

# Report to Council



**Date:** September 11, 2012  
**File:** 1405-03  
**To:** City Manager  
**From:** Jerry Dombowsky, Regional Programs Manager  
**Subject:** Transit Shelter and Bench Advertising Franchise

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## **Recommendation:**

THAT Council approve the Transit Shelter and Bench Advertising Franchise Agreement, as attached to the report of the Regional Programs Manager, dated September 11, 2012, for the sale of advertising on City of Kelowna Transit Shelters and Benches to Pattison Outdoor Advertising for the period of January 1, 2012 to December 31, 2016;

AND THAT the Mayor and City Clerk be authorized to execute the Transit Shelter and Bench Advertising Franchise Agreement with Pattison Outdoor Advertising.

**Purpose:** To renew the Kelowna transit shelter and bench advertising contract for a second five year term.

## **Background:**

The City of Kelowna issued a Request for Proposals for Transit Advertising on Shelters and Benches on August 3, 2006. There was only one proposal received by the closing date of August 25, 2006, from Pattison Outdoor Advertising. The contract awarded to Pattison was for an initial five year term expiring December 31, 2011 with the option for the City to renew the term for another 5 years till December 31, 2016, at its option.

Pattison Outdoor are Canada's largest outdoor advertising company. Apart from other types of outdoor advertising, Pattison Outdoor has the advertising for transit in the cities of Calgary, Edmonton, Winnipeg, Ottawa and Moncton. They also manage the advertising on transit shelters in several BC municipalities including Burnaby, Chilliwack, Delta, Kamloops, Nanaimo, North Vancouver, Prince George and Victoria. They are a highly qualified contractor with significant experience and success in operating advertising franchises. They have strong operating, marketing and business plans along with the financial resources and staff required to operate an effective advertising service.

Pattison takes a full service approach in supporting sales; they offer production co-ordination, creative services, research and mapping to meet client needs. Their focus is on products and services to meet the requirements of local, regional and national advertisers. They have a sales office staffed and located in Kelowna.

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The current inventory of City of Kelowna advertising medium consists of:

- 26 bus shelters with double ad panels
- 65 bus benches with Lexan backs for insertable ad product and 15 solid back panel benches
- For clarification, there are an additional 87 mesh style benches with no opportunity for advertising

The original contract was for a five year term with an option for a further five year term. Based on renewal negotiations and the newly expanded inventory of advertising product the guaranteed minimum return to the City will be \$120,000 over the second five years of the term (up from \$60,000 in the first 5 year term). The guaranteed minimum amount is anticipated to be exceeded based on the gross advertising revenues generated by Pattison Outdoor Advertising. The City will receive 35% of the gross advertising revenues less commissions and production charges (up from 30% in the first 5 year term) which is estimated at \$262,500 over the second five years. Expansion potential and the use of innovative new product lines could also increase the return over the contract term.

Other features of the new contract include the provision of 10% of all advertising space for the City's exclusive use at its option, and the new option of the City to use any of the unsold bench space. This is now easy to facilitate due to the addition of the 65 benches of the insertable panel style earlier this year.

The City's Roadways group continues to be responsible for garbage collection, snow removal and facility repairs (including graffiti clean-up). This allows for a more immediate response to complaints and maintenance requirements.

Advertising revenues from the shelters and benches is for the City of Kelowna only and will be used for maintenance of the bus stops along with improvements to the City's transit amenities (the purchase of new shelters and benches, and other changes made to increase ridership on the transit system).

**Internal Circulation:**

Director, Financial Services

**Financial/Budgetary Considerations:**

A corresponding revenue budget will be set up along with the contribution to reserve to allow for future expenditures.

**Considerations not applicable to this report:**

Legal/Statutory Authority:

Legal/Statutory Procedural Requirements:

Existing Policy:

Personnel Implications:

External Agency/Public Comments:

Communications Comments:  
Alternate Recommendation:

Submitted by:



J. Dombowsky, Regional Programs Manager

Approved for inclusion:



R. Westlake, Director Regional Services

cc: Director, Financial Services

# TRANSIT SHELTER & BENCH ADVERTISING FRANCHISE

## AGREEMENT

*File Ref. #T06-091*

This AGREEMENT made the 1st day of January, 2012

BETWEEN:

CITY OF KELOWNA,

A municipal corporation having its offices at 1435 Water Street, in  
the City of Kelowna, Province of British Columbia

(hereinafter called the "Owner")

OF THE FIRST PART

AND:

JIM PATTISON INDUSTRIES LTD

Carrying on business as

PATTISON OUTDOOR ADVERTISING,

A company incorporated under the laws of the province of British Columbia, and  
having an office at Suite 200, 4180 Lougheed Highway in the City of Burnaby,  
Province of British Columbia

(hereinafter called the "Company")

OF THE SECOND PART

## RECITALS:

- A. The Owner is the owner and operator of certain advertising space located on transit shelters and benches (the "Advertising Space") in the City of Kelowna.
- B. It is essential that the Advertising Space be maintained and properly managed for the benefit of the public.
- C. The Owner is undertaking a transit advertising franchise to provide a stable financing source for the operation, management, and replacement/reserve fund for its transit operations. This Agreement provides for the Company to have exclusive rights for the sale of visual advertising on the Advertising Space and to perform operation and management duties as outlined herein.

## AGREEMENT:

1. Grant. The Owner hereby grants to the Company the exclusive right and privilege to sell and place visual advertising in the Advertising Space strictly in accordance with the terms and conditions of this Agreement.
2. Other Forms of Advertising. The parties agree to discuss, from time to time during the Term, other forms of advertising with a view to determining whether such forms of advertising may be included herein and the terms and conditions upon which such inclusion would be mutually acceptable.
3. Advertising Space Described. The existing Advertising Space addressed under this Agreement consists of:
  - 3.1 Bus Shelters – 26 bus shelters located within existing transit routes. Shelters have been purchased from multiple manufacturers and are of varying ages. The shelters included in the Advertising Space have two advertising faces for a total of 52 panels capable of holding advertising copy. A standard advertising face allows approximately 70"x48" visible copy. Each shelter normally has two advertising faces situated back to back located as the shelter end panel which are illuminated.
  - 3.2 Bus Stop Benches – 65 benches with backs of enclosed Lexan, insertable advertising panels (maximum 72" long x 24" high) for the backrest and approximately 15 benches with plain planks for the backrest with non-insertable advertising panel in the backrest. For clarification, there are presently 87 benches with metal mesh seats with no advertising opportunity.
4. Modifications to Advertising Space: The Owner reserves the right, in the exercise of its sole discretion, to add additional Advertising Space and to change the existing Advertising Space to accommodate the requirements of the Owner or to withdraw any part of the Advertising Space herein made available. Should the Owner at any time reduce the number of bus shelters included in the Advertising Space by more than twenty percent 20% the guaranteed minimum monthly payment detailed in clause 12.2 (a) will be reduced by the same twenty percent (20%) portion.

It is anticipated that additional benches will be installed at the Owner's discretion over the next five years. Existing shelters or benches may be moved to other areas if vandalism is an issue or if bus routes change. New vandal resistant shelters and benches may be added to the existing inventory at the Owner's discretion. The Owner will provide a minimum of 30 days prior notice of any changes.

5. Term.

5.1 Subject to rights of termination as hereafter provided, the Term of the Agreement shall be for five (5) years, commencing at 12:01 a.m. on the 1<sup>st</sup> day of January, 2012 and terminating at 11:59 p.m. on the 31<sup>st</sup> day of December, 2016;

6. Other Charges. The Owner shall neither charge nor claim from the Company, whether directly or indirectly, any property taxes, rents or royalties for placement of advertising on bus shelters or benches other than the Franchise Fee outlined in clause 12 of this Agreement.

7. Company Obligations.

7.1 The Company shall:

- (a) At all times maintain a valid City of Kelowna business license.
- (b) At all times ensure that the Company's subcontractors maintain current WorkSafe BC coverage.
- (c) Provide proof of insurance acceptable to the Owner's Risk Manager.
- (d) Save the Owner harmless in the event of any claim or claims for bodily injury or property damage arising from the Company's obligations during the term of this agreement.
- (e) Ensure that the quality of reproduction of the advertising material is of high quality and standard, and that the content of the advertising displayed conforms to the requirements outlined in clause 11.
- (f) Be entitled to remove any unauthorized advertising or notices placed upon the Advertising Space by a third party.
- (g) Provide to the Owner a list of personnel available on 24 hour call in case of emergency.
- (h) At all times during the term of the Agreement provide, at no charge except for a posting fee to be charged on a per face basis, a minimum of 10% of available Advertising Space for use by the Owner. Any such individual space may be used by the Owner for individual 4-week advertising periods, per space, for its own advertising purposes, or any other not for profit program or initiative supported by the Owner, or for which the Owner is responsible.

The foregoing is subject to the Owner requesting the availability of this space at least 30 days and no more than 60 days prior to the proposed commencement date of the 4-week advertising period for which the space is requested, and the Owner, or its delegate, being responsible for all costs of

producing and shipping the advertising material. The advertising copy provided must be of a technical quality comparable to that normally displayed by the Company.

- (i) Provide to the Owner an annual advertising credit of \$10,000 (retail rate card value) that may be redeemed against Street Level or Transit Shelter Outdoor Advertising media on PATTISON owned or managed bus shelters and street level structures throughout Alberta and British Columbia. This space is to be used for the sole purpose of promoting the City of Kelowna.

*The above clause is considered confidential by the Company.*

- (j) Within 60 days of the start of this contract, change out all expired advertising and place new advertising or similar product in the Advertising Space.
- (k) Throughout the term of the contract, at the Owner's cost - design, produce and post graphic Filler Copy of a generic manner in any vacant and unsold Advertising Bench and Shelter advertising spaces. The form and content of this Filler Copy is to be mutually agreed upon by the Company and the Owner, and fulfillment will be based on empty space and time sensitive material. The City is responsible to maintain a stock of Filler Copy and the Company will do it's best to re-use existing Filler Copy as much as possible.

8. Owner Obligations:

- (a) Provide the Advertising Space, designed and improved in a manner determined jointly with the Company to be necessary and appropriate for visual advertising requirements, including lighting fixtures.
- (b) Maintain in good condition and repair, as determined by the Owner, the bus shelters and benches.
- (c) Maintenance and repair of the Advertising Space, as necessary, to ensure that the appearance of the advertising space and sight lines of the advertising copy is satisfactory to the Owner and the Company, including the maintenance of the advertising display box in each bus shelter, the lighting tubes, the electrical connection and the two (2) glass panels. The Owner agrees to respond to maintenance concerns within seven (7) days of receipt of a written notice from the Company.
- (d) Be responsible for the cleaning at least twice each month of each bus shelter and bus stop bench included in the Agreement, including removal of graffiti, rubbish, trash, refuse, debris, dust, dirt and offensive or unclean materials.
- (e) Snow removal.

9. Repair of Damage. The Company shall repair all damage to the Bus Shelters and Bus Stop Benches caused by or resulting from the negligence, abuse, misuse or willful conduct of the Company or its employees, contractors or agents. If, in the Owner's opinion, the damage is

beyond repair, the Company shall replace the same at its own expense with equipment of a quality that is equal to or better than the shelters or benches as determined by the Owner. Any damage that may be the result of normal wear and tear will not be the responsibility of the Company.

10. Access. Under this agreement the Company shall have the right of access upon the lands and premises upon which the said bus shelters and bus stop benches may be located, to carry out necessary placement of advertising at all reasonable times as the Company may elect.
11. Advertisements. All advertisements to be exhibited in or on the Advertising Space shall comply with the Canadian Code of Advertising from Advertising Standards Canada and be of a moral and reputable character. The Company shall further ensure that all advertising placed in the Advertising Space complies with the laws, statutes, regulations and bylaws in force in the Province of British Columbia.  
Any advertising that the Owner deems to be of a controversial nature or contrary to the interests of the Owner shall, at the request of the Owner in writing, be immediately removed by the Company. The Owner has sole and final authority in all matters relating to advertising content.
12. Franchise Fee: *This clause is considered confidential by the Company.*

12.1 In this clause:

“Adjusted Gross Advertising Revenues” means the dollar amount of all billings made by the Company, which for greater certainty includes discounts off published rates to ensure a sale in a competitive situation, less:

- Applicable commissions to a maximum of fifteen percent (15%) to compensate for the payment of Agency Fees; and
- Production charges recovered by the Company.

12.2 The Company agrees to rent the Advertising Space as set out in clause 3, and during the initial Term of the Agreement as set out in paragraph 5.1, shall pay to the Owner a Franchise Fee, plus applicable GST, as follows:

(a) A guaranteed minimum monthly payment, paid in advance on the first day of each month, of two thousand dollars (\$2,000.00).

or

(b) An annual 35% share of Adjusted Gross Advertising Revenues from the sale of advertising on the Advertising Space;

**whichever is greater.**

12.3 At the end of each quarter, defined for clarity as March 31<sup>st</sup>, June 30<sup>th</sup>, September 30<sup>th</sup>, and December 31<sup>st</sup>, during the Term, the Company will provide a statement to the Owner evidencing gross advertising revenues, less itemized deductions and detailed



by the type of display contracted. This statement will be provided within sixty (60) days of the end of the previous quarter. Failure to provide such statements is considered to be a breach of this agreement and subject to remedies described within.

- 12.4 At the end of each year of the Term, the Company shall calculate the 35% share of Adjusted Gross Advertising Revenues as outlined in subparagraph 12.2(b), and remit to the Owner a financial statement evidencing the calculations showing gross advertising revenues, less itemized deductions, detailed by the type of display contracted, together with payment for any amount greater than the minimum guarantee previously paid pursuant to subparagraph 12.2(a).

This statement and annual payment will be provided within one hundred and twenty (120) days after the end of each year of the Term. Trades, or other forms of discounts (excepting discounts off published rates to ensure a sale in a competitive situation), made for advertising space are to be considered in the gross revenue total at the regular advertising rate value.

13. Quality of Service. The Company shall manage the Advertising Space with a high degree of professionalism and operating standards and shall at all times during the term of this Agreement strictly comply with the Agreement requirements.
14. Administrator. The Company shall appoint, subject to the Owner's approval, a qualified administrator of the operations under this Agreement, who shall have full authority to act for and on behalf of the Company. The administrator shall be available during regular business hours and shall appoint a designated subordinate to cover during his absence.
15. Personnel. The Company acknowledges the high degree of importance the Owner places on the public interest served by the operations and the need for exemplary service. The Company's personnel performing services under this Agreement shall at all times be neat, clean and courteous. The Company shall not permit its employees or agents to conduct themselves in a loud, noisy, boisterous, offensive or objectionable manner. It is the Owner's intent that all personnel provided by the Company be experienced and qualified to perform their duties in a first class manner. Upon objection from the Owner concerning the conduct, demeanor or appearance of any of the Company's employees or agents, the Company shall forthwith take all steps necessary to cure the cause of the objection.
16. Records. The Company shall, with respect to its operations under this Agreement, keep and maintain in accordance with generally accepted accounting principles and procedures, complete, accurate and customary records and books of account relating to the sales of advertising space and will keep and maintain such other records as may be reasonably required from time to time by the Owner.
17. Compliance with Laws, Regulations and Rules. During the term of the Agreement, the Company shall at all times observe, comply with and obey the following:
- 17.1 All applicable rules, regulations, orders and restrictions now in force or hereafter adopted by the Owner; and

- 17.2 All applicable laws, ordinances, statutes, rules, regulations or orders of Federal, Provincial and local governmental authorities lawfully exercising authority at or over the Owner or the Company's operations under this Agreement.
18. Taxes. The Company shall pay all personal property taxes, if any, assessed against the property of the Company used in its operations under this Agreement. The Owner shall be responsible for payment of any real or personal property taxes that may be levied against the Owner's equipment.
19. Hold Harmless and Indemnification. The Company shall be liable for all loss, costs, damages, and expenses whatsoever incurred or suffered by the Owner, its elected officials, officers, employees and agents (the Indemnities) including but not limited to damage to or loss of property and loss of use thereof, and injury to or death of a person or persons resulting from or in connection with the performance, purported performance, or non-performance of this Agreement, excepting only where such loss, costs, damages and expenses are as a result of the sole negligence of the Indemnities. The Company shall defend, indemnify and hold harmless the Indemnities from and against all claims, demands, actions, proceedings, and liabilities whatsoever and all costs and expenses incurred in connection therewith and resulting from the performance, purported performance, or non-performance of this Agreement, excepting only where such claim, demand, action, proceeding or liability is based on the sole negligence of the Indemnities.
20. Insurance. The Company shall, without limiting its obligations or liabilities under this Agreement, procure and maintain, at its own expense and cost, the insurance policies listed in Appendix A, Attached hereto and made a part of the Agreement. The insurance policies shall be maintained continuously from the date of commencement of the Work or Services provided under this Agreement until the date that the Owner certifies in writing completion of the Work or Services or such further period as may be specified in Appendix A.
21. Assignment Prohibited. Subject to the Company's right to subcontract the posting of advertising faces, this Agreement is personal between the Company and the Owner and was awarded to the Company based upon the Company's own qualifications and proposal pursuant to bid. Therefore, the Company shall not assign, transfer, pledge, hypothecate, surrender or otherwise encumber the Company's obligations under this Agreement without the prior written consent of the Owner which will not be unreasonably withheld. Notwithstanding the foregoing, the agreement may be assigned by the Company to another division of The Jim Pattison Group (the company's parent) in the event of an internal reorganization if the new division is wholly-owned division of The Jim Pattison Group.
22. Default. The Company shall be in default under this Agreement upon the occurrence of any of the following ("events of default"):
- 22.1 The Company's failure to pay or deposit any sum required under this Agreement when due and the failure of the Company to remedy such default for a period of sixty (60) days after receipt from the Owner of written notice specifying the nature of the default.

- 22.2 The Company's abandonment of the Agreement. The Company shall be deemed to have abandoned the Agreement if it ceases or fails to operate the advertising franchise for a period of twenty-one or more consecutive days, unless such closure is regularly scheduled.
- 22.3 The Company's failure to perform or observe any other agreement or covenant contained in the Agreement upon its part to be kept and performed if such failure continues for a period of twenty (20) days after the Owner had notified the Company in writing, specifying the nature of the Company's failure of performance;
- 22.4 If the Company should be adjudged bankrupt or if it should make a general assignment for the benefit of creditors or if a receiver should be appointed on account of its insolvency.
23. Termination by Company. This Agreement may be terminated by the Company upon the occurrence of any one or more of the following events:
- 23.1 Abandonment. Permanent abandonment of the bus shelters and benches by the Owner.
- 23.2 Injunction. The issuance by any court of competent jurisdiction of any injunction which remains in force for a period of not less than ninety (90) days, preventing or restraining the operation of all or a substantial part of the Advertising Space which may be operated by the Company or preventing the Company from the selling and placement of advertising on the transit buses.
- 23.3 Default by Owner. Default by the Owner in the performance of any covenant or agreement contained in this Agreement required to be performed by the Owner and the failure of the Owner to remedy such default for a period of sixty (60) days after receipt from the Company of written notice specifying the nature of the default.
24. Termination by Owner. This Agreement may be terminated by the Owner upon the occurrence of any one or more of the following events:
- 25.1 Company's Default. The Owner may terminate this Agreement upon the occurrence of an event of default described in Clause 23. A termination of this Agreement because of the Company's default shall not prejudice any other remedy for breach of contract, damages, non-payment or otherwise which the Owner has under this Agreement or under law, including damages the Owner may suffer by reason of a termination and the necessity for the Owner to take over management of the Advertising Space or contract with another person to perform the same or similar services specified in this Agreement.
25. Obligations on Termination. Upon termination of the Agreement for any reason, the Company shall remove all of its personal property at or prior to the termination and shall promptly and peaceably remove itself, its officers and employees, from the Advertising Space and shall leave the Advertising Space and Owner's equipment in good condition and repair and in good working order, reasonable wear and tear excepted. If the Company fails to remove its

property, the Owner may remove the same to a public warehouse for storage or retain the same in its own possession and, in any event, sell the same at public auction, the proceeds of which shall be applied first to the expenses of removal, storage and sale, then to any sums owed by the Company to the Owner with any balance remaining to be paid to the Company. If the expenses of removal, storage and sale exceed the proceeds of sale, the Company shall promptly pay such excess to the Owner upon demand.

26. Owner's Right to Act. In the event the Company fails to perform any obligation under the Agreement, the Owner shall have the right, but not the obligation, to take the action that the Company has failed to take, after giving at least ten (10) days notice in advance of taking such action, except in the event of an emergency, as determined by the Owner, in which case no advance notice shall promptly pay to the Owner, upon demand, the sum or sums expended or incurred by the Owner and/or the value of the service performed by the Owner. Any action taken by the Owner under these provisions of this Agreement shall remain in effect. In addition to the parties other rights of termination there under, if this Agreement is held over, it may be terminated on thirty (30) days notice by either party.
27. Holdover. During the term of any holdover, all of the provisions of the Agreement shall remain in effect. In addition to the parties other rights of termination there under, if this Agreement is held over, it may be terminated on thirty (30) days notice by either party.
28. Legal Fees: In the event of any litigation involving the Agreement, the prevailing party shall be entitled to recover from the losing party reasonable legal fees and other costs incurred in the litigation, in both trial and all appellate proceedings, as set by the court.
29. Limitation. Nothing in this Agreement shall be construed or interpreted in any manner as limiting, relinquishing, or waiving any rights of ownership enjoyed by the Owner in the Advertising Space, or in any manner limiting, relinquishing or waiving the Owner's control over the operation and maintenance of the Owner's property or in derogation of such governmental rights that the Owner may possess, except as otherwise specifically provided to the contrary by this Agreement.
30. Relationship. Nothing in this Agreement is intended or shall be construed to create or establish the Company as anything but an independent contractor. The Company shall not be deemed an agent of the Owner.
31. Notices. Any notices required to be given under this Agreement shall be sufficient and deemed given if delivered in person or deposited in the Canada Post mail, postage fully pre-paid, certified, addressed to the parties as shown below or to such other address as a party may designate to the other in writing from time to time.

OWNER: City of Kelowna  
Regional Services Department  
Attention: Regional Programs Manager  
1435 Water Street  
Kelowna, BC V1Y 1J4

COMPANY:

Pattison Outdoor Advertising  
Attention: Vice President & General Manager  
200-4180 Lougheed Highway  
Burnaby, BC V5C 6A7

32. Severability. In the event any covenant, condition or provision of this Agreement is found to be invalid by any court of competent jurisdiction, the invalidity of any such covenant, condition or provision shall in no way affect any other covenant, condition or provision of this Agreement.
33. Non-Waiver. Waiver by either party of strict performance of any provision of this Agreement shall not be a waiver of or prejudice the party's right to require strict performance of the same provision in the future or any other provision of this Agreement.
34. Binding Effect. Subject to the restriction on assignment contained in Clause 22, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns.
35. Arbitration. All disputes arising out of or in connection with the Contract must, unless the parties otherwise agree, be referred to and finally resolved by arbitration pursuant to the Commercial Arbitration Act.
36. Jurisdiction/Interpretation. This Agreement shall be deemed to have been entered into in Kelowna, British Columbia. Jurisdiction of any dispute shall be in the Province of British Columbia, and venue shall be in Kelowna, B.C. Interpretation of the Agreement shall be governed by the laws of the Province of British Columbia.
37. Information and Privacy. The Parties acknowledge that the Owner is a local public body and is subject to the British Columbia *Freedom of Information and Protection of Privacy Act*. The Owner acknowledges that the Company considers certain information in clauses 7 (i) & (j) and 12 of this Agreement to be confidential from the Company's perspective and will handle any access to information or disclosure of records matters related to this Agreement in accordance with its obligation under the Act.

CITY OF KELOWNA

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

Title: Mayor

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

CITY OF KELOWNA

PATTISON OUTDOOR  
ADVERTISING

By: 

Title: Aug 27 / 2012

Date: VP / Gen. Mgr.

PATTISON OUTDOOR  
ADVERTISING

## Appendix A – Insurance Requirements

### 1. **Contractor To Provide**

The Contractor shall procure and maintain, at its own expense and cost, the insurance policies listed in section 2, with limits no less than those shown in the respective items, unless in connection with the performance of some particular part of the Work or Services, the Owner advises in writing that it has determined that the exposure to liability justifies less limits. The insurance policy or policies shall be maintained continuously from commencement of the Work or Services until total completion of the Work or Services or such longer period as may be specified by the Owner.

### 2. **Insurance**

As a minimum, the Contractor shall, without limiting its obligations or liabilities under any other contract with the Owner, procure and maintain, at its own expense and cost, the following insurance policies:

2.1 Workers' Compensation Insurance covering all employees of Contractor engaged in the Work or Services in accordance with the statutory requirements of the province or territory having jurisdiction over such employees.

#### 2.2 Comprehensive General Liability Insurance

- (i) providing for an inclusive limit of not less than \$2,000,000 for each occurrence or accident;
- (ii) providing for all sums which the Contractor shall become legally obligated to pay for damages because of bodily injury (including death at any time resulting therefrom) sustained by any person or persons or because of damage to or destruction of property caused by an occurrence or accident arising out of or related to the Work or Services or any operations carried on in connection with this Contract;
- (iii) including coverage for Products/Completed Operations, Blanket Contractual, Contractor's Protective, Personal Injury, Contingent Employer's Liability, Broad Form Property Damage, and Non-Owned Automobile Liability.
- (iv) providing for Completed Operations Liability to continue for a period of 60 days after total completion of the Work or any part of the Work.
- (v) including a Cross Liability clause providing that the inclusion of more than one Insured shall not in any way affect the rights of any other Insured hereunder, in respect to any claim, demand, suit or judgement made against any other Insured.

2.3 Automobile Liability Insurance covering all motor vehicles, owned, operated and used or to be used by the Contractor directly or indirectly in the performance of the Work or Services. The Limit of Liability shall not be less than \$2,000,000 inclusive, for loss or damage including personal injuries and death resulting from any one accident or occurrence.

### 3. **The Owner Named As Additional Insured**

The policies required by sections 2.2 and 2.3 above shall provide that the Owner is named as an Additional Insured thereunder and that said policies are primary without any right of contribution from any insurance otherwise maintained by the Owner.

4. **Contractor's Subcontractors** The Contractor shall require each of its subcontractors to provide comparable insurance to that set forth under section 2.
5. **Certificates of Insurance**

The Contractor agrees to submit Certificates of Insurance, in the form of Appendix A-1, attached hereto and made a part hereof, for itself and for all of its subcontractors to the Risk Management Department of the Owner prior to commencing the work or providing the Services. Such Certificates shall provide that 30 days written notice shall be given to the Risk management Department of the Owner, prior to any material changes or cancellations of any such policy or policies.
6. **Other Insurance**

After reviewing the Contractor's Certificates of Insurance, the Owner may require other insurance or alterations to any applicable insurance policies in force during the period of this Contract and will give notifications of such requirement. Where other insurances or alterations to any insurance policies in force are required by the Owner and result in increased insurance premium, such increased premium shall be at the Contractor's expense.
7. **Additional Insurance**

The Contractor may take out such additional insurance, as it may consider necessary and desirable. All such additional insurance shall be at no expense to the Owner. The Contractor shall ensure that all of its subcontractors are informed of and comply with the Owner's requirements set out in this Appendix A.
8. **Insurance Companies**

All insurance, which the Contractor is required to obtain with respect to this contract, shall be with insurance companies registered in and licensed to underwrite such insurance in the province of British Columbia.
9. **Failure to Provide**

If the Contractor fails to do all or anything which is required of it with regard to insurance, the Owner may do all that is necessary to affect and maintain such insurance, and any monies expended by the Owner shall be repayable by and recovered from the Contractor. The Contractor expressly authorized the Owner to deduct from any monies owing the Contractor, any monies owing by the Contractor to the Owner.
10. **Non-payment of Losses**

The failure or refusal to pay losses by any insurance company providing insurance on behalf of the Contractor or any subcontractor shall not be held to waive or release the Contractor or subcontractor from any of the provisions of the Insurance Requirements or this Contract, with respect to the liability of the Contractor otherwise. Any insurance deductible maintained by the Contractor or any subcontractor under any of the insurance policies is solely for their account and any such amount incurred by the Owner will be recovered from the Contractor as stated in section 9.

**APPENDIX A-1  
CERTIFICATE OF INSURANCE**

This Certificate is issued to: **The City of Kelowna  
1435 Water Street  
Kelowna, BC V1Y 1J4**

**Insured**

Name:
Address:

**Broker**

Name:
Address:

**Location and nature of operation or contract to which this Certificate applies:**

OPERATE A TRANSIT ADVERTISING FRANCHISE				
Type of Insurance	Company & Policy Number	Policy Dates		Limits of Liability/Amounts
		Effective	Expiry	
<b>Section 1</b> Comprehensive General Liability including: <ul style="list-style-type: none"> <li>• Products/Completed Operations;</li> <li>• Blanket Contractual;</li> <li>• Contractor's Protective;</li> <li>• Personal Injury;</li> <li>• Contingent Employer's Liability</li> <li>• Broad Form Property Damage</li> <li>• Non-Owned Automobile;</li> <li>• Cross Liability Cause. Damage</li> </ul>				Bodily Injury and Property Damage  <b>\$2,000,000</b> Inclusive \$ _____ Aggregate \$ _____ Deductible
<b>Section 2</b> Automobile Liability				Bodily Injury and Property Damage <b>\$2,000,000</b> Inclusive

It is understood and agreed that the policy/policies noted above shall contain amendments to reflect the following:

1. **Any Deductible or Reimbursement Clause contained in the policy shall not apply to the City of Kelowna and shall be the sole responsibility of the Insured named above.  
The City of Kelowna is named as an Additional Insured.  
30 days prior written notice of material change and/or cancellation will be given to the City of Kelowna.**