

Meeting Date: 3/29/2016

Report Type: Consent

Report ID: 2016-00339

Title: First Amendments to Digital Billboard Lease Agreements with Clear Channel Outdoor

Location: Citywide

Recommendation: Pass a Motion authorizing the City Manager or the City Manager's designee to execute First Amendments to four Digital Billboard Leases (City Agreements 2010-0525, 2010-0526, 2010-0527, and 2010-0528) with Clear Channel Outdoor.

Contact: Melissa Anguiano, Economic Development Manager, (916) 808-5864, Economic Development Department

Presenter: None

Department: Economic Development

Division: Citywide Development

Dept ID: 18001031

Attachments:

- 1-Description/Analysis
- 2-Amendment to Billboard Lease (2010-0525)
- 3-Amendment to Billboard Lease (2010-0526)
- 4-Amendment to Billboard Lease (2010-0527)
- 5-Amendment to Billboard Lease (2010-0528)

City Attorney Review

Approved as to Form
Michael Sparks
3/23/2016 1:01:56 PM

Approvals/Acknowledgements

Department Director or Designee: Larry Burkhardt - 3/10/2016 7:50:12 AM

Description/Analysis

Issue Detail: On May 11, 2010, City Council approved four Digital Billboard Leases (City Agreements 2010-0525, 2010-0526, 2010-0527, and 2010-0528) with Clear Channel Outdoor (CCO). The four digital billboards operate on city-owned sites located at the north side of Interstate 80 east of Northgate Boulevard (APN: 237-0031-36), Business 80 and Fulton Avenue (3630 Fulton Avenue, APN: 254-0310-002), west side of Highway 99, south of Mack Road (APN: 117-0170-067), and west side of Interstate 5 south of Richards Boulevard (240 Jibboom Street, APN: 001-0190-015). Each lease term is for 25 years, with an option to extend for five years for 30 years total. The effective date of the leases, and the beginning of the first lease year, was July 2, 2010. However, CCO was not required to begin monthly rent payments until the digital billboard signs were installed and operational, which was November 10, 2010.

Under the terms of the lease, monthly rent is adjusted after every five lease years based on lease year revenues. The first adjustment in monthly rent will be the higher of (a) \$15,000 or (b) one-twelfth of 30 percent of the average annual net revenue realized by CCO during lease years 3, 4, and 5. To make the beginning of the first lease year coincide with the first month that CCO began paying rent, the proposed First Amendment to Digital Leases defines the beginning of the first lease year as November 1, 2010. The First Amendment to Digital Leases also includes specifies a process for CCO to submit revenue documentation in accordance with Schedule 1 of the leases.

Policy Considerations: The recommendations in this report are consistent with the City's goals to increase and diversify revenue sources. They are also consistent with section 3.68.120 of the City Code regarding amendment of existing leases.

Economic Impacts: None.

Environmental Considerations: The recommendations are administrative, organizational and fiscal matters that do not constitute a "project" under the California Environmental Quality Act (CEQA) Guidelines section 15061(b)(3). The activity is covered by the general rule that CEQA applies only to projects which have the potential to cause significant effect on the environment.

Sustainability: None.

Commission/Committee Action: None.

Rationale for Recommendation: The First Amendment to Digital Leases will clarify the timing of monthly rent adjustments and definition of lease years. Additionally, the amendments provide the City a process for accepting revenue documentation from CCO that is validated and will result in accurate monthly rent adjustments.

Financial Considerations: The four digital billboards currently generate \$180,000 each in annual revenue. The revenue from these leases assists the City's General Fund in maintaining a balanced budget.

Local Business Enterprise (LBE): None.

**FIRST AMENDMENT TO LEASE FOR DIGITAL BILLBOARD
(City Agreement 2010-0525)**

This agreement, dated _____, 2016, 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

The City and CCO are parties to a lease for a digital billboard at Business 80 at Fulton Avenue, which is dated June 10, 2010, and identified as City Agreement 2010-0525 (the “**Lease**”).

The parties desire to amend the Lease to adjust the date on which the first Lease Year began and to require CCO to provide the City, at CCO’s sole cost and expense, with audited financial reports in connection with the adjustment of Monthly Rent in Schedule 1 of the Lease.

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

- 1. Defined Terms.** Defined terms used but not defined in this agreement are as defined in the Lease.
- 2. Amendment to Section 1.** The definition of “Lease Year” in Section 1(j) is hereby amended to read in its entirety as follows:

“Lease Year” means one of the consecutive 12-month periods during the Term. The first Lease Year begins on November 1, 2010.

- 3. Amendments to Section 4.** Section 4(c)(3) of the Lease is hereby amended to read as follows:

CCO shall maintain and make available at its Sacramento office, for the City's review and audit, all Records that are relevant to the accurate determination of Monthly Rent in accordance with **Schedule 1**, including:

- (A) Records showing the total Gross Revenue and Annual Net Revenue for the prior five Lease Years;
- (B) Records showing the annual Gross Revenue and Annual Net Revenue for each of the prior five Lease Years;
- (C) Records showing the monthly Gross Revenue for each month during the prior five Lease Years;
- (D) Records showing for each month during the prior five Lease Years the difference between the Gross Revenue that CCO receives and any commissions or fees that CCO pays that are used to determine Annual Net Revenue;
- (E) All contracts for advertising in effect during any portion of one Lease Year in the prior five years (the City will select the Lease Year);
- (F) All contracts for non-advertising uses of the Digital Billboard in effect during any portion of one Lease Year in the prior five years (the City will select the Lease Year); and,

- (G) The monthly log files for the Digital Billboard showing each advertisement that was displayed during the month, including the advertising rate for each advertisement, and the times and dates that each advertisement was displayed, for one Lease Year in the prior five years (the City will select the Lease Year).

CCO shall make the records identified in this Section 4(c)(3) available to the City not later than five days after the end of Lease Years 5, 10, and 15. After the Monthly Rent for a five-year period has been determined in accordance with **Schedule 1**, CCO shall retain the related Records for at least three years. The term “**Records**” means any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored.

Section 4 of the Lease is amended by inserting after Section 4(c)(3) the following new Section 4(c)(4):

Each time the Monthly Rent for a five-year period is adjusted in accordance with **Schedule 1**, CCO shall, at its sole cost and expense, provide the City with all of the following not more than 14 days after the adjustment in rent:

- (A) Audited financial statements that provide the basis for the adjustment in Monthly Rent, including an itemized listing of Gross Revenue, Annual Net Revenue, and all commissions and fees paid by CCO, prepared by an independent licensed certified public accountant, acceptable to the City, in accordance with generally accepted accounting principles (with any exceptions that the City does not object to) and in accordance with generally accepted auditing standards; and,
- (B) A statement signed by a duly-authorized officer of CCO certifying that each financial statement provided under Section 4(c)(4)(A) is correct.

- 4. **Effective date.** This agreement is effective on the date both parties have signed it, as indicated by the dates in the signature blocks below.
- 5. **Counterparts.** The parties may sign this agreement in counterparts, each of which is considered an original, but all of which constitute the same agreement. Facsimiles, pdfs, and photocopies of signature pages of the agreement have the same binding effect as originals.
- 6. **Integration and modification.** This agreement sets forth the parties’ entire understanding regarding the matters set forth above and is intended to be their final, complete, and exclusive expression of those matters. 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

By: _____
John F. Shirey
City Manager

Date: _____, 2016

Approved as to Form
Sacramento City Attorney

By:  _____
Michael Sparks
Senior Deputy City Attorney

Attest:

By: _____
Assistant City Clerk

Clear Channel Outdoor, Inc.

By:  _____
Bryan Parker
EVP, Real Estate & Public Affairs

Date: March 14, 2016

**FIRST AMENDMENT TO LEASE FOR DIGITAL BILLBOARD
(City Agreement 2010-0526)**

This agreement, dated _____, 2016, 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

The City and CCO are parties to a lease for a digital billboard at Interstate 5 at Jibboom Street, which is dated June 10, 2010, and identified as City Agreement 2010-0526 (the “**Lease**”).

The parties desire to amend the Lease to adjust the date on which the first Lease Year began and to require CCO to provide the City, at CCO’s sole cost and expense, with audited financial reports in connection with the adjustment of Monthly Rent in Schedule 1 of the Lease.

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

- 1. Defined Terms.** Defined terms used but not defined in this agreement are as defined in the Lease.
- 2. Amendment to Section 1.** The definition of “Lease Year” in Section 1(j) is hereby amended to read in its entirety as follows:

“Lease Year” means one of the consecutive 12-month periods during the Term. The first Lease Year begins on November 1, 2010.

- 3. Amendments to Section 4.** Section 4(c)(3) of the Lease is hereby amended to read as follows:

CCO shall maintain and make available at its Sacramento office, for the City's review and audit, all Records that are relevant to the accurate determination of Monthly Rent in accordance with **Schedule 1**, including:

- (A) Records showing the total Gross Revenue and Annual Net Revenue for the prior five Lease Years;
- (B) Records showing the annual Gross Revenue and Annual Net Revenue for each of the prior five Lease Years;
- (C) Records showing the monthly Gross Revenue for each month during the prior five Lease Years;
- (D) Records showing for each month during the prior five Lease Years the difference between the Gross Revenue that CCO receives and any commissions or fees that CCO pays that are used to determine Annual Net Revenue;
- (E) All contracts for advertising in effect during any portion of one Lease Year in the prior five years (the City will select the Lease Year);
- (F) All contracts for non-advertising uses of the Digital Billboard in effect during any portion of one Lease Year in the prior five years (the City will select the Lease Year); and,

- (G) The monthly log files for the Digital Billboard showing each advertisement that was displayed during the month, including the advertising rate for each advertisement, and the times and dates that each advertisement was displayed, for one Lease Year in the prior five years (the City will select the Lease Year).

CCO shall make the records identified in this Section 4(c)(3) available to the City not later than five days after the end of Lease Years 5, 10, and 15. After the Monthly Rent for a five-year period has been determined in accordance with **Schedule 1**, CCO shall retain the related Records for at least three years. The term “**Records**” means any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored.

Section 4 of the Lease is amended by inserting after Section 4(c)(3) the following new Section 4(c)(4):

Each time the Monthly Rent for a five-year period is adjusted in accordance with **Schedule 1**, CCO shall, at its sole cost and expense, provide the City with all of the following not more than 14 days after the adjustment in rent:

- (A) Audited financial statements that provide the basis for the adjustment in Monthly Rent, including an itemized listing of Gross Revenue, Annual Net Revenue, and all commissions and fees paid by CCO, prepared by an independent licensed certified public accountant, acceptable to the City, in accordance with generally accepted accounting principles (with any exceptions that the City does not object to) and in accordance with generally accepted auditing standards; and,
- (B) A statement signed by a duly-authorized officer of CCO certifying that each financial statement provided under Section 4(c)(4)(A) is correct.

- 4. **Effective date.** This agreement is effective on the date both parties have signed it, as indicated by the dates in the signature blocks below.
- 5. **Counterparts.** The parties may sign this agreement in counterparts, each of which is considered an original, but all of which constitute the same agreement. Facsimiles, pdfs, and photocopies of signature pages of the agreement have the same binding effect as originals.
- 6. **Integration and modification.** This agreement sets forth the parties’ entire understanding regarding the matters set forth above and is intended to be their final, complete, and exclusive expression of those matters. 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

By: _____
John F. Shirey
City Manager

Date: _____, 2016

Approved as to Form
Sacramento City Attorney

By:  _____
Michael Sparks
Senior Deputy City Attorney

Attest:

By: _____
Assistant City Clerk

Clear Channel Outdoor, Inc.

By:  _____
Bryan Parker
EVP, Real Estate & Public Affairs

Date: March 14, 2016

**FIRST AMENDMENT TO LEASE FOR DIGITAL BILLBOARD
(City Agreement 2010-0527)**

This agreement, dated _____, 2016, 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

The City and CCO are parties to a lease for a digital billboard at Interstate 80 at Northgate Boulevard, which is dated June 10, 2010, and identified as City Agreement 2010-0527 (the “**Lease**”).

The parties desire to amend the Lease to adjust the date on which the first Lease Year began and to require CCO to provide the City, at CCO’s sole cost and expense, with audited financial reports in connection with the adjustment of Monthly Rent in Schedule 1 of the Lease.

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

- 1. Defined Terms.** Defined terms used but not defined in this agreement are as defined in the Lease.
- 2. Amendment to Section 1.** The definition of “Lease Year” in Section 1(j) is hereby amended to read in its entirety as follows:

“Lease Year” means one of the consecutive 12-month periods during the Term. The first Lease Year begins on November 1, 2010.

- 3. Amendments to Section 4.** Section 4(c)(3) of the Lease is hereby amended to read as follows:

CCO shall maintain and make available at its Sacramento office, for the City's review and audit, all Records that are relevant to the accurate determination of Monthly Rent in accordance with **Schedule 1**, including:

- (A) Records showing the total Gross Revenue and Annual Net Revenue for the prior five Lease Years;
- (B) Records showing the annual Gross Revenue and Annual Net Revenue for each of the prior five Lease Years;
- (C) Records showing the monthly Gross Revenue for each month during the prior five Lease Years;
- (D) Records showing for each month during the prior five Lease Years the difference between the Gross Revenue that CCO receives and any commissions or fees that CCO pays that are used to determine Annual Net Revenue;
- (E) All contracts for advertising in effect during any portion of one Lease Year in the prior five years (the City will select the Lease Year);
- (F) All contracts for non-advertising uses of the Digital Billboard in effect during any portion of one Lease Year in the prior five years (the City will select the Lease Year); and,

- (G) The monthly log files for the Digital Billboard showing each advertisement that was displayed during the month, including the advertising rate for each advertisement, and the times and dates that each advertisement was displayed, for one Lease Year in the prior five years (the City will select the Lease Year).

CCO shall make the records identified in this Section 4(c)(3) available to the City not later than five days after the end of Lease Years 5, 10, and 15. After the Monthly Rent for a five-year period has been determined in accordance with **Schedule 1**, CCO shall retain the related Records for at least three years. The term “**Records**” means any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored.

Section 4 of the Lease is amended by inserting after Section 4(c)(3) the following new Section 4(c)(4):

Each time the Monthly Rent for a five-year period is adjusted in accordance with **Schedule 1**, CCO shall, at its sole cost and expense, provide the City with all of the following not more than 14 days after the adjustment in rent:

- (A) Audited financial statements that provide the basis for the adjustment in Monthly Rent, including an itemized listing of Gross Revenue, Annual Net Revenue, and all commissions and fees paid by CCO, prepared by an independent licensed certified public accountant, acceptable to the City, in accordance with generally accepted accounting principles (with any exceptions that the City does not object to) and in accordance with generally accepted auditing standards; and,
- (B) A statement signed by a duly-authorized officer of CCO certifying that each financial statement provided under Section 4(c)(4)(A) is correct.

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(Signature Page Follows)

City of Sacramento

By: _____
John F. Shirey
City Manager

Date: _____, 2016

Approved as to Form
Sacramento City Attorney

By:  _____
Michael Sparks
Senior Deputy City Attorney

Attest:

By: _____
Assistant City Clerk

Clear Channel Outdoor, Inc.

By:  _____
Bryan Parker
EVP, Real Estate & Public Affairs

Date: March 14, 2016

**FIRST AMENDMENT TO LEASE FOR DIGITAL BILLBOARD
(City Agreement 2010-0528)**

This agreement, dated _____, 2016, 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

The City and CCO are parties to a lease for a digital billboard at Highway 99 at Mack Road, which is dated June 10, 2010, and identified as City Agreement 2010-0528 (the “**Lease**”).

The parties desire to amend the Lease to adjust the date on which the first Lease Year began and to require CCO to provide the City, at CCO’s sole cost and expense, with audited financial reports in connection with the adjustment of Monthly Rent in Schedule 1 of the Lease.

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

- 1. Defined Terms.** Defined terms used but not defined in this agreement are as defined in the Lease.
- 2. Amendment to Section 1.** The definition of “Lease Year” in Section 1(j) is hereby amended to read in its entirety as follows:

“Lease Year” means one of the consecutive 12-month periods during the Term. The first Lease Year begins on November 1, 2010.

- 3. Amendments to Section 4.** Section 4(c)(3) of the Lease is hereby amended to read as follows:

CCO shall maintain and make available at its Sacramento office, for the City's review and audit, all Records that are relevant to the accurate determination of Monthly Rent in accordance with **Schedule 1**, including:

- (A) Records showing the total Gross Revenue and Annual Net Revenue for the prior five Lease Years;
- (B) Records showing the annual Gross Revenue and Annual Net Revenue for each of the prior five Lease Years;
- (C) Records showing the monthly Gross Revenue for each month during the prior five Lease Years;
- (D) Records showing for each month during the prior five Lease Years the difference between the Gross Revenue that CCO receives and any commissions or fees that CCO pays that are used to determine Annual Net Revenue;
- (E) All contracts for advertising in effect during any portion of one Lease Year in the prior five years (the City will select the Lease Year);
- (F) All contracts for non-advertising uses of the Digital Billboard in effect during any portion of one Lease Year in the prior five years (the City will select the Lease Year); and,

- (G) The monthly log files for the Digital Billboard showing each advertisement that was displayed during the month, including the advertising rate for each advertisement, and the times and dates that each advertisement was displayed, for one Lease Year in the prior five years (the City will select the Lease Year).

CCO shall make the records identified in this Section 4(c)(3) available to the City not later than five days after the end of Lease Years 5, 10, and 15. After the Monthly Rent for a five-year period has been determined in accordance with **Schedule 1**, CCO shall retain the related Records for at least three years. The term “**Records**” means any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored.

Section 4 of the Lease is amended by inserting after Section 4(c)(3) the following new Section 4(c)(4):

Each time the Monthly Rent for a five-year period is adjusted in accordance with **Schedule 1**, CCO shall, at its sole cost and expense, provide the City with all of the following not more than 14 days after the adjustment in rent:

- (A) Audited financial statements that provide the basis for the adjustment in Monthly Rent, including an itemized listing of Gross Revenue, Annual Net Revenue, and all commissions and fees paid by CCO, prepared by an independent licensed certified public accountant, acceptable to the City, in accordance with generally accepted accounting principles (with any exceptions that the City does not object to) and in accordance with generally accepted auditing standards; and,
- (B) A statement signed by a duly-authorized officer of CCO certifying that each financial statement provided under Section 4(c)(4)(A) is correct.

- 4. **Effective date.** This agreement is effective on the date both parties have signed it, as indicated by the dates in the signature blocks below.
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(Signature Page Follows)

City of Sacramento

By: _____
John F. Shirey
City Manager

Date: _____, 2016

Approved as to Form
Sacramento City Attorney

By:  _____
Michael Sparks
Senior Deputy City Attorney

Attest:

By: _____
Assistant City Clerk

Clear Channel Outdoor, Inc.

By:  _____
Bryan Parker
EVP, Real Estate & Public Affairs

Date: March 14, 2016