

Exhibit A

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:

ACTION SIGNS INC
13190 Pierce Road
Saratoga, CA 95070
Attention: Andrew and Bill Morocco

(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
ACTION SIGNS INC**

FOR

ACTION SIGNS DIGITAL BILLBOARD

DEVELOPMENT AGREEMENT

This DEVELOPMENT AGREEMENT is dated as of _____, 2019 (“**Agreement**”) and is entered into between: (i) ACTION SIGNS INC. (“**Action Signs**”) and (ii) the CITY OF SOUTH SAN FRANCISCO, a municipal corporation organized and existing under the laws of the State of California (the “**City**”). Action Signs 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 a property located at 150 Airport Boulevard (APN 012-338-060) (“**Property**”) as identified and more fully described in attached Exhibit A; and,
- D. 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, Action Signs has a legal or equitable leasehold interest in the Property; and,
- F. WHEREAS, Action Signs has submitted a development proposal to the City that would permit Action Signs 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, Action Signs will enter into a separate relocation agreement with the City (“**Relocation Agreement**”) for the removal/relocation of existing billboards, which is identified in Exhibit C (“Removed Billboards”); and,
- H. WHEREAS, The City and Action Signs 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, Sections 5412 and 5443.5 thereof; and,

- I. WHEREAS, the Digital Billboard Project is contingent upon approvals from the California Department of Transportation (“**CalTrans**”); and,
- J. WHEREAS, Action Signs shall take down the Removed Billboards prior to commencing live operations of the Digital Billboard Project; and,
- K. WHEREAS, in-lieu of Action Signs 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 20.360.002.A.6.b, Action Signs has voluntarily elected to enter into this Agreement on the terms set forth herein in order to promote the public health, safety, and welfare of the City in accordance with section 20.360.002.A.6.b; and,
- L. WHEREAS, Action Signs 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 Properties; and,
- M. 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,
- N. 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 General Plan as adopted on October 13, 1999 and as amended from time-to-time; and,
- O. WHEREAS, the City Council and the Planning Commission 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 reduction of visual clutter, elimination of non-conforming signage, and facilitation of the orderly development, relocation, and distribution of existing displays to more appropriate locations within the City, while allowing for the incorporation of modern technology into relocated displays that, in part, provide the City with a means of advertising the City, its events, and public service announcements; and,
- P. WHEREAS, on _____, 2019, the City Planning Commission recommended the adoption of Ordinance No. _____ approving and adopting this Agreement after a duly noticed public hearing; and,
- Q. WHEREAS, on _____, 2019, the City Council, after a duly noticed public hearing, adopted Ordinance No. _____ approving and adopting this Agreement

and the Ordinance thereafter took effect on _____, 2019; and,

- R. 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,
- S. 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, Action Signs 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.

AGREEMENT

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) the Relocation Agreement is fully executed and effective; (c) Action Signs 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 (d) the Digital Billboard is fully operational with a permanent power supply. This Agreement may be terminated by Action Signs with respect to the Digital Billboard Project if the following occurs: (1) Action Signs loses its legal or equitable interest in the respective Property, (2) in Action Signs’ reasonable discretion, Action Signs is unable to obtain or maintain any required Permit for the respective 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 occurs due to a circumstance beyond Action Signs’ control, or (5) Action Signs 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 by 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, Action Signs shall, at its sole cost and expense, remove the above-ground portions of the Digital Billboard Project within ninety (90) days, unless Action Signs 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 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 to the specifications of which are set forth in Exhibit B, and shall be located at 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, the Relocation Agreement, and Negative Declaration No. ND12-0002 all as set forth in Exhibit D 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 20.360.015(J) of the South San Francisco Municipal Code, and the Digital Billboard Project Approvals provide that the maximum height of the Digital Billboard is 114 feet and that the maximum surface area for each display panels is limited to 672 square feet.
- c. Subject to Action Signs' fulfillment of its obligations under this Agreement and the Relocation Agreement being effective, upon the Effective Date of this Agreement, the City hereby grants to Action Signs a vested right to develop and construct on the Property all the improvements for the Digital Billboard Project in accordance with the Digital Billboard Project Approvals and the terms of this Agreement and the Relocation 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, planning documents, codes, rules, laws, resolutions, or regulations adopted or otherwise in effect after the Effective Date shall apply to the Digital Billboard Project, except any future modifications to ordinances, policies or regulations (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 by this Agreement or otherwise required by

State or Federal Law.

- e. In developing the Digital Billboard Project, Action Signs shall implement the mitigation measures set forth in the Mitigation Monitoring and Reporting Program (the “**MMRP**”) attached hereto as part of Exhibit D and incorporated herein by this reference, which MMRP was approved concurrently with the approval of this Agreement for the Project.

4. Building Permits for Project

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

- a. Action Signs 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 Digital Billboard Project Approvals , (2) all applicable provisions of the Uniform Codes (i.e., building, fire, and electric codes) incorporated into the City’s Municipal Code, (3) the applicable requirements of the Municipal Code and MMRP, (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. Action Signs 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, Action Signs 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 Action Signs’ fulfillment of its obligations under this Agreement and the Relocation Agreement being effective, upon the City’s approval of the Digital Billboard Project, Action Signs 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 Project in accordance with the terms of this Agreement. Action Signs 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 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 a reasonably expeditious manner to complete all City actions required for the approval and development of the 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 Properties filed by Action Signs or its nominee, successor or assign as necessary for development of the Projects; and,
- c. Inspecting and providing acceptance of or comments on all work by Action Signs 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 Action Signs 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.

Action Signs 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. Action Signs shall make a deposit as determined by the City and shall pay all of the City's staff, legal and consultants reasonable 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 Action Signs.

7. Fees and Taxes

- a. Action Signs 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 Action Signs operates such Digital Billboard faces, Action Signs agrees to pay the City the annual amount of forty thousand dollars (\$40,000) 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. At the conclusion of the first five (5) years of the Annual Payment, the Annual Payment will increase by fifteen percent (15%) and will continue to increase by fifteen percent (15%) every five (5) years until the earlier of the expiration of this Agreement or the date upon which this Agreement or the Relocation Agreement is terminated. If the City ever adopts a gross receipts tax, Action Signs’ annual payment of such gross receipts tax shall be deducted from this Annual Payment obligation. In the event Action Signs’ annual payment of the City’s gross receipts tax is less than the Annual Payment, Action Signs 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 \$80,000 and the gross receipts tax obligation equals \$20,000, Action Signs will pay the City \$20,000 for the gross receipts tax obligation and \$60,000 for the Annual Payment obligation for a total payment of \$80,000.

In the event Action Signs ceases to operate a Digital Billboard face due to (1) the loss of Action Signs’ legal or equitable interest in the Property, (2) the failure to obtain or maintain any required Permit for the Digital Billboard, (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 Action Signs’ control; or (5) Action Signs 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 by the failure of government agencies to issue all approvals or a governmental agency’s decision to condemn the Property, the Payment for such face shall cease and no further amounts shall be due or payable by Action Signs to the City with respect to such face after such date under this Section 7(b). In the event Action Signs elects in its sole discretion under the Relocation Agreement to replace a Digital Face on the Digital Billboard with a static billboard face beyond those four reasons enumerated above, Action Signs’ obligation to pay the full Annual Payment (\$80,000 per year) shall continue.

- c. For and in consideration of the mutual rights and responsibilities provided in this Agreement and the Relocation Agreement, Action Signs agrees to provide the City with a one-time, non-refundable payment of one hundred and forty thousand dollars (\$140,000) within one hundred and eighty (180) days of the Commencement Date.
- d. In-lieu of Action Signs 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 20.360.002.A.6.b, Action Signs has elected to and shall provide the City with a one-time payment of one million dollars (\$1,000,000) in order to promote the public health, safety, and welfare of the City in accordance with section 20.360.002.A.6.b. Such payment will be made prior to commencing live operations of the Digital Billboard Project.

- e. Notwithstanding anything to the contrary, any sums already paid to CITY by Action Signs during the year in which early termination or expiration has occurred shall be final and Action Signs shall not be entitled to any reimbursement for those sums.

8. Additional Conditions

- a. Community Service Messages. Action Signs will provide the City with free display time on the Digital Billboard for City-sponsored event announcements and non-commercial public service announcements to promote the civic interests of the City ("Community Service Messaging") as follows: consistent with and as further described in the terms of the Relocation 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 (collectively, the "Two-Week Advertising Spot"). The City shall be limited to one (1) Two-Week Advertising Spot for each calendar quarter.
- b. The architecture of the Digital Billboard will be constructed substantially in conformance with the design depicted in attached Exhibit C.
- c. City Sign Regulations. Subject to the vested rights acquired by Action Signs in this Agreement, including but not limited to those vested rights articulated in paragraphs 3.b and 5, the Digital Billboard will 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. Action Signs agrees to indemnify, defend and hold harmless the City and its elected and appointed councils, boards, commissions, officers, agents, employees and representatives (collectively, the "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") which arise directly or indirectly as a result of any actions or inactions by Action Signs, or any actions or inactions of Action Signs' contractors, subcontractors, agents or employees, in connection with the construction, improvement, operation or maintenance of the Digital Billboard Project, provided that Action Signs 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 Indemnatee, (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 Services Messages under Section 8 of this Agreement.

- b. The Parties' obligations under this Section 9 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. Action Signs 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 Action Signs as owners of all or any portion of Action Signs' interest in the Property or Digital Billboard. As a condition precedent to any such transfer, Action Signs 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 Action Signs' 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 Action Signs' notice, provided all reasonably necessary documents, certifications and other information are provided to the City Manager.
- c. Exception for Notice. Notwithstanding Section 10(b), Action Signs 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 Digital Billboard or any part thereof and all or any part of Action Signs' 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 Action Signs, (ii) any member or partner of Action Signs or any subsidiary, parent or affiliate of any such member or partner, or (iii) any successor or successors to Action Signs 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 Action Signs' interest in the Property of Digital Billboard 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 Action

Signs' 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), Action Signs 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 Action Signs under this Agreement, Action Signs 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. Action Signs' Right to Retain Specified Rights or Obligations. Notwithstanding Section 10(a), Section 10(c) and Section 10(d), Action Signs may withhold from a sale, transfer or assignment of this Agreement certain rights, interests and/or obligations which Action Signs shall retain, provided that Action Signs 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 one or both of the Properties. Action Signs' 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 Action Signs 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, Action Signs 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 Action Signs 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, Action Signs 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 bodily injury, personal injury, and property damage, including without limitation, 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 Action Signs 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, Action Signs shall maintain Workers' Compensation insurance for all of Action Signs' employees working at the Digital Billboard Project site as long as Action Signs continues to operate the Digital Billboard. In addition, Action Signs shall require each contractor and subcontractor engaged by Action Signs 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, Action Signs 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 substantially changed, canceled, or non-renewed. Further, an endorsement must be attached to all policies stating 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 Action Signs under this Agreement.
 - 1. During the term of this Agreement, in the event of a reduction (below the limits required in this Agreement) or cancellation in coverage, Action Signs shall, prior to such reduction or cancellation, provide at least ten (10) 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 Action Signs has provided prior notice to the City as required under this Agreement, said failure shall constitute a material breach of this Agreement.
 - 2. During the term of this Agreement, in the event of a reduction (below the limits required by this Agreement) or cancellation in coverage, Action Signs shall have five (5) 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.
 - 3. If Action Signs fails to obtain reinstated or replacement coverage within five (5) days as required under the preceding subparagraph, the City may obtain, but is not required to obtain, substitute coverage and charge Action Signs 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 Action Signs' 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 Action Signs' interest in the Property, 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, Action Signs 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 Action Signs' 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 Action Signs 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 Action Signs.
- c. At least five (5) calendar days prior to any hearing on any annual or special review, the City shall mail Action Signs a copy of all staff reports and, to the extent practical, related exhibits. Action Signs 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 Action Signs 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 Action Signs is in default under this Agreement. Action Signs. If the City finds and determines on the basis of the evidence given that Action Signs 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 Action Signs is determined to not be in good faith compliance with the terms of this Agreement and the Notice of Action includes a determination that Action Signs 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 Action Signs if Action Signs no longer is operating the Digital Billboard, respectively due to the reasons enumerated in Section 7(b).

Upon expiration or early termination of this Agreement, Action Signs shall, at its sole cost and expense, remove the above-ground portions of the Digital Billboard Project within ninety (90) days, unless Action Signs 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, the Relocation Agreement, and all exhibits attached hereto or incorporated herein contain the sole and entire agreement between the Parties concerning Action Signs' 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 is 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 Action Signs, 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, Action Signs has not complied in good faith with the terms and conditions of this Agreement or the Relocation 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 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 Action Signs' 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 Action Signs 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, including, without limitation, the right to reconstruct the Removed Billboards in their existing or comparable locations and the right to any monetary reimbursement in connection with the loss of the Removed Billboards to the extent reconstruction is not feasible.

- 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 Action Signs agrees that it shall remove the above-ground portions of the Digital Billboard Project within ninety (90) days from the date of termination, unless Action Signs 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 Action Signs to defend such action or proceeding. Action Signs 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 Action Signs in connection with such claim. In the event of a Project Approval Challenge, Action Signs 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 Action Signs.

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, Action Signs, 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 Action Signs and that Action Signs 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 Action Signs 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 Action Signs joint venturers or partners. Neither Action Signs nor any of Action Signs' agents or contractors are or shall be considered to be agents of the City in connection with the performance of Action Signs' 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 Action Signs 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 Action Signs 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 Properties by Action Signs 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 Action Signs' interest in the Properties 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 Action Signs under this Agreement, provided that all defaults by Action Signs 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 Action Signs hereunder and specifying the address for service thereof, the City shall deliver to the Mortgagee concurrently with service thereof to Action Signs, all notices given to Action Signs describing all claims by the City that Action Signs has defaulted hereunder. If the City determines that Action Signs is in noncompliance with this Agreement, the City also shall serve notice of noncompliance on the Mortgagee, concurrently with service thereof on Action Signs. Until such time as the lien of the Mortgage has been extinguished, the City shall:
 - 1. 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 one or both of the Properties, 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 one or both of the Properties, 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.
 - 2. 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 Action Signs, 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 Action Signs 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 Action Signs instead of by the Mortgagee. No action or inaction by a Mortgagee pursuant to this Agreement shall relieve Action Signs 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 Action Signs 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 Action Signs to the Mortgagee. If such notice of the proposed amendment or modification is given solely by Action Signs, then Action Signs 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 Action Signs 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 Action Signs, 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

Action Signs shall have the right to record the certificate for the affected portion of the Property at Action Signs' cost.

28. Force Majeure

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, windstorms, 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 Action Signs', 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 Projects' 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, Action Signs 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 Action Signs and that the underlying leasehold interest in the Property belongs solely to Action Signs, and the City shall assert no rights in such interests held by Action Signs, 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 Action Signs 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	Removed Billboards
Exhibit D	Mitigation Monitoring and Reporting Program for Digital Billboard
Exhibit E	Project Approvals

32. Recordation of Agreement

Within ten days after the effective date of the development agreement, the City Clerk shall 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 follows:

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
Attn: Alex Greenwood
400 Grand Avenue
South San Francisco, CA 94080

With a copy to:

City Attorney
400 Grand Avenue

South San Francisco, CA 94080

Notices to Action Signs shall be addressed as follows:

Action Signs, Inc.
Attention: Andrew and Bill Morocco
13190 Pierce Road
Saratoga, CA 95070

With a copy to:

Sumble Manzoor, Esq.
Corey, Luzaich, de Ghetaldi & Riddle, LLP
700 El Camino Real
Millbrae, CA 94030

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:

Charles Michael Futrell, City Manager

ATTEST:

Rosa Acosta, City Clerk

APPROVED AS TO FORM:

Sky Woodruff, City Attorney

ACTION SIGNS:

ACTION SIGNS INC

By:

Its:

EXHIBIT A

PROPERTY MAP AND DESCRIPTION

EXHIBIT B

SITE PLAN/SPECIFICATIONS FOR DIGITAL BILLBOARD

EXHIBIT C

REMOVED/RELOCATED BILLBOARDS

Removed Billboards:

- Billboard (two faces) located at 150 Airport Blvd APN 012-338-060.

EXHIBIT D

MITIGATION MONITORING AND REPORTING PROGRAM FOR
THE DIGITAL BILLBOARD PROJECT

EXHIBIT E

PROJECT APPROVALS

Planning Commission Resolution ____-2019:

City Council Resolution ____-2019:

City Council Ordinance ____-2019: