

## **ECONOMIC DEVELOPMENT AGREEMENT**

THIS AGREEMENT (“Agreement”) is entered into as of the date the last party executes this Agreement (the “Effective Date”), by and between the City of New Braunfels, Texas (“City”) and Lamar Advantage Holding Company (“Lamar”) OR (“Company”). Collectively, the City and the Company may be referred to as “Parties” and individually as a “Party”, acting by and through their respective authorized officers.

### **RECITALS:**

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

**WHEREAS**, Lamar has applied (or will apply) to the City for permission to convert two (2) sign panels (being Lamar Panel Numbers 80201 and 80202) into digital panels on an existing billboard located on the east side of I-35 at SH 46 at the address of 1200 N. I-35, New Braunfels, Texas 78130. The billboard panels that are to be converted to digital panels are referred to herein as the “Digital Billboard”. The conversion of the Digital Billboard as described above is sometimes referred to herein as the “Project”.

**WHEREAS**, the Company shall construct the Project and the Company shall comply substantially with the Development Standards of the City in relation to the Digital Billboard;

**WHEREAS**, the Company is willing to construct and pay for the conversion to the digital panels in exchange for the City’s approval of the Project subject to the terms and conditions of this Agreement;

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

**WHEREAS**, the City of New Braunfels wishes to encourage and to assist economic development in the City of New Braunfels and the greater New Braunfels area by utilizing the Company’s Digital Billboard to advertise proposed developments and other opportunities for commercial investment in the City of New Braunfels;

**WHEREAS**, the City of New Braunfels has an obligation to inform residents on public safety issues and emergencies and wishes to utilize the Company's Digital Billboard to alert and inform the public on such topics and events;

**WHEREAS**, the Company, in consideration of the City’s approval of the Project, has agreed to entirely remove (or cause to be entirely removed) the following four billboard structures: (1) the billboard containing two sign panels (Lamar Panel Numbers 43941 and 43942) located at the address of 2050 N. I-35, New Braunfels 78130; (2) the billboard containing two sign panels (Lamar Panel Numbers 10121 and 10122) located at the address of 209 Loop 337, New Braunfels 78130; (3) the billboard containing two sign panels (Lamar Panel Numbers 1008 and 1016) located near the intersection of SH 46 and FM 758 (Property ID No. 129603); and (4) the billboard containing two sign panels (Lamar Panel Numbers 90411 and 90412) located at the address of

2475 I-35 South, New Braunfels 78130 (the billboard removals described above in (1) – (4) being referred to herein as the “Billboard Removals”); and

**WHEREAS**, the City has the authority to enter into this Agreement and the City desires to treat all billboard companies in a fair and equal manner.

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

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

## **ARTICLE I** **DEFINITIONS**

“City” means the City of New Braunfels, a municipal corporation of the State of Texas.

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

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

“Development Standards of the City” means the development standards set forth in the applicable ordinances of the City of New Braunfels.

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

**Section 2.01 Construction Criteria/ Billboard Removals.** The Company agrees and covenants that it shall:

- a) Construct or cause to be constructed and completed within Company’s control the Digital Billboard in compliance with all City ordinances and specifications of this Agreement.
- b) The Digital Billboard shall comply with the following ambient light protections:
  1. The Digital Billboard shall utilize self-adjusting technology so the brightness adjusts with the intensity of the surrounding ambient light. The Digital Billboard must automatically adjust the sign brightness so that the brightness level of the sign is no

more than 0.3 foot-candles over ambient light conditions at a distance of 250 feet from the signs. The digital display sign must be equipped with both a dimmer control and photocell that automatically adjusts the display's intensity according to natural ambient light conditions.

a. The Digital Billboard may not increase the light level on a lot in a residential district over ambient conditions without the digital display, measured in foot-candles at the point closest to the sign that is five feet inside the residential lot and five feet above the ground.

b. Before the issuance of approval of the plans for the Digital Billboard, the Company shall provide written certification from the sign manufacturer that:

i. The light intensity has been factory programmed to comply with the maximum brightness and dimming standards in this subsection; and

ii. The light intensity is protected from end-use manipulation by password-protected software or other method satisfactory to the building official.

c) The Digital Billboard shall comply with the following additional standards:

1. *Maximum height.* The Digital Billboard shall not exceed an overall height of 42 feet above grade.

2. *Sign face.*

a. The Digital Billboard shall have no more than two sign faces.

b. Each Digital Billboard sign face shall not exceed 672 square feet, nor exceed a height of 14 feet and width of 48 feet.

3. *Sign display.*

a. Any change of images or information on the electronic sign shall not produce the illusion of scrolling, moving objects, expanding or contracting shapes, rotation or any similar effect of animation.

b. There must be a static display with no special effect changes between messages.

c. Images must remain static for at least 8 seconds. The transition from each static image may not last more than two seconds.

d. Any sign image or information shall not have a solid white background

between the time period of 30 minutes after sunset and 30 minutes before sunrise.

- e. The Digital Billboard display shall use diagnostics to monitor for problems or malfunctions and shall automatically alert the NOC (Network Operation Center) of pending issues. In the event of a significant problem or malfunction on the sign display (i.e. over bright module, flashing, etc.), the display shall be remotely turned off by an NOC technician until a service technician can be dispatched to the site to resolve the issue.

d) The Company agrees to complete the Billboard Removals within ninety (90) days following the date of the City's (and the Texas Department of Transportation's) issuance of all necessary permits and approvals for the Project (subject, however, to any force majeure delays). The Billboard Removals must be completed prior to operation of the Digital Billboard.

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

a) Maintain the Digital Billboard in good and working condition, and promptly conduct any repairs should the Digital Billboard become damaged, unsightly, or otherwise out of compliance with City ordinances or the requirements of this Agreement. In this respect, it is expressly agreed that following construction of the Digital Billboard, Company shall be entitled to maintain, repair, replace and/or reconstruct the Digital Billboard in the usual course of Company's business operations.

b) The Digital Billboard shall never be used for ad copy that is sexual, profane, lewd, or attacking in nature.

c) Advertise City of New Braunfels content on the Digital Billboard according to the terms set forth herein, without charging the City for any costs associated with doing so:

1. Lamar will promptly make available the digital display to City law enforcement and fire department for emergency messaging, to include Amber Alerts and other missing persons announcements, disaster evacuation information, and other urgent public safety topics. Such messages will be added to the advertising rotation promptly and will remain in the advertising rotation for 48 hours, unless more or less time is requested in relation to the nature of the emergency and the message; and

2. Lamar shall use best efforts to tie the Digital Billboard into the Texas state system for posting emergency messages by the Division of Emergency Management, Department of Transportation, Department of Public Safety, and others as they enter the program.

3. In addition (and separate from any emergency messaging pursuant to Section 2.02(c)1), Lamar agrees to reserve one (1) time slot per day, every day, on the Digital Billboard for the City to advertise and/or inform the public of City sponsored

events, hiring campaigns, weather updates and other City-related opportunities. The aforementioned time slot shall rotate every six (6) months between the north and south sides of the Digital Board.

**ARTICLE III**  
**BREACH AND REMEDIES**

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

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

b) that the specifications, conditions, and performance requirements herein will attach to the permit provided by the City. Therefore, in addition to any judicial enforcement through breach of contract, Lamar is also subject to enforcement through any and all remedies available through code and permit violations including, but not limited to, citations and permit revocation.

c) Each of the Parties shall have the affirmative obligation to mitigate its damages in the event of a default by the other Party.

**Section 3.02 Default.** A Party shall be deemed in default under this Agreement (which shall be deemed a breach hereunder) if such Party fails to perform, observe or comply with any of its covenants, agreements or obligations hereunder or breaches or violates any of its representations contained in this Agreement.

**Section 3.03 Notice of Default or Breach.**

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

If to the City, to:

City of New Braunfels  
Attn: City Manager  
550 Landa Street  
New Braunfels, TX 78130

With a copy to the City Attorney:

City of New Braunfels  
Attn: City Attorney  
440 Landa Street  
New Braunfels, TX 78130

**Lamar Advantage Holding Company**  
Attention: Alan Reeder, VP. General Manager  
7020 Hwy 290 East  
Austin, Texas 78723

**Section 3.04 Mediation.**

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

**ARTICLE IV**  
**COVENANTS AND DUTIES**

**Section 4.01 Company’s Covenants and Duties.**

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

- a) Company is authorized to do business and is in good standing in the State of Texas and shall remain in good standing in the State of Texas and the United States of America during any term of this Agreement.
- b) The execution of this Agreement has been duly authorized by the Company, and the individual signing this Agreement on behalf of the Company is empowered to execute such Agreement and bind the company. Said authorization, signing, and binding effect is not in contravention of any law, rule, regulation, or of the provisions of the agreement, by-laws, or of any agreement or instrument to which Company is a party to or by which it may be bound.
- c) The Company is not a party to any bankruptcy proceedings currently pending or contemplated, and Company has not been informed of any potential involuntary bankruptcy proceedings.

d) The Company agrees to obtain or cause to be obtained, all necessary permits and approvals from City and/or all other governmental agencies having jurisdiction over the Project on the Property which lie within the City limits including payment of any required permit or annual fees.

e) The Company shall obtain City approval of permits, plans and specifications for the Project improvements prior to starting any construction.

f) The Company shall have a continuing duty to cooperate with the City in providing all necessary information to assist City in complying with this Agreement; and to execute such other and further documents as may be reasonably required to comply therewith.

**Section 4.02 Representation and Warranties and Covenants by the City of New Braunfels.**

a) The City agrees to authorize the conversion of an existing static billboard to a Digital Billboard on the Property according to the specifications and requirements provided herein, so long as Company meets the requirements for such permitting required by the City. The City of New Braunfels further agrees to issue to the Company, or cause to be issued to the Company, all necessary permits or approvals for the Project. The City of New Braunfels represents and warrants that this Agreement is within the scope of its authority, and that it has been duly authorized and empowered to enter this agreement.

b) The City agrees to adhere to the Company's standard operating procedures for placing outdoor advertising and the Company's advertising content specifications.

**ARTICLE V**  
**TERMINATION**

**Section 5.01 Termination.**

This Agreement shall terminate upon the earliest occurrence of any one or more of the following: (a) the written agreement of the Parties; (b) the Agreement's expiration date (as described below in Section 5.02); (c) an uncured Default by the Company, if the City elects to terminate the Agreement for an uncured Default; (d) the Company is prevented from constructing or maintaining the Digital Billboard by reason of any final governmental law, regulation, subdivision or building restriction, order or other action, and the Company provides the City with written notice of termination due to the same; or (e) the Digital Billboard becomes entirely or partially obstructed in any way, or, in the Company's sole opinion, the location of the Digital Billboard becomes economically or otherwise undesirable, and the Company provides the City with thirty (30) days prior written notice of termination.

**Section 5.02 Agreement Expiration Date.**

This Agreement shall expire upon the twentieth (20<sup>th</sup>) anniversary of this Agreement at the option of Lamar or its successor. This Agreement will automatically renew annually thereafter unless written notice of termination is provided by Lamar or its successor prior to the expiration of the twentieth (20<sup>th</sup>) year following the Effective Date of this Agreement.

**ARTICLE VI**  
**MISCELLANEOUS PROVISIONS**

**Section 6.01 Limitations on Liability.**

No public official or employee shall be personally responsible for any liability arising under or growing out of this Agreement. The City shall not be liable for consequential damages, specifically lost profits, and any damages claimed against the City shall be limited to amounts recoverable under §271.153 of the Texas Local Government Code; provided that the parties agree that this Agreement shall not be interpreted as or otherwise claimed to be a waiver of sovereignty on the part of the City.

**Section 6.02 Force Majeure.**

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

The term “force majeure” as employed herein shall mean and refer, without limitation, to acts of God; strikes and/or lockouts; acts of public enemies, orders of any kind of the government of the United States, the State of Texas or any civil or military authority (other than the City); insurrections; riots; lightning, earthquakes, fires, hurricanes, storms, floods and other natural disasters; washouts and other weather-related delays’ restraint of government and people; civil disturbance; explosions; or other causes not reasonably within the control of the party claiming such inability.

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

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

**Section 6.03 Independent Contractors.**

It is expressly understood and agreed by all Parties hereto that in performing their services hereunder, the Company or its subcontractors or tenants at no time will be acting as agents of the



City. The Parties hereto understand and agree that the City will not be liable for any claims that may be asserted by any third party occurring in connection with services performed by the Company under this Agreement, unless any such claims are due to the fault of the City.

**Section 6.04 Interpretation.**

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

**Section 6.05 Section or Other Headings.**

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

**Section 6.06 Entire Agreement.**

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

**Section 6.07 Amendment.**

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

**Section 6.08 Successors and Assigns.**

This Agreement shall be binding on and inure to the benefit of the parties, their respective successors and assigns; provided however (i) the benefits of this Agreement in favor of the Company may not be assigned to any party, without written permission from the City.

**Section 6.09 Applicable Law and Venue.**

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

**Section 6.10 Counterparts.**

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

**Section 6.11 No Additional Waiver Implied.**

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

**Section 6.12 Parties In Interest.**

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

**Section 6.13 Severability.**

If any provision of this Agreement or the application thereof to any person or circumstances is

ever judicially declared invalid, such provision shall be deemed severed from this Agreement and the remaining portions of this Agreement shall remain in effect.

**Section 6.14 Indemnification.**

LAMAR COVENANTS AND AGREES TO FULLY INDEMNIFY AND HOLD HARMLESS, CITY AND (AND THEIR ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS, AND REPRESENTATIVES), INDIVIDUALLY AND COLLECTIVELY, FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND SUITS OF ANY KIND AND NATURE BROUGHT BY ANY THIRD PARTY AND RELATING TO COMPANY'S ACTIONS PURSUANT TO THIS AGREEMENT OR USE OF THE DIGITAL BILLBOARD.

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

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

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

FINDINGS, WHEN THE NEGLIGENT ACT OF CITY IS A CONTRIBUTORY CAUSE OF THE RESULTANT INJURY, DEATH, OR DAMAGE, AND IT SHALL HAVE NO APPLICATION WHEN THE NEGLIGENT ACT OF CITY IS THE SOLE CAUSE OF THE RESULTANT INJURY, DEATH, OR DAMAGE. COMPANY FURTHER AGREES TO DEFEND, AT ITS OWN EXPENSE AND ON BEHALF OF CITY AND IN THE NAME OF CITY ANY CLAIM OR LITIGATION BROUGHT AGAINST CITY (AND ITS ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES), IN CONNECTION WITH ANY SUCH INJURY, DEATH, OR DAMAGE FOR WHICH THIS INDEMNITY SHALL APPLY, AS SET FORTH ABOVE.

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

**COMPANY:**  
**Lamar Advantage Holding Company**

**CITY:**  
**City of New Braunfels, Texas**

By: \_\_\_\_\_  
Name: Alan Reeder  
Title: VP., General Manager  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_