

RECEIVED

Agenda Item: ID16-921 (2-C)

Date: 6/30/16

2016 AUG 22 PM 12 19



Supplemental Information Packet

Agenda Related Item(s) – ID16-921 (2-C)

Contents of Supplement: **Outfront_Fresno - Billboard Master Lease**

Item(s)

Actions pertaining to a digital billboard master lease agreement:

1. Adopt a finding of Class 1 Categorical Exemption set forth in CEQA Guidelines, Section 15301
2. Approve a twenty year master lease agreement with Outfront Media, LLC., for five digital billboards on City owned property at various locations across the City.

Supplemental Information:

Any agenda related public documents received and distributed to a majority of the City Council after the Agenda Packet is printed are included in Supplemental Packets. Supplemental Packets are produced as needed. The Supplemental Packet is available for public inspection in the City Clerk's Office, 2600 Fresno Street, during normal business hours (main location pursuant to the Brown Act, G.C. 54957.5(2)). In addition, Supplemental Packets are available for public review at the City Council meeting in the City Council Chambers, 2600 Fresno Street. Supplemental Packets are also available on-line on the City Clerk's website.

Americans with Disabilities Act (ADA):

The meeting room is accessible to the physically disabled, and the services of a translator can be made available. Requests for additional accommodations for the disabled, sign language interpreters, assistive listening devices, or translators should be made one week prior to the meeting. Please call City Clerk's Office at 621-7650. Please keep the doorways, aisles and wheelchair seating areas open and accessible. If you need assistance with seating because of a disability, please see Security.

RECEIVED

2016 AUG 22 PM 12 19

MASTER LEASE FOR DIGITAL BILLBOARDS

This lease ("Lease"), dated as of August ____, 2016, for purposes of identification, is between the City of Fresno (the "City"), a California municipal corporation, and Outfront Media LLC, a Delaware limited liability company ("Lessee").

Background

Accordingly, the City and Lessee desire to enter into this Lease for the City-owned parcels identified in **Exhibit A** to this lease. This Lease concerns the digital billboards that Lessee will install, operate, and maintain on the City-owned parcels identified in **Exhibit A**.

The City and Lessee agree as follows:

1. Definitions.

- (a) "*Annual Net Revenue*" means all income actually received by Lessee for such Premises (net of any commissions paid by Lessee to advertising agencies, not to exceed 16-2/3%).
- (b) "*Business Day*" means any day the City's main offices located at 2600 Fresno Street, Fresno, California, are open to the public.
- (c) "*Caltrans*" means the California Department of Transportation.
- (d) "*Caltrans Permits*" means all permits and approvals that Lessee must obtain from Caltrans to install, operate, and maintain a Digital Billboard in accordance with this lease.
- (e) "*City Permits*" means all building permits, zoning amendments, relocation agreements, and other permits, entitlements, and agreements that the City, acting in its governmental capacity, must issue or approve for Lessee to install, operate, and maintain a Digital Billboard in accordance with this lease.
- (f) "*Commencement Date*" means the date as of which both of the following have occurred: (1) the City has finally approved the Plans (defined in Section 6(c)), and (2) Lessee has received all necessary governmental permits and approvals for a Digital Billboard, including the Caltrans Permits and the City Permits.
- (g) "*Digital Billboard*" means a single or two-sided outdoor-advertising sign that Lessee will install and operate on the Premises in accordance with the criteria set forth in **Exhibit B** to this lease. A Digital Billboard consists of a Message Center and a Sign Structure. A Digital Billboard will not have any visible cat walk or similar walkways.
- (h) "*Effective Date*" means the date that City Council has approved this Lease and both the City Manager (or designee) and Lessee have signed this lease, as indicated by the dates in the signature blocks below.
- (i) "*Hazardous Substances*" means any material or substance identified in **Exhibit D** to this lease.

- (j) *"Include"* and its variants are not restrictive. For example, "includes" means "includes but not limited to," and "including" means "including but not limited to."
- (k) *"Message Center"* means the portion of a Digital Billboard that consists of back-to-back 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**.
- (l) *"Operational"* means a Digital Billboard is legally and functionally capable of displaying advertising on the Message Center, including meeting all state and federal regulations and requirements.
- (m) *"Operational Date"* means, with respect to any Premises, the date as of which both of the following have occurred: (1) the occurrence of the Commencement Date; and (2) the Digital Billboard for such Premises is Operational.
- (n) *"Premises"* means the City-owned real property within the security fence for each billboard described and depicted in **Exhibit A**. The City shall designate the Premises as a nonpublic forum, not accessible to the public, not open for assembly and debate, and separate from the surrounding area. It is agreed that Lessee has no opinion regarding such designation by the City of the Premises as a nonpublic forum and has not participated in making such designation. As used herein, "Premises" means, individually, any one of the Premises listed on **Exhibit A** and, collectively, all of the Premises listed on **Exhibit A**. Each of City and Lessee agree that following the Effective Date and prior to the Operational Date for each Premises, they will mutually agree upon specific locations for each Premises and will update Exhibit A to further describe such Premises along with legal descriptions for each Premises when available.
- (o) *"Sign Structure"* means the portion of a 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**.
- (p) *"Term"* shall be as defined in 3(a) below.

2. Lease of Premises. The City hereby leases the Premises to Lessee on the terms and conditions set forth in this Lease. Lessee is granted the exclusive right within the City of Fresno, State of California to install and operate Digital Billboards on real property owned, leased or otherwise controlled by the City. The City reserves the right and the parties agree that, during the term of this Lease, the City may install and operate digital signs on buildings and real property owned, leased or otherwise controlled by the City for the sole purpose of displaying On-Premise Displays. For the purposes hereof, *"On-Premise Displays"* means the display and promotion of on-site events or community service messages; provided that such displays (i) will be limited to subjects benefitting projects or programs directly benefitting the City; and (ii) will not

promote or otherwise advertise any goods, services, sponsorships, or business activity, other than those provided by the City.

3. Term of Lease.

(a) Term.

- (1) *Initial Term.* The Term of this Lease shall be on a Premises by Premises basis. For each Premises, the Term for such Premises shall be twenty years beginning on the Operational Date for such Premises and continuing until the twentieth anniversary of such Premises, unless terminated sooner as provided in this Lease.
- (2) *Extension of the Term.* Upon mutual agreement of the parties, the parties may extend the Term for each Premises for two additional five-year terms with the first such additional term commencing on the date immediately following the twentieth anniversary of the Operational Date of the applicable Premises and, if mutually agreed prior to the end of such first additional term, the second additional term for such Premises will commence on the date immediately following the twenty-fifth anniversary of the Operational Date. The City Manager shall have the authority to execute the two five-year extensions of this Lease.

- (b) *Expiration of Lease and Holding Over.* For any Premises, this Lease expires automatically at the end of the Term for such Premises (as the end of the Term for such Premises may be extended pursuant to Section 3(a)(ii)). Any holding over after expiration of the Term for such Premises will not constitute a renewal of this Lease with respect to such Premises but will be on a month-to-month tenancy for such Premises on the same terms and conditions that applied at expiration.

4. Rent.

- (a) *One-Time Payments.* For each Premises, within forty-five days of the Operational Date for the Digital Billboard to be located at such Premises, Lessee shall pay to the City a one-time non-refundable payment in the amount set forth for such Premises in the row designated "One-Time Payment" on **Exhibit C** attached hereto.
- (b) *Annual Rent.* For each Premises, from and after the Operational Date for a Premises, Lessee shall make annual rent payments to the City for such Premises in an amount equal to the greater of (i) the minimum annual rent amount set forth on **Exhibit C** attached hereto for such year of the Term for such Premises or (ii) an amount equal to (A) the percentage set forth for such Premises on **Exhibit C** attached hereto in the row designated "Annual Revenue Share %" multiplied by (B) the Annual Net Revenue collected by Lessee for the immediately preceding year of the Term for such Premises (such calculation pursuant to this clause (ii) will be calculated by Lessee in its reasonable discretion and Lessee will provide City with a full and accurate statement of such calculation within forty-five days of each anniversary of the Operational Date for each Premises). Lessee shall pay such minimum

annual rent amount within forty-five days of (1) the Operational Date for such Premises; and (2) each anniversary of the Operational Date for such Premises. City and the Lessee agree that the annual rental payment for each Premises which corresponds to the Operational Date for such Premises will be an amount equal to the minimum annual rental amount set forth on **Exhibit C** attached hereto for year one for such Premises. The annual rent amount payable under this Section 4(b) shall be adjusted on each of the dates and to the amounts set forth on **Exhibit C** attached hereto. The City and Lessee agree that if this Lease is terminated with respect to any Premises prior to the last day of the initial Term or any extension of the Term, that the rent for such Premises will be pro-rated for the actual number of days Lessee is in possession of such Premises between the most recently occurring anniversary of the Operational Date for such premises and the date on which this Lease is terminated with respect to such Premises.

By way of example, the following table illustrates the rental payment for Woodward Park / SR41:

Operational Date:	July 1, 2017
Anniversary Date:	July 1, 2018
One Time Payment due within 45 days of July 1, 2017:	\$100,000
Annual Rental Payment due within 45 days of July 1, 2017:	\$130,000
Annual Rental Payment due within 45 days of July 1, 2018:	Greater of (1) \$130,000 and (2) 35% x Annual Net Revenue for Woodward Park SR41
Annual Rental Payment due within each subsequent anniversary of the Operational Date:	Greater of (1) the minimum annual rent amount for such year set forth on Exhibit C and (2) 35% x Annual Net Revenue for Woodward Park SR41

5. Use of Premises.

- (a) *Alternate Premises.* Subject to Section 6(a) below, should a Digital Billboard on the Premises be denied a permit by Caltrans or the City pursuant to Section 6(c) or (d) below following application by Lessee, or Lessee is required to relocate any Digital Billboard pursuant to Section 5(d)(2) below, the City staff shall attempt to locate alternative replacement City-owned premises acceptable to Lessee in its reasonable discretion. The Fresno City Manager shall maintain sole discretion to approve or deny the alternative City-owned premises. If approved by the City Manager, the parties shall update **Exhibit A** (as applicable) by an amendment to this Lease to include the alternative City-owned premises. Further, Lessee may from time to time request a relocation of any of the sites (prior to development thereof) listed in **Exhibit A** to other City-owned property, provided that any such voluntary relocation shall be subject to the City's and Caltrans' approval.

Upon any such relocation, addition of a new site or selection of a new site, the parties shall update **Exhibit A** (as applicable) by an amendment to this Lease if approved by the City Manager; provided that failure to do so shall not invalidate Lessee's right to 5 Digital Billboards hereunder. Notwithstanding anything in this lease to the contrary, Lessee may only request additional sites within five years of the Effective Date.

- (b) *Condition of Premises.* The 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 Lessee's anticipated use; any limitations on Lessee's use of the Premises, including limitations arising from zoning laws, environmental laws, or other laws, regulations, or governmental requirements; the costs of conducting Lessee's business on the Premises; or the condition of the soils or ground waters of the Premises. By taking possession of the Premises, Lessee accepts the Premises "as is" and acknowledges that the Premises are satisfactory for Lessee's purposes. Lessee 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.
- (c) *Permitted Uses.* Except as otherwise provided in Section 6(l), Lessee has the exclusive right to display outdoor advertising on the Premises. The City shall not authorize any other off-site outdoor advertising on the Premises. In addition, the City shall not authorize any off-site outdoor advertising on any other City-owned or City-controlled property if the outdoor advertising would be within 1,000 feet of a Digital Billboard. Lessee's exclusive right to conduct outdoor advertising on the Premises includes the following:
 - (1) Installing, operating, maintaining, repairing, improving, and (with the City's consent) repositioning a Digital Billboard during the Term, and removing a Digital Billboard on or from the Premises when this lease terminates.
 - (2) All rights of ingress and egress over the Premises that Lessee needs to access a Digital Billboard.
 - (3) Licensing the use of a Digital Billboard, or any portion of it, for any lawful purpose related to outdoor advertising, except that Lessee may not install non-digital signs on a Digital Billboard without the City's prior consent, which the City may withhold or condition in its sole discretion.
 - (4) All other rights and entitlements necessary or reasonably required by Lessee over any other real property owned by the City in order to access each Premises for construction, removal, maintenance or any other permitted use of the Premises by the Lessee; *provided* that, prior to any such right or entitlement being granted, City will have an opportunity to review and approve such request for such right or entitlement (such approval not to be unreasonably withheld, delayed or conditioned).

(d) *Prohibited Uses.*

- (1) *Hazardous Substances.* Lessee shall not use, handle, store, transport, generate, release, or dispose of any Hazardous Substances on, under, or about the Premises, except as follows: Lessee may use Hazardous Substances that Lessee needs to install, operate, maintain, repair, improve, reposition, or remove a Digital Billboard in accordance with this lease if the City has consented in writing before the Hazardous Substances are brought on the Premises. Within ten days after receiving the City's written request, Lessee shall disclose in writing all Hazardous Substances then being used on the Premises, the purpose and duration of the use, and the manner of storage and disposal.
- (2) *Unlawful Activities.* Lessee 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 the City). Lessee 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. Lessee hereby waives any rights to compensation it may have if a court finds that a Digital Billboard constitutes a public or private nuisance under any valid and applicable federal, state, or local law and for that reason orders Lessee to remove or modify a Digital Billboard or to limit the operation of the Message Center. This waiver will not apply if the court's finding of nuisance is in an action brought by the City under a City ordinance. If Lessee is required to remove a Digital Billboard as a result of a court's decision that any particular Digital Billboard is unlawful or a nuisance, Lessee shall be entitled to relocate such Digital Billboard as provided in Section 5(a) hereof (*provided* that any relocation of a Digital Billboard in connection with this Section 5(d)(2) will be permitted at any time during the Term).
- (3) *Encumbrances.* Lessee shall not encumber the Premises or any part of the Premises, for any purpose, without the City's prior written consent, which the City may withhold for any reason. Lessee shall keep the Premises free of all liens and other encumbrances other than those, if any, to which the City consents.

(e) *Unobstructed Use.*

- (1) The City shall not allow either of the following (each, an "*Obstruction*"):
 - (A) On the Premises: any tree or vegetation that obstructs the view of the Message Center from the freeway or highway adjacent to the Premises.
 - (B) On any City-owned or City-controlled real property in the immediate vicinity of the Premises: any tree or vegetation that is within 1,000 feet of a Digital Billboard and obstructs the view of

the Message Center from the freeway or highway adjacent to the Premises.

- (2) If Lessee notifies the City in writing that an Obstruction exists (whether the Obstruction was authorized or caused by the City), then the City shall remove or remedy the Obstruction at its own cost within fifteen days after receiving the notice. If the City fails to remove the Obstruction within fifteen days after receiving the notice from Lessee pursuant to this Section 5(e)(2), then Lessee may remove the Obstruction at the City's expense after coordinating with the appropriate department of the City.
- (3) Notwithstanding anything to the contrary in Section 5(e)(2), if Lessee notifies the City in writing that an Obstruction exists, and if the Lessee authorized or actively caused the Obstruction, then either the City or the Lessee (after coordinating with the appropriate department of the City) may remove or remedy the Obstruction within fifteen days after the date of the written notice of such Obstruction. Any removal of an Obstruction under this Section 5(e)(3) will be at the Lessee's expense.
- (4) Lessee's exercise of its rights under this Section 5(e) is in addition to any other remedies it may have under this Lease.

6. Installation and Operation of Digital Billboard. City acknowledges that Lessee has the right to develop, install, operate and maintain 5 Digital Billboards, consisting of one Digital Billboard on each of the Premises, subject to all local, state, and federal requirements. Lessee may develop install, operate and maintain these Digital Billboards at any time during the Term of this Lease. Lessee shall develop, install, operate and maintain each Digital Billboard on the Premises in accordance with this Section 6 and consistent with Section 5, all at no cost to the City (except as otherwise specified in this Lease).

- (a) *Caltrans Relocation Agreement.* As soon as practicable after the Effective Date (and, in any event, within thirty days after the Effective Date), Lessee shall engage in discussions with Caltrans to negotiate a Billboard Relocation Agreement that is mutually agreeable to both Lessee and Caltrans which will permit Lessee to seek all Caltrans Permits required in connection with the design, installation and operation of the five Digital Billboards contemplated by this Lease. The City agrees that it shall cooperate with Lessee in the effort to finalize a Billboard Relocation Agreement, including taking any actions necessary to ensure each Premises is properly zoned for such Digital Billboard and all other factors desirable and necessary for the operation of such Digital Billboard are in process and will be completed by the City in order to finalize the Billboard Relocation Agreement. Lessee will work diligently with Caltrans in order to finalize a Billboard Relocation Agreement acceptable to both Lessee and Caltrans. Lessee and the City agree that, if during the negotiations relating to the Billboard Relocation Agreement, Caltrans informs Lessee that it will not permit Lessee to locate a Digital Billboard on any of the Premises contemplated hereunder, then the City and Lessee will make an

effort to propose a mutually agreeable (including the economic benefits thereof) alternate location for such Digital Billboard(s) to Caltrans (subject to City retaining its full discretion under Section 6(c) of this Lease, and as otherwise required under the law). If, ultimately, Caltrans and Lessee cannot agree on a Billboard Relocation Agreement for all five contemplated Premises (including any proposed alternates thereof) for the Digital Billboards, then the City and Lessee will amend this Lease to reflect the number and location of each Premises that will be approved by Caltrans pursuant to the Billboard Relocation Agreement.

- (b) *Plans, Specifications, and Location.* Within ninety days following the effective date of the Billboard Relocation Agreement described in Section 6(a) above, Lessee shall prepare complete plans and specifications for each Digital Billboard (at no cost to the City) approved under the Billboard Relocation Agreement, working closely with the City to develop plans and specifications that are mutually acceptable (the "Plans"). Lessee shall also consult with the City to determine the precise portion of the Premises that will be used for each Digital Billboard. Lessee shall submit the Plans to the City for final approval, which the City shall not unreasonably withhold. Lessee may only request additional sites within five years of the Effective Date.
- (c) *City Permits.* As soon as practicable after the effective date of the Billboard Relocation Agreement described in Section 6(a) above, Lessee will apply for and the City shall diligently process Lessee's applications for all City Permits and any subsequent applications to permit, develop, or erect any of the Digital Billboards following approval of this Lease and appropriate environmental review, including but not limited to, any rezones, leases, ordinance changes, building permits, or other such entitlements, subject to the terms of this Lease. This Lease does not commit the City in advance to approve the City Permits or subsequent approvals; and this Lease does not constrain the City's discretion, acting as a government, with respect to the City Permits or subsequent approvals specifically or to a Digital Billboard generally.
- (d) *Caltrans Permits.* As set forth in the Billboard Relocation Agreement described in Section 6(a) above, Lessee shall apply for Caltrans Permits, and the City shall cooperate with Lessee in that effort, all at no cost to the City. Lessee will work diligently with Caltrans in order to obtain all Caltrans Permits. All Caltrans Permits are to be obtained and secured for Lessee's sole benefit and are to be issued in Lessee's name or, if that is not possible, in the City's name on Lessee's behalf and for Lessee's sole benefit. Lessee shall perform all obligations under the Caltrans Permits at no cost to the City.
- (e) *Installation.* Promptly after obtaining all City Permits and all Caltrans Permits for a Premises, Lessee will order all materials and equipment necessary for the installation and operation of the Digital Billboards (including the LED screens). Lessee will diligently pursue commencing installation of the Digital Billboard for a Premises within 120 days (or such longer time as mutually agreed upon between City and Lessee) following receipt of all City Permits and Caltrans Permits for such Premises. Once Lessee begins installing a

Digital Billboard, it shall diligently pursue installation to completion without unnecessary interruption within sixty days. Lessee will be excused, however, for any delays in beginning or completing installation that are caused by a Force Majeure Event, as defined in Section 12(e)(1). Lessee shall use reasonable diligence to avoid such delays and to resume work as promptly as possible after such a delay.

- (f) *Ownership.* Lessee will be the owner of each Digital Billboard and all permits and authorizations that relate to it, including the City Permits and the Caltrans Permits.
- (g) *Security Fences.* Before beginning installation of a Digital Billboard at any Premises, Lessee shall enclose the portion of such Premises Lessee needs to install, operate, maintain, and repair the Digital Billboard with a temporary security fence. Lessee shall maintain the temporary security fence until Lessee replaces it with a permanent security fence that circumscribes an area coextensive with the area the temporary fence circumscribed. Lessee shall install a permanent security fence within thirty days of the Operational Date of each Digital Billboard. Lessee shall install the permanent security fence around the Digital Billboard on or about the Operational Date of such Digital Billboard and maintain that fence until the end of the Term with respect to such Digital Billboard. Lessee and the City will mutually agree as to the location, design, structure and construction of such security fences and Lessee shall install and maintain the temporary and permanent fences at no cost to the City. Lessee and the City agree that any such security fence will not be chain link style.
- (h) *Maintenance.* At no cost to the City, Lessee shall maintain the Premises and shall maintain, repair, and improve each Digital Billboard in accordance with the highest standards of the outdoor-advertising industry. Lessee's maintenance obligation under this Section 6(h) includes the obligation to maintain an attractive landscape on the Premises including but not limited to mowing and weeding and to remove promptly any graffiti from the Premises and the Digital Billboard. Lessee's obligation to improve the Digital Billboard under this Section includes Lessee's obligation to maintain and cure any technical issues for each Message Center as reasonably determined by Lessee and to replace any Message Center as determined by Lessee in its sole discretion. Except for the obligations of the City set forth in Section 5(e), the City is not obligated to maintain the Premises or to maintain or repair the Digital Billboard. If, however, Lessee does not maintain a Premises (but for the purpose of this sentence, "Premises" shall not include any Digital Billboard and Message Center located at such Premises), then the City may notify Lessee in accordance with Section 12(c) that the City will perform the maintenance with respect to such Premises (but not Digital Billboard and Message Center located at such Premises) described in the notice if Lessee does not begin to do so within fifteen Business Days of Lessee's receipt of such written notice. If Lessee does not begin to perform the needed maintenance for such Premises (but not Digital Billboard and Message

Center located at such Premises) within fifteen Business Days after the notice is given, then the City may perform the maintenance for such Premises (but not Digital Billboard and Message Center located at such Premises) described in the notice, and Lessee shall reimburse the City's costs. For the purposes of clarification, if there is any graffiti or similar types of vandalism on the poles supporting the Digital Billboards and Lessee has not removed such graffiti or vandalism within the timeframe required hereunder, then City will be permitted to remove such graffiti or vandalism provided that City will not perform any such maintenance on the Digital Billboard itself or any LED screen associated with the Digital Billboard.

- (i) *Insured Damage or Destruction.* This Lease will continue in full effect if a Digital Billboard is damaged or destroyed in whole or part by any cause covered by the fire-and-casualty insurance Lessee is required to maintain under Section 11, subject to the following:
- (1) Lessee shall repair or replace the Digital Billboard at no cost to the City using the insurance proceeds Lessee receives or is entitled to receive under the fire-and-casualty policy. Lessee 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 days after obtaining the necessary permits and approvals, Lessee shall begin work to repair or replace the Digital Billboard. Lessee shall complete the work within 180 days after the work begins and shall pay any costs that exceed the available insurance proceeds.
 - (2) Lessee may elect not to repair or replace the Digital Billboard if:
 - (A) the cost to repair or replace it exceeds 60% of its fair-market value immediately before it is damaged or destroyed; and
 - (B) the damage or destruction occurs during the last three years of the Term.
 - (3) If Lessee elects, under Section 6(i)(2), not to repair or replace the Digital Billboard, then Lessee shall:
 - (A) notify the City in writing of its election; and
 - (B) use the insurance proceeds Lessee receives for the damage or destruction to remove the Digital Billboard and restore the Premises in accordance with Section 6(m).

This Lease will terminate with regard to the Premises for such Digital Billboard when all conditions set forth in this Section 6(i)(3) have been satisfied.

Notwithstanding anything in this Section 6(i) to the contrary, during any period when a Digital Billboard is non-operational due to damage or destruction, Lessee will not be required to pay rent with respect to such Premises as required by Section 4 for such period; provided that such abatement period will not exceed ninety days.

- (j) *Uninsured Damage.* If a Digital Billboard is damaged by any cause not covered by the fire-and-casualty insurance Lessee is required to maintain under Section 11, then this Lease will continue in full effect only if:
- (1) Lessee provides written notice to the City that Lessee elects to continue this Lease with respect to the Premises for such Digital Billboard;
 - (2) Lessee has promptly applied for, and is diligently pursue the issuance of, any permits or approvals it needs to repair the damage to a Digital Billboard; and
 - (3) As soon as reasonably practicable after obtaining the necessary permits and approvals, Lessee shall repair the damage at no cost to the City.
- (k) *Utilities.* At no cost to the City, Lessee shall provide and pay for all utility connections, utility equipment, and utility service required to install, operate, maintain, repair, improve, or reposition each Digital Billboard throughout the Term. Lessee shall coordinate with the City and the appropriate provider for utility tie-ins and electrical power sources that Lessee may need to operate a Digital Billboard.
- (l) *Advertising Rights.* During the Term, Lessee will have the exclusive right to enter into agreements for advertising on each Digital Billboard, subject to the following:
- (1) *Operation of the Message Center.* In operating each Message Center, Lessee shall conform to all valid and applicable laws and regulations, including laws and regulations pertaining to outdoor advertising. If Lessee reasonably believes any message violates the restrictions below, Lessee shall notify the City Manager, and, within five calendar days of the date of such notice from Lessee, the City Manager shall reasonably determine if the message violates the restrictions; provided that if the City Manager has not responded on or prior to the fifth calendar day following the date of the notice from Lessee, such message shall be deemed to be approved for display; provided, further, that the City Manager rejects any message submitted by Lessee, the City Manager will provide an explanation for such rejection. When reviewing any such message submitted by Lessee, such determination will be view-point neutral. Lessee shall not display any message that in the reasonable judgment of the City Manager or designee:
 - (A) is inherently false, misleading, or libelous (i.e., speech that is incapable of being presented in a manner that is not misleading);
 - (B) promotes the sale or use of tobacco products, or medical marijuana, whether directly or indirectly; signs promoting the

sale of alcoholic beverages shall be permitted to the extent permitted by law;

- (C) contains "obscene matter," as that term is defined in California Penal Code section 311 on the Effective Date, or promotes adult entertainment;
 - (D) promotes or opposes a candidate for public office or promotes or opposes any political issue;
 - (E) holds a person or group of persons up to public ridicule, derision, or embarrassment, or defames a person or group of persons; or
 - (F) contains language or images that are 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.
- (2) *Amber Alerts and Public-Service Messages.* Lessee shall make each Message Center available to (A) the California Highway Patrol for the purpose of displaying "Amber Alert" messages in accordance with the Amber Alert Guidelines set forth in **Exhibit E** to this Lease and (B) the City for any message which the City Manager identifies to Lessee as "high priority" which for the purposes hereof will mean a message which the City has reasonably determined there to be an imminent threat to public health or safety. In addition, Lessee shall make the Message Center available to the City, without cost, on a space-available basis determined by Lessee in its sole discretion, 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).
- (3) *City Messages.* At the request of the City Manager or designee, Lessee shall make the Message Center available to the City, on a space-available basis determined by Lessee in its sole discretion for the purpose of displaying community service and community event messages for the City. Such announcements will be limited to subjects benefitting projects or programs of the City. The City will make commercially reasonable efforts to provide the Lessee with the copy or text of such messages not less than ten Business Days prior to the date such messages are to appear on the Message Center. Priority for City messaging shall be focused first on the City Council districts in which the signs are located.
- (m) *Removal of Digital Billboard.* When the Term ends, whether it expires as scheduled or is terminated early, Lessee shall promptly apply for, and diligently pursue the issuance of, at no cost to the City, any permits or approvals it needs to remove the Digital Billboards. Within 120 days after obtaining the necessary permits and approvals, Lessee shall remove the

Digital Billboards from the Premises and restore the Premises to their pre-lease condition, all at no cost to the City, except that Lessee is not obligated to remove the below-ground elements of the Sign Structures.

- (n) *Compliance with Laws; Waiver of Compensation.* During the Term and while removing a Digital Billboard after the Term in accordance with Section 6(m), Lessee shall do the following at no cost to the City: comply with all valid and applicable statutes, ordinances, regulations, rules, and orders that concern the Premises or the Digital Billboards and are enacted or issued by any federal, state, or local governmental entity with jurisdiction over the Premises or the Digital Billboard (including the City) whether enacted or issued before, on, or after the Effective Date.
- (o) *Removal of static billboard faces.*
 - (1) *Premises other than Highway 99 & Veterans Boulevard.* At no cost to the City, Lessee shall remove 10 static billboard faces for each Premises location (other than Highway 99 & Veterans Boulevard) described on Exhibit E (which shall be a total of forty static billboard faces for all Premises) within ninety days from the Operational Date for such Premises. The list of static billboard faces that shall be removed from each Premises described in this clause (1) is contained on **Exhibit F**.
 - (2) *Highway 99 & Veterans Boulevard.* In addition to the static billboard faces for the Premises other than Highway 99 & Veterans Boulevard listed on **Exhibit F**, Lessee shall remove the static billboard faces listed on Exhibit E for the Premises located at Highway 99 & Veterans Boulevard within ninety days from the Operational Date for such Premises.
 - (3) Lessee shall not install any static billboards in violation of Fresno Municipal Code Chapter 15, Article 26, within the city limits regardless of damage or destruction of any Digital Billboard or termination of this Lease.

With respect to this clause (n), any modification of **Exhibit F** shall be in writing and mutually agreed between City and Lessee.

7. **Early Termination.**

- (a) *City's Termination Rights.* Without prejudice to its other remedies at law or in equity, the City may terminate this Lease, at any time and in its sole discretion, effective thirty Business Days after the City gives Lessee written notice of termination, if Lessee breaches its obligation to perform in accordance with any material provision of this Lease and (A) does not cure the breach within thirty Business Days after the City serves it with a written notice of breach or, if the breach cannot reasonably be cured within thirty Business Days; or (B) does not begin work on a cure within thirty Business Days after the City serves it with a written notice of breach and diligently pursue the cure to completion within ninety days after work begins. The

express designation in this Lease of a provision as "*material*" does not imply that other provisions are not material. Notwithstanding the foregoing, a termination of Lessee's rights pursuant to a default pertaining to a particular Premises shall only terminate Lessee's rights with respect to such Premises and shall reduce Lessee's total number of permitted Digital Billboards by one. Additionally, Lessee shall not be required to make any further payments pursuant to this Lease following the date of the termination of Lessee's rights for such Premises other than any costs and expenses associated with removal of a Digital Billboard for such Premises and returning such Premises to the condition in existence prior to such Digital Billboard.

- (b) *Lessee's Termination Rights.* Without prejudice to its other remedies at law or in equity, including the right to seek just compensation under the laws of eminent domain as described in Section 9, Lessee may terminate this Lease with respect to any Digital Billboard and its related Premises, at any time and in its sole discretion, effective thirty days after Lessee gives the City written notice of termination. Notwithstanding the foregoing, a termination of Lessee's rights pursuant to a default pertaining to a particular Premises shall only terminate Lessee's rights with respect to such Premises and shall reduce Lessee's total number of permitted Digital Billboards by one.
- (c) *City's and Lessee's Additional Termination Rights.* Without prejudice to their other remedies at law or in equity, either party may terminate this Lease if the other party (or, for Lessee, its parent company):
 - (1) has an order for relief entered with respect to it, commences a voluntary case, or has an involuntary case filed against it under any applicable bankruptcy, insolvency, or other similar law then in effect, and the order or case is not stayed, withdrawn, or settled within sixty days after it is entered, commenced, or filed (11 U.S.C. § 365(e)(2)(A), as amended, or any successor statute); or
 - (2) files for reorganization, becomes insolvent, or has a receiver or other officer with similar powers appointed for its affairs in any court with jurisdiction, whether or not with its consent (unless dismissed, bonded, or discharged within 120 days after appointment).

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

- (a) sales or similar tax on Lessee's sale of advertising space on the Digital Billboards;
- (b) possessory-interest tax related to this Lease or to Lessee's possession or use of the Premises; and
- (c) real-property tax allocated to the Digital Billboards and personal-property tax levied on Lessee's personal property on the Premises.

9. Eminent Domain.

- (a) *Definitions.* The following definitions apply to this Section:
- (1) "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: a Digital Billboard, the entire Premises, or an Essential Part of the Premises.
 - (2) "Essential Part of the Premises" means any portion of the Premises that is reasonably necessary for installing, operating, maintaining, repairing, or improving a Digital Billboard in accordance with this Lease.
- (b) *Termination Events.* This Lease will terminate with respect to a Digital Billboard if a Condemning Entity acquires a Digital Billboard, the entire Premises related to such Digital Billboard, or an Essential Part of such Premises:
- (1) by using the power of eminent domain; or
 - (2) through negotiations under the threat of using the power of eminent domain.
- (c) *Termination Date; Rent Refund; Caltrans Permits.* Termination under this Section will occur on the date the Condemning Entity obtains possession of, or title to, a Digital Billboard, the entire Premises relating to that Digital Billboard, or the Essential Part of the Premises, whichever occurs first. Within fifteen Business Days after the termination date, the City shall relinquish any interest it may have in the applicable Caltrans Permits and execute any documents needed to confirm that Lessee is the sole owner of the applicable Caltrans Permits.
- (d) *Compensation.* If termination occurs under this Section, then Lessee and the 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 the City may not seek or recover compensation for Lessee's lost interests, and Lessee may not seek or recover compensation for the City's lost interests. Without limiting the preceding, Lessee may seek to recover some or all of the following from the Condemning Entity:
- (1) compensation for its lost advertising income, for the value of the Digital Billboard, for lost goodwill, and for its interest in this Lease; and
 - (2) financial assistance for relocating the Digital Billboard.

10. Indemnification.

- (a) To the furthest extent allowed by law, Lessee shall indemnify, hold harmless and defend City and each of its officers, officials, employees, agents, and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by

City, Lessee or any other person, and from any and all claims, demands and actions in law or equity (including reasonable attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of performance of this Agreement. Lessee's obligations under the preceding sentence shall apply regardless of whether City or any of its officers, officials, employees, agents, or volunteers are negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused solely by the gross negligence, or caused by the willful misconduct, of City or any of its officers, officials, employees, agents, or volunteers. Furthermore and notwithstanding anything in this Section 10(a) to the contrary, the indemnification shall not cover Liabilities arising where a third party challenges the City's restrictions on advertising, as provided for in Section 6(l).

If Lessee should subcontract all or any portion of the work to be performed under this Agreement, Lessee shall require each subcontractor to indemnify, hold harmless and defend City and each of its officers, officials, employees, agents, and volunteers in accordance with the terms of the preceding paragraph.

By way of example, Lessee's obligation under Section 10(a) includes but is not limited to Liabilities arising from any of the following:

- (1) Any Occurrence on the Premises and outside a Secured Area, but only to the extent caused by Lessee's acts or omissions.
 - (2) Any Occurrence inside a Secured Area.
 - (3) Any Occurrence that is in any way connected with any of Lessee's personal property on the Premises.
 - (4) Any Occurrence caused or allegedly caused by (A) any condition of the Premises created by Lessee or by any Person on the Premises with Lessee's permission; or (B) some act or omission on the Premises by Lessee or by any Person on the Premises with Lessee's permission.
 - (5) 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 Lessee or any person or entity acting for Lessee or with Lessee's permission.
 - (6) Any Occurrence that is caused by, or related in any way to, a verbal or non-verbal display on the Message Center.
 - (7) Lessee's failure to perform any provision of this Lease, to comply with any requirement of law applicable to Lessee, or to fulfill any requirement imposed by any governmental entity (including the City when acting as a government) on Lessee or on Lessee's use of the Premises.
- (b) *Hazardous Substances.* Lessee shall indemnify, defend (with attorneys reasonably acceptable to the City), protect, and hold harmless the City, the

City's elected officials, officers, employees, and agents, and the City's property adjoining the Premises (including the Premises) from and against all losses and damages that arise directly or indirectly from either of the following:

- (1) The possession, use, generation, transportation, release, threatened release, handling, storage, or disposal by Lessee or Lessee's contractors of any Hazardous Substance on or under the Premises during the Term or during Lessee's removal of a Digital Billboard in accordance with Section 6(m).
 - (2) The possession, use, generation, transportation, release, threatened release, handling, storage, or disposal by anyone other than the City or the City's elected officials, officers, employees, contractors, or agents of any Hazardous Substance on or under the Secured Area during the Term or during Lessee's removal of a Digital Billboard in accordance with Section 6(m). Lessee is not obligated under this Section for any Hazardous Substance that existed on or under the Premises on or before the Operational Date unless Lessee's intentional, negligent, or willful misconduct causes or exacerbates a release of the Hazardous Substance.
- (c) *Legal Challenges.* Lessee shall indemnify, defend (with attorneys reasonably acceptable to the City), protect, and hold harmless the City and the City's elected officials, officers, and employees in any litigation (including litigation based on the California Environmental Quality Act) brought to challenge the validity of this Lease, the validity of the City Permits or the Caltrans Permits, or the validity of the City ordinances that authorize the installation and operation of the Digital Billboards on the Premises. Lessee's obligation to indemnify under this Section 10(d) includes liability for reasonable attorneys' fees awarded to a party who successfully challenges the validity of this Lease, of the City Permits or the Caltrans Permits, or of any authorizing ordinance.
- (d) *Survival.* Lessee's obligations under this Section will survive this Lease.

11. Insurance. Lessee, or any party the Lessee subcontracts with, shall maintain limits of liability of not less than those set forth below. However, insurance limits available to City, its officers, officials, employees, agents, and volunteers as additional insureds, shall be the greater of the minimum limits specified herein or the full limit of any insurance proceeds available to the named insured:

- (a) **COMMERCIAL GENERAL LIABILITY:**
- (1) \$2,000,000 per occurrence for bodily injury and property damage;
 - (2) \$2,000,000 per occurrence for personal and advertising injury;
 - (3) \$4,000,000 aggregate for products and completed operations; and,
 - (4) \$4,000,000 general aggregate.
- (b) **COMMERCIAL AUTOMOBILE LIABILITY :**

- (1) \$1,000,000 per accident for bodily injury and property damage.
- (c) **Workers' Compensation Insurance as required by** the State of California with statutory limits and **EMPLOYER'S LIABILITY** with limits of liability not less than:
 - (1) \$1,000,000 each accident for bodily injury;
 - (2) \$1,000,000 disease each employee; and,
 - (3) \$1,000,000 disease policy limit.
- (d) **ADVERTISING INJURY LIABILITY:**
 - (1) \$1,000,000 per claim/occurrence; and,
 - (2) \$2,000,000 policy aggregate.

UMBRELLA OR EXCESS INSURANCE

In the event Lessee purchases an Umbrella or Excess insurance policy(ies) to meet the "Minimum Limits of Insurance," this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies). In addition, such Umbrella or Excess insurance policy(ies) shall also apply on a primary and non-contributory basis for the benefit of the City, its officers, officials, employees, agents, and volunteers.

DEDUCTIBLES AND SELF-INSURED RETENTIONS

Lessee shall be responsible for payment of any deductibles contained in any insurance policy(ies) required herein and LESSEE shall also be responsible for payment of any self-insured retentions. Any self-insured retentions must be declared on the Certificate of Insurance, and approved by, the City's Risk Manager or designee. At the option of the City's Risk Manager or designee, either:

- (a) The insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, its officers, officials, employees, agents, and volunteers; or
- (b) Lessee shall provide a financial guarantee, satisfactory to City's Risk Manager or designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall City be responsible for the payment of any deductibles or self-insured retentions.

OTHER INSURANCE PROVISIONS/ENDORSEMENTS

The General Liability, Automobile and Advertising Liability insurance policies are to contain, or be endorsed to contain, the following provisions:

- 1. City, its officers, officials, employees, agents, and volunteers are to be covered as additional insureds. Lessee shall establish additional insured status for the City and for all ongoing and completed operations by use of ISO Form CG 20 10 11 85 or both CG 20 10 10 01 and CG 20 37 10 01 or by an executed manuscript insurance company endorsement providing additional insured status as broad as that contained in ISO Form CG 20 10 11 85.

2. The coverage shall contain no special limitations on the scope of protection afforded to City, its officers, officials, employees, agents, and volunteers. Any available insurance proceeds in excess of the specified minimum limits and coverage shall be available to the Additional Insured.
3. For any claims relating to this Agreement, Lessee's insurance coverage shall be primary insurance with respect to the City, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, agents, and volunteers shall be excess of Lessee's insurance and shall not contribute with it. Lessee shall establish primary and non-contributory status by using ISO Form CG 20 01 04 13 or by an executed manuscript insurance company endorsement that provides primary and non-contributory status as broad as that contained in ISO Form CG 20 01 04 13.

The Workers' Compensation insurance policy is to contain, or be endorsed to contain, the following provision: Lessee and its insurer shall waive any right of subrogation against City, its officers, officials, employees, agents, and volunteers.

If the Advertising Injury Liability insurance policy is written on a claims-made form:

1. The retroactive date must be shown, and must be before the effective date of the Agreement or the commencement of work by Lessee.
2. Insurance must be maintained and evidence of insurance must be provided for four years after completion of the Agreement work or termination of the Agreement, whichever occurs first, or, in the alternative, the policy shall be endorsed to provide a four year discovery period.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of the Agreement or the commencement of work by Lessee, Lessee must purchase "extended reporting" coverage for a minimum of four years completion of the Agreement work or termination of the Agreement, whichever occurs first.
4. A copy of the claims reporting requirements must be submitted to City for review.
5. These requirements shall survive expiration or termination of the Agreement.

All policies of insurance required herein shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after thirty calendar days' written notice (or, in the case of errors and omissions insurance, Lessee will provide City with a letter issued by Lessee's insurance broker evidencing payment in full of the premium for such policy or policies) by certified mail, return receipt requested, has been given to City. Lessee is also responsible for providing written notice to the City under the same terms and conditions. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, Lessee shall furnish City with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be

performed for City, Lessee shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy prior to the expiration date of the expiring policy.

Should any of the required policies provide that the defense costs are paid within the Limits of Liability, thereby reducing the available limits by any defense costs, then the requirement for the Limits of Liability of these policies will be twice the above stated limits.

PROVIDING OF DOCUMENTS - Lessee shall furnish City with all certificate(s) and applicable endorsements effecting coverage required herein **All certificates and applicable endorsements are to be received and approved by the City's Risk Manager or designee prior to City's execution of the Agreement and before work commences.** All non-ISO endorsements amending policy coverage shall be executed by a licensed and authorized agent or broker. Upon request of City, Lessee shall immediately furnish City with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement. All subcontractors working under the direction of Lessee shall also be required to provide all documents noted herein.

MAINTENANCE OF COVERAGE - If at any time during the life of the Agreement or any extension, Lessee or any of its subcontractors fail to maintain any required insurance in full force and effect, all work under this Agreement shall be discontinued immediately until notice is received by City that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to City. Any failure to maintain the required insurance shall be sufficient cause for City to terminate this Agreement. No action taken by City hereunder shall in any way relieve Lessee of its responsibilities under this Agreement. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by City that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

The fact that insurance is obtained by Lessee shall not be deemed to release or diminish the liability of Lessee, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify City shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Lessee. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Lessee, its principals, officers, agents, employees, persons under the supervision of Lessee, Lessees, suppliers, invitees, consultants, sub-consultants, subcontractors, or anyone employed directly or indirectly by any of them.

SUBCONTRACTORS - If Lessee should subcontract all or any portion of the services to be performed under this Agreement, Lessee shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein and Lessee shall ensure that City, its officers, officials, employees, agents, and volunteers are additional insureds. The subcontractors' certificates and endorsements shall be on file with Lessee and City prior to the commencement of any work by the subcontractor.

12. Miscellaneous.

- (a) *Assignments and Subleases.* A party may not assign or otherwise transfer this Lease or any interest in it, and this Lease is not assignable by operation of law, without the other party's prior written consent, which the other party shall not withhold, delay, or condition unreasonably. An assignment or transfer of this Lease does not occur, for purposes of this Section, if Lessee merges with another company, reorganizes its stock, or undergoes a similar corporate restructuring, or if Lessee sells any of its assets or stock or if Lessee changes its name. Lessee may not sublease the Premises or any part of the Premises, or the Digital Billboards or any part of the Digital Billboards, without the City's prior written consent, which the City may withhold or condition in its sole discretion. An assignment, transfer, or sublease made contrary to this Section is void.
- (b) *Successors and Assigns.* This Lease binds and inures to the benefit of the successors and assigns of the parties. This Section 12(b) does not constitute the City's consent to any assignment of this Lease or any interest in the Lease, or to any sublease of the Premises or any part of the Premises, or to any sublease of a Digital Billboard or any part of the Digital Billboards.
- (c) *Notices.* Any notice or other communication under this Lease must be in writing and will be considered properly given and effective only when mailed or delivered in the manner provided by this Section to the persons identified below. A mailed notice or other communication will be effective or will be considered to have been given on the third day after it is deposited in the United States Mail (certified mail and return receipt requested), addressed as set forth below, with postage prepaid. A notice or other communication sent in any other manner will be effective or will be considered properly given when actually delivered. 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.

If to the City:

City of Fresno
2600 Fresno Street
Fresno, CA 93721
Attn: Bruce Rudd, City Manager
Phone: 559.621.7776
Fax: 559.621.7770
Email: bruce.rudd@fresno.gov

If to Lessee:

Outfront Media, LLC
5678 E. Shields Ave.
Fresno, CA 93727
Attn: Mark Duran
Phone: 559.292.8300
Fax: 559.292.8434
Email: mark.duran@outfrontmedia.com

- (d) *The City's Right to Enter and Inspect the Premises.* The City and the City's elected officials, officers, employees, and agents may enter upon and inspect the Premises at any time to determine Lessee's compliance with this Lease.

- (e) *Force Majeure*.
- (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 (including the results of such acts), war or war-defense conditions, acts of any public enemy, epidemics, the actions or inactions of any governmental entity (excluding the City) or that entity’s agents, litigation, labor shortages (including shortages caused by strikes or walkouts), and materials shortages.
 - (2) Except as otherwise expressly provided in this Lease, if the performance of any act required by this Lease to be performed by either the City or Lessee 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.
 - (3) This Section does not excuse either party’s obligation to perform an act when performance is rendered difficult or impossible solely because of that party’s financial condition.
- (f) *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.
- (g) *Relationship of the Parties*. This Lease does not create any relationship or association between the City and Lessee other than that of landlord and tenant. For example, and without limiting the previous sentence, this Lease does not create between the City and Lessee the relationship of principal and agent, nor does it create a partnership or joint venture.
- (h) *Attorney’s Fees*. The party prevailing in any litigation arising, or alleged to have arisen from this Lease, the Premises, or any improvements to the Premises (including the Digital Billboards) will be entitled to an award by the court of reasonable and documented attorneys’ fees and litigation costs through final resolution on appeal in addition to any other relief that may be granted in the litigation. If the City is the prevailing party, then this Section will apply whether the City is represented in the litigation by the Office of the City Attorney or by outside counsel.
- (i) *Governing Law and Venue*. This Lease shall be governed by, and construed and enforced in accordance with, the laws of the State of California, excluding, however, any conflict of laws rule which would apply the law of

another jurisdiction. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be Fresno County, California.

- (j) *Severability.* If a court with jurisdiction holds any nonmaterial provision of this Lease to be invalid, void, or unenforceable, then the remaining provisions will remain in full force.
- (k) *Counterparts.* The parties may execute this Lease in counterparts, each of which will be considered an original, but all of which will constitute the same lease.
- (l) *Memorandum of Lease.* Either the City or Lessee may record with the Fresno County Clerk/Recorder.
- (m) *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.
- (n) *Time of Essence.* Time is of the essence of this Lease.
- (o) *Integration and Modification.* This Lease, together with the related provisions of the Project Agreements, set forth the parties' entire understanding regarding the matters addressed. 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.

(Signature Page Follows)

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above written.

CITY:
CITY OF FRESNO,
A California municipal corporation

LESSEE:
OUTFRONT MEDIA LLC,
a Delaware limited liability company

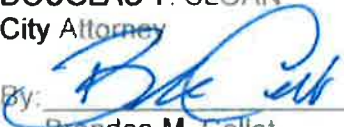
By: _____
Bruce Rudd
City Manager

By: 
Chris Steinbacher
Senior Vice President – Real Estate

ATTEST:
YVONNE SPENCE, CMC
City Clerk

By: _____
Deputy

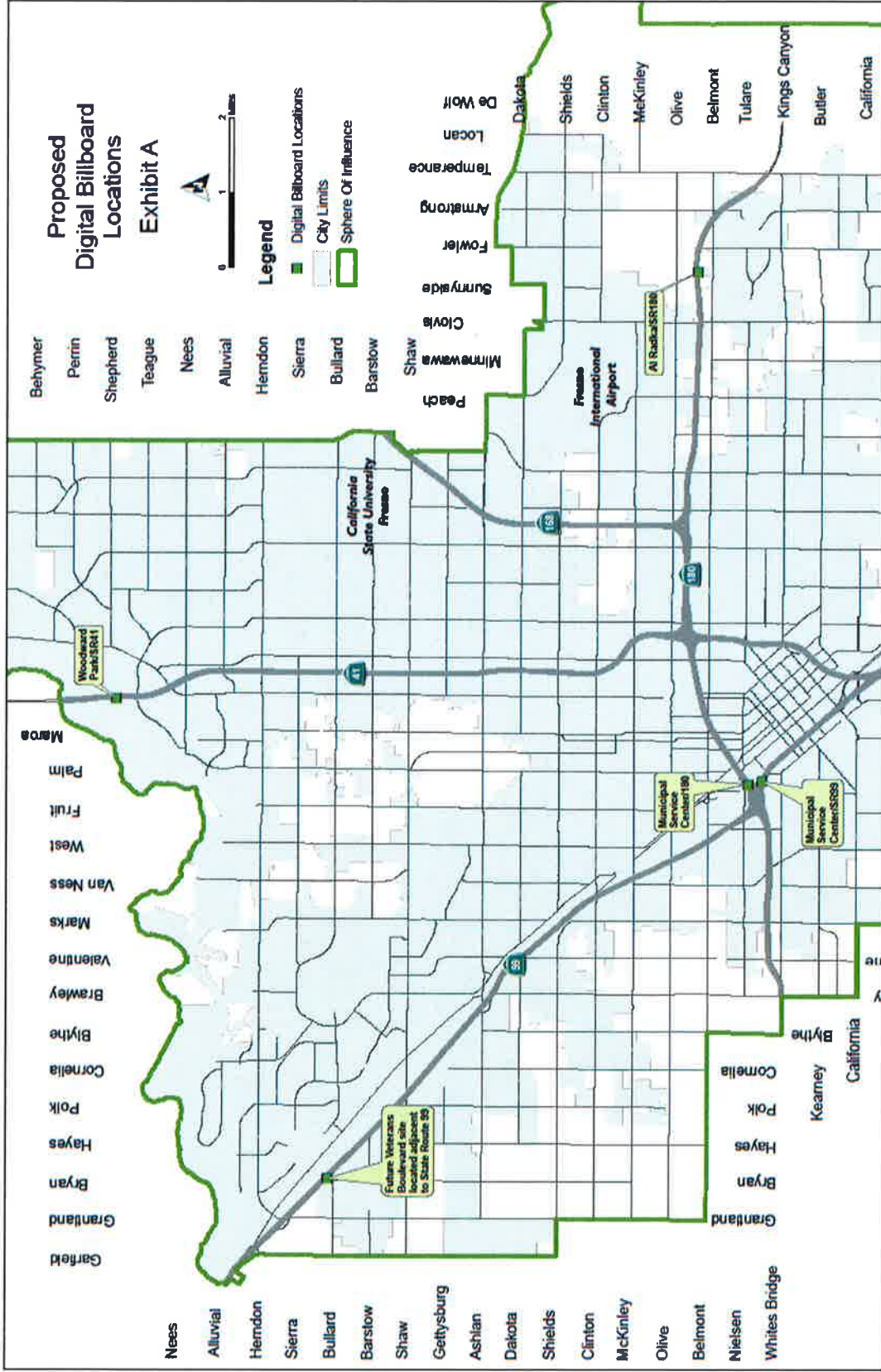
APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By:  _____ 8/23/16
Brandon M. Collet
Deputy City Attorney

Attachments:

- Exhibit A - Proposed Digital Billboard Locations
- Exhibit B – Message Center & Sign Structure
- Exhibit C – Rent Schedule for each Premises
- Exhibit D - Hazardous Substances
- Exhibit E - Guidelines for Issuing AMBER Alerts
- Exhibit F - Proposed Locations for Takedown

Exhibit A Proposed Digital Billboard Locations



Legal Descriptions for each Premises Location

Premises	Legal Description
Woodward Park / SR41	
MSC / SR99	
MSC / SR180	
Al Radka / SR180	
Hwy 99 & Veterans Blvd	

Exhibit B

Message Center & Sign Structure

Development Proposal

Technology and Design Concepts

OPTOTECH Technology LED Displays

OPTOTECH has installed 1,500 LED display and lighting systems and brought about a host of creative ideas from architects and lighting designers in 49 countries since it debuted its first large size LED display in 1991.

Thanks to its profound background technique and the ability of its R&D team to innovate, OPTOTECH provides more than ordinary products. OPTOTECH understands that more than just a manufacturer is needed, that a partner who boasts flexible development capacities to help realize the most intricate and creative architectural ideas is required as well.

Features

After years of investment and dedication to being at the forefront of new developments in LED display technologies, as well as focusing on design and manufacturing, it's no surprise that OPTOTECH is at the top of the industry.

OPTOTECH's R&D team has made OPTOTECH's situation possible through rock solid and reliable support, as well as by being innovative and even, at times, creative. OPTOTECH holds a number of patents in LED display technology and, as a result, has become a trusted supplier of LED solutions across the world, with outstanding projects for all to see.

Characteristics

- UV resistant polycarbonate shell and waterproof module design with silicon/epoxy filling for outdoor application
 - Easy to install with front or rear mechanism
 - High precision CNC housing design
-

- Automotive industry standard coating and rust prevention withstands punishing environment conditions
- Constant current driving technology setup to reduce heat generation
- 1%~100% brightness levels adjustment for each R/G/B
- Built-in self-test pattern for easy maintenance
- Energy saving technology
- Power supply are, CE, UL, ETL, certificate approved
- Custom-made design available
- Compliant with the IEC 60529 standards

Control System

- Control unit: computer, VPU, SPU, DDU
- Brightness detector & control division: photo sensor
- Signal transmission from SPU to DDU: fiber cable
- Software: windows system
- Data source: text, pictures, animation, AVI,.BMP film; VCR, DVD, Video, real-time play via video camera
- Operation temperature: -10°C to 50°C
- Operation humidity: 10 to 95% R.H.

Remote Control Software

The remote control software for play PC can play pre-programmed shows and collect their status and data and send back to edit PC.

- Supports continuous loop playback and pre-set playback times; also supports “breaking news” playback interruption function, and pre-set playback interruption times.
-

- Incorporates program scheduling software that supports program content preview; can also compile a record of the times at which individual programs are shown each day (this record can be stored and printed out).
- Schedules the programming software and lists out the everyday broadcasting time and saves or prints out.
- Directly receives and saves the program from edit PC.
- Supports broadcasting of a variety of software and platforms in following formats: Picture in format of BMP, GIF and JPEG; Motion picture in format of MOV, AVI, MPEG and SWF.

System Configuration

Light Source

The LED (Light Emitting Diode) is a semiconductor component. With the LED, light is produced by a solid state process called electroluminescence. The most significant advantage is low electricity consumption, which saves users energy costs.

Circuit Design

RISin interfaces with the LED matrix circuit design. By applying several same-color LEDs – either in series, parallel or both – every LED matrix becomes a circuit; combining three matrices of Red, Green and Blue forms an LED light source module. By utilizing digital interface technology, the Signal Processing Unit (SPU) controls all matrices-assembling circuits. Exerting the electronic circuit design, the frequency shifts LEDs between darkness and brightness in order to keep the strength of the light source under the control of each LED matrix, thus producing the desired color effect.

Light Source Module

LEDs, MPUs, communication connectors, electricity connectors and other electrical components assembled in a print circuit board form a light source module. The IRISin series contains disk and stripe modules.

Lighting Fixture

Using professional help for assembly and optics design, the heat-emitting device and light source are combined to create a lighting source. The IRISin series accepts dot, line and dimension multi-outline design as well as

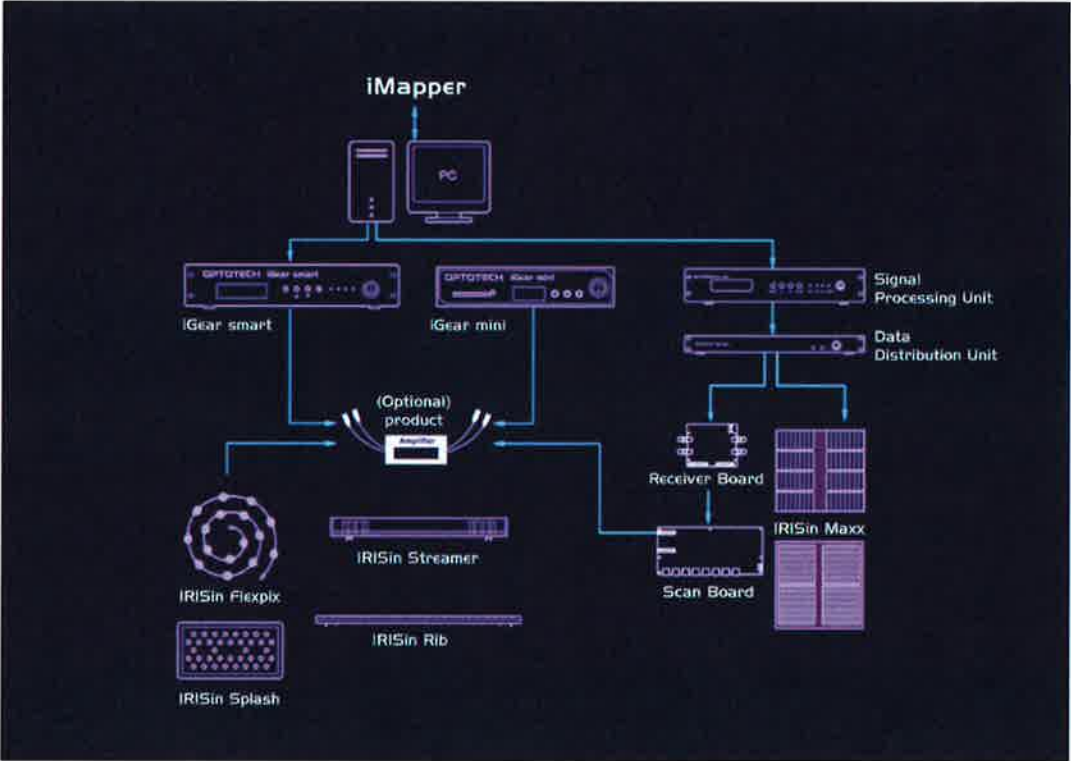
several dynamic standard sizes, which allow users to choose the most suitable products based on their different needs and environmental conditions.

Digital Lighting System

Selected IRISin series products are grouped into a lighting system, which contains lighting fixture, iGear series controller and power system. In a system application, the lighting fixture as defined by user requirements can be used either individually or as part of a group. Animation files are transferred as digital commands into the SPU to rule over strength and order of light so that the desired lighting effect can be achieved correctly, thus creating the most inspiring customized effect.

The IRISin series differs from conventional lighting since Red, Green, and Blue are mixed to create up to 280 trillion colors. Using our software, the user can create programs for their favorite light color and performance. IRISin allows you to have free reign in your light design and creativity.

Lighting System Diagram



Technical Advantages

LED color calibration – In Factory

In general, as a result of the LED's wide range of brightness and color, the general filtering and selection procedure cannot fully unify the LEDs brightness and color onto a display. OPTOTECH, however, has managed to bypass this challenge by developing the chromaticity measurement and correction system.

This system can adjust every unit of the LED brightness and chroma and keep the difference below 5% so as to ensure optimum LED uniformity.

LED color calibration – On Site

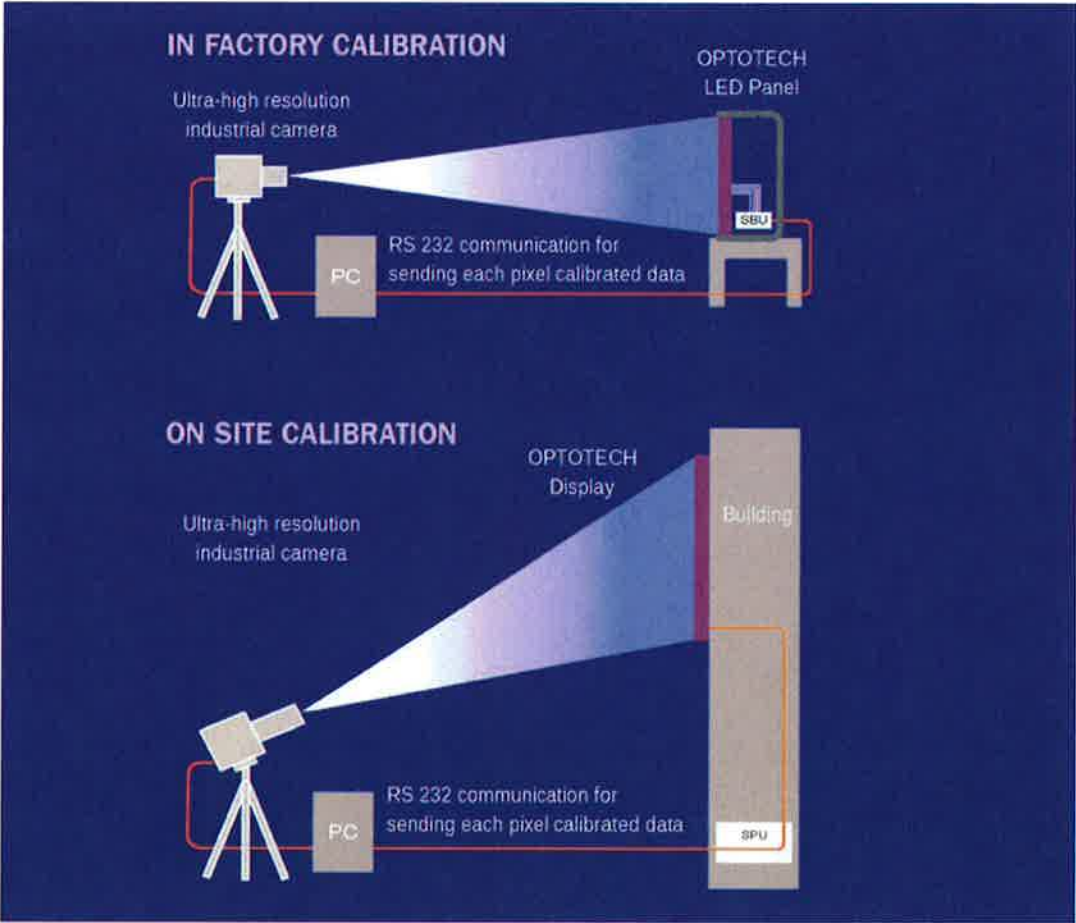
The imbalance in uniform brightness and color shade of display might be caused by the following reasons:

- Not performing factory calibration of each module during the manufacturing process.
- The maintaining, reworking or repairing of display. LED will be polluted or decayed by environmental condition or time.

The Effect Of Calibration

- Each LED pixel's value can be adjusted in uniform brightness and color shade.
 - Improves the uniformity in color shade and brightness of whole display.
 - Retains the quality of display on uniform brightness and color shade over time.
-

LED Color Calibration Diagram



Virtual Pixel Sharing Technology

Specific RGB LED design and accurate driver controlling technology improves the image caused by the edge-line effect. OPTOTECH's virtual pixel technology enables every LED pixel to be shared by the surrounded pixel, increasing the resolution three or four fold, hence delivering a higher quality image to the human eye. This system is an economical way of increasing resolution with a controlled number of LEDs.

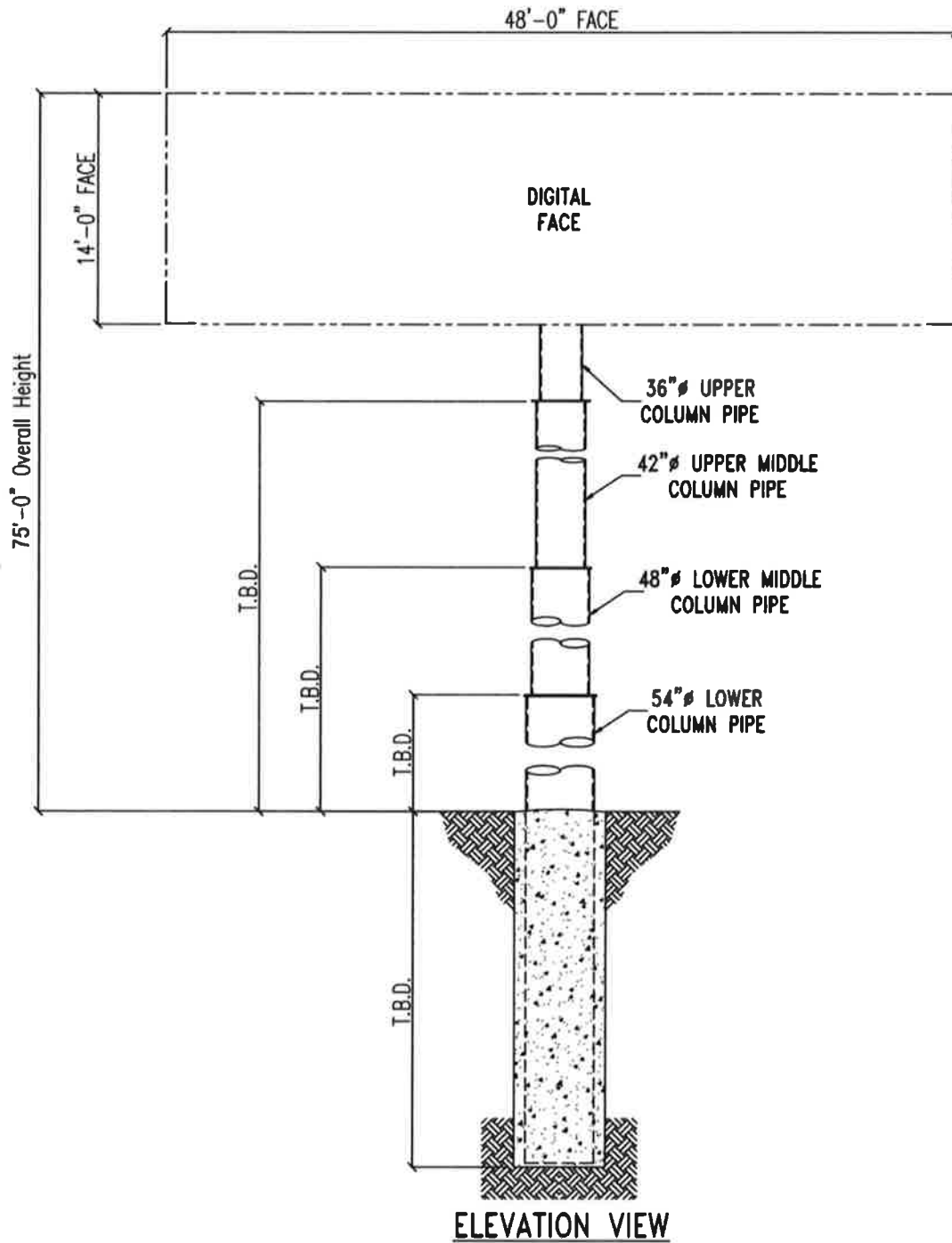
16 Bit Color Depth

With the development of the driving system and gamma correction technology, OPTOTECH is able to successfully diminish the flickering and interference in the lower scale of brightness and lightness. 16 bit from OPTOTECH is able to demonstrate more than 280 trillion colors grey scales on red, green and blue. Brightness varies from 0.08nit, 0.16nit, 0.24nit, 0.32nit. In addition, the 16 bit grey scale smoothly enhances the dim pixel image and enhances the picture quality of the display.

Video Processing Technology

Video processing technology provides a complete digital image product system. Through transforming the input signals to all digitalized image data and output to the display, the technology can fully support a resolution of up to 1920x1080 and give a 24 bit full color image. As a result of this technology, OPTOTECH has managed to create some space between itself and the competition, and effectively lead the field.

NOTE THAT THIS IS FOR EXAMPLE PURPOSES ONLY AND ALL ACTUAL ELEVATIONS WILL BE SUBJECT TO REVIEW AND APPROVAL BY THE CITY.



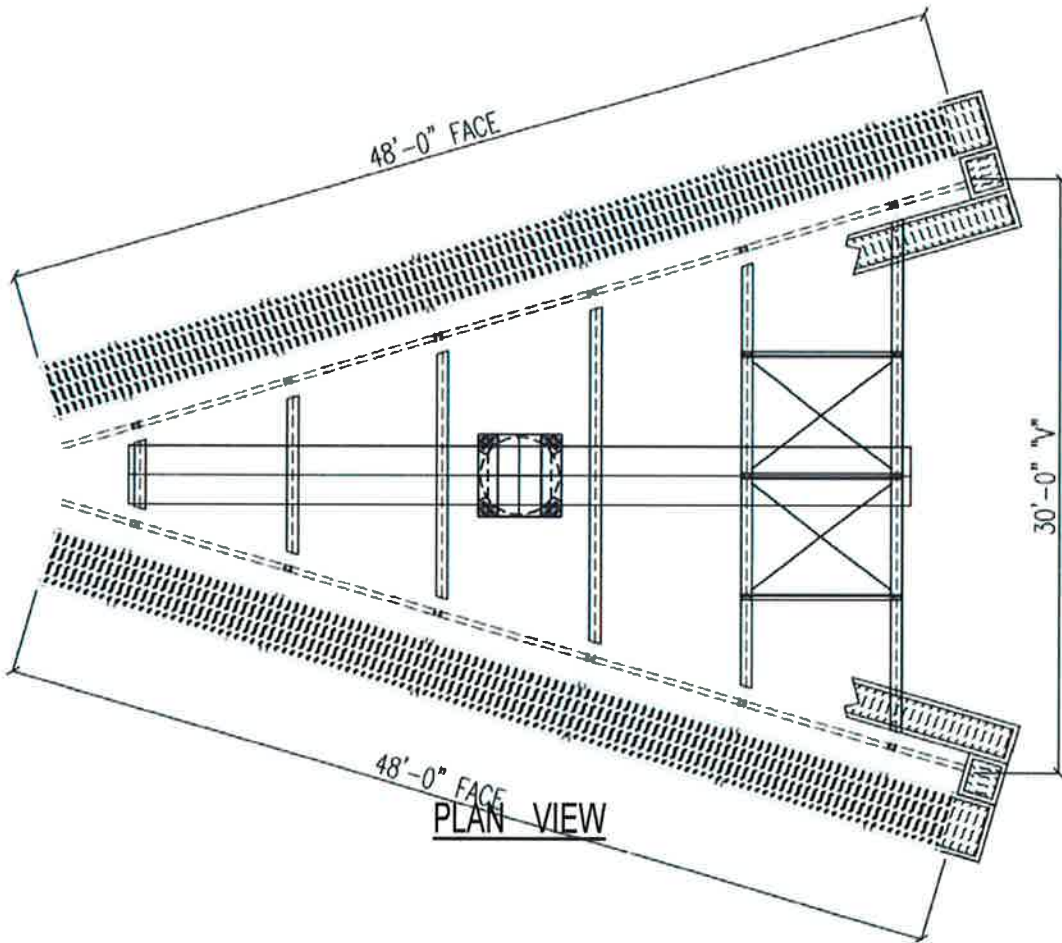


Exhibit C
Rent Schedule for each Premises

	Woodward Park / SR41	MSC / SR99	MSC / SR180	AI Radka / SR180	Hwy 99 & Veterans Blvd
One Time Payment Amount	\$100,000.00	\$50,000.00	\$100,000.00	\$50,000.00	\$25,000.00
Minimum Annual Rent Amount for Years 1-10 of the Term	\$130,000.00	\$56,500.00	\$105,000.00	\$56,500.00	\$30,000.00
Minimum Annual Rent Amount for Years 11-14 of the Term	\$135,850.00	\$59,042.50	\$109,725.00	\$59,042.50	\$50,000.00
Minimum Annual Rent Amount for Years 15-19 of the Term	\$142,642.50	\$61,994.63	\$115,211.25	\$61,994.63	\$65,000.00
Minimum Annual Rent Amount for Years 20+ of the Term	\$149,774.62	\$65,094.36	\$120,971.81	\$65,094.36	\$75,000.00
Annual Revenue Share %	35.0%	35.0%	35.0%	25.0%	30.0%

Exhibit D Hazardous Substances

As used in this Exhibit C, "Environmental Laws" means any statute, ordinance, regulation, rule, order, decree, or other law or requirement that is enacted, promulgated, or issued by any federal, state, or local government entity (whether before, on, or after the Effective Date) and—

- regulates, relates to, or imposes liability or standards of conduct concerning any Hazardous Substance (defined below);
- regulates land use or regulates or protects the environment, including air, soil, soil vapor, surface water, groundwater, flora, or fauna; or
- pertains to occupational health or industrial hygiene or to occupational or environmental conditions on, under, or about the Premises.

Without limiting the generality of the foregoing, "Environmental Laws" includes the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) (42 U.S.C. § 9601 et seq.); the Resource Conservation and Recovery Act of 1976 (RCRA) (42 U.S.C. § 6901 et seq.); the Clean Water Act, also known as the Federal Water Pollution Control Act (FWPCA) (33 U.S.C. § 1251 et seq.); the Toxic Substances Control Act (TSCA) (15 U.S.C. § 2601 et seq.); the Hazardous Materials Transportation Act (HMTA) (49 U.S.C. § 1801 et seq.); the Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. § 136 et seq.); the Superfund Amendments and Reauthorization Act (SARA) (42 U.S.C. § 6901 et seq.); the Clean Air Act (42 U.S.C. § 7401 et seq.); the Safe Drinking Water Act (42 U.S.C. § 300f et seq.); the Solid Waste Disposal Act (42 U.S.C. § 6901 et seq.); the Emergency Planning and Community Right to Know Act (42 U.S.C. § 11001 et seq.); the Occupational Safety and Health Act (OSHA) (29 U.S.C. §§ 655 and 657); the California Underground Storage of Hazardous Substance Act (Cal. Health & Saf. Code, § 25280 et seq.); the California Hazardous Waste Control Act (Cal. Health & Saf. Code, § 25100 et seq.); the California Safe Drinking Water and Toxic Enforcement Act (Cal. Health & Saf. Code, § 24249.5 et seq.); and the Porter-Cologne Water Quality Act (Cal. Water Code, § 13000 et seq.), together with any amendments of these statutes and regulations promulgated under them (whether enacted or promulgated before, on, or after the Effective Date).

For purposes of this lease, "Hazardous Substance" means—

- (1) any substance defined as a "hazardous substance," "hazardous material," "hazardous waste," "toxic substance," "toxic waste," "solid waste," "pollutant," or "contaminant" under Environmental Laws (defined above);
- (2) any substance listed as hazardous substances in 49 C.F.R. § 172.101 or its successor by the U.S. Department of Transportation or in 40 C.F.R. Part 302 or its successor by the U.S. Environmental Protection Agency;
- (3) any other substance, material, or waste that is or becomes regulated or classified as hazardous or toxic under Environmental Laws (defined above);
- (4) any material, waste, or substance that is (a) a petroleum or refined petroleum product, (b) asbestos or asbestos-containing materials, (c) polychlorinated

biphenyl, (d) designated as a hazardous substance under 33 U.S.C. § 1321 or its successor or listed under 33 U.S.C. § 1317 or its successor, (e) a flammable explosive, (f) a radioactive material, or (g) a lead-based paint;

- (5) any substance listed by the State of California under subdivision (a) of California Health and Safety Code section 25249.8, as amended, or under any successor to that statute, as a chemical known by the state to cause cancer or reproductive toxicity;
- (6) any material that, because of its characteristics or interaction with one or more other substances, chemical compounds, or mixtures, threatens to damage health, safety, or the environment or is required by any law or public agency to be remediated;
- (7) any material that, if present, would require remediation under the guidelines set forth in California's Leaking Underground Fuel Tank Field Manual, regardless of whether the presence of the material resulted from a leaking underground fuel tank;
- (8) any pesticide regulated under the federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. §136 et seq.) or its successor;
- (9) any material regulated under the federal Occupational Safety and Health Act (29 U.S.C. § 651 et seq.) or California's Occupational Safety and Health Act (Health & Saf. Code, § 63000 et seq.), or their successors;
- (10) any material regulated under the federal Clean Air Act (42 U.S.C. 7401 et seq.) or under division 26 of the California Health and Safety Code, or their successors;
- (11) any material that qualifies as an "extremely hazardous waste," "hazardous waste," or "restricted hazardous waste" under section 25115, 25117, or 25122.7 of the California Health and Safety Code, or as "medical waste" under section 25281, 25316, 25501, 25501.1, 25023.2, or 39655 of the California Health and Safety Code, or their successors; and
- (12) any material listed or defined as a "hazardous waste," "extremely hazardous waste," or an "acutely hazardous waste" under chapter 11 of title 22 of the California Code of Regulations or any successor to that chapter.

Exhibit E

Guidelines for Issuing AMBER Alerts

Every successful AMBER plan contains clearly defined activation criteria. The following guidance is designed to achieve a uniform, interoperable network of plans across the country, and to minimize potentially deadly delays because of confusion among varying jurisdictions. The following are criteria recommendations:

Law Enforcement Confirms an Abduction

AMBER plans require law enforcement to confirm an abduction prior to issuing an alert. This is essential when determining the level of risk to the child. Clearly, stranger abductions are the most dangerous for children and thus are primary to the mission of an AMBER Alert. To allow activations in the absence of significant information that an abduction has occurred could lead to abuse of the system and ultimately weaken its effectiveness. At the same time, each case must be appraised on its own merits and a judgment call made quickly. Law enforcement must understand that a "best judgment" approach, based on the evidence, is appropriate and necessary.

Risk of Serious Bodily Injury or Death

Plans require a child be at risk for serious bodily harm or death before an alert can be issued. This element is clearly related to law enforcement's recognition that stranger abductions represent the greatest danger to children. The need for timely, accurate information based on strict and clearly understood criteria is critical, again keeping in mind the "best judgment" approach.

Sufficient Descriptive Information

For an AMBER Alert to be effective in recovering a missing child, the law enforcement agency must have enough information to believe that an immediate broadcast to the public will enhance the efforts of law enforcement to locate the child and apprehend the suspect. This element requires as much descriptive information as possible about the abducted child and the abduction, as well as descriptive information about the suspect and the suspect's vehicle. Issuing alerts in the absence of significant information that an abduction has occurred could lead to abuse of the system and ultimately weaken its effectiveness.

Age of Child

Every state adopt the "17 years of age or younger" standard; or, at a minimum, agree to honor the request of any other state to issue an AMBER Alert, even if the case does not meet the responding state's age criterion, as long as it meets the age criterion of the requesting state. Most AMBER plans call for activation of the alert for children under a certain age. The problem is that age can vary--- some plans specify 10, some 12, some 14, 15, and 16. Differences in age requirements create confusion when an activation requires multiple alerts across states and jurisdictions. Overuse of the AMBER Alert system will undermine its effectiveness as a tool for recovering abducted children.

NCIC Data Entry

Immediately enter AMBER Alert data into the National Crime Information Center (NCIC) system. Text information describing the circumstances surrounding the abduction of the child should be entered, and the case flagged as a Child Abduction. Many plans do not mandate entry of the data into NCIC, but this omission undermines the entire mission of the AMBER Alert initiative. The notation on the entry should be sufficient to explain the circumstances of the disappearance of the child. Entry of the alert data into NCIC expands the search for an abducted child from the local, state, or regional level to the national. This is a critical element of any effective AMBER Alert plan.

Summary of Department of Justice Recommended Criteria

- There is reasonable belief by law enforcement that an abduction has occurred.
- The law enforcement agency believes that the child is in imminent danger of serious bodily injury or death.
- There is enough descriptive information about the victim and the abduction for law enforcement to issue an AMBER Alert to assist in the recovery of the child.
- The abduction is of a child aged seventeen years or younger.
- The child's name and other critical data elements, including the Child Abduction flag, have been entered into the National Crime Information Center (NCIC) system.

Exhibit F

Proposed Locations for Takedown

	Location / Premises	Board #	Description
1.	Woodward Park / State Route 41	065524A	Belmont 100 ft W/O Fulton S/S
2.	Woodward Park / State Route 41	065525A	Belmont 100 ft W/O Fulton S/S
3.	Woodward Park / State Route 41	0005186	Belmont 150 ft W/O Jackson S/S
4.	Woodward Park / State Route 41	005186A	Belmont 150 ft W/O Jackson S/S
5.	Woodward Park / State Route 41	065340A	Blackstone 100 ft N/O Illinois W/S
6.	Woodward Park / State Route 41	498220	Blackstone E/L 200 feet South of Griffith
7.	Woodward Park / State Route 41	065101A	Broadway & Stanislaus E/S
8.	Woodward Park / State Route 41	065102A	Broadway & Stanislaus E/S
9.	Woodward Park / State Route 41	007113A	Olive 100 ft E/O Backer N/S
10.	Woodward Park / State Route 41	007113B	Olive 100 ft E/O Backer N/S
11.	MSC / State Route 99	065217A	Blackstone 100 ft S/O Home E/S
12.	MSC / State Route 99	065216A	Blackstone 100 ft S/O Home E/S
13.	MSC / State Route 99	0007186	Fresno 150 ft S/O Lewis E/S
14.	MSC / State Route 99	006340A	G 185.00 ft S/O Mariposa W/S
15.	MSC / State Route 99	006340B	G 185.00 ft S/O Mariposa W/S
16.	MSC / State Route 99	00001A	Van Ness North East of San Diego Street
17.	MSC / State Route 99	004601A	Ventura 110 ft E/O Fulton N/S
18.	MSC / State Route 99	004601B	Ventura 110 ft E/O Fulton N/S
19.	MSC / State Route 99	065072A	Ventura 150 ft W/O Broadway N/S
20.	MSC / State Route 99	065073A	Ventura 150 ft W/O Broadway N/S
21.	MSC / State Route 180	65043A	Belmont 100 feet East Ferger S/L
22.	MSC / State Route 180	65044A	Belmont 100 feet East Ferger S/L
23.	MSC / State Route 180	007237	Belmont Circle South line, 66 feet West of Arthur
24.	MSC / State Route 180	0007255	Chestnut 20 ft N/O Jensen E/S
25.	MSC / State Route 180	007255A	Chestnut 20 ft N/O Jensen E/S
26.	MSC / State Route 180	0004728	Elm 785 ft S/O Annadale W/S
27.	MSC / State Route 180	0910410	Jensen 200 ft E/O Pullman S/S
28.	MSC / State Route 180	0910420	Jensen 200 ft E/O Pullman S/S
29.	MSC / State Route 180	068198B	Olive 75 ft E/O Fresno St N/S
30.	MSC / State Route 180	068198A	Olive 75 ft E/O Fresno St N/S
31.	Al Radka / State Route 180	005572	Abby and Belmont NW/S
32.	Al Radka / State Route 180	68049A	Blackstone 1050 feet S/O Herndon WL
33.	Al Radka / State Route 180	0005113	Blackstone 145 ft S/O Simpson W/S
34.	Al Radka / State Route 180	06278A	Elm E/L 551 feet South of North Ave
35.	Al Radka / State Route 180	06278B	Elm E/L 551 feet South of North Ave
36.	Al Radka / State Route 180	68197A	Fresno E/L 50 feet N/O Olive
37.	Al Radka / State Route 180	68197B	Fresno E/L 50 feet N/O Olive
38.	Al Radka / State Route 180	68128B	Olive S/L, 450 feet West of DeWitt
39.	Al Radka / State Route 180	07107B	Olive S/L, 50 feet E/O Thorne
40.	Al Radka / State Route 180	0005289	Van Ness 150 ft S/O San Joaquin W/S
41.	Highway 99 & Veterans Boulevard	467810	
42.	Highway 99 & Veterans Boulevard	467820	
43.	Highway 99 & Veterans Boulevard	006168	
44.	Highway 99 & Veterans Boulevard	06423A	
45.	Highway 99 & Veterans Boulevard	06423B	
46.	Highway 99 & Veterans Boulevard	07003A	
47.	Highway 99 & Veterans Boulevard	07003B	