



Attachment 2

City of Westminster

Staff Report

8200 Westminster
Boulevard
Westminster,
California 92683

File #: 24-788, **Item #:** 3.11

Meeting Date: December 9, 2024

Westminster City Council

SUBJECT

Resolution to Remove the Existing Right-of-Way Designation from City-Owned Land and to Enable Staff to Prepare the Site for Future Development and City Use.

From: Christine Cordon, City Manager
Requested by: Administration
Prepared by: Stephanie Tomaino, Contract Principal Planner

RECOMMENDED ACTION

Consider adoption of a Resolution entitled, "A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF WESTMINSTER, CALIFORNIA, REMOVING THE EXISTING RIGHT-OF-WAY DESIGNATION FROM CITY-OWNED LAND LOCATED WEST OF EDWARDS STREET AND NORTH OF THE I-405 FREEWAY AND TO ENABLE THE CITY ENGINEER TO PREPARE THE SITE FOR FUTURE DEVELOPMENT AND USE BY THE CITY."

BACKGROUND

The subject property is City-owned land located west of Edwards Street and north of the Interstate 405 freeway. The site is near an undeveloped residential parcel (APN 195-291-03) and an existing 12-unit apartment complex located at 14261 Edwards Street (APN 195-291-02). An aerial map illustrating the subject property is provided as Attachment 2. The site, totaling 21,603 sq. ft. in area, is currently an undeveloped right-of-way. The site includes the former street and undeveloped land adjacent to the freeway overpass. The subject property is currently used by the Orange County Transportation Authority (OCTA) for the 405 Improvement Project. Since certain elements of the 405 Improvement Project will be completed soon, the City now intends to clarify the property's legal designation, facilitating future development and City use.

A resolution is provided as Attachment 1 to allow the City to remove the right-of-way designation from the subject property so that it may be used for non-right-of-way purposes. The attached City Council resolution would establish the subject property as a legal parcel for development and City uses. Adoption of the resolution would enable staff to complete any required actions to facilitate legalization and cleanup of the site, including but not limited to:

- **Updated Legal Records:** A licensed surveyor has prepared a land survey and legal description identifying the boundaries of the subject property, which is provided as Exhibits A and B to Attachment 1. Additional administrative filings are required with the County of Orange for the site to be listed on the County's property records database, including the assignment of an Assessor's Parcel Number.
- **Zoning and General Plan:** Public right-of-way is generally not shown on city maps for zoning or General Plan land use. Because the right-of-way designation would be removed from the subject property, administrative map updates would also need to be prepared to add the property to the city's official zoning map. The site would be given a zoning designation of M-1 (Light Industrial). Additionally, the property would be added to the General Plan Land Use Map and it would be assigned a land use classification of Industrial. The M-1 zoning designation and Industrial land use classification are consistent with adjacent properties in the project vicinity.
- **Future Uses:** At previous City Council meetings, the City identified the subject property as an eligible site for development of a City-owned digital freeway billboard. After an extensive Request for Proposals (RFP) process and evaluating multiple qualified firms, the City Council entered into a lease and operating agreement with Branded Cities to develop, construct, operate, and maintain a digital billboard on the subject property. A copy of the December 13, 2023, City Council staff report and attachments approving the lease and operating agreements is provided as Attachment 3. As the lessor, Branded Cities is responsible for developing the future City-owned billboard. Branded Cities will need to submit applications and detailed plans to the City and obtain entitlement and building permit approvals from the Planning Commission and Community Development Department, respectively, prior to constructing the digital billboard. As the property owner, the City is responsible for updating the administrative records to make the property available for development, including removing the existing right-of-way designation. The future billboard would comprise only a portion of the subject property. In addition to the future billboard, the Public Works Department anticipates using the site for long-term storage to support City operations and staging for city improvements and maintenance projects.

- **Future Improvements:** The property is currently vacant and undeveloped. An existing chain link fence surrounds a portion of the property along Edwards Street, but the site is largely unsecured. The site is currently used by OCTA for the 405 Improvement Project. Following a preliminary assessment, the Public Works Department anticipates various upgrades to the site, including the installation of curb and gutter; perimeter security fencing; paving; and vehicular access gates. Adoption of the attached resolution does not authorize these future site improvements. Any proposed upgrades will require preparation of detailed plans and be subject to future City review and approval.

The subject property is not intended to be sold; it would remain under city ownership and be used and developed for city purposes only.

FISCAL IMPACT

Adoption of the resolution to remove the right-of-way designation from the subject property will not have a direct fiscal impact. This action is intended solely to clear the legal designation of the site, enabling future improvements and potential development by the City. Any future development or improvements on the site would be subject to separate City approvals and may have associated fiscal impacts at that time.

LEGAL REVIEW

The City Attorney's Office has reviewed as to form.

CONCLUSION

Adopting the proposed resolution will allow the City to prepare the property for future City uses by removing the right-of-way designation. This step will allow for updates to the property's legal records and will assign zoning and General Plan designations consistent with nearby areas. Adoption of the resolution will also pave the way for potential future improvements, including a City-owned digital billboard under the existing lease agreement with Branded Cities, while keeping the property under City ownership. This action is part of the City Council's ongoing efforts to enhance economic development and achieve fiscal stability.

ATTACHMENTS

1. City Council Resolution
2. Aerial Map
3. December 13, 2023: City Council staff report and attachments

REVIEWED BY

Erin Backs, Finance Director
Christian Bettenhausen, City Attorney
Christine Cordon, City Manager

Attachment 1

CITY OF WESTMINSTER RESOLUTION NO. XXXX

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF WESTMINSTER, CALIFORNIA, REMOVING THE RIGHT-OF-WAY DESIGNATION FROM EXISTING CITY-OWNED LAND LOCATED WEST OF EDWARDS STREET AND NORTH OF THE I-405 FREEWAY AND TO ENABLE THE CITY ENGINEER TO PREPARE THE SITE FOR FUTURE USE AND DEVELOPMENT BY THE CITY

WHEREAS, the City of Westminster, California owns an approximate 21,603 square foot parcel of land (as detailed in Exhibits “A” and “B” of this Resolution) located west of Edwards Street and north of the Interstate 405 freeway; and

WHEREAS, it has been determined that the subject property is no longer required for public right-of-way purposes and is therefore available for other City use and development; and

WHEREAS, the City Council has identified the property as an eligible site for development of a City-owned digital freeway billboard through a lease agreement with Branded Cities; and

WHEREAS, this resolution was considered during a special City Council meeting held on December 9, 2024, as a regular business item, during which members of the public were given an opportunity to provide comments for the City Council’s consideration prior to action on the proposed resolution; and

WHEREAS, the City Council has determined that the adoption of this Resolution will not impair the public health, safety, or general welfare.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF WESTMINSTER, CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:

SECTION 1. Incorporation of Recitals. The City Council of the City of Westminster, California, hereby finds that the foregoing recitals are true and correct and are incorporated herein as substantive findings of the City Council.

SECTION 2. CEQA. The City Council finds that the adoption of the resolution is exempt from the California Environmental Quality Act (“CEQA”) because it is an administrative activity that will not result in a direct or reasonably foreseeable indirect physical change to the environment and is thus not a “project” under State CEQA Guidelines 15378 (see State CEQA Guidelines, Section 15060(c)(2) and (3)). In this case, the resolution is not a project subject to CEQA, as it solely updates city property records, including the zoning map, to reflect the site as a legal parcel rather than as public right-of-way. Additionally, the resolution is exempt from CEQA under Section 15061(b)(3) of

Resolution – City-Owned Land on Edwards Street
12/09/2024

the State CEQA Guidelines, which provides that a project is exempt from CEQA where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. In this case, there is no possibility that the resolution will have a significant effect on the environment, as it merely removes the right-of-way designation from City-owned land and authorizes administrative updates to property records, without approving any specific development or physical changes at this time. Future anticipated city use of the site, including a planned billboard development, is categorically exempt from further environmental review under CEQA Guidelines, Article 19, Section 15311, Class 11 (construction or placement of minor accessory structures) and Section 15304, Class 4 (minor public or private alterations to land).

SECTION 3. Location of City-Owned Property. The subject property is located west of Edwards Street and north of Interstate 405. The property boundaries are detailed in the legal description (Exhibit "A") and plot map (Exhibit "B") attached to this resolution.

SECTION 4. Right-of-Way Designation Removal and Administrative Actions. The City Council of the City of Westminster hereby removes the right-of-way designation from the subject property and authorizes the City Manager, or their designee, to take any administrative actions necessary as a result of this change. This may include, but is not limited to, updating property records with the City and County of Orange, preparing the site for City use and development, and ensuring compliance with all requirements in any lease agreements between the City of Westminster and entities utilizing the property for billboard development or other purposes.

SECTION 5. Zoning. The subject property is hereby assigned the zoning designation of M-1 (Light Industrial). The City's official zoning map shall be updated to include the subject property within the M-1 zoning district. The M-1 zoning district provides areas for low-intensity and low-impact industrial, manufacturing, and related uses. Typical uses include research and development facilities and laboratories, small-scale warehouses, and light manufacturing. The M-1 zoning district is consistent with the Industrial land use designation of the General Plan.

SECTION 6. General Plan Land Use. The subject property is hereby assigned an Industrial land use designation in the General Plan Land Use Element. The City's adopted General Plan land use map shall be updated to reflect the Industrial designation for the subject property. The Industrial land use designation provides for a range of medium and light industrial uses, such as manufacturing, warehousing, research and development, and other industrial uses that can be conducted indoors or behind effective screening.

SECTION 7. The Mayor shall sign as to the passage, approval, and adoption of this Resolution.

SECTION 8. The City Clerk shall certify to the passage and adoption of this resolution and shall affix their signature and City Seal and that same shall be entered into the Book of Resolutions.

PASSED, APPROVED, AND ADOPTED this 9th day of December, 2024.

CITY OF WESTMINSTER

CHI CHARLIE NGUYEN
MAYOR

ATTEST:

ASHTON R. AROCHO, MMC
CITY CLERK

APPROVED AS TO FORM:

CHRISTIAN L. BETTENHAUSEN
CITY ATTORNEY

PAGE INTENTIONALLY LEFT BLANK

CITY OF WESTMINSTER
CITY CLERK'S OFFICE

CERTIFICATION
OF
RESOLUTION

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss.
CITY OF WESTMINSTER)

I, Ashton R. Arocho, MMC, City Clerk of the City of Westminster, California, do hereby certify that the foregoing Resolution No. XXXX was duly passed, approved, and adopted by the City Council of the City of Westminster at a Special Meeting held on the 9th day of December 2024, with the following vote:

AYES: COUNCILMEMBERS:
NOES: COUNCILMEMBERS:
ABSENT: COUNCILMEMBERS:
ABSTAIN: COUNCILMEMBERS:

Ashton R. Arocho, MMC
City Clerk

PAGE INTENTIONALLY LEFT BLANK

EXHIBIT "A"
LEGAL DESCRIPTION

CITY-OWNED LAND ON EDWARDS STREET

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF WESTMINSTER, COUNTY OF ORANGE, STATE OF CALIFORNIA, AND BEING A PORTION OF PARCEL 11 AS DELINEATED AND SHADED ON MAPS RECORDED ON JUNE 23, 1966 IN STATE HIGHWAY MAP BOOK NO. 4 PAGES 12 TO 22 INCLUSIVE, RECORDER OF SAID ORANGE COUNTY, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE MOST SOUTHEASTERLY CORNER OF SAID PARCEL 11, THENCE ALONG THE SOUTHWESTERLY LINE OF SAID PARCEL 11 THE FOLLOWING COURSES, NORTH 51° 19' 17" WEST, 123.95 FEET;

THENCE NORTH 44° 01' 46" WEST, 106.69 FEET TO THE **POINT OF BEGINNING**;

THENCE CONTINUING ALONG THE SOUTHWESTERLY LINE OF SAID PARCEL 11 THE FOLLOWING COURSES, NORTH 44° 01' 46" WEST, 6.06 FEET;

THENCE SOUTH 09° 02' 05" EAST, 8.95 FEET;

THENCE NORTH 50° 21' 35" WEST, 100.76 FEET;

THENCE NORTH 23° 45' 46" WEST, 53.30 FEET;

THENCE NORTH 46° 40' 19" WEST, 52.01 FEET TO A LINE PARALLEL WITH AND 40.00 FEET EASTERLY OF THE WESTERLY LINE OF SAID PARCEL 11;

THENCE ALONG SAID PARALLEL LINE NORTH 00° 21' 31" EAST, 149.30 FEET TO A TANGENT CURVE, CONCAVE SOUTHERLY, HAVING A RADIUS OF 23.20 FEET;

THENCE EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 158° 21' 18" AND ARC LENGTH OF 64.12 FEET TO A TANGENT LINE, SAID LINE BEEN PARALLEL WITH AND 38.50 FEET SOUTHWESTERLY OF THE EDWARDS STREET CENTERLINE AS SHOWN ON RECORD OF SURVEY NUMBER 2015-1145 FILED IN BOOK 314 PAGES 22 THROUGH 47 INCLUSIVE OF RECORDS OF SURVEY OF SAID COUNTY;

THENCE ALONG SAID TANGENT LINE SOUTH 21° 17' 11" EAST, 110.73 FEET TO A TANGENT CURVE, CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 961.50 FEET;

THENCE SOUTHEASTERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 12° 17' 17" AN ARC LENGTH OF 206.21 FEET TO THE **POINT OF BEGINNING**, SAID POINT HAVE A RADIAL OF NORTH 81° 00' 08" EAST.

THE ABOVE-DESCRIBED PARCEL OF LAND CONTAINS 21,603 SQUARE FEET MORE OR LESS.

ALL AS SHOWN ON EXHIBIT "B" PLOT ATTACHED HEREON AND BY THIS
REFERENCE MADE A PART HEREOF.

SUBJECT TO ALL MATTERS OF RECORD, IF ANY.

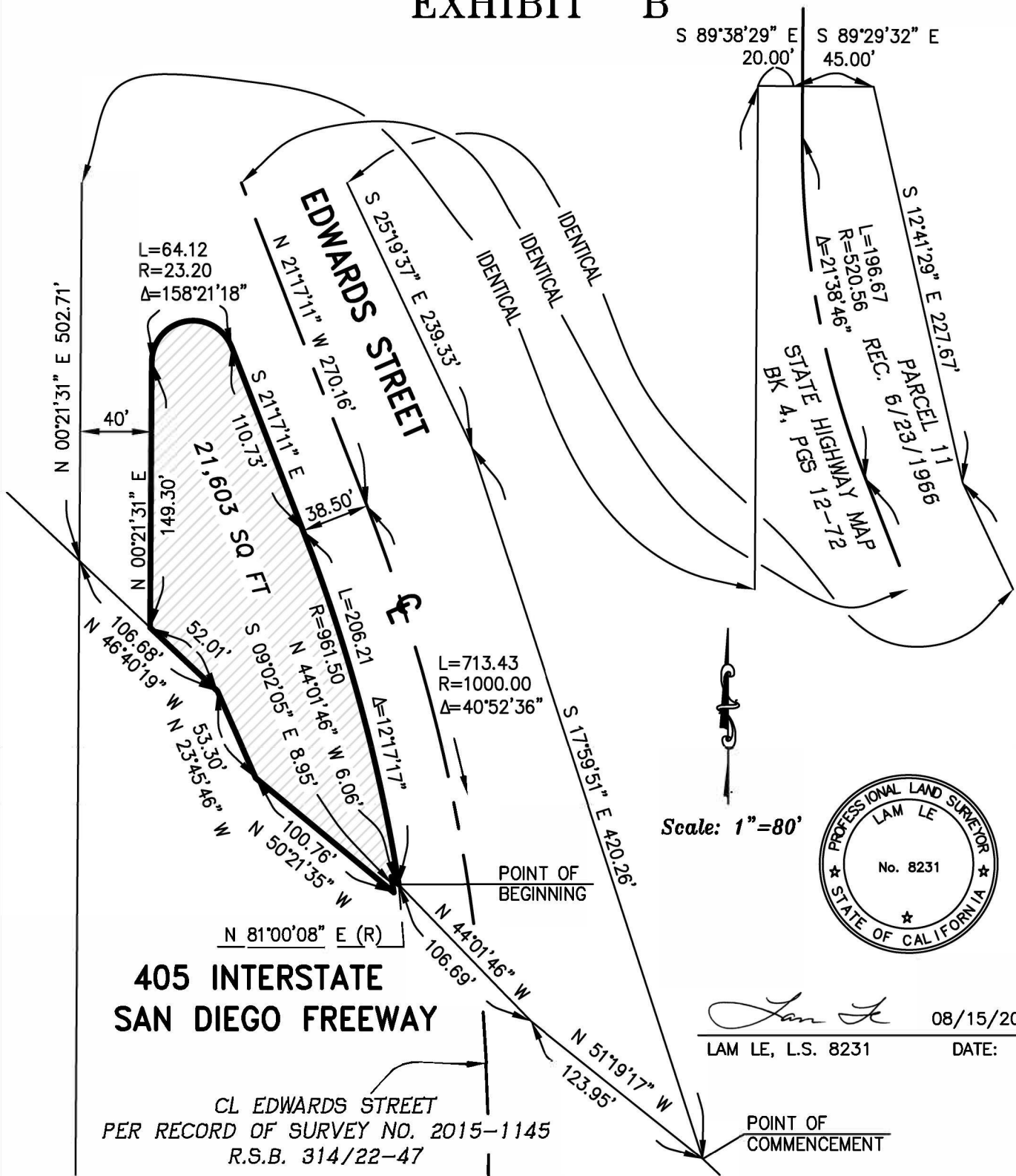
Prepared by:



A handwritten signature in cursive script that reads "Lam Le".

Lam Le L.S. 8231 DATE: 8/15/2024

EXHIBIT "B"



400 EAST RINCON ST., SUITE 202
CORONA, CA 92879
TEL (909) 484-4200 FAX (909) 484-4229

CITY OF WESTMINSTER

CITY-OWNED LAND ON EDWARDS ST.

**PORTION OF PARCEL 11, MAP REC. 6/23/1966, STATE
HIGHWAY MAP BOOK 4, PAGES 12-22
ORANGE COUNTY, CALIFORNIA.**

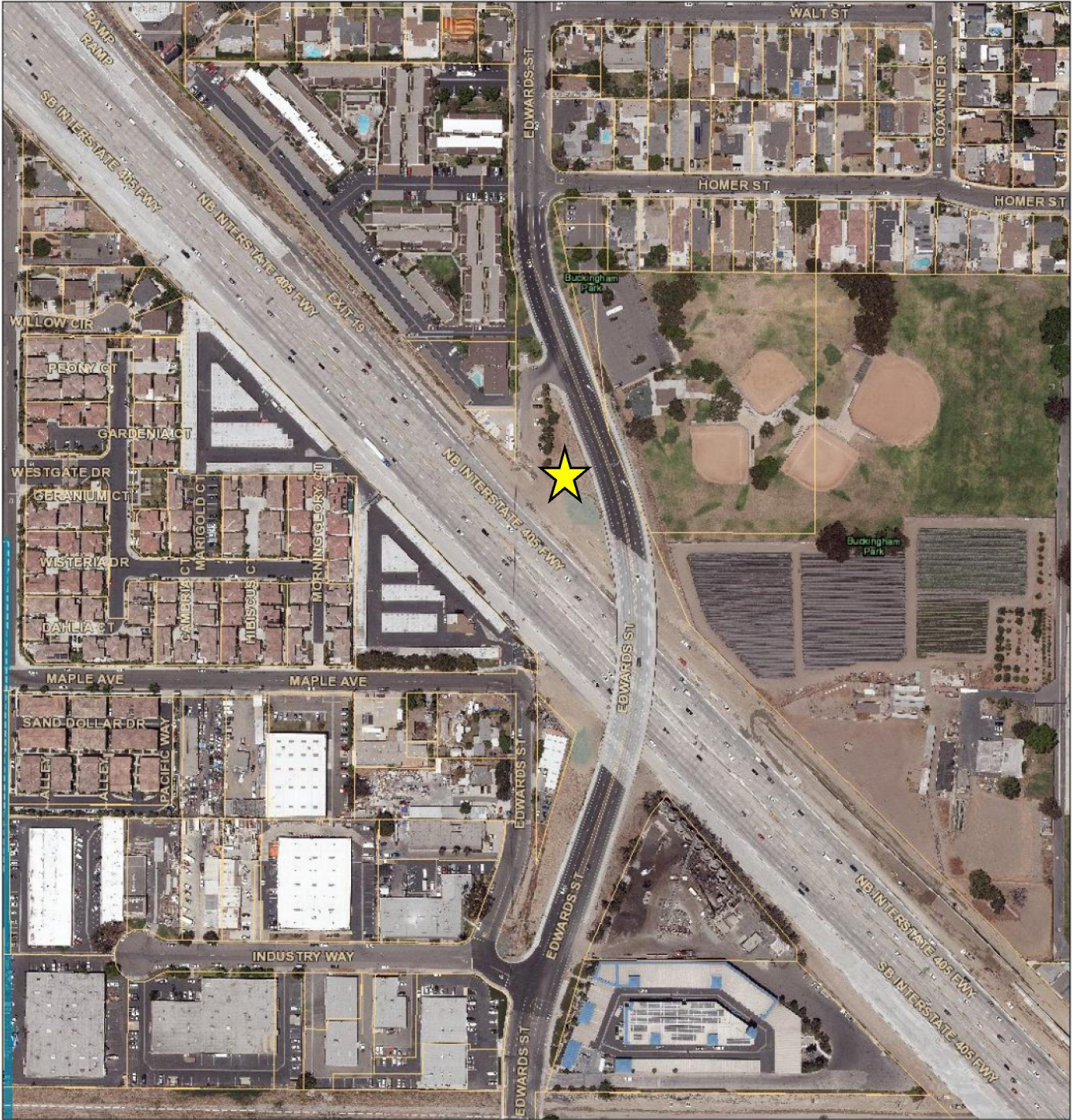
SHEET
1
OF 1

JOB No.
2024-BRAN-01

LAM LE 08/15/2024
LAM LE, L.S. 8231 DATE:

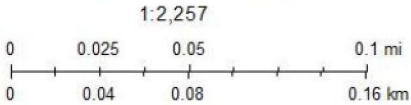
Intentionally Left Blank

ArcGIS Web Map



11/12/2024, 7:24:01 PM

- Parcel Details
- City Boundary
- Roads



Intentionally Left Blank

ATTACHMENT 3

December 13, 2023: City Council Staff Report
and Draft Resolution Approving Lease and
Operating Agreements with Branded Cities

Intentionally Left Blank



City of Westminster

Staff Report

8200 Westminster
Boulevard
Westminster,
California 92683

File #: 23-395, **Item #:** 5.6

Meeting Date: December 13, 2023

Westminster City Council

SUBJECT

Adoption of a Resolution Approving Lease and Operating Agreements With Branded Cities for Digital Billboards on City Property, finding them Categorically Exempt under CEQA.

From: Christine Cordon, City Manager

Requested by: Administration

Prepared by: Adolfo Ozaeta, Assistant City Manager; Ryan Salz, Senior Management Analyst

RECOMMENDED ACTION

Staff recommends that the Mayor and City Council adopt a Resolution entitled, "A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF WESTMINSTER, CALIFORNIA, APPROVING LEASE AND OPERATING AGREEMENTS WITH BRANDED CITIES FOR DIGITAL BILLBOARDS ON CITY PROPERTY, AND FINDING THEM CATEGORICALLY EXEMPT UNDER CEQA."

BACKGROUND

On May 24, 2023, the City Council considered the selection of a qualified firm to develop, construct, operate, and maintain electronic billboards on two designated City-owned sites (Attachment 1). Some Council Members expressed the need for more time and additional information to make a final selection. Staff gathered the requested information and brought the item back to the City Council for consideration the following month. On June 28, 2023, the City Council approved the selection of Branded Cities to develop, construct, operate, and maintain electronic billboards on two designated City-owned sites (Attachment 2).

Upon the selection of Branded Cities, City staff and counsel began collaboratively drafting a lease agreement with Branded Cities that will allow the firm to start the development process on the City-owned sites (Attachments 3 and 4). Attachment 3 addresses the first location as an area located adjacent to the I-405 Freeway and Old Edwards Street. Attachment 4 addresses the second location as an area located adjacent to the I-405 Freeway and near the intersection of Edinger Avenue and Beach Boulevard. Approval of the attached resolution would approve the leases at both of these locations and would make the necessary findings to find the project to be categorically exempt under the California Environmental Quality Act (Attachment 5).

The term of each lease agreement will be 30 years following the Rent Commencement Date. The "Rent Commencement Date" is the first day of the month after the date on which Branded Cities fully completes the construction and installation of the digital billboard and the structure. The financial compensation package to the City is clearly defined in Section 2.4 of the draft lease agreement, as originally described in the Branded Cities Proposal, and is the greater of:

- A Minimum Annual Guaranteed (MAG) Payment that escalates by 10% every 5 years:
 - Years 1-5: \$825,000 per year
 - Years 6-10: \$907,500 per year
 - Years 11-15: \$998,250 per year
 - Years 16-20: \$1,098,075 per year
 - Years 21-25: \$1,207,883 per year
 - Years 26-30: \$1,328,671 per year; or
- 62.5% of all gross revenues received from advertising.

The MAG total for both sign structures across the 30-year term is \$63,653,783, with a projected grand total of \$121,763,330. The City will also receive a one-time construction bonus in the amount of \$775,000 per sign upon installation of each digital billboard, for a total of \$1,550,000. In addition to the financial compensation package, Branded Cities will provide the following community benefits:

- City's use of a digital display face for three (3) minutes per hour on an annualized basis;
- Display of "Amber Alerts" and public safety messages in accordance with applicable guidelines, state, or federal laws; and

- A minimum 10 percent discount off Branded Cities' applicable advertising rate to any business holding a City-issued business license and with its principal place of business located in the City.

Upon execution of the lease agreements, Branded Cities would continue working with City staff and begin engaging Caltrans to ensure the proposed electronic billboard installations receive all necessary permits and adhere to applicable zoning and structural requirements.

FISCAL IMPACT

There will be no fiscal impact associated with the approval of the lease agreement. If both electronic billboards are ultimately installed, the fiscal impact to the City will occur over the course of the following 30 years. The minimum amount of revenue to be collected by the City across the 30-year term would be \$63,653,783, with an estimated total of \$121,763,330.

LEGAL REVIEW

The City Attorney's Office has reviewed as to form.

CONCLUSION

The execution of the proposed lease agreements with the selected firm is the next essential step in the lengthy process of developing electronic billboards along the I-405 Freeway. Tonight's approval of the lease agreements for both City-owned sites will allow Branded Cities to begin working with staff on the next steps necessary to develop and construct the electronic billboards along the I-405 Freeway, which is expected to be a multi-year effort.

ATTACHMENTS

1. Staff Report and Attachments from Item 5.3 of the May 24, 2023 meeting: Selection of Qualified Firm for the Use of City-Owned Real Property to Develop, Construct, Operate, And Maintain Electronic Billboards.
2. Staff Report and Attachments from Item 5.2 of the June 28, 2023 meeting: Continued from May 24, 2023 Regular Meeting - Selection of Qualified Firm for the Use of City-Owned Real Property to Develop, Construct, Operate, and Maintain Electronic Billboards.
3. Draft Lease Agreement: Old Edwards Street
4. Draft Lease Agreement: Edinger Avenue

5. Proposed Resolution

REVIEWED BY

Erin Backs, Finance Director
Christian Bettenhausen, City Attorney
Christine Cordon, City Manager

Attachment 5

CITY OF WESTMINSTER RESOLUTION NO. XXXX

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF WESTMINSTER, CALIFORNIA, APPROVING LEASE AND OPERATING AGREEMENTS WITH BRANDED CITIES FOR DIGITAL BILLBOARDS ON CITY PROPERTY, AND FINDING THEM CATEGORICALLY EXEMPT UNDER CEQA

WHEREAS, the City identified two eligible sites for digital freeway billboards on City owned property adjacent to the 405 freeway at Old Edwards Street and Edinger Avenue; and

WHEREAS, the City prepared a request for proposals for two digital freeway billboards and six companies submitted proposals; and

WHEREAS, the City staff and the City Council having duly evaluated the proposals selected Branded Cities to partner with the City on the digital freeway billboards; and

WHEREAS, the City Council has determined that the adoption of this Resolution will not impair the public health, safety, and general welfare; and

WHEREAS, the City and Branded Cities desire to enter into lease and operating agreements for the two City owned sites.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF WESTMINSTER DOES RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:

SECTION 1. The foregoing recitals are true and correct and incorporated herein by reference.

SECTION 2. That pursuant to the requirements of the California Environmental Quality Act ("CEQA") and implementing regulations (the "CEQA Guidelines"), the City finds the approval of the agreements are exempt from review under section 15303, New Construction or Conversion of Small Structures and section 15332, Infill Developments of the CEQA Guidelines, and the Community Development Director is directed to file a Notice of Exemption.

SECTION 3. The City Council of the City of Westminster hereby approves and authorizes the City Manager to execute a Lease and Operating Agreement for a Digital Billboard at I-405 and Old Edwards St. with Branded Cities in substantially the form attached hereto as Exhibit A and by this reference incorporated herein.

SECTION 4. The City Council of the City of Westminster hereby approves and authorizes the City Manager to execute a Lease and Operating Agreement for a Digital Billboard at I-405 and Edinger Avenue with Branded Cities in substantially the form attached hereto as Exhibit B and by this reference incorporated herein.

SECTION 5. The Mayor shall sign as to the passage, approval, and adoption of this Resolution.

SECTION 6. The City Clerk shall certify to the passage and adoption of this resolution and shall affix their signature and City Seal and that same shall be entered into the Book of Resolutions.

PASSED, APPROVED, AND ADOPTED this 13th day of December 2023.

CITY OF WESTMINSTER

CHI CHARLIE NGUYEN
MAYOR

ATTEST:

ASHTON R. AROCHO, MMC
CITY CLERK

APPROVED AS TO FORM:

CHRISTIAN L. BETTENHAUSEN
CITY ATTORNEY

**CITY OF WESTMINSTER
CITY CLERK'S OFFICE**

**CERTIFICATION
OF
RESOLUTION**

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss.
CITY OF WESTMINSTER)

I, ASHTON R. AROCHO, MMC, City Clerk of the City of Westminster, do hereby certify that the foregoing Resolution No. XXXX was duly passed and adopted by the City Council of the City of Westminster at a Regular Meeting held on the 13th day of December 2023, with the following vote:

AYES: COUNCIL MEMBERS:
NOES: COUNCIL MEMBERS:
ABSENT: COUNCIL MEMBERS:
ABSTAIN: COUNCIL MEMBERS:

Ashton R. Arocho, MMC
City Clerk

Intentionally Left Blank

EXHIBIT "A"

[Exempt From Recording Fee Per Gov. Code §6103]

LEASE AGREEMENT NO.

This Lease Agreement is entered into this [] day of [], 2023 (the "**Effective Date**"), by and between the City of Westminster, a California municipal corporation (the "**City**"), and Branded Cities Los Angeles, LLC, a Delaware limited liability company, doing business at 2850 East Camelback Road, Suite 110, Phoenix, AZ 85016 ("**Company**").

RECITALS

A. The City is the owner of that certain portion of real property, located adjacent to the Interstate 405 Freeway (the "**405 Freeway**") and Old Edwards Street, in the City of Westminster, as shall be generally depicted and legally described in the survey and a permanent property tax number therefor obtained by the City pursuant to Section 4 below, whereupon such depiction and legal description shall automatically be incorporated in Exhibit "A" and Exhibit "B", respectively, attached hereto and incorporated herein (collectively, the "**Site**").

B. The City desires to lease the Site for the purpose of construction and operation of a Digital Billboard and issued a Request for Proposals for the lease and Digital Billboard in December of 2022. The City received six Proposals for development of a two-sided electronic billboard structure on the Site. Of the six Proposals received, four firms were chosen to proceed to the second round of the selection process. The second round entailed a formal interview between a team of City staff and each Proposer's chosen representatives. Proposers had the opportunity to complete a concise presentation highlighting the key details of their Proposal, followed by an interview conducted by staff. After the interviews, staff individually rated each Proposer. Branded Cities emerged as the Proposer with the highest rating among the four interviewed. The City Council selected Company as preferred partner for the Digital Billboard project.

C. Company desires to (i) install on the Site a new lawfully permitted back-to-back double-faced digital billboard with an angle between the signboards (such digital display faces measuring 20'H x 60'W within the billboard frame) (the "**Digital Billboard**") which will be oriented toward the 405 Freeway, as more particularly described in the Scope of Development attached hereto as Exhibit "C" attached hereto and incorporated herein (the "**Scope of Development**"), and as will be depicted in the Site Plan and Billboard Elevation Diagram approved by the City pursuant to Section 6(c) of the Scope of Development whereupon the same shall automatically be incorporated in Exhibit "D" (the "**Site Plan**") and Exhibit "E" (the "**Billboard Elevation Diagram**"), respectively, attached hereto and incorporated herein, together with the Structure (as defined herein), and (ii) complete the undergrounding of all utilities from Southern California Edison's electrical source to the Digital Billboard pursuant to Section 6(m) of the Scope of Development and any other necessary ancillary Site improvements (collectively under this paragraph, the "**Development**").

D. In connection with the Digital Billboard, the City desires to lease the Site to Company for purposes of installation, construction, maintenance, operation (including the display Resolution – Lease and Operating Agreement with Branded Cities
Digital Billboard
12/13/2023

of paid third party advertising and other content), improvement, supplementing, posting, illumination, refurbishment or replacement (as applicable), and/or removal of the Digital Billboard pursuant to this Agreement.

E. In exchange for a site lease and the City approvals sought by Company for the Digital Billboard as provided on the Site herein, Company is agreeable to paying to the City the Rent (as defined below), and providing to the City the community benefits outlined in Section 3 below.

F. On [____], 2023, the City Council of the City, at a duly noticed hearing to consider the approval of this Agreement, considered the proposal, heard testimony, and introduced Resolution No. [____] (the “**Resolution**”), which Resolution approves this Agreement.

G. The City Council has found that this Agreement is in the best public interest of the City and its residents, adopting this Agreement constitutes a present exercise of the City’s police power, the use of the Site under this Agreement is consistent with the uses of sites which are adjacent to and in the general proximity of the Site, and this Agreement is consistent with the City’s General Plan. This Agreement and the proposed Development (as hereinafter defined) will achieve a number of City objectives, including utilizing the Site for a revenue-generating use.

H. The City finds and determines that all actions required of the City precedent to approval of this Agreement by the Resolution have been duly and regularly taken.

I. The purpose of this Agreement is to set forth the rules and regulations applicable to the Development, which shall be accomplished in accordance with this Agreement, including the Scope of Development.

AGREEMENT

NOW, THEREFORE, in consideration of the above recitals and of the mutual covenants hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE I: RECITALS AND DEFINITIONS; GENERAL PROVISIONS

1. RECITALS, DEFINITIONS AND EXHIBITS.

1.1. Recitals; Definitions. The City and Company acknowledge and agree that the above Recitals are complete and accurate in all material respects, and are hereby incorporated into the terms and provisions of this Agreement. This Agreement uses a number of terms having specific meanings, as defined below. These specially defined terms are distinguished by having the initial letter capitalized, when used in the Agreement. In addition to the terms defined in the preamble and the Recitals above, the defined terms include the following:

1.1.1 “**Agreement**” means this Lease Agreement and all attachments and exhibits hereto.

1.1.2 “**Anniversary Date**” is the date which is one (1) year following the Rent Commencement Date, and each date on the anniversary thereof during the Term of this Agreement (or such dates following any partial years).

1.1.3 “**Assignee**” shall have the meaning provided in Section 17.19.

1.1.4 “**Assignment**” shall have the meaning provided in Section 17.19.

1.1.5 “**CEQA**” shall have the meaning provided in Section 12.3.

1.1.6 “**Certificate**” shall have the meaning provided in Section 13.3.

1.1.7 “**City Council**” means the City Council of the City.

1.1.8 “**City Proposal Notice**” shall have the meaning provided in Section 8.

1.1.9 “**Construction Bonus**” have the meaning provided in Section 2.4.2.

1.1.10 “**Construction Costs**” shall have the meaning provided in first paragraph immediately following Section 12.6.3.

1.1.11 “**Company Portion**” shall have the meaning provided in first paragraph immediately following Section 12.6.3.

1.1.12 “**Covered Month(s)**” shall have the meaning provided in Section 17.11 below.

1.1.13 “**Cure Period**” shall have the meaning provided in Section 13.2.

1.1.14 “**Default**” shall have the meaning provided in Section 13.2.

1.1.15 “**Final Permits**” shall mean all necessary/required building and other permits, approvals, entitlements, and inspections by all governmental and utility agencies, to install, construct, maintain, operate (including the display of third party advertising or other content, whether physically on-premise or via remotely changeable off-premise technology), improve, supplement, post, illuminate, repair, reposition, refurbish or replace (as applicable) and/or remove the Digital Billboard and the Structure, and are signed and dated by a duly authorized official of the City or its designee, where applicable and require, including, without limitation, (i) an approved variance request for the permitted total square footage of the digital displays on the Digital Billboard and overall height of the Digital Billboard and the Structure, an approved variance or other modification request for the installation of digital displays on the Digital Billboard allowing for changing or rotating advertising copy at intervals in accordance with state laws, and any other approved variance or modification requests (collectively, the

“**Variances**”), and (ii) an approval from Caltrans for the declassification of the landscape freeway status of the 405 Freeway (the “**Landscape Declassification**”).

1.1.16 “**Force Majeure Event**” shall have the meaning provided in Section 17.11 below.

1.1.17 “**Gross Net Revenue**” means the entire amount of the revenues, whether for cash or otherwise, actually received by Company for the sale of advertising on the Digital Billboard (excluding any advertising copy creative and production revenues which are within normal signage industry standards), net of any third party agency and third party broker commissions and sales commissions paid to Company’s sales staff in connection therewith (in an amount not to exceed 10 percent) (collectively, the “**Commissions**”).

1.1.18 “**Land Use Regulations**” means (i) all ordinances, resolutions, codes, rules, regulations and official policies of the City, including, but not limited to, the City’s General Plan, Municipal Code and Zoning Code, which govern development and use of the Site, including, without limitation, the permitted use of land, the density or intensity of use, subdivision requirements, the maximum height and size of the Digital Billboard, and the design, improvement and construction standards and specifications applicable to the Development or the Site, and (ii) the federal National Pollutant Discharge Elimination System (“**NPDES**”) regulations and approvals from the California Department of Transportation Outdoor Advertising Division, to the extent applicable, in each such instance under (i) and (ii) which are in full force and effect as of the Effective Date of this Agreement, subject to the terms of this Agreement.

1.1.19 “**License**” shall have the meaning provided in Section 7.

1.1.20 “**Minimum Rent**” shall have the meaning provided in Section 2.4.1(i).

1.1.21 “**Mortgagee**” means a mortgagee of a mortgage, a beneficiary under a deed of trust or any other security-device, a lender or each of their respective successors and assigns which possesses an encumbrance on the Site or any portion thereof or the Development or any improvement on the Site thereon by any mortgage, deed of trust or other security device securing financing with respect to the Development.

1.1.22 “**Outside Commencement Date**” shall have the meaning provided in Section 2.3.

1.1.23 “**Percentage Rent**” shall have the meaning provided in Section 2.4.1(ii).

1.1.24 “**Possessory Tax**” shall have the meaning provided in Section 12.6.3.

1.1.25 “**Rent Commencement Date**” means the first day of the month after the date on which Company fully completes the construction and installation of the Digital Billboard and the Structure.

1.1.26 “**Revenue Report**” shall have the meaning provided in Section 2.5.

1.1.27 “**Structure**” shall have the meaning provided in Section 5.

1.1.28 “**Subsequent Land Use Regulations**” means any Land Use Regulations effective after the Effective Date of this Agreement (whether adopted prior to or after the Effective Date of this Agreement) which govern development and use of the Site.

1.1.29 “**Term**” shall have the meaning provided in Section 2.3, unless earlier terminated as provided in this Agreement.

1.1.30 “**Traffic**” shall have the meaning provided in Section 17.11 below.

1.2 **Exhibits.** The following documents are attached to, and by this reference made a part of, this Agreement: Exhibit “A” (Depiction of the Site), Exhibit “B” (Legal Description of the Site), Exhibit “C” (Scope of Development), Exhibit “D” (Site Plan), and Exhibit “E” (Billboard Elevation Diagram).

2. GENERAL PROVISIONS.

2.1. **Binding Effect of Agreement.** From and following the Effective Date of this Agreement, actions by the City and Company with respect to the Development, subject to any applicable Land Use Regulations and Subsequent Land Use Regulations affecting the Site, shall be subject to the terms and provisions of this Agreement, provided, however, that nothing in this Agreement shall be deemed or construed: (i) to bind or restrict the City with respect to its ownership or operation of the Site except as expressly set forth herein with respect to the Development, or (ii) to impose any obligation whatsoever on the City with respect to the Development, except as expressly set forth in this Agreement.

2.2. **Interest in Site.** Company shall possess a leasehold interest in the Site for the Term of this Agreement.

2.3. **Term of Agreement.** This Agreement shall be in effect commencing on the Effective Date hereof for a term (“**Term**”) that is thirty (30) years following the Rent Commencement Date. Upon the written or email request of the City, Company will confirm (via email or in writing) the date of the Rent Commencement Date, as shall be reasonably determined by Company.

Notwithstanding the foregoing in this Section 2.3, either party shall have the right to terminate this Agreement upon sixty (60) days advance written notice to the other party in the event Company has not completed such construction of the Digital Billboard and the Structure within twelve (12) months following its receipt of all of the Final Permits, as shall be extended during the period of any Force Majeure Event (the “**Outside Commencement Date**”), or any application for Final Permits is finally disapproved by the permitting agency and Company has unsuccessfully exhausted all of its right to appeal or challenge such disapproval (whether through administrative process or litigation or other formal process). Further notwithstanding the foregoing, Company may request that the Outside Commencement Date be extended for an additional six (6) months provided Company can demonstrate good faith efforts to, and reasonable progress in, pursuing the

construction of the Digital Billboard and the Structure (as evidenced by a fully-executed construction contract with a third party signage installer), with a reasonable likelihood of completing such construction within such additional six (6) month period. Unless earlier terminated as provided in this Agreement, the Term of this Agreement will terminate on the later of (i) the expiration of the Term of this Agreement, or (ii) the permanent removal of the Digital Billboard and the Structure pursuant to this Section 2.3, other than its removal for repair, refurbishment, or replacement.

Within sixty (60) days following the expiration or earlier termination of this Agreement, unless an extension or renewal of this Agreement is agreed to in writing by the parties, Company shall remove the Digital Billboard and the Structure and the Site will be restored to its pre-install condition, normal wear and tear excepted, except that the columns of the Digital Billboard can be cut off one (1) foot below grade.

Within thirty (30) days after the expiration or earlier termination of this Agreement, the parties shall execute a written cancellation of this Agreement which shall be recorded with the County Recorder. Removal of said Digital Billboard and the Structure shall be completed by Company in compliance with applicable laws and at its sole cost.

2.4. Compensation to the City.

2.4.1 During the Term of this Agreement, Company will pay the following to the City:

(i) Commencing on the Rent Commencement Date, Company shall pay the following base rent, pro-rated for any partial periods (the “**Minimum Rent**”):

- Years 1-5: \$68,750 per month (or \$825,000 per year)
- Years 6-10: \$75,625 per month (or \$907,500 per year)
- Years 11-15: \$83,187.50 per month (or \$998,250 per year)
- Years 16-20: \$91,506.25 per month (or \$1,098,075 per year)
- Years 21-25: \$100,656.92 per month (or \$1,207,883 per year)
- Years 26-30: \$110,722.58 per month (or \$1,328,671 per year)

Such Base Rent shall be paid monthly on or before the 1st day of each month.

(ii) Further, within ninety (90) days following each Anniversary Date, Company shall pay the amount, if applicable, by which 62.5% of Gross Net Revenue exceeds the total Minimum Rent therefor paid to the City during the year (or partial year) immediately preceding such Anniversary Date (“**Percentage Rent**”). Such Percentage Rent payment will be accompanied by a reasonably detailed statement of how such Percentage Rent and excess amount (if any) were calculated.

2.4.2 Within fifteen (15) days following the Rent Commencement Date, Company shall pay the City a one-time construction bonus (the “**Construction Bonus**”) in the amount of \$775,000.00.

Resolution – Lease and Operating Agreement with Branded Cities
Digital Billboard
12/13/2023

For the purposes of this Agreement, “**Rent**” shall mean all of the Minimum Payment and Percentage Rent payments to the City under Section 2.4.1(i) and (ii), respectively, above.

2.5. Revenue Report: Within ninety (90) days following each Anniversary Date, Company shall furnish to the City an itemized statement in writing (“**Revenue Report**”), certified by Company to be correct, showing the total Gross Net Revenue from each sign face of the Digital Billboard during the year immediately preceding such Anniversary Date.

2.5.1. Additional Revenue. While Company is not precluded from generating additional revenue from wireless deployment on the Digital Billboard, other than wireless communication devices used for purposes of operating a billboard, Company shall not enter any agreement with any party for additional revenue, including revenue derived from wireless deployment on the billboard, without first reaching an agreement with City regarding the additional revenue. Notwithstanding the immediately preceding sentence, nothing shall preclude Company from receiving any advertising copy creative and production revenues which are within normal signage industry standards, without the need to reach an agreement therefor with the City.

2.5.2. Audit of Compensation. With at least five (5) business days’ prior written notice to Company of not less than ten (10) business days, the City has the right to audit the Gross Net Revenue for the Digital Billboard with respect to the most recent Revenue Report and to view those portions of any advertising space contracts or invoices in connection with any Commissions that only relate to the Digital Billboard, at Company’s corporate office, on any normal workday (excluding any federal or state holidays) between 9:00 a.m. and 4:00 p.m. MST once a year. The City also has the option of having such advertising space contracts and invoices delivered by Company to the City via email for its audit review at City Hall, 8200 Westminster Blvd., Westminster, CA 92683. Prior to the audit, the City shall sign a confidentiality agreement regarding the Gross Net Revenue and such advertising space contracts and invoices. If the statement of total Gross Net Revenue previously provided to the City shall be found to be inaccurate for prior years of the Term of this Agreement, then there shall be an adjustment and the applicable party shall promptly pay to the other on demand such sums as may be necessary to settle in full the accurate amount of the Compensation during such period. If said audit discloses an underpayment by Company to the City of greater than five percent (5%) with respect to the amount of total Rent for the period or periods of said report, then Company shall promptly pay to the City the reasonable third party cost of such audit, plus a late fee equal to ten percent (10%) interest per annum on the amount underpaid, but the application of the said interest is limited to the period covered by the applicable (most recent) Revenue Report. If said audit does not disclose an underpayment of greater than five percent (5%) with respect to the amount of total Rent for the period or periods of said report, the cost of such audit initiated by the City shall be paid by the City.

3. COMMUNITY BENEFITS. Company shall also provide the following community benefits during the Term of this Agreement.

3.1. City's Use of the Digital Billboard. Company shall provide display time to the City for public service announcements ("PSAs") on either of the digital display faces of the Digital Billboard, (i) for three (3) minutes per hour, on an annualized basis (during the one (1) year following the Anniversary Date and each anniversary thereof), and (ii) during any periods in which third party paid advertising is not displayed thereon. In connection with such PSAs under the immediately preceding sentence, the City shall be responsible, at its sole cost and expense, for providing Company with approved copy in acceptable "display-ready" format per Company's specifications. The City's use pursuant to the foregoing under this Section 3.1 is subject to the following conditions and parameters: (a) all copy must be submitted to Company at least five (5) business days before the proposed display date and (b) all copy will be subject to Company's standard advertising copy rejection and removal policies, which allow Company, in its sole discretion, to approve or disapprove copy and remove copy once posted or displayed.

3.2. Amber Alerts; Public Safety Messages. In addition to the foregoing under Section 3.1 above, Company shall post all "Amber Alerts" on the Digital Billboard in accordance with applicable guidelines and any public safety or emergency service messaging required by applicable state or federal laws. In addition, Company shall make the space on the Digital Billboard available to the City, Caltrans, the Federal Emergency Management Agency and any other federal or state emergency management or public safety authority to preempt commercial displays in favor of public health and safety emergency alerts in the event of natural disasters or other emergency events at no cost to the City or other applicable agency or authority. Any such post on the Digital Billboard pursuant to this Section 3.2 shall be for a duration as reasonably determined by Company.

3.3. Discount Advertising. Company shall offer a minimum of a ten percent (10%) discount off its applicable rate card for the display of third party paid advertising on the Billboard to any business holding a City-issued business license and with its principal place of business located in the City.

ARTICLE II: LEASE

4. LEASE. City hereby leases the Site to Company, on an exclusive basis, including without limitation, any portion of the airspace above or adjacent to the Site which may be occupied by the Digital Billboard and appurtenances thereto, and any surface or subsurface portions of the Site containing structural supports or other components of the Structure (as defined below) or utility improvements installed by Company to serve the Digital Billboard and the Structure.

The City agrees that, during the Term of this Agreement, the City shall not enter into a lease, license, or any other agreement or arrangement, in any form or format, which permits all or any portion of the Site to be used for purposes of displaying third party advertising on any static, digital, or other signage.

Promptly following the receipt of the Landscape Declassification portion of the Final Permits, the City will obtain (i) a new ALTA survey for the Site, at the sole cost and expense of Company, and (ii) a permanent property tax number for the Site, at the sole cost and expense of the City, copies of which in each such instance shall be promptly delivered via email or in writing to Company. Further, the City will reasonably endeavor to zone the Site in a manner that is consistent with the commercial uses of the real properties which are in the proximity of the Site.

5. ALLOWABLE USES. The Site is leased for the purpose of installing, constructing, maintaining, operating (including the display of third party advertising or other content, whether physically on-premise or via remotely changeable off-premise technology), improving, supplementing, posting, illuminating, repairing, repositioning, refurbishing or replacing (as applicable) and/or removing the Digital Billboard and the pole, wireless communications equipment, fixture connections, electrical supply and connections, panels, displays, copy, ladders, sign structure, and any equipment and accessories as Company may place thereon (collectively, the “**Structure**”). Company may sublease, license, or otherwise grant the right to display third party paid advertising or other content on the Digital Billboard, or any portion thereof, for any lawful purpose subject, however, to the limitations set forth in Section 6 below.

6. PROHIBITED USE. Company shall not utilize any of the displays on the Digital Billboard to advertise tobacco, marijuana, hashish, “gentlemen’s clubs,” adult entertainment businesses, obscene or pornographic materials, images, or language, or as may be prohibited by any City ordinance existing as of the Effective Date of this Agreement, or as may be amended or implemented from time-to-time after such Effective Date and equally-applicable to all billboard displays by any duly and valid City ordinance. For the purposes of the immediately preceding sentence, “pornographic material” is defined for the purposes of this Section 6 as any written, pictorial, videographic or computer-driven matter with prurient appeal or any objects or instruments that are primarily concerned with lewd or prurient sexual activity, in each such instance based on contemporary community standards, and “obscene material” is defined herein as it is in California Penal Law §311.

7. LICENSE GRANTED. The City hereby grants to Company and its employees, agents, representatives, contractors of any tier, and invitees, a non-exclusive irrevocable license coupled with an interest (the “**License**”) over any adjacent real property owned by the City for purposes of installing, constructing, maintaining, operating (including the display of third party advertising or other content, whether physically on-premise or via remotely changeable off-premise technology), improving, supplementing, posting, illuminating, repairing, repositioning, refurbishing or replacing (as applicable) and/or removing the Digital Billboard and the Structure and all activities reasonably necessary in connection therewith. Such License shall terminate sixty (60) days after the expiration or earlier termination of this Agreement as set forth herein. Without limiting the foregoing, the City hereby agrees to grant easements over the Site and any real property of City located adjacent thereto to service and utility providers as may be reasonably necessary to provide electrical or other utility service to the Site, together with the Digital Billboard and the Structure, for all of the allowable uses under this Agreement. The Digital Billboard and the Structure on the Site shall be separately metered for electricity, at Company’s sole cost and expense. Company shall, with regard to all separately metered electrical services, promptly pay directly to all

applicable public utilities all amounts which are owed for service furnished to the Site (together with any taxes thereon) during the Term of this Agreement.

8. RIGHT OF FIRST REFUSAL. In the event that, at any time during the Term of this Agreement, the City desires to retain a third party to sell and display third party advertising on any static, digital, or other signage located on any portion of real properties owned by the City (other than the Site), the City shall promptly notify Company of the same in writing, together with a copy of the non-binding letter of intent, proposal, or other summary of all material terms in connection therewith, including, without limitation, the term of the proposed agreement, payment obligations, and advertising restrictions (the “**City Proposal Notice**”), and Company shall have the exclusive right of first refusal to enter into a new written agreement with the City on the terms and conditions which are contained in the City Proposal Notice and other customary terms as mutually agreed upon in writing by the City and Company. If Company declines to exercise such right of first refusal in writing to the City within thirty (30) days following Company’s receipt of the City Proposal Notice (or fails to send a notice of election or decline within such thirty (30) days), Company shall be deemed to have forfeited such right of first refusal, and the City shall be entitled to enter into an agreement with a third party on terms which are no more favorable to such third party than those, as applicable, contained in the City Proposal Notice.

9. EMINENT DOMAIN. If the Site, or any part thereof, is condemned, taken without the exercise of eminent domain, whether permanently or temporarily, or any right-of-way from which the digital displays on the Digital Billboard are visible is relocated, in any such instance by proper governmental authorities, Company shall have the right, in its sole and absolute discretion, to either (i) relocate the Digital Billboard and the Structure to adjacent portions of other real property owned by the City, or (ii) terminate this Agreement upon not less than thirty (30) days’ notice and to receive all pre-paid Rent for any unexpired Term of this Agreement. Company shall be entitled to all compensation and other remedies provided by law, including, without limitation, just compensation for the taking of the Digital Billboard and/or the Structure, the value of the Final Permits, the Construction Bonus, and Company’s leasehold interest in this Agreement, and/or the relocation of the Digital Billboard and the Structure. If condemnation proceedings are initiated, (A) the City shall include Company as a party thereto, provided that the City shall assert no rights in Company’s interests, (B) the termination right of Company set forth in this Section 9 above may not be exercised by Company prior to the sale to any governmental authority with the power of eminent domain or by or for the benefit of any governmental authority with the power of eminent domain, and (C) neither party may apportion the other party’s awarded interest without the express written consent of said party.

10. AUTHORITY. The City represents and warrants that it is the record owner of the Site, and both City and Company represent to the other party that the person(s) executing this Agreement on behalf of the representing party is(are) duly authorized to execute and deliver this Agreement on behalf of said party, and to bind said party to all of its duties and obligations under this Agreement.

11. COVENANT TO INSURE. Prior to Company's entry onto the Site and at all times during the Term of this Agreement, and thereafter upon each renewal of such policies, and without limiting Company's indemnification obligations under Section 15.2 below, Company shall provide and maintain insurance in the amount and form specified in Section 15.1 below.

12. DEVELOPMENT AND IMPLEMENTATION OF THE DEVELOPMENT.

12.1. Rights to Develop. Subject to and during the Term of this Agreement, Company shall have the right to install, construct, and refurbish or replace (as applicable) the Digital Billboard and the Structure in accordance with, and to the extent of, the Final Permits, the Land Use Regulations and this Agreement, provided that nothing in this Agreement shall be deemed to modify or amend any of the Land Use Regulations, as more particularly set forth in Section 12.2 below.

12.2. Effect of this Agreement on Land Use Regulations. Except as otherwise provided under the terms of this Agreement, the rules, regulations and official policies governing permitted uses of the Site, the density and intensity of use of the Digital Billboard and the Structure on the Site, the maximum height and size of the proposed Digital Billboard and the Structure on the Site, and the design, improvement and construction standards and specifications applicable to the Site, shall be as set forth in the Land Use Regulations, subject to the Variances which are part of the Final Permits.

12.3. Final Permits; CEQA and Other Development Requirements. Following the Effective Date hereof, Company shall, at its sole cost and expense, exercise commercially reasonable efforts to submit the necessary applications and obtain all Final Permits in connection with the Digital Billboard and the Structure. The City, without restricting in any manner any legislative or ministerial authority of the City acting in its capacity as the City, shall reasonably cooperate with and assist Company in executing, in its capacity as owner of the Site, any applications or consents required in connection with such Final Permits. All such Final Permits shall remain the property of Company.

As soon as reasonably practicable following the Effective Date of this Agreement, the City and Company will pursue and obtain, at the sole cost and expense of Company, any required approval from the Planning Commission of the City for the installation, construction, and operation of the Digital Billboard and the Structure on the Site, in compliance with, and in satisfaction of, the requirements of, the California Environmental Quality Act ("CEQA"), including any required conclusion that although the proposed project could have an effect on the environment, the effects are not considered to be significant.

Not by way of limiting the foregoing under this Section 12.3, in developing and constructing the Development, Company shall comply with all: (1) applicable development standards in the City's Municipal Code that are in effect as of the Effective Date of this Agreement and the Final Permits, (2) applicable Land Use Regulations pertaining to the Development, and (3) applicable building codes that are in effect as of the Effective Date of this Agreement, except as may be permitted through the Variances. Company shall pay all normal and customary fees and charges applicable to the Final Permits, and any fees and charges hereafter imposed by the City in connection with the Development which are standard and uniformly-applied to similar projects in the City.

12.4. Reservation of Authority.

12.4.1 *Limitations, Reservations and Exceptions.* Notwithstanding any other provision of this Agreement, the following Subsequent Land Use Regulations shall apply to the Development:

(a) Changes adopted by the International Conference of Building Officials, or other similar body, as part of the then most current versions of the Uniform Building Code, Uniform Fire Code, Uniform Plumbing Code, Uniform Mechanical Code, or National Electrical Code, as adopted by the City as Subsequent Land Use Regulations, if adopted prior to the issuance of a building permit for development of the Digital Billboard. Notwithstanding the foregoing, if such change materially changes Company's costs or otherwise materially impacts its performance hereunder, Company may elect in its sole and absolute discretion to terminate this Agreement upon ninety (90) days prior written notice to the City.

(b) Subsequent Land Use Regulations that are in conflict with this Agreement, provided Company has given written consent in its sole and absolute discretion to the application of such Subsequent Land Use Regulations to the Development.

(c) Applicable federal, state, county and multi-jurisdictional laws and regulations which the City is required to enforce against the Site or the Development, and that do not have an exception for existing signs or legal nonconforming uses.

12.4.2 *Modification or Suspension by Federal, State, County, or Multi-Jurisdictional Law.* In the event that applicable federal, state, county or multi-jurisdictional laws or regulations, enacted after the Effective Date of this Agreement, prevent or preclude compliance with one or more of the provisions of this Agreement, and there is no exception for the legal nonconforming use, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such federal, state, county or multi-jurisdictional laws or regulations, and this Agreement shall remain in full force and effect to the extent it is not inconsistent with such laws or regulations and to the extent such laws or regulations do not render such remaining provision impractical to enforce; provided, however, that the applicability and enforceability of the provisions of this sentence shall be expressly subject to Company's right in its sole and absolute discretion to appeal, challenge, or otherwise dispute all or any portion of such provisions. Notwithstanding the foregoing, if such change materially changes Company's costs or otherwise materially impacts its performance hereunder, Company may terminate this Agreement upon ninety (90) days prior written notice to the City.

12.5 Regulation by Other Public Agencies. It is acknowledged by the parties that other public agencies not subject to control by the City may possess authority to regulate aspects of the Development as contemplated herein, and this Agreement does not limit the authority of such other public agencies. Company acknowledges and represents that, in addition to the Land Use Regulations, Company shall, at all times, comply with all applicable federal, state and local laws and regulations applicable to the Development and that do not have an exception for a legal nonconforming use. To the extent such other public agencies preclude development or maintenance of the Development and do not have an exception for a legal nonconforming use,

Company shall not be further obligated under this Agreement except as provided in Section 14.1.3 below. Notwithstanding the foregoing, if such action by another public agency materially changes Company's costs or otherwise materially impacts its performance hereunder, Company may terminate this Agreement upon ninety (90) days prior written notice to the City.

12.6 Fees, Taxes and Assessments. During the Term of this Agreement,

12.6.1 Company shall pay, or cause to be paid, any and all taxes assessed and which become due and payable during the Term of this Agreement upon all of Company's income;

12.6.2 the City shall not, without the prior written consent of Company, impose any additional fees, taxes or assessments on all or any portion of the Development or Company, except as follows:

(i) Company shall be obligated to pay any business license fees or utility taxes applicable to the Development and the operation of the Digital Sign and the Structure,

(ii) Company shall be obligated to pay all fees applicable to any permit applications in connection with the Final Permits as charged by the City at the time such application(s) are filed by Company, and

(iii) Company shall be obligated to pay any fees imposed pursuant to the most current versions of the Uniform Building Code, Uniform Fire Code, Uniform Plumbing Code, Uniform Mechanical Code, or National Electrical Code, as adopted by the City as Subsequent Land Use Regulations, if adopted prior to the issuance of a building permit for development of the New Digital Billboard; and

12.6.3 except as expressly provided in Section 12.6.1 and Section 12.6.2, the City shall pay any other forms or types of charges, fees, imposts, or taxes levied or assessed and which become due and payable during the Term of this Agreement hereof, upon the City's income, the Site, Development (or any portion thereof), and the City's personal property, including, without limitation, (A) any billboard, sales, excise, franchise or transaction privilege, or any other fee, tax, or assessment on billboard or signage revenues, (B) any increases in real estate taxes in connection with or attributable to the Site and/or the Development, (C) real property taxes in connection with or attributable to the Site, including, without limitation, the ownership thereof, and (D) any state and/or county taxes in connection with Company's occupation or possession of (or possessory interest in) the Site in accordance with this Agreement pursuant to, as applicable, California Revenue and Taxation Code Section 107.6(a) and any other State of California and county rules, regulations, orders, or laws (collectively under this (D), "**Possessory Taxes**").

Notwithstanding the foregoing in this Section 12.6, in the event that, during the Term of this Agreement, the City remits payment to the State of California for any Possessory Taxes which is assessed or levied and become due and payable for any annual period (or partial annual period) commencing with the Rent Commencement Date, Company will reimburse the City within ten (10) business days following the date in which the City provides written or email evidence of such

payment to Company in an amount equal to up to one percent (1%) of the total third party costs incurred by Company in connection with the fabrication, procurement, construction, and installation of the Digital Billboard and the Structure under this Agreement (not to exceed the amount of the Possessory Taxes) (collectively, the “**Construction Costs**”). For the purposes of this Agreement, that portion of the Possessory Taxes for which Company is responsible under the immediately preceding sentence shall be defined as the “**Company Portion**”. The first such payment by Company shall be accompanied by written evidence of the Construction Costs incurred by Company, together with copies of the written agreement(s) between Company and the applicable contractor(s) in connection therewith. For the avoidance of doubt, the Construction Costs shall not include the Construction Bonus under this Agreement. During the period between the Effective Date of this Agreement and the commencement of the construction of the Digital Billboard and the Structure, Company will exercise commercially reasonable efforts to determine whether the amount of the Possessory Taxes being assessed or levied may be reduced by the amount of all or any of the labor costs of the applicable contractor(s) which are included in the Construction Costs, and provide written or email back-up support of any such determination (or confirmation that no such reduction applies) to the City.

If the City receives any notices or other communications from the applicable taxing authority(ies) in connection with any tax obligations of Company pursuant to Section 12.6.1 or Section 12.6.2 above, the City will promptly forward a copy of the same (via email or in writing) to Company. If Company receives any notices or other communications from the applicable taxing authority(ies) in connection with any tax obligations of the City pursuant to Section 12.6.3 above, Company will promptly forward a copy of the same (via email or in writing) to the City.

Notwithstanding the foregoing in this Section 12.6, in the event that, during the Term of this Agreement, the City remits payment to the State of California for any Possessory Taxes which is assessed or levied and become due and payable for any annual period (or partial annual period) commencing with the Rent Commencement Date, Company will annually reimburse the City for the Company Portion within ten (10) business days following the date in which the City provides written or email notice of the same, including a copy of the applicable assessment or levy.

12.7 Changes. Notwithstanding anything to the contrary herein, if there is a change in such fees as compared to those fees in effect as of the Effective Date hereof, or if any additional fees are charged and such additional or increased fees materially change Company’s costs or otherwise materially impacts its performance hereunder, which in all instances with respect to such fees and additional fees shall be uniformly applied to all businesses or other parties, Company may terminate this Agreement upon ninety (90) days prior written notice to the City. Further, any increases in fees under Sections 12.6.2, 12.6.3, and 12.6.4 above shall solely be the extent required to satisfy any increases in administrative expenses incurred by the City.

12.8 Maintenance. Company shall comply with all of the maintenance obligations in connection with the Development under Section 3 of the Scope of Development.

12.9 Graffiti Removal. All graffiti and defacement of any type on the Digital Billboard, including marks, words and pictures must be removed and any necessary painting or repair completed in accordance with Chapter 9.38, Section 9.38.070 of City’s Municipal Code as the same may be amended from time to time hereafter.

12.10 Non-Operation and Removal. Company shall promptly repair the Digital Billboard in the event of damage, defect, or other cause to maintain operations in accordance with this Agreement. In the event Company anticipates that a repair will require more than 30 days to complete, Company shall notify City via email or in writing of the anticipated schedule and the cause of the delayed repair, and will keep the City reasonably apprised of the completion of such repair.

12.11 No Obstructions. The City agrees not to obstruct, or permit to be obstructed, from the public view all or any portion of any advertising displayed on either or both of the digital displays on the Digital Billboard. If the City causes or permits any such obstruction, then (i) Company may elect, in its sole and unfettered discretion, on twenty-four (24) hours prior email or written notice to the City, cause the obstruction to be removed, and the cost of the same shall be either deducted from the next installment(s) of the Rent until fully repaid, and (ii) Company's Minimum Rent payment obligation under Section 2.4.1(i) above shall be fully abated during the period of such obstruction, in addition to Company's other rights and remedies under this Lease.

13. REVIEW FOR COMPLIANCE.

13.1. City Rights of Access. The City and its officers, employees, agents and contractors shall have the right, at their sole risk and expense, to enter the Site without interfering any adjacent right-of-way, and at all reasonable times with as little interference as possible to Company's operation of the Digital Billboard and the Structure, for the purpose of conducting a review and inspection of the construction, reconstruction, relocation, maintenance, repair or service of any public improvements or public facilities located on the Site. Any damage or injury to the Site or to the Digital Billboard or Structure resulting from such entry shall be promptly repaired at the sole cost and expense of the City. Notwithstanding anything to the contrary herein, in no event will the City's officers, employees, agents or contractors ever climb up the pole of the Structure during any such review and inspection.

13.2. Dispute Procedure. Each party shall have a reasonable opportunity to assert matters which it believes have not been undertaken in accordance with this Agreement, to explain the basis for such assertion, and to receive from the other party a justification of its position on such matters. In the event that any dispute arises between the parties in connection with this Agreement and either party sends a written notice of such dispute to the other party, which shall include a reasonably detailed explanation thereof, the parties shall, for a period of not less than fifteen (15) days following the other party's receipt of the response, exercise good faith, commercially reasonable efforts to arrive at a mutually agreed upon (via email or in writing) resolution of the disputed matter(s).

In the event that the parties are unable to reach such a resolution and, in connection therewith, either party (i) breaches any of its representations and warranties under this Agreement, or (ii) is in material default of the performance of any of its duties and obligations under this Agreement and fails to cure or remedy such the Cure Period (each under such (i) or (ii), a "**Default**"), then the other non-defaulting party may thereupon pursue the remedies in connection with such Default pursuant to Section 14.1.1 or Section 14.1.2, as applicable, and Section 14.1.4. For the purposes

of this Agreement, the “**Cure Period**” shall be defined as thirty (30) days following the defaulting party’s receipt of the written notice of Default from the other non-defaulting party, as shall be extended by an additional thirty (30) days but if such cure or remedy is not reasonably capable of being cured or remedied within the initial thirty (30) day period and the defaulting party commences to cure or remedy the non-compliance within such thirty (30) day period and thereafter diligently and in good faith to completion.

Notwithstanding the foregoing in this Section 13.2, neither party hereto shall be deemed in default of the performance of any of its duties and obligations under this Agreement if the reason for such non-performance is due to a Force Majeure Event, subject to the provisions of Section 17.11 below.

13.3. Estoppel Certificate. Within ten (10) days after written request therefor by the City or Company, the other party will execute a written estoppel certificate (“**Certificate**”), certifying that (1) this Agreement, as may be amended from time to time, remains is unmodified and in full force and effect, and (2) to such other party’s actual knowledge, the requesting party is not in breach or default under this Agreement, or, if such other party believes that the requesting party is in default, the nature thereof in reasonable detail.

14. DEFAULT AND REMEDIES.

14.1. Termination of Agreement.

14.1.1. Termination of Agreement for Material Default of Company. Subject to the City’s compliance with the procedures set forth in Section 13.2 above, the City, in its sole and absolute discretion, may elect to terminate this Agreement in writing to Company for any Default by Company under such Section 13.2, and pursue all available legal and equitable rights and remedies, which remedies shall be cumulative and not exclusive. In the event of any such termination, Company acknowledges and agrees that the City may retain all Rent that accrues up to the date of the termination, with any then-outstanding portion of such Rent due and payable within sixty (60) days after the date of termination and removal of the Digital Billboard and the Structure in accordance with Section 2.3 above.

14.1.2. Termination of Agreement for Material Default of City. Subject to Company’s compliance with the procedures set forth in Section 13.2 above, Company, in its sole and absolute discretion, may elect to terminate this Agreement in writing to the City for any Default by the City under such Section 13.2, and pursue all available legal and equitable rights and remedies, which remedies shall be cumulative and not exclusive.

14.1.3. Termination of Agreement Without Default. Company may terminate this Agreement in writing to the City if, despite Company’s good faith efforts, (1) it is unable to obtain or maintain during the Term of this Agreement all of the Final Permits and/or compliance with requirements under the Land Use Regulations, Subsequent Land Use Regulations, or ordinances, rules, and laws necessary to effectuate and operate the Development, Digital Billboard, and the Structure for all of the allowable uses under this Agreement, including, without limitation, the display of third party advertising thereon, (2) there is a material diversion or change in directional flow of traffic from the street or streets currently adjacent to or leading to or past the Site that has a material adverse effect on the value of the Digital Billboard (for the avoidance of doubt, a

reduction in the number of lanes on the 405 Freeway would qualify for the foregoing termination right under this Section 14.1.3), (3) electrical service and improvements cannot be made to the Site in a manner to allow the Digital Billboard and the Structure to operate and function for all of the allowable uses under this Agreement, including, without limitation, the display of third party advertising thereon, (4) the applicable portion of the Site cannot safely be used for any reason whatsoever for all of the allowable uses under this Agreement, including, without limitation, the display of third party advertising thereon, (5) all or any portion of any advertising displayed on either or both of the digital displays on the Digital Billboard are obstructed from the public view due to any cause or party, (6) the display of third party advertising on the Digital Billboard is prevented or materially restricted by ordinances or laws, or (7) it Company unable to profitably operate the Digital Billboard and the Structure. In the event of a termination by Company under this Section 14.1.3, Company acknowledges and agrees that the City may retain all Rent that accrues up to the date of the termination, with any then-outstanding portion of such Rent due and payable within sixty (60) days after the date of termination and removal of the Digital Billboard and the Structure in accordance with Section 2.3 above.

14.1.4. ***Rights and Duties Following Termination.*** Upon any earlier termination of this Agreement as provided herein, no party shall have any further right or obligation hereunder except with respect to (i) any additional legal and equitable rights and remedies of the City under Section 14.1.1 above or rights and remedies of Company under Section 14.1.2 above, (ii) any obligations to have been performed prior to said termination of this Agreement, (iii) Company's obligation to remove the Digital Billboard and the Structure in accordance with Section 2.3 above, and (iv) any other terms and provisions of this Agreement which customarily or due to their applicability are reasonably expected to survive.

15. INSURANCE, INDEMNIFICATION AND WAIVERS.

15.1. Insurance.

15.1.1. *Types of Insurance.*

(a) ***Liability Insurance.*** Beginning on the Effective Date hereof and until completion of the Term of this Agreement, Company shall, at its sole cost and expense, keep or cause to be kept in force for Company comprehensive broad form general liability insurance against claims and liabilities covered by the indemnification provisions of Section 15.2 below. Company has agreed to indemnify the City hereunder with respect to its use and occupancy of the Site, improvements or adjoining areas or ways, affected by such use of the Site or for property damage, providing commercial general liability insurance coverage of at least One Million Dollars (\$1,000,000) for bodily injury or death to any one person, at least One Million Dollars (\$1,000,000) for any one accident or occurrence, and property insurance covering the full replacement value of the Digital Billboard and the Structure.

(b) ***Worker's Compensation.*** Company shall also furnish or cause to be furnished to the City evidence that any contractor with whom Company has contracted for the

performance of any work for which Company is responsible hereunder carries worker's compensation insurance as required by law.

15.1.2. *Insurance Policy Form, Sufficiency, Content and Insurer.*

Notwithstanding the minimum coverage amounts stated above, all coverage available to the Company as named insured shall be made available to the City, its officers, employees and volunteers as additional insured. All insurance required by express provisions hereof shall be carried only by responsible insurance companies qualified to do business by California with an AM Best Rating of no less than "A". All such policies shall be non-assignable and shall contain language, to the extent obtainable, to the effect that (i) the insurer waives the right of subrogation against the City and against the City's agents and representatives except as provided in this Section; (ii) the policies are primary and noncontributing with any insurance that may be carried by the City, but only with respect to the liabilities assumed by Company under this Agreement; and (iii) the policies cannot be canceled or materially changed except after written notice by the insurer to the City or the City's designated representative as expeditiously as the insurance company agrees to provide such notice. Company shall furnish the City with certificates evidencing the insurance required to be procured by the terms of this Agreement.

15.1.3. *Failure to Maintain Insurance and Proof of Compliance.* Company shall deliver to the City, in the manner required for notices, copies of certificates of all required insurance policies within the following time limits:

(a) For insurance required above, within seven (7) days after the Effective Date hereof.

(b) The City can request at any time to see updated copies of the current certificates of all required insurance policies. The City reserves the right to obtain copies of the entire insurance policy, including endorsements.

(c) If Company fails or refuses to procure or maintain insurance as required hereby or fails or refuses to furnish the City with required proof that the insurance has been procured and is in force and paid for, the City, after complying with the requirements of Section 13.2, may view such failure or refusal to be a Default hereunder.

15.1.4. *Coverages Shall Not Limit Obligations.* The requirement as to types, limits, and City's written approval of insurance coverage to be maintained by Company are not intended to, and shall not in any manner, limit or qualify the liabilities and obligations of Company under this Agreement.

15.2. Indemnification.

15.2.1. **General.** Company shall indemnify the City and its respective officers, employees, and agents against, and will hold and save them and each of them harmless from, any and all actions, suits, claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions, or liabilities (herein “claims or liabilities”) that may be asserted or claimed by any person, firm, or entity arising out of or in connection with the work, operations, or activities of Company, its agents, employees, subcontractors, or invitees, hereunder, upon the Site.

(a) Company will defend any action or actions filed in connection with any of said claims or liabilities covered by the indemnification provisions herein and will pay all costs and expenses, including reasonable (i) legal costs and (ii) attorneys’ fees incurred in connection therewith, which attorneys will be the attorneys hired by the insurance company to the extent that any insurance coverage applies.

(b) Company will promptly pay any judgment rendered against the City or its respective officers, agents, or employees for any such claims or liabilities arising out of or in connection with such work, operations, or activities of Company hereunder, and Company agrees to save and hold the City and its’ respective its officers, agents, and employees harmless therefrom.

15.2.2. **Additional Scope of Indemnity.** Without limiting the generality of the foregoing, Company’s indemnity obligation under Section 15.2.1 above shall include any liability arising by reason of:

(a) Any accident or other occurrence in or on the Site causing injury to any person or property whatsoever caused by Company;

(b) Any failure of Company to comply with performance of all of the provisions of this Agreement;

(c) Any harm, delays, injuries or other damages incurred by any party as a result of any subsurface conditions on the Site caused solely by Company, including but not limited to, the presence of buried debris, hazardous materials, hydrocarbons, or any form of soil contamination.

(d) Any third party claims or challenges to the approval of this Agreement by City.

15.2.3. **Exceptions.** The indemnity under Section 15.2.1 and Section 15.2 above shall not include claims or liabilities to the extent arising from the negligence or willful misconduct of the City, or its officers, agents, employees, subcontractors, invitees or representatives.

15.2.4. **Loss and Damage.** The City shall not be liable for any damage to property of Company or of others located on the Site, nor for the loss of or damage to any property of Company or others by theft or otherwise. Except as set forth below, the City shall not be liable for any injury or damage to persons or property resulting from fire, explosion, steam, gas, electricity, water, rain, dampness or leaks from any part of Site or from the pipes or plumbing, or from the street, or from any environmental or soil contamination or hazard, or from any other latent or patent defect in the soil, subsurface or physical condition of Site, or by any other cause of whatsoever nature. The foregoing two (2) sentences shall not apply (i) to the extent the City or its officers, agents, employees, subcontractors, invitees or representatives causes such injury or damage when accessing the Site, or (ii) under the circumstances set forth in Section 15.2.3 above.

15.2.5. **Period of Indemnification.** The obligations for indemnity under this Section 15.2 shall begin upon the Effective Date hereof and shall survive termination of this Agreement.

15.3. Waiver of Subrogation. Company and the City mutually agree that neither shall make any claim against, nor seek to recover from the other or its agents, servants, or employees, for any loss or damage to Company or the City or to any person or property relating to this Agreement, except as specifically provided hereunder, which include but is not limited to a claim or liability to the extent arising from the negligence or willful misconduct of the City or Company, as the case may be, or their respective officers, agents, or employees who are directly responsible to the City and Company, as the case may be.

16. MORTGAGEE PROTECTION; SNDAs. The parties hereto agree that this Agreement shall not prevent or limit Company, in any manner, at Company's sole discretion, from encumbering the Site or any portion thereof or the Development or any improvement on the Site thereon by any mortgage, deed of trust or other security device securing financing with respect to the Development. Upon reasonable approval by the City Attorney, the City authorizes the City Manager to execute any Notices of Consent to Assignment on behalf of the City or similar financial documentation. Any Mortgagee of the Site shall be entitled to the following rights and privileges:

16.1.1. Neither entering into this Agreement nor a breach of this Agreement shall defeat, render invalid, diminish or impair the lien of any mortgage on the Development of the Site or any mortgage of the Site made in good faith and for value, unless otherwise required by law.

16.1.2. The Mortgagee of any mortgage or deed of trust encumbering the Development or the Site or any part thereof, which submits a request in writing to the City in the manner specified herein for giving notices, shall be entitled to receive written notification from the City of any default by Company in the performance of Company's obligations under this Agreement.

16.1.3. If the City timely receives a request from a Mortgagee requesting a copy of any notice of default or breach given to Company under the terms of this Agreement, the City shall make a good faith effort to provide a copy of such notice to the Mortgagee within ten (10) days of sending such notice to Company. The Mortgagee shall have the right, but not the obligation, to cure the non-compliance during the period that is the longer of (i) the remaining cure period allowed such party under this Agreement, or (ii) sixty (60) days.

16.1.4. Any Mortgagee who comes into possession of the Development or the Site, or any part thereof, pursuant to foreclosure of the mortgage or deed of trust, or deed in lieu of such foreclosure, shall take the Development or the Site, or part thereof, subject to the terms of this Agreement.

16.1.5. The City (i) shall deliver to Company a subordination, nondisturbance, and attornment agreement (a “**SNDA**”) for Company from the Mortgagee(s), if any (on the standard SNDA form of such Mortgagee(s), if applicable) (the “**Lender(s)**”), promptly following the full execution of this Agreement by the City and Company, and (ii) exercise commercially reasonable diligence to deliver to Company a SNDA for Company from the then-current Mortgagee(s) within thirty (30) days following the City’s receipt of a written request from Company for the same during the Term of this Agreement.

17. MISCELLANEOUS PROVISIONS.

17.1. No Public Forum. Due to the shape, size and location of the Site, it has not been previously utilized for any community purposes, and, in particular, has not been available for or dedicated to First Amendment activities at any time. The lease of the Site and the maintenance and operation of the Digital Billboard and the Structure thereon pursuant to this Agreement is in the best interest of City and the health, safety, morals, and welfare of the residents of the City of Westminster, by creating a source of revenue from land not otherwise used by the public, all in accord with the public purposes and provisions of applicable federal, state and local laws and requirements. The Digital Billboard and the Structure located on the Site shall not serve as a public forum. The provisions of this Agreement shall not be deemed to constitute a dedication for public use nor create any rights in the general public.

17.2. Ambiguities or Uncertainties; Recording of Memorandum of Lease. Neither City nor Company shall be bound by any terms, conditions or oral representations that are not set forth in this Agreement. City and Company agree and acknowledge that: (i) this Agreement has been freely negotiated by both parties; and (ii) in the event of any controversy, dispute, or contest over the meaning, interpretation, validity, or enforceability of this Agreement, or any of its terms or conditions, there shall be no inference, presumption, or conclusion drawn whatsoever against either party by virtue of that party having drafted this Agreement or any portion thereof. Company shall have the right to record a Memorandum of this Agreement against the Site in the Official Records of Orange County, California.

17.3. Entire Agreement. This Agreement sets forth and contains the entire understanding and agreement of the parties with respect to the subject matter set forth herein, and there are no oral or written representations, understandings or ancillary covenants, undertakings or agreements which are not contained or expressly referred to herein. No testimony or evidence of any such representations, understandings or covenants shall be admissible in any proceeding of any kind or nature to interpret or determine the terms or conditions of this Agreement.

17.4. Severability. If any term, provision, covenant or condition of this Agreement shall be determined invalid, void or unenforceable, then that term, provision, covenant or condition of this Agreement shall be stricken and the remaining portion of this Agreement shall remain valid and enforceable if that stricken term, provision, covenant or condition is not material to the main purpose of this Agreement, which is to allow the Development to be permitted and operated and to provide the Compensation to the City; otherwise, this Agreement shall terminate in its entirety, unless the parties otherwise agree in writing, which agreement shall not be unreasonably withheld.

17.5. Interpretation and Governing Law. This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of California, without regard for conflicts of laws principles. This Agreement shall be construed as a whole according to its fair language and common meaning, to achieve the objectives and purposes of the parties hereto. The rule of construction, to the effect that ambiguities are to be resolved against the drafting party or in favor of the non-drafting party, shall not be employed in interpreting this Agreement, all parties having been represented by counsel in the negotiation and preparation hereof.

17.6. Section Headings. All section headings and subheadings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

17.7. Singular and Plural. As used herein, the singular of any word includes the plural.

17.8. Time of Essence. Time is of the essence in the performance of the provisions of this Agreement as to which time is an element.

17.9. Waiver. Failure of a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Agreement thereafter.

17.10. No Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit for the parties and their respective successors and assigns. No other person shall have any right of action based upon any provision of this Agreement.

17.11. Force Majeure Event. Notwithstanding any provision to the contrary herein, neither party shall be deemed to be in default where failure or delay in performance of any of its obligations under this Agreement is caused by earthquakes, floods, or other acts of God, casualties, fires, thefts, explosions, electrical power outages, rains, winds, wars, invasions, insurrections, terrorism (domestic or foreign), riots or similar hostilities, strikes, boycotts, lockouts, civil disturbances, protests, and any other labor difficulties (including the party's employment force), moratoriums, expropriations, requisitions, pandemics and epidemics, public health orders and regulations, or any present or future laws, acts, orders, rules, regulations, or restrictions of federal, state, or municipal government (including, without limitation, the City of Westminster), court actions (such as restraining orders or injunctions), inability to get materials or services, or other causes beyond the party's reasonable control (each, a "**Force Majeure Event**").

If any such Force Majeure Event shall occur during the Term of this Agreement, then the time for performance of any such obligations shall be extended for the duration of each such Force Majeure Event; provided that the Term of this Agreement shall not be extended under any circumstances for more than five (5) years beyond the date it would have otherwise expired, and further provided that if such failure or delay is longer than six (6) months, Company may terminate this Agreement upon written notice to the City and the City shall return to Company any portion of the Rent paid for any period after the effective date of such termination.

Further despite anything contained in this Agreement to the contrary, including, without limitation, Section 17.11 above, if any (i) Force Majeure Event occurs, and (ii) during any month(s) of the Term of this Agreement or portion thereof (an "**Covered Month(s)**"), there is a decrease in the amount of pedestrian and vehicular traffic on the roadway from which travelers thereon are able to view the displays (the "**Traffic**") on the Signs by 25% or greater as compared to the Traffic during the identical month during the period between March 1, 2019 and February 29, 2020 (for example, Traffic during March 2024 would be compared to March 2019), then, during the period thereof, the Minimum Rent shall be reduced as follows: (i) if such Traffic decrease is between 25% and 50%, then the Minimum Rent shall be reduced by 50%, and (ii) if such Traffic decrease is between 50.01% and 100%, then the Minimum Rent shall be reduced by 100%. For the avoidance of doubt, if such Traffic decrease is 24.99% or lower, then there shall not be any reduction in the Minimum Rent during the applicable Covered Month(s). For the purposes of this Section 17.11, the calculation for Traffic reported by Motionworks or its successor or another independent third party as approved via email or in writing by both the City and Company, acting reasonably using a similar or comparable methodology to that used by Motionworks or its successor, a copy of which shall be provided via email or in writing by the City and Company. Company shall cause Motionworks to deliver its monthly reporting to both the City and Company at the same time every month. For the avoidance of any doubt, if a Force Majeure Event occurs, notwithstanding any reduction of the Minimum Rent in accordance with this Section 17.11 above, the Percentage Rent shall continue to be due and owing by Company in accordance with Section

2.4.1(ii) above (calculated as the amount, if applicable, by which 62.5% of Gross Net Revenue exceeds the total Minimum Rent, as reduced for any abatement pursuant to this Section 17.11 above during the year or partial year immediately preceding the applicable Anniversary Date).

17.12. Mutual Covenants. The covenants contained herein are mutual covenants and also constitute conditions to the concurrent or subsequent performance by the party benefited thereby of the covenants to be performed hereunder by such benefited party.

17.13. Counterparts; Signatures. This Agreement may be executed by the parties in counterparts, which counterparts shall be construed together and have the same effect as if all of the parties had executed the same instrument. The parties agree that signatures transmitted electronically (scanned) shall be binding as if they were original signatures.

17.14. Litigation. Any action at law or in equity arising under this Agreement or brought by any party hereto for the purpose of enforcing, construing or determining the validity of any provision of this Agreement shall be filed and tried in the Superior Court of the County of Orange, State of California, or such other appropriate court in said county. Service of process on the City shall be made in accordance with California law. Service of process on Company shall be made in any manner permitted by California law and shall be effective whether served inside or outside California. In the event of any action between the City and Company seeking enforcement of any of the terms and conditions to this Agreement, the prevailing party in such action shall be awarded, in addition to such relief to which such party is entitled under this Agreement, its reasonable litigation costs and expenses, including without limitation its expert witness fees and reasonable attorneys' fees.

17.15. Intentionally Deleted.

17.16. Development as a Private Undertaking. It is specifically understood and agreed by and between the parties hereto that the Development is a private development, that neither party is acting as the agent of the other in any respect hereunder, and that each party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Agreement. No partnership, joint venture or other association of any kind is formed by this Agreement. The City agrees that by its approval of, and entering into, this Agreement, that it is not taking any action which would transform this private development into a "public work" development, and that nothing herein shall be interpreted to convey upon Company any benefit which would transform Company's private development into a public work project, it being understood that this Agreement is entered into by the City and Company upon the exchange of consideration described in this Agreement, including the Recitals to this Agreement which are incorporated into this Agreement and made a part hereof, and that the City is receiving by and through this Agreement the full measure of benefit in exchange for the burdens placed on Company by this Agreement.

17.17. Further Actions and Instruments. Each of the parties shall cooperate with and provide reasonable assistance to the other to the extent contemplated hereunder in the performance of all obligations under this Agreement and the satisfaction of the conditions of this Agreement. Upon the request of either party at any time, the other party shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary under the terms of this Agreement to carry out the intent and to fulfill the provisions of this Agreement or to evidence or consummate the transactions contemplated by this Agreement.

17.18. Amendments. This Agreement may be amended only by written consent of both parties, in their respective sole and absolute discretion, specifically approving the amendment.

17.19. Assignment. Company shall have the right to transfer or assign its rights and obligations under this Agreement (collectively, an “**Assignment**”) to any person or entity (an “**Assignee**”) in connection with a transfer or assignment of all of Company’s interest in the Lease without the prior approval of the City; provided that, (a) Company shall notify City in writing of such proposed Assignment at least thirty (30) days prior to the effective date of any proposed Assignment, and (b) Company and Assignee shall enter into a written assignment and assumption agreement, executed in recordable form, pursuant to which Assignee shall agree to assume all duties and obligations of Company under this Agreement remaining to be performed at the time of the Assignment.

17.20. Corporate Authority. The person(s) executing this Agreement on behalf of each of the parties hereto represent and warrant that (i) such party, if not an individual, is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other agreement to which such party is bound.

17.21. Notices. Unless expressly permitted under this Agreement with respect to email notices or other communications (which shall be sent to the email address below for the individual(s) for the City or Company, as applicable, unless otherwise directed in writing by such party in accordance with this Section 17.21), all notices under this Agreement shall be effective when delivered by United States Postal Service mail, registered or certified, postage prepaid return receipt requested, and addressed to the respective parties as set forth below, or to such other address as either party may from time to time designate in writing by providing notice to the other party:

If to the City:	City of Westminster
	11710 E. Telegraph Road
	Westminster, CA 90670

Attn: City Manager
(email: CCordon@westminster-ca.gov)

If to Company: Branded Cities Los Angeles, LLC
2850 East Camelback Road, Suite 110
Phoenix, AZ 85016
Attn:
(i) Vaibhav Gupta, President and COO
(email: vgupta@brandedcities.com),
(ii) Chris McCarver, SVP of Real Estate and Public
Affairs (email: cmccarver@brandedcities.com), and
(iii) Ty Fields, General Counsel
(email: tfields@brandedcities.com)

17.22. Nonliability of City Officials. No officer, official, member, employee, agent, or representatives of the City shall be liable for any amounts due hereunder, and no judgment or execution thereon entered in any action hereon shall be personally enforced against any such officer, official, member, employee, agent, or representative.

17.23. No Brokers. The City and Company each represent and warrant to the other that it has not employed any broker and/or finder to represent its interest in this transaction. Each party agrees to indemnify and hold the other free and harmless from and against any and all liability, loss, cost, or expense (including court costs and reasonable attorneys' fees) in any manner connected with a claim asserted by any individual or entity for any commission or finder's fee in connection with this Agreement or arising out of agreements by the indemnifying party to pay any commission or finder's fee.

17.24. Time Periods. Unless specified under this Agreement as a business time periods, all time periods under this Agreement shall mean calendar periods.

[Signatures on the following page]

LEASE AGREEMENT

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first set forth above.

CITY: CITY OF WESTMINSTER
a California municipal corporation

By: _____
Mayor

COMPANY: Branded Cities Los Angeles, LLC

By: _____
Vaibhav Gupta, President and COO

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF _____

On _____, _____, before me, _____
(here insert name and title of the officer)

personally appeared _____

,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of _____ that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature (Seal)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF ARIZONA

COUNTY OF MARICOPA

On _____, _____, before me, _____
(here insert name and title of the officer)

personally appeared _____

,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of Arizona that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

(Seal)

EXHIBIT "A"

DEPICTION OF THE SITE

[to be provided]

DRAFT

Intentionally Left Blank

EXHIBIT “B”

LEGAL DESCRIPTION OF THE SITE

[to be provided]

DRAFT

Intentionally Left Blank

EXHIBIT "C"

SCOPE OF DEVELOPMENT

Company and the City agree that the Development shall be undertaken in accordance with the terms of the Agreement, which include the following:

1. The Development. Company shall install, construct, and, as applicable, refurbish or replace the Digital Billboard and the Structure in accordance with the terms of this Agreement. The Digital Billboard consists of one (1) back to back, double-faced digital billboard, with an angle between the two sign displays (with each display screen measuring 20'H x 60'W within the billboard frame) at a height of approximately 75 feet on the 405 Freeway, with the actual, final height to be mutually agreed upon via email or in writing by the parties in their respective commercially reasonable discretion. Before the issuance of final inspection of the Final Permits, Company shall underground all utilities necessary for the Digital Billboard, the Structure, and the Site shall be maintained in accordance with the conditions under Section 3 of this Scope of Development below.

2. Building Fees. Company shall pay all applicable City building fees at the time that the building and other related permits are issued for the installation of the Digital Billboard and the Structure.

3. Maintenance and Access. Company, for itself and its successors and assigns, hereby covenants and agrees to be responsible for the following:

(a) Maintenance and repair of the Digital Billboard and the Structure (where authorized pursuant to the Agreement, and including but not limited to, the displays installed thereon, and all related on-site improvements and, if applicable, easements and rights-of-way, at its sole cost and expense), including, without limitation, landscaping, security fencing, poles, lighting, signs and walls (as they relate to the Development) in good repair, free of graffiti, rubbish, debris and other hazards to persons using the same, and in accordance with all applicable laws, rules, ordinances and regulations of all federal, state, and local bodies and agencies having jurisdiction over the Site, unless those federal, state, and local bodies have an exception for a legal nonconforming use. Such, maintenance and repair shall include, but not be limited to, the following: (i) sweeping and trash removal related to the Development; (ii) the care and replacement of all shrubbery, plantings, and other landscaping or the painted backing in a healthy condition if damaged by the Development; (iii) the ongoing maintenance by Company of any access road to the Digital Billboard if damaged by the Development and to minimize dust caused by the Development; and (iii) the repair, replacement and repainting of the Structure as necessary to maintain the same in good condition and repair.

(b) Maintenance of the Digital Billboard and surrounding portion of the Site in such a manner as to avoid the reasonable determination of a duly authorized official of the City that a public nuisance has been created by the absence of adequate maintenance of the Development such as to be detrimental to the public health, safety or general welfare.

(c) Company shall reasonably coordinate with any neighboring property owners who share utilities or access roads to their separate respective billboards. The City may

designate alternative access for planning purposes so long as such alternative access allows Company reasonable access to the Digital Billboard and related utilities.

4. Other Rights of the City. In the event of any breach by Company of any of the provisions of this Scope of Development, then in addition to, but not in lieu of, any of the rights or remedies the City may have to enforce the provisions of the Agreement, the City shall have the right, after complying with the procedures set forth in Section 13.2 of the Agreement, (i) to enforce the provisions hereof by undertaking any maintenance or repairs required by Company under Paragraph 3 above and charging Company for any actual maintenance costs incurred in performing same, and (ii) to withhold or revoke, after giving written notice of said violation, any building permits, occupancy permits, certificates of occupancy, business licenses and similar matters or approvals pertaining to the Development or any part thereof or interests therein.

5. No City Liability. The granting of a right of enforcement to the City does not create a mandatory duty on the part of the City to enforce any provision of the Agreement. The failure of the City to enforce the Agreement shall not give rise to a cause of action on the part of any person. No officer or employee of the City shall be personally liable to Company, its successors, transferees or assigns, for any default or breach by the City under the Agreement.

6. Conditions of Approval. The following additional conditions shall apply to the installation of the Digital Billboard and, where stated, landscaping adjacent to Digital Billboard, which billboard and landscaping or painted backing adjacent to the billboard, respectively, shall conform to the following conditions, in a manner subject to the approval of the Director of Planning or his or her designee:

(a) A building permit will be required, and structural calculations shall be prepared by a licensed civil engineer and approved by a duly authorized official of the City or its designee.

(b) The Digital Billboard shall be located in the portion of the Site shown on Exhibit "C-1", and shall be of the dimensions described in Section 1 of this Scope of Development above.

(c) The size of each sign display of the Digital Billboard shall not exceed the dimensions set forth in the Resolution, and shall not to exceed the maximum height set forth in the Resolution, including all extensions, and shall be spaced at intervals from any other billboard on the same side of the freeway and measured parallel to the freeway as set forth in the Resolution and depicted in the Site Plan and Billboard Elevation Diagram, both of which shall be prepared by Company at its sole cost and expense, and approved by the City in its commercially reasonable discretion (via email or in writing) as part of the Development Approvals, subject to the Variances which are part of the Final Permits.

(d) The pole portion of the Structure shall have a column cover as mutually agreed upon via email or in writing by the parties.

(e) Plans and specifications for the proposed installation of the Digital Billboard shall be submitted to the City Planning and Building Departments for plan check and approval prior to the issuance of building permits. Plans and specifications for the proposed installation of the undergrounding of all utilities, shall be submitted to the City Planning and Building Departments for plan check and approval prior to the issuance of electrical permits.

(f) Prior to the approval of the final inspection, all applicable conditions of approval and all mandatory improvements shall be completed to the reasonable satisfaction of the City.

(g) Company shall maintain the Digital Billboard and use thereof in full compliance with all applicable codes, standards, policies and regulations imposed by the City, county, state or federal agencies by any duly and valid City, county or state ordinance with jurisdiction over the Development, unless the Development is exempted as a legal nonconforming use.

(h) Company shall, at all times, comply with the approval for the Digital Billboard from the California Department of Transportation Outdoor Advertising Division, and shall maintain acceptable clearance between the Digital Billboard and Southern California Edison distribution lines.

(i) Company shall pay any and all applicable fees due to any public agency prior to the final issuance of the applicable building or electrical permits.

(j) The activities proposed in the Agreement shall be conducted completely upon the Site and shall not use or encroach on any public right-of-way.

(k) Company shall ensure that all access to the Digital Billboard is kept restricted to the general public to the extent permitted under local laws.

(l) If any portion of the landscaping or painted backing installed adjacent to the Digital Billboard is damaged by the Development or, as a result thereof, becomes damaged, unhealthy or otherwise in need of replacement, as determined by the City's Director of Planning or his or her designee, Company shall ensure that the replacement is accomplished within fourteen (14) days of notification by the City, unless such time is extended by the City's Director of Planning or his or her designee if Company shows unusual circumstances requiring more time to accomplish such replacement. Company may trim such landscaping so as not to block the Digital Billboard or with the reasonable consent of the Director of Planning, the Company at the Company's own cost, can remove and relocate any landscaping.

(m) Company shall be required to install all utilities underground in connection with the Digital Billboard in conformance with the Resolution. Company shall coordinate its work with the requirements of Southern California Edison to achieve the undergrounding of all utilities.

(n) Company shall comply with all necessary federal National Pollutant Discharge Elimination System (NPDES) requirements pertaining to the proposed use, to the extent applicable.

(o) All graffiti shall be adequately and completely removed or painted over within 48 hours of notice to Company of such graffiti being affixed on the Development.

(p) Prior to final sign off of the building permit for the Digital Billboard, the applicable landscaping or painted backing shall be installed at the Site.

(q) Company shall comply with State law regarding the limitation of light or glare or such other standards as adopted by the Outdoor Advertising Association of America, Inc. (OAAA), including but not limited to, the 0.3 foot-candles limitation over ambient light levels and ensuring additional flexibility in reducing such maximum light level standard given the lighting environment, the obligation to have automatic dimming capabilities, as well as providing the City's Director of Planning or his or her designee with a designated Company employee's phone number and/or email address for emergencies or complaints that will be monitored 24 hours a day/7 days per week. Upon any reasonable complaint by the City's Planning Officer or designee, Company shall dim the display to meet these guidelines and further perform a brightness measurement of the display using OAAA standards and provide the City with the results of same within 5 days of the City's complaint.

DRAFT

Intentionally Left Blank

EXHIBIT “D”

SITE PLAN

[to be provided]

DRAFT

Intentionally Left Blank

EXHIBIT “E”

BILLBOARD ELEVATION DIAGRAM

[to be provided]

PAGE INTENTIONALLY LEFT BLANK

EXHIBIT “B”

[Exempt From Recording Fee Per Gov. Code §6103]

LEASE AGREEMENT NO.

This Lease Agreement is entered into this [] day of [], 2023 (the “**Effective Date**”), by and between the City of Westminster, a California municipal corporation (the “**City**”), and Branded Cities Los Angeles, LLC, a Delaware limited liability company, doing business at 2850 East Camelback Road, Suite 110, Phoenix, AZ 85016 (“**Company**”).

RECITALS

J. The City is the owner of that certain portion of real property, located adjacent to the Interstate 405 Freeway (the “**405 Freeway**”) and Edinger Avenue, in the City of Westminster, as shall be generally depicted and legally described in the survey and a permanent property tax number therefor obtained by the City pursuant to Section 4 below, whereupon such depiction and legal description shall automatically be incorporated in Exhibit “A” and Exhibit “B”, respectively, attached hereto and incorporated herein (collectively, the “**Site**”).

K. The City desires to lease the Site for the purpose of construction and operation of a Digital Billboard and issued a Request for Proposals for the lease and Digital Billboard in December of 2022. The City received six Proposals for development of a two-sided electronic billboard structure on the Site. Of the six Proposals received, four firms were chosen to proceed to the second round of the selection process. The second round entailed a formal interview between a team of City staff and each Proposer’s chosen representatives. Proposers had the opportunity to complete a concise presentation highlighting the key details of their Proposal, followed by an interview conducted by staff. After the interviews, staff individually rated each Proposer. Branded Cities emerged as the Proposer with the highest rating among the four interviewed. The City Council selected Company as preferred partner for the Digital Billboard project.

L. Company desires to (i) install on the Site a new lawfully permitted back-to-back double-faced digital billboard with an angle between the signboards (such digital display faces measuring 20’H x 60’W within the billboard frame) (the “**Digital Billboard**”) which will be oriented toward the 405 Freeway, as more particularly described in the Scope of Development attached hereto as Exhibit “C” attached hereto and incorporated herein (the “**Scope of Development**”), and as will be depicted in the Site Plan and Billboard Elevation Diagram approved by the City pursuant to Section 6(c) of the Scope of Development whereupon the same shall automatically be incorporated in Exhibit “D” (the “**Site Plan**”) and Exhibit “E” (the “**Billboard Elevation Diagram**”), respectively, attached hereto and incorporated herein, together with the Structure (as defined herein), and (ii) complete the undergrounding of all utilities from Southern California Edison’s electrical source to the Digital Billboard pursuant to Section 6(m) of the Scope of Development and any other necessary ancillary Site improvements (collectively under this paragraph, the “**Development**”).

M. In connection with the Digital Billboard, the City desires to lease the Site to Company for purposes of installation, construction, maintenance, operation (including the display of paid third party advertising and other content), improvement, supplementing, posting, illumination, refurbishment or replacement (as applicable), and/or removal of the Digital Billboard pursuant to this Agreement.

N. In exchange for a site lease and the City approvals sought by Company for the Digital Billboard as provided on the Site herein, Company is agreeable to paying to the City the Rent (as defined below), and providing to the City the community benefits outlined in Section 3 below.

O. On [____], 2023, the City Council of the City, at a duly noticed hearing to consider the approval of this Agreement, considered the proposal, heard testimony, and introduced Resolution No. [____] (the “**Resolution**”), which Resolution approves this Agreement.

P. The City Council has found that this Agreement is in the best public interest of the City and its residents, adopting this Agreement constitutes a present exercise of the City’s police power, the use of the Site under this Agreement is consistent with the uses of sites which are adjacent to and in the general proximity of the Site, and this Agreement is consistent with the City’s General Plan. This Agreement and the proposed Development (as hereinafter defined) will achieve a number of City objectives, including utilizing the Site for a revenue-generating use.

Q. The City finds and determines that all actions required of the City precedent to approval of this Agreement by the Resolution have been duly and regularly taken.

R. The purpose of this Agreement is to set forth the rules and regulations applicable to the Development, which shall be accomplished in accordance with this Agreement, including the Scope of Development.

AGREEMENT

NOW, THEREFORE, in consideration of the above recitals and of the mutual covenants hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE I: RECITALS AND DEFINITIONS; GENERAL PROVISIONS

18. RECITALS, DEFINITIONS AND EXHIBITS.

18.1. Recitals; Definitions. The City and Company acknowledge and agree that the above Recitals are complete and accurate in all material respects, and are hereby incorporated into the terms and provisions of this Agreement. This Agreement uses a number of terms having specific meanings, as defined below. These specially defined terms are distinguished by having the initial letter capitalized, when used in the Agreement. In addition to the terms defined in the preamble and the Recitals above, the defined terms include the following:

1.2.1 “**Agreement**” means this Lease Agreement and all attachments and exhibits hereto.

1.2.2 “**Anniversary Date**” is the date which is one (1) year following the Rent Commencement Date, and each date on the anniversary thereof during the Term of this Agreement (or such dates following any partial years).

1.2.3 “**Assignee**” shall have the meaning provided in Section 17.19.

1.2.4 “**Assignment**” shall have the meaning provided in Section 17.19.

1.2.5 “**CEQA**” shall have the meaning provided in Section 12.3.

1.2.6 “**Certificate**” shall have the meaning provided in Section 13.3.

1.2.7 “**City Council**” means the City Council of the City.

1.2.8 “**City Proposal Notice**” shall have the meaning provided in Section 8.

1.2.9 “**Construction Bonus**” have the meaning provided in Section 2.4.2.

1.2.10 “**Construction Costs**” shall have the meaning provided in first paragraph immediately following Section 12.6.3.

1.2.11 “**Company Portion**” shall have the meaning provided in first paragraph immediately following Section 12.6.3.

1.2.12 “**Covered Month(s)**” shall have the meaning provided in Section 17.11 below.

1.2.13 “**Cure Period**” shall have the meaning provided in Section 13.2.

1.2.14 “**Default**” shall have the meaning provided in Section 13.2.

1.2.15 “**Final Permits**” shall mean all necessary/required building and other permits, approvals, entitlements, and inspections by all governmental and utility agencies, to install, construct, maintain, operate (including the display of third party advertising or other content, whether physically on-premise or via remotely changeable off-premise technology), improve, supplement, post, illuminate, repair, reposition, refurbish or replace (as applicable) and/or remove the Digital Billboard and the Structure, and are signed and dated by a duly authorized official of the City or its designee, where applicable and require, including, without limitation, (i) an approved variance request for the permitted total square footage of the digital displays on the Digital Billboard and overall height of the Digital Billboard and the Structure, an approved variance or other modification request for the installation of digital displays on the Digital Billboard allowing for changing or rotating advertising copy at intervals in accordance with state laws, and any other approved variance or modification requests (collectively, the “**Variances**”), and (ii) an approval from Caltrans for the declassification of the landscape freeway status of the 405 Freeway (the “**Landscape Declassification**”).

1.2.16 “**Force Majeure Event**” shall have the meaning provided in Section 17.11 below.

1.2.17 “**Gross Net Revenue**” means the entire amount of the revenues, whether for cash or otherwise, actually received by Company for the sale of advertising on the Digital Billboard (excluding any advertising copy creative and production revenues which are within normal signage industry standards), net of any third party agency and third party broker commissions and sales commissions paid to Company’s sales staff in connection therewith (in an amount not to exceed 10 percent) (collectively, the “**Commissions**”).

1.2.18 “**Land Use Regulations**” means (i) all ordinances, resolutions, codes, rules, regulations and official policies of the City, including, but not limited to, the City’s General Plan, Municipal Code and Zoning Code, which govern development and use of the Site, including, without limitation, the permitted use of land, the density or intensity of use, subdivision requirements, the maximum height and size of the Digital Billboard, and the design, improvement and construction standards and specifications applicable to the Development or the Site, and (ii) the federal National Pollutant Discharge Elimination System (“**NPDES**”) regulations and approvals from the California Department of Transportation Outdoor Advertising Division, to the extent applicable, in each such instance under (i) and (ii) which are in full force and effect as of the Effective Date of this Agreement, subject to the terms of this Agreement.

1.2.19 “**License**” shall have the meaning provided in Section 7.

1.2.20 “**Minimum Rent**” shall have the meaning provided in Section 2.4.1(i).

1.2.21 “**Mortgagee**” means a mortgagee of a mortgage, a beneficiary under a deed of trust or any other security-device, a lender or each of their respective successors and assigns which possesses an encumbrance on the Site or any portion thereof or the Development or any improvement on the Site thereon by any mortgage, deed of trust or other security device securing financing with respect to the Development.

1.2.22 “**Outside Commencement Date**” shall have the meaning provided in Section 2.3.

1.2.23 “**Percentage Rent**” shall have the meaning provided in Section 2.4.1(ii).

1.2.24 “**Possessory Tax**” shall have the meaning provided in Section 12.6.3.

1.2.25 “**Rent Commencement Date**” means the first day of the month after the date on which Company fully completes the construction and installation of the Digital Billboard and the Structure.

1.2.26 “**Revenue Report**” shall have the meaning provided in Section 2.5.

1.2.27 “**Structure**” shall have the meaning provided in Section 5.

1.2.28 “**Subsequent Land Use Regulations**” means any Land Use Regulations effective after the Effective Date of this Agreement (whether adopted prior to or after the Effective Date of this Agreement) which govern development and use of the Site.

1.2.29 “**Term**” shall have the meaning provided in Section 2.3, unless earlier terminated as provided in this Agreement.

1.2.30 “**Traffic**” shall have the meaning provided in Section 17.11 below.

1.3 **Exhibits.** The following documents are attached to, and by this reference made a part of, this Agreement: Exhibit “A” (Depiction of the Site), Exhibit “B” (Legal Description of the Site), Exhibit “C” (Scope of Development), Exhibit “D” (Site Plan), and Exhibit “E” (Billboard Elevation Diagram).

19. GENERAL PROVISIONS.

19.1. Binding Effect of Agreement. From and following the Effective Date of this Agreement, actions by the City and Company with respect to the Development, subject to any applicable Land Use Regulations and Subsequent Land Use Regulations affecting the Site, shall be subject to the terms and provisions of this Agreement, provided, however, that nothing in this Agreement shall be deemed or construed: (i) to bind or restrict the City with respect to its ownership or operation of the Site except as expressly set forth herein with respect to the Development, or (ii) to impose any obligation whatsoever on the City with respect to the Development, except as expressly set forth in this Agreement.

19.2. Interest in Site. Company shall possess a leasehold interest in the Site for the Term of this Agreement.

19.3. Term of Agreement. This Agreement shall be in effect commencing on the Effective Date hereof for a term (“**Term**”) that is thirty (30) years following the Rent Commencement Date. Upon the written or email request of the City, Company will confirm (via email or in writing) the date of the Rent Commencement Date, as shall be reasonably determined by Company.

Notwithstanding the foregoing in this Section 2.3, either party shall have the right to terminate this Agreement upon sixty (60) days advance written notice to the other party in the event Company has not completed such construction of the Digital Billboard and the Structure within twelve (12) months following its receipt of all of the Final Permits, as shall be extended during the period of any Force Majeure Event (the “**Outside Commencement Date**”), or any application for Final Permits is finally disapproved by the permitting agency and Company has unsuccessfully exhausted all of its right to appeal or challenge such disapproval (whether through administrative process or litigation or other formal process). Further notwithstanding the foregoing, Company may request that the Outside Commencement Date be extended for an additional six (6) months provided Company can demonstrate good faith efforts to, and reasonable progress in, pursuing the construction of the Digital Billboard and the Structure (as evidenced by a fully-executed construction contract with a third party signage installer), with a reasonable likelihood of completing such construction within such additional six (6) month period. Unless earlier terminated as provided in this Agreement, the Term of this Agreement will terminate on the later of (i) the expiration of the Term of this Agreement, or (ii) the permanent removal of the Digital Billboard and the Structure pursuant to this Section 2.3, other than its removal for repair, refurbishment, or replacement.

Within sixty (60) days following the expiration or earlier termination of this Agreement, unless an extension or renewal of this Agreement is agreed to in writing by the parties, Company shall remove the Digital Billboard and the Structure and the Site will be restored to its pre-install condition, normal wear and tear excepted, except that the columns of the Digital Billboard can be cut off one (1) foot below grade.

Within thirty (30) days after the expiration or earlier termination of this Agreement, the parties shall execute a written cancellation of this Agreement which shall be recorded with the County Recorder. Removal of said Digital Billboard and the Structure shall be completed by Company in compliance with applicable laws and at its sole cost.

19.4. Compensation to the City.

2.4.1 During the Term of this Agreement, Company will pay the following to the City:

(i) Commencing on the Rent Commencement Date, Company shall pay the following base rent, pro-rated for any partial periods (the “**Minimum Rent**”):

- Years 1-5: \$68,750 per month (or \$825,000 per year)
- Years 6-10: \$75,625 per month (or \$907,500 per year)
- Years 11-15: \$83,187.50 per month (or \$998,250 per year)
- Years 16-20: \$91,506.25 per month (or \$1,098,075 per year)
- Years 21-25: \$100,656.92 per month (or \$1,207,883 per year)
- Years 26-30: \$110,722.58 per month (or \$1,328,671 per year)

Such Base Rent shall be paid monthly on or before the 1st day of each month.

(ii) Further, within ninety (90) days following each Anniversary Date, Company shall pay the amount, if applicable, by which 62.5% of Gross Net Revenue exceeds the total Minimum Rent therefor paid to the City during the year (or partial year) immediately preceding such Anniversary Date (“**Percentage Rent**”). Such Percentage Rent payment will be accompanied by a reasonably detailed statement of how such Percentage Rent and excess amount (if any) were calculated.

2.4.2 Within fifteen (15) days following the Rent Commencement Date, Company shall pay the City a one-time construction bonus (the “**Construction Bonus**”) in the amount of \$775,000.00.

For the purposes of this Agreement, “**Rent**” shall mean all of the Minimum Payment and Percentage Rent payments to the City under Section 2.4.1(i) and (ii), respectively, above.

19.5. Revenue Report: Within ninety (90) days following each Anniversary Date, Company shall furnish to the City an itemized statement in writing (“**Revenue Report**”), certified by Company to be correct, showing the total Gross Net Revenue from each sign face of the Digital Billboard during the year immediately preceding such Anniversary Date.

19.5.1. Additional Revenue. While Company is not precluded from generating additional revenue from wireless deployment on the Digital Billboard, other than wireless communication devices used for purposes of operating a billboard, Company shall not enter any agreement with any party for additional revenue, including revenue derived from wireless deployment on the billboard, without first reaching an agreement with City regarding the additional revenue. Notwithstanding the immediately preceding sentence, nothing shall preclude Company from receiving any advertising copy creative and production revenues which are within normal signage industry standards, without the need to reach an agreement therefor with the City.

19.5.2. Audit of Compensation. With at least five (5) business days’ prior written notice to Company of not less than ten (10) business days, the City has the right to audit the Gross Net Revenue for the Digital Billboard with respect to the most recent Revenue Report and to view those portions of any advertising space contracts or invoices in connection with any Commissions

that only relate to the Digital Billboard, at Company's corporate office, on any normal workday (excluding any federal or state holidays) between 9:00 a.m. and 4:00 p.m. MST once a year. The City also has the option of having such advertising space contracts and invoices delivered by Company to the City via email for its audit review at City Hall, 8200 Westminster Blvd., Westminster, CA 92683. Prior to the audit, the City shall sign a confidentiality agreement regarding the Gross Net Revenue and such advertising space contracts and invoices. If the statement of total Gross Net Revenue previously provided to the City shall be found to be inaccurate for prior years of the Term of this Agreement, then there shall be an adjustment and the applicable party shall promptly pay to the other on demand such sums as may be necessary to settle in full the accurate amount of the Compensation during such period. If said audit discloses an underpayment by Company to the City of greater than five percent (5%) with respect to the amount of total Rent for the period or periods of said report, then Company shall promptly pay to the City the reasonable third party cost of such audit, plus a late fee equal to ten percent (10%) interest per annum on the amount underpaid, but the application of the said interest is limited to the period covered by the applicable (most recent) Revenue Report. If said audit does not disclose an underpayment of greater than five percent (5%) with respect to the amount of total Rent for the period or periods of said report, the cost of such audit initiated by the City shall be paid by the City.

20. COMMUNITY BENEFITS. Company shall also provide the following community benefits during the Term of this Agreement.

20.1. City's Use of the Digital Billboard. Company shall provide display time to the City for public service announcements ("PSAs") on either of the digital display faces of the Digital Billboard, (i) for three (3) minutes per hour, on an annualized basis (during the one (1) year following the Anniversary Date and each anniversary thereof), and (ii) during any periods in which third party paid advertising is not displayed thereon. In connection with such PSAs under the immediately preceding sentence, the City shall be responsible, at its sole cost and expense, for providing Company with approved copy in acceptable "display-ready" format per Company's specifications. The City's use pursuant to the foregoing under this Section 3.1 is subject to the following conditions and parameters: (a) all copy must be submitted to Company at least five (5) business days before the proposed display date and (b) all copy will be subject to Company's standard advertising copy rejection and removal policies, which allow Company, in its sole discretion, to approve or disapprove copy and remove copy once posted or displayed.

20.2. Amber Alerts; Public Safety Messages. In addition to the foregoing under Section 3.1 above, Company shall post all "Amber Alerts" on the Digital Billboard in accordance with applicable guidelines and any public safety or emergency service messaging required by applicable state or federal laws. In addition, Company shall make the space on the Digital Billboard available to the City, Caltrans, the Federal Emergency Management Agency and any other federal or state emergency management or public safety authority to preempt commercial displays in favor of public health and safety emergency alerts in the event of natural disasters or other emergency events at no cost to the City or other applicable agency or authority. Any such post on the Digital Billboard pursuant to this Section 3.2 shall be for a duration as reasonably determined by Company.

20.3. Discount Advertising. Company shall offer a minimum of a ten percent (10%) discount off its applicable rate card for the display of third party paid advertising on the Billboard to any business holding a City-issued business license and with its principal place of business located in the City.

ARTICLE II: LEASE

21. LEASE. City hereby leases the Site to Company, on an exclusive basis, including without limitation, any portion of the airspace above or adjacent to the Site which may be occupied by the Digital Billboard and appurtenances thereto, and any surface or subsurface portions of the Site containing structural supports or other components of the Structure (as defined below) or utility improvements installed by Company to serve the Digital Billboard and the Structure.

The City agrees that, during the Term of this Agreement, the City shall not enter into a lease, license, or any other agreement or arrangement, in any form or format, which permits all or any portion of the Site to be used for purposes of displaying third party advertising on any static, digital, or other signage.

Promptly following the receipt of the Landscape Declassification portion of the Final Permits, the City will obtain (i) a new ALTA survey for the Site, at the sole cost and expense of Company, and (ii) a permanent property tax number for the Site, at the sole cost and expense of the City, copies of which in each such instance shall be promptly delivered via email or in writing to Company. Further, the City will reasonably endeavor to zone the Site in a manner that is consistent with the commercial uses of the real properties which are in the proximity of the Site.

22. ALLOWABLE USES. The Site is leased for the purpose of installing, constructing, maintaining, operating (including the display of third party advertising or other content, whether physically on-premise or via remotely changeable off-premise technology), improving, supplementing, posting, illuminating, repairing, repositioning, refurbishing or replacing (as applicable) and/or removing the Digital Billboard and the pole, wireless communications equipment, fixture connections, electrical supply and connections, panels, displays, copy, ladders, sign structure, and any equipment and accessories as Company may place thereon (collectively, the “**Structure**”). Company may sublease, license, or otherwise grant the right to display third party paid advertising or other content on the Digital Billboard, or any portion thereof, for any lawful purpose subject, however, to the limitations set forth in Section 6 below.

23. PROHIBITED USE. Company shall not utilize any of the displays on the Digital Billboard to advertise tobacco, marijuana, hashish, “gentlemen’s clubs,” adult entertainment businesses, obscene or pornographic materials, images, or language, or as may be prohibited by any City ordinance existing as of the Effective Date of this Agreement, or as may be amended or implemented from time-to-time after such Effective Date and equally-applicable to all billboard

displays by any duly and valid City ordinance. For the purposes of the immediately preceding sentence, “pornographic material” is defined for the purposes of this Section 6 as any written, pictorial, videographic or computer-driven matter with prurient appeal or any objects or instruments that are primarily concerned with lewd or prurient sexual activity, in each such instance based on contemporary community standards, and “obscene material” is defined herein as it is in California Penal Law §311.

24. LICENSE GRANTED. The City hereby grants to Company and its employees, agents, representatives, contractors of any tier, and invitees, a non-exclusive irrevocable license coupled with an interest (the “**License**”) over any adjacent real property owned by the City for purposes of installing, constructing, maintaining, operating (including the display of third party advertising or other content, whether physically on-premise or via remotely changeable off-premise technology), improving, supplementing, posting, illuminating, repairing, repositioning, refurbishing or replacing (as applicable) and/or removing the Digital Billboard and the Structure and all activities reasonably necessary in connection therewith. Such License shall terminate sixty (60) days after the expiration or earlier termination of this Agreement as set forth herein. Without limiting the foregoing, the City hereby agrees to grant easements over the Site and any real property of City located adjacent thereto to service and utility providers as may be reasonably necessary to provide electrical or other utility service to the Site, together with the Digital Billboard and the Structure, for all of the allowable uses under this Agreement. The Digital Billboard and the Structure on the Site shall be separately metered for electricity, at Company’s sole cost and expense. Company shall, with regard to all separately metered electrical services, promptly pay directly to all applicable public utilities all amounts which are owed for service furnished to the Site (together with any taxes thereon) during the Term of this Agreement.

25. RIGHT OF FIRST REFUSAL. In the event that, at any time during the Term of this Agreement, the City desires to retain a third party to sell and display third party advertising on any static, digital, or other signage located on any portion of real properties owned by the City (other than the Site), the City shall promptly notify Company of the same in writing, together with a copy of the non-binding letter of intent, proposal, or other summary of all material terms in connection therewith, including, without limitation, the term of the proposed agreement, payment obligations, and advertising restrictions (the “**City Proposal Notice**”), and Company shall have the exclusive right of first refusal to enter into a new written agreement with the City on the terms and conditions which are contained in the City Proposal Notice and other customary terms as mutually agreed upon in writing by the City and Company. If Company declines to exercise such right of first refusal in writing to the City within thirty (30) days following Company’s receipt of the City Proposal Notice (or fails to send a notice of election or decline within such thirty (30) days), Company shall be deemed to have forfeited such right of first refusal, and the City shall be entitled to enter into an agreement with a third party on terms which are no more favorable to such third party than those, as applicable, contained in the City Proposal Notice.

26. EMINENT DOMAIN. If the Site, or any part thereof, is condemned, taken without the exercise of eminent domain, whether permanently or temporarily, or any right-of-way from which the digital displays on the Digital Billboard are visible is relocated, in any such instance by proper governmental authorities, Company shall have the right, in its sole and absolute discretion, to either (i) relocate the Digital Billboard and the Structure to adjacent portions of other real property owned by the City, or (ii) terminate this Agreement upon not less than thirty (30) days’ notice and to

receive all pre-paid Rent for any unexpired Term of this Agreement. Company shall be entitled to all compensation and other remedies provided by law, including, without limitation, just compensation for the taking of the Digital Billboard and/or the Structure, the value of the Final Permits, the Construction Bonus, and Company's leasehold interest in this Agreement, and/or the relocation of the Digital Billboard and the Structure. If condemnation proceedings are initiated, (A) the City shall include Company as a party thereto, provided that the City shall assert no rights in Company's interests, (B) the termination right of Company set forth in this Section 9 above may not be exercised by Company prior to the sale to any governmental authority with the power of eminent domain or by or for the benefit of any governmental authority with the power of eminent domain, and (C) neither party may apportion the other party's awarded interest without the express written consent of said party.

27. AUTHORITY. The City represents and warrants that it is the record owner of the Site, and both City and Company represent to the other party that the person(s) executing this Agreement on behalf of the representing party is(are) duly authorized to execute and deliver this Agreement on behalf of said party, and to bind said party to all of its duties and obligations under this Agreement.

28. COVENANT TO INSURE. Prior to Company's entry onto the Site and at all times during the Term of this Agreement, and thereafter upon each renewal of such policies, and without limiting Company's indemnification obligations under Section 15.2 below, Company shall provide and maintain insurance in the amount and form specified in Section 15.1 below.

29. DEVELOPMENT AND IMPLEMENTATION OF THE DEVELOPMENT.

29.1. Rights to Develop. Subject to and during the Term of this Agreement, Company shall have the right to install, construct, and refurbish or replace (as applicable) the Digital Billboard and the Structure in accordance with, and to the extent of, the Final Permits, the Land Use Regulations and this Agreement, provided that nothing in this Agreement shall be deemed to modify or amend any of the Land Use Regulations, as more particularly set forth in Section 12.2 below.

29.2. Effect of this Agreement on Land Use Regulations. Except as otherwise provided under the terms of this Agreement, the rules, regulations and official policies governing permitted uses of the Site, the density and intensity of use of the Digital Billboard and the Structure on the Site, the maximum height and size of the proposed Digital Billboard and the Structure on the Site, and the design, improvement and construction standards and specifications applicable to the Site, shall be as set forth in the Land Use Regulations, subject to the Variances which are part of the Final Permits.

29.3. Final Permits; CEQA and Other Development Requirements.

Following the Effective Date hereof, Company shall, at its sole cost and expense, exercise commercially reasonable efforts to submit the necessary applications and obtain all Final Permits in connection with the Digital Billboard and the Structure. The City, without restricting in any manner any legislative or ministerial authority of the City acting in its capacity as the City, shall reasonably cooperate with and assist Company in executing, in its capacity as owner of the Site, any applications or consents required in connection with such Final Permits. All such Final Permits shall remain the property of Company.

As soon as reasonably practicable following the Effective Date of this Agreement, the City and Company will pursue and obtain, at the sole cost and expense of Company, any required approval from the Planning Commission of the City for the installation, construction, and operation of the Digital Billboard and the Structure on the Site, in compliance with, and in satisfaction of, the requirements of, the California Environmental Quality Act (“CEQA”), including any required conclusion that although the proposed project could have an effect on the environment, the effects are not considered to be significant.

Not by way of limiting the foregoing under this Section 12.3, in developing and constructing the Development, Company shall comply with all: (1) applicable development standards in the City’s Municipal Code that are in effect as of the Effective Date of this Agreement and the Final Permits, (2) applicable Land Use Regulations pertaining to the Development, and (3) applicable building codes that are in effect as of the Effective Date of this Agreement, except as may be permitted through the Variances. Company shall pay all normal and customary fees and charges applicable to the Final Permits, and any fees and charges hereafter imposed by the City in connection with the Development which are standard and uniformly-applied to similar projects in the City.

12.4. Reservation of Authority.

12.4.1 *Limitations, Reservations and Exceptions.* Notwithstanding any other provision of this Agreement, the following Subsequent Land Use Regulations shall apply to the Development:

(d) Changes adopted by the International Conference of Building Officials, or other similar body, as part of the then most current versions of the Uniform Building Code, Uniform Fire Code, Uniform Plumbing Code, Uniform Mechanical Code, or National Electrical Code, as adopted by the City as Subsequent Land Use Regulations, if adopted prior to the issuance of a building permit for development of the Digital Billboard. Notwithstanding the foregoing, if such change materially changes Company’s costs or otherwise materially impacts its performance hereunder, Company may elect in its sole and absolute discretion to terminate this Agreement upon ninety (90) days prior written notice to the City.

(e) Subsequent Land Use Regulations that are in conflict with this Agreement, provided Company has given written consent in its sole and absolute discretion to the application of such Subsequent Land Use Regulations to the Development.

(f) Applicable federal, state, county and multi-jurisdictional laws and regulations which the City is required to enforce against the Site or the Development, and that do not have an exception for existing signs or legal nonconforming uses.

12.4.2 Modification or Suspension by Federal, State, County, or Multi-Jurisdictional Law. In the event that applicable federal, state, county or multi-jurisdictional laws or regulations, enacted after the Effective Date of this Agreement, prevent or preclude compliance with one or more of the provisions of this Agreement, and there is no exception for the legal nonconforming use, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such federal, state, county or multi-jurisdictional laws or regulations, and this Agreement shall remain in full force and effect to the extent it is not inconsistent with such laws or regulations and to the extent such laws or regulations do not render such remaining provision impractical to enforce; provided, however, that the applicability and enforceability of the provisions of this sentence shall be expressly subject to Company's right in its sole and absolute discretion to appeal, challenge, or otherwise dispute all or any portion of such provisions. Notwithstanding the foregoing, if such change materially changes Company's costs or otherwise materially impacts its performance hereunder, Company may terminate this Agreement upon ninety (90) days prior written notice to the City.

12.5 Regulation by Other Public Agencies. It is acknowledged by the parties that other public agencies not subject to control by the City may possess authority to regulate aspects of the Development as contemplated herein, and this Agreement does not limit the authority of such other public agencies. Company acknowledges and represents that, in addition to the Land Use Regulations, Company shall, at all times, comply with all applicable federal, state and local laws and regulations applicable to the Development and that do not have an exception for a legal nonconforming use. To the extent such other public agencies preclude development or maintenance of the Development and do not have an exception for a legal nonconforming use, Company shall not be further obligated under this Agreement except as provided in Section 14.1.3 below. Notwithstanding the foregoing, if such action by another public agency materially changes Company's costs or otherwise materially impacts its performance hereunder, Company may terminate this Agreement upon ninety (90) days prior written notice to the City.

12.6 Fees, Taxes and Assessments. During the Term of this Agreement,

12.6.1 Company shall pay, or cause to be paid, any and all taxes assessed and which become due and payable during the Term of this Agreement upon all of Company's income;

12.6.2 the City shall not, without the prior written consent of Company, impose any additional fees, taxes or assessments on all or any portion of the Development or Company, except as follows:

(i) Company shall be obligated to pay any business license fees or utility taxes applicable to the Development and the operation of the Digital Sign and the Structure,

(ii) Company shall be obligated to pay all fees applicable to any permit applications in connection with the Final Permits as charged by the City at the time such application(s) are filed by Company, and

(iii) Company shall be obligated to pay any fees imposed pursuant to the most current versions of the Uniform Building Code, Uniform Fire Code, Uniform Plumbing Code, Uniform Mechanical Code, or National Electrical Code, as adopted by the City as

Subsequent Land Use Regulations, if adopted prior to the issuance of a building permit for development of the New Digital Billboard; and

12.6.3 except as expressly provided in Section 12.6.1 and Section 12.6.2, the City shall pay any other forms or types of charges, fees, imposts, or taxes levied or assessed and which become due and payable during the Term of this Agreement hereof, upon the City's income, the Site, Development (or any portion thereof), and the City's personal property, including, without limitation, (A) any billboard, sales, excise, franchise or transaction privilege, or any other fee, tax, or assessment on billboard or signage revenues, (B) any increases in real estate taxes in connection with or attributable to the Site and/or the Development, (C) real property taxes in connection with or attributable to the Site, including, without limitation, the ownership thereof, and (D) any state and/or county taxes in connection with Company's occupation or possession of (or possessory interest in) the Site in accordance with this Agreement pursuant to, as applicable, California Revenue and Taxation Code Section 107.6(a) and any other State of California and county rules, regulations, orders, or laws (collectively under this (D), "**Possessory Taxes**").

Notwithstanding the foregoing in this Section 12.6, in the event that, during the Term of this Agreement, the City remits payment to the State of California for any Possessory Taxes which is assessed or levied and become due and payable for any annual period (or partial annual period) commencing with the Rent Commencement Date, Company will reimburse the City within ten (10) business days following the date in which the City provides written or email evidence of such payment to Company in an amount equal to up to one percent (1%) of the total third party costs incurred by Company in connection with the fabrication, procurement, construction, and installation of the Digital Billboard and the Structure under this Agreement (not to exceed the amount of the Possessory Taxes) (collectively, the "**Construction Costs**"). For the purposes of this Agreement, that portion of the Possessory Taxes for which Company is responsible under the immediately preceding sentence shall be defined as the "**Company Portion**". The first such payment by Company shall be accompanied by written evidence of the Construction Costs incurred by Company, together with copies of the written agreement(s) between Company and the applicable contractor(s) in connection therewith. For the avoidance of doubt, the Construction Costs shall not include the Construction Bonus under this Agreement. During the period between the Effective Date of this Agreement and the commencement of the construction of the Digital Billboard and the Structure, Company will exercise commercially reasonable efforts to determine whether the amount of the Possessory Taxes being assessed or levied may be reduced by the amount of all or any of the labor costs of the applicable contractor(s) which are included in the Construction Costs, and provide written or email back-up support of any such determination (or confirmation that no such reduction applies) to the City.

If the City receives any notices or other communications from the applicable taxing authority(ies) in connection with any tax obligations of Company pursuant to Section 12.6.1 or Section 12.6.2 above, the City will promptly forward a copy of the same (via email or in writing) to Company. If Company receives any notices or other communications from the applicable taxing authority(ies) in connection with any tax obligations of the City pursuant to Section 12.6.3 above, Company will promptly forward a copy of the same (via email or in writing) to the City.

Notwithstanding the foregoing in this Section 12.6, in the event that, during the Term of this Agreement, the City remits payment to the State of California for any Possessory Taxes which is assessed or levied and become due and payable for any annual period (or partial annual period)

commencing with the Rent Commencement Date, Company will annually reimburse the City for the Company Portion within ten (10) business days following the date in which the City provides written or email notice of the same, including a copy of the applicable assessment or levy.

12.7 Changes. Notwithstanding anything to the contrary herein, if there is a change in such fees as compared to those fees in effect as of the Effective Date hereof, or if any additional fees are charged and such additional or increased fees materially change Company's costs or otherwise materially impacts its performance hereunder, which in all instances with respect to such fees and additional fees shall be uniformly applied to all businesses or other parties, Company may terminate this Agreement upon ninety (90) days prior written notice to the City. Further, any increases in fees under Sections 12.6.2, 12.6.3, and 12.6.4 above shall solely be the extent required to satisfy any increases in administrative expenses incurred by the City.

12.8 Maintenance. Company shall comply with all of the maintenance obligations in connection with the Development under Section 3 of the Scope of Development.

12.9 Graffiti Removal. All graffiti and defacement of any type on the Digital Billboard, including marks, words and pictures must be removed and any necessary painting or repair completed in accordance with Chapter 9.38, Section 9.38.070 of City's Municipal Code as the same may be amended from time to time hereafter.

12.10 Non-Operation and Removal. Company shall promptly repair the Digital Billboard in the event of damage, defect, or other cause to maintain operations in accordance with this Agreement. In the event Company anticipates that a repair will require more than 30 days to complete, Company shall notify City via email or in writing of the anticipated schedule and the cause of the delayed repair, and will keep the City reasonably apprised of the completion of such repair.

12.11 No Obstructions. The City agrees not to obstruct, or permit to be obstructed, from the public view all or any portion of any advertising displayed on either or both of the digital displays on the Digital Billboard. If the City causes or permits any such obstruction, then (i) Company may elect, in its sole and unfettered discretion, on twenty-four (24) hours prior email or written notice to the City, cause the obstruction to be removed, and the cost of the same shall be either deducted from the next installment(s) of the Rent until fully repaid, and (ii) Company's Minimum Rent payment obligation under Section 2.4.1(i) above shall be fully abated during the period of such obstruction, in addition to Company's other rights and remedies under this Lease.

30. REVIEW FOR COMPLIANCE.

30.1 City Rights of Access. The City and its officers, employees, agents and contractors shall have the right, at their sole risk and expense, to enter the Site without interfering any adjacent right-of-way, and at all reasonable times with as little interference as possible to Company's operation of the Digital Billboard and the Structure, for the purpose of conducting a review and inspection of the construction, reconstruction, relocation, maintenance, repair or service of any public improvements or public facilities located on the Site. Any damage or injury to the Site or to the Digital Billboard or Structure resulting from such entry shall be promptly repaired at the sole cost and expense of the City. Notwithstanding anything to the contrary herein, in no event

will the City's officers, employees, agents or contractors ever climb up the pole of the Structure during any such review and inspection.

30.2. Dispute Procedure. Each party shall have a reasonable opportunity to assert matters which it believes have not been undertaken in accordance with this Agreement, to explain the basis for such assertion, and to receive from the other party a justification of its position on such matters. In the event that any dispute arises between the parties in connection with this Agreement and either party sends a written notice of such dispute to the other party, which shall include a reasonably detailed explanation thereof, the parties shall, for a period of not less than fifteen (15) days following the other party's receipt of the response, exercise good faith, commercially reasonable efforts to arrive at a mutually agreed upon (via email or in writing) resolution of the disputed matter(s).

In the event that the parties are unable to reach such a resolution and, in connection therewith, either party (i) breaches any of its representations and warranties under this Agreement, or (ii) is in material default of the performance of any of its duties and obligations under this Agreement and fails to cure or remedy such the Cure Period (each under such (i) or (ii), a "**Default**"), then the other non-defaulting party may thereupon pursue the remedies in connection with such Default pursuant to Section 14.1.1 or Section 14.1.2, as applicable, and Section 14.1.4. For the purposes of this Agreement, the "**Cure Period**" shall be defined as thirty (30) days following the defaulting party's receipt of the written notice of Default from the other non-defaulting party, as shall be extended by an additional thirty (30) days but if such cure or remedy is not reasonably capable of being cured or remedied within the initial thirty (30) day period and the defaulting party commences to cure or remedy the non-compliance within such thirty (30) day period and thereafter diligently and in good faith to completion.

Notwithstanding the foregoing in this Section 13.2, neither party hereto shall be deemed in default of the performance of any of its duties and obligations under this Agreement if the reason for such non-performance is due to a Force Majeure Event, subject to the provisions of Section 17.11 below.

30.3. Estoppel Certificate. Within ten (10) days after written request therefor by the City or Company, the other party will execute a written estoppel certificate ("**Certificate**"), certifying that (1) this Agreement, as may be amended from time to time, remains is unmodified and in full force and effect, and (2) to such other party's actual knowledge, the requesting party is not in breach or default under this Agreement, or, if such other party believes that the requesting party is in default, the nature thereof in reasonable detail.

31. DEFAULT AND REMEDIES.

31.1. Termination of Agreement.

31.1.1. Termination of Agreement for Material Default of Company. Subject to the City's compliance with the procedures set forth in Section 13.2 above, the City, in its sole and absolute discretion, may elect to terminate this Agreement in writing to Company for any Default by Company under such Section 13.2, and pursue all available legal and equitable rights and

remedies, which remedies shall be cumulative and not exclusive. In the event of any such termination, Company acknowledges and agrees that the City may retain all Rent that accrues up to the date of the termination, with any then-outstanding portion of such Rent due and payable within sixty (60) days after the date of termination and removal of the Digital Billboard and the Structure in accordance with Section 2.3 above.

31.1.2. *Termination of Agreement for Material Default of City.* Subject to Company's compliance with the procedures set forth in Section 13.2 above, Company, in its sole and absolute discretion, may elect to terminate this Agreement in writing to the City for any Default by the City under such Section 13.2, and pursue all available legal and equitable rights and remedies, which remedies shall be cumulative and not exclusive.

31.1.3. *Termination of Agreement Without Default.* Company may terminate this Agreement in writing to the City if, despite Company's good faith efforts, (1) it is unable to obtain or maintain during the Term of this Agreement all of the Final Permits and/or compliance with requirements under the Land Use Regulations, Subsequent Land Use Regulations, or ordinances, rules, and laws necessary to effectuate and operate the Development, Digital Billboard, and the Structure for all of the allowable uses under this Agreement, including, without limitation, the display of third party advertising thereon, (2) there is a material diversion or change in directional flow of traffic from the street or streets currently adjacent to or leading to or past the Site that has a material adverse effect on the value of the Digital Billboard (for the avoidance of doubt, a reduction in the number of lanes on the 405 Freeway would qualify for the foregoing termination right under this Section 14.1.3), (3) electrical service and improvements cannot be made to the Site in a manner to allow the Digital Billboard and the Structure to operate and function for all of the allowable uses under this Agreement, including, without limitation, the display of third party advertising thereon, (4) the applicable portion of the Site cannot safely be used for any reason whatsoever for all of the allowable uses under this Agreement, including, without limitation, the display of third party advertising thereon, (5) all or any portion of any advertising displayed on either or both of the digital displays on the Digital Billboard are obstructed from the public view due to any cause or party, (6) the display of third party advertising on the Digital Billboard is prevented or materially restricted by ordinances or laws, or (7) it Company unable to profitably operate the Digital Billboard and the Structure. In the event of a termination by Company under this Section 14.1.3, Company acknowledges and agrees that the City may retain all Rent that accrues up to the date of the termination, with any then-outstanding portion of such Rent due and payable within sixty (60) days after the date of termination and removal of the Digital Billboard and the Structure in accordance with Section 2.3 above.

31.1.4. *Rights and Duties Following Termination.* Upon any earlier termination of this Agreement as provided herein, no party shall have any further right or obligation hereunder except with respect to (i) any additional legal and equitable rights and remedies of the City under Section 14.1.1 above or rights and remedies of Company under Section 14.1.2 above, (ii) any obligations to have been performed prior to said termination of this Agreement, (iii) Company's obligation to remove the Digital Billboard and the Structure in accordance with Section 2.3 above, and (iv) any other terms and provisions of this Agreement which customarily or due to their applicability are reasonably expected to survive.

32. INSURANCE, INDEMNIFICATION AND WAIVERS.

32.1. Insurance.

32.1.1. *Types of Insurance.*

(a) *Liability Insurance.* Beginning on the Effective Date hereof and until completion of the Term of this Agreement, Company shall, at its sole cost and expense, keep or cause to be kept in force for Company comprehensive broad form general liability insurance against claims and liabilities covered by the indemnification provisions of Section 15.2 below. Company has agreed to indemnify the City hereunder with respect to its use and occupancy of the Site, improvements or adjoining areas or ways, affected by such use of the Site or for property damage, providing commercial general liability insurance coverage of at least One Million Dollars (\$1,000,000) for bodily injury or death to any one person, at least One Million Dollars (\$1,000,000) for any one accident or occurrence, and property insurance covering the full replacement value of the Digital Billboard and the Structure.

(b) *Worker's Compensation.* Company shall also furnish or cause to be furnished to the City evidence that any contractor with whom Company has contracted for the performance of any work for which Company is responsible hereunder carries worker's compensation insurance as required by law.

32.1.2. *Insurance Policy Form, Sufficiency, Content and Insurer.* Notwithstanding the minimum coverage amounts stated above, all coverage available to the Company as named insured shall be made available to the City, its officers, employees and volunteers as additional insured. All insurance required by express provisions hereof shall be carried only by responsible insurance companies qualified to do business by California with an AM Best Rating of no less than "A". All such policies shall be non-assignable and shall contain language, to the extent obtainable, to the effect that (i) the insurer waives the right of subrogation against the City and against the City's agents and representatives except as provided in this Section; (ii) the policies are primary and noncontributing with any insurance that may be carried by the City, but only with respect to the liabilities assumed by Company under this Agreement; and (iii) the policies cannot be canceled or materially changed except after written notice by the insurer to the City or the City's designated representative as expeditiously as the insurance company agrees to provide such notice. Company shall furnish the City with certificates evidencing the insurance required to be procured by the terms of this Agreement.

32.1.3. *Failure to Maintain Insurance and Proof of Compliance.* Company shall deliver to the City, in the manner required for notices, copies of certificates of all required insurance policies within the following time limits:

(a) For insurance required above, within seven (7) days after the Effective Date hereof.

(b) The City can request at any time to see updated copies of the current certificates of all required insurance policies. The City reserves the right to obtain copies of the entire insurance policy, including endorsements.

(c) If Company fails or refuses to procure or maintain insurance as required hereby or fails or refuses to furnish the City with required proof that the insurance has been procured and is in force and paid for, the City, after complying with the requirements of Section 13.2, may view such failure or refusal to be a Default hereunder.

32.1.4. **Coverages Shall Not Limit Obligations.** The requirement as to types, limits, and City's written approval of insurance coverage to be maintained by Company are not intended to, and shall not in any manner, limit or qualify the liabilities and obligations of Company under this Agreement.

32.2. Indemnification.

32.2.1. **General.** Company shall indemnify the City and its respective officers, employees, and agents against, and will hold and save them and each of them harmless from, any and all actions, suits, claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions, or liabilities (herein "claims or liabilities") that may be asserted or claimed by any person, firm, or entity arising out of or in connection with the work, operations, or activities of Company, its agents, employees, subcontractors, or invitees, hereunder, upon the Site.

(a) Company will defend any action or actions filed in connection with any of said claims or liabilities covered by the indemnification provisions herein and will pay all costs and expenses, including reasonable (i) legal costs and (ii) attorneys' fees incurred in connection therewith, which attorneys will be the attorneys hired by the insurance company to the extent that any insurance coverage applies.

(b) Company will promptly pay any judgment rendered against the City or its respective officers, agents, or employees for any such claims or liabilities arising out of or in connection with such work, operations, or activities of Company hereunder, and Company agrees to save and hold the City and its' respective its officers, agents, and employees harmless therefrom.

32.2.2. **Additional Scope of Indemnity.** Without limiting the generality of the foregoing, Company's indemnity obligation under Section 15.2.1 above shall include any liability arising by reason of:

(a) Any accident or other occurrence in or on the Site causing injury to any person or property whatsoever caused by Company;

(b) Any failure of Company to comply with performance of all of the provisions of this Agreement;

(c) Any harm, delays, injuries or other damages incurred by any party as a result of any subsurface conditions on the Site caused solely by Company, including but not limited to, the presence of buried debris, hazardous materials, hydrocarbons, or any form of soil contamination.

(d) Any third party claims or challenges to the approval of this Agreement by City.

32.2.3. *Exceptions.* The indemnity under Section 15.2.1 and Section 15.2 above shall not include claims or liabilities to the extent arising from the negligence or willful misconduct of the City, or its officers, agents, employees, subcontractors, invitees or representatives.

32.2.4. *Loss and Damage.* The City shall not be liable for any damage to property of Company or of others located on the Site, nor for the loss of or damage to any property of Company or others by theft or otherwise. Except as set forth below, the City shall not be liable for any injury or damage to persons or property resulting from fire, explosion, steam, gas, electricity, water, rain, dampness or leaks from any part of Site or from the pipes or plumbing, or from the street, or from any environmental or soil contamination or hazard, or from any other latent or patent defect in the soil, subsurface or physical condition of Site, or by any other cause of whatsoever nature. The foregoing two (2) sentences shall not apply (i) to the extent the City or its officers, agents, employees, subcontractors, invitees or representatives causes such injury or damage when accessing the Site, or (ii) under the circumstances set forth in Section 15.2.3 above.

32.2.5. *Period of Indemnification.* The obligations for indemnity under this Section 15.2 shall begin upon the Effective Date hereof and shall survive termination of this Agreement.

32.3. *Waiver of Subrogation.* Company and the City mutually agree that neither shall make any claim against, nor seek to recover from the other or its agents, servants, or employees, for any loss or damage to Company or the City or to any person or property relating to this Agreement, except as specifically provided hereunder, which include but is not limited to a claim or liability to the extent arising from the negligence or willful misconduct of the City or Company, as the case may be, or their respective officers, agents, or employees who are directly responsible to the City and Company, as the case may be.

33. *MORTGAGEE PROTECTION; SNDAs.* The parties hereto agree that this Agreement shall not prevent or limit Company, in any manner, at Company's sole discretion, from encumbering the Site or any portion thereof or the Development or any improvement on the Site

thereon by any mortgage, deed of trust or other security device securing financing with respect to the Development. Upon reasonable approval by the City Attorney, the City authorizes the City Manager to execute any Notices of Consent to Assignment on behalf of the City or similar financial documentation. Any Mortgagee of the Site shall be entitled to the following rights and privileges:

33.1.1. Neither entering into this Agreement nor a breach of this Agreement shall defeat, render invalid, diminish or impair the lien of any mortgage on the Development of the Site or any mortgage of the Site made in good faith and for value, unless otherwise required by law.

33.1.2. The Mortgagee of any mortgage or deed of trust encumbering the Development or the Site or any part thereof, which submits a request in writing to the City in the manner specified herein for giving notices, shall be entitled to receive written notification from the City of any default by Company in the performance of Company's obligations under this Agreement.

33.1.3. If the City timely receives a request from a Mortgagee requesting a copy of any notice of default or breach given to Company under the terms of this Agreement, the City shall make a good faith effort to provide a copy of such notice to the Mortgagee within ten (10) days of sending such notice to Company. The Mortgagee shall have the right, but not the obligation, to cure the non-compliance during the period that is the longer of (i) the remaining cure period allowed such party under this Agreement, or (ii) sixty (60) days.

33.1.4. Any Mortgagee who comes into possession of the Development or the Site, or any part thereof, pursuant to foreclosure of the mortgage or deed of trust, or deed in lieu of such foreclosure, shall take the Development or the Site, or part thereof, subject to the terms of this Agreement.

33.1.5. The City (i) shall deliver to Company a subordination, nondisturbance, and attornment agreement (a "SNDA") for Company from the Mortgagee(s), if any (on the standard SNDA form of such Mortgagee(s), if applicable) (the "Lender(s)"), promptly following the full execution of this Agreement by the City and Company, and (ii) exercise commercially reasonable diligence to deliver to Company a SNDA for Company from the then-current Mortgagee(s) within thirty (30) days following the City's receipt of a written request from Company for the same during the Term of this Agreement.

34. MISCELLANEOUS PROVISIONS.

34.1. No Public Forum. Due to the shape, size and location of the Site, it has not been previously utilized for any community purposes, and, in particular, has not been available for or dedicated to First Amendment activities at any time. The lease of the Site and the maintenance and operation of the Digital Billboard and the Structure thereon pursuant to this Agreement is in the best interest of City and the health, safety, morals, and welfare of the residents of the City of Westminster, by creating a source of revenue from land not otherwise used by the public, all in accord with the public purposes and provisions of applicable federal, state and local laws and requirements. The Digital Billboard and the Structure located on the Site shall not serve as a public

forum. The provisions of this Agreement shall not be deemed to constitute a dedication for public use nor create any rights in the general public.

34.2. Ambiguities or Uncertainties; Recording of Memorandum of Lease. Neither City nor Company shall be bound by any terms, conditions or oral representations that are not set forth in this Agreement. City and Company agree and acknowledge that: (i) this Agreement has been freely negotiated by both parties; and (ii) in the event of any controversy, dispute, or contest over the meaning, interpretation, validity, or enforceability of this Agreement, or any of its terms or conditions, there shall be no inference, presumption, or conclusion drawn whatsoever against either party by virtue of that party having drafted this Agreement or any portion thereof. Company shall have the right to record a Memorandum of this Agreement against the Site in the Official Records of Orange County, California.

34.3. Entire Agreement. This Agreement sets forth and contains the entire understanding and agreement of the parties with respect to the subject matter set forth herein, and there are no oral or written representations, understandings or ancillary covenants, undertakings or agreements which are not contained or expressly referred to herein. No testimony or evidence of any such representations, understandings or covenants shall be admissible in any proceeding of any kind or nature to interpret or determine the terms or conditions of this Agreement.

34.4. Severability. If any term, provision, covenant or condition of this Agreement shall be determined invalid, void or unenforceable, then that term, provision, covenant or condition of this Agreement shall be stricken and the remaining portion of this Agreement shall remain valid and enforceable if that stricken term, provision, covenant or condition is not material to the main purpose of this Agreement, which is to allow the Development to be permitted and operated and to provide the Compensation to the City; otherwise, this Agreement shall terminate in its entirety, unless the parties otherwise agree in writing, which agreement shall not be unreasonably withheld.

34.5. Interpretation and Governing Law. This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of California, without regard for conflicts of laws principles. This Agreement shall be construed as a whole according to its fair language and common meaning, to achieve the objectives and purposes of the parties hereto. The rule of construction, to the effect that ambiguities are to be resolved against the drafting party or in favor of the non-drafting party, shall not be employed in interpreting this Agreement, all parties having been represented by counsel in the negotiation and preparation hereof.

34.6. Section Headings. All section headings and subheadings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

34.7. Singular and Plural. As used herein, the singular of any word includes the plural.

34.8. Time of Essence. Time is of the essence in the performance of the provisions of this Agreement as to which time is an element.

34.9. Waiver. Failure of a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Agreement thereafter.

34.10. No Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit for the parties and their respective successors and assigns. No other person shall have any right of action based upon any provision of this Agreement.

34.11. Force Majeure Event. Notwithstanding any provision to the contrary herein, neither party shall be deemed to be in default where failure or delay in performance of any of its obligations under this Agreement is caused by earthquakes, floods, or other acts of God, casualties, fires, thefts, explosions, electrical power outages, rains, winds, wars, invasions, insurrections, terrorism (domestic or foreign), riots or similar hostilities, strikes, boycotts, lockouts, civil disturbances, protests, and any other labor difficulties (including the party's employment force), moratoriums, expropriations, requisitions, pandemics and epidemics, public health orders and regulations, or any present or future laws, acts, orders, rules, regulations, or restrictions of federal, state, or municipal government (including, without limitation, the City of Westminster), court actions (such as restraining orders or injunctions), inability to get materials or services, or other causes beyond the party's reasonable control (each, a "**Force Majeure Event**").

If any such Force Majeure Event shall occur during the Term of this Agreement, then the time for performance of any such obligations shall be extended for the duration of each such Force Majeure Event; provided that the Term of this Agreement shall not be extended under any circumstances for more than five (5) years beyond the date it would have otherwise expired, and further provided that if such failure or delay is longer than six (6) months, Company may terminate this Agreement upon written notice to the City and the City shall return to Company any portion of the Rent paid for any period after the effective date of such termination.

Further despite anything contained in this Agreement to the contrary, including, without limitation, Section 17.11 above, if any (i) Force Majeure Event occurs, and (ii) during any month(s) of the Term of this Agreement or portion thereof (an "**Covered Month(s)**"), there is a decrease in the amount of pedestrian and vehicular traffic on the roadway from which travelers thereon are able to view the displays (the "**Traffic**") on the Signs by 25% or greater as compared to the Traffic during the identical month during the period between March 1, 2019 and February 29, 2020 (for example, Traffic during March 2024 would be compared to March 2019), then, during the period thereof, the Minimum Rent shall be reduced as follows: (i) if such Traffic decrease is between 25% and 50%, then the Minimum Rent shall be reduced by 50%, and (ii) if such Traffic decrease is between 50.01% and 100%, then the Minimum Rent shall be reduced by 100%. For the avoidance of doubt, if such Traffic decrease is 24.99% or lower, then there shall not be any reduction in the Minimum Rent during the applicable Covered Month(s). For the purposes of this Section 17.11, the calculation for Traffic reported by Motionworks or its successor or another independent third party as approved via email or in writing by both the City and Company, acting

reasonably using a similar or comparable methodology to that used by Motionworks or its successor, a copy of which shall be provided via email or in writing by the City and Company. Company shall cause Motionworks to deliver its monthly reporting to both the City and Company at the same time every month. For the avoidance of any doubt, if a Force Majeure Event occurs, notwithstanding any reduction of the Minimum Rent in accordance with this Section 17.11 above, the Percentage Rent shall continue to be due and owing by Company in accordance with Section 2.4.1(ii) above (calculated as the amount, if applicable, by which 62.5% of Gross Net Revenue exceeds the total Minimum Rent, as reduced for any abatement pursuant to this Section 17.11 above during the year or partial year immediately preceding the applicable Anniversary Date).

34.12. Mutual Covenants. The covenants contained herein are mutual covenants and also constitute conditions to the concurrent or subsequent performance by the party benefited thereby of the covenants to be performed hereunder by such benefited party.

34.13. Counterparts; Signatures. This Agreement may be executed by the parties in counterparts, which counterparts shall be construed together and have the same effect as if all of the parties had executed the same instrument. The parties agree that signatures transmitted electronically (scanned) shall be binding as if they were original signatures.

34.14. Litigation. Any action at law or in equity arising under this Agreement or brought by any party hereto for the purpose of enforcing, construing or determining the validity of any provision of this Agreement shall be filed and tried in the Superior Court of the County of Orange, State of California, or such other appropriate court in said county. Service of process on the City shall be made in accordance with California law. Service of process on Company shall be made in any manner permitted by California law and shall be effective whether served inside or outside California. In the event of any action between the City and Company seeking enforcement of any of the terms and conditions to this Agreement, the prevailing party in such action shall be awarded, in addition to such relief to which such party is entitled under this Agreement, its reasonable litigation costs and expenses, including without limitation its expert witness fees and reasonable attorneys' fees.

34.15. Intentionally Deleted.

34.16. Development as a Private Undertaking. It is specifically understood and agreed by and between the parties hereto that the Development is a private development, that neither party is acting as the agent of the other in any respect hereunder, and that each party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Agreement. No partnership, joint venture or other association of any kind is formed by this Agreement. The City agrees that by its approval of, and entering into, this Agreement, that it is not taking any action which would transform this private development into a "public work" development, and that nothing herein shall be interpreted to convey upon Company any benefit which would transform Company's private development into a public work project, it being understood that this Agreement is entered into by the City and Company upon the exchange of consideration described in this Agreement, including the Recitals to this Agreement which are incorporated into this

Agreement and made a part hereof, and that the City is receiving by and through this Agreement the full measure of benefit in exchange for the burdens placed on Company by this Agreement.

34.17. Further Actions and Instruments. Each of the parties shall cooperate with and provide reasonable assistance to the other to the extent contemplated hereunder in the performance of all obligations under this Agreement and the satisfaction of the conditions of this Agreement. Upon the request of either party at any time, the other party shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary under the terms of this Agreement to carry out the intent and to fulfill the provisions of this Agreement or to evidence or consummate the transactions contemplated by this Agreement.

34.18. Amendments. This Agreement may be amended only by written consent of both parties, in their respective sole and absolute discretion, specifically approving the amendment.

34.19. Assignment. Company shall have the right to transfer or assign its rights and obligations under this Agreement (collectively, an “**Assignment**”) to any person or entity (an “**Assignee**”) in connection with a transfer or assignment of all of Company’s interest in the Lease without the prior approval of the City; provided that, (a) Company shall notify City in writing of such proposed Assignment at least thirty (30) days prior to the effective date of any proposed Assignment, and (b) Company and Assignee shall enter into a written assignment and assumption agreement, executed in recordable form, pursuant to which Assignee shall agree to assume all duties and obligations of Company under this Agreement remaining to be performed at the time of the Assignment.

34.20. Corporate Authority. The person(s) executing this Agreement on behalf of each of the parties hereto represent and warrant that (i) such party, if not an individual, is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other agreement to which such party is bound.

34.21. Notices. Unless expressly permitted under this Agreement with respect to email notices or other communications (which shall be sent to the email address below for the individual(s) for the City or Company, as applicable, unless otherwise directed in writing by such party in accordance with this Section 17.21), all notices under this Agreement shall be effective when delivered by United States Postal Service mail, registered or certified, postage prepaid return receipt requested, and addressed to the respective parties as set forth below, or to such other address as either party may from time to time designate in writing by providing notice to the other party:

If to the City:	City of Westminster
	11710 E. Telegraph Road
	Westminster, CA 90670

Attn: City Manager
(email: CCordon@westminster-ca.gov)

If to Company: Branded Cities Los Angeles, LLC
2850 East Camelback Road, Suite 110
Phoenix, AZ 85016
Attn:
(i) Vaibhav Gupta, President and COO
(email: vgupta@brandedcities.com),
(ii) Chris McCarver, SVP of Real Estate and Public
Affairs (email: cmccarver@brandedcities.com), and
(iii) Ty Fields, General Counsel
(email: tfields@brandedcities.com)

34.22. Nonliability of City Officials. No officer, official, member, employee, agent, or representatives of the City shall be liable for any amounts due hereunder, and no judgment or execution thereon entered in any action hereon shall be personally enforced against any such officer, official, member, employee, agent, or representative.

34.23. No Brokers. The City and Company each represent and warrant to the other that it has not employed any broker and/or finder to represent its interest in this transaction. Each party agrees to indemnify and hold the other free and harmless from and against any and all liability, loss, cost, or expense (including court costs and reasonable attorneys' fees) in any manner connected with a claim asserted by any individual or entity for any commission or finder's fee in connection with this Agreement or arising out of agreements by the indemnifying party to pay any commission or finder's fee.

34.24. Time Periods. Unless specified under this Agreement as a business time periods, all time periods under this Agreement shall mean calendar periods.

[Signatures on the following page]

LEASE AGREEMENT

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first set forth above.

CITY: CITY OF WESTMINSTER
a California municipal corporation

By: _____
Mayor

**LEASE AGREEMENT
(Continued)**

COMPANY: Branded Cities Los Angeles, LLC

By: _____
Vaibhav Gupta, President and COO

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA

COUNTY OF _____

On _____, _____, before me, _____
(here insert name and title of the officer)

personally appeared _____

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of _____ that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature (Seal)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF ARIZONA

COUNTY OF MARICOPA

On _____, _____, before me, _____
(here insert name and title of the officer)

personally appeared _____

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of Arizona that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature (Seal)

Intentionally Left Blank

EXHIBIT “A”

DEPICTION OF THE SITE

[to be provided]

Intentionally Left Blank

EXHIBIT “B”

LEGAL DESCRIPTION OF THE SITE

[to be provided]

Intentionally Left Blank

EXHIBIT "C"

SCOPE OF DEVELOPMENT

Company and the City agree that the Development shall be undertaken in accordance with the terms of the Agreement, which include the following:

4. The Development. Company shall install, construct, and, as applicable, refurbish or replace the Digital Billboard and the Structure in accordance with the terms of this Agreement. The Digital Billboard consists of one (1) back to back, double-faced digital billboard, with an angle between the two sign displays (with each display screen measuring 20'H x 60'W within the billboard frame) at a height of approximately 75 feet on the 405 Freeway, with the actual, final height to be mutually agreed upon via email or in writing by the parties in their respective commercially reasonable discretion. Before the issuance of final inspection of the Final Permits, Company shall underground all utilities necessary for the Digital Billboard, the Structure, and the Site shall be maintained in accordance with the conditions under Section 3 of this Scope of Development below.

5. Building Fees. Company shall pay all applicable City building fees at the time that the building and other related permits are issued for the installation of the Digital Billboard and the Structure.

6. Maintenance and Access. Company, for itself and its successors and assigns, hereby covenants and agrees to be responsible for the following:

(d) Maintenance and repair of the Digital Billboard and the Structure (where authorized pursuant to the Agreement, and including but not limited to, the displays installed thereon, and all related on-site improvements and, if applicable, easements and rights-of-way, at its sole cost and expense), including, without limitation, landscaping, security fencing, poles, lighting, signs and walls (as they relate to the Development) in good repair, free of graffiti, rubbish, debris and other hazards to persons using the same, and in accordance with all applicable laws, rules, ordinances and regulations of all federal, state, and local bodies and agencies having jurisdiction over the Site, unless those federal, state, and local bodies have an exception for a legal nonconforming use. Such, maintenance and repair shall include, but not be limited to, the following: (i) sweeping and trash removal related to the Development; (ii) the care and replacement of all shrubbery, plantings, and other landscaping or the painted backing in a healthy condition if damaged by the Development; (iii) the ongoing maintenance by Company of any access road to the Digital Billboard if damaged by the Development and to minimize dust caused by the Development; and (iii) the repair, replacement and repainting of the Structure as necessary to maintain the same in good condition and repair.

(e) Maintenance of the Digital Billboard and surrounding portion of the Site in such a manner as to avoid the reasonable determination of a duly authorized official of the City that a public nuisance has been created by the absence of adequate maintenance of the Development such as to be detrimental to the public health, safety or general welfare.

(f) Company shall reasonably coordinate with any neighboring property owners who share utilities or access roads to their separate respective billboards. The City may

designate alternative access for planning purposes so long as such alternative access allows Company reasonable access to the Digital Billboard and related utilities.

7. Other Rights of the City. In the event of any breach by Company of any of the provisions of this Scope of Development, then in addition to, but not in lieu of, any of the rights or remedies the City may have to enforce the provisions of the Agreement, the City shall have the right, after complying with the procedures set forth in Section 13.2 of the Agreement, (i) to enforce the provisions hereof by undertaking any maintenance or repairs required by Company under Paragraph 3 above and charging Company for any actual maintenance costs incurred in performing same, and (ii) to withhold or revoke, after giving written notice of said violation, any building permits, occupancy permits, certificates of occupancy, business licenses and similar matters or approvals pertaining to the Development or any part thereof or interests therein.

8. No City Liability. The granting of a right of enforcement to the City does not create a mandatory duty on the part of the City to enforce any provision of the Agreement. The failure of the City to enforce the Agreement shall not give rise to a cause of action on the part of any person. No officer or employee of the City shall be personally liable to Company, its successors, transferees or assigns, for any default or breach by the City under the Agreement.

9. Conditions of Approval. The following additional conditions shall apply to the installation of the Digital Billboard and, where stated, landscaping adjacent to Digital Billboard, which billboard and landscaping or painted backing adjacent to the billboard, respectively, shall conform to the following conditions, in a manner subject to the approval of the Director of Planning or his or her designee:

(f) A building permit will be required, and structural calculations shall be prepared by a licensed civil engineer and approved by a duly authorized official of the City or its designee.

(g) The Digital Billboard shall be located in the portion of the Site shown on Exhibit "C-1", and shall be of the dimensions described in Section 1 of this Scope of Development above.

(h) The size of each sign display of the Digital Billboard shall not exceed the dimensions set forth in the Resolution, and shall not to exceed the maximum height set forth in the Resolution, including all extensions, and shall be spaced at intervals from any other billboard on the same side of the freeway and measured parallel to the freeway as set forth in the Resolution and depicted in the Site Plan and Billboard Elevation Diagram, both of which shall be prepared by Company at its sole cost and expense, and approved by the City in its commercially reasonable discretion (via email or in writing) as part of the Development Approvals, subject to the Variances which are part of the Final Permits.

(i) The pole portion of the Structure shall have a column cover as mutually agreed upon via email or in writing by the parties.

(j) Plans and specifications for the proposed installation of the Digital Billboard shall be submitted to the City Planning and Building Departments for plan check and approval prior to the issuance of building permits. Plans and specifications for the proposed installation of

the undergrounding of all utilities, shall be submitted to the City Planning and Building Departments for plan check and approval prior to the issuance of electrical permits.

(l) Prior to the approval of the final inspection, all applicable conditions of approval and all mandatory improvements shall be completed to the reasonable satisfaction of the City.

(m) Company shall maintain the Digital Billboard and use thereof in full compliance with all applicable codes, standards, policies and regulations imposed by the City, county, state or federal agencies by any duly and valid City, county or state ordinance with jurisdiction over the Development, unless the Development is exempted as a legal nonconforming use.

(n) Company shall, at all times, comply with the approval for the Digital Billboard from the California Department of Transportation Outdoor Advertising Division, and shall maintain acceptable clearance between the Digital Billboard and Southern California Edison distribution lines.

(o) Company shall pay any and all applicable fees due to any public agency prior to the final issuance of the applicable building or electrical permits.

(p) The activities proposed in the Agreement shall be conducted completely upon the Site and shall not use or encroach on any public right-of-way.

(q) Company shall ensure that all access to the Digital Billboard is kept restricted to the general public to the extent permitted under local laws.

(l) If any portion of the landscaping or painted backing installed adjacent to the Digital Billboard is damaged by the Development or, as a result thereof, becomes damaged, unhealthy or otherwise in need of replacement, as determined by the City's Director of Planning or his or her designee, Company shall ensure that the replacement is accomplished within fourteen (14) days of notification by the City, unless such time is extended by the City's Director of Planning or his or her designee if Company shows unusual circumstances requiring more time to accomplish such replacement. Company may trim such landscaping so as not to block the Digital Billboard or with the reasonable consent of the Director of Planning, the Company at the Company's own cost, can remove and relocate any landscaping.

(p) Company shall be required to install all utilities underground in connection with the Digital Billboard in conformance with the Resolution. Company shall coordinate its work with the requirements of Southern California Edison to achieve the undergrounding of all utilities.

(q) Company shall comply with all necessary federal National Pollutant Discharge Elimination System (NPDES) requirements pertaining to the proposed use, to the extent applicable.

(r) All graffiti shall be adequately and completely removed or painted over within 48 hours of notice to Company of such graffiti being affixed on the Development.

(r) Prior to final sign off of the building permit for the Digital Billboard, the applicable landscaping or painted backing shall be installed at the Site.

(s) Company shall comply with State law regarding the limitation of light or glare or such other standards as adopted by the Outdoor Advertising Association of America, Inc. (OAAA), including but not limited to, the 0.3 foot-candles limitation over ambient light levels and ensuring additional flexibility in reducing such maximum light level standard given the lighting environment, the obligation to have automatic dimming capabilities, as well as providing the City's Director of Planning or his or her designee with a designated Company employee's phone number and/or email address for emergencies or complaints that will be monitored 24 hours a day/7 days per week. Upon any reasonable complaint by the City's Planning Officer or designee, Company shall dim the display to meet these guidelines and further perform a brightness measurement of the display using OAAA standards and provide the City with the results of same within 5 days of the City's complaint.

EXHIBIT “D”

SITE PLAN

[to be provided]

Intentionally Left Blank

EXHIBIT “E”

BILLBOARD ELEVATION DIAGRAM

[to be provided]

PAGE INTENTIONALLY LEFT BLANK