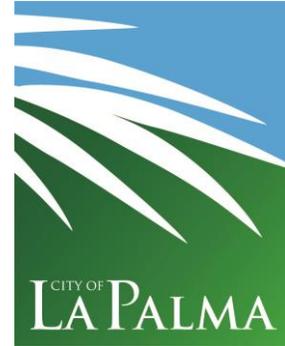


City of La Palma

Agenda Item No. 8



MEETING DATE: March 1, 2016

TO: CITY COUNCIL

FROM: Laurie A. Murray, City Manager

SUBMITTED BY: Douglas D. Dumhart, Community Development Director

AGENDA TITLE: Adoption of an Ordinance Approving a Development Agreement Between the City of La Palma and Foster Interstate Media, Inc., for a Double-sided Digital Display Billboard at 5545 Orangethorpe Avenue, La Palma, California

RECOMMENDATION:

It is recommended that the City Council adopt and order the second reading of Ordinance 2016-05 approving the Development Agreement between the City of La Palma and Foster Interstate Media, Inc., for the construction, operation, and maintenance of a double-sided digital display billboard at 5545 Orangethorpe Avenue.

SUMMARY:

The City Council conducted a duly noticed Public Hearing on February 16, 2016, for the above referenced Ordinance which is provided as *Attachment 1* to this agenda report. A complete analysis of the proposed Ordinance is provided in the February 16, 2016, staff report on this item which can be found online at: <http://www.cityoflapalma.org/DocumentCenter/View/5913>.

After considering the staff report, public testimony, and all the evidence before them at the Public Hearing held with respect thereto, the City Council approved the introduction and first reading of the Ordinance approving the Development Agreement between the City of La Palma and Foster Interstate Media, Inc., for the construction, operation and maintenance of a double-sided digital display billboard at 5545 Orangethorpe Avenue. For the Ordinance to be effective the City Council needs to adopt the Ordinance and order its second reading.

FISCAL IMPACT:

The Development Agreement establishes the amount and timing of revenues that would flow to the City from the billboard operations. The first payment to the City will be due one year from FIMI's receipt of all government approvals. The project proposes to pay the City \$10,000 per month or \$120,000 a year for a double-sided digital display billboard. Should a second site be secured and a second billboard be built, both the first and second billboards (if they have double-sided digital displays) will pay \$8,500 per month or \$102,000 a year for a possible total of \$204,000 per year.

APPROVED:



Department Director



City Manager

Attachments: 1. Draft Ordinance No. 2016-05 Approving Development Agreement

ORDINANCE NO. 2016-05**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LA PALMA APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY AND FOSTER INTERSTATE MEDIA, INC., FOR THE DEVELOPMENT, OPERATION AND MAINTENANCE OF A TWO-SIDED DIGITAL DISPLAY BILLBOARD AT 5545 ORANGETHORPE AVENUE**

WHEREAS, the City Council of the City of La Palma wishes to protect and preserve the quality of the residential, commercial, and industrial areas of the City, as well as the quality of life throughout the City, through effective land use and planning; and

WHEREAS, On June 17, 2014, the City Council of the City of La Palma (hereinafter, the "City Council") adopted Resolution No. 2014-32 adopting a comprehensive update to its General Plan (the "GP Update") and the GP Update established a new freeway overlay district over fourteen (14) properties that lie adjacent and contiguous to State Route 91 within the territorial limits of the City (the "Freeway Overlay District"); and

WHEREAS, On October 21, 2014, the City Council adopted Ordinance No. 2014-03, adding Section 44-137(h) to the La Palma Development Code, specifying the purposes of the "Freeway Overlay District," and generally describing the types of display structures which may be erected on property located within the District; and

WHEREAS, the La Palma City Code Chapter 44 (Zoning) Section 44-398 states that "Billboard" use in the Freeway Overlay District requires a Precise Plan, a Conditional Use Permit and a Development Agreement that shall be consistent with Sections 44-399 through 44-402; and,

WHEREAS, Foster Interstate Media, Inc., made an application for Conditional Use Permit 361, Precise Plan 275, and a Development Agreement for approval to construct and operate a double-sided digital display billboard on a portion of the real property (the "Premises") located at 5545 Orangethorpe Avenue (the "Project"); and

WHEREAS, on January 19, 2016, the Planning Commission of the City of La Palma conducted a duly noticed Public Hearing on Conditional Use Permit No. 361 and Precise Plan No. 275, and adopted Resolutions Approving Conditional Use Permit No. 361 and Precise Plan No. 275, both conditioned on the City Council's approval of a Development Agreement for the Project; and

WHEREAS, Conditions of Approval have been included in the Precise Plan and the Conditional Use Permit for the Project to achieve an attractive and aesthetically palatable architectural design for the Billboard development, to ensure harmony with the surrounding land uses, and to comply with the Freeway Overlay Development standards; and,

WHEREAS, California Government Code section 65865(a) provides, in pertinent part, that “any city ... may enter into a development agreement with any person having a legal or equitable interest in real property for the development of the property as provided in this article ... ”; and

WHEREAS, the City Attorney’s Office and Community Development Department have prepared a draft Development Agreement by and between City of La Palma and Foster Interstate Media, Inc., related to the Project, a copy of which is included as Exhibit "A" attached hereto and incorporated by reference herein; and

WHEREAS, the Development Agreement has been prepared and processed in accordance with applicable law, including but not limited to Section 65864 et seq. of the Government Code; and

WHEREAS, on January 19, 2016, the Planning Commission of the City of La Palma conducted a duly noticed Public Hearing concerning the subject Development Agreement Ordinance, considered testimony and evidence on the draft Development Agreement Ordinance, and adopted a Resolution recommending that the City Council adopt the Ordinance approving the Development Agreement; and,

WHEREAS, the Development Agreement would promote the public convenience, general welfare, and good land use practices, and is in the best interest of the community; and

WHEREAS, the Development Agreement strengthens the public planning process, encourages private participation in comprehensive planning, and reduces the economic costs of development uncertainty; and

WHEREAS, the Development Agreement is compatible with the uses authorized in, and the regulations prescribed for, the land use district in which the Premises is or will be located, including any policy plan overlay applicable to the Premises; and

WHEREAS, the Project has been analyzed under the California Environmental Quality Act (“CEQA”), resulting in the City’s preparation of an Initial Study/Mitigated Negative Declaration (“IS/MND”), dated December 2015, and circulated for 30-day review from December 9, 2015 to January 8, 2016; and

WHEREAS, the IS/MND for the Project concluded that implementation of the Project would not result in a significant effects on the environment with implementation of identified mitigation measures that would reduce the potential significant effects to a less-than-significant level; and

WHEREAS, the City of La Palma is the lead agency on the Project, for purposes of CEQA, and on January 19, 2016, prior to the discretionary approval of Conditional Use Permit No. 361 and Precise Plan No. 275, the La Palma Planning Commission adopted

the IS/MND for the Project, conditioning the Project implementation on mitigation measures to ensure compliance with CEQA and state and local guidelines implementing CEQA; and

WHEREAS, on January 19, 2016, the City of La Palma Planning Commission conducted a duly noticed Public Hearing to consider this Resolution recommending that the City Council adopt the approval of an Ordinance approving the Development Agreement, and considered the evidence and testimony presented at that public hearing; and

WHEREAS, notice of the City Council Public Hearing concerning the proposed Ordinance was duly published in a local newspaper at least ten (10) days prior to the hearing and posted City Hall, Central Park, and the Library; and

WHEREAS, on February 16, 2016, the City Council of the City of La Palma conducted a first reading of this Ordinance at a duly noticed Public Hearing on the Ordinance, and considered testimony and evidence at the Public Hearing held with respect thereto; and

WHEREAS, on March 1, 2016, the City Council of the City of La Palma conducted a second reading on the Ordinance, and considered testimony and evidence at the Public Hearing held with respect thereto; and

WHEREAS, the City Council of the City of La Palma wishes to protect and preserve the quality of the residential and commercial areas of the City, as well as the quality of life throughout the City, through effective land use and planning; and

WHEREAS, the City Council of the City of La Palma finds and determines that the Development Agreement being approved by the proposed Ordinance is consistent with the General Plan of the City of La Palma; and

WHEREAS, all legal prerequisites prior to the adoption of this Ordinance have occurred.

NOW, THEREFORE, the City Council of the City of La Palma does hereby ordain as follows:

SECTION 1. The City Council finds that the Development Agreement complies with the requirements of California Government Code Sections 65865 through 65869.5 in that the Development Agreement contains and specifies in detail the information required by those statutes.

SECTION 2. The City Council of the City of La Palma makes the following findings in support of the Ordinance approving the Development Agreement:

1. The proposed use to which the Development Agreement relates is allowed within the subject zoning district and complies with all applicable provisions of the Development Code.
2. The proposed use would be consistent with the objectives, policies, general land uses, and programs of the general plan and any applicable specific plan and is in compliance with all city, state, and federal laws and regulations.
3. The approval of the Development Agreement is in compliance with the requirements of the California Environmental Quality Act (CEQA).
4. The Development Agreement provides sufficient benefit to the community to justify entering into the Agreement.

SECTION 3. The City Council finds that approval of the Ordinance is in compliance with the requirements of the California Environmental Quality Act (Public Resources Code § 21000 et seq.) because the Project to which it relates was fully analyzed in an Initial Study/Mitigated Negative Declaration approved by the City's Planning Commission on January 19, 2016, after a duly noticed public hearing.

SECTION 4. The Development Agreement attached hereto as Exhibit "A" is hereby approved, and the Mayor is hereby authorized to execute the Development Agreement on behalf of the City. The City Manager, or his or her designee, is directed and authorized to do all of the following:

- a. Prepare a final version of the Development Agreement for execution and recording that fully reflects the action of the City Council in adopting the Development Agreement, subject to review and approval of the City Attorney; and
- b. Make all necessary and appropriate clerical, typographical, and formatting corrections to the adopted Development Agreement prior to execution and recording; and
- c. To implement the Development Agreement, in accordance with its terms.

SECTION 5. The City Clerk shall certify to the passage of this Ordinance and cause the same to be published and recorded as required by law, and the same shall take effect thirty (30) days after adoption.

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APPROVED AND ADOPTED by the City Council of the City of La Palma at a regular meeting held on the 1st day of March 2016.

Gerard Goedhart
Mayor

ATTEST:

Kimberly Kenney
Deputy City Clerk

STATE OF CALIFORNIA)
COUNTY OF ORANGE) SS.
CITY OF LA PALMA)

I, Kimberly Kenney, Deputy City Clerk of the City of La Palma, DO HEREBY CERTIFY that the foregoing Ordinance was adopted by the City Council of said City at a regular meeting of said City Council held on the 1st day of March 2016, and that it was so adopted by called vote as follows:

AYES:

NOES:

ABSENT:

Kimberly Kenney
Deputy City Clerk

Exhibit A

PLEASE RECORD AND WHEN RECORDED

RETURN TO:

City Of La Palma
7822 Walker Street
La Palma, CA 90623
Attn: City Manager

DEVELOPMENT AGREEMENT

DIGITAL DISPLAY SIGN

This Development Agreement (hereinafter “Agreement”) is entered into effective as of February __, 2016 (hereinafter the “Effective Date”) by and between the CITY OF LA PALMA (hereinafter “CITY”), and FOSTER INTERSTATE MEDIA, INC., a California close corporation (“DEVELOPER”).

RECITALS

A. DEVELOPER represents that it has an equitable and/or legal interest (being a leasehold interest) in a portion of the parcel of real property known by the common street address of 5545 Orangethorpe Avenue in the City of La Palma, California and having assessor’s parcel number (“APN”) 276-073-04 (the “Property”) as such portion is described in Exhibit “A” and depicted on Exhibit “B”. The portion of the Property leased to DEVELOPER is referred to hereinafter as the “Premises”.

B. On June 17, 2014, the City Council of the CITY (hereinafter, the “City Council”) adopted Resolution No. 2014-32 adopting a comprehensive update to its General Plan (the “GP Update”). The GP Update established a new freeway overlay district over fourteen (14) properties that lie adjacent and contiguous to State Route 91 within the territorial limits of the CITY (the “Freeway Overlay District”). The Freeway Overlay District allows for freeway-oriented on-site and off-site advertising. On October 21, 2014, the City Council adopted Ordinance No. 2014-03, adding Section 44-137(h) to the La Palma Development Code, establishing the Freeway Overlay District,” and applying the Freeway Overlay District to the Property. On January 19, 2016, the Planning Commission adopted (i) Conditional Use Permit No. 361, and (ii) Precise Plan No. 275 for the approval of a digital display sign on the Premises. The above entitlements and approvals allow the development and operation on the Property of one dual-sided digital display billboard at a height not to exceed fifty-five (55) feet above the finished grade of the adjacent State Route 91 freeway to the bottom of the digital display billboard (the “Project”).

C. Government Code Section 65864 *et seq.* (“Development Agreement Law”) authorize CITY to enter into binding development agreements with persons having a legal or equitable interest in real property for the development of such property, all for the purpose of

strengthening the public planning process, encouraging private participation and comprehensive planning, and reducing the economic costs of such development. DEVELOPER has therefore asked the CITY to approve a development agreement for the Premises in order to memorialize and secure the respective expectations of CITY and DEVELOPER.

D. The City Council has found that this Agreement is in the public interest of the CITY and its residents, that adopting this Agreement constitutes a present exercise of the CITY's police power, and that the Project is consistent with the goals and policies of the CITY's General Plan and imposes appropriate standards and requirements with respect to the development of the Premises in order to maintain the overall quality of life and of the environment within the CITY. Prior to its approval of the Project and this Agreement, CITY considered the environmental impacts of the Project and completed its environmental review of the Project.

E. On January 19, 2016, the Planning Commission of CITY (hereinafter, the "Planning Commission") held a public hearing on the DEVELOPER's application for approval of this Agreement, made certain findings and determinations with respect thereto, and recommended to the City Council that this Agreement be approved. On February ____, 2016, the City Council held a public hearing on the DEVELOPER's application for approval of this Agreement, considered the recommendations of the Planning Commission, found that this Agreement is consistent with CITY's General Plan, and introduced Ordinance No. 2016-04 to approve this Agreement. On _____, 2016, the City Council adopted Ordinance No. 2016-04, approving this Agreement.

COVENANTS

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

1. DEFINITIONS AND EXHIBITS.

1.1. Definitions. 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, or all letters capitalized, when used in this Agreement. The defined terms include the following:

1.1.1 "*Agreement*" means this Development Agreement.

1.1.2 "*CITY*" means the City of La Palma, a California general law city.

1.1.3 "*City Council*" means the City Council of the CITY.

1.1.4 "*Commencement of Operations*" means the date on which all of the following have occurred, each of which is a condition to Commencement of Operations: (i) DEVELOPER and CITY have each executed and delivered this Agreement; (ii) CITY has taken any actions as may be necessary to allow for the lawful construction and operation of the Digital Display Sign on the Premises for general outdoor advertising; (iii)

DEVELOPER has received all required governmental permits and approvals for the lawful construction and operation of the Digital Display Sign on the Premises for general outdoor advertising; (iv) DEVELOPER (or CITY, as may be required hereunder) has completed all tree removal, pruning, landscaping, and other site preparation at the Premises and on adjacent property as may be necessary or desired for the construction and display of the Digital Display Sign; (v) construction of the Digital Display Sign is complete and the Digital Display Sign is fully operational, including without limitation connection of utilities and related equipment; (vi) DEVELOPER first displays general outdoor advertising on the Digital Display Sign for an advertising customer; and (vii) none of the above-referenced agreements, amendments, ordinances, permits, or approvals shall have expired or been revoked, rescinded, nullified, superseded, delayed, or terminated in a manner that would prevent the lawful construction and operation of the Digital Display Sign on the Premises for general outdoor advertising, and there shall be no action pending or threatened against DEVELOPER challenging DEVELOPER's right to operate the Digital Display Sign on the Premises for general outdoor advertising.

1.1.5 “*Development*,” means the improvement of the Premises for the purposes of completing the structures, improvements and facilities comprising the Project, to wit: The Digital Display Sign, including, but not limited to: grading; the construction of infrastructure and public facilities constituting a portion of the Project whether located within or outside the Premises; the construction of buildings and structures; and the installation of landscaping and incidental facilities and improvements. “*Development*” also includes the maintenance, repair, reconstruction or redevelopment of any building, structure, improvement, landscaping or facility constituting a portion of the Project after the construction and completion thereof.

1.1.6 “*Development Approvals*” means all permits, licenses, consents, rights and privileges, and other actions subject to approval or issuance by CITY in connection with the Project issued by CITY on or before the Effective Date of this Agreement, including but not limited to:

- (a) General plans and general plan amendments;
- (b) Zoning, rezoning and City Municipal Code Amendments;
- (c) Variances, conditional use permits, master sign program approvals and precise plans; and
- (d) Grading and building permits.

1.1.7 “*Development Plan*” means the plan for Development of the Premises, including without limitation the Development Approvals, planning and zoning standards, regulations, and criteria for the Project, contained in and consistent with Exhibit “C”. “*Development Plan*” also includes the Mitigation Measures identified in Exhibit “D”.

1.1.8 “*Development Requirement*” means any requirement of CITY in connection with or pursuant to any Development Approval for the dedication of land, the construction or improvement of public facilities, the payment of fees or assessments in

order to lessen, offset, mitigate or compensate for the impacts of Development on the environment, or the advancement of the public interest.

1.1.9 “*DEVELOPER*” means FOSTER INTERSTATE MEDIA, INC., as listed on the first page of this Agreement. Any reference hereunder to “*DEVELOPER*” shall mean *DEVELOPER* or any successor in interest to *DEVELOPER*’s leasehold interest in the Premises.

1.1.10 “*Digital Display Sign*” means a single- or double-sided, full color, light-emitting diode (L.E.D.) digital display facility to be located on the Premises, with a digital display area of at least 14’ by 48’ and not to exceed 20’ by 60’, mounted on a monopole base with architectural treatment as generally depicted in the concept plan attached hereto as Exhibit “G”. The maximum height of the digital display sign shall not exceed fifty-five (55) feet above the finished grade of the adjacent State Route 91 freeway to the bottom of the digital display sign.

1.1.11 “*Display Sign Fee*” means the fee described in Paragraph 1 of Exhibit “E” hereto.

1.1.12 “*Display Sign Late Charge*” means the late charge described in Paragraph 1(e) of Exhibit “E” hereto.

1.1.13 “*Fixed Facility Fee*” means the fee described in Paragraph 2 of Exhibit “E” hereto.

1.1.14 “*Fixed Facility Late Charge*” means the late charge described in Paragraph 2 of Exhibit “E” hereto.

1.1.15 “*Effective Date*” means the date defined as such in the Preamble to this Agreement.

1.1.16 “*Landscaping*” has the meaning giving in Paragraph 3.10.

1.1.17 “*Land Use Regulations*” means all ordinances, resolutions, codes, rules, regulations and official policies of CITY adopted and effective on or before the Effective Date of this Agreement governing the Development and use of land, including, without limitation, the permitted use of land, the density or intensity of use, subdivision requirements, the maximum height and size of proposed buildings, the provisions for reservation or dedication of land for public purposes, and the design, improvement and construction standards and specifications applicable to the Development of the Premises. “*Land Use Regulations*” does not include any CITY ordinance, resolution, code, rule, regulation or official policy, governing:

- (a) the conduct of businesses, professions, and occupations;
- (b) taxes and assessments;
- (c) the control and abatement of nuisances;

(d) the granting of encroachment permits and the conveyance of rights and interests which provide for the use of or the entry upon public property;

(e) the exercise of the power of eminent domain; and

(f) the amount of processing fees or development impact fees.

1.1.18 “*Lease Agreement*” means that certain Lease Agreement, dated June 2003, between DHL Investments, LLC, as “Landlord,” and Diamond King Restaurants, Inc., predecessor in interest to California Food Management, LLC, as “Tenant.”

1.1.19 “*Mitigation Measures*” mean those requirements and Conditions of Approval imposed on the Project and contained in Exhibit “D”

1.1.20 “*Mortgagee*” means a mortgagee of a mortgage, a beneficiary under a deed of trust or any other security instrument, a lender, or any of their respective successors and assigns.

1.1.21 “*Premises*” means the portion of the Property leased to DEVELOPER under the Sublease Agreement.

1.1.22 “*Project*” means the Development of the Premises as described in Recital B consistent with the Development Plan.

1.1.23 “*Property*” means the real property located at 5545 Orangethorpe Avenue, in the City of La Palma, County of Orange, State of California.

1.1.24 “*Reservation of Authority*” means the rights and authority excepted from the assurances and rights provided to DEVELOPER under this Agreement and reserved to CITY under Paragraph 3.6 of this Agreement.

1.1.25 “*Sublease Agreement*” means that certain Sublease Agreement for Outdoor Advertising Improvements, dated March 19, 2015, between DEVELOPER and California Food Management, LLC, which has a leasehold interest in the Property pursuant to the Lease Agreement.

1.1.26 “*Subsequent Development Approvals*” means all Development Approvals issued subsequent to the Effective Date in connection with Development of the Premises.

1.1.27 “*Subsequent Land Use Regulations*” means all Land Use Regulations adopted and effective after the Effective Date of this Agreement.

1.1.28 “*Term*” shall mean the period of time from Commencement of Operations until the expiration of this Agreement as provided in Paragraph 10.1, or earlier termination as provided in Section 6.

1.1.29 “*Term Commencement Date*” means the earlier of (a) the date of DEVELOPER’s Commencement of Operations; or (b) the date that is one (1) year following the date DEVELOPER obtains the last of any and all required governmental permits and approvals for the lawful construction and operation of the Digital Display Sign on the Premises for general outdoor advertising, including without limitation all permits and approvals required for the Landscaping as described in Section 3.10.

1.2. Exhibits. The following documents are attached to, and by this reference incorporated in and made a part of, this Agreement:

Exhibit “A” Legal Description of the Premises.

Exhibit “B” Map showing Property and location of Premises.

Exhibit “C” Development Plan and Development Approvals for the Premises.

Exhibit “D” Mitigation Measures and Conditions of Approval.

Exhibit “E” Public Benefits of the Project.

Exhibit “F” Form of Annual Monitoring Review Statement.

Exhibit “G” Digital Display Sign Concept Plan.

Exhibit “H” Landscaping

Exhibit “I” Insurance Requirements

2. GENERAL PROVISIONS.

2.1. Binding Effect of Agreement. From and following the Effective Date, the Development and CITY actions on applications for Subsequent Development Approvals respecting the Premises shall be subject to the terms and provisions of this Agreement.

2.2. Leasehold Interest in Premises. DEVELOPER represents and covenants that it has an equitable and/or legal interest in the Premises, being a leasehold interest in the Premises.

2.3. Assignment. The parties acknowledge that CITY has negotiated the terms of this Agreement in contemplation of the development and operation of the Digital Display Sign on the Premises and the public benefits to be provided to CITY as a result of said operation. Accordingly, (a) no voluntary or involuntary successor in interest of DEVELOPER shall acquire any rights or powers under this Agreement, and (b) DEVELOPER shall not make any total or partial sale, transfer, conveyance, assignment, subdivision, refinancing or lease of the whole or any part of the Premises or the Digital Display Sign (collectively referred to herein as a “Transfer”), except as provided in this Section 2.3.

2.3.1 *CITY Approval Required.* DEVELOPER may not effect a Transfer unless DEVELOPER obtains CITY's prior written consent. CITY shall not unreasonably withhold, condition or delay its consent so long as it is reasonably satisfied that the proposed Transfer is to an entity that has the financial capability and experience to undertake all of DEVELOPER's obligations under this Agreement and under the Sublease Agreement. DEVELOPER shall cooperate in promptly providing information and written documentation to the CITY so that the City may make its determination concerning the proposed Transfer.

2.3.2 *No Approval for Transfers to an Affiliate.* Notwithstanding anything herein to the contrary, DEVELOPER shall not be required to obtain CITY's written consent prior to effecting a Transfer to an entity owned and controlled by DEVELOPER or the principals of DEVELOPER, or to any other entity so long as DEVELOPER retains at least 50.1% interest in the Premises and the Digital Display Sign at all times.

2.3.3 *Assignment and Assumption Agreement.* Prior to effecting any Transfer, including Transfers not requiring the prior written consent of City pursuant to Section 2.3.2, DEVELOPER and its proposed assignee shall execute an assignment and assumption agreement in a form reasonably approved by the City Attorney of CITY that transfers to the assignee all of DEVELOPER's (i) rights and obligations under this Agreement, and (ii) interest in the Premises pursuant to the Sublease Agreement.

2.3.4 *Release of Transferring DEVELOPER.* Upon DEVELOPER's consummation of a Transfer in accordance with the provisions of this Section 2.3, the entity then constituting the "DEVELOPER" shall be released of all obligations under this Agreement.

3. DEVELOPMENT OF THE PREMISES.

3.1. Exclusive Rights to Develop. Subject to the terms of this Agreement, DEVELOPER shall have an exclusive vested right to develop the Premises in accordance with, and to the extent of, the Development Plan. Development allowed under the Development Plan is hereby vested specifically with the Premises.

3.2. Effect of 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 Premises, the density and intensity of use of the Premises, the maximum height and size of proposed buildings, and the design, improvement and construction standards and specifications applicable to Development of the Premises, shall be those contained in the Development Plan and those Land Use Regulations not inconsistent with the Development Plan.

3.3. Subsequent Development Approvals. CITY shall accept for processing, review and action all applications for Subsequent Development Approvals, and such applications shall be processed in the normal manner for processing such matters, for all or a portion of the Premises at DEVELOPER's option.

3.4. Timing of Development. The parties acknowledge that DEVELOPER cannot at this time predict when or the rate at which phases of the Project will be developed. Such decisions

depend upon numerous factors which are not within the control of DEVELOPER, such as market orientation and demand, interest rates, absorption, completion and other similar factors. Since the California Supreme Court held in *Pardee Construction Co. v. City of Camarillo* (1984) 37 Cal. 3d 465, that the failure of the parties therein to provide for the timing of development resulted in a later-adopted initiative restricting the timing of development to prevail over such parties' agreement, it is the parties' intent to cure that deficiency by acknowledging and providing that, subject to this Agreement (and in particular this Paragraph and Paragraph 6.4.3 below), DEVELOPER shall have the right to develop the Project in such order and at such rate and at such times as DEVELOPER deems appropriate within the exercise of DEVELOPER's subjective business judgment. Nothing in this paragraph is intended to alter the standard durational limits of any applicable permits issued to DEVELOPER. Notwithstanding anything herein to the contrary, once DEVELOPER has obtained all necessary land use approvals for the Digital Display Sign and all Obstructions have been eliminated, DEVELOPER shall develop and construct both sides of the Digital Display Sign concurrently, such that construction of both sides will be completed and available for operation on the same date.

3.5. Changes and Amendments. The parties acknowledge that Development of the Project may require Subsequent Development Approvals, and that in connection therewith DEVELOPER may determine that changes are appropriate and desirable in the existing Development Approvals or Development Plan. In the event DEVELOPER finds that such a change is appropriate or desirable, DEVELOPER may apply in writing for an amendment to prior Development Approvals or the Development Plan to effectuate such change, and CITY shall process and act on such application notwithstanding anything in this Agreement that may be to the contrary. CITY shall have no obligation to grant any such application by DEVELOPER that modifies the overall intensity or density of Development, or otherwise is a substantial modification of the Development Plan having significant adverse environmental impacts. If approved in a form to which DEVELOPER has consented in writing, any such change in the Development Approvals or Development Plan shall be incorporated herein as an addendum, and may be further changed from time to time as provided in this paragraph. Any change in the Development Approvals or Development Plan made in accordance with the procedures required by the Land Use Regulations and with the written consent of the DEVELOPER shall be conclusively deemed to be consistent with this Agreement, without any further need for any amendment to this Agreement or any of its Exhibits.

3.6. Reservation of Authority.

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

(a) Processing fees and charges of every kind and nature imposed by CITY to cover the estimated actual costs to CITY of processing applications for Development Approvals or for monitoring compliance with any Subsequent Development Approvals granted or issued.

(b) Procedural regulations not inconsistent with this Agreement relating to hearing bodies, petitions, applications, notices, findings, records, hearing, reports, recommendations, appeals and any other matter of procedure.

(c) Changes adopted by the International Conference of Building Officials or similar authority with jurisdiction over uniform codes in California, as part of the then most current versions of the Uniform Building Code, Uniform Fire Code, Uniform Plumbing Code, Uniform Mechanical Code, Uniform Solar Energy Code, Uniform Swimming Pool, Spa and Hot Tub Code, Uniform Housing Code, Uniform Administrative Code, or National Electrical Code, and also adopted by CITY as Subsequent Land Use Regulations.

(d) Regulations which may be in conflict with the Development Plan but which are reasonably necessary to protect the public health, safety, and welfare. To the extent possible, any such regulations shall be applied and construed consistent with Paragraph 3.6.4 below so as to provide DEVELOPER with the rights and assurances provided under this Agreement.

(e) Regulations which are not in conflict with the Development Plan and this Agreement. Any regulation, whether adopted by initiative or otherwise, limiting the rate or timing of Development of the Premises, or attempting to assess any additional fees or taxes solely on Development of the Premises or solely on off-site advertising, shall be deemed to conflict with the Development Plan and this Agreement and shall therefore not be applicable to Development of the Premises.

(f) Regulations which are in conflict with the Development Plan, provided DEVELOPER has given written consent to the application of such regulations to Development of Premises.

(g) Federal and State laws and regulations which CITY is required to enforce as against the Premises or the Development of the Premises.

3.6.2 *Future Discretion of CITY.* This Agreement shall not prevent CITY, in acting on Subsequent Development Approvals, from applying Subsequent Land Use Regulations which do not conflict with the Development Plan, nor shall this Agreement prevent CITY from denying or conditionally approving any Subsequent Development Approval on the basis of the existing Land Use Regulations or any Subsequent Land Use Regulation not in conflict with the Development Plan.

3.6.3 *Modification or Suspension by State or Federal Law.* In the event that any State or Federal law or regulation, enacted after the Effective Date of this Agreement, prevents or precludes compliance with one or more of the provisions of this Agreement, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such State or Federal law or regulation, and this Agreement shall remain in full force and effect to the extent it is not inconsistent with such law or regulation and to the extent such law or regulation does not render such remaining provision impractical to enforce.

3.6.4 *Intent.* The CITY acknowledges that DEVELOPER has reasonably entered into this Agreement and will proceed with the Project on the assumption that CITY has adequately provided for the public health, safety and welfare through the Land Use Regulations. In the event that any future, unforeseen public health or safety emergency arises, CITY agrees that it shall attempt to address such emergency in such a way so as not to impact Development of the Premises in accordance with the Development Plan; and if that is not possible, CITY will endeavor to select that option for addressing the emergency which has the least adverse impact on the Project in accordance with the Development Plan. CITY specifically also agrees that it will not adopt any Development moratorium applicable to the Premises except as a last resort response to such an emergency, and then shall maintain any such moratorium with respect to the Premises only for so long as required for the CITY to address the emergency in such a way as to permit the Project to be completed according to DEVELOPER's timetable.

3.6.5 *Taxes, Assessments and Fees.* Except as otherwise set forth in Section 3.6(e), above, this Agreement shall not prevent the CITY from enacting, levying or imposing any new or increased tax, assessment or fee that is levied or imposed on a CITY-wide basis.

3.7. Regulation by Other Public Agencies. It is acknowledged by the parties that other public agencies not subject to control by CITY possess authority to regulate aspects of the Development of the Premises, and this Agreement does not limit the authority of such other public agencies.

3.8. DEVELOPER's Right to Construct Public or Quasi-Public Facilities. It is understood and agreed that, subject to review and approval by CITY and other governmental agencies or utilities of plans and specifications, the DEVELOPER may elect, and reserves the right, to construct, or cause the construction of, any public or quasi-public facility for which the CITY intends to collect a fee, and to dedicate the completed facility to the CITY, in lieu of payment of the fee.

3.9. [RESERVED].

3.10. Cooperation in Completing Development Plan; Landscaping. DEVELOPER and CITY acknowledge and agree that in order to provide for DEVELOPER's effective utilization of the Digital Display Sign, the Digital Display Sign must be visible without obstruction. Such effective utilization necessitates the removal of the trees depicted on Exhibit H (collectively, the "Trees"). CITY agrees to reasonably cooperate (at no cost to CITY) with DEVELOPER, including, without limitation, applying for certain permits in the name of the CITY, as necessary for the successful completion of the Development Plan and fulfillment of Development Requirements, including, without limitation, accomplishment of each and every one of the Mitigation Measures, and all other requirements or conditions that may be imposed on the Development by other public agencies. DEVELOPER acknowledges and agrees that such requirements and conditions may include the planting of new landscaping and/or trees. DEVELOPER shall be solely responsible for paying all costs associated with removal of the Trees. For planting of new landscaping and/or trees, DEVELOPER shall bear the responsibility for paying the costs associated with any such planting, provided that any such costs that exceed

\$25,000 (or \$50,000 if DEVELOPER constructs two Digital Display Signs in the City) may be credited, in equal parts over a 24-month period, toward the Display Sign Fee owed to CITY by DEVELOPER under this Agreement.

3.11. Display Requirements. DEVELOPER has voluntarily agreed that all advertising and/or promotional materials displayed on the Digital Display Sign shall be appropriate for display to the general public of all ages and may not contain material or information that: (i) is false, misleading, or deceptive; (ii) is libelous or defamatory; (iii) promotes unlawful or illegal products, services or activities; (iv) infringes on any copyright, trade or service mark, patent, trade secret or other intellectual property right of any person or entity; (v) implies or declares an endorsement by CITY of any product, service or activity, except upon the written consent of CITY; (vi) is obscene, pornographic, or sexually-explicit material, including, but not limited to, the depiction of nudity, sexual conduct, or sexual excitement; (vii) promotes or depicts tobacco or tobacco-products, or their use, or advertises entities whose business is substantially derived from the sale of tobacco or tobacco products; (viii) promotes or depicts alcoholic beverages or the use of alcoholic beverages if such advertisement or promotional material is within a 500-foot radius of a school up through the level of high school, a house of worship or a playground (other than a playground located adjacent to a linear park that is more than one mile in length and is located within the public way); (ix) advertises entities whose business is substantially derived from the sale of firearms; or (x) advocates imminent lawlessness or violent action.

4. REVIEW FOR COMPLIANCE.

4.1. Periodic Review. During the Term, the City Council shall review this Agreement annually, on or before the anniversary of the Effective Date, in order to ascertain the good faith compliance by DEVELOPER with the terms of this Agreement. As part of that review, DEVELOPER shall submit an annual monitoring review statement substantially in the form set forth in Exhibit "F" hereto, describing DEVELOPER's actions in compliance with this Agreement, at least ninety (90) days prior to each annual anniversary of the Effective Date.

4.2. Special Review. The City Council may order a special review of compliance with this Agreement at any time. DEVELOPER shall cooperate with the CITY in the conduct of any such special review.

4.3. Procedure. In connection with any periodic or special review, 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. If on the basis of the parties' review of any terms of this Agreement, either party concludes that the other party has not complied with the terms of this Agreement, then such party may issue a written "Notice of Non-Compliance," specifying the grounds therefor and all facts demonstrating such non-compliance. The party receiving a Notice of Non-Compliance shall have thirty (30) days to respond in writing to said Notice. If the response to the Notice of Non-Compliance has not been received in the offices of the party alleging the non-compliance within the prescribed time period and in accordance with Paragraph 10.3 below, the Notice of Non-Compliance shall be conclusively presumed to be valid. If a Notice of Non-Compliance is contested, the parties shall have up to sixty (60) days to arrive at a mutually acceptable resolution of the matters occasioning the Notice. In the event that the

parties are not able to arrive at a mutually acceptable resolution of the matter(s) by the end of the sixty (60) day period, the party alleging the non-compliance may thereupon pursue the remedies provided in Section 6.

4.4. Certificate of Agreement Compliance. If, at the conclusion of a periodic or special review, DEVELOPER is found to be in compliance with this Agreement, CITY shall, upon written request by DEVELOPER, issue a Certificate of Agreement Compliance (“Certificate”) to DEVELOPER stating that after the most recent Periodic or Special Review and based upon the information known or made known to the City Manager and City Council that (1) this Agreement remains in effect and (2) DEVELOPER is in compliance. The Certificate shall be in recordable form, shall contain information necessary to communicate constructive record notice of the finding of compliance, shall state whether the Certificate is issued after a periodic or special review and shall state the anticipated date of commencement of the next periodic review. DEVELOPER may record the Certificate with the County Recorder. Additionally, DEVELOPER may at any time request from the CITY a Certificate stating, in addition to the foregoing, which obligations under this Agreement have been fully satisfied with respect to the Premises.

5. PUBLIC BENEFIT.

The public benefits to be provided under this Agreement by the Project to the CITY and its residents are set forth in Exhibit “E.”

6. DEFAULT AND REMEDIES.

6.1. Specific Performance Available. The parties acknowledge that money damages and remedies at law generally are inadequate and specific performance is a particularly appropriate remedy for the enforcement of this Agreement and should be available to DEVELOPER and CITY, because it may not be practical or possible to restore the Premises to its natural condition once implementation of this Agreement has begun. After such implementation, DEVELOPER and/or CITY may be foreclosed from other choices each may have had to utilize or condition the uses of the Premises or portions thereof. DEVELOPER and CITY have invested significant time and resources and performed extensive planning and processing of the Project and in agreeing to the terms of this Agreement. The parties will be investing even more significant time and resources in implementing the Project in reliance upon the terms of this Agreement, such that it would be extremely difficult to determine the sum of money which would adequately compensate DEVELOPER and/or CITY for such efforts.

6.2. Money Damages Unavailable. Except for claims concerning fraud, and except as provided in Paragraph 10.14 below (regarding attorneys’ fees to the prevailing party), neither DEVELOPER nor CITY shall be entitled to any money damages from the other party by reason of, arising out of, based upon, or relating to (a) the interpretation, enforcement, performance or breach of any provision of this Agreement, or (b) the respective rights or duties of any of the parties under the Development Approvals, the Subsequent Development Approvals, any Development Requirement, the Land Use Regulations or the Subsequent Land Use Regulations. Claims for money damages against the CITY shall be subject to the California Government Claims Act (Gov’t Code § 810 et seq.), as well as all other applicable statutes and ordinances.

6.3. [RESERVED]

6.4. Termination of Agreement.

6.4.1 *Termination of Agreement for Default of DEVELOPER.* CITY in its discretion may terminate this Agreement for any failure of DEVELOPER to perform any material duty or obligation of DEVELOPER or to comply with the terms of this Agreement (hereinafter referred to as “default”); provided, however, CITY may terminate this Agreement pursuant to this Section only after following the procedure set forth in Paragraph 4.3 and thereafter providing written notice to DEVELOPER of the default, setting forth the nature of the default and the actions, if any, required by DEVELOPER to cure such default and, where the default can be cured, DEVELOPER has failed to take such actions and cure such default within thirty (30) days after the effective date of such notice or, in the event that such default cannot be cured within such thirty (30) day period but can be cured within a longer time, as reasonably determined by the CITY, DEVELOPER has failed to commence the actions necessary to cure such default within such thirty (30) day period and to diligently proceed to complete such actions and cure such default. The parties acknowledge that termination of this Agreement due to any default by DEVELOPER, including but not limited to DEVELOPER’s failure, refusal or neglect to pay to CITY any installment of any fee or late charge in accordance with Exhibit “E” hereto, shall be grounds for CITY revoking, terminating or cancelling any and all Development Approvals for the Project, including but not limited to the Conditional Use Permit and Precise Plans for the Project described in Exhibit “C” hereto, and thereby terminating the occupancy and use of the Premises for the activities contemplated by this Agreement.

6.4.2 *Termination of Agreement for Default of CITY.* DEVELOPER in its discretion may terminate this Agreement for any default by CITY; provided, however, DEVELOPER may terminate this Agreement pursuant to this Section only after following the procedure set forth in Paragraph 4.3 and thereafter providing written notice by DEVELOPER to the CITY of the default, setting forth the nature of the default and the actions, if any, required by CITY to cure such default and, where the default can be cured, the failure of CITY to cure such default within thirty (30) days after the effective date of such notice or, in the event that such default cannot be cured within such thirty (30) day period, the failure of CITY to commence to cure such default within such thirty (30) day period and to diligently proceed to complete such actions and to cure such default.

6.4.3 *Termination for Failure to Initiate Operations.* Notwithstanding the foregoing, in the event that DEVELOPER fails to commence the operation and advertising of messages on the Digital Display Sign within one (1) year following the date DEVELOPER receives all permits and approvals for the Project, including without limitation such permits and approvals as may be needed for the display of general outdoor advertising on the Digital Display Sign, and to accomplish the Landscaping, CITY reserves the right to terminate this Agreement upon written notice to DEVELOPER. Notwithstanding the foregoing, if at the end of such 1-year period DEVELOPER is using good faith and diligent efforts to commence the operation and advertising of messages on the Digital Display Sign(s) but is unable to do so for reasons beyond its control,

DEVELOPER shall have such additional time as may be reasonably necessary to commence operations and the display of advertising messages on the Digital Display Sign, during which additional time CITY shall have no right to terminate this Agreement for DEVELOPER's failure to commence operations so long as DEVELOPER is otherwise in compliance with the terms of this Agreement, including without limitation the fee payment provisions in Exhibit E, and continues to use good faith, diligent efforts to commence operations.

6.4.4 Termination Due to Expiration of DEVELOPER's Leasehold Interest. CITY acknowledges that, as of Effective Date of this Agreement, the initial durational term of the Sublease Agreement is set to expire on May 11, 2023, and that thereafter the term shall automatically renew for up to four (4) successive five (5) year terms unless DEVELOPER elects to not renew, for a total term of twenty-seven (27) years. If the term of the Sublease Agreement is not extended beyond the twenty-seven (27) year term, the Development Approvals for the Project, including but not limited to the Conditional Use Permit and Precise Plans for the Project described in Exhibit "C" hereto, and the occupancy and use of the Premises for the activities contemplated by this Agreement, shall terminate.

6.4.5 DEVELOPER's Right to Terminate Upon Specified Events. Notwithstanding any other provision of this Agreement to the contrary, DEVELOPER retains the right to terminate this Agreement upon thirty (30) days written notice to CITY in the event that DEVELOPER reasonably determines that continued development or operation of the Project consistent with the Development Plan has become economically infeasible due to changed market conditions, increased development or operation costs, burdens imposed by the CITY or other governmental entity as conditions to future discretionary approvals of the Project consistent with this Agreement, the CITY's exercise of its Reserved Authority in a way deemed by DEVELOPER to be inconsistent with the Development Plan, obstruction of the Digital Display Sign, or similar factors. If DEVELOPER exercises this right, it shall nonetheless be responsible for mitigation of impacts to CITY resulting from Development that may have occurred on the Premises prior to the notice of termination, on a fair share or nexus basis; and within the thirty (30) day notice period CITY and DEVELOPER shall meet to identify any such mitigation obligation that may remain to be satisfied. If the parties are in disagreement at the end of the thirty (30) day notice period, this Agreement shall be terminated as to all matters except for the remaining mitigation obligation in dispute, and with respect thereto the parties shall have the remedies provided in this Section 6.

6.5. Rights and Duties Following Termination. Upon the termination or expiration of this Agreement, no party shall have any further right or obligation hereunder except with respect to (i) any obligations to have been performed prior to said termination, or (ii) any default in the performance of the provisions of this Agreement which has occurred prior to said termination, provided, however, that DEVELOPER shall, at its sole cost, and within sixty (60) days from the date of the expiration or earlier termination of this Agreement, cause the Digital Display Sign and all ancillary improvements to be removed from the Premises, and to restore the Premises to their condition as of the Effective Date. The foregoing obligation of DEVELOPER shall be limited to improvements existing above the level of grade of the Premises, and DEVELOPER shall have no

obligation under this Agreement to remove any portion of the Digital Display Sign that is below the level of grade of the Premises.

7. THIRD PARTY LITIGATION.

In the event of any legal action instituted by a third party challenging or seeking to set-aside, void, annul, limit or restrict the approved and continued implementation and enforcement of this Agreement, any Development Approval or any Subsequent Development Approval, or any provision thereof, DEVELOPER and the CITY shall cooperate in defending any such action. The CITY shall notify DEVELOPER of any such legal action against the CITY within ten (10) working days after the CITY receives service of process, except for any writ for injunctive relief, in which case the CITY shall notify DEVELOPER immediately upon receipt. DEVELOPER shall indemnify, hold harmless and defend the CITY, its officers, agents and employees, from any such legal actions; provided, however, that if the CITY fails to timely notify DEVELOPER of the legal action or if the CITY fails to cooperate in the defense, DEVELOPER shall not thereafter be responsible for the CITY's defense.

The CITY shall be entitled to select its own counsel to conduct its defense, and DEVELOPER shall be responsible for paying all fees and costs of counsel the CITY selects except as provided herein. DEVELOPER shall pay all of CITY's defense costs, including without limitation, court costs and attorney fees, and DEVELOPER shall promptly pay all monetary awards, judgments, verdicts, court costs, and attorney fees that may be awarded in such an action. During the first year of the term of this Agreement, DEVELOPER agrees to pay the initial Five Hundred Thousand Dollars (\$500,000) of legal fees incurred by the CITY in defense of any such action. In the event legal fees incurred by the CITY in the first year exceed Five Hundred Thousand Dollars (\$500,000), DEVELOPER and the CITY shall each pay fifty percent (50%) of such additional legal fees. After the first year, DEVELOPER shall be responsible for one hundred percent (100%) of all legal costs and fees.

CITY shall not reject any reasonable settlement; if CITY does reject a settlement that is acceptable to DEVELOPER, DEVELOPER may settle the action, as it relates to DEVELOPER, and the CITY shall thereafter defend such action (including appeals) at its own cost and be solely responsible for any judgments rendered in connection with such action. The filing of any third party lawsuit(s) against CITY or DEVELOPER challenging or seeking to set-aside, void, annul, limit or restrict the approved and continued implementation and enforcement of this Agreement, any Development Approval or any Subsequent Development Approval, or any provision thereof, shall not delay or stop the processing or issuance of any building permit, unless the third party obtains a court order preventing the activity. The CITY shall not stipulate to the issuance of any such order.

8. MORTGAGEE PROTECTION.

The parties hereto agree that this Agreement shall not prevent or limit DEVELOPER, in any manner, at DEVELOPER's sole discretion, from encumbering the Premises or any portion thereof or any improvement thereon by any mortgage, deed of trust or other security device securing financing with respect to the Premises. CITY acknowledges that one or more lenders providing such financing may require certain Agreement interpretations and modifications and

agrees upon request, from time to time, to meet with DEVELOPER and representatives of such lenders to negotiate in good faith any such request for interpretation or modification. Subject to compliance with applicable laws, CITY will not unreasonably withhold its consent to any such requested interpretation or modification provided CITY determines such interpretation or modification is consistent with the intent and purposes of this Agreement, and does not adversely affect any Mortgagee of the Premises. A Mortgagee shall be entitled to the following rights and privileges:

(a) 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 Premises made in good faith and for value, unless otherwise required by law.

(b) The Mortgagee of any mortgage or deed of trust encumbering the Premises, which Mortgagee has submitted a request in writing to the CITY in the manner specified herein for giving notices, shall be entitled to receive written notification from CITY of any default by DEVELOPER in the performance of DEVELOPER's obligations under this Agreement.

(c) If CITY timely receives a request from a Mortgagee requesting a copy of any notice of default given to DEVELOPER under the terms of this Agreement, CITY shall make a good faith effort to provide a copy of that notice to the Mortgagee within ten (10) days of sending the notice of default to DEVELOPER. The Mortgagee shall have the right, but not the obligation, to cure the default during the remaining cure period allowed such party under this Agreement.

(d) Any Mortgagee who comes into possession of the Premises, pursuant to foreclosure of the mortgage or deed of trust, or deed in lieu of such foreclosure, shall take the Premises subject to the terms of this Agreement. Notwithstanding any other provision of this Agreement to the contrary, no Mortgagee shall have an obligation or duty under this Agreement to perform any of DEVELOPER's obligations or other affirmative covenants of DEVELOPER hereunder, or to guarantee such performance; except that (i) to the extent that any covenant to be performed by DEVELOPER as a condition precedent to the performance of a covenant by CITY, the performance thereof shall continue to be a condition precedent to CITY's performance hereunder; (ii) in the event any Mortgagee seeks to develop or use any portion of the Premises acquired by such Mortgagee by foreclosure, deed of trust, or deed in lieu of foreclosure, such Mortgagee shall strictly comply with all of the terms, conditions and requirements of this Agreement and the Development Plan; and (iii) once occupancy of the Premises commences, and for so long thereafter as a financial institution, bank or other non-sales tax generating use occupies the Premises, Mortgagee shall provide the public benefits set forth in Exhibit "E" to this Agreement.

9. LEGAL RELATIONS AND RESPONSIBILITIES.

9.1. Compliance with Laws. DEVELOPER shall keep itself fully informed of all existing and future state, federal and local laws, ordinances, and regulations which in any manner affect this Agreement or its performance. DEVELOPER shall at all times during the Term observe

and comply with, and shall cause all of their lessees, tenants, agents, and employees to observe and comply with, all such existing and future laws, ordinances and regulations; and DEVELOPER shall protect and indemnify the CITY, its officers, officials, employees, representatives, and agents from and against any claim or liability arising from or based on the violation of any such law, ordinance or regulation, whether by DEVELOPER or by any tenant, lessee, employee, agent, or representative.

9.2. No Discrimination. At all times during the Term, DEVELOPER shall not discriminate against any person on the basis of race, religion, national origin, ethnic group identification, sex, sexual orientation, age, physical or mental disability, or other protected class status.

9.3. Project as a Private Undertaking. It is specifically understood and agreed by and between the parties hereto that the Development of the Project 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 only relationship between CITY and DEVELOPER is that of a government entity regulating the Development of private property and the owner of such property.

9.4. Indemnification. DEVELOPER shall defend, indemnify and hold harmless CITY, its officers, officials, members, employees, representatives, and agents from and against any and all actions, claims, damages to persons or property, penalties, obligations or liabilities that may be asserted or claimed by any person, firm, entity, corporation, political subdivision or other organization arising out of or in any connection with the performance of this Agreement, the occupation or use of the Premises or the implementation of the Project, but excluding such actions, claims, damages to persons or property, penalties, obligations or liabilities to the extent arising from the active negligence or willful misconduct of CITY, its officers, officials, employees, representatives or agents. Subject to the foregoing exclusions, DEVELOPER shall defend any action or actions filed in connection with any of such claims, damages, penalties, obligations or liabilities, and shall pay all expenses and costs, including attorneys' fees, incurred therewith. DEVELOPER shall have the right to select counsel to perform the defense, subject to such counsel being reasonably acceptable to CITY. DEVELOPER shall also have the ability to control strategy and resolution of such actions, provided that DEVELOPER must obtain CITY's consent for any strategy or resolution that would impose an obligation on CITY (financial or otherwise) that would not be borne by DEVELOPER or that would amount to a representation concerning, or an admission by, CITY.

9.5. Insurance. From and after the commencement of construction of the Digital Display Sign, DEVELOPER shall procure and, throughout the term of this Agreement shall maintain, insurance coverage as set forth in Exhibit I attached hereto. In addition, DEVELOPER shall require all Project contractors and subcontractors to procure, and throughout the term of their involvement in the Project maintain, insurance coverage as set forth in Exhibit I attached hereto.

9.6. Waiver. The 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.

9.7. No Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit for the parties and their successors and assigns. No other person shall have any right of action based upon any provision of this Agreement; and there are no third party beneficiaries to this Agreement.

9.8. Force Majeure. 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 earthquake, other Act of God, fire, war, riot or similar hostilities, strike and other labor difficulty beyond the party's control (including the party's employment force), government regulation, court action (such as restraining orders or injunctions), obstruction of the Digital Display Sign, or other cause beyond the party's control. If any such events shall occur, the term of this Agreement and the time for performance shall be extended for the duration of each such event, provided that the term of this Agreement shall not be extended under any circumstances for more than five (5) years. Without limiting the foregoing, the monthly Display Sign Fee and other amounts otherwise payable hereunder shall be abated for the duration of any event of Force Majeure which prevents the unobstructed and lawful display of the Digital Display Sign.

9.9. 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.

9.10. Eminent Domain. No provision of this Agreement shall be construed to limit or restrict the exercise by CITY of its power of eminent domain or DEVELOPER's rights with respect to claims for the fair market value of the Digital Display Sign structures, this Agreement, and the Sublease.

9.11. Display Sign Contract Control. Except with respect to the display of CITY public service announcements and emergency broadcasts as set forth in Exhibit E, DEVELOPER shall have sole and exclusive control over and responsibility for the content of any messages, announcements or advertisements displayed on the Digital Display Sign, and the CITY shall have no responsibility or authority with respect to such displays.

9.12. Prevailing Wages. As of the date of this Agreement, the parties understand and intend that prevailing wages will not be required to be paid in connection with the construction of improvements under this Agreement. If prevailing wages are determined to be required in connection with the construction of any improvements under this Agreement, DEVELOPER shall be solely responsible to pay such required wage rates, and any interest and penalties relating thereto.

9.13. Right of First Refusal. Before the CITY agrees to lease any CITY-owned property to a third party for the construction, operation and maintenance of a single- or double-sided billboard facility to be owned by the third party, the CITY shall first offer, in writing, to lease the CITY-owned property to DEVELOPER for such purposes (“First Offer”). DEVELOPER will have until 5:00 p.m. on the 10th business day after the date of the First Offer to accept the First Offer by delivering to the CITY an unequivocal, unconditional written notice of acceptance. If DEVELOPER fails to accept the First Offer within such time period, then the First Offer will be considered rejected unequivocally and unconditionally, and the CITY may lease the property to a third party on the same terms as rejected by DEVELOPER.

10. MISCELLANEOUS PROVISIONS.

10.1. Term of Agreement. Unless earlier terminated as provided in Section 6.4 above, this Agreement shall continue in full force and effect for a period of thirty (30) years from the date of DEVELOPER’s Commencement of Operations (“Term Commencement Date”). The parties may, by mutual written agreement, extend the term for one (1) additional period of ten (10) years from the date of expiration of the term of this Agreement.

10.2. Recordation of Agreement. This Agreement shall be recorded with the County Recorder by the City Clerk within the period required by Section 65868.5 of the Government Code. Amendments approved by the parties, and any cancellation, shall be similarly recorded.

10.3. Notices. Any notice relating to this Agreement or any instrument or payment required to be given under this Agreement, shall be given in writing and shall be deemed sufficiently given and served for all purposes when delivered personally, by generally recognized overnight courier service (provided that sender retains a receipt evidencing the date and time of delivery), by facsimile or email (provided that sender retains a printed confirmation of delivery to the facsimile number or email address provided below), or three (3) days after deposit in the United States mail, certified or registered, return receipt requested, with postage prepaid, addressed as follows:

CITY: City of La Palma
7822 Walker Street
La Palma, CA 90623
Attn: City Manager
FAX: (714) 523-2141

with a copy to: RUTAN & TUCKER, LLP
611 Anton Boulevard, Suite 1400
Costa Mesa, CA 92626
Attn: Joel D. Kuperberg
FAX: (714) 546-9035

DEVELOPER: FOSTER INTERSTATE MEDIA, INC.
1111 Broadway, Suite 1515
Oakland, CA 94607
Attn: John B. Foster, President

FAX: (510) 832-7071

with a copy to:

WENDEL ROSEN BLACK & DEAN LLP
1111 Broadway, Suite 2400
Oakland, CA 94607
Attn: Matthew E. Dambrov, Esq.
FAX: (510) 808-4649

Either party may change its address or other contact information by written notice to the other given in the manner set forth above.

10.4. Entire Agreement. This Agreement sets forth and contains the entire understanding and agreement of the parties, 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.

10.5. Severability. If any term, provision, covenant or condition of this Agreement shall be determined invalid, void or unenforceable, then this Agreement shall terminate in its entirety, unless the parties otherwise agree in writing, which agreement shall not be unreasonably withheld.

10.6. 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. 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, and the rule of construction to the effect that ambiguities are to be resolved against the drafting party or in favor of CITY shall not be employed in interpreting this Agreement, all parties having been represented by counsel in the negotiation and preparation hereof.

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

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

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

10.10. 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.

10.11. Successors in Interest. As provided in Section 65868.5 of the Government Code, and subject to Paragraph 2.3 above, all of the terms, provisions, covenants and obligations contained in this Agreement shall be binding upon, and inure to the benefit of, CITY and DEVELOPER, and its respective successors and assigns.

10.12. Counterparts. 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.

10.13. Jurisdiction and Venue. 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, and the parties hereto waive all provisions of law providing for the filing, removal or change of venue to any other court.

10.14. Attorneys' Fees. In the event any action at law or in equity arises under this Agreement, or is brought by CITY or DEVELOPER for the purpose of enforcing, construing or determining the validity of any provision of this Agreement, the prevailing party shall be entitled to recover its litigation costs and reasonable attorneys' fees.

10.15. Amendments in Writing/Cooperation. This Agreement may be amended only by written consent of both parties specifically approving the amendment and in accordance with the Development Agreement Law. The parties shall cooperate in good faith with respect to any amendment proposed in order to clarify the intent and application of this Agreement, and shall treat any such proposal on its own merits, and not as a basis for the introduction of unrelated matters.

10.16. Authority to Execute. The person or persons executing this Agreement on behalf of DEVELOPER warrants and represents that he/they have the authority to execute this Agreement on behalf of his/their corporation, partnership or business entity and warrants and represents that he/they has/have the authority to bind DEVELOPER to the performance of its obligations hereunder.

[SIGNATURES ON FOLLOWING PAGE]

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

CITY OF LA PALMA

Gerard Goedhart, Mayor

ATTEST:

Kimberly Kenney,
Deputy City Clerk

APPROVED AS TO FORM:

Michelle Molko, Assistant City Attorney

FOSTER INTERSTATE MEDIA, INC.

John B. Foster, President

Lars Skugstad, Vice President

[ALL SIGNATURES SHALL BE NOTARIZED. EXECUTION ON BEHALF OF ANY CORPORATION SHALL BE BY TWO CORPORATE OFFICERS.]

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 Orange)

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

Notary Public, 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 California 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 California)
County of Orange)

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

Notary Public, 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
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I certify under PENALTY OF PERJURY under the laws of the State of California 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 California)
County of Orange)

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

Notary Public, 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 California that the
foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

EXHIBIT "A"

LEGAL DESCRIPTION

THAT PORTION OF PARCEL "B" AS SHOWN ON A MAP FILED IN BOOK 36, PAGE 8 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF ORANGE COUNTY, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID PARCEL "B";

THENCE NORTH 63°06'33" WEST, ALONG THE NORTH LINE OF SAID PARCEL "B", 25.50 FEET TO THE TRUE POINT OF BEGINNING;

THENCE SOUTH 26°53'27" WEST 60.00 FEET;

THENCE NORTH 63°06'33" WEST 15.00 FEET;

THENCE NORTH 26°53'27" EAST 60.00 FEET TO THE NORTH LINE OF SAID PARCEL "B";

THENCE SOUTH 63°06'33" EAST, ALONG THE NORTH LINE OF SAID PARCEL "B", 15.00 FEET TO THE TRUE POINT OF BEGINNING;

SAID DESCRIPTION CONTAINS 900 SQUARE FEET, MORE OR LESS.

EXHIBIT “C”

**DEVELOPMENT PLAN AND DEVELOPMENT APPROVALS
FOR THE PREMISES**

The entitlements, approvals and development standards governing the Premises and vested by this Development Agreement are as follows:

1. The La Palma General Plan in effect as of the Effective Date, including amendments and updates to the General Plan effected by Resolution No. 2014-32, adopted by the City Council on June 17, 2014.
2. The La Palma Development Code in effect as of the Effective Date, including amendments to the Development Code and rezoning actions effected by Ordinance No. 2014-03 approved by the City Council on October 21, 2014.
3. Conditional Use Permit No.361, approved by the adoption of Resolution No.2016-02 by the Planning Commission of the CITY on January 19, 2016.
4. Precise Plan No.275, approved by the adoption of Resolution No. 2016-03 by the Planning Commission of the CITY on January 19, 2016.

EXHIBIT “D”

MITIGATION MEASURES AND CONDITIONS OF APPROVAL

LA PALMA FREEWAY OVERLAY							
Mitigated Negative Declaration: Mitigation Monitoring Reporting Program							
Mitigation Measures	Monitoring Timing/Frequency	Action Indicating Compliance	Monitoring Agency	Verification of Compliance			
				Initials	Date	Remarks	
AE-1	The applicant shall demonstrate compliance with a maximum 0.3 foot-candle increase over ambient light at 250 feet from the sign face during nighttime conditions upon initial start-up through field testing. If subsequent complaints consisting of direct personal impacts are received by the City of La Palma, the City shall require the applicant to fund follow-up field testing by an independent contractor or City staff trained in the use of a handheld photometer to demonstrate continued compliance. If increases in ambient light are found to be above the 0.3 foot-candle level, the dimming level shall be adjusted until this level can be demonstrated.	Upon Completion of Construction	Field Test Submit Report	Building & Safety Division Code Enforcement			
AE-2	Signs shall be installed with sensors which automatically lower light output in accordance with atmospheric conditions (i.e. cloudy or overcast weather). Throughout sign operation, the dimness setting of the LED sign shall be adjusted in real time so it does not exceed the level of illumination identified under Mitigation Measure AE-1.	Throughout Operation	Operator Compliance	Building & Safety Division Code Enforcement			
C-1	If potential archaeological materials are uncovered during grading or other earth moving activities, the contractor shall be required to halt work in the immediate area of the find and to retain a professional archaeologist to examine the materials to determine whether it is a unique archaeological resource as defined in Section 21083.2(g) of the state CEQA Statutes. If this determination is positive, the resource shall be left in place, if determined feasible by the project archaeologist. Otherwise, the	Throughout Construction	Contractor Compliance Submit Report	Planning Division			

LA PALMA FREEWAY OVERLAY							
Mitigated Negative Declaration: Mitigation Monitoring Reporting Program							
Mitigation Measures	Monitoring Timing/ Frequency	Action Indicating Compliance	Monitoring Agency	Verification of Compliance			
				Initials	Date	Remarks	
scientifically consequential information shall be fully recovered by the archaeologist. Work may continue outside of the area of the find; however, no further work shall occur in the immediate location of the find until all information recovery has been completed and a report concerning it filed with the Economic Development and Redevelopment Director. The applicant shall bear the cost of implementing this mitigation.							
C-2 If paleontological materials are uncovered during grading or other earth moving activities, the contractor shall be required to halt work in the immediate area of the find, and to retain a professional paleontologist to examine the materials to determine whether it is a significant paleontological resource. If this determination is positive, resource shall be left in place, if determined feasible by the project paleontologist. Otherwise, the scientifically consequential information shall be fully recovered by the paleontologist. Work may continue outside of the area of the find; however, no further work shall occur in the immediate location of the find until all information recovery has been completed and a report concerning it filed with the Economic Development and Redevelopment Director. The applicant shall bear the cost of implementing this mitigation.	Throughout Construction	Contractor Compliance Submit Report	Planning Division				

LA PALMA FREEWAY OVERLAY							
Mitigated Negative Declaration: Mitigation Monitoring Reporting Program							
Mitigation Measures	Monitoring Timing/ Frequency	Action Indicating Compliance	Monitoring Agency	Verification of Compliance			
				Initials	Date	Remarks	
T-1 The operation of digital LED billboards within the Freeway Overlay District shall comply with the following at all times: <ul style="list-style-type: none"> •No special visual effects that include moving or flashing lights shall accompany the transition between two successive messages, and no special visual effects shall accompany any message display; •The minimum display duration time for messages shall be not less than 8 seconds, and the minimum display time between messages shall be not more than 1 second; •The minimum font size shall be established for the maximum speed on SR-91 freeway. The font size standard shall be in accordance with the sign industry's best practices formula. •Prior to implementing any of the following, the operator shall submit a request and obtain permission from the City: installing, implementing or using any technology that would allow interaction with drivers, vehicles or any device located in vehicles, including, but not limited to, a radio frequency identification device, geographic positions system, or other device. •In the event of any failure or combination of failures that affect the digital billboards' luminance, the operator shall impose a default to an output level no higher than 4 percent of the maximum luminance of the billboard. If this cannot be achieved, then the display shall be required to default to an "off" position until 	Throughout Operation	Operator Compliance	Building & Safety Division Code Enforcement				

LA PALMA FREEWAY OVERLAY							
Mitigated Negative Declaration: Mitigation Monitoring Reporting Program							
Mitigation Measures	Monitoring Timing/ Frequency	Action Indicating Compliance	Monitoring Agency	Verification of Compliance			
				Initials	Date	Remarks	
	the problem can be resolved.						
T-2	<p>The operator of any digital LED billboard within the City Freeway Overlay District shall submit, within 30 days following June 30 of each year, a written report regarding operation of each digital billboard during the preceding period of July 1 to June 30. The operator may submit a combined report for all such digital billboards operated by such operator within the District. The report shall, when appropriate, identify incidents or facts that relate to specific digital billboards. The report shall be submitted to the Office of the City Manager and the City Attorney, and shall include the following information:</p> <ul style="list-style-type: none"> •Status of the operator’s license as required by California Business and Professions Code para 5300 et seq.; •Status of the required permit for individual digital billboards, as required by California Business and Professions Code para. 5350 et seq.; •Compliance with the California Outdoor Advertising Act, California Business and Professions Code para 5200 and all regulations adopted pursuant to such Act; •Compliance with California Vehicle Code para 21466.5 and 21467; •Compliance with provisions of written agreements between the U.S. Department of Transportation and the California Department 	Throughout Operation	Submit Report	City Manager City Attorney			

LA PALMA FREEWAY OVERLAY						
Mitigated Negative Declaration: Mitigation Monitoring Reporting Program						
Mitigation Measures	Monitoring Timing/ Frequency	Action Indicating Compliance	Monitoring Agency	Verification of Compliance		
				Initials	Date	Remarks
of Transportation pursuant to the federal Highway Beautification Act (23U.S.C. para.131); •Compliance with mitigation measures and/or conditions of approval adopted as part of the project approval; •Each written or oral complaint received by the operator, or conveyed to the operator by any government agency or any other person, regarding operation of digital billboards within the District; •Each malfunction or failure of a digital billboard operated by the operator within the District, which shall include only those malfunctions or failures that are visible to the naked eye, including reason for the malfunction, duration and confirmation of repair; and •Operating status of each digital billboard operated by the operator within the District, including estimated date of repair and return to normal operation of any digital billboard identified in the report as not operating in normal mode.						

EXHIBIT “E”

PUBLIC BENEFITS

In partial consideration for CITY entering into this Agreement, the Project shall provide the following public benefits to CITY and its residents:

1. **Monthly Display Sign Fee:** From and after the Term Commencement Date during the Term of this Agreement, DEVELOPER shall pay to CITY the following monthly fixed fee for the Digital Display Sign (the “Display Sign Fee”):

a. On the first day of each month during the Term (each such date, a “Monthly Payment Date”), DEVELOPER shall pay to CITY the amount of Eight Thousand Five Hundred Dollars (\$8,500), which is One Hundred Two Thousand Dollars (\$102,000) per year; provided, however, that during any period that one (1) of the advertising displays on the Digital Display Sign has not yet been installed or is not in operation solely as the result of an “Obstruction” (as that term is defined below), the monthly Display Sign Fee shall be Four Thousand Two Hundred Fifty Dollars (\$4,250). Notwithstanding the foregoing, if as of the date of any Monthly Payment Date DEVELOPER has not developed and commenced operations of a second single- or double-sided, full color, light-emitting diode (L.E.D.) digital display facility in the City of La Palma, the monthly Display Sign Fee shall be Ten Thousand Dollars (\$10,000); provided, however, that during any period that one (1) of the advertising displays on the Digital Display Sign is not in operation solely as the result of an “Obstruction” (as that term is defined below), the monthly Display Sign Fee shall be Five Thousand Dollars (\$5,000). For purposes of clarity, no Display Sign Fee shall be payable for an advertising display until DEVELOPER has achieved Commencement of Operations for such display. As used in this Agreement, the term “Obstruction” shall mean (a) the inability to remove any of the trees identified on Exhibit H hereto (Landscaping) that are within 750 feet of the Digital Display Sign due to circumstances outside of the control of either CITY or DEVELOPER; or (b) the construction of any structure requiring a building permit within the City of La Palma that obstructs the view of any of the advertising displays on the Digital Display Sign, as seen by vehicular traffic travelling on State Route 91.

b. Notwithstanding the foregoing, on the date the above-referenced monthly Display Sign Fee is first payable by DEVELOPER, Developer shall pay to CITY an amount equal to the first six (6) months of the Display Sign Fee then due (determined pursuant to paragraph a above) as an advance toward future Display Sign Fees otherwise due hereunder. The outstanding balance of said advanced fees shall be applied to future Display Sign Fees due hereunder without offset or deduction of any kind.

c. Commencing on or before the fifth (5th) anniversary of the Term Commencement Date, for each display, the DEVELOPER shall pay the Display Sign Fee determined and set forth in subparagraph (a) above, increased by the following amounts: (i) Years 6-10: 2% annual increase; (ii) Years 11-15: 1% annual increase; (iii) Years 16 –20: 2% annual increase; (iv) Years 21-25: 1% annual increase; and (v) Years 26 – 30: 2% annual increase. In no event shall the Display Sign Fee be reduced from one year to the next.

d. The monthly fixed fees set forth herein shall be in addition to, and not in lieu of, any processing, permit or other fees or deposits required under the Agreement, or by any of the Land Use Regulations, or Development Approvals.

e. If any monthly Display Sign Fee payment is not received by the CITY on or before the date on which such payment is due, DEVELOPER shall pay an additional sum equal to three percent (3%) of the amount due (the "Display Sign Late Charge") for each month or portion thereof that any portion of the Display Sign Fee payment remains delinquent. CITY and DEVELOPER mutually agree that: i) the Display Sign Late Charge constitutes liquidated damages and not a penalty for DEVELOPER's failure to make the Display Sign Fee payments in a timely manner as required by the Agreement; and ii) this amount of liquidated damages is fixed and agreed upon by and between CITY and DEVELOPER because of the impracticality and extreme difficulty of fixing and ascertaining the actual damages CITY would in such event sustain, such that CITY and DEVELOPER agree that the liquidated damages amount is deemed to be the amount that CITY would sustain by reason of such breach by DEVELOPER.

2. Fixed Facility Fee: If, at any time during the term of the Agreement, any additional fixed asset or item is placed on the Digital Display Sign (e.g., a cellular antenna), DEVELOPER shall pay to the CITY an amount equal to fifty percent (50%) of all income and/or revenue received by DEVELOPER in connection with the added asset or item (The "Fixed Facility Fee"). The Fixed Facility Fee shall be paid by DEVELOPER to CITY within five (5) calendar days after receipt by DEVELOPER of any such income and/or revenue. In the event of any delinquency in the payment of the Fixed Facility Fee, DEVELOPER shall pay an additional sum equal to three percent (3%) of the amount due (the "Fixed Facility Fee Late Charge") for each month or portion thereof that the Fixed Facility Fee payment remains delinquent. CITY and DEVELOPER mutually agree that: a) the Fixed Facility Fee Late Charge constitutes liquidated damages and not a penalty for DEVELOPER's failure to make the Fixed Facility Fee payments in a timely manner as required by the Agreement; and ii) this amount of liquidated damages is fixed and agreed upon by and between CITY and DEVELOPER because of the impracticality and extreme difficulty of fixing and ascertaining the actual damages CITY would in such event sustain, such that CITY and DEVELOPER agree that the liquidated damages amount is deemed to be the amount that CITY would sustain by reason of such breach by DEVELOPER.

3. Digital Air Time Donation to CITY: Following Commencement of Operations, DEVELOPER shall provide CITY "air time" on the Digital Display Sign for public service announcements and/or emergency broadcasts (e.g., "Amber Alerts") and advertising air time (with such advertised air time copy to be reasonably approved by DEVELOPER), at no cost to CITY, for up to one half of one percent (.5%) of the total air time for each advertising display face of the Digital Display Sign (being one half of one percent (.5%) of all air time for the Digital Display Sign), of which fifty-five percent (55%) of the CITY "air time" must be between the hours of 7:00 a.m. and 10:00 p.m. California time. CITY agrees that CITY's air time can be divided between the advertising displays of the Digital Display Sign in such proportion as may be determined by DEVELOPER in its discretion so long as in the aggregate CITY receives the agreed percentage of air time on the Digital Display Sign.

4. Maintenance of Digital Display Sign: DEVELOPER shall maintain the Digital Display Sign and the Premises in a first class condition, in strict conformance with all the

requirements of the Development Approvals, Subsequent Development Approvals and Land Use Regulations. CITY acknowledges and agrees that DEVELOPER has no right or obligation to maintain any portion of the Property other than the Premises leased by DEVELOPER.

5. Capital Improvements: DEVELOPER acknowledges and agrees that CITY approved a lower annual increase (e.g., 1%) to the monthly Display Sign Fee during years 11-15 and during years 21-25, as set forth in Paragraph 1c above, as an accommodation to DEVELOPER such that DEVELOPER will have funds available to invest in capital improvements to the Digital Display Sign. As consideration for CITY's approval of said lower annual increases, DEVELOPER shall replace each display screen of the Digital Display Sign, with a display screen of equal or better quality than the screen then being replaced, at least every 10 years. Unless otherwise agreed to in writing by the Parties, the annual increase to the Display Sign Fee shall remain as set forth in Paragraph 1c, above, and shall not be affected by when display replacement actually occurs.

EXHIBIT "F"

FORM OF ANNUAL MONITORING REVIEW STATEMENT

_____, 20____

VIA CERTIFIED MAIL

City of La Palma
7822 Walker Street
La Palma, California 90623
Attention: City Manager

Re: Development Agreement dated as of _____, 2016 (the "**Agreement**"), for a portion of _____, La Palma, California and _____, La Palma, California (the "**Premises**"), by and between the City of La Palma (the "**City**"), and Foster Interstate Media, Inc. (the "**Developer**").

Dear Sir or Madame:

As you know, the City and the Developer entered into the above-referenced Agreement in connection with permitting development on the Premises for the development and operation of two digital display sign, as more particularly set forth in the Agreement. This letter shall constitute an "annual monitoring review statement" under the terms of Section 4.1 of the Agreement. Capitalized terms not otherwise identified herein shall have the same meaning as given such terms under the Agreement. In accordance with such Section 4.1, Developer hereby advises the City of the following:

1. Developer has paid the monthly Display Sign Fee (and, if applicable, any Fixed Facility Fee) for the current year, as specified in Exhibit E to the Agreement.
2. The improvements on the Premises have been completed in accordance with the terms set forth in the Agreement.
3. The Premises have been maintained in a first class condition in accordance with the requirements set forth in the Agreement.
4. Developer has provided City "air time" on the Digital Display Sign for public service announcements, emergency broadcasts and advertising, in the amounts and at the time required by Exhibit E to the Agreement.

Please let us know if you have any questions.

FOSTER INTERSTATE MEDIA, INC.

John B. Foster, President

EXHIBIT "F"

EXHIBIT "G"

DIGITAL DISPLAY SIGN CONCEPT PLAN

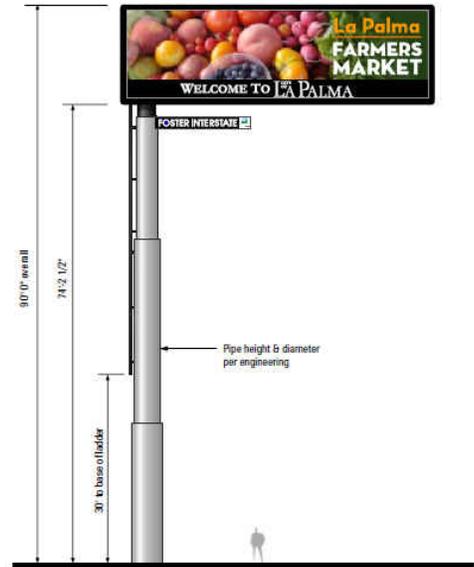


A SIGN ELEVATION

SCALE: 3/32" = 1' 0"

One (1) double face LED display.

ITEM	DESCRIPTION	VENDOR	SPECIFICATION
Electronics	LED	Watchfire	20mm Actual
Cabinet	Aluminum	Matthews	PMS 877C Metallic Silver, satin
Border	Aluminum	Matthews	MP26308 "Wells Fargo Black", high gloss
Pole Support - Top		Matthews	MP59647 "Black is back" high gloss
Pole Support - Middle & Base		Matthews	PMS 877C Metallic Silver, satin
Center Structure	Per engineering	Matthews	MP59647 "Black is back" high gloss
Ladder	Per engineering	Matthews	MP59647 "Black is back" high gloss PMS 877C Metallic Silver, satin
Foster Sign	Aluminum		Per detail
Illumination	Brightness level of the illumination for the Advertising Structures will measure no more than 0.3 foot candles above ambient light conditions when measured at an appropriate distance. This foregoing brightness level has become the industry standard and is recommended by the DAAA (Outdoor Advertising Association of America) and the ISA (International Sign Association).		



A SIGN ELEVATION

SCALE: 1/16" = 1' 0"

EXHIBIT "H"

LANDSCAPING



EXHIBIT "I"

INSURANCE REQUIREMENTS

Without limiting DEVELOPER's indemnification obligations, DEVELOPER shall not enter or occupy the Premises until DEVELOPER has obtained all of the insurance required herein from a company or companies acceptable to CITY, and DEVELOPER shall maintain all such insurance in full force and effect at all times during the term of this Agreement and any extension or renewal thereof. Insurance shall be placed with insurers having a current A.M. Best rating of no less than A-:VII or equivalent or as otherwise approved by CITY.

1. DEVELOPER shall take out and maintain the following insurance:

1.1 Workers' Compensation and Employer's Liability Insurance: DEVELOPER shall cover or insure under the applicable laws relating to workers' compensation insurance all of its employees working on or about the Premises, in accordance with the "Workers' Compensation and Insurance Act," Division IV of the Labor Code of the State of California and any Acts amendatory thereof. DEVELOPER shall provide worker's compensation insurance and employer's liability insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence, One Million Dollars (\$1,000,000) disease policy limit, and One Million Dollars (\$1,000,000) disease each employee. Such policy of workers compensation insurance shall contain the following separate endorsements:

(a) "Insurer waives all rights of subrogation against the City of La Palma, its officers, officials, employees, representatives, agents and volunteers."

(b) "This insurance policy shall not be suspended, voided, reduced in coverage or in limits, cancelled, limited, non-renewed or materially changed for any reason by the insurer until thirty (30) days after receipt by the City of La Palma of a written notice of such cancellation, limitation or reduction of coverage."

1.2 Commercial General Liability Insurance providing coverage in the following minimum limits:

(a) Combined single limit of Three Million Dollars (\$3,000,000) per occurrence for Bodily Injury, Personal Injury or Death and Property.

(b) Damage Coverage shall be at least as broad as Insurance Services Office (ISO) Commercial General Liability coverage (occurrence Form CG 0001).

(c) If Commercial General Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the project/location (with the ISO CG 2503 or ISO CG 2504, or insurer's equivalent endorsement provided to CITY), or the general aggregate limit shall be twice the required occurrence limit.

1.3 **Comprehensive Automobile Liability Insurance**, including owned, non-owned, leased, hired, and borrowed automobiles and similar vehicles, providing the following minimum limits:

(a) Combined single limit of One Million Dollars (\$1,000,000) per occurrence for Bodily Injury or Death and Property Damage.

(b) Coverage shall be at least as broad as Insurance Services Office (ISO) Business and Auto Coverage (Form CA 0001) covering any auto.

2. Endorsements: The policies of liability insurance provided for in Paragraphs 1.2 and 1.3 shall specify that the Project referenced in this Agreement is insured and that coverage for injury resulting from DEVELOPER's activities is not excluded, and shall be in a form satisfactory to CITY and contain the following separate endorsements:

(a) "The City of La Palma, its officers, officials, employees, agents, representatives and volunteers, are declared to be additional insureds on all of the above policies with respects to the operations and activities of the named insured. The coverage shall contain no special limitations on the scope of protection afforded to the City of La Palma, its officers, officials, employees, representatives and volunteers."

(b) "This insurance policy shall not be suspended, voided, reduced in coverage or in limits, canceled, limited, non-renewed, or materially changed for any reason until thirty (30) days after receipt by the City of La Palma of a written notice of such cancellation, limitation or reduction of coverage."

(c) "This insurance policy is primary insurance and no insurance held or owned by the designated additional insureds shall be called upon or looked to cover a loss under said policy; the City of La Palma shall not be liable for the payment of premiums or assessments on this policy."

(d) "Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City of La Palma, its officers, officials, employees, agents, representatives, or volunteers."

(e) "This insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability."

3. Evidence of Coverage: DEVELOPER shall prior to the commencement of construction of the Project present to CITY the original policies of insurance required by this Exhibit "I", or a certificate of the insurance, with separate endorsements (Insurance Services Office Form CG 2026, or equivalent), showing the issuance of such insurance and the additional insured and other provisions and endorsements required herein and copies of all endorsements signed by the insurer's representative. All policies shall contain the DEVELOPER's name and location of the Project on the certificate. At least thirty (30) days prior to the expiration of any such policy, a signed complete certificate of insurance, with all endorsements provided herein, showing that such insurance coverage has been renewed or extended, shall be filed with CITY. DEVELOPER's

insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

4. Review of Coverage: CITY shall have the right at any time to review the coverage, form, and limits of insurance required under this Agreement. If, in the sole and absolute discretion of CITY, the insurance provisions in this Agreement do not provide adequate protection for CITY, CITY shall have the right to require DEVELOPER to obtain insurance sufficient in coverage, form and limits to provide adequate protection and DEVELOPER shall promptly comply with any such requirement. CITY's requirements shall not be unreasonable, but shall be adequate in the sole opinion of CITY to protect against the kind and extent of risks which may exist at the time a change of insurance is required, or thereafter.

5. Deductibles: Any and all deductibles must be declared and approved by CITY prior to execution of this Agreement.