

RESOLUTION NO. PC-2018-

RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF ROCKLIN  
RECOMMENDING TO THE CITY COUNCIL APPROVAL OF AN OPERATING AGREEMENT  
FOR A DIGITAL FREEWAY SIGN, CITY OF ROCKLIN AND ORION 50 OUTDOOR, LLC  
INTERSTATE 80 AT WEST MARINE  
(WEST MARINE DIGITAL FREEWAY SIGN)

The Planning Commission of the City of Rocklin does resolve as follows:

Section 1. The Planning Commission of the City of Rocklin finds and determines that:

A. The purpose of the Freeway Digital Sign Program is to manage development of freeway advertising structures by removing outdated billboard structures, reducing the total number of freeway billboards, and updating the freeway advertising to state of the art electronic messaging which will provide area businesses with additional advertising opportunities in a manner that minimizes visual clutter and provides an orderly, attractive, high quality image of the City.

B. The Freeway Digital Sign Program facilities can be quickly and effectively utilized to present critically important “Amber Alert” and other public safety messages to the community.

C. Approval of Design Review (DR2018-0003) authorizes the construction of a digital freeway sign on the property at the existing West Marine site - 4445 Granite Drive (APN 045-080-036).

D. The development of the project site was analyzed as required by the California Environmental Quality Act (CEQA) as a part of the Digital Freeway Sign Program Initial Study/Mitigated Negative Declaration of Environmental Impacts (MND), approved and certified by City Council Resolution No. 2012-35. Pursuant to Section 15162 of the CEQA Guidelines, no further environmental review of the West Marine Digital Freeway Sign is required, nor should be conducted, since the project is within the scope of the Digital Freeway Sign Program MND which adequately describe these activities for purposes of CEQA for the following reasons:

- i) No new significant environmental impacts nor any substantial increase in the severity of previously identified significant impacts will occur from the West Marine Digital Freeway Sign project.
- ii) No substantial changes occur with respect to the circumstances under which the project will be undertaken which will require major revisions of the previous MND due to the involvement of new significant

environmental impacts or a substantial increase in the severity of previously identified significant impacts.

- iii) No new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous MND was certified as complete shows any of the following:
  - a. That the project will have one or more significant effects not discussed in the previous MND;
  - b. That significant effects previously examined will be substantially more severe than shown in the previous MND;
  - c. That mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative.
  - d. That mitigation measures or alternatives which are considerably different from those analyzed in the previous MND would substantially reduce one or more significant effects of the environment, but the project proponents declined to adopt the mitigation measure or alternative.

E. City of Rocklin and Orion 50 Outdoor, LLC desire to complete the necessary operating agreement required to implement the City's Digital Freeway Sign Program on Interstate 80.

Section 2. The Planning Commission of the City of Rocklin hereby recommends that the City Council approve and authorize the City Manager to execute the Operating Agreement for a Digital Freeway Sign on the I-80 corridor in the form attached hereto as Exhibit A and by this reference incorporated herein.

PASSED AND ADOPTED on this      day of      , 2018 by the following roll  
call vote:

AYES:            Commissioners:

NOES:           Commissioners:

ABSENT:        Commissioners:

ABSTAIN:       Commissioners:

---

Pierre Martinez, Chairman

ATTEST:

---

Secretary

EXHIBIT A

(Digital Freeway Sign Program/I-80 Corridor Site)  
Operating Agreement for Digital Freeway Sign  
City of Rocklin and Orion 50 Outdoor, LLC

**Operating Agreement for Digital Freeway Sign  
City of Rocklin and Orion 50 Outdoor, LLC  
Interstate 80 at West Marine Site**

This Operating Agreement for a Digital Freeway Sign (hereinafter "Agreement"), dated \_\_\_\_\_, 2018 is by and between the **City of Rocklin** (the "City"), a California municipal corporation, and **Orion 50 Outdoor, LLC**, ("ORION"), a California limited liability company.

**Background**

Ordinance No. 979, which the Rocklin City Council adopted on March 13, 2012, after all required notices and public hearing, allows for the City to enter into an Operating Agreement to allow for Digital Freeway Signs under certain circumstances; including compensation to the City and the permanent removal of pre-existing billboards from within the City.

There is property in the City located at the West Marine Site adjacent to Interstate 80 and suitable for the operation of a Digital Freeway Sign. ORION is an outdoor-advertising company that has extensive experience in successfully installing, operating, and maintaining billboards throughout California. ORION desires to contract with the owners of the West Marine Site for the purpose of installing, operating, and maintaining a Digital Freeway Sign, and it has the requisite resources and expertise to do so successfully.

City finds that a substantial public benefit will accrue to City by reason of the advertising revenue that will be generated by ORION's outdoor advertising display and shared with City, which adds value to the community by enabling City to undertake projects, programs and other activities for the benefit of City and its businesses and residents. In exchange for providing these public benefits, ORION receives assurance that it may proceed with the construction and operation of ORION's outdoor advertising display and the Project in accordance with ordinances, resolutions and regulations existing as of the date of this Agreement, subject only to the terms and conditions contained herein.

***With these background facts in mind, the City and ORION agree as follows:***

**1. Definitions.** This section defines the terms "Agreement Year," "Business Day," "Caltrans," "Caltrans Permits," "City Permits," "City controlled real property," "City Permits," "Commencement Date," "Digital Freeway Signs," "Digital Display Area," "Effective Date," "Include," "Operational," "Site" or "West Marine Site," "Sign Structure," and "Term." Other terms are defined elsewhere in this Agreement.

(a) "Agreement Year" means one of the consecutive 12-month periods during the Term. The first Agreement Year begins on the Effective Date.

- (b) "Business Day" means any day the City's main offices located at 3970 Rocklin Road, Rocklin, California, are open to the public.
- (c) "Caltrans" means the California Department of Transportation.
- (d) "Caltrans Permits" means all permits and approvals that ORION must obtain from Caltrans to install, operate, and maintain the Digital Freeway Signs in accordance with this Agreement.
- (e) "City controlled real property" means any property which the City owns, or property in which the City has a legal right that allows the City to exercise unencumbered operational control over the property.
- (f) "City Permits" means all building permits, zoning amendments, relocation agreements, design review approvals, and other permits, entitlements, and agreements that the City, acting in its governmental capacity, must issue or approve for ORION to install, operate, and maintain the Digital Freeway Sign in accordance with this Agreement.
- (g) "Commencement Date" means the date as of which both of the following have occurred: the City has finally approved the Plans (defined in Section 6(a)), and ORION has received all necessary governmental permits and approvals for the Digital Freeway Sign, including the Caltrans Permits and the City Permits.
- (h) "Digital Freeway Sign" means an off-site outdoor advertising sign containing two faces, utilizing digital message technology, capable of changing the static message or copy on the sign electronically. Digital Freeway Signs may be internally or externally illuminated. Digital Freeway Signs shall contain static messages only, and shall not have animation, movement, or the appearance or optical illusion of movement, of any part of the sign structure, design, or pictorial segment of the sign. Each static message shall not include flashing, scintillating lighting or the varying of light intensity. ORION will install and operate the Digital Freeway Sign on the Site in accordance with the criteria set forth in **Exhibit A** to this Agreement. The Digital Freeway Sign consists of a Digital Display Area and a Sign Structure.
- (i) "Digital Display Area" means the portion of the Digital Freeway Sign that consists of back-to-back digital (LED) display areas used for general commercial advertising, with each of the two display areas measuring 14 feet high and 48 feet wide plus a framing around the display area.
- (j) "Effective Date" means the date as of which both the City and ORION have signed this Agreement, as indicated by the dates in the signature blocks below.

- (k) "Include" and its variants are not restrictive. For example, "includes" means "includes but not limited to," and "including" means "including but not limited to."
- (l) "Operational" means the Digital Freeway Sign is capable, legally and functionally, of displaying advertising on the Message Center.
- (m) "Site" or "West Marine Site" means the real property located at 4445 Granite Drive in the City that is the location of a digital freeway sign pursuant to this Agreement.
- (n) "Sign Structure" means the portion of the Digital Freeway Sign other than the Digital Display Area, and it includes all ancillary equipment and utilities installed on the Site.
- (o) "Term" means the entire time this Agreement is in effect. As specified in Section 2.

## 2. Term of Agreement.

- (a) *Term.* The "Term" of this Agreement consists of two phases:
  - (1) The "Pre-Operations Phase," which begins on the Effective Date and ends with respect to the Digital Freeway Sign on the date such Digital Freeway Sign becomes Operational.
  - (2) The "Operations Phase," with regard to the Digital Freeway Sign begins when the Pre-Operations Phase ends and ends when such Digital Freeway Sign is removed.

**3. Consideration.** As consideration for the rights and benefits it enjoys under this Agreement, including the contemplated use during the Term, ORION shall do all of the following:

- (a) *Monthly Fee.* Each month during the Operations Phase, ORION shall pay the City the "Monthly Fee" set forth in **Schedule 1**.
  - (1) Monthly Fee is due and payable on the first day of each calendar month at the address set forth for the City in Section 9(c). Any installment of Monthly Fee that is not paid within 20 days after it is due and payable will increase by 5%.
  - (2) If the Operations Phase begins on a day other than the first day of a month, then the first and last months' installments of Monthly Fee will be prorated.
  - (3) ORION may offset the Monthly Fee if ORION is unable by reason of law or regulation, permit revocation or issuance, to continue operation of the Digital Display Area for any period of time during the Term of this Agreement in which event the Monthly Fee shall be waived in full for any such period of time.

- (4) ORION may offset the Monthly Fee if ORION has provided notice of an Obstruction under Section 4(b) and the City has not removed the Obstruction as provided therein. In such event, the Monthly Fee shall be offset in full until such Obstruction is removed as required in Section 4(b).

#### 4. Use of Site.

- (a) *Exclusive Uses.* Except as otherwise provided in Section 5(i), ORION has the exclusive right to display outdoor advertising on the approved Digital Freeway Sign, in digital format. In addition, the City shall not authorize any off-site outdoor advertising on any City-owned or City-controlled property if the outdoor advertising would be within 1,000 feet of the Digital Freeway Sign. ORION's exclusive right to conduct outdoor advertising on the Site includes the following:
  - (1) Installing, erecting, maintaining, operating, improving, supplementing, posting, painting, illuminating, repairing, adding, changing and maintaining equipment required to maintain communications with the Digital Freeway Sign repositioning (with the City's consent), and removing the Digital Freeway Sign and all associated equipment on or from the Site when this Agreement terminates.
  - (2) Licensing the use of the Digital Freeway Sign, or any portion of it, for any lawful purpose related to outdoor advertising,
  - (3) All rights to operate the sign face as Digital Display Areas as set forth in subsection 4 (a) above.
- (b) *Unobstructed Use.*
  - (1) The City shall not allow the following (an "Obstruction"):
    - (A) On any City-owned or City-controlled real property in the immediate vicinity of the Site – any structure, sound wall, communications antennae, tree, or vegetation that is within 1,000 feet of the Digital Freeway Sign and obstructs the view of the Digital Display (in the sole determination of ORION) from Interstate 80.
  - (2) If ORION notifies the City in writing that an Obstruction exists, and if the City authorized or actively caused the Obstruction, then the City shall remove or remedy the Obstruction at its own cost within 30 days after receiving the notice. If the City fails to remove the Obstruction within 30 days after receiving the notice, then ORION may remove the Obstruction at the City's expense after coordinating with the appropriate department of the City.



- (3) If ORION notifies the City in writing that an Obstruction exists, and if the City did not authorize or actively cause the Obstruction, then the City may remove or remedy the Obstruction at its own cost within 30 days after receiving the notice. If the City does not remove or remedy the Obstruction within the 30 days, then, at no cost to the City, and after coordinating with the appropriate department of the City, ORION may remove the Obstruction described in the notice.
- (4) ORION's exercise of its rights under this Section 4(b) shall be the sole remedy for obstruction of the Digital Display under this Agreement.

**5. Installation and Operation of Digital Freeway Sign.** ORION shall install and operate the Digital Freeway Sign on the Site in accordance with this Section 5 and consistent with Section 4, all at no cost to the City.

- (a) *Plans and Specifications.* At no cost to the City, ORION shall prepare complete plans and specifications for the Digital Freeway Sign, working closely with the City to develop plans and specifications that are mutually acceptable (the "Plans"). ORION shall submit the Plans to the City for final approval, which the City shall not unreasonably withhold.
- (b) *Caltrans Permits.* As soon as practicable after the Effective Date, ORION shall apply to Caltrans for all Caltrans Permits, and the City shall cooperate with ORION in that effort, including the completion of any Caltrans forms, all at no cost to the City. All Caltrans Permits are to be obtained and secured for ORION's sole benefit and are to be issued in ORION's name. ORION shall perform all obligations under the Caltrans Permits at no cost to the City.
- (c) *City Permits.* The City shall diligently process ORION's applications for all City Permits. This Agreement does not commit the City in advance to approve the City Permits; and this Agreement does not constrain the City's discretion, acting as a government, with respect to the City Permits specifically or to the Digital Freeway Sign generally.
- (d) *Installation.* ORION shall begin installing the Digital Freeway Sign as soon as practicable after the Commencement Date and shall diligently pursue installation to completion without unnecessary interruption. ORION will be excused, however, for any delays in beginning or completing installation that are caused by a Force Majeure Event, as defined in Section 8(d)(1). ORION shall use reasonable diligence to avoid such delays and to resume work as promptly as possible after such a delay.
- (e) *Ownership.* ORION will be the owner of the Digital Freeway Sign and all permits and authorizations that relate to it, including the City Permits and the Caltrans Permits.
- (f) *Maintenance.* At no cost to the City, ORION shall maintain the sign structures and shall maintain, repair, and improve the Digital Freeway Sign in accordance with the standards of the outdoor-advertising industry. ORION's maintenance obligation under this Section

5(f) includes the obligation to remove any graffiti from the Sign Structure and the Digital Freeway Sign. The City is not obligated to maintain the sign structure or to maintain or repair the Digital Freeway Sign.

- (g) *Damage or Destruction.* At ORION's sole option, this Agreement will continue in full effect if the Digital Freeway Sign is damaged or destroyed in whole or part. If ORION elects to repair or replace the Digital Freeway Sign, ORION shall promptly apply for, and diligently pursue the issuance of, any permits or approvals it needs to repair or replace the Digital Freeway Sign. Within 30 days after obtaining the necessary permits and approvals, and the availability of all parts and components ORION shall begin work to repair or replace the Digital Freeway Sign. ORION shall complete the work within 180 days after the work begins. If ORION elects, under this Section 5(g), not to repair or replace the Digital Freeway Sign then ORION shall notify the City in writing of its election and shall remove the Digital Freeway Sign and restore the Site in accordance with Section 5(m); and
- (h) *Utilities.* At no cost to the City, ORION shall provide and pay for all utility connections, utility equipment, and utility service required to install, operate, maintain, repair, improve, or reposition the Digital Freeway Sign throughout the Term
- (i) *Amber Alerts and Public-Service Messages.* During all periods when Digital Display Areas are Operational on its Digital Freeway Sign, ORION shall make the advertising space on the Digital Freeway Sign available to the appropriate agencies for the purpose of displaying "Amber Alert" messages in accordance with the Amber Alert Guidelines set forth in **Exhibit B** to this Agreement. In addition, ORION shall make the advertising space on the Digital Freeway Sign available to the City, and to other government agencies with the consent of the City, which consent shall not be unreasonably withheld, and without cost, on a space-available basis determined by ORION, for the purpose of displaying public-service messages (e.g., evacuation routes, drunk-driving-awareness messages, , emergency-disaster communications). The City's messages must meet ORION's graphics-arts standards so that the messages are "camera ready," at no cost to ORION. All copy will be subject to ORION's standard advertising copy rejection and removal policies which allow ORION the right in ORION's sole discretion to approve or disapprove copy and remove copy once posted or displayed.
- (j) *City Sign.* On each side of the Sign Structure, ORION shall install, operate, maintain, and repair a City sign that faces the same direction as a Digital Display Area on the Digital Freeway Sign. The size and design of the City sign shall substantially comply with the criteria set forth in the Design Review Approval provided by the City.
- (k) *Future technologies.* The technology currently being deployed for Digital Freeway Signs is LED (light emitting diode), but there may be alternate, preferred or superior technology available in the future. ORION is authorized to change the Digital Freeway Sign to any other technology that operates under the maximum brightness standards set forth in

Section 5(l) of this Agreement. The City shall expedite any required approvals for technology that is superior in energy efficiency over previous generations or types.

- (l) *Illumination Standards.* Digital Freeway Sign illumination is expressly permitted when operated within these standards,
  - (1) Digital Freeway Signs shall not operate at brightness levels of more than 0.3 foot candles above ambient light, as measured using a foot candle meter at a pre-set distance.
  - (2) Distance to measure the foot candles impact shall be measured from a distance of 250 ft. for a sign with a nominal face size of 14' x 48'.
  - (3) Each Digital Display Area must have a light sensing device that will adjust the brightness as ambient light conditions change.
- (m) *Removal of Digital Freeway Sign.* When the Term ends, whether it expires as scheduled or is terminated early, ORION 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 Freeway Sign. Within 120 days after obtaining the necessary permits and approvals, ORION shall remove the Digital Freeway Sign from the Sites and restore the Site to its pre-Agreement condition, all at no cost to the City, except that ORION is not obligated to remove the below-ground elements of the Sign Structure.
- (n) *Compliance with Laws; Waiver of Compensation.* During the Term and while removing the Digital Freeway Signs after the Term in accordance with Section 5(m), ORION 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 Digital Freeway Sign and are enacted or issued by any federal, state, or local governmental entity with jurisdiction over the Digital Freeway Sign (excluding the City) whether enacted or issued before, on, or after the Effective Date. Notwithstanding the foregoing, nothing herein shall be deemed to negate, void, or diminish (i) any claim ORION may have for just compensation as a result of any governmental action that results in the taking of its property or (ii) the right of ORION to avail itself of all remedies available to ORION under state or federal law to maintain its Digital Freeway Sign.
- (o) *Compliance with Mitigation-Monitoring Program.* During the Term and while removing the Digital Freeway Signs after the Term in accordance with Section 5(m), ORION shall comply with the Mitigation Monitoring Program attached as **Exhibit C** to this Agreement. ORION's compliance with the Mitigation Monitoring Program is a material term of this Agreement.

## 6. Early Termination.

- (a) *City's Termination Rights.* Without prejudice to its other remedies at law or in equity, the City may terminate this Agreement, at any time and in its sole discretion, effective 30 days after the City gives ORION written notice of termination, if any of the following circumstances occurs:
- (1) ORION breaches its obligation to pay Monthly Fee when due and does not cure the breach within 30 days after the City serves ORION with a written notice of breach.
  - (2) ORION breaches its obligation to perform in accordance with any material provision of this Agreement other than the obligation to pay Monthly Fee and (A) does not cure the breach within 30 Business Days after the City serves it with a written notice of breach or, if the breach cannot reasonably be cured within 30 Business Days, (B) does not begin work on a cure within 30 Business Days after the City serves it with a written notice of breach and diligently pursue the cure to completion within 90 days after work begins. The express designation in this Agreement of a provision as "material" does not imply that other provisions are not material.
- (b) *ORION'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 5(n), ORION may terminate this Agreement with respect to any or all of the Digital Freeway Signs, at any time and in its sole discretion, effective 30 days after ORION gives the City written notice of termination, if any of the following circumstances occurs:
- (1) The view of the Message Center's display area from the portion of Interstate 80 adjacent to the Site is materially Obstructed, and ORION did not cause the Obstruction.
  - (2) ORION cannot safely use the Site to install, operate, maintain, repair, or improve the Digital Freeway Sign because of a non-remediable condition, and ORION did not cause the condition.
  - (3) There is a material diversion of traffic from, or a material reduction or change in the directional flow of traffic on, the portion of Interstate 80 adjacent to the Site, and the diversion or disruption continues uninterrupted for at least 12 consecutive months.
  - (4) ORION cannot obtain or maintain the governmental permits required to install, operate, maintain, repair, or improve the Digital Freeway Sign, including the Caltrans Permits and the City Permits.
  - (5) Use of the Digital Freeway Sign for their intended purpose is prevented or limited by law, or ORION is required by any court or other governmental entity, for reasons other than eminent domain, to remove the Digital Freeway Sign from the Site.

- (6) With respect to the Digital Freeway Sign, such Sign is damaged by a casualty for which ORION elects not to repair or replace the Digital Display Area.
- (c) *City's and ORION's Additional Termination Rights.* Without prejudice to their other remedies at law or in equity, either party may terminate this Agreement if the other party (or, for ORION, 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 60 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 60 days after appointment).

## **7. Indemnification.**

- (a) *Definitions.* The following definitions apply to this Section 7:
  - (1) "Person" is to be interpreted broadly. It includes not just third persons but also ORION and ORION's directors, officers, employees, contractors, and agents; and the City and the City's elected officials, officers, employees, contractors, and agents.
  - (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 ORION's possession or use of the Site.
  - (3) "Occurrence" means (A) the death of, or injury to, any Person; and (B) damage to, or destruction of, any real property, personal property.
- (b) *General Indemnity.* ORION shall indemnify, defend (with attorneys reasonably acceptable to the City), protect, and hold the City and the City's property, (including the Sites) harmless, for the full period of time allowed by law, from and against all Liabilities that arise directly or indirectly from ORION's possession or use of the Sites. ORION is obligated under this Section 7(b) even if the City or the City's elected officials, officers, employees, contractors, or agents reviewed, accepted, or approved the work, materials, or activities from which the Liabilities arise. But ORION is not obligated under this Section 7(b) to the extent the Liabilities are caused by the active negligence or willful misconduct of the City or the City's elected officials, officers, employees, contractors, or agents. ORION's obligation under this Section 7 (b) includes Liabilities arising from any of the following:

- (1) Any Occurrence on the Site.
  - (2) Any Occurrence that is in any way connected with any of ORION's personal property on the Site.
  - (3) Any Occurrence caused or allegedly caused by (A) any condition of the Site created by ORION or by any Person on the Site with ORION's permission; or (B) some act or omission on the Site by ORION or by any Person on the Site with ORION's permission.
  - (4) Any Occurrence caused by, or related in any way to, work or activities performed on the Site or materials furnished to the Site at the request of ORION or any person or entity acting for ORION or with ORION's permission.
  - (5) Any Occurrence that is caused by, or related in any way to, a verbal or non-verbal display on the Digital Display Area.
  - (6) ORION's failure to perform any provision of this Agreement, to comply with any requirement of law applicable to ORION, or to fulfill any requirement imposed by any governmental entity (including the City when acting as a government) on ORION or on ORION's use of the Site.
- (c) *Legal Challenges.* Notwithstanding anything to the contrary contained in this Section 7, ORION shall be required to indemnify, defend, 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 Agreement, 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 Freeway Sign on the Site.
- (d) *Survival.* ORION's obligations under this Section 7 shall survive this Agreement for the full period of time allowed by law.

## **8. Miscellaneous.**

- (a) *Assignments and Subagreements.* A party may not assign or otherwise transfer this Agreement or any interest in it, and this Agreement 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 Agreement does not occur, for purposes of this Section 8(a), if ORION merges with another company, reorganizes its stock, or undergoes a similar corporate restructuring, or if ORION sells any of its assets or stock. An assignment or transfer made contrary to this Section 8(a) is void. Notwithstanding the foregoing, City hereby approves a sublease by Orion to Clear

Channel Outdoor, Inc, or a parent, subsidiary, successor or affiliate under common control of Clear Channel Outdoor, Inc., provided such sublease is otherwise in compliance with the terms and conditions of this Agreement.

- (b) *Successors and Assigns.* This Agreement binds and inures to the benefit of the successors and assigns of the parties. This Section 8(b) does not constitute the City's consent to any assignment of this Agreement or any interest in the Agreement.
- (c) *Notices.* Any notice or other communication under this Agreement must be in writing and will be considered properly given and effective only when mailed or delivered in the manner provided by this Section 8(c) 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 8(c).

*If to the City:*

City of Rocklin  
3970 Rocklin Road  
Rocklin, California 95677  
Attention: City Manager

*If to ORION:*

Orion 50 Outdoor, LLC  
3161 Cameron Park Sr. Ste. 221  
Cameron Park CA 95682  
Attn: Beau Palley

(d) *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 Agreement 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 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 Agreement, if the performance of any act required by this Agreement to be performed by either the City or ORION 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 8(d) does not excuse (A) ORION's obligation to pay Monthly Fee when due and payable, except as otherwise provided in Subsection 3(b); or (B) either party's obligation to perform any act when performance is rendered difficult or impossible solely because of that party's financial condition.
- (e) *Waiver of Breach.* A party's failure to insist on strict performance of this Agreement or to exercise any right or remedy upon the other party's breach of this Agreement 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 Agreement 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.
- (f) *Relationship of the Parties.* ORION is an independent contractor to the City and not an agent or employee of the City. No agency, joint powers agreement, or other relationship is created or intended to be created by this Agreement.
- (g) *Attorney's Fees.* If the services of any attorney are required by any party to secure the performance of this Agreement or otherwise upon the breach or default of another party, or if any judicial remedy or arbitration is necessary to enforce or interpret any provisions of this Agreement or the rights and duties of any person in relation to this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, costs and other expenses, in addition to any other relief to which such party may be entitled. Prevailing party includes (a) a party who dismisses an action in exchange for sums allegedly due; (b) the party that receives performance from the other party of an alleged breach of covenant or a desired remedy, if it is substantially equal to the relief sought in an action; or (c) the party determined to be prevailing by a court of law.
- (h) *Severability.* If a court with jurisdiction holds any nonmaterial provision of this Agreement to be invalid, void, or unenforceable, then the remaining provisions will remain in full force.
- (i) *Counterparts.* The parties may execute this Agreement in counterparts, each of which will be considered an original, but all of which will constitute the same Agreement.
- (j) *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 Agreement.
- (k) *Time of Essence.* Time is of the essence of this Agreement.
- (l) *Governing Law; Interpretation.* This Agreement 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. The titles of the various Paragraphs of this Agreement and elsewhere in the Contract Documents are



used for convenience of reference only and are not intended to, and shall in no way, enlarge or diminish the rights or obligations of the City or ORION and shall have no effect upon the construction or interpretation of the Agreement. The Agreement shall be construed as a whole in accordance with its fair meaning and not strictly for or against the City or ORION. Schedules 1 and Exhibits A, B, and C are part of this Agreement.

- (m) *Integration and Modification.* This Agreement sets 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)*

**City of Rocklin**

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

Steven Rudolph  
City Manager

Dated: \_\_\_\_\_, 2018

**Orion 50 Outdoor, LLC**

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

Beau Palley  
Managing Member

Dated: May 23, 2018

Approved as to Form  
Rocklin City Attorney

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

*Operating Agreement for Digital Freeway Sign  
Orion 50 Outdoor, LLC – West Marine Site*

**Schedule 1**  
**Monthly Fee**

1. The Monthly Fee shall be as follows:
  - Years 1-6 - \$2,000 per month, or portion thereof, commencing on the first day of the Operations Phase.
  - Subsequent years - On the first (1st) day of the seventh (7th) yearly anniversary of the Operations Phase and, every year thereafter, the rent shall be increased by 2%.

**Exhibit A**

**Digital Freeway Signs Operational Requirements**

- a. Operational Limitations.** Such displays shall contain static messages only, and shall not have movement, or the appearance or optical illusion of movement during the static display period, of any part of the sign structure, design, or pictorial segment of the sign, including the movement or appearance of movement. Each static message shall not include flashing, scintillating lighting or the varying of light intensity.
- b. Minimum display time.** Each message on the sign must be displayed for a minimum of eight (8) seconds.
- c. Each display must have a light sensing device that will adjust the brightness as ambient light conditions change.**
- d. The Digital billboard shall be operated with systems and monitoring in place to either turn the display off or show a “full black” image on the display in the event of a malfunction.**

**Exhibit B**

**Amber Alert Guidelines**

**AMBER alerts are issued by the National Center for Missing and exploited Children in Washington, DC. For those alerts, ORION and the outdoor advertising industry adhere to these guidelines:**

**Digital Freeway Sign advertising will be completely interrupted upon receipt of an AMBER Alert within the affected geographical boundary.**

**The appropriate AMBER Alert will run uninterrupted for a minimum of one hour preempting all other advertising.**

**During the next two hours, the same alert will be displayed in rotation along with other paid advertisers unless cancelled earlier. After the initial 3 hour display period, any additional posting of the alert is based on the situation and availability.**

*Operating Agreement for Digital Freeway Sign  
Orion 50 Outdoor, LLC – West Marine Site*

**Exhibit C**

**Exhibit 3 to Mitigated Negative Declaration approved by  
Rocklin City Council Resolution 2012- 35  
Mitigation Monitoring Program**