

Brian Mulry

CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S.

INTRODUCED BY COUNCILMEMBER GALLO

A RESOLUTION: (1) AUTHORIZING THE CITY ADMINISTRATOR TO AMEND THE ADVERTISING SIGNS RELOCATION AGREEMENT, DATED DECEMBER 29, 2023, WITH BECKER BOARDS, A CALIFORNIA LIMITED LIABILITY COMPANY (“BECKER”), SUCH THAT THE ANNUAL PAYMENTS WOULD BE CONVERTED FROM A FIXED-FEE STRUCTURE TO A PAYMENT STRUCTURE WHERE TWENTY PERCENT (20%) OF BECKER’S ADVERTISING REVENUE COLLECTED FROM THE NEW ADVERTISING SIGNS WOULD BE APPORTIONED TO THE CITY AND CERTAIN COMMUNITY NON-PROFITS, WITH FIFTY PERCENT (50%) OF THAT REVENUE PAID TO THE CITY AND THE REMAINING FIFTY PERCENT (50%) SPLIT EQUALLY AMONG (A) THE NATIVE AMERICAN HEALTH CENTER, (B) ASIAN HEALTH SERVICES, (C) LA CLINICA DE LA RAZA, AND (D) BAYWELL HEALTH, WITH THE CITY RECEIVING A MINIMUM OF \$250,000 PER YEAR, REGARDLESS OF BECKER’S REVENUE, WHICH AMOUNT MAY BE MORE DEPENDING ON BECKER’S REVENUE; AND (2) ADOPTING APPROPRIATE CALIFORNIA ENVIRONMENTAL QUALITY ACT FINDINGS

WHEREAS, On June 6, 2023, the City Council passed Resolution 89771 C.M.S. authorizing the City Administrator to enter into a Relocation Agreement upon certain terms; and

WHEREAS, Becker Boards, L.L.C., a California limited liability company (“Becker”), and the City have entered into an Advertising Sign Relocation Agreement dated December 29, 2023 (“2023 Relocation Agreement”) pursuant to Resolution 89771 C.M.S., which is attached hereto at **Exhibit A**; and

WHEREAS, such Relocation Agreement authorized Becker to construct five (5) new double-sided digital advertising signs (“New Advertising Signs”), in exchange for (i) causing the removal of twenty-five (25) existing advertising signs (“Removal Signs”), (ii) making one-time payments to the City, (iii) making ongoing fixed fee annual payments to the City and various non-city non-profit organizations (“Annual Payments”), and (iv) allowing the community to place free advertisements upon the New Advertising Signs; and

WHEREAS, Becker is required to cause the removal of all 25 removal sign faces, to pay all one-time payments to the City, is current on its ongoing annual payments to the City, and has provided free advertisements to the community all in compliance with the 2023 Relocation Agreement; and

WHEREAS, due to economic forces in the Oakland Advertising Signs market, Becker is requesting a prospective change in the structure of the annual payments to allow for the signs to continue their operation, while guaranteeing at least \$250,000 in annual revenue to the City; and

WHEREAS, in order to prevent the Annual Payments from ceasing completely, the City and Becker wish to make changes to the Annual Payments from a fixed amount to a percentage of Becker's revenue share, among other changes to the Relocation Agreement; and

WHEREAS, under the 2023 Relocation Agreement, the City receives 33.33% of the fixed fee Annual Payments while the non-city non-profit organizations receives 66.67% of the fixed fee Annual Payments; and

WHEREAS, the City wishes to make changes to the Annual Payment ratio to increase the portion of the funds the City is receiving and also wishes to make changes to the list of recipients of the non-city non-profit organizations; and

WHEREAS, the changes made to the Annual Payments are guaranteed to provide the City with at least as much annual revenue as the existing formula; and now, therefore, be it

RESOLVED: That the City Administrator is authorized to amend the Becker 2023 Relocation Agreement as follows:

1. The Annual Payments shall no longer be a fixed fee but shall be twenty percent (20%) of advertising revenue collected from of all the New Advertising Signs ("Percentage of Becker Gross Revenue"), paid on or before January 31 of the year following the preceding 12-month collection period of the year prior. Becker shall provide evidence, acceptable to the City, of the accuracy of the accounting of the Percentage of Becker Gross Revenue. Such evidence shall be provided by Becker within seven (7) days of demand being made for such information.
2. Fifty percent (50%) of the Percentage of Becker Gross Revenue shall be paid to the City, and the remaining 50% shall be split equally amongst the non-city payees, provided that should the Percentage of Becker Gross Revenue, for any given year, is \$500,000 or less, the first \$250,000 of such shall be paid to the City, and the remaining amount shall be split equally amongst the non-city payees. Notwithstanding the previous sentence, in no event shall the City receive less than \$250,000 per year from Becker.
3. The non-city payees shall be:
 - a) Native American Health Center

- b) Asian Health Services
- c) La Clinica de la Raza
- d) Baywell Health

4. The requirement for the New Advertising Signs to have pole covers shall be deleted; and be it

FURTHER RESOLVED: That the Council’s action in approving the Amendment to the Relocation Agreement(s) is exempt from CEQA pursuant to Public Resources Code Section 21080.17 and CEQA Guidelines Sections 15183 (projects consistent with General Plan and Zoning) and 15061(b)(3) (general rule, no significant effect on the environment); CEQA Guidelines Sections 15301 (Existing Facilities); 15302 (Small Structures); 15303 (Minor Alterations to Land); and 15332 (Infill Development Projects). No exceptions to these exemptions apply.; and be it

FURTHER RESOLVED: That the City Council hereby directs the City Administrator to: (a) negotiate and execute an amendment to the 2023 Becker Relocation Agreement (“Amendment”) that the City Administrator, in consultation with the City Attorney’s Office, determines is in the best interests of the City, provided that the terms and conditions of the Amendment are in substantial compliance with the terms and conditions contemplated in this Resolution with respect to, among other specifications, the financial terms of the Amendment, the non-financial terms of the Amendment, and monetary payments, and do not materially increase the obligations or liabilities of the City, and are necessary or advisable to complete the transactions contemplated by this Resolution; and (b) to negotiate and execute such other documents as necessary or appropriate, in consultation with the City Attorney’s Office, to implement the Amendment in order to consummate the transaction in accordance with this Resolution, or to otherwise effectuate the purpose of this Resolution and its basic purposes.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - BROWN, FIFE, GALLO, HOUSTON, RAMACHANDRAN, UNGER, WANG, AND
PRESIDENT JENKINS

NOES –

ABSENT –

ABSTENTION –

ATTEST: _____

ASHA REED
City Clerk and Clerk of the Council of the
City of Oakland, California

BPM

EXHIBIT A

**ADVERTISING SIGN RELOCATION AGREEMENT
(Becker Boards, L.L.C.)**

This Advertising Sign Relocation Agreement (Becker Boards, L.L.C.) (the “**Agreement**”), is made and entered into as of December 29, 2023 (“**Effective Date**”), by and between the City of Oakland, a municipal corporation (“**City**”) and Becker Boards, L.L.C., a California limited liability company (“**Becker**” or “**Outdoor Advertiser**”). The City and Becker are referred to herein as the “**Parties**” and each individually as a “**Party**”.

RECITALS

This Agreement is entered into upon the following facts, understandings, and intentions of the Parties:

A. Given the current economic state of the City related to post COVID-19 pandemic pressures and other factors, the City Council desires to generate new economic activity in areas of the City along freeway corridors, and to use new Advertising Signs (as defined in Oakland Planning Code Section 17.10.850) to display public service messages, provide advertising for hard-hit small businesses and for business districts, and to provide revenue streams for community health clinics and other beneficiaries.

B. The City has a policy and has enacted local laws that encourage the reduction of Advertising Signs in the City.

C. Becker owns, or will own, twenty-five (25) existing Advertising Sign faces in the City identified in Exhibit A attached hereto and incorporated herein by this reference (collectively, the “**Becker Removal Advertising Sign Faces**”).

D. Becker, in exchange for the City’s approval of this Agreement, which entails construction and operation of New Advertising Signs (as defined below) and the removal of the Becker Removal Advertising Sign Faces at Becker’s sole cost and expense, will waive its rights to just compensation related to the removal of the existing Becker Removal Advertising Sign Faces, including with respect to all real property and personal property interests related thereto, thereby eliminating Advertising Sign faces within the City at no cost to the City.

E. The removal of all of the Becker Removal Advertising Sign Faces in exchange for the New Advertising Signs (as defined below) will result in a net decrease in the number of Advertising Signs in the City.

F. On June 6, 2023, pursuant to Resolution No. 89771 C.M.S. the City Council, among other things, authorized the City Administrator to negotiate and enter into this Agreement with Becker.

NOW THEREFORE, for and in consideration of the foregoing recitals, which are incorporated herein by reference, and the mutual promises contained herein, including,

without limitation the waiver of just compensation, and for other good and valuable consideration, the Parties agree as follows:

1. DEMOLITION; WAIVER; NEW SIGNS


1.1 Demolition and Waiver Exchange for New Signs. Becker, at its sole cost and expense, shall permanently remove all above-grade portions of all of the existing Becker Removal Advertising Sign Faces and any improvements related thereto, including supporting infrastructure such as electrical connections and below-grade structural elements, filling to grade with clean fill, unless the respective private property owner elects in writing to keep such below-grade elements in place, and shall restore, repair, patch, and paint the face of each building in a good and workmanlike manner where a Becker Removal Advertising Sign Face was removed from a building. In addition, Becker shall waive its rights to just compensation for such removal, including with respect to all real property and personal property interests related thereto, in exchange for Becker's construction of the New Advertising Signs (as defined below) in the Permitted Becker Advertising Sign Locations (as defined below).

1.2 Waiver and Release.

1.2.1 Effective as of the Effective Date, Becker hereby waives its rights to, releases and forever discharges the Indemnified Parties (as defined below) from any and all Claims (as defined below) which Becker has, or in the future may have, against an Indemnified Party, arising out of, or in any way related to or connected with, the demolition and removal of the Becker Removal Advertising Sign Faces, or the construction of the New Advertising Signs (as defined below, including, but not limited to, any claims made or arising under the Outdoor Advertising Act (California Business and Professions Code, Section 5200 et seq.) ("**Outdoor Advertising Act**"), Claims for compensation arising under the California or United States Constitution, Claims for damages under the California Tort Claims Act, or any relocation assistance or payment pursuant to the provisions of the California Relocation Assistance Act (California Government Code Sections 7260 et seq.) ("**Relocation Assistance Act**"), or pursuant to any other local, state, or federal laws or regulations with respect to the any relocation of its business or activities; provided, however, that the foregoing indemnity shall not apply to any Claims based on a City Event of Default (as defined below).

1.2.2 Becker understands and expressly accepts and assumes the risk that any facts concerning the Claims released in this Agreement might be found later to be other than or different from the facts now believed to be true and agrees that the release in this Agreement shall remain effective. Therefore, with respect to the Claims released in this Agreement, Becker waives any rights or benefits provided by Section 1542 of the California Civil Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASED PARTY DOES NOT KNOW OR EXPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN TO HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Becker: 

1.3 New Advertising Signs. This Agreement allows Becker to construct and operate a maximum of five (5) new double-sided digital advertising signs (collectively, the “**New Advertising Signs**”) on five (5) of the private properties identified in Exhibit B attached hereto and incorporated by this reference (each a “**Permitted Becker Advertising Sign Location**”) on the terms and conditions set forth herein.

2. TERM

2.1 Term. Unless earlier terminated pursuant to this Agreement, the term of this Agreement (as may be extended pursuant to Section 2.2, the “**Term**”) commenced on the Effective Date and will expire on the date that is thirty-one (31) years from the Effective Date; provided, however, if Outdoor Advertiser submits its complete application for its Approvals for all five (5) of the New Advertising Signs from the City within six (6) months after the Effective Date and diligently works with the City to obtain the Approvals no later than two (2) years after the Effective Date, then the Term will be deemed to have commenced on the date of attainment of the Approvals, which date shall become effective by a written amendment of this Agreement memorializing such date executed by both Parties.

2.2 Extension. Provided Outdoor Advertiser is not in Default (as defined below) of this Agreement, Outdoor Advertiser may extend the initial Term for one (1) additional period of ten (10) years upon sending written notice to the City at least one (1) year prior to the end of the initial Term, which extension shall become effective upon the earlier of (a) the expiration of the initial Term, or (b) execution of a written amendment of this Agreement memorializing the extension executed by both Parties.

2.3 Condition. The Term shall be terminated with respect to each Permitted Becker Sign Location upon the earlier of (a) the termination of the respective Owner Agreement (as defined below), whether for the original location or a later substitute location that is a Permitted Becker Sign Location as described in Section 5.1(a) below, or (b) the Term of this Agreement.

2.4 End of Agreement. Upon the expiration or other termination of the Term of this Agreement, Outdoor Advertiser, at its sole cost and expense, shall promptly demolish and remove all above-grade portions of the New Advertising Signs and any improvements related thereto, including supporting infrastructure such as electrical connections and below-grade structural elements, filling to grade with clean fill, unless the respective Owner (as defined below) elects in writing to keep such below-grade structural

elements in place, and shall restore, repair, patch, and paint the face of each building in a good and workmanlike manner where a New Advertising Sign was removed from a building.

3. CONDITIONS PRECEDENT FOR NEW ADVERTISING SIGNS

The following shall be condition precedent for construction and operation of the New Advertising Signs:

3.1 Approvals. Outdoor Advertiser shall diligently and in good faith, pursue obtaining all governmental permits and approvals and any other regulatory approvals, permits, environmental review determinations, and other entitlements as may be required for the demolition of the Becker Removal Advertising Sign Faces and construction and operation of the New Advertising Signs (collectively, the “**Approvals**”).

3.1.1 As between Outdoor Advertiser and City, Outdoor Advertiser shall be solely responsible for all of its own costs and expenses, including, but not limited to, fees which it incurs for its attorneys, architects, engineers, consultants and other professionals, related to, or arising from, this Agreement.

3.1.2 Outdoor Advertiser shall bear all costs associated with, or complying with, all permit and processing fees related to the Approvals.

3.1.3 Outdoor Advertiser shall pay and discharge any fines or penalties imposed as a result of its failure to comply with the terms and conditions of any Approval granted to Outdoor Advertiser, and City shall have no liability, monetary or otherwise, for such fines and penalties.

3.2 Funds. Outdoor Advertiser shall commit sufficient financial and personnel resources required to undertake and to fulfill its obligations under this Agreement in an expeditious fashion.

3.3 Agreements with Property Owners; Notice. Becker has entered, or shall enter into, a contract, including any lease, easement, license, permit or any other use or occupancy agreement for placement of a New Advertising Sign (each an “**Owner Agreement**”) with each property owner (each, including any successors and assigns, an “**Owner**”) of the Permitted Becker Sign Location for each New Advertising Sign, which shall be terminated by Becker on, or prior to, the expiration or earlier termination of the Term of this Agreement. As part of the Annual Compliance Report (as defined below), Becker shall confirm and provide evidence to the City that:

a. each Owner has had both actual and constructive notice of the terms of this Agreement;

b. each Owner has been reasonably advised by Outdoor Advertiser to seek attorney review of both this Agreement and any lease or other agreement for, or related to, the placement of an Advertising Sign on Owner’s property;

c. that all such Owner Agreements must comply with applicable law, including the Subdivision Map Act;

d. any Owner Agreement facilitating the placement of an Advertising Sign may be for a term of forty-one (41) years;

e. each Owner may have to pay transfer tax or other taxes for such Owner Agreement related to erection and operation of a long-term Advertising Sign on Owner's property; and

f. each Owner may need lender consent if Owner's property is encumbered by a mortgage or deed of trust.

3.4 Payments. Outdoor Advertiser shall have paid all payments required under Sections 4.1 and 4.2 of this Agreement.

3.5 Demolition.

3.5.1 Becker shall demolish and will remove the Becker Removal Advertising Sign Faces at its sole cost and expense within one hundred eighty (180) days after Becker's receipt of the Approvals (the "**Demolition Period**"), subject to extension pursuant to Section 16.12. Becker shall provide evidence satisfactory to the City that each group of five (5) of the Becker Removal Advertising Sign Faces (each a "**Group of Five Faces**") has been demolished and removed prior to construction and operation of each New Advertising Sign. Becker may toll the demolition and removal of the Becker Removal Advertising Sign Faces if there is a third-party legal challenge to this Agreement and Becker chooses to delay such demolition and removal until a judgment, order, or other decision resolving such matter in favor of the party whose performance is delayed has become final and unappealable.

3.5.2 Becker must demolish and remove one Group of Five Faces for each New Advertising Sign it plans to construct. For example, if Becker has demolished and removed five (5) Group of Five Faces (for a total of twenty-five (25) Becker Removal Advertising Faces, then Becker may construct and operate five (5) New Advertising Signs. Or, for example, if Becker has demolished and only removed four (4) Groups of Five Faces (twenty (20) total) during the Demolition Period, then Becker may only construct four (4) New Advertising Signs.

4. PAYMENTS

4.1 Planning and Building Department. On the Effective Date of this Agreement, Outdoor Advertiser shall pay Twenty-Five Thousand Dollars (\$25,000) to the City's Planning and Building Department to cover City expenses associated with the review and issuance of building permits for the New Advertising Signs.

4.2 Carbon Offset Fee. Prior to construction of, and after the issuance of building permits for, each New Advertising Sign, and subject to the City Administrator's acceptance, or reasonable amendments, to the figures and methodology described in Exhibit C attached hereto and incorporated herein by this reference Outdoor Advertiser shall pay a one-time climate offset fee to the City for each of the New Advertising Signs in the amount of Eleven Thousand Twenty-Seven Dollars and Eighty Cents (\$11,027.80) per New Advertising Sign, for a total of Fifty-Five Thousand One Hundred Thirty-Nine Dollars (\$55,139), as described in detail in Exhibit C attached hereto.

4.3 One-Time Payments.

4.3.1. Outdoor Advertiser shall pay the City a one-time payment in the amount of One Hundred Fifty Thousand Dollars (\$150,000) for each New Advertising Sign at the Commencement of Operation Date (defined below) of each New Advertising Sign, for a total of Seven Hundred Fifty Thousand Dollars (\$750,000) for a total of five (5) New Advertising Signs.

4.3.2. For purposes of this Agreement, "**Commencement of Operation Date**" shall mean a date upon which a New Advertising Sign is fully constructed and operational, all final inspections for all permits and approvals from all relevant government agencies have been issued or granted, and the New Advertising Sign is permanently connected to a permanent source of electricity from either (i) Pacific Gas & Electric (PG&E), (ii) an equivalent permanent public utility source, or (iii) a permanent submeter from an existing PG&E or equivalent permanent public utility source.

4.4. Annual Payments. During the Term of this Agreement and until terminated pursuant to Section 2.3, on each anniversary of the Commencement of Operation Date for each New Advertising Sign, Becker shall make annual payments (the "**Required Becker Annual Payments**") to the City and various organizations or entities as described in Exhibit D attached hereto and incorporated by this reference (collectively, the "**Becker Payees**"). The Required Becker Annual Payments shall increase by five percent (5%) starting at a date six (6) years following the Commencement of Operation Date for each New Advertising Sign, and at the beginning of each five (5) year anniversary thereafter (e.g., years 11, 16, 21, etc. as applies to each New Advertising Sign), as described in Exhibit D attached hereto.

4.4.1 Within ten (10) business days of any payment of each Required Becker Annual Payments becoming due, Becker shall provide to the City evidence of full payment remittance to each of the Becker Payees as evidence that each Required Becker Annual Payment has been paid.

4.4.2. Should any of the non-City Becker Payees cease to exist, dissolve, are rendered insolvent, or are in any other way unable or deemed by the City unfit to receive their portion of the Required Becker Annual Payments (the "**Expired Payee Designee**"), then such portion of the monetary payments, otherwise designated for the Expired Payee

Designee, shall instead be paid to the City Administrator for the then remaining Term of this Agreement.

4.4.3 Should Becker be required or desires to change a non-City Becker Payee, then the City Council shall review and approve any new or substitute non-City Becker Payee. The City Council has sole and absolute discretion in determining whether a non-City Becker Payee shall be removed and/or whether a new or substitute non-City Becker Payee shall be appointed.

4.4.4 Becker acknowledges and agrees that late payment by Becker pursuant to this Section 4 to the City, and if applicable the Becker Payees (including the City) will cause the City, and if applicable, the Becker Payees, increased costs not contemplated by this Agreement. The exact amount of such costs is extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges. Accordingly, without limiting any of the City's or any other Becker Payee's rights or remedies hereunder and regardless of whether such late payment results in an Event of Default, Becker will pay to the City, and if applicable, the Becker Payees, a late charge (the "**Late Charge**") equal to five percent (5%) of the monetary amount due or any portion thereof which remains unpaid more than ten (10) days following the date it is due. The Parties agree that such Late Charge represents a fair and reasonable estimate of the cost that City and the other Becker Payees will incur by reason of a late payment by Becker.

4.5. Under no circumstances shall City be required to return to Becker all or any portion of the any payments paid pursuant to this Agreement including, without limitation, the Required Becker Annual Payment.

5. CONSTRUCTION AND OPERATION

5.1 New Advertising Signs. This Agreement allows Becker to construct and operate the New Advertising Signs at the Permitted Becker Advertising Sign Locations at Becker's sole cost and expense as follows:

a. Exhibit B attached hereto has a list of proposed locations (Signs A through E), and a list of alternate locations (Alternative Signs 1 and 2), from which Becker may choose only five (5) locations in total; so for example, if two (2) of the New Advertising Signs are to be located at the alternate locations, Becker may only construct New Advertising Signs on three (3) of the proposed locations (Signs A through E). However, if an Owner Agreement on an initial Permitted Becker Advertising Sign Location expires prior to the end of the Term of this Agreement, Becker may negotiate an Owner Agreement on an unused substitute location, which shall be terminated by Becker on, or prior to, the expiration or earlier termination of the Term of this Agreement (whether on the list of proposed locations or alternate locations on Exhibit B attached hereto).

b. All conditions precedent provided in Section 3 have been satisfied.

c. Becker shall provide evidence satisfactory to the City that five Becker Removal Advertising Sign Faces have been demolished and removed prior to construction and live operations of each New Advertising Sign.

d. Prior to the construction of any of the New Advertising Signs, Outdoor Advertiser shall obtain all necessary building permits from the City for each of the New Advertising Signs to be constructed and shall demonstrate compliance with the Subdivision Map Act with respect to their placement. Nothing herein signifies that the City has determined that any Owner Agreement (as defined below) complies with the Subdivision Map Act, and nothing in this Agreement authorizes non-compliance with the Subdivision Map Act.

e. Each digital sign panel for each of the New Advertising Signs shall (i) utilize energy efficient LED technology, and (ii) have a decorative pole cover, compliant with state law, and subject to review and approval by the City Administrator.

f. Each New Advertising Sign shall be constructed in accordance with the applicable criteria provided in Exhibit B attached hereto and shall conform with the standards set forth on Exhibit E attached hereto and incorporated herein by this reference as determined by the City.

5.2 New Construction; Operation. Following the demolition of each Group of Five Faces during the Demolition Period, Becker shall use commercially reasonable efforts to promptly construct each New Advertising Signs and commence operations of each of the New Advertising Signs within one (1) year of obtaining the applicable Approvals for each New Advertising Sign. Becker covenants and agrees for itself and its permitted successors and assigns that, for the Term of this Agreement, it will make good-faith efforts to continuously operate its business of selling advertising space on the New Advertising Signs consistent with this Agreement.

5.3 Trees. If any tree is removed from any property in relation to any of the New Advertising Signs, all such tree removal must comply with Oakland Municipal Code Chapter 12.36, and at minimum, Outdoor Advertiser shall replace the removed tree by planting at least three (3) new City-approved trees in a location subject to the discretion of the City Administrator, which location may be in the public right-of-way or on City-owned property. In addition, any substantial pruning of any tree, whether prior to construction of an Advertising Sign or at any point after the construction of an Advertising Sign, shall be approved by the City Administrator and be in compliance with Oakland Municipal Code Chapter 12.36.

6. FREE ADVERTISING

6.1. Free Advertising Spot. One guaranteed digital advertising space per rotation on each of the New Advertising Sign faces shall be made available at all times (the “**Free Advertising**”), free of charge, to the City and the organizations and entities as described in Exhibit F attached hereto and incorporated herein by this reference.

6.2. Expired Entity. Should any of the non-City entities described in Exhibit F attached hereto cease to exist, dissolve, are rendered insolvent, or are in any other way unable or deemed by the City unfit to receive its portion of the Free Advertising described in Exhibit F (the “**Expired Entity**”), then such portion of the free advertising, otherwise designated for the Expired Entity, shall instead be provided to the City Administrator or to the City Council’s designee for the then remaining Term.

6.3. Entity Change. Should Outdoor Advertiser be required or desire to change a non-City entity listed in Exhibit F attached hereto, then the City Council shall review and approve any new or substitute non-City nonprofit entity. The City Council has sole and absolute discretion in determining whether such a nonprofit entity shall be removed and/or whether a new or substitute nonprofit entity shall be appointed.

7. ANNUAL COMPLIANCE REPORT

7.1 Report. No later than December 31 of each year of the Term, Outdoor Advertiser shall submit an annual compliance report to the City Administrator detailing how it is complying with the terms of this Agreement (the “**Annual Compliance Report**”), including, but not limited to, evidence of payment of the Required Becker Annual Payments and a summary of Free Advertising display time by month and organization.

7.2 Compliance Review Fee. The City Administrator may charge, and Outdoor Advertiser shall pay, a reasonable compliance review fee to the City Administrator for review of the Annual Compliance Report.

7.3 Notice of Compliance. Within forty-five (45) days of submission of the Annual Compliance Report, the City shall provide written notice to Outdoor Advertiser that it is in compliance with this Agreement, or if it is not in compliance, a description of the deficiencies in compliance so that Outdoor Advertiser may correct such deficiencies. If no notice of compliance or non-compliance is provided within such forty-five (45) day period, Outdoor Advertiser may submit a second written notice (the “**Second Written Notice**”) to the City requesting response be given within thirty (30) days after the date of receipt by the City of the Second Written Notice. The Second Written Notice shall display prominently on the envelope enclosing such request and the first page of such request, substantially the following: “APPROVAL REQUEST FOR ANNUAL COMPLIANCE REPORT. IMMEDIATE ATTENTION REQUIRED.”

8. INDEMNITY

8.1 Outdoor Advertiser shall indemnify, defend (with counsel acceptable to the City) and hold harmless the City and its Council members, commissioners, officers, agents, contractors and employees (collectively, the “**Indemnitee Parties**” or individually, an “**Indemnified Party**”) from and against any and all losses, costs, claims, damages, liabilities and causes of action (including Attorneys’ Fees and Costs (as defined below)) (collectively, “**Claims**”) arising out of, or relating to, (a) this Agreement, including, without limitation, with respect to any third-party challenge or any filing of any kind related

to any Approvals, (b) Owner Agreements, or (c) in any way connected with the Becker Removal Advertising Signs or New Advertising Signs directly, or indirectly, caused by any acts or omissions of Outdoor Advertiser or any of the Outdoor Advertiser's officers, directors, members, agents, employees, contractors and subcontractors; provided, however, that the foregoing indemnity shall not apply to any Claims (i) due solely to the gross negligence or willful misconduct of the Indemnified Party seeking to be indemnified, or its respective agents, employees or contractors, or (ii) arising out of any default under this Agreement of any Indemnified Party seeking to be indemnified, or its respective agents, employees or contractors.

8.2 Outdoor Advertiser shall indemnify, defend (with counsel acceptable to the City) and hold harmless the City and the Indemnified Parties from and against all Claims arising directly or indirectly from, or connected with or related to the Outdoor Advertising Act for compensation arising under the California or United States Constitution, claims for damages under the California Tort Claims Act, or any relocation assistance or payment pursuant to the provisions of the Relocation Assistance Act, or pursuant to any other local, state, or federal laws or regulations with respect to the any relocation of its business or activities.

8.3 Outdoor Advertiser's obligations under this Section 8 shall survive the termination of this Agreement.

9. NON-ASSIGNMENT

The Parties acknowledge and agree that City is entering into this Agreement on the basis of the particular experience, financial capacity, skills and capabilities of Becker. This Agreement is personal to Becker and is non-assignable without the prior written consent of City, which shall not be unreasonably withheld.

10. DEFAULT

10.1 No Default of Parties. The following events constitute a basis for a Party to terminate this Agreement without the fault of either Party:

a. If Outdoor Advertiser fails to procure all of the Approvals for the New Advertising Signs within twenty-four (24) months of the Effective Date and Outdoor Advertiser diligently and in good faith sought such Approvals, subject to extension pursuant to Section 16.12.

b. There is a legal challenge that is filed, challenging this Agreement and the legal challenge is sustained.

c. If Outdoor Advertiser is prohibited by law or government order or moratorium other than issued by the City (unless required to do so by state or federal law or non-City government order) from constructing or operating the New Advertising Signs.

Thereafter, either Party may terminate this Agreement by written notice to the other Party, Outdoor Advertiser may maintain the Becker Removal Advertising Signs if termination is due to Sections 10.1(a) or (b), and neither Party shall have any rights or obligations under this Agreement except those provisions of this Agreement that expressly survive termination of this Agreement.

10.2 Outdoor Advertiser's Event of Default. The occurrence of any of the following (each, a “**Outdoor Advertiser Event of Default**”) shall constitute a default by Outdoor Advertiser after City gives notice of the default specifying in reasonable detail the basis for the determination of the default and after the expiration of the applicable cure period, if any:

10.2.1 Failure to pay any sums due under this Agreement within ten (10) business days after written notice has been given by City.

10.2.2 Failure to perform or abide by any provision of this Agreement if such failure is not cured within thirty (90) days after notice has been given by City.

10.2.3 Either (a) the filing by Outdoor Advertiser of a petition to have itself adjudicated insolvent and unable to pay its debts as they mature or a petition for reorganization or arrangement under any bankruptcy or insolvency law, or a general assignment by Outdoor Advertiser for the benefit of creditors; or (b) the filing by or against (unless dismissed within 180 days) Outdoor Advertiser of any action seeking reorganization, arrangement, liquidation, or other relief under any law relating to bankruptcy, insolvency, or reorganization or seeking appointment of a trustee, receiver, or liquidator of itself or any substantial part of the its assets.

10.2.4 Any material breach of any representation and warranty contained in Section 12.1, or any other provision of this Agreement, unless Outdoor Advertiser notifies City within ten (10) business days after it becomes aware of the breach and commences to cure such inaccuracy within thirty (30) days from the date on which it was obligated to notify City (or if such inaccuracy cannot reasonably be cured within such thirty (30) days, Outdoor Advertiser shall not be in default of this Agreement if it commences to cure such inaccuracy within the thirty (30) day period and diligently and in good faith continues to seek to cure such inaccuracy until completion).

10.2.5 The debarment or prohibition of Outdoor Advertiser from doing business with any federal, state or local government agency, which prevents or prohibits Outdoor Advertiser's performance under this Agreement.

If an Outdoor Advertiser Event of Default cannot reasonably be cured within the applicable time period set forth in this Section 10.2, Outdoor Advertiser shall not be in default of this Agreement if it commences to cure the Outdoor Advertiser Event of Default within the applicable time period and diligently and in good faith continues to seek to cure the Outdoor Advertiser Event of Default until completion.

10.3 City's Event of Default.

10.3.1 Failure to perform or abide by any material provision of this Agreement, if such failure is not cured within thirty (30) days after written notice (which shall specify in reasonable detail the basis for the determination of the default) has been given to City, shall constitute an event of default by City ("**City Event of Default**"); provided, however, that if the City Event of Default cannot reasonably be cured within thirty (30) days, City shall not be in default of this Agreement if City commences to cure the City Event of Default within the thirty (30) day period and diligently and in good faith continues to seek to cure the City Event of Default to completion.

10.3.2 Any material breach of any City representation and warranty contained in Section 12.3, or any other provision of this Agreement, unless City notifies Outdoor Advertiser within ten (10) business days after it becomes aware of the material breach and commences to cure such inaccuracy within thirty (30) days from the date on which City was obligated to notify Outdoor Advertiser (or if such inaccuracy cannot reasonably be cured within such thirty (30) days, City shall not be in default of this Agreement if City commences to cure such inaccuracy within the thirty (30) day period and diligently and in good faith continues to seek to cure such inaccuracy to completion).

11. **REMEDIES**

11.1 City's Remedies. If an Outdoor Advertiser Event of Default remains uncured following notice and cure pursuant to Section 10.2 above, and the default is reasonably deemed by City to be an incurable default, City shall have the following cumulative, nonexclusive remedies at law or in equity, to (a) if an Outdoor Advertiser Event of Default pertains solely to a particular New Advertising Sign and not to any other obligations under this Agreement, revoke the right to maintain that particular New Advertising Sign, and terminate this Agreement with respect to such Advertising Sign upon written notice to Outdoor Advertiser, which New Advertising Sign will then be removed and demolished pursuant to Section 2.4 above, and retain any applicable payments previously paid to City; (b) the right to terminate this Agreement; (c) the right of injunctive relief and specific performance; (d) the right to obtain compensatory damages; (e) the right to seek to recover any funds due and owing to City under this Agreement; (f) the right to seek to enforce Outdoor Advertiser's indemnity obligations; and (g) any other remedy provided at law or in equity.

11.2 Outdoor Advertiser's Remedies. If a City Event of Default remains uncured, and City following notice and cure pursuant to Section 10.3 above and the default is deemed to be an incurable default, Outdoor Advertiser's remedies under this Agreement shall be limited to obtaining specific performance or other injunctive relief from a court of competent jurisdiction, or to terminate this Agreement by delivery of written notice of termination to City and remove and demolish all New Advertising Signs pursuant to Section 2.4 above, and all Parties shall each be released from all liability under this Agreement (except for those provisions which recite that they survive termination). The foregoing are the exclusive rights and remedies available to Outdoor Advertiser at law or

in equity in the event of a City Event of Default under this Agreement. Outdoor Advertiser hereby waives any and all rights it may now or hereafter have to pursue any other remedy or recover any other damages on account of any such breach or default by City, including, without limitation, loss of bargain, loss of profits, special, punitive, compensatory or consequential damages.

12. REPRESENTATIONS AND WARRANTIES

12.1 Outdoor Advertiser's Representations and Warranties. Outdoor Advertiser represents, warrants and covenants, as of the Effective Date as follows:

12.1.1 Valid Existence; Good Standing; Joint Venture Relationships. Outdoor Advertiser and any of its entities and affiliates, if applicable, are duly organized and validly existing entities under the laws of the states of their incorporation. Outdoor Advertiser has all requisite power and authority to own its property and conduct its business as presently conducted. Outdoor Advertiser has made all legally required filings, and is in good standing, and in the jurisdiction of the State of California.

12.1.2 Authority. Outdoor Advertiser has all requisite power and authority to execute and deliver this Agreement and to carry out and perform all of the terms and covenants of this Agreement.

12.1.3 No Limitation on Ability to Perform. Neither Outdoor Advertiser's operating agreement nor any other agreement, document or law in any way prohibits, limits or otherwise affects the right or power of Outdoor Advertiser to enter into and perform all of the terms and covenants of this Agreement. Outdoor Advertiser is not a party to, or bound by, any contract, agreement, indenture, trust agreement, note, obligation or other instrument, which could prohibit, limit or otherwise affect the same. No consent, authorization or approval of, or other action by, and no notice to, or filing with, any governmental authority, regulatory body or any other person or entity is required for the due execution, delivery and performance by Outdoor Advertiser of this Agreement or any of the terms and covenants contained in this Agreement. There are no pending or threatened suits or proceedings or undischarged judgments affecting Outdoor Advertiser before any court, governmental agency, or arbitrator which might affect the enforceability of this Agreement, the ability of Outdoor Advertiser to perform the transactions contemplated by this Agreement or the business, operations, assets or condition of Outdoor Advertiser.

12.1.4 Valid Execution. The execution and delivery of this Agreement by Outdoor Advertiser has been duly and validly authorized by all necessary action. This Agreement will be a legal, valid and binding obligation of Outdoor Advertiser, enforceable in accordance with its terms, subject to usual qualifications related to the effects of laws relating to bankruptcy, insolvency and the limitations imposed by equitable considerations.

12.1.5 Defaults. The execution, delivery and performance of this Agreement do not, and will not, violate or result in a violation of, contravene or conflict with, or constitute a default under (a) any agreement, document or instrument to which

Outdoor Advertiser may be bound or affected, (b) any applicable law, statute, ordinance, regulation, or (c) the operating agreement of Outdoor Advertiser.

12.1.6 Conflicts of Interest. Outdoor Advertiser is familiar with (a) Section 87100 et seq. of the California Government Code, which provides that no member, official or employee of City, may have any personal interest, direct or indirect, in this Agreement, nor shall any member, official or employee participate in any decision relating to this Agreement, which affects her or his personal interest or the interests of any corporation, partnership or association in which she or he is interested directly or indirectly; (b) Oakland Municipal Code Section 2.25.050, which prohibits former City employees and consultants from working on behalf of another party on a matter in which they have participated personally and substantially for one (1) year after separation from City unless City of Oakland Public Ethics Commission consents to such scope of work; and (c) Section 1090 of the California Government Code, which provides that no member, official or employee of City shall be financially interested in any contract made by them in their official capacity. As to the provisions referred to in clause (a), Outdoor Advertiser is not aware of any facts that constitute a violation of such provisions.

12.1.7 Not Prohibited from Doing Business. Outdoor Advertiser nor any of its officers, directors or affiliates have been debarred or otherwise prohibited from doing business with any local, state or federal governmental agency.

12.1.8 Business Licenses. Outdoor Advertiser has obtained all licenses required to conduct its business in City and is not in default of any fees or taxes due to City.

12.1.9 No Claims. Outdoor Advertiser has no claim, and shall not make any claim, against City (other than potential claims arising from any default by City), directly or indirectly, by reason of: (a) the entry into this Agreement or the termination of this Agreement; (b) any statements, representations, acts or omissions made by City or any of its officers, Council members, commissioners, employees, contractors or agents with regard to any aspect of the negotiations under this Agreement; and (c) City's exercise of discretion, decision and judgment set forth in this Agreement.

12.2 Representation and Warranties of Outdoor Advertiser's Signatory. If Outdoor Advertiser signs as a corporation, limited liability company or a partnership, each of the persons executing this Agreement on behalf of Outdoor Advertiser does hereby represent and warrant that Outdoor Advertiser is a duly authorized and existing entity, that it has and is qualified to do business in the State of California, that Outdoor Advertiser has full right and authority to enter into this Agreement, and that each and all of the persons signing on Outdoor Advertiser's behalf is authorized to do so. Upon City's request, Outdoor Advertiser shall provide City with evidence reasonably satisfactory to City confirming the foregoing representations and warranties.

12.3 City's Representations and Warranties. City represents, warrants and covenants as follows:

12.3.1 Authority. City has all requisite power and authority to execute and deliver this Agreement and to carry out and perform all of the terms and covenants of this Agreement.

12.3.2 Valid Execution. The execution and delivery of this Agreement by City have been duly and validly authorized by all necessary action. This Agreement will be a legal, valid and binding obligation of City. City has provided to Outdoor Advertiser a written resolution of City Council authorizing the execution of this Agreement.

13. NONDISCRIMINATION

13.1 Covenant. Outdoor Advertiser for itself, successors in interest and assigns, as part of the consideration hereof, does hereby covenant and agree with respect to its activities under this Agreement:

a. That Outdoor Advertiser, its successors, assigns, contractors and subcontractors shall not discriminate against any employee or applicant for employment in connection with the Project on the basis of race, color, ancestry, national origin, caste, religion, sex, sexual preference, marital status, AIDS or AIDS-related complex, or physical or mental disability. Each of the following activities shall be conducted in a nondiscriminatory manner: hiring; upgrading; demotion and transfers; recruitment and recruitment advertising; layoff and termination; rates of pay and other forms of compensation; and selection for training, including apprenticeship. Outdoor Advertiser and its successors, assigns, contractors and subcontractors may not retaliate against, threaten, or harass employees based on immigration status.

b. That Outdoor Advertiser shall provide, in all solicitations or advertisements for employees placed by or on behalf of Outdoor Advertiser, that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, actual or perceived sexual orientation, national origin, caste, age, physical or mental handicap or disability as set forth in the Americans With Disabilities Act of 1990, or veteran's status.

c. That Outdoor Advertiser's noncompliance with the provision of this Section 13 shall constitute a material breach of this Agreement.

14. CAMPAIGN CONTRIBUTION RESTRICTIONS

Outdoor Advertiser and its officers, directors and affiliates are aware of, and shall abide by, the prohibition on campaign contributions from contractors doing business with the City between commencement of contract negotiations and either (a) one-hundred eighty (180) days from completion of contract negotiations, or (b) termination of contract negotiations, as set forth in the Oakland Campaign Reform Act. Outdoor Advertiser acknowledges that it has executed and submitted to the City a Contractor Acknowledgement of City of Oakland Campaign Contribution Limits.

15. NOTICES

15.1 Requirements. Any notice given under this Agreement shall be in writing and given by delivering the notice in person, by commercial courier, express delivery service, or by sending it by registered or certified mail, or express mail, return receipt requested, with postage prepaid, to the mailing address listed below or any other address, notice of which is given.

15.2 Addresses; Delivery. Any mailing address may be changed at any time by giving written notice of such change in the manner provided above at least ten (10) days prior to the effective date of the change. All notices under this Agreement shall be deemed given, received, made or communicated on the date personal receipt actually occurs or, if mailed, on the delivery date or attempted delivery date shown on the return receipt. A Party may not give official or binding notice by facsimile or email; courtesy notices by emails provided in Section 15.2, if any, shall not constitute notice under this Section 15. The effective time of a notice shall not be affected by the receipt of the original or mailed copy of the notice.

CITY: City of Oakland
Real Property Asset Management Division
250 Frank H. Ogawa Plaza, 4th Floor
Oakland, CA 94612
Attn: Real Property Asset Manager

Copy to: Office of the City Attorney
1 Frank Ogawa Plaza, 6th Floor
Oakland, CA 94612
Attn: Supervising City Attorney for Real Estate

BECKER: Becker Boards, L.L.C.
490 43rd Street, #211
Oakland, CA 94609
Attn: Nema Link

If mailed, the written notice shall be deemed received and shall be effective three (3) business days after deposit in the United States mail in the State of California or upon actual receipt by the addressee if earlier.

16. MISCELLANEOUS PROVISIONS

16.1 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California, without regard to any choice of law principles. As part of the consideration for City entering into this Agreement, Outdoor Advertiser agrees that all actions or proceedings arising directly or indirectly under this Agreement may, at the sole option of City, be litigated in courts located within the County of Alameda, State of California, and Outdoor Advertiser expressly consents to the jurisdiction of any such local, state or federal court, and consents that any service of process

in such action or proceeding may be made by personal service upon itself wherever it may then be located, or by certified or registered mail directed to the address set forth in this Agreement.

16.2. Interpretation of Agreement.

16.2.1 Exhibits. Whenever an “Exhibit” is referenced, it means an exhibit to this Agreement unless otherwise specifically identified.

16.2.2 Captions. Whenever a section, article or paragraph is referenced, it refers to this Agreement unless otherwise specifically identified. The captions preceding the articles and sections of this Agreement have been inserted for convenience of reference only. Such captions shall not define or limit the scope or intent of any provision of this Agreement.

16.2.3 Words of Inclusion. The use of the term “including,” “such as”, or words of similar import when following any general term, statement or matter shall not be construed to limit such term, statement or matter to the specific items or matters, whether or not language of non-limitation is used with reference thereto. Rather, such terms shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such statement, term or matter.

16.2.4 References. Wherever reference is made to any provision, term or matter “in this Agreement,” “herein” or “hereof” or words of similar import, the reference shall be deemed to refer to any and all provisions of this Agreement reasonably related thereto in the context of such reference, unless such reference refers solely to a specific numbered or lettered, section or paragraph of this Agreement or any specific subdivision thereof.

16.2.5 Recitals. In the event of any conflict or inconsistency between the recitals and any of the remaining provisions of this Agreement, the remaining provisions of this Agreement shall prevail.

16.2.6 No Presumption Against Drafter. This Agreement has been negotiated at arm’s length and between persons sophisticated and knowledgeable in the matters dealt with herein. In addition, each Party has been represented by experienced and knowledgeable legal counsel. Accordingly, any rule of law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Agreement against the Party that has drafted it is not applicable and is waived. The provisions of this Agreement shall be construed as a whole, according to their common meaning, and not strictly for or against any Party, in order to achieve the objectives and purposes of the Parties. The provisions of this Agreement shall be interpreted in a reasonable manner to effect the purposes of the Parties and this Agreement.

16.3 Entire Agreement; Conflict. This Agreement contains all of the representations and the entire agreement between the Parties with respect to the subject

matter of this Agreement. Any prior correspondence, memoranda, agreements, warranties, or written or oral representations relating to such subject matter are superseded in total by this Agreement. No prior drafts of this Agreement or changes from those drafts to the executed version of this Agreement shall be introduced as evidence in any litigation or other dispute resolution proceeding by any Party or other person, and no court or other body should consider those drafts in interpreting this Agreement.

16.4 Non-Liability. No Council member, commissioner, official, agent or employee of City will be personally liable to Outdoor Advertiser, or any successor in interest (if and to the extent permitted under this Agreement), in an event of default by City or for any amount that may become due to Outdoor Advertiser or successors or on any obligations under the terms of this Agreement. No director, officer, agent or employee of Outdoor Advertiser will be personally liable to City in an event of default by Outdoor Advertiser or for any amount that may become due to City or on any obligations under the terms of this Agreement.

16.5 Amendments. No amendment of this Agreement or any part thereof shall be valid unless it is in writing and signed by a person or persons having authority to do so, on behalf of all Parties.

16.6 Severability.

16.6.1 If any provision of this Agreement, or its application to any person or circumstance, is held invalid by a court of competent jurisdiction, the invalidity or inapplicability of such provision shall not affect any other provision of this Agreement or the application of such provision to any other person or circumstance, and the remaining portions of this Agreement shall continue in full force and effect, unless enforcement of this Agreement as so modified by and in response to such invalidation would be unreasonable or grossly inequitable under all of the circumstances or would frustrate the fundamental purposes of this Agreement.

16.6.2 Without limiting the foregoing Section 16.6.1, in the event that any applicable federal or state law prevents or precludes compliance with any material term of this Agreement, the Parties shall promptly modify, amend or suspend this Agreement, or any portion of this Agreement, to the extent necessary to comply with such provisions in a manner which preserves to the greatest extent possible the benefits to each of the Parties to this Agreement before such conflict with federal or state law.

16.7 Singular, Plural, Gender. Whenever required by the context, the singular shall include the plural and vice versa, and the masculine gender shall include the feminine or neuter genders, and vice versa.

16.8 Approvals and Consents.

16.8.1 Unless this Agreement otherwise expressly provides or unless applicable law requires, all approvals, consents or determinations to be made by or on

behalf of (a) City under this Agreement shall be made by the City Administrator or its designee, and (b) Outdoor Advertiser under this Agreement shall be made by the Chief Executive Officer or such other employee or agent of Outdoor Advertiser as it may designate to act as Outdoor Advertiser's representative for a particular matter.

16.8.2 Approval by any of the Parties to, or of any act or request by, the other in accordance with this Section 16.8 shall not be deemed to waive or render unnecessary approval to or of any similar or subsequent acts or requests.

16.9 Waiver.

16.9.1 No failure by any Party to insist upon the strict performance of any obligation of the other Party under this Agreement or to exercise any right, power or remedy arising out of a breach thereof, irrespective of the length of time for which such failure continues, and no acceptance of any full or partial payment during the continuance of any such breach shall constitute a waiver of such breach or of such Party's rights to demand strict compliance with such term, covenant or condition.

16.9.2 Any Party's consent to, or approval of, any act by another Party requiring the consenting Party's consent or approval shall not be deemed to waive or render unnecessary the consenting Party's consent to, or approval of, any subsequent act by the other Party.

16.9.3 Any waiver by any Party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

16.10 Time for Performance.

16.10.1 Expiration. All performance dates, including cure dates, expire at 5:00 p.m., Pacific Time, on the performance or cure date.

16.10.2 Weekends and Holidays. A performance date which falls on a Saturday, Sunday, or national, state or City holiday is deemed extended to the next working day.

16.10.3 Days for Performance. All periods for performance specified in this Agreement in terms of days shall be calendar days, and not business days, unless otherwise expressly provided in this Agreement.

16.10.4 Time of the Essence. Time is of the essence with respect to each provision of this Agreement.

16.11 Successors and Assigns. This Agreement shall inure to the benefit of, and bind, the respective successors and assigns of City and Outdoor Advertiser, subject to the limitations on assignment by Outdoor Advertiser set forth in Section 9. This Agreement is

for the exclusive benefit of the Parties hereto, and except for the entities listed on Exhibits D and F attached hereto, not for the benefit of any other person and shall not be deemed to have conferred any rights, express or implied, upon any other person.

16.12 Force Majeure. Whenever performance is required of a Party hereunder, that Party shall use all due diligence and take all necessary measures in good faith to perform, but if completion of performance is delayed by reasons of floods, earthquakes, or other acts of nature, war, civil commotion, riots, strikes, picketing, or other labor disputes, damage to work in progress by casualty, any administrative, judicial, or referenda challenges or proceedings, or by other cause without fault and beyond the reasonable control of the Party (except COVID-19 or its variants, which is a known and foreseeable condition), then the specified time for performance shall be extended by the amount of the delay actually so caused; provided, however, that the foregoing shall not impact or extend any obligation by Outdoor Advertiser to meet a monetary duty under this Agreement. Since COVID-19 and its variants is an existing condition as of the Effective Date of this Agreement, it cannot be used for Force Majeure pursuant to this Agreement as it is known and foreseeable. However, if a delay is caused by COVID-19 or its variants, Outdoor Advertiser shall provide written notice to the City of the specific delay and the specific cause, and the City and Outdoor Advertiser shall meet and confer in good faith to mutually agree to extension related to the particular delay on a case-by-case basis.

16.13 Broker. Outdoor Advertiser represents and warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement or the transactions contemplated hereunder, upon an agreement or understanding for a commission, percentage, brokerage or contingent fee. Outdoor Advertiser shall defend and hold the City harmless from all damages resulting from any claims that may be asserted against the City by any broker, finder or other person with whom Outdoor Advertiser has or purportedly has dealt. The provisions of this Section 22.13 shall survive any termination of this Agreement.

16.14 Attorneys' Fees and Costs.

16.14.1 If any action arising out of a dispute relating to the meaning or interpretation of any provision of this Agreement or the performance of a Party of its obligations under this Agreement, the Party determined to be in default or the Party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other Party or Parties on account of such default or in enforcing or establishing its rights under this Agreement, including, without limitation, court costs and reasonable Attorneys' Fees and Costs (as defined below).

16.14.2 Any such Attorneys' Fees and Costs incurred by any Party in enforcing a judgment in its favor under this Agreement shall be recoverable separately from, and in addition to, any other amount included in such judgment, and such Attorneys' Fees and Costs obligation is intended to be severable from the other provisions of this Agreement and to survive and not be merged into any such judgment.

16.14.3 For purposes of this Agreement, the reasonable fees of attorneys shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which services were rendered who practice in the City of Oakland, California, in law firms with approximately the same number of attorneys as employed by the City Attorney's Office.

16.14.4 "**Attorneys' Fees and Costs**" means any and all reasonable attorneys' fees, costs, expenses and disbursements, including, but not limited to, expert witness fees and costs, travel time and associated costs, transcript preparation fees and costs, document copying, attachment preparation, courier, postage, facsimile, long-distance and communications expenses, court costs and the costs and fees associated with any other legal, administrative or alternative dispute resolution proceeding, fees and costs associated with execution upon any judgment or order, and costs on appeal.

16.15 Survival. Notwithstanding anything to the contrary in this Agreement, the indemnification obligations and those other obligations that specifically survive and that arise and were not satisfied before termination shall survive any termination of this Agreement. In addition, the representations and warranties in Section 12 shall survive any termination of this Agreement for a period of one (1) year.

16.16 Applicable Laws and Requirements. Outdoor Advertiser shall comply with all Applicable Laws and Requirements. As used herein, "**Applicable Laws and Requirements**" means: all applicable present and future statutes, regulations, rules, guidelines, ordinances, codes, orders, and the like, and all amendments and modifications thereto (collectively, "**Laws**"), of any federal, state, or local agency, department, commission, board, bureau, office or other governmental authority to the extent of its jurisdiction relating to or affecting this Agreement, the demolition and removal of the Becker Removal Advertising Sign Faces, the design and construction of the New Advertising Signs, and/or the use of the "Permitted Becker Advertising Sign Locations by Outdoor Advertiser, Outdoor Advertiser's agents, contractors, employees, invitees, contractors, subcontractors or other persons or entities, including, but not limited to: (a) those Laws pertaining to the protection of the environment and/or the health or safety of employees or the public; (b) those Laws pertaining to taxes, assessments, rates, charges, fees, municipal liens, levies, excises or imposts; and (c) the Approvals.

16.17 Relationship of the Parties. The subject of this Agreement is a private development with none of the Parties acting as the agent of the other in any respect. None of the provisions in this Agreement shall be deemed to render City a partner in Outdoor Advertiser's business or a joint venture partner or member in any joint enterprise with Outdoor Advertiser.

16.18 Joint and Several. In the event that Outdoor Advertiser is composed of more than one person or entity, the obligations imposed herein shall be joint and several.

16.19 Public Records. The Parties acknowledge that City is subject to the California Public Records Act (the "**CPRA**") and the City's "**Sunshine Ordinance**" (City


of Oakland Municipal Code, Chapter 2.20). The Sunshine Ordinance generally provides that written documents retained by City are subject to disclosure upon the request of any third party except for specific limited exceptions provided for in the CPRA and Sunshine Ordinance.

16.20 Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument. The Parties shall be entitled to rely upon facsimile copies or electronic copies of a Party's signature of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date hereof.

CITY:

City of Oakland,
a municipal corporation

By: 
Jestin Johnson (Jan 11, 2024 14:54 PST)
Justin D. Johnson
City Administrator

Approved as to form and legality:

By: 
JoAnne Dunec
Deputy City Attorney

[Signatures Continue on Following Page]

BECKER:

Becker Boards, L.L.C.,
a California limited liability company

By:  _____
Nema Link
Director of Land Development/Authorized Signer

EXHIBIT A
Advertising Sign Relocation Agreement
(Becker Boards, L.L.C.)

Becker Removal Advertising Sign Faces

List of Becker Removal Advertising Sign Faces to be removed from the City by Becker at its sole expense (such list may be updated by Becker so long as the total number and size of faces to be removed remains identical).

	Unit	Location	Facing
1)	4227	13th Ave Nl 100' E/O & E 18th St	NE
2)	4219	14th Ave N/O 27th St W/S	E
3)	4220	14th Ave Nl 25' W/O & E 27th St	W
4)	4180	14th St Nl 100' W/O MLK Jr & Way	W
5)	4181	14th St Nl 100' W/O MLK Jr & Way	W
6)	4382	66th Ave Sl 100' E/O & San Leandro Bl	E
7)	4383	66th Ave Sl 100' E/O & San Leandro Bl	W
8)	4236	Foothill Blvd El 200' N/O & Fruitvale	SE
9)	4237	Foothill Blvd El 200' N/O & Fruitvale	SE
10)	4248	Foothill Blvd & 57th Ave & S.W.	E
11)	4249	Foothill Blvd & 57th Ave & S.W.	W
12)	4246	Foothill Blvd & Congress & N.W.	E
13)	4376	High St 75 ft E/O San Leandro Blvd N/S	SW
14)	4377	High St 75 ft E/O San Leandro Blvd N/S	NE
15)	4247	Foothill & Fairfax	N
16)	4148	54th St Nl E/O Lowell	W
17)	4100	San Pablo El N/O 59th St	S
18)	4199	San Pablo El N/O 59th St	S
19)	4254	Seminary & Fortune, S.E &	SW
20)	4385	Seminary Sl 50' E/O & San Leandro	E
21)	4384	Seminary Wl 50' E/O & San Leandro	W
22)	4124	W Macarthur Sl 250' W/O & West	W
23)	4125	W Macarthur Sl 250' W/O & West	E
24)	4118	West. N/O Mac Arthur E/S	S
25)	4119	West. N/O Mac Arthur E/S	S

EXHIBIT B
Advertising Sign Relocation Agreement
(Becker Boards, L.L.C.)

Permitted Becker Advertising Sign Locations

Only five (5) of the following to be built:

Proposed locations:

- 1) Sign A - 3401 East 8th Street, Oakland, CA 94601 (APN 33-2201-7-1) - Sign Face Size 14'h x 48'w – “V” build double-sided digital display, height less than or equal to 75' above highway grade level.
- 2) Sign B - 1005 7th Street, Oakland, CA 94607 (APN 4-19-3-3) – Size 14'h x 48'w – “V” build, height less than or equal to 75' above highway grade level, double-sided digital display.
 - a. Alternate for 1005 7th Street: 1035 7th Street, Oakland, CA 94607 (APN 4-19-4-3) – Size 14'h x 48'w – “V” build, height less than or equal to 75' above highway grade level, double-sided digital display. Note: only one of either 1005 7th Street or 1035 7th Street can be built due to California Department of Transportation (“CalTrans”) spacing, and not both.
- 3) Sign C - 1357 5th Street, Oakland, CA 94607 (APN 18-390-10-7) – Size 14'h x 48'w – “V” build, height less than or equal to 75' above highway grade level, double-sided digital display.
- 4) Sign D - 8099 S Coliseum Way, Oakland, CA 94621 (APN 42-4328-8-1) – Size 20'h x 60'w – “V” build, height less than or equal to 85' above highway grade level, double-sided digital display.
- 5) Sign E - 4701 Oakport Street, Oakland, CA 94601 (APN 34-2304-11-1) – Size 14h' x 48w' or 20h' x 60'w – “V” build, height less than or equal to 85' above highway grade level, double-sided digital display.
 - a. Alternate for 4701 Oakport Street: 4417 Oakport Street, Oakland, CA 94601 (APN 34-2295-9-5) – Size 14'h x 48'w or 20'h x 60w' – “V” build, height less than or equal to 85' above highway grade level, double-sided digital display. Note: only one of either 4701 Oakport Street or 4417 Oakport Street can be built due to Caltrans spacing, and not both.

Alternate Locations:

- 6) Alternate Sign 1 - 2982 E 7th Street, Oakland, CA 94601 (APN 25-670-14) - Size 14'h x 48'w – “V” build, height less than or equal to 75' above highway grade level, double-sided digital display.
- 7) Alternate Sign 2 – 2754 E 7th Street, Oakland, CA 94601 (APN 19-81-10-1) - Size 14'h x 48'w – “V” build, height less than or equal to 75' above highway grade level, double-sided digital display.

EXHIBIT C
Advertising Sign Relocation Agreement
(Becker Boards, L.L.C.)

Detailed Description of Carbon Offset Fee

Average project annual power use for each double-sided digital Advertising sign is approximately 40,000 kilowatt hour (kWh)/year* = 40 megawatt hours (MWh)/year

PG&E Carbon Dioxide Emission Rates for Electricity usage is = .524lbs of CO₂ per kWh, or 524lbs per MWh**

40MWh/year/sign X 524lbs CO₂/MWh = 20,960lbs/year/sign

20,960lbs = 9.51 metric tonnes

The California Carbon Allowance, per the California Cap and Trade Program***, sets the prices for carbon offsets cost per metric tonne of carbon. The cost per metric tonne of carbon as of March 28, 2023 is \$28.99/tonne.

9.51 metrics tonnes X \$28.99/metric tonne = \$275.69/sign/year

40 years x \$275.69 = **\$11,027.80**/sign to offset the carbon emissions for the life of the sign.

*source: rounded up from the PG&E invoice dated 12/30/2022 for 1695 Eastshore Highway, double-sided digital Advertising Sign location in Berkeley, CA, meter number 1006713273, calculated at an annual average daily usage of kWh/day multiplied by 365 days, = 96.36kWh/day average X 365 days = 35,171.4kWh/year Avg = 35.171MWh/year Avg. For purposes of this estimate, rounded up to 40,000 kWh/year = 40MWh/year.

**source: PG&E report from
(<https://www.pge.com/includes/docs/pdfs/about/environment/calculator/assumptions.pdf>)

***source: Spot price from CaliforniaCarbon.com as of April 3, 2023
(<https://carboncredits.com/carbon-prices-today/>)

EXHIBIT D
Advertising Sign Relocation Agreement
(Becker Boards, L.L.C.)

List of Recipients of Required Becker Annual Payments

All capitalized terms shall have the meaning given to them in the Agreement to which this exhibit is attached.

1. **City of Oakland**, a municipal corporation, to its General Purpose Fund – \$250,000 per year, at \$50,000 per year from each of the New Advertising Signs (Signs A, B, C, D, and E or alternate locations listed on Exhibit B attached to the Agreement), with periodic increases for the Term of the Agreement, paid in equal quarterly installments with the first installment commencing upon the beginning of the thirteenth (13th) month following the commencement of operation of each New Advertising Sign.
2. **Native American Health Center, Inc.**, a California nonprofit public benefit corporation, - \$100,000 per year from Sign A, or alternate location listed on Exhibit B attached to the Agreement, with periodic increases for the Term of the Agreement, paid in equal quarterly installments with the first installment commencing upon the beginning of the thirteenth (13th) month following the commencement of operation of Sign A, or alternate location, as described on Exhibit B attached to the Agreement.
3. **Asian Health Services**, a California nonprofit public benefit corporation, - \$100,000 per year from Sign B, or alternate location listed on Exhibit B attached to the Agreement, with periodic increases for the Term of the Agreement, paid in equal quarterly installments with the first installment commencing upon the beginning of the thirteenth (13th) month following the commencement of operation of Sign B, or alternate location, as described on Exhibit B attached to the Agreement.
4. **The West Oakland Health Council**, a California nonprofit public benefit corporation, - \$100,000 per year from Sign C, or alternate location listed on Exhibit B attached to the Agreement, with periodic increases for the Term of the Agreement, paid in equal quarterly installments with the first installment commencing upon the beginning of the thirteenth (13th) month following the commencement of operation of Sign C, or alternate location, as described on Exhibit B attached to the Agreement.
5. **La Clínica de la Raza, Inc.** , a California nonprofit public benefit corporation, - \$100,000 per year from Sign D, or alternate location listed on Exhibit B attached to the Agreement, with periodic increases for the Term of the Agreement, paid in equal quarterly installments with the first installment commencing upon the beginning of the thirteenth (13th) month following the commencement of operation of Sign D, or alternate location, as described on Exhibit B attached to the Agreement.
- 6.. **Movement Strategy Center**, a California nonprofit public benefit corporation, to its Career Technical Education Transitional Age Youth Hub - \$100,000 per year from

Sign E, or alternate location listed on Exhibit B attached to the Agreement, with periodic increases for the Term of the Agreement, paid in equal quarterly installments with the first installment commencing upon the beginning of the thirteenth (13th) month following the commencement of operation of Sign E, or alternate location, as described on Exhibit B attached to the Agreement.

EXHIBIT E
Advertising Sign Relocation Agreement
(Becker Boards, L.L.C.)

Physical and Operational Standards

All capitalized terms shall have the meaning given to them in the Agreement to which this exhibit is attached, except as defined herein.

1. Each New Advertising Sign shall be located on a Permitted Becker Advertising Sign Location only if such location has at least one (1) property line within two hundred fifty (250) feet of the edge of the right-of-way of an interstate or primary highway that is not deemed to be a Landscaped Freeway by California Department of Transportation (“**Caltrans**”), and with the sign copy oriented toward the highway with the purpose of its message being visible and readable from the main traveled way.
2. Each New Advertising Sign shall meet all applicable Caltrans requirements.
3. No New Advertising Sign shall have more than one (1) digital face (display surface) oriented in the same vertical plane.
4. No New Advertising Sign shall exceed eighty-five (85) feet in height inclusive of supporting structures, measured from finished grade of the freeway travel lane closest to the sign to the uppermost point of the Advertising Sign, except as may be approved for good cause as demonstrated by the applicant and determined in the sole discretion of the City.
5. Each New Advertising Sign shall plainly display the name of the person or company owning or operating the New Advertising Sign, to be readable by a person with average eyesight from no less than one hundred (100) feet.
6. No New Advertising Sign shall display any statement or words of an “obscene, indecent, or immoral character,” as it applies to the California Business and Professions Code Section 5402 and judicial decisions interpreting the same.
7. New Advertising Signs shall not create a hazard to public safety or provide an attractive nuisance and shall be continually maintained by Outdoor Advertiser free from graffiti.
8. New Advertising Signs shall not be operated in such a fashion as to constitute a hazard to safe and efficient operation of vehicles on streets or freeways and shall comply with all applicable Federal, State, and local laws and regulations.
9. No New Sign shall simulate or imitate any directional, warning, danger or information sign, or any display likely to be mistaken for any permitted traffic sign intended or likely to be construed as giving warning to traffic, by, for example, the use of the words “stop” or “slow down.”

10. No New Advertising Sign 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.

11. Digital sign face operating requirements:

a. Each digital message shall not include flashing lights or the varying of light intensity, nor have movement, or the appearance or optical illusion of movement.

b. Minimum display time of each message shall be no less than eight (8) seconds, and each image shall be exclusively a static image, and shall not include any video or motion picture of any kind.

c. New Advertising 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.

d. Pre-set distances to measure the foot candles' impact vary with the expected viewing distances of each size New Advertising Sign. Measure distance criteria shall be:

<u>Nominal Face Size</u>	<u>Distance to be measured</u>
12' x 25'	150'
10'6" x 36'	200'
24' x 48'	250'
20' x 60' or 25' x 48'	350'

e. Each New Advertising Sign must have a light sensing device that adjusts the brightness as ambient light conditions change.

f. In the event of a New Advertising Sign malfunction, each New Advertising Sign shall be designed to freeze the display in one static position, display a full black screen, or turn off completely.

g. Each New Advertising Sign shall be connected to the National Emergency Network and provide emergency information, including child abduction alerts (e.g., "Amber Alerts"), in accordance with local and regional first responder protocols.

h. New Advertising Signs must utilize energy efficient LED technology or the better available energy efficient lighting and technology at the time of construction, replacement, and/or reconstruction of each New Advertising Sign face.

i. In the event of a catastrophic emergency (such as an earthquake or other major event which may disrupt normal communication), digital advertising must be made available to the City for emergency messaging and communication.

EXHIBIT F
Advertising Sign Relocation Agreement
(Becker Boards, L.L.C.)

Free Advertising Spot

All capitalized terms shall have the meaning given to them in the Agreement to which this exhibit is attached.

Listed organizations to share one guaranteed digital advertising space per rotation at all times on each of the New Advertising Sign faces:

- 1) The Unity Council
- 2) Oakland African American Chamber of Commerce
- 3) Oakland Chinatown Chamber of Commerce, Inc.
- 4) Oakland Latino Chamber of Commerce
- 5) Oakland Vietnamese Chamber of Commerce
- 6) Oakland Metropolitan Chamber of Commerce
- 7) Black Cultural Zone Community Development Corporation
- 8) Visit Oakland
- 9) City of Oakland

Advertising content limitations shall be as follows: Each of the organizations listed as 1-8 above may use the free advertising space to promote Oakland-based small businesses, Oakland-based micro enterprises, Oakland-based/serving nonprofit organizations, and events related to their organizations. Visit Oakland may also use the free advertising space for Oakland branding and messaging; Oakland events; Business Improvement District messaging; community messaging including, but not limited to, messaging for the Oakland Community Messaging Collective, and workforce education and development organizations such Cypress Mandela, Rising Sun Center for Opportunity, and others; and public service messaging. The City may use its allocation of its messaging for City branding and emergency and public service messaging. None of the free advertising spots may be sold, resold, or directly monetized by any of the above-mentioned organizations.