

LEASE AGREEMENT

This LEASE AGREEMENT ("Agreement") is dated as of the ____ day of November, 2024 ("Effective Date") by and between the CITY OF FONTANA, a California municipal corporation ("City") and KNIGHT SUNRISE FORD, a California corporation ("Auto Center") (each individually a "Party", and collectively the "Parties"), and is made with reference to the following facts:

RECITALS

- A. Auto Center owns and operates one electronic LED sign ("LED Sign") on certain real property located at 16005 Valley Boulevard, Fontana California, 92335 ("Property"), which Property is further described in Exhibit "A" attached to this Agreement and incorporated herein by this reference.
- B. Auto Center desires, and City agrees, to refurbish the LED Sign on the Property, which refurbishing will include installation of new LED display, an update of the ID cabinet, repainting of the LED Sign and other related work, as further described in Exhibit "B" attached to this Agreement and incorporated herein by this reference.
- C. Auto Center anticipates the cost to refurbish the LED Sign is approximately SEVEN HUNDRED NINETY FOUR THOUSAND FIVE HUNDRED EIGHTY SEVEN DOLLARS (\$794,587).
- D. Auto Center and City each desire to pay a portion of the cost to refurbish the LED Sign upon completion and in consideration for City's payment of an amount not to exceed FOUR HUNDRED SEVENTY SIX THOUSAND SEVEN HUNDRED FIFTY TWO DOLLARS (\$476,752) to refurbish the LED Sign, City will obtain a leasehold interest to display certain messages as provided for hereunder on the LED Sign.

AGREEMENT

NOW, THEREFORE, IN CONSIDERATION OF THE TERMS AND CONDITIONS SET FORTH IN THIS AGREEMENT, CITY AND AUTO CENTER AGREE, AS FOLLOWS:

- 1. Recitals. The Recitals above are true and correct and are hereby incorporated as part of this Agreement.
- 2. Lease. For a period of ten (10) years from the filing of a Notice of Completion for the refurbishment of the LED Sign (the "Term"), Auto Center hereby leases to the City, and City hereby leases from Auto Center, fifteen percent (15%) of the LED Sign's operating time each hour ("City Operating Time") for purposes of displaying the City's Permitted Messages (as defined in Section 4 below) prepared by City, which message content shall not be subject to edit or modification by Auto Center ("Lease"). Additionally, the City has the option to increase City's Lease usage by five percent (5%) ("Emergency Operating Time") for a total of twenty percent (20%) for each hour in the event of and for the duration of an emergency pursuant to Section 2.1 below. Upon the expiration of the Term, unless extended by mutual written agreement of the Parties, this Agreement shall

automatically terminate and no additional instrument, consent or action by either Party shall be required to terminate this Agreement. Upon the termination of this Agreement, the City shall execute any document and take any action as may be reasonably necessary to evidence such termination.

2.1 EDIS Service Messages. In addition to City Operating Time, the City may elect to initiate Emergency Operating Time for an additional five percent (5%) of the LED Signs operating time each hour to publish messages from the State of California's Emergency Digital Information Service ("EDIS") and/or local emergencies as may be declared by the City Council. The Emergency Operating Time is separate and in addition to City Operating Time and in no event shall be deducted from City Operating Time. Auto Center agrees to work cooperatively and in good faith with the City by providing reasonable technical assistance in the event that the City desires to publish EDIS messages and/or City messages during the Emergency Operating Time.

3. Consideration. In consideration for the Lease, and subject to the City's confirmation that the LED Sign is in conformance with (i) the sign panel as described in the attached proposal; (ii) all Regulations, as defined herein below, City shall pay to the Auto Center FOUR HUNDRED SEVENTY SIX THOUSAND SEVEN HUNDRED FIFTY TWO DOLLARS (\$476,752) ("City Payment"), which shall be paid in one lump sum no later than forty-five (45) days after filing of the Notice of Completion. "Actual Costs" shall mean the direct costs to refurbish the LED Sign, including, without limitation, any payments to a third party licensed contractor to refurbish the LED Sign, but excluding Auto Center overhead and/or profit.

4. City Use of LED Sign. The LED Sign shall be operative 5:00 am to midnight every calendar day of each year during the Term, except when inoperative due to mechanical or electrical failure and/or required maintenance. The City shall be responsible for providing notice of the City's desired message content for the LED Sign to Auto Center or its designee at least seven (7) business days in advance of the date and time for publication ("Notice of Content"), except in the case of an emergency (where notice will provided within a reasonable amount of time determined by the City at its sole discretion); provided, however, that the City's message content shall only pertain to (i) City sponsored events, (ii) events held at City facilities, (iii) City recreation programs, or (iv) public service announcements (including EDIS messages) as determined at the City's sole discretion; and provided further that no City message content shall relate to any auto sales, auto services or auto products (the message content permitted hereunder is referred to herein as "Permitted Messages"). If the Notice of Content is timely provided by City, Auto Center shall endeavor to provide timely publication of the Permitted Messages at the City designated date, time and period of publication ("Publication Time"), subject to (i) Auto Center's consent to the Publication Time, which shall not be unreasonably withheld in light of the City's targeted audience and purposes for publication, and (ii) Auto Center's determination that the message content contained in the Notice of Content are Permitted Messages. In the event that Auto Center does not consent to the City's proposed Publication Time or the message content, Auto Center shall provide written notice to the City, stating the reasons for withholding consent ("Notice of Refusal"), within three (3) business days of receiving the City's Notice of Content.

5. Maintenance and Repair. Auto Center shall maintain the LED Sign in good and operable condition during the Term and any authorized extension thereto. City shall have no obligation to maintain and/or repair, or cause the maintenance and/or repair of, the LED Sign. Any period during which the LED Sign is inoperative, including any inoperative periods during maintenance and/or repair, shall not be considered as City Operating Time.

6. Installation, Construction and Removal. City shall bear no responsibility for installation, construction, and/or removal of the LED Sign. Auto Center shall be responsible for obtaining and/or complying with all regulations, approvals and/or permits required by any government agency having jurisdiction therefore ("Required Approvals"), including any permits and/or regulations required by the Outdoor Advertising Act (California Business and Professions Code sections 5200-5231). Auto Center understands and agrees that the City's approval of this Agreement shall not constitute a Required Approval and Auto Center's failure to obtain all Required Approvals shall constitute a default hereunder.

7. Costs and Expenses. Auto Center shall be responsible for installing and/or providing all utility services for operation of the LED Sign in accordance with this Agreement. Except for the City Payment, City shall not be responsible for any costs or expenses associated with the LED Sign or the surrounding property including, without limitation, installing and/or providing utility services for operation of the LED Sign and any and all real or personal property taxes and other charges (including any increase caused by a change in the tax rate or by a change in assessed valuation) of any description levied or assessed on or against the Properties or the LED Sign.

8. Content. Except for the Content granted to the City in Section 4, Content on LED Sign shall be limited to on premise advertising of Knight Sunrise Ford auto dealers, and their products and services located.

9. Assignment.

9.1 Assignment by Auto Center. Auto Center shall not assign any rights under this Agreement to any individual, partnership, limited partnership, trust, estate, association, corporation, limited liability company, or other entity, domestic or foreign (collectively, "Person") without the prior written consent of the City or authorized designee. In the event that Auto Center is permitted to assign this Agreement (or any portion hereof), the City may require the assignee to enter into an assignment and assumption agreement.

9.2 Assignment by City. City shall not assign, license, lease, sell, or otherwise transfer any rights under this Agreement to any Person. Without limiting the generality of the forgoing, this section 7.2 shall be deemed to prohibit City from, in any manner, (i) assigning, licensing, leasing, selling or otherwise transferring the City Operating Time, and any portion thereof, to any Person; and (ii) including in any Notice of Content any message content prepared or requested by any Person other than the Parties to this Agreement or for which the City will receive any consideration of any kind whatsoever from any Person other than the Parties to this Agreement.

10. Indemnification.

10.1 Auto Center shall defend, indemnify and hold harmless (collectively, "Indemnify") the City and its officers, employees, contractors, representatives, and agents (collectively, "City Indemnitees") from and against all claims, liability, loss, damage, costs or expenses (including attorney's fees and court costs) (collectively, "Claims") arising from the acts or omissions of Auto Center, its officers, employees, contractors, representatives, and agents (collectively, "Auto Center Indemnitors") in connection with the Auto Center's use, repair, maintenance, and refurbishing of the LED Sign; provided, however, that Auto Center shall have no duty to Indemnify the City Indemnitees against any Claims arising from any act or omission of the City Indemnities.

10.2 Auto Center's insurance or indemnification obligations under this Agreement are independent of each other and shall not in any way satisfy, restrict, limit or modify the other obligation.

10.3 The obligation of Auto Center to Indemnify the City pursuant to this Agreement shall survive the termination of this Agreement, until any and all actual or prospective claims regarding any matter subject to such obligation to Indemnify the City pursuant to this Agreement are fully, finally, absolutely and completely barred by applicable statutes of limitations.

11. Insurance. During the Term, and without diminishing its responsibilities to Indemnify the City Indemnitees, Auto Center shall obtain and maintain the following insurance coverage:

11.1 Liability Insurance. Commercial general liability insurance insuring against claims for bodily injury, personal injury, death or property damage occurring upon, on or about the LED Sign at least as broad as Insurance Services Office Occurrence Form CG0001, with a minimum liability limit of Two Million Dollars (\$2,000,000) for any one occurrence and Four Million Dollars (\$4,000,000) aggregate.

11.2 Property Insurance. Insurance providing coverage for the LED Sign insuring against loss, damage, or destruction by fire or other hazards encompassed under the broadest form of property insurance coverage then customarily used for like properties in San Bernardino County, in an amount equal to one hundred percent (100%) of the replacement value (without deduction for depreciation) of the LED Sign (excluding excavations and foundations) and in any event sufficient to avoid co-insurance and with no co-insurance penalty provision, with "ordinance or law" coverage. To the extent customary for like properties in San Bernardino County at the time, such insurance shall include an "increased cost of construction" endorsement and an endorsement covering demolition and cost of debris removal.

11.3 Auto Center may provide any insurance required hereunder through a "blanket" or "umbrella" insurance policy. All insurance obtained and maintained by Auto Center in satisfaction of the requirements of this Agreement shall be fully paid for and non-assessable. The Property Insurance policy shall name City as a "loss payee." The Liability Insurance policy shall name the City Indemnitees as "additional insured." The coverage afforded to the City Indemnitees shall be at least as broad as that afforded to Auto Center and may not contain any terms, conditions, exclusions, or limitations applicable to the City Indemnitees that do not apply to Auto Center. Any insurance or self-insurance maintained by the City Indemnitees shall be excess of all insurance required to be maintained by Auto Center under this Agreement and shall not contribute with any insurance required to be maintained by Auto Center under this Agreement. Auto Center shall furnish, or cause to be furnished, to the City evidence of the insurance required to be maintained by Auto Center under this Agreement.

12. Compliance with Law. Auto Center shall erect, re-erect, construct, enlarge, alter, repair, move, improve, convert, equip, use, operate, and/or maintain the LED Sign in compliance with all applicable laws, rules and regulations, including, but not limited to, all applicable federal and state labor laws (collectively, "Regulations"). Auto Center hereby expressly acknowledges and agrees that City has never previously affirmatively represented to Auto Center or its contractor for the LED Sign, in writing or otherwise, in a call for bids or otherwise, that the work to be covered by the bid or contract for installation of the LED Sign is not a "public work," as defined in Section 1720 of the Labor Code. Auto Center hereby agrees that Auto Center shall have the obligation to provide any

and all disclosures, representations, statements, rebidding, and/or identifications which may be required by Labor Code Sections 1726 and 1781, as the same may be enacted, adopted or amended from time to time, or any other provision of law. Auto Center hereby agrees that Auto Center shall have the obligation to provide and maintain any and all bonds to secure the payment of contractors (including the payment of wages to workers performing any public work) which may be required by Labor Code Section 1781 as the same may be enacted, adopted or amended from time to time, or any other provision of law. Auto Center shall defend, hold harmless and indemnify the City and its respective officials, officers, employees, contractors and agents, from and against any and all loss, liability, damage, claim, cost, expense, and/or "increased costs" (including labor costs, penalties, reasonable attorney's fees, court and litigation costs, and fees of expert witnesses) which, in connection with the refurbishing of the LED Sign, including, without limitation, any and all public works (as defined by applicable law), results or arises in any way from any of the following: (1) the noncompliance by Auto Center of any applicable local, state and/or federal law, including, without limitation, any applicable federal and/or state labor laws (including, without limitation, if applicable, the requirement to pay state prevailing wages); (2) the implementation of Sections 1726 and 1781 of the Labor Code, as the same may be enacted, adopted or amended from time to time, or any other similar law; (3) failure by Auto Center to provide any required disclosure representation, statement, rebidding and/or identification which may be required by Labor Code Sections 1726 and 1781, as the same may be enacted, adopted or amended from time to time, or any other provision of law; and/or (4) failure by Auto Center to provide and maintain any and all bonds to secure the payment of contractors (including the payment of wages to workers performing any public work) which may be required by Labor Code Section 1781, as the same may be enacted, adopted or amended from time to time, or any other provision of law. It is agreed by the Parties that, in connection with the refurbishing of the LED Sign, including, without limitation, any public work (as defined by applicable law), Auto Center shall bear all risk of payment or non-payment of state prevailing wages and/or the implementation of Labor Code Sections 1726 and 1781, as the same may be enacted, adopted or amended from time to time, and/or any other provision of law. "Increased costs" as used in this Section shall have the meaning ascribed to it in Labor Code Section 1781, as the same may be enacted, adopted or amended from time to time.

13. No Encumbrances. Auto Center shall pay any mechanics', materialmen's, contractors' or subcontractors' liens or any claim for damage arising from Auto Center's use of the LED Signs.

14. Notices. Any notice to be given or other document to be delivered by either Party to the other may be delivered in person or may be deposited in the United States mail, with first class postage prepaid, and addressed as follows:

Auto Center: Knight Sunrise Ford
 c/o General Manager
 16005 Valley Boulevard
 Fontana, CA 92335
 Attn: Jamie Lange

City: City of Fontana
 City Hall
 8353 Sierra Avenue

Fontana, CA 92335
Attn: Matthew Ballantyne, City Manager

With a Copy to: Best Best & Krieger LLP
2855 E. Guasti Road, Suite 400
Ontario, CA 91761
Attn: Ruben Duran, City Attorney

15. City Default. Failure by City to perform or comply with any term or provision of this Agreement constitutes a default under this Agreement. In the event of any failure by City to make payment when due, Auto Center may immediately seek any available remedy prescribed in this Section 13. With respect to any other default, the following shall apply: Auto Center shall give written notice of default to the City in the event of such default by City, specifying the default complained of by Auto Center; If the default is reasonably capable of being cured within thirty (30) days after such notice is received or deemed received, City shall have such period to effect a cure prior to exercise of remedies by Auto Center; if the default is such that it is not reasonably capable of being cured within thirty (30) days, and City (a) initiates corrective action within said 30-day period, and (b) diligently, continually, and in good faith works to effect a cure as soon as possible, then City shall have such additional time as is reasonably necessary to cure the default prior to exercise of any remedies by Auto Center; provided, however, in no event shall Auto Center be precluded from exercising remedies if the event of default, Auto Center has otherwise become or are about to become materially jeopardized by any failure to cure a default. In the event that City fails to cure a default (other than any failure or delay by City to make payment when due) in accordance with the provisions of this Section 15, Auto Center may exercise any or all of the following remedies: (i) institute a legal action to seek specific performance of City's obligations under this Agreement; or (ii) terminate this Agreement.

16. Auto Center Default. Failure or delay by Auto Center to perform or comply with any term or provision of this Agreement constitutes a default under this Agreement. City shall give written notice of default to Auto Center, specifying the default complained of by City. If the default is reasonably capable of being cured within thirty (30) days after such notice is received or deemed received, Auto Center shall have such period to effect a cure prior to exercise of remedies by the City. If the default is such that it is not reasonably capable of being cured within thirty (30) days, and Auto Center (a) initiates corrective action within said 30-day period, and (b) diligently, continually, and in good faith works to effect a cure as soon as possible, then Auto Center shall have such additional time as is reasonably necessary to cure the default prior to exercise of any remedies by City; provided, however, in no event shall City be precluded from exercising remedies if the event of default is not cured within ninety (90) days or City's rights under this Agreement or otherwise become or are about to become materially jeopardized by any failure to cure a default. In the event that Auto Center fails to cure a default in accordance with the provisions of this Section 16, City may exercise any or all of the following remedies: (i) institute a legal action to seek specific performance of Auto Center's obligations under this Agreement; or (ii) terminate this Agreement. Such remedies shall be in addition all other applicable legal and equitable remedies available to the City.

17. Waiver of Certain Damages. The Parties hereby agree to waive the right to lost profits, speculative, consequential, special and punitive damages.

18. Auto Center's Duty of Restoration. Auto Center shall be responsible for the restoration of the LED Sign in accordance with the damage and destruction clauses in this Section 16.

18.1 In case of any damage to or destruction of the LED Sign, or any part thereof, Auto Center shall commence the restoration, replacement or rebuilding of the LED Sign with such alterations and additions as may be approved by the City Manager (such restoration, replacement, rebuilding alterations and additions, together with any temporary repairs and property protection pending completion of the work being herein called "Restoration") within thirty (30) days of such damage or destruction or such longer time as may be reasonably approved, in writing, by the City Manager, plus any additional period reasonably determined by the City Manager to be required to obtain any Net Insurance Proceeds, as hereinafter defined, to be used to pay all or a portion of the cost of such Restoration, and shall complete such Restoration within a reasonable period of time thereafter. As used herein, the term "Net Insurance Proceeds" means the gross insurance proceeds paid by an insurer to Auto Center for loss or damage to the LED Sign, less any and all costs and expenses (including, but not limited to reasonable attorney's fees) incurred to recover said proceeds. Auto Center agrees to promptly commence and prosecute to completion the settlement of insurance proceeds with respect to any event of damage or destruction of the LED Sign.

18.2 Auto Center agrees that notwithstanding any other provision of this Agreement, upon any event of damage to or destruction of the LED Sign, Auto Center shall, at its sole cost and expense, immediately take or cause to be taken such actions and to complete such work as is necessary to reasonably minimize further damage to the LED Sign pending the ultimate disposition of the LED Sign.

18.3 Insurance proceeds which are received on account of any damage to or destruction of the LED Sign, or any portion thereof (less the costs, fees and expenses incurred in the collection thereof, including without limitation attorney's fees and expenses) shall be applied as follows:

1. Within a reasonable time and in any event within 180 days after the damage to or destruction of the LED Sign, Auto Center shall furnish, or cause to be furnished to City evidence reasonably satisfactory to City (a) of the total cost of Restoration of the damaged or destroyed LED Sign and (b) that the total amount of money available will, when added to the Net Insurance Proceeds received and available to pay for the Restoration, be sufficient to pay the cost of such Restoration.
2. Net Insurance Proceeds received on account of any damage to or destruction of the LED Sign, or any part thereof, shall be paid to Auto Center or as Auto Center may direct from time to time, as Restoration progresses, solely to pay or reimburse Auto Center for the cost of Restoration.

19. City Contract Administration and Implementation. City shall implement this Agreement through its City Manager. The City Manager is hereby authorized by the City to enter into agreements and sign documents referenced in this Agreement or reasonably required to implement this Agreement on behalf of the City Council, issue approvals, interpretations or waivers and enter into amendments to this Agreement on behalf of City. All other actions shall require the consideration and approval of the City Council, unless expressly provided otherwise by action of the City Council.

20. Further Documents. The Parties hereby agree to execute such other documents and to take such other action as may be reasonably necessary to further the purposes of this Agreement.

21. Time of the Essence. Time is of the essence in this Agreement.

22. Governing Law and Venue. This Agreement shall be governed by, interpreted under, and construed and enforced in accordance with the laws of the State of California. The Parties each acknowledge and agree that this Agreement is entered into and is to be fully performed in the City of Fontana, County of San Bernardino, State of California, and that all legal actions arising from this Agreement shall be filed in the Superior Court of the State of California in and for the County of San Bernardino, California, or the United States District Court with jurisdiction in the County of San Bernardino, California.

23. No Limitation on City Authority. Nothing in this Agreement shall be deemed to limit, modify or abridge the governmental police power or other legal authority (whether direct or delegated) of City regarding the Property, the LED Sign, or the Auto Center.

24. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their permitted successors and assigns.

25. Third Party Beneficiaries. The Parties to this Agreement acknowledge and agree that the provisions of this Agreement are for the sole benefit of City and Auto Center, and not for the benefit, directly or indirectly, of any other person or entity.

26. Severance. If any provision of this Agreement is determined by a court of competent jurisdiction to be illegal, invalid or unenforceable, such provision will be deemed to be severed and deleted from this Agreement as a whole and neither such provision, nor its severance and deletion shall in any way affect the validity of the remaining provisions of this Agreement.

27. Counterparts. This Agreement may be executed in counterparts and when so executed, each such counterpart will constitute an original document and such counterparts will constitute one and the same agreement.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the City and Auto Center have executed and entered into this Agreement as of the date first written above.

CITY:

CITY OF Fontana,
a California municipal corporation

By: _____
Matthew Ballantyne
City Manager

Attest:

By: _____
City Clerk

Approved as to form:

Best Best & Krieger LLP

By: _____
City Attorney

AUTO CENTER:

Knight Sunrise ford
a California corporation

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

**EXHIBIT "A"
TO
LEASE AGREEMENT
(Knight Sunrise Auto Center)**

Property Description

EXHIBIT "B"
TO
LEASE AGREEMENT
(Knight Sunrise Ford Auto Center)

Sign Proposal