

BUS BENCH LICENSE

THIS LICENSE is made effective as of this _____ day of _____, 2017 (the "Effective Date") by the CITY OF GARDEN GROVE, a municipal corporation, ("CITY"), and FOCUS MEDIA GROUP, INC. an Oklahoma Corporation ("LICENSEE").

RECITALS

The following recitals are a substantive part of this License:

- A. This License is entered into pursuant to City Council Authorization on _____.
- B. CITY and LICENSEE desire to enter into a license for the construction, installation, maintenance, operation and administration of, and the solicitation, sale and placement of out of home advertising upon, the non-shelter bus benches, including benches, located within City rights-of-way.

LICENSE

CITY AND LICENSEE MUTUALLY AGREE AS FOLLOWS:

1. GRANT OF LICENSE LICENSEE, with its local address at 11612 Knott Street, Suite 2, Garden Grove, CA 92841, is hereby granted for itself, its successors and assigns, subject to the terms and conditions of this License and Chapter 11.36 of the Garden Grove Municipal Code hereinafter referred to as Chapter 11.36, a ten (10) year period from and after the Effective Date, to construct, install, maintain, operate and administer, and solicit, sell and place out of home advertising upon, non-shelter bus benches upon the public sidewalks within the public ways within the City of Garden Grove, except for the portion of Harbor Boulevard within the Grove Resort District (Harbor Corridor Specific Plan/International West Mixed Use).
2. RIGHT OF CITY TO ISSUE LICENSE LICENSEE acknowledges and accepts the right of CITY to issue a license and LICENSEE agrees it shall not now or at any time hereafter challenge this right in any way or in any city, state, or federal court.
3. LICENSE ACCEPTANCE LICENSEE, by executing this License, guarantees performance by LICENSEE of all LICENSEE'S obligations hereunder imposed by said Chapter 11.36 of the Garden Grove Municipal Code, and as it may be periodically amended.
4. GOVERNING REQUIREMENTS The proposal of LICENSEE shall be incorporated herein as if fully set forth herein. LICENSEE shall comply with the requirements of this License and Chapter 11.36 and all offerings contained in LICENSEE'S license proposal. In the event of any conflict, the provisions of Chapter 11.36 shall first govern, followed by provisions of this License, and finally by LICENSEE's proposal, which is attached as Attachment A hereto and incorporated herein by this reference. Notwithstanding the

foregoing, in the event of any inconsistencies between this License and Chapter 11.36, LICENSEE shall be held to the higher or more stringent standard or term more beneficial to CITY as determined by CITY. All definitions as set forth in Chapter 11.36 shall apply to this License.

5. FINANCIAL PROVISIONS

5.1 LICENSEE FEE LICENSEE shall provide to CITY license fee quarterly payments at a stated percentage of the gross advertising revenues ("Percentage Advertising Revenue") derived from advertising benches within City of Garden Grove. The Percentage Advertising Revenue will be calculated as follows:

a.) Fifteen percent (15%) of the gross advertising revenues collected by LICENSEE, for rental of advertising space on all bus benches located in the City. For the purposes of this Agreement, the term "gross advertising revenues" upon which the quarterly Percentage Advertising Revenue will be paid, includes all advertising space rental charged by LICENSEE, whether for cash or credit, less any advertising agency commissions or non-affiliated third party commission (i.e. media brokers), and further defined as accrued advertising revenue for any calendar quarter, per Generally Accepted Accounting Principles ("GAAP"). All advertising contracts must clearly show the total advertising costs, per panel, per time (e.g., monthly, quarterly, etc.). The compensation provisions contained in Chapter 11.36 shall apply to this License. No additional percentage of gross revenues shall be required to be paid by LICENSEE.

5.2 ACCEPTANCE OF PAYMENT BY CITY No acceptance of any payment shall be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim CITY may have for further or additional sums payable under the provisions of this License. All amounts paid shall be subject to audit and re-computation by CITY.

6. PUBLIC SERVICE ANNOUNCEMENTS LICENSEE shall provide CITY with non-sold advertising space for all benches for CITY'S use for public service advertisements (not to exceed 20% of total advertising space per month) as requested by CITY. LICENSEE shall arrange, at its own cost and expense, service, maintenance, installation, and removal of the public service announcements upon consultation with the CITY. The CITY shall be solely responsible for the cost of poster production. Notwithstanding anything to the contrary herein, CITY shall provide LICENSEE a minimum of ten (10) business days advance written notice of its intent to place public service announcement(s) and LICENSEE shall have a reasonable amount of time to make such space available to CITY. CITY shall provide LICENSEE with all advertising displays ready for installation on the benches.

7. CONSTRUCTION AND MAINTENANCE REQUIREMENTS

7.1 GENERAL LICENSEE shall meet or exceed all the construction and maintenance requirements as reasonably required by CITY, as set forth in Chapter 11.36 and, in addition, shall meet or exceed those material construction and maintenance requirements set out in LICENSEE'S proposal. LICENSEE'S failure to meet annual fee projections contained in its proposal shall not relieve LICENSEE from meeting any requirements of this License or Chapter 11.36.

7.2 CONSTRUCTION SCHEDULE Consistent with the terms of this License and Chapter 11.36, LICENSEE shall commence provision of bus bench service in accordance with the following schedule:

7.2.1 PERMITS Prior to any installation activity, LICENSEE shall obtain permits as provided by Chapter 11.36.

7.2.2 TIME OF INSTALLATION LICENSEE shall commence the installation of, and install, the benches in accordance with Section 11.36.120 of the Garden Grove Municipal Code, subject to the CITY'S approval of the design and color of the non-shelter bus benches. Time is of the essence in the installation of the benches.

7.3 DESIGN STANDARDS All bus benches installed in the City of Garden Grove must be of a consistent and identical design. No company will be allowed to install a bus bench design different from that approved by the City.

7.4 MAINTENANCE LICENSEE shall maintain, repair, clean and service the benches in accordance with Chapter 11.36. LICENSEE shall provide CITY with a maintenance and cleaning schedule. Should the CITY determine that any bench or bus bench and/or surrounding area be in need of a cleaning, LICENSEE shall clean or have cleaned, such bench, bench and/or area within twenty-four (24) hours after notification by CITY.

LICENSEE shall repair, remove or replace damage, vandalism, or graffiti, including etching and other forms of graffiti and/or vandalism damage, within twenty-four (24) hours after having been found or the time of a routine maintenance call or upon notification by the CITY.

8. LOCATIONS

8.1 LICENSEE shall in accordance with Chapter 11.36 provide, remove, install, and maintain non-shelter bus benches in the City of Garden Grove. Non-shelter bus benches shall be located only at the locations within City limits. LICENSEE shall not construct, maintain, or install more than two (2) bus benches per location.

9. REGULATION / PENALTIES LICENSEE shall be subject to all of the requirements of Chapter 11.36 of the Garden Grove Municipal Code which are incorporated by this reference as if fully set forth.
10. SURRENDER Upon expiration or termination of the term hereof, all non-shelter bus benches and non-shelter bus benches shall expressly remain the property of LICENSEE, subject to the City of Garden Grove's right to demand removal of the benches and restoration of the respective public improvements to their proper and original condition at LICENSEE'S sole cost and expense.
11. INSURANCE REQUIREMENTS
- 11.1 COMMENCEMENT OF WORK LICENSEE shall not commence work under this License until it has obtained all insurance required and CITY has approved the insurance. All insurance required by this License shall contain a Statement of Obligation on the part of the carrier to notify the CITY of any material change, cancellation, or termination at least thirty (30) days in advance. All LICENSEE's contractors and subcontractors shall carry the same insurance as that required of LICENSEE herein. LICENSEE shall collect and maintain all insurance from all of its contractors and subcontractors and ensure that all insurance complies with CITY'S requirements. All insurance and certified copies of each policy shall be provided to CITY upon CITY'S request.
- 11.2 WORKERS' COMPENSATION INSURANCE During the duration of this License, LICENSEE shall maintain and require each of its subcontractors to maintain Worker's Compensation Insurance, in at least the minimum amounts required by California law and with an insurance carrier acceptable to CITY.
- 11.3 INSURANCE AMOUNTS LICENSEE shall maintain the following insurance covering LICENSEE's obligations and activities pursuant to this License for the duration of this License:
- (a) Commercial general liability in an amount not less than \$1,000,000 per occurrence; (claims made and modified occurrence policies are not acceptable); Insurance companies must be acceptable to CITY and have an AM Best's Guide Rating of A-, Class VII or better, as approved by the CITY.
- (b) Automobile liability in an amount not less than \$1,000,000 combined single limit; (claims made and modified occurrence policies are not acceptable); Insurance companies must be acceptable to CITY and have an AM Best's Guide Rating of A-, Class VII or better, as approved by the CITY.

- (c) Other insurance, in a form approved by the CITY, as set forth in Municipal Code Section 11.36.230 with a minimum of \$1,000,000 per occurrence and combined single limits as applicable. Insurance companies must be reasonably acceptable to CITY, be admitted and licensed in California, and have a Best's Rating of A-, Class VII or better.

Endorsements:

An Additional Insured Endorsement, **ongoing and products-completed operations**, for the policy under section 4.3 (a) shall designate CITY, its officers, officials, employees, agents, and volunteers, and all public agencies as determined by the City as additional insureds for liability arising out of work or operations performed by or on behalf of the LICENSEE. LICENSEE shall provide to CITY proof of insurance and endorsement forms that conform to City's requirements, as approved by the CITY.

An Additional Insured Endorsement for the policy under section 4.3 (b) shall designate CITY, its officers, officials, employees, agents, and volunteers, and all public agencies as determined by the City as additional insureds for automobiles owned, leased, hired, or borrowed by the LICENSEE shall provide to CITY proof of insurance and endorsement forms that conform to CITY's requirements, as approved by the CITY.

For any claims related to this Agreement, LICENSEE's insurance coverage shall be primary insurance as respects CITY, its officers, officials, employees, agents, and volunteers, and all public agencies as determined by CITY. Any insurance or self-insurance maintained by the CITY, its officers, officials, employees, agents, or volunteers, and all public agencies as determined by the City shall be excess of the LICENSEE's insurance and shall not contribute with it.

If LICENSEE maintains higher insurance limits than the minimums shown above, LICENSEE shall provide coverage for the higher insurance limits otherwise maintained by the LICENSEE.

- 11.4 CITY may, in the exercise of its sole discretion, require the minimum insurance coverages set forth in Section 12.3 to be raised up to \$2,000,000.00 by providing sixty (60) days written notice to LICENSEE pursuant to Section 18 herein.
12. **SURETY BOND** Within forty-five (45) days of the Effective Date, LICENSEE shall furnish bonds, or an irrevocable standby letter of credit, in the form acceptable to the City, in the amount of fifty thousand dollars (\$50,000.00) for the term of the license, to guarantee the faithful performance of the work, and to guarantee payment of all claims for labor and materials furnished. LICENSEE shall not commence any work or bench installation until the surety required herein is/are supplied to and approved by the CITY.

13. NON-LIABILITY OF OFFICIALS AND EMPLOYEES OF THE CITY No official or employee of CITY shall be personally liable to LICENSEE in the event of any default or breach by CITY, or for any amount which may become due to LICENSEE.
14. NON-DISCRIMINATION. LICENSEE covenants there shall be no discrimination against any person or group due to race, color, creed, religion, sex, marital status, age, handicap, national origin, or ancestry, in any activity pursuant to this License.
15. INDEPENDENT CONTRACTOR It is agreed that in the performance of the obligations to be performed by LICENSEE, LICENSEE shall act and be an independent contractor and not an agent or employee of CITY, and shall obtain no rights to any benefits which accrue to CITY'S employees.
16. COMPLIANCE WITH LAW LICENSEE shall comply with all applicable laws, ordinances, codes, and regulations of the federal, state, and local government in the performance of activities pursuant to this License.
17. NOTICES All notices shall be personally delivered or mailed to the below listed address, or to such other addresses as may be designated by written notice. These addresses shall be used for delivery of service of process.

Address of LICENSEE is as follows:

Focus Media Group
 11612 Knott Street, Suite 2
 Garden Grove, CA 92841
 Attention: Managing Director

Address of CITY is as follows:

City Manager
 City of Garden Grove
 11222 Acacia Parkway
 Garden Grove, CA 92840

(with a copy to):
 Garden Grove City Attorney
 11222 Acacia Parkway
 Garden Grove, CA 92840

18. LICENSES, PERMITS, AND FEES At its sole expense, LICENSEE shall obtain a Garden Grove Business License and all other permits and licenses as may be necessary to perform the activities required by this License or as otherwise required by Chapter 11.36.
19. FAMILIARITY WITH WORK By executing this License, LICENSEE warrants that: (1) it has investigated the work to be performed; (2) it has investigated the locations of the proposed non-shelter bus benches and is aware of all conditions there; and (3) it understands the facilities, difficulties, and restrictions of the work under this License.
20. TIME OF ESSENCE Time is of the essence in the performance of Licensee's obligations under this License.

21. **LIMITATIONS UPON SUBCONTRACTING AND ASSIGNMENT** The experience, knowledge, capability, and reputation of LICENSEE, its principals and employees were a substantial inducement for CITY to make this License. LICENSEE shall not contract with any other entity to perform the obligations required without written approval of the CITY. This License may not be assigned voluntarily or by operation of law, without the prior written approval of CITY. If LICENSEE is permitted to subcontract of its obligations under this License, LICENSEE shall be responsible to CITY for the acts and omissions of its subcontractor as it is for persons directly employed. Nothing contained in the License shall create any contractual relationship between any subcontractor and CITY. All persons engaged in the work will be considered employees of LICENSEE. CITY will deal directly with LICENSEE.
22. **INDEMNIFICATION** LICENSEE shall comply with the provisions of Section 11.36.230 of Chapter 11.36. LICENSEE shall protect, defend, and hold harmless CITY and its elective or appointive boards, members, officers, agents, employees and volunteers from any and all claims, liabilities, expenses, or damages of any nature, including attorneys' fees, for injury or death of any person, or damage to property, or interference with use of property, and for any other damage claim arising out of, or in any way connected with performance of the License by LICENSEE and LICENSEE'S agents, officers, employees, subcontractors, and independent contractors. The only exception to LICENSEE'S responsibility to protect, defend, and hold harmless CITY shall be due to the sole negligence of CITY, or any of its elective or appointive boards, officers, agents, contractors, employees or volunteers.
- This hold harmless provision shall apply to all liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by LICENSEE. This indemnification provision shall survive the termination of this License and remain in effect until all claims and liability matters pursuant to this provision are fully and finally resolved.
23. **TERMINATION** CITY may terminate this License based on any of the grounds, and according to the procedure, set forth in Garden Grove Municipal Code Section 11.36.100.
24. **LIENS AND CHARGES** LICENSEE shall promptly pay and discharge any and all liens arising out of any construction, alterations or repairs done, suffered or permitted to be done by LICENSEE with respect to the non-shelter bus benches. LICENSEE shall pay when due any taxes, assessments or other charges (collectively, "Taxes") levied or assessed upon the non-shelter bus benches by any governmental or quasi-governmental body or any Taxes levied or assessed against CITY or CITY property that are attributable to the non-shelter bus benches.
25. **INTEGRATION** This License constitutes the entire agreement between CITY and LICENSEE relating to this License. Any prior agreements, promises, negotiations, or representations related to this License not expressly set forth in this License are of no force

and effect. Any amendment to this License shall be of no force and effect unless it is in writing and signed by CITY and LICENSEE.

26. NON-WAIVER A waiver by either party of any breach of any term covenant, or condition contained in this License shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition contained in this License whether of the same or different character.
27. AUTHORITY TO EXECUTE The persons executing this License on behalf of the parties warrant that they are duly authorized to execute this License and that by executing this License, the parties are formally bound.
28. JURISDICTION AND VENUE The parties hereto agree that the State of California is the proper jurisdiction for litigation of any matters relating to this License, and service mailed to the address of LICENSEE set forth herein shall be adequate service for such litigation. The parties further agree that Orange County, California is the proper place for venue as to any such litigation and LICENSEE agrees to submit to the personal jurisdiction of such court in the event of such litigation.
29. SEVERABILITY If any term, covenant, condition, provision or word of this License is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereof.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS THEREOF, these parties have executed this License, to be effective, on the day and year first shown above.

"CITY"
CITY OF GARDEN GROVE

"LICENSEE"
FOCUS MEDIA GROUP, INC.

By: _____
Scott C. Stiles
City Manager

By: Michael A. Gibson
Name: Michael Gibson
Title: Managing Director

ATTESTED:

By: _____

Name: _____

By: _____
City Clerk

Title: _____

Taxpayer ID No. 26-2069993

APPROVED AS TO FORM:

By: Omar Sandoval
Omar Sandoval
City Attorney

If LICENSEE is a corporation, a Corporate Resolution and/or Corporate Seal is required. If a partnership, Statement of Partnership must be submitted to CITY.

Attachment A



City of Garden Grove

Transit Bench Proposal

Proposal to the
City of Garden Grove
for the Installation, Maintenance
and Monetization of Transit Benches

Presented to:

Raquel Monson, Sr. Administrative Analyst, Dept. of Public Works
AJ Holmon III, Environmental Services Mgr., Streets/Street Trees Mgr.
Bill Murray, Director of Public Works

June 1, 2017

Our mission

Focus Media Group is dedicated to offering high-quality media assets and marketing opportunities to our clients, partnering with them to solve marketing problems and drive consumer engagement, sales and growth.

Additionally, Focus Media Group partners with various municipalities to provide much needed amenities to communities through public-private partnerships.

About Us

We are a team of leading experts in the Outdoor Advertising Industry who provide a unique and specialized approach to bus stop services.

Our team collectively has more than seventy-five years of expertise in developing new Street Furniture products in Southern California.

We enjoy an excellent reputation in the industry and are known for superior services by our clients and the municipalities we serve.

Our experienced maintenance team in Los Angeles and Orange County has resulted in community beautification and graffiti abatement programs that are a proven success.

Our success is due to our geographic market knowledge, vast experience in developing new street furniture products and our dedicated maintenance services.

Current Assets & Partnerships

- ✓ Los Angeles County: Transit Bench
- ✓ City of Stanton: Transit Shelter & Transit Bench
- ✓ City of Westminster: Transit Shelter & Transit Bench
- ✓ City of Seal Beach: Transit Bench
- ✓ City of Fullerton: Transit Bench

Our proposal

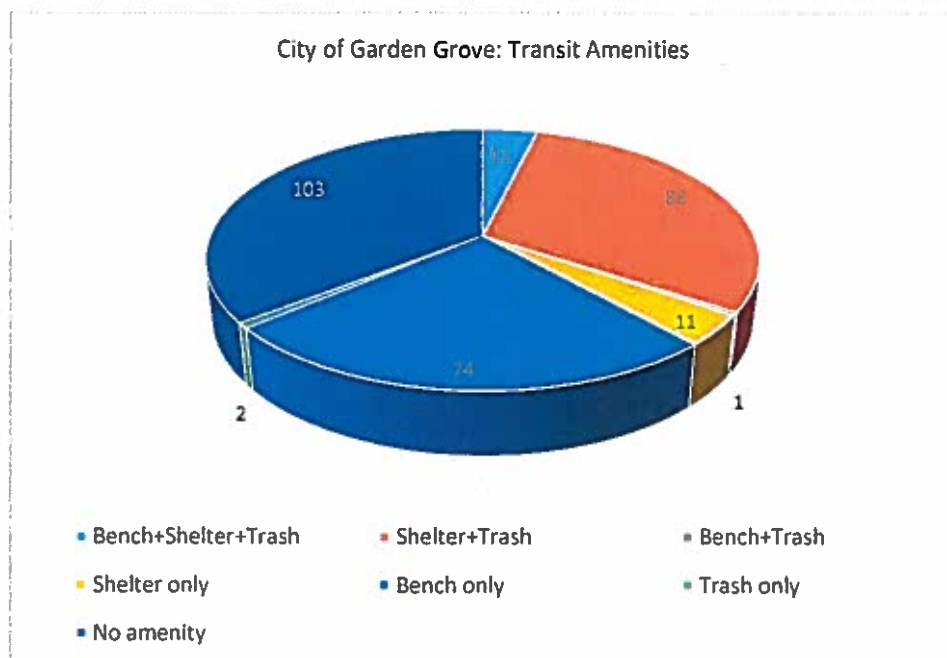
Focus Media Group proposes to partner with the City of Garden Grove, through a services contract, to install, maintain and operate advertising-supported transit benches throughout the City. These transit benches would offer the mass transit-using public a valuable amenity, enhancing the mass transit experience at absolutely no cost to the City.

The services related to maintaining the transit benches would be at no cost to the City. The program is sustained by Focus Media Group monetizing the advertising space available on the benches. In addition to offsetting the substantial expense and logistical challenges of maintain an adequate number of benches for the citizens of Garden Grove, the contract between the City and Focus Media Group would potentially be a revenue-generation partnership since the contract calls for the City to enjoy 15% of all advertising revenue generated.

Current Amenities

Currently, Clear Channel Outdoor has a contract to provide the city with transit shelters, but the City does not have a partnership with any company to provide transit benches. There are several non-advertising benches at select locations. Focus Media Group feels that the community would be better served by increasing the number of transit benches as well as better positioning to maximize both use of the amenities and advertising impact.

There are a total of 290 OCTA bus stops in the City. Of those, 103 bus stops have no amenity whatsoever. The distribution of current amenities is as follows:



Services

A brief summary of services that Focus Media Group would provide the City of Garden Grove are as follows:

- ✓ Regular and thorough cleaning of bus stops
- ✓ Sweeping and cleaning in the immediate vicinity
- ✓ Spray washing of bus stops as required
- ✓ Trash removal
- ✓ Ad copy posting, monitoring and repair
- ✓ Posting report verification
- ✓ Bench & Shelter relocation and removal
- ✓ Compliance with all insurance requirements
- ✓ Repairs and modifications

Benefits to Garden Grove

- ✓ A high-value vendor to provide additional, high-value amenities to the community at no additional cost to the City.
- ✓ Provide a cost-effective vehicle for local businesses to promote their products and services to the local community.
- ✓ Provide an effective, low/no cost communication tool to the City of Garden Grove on available advertising space.
- ✓ Premium maintenance, litter removal and graffiti control.
- ✓ Additional revenue generator for the City

Proposed Terms

- Ten (10) year contract
- July 1, 2017 start date
- Optional extensions of five (5) one-year periods or one (1) five-year period
- Focus Media Group would:
 - Purchase the transit benches
 - Install, Maintain, Monetize
- The City of Garden Grove would enjoy 15% of the advertising revenue, paid in quarterly payments
- In addition to the ad revenue, the City would avoid the expenses related to transit bench maintenance
- The City would have final say on all advertising copy. There are prohibited categories of advertising
- Although the contract would not specify an exact number of transit benches, Focus Media Group expects to install approximately 175 units upon completion of the project.
- Current dollar value = \$0
- Potential revenue to the City = unknown

The exact terms of the agreement are found in the Franchise Agreement herein and part of this proposal.

The following pro forma describes a potential scenario of advertising revenue, based upon rates and occupancy that Focus Media Group believes would be reasonably expected. As with any pro forma, it describes an educated guess and is not offered as a guarantee or promise of revenue to the City.

Following the pro forma is the Franchise Agreement or contact with the City of Garden Grove that we are hereby proposing. The Franchise Agreement will also be submitted in editable form to facilitate revisions to craft the final contract.

Contact information:

Arthur R. Rockwell

Executive Vice President, Sales & Marketing

Telephone: (305) 878-1279

Email: arockwell@focusmediagroupinc.com

Michael A. Culver

Managing Director

Telephone: (714) 441-1300

Email: mculver@focusmediagroupinc.com

GARDEN GROVE
PROFORMA - City Revenue Share

Bench 175

YEAR TWO (Average)	Mo 1	Mo 2	Mo 3	Mo 4	Mo 5	Mo 6	Mo 7	Mo 8	Mo 9	Mo 10	Mo 11	Mo 12	Yr 2
TRANSIT BENCH													
Transit Bench Ad Panels	175	175	175	175	175	175	175	175	175	175	175	175	175
Occupancy	65%	65%	65%	65%	65%	65%	65%	65%	65%	65%	65%	65%	65%
Panel Sold	114	114	114	114	114	114	114	114	114	114	114	114	114
Rate per Panel	\$115	\$115	\$115	\$115	\$115	\$115	\$115	\$115	\$115	\$115	\$115	\$115	\$115
BENCH GROSS REVENUE	\$13,081	\$13,081	\$13,081	\$13,081	\$13,081	\$13,081	\$13,081	\$13,081	\$13,081	\$13,081	\$13,081	\$13,081	\$156,975
REVENUE SHARE TO CITY	\$13,081	\$13,081	\$13,081	\$13,081	\$13,081	\$13,081	\$13,081	\$13,081	\$13,081	\$13,081	\$13,081	\$13,081	\$156,975
GROSS REVENUE	\$13,081	\$13,081	\$13,081	\$13,081	\$13,081	\$13,081	\$13,081	\$13,081	\$13,081	\$13,081	\$13,081	\$13,081	\$156,975
Bench Revenue @ 15%	\$1,962	\$1,962	\$1,962	\$1,962	\$1,962	\$1,962	\$1,962	\$1,962	\$1,962	\$1,962	\$1,962	\$1,962	\$23,546
REVENUE TO CITY	\$1,962	\$1,962	\$1,962	\$1,962	\$1,962	\$1,962	\$1,962	\$1,962	\$1,962	\$1,962	\$1,962	\$1,962	\$23,546