



CITY OF IRWINDALE

5050 N. IRWINDALE AVE., IRWINDALE CA 91706 • PHONE: (626) 430-2200

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RODRIGUEZ II
COMMISSIONER

AGENDA FOR THE REGULAR MEETING OF THE

PLANNING COMMISSION

January 17, 2024

6:30 P.M.

IRWINDALE COUNCIL CHAMBER

Join Webinar at

<https://us02web.zoom.us/j/86349691359>

Webinar ID

863 4969 1359

In the event that a Zoom broadcast is unavailable, staff will promptly notify the public through its social media platforms. The public meeting will proceed in accordance with The Brown Act.

Submit public comments by email to planning@irwindaleca.gov prior to the start of the meeting. Comments will be read by the Administrative Secretary during public comment. Lengthy public comment may be summarized in the interest of time.

Spontaneous Communications: The public is encouraged to address the Planning Commission on any matter listed on the agenda or on any other matter within its jurisdiction. The Planning Commission will hear public comments on items listed on the agenda during discussion of the matter and prior to a vote. The Planning Commission will hear public comments on matters not listed on the agenda during the Spontaneous Communications period.

Pursuant to provisions of the **Brown Act**, no action may be taken on a matter unless it is listed on the agenda, or unless certain emergency or special circumstances exist. The Planning Commission may request staff to investigate and/or schedule certain matters for consideration at a future Commission or City Council meeting.

Americans with Disabilities Act: In compliance with the ADA and Government Code section 54953(g), the City Council has adopted a reasonable accommodation policy to swiftly resolve accommodation requests. The policy can be found on the City's website: <https://www.irwindaleca.gov/DocumentCenter/View/8075/AB-2449-Reasonable-Accommodation-Policy>. If you need special assistance to participate in a City Council or Commission meeting or other services offered by this City, including an electronic or printed copy of the City's reasonable accommodation policy, please contact City Hall at (626) 430-2200. Notification of at least 48 hours prior to the meeting or time when services are needed will assist the City staff in assuring that reasonable arrangements can be made to provide accessibility to the meeting or service. **Note:** Staff reports are available for inspection at the Planning Division Counter, 16102 Arrow Highway or at City Hall, 5050 N. Irwindale Avenue, during regular business hours (8:00 a.m. to 6:00 p.m., Monday through Thursday) by appointment only, and by contacting the Planning Division at 626-430-2208.



Code of Ethics

As City of Irwindale Planning Commissioners, our fundamental duty is to serve the public good. We are committed to the principle of an efficient and professional local government. We will be exemplary in obeying the letter and spirit of Local, State and Federal laws and City policies affecting the operation of the government and in our private life. We will be independent and impartial in our judgment and actions.

We will work for the common good of the City of Irwindale community and not for any private or personal interest. We will endeavor to treat all people with respect and civility. We will commit to observe the highest standards of morality and integrity, and to faithfully discharge the duties of our office regardless of personal consideration. We shall refrain from abusive conduct, personal charges or verbal attacks upon the character or motives of others.

We will inform ourselves on public issues, listen attentively to public discussions before the body, and focus on the business at hand. We will base our decisions on the merit and substance of that business. We will be fair and equitable in all actions, claims or transactions. We shall not use our official position to influence government decisions in which we have a financial interest or where we have a personal relationship that could present a conflict of interest, or create a perception of a conflict of interest.

We shall not take advantage of services or opportunities for personal gain by virtue of our public office that are not available to the public in general. We shall refrain from accepting gifts, favors or promises of future benefit that might compromise our independence of judgment or action or give the appearance of being compromised.

We will behave in a manner that does not bring discredit or embarrassment to the City of Irwindale. We will be honest in thought and deed in both our personal and official lives.

Ultimate responsibility for complying with this Code of Ethics rests with the individual elected official. In addition to any other penalty as provided by law, violation of this Code of Ethics may be used as a basis for disciplinary action or censure of a Commissioner.

These things we hereby pledge to do in the interest and purposes for which our government has been established.

IRWINDALE PLANNING COMMISSION



A. CALL TO ORDER**B. PLEDGE OF ALLEGIANCE****C. INVOCATION****D. ROLL CALL: Commissioners: Albert Acosta, Richard Chico, Joseph V. Rodriguez II; Vice-Chair Maricela Frymark; Chair David Fuentes****E. AB 2449 DISCLOSURES**

Remote participation by a member of the legislative body for just cause or emergency circumstances.

F. ANNOUNCEMENTS**1. CONSENT CALENDAR**

The Consent Calendar contains matters of routine business and is to be approved with one motion unless a member of the Commission requests separate action on a specific item. At this time, members of the audience may ask to be heard regarding an item on the Consent Calendar.

A. Minutes

Recommendation: No minutes for approval

2. SPONTANEOUS COMMUNICATIONS

This is the time set aside for members of the audience to speak on items not on this agenda. State law prohibits any Commission discussion or action on such communications unless 1) the Commission by majority vote finds that a catastrophe or emergency exists; or 2) the Commission by at least four votes finds that the matter (and need for action thereon) arose within the last five days. Since the Commission cannot (except as stated) participate it is requested that all such communications be made in writing so as to be included on the next agenda for full discussion and action.

Any public member addressing the Commission shall limit his or her address to three (3) minutes regarding the subject under discussion. If a member of the public wishes to donate their time to another speaker, both persons must be physically present and in attendance of the meeting. In no event shall any donations of time exceed six minutes of total speaking time per person on any one item. The Presiding Officer may, in his or her discretion, extend the 3-minute time limitation for the particular subject under discussion for all speakers. In no event shall the total amount of speaking time exceed 6 minutes per person for the subject under discussion. Organized group of persons wishing to address the Board on the same subject matter, should select a spokesperson to represent the group, so as to avoid unnecessary repetition. The Commission may regulate a speaker who is speaking too long, being unduly repetitious, or extending discussion of irrelevancies.

In the hybrid format, both in-person and hybrid audience members will participate in the following order:

Tier 1: In-person attendees

Tier 2: Teleconference attendees

Tier 3: In-person and teleconference attendees who have not previously provide comments on the matter(s) being discussed by the legislative body

3. NEW BUSINESS**4. PUBLIC HEARINGS****A. DEVELOPMENT AGREEMENT NO. 01-2020; 4800 RIVERGRADE ROAD (APNs: 8535-020-047, AND 8535-020-048)– DIGITAL BILLBOARD CONVERSION (RIVERGRADE HOLDING LLC)**

Request for an approval of a Development Agreement to allow the conversion of a freeway-oriented static billboard into a digital display billboard at the property 4800 Rivergrade Road. ENVIRONMENTAL REVIEW: The proposed project is exempt from the California Environmental Quality Act (CEQA), pursuant to Section 15302 (Class 2; Replacement or Reconstruction) and no further review is required. Also, the City has determined that this project will not have, either individually or cumulatively, an adverse impact on fish and wildlife resources.

Recommendation: Adopt Resolution No. 821(24)

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF IRWINDALE RECOMMENDING THAT THE CITY COUNCIL APPROVE DEVELOPMENT AGREEMENT NO. 01-2020 TO ALLOW FOR THE CONVERSION OF AN EXISTING STATIC BILLBOARD LOCATED AT 4800 RIVERGRADE ROAD (APNS: 8535-020-045, 8535-020-047, AND 8535-020-048) IN THE M-2 (HEAVY MANUFACTURING) ZONE SUBJECT TO THE CONDITIONS AS SET FORTH HEREIN AND MAKING FINDINGS IN SUPPORT THEREOF, AND FIND THE PROJECT EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) PURSUANT TO CEQA GUIDELINES SECTION 15302 (CLASS 2; REPLACEMENT AND RECONSTRUCTION)

5. DISCUSSION ITEMS/PRESENTATIONS**6. COMMUNITY DEVELOPMENT DIRECTOR REPORT****7. LEGAL COUNSEL COMMENTS****8. COMMISSIONER COMMENTS****9. ADJOURN**

AFFIDAVIT OF POSTING

I, Jesus Hernandez, Administrative Secretary, certify that I caused the agenda for the regular meeting of the Irwindale Planning Commission to be held on January 17, 2024 to be posted at the City Hall, Library, and Post Office on January 11, 2024.

Jesus Hernandez

Jesus Hernandez,
Administrative Secretary



**CITY OF IRWINDALE
PLANNING COMMISSION STAFF REPORT**
COMMUNITY DEVELOPMENT DEPARTMENT
PLANNING DIVISION



Date: January 17, 2024 **Agenda Item No. 4-A**

To: Honorable Chair and Members of the Planning Commission

From: Marilyn Simpson, AICP, Community Development Director

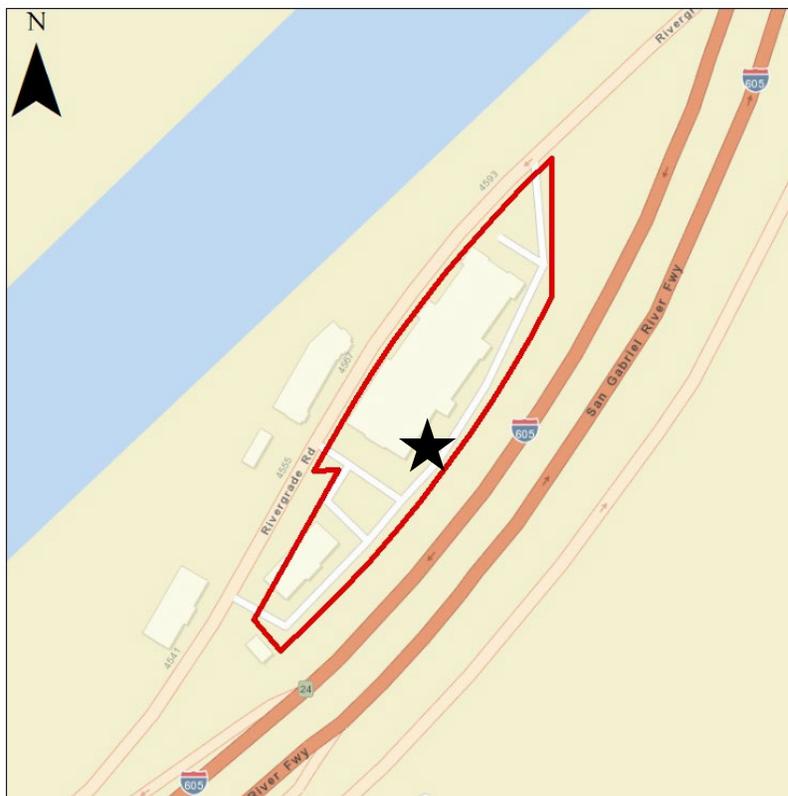
Project Planner: Martin Romero, Planning Technician

Project: Development Agreement No. 01-2020;
4800 Rivergrade Road – Digital Billboard Conversion

Applicants: Rivergrade Holding LLC

Property Owner: Rivergrade Holding LLC

Project Location: 4800 Rivergrade Road (APNs: 8535-020-045, 8535-020-047, and 8535-020-048)



Sources: Los Angeles County, City of Irwindale, ESRI
Map dated: January 2024

Staff Recommendation: That the Planning Commission adopt Resolution No. 821(24) recommending to the City Council an exemption from CEQA and approval of Development Agreement No. 01-2020 subject to the Conditions of Approval.

REQUEST

The Applicant, Rivergrade Holding LLC, is requesting approval of a Development Agreement to allow the conversion of a freeway-oriented static billboard into a digital display billboard at the property 4800 Rivergrade Road. Per Irwindale Municipal Code (IMC) section 17.72.030, the repair, replacement, or new installation of a static or digital billboard requires the approval of a Development Agreement with appropriate standards and public benefits to be negotiated with the City and complying with all other standards imposed by the IMC.

BACKGROUND

The site is located west of the I-605 freeway, east of Rivergrade Road. The site is currently occupied by four (4) buildings having a total square footage of ± 63,209 SF, formerly Hallett Boats. The subject billboard sits east of the buildings and faces the I-605 freeway. There is an existing static billboard located north of the project site sitting roughly 500 feet from the subject billboard. The digital conversion of the subject billboard meets the minimum distance requirement per IMC Subsection 17.72.50(D)(7).

GENERAL PLAN AND ZONING

The Site is designated in the General Plan as Industrial/Business Park and zoned M-2 (Heavy Manufacturing).

The proposed billboard area is surrounded by the following zones and uses:

Direction	Existing Land Use	Zoning District
North	San Gabriel River	M-2 (Heavy Manufacturing) and A-1 (Agricultural)
South	I-605 Fwy	I-605 Fwy
East	I-605 Fwy	I-605 Fwy
West	San Gabriel River	M-2 (Heavy Manufacturing) and A-1 (Agricultural)

PROJECT DESCRIPTION/ANALYSIS

The Applicant is proposing to convert an existing static billboard consisting of two (2), 16'-4.8" x 50'-0" digital panels arranged in a "V" shaped panel configuration having both the north-facing and south-facing panels facing both directions of the I-605 Freeway. The proposed digital billboard is proposed to have the same height and face area as the existing static billboard it will be replacing. The proposed billboard will have a total height of 52'-4.8", falling below the 65-foot maximum height.

Key provisions of the Development Agreement include the following:

1. *Annual Development Fee.* Developer will pay Seventy Thousand Dollars (\$70,000.00) to the City of Irwindale per year (representing \$35,000 per Digital Display) with a 12.5% increase every 5 years.
2. *Community Benefit.* Developer will provide advertising space on the Digital Displays to the City free of charge on a space-available basis. Such advertising space shall only be made available for the use of City-related events or agencies.
3. *Prohibited Use.* Developer will not utilize any of the displays on the Billboard to advertise tobacco, marijuana, hashish, "gentlemen's clubs," adult entertainment businesses, sexually oriented materials, or use sexually oriented images or language, including, but not limited to, ads such as "Adult Con", vulgar or obscene images or language.
4. *Annual Review.* The City Council will have the right to review this Agreement annually at the Developer's sole cost, on or before the anniversary of the Term, to ascertain the good faith compliance by Developer with the terms of the Agreement ("Annual Review").
5. *Indemnification.* Developer will indemnify the City for any damages or claims related to its construction and operation of the subject billboard.

DEVELOPMENT STANDARDS COMPLIANCE

Pursuant to IMC section 17.72.050, the proposed digital billboard complies with all of the required development standards, including, but not limited to the following (Refer to Exhibit B for a description of all general billboard standards):

A. Sign Face Dimensions.

1. The area of the sign face shall not exceed 675 square feet, excluding border, trim, cutouts and other special advertising features or additions and base or apron supports and other structural members.
2. Cutouts and other special advertising features or additions to a sign face shall not exceed in area 10% of the total sign face dimensions.
3. Three-dimensional design elements shall not extend more than 5 feet beyond the front of the sign face or sign side.
4. Bidirectional or double-faced signs shall be located on the same structure. For parallel double-faced signs, the distance between sign faces shall not exceed 8 feet. For "V-shaped" double-faced signs, the distance between sign faces shall not exceed 45 feet at their widest point and shall not exceed 8 feet at their closest point.
5. Billboard identification signs shall have a minimum character height of two feet.

- B. *Structure Design.* Each structure shall have no more than two poles, and shall be constructed of noncombustible material.
- C. *Height.* The height shall not exceed 65 feet or, exclusive of cutouts or special additions, measured from the higher of either:
1. The finished grade of the roadway adjacent to the lot on which the structure is located and from which the advertising display is to be viewed; or
 2. the finished grade of the base of the sign.
- D. *Location.* The location of billboards shall be restricted as follows:
1. Structures shall be located only in area immediately adjacent to the I-605 and I-210 freeways that is zoned for commercial, quarry or industrial uses.
 2. Structures shall not be located on public property or rights-of-way. No portion of any sign or structure shall located on, project into, beneath, or above the public right-of-way.
 3. Maintenance, repair and other related operations shall be operated completely upon the billboard site and shall not use or encroach on any public right-of-way.
 4. Structures shall not be located within the setbacks that apply to the zone in which the structure is located.
 5. Structures shall not be located within 5 feet of a building or other structure.
 6. New billboards shall not be located within 2,500 feet of another billboard on the same side of the public right-of-way. Existing billboards may not be replaced unless they are outside of a minimum 500-foot buffer of another billboard. For purposes of this section, measurements shall be made from the centerline of the support structure if a single pole and from the angle of intersection if a perpendicular (V-shaped) sign. Development agreements for new billboard structures with digital displays may provide for a reduced buffer, but not less than 1,500 feet in due consideration of other public benefits provided in the development agreements, including, but not limited to, the concurrent takedown of existing static displays or digital displays within the city.
 7. When the replacement of a static billboard results in the construction of a new digital display, the new billboard shall not be located within a 500-foot radius of any existing billboards (static or digital) on the same side of the public right-of-way. For purposes of this section, measurements shall be made from the centerline of the support structure if a single pole and from the angle of intersection if a perpendicular (V-shaped) sign.

ENVIRONMENTAL REVIEW

Pursuant to the authority and criteria contained in the California Environmental Quality Act (CEQA) of 1970, as amended, and the City of Irwindale environmental guidelines, the City, as the Lead Agency, has analyzed the project and has determined that the Project is Categorically Exempt from the provisions of CEQA pursuant to Section 15302 (Class 2; Replacement or Reconstruction) and no further review is required. Also, the City has determined that this project will not have, either individually or cumulatively, an adverse impact on fish and wildlife resources.

Subject to approval of the project by the City Council based on a recommendation by the Planning Commission, a Notice of Exemption will be filed with the office of the Registrar-Recorder/County Clerk, County of Los Angeles.

RECOMMENDATION

That the Planning Commission adopt Resolution No. 821(24) recommending to the City Council approval of Development Agreement No. 01-2020 subject to the Conditions of Approval.

ATTACHMENTS

- Exhibit A: Resolution No. 821(24) with Development Agreement
- Exhibit B: IMC Section 17.72.050, General (Billboard) Standards
- Exhibit C: Site Plan, Elevations, and Photo Simulations

EXHIBIT “A”

RESOLUTION NO. 821(24)

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF IRWINDALE RECOMMENDING THAT THE CITY COUNCIL APPROVE DEVELOPMENT AGREEMENT NO. 01-2020 TO ALLOW FOR THE CONVERSION OF AN EXISTING STATIC BILLBOARD LOCATED AT 4800 RIVERGRADE ROAD (APNS: 8535-020-045, 8535-020-047, AND 8535-020-048) IN THE M-2 (HEAVY MANUFACTURING) ZONE SUBJECT TO THE CONDITIONS AS SET FORTH HEREIN AND MAKING FINDINGS IN SUPPORT THEREOF, AND FIND THE PROJECT EXEMPT FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) PURSUANT TO CEQA GUIDELINES SECTION 15302 (CLASS 2; REPLACEMENT AND RECONSTRUCTION)

A. RECITALS.

- (i) Andrew Goodman, on behalf of Rivergrade Holding, LLC, (the “Applicant”), has made a request for approval of a Development Agreement (Exhibit A) to allow the conversion of an existing static billboard into a digital display billboard at 4800 Rivergrade Road in Irwindale, APNs: 8535-020-045, 8535-020-047, and 8535-020-048 (“Subject Property”). The proposed billboard conversion will consist of two (2) 16’-4.8” x 50’-0” digital panels facing north and south bound traffic just west of the I-605 Freeway. The digital billboard panels will be placed on a similar structure as the existing and will not increase the height of the existing structure. The digital billboard will have a total height of 52 feet 4.8 inches.
- (ii) The Subject Property is zoned M-2 (Heavy Manufacturing). Per Irwindale Municipal Code (IMC) section 17.72.030, the repair, replacement, or new installation of a static or digital billboard requires the approval of a Development Agreement with appropriate standards and public benefits to be negotiated with the City and complying with all other standards imposed by the IMC.
- (iii) Pursuant to the authority and criteria contained in the California Environmental Quality Act (CEQA) of 1970, as amended, and the City of Irwindale environmental guidelines, the City, as the Lead Agency, has analyzed the project and has determined that the Project is Categorically Exempt from the provisions of CEQA pursuant to Section 15302 (Class 2; Replacement and Reconstruction) and no further review is required. Also, the City has determined that this project will not have, either individually or cumulatively, an adverse impact on fish and wildlife resources. Subject to approval of the project by the City Council based on a recommendation by the Planning Commission, a Notice of Exemption will be filed with the office of the Registrar-Recorder/County Clerk, County of Los Angeles.

- (iv) On January 17, 2024, the Planning Commission conducted a duly noticed public hearing, at which time they received a presentation from staff; opened the public hearing and heard testimony from the Applicant and the public; closed the public hearing; and discussed the Proposed Project; and, after discussion and consideration of substantial evidence including the testimony, staff report, and all attachments thereto, approved this Resolution recommending that the City Council approve Development Agreement No. 01-2020.
- (v) All legal prerequisites to the adoption of this Resolution have occurred.

B. RESOLUTION.

NOW, THEREFORE, it is hereby found, determined and resolved by the Planning Commission of the City of Irwindale as follows:

- (i) The Planning Commission hereby specifically finds that all of the facts set forth in Recitals, Part A, of this Resolution are true and correct and incorporated herein by this reference.
- (ii) The Planning Commission hereby specifically finds and determines that the project, as proposed, is exempt from the provisions of the California Environmental Quality Act (CEQA), pursuant to 15302 (Class 2; Replacement and Reconstruction). The Planning Commission therefore recommends that the City Council find the project exempt from further CEQA review.
- (iii) Based upon substantial evidence and testimony taken from the record as a whole, and received at the public hearing, both oral and written, including the staff report, and all attachments thereto, all of which shall constitute the entire record of the matter, the Planning Commission hereby finds that the proposed billboard conversion complies with the General Standards imposed by Section 17.72.050 of the Irwindale Municipal Code.
- (iv) Based upon the substantial evidence and conclusions set forth herein above, this Planning Commission hereby recommends to the City Council approval of the Development Agreement subject to the conditions set forth in the Development Agreement attached hereto as Exhibit A and by this reference incorporated herein, which conditions are deemed necessary to protect the public health, safety and general welfare and are reasonable and proper in accordance with the intent and purposes of Title 17 of the Irwindale Municipal Code.

Draft Development Agreement

Recording Requested by And
 When Recorded Return to:
 CITY OF IRWINDALE
 5050 N. Irwindale Ave.
 Irwindale, CA 91706
 Attn: City Clerk

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

DEVELOPMENT AGREEMENT NO.

This Development Agreement (“**Agreement**”) is entered into this ____ day of _____, 2023 (“**Effective Date**”) by and between the CITY OF IRWINDALE, a California municipal corporation (“**City**”) and RIVERGRADE HOLDING, LLC, a California limited liability company (“**Developer**”).

RECITALS

A. California Government Code Sections 65864, *et seq.*, (“**Development Agreement Law**”) authorizes cities 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 purposes of strengthening the public planning process, encouraging private participation and comprehensive planning and identifying the economic costs of such development.

B. Developer is the grantee of that certain Grant of Easement for Billboard Sign and Access granting Developer an exclusive easement over a certain portion of real property, as further described below (such easement is referred to herein as the “**Billboard Sign Easement Site**”), which real property is located adjacent to the west side of the 605 Freeway and immediately east of Rivergrade Road in the City of Irwindale, at 4800 Rivergrade Road, Assessor Parcel Numbers 8535-020-045, 8535-020-047 and 8535-020-048, and as more specifically described in Exhibit “A-1”, attached hereto and incorporated herein (such real property is referred to herein as the “**Real Property Site**”). Grantee’s easement rights and obligations with regards to the Billboard Sign Easement Site have been modified or otherwise clarified through that certain First Amendment to Grant of Easement for Billboard Sign and Access, recorded October 10, 2023 with the County Recorder’s Office, having document number 20230687730.

C. The Billboard Sign Easement Site, which lies within the borders of the Real Property Site, is specifically described in Exhibit “A-2” and depicted in Exhibit “A-3”, attached hereto and incorporated herein and improved with one (1) existing lawfully-permitted double-sided printed billboard (such printed billboard is referred to herein as the “**Printed Billboard Structure**”).

D. Pursuant to the terms of this Agreement, Developer seeks to replace the Printed Billboard Structure with one double-faced digital billboard (such digital billboard is referred to herein as the “**Digital Billboard Structure**”), having a V-shaped design with one face oriented towards southbound traffic and the other face oriented toward northbound traffic on the 605 Freeway, using a new billboard foundation and pole structure in generally the same location where the Printed Billboard Structure is currently located. The Digital Billboard Structure will have

two faces of approximately 14 feet by 48 feet, or approximately 675 square feet (each referred to individually herein as a “**Digital Display Face**”). The Digital Billboard Structure will be supported by a single post.

E. Luos Investment LLC, a California limited liability company, owns the Real Property Site. Luo Investment, LLC has represented and warranted that it is the owner of the Real Property Site and that Rivergrade Holding LLC has (1) a valid current easement interest in the Billboard Sign Easement Site, (2) the exclusive, perpetual and irrevocable right to replace and modify (and all activities reasonably necessary in connection therewith) the Printed Billboard Structure, and (3) provided Luo Investment, LLC with notice of the replacement Digital Billboard Structure including a detailed description of the proposed Project. Developer, as the easement holder to the Billboard Sign Easement Site upon which the Printed Billboard Structure is located, has a legal and/or equitable interest in the Billboard Sign Easement Site and, thus, qualifies to enter into this Agreement in accordance with Development Agreement Law.

F. Developer is currently subject to an April 1, 2003 Billboard Lease Agreement, as assigned, with Regency Outdoor Advertising, Inc. and Clear Channel Outdoor, Inc. for the lease of each display face on the Printed Billboard Structure, which lease is on a month-to-month term and Developer, in its discretion intends to terminate such lease to allow for the Project and negotiate a new lease with an operator of Developer’s choice to utilize such Digital Billboard Structure and Digital Display Faces in pursuit of the approvals secured through this Agreement.

G. In exchange for the approvals sought to install the Digital Billboard Structure, Developer has offered to:

1. Pay to the City an annual Development Fee, as defined and provided in Section 2.6 below, for the cost to the City to mitigate the impact of the installation of the Digital Billboard Structure; and

2. Provide advertising time on the Digital Billboard Structure on a space-available basis to the City for public service and civic causes.

H. The Billboard Sign Easement Site is located within the City’s M-2 Heavy Manufacturing Zone and designated by the General Plan land use map as Commercial/Industrial.

I. Developer and City agree that a development agreement should be approved and adopted to memorialize the property expectations of City and Developer as more particularly described herein.

J. On _____, 2022, the Planning Commission of the City, adopted Resolution No. _____ recommending approval of this Agreement and Ordinance No. _____ to the City Council and the filing of a Notice of Exemption pursuant to the provisions of the California Environmental Quality Act (“CEQA”).

K. On _____, 2022, the City Council of the City, at a duly noticed hearing to consider the approval of this Agreement, considered the proposal, heard testimony, and introduced Ordinance No. _____, and authorized the adoption of a Notice of Exemption pursuant to Section 15302 of the CEQA Guidelines (Class 2 exemption for replacement or reconstruction of existing structures and facilities).

L. The City Council has found that this Agreement is in the best interest of the City and its residents, adopting this Agreement constitutes a prudent exercise of the City’s police power, and this Agreement is consistent with the City’s General Plan. This Agreement and the proposed Project (as hereinafter defined) will achieve several City objectives. Upon expiration or any termination of this Agreement, City and Developer shall be subject to Section 4.1 and Section 4.2 with respect to various rights and obligations to convert the Digital Billboard Structure back to a printed billboard with two facings, subject to obtaining any required permits.

M. On _____, 2022, the City Council held the second reading of Ordinance No. _____, thereby approving this Agreement.

N. City finds and determines that all actions required of City precedent to approval of this Agreement by Ordinance No. _____ of the City Council have been duly and regularly taken.

COVENANTS

NOW, THEREFORE, in consideration of the above recitals and of the mutual covenants hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which 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, when used in the Agreement. In addition to the terms defined in the Recitals above, the defined terms include the following:

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

1.1.2 “Billboard Sign Easement Site” shall have the meaning ascribed in the Recitals above.

1.1.3 “City” means the City of Irwindale, a California municipal corporation and charter city.

1.1.4 “City Council” means the City Council of the City.

1.1.5 “Developer” means Rivergrade Holding LLC, a California limited liability company, duly existing and operating, and its successors and assigns, doing business at 9454 Wilshire Boulevard, Suite 201, Beverly Hills, CA 90212.

1.1.6 “Development Approvals” means any and all permits or approvals necessary to carry out and complete the Project, including, but not limited to Ordinance No. ___, and as further described in Section 3.3 herein.

1.1.7 “Development Fee” shall have the definition given in Section 2.6 of this Agreement.

1.1.8 “Digital Billboard Structure” shall have the meaning ascribed in the Recitals above.

1.1.9 “Digital Display Face” shall have the meaning ascribed in the Recitals above.

1.1.10 “Effective Date” means the date inserted into the preamble of this Agreement, which is 30 days following approval of this Agreement by ordinance of the City Council, provided the Agreement is signed by the Developer and City.

1.1.11 “Fee Commencement Date” shall have the definition given in Section 2.6 of this Agreement.

1.1.12 “Final Permits” shall mean the final approval from the applicable governmental authorities and all required third party approvals, after the expiration of all applicable appeal periods, for any and all required permits to maintain and operate the Digital Billboard Structure as contemplated under this Agreement.

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

1.1.14 “Mortgagee” means a mortgagee of a mortgage, a beneficiary under a deed of trust or any other security-device, a lender or each of their respective successors and assigns.

1.1.15 “Owner” means the fee simple owner of the Real Property Site encumbered by and subject to Developer’s exclusive grant of easement to the Billboard Sign Easement Site at a specific time. As of the Effective Date, Luos Investment, LLC is the Owner.

1.1.16 “Project” means the removal of the Printed Billboard Structure and installation, operation, improvement, replacement, upgrade, and maintenance of the Digital Billboard Structure on the Billboard Sign Easement Site, all in accordance with the Development Approvals and this Agreement, including the Scope of Development attached hereto as Exhibit “B”, Schedule of Performance attached hereto as Exhibit “D”, and all conditions of approval, and consistent with the approval from the California Department of Transportation Outdoor Advertising Division.

1.1.17 “Real Property Site” shall have the meaning ascribed in the Recitals above.

1.1.18 “Schedule of Performance” means the Schedule of Performance attached hereto as Exhibit “D” and incorporated herein.

1.1.19 “Scope of Development” means the Scope of Development attached hereto as Exhibit “B” and incorporated herein.

1.1.20 “Subsequent Development Approvals” means all Development Approvals issued subsequent to the Effective Date in connection with development of the Project, which shall include, without limitation, any changes to the Development Approvals.

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

1.1.22 “Term” shall have the meaning provided in Section 2.4, unless earlier terminated as provided in this Agreement.

1.2 **Exhibits.** The following documents are attached to, and by this reference made a part of, this Agreement: Exhibit “A-1” (Legal Description of Real Property Site), Exhibit A-2 (Legal Description of Billboard Sign Easement Site), Exhibit “A-3” (Depiction of Billboard Sign Easement Site), Exhibit “B” (Scope of Development), Exhibit “C” (Billboard Sign Easement Site Plan and Elevations), and Exhibit “D” (Schedule of Performance).

2. GENERAL PROVISIONS.

2.1 **Binding Effect of Agreement.** From and following the Effective Date, actions by the City and Developer with respect to the Project, including actions by the City on applications for Subsequent Development Approvals affecting the Billboard Sign Easement Site, shall be subject to the terms and provisions of this Agreement.

2.2 **Interest in Billboard Sign Easement Site.** Developer represents to City that Developer has a legal and/or equitable interest in the Billboard Sign Easement Site and thus is qualified to enter and be a party to this Agreement under the Development Agreement Law.

2.3 **Assignment.** Developer may assign or otherwise transfer this Agreement, or any part of this Agreement, to any other entity, upon presentation to the City of an assignment and assumption agreement in a form reasonably acceptable to the City Attorney and the City's written approval of such assignment or transfer by the City Manager, which shall not be unreasonably withheld if the assignee is able to demonstrate sufficient financial assets and experience in undertaking the obligations under this Agreement. However, Developer may, from time to time and one or more times, assign this Agreement, to another entity without City approval, but with written notice to the City, as long as (1) Developer has and maintains at least a twenty-five percent (25%) ownership interest in the assignee(s) or transferee(s); and (2) any assignee(s) or transferee(s) executes an assumption agreement assuming all of Developer's duties and obligations hereunder to the extent of the interest assigned or transferred. After a transfer or assignment as permitted by this Section, the City shall look solely to such assignee or transferee for compliance with the provisions of this Agreement which have been assigned or transferred.

2.4 Term of Agreement. Unless earlier terminated as provided in this Agreement, this Agreement shall continue in full force and effect until the earlier of: (i) thirty (30) years after the Fee Commencement Date; or (ii) the permanent removal of both Digital Display Faces constructed pursuant to the terms hereof (“**Term**”). If only one Digital Display Face is permanently removed from the Digital Billboard Structure and replaced with a printed billboard, the then-current Development Fee will be reduced by fifty percent (50%) and the Agreement will remain in full force and effect as to the remaining Digital Display Face. Within thirty (30) days after the expiration or termination of this Agreement, the parties shall execute a written cancellation of this Agreement which shall be recorded with the County Recorder pursuant to Section 9.1 below. If no extension of this Agreement is agreed to, then the Digital Display Faces shall be removed within the times and as set forth under Section 4 below.

2.5 Processing Fee. Developer has paid to City a processing fee (“**Processing Fee**”) in the total amount of \$13,526.20, which included (1) the Agreement application fee of \$2,000.00 (2) Environmental Documentation fee of \$250.00; (3) Agreement fee of \$10,000.00, as an initial deposit for the City Attorney costs of preparation (4) Public Hearing Notices deposit of \$350.00, which did not include the actual cost of ads; (5) a Noticing fee of \$12.00, representing \$2.00 per parcel times the number of parcels that received public hearing notices; and (6) a 35% Administrative and Overhead fee of \$914.20. The City shall retain and use the Processing Fee, or any part thereof, for any public purpose within the City’s discretion. In addition to the Processing Fee, any additional City Attorney fees incurred by City in the preparation and negotiation of the Agreement and processing of Project Development Approvals at a rate not to exceed \$400.00 per hour, plus the actual amount of the costs of the Public Hearing Notice ads, shall be Developer’s responsibility to pay. The Processing Fee shall be separate from all fees which are standard and uniformly applied to similar projects in the City, including, but not limited to, business license fees (due by Developer to City annually), a one-time plan check fee and building permit fee, and any other fees imposed by the City as may be applicable. Additionally, within thirty (30) days of the City providing Developer with a final invoice of legal fees (subject to the above cap) or fees incurred by City related to the negotiation and preparation of this Agreement and Public Hearing Notice ads, Developer shall pay City any outstanding balance of such fees.

2.6 Development Fee. The potential aesthetic impacts of the Project on City and surrounding community are discussed in the CEQA documents prepared as part of the review process of this Agreement. The parties agree an annual fee paid by Developer to City would adequately mitigate those aesthetic impacts, because that fee will provide City resources to install and maintain other aesthetic improvements throughout the community, including, but not limited to, landscaping, street medians, signs in public parks, street sweeping, street signs and street lighting. To that end, Developer and City agree that an annual development fee paid per Digital Display Face by Developer to City would adequately mitigate all such potential impacts. The parties therefore agree, subject to the obligations of Section 2.7 below, Developer shall pay an annual development fee to City of \$35,000 per Digital Display Face, increased by twelve and one half percent (12.5%) at the 6th, 11th, 16th, 21st, and 26th payments (“**Development Fee**”). For ease of reference, the Development Fees shall equal the following amounts during the Term:

Payment Number	Fee per Digital Display Face	Fee for Digital Billboard Structure (Project)
1 through 5	\$35,000	\$70,000

6 through 10	\$39,375	\$78,750
11 through 15	\$44,297	\$88,594
16 through 20	\$49,834	\$99,668
21 through 25	\$56,063	\$112,126
26 through 30	\$63,071	\$126,142

The first Development Fee payment for the Project shall be due no later than one (1) year after the Digital Billboard Structure becomes fully operational or within thirty (30) days after Developer receives any income from the use of the Digital Billboard Structure, whichever occurs first (“**Fee Commencement Date**”). On the one-year anniversary of the Fee Commencement Date, Developer shall make the second Development Fee payment and then annually thereafter in accordance with the above pay schedule. Developer shall notify City within five (5) days after the Digital Billboard Structure becomes fully operational or within five (5) days of its receipt of any income received from use of the Digital Billboard Structure, whichever occurs first, for the purpose of determining the Fee Commencement Date. Nothing herein relieves the City from its contractual duty to issue all municipal building permits that are associated with the Project if Developer is in compliance with the terms of this Agreement. In compliance with the provisions of Government Code section 65865(e), City shall maintain the Development Fee it receives pursuant to this Agreement and other similar agreements in a separate capital facilities account to be expended for the purpose of enhancing and/or improving the aesthetics of the community within the City of Irwindale, such as through new street signs, street lighting, increased landscaping, heightened landscape maintenance, removal of code violations that impact the aesthetics of the community, and other related aesthetic uses.

2.6.1 *Late Payment*

(a) Penalty. The City may notify the Developer if the Development Fee is not received within ten (10) business days after the due date (“**Late Notice**”); there shall be no penalty if payment is made within ten (10) business days following the Late Notice. The date of the Late Notice shall mean the date that it is received by the Developer after it has been placed by the City in the U.S. Mail, certified mail with return receipt. Failure to sign the return receipt shall not affect the date Late Notice is given. If City does not issue a Late Notice, penalties will begin to accrue if payment is not made within thirty (30) calendar days of the Due Date.

Late payment penalties shall be calculated as follows: 5% of the Development Fee due and payable for the current year shall be added to the Development Fee for that year for failure to make the full payment within ten (10) business days of the Late Notice. As an example, the Development Fee for Year 5 is \$70,000. A 5% penalty would result in a total amount due of \$73,500 (\$70,000 + \$3,500). Thereafter, for each additional ten (10) calendar days that the full Development Fee is not paid, including the penalty, the Developer shall incur an additional penalty of 5% of that year’s Development Fee, for a maximum penalty of 15% of that year’s Development Fee.

(b) Termination. Notwithstanding anything to the contrary in Article 6 of this Agreement, failure by Developer to pay the Development Fee to the City within thirty (30) days following the due date of each year during the Term of this Agreement is considered

a material breach of this Agreement, and if not paid in full to the City, including all late penalties, within ten (10) business days after written notice to Developer of such material breach, City may begin termination proceedings in accordance with Article 6 of Agreement.

2.7 Community Benefits. Developer shall also provide free of charge to City on a space-available basis, advertising space on the Digital Billboard Structure. Such advertising space shall only be made available for the use of City-related events or agencies. City will be responsible for creating the design of any displays, subject to review and approval of a suggested copy from City by Developer, with such Developer approval not to be unreasonably withheld, conditioned or delayed. Developer agrees to install, at no cost to the City, an unlit City emblem (the “**City Logo**”) on the sign column of each Digital Billboard Structure. Said logo shall be provided to the Developer by the City, as further detailed in “Exhibit B” attached hereto.

2.8 Prohibited Use. Developer shall not utilize any of the displays on the Digital Billboard Structure to advertise tobacco, marijuana, hashish, “gentlemen’s clubs,” adult entertainment businesses, sexually oriented materials, or use sexually oriented images or language, including, but not limited to, ads such as “Adult Con”, vulgar or obscene images or language, or as may be prohibited by any City ordinance existing as of the Effective Date of this Agreement or as may be amended or implemented from time-to-time after the Effective Date and equally-applicable to all digital displays by any duly adopted and valid City ordinance.

3. DEVELOPMENT AND IMPLEMENTATION OF THE PROJECT.

3.1 Rights to Develop Project on the Billboard Sign Easement Site. Subject to and during the Term of this Agreement, Developer shall develop, maintain, and operate the Project on the Billboard Sign Easement Site in accordance with, and to the extent of, the Development Approvals, the Land Use Regulations, and this Agreement.

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 Billboard Sign Easement Site, the density and intensity of use of the Billboard Sign Easement Site, the maximum height and size of the proposed Digital Display Face, and the design, improvement and construction standards and specifications applicable to development of the Project shall be as set forth in the Land Use Regulations, as such term is defined in Section 1.1.13, which are in full force and effect as of the Effective Date of this Agreement, subject to the terms of this Agreement.

3.3 Development Approvals. Developer shall, at its own expense and before commencement of demolition, construction or development of any structures or other work of improvement upon the Billboard Sign Easement Site, secure or cause to be secured all necessary Development Approvals, which shall include any and all permits and approvals which may be required by City or any other governmental agency or utility affected by such construction, development or work to be performed by Developer pursuant to the Scope of Development, including but not limited to, necessary building permits and all approvals required under the California Environmental Quality Act (“CEQA”). Not by way of limiting the foregoing, in developing and constructing the Project, Developer shall comply with all (1) applicable

development standards in City's Municipal Code, (2) applicable NPDES requirements pertaining to the Project, and (3) all applicable building codes, except as may be permitted through approved variances and modifications. Developer shall pay all normal and customary fees and charges applicable to such permits, and any fees and charges hereafter imposed by City in connection with the Project which are standard and uniformly applied to similar projects in the City.

3.4 Timing of Project; Scope of Development. Developer shall comply with all time requirements set forth in the Schedule of Performance, attached hereto as Exhibit "D". Developer shall remove the Printed Billboard Structure and install a Digital Billboard Structure and such Digital Billboard Structure and both Digital Display Faces shall be fully operational not later than one (1) year after the issuance of Final Permits for the Digital Billboard Structure, or two (2) years after the Effective Date, whichever occurs first. If the Digital Billboard Structure is not fully operational within such time, and after compliance with Section 5.4, City may terminate this Agreement and shall have no further obligation hereunder. However, City may allow for extensions of time for the conversions based on Developer's showing, and City's finding, of good cause for such delay, which extension shall be confirmed in writing by City to Developer.

If circumstances within the scope of Section 9.10 delay the commencement or completion of the Project, it would not constitute grounds for any termination rights found within this Agreement. In such case, the timeline to commence or complete the relevant task shall be extended in the manner set forth at Section 9.10. Notwithstanding the above, Developer shall, at all times, comply with all other obligations set forth in this Agreement regarding the construction of the Project on the Billboard Sign Easement Site. Developer shall also maintain the Digital Billboard Structure at all times during the Term in accordance with the maintenance provisions set forth in Section 3 of the Scope of Development, attached hereto as Exhibit "B".

The purpose of this Agreement is to set forth the rules and regulations applicable to the Project, which shall be accomplished in accordance with this Agreement, including the Scope of Development (Exhibit "B") which sets forth a description of the Project and the Schedule of Performance (Exhibit "D").

3.5 Changes and Amendments. Developer may determine that changes to the Development Approvals are appropriate and desirable. In the event Developer makes such a determination, Developer may apply in writing for an amendment to the Development Approvals to effectuate such change(s). The parties acknowledge that City shall be permitted to use its inherent land use authority in deciding whether to approve or deny any such amendment request; provided, however, that in exercising the foregoing the City shall use reasonable discretion and shall not apply a standard different than that used in evaluating requests of other developers. Accordingly, under no circumstance shall City be obligated in any manner to approve any amendment to the Development Approvals. The City Manager shall be authorized to approve any non-substantive amendment to the Development Approvals without processing an amendment to this Agreement. All other amendments shall require the approval of the City Council. The parties acknowledge that any extension of the Term for no more than twenty-four (24) months total is an example of a non-substantive change, which the City Manager, in his or her reasonable discretion, may approve in writing. Nothing herein shall cause Developer to be in default if it upgrades the Digital Billboard Structure installed pursuant to this Agreement during the term of this Agreement to incorporate newer technology; provided Developer shall secure all applicable ministerial

permits to do so and such upgrade is consistent with the dimensions and standards for the displays, as provided under this Agreement, Land Use Regulations and Subsequent Land Use Regulations.

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 Project:

(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 Subsequent Development Approvals.

(b) Procedural regulations consistent with this Agreement relating to hearing bodies, petitions, applications, notices, findings, records, hearing, reports, recommendations, appeals and any other matter of procedure. Notwithstanding the foregoing, if such change materially changes Developer's costs or otherwise materially impacts its performance hereunder, Developer may terminate this Agreement upon ninety (90) days prior written notice.

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

(d) Regulations that are not in conflict with the Development Approvals or this Agreement.

(e) Regulations that are in conflict with the Development Approvals or this Agreement, provided Developer has given written consent to the application of such regulations to development of the Project.

(f) Applicable Federal, State, County, and multi-jurisdictional laws and regulations which City is required to enforce as against the Billboard Sign Easement Site or the development of the Project and that do not have an exception for existing signs or legal nonconforming uses.

3.6.2 *Future Discretion of City.* This Agreement shall not prevent City from denying or conditionally approving any application for a Subsequent Development Approval on the basis of the Land Use Regulations.

3.6.3 *Modification or Suspension by Federal, State, County, or Multi-Jurisdictional Law.* In the event that applicable federal, State, County, or multi-jurisdictional laws or regulations, enacted after the Effective Date of this Agreement,

prevent or preclude compliance with one or more of the provisions of this Agreement, and there is no exception for the legal nonconforming use, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such federal, State, County, or multi-jurisdictional laws or regulations, and this Agreement shall remain in full force and effect to the extent it is not inconsistent with such laws or regulations and to the extent such laws or regulations do not render such remaining provision impractical to enforce. Notwithstanding the foregoing, if such change materially changes Developer's costs or otherwise materially impacts its performance hereunder, Developer may terminate this Agreement upon ninety (90) days prior written notice.

3.7 Regulation by Other Public Agencies. It is acknowledged by the parties that other public agencies not subject to control by City may possess authority to regulate aspects of the development of the Project as contemplated herein, and this Agreement does not limit the authority of such other public agencies. Developer acknowledges and represents that, in addition to the Land Use Regulations, Developer shall, at all times, comply with all applicable federal, State and local laws and regulations applicable to the Digital Billboard Structure and the Billboard Sign Easement Site that do not have an exception for a legal nonconforming use. To the extent such other public agencies preclude development or maintenance of the Project and that do not have an exception for a legal nonconforming use, Developer shall not be further obligated under this Agreement except as provided in Section 4.1. Notwithstanding the foregoing, if such action by another public agency materially changes Developer's costs or otherwise materially impacts its performance hereunder, Developer may terminate this Agreement upon ninety (90) days prior written notice.

3.8 Public Improvements. Notwithstanding any provision herein to the contrary, the City shall retain the right to condition any Subsequent Development Approvals to require Developer to pay any required development fees, and/or to construct the required public infrastructure ("**Exactions**") at such time as City shall determine subject to the following conditions.

3.8.1 The payment or construction must be to alleviate an impact caused by the Project or be of benefit to the Project; and

3.8.2 The timing of the Exaction should be reasonably related to the development of the Project and said public improvements shall be phased to be commensurate with the logical progression of the Project development as well as the reasonable needs of the public.

3.8.3 It being understood, however, that if there is a material increase in cost to Developer or such action by City otherwise materially impacts Developer's performance hereunder, Developer may terminate this Agreement upon ninety (90) days prior written notice.

3.9 Fees, Taxes and Assessments. During the Term of this Agreement, the City shall not, without the prior written consent of Developer, impose any additional fees, taxes or assessments on all or any portion of the Project, except such fees, taxes and assessments as are described in or required by this Agreement and/or the Development Approvals. However, this

Agreement shall not prohibit the application of fees, taxes or assessments upon the Billboard Sign Easement Site or Developer, including the following:

3.9.1 Developer shall be obligated to pay those fees, taxes or City assessments and any increases in same which exist as of the Effective Date or are included in the Development Approvals;

3.9.2 Developer shall be obligated to pay any fees or taxes, and increases thereof, imposed on a City-wide basis such as, but not limited to, business license fees or taxes or utility taxes;

3.9.3 Developer shall be obligated to pay all fees applicable to a permit application as charged by City at the time such application is filed by Developer;

3.9.4 Developer shall be obligated to pay any fees imposed pursuant to any Uniform Code that existed when the application is filed by the Developer or that exists when the Developer applies for any Subsequent Development Approval.

3.10 Notwithstanding anything to the contrary herein, if there is a change in such fees as of the full execution hereof or any additional fees are charged and such additional or increased fees materially change Developer's costs or otherwise materially impacts its performance hereunder, Developer may terminate this Agreement upon ninety (90) days prior written notice.

4. REMOVAL OF DIGITAL DISPLAY FACES

4.1 **Removal Upon Expiration.** Developer has the right to negotiate an extension of the Term as an amendment to this Agreement. If the extension of the Term is not granted by the City, the Digital Display Faces shall be removed and said displays shall be converted to printed displays within ninety (90) days following expiration of the Term, subject to obtaining any required permits. In the event Developer should fail to remove the Digital Display Faces and convert to a static billboard within ninety (90) days after the effective date of termination and City is required to enforce the terms of this Agreement and conversion of the Digital Display Faces to a printed billboard, City will have the right to convert the Digital Billboard Structure to a printed billboard at Developer's cost, and Developer shall reimburse City its reasonable City staff, consultant, and attorneys' fees and costs incurred in securing such conversion. Developer's obligations and City's rights under this Section 4.1 shall expressly survive expiration of this Agreement.

4.2 **Removal Upon Termination.** Should this Agreement be terminated for any reason, City and Developer shall cause a termination agreement or memorialization of the termination (in the event the Agreement has already been terminated pursuant to Section 6.1), to be recorded with the County Recorder's Office. Upon termination, Developer shall remove the Digital Display Faces and convert said displays to printed displays within ninety (90) days from the effective date of termination, , subject to obtaining any required permits. City will have the right to convert the Digital Billboard Structure to a printed billboard at Developer's cost, and Developer shall reimburse City its reasonable City staff, consultant, and attorneys' fees and costs incurred in securing such conversion, in the event Developer should fail to remove the Digital Display Faces and convert to a static billboard within ninety (90) days after the effective date of termination. Developer's obligations and City's rights under this Section 4.2 shall expressly survive termination of this Agreement.

5. REVIEW FOR COMPLIANCE.

5.1 **Annual Review.** The City Council shall have the right to review this Agreement annually at Developer's sole cost, on or before the anniversary of the Effective Date, to ascertain the good faith compliance by Developer with the terms of the Agreement ("**Annual Review**"). However, no failure on the part of City to conduct or complete an Annual Review as provided herein shall have any impact on the validity of this Agreement. Upon receipt of written request from the City, Developer shall cooperate with the City in the conduct of such an Annual Review and provide the following information and documentation to the City at least thirty (30) days before the anniversary of the Effective Date: (1) description of all complaints from Caltrans or the City regarding the Digital Billboard Structure, (2) description of all complaints from the public regarding the display unrelated to any content of the message displayed, (3) any updates to Developer's contact information related to complaints concerning the Digital Billboard Structure, as required in Section 6(m) of the conditions at Exhibit "B", herein, (4) status and amount of all payment obligations to the City required under this Agreement for the year in question and cumulatively for the entire Term of the Agreement, (5) any easement or lease changes that could in any way materially impact the City or the obligations under this Agreement, (6) any utility changes that could in any way materially impact the City or the obligations under this Agreement, (7) any maintenance issues addressed or needing to be addressed per the requirements of Exhibit "B", and (8) whether any City messages per Section 2.8 have been displayed during the preceding year of the Term and a description of the duration of such displays.

5.2 **Special Review.** The City Council may, in its sole and absolute discretion, order a special review of compliance with this Agreement at any time at City's sole cost ("**Special Review**"). Developer shall cooperate with the City in the conduct of any such Special Review.

5.3 **Intentionally Omitted.**

5.4 **Procedure.** Each party shall have a reasonable opportunity to assert matters which it believes have not been undertaken in accordance with the 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 the Agreement, either party concludes that the other party has not complied in good faith with the terms of the Agreement, then such party may issue a written "**Notice of Non-Compliance**" or "**Notice**" 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 cure or remedy the non-compliance identified in the Notice of Non-Compliance, or if such cure or remedy is not reasonably capable of being cured or remedied within such thirty (30) days period, to commence to cure or remedy the non-compliance and to diligently and in good faith prosecute such cure or remedy to completion. If the party receiving the Notice of Non-Compliance does not believe it is out of compliance and contests the Notice, it shall do so by responding in writing to said Notice within thirty (30) days after receipt of the Notice. If the response to the Notice of Non-Compliance is not delivered to the party alleging the non-compliance within the prescribed time period, the Notice of Non-Compliance shall be conclusively presumed to be valid. If a Notice of Non-Compliance is contested, the parties shall, for a period of not less than fifteen (15) days following receipt of the response, seek to arrive at a mutually acceptable resolution of the matter(s) occasioning the Notice. If a cure or remedy is not timely effected or, if the Notice is contested and the parties are not able to arrive at a mutually acceptable resolution of

the matter(s) by the end of the fifteen (15) day period, the party alleging the non-compliance may thereupon pursue the remedies provided in Section 6. Neither party hereto shall be deemed in breach if the reason for non-compliance is due to a “force majeure” as defined in, and subject to the provisions of, Section 9.10.

5.5 Certificate of Agreement Compliance. If, at the conclusion of an Annual Review or a Special Review, Developer is found to be in compliance with this Agreement, City shall, upon request by Developer, issue a Certificate of Agreement Compliance ("**Certificate**") to Developer stating that, after the most recent Annual Review 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, whether issued after an Annual Review or Special Review, shall be in recordable form and shall contain information necessary to communicate constructive record notice of the finding of compliance. 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 Billboard Sign Easement Site.

6. DEFAULT AND REMEDIES.

6.1 Termination of Agreement.

6.1.1 Termination of Agreement for Material Default of Developer. City, in its discretion, may terminate this Agreement for any material failure of Developer to perform any material duty or obligation of Developer hereunder or to comply in good faith with the terms of this Agreement (hereinafter referred to as "**default**" or "**breach**"); provided, however, City may terminate this Agreement pursuant to this Section only after following the procedure set forth in Section 5.4. In the event of a termination by City under this Section 6.1.1, Developer acknowledges and agrees that City may retain all fees accrued up to the date of the termination, including the Processing Fee and the Development Fee paid up to the date of termination, and Developer shall pay the prorated amount of the Development Fee within sixty (60) days after the date of termination and removal of the Digital Display Faces that equates to the percentage of time elapsed in the year of the Term at the time of termination.

6.1.2 Termination of Agreement for Material Default of City. Developer, in its discretion, may terminate this Agreement for any material failure of City to perform any material duty or obligation of City hereunder or to comply in good faith with the term of this Agreement; provided, however, Developer may terminate this Agreement pursuant to this Section only after following the procedure set forth in Section 5.4. In addition, Developer may terminate this Agreement if, despite Developer’s good faith efforts, it is unable to secure the Development Approvals, including the Final Permits and/or compliance with requirements under laws necessary to effectuate the Project. In the event of a termination by Developer under this Section 6.1.2, Developer acknowledges and agrees that City may retain all fees, including the Processing Fee and the Development Fee paid up to the date of termination, and Developer shall pay the prorated amount of the Development Fee within sixty (60) days after the date of termination and removal of the Digital Display Faces that equates to the percentage of time elapsed in the year of the Term at the time of termination.

6.1.3 *Termination of Agreement Economic Infeasibility of Developer.* Developer, in its discretion, may terminate this Agreement upon ninety (90) days prior written notice if, pursuant to Section 7.2.1, Developer is required to defend, pay judgment, or settle by payment of funds any action or actions filed in connection with claims or liabilities for which Developer is required to save and hold the City and its officers, agents, and employees harmless, and Developer determines it is no longer economically feasible to operate the Digital Billboard Structure or a printed billboard with two facings on the Billboard Sign Easement Site, provided Developer's obligations under Section 7.2.1. shall survive any such termination under this Section 6.1.3. Developer acknowledges and agrees that City may retain all fees, including the Processing Fee and the Development Fee paid up to the date of termination, and Developer shall pay the prorated amount of the Development Fee within sixty (60) days after the date of termination that equates to the percentage of time elapsed in the year of the Term at the time of termination.

6.1.4 *Rights and Duties Following Expiration and Termination.* Upon the expiration or sooner termination of this Agreement, neither party shall have any further right or obligation hereunder except with respect to (i) any obligations to have been performed prior to said termination, (ii) any default in the performance of the provisions of this Agreement which has occurred prior to said termination, (iii) Developer's obligations under Section 4.1 and Section 4.2, and (iv) any continuing obligations to indemnify, defend and hold harmless the other party under Section 7.2.

6.1.5 *No Damages.* Notwithstanding anything else in this Agreement to the contrary, Developer acknowledges that the City would not have entered this Agreement had it been exposed to damage claims from Developer for any breach hereof. As such, the parties agree that in no event shall Developer be entitled to recover damages of any kind whatsoever against City or any of its officials, officers, agents, or employees for breach of this Agreement.

7. **INSURANCE, INDEMNIFICATION AND WAIVERS.**

7.1 **Insurance.**

7.1.1 *Types of Insurance.*

(a) *Liability Insurance.* Beginning on the Effective Date hereof and until completion of the Term, Developer shall, at its sole cost and expense, keep or cause to be kept in force for the mutual benefit of City, as additional insured, comprehensive broad form general liability insurance against claims and liabilities covered by the indemnification provisions of Section 7.2. Developer has agreed to indemnify City hereunder with respect to its use, occupancy, disuse or condition of the Billboard Sign Easement Site, improvements or adjoining areas or ways, affected by such use of the Billboard Sign Easement Site or for property damage, providing protection of at least Two Million Dollars (\$2,000,000) for any one accident or occurrence for bodily injury or death and property damage. Developer shall also furnish or cause to be furnished to City evidence that any contractors with whom Developer has contracted for the performance of any work for which Developer is responsible maintains the same coverage required of Developer.

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

(c) *Insurance Policy Form, Sufficiency, Content, and Insurer.* All insurance required by express provisions hereof shall be carried only by responsible insurance companies qualified to do business by California with an AM Best Rating of no less than "A". All such policies shall be non-assignable and shall contain language, to the extent obtainable, to the effect that (i) the insurer waives the right of subrogation against City and against City's agents and representatives except as provided in this Section; (ii) the policies are primary and noncontributing with any insurance that may be carried by City, but only with respect to the liabilities assumed by Developer under this agreement; and (iii) the policies cannot be canceled or materially changed except after written notice by the insurer to City or City's designated representative as expeditiously as insurance company agrees to provide notice. Developer shall furnish City with certificates and endorsements evidencing the insurance required in this Section 7.1. City shall be named as an additional insured on all liability policies of insurance required to be procured by the terms of this Agreement.

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

(1) For insurance required above, within seven (7) days after the Effective Date or consistent with the requirements of Exhibit "D" (Schedule of Performance), Item No. 4.

(2) The City may request to see updated copies of the current certificates and endorsements of all insurance policies required at any time.

If Developer fails or refuses to procure or maintain insurance as required hereby or fails or refuses to furnish City with required proof that the insurance has been procured and is in force and paid for, after complying with the requirements of Section 5.4, the City may view such failure or refusal to be a default hereunder.

7.2 **Indemnification.**

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

set aside, void or annul, any approval of the City, its advisory agencies, appeal boards, or legislative body concerning this Agreement and related Resolutions or Ordinance approving this Agreement. The City will promptly notify Developer of any such claim, action, or proceeding against the City and will cooperate fully in the defense. To this end,

(a) Developer will defend and if circumstances warrant, settle any action or actions filed in connection with any of said claims or liabilities covered by the indemnification provisions herein and will pay all reasonable costs and expenses, including legal costs and attorneys' fees incurred in connection therewith.

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

7.2.2 Exceptions. The foregoing indemnity shall not include claims or liabilities arising from the sole negligence or willful misconduct of the City, or its officers, agents, or employees, who are directly responsible for the City.

7.2.3 Additional Coverage. Without limiting the generality of the foregoing, Developer's indemnity, defense, and hold harmless obligations shall include any liability arising by reason of:

(a) Any accident or other occurrence in or on the Billboard Sign Easement Site causing injury to any person or property whatsoever caused by Developer, its agents, employees, contractors, subcontractors, or invitees;

(b) Any failure of Developer to comply with performance of any of the provisions of this Agreement;

(c) Any harm, delays, injuries, or other damages incurred by any party as a result of any subsurface conditions on the Billboard Sign Easement Site caused by Developer, its agents, employees, contractors, subcontractors, or invitees, including but not limited to, the presence of buried debris, hazardous materials, hydrocarbons, or any form of soil contamination.

7.2.4 Loss and Damage. Except as set forth below, City shall not be liable for any damage to property of Developer or others located on the Billboard Sign Easement Site, nor for the loss of or damage to any property of Developer, or others by theft or otherwise. Except as set forth below, City shall not be liable for any injury or damage to persons or property resulting from fire, explosion, steam, gas, electricity, water, rain, dampness or leaks from any part of the Billboard Sign Easement Site or from the pipes or plumbing, or from the street, or from any environmental or soil contamination or hazard, or from any other latent or patent defect in the soil, subsurface or physical condition of the Billboard Sign Easement Site, or by any other cause of whatsoever nature. The foregoing two (2) sentences shall not apply (i) to the extent City or its agents, employees, subcontractors, invitees or representatives causes such injury or damage or to the extent they cause any damage to any improvements thereon, including by condemnation, whether

with or without the exercise of eminent domain, temporarily or permanently, or (ii) to the extent covered in any permit to enter executed by the City. Nothing in this Section 7.2.4 allows the City or any government authorities to condemn all or any part of the Billboard Sign Easement Site or the Digital Billboard Structure, whether with or without the exercise of eminent domain, without the payment of just compensation, and as further set forth in Section 9.17 herein.

7.2.5 Period of Indemnification. The obligations to indemnify, defend, and hold harmless under this Section 7.2 shall begin upon the Effective Date and shall survive expiration or sooner termination of this Agreement.

7.3 Waiver of Subrogation. Developer and City each agrees that it shall not make any claim against, or seek to recover from the other or its agents, servants, or employees, for any loss or damage to it or to any person or property relating to this Project, except as specifically provided hereunder which include but is not limited to, a claim or liability arising from the sole negligence or willful misconduct of the City, its officers, agents, or employees, who are directly responsible for the City.

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 Billboard Sign Easement Site or any portion thereof or any improvement thereon by any mortgage, deed of trust or other security device securing financing with respect to the Billboard Sign Easement Site. City acknowledges that the lenders providing such financing may require certain Agreement interpretations and modifications and City 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. Any Mortgagee of the Billboard Sign Easement Site 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 Project, the Digital Billboard Structure, or the Billboard Sign Easement Site made in good faith and for value, unless otherwise required by law.

(b) The Mortgagee of any mortgage or deed of trust encumbering the Project, the Digital Billboard Structure, or the Billboard Sign Easement Site, or any part thereof, 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 period that is the longer of (i) the remaining cure period allowed Developer under this Agreement, or (ii) sixty (60) days.

(d) Any Mortgagee who comes into possession of the Project, the Digital Billboard Structure, or the Billboard Sign Easement Site, or any part thereof, pursuant to foreclosure of the mortgage or deed of trust, or deed in lieu of such foreclosure, shall take the Project, the Digital Billboard Structure, or the Billboard Sign Easement Site, or part thereof, 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 is 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, and (ii) in the event any Mortgagee seeks to develop or use any portion of the Project, the Digital Billboard Structure, or the Billboard Sign Easement Site 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 Approvals applicable to the Project, the Digital Billboard Structure, or the Billboard Sign Easement Site or such part thereof so acquired by the Mortgagee.

9. MISCELLANEOUS PROVISIONS.

9.1 **Recordation of Agreement.** This Agreement shall be recorded with the County Recorder by the City Clerk within ten (10) days of execution, as required by Government Code Section 65868.5. Amendments approved by the parties, and any cancellation, shall be similarly recorded.

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

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

9.4 **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. The rule of construction, to the effect

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

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

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

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

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

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

9.10 **Force Majeure.** Notwithstanding the contrary herein, neither party shall be deemed to be in default where failure or delay in performance of any of its obligations under this Agreement is caused by earthquakes, other acts of God, fires, rains, winds, wars, pandemics, terrorism, riots or similar hostilities, strikes and other labor difficulties beyond the party's control (including the party's employment force), government actions and regulations (other than those of the City), court actions (such as restraining orders or injunctions), or other causes beyond the party's reasonable 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 and further provided that if such delay is longer than six (6) months, Developer may terminate this Agreement upon written notice to City and City shall return to Developer any portion of the Development Fee paid for any period after the effective date of such termination.

9.11 **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.

9.12 **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 the parties had executed the same instrument.

9.13 **Litigation.** Any action at law or in equity arising under this Agreement or brought by any party hereto for the purpose of enforcing, construing, or determining the validity of any provision of this Agreement shall be filed and tried in the Superior Court of the County of Los Angeles, State of California, or such other appropriate court in said county. Service of process on City shall be made in accordance with California law. Service of process on Developer shall be made in any manner permitted by California law and shall be effective whether served inside or outside California. In the event of any action between City and Developer seeking enforcement of

any of the terms and conditions to this Agreement, the prevailing party in such action shall be awarded, in addition to such relief to which such party is entitled under this Agreement, its reasonable litigation costs and expenses, including without limitation its expert witness fees and reasonable attorneys' fees.

9.14 **Covenant Not To Sue.** The parties to this Agreement, and each of them, agree that this Agreement and each term hereof is legal, valid, binding, and enforceable. The parties to this Agreement, and each of them, hereby covenant and agree that each of them will not commence, maintain, or prosecute any claim, demand, cause of action, suit, or other proceeding against any other party to this Agreement, in law or in equity, which is based on an allegation, or assert in any such action, that this Agreement or any term hereof is void, invalid, or unenforceable.

9.15 **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 activity, 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, on the one hand, and the holder of a legal or equitable interest in such property on the other hand. City agrees that by its approval of, and entering into, this Agreement, that it is not taking any action which would transform this private Project into a "public work" project, and that nothing herein shall be interpreted to convey upon Developer any benefit which would transform Developer's private project into a public work project, it being understood that this Agreement is entered into by City and Developer upon the exchange of consideration described in this Agreement, including the Recitals to this Agreement which are incorporated into this Agreement and made a part hereof, and that City is receiving by and through this Agreement the full measure of benefit in exchange for the burdens placed on Developer by this Agreement.

9.16 **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.

9.17 **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 right to seek and collect just compensation or any other remedy available to it.

9.18 **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 Government Code provisions for the amendment of development agreements. 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. Minor, non-material modifications may be

approved by the City Manager upon approval by the City Attorney.

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

9.20 Notices. All notices under this Agreement shall be effective when delivered by United States Postal Service mail, registered or certified, postage prepaid return receipt requested; and addressed to the respective parties as set forth below or as to such other address as the parties may from time to time designate in writing by providing notice to the other party:

Original To City:	City of Irwindale 5050 N. Irwindale Ave. Irwindale, CA 91706 Attn: City Manager
With Copy to:	Aleshire & Wynder, LLP 1 Park Plaza, Suite 1000 Irvine, CA 92614 Attn: Adrian R. Guerra, City Attorney
To Developer:	Rivergrade Holding, LLC 9454 Wilshire Boulevard, Suite 201 Beverly Hills, CA 90212 Attn: Caspar Chou, Managing Member
With Copy to:	Tepper & Associates, APC 9454 Wilshire Boulevard, Suite 201 Beverly Hills, CA 90212 Attn: Foster Tepper

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

9.22 No Brokers. City and Developer represent and warrant to the other that neither has employed any broker and/or finder to represent its interest in this transaction. Each party agrees to indemnify and hold the other free and harmless from and against any and all liability, loss, cost, or expense (including court costs and reasonable attorneys' fees) in any manner connected with a claim asserted by any individual or entity for any commission or finder's fee in connection with this Agreement or arising out of agreements by the indemnifying party to pay any commission or finder's fee.

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

CITY OF IRWINDALE

By: .

H. Manuel Ortiz, Mayor

ATTEST:

By

Laura Nieto, Chief Deputy City Clerk

APPROVED AS TO FORM:

By

Adrian R. Guerra, City Attorney

RIVERGRADE HOLDING, LLC

By: _____

Name: Caspar Chou

Title: Manager:

By: _____

Name:

Title:

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)
) ss.
COUNTY OF LOS ANGELES)

On _____, 2023, before me, _____, a 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.

Notary 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)
) ss.
COUNTY OF LOS ANGELES)

On _____, 2023, before me, _____, a 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.

Notary 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)
) ss.
COUNTY OF LOS ANGELES)

On _____, 2023, before me, _____, a 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.

Notary 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)
) ss.
COUNTY OF LOS ANGELES)

On _____, 2023, before me, _____, a 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.

Notary Signature

(Seal)

EXHIBIT A-1LEGAL DESCRIPTION OF REAL PROPERTY SITE

Real property in the City of Irwindale, County of Los Angeles, State of California, described as follows:

PARCEL 3:

A STRIP OF LAND WITHIN LOT 4 OF FRACTIONAL SECTION 12, TOWNSHIP 1 SOUTH, RANGE 11 WEST, SAN BERNARDINO MERIDIAN, IN THE CITY OF IRWINDALE, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT OF SAID LAND FILED IN THE DISTRICT LAND OFFICE, DESCRIBED AS FOLLOWS:

THE SOUTHEASTERLY 35.00 FEET OF RIVERGRADE ROAD, AS DESCRIBED IN PARCEL A OF THE LAND DESIGNATED AS PARCEL NO. 1-11 IN THE SUPERIOR COURT OF LOS ANGELES COUNTY, CASE NO. 602687, NOTICE OF THE PENDENCY OF SAID ACTION WAS RECORDED ON AUGUST 11, 1952, AS [INSTRUMENT NO. 2031](#), IN [BOOK 39577, PAGE 345](#) OF OFFICIAL RECORDS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

SAID STRIP TO TERMINATE NORTHEASTERLY IN THE EAST LINE OF SAID LOT 4 AND SOUTHWESTERLY IN THE SOUTH LINE OF SAID LOT 4.

PARCEL 4:

THAT PORTION OF LOT 4 IN SECTION 12, TOWNSHIP 1 SOUTH, RANGE 11 WEST, SAN BERNARDINO MERIDIAN, IN THE CITY OF IRWINDALE, ACCORDING TO THE OFFICIAL PLAT OF SAID LAND FILED IN THE DISTRICT LAND OFFICE JANUARY 7, 1868 DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 4;
THENCE ALONG THE EASTERLY LINE OF SAID LOT 4, TO THE SOUTHEASTERLY LINE OF RIVERGRADE ROAD, AS DESCRIBED IN PARCEL A OF THE LAND DESIGNATED AS PARCEL 1-11 IN THE SUPERIOR COURT OF LOS ANGELES COUNTY, CASE NO. 602687, NOTICE OF THE PENDENCY OF SAID ACTION WAS RECORDED ON AUGUST 11, 1952 AS [INSTRUMENT NO. 2031](#), IN [BOOK 39577, PAGE 345](#) OF OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY;
THENCE SOUTHWESTERLY ALONG SAID RIVERGRADE ROAD TO THE SOUTHERLY LINE OF SAID LOT 4;
THENCE EASTERLY ALONG SAID SOUTHERLY LINE TO THE POINT OF BEGINNING.

EXCEPT THEREFROM THAT PORTION OF SAID LAND DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEASTERLY CORNER OF SAID LOT 4;
THENCE ALONG THE EASTERLY LINE OF SAID LOT 4 NORTH 00° 26' 40" WEST 297.76 FEET TO A POINT IN A NON-TANGENT CURVE CONCAVE NORTHWESTERLY HAVING A RADIUS OF 2000.00 FEET, A RADIAL LINE TO SAID POINT BEARS SOUTH 63° 27' 08" EAST;
THENCE SOUTHWESTERLY ALONG SAID CURVE THROUGH AN ANGLE OF 10° 08' 23" AN ARC DISTANCE OF 353.94 FEET TO THE SOUTHERLY LINE OF SAID LOT 4;
THENCE ALONG SAID SOUTHERLY LINE NORTH 89° 00' 14" EAST 187.65 FEET TO THE POINT OF BEGINNING.

PARCEL 5:

PARCEL 2, AS SHOWN ON THE PARCEL MAP NO. 23240 FILED IN [BOOK 257 PAGES 34](#) AND 35 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, AND AS MODIFIED BY THAT CERTIFICATE OF CORRECTION RECORDED FEBRUARY 16, 1993 AS [INSTRUMENT NO. 93-291037, OF OFFICIAL RECORDS.](#)

EXCEPT THEREFROM ALL MINERALS, OILS, GASES, AND OTHER HYDROCARBONS BY WHATSOEVER NAME KNOWN THAT MAY BE WITHIN OR UNDER THE PARCEL OF LAND HEREINABOVE DESCRIBED WITHOUT, HOWEVER, THE RIGHT TO DRILL, DIG OR MINE THROUGH THE SURFACE OF THE UPPER 500 FEET THEREOF, AS RESERVED BY THE STATE OF CALIFORNIA IN DEED RECORDED JUNE 27, 1972 AS [INSTRUMENT NO. 3793, OF OFFICIAL RECORDS.](#)

APNs: 8535-020-045, 8535-020-047 and 8535-020-048

EXHIBIT A-2

LEGAL DESCRIPTION OF BILLBOARD SIGN EASEMENT SITE

LEGAL DESCRIPTION
BILLBOARD SIGN PARCEL

THAT PORTION OF LOT 4 IN FRACTIONAL SECTION 12, TOWNSHIP 1 SOUTH RANGE II WEST, SAN BERNARDINO MERIDIAN, IN THE CITY OF IRWINDALE, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT OF SAID LAND FILED IN THE DISTRICT LAND OFFICE JANUARY 7, 1868 DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 4; THENCE ALONG THE SOUTHERLY LINE OF SAID LOT 4 SOUTH 89° 00' 14" WEST 187.65 FEET TO A POINT IN A NON-TANGENT CURVE CONCAVE NORTHWESTERLY HAVING A RADIUS OF 2,000 FEET; TO WHICH POINT A RADIAL LINE BEARS SOUTH 53° 18' 45" WEST; THENCE NORTHEASTERLY 11.12 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 0° 19' 07" TO THE TRUE POINT OF BEGINNING; THENCE NORTH 53° 46' 28" WEST 63.67 FEET; THENCE NORTH 33° 04' 33" EAST 54.51 FEET; THENCE SOUTH 55° 05' 26" EAST 66.04 FEET TO A POINT IN A NON-TANGENT CURVE CONCAVE NORTHWESTERLY HAVING A RADIUS OF 2,000 FEET; TO WHICH POINT, A RADIAL LINE BEARS SOUTH 55° 14' 02" EAST; THENCE SOUTHWESTERLY 55.95 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 1° 36' 10" TO THE TRUE POINT OF BEGINNING.

CONTAINING 3,588 SQUARE FEET, MORE OR LESS.

Description prepared by:

Samir M. Khoury APRIL 13, 2004
Samir M. Khoury Date
R.C.E. No. 30567



EXHIBIT B

SCOPE OF DEVELOPMENT

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

1. The Project. This Agreement allows for demolition of one Printed Billboard Structure and installation of one Digital Billboard Structure. The existing Printed Billboard Structure has double-sided printed displays. A Digital Billboard Structure, as further defined in this Agreement, is a billboard with Digital Display Faces that uses digital technology to change the messages on the sign faces electronically. This type of display shall not contain video, animation, movement, flashing, or the appearance of movement. The Digital Display Faces contain messages that are static for eight (8) seconds at a time and then change to the next message. To this end, Developer shall replace the existing Printed Billboard Structure with a 14 x 48 foot double-sided V-display or back-to-back Digital Billboard Structure, with Digital Display Faces facing north and south, at the same general location as the existing Printed Billboard Structure. Developer shall operate and maintain the Digital Billboard Structure on the Billboard Sign Easement Site in accordance with the Development Approvals and this Agreement and all conditions of approval and consistent with the approval from the California Department of Transportation Outdoor Advertising Division.

The Digital Billboard Structure shall comply with Section 17.72.050, General Standards, of the Irwindale Municipal Code. Specifically, the area of the sign face shall not exceed six hundred seventy-five (675) square feet, excluding border, trim, cutouts and other special advertising features or additions and base or apron supports and other structural members. The building height may not exceed sixty-five (65) feet, exclusive of cutouts or special additions, measured from the higher of either: 1) the finished grade of the roadway adjacent to the lot on which the structure is located (the 605 Freeway) and from which the advertising display is to be viewed; or 2) the finished grade of the base of the sign. Developer shall underground all utilities necessary for the Digital Billboard Structure. The Digital Billboard Structure shall be constructed in the location shown therefor on Exhibits "A-2 and A-3". In addition, Developer agrees to install, at no cost to the City, an unlit City emblem (the "City Logo") on the sign column of the Digital Billboard Structure.

2. Processing Fees. Developer shall pay all applicable City Processing Fees, as described in Section 2.5 of this Agreement, prior to the time that a building permit is issued for the installation of the Digital Billboard Structure on the Billboard Sign Easement Site.

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

(a) Maintenance and repair of the Digital Billboard Structure, including but not limited to, the Digital Display Faces installed thereon, and all related on-site improvements, easements, rights-of-way and, if applicable, at its sole cost and expense, including, without limitation, poles, lighting, signs and walls, in good repair, free of graffiti, rubbish, debris and other hazards to persons using the same, and in accordance with all applicable laws, rules, ordinances and regulations of all federal, State, and local bodies and agencies having

jurisdiction over the Billboard Sign Easement Site unless those federal, State, and local bodies have an exception for a legal nonconforming use. Such maintenance and repair shall include, but not be limited to, the following: (i) sweeping and trash removal related to the Project; (ii) the ongoing maintenance by the Developer of any access road to the Digital Billboard Structure to minimize dust caused by the Project; (iii) the adequate and complete removal or painting over of all graffiti within 48 hours of notice of such graffiti being affixed on the Digital Billboard Structure; and (iv) the repair, replacement and repainting of the Digital Billboard Structure and Digital Display Faces as necessary to maintain such Digital Billboard Structure in good condition and repair. In addition, Developer has the explicit right to change the Light Emitting Diode (“LED”) displays from time to time as determined necessary in Developer’s sole discretion, subject to obtaining any required permits.

(b) Maintenance of the Billboard Sign Easement Site in such a manner as to avoid the reasonable determination of a duly authorized official of the City that a public nuisance has been created by the absence of adequate maintenance of the Project such as to be detrimental to the public health, safety or general welfare or that such a condition of deterioration or disrepair causes appreciable harm or is materially detrimental to property or improvements within three hundred (300) feet of the Billboard Sign Easement Site.

4. Other Rights of City. In the event of any violation or threatened violation of any of the provisions of this Exhibit “B,” then in addition to, but not in lieu of, any of the rights or remedies the City may have to enforce the provisions of this Agreement, the City shall have the right, after complying with Section 5.4 of this Agreement, (i) to enforce the provisions hereof by undertaking any maintenance or repairs required by Developer under Section 3 of this Exhibit “B” and charging Developer for any actual maintenance costs incurred in performing same, and (ii) to withhold or revoke, after giving written notice of said violation, any building permits, occupancy permits, certificates of occupancy, business licenses and similar matters or approvals pertaining to the Billboard Sign Easement Site or any part thereof or interests therein as to the violating person or one threatening violation.

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

6. Conditions of Approval. The following additional conditions shall apply to the installation of the Digital Billboard Structure and shall conform to all applicable provisions of the Irwindale Municipal Code (“IMC”), including but not limited to the Outdoor Advertising provisions of the IMC at Section 17.72.030, and the following conditions, in a manner subject to the approval of the Community Development Director or designee:

(a) Conditions to be met before Final Permits. Prior to the issuance of a business license, occupancy permit, final inspection by the Community Development Department, and Final Permits, all applicable conditions of approval (except those

involving construction permits) shall be completed to the reasonable satisfaction of the City.

(b) Building Permit. A building permit from the Building and Safety Division will be required, structural calculations shall be prepared by a licensed civil engineer and approved by the City Building Official. All construction shall be in compliance with the Irwindale Building Code and all applicable regulations including Caltrans Advertising Department.

(c) Plans. The use and improvements authorized by this Agreement shall conform to the plans as finally approved by the City (date stamped _____) as conditioned herein, and any appreciable modification of the plans or mode of operation, as determined by the Director of Community Development, shall require the prior approval of the Planning Commission.

(d) Digital Display Face dimensions. The size of each Digital Display Face shall not exceed a maximum area of 675 square feet, with no more than 128 total feet of extensions or borders, and the Digital Billboard Structure shall not exceed a maximum height of 65 feet, as measured per Section 17.72.050 standards, including all extensions, and shall be consistent with the Elevations at Exhibit "C" approved by the City as part of the Development Approvals.

(e) Plan Check. Plans and specifications for the proposed installation of the Digital Billboard Structure, including plans for all utilities, shall be submitted to the City Community Development and Building Departments for plan check and approval prior to the issuance of building permits. Per the requirements of the County of Los Angeles Building and Safety Division, serving as the City's contract building department, the building plans must contain the following items to be submitted for plan check, as such requirements may be revised before final approval of such plans:

(1) Site Plan: Lot size, locations and dimensions of property lines, adjacent streets, setbacks from property lines, locations of other structures, easements, north arrow, scale, contours/drainage pattern.

(2) General Notes: Applicable codes, occupancy classification, type of construction, allowable area analysis, and occupant load analysis, description of work, material specifications.

(3) Exterior Elevations: Wall covering material, plate and building heights, finish grade lines, veneers.

(4) Foundation Plan: Locations of all new footings, anchor bolt and hold-down schedules, complete foundation details.

(5) Framing Plan: Size, spacing, and span of all floor and ceiling joists, roof rafters, valleys and hips, beams, and headers. All lateral force resisting elements, including shear wall locations and schedule, and diaphragm construction specifications.

(6) **Structural Analysis:** Calculations shall be provided to substantiate the structural plans where new structural elements are proposed or existing structural elements are altered. The structural calculations shall address both vertical and lateral forces and shall be wet stamped and signed by a licensed engineer or architect registered in the state of California.

(7) **Schedules:** exterior/interior finish.

(8) **Details:** Complete framing and foundation details for all new structural elements, complete accessible path of travel details, required fire rated assembly details.

(f) **Compliance with applicable law.** Developer shall maintain the Billboard Sign Easement Site and use thereof in full compliance with all applicable and duly adopted codes, standards, policies, and regulations imposed by the City, County, State, and federal agencies, unless the Project or Digital Billboard Structure is exempted as a legal nonconforming use.

(g) **Caltrans approvals.** Developer shall, at all times, comply with the approval for the Digital Billboard Structure from the California Department of Transportation Outdoor Advertising Division (“Caltrans”) that may be necessary in order to allow for the construction and installation of the Digital Billboard Structure pursuant to the California Outdoor Advertising Act and shall maintain acceptable clearance between the Digital Billboard Structure and utility distribution lines.

(h) **Fees.** The Developer shall pay any and all applicable fees due to any public agency prior to the issuance of the Development Approvals and Final Permits.

(i) **Use within Billboard Sign Easement Site.** The activities proposed in this Agreement shall be conducted completely upon the Billboard Sign Easement Site and shall not use or encroach on any public right-of-way.

(j) **Access Roads.** Developer shall ensure that all access to the Digital Billboard Structure is kept restricted from the general public to the extent permitted under local laws.

(k) **Landscaping.** If any portion of the landscape or artwork installed adjacent to the Digital Billboard Structure is damaged by the Project and becomes damaged, or otherwise in need of replacement, as determined by the City’s Community Development Department Director or designee, the Developer shall ensure that the replacement is accomplished within fourteen (14) days of notification by the City, unless such time is extended by the City’s Community Development Director or designee if Developer shows unusual circumstances requiring more time to accomplish such replacement. Developer may trim such landscaping so as not to block the Digital Display Faces.

(l) **Utilities.** Developer shall be required to install all utilities underground in connection with the Digital Billboard Structure. To this end, City shall cooperate with the applicable utility provider’s requirement upon Developer to upgrade Developer’s current electrical service to the Digital Billboard Structure.

(m) Light/Glare. Developer shall comply with State law regarding the limitation of light or glare or such other standards as adopted by the Outdoor Advertising Association of America, Inc. (“OAAA”), including but not limited to, the 0.3 foot-candles limitation over ambient light levels and ensuring additional flexibility in further reducing such maximum light level standard given the lighting environment upon request by the City’s Development Services Director or designee, the obligation to have automatic dimming capabilities, as well as providing the City’s Development Services Director or designee with a designated Developer employee’s phone number and/or email address for emergencies or complaints that will be monitored 24 hours a day/7 days per week. Upon any reasonable complaint by the City’s Development Services Director or its designee, Developer shall perform a brightness measurement of the display using OAAA standards, or such lower level given the lighting environment, and provide City with the results of same within five (5) business days of the City’s complaint. Developer shall dim the display to the appropriate setting immediately upon the conclusion of any such measurement that concluded that the light standards were exceeded.

(n) Public Works:

(1) NPDES. Developer shall comply with all necessary NPDES requirements pertaining to the proposed use, to the extent applicable.

(2) Separate permits are required for all work performed within the public right-of- way. Developer shall be responsible for all fees for the necessary permits and construction inspections for work performed within the public-right-of-way.

EXHIBIT C

BILLBOARD SIGN EASEMENT SITE PLAN AND ELEVATIONS

EXHIBIT DSCHEDULE OF PERFORMANCE

ITEM OF PERFORMANCE	TIME FOR PERFORMANCE	REFERENCE
1. Effective Date of this Agreement.	30 days following Council's second reading of Ordinance.	1.1.10
2. Developer prepares and submits to City working drawings, specifications, and engineering for the Digital Billboard Structure; City commences approval process.	Within 180 days of the Effective Date.	Ex. B(6)(e)
3. Developer to submit proof of insurance to City.	Prior to commencing any inspections and work on the Project.	7.1.2
4. The Digital Billboard Structure shall be fully operational.	Not later than one (1) year after the issuance of Final Permits for the Digital Billboard Structure, or two (2) years after the Effective Date, whichever occurs first.	3.4
5. Developer pays City first installment of Development Fee if Developer receives Final Permits.	Within 1 year after the Digital Billboard Structure becomes fully operational or within 30 days after Developer receives any income from the use of the Digital Billboard Structure, whichever occurs first.	2.6
6. Developer pays City second through final installments of Development Fee if Developer receives Final Permits for the Digital Billboard Structure.	Upon each anniversary date of the Fee Commencement Date, as defined in Section 2.6 of this Agreement, for the Digital Billboard Structure.	2.6

It is understood that this Schedule of Performance is subject to all the terms and conditions of the text of the Agreement. The summary of the items of performance in this Schedule of Performance is not intended to supersede or modify the more complete description in the text; in the event of any conflict or inconsistency between this Schedule of Performance and the text of the Agreement, the text shall govern.

The time periods set forth in this Schedule of Performance may be altered or amended only by written agreement signed by both the Developer and the City. Notwithstanding any extension of the Term in the manner described in, and subject to the provisions of, Section 3.5, the City Manager shall have the authority to approve extensions of time set forth in this Schedule of Performance without action of the City Council not to exceed a cumulative total of 180 days.

EXHIBIT "B"

The provisions of this section are in addition to any standards imposed by the development agreement, provided, however, that where any standard imposed by a development agreement, lease or license differ from the general standards set forth in this section, the standards imposed by the development agreement shall apply over the general standards as a matter of public interest.

- A. Sign Face Dimensions. The area of the sign face of a billboard shall not exceed six hundred seventy-five square feet, excluding border, trim, cutouts and other special advertising features or additions and base or apron supports and other structural members.
 - 1. Cutouts and other special advertising features or additions to a sign face shall not exceed in area ten percent of the total sign face dimensions.
 - 2. Three-dimensional design elements shall not extend more than five feet beyond the front of the sign face or sign side.
 - 3. Bidirectional or double-faced signs shall be located on the same structure. For parallel double-faced signs, the distance between sign faces shall not exceed eight feet. For "V-shaped" double-faced signs, the distance between sign faces shall not exceed forty-five feet at their widest point and shall not exceed eight feet at their closest point.
 - 4. Billboard identification signs shall have a minimum character height of two feet.
- B. Structure Design. Each structure shall have no more than two poles, and shall be constructed of noncombustible material.
- C. Height. The overall height of each structure shall not be limited to the maximum height limit of the zone, in which the billboard is located. The height shall not exceed sixty-five feet or, exclusive of cutouts or special additions, measured from the higher of either:
 - 1. The finished grade of the roadway adjacent to the lot on which the structure is located and from which the advertising display is to be viewed; or
 - 2. The finished grade of the base of the sign.
- D. Location. The location of billboards shall be restricted as follows:
 - 1. Structures shall be located only in area immediately adjacent to the I-605 and I-210 freeways that is zoned for commercial, quarry or industrial uses.
 - 2. Structures shall not be located on public property or rights-of-way. No portion of any sign or structure shall located on, project into, beneath, or above the public right-of-way.
 - 3. Maintenance, repair and other related operations shall be operated completely upon the billboard site and shall not use or encroach on any public right-of-way.
 - 4. Structures shall not be located within the setbacks that apply to the zone in which the structure is located.

5. Structures shall not be located within five feet of a building or other structure.
 6. New billboards shall not be located within two thousand five hundred feet of another billboard on the same side of the public right-of-way. Existing billboards may not be replaced unless they are outside of a minimum five hundred foot buffer of another billboard. For purposes of this section, measurements shall be made from the centerline of the support structure if a single pole and from the angle of intersection if a perpendicular (V-shaped) sign. Development agreements for new billboard structures with digital displays may provide for a reduced buffer, but not less than one thousand five hundred feet in due consideration of other public benefits provided in the development agreements, including, but not limited to, the concurrent takedown of existing static displays or digital displays within the city.
 7. When the replacement of a static billboard results in the construction of a new digital display, the new billboard shall not be located within a five hundred foot radius of any existing billboards (static or digital) on the same side of the public right-of-way. For purposes of this section, measurements shall be made from the centerline of the support structure if a single pole and from the angle of intersection if a perpendicular (V-shaped) sign.
- E. Prohibited Signs. The following types of signs shall not be permitted on billboards:
1. Any form of moving, animated, oscillating or rotating sign, or any other design intended to attract attention through movement or the semblance of movement of the whole or any part of the sign or any other method or device that suggests movement;
 2. Inflatable signs (including generator driven/externally powered inflatables);
 3. Flashing signs, containing internally and/or externally illuminated light or other devices which are intermittently on and off, which change in intensity, or which create the illusion of flashing in any manner, except that a digital display may be allowed subject to appropriate standards.
- F. Appearance. No billboard, including its supporting structure and lighting, shall present any hazard to the safety of pedestrian or vehicular traffic by obstructing the flow of such traffic, obstructing the sight lines required for the safe movement of pedestrian or vehicular traffic, interfering with the visibility and effectiveness of any traffic control or warning device, or in any other manner, as determined by the city manager or his designee.
1. Specifications regarding illumination, intermittent messaging, intensity, flashing and/or any other visual transformations shall be detailed in the development agreement.
 2. The images on the digital billboard faces will not change more often than every eight seconds. The images will change instantaneously, with no special effects or video. Any form of moving, animated, oscillating or rotating sign, or any other design intended to

attract attention through movement or the semblance of movement of the whole or any part of the sign or any other method or device that suggests movement is prohibited.

3. All signs shall be designed and maintained to be compatible with the design and materials used in the structure on which the sign is located.
4. No sign face or sign area shall be added to an existing sign unless within a permanent frame or panel indicated for such purpose on approved plans for the total sign structure.
5. All signs shall be maintained in good condition and working order, as determined by the city manager or his designee, and free of graffiti, peeling paint, faded colors and/or broken and damaged materials.

G. General Standards. All billboards must comply with the following standards:

1. Billboard modifications and replacements shall only apply to legal conforming and legal non-conforming signs. Any illegal signs must be removed.
2. The developer shall, at all times, comply with the approvals of the California Department of Transportation Outdoor Advertising Division.
3. The developer shall underground all utilities installed in connection with the billboard, where feasible.

H. Adjacent Landscaping. Where appropriate, the properties upon which billboards are located shall be landscaped to achieve a consistent freeway corridor landscaping theme in accordance with the following guidelines:

1. The landscaping objective is to see the property on which the structure is located landscaped completely along the freeway frontage, or on larger parcels with more than one billboard, a distance determined to be a proportionate share of the property's freeway frontage. Landscaping is not intended to block the view of the structures within their view shed, a distance of one-quarter mile from the sign face.
2. The structures shall be landscaped with a backdrop effect, utilizing fast growing, vertical formed trees, such as California Bay; Fern Pine; Coast Live Oak; or other similar non-invasive species.
3. The structures should be framed with trees of a broad form, such as native oak varieties, or other similar non-invasive species.
4. Sites that are on quarry or landfill properties shall be landscaped with shrubs and trees so as to effectively screen the property from freeway views.
5. The plant materials used for landscaping shall be drought-resistant and irrigated with an automatic drip irrigation system. Irrigation systems may be installed on the surface if a licensed landscape architect establishes a maintenance plan that may allow the irrigation

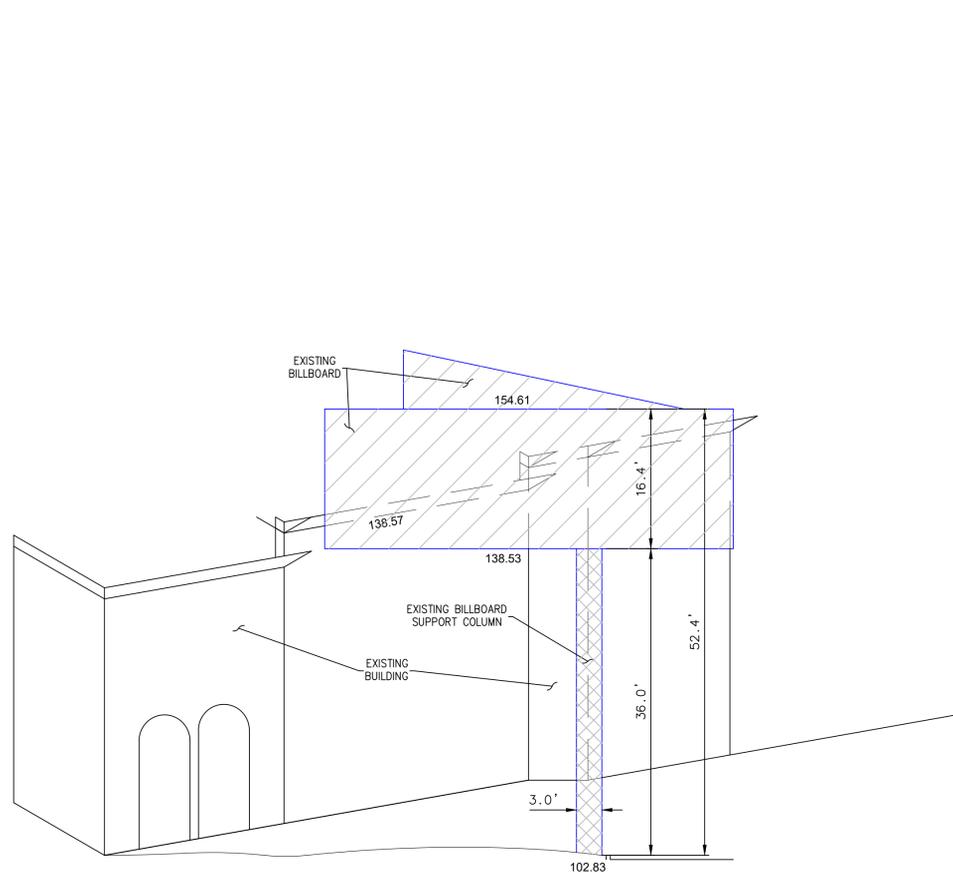
to be discontinued if the plant materials reach a level of maturity and condition that would permit it without damage to the plant material.

6. Landscape plans shall be accompanied by a photographic view study of the structure; both within its view shed and from a more distant approach to the view shed of the structure. This study shall demonstrate the effectiveness of the proposed landscape plan and its compliance with the preceding provisions.

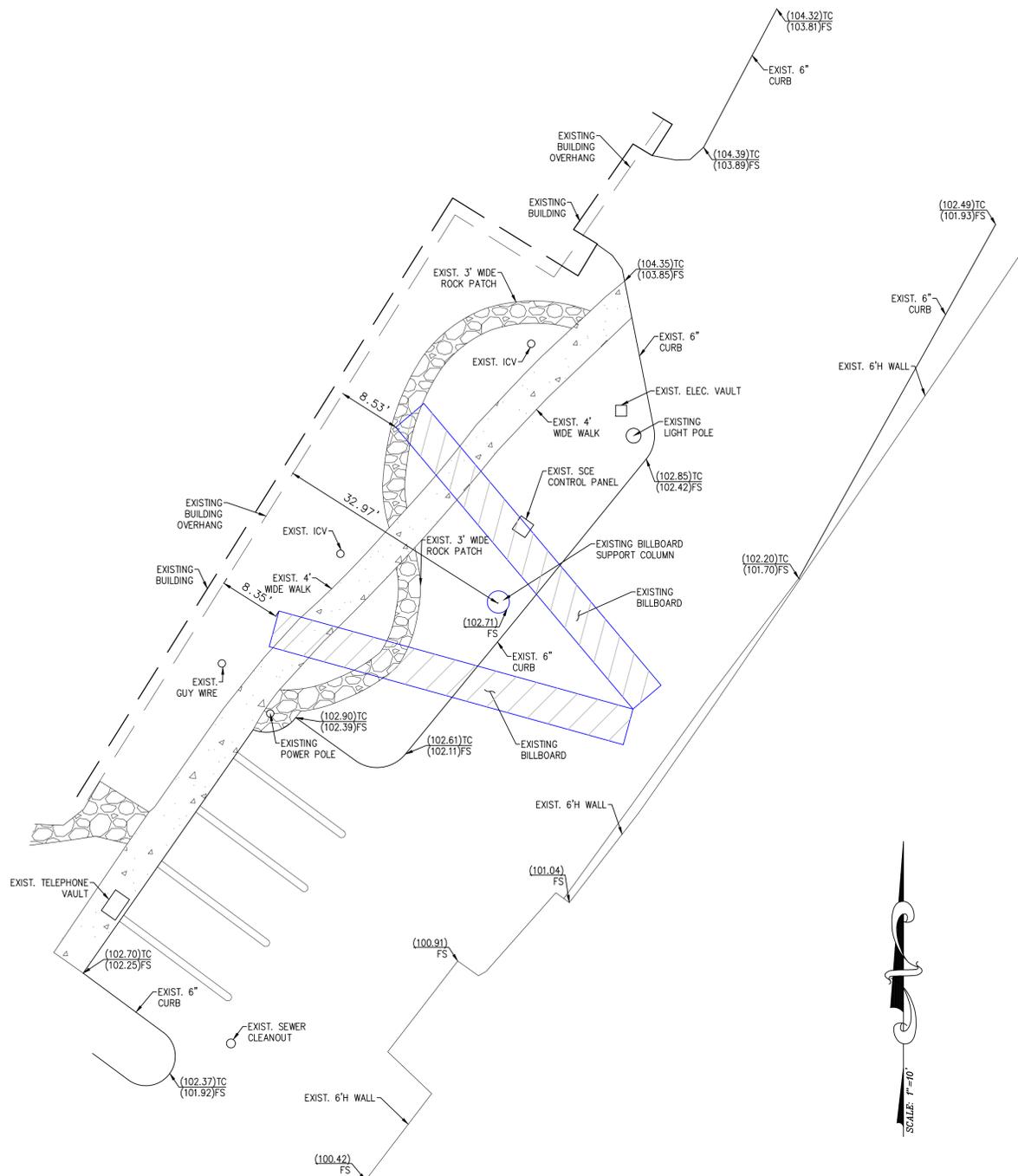
(Ord. No. 659, § 4, 8-8-12)

BILLBOARD SITE PLAN

4800 RIVERGRADE



BILLBOARD ELEVATION



SITE PLAN

UTILITY AGENCIES

SOUTHERN CALIFORNIA GAS CO. (323) 881-3501
 SOUTHERN CALIFORNIA EDISON (626) 303-8447
 VERIZON (909) 469-4731
 CHARTER (626) 807-8263

UNDERGROUND SERVICE ALERT

1. ATTENTION IS DIRECTED TO THE POSSIBLE EXISTENCE OF UNDERGROUND FACILITIES NOT SHOWN OR IN A LOCATION DIFFERENT FROM THAT WHICH IS SHOWN ON THE PLANS OR DESCRIBED IN THE SPECIAL PROVISIONS. THE CONTRACTOR SHALL TAKE STEPS TO ASCERTAIN THE EXACT LOCATION OF ALL UNDERGROUND FACILITIES PRIOR TO DOING WORK THAT MAY DAMAGE SUCH FACILITIES OR INTERFERE WITH THEIR SERVICE.

2. BEFORE EXCAVATING, THE CONTRACTOR SHALL VERIFY THE LOCATION OF UNDERGROUND UTILITIES BY CONTACTING THE UNDERGROUND SERVICE ALERT AT 811, AT LEAST TWO (2) DAYS PRIOR TO BEGINNING WORK.

REVISIONS				
NO.	DATE	INIT.	DESCRIPTION	APPV'D

BENCHMARK	

PREPARED UNDER THE SUPERVISION OF:	DATE:
DRAWN BY:	
CHECKED:	
RECOMMENDED:	
APPROVED:	DATE:

PLANS PREPARED BY:

ALLIANCE
 LAND PLANNING & ENGINEERING INC.
 CIVIL ENGINEERING • LAND PLANNING • HILLSIDE DESIGN • SURVEYING

2248 FARADAY AVE.
 CARLSBAD, CA 92008
 TEL: (760) 431-8086
 FAX: (760) 431-8802

27413 TOURNEY ROAD
 SUITE 120
 WALDEN, CA 91355
 TEL: (661) 799-2760

CRAIG M. WHITTAKER 3/26/20
 PROJECT ENGINEER

CITY OF IRWINDALE

SITE PLAN

4800 RIVERGRADE

IRWINDALE, CALIFORNIA

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EXISTING: I-605 NB

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It's time for Dodger Baseball in:

00 : 04 : 29

DAYS HOURS MINUTES



DODGERS.COM

PROPOSED: I-605 NB



Carls Jr.
\$2.99 CHICKEN DOUBLE DECK DEALS
NEW LISA ANN'S BUNDT CAKE

El Monte
Baldwin Park
West Covina

Rivero
NEX

EXISTING: I-605 SB

Pollen Count:

PHARMACY



8.9

HIGH

Rivero
NEX

PROPOSED: I-605 SB