

INITIATIVE MEASURE TO BE SUBMITTED DIRECTLY TO THE VOTERS

BALLOT TITLE AND SUMMARY BY THE CITY ATTORNEY

The City Attorney has prepared the following title and summary of the chief purpose and points of the proposed measure:

INITIATIVE MEASURE TO AUTHORIZE THE INSTALLATION OF OUTDOOR ADVERTISING SIGNS WITHIN SPECIFIC FREEWAY ADJACENT CORRIDORS AND TO IMPOSE PLANNING REGULATIONS AND RESTRICTIONS CONCERNING THE NUMBER AND LOCATION OF THE OUTDOOR ADVERTISING SIGNS, AND TO ESTABLISH DEVELOPMENT FEES TO BE PAID TO THE CITY OF POMONA IN AN AMOUNT OF \$1 MILLION FOR EACH BILLBOARD INSTALLED

The proposed initiative measure would amend the current Pomona City Code by allowing the installation of Outdoor Advertising Signs at specific freeway adjacent locations situated along the Orange (57) Freeway, Chino Valley (71) Freeway and Pomona (60) Freeway. The terms of the installation of the signs would be limited by definitions as set forth in the Pomona City Code and consistent with a Development Agreement submitted with the proposed initiative.

A key component to this proposal is the payment of development and installation fees in an amount of \$1 million for each Outdoor Advertising Sign installed. If this initiative is approved by the voters, the City could receive revenue in an amount up to \$10 million. These revenues would be available to fund essential City services, including police and fire protection, street and park maintenance, library and recreation services and other vital City programs.

The initiative identifies specific locations along the freeway corridors and imposes restrictions upon the location, height, and size of the Signs. It also prohibits the placement of Outdoor Advertising Signs within 90 feet from a school, church or other similar place of worship and restricts the distance between signs installed.

A "yes" vote would allow for the installation of up to 10 new Outdoor Advertising Signs, amend the provisions of the Pomona City and Zoning Code, and provide an opportunity for additional revenues to the City in an amount up to \$10 million. A "no" vote would reject the proposed Signs and would not result in any new revenues being paid to the City.

This Ballot Title and Summary has been prepared pursuant to California Elections Code Section 9203. Respectfully submitted, Arnold M. Alvarez-Glasman, City Attorney

Text of Measure

AN ORDINANCE OF THE CITY OF POMONA AMENDING PORTIONS OF SECTION .503-K, 554-C, .5512-A AND .398 OF THE POMONA ZONING ORDINANCE AND PORTIONS OF THE CITY OF POMONA GENERAL PLAN TO ALLOW OFF-SITE ADVERTISING SIGNS IN ELIGIBLE DISPLAY AREAS IN THE CITY, PURSUANT TO DEVELOPMENT AGREEMENTS WITH THE CITY.

WHEREAS, on November 2, 1993, the voters of the City of Pomona ("City") approved a Billboard Ordinance Initiative ("Proposition L") that banned any new or structurally altered off-site advertising signs from being constructed, relocated, or structurally altered within the City of Pomona in any zoning district;

WHEREAS, on August 4, 1997, by Ordinance 3845 the City Council approved Code Amendment CA-96-003 amending Section .503-K of the Pomona Zoning Ordinance pertaining to definitions and standards for signs located on private property within the City;

WHEREAS, since 1993 and 1997, sign abatement has been significant; commercial signing in the City is no longer typified by an overabundance of poorly designed, over-scaled signs; continued regulation and reasonable controls for off-site advertising signs and structures in specifically designated areas can continue to protect and enhance the quality and character of the visual environment;

WHEREAS, due to the on-going recession and the dire fiscal emergency the City currently faces, the City has identified new and existing off-site billboards as a potential revenue source for the City, which if permitted, would permit the City to preserve and apply funding for essential general city services including police and fire protection, street and park maintenance, the library, business development and park and recreation services;

WHEREAS, the City has identified specific corridors where up to ten billboard structures could be placed without detracting from the quality and character of the visual environment, subject to regulations and reasonable controls that preserve and enhance the City's scenic quality, traveler orientation and public pride;

WHEREAS, the 2013 General Plan Update notes the City's crossroads location among five major freeways, and the General Plan can be amended by a vote of the people;

WHEREAS, since Proposition L was approved by a majority of the voters, it may only be modified by a vote of the people;

WHEREAS, The Development Agreement that is attached as Exhibit "A" ("Development Agreement") imposes reasonable controls on developers that protect the City's interests by preserving and enhancing the City's scenic quality, traveler orientation and public pride;

WHEREAS, The Development Agreement offers to allow up to ten new off-site billboard structures in specified, freeway-adjacent corridors, subject to provisions of the Development Agreement, and the provisions of the laws of the United States, the State of California and the City of Pomona;

WHEREAS, The Development Agreement, if accepted by one or more developers, will raise Ten Million Dollars (\$10,000,000.00) for the City if all ten structures are built, and provide substantial value to the City and its residents in the form of free public service announcements and discounted advertising for local businesses;

THE PEOPLE OF THE CITY OF POMONA, CALIFORNIA DO ORDAIN AS FOLLOWS:

SECTION 1. The recitals set forth above are incorporated herein and by this reference are made an operative part of the Ordinance.

SECTION 2. Subdivision B of Section .503-K of the Pomona Zoning Ordinance is hereby amended as follows:

B. Definitions.

“Extension” means an incidental increase in the size of the advertising area on the face of an off-site advertising sign structure and relates to the specific advertising copy.

(b) Applicant. The word “applicant” as used herein refers to any individual, business, enterprise, or partnership which proposes to construct an off-site advertising Sign within the City of Pomona, California.

“Eligible Display Area” means the corridors within the City of Pomona that are expressly identified in Section .503-K-K2(a), and limited to areas within such corridors that are located in non-residential zones in the City of Pomona, on a parcel immediately adjacent to a freeway or an expressway right-of-way, and within two hundred and fifty (250) feet of a freeway or an expressway right-of-way, including exit and entrance ramps, with measurements to be made from the edge of the freeway or expressway right-of-way to the nearest edge of the off-site advertising sign.

(d) “Off-Site Advertising Sign or Structure” means any sign structure or billboard, whether freestanding or mounted on an existing building, and that has one or more flat surface sign spaces upon which advertising may be posted, painted, displayed electronically, or affixed and which is primarily designed for the rental or lease of such sign space for advertising not relating to the product or service of the property upon which the sign exists.

(e) “On-Premise Sign in Redevelopment Areas” means a sign or billboard advertising those businesses and activities developed within the boundary limits of, and as part of, an individual redevelopment project area, which may, with the consent of the redevelopment agency governing the project area, be considered to be on the premises anywhere within the limits of that project area when all of the land is contiguous or is separated only by a public highway or public facilities developed or relocated for inclusion within the project area.

(f) “Off-Site Advertising Sign Applicant” means any individual, business, enterprise, or partnership that proposes to construct an off-site advertising sign structure within the City of Pomona.

SECTION 3. Subsection 10 of subdivision F of Section .503-K of the Pomona Zoning Ordinance is hereby amended as follows:

F. Prohibited Signs, The following types of signs and devices shall be specifically prohibited:

...
40. Off Site Advertising Signs (billboards). 10. Off Site Advertising Signs or Structures (billboards), except billboards located within an Eligible Display Area that meets all the of the requirements of Section .503-K-K.

SECTION 4. Subsection 19 of subdivision G of Section .503-K of the Pomona Zoning Ordinance is hereby added as follows:

G. Permitted Signs. The following signs shall be permitted subject to the requirements contained herein:

...
19. Off-Site Advertising Signs or Structures (billboards). Off-Site Advertising Signs shall be permitted pursuant to subdivision K of this Section.

SECTION 5. That subdivision K of Section .503-K of the Pomona Zoning Ordinance is hereby amended as follows:

K. Proposition “L” Off-Site Advertising Signs (billboards) Standards within an Eligible Display Area.

1. No new or structurally altered offsite billboards shall be permitted within the City of Pomona. In technical words conveying the same meaning, no “offsite advertising signs” as defined shall be constructed, relocated, or structurally altered in any zoning district.

2. Noncommercial advertising by the property owner or by another with their consent is permitted on any advertising sign allowed by this ordinance for onsite advertising, whether the message concerns activity at the property or not.

1. Purpose and Intent. It is the purpose and intent of this section to establish regulations and reasonable controls for off-site advertising signs in Eligible Display Areas, which consist of specifically designated freeway adjacent City corridors, while protecting and enhancing the public safety, health and welfare with the following objectives:

(a) to protect the quality and character of the visual environment of the community while providing adequate opportunities for off-site advertising sign applicants to construct off-site advertising signs within designated Eligible Displays Areas; and

(b) to ensure the design and construction of off-site advertising signs and structures do not interfere with traffic safety or otherwise endanger public safety; and

(c) to enhance the local and regional economy by providing for off-site advertising signs and structures within designated Eligible Displays Areas which may, among other things identify and promote businesses and organizations within the community and region, or identify, and promote the products or services offered by local or regional businesses and organizations; and

(d) to prohibit the construction of new off-site advertising signs within the City of Pomona except for those constructed within the Eligible Displays Areas designated in this ordinance; and

(e) to set forth the entirety of the City’s Zoning regulations with respect to billboards permitted in Eligible Displays Areas. If there is any conflict between any provision contained in this subdivision K of Section 503-K and any other provisions contained elsewhere in this code, the provisions contained in this subdivision K shall prevail.

(f) Until Development Agreements have been signed for ten (10) new advertising structures in Eligible Display Areas, to require the City to execute one or more Development Agreements exactly in the form of the attached Exhibit “A”, except for filling in the blanks, in the order in which developers with a legal or equitable interest in properties in Eligible Display Areas have submitted executed Development Agreements to the City.

2. Construction of New Off-Site Advertising Signs. No new off-site advertising sign or structure may be constructed within the City of Pomona unless all of the following requirements are satisfied:

(a) Eligible Displays Areas. Off-Site Advertising Signs may be placed only within one or more of the following Eligible Display Areas and may be retrofitted with digital displays, but in addition to the spacing requirements of Section .503-K-K.2.g., no more than ten (10) billboards may be placed in all of the following Eligible Displays Areas:

1. On the west line of the Orange (57) Freeway, starting from a point 385 feet south along the Orange (57) Freeway from the intersection of the south line of West Temple Avenue and the Orange (57) Freeway and continuing to a point along the Orange (57) Freeway to a point 1,173 feet north of the north line of West Temple Avenue.
2. On the east line of the Orange (57) Freeway, starting from a point 450 feet north along the Orange (57) Freeway from the intersection of the northern property line of South Campus Drive and the Orange (57) Freeway and continuing along Orange (57) Freeway to the north line of South Campus Drive.
3. On the south line of the Pomona (60) Freeway, starting from a point 280 feet west along the Pomona (60) Freeway from the intersection of the west line of South Reservoir Street and the Pomona (60) Freeway and continuing along the Pomona (60) Freeway to a point 635 feet west of the westerly side of South Reservoir Street.
4. On the east line of the Chino Valley (71) Freeway, starting from a point 190 feet north along the Chino Valley (71) Freeway from the intersection of the southerly line of Mount Vernon Ave and the Chino Valley (71) Freeway and continuing south along the Chino Valley (71) Freeway to the southern line of Mount Vernon Ave.
5. On the east line of the Chino Valley (71) Freeway, starting from a point 450' south along the Chino (71) Freeway from the intersection of the southerly line of Pomona Boulevard and the Chino Valley (71) Freeway and continuing north along the Chino Valley (71) Freeway to the south line of Pomona Blvd.
6. On the north line of the San Bernardino (10) Freeway, starting from a point 150' feet west along the San Bernardino (10) Freeway from the intersection of the easterly line of Garey Avenue and the San Bernardino (10) Freeway and continuing east along the San Bernardino (10) Freeway to the east line of Garey Avenue
7. On the south line of the San Bernardino (10) Freeway, starting from a point 250' west along the San Bernardino (10) Freeway from the intersection of the westerly line of East McKinley Avenue and the San Bernardino (10) Freeway and continuing east along the San Bernardino (10) Freeway to a point 410' feet past the eastern line of East McKinley Avenue.
8. On the south line of the San Bernardino (10) Freeway, starting from a point 473 feet west along the San Bernardino (10) Freeway from the intersection of the westerly line of North Town Avenue and the San Bernardino (10) Freeway and continuing east along the San Bernardino (10) Freeway to the west line of North Town Avenue.
9. On the north line of the Pomona (60) Freeway, starting from a point 3,747 feet east along the Pomona (60) Freeway from the intersection of the easterly line of Philips Ranch Road and the Pomona (60) Freeway and continuing east along the Pomona (60) Freeway another 846 feet.

(b) Freeway Orientation. The off-site advertising sign shall be designed to be viewed primarily from a freeway or an expressway, unless a third street face would block the view to the back of the other two primarily oriented freeway or expressway faces of the off-site advertising sign.

(c) No Street Orientation. Other than the exception listed in .305K-K.2.c above, the off-site advertising sign is not constructed or designed to be viewed primarily from an arterial or surface street within the City of Pomona.

(d) Development Agreement. The Developer accepts and executes a Development Agreement exactly in the form attached as Exhibit "A", except for filling in the blanks. A Development Agreement may be for one or more advertising Structures in one or more Eligible Display Areas, but no Structure may be built unless the developer accepts the terms of Exhibit "A" for each Structure built. A Development Agreement shall be entered into prior to the issuance of a building permit for any off-site advertising Structure. A Development Agreement shall include the consideration referenced in Exhibit "A" to be delivered to the City pursuant to the terms of the Development Agreement. All monetary consideration to be delivered to the City shall be directed to benefit the City's general fund. Such amounts may be used for any purpose at the discretion of the City, including but not limited to, police and fire protection, street and park maintenance, the library, business development, and park and recreation services.

(e) Compliance. The Developer shall comply with all building code requirements for the construction of advertising structures;

(f) Location.

1. The off-site advertising sign or structure shall not be located within a distance of (90) feet from the main building on the property containing a school, church or similar place of worship on the date the off-site advertising sign or structure is first built unless the school, church or similar place of worship is the landlord for the off-site advertising sign and consents to the placing of the sign on their property; or a distance of five-hundred (500) feet from any other Off-Site Advertising Sign located on the same side of the freeway or expressway or one-thousand (1000) feet between two digital off-site advertising Signs located on the same side of the freeway or expressway, which digital displays intended for off-site advertising, can only be placed within an Eligible Display Area and must comply with the Business & Professions Codes, Section 5405(d)(1). For purposes of this subdivision, measurements shall be made in a straight line from the closest point of the off-site advertising sign to the closest point of the main building on the parcel in question.

2. The off-site advertising sign is not placed, in total or in part, upon the roof or parapet of any building or located on any wall nor does the off-site advertising sign project over any public right-of-way;

(g) Height. Not including extensions, the maximum height of any off-site advertising sign shall not exceed fifty (50) feet from the top of the off-site advertising sign to either the ground level below the off-site advertising sign, or the level of the roadbed from which the off-site advertising sign is designed to be viewed, whichever is greater;

(h) Sign Surface Area. The surface area of each face, poster, printing or advertisement on the off-site advertising sign structure, excluding cut-outs and extensions, does not exceed eight-hundred seventy-two (872) square feet. If the off-site advertising sign is a back-to-back or v-type off-site advertising sign, the surface area of each face, poster, printing or advertisement included on the off-site advertising sign shall not exceed eight-hundred seventy-two (872) square feet, excluding cut-outs and extensions;

(i) Cut-Outs and Extensions. No cut-outs or extensions shall exceed thirty (30%) percent of the square foot area of each off-site advertising sign face, poster, printing or advertisement to which the cut-out or extension is attached. Measurement is made based on the height and the length but not the depth of the cut-out or extension;

(j) Illumination. No new off-site advertising sign shall display flashing, blinking, shimmering, glittering, intermittent or moving light or lights, use motion, sound or other mechanical devices, blinkers, flashing or unusual lighting or other means which cause significant distractions to operators of motor vehicles. However, any off-site advertising sign shall be permitted to have standard lighting for its advertisements and within an Eligible Display Area, the off-site advertising signs can install digital advertising displays so long as such advertising structures and illumination comply with state and federal regulations; and

(k) Local and State Permit. The off-site advertising sign applicant shall obtain a building permit from the City of Pomona. Because the State may require to see evidence of the City building permit prior to the State issuing the State Permit, the off-site advertising sign applicant will be allowed to receive the building permit from the City, but shall not commence construction of the off-site

advertising sign nor receive any required City building inspections until the applicant provides the City of Pomona with written evidence that the applicant has obtained all necessary permits for the construction of the off-site advertising sign from the California Department of Transportation pursuant to the Outdoor Advertising Act, California Business and Professions Code, Sections 5200 et. seq. The City shall cooperate and assist the off-site advertising sign applicant with complying with federal, state and local laws for any off-site advertising sign that was approved by a development agreement; including but not limited to assistance with a relocation per Bus. & Professions Code, Section 5412 for any of the off-site advertising sign locations that are in landscaped classified areas per state law.

3. Construction Demolition Permit Fees. The off-site advertising sign applicant shall pay all applicable construction, demolition and electric permit fees to the Building and Safety Department as required by the International Building Code.

4. Compliance with the Outdoor Advertising Act. No applicant with a City permit to construct a new Off-Site Advertising Sign shall be provided with the required City inspections until the applicant has obtained all necessary permits for the construction of the off-site advertising structure from the from the California Department of Transportation pursuant to the Outdoor Advertising Act, California Business and Professions Code, Sections 5200 et. seq.

5. Maintenance of off-site advertising signs and structures. It shall be the off-site advertising sign applicant's responsibility to keep all off-site advertising signs and structures clean, graffiti free, and in good repair at the applicant's expense.

6. Nothing in this subdivision K of Section .503-K shall affect the status of any existing off-site advertising sign or structure that is in violation of the sign ordinance at the time of adoption of this subdivision.

7. If a developer submits a completed and executed Development Agreement, or Development Agreements, exactly in the form of Exhibit "A" attached, except for filling in the blanks, and if the developer has a legal or equitable interest in one or more properties in Eligible Display Areas, and if the Development Agreements and proposed new advertising structures comply with the requirements of this Ordinance, the City shall, within ten (10) days of the submission as a ministerial duty, execute and deliver to the developer a counterpart original of the agreement(s) in the order submitted by the developer(s) until Development Agreements have been executed for ten (10) new advertising structures in Eligible Display Areas.

SECTION 6. Section .398 of the Pomona Zoning Ordinance prohibiting uses in the "M" Special Industrial Zone is hereby amended as follows:

Sec. .398. - Uses expressly prohibited.

...

(d) Billboards or advertising structures-Off-Site Advertising Signs or Structures (billboards), except billboards that are located within an Eligible Display Area and that meet all of the requirements of Section .503K-K

SECTION 7. Part 2 of subdivision C of section .554 of the Pomona Zoning Ordinance regarding nonconforming use is hereby amended as follows:

C. NONCONFORMING USE OF LAND

...

2. Signs, billboards or commercial advertising structures, that lawfully exist and were maintained when this ordinance became effective, may be continued, provided no structural alterations are made thereto unless such alterations are approved per Section .503-K-K; and further provided, that all such nonconforming signs, billboards or commercial advertising structures shall be removed from the district not later than five years from the effective date of this ordinance unless a longer period is approved per Section .503-K.

During the interim five year period, At all times said nonconforming signs, billboards, or commercial advertising structures shall be maintained and kept in good repair and good visual appearance.

SECTION 8. Subdivision (A) of section .5512 of the Pomona Zoning Ordinance regarding off-site advertising abatement is hereby amended as follows:

(A) Removal of Nonconforming Billboards. Off-site advertising signage or billboards, as defined in Section .503-K, are permitted only in an Eligible Display Area eligible display area, provided, the required ~~conditional use permit~~ and development agreement have been issued and approved. All off-site advertising signage or billboards which were lawfully constructed at the time in which they were erected ~~and~~ which are outside an Eligible Display Area eligible display area, as defined by Section .503-K-K ~~.503-K-G6~~, shall be deemed nonconforming. All off-site advertising signage which is erected within an Eligible Display Area eligible display area without obtaining the required ~~conditional use permit and development agreement~~, or which is maintained after expiration of an applicable development agreement, shall be nonconforming, ~~or which was erected outside an eligible display area with appropriate building permits conditional use permit or other requirements as set forth by law or this code abatement.~~ Any off-site advertising signage or billboard which was erected outside an Eligible Display Area eligible display area with appropriate building permits, conditional use permit or other requirements as set forth by law or this code abatement shall be nonconforming. All off-site advertising signage which is erected within an Eligible Display Area and for which the required permit and development agreement has been issued shall be removed pursuant to and in compliance with the terms of the development agreement. All other ~~Off-site advertising sign structures~~ or billboards which are nonconforming or become non-conforming through annexation, zone change, or other provisions of this code, including approved amendments hereto, shall be removed ~~at the end of within the following specified time period, whichever is longer:~~

1. On or before December 31, 1994; or

2. ~~The~~ the actual useful life adopted for such.

Notwithstanding any other provision of this section, any sign owner or sponsor may allocate a sign area authorized by this code to a noncommercial message.

Notwithstanding any other provision of this section, all signs deemed nonconforming must in all other respects be operated and maintained so as not to create a nuisance or dangerous condition as set forth in the Pomona City Code and Zoning Code.

SECTION 9. General Plan Amendments. The Pomona General Plan is hereby amended as follows. Page numbers refer to the document presented electronically on February 20, 2014 as "City of Pomona 2011 General Plan Update." The Page Numbers will change to reflect amendments made at the March 3, 2014 City Council, as Agenda Item No. 4.

A) General Plan, 7-A. LAND USE & DENSITY, Intensity of Future Development, is amended at Page 85 to add, "4) Freeway Corridor Uses:

"The ten Eligible Display Areas described in Section 2 of this Ordinance are not suitable for residential or open space uses due to the noise, dirt, and exhaust products from the adjacent freeways. They are suitable for advertising structures that have a small footprint at grade and can provide information about local businesses and municipal activities. Advertising structures described in Section 2 of this Ordinance are also suitable uses for properties zoned for industrial, commercial, and office uses.

B) General Plan, 7-B. ECONOMIC DEVELOPMENT, Economic Development Strategy, is amended at the following pages:

P. 97, Item 8, Ensure Fiscal Stability: add the following paragraph to the end of the section headed "Revenue"

"It is anticipated that one or more developers would be willing to sign a development agreement with the City exactly in the format of Exhibit "A" to this Ordinance, except for filling in the blanks ("Development Agreement"). Such agreements would provide the City with additional revenue of \$1,000,000 per structure to be used for vital City services and infrastructure."

P. 99, Item, Item 10, Pursue Stakeholder Partnerships and Collaboration: add the following paragraph to the section headed "Marketing Pomona"

"The Development Agreement requires developers post public service announcements, "Shop Pomona" promotions and allow discounted advertising for local business advertisements. This will enhance the opportunity for joint marketing of City services as well as image building with the business community and supporting business and City innovation."

C) General Plan, 7-C. OPEN SPACE NETWORK, at Page 105, add the following paragraph,

"The corridors identified as Eligible Display Areas described in Section 2 of this Ordinance are particularly unsuited for open space uses. Structures allowed in those areas must be built within 250' of the edge of a freeway right-of-way. Such areas are subject to noise, exhaust products, and dirt that make them unsuitable for any open space use."

D) General Plan, 7-D, MOBILITY & ACCESS, at Page 121, add the following paragraph to the section entitled "FREEWAY NETWORK",

"The Development Agreement requires the developer to make any new advertising structure available for public service announcements. Any structure built for electronic display will enable the City to alert motorists to traffic problems, Amber Alerts, and other emergencies. The City will be able to give traffic-calming instructions in real time."

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E) General Plan, 7-G NOISE & SAFETY, at Page 155, add the following language to the end of the sole paragraph on the page,

"Allowing digital advertising structures in the limited Eligible Display Areas will enhance the City's ability to communicate with the public during emergencies."

SECTION 10.

1. The People of the City of Pomona hereby approve and adopt the generic Development Agreement attached to "Exhibit A" either per Elections Code, Section 9215(a) or per Elections Code, Section 9217, which exhibit is incorporated by reference herein, as an Ordinance of the City.

2. The City Council or the voters hereby finds and determines that the generic Development Agreement attached as Exhibit "A" is consistent with the City's General Plan.

SECTION 11, Severability. If any sections subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held to be invalid or unenforceable by a court of competent jurisdiction, including but not limited to Exhibit "A" and all references thereof, the remaining portions of this Ordinance shall nonetheless remain in full force and effect. We the voters of the City of Pomona, hereby declare we would have adopted each section, subsection, sentence, clause, phrase, or portion of this Ordinance, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions of this Ordinance be declared invalid or unenforceable.

If any portion of this Ordinance is held by a court of competent jurisdiction to be invalid, we, the voters of the City of Pomona, indicate our strong desire that: (1) the City Council use its best efforts to sustain and cure such portion, and (ii) the City Council implement this Ordinance by taking all steps possible to cure any inadequacies or deficiencies identified by the court in a manner consistent with the express and implied intent of this Ordinance.

SECTION 12, Amendment or Repeal. The changes to the Pomona Zoning Ordinance and to the Pomona General Plan made by this Ordinance may be amended or repealed only by the voters at a City election.

SECTION 13, Authorization. The mayor is hereby authorized to attest to the adoption of this Ordinance by the voters of the City by signing where indicated below.

SECTION 14, CEQA. The submission of this ordinance to the voters and approval thereof per Elections Code, Section 9215 (a) or per Elections Code, Section 9217, is not a "project" subject to CEQA.

SECTION 15, Majority Approval; Effective Date. If a majority of voters voting in the City's general municipal election on _____, approve this Ordinance per Elections Code,

Section 9217 or the City Council adopts a qualified petition as drafted per Elections Code, Section 9215 (a), the Ordinance shall be considered adopted and effective upon the earliest date legally possible after the City Clerk certifies the vote on the Ordinances by the voters of the City of Pomona or the vote of the City Council when if they adopt a qualified petition as drafted ("Effective Date"). The Mayor will sign the Ordinance, and the City Clerk will attest and certify to the passage and adoption of this Ordinance. Upon the Effective Date of this Ordinance, the City Manager is directed to promptly take appropriate actions needed to implement this Ordinance.

[SIGNATURES FOLLOW]

I hereby certify that the foregoing Ordinance was PASSED, APPROVED and ADOPTED by the people of the City of Pomona voting on the ___ day of _____, 2014.

ATTEST

CITY OF POMONA

Eva M. Buice, MMC, City Clerk

Elliot Rothman, Mayor

Arnold M. Alvarez-Glasman, City Attorney

EXHIBIT "A" TO ORDINANCE NO. _____
DEVELOPMENT AGREEMENT
BETWEEN THE CITY OF POMONA
AND _____

THIS DEVELOPMENT AGREEMENT ("Agreement") is made and entered in the City of Pomona, County of Los Angeles, on this _____ day of _____, _____, by and between the City of Pomona, a charter city (hereinafter referred to as "City"), and _____ referred to as "Developer").

WITNESSETH:

WHEREAS, on November 16, 1992, City enacted ordinance number 3676 ("Ordinance 3676") that regulated the construction of "Off-Site Outdoor Advertising Structures" to protect the quality and character of the visual environment of the community; to provide adequate opportunities for applicants to construct Off-Site Outdoor Advertising Structures within "Eligible Display Areas"; to enhance the local and regional economy by providing for Off-Site Outdoor Advertising Structures that may identify and promote businesses and organizations within the City and region; and to enhance the visual environment within the city's central core by reducing the overall number of Off-Site Outdoor Advertising Structures in that area; and

WHEREAS, on November 2, 1993, the voters of the city of Pomona approved Billboard Ordinance Initiative ("Proposition L") that banned any new or structurally altered off-site advertising signs from being constructed, relocated, or structurally altered within the City of Pomona in any zoning district;

WHEREAS, on August 4, 1997, by Ordinance 3845 the City Council approved Code Amendment CA-96-003 amending Section .503-K of the Pomona Zoning Ordinance pertaining to definitions and standards for signs located on private property within the City;

WHEREAS, since 1992, sign abatement has been significant; commercial signing in the City is no longer typified by an overabundance of poorly designed, over-scaled signs; continued regulation and reasonable controls for off-site advertising signs and structures in specifically designated areas ("Eligible Display Areas") can continue to protect and enhance the quality and character of the visual environment;

WHEREAS, due to the on-going recession and the dire fiscal emergency the City currently faces, the City has identified new and existing off-site billboards as a potential revenue source for the City, which if permitted, would permit the City to preserve and apply funding for essential and general city services including, but not limited to, police and fire protection, street and park maintenance, the library, business development and park and recreation services;

WHEREAS, Developer has a legal or equitable interest, or both, in one or more properties identified in Exhibits "A-1" through "A - ____" ("Developer's Properties"), all of which are located within Eligible Display Areas;

WHEREAS, Developer has asked to enter into an agreement with the City to permit development of off-site advertising structures on Developer's Properties ("New Structures");

WHEREAS, as consideration for this Development Agreement, which allows the Developer, among other things, to solicit paid commercial off-site advertising, Developer is willing to pay fees to the City, make the New Structures available for public service announcements, provide discounts to local merchants who advertise on the New Structures, and limit the surface area of each New Structure, all as required by this Development Agreement;

WHEREAS, Developer acknowledges the City's interests in preserving and enhancing the City's scenic quality, traveler orientation, and public pride, and in obtaining the means of communicating with the public, all through provisions included within this Development Agreement;

WHEREAS, in light of the substantial commitments agreed to by Developer pursuant to this Agreement, City desires to give Developer assurance that Developer can proceed with construction of the New Structures subject to the "Applicable Rules" (as hereinafter defined) for the term of this Agreement; and

WHEREAS, the terms and conditions of this Agreement have been found to be fair, just and reasonable by the People of the City of Pomona, and City has concluded that the economic interests of its citizens and the public health, safety and welfare will be best served by entering into this obligation; and

WHEREAS, the development fees for the New Structures on the Developer's Properties are consistent with the City's General Plan, any applicable specific plan, and the Applicable Rules, and that there are no Applicable Rules that would prohibit or prevent the tender and acceptance of the development fees and construction of the New Structures on the Developer's under this Agreement; and

WHEREAS, by adoption of the Ordinance to which this Development Agreement is Exhibit "A" City has made the following findings under its police and regulatory powers:

- (1) The New Structures in Eligible Display Areas will contribute to the general well-being of the neighborhood or community;
- (2) The New Structures will not, be detrimental to the health, safety, peace, or general welfare of persons residing or working in the vicinity of the Eligible Display Areas, or be detrimental to the use, valuation or enjoyment of property or improvements in the vicinity thereof;
- (3) The properties within the Eligible Display Areas are of adequate topography, size and shape to accommodate the New Structures, as well as all yards, spaces, walls, fences, parking, loading, landscaping, and any other features necessary to allow the New Structures to be compatible with the land and uses in the Eligible Display Areas and surrounding neighborhoods ;
- (4) The Eligible Display Areas abut streets and highways adequate in width and improvements to carry traffic generations typical of Off-site Outdoor Advertising Structures;
- (5) The consent to this Agreement will not adversely affect the City's General Plan, or any other adopted plan of City and conforms to the provisions of the City Zoning Ordinance; and

AGREEMENT

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

Section I. Obligations of or Contributions by Developer. In consideration of City entering into this Agreement, Developer agrees to perform certain obligations in connection with the construction of the New Structures, which will have an overall benefit to City. These obligations include:

A. **Notice of Completion.** Developer shall notify City in writing upon completion of the construction of the last of the New Structures under receive final City inspection (hereinafter referred to as the "Notice of Completion").

B. **Payment of Fees.** Developer shall pay the following fees to City:

- 1. A ONE MILLION dollar (\$1,000,000.00) development fee for each New Structure, payable in installments of Two-Thousand, Eighty-Three Dollars and Thirty-Three Cents (\$2,083.33) per month for the term of this Agreement;
- 2. Within One-Hundred-Sixty (160) days after the Effective Date, Developer shall pay the City an advance equal to twenty-four (24) monthly installments of the development fee for each New Structure allowed by this Development Agreement. This advance is a refundable deposit that shall be credited against the first installments of development fees owed by the Developer.
- 3. The Developer shall be entitled to build _____ () New Structures for a total development fee of _____ (\$.00);
- 4. On the first day of the month following completion of each New Structure, and issuance of a State permit for the New Structure, and issuance by the City of a Certificate of Occupancy or Final Inspection Report for the New Structure, Developer shall begin paying the monthly installment(s) for each New Structure allowed by this Development Agreement. Developer shall pay the monthly installments, in advance, on the first day of each month during the remaining term of this Development Agreement.

5. A standard construction and electrical fee, as paid by any other business within the City; and

6. A standard business license fee, as paid by any other business within the City.

C. Hold Harmless. Developer agrees to indemnify City, and any of its officers, employees or agents, and hold City, and any of its officers, employees or agents thereof, harmless from any and all claims, liabilities, obligations and causes of action of whatsoever kind or nature for injury to, or death of, any person (including officers, employees and agents of city), and for injury or damage to or destruction of property (including property of City), resulting from any and all actions or omissions of Developer's employees, agents or invitees, or any of its subcontractors or any of such subcontractor's employees, agents or invitees pursuant to this Agreement, except in the case where the claims, liabilities, obligations and causes of action may have been partially caused by City, or City's officers', agents' or employees' activities whether willfully or negligently.

D. Equal Opportunity.

1. By signing this Agreement, Developer certifies that it does not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, marital status, national origin, ancestry, physical handicap or medical condition, except as provided in Government Code section 12940, in connection with employment, upgrading, promotion, or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training including apprenticeship. Developer agrees that it will comply with the affirmative action guidelines adopted by City.

2. Developer agrees that it shall, in all solicitations or advertisement for employees for any work covered by this Agreement, placed by, or on behalf of, Developer, state that all qualified applicants will receive consideration for employment without regard to race, color, creed, religion, sex, marital status, national origin, or ancestry.

3. Noncompliance with the affirmative action program will constitute a breach of the terms of this Agreement

E. Public Service and Promotion of Local Business. As described in subparagraphs 1, 2 and 3 below, Developer shall post public service announcements, "Shop Pomona" promotions, and advertisements for local business advertisements.

1. Public Service. Developer shall post public service and other non-commercial displays related to City issues or events (other than political campaigns) on the New Structures on a space-available basis if requested by the City. Developer shall determine when and on which of the New Structures the public service announcements will be posted. Developer shall not charge rent for such public service time. The public service entity shall be responsible for the cost of producing such public service announcements which includes the installation thereof. Nothing in this paragraph shall preclude Developer's right to post other public service announcements, which may not be credited towards Developer's obligation under this Section I.E.

2. "Shop Pomona" or "Second Street" Promotion. Developer shall post a "Shop Pomona" or "Second Street" promotion on only one sign face among the New Structures for three (3) months annually, which shall be credited towards Developer's obligation under this Section I.E. Developer shall determine when and on which sign face the "Shop Pomona" or "Second Street" promotion will be posted. Developer may within Developer's sole discretion relocate the "Shop Pomona" or "Second Street" promotion from one sign face to another sign face and may post the promotions in any interval of days, weeks, or months, up to three consecutive months, provided the total promotion time shall total three (3) months within a twelve (12) month period. Developer may also provide additional time on a space-available basis. Developer shall not charge rent for such promotional time. City shall be responsible for the cost of producing such promotional announcements which includes the installation thereof.

3. Local Business Discount. Developer shall give a ten percent (10%) discount off of the market rates normally charged by Developer for advertising space on the New Structures to any business that has its principal place of business within the City of Pomona, and rents advertising space on the New Structures for the sole purpose of advertising that business's name and/or services rendered by that business within the City of Pomona.

Section II. Project Development.

A. Entitlement to Develop. The Ordinance that approved the form and content of this Development Agreement allows only ten New Structures to be built in the Eligible Display Areas. To date, development agreements have been signed to permit ____ (___) New Structures to be built in the Eligible Display Areas. City hereby grants Developer the right to construct ____ (___) New Structures on properties in the Eligible Display Areas, in which Developer has a legal or equitable interest, subject to all the terms and conditions of this Agreement and in accordance with the Applicable Rules. The right to construct the New Structures includes, but is not limited to, the right to install statically illuminated lighting on the New Structures or to install digital displays on any of the faces of the New Structures, at the sole choice of Developer, provided the static illumination and/or the digital display illumination complies with all state law and federal law. Any other development contemplated by Developer or Developer's Affiliates or assignees shall require full and separate legal and administrative process per all applicable local, state and federal laws.

B. Permitted Density, Height and Uses. The permitted uses, the density or intensity of use, the maximum height and size of proposed structures, and provisions for reservation or dedication of land for public purposes shall be those set forth in this Agreement and the Applicable Rules.

1. Surface Area. The surface area of each billboard face, poster, printing or advertisement included within the New Structures, excluding cut-outs and extensions, which shall not exceed thirty (30%) percent of each billboard face of the New Structures, shall not exceed eight hundred seventy-two (872) square feet on Off-Site Outdoor Advertising Structures located along state route 60 (Pomona Freeway), state route 57 (Orange Freeway), state route 10 (San Bernardino), and state route 71 (Chino Valley Freeway).

2. Height. Exclusive of extensions, the maximum height of any New Structure will not exceed fifty (50) feet, measured from the top of the face of the New Structures to either the ground level or the level of the roadbed from which the New Structures are designed to be viewed, whichever is higher.

3. Design of New Structures. Except as hereinafter provided, the New Structures shall be of a single pole design. The construction of the New Structures shall be substantially as depicted on the site plans for each, which are attached as **Exhibits "B-1"** through **"B- "**, incorporated herein by this reference.

4. Repair and Maintenance. Developer shall keep the New Structures clean, graffiti free, and in good repair. Developer may replace the New Structures as appropriate and in Developer's sole discretion.

5. Advertising. No advertisement on any New Structure built under this Agreement shall be displayed which would be indecent or obscene. If the City Administrator, after consultation with the City Attorney, and in their reasonable discretion, determines that any advertising on any New Structure is indecent or obscene, City may, in exercise of City's police and regulatory powers, serve written notice upon Developer requiring the removal of such advertising pursuant to this paragraph. Developer shall remove all such advertising within three (3) business days after City serves such notice. Developer shall have the right to appeal the City Administrator's and City Attorney's decision to the City Council.

No advertisement on any New Structure shall displays any word, phrase, symbol or character likely to interfere with, mislead or distract traffic, or conflict with any traffic control device, including, but not limited to, words such as "Stop," "Look," "Drive-In," or "Danger."

No New Structure shall display any tobacco advertisement where the tobacco product is the sole subject of the advertisement, but when a tobacco advertisement is in conjunction with a sporting or community event, such advertising shall be permissible in its entirety. Should Developer fail to comply with the provisions of this paragraph, the City Administrator, after consultation with the City Attorney, may serve written notice upon Developer requiring removal of the alleged improper tobacco advertisement. Developer shall remove all such advertising within three (3) business days after City serves such notice. If the alleged improper tobacco advertisement is not corrected within three (3) business days after the notice is served on Developer, Developer shall pay a fine of five hundred dollars (\$500.00), for each day the alleged improper tobacco advertisement continues to be displayed. Developer shall have the right to appeal the City Administrator's and City Attorney's decision to the City Council.

C. No Further Discretionary Action. The City hereby grants this Development Agreement to Developer. City hereby acknowledges that no other discretionary approvals are required by City for the construction of the New Structures, for .posting of any sign faces or digital displays on a New Structure, or for building New Structures initially or relocating New Structures in the future pursuant to *California Business and Professions Code*, §5412.

D. Ministerial Approvals. Developer shall obtain from City a separate building permit for each New Structure whether or not it was initially built pursuant to *California Business and Professions Code*, §5412 or relocated at any time during the term of this agreement per said §5412, and each such permit

shall be valid only for the particular location specified therein. Each application for a building permit shall conform to the Applicable Rules and the City shall process the Building Permits within Fifteen (15) days of receipt of the building permit application. After execution of this Agreement, the City will use its best efforts to cooperate with Developer to obtain the necessary permits from the City and from Caltrans, by means including, but which may not be limited to, providing Caltrans a letter from the City Attorney evidencing that the City has "consented to the placing" of the New Structures, as that term is used within the meaning of Business and Professions Code section 5354 or providing assistance with a relocation per Business and Professions Code, Section 5412 which is necessary to build the New Structure or necessary to relocate the New Structure at any time during the term of the Agreement. Any proposed New Structure that would need relocation per Business and Professions Code, Section 5412 in order to be initially built due to the freeway being a classified landscape freeway should not be a basis for the City to not execute this Development Agreement. City acknowledges that this evidence of consent is necessary for Developer to obtain from the City prior to Developer applying to Caltrans for the Caltrans permits for the New Structures. If Caltrans requires the City to first issue the City building permit prior to Caltrans issuing the Caltrans permit, the City shall issue the City Building Permit prior to Caltrans issuing their permit since Caltrans requires the City Permit as part of the application process to obtain a Caltrans permit. Developer agrees not to commence construction on any particular New Structure and Developer agrees that the City will conduct no building inspections for a New Structure until Developer obtains a Caltrans permit for that particular New Structure. City will use its best efforts to expedite the processing of Developer's applications to build or relocate the New Structures.

E. Rules, Regulations and Official Policies.

1. **Applicable Rules.** The parties hereby agree that, for the term of this Agreement, the rules, regulations and official policies governing permitted uses, governing density, and governing design, improvement and construction standards and specifications applicable to the development of the Developer's Properties shall be those rules, regulations and official policies of the City, State and Federal government in force at the time of the Effective Date, including Caltrans regulations and policies permitting relocation of billboards to landscaped freeways, (hereinafter referred to collectively as the "Applicable Rules").

2. **Conflicting Enactments.** Any change in the Applicable Rules, including, without limitation, any change in any applicable general, area or specific plan, zoning, subdivision or building regulation, adopted or becoming effective after the Effective Date of this Agreement, and which would, absent this Agreement, otherwise be applicable to the removal or relocation of the New Structures or the construction, maintenance and or use of the New Structures by Developer and which would conflict in any way with or be more restrictive than the Applicable Rules, shall not be applied by City to the New Structures. The parties acknowledge and agree that any such subsequent conflicting enactment may apply to any existing Off-Site Outdoor Advertising Structures, other than the New Structures.

3. **Moratorium.** No City imposed moratorium or other limitation (whether relating to the rate, timing or sequencing of the construction of all or any part of the New Structures) affecting parcel or subdivision maps (whether tentative, vesting tentative or final), building permits, occupancy certificates or other entitlements to use or service approved, issued or granted within city, or portions of City, shall apply to the New Structures to the extent such moratorium or other limitation is in conflict with this Agreement.

F. **Permitted Conditions and Fees.** Subject to the fees set forth in this Agreement, no additional mitigations, conditions, exactions, dedications or fees, whether adopted through the exercise of either: the police power, the taxing power or any other authority, shall be imposed by City on the construction and/or maintenance of the New Structures, except as expressly provided in this Agreement.

G. **Timing of Development.** Because the California Supreme Court held in *Pardee Construction Co. v. City of Camarillo*, 37 Cal.3d 465 (1984), that failure of the parties therein to provide for the timing of development resulted in a later adopted initiative restricting the timing of development to prevail over such parties' agreement, it is the parties' intent to cure that deficiency by acknowledging and providing that Developer shall have the right (without obligation) to develop the Developer's Properties in such order and at such rate and at such times as Developer deems appropriate within the exercise of its subjective business judgment.

H. **Vesting of Developer's Rights.** Upon execution of this Agreement, the rights and entitlements granted to Developer, pursuant to this Agreement, shall be and constitute "vested rights" or the equivalent of "vested rights" as that term is defined under California law applicable to the development of land or property and the right of a public entity to regulate or control such development of land or property, to construct the New Structures on the Developer's Properties.

Section III. Cooperation/Implementation.

A. **No Inconsistent Actions.** Except as required by any un-stayed court order, neither City, nor any of its agencies, officers or employees, shall take any action that is inconsistent with the terms of this Agreement.

B. **Further Assurances; Covenant to Sign Documents and Assist with Permits.** Each party shall take all actions and do all things, and execute, with acknowledgment or affidavit, if required, any and all documents and writings that may be necessary or proper to achieve the purposes and objectives of this Agreement, including any applications for State permits. The City acknowledges that per the Business and Professions Code, Section 5412, 5443 and/or 5443.5 that it is a policy of this state to encourage local entities and display owners to enter into relocation agreements which allow local entities to continue development in a planned manner without expenditure of public funds while allowing the continued maintenance of private investment and a medium of public communication. By this Agreement the City desires to support and cooperate in future processes for permitting the relocation of the New Structures after they are built or the initial construction and operation of the New Structures that need to be relocated from other areas in the City or outside the City and placed at the locations listed in this Agreement in order to facilitate continued development in a planned manner for the general welfare and benefit of the public whether that planning be for the benefit of the City in removing signs within the City or for any other local or state agency where the signs maybe removed due to said planning purposes.

C. **State, Federal or Case Law.** Where any state, federal or case law allows city to exercise any discretion or take any act with respect to that law, City shall, in an expeditious and timely manner, at the earliest possible time, (a) exercise its discretion in such a way as to be consistent with, and carry out the terms of, this Agreement and (b) take such other actions as may be necessary to conform with the terms of this Agreement.

D. **Other Governmental Bodies.** To the extent that City, its City Council, Planning Commission or any other City agency constitutes and sits as any other board or agency, it shall not take any action that is inconsistent with the terms of this Agreement. Nothing in this paragraph shall restrict or inhibit any individual member of City's City Council, Planning Commission or any other City agency who is also a member of another governmental body, the composition of which is different than the City's City Council, Planning Commission or other City agency, from exercising his or her discretion on such other governmental body.

E. **Cooperation in the Event of Legal Challenge.** If any legal action is instituted by a third party or other governmental entity or official challenging the validity of any provision in this Agreement, Developer and City shall cooperate in defending any such action, but pay for their own legal fees and costs. City shall notify Developer of any such legal action against City within ten (10) working days after City receives service of process, except for any writ for injunctive relief, in which case City shall notify Developer immediately upon receipt. The City shall defend City, its officers, agents and employees from any legal actions instituted by a third party or other governmental entity or official challenging the validity of any provision of this Agreement. City shall not reject any reasonable settlement; if city does reject a settlement that is acceptable to Developer, Developer may settle the action, as it relates to Developer, and City shall thereafter continue to defend such action (including appeals) at its own cost and be solely responsible for any judgments rendered in connection with such action.

The filing of any third party lawsuit(s) against City or Developer relating to this Agreement or to other development issues affecting construction of the New Structures shall not delay or stop the processing or issuance of any necessary building permit, unless the third party obtains a court order preventing the activity. City shall not stipulate to the issuance of any such order.

Section IV. General Provisions.

A. **Covenants Run with the Land.** All of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall be binding upon the parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns, devisees, administrators, representatives, lessees, and all other persons acquiring all or some of the Developer's Properties, or any interest therein, whether by operation of law or in any manner whatsoever, and shall inure to the benefit of the parties and their respective heirs, successors and assigns. All of the provisions of this Agreement shall constitute covenants running with the land.

B. Transfers and Assignments. Developer can assign any interest in this Agreement in connection with the concurrent transfer of some or all of the Developer's Properties.

City shall sign any reasonable Consent to Assignment provided by any assignee that is an Affiliate or that is a financial institution that is financing Developer or Developer's Affiliates, or that is a transferee of Developer. The City Attorney shall be authorized to execute any Consent to Assignment requested by Developer hereunder.

Upon any transfer of all or some of the Developer's Properties and assignment of this Agreement and delegation of all of Developer's obligations hereunder, with respect to the transferred properties, to an Affiliate or to a financial institution that is financing Developer or their Affiliates, or to other transferee of Developer, Developer shall be relieved of and from further liability or responsibility for the obligations arising under this Agreement, and City agrees to look solely to the transferee for compliance with the provisions of this Agreement, as such obligations and provisions relate to the Developer's Properties acquired by such transferee.

In addition, any amendment to this Agreement between City and a transferee shall only affect the Developer's Properties owned by such transferee, and a default by any transferee shall only affect the Developer's Properties owned by such transferee.

C. Statement of Compliance. Within ten (10) days following any written request which either City or Developer may make from time to time, the other shall execute and deliver to the requesting party a statement certifying that: (1) this Agreement is unmodified and in full force and effect or, if there have been modifications hereto, that this Agreement is in full force and effect, as modified, and stating the date and nature of such modifications; (2) there are no current uncured defaults under this Agreement or specifying the dates and nature of any such defaults; and (3) any other reasonable information requested. The failure to deliver such statement within such time shall be conclusive upon the party which fails to deliver such statement that this Agreement is in full force and effect without modification and that there are no uncured defaults in the performance of the requesting party.

The City Attorney shall be authorized to execute any certificate requested by Developer hereunder.

D. Default. Failure by City or Developer to perform any term or provision of this Agreement for a period of thirty (30) days from the receipt of written notice thereof from the other, unless any such failure is the result of an un-stayed court order, shall constitute a default under this Agreement, subject to extensions of time by mutual consent in writing. Said notice shall specify in detail the nature of the alleged default and the manner in which said default may be satisfactorily cured. If the nature of the alleged default is such that it cannot reasonably be cured with such 30-day period, the commencement of the cure within such time period and the diligent prosecution to completion of the cure shall be deemed a cure within such period.

Subject to the foregoing, after notice and expiration of the 30-day period without cure, the notifying party, at its option, may institute legal proceedings pursuant to this Agreement and/or give notice of intent to terminate the Agreement pursuant to Government Code sections 65867 and 65868. Following such notice of intent to terminate, the matter shall be scheduled for consideration and review by the City Council within thirty (30) calendar days in the manner set forth in Government Code sections 65867 and 65868.

Following consideration of the evidence presented in the review before the City Council, the party alleging the default by the other party may give written notice of termination of this Agreement to the other party.

Except as otherwise provided, evidence of default may also arise in the course of the regularly scheduled annual review described in Section IV.E. below.

E. Annual Review. Each year on the anniversary of the Effective Date (or, in the event such date falls on a weekend or holiday, the next available business day) if requested by the City or Developer with 30 days written notice prior to the Effective Date, throughout the term of this Agreement, Developer and City will meet and review, pursuant to Government Code section 65865.1, the good faith compliance by Developer with the terms of this Agreement. Such meeting shall take place at the offices of the Planning Department, or at such other places or times which are mutually agreed upon by the parties. If as a result of such review, the City or Developer reasonably determines ("Alleging Party"), on the basis of substantial evidence presented at such meeting, that the other party ("Responding Party") or its successor in interest to the Developer's Properties has not complied in good faith with the terms and conditions hereof, the Alleging Party shall provide written notice thereof (hereinafter referred to as the "Notice of Non-Compliance"), specifying in specific detail and specific reasons for such finding. After the Alleging Party delivers the Notice of Non-Compliance, the Responding Party shall have the right to cure such non-compliance as provided in Section IV.D. above. If the Responding Party does not timely cure the non-compliance after a Notice of Non-Compliance is delivered by City, Alleging Party may proceed to terminate this Agreement on ten (10) days prior written notice to the Responding Party in accordance with the termination procedure set forth in Section IV.D. above, in addition to any other legal rights to which that Alleging Party may be entitled. The costs incurred by the parties in connection with the annual review hereunder shall be shared equally by Developer and City. If either party fails to either (1) request the annual review or (2) notify the non-requesting party in writing (following the time during which the review is to be conducted) of the requesting party's determination as to compliance or noncompliance with the terms of this Agreement and such failure remains uncured as of sixty (60) days after any annual anniversary of the Effective Date during the term of this Agreement, such failure shall be deemed an approval by the requesting party of the non-requesting party's compliance with the terms of this Agreement during the year that is the subject of the annual review.

F. Default by City. If City defaults (as defined in Section IV.D., herein) under the terms of this Agreement, Developer shall have all rights and remedies provided herein or under applicable law, including the specific performance of this Agreement. In addition, the term of this Agreement will be extended by the same time as City is in default.

G. Legal Action. Either party may, in addition to any other rights or remedies, institute legal action to cure, correct or remedy any default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation hereof, or enforce by specific performance the obligations and rights of the parties hereto.

All legal actions shall be heard by a referee from the Los Angeles County Superior Court, Central District, pursuant to Code of Civil Procedure sections 638, et seq. Developer and City shall agree upon a single referee, who shall then try all issues, whether of fact or law, and report a finding and judgment thereon and issue all legal and equitable relief appropriate under the circumstances of the controversy before such referee. If Developer and City are unable to agree on a referee within ten (10) days of a written request to do so by either party hereto, either party may seek to have one appointed pursuant to Code of Civil Procedure section 640. The cost of such proceeding shall initially be borne equally by the parties. Any referee selected pursuant to this Section shall be considered a temporary judge appointed pursuant to article 6, section 21 of the California Constitution.

H. Waiver: Remedies Cumulative. Failure by City or Developer to insist upon the strict performance of any of the provisions of this Agreement, irrespective of the length of time for which such failure continues, shall not constitute a waiver of the right to demand strict compliance with this Agreement in the future. No waiver by City or Developer of a default or breach of any other party shall be effective or binding upon it unless made in writing. No such waiver shall be implied from any omission by City or Developer to take any action with respect to such default or breach. No express written waiver of any defaults or breach shall affect any other default or breach, or cover any other period of time, other than any default or breach and/or period of time specified in such express waiver. One or more written waivers of a default or breach under any provision of this Agreement shall not be a waiver of any subsequent default or breach, and the performance of the same or any other term or provision contained in this Agreement. Subject to notice of default and opportunity to cure under Section IV.D., all of the remedies permitted or available under this Agreement, at law or in equity, shall be cumulative and alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right or remedy.

I. Future Litigation Expenses.

1. **Payment to Prevailing Party.** If City or Developer brings an action or proceeding (including, without limitation, any motion, order to show cause, cross-complaint, counterclaim, or third-party claim) by reason of defaults or breach, or otherwise arising out of this Agreement, the prevailing party in such action or proceeding shall be entitled to its costs and expenses of suit including, but not limited to, reasonable attorneys' fees, consulting fees, expert witness fees, expenses of preparing exhibits and court costs incurred in connection with the litigation ("Litigation Expenses").

2. **Scope of Fees.** Attorneys' fees under this Agreement shall include attorneys' fees on any appeal and, in addition, a party entitled to attorneys' fees shall be entitled to all other reasonable Litigation Expenses in connection with such action. In addition to the foregoing award of attorneys' fees and Litigation Expenses to the prevailing party, the prevailing party in any lawsuit shall be entitled to its attorneys' fees incurred in any post judgment proceedings to collect or enforce the judgment. This provision is separate and several and shall survive the merger of this Agreement into any judgment on this Agreement.

J. Effective Date and Term. The Effective Date of this Agreement shall be the day that the City signs this Agreement ("Effective Date"). The first term of this Agreement shall expire ten (10) years from the earlier to occur of (i) the construction of all of the New Structures contemplated by this

Development Agreement, or (ii) twelve (12) months after the Effective Date. This Agreement shall be automatically extended for three more consecutive ten (10) year terms, unless such term is otherwise terminated, modified or extended by circumstances set forth in this Agreement or by mutual consent of the parties.

At least sixty (60) days before the end of the final ten (10) year term, Developer shall apply for a separate demolition permit for each New Structure. Provided that City has timely issued demolition permits, Developer shall remove all of the New Structures on or before the last day of the final ten (10) year term of this Agreement. If Developer fails to remove any of the New Structures by the end of the final ten (10) year term of this Agreement, City shall have the right to remove said remaining New Structures and to charge Developer its actual costs of removal. In addition, if Developer fails to remove any of the New Structures by the end of the final ten (10) year term of this Agreement, Developer shall pay City a fine of either (i) five hundred dollars (\$500.00) a day, or (ii) the actual amount of revenues received by Developer for the New Structures for the period following the end of the final ten (10) year term of this Agreement, whichever is greater.

Notwithstanding the foregoing, Developer shall have the right to remove any of the New Structures at any time during the term of this Agreement and to terminate this Agreement with respect to the Property on which said New Structure was located.

K. Subsequent Laws. If any federal or state law made or enacted after the Effective Date of this Agreement prevents or precludes compliance with one or more provisions of this Agreement, then the provisions of this Agreement shall, to the extent feasible, be modified as may be necessary to comply with such new law. Immediately after enactment or promulgation of any such new law, City and Developer shall meet and confer in good faith to determine the feasibility of any such modification based on the effect such modification would have on the purposes and intent of this Agreement.

Developer and City shall have the right to challenge the new law preventing compliance with the terms of this Agreement, and in the event such challenge is successful, this Agreement shall remain unmodified and in full force and effect.

L. Amendment of Agreement. While the desire of the City to amend this Agreement cannot delay the execution of this Agreement that has been properly submitted per local laws, this Agreement may be subsequently amended after its execution from time to time by mutual consent of the parties to this Agreement, in accordance with the provisions of Government Code sections 65867 and 65868 or their successor sections, and provided a public hearing is conducted prior to any amendment to this Agreement.

M. Operating Memoranda. The provisions of this Agreement require a close degree of cooperation between City and Developer and the refinements and further development of the Developer's Properties hereunder may demonstrate that clarifications are appropriate with respect to the details of performance of City and Developer. If and when, from time to time, during the term of this Agreement, City and Developer agree that such clarifications are necessary or appropriate, they shall effectuate such clarifications through operating memoranda approved by City and Developer, which, after execution, shall be attached hereto as addenda and become a part hereof, and may be further clarified from time to time as necessary with future approval by City and Developer. No such operating memoranda shall constitute an amendment to this Agreement requiring public notice or hearing. The City Attorney shall be authorized to make the determination whether a requested clarification may be effectuated pursuant to this Section or whether the requested clarification is of such a character to constitute an amendment hereof pursuant to Section IV.L. The City Attorney may execute any operating memoranda hereunder.

Section V. Miscellaneous.

A. Negation of Partnership. The development on the Developer's Properties constitutes private development. Neither City nor Developer is acting as the agent of the other in any respect hereunder, and City and Developer are independent entities with respect to the terms and conditions of this Agreement. None of the terms or provisions of this Agreement shall be deemed to create a partnership between or among the parties in the businesses of Developer, the affairs of City, or otherwise, nor shall it cause them to be considered joint venturers or members of any joint enterprise.

B. No Third Party Beneficiary. This Agreement is not intended, nor shall it be construed, to create any third party beneficiary rights in any person or entity that is not a party, unless expressly otherwise provided.

C. Entire Agreement. This Agreement sets forth and contains the entire understanding and agreement of the parties, and there are no oral or written representations, understandings or ancillary covenants, undertakings or agreements which are not contained or expressly referred to herein. No testimony or evidence of any such representations, understandings or covenants shall be admissible in any proceeding of any kind or nature to interpret or determine the terms or conditions of this Agreement.

D. Severability. Invalidation of any of the provisions contained in this Agreement, or of the application thereof to any person, by judgment or court order shall in no way affect any of the other provisions hereof or the application thereof to any other person or circumstance, and the same shall remain in full force and effect, unless enforcement of this Agreement, as so invalidated, would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this Agreement and the rights and obligations of the parties hereto.

E. Construction of Agreement. The provisions of this Agreement and the exhibits hereto shall be construed as a whole according to their common meaning and not strictly for or against Developer or City and consistent with the provisions hereof, in order to achieve the objectives and purposes. Wherever required by the context, the singular shall include the plural and vice versa, and the masculine gender shall include the feminine or neuter genders, or vice versa.

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

G. Applicable Law. This Agreement shall be construed and enforced in accordance with the laws of the State of California.

H. Notices. Any notice shall be in writing and given by delivering the same by registered, certified or express mail, return receipt requested, with postage prepaid, to the mailing address. The respective mailing addresses of the parties are, until changed as hereinafter provided, the following:

City: City of Pomona
505 South Garey Avenue, P.O. Box 660
Pomona, California 91769
Attention: City Administrator

Developer: (Name/address)

Attention:

With a copy to: (Name back up person/address)

Either City or Developer may change its mailing address at any time by giving written notice of such change to the other in the manner provided herein at least ten (10) days prior to the date such change is affected. All notices under this Agreement shall be deemed given, received, made or communicated on the delivery date or attempted delivery date shown on the return receipt.

I. Time is of the Essence. Time is of the essence of this Agreement and of each and every term and condition hereof.

J. Recordation. In order to comply with section 65868.5 of the Government Code, the parties do hereby direct the City Clerk to record a copy of this Agreement against each of the Properties with the County Recorder of Los Angeles County within ten (10) days after the Effective Date.

IN WITNESS WHEREOF, Developer and City have executed this Agreement as of the date first hereinabove written.

"CITY"
CITY OF POMONA

By: _____

Attest:

By: _____
City Clerk

APPROVED AS TO FORM:

By: _____
City Attorney

"DEVELOPER"

By: _____

Exhibits A-1 through A-____
Legal Description of each of the Developer's Properties

Exhibits B-1 through B-____ are site plans for each of the New Structures on each of the Developer's Properties. Copies of Exhibits B-1 through B-____ are on file with City.

NOTICE OF INTENT TO CIRCULATE PETITION

Notice is hereby given by the persons whose names appear hereon of their intention to circulate the petition within the City of Pomona for the purpose of placing an initiative on the ballot for an election in the City.

A statement of the reasons of the proposed action as contemplated in the petition is as follows (optional, maximum of 500 words):

Due to the on-going recession and dire fiscal emergency that the City of Pomona currently faces, new revenue sources are being sought. Many other cities have entered into sign agreements in order to raise revenues and to regulate signs. New off-site billboards have been identified as a great potential revenue source for the City, which if permitted, would allow the City to preserve and apply funding for essential general city services, including police and fire protection, street and park maintenance, the library, business development and park and recreation services. Certain specific corridors adjacent to freeways have been identified where no more than 10 new billboard structures could be set up without detracting from the quality and character of the visual environment, subject to strict regulations and controls to preserve and enhance the City's scenic quality, traveler orientation and public pride. However, to facilitate this, a new initiative needs to be adopted per the Elections Code that approves amendments to regulations enacted by Proposition L back in 1993, which banned any new off-site advertising signs from being constructed, relocated, or structurally altered within the City.

If adopted, this new initiative will allow no more than 10 new outdoor advertising signs to be built. The initiative will enable the City to receive up to \$10 Million dollars in fees since each sign will generate \$1 Million for signs that will be located in specifically designated corridors adjacent to freeways, and will amend the City's general plan and zoning ordinance to regulate the construction, alteration, and maintenance of no more than 10 new outdoor advertising signs in the designated areas. The initiative also includes a form development agreement to be used by the City and the owners of the signs. The revenues generated by these development agreements may be used at the City's discretion to fund services for City residents and businesses. This initiative will solve many of the City's financial problems while providing strict regulations for the new signs.

James N. Popovich March 27, 2014
Pomona Resident

Vernon L. Price March 27, 2014
Pomona Resident

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BALLOT TITLE AND SUMMARY BY THE CITY ATTORNEY**

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A key component to this proposal is the payment of development and installation fees in an amount of \$1 million for each Outdoor Advertising Sign installed. If this initiative is approved by the voters, the City could receive revenue in an amount up to \$10 million. These revenues would be available to fund essential City services, including police and fire protection, street and park maintenance, library and recreation services and other vital City programs.

The initiative identifies specific locations along the freeway corridors and imposes restrictions upon the location, height, and size of the Signs. It also prohibits the placement of Outdoor Advertising Signs within 90 feet from a school, church or other similar place of worship and restricts the distance between signs installed.

A "yes" vote would allow for the installation of up to 10 new Outdoor Advertising Signs, amend the provisions of the Pomona City and Zoning Code, and provide an opportunity for additional revenues to the City in an amount up to \$10 million. A "no" vote would reject the proposed Signs and would not result in any new revenues being paid to the City.

This Ballot Title and Summary has been prepared pursuant to California Elections Code Section 9203.

Respectfully submitted, Arnold M. Alvarez-Glasman, City Attorney

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The initiative identifies specific locations along the freeway corridors and imposes restrictions upon the location, height, and size of the Signs. It also prohibits the placement of Outdoor Advertising Signs within 90 feet from a school, church or other similar place of worship and restricts the distance between signs installed.

A "yes" vote would allow for the installation of up to 10 new Outdoor Advertising Signs, amend the provisions of the Pomona City and Zoning Code, and provide an opportunity for additional revenues to the City in an amount up to \$10 million. A "no" vote would reject the proposed Signs and would not result in any new revenues being paid to the City.

This Ballot Title and Summary has been prepared pursuant to California Elections Code Section 9203.

Respectfully submitted, Arnold M. Alvarez-Glasman, City Attorney

NOTICE TO THE PUBLIC: THIS PETITION MAY BE CIRCULATED BY A PAID SIGNATURE GATHERER OR A VOLUNTEER. YOU HAVE THE RIGHT TO ASK.

**Signers Must Be Registered Voters of the City of Pomona – Use Pen Only
Please Print All Information Except for Signature**

SIG #	LN#	NAME OF PETITIONER	ADDRESS		FOR CLERKS USE ONLY
	41	Print Name	Residence Address (No P.O. Box)		
		Signature	City Zip		
	42	Print Name	Residence Address (No P.O. Box)		
		Signature	City Zip		
	43	Print Name	Residence Address (No P.O. Box)		
		Signature	City Zip		
	44	Print Name	Residence Address (No P.O. Box)		
		Signature	City Zip		
	45	Print Name	Residence Address (No P.O. Box)		
		Signature	City Zip		

**INITIATIVE MEASURE TO BE SUBMITTED DIRECTLY TO THE VOTERS
BALLOT TITLE AND SUMMARY BY THE CITY ATTORNEY**

The City Attorney has prepared the following title and summary of the chief purpose and points of the proposed measure:

INITIATIVE MEASURE TO AUTHORIZE THE INSTALLATION OF OUTDOOR ADVERTISING SIGNS WITHIN SPECIFIC FREEWAY ADJACENT CORRIDORS AND TO IMPOSE PLANNING REGULATIONS AND RESTRICTIONS CONCERNING THE NUMBER AND LOCATION OF THE OUTDOOR ADVERTISING SIGNS, AND TO ESTABLISH DEVELOPMENT FEES TO BE PAID TO THE CITY OF POMONA IN AN AMOUNT OF \$1 MILLION FOR EACH BILLBOARD INSTALLED

The proposed initiative measure would amend the current Pomona City Code by allowing the installation of Outdoor Advertising Signs at specific freeway adjacent locations situated along the Orange (57) Freeway, Chino Valley (71) Freeway and Pomona (60) Freeway. The terms of the installation of the signs would be limited by definitions as set forth in the Pomona City Code and consistent with a Development Agreement submitted with the proposed initiative.

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SIG #	LN#	NAME OF PETITIONER	ADDRESS		FOR CLERKS USE ONLY
	46	Print Name	Residence Address (No P.O. Box)		
		Signature	City Zip		
	47	Print Name	Residence Address (No P.O. Box)		
		Signature	City Zip		
	48	Print Name	Residence Address (No P.O. Box)		
		Signature	City Zip		
	49	Print Name	Residence Address (No P.O. Box)		
		Signature	City Zip		
	50	Print Name	Residence Address (No P.O. Box)		
		Signature	City Zip		

DECLARATION OF CIRCULATOR
(must be in Circulator's handwriting)

I, _____ residing at _____
[print full name of circulator] [print residential address, including number, street, city, state and zip code]
circulated the petition and witnessed the appended signatures being written. That according to the best information and belief each signature is the genuine signature of the person whose name it purports to be.

I declare that I am *18 years of age or older*.

The signatures were obtained between _____, 2014, and _____, 2014.

I certify (or declare) under the penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed by me at _____, on _____, 2014.

(Signature of Circulator)

See §§ 101, 9201, 9203(b), 9207, 9209, 9214, Elections Code
