

RESOLUTION NO. 2010-620

Adopted by the Sacramento City Council

October 26, 2010

ADOPTING FINDINGS OF FACT AND APPROVING THE HIGHWAY 99 BILLBOARD RELOCATION AGREEMENT (CLEAR CHANNEL OUTDOOR) (P10-009)

BACKGROUND

- A. On September 23, 2010 the City Planning Commission conducted a public hearing on, and forwarded to the City Council a recommendation to approve the Highway 99 Billboard Relocation Agreement.
- B. On October 26, 2010, the City Council conducted a public hearing, for which notice was given pursuant Sacramento City Code Section 17.200.010(C)(1) (b) and (c) (posting and mail (500 feet), and received and considered evidence concerning the Digital Billboards Relocation Agreement Project.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

Section 1. Based on the verbal and documentary evidence received at the hearing on the Highway 99 Billboard Relocation Agreement Project, the City Council approves the Relocation Agreement as attached in Exhibit A, based on the findings of fact as set forth below.

Section 2. Findings of fact:

- A. Relocation Agreement: The Billboard Relocation Agreement for the Project is approved based on the following findings of fact:
 - 1. The new billboard complies with the purpose and requirements of Sacramento City Code Chapter 15.148, including section 15.148.815.
 - 2. The new billboard is compatible with the uses and structures on the site and in the surrounding areas, including parks, trails, and other public facilities and amenities.
 - 3. The new billboard will not interfere with onsite access, circulation, or visibility.
 - 4. The new billboard will not create a traffic or safety hazard.
 - 5. The new billboard will not result in any undue or significant increase in visual clutter in the areas surrounding the new sites.

Section 3. Exhibit A is a part of this Resolution.

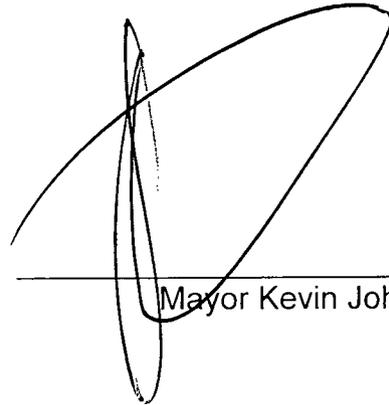
Adopted by the City of Sacramento City Council on October 26, 2010 by the following vote:

Ayes: Councilmembers Cohn, Fong, Hammond, McCarty, Pannell, Sheedy,
Tretheway, Waters, and Mayor Johnson.

Noes: None.

Abstain: None.

Absent: None.



Mayor Kevin Johnson

Attest:



Shirley Concolino, City Clerk

Exhibit A

Billboard Relocation Agreement

City of Sacramento and Clear Channel Outdoor

This agreement, dated October 26, 2010, for purposes of identification, is between the **City of Sacramento** (the "City"), a California municipal corporation; and **Clear Channel Outdoor, Inc.** ("CCO"), a Delaware corporation.

Background

A. On October 16, 2007, the Sacramento City Council adopted Ordinance No. 2007-079, which prohibits the construction and operation of new billboards within the City. Ordinance No. 2007-079 also provides, however, that this prohibition does not limit the City's ability to enter into relocation agreements under which new billboards may be constructed in exchange for the permanent removal of existing billboards, as encouraged by the Outdoor Advertising Act.¹ Section 15.148.815 of the Sacramento City Code ("Section 15.148.815") prescribes when and how the City may enter into a relocation agreement.

B. CCO desires to construct, maintain, and operate a new billboard on privately owned land within the City's jurisdiction, at CCO's sole expense (the "New Billboard"). The first column of **Exhibit A** to this agreement identifies the land on which CCO proposes to locate the New Billboard (the "New Billboard Site").

C. CCO owns the existing billboards identified in the second column of **Exhibit A**, each of which is located on privately owned land within the City's jurisdiction (the "Existing Billboards"). To fulfill the requirement that CCO remove existing billboards in return for the right to construct, operate, and maintain the New Billboard on the New Billboard Site, CCO applied to the City for a relocation agreement covering the Existing Billboards (Project No. P10-009). Removal of the Existing Billboards will result in a net reduction within the City of both (1) the total number of lawfully permitted offsite signs and (2) the total square footage of lawfully permitted offsite signage, as required by Section 15.148.815.

D. In accordance with Section 15.148.815, on September 23, 2010, the City's Planning Commission held a public hearing on CCO's application for a relocation agreement and then forwarded a recommendation of approval to the City Council; and on October 26, 2010, the City Council held a public hearing on the application and approved it based on the findings of fact, and subject to the conditions of approval (if any), set out in Resolution No. 2010-___.

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

1. **Removal of Existing Billboards.** In return for the City's approval of the New Billboard (Project No. P10-009), and to comply with Ordinance No. 2007-079, Section 15.148.815, and the Outdoor Advertising Act, CCO shall remove the Existing Billboards according to the schedule set forth in the second column of **Exhibit A**.

¹ Chapter 2 (beginning with section 5200) in division 3 of the California Business and Professions Code.

2. Compliance with Law. While removing the Existing Billboards and while constructing, operating, and maintaining the New Billboard on the New Billboard Site, CCO shall comply with all conditions of approval set out in Resolution No. 2010-____ and with valid and applicable statutes, ordinances, regulations, rules, and orders that concern the Existing Billboards, the New Billboard, or the New Billboard Site, including Section 15.148.815 and the Outdoor Advertising Act, whether enacted or issued before, on, or after the effective date of this agreement (see Section 6(i), below).

3. Waiver of Compensation. CCO hereby waives and releases all claims for compensation CCO has or may have in the future that are against the City or the City's elected officials, officers, employees, or agents and are related to, or connected with, CCO's removal of the Existing Billboards. This waiver and release includes any claims made or arising under the California Government Claims Act,² the Outdoor Advertising Act, the California Constitution, the federal Highway Beautification Act of 1965,³ or the United States Constitution.

4. Release of Claims. CCO unconditionally and forever releases and discharges the City and the City's elected officials, officers, employees, and agents from all liabilities, claims, demands, damages, and costs (including reasonable attorneys' fees and litigation costs through final resolution on appeal) that in any way arise from, or are connected with, CCO's removal of the Existing Billboards. This release and discharge covers all claims, rights, liabilities, demands, obligations, duties, promises, costs, expenses, damages, and other losses or rights of any kind, past, present, and future, whatever the theory of recovery, and whether known or unknown, patent or latent, suspected or unsuspected, fixed or contingent, or matured or unmatured. CCO hereby waives all rights it has or may have in the future under section 1542 of the California Civil Code, which provides as follows:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known to him or her must have materially affected his or her settlement with the debtor."

5. Indemnity. CCO shall indemnify, defend (upon the City's written request), protect, and hold the City and the City's elected officials, officers, employees, and agents harmless against all liabilities, claims, demands, damages, and costs (including reasonable attorneys' fees and litigation costs through appeal) that arise in any way from either or both of the following:

- (a) The acts or omissions of CCO or CCO's officers, employees, or agents in removing the Existing Billboards.
- (b) The City's processing and approval of CCO's application for this relocation agreement. CCO's obligation under this Section 5(b) includes all claims by the owner of property from which an Existing Billboard is removed, including claims based on the California Government Claims Act, the Outdoor Advertising Act, the California Constitution, the federal Highway Beautification Act of 1965, or the United States Constitution.

² Parts 1 through 7 (beginning with section 810) in division 3.6 of title 1 of the California Government Code.

³ Title 23 United States Code section 131.

6. Miscellaneous.

- (a) *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 6(a) 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. Any 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 Sacramento Community
Development Department
Planning Division

300 Richards Boulevard, Third Floor
Sacramento, California 95811

Attention:
Sandra Yope
Senior Planner

If to CCO:

Clear Channel Outdoor, Inc.
1107 9th Street, Suite 500
Sacramento, California 95814

Attention:
David M. McWalters
Senior Vice President
Real Estate & Public Affairs

- (b) *Assignment.* A party may not assign or otherwise transfer this agreement or any interest in it without the other party's written consent. An assignment or other transfer made contrary to this Section 6(b) is void.
- (c) *Successors and Assigns.* This agreement binds and inures to the benefit of the successors and assigns of the parties. This Section 6(c) does not constitute the City's consent to any assignment of this agreement or any interest in this agreement.
- (d) *Interpretation.* This agreement is to be interpreted and applied in accordance with California law, without regard to conflict-of-law principles, subject to the following:
- (1) Sections 3, 4, and 5 of this agreement are to be interpreted so as to provide the City and the City's elected officials, officers, employees, and agents with the maximum protection possible against any obligation or liability that in any way arises from, or is connected with, CCO's removal of the Existing Billboards.
 - (2) The rule of interpretation in Civil Code section 1654 will not apply.
 - (3) "Includes" and "including" are not restrictive. "Includes" means "includes but not limited to," and "including" means "including but not limited to."
 - (4) Exhibit A is part of this agreement.
- (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 term or provision in this agreement will not constitute a continuing waiver or a waiver of any subsequent breach of the same or any other term or provision. A waiver is binding only if set forth in writing and signed by the waiving party.

- (f) *Attorney's Fees.* The party prevailing in any litigation concerning this agreement will be entitled to an award by the court of reasonable 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 6(f) will apply whether the City is represented in the litigation by the Office of the City Attorney or by outside counsel.
- (g) *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.
- (h) *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.
- (i) *Effective Date.* This agreement is effective as of the date on which both the City and CCO have signed it, as indicated by the dates in the signature blocks below.
- (j) *Time of Essence.* Time is of the essence of this agreement.
- (k) *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 Sacramento

Clear Channel Outdoor, Inc.

By: _____

Gus Vina
Interim City Manager

Dated: October ____, 2010

Approved as to Form
Sacramento City Attorney

By: _____

Joseph Cerullo Jr.
Senior Deputy City Attorney

By: _____

David McWalters
Senior Vice President Real Estate
Clear Channel Outdoor

Dated: October ____, 2010

Approved as to Form
Remy, Thomas, Moose & Manley

By: _____

Tina Thomas
Attorneys for Clear Channel Outdoor

Exhibit A to Billboard Relocation Agreement

City of Sacramento and Clear Channel Outdoor

New Billboard	Existing Billboards
<p>New Billboard</p> <p><i>General Location:</i> 7900 Stockton Boulevard <i>APN:</i> 117-0170-009 <i>Zoning:</i> C-2 <i>General Description:</i> two-sided billboard (14' X 48') <i>Total Display Area:</i> 1344 square feet</p>	<p>CCO shall permanently remove these three Existing Billboards from the indicated locations before CCO begins constructing the New Billboard:</p> <p>Existing Billboard 1</p> <p><i>General Location:</i> 7900 Stockton Boulevard <i>APN:</i> 117-0170-009 <i>Zoning:</i> C-2 <i>CCO Location Number:</i> 2319 <i>General Description:</i> one-sided billboard (14' X 48') <i>Total Display Area:</i> 672 square feet</p> <p>Existing Billboard 2</p> <p><i>General Location:</i> 1476 Blair Avenue <i>APN:</i> 035-0091-006 <i>Zoning:</i> M-1 <i>CCO Location Numbers:</i> 4521, 4522 <i>General Description:</i> two-sided billboard (12' X 25') <i>Total Display Area:</i> 600 square feet</p> <p>Existing Billboard 3</p> <p><i>General Location:</i> 3218 Broadway <i>APN:</i> 010-0308-005 <i>Zoning:</i> C-2 <i>CCO Location Number:</i> 4046 <i>General Description:</i> one-sided billboard (12' X 25') <i>Total Display Area:</i> 300 square feet</p>

Net Reduction in Number of Signs:	2 signs
Net Reduction in Number of Display Faces:	2 faces
Net Reduction in Display Area:	228 square feet