

**BILLBOARD RELOCATION AGREEMENT BETWEEN  
THE CITY OF SOUTH SAN FRANCISCO AND ACTION SIGNS, INC.**

This Billboard Relocation Agreement (“**AGREEMENT**”) is made and entered into as of this \_\_\_\_\_, 2019, by and between the City of South San Francisco, a municipal corporation (“**CITY**”), and Action Signs, Inc., (“**ACTION SIGNS**”) (collectively the “**Parties**”).

**RECITALS**

- (A) **WHEREAS**, ACTION SIGNS has proposed to remove those certain billboards located within the City of South San Francisco commonly described and shown by maps in Exhibit “A,” entitled “Removed Billboards,” attached hereto and incorporated herein by this reference (hereafter the “**REMOVED BILLBOARDS**”); and,
- (B) **WHEREAS**, ACTION SIGNS operates and maintains a static, double-faced V-shaped outdoor advertising monopole billboard sign with the following dimensions: a display face size of fourteen (14’) feet wide and forty-eight (48’) feet high with an elevation of one hundred fourteen (114’) feet (“**EXISTING BILLBOARD**”); and,
- (C) **WHEREAS**, CITY is willing to allow ACTION SIGNS to remove the static faces of the EXISTING BILLBOARD and to construct, operate, repair and maintain a new, off-premise digital message center display including two Digital Displays (as defined below) arranged in a V-shape configuration, 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 (collectively, the “**DIGITAL BILLBOARD**”), where the Digital Billboard’s digital message center displays have the following dimensions: a display face size of forty-eight feet (48’) wide and fourteen feet (14’) high (the “**DIGITAL DISPLAYS**”) with an elevation of one hundred fourteen feet (114’) above the adjacent freeway grade. The exact specifications of the DIGITAL BILLBOARD are set forth in Exhibit “B” attached hereto. The DIGITAL BILLBOARD will be constructed at the property located at 150 Airport Boulevard (APN 012-338-060), which is further described and depicted in Exhibit “C” (the “**PROPERTY**”). Such DIGITAL BILLBOARD will also be constructed pursuant to and in accordance with the terms and conditions of Chapter 20.360 of the City of South San Francisco Municipal Code; and,
- (D) **WHEREAS**, in consideration for the removal of the REMOVED BILLBOARDS in accordance with the terms of this AGREEMENT, the benefits derived by the CITY from the construction, operation and maintenance of the DIGITAL BILLBOARD, including the promotion of business and commerce within the CITY, which construction, operation and maintenance are specifically permitted and encouraged by Section 5412 and Section 5443.5 of the California Outdoor Advertising Act (Bus. and Prof Code § 5200 et seq.), and the CITY’s sign regulations, and for valuable consideration more fully set forth herein and in the development agreement attached as Exhibit “D” hereto

(“DEVELOPMENT AGREEMENT”) related to the DIGITAL BILLBOARD, CITY will grant ACTION SIGNS the right to construct, operate and maintain the DIGITAL BILLBOARD as provided in this AGREEMENT; and,

- (E) **WHEREAS**, the DIGITAL BILLBOARD together with the removal of the REMOVED BILLBOARDS, DEVELOPMENT AGREEMENT, and this AGREEMENT are collectively referred to herein as the DIGITAL BILLBOARD PROJECT; and,
- (F) **WHEREAS**, CITY has made the following findings under its police and regulatory powers regarding the DIGITAL BILLBOARD PROJECT: that the construction, operation, repair, and maintenance of the DIGITAL BILLBOARD as proposed and as more-fully described and depicted in Exhibits B, C and E, are in compliance with all CITY regulations, plans and codes; and that the DIGITAL BILLBOARD will not unreasonably interfere with traffic sight distances, nearby residences or traffic flow; and,
- (G) **WHEREAS**, the DIGITAL BILLBOARD PROJECT is contingent upon approvals from the California Department of Transportation (“CalTrans”); and,
- (H) **WHEREAS**, ACTION SIGNS shall take down the REMOVED BILLBOARDS prior to commencing live operations of the DIGITAL BILLBOARD PROJECT; and,
- (I) **WHEREAS**, CITY adopted an Initial Study/Mitigated Negative Declaration (“IS/MND”) on August 26, 2015 (State Clearinghouse number 2013062062) in accordance with the provision of the California Environmental Quality Act (“CEQA”) and CEQA Guidelines, which analyzed the potential environmental impacts of digital billboards along the west side of U.S. Highway 101, and pursuant to an environmental assessment conducted as part of this PROJECT, the City confirmed that the construction of the DIGITAL BILLBOARD, based on substantial evidence that ACTION SIGNS’ proposed removal of the EXISTING BILLBOARD, and construction, operation and maintenance of the DIGITAL BILLBOARD, as more fully described in this AGREEMENT, would not have the potential for any significant environmental impacts, a substantial increase in the severity of any previously identified effects beyond those disclosed and analyzed in the IS/MND adopted by the CITY, nor would it require additional environmental review; and,
- (J) **WHEREAS**, CITY on \_\_\_\_\_, 2019 approved ACTION SIGNS’s application for the DIGITAL BILLBOARD PROJECT upon terms and conditions set forth in such approval; and,
- (K) **WHEREAS**, the City Council of South San Francisco has found that this AGREEMENT, and the construction, operation and maintenance of the DIGITAL BILLBOARD PROJECT as provided for herein, meet the requirements of the City’s Municipal Code, are consistent with the City’s General Plan, and all other applicable regulations, codes and plans, and will preserve and promote the public health, safety and welfare; and,

- (L) **WHEREAS**, on \_\_\_\_\_, 2019, after conducting duly noticed public hearings, the City Council introduced and conducted a first reading of an ordinance approving the DEVELOPMENT AGREEMENT (the “ORDINANCE”), and otherwise approved the DIGITAL BILLBOARD PROJECT; and,
- (N) **WHEREAS**, on \_\_\_\_\_, 2019 the City Council conducted a second reading of the ORDINANCE, and adopted the ORDINANCE and on \_\_\_\_\_, 2019 the DEVELOPMENT AGREEMENT became effective; and,
- (O) **WHEREAS**, this AGREEMENT will serve the public interest by allowing the CITY to continue its development in a planned manner and promoting business and commerce within the CITY, and will result in an overall reduction of billboards along the surface streets in the CITY.

### **AGREEMENT**

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by both Parties, the Parties hereto agree as follows:

#### **SECTION 1. RECITALS AND EXHIBITS.**

The foregoing recitals are true and correct, express the intent of the Parties, and are incorporated herein as contractual terms. All exhibits to this AGREEMENT are essential to this AGREEMENT and are hereby deemed a part hereof.

#### **SECTION 2. ACTION SIGNS AND CITY AUTHORITY AND STATUS.**

A. ACTION SIGNS hereby represents and warrants for the benefit of CITY all of the following:

1. That the information provided by ACTION SIGNS in this AGREEMENT is true and accurate to the best of ACTION SIGNS’s knowledge after a diligent inquiry; and,
2. That ACTION SIGNS is a duly organized, validly existing corporation, and is in good standing under the laws of its place of incorporation and is in good standing in the State of California; and,
3. That ACTION SIGNS’s signatory to this AGREEMENT is authorized by resolution, bylaws, constitution or other authorization of ACTION SIGNS, which resolution, bylaw, constitution or other authorization is currently in full force and effect, to execute this AGREEMENT on ACTION SIGNS’s behalf and bind ACTION SIGNS thereby; and,
4. That ACTION SIGNS has legal or equitable interest in the PROPERTY sufficient to construct, operate and maintain the DIGITAL BILLBOARD at that location; and,

5. That ACTION SIGNS is duly authorized to perform or to cause to be performed all of the obligations of ACTION SIGNS, or ACTION SIGNS's contractors, subcontractors or other agents, under and in accordance with the terms and conditions of this AGREEMENT.

B. CITY hereby represents and warrants for the benefit of ACTION SIGNS all of the following:

1. That the information in this AGREEMENT is true and accurate to the best of CITY's knowledge after a diligent inquiry; and,
2. That CITY's execution of this AGREEMENT is authorized by resolution, which resolution, is currently in full force and effect, to execute this AGREEMENT on the CITY's behalf and bind the CITY thereby; and,
3. That the CITY is duly authorized to perform or to cause to be performed all of the obligations of CITY under and in accordance with the terms and conditions of this AGREEMENT.

### **SECTION 3. EFFECTIVE DATE OF AGREEMENT.**

The effective date of this AGREEMENT shall be the later of the effective date of the resolution approving this AGREEMENT and the effective date of the DEVELOPMENT AGREEMENT (the "EFFECTIVE DATE"). This AGREEMENT shall not take effect unless all two approvals are effective.

### **SECTION 4. TERM OF AGREEMENT/EARLY TERMINATION.**

- A. The term of this AGREEMENT shall commence on the EFFECTIVE DATE and end on the date which is thirty (30) years after the COMMENCEMENT DATE (as hereinafter defined). The "COMMENCEMENT DATE" shall be the Commencement Date under the DEVELOPMENT AGREEMENT attached as Exhibit "D" hereto.
- B. This AGREEMENT may be terminated early by ACTION SIGNS in the following circumstances:
  - i. ACTION SIGNS loses its legal or equitable in the respective Property;
  - ii. A legal challenge is filed that challenges this Agreement or any governmental approvals, permits, leases, and licenses necessary for the Project (the "APPROVALS");
  - iii. In ACTION SIGNS's reasonable discretion, ACTION SIGNS is unable to obtain the requisite APPROVALS within 270 days of the EFFECTIVE DATE;

- iv. If 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; or
- v. A significant obstruction of a display occurs due to a circumstance beyond ACTION SIGNS's control.

C. This AGREEMENT may be terminated early by CITY in the following circumstances:

- i. ACTION SIGNS fails to pay any sum due under this AGREEMENT or the DEVELOPMENT AGREEMENT, subject to default procedures set forth in the aforesaid agreements; or
- ii. ACTION SIGNS fails to comply with any of its obligations pursuant to this AGREEMENT or the DEVELOPMENT AGREEMENT, subject to default procedures set forth in the aforesaid agreements.

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.

Upon the expiration or earlier termination of this AGREEMENT,

- i. All entitlements and obligations associated with the DIGITAL BILLBOARD PROJECT shall immediately terminate,
- ii. ACTION SIGNS shall forfeit any sums already paid to CITY during the year in which termination or expiration has occurred and shall not be entitled to any reimbursement,
- iii. ACTION SIGNS shall, at its sole cost and expense, remove the above-ground portions of the DIGITAL BILLBOARD 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 to remain.
- iv. The associated DEVELOPMENT AGREEMENT will terminate within thirty (30) days of such termination or expiration of this AGREEMENT, except for the Parties' obligations pertaining to indemnification, hold harmless, and insurance, which shall survive any termination of either this AGREEMENT or the DEVELOPMENT AGREEMENT.

Notwithstanding anything else in this AGREEMENT, this Section 4 shall survive any termination or expiration of this AGREEMENT.

## **SECTION 5. BILLBOARD REMOVAL.**

The Parties hereto acknowledge and agree that ACTION SIGNS will permanently remove the REMOVED BILLBOARDS within 270 days of ACTION SIGNS's receipt of all required APPROVALS and such APPROVALS becoming final, irrevocable, and unappealable. Consistent with the above, the Parties agree that ACTION SIGNS may toll the demolition and removal of the REMOVED BILLBOARDS in the event that there is a legal challenge to this AGREEMENT or to any APPROVAL. The tolling period shall last until the date upon which any legal challenge is resolved such that ACTION SIGNS may proceed with full implementation of the DIGITAL BILLBOARD PROJECT, unless this AGREEMENT is terminated as set forth in Section 4 of this AGREEMENT, in which case the obligation to demolish and remove the REMOVED BILLBOARDS become null and void. Except as otherwise provided in this AGREEMENT, upon removal of the REMOVED BILLBOARDS, any right, title and interest therein or right to place a billboard, whether by lease, license or other right, at the location of the REMOVED BILLBOARDS shall be forever terminated and shall not be or have been assigned, transferred or given to any other entity, affiliate, subsidiary, person or party by ACTION SIGNS.

Notwithstanding anything to the contrary, ACTION SIGNS understands and agrees that under no circumstances may ACTION SIGNS commence live operations of the DIGITAL BILLBOARD PROJECT until the REMOVED BILLBOARDS have been removed as contemplated in Section 5 of this Agreement.

## **SECTION 6. BILLBOARD CONSTRUCTION.**

The Parties hereto acknowledge and agree that ACTION SIGNS may construct, operate and maintain the DIGITAL BILLBOARD at the location described in Exhibit B, that the DIGITAL BILLBOARD shall be constructed to the specifications outlined in Exhibit C, and that ACTION SIGNS will at all times operate and maintain the DIGITAL BILLBOARD in compliance with this AGREEMENT, the DEVELOPMENT AGREEMENT and all applicable state and local laws. ACTION SIGNS acknowledges and agrees that the design of the DIGITAL BILLBOARD will be constructed substantially in conformance with the design depicted in attached Exhibit E.

## **SECTION 7. ACTION SIGNS'S RIGHTS AND OBLIGATIONS.**

- A. ACTION SIGNS obligations under this AGREEMENT are contingent upon (i) ACTION SIGNS receiving all required APPROVALS, including but not limited to APPROVALS from Caltrans and the CITY; and (ii) the foregoing APPROVALS being final, irrevocable, and unappealable.
- B. CITY agrees that it will reasonably assist ACTION SIGNS in connection with any APPROVALS required from the CITY and Caltrans, and any other governmental agencies, but ACTION SIGNS understands and agrees that the obligation and burden of obtaining said APPROVALS is solely an obligation and burden of ACTION SIGNS.
- C. Provided that ACTION SIGNS submits all necessary documentation satisfactory to CITY, CITY will use reasonable efforts to timely issue all APPROVALS necessary for

ACTION SIGNS's timely compliance with this AGREEMENT including, but not limited to, construction of the DIGITAL BILLBOARD and permanent removal of the REMOVED BILLBOARDS.

- D. ACTION SIGNS may replace a DIGITAL DISPLAY on the DIGITAL BILLBOARD with a static billboard face from time to time in ACTION SIGNS's sole and absolute discretion.
- E. ACTION SIGNS shall pay, up to eighty thousand dollars (\$80,000), for all reasonable CITY costs for CITY staff and consultants incurred to process CITY APPROVALS. Any delay caused by the CITY in its issuance of APPROVALS shall not result in a default or failure of performance by ACTION SIGNS for the period of time delay caused by CITY. ACTION SIGNS's obligations to pay for customary permit fees pursuant to Section 7(a) of the Development Agreement and its obligations to pay legal fees and costs pursuant to Sections 9, 15 and 20 of the Development Agreement are not included in the calculation of the eighty thousand dollar (\$80,000) cap discussed in this section.
- F. As long as ACTION SIGNS operates a DIGITAL DISPLAY on the DIGITAL BILLBOARD, ACTION SIGNS shall agree to use one (1) guaranteed spot in a standard rotation on one Digital Display for four (4) "blocks" of time, during each calendar year following the COMMENCEMENT DATE to display CITY-sponsored event announcements and non-commercial public service announcements to promote the civic interests of the CITY ("CITY MESSAGES") with no charge for advertising space. Each "block" will consist of one (1) advertising spot of no greater than eight (8) seconds in the standard rotation of eight (8) spots on one Digital Display, where such CITY MESSAGES 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. The blocks of time are subject to the following conditions and parameters:
  - (i) The CITY shall provide the requested time periods to ACTION SIGNS for the following year prior to November 1 of the preceding year. CITY shall be responsible for providing ACTION SIGNS with its CITY MESSAGES and for any costs associated with providing ACTION SIGNS associated artwork in acceptable format, and will be subject to ACTION SIGNS's standard advertising copy rejection and removal policies which allow ACTION SIGNS the right in its sole discretion to approve or disapprove copy and remove copy once posted or displayed. If ACTION SIGNS rejects or removes CITY MESSAGES, ACTION SIGNS will give CITY a reasonable opportunity to revise CITY MESSAGES and resubmit them to ACTION SIGNS in order to ensure CITY is granted its four (4) blocks of time per calendar year.
  - (ii) The CITY shall not charge for, or exchange goods or services for, any sign space granted on the DIGITAL DISPLAYS.

- (iii) The CITY must submit “camera ready art” utilizing formats and protocols acceptable to ACTION SIGNS from time to time or pay production costs. All copy shall be submitted to ACTION SIGNS at least ten (10) business days in advance.
- (iv) If at any time in the future ACTION SIGNS removes the DIGITAL DISPLAY(s) from the sign structure or ACTION SIGNS is unable to operate the DIGITAL DISPLAY(s), for any reason, the advertising spot commitments in this section shall be automatically terminated and rendered null and void, and ACTION SIGNS shall be under no obligation whatsoever to provide the City with any type of free advertising space. However, at any time ACTION SIGNS operates the Digital Display(s) with electronic/digital technology, the advertising spot commitment shall remain in place.
- (v) It is expressly understood and agreed that CITY MESSAGES may not include any names, logos or marks associated with any third party non-governmental person or entity or any products or any services associated with any third party non-governmental person or entity.
- (vi) Any unused space will be forfeited and shall not roll over. In the event CITY does not provide ACTION SIGNS with a space request for the following year by November 1 of the prior year, or in the event the CITY fails to use any space, nothing herein shall be deemed to prevent or prohibit ACTION SIGNS from using such spots for promoting ACTION SIGNS’S business, promoting charitable enterprises, or from actively seeking advertisers for unsold or unused spots, even though that may result in the shortening of advertising time that would otherwise have been available to the CITY under this AGREEMENT.
- (vii) In addition to the guaranteed space described above, ACTION SIGNS also agrees to provide the CITY with one spot in a standard eight spot rotation during periods other than the two week periods when the CITY has a guaranteed spot, on a space available basis and provided that such spots may be pre-empted by ACTION SIGNS for any reason, including without limitation the use of such spots for promoting ACTION SIGNS’S business, promoting charitable enterprises, or from actively seeking advertisers for such spots.
- (viii) Notwithstanding anything else in this AGREEMENT, the CITY shall and hereby does agree to indemnify, defend and hold harmless ACTION SIGNS for, from and against, any claims, costs (including, but not limited to, court costs and reasonable attorneys’ fees), losses, actions or liabilities arising from or in connection with any third party allegation concerning any CITY MESSAGE, including but not limited to a claim that any portion of any CITY MESSAGE infringes or violates the rights, including, but not limited to, copyright, trademark, trade secret or any similar right, of any third party. This indemnity shall not include an obligation for CITY to be responsible for compensating ACTION SIGNS for any lost profits or consequential damages or any similar remedy that



ACTION SIGNS may assert against any third party. Notwithstanding anything else in this AGREEMENT, this Section 7(F)(viii) shall survive any termination or expiration of this AGREEMENT.

- G. ACTION SIGNS shall pay customary permit fees, fees imposed pursuant to the DEVELOPMENT AGREEMENT and any applicable gross receipts 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 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 in connection with the DIGITAL BILLBOARD.
- H. 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 permits and approvals for the DIGITAL BILLBOARD or of the ADDENDUM TO THE NEGATIVE DECLARATION, 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, as set forth in more detail in Section 11 of this AGREEMENT. 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 that 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, during the pendency of such action, ACTION SIGNS shall have the option to return any DIGITAL DISPLAY to a conventional non-digital display and CITY shall not be entitled to claim any lost revenues or damages as a result of such election by ACTION SIGNS.

## **SECTION 8. RELATIONSHIP OF PARTIES.**

Under no circumstances shall this AGREEMENT be construed as one of agency, partnership, joint venture or employment between ACTION SIGNS and the CITY. Each party acknowledges and agrees that it neither has, nor will it give the appearance or impression of having, any legal authority to bind or commit the other Party in any way, notwithstanding that this AGREEMENT is binding on and between the Parties.

## **SECTION 9. INSURANCE REQUIREMENTS.**

- 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's employees working on the DIGITAL BILLBOARD PROJECT site. In addition, ACTION SIGNS shall require each contractor and subcontractor engaged by ACTION SIGNS for work on the DIGITAL BILLBOARD PROJECT site to provide Workers' Compensation insurance for its respective employees working at the DIGITAL BILLBOARD 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 9(a) and 8(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 PROPERTY 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.

**SECTION 10. INDEMNIFICATION AND HOLD HARMLESS.**

- 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's contractors, subcontractors, agents or employees, in connection with the construction, improvement, operation or maintenance of the DIGITAL BILLBOARD, 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 negligence or willful misconduct of any CITY INDEMNITEES, or (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). ACTION SIGNS shall defend such CLAIMS with joint counsel selected by ACTION SIGNS but subject to the approval of the CITY, where such approval shall not be reasonably withheld.
- B. 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.

**SECTION 11. NOTICES.**

Any communication or notice which either of the Parties is required to send to the other, or which either of the Parties desires to send to the other, shall be in writing and shall be either: personally delivered; mailed using the United States Postal Service, postage prepaid, return receipt requested; delivered by a recognized overnight courier service; or sent by facsimile to the office of the respective Parties as identified below:

TO THE CITY: City Manager, City Clerk and City Attorney  
City of South San Francisco  
400 Grand Avenue  
South San Francisco, CA 94080

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

With copies to: Sumble Manzoor, Esq.

Corey,

Luzaich, de Ghetaldi & Riddle, LLP  
700 El Camino Real  
Millbrae, CA 94030

Either of the Parties may change its address by sending notice of the new address to the other pursuant to this section.

## **SECTION 12. ENTIRE AGREEMENT.**

This AGREEMENT and the DEVELOPMENT AGREEMENT, including exhibits, represent the entire understanding of the Parties as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder.

## **SECTION 13. MISCELLANEOUS PROVISIONS.**

- A. The parties agree that this AGREEMENT shall be governed and construed in accordance with the laws of the State of California. 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.
- B. The headings of the sections and subsections of this AGREEMENT are inserted for convenience only. They do not constitute a part of this AGREEMENT and shall not be used in its construction.
- C. No provision of this AGREEMENT will be deemed waived by either Party unless expressly waived in a writing signed by the waiving Party. No waiver shall be implied by delay or any other act or omission of either Party. The waiver by any party to this AGREEMENT of a breach or violation of any provision of this AGREEMENT shall not be deemed a continuing waiver, a waiver of any other term or condition contained herein, or a waiver of any subsequent breach or violation of that or any other provision of this AGREEMENT.
- D. Any and all exhibits that are referred to in this AGREEMENT are incorporated herein by reference and are deemed a part of this AGREEMENT.
- E. This AGREEMENT may be amended only by written agreement executed by both Parties.
- F. If a court of competent jurisdiction adjudges any provision of this AGREEMENT as void or unenforceable, the remaining provisions shall not be affected thereby and shall remain in full force and effect to the maximum possible extent.
- G. Where this AGREEMENT refers to the CITY and no officer of the CITY is named, the City Manager of the CITY shall have the authority to act on behalf of the CITY.

- H. The provisions of this AGREEMENT shall be binding upon and inure to the benefit of the successors and assigns of each Party.
- I. This AGREEMENT may be executed in counterparts, each of which shall be deemed an original but all of which shall constitute a single instrument.
- J. In the event either Party is in default of any provision hereof, the non-defaulting Party, as a condition precedent to the exercise of its remedies, shall be required to give the defaulting Party written notice of the same pursuant to this AGREEMENT.

Unless otherwise specified herein, the defaulting Party shall have thirty (30) calendar days from the receipt of such notice to cure the default, or, if the default cannot be cured within thirty (30) calendar days, to commence and diligently pursue a cure. If the defaulting Party timely cures the default, then the default shall be deemed waived and this AGREEMENT shall continue in full force and effect.

If ACTION SIGNS is in default of this AGREEMENT and/or is in default of any payment provision under the DEVELOPMENT AGREEMENT with respect to the DIGITAL BILLBOARD PROJECT and does not timely cure such payment default, the CITY shall be entitled to pursue all of its remedies available at law or equity, including, but not limited to, termination of this AGREEMENT and specific performance, and in the event the CITY elects to terminate this AGREEMENT, ACTION SIGNS shall remove the above-ground portions of the DIGITAL BILLBOARD as provided below.

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 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 to remain.

- K. Except as otherwise expressly provided in this Agreement, if the performance of any act required by this Agreement to be performed by either ACTION SIGNS or Caltrans is prevented or delayed because of a Force Majeure Event, as defined below, then the time for performance will be extended for a period equivalent to the period of delay, and performance of the act during the period of delay will be excused. An extension of time for any such Force Majeure Event will be for the period of the enforced delay and will commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other Party within thirty (30) days of the commencement of the cause. Times of performance under this Agreement may also be extended in writing by the mutual agreement of City and ACTION SIGNS. "Force Majeure Event," for purposes of this Agreement, means a cause of delay that is not the fault of the Party who is required to perform under this Agreement and is beyond that Party's reasonable control, including the elements (including floods, earthquakes, windstorms, and unusually severe weather), fire, energy shortages or rationing, riots, acts of

terrorism, war or war-defense conditions, acts of any public enemy, epidemics, the actions or inactions of any governmental entity or that entity's agents, litigation, labor shortages (including shortages caused by strikes or walkouts), and materials shortages.

- L. 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 at its existing or comparable location and the right to any monetary reimbursement in connection with the loss of the REMOVED BILLBOARDS to the extent reconstruction is not feasible. This provision does not waive any of ACTION SIGNS's remedies for causes of action that do not arise out of a breach or violation of this AGREEMENT, including such causes of action that arise statutorily or provide for a constitutional right to just compensation, such as a taking.
- M. In the event of litigation, the prevailing Party in any action filed to enforce this Agreement will be entitled to recover costs, attorneys' fees, and all other expenses incurred or arising out of any effort to enforce this AGREEMENT.

**WITNESS THE EXECUTION HEREOF** as of the date first hereinabove written.

CITY:  
CITY OF SOUTH SAN FRANCISCO

By: \_\_\_\_\_  
Mike Futrell, City Manager

ATTEST:

\_\_\_\_\_  
Rosa Acosta, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Sky Woodruff, City Attorney

ACTION SIGNS:  
ACTION SIGNS, INC.

By:\_\_\_\_\_

**EXHIBIT A**

**REMOVED BILLBOARDS**

REMOVED BILLBOARDS:

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



**EXHIBIT B**

**DIGITAL BILLBOARD PROPERTY MAP AND DESCRIPTION OF LOCATION**

**EXHIBIT C**

**DIGITAL BILLBOARD SITE PLANS/SPECIFICATIONS**

**EXHIBIT D**  
**DEVELOPMENT AGREEMENT**

**EXHIBIT E**  
**DESIGN OF DIGITAL BILLBOARD**

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