

**DIGITAL MEDIA SERVICE AGREEMENT
FOR THE DOWNTOWN SAN DIEGO PARTNERSHIP
CLEAN AND SAFE PROGRAM**

This DIGITAL MEDIA SERVICE AGREEMENT is entered into as of January 1, 2018, (the “**Effective Date**”) between **IVC MEDIA LLC**, a California corporation, (“**IVC**”), and **DOWNTOWN SAN DIEGO PARTNERSHIP CLEAN AND SAFE PROGRAM**, a California nonprofit corporation (“**Client**”), and Client and IVC are hereinafter referred to jointly as the “**Parties**” and each as a “**Party**”, with reference to the following facts:

A. IVC is in the business of providing consulting, marketing, communications, and other digital media services.

B. Client desires to retain IVC to perform such services on its behalf for the purpose of supporting online digital public relations including creative marketing, (the, “**Proposal**”).

NOW, THEREFORE, in consideration of the covenants, agreements, representations, and warranties in this Agreement, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Services.**

1.1 **AGREEMENT PERIOD.** This Agreement shall commence January 1st, 2018 (“**Commencement Date**”) and continue through March 15th, 2018 (“**Completion Date**”) unless terminated sooner pursuant to the termination provision provided in this Agreement.

1.2 **SCOPE OF SERVICES.** IVC shall provide the basic services described in Exhibit A attached hereto (the “**Services**”).

1.3 **Implementation.** The Services do not include implementation such as production, execution, printing, or distribution of materials associated with or related to the Services (the “**Implementation**”). Client and IVC agree that before any such Implementation is to be provided, IVC will provide a written estimate for approval by Client. This estimate shall include fees, supplier charges, and incidental expenses. The Implementation will not proceed until Client has given IVC written approval and provides an authorized purchase order. If any portion of the Implementation is to be provided by any third parties, IVC’s services with respect to such portion of the Implementation shall be restricted to providing specifications, coordination, and quality-checking. Unless otherwise specified in this Agreement, IVC shall have no responsibility to the providers of such Implementation, and charges therefore shall be billed directly to Client. While not responsible for Implementation, IVC may, in its supervisory capacity, assume responsibility for paying such charges, and IVC shall be entitled to reimbursement from Client for Implementation costs plus a handling charge as specified in Section 3.3.

1.4 **Maintenance and New Development.** IVC has no obligation to maintain the website(s), social media pages, or other related platforms (“**Channels**”), or to provide additional development or maintenance once the once the Services are completed and accepted by Client, and any warranty period set forth lapses. In the event that Client desires to make modifications or

enhancements to the Channels, Client agrees that IVC shall be given the first option to submit a proposal to make such modifications or enhancements.

2. **Term.** The term of this Agreement (the “**Term**”) shall commence on January 1, 2018 and shall continue in accordance with the services set forth in Exhibit A, unless otherwise modified by mutual written agreement by both parties or otherwise terminated in accordance with Section 8 of this Agreement.

3. **Compensation.**

3.1 **Consulting Retainer.** As compensation for IVC’s consulting services, Client shall pay to IVC a monthly fee during the Term of this Agreement equal to Five Thousand Dollars per month (US \$5,000) (the “**Retainer**”) and will be prorated for any partial monthly period thereof.

3.2 **Automatic Annual Increase.** N/A

3.3 **Reimbursable Expenses.** In addition to payment of the Retainer, Client agrees to reimburse IVC for all other actual and reasonable out-of-pocket expenses incurred by IVC with respect to the Services so long as they are pre-authorized by Client, such authorization not to be unreasonably withheld.

3.4 **Payment Terms** IVC shall invoice Client on the first day of each month beginning January 1, 2018. All amounts not paid within thirty (30) days from the date of such invoices shall automatically bear interest from such thirtieth (30th) day at the rate of ten percent (10%) per annum. This charge shall be in addition to, and not in limitation of, any other remedies IVC may have under applicable law. Notwithstanding anything to the contrary in this Section 3.3, any payments that IVC shall be required to make on behalf of Client shall be paid by Client no later than the earliest date on which IVC is required to make payment on behalf of Client. In the event that IVC does not receive payment by the date set forth above, IVC shall have the right to not purchase or contract on behalf of Client or to cancel any contracts previously entered into on behalf of Client, and, in the event that IVC shall cancel any such contracts, Client shall be solely responsible for any charges, commissions and fees incurred prior to, or as a result of, such cancellation.

3.5 **Hourly Rates.** Where specified in this Agreement, Client shall pay IVC at IVC’s then-current hourly rates. IVC’s hourly rates as of the Effective Date are listed in **Exhibit B** attached hereto. Unless otherwise agreed in writing, where IVC agrees to undertake work that is outside the scope of the Services hereunder, as authorized by Client, the foregoing hourly rates shall apply. IVC reserves the right to increase its hourly rates upon written notice to client, provided such increase(s) shall not occur sooner than each one (1) year anniversary of the Effective Date.

3.6 **Revisions and Additions.** IVC shall keep Client informed of additional services that are required and shall use reasonable efforts to request Client’s approval for any additional services which cause the total fees, exclusive of any Reimbursable Expenses and surcharge for rush work, to exceed the Retainer.

3.7 **Records.** IVC shall maintain records of hours and Reimbursable Expenses and shall make such records available to Client for inspection on request.

4. **Contractor's Requirements Relating to Employees.** Contractor shall hire, employ, discharge control, and supervise all personnel and labor necessary for performance of the duties described in this Agreement. Contractor shall use its best efforts to exercise reasonable care to select qualified, competent, and trustworthy employees. All employees shall be employees of Contractor and not DSDP. Contractor shall comply with all laws, ordinances, statutes, codes, and regulations including, without limitation, governmental anti-discrimination laws and the requirements of the American with Disabilities Act relating to employees and all requirements relating to employee tax, employee benefits, and other federal and state requirements. Contractor shall make whatever reports may be required by the state and federal governments relative to such taxes or deductions. All employees shall be covered under Contractor's Worker's Compensation insurance policy at Contractor's expense.

4.1 **Living Wage:** The Contractor must comply with the City of San Diego Living Wage ordinance. If it is determined that the Contractor is not comply with living wage, any fees, costs or penalties associated with noncompliance will be paid for by Contractor. Contractor shall provide payroll reports for all employees working on the contract showing compliance with Living Wage requirements. Confidential employee information may be redacted. You may visit the following links for specific requirements. <http://www.sandiego.gov/purchasing/programs/livingwage/>.

4.2 **Prevailing Wage:** Prevailing Wages. Pursuant to SDMC section 22.3019, construction, alteration, demolition, repair, and maintenance work performed under this Agreement is subject to State prevailing wage laws. For construction work performed under this Agreement cumulatively exceeding \$25,000 and for alteration, demolition, repair and maintenance work performed under this Agreement cumulatively exceeding \$15,000, the Contractor and its subcontractors shall comply with State prevailing wage laws including, but not limited to, the requirements listed below. This requirement is in addition to the requirement to pay Living Wage pursuant to SDMC sections 22.4201 through 22.4245. Contractor must determine which per diem rate is highest for each classification of work (i.e. Prevailing Wage Rate or Living Wage Rate), and pay the highest of the two rates to their employees. Living Wage applies to workers who are not subject to Prevailing Wage Rates.

1. Compliance with Prevailing Wage Requirements. Pursuant to California Labor Code (Labor Code) sections 1720 through 1861, Contractor and its subcontractors shall ensure that all workers who perform work under this Agreement are paid not less than the prevailing rate of per diem wages as determined by the Director of the California Department of Industrial Relations (DIR). This includes work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work.

- (a) Copies of such prevailing rate of per diem wages are on file at the City and are available for inspection to any interested party on

request. Copies of the prevailing rate of per diem wages also may be found at

<http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>.

Contractor and its subcontractors shall post a copy of the prevailing rate of per diem wages determination at each job site and shall make them available to any interested party upon request.

- (b) The wage rates determined by the DIR refer to expiration dates. If the published wage rate does not refer to a predetermined wage rate to be paid after the expiration date, then the published rate of wage shall be in effect for the life of this Contract. If the published wage rate refers to a predetermined wage rate to become effective upon expiration of the published wage rate and the predetermined wage rate is on file with the DIR, such predetermined wage rate shall become effective on the date following the expiration date and shall apply to this Agreement in the same manner as if it had been published in said publication. If the predetermined wage rate refers to one or more additional expiration dates with additional predetermined wage rates, which expiration dates occur during the life of this Agreement, each successive predetermined wage rate shall apply to this Agreement on the date following the expiration date of the previous wage rate. If the last of such predetermined wage rates expires during the life of this Agreement, such wage rate shall apply to the balance of the Contract.

2. Penalties for Violations. Contractor and its subcontractors shall comply with Labor Code section 1775 in the event a worker is paid less than the prevailing wage rate for the work or craft in which the worker is employed.

3. Payroll Records. Contractor and its subcontractors shall comply with Labor Code section 1776, which generally requires keeping accurate payroll records, verifying and certifying payroll records, and making them available for inspection. Contractor shall require its subcontractors to also comply with section 1776. Contractor and its subcontractors shall submit weekly certified payroll records online via the City's web-based Labor Compliance Program. Contractor is responsible for ensuring its subcontractors submit certified payroll records to the City.

4. Apprentices. Contractor and its subcontractors shall comply with Labor Code sections 1777.5, 1777.6, and 1777.7 concerning the employment and wages of apprentices. Contractor shall be held responsible for the compliance of their subcontractors with sections 1777.5, 1777.6 and 1777.7.

5. Working Hours. Contractor and subcontractors shall comply with Labor Code sections 1810 through 1815 including but not limited to: (i) restrict working hours on public works contracts to eight hours a day and forty hours a week, unless

all hours worked in excess of 8 hours per day are compensated at not less than 1½ times the basic rate of pay; and (ii) specify penalties to be imposed on design professionals and subcontractors of \$25 per worker per day for each day the worker works more than 8 hours per day and 40 hours per week in violation of Labor Code sections 1810 through 1815.

6. Required Provisions for Subcontracts. Contractor shall include at a minimum a copy of the following provisions in any contract they enter into with a subcontractor: Labor Code sections 1771, 1775, 1776, 1777.5, 1810, 1813, 1815, 1860 and 1861.

7. Labor Code Section 1861 Certification. Contractor, in accordance with Labor Code section 3700, is required to secure the payment of compensation of its employees and by signing this Agreement, Contractor certifies that "I am 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 I will comply with such provisions before commencing the performance of the work of this agreement."

8. Labor Compliance Program. The City has its own Labor Compliance Program authorized in August 2011 by the DIR. The City will withhold contract payments when payroll records are delinquent or deemed inadequate by the City or other governmental entity, or it has been established after investigation by the City or other governmental entity that underpayment(s) have occurred. For questions or assistance, please contact the Equal Opportunity Contracting Department at 619-236-6000.

(c) Higher Wage Rate Applies. Contractor is required to pay the highest applicable wage rate where more than one wage rate applies.

5. Client's Obligations.

5.1 **Client Representatives.** Client shall appoint certain persons listed on **Appendix A** attached hereto with full authority to provide or obtain any necessary information and approvals that may be required by IVC (the "**Client Representatives**"). The Client Representatives shall be responsible for coordination of briefing, review, and the decision-making process with respect to persons and parties other than IVC and its subcontractors. If, after any one Client Representative has approved a specific stage of design, documentation, or other materials associated with or related to the Services, Client or any other authorized person of Client requires changes that require additional services from IVC, Client shall pay all fees and expenses arising from such changes as additional services. Additionally, CLIENT SHALL BE RESPONSIBLE FOR ALL NECESSARY REPORTING UNDER APPLICABLE CAMPAIGN FINANCE REGULATIONS.

5.2 **Materials to be Provided by Client.** Client shall provide accurate and complete information and materials to IVC and shall be responsible for the accuracy and completeness of all information and materials so provided. Client represents and warrants that all materials supplied to IVC are owned by Client or that Client has all necessary rights in such materials to permit IVC to use them for the Services and any additional services, and that Client shall do all things necessary to maintain its rights in such information and materials. Client shall provide the materials and services that are set forth on **Exhibit C** attached hereto. Upon request, IVC shall return all materials provided by Client within thirty (30) days after completion of the Services and payment of amounts due.

6. **Custody of Materials.** IVC shall take reasonable precautions to safeguard Client's property entrusted to IVC's custody or control. In the absence of gross negligence on IVC's part, IVC shall not be liable for any loss, damage, destruction or unauthorized use of such property. IVC shall not store on behalf of Client electronic files of IVC's work in relation to the Services, and IVC shall have no obligation to transfer such files to Client at any time.

7. **Rights and Ownership.**

7.1 **Rights.** Upon payment of all fees and expenses, the work product, designs, concepts, and plans created by IVC in relation to the Services shall be for the exclusive use of Client other than for the promotional use of IVC. Client shall not obtain any right to use pre-existing copyrights, inventions, discoveries, and proprietary processes or information used by IVC or third parties in executing the Services or the Implementation.

7.2 **Ownership.** Upon payment of all fees and expenses, the work product, designs, concepts, and plans created by IVC in relation to the Services shall be owned by Client. All data collected and managed in relation to this Agreement shall be owned by both Client and IVC. Client shall not obtain any ownership in pre-existing data, copyrights, inventions, discoveries, and proprietary processes or information used by IVC or third parties in executing the Services or the Implementation. Notwithstanding anything to the contrary in this Section 7, any material or ideas prepared or submitted to Client by IVC, which Client chooses not to produce or for which Client shall not have made payment as contemplated herein, will remain the property of IVC (regardless of whether the physical embodiment of creative work is in the possession of Client in the form of copy, artwork, plates, recordings, films, tapes, etc.) and may be submitted to other clients of IVC for their use, provided that such submission or use does not involve the release of any confidential information regarding the business or methods of operation of Client. For purposes hereof, "produce" shall be defined as any material which is created in tangible form pursuant to the provisions of this Agreement.

8. **Indemnification.**

8.1 **By IVC.** IVC shall indemnify and hold Client harmless with respect to any claims, loss, suit, liability or judgment suffered by Client, including reasonable attorney's fees and costs, based upon or related to any item prepared by IVC or at IVC's direction, including, but not limited to, any claim of libel, slander, piracy, plagiarism, invasion of privacy, or infringement of copyright or other intellectual property interest, except where any such claim arises out of material

supplied by or approved by Client and incorporated into any materials or advertisement prepared by IVC.

8.2 **By Client.** Client agrees to indemnify and hold IVC harmless with respect to any claims, loss, liability, damage or judgment suffered by IVC, including reasonable attorney's fees and court costs, which results from the use by IVC of any material furnished by Client or where material created by IVC or at the direction of IVC is materially changed by Client, subject to the indemnification in Section 7.1 above. Information or data obtained by IVC from Client to substantiate claims made in advertising shall be deemed to be "material furnished by Client to IVC." In furtherance and not in limitation of any other provision of this Agreement, Client shall have the right at any time to direct IVC to cancel any plans, schedules or work in progress; provided, however, that Client shall indemnify IVC against any loss, cost or liability IVC may sustain as a result of such action, and provided further, that IVC shall be entitled to any and all commissions, fees and payments for Services performed prior to the instructions of Client to cancel, and for advertising and materials placed or delivered thereafter if IVC is unable to halt such placement or delivery. Under no circumstances shall IVC be obliged to breach any lawful contractual commitment to a third party.

9. **Termination.**

9.1 **Method.** This Agreement may be terminated upon either (i) a material breach of this Agreement, (ii) a thirty (30) day written notice, or (iii) at the completion of the services set forth in Exhibit B. All indemnities shall continue even after any such termination.

9.2 **Fees and Expenses.** Upon any termination, Client shall pay all fees and expenses incurred in connection with the Services up to the date of termination. Client shall also pay all fees and expenses imposed on IVC as a result of cancellation of such commitments, including severance payments. Upon the termination of this agreement and payment of all sums due as provided herein, IVC shall transfer, assign, and make available to Client, or its representative, all property and materials in IVC's possession or control belonging to Client.

9.3 **Failure to Pay.** In conjunction with and in addition to the provisions of section 3, in the event Client fails to make any payment of fees and expenses due to IVC within thirty (30) days of the date of an invoice, IVC shall have the right to notify Client in writing, and if such payment is not made within ten (10) days following Client's receipt of such notice, IVC will have the right to (i) suspend all future performance of IVC's obligations under this agreement, without limiting any of Client's obligations to IVC, until such time as Client has made all such payments; or (ii) immediately terminate this agreement, and all right, title, and interest in any and all materials and elements created and produced hereunder, including, without limitation all copyrights in all works of authorship, shall automatically revert to IVC for all uses and purposes whatsoever. IVC's exercise or failure to exercise any of the foregoing rights will not be deemed a waiver or release of any other rights or remedies IVC may have at law or in equity.

10. **Insurance Requirements.** Prior to the Commencement Date, Contractor shall furnish DSDP with a certificate(s) of insurance and the endorsements specified below, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth below. Contractor agrees to provide to The City of San Diego and its respective elected officials, officers, employees, agents and representatives the same protection as afforded to DSDP.

(1) Commercial General Liability. Commercial General Liability (CGL) insurance written on a current version of the ISO Occurrence form CG 00 01 or an equivalent form providing coverage at least as broad which shall cover liability arising from any and all bodily injury, personal injury, advertising injury or property damage in the amount of \$1 million per occurrence and subject to an annual aggregate of \$2 million. There shall be no endorsement or modification of the CGL limiting the scope of coverage for either insured claims or contractual liability. All defense costs shall be outside the limits of the policy.

(2) Commercial Automobile Liability. For all of Contractor's automobiles including owned, hired and non-owned automobiles, Contractor shall keep in full force and effect, automobile insurance written on a current version of the ISO form CA 00 01 or an equivalent form providing coverage at least as broad for bodily injury and property damage for a combined single limit of \$1 million per occurrence. The insurance certificate shall reflect coverage for any automobile (any auto).

(3) Workers' Compensation. For all of Contractor's employees who are subject to this Agreement and to the extent required by the applicable state or federal law, Contractor shall keep in full force and effect, a Workers' Compensation policy. That policy shall provide a minimum of \$1 million of employer's liability coverage, and Contractor shall provide an endorsement that the insurer waives the right of subrogation against DSDP and the City and its respective elected officials, officers, employees, agents, and representatives.

(A) Deductibles. All deductibles or retentions on any policy shall be the sole responsibility of Contractor and shall be disclosed to DSDP at the time the evidence of insurance is provided.

(B) Acceptability of Insurers. Except for the State Compensation Insurance Fund, all insurance required by this Agreement, shall only be carried by insurance companies with a current rating of at least "A-, VI" by A.M. Best Company that are authorized by the California Insurance Commissioner to do business in the State of California, and that have been approved by DSDP. DSDP will accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is authorized to do business in the State of California and is included on the List of Approved Surplus Lines Insurers (LASLI list). All policies of insurance carried by non-admitted carriers are subject to all of the requirements for policies of insurance provided by admitted carriers described herein.

(C) Required Endorsements. The following endorsements to the policies of insurance are required to be provided to DSDP before any performance is initiated under this Agreement.

(1) Commercial General Liability Insurance Endorsements.

Additional Insured. To the fullest extent allowed by law, including but not limited to California Insurance Code section 11580.04, the policy or policies must be endorsed to include as an additional insured using current versions of ISO additional insured endorsements CG 20 10 and CG 20 37 (completed operations) or their equivalents, the DSDP and the City of San Diego and its respective elected officials, officers, employees, agents and representatives with respect to liability arising out of (a) ongoing operations performed by you or on your behalf, (b) your products, (c) your work, including but not limited to your completed operations performed by you or on your behalf, or (d) premises owned, leased, controlled or used by you.

Primary and Non-contributory Coverage. The policy or policies must be endorsed to provide that the insurance afforded by the Commercial General Liability policy or policies is primary to any insurance or self-insurance of DSDP and the City, its elected officials, officers, employees, agents and representatives as respects operations of the Named Insured.

Severability of Interest. The policy or policies must be endorsed to provide that Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.

(2) Automobile Liability Insurance Endorsements

Additional Insured. To the fullest extent allowed by law, including but not limited to California Insurance Code section 11580.04, the policy or policies must be endorsed to include as an Insured DSDP and the City and its respective elected officials, officers, employees, agents and representatives with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of Contractor. DSDP and the City is an additional named insured and insurer waives the right of subrogation against the DSDP and the City and its respective elected officials, officers, employees, agents and representatives.

Primary and Non-contributory Coverage. The policy or policies must be endorsed to provide that the insurance afforded by the Automobile Liability policy or policies is primary to any insurance or self-insurance of DSDP and the City, its elected officials, officers, employees, agents and representatives as respects operations of the Named Insured.

Severability of Interest. The policy or policies must be endorsed to provide that Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.

(3) Worker's Compensation Insurance Endorsements.

Waiver of Subrogation. The Worker's Compensation policy or policies must be endorsed to provide that the insurer will waive all rights of subrogation against DSDP and the City, its elected officials, officers, employees, agents and representatives for losses paid under the terms of this policy or these policies which arise from work performed by the Named Insured for DSDP and the City.

(D) Reservation of Rights. DSDP and the City reserves the right, from time to time, to review Contractor's insurance coverage, limits, deductible, and self-insured retentions to determine if they are acceptable to DSDP and the City.

(E) Additional Insurance. Contractor may obtain additional insurance not required by this Agreement.

(F) Excess Insurance. All policies providing excess coverage to City shall follow the form of the primary policy or policies including but not limited to all endorsements.

11. **Miscellaneous.**

11.1 **Waiver.** No covenant, term or condition of this Agreement or breach thereof shall be deemed waived unless the waiver is in writing, signed by the party against whom enforcement is sought, and any waiver shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term or condition.

11.2 **Sales Tax.** Client shall pay any sales, use, or other transfer taxes that may be applicable to the services provided under this Agreement, including any tax that may be assessed on audit of IVC's tax return.

11.3 **Assignment.** Neither Client nor IVC may assign or transfer their interest in this Agreement without the written consent of the other.

11.4 **Force Majeure.** Notwithstanding anything in this Agreement to the contrary, no delay or failure of any performance required hereunder by either party shall be an event of default, which delay or failure has resulted in whole or in part from any unforeseen act of God, fire, flood, strike, riot, war, governmental interference, import controls, tariffs or unavailability of materials through normal commercial channels.

11.5 **Construction.** The parties have participated jointly in the negotiation and drafting of this Agreement. If an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party because of the authorship of any provision of this Agreement. The words "include," "includes," and "including" shall be deemed to be followed by "without limitation." Pronouns in masculine, feminine, and neuter genders shall be construed to include any other gender, and words in the singular form shall be construed to include the plural and vice versa, unless the context otherwise requires. The words "this Agreement," "herein," "hereof," "hereby," "hereunder," and words of similar import refer to this Agreement as a whole and not to any particular subdivision unless expressly so limited.

11.6 **Descriptive Headings.** The descriptive headings of this Agreement are for convenience only and shall not control or affect the meaning, interpretation or construction of any provision of this Agreement.

11.7 **Exhibits and Recitals.** All recitals and exhibits to this Agreement are incorporated herein by this reference and all references herein to "Agreement" shall mean this Agreement together with all such recitals and exhibits.

11.8 **Delays or Omissions.** It is agreed that no delay or omission to exercise any right, power or remedy accruing to any party, upon any breach, default or noncompliance by any other party under this Agreement, shall impair any such right, power or remedy, nor shall it be construed to be a waiver of any such breach, default or noncompliance, or any acquiescence therein, or of any similar breach, default or noncompliance thereafter occurring. It is further agreed that any waiver, permit, consent or approval of any kind or character on the part of any party of any breach, default or noncompliance under the Agreement, or any waiver on the part of any party of any provisions or conditions of this Agreement, must be in writing and shall be effective only to the extent specifically set forth in such writing. All remedies, either under this Agreement, by law, or otherwise afforded to any party, shall be cumulative and not alternative.

11.9 **Warranty of Authority.** Each person executing this Agreement represents and warrants that he or she has full power and authority to do so that no other authorizations or approvals of any kind are necessary.

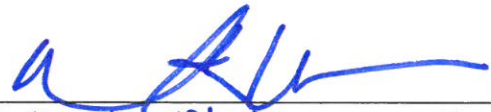
11.10 **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. In lieu of the original, a facsimile transmission or copy of the original shall be as effective and enforceable as the original.

11.11 **Survival.** Section 6, Section 7, and Section 9 of this Agreement shall survive termination of this Agreement and shall remain effective notwithstanding such termination


IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the date first set forth above.

DATED: December 29, 2017

**DOWNTOWN SAN DIEGO PARTNERSHIP
CLEAN AND SAFE PROGRAM**

By:  1/7/18
Maki Katherine Urtasun Date
SVP of Branding and Marketing

IVC MEDIA, LLC

By: 
12/29/2017
S. Chad Peace, President Date

Appendix I

General Terms and Conditions

1. Confidentiality and Relationship with Other Clients

1.1. “Confidential Information” shall mean any confidential information in any form (including any copies and any document which contains, reflects or is derived from Confidential Information) disclosed by one party or its employees, officers or advisers to the other party (whether before or after the date of the engagement letter). Confidential Information does not include any information that: (a) is or subsequently becomes public knowledge (other than as a result of disclosure in breach of paragraph 1.2 below); or (b) was known by the receiving party on a non-confidential basis prior to disclosure; or (c) becomes available to the receiving party on a non-confidential basis from a person who is not bound by obligations of confidence; or (d) the parties agree in writing is not confidential or may be disclosed.

1.2. Each party shall keep the other party’s Confidential Information confidential and shall not use such Confidential Information except for the purpose of exercising or performing the relevant rights and obligations under the Agreement and shall not disclose any Confidential Information to a third party, except as expressly permitted by this clause. Each party may disclose Confidential Information on an as-needed basis to professional advisors retained to provide services to Client or on Client’s behalf in relation to, or connected with, the subject matter of services provided by IVC under this Agreement. Each party may disclose Confidential Information to the extent required by law, by any governmental or other regulatory authority, or by a court or other authority of competent jurisdiction; provided that, to the extent permitted by law, such party shall provide the other party with a reasonable opportunity to contest such disclosure.

2. Personnel and Communication

- 2.1. IVC reserves the right to determine its personnel that are allocated to the performance of the services hereunder. With Client’s prior written agreement, IVC may also use third parties in performing our services hereunder.
- 2.2. It is Client’s responsibility to provide IVC with complete, accurate, and timely instructions or information relevant to IVC’s engagement hereunder. Client hereby authorizes IVC to act on instructions given to IVC by Client or any officer or other authorized representative of Client.

3. Non-Exclusive

This Agreement is for the non-exclusive use of IVC’s services. Nothing contained herein shall prevent IVC from providing similar services to other clients on a non-exclusive basis subject to IVC’s obligations to use its best efforts to identify and avoid any actual conflict of interest.

4. No Practice of Law

For the avoidance of doubt, the scope of services hereunder do not include the provision of legal advice or the practice of law.

5. Documentation

Documents generated by IVC are intended for the sole use of Client.

6. Standard of Performance

In performing the services hereunder IVC shall exercise the degree of care and skill ordinarily exercised by a professional firm in performing the same or similar services. Given the nature of IVC’s services, including, where applicable, the dependence of an outcome on a governmental body, IVC does not guarantee or warrant any specific result.

7. Limitation of Liability

IN NO EVENT SHALL IVC, ITS EMPLOYEES, CONTRACTORS, OFFICERS, OR DIRECTORS

BE LIABLE (WHETHER IN CONTRACT, TORT, STRICT LIABILITY, WARRANTY, OR OTHERWISE) FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES, OR FOR ANY LOSS OF PROFITS OR REVENUE, AND IN NO EVENT SHALL IVC'S TOTAL CUMULATIVE LIABILITY, INCLUDING ATTORNEYS' FEES, UNDER THIS AGREEMENT EXCEED THE FEES PAID TO IVC HEREUNDER.

8. Arbitration

Any controversy or claim arising under this Agreement shall be settled by mediation, and if not resolved by mediation then by arbitration under the rules of the American Arbitration Association then in effect. The award of the arbitrator shall be final and binding upon the parties and shall be delivered in writing signed by the arbitrator to each party. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

9. Notices

All notices and invoices hereunder shall be sent with respect to Client:

Downtown San Diego Partnership,
Clean and Safe Program
Attn: Mari Katherine Urtasun
401 B Street, Suite 100
San Diego, CA 92101

and with respect to IVC:

IVC Media LLC
Attn.: S. Chad Peace
2700 Adams Avenue, Suite 200
San Diego, CA 92116

In each case, such other address as may be communicated by such party in writing.

10. Entire Agreement

These terms of this Agreement (upon signing) shall supersede any earlier agreement between the parties with respect to the subject matter hereof, and shall constitute the entire agreement between the parties in relation to IVC's provision of the scope of work set forth herein.

11. Amendments

This Agreement may only be amended with the prior written approval of both parties.

12. Governing Law

These terms of this Agreement and the relation between the parties shall be governed by, and construed in accordance with, the laws of the State of California.

13. Severability

If the validity or enforceability of any provision of this Agreement is in any way limited by any applicable law or regulation, such provision shall not affect the validity or enforceability of any other provision of this Agreement.

EXHIBIT A

Services shall be those more particularly describe in the attached Proposal prepared by IVC Media and includes approximately 60 hours of services per month across the breadth of their expterise at the direction of Client. Client agrees and understands that IVC may not be able to complete all the services provided within the contract period.

EXHIBIT B

A per-hour rate is listed, however, depending on project scope, an overall per-project rate can also be estimated.

IVC shall not accrue hours outside of the Monthly Retainer Compensation without prior written approval.

| | |
|-------------------------------------|----------|
| Executive Management & Consultation | \$300/hr |
| Programming/Web Design | \$200/hr |
| Creative Management/Design | \$175/hr |
| Project Management | \$175/hr |
| Database Administration | \$150/hr |
| Editorial/Copywriting | \$125/hr |
| Social Media Management | \$125/hr |
| Analytics/Reporting | \$125/hr |

EXHIBIT C

Materials and Services to be Provided by Client

Information and access necessary to manage any of client's existing or future online platforms.