

## **AGREEMENT**

This Agreement, made and entered this \_\_\_\_ day of July, 2016, by and between the City of Margate, a political subdivision of the State of Florida, having its principal address at 5790 Margate Boulevard, Margate, Florida (hereinafter "City of Margate"), and Gold Coast Transit, Inc., having its principal address at 3941 SW 47th Avenue, Suite 1010, Davie, Florida, 33314 (hereinafter "Gold Coast" or "Gold Coast Companies" or "Contractor").

### **WITNESSETH:**

WHEREAS, the City of Margate and Gold Coast agree that Gold Coast shall supply bus benches with waste receptacles, transit shelters with waste receptacles, maintain same, and will manage an advertising program for the City of Margate; and

WHEREAS, Gold Coast has provided these services to the City of Margate since 2007 and the City of Margate wishes to enter into a new agreement with Gold Coast for a period of three (3) years, with two (2) successive one (1) year renewals, unless either party gives notice to the other party that they wish to terminate this Agreement ninety (90) days before the end of the current term then in force; and

WHEREAS Gold Coast has agreed to provide the City of Margate with up to five (5) non-advertising benches, as requested by residents, to be placed in residential areas where there currently are no bench amenities provided, the final location and placement of said benches being subject to the mutual approval of the City of Margate and Gold Coast; and

WHEREAS, Gold Coast has instituted and will continue to operate its property maintenance program having an estimated value of \$85,000, to refurbish, repair, and repaint, on an as needed basis, all benches and transit shelters owned by Gold Coast and located in the City of Margate. The Gold Coast program shall be undertaken at no cost to the City of Margate, as all costs for this program will be borne solely by Gold Coast; and

WHEREAS, as part of its advertising program and to assist the City of Margate with its annual budgeting and financial planning, Gold Coast will produce, for the sole and exclusive use of the City of Margate, a quarterly report identifying: (1) the location of each bench or transit shelter panel in the City of Margate; (2) the name of any advertiser posted thereon; (3) the advertising revenue per bench or transit shelter panel; and (4) the corresponding revenue due to the City of Margate.

NOW THEREFORE, in consideration of the mutual promises expressed herein, the parties agree as follows:

## **THE DOCUMENTS**

1. The above recitations are true and correct and are incorporated by reference.

## **COMMENCEMENT OF THE AGREEMENT, ADDITIONAL ONE-YEAR TERMS**

2. The initial term of this Agreement shall be for a period of three (3) years, commencing on July 13, 2016 and ending July 13, 2019. This Agreement shall renew for two (2) successive one-year periods unless either party gives notice to the other that they wish to terminate this Agreement ninety (90) days before the end of the current term then in force.

## **PERFORMANCE AND SCOPE OF SERVICE**

3. The Gold Coast Companies will faithfully and fully perform every term, covenant, and condition of this Agreement, which are all of equal dignity and binding on City of Margate.
4. The City of Margate will faithfully and fully perform every term, covenant, and condition of this Agreement, which are all of equal dignity and binding on Gold Coast.
5. The City of Margate agrees to allow Gold Coast the right, privilege and license, without cost to the City, to place benches with receptacles and bus transit shelters with benches and receptacles upon the public space within the City of Margate city limits at various transit stops and other points of public convenience as specifically authorized by the City.
6. Gold Coast shall provide all labor, materials, equipment and services necessary to provide, erect and maintain a bus bench and bus transit shelter and advertising program in the City of Margate. The design of the bus benches and bus transit shelters must meet with the mutual approval of the City of Margate and Gold Coast.

All installations shall meet FDOT, County, and ADA regulations.

7. Both parties agree to cooperate and use best efforts with each other in connection with all matters contemplated in this Agreement.

## **PAYMENTS**

8. Beginning July 13, 2016 and for all subsequent years of this Agreement, Gold Coast agrees to pay the City of Margate Eight Thousand Dollars (\$8,000.00) per year, or One Hundred Dollars (\$100.00) per bench, or fifteen percent (15%) of the gross advertising revenue earned from bus benches (based on the previous calendar year sales), whichever is greater, for the right, privilege, and license to construct, install, and place the bus benches and advertising as provided in this Agreement within the municipal boundaries of the City.

Annual installments of the greater of the Eight Thousand Dollar (\$8,000.00) per year payment, or the One Hundred Dollars (\$100.00) per bench payment, or the payment representing fifteen percent (15%) of the gross advertising revenue earned from bus benches (based on the previous calendar year sales), shall be made in one payment due April 1<sup>st</sup> of each successive year of this Agreement. For 2016, an annual payment has already been received by the City.

9. Beginning July 13, 2016 and for all subsequent years of this Agreement, Gold Coast agrees to pay the City of Margate fifteen percent (15%) of the gross advertising revenue earned from bus transit shelters (based on the previous calendar year sales) for the right, privilege, and license to construct, install, and place the bus transit shelters and advertising as provided in this Agreement within the municipal boundaries of the City.

Annual installments of the payment representing fifteen percent (15%) of the gross advertising revenue earned from bus transit shelters (based on the previous calendar year sales), shall be made in one payment due April 1<sup>st</sup> of each successive year of this Agreement. For 2016, the fifteen percent (15%) of the gross advertising revenue earned from bus transit shelters (based on the previous calendar year sales) shall be paid to the City on a quarterly basis.

10. Payment must be made by certified check, cashier's check or a Gold Coast company check drawn on a bank with Florida offices.

11. Gold Coast shall provide to the City, for the sole and exclusive use of the City of Margate, a quarterly report identifying: (1) the location each bench or transit shelter in the City; (2) the name of any advertiser posted thereon; (3) the advertising revenue per bench or transit shelter. The City of Margate shall have the right to audit only those books, records and accounts of Gold Coast which are pertinent to this Agreement, provided the City of Margate has given the Gold Coast a thirty (30) day written notice of its intent to perform such an audit. Any audit of Gold Coast records undertaken by the City of Margate will be solely at the expense of the City of Margate and shall take place on Gold Coast's business premises. Gold Coast shall keep the books, records and accounts of this Agreement at its offices in Broward County during the term of the Agreement or until any audit findings are resolved, whichever is longer.

12. Either party may open the fee structure for discussion at any time during this Agreement.

#### **PERMITTING AND INSTALLATION, PLACEMENT AND MAINTENANCE**

13. The City of Margate shall not charge individual license or permit fees to Gold Coast with respect to the installation and operation of any single bus bench or any single transit shelter that is the subject of this Agreement. All benches installed pursuant to this Agreement shall be installed under one Master License and one Master Permit issued by the City of Margate for the exclusive use of Gold Coast in performing this

## Agreement.

14. Gold Coast represents that all persons performing pursuant to this Agreement have the knowledge and skills to perform their duties under this Agreement. The Gold Coast Companies is an independent contractor under this Agreement. Materials, supplies, services, and goods shall be subject to the supervision of Gold Coast. In providing services hereunder, neither Gold Coast nor its agents shall act as an officer, employee, or agent of the City of Margate. This Agreement does not constitute a partnership or joint venture between the City of Margate and the Gold Coast Companies.

15. Gold Coast has placed a minimum of Eighty (80) benches with adjacent City of Margate approved trash receptacles upon public space within the City of Margate, at various transit stops and at other points of public convenience in locations that do not obstruct passage along the public way, do not create a hazard and are not otherwise detrimental to the safety, welfare, morals or health of the citizens of the City of Margate. Gold Coast has placed all required benches within the City of Margate and continues to maintain all benches and shelters in conformance with the maintenance and standards set forth herein.

16. Gold Coast has installed and maintains Thirty (30) transit shelter panels within the City of Margate. The transit shelters are custom designed for the City of Margate and the Margate Community Redevelopment Agency. All units contain trash receptacles and convenience benches. The maintenance schedule for these transit shelters is the same as the bench maintenance schedule, with the addition of quarterly pressure cleaning of the transit units.

17. Any additional benches or transit shelter units placed at transit stops within the City of Margate shall require the authorization and approval of the City in advance of placement, and all necessary permitting shall be issued pursuant to Paragraph 13 of this Agreement. Such placement shall be made only where there is no objection of the abutting property owner and shall be subject to the terms of this Agreement.

18. Gold Coast shall monitor its benches and transit shelter units and shall respond within twenty-four (24) hours to the City's request for maintenance, repair, and/or graffiti removal. Gold Coast shall follow industry standards for safety and maintenance in the installation, servicing, safekeeping, repair, and removal of its bus benches and transit shelter units. Gold Coast shall provide trash pickup and bench and transit shelter unit maintenance on a twice weekly basis. Non-Advertising benches shall be included in Gold Coast's regular maintenance schedule for the City's benches.

19. In the event that a bus bench or transit shelter unit is destroyed through the intentional or negligent act of any third party, or is damaged or destroyed by any act of nature, war, riot or other major upheaval (a force majeure), or in the opinion of the City or Gold Coast, the immediate area surrounding a bus bench poses a legitimate hazard to the safety of the user as a result of any such force majeure, Gold Coast shall have

the right, on a temporary emergency basis, to remove, replace, or relocate the bus bench or transit shelter unit to a location which, in the sole opinion of Gold Coast, puts the bench or transit shelter unit away from the hazardous area, if said location meets all other criteria provided in this Agreement. Any temporary emergency relocation of a bus bench or transit shelter unit shall remain effective until such time as Gold Coast, the City of Margate, or the abutting property owner has cured the hazard.

20. In order to continuously meet the City's aesthetic standards, Gold Coast agrees to provide for an age-based replacement schedule of bus benches and transit shelters.

21. All benches and transit shelter units placed and installed by Gold Coast under this Agreement are the property of the Gold Coast Companies and shall be maintained in compliance with FDOT standards for placement, and shall be ADA compliant.

### **LEASE OF ADVERTISING SPACE ON BENCHES AND TRANSIT SHELTER UNITS**

22. Gold Coast shall have the right, privilege, and license, as granted by the City of Margate herein, to lease advertising space on all Gold Coast benches and transit shelter units outside of the designated CRA City Center area.

23. Gold Coast shall not lease advertising space to adult businesses as defined in the Zoning Code of the City of Margate. Advertising space sold to advertise alcoholic beverages shall be at the sole and absolute discretion of the City Manager.

24. In the event the City of Margate objects to proposed advertising or, in the judgment of the City, deems posted advertising to be of an immoral or otherwise objectionable nature, the City shall document its specific reason for such objection in writing, and provide such documentation to Gold Coast. Gold Coast will remove the objectionable advertising within ten (10) days of receipt of notice from the City.

25. The Gold Coast Companies comply with all O.A.A.A. (Outdoor Advertising Association of America) guidelines regarding content of outdoor advertising posted on its benches and transit shelters.

26. The City of Margate and Gold Coast agree that Gold Coast shall establish Co-Op units under this program at no cost to the City of Margate. The City of Margate and Gold Coast agree to utilize any unsold benches and transit shelters to mutually promote the City of Margate and the contractor (see attached photograph of current design). The maximum units to be utilized under this program shall be limited to twenty (20) advertising panels per month, subject to availability throughout the year. The cost for production of posters is approximately fifty dollars (\$50.00) per unit (net cost) and the Contractor, Gold Coast, agrees to provide production, printing and posting service for this program at no cost the City of Margate.

27. Gold Coast agrees to provide the City of Margate up to three unsold benches and transit shelters per month to promote City-sponsored special events. Gold Coast agrees

to provide production, printing and posting service for this program at no cost the City of Margate.

### **DEFAULT AND CURE**

28. Upon default, either party may terminate this Agreement by providing notice in accordance with the Notice section below.

29. Notice of termination may be provided by the City of Margate or to Gold Coast in the event any one of the following causes of default occurs:

- a. Failure to pay any sums when due;
- b. Failure to comply with any term, covenant, or condition of this Agreement;
- c. Failure to have the required insurance in force and effect;
- d. The placement of any Gold Coast company on the convicted vendor list pursuant to the State of Florida Public Entity Crime Act, Section 287.133, Florida Statutes; or
- e. Failure of Gold Coast Companies to comply with any federal, state, or local laws, codes ordinances, rules or regulations in performing its collective duties, responsibilities or obligations pursuant to this Agreement.

30. The Gold Coast Companies shall have ten (10) days to fully cure any specified defaults provided written notice has been given hereunder. If at the end of ten (10) days the default has not been fully cured and brought into compliance with the relevant conditions set forth in this Agreement, the Agreement shall be considered terminated. Thereafter, the City of Margate shall be entitled to receive any sums due to it through the date of termination, and the Gold Coast Companies shall be required to remove their bus benches and transit shelter units from within the city limits of the City of Margate within a reasonable period of time. No further action or legal proceeding will be necessary to implement this section.

### **NOTICE**

31. Notice given under this Agreement must be in writing, sent by Certified Mail, postage prepaid, return receipt requested, addressed to the party for whom it is intended at the place last specified. The place for giving all notice for the present, and until such time as the place is changed in writing in the manner provided in this section, is set forth below:

For the City: Douglas E. Smith  
City Manager  
5790 Margate Boulevard  
Margate, Florida 33063

Or to: The Designee of Douglas E. Smith

For Gold Coast: Alison J. Oliver, President  
Gold Coast Transit, Inc.  
3941 SW 47th Avenue  
Suite 1010  
Davie, Florida 33314

### **INSURANCE AND INDEMNIFICATION**

32. To the extent permitted by Florida law, Contractor agrees to indemnify, defend, save, and hold harmless the City of Margate, its officers and employees, from or on account of all damages, losses and liabilities, including but not limited to reasonable attorney fees and costs to the extent caused by the negligence, recklessness or intentional wrongful misconduct of the Contractor and persons employed or utilized by the Contractor in the performance of this Agreement. Nothing contained in the foregoing indemnification shall be construed to be a waiver of any immunity or limitation of liability the City may have under the doctrine of sovereign immunity or Section 768.28, Florida Statutes.

33. To ensure the indemnification obligation contained above, Gold Coast shall, at a minimum, provide for, pay and maintain insurance coverage required by this Agreement at all times during the term of the Agreement.

34. Gold Coast shall maintain Workers' Compensation and Employers' Liability coverage to apply to all employees of any Gold Coast Company at the statutory limits and in compliance with applicable state and federal laws. Coverage must include Employers' Liability with a minimum coverage of \$100,000 each accident.

35. Gold Coast shall maintain a Business Auto Policy or similar form of insurance, with a minimum limit of \$300,000 per occurrence combined single limit for bodily injury and property damage liability. This policy shall include owned, hired, and non-owned vehicles.

36. Gold Coast shall maintain a Commercial General Liability insurance policy, or similar policy, with a minimum limit of \$1,000,000 per occurrence combined single limit for personal injury, bodily injury, and property damage liability. Coverage shall include premises and/or operations, independent contractors, product and/or complete operations, contractual liability and broad form property damage endorsements. Coverage for hazards of explosion, collapse and underground property damage must also be included when applicable to the work performed.

37. Signed Certificates of Insurance and all required endorsements evidencing that these required insurance coverages have been procured by Gold Coast in the types and amounts required hereunder shall be furnished to the City Manager within ten (10) days of the execution of this Agreement.

38. All Certificates of Insurance except Workers' Compensation and Employers'

Liability, shall clearly state that the Contract has been endorsed to include the City of Margate, a political subdivision of the State of Florida, its officers, agents, and employees, as Additional Insureds. All Certificates of Insurance shall support the Indemnity provisions of Paragraph 32 of this Agreement, and shall so state on the face of the Certificates. All Certificates of Insurance shall provide thirty (30) days' written notice to the City of Margate prior to any adverse changes, cancellation or non-renewal of coverage.

### **FORCE MAJEURE**

39. Neither party to this Agreement shall be liable for any delay or failure under the Agreement to the extent the delay or failure result from causes beyond the party's control, occurring without fault or negligence, including without limitation failures or delays resulting from natural disasters (including inclement weather, tornadoes, tropical storms and hurricanes, wars, riots or other major upheavals, or performance failures outside the control of such applicable party ("force majeure")). Any dates by which performance obligations are scheduled to be met will, as a result of force majeure, be extended by a period of time equal to the time lost due to any such delay. Force majeure shall apply to all Gold Coast obligations where a timing obligation is imposed with respect to the site and bench maintenance obligations.

### **LITIGATION AND VENUE**

40. This Agreement is deemed to have been executed within the State of Florida. The validity, construction, and effect of this Agreement shall be governed by the law of the State of Florida. Any claim, objection or dispute arising out of this Agreement shall be litigated only in the courts of the Seventeenth Judicial Circuit in and for Broward County, Florida.

41. The parties to this Agreement hereby knowingly, irrevocably, voluntarily and intentionally waive any right either may have to a trial by jury in respect to any action, proceeding, lawsuit or counterclaim based upon the Agreement, arising out of, under, or in connection with the matters to be accomplished in this Agreement, or any course of conduct, course of dealing, statements (whether verbal or written) or the actions or inactions of any party.

### **RETENTION OF RECORDS AND RIGHT TO ACCESS**

42. In accordance with Florida Statute, 119.0701 - Contracts; public records, Gold Coast shall keep, maintain and make available all records, regardless of format, including but not limited to finance records, statistical records, correspondence, and supporting documents pertinent to this Agreement for a period determined by the nature of the document, pursuant to state and federal records retention and disposition requirements, and after termination of this Agreement, provide the public with access to public records on the same terms and conditions that the public agency would provide the records and at a cost that does not exceed the cost provided in this chapter or as



otherwise provided by law; shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; meet all requirements for retaining public records and transfer, at no cost, to the public agency all public records in possession of Gold Coast upon termination of the Agreement, and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements; all records stored electronically must be provided to the public agency in a format that is compatible with the information technology systems of the public agency. If Gold Coast does not comply with a public records request, the City of Margate shall enforce the Agreement provisions in accordance with the Agreement.

### **ENTIRE AGREEMENT**

43. This Agreement set forth is the entire agreement between the parties, and there are no promises or understandings other than those stated herein. No further amendment, modification, or alteration will be allowed except by written instrument of the parties executed with all the formalities of this Agreement.

### **CITY OF MARGATE**

\_\_\_\_\_  
Tommy Ruzzano, Mayor

\_\_\_\_ day of \_\_\_\_\_, 2016

\_\_\_\_\_  
Douglas E. Smith, City Manager

\_\_\_\_ day of \_\_\_\_\_, 2016

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Joseph J. Kavanagh, City Clerk

\_\_\_\_ day of \_\_\_\_\_, 2016

\_\_\_\_\_  
Douglas R. Gonzales, City Attorney

\_\_\_\_ day of \_\_\_\_\_, 2016

**GOLD COAST TRANSIT, INC.**

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

By: \_\_\_\_\_  
Alison J. Oliver

WITNESS:

\_\_\_\_\_

Printed Name: \_\_\_\_\_

\_\_\_\_\_

Printed Name: \_\_\_\_\_