECTION 4 **FEE**

4.1 In consideration of the Services to be provided, Contractor shall pay to the City as revenue earned 52.5% of Gross Receipts on a monthly basis, payable within thirty (30) days following the end of each month with respect to the previous month during the Term. The term "Gross Receipts" is understood to mean all income collected and received by Contractor from the sale and display of advertising on any portion of the trolley vehicles, permitted under the terms of this Agreement. Gross receipts shall be reduced by: (1) Independent third party agency commissions; and (ii) amount of any sales or excise tax levied upon any sales, rentals, and/or services rendered and payable to the appropriate governmental authority; the City shall not be responsible to pay any expenditures under this Agreement.

4.2 REPORTS OF GROSS RECEIPTS

Within thirty (30) days from the end of each month throughout the Term, Contractor shall provide the City Manager's designee with a detailed quarterly report of the Gross Receipts for the preceding month. The report shall reflect the activity and expenditures on a monthly basis and shall itemize the total monthly Gross Receipts and expenses from each advertisement for each trolley vehicle. The City Manager's designee may request back-up documents for any entry in the monthly report and Contractor shall provide said documentation within ten (10) days from the City's request.

Monthly payments shall be submitted to the City at the following address, with a copy of the remittance to the City Manager's designee:

City of Miami Beach
Attention: Finance Department
1700 Convention Center Drive, 3rd Floor
Miami Beach, Florida 33139
Re: Outfront Trolley Advertising Agreement

4.3 INTEREST FOR LATE PAYMENT

Any payment which Contractor is required to make to City which is not paid on or before 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. In addition, any payment received after five (5) days of its due date, shall accrue a late charge of five percent (5%) of the payment amount due.

SECTION 5 **TERMINATION**

5.1 TERMINATION FOR CAUSE

If the Contractor shall fail to fulfill in a timely manner, or otherwise violates, any of the covenants, agreements, or stipulations material to this Agreement, the City, through its City Manager, shall thereupon have the right to terminate this Agreement for cause. Prior to exercising its option to terminate for cause, the City shall notify the Contractor of its violation of the particular term(s) of this Agreement, and shall grant Contractor ten (10) days to cure such default. If such default remains uncured after ten (10) days, the City may terminate this Agreement without further notice to Contractor. Upon termination, the City shall be fully discharged from any and all liabilities, duties, and terms arising out of, or by virtue of, this Agreement.

Notwithstanding the above, the Contractor shall not be relieved of liability to the City for damages sustained by the City for any breach of the Agreement by the Contractor. The City, at its sole option and discretion, shall be entitled to bring any and all legal/equitable actions that it deems to be in its best interest in order to enforce the City's rights and remedies against

Contractor. The City shall be entitled to recover all costs of such actions, including reasonable attorneys' fees.

5.2 TERMINATION FOR CONVENIENCE OF THE CITY

THE CITY MAY ALSO, THROUGH ITS CITY MANAGER, AND FOR ITS CONVENIENCE AND WITHOUT CAUSE, TERMINATE THE AGREEMENT AT ANY TIME DURING THE TERM BY GIVING WRITTEN NOTICE TO CONTRACTOR OF SUCH TERMINATION; WHICH SHALL BECOME EFFECTIVE NINETY (90) DAYS FOLLOWING RECEIPT BY THE CONTRACTOR OF SUCH NOTICE. ADDITIONALLY, IN THE EVENT OF A PUBLIC HEALTH, WELFARE OR SAFETY CONCERN, AS DETERMINED BY THE CITY MANAGER, IN THE CITY MANAGER'S SOLE DISCRETION, THE CITY MANAGER, PURSUANT TO A VERBAL OR WRITTEN NOTIFICATION TO CONTRACTOR, MAY IMMEDIATELY SUSPEND THE SERVICES UNDER THIS AGREEMENT FOR A TIME CERTAIN, OR IN THE ALTERNATIVE, TERMINATE THIS AGREEMENT ON A GIVEN DATE. IF THE AGREEMENT IS TERMINATED FOR CONVENIENCE BY THE CITY, CONTRACTOR SHALL CONTINUE TO PERFORM THE SERVICES UP TO THE EFFECTIVE DATE OF TERMINATION AND SHALL PAY THE CITY'S SHARE OF GROSS RECEIPTS FOR SUCH CAMPAIGNS IN ACCORDANCE WITH SECTION 4 (FEE); FOLLOWING WHICH THE CITY SHALL BE DISCHARGED FROM ANY AND ALL LIABILITIES, DUTIES, AND TERMS ARISING OUT OF, OR BY VIRTUE OF, THIS AGREEMENT.

5.3 TERMINATION FOR INSOLVENCY

The City also reserves the right to terminate the Agreement in the event the Contractor is placed either in voluntary or involuntary bankruptcy or makes an assignment for the benefit of creditors. In such event, the right and obligations for the parties shall be the same as provided for in Section 5.2.

5.4 SURRENDER OF ADVERTISING SPACES/REMOVAL BY CONTRACTOR ADVERTISEMENTS

Upon expiration, or earlier termination of this Agreement, Contractor shall surrender the Advertising Spaces (as defined in Exhibit "A", attached hereto) in the same condition as the Advertising Spaces were prior to the Effective Date. Contractor shall, at its sole expense and at no charge to the City, remove all advertising materials, panels, and equipment ("Advertising Space Improvements") from the Advertising Spaces and restore the Advertising Spaces and any surrounding areas, including repairing any damage caused from the removal of the Advertising Space Improvements prior to the effective date of expiration or termination of the Term unless a longer time period is agreed to, in writing, by the City Manager or his/her designee.

Contractor'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 Contractor and may be prosecuted as such. In addition, Contractor shall pay to the City One Thousand (\$1,000.00) Dollars per day per Advertising Space as liquidated damages for such trespass and holding over.

5.5 **SUBSTITUTE PERFORMANCE**

In the event that Contractor fails to properly perform the removal of any advertising improvements, equipment or materials from the Advertising Spaces 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 Contractor for all actual costs thereby incurred by the City. Contractor shall be responsible for paying all of said costs.

SECTION 6
INDEMNIFICATION AND INSURANCE REQUIREMENTS

6.1 **INDEMNIFICATION**

Contractor agrees to indemnify, defend and hold harmless the City of Miami Beach and its officers, employees, agents, and contractors, from and against any and all actions (whether at law or in equity), 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 the negligent acts, errors, omissions or other wrongful conduct of the Contractor, its officers, employees, agents, contractors, or any other person or entity acting under Contractor's control or supervision, in connection with, related to, or as a result of the Contractor's performance of the Services pursuant to this Agreement. To that extent, the Contractor 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. The Contractor expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the Contractor shall in no way limit the Contractor's responsibility to indemnify, keep and save harmless and defend the City or its officers, employees, agents and instrumentalities as herein provided.

The parties agree that one percent (1%) of the total compensation to Contractor for performance of the Services under this Agreement is the specific consideration from the City to the Contractor for the Contractor's indemnity agreement. The provisions of this Section 6.1 and of this indemnification shall survive termination or expiration of this Agreement.

6.2 **INSURANCE REQUIREMENTS**

The Contractor shall maintain and carry in full force during the Term, the following insurance:

1. Commercial General Liability
 - (A) Limits of Liability
 - Bodily injury and property damage liability
 - Each occurrence limit, \$1,000,000.00;
 - General Aggregate limit, \$2,000,000.00
 - Products/Completed Operations, \$1,000,000.00
 - Personal and Advertising Injury, \$1,000,000.00

- (B) Endorsements Required
 - City of Miami Beach included as an additional insured
 - Contingent Liability & Contractual Liability;
 - Primary Insurance Clause (not contributory) for direct claims under the Agreement
 - Premises & Operations Liability
 - Waiver of Subrogation

- 2. Business Automobile Liability
 - (A) Limits of Liability
 - Bodily Injury and Property Damage Liability
 - Combined Single Limit
 - Any Auto/Owned Autos/Scheduled
 - Including Hired, Borrowed or Non-Owned Autos
 - Any One Accident, \$1,000,000.00

 - (B) Endorsements Required
 - City of Miami Beach included as an Additional Insured

- 3. Workers Compensation & Employers Liability, as required pursuant to Florida Statutes, waiver of subrogation.
 - (A) Limits of Liability
 - \$500,000.00 for bodily injury caused by an accident, each accident.
 - \$500,000.00 for bodily injury caused by disease, each employee
 - \$500,000.00 for bodily injury caused by disease, policy limit

- 4. Excess Liability (Excess Follow Form)
 - (A) Limits of Liability
 - Each Occurrence \$1,000,000.00
 - Policy Aggregate \$1,000,000.00

 - City of Miami Beach as additional insured

- 5. Contractor Professional Liability/Errors & Omissions
 - (A) Limits of Liability
 - Bodily Injury and Property Damage Liability
 - Each Claim \$1,000,000.00
 - Policy Aggregate \$1,000,000.00

The insurance must be furnished by insurance companies authorized to do business in the State of Florida. All insurance policies must be issued by companies rated no less than "A-" as to management and not less than "Class VI" as to strength by the latest edition of Best's Insurance Guide, published by A.M. Best Company.

Timely renewal certificates will be provided to the City as coverage renews. If the Professional Liability coverage is provided on a claims made basis, then such insurance shall continue for (3) years following the expiration or termination of the Agreement.

Original certificates of insurance must be submitted to the City's Risk Manager for approval (prior to any work and/or services commencing) and will be kept on file in the Office of the Risk Manager. The City shall have the right to obtain from the Contractor specimen copies of the insurance policies in the event that submitted certificates of insurance are inadequate to ascertain compliance with required coverage.

The Contractor is also solely responsible for obtaining and submitting all insurance certificates for any sub-Contractors.

Compliance with the foregoing requirements shall not relieve the Contractor of the liabilities and obligations under this section or under any other portion of this Agreement.

The Contractor shall not commence any work and or services pursuant to this Agreement until all insurance required under this section has been obtained and such insurance has been approved by the City's Risk Manager.

SECTION 7
LITIGATION JURISDICTION/VENUE/JURY TRIAL WAIVER

This Agreement shall be construed in accordance with the laws of the State of Florida. This Agreement shall be enforceable in Miami-Dade County, Florida, and if legal action is necessary by either party with respect to the enforcement of any or all of the terms or conditions herein, exclusive venue for the enforcement of same shall lie in Miami-Dade County, Florida. By entering into this Agreement, Contractor and the City expressly waive any rights either party may have to a trial by jury of any civil litigation related to or arising out of this Agreement.

SECTION 8
LIMITATION OF CITY'S LIABILITY

The City desires to enter into this Agreement only if in so doing the City can place a limit on the City's liability for any cause of action, for money damages due to an alleged breach by the City of this Agreement, so that its liability for any such breach never exceeds the sum of \$10,000. Contractor hereby expresses its willingness to enter into this Agreement with Contractor's recovery from the City for any damage action for breach of contract to be limited to a maximum amount of \$10,000.

Accordingly, and notwithstanding any other term or condition of this Agreement, Contractor hereby agrees that the City shall not be liable to the Contractor for damages in an amount in excess of \$10,000 for any action or claim for breach of contract arising out of the performance or non-performance of any obligations imposed upon the City by this Agreement.

Nothing contained in this section or elsewhere in this Agreement is in any way intended to be a waiver of the limitation placed upon the City's liability, as set forth in Section 768.28, Florida Statutes.

SECTION 9
DUTY OF CARE/COMPLIANCE WITH APPLICABLE LAWS/PATENT RIGHTS; COPYRIGHT;
AND CONFIDENTIAL FINDINGS

9.1 DUTY OF CARE

With respect to the performance of the Services contemplated herein, Contractor shall exercise that degree of skill, care, efficiency and diligence normally exercised by reasonable persons and/or recognized professionals with respect to the performance of comparable work and/or services.

9.2 COMPLIANCE WITH APPLICABLE LAWS

In its performance of the Services, Contractor shall comply with all applicable laws, ordinances, and regulations of the City, Miami-Dade County, the State of Florida, and the federal government, as applicable.

9.3 PATENT RIGHTS; COPYRIGHT; CONFIDENTIAL FINDINGS

Any work product arising out of this Agreement, as well as all information specifications, processes, data and findings, are intended to be the property of the City and shall not otherwise be made public and/or disseminated by Contractor, without the prior written consent of the City Manager, excepting any information, records etc. which are required to be disclosed pursuant to Court Order and/or Florida Public Records Law.

All reports, documents, articles, devices, and/or work produced in whole or in part under this Agreement are intended to be the sole and exclusive property of the City, and shall not be subject to any application for copyright or patent by or on behalf of the Contractor or its employees or sub-contractors, without the prior written consent of the City Manager.

SECTION 10
GENERAL PROVISIONS

10.1 MAINTENANCE AND EXAMINATION OF RECORDS / AUDIT AND INSPECTIONS

(A) Maintenance and Examination of Records. Contractor 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 Manager's designee, 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 Contractor 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 Sites; 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.

(B) Audit and Inspections. Contractor 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 City Manager's designee, as deemed necessary by the City Manager or City Manager's designee. Contractor shall make such records available electronically, or at the City's option, at a location in Miami Beach, within ten (10) days' notice (written or verbal) from the City at Contractor's expense.

The City Manager shall be entitled to audit Contractor's records, by an Auditor designated by the City Manager, 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 Contractor's statement of Gross Receipts for any year or years audited, in which case Contractor 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. The City Manager, in the City Manager's sole discretion, may have the audit conducted by one of its internal auditors or may retain the services of a private auditor.

Contractor shall submit within sixty (60) days from the end of each Contract Year (throughout the Term), an annual statement of Gross Receipts, in a form consistent with generally accepted accounting principles. Additionally, such statement shall be accompanied by a report from an independent CPA.

It is Contractor's intent to stay informed of comments and suggestions by the City regarding Contractor's performance under the Agreement. Within thirty (30) days after the end of each Contract Year, upon written notice from the City Manager, Contractor shall meet with the City Manager or City Manager's designee to review Contractor's performance under the Agreement. At the meeting, Contractor and City may discuss quality, operational, maintenance and any other issues regarding Contractor's performance under the Agreement.

10.2 INSPECTOR GENERAL AUDIT RIGHTS

(A) Pursuant to Section 2-256 of the Code of the City of Miami Beach, the City has established the Office of the Inspector General which may, on a random basis, perform reviews, audits, inspections and investigations on all City contracts, throughout the duration of said contracts. This random audit is separate and distinct from any other audit performed by or on behalf of the City.

(B) The Office of the Inspector General is authorized to investigate City affairs and empowered to review past, present and proposed City programs, accounts, records, contracts and transactions. In addition, the Inspector General has the power to subpoena witnesses, administer oaths, require the production of witnesses and monitor

City projects and programs. Monitoring of an existing City project or program may include a report concerning whether the project is on time, within budget and in conformance with the contract documents and applicable law. The Inspector General shall have the power to audit, investigate, monitor, oversee, inspect and review operations, activities, performance and procurement process including but not limited to project design, bid specifications, (bid/proposal) submittals, activities of the Contractor, its officers, agents and employees, lobbyists, City staff and elected officials to ensure compliance with the contract documents and to detect fraud and corruption. Pursuant to Section 2-378 of the City Code, the City is allocating a percentage of its overall annual contract expenditures to fund the activities and operations of the Office of Inspector General.

- (C) Upon ten (10) days written notice to the Contractor, the Contractor shall make all requested records and documents available to the Inspector General for inspection and copying. The Inspector General is empowered to retain the services of independent private sector auditors to audit, investigate, monitor, oversee, inspect and review operations activities, performance and procurement process including but not limited to project design, bid specifications, (bid/proposal) submittals, activities of the Contractor its officers, agents and employees, lobbyists, City staff and elected officials to ensure compliance with the contract documents and to detect fraud and corruption.
- (D) The Inspector General shall have the right to inspect and copy all documents and records in the Contractor's possession, custody or control which in the Inspector General's sole judgment, pertain to performance of the contract, including, but not limited to original estimate files, change order estimate files, worksheets, proposals and agreements from and with successful subcontractors and suppliers, all project-related correspondence, memoranda, instructions, financial documents, construction documents, (bid/proposal) and contract documents, back-change documents, all documents and records which involve cash, trade or volume discounts, insurance proceeds, rebates, or dividends received, payroll and personnel records and supporting documentation for the aforesaid documents and records.
- (E) The Contractor shall make available at its office at all reasonable times the records, materials, and other evidence regarding the acquisition (bid preparation) and performance of this Agreement, for examination, audit, or reproduction, until three (3) years after final payment under this Agreement or for any longer period required by statute or by other clauses of this Agreement. In addition:
 - i. If this Agreement is completely or partially terminated, the Contractor shall make available records relating to the work terminated until three (3) years after any resulting final termination settlement; and

- ii. The Contractor shall make available records relating to appeals or to litigation or the settlement of claims arising under or relating to this Agreement until such appeals, litigation, or claims are finally resolved.
- (F) The provisions in this section shall apply to the Contractor, its officers, agents, employees, subcontractors and suppliers. The Contractor shall incorporate the provisions in this section in all subcontracts and all other agreements executed by the Contractor in connection with the performance of this Agreement.
- (G) Nothing in this section shall impair any independent right to the City to conduct audits or investigative activities. The provisions of this section are neither intended nor shall they be construed to impose any liability on the City by the Contractor or third parties.

10.3 ASSIGNMENT, TRANSFER OR SUBCONSULTING

Contractor shall not subcontract, assign, or transfer all or any portion of any work and/or service under this Agreement without the prior written consent of the City Manager, which consent, if given at all, shall be in the Manager's sole judgment and discretion. Neither this Agreement, nor any term or provision hereof, or right hereunder, shall be assignable unless as approved pursuant to this section, and any attempt to make such assignment (unless approved) shall be void.

10.4 PUBLIC ENTITY CRIMES

Prior to commencement of the Services, the Contractor shall file a State of Florida Form PUR 7068, Sworn Statement under Section 287.133(3)(a) Florida Statute on Public Entity Crimes with the City's Procurement Division.

10.5 NO DISCRIMINATION

In connection with the performance of the Services, the Contractor 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, Contractor 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 (including independent contractors), housing, public accommodations, public services, and in connection with its membership or policies because of actual or perceived race, color, national origin, religion, sex, intersexuality, gender identity, sexual orientation, marital and familial status, age, disability, ancestry, height, weight, hair texture and/or hairstyle, domestic partner status, labor organization membership, familial situation, or political affiliation.

10.6 CONFLICT OF INTEREST

Contractor herein agrees to adhere to and be governed by all applicable Miami-Dade County Conflict of Interest Ordinances and Ethics provisions, as set forth in the Miami-Dade County Code, as may be amended from time to time; and by the City of Miami Beach Charter and Code, as may be amended from time to time; both of which are incorporated by reference as if fully set forth herein.

Contractor covenants that it presently has no interest and shall not acquire any interest, directly or indirectly, which could conflict in any manner or degree with the performance of the Services. Contractor further covenants that in the performance of this Agreement, Contractor shall not employ any person having any such interest.

10.7 CONTRACTOR'S COMPLIANCE WITH 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.
- (B) The term "public records" shall have the meaning set forth in Section 119.011(12), which means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business of the City.
- (C) 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.
- (D) 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](#).

(E) 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 attorneys' 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.

(F) **IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, OR AS 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**

10.8 FORCE MAJEURE

- (A) A "Force Majeure" event is an event that (i) in fact causes a delay in the performance of the Contractor or the City's obligations under the Agreement, and (ii) is beyond the reasonable control of such party unable to perform the obligation, and (iii) is not due to an intentional act, error, omission, or negligence of such party, and (iv) could not have reasonably been foreseen and prepared for by such party at any time prior to the occurrence of the event. Subject to the foregoing criteria, Force Majeure may include events such as war, civil insurrection, riot, fires, epidemics, pandemics, terrorism, sabotage, explosions, embargo restrictions, quarantine restrictions, transportation accidents, strikes, strong hurricanes or tornadoes, earthquakes, or other acts of God

which prevent performance. Force Majeure shall not include technological impossibility, inclement weather, or failure to secure any of the required permits pursuant to the Agreement.

- (B) If the City or Contractor's performance of its contractual obligations is prevented or delayed by an event believed by to be Force Majeure, such party shall immediately, upon learning of the occurrence of the event or of the commencement of any such delay, but in any case within fifteen (15) business days thereof, provide notice: (i) of the occurrence of event of Force Majeure, (ii) of the nature of the event and the cause thereof, (iii) of the anticipated impact on the Agreement, (iv) of the anticipated period of the delay, and (v) of what course of action such party plans to take in order to mitigate the detrimental effects of the event. The timely delivery of the notice of the occurrence of a Force Majeure event is a condition precedent to allowance of any relief pursuant to this section; however, receipt of such notice shall not constitute acceptance that the event claimed to be a Force Majeure event is in fact Force Majeure, and the burden of proof of the occurrence of a Force Majeure event shall be on the requesting party.
- (C) No party hereto shall be liable for its failure to carry out its obligations under the Agreement during a period when such party is rendered unable, in whole or in part, by Force Majeure to carry out such obligations. The suspension of any of the obligations under this Agreement due to a Force Majeure event shall be of no greater scope and no longer duration than is required. The party shall use its reasonable best efforts to continue to perform its obligations hereunder to the extent such obligations are not affected or are only partially affected by the Force Majeure event, and to correct or cure the event or condition excusing performance and otherwise to remedy its inability to perform to the extent its inability to perform is the direct result of the Force Majeure event with all reasonable dispatch.
- (D) Obligations pursuant to the Agreement that arose before the occurrence of a Force Majeure event, causing the suspension of performance, shall not be excused as a result of such occurrence unless such occurrence makes such performance not reasonably possible. The obligation to pay money in a timely manner for obligations and liabilities which matured prior to the occurrence of a Force Majeure event shall not be subject to the Force Majeure provisions.
- (E) Notwithstanding any other provision to the contrary herein, in the event of a Force Majeure occurrence, the City may, at the sole discretion of the City Manager, suspend the City's payment obligations under the Agreement, and may take such action without regard to the notice requirements herein. Additionally, in the event that an event of Force Majeure delays a party's performance under the Agreement for a time period greater than thirty (30) days, the City may, at the sole discretion of the City Manager, terminate the Agreement on a given date, by giving written notice to Contractor of such termination. If the Agreement is terminated pursuant to this section, Contractor shall be paid for any Services satisfactorily performed up to the date of termination; following which the City shall be discharged from any and all liabilities, duties, and terms arising out of, or by virtue of, this Agreement. In no event will any condition of Force Majeure extend this Agreement beyond its stated term.

10.9 E-VERIFY

(A) To the extent that Contractor provides labor, supplies, or services under this Agreement, Contractor shall comply with Section 448.095, Florida Statutes, "Employment Eligibility" ("E-Verify Statute"), as may be amended from time to time. Pursuant to the E-Verify Statute, commencing on January 1, 2021, Contractor shall register with and use the E-Verify system to verify the work authorization status of all newly hired employees during the Term of the Agreement. Additionally, Contractor shall expressly require any subcontractor performing work or providing services pursuant to the Agreement to likewise utilize the U.S. Department of Homeland Security's E-Verify system to verify the employment eligibility of all new employees hired by the subcontractor. If Contractor enters into a contract with an approved subcontractor, the subcontractor must provide the Contractor with an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien. Contractor shall maintain a copy of such affidavit for the duration of this Agreement or such other extended period as may be required under this Agreement.

(B) TERMINATION RIGHTS.

- (1) If the City has a good faith belief that Contractor has knowingly violated Section 448.09(1), Florida Statutes, which prohibits any person from knowingly employing, hiring, recruiting, or referring an alien who is not duly authorized to work by the immigration laws or the Attorney General of the United States, the City shall terminate this Agreement with Contractor for cause, and the City shall thereafter have or owe no further obligation or liability to Contractor.
- (2) If the City has a good faith belief that a subcontractor has knowingly violated the foregoing Subsection 10.9(A), but the Contractor otherwise complied with such subsection, the City will promptly notify the Contractor and order the Contractor to immediately terminate the contract with the subcontractor. Contractor's failure to terminate a subcontractor shall be an event of default under this Agreement, entitling City to terminate this Agreement for cause.
- (3) A contract terminated under the foregoing Subsection (B)(1) or (B)(2) is not in breach of contract and may not be considered as such.
- (4) The City or Contractor or a subcontractor may file an action with the Circuit or County Court to challenge a termination under the foregoing Subsection (B)(1) or (B)(2) no later than 20 calendar days after the date on which the contract was terminated.
- (5) If the City terminates the Agreement with Contractor under the foregoing Subsection (B)(1), Contractor may not be awarded a public contract for at least 1 year after the date of termination of this Agreement.
- (6) Contractor is liable for any additional costs incurred by the City as a result of the termination of this Agreement under this Section 10.9.

SECTION 11 NOTICES

All notices and communications in writing required or permitted hereunder, shall be delivered personally to the representatives of the Contractor and the City listed below or may be mailed by U.S. Certified Mail, return receipt requested, postage prepaid, or by a nationally recognized overnight delivery service.

Until changed by notice, in writing, all such notices and communications shall be addressed as follows:

TO CONTRACTOR: Outfront Media Group, LLC
405 Lexington Avenue
New York, NY 10174
Attention: _____

TO CITY: City of Miami Beach
1700 Convention Center Drive
Miami Beach, Florida 33139
Attention: Marketing and Communications Department Director

WITH COPY TO: City of Miami Beach
1700 Convention Center Drive
Miami Beach, Florida 33139
Attention: City Manager

Notice may also be provided to any other address designated by the party to receive notice if such alternate address is provided via U.S. certified mail, return receipt requested, hand delivered, or by overnight delivery. In the event an alternate notice address is properly provided, notice shall be sent to such alternate address in addition to any other address which notice would otherwise be sent, unless other delivery instruction as specifically provided for by the party entitled to notice.

Notice shall be deemed given on the date of an acknowledged receipt, or, in all other cases, on the date of receipt or refusal.

Notwithstanding the foregoing, each party may communicate with each other relating to operational issues, except with respect to any alleged defaults, which will require notice to the foregoing parties.

SECTION 12 **MISCELLANEOUS PROVISIONS**

12.1 CHANGES AND ADDITIONS

This Agreement cannot be modified or amended without the express written consent of the parties. No modification, amendment, or alteration of the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

12.2 SEVERABILITY

If any term or provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement shall not be affected and every other term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

12.3 WAIVER OF BREACH

A party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A party's waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

12.4 JOINT PREPARATION

The parties hereto acknowledge that they have sought and received whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been a joint effort of the parties, the language has been agreed to by parties to express their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

12.5 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.

12.6 ENTIRETY OF AGREEMENT

The City and Contractor agree that this is the entire agreement between the parties. This Agreement supersedes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained herein, and there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Title and paragraph headings are for convenient reference and are not intended to confer any rights or obligations upon the parties to this Agreement.

[REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their appropriate officials, as of the date first entered above.

FOR CITY:

CITY OF MIAMI BEACH, FLORIDA

ATTEST:

By: _____
City Clerk

City Manager

Date: _____

FOR CONTRACTOR:

OUTFRONT MEDIA GROUP, LLC

ATTEST:

By: _____

Print Name and Title

Print Name and Title

Date: _____

EXHIBIT "A"

1. MARKETING, MANAGEMENT AND OPERATION OF TROLLEY ADVERTISEMENTS

Contractor agrees to market, manage and operate the advertisement services on the City's trolley vehicles, solely on the advertising spaces ("Advertising Spaces") which may be designated from time to time by the City Manager's designee, in the City Manager's designee's, sole option and discretion, to be included as part of the City's trolley advertisement program (the "Services"), including, without limitation, the following in accordance with the terms of this Agreement:

- (A) evaluate current and future revenue potential;
- (B) market the City's trolley vehicle advertising opportunities pursuant to the terms of this Agreement;
- (C) provide ongoing management of the trolley advertisement program;
- (D) Track and manage all issues and requests concerning the operation of the trolley advertisement program;
- (E) Coordinate the installation and/or removal of advertising equipment, including to all applicable City departments;
- (F) For City sponsorships or public service announcements (PSAs), assist with the printing, installation and removal of advertising materials on the inside of the trolleys, each at the sole cost and expense of the City at the current negotiated rate of \$3,750.00 per trolley as further outlined under "Advertising Standards";
- (G) Prevent any additional costs not contemplated under this Agreement;
- (I) Provide all personnel, equipment, and other resources necessary to operate the City's trolley advertisement program; and
- (J) Coordinate all necessary requirements pursuant to all other City departments.

2. LICENSES, TAXES, ASSESSMENTS

(A) Contractor 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 this Agreement.

(B) Contractor agrees and shall pay before delinquency all taxes and assessments of any kind levied or assessed by reason of this Agreement, or by reason of Contractor's business and/or operations. Contractor 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. Contractor 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, Contractor shall be responsible for such delinquency charges, in addition to payment of the contested tax, if so ordered.

3. **EMPLOYEES AND INDEPENDENT CONTRACTORS**

(A) Contractor's Employees.

(1) Contractor shall select, train and employ such number of employees or contractors as is necessary or appropriate for Contractor to satisfy its responsibilities hereunder. Contractor shall be the sole authority to hire, terminate and discipline any and all personnel employed by Contractor.

(2) Contractor shall designate a competent full-time employee to oversee the day-to-day operations, and who shall act as the contract administrator for the trolley vehicle advertising program and serve as Contractor's primary point-person with the City. This individual shall have the requisite amount of experience in operating, managing, and maintaining the advertising program and operations contemplated herein. The employee shall be accessible to the City Manager or City Manager's designee at all reasonable times during normal business hours (8:00 A.M. to 5:00 P.M.) to discuss the management, operation and maintenance of the Program, and during the hours of 8:00 A.M. and 2:00 A.M. in the event of an emergency. Consistent failure by the employee to be accessible shall be reported to Contractor's principal(s), and if not rectified, shall be grounds for replacement of the employee.

(3) Contractor shall provide the City Manager's designee with a list of its employees and/or contractors who meet the Level 1 Screening Standards described in Subsection (5), and such qualified employees and/or contractors will be permitted to secure identification badges from the City's Human Resource Department. Contractor's employees and/or contractors will be required to wear the City issued identification during all hours of operation when such employee and/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. Contractor 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.

(4) Contractor shall use its best efforts to hire employees and/or contractors for the program from among unemployed workers in the City of Miami Beach workforce.

(5) Background Check Screening Process. Contractor shall conduct a full Level I criminal background screening check at its own expense on each of its employees and/or contractors engaged in providing services under this Agreement. The Level I background screening check shall be compliant with the requirements of Section 435.03, Florida Statutes, as may be amended from time to time, and must include, at minimum, employment history checks and statewide criminal correspondence checks through the Department of Law Enforcement, and a check of the Dru Sjodin National Sex Offender Public Website, and local criminal records checks through local law enforcement agencies (collectively, the "Statutory Screening Standards"). Contractor shall ensure that each employee and/or contractor meets the Statutory Screening Standards prior to commencing to perform any work and/or services under this Agreement. Contractor acknowledges that it has an ongoing duty to maintain and update these lists as new employees and/or contractors are hired and in the event that any

previously screened employee and/or contractor fails to meet the Statutory Screening Standards. Contractor agrees to notify the City immediately upon becoming aware that one of its employees and/or contractors who was previously certified as completing the background check and meeting the Statutory Screening standards is subsequently arrested or convicted of any disqualifying offense. Failure by Contractor to notify the City of such arrest or conviction within two business days of being put on notice or within thirty (30) days of the occurrence of qualifying arrest resulting in charges or conviction, shall constitute grounds for the City, at its sole option, to place Contractor in default. Contractor shall defend, indemnify and hold the City, its officers, employees, and agents harmless from and against any and all liability, loss, expense (including reasonable attorney's fees) or claims for injury or damages arising out of its failure to comply with this requirement. Contractor shall employ personnel competent to perform the work specified herein. The City reserves the right to request the removal of Contractor employee's from performing services under this Agreement where the employee's performance or actions are obviously detrimental to the Program. Contractor's personnel must wear photo identification at all times.

(6) Contractor shall not retain, add, or replace any sub-contractor without the prior written approval of the City Manager or his/her designee, in response to a written request from Contractor stating the reasons for any proposed substitution. Any approval of a sub-contractor by the City Manager or designee shall not in any way shift the responsibility for the quality and acceptability by the City of the services performed by the sub-contractor. The quality of services and acceptability to the City of the services performed by sub-contractor shall be the sole responsibility of Contractor.

(7) A change in Contractor's project manager or key personnel (as well as any replacement) shall be subject to the prior written approval of the City Manager or City Manager's designee. Replacement (including reassignment) of an approved project manager, public information officer, or any key personnel shall not be made without submitting a resume for the replacement staff person and receiving prior written approval of the City Manager or City Manager's designee.

(8) Contractor shall coordinate the work performed by its team (Project Team) and suppliers and shall be fully responsible for all acts and omissions of the Project Team, suppliers, and their employees. Any provision of the Agreement referring to the acts or omissions of Contractor shall also refer to and include the acts and omissions of Project Team and suppliers. Project Team composition and responsibilities will be provided and attached to this Agreement.

(9) If any portion of the subcontracted work is not performed in accordance with the Agreement, or if a Contractor's Team member or Supplier commits or omits any act that would constitute a breach of this Agreement, Contractor shall cure the breach (within the time frame established by the City); and, at the direction of the City Manager's designee, shall replace Contractor's Team member(s) or Supplier(s). Following a debarment for breach, said member(s) or Supplier(s) shall not be employed again to perform work or services under the Agreement.

4. **NO IMPROPER USE**

Contractor shall not suffer or permit the City's trolleys 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 trolleys' 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 trolleys; (vi) or impair or interfere with the physical convenience of any of the occupants of the trolleys. Contractor understands that this Agreement is limited to the portions of the City's trolley vehicles which has been designated by the City Manager's designee as Advertising Spaces within the trolley vehicles.

5. **ADVERTISING STANDARDS**

- (A) Contractor shall comply with the following:
- (1) All advertising accepted for placement will comply with Federal, State, Miami-Dade County, and existing City of Miami Beach laws, rules and regulations;
 - (2) The Contractor shall neither accept for display, install, display nor maintain any advertisement that falls within one or more of the following categories:
 - (a) contains the words "STOP", "LOOK", "DRIVE IN", "DANGER" or any other word, symbol, or displays designed to distract vehicular traffic;
 - (b) false or misleading material that is immoral, lascivious, or obscene as defined in Section 847.001, Florida Statutes;
 - (d) no advertising shall be for businesses engaged in any activity that requires the exclusion of minors pursuant to Chapter 847, Florida Statutes;
 - (e) promotes unlawful or illegal goods, services or activities;
 - (f) tobacco or tobacco related products including electronic cigarettes;
 - (g) firearms;
 - (h) sexual services, programs or products;
 - (i) political candidates or political issues, campaigns;
 - (j) detrimental to the operation or goals of the City;
 - (k) competitive products with the Pepsi Cola and Red Bull brands pursuant to the exclusive sponsorship agreements in existence with the City as of the effective date of this Agreement, and any future Agreement with the City relating to a citywide exclusive sponsorship agreement, as notified in writing to Contractor; and
 - (l) any such additional category of advertising that the City Manager, in the City Manager's sole discretion, may determine to be reasonable, as notified in writing to Contractor.
 - (m) Advertising of alcoholic beverages is prohibited absent the expressed written consent of the City Manager.
- (B) **Any prohibited or unacceptable material, as determined by the City Manager, in the City Manager's sole discretion, which is displayed or placed, shall be immediately removed by Contractor upon notice from the City Manager.** In the event Contractor fails to remove any prohibited material within twenty-four 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 Contractor, without liability to the City, or, at the City's option, or (ii) remove the prohibited material and charge Contractor for the actual cost thereof, without liability to the City.

6. CITY'S SELF-PROMOTIONAL SPACE

The City shall be entitled to purchase advertising space on the trolley's at an agreed to rate of \$3,750.00 per trolley, inclusive of production and installation costs, with such rate remaining in effect during the term of this Agreement unless otherwise agreed to in writing by the City Manager or his/her Designee.

7. INTERRUPTION OF OPERATIONS

Contractor releases the City for any diminution of rental value or by reason of inconvenience, annoyance or interference with Contractor's operation arising from the City' or its agents removing any trolley vehicles from operation, or making any repairs, replacements, alterations, decorations, or improvements in or to any portion of a trolley vehicle.

8. COPYRIGHT, PATENTS & ROYALTIES

Contractor 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 Contractor uses any design, device or materials covered 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 trolley advertising program. This indemnity shall survive the expiration or termination of this Agreement.