

RESOLUTION NO. 2013-070

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ROHNERT PARK AUTHORIZING AND APPROVING THE MASTER LEASE AGREEMENT BY AND BETWEEN THE CITY OF ROHNERT PARK AND KIRK VEALE (d.b.a. B.P.O. OF CALIFORNIA) FOR THE FINANCING, INSTALLATION, OPERATION, AND MAINTENANCE OF THE CITY OF ROHNERT PARK'S DIGITAL BILLBOARD

WHEREAS, the City of Rohnert Park ("City") owns, operates, and maintains a digital billboard located adjacent to the 101 freeway (the "Premises"); and

WHEREAS, City wishes to replace the existing aging digital billboard and install a new upgraded digital billboard on the Premises; and

WHEREAS, Kirk Veale, a sole proprietorship, d.b.a. B.P.O. of California ("B.P.O."), has the skills and experience to install, operate, and maintain a digital billboard; and

WHEREAS, the City Council has determined, that entering into a Master Lease Agreement with B.P.O. (the "Project") would benefit the City and its citizens by facilitating the financing, installation, operation, and maintenance of the digital billboard thereby improving local business marketing opportunities, increasing revenue to the City, and lowering City operating expenses; and

WHEREAS, an Initial Study and Negative Declaration were prepared in accordance with the requirements of the California Environmental Quality Act ("CEQA"), California Public Resources Code section 21000 et seq., the State CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, sections 15000 et seq. (the "Guidelines"), and the local guidelines of the City of Rohnert Park, in connection with the Planning Commission's consideration of B.P.O.'s applications for a conditional use permit and site plan and architectural review (collectively, the "Discretionary Permits") to permit the demolition of the existing freeway billboard sign and the installation of a the new digital billboard sign being proposed in connection with the Project.

WHEREAS, the Initial Study and Negative Declaration assessed the potential environmental effects associated with both the proposed demolition of the existing digital billboard and the installation and operation of the new digital billboard in accordance with the requirements of CEQA and the Guidelines. The Planning Commission found that such documents indicate that no substantial evidence exists that the demolition and removal of the existing digital billboard and approval of the proposed digital billboard will have a significant effect on the environment as such terms are defined under CEQA and adopted the Negative Declaration at a duly notice public hearing on March 28, 2013; and

WHEREAS, the City Council finds that approval of the Project will not authorize any activities not already contemplated by and encompassed within the Discretionary Permits and that the Negative Declaration adopted by the Planning Commission in connection with the Discretionary Permits thoroughly considers and analyzes the environmental impacts associated with the Project; and

WHEREAS, the City Council finds that no additional environmental review is required under CEQA; and

WHEREAS, authorizing and approving the proposed Master Lease Agreement with B.P.O. does not commit the City in advance to approve the entitlements for the proposed digital billboard, or otherwise constrain the City's discretion, acting as a governing agency, with respect to processing the entitlement applications for the digital billboard specifically or to the digital billboard generally, and the Planning Commission has independently reviewed and approved the necessary entitlement applications and the Building Official will independently review and issue building permits for the proposed billboard as appropriate.

NOW, THEREFORE, the City Council of the City of Rohnert Park hereby resolves, determines, finds, and orders as follows:

SECTION 1. Compliance with CEQA. The City Council finds that the Negative Declaration adopted by the Planning Commission in connection with its approval of the Discretionary Permits thoroughly and accurately analyzes the potential impacts associated with the Project. The City Council concurs with the findings and conclusions of the Planning Commission and finds that no further environmental review is required under CEQA or the Guidelines.

SECTION 2. Approval of Lease Agreement. The City Council authorizes and approves that certain Master Lease Agreement between the City of Rohnert Park and Kirk Veale, d.b.a. B.P.O of California, attached hereto as Exhibit A ("Lease Agreement"); and

SECTION 3. Execution. The City Manager is hereby authorized and directed to execute the Lease Agreement in substantially similar form to the attached Exhibit "A" and to take all actions necessary to effectuate the Lease Agreement, including but not limited to, execution of documents for and on behalf of the City of Rohnert, subject to approval by the City Attorney.

SECTION 4. Authorized Signature. The Mayor, or presiding officer, is hereby authorized to affix his or her signature to this Resolution signifying its adoption, and the City Clerk, or her duly appointed deputy, is directed to attest thereto.

DULY AND REGULARLY ADOPTED this 23rd day of April, 2013.



CITY OF ROHNERT PARK

Pam Stafford
Pam Stafford, Mayor

ATTEST:

JoAnne Buergler
JoAnne Buergler, City Clerk

AHANOTU: Aye BELFORTE: Aye MACKENZIE: Aye CALLINAN: Aye STAFFORD: Aye
AYES: (5) NOES: (0) ABSENT: (0) ABSTAIN: (0)

“Exhibit A”

A G R E E M E N T

DIGITAL BILLBOARD LEASE

by and between

**CITY OF ROHNERT PARK,
a California Municipal corporation
("City")**

and

**KIRK VEALE , a sole proprietorship
dba B.P.O. OF CALIFORNIA
("Tenant")**

BASIC INFORMATION

The following Basic Information provides a brief synopsis of the critical terms of this Lease and a reference for certain specific terms of this Lease. The Basic Information, the Recitals below, and all exhibits attached hereto are incorporated into and made a part of the Lease. If there is any conflict between the Basic Information and terms of the Lease, the terms of the Lease shall control.

1. City: CITY OF ROHNERT PARK, a California Municipal corporation
 130 Avram Avenue
 Rohnert Park, CA 94928

 Notice: City Manager
 Email: admin@rpcity.org
 Telephone: (707) 588-2226
 Facsimile: (707) 792-1876
2. Tenant: Kirk Veale, a sole proprietorship
 dba B.P.O of California
 P. O. Box 1496
 Santa Rosa, CA 95402
 2800 Cleveland Avenue #A2
 Santa Rosa, CA 95402

 Notice: Kirk Veale
 Email: kirk@vealeinvestmentto.com
 Telephone: (707) 575-3752
 Facsimile: (707) 575-4540
3. Effective Date: _____, 2013
4. Premises: That certain real property owned by City legally described in and depicted on Exhibit A, commonly known and referred to as the City of Rohnert Park—Highway 101 Digital Sign in the City of Rohnert Park, County of Sonoma, State of California, together with the City's improvements serving the digital billboard located thereon (excluding any pipes, utilities, structures or other improvements servicing any property other than the digital billboard).
5. Permitted Use: Operation of one two-sided digital billboard to display outdoor advertising on the Premises.
6. Term: Twenty (20) years from the Commencement Date of the Lease and a ten (10) year extension option by Tenant as set forth in Article 4.

7. Base Rent: As set forth in Article 5, Tenant shall pay City \$180,000 per year payable in monthly installments of \$15,000 per month commencing on the Commencement Date. The Base Rent will be adjusted as set forth in Article 5. Base Rent will be adjusted annually after the first five (5) years of the Term either by the Performance Increase (as defined in Schedule 1) or three and one-half percent (3.5%), whichever is greater.
8. Percentage Rent: If the total Base Rent paid by Tenant in any Lease Year is less than twenty percent (20%) of the Gross Revenues for that Lease Year, then in addition to the Base Rent, Tenant shall pay City the difference as Percentage Rent on an annual basis, as described in detail in Schedule 1. However, if the total Base Rent paid by Tenant in any Lease Year equals or exceeds twenty percent (20%) of the Gross Revenues for that Lease Year, City shall have no obligation to refund any portion of the Base Rent payments or to apply said payments to any future Lease Year.

LANDLORD'S INITIALS_____

TENANT'S INITIALS_____

**Lease for Digital Billboard
By and Between
City of Rohnert Park and Veale Investment Properties dba B.P.O of
California**

This lease ("Lease"), dated this 1st day of March, 2013 for identification purposes, is by and between the **City of Rohnert Park** ("City"), a California municipal corporation; and **Kirk Veale**, a sole proprietorship, **dba B.P.O. of California** ("Tenant"). City and Tenant may sometimes be referred to hereinafter individually as a "party" and collectively as the "parties."

RECITALS

A. City owns that certain parcel of land located in the City of Rohnert Park, County of Sonoma, State of California, consisting of approximately 4,109 square feet located between Commerce Boulevard and the freeway boundary for U.S. Highway 101 adjacent to State Farm Drive, as more particularly shown on Exhibit A attached hereto and incorporated herein by reference (the "Premises").

B. City owns and operates a digital freeway sign located on the Premises that needs to be retrofitted or replaced. The existing sign was first installed in 2003 and is rapidly becoming obsolete.

C. Rohnert Park is considered the "Gateway to the Wine Country," and tourists and visitors drive through the community daily to reach popular wine destinations in Healdsburg and Sonoma, and along the Russian River.

D. A new digital freeway sign utilizing modern technology will provide a significant marketing tool for City and Sonoma County. City desires to facilitate the replacement, operation, and maintenance of the existing digital freeway sign in order to take advantage of this economic development and marketing tool to increase awareness about the City of Rohnert Park and to provide promotional and advertising opportunities for local businesses.

E. On July 9, 2012, City issued a Request for Proposal soliciting proposals for development of a new digital freeway sign along Highway 101. Three proposals were received and thoroughly reviewed by City.

F. The Rohnert Park City Council has determined that it is in the best interests of City, and for the common benefit of the citizens residing in City, to enter into this Lease with Tenant for the financing, installation, operation and maintenance of a new digital freeway sign at the Premises.

G. City desires to lease to Tenant, and Tenant desires to lease from City, the Premises, all as further set forth herein.

AGREEMENT

ARTICLE 1 – DEFINITIONS.

For purposes of this Lease, unless a different meaning is clearly required, the following terms shall have the following meanings and be capitalized throughout this Lease:

- 1.1 “Base Rent” means the guaranteed monthly minimum amount tenant shall pay to City as consideration for the rights and benefits it enjoys under the Lease, as more particularly described in Schedule 1.
- 1.2 “Business Day” means any day City’s main offices located at 130 Avram Avenue, Rohnert Park, California, are open to the public.
- 1.3 “Caltrans” means the California Department of Transportation.
- 1.4 “Caltrans Permits” means all permits and approvals, if any, that Tenant must obtain from Caltrans to install, operate, and maintain the Digital Billboard in accordance with this Lease.
- 1.5 “City Permits” means all building permits, conditional use permits, site plan review, architectural review, and other permits, entitlements, and agreements that City, acting in its governmental capacity, must issue or approve for Tenant to install, operate, and maintain the Digital Billboard in accordance with this Lease.
- 1.6 “Commencement Date” means the earlier of the date on which the Digital Billboard described herein becomes Operational (as described herein) or 120 days after both of the following have occurred: (i) City has finally approved the Plans (defined in Section 7.2), and (ii) Tenant has received all necessary governmental permits and approvals for the Digital Billboard, including the Caltrans Permits and City Permits (as described more fully in Article 7).
- 1.7 “Community Center Sign” shall mean the two-sided outdoor-advertising sign located at 5401 Snyder Lane in the City of Rohnert Park, County of Sonoma, State of California that Tenant will replace and operate in accordance with the criteria set forth in Exhibit C to this Lease.
- 1.8 “Digital Billboard” means the two-sided outdoor-advertising sign that Tenant will install and operate on the Premises in accordance with the criteria set forth in Exhibit B to this Lease. The Digital Billboard consists of a Message Center and a Sign Structure.

- 1.9 “Effective Date” means the date as of which both City and Tenant have signed this Lease, as indicated by the dates in the signature blocks below.
- 1.10 “Existing Sign” means the digital freeway sign currently located on the Premises that Tenant will remove in accordance with the criteria set forth in Subsection 5.1.5 of this Lease.
- 1.11 “Gross Revenue” means all revenue Tenant derives from the Digital Billboard, less any commissions paid, at the industry standard commission rate of sixteen and sixth/tenths percent (16.6%).
- 1.12 “Hazardous Materials” means any and all pollutants, wastes, flammables, explosives, radioactive materials, hazardous or toxic materials, hazardous or toxic wastes, hazardous or toxic substances, carcinogenic materials or contaminants and all other materials governed, monitored, or regulated by any Federal, State or local Law or regulation, including the Comprehensive Environmental Response, Compensation and Liability Act, the Hazardous Substances Account Act, and/or the Resources Conservation and Recovery Act, together with asbestos, asbestos-containing materials, hydrocarbons, polychlorinated biphenyl (“PCB”) or PCB-containing materials, petroleum, gasoline, petroleum products, crude oil or any fraction, product or by product thereof.
- 1.13 “Hazardous Materials Laws” means all laws, codes, rules, orders, ordinances, directives, regulations, permits, or other requirements of federal, state, county, municipal or governmental authorities having jurisdiction, now in force or which may hereafter be in force concerning the management, use, generation, storage, transportation, presence, discharge or disposal of Hazardous Materials. .
- 1.14 “Include” and its variants are not restrictive. For example, “includes” means “includes but not limited to,” and “including” means “including but not limited to.”
- 1.15 “Lease Year” means one of the consecutive 12-month periods during the Term. The first Lease Year begins on the Commencement Date, and shall not include the Pre-Operations Phase of the Initial Term as more particularly described in Section 4.1.1.
- 1.16 “Message Center” means the portion of the Digital Billboard that consists of the two digital (LED) display areas used for general commercial advertising, with each of the two areas measuring 14 feet high and 48 feet wide. The Message Center is more particularly described in Exhibit B.
- 1.17 “Operational” means the Digital Billboard is capable, legally and functionally, of displaying advertising on the Message Center.
- 1.18 “Percentage Rent” means the sum representing the difference between

the total Base Rent paid by Tenant for that Lease Year and a sum which is twenty percent (20%) of Gross Revenue for that same Lease Year which Tenant shall pay to City in addition to the Base Rent where the total Base Rent paid by Tenant for that Lease Year is less than twenty percent (20%) of the Gross Revenues for the same Lease Year, as more particularly described in Schedule 1.

- 1.19 "Premises" means City-owned real property described and depicted in Exhibit A.
- 1.20 "Rent" means the actual amount Tenant pays to City as consideration for the rights and benefits it enjoys under the Lease, and includes both "Base Rent" and "Percentage Rent," as more particularly described in Schedule 1.
- 1.21 "Sign Structure" means the portion of the Digital Billboard other than the Message Center, and it includes all ancillary equipment and utilities installed on the Premises. The Sign Structure is more particularly described in Exhibit B.
- 1.22 "Term" means the entire time this Lease is in effect. As specified in Article 4, it consists of the Initial Term, the Extended Term, and any period of holding over.

ARTICLE 2 – REPRESENTATIONS AND WARRANTIES OF TENANT

2.1 Tenant Status

Tenant is a sole proprietorship which has the power to own its properties and to carry on its business as now owned and operated and as required by this Lease.

2.2 Authority

Tenant has the legal rights, power, and authority to enter into and perform its obligations under this Lease. The Person signing this Lease on behalf of Tenant has authority to do so and to bind Tenant to the terms set forth herein.

2.3 Lease Will Not Cause Breach

To the best of Tenant's knowledge, after reasonable investigation, neither the execution or delivery of this Lease, nor the performance of this Lease by Tenant: (i) conflicts with, violates, or results in a breach of any applicable law; or (ii) conflicts with, violates or results in a breach of any term or condition of any judgment, order or decree of any court, administrative agency or other governmental authority, or any agreement or instrument to which Tenant is a party or by which Tenant or any of its properties or assets are bound, or constitutes a default thereunder.

2.4 No Litigation

To the best of Tenant's knowledge, after reasonable investigation, there is no action, suit, proceeding or investigation, at law or in equity, before or by any court or governmental authority, commission, board, agency or instrumentality decided, pending or threatened against Tenant wherein an unfavorable decision, ruling or finding, in any single case or in the aggregate, would materially adversely affect the performance by Tenant of its obligations hereunder or which, in any way, would adversely affect the validity or enforceability of this Lease or which would have a material adverse effect on the financial condition of Tenant or any surety guaranteeing Tenant's performance under this Lease, which has not been waived by City in writing.

2.5 No Adverse Judicial Decisions

To the best of Tenant's knowledge, after reasonable investigation, there is no judicial decision that affects the validity of this Lease and/or may subject this Lease to legal challenge.

2.6 Ability to Perform

Tenant possesses the business, professional, and technical expertise to install, maintain, and operate the Digital Billboard and to remove and dispose of the Existing Sign on the Premises required to perform this Lease.

2.7 Qualifications and Identity of Tenant Material

Tenant acknowledges and agrees that the qualifications and identity of Tenant, and its principals, are of particular concern to City and served as a material inducement to City to enter into this Lease with Tenant and further acknowledges and agrees that a change in ownership or control of Tenant or of a substantial part thereof, or any other act or transaction involving or resulting in a significant change in ownership or control of Tenant or the degree thereof, is for practical purposes a transfer or disposition of the property then owned by Tenant. Tenant recognizes that it is because of such qualifications and identity that City is entering into this Agreement with Tenant. Accordingly, except as expressly authorized and set forth herein, no voluntary or involuntary successor in interest of Tenant shall acquire any rights or powers under this Lease.

ARTICLE 3 – LEASE OF PREMISES.

City hereby leases and demises to Tenant, and Tenant hereby leases and hires from City, the Premises, as of the Effective Date, for the Term and upon the covenants, terms, and conditions set forth in this Lease.

ARTICLE 4 – TERM.

4.1 Term

The “Initial Term” of this Lease shall commence on the Effective Date and shall continue for a period of twenty (20) years from the Commencement Date. The Initial Term shall consist of two phases:

- 4.1.1 The “Pre-Operations Phase,” which shall begin on the Effective Date and end on the Commencement Date.
- 4.1.2 The “Operations Phase,” which shall begin when the Pre-Operations Phase ends and shall expire one (1) day before the twentieth (20th) anniversary of the Commencement Date.

4.2 Extension of Term

At the end of the Initial Term, City shall extend the Term of this Lease for an additional period of ten (10) years (the “Extended Term”) in accordance with the provisions of this Section 4.2. Any reference to Term in this Lease shall include the Extended Term if Tenant has exercised its right to extend the Term and City has determined there is no event of default that prohibits the granting of such Extended Term as provided herein. Any extension of the Term must comply with all of the following:

- 4.2.1 No Event of Default. To exercise its right to the Extended Term, Tenant must be in good standing under the Lease. In no event shall City extend the Term if Tenant is in default under this Lease.
- 4.2.2 Request for Extension. Tenant shall request the Extended Term by giving written notice to City not sooner than twelve (12) months nor less than six (6) months prior to the expiration of the Initial Term.
- 4.2.3 Conditions for Extended Term. The Extended Term shall be upon all of the same terms and conditions of this Lease, as the same may be modified by City and Tenant from time to time, except that Base Rent shall be set in accordance with Section 2.5 in Schedule 1 to this Lease.

4.3 Expiration of Lease; Holding Over

This Lease shall expire automatically at the end of the Initial Term unless extended in accordance with Section 4.2. If this Lease is extended, then it shall expire automatically at the end of the Extended Term. If Tenant shall hold over on the Premises after the expiration of the Term hereof with the consent of City, such holding over shall be construed to be only a tenancy from month to month, subject to all the covenants, conditions and obligations contained in this Lease. Tenant hereby agrees to pay to City as monthly rental 1/12th of the amount which is one hundred fifty percent (150%) of the highest amount of total annual Rent paid by Tenant to City during the last year of the Term.

ARTICLE 5 – CONSIDERATION.

As consideration for the rights and benefits it enjoys under this Lease, including the use and occupancy of the Premises during the Term, Tenant shall do all of the following:

5.1 Rent

Each month during the Operations Phase, Tenant shall pay City the Base Rent set forth in Schedule 1 in accordance with the terms set forth in this Section 5.1.

5.1.1 Base Rent. Base Rent is due and payable in advance on the first day of each calendar month without notice, demand, offset or deduction. Tenant shall remit the Base Rent to City at the address designated in the Basic Information, or at such other address as City may designate from time to time in writing to Tenant for the payment of Rent.

- a. Late Charge. If Tenant fails to pay any installment of Base Rent within ten (10) calendar days after the same is due and payable, such unpaid amount will be subject to a late payment charge equal to five percent (5%) of the unpaid amount in each instance. The late payment charge has been agreed upon by City and Tenant, after negotiation, as a reasonable estimate of the additional administrative costs and detriment that City will incur as a result of any such failure by Tenant, the actual costs thereof being extremely difficult—if not impossible—to determine. The late payment charge constitutes liquidated damages to compensate City for its damages resulting from such failure to pay, and Tenant shall promptly pay such charge to City together with any unpaid interest
- b. Default Interest. If any Base Rent is not paid within fifteen (15) calendar days following the due date, such unpaid amount shall bear interest from the due date until paid at the legal interest rate. However, interest shall not be payable on late charges incurred by Tenant, nor on any amounts on which late charges are paid by Tenant to the extent this interest would cause the total interest to be in excess of that which an individual is lawfully permitted to charge. Payment of interest shall not excuse or cure any default by Tenant.
- c. Application of Payments. All payments received by City from Tenant shall be applied to the oldest obligation owed by Tenant to City. No designation by Tenant, either in a separate writing, on a check or money order, or otherwise shall modify this Article 3 or have any force or effect.

- d. Proration for First Base Rental Payment. If the Operations Phase begins on a day other than the first day of a month, then the first month's installment of Base Rent will be prorated.
- 5.1.2 Percentage Rent. In addition to the Base Rent, Tenant shall annually pay City Percentage Rent as set forth in Schedule 1, in accordance with the terms of this 5.1.2.
- a. Annual Payment. Tenant shall pay to City the Percentage Rent annually on a date which is no later than forty-five (45) days after the end of each Lease Year. In the event Tenant fails to pay any annual installment of Percentage Rent when the same is due, the late charge and interest provisions of Section 5.1.1, subsections (a) and (b), above, shall apply to the payment of Percentage Rent.
 - b. Annual Report. On or before the payment of each installment of Percentage Rent, Tenant shall furnish to City an annual statement of Gross Revenue within forty-five (45) days after the end of each Lease Year. The statement of Gross Revenue shall include a designation of gross advertising revenue for the Digital Billboard, as well as a designation for all permissible commissions paid in accordance with this Lease. Such statement shall be in a form acceptable to City. Each statement shall be signed and certified to be correct by a duly authorized officer of Tenant. In addition, each annual statement shall be reviewed by an independent certified public accountant reasonably acceptable to City. Tenant shall keep and make available at its Santa Rosa office complete and accurate books of account, records, cash receipts and other pertinent data, in accordance with good accounting practices and in a form approved by City, showing its Gross Revenue, including without limitation, accurate records of every sale and other transaction made for any advertising display on the Digital Billboard and any commissions paid by Tenant pursuant to this Lease. Such books of account, records, cash receipts and other pertinent data shall be kept for a period of ten (10) years after the end of each Lease Year. The receipt by City of any statement, or any payment of Percentage Rent (as defined in Schedule 1) for any period, shall not bind City as to the correctness of the statement or payment.
- 5.1.3 Adjustment of Rent Schedules. Commencing in Lease Year Six (6) and annually thereafter, the Base Rent amounts set forth in Section 7 of the Basic Information shall be adjusted as set forth in Schedule 1.
- 5.1.4 Inspection and Audit. Tenant shall maintain and make available at its Santa Rosa office, for City's review and audit, all contracts, leases, invoices, and other records that are relevant to the accurate determination of Base Rent in accordance with Schedule 1. After the Base Rent for a

five-year period has been determined in accordance with Schedule 1, Tenant shall retain the related records for at least ten (10) years. City, at its sole option, shall be entitled, at any time and from time to time during the Term, to inspect, examine, copy and audit Tenant's books, records and cash receipts as related to Gross Revenue. The purpose of such examination is to enable City to ascertain, clearly and accurately, Tenant's Gross Revenue and to verify that the form and method of Tenant's record keeping provide adequate and proper control and check of all such revenues. Tenant shall cooperate fully with City and City's agents in making the examination. City, at its option, shall also be entitled once during each Lease Year and once after the Expiration Date or other termination of this Lease, to cause an independent audit of such records to be performed by a certified public accountant designated by City. The audit shall be conducted during usual business hours at Tenant's Santa Rosa office. If the audit shows that there is a deficiency in the payment of any Percentage Rent, then Tenant shall immediately upon notice pay the deficiency to City, together with interest thereon at the Default Rate, which interest shall accrue from the date on which such deficient amount would have been due until such deficiency is paid. City shall pay the costs of the audit unless the audit shows that Tenant understated Gross Revenue by more than two percent (2%) in which case Tenant shall pay all City's costs of the audit. Tenant's understatement of Gross Revenue for any Lease year by more than five percent (5%) due to Tenant's gross negligence or willful misconduct shall constitute an event of default as defined in this Lease.

5.2 Additional Consideration

5.2.1 Signing Bonus. Tenant shall pay City a one-time "Signing Bonus" of \$50,000 within five (5) Business Days after the Effective Date.

5.2.2 Payment for Lost Revenue During Pre-Operation Phase. Commencing on the date that the Existing Sign on the Premises is removed by Tenant, or City's ceases to sell advertising on the Existing Sign to accommodate Tenant's removal of the Existing Sign, and ending on the Commencement Date, Tenant shall pay to City the sum of five thousand dollars (\$5,000) per month, which sum shall be prorated on a daily basis based on a 30-day month, for any period in which neither the Existing Sign or the Digital Billboard are in operation to offset the loss of advertising revenue during such period.

5.2.3 In Kind Revenue. At no cost to City, and as additional consideration for use and occupancy of the Premises during the Operations Phase, Tenant shall provide City the exclusive use of ten percent (10%) of the total advertising time for the Digital Billboard ("City Usage"). City Usage will be allocated by Tenant, in Tenant's reasonable discretion, on a fair and consistent basis with other advertisers during the operating hours of the

Digital Billboard. City may use such advertising time to promote any purpose that City, in its sole discretion, determines best serve the needs of the City and its residents. Tenant expressly acknowledges and understands that its commitment to provide free advertising time to City in accordance with this Subsection 5.2.3 is a material provision of this Lease.

5.2.4 Removal of Existing Sign. At no cost to City, and as further consideration for use and occupancy of the Premises during the Operations Phase, Tenant shall remove the existing digital freeway sign according to the schedule set forth in Schedule 2, subject to the following:

- a. Tenant shall obtain all necessary governmental permits and environmental clearances prior to starting any demolition of the Existing Sign.
- b. Tenant shall restore the Premises to a condition acceptable to City, including completing any necessary environmental cleanup mandated by any governmental agency with jurisdiction over the Premises.
- c. Tenant shall use its best efforts to remove and demolish the Existing Sign in a manner that permits the existing sign structure and components to be recycled as fully as possible.
- d. Tenant's commitment to remove the Existing Sign according to the schedule set forth in Schedule 2 and in compliance with the criteria set forth in this Section 5.2.4 is a material provision of this Lease.

5.2.5 Community Center Sign. At no cost to City, and as further consideration for use and occupancy of the Premises during the Operations Phase, Tenant, shall replace the Community Center Sign with a digital billboard sign in accordance with the criteria set forth in Exhibit C, subject to the following:

- a. No sooner than six (6) months and no later than one (1) year after the Commencement Date, Tenant shall (i) prepare design plans and apply for City's review and approval, and (ii) seek all necessary governmental permits, entitlements, and environmental clearances to replace the Community Center Sign. No later than one hundred twenty (120) days after receiving all such approvals, permits, entitlements, and clearances, Tenant shall replace the Community Center Sign with a digital billboard sign.
- b. Prior to replacing the Community Center Sign, Tenant and City shall enter into an amendment to this Lease to provide for the lease of the site and for the installation, operation, and maintenance of the Community Center Sign in accordance with the terms set forth in Exhibit C.

- c. Tenant's commitment to replace the Community Center Sign in accordance with this Section 5.2.5 and the criteria set forth in Exhibit C is a material provision of this Lease.

ARTICLE 6 – USE OF PREMISES.

6.1 Condition of Premises

City represents and warrants that it has no actual knowledge of any physical condition of the Premises that would substantially, materially, and adversely impact Tenant's construction and operation of the Digital Billboard. Other than such warranty, the Premises and all improvements thereon, including the Existing Sign, are being leased to Tenant in its current, existing, "AS IS" condition. Except as expressly set forth above, City makes no representations or warranties of any kind, express or implied, written or oral, about any of the following: the physical condition of the Premises; the suitability of the Premises for Tenant's anticipated use; any limitations on Tenant's use of the Premises, including limitations arising from zoning laws, environmental laws, or other laws, regulations, or governmental requirements; the costs of conducting Tenant's business on the Premises; or the condition of the soils or ground waters of the Premises. By taking possession of the Premises, Tenant accepts the Premises "AS IS" and acknowledges that the Premises are satisfactory for Tenant's purposes. Tenant has ascertained the condition of the Premises through its own independent investigation and has relied solely on that independent investigation when entering into this Lease.

6.2 Permitted Uses

Except as otherwise provided in Section 7.12, Tenant has the exclusive right to display outdoor advertising on the Premises. City shall not authorize any other off-site outdoor advertising on the Premises. In addition, City shall not authorize any off-site outdoor advertising on any other City-owned or City-controlled property. Tenant's exclusive right to conduct outdoor advertising on the Premises includes the following:

- a. Installing, operating, maintaining, repairing, improving, repositioning (with City's consent), and removing the Digital Billboard on or from the Premises when this Lease terminates.
- b. All rights of ingress and egress over the Premises that Tenant needs to access the Digital Billboard.
- c. Subject to the criteria set forth in Exhibit B to this Lease, licensing the use of the Digital Billboard, or any portion it, for any lawful purpose related to outdoor advertising, except that Tenant may not install non-digital signs on the Digital Billboard without City's prior consent, which City may withhold or condition in its sole discretion.

6.3 Prohibited Uses

6.3.1 Hazardous Substances. Neither Tenant nor any of Tenant's representatives or agents shall use, handle, store, transport, treat, generate, release or dispose of any Hazardous Materials anywhere in, on, under or about the Personal Property, the Premises, the Digital Billboard, any portion thereof, or any improvements thereon. Notwithstanding the foregoing, Tenant may use, handle, store, transport, treat, generate, release or dispose of any Hazardous Materials in such limited amounts as are customarily used to install, operate, maintain, repair, improve, reposition, or remove the Digital Billboard in accordance with this Lease, provide City has consented in writing before the Hazardous Materials are brought on the Premises, and so long as Tenant is at all times in full compliance with all applicable environmental laws. Tenant shall cause any and all Hazardous Materials brought onto, used, generated, handled, treated, stored, released or discharged on or under the Digital Billboard, the Premises, any portion thereof, or any improvements thereon to be removed therefrom and transported for disposal in accordance with applicable Laws, including Hazardous Materials Laws. City shall have the right to enter the Premises, any portion thereof, or any improvements thereon from time to time to conduct tests, inspections and surveys concerning Hazardous Materials and to monitor Tenant's compliance with its obligations concerning Hazardous Materials and Hazard Materials Laws. Tenant shall immediately notify City in writing of: (a) any release or discharge of any Hazardous Material; (b) any voluntary clean-up or removal action instituted or proposed by Tenant, (c) any enforcement, clean-up, removal or other governmental or regulatory action instituted or threatened, or (d) any claim made or threatened by any person against City, Tenant, the Digital Billboard, the Premises, any portion thereof, or any improvements thereon relating to Hazardous Materials or Hazardous Materials Laws. Tenant shall also supply to City as promptly as possible, and in any event within five (5) business days after Tenant receives or sends same, copies of all claims, reports, complaints, notices, warnings or asserted violations relating in any way to the Digital Billboard, the Premises, any portion thereof, or any improvements thereon or Tenant's use thereof and concerning Hazardous Materials or Hazardous Materials Laws. In the event Tenant institutes a cleanup or removal action, Tenant shall provide copies of all work plans and subsequent reports submitted to the governmental agency with jurisdiction to City in a timely manner. Tenant shall indemnify and defend City any claims, causes of action, liabilities, losses, damages, injunctions, suits, fines, penalties, costs or expenses (including attorneys' fees and expenses and consultant fees and expenses) caused or alleged to have been caused by the presence of Hazardous Materials in, on, under, about, or emanating from the Personal Property, the Digital Billboard, the Premises, any portion thereof, or any improvements thereon, in accordance with the provisions of Section 11.3

6.3.2 Unlawful Activities. Tenant shall not use or permit the Premises to be used in any way that violates this Lease or any valid and applicable statute, ordinance, regulation, rule, or order of any federal, state, or local governmental entity (including City). Tenant shall not maintain or commit, or permit the maintenance or commission of, any public or private nuisance as defined by any law applicable to the Premises on or after the Effective Date. Tenant hereby waives any rights to compensation it may have if a court finds that the Digital Billboard constitutes a public or private nuisance under any valid and applicable federal, state, or local law and for that reason orders Tenant to remove or modify the Digital Billboard or to limit the operation of the Message Center.

6.3.3 Encumbrances. Tenant shall not encumber the Premises or any part of the Premises, for any purpose, without City's prior written consent, which City may withhold for any reason. Tenant shall keep the Premises free of all liens and other encumbrances other than those, if any, to which City consents. Notwithstanding the foregoing, Tenant may, without the consent of City, encumber the Digital Billboard or any part of the Digital Billboard in Tenant's sole discretion, including leasing of such Digital Billboard through a financing lease with a nationally recognized financing company. In the event of such encumbrance or financing lease, all rights under such encumbrance or financing lease shall be subordinate and subject to the rights and obligations of the parties under this Lease.

6.4 Unobstructed Use

6.4.1 City shall not allow either of the following (each, an "Obstruction"):

- a. On the Premises - any structure, tree, or vegetation that obstructs the view of the Message Center from U.S. Highway 101.
- b. On any City-owned or City-controlled real property in the immediate vicinity of the Premises - any structure, tree, or vegetation that is within 1,000 feet of the Digital Billboard and obstructs the view of the Message Center from U.S. Highway 101.

6.4.2 If Tenant notifies City in writing that an Obstruction exists, and if City authorized or actively caused the Obstruction, then City shall remove or remedy the Obstruction at its own cost within fifteen (15) days after receiving the notice.

6.4.3 If Tenant notifies City in writing that an Obstruction exists, and if City did not authorize or actively cause the Obstruction, then City may remove or remedy the Obstruction at its own cost within fifteen (15) days after receiving the notice. If City does not remove or remedy the Obstruction within the fifteen (15) days, then, at no cost to City, and after coordinating

with the appropriate department of City, Tenant may remove the Obstruction described in the notice.

6.4.4 Tenant's exercise of its rights under this Section 6.4 are in addition to any other remedies it may have under this Lease.

ARTICLE 7 – INSTALLATION AND OPERATION OF DIGITAL BILLBOARD

Tenant shall install and operate the Digital Billboard on the Premises in accordance with this Article 7 and consistent with Article 6, all at no cost to City.

7.1 Deposit of Costs

Tenant shall bear all costs associated with permitting and entitling the Digital Billboard. Concurrently with the execution of this Lease, Tenant shall submit to City a cash deposit in the full amount of the estimated cost of the fees for processing the entitlement applications for the Digital Billboard, completing the required environmental review, and issuing the permits to construct the Digital Billboard (the "Deposit"). City shall deposit said funds in an interest-bearing account and such interest, when received by City, shall become part of the Deposit. City is authorized to use the Deposit to pay the following actual and reasonable out-of-pocket costs and expenses incurred in carrying out its obligations under this Agreement: all costs or fees paid incurred, either by City or third parties retained by City, for the purposes of (i) preparing, submitting and processing entitlements for the proposed Digital Billboard, including preparing a conditional use permit application, (ii) preparing and submitting environmental studies and any other necessary CEQA documentation and reports, and (iii) reviewing and approving the plans and specifications described in Section 7.2 and issuing building permits to authorize construction of the Digital Billboard (collectively, "City Expenses"). In the event that City determines that, in order to carry out its obligations under this Lease, the anticipated City Expenses will exceed the remaining balance of the Deposit by more than ten percent (10%), City may by ten (10) days written notice to Tenant require Tenant to replenish the Deposit to cover such anticipated additional City Expenses. Upon the completion of the entitlement process, City shall return the unexpended portion of the Deposit, if any, to Tenant.

7.2 Plans and Specifications

At no cost to City, Tenant shall prepare complete plans and specifications for the Digital Billboard, working closely with City to develop plans and specifications that are mutually acceptable (the "Plans"). Tenant shall submit the Plans to City for final approval, which City shall not withhold unreasonably. The Digital Billboard shall be designed to comply with all applicable state, county, and City codes and regulations. At a minimum, the Plans shall comply with the criteria set forth in Exhibit B to this Lease.

7.3 Caltrans Permits

Tenant shall be responsible for insuring that the Digital Billboard complies with all requirements of California's Outdoor Advertising Act and Regulations if Caltrans determines that the Premises fall within the scope of the Act. In addition, Tenant shall be responsible for obtaining any and all permits required from Caltrans to install the Digital Billboard on the Premises. As soon as practicable after the Effective Date, Tenant shall apply to Caltrans for all necessary Caltrans Permits, if any, and City shall cooperate with Tenant in that effort, all at no cost to City. At its discretion, Tenant may designate City as the permittee under the Caltrans Permits, but that designation will confer no legal rights on City to use, encumber, or transfer the Caltrans Permits except as may be necessary for the parties to benefit from the Digital Billboard during the Term. Upon termination of this Lease, if title to the Digital Billboard transfers to the City as provided in Section 7.6, Tenant shall relinquish any interest it may have in the Caltrans Permits and execute any documents needed to confirm that City is the sole owner of the Caltrans Permits. Alternatively, if City elects to have Tenant remove the Digital Billboard as provided in Section 7.13, then City shall relinquish any interest it may have in the Caltrans Permits and execute any documents needed to confirm that Tenant is the sole owner of the Caltrans Permits. During the Term, Tenant shall perform all obligations under the Caltrans Permits at no cost to City whether Tenant or City is designated as the permittee. Prior to the issuance of City Building Permits, Tenant shall submit evidence reasonably satisfactory to City that it has obtained all necessary permits from Caltrans.

7.4 City Permits

Prior to starting construction, Tenant shall apply for a conditional use permit in accordance with Section 17.27.080 of the Rohnert Park Municipal Code ("RPMC"), site plan and architectural review in accordance with RPMC Section 17.25.030, and all necessary building and electrical permits for the Digital Billboard. City shall diligently process Tenant's applications for all City Permits. This Lease does not commit City in advance to approve City Permits; and this Lease does not constrain City's discretion, acting as a government, with respect to City Permits specifically or to the Digital Billboard generally, and nothing contained herein shall be construed to mean that City is agreeing or has agreed to exercise its discretionary authority in support of any approvals or entitlements that may be required to construct the Digital Billboard.

7.5 Installation

Tenant shall install the Digital Billboard in accordance with the proposed schedule set forth in Schedule 2 to this Lease. Tenant shall begin installing the Digital Billboard as soon as practicable after all permits and governmental approvals have been obtained and shall diligently pursue installation to completion without unnecessary interruption so that the Digital Billboard is Operational by the 120th day after such permits and governmental approvals have been obtained. Tenant will be excused, however, for any delays in beginning or completing installation that are caused by a Force Majeure

Event, as defined in Section 13.5. Tenant shall use reasonable diligence to avoid such delays and to resume work as promptly as possible after such a delay.

7.6 Ownership

Tenant intends to lease the Digital Billboard under a financing lease from a nationally recognized financing company and thereafter acquire title pursuant to the terms of such financing lease. Upon the expiration or other termination of this Lease for any reason, if the Digital Billboard is then owned outright by Tenant, the Digital Billboard, and all other improvements on the Premises, shall, without compensation to Tenant, become City's property free and clear of all claims to or against them by Tenant or any third person. If, upon such expiration or other termination of this Lease, Tenant has not yet acquired title to the Digital Billboard, and title to or a security interest in such Digital Billboard is still held by such financing company, City's rights to the Digital Billboard shall be subordinate and subject to the rights of such financing company. In either event, if City, at its sole option, elects to have Tenant remove the Digital Billboard, Tenant shall remove the Digital Billboard upon the expiration or termination of the Term in accordance with Section 7.13.

7.7 Security Fencing/Bollards

Before beginning installation of the Digital Billboard, Tenant shall enclose with a temporary security fence the portion of the Premises Tenant needs to install, operate, maintain, and repair the Digital Billboard. Tenant shall maintain the temporary security fence until Tenant replaces it with permanent bollards around the base of the Sign Structure to protect the Digital Billboard from damage. Tenant shall install and maintain the temporary fence and the permanent bollards at no cost to City and shall consult with City on the location and design of each. Tenant shall install the permanent bollards at the beginning of the Operations Phase and maintain those bollards until the end of the Term.

7.8 Maintenance

At no cost to City, Tenant shall maintain the Premises and shall maintain, repair, and improve the Digital Billboard in accordance with the highest standards of the outdoor-advertising industry. Tenant's maintenance obligation under this Section 7.8 includes the obligation to remove promptly any graffiti from the Premises and the Digital Billboard. Tenant's obligation to improve the Digital Billboard under this Section 7.8 includes the obligation to replace the entire Message Center every ten (10) years. City is not obligated to maintain the Premises or to maintain or repair the Digital Billboard. If, however, Tenant does not maintain the Premises or the Digital Billboard in accordance with this Lease, then City may notify Tenant in accordance with Section 13.1 that City will perform the maintenance described in the notice if Tenant does not do so within ten (10) Business Days. If Tenant does not perform the needed maintenance within the ten (10) Business Days after the notice is given, then City may perform the maintenance described in the notice, and Tenant shall reimburse City's costs.

7.9 Insured Damage or Destruction

7.9.1 Restoration. This Lease will continue in full effect if the Digital Billboard is damaged or destroyed in whole or part by any cause covered by the fire-and-casualty insurance Tenant is required to maintain under Section 12.1(c). No loss or damage by fire or any other cause resulting in either partial or total destruction of the Digital Billboard, or any portion thereof, shall (except as otherwise provided in Section 7.10, below) operate to terminate this Lease or to relieve or discharge Tenant from the payment of any Rent, or other amounts payable hereunder, as and when they become due and payable, or from the performance and observance of any of the agreements, covenants and conditions herein contained to be performed and observed by Tenant. Tenant covenants to repair, reconstruct, and/or replace or cause to be repaired, reconstructed and/or replaced the Digital Billboard, or any portion thereof, including any Personal Property owned by Tenant and used or intended to be used in connection with the Premises, so damaged or destroyed. Tenant also covenants that all insurance proceeds will be applied to the repair, reconstruction and/or replacement described herein, subject to the following:

- a. Tenant shall repair or replace the Digital Billboard at no cost to City using the insurance proceeds Tenant receives or is entitled to receive under the fire-and-casualty policy. Tenant shall promptly apply for, and diligently pursue the issuance of, any permits or approvals it needs to repair or replace the Digital Billboard. Within thirty (30) days after obtaining the necessary permits and approvals, Tenant shall begin work to repair or replace the Digital Billboard. Tenant shall complete the work within 180 days after the work begins and shall pay any costs that exceed the available insurance proceeds.
- b. Tenant may elect not to repair or replace the Digital Billboard if:
 - i. the cost to repair or replace it exceeds fifty percent (50%) of its fair-market value immediately before it is damaged or destroyed; and
 - ii. the damage or destruction occurs:
 - 1) during the last two years of the Initial Term (if Tenant opts not to extend this Lease under Section 4.2); or
 - 2) during the last two years of the Extended Term (if Tenant opts to extend this Lease under Section 4.2).
- c. If Tenant elects, under this Section 7.9, not to repair or replace the Digital Billboard, then Tenant shall:

- i. notify City in writing of its election;
- ii. use the insurance proceeds Tenant receives for the damage or destruction to remove the Digital Billboard and restore the Premises in accordance with Section 7.13; and
- iii. pay to City half of the insurance proceeds that remain after Tenant has performed under the preceding subsection, and this Lease will terminate when those proceeds are so paid.

Except as otherwise permitted by this Section 7.9.1, Tenant's failure to make such full repair, restoration and replacement under any conditions in which it was elected or required so to do shall constitute a default by Tenant under this Lease.

7.9.2 Procedures for Repair and Restoration. In the event of any damage or destruction, Tenant shall promptly give City written notice of such damage or destruction and the date on which such damage or destruction occurred. Tenant shall promptly make proof of loss and shall proceed promptly to collect, or cause to be collected, all valid claims which Tenant may have against insurers or others based upon any such damage or destruction. Except as otherwise provided above, amounts received on account of any losses pursuant to insurance policies shall be used and expended for the purpose of fully repairing or reconstructing the portions of the Digital Billboard which has been destroyed or damaged.

7.10 Uninsured Damage or Destruction

Notwithstanding the provisions of Section 7.9, if, during the Term, (i) the Digital Billboard is totally destroyed or rendered unusable from a risk not covered ninety percent (90%) by the insurance required to be carried by Tenant under this Lease, and (ii) the cost of restoration exceeds fifty percent (50%) of the replacement cost of the Digital Billboard immediately before the damage or destruction or twelve times the Base Rent in effect when the damage occurs, whichever is greater, then either City or Tenant may elect to terminate this Lease by giving notice to the other party within thirty (30) days after City's determination of the restoration cost and replacement value.

7.11 Utilities

At no cost to City, Tenant shall provide and pay for all utility connections, utility equipment, and utility service required to install, operate, maintain, repair, improve, or reposition the Digital Billboard throughout the Term. Tenant shall coordinate with City and the applicable utility companies for utility tie-ins and electrical power sources that Tenant may need to operate the Digital Billboard. When purchasing electricity needed to operate the Digital Billboard, Tenant shall participate in the "Green Option" program offered by Pacific Gas & Electric ("PG&E"), so that 100% of the Digital Billboard's electrical needs come from renewable resources. If PG&E discontinues the Green

Option program, then Tenant shall participate in any comparable program that PG&E then offers.

7.12 Advertising Rights

During the Term, Tenant will have the exclusive right to enter into agreements for advertising on the Digital Billboard, subject to the following:

7.12.1 Operation of the Message Center. In operating the Message Center, Tenant shall conform to all valid and applicable laws and regulations, including laws and regulations pertaining to outdoor advertising, including the criteria and limitations set forth in Exhibit B. Unless otherwise legally obligated to do so, Tenant shall not display any message that in the judgment of the Rohnert Park City Manager or his or her designee:

- i. is false, misleading, or deceptive;
- ii. promotes the sale or use of tobacco products, or medical marijuana, whether directly or indirectly, provided that advertising for hydroponics shall not be deemed indirect promotion of marijuana;
- iii. promotes the sale of alcoholic beverages in a manner that violates the best standards of the outdoor advertising industry for the promotion of wineries or alcoholic beverages;
- iv. depicts violence or anti-social behavior or relates to illegal activity;
- v. contains "obscene matter," as that term is defined in California Penal Code section 311 on the Effective Date, or promotes adult entertainment;
- vi. promotes or opposes a candidate for public office or promotes or opposes a ballot measure;
- vii. holds a person or group of persons up to public ridicule, derision, or embarrassment, or defames a person or group of persons; or
- viii. contains language that is obscene, vulgar, profane, or scatological, or that presents a clear-and-present danger of causing riot, disorder, or other imminent threat to public safety, peace, or order.

As used in this Section 7.12.1, "legally obligated" shall mean under a court order from a court with competent jurisdiction.

7.12.2 Amber Alerts and Public-Service Messages. Tenant shall make the Message Center available to Caltrans for the purpose of displaying "Amber Alert" messages in accordance with the Amber Alert Guidelines

established by Caltrans and the United States Department of Justice. In addition, Tenant shall make the Message Center available to Caltrans, to City, and to other government agencies, on a space-available basis and without cost, for the purpose of displaying public-service messages (e.g., reports of commute times, drunk-driving-awareness messages, reports of serious accidents, emergency-disaster communications). As used in this 7.12.2, "space-available basis" means any time when Tenant has not sold out the display time on the Message Board. Such use for public-service messages shall not count against the ten percent (10%) of the advertising time allocated to City pursuant to Section 5.2.3 and the criteria set forth in Exhibit B without the prior written consent of City. Alternatively, Tenant may include such public-service messages in the body of commercial advertising.

7.12.3 City Messages. During the Term, City shall have the exclusive right to ten percent (10%) of the total advertising time on the Digital Billboard, as provided in Section 5.2.3 and Exhibit B.

7.13 Removal of Digital Billboard

If City, at its sole option, elects to have Tenant remove the Digital Billboard rather than transfer title pursuant to Section 7.6, within 120 days after the Term ends, whether the Term expires as scheduled or is terminated early for any reason, Tenant shall remove the Digital Billboard from the Premises and shall restore the Premises to their pre-lease condition, all at no cost to City.

7.14 Compliance with Law; Waiver of Compensation

During the Term and while removing the Digital Billboard after the Term in accordance with Section 7.13, Tenant, at no cost to City, shall comply with all valid and applicable statutes, ordinances, regulations, rules, and orders that concern the Premises or the Digital Billboard and are enacted or issued by any federal, state, or local governmental entity with jurisdiction over the Premises or the Digital Billboard (including City) whether enacted or issued before, on, or after the Effective Date.

ARTICLE 8 – EVENT OF DEFAULT; EARLY TERMINATION.

8.1 Defaults by Tenant

Tenant shall be in default under this Lease upon occurrence of any of the following:

- 8.1.1 Tenant shall at any time be in default in the payment of Rent or any other monetary sum called for by this Lease for more than ten (10) days following written notice from City to Tenant; or
- 8.1.2 Tenant shall at any time be in default in the keeping and performing of any of its other covenants or agreements herein contained, or any other provisions of this Lease, and such other default continues for thirty (30)

days after written notice thereof from City to Tenant specifying the particulars of such default, or if such default is of a nature that curing such default will take more than thirty (30) days Tenant has failed to commence such cure within such thirty (30) day period and to thereafter diligently pursue completion of such cure; or

8.1.3 Except as otherwise authorized by this Lease, Tenant assigns, sells, transfers, conveys, encumbers, hypothecates or leases the whole or any part of the Digital Billboard, the Premises, any portion thereof, or any improvements thereon in violation of this Lease; or

8.1.4 Except as otherwise expressly permitted in this Lease, there is any change in control of Tenant, or any other act or transaction involving or resulting in a change in the identity of the parties in control of Tenant or the degree of such control.

8.2 City's Remedies For Default By Tenant

Upon the occurrence of any such default, in addition to any and all other rights or remedies of City hereunder, or by Law or in equity provided, City shall have the sole option to exercise the following rights and remedies:

8.2.1 Without prejudice to its other remedies at law or in equity, City may terminate this Lease, at any time and in its sole discretion, effective 30 days after City gives Tenant written notice of termination.

8.2.2 City shall have the remedy described in California Civil Code section 1951.4 (lessor may continue lease in effect after lessee's breach and abandonment and recover rent as it becomes due, if lessee has right to sublet or assign, subject only to reasonable limitations), as amended from time to time, and successor statutes thereto.

8.3 Damages

Should City elect to terminate this Lease, City shall be entitled to recover from Tenant, as damages:

8.3.1 The worth at the time of the award of the unpaid Rent that had been earned at the time of termination of this Lease;

8.3.2 The worth at the time of the award of the amount by which the unpaid Rent that would have been earned after the date of termination of this Lease until the time of award exceeds the amount of the loss of Rent that Tenant proves could have been reasonably avoided;

8.3.3 The worth at the time of the award of the amount by which the unpaid Rent for the balance of the Term of this Lease after the time of award

exceeds the amount of the loss of Rent that Tenant proves could have been reasonably avoided; and

- 8.3.4 Any other amount (and court costs) necessary to compensate City for all detriment proximately caused by Tenant's default, including costs of alterations and improvements in connection with reletting.

8.4 Cumulative

Each right and remedy of City provided for herein or now or hereafter existing at Law or in equity, by statute or otherwise shall be cumulative and shall not preclude City from exercising any other rights or remedies provided for in this Lease or now or hereafter existing at Law or in equity, by statute or otherwise. No payment by Tenant of a lesser amount than the Rent nor any endorsement on any check or letter accompanying any check or payment of Rent shall be deemed an accord and satisfaction of full payment of Rent; and City may accept such payment without prejudice to City's right to recover the balance of such Rent or to pursue other remedies.

ARTICLE 9 – TAXES

Tenant is responsible for and shall pay or otherwise discharge, without abatement or deduction, all taxes levied on, or related to, Tenant's outdoor-advertising activities on the Premises. Tenant's obligation to pay taxes includes payment of the following:

9.1 Possessory Interest Taxes

This Lease creates a possessory property interest in Tenant. Tenant acknowledges and agrees that Tenant's leasehold and/or other property interests may be subject to property taxation, and Tenant to the payment of property taxes levied on such interest. Such taxes are referred to herein as "Possessory Interest Taxes," and shall be paid by Tenant during the term of this Lease.

9.2 Sales Taxes

The sale of advertising space on the Digital Billboard may be subject to sales or similar tax. Tenant acknowledges and agrees that such activities may subject Tenant to the payment of sales taxes levied on such interest, and Tenant agrees that all such sales taxes shall be paid by Tenant (or Tenant's customers) during the term of this Lease.

9.3 Personal Property Taxes

Tenant shall pay before delinquency all taxes, assessments, license fees and other charges levied and assessed against Tenant or City with respect to any real-property tax allocated to the Digital Billboard and/or personal-property tax levied on Tenant's personal property on the Premises ("Personal Property Taxes") which may become payable during the Term or are attributable to Tenant's use or occupancy of the Premises. On demand by City, Tenant shall furnish City with satisfactory evidence of these payments. Notwithstanding the foregoing, Tenant shall have the right to contest

the imposition or collection of any such Personal Property Taxes, which Tenant reasonably believes, was improperly assessed or calculated.

9.4 Other Taxes

Excepting any Possessory Interest Taxes as set forth in section 9.1, Tenant shall pay before delinquency all taxes, impositions, general or special assessment, surcharge, fee, levy, penalty, bond, or similar charge is levied on any business conducted on the Premises or any portion thereof) general and special taxes including gross receipts tax, excise tax levied by any Taxing Authority (defined below) including with respect to City's receipt of Rent or ownership, management or operation of the Premises, or any improvements, any portion thereof, or any improvements thereon by any authority having the power to tax, including any federal, state or county government or any political subdivision thereof ("Taxing Authority"). In the event any Personal Property Taxes, and other Taxes, as described in this Article 9 or any other costs to be borne by or due from Tenant are not assessed or charged against the Premises separately from other City-owned property, City shall reasonably allocate such on a pro-rata basis.

9.5 Tenant's Tax Liability Prorated

Tenant's liability to pay any Taxes and new assessments shall be prorated on the basis of a 365-day year to account for any fractional portion of a fiscal tax year included in the Term at its inception and expiration or other termination in accordance with this Lease.

ARTICLE 10 – EMINENT DOMAIN

10.1 Definitions

For the purposes of this Article 10, the following definitions shall apply:

- a. "Condemning Entity" means any entity that by law may exercise the power of eminent domain to acquire possession of, and title to, any of the following: the Digital Billboard, the entire Premises, or an Essential Part of the Premises.
- b. "Essential Part of the Premises" means any portion of the Premises that is reasonably necessary for installing, operating, maintaining, repairing, or improving the Digital Billboard in accordance with this Lease.

10.2 Termination Events

This Lease will terminate if a Condemning Entity acquires the Digital Billboard, the entire Premises, or an Essential Part of the Premises:

- a. by using the power of eminent domain; or

- b. through negotiations under the threat of using the power of eminent domain.

10.3 Termination Date; Rent Refund; Caltrans Permits

Termination under this Article 10 will occur on the date the Condemning Entity obtains possession of, or title to, the Digital Billboard, the entire Premises, or the Essential Part of the Premises, whichever occurs first. Within 15 Business Days after the termination date, City shall:

- a. refund to Tenant any pre-paid Base Rent for the unexpired portion of the Term; and
- b. relinquish any interest it may have in the Caltrans Permits and execute any documents needed to confirm that Tenant is the sole owner of the Caltrans Permits.

10.4 Compensation

If termination occurs under this Article 10, then Tenant and City may each independently seek to recover from the Condemning Entity all compensation and other remedies provided by law for the interests taken from them. But City may not seek or recover compensation for Tenant's lost interests, and Tenant may not seek or recover compensation for City's lost interests. Without limiting the preceding, Tenant may seek to recover some or all of the following from the Condemning Entity:

- a. compensation for its lost advertising income, for the value of the Digital Billboard, for lost goodwill, and for its interest in this Lease; and
- b. financial assistance for relocating the Digital Billboard.

ARTICLE 11 – INDEMNIFICATION

11.1 Definitions

For the purposes of this Article 11, the following definitions shall apply:

11.1.1 "Person" is to be interpreted broadly and includes Tenant and Tenant's directors, officers, employees, contractors, and agents; and City and City's elected officials, officers, employees, contractors, and agents.

11.1.2 "Liabilities" means all liabilities, claims, demands, damages, and costs (including reasonable attorneys' fees and litigation costs through final resolution on appeal) that arise directly or indirectly from Tenant's possession or use of the Premises.

11.1.3 "Occurrence" means (A) the death of, or injury to, any Person; and (B) damage to, or destruction of, any real property, personal property (including intellectual property), or the environment (broadly interpreted to include the air, soil, soil vapor, surface water, groundwater, flora, and fauna on or about the Premises).

11.1.4 "Secured Area" means the portion of the Premises enclosed by the permanent security fence that Tenant erects around the Digital Billboard in accordance with Section 6(f).

11.2 General Indemnity

Except to the extent claims are caused by City's sole negligence or willful misconduct, Tenant shall indemnify, protect, defend, and hold harmless City and its elected officials, officers, employees, volunteers, lenders, agents, representatives, tenants and each of their successors and assigns from and against any and all claims, judgments, causes of action, damages, penalties, costs, liabilities, and expenses, including all costs, attorneys' fees, expenses and liabilities incurred in the defense of any such claim or any action or proceeding brought thereon, arising at any time during or after the Term as a result (directly or indirectly) of or in connection with (a) any Tenant default under this Lease (including in the performance or non-performance of any obligation on Tenant's part to be performed under the terms of this Lease); (b) Tenant's performance of the installation of the Digital Billboard (including design, development, and construction); (c) Tenant's or Tenant's representatives or agents use of the Premises, the Digital Billboard, any portion thereof, or any improvements thereon, the conduct of Tenant's business or any activity, work or thing done, permitted or suffered by Tenant or its representatives or agents in or about the Premises or any portion thereof, or any improvements thereon, except that with regard to the presence of Hazardous Materials, the Premises or any improvements thereon, Tenant shall not be responsible for conditions that may have existed prior to the Effective Date; (d) any act, error or omission of Tenant or its representatives or agents in or about the Premises, any portion thereof, or any improvements thereon; (e) loss of, injury or damage to, or description of property (including merchandise or inventory), including loss of use resulting from such loss, injury, damage, or destruction; or (f) any resulting economic loss, consequential damages, or exemplary damages (collectively, "Indemnification"). Tenant shall provide such Indemnification by and through counsel selected by City. Without limiting the foregoing, Tenant's obligation under this Section 11.2 includes Liabilities arising from any of the following:

- a. Any Occurrence on the Premises and outside the Secured Area, but only to the extent caused by Tenant's acts or omissions.
- b. Any Occurrence inside the Secured Area.
- c. Any Occurrence that is in any way connected with any of Tenant's personal property on the Premises.

- d. Any Occurrence caused or allegedly caused by (A) any condition of the Premises created by Tenant or by any Person on the Premises with Tenant's permission; or (B) some act or omission on the Premises by Tenant or by any Person on the Premises with Tenant's permission.
- e. Any Occurrence caused by, or related in any way to, work or activities performed on the Premises or materials furnished to the Premises at the request of Tenant or any person or entity acting for Tenant or with Tenant's permission.
- f. Any Occurrence that is caused by, or related in any way to, a verbal or nonverbal display on the Message Center.
- g. Tenant's failure to perform any provision of this Lease, to comply with any requirement of law applicable to Tenant, or to fulfill any requirement imposed by any governmental entity (including City when acting as a government) on Tenant or on Tenant's use of the Premises.
- h. Any claim that Tenant's policies with respect to the allocation of advertising time violate any person's or persons' First Amendment rights.

11.3 Hazardous Materials

Except to the extent caused by City's sole negligence or willful misconduct or except with regard to the presence of Hazardous Materials on the Premises prior to the Effective Date, Tenant shall indemnify, defend and hold City harmless from any claims, causes of action, liabilities, losses, damages, injunctions, suits, fines, penalties, costs or expenses (including attorneys' fees and expenses and consultant fees and expenses) caused or alleged to have been caused by the presence of Hazardous Materials in, on, under, about, or emanating from the Digital Billboard, the Premises, any portion thereof, or any improvements thereon, including any bodily injury, death, property damage, natural resource damage, decrease in value of the Premises, any portion thereof, or any improvements thereon, caused or alleged to have been caused by Tenant's use, storage, handling, treatment, generation, presence, discharge or release of Hazardous Materials in violation of Tenant's obligations under this Lease, whether such claims, causes of action or liabilities are first asserted during the Term or thereafter, and including claims made against City with respect to bodily injury, death or property damage sustained by third parties caused or alleged to have been caused by Tenant or Tenant's Parties' use, storage, handling, treatment, generation, presence, discharge or release of Hazardous Materials.

11.4 Legal Challenges

Tenant shall indemnify, defend (with attorneys selected by City), protect, and hold harmless City and City's elected officials, officers, and employees in any litigation

brought to challenge the award or validity of this Lease, the validity of City Permits or the Caltrans Permits, or the validity of City ordinances that authorize the installation and operation of the Digital Billboard on the Premises. Tenant's obligation to indemnify under this Section 11.4 includes liability for attorneys' fees awarded to a party who successfully challenges the validity of this Lease, of City Permits or the Caltrans Permits, or of any authorizing ordinance.

11.5 Not a Construction Contract

This Lease is not intended nor shall it be construed to be a construction contract. To the extent this Lease is construed by a court of law to be a construction contract, all indemnity obligations construed to be related to construction contracts shall be read as if including the carve out "except to the extent claims are caused by the sole or active negligence or willful misconduct of the indemnified party."

11.6 Exemption of City from Liability

Tenant, as a material part of the consideration to City, hereby assumes all risk of damage to property (including the Personal Property, the Digital Billboard, the Premises, any portion thereof and any improvements thereon), and injury to or death of persons in, upon or about Personal Property, the Digital Billboard, the Premises, any portion thereof, or any improvements thereon, arising from any cause, and Tenant hereby waives all claims in respect thereof against City, except to the extent such claims are caused by City's sole negligence or willful misconduct. Tenant hereby agrees that City shall not be liable for injury to Tenant's business or any loss of income therefrom or for damage to the Personal Property, or injury to or death of Tenant, its representatives, or agents, or any other person in or about the Premises, any portion thereof, or any improvements thereon, whether such damage or injury is caused by fire, steam, electricity, gas, water or rain, or from the breakage, leakage or other defects of sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures, or from any other cause, whether said damage or injury results from conditions arising within or about the Personal Property, the Digital Billboard, the Premises, any portion thereof, or any improvements thereon or from other sources or places, and regardless of whether the cause of such damage or injury or the means of repairing the same is inaccessible to Tenant, except damage or injury caused solely by City's sole negligence or willful misconduct. City shall not be liable for any damages arising from any act or neglect of any other tenant or occupant, if any, of the Personal Property, the Digital Billboard, the Premises, any portion thereof, or any improvements thereon, or Landlord's failure to enforce the terms of any agreements with parties other than Tenant.

11.7 Survival

Tenant's obligations under this Article 11 shall survive expiration or termination of this Lease.

ARTICLE 12 – INSURANCE

12.1 Types of Policies

During the Term and during Tenant's removal of the Digital Billboard in accordance with 7.13, at no cost to City, Tenant shall procure and maintain the following forms and amounts of insurance covering Tenant's possession and use of the Premises. Such insurance shall be primary to and not contributing with any other insurance, self-insurance or joint self-insurance maintained by City, and shall name the City as an additional insured.

- a. Commercial General Liability Insurance. A policy of commercial general liability insurance (occurrence form) having a combined single limit of not less than Five Million Dollars (\$5,000,000) per occurrence and Five Million Dollars (\$5,000,000) annual aggregate, providing coverage for, among other things, blanket contractual liability (including Tenant's indemnification obligations under this Lease), premises liability, products and completed operations liability, owner's protective coverage, broad form property damage, and bodily injury (including wrongful death) and advertising injury coverage. If necessary, Tenant shall provide for restoration of the aggregate limit.
- b. Workers' Compensation and Employer's Liability Insurance. Workers' compensation insurance, if required by Law, which complies with all applicable state statutes and regulatory requirements, and employer's liability insurance coverage in statutory amounts.
- c. Premises Insurance. "All risk" property insurance including fire and extended coverage, sprinkler leakage, vandalism and malicious mischief coverage, insures the Digital Billboard for its full replacement value against damage or destruction by fire or by any of the perils commonly covered under the standard extended-coverage endorsement to fire-insurance policies issued on real property in Rohnert Park. In addition, during installation of the Digital Billboard, the policy must include coverage for course of construction, vandalism, and malicious mischief and must insure the Digital Billboard and all materials delivered to the Premises for their full insurable value. All insurance proceeds that become payable under this policy while this Lease is in effect will be paid to Tenant in trust and applied by Tenant to the cost of repairing and restoring the Digital Billboard as required by, and except as otherwise provided in, Section 7.9.
- d. Other Insurance. Any other form or forms of insurance as City may reasonably require from time to time, in form, amounts and for

insurance risks against which a prudent tenant would protect itself, but only to the extent such risks and amounts are available in the insurance market at commercially reasonable costs.

12.2 Insurer Qualifications

Tenant's Insurance shall be written by companies licensed to do business in California and having a "General Policyholders Rating" of at least A VII (or such higher rating as may be required by a lender having a lien on the Leasehold Interest) as set forth in the most current issue of "Best's Insurance Guide."

12.3 Certificates of Insurance

Tenant shall deliver to City certificates of insurance for Tenant's Insurance, in the form of the ACORD standard certificate of insurance, prior to the Commencement Date. Tenant shall, at least thirty (30) days prior to expiration of the policy, furnish City with certificates of renewal or "binders" thereof. Each certificate shall expressly provide that such policies shall not be cancelable or otherwise subject to modification except after thirty (30) days' prior written notice to the parties named as additional insureds as required in this Lease. If Tenant fails to maintain any insurance required in this Lease, Tenant shall be liable for all losses and costs resulting from said failure.

12.4 Notice

Each of the policies must obligate the insurer to give City at least 30 days' advance written notice before the policy is cancelled or materially changed.

12.5 Other Requirements

The general-liability and automobile-liability policies must each:

- a. name City and City's elected officials, officers, employees, and agents as additional insureds;
- b. provide that Tenant's insurance coverage is primary insurance with respect to City and City's elected officials, officers, employees, and agents to the extent they are additional insureds;
- c. any umbrella liability policy or excess liability policy shall provide that if the underlying aggregate is exhausted, the excess coverage will drop down as primary insurance. The limits of Tenant's Insurance shall not limit Tenant's liability under this Lease;
- d. provide that Tenant's insurance applies separately to each insured against whom a claim is made or a suit brought, except with respect to the applicable policy limits;

- e. provide that City's insurance and self-insurance are in excess of Tenant's insurance and will not contribute with it;
- f. waive any right to recover against City for claims for damages to Tenant's Personal Property to the extent covered (or required by this Lease to be covered) by Tenant's Insurance. This provision is intended to waive fully, and for the benefit of City, any rights and/or claims which might give rise to a right of subrogation in favor of any insurance carrier. The coverage obtained by Tenant pursuant to this Lease shall include a waiver of subrogation endorsement attached to the certificate of insurance.

12.6 Notification of Incidents

Tenant shall notify City within twenty-four (24) hours after the occurrence of any accident or incident on or about the Digital Billboard, the Premises, any portion thereof, or any improvements thereon which could give rise to a claim against City, City's Insurance, Tenant, or Tenant's Insurance, except that Tenant shall not be obligated to give City notice of any accident or incident which could give rise to a claim under Tenant's workers' compensation insurance. Tenant's notice shall be accompanied by a copy of any report(s) relating to the accident or incident.

12.7 No Limit on Indemnification

Nothing in this Article 12 limits Tenant's obligations under Article 11.

ARTICLE 13 – MISCELLANEOUS

13.1 Notices

Any notice or other communication to be given under this Lease shall be in writing and shall be considered properly given and effective only when addressed to the persons identified below and (i) mailed postage prepaid by certified or registered mail, return receipt requested, or (ii) delivered by personal or courier delivery, or (iii) sent by facsimile (immediately followed by one of the preceding methods). Notices or communications shall be deemed served upon the earlier of receipt or three (3) days after the date of mailing. A party may change its address for these purposes by giving written notice of the change to the other party in the manner provided in this Section 13.1.

If to City:

City Manager
City of Rohnert Park
130 Avram Avenue
Rohnert Park, California 94928

If to Tenant:

Kirk Veale, dba B.P.O. of California
2800 Cleveland Avenue #A2
P.O. Box 1496
Santa Rosa, California 95402

Facsimile: (707) 792-1876

Attention: Kirk Veale

Facsimile: (707) 575-4540

13.2 Assignments and Subleases

Except as set forth herein, neither party may sublet, assign or otherwise transfer this Lease or any interest herein, either voluntarily or by operation of law, without the other party's prior written consent, which the other party shall not unreasonably withhold, condition, or delay. Notwithstanding the above, the consent of City shall not be required (a) for Tenant to assign his rights and duties under this Lease to any type of legal entity, including but not limited to a limited liability company, corporation, or limited partnership, in which Tenant has a controlling ownership interest; or (b) in the event any such entity to which this Lease has been so assigned thereafter merges with another company, reorganizes its stock, or undergoes a similar corporate restructuring, changes ownership or sells any of its assets or stock. In addition, the consent of City shall not be required if Tenant's interest in this Lease is distributed on Tenant's death to an heir, successor or assign via a trust distribution, will, order of the court or other transfer. Notwithstanding the foregoing, if Tenant assigns his rights and duties under this lease to any immediate family member or to any intervivos trust of which Tenant is either a trustee or beneficiary, Tenant shall first obtain City's consent to the transfer, which consent shall not be unreasonably withheld. An assignment, transfer, or sublease made contrary to this Section 13.2 shall be null and void and of no effect whatsoever.

13.3 Successors and Assigns

Subject to the restrictions set forth herein, each of the terms, covenants and conditions of this Lease shall extend to and be binding on and shall inure to the benefit of not only City and Tenant, but to each of their respective heirs, administrators, executors, successors and assigns. Whenever in this Lease reference is made to either City or Tenant, the reference shall be deemed to include, wherever applicable, the heirs, administrators, executors, successors and assigns of such parties, the same as if in every case expressed.

13.4 City's Right to Enter and Inspect the Premises

City and its authorized representatives shall have the right to enter upon and inspect the Premises at any time to determine Tenant's compliance with this Lease.

13.5 Force Majeure

13.5.1 "Force Majeure Event" means a cause of delay that is not the fault of the party who is required to perform under this Lease and is beyond that party's reasonable control, including the elements (including floods, earthquakes, windstorms, and unusually severe weather), fire, energy shortages or rationing, riots, acts of terrorism, war or war-defense conditions, acts of any public enemy, epidemics, the actions or inactions

of any governmental entity (excluding City) or that entity's agents, litigation, labor shortages (including shortages caused by strikes or walkouts), and materials shortages.

13.5.2 Except as otherwise expressly provided in this Lease, if the performance of any act required by this Lease to be performed by either City or Tenant is prevented or delayed because of a Force Majeure Event, then the time for performance will be extended for a period equivalent to the period of delay, and performance of the act during the period of delay will be excused. An extension of time for any such Force Majeure Event shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within thirty (30) days of the commencement of the cause. Times of performance under this Lease may also be extended in writing by the mutual agreement of City and Tenant.

13.5.3 This Section 13.5 does not excuse (A) Tenant's obligation to pay Rent when due and payable; or (B) either party's obligation to perform an act when performance is rendered difficult or impossible solely because of that party's financial condition. Tenant expressly agrees that adverse changes in economic conditions, either of Tenant specifically or the economy generally, changes in market conditions or demand, and/or Tenant's inability to sell advertising time on the Digital Billboard or other lack of funding, or to complete the installation of the Digital Billboard shall not constitute grounds of enforced delay pursuant to this Section 13.5. Tenant expressly assumes the risk of such adverse economic or market changes and/or financial inability, whether or not foreseeable as of the Commencement Date

13.6 Waiver of Breach

A party's failure to insist on strict performance of this Lease or to exercise any right or remedy upon the other party's breach of this Lease will not constitute a waiver of the performance, right, or remedy. A party's waiver of the other party's breach of any provision in this Lease will not constitute a continuing waiver or a waiver of any subsequent breach of the same or any other provision. A waiver is binding only if set forth in writing and signed by the waiving party.

13.7 Relationship of the Parties

This Lease does not create any relationship or association between City and Tenant other than that of landlord and tenant, and it is expressly understood and agreed that City does not in any way nor for any purpose become a partner of Tenant or a joint venturer with Tenant in the conduct of Tenant's business or otherwise; nor does this Lease create between City and Tenant the relationship of principal and agent.

13.8 Attorney's Fees

In the event that any action is brought by either party hereto as against the other party hereto for the enforcement or declaration of any right or remedy in or under this Lease or for the breach of any covenant or condition of this Lease, the prevailing party shall be entitled to recover, and the other party agrees to pay, all fees and costs to be fixed by the court therein including, but not limited to, attorneys' fees.

13.9 Severability

If any term, provision, condition or covenant of this Lease or its application to any party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Lease, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by Law.

13.10 Memorandum of Lease

Either City or Tenant may record with the Sonoma County Recorder's Office, using a form reasonably satisfactory to City, a memorandum summarizing this Lease.

13.11 Further Assurances

Each party shall execute all additional documents or instruments and take all necessary action that either party reasonably considers necessary to carry out the proper purposes of this Lease.

13.12 Estoppel Certificates

Either Party hereto shall, from time to time during the Term upon not less than twenty (20) days' prior written notice from the other Party, execute, acknowledge and deliver to the other Party, or such persons or entities designated by such other Party, a statement in writing certifying: (a) the Commencement Date and Expiration Date of this Lease, (b) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that the Lease is in full force and effect as modified and stating the modifications), (c) that there are no defaults under this Lease (or if so, specifying the same), (d) the dates, if any, to which the Base Rent has been paid, and (e) any other information that may be reasonably required by any such persons or entities. Any such certificate delivered pursuant to the provisions hereof may be relied upon by the other Party or any prospective purchaser or Encumbrancer of its estate. The City Manager shall be authorized to execute, acknowledge and deliver any such certificate on behalf of City.

13.13 Time of Essence

Time is expressly made of the essence with respect to the performance by the parties of each and every obligation and condition of this Lease.

13.14 Interpretation

This Lease is to be interpreted and applied in accordance with California law without regard to conflict-of-laws principles, except that the rule of interpretation in California Civil Code section 1654 will not apply. Schedules 1 and 2 and Exhibits A, B, and C are expressly incorporated into and form a part of this Lease. The titles to the articles and sections of this Lease are for convenience only; they do not form a part of this Lease and shall have no effect upon the construction or interpretation of any part of this Lease. As used in this Lease, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others where and when the context so dictates. The word "including" shall be construed as if followed by the words "without limitation." This Lease shall be interpreted as though prepared jointly by both parties

13.15 Integration and Modification

This Lease, including all recitals of exhibits and attachments to each of the foregoing, constitute the entire agreement between the parties and there are no conditions, representations or agreements regarding the matters covered by this Lease which are not expressed herein. It supersedes all prior or contemporaneous agreements, representations, and negotiations (written, oral, express, or implied) and may be modified only by another written agreement signed by both parties. City and Tenant agree to mutually consider reasonable requests for amendments to this Lease that may be made by either of them, provided such requests are consistent with this Lease and would not materially alter the basic business terms included herein. No amendment hereto shall be effective unless in writing and signed by both parties hereto.

13.16 Quiet Possession

So long as Tenant is not in default under this Lease and is paying the Rent and performing all of the covenants and conditions of this Lease, Tenant shall quietly have, hold and enjoy the Premises during the Term without interruption or disturbance from City or any other persons claiming by, through or under City.

13.17 Surrender

Upon the expiration or other termination of the Term of this Lease, and notwithstanding anything herein contained to the contrary, Tenant shall surrender to Premises, all portions thereof, and all improvements thereon, in good condition and repair, reasonable wear and tear excepted, and free from the Digital Billboard in accordance with the provisions of Section 7.13.

13.18 Legal Advice

Each party represents and warrants to the other the following: they have carefully read this Lease, and in signing this Lease, they do so with full knowledge of any right which they may have; they have received independent legal advice from their respective legal counsel as to the matters set forth in this Lease, or have knowingly chosen not to consult legal counsel as to the matters set forth in this Lease; and, they have freely

signed this Lease without any reliance upon any agreement, promise, statement or representation by or on behalf of the other party, or their respective agents, employees, or attorneys, except as specifically set forth in this Lease, and without duress or coercion, whether economic or otherwise.

13.19 Nonliability

No member, official or employee of City shall be personally liable to Tenant, or any successor in interest, in the event of any default or breach by City or for any amount which may become due to Tenant or its successors, or on any obligations under the terms of this Lease. Tenant hereby waives and releases any claim it may have against the members, officials or employees of City with respect to any default or breach by City or for any amount which may become due to Tenant or its successors, or on any obligations under the terms of this Lease.

13.20 Applicable Law; Venue

The laws of the State of California, without regard to conflict of Laws principles, shall govern the interpretation and enforcement of this Lease. Any action to enforce or interpret this Lease shall be filed in the Superior Court for Sonoma County, California.

13.21 Covenants and Conditions

Each obligation of the parties hereunder, including, without limitation, Tenant's obligations for the payment of Rent and the replacement of the Community Center Sign, shall be construed to be both a covenant and a condition of this Lease.

13.22 Commission

Each party represents to the other that it has not been represented by any broker in connection with this Lease, and that no real estate broker's commission, finder's fee or other compensation (individually and collectively, "Commission") is due or payable. Each party agrees to indemnify and hold the other harmless from any claims or liability, including reasonable attorneys' fees, in connection with a claim by any person for a Commission based upon any statement, representation or agreement of the other party.

13.23 Counterparts

The parties hereto agree that this Lease may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same agreement, binding all of the parties hereto, notwithstanding all of the parties are not signatory to the original or the same counterparts. For all purposes, including, without limitation, recordation, filing and delivery of this Lease, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

IN WITNESS WHEREOF, the parties have executed this Lease as of the Effective Date.

LANDLORD:

CITY OF ROHNERT PARK, a California
Municipal corporation

By: _____
Name: Gabriel A. Gonzalez
Its: City Manager

ATTEST:

JoAnne Buergler, City Clerk

APPROVED AS TO FORM:

Michelle Marchetta Kenyon, City Attorney

—AND—

TENANT:

KIRK VEALE, a sole proprietorship, dba
B.P.O. of CALIFORNIA

By: _____
Name: _____
Its: _____

APPROVED AS TO FORM:

By: _____
Name: _____
Its: _____

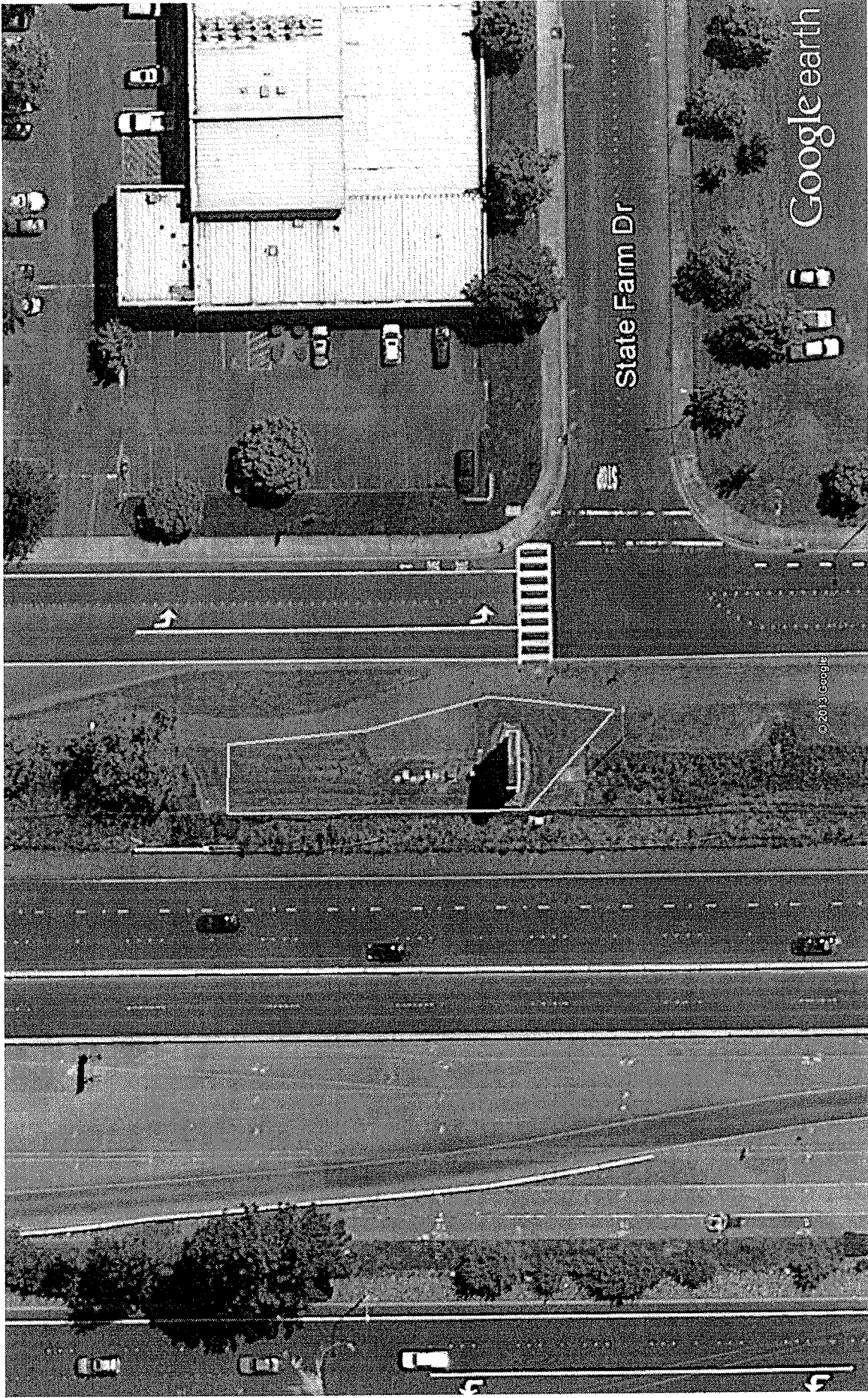
EXHIBIT A

PREMISES

Legal Description and Map

[Legal Description to be inserted here]

EXHIBIT A



© 2013 Google

State Farm Dr

Google earth

Google earth

feet
meters

300
100

EXHIBIT B

CRITERIA FOR DESIGN, INSTALLATION, AND OPERATION OF DIGITAL BILLBOARD

The design, installation, operation, and maintenance of the Digital Billboard shall comply with all applicable state, county, and City codes and regulations and, at a minimum, shall conform to the criteria, terms, conditions, and restrictions set forth in the Lease and this Exhibit B.

1. Definitions

Unless otherwise indicated, all capitalized terms set forth in this Exhibit B shall have the meanings ascribed thereto in the Lease to which this Exhibit B is attached and forms a material part.

2. Location

The Digital Billboard shall be located on the City-owned Premises, as described more particularly in the Lease. The Premises are generally located on the eastside of U.S. Highway 101 between Rohnert Park Expressway and the Wilfred Overpass/Golf Course Drive Interchange. The Premises contain approximately 4,109 square feet of land situated between Commerce Boulevard and the freeway boundary adjacent to State Farm Drive, as shown on site map included in Exhibit A to the Lease.

3. Entitlement Process/Environmental Review Standards

3.1 Tenant's Responsibilities

At no cost to City, Tenant shall:

- (i) prepare complete plans and specifications for the Digital Billboard in accordance with Section 7.2 of the Lease and the criteria set forth in Paragraph 3.2 of this Exhibit B for review and approval by City; and
- (ii) obtain all entitlements, environmental clearances, and permits necessary to remove the Existing Sign and install the Digital Billboard, including the City Permits described in Paragraph 3.2 below and any Caltrans Permits; and
- (iii) remove and dispose of the Existing Sign as provided in Section 5.2.4 of the Lease; and

- (iv) install the Digital Billboard in accordance with the plans and specifications approved by City and entitled through the process described in Paragraph 3.2, below.

3.2 Zoning and Permit Requirements

3.2.1 City Permits Required. Prior to constructing the Digital Billboard, Tenant shall apply for and obtain the following approvals from City acting in its regulatory capacity:

- (i) a conditional use permit in accordance with Section 17.27.080 of the Rohnert Park Municipal Code ("RPMC");
- (ii) site plan and architectural review in accordance with Section 17.25.030 of the RPMC; and
- (iii) all necessary building and electrical permits.

3.2.2 Governmental Discretion Retained. City shall diligently process Tenant's applications for all City Permits. Notwithstanding this requirement, the Lease does not commit City in advance to approve City Permits; and the Lease does not constrain City's discretion, acting as a government, with respect to City Permits specifically or to the Digital Billboard generally. Nothing contained in the Lease or this Exhibit B shall be construed to mean that City is agreeing or has agreed to exercise its discretionary authority in support of any approvals or entitlements that may be required to construct the Digital Billboard. In the event that City fails to approve City Permits, this Lease shall be of no further force and effect.

3.2.3 Environmental Review. Both the removal of the Existing Sign and the installation and operation of the Digital Billboard pursuant to the Lease constitute a project under the California Environmental Quality Act (CEQA) and compliance with CEQA will be required. City staff shall prepare an Initial Study and shall determine the level of environmental review required.

3.2.4 Costs; Deposit. Tenant shall be responsible for all costs associated with the review and compliance described in this Section 3, including noticing costs, filing fees, staff costs and consultant fees (collectively, the "City Permitting Costs"). City staff shall provide Tenant with an estimate of the projected City Permitting Costs. Concurrently with the execution of the Lease, Tenant shall submit to City a cash deposit in the full amount of the estimated City Permitting Costs as provided in Section 7.1 of the Lease.

3.3 Compliance with Other Regulatory Requirements.

In accordance with Section 7.3 of the Lease, Tenant shall be responsible for insuring that the Digital Billboard complies with all requirements of California's Outdoor Advertising Act and Regulations if Caltrans determines that the Premises fall within the scope of the Act. In addition, Tenant shall be responsible for obtaining any and all permits required from Caltrans to install the Digital Billboard on the Premises. Prior to the City's issuance of building permits for the Digital Billboard, Tenant shall submit evidence reasonably satisfactory to City that it has obtained all necessary approvals and permits from Caltrans. In the event that Caltrans fails to grant the necessary permits for the Digital Billboard, this Lease shall be of no further force and effect.

4. Minimum Specifications for Proposed Digital Billboard

City shall select the ultimate sign design from the plans and specifications prepared by Tenant as part of the entitlement and permitting process described in Paragraph 3.2 above. Subject to City's approval as provided in the Lease and this Exhibit B, the Digital Billboard shall conform to the following criteria:

- 4.1 Size. The Message Center portion of the Digital Billboard shall have a maximum width of fourteen feet (14') and a maximum height of forty-eight feet (48').
- 4.2 Height. The Digital Billboard shall have a maximum height of fifty feet (50') to the top of the Sign Structure.
- 4.3 Technology. The Digital Billboard shall employ the then current best available digital-billboard technologies to the extent known to Tenant at the time of installation or upgrade as required by the Lease, including:
 - a. UL and IEC approved
 - b. Remote diagnostic and maintenance capability;
 - c. Amber Alert capability;
 - d. State-of-the-art sensors for automatic brightness adjustment to ambient lighting conditions;
 - e. Color calibration to ensure consistent image quality;
 - f. Remote shutdown capability.
- 4.4 Compliance with Laws. The Digital Billboard shall be designed to comply with all applicable federal, state, county, and City statutes, ordinances, regulations, rules, and orders as provided in Section 7.14 of the Lease.

- 4.5 Energy. The Digital Billboard shall employ the latest technology to ensure it achieves the greatest energy efficiency possible. In addition, Tenant shall purchase power through PG&E's "Green Option" program—as provided in Section 7.11 of the Lease and described more fully in Paragraph 6.8 (Sustainability Plan) of this Exhibit B.
- 4.6 Service Access. The Digital Billboard shall be designed with internal service access for safety and improved appearances. There shall be no visible catwalks on the exterior of the Digital Billboard.

5. Construction Requirements

- 5.1 Removal of Existing Sign. Prior to the installation of the Digital Billboard, Tenant, at no cost to City, shall remove the Existing Sign according to the schedule set forth in Schedule 2, to the Lease subject to the following:
- a. Tenant shall obtain all necessary governmental approvals, permits and environmental clearances prior to starting any demolition of the Existing Sign.
 - b. Tenant shall restore the Premises to a condition acceptable to City, including completing any necessary environmental cleanup mandated by any governmental agency with jurisdiction over the Premises.
 - c. Tenant shall use its best efforts to remove and demolish the Existing Sign in a manner that permits the existing sign structure and components to be recycled as fully as possible.
- 5.2 Compliance with Law. Tenant shall comply with all applicable state, county, and City codes and permitting requirements governing the demolition of the Existing Sign and the construction of the Digital Billboard.
- 5.3 Prevailing Wage. Tenant acknowledges and agrees that any construction or alterations made by or on behalf of Tenant to the Premises, including demolition of the Existing Sign, installation of the Digital Billboard, repair or upgrades to the Digital Billboard, or any improvements thereon ("Improvement Work"), whether paid for in whole or part by City or which are considered under law to have been paid for in whole or part by City (e.g. any improvement which become City's property upon the expiration or other termination of the Lease), will constitute "construction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds..." California Labor Code Section 1720. Accordingly, except as to Tenant's employees, Tenant shall comply with applicable prevailing wage policies as set forth in the Rohnert Park Municipal Code, applicable California Labor Code requirements pertaining

to "public works" (California Labor Code Section 1720 et seq., as amended from time to time and implementing regulations), the Davis-Bacon Act (sec. 1-7, 46 Stat. 1949, as amended; Pub. L. 74-403, 40 U.S.C. 276a-276a-7, as amended from time to time and implementing regulations), and other applicable laws addressing the payment of prevailing wages in connection with any Improvement Work (collectively, "Prevailing Wage Laws"). Tenant shall require the general contractor for any Improvement Work to submit, upon request by City, certified copies of payroll records to City and to maintain and make records available to City and its designees for inspection and copying to ensure compliance with Prevailing Wage Laws. Tenant shall defend, indemnify and hold harmless City and its officers, officials, employees, volunteers, agents and representatives (collectively, "Indemnitees") from and against any and all Claims arising out of or in any way connected with Tenant's obligation to comply with all Laws with respect to any Improvement Work and/or Prevailing Wage Laws, including all Claims that may be made by Tenants, subtenants or other third party claimants pursuant to Labor Code Section 1726. Tenant hereby waives, releases and discharges forever the Indemnitees from any and all present and future Claims arising out of or in any way connected with Tenant's obligation to comply with all Laws with respect to the Improvement Work and Prevailing Wage Laws

- 5.4 Security Fencing. Prior to commencing demolition of the Existing Sign, Tenant shall enclose with a temporary security fence the portion of the Premises Tenant needs to remove the Existing Sign and install, operate, maintain, and repair the Digital Billboard. Tenant shall maintain the temporary security fence until Tenant replaces it with the permanent bollards described in Paragraph 6.3 of this Exhibit B. Tenant shall install and maintain the temporary fence at no cost to City and shall consult with City on the location and design of the temporary security fence.
- 5.5 Performance Bond. Within five (5) days of the execution of the Lease, Tenant shall provide City a faithful performance bond securing Tenant's faithful performance of its obligations under the Lease. The principal sum of the faithful performance bond shall be equal to the full amount of the Base Rent for Lease Years 1 and 2, inclusive.

6. Operational Requirements

- 6.1 Hours of Operation. Tenant shall operate the Digital Billboard from 5:00 a.m. until 3:00 a.m. daily. Tenant reserves the right, with the consent of City, which shall not be unreasonably withheld, to shorten or extend such hours of operation if economic conditions warrant such change.

6.2 Maintenance; Upgrades.

6.2.1 Premises. As provided in Section 7.8 of the Lease, Tenant shall, at Tenant's sole cost and expense, maintain the Premises, in good, clean and first-class condition and repair at all times during the Term, reasonable wear and tear excepted. Without limiting the generality of the foregoing, Tenant shall be solely responsible for keeping the Premises free from weeds and debris. To ensure compliance with these requirements, Tenant shall implement a regular weed removal program and shall remove weeds from the Premises not less than weekly. In addition, Tenant shall promptly remove and dispose of any debris from the Premises.

6.2.2 Digital Billboard. As provided in Section 7.8 of the Lease, Tenant, at no cost to City, shall maintain, repair, and improve the Digital Billboard in accordance with the highest standards of the outdoor-advertising industry. Tenant's maintenance obligation includes the obligation to promptly remove any graffiti from the Premises and the Digital Billboard, as provided in Paragraph 6.4, below. Tenant's obligation to improve the Digital Billboard includes the obligation to replace the entire Message Center every ten (10) years.

6.2.3 City's Responsibility. City shall not be obligated to maintain the Premises or to maintain or repair the Digital Billboard. If, however, Tenant does not maintain the Premises, then City may notify Tenant in accordance with Section 13.1 of the Lease that City will perform the maintenance described in the notice if Tenant does not do so within ten (10) Business Days. If Tenant does not perform the needed maintenance within ten (10) Business Days after the notice is given, then City may perform the maintenance described in the notice, and Tenant shall reimburse City's costs.

6.3 Security Bollards. Upon completion of the installation of the Digital Billboard, Tenant shall replace the temporary security fence described in Paragraph 5.4, above, with permanent bollards around the base of the Sign Structure to protect the Digital Billboard from damage. Tenant shall install and maintain the permanent bollards at no cost to City and shall consult with City on the location and design of the bollards. Tenant shall install the permanent bollards at the beginning of the Operations Phase and maintain those bollards until the end of the Term.

6.4 Graffiti Removal. At no cost to City, Tenant shall promptly remove any graffiti on the Digital Billboard or on the Premises and shall restore the same to a condition acceptable to City.

6.5 Advertising rights

During the Term, Tenant will have the exclusive right to enter into agreements for advertising on the Digital Billboard, subject to the following

6.5.1 General Provisions

- a. Tenant shall, at all times, operate the Message Center in a manner that fully complies with all valid and applicable laws and regulations, including laws and regulations pertaining to outdoor advertising, and shall adhere to the criteria and limitations set forth in the Lease and this Exhibit B.
- b. Unless otherwise legally obligated to do so, Tenant shall not display any message that in the judgment of the Rohnert Park City Manager, or his or her designee, violates any of the provisions of Section 7.12.1 of the Lease. As used in this subparagraph (b), "legally obligated" shall mean under a court order from a court with competent jurisdiction.
- c. When requested, Tenant shall make the Message Center available to Caltrans for the purpose of displaying "Amber Alert" messages in accordance with the Amber Alert Guidelines established by Caltrans and the United States Department of Justice, as set forth in Section 7.12.2 of the Lease.
- d. Tenant shall give City the exclusive right to ten percent (10%) of the total advertising time on the Digital Billboard, as more fully described in Paragraph 6.5.2, below.

6.5.2 Allocation of Advertising Time.

The advertising time on the Digital Billboard shall be allocated in accordance with the provisions of this Paragraph 6.5.2.

- a. City Exclusive Use. Ten percent (10%) of the total advertising time on the Digital Billboard shall be allocated to the exclusive use of City. City shall be solely responsible for the message content for this advertising time.
- b. Local Business Use. An additional twenty percent (20%) of the total advertising time on the Digital Billboard shall be allocated for first right of use by local businesses in accordance with the provisions set forth in Paragraph 6.5.3, below. Subject to the limitations and criteria set forth in

EXHIBIT B

Paragraph 6.5.3, Tenant will have the exclusive right to enter into agreements to fill the local business advertising time on the Digital Billboard. In the event that, after reasonable effort by Tenant, local businesses do not purchase advertising for the full twenty percent (20%) allocated to local businesses, any portion of such advertising time not purchased by local business may be added to the unrestricted time as set forth in Paragraph 6.5.2 (c) below. Tenant shall submit a written report to the City Manager every six (6) months summarizing the usage of the Digital Billboard by local business and documenting the reallocation of any time reserved for first right of use by local businesses to unrestricted time pursuant to the provisions of this Paragraph 6.5.2(b)

- c. Unrestricted. The remaining seventy percent (70%) of the total advertising time on the Digital Billboard shall be unrestricted, subject only to requests for use by Caltrans for Amber Alerts in accordance with Section 7.12.2 of the Lease. Tenant will have the exclusive right to enter into agreements to fill the unrestricted advertising time on the Digital Billboard.
 - (i) Amber Alerts – Any request by Caltrans to use the Digital Billboard to display Amber Alerts pursuant to Section 7.12.2 of the Lease shall be allocated time from the unrestricted advertising time on a space available basis. Alternatively, Tenant may include such public-service messages in the body of commercial advertising.
- d. Limitation on Advertisement. To avoid a single business or group of related businesses from monopolizing the advertising time on the Digital Billboard, no single business or group of related businesses may utilize more than thirty percent (30%) of the advertising time available on the Digital Billboard in any given month. This limitation shall apply separately to each class of advertising time (e.g. Local Business or Unrestricted) with the exception of the advertising time allocated to City pursuant to subparagraph (a), above, or provided to Caltrans for Amber Alerts pursuant to Section 7.12.2 of the Lease. For the purposes of enforcing this limitation, a “group of related businesses” shall include parent corporations, subsidiaries, sister corporations, and other off-shoots of a particular business, as well as any tenants or licensees of that business.

6.5.3 Local Economic Development and Marketing Partnership. The advertising time allocated to local businesses pursuant to subparagraph 6.5.2(b), above, shall be administered in accordance with this Paragraph 6.5.3.

- a. Definition of Local Business. For the purposes of this program, "local business" means a business located within the corporate limits of the City of Rohnert Park that is independently owned or a locally-owned franchise.
- b. Local Marketing Program. Subject to City's approval, Tenant shall develop a comprehensive, locally-based marketing and economic development plan for the Digital Billboard. Through the proposed public/private partnership, Tenant will work with City to promote city events, civic communications, promotions, and programs. Tenant will use its best efforts to reach out to local businesses through the Rohnert Park Chamber of Commerce, Sonoma State University School of Business, and the Sonoma Mountain Business Cluster. These efforts may initially include: (i) placing advertisements in Rohnert Park Chamber of Commerce Community Guide; (ii) holding at least two (2) informational meetings/seminars for local businesses; (iii) sending direct mailers to local business to make them aware of the advertising opportunities on the Digital Billboard and the resources Tenant is making available to locally-based businesses; (iv) employing website marketing on Tenant's website; (v) making direct contact with Tenant's existing client base in the City; (vi) making direct contact with marketing agencies in Sonoma County and Bay Area to make them aware of the advertising opportunities for local businesses on the Digital Billboard; (vii) advertising in the chamber newsletter; and (viii) making direct contact with potential advertisers. No restrictions will be placed on the number of local businesses that can advertise on the Digital Billboard. Tenant will use its best efforts to leverage its local knowledge and experience to provide advertising opportunities to many local small businesses that could not previously afford outdoor advertising.
- c. Discounted Time for Local Businesses. In an effort to maximize opportunities to advertise for local businesses, the advertising time allocated to local businesses pursuant to subparagraph 6.5.2(b), above, shall be offered to local businesses at the following discounted rates:

- twenty-five percent (25%) off a full 28-day showing
 - twenty percent (20%) off a one-half (½) 28-day showing
 - fifteen percent (15) off a one-quarter (¼) 28-day showing
- d. Additional Incentives for Local Business. In addition to the foregoing, Tenant will execute the following plan:
- i. Within 45-days of the Effective Date, Tenant shall host a series of advertising and marketing training sessions for local businesses. These sessions will be held in partnership with the Rohnert Park Chamber of Commerce, will be open to all Rohnert Park-based businesses, and will take place at various times to maximize the opportunity for local businesses to participate.
 - ii. Tenant shall present the Digital Billboard to the local business community and will discuss the various ways local businesses can utilize the new sign to advertise their products and services, brand their businesses, and increase sales.
 - iii. Tenant will have its graphic design team at all seminars/meetings to give a presentation on designing attractive, creative, and successful ads for the Digital Billboard.
 - iv. Tenant shall work with Sonoma State University School of Business (the "Business School") in a good faith effort to create (and participate in) a program which would give students the opportunity to gain real world experience in assisting and working with local businesses in creating advertising campaigns. The goal of this program will be to allow students to gain real world experience in sales and marketing, while simultaneously giving local businesses access to the talent that exists at the university. Tenant shall work with the Business School to create the program as soon as reasonably possible. If Tenant's efforts to create the program are successful, the program shall continue throughout the Term of the Lease for as long as the Business School supports it.

- 6.6 Utilities. At no cost to City, Tenant shall provide and pay for all utility connections, utility equipment, and utility service required to install, operate, maintain, repair, improve, or reposition the Digital Billboard throughout the Term, as provided in Section 7.11 of the Lease. When purchasing the electricity needed to operate the Digital Billboard, Tenant shall participate in the "Green Option" program offered by PG&E, as more fully discussed in Section 7.11 of the Lease and Paragraph 6.8, below.
- 6.7 Hazardous Materials. Neither Tenant nor any of Tenant's representatives or agents shall use, handle, store, transport, treat, generate, release or dispose of any Hazardous Materials anywhere in, on, under or about the Personal Property, the Premises, the Digital Billboard, any portion thereof, or any improvements thereon, except as permitted by Section 6.3.1 of the Lease. In the event there is a release or suspected release of Hazardous Materials anywhere in, on, under or about the Personal Property, the Premises, the Digital Billboard, any portion thereof, or any improvements thereon, Tenant shall promptly take all action necessary to investigate and remedy the release of any Hazardous Materials in accordance with the provisions set forth in Section 6.3.1 of the Lease, and Tenant shall indemnify City from any from any claims, causes of action, liabilities, losses, damages, injunctions, suits, fines, penalties, costs or expenses (including attorneys' fees and expenses and consultant fees and expenses) caused or alleged to have been caused by the presence and release of such Hazardous Materials in accordance with the provisions of Section 11.3 of the Lease.
- 6.8 Sustainability Plan. Tenant shall implement the following sustainability plan in connection with the Digital Billboard:
- a. The Digital Billboard design shall employ the latest technology to ensure that it achieves the greatest energy efficiency possible, as provided in Paragraph 4.5 of this Exhibit B.
 - b. Tenant shall purchase power through PG&E's "Green Option" program to ensure the Digital Billboard is powered using only renewable energy resources, in accordance with the provisions set forth in Section 7.11 of the Lease.
 - c. Tenant shall operate the Digital Billboard from 5:00 a.m. until 3:00 a.m. daily, subject to possible revision as provided in Paragraph 6.1, above. This represents a slight reduction from the hours of operation for the Existing Sign and will reduce the energy consumption and prolong the life expectancy of the Digital Billboard without compromising the promotional and advertising opportunities for the City and local businesses.

- d. Tenant shall use its best efforts to remove and demolish the Existing Sign in a manner that permits the existing sign structure and components to be recycled as fully as possible, as provided in Paragraph 5.1, above.
 - e. Tenant will continue to demonstrate its commitment to sustainable business practices by continuing its ongoing discussions with PG&E to create a solar farm on Tenant-owned property, as more fully described in Tenant's August 2, 2012 response to the City's July 9, 2012 Request for Proposals for the Digital Billboard. If this solar farm is approved, it would create sufficient energy to completely power all of Tenant's digital and static billboards, including the Digital Billboard. Tenant shall keep City informed of the progress of its efforts to create the solar farm and shall provide annual reports to the City Council documenting these efforts.
- 6.9 Insurance. At no cost to the City, Tenant shall maintain both public liability insurance and fire and casualty insurance covering improvements placed onsite in accordance with the provisions set forth in Article 12 of the Lease.
- 6.10 Indemnification. At no cost to City, Tenant shall indemnify City as provided in Article 11 of the Lease.
- 6.11 Performance Bond. Within five (5) days of the execution of the Lease, Tenant shall provide City either (i) a set-aside irrevocable letter of credit in a form acceptable to City, payable to City, or (ii) a faithful performance bond securing Tenant's faithful performance of its obligations under the Lease, as provided in Paragraph 5.5, above.

EXHIBIT C

CRITERIA FOR REPLACEMENT OF COMMUNITY CENTER SIGN

1. Definitions.

Unless otherwise indicated, all capitalized terms set forth in this Exhibit C shall have the meanings ascribed thereto in the Lease to which this Exhibit C is attached and forms a material part.

2. Replacement of Community Center Sign. As a material inducement to get City to enter into the Lease, Tenant has agreed to replace the existing non-digital sign located at the Rohnert Park Community Center at 5401 Snyder Lane in the City of Rohnert Park, County of Sonoma (the "Community Center Sign") in accordance with the following terms and conditions:

2.1 Tenant shall bear all costs associated with (i) preparing complete plans and specifications for the Community Center Sign, (ii) obtaining all entitlements, environmental clearances, and permits necessary to install the Community Center Sign, (iii) removing and disposing of the existing sign at the Community Center, and (iv) constructing the Community Center Sign. Notwithstanding the foregoing, City staff will trench the utilities to the Community Center Sign location, if necessary.

2.2 City shall diligently process Tenant's applications for all City Permits necessary for the Community Center Sign. These terms do not commit City in advance to approve City Permits; and this Exhibit C does not constrain City's discretion, acting as a government, with respect to City Permits specifically or to the Community Center Sign generally, and nothing contained herein shall be construed to mean that City is agreeing or has agreed to exercise its discretionary authority in support of any approvals or entitlements that may be required to construct the Community Center Sign.

2.3 The Digital Billboard shall be constructed first.

2.4 Tenant shall be obligated to construct the Community Center Sign within the time frame provided for in Section 5.2.5 of the Lease.

2.5 Both the Digital Billboard and the Community Center Sign shall be covered by a single agreement. Prior to starting construction of the Community Center Sign, Tenant and City shall enter into an amendment to the Lease to set forth the terms and conditions for installation, operation, and maintenance of the Community Center Sign.

EXHIBIT C

- 2.6 Subject to City's approval, the Community Center Sign shall be similar in design and technology to the Digital Billboard.
- 2.7 City and Tenant shall share the utility costs for the Community Center Sign equally.
- 2.8 Tenant shall pay City a percentage of the Gross Revenue from advertising on the Community Center Sign as rent for the lease of the Community Center Sign site. No fixed rent shall be required for the Community Center Sign site. The rent to be paid by Tenant shall initially be structured with Tenant receiving seventy-five percent (75%) of the Gross Revenue and City receiving twenty-five percent (25%) of the Gross Revenue until such time as Tenant has been reimbursed from the extra twenty-five percent (25%) for Tenant's actual cost to design, permit, and construct the Community Center Sign. Tenant shall provide evidence reasonably satisfactory to City to document the actual costs to design, permit, and construct the Community Center Sign. Upon the earlier of (i) Tenant recovering the actual cost for construction of the Community Center Sign or (ii) the beginning of the fourth year of operation of the Community Center Sign, Tenant shall pay City fifty percent (50%) of the Gross Revenue from the Community Center Sign as rent for remainder of the Term and any extension thereof.
- 2.9 As additional consideration, the City shall receive the exclusive use of thirty-five percent (35%) of all advertising time on the Community Center Sign at no cost to City. City may use such advertising time to promote any purpose that City, in its sole discretion, determines best serve the needs of the City and its residents. The allocation of advertising time to the City shall be on a fair and consistent basis with other advertisers during the operating hours of the Community Center Sign.
- 2.10 Subject to the criteria and limitations set forth in the Lease, Tenant shall have the exclusive right to manage all advertising content on the Community Center Sign for the portion of advertising time not allocated to the City. The City shall have sole authority to manage its own sign content.
- 2.11 Tenant shall operate the Community Center Sign in a manner similar to the Digital Billboard—no less than six (6) seconds nor more than eight (8) seconds per ad.
- 2.12 Tenant and City shall mutually agree upon the hours of operation for the Community Center Sign, but in no event less than 6:00 a.m. to 10:00 p.m. daily, except on nights when evening events that let out at or after 10:00

p.m. are held at the Green Music Center, in which event the sign may operate no later than one (1) hour after the end of said event.

- 2.13 Subject to City approval, Tenant may explore the option to build the Community Center Sign with a rotating face. This feature will allow the sign to be repositioned at various times of the day to optimize visibility of the Community Center Sign to prevailing traffic patterns. Nothing in this Paragraph 2.13 shall be construed to require Tenant to construct the Community Center Sign with a rotating face, and if the cost to include a rotating face is determined to be too expensive, Tenant may elect to eliminate this option.
- 2.14 Tenant shall own the Community Center Sign during the term of the lease.
- 2.15 Either party may elect to terminate the agreement for the Community Center Sign upon an agreed upon time based on performance, community sentiment, and other factors that may limit the viability of the Community Center Sign. Except where City exercises its right to terminate this Lease for cause, City may not terminate the Lease pursuant to this provision prior to Tenant recouping its investment to design, permit and construct the Community Center Sign. Upon the expiration or other termination of the agreement for the Community Center Sign, City shall not be financially liable to Tenant for the cost to construct the sign and ownership of the Community Center Sign shall, without compensation to Tenant, become City's property, free and clear of all claims to or against it by Tenant or any third person.
- 2.16 Subject to City's approval, which approval shall not be unreasonably withheld, Tenant may hire a California licensed arborist to trim, shape and prune the trees in the median on Rohnert Park Expressway to maximize the visibility of the Community Center Sign.

SCHEDULE 1

RENT

1. Definitions

For purposes of this Schedule 1, the following definitions shall apply:

- 1.1 "Base Rent" means the guaranteed minimum monthly amount Tenant shall pay to City as consideration for the rights and benefits it enjoys under the Lease, including the use and occupancy of the Premises during the Term. The Base Rent shall be \$15,000 per month during Lease Years 1 through 5.
- 1.2 "Gross Revenue" means all revenue Tenant derives from the Digital Billboard, less any commissions paid at the industry standard commission rate of sixteen and sixth/tenths percent (16.6%).
- 1.3 "Percentage Rent" means the sum representing the difference between the total Base Rent paid by Tenant for that Lease Year and a sum which is twenty percent (20%) of Gross Revenue for that same Lease Year which Tenant shall pay to City in addition to the Base Rent where the total Base Rent paid by Tenant for that Lease Year is less than twenty percent (20%) of the Gross Revenues for the same Lease Year.
- 1.4 "Rent" means the actual amount Tenant shall pay City as consideration for the rights and benefits it enjoys under the Lease, including the use and occupancy of the Premises during the Term. Total Rent shall include Base Rent and any Percentage Rent due under the terms of the Lease and this Schedule 1

Unless otherwise indicated, all other capitalized terms set forth in this Schedule 1 shall have the meanings ascribed thereto in the Lease to which this Schedule 1 is attached and forms a material part.

2. Rent

Each month during the Operations Phase, Tenant shall pay City Base Rent calculated as provided in this Schedule 1. The Base Rent shall be calculated as follows:

2.1 Lease Years 1-5

During Lease Years 1 through 5, inclusive, Tenant shall pay City the Base Rent of \$15,000 per month. In addition, if the total Base Rent paid by

SCHEDULE 1

Tenant in any Lease Year is less than twenty percent (20%) of the Gross Revenues for that Lease Year, then in addition to the Base Rent, Tenant shall pay City the difference as Percentage Rent on an annual basis. However, if the total Base Rent paid by Tenant in any Lease Year equals or exceeds twenty percent (20%) of the Gross Revenues for that Lease Year, City shall have no obligation to refund any portion of the Base Rent payments or to apply said payments to any future Lease Year.

2.2 Lease Years 6-10

Commencing in Lease Year 6, and annually thereafter, the Base Rent shall be adjusted at the conclusion of each Lease Year to be the greater of (a) one hundred three and one-half percent (103.5%) of the Base Rent in effect as of the end of preceding Lease Year, or (b) an amount equal to the actual rent (Base Rent plus Percentage Rent) paid during Lease Years 3, 4 and 5, divided into monthly installments. The calculation of Base Rent based on the actual Rent paid in such prior years shall be referred to as the Performance Increase. If the Base Rent is determined based on the Performance Increase, it shall thereafter be adjusted up annually by three and one-half percent (3.5%) at the conclusion of each Lease Year.

In addition, if the total Base Rent paid by Tenant in any Lease Year during Lease Years 6-10, inclusive, is less than twenty percent (20%) of the Gross Revenues for that Lease Year, then in addition to the Base Rent, Tenant shall pay City the difference as Percentage Rent on an annual basis. However, if the total Base Rent paid by Tenant in any Lease Year equals or exceeds twenty percent (20%) of the Gross Revenues for that Lease Year, City shall have no obligation to refund any portion of the Base Rent payments or to apply said payments to any future Lease Year.

2.3 Lease Years 11-15

Commencing in Lease Year 11, and annually thereafter, the Base Rent shall be adjusted at the conclusion of each Lease Year to be the greater of (a) one hundred three and one-half percent (103.5%) of the Base Rent in effect as of the end of preceding Lease Year, or (b) the Performance Increase based on the average Rent paid in Lease Years 6 through 10. If the Base Rent is determined based on the Performance Increase, it shall thereafter be adjusted up annually by three and one-half percent (3.5%) at the conclusion of each Lease Year.

In addition, if the total Base Rent paid by Tenant in any Lease Year during Lease Years 11-15, inclusive, is less than twenty percent (20%) of the Gross Revenues for that Lease Year, then in addition to the Base Rent, Tenant shall pay City the difference as Percentage Rent on an annual basis. However, if the total Base Rent paid by Tenant in any Lease Year

equals or exceeds twenty percent (20%) of the Gross Revenues for that Lease Year, City shall have no obligation to refund any portion of the Base Rent payments or to apply said payments to any future Lease Year.

2.4 Lease Years 16-20

Commencing in Lease Year 16, and annually thereafter, the Base Rent shall be adjusted at the conclusion of each Lease Year to be the greater of (a) one hundred three and one-half percent (103.5%) of the Base Rent in effect as of the end of preceding Lease Year, or (b) the Performance Increase based on the average Rent paid in Lease Years 11 through 15. If the Base Rent is determined based on the Performance Increase, it shall thereafter be adjusted up annually by three and one-half percent (3.5%) at the conclusion of each Lease Year.

In addition, if the total Base Rent paid by Tenant in any Lease Year during Lease Years 16-20, inclusive, is less than twenty percent (20%) of the Gross Revenues for that Lease Year, then in addition to the Base Rent, Tenant shall pay City the difference as Percentage Rent on an annual basis. However, if the total Base Rent paid by Tenant in any Lease Year equals or exceeds twenty percent (20%) of the Gross Revenues for that Lease Year, City shall have no obligation to refund any portion of the Base Rent payments or to apply said payments to any future Lease Year.

2.5 Extended Term

Commencing in the first Lease Year of the Extended Term, and annually thereafter, the Base Rent shall be adjusted at the conclusion of each Lease Year to be the greater of (a) one hundred three and one-half percent (103.5%) of the Base Rent in effect as of the end of preceding Lease Year, or (b) the Performance Increase based on the average Rent paid in Lease Years 16 through 20. If the Base Rent is determined based on the Performance Increase, it shall thereafter be adjusted up annually by three and one-half percent (3.5%) at the conclusion of each Lease Year.

In addition, if the total Base Rent paid by Tenant in any Lease Year during the Extended Term is less than twenty percent (20%) of the Gross Revenues for that Lease Year, then in addition to the Base Rent, Tenant shall pay City the difference as Percentage Rent on an annual basis. However, if the total Base Rent paid by Tenant in any Lease Year equals or exceeds twenty percent (20%) of the Gross Revenues for that Lease Year, City shall have no obligation to refund any portion of the Base Rent payments or to apply said payments to any future Lease Year.

SCHEDULE 2

DEVELOPMENT SCHEDULE

Council Awards Lease	March 12 2013
Submit Certificate of Insurance and begin plan preparation	March19, 2013
Planning Department Meeting	
Submit Plans to Planning Dept./Caltrans	
City Approval of Insurance Certificates	
Begin Seminars	
Planning Commission Hearing	
City Council Hearing	
Issue Notice to Proceed to YESCO	
Seminars and Commence Sales	
Removal of Existing Sign	
Begin Construction of Digital Billboard	
Complete Construction of Digital Billboard	
Commence Operation of Digital Billboard	

SCHEDULE 2

DEVELOPMENT SCHEDULE

Council Awards Lease	April 23, 2013
Submit Certificate of Insurance and begin plan preparation	April 30, 2013
Planning Department Meeting	April 29, 2013
Submit Plans to Planning Dept./CALTRANS	See note below
Submit Plans to Building Department	April 24, 2013
City Approval of Insurance Certificates	May 7, 2013
Begin Seminars	May 29, 2013
Planning Commission Hearing	CUP approved
City Council Hearing	April 23, 2013
Issue Notice to Proceed to YESCO	April 24, 2013
Commence Sales	May 1, 2013
Remove Existing Sign	July 24, 2013
Begin Construction of Digital Billboard	August 1, 2013
Complete Construction of Digital Billboard	August 15, 2013
Commence Operation of Digital Billboard	September 1, 2013