



STREET FURNITURE AGREEMENT

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AGREEMENT DATED the day of January 2007

BETWEEN:

The City of Marion (ABN 373 721 622 94) of 245 Sturt Road, Sturt SA 5047 (the "Council"), of the one part, and

Claude Group Pty Ltd (ABN 90 000 006 520) of Level 3, 1 Rosebery Avenue, Rosebery NSW 2018 ("The Company"), of the other part.

RECITALS:

The Company has made a submission to Council for the supply, installation, cleaning and maintenance of Bus Shelters on public road reserves within the Council's boundaries on the basis that, amongst other things, such Bus Shelters will be constructed and installed at The Company's cost in return for The Company being granted exclusive rights to display advertisements thereon.

Council has resolved to accept The Company's submission and pursuant to that decision the parties have entered into this Agreement.

1. Definitions and Interpretation

In this Agreement the terms listed hereunder shall have the following meanings unless the context otherwise requires:

'Agreed Sites' means the agreed Sites listed in Schedule 1.

'Authorisation' means any authorisation, agreement approval, licence, permit, consent, qualification, accreditation, filing, registration, certificate, resolution, direction, declaration or exemption and any renewal and variation of them by or with a Governmental Agency;

'Bus Shelter' means a freestanding shelter that may or may not incorporate an advertising panel in accordance with the specifications and drawings agreed between The Company and the Council pursuant to clause 3 installed within the City of Marion by The Company pursuant to this Agreement.

'Commencement Date' means 12 December 2006 or such later date agreed between the parties.

'Concept Drawings' means the detailed engineers drawings and installation methods attached to this Agreement at Schedule 2.

'Final Design' has the meaning given to that term in clause 3.1

'Law' means any statute, regulation, order, rule, subordinate legislation or other document enforceable under any statute, regulation, order, rule or subordinate legislation.

'Local Content Advertising' means advertising promoting businesses or events within the City of Marion.

'Term' means the period starting on the Commencement Date and finishing on the Termination Date.

'Termination Date' means the date falling ten (10) years after the Commencement Date or such earlier date that this Agreement is terminated in accordance with its terms.

'Works' has the meaning given to that term in clause 4.1.

‘Year’ means the period of twelve months commencing on an anniversary of the Commencement Date in one year and ending an anniversary of the Commencement Date of the next year. The First Year commences on the Commencement Date and ends on the first anniversary. The Second Year is the Year immediately following the first year and so on.

In this Agreement unless the contrary intention appears:

- headings are for ease of reference only and are not relevant to interpretation;
- the singular includes the plural and vice versa;
- a reference to a gender includes all genders;
- a reference to a person includes bodies corporate, unincorporated associations and partnerships;
- a reference to the Recitals, a clause or Schedule is a reference to the recitals, a clause or schedule of this Agreement;
- where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- monetary references are references to Australian currency;
- the meaning of general words is not limited by specific examples introduced by **including, for example** or similar expressions;
- the Recitals and Schedules form part of this Agreement; and
- in the interpretation of this Agreement, no rule of construction applies to the disadvantage of one party on the basis that that party put forward or drafted this Agreement or any provision in it.

2. Bus Shelters Sites

Subject to clause 2.1, The Company shall, at its sole expense, supply and install and maintain during the Term a minimum of thirty-five (35) Bus Shelters at locations agreed to between the Council and The Company (each such location a ‘Site’) in accordance with the terms and conditions of this Agreement.

2.1 The Company will install fifteen (15) Bus Shelters in the first Year (including the installation of a Bus Shelter at each of the eleven (11) Agreed Sites) with the remainder to be installed during the Second Year and the Third Year in accordance with a program to be mutually agreed. If the parties are unable to agree the Sites or the installation program within the First Year then either party immediately may terminate this Agreement by notice to the other party.

2.2 If the parties agree, The Company may at any time during the Term install additional Bus Shelters in a phased program, however The Company acknowledges that this Agreement does not confer on the Company an exclusive right or a right in priority to others to erect and/or display advertising on bus shelters within the City of Marion.

2.3 If at any time during the term of this Agreement -

(a) The Company is prevented or prohibited from exhibiting advertisements on any Bus Shelter by reason of its location.

(b) Any Bus Shelter is required to be dismantled due to road works or works in respect of any public utilities or services.

(c) Any Bus Shelter becomes obscured or otherwise unsuitable for the display of advertisements.

(d) Any Bus Shelter is subject to constant and excessive vandalism;

then The Company and the Council must in good faith seek to identify and agree an alternative Site for the Bus Shelter and The Company will bear all costs associated with relocating the Bus Shelter and making good the original Site from which the Bus Shelter is removed.

3. Design, Specifications and Approvals

3.1 Within 3 months from the Commencement Date, the Company must prepare and reach agreement with the Council with respect to the design and specifications (the 'Final Design') for the Bus Shelters to be installed during the Term. In preparing the Final Design The Company must comply with the following requirements:

(a) The Final Design must be consistent and compatible and conform with all Authorisations as amended from time to time and other Laws and if constructed, produce infrastructure that will meet the relevant parts of all Laws.

(b) The Final Design must be consistent with the Concept Drawings except to the extent the Council proposes variations to same.

(c) Without limiting clause 3.1(a) the Final Design must contemplate the use of design features and materials which limit the potential impact of vandalism on the appearance or structure of the Bus Shelter.

If the parties are unable to agree the Final Design within the specified time frame then either party may immediately terminate this Agreement by notice to the other party.

3.2 The Company prior to the installation of any Bus Shelters shall obtain approval from the Council as required and all other Authorisations required by Law.

The Council shall provide reasonable assistance to The Company in promptly securing such approvals and Authorisations provided that the Council shall not be liable to The Company in the event that any such approvals, cannot be obtained.

Notwithstanding the Council's undertaking, The Company agrees and acknowledges that the Council cannot and does not undertake any obligation or make any commitment as regards any determination under the *Development Act 1993 (SA)* or any other legislation with respect to the Authorisations required by The Company for the Final Design or the Works.

4. Installation

4.1 The Company, when installing any Bus Shelter (the 'Works'), shall –

(a) Ensure that the levels of footings for the Bus Shelter are in accordance with the Council's requirements;

(b) Provide adequate protection for the public in the form of safety barricades and warning signs during the installation process to the Council's satisfaction;

(c) Use its best endeavours to ensure that no unreasonable or unnecessary nuisance or danger is caused to any person or property;

(d) Carry out the Works in an expeditious manner;

(e) Restore any excavation to its original condition, unless Council advises otherwise, whereby Council will make good the restoration;

(f) Not undertake any portion of the Works until all necessary Authorisations in relation to such portion of the Works have been obtained; and

(g) Ensure the Works comply in all respects with all Authorisations and Laws.

4.2 Without limiting clause 4.1, all Bus Shelters shall be erected in good and a proper manner in accordance with the Final Design subject to any modifications as may be approved by the Council.

4.3 The Company shall not erect any Bus Shelter so as to obscure or interfere with the view of any road hazard, traffic signs or signals, road intersections or oncoming vehicles or other vehicles or persons at a marked foot crossing or any other obstructions which should be visible to motorists and other road users.

4.4 Council shall use reasonable endeavours, having regard to the benefits to both parties in having advertisements displayed on Bus Shelters which are clearly visible, not to erect or cause or permit to be erected any extraneous objects such as trees or garbage bins or commercial signage on the pavement either within fifteen (15) metres of the approach side of any Bus Shelter unit or within seven (7) metres of the departure side. Any such extraneous objects placed within this area shall be by consultation between the Council and The Company.

4.5 The Council will provide up to ten concrete slab footings reasonably required to facilitate the Works if required by The Company at such times and at such locations as are mutually agreed.

4.6 The Company shall provide the Council with 'as built' drawings for each Bus Shelter installed during the Term.

5. Exclusive Right to Display Advertisements on Company Owned Bus Shelters

5.1 Subject to the terms and conditions contained in this Agreement, the Council hereby grants to The Company the exclusive right to display advertisements on Bus Shelters installed and owned by The Company during the Term.

5.2 The Company may display a maximum of two (2) advertisements on each Bus Shelter.

5.3 The Council shall not grant, during the Term, a licence or permit to any other person or company the right to erect advertising signs or signs of any type or description upon The Company owned Bus Shelters;

6. Restrictions on Advertisements

6.1 The Company shall use its best endeavours to display on Bus Shelters only advertisements which comply with Commonwealth and State legislation and all voluntary codes of conduct established by the Advertising Industry, and that exhibit high quality graphic designs and finish.

6.2 In particular The Company shall not display:

(a) any advertisement which is controversial in nature, or that is likely to be considered offensive;

(b) any advertisement depicting smoking or for a tobacco product; or

(c) any advertisement which resembles in shape, size or colour any traffic signs, or which has the appearance of giving any instructions or other directions to traffic, or which flashes or contains any moving parts whether glary or luminous.

6.3 The Company shall not be required to obtain the prior approval of the Council for each individual advertisement proposed to be displayed on Bus Shelters so long as The Company is satisfied it has and will comply with the obligations of the Local Government Act 1999 (SA), as amended with regard to each advertisement and the display of each advertisement and the provisions of this Agreement.

6.4 Unless otherwise agreed by the Council, notwithstanding any other provision of this Agreement, The Company must display only Local Content Advertising on the Bus Shelters.

6.5 The Council may, in writing, direct The Company to remove any advertisement from a Bus Shelter which in its reasonable opinion, infringes clauses 6.1, 6.2, 6.3 or 6.4 and The Company shall promptly obey any such direction.

7. Maintenance

7.1 The Company shall at its sole expense during the Term:

(a) Carry out all routine maintenance and cleaning of all advertising Bus Shelters erected by The Company based on regular inspections (at least weekly).

(b) During each maintenance inspection clean and remove any graffiti, stickers and posters so that the Bus Shelters remain as far as possible a 'like-new' appearance.

(c) Commence to repair all structural damage (howsoever caused, including motor vehicle accident damage) to any Bus Shelter within 24 hours of receiving notice of the damage and promptly bring such repairs works to completion.

(d) Where such damage to any Bus Shelter has created a hazard (eg. broken glass), remove that hazard and make the unit safe within 12 hours of receiving notice of the damage.

(e) Repair and maintain Bus Shelters only at times which will not interfere with the free flow of traffic in streets carrying high traffic volumes unless the repair or maintenance is being carried out to remove a hazardous situation and;

(f) Keep adequate records of such maintenance and repair operations and provide copies of such records to the Council on request from the Council.

7.2 A damage report telephone number shall be prominently displayed on Bus Shelters. Such a number will be maintained and attended on a 24hour 7 days a week basis by The Company.

7.3 The Council shall be responsible for removing rubbish near all the Bus Shelters and cleaning the footpaths on or near where the Bus Shelters are installed in accordance with the Council's standard practice.

7.4 The Council acknowledges The Company's right to take legal action at its own cost against any third party responsible for damage to the Company's Bus Shelters and shall co-operate fully with The Company in relation to any such legal proceedings provided that the Council shall not be required to incur costs in providing such assistance.

8. Duration / Ownership

8.1 Subject to the terms and conditions of this Agreement the rights conferred on The Company by this Agreement shall extend for the duration of the Term, and provided that the Company has duly and faithfully observed and performed its covenants and conditions under this Agreement, a renewal of this Agreement for periods of five (5) years under the same terms and conditions of this Agreement may be negotiated between The Company and The Council.

8.2 All advertising Bus Shelters, which are installed by The Company, shall remain the property of The Company for the duration of the Term.

8.3 At the end of the Term, and if this Agreement is not renewed, then The Council may become the owner of the Bus Shelters provided and subject to reaching agreement with The Company on the terms of transfer. Upon the transfer of a Bus Shelter to the Council the Company shall cease to be liable for the maintenance and repair of that Bus Shelter as contemplated by this Agreement.

8.4 At the end of the Term, The Company shall remove any Bus Shelters which are not transferred to the Council at the Company's expense. The Company shall pay to the Council the cost of repair to any damage caused by the Company to Council infrastructure as a result of such removal

9. Assignment

The Company shall not assign or transfer its interest under this Agreement without the prior approval of the Council provided that this clause does not prevent The Company assigning or transferring its interests under this Agreement to any 'related corporation' as defined in the Corporations Law.

10. Default

10.1 In the event that the default is made in the fulfilment of any covenant condition or stipulation whether expressed or implied herein and on the part of The Company, to be performed or observed or in case The Company shall go into liquidation voluntarily or compulsorily (except for the purpose of reconstruction) the Council may –

(a) itself fulfil the covenant condition or stipulation and recover all costs necessarily incurred by the Council of so doing from The Company as a debt due on demand: and/or

(b) Terminate the Agreement by giving written notice to The Company without releasing The Company from liability in respect of the breach or non-observance of any such covenant condition or stipulation.

Provided always that no termination of the Agreement shall be made under the power conferred on the Council by clause 10.1 b); unless and until the Council has served on The Company a notice specifying the particular breach complained of and if the breach is capable of remedy requiring The Company to remedy the breach or in any case requiring The Company to make compensation in money for the breach, and The Company fails within a reasonable time to remedy the breach or pay the compensation to the satisfaction of the Council.

11. Indemnity

The Company shall indemnify the Council from and against all actions, proceedings, claims costs and demands in respect of-

(a) Any claim for damages or compensation by any person or company arising out of the erection, existence, maintenance, repair or want of repair of any Bus Shelter arising from any matter directly or indirectly connected herewith other than where the claim arises out of or in connection with any wilful neglect, act or default by the Council, its servants or agents;

(b) Any advertisement which allegedly to be defamatory, obscene, blasphemous or seditious; or

(c) The content or claims of any advertisement or any breach of any provision of the Trade Practices Act or any general law or statute law of the State or Commonwealth.

12. Insurance

The Company shall itself, or through its parent Company, effect and maintain in full force and effect for the duration of this Agreement, a public risk insurance cover for an amount not less than \$100 million (one hundred million dollars) for any individual claim to the reasonable satisfaction of the Council. Upon request The Company must make available reasonable evidence of such insurance cover for inspection by the Council.

13. Costs

Each party shall be responsible for meeting its own legal costs and disbursements in respect of the preparation and execution of this Agreement.

14. Notices

All notices required or permitted to be given to a party pursuant to this Agreement shall be in writing and shall be deemed to have been duly given if left at that party's address as aforesaid or such other address as subsequently advised in writing to the other party or if sent by prepaid ordinary mail and shall be deemed to have duly given and received –

(a) When delivered (in the case of it being left at the party's address); or

(b) on the seventh (7th) business day after posting (in the case of it being sent by prepaid ordinary mail) to that party's address.

15. GST

If GST applies to any Supply made by either party under or in connection to this Deed, the consideration (or payment) provided or to be provided for that Supply will, upon production by the Supplier of an appropriate tax invoice, be increased by an amount equal to the GST liability properly incurred by the party making Supply. Each party here warrants that at the time any Supply is made under this Deed on which GST is imposed they are or will be registered under the GST Law. If the other party requests written evidence and registration, the first party will properly produce evidence satisfactory to the other party of such registration.

16. Miscellaneous provisions

(a) This Agreement may only be varied if agreed by all the parties in writing by a subsequent document.

(b) This Agreement constitutes the entire agreement between the parties and supersedes all prior representations, agreements, statements and understandings, whether verbal or in writing.

(c) Each release and/or indemnity by a party in this Agreement is a continuing obligation of that party despite:

- any settlement of account; or
- the occurrence of any other thing;

and remains in full force until all money owing, contingently or otherwise, under the indemnity has been paid in full.

Each release or indemnity by a party in this Agreement is an additional, separate and independent obligation of that party and no one indemnity limits the general nature of any other indemnity.

(d) If any provision of this Agreement is invalid or unenforceable in accordance with its terms, all other provisions which are self sustaining and capable of separate enforcement without regard to the invalid or unenforceable provisions are and will continue to be valid and enforceable in accordance with their terms.

(e) Any rights conferred by this Agreement are additional and without prejudice to all other rights and remedies available to the parties. No exercise or lack of exercise of a right constitutes a waiver by a party of any other right or remedy nor does any of the parties respective rights merge upon the termination of this Agreement.

(f) Failure or omission by a party to enforce or require strict compliance with a provision of this Agreement does not affect or impair that provision or the right of the party to avail themselves of any remedies they may have in respect of any breach of a provision.

(g) Each party must do all things necessary to give full effect to this Agreement and the transactions contemplated by this Agreement.

(h) This Agreement is governed by and will be construed in accordance with the laws of South Australia. The parties submit to the jurisdiction of the courts of South Australia and agree to issue any proceedings relating to this document in those courts.

THE COMMON SEAL of The Company
was affixed to this document in accordance
with its constitution:

in the presence of

Director

Witness

Print name

Print name

Signed for and on behalf of the Council by:

in the presence of:

Authorised Officer

Witness

Print name

Print name

SCHEDULE 1

AGREED SITES

Road	Stop No.	Location	Side, Width & Surface	Comment
Morphett Road	33A	North of Bay St, Seacombe Gardens	Eastern side, 6.6m Brick Paving	To be situation 3.5m of back of kerb
	24B	North of Lawson St, Glengowrie	Eastern side, 3.5m Brick Paving	North of Telstra pit
	16	South of Maxwell Tce, Glengowrie	Western side, 3.5m Brick Paving	To be situated on fence line Some tree trimming required Pad and tactiles required
	28A	North of Murray Tce, Oaklands Park	Western side, 3m + Brick Paving	Remove existing shelter
	29	North of Milham St, Oaklands Park	Eastern side, 2.1m bitumen footpath but a total 6m wide area	To be situated at the back of the existing footpath.
Diagonal Road	29F	South of Trott Grove, Marion	Eastern side, 2.8m Brick Paving	To be situated on fence line
Sturt Road	33	West of Winchester St, Dover Gardens	Southern side, 2.8m Brick Paving	To be situated on fence line
Marion Road	25	North of Norfolk Rd, Marion	Western side, 2.7m Brick Paving	To replace existing shelter in front of Harvey Norman To be situated on fence line
	25	North of Norfolk Rd, Mitchell Park	Eastern side, 4m plus. Unmade surface	Concrete Pad and tactiles required
	13	North of Shelley St,	Eastern side, 2.8m Brick paving	Relocate stop 10.5m to the south to accommodate shelter
Oaklands Road	24	West of the Sturt River	Southern side, 2.9m Brick Paving	To be situated on fence line

SCHEDULE 2
CONCEPT DRAWINGS



