

Item No. 23

Supplemental Material

For

City of Sacramento

City Council

Financing Authority

Housing Authority

Redevelopment Agency

Agenda Packet

Submitted: 5/11/10

For the Meeting of:

- X Additional Material
- Revised Material

Title: Lease Agreements: Digital Billboards on City-Owned Sites

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MEMORANDUM

DATE: May 10, 2010

TO: Mayor, Members of the City Council

CC: Gus Vina, City Manager
Shirley Concolino, City Clerk
John Dangberg, Assistant City Manager
Jim Rinehart, Director of Economic Development

FROM: Tom Zeidner, Sr. Economic Development Project Manager

SUBJECT: **Digital Billboards of City-owned Sites**



The staff report for item number 23 on the City Council Agenda for its meeting on May 11, 2010, entitled **Leases – Digital Billboards on City-owned Sites**, included a draft Digital Billboards Lease as Attachment 1. The final Lease documents that have been executed by Clear Channel Outdoor, Inc. (CCO) prior to their consideration by the City Council include material changes to the draft as summarized below:

- With respect to the **Term of Lease**, Section 3(a)(1) has been revised so that the “Pre-Operations Phase” begins on the Effective Date and ends on the earlier of (A) the 30th day after the Digital Billboard becomes Operational or (B) 270 days after the “Commencement Date” for the Business 80 & Fulton Avenue and Highway 99 locations or 360 days after the “Commencement Date” for the signs proposed at 240 Jibboom Street, west of Interstate 5 and near Interstate 80, east of Northgate Boulevard.
- Provisions have been added to Section 4 **Consideration** that provide for adjustment of Monthly Rent to be paid by CCO in the event of (1) a material diversion of, or reduction in, traffic on the portion of freeway adjacent to each sign that continues for at least five days; (2) a force-majeure event; or (3) the obstruction of any of the signs because of actions authorized or caused by the City. The amount of any adjustment in Monthly Rent will be in direct proportion to the decrease in advertising revenue caused by these events. If CCO believes one of these events is causing its advertising revenue to decrease, it may send the City a notice describing the event and the amount by which CCO proposes to adjust the Monthly Rent, along with supporting evidence. If the City does not object to the proposed adjustment within five business days, the Monthly Rent will be adjusted accordingly. If the City objects to a proposed adjustment, and the objection is not resolved through discussions between staff and CCO within 5 business days, then the matter will be submitted to binding arbitration.

- The draft Lease under Section 5(c)(2) **Use of Premises**, Unlawful Activities, states that CCO waives any rights to compensation if a court finds that the Digital Billboard constitutes a nuisance under any federal, state, or local law and order CCO to remove, modify, or limit operation of the sign. A sentence has been added to the end of that section indicating that the waiver will not apply if a court's finding of nuisance is an action brought by the City under a City Ordinance.
- Section 6 (h) **Installation and Operation of Digital Billboard**, *Insured Damage or Destruction*, has been revised to indicate that CCO may choose not to repair or replace the Digital Billboard if (1) the cost to do so exceeds 60% of its fair-market value prior to it being damaged or destroyed, and (2) the damage or destruction occurs in last three years of the Initial or Extended Term. Section 6(k)(3) *City Messages* indicates that the Digital Billboards will available for display of City messages on a time-available basis. Language within the draft that CCO will display City messages "for at least 20 consecutive days" has been removed for consistency with the time-available intent.
- **Schedule 1, Monthly Rent** to the draft lease indicates that Monthly Rent for the Digital Billboards in Lease Years 1 through 5 will be \$15,000 a month. Thereafter, every five years, the Monthly Rent will adjust to the higher of (1) the Monthly Rent during the previous five-year period; or (2) one-twelfth of 30% of the average net annual revenue realized by CCO during the prior five-year period. In the case of the Business 80 & Fulton Avenue Lease only, Schedule 1 is revised so that, for Lease Years 6 on, Monthly Rent will simply equal one-twelfth of 30% of average net annual revenue for that particular sign during the prior five-year period. For this sign alone, there will be no floor for rent after the fifth Lease Year. This revision is recommended in consideration of CCO's recent commitment to provide advertising on the Business 80 & Fulton Avenue Digital Billboard at no charge to Mel Raption Honda, which is also leasing City property at that location. CCO will also be incurring the cost of onsite signage for Raption in conjunction with its installation and operation of the Digital Billboard at this location.