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LEADSHEET



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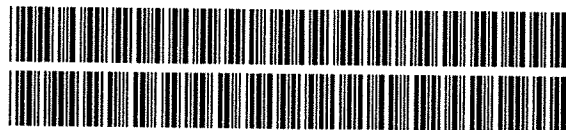
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DAR - Counter (Upfront Scan)



THIS FORM IS NOT TO BE DUPLICATED

EXHIBIT NO. 1



Recording Requested by And
When Recorded Return to:

CITY OF CARSON
701 East Carson Street
Carson, CA 90745
Attn: City Clerk

[Exempt From Recording Fee Per Gov. Code §6103]

DEVELOPMENT AGREEMENT NO. 22-19

This Development Agreement (hereinafter “Agreement”) is entered into this 16th day of November, 2021, (hereinafter the “Effective Date”) by and between the CITY OF CARSON, a California charter municipality (hereinafter “City”) and WIN CHEVROLET PROPERTIES , LLC, a California limited liability company (hereinafter “Developer”).

RECITALS

A. *Development Agreement Law.* The Development Agreement Law authorizes cities to enter into binding development agreements with persons having a legal or equitable interest in real property for the development of such property, all for the purposes of strengthening the public planning process, encouraging private participation and comprehensive planning and identifying the economic costs of such development.

B. *Outdoor Advertising Act.* The California Outdoor Advertising Act (Bus. and Prof. Code Sections 5200 *et seq.*), and specifically Sections 5412 and 5443.5, empowers cities and sign owners to enter into relocation agreements on whatever terms are agreeable to such parties.

C. *The 405 Freeway Site.* Developer is the owner of that certain portion of real property in the City of Carson, located adjacent to the south-bound lanes of the 405 Freeway, at the location of 2201 223rd Street, Carson, CA, Assessor Parcel Number 7315-040-013, which property is legally described in Exhibit A and depicted on Exhibit A-1, both attached hereto and incorporated herein by this reference (the “405 Freeway Site” or “Site”). The 405 Freeway Site is located within the City’s Commercial Automotive Zone, designated by the General Plan as Regional Commercial. A height variance, Variance No. 570-19, is being processed concurrently with this Agreement to accommodate the structural height of the Site’s contemplated development under this Agreement.

D. *Replacement of Two Existing, On-Site Digital Signs with One, Consolidated Digital Billboard.* Pursuant to its ownership of the 405 Freeway Site, Developer owns and operates two (2) digital freeway signs for the two (2) automotive dealerships in the property portfolio signage program (the “Existing Signs”). The Existing Signs consist of (i) a 47 foot tall digital sign advertising the Win Chevrolet dealership (the “Win Chevrolet Sign”) and (ii) a 54 foot 7 inch digital sign advertising Win Hyundai dealership (the “Win Hyundai Sign”). The location of the Win Chevrolet Sign and Win Hyundai Sign are further depicted on Exhibit B attached hereto. These two (2) Existing Signs will be demolished and replaced with one (1) digital freeway-oriented billboard for both dealerships (the “Replacement Digital Billboard”). Implementing this signage

consolidation will result in no increase in overall freeway sign square footage and no additional square footage added to the existing signage program for the two dealerships. The Replacement Digital Billboard shall be located in a more centered location at the 405 Freeway Site, and consist of:

1. A height from ground of 64 feet,
2. A height from freeway grade of 52 feet,
3. A freeway grade of 12 feet, and
4. Double-sided advertising digital display faces (each facia of 14x48 square feet). The Replacement Digital Billboard shall use LED display on a mixed-use basis to advertise for both Developer's dealerships, as well as selling advertising space to select third-party advertisers to facilitate an additional revenue stream for Developer.
5. The proposed Replacement Digital Billboard will conform with all California Department of Transportation ("CalTrans") regulations and Developer will assume all responsibility for securing all appropriate CalTrans permits,
6. The proposed Replacement Digital Billboard is more specifically depicted in those scaled elevation and location plans attached hereto as Exhibit C.

E. *Consideration.* In consideration for the approvals sought to replace the Existing Signs with the Replacement Digital Billboard, Developer has agreed to, in addition to the annual sales tax revenue and community employment Developer provides, remit an annual fee of \$40,000 to the City of Carson from their gross revenue of advertising sales on the digital freeway sign.

F. *Project to Conform With Terms Hereof, Development Approvals and State Authorizations.* Developer and City agree that a development agreement should be approved and adopted to memorialize the property expectations of City and Developer as more particularly described herein. The term "Project" as used herein refers to all demolition and construction undertakings described in Recital D above, including (i) the demolition of the Existing Signs; and (ii) replacement of the demolished Existing Signs with the Replacement Digital Billboard, which will be located on a different, more centralized location than that of the Existing Signs; and (iii) in connection with the Replacement Digital Billboard, installing any new and moving all existing utilities underground, subject to approval by Southern California Edison; and (iv) restoration of the Site to a clean, safe condition that reasonably matches the surrounding landscape, reasonable wear and tear excepted; and (v) the operation and maintenance of the Replacement Digital Billboard on the Site. The Project shall be undertaken in strict accordance with the Development Approvals (defined below) and their attendant conditions of approval, if any, and this Agreement, including without limitation the Scope of Development attached hereto as Exhibit D, Schedule of Performance attached hereto as Exhibit E, and consistent with all legally required approvals from the California Department of Transportation Outdoor Advertising Division.

G. *Planning Commission Review.* On September 28, 2021, the Planning Commission of the City, at a duly noticed public hearing, issued the following actions and recommendations: (i) recommending to the City Council approval of this Agreement as consistent in its provisions with the City's General Plan via Resolution No. 2715; (ii) granting Variance No. 570-19 pursuant to Resolutions No. 2715; and (iii) recommending a categorical exemption from the provisions of the California Environmental Quality Act ("CEQA") to the City Council.

H. *City Council Hearing; Findings; General Plan Consistency; Public Interests.* On November 16, 2021, the City Council of the City, at a duly noticed public hearing to consider the approval of this Agreement, considered the Project proposal and heard testimony relating to the Project proposal and this Agreement. The City Council accordingly found that this Agreement is in the best public interest of the City and its residents, adopting this Agreement constitutes a present exercise of the City's police power, and this Agreement is consistent with the City's General Plan. This Agreement and the proposed Project will achieve a number of City objectives including (i) the removal of the less-desirable Existing Signs and visual clutter attendant thereto, and (ii) the replacement of the demolished Existing Signs with new, updated, more efficient, double-sided advertising digital display faces in the form of the Replacement Digital Billboard to be located at a more centralized location of the Site. Accordingly, following the public hearing and in accord with all findings and conclusions based on substantial evidence presented at such hearing, the City Council introduced Ordinance No. 21-2119 for the approval of this Agreement.

I. *Ordinance Approving this Agreement.* On November 16, 2021, the City Council conducted the second reading of Ordinance No. 21-2119, thereby approving this Agreement.

J. City finds and determines that all actions required of City precedent to approval of this Agreement by Ordinance No. 21-2119 of the City Council have been duly and regularly taken.

COVENANTS

NOW, THEREFORE, in consideration of the above recitals and of the mutual covenants hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. DEFINITIONS AND EXHIBITS.

1.1 **Definitions.** This Agreement uses a number of terms having specific meanings, as defined below. These specially defined terms are distinguished by having the initial letter capitalized, when used in the Agreement. In addition to the terms defined in the Recitals above, the defined terms include the following:

1.1.1 "405 Freeway Site" or "Site" means that certain portion of real property in the City of Carson, located adjacent to the south-bound lanes of the 405 Freeway, at the location of 2201 223rd Street, Carson, CA, owned by Win Chevrolet Properties, LLC, Assessor Parcel Number 7315-040-013, as more specifically described on Exhibit A and depicted on Exhibit A-1, attached hereto and incorporated herein.

1.1.2 “Agreement” means this Development Agreement and all attachments and exhibits hereto.

1.1.3 “City” means the City of Carson, a California charter municipal corporation.

1.1.4 “City Council” means the City Council of the City.

1.1.5 “Commencement Date” shall mean the date that the Replacement Digital Billboard becomes operational—i.e., the date construction has been completed, final inspection by the City has occurred, and the digital advertising facia are capable of displaying advertising copy electronically and are connected to a permanent power source, following receipt by Developer of all Development Approvals. Developer will provide to City a written Notice of Commencement Date within five (5) business days following the completion of all of the foregoing.

1.1.6 “Default” or “Breach” shall have the meanings described in Section 6.1.1 of this Agreement.

1.1.7 “Developer” means Win Chevrolet, LLC, a California corporation duly existing and operating, and its successors and assigns, doing business at 2201 E 223rd Street, Carson, California 90810.

1.1.8 “Development Agreement Law” means California Government Code Sections 65864, *et seq.*

1.1.9 “Development Approvals” means any and all permits or approvals necessary to carry out and complete the Project, including, but not limited to Ordinance No. 21-2119, and as further described at Section 3.4 herein, and any and all approvals required by the California Department of Transportation (“CalTrans”), LACMTA and any other governmental or other required approvals from third parties for Project development.

1.1.10 “Development Fee” bears meaning set forth in Section 2.6 below.

1.1.11 “Due Date” means the date thirty (30) days after the Commencement Date and each anniversary thereafter.

1.1.12 “Effective Date” means the date inserted into the preamble of this Agreement, which is thirty (30) days following approval of this Agreement by its authorizing ordinance of the City Council taking effect, or the date this Agreement is signed by both Developer and City, whichever is later.

1.1.13 “Existing Signs” means the “Win Chevrolet Sign” and “Win Hyundai Sign” collectively.

1.1.14 “LACMTA” means the Los Angeles County Metropolitan Transportation Authority.

1.1.15 “Land Use Regulations” means all ordinances, resolutions, codes, rules, regulations and official policies of City, including, but not limited to, the City’s Charter, General Plan, Municipal Code and Zoning Code, which govern Project development and use of the 405 Freeway Site, including, without limitation, the permitted use of land, the density or intensity of use, subdivision requirements, the maximum elevations and size of the Replacement Digital Billboard, the provisions for reservation or dedication of land for public purposes, and the design, improvement and construction standards and specifications applicable to the development of the Project that are in full force and effect as of the Effective Date of this Agreement, subject to the terms of this Agreement. Land Use Regulations shall also include NPDES regulations and approvals from the California Department of Transportation Outdoor Advertising Division, to the extent applicable.

1.1.16 “Mortgagee” means a mortgagee of a mortgage, a beneficiary under a deed of trust or any other security device, a lender, or each of their respective successors and assigns.

1.1.17 “Project” bears the meaning stated in Recital F hereinabove, including (i) the demolition and replacement of the Existing Signs with the Replacement Digital Billboard, including installing any new and moving all existing utilities underground, subject to approval by Southern California Edison; (ii) restoration of the Site to a clean, safe condition that reasonably matches the surrounding landscape, reasonable wear and tear excepted; and (iii) the operation and maintenance of the Replacement Digital Billboard on the Site. The Project shall be undertaken in strict accordance with the Development Approvals (defined below) and their attendant conditions of approval, if any, and this Agreement, including without limitation the Scope of Development attached hereto as Exhibit D, Schedule of Performance attached hereto as Exhibit E, and consistent with all legally required approvals from the California Department of Transportation Outdoor Advertising Division.

K. “Replacement Digital Billboard” means new double-faced digital billboard to be installed as a replacement for the two Existing Signs. The Replacement Digital Billboard shall be located in a more centered location at the 405 Freeway Site, and consist of:

1. A height from ground of 64 feet,
2. A height from freeway grade of 52 feet,
3. A freeway grade of 12 feet,
4. Double-sided advertising digital display faces (each facia of 14x48 square feet). The Replacement Digital Billboard shall use LED display on a mixed-use basis to advertise for both Developer’s dealerships, as well as selling advertising space to select third-party advertisers to facilitate an additional revenue stream for Developer,
5. The proposed Replacement Digital Billboard will conform with all California Department of Transportation (“CalTrans”) regulations and

Developer will assume all responsibility for securing all appropriate CalTrans permits, and

6. The proposed Replacement Digital Billboard is more specifically depicted in those scaled elevation and location plans attached hereto as Exhibit C.

1.1.18 “Schedule of Performance” means the Schedule of Performance attached hereto as Exhibit E and incorporated herein.

1.1.19 “Scope of Development” means the Scope of Development for the Project as attached hereto as Exhibit D and incorporated herein.

1.1.20 “Subsequent Development Approvals” means any approvals requested by Developer and issued after the Project is fully completed, but during the Term of this Agreement, and in connection with development of the Project and use of the Site.

1.1.21 “Subsequent Land Use Regulations” means any Land Use Regulations effective after the Effective Date of this Agreement (whether adopted prior to or after the Effective Date of this Agreement) which govern the Project and use of the Site.

1.1.22 “Term” shall have the meaning provided in Section 2.4, unless earlier terminated as provided in this Agreement.

1.1.23 “Third-Party Claims or Litigation” means any challenge by any person or entity not a Party to this Agreement (i) to the legality, validity, or adequacy of this Agreement, applications processed in connection with the Project, or (ii) seeking damages which may arise directly or indirectly from the negotiation, formation, execution, enforcement or termination of this Agreement and/or the construction, maintenance, and operation of the Project. Third-Party Claims and Litigation do not include initiatives and referenda.

1.1.24 “Win Chevrolet Sign” and “Win Hyundai Sign” means, respectively, the existing lawfully permitted (i) 47 foot tall digital sign advertising the Win Chevrolet dealership, and (ii) 54 foot 7 inch digital sign advertising Win Hyundai dealership, both of which are owned by Developer and located on the 405 Freeway Site. The location of the Win Chevrolet Sign and Win Hyundai Sign are further depicted on Exhibit B attached hereto and collectively referred to as the Existing Signs.

1.2 **Exhibits.** The following documents are attached to, and by this reference made a part of, this Agreement:

- | | |
|----------------------------|--|
| <u>Exhibit A:</u> | Legal Description of 405 Freeway Site |
| <u>Exhibit A-1:</u> | Depiction of 405 Freeway Site |
| <u>Exhibit B:</u> | Map of Relative Locations of Win Chevrolet Sign, Win Hyundai Sign. |

Exhibit C: Dimensioned Elevation and Location Plans for Replacement Digital Billboard.

Exhibit D: Scope of Development and Conditions of Approval

Exhibit E: Project Schedule of Performance

2. **GENERAL PROVISIONS.**

2.1 **Binding Effect of Agreement.** From and following the Effective Date, actions by the City and Developer with respect to the Project, including actions by the City on applications for Subsequent Development Approvals affecting the Site, shall be subject to the terms and provisions of this Agreement.

2.2 **Interest in Site and Development Approvals – Conditions Precedent.** City and Developer acknowledge and agree that Developer has a legal or equitable interest in the 405 Freeway Site in the form of fee ownership.

2.3 **No Assignment.** Developer may only assign or otherwise transfer this Agreement, or its interest in the 405 Freeway Site, to any other person, firm, or entity, upon presentation to the City of an assignment and assumption agreement in a form reasonably acceptable to the City Attorney and receipt of the City's written approval of such assignment or transfer by the City Manager; provided, however, that Developer may, from time to time and one or more times, assign this Agreement, or the 405 Freeway Site, to one or more persons or entities without City approval, but with written notice to the City, as long as Developer either assigns this Agreement to a financial institution that finances Developer's development of the Project or as long as Developer, or entities owned or controlled by it have and maintain at least a twenty-five percent (25%) ownership interest in such entities who are the assignees or transferees, or as long as the transfer is as a result of a sale of Developer and/or all or substantially all of its assets located in the State of California, including the rights granted under this Agreement, to another publicly-traded company or an entity having a net worth that is substantially similar to, or greater than, Developer's net worth prior to such assignment or at the time of execution of this Agreement, which net worth is subject to verification by the City; and further provided that any assignee executes an assumption agreement assuming all of Developer's duties and obligations hereunder. Any security posted by Developer may be substituted by the assignee or transferee. After a transfer or assignment as permitted by this Section, the City shall look solely to such assignee or transferee for compliance with the provisions of this Agreement which have been assigned or transferred.

2.4 **Term of Agreement.** Unless earlier terminated as provided in this Agreement, this Agreement shall continue in full force and effect until the earlier of (i) 30 years after the Commencement Date, as defined in Section 1.1.5, (ii) the expiration or earlier termination of Developer's interest in the 405 Freeway Site per Section 4.1, (iii) termination of the Agreement in the event of a material Default by Developer per Section 6.1.1 or in the event of a material Default by City per Section 6.1.2, (iv) conversion of the Replacement Digital Billboard to a static displays or display otherwise in conflict with the Scope of Development without due City approval, or (v) the permanent removal of the Replacement Digital Billboard pursuant to the terms hereof. In such case, Developer shall convert the Replacement Digital Billboard within the times and as

provided under Section 4.1. Notwithstanding the foregoing to the contrary, City and Developer may agree to extend the Term of this Agreement pursuant to a mutual agreement in writing upon terms acceptable to both parties. Within 30 days after the expiration or termination of this Agreement, the parties shall execute a written cancellation of this Agreement which shall be recorded with the County Recorder pursuant to Section 9.1. Following the expiration of the Term and provided no extension of this Agreement is agreed to, then Developer will either convert the Replacement Digital Billboard or remove it, as set forth under Section 4.1.

2.5 Processing Fee. The City and Developer acknowledge and agree that Developer has paid to City a processing (“Processing Fee”) in the amount of Twenty Thousand Dollars (\$20,000). The City shall retain and use the Processing Fee, or any part thereof, for any public purpose within the City’s discretion. The Processing Fee shall be separate from, and in addition to, all fees that are standard and uniformly applied to similar projects in the City, including, but not limited to, business license fees (due by Developer to City annually), one time plan check fee and building permit fee and any other fees imposed by Los Angeles County, as may be applicable. Additionally, within 30 days of the City providing Developer with a final invoice of reasonable legal fees incurred by City related to the negotiation and preparation of this Agreement, Developer shall pay City any outstanding balance of those fees.

2.6 Development Fee. The potential impacts of the Project on the City and surrounding community are difficult to identify and calculate. Developer and City agree that an annual development fee paid by Developer to City for the Replacement Digital Billboard would adequately mitigate all such potential impacts of each billboard (the “Development Fee”). The parties therefore agree that Developer shall pay an annual Development Fee, as calculated herein.

2.6.1 Amount of Annual Development Fee for Replacement Digital Billboard; Payment Schedule. The Development Fee to City as applied to the Replacement Digital Billboard will commence at \$40,000 per annum during the Term, and the applicable annual rate will be increased by six percent (6%) once every three years throughout the Term of the Agreement. The Development Fee shall be paid annually, with the first Fee payable no later than the Due Date. Subsequent annual payments shall be due no later than the anniversary of the Due Date.

2.6.2 Late Payment.

(a) Penalty. The City may notify the Developer if the Development Fee is not received within 10 business days after the Due Date (“Late Notice”) and there shall be no penalty if payment is made within 10 business days following the Late Notice. The date of the Late Notice shall mean the date that it is received by the Developer after it has been placed by the City in the U.S. Mail, certified mail with return receipt. Failure to sign the return receipt shall not affect the date Late Notice is given. If City does not issue a Late Notice, penalties will begin to accrue if payment is not made within 30 days of the Due Date.

Late payment penalties shall be calculated as follows: 5% of the Development Fee due and payable for the current year shall be added to the Development Fee for that year for failure to make the full payment within 10 business days of the Late Notice. As an

example, the Development Fee for any year is \$40,000. A 5% penalty would result in a total amount due of \$42,000 (\$40,000 + \$2,000). Thereafter, for each additional 10 days that the full Development Fee is not paid, including the penalty, the Developer shall incur an additional penalty of 5% of that year's Development Fee, for a maximum penalty of 15% of that year's Development Fee.

(b) Termination. Failure by Developer to pay the Development Fee to the City within 30 days following the Due Date of each year during the Term of this Agreement is considered a material Breach of this Agreement, and if not paid in full to the City, including all late penalties, within 10 business days after written notice to Developer of such material Breach, City may begin termination proceedings in accordance with Section 6, Termination of Agreement.

2.6.3 Nothing herein relieves the City from its contractual duty to issue all municipal building permits that are associated with the Project if Developer is in compliance with the terms of this Agreement.

2.7 **City Discretion**. The Parties understand, and expressly agree, that this Agreement does not waive or limit the City's exercise of its police powers as defined by law (which police powers the Parties acknowledge and agree cannot be contractually waived) to issue such permit(s) that are otherwise necessary for the development of the Project.

2.8 **Prohibited Use**. Developer shall not utilize any of the digital display faces on the Replacement Digital Billboard to advertise tobacco, marijuana, hashish, "gentlemen's clubs," or other related sexually explicit or overly sexually-suggestive messages, or as may be prohibited by any City ordinance existing as of the Effective Date of this Agreement. Unless otherwise approved by written amendment to this Agreement and the securing of all necessary City, CalTrans or other legally required permits and entitlements, Developer will not be eligible for any additional (static or digital) freeway-oriented signs on the Site during the Term of this Agreement.

3. DEVELOPMENT AND IMPLEMENTATION OF THE PROJECT.

3.1 **Rights to Develop 405 Freeway Site**. At its sole costs and subject to and during the Term of this Agreement, Developer shall have the right to develop the 405 Freeway Site in accordance with the Scope of Development (Exhibit D) and Schedule of Performance (Exhibit E), and to the extent authorized by the Development Approvals, the Land Use Regulations and this Agreement.

Developer shall be solely responsible for securing any and all authorizations from any other holders of interests therein, for purposes of coordinating and undertaking the work described in this Section 3.1. Under no circumstances shall the City, its elected boards, commissions, officers, agents or employees be liable to any property owner or holder of an interest in the 405 Freeway Site for losses, claims, injuries or damages arising from, or related to, Developer's work or coordination of Project work on such Site; the provisions of indemnity and defense set forth in Section 7.2 shall extend to Developer's performance under this Section 3.1 and Article 4 of this Agreement.

3.2 Effect of Agreement on Land Use Regulations. Except as otherwise provided under the terms of this Agreement, the rules, regulations and official policies governing permitted uses of the 405 Freeway Site, the density and intensity of use of the such 405 Freeway Site, the maximum height and size of proposed Replacement Digital Billboard structure, and the design, and improvement and construction standards and specifications applicable to development of the 405 Freeway Site shall be as set forth in the Land Use Regulations, as such term is defined in Section 1.1.15, which are in full force and effect as of the Effective Date of this Agreement, subject to the terms of this Agreement.

3.3 Development Approvals. Developer shall, at its own expense and before commencement of demolition, construction, or development of any structures, the Project or other work of improvement upon the Site, secure or cause to be secured all necessary Development Approvals, which shall include any and all permits and approvals which may be required by City or any other governmental agency or utility affected by such construction, development, or work to be performed by Developer pursuant to the Scope of Development, including but not limited to, necessary building permits and all approvals required under the California Environmental Quality Act (“CEQA”) and by Caltrans. Not by way of limiting the foregoing, in developing and constructing the Project, Developer shall comply with all (i) applicable development standards in City’s Municipal Code, (ii) applicable NPDES requirements pertaining to the Project, and (iii) all applicable building codes, except as may be permitted through approved variances and modifications. Developer shall pay all normal and customary fees and charges applicable to such permits, and any fees and charges hereafter imposed by City in connection with the Project that are standard and uniformly-applied to similar projects in the City.

3.4 Timing of Development; Scope of Development. Developer shall commence the Project within the time set forth in the Schedule of Performance, attached hereto as Exhibit E. “Commencement” of the Project is defined herein as commencement of construction or improvements under any and all building permits for the Project as soon as possible following Developer’s receipt of Development Approvals. In the event that Developer fails to meet the schedule for commencement of the Project, and after compliance with Section 5.4, either party hereto may terminate this Agreement by delivering written notice to the other party, and, in the event of such termination, neither party shall have any further obligation hereunder. However, if circumstances within the scope of Section 9.10 delay the Commencement or completion of the Project, it would not constitute grounds for any termination rights found within this Development Agreement. In such case, the timeline to commence or complete the relevant task shall be extended in the manner set forth at Section 9.10. Notwithstanding the above, Developer shall, at all times, comply with all other obligations set forth in this Agreement regarding the Project and maintenance of any billboards included in the Project up-to the time of their demolition (with respect to the Existing Signs) or upon their completion of construction (with respect to the Replacement Digital Billboard).

The purpose of this Agreement is to set forth the rules and regulations applicable to the Project, which shall be accomplished in accordance with this Agreement, including the Scope of Development (Exhibit D), which sets forth a description of the Project and the Schedule of Performance (Exhibit E).

3.5 Changes and Amendments. Developer may determine that changes to the Development Approvals are appropriate and desirable. In the event Developer makes such a determination, Developer may apply in writing for an amendment to the Development Approvals to effectuate such change(s). The Parties acknowledge that City shall be permitted to use its reasonable discretion in deciding whether to approve or deny any such amendment request; provided, however, that in exercising the foregoing discretion, the City shall not apply a standard different than that used in evaluating requests of other developers. Accordingly, under no circumstance shall City be obligated in any manner to approve any amendment to the Development Approvals. The City Manager shall be authorized to approve any non-substantive amendment to the Development Approvals without City Council approval. All other amendments shall require the approval of the City Council. The parties acknowledge that any extension of the Term for no more than twenty-four (24) months total is an example of a non-substantive change, which the City Manager, in his or her sole discretion, may approve in writing. Nothing herein shall cause Developer to be in Default if it upgrades or replaces a digital display installed pursuant to this Agreement during the Term of this Agreement to incorporate newer technology that is of like-kind or lesser dimensions and intensity; provided Developer shall secure all applicable ministerial permits to do so and such upgrade is consistent with the dimensions and standards for the displays, as provided under this Agreement, Land Use Regulations, and Subsequent Land Use Regulations

3.6 Reservations of Authority.

3.6.1 Limitations, Reservations and Exceptions. Notwithstanding any other provision of this Agreement, the following Subsequent Land Use Regulations shall apply to the Project:

(a) Processing fees and charges of every kind and nature imposed by City to cover the estimated actual costs to City of processing applications for Subsequent Development Approvals submitted by Developer.

(b) Procedural regulations consistent with this Agreement relating to hearing bodies, petitions, applications, notices, findings, records, hearing, reports, recommendations, appeals, and any other matter of procedure. Notwithstanding the foregoing, if such change materially changes Developer's costs or otherwise materially impacts its performance hereunder, Developer may terminate this Agreement upon 90 days prior written notice.

(c) Changes adopted by the International Conference of Building Officials, or other similar body, as part of the then most current versions of the Uniform Building Code, Uniform Fire Code, Uniform Plumbing Code, Uniform Mechanical Code, or National Electrical Code, as adopted by City as Subsequent Land Use Regulations, if adopted prior to the issuance of a building permit for development of the Replacement Digital Billboard. Notwithstanding the foregoing, if such change materially changes Developer's costs or otherwise materially impacts its performance hereunder, Developer may terminate this Agreement upon 90 days prior written notice.

(d) Regulations that are not in conflict with the Development Approvals or this Agreement.

(e) Regulations that are in conflict with the Development Approvals or this Agreement, provided Developer has given written consent to the application of such regulations to the Project.

(f) Applicable Federal, State, County, and multi-jurisdictional laws and regulations which City is required to enforce as against the 405 Freeway Site or the Project and that do not have an exception for (1) existing signs, or (2) legal nonconforming uses, or (3) signs governed by an agreement entered into pursuant to Sections 5412 and 5443.5 of the California Outdoor Advertising Act which were in existence in the City before the approval of this Agreement. Notwithstanding the foregoing, if such regulations materially change Developer's costs or otherwise materially impact its performance hereunder, Developer may terminate this Agreement upon 90 days prior written notice.

3.6.2 *Future Discretion of City.* This Agreement shall not prevent City from denying or conditionally approving any application for a Subsequent Development Approval on the basis of the Land Use Regulations.

3.6.3 *Modification or Suspension by Federal, State, County, or Multi-Jurisdictional Law.* In the event that applicable federal, State, County, or multi-jurisdictional laws or regulations, enacted after the Effective Date of this Agreement, prevent or preclude compliance with one or more of the provisions of this Agreement, and there is no exception for the legal nonconforming use, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such federal, State, County, or multi-jurisdictional laws or regulations, and this Agreement shall remain in full force and effect to the extent it is not inconsistent with such laws or regulations and to the extent such laws or regulations do not render such remaining provision impractical to enforce. Notwithstanding the foregoing, if such change materially changes Developer's costs or otherwise materially impacts its performance hereunder, Developer may terminate this Agreement upon 90 days prior written notice.

3.7 **Regulation by Other Public Agencies.** It is acknowledged by the parties that other public agencies not subject to control by City may possess authority to regulate aspects of the Project as contemplated herein, and this Agreement does not limit the authority of such other public agencies. Developer acknowledges and represents that, in addition to the Land Use Regulations, Developer shall, at all times, comply with all applicable federal, State and local laws and regulations applicable to the Replacement Digital Billboard and Site that do not have an exception for a legal nonconforming use. To the extent such other public agencies preclude development or maintenance of the Project and that do not have an exception for a legal nonconforming use, Developer shall not be further obligated under this Agreement except as provided in Section 4.1. Notwithstanding the foregoing, if such action by another public agency materially changes Developer's costs or otherwise materially impacts its performance hereunder, Developer may terminate this Agreement upon 90 days prior written notice to City.

3.8 **Public Improvements.** Notwithstanding any provision herein to the contrary, the City shall retain the right to condition any Subsequent Development Approvals to require Developer to pay any required development fees, and/or to construct the required public infrastructure ("Exactions") at such time as City shall determine subject to the following

conditions; provided that none of the following shall be applicable to the Project as set forth in this Agreement.

3.8.1 The payment or construction must be to alleviate an impact caused by the Project or be of benefit to the Project as a result of such Subsequent Development Approvals; and

3.8.2 The timing of the Exaction should be reasonably related to the development of the Project as a result of such Subsequent Development Approvals and said public improvements shall be phased to be commensurate with the logical progression of the Project as a result of such Subsequent Development Approvals as well as the reasonable needs of the public as a result thereof.

3.8.3 It being understood, however, that if there is a material increase in cost to Developer or such action by City otherwise materially impacts developer's performance hereunder, Developer may terminate this Agreement upon 90 days prior written notice.

3.9 Fees, Taxes and Assessments. During the Term of this Agreement, the City shall not, without the prior written consent of Developer, impose any additional fees, taxes or assessments on all or any portion of the Project, except such fees, taxes and assessments as are described in or required by this Development Agreement and/or the Development Approvals. However, this Development Agreement shall not prohibit the application of fees, taxes or assessments upon the 405 Freeway Site only and not the Replacement Digital Billboard or Developer directly as follows:

3.9.1 Developer shall be obligated to pay those fees, taxes or City assessments and any increases in same which exist as the Effective Date or are included in the Development Approvals;

3.9.2 Developer shall be obligated to pay any fees or taxes, and increases thereof, imposed on a City-wide basis such as, but not limited to, business license fees or taxes or utility taxes;

3.9.3 Developer shall be obligated to pay all fees applicable to a permit application as charged by City at the time such application is filed by Developer;

3.9.4 Developer shall be obligated to pay any fees imposed pursuant to any Uniform Code that existed when the application is filed by the Developer or that exists when the Developer applies for any Subsequent Development Approval.

3.10 Notwithstanding anything to the contrary herein, if there is a change in such fees to those charges as of the full execution hereof or any additional fees are charged and such additional or increased fees materially change Developer's costs or otherwise materially impacts its performance hereunder, Developer may terminate this Agreement upon 90 days prior written notice.

4. CONVERSION OF BILLBOARD AT TERMINATION OR EXPIRATION.

4.1 **Conversion by Developer.** Developer has the right to negotiate an extension of the Term as an amendment to this Agreement. If the extension for the Term is not granted by the City, the Developer shall convert the use of the Replacement Billboard to advertising only the Win Chevrolet and Win Hyundai dealership, with no third-party advertising. Excepting, however, that in the event (i) the construction of the Replacement Billboard is completed, and (ii) an uncured Breach of this Agreement is thereafter perpetrated by the City pursuant to Section 6.1.2, then Developer may continue to utilize the sign for all advertising purposes permitted under this Agreement for whatever Term period would have otherwise been remaining under this Agreement had it not been terminated as a result of City Breach.

4.1.1 A temporary suspension of the digital display faces on the Replacement Digital Billboard by Developer shall have no effect on this Agreement, which shall remain in full force and effect for the full Term unless otherwise terminated in accordance with Section 6. Developer shall further have the right, but not the obligation, to terminate the Agreement and remove the Replacement Digital Billboards in the event of the expiration or termination of its interest in the 405 Freeway Site. In such event, neither Developer nor City shall have any further obligations hereunder.

4.2 **City's Right to Demand Removal Upon Developer Breach.** Provided Developer is not in material Breach of the terms of this Agreement past any applicable written notice and cure period, City will not have the right to require removal of the Replacement Digital Billboard. Should an uncured Breach by Developer occur, City may require Developer to remove the Replacement Digital Billboard within ninety (90) days of City's notice and demand for removal to Developer following exhaustion of those procedures set forth in Section 5.4.

4.2.1 After removal of the Replacement Digital Billboard following an uncured breach by Developer, Developer shall return the 405 Freeway Site to its original condition or better. At a minimum, Developer shall obtain demolition permit(s) for the Replacement Digital Billboard and shall remove all parts thereof, including the above-ground portions of the structure, and shall secure the 405 Freeway Site.

5. REVIEW FOR COMPLIANCE.

5.1 **Annual Review.** The City Council shall review this Agreement annually at City's sole cost, on or before the anniversary of the Term, to ascertain the good faith compliance by Developer with the terms of the Agreement ("Annual Review"). The annual review will not require a public hearing unless amendments to this Agreement are being requested by Developer or recommended by City. However, no failure on the part of City to conduct or complete an Annual Review as provided herein shall have any impact on the validity of this Agreement. Developer shall cooperate with the City in the conduct of such Annual Review and provide the following information and documentation to the City thirty (30) days following the anniversary of the Commencement Date: (1) copy of a current and valid CalTrans permit; (2) description of all complaints from CalTrans or the City regarding the Replacement Digital Billboard; (3) description of all complaints from the public regarding the display unrelated to any content of the message displayed; (4) status and amount of all payment obligations to the City required under this

Agreement for the year in question and cumulatively beginning from the Commencement of the Project herein; (5) any easement, lease or license changes that could in any way materially impact the City or the obligations under this Agreement; and (6) any utility changes that could in any way materially impact the City or the obligations under this Agreement.

5.2 **Special Review.** The City Council may, in its sole and absolute discretion, order a special review of compliance with this Agreement at any time at City's sole cost ("Special Review"). Developer shall cooperate with the City in the conduct of such any Special Review, and shall promptly provide information relevant to the Special Review at the request of the City.

5.3 **City Rights of Access.** Subject to any property owner's written consent, the City, its officers, employees, agents and contractors, shall have the right, at their sole risk and expense, to enter the Site at all reasonable times with as little interference as possible for the purpose of conducting the review under this Article 5, inspection, construction, reconstruction, relocation, maintenance, repair or service of any public improvements or public facilities located on the Site. Any damage or injury to the Site or to the Project work thereon resulting from such entry shall be promptly repaired at the sole expense of the City and the City will indemnify the Site's property owner(s), as applicable, and Developer, and their respective officers, employees, and/or agents against, and will hold and save them and each of them harmless from, any and all actions, suits, claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions, or liabilities that may be asserted or claimed by any person(s), firm, or entity arising out of or in connection with the work, operations, or activities of City, its agents, employees, subcontractors, and/or invitees, arising from or relating to the City's entry upon the Site. This provision is not intended to interfere with the City's police powers to address any nuisance, dangerous condition, or other condition in violation of the City's ordinances. In no event will City representatives climb up or access the pole of any Site sign during any inspection without providing such insurance and indemnification to Developer as Developer may request, and without coordinating with Developer to ensure the safety of the inspectors

5.4 **Procedure.** Each party shall have a reasonable opportunity to assert matters that it believes have not been undertaken in accordance with the Agreement, to explain the basis for such assertion, and to receive from the other party a justification of its position on such matters. If, on the basis of the parties' review of any terms of the Agreement, either party concludes that the other party has not complied in good faith with the terms of the Agreement, then such party may issue a written "Notice of Non-Compliance" specifying the grounds therefore and all facts demonstrating such non-compliance. The party receiving a Notice of Non-Compliance shall have thirty (30) days to cure the non-compliance identified in the Notice of Non-Compliance, or if such non-compliance is not reasonably capable of being cured or remedied within the 30-day period, to commence to cure the non-compliance and to diligently and in good faith prosecute such cure to completion. If the party receiving the Notice of Non-Compliance does not believe it is out of compliance and contests the Notice, it shall do so by responding in writing to the Notice within 30 days after receipt. If the response to the Notice of Non-Compliance has not been received in the offices of the party alleging the non-compliance within the prescribed time period, the Notice of Non-Compliance shall be conclusively presumed to be valid. If a Notice of Non-Compliance is contested, the parties shall, for a period of not less than 15 days following receipt of the response, seek to arrive at a mutually acceptable resolution of the matter(s) occasioning the Notice. In the event that a cure or remedy is not timely effected or, if the Notice is contested and the parties are

not able to arrive at a mutually acceptable resolution of the matter(s) by the end of the 15-day period, the party alleging the non-compliance may thereupon pursue the remedies provided in Section 6. Neither party hereto shall be deemed in Breach if the reason for non-compliance is due to a “force majeure” as defined in, and subject to the provisions of, Section 9.10.

5.5 Certificate of Agreement Compliance. If, at the conclusion of an Annual Review or a Special Review, Developer is found to be in compliance with this Agreement, City shall, upon request by Developer, issue a Certificate of Agreement Compliance (“Certificate”) to Developer stating that, after the most recent Annual Review or Special Review, and based upon the information known or made known to the City Manager and City Council, that (1) this Agreement remains in effect and (2) Developer is in compliance. The Certificate, whether issued after an Annual Review or Special Review, shall be in recordable form and shall contain information necessary to communicate constructive record notice of the finding of compliance. Developer may record the Certificate with the County Recorder.

6. DEFAULT AND REMEDIES.

6.1 Termination of Agreement.

6.1.1 Termination of Agreement for Material Default of Developer. City, in its discretion, may terminate this Agreement for any failure of Developer to perform any material duty or obligation of Developer hereunder or to comply in good faith with the material terms of this Agreement (“Default” or “Breach”); provided, however, City may terminate this Agreement pursuant to this Section only after following the procedure set forth in Section 5.4. In the event of a termination by City under this Section 6.1.1, Developer acknowledges and agrees that City may retain all fees accrued up-to the date of the termination, including the Processing Fee and the Development Fee paid up-to the date of termination, and Developer shall pay the prorated amount of the Development Fee within sixty (60) days after the date of termination that equates to the percentage of time elapsed in the year of the Term prior to the date of termination. In the event Developer has pre-paid any portion of the Development Fee at the time of termination, City shall refund to Developer the pro-rated portion of the Development Fee for any periods after the date of termination.

6.1.2 Termination of Agreement for Material Default of City. Developer, in its discretion, may terminate this Agreement for any failure of City to perform any material duty or obligation of City hereunder or to comply in good faith with the material terms of this Agreement; provided, however, Developer may terminate this Agreement pursuant to this Section only after following the procedure set forth in Section 5.4. In addition, Developer may terminate this Agreement if, despite Developer’s good faith efforts, it is unable to secure the Development Approvals and/or compliance with requirements under laws necessary to effectuate the Project, or if Developer determines that the settlement by the City of any Third-Party Claims or Litigation (as defined below) pursuant to Section 7.2.1(b) would affect Developer’s rights or ability to perform under this Agreement. In the event of a termination by Developer under this Section 6.1.2, Developer acknowledges and agrees that City may retain all fees, including the Processing Fee and the Development Fee, Developer paid up-to the date of termination, and Developer shall pay the prorated amount

of the Development Fee within sixty (60) days after the date of termination that equates to the percentage of time elapsed in the year of the Term at the time of termination. In the event Developer has pre-paid any portion of the Development Fee at the time of termination, City shall refund to Developer the pro-rated portion of the Development Fee for any periods after the date of termination.

6.1.3 *Rights and Duties Following Termination.* Upon the termination of this Agreement, no party shall have any further right or obligation hereunder except with respect to (i) any obligations to have been performed prior to said termination, (ii) any Default in the performance of the provisions of this Agreement which has occurred prior to said termination, (iii) Developer's obligation to either convert use of, or remove, the Replacement Digital Billboard (as applicable) pursuant to Section 4, or (iv) any continuing obligations to indemnify other parties.

7. INSURANCE, INDEMNIFICATION AND WAIVERS.

7.1 **Insurance.** Developer shall carry, and comply with, the following insurance requirements FOR Project performance:

7.1.1 *Types of Insurance.*

(a) Liability Insurance. Beginning on the Effective Date hereof and until completion of the Term, Developer shall, at its sole cost and expense, keep or cause to be kept in force for the mutual benefit of City, as additional insured, and Developer comprehensive broad form general liability insurance against claims and liabilities covered by the indemnification provisions of Section 7.2. Such policy shall provide for limits of a least Two Million Dollars (\$2,000,000) per occurrence and at least Four Million Dollars (\$4,000,000) in the aggregate for any accidents or occurrence and limits may be satisfied with a combination of primary and excess policies. Developer shall also furnish or cause to be furnished to City evidence that any contractors with whom Developer has contracted for the performance of any work for which Developer is responsible maintains the same coverage required of Developer. The liability certificate of insurance shall name the City as additional insured and include the appropriate additional insured endorsement form.

(b) Worker's Compensation. Developer shall also furnish or cause to be furnished to City evidence reasonably satisfactory to it that Developer and any contractor with whom Developer has contracted for the performance of any work for which Developer is responsible hereunder carries worker's compensation insurance as required by law. At a minimum, Developer shall provide for \$1,000,000 Employer's Liability. A waiver of subrogation rights endorsement form is required as well.

(c) Automobile Liability. Developer shall furnish or cause to be furnished to City evidence reasonably satisfactory to it that Developer and any contractor with whom Developer has contracted for the performance of any work for which Developer is responsible hereunder carries automobile liability insurance

as follows: Minimum of \$1,000,000 combined single limit per accident for bodily injury and property damage covering “any auto”. Automobile certificate of insurance shall name the City as additional insured and include the appropriate additional insured endorsement form.

(d) Insurance Policy Form, Sufficiency, Content and Insurer. All insurance required by express provisions hereof shall be carried only by responsible insurance companies qualified to do business by California with an AM Best Rating of no less than “A”. All such policies shall be non-assignable and shall contain language, to the extent obtainable, to the effect that (i) the insurer waives the right of subrogation against City and against City’s agents and representatives except as provided in this Section; (ii) the policies are primary and noncontributing with any insurance that may be carried by City, but only with respect to the liabilities assumed by Developer under this agreement; and (iii) the policies cannot be canceled except after thirty (30) days’ written notice by the insurer to City or City’s designated representative Developer shall furnish City with certificates evidencing the insurance. City shall be named as an additional insured on all liability policies of insurance required to be procured by the terms of this Agreement.

(e) *City Waiver of Subrogation.* To the extent this Agreement creates a claim of liability against Developer, and to the extent the City is insured against such claim or liability, the City will obtain, to the extent reasonable, an endorsement waiving any right of subrogation that the insurer may otherwise have against Developer; provided that if such a waiver is not available from the City’s insurance company at a reasonable cost, the City will be relieved of its obligation to obtain a waiver of subrogation unless Developer agrees to pay for the waiver.

7.1.2 *Failure to Maintain Insurance and Proof of Compliance.* Developer shall deliver to City, in the manner required for notices, copies of certificates of all insurance coverage required of each policy within the following time limits:

(a) For insurance required above, within seven (7) days after the Effective Date or consistent with the requirements of Exhibit E (Schedule of Performance).

(b) The City can request to see updated copies of the current certificates of all insurance coverage required.

If Developer fails or refuses to procure or maintain insurance as required hereby or fails or refuses to furnish City with required proof that the insurance has been procured and is in force and paid for, after complying with the requirements of Section 5.4, the City may view such failure or refusal shall be a Default hereunder.

7.2 **Third-Party Claims or Litigation**

7.2.1 *Indemnity Obligations on Third-Party Claims or Litigation.*

(a) The Developer shall indemnify the City and its elected boards, commissions, officers, agents, related agencies, employees, and assigns, and will defend, hold and save them and each of them harmless from any and all Third-Party Claims or Litigation (including but not limited to objectively reasonable attorneys' fees and costs, including, but not limited to, expert costs) arising from or in connection with Developer's obligations under this Agreement and related to the Project or construction activities in furtherance of the Project against the City and shall be responsible for any judgment arising therefrom. Except, however, Developer's indemnity obligations shall not extend to any claims, damages or litigation arising solely from City's negligent acts or omissions.

(b) The Parties acknowledge that there may be challenges to the legality, validity and adequacy of the Development Approvals and/or this Agreement in the future; and if successful, such challenges could delay or prevent the performance of this Agreement and the development of the Project. The City shall have no liability under this Agreement for the inability of Developer to develop the Project as the result of a judicial determination that the entitlements, the general plan, the zoning, the land use regulations, or any portions thereof are invalid or inadequate or not in compliance with law.

The City shall promptly provide the Developer with written notice (the "Notice") of the pendency of such Third-Party Claims or Litigation within ten (10) days of being served of such Third-Party Claims or Litigation and shall make a written demand for defense and indemnity of the same on the Developer within a reasonable time following delivery of the Notice. The City will cooperate in good faith in the defense of any such Third-Party Claims or Litigation. Notwithstanding the foregoing, the City retains the discretion to select legal counsel of its choosing to represent the City in such Third-Party Claims or Litigation, and the City further retains the discretion to settle or abandon such Third-Party Claims or Litigation without Developer's consent; provided, however, that should City determine to settle or abandon such Third-Party Claims or Litigation, City shall be entitled to be reimbursed its reasonable defense or other costs up to the point of settlement or abandonment, but shall not be entitled to indemnification for any fees or costs or other amounts for any period thereafter or for any settlement amount, and provided, further, that City's decision to settle or abandon such Third-Party Claims or Litigation following an adverse judgment or City's determination not to appeal an adverse judgment from such Third-Party Claims or Litigation shall not void City's indemnification rights under subsection (a) above for any period prior to the date of such settlement or abandonment. The City agrees that should City determine to settle such Third-Party Claims or Litigation in a manner that includes the payment of attorneys' fees not ordered or awarded in such Third-Party Claims or Litigation, the City shall be entitled to reimbursement for the same upon receiving the written

consent of Developer to such settlement and attorneys' fees, which consent shall not be unreasonably withheld.

The Developer may utilize the City Attorney's office or use legal counsel of its choosing, but shall reimburse the City for its necessary and reasonable legal costs, including, but not limited to, expert or other consultant fees, incurred by City in such Third-Party Claims or Litigation (the "City Costs"). Failure to provide the Notice within 10 days of being served shall not affect the enforceability of these provisions. The Developer shall be required, following written demand by the City for defense and indemnity, to place funds on deposit with the City in the amount of Fifty Thousand Dollars (\$50,000.00) per billboard if multiple billboards are the subject of the claim, which funds shall be used to reimburse the City for its City Costs. If the Developer fails to provide the deposit, and after compliance with the provision of Section 6, the City may abandon the action and the Developer shall pay all costs resulting therefrom and City shall have no liability to the Developer. At no point shall the minimum balance of the deposit fall below Fifty Thousand Dollars (\$50,000.00) per billboard if multiple billboards are the subject of the claim. All deposits must be paid to the City within thirty (30) days of Developer's receipt of the City's written demand. Any unused portions of the deposit shall be refunded to Developer within thirty (30) days following the resolution of such Third-Party Claims or Litigation. The Developer's obligation to pay the cost of the action, including judgment, shall extend until judgment. After judgment in a trial court, the parties must mutually agree as to whether any appeal will be taken or defended. City agrees that it shall cooperate in good faith with the Developer in the defense of any matter in which the Developer is defending and/or holding the City harmless.

The Developer shall have the right, within the first 30 days of the service of the complaint, in its reasonable discretion, to determine that it does not want to defend the Third-Party Claims or Litigation, in which case the City shall allow the Developer to settle the Third-Party Claims or Litigation on whatever terms the Developer determines, in its reasonable discretion, but Developer shall confer with City before acting and cannot bind City. In that event, the Developer shall be liable for any City Costs incurred up to the date of settlement but shall have no further obligation to the City beyond the payment of those costs.

(c) Developer is aware of the laws of the State governing the payment of prevailing wages on public projects (as described in California Labor Code Section 1720) and will comply with same should such laws apply to the Project, and will indemnify City in the event Developer fails to do so. To the extent that (contrary to the parties' intent) it is determined that Developer was required to pay prevailing wage and has not paid prevailing wages for any portion of the Project, Developer shall defend and hold the City, its elected boards, commissions, officers, agents, related agencies, employees, and assigns, harmless from and against any and all increase in construction costs, or other liability, loss, damage, costs, or expenses (including reasonable attorneys' fees and court costs) arising from or as a result of any action or determination that Developer failed to pay prevailing wages in connection with the construction of the Project. City shall reasonably cooperate

with Developer regarding any action by Developer hereunder challenging any determination that the Project is subject to the payment of prevailing wages. Notwithstanding the foregoing, the City retains the right to settle or abandon the matter without Developer's consent as to the City's liabilities or rights only, but should it do so, City shall waive the indemnification herein provided such waiver occurs prior to the issuance of any judgment in the matter.

7.2.2 Hold Harmless: Developer's Construction and Other Activities.

(a) The Developer shall defend, save and hold the City and its elected boards, commissions, officers, agents, related agencies, employees, and assigns, harmless from any and all claims, costs (including reasonable attorneys' fees) and liability for any damages, personal injury or death, which may arise, directly or indirectly, from the Developer's or the Developer's agents, contractors, subcontractors, agents, or employees' Project construction activities and operations under this Agreement, whether such Project construction activities and operations be by the Developer or by any of the Developer's agents, contractors or subcontractors or by any one or more persons directly or indirectly employed by or acting as agent for the Developer or any of the Developer's agents, contractors or subcontractors. Nothing herein shall be construed to mean that the Developer shall hold the City harmless and/or defend it from any claims arising from, or alleged to arise from, the sole negligence or gross or willful misconduct of the City's officers, employees, agents, contractors of subcontractors.

(1) *Loss and Damage.* City shall not be liable for any damage to property owners of the Site, LACMTA, or of others located on the Site, nor for the loss of or damage to any property owners of the Site, LACMTA, or of others by theft, vandalism, operational interference or otherwise. City shall not be liable for any injury or damage to persons or property resulting from fire, explosion, steam, gas, electricity, water, rain, dampness, or leaks from any part of the Site or from the pipes or plumbing, or from the street, or from any environmental or soil contamination or hazard, or from any other latent or patent defect in the soil, subsurface or physical condition of the Site, or by any other cause of whatsoever nature. Nothing herein shall be construed to mean that the Developer shall bear liability for the sole negligence or gross or willful misconduct of the City's officers, employees, agents, contractors of subcontractors.

(2) *Non-liability of City Officers and Employees.* No official, agent, contractor, or employee of the City shall be personally liable to the Developer, or any successor in interest, in the event of any Default or Breach by the City or for any amount which may become due to the Developer or to its successor, or for Breach of any obligation of the terms of this Agreement.

(3) *Conflict of Interest.* No officer or employee of the City shall have any financial interest, direct or indirect, in this Agreement nor shall

any such officer or employee participate in any decision relating to this Agreement which affects the financial interest of any corporation, partnership or association in which he or she is, directly or indirectly, interested, in violation of any state statute or regulation.

(4) *Survival of Indemnity Obligations.* All indemnity provisions set forth in this Agreement shall survive termination of this Agreement for any reason.

(b) *Waiver of Subrogation.* Developer agrees that it shall not make any claim against, or seek to recover from City or its elected official, agents, servants, or employees, for any loss or damage to Developer, its agents, employees, subcontractors, or invitees, or any property of Developer its agents, employees, subcontractors, or invitees relating to this Project, except as specifically provided hereunder, including but not limited to, a claim or liability arising from the sole negligence or willful misconduct of the City, its elected officials, officers, agents, or employees, who are directly responsible for the City.

8. MORTGAGEE PROTECTION.

8.1 The parties hereto agree that this Agreement shall not prevent or limit Developer, in any manner, at Developer's sole discretion, from encumbering the Site or any portion thereof or any improvement thereon by any mortgage, deed of trust or other security device securing financing with respect to the Site. City acknowledges that the lenders providing such financing may require certain Agreement interpretations and modifications and City agrees upon request, from time to time, to meet with Developer or property owners of the Site, and representatives of such lenders to negotiate in good faith any such request for interpretation or modification. Subject to compliance with applicable laws, City will not unreasonably withhold its consent to any such requested interpretation or modification provided City determines such interpretation or modification is consistent with the intent and purposes of this Agreement. Any Mortgagee of the Site shall be entitled to the following rights and privileges:

(a) Neither entering into this Agreement nor a Breach of this Agreement shall defeat, render invalid, diminish or impair the lien of any mortgage on the Project or Site made in good faith and for value, unless otherwise required by law.

(b) The Mortgagee of any mortgage or deed of trust encumbering the Project or Developer's interest in the Site, or any part thereof, which Mortgagee has submitted a request in writing to the City in the manner specified herein for giving notices, shall be entitled to receive written notification from City of any Default by Developer in the performance of Developer's obligations under this Agreement.

(c) If City timely receives a request from a Mortgagee requesting a copy of any notice of default given to Developer under the terms of this Agreement, City shall make a good faith effort to provide a copy of that notice to the Mortgagee within ten (10) days of sending the notice of default to Developer. The Mortgagee shall have the right, but not the

obligation, to cure the Default during the period that is the longer of (i) the remaining cure period allowed such party under this Agreement, or (ii) 60 days.

(d) Any Mortgagee who comes into possession of the Project or Site, or any part thereof, pursuant to foreclosure of the mortgage or deed of trust, or deed in lieu of such foreclosure, shall take the Project or Site or part thereof, subject to the terms of this Agreement. Notwithstanding any other provision of this Agreement to the contrary, no Mortgagee shall have an obligation or duty under this Agreement to perform any of Developer's obligations or other affirmative covenants of Developer hereunder, or to guarantee such performance; except that (i) to the extent that any covenant to be performed by Developer is a condition precedent to the performance of a covenant by City, the performance thereof shall continue to be a condition precedent to City's performance hereunder, and (ii) in the event any Mortgagee seeks to develop or use any portion of the Project or Site acquired by such Mortgagee by foreclosure, deed of trust, or deed in lieu of foreclosure, such Mortgagee shall strictly comply with all of the terms, conditions and requirements of this Agreement and the Development Approvals applicable to the Project or Site or such part thereof so acquired by the Mortgagee.

9. MISCELLANEOUS PROVISIONS.

9.1 **Recordation of Agreement.** This Agreement shall be recorded with the County Recorder by the City Clerk within 10 days of execution, as required by Government Code Section 65868.5. Amendments approved by the parties, and any cancellation, shall be similarly recorded.

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

9.3 **Severability.** If any term, provision, covenant or condition of this Agreement shall be determined invalid, void or unenforceable, then that term, provision, covenant or condition of this Agreement shall be stricken and the remaining portion of this Agreement shall remain valid and enforceable if that stricken term, provision, covenant or condition is not material to the main purpose of this Agreement, which is to allow the Project to be permitted and operated and to provide the Development Fee to the City; otherwise, this Agreement shall terminate in its entirety, unless the parties otherwise agree in writing, which agreement shall not be unreasonably withheld.

9.4 **Interpretation and Governing Law.** This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of California. This Agreement shall be construed as a whole according to its fair language and common meaning, to achieve the objectives and purposes of the parties hereto. The rule of construction, to the effect that ambiguities are to be resolved against the drafting party or in favor of the non-drafting party, shall not be employed in interpreting this Agreement, all parties having been represented by counsel in the negotiation and preparation hereof.

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

9.6 **Singular and Plural.** As used herein, the singular of any word includes the plural.

9.7 **Time of Essence.** Time is of the essence in the performance of the provisions of this Agreement as to which time is an element.

9.8 **Waiver.** Failure of a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, or the failure by a party to exercise its rights upon the Default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Agreement thereafter.

9.9 **No Third-Party Beneficiaries.** This Agreement is made and entered into for the sole protection and benefit for the parties and their successors and assigns. No other person shall have any right of action based upon any provision of this Agreement.

9.10 **Force Majeure.** Neither party shall be deemed to be in Default where failure or delay in performance of any of its obligations under this Agreement is caused by earthquakes, other acts of God, fires, rains, winds, wars, terrorism, riots or similar hostilities, strikes and other labor difficulties beyond the party's control (including the party's employment force), government actions and regulations (other than those of the City), court actions (such as restraining orders or injunctions), or other causes beyond the party's reasonable control. If any such events shall occur except as otherwise provided herein, the term of this Agreement and the time for performance shall be extended for the duration of each such event, provided that the term of this Agreement shall not be extended under any circumstances for more than five (5) years and further provided that if such delay is longer than six (6) months, Developer may terminate this Agreement upon written notice to City and City shall return to developer any portion of the Development Fee paid for any period after the effective date of such termination.

9.11 **Mutual Covenants.** The covenants contained herein are mutual covenants and also constitute conditions to the concurrent or subsequent performance by the party benefited thereby of the covenants to be performed hereunder by such benefited party.

9.12 **Counterparts.** This Agreement may be executed by the parties in counterparts, which counterparts shall be construed together and have the same effect as if all of the parties had executed the same instrument.

9.13 **Litigation.** Any action at law or in equity arising under this Agreement or brought by any party hereto for the purpose of enforcing, construing or determining the validity of any provision of this Agreement shall be filed and tried in the Superior Court of the County of Los Angeles, State of California, or such other appropriate court in said county. Service of process on City shall be made in accordance with California law. Service of process on Developer shall be made in any manner permitted by California law and shall be effective whether served inside or outside California. In the event of any action between City and Developer seeking enforcement of any of the terms and conditions to this Agreement, the prevailing party in such action shall be awarded, in addition to such relief to which such party is entitled under this Agreement, its

reasonable litigation costs and expenses, including without limitation its expert witness fees and reasonable attorneys' fees.

9.14 **Covenant Not To Sue.** The parties to this Agreement, and each of them, agree that this Agreement and each term hereof is legal, valid, binding, and enforceable. The parties to this Agreement, and each of them, hereby covenant and agree that each of them will not commence, maintain, or prosecute any claim, demand, cause of action, suit, or other proceeding against any other party to this Agreement, in law or in equity, which is based on an allegation, or assert in any such action, that this Agreement or any term hereof is void, invalid, or unenforceable.

9.15 **Project as a Private Undertaking.** It is specifically understood and agreed by and between the parties hereto that the development of the Project is a private development, that neither party is acting as the agent of the other in any respect hereunder, and that each party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Agreement. No partnership, joint venture or other association of any kind is formed by this Agreement. The only relationship between City and Developer is that of a government entity regulating the development of private property, on the one hand, and the holder of a legal or equitable interest in such property on the other hand. City agrees that by its approval of, and entering into, this Agreement, that it is not taking any action which would transform this private development into a "public work" project, and that nothing herein shall be interpreted to convey upon Developer any benefit which would transform Developer's private project into a public work project, it being understood that this Agreement is entered into by City and Developer upon the exchange of consideration described in this Agreement, including the Recitals to this Agreement which are incorporated into this Agreement and made a part hereof, and that City is receiving by and through this Agreement the full measure of benefit in exchange for the burdens placed on Developer by this Agreement.

9.16 **Further Actions and Instruments.** Each of the parties shall cooperate with and provide reasonable assistance to the other to the extent contemplated hereunder in the performance of all obligations under this Agreement and the satisfaction of the conditions of this Agreement. Upon the request of either party at any time, the other party shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary under the terms of this Agreement to carry out the intent and to fulfill the provisions of this Agreement or to evidence or consummate the transactions contemplated by this Agreement.

9.17 **Eminent Domain.** No provision of this Agreement shall be construed to limit or restrict the exercise by City of its power of eminent domain or Developer's right to seek and collect just compensation or any other remedy available to it.

9.18 **Amendments in Writing/Cooperation.** This Agreement may be amended only by written consent of both parties specifically approving the amendment and in accordance with the Government Code provisions for the amendment of Development Agreements. The parties shall cooperate in good faith with respect to any amendment proposed in order to clarify the intent and application of this Agreement, and shall treat any such proposal on its own merits, and not as a basis for the introduction of unrelated matters. Minor, non-material modifications may be approved by the City Manager upon approval by the City Attorney.

9.19 **Corporate Authority.** The person(s) executing this Agreement on behalf of each of the parties hereto represent and warrant that (i) such party, if not an individual, is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other agreement to which such party is bound.

9.20 **Notices.** All notices under this Agreement shall be effective when delivered by United States Postal Service mail, registered or certified, postage prepaid return receipt requested; and addressed to the respective parties as set forth below or as to such other address (including electronic transmission) as the parties may from time to time mutually designate in writing by providing notice to the other party:

To City: City of Carson
701 E. Carson Street
Carson, CA 90745
Attn: City Manager

With Copy to: Aleshire & Wynder, LLP
18881 Von Karman Ave., #1700
Irvine, CA 92612
Attn: City Attorney

To Developer: Win Chevrolet Properties, LLC
2201 E 223rd Street
Carson, CA 90810
Attn: Vice President, Real Estate & Public Affairs

With Copy to: _____

9.21 **Nonliability of City Officials.** No officer, official, member, employee, agent, or representatives of City shall be liable for any amounts due hereunder, and no judgment or execution thereon entered in any action hereon shall be personally enforced against any such officer, official, member, employee, agent, or representative.

9.22 **No Brokers.** City and Developer represent and warrant to the other that neither has employed any broker and/or finder to represent its interest in this transaction. Each party agrees to indemnify and hold the other free and harmless from and against any and all liability, loss, cost, or expense (including court costs and reasonable attorneys' fees) in any manner connected with a claim asserted by any individual or entity for any commission or finder's fee in connection with this Agreement or arising out of agreements by the indemnifying party to pay any commission or finder's fee.

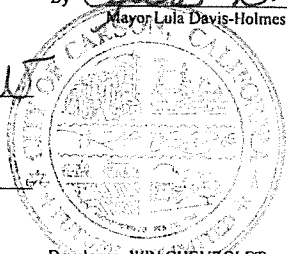
IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first set forth above.

City: CITY OF CARSON

By Lula Davis-Holmes
Mayor Lula Davis-Holmes

ATTEST:
By K. Bradshaw
~~Michael Bradshaw~~, City Clerk

APPROVED AS TO FORM:
By Sunny K. Soltani
Sunny K. Soltani, City Attorney



Developer: WIN CHEVROLET
PROPERTIES, LLC, a California
limited liability company

By: [Signature]

Its: MANAGER

By: [Signature] HANI NASSIF

Its: SECRETARY

Two corporate officer signatures required when Developer is a corporation, with one signature required from each of the following groups: 1) Chairman of the Board, President or any Vice President; and 2) Secretary, any Assistant Secretary, Chief Financial Officer or any Assistant Treasurer. DEVELOPER'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO DEVELOPER'S BUSINESS ENTITY.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first set forth above.

City: CITY OF CARSON
By _____
Mayor Lula Davis-Holmes

ATTEST:
By _____, City Clerk

APPROVED AS TO FORM:
By _____
Sunny K. Soltani, City Attorney

Developer: WIN CHEVROLET
PROPERTIES, LLC, a California
limited liability company
By: _____
Its: MEMBER
By: _____ HANI MASSIF
Its: SECRETARY

Two corporate officer signatures required when Developer is a corporation, with one signature required from each of the following groups: 1) Chairman of the Board, President or any Vice President; and 2) Secretary, any Assistant Secretary, Chief Financial Officer or any Assistant Treasurer. DEVELOPER'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO DEVELOPER'S BUSINESS ENTITY.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

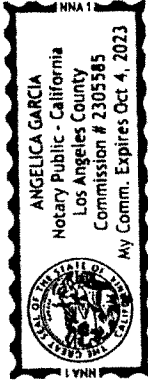
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy or validity of that document

STATE OF CALIFORNIA
 COUNTY OF LOS ANGELES

On 2/14, 2023 before me ANGELICA GARCIA personally appeared JAY HALL, proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.
 Signature: [Signature]



OPTIONAL
 Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form

CAPACITY CLAIMED BY SIGNER	DESCRIPTION OF ATTACHED DOCUMENT
<input type="checkbox"/> INDIVIDUAL <input type="checkbox"/> CORPORATE OFFICER 9) TITLE(S) _____	10) TITLE OR TYPE OF DOCUMENT _____
<input type="checkbox"/> PARTNER(S) <input type="checkbox"/> LIMITED GENERAL <input type="checkbox"/> ATTORNEY-IN-FACT <input type="checkbox"/> TRUSTEE(S) <input type="checkbox"/> GUARDIAN/CONSERVATOR <input type="checkbox"/> OTHER _____	11) NUMBER OF PAGES _____ 12) DATE OF DOCUMENT _____
15) SIGNER IS REPRESENTING: (NAME OF PERSON(S) OR ENTITY(IES)) _____ 16) SIGNER(S) OTHER THAN NAMED ABOVE _____	

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document

STATE OF CALIFORNIA

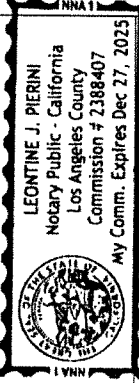
COUNTY OF LOS ANGELES

On 2/14, 2024 before me Leonidas PIERINI personally appeared Hani Hassie, proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: Leonidas Pierini



OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form

CAPACITY CLAIMED BY SIGNER		DESCRIPTION OF ATTACHED DOCUMENT	
<input type="checkbox"/> INDIVIDUAL	_____ 1) _____	_____ 2) _____	_____ TITLE OR TYPE OF DOCUMENT _____
<input type="checkbox"/> CORPORATE OFFICER	_____ LIMITED _____	_____ 3) _____	_____ 4) NUMBER OF PAGES _____
<input type="checkbox"/> PARTNER(S)	<input type="checkbox"/> GENERAL _____	_____ 5) _____	_____ 6) DATE OF DOCUMENT _____
<input type="checkbox"/> ATTORNEY-IN-FACT	_____ TRUSTEE(S) _____	_____ 7) _____	_____ 8) SIGNER(S) OTHER THAN NAMED ABOVE _____
<input type="checkbox"/> GUARDIAN/CONSERVATOR	_____ OTHER _____	_____ 8) _____	_____

SIGNER IS REPRESENTING:
(NAME OF PERSON(S) OR ENTITY(IES))

EXHIBIT "A"
LEGAL DESCRIPTION OF 223RD STREET SITE

THAT PORTION OF LOT 5 IN BLOCK "C" OF SUBDIVISION OF A PART OF THE RANCHO SAN PEDRO, (ALSO KNOWN AS DOMINGUEZ COLONY), IN WHICH THE CITY OF CARSON, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS SHOWN ON MAPS RECORDED IN BOOK 1 PAGES 601 AND 602, AND BOOK 32 PAGES 97 AND 98, OF MISCELLANEOUS RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, BOUNDED AS FOLLOWS:

ON THE NORTH BY THE SOUTHERLY LINE OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN DEED TO THE STATE OF CALIFORNIA AS RECORDED IN BOOK D-758 PAGE 676 OF OFFICIAL RECORDS OF SAID COUNTY, (NOW KNOWN AS THE SAN DIEGO FREEWAY) ON THE SOUTH BY A LINE WHICH IS PARALLEL WITH AND DISTANT NORTHERLY 50 FEET, MEASURED AT RIGHT ANGLE FROM THE CENTERLINE OF 223RD STREET AS SAID CENTERLINE IS SHOWN ON COUNTY SURVEYOR'S MAP NO. B-793, SHEET 2, ON FILE IN THE OFFICE OF THE COUNTY ENGINEER; ON THE WEST BY THE WESTERLY LINE OF SAID LOT 5; AND ON THE EAST BY A LINE WHICH IS AT RIGHT ANGLES TO SAID LAST MENTIONED CENTERLINE, AND PASSES THROUGH A POINT IN SAID CENTERLINE, DISTANT EASTERLY 1225.59 FEET FROM THE SOUTHERLY PROLONGATION OF SAID WESTERLY LINE OF LOT 5.

APN: 7315-040-013

Exhibit "A-1"
Depiction of 405 Freeway Site

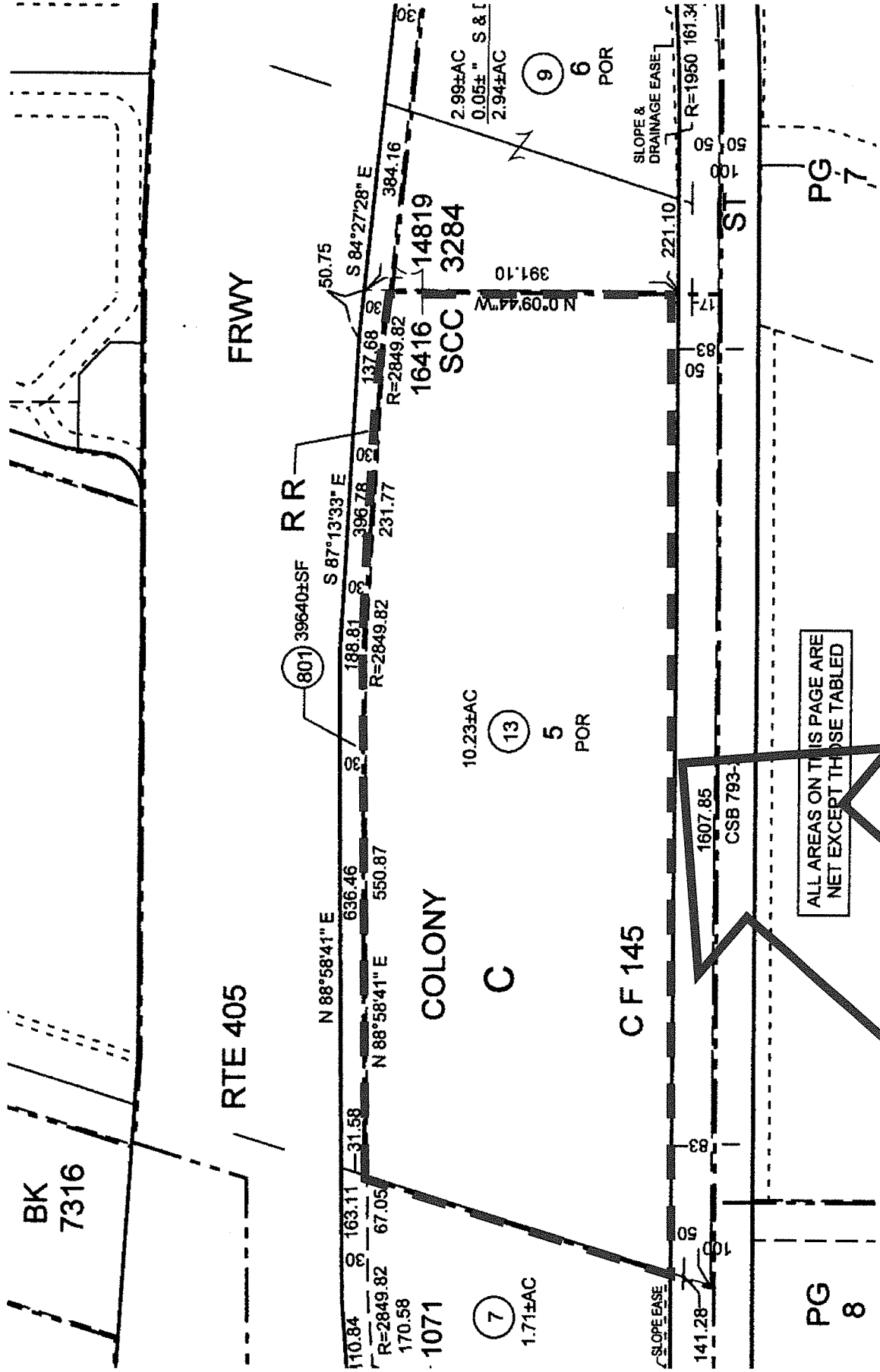


EXHIBIT "A-1"
CONTINUED

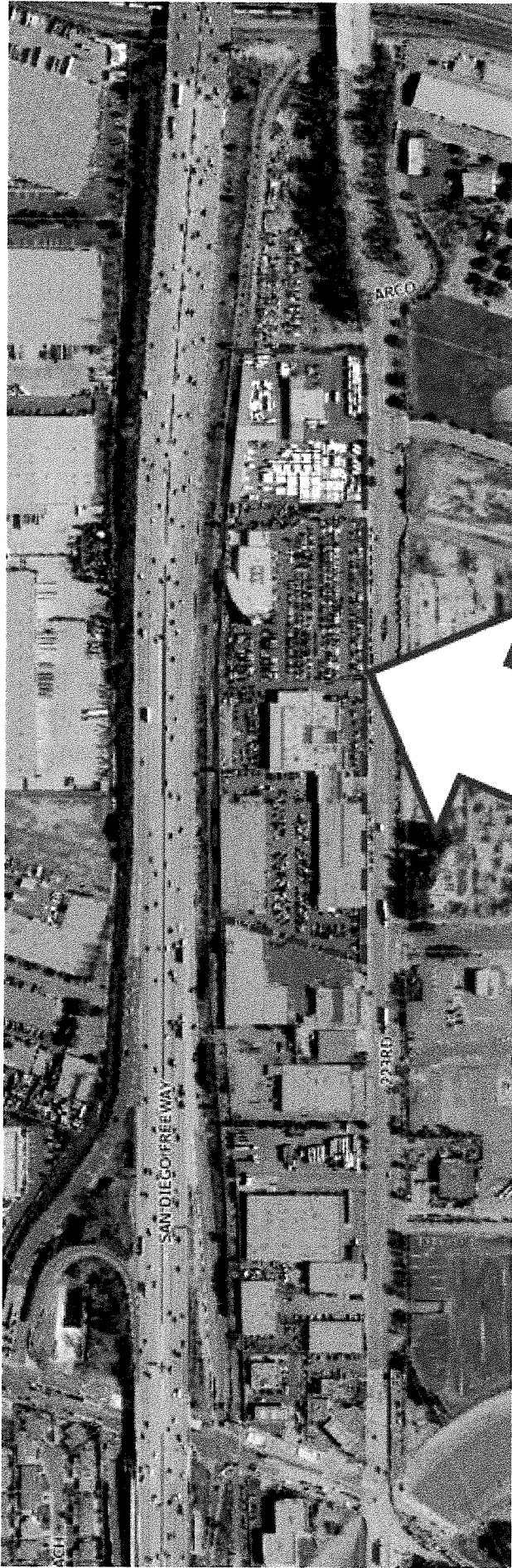


EXHIBIT "A-1"
CONTINUED



EXHIBIT "B"
MAP OF RELATIVE LOCATIONS OF EXISTING BILLBOARDS TO BE DEMOLISHED

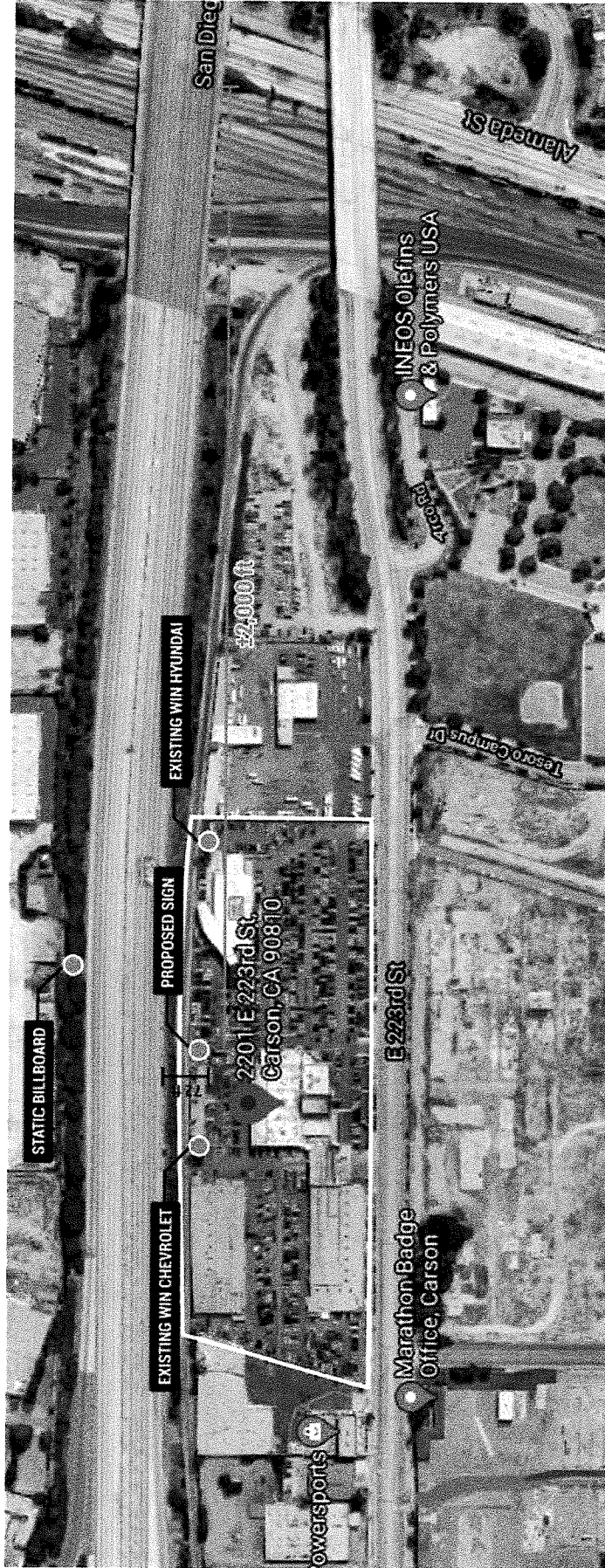
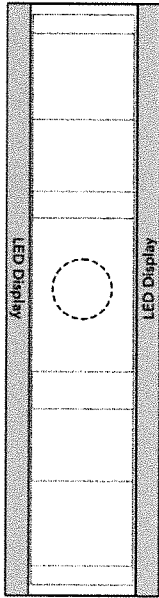
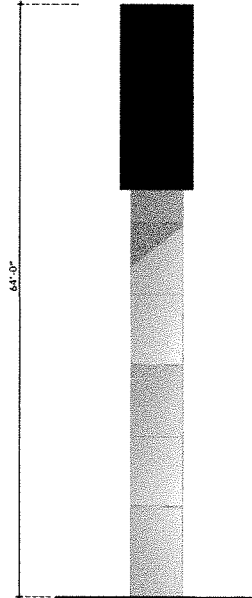


EXHIBIT "C"
DIMENSIONED ELEVATION AND LOCATION PLANS FOR REPLACEMENT DIGITAL
BILLBOARD



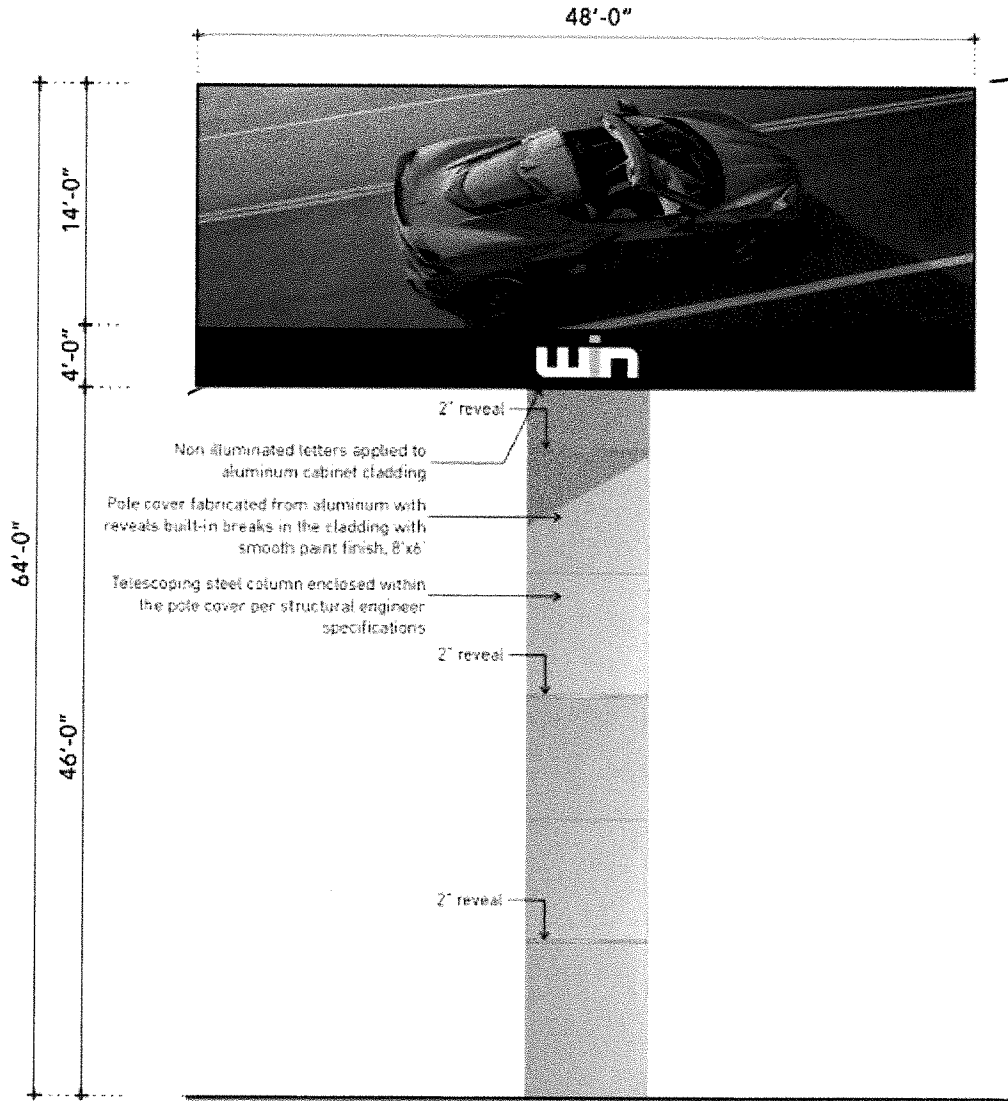
PLAN VIEW
SCALE: 1/8" = 1' - 0"



SIDE VIEW
SCALE: 1/8" = 1' - 0"

EXHIBIT "C-1"
CONTINUED

J.W



NEW DOUBLE FACE ILLUMINATED PYLON
SCALE: 1/8" = 1' - 0"

EXHIBIT "D"
SCOPE OF DEVELOPMENT AND CONDITIONS OF APPROVAL

Developer and City agree that the Project shall be undertaken in accordance with the terms of the Agreement, which include the following:

1. The Replacement Digital Billboard. Developer shall demolish and remove the Existing Signs and all debris therefrom. Developer shall then construct the Replacement Digital Billboard (Exhibit C) in the location in accordance with the terms of the Agreement. The Replacement Digital Billboard consists of one "bulletin" size freeway-oriented billboard with a height not to exceed 64' and with a total of two (2) digital display faces (each display face measuring 14' x 48') within the 405 Freeway Site at the location depicted at Exhibit B hereto.
2. Demolition and Removal of Existing Signs. Developer shall secure all demolition permits and approvals and commence the demolition and complete removal of the Existing Signs prior to the erecting of the new digital billboard.
3. Maintenance. All Project work will be undertaken as further provided in this Agreement at Article 3 at Developer's sole cost and responsibility. As required by the City at the time of Project installation and completion, Developer shall install underground all utilities necessary for the Replacement Digital Billboard, subject to the approval of Southern California Edison. The Replacement Digital Billboard shall be maintained in accordance with the conditions of approval in the Agreement and this Exhibit E.
4. Building Fees. Developer shall pay all applicable Processing Fees, as described at Section 2.5 of the Agreement, at the time that a building permit is issued for the installation of the Replacement Digital Billboard on the 405 Freeway Site. Other normal and customary fees and charges applicable to permits, and any fees and charges hereafter imposed by City in connection with the Project, shall be paid at the time due, and Development Fees paid as specified in Section 2.6.
5. Maintenance and Access. Developer, for itself and its successors and assigns, hereby covenants and agrees to be responsible for the following:
 - a. Maintenance and repair of the Replacement Digital Billboard within the 405 Freeway Site, including but not limited to, the digital display faces installed thereon, at its sole cost and expense, including, without limitation, landscaping, poles, lighting, signs and walls, in good repair, free of graffiti, rubbish, debris and other hazards to persons using the same, and in accordance with all applicable laws, rules, ordinances and regulations of all federal, State, and local bodies and agencies having jurisdiction. Project maintenance shall include, but not be limited to, the following: (i) sweeping and trash removal related to the Project; (ii) the ongoing maintenance by the Developer of the access road to the

Replacement Digital Billboard to minimize dust caused by the Project; and (iii) the repair, replacement, and repainting of the Replacement Digital Billboard structure and displays as necessary to maintain such billboard in good condition and repair.

- b. Maintenance of the Replacement Digital Billboard within the 405 Freeway Site in such a manner as to avoid the reasonable determination of a duly authorized official of the City that a public nuisance has been created by the absence of adequate maintenance of the Development.
 - c. Upon completion of removal of the Existing Signs Developer shall, at Developer's sole costs and as reasonably as possible, restore the 405 Freeway Site to a good condition that reasonably matches the surrounding landscape. Once removal of the Existing Signs and restoration of the 405 Freeway Site is complete, Developer shall have no further obligation to maintain or repair such Site.
6. No City Liability. The granting of a right of enforcement to the City does not create a mandatory duty on the part of the City to enforce any provision of this Agreement. The failure of the City to enforce this Agreement shall not give rise to a cause of action on the part of any person. No officer or employee of the City shall be personally liable to the Developer, its successors, transferees or assigns, for any Default or Breach by the City under this Agreement.
7. Conditions of Approval. The following additional conditions shall apply to the installation of the Replacement Digital Billboard and removal of the Existing Signs, which shall conform to all applicable provisions of the Carson Municipal Code (CMC) and the following conditions, in a manner subject to the approval of the Planning Officer or designee:
- a. A building permit will be required, structural calculations shall be prepared by a licensed civil engineer and approved by the City Building Official.
 - b. The size of the active copy area of each sign face display of the Replacement Digital Billboard shall not exceed a maximum area of 672 square feet with no more than 192 square feet of extensions or borders, not including decorative pole covers as depicted in Exhibit C, and shall not exceed a maximum height of 64 feet, including all extensions, from the grade level, and shall be spaced at intervals that are no less than 500 feet from any other billboard on the same side of the freeway and measured parallel to the freeway as depicted in the Site Plan and Elevation at Exhibit C approved by the City as part of the Development Approvals.
 - c. The Replacement Digital Billboard pole shall match the specifications attached in Exhibit C subject to the approval of the City's Development Services Manager or Designee.

- d. Plans and specification for the proposed installation of the Replacement Digital Billboard, shall be submitted to the City Planning and Building Departments for plan check and approval prior to the issuance of building permits.
- e. Prior to the approval of the final inspection, all applicable conditions of approval and shall be completed to the reasonable satisfaction of the City.
- f. Developer shall maintain the 405 Freeway Site and use thereof in full compliance with all applicable codes, standards, policies and regulations imposed by the City, County, State or federal agencies with jurisdiction over the facilities, unless the Project is exempt as a legal nonconforming use.
- g. Developer shall, at all times, comply with the approval for the Replacement Digital Billboard from the California Department of Transportation Outdoor Advertising Division and shall maintain acceptable clearance between the proposed billboard and Southern California Edison distribution lines.
- h. The Developer shall pay any and all applicable fees due to any public agency prior to the final issuance of the building permits.
- i. The Project activities in this Agreement shall be conducted completely upon the Site and shall not use or encroach on any operable portion of any public right-of-way.
- j. Developer shall be required to install all utilities, subject to approval by Southern California Edison, in connection with the Replacement Digital Billboard as set forth in paragraphs 3 and 7(d) of this requirement and approval upon Developer to upgrade Developer's current electrical service to the Replacement Digital Billboard. Developer shall comply with all necessary requirements pertaining to the proposed use, to the extent applicable.
- k. All graffiti shall be adequately and completely removed or painted over within 48 hours of notice of such graffiti being affixed at any portion of the Project structure.
- l. Prior to issuance of a building approval allowing the operation of the Replacement Digital Billboard, all Existing Signs shall be completely removed and the 405 Freeway Site restored to a good condition that reasonably matches the surrounding landscape, reasonable wear and tear expected.
- m. Developer shall comply with State law regarding the limitation of light or glare or such other standards as adopted by the Outdoor Advertising Association of America, Inc. (OAAA), including but not limited to, the 0.3 foot-candles limitation over ambient light levels and ensuring additional flexibility in

reducing such maximum light level standard given the lighting environment, the obligation to have automatic dimming capabilities, as well as providing the City's Planning Officer or designee with a designated Developer employee's phone number and/or email address for emergencies or complaints that will be monitored 24 hours a day/7 days per week. Upon any complaint by the City's Planning Officer or designee, Developer shall dim the display to meet these guidelines and further perform a brightness measurement of the display using OAAA standards and provide City with the results of same within 5 days of the City's complaint.

- n. Each message on the digital display faces of the Replacement Digital Billboard and New Digital Billboard shall be displayed for at least eight (8) seconds.

EXHIBIT "E"
SCHEDULE OF PERFORMANCE

ITEM OF PERFORMANCE	TIME FOR PERFORMANCE	REFERENCE
1. City's Planning Commission holds public hearing and recommends approval of Agreement and Conditions of Approval	September 28, 2021	Recitals
2. City's City Council holds hearings to approve Agreement and first and second reading of Ordinance	November 8, 2021 (1 st Reading); November 22, 2021 (2 nd Reading) provided Developer has fully executed this Agreement	Recitals
3. Effective Date of this Agreement	30 days following approval of this Agreement by its authorizing ordinance of the City Council taking effect, or the date this agreement is signed by both Developer and City, whichever is later	1.1.12
4. Developer prepares and submits to City working drawings specifications and engineering, City commences approval process	Within 150 days of Event #3	N/A
5. City to approve all construction, engineering drawings and specifications with a plan check approval and issue all necessary permits, including but not limited to, a building permit	Within 30 days of City's receipt of complete submissions pursuant to Event #4	N/A
6. Developer to submit proof of insurance to City	Prior to issuance of building permits for commencing any inspections and work on the Project	7.1.2
7. Developer pays City Year 1 Development Fees	Within 30 days of the Commencement Date	2.6

ITEM OF PERFORMANCE	TIME FOR PERFORMANCE	REFERENCE
8. Developer pays City second through 30 th installments of Development Fee if Developer receives Final Permits	Annually, on the anniversary of the Due Date	2.6
9. Developer to complete the demolition and complete removal of the Existing Signs	Prior to issuance of a building approval allowing the operation of Replacement Digital Billboard	Exhibit E, 9(1)
10. Developer to commence the development of the Replacement Digital Billboard	Within 180 days of receipt of all Development Approvals	N/A
11. Developer to complete the Replacement Digital Billboard	Within 180 days of the commencement of the construction of the billboard footing, column and head of the Replacement Digital Billboard, but extended for those Force Majeure items listed in Section 9.10	N/A

It is understood that this Schedule of Performance is subject to all of the terms and conditions of the text of the Agreement. The summary of the items of performance in this Schedule of Performance is not intended to supersede or modify the more complete description in the text; in the event of any conflict or inconsistency between this Schedule of Performance and the text of the Agreement, the text shall govern.

The time periods set forth in this Schedule of Performance may be altered or amended only by written agreement signed by both the Developer and the City. Notwithstanding any extension of the Term in the manner described in, and subject to the provisions of Section 3.5, the City Manager shall have the authority to approve extensions of time set forth in this Schedule of Performance without action of the City Council not to exceed a cumulative total of 180 days.



WINCH-1

OP ID: 0424

CERTIFICATE OF LIABILITY INSURANCEDATE (MM/DD/YYYY)
03/08/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must have **ADDITIONAL INSURED** provisions or be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Dealer Protection Group 8659 RESEARCH DRIVE Irvine, CA 92618 John Heusser	949-208-8550		CONTACT NAME: John Heusser	
			PHONE (A/C, No, Ext): 949-208-8550	FAX (A/C, No): 949-208-8560
E-MAIL ADDRESS:				
INSURER(S) AFFORDING COVERAGE				NAIC #
INSURER A: Allied World Specialty Ins				16624
INSURER B: StarStone Specialty Insurance				44776
INSURER C:				
INSURER D:				
INSURER E:				
INSURER F:				

INSURED
WIN CHEVROLET INC
DBA WIN HYUNDAI CARSON
2201 E. 223RD ST
LONG BEACH, CA 90810

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input type="checkbox"/> COMMERCIAL GENERAL LIABILITY	X	X	6203-2326-00	01/01/2022	01/01/2023	EACH OCCURRENCE \$ 1,000,000
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence) \$
	<input checked="" type="checkbox"/> Garage Liability						MED EXP (Any one person) \$
							PERSONAL & ADV INJURY \$
	GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC						GENERAL AGGREGATE \$ 3,000,000
	OTHER:						PRODUCTS - COMP/OP AGG \$
A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY	X	X	6203-2326-00	01/01/2022	01/01/2023	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
	<input checked="" type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS						BODILY INJURY (Per person) \$
	<input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY						BODILY INJURY (Per accident) \$
							PROPERTY DAMAGE (Per accident) \$
							\$
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> EXCESS LIAB			72320L220ALI	01/01/2022	01/01/2023	EACH OCCURRENCE \$ 5,000,000
	<input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE						AGGREGATE \$ 5,000,000
	DED <input type="checkbox"/> RETENTION \$ <input type="checkbox"/>						\$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						PER STATUTE <input type="checkbox"/> OTH-ER <input type="checkbox"/>
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y <input checked="" type="checkbox"/> N/A						E.L. EACH ACCIDENT \$
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE \$
							E.L. DISEASE - POLICY LIMIT \$
A	GarageKeepers			6203-2326-00	01/01/2022	01/01/2023	Limit: 2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

City of Carson its elected and appointed officials, employees, volunteers and agents are named Additional Insured as respects General Liability when required by contract subject to all terms, conditions and exclusions of the policy. GL is primary adn non-contributory. Waiver of subrogation in favor or the additional insured.

CERTIFICATE HOLDER

City of Carson
701 E. Carson Street
Carson, CA 90745

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE
John Heusser

ENDORSEMENT NO. 1

Named Insured: Win Chevrolet, Inc DBA: Win Hyundai Inc

Policy Effective Date: 01/01/2022

Policy Expiration Date: 01/01/2023

This endorsement effective: 12:01 A.M. 03/29/2022 forms a part of

Policy No: 6203-2326-00 Allied World Specialty Insurance Company

Amendatory Endorsement

In consideration of the premium shown below, it is hereby understood and agreed this endorsement is attached to and forms part of the above policy and is effective as shown above. This endorsement amends only the changes which are indicated by check in the box immediately preceding such change:

- 1. Policy is
- 2. Item(s) listed below are the policy schedule.
- 3. Name of Insured is amended as shown below.
- 4. Insured mailing address is amended as shown below.
- 5. Policy term is amended to:
- 6. Endorsement No is null and void
- 7. Description of item(s) is amended as shown below.
- 8. Limit of Liability is as shown below.
- 9. Policy Reinstated
- 10. Other, as shown below

THE ABOVE POLICY HAS BEEN AMENDED AS FOLLOWS:

The City of Carson, its elected and appointed officers, employees, volunteers, and agents are added as Additional Insured with a Waiver of Subrogation, on a Primary Non-Contributory basis for auto and general liability coverages.

City of Carson
701 E. Carson St.
Carson, Ca 90745

Breakdown:

\$	300.00 Premium
\$	0.00 Terrorism Premium
\$	0.00 CA Seismic Safety Commission F
\$	0.00 CA Auto Special Purpose Surcha
\$	<u>300.00 Grand Total</u>

Issue Date: 04/04/2022



Authorized Representative

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL NAMED INSUREDS

POLICY NUMBER 6203-2326-00	POLICY CHANGES EFFECTIVE 1/1/2022	COMPANY Allied World Specialty Insurance Company
NAMED INSURED Win Chevrolet, Inc		AUTHORIZED REPRESENTATIVE
COVERAGE PARTS AFFECTED GARAGE COVERAGE FORM		
<u>SCHEDULE OF NAMED INSUREDS (CONTINUED)</u>		
Win Hyundai, Inc Win Chevrolet Properties, LLC		

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

LOCATIONS AND OPERATIONS NOT COVERED

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

<p>Named Insured: Win Chevrolet, Inc</p> <p>Endorsement Effective Date: 3/29/2022</p>

SCHEDULE

Locations And Operations Not Covered
All locations owned and operations of Win Chevrolet Properties, LLC, not listed on this policy.
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

This insurance does not apply to the locations or operations described in the Schedule.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**WAIVER OF TRANSFER OF RIGHTS OF RECOVERY
AGAINST OTHERS TO US (WAIVER OF SUBROGATION)**

This endorsement modifies insurance provided under the following:

- AUTO DEALERS COVERAGE FORM
- BUSINESS AUTO COVERAGE FORM
- MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

<p>Named Insured: Win Chevrolet, Inc</p> <p>Endorsement Effective Date: 3/29/2022</p>

SCHEDULE

<p>Name(s) Of Person(s) Or Organization(s): City of Carson, its elected and appointed officers, employees, volunteers and agents 701 E. Carson St. Carson, CA 90745</p>
<p>Information required to complete this Schedule, if not shown above, will be shown in the Declarations.</p>

The **Transfer Of Rights Of Recovery Against Others To Us** condition does not apply to the person(s) or organization(s) shown in the Schedule, but only to the extent that subrogation is waived prior to the "accident" or the "loss" under a contract with that person or organization.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

PRIMARY AND NONCONTRIBUTORY – OTHER INSURANCE CONDITION

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM
BUSINESS AUTO COVERAGE FORM
MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

- A.** The following is added to the **Other Insurance Condition** in the Business Auto Coverage Form and the **Other Insurance – Primary And Excess Insurance Provisions** in the Motor Carrier Coverage Form and supersedes any provision to the contrary:
- This Coverage Form's Covered Autos Liability Coverage is primary to and will not seek contribution from any other insurance available to an "insured" under your policy provided that:
1. Such "insured" is a Named Insured under such other insurance; and
 2. You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to such "insured".
- B.** The following is added to the **Other Insurance Condition** in the Auto Dealers Coverage Form and supersedes any provision to the contrary:
- This Coverage Form's Covered Autos Liability Coverage and General Liability Coverages are primary to and will not seek contribution from any other insurance available to an "insured" under your policy provided that:
1. Such "insured" is a Named Insured under such other insurance; and
 2. You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to such "insured".