

DIGITAL SIGN PLACEMENT AGREEMENT

This Digital Sign Placement Agreement ("**Agreement**") is made and entered into on this _____ day of _____.

BETWEEN:

The City of Merritt
2185 Voght Street
Merritt, BC V1K 1B8

(the "**City**")

AND:

Merritt and Nicola Valley Destination Marketing Society, duly incorporated pursuant to the laws of British Columbia, Inc. No. S0059930 with a registered office of 2181 Quilchena Ave St, PO BOX 159, Merritt, BC, V1K 1B8

(the "**TNV**")

WHEREAS:

- A. The City is the owner of those lands and premises as outlined in Schedule "A" to this Agreement.
- B. TNV has approached the City to construct a digital sign substantially consistent with the drawings attached as Schedule "B" to this Agreement (the "**Digital Sign**").
- C. The City is prepared to allow TNV to construct the Digital Sign pursuant to the terms of this Agreement.

NOW THEREFORE THIS AGREEMENT WITNESSES THAT in consideration of the amount of Ten Dollars (\$10.00), the covenants and agreements herein contained and other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged and agreed to by the Parties) the Parties hereto hereby covenant and agree as follows:

ARTICLE 1 DEFINITIONS AND INTERPRETATIONS

1.1 Definitions

Unless the context otherwise specifies or requires, for the purposes of this Agreement, the terms defined in this Section 1.1 will have the following meanings:

- (a) "**Affiliate**" means with respect to a corporation means another corporation which is affiliated with the first mentioned corporation within the meaning thereof in the *Business Corporations Act* (British Columbia);
- (b) "**Agreement**" means this Agreement, together with the Schedules and attachments hereto, all as may be amended in writing from time to time;
- (c) "**Applicable Laws**" means in respect of any Person, all provisions of constitutions, statutes, rules, regulations, ordinances, by-laws, requirements, orders, published policies and interpretations of any Authority applicable to such Person including without limitation environmental and land use requirements and all orders and decrees of all courts and

- arbitrators in proceedings or actions to which the Person in question is a party or by which such person is bound;
- (d) **"Authority"** means any federal, provincial or municipal government, judicial, public or statutory authority, body, board, commissions regulatory agency, council, tribunal, department or other division thereof having jurisdiction over the Digital Sign or this Agreement;
 - (e) **"Authorization"** means with respect to any Person, any authorization, order, permit, approval, grant, consent, waiver, license, right, franchise, privilege, certificate, judgment, writ, injunction, award, determination, direction, decree, by-law, rule or regulation of any Authority having jurisdiction over such Person, whether or not having the force of Applicable Law;
 - (f) **"Builders Lien Act"** means the *Builders Lien Act*, S.B.C. 1997, c. 45, as amended, or any successor or parallel legislation;
 - (g) **"Business Day"** means any day which is not Saturday or a Sunday, or a day observed as a holiday under any of the Applicable Laws of the Province of British Columbia or the Applicable Laws of Canada applicable to the Province of British Columbia;
 - (h) **"City"** means the City of Merritt;
 - (i) **"City Council"** means the council of elected Councilors of the City of Merritt and the Mayor of the City;
 - (j) **"City Designated Representatives"** means the City's employees or representatives who are authorized by the Director of Public Works and Engineering Services to deal with TNV on behalf of the City in connection with this Agreement, the Digital Sign and to otherwise make decisions in connection with this Agreement;
 - (k) **"City Included Parties"** means:
 - i. any past, present or future elected official, employee, agent, representative, contractor, officer and licensee of the City;
 - ii. the City Council;
 - iii. any other party for whom the City is responsible at Law; and
 - iv. any legal, technical and accounting advisors that have been, are currently or may in the future be, engaged by the City, from time to time, to advise in respect of the undertakings described herein, or any aspect thereof;
 - (l) **"City Solicitor"** means the City's legal representative;
 - (m) **"Claim"** means any action, causes of action, right, suit, debt, due, accounting, bond, covenant, obligation, liability, contract, claim, interest, dues, proceeding, grievances, execution, judgment, obligation and demand whatsoever, or any of them, whether now known or not, now suspected or not, contingent or vested, whether under Law or in contract, at common law, in equity or otherwise and "Claims" has a corresponding meaning;
 - (n) **"Commencement Date"** means the date shown on the front page of this Agreement;
 - (o) **"Costs"** means all costs, expenses, damages, Claims, penalties, fines, charges, obligations and outlays;
 - (p) **"Digital Sign"** means that definition as defined in Recital B;

- (q) **"Digital Sign Drawings"** means a line drawing and/or rendering with dimensions of the Digital Sign, stamped foundation and all other construction drawings as required by the City which are substantially in the form as set out in Schedule B;
- (r) **"Director of Public Works and Engineering Services"** means the officer position from time to time of the Engineering Department of the City and his/her successors in function and their respective nominees;
- (s) **"Extension Term"** means Section 2.2;
- (t) **"Fee"** has the same meaning as Section 8.1 of this Agreement;
- (u) **"Force Majeure"** means any circumstance or act beyond the reasonable control of a party to this Agreement claiming Force Majeure, including, an intervening act of God or public enemy, an act or acts of terrorism, war, blockade, civil commotions, forest fire, epidemic, quarantine, restriction, a stop work order or injunction issued by a court or Authority having jurisdiction, governmental embargo, all or any of which delays the performance of any obligation under this Agreement, provided such circumstances or act is not otherwise expressly dealt with under this Agreement or does not arise by reason of;
- i. the negligence or willful misconduct of the party claiming Force Majeure or those for whom it is responsible at Law;
 - ii. any act or omission by the party (or those whom it is responsible at Law) claiming Force Majeure in breach of the provisions of this Agreement; and
 - iii. an inability by TNV to satisfy its financial obligations under this Agreement, except to the extent that such inability results from an event of Force Majeure which prevents the TNV from satisfying its financial obligations under this Agreement;
- (v) **"GST"** means harmonized sales tax, or any successor or parallel legislation that imposes a tax on the recipient of goods and services supplied under this Agreement and any taxes or fees that may be imposed in replacement or substitution for, or in addition to, such taxes;
- (w) **"Income Tax Act"** means the *Income Tax Act*, 1985, c. 1 (5th Supp.), as amended, or any successor or parallel legislation;
- (x) **"Installation Permits"** means the Authorizations required to be issued by the Director of Public Works and Engineering Services for the installation of the Digital Sign Drawings;
- (y) **"Law"** means "Applicable Law";
- (z) **"Loss"** means, in respect of any matter, all Costs, Claims, direct, indirect, consequential and incidental losses (including loss of revenue), damages, charges, liabilities, deficiencies, costs and expenses, including all legal and other professional fees and disbursements on a full indemnity basis, interest, penalties and amounts paid in settlement of any nature and kind whatsoever and howsoever arising, whether under Law or contract, at common law, in equity or otherwise;
- (aa) **"Party"** means any one of the City or TNV and "Parties" means both of the City and TNV, both as the context may require;
- (bb) **"Person"** means an individual, corporation, partnership, joint venture, association, trust, pension fund, union, governmental agency, board, tribunal, ministry, commission or department and the heirs, beneficiaries, executors, legal representatives or administrators of an individual;

- (cc) **"Site"** means the location where the Digital Sign is to be installed which location will be substantially within the boundaries as outlined in Schedule "C" to this Agreement;
- (dd) **"Taxes"** means, with respect to any Person, all supranational, national, federal, provincial, state, local or other taxes, including income taxes, branch taxes, profits taxes, capital gains taxes, gross receipts taxes, windfall profits taxes, value added taxes, severance taxes, ad valorem taxes, property taxes, capital taxes, net worth taxes, production taxes, sales taxes, use taxes, licence taxes, excise taxes, franchise taxes, environmental taxes, transfer taxes, withholding or similar taxes, payroll taxes, employment taxes, employer health taxes, pension plan premiums and contributions, social security premiums, workers' compensation premiums, employment insurance or compensation premiums, stamp taxes, occupation taxes, premium taxes, alternative or add-on minimum taxes, GST, sales taxes, customs duties or other taxes of any kind whatsoever imposed or charged by any Governmental Authority, together with any interest, penalties, or additions with respect thereto and any interest in respect of such additions or penalties
- (ee) **"Term"** means one (1) year from the Commencement Date and subject to renewal pursuant to Section 2.2 of this Agreement;
- (ff) **"Termination Date"** means the date of termination of this Agreement as determined in Sections 14.1 and 14.2;
- (gg) **"WorkSafeBC"** means the Workers' Compensation Board of British Columbia; and
- (hh) **"Workers Compensation Act"** means the *Workers Compensation Act*, R.S.B.C. 1996, c. 492, as amended, or any successor or parallel legislation.

1.2 Interpretation

In this Agreement, except as otherwise expressly provided or as the context otherwise requires:

- (a) headings are solely for convenience of reference and are not intended to be complete or accurate descriptions of content or to be guides to interpretation of this Agreement or any part of it;
- (b) the words "including" or "includes", when following a general statement or term, mean "including (or includes) without limitation" and are not to be construed as limiting the general statement or term to any specific item or matter set forth or to similar items or matters, but rather as permitting the general statement or term to refer to all other items or matters that could reasonably fall within its broadest possible scope;
- (c) a reference in this Agreement or any agreement contemplated herein to currency means Canadian currency;
- (d) a reference to a statute includes all regulations made thereunder, all amendments to the statute or regulations in force from time to time, and every statute or regulation that supplements or supersedes such statute or regulations;
- (e) a reference to an entity includes any successor to that entity;
- (f) a word importing the masculine gender includes the feminine and neuter, a word in the singular includes the plural, a word importing a corporate entity includes an individual, and vice versa; and
- (g) persons will be considered as dealing with each other at arm's length if they would be so considered for the purposes of the *Income Tax Act* in effect on the date hereof.

1.3 Schedules

The following are the Schedules attached to and forming a part of this Agreement:

Schedule "A" – General Location of Property

Schedule "B" – Digital Sign Drawings

Schedule "C" – Specific Location of Site where Digital Sign is to be installed

ARTICLE 2 EFFECTIVE DATE AND TERM

2.1 Term

The rights and obligations of the City and TNV under this Agreement will come into existence and be enforceable on the Commencement Date and remain in effect throughout the Term, or early termination thereof. Despite anything in this Agreement, the amendments herein will be effective from and after the Commencement Date and Term - Extension Term and not the date of this amendment or the Effective Date.

2.2 Extension Term

The City may extend this Agreement by providing written notice to TNV on or before 60 days prior to the expiration of the then current Term for a further period of one (1) year. The City may continue to extend the Term if it provides written notice to TNV in accordance with this section 2.2.

The Fee payable in each Term will be set in accordance with Section 8.1 of this Agreement.

ARTICLE 3 REQUIREMENTS

3.1 Requirements

Without limiting the application of the provisions contained in this Agreement, TNV will at all times during the Term:

- (a) install and maintain the Digital Sign and all associated repairs in accordance with the terms of this Agreement; and
- (b) maintain a first-class standard of care, skill and diligence in installation, operation, maintenance, and repair of the Digital Sign and warrant that the installation, operation, maintenance, and repair of the Digital Sign will be performed to the high standards as provided herein.

Provided that TNV is not in breach of this Agreement, the City will, subject to the City being legally prevented, at all times during the Term confer upon TNV the right to occupy the Site and operate the Digital Sign.

**ARTICLE 4
DESIGN FABRICATION AND OWNERSHIP**

4.1 Design of Digital Sign and components

TNV will, at its cost, undertake and complete, or cause to be undertaken and completed, the construction of the Digital Sign in accordance with the Digital Sign Drawings.

4.2 Compliance

The design of the Digital Sign must comply with Applicable Laws, including for certainty all relevant City by-laws and the British Columbia Building Code, particularly in respect to safety issues pertaining to people with disabilities and special needs. TNV is solely responsible for and accepts all liability and responsibility in connection with the installation, repair, maintenance, and operation of the Digital Sign.

TNV expressly acknowledges and agrees that the City bears no responsibility whatsoever in connection with the Digital Sign, including, without limitation, the installation, operation, maintenance, or repair of the Digital Sign or any of the components, materials, or equipment in connection with the Digital Sign.

4.3 Approval of Construction Drawings

The construction drawings and specifications for Digital Sign must be submitted to the Director of Public Works and Engineering Services for approval. If the Director of Public Works and Engineering Services provides comments to TNV, TNV will make such changes and amendments to the said plans and specifications as are stated by the Director of Public Works and Engineering Services, providing such changes and amendments are reasonable and do not substantially alter the Digital Sign Drawings, and the TNV will thereafter re-submit said plans and specifications to the Director of Public Works and Engineering Services for review. This process will continue until the Director of Public Works and Engineering Services gives his or her final approval to such drawings and specifications. The City will be responsible for the costs incurred by the Director of Public Works and Engineering Services in reviewing the construction drawings and specifications for the Digital Sign Drawings.

4.4 Design Responsibility

Notwithstanding that the Director of Public Works and Engineering Services may:

- (a) require TNV to make reasonable changes to the plans, drawings and specifications concerning the Digital Sign Drawings pursuant to Section 4.3;
- (b) inspect or reinspect the Digital Sign Drawings;
- (c) inspect or reinspect the progress of the installation of the Digital Sign at the Site owned by the City;
- (d) approve or accept the plans, drawings and specifications concerning the Digital Sign Drawings pursuant to Section 4.3,

all design and construction responsibility and supervisory responsibility will remain exclusively with TNV and no such responsibility will rest with the Director of Public Works and Engineering Services or other City officials, officers, employees, servants or agents and neither the City, nor its officials, officers, employees, servants or agents will be liable to TNV for the safety, adequacy or soundness of the Digital Design by reason of any inspections made, changes required or approvals given with respect to the Digital Design. Any approval given by and any inspection carried out by the Director of Public Works and Engineering Services, the City or its officials, officers, employees, servants or agents pursuant to this Agreement or concerning the Digital Sign will be for the purposes only of ensuring compliance with this Agreement from the point of view of the City as contracting party, and no inspection or approval given by the Director of Public Works and Engineering Services, the City or its officials, officers, employees, servants or agents will relieve TNV from its obligation to comply with the terms of this Agreement nor will the giving of any approval constitute a waiver or release by the Director of Public Works and Engineering Services, the City of any duty or liability owed to the City or of any indemnity given by TNV to the City, its officials, officers, employees, servants or agents.

ARTICLE 5 PROVISION, DELIVERY AND INSTALLATION

5.1 Site and Installation

TNV will provide, deliver and install the Digital Sign at its sole cost and expense as required in accordance with this Agreement and at the Site, all to the satisfaction of the Director of Public Works and Engineering Services and in accordance with the following requirements:

- (a) TNV will be responsible for keeping the Director of Public Works and Engineering Services properly and adequately advised of the progress of construction, delivery and installation of the Digital Sign and for providing the Director of Public Works and Engineering Services periodically, as he/she may require, with schedules and progress reports, and for ensuring the overall condition of the construction, delivery and installation of the Digital Sign;
- (b) TNV will provide the necessary power, electrical connections, component, material, labour and civil works from BC Hydro;
- (c) TNV will provide all utility connections and foundation supports or tethers on which the Digital Sign will be anchored. If modifications to the Digital Sign's foundation support or tether is required due to design changes or other requirements, such modifications will be undertaken by TNV at its cost; and
- (d) TNV will ensure that all work performed at the Site is compliant with all Applicable Laws and is of the highest quality and workmanship.

ARTICLE 6 MAINTENANCE AND OPERATION

6.1 General

TNV will repair and maintain the Digital Sign and all necessary ancillary components associated with the operation of the Digital Sign, in accordance with this Section 6.1 and without limitation commencing on the date of installation of such Digital Sign or otherwise as set out herein:

- (a) TNV will keep the Digital Sign in first class condition and good working order for the duration of the Term. For greater certainty, the Digital Sign will be kept structurally sound, free of distortion or displacement and weather tight. Internal and external surfaces are to be damage free. All surfaces of the Digital Sign will be kept clean and free of graffiti. All functional components and equipment of the Digital Sign including mechanical, electrical and lighting, are to be kept in good working order;
- (b) TNV will be responsible for the payment of all costs including but not limited to. electricity, power) and all other services and utility costs incurred in respect to the operation of the Digital Sign that utilizes these services. TNV will pay all service costs directly to the respective service providers;
- (c) TNV will maintain and/or repair the Digital Sign at its sole expense, to the satisfaction of the City, whether modified or retained unmodified by TNV and irrespective of the date of installation. Under the provisions of this Agreement, TNV is required to:
 - i. undertake emergency maintenance if notified by the City that the condition of the Digital Sign is such that it is a serious danger to the public. TNV will, as soon as reasonably possible, and in any event no later than forty-eight (48) hours or such time agreed to with the Director of Public Works and Engineering Services after the giving of such notice, repair, maintain, or make safe the Digital Sign, at its sole expense and to the satisfaction of the City;
 - ii. at its own expense, be responsible for the repair of damage to the Digital Sign or components including LED screens when such damage is caused by an act of vandalism or any other cause of damage to the Digital Sign;
 - iii. have readily available replacement parts to facilitate ease of maintenance; and
 - iv. ensure the City, or persons authorized by the City, have the right, at all reasonable times, to inspect or otherwise review the Services performed or being performed by TNV or its agents or vendors,
- (d) if at any time during the Term any deficiency, failure, breakdown or deterioration in workmanship or material should be discovered in connection with the Digital Sign, the City may at its option:
 - i. require TNV to correct the deficiency at no expense to the City within seven (7) days of receipt of written notification from the City, or such other time as mutually agreed to by the Parties;
 - ii. and if repairs are not carried out as per (i) above, the City may at its option, correct such deficiency and TNV will be liable to reimburse the City for any and all charges and expenses however so incurred by the City associated with such correction, plus a normal overhead charge which will not exceed twenty percent (20%) of such costs and expenses,; or
 - iii. If the City determines, in its discretion, the defects to be dangerous and that an emergency situation exists, upon notice to TNV of such damage or emergency situation, the City's remedy such emergency and the total costs, charges and expenses so incurred may be deducted or collected by the City,
- (e) TNV will perform its obligations in a proper and workmanlike manner and in accordance with the requirements of this Agreement and maintain the Digital Sign against any defects arising from faulty installation, material or workmanship during the Term or Extension Term and make good in a permanent manner satisfactory to the Director of Public Works and Engineering Services any defects arising from any of these causes.

ARTICLE 7 ADVERTISING

7.1 General

- (a) TNV agrees that advertising will only be permitted on the Digital Sign in accordance with all Applicable Laws;
- (b) The City may request TNV to remove certain advertising materials if in the City's reasonable judgment such advertising violates the standards and policies of Advertising Standards of Canada;
- (c) All costs and expenses (including overhead and other general, administrative and third-party expenses) incurred by TNV in connection with the advertising program and the Digital Sign will be borne exclusively by and paid by TNV.

ARTICLE 8 FEE

8.1 Fee

TNV will pay to the City a fee of \$25,000 annually (the “**Fee**”) which payment must be delivered to the City by way of certified bank draft at least 15 days prior to the Commencement Date and at least 15 days prior to the commencement of any Extension Term, plus applicable Taxes.

If this Agreement is renewed in accordance with Section 2.2, the Fee will be renegotiated and mutually accepted by each Party thirty (30) days prior to the commencement of each renewal Term. The Parties agree that any renegotiated Fee will not be less than \$25,000.

If the parties are unable to mutually agree to the renegotiated Fee thirty (30) days prior to the commencement of the renewed Term, then this Agreement will be terminated and which termination will occur in accordance with section 14.2(b) of this Agreement.

ARTICLE 7 REPRESENTATIONS AND WARRANTIES

9.1 Representations and Warranties

TNV hereby represents and warrants to the City as follows, and confirms that the City is relying upon the accuracy of each of such representations and warranties in connection with this Agreement and the completion of the transactions hereunder:

- (a) **Society:** TNV is a society duly incorporated and validly subsisting in all respects under the Law of its jurisdiction of incorporation. TNV has good right, full corporate power and absolute authority to enter into this Agreement and to perform all of TNV's obligations under this Agreement. TNV and its Board of Directors have taken all necessary or desirable actions, steps and corporate and other proceedings to approve or authorize, validly and effectively, the entering into of, and the execution, delivery and performance of, this Agreement. This Agreement is legal, valid and binding on TNV.
- (b) **Performance:** the execution, delivery and performance of this Agreement and the completion of the obligations contemplated hereby will not constitute or result in a violation or breach of or default under:

- i. the terms of any indenture, agreement (written or oral), instrument, understanding, other obligation or restriction to which TNV is a party or by which it is bound; or
 - ii. any term or provision of any licenses, registrations or qualifications of TNV, any order of any Authority or any Applicable Laws.
- (c) **Installation:** TNV warrants and represents that all work associated with the installation of the Digital Sign will be:
 - i. free from defects in materials or workmanship and will conform to the Digital Sign Drawings as approved by the City;
 - ii. fit and sufficient for their intended purpose, will be of merchantable quality and will be manufactured from new and unused materials;
 - iii. in compliance with the standards set forth by any Authority;
 - iv. capable of operating as necessary with reasonable continuity throughout the expected life of the equipment and the Term or Extension Term without breakdown, excessive wear of parts or other evidence of faulty design or manufacture;
 - v. free and clear of all charges, liens, claims or encumbrances; and
 - vi. if designated as hazardous or controlled materials, handled and shipped in accordance with any Applicable Laws, including any environmental protection Laws and regulations.
- (d) **General:** TNV further warrants and represents that:
 - i. TNV will comply, and make all reasonable efforts to ensure that all of its employees and subcontractors comply, with all Applicable Laws in carrying out its obligations hereunder;
 - ii. if any Applicable Laws mentioned in the subsection immediately above require the City to act at variance with the terms of this Agreement and the City so acts, then the same will not constitute a breach of this Agreement (the City is not aware of any Law that requires the City to act at variance with the terms of this Agreement); and
 - iii. TNV's employees have the qualifications, experience, knowledge, skills and abilities necessary to carry out the installation, repair, maintenance, and operation of the Digital Sign which will be performed in a competent, efficient and professional manner.

ARTICLE 10 INSURANCE AND WORKER'S COMPENSATION

10.1 Insurance

- (a) TNV will provide, maintain and pay for comprehensive liability insurance coverage in an amount not less than \$5,000,000 per occurrence to cover any potential liability arising from the installation, operation, repair, or maintenance of the Digital Sign.
- (b) TNV will name the City as an additional insured on all such insurance.

- (c) TNV will provide the City with certified copies of all certificates of insurance prior to the Commencement Date. Approval of any policies of insurance by the City will in no way relieve TNV of its obligations hereunder.
- (d) If TNV fails to provide, maintain or pay for the insurance required by this section 10.1, then the City will have the right, but not the obligation to provide, maintain and pay for such insurance, in which case the cost thereof will, at the City's option, be payable by TNV on demand or the City may recover such costs from TNV.

10.2 WorkSafeBC

- (a) TNV will at its own expense, procure and carry or cause to be procured and carried and paid for, full WorkSafeBC coverage for itself and all workers, employees, servants and others engaged by TNV in or upon any work or service which is the subject of this Agreement.
- (b) TNV will provide the City with the TNV's WorkSafeBC registration number and letter from WorkSafeBC confirming that TNV is registered in good standing with WorkSafeBC and that all assessments have been paid.
- (c) TNV will comply with all WorkSafeBC rules and regulations.

ARTICLE 11 INDEMNITY RELEASE AND LIABILITY

13.1 Indemnity

Without limiting the generality of any other indemnities granted by TNV herein, TNV hereby indemnifies and saves harmless the City and the City Included Parties (including the City Designated Representatives) from all Costs, expenses (including counsel fees on a dollar for dollar basis and other expenses of suits, whether groundless or not), damages, Loss, Claims and judgments on account of any damage to the Site, or property, or injury (including death) to any Person (including damage or injury to the City or any agent or employee thereof) which may be caused or be alleged to have been caused as a direct or indirect result of any act or omission of TNV, its agents or representatives or those for whom it is responsible at Law, or as a result of the breach of any covenant, representation or warranty, or which may occur or be alleged to have occurred by reason of any defects, deficiencies or malfunctioning of the Digital Sign, but excluding the willful or negligent act or omission of the City of the City Included Parties. TNV hereby assumes all risk of damage or injury to the TNV's own property, agents and those for whom it is responsible at Law from whatever cause.

13.2 Release

TNV hereby accepts the lands upon which the Digital Sign is to be installed on an "as is" basis and hereby unconditionally, absolutely and irrevocably releases and forever discharges the City and the City Included Parties from any and all liability for, and any Loss, Claim or Costs relating to:

- (a) the condition or quality of the lands upon which the Digital Sign is installed;
- (b) the use or occupation of the lands by TNV, its agents or those for whom it is responsible at Law, upon which the Digital Sign is, or is intended to be installed; and

- (c) any cessation, interruption, or delay in the installation, maintenance or removal of the Digital Sign, as the case may be, regardless of how such cessation, interruption or delay arises.

13.3 Liability

Notwithstanding anything contained in this Agreement, the City shall not be liable in any way for indirect or consequential losses or damages, for pure economic loss, loss of profit or business loss, howsoever caused or contributed to, in connection with this Agreement or with the Digital Sign (installed or not) at the Site.

ARTICLE 14 DEFAULT AND TERMINATION

14.1 Default

TNV will be deemed to be in default of this Agreement if TNV:

- (a) refuses or fails to perform the obligations after written notice from the City and fails to cure such default, as required by the City or as otherwise stated in this Agreement;
- (b) ceases to operate as a society in accordance with the *Societies Act*, SBC 2015, c. 18;
- (c) changes its mandate and fails to provide services to local businesses as represented to the City;
- (d) is adjudged as bankrupt;
- (e) makes a general assignment for the benefit of a creditor;
- (f) has a receiver appointment or account of insolvency;
- (g) fails to observe Laws, policies, procedures or instructions of the City;
- (h) fails to pay the Fee in accordance with this Agreement; or
- (i) fails to cure any deficiency as contained in any written notice from the City of any of the provisions of this Agreement.

In the event of default which is not cured by TNV in accordance with the terms of this Agreement, the City may, without prejudice to any other right or remedy, terminate this Agreement. If this Agreement is terminated, TNV will, within 30 days of such termination, remove all structures, components, equipment, and materials from the Site and ensure the Site is returned to the original condition immediately prior to the installation of the Digital Sign.

14.2 Termination

- (a) TNV cannot terminate this Agreement prior to the expiry of the term and if TNV initiates termination of this Agreement, it will be deemed to be in breach of this Agreement and the City will retain all rights and remedies, whether in equity or in law, to pursue TNV.
- (b) Upon expiration of the Term or earlier termination of the Term, ownership of the Digital Sign, regardless of the date of installation, will remain with TNV. For greater certainty, TNV will be liable and obligated to demolish and remove all structures, equipment, and materials associated with the Digital Sign from the Site and TNV will either dispose of the equipment and/or material in accordance with all Applicable Laws or store the equipment at its own expense in accordance with all Applicable Laws.

ARTICLE 15 GENERAL

14.1 Compliance with Laws

In carrying out its obligations, TNV will familiarize itself and comply with all:

- (a) Applicable Laws, and will obtain all necessary licenses, permits and registrations as may be required by Applicable Laws; and
- (b) TNV will pay and discharge all wages, fees, salaries, charges, Costs and expenses due and accruing to any of its employees, agents, suppliers and subcontractors and will make and remit to each property Authority all deductions as required by Applicable Laws

14.2 No Partnership or Agency

It is understood and agreed that:

- (a) nothing contained in this Agreement will constitute or be deemed to create a partnership, joint venture or principal and agent relationship between or among the City and TNV, and the officers, directors, shareholders, partners, personnel, Affiliates and agents of TNV; and
- (b) TNV will not purport to enter into any agreement on behalf of the City, or otherwise act on its behalf; and TNV hereby acknowledges that the City will not be required on its behalf to make remittances, filings or payments required by statute of employers, and that TNV will not be entitled to the fringe benefits provided by the City to its employees.

14.3 Subcontractors

Except where otherwise set out, TNV will furnish all personnel required to:

- (a) TNV will administer, coordinate, and manage all work of subcontractors, and will assume full responsibility for all work performed by the subcontractors; and
- (b) TNV will be solely responsible for paying the fees and expenses of all subcontractors engaged by it in connection with the Agreement and the City will have no liability whatsoever in connection therewith.

14.4 Assignment

TNV will not assign or subcontract this Agreement without the prior written consent of the City, which consent may be unreasonably or arbitrarily withheld. Any assignment or subcontract without such consent will be null and void and of no effect.

14.5 Builder's Liens and Holdbacks

- (a) TNV will not at any time suffer or permit any liens to be registered against or to exist on any City property, the Digital Signs or any other asset or matter supplied under this Agreement. TNV agrees to forthwith cause all such liens to be fully paid, satisfied and released; and
- (b) TNV hereby agrees to make payment and take all other steps which may be necessary to ensure that all monies payable under this Agreement, the City property and the Digital Signs and every part thereof, will be and remain at all times free from and not liable to any lien or charge at Law or in equity, or to any Claim of liability under the *Builders Lien Act*, or to any attachment for debt, garnishee process or otherwise, and TNV and his sureties, as well as its respective successors and permitted assigns, will fully indemnify

and save harmless the City and all its officers, servants and employees from any and all such liability, and will, on demand, immediately cause any such lien charge, Claim or attachment to be removed or released from the records of any Land Title Office or Court in which the same may appear.

14.6 Permits and Approvals

For services related to the installation, repair, operation, maintenance and removal of the Digital Sign or any components or materials thereof, TNV will apply for, obtain and pay for all permits and approvals required by any Authority and/or the City, to enable TNV to perform its obligations and all other site development costs, necessary to fully perform its obligations under this Agreement, including without limitation, development permits, development variance permits and building permits including the Installation Permit.

14.7 Non-Waiver of Rights

Any failure by the City to enforce or require the strict keeping and performance of any of the terms and conditions contained in the Agreement will not constitute a waiver of such terms and conditions and will not affect or impair such terms and conditions in any way or the City's right at any time to avail itself of such remedies as the City may have for any breach or breaches of such terms and conditions.

14.8 Notice

All notices which are required or permitted to be given or made pursuant to the Agreement will be given or made in writing and will be delivered personally or by courier with a copy sent by facsimile to:

(a) in the case of the City, at:

Cynthia White
Chief Administrative Officer
City of Merritt
PO BOX 189
Merritt, BC V1K 1B8

(b) in the case of TNV, at:

Melvina White, President
Merritt and Nicola Valley Destination Marketing Society
2181 Quilchena Ave St
PO BOX 159
Merritt, BC, V1K 1B8

14.9 Costs

Except as otherwise provided in this Agreement, each of the City and TNV will be responsible for its own fees, expenses and other Costs incurred in connection with carrying out its obligations under this Agreement.

14.10 Severability

Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction will, as to that jurisdiction, be ineffective to the extent of such prohibition or unenforceability and will be severed from the balance of this Agreement, all without affecting the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

14.11 Time of the Essence

Time shall be of the essence of this Agreement in all respects.

14.18 Entire Agreement

This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter of this Agreement and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written. There are no conditions, representations, warranties, obligations or other agreements between the Parties in connection with the subject matter of this Agreement (whether oral or written, express or implied, statutory or otherwise) except as explicitly set out in this Agreement.

14.19 Governing Law and Attornment

This Agreement will be governed by and construed in accordance with the Laws of the Province of British Columbia, which will be deemed to be the proper Law hereof. The courts of British Columbia will have jurisdiction to determine all disputes and Claims, whether for specific performance, injunction, declaration or otherwise arising out of or in any way connected with the constructions, branch, or alleged, threatened or anticipated breach of this Agreement and will have jurisdiction to hear and determine all questions as to the validity, existence or enforceability hereof. For the purposes of any legal actions or proceedings brought by the City in respect of this Agreement, TNV hereby irrevocably submits and attorns to the jurisdiction of the courts of British Columbia and acknowledges their competence and the convenience and propriety of the venue and agrees to be bound by any judgment thereof and not to seek, and hereby waives, any review of its merits by the Courts of any jurisdiction.

14.20 Counterparts

This Agreement may be executed in any number of counterparts. Any Party hereto may send the copy of its executed counterpart to the other Party hereto by facsimile transmission instead of delivering a signed original copy of such counterpart. Each executed counterpart (including each copy sent by facsimile transmission) will be deemed to be an original and all such executed counterparts taken together will constitute one and the same agreement, and notwithstanding the date of execution will be deemed to bear the same date as written above on this Agreement.

14.22 Enurement

This Agreement will enure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

IN WITNESS WHEREOF the Parties hereto have executed and delivered this Agreement as of the date and year first above written.

**Merritt and Nicola Valley
Destination Marketing Society**

by its authorized signatories:

Name:

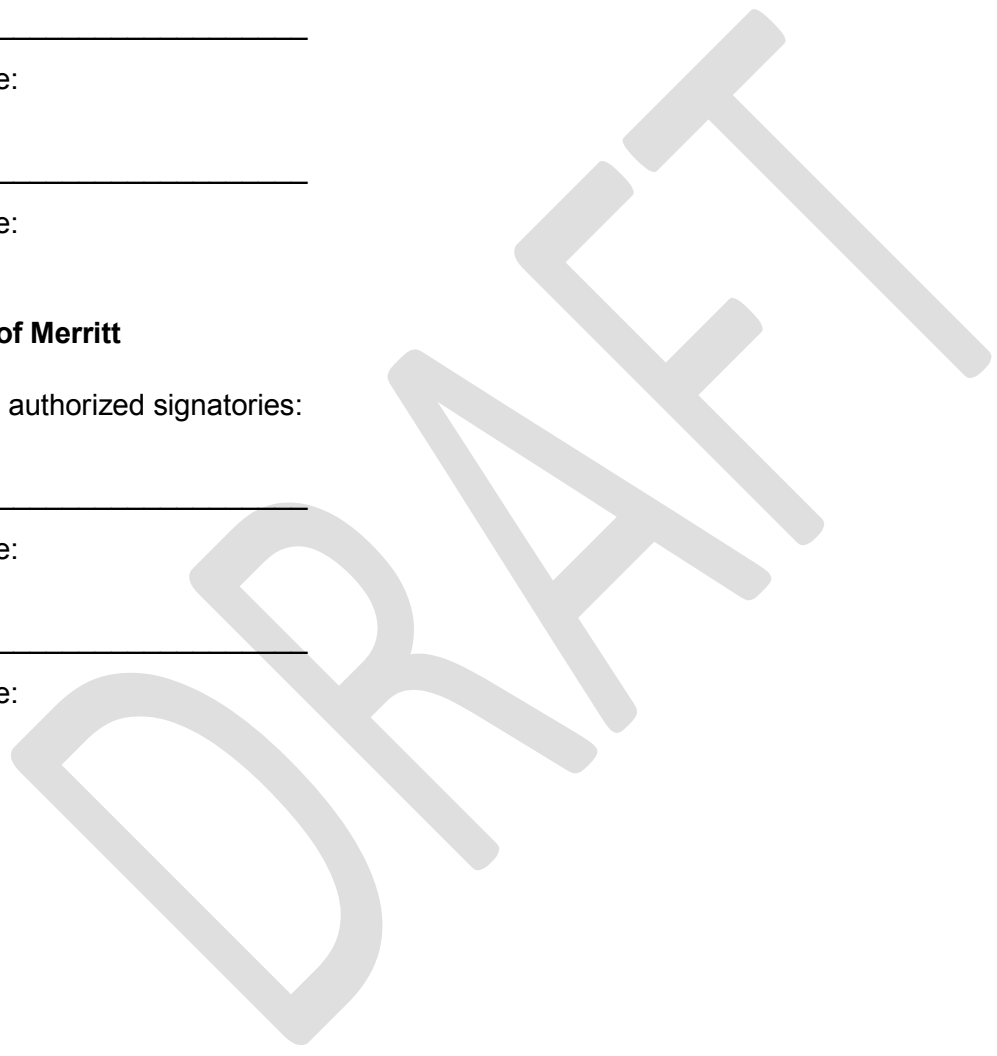
Name:

City of Merritt

by its authorized signatories:

Name:

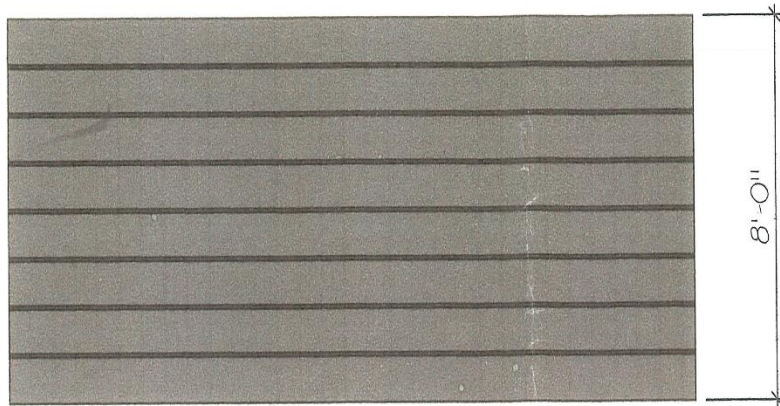
Name:



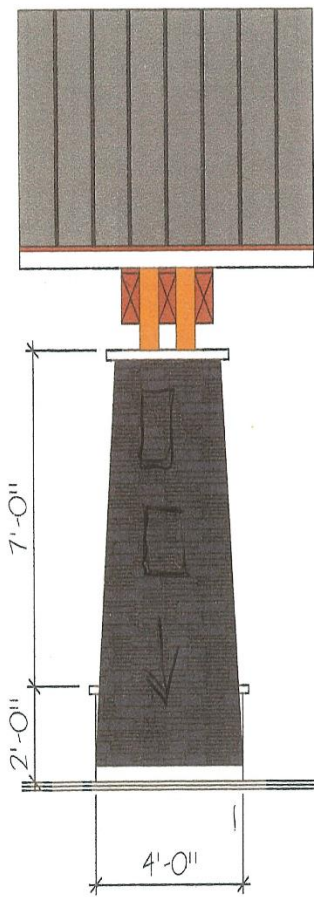
Schedule "A" – General Location of Property



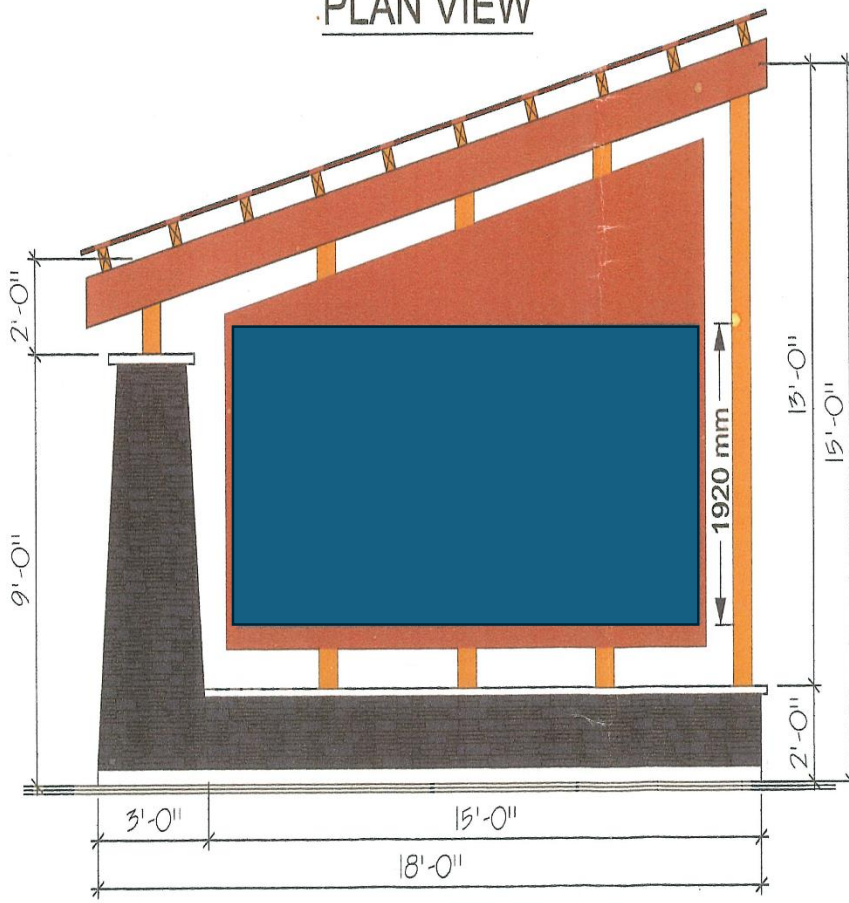
Schedule "B" – Digital Sign Drawings



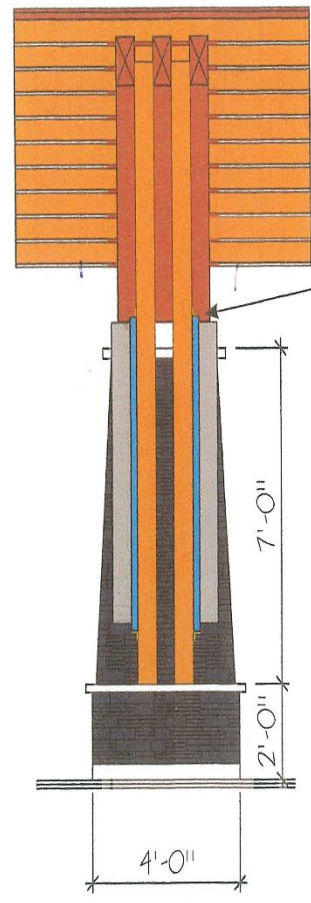
PLAN VIEW



SIDE VIEW



FRONT VIEW



SIDE VIEW

**Schedule "C" – Specific Location of Site
Digital Sign is to be Installed**

