#### CITY OF LEON VALLEY DEVELOPMENT AGREEMENT

For Off-Premises Digital Billboard

THIS DEVELOPMENT AGREEMENT ("Agreement") is entered into as of the date the last party executes this Agreement (the "Effective Date") by and between City of Leon Valley, Texas ("City") and Burkett Media ("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; and

WHEREAS, Company has applied to the City for permission to post a double-sided digital billboard adjacent to Loop 410 in Leon Valley at 5902 Bandera Road in the City (the "Property"), such billboard being no taller than 60 feet in height above the adjacent max grade of Loop 410 at the Site, or the maximum height allowed by the Texas Department of Transportation ("TXDOT"), with advertising displays measuring 672 square feet in area ("Digital Billboard" or "Company's Digital Billboard"); and

WHEREAS, on March 19, 2024, the City Council of the City unanimously approved two (2) variances to Chapter 3 Building Regulations, Article 3.04 Signs, Section 3.04.012 Off Premises Sigs, (a) New Off-Premises Signs and (12) Emitting Diode Signs Light to allow construction of the off-premise Digital Billboard by Company (collectively the "Variance"); and

**WHEREAS**, on March 25, 2024, the City, by its Planning and Zoning Director, issued a letter formally approving the Variance; and

WHEREAS, the Digital Billboard would be 14 ft high by 48ft wide; and

**WHEREAS,** Company has obtained a permit from TXDOT to construct an off-premise advertising sign on the Property; and

**WHEREAS**, the Company shall Construct on the Property, a Digital Billboard, which will include a monopole back-to-back structure directly embedded into a drilled foundation and comply with the Variance and City Development and Building Code Standards;

WHEREAS the Company is willing to Construct and pay for the Digital Billboard, including the beautification costs necessary to offset the impact of the Digital Billboard, in exchange for the City's approval of the Digital Billboard subject to the terms and conditions of this Agreement; and

**WHEREAS**, the City of Leon Valley wishes to encourage and assist economic development in the City and the greater Leon Valley area by using the Company's Digital Billboard as an introduction to the City to advertise city-sponsored events in communities outside of the City; and

**WHEREAS** the City wishes to encourage and assist economic development in the City and the greater Leon Valley area by using the Company's Digital Billboard to advertise proposed developments and other opportunities for commercial investment in the City;

**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 Leon Valley, 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 all applicable Development Standards of the City); or valid waivers thereof or variances thereunder and the construction plans approved by the City and the State of Texas.

"City Development Standards" means the development standards set forth in Chapter 3, Article 3.02, Division 2 and Article 3.04 of the City's Code of Ordinances.

"Digital Billboard" means a monopole sign with back-to-back 14' high x 48' wide changeable electronic variable message sign faces ("Displays"); which permit alteration of the Displays' messages or images by electronic means, including by light-emitting diodes (LEDs) or other means of digital display to present a message or images that comply with this Agreement, as generally shown in the attached exhibits and the plans approved by the City and State of Texas.

"Property" means the premises located at 5902 Bandera Road, Leon Valley, Texas, more fully depicted in Exhibit C.

#### **ARTICLE II -- PERFORMANCE CRITERIA AND DEFAULT**

**Section 2.01 Construction 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 in Compliance with the Variance, City Development Standards, laws of the state of Texas and specifications of this Agreement. Provided, however, Company's construction and completion of the Digital Billboard in accordance with the specifications of the Variance, laws of the state of Texas, and this Agreement shall not constitute a violation of the City Development Standards.

- b) The Digital Billboard shall Comply with the following design and location parameters:
- 1. The Digital Billboard shall be designed and built pursuant to the specifications provided in the attached Exhibit A. Any further deviation from the specification in Exhibit A must be approved in writing by the City.
- 2. The Digital Billboard shall be designed and built pursuant to the rendering and the sign design that is attached as Exhibit B. Any further deviation from the specifications in Exhibit B must be approved in writing by the City.
- 3. The Digital Billboard shall be designed and built pursuant to the location and site rendering that is shown in Exhibit C. Any deviation from the specification in Exhibit C must be approved in writing by the City.
- c) The Digital Billboard shall contain a default mechanism that freezes the sign in one position if a malfunction occurs and automatically adjust the intensity of its display according to natural ambient light conditions in compliance with Texas Administrative Code, Title 43, Chapter 21, §21.206.

#### **Section 2.02 Performance Criteria.** The Company agrees and covenants that it shall:

- a) Maintain the Digital Billboard in good repair and working condition, free of graffiti, rubbish and debris. Conduct any repairs within 90 days should the Digital Billboard become damaged, unsightly, or otherwise out of Compliance with City ordinances or the criteria of this Agreement.
- b) The Digital Billboard shall never be used for political signs, unlawful content, or ad copy that is sexual, profane, lewd, attacking in nature, including text, image, or otherwise.
- c) Advertise City content on the Digital Billboard according to the terms set forth herein, without charging the City for any costs associated with doing so:
- 1. Company will promptly make available, in perpetuity, the LED Displays installed on the Digital Billboard to City law enforcement and fire department for emergency messaging, to include Amber Alerts and other missing persons announcements, disaster evacuation information, and other urgent public safety topics. Such messages will be added to the advertising rotation promptly and will remain in the advertising rotation for 48 hours unless more or less time is requested in relation to the nature of the emergency and the message.
- 2. Company will donate one (1) of eight (8) advertisement slots on one (1) of the LED Displays installed on the Digital Billboard to the City for public messages ("City Advertising Space"). The City

Advertising Space may be used for any City message, such as promoting City sponsored events, City meetings, promoting business and tourism, or posting hiring notices for police, fire, and City offices. Company will also provide content management for such advertisements free of charge. The City shall provide Company with scaled artwork designs at least two (2) business days in advance of the day on which the City requests to change its message on the Digital Billboard. An example of the digital advertising design for the City Advertising Space is attached hereto as Exhibit D; and

- 3. The City will not assign or sell the City Advertising Space. The City will not use the City Advertising Space to promote businesses in or out of the City except for such businesses associated with City sponsored events. The City may promote events and public service messages for other cities if doing so is deemed by the City to bring a direct benefit to the City;
- 4. At the City's election, which election shall be made in writing delivered to Company prior to Company undertaking its construction of the Digital Billboard, Company will place the City's logo on two (2) opposite sides of the Digital Billboard pole as depicted on Exhibit B.
- 5. Company shall use best efforts to tie the Digital Billboard into the Texas state system for posting emergency messages by the Division of Emergency Management, Department of Transportation, Department of Public Safety, and others as they enter the system; and
- d) Company shall provide preferred, discounted rates off standard advertising rates to all local businesses with their primary offices located inside of the City's city limits. Such discount shall be at least fifteen percent (15%) off the standard rate (known as "rate card" in the industry) once the advertiser makes clear they are located within the city limits; and
- e) Company will pay a one-time beautification and impact fee of one hundred thousand dollars (\$100,000) upon issuance of the City permit and all state permits required by TXDOT to build and operate the Digital Billboard. Such payment shall be made payable to "City of Leon Valley, Texas" and shall be paid at the time of issuance of any and all City and state TXDOT permits needed for the Digital Billboard; and
- f) Company will pay its legal counsel to provide any requested assistance in updating the City's sign ordinance, if requested.

#### **ARTICLE III -- BREACH AND REMEDIES**

**Section 3.01 Remedies.** The Parties expressly recognize and acknowledge:

a) 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 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.

b) that the specifications, conditions, and performance requirements herein will attach to the permit provided by the City. Therefore, in addition to any judicial enforcement through breach of contract.

Company is also subject to enforcement through any and all remedies available through code and permit

violations including, but not limited to, citations and permit revocation.

c) Each of the Parties shall have the affirmative obligation to mitigate its damages in the event of

a default by the other Party.

Section 3.02 Default. 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.

Section 3.03 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 thirty (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 Leon Valley:**

Attn: City Manager

6400 El Verde Road

Leon Valley, TX 78238

#### **Burkett Media:**

Attn: Beau Burkett

PO Box 163266

Austin, TX 78716-3266

Section 3.04 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 IV -- COVENANTS AND DUTIES**

**Section 4.01 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 by-laws, or any other agreement or instrument to which Company is a party or by which Company 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 including payment of any required permit or annual fees.
- e) The Company's obligations provided under this Agreement shall not be enforceable until Company receives all State-issued permits necessary and required for the legal construction and operation of the Sign.
- f) The Company shall obtain City approval of plans and specifications for the Project improvements prior to starting any Construction.
- g) 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 4.02 Representation and Warranties by the City of Leon Valley.

a) The City agrees to authorize the Construction of a Digital Billboard on the Property according to the specifications and requirements provided herein. The City 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 agrees to adhere to the Company's standard operating procedures for placing outdoor advertising and the Company's advertising content specifications.

#### **ARTICLE V -- TERMINATION**

**Section 5.01 Termination.** This Agreement shall terminate upon the earliest occurrence of any one or more of the following: (a) The written agreement of the Parties; (b) Notice of termination by Company or its successor; or (c) An uncured Default by the Company if the City elects to terminate the Agreement for an Uncured Default.

**Section 5.02 Expiration and Notice of Termination.** The initial term of this Agreement shall expire upon the fortieth (40<sup>th</sup>) anniversary of this Agreement at the option of Company or its successor. This Agreement will automatically renew for like terms unless Company or its successor gives written notice of non-renewal.

### ARTICLE VI – MISCELLANEOUS PROVISIONS

**Section 6.01 Limitations on Liability.** No public official or employee shall be personally responsible for any liability arising under or growing out of this Agreement. 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 or governmental immunity 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; washouts and other weather-related delays; restraint of 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 provided, 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 lie or be borne 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 Independent Contractors.** It is expressly understood and agreed by all Parties hereto that in performing their services hereunder, the Company or its subcontractors or tenants at no time will be acting as agents of the City. The Parties hereto understand and agree that the City will not be liable for any claims that may be asserted by any third party occurring in connection with services performed by the Company under this Agreement, unless any such claims are due to the fault of the City.

**Section 6.04 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 nor against any Party.

**Section 6.05 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 6.06 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 6.07 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.

**Section 6.08 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, without written permission from one (1) of either the City Manager or Mayor, or their designated authorized representative.

**Section 6.09 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 Bexar County, Texas.

**Section 6.10 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 6.11 No Additional Waiver Implied.** The failure of either Party to insist upon the 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 6.12 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 6.13 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 6.14 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 PURSUANT TO THIS AGREEMENT OR USE OF THE DIGITAL BILLBOARD.

THE INDEMNIFICATION HEREIN INCLUDES BUT IS NOT LIMITED TO, PERSONAL INJURY OR DEATH AND PROPERTY DAMAGE, MADE UPON THE CITY OR DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM, OR RELATED TO THE COMPANY OR THE COMPANY'S TENANTS' OR ASSIGN'S NEGLIGENCE, WILLFUL MISCONDUCT OR CRIMINAL CONDUCT IN ITS ACTIVITIES UNDER THIS AGREEMENT, INCLUDING ANY SUCH ACTS OR OMISSIONS OF THE COMPANY OR COMPANY'S TENANTS OR ASSIGNS, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANT OR SUBCONSULTANTS OF COMPANY OR COMPANY'S TENANTS OR ASSIGNS, AND THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES, DIRECTORS AND REPRESENTATIVES WHILE IN THE EXERCISE OR PERFORMANCE OF THE RIGHTS OR DUTIES UNDER THIS AGREEMENT.

INDEMNIFICATION HEREIN DOES NOT WAIVE ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY, UNDER TEXAS OR FEDERAL LAW, AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS OR FEDERAL 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 THE COMPANY OF ANY OF ITS OBLIGATIONS UNDER THIS PARAGRAPH.

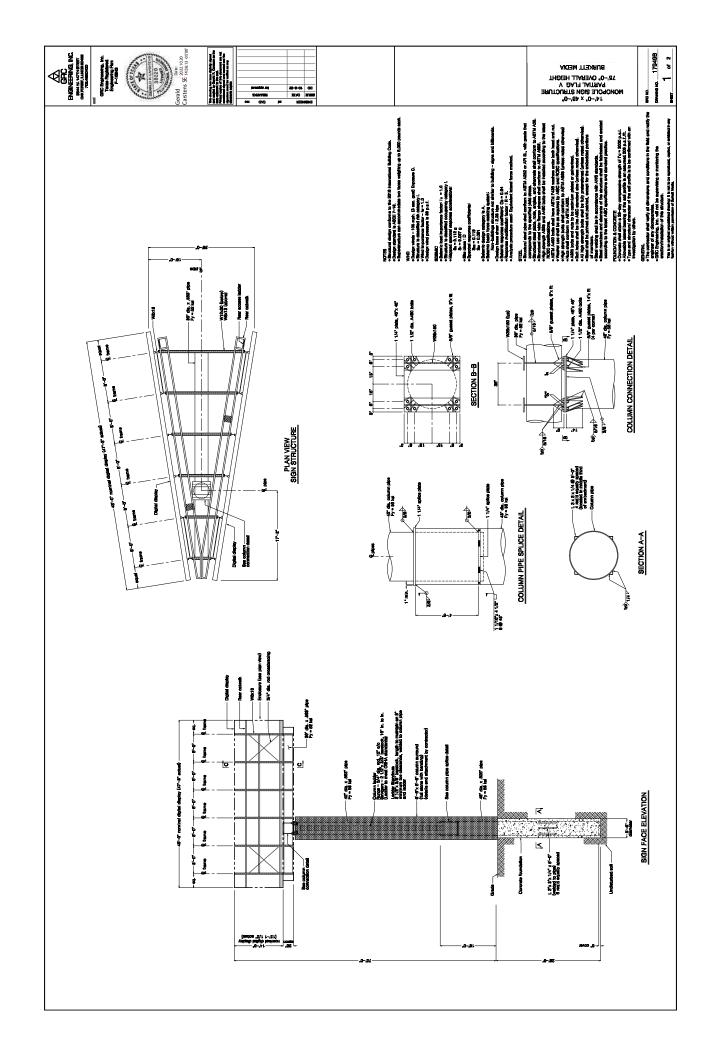
IT IS THE EXPRESS INTENT OF THE PARTIES TO THIS AGREEMENT THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT BE AN INDEMNITY EXTENDED BY THE COMPANY TO INDEMNIFY, PROTECT AND HOLD HARMLESS THE CITY FROM THE CONSEQUENCES OF THE CITY'S OWN NEGLIGENCE OR INTENTIONAL MISCONDUCT. THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL APPLY ONLY, TO THE EXTENT OF ANY COMPARATIVE NEGLIGENCE STATUTES AND FINDINGS WHEN THE NEGLIGENT ACT OF THE 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.

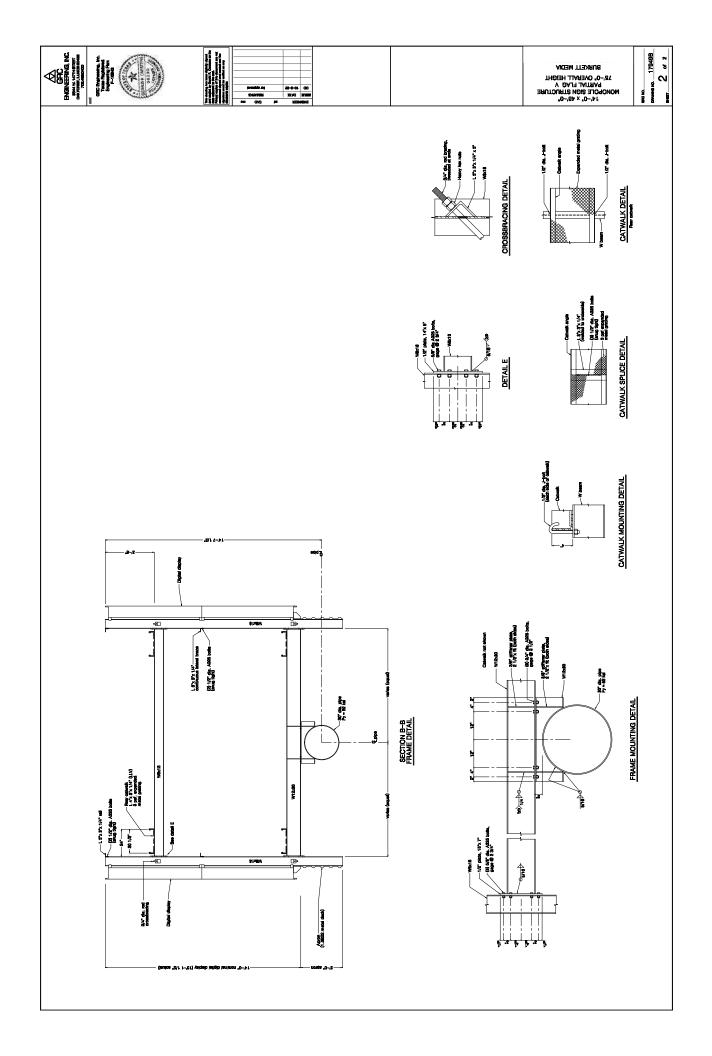
IT IS THE EXPRESS INTENT OF THIS SECTION THAT THE INDEMNITY PROVIDED TO THE CITY AND THE COMPANY SHALL SURVIVE THE TERMINATION AND OR EXPIRATION OF THIS AGREEMENT AND SHALL BE BROADLY INTERPRETED AT ALL TIMES TO PROVIDE THE MAXIMUM INDEMNIFICATION OF THE CITY AND/OR THEIR OFFICERS, EMPLOYEES AND ELECTED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

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 to which notices are to be sent by giving the other parties written notice In the manner provided herein.

///Signatures on Next Page///

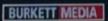
COMPANY Burkett Media	CITY: City of Leon Valley, Texas
By:	Ву:
Name:	Name:
Title:	Title:
Date:	Date:





# BURKETT MEDIA







Loop 410 @ Bandera Rd 5902 Bandera Rd • Leon Valley, TX 78238



14x48 Back to Back LED Digital Billboard
 Free Advertising to the City of Leon Valley

• Discounted Ad Rates to City Based Businesses

• Increase Visitors and Tax Revenue to the City

• Located @ Western City Limits on Loop 410

• Burkett Media Fully Funds the Project

BEAU BURKETT
BEAU@BURKETTMEDIA.COM
512-787-2375



# Free City Ad Design Examples - City of Leon Valley, Texas



