

Recording Requested By:

CITY OF SOUTH SAN FRANCISCO

When Recorded Mail To:

CITY OF SOUTH SAN FRANCISCO

400 Grand Avenue

South San Francisco, CA 94083

Attn: City Clerk

Mail Tax Statements To:

Outfront Foster Interstate, LLC

2300 Contra Costa Blvd, Suite 340

Pleasant Hill, CA

Attn: John B. Foster

(Space above this line for Recorder's use)

This instrument is exempt from recording fees pursuant to Government Code Sec. 27383.

Documentary Transfer Tax is \$ 0.00 (exempt per Rev. & Taxation Code Sec. 11922, Transfer to Municipality).

DEVELOPMENT AGREEMENT
BETWEEN THE CITY OF SOUTH SAN FRANCISCO
AND
OUTFRONT FOSTER INTERSTATE, LLC

DEVELOPMENT AGREEMENT

This DEVELOPMENT AGREEMENT is dated as of _____, 2023 (“**Agreement**”) and is entered into between: (i) OUTFRONT FOSTER INTERSTATE, LLC., a limited liability company (“**OFI**”) and (ii) the CITY OF SOUTH SAN FRANCISCO, a municipal corporation organized and existing under the laws of the State of California (the “**City**”). OFI and the City are sometimes collectively referred to herein as “**Parties**.”

RECITALS

- A. WHEREAS, California Government Code (“**Government Code**”) Sections 65864 through 65869.5 authorize the City to enter into binding development agreements with persons having legal or equitable interests in real property for the development of such property or on behalf of those persons having same; and,
- B. WHEREAS, pursuant to Government Code Section 65865, the City has adopted rules and regulations, embodied in Chapter 19.60 of the South San Francisco Municipal Code (“**Municipal Code**”), establishing procedures and requirements for adoption and execution of development agreements; and,
- C. WHEREAS, this Agreement concerns the property located adjacent to 140 Beacon Street (APN 015-171-999) (“**Property**”) as identified and more fully described in attached Exhibit A; and,
- D. WHEREAS, Section 5412 of the Outdoor Advertising Act (Bus. & Profs. Code, § 5200 et seq) encourages local governments and owners of billboards to enter into relocation agreements, pursuant to which local governments can continue development in a planned manner without expenditure of public funds, while allowing the continued maintenance of private investment and a medium of public communication; and,
- E. WHEREAS, OFI has a legal or equitable interest in the Property; and,
- F. WHEREAS, OFI has submitted a development proposal to the City that would permit OFI to construct, operate, repair, and maintain an off-premise digital message center display including digital displays, supporting structures, service ladders, underground utilities, fixture connections, electrical supply and connections, panels, signs, lights, electronics, copy and any additional equipment, appurtenances, and accessories necessary for the operation of the digital message center display (“**Digital Billboard**”), the specifications of which are set forth in Exhibit B, at the Property (“**Digital Billboard Project**”); and,
- G. WHEREAS, the City and OFI agree and acknowledge that the outdoor advertising sign relocation contemplated by the Digital Billboard Project complies with, and serves the purposes enumerated in, Business & Professions Code sections 5200 et seq. (the “California Outdoor Advertising Act”), including, but not limited to, planned development for the public benefit, in Sections 5412 and 5443.5 thereof; and,

- H. WHEREAS, the Digital Billboard Project is contingent upon approvals from Pacific Gas and Electric (“**PG&E**”); and,
- I. WHEREAS, in-lieu of OFI removing sufficient existing billboards in order to satisfy the 2:1 removal-to-placement ratio requirement, as set forth in the City's Zoning Code section 20.360.003.D.6.b, OFI has elected to make an in-lieu payment to the City in order to promote the public health, safety, and welfare of the City in accordance with section 20.360.003.D.6.b; and,
- J. WHEREAS, OFI and the City seek to enter into this Agreement to set forth the rights and obligations of the Parties relating to the development of the Property; and,
- K. WHEREAS, all proceedings necessary for the valid adoption and execution of this Agreement have taken place in accordance with Government Code Sections 65864 through 65869.5, the California Environmental Quality Act (“**CEQA**”), and Chapter 19.60 of the Municipal Code; and,
- L. WHEREAS, the City Council and the Planning Commission have found that this Agreement is consistent with the objectives, policies, general land uses, and programs specified in the South San Francisco 2040 General Plan as adopted October 2022 Resolution #178-2022 and as amended from time-to-time; and,
- M. WHEREAS, the City Council and the Planning Commission for the City of South San Francisco have found, based on substantial information in the administrative record, that: this Agreement is in the best public interest of the City and its residents; adopting this Agreement constitutes a present exercise of the City's police power; that the Digital Billboard Project is compatible with the uses authorized in, and the regulations prescribed for, the land use district in which the real property is located; and that the terms of the Agreement are in conformity with, and will not be detrimental to, the public's health, safety, convenience, and general welfare. This Agreement and the Digital Billboard Project will achieve a number of City objectives including the facilitation of the orderly development, while allowing for the incorporation of modern technology that, in part, provide the City with a means of advertising the City, its events, and public service announcements; and,
- N. WHEREAS, on December 21, 2023, the Planning Commission recommended the adoption of Ordinance No. _____ approving and adopting this Agreement after a duly noticed public hearing; and,
- O. WHEREAS, on _____, 2024, the City Council, after a duly noticed public hearing, adopted Ordinance No. _____ approving and adopting this Agreement and the Ordinance thereafter took effect on _____, 2024; and,
- P. WHEREAS, the City finds and determines that all actions required of City precedent to the approval of this Agreement by Ordinance No. _____ of the City Council have been duly and regularly taken; and,
- Q. WHEREAS, in exchange for the benefits to the City described in the Agreement together with other public benefits that will result from the development of the Digital Billboard Project, OFI will receive by this Agreement assurance that it may proceed with the Digital Billboard Project

in accordance with the Digital Billboard Project Approvals, as defined below, and therefore desires to enter into this Agreement.

A G R E E M E N T

NOW, THEREFORE, the Parties, pursuant to the authority contained in Government Code Sections 65864 through 65869.5 and Chapter 19.60 of the Municipal Code and in consideration of the mutual covenants and agreements contained herein, agree as follows:

1. **Effective Date**

Pursuant to Section 19.60.140 of the Municipal Code, notwithstanding the fact that the City Council adopts an ordinance approving this Agreement, this Agreement shall be effective and shall only create obligations for the Parties from and after the date that the ordinance approving this Agreement takes effect (the “**Effective Date**”).

2. **Duration**

This Agreement shall be in effect for an initial term, commencing on the Effective Date and ending on the date which is thirty (30) years after the Commencement Date (as hereinafter defined). The “Commencement Date” is the first calendar day of the month following the date on which all of the following have occurred: (a) this Agreement is fully executed and effective; (b) OFI has obtained all local and state governmental permits and approvals and any other required permits and approvals for the Digital Billboard Project, including but not limited to the Digital Billboard Project Approvals as defined in Section 3(a) below, (collectively, “Permits”); and (c) the Digital Billboard is fully operational with a permanent power supply. This Agreement may be terminated by OFI if the following occurs: (1) OFI loses its legal or equitable interest in the Property, (2) In OFI’s reasonable discretion, OFI is unable to obtain or maintain any required Permit for the Digital Billboard Project, (3) a legal challenge to the Project Approvals or the Digital Billboard Project, including without limitation a Project Approval Challenge as defined in Section 20, (4) a significant obstruction of a display face on the Digital Billboard occurs due to a circumstance beyond OFI’s control, or (5) OFI is prevented by law or government order or action from constructing, operating, repairing or maintaining the Digital Billboard, or otherwise implementing the Project, including but not limited to, the failure of government agencies to issue all approvals or a governmental agency’s decision to condemn the Property.

Upon expiration or early termination of this Agreement, OFI shall, at its sole cost and expense, remove the above-ground portions of the Digital Billboard Project within ninety (90) days, unless OFI and City have entered into a subsequent written agreement, upon terms mutually acceptable to both Parties, that allows the Digital Billboard Project to remain.

3. **Project Description for the Digital Billboard Project; Development Standards for Digital Billboard Project**

The Digital Billboard Project shall consist of the construction, operation, repair and maintenance of the Digital Billboard, the specifications of which are set forth in Exhibit B, and shall be located at the Property.

- (a) The permitted use, the design, the maximum height, location, and total area of the Digital Billboard, and all environmental impact mitigation measures imposed as approval conditions for the Project shall be exclusively those provided in this Agreement, and Negative Declaration (the "IS/NMD") as set forth in Exhibit C to this Agreement, and the applicable laws in effect as of the Effective Date (including, but not limited to, the applicable provisions of the City's General Plan, Municipal Code, and all other City resolutions, codes, rules, laws, regulations, and policies governing topics that include without limitation the height, location, size, bulk, area, design, improvement and construction standards of billboards and public utilities in effect as of the Effective Date), except as modified in this Agreement (hereafter and collectively the "**Digital Billboard Project Approvals**").
- (b) The use permitted by this Agreement is for a digital billboard as defined in Section 20.360.004(F)(7) of the Municipal Code, and the Digital Billboard Project Approvals provide that the maximum height of the Digital Billboard is sixty-five feet (65') and that the maximum surface area for each display panels is limited to fourteen feet (14') in height by forty eight feet (48') in width.
- (c) Subject to OFI's fulfillment of its obligations under this Agreement upon the Effective Date of this Agreement, the City hereby grants to OFI a vested right to develop and construct on the Property all the improvements for the Digital Billboard Project authorized by, and in accordance with the Digital Billboard Project Approvals and the terms of this Agreement.
- (d) Except as authorized by this Agreement, upon such grant of right, no future amendments to the City's General Plan, the City Zoning Code, the Municipal Code, or other City ordinances, policies or regulations, adopted or otherwise in effect as of the Effective Date shall apply to the Digital Billboard Project, except such existing ordinances, policies, planning documents, codes, rules, laws, resolutions or regulations, adopted or otherwise in effect after the Effective Date and such future modifications (if any) that are not in conflict with and do not prevent or materially inhibit the development or operation of the Digital Billboard Project; provided, however, that nothing in this Agreement shall prevent or preclude the City from adopting any land use regulations or amendments expressly permitted herein or otherwise required by State or Federal Law.

4. **Building Permits for Digital Billboard Project**

City staff review of applications for building permits shall be limited to determining whether the following conditions are met:

- (a) OFI has complied with (1) the conditions and design of the Digital Billboard Project as specified in the City Council's approval of the Digital Billboard Project and the final, non-appealable (with no appeal having been filed) Digital Billboard Project Approvals, (2) all applicable provisions of the Uniform Codes (including but not limited to the Building, Fire, and Electric Code), incorporated into the City's Municipal Code, (3) the applicable

requirements of the Municipal Code and CEQA requirements (including any required mitigation measures as set forth in the IS/MND), (4) any other applicable Federal and State laws, as modified and/or clarified pursuant to this Agreement where applicable, and as each of the foregoing are applicable to the issuance of building permits; and,

- (b) All applicable processing, administrative and legal fees have been paid subject to the provisions of this Agreement; and,
- (c) OFI has demonstrated through proper documentation that it has proper and sufficient legal and/or equitable interests in the Property to effectuate the Digital Billboard Project in accordance with the terms of this Agreement.

Notwithstanding anything in this Section 4, the City agrees that the issuance of a building permit is not a discretionary decision triggering further CEQA review of the Digital Billboard Project, and that the above provisions of this Agreement pertaining to building permit issuance shall not be interpreted to require discretionary review or further CEQA review, but that staff are limited to determining, ministerially, whether the conditions and building standards in the foregoing subsections, entitlements and regulations have been satisfied. Upon obtaining a City building permit, OFI shall diligently pursue the obtainment of all Caltrans/state permits and approvals.

5. **Vesting of Approvals**

Except as provided in this Agreement and subject to OFI's fulfillment of its obligations under this Agreement being effective, upon the City's approval of the Digital Billboard Project, OFI and its successors and assigns shall have a vested right in the Digital Billboard Project Approvals for the term of this Agreement, provided that any such successors and assigns comply with the terms and conditions of this Agreement.

6. **Cooperation between Parties in Implementation of This Agreement**

It is the Parties' express intent to cooperate with one another and diligently work to implement all land use and building approvals for development of the Digital Billboard Project in accordance with the terms of this Agreement. Accordingly, OFI and the City shall proceed in a reasonable and timely manner, in compliance with the deadlines mandated by applicable agreements, statutes or ordinances, to complete all steps necessary for implementation of this Agreement and development of the Digital Billboard Project in accordance with the terms of this Agreement. The City shall proceed, and shall cause its planners, engineers and other consultants to proceed, in an expeditious manner to complete all City actions required for the approval and development of the Digital Billboard Project, including, but not limited to, the following:

- (a) Scheduling all required public hearings by the City Council and City Planning Commission; and
- (b) Processing and checking all maps, plans, permits, building plans and specifications and other plans relating to development and/or improvement of the Property filed by OFI or its nominee, successor or assign as necessary for development of the Digital Billboard Project; and

- (c) Inspecting and providing acceptance of or comments on all work by OFI that requires acceptance or approval by the City; and
- (d) Providing any necessary documents within the City's possession or preparing documents or written consents that are, in the City's sole discretion, reasonably necessary for OFI to secure approvals for the Digital Billboard Project from other public agencies, such as Caltrans. Notwithstanding the foregoing, this provision is not intended to restrict the City's discretion in considering or evaluating the Digital Billboard Project Approvals.

OFI shall provide or submit, and shall cause its planners, engineers and other consultants to provide or submit, to the City in a timely manner all documents, applications, plans and other information necessary for the City to carry out its obligations hereunder. OFI shall make a deposit as determined by the City and shall pay all of the City's staff, legal and consultants costs incurred in implementing this section. Notwithstanding the foregoing, the parties understand and agree that the ultimate responsibility to obtain the required Approvals and state permits and approvals are the sole obligations and burdens of OFI.

7. **Fees and Taxes**

- (a) OFI shall pay customary permit fees and any applicable gross receipts business license tax, in the event the City enacts such a tax. No additional fees, mitigations, conditions, exactions, dedications, fees or otherwise, whether adopted through the exercise of police power, the taxing power or any other authority, shall be imposed by the City with respect to the construction, operation, repair or maintenance of the Digital Billboard except as provided for herein. Notwithstanding anything to the contrary, no fee or permit shall be required for any change of copy, or customary, routine maintenance in connection with the Digital Billboard.
- (b) For and in consideration of the mutual rights and responsibilities provided in this Agreement, as long as OFI operates such Digital Billboard faces, OFI agrees to pay the City the annual amount of fifty one thousand dollars (\$51,000.00) per Digital Billboard face per year ("Annual Payment"), payable on the first business day of the month following the Commencement Date and on the anniversary of such date each succeeding year. The Annual Payment will increase by three percent (3%) per year on the anniversary of the Commencement Date. Annual Payment shall be made until the earlier of the expiration of this Agreement or the date upon which this Agreement is terminated. If the City ever adopts a gross receipts tax, OFI's annual payment of such gross receipts tax shall be deducted from this Annual Payment obligation. In the event OFI's annual payment of the City's gross receipts tax is less than Annual Payment, OFI shall pay the remainder to the City, resulting in an annual payment to the City of not less than the Annual Payment for the Digital Billboard as illustrated below:

If the Annual Payment equals one-hundred and two thousand dollars (\$102,000.00) and the gross receipts tax obligation equals twenty thousand dollars (\$20,000.00), OFI shall pay the City twenty thousand dollars (\$20,000.00) for the gross receipts tax obligation and eighty-two thousand dollars (\$82,000.00) for the Annual Payment obligation for a total payment of one-hundred and two thousand dollars (\$102,000.00).

In the event OFI ceases to operate a Digital Billboard face due to (1) the loss of OFI's legal or equitable interest in the Property, (2) the failure to obtain or maintain any required Permit for the Digital Billboard or the Digital Billboard Project, (3) a legal challenge to the Digital Billboard Project Approvals, or the Digital Billboard Project, including without limitation a Project Approval Challenge as defined in Section 20, (4) a significant obstruction of Digital Billboard face occurs which is beyond OFI's control, or (5) OFI is prevented by law or government order or action from constructing, operating, or maintaining the Digital Billboard or otherwise implementing the Project, including but not limited to the failure of government agencies to issue all approvals or a government agency's decision to condemn the Property, the Annual Payment for such face shall cease and no further amounts shall be due or payable by OFI to the City with respect to such face after such date under this Section 8(b). In the event OFI elects in its sole discretion to replace a Digital Face on the Digital Billboard with a printed billboard face beyond those four reasons enumerated in this subsection, OFI's obligation to pay the full Annual Payment of one-hundred and two thousand dollars (\$102,000.00) per year shall continue.

- (c) For and in consideration of the mutual rights and responsibilities provided in this Agreement, OFI agrees to pay the City a one-time non-refundable payment of one hundred and forty thousand dollars (\$140,000.00). Such payment shall be made within one hundred and eighty (180) days of the Commencement Date.
- (d) In-lieu of OFI removing sufficient existing billboards in order to satisfy the 2:1 removal-to-placement ratio requirement, as set forth in the City's Zoning Code section 20.360.003.D.6.b, OFI has elected to and shall provide the City with a one-time payment of one million one hundred thousand dollars (\$1,100,000.00), in-lieu of removal of two billboard faces in order to promote the public health, safety, and welfare of the City in accordance with section 20.360.003.D.6.b. Such payment shall be made prior to the Commencement Date provided that the conditions precedent for the Commencement Date have occurred, including that (1) OFI has obtained all local and state governmental permits and approvals and any other required permits and approvals necessary for the construction and operation of the Digital Billboard Project, including but not limited to the Digital Billboard Project Approvals, and (2) the Digital Billboard Project is fully operational with a permanent power supply.
- (e) Notwithstanding anything to the contrary, any sums already paid to the City by OFI during the year in which early termination or expiration has occurred shall be final and OFI shall not be entitled to any reimbursement for those sums.

8. **Additional Conditions**

- (a) **Community Service Messages**. OFI shall provide the City with free display time on the Digital Billboard for advertising City-sponsored events announcements and non-commercial public service announcements to promote the civic interests of the City ("**Community Service Messages**") as follows: consistent with and as further described in the terms of the Agreement, the City shall be guaranteed, for purposes of Community Service Messaging, one (1) advertising spot lasting no more than eight (8) seconds in the

standard rotation of eight (8) spots on one (1) digital display face, where such Community Service Messaging shall be so displayed for two (2) weeks in duration ("**Two-Week Advertising Spot**"). The City shall be limited to one (1) Two-Week Advertising Spot for each calendar quarter.

- (b) Sign Design. The architecture of the Digital Billboard shall be constructed substantially in conformance with the design depicted in attached Exhibit B.
- (c) City Sign Regulations. Subject to the vested rights acquired by OFI in this Agreement, including but not limited to those vested right articulated in paragraphs 3.b and 5, the Digital Billboard shall be consistent with City ordinances and regulations governing outdoor signs in all respects, except in relation to the exceptions articulated in this Agreement.

9. **Indemnity**

- (a) OFI agrees to indemnify, defend and hold harmless the City and its elected and appointed councils, boards, commissions, officers, agents, employees and representatives (collectively, "**City Indemnitees**") from any and all claims, costs (including reasonable legal fees and costs) and liability for any personal injury, death or property damage (collectively, "**Claims**") resulting from any actions or inactions by OFI, or any actions or inactions of OFI's contractors, subcontractors, agents or employees, in connection with the construction, improvement, operation or maintenance of the Digital Billboard Project, provided that OFI shall have no indemnification obligation with respect to any such Claims (i) to the extent such Claims are solely attributable to the sole or gross negligence or willful misconduct of any City Indemnitee, (ii) to the extent arising out of or in connection with the maintenance, use or condition of any public improvement after the time it has been dedicated to and accepted by the City or another public entity (except as otherwise provided in an improvement agreement or maintenance bond, if applicable); or (iii) to the extent arising out of the City's use of Community Service Messages under Section 8 of this Agreement.

The Parties' obligations under this Section 10 shall survive the expiration or earlier termination of this Agreement and shall be independent of any other applicable indemnity agreements.

10. **Assignment**

- (a) Right to Assign. OFI may at any time or from time to time transfer its right, title or interest in or to all or any portion of the Property. In accordance with Government Code Section 65868.5, with respect to either the Property or the Digital Billboard, the burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to OFI as owners of all or any portion of OFI's interest in the respective Property. As a condition precedent to any such transfer, OFI shall require the transferee to acknowledge in writing that transferee has been informed, understands and

agrees that the burdens and benefits under this Agreement relating to such transferred property shall be binding upon and inure to the benefit of the transferee.

- (b) Notice of Assignment or Transfer. No transfer, sale or assignment of OFI's rights, interests and obligations under this Agreement with respect to the Property or the Digital Billboard shall occur without prior written notice to the City and approval by the City Manager, which approval shall not be unreasonably withheld, conditioned or delayed. The City Manager shall consider and decide the matter within ten (10) days after receipt of OFI's notice, provided all reasonably necessary documents, certifications and other information are provided to the City Manager.
- (c) Exception for Notice. Notwithstanding Section 10(b), OFI may at any time, upon notice to the City but without the necessity of any approval by the City, transfer its interest in the Property or the Digital Billboard or any part thereof and all or any part of OFI's rights, interests and obligations under this Agreement to: (i) any subsidiary, affiliate, parent or other entity which controls, is controlled by or is under common control with OFI, (ii) any member or partner of OFI or any subsidiary, parent or affiliate of any such member or partner, or (iii) any successor or successors to OFI by merger, acquisition, consolidation, non-bankruptcy reorganization or government action. As used in this subsection, "control" shall mean the possession, directly or indirectly, of the power to direct or cause the direction of management or policies, whether through the ownership of voting securities, partnership interest, contracts (other than those that transfer OFI's interest in the Property to a third party not specifically identified in this subsection) or otherwise.
- (d) Release upon Transfer. Upon the transfer, sale or assignment of all of OFI's rights, interests and obligations under this Agreement pursuant to Section 10(a), Section 10(b) and/or Section 10(c) of this Agreement (as applicable), OFI shall be released from all obligations under this Agreement, with respect to the interests, including the Property and Digital Billboard, transferred, sold or assigned, to the extent such obligations arise subsequent to the date of the City Manager's approval of such transfer, sale or assignment or the effective date of such transfer, sale or assignment, whichever occurs later; provided, however, that if any transferee, purchaser or assignee approved by the City Manager expressly assumes any right, interest or obligation of OFI under this Agreement, OFI shall be released with respect to such rights, interests and assumed obligations. In any event, the transferee, purchaser or assignee shall be subject to all the provisions hereof and shall provide all necessary documents, certifications and other reasonably necessary information prior to City Manager approval.
- (e) OFI's Right to Retain Specified Rights or Obligations. Notwithstanding Section 10(a), Section 10(c) and Section 10(d), OFI may withhold from a sale, transfer or assignment of this Agreement certain rights, interests and/or obligations which OFI shall retain, provided that OFI specifies such rights, interests and/or obligations in a written document to be appended to or maintained with this Agreement and recorded with the San Mateo County Recorder prior to or concurrently with the sale, transfer or assignment of the Property. OFI's purchaser, transferee or assignee shall then have no interest in or obligations for such retained rights, interests and obligations and this Agreement shall remain applicable to OFI with respect to such retained rights, interests and/or obligations.

- (f) Time for Notice. Within ten (10) days of the date escrow closes on any such transfer, OFI shall notify the City in writing of the name and address of the transferee. Said notice shall include a statement as to the obligations, including any mitigation measures, fees, improvements or other conditions of approval, assumed by the transferee. Any transfer which does not comply with the notice requirements of this Section 10(f) and of Section 10(b) shall not release OFI from its obligations to the City under this Agreement until such time as the City is provided notice in accordance with Section 10(b).

11. **Insurance**

- (a) General Liability Insurance. During the term of this Agreement, OFI shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than Five Million Dollars (\$5,000,000) per occurrence for claims including bodily injury, personal injury, property damage, and blanket contractual liability. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. The general liability policy so maintained by OFI shall be primary and non-contributory and be endorsed using Insurance Services Office form CG 20 10 to provide that City and its officers, officials, employees, and agents shall be additional insureds under such policy.
- (b) Workers' Compensation Insurance. During the term of this Agreement, OFI shall maintain Workers' Compensation insurance for all of OFI's employees working at the Digital Billboard Project site as long as OFI continues to operate the Digital Billboard. In addition, OFI shall require each contractor and subcontractor engaged by OFI for work at the Digital Billboard Project site to provide Workers' Compensation insurance for its respective employees working at the Project site.
- (c) Evidence of Insurance. Prior to City Council approval of this Agreement, OFI shall furnish the City satisfactory evidence of the insurance required in Sections 11(a) and 11(b) and evidence that the carrier will endeavor to give the City thirty (30) days' (ten (10) days for non-payment of premium) prior written notice in the event coverage is canceled. Further, all policies, except Workers Compensation, shall state that coverage is primary insurance with respect to the City and its officers, officials, employees and volunteers, and that no insurance or self-insurance maintained by the City shall be called upon to contribute to a loss under the coverage with respect to the liabilities assumed by OFI under this Agreement.
- i. During the term of this Agreement, in the event of a reduction (below the limits required in this Agreement) or cancellation in coverage, OFI shall, prior to such reduction or cancellation, provide at least thirty (30) days prior written notice to the City, regardless of any notification by the applicable insurer. If the City discovers that the policies have been cancelled or reduced below the limits required in this Agreement and that neither the insurer nor OFI has provided prior notice to the City as required under this Agreement, said failure shall

constitute a material breach of this Agreement.

- ii. During the term of this Agreement, in the event of a reduction (below the limits required by this Agreement) or cancellation in coverage, OFI shall have ten (10) business days in which to provide evidence of the required coverage being reinstated or replaced, during which time no persons shall enter the Properties to construct improvements thereon, including construction activities related to the landscaping and common improvements.
- iii. If OFI fails to obtain reinstated or replacement coverage within ten (10) business days as required under the preceding subparagraph, the City may obtain, but is not required to obtain, substitute coverage and charge OFI the cost of such coverage plus an administrative fee equal to ten percent (10%) of the premium for said coverage.

12. **Covenants Run with the Land**

The terms of this Agreement are legislative in nature and apply to OFI's interest in the Property and Digital Billboard as regulatory ordinances. During the term of this Agreement, all of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall run with the land and shall be binding upon the Parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns, devisees, administrators, representatives, lessees and all other persons or entities acquiring OFI's interest in the Property, the Digital Billboard, any lot, parcel or any portion thereof, and any interest therein, whether by sale, operation of law or other manner, and they shall inure to the benefit of the Parties and their respective successors.

13. **Conflict with State or Federal Law**

In the event that State or Federal laws or regulations enacted after the Effective Date prevent or preclude compliance with one or more provisions of this Agreement, such provisions of this Agreement shall be modified (in accordance with Section 14 set forth below) or suspended as may be necessary to comply with such State or Federal laws or regulations. Notwithstanding the foregoing, OFI shall have the right to challenge, at its sole cost, in a court of competent jurisdiction, the law or regulation preventing compliance with the terms of this Agreement and, if the challenge in a court of competent jurisdiction is successful, this Agreement shall remain unmodified and in full force and effect.

14. **Procedure for Modification Because of Conflict with State or Federal Laws**

In the event that State or Federal laws or regulations enacted after the Effective Date prevent or preclude compliance with one or more provisions of this Agreement or require changes in plans, maps or permits approved by the City, the Parties shall meet and confer in good faith in a reasonable attempt to modify this Agreement to comply with such State or Federal law or regulation. Any such amendment or suspension of this Agreement shall be approved by the City Council in accordance with Chapter 19.60 of the Municipal Code.

15. **Periodic Review**

- (a) During the term of this Agreement, the City shall conduct “annual” and/or “special” reviews of OFI’s good faith compliance with the terms and conditions of this Agreement in accordance with the procedures set forth in Chapter 19.60 of the Municipal Code. The City may recover reasonable costs incurred in conducting said review, including staff time expended and attorneys’ fees.
- (b) The director of community development shall give OFI thirty (30) calendar days’ advance notice of annual review or special review, by placing such notice to the developer into the U.S. Mail, first class, postage prepaid, and addressed to OFI.
- (c) At least five (5) calendar days prior to any hearing on any annual or special review, the City shall mail OFI a copy of all staff reports and, to the extent practical, related exhibits. OFI shall be permitted an opportunity to be heard orally or in writing regarding its performance under this Agreement before the City Council or, if the matter is referred to the Planning Commission, then before said Commission. Following completion of any annual or special review, the City shall give OFI a written Notice of Action, which Notice shall include a determination, based upon information known or made known to the City Council or the City’s Planning Director as of the date of such review, whether OFI is in default under this Agreement. If the City finds and determines on the basis of the evidence given that OFI has complied in good faith with the terms and conditions of the agreement during the period under review, the review for that period shall be concluded. If OFI is determined to not be in good faith compliance with the terms of this Agreement and the Notice of Action includes a determination that OFI is in default, the City shall specify the alleged nature of the default, set forth suggested or potential actions that the City may take if such default is not cured; otherwise, the provisions of Sections 18 and 19 shall govern the Parties’ rights.

16. **Amendment or Cancellation of Agreement**

This Agreement may be further amended or terminated only in writing and in the manner set forth in Government Code Sections 65865.1, 65867.5, 65868, 65868.5 and Chapter 19.60 of the Municipal Code; and provided that this Agreement may be terminated by OFI if OFI no longer is operating the Digital Billboard due to the reasons enumerated in Section 7(b) above. Upon expiration or early termination of this Agreement, OFI shall, at its sole cost and expense, remove the above-ground portions of the Digital Billboard Project within ninety (90) days, unless OFI and City have entered into a subsequent written agreement, upon terms mutually acceptable to both Parties, that allows the Digital Billboard Project to remain.

17. **Agreement is Entire Agreement**

This Agreement and all exhibits attached hereto or incorporated herein contain the sole and entire agreement between the Parties concerning OFI’s entitlements to develop and improve the Property, and construct, operate, repair, and maintain the Digital Billboard. This document supersedes all prior or contemporaneous agreements, representations, and negotiations (written, oral, express or implied) and this Agreement may be modified only in accordance with Section 16 of this

Agreement. The Parties acknowledge and agree that neither of them has made any representation with respect to the subject matter of this Agreement or any representations inducing the execution and delivery hereof, except representations set forth herein, and each Party acknowledges that it has relied on its own judgment in entering this Agreement. The Parties further acknowledge that all statements or representations that heretofore may have been made by either of them to the other are void and of no effect, and that neither of them has relied thereon in its dealings with the other.

18. **Events of Default**

A Party shall be in default under this Agreement upon the happening of one or more of the following events (and the failure to cure after the expiration of the cure period in paragraph 19(e) below):

- (a) If a warranty, representation or statement related to this Agreement or compliance therewith made or furnished by such Party to the other Party in this Agreement that is false or proves to have been false in any material respect when it was made; or,
- (b) In the case of OFI, a finding and determination by the City made following an annual or special review under the procedure provided for in Government Code Section 65865.1 and Chapter 19.60 of the Municipal Code that, upon the basis of substantial evidence, OFI has not complied in good faith with the terms and conditions of this Agreement is no longer in effect; or,
- (c) Such Party fails to fulfill any of its obligations set forth in this Agreement and such failure continues beyond the cure period provided in paragraph 19(e) below.

19. **Procedure upon Default; Legal Actions**

- (a) Upon the occurrence of an event of default (including expiration of the cure period in paragraph (e) below), the non-defaulting Party may, at its option, institute legal proceedings as provided below or may terminate this Agreement; provided, however, that any such termination by the City shall occur only in accordance with the provisions of Government Code Section 65865.1 and of Chapter 19.60 of the Municipal Code; and provided further, a default under the provisions relating to the Digital Billboard Project shall limit the non-defaulting Party to the option of terminating this Agreement.
- (b) The City shall not be deemed to have waived any claim of defect in OFI's performance if, on annual or special review, the City does not propose to terminate this Agreement.
- (c) No waiver or failure by either Party to enforce any provision of this Agreement shall be deemed to be a waiver of any other provision of this Agreement or of any subsequent breach of the same or any other provision.
- (d) Any action for breach of this Agreement shall be decided in accordance with California law. In the event that suit shall be brought by either party to this Agreement, the parties agree that venue shall be vested exclusively in San Mateo County Superior Court, or, where otherwise appropriate, exclusively in the United States District Court, Northern District of California. Any Party may institute legal action to cure, correct or remedy any

default, to enforce any covenant or agreement herein, to enjoin any threatened or attempted violation, or to enforce by specific performance the obligations and rights of the parties hereto. Except as provided below, in no event shall the City or its elected or appointed officials, directors, officers, members, partners, agents, employees or representatives be liable in monetary damages for any breach or violation of this Agreement, it being expressly understood and agreed that in addition to the right of termination (at the option of the non-defaulting Party), the sole legal or equitable remedy available to OFI for a breach or violation of this Agreement shall be an action in mandamus, specific performance, injunctive or declaratory relief to enforce the provisions of this Agreement and any and all other available legal and equitable remedies.

- (e) A Party shall give the other Party written notice of any default by such other Party under this Agreement, and the defaulting Party shall have thirty (30) business days after the date of the notice to cure the default or to reasonably commence the procedures or actions needed to cure the default; provided, however, that if such default is not capable of being cured within such thirty (30) business day period but a cure is commenced within such thirty (30) business day period, the defaulting Party shall have such additional time to complete the cure as is reasonably necessary.
- (f) In the event that either Party elects to terminate this Agreement due to default of the other Party, then OFI agrees that it shall remove the above-ground portions of the Digital Billboard Project within ninety (90) days from the date of termination, unless OFI and City have entered into a subsequent written agreement, upon terms mutually acceptable to both Parties, that allows the Digital Billboard Project to remain.

20. **Attorneys' Fees and Costs**

- (a) Action by Party. If legal action by either Party is brought because of breach of this Agreement or to enforce a provision of this Agreement, the prevailing Party is entitled to reasonable attorneys' fees and court costs.
- (b) Action by Third Party. If any person or entity not a party to this Agreement initiates any legal or equitable action or proceeding to challenge the validity of any provision of this Agreement or the validity or implementation of the Digital Billboard Project Approvals or of the IS/MND ("**Project Approval Challenge**"), the Parties shall promptly notify the other Party of such claim and each party shall cooperate with the efforts of OFI to defend such action or proceeding. OFI agrees to pay all reasonable costs and expenses, including reasonable legal costs and reasonable attorney's fees incurred in connection therewith. The City will not voluntarily assist the opposing party in any such claim or take any position adverse to OFI in connection with such claim. In the event of a Project Approval Challenge, OFI shall have the option to return any Digital Billboard face to a conventional non-digital display and the City shall not be entitled to claim any lost revenues or damages as a result of such election by OFI.

21. **Severability**

If any material term or condition of this Agreement is for any reason held by a final judgment of a court of competent jurisdiction to be invalid, and if the same constitutes a material change in the consideration for this Agreement, then either Party may elect in writing to invalidate this entire Agreement, and thereafter this entire Agreement shall be deemed null and void and of no further force or effect following such election.

22. **No Third Parties Benefited**

No person other than the City, OFI, and their respective successors is intended to or shall have any right or claim under this Agreement, this Agreement being for the sole benefit and protection of the Parties and their respective successors. Similarly, no amendment or waiver of any provision of this Agreement shall require the consent or acknowledgment of any person not a Party or successor to this Agreement.

23. **Binding Effect of Agreement**

The provisions of this Agreement shall bind and inure to the benefit of the Parties originally named herein and their respective successors and assigns.

24. **Relationship of Parties**

It is understood that this Agreement is a contract that has been negotiated and voluntarily entered into by the City and OFI and that OFI is not an agent of the City. The Parties do not intend to create a partnership, joint venture or any other joint business relationship by this Agreement. The City and OFI hereby renounce the existence of any form of joint venture or partnership between them, and agree that nothing contained herein or in any document executed in connection herewith shall be construed as making the City and OFI joint venturers or partners. Neither OFI nor any of OFI's agents or contractors are or shall be considered to be agents of the City in connection with the performance of OFI's obligations under this Agreement.

25. **Bankruptcy**

The obligations of this Agreement shall not be dischargeable in bankruptcy.

26. **Mortgagee Protection: Certain Rights of Cure.**

(a) **Mortgagee Protection.** The Parties hereto agree that this Agreement shall not prevent or limit OFI from encumbering the Property or any portion thereof or any improvement thereon by any mortgage, deed of trust or other security device to securing financing. The City acknowledges that the lenders providing such financing may require certain Agreement modifications and City agrees upon request, from time to time, to meet with OFI and representatives of such lenders to negotiate in good faith any such request for modification. This Agreement shall be superior and senior to all liens placed upon the Property by OFI or any portion thereof after the date on which this Agreement or a memorandum of this Agreement is recorded with the San Mateo County Recorder,

including the lien of any deed of trust or mortgage (“**Mortgage**”). Notwithstanding the foregoing, no breach hereof shall defeat, invalidate, diminish or impair the lien of any Mortgage made in good faith and for value, but all of the terms and conditions contained in this Agreement shall be binding upon and effective against all persons and entities, including all deed of trust beneficiaries or mortgagees (“**Mortgagees**”), who acquire title to OFI’s interest in the Property or any portion thereof by foreclosure, trustee’s sale, deed in lieu of foreclosure or otherwise.

- (b) Mortgagee Not Obligated. No foreclosing Mortgagee shall have any obligation or duty under this Agreement to construct or complete the construction of any improvements required by this Agreement, or to pay for or guarantee construction or completion thereof. The City, upon receipt of a written request therefor from a foreclosing Mortgagee, shall permit the Mortgagee to succeed to the rights and obligations of OFI under this Agreement, provided that all defaults by OFI hereunder that are reasonably susceptible of being cured are cured by the Mortgagee as soon as is reasonably possible. The foreclosing Mortgagee thereafter shall comply with all of the provisions of this Agreement.

- (c) Notice of Default to Mortgagee. If the City receives notice from a Mortgagee requesting a copy of any notice of default given to OFI hereunder and specifying the address for service thereof, the City shall deliver to the Mortgagee concurrently with service thereof to OFI, all notices given to OFI describing all claims by the City that OFI has defaulted hereunder. If the City determines that OFI is in noncompliance with this Agreement, the City also shall serve notice of noncompliance on the Mortgagee, concurrently with service thereof on OFI. Until such time as the lien of the Mortgage has been extinguished, the City shall:
 - i. Take no action to terminate this Agreement or exercise any other remedy under this Agreement, unless the Mortgagee shall fail, within thirty (30) days of receipt of the notice of default or notice of noncompliance, to cure or remedy or commence to cure or remedy such default or noncompliance; provided, however, that if such default or noncompliance is of a nature that cannot be remedied by the Mortgagee or is of a nature that can only be remedied by the Mortgagee after such Mortgagee has obtained possession of and title to the Property, by deed-in-lieu of foreclosure or by foreclosure or other appropriate proceedings, then such default or noncompliance shall be deemed to be remedied by the Mortgagee if, within ninety (90) days after receiving the notice of default or notice of noncompliance from the City, (i) the Mortgagee shall have acquired title to and possession of the Property, by deed-in-lieu of foreclosure, or shall have commenced foreclosure or other appropriate proceedings, and (ii) the Mortgagee diligently prosecutes any such foreclosure or other proceedings to completion.

 - ii. If the Mortgagee is prohibited from commencing or prosecuting foreclosure or other appropriate proceedings by reason of any process or injunction issued by any court or by reason of any action taken by any court having jurisdiction over any bankruptcy or insolvency proceeding involving OFI, then the times specified above for commencing or prosecuting such foreclosure or other proceedings shall be extended for the period of such prohibition.

- (d) Performance by Mortgagee. Each Mortgagee shall have the right, but not the obligation, at any time prior to termination of this Agreement, to do any act or thing required of OFI under this Agreement, and to do any act or thing not in violation of this Agreement, that may be necessary or proper in order to prevent termination of this Agreement. All things so done and performed by a Mortgagee shall be as effective to prevent a termination of this Agreement as the same would have been if done and performed by OFI instead of by the Mortgagee. No action or inaction by a Mortgagee pursuant to this Agreement shall relieve OFI of its obligations under this Agreement.
- (e) Mortgagee's Consent to Modifications. Subject to the sentence immediately following, the City shall not consent to any amendment or modification of this Agreement unless OFI provides the City with written evidence of each Mortgagee's consent, which consent shall not be unreasonably withheld, to the amendment or modification of this Agreement being sought. Each Mortgagee shall be deemed to have consented to such amendment or modification if it does not object to the proposed amendment or modification by written notice given to the City within thirty (30) days from the date written notice of such proposed amendment or modification is given by the City or OFI to the Mortgagee. If such notice of the proposed amendment or modification is given solely by OFI, then OFI shall also provide the City with reasonable evidence of the delivery of such notice to the Mortgagee.

27. **Estoppel Certificate**

Either Party from time to time may deliver written notice to the other Party requesting written certification that, to the knowledge of the certifying Party, (i) this Agreement is in full force and effect and constitutes a binding obligation of the Parties; (ii) this Agreement has not been amended or modified either orally or in writing, or, if it has been amended or modified, specifying the nature of the amendments or modifications; and (iii) the requesting Party is not in default in the performance of its obligations under this Agreement, or if in default, describing therein the nature and monetary amount, if any, of the default. A Party receiving a request hereunder shall endeavor to execute and return the certificate within ten (10) days after receipt thereof and shall in all events execute and return the certificate within thirty (30) days after receipt thereof. Failure of a Party to return a requested certificate in a timely manner shall not be deemed a default of the Party's obligations under this Agreement and no cause of action shall arise based on such failure, but such Party shall thereupon be deemed to have certified that the statements in clauses (i) through (iii) of this Section are true, and the requesting Party and any third parties shall be entitled to rely upon such deemed certification. The City Manager shall have the right to execute any such certificate requested by OFI hereunder provided the certificate is requested within six (6) months of any annual or special review. The City acknowledges that a certificate hereunder may be relied upon by permitted transferees and Mortgagees. At the request of OFI, the certificates provided by the City establishing the status of this Agreement with respect to any lot or parcel shall be in recordable form, and OFI shall have the right to record the certificate for the affected portion of the Property at OFI's cost.

28. **Force Majeure**

- (a) Notwithstanding anything to the contrary contained herein, either Party shall be excused for

the period of any delay in the performance of any of its obligations hereunder, except the payment of money, to the extent such performance is prevented or delayed by one or more of the following specific causes beyond such Party's control: major weather differences from the normal weather conditions for the South San Francisco area, war, acts of God or of the public enemy, fires, explosions, floods, earthquakes, pandemics, epidemics, invasions by non-United States armed forces, failure of transportation due to no fault of the Parties, unavailability of equipment, supplies, materials or labor when such unavailability occurs despite the applicable Party's good faith efforts to obtain same (good faith includes the present and actual ability to pay market rates for said equipment, materials, supplies and labor), strikes of employees other than OFI, freight embargoes, sabotage, riots, acts of terrorism, acts of the government, and litigation initiated by a non-Party challenging this Agreement or any of the Digital Billboard Project' approvals or entitlements. The Party claiming such extension of time to perform shall send written notice of the claimed extension to the other Party within thirty (30) days from the commencement of the cause entitling the Party to the extension.

29. Eminent Domain

If the Digital Billboard or the Property, or any part thereof, is condemned by proper authorities; taken without the exercise of eminent domain, whether permanently or temporarily; or any right-of-way from which the Digital Billboard is visible is relocated, OFI shall have the option to terminate this Agreement consistent with the terms of Section 2. The Parties agree that the Digital Billboard is owned solely by OFI and that the underlying leasehold interest in the Property belongs solely to OFI, and the City shall assert no rights in such interests held by OFI, though the City shall not be prevented from asserting any rights against the condemning authority. Notwithstanding the above, nothing in this Agreement shall operate as a waiver of any rights OFI might have to just compensation and other remedies provided by law in the event of an eminent domain action.

30. Rules of Construction and Miscellaneous Terms

- (a) The singular includes the plural; the masculine gender includes the feminine; "shall" is mandatory, "may" is permissive.
- (b) Time is and shall be of the essence in this Agreement.
- (c) Where a Party consists of more than one person, each such person shall be jointly and severally liable for the performance of such Party's obligations hereunder.
- (d) The captions in this Agreement are for convenience only, are not a part of this Agreement and do not in any way limit or amplify the provisions thereof.
- (e) This Agreement shall be interpreted and enforced in accordance with the laws of the State of California in effect on the date thereof.

31. **Exhibits**

- Exhibit A Property Map and Description
- Exhibit B Site Plans/Specifications for Digital Billboard
- Exhibit C Mitigation Monitoring and Reporting Program for Digital Billboard
- Exhibit D Project Approvals

32. **Recordation of Agreement**

Within ten (10) days after the effective date of this Agreement, the City Clerk will make all efforts necessary to have the Agreement recorded with the County Recorder.

33. **Notices**

All notices required or provided for under this Agreement shall be in writing and delivered in person (to include delivery by courier) or sent by certified mail, postage prepaid, return receipt requested or by overnight delivery service, and shall be effective upon actual delivery as evidenced by the return receipt or by the records of the courier, overnight delivery service or other person making such delivery.

Notices to the City shall be addressed as follow:

City of South San Francisco
Attn: City Clerk
P.O. Box 711,
400 Grand Avenue
South San Francisco, CA 94080

With a copy to:

Economic and Community Development Department
400 Grand Avenue
South San Francisco, CA 94080

With a copy to:

City Attorney
400 Grand Avenue
South San Francisco, CA 94080

Notices to OFI shall be addressed as follows:

Outfront Foster Interstate, LLC
2300 Contra Costa Blvd., Suite 340

Pleasant Hill, CA 94523
attn: John B. Foster

With a copy to:

Cc: Outfront Media LLC
405 Lexington Avenue
New York, NY 10174
Attn: General Counsel

Cc: Fennemore Wendel
1111 Broadway, 24th Floor
Oakland, CA 94607
Attn: Daniel B. Myers

A party may change its address for notice by giving notice in writing to the other party and thereafter notices shall be addressed and transmitted to the new address.

IN WITNESS WHEREOF this Agreement has been executed by the Parties on the day and year first above written.

CITY:

CITY OF SOUTH SAN FRANCISCO

By: _____

ATTEST:

_____, City Clerk

APPROVED AS TO FORM:

_____, City Attorney

OUTFRONT FOSTER INTERSTATE, LLC

By Its Members:

Outfront Media, LLC, a Delaware limited liability company

By: _____
Name: Chris Steinbacher
Title: EVP Real Estate

Foster Interstate, LLC, a Delaware limited liability company

By: _____
Name: John Foster
Title: President

EXHIBIT A

PROPERTY MAP AND DESCRIPTION

EXHIBIT B

SITE PLAN/SPECIFICATIONS FOR DIGITAL BILLBOARD

EXHIBIT C

MITIGATION MONITORING AND REPORTING PROGRAM FOR
THE DIGITAL BILLBOARD PROJECT

EXHIBIT D

PROJECT APPROVALS

[TO BE INSERTED]

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