

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

City of Fullerton
303 W. Commonwealth Avenue
Fullerton, CA 92832-1775
Attn: City Clerk

(Space Above This Line Is for Recorder's Use Only)

This Agreement is recorded at the request and for the benefit of the City of Fullerton and is exempt from the payment of a recording fee pursuant to Government Code §§ 6103 and 27383.

DRAFT

DEVELOPMENT AGREEMENT

between

CITY OF FULLERTON

and

AGE Advertising, LLC

CONCERNING CONSTRUCTION OF A FREEWAY- ORIENTED ELECTRONIC BILLBOARD

DEVELOPMENT AGREEMENT

(Pursuant to California Government Code sections 65864-65869.5)

This DEVELOPMENT AGREEMENT (the “Agreement”) is dated for reference purposes as of the ___ day of ___, 2021 (the “Agreement Date”), and is being entered into by and between the CITY OF FULLERTON (“City”), and AGE ADVERTISING, LLC (“Company”). City and Leasee are sometimes collectively referred to in this Agreement as the “Parties” and individually as a “Party.”

RECITALS

A. HUOYEN INTERNATIONAL, INC. (“Landowner”) is the owner of that certain real property located in the City of Fullerton, County of Orange, State of California at 1210 BURTON STREET (APN # 267-033-01) (the “Property”). The Property is more particularly described in the legal description attached hereto as Exhibit A-1 and is depicted on the site map attached hereto as Exhibit B.

B. Landowner and Company have entered into a lease for a portion of the Property (the “Site”) whereby Company has acquired a legal interest in that portion of the Property constituting the Site, the boundaries of which are shown on the attached Exhibit B, and Company intends to construct a Freeway-Oriented Electronic Billboard on the Site with the written authorization and approval of Landowner.

C. There is property in the City adjacent to local freeways and suitable for the operation of Freeway-Oriented Electronic Billboards. Company is an outdoor-advertising company that has extensive experience in successfully installing, operating, and maintaining digital billboards throughout the United States. Company desires to contract with the owners of certain property for the purpose of installing, operating, and maintaining Freeway-Oriented Electronic Billboards, and it has the requisite resources and expertise to do so successfully.

D. To encourage investment in, and commitment to, comprehensive planning and public facilities financing, strengthen the public planning process and encourage private implementation of the local general plan, provide certainty in the approval of projects in order to avoid waste of time and resources, and reduce the economic costs of development by providing assurance to property owners that they may proceed with projects consistent with existing land use policies, rules, and regulations, the California Legislature adopted California Government Code sections 65864-65869.5 (the “Development Agreement Statute”) authorizing cities and counties to enter into development agreements with persons or entities having a legal or equitable interest in real property located within their jurisdiction.

E. For the reasons recited herein, the City has determined that the construction and operation of Company’s proposed outdoor advertising displays is a development for which this Agreement is appropriate and is specifically permitted and encouraged by §§ 5412 and 5443.5 of the California Outdoor Advertising Act (Bus. and Prof. Code § 5200 et seq.).

F. City finds that a substantial public benefit will accrue to City by reason of the advertising revenue that will be generated by Company’s outdoor advertising displays and shared with City, opportunity for the City to present public service messages and public safety alert messages. In exchange for providing these public benefits, Company receives assurance that it may proceed with the construction and operation of Company’s outdoor advertising displays and the Project in accordance with ordinances, resolutions and regulations existing as of the date of this Agreement, subject only to the terms and conditions contained herein.

G. This Agreement is consistent with the City of Fullerton’s General Plan Community Development Type (general plan designation) of Industrial.

H. In recognition of the significant public benefits that this Agreement provides, the

City Council has found that this Agreement: (i) is consistent with the City of Fullerton General Plan as of the date of this Agreement; (ii) is in the best interests of the health, safety, and general welfare of City, its residents, and the public; (iii) is entered into pursuant to, and constitutes a present exercise of, City's police power; and (iv) is categorically exempt from the provisions of the California Environmental Quality Act ("CEQA") pursuant to Section 15303 regarding New Construction or Conversion of Small Structures and Section 15332 regarding In-Fill Development projects.

I. On September 15, 2021, City's Planning Commission held a public hearing on this Agreement, made findings and determinations with respect to this Agreement, and recommended to the City Council that the City Council approve this Agreement.

J. On _____, 2021, the City Council also held a public hearing on this Agreement and considered the Planning Commission's recommendations and the testimony and information submitted by City staff, Company, and members of the public. On _____, 2021, the City Council adopted Ordinance No. _____ (the "Adopting Ordinance"), finding this Agreement to be consistent with the City of Fullerton General Plan and approving this Agreement.

AGREEMENT

NOW, THEREFORE, City and Company agree as follows:

1. **Definitions.** In addition to any terms defined elsewhere in this Agreement, the following terms when used in this Agreement shall have the meanings set forth below:

"Action" shall have the meaning ascribed in Section 8.10 of this Agreement.

"Adopting Ordinance" shall mean City Council Ordinance No. _____ approving and adopting this Agreement.

"Agreement" shall mean this Development Agreement, as the same may be amended from time to time.

"Agreement Date" shall mean the date first written above, which date is the date the City Council adopted the Adopting Ordinance.

"Agreement Year" means one of the consecutive 12-month periods during the Term. The first Agreement Year begins on the Effective Date.

"Business Day" means any day the City's main offices located at 303 Commonwealth Ave, Fullerton, California, are open to the public.

"Caltrans" means the California Department of Transportation.

"Caltrans Permits" means all permits and approvals that Company must obtain from Caltrans to install, operate, and maintain the Freeway-Oriented Electronic Billboards in accordance with this Agreement.

"CEQA" shall mean the California Environmental Quality Act (California Public Resources

Code sections 21000-21177) and the implementing regulations promulgated thereunder by the Secretary for Resources (California Code of Regulations, Title 14, section 15000 *et seq.*), as the same may be amended from time to time.

“City” shall mean the City of Fullerton, a California general law city, and any successor or assignee of the rights and obligations of the City of Fullerton hereunder.

“City Council” shall mean the governing body of City.

“City’s Affiliated Parties” shall have the meaning ascribed in Section 11.1 of this Agreement.

“City Permits” means all building permits and other permits, entitlements, and agreements that the City, acting in its governmental capacity, must issue or approve for Company to install, operate, and maintain the Freeway-Oriented Electronic Billboards in accordance with this Agreement.

“Claim” shall have the meaning ascribed in Section 11.1 of this Agreement.

“Commencement Date” means the date as of which both of the following have occurred: 1) the City has approved the final Plans (defined in Section 6(a)), and 2) Company has received all necessary governmental permits and approvals for the Freeway-Oriented Electronic Billboard, including the Caltrans Permits, Orange County Flood Control District and the City Permits.

“Company” shall mean AGE ADVERTISING, LLC and any successor or assignee to all or any portion of the right, title, and interest of the freeway-oriented electronic billboard in and to the leasehold estate of the Site.

“Cure Period” shall have the meaning ascribed in Section 9.1 of this Agreement. “Default” shall have the meaning ascribed to that term in Section 9.1 of this Agreement.

“Develop” or “Development” shall mean to improve or the improvement of the Property for the purpose of completing the structures, improvements, and facilities comprising the Project, including but not limited to: grading; the construction of infrastructure and public facilities related to the Project, whether located within or outside the Property; the construction of all of the private improvements and facilities comprising the Project; the preservation or restoration, as required of natural and man-made or altered open space areas; and the installation of landscaping. The terms “Develop” and “Development,” as used herein, do not include the maintenance, repair, reconstruction, replacement, or redevelopment of any structure, improvement, or facility after the initial construction and completion thereof.

“Development Agreement Statute” shall mean California Government Code sections 65864-65869.5, inclusive.

“Development Exactions” shall mean any requirement of City in connection with or pursuant to any ordinance, resolution, rule, or official policy for the dedication of land, the construction or installation of any public improvement or facility, or the payment of any fee or charge in order to lessen, offset, mitigate, or compensate for the impacts of Development of the

Project on the environment or other public interests.

“Development Plan” shall mean all of the land use entitlements, approvals and permits approved by the City for the Project on or before the Agreement Date, as the same may be amended from time to time consistent with this Agreement. Such land use entitlements, approvals, and permits include, without limitation, the following: (1) approval of a Development Agreement authorizing such installation or construction (2) approval of a Conditional Use Permit to assure that the degree of compatibility shall be maintained with respect to the particular use on the particular site and in consideration of other existing and potential uses within the general area in which such use is proposed to be located.

“Development Regulations” shall mean the following regulations as they are in effect as of the Effective Date and to the extent they govern or regulate the development of the Property, but excluding any amendment or modification to the Development Regulations adopted, approved, or imposed after the Effective Date that impairs or restricts Company’s rights set forth in this Agreement, unless such amendment or modification is expressly authorized by this Agreement or is agreed to by Company in writing: the General Plan; the Development Plan; and, to the extent not expressly superseded by the Development Plan or this Agreement, all other land use and subdivision regulations governing the permitted uses, density and intensity of use, design, improvement, and construction standards and specifications, procedures for obtaining required City permits and approvals for development, and similar matters that may apply to Development of the Project on the Property during the Term of this Agreement that are set forth in Title 14 of the Municipal Code (Buildings & Construction), and Title 15 of the Municipal Code (Zoning), but specifically excluding all other sections of the Municipal Code. Notwithstanding the foregoing, the term “Development Regulations,” as used herein, does not include any City ordinance, resolution, code, rule, regulation or official policy governing any of the following: (i) the conduct of businesses, professions, and occupations; (ii) taxes and assessments; (iii) the control and abatement of nuisances; (iv) the granting of encroachment permits and the conveyance of rights and interests which provide for the use of or the entry upon public property; or (v) the exercise of the power of eminent domain.

“Digital Display Area” or “Message Center” means the portion of the Freeway-Oriented Electronic Billboard that consists of back-to-back digital (currently LED technology) display areas used for general commercial advertising, with each of the two display areas measuring nominally 14 feet high and 48 feet wide plus a framing around the display area.

“Effective Date” shall mean the latest of the following dates, as applicable: (i) the date that is thirty (30) days after the Agreement Date; (ii) if a referendum concerning the Adopting Ordinance or any of the Development Regulations approved on or before the Agreement Date is timely qualified for the ballot and a referendum election is held concerning the Adopting Ordinance or any of such Development Regulations, the date on which the referendum is certified resulting in upholding and approving the Adopting Ordinance and such Development Regulations and becomes effective, if applicable; (iii) if a lawsuit is timely filed challenging the validity or legality of the Adopting Ordinance, this Agreement, and/or any of the Development Regulations approved on or before the Agreement Date, the date on which said challenge is finally resolved in favor of the validity or legality of the Adopting Ordinance, this Agreement, and/or the applicable Development Regulations, whether such finality is achieved by a final non-appealable judgment, voluntary or involuntary dismissal (and the passage of any time required to appeal an involuntary dismissal), or binding written settlement agreement. Promptly after the Effective Date occurs, the

Parties agree to cooperate in causing an appropriate instrument to be executed and recorded against the Property memorializing the Effective Date.

“Environmental Laws” means all federal, state, regional, county, municipal, and local laws, statutes, ordinances, rules, and regulations which are in effect as of the Agreement Date, and all federal, state, regional, county, municipal, and local laws, statutes, rules, ordinances, rules, and regulations which may hereafter be enacted and which apply to the Property or any part thereof, pertaining to the use, generation, storage, disposal, release, treatment, or removal of any Hazardous Substances, including without limitation the following: the Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 U.S.C. Sections 9601, *et seq.*, as amended (“CERCLA”); the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, 42 U.S.C. Sections 6901, *et seq.*, as amended (“RCRA”); the Emergency Planning and Community Right to Know Act of 1986, 42 U.S.C. Sections 11001 *et seq.*, as amended; the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, *et seq.*, as amended; the Clean Air Act, 42 U.S.C. Sections 7401 *et seq.*, as amended; the Clean Water Act, 33 U.S.C. Section 1251, *et seq.*, as amended; the Toxic Substances Control Act, 15 U.S.C. Sections 2601 *et seq.*, as amended; the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. Sections 136 *et seq.*, as amended; the Federal Safe Drinking Water Act, 42 U.S.C. Sections 300f *et seq.*, as amended; the Federal Radon and Indoor Air Quality Research Act, 42 U.S.C. Sections 7401 *et seq.*, as amended; the Occupational Safety and Health Act, 29 U.S.C. Sections 651 *et seq.*, as amended; and California Health and Safety Code Section 25100, *et seq.*

“Freeway-Oriented Electronic (Digital) Billboards” means a billboard located within 200 feet of the SR-57 or SR-91 freeway right-of-way, which utilizes digital message technology on at least one (1) display face, capable of changing the static message or copy on the sign electronically, such that the alphabetic, pictographic, or symbolic informational content of which can be changed or altered on a fixed display surface composed of electronically illuminated or electronically actuated or motivated elements can be changed or altered electronically. This includes billboards with displays that must be preprogrammed to display only certain types of information (i.e., time, date, temperature) and billboards whose informational content can be changed or altered by means of computer-driven electronic impulses. This includes, without limitation, billboards also known as digital billboards or LED billboards. Freeway-Oriented Electronic Billboards may be internally or externally illuminated and shall contain static messages only, and shall not have animation, movement, or the appearance or optical illusion of movement, of any part of the sign structure, design, or pictorial segment of the sign. Each static message shall not include flashing, scintillating lighting or the varying of light intensity.

“General Plan” shall mean City’s General Plan adopted by the City Council on May 1, 2012, by Resolution No. 2012-39, excluding any amendment after the Effective Date that impairs or restricts Company’s rights set forth in this Agreement, unless such amendment is expressly authorized by this Agreement, is authorized by Sections 8 or 9, or is specifically agreed to by Company.

“Hazardous Substances” means any toxic substance or waste, pollutant, hazardous substance or waste, contaminant, special waste, industrial substance or waste, petroleum or petroleum-derived substance or waste, or any toxic or hazardous constituent or additive to or breakdown component from any such substance or waste, including without limitation any substance, waste, or material regulated under or defined as “hazardous” or “toxic” under any

Environmental Law.

“Include” and its variants are not restrictive. For example, “includes” means “includes but not limited to,” and “including” means “including but not limited to.”

“Landowner” shall mean HUOYEN INTERNATIONAL, INC., and any successor or assignee to all or any portion of the right, title, and interest in and to ownership of all or a portion of the Property.

“Mortgage” shall mean a mortgage, deed of trust, sale and leaseback arrangement, or any other form of conveyance in which the Property, or a part or interest in the Property, is pledged as security and contracted for in good faith and for fair value.

“Mortgagee” shall mean the holder of a beneficial interest under a Mortgage or any successor or assignee of the Mortgagee.

“Notice of Default” shall have the meaning ascribed in Section 9.1 of this Agreement.

“Operational” means the Freeway-Oriented Electronic Billboard is capable, legally and functionally, of displaying advertising on the Digital Display Area.

“Party” or “Parties” shall mean either City or Company or both, as determined by the context.

“Project” shall mean all on-site and off-site improvements that Company is authorized and/or required to construct with respect to the Site, as provided in this Agreement and the Development Regulations and depicted in Exhibit C, as the same may be modified or amended from time to time consistent with this Agreement and applicable law.

“Property” is located at 1210 BURTON STREET (APN # 267-033-01) as described in Exhibit A and depicted on Exhibit B.

“Public Benefit Fee” shall have the meaning ascribed in Section 3.1 of this Agreement.

“Sign Structure” means the portion of the Freeway-Oriented Electronic Billboards other than the Digital Display Area, and it includes all ancillary equipment and utilities installed on the Sites.

“Site” is the portion of the Property subject to the lease between Landowner and Company described in Exhibit B.

“Subsequent Development Approvals” shall mean all discretionary development and building approvals that Company is required to obtain to Develop the Project on and with respect to the Site after the Agreement Date consistent with the Development Regulations and this Agreement, with the understanding that except as expressly set forth herein City shall not have the right subsequent to the Effective Date and during the Term of this Agreement to adopt or impose requirements for any such Subsequent Development Approvals that do not exist as of the Agreement Date.

“Term” shall have the meaning ascribed in Section 2.4 of this Agreement.

“Transfer” shall have the meaning ascribed in Article 12 of this Agreement.

2. General Provisions.

2.1 General Plan Consistency, Zoning Implementation.

This Agreement and the Development Regulations applicable to the Site will cause City’s zoning and other land use regulations for the Site to be consistent with the General Plan.

2.2 Binding Effect of Agreement.

The Site is hereby made subject to this Agreement. Development of the Site is hereby authorized and shall be carried out in accordance with the terms of this Agreement.

2.3 Company Representations and Warranties Regarding Legal Interest in the Site and Related Matters Pertaining to this Agreement.

Company and each person executing this Agreement on behalf of Company hereby represents and warrants to City as follows: (i) that Company has a legal interest by a lease in the fee simple title to the Site; (ii) if Company or any co-owner comprising Company is a legal entity that such entity is duly formed and existing and is authorized to do business in the State of California; (iii) if Company or any co-owner comprising Company is a natural person that such natural person has the legal right and capacity to execute this Agreement; (iv) that all actions required to be taken by all persons and entities comprising Company to enter into this Agreement have been taken and that Company has the legal authority to enter into this Agreement; (v) that Company’s entering into and performing its obligations set forth in this Agreement will not result in a violation of any obligation, contractual or otherwise, that Company or any person or entity comprising Company has to any third party; (vi) that neither Company nor any co- owner comprising Company is the subject of any voluntary or involuntary petition; and (vii) that Company has no actual knowledge of any pending or threatened claims of any person or entity affecting the validity of any of the representations and warranties set forth in clauses (i)- (vi), inclusive, or affecting Company’s authority or ability to enter into or perform any of its obligations set forth in this Agreement.

2.4 Term.

The term of this Agreement (the “Term”) shall commence on the Effective Date and shall terminate on the “Termination Date.”

Notwithstanding any other provision set forth in this Agreement to the contrary, if either Party reasonably determines that the Effective Date of this Agreement will not occur because (i) the Adopting Ordinance or any of the Development Regulations approved on or before the Agreement Date for the Project has/have been disapproved by City’s voters at a referendum election or (ii) a final non-appealable judgment is entered in a judicial action challenging the validity or legality of the Adopting Ordinance, this Agreement, and/or any of the Development Regulations for the Project approved on or before the Agreement Date such that this Agreement and/or any of such Development Regulations is/are invalid and unenforceable in whole or in such

a substantial part that the judgment substantially impairs such Party's rights or substantially increases its obligations or risks hereunder or thereunder, then such Party, in its sole and absolute discretion, shall have the right to terminate this Agreement upon delivery of a written notice of termination to the other Party, in which event neither Party shall have any further rights or obligations hereunder except that Company's indemnity obligations set forth in Article 10 shall remain in full force and effect and shall be enforceable, and the Development Regulations applicable to the Project and the Site only (but not those general Development Regulations applicable to other properties in the City) shall similarly be null and void at such time.

The Termination Date shall be the thirty (30) year anniversary of the Effective Date, as said date may be extended in accordance with Section 6.1 of this Agreement.

3. Public Benefits.

3.1 Annual Public Benefit Fee.

As consideration for City's approval and performance of its obligations set forth in this Agreement, Company shall pay to City an annual fee, that shall be in addition to any other fee or charge to which the Site and the Project would otherwise be subject, (herein, the "Annual Fee") in the sum of the greater of \$75,000 each calendar year or twelve percent (12%) of the gross receipts generated, less agency commissions, by the Freeway Oriented Electronic Billboard. If there is a first and last partial calendar year during the term of the Agreement, the amount payable shall be prorated on the basis of a 365 day year. The commencement of the Annual Fee shall be paid on the date of the building permit final for the Project. Company acknowledges by its approval and execution of this Agreement that it is voluntarily agreeing to pay the Annual Fee, that its obligation to pay the Annual Fee is an essential term of this Agreement and is not severable from City's obligations and Company's vesting rights to be acquired hereunder, and that Company expressly waives any constitutional, statutory, or common law right it might have in the absence of this Agreement to protest or challenge the payment of such fee on any ground whatsoever, including without limitation pursuant to the Fifth and Fourteenth Amendments to the United States Constitution, California Constitution Article I Section 19, the Mitigation Fee Act (California Government Code Section 66000 *et seq.*), or otherwise.

3.2 Other Public Benefits.

As further consideration for City's Agreement to allow Company to develop the Freeway Oriented Electronic Billboard, City shall be entitled to place public service announcements on the Message Display Center, provided however, that such public service announcements shall be limited to civic public service messages, including those sponsored by private organizations as approved by the City (hereinafter "Public Service Messages"). The term Public Service Message shall expressly exclude any message advertising any business, company or event where such message would have a direct and tangible economic benefit to a private, for-profit company. City shall be entitled to post up to one eight (8) second Public Service Message per minute on the Message Display Center on a continuous basis. Notwithstanding the foregoing, should City not utilize its allotment of advertising space, Company shall be entitled to lease that time for other advertising purposes. For all Public Service Messages, City shall be responsible for providing Company with the advertising copy and artwork. Company shall not be responsible for producing or substantially

modifying any advertising copy for a Public Service Message, and shall display the Public Service Message no more than 48 hours after receipt and approval of advertising copy.

4. Development of Project.

4.1 Applicable Regulations; Company's Vested Rights and City's Reservation of Discretion With Respect to Subsequent Development Approvals.

Other than as expressly set forth in this Agreement, during the Term of this Agreement, Company shall have the vested right to Develop the Project on and with respect to the Property in accordance with the terms of the Development Regulations and this Agreement and City shall not prohibit or prevent development of the Property on grounds inconsistent with the Development Regulations or this Agreement. Notwithstanding the foregoing, nothing herein is intended to limit or restrict City's discretion with respect to (i) review and approval requirements contained in the Development Regulations, (ii) exercise of any discretionary authority City retains under the Development Regulations, (iii) the approval, conditional approval, or denial of any Subsequent Development Approvals that are required for Development of the Project as of the Effective Date, or (iv) any environmental approvals that may be required under CEQA or any other federal or state law or regulation in conjunction with any Subsequent Development Approvals that may be required for the Project, and in this regard, as to future actions referred to in clauses (i)-(iv) of this sentence, City reserves its full discretion to the same extent City would have such discretion in the absence of this Agreement. In addition, it is understood and agreed that nothing in this Agreement is intended to vest Company's rights with respect to any laws, regulations, rules, or official policies of any other governmental agency or public utility company with jurisdiction over the Property or the Project; or any applicable federal or state laws, regulations, rules, or official policies that may be inconsistent with this Agreement and that override or supersede the provisions set forth in this Agreement, and regardless of whether such overriding or superseding laws, regulations, rules, or official policies are adopted or applied to the Property or the Project prior or subsequent to the Agreement Date.

Company has expended and will continue to expend substantial amounts of time and money planning and preparing for Development of the Project. Company represents and City acknowledges that Company would not make these expenditures without this Agreement, and that Company is and will be making these expenditures in reasonable reliance upon its vested rights to Develop the Project as set forth in this Agreement.

4.2 No Conflicting Enactments.

Except to the extent City reserves its discretion as expressly set forth in this Agreement, during the Term of this Agreement City shall not apply to the Project or the Site any ordinance, policy, rule, regulation, or other measure relating to Development of the Project that is enacted or becomes effective after the Effective Date to the extent it conflicts with this Agreement.

4.3 Reservations of Authority.

Notwithstanding any other provision set forth in this Agreement to the contrary, the laws, rules, regulations, and official policies set forth in this Section 4.3 shall apply to and govern the Development of the Project on and with respect to the Site.

4.3.1 Procedural Regulations. Procedural regulations relating to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals, and any other matter of procedure shall apply to the Site, provided that such procedural regulations are adopted and applied City-wide or to all other properties similarly situated in City.

4.3.2 Processing and Permit Fees. City shall have the right to charge and Company shall be required to pay all applicable processing and permit fees to cover the reasonable cost to City of processing and reviewing applications and plans for any required Subsequent Development Approvals, building permits, excavation and grading permits, encroachment permits, and the like, for performing necessary studies and reports in connection therewith, inspecting the work constructed or installed by or on behalf of Owner, and monitoring compliance with any requirements applicable to Development of the Project, all at the rates in effect at the time fees are due.

4.3.3 Consistent Future City Regulations. City ordinances, resolutions, regulations, and official policies governing Development which do not conflict with the Development Regulations, or with respect to such regulations that do conflict, where Company has consented in writing to the regulations, shall apply to the Site.

4.3.4 Overriding Federal and State Laws and Regulations. Federal and state laws and regulations that override Company's vested rights set forth in this Agreement shall apply to the Site, together with any City ordinances, resolutions, regulations, and official policies that are necessary to enable City to comply with the provisions of any such overriding federal or state laws and regulations, provided that (i) Company does not waive its right to challenge or contest the validity of any such purportedly overriding federal, state, or City law or regulation; and (ii) upon the discovery of any such overriding federal, state, or City law or regulation that prevents or precludes compliance with any provision of this Agreement, City or Company shall provide to the other Party a written notice identifying the federal, state, or City law or regulation, together with a copy of the law or regulation and a brief written statement of the conflict(s) between that law or regulation and the provisions of this Agreement. Promptly thereafter City and Company shall meet and confer in good faith in a reasonable attempt to determine whether a modification or suspension of this Agreement, in whole or in part, is necessary to comply with such overriding federal, state, or City law or regulation. In such negotiations, City and Company agree to preserve the terms of this Agreement and the rights of Company as derived from this Agreement to the maximum feasible extent while resolving the conflict. City agrees to cooperate with Company at no cost to City in resolving the conflict in a manner which minimizes any financial impact of the conflict upon Company. City also agrees to process in a prompt manner Company's proposed changes to the Project and any of the Development Regulations as may be necessary to comply with such overriding federal, state, or City law or regulation; provided, however, that the approval of such changes by City shall be subject to the discretion of City, consistent with this Agreement.

4.3.5 Public Health and Safety. Any City ordinance, resolution, rule, regulation, program, or official policy that is necessary to protect persons on the Site or in the immediate vicinity from conditions dangerous to their health or safety, as reasonably determined by City, shall apply to the Site, even though the application of the ordinance, resolution, rule regulation, program, or official policy would result in the impairment of Company's vested rights under this Agreement.

4.3.6 Uniform Building Standards. Existing and future building and building-related standards set forth in the uniform codes adopted and amended by City from time to time, including building, electrical, and fire codes, and any modifications and amendments thereof shall all apply to the Project and the Site to the same extent that the same would apply in the absence of this Agreement.

4.3.7 Public Works Improvements. To the extent Company constructs or installs any public improvements, works, or facilities, the City standards in effect for such public improvements, works, or facilities at the time of City's issuance of a permit, license, or other authorization for construction or installation of same shall apply.

5. Implementation

- 5.1 Company shall maintain the sign structures and shall maintain, repair, and improve the Freeway Oriented Electronic Billboard in accordance with the standards of the outdoor-advertising industry. Company's maintenance obligation under this Section 5.1 includes the obligation to remove any graffiti from the sign structures and the Digital Freeway Signs within 48 hours of notification. The City is not obligated to maintain the sign structures or to maintain or repair the Electronic Freeway Oriented Billboard.
- 5.2 Provide area within the structure to provide conduit through the Freeway Oriented Electronic Billboard structure for future CCTV capabilities. City agrees and acknowledges that any work occurring on the billboard structure by a City requested 3rd party shall also provide acceptable insurance and indemnification to the property owner and billboard operator.
- 5.3 Company voluntarily covenants and agrees for itself, its successors and assigns, to prohibit advertising displayed on the Digital Display Area for adult oriented businesses or tobacco products.
- 5.4 The technology currently being deployed for Freeway Oriented Electronic Signs is LED (light emitting diode), but there may be alternate, preferred or superior technology available in the future. Company is authorized to change the Freeway Oriented Electronic Sign to any other technology that operates under the maximum brightness standards set forth in Section 5.4 of this Agreement. The City shall expedite any required approvals for technology that is superior in energy efficiency over previous generations or types.
- 5.5 Freeway Oriented Electronic Sign illumination is expressly permitted when operated within these standards and any requirements under Section 15.49.120 of the Fullerton Municipal Code,
 - 5.5.1 Electronic Freeway Oriented Signs shall not operate at brightness levels of more than 0.3 foot candles above ambient light, as measured using a foot candle meter at a pre-set distance.
 - 5.5.2 Distance to measure the foot candles impact shall be measured from a

distance of 250 ft. for a sign with a nominal face size of 14' x 48'.

5.5.3 Each Digital Display Area must have a light sensing device that will adjust the brightness as ambient light conditions change in accordance with the Outdoor Advertising Act.

5.5.4 Freeway-oriented electronic billboards shall contain static messages only, and shall not have movement, or the appearance or optical illusion of movement during the static display period, of any part of the sign structure, design, or pictorial segment of the sign, including the movement or appearance of movement. Each static message shall not include flashing lighting or the varying of light intensity.

5.5.5 No freeway-oriented electronic billboard shall involve any red or blinking or intermittent light likely to be mistaken for warning or danger signals nor shall its illumination impair the vision of travelers on the adjacent freeway and/or roadways.

5.6 The Freeway Oriented Electronic Sign shall be operated with systems and monitoring to freeze the display in one static position, display a full black screen, or turn off, in the event of a malfunction.

5.7 No freeway-oriented electronic billboard shall simulate or imitate any directional, warning, danger or any display likely to be mistaken for any permitted sign intended or likely to be construed as giving warning to traffic, by, for example, the use of the words "stop" or "slow down."

6. Amendment or Cancellation of Agreement

Other than modifications of this Agreement under Section 8.3 of this Agreement, this Agreement may be amended or canceled in whole or in part only by mutual written and executed consent of the Parties in compliance with California Government Code section 65868 or by unilateral termination by City in the event of an uncured default of Company.

6.1 Extension.

Company may request up to, and upon receipt of a written request from Company, City shall grant two (2) five (5) year extensions that extend the Term of this Agreement for a total of ten (10) additional years provided that Company has submitted its written request to extend this Development Agreement, and prior to the City granting the extension the Annual Fee is adjusted to then current market rates for Freeway Oriented Electronic Billboard operating rights.

7. Enforcement.

Unless this Agreement is amended, canceled, modified, or suspended as authorized herein or pursuant to California Government Code section 65869.5, this Agreement shall be enforceable by either Party despite any change in any applicable general or specific plan, zoning, subdivision, or

building regulation or other applicable ordinance or regulation adopted by City (including by City's electorate) that purports to apply to any or all of the Property or Site.

8. Annual Review of Company's Compliance With Agreement.

8.1 General.

City shall review this Agreement once during every twelve (12) month period following the Effective Date for compliance with the terms of this Agreement as provided in Government Code section 65865.1. Company (including any successor to the owner executing this Agreement on or before the Agreement Date) shall pay City a reasonable fee in an amount City may reasonably establish from time to time to cover the actual and necessary costs for the annual review. City's failure to timely provide or conduct an annual review shall not constitute a Default hereunder by City.

8.2 Company Obligation to Demonstrate Good Faith Compliance.

During each annual review by City, Company is required to demonstrate good faith compliance with the terms of the Agreement. Company agrees to furnish such evidence of good faith compliance as City, in the reasonable exercise of its discretion, may require, thirty (30) days prior to each anniversary of the Effective Date during the Term.

Amended Language

8.3 Procedure.

In the event City staff determines that there is a reasonable basis to conclude that there is insufficient evidence of good faith compliance with the terms of the Agreement, the City Council of City shall conduct a duly noticed hearing and shall determine, on the basis of substantial evidence, whether or not Company has, for the period under review, complied with the terms of this Agreement. If the City Council finds that Company has so complied, the annual review shall be concluded. If the City Council finds, on the basis of substantial evidence, that Company has not so complied, written notice shall be sent to Company by first class mail of the City Council's finding of non-compliance, and Company shall be given at least ten (10) days to cure any noncompliance that relates to the payment of money and thirty (30) days to cure any other type of noncompliance. If a cure not relating to the payment of money cannot be completed within thirty (30) days for reasons which are beyond the control of Company, Company must commence the cure within such thirty (30) days and diligently pursue such cure to completion. If Company fails to cure such noncompliance within the time(s) set forth above, such failure shall be considered to be a Default and City shall be entitled to exercise the remedies set forth in Article 9 below.

8.4 Annual Review a Non-Exclusive Means for Determining and Requiring Cure of Company's Default.

The annual review procedures set forth in this Article 8 shall not be the exclusive means for City to identify a Default by Company or limit City's rights or remedies for any such Default.

9. Events of Default.

9.1 General Provisions.

In the event of any material default, breach, or violation of the terms of this Agreement (“Default”), the Party alleging a Default shall have the right to deliver a written notice (each, a “Notice of Default”) to the defaulting Party. The Notice of Default shall specify the nature of the alleged Default and a reasonable manner and sufficient period of time (twenty (20) days if the Default relates to the failure to timely make a monetary payment due hereunder and not less than thirty (30) days in the event of non-monetary Defaults) in which the Default must be cured (the “Cure Period”). During the Cure Period, the Party charged shall not be considered in Default for the purposes of termination of this Agreement or institution of legal proceedings. If the alleged Default is cured within the Cure Period, then the Default thereafter shall be deemed not to exist. If a non-monetary Default cannot be cured during the Cure Period with the exercise of commercially reasonable diligence, the defaulting Party must promptly commence to cure as quickly as possible, and in no event later than thirty (30) days after it receives the Notice of Default, and thereafter diligently pursue said cure to completion.

9.2 Default by Company.

If Company is alleged to have committed Default and it disputes the claimed Default, it may make a written request for an appeal hearing before the City Council within ten (10) days of receiving the Notice of Default, and a public hearing shall be scheduled at the next available City Council meeting to consider Company’s appeal of the Notice of Default. Failure to appeal a Notice of Default to the City Council within the ten (10) day period shall waive any right to a hearing on the claimed Default. If Company’s appeal of the Notice of Default is timely and in good faith but after a public hearing of Company’s appeal the City Council concludes that Company is in Default as alleged in the Notice of Default, the accrual date for commencement of the thirty (30) day Cure Period provided in Section 9.1 shall be extended until the City Council’s denial of Company’s appeal is communicated to Company.

9.3 City’s Option to Terminate Agreement.

In the event of an alleged Company Default, City may not terminate this Agreement without first delivering a written Notice of Default and providing Company with the opportunity to cure the Default within the Cure Period, as provided in Section 8.1, and complying with Section 8.2 if Company timely appeals any Notice of Default with respect to a non-monetary Default. A termination of this Agreement by City shall be valid only if good cause exists and is supported by evidence presented to the City Council at or in connection with a duly noticed public hearing to establish the existence of a Default. The validity of any termination may be judicially challenged by Company. Any such judicial challenge must be brought within ninety (90) calendar days of service on Company, by first class mail, postage prepaid, of written notice of termination by City or a written notice of City’s determination of an appeal of the Notice of Default as provided in Section 8.2.

9.4 Default by City.

If Company alleges a City Default and alleges that the City has not cured the Default within the Cure Period, Company may pursue any equitable remedy available to it under this Agreement, including, without limitation, an action for a writ of mandamus, injunctive relief, or specific performance of City’s obligations set forth in this Agreement. Upon a City Default, any resulting

delays in Company's performance hereunder shall neither be a Company Default nor constitute grounds for termination or cancellation of this Agreement by City and shall, at Company's option (and provided Company delivers written notice to City within thirty (30) days of the commencement of the alleged City Default), extend the Term for a period equal to the length of the delay.

9.5 Waiver.

Failure or delay by either Party in delivering a Notice of Default shall not waive that Party's right to deliver a future Notice of Default of the same or any other Default.

9.6 Monetary Damages.

The Parties agree that monetary damages shall be an available remedy for either Party for a Default hereunder by the other Party; provided, however, that (i) nothing in this Section 9.6 is intended or shall be interpreted to limit or restrict City's right to recover the Annual Fees due from Company as set forth herein; and (ii) nothing in this Section 9.6 is intended or shall be interpreted to limit or restrict Owner's indemnity obligations set forth in Article 11 or the right of the prevailing Party in any Action to recover its litigation expenses, as set forth in Article 11.

9.7 Additional City Remedy for Company's Default.

In the event of any Default by Company, in addition to any other remedies which may be available to City, whether legal or equitable, City shall be entitled to receive and retain any Development Exactions applicable to the Project or the Site, including any fees, grants, dedications, or improvements to public property which it may have received prior to Company's Default without recourse from Company or its successors or assigns.

9.8 No Personal Liability of City Officials, Employees, or Agents.

In any judicial proceeding, arbitration, or mediation (collectively, an "Action") between the Parties that seeks to enforce the provisions of this Agreement or arises out of this Agreement, the prevailing Party shall recover all of its actual and reasonable costs and expenses, regardless of whether they would be recoverable under California Code of Civil Procedure section 1033.5 or California Civil Code section 1717 in the absence of this Agreement. These costs and expenses include expert witness fees, attorneys' fees, and costs of investigation and preparation before initiation of the Action. The right to recover these costs and expenses shall accrue upon initiation of the Action, regardless of whether the Action is prosecuted to a final judgment or decision.

10. Force Majeure.

Neither Party shall be deemed to be in Default where failure or delay in performance of any of its obligations under this Agreement is caused, through no fault of the Party whose performance is prevented or delayed, by floods, earthquakes, other acts of God, fires, wars, riots or similar hostilities, strikes or other labor difficulties, state or federal regulations, or court actions. Except as specified above, nonperformance shall not be excused because of the act or omission of a third person. In no event shall the occurrence of an event of force majeure operate to extend the Term of this Agreement. In addition, in no event shall the time for performance of a monetary obligation, including without limitation Company's obligation to pay Public Benefit Fees, be

extended pursuant to this Section.

11. Indemnity Obligations of Company.

11.1 Indemnity Arising From Acts or Omissions of Company.

Except to the extent caused by the intentional misconduct or negligent acts, errors or omissions of City or one or more of City's officials, employees, agents, attorneys, and contractors (collectively, the "City's Affiliated Parties"), Company shall indemnify, defend, and hold harmless City and City's Affiliated Parties from and against all suits, claims, liabilities, losses, damages, penalties, obligations, and expenses (including but not limited to reasonable attorneys' fees and costs) (collectively, a "Claim") that may arise, directly or indirectly, from the acts, omissions, or operations of Company or Company's agents, contractors, subcontractors, agents, or employees in the course of Development of the Project or any other activities of Company relating to the Property, the Site, or pursuant to this Agreement. City shall have the right to select and retain counsel to defend any Claim filed against City and/or any of City's Affiliated Parties, and Company shall pay the reasonable cost for defense of any Claim. The indemnity provisions in this Section 11.1 shall commence on the Agreement Date, regardless of whether the Effective Date occurs, and shall survive the Termination Date.

11.2 Third Party Litigation.

In addition to its indemnity obligations set forth in Section 11.1, Company shall indemnify, defend, and hold harmless City and City's Affiliated Parties from and against any Claim against City or City's Affiliated Parties seeking to attack, set aside, void, or annul the approval of this Agreement, the Adopting Ordinance, any of the Development Regulations for the Project (including without limitation any actions taken pursuant to CEQA with respect thereto), any Subsequent Development Approval, or the approval of any permit granted pursuant to this Agreement. Said indemnity obligation shall include payment of any costs related to staff, consultant and reasonable attorney's fees, expert witness fees, and court costs. City shall promptly notify Company of any such Claim and City shall cooperate with Company in the defense of such Claim. City shall be entitled to retain environmental consultant(s) to prepare any necessary environmental documents and/or separate counsel to represent City against the Claim and the City's defense costs for its separate counsel shall be included in Company's indemnity obligation, provided that such counsel shall reasonably cooperate with Company in an effort to minimize the total litigation expenses incurred by Company. In the event either City or Company recovers any attorney's fees, expert witness fees, costs, interest, or other amounts from the party or parties asserting the Claim, Company shall be entitled to retain the same (provided it has fully performed its indemnity obligations hereunder). The indemnity provisions in this Section 10.2 shall commence on the Agreement Date, regardless of whether the Effective Date occurs, and shall survive the Termination Date.

11.3 Environmental Indemnity.

In addition to its indemnity obligations set forth in Section 11.1, from and after the Agreement Date Company shall indemnify, defend, and hold harmless City and City's Affiliated Parties from and against any and all Claims for personal injury or death, property damage, economic loss, statutory penalties or fines, and damages of any kind or nature whatsoever, including without limitation reasonable attorney's fees, expert witness fees, and costs, based upon

or arising from any of the following: (i) the actual or alleged presence of any Hazardous Substance on or under any of the Site in violation of any applicable Environmental Law; (ii) the actual or alleged migration of any Hazardous Substance from the Site through the soils or groundwater to a location or locations off of the Site; and (iii) the storage, handling, transport, or disposal of any Hazardous Substance on, to, or from the Site and any other area disturbed, graded, or developed by Company in connection with Company's Development of the Project. The indemnity provisions in this Section 11.3 shall commence on the Agreement Date, regardless of whether the Effective Date occurs, and shall survive the Termination Date.

12. Assignment.

Company shall have the right to sell, transfer, or assign (hereinafter, collectively, a "Transfer") Company's fee title to the Site, in whole or in part, to a Permitted Transferee (which successor, as of the effective date of the Transfer, shall become the "Company" under this Agreement) at any time from the Agreement Date until the Termination Date; provided, however, that any such transfer shall include the assignment and assumption of Company's rights, duties, and obligations set forth in or arising under this Agreement as to the Site or the portion thereof so Transferred and shall be made in strict compliance with the following conditions precedent:

(i) no transfer or assignment of any of Company's rights or interest under this Agreement shall be made unless made together with the Transfer of all or a part of the Site; and (ii) prior to the effective date of any proposed Transfer, Company (as transferor) shall notify City, in writing, of such proposed Transfer and deliver to City a written assignment and assumption, executed in recordable form by the transferring and successor Company and in a form subject to the reasonable approval of the City Attorney of City (or designee), pursuant to which the transferring Company assigns to the successor Company and the successor Company assumes from the transferring Company all of the rights and obligations of the transferring Company with respect to the Site or portion thereof to be so Transferred, including in the case of a partial Transfer the obligation to perform such obligations that must be performed outside of the Site so Transferred that are a condition precedent to the successor Company's right to develop the portion of the Site so Transferred. Any Permitted Transferee shall have all of the same rights, benefits, duties, obligations, and liabilities of Company under this Agreement with respect to the portion of the Site sold, transferred, and assigned to such Permitted Transferee; provided, however, that in the event of a Transfer of less than all of the Site no such Permitted Transferee shall have the right to enter into an amendment of this Agreement that jeopardizes or impairs the rights or increases the obligations of the Company with respect to the balance of the Site.

Notwithstanding any Transfer, the transferring Company shall continue to be jointly and severally liable to City, together with the successor Company, to perform all of the transferred obligations set forth in or arising under this Agreement unless there is full satisfaction of all of the following conditions, in which event the transferring Company shall be automatically released from any and all obligations with respect to the portion of the Site so Transferred: (i) the transferring Company no longer has a legal or equitable interest in the portion of the Site so Transferred other than as a beneficiary under a deed of trust; (ii) the transferring Company is not then in Default under this Agreement and no condition exists that with the passage of time or the giving of notice, or both, would constitute a Default hereunder; (iii) the transferring Company has provided City with the notice and the fully executed written and recordable assignment and assumption agreement required as set forth in the first paragraph of this Section 11; and (iv) the successor Company either (A) provides City with substitute security equivalent to any security

previously provided by the transferring Company to City to secure performance of the successor Company's obligations hereunder with respect to the Site or the portion of the Site so Transferred or (B) if the transferred obligation in question is not a secured obligation, the successor Company either provides security reasonably satisfactory to City or otherwise demonstrates to City's reasonable satisfaction that the successor Company has the financial resources or commitments available to perform the transferred obligation at the time and in the manner required under this Agreement and the Development Regulations for the Project.

13. Mortgagee Rights.

13.1 Encumbrances on Site.

The Parties agree that this Agreement shall not prevent or limit Company in any manner from encumbering the Site, any part of the Site, or any improvements on the Site with any Mortgage securing financing with respect to the construction, development, use, or operation of the Project.

13.2 Mortgagee Protection.

This Agreement shall be superior and senior to the lien of any Mortgage. Nevertheless, no breach of this Agreement shall defeat, render invalid, diminish, or impair the lien of any Mortgage made in good faith and for value. Any acquisition or acceptance of title or any right or interest in the Site or part of the Site by a Mortgagee (whether due to foreclosure, trustee's sale, deed in lieu of foreclosure, lease termination, or otherwise) shall be subject to all of the terms and conditions of this Agreement. Any Mortgagee who takes title to the Site or any part of the Site shall be entitled to the benefits arising under this Agreement.

13.3 Mortgagee Not Obligated.

Notwithstanding the provisions of this Section 13.3, a Mortgagee will not have any obligation or duty under the terms of this Agreement to perform the obligations of Company or other affirmative covenants of Company, or to guarantee this performance except that: (i) the Mortgagee shall have no right to develop the Project under the Development Regulations without fully complying with the terms of this Agreement; and (ii) to the extent that any covenant to be performed by Company is a condition to the performance of a covenant by City, that performance shall continue to be a condition precedent to City's performance.

13.4 Notice of Default to Mortgagee; Right of Mortgagee to Cure.

Each Mortgagee shall, upon written request to City, be entitled to receive written notice from City of: (i) the results of the periodic review of compliance specified in Article 8 of this Agreement, and (ii) any default by Company of its obligations set forth in this Agreement.

Each Mortgagee shall have a further right, but not an obligation, to cure the Default within thirty (30) days after receiving a Notice of Default with respect to a monetary Default and within sixty (60) days after receiving a Notice of Default with respect to a non-monetary Default. If the Mortgagee can only remedy or cure a non-monetary Default by obtaining possession of the Site, then the Mortgagee shall have the right to seek to obtain possession with diligence and continuity through a receiver or otherwise, and to remedy or cure the non-monetary Default within sixty (60)

days after obtaining possession and, except in case of emergency or to protect the public health or safety, City may not exercise any of its judicial remedies set forth in this Agreement to terminate or substantially alter the rights of the Mortgagee until expiration of the sixty (60)-day period. In the case of a non-monetary Default that cannot with diligence be remedied or cured within sixty (60) days, the Mortgagee shall have additional time as is reasonably necessary to remedy or cure the Default, provided the Mortgagee promptly commences to cure the non-monetary Default within sixty (60) days and diligently prosecutes the cure to completion.

14. Miscellaneous Terms.

14.1 Notices.

Any notice or demand that shall be required or permitted by law or any provision of this Agreement shall be in writing. If the notice or demand will be served upon a Party, it either shall be personally delivered to the Party; deposited in the United States mail, certified, return receipt requested, and postage prepaid; or delivered by a reliable courier service that provides a receipt showing date and time of delivery with courier charges prepaid. The notice or demand shall be addressed as follows:

TO CITY:

City of Fullerton
303 Commonwealth Ave
Fullerton, California 92832-1775
Attn: City Manager

With a copy to:

City Attorney
City of Fullerton
303 Commonwealth Ave
Fullerton, California 92832-1775
Attn: City Attorney

TO Company:

AGE Advertising, LLC
622 Vincent Park
Redondo Beach, CA 90277
Attn: Andrew P. Goodman

Either Party may change the address stated in this Section 13.1 by delivering notice to the other Party in the manner provided in this Section 13.1, and thereafter notices to such Party shall be addressed and submitted to the new address. Notices delivered in accordance with this Agreement shall be deemed to be delivered upon the earlier of: (i) the date received or (iii) three business days after deposit in the mail as provided above.

14.2 Project as Private Undertaking.

The Development of the Project is a private undertaking. Neither Party is acting as the agent of the other in any respect, and each Party is an independent contracting entity with respect to the terms, covenants, and conditions set forth in this Agreement. This Agreement forms no partnership, joint venture, or other association of any kind. The only relationship between the Parties is that of a government entity regulating the Development of private property by the owner of the property.

14.3 Attorney Fees.

If the services of any attorney are required by any party to secure the performance of this Agreement or otherwise upon the breach or default of another party, or if any judicial remedy or arbitration is necessary to enforce or interpret any provisions of this Agreement or the rights and duties of any person in relation to this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, costs and other expenses, in addition to any other relief to which such party may be entitled. Prevailing party includes (a) a party who dismisses an action in exchange for sums allegedly due; (b) the party that receives performance from the other party of an alleged breach of covenant or a desired remedy, if it is substantially equal to the relief sought in an action; or (c) the party determined to be prevailing by a court of law.

14.4 Cooperation.

Each Party shall cooperate with and provide reasonable assistance to the other Party to the extent consistent with and necessary to implement this Agreement. Upon the request of a Party at any time, the other Party shall promptly execute, with acknowledgement or affidavit if reasonably required, and file or record the required instruments and writings and take any actions as may be reasonably necessary to implement this Agreement or to evidence or consummate the transactions contemplated by this Agreement.

14.5 Estoppel Certificates.

At any time, either Party may deliver written notice to the other Party requesting that that Party certify in writing that, to the best of its knowledge: (i) this Agreement is in full force and effect and is binding on the Party; (ii) this Agreement has not been amended or modified either orally or in writing or, if this Agreement has been amended, the Party providing the certification shall identify the amendments or modifications; and (iii) the requesting Party is not in Default in the performance of its obligations under this Agreement and no event or situation has occurred that with the passage of time or the giving of Notice or both would constitute a Default or, if such is not the case, then the other Party shall describe the nature and amount of the actual or prospective Default.

The Party requested to furnish an estoppel certificate shall execute and return the certificate within thirty (30) days following receipt.

14.6 Rules of Construction.

The singular includes the plural; the masculine and neuter include the feminine; “shall” is mandatory; and “may” is permissive.

14.7 Time Is of the Essence.

Time is of the essence regarding each provision of this Agreement as to which time is an element.

14.8 Waiver.

The failure by a Party to insist upon the strict performance of any of the provisions of this Agreement by the other Party, and failure by a Party to exercise its rights upon a Default by the other Party, shall not constitute a waiver of that Party’s right to demand strict compliance by the other Party in the future.

14.9 Counterparts.

This Agreement may be executed in two or more counterparts, each of which shall be identical and may be introduced in evidence or used for any other purpose without any other counterpart, but all of which shall together constitute one and the same agreement.

14.10 Entire Agreement.

This Agreement constitutes the entire agreement between the Parties and supersedes all prior agreements and understandings, both written and oral, between the Parties with respect to the subject matter addressed in this Agreement.

14.11 Severability.

The Parties intend that each and every obligation of the Parties is interdependent and interrelated with the other, and if any provision of this Agreement or the application of the provision to any Party or circumstances shall be held invalid or unenforceable to any extent, it is the intention of the Parties that the remainder of this Agreement or the application of the provision to persons or circumstances shall be rendered invalid or unenforceable. The Parties intend that neither Party shall receive any of the benefits of the Agreement without the full performance by such Party of all of its obligations provided for under this Agreement. Without limiting the generality of the foregoing, the Parties intend that Company shall not receive any of the benefits of this Agreement if any of Company’s obligations are rendered void or unenforceable as the result of any third party litigation, and City shall be free to exercise its legislative discretion to amend or repeal the Development Regulations applicable to the Site and Company shall cooperate as required, despite this Agreement, should third party litigation result in the nonperformance of Company’s obligations under this Agreement. The provisions of this Section 14.11 shall apply regardless of whether the Effective Date occurs and after the Termination Date.

14.12 Construction.

This Agreement has been drafted after extensive negotiation and revision. Both City and Company are sophisticated parties who were represented by independent counsel throughout the negotiations or City and Company had the opportunity to be so represented and voluntarily chose to not be so represented. City and Company each agree and acknowledge that the terms of this Agreement are fair and reasonable, taking into account their respective purposes, terms, and conditions. This Agreement shall therefore be construed as a whole consistent with its fair meaning, and no principle or presumption of contract construction or interpretation shall be used to construe the whole or any part of this Agreement in favor of or against either Party.

14.13 Successors and Assigns; Constructive Notice and Acceptance.

The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the Parties to this Agreement. All provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land. Each covenant to do or refrain from doing some act hereunder with regard to Development of the Site: (i) is for the benefit of and is a burden upon every portion of the Site; (ii) runs with the Site and each portion thereof; and (iii) is binding upon each Party and each successor in interest during its ownership of the Site or any portion thereof. Every person or entity who now or later owns or acquires any right, title, or interest in any part of the Project or the Site is and shall be conclusively deemed to have consented and agreed to every provision of this Agreement. This Section 14.13 applies regardless of whether the instrument by which such person or entity acquires the interest refers to or acknowledges this Agreement and regardless of whether such person or entity has expressly entered into an assignment and assumption agreement as provided for in Article 12.

14.14 No Third Party Beneficiaries.

The only Parties to this Agreement are City and Company. This Agreement does not involve any third-party beneficiaries, and it is not intended and shall not be construed to benefit or be enforceable by any other person or entity.

14.15 Applicable Law and Venue.

This Agreement shall be construed and enforced consistent with the internal laws of the State of California, without regard to conflicts of law principles. Any action at law or in equity arising under this Agreement or brought by any Party for the purpose of enforcing, construing, or determining the validity of any provision of this Agreement shall be filed and tried in the Superior Court of the County of Orange, State of California, or the United States District Court for the Central District of California. The Parties waive all provisions of law providing for the removal or change of venue to any other court.

14.16 Section Headings.

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

14.17 Incorporation of Recitals and Exhibits.

All of the Recitals are incorporated into this Agreement by this reference. Exhibits A, Exhibit B and C are attached to this Agreement and incorporated by this reference as follows:

EXHIBIT DESIGNATION	DESCRIPTION
A	Legal Description of Property
B	Depiction of the Site
C	Plans & Architectural Details

14.18 Recordation.

The City Clerk of City shall record this Agreement and any amendment, modification, or cancellation of this Agreement in the Office of the County Recorder of the County of Orange within the period required by California Government Code section 65868.5. The date of recordation of this Agreement shall not modify or amend the Effective Date or the Termination Date.

[SIGNATURE PAGE FOLLOWS]

**SIGNATURE PAGE TO
DEVELOPMENT AGREEMENT**

“COMPANY”

By:

By: _____

Name: _____

Title: _____

“CITY”

CITY OF FULLERTON, a municipal
corporation

Bruce Whitaker, Mayor

ATTEST:

Lucinda Williams, City Clerk

APPROVED AS TO FORM:

Richard D. Jones, City Attorney

STATE OF CALIFORNIA
COUNTY OF ORANGE

On _____, before me, the undersigned, a Notary Public in and for said State, personally appeared _____ and _____, who proved to me on the basis of satisfactory evidence to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities and that by their signature on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

Notary Public in and for
said County and State

STATE OF CALIFORNIA
COUNTY OF ORANGE

On _____, before me, the undersigned, a Notary Public in and for said State, personally appeared _____ and _____, who proved to me on the basis of satisfactory evidence to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities and that by their signature on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

Notary Public in and for
said County and State

EXHIBIT A

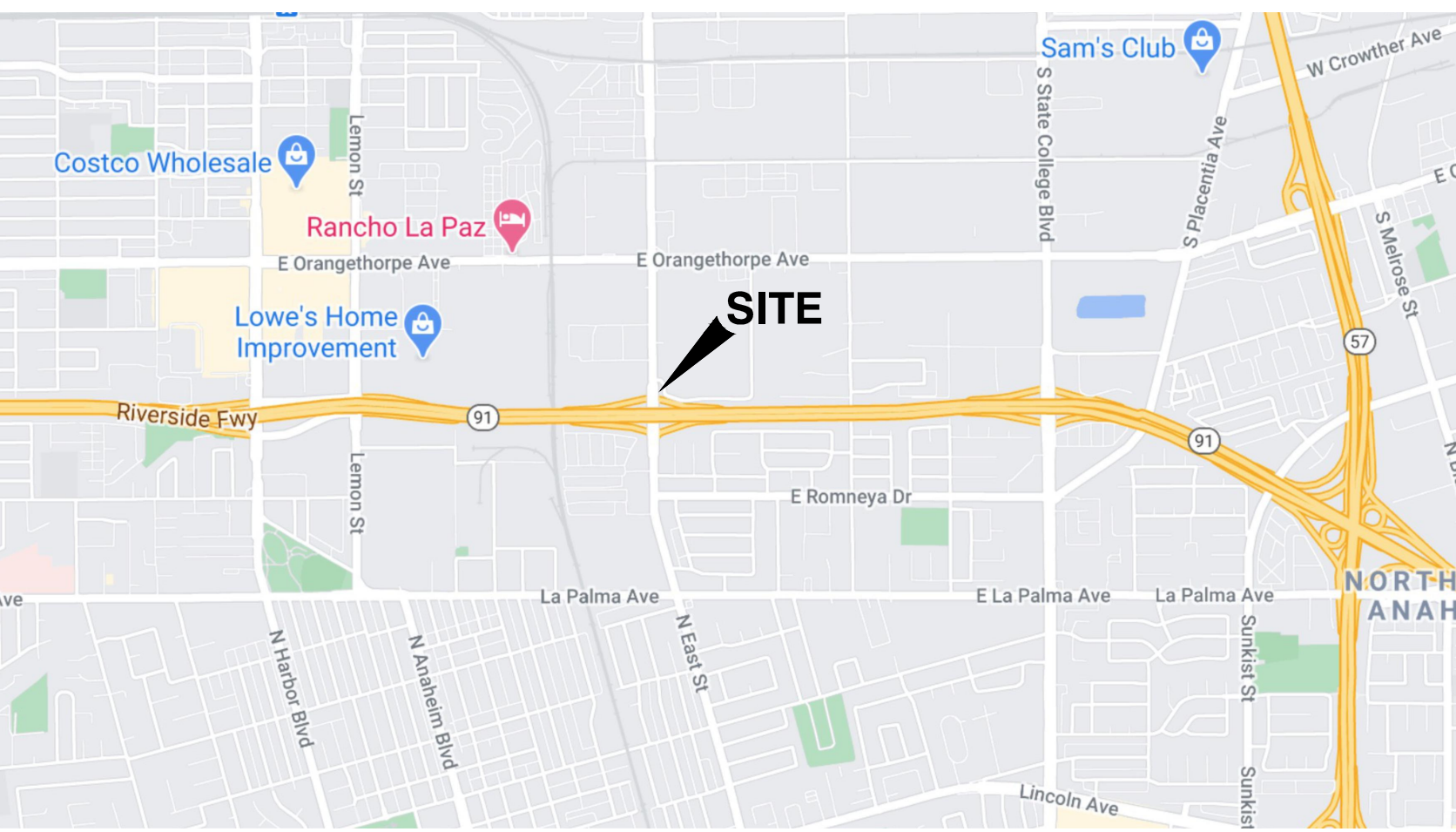
LEGAL DESCRIPTION OF PROPERTY

PARCEL 1:

Lot A of Tract No. 5876, in the City of Fullerton, as shown on a map recorded in book 227, page(s) 4, 5 and 6, of Miscellaneous Maps, in the office of the County Recorder of said County.

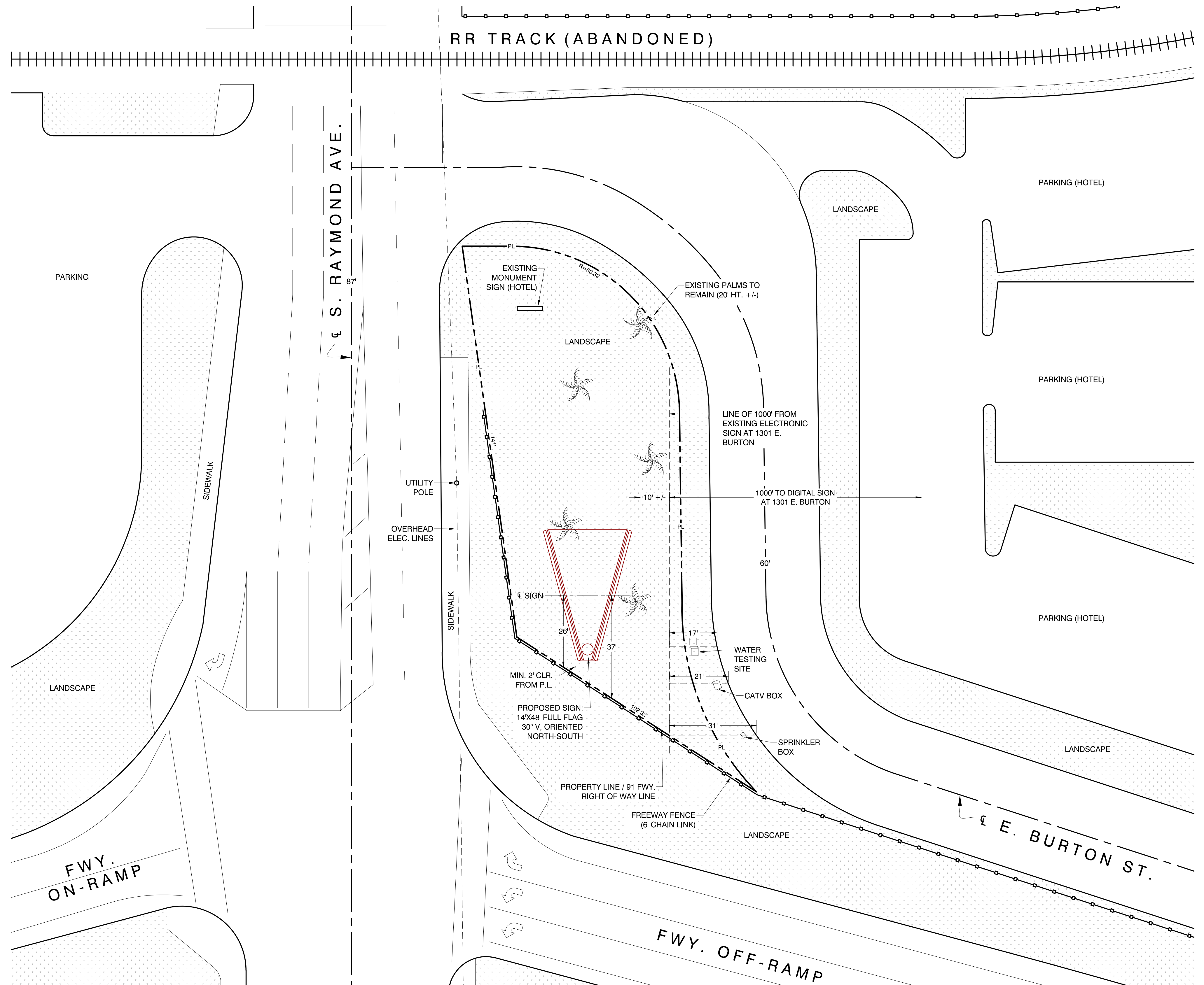
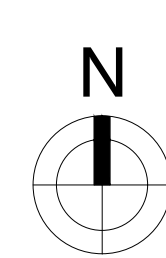
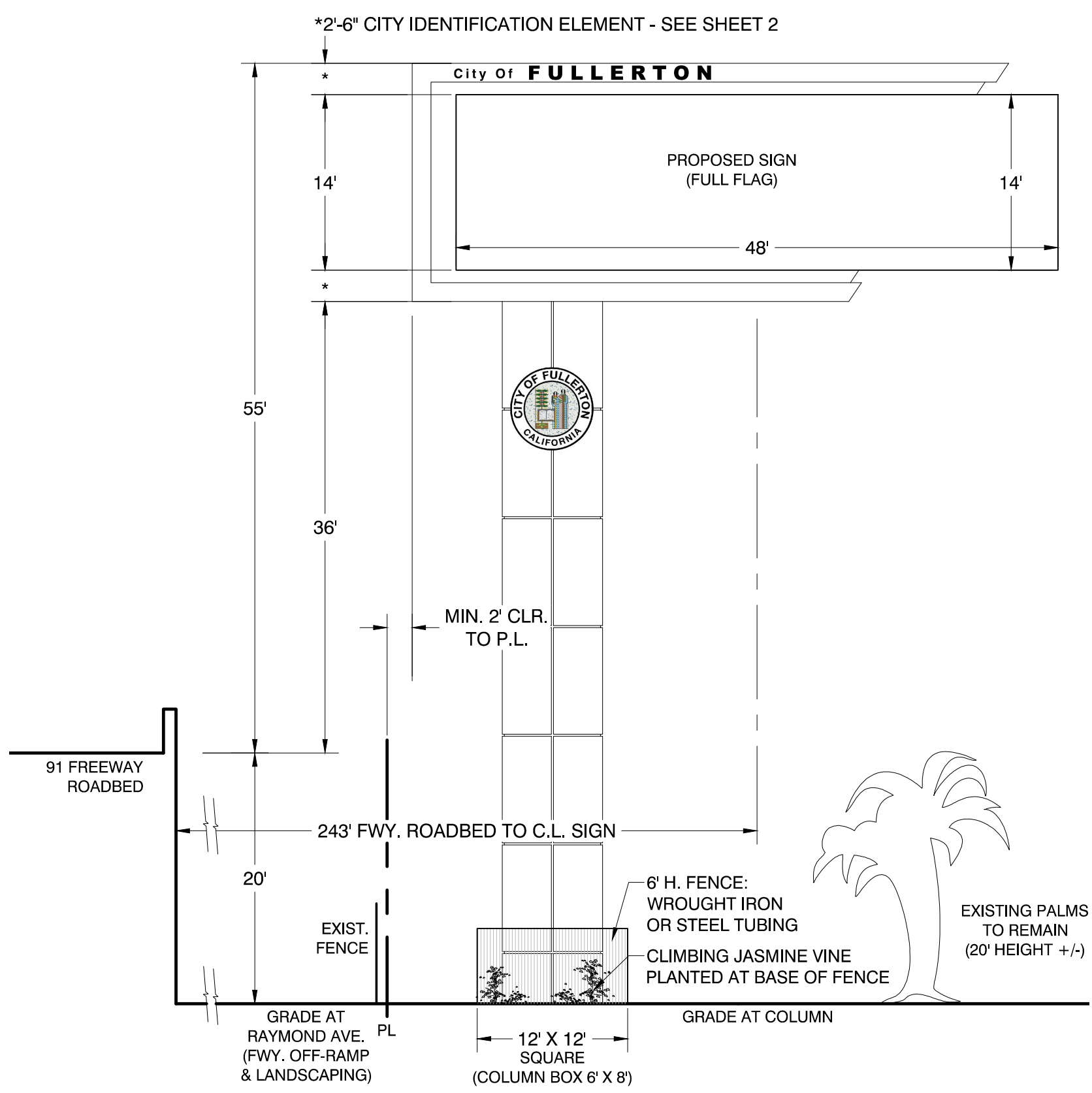
EXCEPT all oil, minerals, natural gas and other hydrocarbons lying within said land, but with no right surface entry upon the top 100 feet thereof, as reserved in the deed from Peter Joseph Bozell and wife, recorded December 5, 1955 in book 3303 page 91, Official Records.

EXHIBITS B & C



Elevation Looking West:
1" = 10'

Note: Elevation is conceptual only.
For proposed sign design see
sheet 2 of 2.

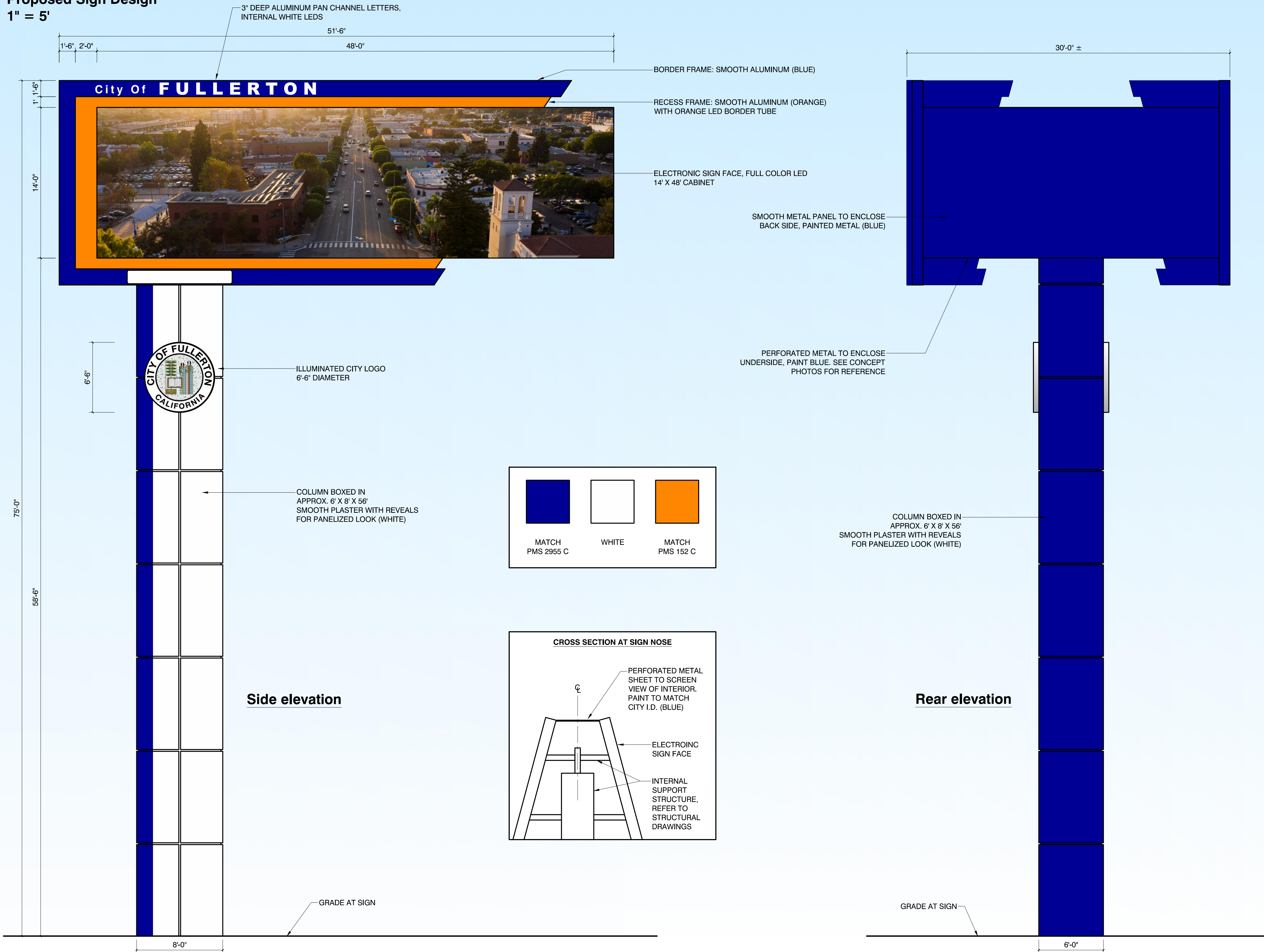


PROJECT	ELECTRICAL	COPYRIGHT	ENGINEER / CONTRACTOR	APPLICANT	DATE	12.22.20	Drawn by:	PH
1210 E. Burton St., Fullerton, CA 92831 APN#: 267-033-001 Proposed digital billboard (2 faces at 14' x 48') with a full-flag, 30° V structure and a height of approx. 55' above freeway grade.	T.B.D.	Design concept & drawing ©2020 by AGE Advertising Unauthorized use or reproduction prohibited.	T.B.D.		Revisions:	2.10.21	Approved by:	AG
						4.27.21	Scale:	As Noted
						7.23.21	Sheet No.	1 OF 3 SITE PLAN
						8.18.21		
						9.23.21		

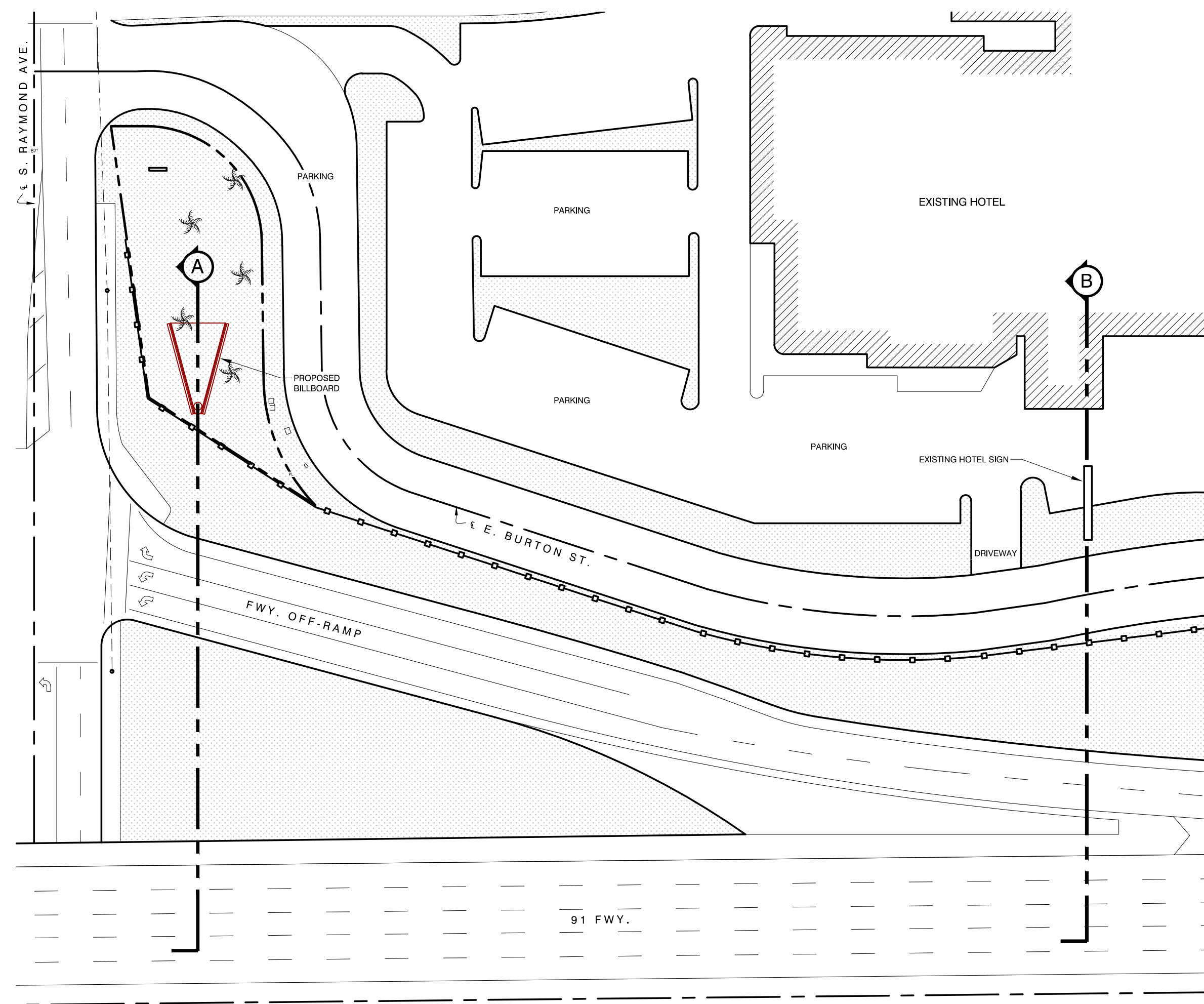
Inspiration / Concept Photos



Proposed Sign Design
1" = 5'



PROJECT	ELECTRICAL	COPYRIGHT	ENGINEER / CONTRACTOR	APPLICANT	DATE	12.22.20	Drawn by:	PH
1210 E. Burton St., Fullerton, CA 92831 APN#: 267-033-001 Proposed digital billboard (2 faces at 14' x 48') with a full-flag, 30° V structure and a height of approx. 80' above freeway grade.	T.B.D.	Design concept & drawing ©2020 by AGE Advertising Unauthorized use or reproduction prohibited.	T.B.D.		Revisions:	2.10.21	Approved by:	AG
						4.27.21	Scale:	As Noted
						8.18.21	Sheet No.	2 OF 3 SIGN DESIGN



Plan view diagram showing the proposed interchange and existing hotel sign. The diagram includes the following labels and dimensions:

- EXISTING HOTEL SIGN**: A rectangular sign structure with two vertical posts.
- CL**: Centerline of the existing road.
- 170'**: Total width of the proposed interchange area.
- 62'**: Distance from the centerline to the existing hotel sign.
- 4'**: Distance from the centerline to the proposed interchange structure.
- 91 FREEWAY ROADBED**: The existing freeway roadbed.
- FWY. OFF-RAMP LANES**: The proposed off-ramp lanes.
- BURTON ST.**: The proposed interchange structure.

75 ft Overall

PROJECT	ELECTRICAL	COPYRIGHT	ENGINEER / CONTRACTOR	APPLICANT	DATE	8.18.21	Drawn by:	PH
1210 E. Burton St., Fullerton, CA 92831 APN#: 267-033-001 Proposed digital billboard (2 faces at 14' x 48') with a full-flag, 30° V structure and a height of approx. 60' above freeway grade.	T.B.D.	Design concept & drawing ©2020 by AGE Advertising Unauthorized use or reproduction prohibited.	T.B.D.		Revisions:	9.23.21	Approved by:	AG
							Scale:	As Noted
							Sheet No.	3 OF 3 SECTIONS