DATE: January 31, 2023

TO: Mayor and Council Members

FROM: Economic and Community Development Department

SUBJECT: Fifth Amendment to Agreement No. 10-68 with Pearl Media, LLC to Extend the Display of Super Graphic Wall Sign Outdoor Advertising

RECOMMENDATION:
It is recommended that the Mayor and Council Members approve the Fifth Amendment to Agreement No. 10-68 with Pearl Media, LLC, to extend the display of super graphic wall sign outdoor advertising.

BACKGROUND:
On August 17, 2010, the City Council adopted Resolution No. 10-111, approving a three (3)-year sign agreement (Agreement No. 10-68) between the City and Pearl Media, LLC to allow super graphic wall displays at 9920 S. La Cienega Boulevard (“9920”).

On July 30, 2013, the City Council approved an Amendment to Agreement No. 10-68, approving an extension to January 31, 2014, between the City and Pearl Media, LLC (“Sign Owner”).

On October 4, 2013, Senate Bill No. 684 (SB 684) was signed into law by Governor Jerry Brown Jr., essentially providing that displays advertising businesses and activities operating within the boundary limits of a redevelopment project area may continue to do so as an on-premise display until January 1, 2023.

On January 28, 2014, the City Council approved a Second Amendment to Agreement No. 10-68, approving a five (5)-year extension of the term of Agreement No. 10-68, as amended, and modifying the payment schedule obligations of the Sign Owner.

On February 3, 2015, the City Council approved a Third Amendment to Agreement No. 10-68, approving establishment of payment alternative option for display of super graphic outdoor advertisements.

On January 22, 2019, the City Council approved a Fourth Amendment to Agreement No. 10-68, approving extension of the Agreement for approximately four (4) years.
DISCUSSION:
Since the inception of the Super Graphic Wall Signs Ordinance in March of 2010, the City has collected in excess of five Million Dollars ($5,000,000) in general fund revenue based upon its negotiated share of revenues generated by the subject displays. Moreover, the amount of revenue per year has steadily increased, as major advertisers continue to opt for extended contract periods.

The proposed Fifth Amendment to Agreement No. 10-68 with Sign Owner, among other things, recognizes that in satisfaction of the statutorily mandated terms and conditions of SB 684 (California Business and Professional Code of the Outdoor Advertising Act, Section 5273.1), a “good cause extension” request was officially made by the City to the California Department of Transportation (“Caltrans”) on October 10, 2022 (“Extension Request”), with respect to the continued authorization, operation, and display of the Super Graphic Wall Sign beyond January 1, 2023. Absent receipt by the City of official notification from Caltrans disapproving the City’s Extension Request, the parties, now subject to the requirements of SB 684 (including but not limited to the City’s Extension Request), desire to modify the Agreement to do the following: (a) extend the term of the Agreement, as established by this Fifth Amendment with regard to the display of the Super Graphic Wall Sign (the “Sign”) on the Building consistent with the terms of the Agreement and SB 684 for a period of five (5) years; and (b) effectuate any and all other changes necessary to implement the outdoor advertising requirements of SB 684 and the City.

The Sign Owner also acknowledges and agrees that the City is entering into this Fifth Amendment based upon Caltrans’ failure to officially disapprove the City’s Extension Request as of the Effective Date. However, notwithstanding anything contained in the Agreement and/or this Fifth Amendment, should any Subsequent Action(s) be officially taken, this Fifth Amendment and the Agreement shall immediately terminate; in which case, the City shall not have any liability to Sign Owner, its principals, agents, representatives, etc., for any claim of damages incurred arising out of, attributable to, or resulting from any such Subsequent Actions and/or the termination of this Fifth Amendment and the Agreement.

FINANCIAL/FUNDING ISSUES AND SOURCES:
The approval of this request will not result in funding necessary to facilitate the agreements.

DESCRIPTION OF ANY ATTACHMENTS:
Attachment No. 1 - Fifth Amendment to Agreement No. 10-68 with Pearl Media, LLC

PREPARED BY:
Christopher E. Jackson, Sr., Economic and Community Development Director

COUNCIL PRESENTER:
Christopher E. Jackson, Sr., Economic and Community Development Director
APPROVAL VERIFICATION SHEET

DEPARTMENT HEAD APPROVAL: Christopher E. Jackson, Sr., ECD Dept. Director

CITY MANAGER APPROVAL: Artie Fields, City Manager
ATTACHMENT NO. 1
FIFTH AMENDMENT TO AGREEMENT NO: 10-68

THIS FIFTH AMENDMENT TO AGREEMENT NO: 10-68 (the “Fifth Amendment”) is dated as of January ___, 2023 (“Effective Date”) and made by and between the CITY OF INGLEWOOD, a municipal corporation (“City”) and PEARL MEDIA, LLC, a New Jersey limited liability company (the “Sign Owner”) with its principal place of business located at 151 Forest Street, Suite J, Montclair, New Jersey, 07039.

WITNESSETH

WHEREAS, pursuant to enactment of Senate Bill 684 (California Business and Professional Code 5273, “SB 684”) the Sign Owner and the City entered into that certain Agreement No: 10-68 dated August 17, 2010 (the “Initial Agreement”), as amended by an Amendment to Agreement No: 10-68 dated July 30, 2013 (City Agreement No. 13-096), as further amended by a Second Amendment to Agreement No: 10-68 dated January 28, 2014 (City Agreement No. 14-002), a Third Amendment to Agreement No. 10-68 dated February 3, 2015 (City Agreement No. 15-096), and a Fourth Amendment to Agreement No. 10-68 dated January 23, 2019, providing for the outdoor advertising display of a “Super Graphic Wall Sign” specifically owned and installed by Sign Owner on a building located at 9920 La Cienega Boulevard, Inglewood, California (the “Building”). The Initial Agreement along with all such subsequent amendments are sometimes collectively referred to herein, as the “Agreement”.

WHEREAS, pursuant to and in satisfaction of the statutorily mandated terms and conditions of SB 684 (California Business and Professional Code of the Outdoor Advertising Act, Section 5273.1), a “good cause extension” request was officially made by the City to the California Department of Transportation (“Caltrans”) on October 10, 2022 (“Extension Request”) with respect to the continued authorization, operation and display of the Super Graphic Wall Sign beyond January 1, 2023.

WHEREAS, absent receipt by the City of official notification from Caltrans disapproving the City’s Extension Request, the parties, now subject to the requirements of SB
684 (including but not limited to the City’s Extension Request) now desire to enter into this proposed Fifth Amendment to modify the Agreement, as appropriate, to: (a) extend the term of the Agreement as established by this Fifth Amendment with regard to the display of the Super Graphic Wall Sign (the “Sign”) on the Building consistent with the terms of the Agreement and SB 684; and (b) effectuate any and all other changes necessary to implement the outdoor advertising requirements of SB 684 and the City.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, Sign Owner and City hereby agree as follows:

SECTION 1. TERM OF FIFTH AMENDMENT. The Sign Owner and City hereby agree that notwithstanding anything contained in the Agreement to the contrary, the term of this Fifth Amendment shall govern the display period for the Sign and shall consist of a term commencing on the Effective Date of this Fifth Amendment and terminating on January 31, 2028 (the “New Term”).

SECTION 2. SUBSEQUENT CALTRANS/LEGISLATIVE ACTIONS. The Sign Owner hereby acknowledges and agrees that the effectiveness of this Fifth Amendment, the New Term as established by this Fifth Amendment, and the Agreement, may be subject to subsequent Caltrans action and/or subsequently enacted legislation requiring the discontinuance of the operation and display of the Sign by the Sign Owner (“Subsequent Actions”), and notwithstanding the potential risk of any Subsequent Actions, hereby elects to enter into this Fifth Amendment.

SECTION 3. NONLIABILITY OF CITY RE AGREEMENT AND FIFTH AMENDMENT. The Sign Owner hereby also acknowledges and agrees that the City is entering into this Fifth Amendment based upon Caltrans’ failure to officially disapprove the City’s Extension Request as of the Effective Date. However, notwithstanding anything contained in the Agreement and/or this Fifth Amendment, should any Subsequent Action(s) be officially taken, this Fifth Amendment and the Agreement shall immediately terminate; in which case, the City shall not have any liability to Sign Owner, its principals, agents, representatives, etc.,
(collectively, "Sign Parties") for any claim of damages incurred arising out of, attributable to, or resulting from any such Subsequent Actions and/or the termination of this Fifth Amendment and the Agreement.

SECTION 4. MISCELLANEOUS. Subject to the above provisions, the terms and conditions of this Fifth Amendment shall be fully enforceable and binding on the parties hereto and shall supersede any and all terms and conditions of the Agreement to the contrary. However, to the extent the terms and conditions of the Agreement are not specifically and expressly amended and/or modified by this Fifth Amendment, all such terms and provisions of the Agreement shall remain fully enforceable and binding upon the parties hereto.

SECTION 5. SEVERABILITY. In the event that any provision of this Fifth Amendment is found and determined to be invalid or unenforceable by any Subsequent Action, judgment or court order, the remaining provisions shall remain fully enforceable and binding on the parties hereto.

IN WITNESS WHEREOF, the Sign Owner and City have executed this Fifth Amendment to Agreement No. 10-68 as of the Effective Date first above written.

CITY OF INGLEWOOD
a municipal corporation

By: ____________________________
    James T. Butts, Jr.
    Mayor

ATTEST:

By: ____________________________
    Aisha Thompson
    City Clerk

APPROVED AS TO FORM:
KENNETH R. CAMPOS
City Attorney

By: ____________________________
    Kenneth R. Campos

Fifth Amendment to Agreement No. 10-68
APPROVED:
KANE, BALLMER & BERKMAN
City Special Counsel

By: ____________________________
    Royce K. Jones

PEARL MEDIA, LLC
a New Jersey limited liability company

By: ____________________________
    Joshua Cohen
    President

Fifth Amendment to Agreement No: 10-68