

## AGREEMENT

**THIS AGREEMENT** ("Agreement") is made and entered into this \_\_\_\_\_ day of November, 2018, by and between the **VILLAGE OF ROMEOVILLE**, an Illinois municipal corporation and home rule unit of local government, ("Village") and **BRT OUTDOOR, LLC**, an Illinois limited liability company ("BRT").

## RECITALS

**WHEREAS**, Village has previously entered into an agreement with Outdoor Impact, LLC dated as of June 5, 2013 and amended as of May 7, 2014 (collectively, the "Original Agreement"), concerning the installation and operation of a digital video display multiple message sign ("Video Panel") on a Village owned Community Identification Display Site at the location described in Exhibit A (the "Route 53 Site"), a copy of which is attached hereto; and

**WHEREAS**, BRT Outdoor LLC is the successor in interest to Outdoor Impact, LLC, and holds all rights of and is responsible for all obligations of Outdoor Impact, LLC under the Original Agreement; and

**WHEREAS**, Village has, subsequent to the Execution of the Original Agreement, acquired an additional Community Identification Display Site at the location described in Exhibit B (the "Renwick and Weber Site"), a copy of which is attached hereto; and

**WHEREAS**, the Route 53 Site and the Renwick and Weber Site are sometimes collectively hereinafter referred to as the Village Display Sites; and

**WHEREAS**, the Village has installed a Community Identification Display at the Route 53 Site, and is in the process of installing a Community Identification Display at the Renwick and Weber Site; and

**WHEREAS**, BRT desires to continue to use and operate the Video Panel contemplated in the Original Agreement, and upon the terms and conditions hereinafter set forth, which Village and BRT acknowledge to be substantially the same as the terms contained in the Original Agreement; and

**WHEREAS**, BRT further desires to install a Video Panel on the Community Identification Display located at the Renwick and Weber Site, all upon the terms and conditions hereinafter set forth; and

**WHEREAS**, among other things, the terms and conditions hereinafter set forth include provide for certain rights of the Village as hereinafter set forth to display messages on the Video Panels installed at the Route 53 Site and to be installed at the Renwick and Weber Site; and

**WHEREAS**, the Village has determined that the proposed use of the Village Display Sites in the manner hereinafter set forth will provide a public benefit by allowing

the Village to better notify its residents and visitors of local public events, facilities and services and in providing emergency and civil defense notifications;

***NOW, THEREFORE, THE VILLAGE AND BRT AGREE as follows:***

**1. USE OF VILLAGE DISPLAY SITES**

Subject to BRT's compliance with this Agreement, the Village hereby grants BRT the right to install and operate Video Panels at the Village Display Sites for the purpose of conducting outdoor advertising, public service messaging and emergency and civil defense notifications, subject to the terms and conditions of this Agreement.

This Agreement shall not be construed so as to grant BRT an interest in any real property of the Village.

**2. TERM**

The right to install and operate the Video Panels at the Village Display Sites shall commence on the date of execution of this Agreement as hereinabove specified (the "Commencement Date") and shall continue until December 31, 2038 for the Route 53 Site(the "Route 53 Expiration Date"), and shall continue until December 31, 2038 (the "Renwick and Weber Expiration Date"). This Agreement shall terminate as to the Renwick and Weber Site if installation of the Video Panel at the Renwick and Weber Site is not completed within one year from the date of execution of this Agreement.

The Video Panels installed at the Village Display Sites by BRT or its predecessor shall be removed by BRT from the relevant Village Display Site at its expense upon the expiration or termination of this Agreement as to either of the Village Display Sites.

**3. VILLAGE USE OF VIDEO PANELS**

BRT intends to display multiple messages on each Video Panel in a fixed rotation of not less than 10 seconds duration per image. During the effective term of this Agreement the Village shall have the right to at least one of every eight of the positions in the display rotation ("Base Position") for Village content. In addition, the Village's use shall be increased to one of every four of the positions in the rotation ("Additional Position") if the Additional Position has not been sold for value to a third party in the ordinary course of business. The Village's positions in the rotation shall remain fixed and shall not be reduced during certain periods of the day or week, other than when necessary to revert to the Base Position due to the unavailability of the Additional Position.

BRT shall provide the Village with the means to temporarily assume control of the content displayed on the Video Panels in order for the Village to provide information to the public concerning "Emergencies" and "Civil Defense Incidents." Emergencies shall include severe weather alerts and emergency police alerts. Civil Defense Incidents shall include acts of war against the United States or emergencies associated with acts of terrorism.

BRT shall not charge the Village for the use of the Video Panels.

BRT acknowledges that the Village acquired title to the Renwick and Weber Site pursuant to a quitclaim deed recorded as Document No. \_\_\_\_\_ with the Will County Recorder's office (the "Deed"), and that the Deed contains certain restrictions to which the Village's ownership and use of the Renwick and Weber Site are subject, including but not limited to the restriction that the Renwick Romeoville Association, the grantor of the Renwick and Weber Site shall retain the right to display a digital message in one of every eight positions in the Display Rotation. BRT shall provide Renwick Romeoville Association with right to display digital messages consistent with the foregoing restriction, and shall otherwise comply with all other restrictions set forth in the Deed as the same may apply to BRT's performance under this Agreement. BRT further acknowledges that the signage rights to be provided to the Renwick Romeoville Association under the foregoing deed restriction are in addition to the signage rights to be provided to the Village as hereinabove set forth in this Section 3.

BRT acknowledges that a portion of the property immediately adjacent to the Renwick and Weber Site is anticipated to be developed in the immediate future with a new restaurant. Upon the commencement of construction of the proposed new restaurant project, BRT shall provide advertising to the restaurant during the construction process until thirty (30) days after the restaurant open to the public at a rate of one of every sixteen positions in the display rotation, at no cost or charge to the Village or to the restaurant owner/operator.

#### **4. DESIGN AND INSTALLATION OF THE VIDEO PANELS**

A. Route 53 Site. Village and BRT acknowledge that pursuant to the Original Agreement, BRT has heretofore installed a Video Panel at the Route 53 Site as depicted in Exhibit C, a copy of which is attached hereto, and that the future use and maintenance of the same shall be as set forth in this Agreement. BRT acknowledges that in consideration of the Village's execution of this Agreement, BRT shall, not later than contemporaneously with its commencement of the construction and installation of the Video Panel at the Renwick and Weber Site, contribute to the Village the sum of \$5,000.00 for the Village's use in defraying the cost of additional landscaping at the Route 53 Site to be installed by Village.

B. Renwick and Weber Site. Village hereby approves BRT's construction of a Video Panel, associated Village identification signage and necessary supporting appurtenances on the existing sign structure located on the Renwick and Weber Site, at the location depicted in and consistent with the visual depiction and plans and specifications included within Exhibit D, a copy of which is attached hereto.

C. General Provisions. Except as otherwise expressly provided for herein, BRT shall submit the plans and specifications for all work to be performed on the Route 53 Site or the Renwick and Weber Site to the Village prior to the performance thereof, and shall not attach the Video Panels or any fixtures, equipment or other items to

improvements installed by the Village or existing at either of such sites without the prior written consent of the Village Manager. BRT, at its expense, shall obtain all required permits, licenses and approvals prior to commencing construction of the Video Panels. All work is to be done in accordance with all applicable Village ordinances, including prevailing wages if applicable. The Village reserves the right to impose requirements in connection with all work undertaken by BRT, including without limitation, requirements that BRT: (i) submit for the Village's prior written approval detailed plans and specifications prepared by licensed and competent design professionals, (ii) submit for the Village's prior written approval the names, addresses concerning all contractors, subcontractors and suppliers, (iii) obtain and post permits and additional insurance, (iv) submit contractor, subcontractor and supplier lien waivers, and (v) comply with such other requirements as the Village may impose concerning the manner and times in which such work shall be done and other aspects of the work. All work undertaken by BRT and its agents or contractors shall be performed: (i) in a workmanlike manner, (ii) only with materials that are high quality and free of material defects, (iii) strictly in accordance with plans and specifications approved the Village in advance in writing, (iv) diligently to completion and so as to cause the least possible interference with Village operations, and (v) in compliance with all administrative regulations promulgated by IDOT and other provisions of this Agreement.

## **5. MAINTENANCE OF THE VIDEO PANELS**

BRT shall, at its expense, maintain the Video Panels in good condition and repair and in a workmanlike condition. This maintenance shall include, but shall not be limited to, the prompt repair, replacement or removal of damaged, inoperable or malfunctioning Video Panels. BRT shall regularly inspect the Village Display Sites to determine whether maintenance of the Video Panels is necessary.

In the event the Village becomes aware of the need for maintenance at one or more of the Village Display Sites in connection with BRT's use thereof, the Village shall notify BRT. BRT shall diligently respond within fourteen (14) business days to the Village's notice and shall inspect the subject location with qualified personnel to determine the nature and scope of the required maintenance activities. In the event that BRT fails to perform necessary maintenance within thirty (30) days of initial notice, the Village may take undertake such maintenance as it may deem reasonably necessary. Any costs incurred by the Village in this regard shall be reimbursed by BRT within fourteen days of a Reimbursement Invoice issued by the Village.

## **6. TAXES**

BRT shall be responsible for and shall timely pay any and all taxes that may arise through its use or occupancy of the Village Display Sites or any other rights conferred hereunder. This obligation includes, but is not limited to, special taxes, special assessments, general real estate taxes and any statutory interest, penalties or fees related to any of the foregoing. It shall be the duty of BRT to ascertain whether or not taxes are due and to timely pay the same. BRT shall not permit or suffer any lien of taxes to encumber Village's title to Village Property. In the event BRT fails to pay any

tax when due, the Village may, in addition to any other remedy the Village may have, pay said tax and recovers the same from BRT.

**7. CONDITION OF PREMISES**

BRT agrees to accept the Video Panel installation locations on the Village Display Sites "as is", without any agreements, representations, understandings or obligations on the part of the Village to perform any alterations, repairs or improvements thereto.

**8. LIENS**

BRT shall keep any Village Property associated with any work by or for BRT free from any mechanics lien or similar liens and encumbrances. BRT shall remove any such claim, lien or encumbrance by bond or otherwise within fourteen days after notice by the Village. If BRT fails to do so, the Village may pay the amount or take such other action as the Village deems necessary to remove such claim, lien or encumbrance, without being responsible for investigating the validity thereof. Nothing contained in this Agreement shall authorize BRT to do any act which shall impair the Village's title to the any Village property.

**9. USE AND OPERATING REQUIREMENTS**

**A. Use; Compliance with Laws.**

BRT shall use the Village Display Sites for the purpose specified in this Agreement and for no other purpose whatsoever, subject to and in compliance with all other provisions of this Agreement, and, in the case of the Renwick and Weber Site, subject to and in compliance with all restrictions contained within the Deed. BRT shall comply with all applicable laws and ordinances relating to its use of Village property, including without limitation, health, safety and building codes, zoning ordinances and all IDOT regulations and permit requirements pertaining to outdoor advertising or construction in or near a State highway.

**B. Required Operations.**

BRT shall conduct its business at all times in a professional and businesslike manner consistent with reputable business standards and practices and in compliance with applicable law, codes and ordinances.

**C. Prohibited Uses.**

The Video Panels shall not be used for the display, promotion or advertisement of obscenity, sexually oriented businesses, specified anatomical areas or specified sexual activities as defined in the Village Zoning Ordinance or other activities not suitable for underage persons including, but not limited to, lingerie shows, mud or jello wrestling, wet T-shirt contests, bikini or go-go dancing, strip tease dancing, tattoo parlors, bathhouses, tobacco, guns and ammunition, birth control, alcohol (except for

sponsored events) or similar forms of products or entertainment. The Video Panels may not be used for the display, promotion or advertisement of acts, images or statements that unlawfully discriminate based on race, color, national origin, disability, gender, sexual orientation, religion or other legally protected status. In order to avoid the inadvertent suggestion of Village endorsement thereof or opposition thereto, the Video Panels may not be used for the display, promotion or advertisement of political candidates, political action committees, political parties, public questions or issues of recognized political or social debate including but not limited to abortion, gun control, immigration, war or other public policies.

#### **10. UTILITIES**

BRT shall provide all utilities it may require at its sole expense and: (i) make application in its own name for all utilities, (ii) comply with all utility company regulations for such utilities, including requirements for the installation of meters, and (iii) obtain such utilities direct from, and pay for the same when due directly to, the applicable utility company. The term "utilities" for purposes hereof shall include but not be limited to electricity, cable television, internet and data services, telephone and other communication and alarm services, and all taxes or other charges thereon. BRT shall install and connect all equipment and lines required to supply such utilities to the Village Display Sites.

#### **11. INSURANCE, SUBROGATION, AND WAIVER OF CLAIMS**

##### **A. Required Insurance.**

BRT and all of its contractors shall maintain during the term of this Agreement: (i) commercial general liability insurance, with a contractual liability endorsement covering BRT's indemnity obligations under this Agreement, and with limits of not less than \$1,000,000 combined single limit for personal injury, bodily injury or death, or property damage or destruction (including loss of use thereof) per occurrence (ii) casualty insurance covering the Video Panels and other BRT property located on the Village Display Sites in an amount reasonably calculated to replace or repair such items or to permit BRT to continue or resume operations in substantially the same manner as preceded the loss and (iii) workers' compensation insurance as required by statute. BRT's insurance shall be primary, and any insurance maintained by the Village or any other additional insured hereunder shall be excess and noncontributory.

BRT shall further maintain automobile liability insurance with coverage of not less than \$1,000,000.00 for personal injuries or death per occurrence and \$1,000,000.00 for property damage per occurrence.

All insurance coverage provided under this Agreement shall expressly provide that it is primary and noncontributory to any insurance coverage maintained by the Village, and shall waive any rights of recovery against the Village. Copies of all policies of insurance, certificates of insurance and endorsements reflecting the coverages required under this Agreement shall be provided to the Village prior to any provision of

services by BRT. In the event that the foregoing documentation is not provided within ten (10) business days from the date of Village approval of this Agreement, Village may terminate this Agreement.

**B. Certificates, Subrogation and Other Matters.**

BRT shall provide the Village with certificates evidencing the coverage required hereunder (and, with respect to liability coverage showing the Village as additional insured). BRT shall provide such certificates prior to the Commencement Date. BRT shall provide renewal certificates to the Village at least thirty (30) days prior to expiration of such policies. The parties mutually hereby waive all rights and claims against each other for all losses covered by their respective insurance policies, and waive all rights of subrogation of their respective insurers. The parties agree that their respective insurance policies are not, nor shall be, endorsed so that such waivers of subrogation shall affect their respective rights to recover thereunder.

**12. RESTORATION OF VILLAGE DISPLAY SITES**

At the expiration or earlier termination of this Agreement, BRT shall, at its expense, remove the Video Panels and shall restore each Village Display Site and Community identification Displays to their pre-existing condition.

**13. ASSIGNMENT**

BRT shall not, without the prior written consent of the Village, (i) assign, mortgage, pledge, hypothecate, encumber, permit any lien to attach to or otherwise transfer, this Agreement or any interest hereunder, by operation of law or otherwise, or (ii) permit the use of the Village Display Sites by any parties other than BRT. Any transfer made without complying with this Agreement shall, at the Village's option, be null, void and of no effect (which shall not be in limitation of the Village's other remedies). BRT has the right to assign to company of like or equal financial condition. Assignment shall not be unreasonably withheld.

**14. RIGHTS RESERVED BY THE CITY**

The Village reserves all rights to control or modify the Community Identification Displays and the Village Display Sites as it sees fit, which rights may be exercised without subjecting the Village to claims for damages or equitable relief: Village will not erect any signs poles or other like obstructions that would obstruct the sight lines of the sign within 500 feet of the display. Subject to the preceding sentence, the Village will use its best efforts to prevent the construction or placement of signs, poles or like structures within 500 feet of a Village Display Site that would obstruct the view of Video Panel thereon, but nothing herein shall be deemed to prevent the Village from taking any actions deemed necessary by the Village to satisfy its legal obligations or to protect and promote public safety.

This Agreement may be terminated by the Village with respect to particular Village Display Sites, without compensation to BRT, in the event the Village determines

that the location is better used for other public purposes. In the event that the Village terminates this Agreement as to one or more Village Display Sites in accordance with the preceding sentence, the Village shall offer the use of a comparable replacement site (based on traffic counts and visibility), provided, however, that (i) BRT shall be solely responsible for any and all expenses and costs of relocating signage to such a replacement site and (ii) Village's obligation to offer BRT a comparable site shall apply only to property owned in fee simple by the Village as of the date of such a termination, and nothing herein shall obligate the Village to make utility, roadway or other right of way available to BRT in the event of such a termination, or to acquire any property or rights in any property not owned as of the date of such a termination. Notwithstanding the foregoing, if a site that is owned fee simple by the Village is not available, the Village will also use its best efforts to assist BRT in finding a suitable private property replacement site, including but not limited to: (1) providing staff assistance with any and all necessary approval processes required for such location; (2) support of BRT in securing any and all required permits, plans and specifications; and (3) assist BRT as needed in its efforts to secure a private property lease if necessary.

## **15. VILLAGE'S REMEDIES**

### **A. Default.**

The occurrence of any or more of the following events shall constitute a "Default" by BRT and shall give rise to the Village's remedies set forth in paragraph B, below: (i) failure to provide the Base Position, or Additional Position when available, in accordance with this Agreement, (ii) failure to observe or perform any term or condition of this Agreement, unless such failure is cured within any period of time following notice expressly provided in other Articles hereof, or otherwise within a reasonable time, but in no event more than thirty (30) days following notice, (iii) (a) making by BRT of any general assignment for the benefit of creditors, (b) filing by or against BRT of a petition to have BRT adjudged a bankrupt or a petition for reorganization or arrangement under any Law relating to bankruptcy or insolvency, (c) appointment of a trustee or receiver to take possession of substantially all of BRT's assets located on Village property or of BRT's interest in this Agreement, (d) attachment, execution or other judicial seizure of substantially all of BRT's assets located on Village Property or of BRT's interest in this Agreement. The notice and cure periods provided herein are in lieu of, and not in addition to, any notice and cure periods provided by Law.

### **B. Remedies.**

If a Default occurs, and provided the Default is not timely cured, the Village shall have the right to terminate this Agreement upon thirty (30) days written notice.

Whether or not the Village elects to terminate this Agreement, the Village shall also be entitled to damages attributable to BRT's default.

The Village shall have all other rights and remedies available under law.



**C. The Village's Cure of BRT Defaults.**

If BRT fails to perform any obligation under this Agreement for thirty (30) days after notice thereof by the Village, the Village shall have the right (but not the duty), to perform such obligation on behalf and for the account of BRT. In such event, BRT shall reimburse the Village within thirty (30) days for all expenses incurred by the Village in performing such obligation.

**16. INDEMNIFICATION**

BRT shall, at its sole cost and expense, defend, indemnify and hold harmless the Village from and against any and all claims, demands, liabilities, damages, judgments, costs and expenses, including without limitation, court costs and attorneys' fees, arising from this Agreement or BRT's use of Village property.

The Village shall not be liable to BRT for any reason in the event that BRT's use of the Village Display Site is impaired, limited, modified or prohibited on account of legal claims or proceedings asserted against the Village or BRT, or from the settlement thereof by the Village.

The Village specifically reserves any privileges, defenses or immunities it may have under law.

**17. HAZARDOUS MATERIALS**

BRT shall not use, store, maintain, handle, dispose, release or discharge any "Hazardous Material" as defined in any applicable law or regulation upon or about Village property, or permit BRT's employees, agents, contractors or invitees to engage in such activities upon or about Village property.

**18. NO WAIVER**

No provision of this Agreement will be deemed waived by either party unless expressly waived in writing. No waiver shall be implied by delay or any other act or omission of either party. No waiver by either party of any provision of this Agreement shall be deemed a waiver of such provision with respect to any subsequent matter relating to such provision, and the Village's consent respecting any action by BRT shall not constitute a waiver of the requirement for obtaining the Village's consent respecting any subsequent action.

**19. NOTICES**

Every notice, demand or other communication given by either party to the other party with respect to this Agreement shall be in writing and shall not be effective for any purpose unless the same shall be served personally or by United States registered or certified mail, return receipt requested, postage prepaid, addressed as follows or to such other address as BRT or the Village may from time to time designate by notice:

VILLAGE OF ROMEOVILLE:      BRT OUTDOOR, LLC:

Village of Romeoville  
1050 West Romeo Road  
Romeoville, Illinois, 60441

BRT Outdoor, LLC  
P.O. Box 5097  
Naperville, IL 60567

**20.    MISCELLANEOUS**

A.      Each of the terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective heirs, executors, administrators, guardians, custodians, successors and assigns, subject to the provisions hereof

B.      This Agreement shall not be recorded by BRT.

C.      This Agreement shall be governed by the Laws of the State of Illinois.

D.      No provision hereof, or act of either party hereunder, shall be construed as creating the relationship of principal and agent, or as creating a partnership, joint venture or other enterprise, or render either party liable for any of the debts or obligations of the other party, except under any indemnity provision of this Agreement.

E.      This Agreement has been mutually negotiated by the Village and BRT and any ambiguities shall not be interpreted in favor of either party.

F.      All references to any Exhibits attached hereto shall be deemed to incorporate such Exhibits into this Agreement as a part thereof as if fully set forth herein.

G.      This Agreement, upon its full execution by the parties, shall supersede and replace the Original Agreement, provided, however, that to the extent that Outdoor Impact LLC was or would have been obligated to indemnify the Village for any matter arising under the Original Agreement, BRT shall be liable to indemnify the Village for any such matter arising under the Original Agreement, in accordance with the provisions of Section 16 hereof.

***IN WITNESS WHEREOF***, the parties have caused this Agreement to be signed under seal by their respective representatives designated below, as of the day and year first above written.

***VILLAGE OF ROMEOVILLE,  
a Municipal Corporation,***

***BRT OUTDOOR, LLC  
An Illinois limited liability company***

By: \_\_\_\_\_

\_\_\_\_\_

**ATTEST:** \_\_\_\_\_  
*Village Clerk*