City of La Palma

Agenda Item No. 8

MEETING DATE: October 1, 2013
TO: CITY COUNCIL
FROM: CITY MANAGER
SUBMITTED BY: Douglas D. Dumhart, Community Development Director
AGENDA TITLE: Agreement between the City of La Palma and La Palma Sign Partners, LLC to advance the concept of a La Palma Digital Display Project

PURPOSE:

This item is consideration of an Agreement with La Palma Sign Partners, LLC to advance the concept of a digital billboard project to diversify and enhance City revenues.

SUMMARY:

This item was continued from September 3, 2013, to the October 1, 2013 meeting, to provide additional time to evaluate a revised proposal submitted by Clear Channel Outdoor during the course of the September 3rd City Council meeting.

BACKGROUND:

The September 3, 2013, Agenda Report is provided as Attachment 1 to this report for additional background information.

DISCUSSION:

The City received two proposals to develop digital billboards along the 91 freeway. One from La Palma Sign Partners, LLC (hereinafter, “Sign Partners”), a consortium team formed specifically for developing a billboard project in La Palma, and another from Clear Channel Outdoor (CCO), a top leader in the outdoor advertising industry.

La Palma Sign Partners, in its proposal dated June 4, 2013, to help facilitate the construction and implementation of a La Palma digital billboard project, with the goal of bringing the project on-line, and a new revenue stream to the City, by the start of the next fiscal year. Sign Partners will add the necessary expertise to secure future site location(s), to assist with processing municipal code and environmental compliance documents, to secure Caltrans permits, to finance, construct, and furnish digital display structures, and to bid out and manage the digital display structures.
display billboard(s) to the outdoor advertising companies. Sign Partners has indicated its willingness to move quickly to secure ideal site(s) for billboard placement; either advance a cash deposit or reimburse City for costs incurred such as legal, environmental, and staff expenses related to processing the project; and commit to a guaranteed annual payment stream with cost of living adjustment (COLA). They have proposed a 30-year term with an initial fixed lump sum payment that is adjusted annually by an inflation factor. When applying the historical 30-year CPI factor to their proposed annual payment for one billboard sign, the 30-year term would net slightly more than $6.0 million in new revenue to the City. If a second billboard can be secured, Sign Partner’s proposal doubles to approximately $12.1 million in new revenue to the City.

CCO’s initial proposal was received August 15, 2013. CCO’s offer proposes to relocate its traditional off-premise static billboard, located on the Pacific Electric Corridor ROW on Moody Street south of Crescent, and rebuild it as a new digital off-premise billboard along the 91 Freeway corridor. In exchange for City cooperation, they offer to provide staff with expert guidance relative to the process of entitling a billboard project. At this time CCO is proposing just one new sign and an indication to look at a second sign in the future if market conditions support it. Their proposal is for a 30–year term with fixed lump sum annual payments increasing every ten (10) years, for a 30 year total of $4.5 million. They have also offered to consider reimbursing the City for reasonable processing, attorney costs, and related fees in connection with the approval process. Staff has verified with business associates that CCO is reimbursing the City of Baldwin Park for its out-of-pocket expenses for updating their static billboards to digital.

At the September 3, 2013, City Council meeting, staff was recommending the City enter into an Agreement with Sign Partners to advance a concept of having two billboards adjacent to the 91 freeway. During the City Council meeting, CCO tendered a revised proposal and requested that the City Council reconsider their offer. Their proposal was for the same relocated single billboard but with new economics. CCO proposed to increase their payment for a single sign to $6.1 million over 30 years. All other terms of their August 15, 2013, proposal remained the same. A matrix comparing the Sign Partner and CCO proposals is as follows:

<table>
<thead>
<tr>
<th>Comparison Matrix</th>
<th>La Palma Sign Partners</th>
<th>Clear Channel Outdoor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of Signs/Faces</td>
<td>2 / 4</td>
<td>1 / 2</td>
</tr>
<tr>
<td>Type of sign</td>
<td>14’ x 48’ Digital LED</td>
<td>14’ x 48’ Digital LED</td>
</tr>
<tr>
<td>Location(s)</td>
<td>Private Property</td>
<td>City R-O-W</td>
</tr>
<tr>
<td>Annual starting revenue</td>
<td>$240,000</td>
<td>$120,000</td>
</tr>
<tr>
<td>Term of Agreement</td>
<td>30 Years</td>
<td>30 Years</td>
</tr>
<tr>
<td>COLA Adjustments</td>
<td>Annually</td>
<td>None; programmed increases</td>
</tr>
<tr>
<td>Date of 1st payment</td>
<td>One year from permit issuance</td>
<td>After “Turning-on” display</td>
</tr>
<tr>
<td>Total projected revenue</td>
<td>$12.1M</td>
<td>$6.1M</td>
</tr>
<tr>
<td>Deposit/Reimbursement</td>
<td>$50,000 or as directed</td>
<td>None; will consider reimbursements</td>
</tr>
</tbody>
</table>
Staff’s general observations are that La Palma Sign Partners was specifically formed to build and operate digital billboards in La Palma. Its team consists of partners with backgrounds in finance, processing, and community relations. Their plan is to entitle, finance, construct, and manage the billboards in La Palma. They will handle all marketing and sales of the actual billboards to advertising companies and they propose to guarantee the City an annual payment regardless of the outcome of their dealings with the billboard industry. Clear Channel Outdoor is a large national industry leader with many commitments. They currently have a significant investment in Los Angeles digital displays that are idle due to a protracted legal fight. There may be some concern that as an end user, CCO is primarily interested in tying up the La Palma trade area to prevent competition and not necessarily in achieving an active billboard that generates revenue for the City. Under Sign Partners' proposal, CCO can still be a bidder to advertise on any billboards that might be developed if they are committed to the location.

During the September 3, 2013, City Council meeting, staff heard the following concerns:

Concern # 1. Why a Development Agreement was not being proposed in-lieu of the Deposit Agreement.

Response: Currently, billboards are not an allowed use under the La Palma Development Code. A Development Agreement may not authorize a use not allowed by the zoning ordinance. Thus, a Development Agreement would be premature at this stage of the process. The proposed Deposit/Reimbursement Agreement was created to effectuate pre-development feasibility work with the result being a possible future Development Agreement.

Concern # 2. Whether the City should accept an advance deposit.

Response: It is common practice for municipalities to accept an advance deposit for city expenses associated with advance planning work. The City's adopted fee schedule requires a minimum deposit/actual fee payment for processing many of its land use entitlement application like Conditional Use Permits. In approaching more complex land use matters, it is normal to take a larger deposit. It is not necessary to require an advance deposit, rather it just tends to be prudent practice. To that end, staff has prepared an alternate agreement for the City Council’s consideration. A Due Diligence Agreement is provided as Attachment 2 to this report, has provisions for periodic reimbursement of City expenses incurred, rather than an upfront payment.

Concern # 3. Whether two billboards versus one should be pursued.

Response: With respect to whether two billboards versus one should be pursued, staff notes that in addition to securing City approvals, a permit is also required from California Department of Transportation (Caltrans.) Caltrans regulates the placement of outdoor advertising displays (including billboards) which are visible from California Highways. Permits from Caltrans are required and these billboards must conform to California Business and Professions Code (Outdoor Advertising Act) Section 5200 et seq. and Section 21466.5 of the Vehicle Code. These codes contain regulations for all billboards and specific regulations pertaining to "changeable electronic messages" (digital signs) regarding allowed location, proximity to other billboards (digital and traditional), frequency of message changes, illumination and prohibition of animation. In order for an outdoor advertising display application to be considered for a permit...
adjacent to an Interstate highway, there are numerous criteria\(^2\) that must be met. Most notable among those conditions includes:

**Display Location**

- Location of property where display is to be placed must be zoned industrial or commercial.
- Must have written permission (building permit) from the local government having jurisdiction where the display is to be located.
- Location may not be adjacent to a landscaped section of a freeway.

**Display**

- An electronic changeable message center display must be 1000 feet from another electronic message center display.
- Maximum height for the advertising display area is, 25 feet in height and 60 feet in length, not to exceed an overall maximum of 1200 square feet.

Since the freeway corridor in La Palma is approximately 2,800 linear feet, it is only possible to place a maximum of two digital displays within La Palma city limits. The fixed costs associated with processing entitlement approvals, permits, and legal work would be approximately the same for one sign as it would be for two. So, the return on investment is greater if two signs are feasible.

**ENVIRONMENTAL:**

Implementing changes to the City’s current prohibition of Off-Premise sign requirements to allow digital LED billboards will require the City Council to consider Development Code amendments. The amendments would be discretionary action under the California Environmental Quality Act (CEQA). It is not clear at this point what level of review will be required under CEQA. If a future ordinance amendment proposes to allow digital billboards in commercial or industrial zones adjacent to the 91 freeway, the City will need to determine and complete the requisite level of CEQA review.

**FISCAL IMPACT:**

A number of public agencies have come to recognize advertising revenue can be an important funding source for municipal operations and to augment their traditional sources of revenue. Public transit systems have accepted advertising for a long time, and their experience is often cited as models for expanding advertising in and around public facilities. La Palma has limited opportunities to increase existing revenues and cultivating new sources of revenue is therefore of particular importance. Diversification of its revenue also adds to fiscal stability. As proposed by the La Palma Sign Partners, LLC, the proposed project at the 91 freeway could secure stabilized new revenue over a 30 year term of $6.0 million for one sign and $12.0 million for two signs.

The expenses associated with advancing the concept of a La Palma billboard project are estimated to be as follows:

**Phase I**
- Prepare and Approve Initial Agreement (Deposit or Due Diligence) $3,000
- Analyze/Survey Sites $3,000
- Review Easement Documents $4,000
- Prepare Draft Code Amendment $5,000
  - Sub Total $15,000

**Phase II**
- Negotiate and Prepare Draft DA $8,000
- Prepare CEQA and Circulate $25,000
  - Sub Total $33,000

**Phase III**
- Notice & Conduct Public Hearings $2,000
  - Sub Total $2,000
  - Total $50,000

La Palma Sign Partners has expressed a willingness to either pay an advance deposit or to reimburse the City for expenses incurred as the negotiations and processing takes place. Should the City Council elect not to accept an advance deposit from La Palma Sign Partners, the City Council would need to appropriate $50,000 from General Fund reserves to initiate the pre-feasibility process.

**ALTERNATIVE ACTIONS:**

1. Approve the Deposit/Reimbursement Agreement with La Palma Sign Partners as presented on September 3, 2013, which requires an advance deposit for City expenses. This agreement is attached to the September 3, 2013 staff report.

2. Approve the Due Diligence Agreement with La Palma Sign Partners which provides for reimbursements of City incurred expenses at established milestones and appropriate $50,000 from General Fund reserves. An agreement prepared by the City Attorney's Office is attached.

3. Continue the item and refer to staff with further direction.

4. Direct staff to discontinue pursuit of billboard advertising.

**RECOMMENDATION:**

It is recommended that the City Council approve the Deposit/Reimbursement Agreement with La Palma Sign Partners, LLC, to cover City expenses associated with advancing the concept of digital billboards and authorize the City Manager to execute the agreement.

**APPROVED:**

- Department Director
- Finance
- City Manager

Attachment: 1. September 3, 2013, Agenda Report w/Attachment
2. Due Diligence Agreement
City of La Palma  
*Agenda Item No. 10*

**MEETING DATE:** September 3, 2013

**TO:** CITY COUNCIL

**FROM:** CITY MANAGER

**SUBMITTED BY:** Douglas D. Dumhart, Community Development Director

**AGENDA TITLE:** Deposit/Reimbursement Agreement between the City of La Palma and La Palma Sign Partners, LLC to advance the concept of a La Palma Digital Display Project

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**PURPOSE:**

Consideration of a Deposit/Reimbursement Agreement with La Palma Sign Partners, LLC to cover expenses associated with advancing the concept of a digital billboard project to enhance municipal revenues.

**SUMMARY:**

The greater L.A./Orange County/Riverside metropolitan marketplace is a major market for commerce. The City of La Palma’s economic strength is derived from its central location in this marketplace. The 91 Freeway spans these three counties and represents a critical corridor for successful corporations to establish their brand recognition. La Palma has the opportunity to capitalize on the fact that it hosts a portion of the 91 Freeway within its corporate limits. To that end, the City needs to capture its ability to market that exposure for the diversification of its municipal revenues.

**BACKGROUND:**

The City initially contacted Clear Channel Outdoor, Inc. (CCO) regarding the possibilities to raise revenues using bus shelter advertising in light of the loss of BP/Arco sales tax revenue. The conversation with CCO identified more marketing interest in La Palma’s freeway exposure rather than its arterials and the bus shelter concept was dropped from further consideration. As discussed during Fiscal Year 2013-14 budget review, billboards are currently not permitted within the City of La Palma and moving forward with a billboard project would require the City to amend its Municipal Code to establish regulations to guide such a project.

Shortly thereafter, a consortium team, consisting of Principals from Independent Processing Services, Lakeside Capital, LLC, and Arrow Signs, approached the City offering to assist in
developing an off-premises outdoor advertising program along the 91 freeway corridor to help raise new municipal revenues. These individuals would act as “Developer” to facilitate the permitting, development, management, maintenance and operations of up to two (2) new off-premises outdoor advertising structures (Billboards) utilizing state-of-the-art two-sided digital display. The targeted area for the proposed electronic digital display billboards is along the 91 freeway corridor within City limits. The targeted area is shown in red in the photo below. There are no adjacent residential areas and no code change is being recommended for any area other than the freeway zone noted below.

DISCUSSION:

The contemplated digital billboard(s) would be similar to the recently erected digital display billboard located on the north side of the 91 Freeway east of Knott Street in the City of Buena Park. The size of the double-sided digital display sign is proposed to be smaller than the traditional static display billboards, with the digital display area being approximately 14 feet high by 48 feet wide — a size identical to the Buena Park digital display billboard pictured on the following page.
Both CCO and the consortium team have submitted preliminary proposals, indicating their willingness to work cooperatively with the City to facilitate a 91 freeway digital billboard project to bring in a new revenue stream for the community.

CCO is an industry leader in outdoor advertising and is a very reputable firm. CCO is proposing to relocate its traditional off-premise static billboard sign currently located on the Pacific Electric Corridor ROW on Moody Street south of Crescent and rebuild it as a new digital off-premise sign along the 91 Freeway corridor. In exchange for cooperation, CCO has proposed to provide staff with expert guidance relative to the process of implementing a successful billboard project. At this time CCO is proposing just one new billboard and it has indicated it may consider a second billboard in the future, with market conditions permitting. As the end user of the digital display structure CCO has proposed a 30-year term with fixed lump sum annual payments increasing every ten (10) years, for a 30 year total of $4.5M. CCO has also offered to consider reimbursing the City for reasonable processing, attorneys, and related fees in connection with the approval process. Staff has verified with associates that CCO is reimbursing the City of Baldwin Park for its out-of-pocket expenses for updating its static billboards to digital.

The consortium team has proposed to form a new Limited Liability Corporation (LLC), specifically for the purpose of advancing the billboard project. The new corporation, La Palma Sign Partners, LLC, would be a partially owned subsidiary of Lakeside Capital, LLC, a well capitalized corporation. The consortium team proposes to act as an extension of City staff to help facilitate a digital billboard project, with the goal of bringing the project on-line by the start of the next fiscal year.

By augmenting staff resources, they will add the necessary expertise to secure location(s) and Caltrans permits, to enable the processing of any necessary municipal code amendments and environmental compliance documents, to finance, construct, and furnish digital billboards, and to seek out the outdoor advertising companies who will advertise on the digital display message center. The consortium has proposed to move quickly to secure ideal site(s) for billboard placement; to advance a cash deposit for City-incurred costs, such as legal, environmental, and staff expenses, to negotiate and process the project; and to commit to a guaranteed annual payment stream with cost of living adjustment (COLA). It has proposed a 30-year term with an initial fixed lump sum payment that is adjusted annually by an inflation factor. When applying the CPI factor for the last 30 years to its proposed payment for one billboard sign, a 30-year yield
nets slightly more than $6M. If a second billboard can be secured, the consortium’s proposal doubles to slightly more than $12M in new revenue to the City.

Staff envisions the next steps in the process would entail securing sites, amending City code, negotiating a development agreement, conducting environmental review and holding Public Hearings. To cover city expenses associated with these endeavors, staff and legal counsel have developed a Deposit/Reimbursement Agreement for consideration. Having the Deposit/Reimbursement Agreement in place would permit the City to allocate resources to advancing the billboard project by covering City expenses associated with these tasks. The Deposit/Reimbursement Agreement spells out how and what the deposit funds will be allocated to and refund procedures of unspent balance should either party terminate the process. The Deposit/Reimbursement Agreement also commits the parties to negotiating an agreement in earnest.

CONCLUSIONS:

Staff is recommending the City enter into the Deposit/Reimbursement Agreement with the LLC that will be formed by the consortium team for the following reasons:

- Team will augment limited staff resources to help move the project forward in a timely fashion.
- Team will advance a $50,000 cash deposit up front to cover City expenses in evaluating and advancing the proposal at the consortium team’s own risk.
- Team will finance and secure property, entitlements, and permits.
- Team will finance, construct, and bid out digital display to end-users to achieve maximum value.
- Clear Channel would still have the opportunity to be the operator of the digital display billboard(s) under the design, permit, and construct proposal of the consortium team

The advance deposit is preferable to the “may” reimbursement approach since the City has not budgeted any funding for the project. Having the guarantee of funds on deposit to match expenses as incurred is fiscally prudent. Through the Deposit/Reimbursement Agreement the City would not be obligated to advance any of its own funds for continuing to work on this project.

The consortium team has reserved the name of the new LLC for this venture and has filed incorporation papers with the State. To that end, the City Council is being asked to approve the deposit agreement and authorize the City Manager to execute the agreement as soon as staff can verify the Limited Liability Corporation is recognized by the State.

FISCAL IMPACT:

A number of governments have come to recognize advertising revenue can be an important funding source for municipal operations to augment traditional sources of revenue. Public transit systems have accepted advertising for a long time, and their experience is often cited as models for expanding advertising in and around public facilities. La Palma has limited opportunities to increase existing revenues and cultivating new sources of revenue is therefore of particular importance. Diversification of its revenue sources also adds to fiscal stability.
As proposed by the consortium, placing one or two digital billboards along the 91 freeway could secure to the City a stabilized revenue source over a 30-year term of between $6.0 million and $12.0 million in total new revenue.

Through the Deposit/Reimbursement Agreement, the City would not be obligated to advance any of its own funds for continuing to work on this conceptual project.

RECOMMENDATION:

Approve the Deposit/Reimbursement Agreement with La Palma Sign Partners, LLC, to cover City expenses associated with advancing the concept of digital billboards in the City, and authorize the City Manager to execute the Agreement once the formation of La Palma Sign Partners, LLC is completed.

APPROVED:

Department Director

Finance (if applicable)

City Manager

Attachment: 1. Deposit/Reimbursement Agreement
DEPOSIT/REIMBURSEMENT AGREEMENT

This Deposit/Reimbursement Agreement (“Agreement”) is entered into this ___ day of September, 2013, by and between the CITY OF LA PALMA, a California municipal corporation (“City”), and La Palma Sign Partners, LLC (“Business”), a California Corporation. City and Business are sometimes referred to herein as the “Parties” or individually as a “Party.”

RECITALS

A. Business desires to discuss a potential transaction (“Proposed Transaction”) with City concerning the installation and operation by Business of one or more billboards with a two-sided L.E.D. display (“Digital Billboard”) in the City, a matter concerning which City staff and Business staff have had some preliminary discussions.

B. The purpose of this Agreement is to provide for Business to reimburse City for fees and costs incurred by City in evaluating the Proposed Transaction, documenting an agreement concerning the Proposed Transaction, if one is reached between the Parties, and processing the Proposed Transaction for City Council consideration.

NOW THEREFORE, in consideration of the mutual covenants set forth herein, the mutual benefits to be derived there from, and for other consideration the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

TERMS

1. Incorporation of Recitals. The Parties agree that the Recitals constitute the factual basis upon which City and Business have entered into this Agreement. City and Business each acknowledge the accuracy of the Recitals and agree that the Recitals are incorporated into this Agreement.

2. Deposit. Within three (3) days following the date that both Parties have signed this Agreement, Business shall provide City with a deposit of Fifty Thousand Dollars ($50,000), in immediately available funds. City shall use these funds solely for the purpose of paying fees or costs associated with the Proposed Transaction and shall, upon Business’ request, provide an accounting of the expenses. If additional funds are needed to reimburse the City for fees or costs, City shall make a written request to Business and Business shall promptly provide payment to City. The City’s Community Development Director may direct City staff and consultants to suspend all work related to the Proposed Transaction until any additional amounts so demanded has been received by the City. The initial deposit and any additional deposit amounts are hereafter referred to, collectively, as the “Deposit Funds.”

3. Use of Deposit Funds. The City may draw upon the Deposit Funds to pay any fees or costs associated with the Proposed Transaction, including, without limitation, any of the following: City staff time and apportioned overhead costs, fees and expenses of the City Attorney and any other consultants retained by the City, costs of performing any necessary
environmental review, costs of any notices, printing costs, and any and all other actual costs and expenses incurred by the City with respect to the Proposed Transaction (collectively, “Preliminary Costs”).

4. **Schedule.** The Parties agree to make a good faith effort to negotiate the business terms of the Proposed Transaction within 90 days of the effective date of this Agreement. The Parties may mutually consent to a one-time extension of 60 days. Business acknowledges, however, that the La Palma City Council retains complete discretion over the terms and conditions of the Proposed Transaction, and that there is no guarantee as to the terms of the Proposed Transaction or that the Proposed Transaction will ultimately be effectuated.

5. **Return of Unused Deposit Funds.** If discussions between the Parties do not result in a mutually satisfactory agreement within the timeframe referenced above, either party may terminate this agreement. Upon termination the City shall, within ten (10) business days of receiving a written request from Business, return the then-unexpended Deposit Funds to Business, without interest, less an amount equal to any Preliminary Costs incurred by the City, or that the City has otherwise committed to pay, which costs would be subject to use of Deposit Funds under Sections 2 and 3 of this Agreement, but which have not yet been so paid.

6. **Assignment.** This Agreement may not be assigned by either Party without the prior and express written consent of the other Party, which consent shall not be unreasonably withheld or delayed. Any attempted assignment of this Agreement not in compliance with the terms of this Agreement shall be null and void and shall confer no rights or benefits upon the assignee.

7. **No Prior Agreements and No Oral Modifications.** This Agreement represents the entire understanding of City and Business and supersedes all other prior or contemporaneous written or oral agreements pertaining to the subject matter of this Agreement. This Agreement may be modified, only in writing signed by the authorized representatives of both City and Business.

8. **Binding Upon Successors.** This Agreement and each of its terms shall be binding upon City and Business and their respective officers, elected officials, employees, agents, contractors, and permitted successors and assigns.

9. **No Third Party Beneficiaries.** This Agreement is entered into solely for the benefit of the Parties. No other person or entity has any rights or remedies under this Agreement.

10. **Attorneys’ Fees.** In the event that any action or proceeding, including arbitration, is commenced by either City or Business against the other to establish the validity of this Agreement or to enforce any one or more of its terms, the prevailing party in any such action or proceeding shall be entitled to recover from the other, in addition to all other legal and equitable remedies available to it, its actual attorneys’ fees and costs of litigation, including, without limitation, filing fees, service fees, deposition costs, arbitration costs and expert witness fees, including actual costs and attorneys’ fees on appeal.
11. **Jurisdiction and Venue.** This Agreement is executed and is to be performed in Orange County, California, and any action or proceeding brought relative to this Agreement shall be heard in the appropriate court in the County of Orange, California. City and Business each consent to the personal jurisdiction of the court in any such action or proceeding.

12. **Severability.** If any term or provision of this Agreement is found to be invalid or unenforceable, City and Business both agree that they would have executed this Agreement notwithstanding the invalidity of such term or provision. The invalid term or provision may be severed from the Agreement and the remainder of the Agreement may be enforced in its entirety.

13. **Headings.** The headings of each Section of this Agreement are for the purposes of convenience only and shall not be construed to either expand or limit the express terms and language of each Section.

14. **Representations of the Parties.** Each person signing this Agreement on behalf of a Party which is not a natural person hereby represents and warrants to the other Party that all necessary legal prerequisites to that Party’s execution of this Agreement have been satisfied and that he or she has been authorized to sign this Agreement and bind the Party on whose behalf he or she signs.

###

[Signatures on following page]
BUSINESS:
La Palma Sign Partners LLC, a California Corporation

Dated: ____________________________

Melvin T. Andrews,
Authorized Signatory

CITY:
CITY OF LA PALMA, a California municipal corporation

Dated: ____________________________

Ellen Volmert,
City Manager

ATTEST:

Laurie A. Murray, CMC
City Clerk

APPROVED AS TO FORM:

Michelle Molko,
Assistant City Attorney
EXCLUSIVE DUE DILIGENCE AGREEMENT
(La Palma Sign Partners, LLC — Digital Display Billboards)

This Exclusive Due Diligence Agreement (“Agreement”) is made this _____ day of ____________, 2013 (the “Effective Date”), by and between the CITY OF LA PALMA, a corporate body politic under the laws of the State of California (hereinafter, “City”), and LA PALMA SIGN PARTNERS, LLC, a California limited liability company (hereinafter, “Sign Partners”). City and Sign Partners are sometimes referred to herein as the “Parties” or individually as a “Party.”

RECITALS

WHEREAS, Sign Partners desires to discuss a potential transaction (“Proposed Transaction”) with City concerning the installation and operation by Sign Partners of one or more billboards with a two-sided L.E.D. display (“Digital Billboard”) in the City, a matter concerning which City staff and Sign Partners have had some preliminary discussions; and,

WHEREAS, Sign Partners has presented a preliminary proposal, dated June 4, 2013, containing representations made by Sign Partners that it believed would assist the City in discussing the potential advancement of the conceptual Digital Billboards; and,

WHEREAS, Sign Partners is interested in identifying and securing proposed sites that are suitable for the development of the conceptual Digital Billboards; and,

WHEREAS, City and Sign Partners desire to enter into this Agreement for up to one hundred and fifty (150) days for the purposes of (A) allowing Sign Partners to (i) identify and secure sites suitable for the proposed Digital Billboard(s), (ii) undertake due diligence activities regarding the Proposed Transaction, and (iii) present a complete proposed project and business plan, including financial arrangements, for City’s consideration in its sole discretion; and (B) allowing City to (i) consider Sign Partners’ proposed project and business plan; (ii) determine the nature and scope of both land use development entitlements required for the Project and environmental studies, if any, required for such entitlements; and (iii) taking any other steps necessary to evaluate and negotiate the business terms of the Proposed Transaction.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, the mutual benefits to be derived there from, and for other consideration the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Incorporation of Recitals. The Parties agree that the Recitals constitute the factual basis upon which City and Sign Partners have entered into this Agreement. City and Sign Partners each acknowledge the accuracy of the Recitals and agree that the Recitals are incorporated into this Agreement.

2. Due Diligence Period. This Agreement shall commence upon the Effective Date
set forth above. The Parties agree to make a good faith effort to negotiate the business terms of the Proposed Transaction within 90 days of the Effective Date (the “Standstill Period”). The Parties may mutually consent, in writing, to a one-time 60-day extension of the Standstill Period, with the City’s City Manager having the authority to consent to such an extension on the City’s behalf. Upon termination of this Agreement, neither City nor Sign Partners shall have any further rights or obligations under this Agreement except for those rights and obligations that expressly survive termination.

3. **Proposed Project and Business Plan.** Sign Partners and City agree that Sign Partners, at its sole cost and expense, shall (1) identify suitable sites for the potential Digital Billboards; (2) submit for the City’s consideration a listing of the suitable sites identified by Sign Partners along with an initial feasibility analysis for each site; (3) submit for the City’s consideration a complete, detailed proposed project and business plan, including financial arrangements; and (4) submit any other information and documentation requested by the City for purposes of evaluating and/or processing the proposed project and the associated Proposed Transaction.

4. **Exclusivity.** During the Standstill Period, and any extension thereof made pursuant to the terms of this Agreement, City agrees to negotiate exclusively with Sign Partners, and not with any other person or entity, concerning the installation and operation of Digital Billboard(s) for any site located within the City and within 500 feet of the 91 Freeway. The City agrees that during such time, it will work diligently and in good faith to evaluate the proposed project and associated documents submitted by Sign Partners pursuant to Section 3 of this Agreement, cooperate in good faith with Sign Partners to provide information reasonably necessary to further negotiations between the Parties concerning the Proposed Transaction.

5. **Reimbursement of City Expenses.** The Parties acknowledge that the City will incur expenses in negotiating, evaluating, and processing the Proposed Transaction, including, without limitation, the following: City staff time and apportioned overhead costs, fees and expenses of the City Attorney and any other consultants retained by the City, costs of performing any necessary environmental review, costs of any notices, printing costs, and any and all other actual costs and expenses incurred by the City with respect to the Proposed Transaction (collectively, “Preliminary Costs”). Sign Partners shall reimburse the City for Preliminary Costs incurred, in accordance with Exhibit “A” (Reimbursement Schedule) hereto, which is incorporated herein by this reference.

6. **Termination of Agreement.**

   a. If Sign Partners has not presented a project proposal and related documents to the City in accordance with Section 3 of this Agreement within 90 days of the Effective Date (or within 150 days if this Agreement is extended by 60 days pursuant to Section 2, above), then this Agreement shall terminate except for the rights and obligations that expressly survive termination.

   b. Notwithstanding the Standstill Period, and any extension thereof made pursuant to the terms of this Agreement, either Party may terminate this Agreement if
the other party has materially defaulted in its obligations herein set forth, the terminating Party has provided the defaulting Party with written notification of such default, and the defaulting Party has refused to cure same. The written default notification shall set forth the nature of the actions required to cure such default if curable. The defaulting Party shall have fourteen (14) days from the date of the written notification to cure such default. If such default is not cured within the fourteen (14) days, the termination shall be deemed effective.

c. Regardless whether this Agreement expires or terminates for any reason, Sign Partners shall receive no compensation from the City whatsoever for any costs incurred by or steps taken by Sign Partners to advance the concept of the Proposed Transaction.

7. City’s Reservation of Discretion; No Pre-Determination or Pre-Commitment. The Parties acknowledge and agree that the City, its Planning Commission, and its City Council reserve the right to exercise their full, complete, and unfettered discretion as to all matters which they are, by law, entitled or required to exercise their discretion, including, but not limited to, the following:

a. City’s Discretion Regarding the Proposed Transaction. The City shall have the complete and unfettered discretion to reject any or all the terms and conditions of the Proposed Transaction, and there is no guarantee as to the terms of the Proposed Transaction or that the Proposed Transaction, or any necessary land use ordinance amendments, will ultimately be effectuated. The risk of loss of all negotiation, processing, design and developmental costs incurred by Sign Partners prior to approval by the City of the Proposed Transaction shall be assumed and borne entirely and solely by Sign Partners.

b. City’s Discretionary Findings and Conclusions. As to any matter which the City, its Planning Commission, and/or its City Council may be required to exercise its discretion with respect to the Proposed Transaction, nothing herein shall obligate the City, its Planning Commission and/or its City Council to exercise its discretion in any particular manner, and any exercise of discretion reserved hereunder or required by law shall not be deemed to constitute a breach of the City’s obligations under this Agreement.

c. No Pre-Commitment by the City. By its execution of this Agreement, the City does not commit itself or agree to undertake any discretionary action concerning the Proposed Transaction, and there is no guarantee as to the terms of the Proposed Transaction or that the Proposed Transaction will ultimately be effectuated.

8. Time of Essence. Time is of the essence of every portion of this Agreement in which time is a material part.

9. No Prior Agreements and No Oral Modifications. This Agreement represents the entire understanding of City and Sign Partners and supersedes all other prior or contemporaneous written or oral agreements pertaining to the subject matter of this
Agreement. This Agreement may only be modified in writing, signed by the authorized representatives of both City and Sign Partners.

10. Assignment. Sign Partners may not assign this Agreement without the prior written approval of the City, which approval may be given or withheld in the City’s sole and absolute discretion.

11. Binding Upon Successors. This Agreement and each of its terms shall be binding upon City and Sign Partners and their respective successors and assigns.

12. No Third Party Beneficiaries. This Agreement is entered into solely for the benefit of the Parties. No other person or entity has any rights or remedies under this Agreement.

13. Attorneys’ Fees. In the event that any action or proceeding, including arbitration, is commenced by either City or Sign Partners against the other to establish the validity of this Agreement or to enforce any one or more of its terms, the prevailing party in any such action or proceeding shall be entitled to recover from the other, in addition to all other legal and equitable remedies available to it, its actual attorneys’ fees and costs of litigation, including, without limitation, filing fees, service fees, deposition costs, arbitration costs and expert witness fees, including actual costs and attorneys’ fees on appeal.

14. Jurisdiction and Venue. This Agreement is executed and is to be performed in Orange County, California, and any action or proceeding brought relative to this Agreement shall be heard in the appropriate court in the County of Orange, California. City and Sign Partners each consent to the personal jurisdiction of the court in any such action or proceeding.

15. Severability. If any term or provision of this Agreement is found to be invalid or unenforceable, City and Sign Partners agree that they would have executed this Agreement notwithstanding the invalidity of such term or provision. In the event any section or portion of this Agreement shall be held, found, or determined to be unenforceable or invalid for any reason whatsoever, the remaining provisions shall remain in effect, and the Parties hereto shall take further actions as may be reasonably necessary and available to them to effectuate the intent of the Parties as to all provisions set forth in this Agreement.

16. Interpretation. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either Party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply. The headings used in this Agreement are for purposes of convenience only, and shall not be construed to limit or extend the meaning of this Agreement.

17. Representations of the Parties. Each person signing this Agreement on behalf of a Party which is not a natural person hereby represents and warrants to the other Party that all necessary legal prerequisites to that Party’s execution of this Agreement have
been satisfied and that he or she has been authorized to sign this Agreement and bind the Party on whose behalf he or she signs.

18. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

###

[Signatures on following page]
NOW THEREFORE, the City and Sign Partners have executed this Exclusive Due Diligence Agreement as of the date and year first set forth above.

SIGN PARTNERS:
La Palma Sign Partners, LLC, a California limited liability company

Dated: _________________
Melvin Andrews

CITY:
CITY OF LA PALMA, a California municipal corporation

Dated: _________________
Ellen Volmert,
City Manager

ATTEST:

Laurie A. Murray, CMC
City Clerk

APPROVED AS TO FORM:

Michelle Molko,
Assistant City Attorney
Exhibit “A”

Reimbursement Schedule

Exhibit “A”

Reimbursement Schedule

Sign Partners’ reimbursement payments to the City for Preliminary Costs incurred by the City shall be made in the following amounts within seven (7) days of the City’s written notice to Sign Partners of the completion of each of the identified milestones:

<table>
<thead>
<tr>
<th>Phase I</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Preparation and Approval of Exclusive Due Diligence Agreement</td>
<td>$3,000</td>
</tr>
<tr>
<td>Analysis and Survey of Proposed Sites</td>
<td>$4,000</td>
</tr>
<tr>
<td>Review Easement Documents</td>
<td>$3,000</td>
</tr>
<tr>
<td>Preparation of Draft Municipal Code Amendments</td>
<td>$5,000</td>
</tr>
<tr>
<td><strong>Sub Total</strong></td>
<td><strong>$15,000</strong></td>
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</table>

<table>
<thead>
<tr>
<th>Phase II</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Negotiation and Preparation of Draft Agreement</td>
<td>$8,000</td>
</tr>
<tr>
<td>Preparation and Circulation of Any CEQA Documents</td>
<td>$25,000</td>
</tr>
<tr>
<td><strong>Sub Total</strong></td>
<td><strong>$33,000</strong></td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Phase III</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>Publication of Notices for and Holding of Public Hearings</td>
<td>$2,000</td>
</tr>
<tr>
<td><strong>Sub Total</strong></td>
<td><strong>$2,000</strong></td>
</tr>
</tbody>
</table>

**Total** $50,000

The Parties acknowledge and agree that these amounts are reasonable estimates of the Preliminary Costs that the City may incur in evaluating and processing the Proposed Transaction. Should the actual Preliminary Costs incurred by the City be greater than the amounts listed above, Sign Partners shall reimburse the City for the full amount of all actual Preliminary Costs within 10 days of written notification from the City of the additional amount due. Should the actual Preliminary Costs be less than the amounts listed above, City shall return any excess amount to Sign Partners, without interest.

Should negotiations between the Parties and/or processing of the Proposed Transaction terminate for any reason prior to completion of any particular milestone, Sign Partners shall be responsible for reimbursing City for all actual Preliminary Costs incurred by City up through the date of termination. Such reimbursement shall be made within 10 days of written notification from the City identifying the reimbursement amount due.