



staff report

TO: Honorable Mayor and Members of the City Council

ATTENTION: Jeffrey L. Stewart, City Manager

FROM: Jim DellaLonga, Director of Economic Development

SUBJECT: Consideration and possible action to authorize the City Manager to execute Agreement File No. XXX, in a form approved by the Interim City Attorney, with Bulletin Displays, LLC, for the preparation of an Exclusive Outdoor Advertising Development Plan.

DATE: February 22, 2016

EXECUTIVE SUMMARY

Bulletin Displays, LLC, is proposing to conduct a citywide feasibility analysis of potential locations, both on public and private property, for outdoor advertising signage. The proposed Agreement File No. XXX will provide Bulletin Displays, LLC, with an exclusive opportunity to conduct said analysis for a period of two years with a possible extension period of one year.

RECOMMENDATION TO CITY COUNCIL

- 1) Authorize the City Manager to execute Agreement File No. XXX with Bulletin Displays, LLC, in a form approved by the Interim City Attorney; or
- 2) Alternatively, discuss and take other action related to this item.

CEQA

This Agreement is exempt from the California Environmental Quality Act ("CEQA") for two reasons. First, pursuant to CEQA Guidelines § 15061(b)(3), the Agreement is exempt from CEQA because it can be seen with certainty that the Agreement will not, by itself, have significant effects on the environment. In addition, the Agreement is not a "project" as defined under CEQA Guidelines § 15378 because it has no potential for resulting in physical change in the environment, directly or ultimately. Any project that might result from work performed under the Agreement would be analyzed individually in accordance with CEQA.

FISCAL IMPACT

Based upon the terms of the draft agreement, the City would receive 7% of the annual gross revenue from each sign proposed to be located on private property, and 25% of the annual gross advertising revenue from each sign proposed to be located on public property, or a base annual fee of \$50,000 for a freeway sign location or \$25,000 for a street sign location, whichever is higher. The total revenue generated would depend on how many, if any, sign locations were approved by the City. The exact amount of revenue, however, is speculative at this point.

DISCUSSION

It is proposed that Bulletin Displays, LLC (Bulletin), be provided with an exclusive opportunity to conduct a citywide analysis of public and private property to determine the potential for the development of outdoor advertising signage. Agreement File No. XXX will give Bulletin two years with a possible one-year extension to conduct the analysis of potential outdoor advertising sites adjacent to both the 91 Freeway and City streets. When complete, the identified sites in the plan will be assessed by staff and, along with Bulletin’s analysis, a recommendation will be presented to the City Council as to which sites, if any, should be considered for outdoor advertising signs. Among other things, the plan may include proposed amendments to the Bellflower Municipal Code to accommodate sign locations.

While this agreement would cause Bulletin to prepare a plan, much additional work and analysis is required going forward. The plan would need to be accompanied with an environmental analysis of the sign locations along with any proposed amendments to the City’s sign regulations (or General Plan), and a potential development agreement. All of those items would require separate negotiations and environmental review before the Planning Commission or City Council could consider them for any future approvals. This agreement is simply a preliminary step toward any long-term (somewhat speculative) goal of receiving new advertising revenue from various locations within the City.

Bulletin is well-qualified to perform the tasks as set forth in the proposed agreement. Its previous experience includes over 20 years of billboard and outdoor advertising throughout the Los Angeles area including the City of Compton. A reference check with the City of Compton concluded that Bulletin has performed to staff’s satisfaction there. Staff has negotiated the current draft contract at length. Based upon Bulletin’s past track record, professionalism, and response to these initial negotiations, it appears that the course of action proposed by the vendor may benefit the City. At this point, all of the risk lies with the vendor; the City is not required to expend any funds for preparing the plan (there is agreement as to a fixed application fee for submitting sign locations identified in the proposed plan to be considered by the City, as well as a 2 year restriction period prohibiting the City from negotiating with other sign entities on identified sign locations, but there is no actual outlay of general fund or other monies).

ATTACHMENT

Agreement File No. XXX 3

EXCLUSIVE OUTDOOR ADVERTISING DEVELOPMENT PLAN AGREEMENT

This EXCLUSIVE OUTDOOR ADVERTISING DEVELOPMENT PLAN AGREEMENT ("Agreement") is entered made and entered on the ____ day of _____, 2016, by and between the City of Bellflower, a municipal corporation organized and existing under the laws of the State of California ("City"), and Bulletin Displays, LLC, a California Limited Liability Company ("Bulletin"). Either Bulletin or the City are referred to as "Party" or "Parties."

RECITALS

- A. Bulletin is a state licensed outdoor advertising company in the state of California and engaged in the business of evaluating the location, installation and operation of commercial outdoor advertising signs, and administering those signs and agreements related to the use of those signs.
- B. City is a California municipal corporation that desires to analyze all potential locations in the City for outdoor advertising signs whether on private or public property.
- C. In light of the consideration in this Agreement, City is willing to enter this Agreement as a means having Bulletin exclusively analyze the possible private and public properties that could be developed with outdoor advertising.

NOW, THEREFORE, with reference to the foregoing recitals and in consideration of the mutual promises, obligations and covenants herein contained, the Parties agree as follows:

ARTICLE 1

BASIC PROJECT INFORMATION AND CONTRACT DOCUMENTS

1.1 **Basic Project Information.** The following terms have the meanings given below:

Commencement Date: The date of this Agreement.

Expiration Date: The second anniversary of the Commencement Date, subject to extension in writing for up to one extension period of one year in the sole and absolute discretion of the City Manager, as provided in section 2.2 below.

Project Property: All private and public real property within the City of Bellflower.

1.2 **Definitions.** For the purposes of this Agreement, the following definitions apply:

"City Revenues" means, for any period of time, the city portion as detailed in Section 4.2(B) below the gross advertising revenues received by (or paid for the benefit of, or as directed by) Bulletin from sales of advertising on a Sign developed under an effective development agreement. The City Revenues specifically excludes advertising

agency fees paid to the advertiser's advertising agency and or brokerage fees paid to the sales brokers other than Bulletin. Furthermore, the City Revenue is based solely on the basic advertising size, as recorded on the City building permits, and does not include free form cutouts, solid extensions, back-lit displays, 3D presentations, tri-vision, stretch faces, additional art work reproductions or any other special treatment or appurtenances as required by the advertiser.

"Plan" has the meaning ascribed in Section 3.1 (B).

"Force Majeure" means severe weather, earthquake, flood, fire, natural disaster, shortages of labor, materials, fuel, power or transportation, act of war, terrorist attack, civil unrest, or other causes beyond the reasonable control of the Parties, and any challenge to the issuance of governmental permits and approvals by third parties, but shall not include normal delays in the processing of governmental permits and approvals.

"Gross Revenue" means all advertising revenue obtained from the Sign Location approved by a development agreement, but specifically excludes advertising agency fees paid to the advertiser's advertising agency and or brokerage fees paid to the sales brokers other than Bulletin. Furthermore, the gross revenue is based solely on the basic advertising size, as recorded on the City building permits, and does not include free form cutouts, solid extensions, back-lit displays, 3D presentations, tri-vision, stretch faces, additional art work reproductions or any other special treatment or appurtenances as required by the advertiser.

"Operating Permits" means any permit required by applicable law specifically for the operation of a Sign on the Sign Location in question, as distinct from generally applicable building and construction permits.

"Planning Materials" means the Plan and all designs, plans, studies, reports, and other information submitted in any form in connection with the Plan.

"Restriction Period" means the period beginning on the Commencement Date and ending on the date of the expiration or earlier termination of this Agreement, except that if this Agreement is terminated pursuant to Section 3.1 below, the Restriction Period will extend until the third anniversary of the Commencement Date.

"Sign" means any of various sizes and types of outdoor advertising display faces, including static, digital, or mechanical (including tri-vision) and all other billboards, displays, signboards and other types of equipment and structures that may be appropriate for outdoor advertising purposes, and associated structures and equipment, located or proposed to be located in Sign Locations.

"Sign Location" means each portion of the Project Property on which a Sign is or is proposed to be located.

"Third Party Property" means real property not owned by the City or Bulletin.

"Development Agreement" If the City approves a Development Plan, the Parties will work on drafting a development agreement with the general terms included in **Exhibit A**.

"Term" has the meaning in Section 2.1.

ARTICLE 2

TERM OF AGREEMENT AND RELATIONSHIP OF THE PARTIES

2.1 **Term.** The primary term of this Agreement extends from the Commencement Date to the Expiration Date, inclusive, as extended or terminated as provided in this Agreement or by mutual written Agreement of the Parties (the "Term").

2.2 **Extension of Term by City Manager; Extension for Active Development in Progress.** The City Manager may, in the sole and absolute discretion of the City Manager, extend the Expiration Date by up to one extension period of one calendar year by giving Bulletin notice of that extension before the then-scheduled Expiration Date. The City Manager may elect to extend the Expiration Date up to one extension period of one year each with respect to one or more of the Bulletin Sign Locations.

2.3 **Independent Contractor.** The relationship established between Bulletin and the City by this Agreement is the relationship of independent contractor. This Agreement is not to be construed to establish any partnership or joint venture between Bulletin and the City, and neither Bulletin nor the City can hold itself out to any third party as being participants in a joint venture, partnership or any other form of joint enterprise with respect to any Signs.

2.4 **Exclusivity.** With respect to each Sign Location in the approved Plan, the City will not engage any other person or entity to provide the same services or services similar to those provided by Bulletin under the Development Agreement for that particular Sign Location during the term applicable to such Sign Location.

ARTICLE 3

PLAN

3.1 **Asset Analysis and Plan.**

(A) Bulletin will evaluate the opportunities for the marketing and development of Signs in potential new Sign Locations on the Project Property and such evaluation will be included in the Plan described in clause (B) below.

(B) Within 120 days after the date of this Agreement, Bulletin will prepare and submit to the City Manager, or designee, a proposed plan for the development, marketing and use of potential Sign Locations (the "**Plan**"). Bulletin will revise the draft Plan to address questions and comments delivered by City to Bulletin in writing and re-

submit the revised draft Plan to City within 10 days after such questions and comments are delivered to Bulletin. Upon the City Manager, or designee, finding that the Plan adequately identifies the Project Property and provides sufficient marketing information, the City Manager, or designee, will propose the Plan to the City Council for consideration. If the City Council disapproves the draft Plan, City may elect to terminate this Agreement by written notice to Bulletin, in which event this Agreement will terminate and neither Party will have any further obligations to the other hereunder except for those that survive the termination of this Agreement, including the provisions of Section 3.5 below.

The Plan will cover possible sign locations along the 91 freeway and along city streets. Bulletin may also identify other locations that Bulletin believes may be suitable Sign Locations on Project Property. The Plan must include the following elements:

- (1) the proposed Sign Locations;
- (2) the types of Signs proposed;
- (3) whether Bulletin proposes to operate the Signs under one or more agreements;
- (4) the value of the economic terms for any proposed development agreement as the general economic terms are detailed in **Exhibit A**;
- (5) relevant market and/or media research, planning and competitive analyses;
- (6) a review of existing City billboard agreements designated by City in writing, with proposals for modifications or alternatives;
- (7) locations on Third Party Property that Bulletin proposes be developed, as described in Section 3.7 below; and
- (8) any other matters reasonably requested by the City that are to be considered in the development, marketing, and use of the Sign Locations.

3.2 Development Methodology.

(A) The development of Sign Locations and Signs under this Agreement, if approved by City, will be undertaken using the following methodology:

- (1) Bulletin may submit an application to City in accordance with applicable law including, without limitation, the Bellflower Municipal Code (“BMC”) for developing proposed Signs upon Project Property in accordance with the Plan. Part of that application will include a request for a development agreement in accordance with Government Code § 65864, *et seq.* that conforms with this Agreement. Nothing in this Agreement obligates the City Council, nor can it, to approve a development agreement

for a Sign.

(B) If Bulletin elects not to pursue a development methodology above for a particular Sign Location, then that Sign will be removed from the Plan and neither Party will have any further obligations to each other under this Agreement with respect to that Sign Location, except for obligations that survive the termination of this Agreement, and except that the restrictions provided in Section 3.5 below will not apply to that Sign Location.

(C) The Parties acknowledge that the implementation of the Plan will require Bulletin to apply for certain entitlements from the City including, without limitation, discretionary legislative acts including a development agreement all of which will require environmental review pursuant to the California Environmental Quality Act ("CEQA) and including a possible request for recommended modifications to the Municipal Code. Nothing in this Agreement is intended to, nor can it be deemed, to constitute an approval for any particular Sign or Sign Location by the City.

3.3 City's Documents and Information. The City will, within a reasonable time after written request, provide Bulletin any and all records and documents which Bulletin reasonably requests of the City that are necessary or appropriate for Bulletin's preparation of the Plan, except for documents and information that applicable law prohibits the City from disclosing or which is privileged (including, attorney-client communications and attorney work product). The Parties will each make its representatives reasonably available for meetings to discuss drafts of the proposed Plan and the approved Plan, and drafts of any development agreement or License Agreement.

3.4 Approvals and Permits. Bulletin must prepare and submit to the applicable governmental authorities all necessary applications for Operating Permits.

3.5 Restriction Period for Prospective Sign Locations Proposed by Bulletin.

(A) Except for Signs installed through an approved Plan or listed in Section 3.5(A)(1) below, during the Restriction Period, the City will not install, maintain or operate, and will not cause (other than as required by applicable law) any third party to install, maintain or operate, any new revenue-generating billboard or other revenue-generating advertising sign of any kind at any location on Project Property that is identified as a prospective Sign Location in a proposed Plan submitted by Bulletin. As used herein, the term "revenue-generating" means generation of advertising revenue from a sign that is advertising off-premise messages or on-premise messages that are not a principal part of the on-premise business, but does not mean permit fees and similar fees paid to the City in the normal course of the permitting/entitlements process.

(1) One Sign location for a third party on the north/east corner of Artesia Boulevard and Bellflower Boulevard on Los Angeles County Assessor Parcel number 7161-004-033.

(B) If the City breaches the restriction in Section 3.5(A) above, then in addition

to any other remedies that may be available to Bulletin in law or equity, the revenue from such Sign Location will be used to calculate the revenue Bulletin would have been entitled to under the terms of this Agreement.

(C) The restriction provided in Section 3.5(A) above is in addition to, and not in limitation of, the general exclusivity agreement provided in Section 2.4 above.

(D) The provisions of this Section 3.5 survive the expiration or other termination of this Agreement.

3.6 Access to Property. Except for maintenance, if City approves the Plan and also elects to proceed as to a Sign Location owned by City, and Bulletin has given City at least two (2) business days' prior written notice that Bulletin intends to access such Sign Location and build it, then Bulletin has the right to have access to such Sign Location for purposes of performing the activities contemplated by this Agreement. Bulletin must avoid conflict between the City's uses of the Sign Location and Bulletin's services and make any necessary arrangements for on-site safety measures.

3.7 Locations on Third Party Property. Bulletin must include in the Plan potential Sign Locations on property owned by third parties that Bulletin has entitlements thereto and would be willing to develop together with property owned by the City that Bulletin would be willing to develop under this Agreement. If the City agrees to pursue any such opportunity, Bulletin and the City may include those locations mutually agreeable locations within a potential development agreement.

ARTICLE 4 BULLETIN DEVELOPMENT

4.1 Development Agreements. If the City elects to develop a Sign Location owned by the City or by a private party, the Parties may consider entering into a development agreement acceptable to the City Council and Bulletin for that Sign Location in accordance with applicable law including, without limitation, CEQA and the BMC.

4.2 Key Terms. Any development agreement would include provisions based on the following key terms (but providing greater detail):

(A) The term of each development agreement will be a term beginning the date the Sign receives all its applicable permits from all governmental agencies and expire 30 years thereafter, and have appropriate reporting/audit, insurance, maintenance, revenue to the City, and indemnification provisions.

(B) City Revenues associated with the applicable Sign Location that is placed on City owned property will be 25% of the gross advertising revenues and if the Sign Location is placed on privately owned property, City Revenues will be 7% of the gross advertising revenues.

(C) If the Sign is to be removed due to casualty, condemnation, or legal

prohibition, and the Parties fail to agree on a comparable replacement Sign Location, then Bulletin and the City may claim and recover in proportion to their interests therein any lost assets or revenue or other condemnation damages for the loss of the Sign. If a Sign is removed from public property so that the City can develop the Sign Location for other purposes, the City agrees not to install or permit the installation of outdoor advertising billboards on that property for which that Sign Location is a part until the date of the originally scheduled termination date of the applicable development agreement.

ARTICLE 5
PERMITS AND OTHER APPROVALS

5.1 **Operating Permits.** Bulletin will prepare and pay for any and all applications required for any Operating Permits necessary for each proposed Sign in the name of Bulletin.

5.2 **Construction Permits.** Bulletin will obtain all such permits and pay for each Sign to be installed on a Bulletin Sign Location under a development agreement.

ARTICLE 6
ACCOUNTING RECORDS

6.1 **Bulletin's Records.** For so long as Bulletin collects and distributes City Revenues, and for three years thereafter, Bulletin must maintain records of receipts, disbursements and withholding of amounts received by it on account of each development agreement looking back at least seven years. The City and its accountants are entitled to inspect such records and documents at the Bulletin's offices during normal business hours upon 2 business days' prior written request, and Bulletin must, at Bulletin's cost, make such records and documents available for the purpose of such inspection.

6.2 **The City's Records.** The City will keep records of all Development Project Revenues received by it, and Bulletin and its accountants are entitled to inspect such records and documents at the City's office where such records are regularly kept upon not less than 2 business days' prior written request.

ARTICLE 7
REPRESENTATIONS OF THE PARTIES

7.1 **By Bulletin.** Bulletin represents to the City as follows, as of the date of this Agreement:

(A) Bulletin is a limited liability company formed and validly existing under the laws of the State of California.

(B) Bulletin has the requisite power, authority, and capacity to execute, deliver, and perform this Agreement.

(C) This Agreement has been duly authorized, executed, and delivered by

Bulletin, and the execution, delivery, and performance by Bulletin of this Agreement does not and will not violate or constitute a default under the organizational documents of Bulletin or any other covenant, contract, Agreement, or understanding to which it is a Party or by which it or any of its properties or assets is bound or affected.

(D) Bulletin has not received any notice of any actions, suits, proceedings, or investigations pending or threatened against Bulletin that individually or in the aggregate are reasonably likely to result in any material adverse effect on the business, properties, or assets, or the condition, financial or otherwise, of Bulletin or in any impairment of Bulletin's ability to perform its obligations under this Agreement.

7.2 By the City. The City represents to Bulletin as follows, as of the date of this Agreement:

(A) The City is a municipal corporation formed and validly existing under the laws of the state of California.

(B) The City has the requisite power, authority, and capacity to execute, deliver, and perform this Agreement.

(C) This Agreement has been duly authorized, executed, and delivered by the City, and the execution, delivery, and performance by the City of this Agreement does not and will not violate or constitute a default under the organizational documents of the City or any other covenant, contract, Agreement, or understanding to which it is a Party or by which it or any of its properties or assets is bound or affected; provided, however, that the foregoing does not cover or include legal restrictions or recorded documents for any proposed Sign Location, it being understood that Bulletin shall investigate such matters with the good faith cooperation of City.

(D) The City has not received any notice of any actions, suits, proceedings, or investigations pending or threatened against the City that individually or in the aggregate are reasonably likely to result in any material adverse effect on the business, properties, or assets, or the condition financial or otherwise, of the City or in any impairment of the City's ability to perform its obligations under this Agreement.

7.3 Breach of Representations. A breach by one of the Parties of any of its representations made in this Article 7 will constitute a breach of this Agreement by that Party and, if uncured, will entitle the other Party to its remedies provided in this Agreement. However, the non-breaching Party will not be entitled to any tort remedies, regardless of whether those remedies would otherwise available at common law or in equity.

ARTICLE 8 CONFIDENTIALITY

8.1 Use and Disclosure of Confidential Information.

(A) Except as otherwise provided, each Party to this Agreement will hold in confidence, not disclose and not permit any third party or company any direct or indirect access to any Confidential Information of the other Party except as permitted by this Agreement. Recipient's obligations regarding Confidential Business Information received under this Agreement expires five years after this Agreement terminates.

(B) As used in this Article 8, with respect to each item of Confidential Information, the following definitions apply:

"Disclosing Party" means the Party that disclosed information to the other.

"Receiving Party" means the Party that received information from the other.

(C) A Recipient is obligated to protect only such Confidential Business Information disclosed under this Agreement as is (a) disclosed in tangible form clearly labeled as Confidential at the time of disclosure, or (b) disclosed initially in non-tangible form identified as Confidential at the time of disclosure and within thirty days thereafter under the procedure set forth below.

(D) Confidential Business Information may be disclosed either visually, orally, or in writing. When disclosed in writing, the Confidential Business Information must be identified as such at the time of disclosure, with the writing being clearly stamped, labeled or otherwise identified as Confidential Business Information. When disclosed orally or visually, such information must be identified as confidential Business Information and a subsequent written confirmation of such disclosure will be forwarded to the recipient with thirty days after disclosure. Such written confirmation must specifically identify the information disclosed, to whom it was disclosed and the date of disclosure. Either party may request written, signed acknowledgment of receipt of transmitted Confidential Business Information at any time during this Agreement.

(E) Bulletin understands and agrees that City is a public entity subject to the California Public Records Act. Accordingly, City may be required to disclose certain information to third-parties pursuant to the California Public Records Act or court order, notwithstanding the obligations set forth in this Agreement. City will, however, inform Bulletin regarding any third-party's attempt to obtain Confidential Information so that Bulletin may take such action it deems appropriate to prevent such disclosure.

(F) A Receiving Party may disclose Confidential Information of a Disclosing Party to the Receiving Party's employees, officers, governing body members, professional advisors and agents (those Persons, the Receiving Party's **"Representatives"**) to the extent necessary to enable that Party to perform this Agreement, enforce its rights under this Agreement, or comply with Applicable Law, on condition that the Receiving Party notifies those Persons of the confidential nature of the Confidential Information and obtains their Agreement to keep that information confidential. Each Receiving Party is liable for disclosures of Confidential Information of the other Party made by that Receiving Party's Representatives to the same extent as if

the Receiving Party had disclosed that Confidential Information itself.

(G) A Receiving Party cannot use, or cause, authorize or permit any other Person to use, any Confidential Information of the other Party except for the purposes of this Agreement, as permitted by this Agreement or as authorized by the Disclosing Party in writing.

(H) A Receiving Party must protect all Confidential Information of a Disclosing Party using the same degree of care as it uses to prevent the unauthorized use, disclosure, publication, or dissemination of its own confidential information of a similar nature or character, but in no event using less than a reasonable degree of care.

8.2 Exceptions. Recipient is not liable for disclosure or use of any Confidential Business Information:

(A) If the Disclosing Party advises the Receiving Party that the information disclosed is not required to be treated as Confidential Information;

(B) If the information is then or subsequently becomes generally available to or accessible by the public through no fault or wrongdoing of the Receiving Party or its Representatives, and the Receiving Party has no actual knowledge that the information was made available to the public in violation of a third party's duty of confidentiality;

(C) If the information is a matter of public record or in the public domain;

(D) If the information was in the possession of the Receiving Party before it was disclosed by the Disclosing Party;

(E) If the information is received by the Receiving Party on a non-confidential basis from a source other than the Disclosing Party, and the Receiving Party did not know or have reason to know that the source was bound by a duty of confidentiality to the Disclosing Party;

(F) If the information was independently developed by the Receiving Party without access to disclosures by the Disclosing Party, as evidenced by contemporaneous written records;

(G) If the Disclosing Party authorizes disclosure of the information (and only to the extent of that authority); or

(H) If disclosure is required by the Freedom of Information Act, the California Public Records Act, or other Applicable Law, as determined by City. Before any such disclosure, recipient agrees that it will inform discloser regarding any effort to obtain such Confidential Business Information so that discloser may take such action it wishes to prevent disclosure.

8.3 Compelled Disclosure. If a Receiving Party receives a subpoena, court order, or

other legal process requiring disclosure of Confidential Information, the Receiving Party will promptly notify the Disclosing Party of the requirement and may, but is not required to, cooperate at the Disclosing Party's expense in any efforts the Disclosing Party may wish to undertake to seek a protective order or other exception to the disclosure requirement. Unless the Disclosing Party obtains a protective order or exception before the Receiving Party is required to disclose the Confidential Information, the Receiving Party may disclose so much of the Confidential Information as is required to comply with the disclosure requirement.

ARTICLE 9 **INSURANCE AND LIABILITY**

9.1 Bulletin's Insurance.

(A) Bulletin must procure and maintain during the Term the following coverages and limits of insurance, with reasonable and typical deductibles:

(1) Commercial General Liability insurance in form and substance acceptable to the City, on an occurrence basis, with limits of at least \$2,000,000 per occurrence for bodily injury, personal injury and property damage and \$4,000,000 general aggregate.

(2) Commercial automotive liability insurance in form and substance acceptable to the City, covering liability for any auto, with limits of at least \$1,000,000 per accident for personal injury and property damage.

(3) Workers' Compensation Insurance as required by applicable law, and Employer's Liability Insurance with limits of at least \$1,000,000 per accident, per employee.

(4) Errors and Omissions Insurance with limits of at least \$2,000,000 per occurrence. If such insurance is issued on a "claims-made" basis, Bulletin shall maintain this insurance for at least two (2) years after the end of the Term, either by replacement policies or by the issuance of tail coverage.

(B) The City and its officers, employees and agents must be named as additional insureds under Bulletin's policy of Commercial General Liability insurance with respect to liability arising out of Bulletin's activities under this Agreement. Bulletin may provide this additional insured coverage by way of a blanket additional insured endorsement.

(C) For claims arising out of services rendered by Bulletin under this Agreement, Bulletin's liability insurance coverage must be primary and not contributory with the City's insurance.

(D) Each insurance policy required by this Section 9.1 must be endorsed to state that coverage will not be suspended, voided, canceled by the insurer or the

insured, or reduced in coverage or in limits except after thirty (30) days prior written notice has been given to the City (or ten (10) days prior written notice in the event of non-payment of premiums).

(E) Bulletin must provide the City certificates of insurance and (for the endorsements specifically required above) endorsements evidencing the issuance of the insurance coverage required by this Agreement. Upon the City's request, Bulletin must submit copies of all required insurance policies, including the endorsements affecting the coverage required by this Agreement.

(F) All policies required by this Agreement must allow City, as additional insured, to satisfy the self-insured retention ("SIR") and deductible of the policy in lieu of Bulletin (as the named insured) should Bulletin fail to pay the SIR or deductible requirements. The Parties hereby agree that the SIR and deductible Bulletin carries as part of its insurance policy (as shown in **Exhibit B**) is sufficient for purposes of this Agreement. Bulletin understands and agrees that satisfaction of this requirement is an express condition precedent to the effectiveness of this Agreement. Failure by Bulletin as primary insured to pay its SIR or deductible constitutes a material breach of this Agreement. Should City pay the SIR or deductible on Bulletin's behalf upon the Bulletin's failure or refusal to do so in order to secure defense and indemnification as an additional insured under the policy, City may include such amounts as damages in any action against Bulletin for breach of this Agreement in addition to any other damages incurred by City due to the breach.

9.2 Indemnification. Bulletin agrees to the following:

A. Indemnification for Professional Services. With respect to claims arising from Bulletin's performance of Professional Services, Bulletin will save harmless and indemnify and at City's request reimburse defense costs for City and all its officers, volunteers, employees, and representatives from and against any and all suits, actions, or claims, of any character whatever, brought for, or on account of, any injuries or damages sustained by any person or property resulting or arising from any negligent or wrongful act, error or omission by Bulletin or any of Bulletin's officers, agents, employees, or representatives, in the performance of this Agreement, except for such loss or damage arising from City's sole negligence or willful misconduct.

B. Indemnification for other Damages. With respect to claims arising from Bulletin, Bulletin indemnifies and holds City harmless from and against any claim, action, damages, costs (including, without limitation, attorney's fees), injuries, or liability, arising out of this Agreement, or its performance, except for such loss or damage arising from City's sole negligence or willful misconduct. Should City be named in any suit, or should any claim be brought against it by suit or otherwise, whether the same be groundless or not, arising out of this Agreement, or its performance, Bulletin will defend City and will indemnify City for any judgment rendered against it or any sums paid out in settlement or otherwise.

C. For purposes of this section "City" includes City's officers, officials, employees, agents, representatives, and volunteers.

D. It is expressly understood and agreed that the foregoing provisions will survive termination of this Agreement.

E. The requirements as to the types and limits of insurance coverage to be maintained by Bulletin, and any approval of said insurance by City, are not intended to and will not in any manner limit or qualify the liabilities and obligations otherwise assumed by Bulletin pursuant to this Agreement, including, without limitation, to the provisions concerning indemnification.

ARTICLE 10 DEFAULTS AND REMEDIES

10.1 **Default.** The occurrence of any of the following circumstances will constitute a "Default" of either Party:

(A) A Party fails in a material way to perform its obligations under this Agreement and fails to cure such default within 30 days following delivery of written notice of that failure from the other Party (or, if the default cannot reasonably be cured within that 30-day time period, but the Party commences efforts to cure within that 30-day period and diligently pursues such efforts and the default is not inherently incurable, then within the longer amount of time reasonably necessary to complete such cure).

(B) A Party commences voluntary bankruptcy or insolvency proceedings or is adjudicated a bankrupt, becomes insolvent, makes an assignment for the benefit of creditors or proposes or makes any arrangement for the settlement of its debts (in whole or in part) or for the liquidation of its assets or a receiver or a receiver and manager or person with similar authority is appointed with respect to the assets of the Party;

(C) a material portion of the assets of A Party is seized in satisfaction of any judgment; or

(D) any proceedings are taken for the liquidation, dissolution or winding-up of a Party or a Party ceases or threatens to cease to carry on business in the ordinary course.

10.2 **The Remedies.** If a Default occurs, the non-defaulting Party may have recourse to the following remedies (but without any duplicative recovery):

(A) Recover its actual damages for breach of contract resulting from the defaulting Party's default;

(B) Terminate this Agreement; and

(C) Have recourse to any other remedies for the breach available at law or in equity, except as limited by the provisions of this Agreement.

10.3 **Force Majeure.** Neither Party is responsible to the other for a failure in the performance of its obligations under this Agreement that results from Force Majeure, and the time for each Party to render performance that is delayed or interfered with by Force Majeure will be extended for so long as the Force Majeure condition continues to delay or interfere with that Party's performance, and for so long thereafter as is reasonably necessary to remobilize or otherwise resume performance following the abatement of the Force Majeure circumstances. The Parties will make reasonable efforts to cooperate to mitigate the effects of any such delays.

ARTICLE 11

DISPOSITION OR ACQUISITION OF PROJECT PROPERTY

11.1 **Disposition of Portions of the Project Property.** The City may sell, lease or otherwise dispose of parts of the City's property in accordance with applicable law.

11.2 **Pending Plans.** If the City sells or otherwise disposes of property ("Disposed Property") on the approved Plan that City has also subsequently approved for development of a Sign within a development agreement whether the Sign Location is built or not, the City may assign its interest in this Agreement insofar as it applies to the applicable Disposed Property to the transferee of the Disposed Property and, in the terms of the agreement for that sale or other transfer, and must require the transferee to assume the obligations of the City hereunder with respect to the Disposed Property and City Sign Locations thereon.

11.3 **Development Agreements Not Affected.** The provisions of the foregoing Sections of this Article are not to be construed to affect any development agreement on Disposed Property. The effect of the transfer of City Property on development agreements will be governed by applicable law.

ARTICLE 12

ASSIGNMENT

12.1 By the City. The City may assign its interest in this Agreement, in whole or in part, as provided in Article 12 above without the consent of Bulletin. The City must notify Bulletin of any such assignment within seven business days after the effective date of the assignment.

12.2 By Bulletin. Except for Section 13.3 below, Bulletin may assign this Agreement to any third party only upon City's sole discretion, which the City will not unreasonably withhold, condition or delay, on condition that the third party assumes in writing the obligations of Bulletin under this Agreement accruing from and after the date of that assignment.

12.3 Notwithstanding the foregoing, Bulletin shall have the right to assign or otherwise transfer this Agreement in its entirety without such consent, but with prior written notice to City (i) to a subsidiary, parent, or entity under common control with the Bulletin; or (ii) to a successor party in the event of a merger, acquisition, sale, transfer or other disposition of all or substantially all of the assets of the Bulletin; or (iii) as part of financial assignment to a financial institution that finances Bulletin and the City Manager shall be authorized to execute any documentation required to approve and/or acknowledge the financing, including but not limited to any Notices of Consent to Assignment on behalf of the City or similar financial documents. Any security posted by Bulletin may be substituted by the assignee or transferee. After a transfer or assignment as permitted by this Section, and written agreement of the assignee or transferee to be bound by this Agreement, then, provided the Bulletin is not then in breach of this Agreement, the City shall look solely to such assignee or transferee for compliance with the provisions of this Agreement.

ARTICLE 13 **NOTICES**

13.1 **How Delivered.** To be valid, notices under this Agreement must be in writing, delivered: (a) by certified mail, return receipt requested; or (b) by an overnight courier service of national repute with delivery tracking, and addressed to the Party to whom it is directed at that Party's address for notices stated in Article 1. Either Party may change its address for notices by giving ten (10) days prior written notice of such change to the other Party.

13.2 **When Effective.** A valid notice or other communication under this Agreement will be effective when received by the Party to which it is addressed. It will be deemed to have been received as follows:

(A) If delivered by certified mail, return receipt requested and postage prepaid, upon receipt or attempted delivery as indicated on the return receipt; and

(B) If it is delivered by an overnight courier service, one business day after delivery to the service, unless a later delivery date is indicated by the company's tracking records.

City's Address for Notices:

City of Bellflower
16600 Civic Center Dr.
Bellflower, CA 90706
Attention: City Manager

Bulletin's Addresses for Notices:

Bulletin Displays, LLC
3127 E. South St., Ste. B
Long Beach, Ca 90805
Attention: CFO

ARTICLE 14
MISCELLANEOUS PROVISIONS

14.1 **Governing Law.** The validity and effect of this Agreement shall be determined in accordance with the laws of the State of California, without reference to its conflicts of laws principles. Exclusive venue is within the appropriate court for Los Angeles County.

14.2 **Survival of Provisions.** All provisions of this Agreement that provide for actions to be taken or amounts paid after the end of the Term survive the expiration or other termination of this Agreement.

14.3 **No Continuing Waiver.** No waiver by a Party of any breach of any provision of this Agreement will be deemed for any purpose to constitute a waiver of any breach of any other provision hereof, nor of any continuing or subsequent breach of the same provision.

14.4 **No Partnership.** Nothing in this Agreement is to be construed to create a partnership between the Parties. The relationship between the City and Bulletin is an independent contracting and licensor/licensee relationship.

14.5 **Entire Agreement.** This Agreement represents the complete understanding and Agreement between the Parties with respect to the subject matter of this Agreement. This Agreement may be changed only by a written amendment signed by the Parties.

14.6 **Successors and Assigns.** This Agreement is binding on and inures to the benefit of the successors and permitted assigns of the Parties.

14.7 **Deadlines on Business Days.** The term "business day," as used herein, refers to days other than Saturday, Sunday, or holidays when banks in the State of California are not open for transaction of regular business. If the last day for any obligation to be performed under this Agreement falls on a day other than a business day, that deadline will be automatically extended to the next business day.

14.8 **Time of the Essence.** Time is of the essence of this Agreement.

14.9 **No Regulated Services.** Nothing in this Agreement is to be construed to require Bulletin to provide legal advice to the City, perform real estate brokerage services, or perform any other activity for which any kind of professional license is required. Bulletin is not a real estate brokerage firm.

14.10 **Severability.** If any provision of this Agreement or the application thereof to any person or circumstance is determined to be invalid or unenforceable, the remainder of this Agreement (and the application of the affected provision to any other person or circumstance) will remain valid and enforceable, except that if a provision of this

Agreement that is written to apply to both Parties is determined to be invalid or unenforceable as to one Party but not as to the other, that provision will be void as to both Parties.

14.11 **Construction.** This Agreement was negotiated between sophisticated Parties, and its provisions are to be construed without regard to which Party first drafted or proposed them.

14.12 **Counterparts.** This Agreement may be executed in counterparts, each of which will constitute an original and all of which taken together will constitute one and the same instrument.

14.13 **Effect on City's Governmental Rights and Powers.** City is entering into this Agreement in its proprietary capacity only, and nothing in this Agreement can be construed to constitute a waiver or exercise of the City's governmental rights and powers, all of which are hereby reserved.

[Signature Page Follows]

CITY OF BELLFLOWER, a general law city and municipal corporation and the Successor Agency to the Bellflower Redevelopment Agency, a subdivision of the State of California.

Bulletin Displays, LLC

By:

Jeffrey L. Stewart, City Manager

By:

Mark Kudler, President

Date:

By:

Attest:

Mayra Ochiqi, City Clerk

APPROVED AS TO FORM:

Karl H. Berger, Interim City Attorney

EXHIBIT A

Term Sheet Contemplated by the Parties

1. The parties will negotiate in good faith an appropriate agreement as provided by applicable law.
 - a. The instrument will list locations with legal descriptions, site plans and elevations, and a reasonable schedule of performance.
2. Term of 30 Years
3. Processing Fee: \$7,500 for Permit Processing, Legal Fees, etc. and Bulletin will pay for any CEQA third party costs
4. Guaranteed Base Fee Per Site to be Applied Against a Percentage of the Gross
 - a. Freeway Location: \$50,000 per year
 - b. Street Location: \$25,000 per year
5. Percentage of Gross Revenue to City (All rental income less agency or brokers' fees and appurtenances)
 - a. City Property: 25% City and 75% Bulletin
 - b. Private Property: 7% City and 93% Bulletin and Private Property Landlord
6. Revenue Report to the City by Bulletin:
 - a. 90 days after the beginning of the calendar year (after the sign receives all final permits), Bulletin shall compare the total Development for all signs to the Percentage of the Gross Revenue of all signs and pay the difference if the Percentage is higher and provide the City with a Revenue Report.
 - b. Both sides can audit each other regarding the signs/sign locations approved by a potential future agreement.
7. All defaults shall have a cure period of 30 days or a reasonable additional amount of time if the default is reasonable being pursued and the cure would reasonably take longer.
8. Bulletin owns the sign assets. No default of assets upon termination.

EXHIBIT B

**Insurance
Self-Insured Retention (SIR) and Deductible**

ATTACHED



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
2/18/2016

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER	CONTACT NAME:	
	PHONE (A/C, No, Ext)	FAX (A/C, No)
	E-MAIL	
	ADDRESS:	
	INSURER(S) AFFORDING COVERAGE	
INSURED Bulletin Displays, LLC 3127 E. South Street, Suite B Long Beach, CA 90805	INSURER A :	Nationwide Mutual Insurance Company NAIC # 23787
	INSURER B :	National Union Fire Insurance Company of Pittsburg, PA NAIC # 19445
	INSURER C :	
	INSURER D :	
	INSURER E :	
	INSURER F :	

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR		ACP7835197076	08/23/2015	08/23/2016	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:					
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS					COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE		EBU020682482	08/23/2015	08/23/2016	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	<input type="checkbox"/> Y <input checked="" type="checkbox"/> N				PER STATUTE OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
Proof ONLY
No Deductible Applies

CERTIFICATE HOLDER CANCELLATION

Proof of Insurance ONLY	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE



State Farm Mutual Automobile Insurance Company

900 Old River Road
Bakersfield CA 93311-9501

14785-1-I MATCH 00054 MUTL VOL

DECLARATIONS PAGE

NAMED INSURED 00054
75-8637-1 I A

000054 0058
BULLETIN DISPLAYS, LLC
3127 E SOUTH ST STE B
LONG BEACH CA 90805-3794

POLICY NUMBER 271 3438-E10-75B
POLICY PERIOD NOV 13 2015 to MAY 10 2016
12:01 A.M. Standard Time

AGENT

PHONE

DO NOT PAY PREMIUMS SHOWN ON THIS PAGE.
IF AN AMOUNT IS DUE, THEN A SEPARATE STATEMENT IS ENCLOSED.

YOUR CAR

YEAR	MAKE	MODEL	BODY STYLE	VEHICLE ID NUMBER	CLASS
2007	DODGE	RAM 2500	PICKUP	1D7KS28D47J577260	300HCV11

SYMBOLS	COVERAGE & LIMITS	PREMIUMS
A	Liability Coverage Limit-Each Accident \$1,000,000	\$609.81
C	Medical Payments Coverage Limit-Each Person \$5,000	\$29.12
D	Comprehensive Coverage - \$1,000 Deductible	\$52.05
G	Collision Coverage - \$1,000 Deductible	\$254.42
R1	Car Rental and Travel Expenses Coverage Limit - Car Rental Expense Each Day, Each Loss \$25 \$600	\$16.52
U	Uninsured Motor Vehicle Coverage Bodily Injury Limits Each Person, Each Accident \$30,000 \$60,000	\$24.23
U1	Uninsured Motor Vehicle Property Damage Coverage	\$5.71
Total premium for NOV 13 2015 to MAY 10 2016:		\$991.86 This is not a bill.

IMPORTANT MESSAGES

Replaced policy number 2713438-75A.

Your total renewal premium for NOV 10 2015 to MAY 10 2016 is \$1,009.01.

Location used to determine rate charged-5360 LOCKHAVEN DR, BUENA PARK CA 90621.

EXCEPTIONS, POLICY BOOKLET & ENDORSEMENTS (See policy booklet & individual endorsements for coverage details.)

YOUR POLICY CONSISTS OF THIS DECLARATIONS PAGE, THE POLICY BOOKLET - FORM 9805B, AND ANY ENDORSEMENTS THAT APPLY, INCLUDING THOSE ISSUED TO YOU WITH ANY SUBSEQUENT RENEWAL NOTICE.
01 6028BU ADDITIONAL INSURED-CITY OF LYNWOOD, 11330 BULLIS RD, LYNWOOD CA 90262-3665.
02 6028BU ADDITIONAL INSURED-CITY OF COMPTON, 205 S WILLOWBROOK AVE, COMPTON CA 90220-3134.
6126MD EXCESS COVERAGE FOR PERSONAL VEHICLE SHARING.
6289DW SINGLE LIMIT LIABILITY COVERAGE.

Agent: DREW MARTIN

Telephone: (562)943-4343

Prepared NOV 24 2015 8637-B85

00621/00267

155-3865 CA 2 05-2002 (01a0251c)
149X0N (01a0251e)

See Reverse Side

(01a0254c)