

## **AGREEMENT REGARDING APPLICATION PROCESSING COSTS**

THIS AGREEMENT REGARDING COST OF APPLICATION PROCESSING ("AGREEMENT") is made as of \_\_\_\_\_, 2024, by and among Advanced Air LLC, a California corporation ("DEVELOPER ") and the City of Hawthorne, a California municipal corporation and general law city ("CITY").

### **Recitals**

A CITY is a Municipal Corporation organized and existing under the laws of the State of California.

B. DEVELOPER desires to develop a two electronic billboard structures ("PROJECT") one located at 12208 Crenshaw Blvd and the other at 12016 Prairie Ave. ("SITES") both located in the CITY.

C. DEVELOPER desires to enter into this Cost reimbursement AGREEMENT with the CITY to subsidize the CITY's need to hire Kimley-Horn and Associates, Inc. ("CONSULTANT") to assist the CITY with CEQA analysis related to the PROJECT, as well as other expenses required for public hearings and staff hours devoted to the PROJECT.

D. DEVELOPER is willing to reimburse the CITY for its actual costs of such CONSULTANT, expenses, and staff hours, subject to the terms of this AGREEMENT.

NOW, THEREFORE, the Parties agree as follows:

### **AGREEMENT**

1. Engagement of CONSULTANT. The Parties acknowledge that the CITY will engage Kimley-Horn and Associates, Inc. to serve as the CONSULTANT to the CITY for purposes of CEQA analysis and for preparation of any necessary CEQA documents.

2. Actual expenses related to public hearing(s). The parties acknowledge that the CITY will incur expenses related to the holding of at least one public hearing, and that these expenses will be reimbursed by DEVELOPER in lieu of an application fee.

3. Actual expenses related to staff hours. The parties acknowledge that the CITY will incur expenses related to staff time dedicated to processing DEVELOPER's application, and that these expenses will be reimbursed by DEVELOPER at the fully-burdened rate for each staff person so engaged, in lieu of an application fee.

4. Deposit of FUNDS. Upon execution of this AGREEMENT, DEVELOPER shall deposit with the CITY the amount of \$40,000.00 ("FUNDS"). Unless otherwise agreed to by DEVELOPER, the CITY may use the FUNDS only for 1) payment of invoices from the CONSULTANT for CEQA analysis and preparation of necessary documents pursuant to the procedures set forth in this AGREEMENT, 2) actual public hearing and reporting costs, and 3) actual cost of staff hours dedicated to the PROJECT. If the CITY anticipates that these tasks will

exceed the initial \$40,000.00 deposit, the CITY may seek two (2) additional deposits of \$20,000.00 each, with the total deposit by DEVELOPER not to exceed \$80,000.00. In lieu of making such additional deposit, DEVELOPER may choose to terminate this AGREEMENT pursuant to Section 3(b) of this AGREEMENT.

5. CEQA analysis and Associated Reports

(a) Upon deposit of the FUNDS with the CITY, the CITY shall direct the CONSULTANT work on necessary CEQA analysis and documents. Subject to the understanding set forth in subdivision (d) of this Section, the CITY shall endeavor to provide DEVELOPER regular updates on CONSULTANT's progress, however, DEVELOPER acknowledges that the CONSULTANT may not be able to deliver their work on this schedule and there shall be no penalty to the CITY if it cannot provide these documents on this schedule. Thereafter, the CITY will work with DEVELOPER in good faith to negotiate and finalize all necessary documents as expeditiously as possible.

(b) At any time while this AGREEMENT is in effect, the CITY and DEVELOPER understand that either the CITY or DEVELOPER may elect to terminate this AGREEMENT and terminate the CONSULTANT's work. In such event, the Parties shall proceed in accordance with Section 4(c) below.

(c) Nothing in this AGREEMENT should be interpreted as a commitment by the CITY or by its City Council to approve any documents prepared under this AGREEMENT or any other documents prepared by CONSULTANTS.

(d) Part of the purpose of this AGREEMENT is to permit the CITY to engage the CONSULTANT at DEVELOPER's expense, nothing in this AGREEMENT shall be interpreted as a commitment by the CITY to approve a future project related to the SITES. DEVELOPER specifically acknowledges that this AGREEMENT does not guarantee an approval of this or for any future projects on the SITES, and that any potential denial does not obviate DEVELOPER's obligations under this AGREEMENT.

6. Payment of Legal Fees and Expenses

(a) Upon receipt of each invoice from the CONSULTANT, the CITY will provide a copy of such invoice to DEVELOPER.

(b) If within 10 days of the CITY transmitting an invoice to DEVELOPER, DEVELOPER notifies the CITY that it objects to a charge on such invoice, the CITY and DEVELOPER will confer to resolve such objections. Otherwise, DEVELOPER will be deemed to have approved the invoice and the CITY may withdraw from the FUNDS in the amount of the approved invoice for payment.

(c) At such time as the CITY and DEVELOPER agree the CONSULTANT's obligations are complete, either party may elect to terminate this AGREEMENT as provided in Section 3(b) above. The CITY shall direct the CONSULTANT to prepare final invoices reflecting any remaining fees and expenses due to the

CONSULTANT. Upon approval and payment of such final invoice in accordance with the process set forth in Section 4(a) above, the CITY shall, within ten (10) days thereafter, provide to DEVELOPER a final accounting of the FUNDS, and shall refund to DEVELOPER the unused balance of the FUNDS.

(d) Nothing in this AGREEMENT should be interpreted as an agreement by the CITY to commit itself to authorize work by the CONSULTANT that would obligate the CITY to make payments to the CONSULTANT in excess of the amount actually deposited by DEVELOPER pursuant to this AGREEMENT.

7. Termination. Unless the Parties otherwise agree, this AGREEMENT shall automatically terminate upon the distribution of all of the FUNDS in accordance with the terms of this AGREEMENT.

8. Defaults. In the event of a default by either Party under this AGREEMENT, the non-defaulting Party shall be entitled to all of its remedies at law or in equity. However, in no event shall the CITY's financial obligations to DEVELOPER under this AGREEMENT exceed a full refund of the amount paid by DEVELOPER under this AGREEMENT.

9. General Provisions.

(a) Notices. All notices or other communications required or permitted to be given hereunder shall be in writing, shall be addressed as provided below and shall be considered as properly given (i) if delivered in person, (ii) if sent by overnight delivery service providing proof of delivery, (iii) if mailed by first-class United States mail, postage prepaid, registered or certified with return receipt requested, or (iv) if sent by electronic mail, with receipt confirmed. Notice so given shall be effective upon receipt by the addressee; provided, however, that if any notice is tendered to an addressee and the delivery thereof is refused by such addressee, such notice shall be effective upon tender. For the purposes of notice, the addresses of the parties shall be as noted below; provided that any party shall have the right to change its address for notice hereunder by giving written notice to the other parties. The initial addresses of the parties are as follows:

To DEVELOPER Corporation:

Advanced Air LLC  
12101 Crenshaw Blvd., Ste 100  
Hawthorne, CA 90250  
Email: dsandusky@jetcenterla.com

To CITY:

4455 West 126th Street  
Hawthorne, CA 90250  
ATTN: Planning Dept

(b) Governing Law: Interpretation. This AGREEMENT shall be governed by and construed in accordance with the internal laws of the State of California. As all parties are represented by counsel and as all parties have equal negotiating power, there shall be no construction in favor of any party due to the fact that counsel for the other party was responsible for the drafting of the documents.

(c) Counterparts. This AGREEMENT may be executed and delivered by email transmission, and in more than one counterpart, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

(d) Severability. If any provision of this AGREEMENT shall be held to be invalid, illegal or unenforceable, the same shall not affect any other provision of this AGREEMENT, but this AGREEMENT shall be construed in a manner which, as nearly as possible, reflects the original intent of the parties.

(e) Amendment and Modification. This AGREEMENT may be amended or modified only by written agreement executed by the Parties.

(f) Waiver. Any waiver of any of the provisions or conditions of this AGREEMENT or any of the rights of a party hereto shall be valid only if set forth in an instrument in writing signed by the party granting such waiver. Any waiver or failure to insist upon strict compliance with any obligation, covenant, agreement or condition shall not operate as a waiver of any other provision.

(g) Binding Effect. This AGREEMENT shall inure to the benefit of and be binding upon the parties, their legal representatives, successors, and permitted assigns.

(h) Entire Agreement. This AGREEMENT sets forth the entire understanding and agreement of the Parties hereto relating to the FUNDS and supersedes any and all other understandings, negotiations or agreements relating thereto.

