

## **BUS STOP SHELTER AGREEMENT**

This Agreement made and entered into as of the day of February 1, 2021 by and between the City of Smyrna, Georgia, a political subdivision of Cobb County within the State of Georgia, (hereinafter referred to as "Smyrna"), and Plainview Outdoor, LLC, a Georgia Limited Liability Company and/or a newly formed transit entity solely owned and operated by Plainview Outdoor, LLC specifically for this agreement (hereinafter referred to as "Plainview"), both of which are referred to as the parties.

WHEREAS Smyrna currently has located within its boundaries various bus stops (hereinafter referred to as "Stops") for passenger use on the Cobb Community Transit System (hereinafter referred to as "the System"); and,

WHEREAS the current Stops located throughout the System are used by passengers and citizens of Smyrna on a daily basis; and,

WHEREAS Smyrna is to provide bus stop shelters with benches and trash containers (hereinafter referred to as "Shelters") for the protection and safety of the passengers of the System while waiting for bus service at said Stops; and,

WHEREAS Plainview has the ability, expertise and capital necessary to install and operate digital signage and digital operational equipment (hereinafter referred to as "Digitals") at various stops throughout the City of Smyrna; and,

WHEREAS Smyrna intends that the primary function of these Shelters is to protect the passengers of the System from the environment; and,

WHEREAS Smyrna desires to have Plainview assist and consult in the selection of and construction of additional Shelters purchased by and owned by Smyrna, within Smyrna for the purposes and under the terms and conditions as stated herein; and,

WHEREAS it is also the intent of Smyrna to allow the display of Digitals and static advertising on said Shelters solely for the purpose of raising revenue for the citizens of Smyrna and funding its' Shelters program, in order to defray the cost of operation and maintenance of the Shelters; and,

WHEREAS it is not the intent of Smyrna to provide a general or limited public forum for purposes of

communication.

NOW THEREFORE for and in consideration of the premises and mutual promises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by both parties, the parties hereto agree as follows:

1. Shelters to be provided and solely owned by Smyrna and the Digitals provided and solely owned by Plainview: For the duration of this Agreement as provided for herein and subject to the terms, conditions, limitations and exceptions also provided for herein, Plainview shall install Digitals at Stops on the current System and any subsequent modifications thereto. The Digitals shall be installed in compliance with all Department of Transportation, ADA, Smyrna, Cobb County and State of Georgia requirements. Plainview shall be solely responsible for all Digitals, engineering, installation and operation of the Digitals.

2. Locations: At the inception of this Agreement all parties acknowledge that Plainview shall be permitted to place Digitals at Stops only within Smyrna. Locations for Digitals may be added, amended or changed based upon any future alterations of the Stops specifically related to the Cobb County Transit System Bus routes.

3. Advertising on Shelters: Plainview shall be permitted to place various Digitals on any Shelters by approval from the City of Smyrna. The Digitals may not exceed 48" x 96" in size, with advertising on both sides and the Digitals shall be UL or ETL certified and the static lighting shall be UL and CSA certified and not exceed 65 watts. Smyrna supports no political viewpoint and therefore no political speech may be placed on any Shelters. There is a constitutional mandate for the separation of church and state; therefore, no advertisements espousing any religious belief or viewpoint will be permitted. Pursuant to Plainview policy, Plainview shall not display any advertising that depicts physical violence against any person or animal, that is obscene as defined by federal or state law, that is untrue, misleading, deceptive, or distorted, or that explicitly or directly promotes or encourages the use of guns, birth control, or any tobacco product. Smyrna is acting in a proprietary function and therefore retains discretion and authority to develop reasonable standards and choices for the advertisements in Shelters utilized by its citizens. Smyrna shall have the right to direct the removal of any advertising material displayed

on the Shelters that Smyrna reasonably determines to be inconsistent with the foregoing standards. Any direction to remove advertising material shall be given in written notice to Plainview providing Plainview with ten (10) day notice to correct and/or remove said material. In such case, Plainview shall promptly remove such material at Plainview's cost. In the event that Plainview fails to remove such material promptly, Smyrna may remove it or cause it to be removed, and Plainview will reimburse Smyrna for all costs associated therewith. Notwithstanding the above, if approval for advertising was expressly given by Smyrna, it cannot require Plainview to remove such advertising during the term of the contract between Plainview and the advertiser so long as the term does not exceed twelve (12) months.

4. Shelter Maintenance and Repair: So long as this Agreement is in effect, Plainview shall be responsible for weekly trash pickup, quarterly pressure washing, and general upkeep of the Shelters and the surrounding area. Plainview will assist Smyrna with the assessment of and recommendation of each Shelter. Plainview shall promptly notify Smyrna if any damage to the Shelters or necessary repairs needed are found in routine maintenance inspections, but in any event within seven (7) days of knowledge of damage or necessary repairs.

Plainview is solely responsible for the repair and upkeep of all of its' Digitals.

5. Duties of Plainview: Plainview shall use best efforts to assist and coordinate with Smyrna in the location and placement of all new Shelters. Duration of Agreement: The initial term of this Agreement shall be for fifteen (15) years beginning on the date and year first above written with a five (5) year renewal option under the same terms and conditions.

6. Construction of New Shelters: Plainview will assist Smyrna with the installation of New Shelters at a rate of at least five per year until all Smyrna shelters have been replaced. Plainview will use the annual payment that are due and payable to Smyrna and apply these monies to new Shelters each year until all Smyrna Shelters have been replaced. Smyrna will select the new Shelters design.

7. Annual payment to Smyrna: Commencing on January 1st, 2022, Plainview will pay \$67,200.00 for years one (1) through five (5) then \$70,560.00 for years six (6) through ten (10) and \$74,088.00 for years eleven (11) through fifteen (15) to the city of Smyrna. Payments shall be due in full on or before January 30,

of the following year subject to paragraph 6 herein.

8. Increases in payment: After the initial five (5) year term, the payments from Plainview to Smyrna shall automatically increase by five percent (5%) for each additional five (5) year period.

9. Installation Schedule: Within sixty (60) days after execution of this Agreement, Plainview shall provide to Smyrna an Installation Schedule of its' Digitals as well as a schedule for the replacement of new shelters. At the request of Plainview, a designee of Smyrna shall approve the actual location of any Digitals. Installation may commence only upon written approval by Smyrna of the location.

10. Maintenance and Availability of Records: Plainview shall keep true and correct records pertaining to the maintenance of all Shelters to be reviewed during normal business hours by Smyrna or by any person requesting records pursuant to Georgia's Open Records Act, or Plainview shall provide said records to Smyrna within seventy-two (72) hours after such request is made by Smyrna.

11. Indemnification and Insurance: Plainview covenants, promises and agrees to fully indemnify and save harmless Smyrna and its officers, agents, servants, subcontractors, and employees against any and all loss, costs and damages that may result to them or any of them arising out of or in connection with any claim for damage to person or property by any person, firm, corporation or other party for injury related in any way to or from a Shelter or any service provided by Plainview pursuant to this Agreement or that he/she, it or they have been injured, defamed, or otherwise liable as a result of any breach of an advertising agreement or as a result of any advertising or other material placed by Plainview in, on or about the Shelters or that his/her, it's or their privacy has been invaded thereby with any copyright, patent or other rights have been infringed thereby or that he/she, it or they have become otherwise injured thereby and from and against any and all loss, liability, costs and damage arising out of or in connection with any action at law, suit in equity or other proceeding based upon or asserting any such claims.

The indemnity hereinabove provided shall include reasonable attorneys' fees and all other costs of defending against any claims, demands, or losses subject thereto, whether or not such claims are asserted by means of an action at law, suit in equity, or other legal or other formal proceeding.

Plainview covenants and agrees that, so long as this Agreement remains in force, it will maintain in

effect the following insurance policies, with underwriters satisfactory to Smyrna, and under forms of policies satisfactory to Smyrna and providing that they can be cancelled only after at least thirty (30) days written notice shall first have been given to Smyrna; Plainview shall, upon request at any time while this Agreement is in force, provide certificates of insurance evidencing the required policies or the policies themselves:

- A) Worker's Compensation: Plainview will maintain Georgia Statutory Worker's Compensation plan with an "All States Broad Form Endorsement" and Employer's Liability in an amount of \$100,000.
- B) Comprehensive General Liability Insurance: This policy shall include the following:
  - 1) Combined single limits of \$5,000,000.
  - 2) Occurrence Basis.
  - 3) Name Smyrna as additional insured and coverage to be primary for actions arising out of this Agreement.
  - 4) Contractual Liability Endorsement specifically naming this Agreement.
  - 5) Independent contractors.
  - 6) Products/Completed Operations.
  - 7) Personal Injury Endorsement.
  - 8) Broad Form Property Endorsement.

C) Fire/Lightning Extended Coverage and Vandalism/Malicious/Mischief Insurance: Plainview will cause to be insured all of its' Digitals and all other property stored on Smyrna's premises in an amount equal to the full replacement value at any given time. The policy or policies shall include a waiver or subrogation against Smyrna, its officers, employees, agents, and servants.

These insurance requirements do not relieve, change, limit, alter, or otherwise abrogate the indemnification provided above nor waive any defense of sovereign or other immunity.

12. Creation of Agency: The parties hereto acknowledge that pursuant to O.C.G.A. Section 32-6-51, ATOS shall be deemed to be acting as the designated agent for Smyrna and/or the System with respect to all permits and applications necessary to erect the Shelters as provided for herein. In furtherance hereof, Smyrna and/or the System will execute any and all forms or applications necessary in furtherance of this provision in order to obtain all necessary and proper permits for Plainview for the erection of Shelters as

provided for herein, including obtaining all necessary approvals for Smyrna and/or the System as such may be necessary for the erection of such Shelters on the right-of-way of State or Federal aid primary roads.

13. Termination of this Agreement: In addition to the other termination provisions of this Agreement, this Agreement may be terminated in the event Plainview shall fail to substantially perform any obligation under this Agreement and shall not cure such failure within thirty (30) days next after Smyrna shall give written notice thereof, or in the case of failure that cannot be reasonably cured within thirty (30) days, shall fail to begin to cure within such time and diligently to prosecute such cure to completion within a reasonable time thereafter.

14. Right Upon Termination: Upon the termination of this Agreement for any cause or reason whatsoever by either party as provided for herein, said party shall provide written notice of its election to terminate the Agreement, after adhering to all provisions in paragraph 14, if termination is based upon default of Plainview, and the remaining provisions of this Agreement. Upon such election to terminate, or upon expiration of this Agreement, Plainview shall remove all Digitals no later than sixty (60) days after the termination or expiration of this Agreement.

15. Assignment: This Agreement may be pledged or otherwise encumbered by either party without the prior written approval of the other party. Smyrna reserves the right to terminate this Agreement if it is transferred to a third party without prior written approval by Smyrna, which shall not be unreasonably withheld.

16. Successors and Assigns: The terms of this Agreement shall be binding upon the executors, administrators' successors and assigns of the parties hereto.

17. Ingress and Egress: Subject to the reasonable rules of Smyrna, Plainview shall be granted the right to ingress and egress across city owned property to the Shelters for the purpose of carrying out Plainview's operations under this Agreement to the extent said ingress and egress does not violate any laws, rules, ordinances at that time.

18. Notices: All notices, consents, demands, approvals and requests which are required or permitted to be given by either party to the other pursuant to the provision of this Agreement shall be sent

by United States certified or registered mail, return receipt requested, postage prepaid and shall be addressed as follows:

IF TO SMYRNA: Mayor, City of Smyrna (or designee)  
2800 King Street  
Smyrna, Georgia 30081

With copy to  
Scott Cochran  
Cochran & Edwards  
2950 Atlanta Rd  
Smyrna, Ga 30080

or

IF TO PLAINVIEW: Plainview Outdoor LLC  
2802 Belle Arbor Avenue  
Chattanooga, Tennessee 37406

Notices mailed as aforesaid shall be deemed to have been given for all purposes hereunder on the business day next following the date on which the same shall have been deposited in the mail.

19. Waiver: No waiver of any term or condition of this Agreement on any occasion shall be deemed to be a waiver of any other term or condition of this Agreement or of the same or any other such term or condition or on any other occasion.

20. Interpretation of Agreement: This Agreement shall be governed and construed in accordance with the laws of the State of Georgia.

21. Resolution of Disputes: In the event any disputes cannot be resolved amicably between the parties, such disputes shall be resolved through litigation or mediation and the parties agree exclusive venue shall lie in a court of competent jurisdiction located in Cobb County, Georgia.

22. Entire Agreement: This agreement embodies the entire agreement of the parties respecting the subject matter. There are no promises, terms, conditions, or obligations other than those contained in the agreement. This document supersedes all previous communications, representations, or agreements, either verbal or written, between the parties.

[SIGNATURES ON THE FOLLOWING PAGE]

**IN WITNESS WHEREOF**, the parties undersigned have executed the Bus Stop Shelter Agreement effective as of date and year first written above.

**For the City of Smyrna, Georgia**

**For Plainview Outdoor, LLC**

BY: \_\_\_\_\_ BY: \_\_\_\_\_  
Signature of Authorized Agent Signature of Authorized Agent

DEREK NORTON

Print Name

Print Name

MAYOR, CITY OF SMYRNA

Print Title

Print Title

FEBRUARY 1, 2021

Date

Date

ATTEST:

CITY SEAL

\_\_\_\_\_  
Heather K. Peacon - Corn  
City Clerk, City of Smyrna

Approved as to form:

\_\_\_\_\_  
Scott Cochran  
City Attorney, City of Smyrna