

RIVERSIDE COUNTY TRANSPORTATION COMMISSION

DATE:	July 13, 2011
TO:	Riverside County Transportation Commission
FROM:	Western Riverside County Programs and Projects Committee Henry Nickel, Staff Analyst Sheldon Peterson, Rail Manager
THROUGH:	Anne Mayer, Executive Director
SUBJECT:	Agreement with Vendsight, Inc. to Provide a Station Advertising Revenue Program

WESTERN RIVERSIDE COUNTY PROGRAMS AND PROJECTS COMMITTEE AND STAFF RECOMMENDATION:

This item is for the Commission to:

- 1) Award Agreement No. 11-24-029-00 to Vendsight, Inc. to provide services associated with the development, management, and maintenance of a station advertising revenue program for a five-year term, and one five-year option to extend the agreement; and
- 2) Authorize the Chair, pursuant to legal counsel review, to execute the agreement, including the option term, on behalf of the Commission.

BACKGROUND INFORMATION:

On July 14, 2010, the Commission approved Resolution No. 10-011 adopting a commercial advertising policy applicable to all Riverside County Metrolink stations. The intention of the Commission was to generate revenue from the available space of its Metrolink stations to offset increasing maintenance costs. Accordingly, the Commission sought a competitive solution to meet these requirements. In August, staff responded to the resolution by drafting a scope of services for a turnkey advertising revenue program and issued Request for Proposals (RFP) No. 11-24-029-00.

The awarded firm was to plan, establish, solicit, place, administer, manage, and maintain advertisements for the space available at the Commission-owned Metrolink stations. Both content guidelines and discretionary approval authority remains with the Commission pursuant to the adopted policy and terms of contract. Proposers were encouraged to visit each station to gain perspective of the available advertising space.

Procurement Process

The procurement of a station advertising revenue program was especially challenging because the Commission has never conducted a competitive procurement for these services, does not have existing advertising sites in place at the stations, the ad performance and market area are untested, and the current advertising market is suffering due to the economic downturn. Additionally, recent advertising solicitations by local agencies have been unsuccessful in generating any interest from the market.

In an effort to refine the scope of services and to maximize competition and revenue, staff arranged a series of meetings with several advertising firms that would likely, in a stable economic environment, submit a proposal. Based on these discussions, it was apparent that the biggest hurdle for the advertising firms is recouping the sizeable capital investment required to place the initial advertising program infrastructure. Since the Commission does not have existing ad sites in place and ad performance in the local market area is untested, it was unclear whether firms would be willing to make the capital outlay necessary to establish a start up program. Staff issued a competitive solicitation to test the local market.

RFP No. 11-24-029-00 was released by staff and advertised on January 14. A pre-proposal conference and job walk of the Downtown Riverside commuter rail station was held on January 27. Staff responded to all requests for clarifications submitted by potential proposers. One firm, Vendsight, Inc. (Vendsight), submitted a proposal prior to the stated deadline date. Staff reached out to several advertising firms to determine why these firms did not submit a proposal in response to the RFP. The following reasons were given – experiencing an advertising recession, too much risk, and insufficient staff.

The proposal Vendsight submitted was determined by staff to be a responsive and responsible proposal. Vendsight's proposal was evaluated and scored by an evaluation committee comprised of Commission staff. Scoring was based entirely upon the evaluation criteria set forth in the RFP. Negotiations with Vendsight were conducted over the course of several meetings, discussions, and correspondence, whereby contract terms were finalized. Under the terms of the proposed agreement, Vendsight will provide the intended turnkey advertising revenue program, at no cost to the Commission, and the Commission will receive approximately 25 percent of the total gross sales calculated prior to any deductions for maintenance, vandalism, and other program costs and expenses. After implementation, the vendor anticipates annual revenue would be up to \$50,000. The contractor will comply with all requirements set forth in the advertising policy including prohibition of advertising alcohol and tobacco products. Additionally, the Commission will retain the discretion to utilize 10 percent of the advertising space for its own messages and information. Attached are photos of the anticipated

installations. The program could be expanded with Vendsight at the four new stations following the implementation of new service on the Perris Valley Line.

Based on the foregoing procurement process, staff recommends the award of Agreement No. 11-24-029-00 to Vendsight for station advertising revenue program services at the five Commission-owned commuter rail stations for a five-year term, and one five-year option to extend the agreement.

Financial Information					
In Fiscal Year Budget:	N/A N/A	Year:	FY 2011/12 FY 2012/13 +	Amount:	\$0 \$100,000 (Revenues)
Source of Funds:	Other Revenues			Budget Adjustment:	No N/A
GL/Project Accounting No.:	103 24 42003 (Other Revenues)				
Fiscal Procedures Approved:	<i>Sherida Iervino</i>			Date:	06/15/11

Attachments:

- 1) Commercial Advertising Policy
- 2) Vendsight Photos
- 3) Standard Form Professional Services Agreement

RESOLUTION NO. 10-011**A RESOLUTION OF THE RIVERSIDE COUNTY TRANSPORTATION COMMISSION ADOPTING A COMMERCIAL ADVERTISING POLICY AND CONTENT GUIDELINES; AN INCIDENTAL USE POLICY COVERING CONCESSION STANDS, MERCHANDISING AND INFORMATIONAL MATERIALS FOR COMMISSION OWNED FACILITIES AND PROPERTY; AND A REVISED NON-COMMERCIAL FREE SPEECH PERMIT POLICY**

WHEREAS, the Riverside County Transportation Commission (“Commission”) owns real property, provides bus and commuter rail service throughout Riverside County and currently operates the following five commuter rail stations: (1) Downtown Riverside Station; (2) Pedley Station; (3) La Sierra Station; (4) West Corona Station; and (5) North Main Corona Station; and

WHEREAS, Commission has designated certain spaces in its commuter rail stations for non-commercial free speech purposes, while other spaces are appropriate for incidental uses of its real property including commercial advertising and other revenue generating purposes; and

WHEREAS, for those spaces that have been authorized as non-commercial free speech zones—all leafleting, solicitation and political campaign activities shall be conducted by permit and in accordance with this Policy; and

WHEREAS, Commission has adopted reasonable permit requirements to ensure that the number and location of people involved in such leafleting, solicitation and/or political campaign activities at each station do not impede, limit or restrict optimum pedestrian traffic or intended public transportation uses of its commuter rail stations; and

WHEREAS, for those spaces that have been authorized for commercial advertising and other revenue-generating uses, such incidental uses shall be allowed only so long as the following interests of Commission are preserved: (1) a safe, convenient and pleasant environment for users of Commission property, which includes maximizing use of its commuter rail stations by attracting and maintaining the patronage of the public; (2) protection of any minors who use Commission stations; and (3) the avoidance of any potential identification of the Commission with the point of view or message of the commercial advertisement placed by a third party; and

WHEREAS, the Commission has further identified potential additional revenues sources beyond commercial advertising such as concessions and Commission-related merchandising programs to supplement existing operational and capital funds; and

WHEREAS, these new programs are intended to supplement existing revenues generated from current fare rates and non-operating subsidies; and

WHEREAS, this Policy authorizes the Executive Director to implement any reasonable time, place, manner restrictions necessary to maintain public safety, aesthetic standards and the promotion of public transportation; and

WHEREAS, the Commission adopts the viewpoint neutral and content-based commercial advertising guidelines as contained herein in order to provide direction to third parties seeking to use the Commission's designated advertising spaces; and

WHEREAS, by adopting these guidelines, the Commission does not intend or propose to permit advertising that individually or commercially would cause any real or personal property owned or controlled by Commission to become a public forum for the dissemination, debate, and/or discussion of public issues unless permitted under the Commission's non-commercial free speech policy; and

WHEREAS, the commercial advertising policy applies to advertising placed by a third party on any Commission property and does not prohibit the Commission from placing advertisements and announcements related to its own or other governmental services, programs, or events not in violation of the viewpoint neutral content-based restrictions contained herein; and

WHEREAS, the sale of newspapers, food and beverages shall be regulated under separate policies. The sale of non-Commission merchandise except for approved concession vendors is strictly prohibited at the commuter rail stations; and

WHEREAS, any advertising on bus shelters and benches within the public rights-of-way shall be governed by the then-current policies of the applicable jurisdiction. This Policy shall only apply to Commission owned real property and otherwise the commuter rail stations above.

WHEREAS, the following Policy and Guidelines will be reviewed biennially (every two years) to reflect the current policies of the Commission and to reflect changes in the trends of social and economic acceptance and appropriateness of various forms of advertising and concessions.

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners as follows:

Section 1. The Recitals set forth above are true and correct and are incorporated into this resolution by this reference.

Section 2. Commission hereby adopts a "Commercial Advertising Policy and Guidelines" attached hereto as Exhibit "A" and incorporated herein by reference.

Section 3. Commission hereby adopts a "Incidental Use Policy" attached hereto as Exhibit "B" and incorporated herein by reference.

Section 4. Commission hereby adopts a "Non-Commercial Free Speech Policy" attached hereto as Exhibit "C" and incorporated herein by reference.

Section 5. Commission reserves the right to modify both Exhibits A, B and/or C at any time as may be required. Commission hereby authorizes the Executive Director to revise and enforce the provisions of both policies. Commission staff shall post revisions to either Policy on Commission's website at least thirty (30) calendar days before it becomes effective.

Section 6. The Chairperson of the Board shall sign this Resolution and the Clerk of the Board shall certify the adoption thereof. This Resolution shall be effective on the date of its adoption.

Section 7. The Board of Commissioners hereby finds that adoption of this Resolution is not subject to CEQA and authorizes and directs Commission staff as designated by the Executive Director to file a Notice of Exemption with the County Clerk of Riverside County and the State Clearinghouse within five (5) days following adoption of this Resolution.

APPROVED AND ADOPTED this 14th day of July, 2010.

Bob Buster, Chair
Riverside County Transportation Commission

ATTEST:

Jennifer Harmon, Clerk of the Board
Riverside County Transportation Commission

EXHIBIT “A”

COMMERCIAL ADVERTISING POLICY AND CONTENT GUIDELINES

A. POLICY STATEMENT

The purpose of this Commercial Advertising Policy is to establish viewpoint-neutral and content-based guidelines that govern Commission’s display of acceptable commercial advertisements. The display of commercial advertising is not intended to provide a general public forum for free speech purposes but rather to retain use of Commission property in a proprietary capacity. Allowing commercial advertising in certain locations on Commission property as a means of fee generation is a responsible incidental economic use of Commission's capital investments.

Advertising placed by any third party (including vendors) on Commission property is not authorized unless permitted in accordance with this Policy and guidelines and a contract approved by the Commission. Issuance of any license agreements and related contracts must be in accordance with Commission's procurement policies. Commission reserves the right to reject any advertising based upon its guidelines for acceptable advertising content as outlined in this Policy. Locations for commercial advertising may include but are not limited to: commuter rail stations, parking structures, and fixed outdoor displays on any Commission-owned property.

This Policy also provides guidelines as to the use of information signage space. Notwithstanding, Commission recognizes that advertising on its own properties is a critical means of communication with its patrons and users—including the adequate dissemination of transit and safety related information. Some informational signage space is currently available at the stations and reserved exclusively for Commission information.

B. DEFINITION OF TERMS

Key terms are defined as follows:

- “Added Value Materials” - Informational advertising which offers a tangible benefit to patrons as a means of rewarding and retaining customers (i.e., a money-saving discount).
- “Commercial advertisements” - Advertisements that (1) have as its primary purpose the promotion of a commercial transaction, such as the sale of real or personal property, services, entertaining and/or dining, which is offered to the public generally and (2) are not otherwise prohibited under the viewpoint neutral content-based restrictions below. Such shall include services and messages of charitable, educational, government, and not for profit institutions subject to compliance with the Commercial Advertising Content Guidelines.
- “Cross-Promotion” - A cooperative partnership in which two or more entities work together with the goal of jointly promoting their respective services.

- “Governmental Entities” - Public entities specifically created by government action.
- “Map Cases” - Fixed cases in Commission Rail stations. Used to display Commission Rail System Maps and provide information on fares, routes, safety, sales locations, service changes and other matters relevant to the use of the Metrolink System.
- “Non-Commercial Advertising” - A public service announcement, event notification, political statement or other message which does not have as its primary purpose to propose a commercial transaction. These types of advertisements that otherwise deviate from the Commercial Advertising Content Guidelines will not be accepted.

C. COMMERCIAL ADVERTISING CONTENT GUIDELINES

1. Revenue-Generating/Commercial Advertising

In accordance with the revenue-generating purpose of this Policy, the Commission shall accept only commercial advertisements. Non-commercial advertisements will not be accepted unless it is considered informational material as described below. Any person seeking to advertise, leaflet or solicit for political purposes are not covered by this Policy. Notwithstanding the foregoing, Commission expressly reserves its proprietary right to display notices and advertisements relating to Commission’s transit operations.

The Commission may, but is not required, to contract with outside vendors to sell and display commercial advertising within the commuter rail stations and otherwise on its property for the sole purpose of generating revenue. Commission may sell or post advertising directly. Any vendors responsible for soliciting and posting commercial advertisements to third parties shall be authorized under contracts awarded by Commission through a competitive bidding process to the extent required under the Commission’s procurement policy. All such contracts shall comply with these guidelines and following requirements:

- Locations for commercial advertising on Commission property or rail right of way may include, but are not limited to: dedicated map cases, billboards, banners, bike lockers, vending machine shelters, fixed outdoor displays, electronic signage, and any other locations approved by the Commission.
- Safety, aesthetic considerations, customer convenience, and Commission’s need to convey transit-related and emergency information to passengers will take precedence over revenue generation.
- Quantity, quality, and placement of all advertising will be controlled by and subject to the specific approval of Commission.

- Commission reserves the right to review any proposed advertisement in advance and reject any proposed advertisement which does not meet the Commission's standards as set forth in this Policy. Each entity wishing to purchase advertising space shall submit an application in such form as approved by the Executive Director or his/ her designee, which shall include the proposed content of the advertisement. Such shall not prohibit contracting the sale and management of such advertising space to a third party pursuant to Commission's procurement policies and procedures. Before any advertisement is rejected, it shall be referred to the Executive Director or his/her designee for Commission for appropriate action and a final decision.

The following viewpoint-neutral content-based limitations for third party commercial advertising are established as follows:

2. Alcohol and Tobacco Advertising

Advertising of all alcohol and tobacco products is prohibited.

3. Non-Commercial Advertising

Commission does not accept advertising from non-governmental entities if the subject matter and intent of said advertising is non-commercial and deviates from these guidelines. Generally, acceptable advertising must promote for sale, lease or other form of financial benefit a product, service, event or other property interest in primarily a commercial manner for primarily a commercial purpose.

Exemption: Governmental entities, meaning public entities specifically created by government action, may purchase or negotiate arrangements for advertising space for messages that advance specific government purposes. It is Commission's intent that government advertising will not be used for comment on issues of valid public debate.

4. Other Subject Matter Restrictions

Advertising may not be displayed if its content:

- Promotes, condones or relates to an illegal activity or which might be considered as derogatory toward any aspect of the law enforcement profession; or
- Contains language which is obscene, vulgar, profane, or otherwise offensive to generally accepted sensibility and taste; or
- Contains images, copy or concepts that actively denigrate or discriminate against a religious, ethnic, racial, sexual orientation, gender identity, or political group;
- Contains images, copy or concepts that actively denigrate public transportation; or

- Contains obscene matter as defined in state law, or sex-oriented material as defined in the Riverside County Municipal Code, Chapter 5.44; or
- Contains images, copy or concepts that appear to make a personal attack on any individual or upon any company, product, or institution; or falsely disparages any service or product or is defamatory in any respect; or
- Contains images, copy or concepts that portrays acts of violence, murder, sedition, terror, antisocial behavior, vandalism, or other acts of violence against persons and/or institutions; or
- Contains images, copy or concepts that depict nudity or portions of nudity that would be considered as offensive, distasteful, pornographic, or erotic, is obscene, or advertises adult entertainment. The rule of “public acceptance” should be used in such cases; i.e., if the advertisement has already gained public acceptance, then it may be considered as acceptable to Commission; or
- Contains images, copy or concepts that contains political ads endorsing a candidate, measure or proposition; or
- Contains images, copy or concepts that contains a religious message or promotes any religion; or
- Contains images, copy or concepts that implies an endorsement by Commission for any service, product or point of view; or
- Contains images, copy or concepts that are in conflict with any applicable federal, state, or local law, statute, or ordinance.

5. Display, Treatment and Maintenance Requirements

Advertising must comply with the following:

- Advertising placement or treatments will not impede vehicular or pedestrian traffic, will not restrict the visibility of directional/traffic signs and informational material, and will not encroach on necessary sight lines (e.g., driver/operator view of waiting patrons) nor present any other safety risks or hazards.
- Advertising industry standard sizes will be used for all advertising treatments.
- Advertising treatments will be maintained in “like-new” condition. Damage to the advertisement or its housing will be corrected within forty-eight (48) hours.
- Advertising treatments (housings) will complement the architecture of the transit centers/stations and the flavor of the surrounding community. Commission plan specifications will be followed wherever applicable. Advertising treatments will

be designed, constructed, and placed in accordance with all applicable local, state, and federal standards.

- Any unsold transit center, major transit points, and station display advertising space will be allocated for graphics and/or nonrevenue-producing functions approved by the Executive Director or his/her designee. At least one full display panel per transit center and station will be reserved exclusively for transit-related items.
- Advertising space may be allowed in printed materials (e.g., timetables, maps, and informational brochures) at the discretion of the Executive Director or his/her designee.
- No advertising space shall supersede necessary transit information and/or regulations.
- At the discretion of the Executive Director or his/her designee, Commission may allocate space in printed materials to inform transit customers about private entities actively participating in transit services, e.g., pass and ticket-sales outlets.
- Advertising vendors shall maintain all commercial advertising for which they have contracted to display on Commission properties.

6. Commission's Right of Rejection

The Commission reserves the right to reject any advertisement on the stated grounds as set forth in these Guidelines. Any advertisement or other display deemed to be objectionable will be removed. No refund shall be made for the time such objectionable material was on display. Commission's vendors may review advertising content according to their own guidelines of acceptability and generally Commission will not screen individual ads submitted to its vendors prior to posting unless specifically requested to do so by vendors. Nevertheless, in all advertising vendor contracts awarded, Commission reserves the right to reject any advertising content submitted for display on its properties and/or to order the removal of any advertising posted on its properties. Decisions regarding the rejection or removal of advertising shall be made by the Executive Director or his/her designee based upon the criteria in these Guidelines.

7. Informational Advertising

Commission has several unique distribution channels at its disposal for disseminating transit information that incurs no “space” cost (no fee charged for advertising space). These distribution channels include, but are not limited to: newsletter racks at Commission stations, bulletin boards and cases at select Commission Rail stations.

In addition, Commission shall have use of an allotment of advertising space at no charge by agreement with any vendor that sells all remaining advertising space under revenue generating agreements.

Acceptable information for these distribution channels is categorized as follows:

a. Regular Transit Information

Regular transit-oriented information is prepared by Commission and operators as well as upon request from other internal departments. Regular transit information includes, but is not limited to: service features and changes, fare information and changes, safety and security messages, maps and explanations of related transportation services.

b. Cross-Promotional Information

On an occasional basis and only when space is available, Commission may use its distribution channels to participate in cross-promotional opportunities that offer a direct opportunity to promote the public use of transit. Any materials distributed for this purpose must prominently include promotion of multimodal services (i.e. Rideshare, Commuterlink). Commission is prohibited by law from simply donating advertising space to any entity for purposes that are not directly transit-related. The outside organization involved must either bear the cost of producing such materials or, if approved by Commission, provide an equivalent or greater value in cross-promotional benefits (i.e. advertising space, editorial space, etc.). Any cross-promotional arrangement must be approved by the Executive Director or his/her designee based upon the criteria in these Guidelines.

c. “Added Value” Materials

On an occasional basis and only when space is available, Commission may use available distribution channels to provide “added value” materials to its customers. Such materials must present a specific and time-dated offer uniquely provided for station patrons (generally a money-saving discount) in which transit can be used to access the redemption point. Any materials distributed for this purpose must prominently include the Commission logo and other wording approved by Commission to indicate that the offer is specifically designed for Commission and transit operator customers. Commission is prohibited by law from simply donating advertising space to any entity for purposes that are not directly transit-related.

The outside organization involved must either bear the cost of producing such materials or, if approved by Commission, provide an equivalent or greater value in cross-promotional benefits (i.e. advertising space, editorial space, etc.). Any added value programs must be approved by the Executive Director or his/her designee based upon the criteria in these Guidelines.

D. COMMISSION RESPONSIBILITIES

Commission may engage contractor(s) services for the development, implementation, management, and maintenance of advertising, concessions, and/or merchandise programs in conformance with existing Board policies and in the best interests of the Commission.

Commission prepares all information messages and materials for dissemination at stations: administers the distribution/display of transit information; tracks/coordinates the availability and use of Commission's unique information distribution channels.

Executive Director (or designee) shall review and approve/reject all cross promotions and added value programs using Commission's unique distribution channels based upon the criteria in these Guidelines; enforces Commission's right to reject and/or order removal of commercial advertising based upon the criteria in these Guidelines.

Effective Date:

Date of Last Review:

EXHIBIT "B"

INCIDENTAL USE POLICY

Any incidental use of Commission owned facilities and property will not exceed that permitted under applicable Federal laws or regulations in accordance with applicable Federal directives. This Policy shall permit staff to use these facilities and property for incidental uses including revenue generating purposes so long as these activities do not interfere with the Commission's primary public transportation operations and responsibilities. These new programs will supplement existing revenues generated from current fare rates and non-operating subsidies.

A. Concessions

Concession formats, quantity, and placement will be approved and controlled by the Executive Director or his/her designee. Acceptable concession formats may include: short-term rental services (i.e., videos, bicycles, beach or sports equipment), automated teller machines (ATMs), State Lottery vending machines, personal service facilities (i.e., laundry drop-off and pick-up, car detailing), beverage carts, snack or beverage vending machines, and kiosks/shops for the sale of general merchandise, newspapers, magazines, sundries, prepaid transit fares, transit related merchandise, and rider convenience items approved by the Commission. Any additional concession formats are subject to approval of the Executive Director or his/her designee.

Contracts for any concession format or related development will be awarded in accordance with existing Commission policies. During hours of business, concessionaires will provide the public with transit information materials as directed and supplied by Commission or its designated representative. Concession treatments/structures will be designed to complement the architecture of the transit centers/stations and the flavor of the surrounding community. Commission plan specifications will be followed wherever applicable. Concession treatments/structures will be designed, constructed, and placed in accordance with all applicable local, state, and federal standards.

Concession treatments/structures will not impede vehicular or pedestrian traffic, will not restrict the visibility of directional signs and informational materials, and will not encroach on necessary sight lines. Concessionaire contracts will include remittance to Commission or its designated operating vendor. Said remittance will be made monthly or quarterly and include a flat rate or a percentage of gross revenue, as approved by the Commission. Any and all concession on-site signing and displays will be in accordance with existing Commission policies and subject to approval of the Executive Director or his/her designee.

B. Merchandise

Any and all system-related merchandise will be of the quality that is generally available in the surrounding retail environment and will project a positive Commission transit image.

Merchandise licensing agreements and royalty payments will be made in accordance with contemporary Commission practices and in the best interests of the Commission.

C. Contractor Services

Commission may engage contractor(s) services for the development, implementation, management, and maintenance of advertising, concessions, and/or merchandise programs in conformance with existing Board policies and in the best interests of the Commission.

Effective Date:

Date of Last Review:

EXHIBIT "C"

NON-COMMERCIAL FREE SPEECH POLICY

A. RESPONSIBLE DEPARTMENT

Subject to the discretion of the Executive Director, the Commission's Rail Department will be responsible for overseeing this Policy.

B. PROCEDURE

1. Application and Lottery Process for Leafleting, Solicitation, and/or Political Campaign Activities

Individuals interested in conducting leafleting, solicitation, and/or political campaign activities at any of Commission's commuter rail stations must complete and submit a "*Leafleting, Solicitation and/or Political Campaign Activities Permit Application*" to Commission's Rail Department. Applicants shall specify the Commission commuter rail station location for which they are applying for a permit. Individuals may apply for permits at more than one commuter rail station. However, should an individual's application be selected for a permit at more than one commuter rail station for a particular permit period (according to the lottery process described below), the individual must select one station for which he or she may have a permit for the particular permit period within two (2) days of the applicant's receipt of Commission's notification, unless there are no other applications for a particular station. For the station location(s) not selected by such applicant, Commission shall select a different application for receipt of a permit.

Two locations have been designated at each commuter rail station for leafleting, solicitation, and/or political campaign activities. Each designated location shall be for one individual. Permits shall be issued for two month periods as follows (except in the case of election months and the month immediately preceding election dates as discussed in Section B below):

- (1) January and February (Permit Period #1)
- (2) March and April (Permit Period #2)
- (3) May and June (Permit Period #3)
- (4) July and August (Permit Period #4)
- (5) September and October (Permit Period #5)
- (6) November and December (Permit Period #6)

Applications for a particular permit period shall be due by the 19th day of the calendar month immediately preceding the particular permit period. On the 20th day of the calendar month immediately preceding the particular permit period, Commission shall conduct a lottery whereby two applications shall be blindly selected for each station. Commission shall notify selected applicants in writing within two (2) days of the lottery of their selection and shall enclose a written permit with such notification indicating the rail station at which they have been

issued a permit as well as the precise location at the rail station where they may conduct their designated advertising, leafleting and/or solicitation activity. Should a situation arise where a particular applicant is selected for more than one station and must forfeit another station location, Commission shall notify the alternate applicant(s) within two (2) days receipt of notice of the forfeiting applicant's selection of a rail station location.

Therefore, for example, for Permit Period #4 (July and August), applications would be due by June 19. Commission would then conduct a lottery on June 20 whereby two applications would be blindly selected. Selected applicants would then be notified in writing by June 22 of their selection.

2. Application and Lottery Process for Political Campaign Activities

For the months of February and October and the days in March and November prior to a March or November election date, one of the two permit locations at each commuter rail station shall be reserved for political campaign activities. Individuals who wish to conduct political campaign activities at the commuter rail stations must submit a "*Leafleting, Solicitation and/or Political Campaign Activities Permit Application*" to Commission's Rail Department by 10:00 am, January 20 for a March election date and by 10:00 am, September 20 for a November election date. If January 20 and/or September 20 fall on a weekend, then applications will be due on the following Monday. Individuals may apply for permits at more than one commuter rail station. Commission shall conduct a blind lottery on or about the same date applications are due whereby each applicant shall be given a three (3) working-day period to conduct political campaign activities at a particular commuter rail station location. Commission shall notify all applicants in writing within two (2) days of the lottery indicating to them which dates they have been designated for their political campaign activities and shall enclose a written permit with such notification indicating the commuter rail station at which they have been issued a permit as well as the precise location at the rail station where they may conduct their designated political campaign activities. Once each applicant has had an opportunity to conduct political campaign activities at a commuter rail station for three (3) working days, then the cycle will start over beginning with the applicant who had the first three (3) working-day period. Should more applicants apply than can be accommodated for three (3) working-day periods, then the permit period shall be decreased to two (2) working-days.

If no applications are submitted to conduct political campaign activities at a particular commuter rail station, then the permit location shall continue being designated for advertising, leafleting and solicitation activities. The leafleting, solicitation, and/or political campaign activities permittee who had been using the location shall be allowed to continue conducting such activities at the location until the end of the permit period (see Section A above) for which he or she was selected.

3. Permit Requirements

Permit recipients shall conduct their designated leafleting, solicitation and/or political campaign activity for the permit period indicated on the permit. Permit recipients must adhere to the following policies in conducting such activities:

- No leaflets, placards, signs, banners or other material shall be affixed to any Commission property.
- No material shall be distributed by leaving it unattended.
- Permission shall not be given by Commission for leafleting of cars parked in rail station parking lots.
- Permittees must have the original or a copy of the permit with them at all times while they are conducting their designated leafleting, soliciting and/or political campaign activities at the commuter rail stations.
- Permittees may not conduct their leafleting, soliciting and/or political campaign activities on the platform of a commuter rail station.
- Permittees may not set up tables or booths at the commuter rail stations.
- Permittees may not block access to ticket machines or other facilities such as newsracks or benches.
- Permittees may not conduct the designated leafleting, soliciting and/or political campaign activities on stairways leading to platforms, stairways leading up to an overcrossing or on an overcrossing.
- Permittees may not create disturbances or harass patrons.
- Permittees must follow the directions of security guards and Commission officials.
- Permits may be revoked if not used for three (3) consecutive working days (except in the case of permits issued for political campaign activities).

III. APPEAL PROCEDURE

Commission staff shall make a good faith effort to comply with the timelines set forth herein. Should events arise such as holidays or work-related events whereby slight modifications must be made to the timelines, Commission staff shall make a good faith effort to follow the timelines set forth herein as closely as possible.

Any permit recipient who does not adhere to all of the policies contained herein shall be asked by a security guard to leave the premises immediately. Furthermore, violation of any of the above policies shall result in automatic revocation of a permit.

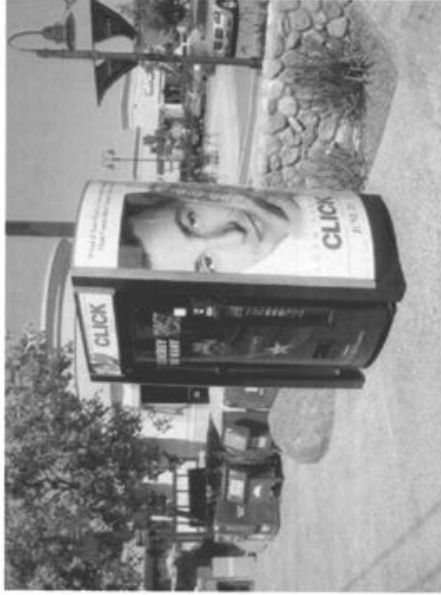
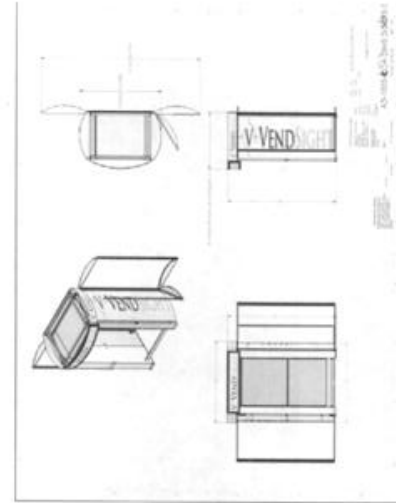
Should an individual's application for a permit be denied, such individual may appeal the denial of his or her application in writing to the Executive Director of Commission explaining why the application should not have been denied. The Executive Director shall review the denial

and shall notify the denied applicant of his or her determination in writing within ten (10) days receipt of such appeal. The Executive Director may authorize exceptions to the above-stated policies to protect applicants' free speech rights as well as the safety and mobility of patrons.

Should the Executive Director uphold the denial of such individual's application, such individual may appeal his or her case to the Board of Commissioners by sending such appeal to the Board in writing explaining why the application should not have been denied. The Board shall review the appeal at its next general meeting and shall notify the denied applicant of its determination in writing within ten (10) days of such general meeting.



AdMedia Enclosures

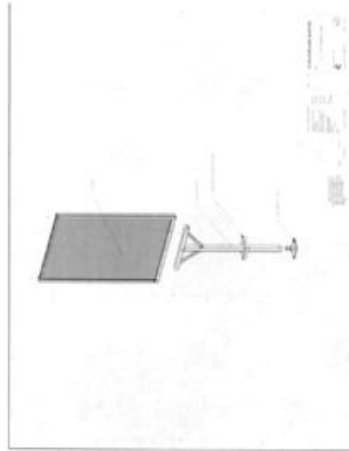


Designed and manufactured by Vendsight . Color matched to the surroundings





Fixed Signs-Wall/Floor Mounted



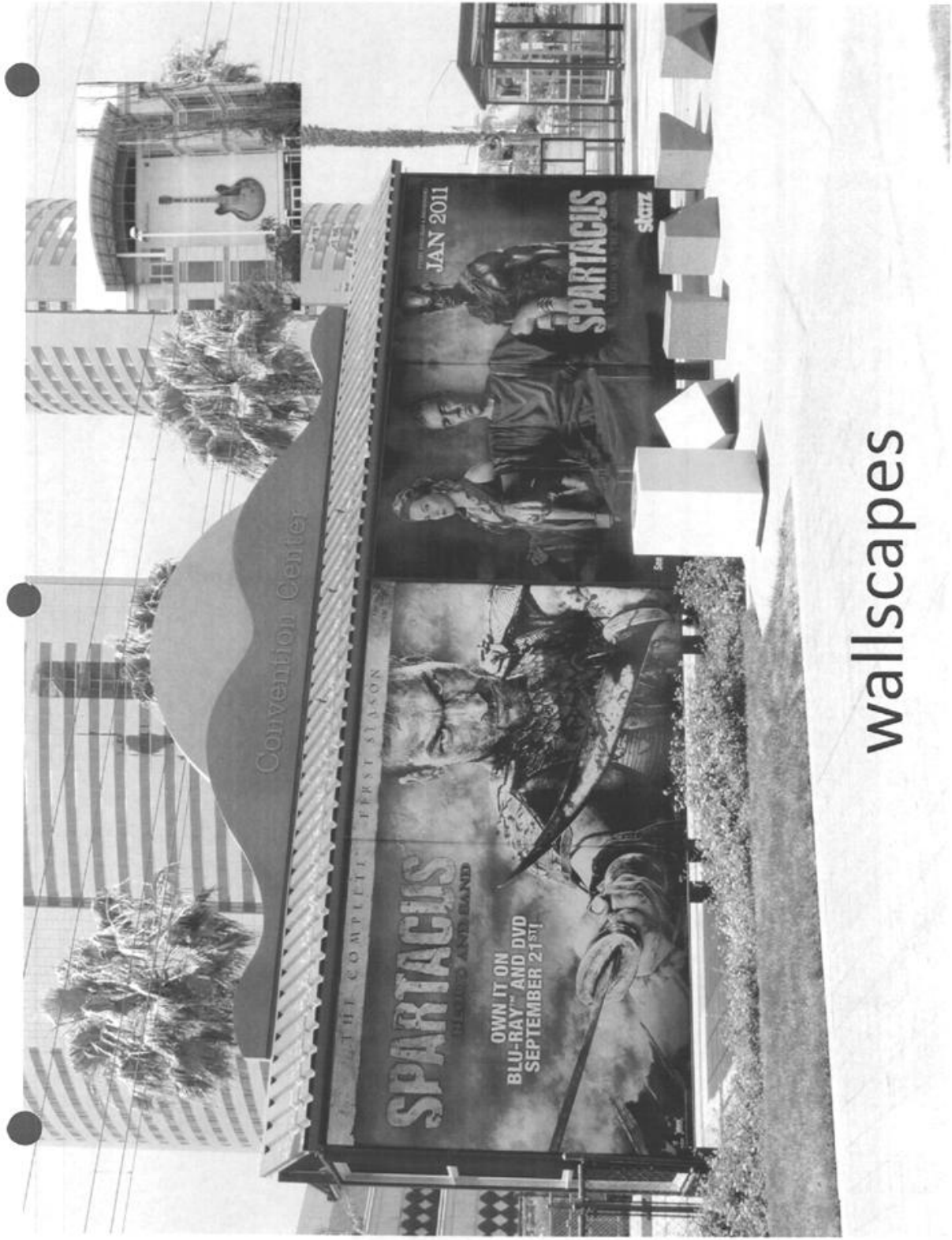
Designed and manufactured by
VendSight . Color matched to the
surroundings





Graphics wraps





wallscapes



 VENSIGHT

floor graphics





trash receptacle wraps



Agreement No. 11-24-029- 00

**RIVERSIDE COUNTY TRANSPORTATION COMMISSION
AGREEMENT FOR ADVERTISING SERVICES
WITH VENDSIGHT INCORPORATED**

1. PARTIES AND DATE.

This Agreement is made and entered into this ___ day of _____, 2011, by and between the RIVERSIDE COUNTY TRANSPORTATION COMMISSION ("the Commission") and VENDSIGHT INCORPORATED ("Consultant"), a Delaware Corporation.

2. RECITALS.

2.1 Consultant desires to perform and assume responsibility for the provision of certain professional consulting services required by Commission on the terms and conditions set forth in this Agreement. Consultant represents that it is a professional consultant, experienced in providing advertising services to public clients, is duly registered in California and agrees to maintain such registration with the California Secretary of State, and is familiar with the plans of the Commission.

2.2 Commission desires to engage Consultant to render certain turn-key advertising services for the Station Advertising Revenue Program ("Project") as set forth herein. The turn-key program shall include advertising graphics production, account management, design, installation, and maintenance.

2.3 Commission desires to make available advertising space at its five commuter rail stations and the Perris Transit Center located in Riverside County.

3. TERMS.

3.1 General Scope of Services. Consultant promises and agrees to furnish to Commission all labor materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately provide turn-key advertising services and advice on various issues affecting the decisions of Commission regarding the Project and on other programs and matters affecting Commission, hereinafter referred to as "Services". The Services are more particularly described in Exhibit "A" attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state, and federal laws, rules and regulations.

3.2 Term. The term of this Agreement shall be for a five (5) year base period with a single five (5) year option to extend the Agreement for a total period of

performance of up to ten (10) years. The option term may be exercised by the Commission, at its sole discretion, with prior written notice to the Consultant. Consultant shall complete the Services within the term of this Agreement and shall meet any other established schedules and deadlines.

3.3 Schedule of Services. Consultant shall perform the Services expeditiously, within the term of this Agreement, and in accordance with the Schedule of Services set forth in Exhibit "B" attached hereto and incorporated herein by reference. Consultant represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. In order to facilitate Consultant's conformance with the Schedule, the Commission shall respond to Consultant's submittals in a timely manner. Upon request of the Commission, Consultant shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

3.4 Independent Contractor; Control and Payment of Subordinates. The Services shall be performed by Consultant under its supervision. Consultant will determine the means, method and details of performing the Services subject to the requirements of this Agreement. Commission retains Consultant on an independent contractor basis and Consultant is not an employee of Commission. Consultant retains the right to perform similar or different services for others during the term of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Consultant shall not be employees of Commission and shall at all times be under Consultant's exclusive direction and control. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Consultant shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, and workers' compensation insurance.

3.5 Conformance to Applicable Requirements. All work prepared by Consultant shall be subject to the approval of Commission.

3.6 Substitution of Key Personnel. Consultant has represented to Commission that certain key personnel will perform and coordinate the Services under this Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence and experience upon written approval of Commission. In the event that Commission and Consultant cannot agree as to the substitution of key personnel, Commission shall be entitled to terminate this Agreement for cause, pursuant to provisions of Section 3.16 of this Agreement. The key personnel for performance of this Agreement are as follows: Michael Barnhill.

3.7 Commission's Representative. Commission hereby designates Executive Director, or his/her designee, to act as its representative for the performance of this Agreement ("Commission's Representative"). Commission's representative shall

have the power to act on behalf of Commission for all purposes under this Agreement. Consultant shall not accept direction from any person other than Commission's Representative or his/her designee.

3.8 Consultant's Representative. Consultant hereby designates Michael Barnhill, or his/her designee, to act as its representative for the performance of this Agreement ("Consultant's Representative"). Consultant's Representative shall have full authority to represent and act on behalf of the Consultant for all purposes under this Agreement. The Consultant's Representative shall supervise and direct the Services, using his or her best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

3.9 Coordination of Services. Consultant agrees to work closely with Commission staff in the performance of Services and shall be available to Commission's staff, consultants and other staff at all reasonable times.

3.10 Standard of Care; Licenses. Consultant shall perform the Services under this Agreement in a skillful and competent manner, consistent with the standard generally recognized as being employed by professionals in the same discipline in the State of California. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. Finally, Consultant represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services and that such licenses and approvals shall be maintained throughout the term of this Agreement. Consultant shall perform, at its own cost and expense and without reimbursement from Commission, any Services necessary to correct errors or omissions which are caused by the Consultant's failure to comply with the standard of care provided for herein, and shall be fully responsible to the Commission for all damages and other liabilities provided for in the indemnification provisions of this Agreement arising from the Consultant's errors and omissions.

3.11 Laws and Regulations.

3.11.1 Statutes. Consultant shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Consultant shall also comply with all applicable provisions of the California Fair Employment and Housing Act, California Government Code §§ 12900 et seq.; the state "whistleblower" requirements, California Labor Code §§ 1101 et seq.; and Employment of Undocumented Aliens, California Public Contract Code §§ 6101 et seq.

3.11.2 Liability. Consultant shall be liable for all violations of such laws and regulations in connection with Services. If the Consultant performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to Commission, Consultant shall be solely responsible for all costs arising therefrom. Consultant shall defend, indemnify and hold Commission, its officials, directors, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.12 Insurance.

3.12.1 Time for Compliance. Consultant shall not commence work under this Agreement until it has provided evidence satisfactory to the Commission that it has secured all insurance required under this section. In addition, Consultant shall not allow any subcontractor to commence work on any subcontract until it has secured all insurance required under this section.

3.12.2 Minimum Requirements. Consultant shall, at its expense, procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by the Consultant, its agents, representatives, employees or subcontractors. Consultant shall also require all of its subcontractors to procure and maintain the same insurance for the duration of the Agreement. Such insurance shall meet at least the following minimum levels of coverage:

(A) Minimum Scope of Insurance. Coverage shall be at least as broad as the latest version of the following: (1) *General Liability*: Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001); (2) *Automobile Liability*: Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto); and (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

(B) Minimum Limits of Insurance. Consultant shall maintain limits no less than: (1) *General Liability*: \$2,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with general aggregate limit is used, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit; (2) *Automobile Liability*: \$1,000,000 per accident for bodily injury and property damage; and (3) *if Consultant has an employees, Workers' Compensation and Employer's Liability*: Workers' Compensation limits as required by the Labor Code of the State of California. Employer's Practices Liability limits of \$1,000,000 per accident.

3.12.3 Professional Liability. Consultant shall procure and maintain, and require its subcontractors to procure and maintain, for a period of five (5)

years following completion of the Project, errors and omissions liability insurance appropriate to their profession. Such insurance shall be in an amount not less than \$1,000,000 per claim.

3.12.4 Insurance Endorsements. The insurance policies shall contain the following provisions, or Consultant shall provide endorsements on forms approved by the Commission to add the following provisions to the insurance policies:

(A) General Liability. The general liability policy shall be endorsed to state that: (1) the Commission, its directors, officials, officers, employees and agents shall be covered as additional insureds with respect to the Services or operations performed by or on behalf of the Consultant, including materials, parts or equipment furnished in connection with such work; and (2) the insurance coverage shall be primary insurance as respects the Commission, its directors, officials, officers, employees and agents, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by the Commission, its directors, officials, officers, employees and agents shall be excess of the Consultant's insurance and shall not be called upon to contribute with it in any way.

(B) Automobile Liability. The automobile liability policy shall be endorsed to state that: (1) the Commission, its directors, officials, officers, employees and agents shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Consultant or for which the Consultant is responsible; and (2) the insurance coverage shall be primary insurance as respects the Commission, its directors, officials, officers, employees and agents, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by the Commission, its directors, officials, officers, employees and agents shall be excess of the Consultant's insurance and shall not be called upon to contribute with it in any way.

(C) Workers' Compensation and Employers Liability Coverage. The insurer shall agree to waive all rights of subrogation against the Commission, its directors, officials, officers, employees and agents for losses paid under the terms of the insurance policy which arise from work performed by the Consultant.

(D) All Coverages. Each insurance policy required by this Agreement shall be endorsed to state that: (A) coverage shall not be suspended, voided or canceled except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the Commission; and, (B) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the Commission, its directors, officials, officers, employees and agents.

3.12.5 Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to and approved by the Commission. If the Commission does not approve the deductibles or self-insured retentions as presented, Consultant shall guarantee that, at the option of the Commission, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Commission, its directors, officials, officers, employees and agents; or, (2) the Consultant shall procure a bond guaranteeing payment of losses and related investigation costs, claims and administrative and defense expenses.

3.12.6 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating no less than A:VIII, licensed to do business in California, and satisfactory to the Commission.

3.12.7 Verification of Coverage. Consultant shall furnish Commission with original certificates of insurance and endorsements effecting coverage required by this Agreement on forms satisfactory to the Commission. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements must be received and approved by the Commission before work commences. The Commission reserves the right to require complete, certified copies of all required insurance policies, at any time.

3.13 Safety. Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions as applicable shall include, but shall not be limited to: (A) adequate life protection and life saving equipment and procedures; (B) instructions in accident prevention for all employees and subcontractors, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

3.14 Fees and Payment. In consideration for Commission entering into and granting the exclusive right to provide turn-key advertising services as provided forth in this Agreement, Consultant will pay Customer those rates as outlined in Exhibit C attached hereto and incorporated herein.

3.15 Accounting Records. Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred and fees charged under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of Commission during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created

pursuant to this Agreement. Consultant shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the final payment under this Agreement or the date of termination of this Agreement, whichever comes later.

3.16 Termination of Agreement.

3.16.1 Grounds for Termination. Both parties may, by written notice to the other, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to the other of such termination, and specifying the effective date thereof.

3.16.2 Effect of Termination. If this Agreement is terminated as provided herein, Commission may require Consultant to provide all finished or unfinished Documents and Data, as defined below, and other information of any kind prepared by Consultant in connection with the performance of Services under this Agreement. Consultant shall be required to provide such document and other information within fifteen (15) days of the request.

3.16.3 Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, Commission may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

3.17 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

CONSULTANT:
Vendsight Incorporated
8021 Wing Ave.
El Cajon, CA 92020
Attn: Michael Barnhill

COMMISSION:
Riverside County
Transportation Commission
4080 Lemon Street, 3rd Floor
Riverside, CA 92501
Attn: Executive Director

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.18 Ownership of Materials/Confidentiality.

3.18.1 Documents & Data. This Agreement creates an exclusive and perpetual license for Commission to copy, use, modify, reuse, or sub-license any and all copyrights and designs embodied in plans, specifications, studies, drawings,

estimates, materials, data and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Consultant under this Agreement (“Documents & Data”).

Consultant shall require all subcontractors to agree in writing that Commission is granted an exclusive and perpetual license for any Documents & Data the subcontractor prepares under this Agreement.

Consultant represents and warrants that Consultant has the legal right to grant the exclusive and perpetual license for all such Documents & Data. Consultant makes no such representation and warranty in regard to Documents & Data which were prepared by design professionals other than Consultant or provided to Consultant by the Commission.

Commission shall not be limited in any way in its use of the Documents & Data at any time, provided that any such use not within the purposes intended by this Agreement shall be at Commission’s sole risk.

3.18.2 Intellectual Property. In addition, Commission shall have and retain all right, title and interest (including copyright, patent, trade secret and other proprietary rights) in all plans, specifications, studies, drawings, estimates, materials, data, computer programs or software and source code, enhancements, documents, and any and all works of authorship fixed in any tangible medium or expression, including but not limited to, physical drawings or other data magnetically or otherwise recorded on computer media (“Intellectual Property”) prepared or developed by or on behalf of Consultant under this Agreement as well as any other such Intellectual Property prepared or developed by or on behalf of Consultant under this Agreement.

The Commission shall have and retain all right, title and interest in Intellectual Property developed or modified under this Agreement whether or not paid for wholly or in part by Commission, whether or not developed in conjunction with Consultant, and whether or not developed by Consultant. Consultant will execute separate written assignments of any and all rights to the above referenced Intellectual Property upon request of Commission.

Consultant shall also be responsible to obtain in writing separate written assignments from any subcontractors or agents of Consultant of any and all right to the above referenced Intellectual Property. Should Consultant, either during or following termination of this Agreement, desire to use any of the above-referenced Intellectual Property, it shall first obtain the written approval of the Commission.

All materials and documents which were developed or prepared by the Consultant for general use prior to the execution of this Agreement and which are not the copyright of any other party or publicly available and any other computer applications, shall continue to be the property of the Consultant. However, unless

otherwise identified and stated prior to execution of this Agreement, Consultant represents and warrants that it has the right to grant the exclusive and perpetual license for all such Intellectual Property as provided herein.

Commission further is granted by Consultant a non-exclusive and perpetual license to copy, use, modify or sub-license any and all Intellectual Property otherwise owned by Consultant which is the basis or foundation for any derivative, collective, insurrectional, or supplemental work created under this Agreement.

3.18.3 Confidentiality. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other Documents and Data either created by or provided to Consultant in connection with the performance of this Agreement shall be held confidential by Consultant. Such materials shall not, without the prior written consent of Commission, be used by Consultant for any purposes other than the performance of the Services. Nor shall such materials be disclosed to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Consultant which is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use Commission's name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of Commission.

3.19 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

3.20 Attorney's Fees. If either party commences an action against the other party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorney's fees and costs of such actions.

3.21 Indemnification. Consultant shall indemnify and hold the Commission, its directors, officials, officers, agents, consultants, employees and volunteers free and harmless from any and all claims, demands, causes of action, costs, expenses, liabilities, losses, damages or injuries, in law or in equity, to property or persons, including wrongful death, in any manner arising out of or incident to alleged negligent acts, omissions or willful misconduct of the Consultant, its officials, officers, employees, agents, consultants, and contractors arising out of or in connection with the performance of the Services, the Project or this Agreement, including without limitation, the payment of all consequential damages, attorneys fees and other related costs and expenses. Consultant shall defend, at Consultant's own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against the Commission, its directors, officials, officers, agents, consultants, employees and volunteers. Consultant shall pay and satisfy any judgment, award or decree that may be rendered against the Commission or its directors, officials,

officers, agents, consultants, employees and volunteers, in any such suit, action or other legal proceeding. Consultant shall reimburse the Commission and its directors, officials, officers, agents, consultants, employees and volunteers, for any and all legal expenses and costs, including reasonable attorney's fees, incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the Commission or its directors, officials, officers, agents, consultants, employees and volunteers. Notwithstanding the foregoing, to the extent Consultant's Services are subject to Civil Code Section 2782.8, the above indemnity shall be limited, to the extent required by Civil Code Section 2782.8, to claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Consultant. This Section 3.21 shall survive any expiration or termination of this Agreement.

3.22 Entire Agreement. This Agreement contains the entire Agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both parties.

3.23 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in Riverside County.

3.24 Time of Essence. Time is of the essence for each and every provision of this Agreement.

3.25 Commission's Right to Employ Other Consultants. The Commission reserves the right to employ other consultants in connection with this Project.

3.26 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the parties, and shall not be assigned by Consultant without the prior written consent of Commission.

3.27 Prohibited Interests.

3.27.1 Solicitation. Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, Commission shall have the right to rescind this Agreement without liability.

3.27.2 Conflict of Interest. For the term of this Agreement, no member, officer or employee of Commission, during the term of his or her service with

Commission, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

3.28 Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Consultant shall also comply with all relevant provisions of Commission's Disadvantaged Business Enterprise program, Affirmative Action Plan or other related Commission programs or guidelines currently in effect or hereinafter enacted.

3.29 Subcontracting. Consultant shall not subcontract any portion of the work or Services required by this Agreement, except as expressly stated herein, without prior written approval of the Commission. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

3.30 Prevailing Wages. By its execution of this Agreement, Consultant certified that it is aware of the requirements of California Labor Code Sections 1720 et seq. and 1770 et seq., as well as California Code of Regulations, Title 8, Section 16000 et seq. ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. If the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Consultant agrees to fully comply with such Prevailing Wage Laws. The Commission shall provide Consultant with a copy of the prevailing rate of per diem wages in effect at the commencement of this Agreement. Consultant shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Consultant's principal place of business and at the project site. Consultant shall defend, indemnify and hold the Commission, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

3.31 Employment of Apprentices. This Agreement shall not prevent the employment of properly indentured apprentices in accordance with the California Labor Code, and no employer or labor union shall refuse to accept otherwise qualified employees as indentured apprentices on the work performed hereunder solely on the ground of race, creed, national origin, ancestry, color or sex. Every qualified apprentice shall be paid the standard wage paid to apprentices under the regulations of the craft or trade in which he or she is employed and shall be employed only in the craft or trade to which he or she is registered.

If California Labor Code Section 1777.5 applies to the Services, Consultant and any subcontractor hereunder who employs workers in any apprenticeable craft or trade shall apply to the joint apprenticeship council administering applicable standards for a certificate approving Consultant or any sub-consultant for the employment and training of apprentices. Upon issuance of this certificate, Consultant and any sub-consultant shall employ the number of apprentices provided for therein, as well as contribute to the fund to administer the apprenticeship program in each craft or trade in the area of the work hereunder.

The parties expressly understand that the responsibility for compliance with provisions of this Section and with Sections 1777.5, 1777.6 and 1777.7 of the California Labor Code in regard to all apprenticeable occupations lies with Consultant.

3.32 No Waiver. Failure of Commission to insist on any one occasion upon strict compliance with any of the terms, covenants or conditions hereof shall not be deemed a waiver of such term, covenant or condition, nor shall any waiver or relinquishment of any rights or powers hereunder at any one time or more times be deemed a waiver or relinquishment of such other right or power at any other time or times.

3.33 Eight-Hour Law. Pursuant to the provisions of the California Labor Code, eight hours of labor shall constitute a legal day's work, and the time of service of any worker employed on the work shall be limited and restricted to eight hours during any one calendar day, and forty hours in any one calendar week, except when payment for overtime is made at not less than one and one-half the basic rate for all hours worked in excess of eight hours per day ("Eight-Hour Law"), unless Consultant or the Services are not subject to the Eight-Hour Law. Consultant shall forfeit to Commission as a penalty, \$50.00 for each worker employed in the execution of this Agreement by him, or by any sub-consultant under him, for each calendar day during which such workman is required or permitted to work more than eight hours in any calendar day and forty hours in any one calendar week without such compensation for overtime violation of the provisions of the California Labor Code, unless Consultant or the Services are not subject to the Eight-Hour Law.

3.34 Survival. All rights and obligations hereunder that by their nature are to continue after any expiration or termination of this Agreement, including, but not limited to, the indemnification and confidentiality obligations, shall survive any such expiration or termination.

3.35 No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

3.36 Labor Certification. By its signature hereunder, Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

3.37 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

3.38 Incorporation of Recitals. The recitals set forth above are true and correct and are incorporated into this Agreement as though fully set forth herein.

3.39 Piggybacking. To the extent permitted by state and federal law, for the first twenty four months of this Agreement, any other public transportation organizations within the State of California may enter into similar professional service agreements for turn-key advertising services on the same terms and conditions contained herein.

[SIGNATURES ON FOLLOWING PAGE]

**SIGNATURE PAGE
TO
RIVERSIDE COUNTY TRANSPORTATION COMMISSION
AGREEMENT FOR ADVERTISING SERVICES
WITH VENDSIGHT INCORPORATED**

IN WITNESS WHEREOF, this Agreement was executed on the date first written above.

**RIVERSIDE COUNTY
TRANSPORTATION COMMISSION**

**CONSULTANT
VENDSIGHT INCORPORATED**

By: _____

Greg Pettis
Chairman

By: _____

Signature

Name

[NOT NEEDED IF APPROVED BY COMMISSION]

Title

By: _____

Anne Mayer
Executive Director

Approved as to Form:

By: _____

Best Best & Krieger LLP
General Counsel

EXHIBIT "A"

Scope of Services

1.0 GENERAL INFORMATION

1.1 Background

- 1.1.1 In establishing this Agreement, the Commission intends to generate revenue from the available space located at its five (5) commuter rail stations and the Perris Transit Center and increase vending revenue at no cost to the Commission.
- 1.1.2 Consultant shall provide all labor and labor supervision, tools, equipment, transportation, and supplies necessary to successfully provide a turn-key advertising revenue program at no cost to the Commission. The turn-key program shall include advertising graphics production, account management, design, installation, and maintenance, as described herein.
- 1.1.3 Consultant shall conform to the Commission's Commercial Advertising Policy and Content Guidelines.
- 1.1.4 Consultant shall refuse advertising of tobacco and/or alcoholic beverage products and sexually explicit copy on any advertising space.
- 1.1.5 The Commission's purpose in allowing advertising is to raise revenue, not to allow public speech. Consultant shall limit advertisements to those advertisements that propose a commercial transaction. Consultant shall refuse political advertisements or issue oriented advertisements (for example: pro choice or anti-choice advertisements, religious advertisements, etc.)
- 1.1.6. The successful Consultant will be responsible for soliciting advertisers to buy advertising in and around the Commission's commuter rail stations and the Perris Transit Center in Riverside County. The Consultant shall employ its best efforts to develop and make sales of advertising space and shall operate a fully staffed business office serving the Southern California area including:
 - 1.1.6.1 An experienced local ad sales force with the capability of acquiring national advertising accounts; and
 - 1.1.6.2 An office facility and work force capable of assuring proper installation, maintenance, and removal of advertising displays on revenue equipment.

2.0 TASKS

Consultant shall perform various advertising tasks at all Commission rail station properties including, but not limited to:

2.1 Station Advertising Revenue Program Services

- 2.1.1 Marketing and selling advertising packages. Solicit advertising in an effort to completely sell all available space authorized by this Agreement.
- 2.1.2 Create high traffic advertising placement and create secure and aesthetically attractive advertisements and points of sale.
- 2.1.3 Production of banners, floor graphics, wallscapes.
- 2.1.4 Graphics design for all advertising programs.
- 2.1.5 Management services: oversee all necessary personnel, maintenance, and installation.
- 2.1.6 Portfolio management: manage all advertiser accounts.
- 2.1.7 Increase vending revenue
- 2.1.8 No less than ten percent (10%) of available fixed advertising space at each station shall be reserved to exclusive use at the discretion of Commission.
- 2.1.9 If the Commission decides to use any such advertising space, Consultant agrees to install the Commission's advertisements at no charge within ten (10) days after receipt and to remove all advertising within three (3) days of the specified removal date.
- 2.1.10 All commercial advertising shall comply with the Commission's Commercial Advertising Policy and Content Guidelines its most current form as adopted by the Commission and as it may be revised from time to time.

2.2 Installation Services

- 2.2.1 Install media enclosures and fixed signage in mutually agreed locations at no cost to the Commission, including but not limited to framed, mounted advertising panels, backlighting, billboards, digital signage, and banners.
- 2.2.2 Each ad placement shall be installed: 1) free from wrinkles, blisters, or similar defects; 2) displayed properly; and 3) present a sharp, clear, and clean appearance.
- 2.2.3 No advertisement/placement will be allowed to interfere with any safety devices, signs, lights, signals, identification numbers, or distinctive logos at the commuter rail stations. This includes, but is not limited to, reflective materials, side reflectors, and other features. In addition, advertisements cannot interfere with the normal utilization of vents, glazing, ladders, windows, doors, and other equipment that may require regular preventive maintenance.

2.2.4 Production and installation of no less than one (1) vending machine enclosure capable of accommodating at least two (2) machines of current configuration at each station. One side shall be dedicated to Commission messaging.

2.2.5 Consultant must provide the following Icon Enclosure, OR EQUAL:

- Product #: RC04-Dual Machine Enclosure/No Security Door
- Option #: ADP01 Ad Panel Kit
- Option #: BB01 Header Display

2.2.5.1 AN APPROVED EQUAL may be allowed as a substitute for the above-described unit, however, prior written authorization to substitute the Icon enclosure specified above must be received by the Procurement Officer.

2.2.6 Installation and removal of advertisements shall be done by Consultant at Consultant's sole expense. Installation and removal at the Commission-owned commuter rail station sites shall be performed by Consultant Monday-Friday between 9:00 am and 2:30 pm, unless prior approval is obtained from the Commission. Consultant shall be responsible for, at no cost to the Commission, any repairs required as a result of installation or removal of advertisements. This includes, but is not limited to, any paint damage, resulting from the removal of direct application advertisements.

2.3 Maintenance Services

2.3.1 Consultant shall maintain and repair, at its sole cost and expense, all equipment and advertising space provided by or on behalf of Consultant for the term of this Agreement in accordance with the provisions below.

2.3.2 Consultant shall maintain an attractive appearance for all of the advertisements at every station. Consultant shall maintain clean and not worn, tattered or defaced advertising displays. Each advertisement shall be free from wrinkles, blisters or similar defects and shall present a sharp and clear appearance.

2.3.3 If requested in writing by the Commission, an advertisement, shall be removed by Consultant within forty-eight (48) hours of receipt of written request at no cost to the Commission.

2.3.4 Consultant shall remove date sensitive advertisements within one (1) week after expiration. Failure to remove date sensitive advertisements within one (1) week after expiration may result in the Commission removing the advertisements and assessing the cost for removal to Consultant.

3.0 CONSULTANT OBLIGATIONS

3.1 Notifications and Response Time(s)

- 3.1.1 Consultant shall assume an appropriate level of advertising staffing and workforce capable of ensuring proper installation and removal of advertising material
- 3.1.2 An advertiser's placement, shall be removed by Consultant within 48 hours of receipt of written request from the Commission at no cost to the Commission.
- 3.1.3 Consultant and Consultant's subcontractors shall provide the Commission with 24-hour contact number(s) for Consultant's key personnel and an acceptable means of emergency "on-call" communication with the Commission's designated project manager.
- 3.1.4 Consultant's offices shall have voice, fax and e-mail capability.
- 3.1.5 The Commission's designated Project manager shall be notified, in advance, if Consultant and/or its subcontractors intend to be on or have employees on Commission-owned property at times other than regularly scheduled work times.
- 3.1.6 Consultant and/or its subcontractors are to immediately notify the Commission's designated project representative of any unsafe or questionable condition that exists on any Commission property. The designated Commission representative will then notify the necessary parties.

3.2 Reporting

- 3.2.1 The Consultant shall provide the Commission with a regular quarterly report regarding the fixed percentage of the gross advertising revenue generated by Consultant under the program.
- 3.2.2 Upon request, Consultant shall furnish to the Commission a copy of each contract entered into by Consultant for advertising space at all of the stations during the term of this Agreement. Terms and conditions of sales of advertising shall be at the sole discretion of Consultant, subject to the terms and conditions of the Agreement and the Commission's adopted advertising policy.
- 3.2.3 The Consultant shall establish a schedule of rates applicable to the sale of advertising space for various station placements. The Consultant shall forward such rates to the designated Commission project Manager within three (5) days of the issuance of the initial notice to proceed, and within fifteen (15) days of any changes during the course of this Agreement.

3.3 Advertising Asset Inventory

3.3.1 Approval of Advertising Placements

The Commission shall approve **all** advertising placements, exhibit material, announcements, or any other display and their manner of presentation prior to placement of such ads. Accordingly, all advertising

displays at any time placed on any Commission equipment by the Contractor shall be deemed acceptable to the Commission only by advance written approval by the designated Commission representative. The Commission's determination to approve or disapprove advertising will be based on the guidelines set forth in this RFP, including the Commercial Advertising Policy (see Appendix H) adopted by the Commission.

3.3.2 Ownership and Title to Asset Inventory

Consultant shall retain title to all asset inventory it provides under the terms of the program pursuant to this Agreement until the Agreement expires or is terminated pursuant to the terms and conditions of the Agreement. If the Agreement either expires or is terminated, the Commission may choose to: 1) elect to have all Consultant-provided inventory and associated equipment removed and all affected areas returned to a safe, finished condition to the Commission's satisfaction at the Consultant's expense; or 2) transfer title of the assets to the Commission at which time title to the assets shall transfer to the Commission free and clear of all encumbrances through negotiated purchase from the Consultant based on the depreciated or current market value of the asset inventory.

3.4 Program Review

Consultant and Commission may meet and confer annually, or as requested by either party, regarding the operation of the Program, including the status of existing, planned and prospective placements.

4.0 COMPENSATION STRUCTURE

4.1 Revenue Sharing

Compensation by the Consultant to the Commission shall be based on the Gross Advertising Revenue sharing structure as detailed in Exhibit C.

4.2 The term Gross Advertising Revenue means all monies and remunerations received from the sale of advertising space by the Consultant in its operations as permitted under the Agreement.

4.2.1 Gross advertising revenue shall be calculated on an accrual basis, (i.e., amounts are pro-rated to the time periods which correlate to the time periods during which the advertising is displayed).

EXHIBIT "B"

Schedule of Services

[INSERT]

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EXHIBIT "C"

Revenue Sharing

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