

## COMMUNITY SIGNAGE AGREEMENT

**THIS COMMUNITY SIGNAGE AGREEMENT** (the “Agreement”) is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2021, by and between the CITY OF SAN PABLO, a California municipal corporation (the “City”) and CHANGING ENVIRONMENTS, INC., a Delaware corporation (the “Vendor”).

### Recitals

A. The Vendor produces kiosk-type signs that provide electronic paper screen displays that rotate informational content of interest to the local community, such as municipal events and news as well as advertising for local businesses (“Soofa signs”). These Soofa signs are 100% solar powered and wirelessly connected.

B. The City desires to obtain the services of Vendor for the installation, operation and maintenance of up to six (6) Soofa signs in the City of San Pablo.

### Agreements

NOW, THEREFORE, THE CITY AND THE VENDOR HEREBY AGREE AS FOLLOWS:

#### 1. Scope of Services.

The Vendor shall provide the services detailed in this Agreement. In general, the services shall consist of the following:

- a. The installation, cleaning, maintenance and repair or replacement of up to six (6) Soofa signs in locations approved by the City.
- b. The management of informational content provided by the City for display on the Soofa signs.
- c. The solicitation, from local businesses and institutions, of digital and static advertising on the Soofa signs.
- d. The collection of all advertising revenue from the Soofa signs and remittance of the City’s share of such revenue on a quarterly basis.

#### 2. Specifications of Soofa Signs.

The Vendor shall manufacture and install Soofa signs in accordance with this Agreement and the specifications set forth in Exhibit A, attached hereto and incorporated herein by this reference, and the following:

a. The color scheme for the custom vinyl wrap for the Soofa signs shall be provided by the City.

b. The custom vinyl wrap will be designed to include the name and official logo of the City which shall be prominently displayed on both sides of each Soofa sign, and a vinyl decal wayfinding map of the City of San Pablo shall be displayed on the opposite side from the electronic paper screen. In the event the Vendor obtains advertisers for the vinyl wrapping of a Soofa sign, the City vinyl wrap may be replaced only for the duration of the advertising campaign, provided, however, that the City wayfinding map, as well as the City's name and logo on both sides of the sign, must continue to be displayed.

c. Digital informational content provided by the City on each Soofa sign shall be a minimum of twenty percent (20%) of the digital airtime or twenty percent (20%) of the screen real estate and digital advertising on each Soofa sign shall not exceed eighty percent (80%) of the digital airtime or eighty percent (80%) of the screen real estate, as appropriate.

d. The locations for the Soofa signs shall be determined by the City. The signs shall not interfere with the safe use of sidewalks or walkways, and shall not obstruct the visibility of motorists, pedestrians, or traffic control signs.

### 3. Price, Advertising Revenue and Payment Schedules.

a. The City shall pay the sum of \$8,000.00 for each of the first five (5) Soofa signs and the sum of \$4,000.00 for the sixth (6th) Soofa sign. The City shall be invoiced a thirty percent (30%) deposit of the full amount on the date this Agreement is executed, and the invoiced amount shall be due and payable within thirty (30) days from the date of the invoice. The City shall be invoiced for the remaining seventy percent (70%) of the full amount on the day that the last Soofa sign is installed, and the invoiced amount shall be due and payable within thirty (30) days from the date of invoice. Payment for each of the Soofa signs shall include the cost of all content management services to be provided for those signs during the Initial Term of this Agreement (defined in Section 4). All payments must be made in US dollars and made by check or electronic transfer. Except as otherwise set forth in this Agreement, the Vendor shall retain ownership of the installed Soofa signs.

b. From and after the Initial Term of this Agreement (defined in Section 4), the cost of all services to be provided for each Soofa sign shall be \$3,000.00 per year, payable by the City annually on the first day of each Renewal Term (defined in Section 4).

c. The Vendor shall solicit, from local businesses and institutions, digital and static advertising on the City's Soofa signs. The Vendor shall manage all advertising contracts, including the collection of advertising fees and costs, and shall pay to the City twenty percent (20%) of the "net revenues" (as defined herein). The advertising revenue to the City shall be paid on a quarterly basis within forty-five (45) days of the end of each quarter, and shall be accompanied by a statement of the gross receipts and permitted expenses. "Net revenues," as used herein, shall mean the gross receipts to the Vendor from all advertising and sponsorship (digital or static) provided on the City's Soofa signs less permitted expenses. "Permitted expenses," as used herein,

shall mean the Vendor's actual costs (1) to operate the software for the Soofa signs and (2) for the routine cleaning of the Soofa signs. The Vendor shall keep accurate books and records of all gross receipts and permitted expenses, which shall be open for inspection, copying or audit by the City at all times.

4. Initial Term and Renewal Terms.

The initial term of this Agreement shall commence on the date of this Agreement set forth in the opening paragraph and end on the date that is one calendar year from the date of completed installation of the last Soofa sign to be installed (the "Initial Term").

The City shall have the right to renew this Agreement for up to four (4) additional one-year terms (each a "Renewal Term"), effective immediately upon the termination date of the previous term, upon the same terms and conditions as provided in this Agreement.

5. Location and Installation of Soofa Signs; Relocation of Soofa Signs.

Within fifteen (15) days of the date of this Agreement, the City shall submit to the Vendor a map identifying the proposed location for each of the six (6) Soofa signs. Within five (5) days of receipt of the City's map, the Vendor will submit a no-fee encroachment permit application to the City for the proposed locations. Following satisfaction of all City permit requirements, the City shall designate an approved location for each of the six (6) Soofa signs and shall authorize and direct the Vendor to proceed to install said Soofa signs in locations designated by the City. The Vendor shall complete the installation of the Soofa signs within forty (40) business days of the City's authorization to proceed.

In the event that the City and the Vendor agree that the location of a particular Soofa sign is no longer viable, the sign will be relocated by the Vendor to a new location at no cost to the City. In the event that the City needs or desires to have a specific Soofa sign relocated to a new location, the sign will be relocated by the Vendor to a new location at no cost to the City. Any relocation site shall be determined in accordance with the procedure identified in this section for determining the original sign locations.

6. Maintenance and Repair or Replacement of Soofa Signs.

The Vendor shall maintain the Soofa signs throughout the Initial Term and any Renewal Term of this Agreement in accordance with the following requirements:

a. The Soofa signs shall be cleaned of all dirt and debris and inspected for damage not less than every two weeks.

b. Graffiti of any Soofa sign shall be promptly removed and, in any event, not more than five (5) business days following notice from the City. If the custom vinyl wrap needs to be replaced, the Vendor shall complete the replacement within fifteen (15) days of receipt of the City's notice.

c. The electronic paper screen display shall be maintained in good condition and proper working order, consistent with the requirements for the content management services to be provided in accordance with this Agreement.

d. A damaged Soofa sign shall be promptly repaired or replaced and, in any event, within fifteen (15) days of the City's request for repair or within thirty (30) days of the City's request for replacement. In the event repair or replacement is not completed within the times set forth in this subparagraph, the City shall be credited for the prorated annual cost for the applicable sign until the repair or replacement has been completed.

#### 7. Content Management Services.

The City shall have the right to provide informational content to be displayed on all portions of the electronic paper screen display other than that being used for advertising as set forth in Section 2.d hereof. Such content shall be provided using the web-based content management system called "Soofa Talk" at [www.soofatalk.com](http://www.soofatalk.com), which will allow the City to add, change and delete content at any time.

The intent of the Soofa signs is to promote local healthy community content. As such, all images and content displayed will be in good taste and consistent with the standards and practices of the community. Any advertisement that is in violation of any law, false, misleading or deceptive, contrary to moral or ethical standards, or contrary to community standards is prohibited. More specifically, the Vendor shall not permit the display of any message that:

a. Is inherently false, misleading, or libelous (i.e., speech that is incapable of being presented in a manner that is not misleading);

b. Promotes the sale or use of alcohol, tobacco products or marijuana, whether directly or indirectly;

c. Promotes gaming establishments outside of the San Pablo city limits;

d. Contains "obscene matter," as that term is defined in local, state or federal law, including but not limited to any statements or words of an obscene, indecent or immoral character, or any picture or illustration of any human figure in such detail as to offend public morals or decency or any other matter or thing of an obscene, indecent or immoral character;

e. Contains any "political advertising," which means advertising that promotes or opposes any candidate for public office or promotes or opposes a ballot measure, referendum, bond issue, or any federal, state or local legislation, regulation, or other discretionary action;

f. Contains language that presents a clear and present danger of causing riot, disorder, or other imminent threat to public safety, peace, or order; or

g. Promotes any product, service or activity that is illegal under local, state or federal law.

The Vendor shall manage and review all advertising content before it goes live on the Soofa signs, and shall reserve in its advertising contracts the right to reject and remove any advertisement in its sole discretion. In the event that content on the Soofa signs does not appear to meet the standards listed herein in the sole discretion of the City, the City shall notify the Vendor in writing regarding the non-compliant content and the Vendor shall remove the non-compliant content from the display promptly and, in any event, not less than four (4) hours from receipt of the City's written notice during regular business hours.

8. Prevailing Wages.

The installation, maintenance, and repair or replacement of the Soofa signs is subject to the requirements of Section 1720 *et seq.* of the California Labor Code requiring the payment of prevailing wages, the training of apprentices and compliance with other applicable requirements. Contractors and all subcontractors who perform such work are required to comply with these requirements. Prevailing wages apply to all projects over \$1,000 that are defined as a "public work" by the State of California. This includes construction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds. The applicable California prevailing wage rates can be found at [www.dir.ca.gov](http://www.dir.ca.gov). The Vendor shall defend, indemnify and hold the City and its elected officials, officers, employees, and agents harmless from any claim or liability arising out of any failure or alleged failure to comply with the prevailing wage requirements.

9. Indemnification.

For the purposes of this Section 9, the following definitions will apply:

a. "Person" is to be interpreted broadly and includes the Vendor and the Vendor's directors, officers, employees, contractors, and agents, and the City and the City's elected officials, officers, employees, contractors, and agents.

b. "Liabilities" means all liabilities, claims, demands, damages, and costs (including reasonable attorneys' fees and litigation costs through final resolution on appeal) that arise directly or indirectly from the installation, operation, maintenance and repair or replacement of the Soofa signs in accordance with this Agreement.

c. "Occurrence" means (1) the death of, or injury to, any Person; and (2) the damage to, or destruction of, any real property, personal property (including intellectual property), or the environment in which the Soofa signs are located.

The Vendor agrees to indemnify, protect, defend, and hold harmless City and its elected officials, officers, employees, volunteers, agents, and representatives and each of their successors and assigns from and against any and all third party claims, judgments, causes of action, damages, penalties, costs, liabilities, and expenses, including all reasonable out-of-pocket costs,

attorneys' fees, expenses and liabilities incurred in the defense of any such claim or any action or proceeding brought thereon, arising at any time during or after the Initial Term or any Renewal Term as a result of (directly or indirectly) or in connection with (1) any default by the Vendor under this Agreement (including in the performance or non-performance of any obligation on the Vendor's part to be performed under the terms of this Agreement); and (2) any negligent or willful act, error or omission of the Vendor or its representatives or agents in connection with the installation, operation, maintenance, and repair or replacement of the Soofa signs ( collectively, "Indemnification"). The Vendor must provide such Indemnification by and through counsel reasonably approved by the City. Without limiting the foregoing, the Vendor's obligation under this section includes Liabilities arising from any of the following:

- a. Any Occurrence that is caused by, or related in any way to, a verbal or nonverbal display on any of the Soofa signs.
- b. The Vendor's failure to perform any provision of this Agreement due to no fault of the City, to comply with any requirement of law applicable to the Vendor, or to fulfill any requirement imposed by any governmental entity (including the City when acting in its governmental capacity).
- c. Any claim that the Vendor's policies with respect to advertising time violate any person's or persons' First Amendment rights.
- d. Any Occurrence caused or allegedly caused by any condition of any of the Soofa signs.

The Vendor agrees that its Indemnification obligation under this section includes the reasonable costs of attorney's fees incurred by the City Attorney's Office to monitor and consult with the Vendor regarding strategy, the defense of any such Liabilities, including discussions, providing direction with regard to preparation of pleadings, settlement, and attendance at court hearings, mediations, or other litigation related appearances. The City will use its best efforts to avoid duplicative attorney work or appearances in order to keep litigation costs to a reasonable minimum. The Vendor further acknowledges and agrees that settlement of any Liabilities requires the consent of the City. The City agrees that its consent will not be unreasonably withheld provided that the Vendor is financially able (based on demonstrated assets) to fulfill its obligation to indemnify the City for the costs of any such settlement as required under this Agreement.

The Indemnification obligations of the Vendor hereunder shall survive the termination of this Agreement for a period of three (3) years following such termination.

#### 10. Insurance.

During the Initial Term and any Renewal Term, the Vendor shall procure and maintain the following forms and amounts of insurance covering the Soofa signs and the Vendor's obligations related thereto. Such insurance must be primary to and not contributing with any other insurance, self-insurance or joint self-insurance maintained by the City, and must name the City as an additional insured.

a. Commercial General Liability Insurance. A policy of commercial general liability insurance (occurrence form) having a combined single limit of not less than Two Million Dollars (\$2,000,000) per occurrence and Four Million Dollars (\$4,000,000) annual aggregate, providing coverage for, among other things, blanket contractual liability (including the Vendor's Indemnification obligations under this Agreement), premises liability, products and completed operations liability, broad form property damage, and bodily injury (including wrongful death) and advertising injury coverage.

b. Workers' Compensation and Employer's Liability Insurance. Workers' compensation insurance, if required by law, that complies with all applicable state statutes and regulatory requirements, and employer's liability insurance coverage in statutory amounts. The Vendor must also require any contractor utilized to perform any services or work pursuant to this Agreement to maintain such workers' compensation insurance and provide proof of such insurance prior to commencing any services or work pursuant to this Agreement.

c. Property Insurance. Property insurance, including fire, vandalism and malicious mischief coverage, insuring the Soofa signs for their full replacement value against damage or destruction by fire or by any of the perils commonly covered under the standard extended-coverage endorsement to fire-insurance policies issued on real property in Contra Costa County.

The Vendor's insurance must be written by companies licensed to do business in California and having a "General Policyholders Rating" of at least A/VII as set forth in the most current issue of "Best's Insurance Guide."

The Vendor shall deliver to the City certificates of insurance as required hereunder promptly following the execution of this Agreement and, in any event, prior to any work of installation of a Soofa sign pursuant to this Agreement. Each certificate of insurance shall expressly provide that the insurance may not be cancelled or modified except after thirty (30) days prior written notice to the City. If the Vendor fails to maintain any insurance required by this Agreement, the Vendor shall be liable for all losses and costs resulting from such failure.

#### 11. Enforcement of Agreement and Termination.

a. California Law. This Agreement shall be interpreted, construed and governed in accordance with the laws of the State of California except those pertaining to choice of laws. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Contra Costa, State of California, or any other appropriate court in such county, and the Vendor covenants and agrees to submit to the personal jurisdiction of such court in the event of such action. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Northern District of California.

b. Disputes; Default. If any party fails to perform any of its obligations under this Agreement, such failure shall constitute a default. The non-defaulting party shall give the

defaulting party written notice of the default. The defaulting party shall have ten (10) days after the receipt of such notice in which to cure the default.

c. Waiver. Waiver by any party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any party of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision or a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by the City of any work or services by the Vendor shall not constitute a waiver of any of the provisions of this Agreement. No delay or omission in the exercise of any right or remedy by a non-defaulting party shall impair such right or remedy or be construed as a waiver. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

d. Rights and Remedies are Cumulative. Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

e. Legal Action. In addition to any other rights or remedies, either party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement, provided, however, that the City shall have no liability for damages whatsoever under this Agreement. The parties acknowledge and agree that it is a material part of the consideration hereunder to the City that the City shall not be at any risk of liability for money damages relating to or arising from this Agreement. The Vendor, for itself and for all successors and assignees, hereby releases the City and all of its agents, employees, representatives, council members, board members, consultants, and officers from any and all claims seeking to impose money damages on the City as a result of the City's negotiation, drafting, execution or performance of this Agreement.

f. Termination for Default of Vendor. In the event the Vendor fails to perform its obligations under this Agreement, or in the event the Vendor files a voluntary petition in bankruptcy or proceedings in bankruptcy are instituted against the Vendor and the Vendor is thereafter adjudicated bankrupt pursuant to such proceedings, or in the event a court takes jurisdiction of the Vendor and its assets under the provisions of any federal bankruptcy reorganization act, or in the event that a receiver of the Vendor's assets is appointed, or in the event the Vendor executes an assignment for the benefit of its creditors, the City may (after providing any applicable notice and opportunity to cure) terminate this Agreement upon written notice to the Vendor. In such event, neither party shall have any further rights against or liabilities to the other hereunder, except that:

1. The Vendor shall immediately remove all of the installed Soofa signs from their locations in the public rights-of-way and shall repair any damage to the public rights-of-way; and



2. The Vendor shall be liable to the City, and shall immediately reimburse the City, for the pro rata portion of the City's payments applicable to the remaining portion of the Initial Term or any Renewal Term.

In the event the Vendor has not removed all of the installed Soofa signs within thirty (30) days after receipt of the City's notice of termination, the City shall have the right to remove and dispose of the installed Soofa signs after sixty (60) days following receipt of the City's notice of termination without any liability to the Vendor.

g. Attorneys' Fees. If either party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief that may be granted, whether legal or equitable, shall be entitled to reasonable attorneys' fees, including attorneys' fees on any appeal. In addition, a party entitled to attorneys' fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs the court allows that are incurred in such litigation.

12. Notices.

Any notice or other communication to be given under this Agreement must be in writing and will be considered properly given and effective only when addressed to the persons identified below and (a) mailed, postage prepaid, by certified or registered mail, return receipt requested, or (b) delivered by personal or courier delivery, or (c) sent by email (immediately followed by one of the preceding methods). Notices or communications will be deemed received upon the earlier of receipt or three (3) days after the date of mailing. A party may change its address for these purposes by giving written notice of the change to the other party in the manner provided in this section.

If to the City:

City of San Pablo  
1000 Gateway Avenue  
San Pablo, CA 94806  
Attention: City Manager  
Email: MattR@sanpabloca.gov

With a copy to:

City Attorney  
Email: LynnN@sanpabloca.gov

If to the Vendor:

Changing Environments, Inc.  
24 Thorndike Street  
Cambridge, MA 02141  
Attention: Holly McKenna, Vice President  
Email: Holly@soofadigital.com

13. Assignment Prohibited.

The Vendor may not assign or otherwise transfer its rights and obligations under this Agreement without the City's prior written consent, which may be withheld in the City's sole and absolute discretion.

14. Legal Relationship.

The Vendor is, and at all times shall remain, an independent contractor, not an agent, officer or employee of the City. As an independent contractor, the Vendor shall not be entitled to any salary, fringe benefits, workers' compensation, retirement contributions, sick leave, insurance or any benefit or right connected with employment by the City, other than as specifically provided in this Agreement.

15. Entire Agreement.

This Agreement represents the entire integrated Agreement between the City and the Vendor and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by a written instrument signed by both the District and the Vendor.

16. Counterparts.

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

IN WITNESS WHEREOF, the City and the Vendor have executed this Agreement as of the date first above set forth.

CITY OF SAN PABLO (“City”)

By \_\_\_\_\_  
Matt Rodriguez, City Manager

Approved as to Form:

\_\_\_\_\_  
City Attorney

Attest:

\_\_\_\_\_  
Dorothy Gantt, City Clerk

CHANGING ENVIRONMENTS, INC. (“Vendor”)

By \_\_\_\_\_

Title: \_\_\_\_\_

By \_\_\_\_\_

Title: \_\_\_\_\_

# Exhibit A

