

ECONOMIC DEVELOPMENT AGREEMENT:

City of Joshua Economic Development Outdoor Advertising Program

THIS CHAPTER 380 ECONOMIC DEVELOPMENT AGREEMENT (" Agreement") is entered into as of this ____ day of _____ 2022 by and between the CITY OF JOSHUA, TEXAS, a home rule city of the State of Texas ("the City"). and FAIRMOUNT OUTDOOR ADVERTISING, INC., a Texas company ("the Company"). Collectively, the City and the Company may be referred to as "Parties" and individually as a "Party," acting by and through their respective authorized officers.

RECITALS:

WHEREAS, pursuant to Chapter 380 of the Texas Local Government Code ("Chapter 380"), the City may establish and provide for the administration of an economic development program to advance economic growth, while also stimulating business and commercial activity within the City of Joshua;

WHEREAS, pursuant to Chapter 380 of the Texas Local Government Code ("Chapter 380"), the City may enter into an agreement with any entity for administration of an economic development program;

WHEREAS, the City owns a 3.95 acre tract of land ("Property") located within the corporate limits of the City, as further described in "Exhibit A," attached and incorporated herein. The Property is currently vacant land classified as C1 – Restricted Commercial;

WHEREAS, the Company wishes to construct on the Property, a new Off-Premise Digital Billboard, which shall comply substantially with the Development Standards of the City of Joshua and the Texas Department of Transportation;

WHEREAS, the Company will authorize the City of Joshua's use of one side of the Digital Billboard for the benefit of the citizens of the greater Joshua area;

WHEREAS, the Company is willing to construct and pay for all costs associated with the Project, including the improvements necessary to serve the Project, in exchange for the City's approval of the Project subject to the terms and conditions of this Agreement;

WHEREAS, for and in consideration of the City's approval, the Company and its successors and assigns, will commence and diligently pursue the completion of the Project, beginning construction within one year of final approval of the construction plans by the City and State;

WHEREAS, the City has the authority to enter into this Agreement and this Agreement sets up a structured arrangement wherein the City will have use of the Company's Digital Billboard;

NOW, THEREFORE, for and in consideration of the terms, conditions and covenants set forth herein, the parties agree as follows:

RECITALS INCORPORATED. The representations, covenants and recitations set forth in the recitals to this Agreement are material to this Agreement and are hereby found and agreed to be true and correct, and are incorporated into and made a part of this Agreement for all purposes.

ARTICLE I **DEFINITIONS**

"City" means the City of Joshua, a municipal corporation of the State of Texas.

"Comply" and "compliance" means timely, full, and complete performance of each requirement, obligation, duty, condition, or warranty as stated in this agreement. "Comply" and "compliance" mean complete compliance in all material respects and do not mean substantial compliance, unless otherwise specifically stated.

"Construct" and "construction" mean construction in a good and workmanlike manner and in compliance with applicable State and local laws, codes, and regulations (including but not limited to substantial compliance with the Development Standards of the City of Joshua); or valid waivers thereof or variances thereunder and the construction plans approved by the City and the State of Texas.

"Default" and "Act of Default" means failure in some material respect to comply timely, fully, and completely with one or more requirements, obligations, duties, terms, conditions, or warranties set forth in this Agreement.

"Development Standards of the City of Joshua" means the development standards set forth in the City of Joshua Code of Ordinances.

"Economic Development Opportunity Announcement" means an announcement regarding opportunities for commercial investment within the City of Joshua.

"Finance Department" means the Finance Department of the City of Joshua.

"Digital Billboard" means a monopole sign with back-to-back 12' x 40' changeable electronic variable message sign faces; which permits alteration of the sign's message or images by electronic means, including by light-emitting diodes (LEDs) or other means of digital display to present a message or images that complies with this Agreement, as generally shown in Exhibit B and the plans approved by the City and State of Texas.

"On-site" means on the Property and the Project.

"Property" means the real property being approximately 3.95 Acres, Property ID: R000107571, GEO ID: 126.3485.00022, Legal Description: LOT 3AR1B BLK 1 JOSHUA PLAZA located in Joshua, Johnson County Texas, more particularly described on Exhibit "A" attached hereto.

"Project" means the Digital Billboard described in Exhibit "B" to be constructed on property located within the City of Joshua and on the property described in Exhibit "A."

"Public Service Announcement" means announcements regarding city-sponsored event announcements and noncommercial announcements.

ARTICLE II

PERFORMANCE CRITERIA AND DEFAULT

Section 2.01 Performance Criteria. The Company agrees and covenants that it shall:

- a) Construct or cause to be constructed and completed within Company's control the "Digital Billboard" with construction to commence within 1 Year from the date the City of Joshua and the State of Texas provides final approval of construction plans.
- b) Advertise City of Joshua content on the Digital Billboard operated by the Company according to the terms set forth herein, without charging the City for any costs associated with doing so:
 1. Permit the City to post Public Service Announcements or Economic Development Opportunity Announcements (the "Announcements") on one side of the Digital Billboard in Perpetuity; provided, however, that such Announcements shall consist of one slot per rotation in the standard rotation utilized by the advertising company on the applicable Digital Billboard. The City will provide the messaging, approve the style and layout of the messaging, and have the ability to post the messaging via a software program.
- c) Pay the established annual registration fee for off-premises digital display signs in the amount specified in the City's approved fee schedule.

Section 2.02 Digital Billboard Plans and Specifications.

The Company shall design the "Digital Billboard" according to the following specifications:

- a) To a height that does not exceed 42 feet.
- b) To a maximum sign area of 480 square feet.
- c) On a monopole base in compliance with customary building standards in place at the time of this Agreement.
- d) Equipped with a DPI that provides the most clear display and advertising content in the Company's reasonable opinion.

- e) Self-adjusting technology so the brightness adjusts with the intensity of the surrounding ambient light.
- f) Complies with the following standards:
 - a. The Digital Billboard must automatically adjust the sign brightness so that the brightness level of the sign is no more than 0.3 foot-candles over ambient light conditions at a distance of 250 feet from the sign. A digital display sign must be equipped with both a dimmer control and photocell that automatically adjusts the display's intensity according to natural ambient light conditions.
 - b. Before the issuance of approval of the plans for the Digital Billboard, the Company shall provide written certification from the sign manufacturer that:
 - i. The light intensity has been factory programmed to comply with the maximum brightness and dimming standards in this subsection; and
 - ii. The light intensity is protected from end-use manipulation by password-protected software or other method satisfactory to the building official.

Section 2.03 Remedies.

The Parties expressly recognize and acknowledge that a breach of this Agreement by either Party may cause damage to the non-breaching Party for which there will not be an adequate remedy at law. Accordingly, in addition to all the rights and remedies provided by the laws of the State of Texas, in the event of a breach hereof by either Party, the other Party shall be entitled but not limited to the equitable remedy of specific performance or a writ of mandamus to compel any necessary action by the breaching Party.

Section 2.04 Notice of Default or Breach.

The complaining Party must give the non-complaining Party written notice of default or breach, including specification of the alleged default(s) or breach(es), and a cure period of at least 30 days. Notice must be sent by certified mail, return receipt requested, but may also be sent by other methods; notice, however, is effective only as of the date delivery of the certified mail correspondence is initially attempted. The Parties' addresses for notice are:

City of Joshua:
Attn: City Manager
101 S Main St, Joshua, TX 76058

Fairmount Outdoor Advertising, Inc:
Attn: Billy Tolson
PO Box 25103
Dallas, TX 75225

ARTICLE III
COVENANTS AND DUTIES

Section 3.01 Company's Covenants and Duties.

Company makes the following covenants and warranties to the City and agrees to timely and fully perform the obligations and duties contained in Article II of this Agreement. Any false or substantially misleading statements contained herein or failure to timely and fully perform those obligations and duties within this Agreement shall be an act of Default by the Company.

- a) Company is authorized to do business and is in good standing in the State of Texas and shall remain in good standing in the State of Texas and the United States of America during any term of this Agreement.
- b) The execution of this Agreement has been duly authorized by the Company, and the individual signing this Agreement on behalf of the Company is empowered to execute such Agreement and bind the company. Said authorization, signing, and binding effect is not in contravention of any law, rule, regulation, or of the provisions of the agreement, by-laws, or of any agreement or instrument to which Company is a party to or by which it may be bound.
- c) The Company is not a party to any bankruptcy proceedings currently pending or contemplated, and Company has not been informed of any potential involuntary bankruptcy proceedings.
- d) The Company agrees to obtain or cause to be obtained, all necessary permits and approvals from City and/or all other governmental agencies having jurisdiction over the Project on the Property which lie within the City limits.
- e) The Company shall obtain City approval of plans and specifications for the Project improvements prior to starting any construction.
- f) The Company shall have a continuing duty to cooperate with the City in providing all necessary information to assist City in complying with this Agreement; and to execute such other and further documents as may be reasonably required to comply therewith.

Section 3.02 Representation and Warranties by the City of Joshua.

- a) The City of Joshua agrees to authorize the construction of a Digital Billboard on the Property according to the specifications and requirements provided herein. The City of Joshua represents and warrants that this Agreement is within the scope of its authority, and that it has been duly authorized and empowered to enter this agreement.
- b) The City of Joshua does hereby grant unto Company and Company's successors, heirs, and assigns the right to use the portions of the Property described herein upon the terms and conditions hereof for outdoor advertising, access, utilities and other incidental purposes, including but not limited to the right to: (i) locate, place, construct, operate, lease, maintain, repair, rebuild, demolish, remove, replace and use its Digital Billboard, (ii) enter upon and cross-over for pedestrian and vehicular ingress and egress to its Digital Billboard, (iii) place, construct, install, operate, repair, maintain, rebuild, remove, replace, and relocate aerial or underground power lines or such other conduits as may be necessary for the provision of utilities or services to the Digital Billboard, and (iv) exercise such other incidental rights and privileges that may be necessary

for the full enjoyment of the Digital Billboard.

- c) The City of Joshua does hereby grant unto Company and Company's successors, heirs, and assigns the right of perpetual sight or view corridors within the air space over that portion of the Property which the Digital Billboard sits for the right to receive light and an unobstructed and undistracted view of the advertising faces of the Digital Billboard located on the Property from the perspective of a motorist traveling in either direction along Highway 174 (the "Thoroughfare") unobstructed by any improvements, buildings, trees, landscaping or other objects within the Digital Billboard at elevations in excess of twenty (20) feet above the grade level of Property adjacent to the Thoroughfare. The view of the Digital Billboard shall not be interfered with or diverted by any signs, banners, flags, poles, lighting, moving parts or other advertising features at all elevations.
- d) The City of Joshua does hereby grant unto Company and Company's successors, heirs, and assigns, the right: (i) to concurrently use curb-cuts, driveways, turn-lanes or paved parking areas on the Property for vehicular and ingress and egress to reach the Digital Billboard; and (ii) to concurrently use such paved parking areas on the Property for temporary parking of vehicles or work areas for normal service, maintenance or repairs to the Digital Billboard.
- e) The City of Joshua agrees to adhere to the Company's standard operating procedures for placing outdoor advertising and the Company's advertising content specifications.
- f) The City of Joshua is not required to pay any sum for the City's use of the Digital Billboard as set forth in Section 2.01.

ARTICLE IV **TERMINATION**

Section 4.01 Termination.

This Agreement shall terminate upon the earliest occurrence of any one or more of the following: (a) The written agreement of the Parties; or (b) An uncured Default by the Company, if the City elects to terminate the Agreement for an Uncured Default.

ARTICLE V **GENERAL PROVISIONS**

Section 5.01 Default.

- a) A party shall be deemed in default under this Agreement (which shall be deemed a breach hereunder) if such party fails to perform, observe, or comply with any of its covenants, agreements, or obligations hereunder or breaches or violates any of its representations contained In this Agreement.
- b) Before any failure of any party to perform its obligations under this Agreement shall be deemed to be a breach of this Agreement, the party claiming such failure shall notify, in writing, the party alleged to have failed to perform of the alleged failure and shall demand performance. No breach of this Agreement may be found to have occurred if performance has commenced to the reasonable satisfaction of the complaining party within thirty (30) days of the receipt of such

notice. Upon a breach of this Agreement, the non-defaulting Party, in any court of competent jurisdiction, by an action or proceeding at law or in equity, may secure the specific performance of the covenants and agreements herein contained, may be awarded damages for failure of performance, or both. Except as otherwise set forth herein, no action taken by a Party pursuant to the provisions of this Section or pursuant to the provisions of any other Section of this Agreement shall be deemed to constitute an election of remedies; and all remedies set forth in this Agreement shall be cumulative and non-exclusive of any other remedy either set forth herein or available to any Party at law or in equity. Each of the Parties shall have the affirmative obligation to mitigate its damages in the event of a default by the other Party.

Section 5.02 No Personal Liability of Public Officials.

No public official or employee shall be personally responsible for any liability arising under or growing out of this Agreement.

Section 5.03 Liability of the Company, its Successors and Assignees.

Any obligation or liability of the Company whatsoever that may arise at any time under this Agreement or any obligation or liability which may be incurred by the Company pursuant to any other instrument transaction or undertaking contemplated hereby shall be satisfied, if at all, out of the assets of the Company only. No obligation or liability shall be personally binding upon, nor shall resort for the enforcement thereof be had to, the property of any of partners, officers, employees, shareholders, or agents of the Company, regardless of whether such obligation or liability is contract, tort or otherwise.

Section 5.04 Mediation.

If a dispute arises out of or relates to this Agreement or the breach thereof, the Parties shall first in good faith seek to resolve the dispute through negotiation between the upper management of each respective Party. If such dispute cannot be settled through negotiation, the Parties agree to try in good faith to settle the dispute by mediation before resorting to litigation, or some other dispute resolution procedure; provided that a Party may not invoke mediation unless it has provided the other Party with written notice of the dispute and has attempted in good faith to resolve such dispute through negotiation. All costs of negotiation and mediation collectively known as alternate dispute resolution ("ADR") shall be assessed equally between the City and Company with each party bearing their own costs for attorney's fees, experts, and other costs of ADR and any ensuing litigation.

ARTICLE VI **MISCELLANEOUS PROVISIONS**

Section 6.01 Limitations on Liability.

The City shall not be liable for consequential damages, specifically lost profits, and any damages claimed against the City shall be limited to amounts recoverable under §271.153 of the Texas

Local Government Code; provided that the parties agree that this Agreement shall not be interpreted as or otherwise claimed to be a waiver of sovereignty on the part of the City.

Section 6.02 Force Majeure.

In the event either Party is rendered unable, wholly or in part, by force majeure to carry out any of its obligations under this Agreement, then the obligations of such Party, to the extent affected by such force majeure and to the extent that due diligence is being used to resume performance at the earliest practicable time, shall be suspended during the continuance of any inability so caused, to the extent provided, but for no longer period. As soon as reasonably possible after the occurrence of the force majeure relied upon, the Party whose contractual obligations are affected thereby shall give notice and the full of such force majeure to the other Party. Such cause, as far as possible, shall be remedied with all reasonable diligence.

The term "force majeure" as employed herein shall mean and refer, without limitation, to acts of God; strikes and/or lockouts; acts of public enemies, orders of any kind of the government of the United States, the State of Texas or any civil or military authority (other than the City); insurrections; riots; lightning, earthquakes, fires, hurricanes, storms, floods and other natural disasters; pandemics, infectious diseases or viruses that shut down the state, city or county by federal, state or local order; washouts and other weather-related delays' restraint of government and people; civil disturbance; explosions; or other causes not reasonably within the control of the party claiming such inability.

If, because of force majeure, any party hereto shall be rendered wholly or partially unable to carry out its obligations under this Agreement, then such party shall give written notice of the full of such force majeure to the other party within thirty (30) days after the occurrence thereof. The obligations of the party giving such notice, to the extent effected by the force majeure, shall be suspended during the continuance of the inability claimed except as hereinafter provide, but of no longer period, and the party shall endeavor to remove or overcome such inability with all reasonable dispatch.

It is understood and agreed that the settlement of strikes and lockouts shall entirely within the discretion of the party having the difficulty, and that the above requirement and any force majeure shall be remedied with all reasonable dispatch shall not require that the settlement be unfavorable in the judgment of the party having the difficulty.

Section 6.03 Interpretation.

Each of the Parties has been represented by counsel of their choosing in the negotiation and preparation of this Agreement. Regardless of which Party prepared the initial draft of this Agreement, this Agreement shall, in the event of any dispute, whatever its meaning or application, be interpreted fairly and reasonably and neither more strongly for or against any Party.

Section 6.04 Section or Other Headings.

Section or other headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

Section 6.05 Entire Agreement.

This Agreement contains the entire agreement between the parties with respect to the transaction contemplated herein. Any Exhibits attached hereto are incorporated by reference for all purposes.

Section 6.06 Amendment.

This Agreement may only be amended, altered, or revoked by written instrument signed by the parties and as approved by the City Council of the City of Joshua, Texas.

Section 6.07 Successors and Assigns.

This Agreement shall be binding on and inure to the benefit of the parties, their respective successors and assigns; provided however (i) the benefits of this Agreement in favor of the Company may not be assigned to any party, unless the Digital Billboard is part of a bulk sale of assets, to collateral assignments to lenders, or to sales to experienced operators that assume all obligations of the contract in writing, with the written consent of the City of Joshua (which consent shall not be unduly withheld, provided the City is satisfied that any remaining obligations under the Agreement will be met); and (ii) notwithstanding the foregoing and any other provision of the Agreement to the contrary, any successor owner, occupant, tenant, licensee or invitee of any such portion of the Property (including, without limitation, any business that may operate from time to time thereon).

Section 6.08 Applicable Law and Venue.

This Agreement is made and all obligations arising hereunder shall be construed and interpreted under the laws of the State of Texas and the venue for any action arising from the Agreement shall be Johnson County, Texas.

Section 6.9 Counterparts.

This Agreement may be executed in multiple counterparts, each of which shall be considered an original, but all of which shall constitute one instrument.

Section 6.10 No Additional Waiver Implied.

The failure of either Party to insist upon performance of any provision of this Agreement shall not be construed as a waiver of the future performance of such provision by the other Party.

Section 6.11 Parties In Interest.

This Agreement shall be for the sole and exclusive benefit of the Parties and shall not be construed to confer any rights upon any third parties.

Section 6.12 Merger.

This Agreement embodies the entire understanding between the Parties and there are no other representations, warranties or agreements between the Parties covering the subject matter of this Agreement.

Section 6.13 Captions.

The captions of each section of this Agreement are inserted solely for convenience.

Section 6.14 Severability.

If any provision of this Agreement or the application thereof to any person or circumstances is ever judicially declared invalid, such provision shall be deemed severed from this Agreement and the remaining portions of this Agreement shall remain in effect.

Section 6.15 Company Indemnification.

COMPANY COVENANTS AND AGREES TO FULLY INDEMNIFY AND HOLD HARMLESS, CITY AND (AND THEIR ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS, AND REPRESENTATIVES), INDIVIDUALLY AND COLLECTIVELY, FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND SUITS OF ANY KIND AND NATURE BROUGHT BY ANY THIRD PARTY AND RELATING TO COMPANY'S ACTIONS ON THE PROJECT, INCLUDING BUT NOT LIMITED TO, PERSONAL INJURY OR DEATH AND PROPERTY DAMAGE, MADE UPON CITY OR DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO COMPANY OR COMPANY'S TENANTS' NEGLIGENCE, WILLFUL MISCONDUCT OR CRIMINAL CONDUCT IN ITS ACTIVITIES UNDER THIS AGREEMENT, INCLUDING ANY SUCH ACTS OR OMISSIONS OF COMPANY OR COMPANY'S TENANTS, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANT OR SUBCONSULTANTS OF COMPANY OR COMPANY'S TENANTS, AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS AND REPRESENTATIVES WHILE IN THE EXERCISE OR PERFORMANCE OF THE RIGHTS OR DUTIES UNDER THIS AGREEMENT, ALL WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY, UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. THE

PROVISIONS OF THIS INDEMNIFICATION ARE SOLELY FOR THE BENEFIT OF THE CITY AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY. COMPANY SHALL PROMPTLY ADVISE CITY IN WRITING OF ANY CLAIM OR DEMAND AGAINST CITY, RELATED TO OR ARISING OUT OF COMPANY OR COMPANY'S TENANTS' ACTIVITIES UNDER THIS AGREEMENT AND SHALL SEE TO THE INVESTIGATION AND DEFENSE OF SUCH CLAIM OR DEMAND AT COMPANY'S COST TO THE EXTENT REQUIRED UNDER THE INDEMNITY IN THIS PARAGRAPH. CITY SHALL HAVE THE RIGHT, AT THEIR OPTION AND AT THEIR OWN EXPENSE, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING COMPANY OF ANY OF ITS OBLIGATIONS UNDER THIS PARAGRAPH.

IT IS THE EXPRESS INTENT OF THE PARTIES TO THIS AGREEMENT THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH, SHALL NOT BE AN INDEMNITY EXTENDED BY COMPANY TO INDEMNIFY, PROTECT AND HOLD HARMLESS CITY FROM THE CONSEQUENCES OF THE CITY'S OWN NEGLIGENCE OR INTENTIONAL MISCONDUCT. THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL APPLY ONLY, TO THE EXTENT OF ANY COMPARATIVE NEGLIGENCE STATUTES AND FINDINGS, WHEN THE NEGLIGENT ACT OF CITY IS A CONTRIBUTORY CAUSE OF THE RESULTANT INJURY, DEATH, OR DAMAGE, AND IT SHALL HAVE NO APPLICATION WHEN THE NEGLIGENT ACT OF CITY IS THE SOLE CAUSE OF THE RESULTANT INJURY, DEATH, OR DAMAGE. COMPANY FURTHER AGREES TO DEFEND, AT ITS OWN EXPENSE AND ON BEHALF OF CITY AND IN THE NAME OF CITY ANY CLAIM OR LITIGATION BROUGHT AGAINST CITY (AND ITS ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES), IN CONNECTION WITH ANY SUCH INJURY, DEATH, OR DAMAGE FOR WHICH THIS INDEMNITY SHALL APPLY, AS SET FORTH ABOVE.

IT IS THE EXPRESS INTENT OF THIS SECTION THAT THE INDEMNITY PROVIDED TO THE CITY AND THE COMPANY SHALL SURVIVE THE TERMINATION AND OR EXPIRATION OF THIS AGREEMENT AND SHALL BE BROADLY INTERPRETED AT ALL TIMES TO PROVIDE THE MAXIMUM INDEMNIFICATION OF THE CITY AND/ OR THEIR OFFICERS, EMPLOYEES AND ELECTED OFFICIALS PERMITTED BY LAW.

Section 6.16 City Indemnification.

CITY COVENANTS AND AGREES TO FULLY INDEMNIFY AND HOLD HARMLESS, COMPANY AND (AND THEIR ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS, AND REPRESENTATIVES), INDIVIDUALLY AND COLLECTIVELY, FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND SUITS OF ANY KIND AND NATURE BROUGHT BY ANY THIRD PARTY AND RELATING TO COMPANY'S ACTIONS ON THE PROJECT, INCLUDING BUT NOT LIMITED TO, PERSONAL INJURY OR DEATH AND PROPERTY DAMAGE, MADE UPON CITY OR DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO COMPANY OR COMPANY'S TENANTS' NEGLIGENCE, WILLFUL MISCONDUCT OR CRIMINAL CONDUCT IN ITS ACTIVITIES UNDER THIS AGREEMENT, INCLUDING ANY SUCH ACTS OR OMISSIONS OF COMPANY OR COMPANY'S TENANTS, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANT OR SUBCONSULTANTS OF COMPANY OR COMPANY'S TENANTS, AND THEIR

RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS AND REPRESENTATIVES WHILE IN THE EXERCISE OR PERFORMANCE OF THE RIGHTS OR DUTIES UNDER THIS AGREEMENT, ALL WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY, UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. THE PROVISIONS OF THIS INDEMNIFICATION ARE SOLELY FOR THE BENEFIT OF THE CITY AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY. COMPANY SHALL PROMPTLY ADVISE CITY IN WRITING OF ANY CLAIM OR DEMAND AGAINST CITY, RELATED TO OR ARISING OUT OF COMPANY OR COMPANY'S TENANTS' ACTIVITIES UNDER THIS AGREEMENT AND SHALL SEE TO THE INVESTIGATION AND DEFENSE OF SUCH CLAIM OR DEMAND AT COMPANY'S COST TO THE EXTENT REQUIRED UNDER THE INDEMNITY IN THIS PARAGRAPH. CITY SHALL HAVE THE RIGHT, AT THEIR OPTION AND AT THEIR OWN EXPENSE, TO PARTICIPATE IN SUCH DEFENSE WITHOUT RELIEVING COMPANY OF ANY OF ITS OBLIGATIONS UNDER THIS PARAGRAPH.

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IT IS THE EXPRESS INTENT OF THIS SECTION THAT THE INDEMNITY PROVIDED TO THE CITY AND THE COMPANY SHALL SURVIVE THE TERMINATION AND OR EXPIRATION OF THIS AGREEMENT AND SHALL BE BROADLY INTERPRETED AT ALL TIMES TO PROVIDE THE MAXIMUM INDEMNIFICATION OF THE CITY AND/ OR THEIR OFFICERS, EMPLOYEES AND ELECTED OFFICIALS PERMITTED BY LAW.

IN WITNESS, WHEREOF, the Parties hereto have executed this Agreement in multiple copies, each of equal dignity, to be effective on the latest date of execution. Any party may change the address which notices are to be sent by giving the other parties written notice in the manner provided in Section 2.04.

EXECUTION PAGE FOLLOWS:

THE CITY OF JOSHUA, TEXAS

Joe Hollarn, Mayor

ATTEST/SEAL:

Terry Welch, City Attorney

Agreed to and accepted on _____, 2022

FAIRMOUNT OUTDOOR ADVERTISING, INC., a Texas Corporation.

Deborah Hamilton Tolson,
Its President

Exhibit A: Property Location



Exhibit B: Billboard Plans & Specifications

PROPOSED SITE (BEFORE)



PROPOSED SITE (AFTER)



