

BILLBOARD OPERATING AGREEMENT

This Billboard Operating Agreement ("**AGREEMENT**") is dated _____, 202__ between the City of Santa Ana, a charter city and municipal corporation ("**CITY**") and _____, a _____ ("**OPERATOR**"), collectively referred to as "the Parties". This **AGREEMENT** shall become effective on the date that **OPERATOR** is issued a Permit by **CITY** (the "Effective Date") for the installation of a new digital billboard or conversion/reconstruction of an existing static billboard to a digital billboard at the following subject property location: _____, Santa Ana, California _____, referred to as the "Subject Property".

1. Public Benefit.

A. Intent. The purpose of this **AGREEMENT** is to collect fees for the operation of freeway-oriented digital billboards and to provide fees for mitigation options to be used by **CITY** to compensate for impacts to **CITY** services, residents, and/or businesses as set forth in Santa Ana Municipal Code section 41-1100 et seq. The Parties agree that this **AGREEMENT** confers substantial private benefits on **OPERATOR** which should be balanced by commensurate public benefits. As part of the city's billboard sign permit process, **OPERATOR** agrees to enter into this **AGREEMENT**. **OPERATOR** has elected to execute this **AGREEMENT** as it provides **OPERATOR** with important economic benefits. Accordingly, the Parties intend to provide consideration to the public to balance the private benefits conferred on **OPERATOR** by providing mitigation measures to the public and to pay for **economic and community-oriented** services using the operating agreement fees collected.

B. Local Hiring and Sourcing. In the construction, operation, and maintenance of its billboard, **OPERATOR** agrees to use its reasonable efforts to retain the services of qualified contractors and suppliers who are located in the City of Santa Ana or who employ a significant number of City of Santa Ana residents.

C. Existing Billboard Removal Plan or Economic and Community Benefits Plan. **OPERATOR** agrees to submit a Billboard Removal Plan (BRP) to remove existing static (non-digital) billboards within the City of Santa Ana for review and approval by **CITY** as part of its application for a new or converted/reconstructed digital billboard. The BRP must specify the minimum components listed below and must be attached to this **AGREEMENT** as Exhibit A. **OPERATOR** shall adequately document that it has met the BRP's obligations and commitments as a condition of renewal/extension of this **AGREEMENT** upon expiration of the initial term and any extensions.

i. BRP Minimum components:

- (1) Location of existing billboards to be removed, including a street address, geo-coordinates, and accompanying map.
- (2) Size of existing billboards to be removed, including dimensions of the overall structure, number of billboard faces on the structure,

dimensions of the billboard face, square footage of the billboard face, and accompanying photographs.

- (3) Timeline for removal of existing billboards identified, prior to release of utilities for any new or converted/reconstructed digital billboard identified in the application.
- (4) Provisions for advertising of any onsite available products or services, specified as a percentage of total hourly on- or offsite product or service advertisements.
- (5) Economic and Community Benefits Plan, if applicable as per item 7, below.
- (6) Documentation of any/all permit(s) required for removal.

ii. **Billboard Removal Ratios for Existing Static Billboards (Except as Noted Below):**

Table 1: Billboard Removal Ratios for Nonconforming Billboards

Project/Request	Required Removal
New Digital Billboard on a freeway	4 times the area of the proposed billboard*
Conversion/Reconstruction of Existing Static Billboard to Digital with No Expansion of Area	4 times the area of the proposed billboard
Conversion/Reconstruction of Existing Static Billboard to Digital Including Expansion of Area	4 times the area of the proposed billboard
Conversion of Existing Digital On-Premise Sign to Digital with No Expansion of Area	2 times the area of the proposed billboard*
Conversion of Existing Digital On-Premise Sign to Digital Including Expansion of Area	4 times the area of the proposed billboard*
New Digital Billboard with Mandatory On-Premise Advertising Associated with an On-Premise Regional Retail Commercial Business or a Regional Commercial Center	As determined under the Economic Community Benefits Plan
Conversion of Existing Digital On-Premise Sign to a Digital Billboard with Mandatory On-Premise Advertising Associated with an On-Premise Regional Automobile Dealership or Regional Commercial Center	As determined under the Economic Community Benefits Plan

*May be reduced subject to approval of Community Benefits Plan

As used in this section, the terms stated below shall be defined as follows:

1. **Regional Automobile Dealership:** An automobile dealership licensed by the state that sells new or used automobiles or other motor vehicles in conjunction with new automobiles to the general public on an integrated site which fronts onto one or more freeways, is plainly visible from one or more freeways, or is on a site which is located within three hundred (300) feet of the point where a freeway exit centerline intersects with a city street.
2. **Regional Business:** A business or enterprise offering commodities, goods, or services, either wholesale or public, to the broader Orange County region, on an integrated site which fronts onto one or more freeways, is plainly visible from one or more freeways, or is on a site which is located within three hundred (300) feet of the point where a freeway exit centerline intersects with a city street.

Regional Commercial Center: A large commercial complex containing a variety of stores, restaurants and other businesses housed in a series of connected and/or adjacent buildings within an integrated campus that shares common areas and parking facilities, and which fronts onto one or more freeways. Said center must be located on a site of no less than fifteen (15) acres.

iii. Economic and Community Benefits Plan:

Except as required by Table 1 above, **OPERATOR** may exercise the option to reduce the billboard removal ratio for billboards that are nonconforming as resulting from the adoption of Ordinance No. NS-____, subject to detailing provisions for economic and community benefits in an Economic and Community Benefits Plan in full accordance with Section 41-1113 of the Santa Ana Municipal Code as detailed and approved in the BRP. The terms of the Community Benefit Plan within the BRP shall be subject to review and approval by the City Manager as recommended by the City Attorney and Executive Director of the Planning and Building Agency.

For the proposed conversion of existing freeway-oriented on-premise digital signs to be considered for a reduction in or exemption from the required removal ratios as outlined in Table 1, the Subject Property shall contain an existing business that satisfies all of the criteria enumerated below:

- (1) Is a local tax revenue generating business, a retail mall, or a local taxable consumer goods retail district that is regional in nature and is able to reasonably demonstrate regional draw of consumers from neighboring cities and counties and competitiveness in the region; and
- (2) Is able to demonstrate annual gross taxable sales average of at least \$5,000,000 (five million); and
- (3) Is able to demonstrate making physical improvements to the property and onsite improvement within the three-year period prior to submitting an application to the **CITY** and a budgeted improvement plan for a minimum of a five (5) year period following final building approval; and
- (4) Is able to demonstrate an on-going business plan and a budget that include a marketing plan reaching out to customers in neighboring cities and counties for the three (3) year period prior to submitting an application to the **CITY** and a budgeted marketing plan for a minimum of a five (5) year period following final building approval; and
- (5) Has been continuously open to the public with reportable tax revenue for the five (5) year period prior to submitting an application to the **CITY**; and
- (6) Employs a minimum 20 percent (20%) of its employees who reside in Santa Ana; and
- (7) In receipt of a preliminary approval letter of conformance from Caltrans for an off-premise sign; and
- (8) Retain no less than thirty percent (30%) of time slots within and advertising cycle for advertising of the business and products available on the property; and
- (9) The applicant and business operator and the **CITY** shall enter into a Billboard Operating Agreement as set forth in Section 41-1113 of this Chapter.

For new digital billboards signs to be considered for a reduction in or exemption from the required removal ratios as outlined in Table 1, the Subject Property shall satisfy all of the criteria enumerated below:

- (1) Propose in conjunction with the development of a new or an existing tax revenue generating business, a retail mall, or a local taxable consumer goods retail district that is regional in nature and is able to reasonably demonstrate regional draw of consumers from neighboring cities and counties and competitiveness in the region, or is an established business with a national presence having at least fifty (50) or more locations nationally demonstrating the following economic benefits:
 - a. Projected annual gross taxable revenue average of at least \$5,000,000 (five million); and
 - b. Commit to employing at least forty (40) full-time employees, of which a minimum 20 percent (20%) of its employees who reside in Santa Ana; and
- (2) Retain no less than thirty percent (30%) of time slots within advertising cycle for advertising of the business and products available on the Subject Property; and
- (3) In receipt of a preliminary approval letter of conformance from Caltrans for an off-premise sign; and
- (4) The applicant and business operator and the **CITY** shall enter into a Billboard Operating Agreement as set forth in Section 41-1113 of this Chapter.

2. Effect of City Regulations on Development of Project.

Except as expressly provided in this **AGREEMENT**, all substantive and procedural requirements and provisions contained in **CITY's** ordinances, specific plans, design guidelines, rules and regulations, including, but not limited to zoning and building codes and approved billboard designs on file with the Planning and Building Agency, in effect as of the effective date of this **AGREEMENT**, shall apply to the construction and development of the Subject Property.

3. Operating Requirements

The following covenants shall run with the sites until such time as the billboards are removed from the sites:

- A. Covenants Regarding Operation and Maintenance. **OPERATOR** shall operate and maintain the billboards in good working order and in accordance with all applicable laws, including without limitation, the California Outdoor Advertising Act (California Business and Professions Code Section 5200, *et seq.*) and California Department of Transportation regulations and specifications adopted pursuant thereto (Title 4 California Code of Regulations, Section 2240, *et. seq.*).
- B. Maintenance. **OPERATOR** shall, at **OPERATOR's** sole cost and expense, maintain and repair or cause to be maintained and repaired the billboards and any and all security lighting or appliances installed in accordance with any entitlements and building permits issued by the **CITY** and any and all other applicable laws. The billboards and the sites

shall be kept free from the accumulation of debris and waste materials. All exterior painted surfaces shall be maintained at all times in a clean and presentable manner, free from chipping, cracking, peeling and defacing marks. All broken lights shall be immediately repaired in order to prevent hazardous conditions and/or invitation for trespassers and malicious mischief. Except during periods of construction, no lumber, trash, discarded equipment or other debris shall be stored in areas visible from the street.

- C. Graffiti Removal. All graffiti and defacement of any type, including marks, words and pictures must be removed and any necessary painting or repair completed within 24 hours of the **OPERATOR** becoming aware of the graffiti or the **CITY** reporting the graffiti to the **OPERATOR**.
- D. Design of potential graffiti-attracting surfaces. **OPERATOR** shall design the billboards and all associated structures visible from any public or quasi-public place in such a manner to consider prevention of graffiti in accordance with the Santa Ana Municipal Code section 41-638.2(b) as the same may be amended from time-to-time hereafter.
- E. Non-Operation and Removal. **OPERATOR** shall promptly repair the billboards in the event of damage, defect or other cause so as to maintain operations in accordance with this **AGREEMENT**. In the event that **OPERATOR** anticipates that a repair will require more than 30 days to complete, **OPERATOR** shall notify City in writing of the anticipated schedule and the cause of the delayed repair.

4. Operating Fee Rates for Billboards; Payment.

OPERATOR shall pay billboard operating fees to **CITY** as follows:

- A. **OPERATOR** shall pay **CITY** an annual operating fee, which shall be the greater of the Revenue Share generated from the Advertising Inventory or the minimum annual guarantee ("MAG"). The Revenue Share is defined as 30 percent of the Net Advertising Revenue. Net Advertising Revenue is defined as gross revenue received from the sale of Advertising Inventory, less bad debt only (not to exceed two percent of gross revenue). The minimum annual fee shall be no less than \$90,000 per face of the digital billboard being constructed, subject to three percent increases annually on the anniversary month of the Commencement Date.
- B. The annual operating fee shall be paid in equal monthly installments (the "Monthly Operating Fee"), due on the first day of the month in which the Commencement Date occurs. When the first day of the month falls on a City Holiday or City Hall Closure Day, then the reporting/remittance date shall fall on the next City business day following. The Monthly Operating Fee shall be acknowledged and agreed by **CITY** to be paid timely if paid on said date. When reporting/remitting is made by mail, the postmark date shall serve as proof of timely reporting/remittance.
- C. **OPERATOR** shall not add any ancillary use to the new digital billboard and shall not derive any ancillary revenue from the Subject Property other than advertising revenue unless agreed to in writing and approved by the City. Any approved ancillary revenue shall be referred to as Approved Ancillary Revenue. The terms of any Approved Ancillary

Revenue shall be mutually agreed on by **CITY** and **OPERATOR** by a separate writing, provided that the revenue share for Approved Ancillary Revenue shall not be less than 30 percent of gross ancillary revenue received less bad debt only (not to exceed two percent of gross ancillary revenue).

- D. The "Commencement Date" is the day that all of the following are true: (i) **OPERATOR** has obtained all Development Approvals, (ii) the billboard is fully constructed and operational and has electrical power from a permanent source, and (iii) the billboard has passed the City's final inspection. The Monthly Operating Fee shall be paid to CITY on the first day of the month that it is due. If the Commencement Date is other than the first day of a month, the first monthly payment of the Monthly Operating Fee shall be due on the first day of the month after the Commencement Date occurred.

5. Remittance and Reporting.

Beginning as set forth above and annually thereafter, **OPERATOR** shall report and remit payment to **CITY** of the applicable billboard operating fees set forth in Section 4 of this **AGREEMENT**.

On a twice-yearly basis, **OPERATOR** shall provide to the City advertising revenue reports (the "Advertising Reports" for all advertising sales at the Subject Property. Reports shall include gross revenue collected, advertisers, advertising rates, and occupancy rates for the preceding period.

OPERATOR shall maintain or cause to be maintained adequate accounting systems and controls to insure that all gross revenue is recorded. **OPERATOR** shall keep or cause to be kept true and accurate books and records for a period of seven years after end of the Term as defined in Section 8 and all business transactions related to the Subject Property, and City shall have the right, through its representatives and at all reasonable times, upon at least 7 days' prior written notice to **OPERATOR**, to inspect such books and records. If such books and records are not kept and maintained within a radius of 50 miles from the main office of the City, upon request of City, **OPERATOR** shall make such books and records available to City for inspection and audit at a location within that radius or **OPERATOR** shall pay to City the reasonable and actual costs incurred by City in inspecting and auditing such books and records, including but not limited to travel, lodging and subsistence costs.

6. Past due date – Past due penalty; Late interest.

- A. Any **OPERATOR** entity or individual who fails to pay the billboard operating fees required by this **AGREEMENT** when due shall be subject to past due penalties and interest as set forth herein.

- i. **OPERATOR** shall be considered past due if the required yearly operating agreement fee is not paid by the last day of the month following the month for which it is due.
- ii. For failure to fully pay any monthly fee when due, the following past due penalty and late interest charges shall be added to the unpaid balance amount owing:

- 1) A past due penalty of Ten Percent (10%) per month;

- 2) A late interest charge of One and One Half Percent (1.5%) per month added to the unpaid balance amount owing, inclusive of any prior past due penalty or late interest charges accrued.

- B. **CITY** is not required to send a past due notice or other bill or invoice to **OPERATOR**, or any other person subject to the provisions of this **AGREEMENT**, and failure to send such notice, bill or invoice shall not affect the validity of any operating fee, late penalty or late interest charge due under the provisions of this **AGREEMENT**.

7. Requirements for All Digital Billboards.

- A. Civic Promotions. **OPERATOR** agrees to provide free advertising time on the Digital Billboard to City for the promotion of community events, tourism activity and events, and other civic interests of the City.

- i. Amount of Advertising Time for Civic Promotions. Following the Commencement Date, **OPERATOR** shall permit City to use a minimum of 5% of the advertising inventory, up to one (1) spot in a standard eight (8) spot rotation on the Digital Billboard, for the entire Term of the **AGREEMENT** for civic promotions and public service announcements as supplied by **CITY**, without charge for advertising space (the "Free Advertising Space"). **OPERATOR** shall provide the Free Advertising Space evenly across all days and day parts. The foregoing obligation of **OPERATOR** to provide Free Advertising Space to City for Civic Promotions shall be and remain in effect only during those periods **OPERATOR** is operating the Digital Billboard with electronic/digital technology. In the event **OPERATOR** removes or is unable to operate the Digital Billboard for any reason, **OPERATOR'S** obligation to provide Free Advertising Space to City for any reason shall be suspended for the period of time it is not operating the Digital Billboard.

- ii. Process for City Requests to Utilize Advertising Space for Civic Promotions. City shall be responsible for providing **OPERATOR** with its Civic Promotions, which may be updated by City at any time, and for any costs associated with providing **OPERATOR** with associated artwork in acceptable format. City shall notify Operator at least thirty (30) days before the proposed display date of a Civic Promotion. City must submit "camera ready art" utilizing formats and protocols acceptable to **OPERATOR**. All copy shall be submitted to **OPERATOR** at least ten (10) business days in advance.

- iii. Limitations on City. City shall not charge for, or exchange goods or services for, any advertising space on the Digital Billboard provided by **OPERATOR** to City pursuant to this **AGREEMENT**; provided, however, that this limitation shall not be construed to prevent City from entering into agreements to promote properties within the City in conjunction with its tourism promotion activities, so long as City does not sell advertising for profit. In addition, it is expressly understood and agreed that Civic Promotions may not include any names, logos, marks, products, or services associated with any commercial entity, any campaign for public office in the City, or any third party non-governmental person or entity that is not located in, sponsored by or affiliated with the City. The foregoing limitation shall not be construed to prohibit the display of names, logos, or marks of organizations associated with City events or activities.

- B. Public Safety Announcements. **OPERATOR** shall utilize the advertising space on the Digital Billboards for regional emergency announcements and alerts, including but not limited to Amber Alerts and “wanted” criminal postings from law enforcement, without charge, as reasonably requested by the City of Santa Ana, in accordance with applicable local, regional, and/or state protocols.
- C. Unacceptable Content. **OPERATOR** agrees not to utilize the Digital Billboard to advertise tobacco products, adult entertainment businesses, as defined in the Santa Ana Municipal Code, conferences/conventions for any of the foregoing prohibited uses, sexually explicit messages, or any violent, hate, or other obscene messaging.

8. Term.

This **AGREEMENT** shall continue in full force and effect for a fifteen (15) year period commencing on the Commencement Date (“Term”). **OPERATOR** may notify City up to twelve months prior to the expiration date of this **AGREEMENT** of its desire to extend the term of this **AGREEMENT**, and City and **OPERATOR** shall enter into negotiations and may agree to extend the term of this **AGREEMENT** pursuant to a mutual agreement in writing upon terms acceptable to both parties. Following termination or expiration of this **AGREEMENT** and provided no extension of this **AGREEMENT** is agreed to, within ninety (90) days after the date of the termination or expiration of this **AGREEMENT**, **OPERATOR** shall, at its sole cost and expense, secure all required permits to, and shall, remove and properly transport the billboard from the Subject Property, shall return the Subject Property to its original condition, and shall not store any portion of the removed billboard on the Subject Property or any other location within City's jurisdictional boundaries. The billboard shall be deemed to have been satisfactorily removed for purposes of this Section 8 so long as no remnants of the sign structures remain visible above ground, all utilities are capped, and the site is graded, secured, landscaped, and irrigated to a condition satisfactory to **CITY**. If **CITY** is required to exercise its rights under this **AGREEMENT** due to **OPERATOR'S** failure to remove the billboard, then **CITY** shall be entitled to be reimbursed by **OPERATOR** any and all direct expenses incurred by **CITY** in exercising its rights under this subsection within no more than ten (10) days following **CITY'S** delivery of an invoice demanding payment for such expenses. Any such removal of the billboard by City shall not entitle **OPERATOR** to any damages of any kind whatsoever against **CITY** or its agents, and **OPERATOR** hereby releases and holds all City Parties harmless from indemnified claims and liabilities for any action by any of the City Parties in removing the billboard. **OPERATOR** hereby consents to **CITY'S** entry onto the site to accomplish such removal.

9. Business License Required.

A valid City of Santa Ana Business License is required for all entities engaged in operating digital billboards in the City of Santa Ana. It is unlawful for any person or legal entity to display advertising on a billboard in the City of Santa Ana without first having procured a City of Santa Ana business license.

10. Regulation by other Public Agencies.

It is acknowledged by the Parties that other public agencies not subject to control by the City, including, but not limited to, Caltrans, may possess authority to regulate aspects of the digital billboard as contemplated herein, and this **AGREEMENT** does not limit the authority

of any of those other public agencies. **OPERATOR** acknowledges and represents, in addition to City's regulations, **OPERATOR** shall, at all times, comply with all applicable Federal, State, local, and other public agency laws and regulations applicable to the billboard. To the extent any such other public agency or agencies preclude development or maintenance of the billboard, **OPERATOR** shall have the right to terminate this **AGREEMENT** by delivery to City of notice of termination, along with evidence reasonably satisfactory to City that the development and/or maintenance of the billboard has been precluded by another agency or agencies. Upon delivery of such evidence and notice of termination to the City, this **AGREEMENT** shall be deemed terminated and **OPERATOR** shall not be further obligated under this **AGREEMENT**; provided, however, that such termination shall not affect the **OPERATOR'S** obligation to pay any Development Review or Impact Fees that have already accrued, to indemnify and defend the City and any of its agents or consultants acting on its behalf for any Indemnified Claims and Liabilities pursuant to Section 11, and/or to remove the billboards from the site in accordance with Section 8 of this **AGREEMENT**, if applicable.

11. OPERATOR Indemnification of City.

- A. **OPERATOR** will defend, indemnify and hold **harmless CITY** from any claims, damages, injuries, or liabilities of any kind whatsoever sustained or incurred by **CITY** resulting from this **AGREEMENT**, or **OPERATOR's** performance and/or breach of this **AGREEMENT**.
- B. **OPERATOR** agrees to defend, at its sole expense, any action against **CITY**, its agents or consultants, officers, and employees related to this **AGREEMENT**. **OPERATOR** agrees to indemnify and reimburse **CITY** for any court costs and attorney fees that **CITY** may be required to pay as a result of any legal challenge related to this **AGREEMENT** and/or **CITY's** approval of a Billboard Permit or Conditional Use Permit. **CITY** may, at its sole discretion, participate at its own expense in the defense of any such action, but such participation shall not relieve the **OPERATOR** of its obligation hereunder.

12. Annual Review

During the term of this **AGREEMENT**, **CITY** shall annually review the extent of good faith compliance by **OPERATOR** with the terms of this **AGREEMENT**. **OPERATOR** shall file an annual report with the **CITY containing** detailed information regarding compliance with the terms of this **AGREEMENT** no later than March 15 of each calendar year.

13. Default and Termination for Cause.

This **AGREEMENT** may be terminated, for good cause, by City or **OPERATOR** if either gives the other Party written notice of default and if that default is not corrected (i) on or before ten (10) days after receipt of the notice for non-payment of any amount due or (ii) within thirty (30) days after receipt of the notice for any other default (except in connection with a default which cannot be remedied or cured within said 30-day period, in which event said 30-day period shall be extended for such time as shall be deemed mutually agreeable by City and **OPERATOR** necessary to cure the same, but only if the defaulting Party, within such 30-day period, shall promptly commence and thereafter proceed diligently and continuously to cure such default. In no event shall the period be extended beyond 90 days.).

If this **AGREEMENT** terminates due to non-performance by **OPERATOR**, then (i) any remaining unpaid Monthly Operating Fee that was due for any period before the date of that termination shall be immediately due and payable to City and (ii) **OPERATOR** at its sole cost, shall immediately remove the billboard and visible supporting equipment installed pursuant to this **AGREEMENT** and shall return the site to an acceptable condition wherein the billboard and its accompanying equipment and improvements are removed, and the site is graded, landscaped, irrigated, and secured; provided, that if **OPERATOR** fails to remove any of the billboard within ninety (90) days after this **AGREEMENT** is terminated pursuant to this subsection, then City shall be entitled to remove the remaining billboard and dispose of same. If City is required to exercise its rights under this **AGREEMENT** due to **OPERATOR'S** failure to remove the billboard, then City shall be entitled to be reimbursed by **OPERATOR** any and all direct expenses incurred by City in exercising its rights under this subsection within no more than ten (10) days following City's delivery of an invoice demanding payment for such expenses. Any such removal of the billboard by City shall not entitle **OPERATOR** to any damages of any kind whatsoever against any or all City Parties, and **OPERATOR** hereby releases and holds all City Parties harmless from indemnified claims and liabilities for any action by any of the City Parties in removing the billboard. **OPERATOR** hereby consents to City's entry onto the site to accomplish such removal.

14. Termination Without Cause.

This **AGREEMENT** may be terminated for convenience by the City upon twelve (12) months written notice of termination, provided that such termination cannot occur within the initial ten (10) years from the Commencement Date. In such event, City shall be entitled to receive, and the **OPERATOR** shall pay City, compensation for all Monthly Operating Fees due to the City up to the termination date.

If this **AGREEMENT** terminates due to non-performance by **OPERATOR**, then (i) any remaining unpaid Monthly Operating Fee that was due for any period before the date of that termination shall be immediately due and payable to City and (ii) **OPERATOR** at its sole cost, shall immediately remove the billboard and visible supporting equipment installed pursuant to this **AGREEMENT** and shall return the site to an acceptable condition wherein the billboard and its accompanying equipment and improvements are removed, and the site is graded, landscaped, irrigated, and secured; provided, that if **OPERATOR** fails to remove any of the billboard within ninety (90) days after this **AGREEMENT** is terminated pursuant to this subsection, then City shall be entitled to remove the remaining billboard and dispose of same. If City is required to exercise its rights under this **AGREEMENT** due to **OPERATOR'S** failure to remove the billboard, then City shall be entitled to be reimbursed by **OPERATOR** any and all direct expenses incurred by City in exercising its rights under this subsection within no more than ten (10) days following City's delivery of an invoice demanding payment for such expenses. Any such removal of the billboard by City shall not entitle **OPERATOR** to any damages of any kind whatsoever against any or all City Parties, and **OPERATOR** hereby releases and holds all City Parties harmless from indemnified claims and liabilities for any action by any of the City Parties in removing the billboard. **OPERATOR** hereby consents to City's entry onto the site to accomplish such removal.

15. Termination - Effect on Prior Obligations.

Upon any termination of this **AGREEMENT**, **OPERATOR's** obligation to remit operating agreement fees due and payable under the terms of this **AGREEMENT** for operation of a

billboard prior to termination of this **AGREEMENT** shall continue to be in effect. Past due penalties and late interest charges shall continue to accrue and be applicable until all operating fees due under this **AGREEMENT** are paid in full. **OPERATOR's** liability for any remaining unpaid past due penalties and/or late interest charges shall continue until fully satisfied.

16. Reimbursement Clause.

In consideration of the time and costs incurred by **CITY** in the drafting and implementation of this **AGREEMENT**, **OPERATOR** agrees to pay \$2,500.00 to **CITY** within thirty (30) days of execution of this **AGREEMENT**.

17. Attorney Fees and Costs.

In any action or proceeding between **CITY** and **OPERATOR** brought to interpret or enforce this **AGREEMENT**, or which in any way arises out of the existence of this **AGREEMENT** or is based upon any term or provision contained herein, the prevailing party in such action or proceeding shall be entitled to recover from the non-prevailing party, in addition to all other relief to which the prevailing party may be entitled pursuant to this **AGREEMENT**, the prevailing party's reasonable attorneys' fees and litigation costs. Fees and costs recoverable pursuant to this Section 17 include those incurred during any appeal from an underlying judgment and in the enforcement of any judgment rendered in any such action or proceeding.

18. Notice.

Any notice, tender, demand, delivery, or other communication pursuant to this **AGREEMENT** shall be in writing and shall be deemed to be properly given if delivered in person or mailed by first class or certified mail, postage prepaid, or sent by fax or other telegraphic communication in the manner provided in this section, to the following persons:

To **CITY**: Clerk of the City Council
City of Santa Ana
20 Civic Center Plaza (M-30)
P.O. Box 1988
Santa Ana, CA 92702-1988
Fax 714-647-6956

Copies to: Executive Director – Planning and Building Agency
City of Santa Ana
20 Civic Center Plaza (M-20)
P.O. Box 1988
Santa Ana, California 92702-1988
Fax 714-973-1461

City Attorney
City of Santa Ana
20 Civic Center Plaza (M-29)

P.O. Box 1988
Santa Ana, California 92702-1988
Fax 714-647-6515

To **OPERATOR**:

A party may change its address by giving signed notice in writing to the other party. Thereafter, any communication shall be addressed and transmitted to the new address. If sent by mail, communication shall be effective or deemed to have been given three (3) business days after it has been deposited in the United States mail, duly registered or certified, with postage prepaid, and addressed as set forth above. If sent by fax or email document attachment, communication shall be effective or deemed to have been given twenty-four (24) hours after the time set forth on the transmission report issued by the transmitting facsimile machine, addressed as set forth above. For purposes of calculating these time frames, weekends, federal, state, County or City holidays, or City Hall closure dates shall be excluded.

19. Exclusivity and Amendment.

This **AGREEMENT** represents the complete and exclusive statement between **CITY** and **OPERATOR** for the applicable Subject Property identified on page one of this agreement, and supersedes any and all other agreements, oral or written, between the parties. This **AGREEMENT** may not be modified except by written instrument signed by **CITY** and by an authorized representative of **OPERATOR**. Each party to this **AGREEMENT** acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein.

20. Assignment.

OPERATOR may not assign or transfer any interest herein without the prior written consent of **CITY**, and any such assignment or transfer without **CITY's** prior written consent shall be considered null and void.

21. Discrimination.

OPERATOR shall not discriminate because of race, color, creed, religion, sex, marital status, sexual orientation, age, national origin, ancestry, or disability, as defined and prohibited by applicable law, in the recruitment, selection, training, utilization, promotion, termination or other employment related activities. **OPERATOR** affirms that it is an equal opportunity employer and shall comply with all applicable federal, state and local labor laws and regulations.

22. Jurisdiction-Venue.

This **AGREEMENT** has been executed and delivered in the State of California and the validity, interpretation, performance, and enforcement of any of the clauses of this

AGREEMENT shall be determined and governed by the laws of the State of California. Both parties further agree that Orange County, California, shall be the venue for any action or proceeding that may be brought or arise out of this **AGREEMENT**.

23. Severability.

If any part of this **AGREEMENT** is found to conflict with applicable local, state, or federal laws or regulations, such part shall be inoperative, null and void insofar as it conflicts with said laws or regulations, or may be modified or suspended as may be necessary to comply with any local, state, or federal law or regulation, but the remainder of the **AGREEMENT** shall continue in full force and effect.

24. Counterparts.

This **AGREEMENT** may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. The execution of this **AGREEMENT** may be by actual, facsimile or electronic signature.

25. Authority to Bind.

Each undersigned represents and warrants that its signature hereinbelow has the power, authority and right to bind their respective parties to each of the terms of this **AGREEMENT**, and shall indemnify **CITY** fully, including reasonable costs and attorney's fees, for any injuries or damages to **CITY** in the event that such authority or power is not, in fact, held by the signatory or is withdrawn.

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{Signature page follows}

IN WITNESS WHEREOF, the parties hereto have executed this **AGREEMENT** the date and year first above written.

ATTEST:

CITY OF SANTA ANA

DAISY GOMEZ
Clerk of the Council

KRISTINE RIDGE
City Manager

APPROVED AS TO FORM:
SONIA R. CARVALHO
City Attorney

**OPERATOR
LEGAL
NAME:** _____

By: _____
John M. Funk
Chief Assistant City Attorney

**SIGNATORY
NAME:** _____

TITLE: _____

TAXPAYER ID: _____

RECOMMENDED FOR APPROVAL:

Executive Director
Planning & Building Agency