

## BILLBOARD OPERATING AGREEMENT

This Billboard Operating Agreement (“**AGREEMENT**”) is dated \_\_\_\_\_, 2023 between the City of Santa Ana, a charter city and municipal corporation (“**CITY**”) and Sign Co, LP, a California Limited Partnership (“**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: 2401 South Pullman Street, Santa Ana, California 92705 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 billboard 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.

#### i. Economic and Community Benefits Plan:

**OPERATOR** may exercise, and hereby does exercise, the option to reduce the billboard removal ratio for billboard that are nonconforming as resulting from the adoption of Ordinance No. NS-3023, 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. All details of the **OPERATOR** Economic and Community Benefits Plan for are detailed herein.

For new digital billboard signs to be considered for a reduction in or exemption from the required removal ratios as outlined in Table 1, the Subject Property shall, and does, 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 ten percent (10%) of time slots within advertising cycle for advertising of the business and products available on the Subject Property. Business percentage to be programmed such that a business advertisement is displayed once every two (2) minutes minimum; 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 billboard is removed from the sites:

- A. Covenants Regarding Operation and Maintenance. **OPERATOR** shall operate and maintain the billboard 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 billboard 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 billboard 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 **OPEARATOR**.
- D. Design of potential graffiti-attracting surfaces. **OPERATOR** shall design the billboard 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 billboard 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 Billboard; Payment.**

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

- A. **OPERATOR** shall pay **CITY** a total annual operating fee for the entire digital billboard as follows: term year one (1) \$30,000.00, term year two (2) \$45,000.00, term year three (3) \$60,000.00, term year four (4) \$75,000.00, term year five (5) \$90,000.00. After term year five, the annual operating fee shall only increase by three percent (3%) annually on the anniversary month of the Commencement Date. See Exhibit A: Annual Payment Schedule.
- B. **OPERATOR** shall increase their remitted gross sales tax to the **CITY** each calendar year by five percent (5%) over the previous year's remitted gross sales tax ("Annual Sales Tax Increase") commencing January 1, 2024. In the event that **OPERATOR** is unable to achieve the Annual Sales Tax Increase through regular business operations, **OPERATOR** must remit to **CITY** the difference in actual remittance versus required remittance through one (1) annual monetary payment ("Sales Tax Shortage Payment"). By way of example, if **OPERATOR's** Annual Sales Tax Increase equated to a gross sales tax remittance total of \$5,000.00, but at the end of the subject year **OPERATOR** increased remitted gross sales tax by \$4,500.00, **OPERATOR** would owe **CITY** a Sales Tax Shortage Payment of \$500.00 within sixty (60) days of notice from **CITY** of Sales Tax Shortage Payment activation. **OPERATOR** shall be solely responsible for monitoring annual gross sales and the potential for a gross sales tax remittance shortfall. **OPERATOR** is to notify **CITY** no less than thirty (30) days before the end of the calendar year of any potential shortfall. **CITY** shall then be solely responsible for auditing gross sales tax remittance from **OPERATOR** for the year and must notify **OPERATOR** of

Sales Tax Shortage Payment requirement with amount due prior to **OPERATOR** payment (which shall be remitted within sixty (60) days of notice). The base remitted gross sales tax threshold that shall govern year one (1) of this **AGREEMENT** shall be averaged from the last five (5) years of documented **CITY** received gross sales tax from **OPERATOR** (2019, 2020, 2021, 2022, 2023). See Exhibit B: Gross Taxes Received from Operator. For the avoidance of confusion, if in any term year **OPERATOR** must remit a Sales Tax Shortage Payment, that payment does not apply to the annual remitted gross sales tax threshold. By way of the example above, if **OPERATOR** remitted \$4,500.00 in gross sales tax through regular business operations, the amount of gross sales tax to be remitted the following year would be \$4,500.00 plus five percent (5%) for a total of \$4,725.00. If in any year **OPERATOR** increases remitted gross sales tax by six percent (6%) or more ("Sales Tax Overage") that Sales Tax Overage shall apply to the following year's Annual Sales Tax increase; Sales Tax Overage shall not carry forward beyond the immediately succeeding year. By way of example and using the scenario above, if **OPERATOR**'s annual gross sales tax remittance was required to be \$5,000 but instead totaled \$6,000 in gross sales tax remitted, the additional \$1,000 above the required \$5,000 would be credited to the next year's Annual Sales Tax Increase amount due. In the event of an economic recession, as characterized by a material change in the local, state, national, or global economy as effected by recessions, depressions, pandemics (declared by an authorized Federal Agency and agreed upon by both parties), and/or force majeure events, this Section shall be renegotiated between **CITY** and **OPERATOR** upon written notice from **OPERATOR** to **CITY** of economic downturn business impact. **OPERATOR** shall be solely responsible for communicating to **CITY** when an economic downturn has affected business to the extent that this Section must be renegotiated.

- C. The annual operating fee shall be paid in annual installments (the "Yearly 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 Yearly 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.
- D. **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).
- E. The "Commencement Date" is January 1, 2024. The Yearly Operating Fee shall be paid to **CITY** on the first day of the month that it is due (January 1 of every term year beginning January 1, 2025). The first payment of the Yearly Operating Fee shall be due one (1) year 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**.

At the request of the **CITY**, and on no more than a yearly basis, **OPERATOR** shall provide to the City gross business sales revenue reports (the "Business Revenue Reports" for all product sales at the Subject Property. Reports shall include all business product sales gross revenue collected as of the date of the report. Report shall be provided no later than thirty (30) days prior to the end of the calendar year. Reporting requirement shall be effective January 1, 2024.

**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 and Sales Tax Shortage Payments 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 yearly 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. Outside of the original Sales Tax Shortage Payment invoice, **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 Billboard.**

- 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 place a maximum of ten (10) different civic promotion and/or public service announcement advertisements, as supplied by **CITY**, per year with each advertisement running for as long and as many times as requested by the City within the parameters as uncontracted space available allows for the entire Term of the **AGREEMENT**, without charge for advertising space (the "Free Advertising Space"). 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 Billboard 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 within the parameters as uncontracted space available allows.
- 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 twenty (20) 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 one hundred eighty (180) days after the date of the termination or expiration of this **AGREEMENT**, **OPERATOR** shall, at its sole cost and expense, either (a) convert the billboard to an on-premise business sign that will only be allowed to advertise the products, goods and services sold on the Subject Property referenced herein or (b) 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 thirty (30) 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 billboard in the City of Santa Ana.

**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 convert/remove the billboard 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 fifteen (15) 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.

If this **AGREEMENT** terminates due to non-performance by **OPERATOR**, then (i) any remaining unpaid Yearly 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 either (a) convert the billboard to an on-premise business sign that will only be allowed to advertise the products, goods and services sold on the Subject Property referenced herein or (b) 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 one hundred eighty (180) 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) business 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 without cause by the City or **OPERATOR**, upon eighteen (18) months written notice of termination, provided that such termination cannot occur within the initial ten (10) years from the Commencement Date. Such termination may only occur by the City in events of intragovernmental changes with local effect that require such termination, enactment of preemptive laws that require such termination, natural disasters, declared states of emergency (local, state and/or federal), war, or an event materially similar in nature or effect to those enumerated that requires such termination. 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 Annual 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 either (a) convert the billboard to an on-premise business sign that will only be allowed to advertise the products, goods and services sold on the Subject Property referenced herein or (b) 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 one hundred eighty (180) 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) business 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**: Sign Co, LP  
2401 S. Pullman St.  
Santa Ana, CA 92705

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**

\_\_\_\_\_  
Jennifer L. Hall  
Clerk of the Council

\_\_\_\_\_  
KRISTINE RIDGE  
City Manager

**APPROVED AS TO FORM:**  
SONIA R. CARVALHO  
City Attorney

**OPERATOR  
LEGAL  
NAME:** Sign Co, LP

By: \_\_\_\_\_  
John M. Funk  
Chief Assistant City Attorney

**SIGNATORY  
NAME:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_

**TAXPAYER ID:** \_\_\_\_\_

**RECOMMENDED FOR APPROVAL:**

\_\_\_\_\_  
Minh Thai  
Executive Director  
Planning & Building Agency

**EXHIBIT A: ANNUAL PAYMENT SCHEDULE**

<b>Term Year</b>	<b>Annual Payment Remittance Amount</b>
1	\$30,000.00
2	\$45,000.00
3	\$60,000.00
4	\$75,000.00
5	\$90,000.00
6	\$92,700.00
7	\$95,481.00
8	\$98,345.43
9	\$101,295.79
10	\$104,334.67
11	\$107,464.71
12	\$110,688.65
13	\$114,009.31
14	\$117,429.59
15	\$120,952.47
16	\$124,581.05
17	\$128,318.48
18	\$132,168.03
19	\$136,133.08
20	\$140,217.07
Total Agreement Term Remittance	\$2,024,119.32

**EXHIBIT B: GROSS TAXES RECEIVED FROM OPERATOR**

<b>Sales Tax Year</b>	<b>Remitted Amount</b>
2019	\$178,870
2020	\$220,205
2021	\$267,798
2022	\$271,062
2023	To be inserted after January 1, 2024
5 Year Average Baseline Amount	To be inserted after January 1, 2024