

OUTDOOR ADVERTISING SIGN RELOCATION AGREEMENT BETWEEN THE CITY OF FAIRFIELD AND CLEAR CHANNEL OUTDOOR, LLC

This Outdoor Advertising Sign Relocation Agreement (the “Agreement”) is made and entered into as of this 4th day of January, 2021, by and between the City of Fairfield, a California municipal corporation (“City”), and Clear Channel Outdoor, LLC, a Delaware limited liability company (“CCO”) (collectively the “Parties”).

RECITALS

- A. On October 23, 2019, the Solano Transportation Authority, a joint exercise of powers entity (the “STA”), filed two separate eminent domain actions in the Superior Court of Solano County: (1) a Complaint in Condemnation, Case No. FCS053777, entitled *Solano Transportation Authority, a joint exercise of powers entity v. Clear Channel Outdoor, LLC et al.*; and (2) a Complaint in Condemnation, Case No. FCS053778, entitled *Solano Transportation Authority, a joint exercise of powers entity v. Store SPE Ashley CA LLC, et al.* (collectively, the “Actions”).
- B. In the Actions, the STA seeks to condemn and acquire fee title to parcels of real property designated as Parcel Nos. 63903-1 (a portion of Assessor’s Parcel Number (“APN”) 0180-110-260), 63902-1 (a portion of APN 0180-110-250), and 63899 (also identified as 63899-1) (portions of APN 0180-120-010 and 0180-120-060), as well as temporary construction easements upon, over, across, and in Parcel Nos. 63902-3 (a portion of APN 0180-110-250) and 63903-4 (a portion of APN 0180-110-260) (collectively, the “Subject Properties”).
- C. CCO owns three easement interests in the Subject Properties; specifically, on Parcel Nos. 63899, 63903-1, and 63903-4 (the “Easements”). On Parcel No. 63899, CCO owns two permanent, non-exclusive easements, and owns and operated one double-faced, printed 19’ x 48’ and one double faced, printed 14’ by 48’ outdoor advertising structures. The easements include the right of access to the easement properties. On Parcel Nos. 63903-1 and 63903-4, CCO owns a permanent, non-exclusive easement, and owns and operates another double-faced, printed 14’ x 48’ outdoor advertising structure. This easement also includes the right of access to the easement property (collectively, the three outdoor advertising structures referenced above referred to hereinafter as the “Existing Billboards” or the “Removed Billboards”).
- D. In lieu of just compensation for the taking of the Existing Billboards and the Easements, CCO and the STA desire to relocate two of the three Existing Billboards from the Easements to different land parcels within the City, and to reconstruct such relocated billboards as (i) one (1) double-faced 19’ x 48’ outdoor advertising structure with printed or non-digital faces at a height not to exceed Sixty-Five (65) feet from grade adjacent to the sign (the “Printed Billboard”) to be located on the real property designated as APN No. 180-110-250, and (ii) one double-faced 20’ x 60’ outdoor advertising structure with digital faces at a height not to exceed Seventy-Five (75) feet from adjacent grade to be located on the real property designated as APN No. 180-110-040 (the “Digital Billboard,” and

together with the Printed Billboard, the “New Billboards”, and the City desires to consent to such relocation.

- E. The City’s Sign Ordinance, Article IX, Section 25.1300, as amended by Ordinance No. 2020-06 (the “Code”), provides an exemption to the prohibition on new off-site signs for off-site signs relocated in connection with an eminent domain proceeding pursuant to a relocation agreement, consistent with Section 5412 of the California Business and Professions Code, and subject to the conditions contained therein, including without limitation, that there shall be no net increase in the number of off-site signs in the City, and in the event of a new digital off-site sign, that there shall be a net reduction in the number of off-site signs in the City.
- F. The City and CCO agree and acknowledge that the outdoor advertising sign relocation described and consented to herein further complies with, and serves the purposes enumerated in, the California Outdoor Advertising Act, including, but not limited to, Sections 5412 and 5443.5 thereof and that the New Billboards comply with and are permitted under the Code.
- G. The City has determined that the New Billboards would not have the potential for any significant environmental impacts under the California Environmental Quality Act (“CEQA”), and further that the New Billboards would be compatible with the existing commercial/industrial character of the project site and the general project area and therefore would be categorically exempt from CEQA.
- H. On January 19, 2021, after conducting a duly noticed public meeting, the City Council adopted a resolution approving this Agreement with CCO and authorizing the City Manager to sign this Agreement on behalf of the City.
- I. The City believes that the fulfillment of the terms and conditions of this Agreement will preserve or further the public health, safety and welfare.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by both Parties, the Parties hereto agree as follows:

SECTION 1. RECITALS AND EXHIBITS.

The foregoing recitals are true and correct, express the intent of the Parties, and are incorporated herein as contractual terms. All exhibits to this Agreement are essential to this Agreement and are hereby deemed a part hereof.

SECTION 2. CCO AND CITY AUTHORITY AND STATUS.

- A. CCO hereby represents and warrants for the benefit of City all of the following:

- (i) That the information provided by CCO in this Agreement is true and accurate to the best of CCO's knowledge after a diligent inquiry; and
- (ii) That CCO is a duly organized, validly existing limited liability company, and is in good standing under the laws of its place of organization and is in good standing in the State of California; and
- (iii) That CCO's signatory to this Agreement is authorized by resolution, bylaws, constitution or other authorization of CCO, which resolution, bylaw, constitution or other authorization is currently in full force and effect, to execute this Agreement on CCO's behalf and bind CCO thereby; and
- (iv) That CCO is duly authorized to perform or to cause to be performed all of the obligations of CCO under and in accordance with the terms and conditions of this Agreement.

B. City hereby represents and warrants for the benefit of CCO all of the following:

- (i) That the information in this Agreement is true and accurate to the best of City's knowledge after a diligent inquiry; and
- (ii) That City's execution of this Agreement is authorized by resolution, which resolution, is currently in full force and effect, to execute this Agreement on the City's behalf and bind the City thereby; and
- (iii) That the City is duly authorized to perform or to cause to be performed all of the obligations of City under and in accordance with the terms and conditions of this Agreement.

SECTION 3. EFFECTIVE DATE OF AGREEMENT.

The effective date of this Agreement shall be the effective date of the resolution approving this Agreement (the "Effective Date").

SECTION 4. TERM OF AGREEMENT.

- A. The term of this Agreement shall commence on the Effective Date and end on the date which is thirty (30) years after the Initial Payment Date (as hereinafter defined), and shall continue for successive like terms provided that CCO remains in compliance with the provisions of this Agreement and all applicable permits and laws unless CCO provides ninety (90) days written notice of termination prior to the end of any such term, except as otherwise provided herein.
- B. Upon the expiration or earlier termination of this Agreement,

- (i) City shall refund to CCO any amounts paid for any period subsequent to such termination.
- (ii) CCO shall, at its sole cost and expense, remove the above-ground portions of the New Billboards within ninety (90) days following such expiration or termination.

SECTION 5. BILLBOARD REMOVAL.

The Parties hereto acknowledge and agree that CCO will permanently remove the Removed Billboards in accordance with the Actions and that the City will issue all required local permits therefor. Except as otherwise provided in this Agreement, upon removal of the Removed Billboards, any right title and interest therein or right to place a billboard, whether by lease, license or other right, at the locations of the Removed Billboards shall be forever terminated and shall not be or have been assigned, transferred or given to any other entity, affiliate, subsidiary, person or party by CCO.

SECTION 6. BILLBOARD RELOCATION AND CONSTRUCTION.

- A. The Parties agree that the Removed Billboards listed on Exhibit A hereto may be relocated to the New Billboard locations indicated on the attached Exhibit B.
- B. The Parties agree that the New Billboards will result in (i) no net increase in the number of billboards in the City in the case of the Printed Billboard, and (ii) a net reduction in the number of billboards in the City in the case of the Digital Billboard, in accordance with the Code.
- C. The City agrees that it will approve any and all requisite permit applications from CCO for the removal of the Removed Billboards and the construction of the Printed Billboard subject to compliance with all applicable state and local laws including the City Code, and will issue all such permits. The Digital Billboard requires design approval by the Planning Commission. City staff will process the design review application to the Planning Commission in a timely manner. Subject to the Planning Commission approval of the design of the Digital Billboard, the City will issue any required ministerial permits for the Digital Billboard subject to compliance with all applicable state and local laws, including the City Code. The City further agrees that it will assist CCO in connection with any approvals required from Caltrans and any other governmental agencies, but CCO understands and agrees that the obligation and burden of obtaining said approvals is solely an obligation and burden of CCO.
- D. The Parties agree and acknowledge that the relocations consented to herein comply with, and serve the purposes enumerated in, the California Outdoor Advertising Act (Cal. Bus & Prof. Code, §§ 5200-5486) including but not limited to, Sections 5412 and 5443.5 thereof.
- E. CCO shall pay to the City an annual grant (“Annual Grant”) for the operation of the Digital Billboard which shall commence on the Initial Payment Date (as defined below), in the amount of Fifty Thousand Dollars (\$50,000.00) per year for the first ten (10) years following such Initial Payment Date, and such Annual Grant shall increase by twelve

percent (12%) every five years thereafter, in each case for as long as CCO continues to operate the Digital Billboard. . The Initial Payment Date is defined as the date that is one year after the last of the following conditions have been met: (i) the grant of final permits from the City for the construction, installation, operation, maintenance and repair of the Digital Billboard, with conditions acceptable to CCO in its sole discretion, with all appeal periods having expired and with no appeal filed; (ii) CCO's receipt of all other necessary local, state and/or federal and other third party permits, licenses and approvals for the construction, installation, operation, maintenance and repair of said Digital Billboard, including without limitation from Caltrans; and (iii) such Digital Billboard is connected to a permanent power supply, fully operational and capable of displaying digital advertising copy (the "Initial Payment Date"). The City acknowledges and agrees that CCO may elect at any time, in its sole discretion, when to complete the last of the above conditions and whether to convert any or all of the Digital Billboard faces to a printed or non-digital face. In such event, no Annual Grant shall be payable by CCO to the City for printed or non-digital displays after the date of such conversion, and the City shall refund to CCO any pre-paid portion of any Annual Grant for any period following the date of such conversion. Notwithstanding anything to the contrary in this Agreement, the City shall hold harmless CCO from and against any and all claims brought by any third parties to the extent arising out of the City's breach of the Agreement and/or its negligent or willful misconduct with respect to the Annual Grants to be paid to the City hereunder.

- F. If the view of any or both of the relocated Billboards is subsequently blocked or impaired in CCO's sole discretion, through no fault of CCO, then CCO may relocate the Billboard(s) on the same parcel .
- G. The New Billboards shall be maintained and operated in accordance with all applicable permits and laws and regulations. This Agreement shall not limit in any manner the regulatory authority of the City to enforce the provisions of any permits issued by the City to the New Billboards or to enforce any violations by CCO or its successors or assignees of any laws or regulations applicable to the New Billboards.

SECTION 7. RELATIONSHIP OF PARTIES.

Under no circumstances shall this Agreement be construed as one of agency, partnership, joint venture or employment between CCO and the City. Each party acknowledges and agrees that it neither has, nor will it give the appearance or impression of having, any legal authority to bind or commit the other party in any way, notwithstanding that this Agreement is binding on and between the Parties.

SECTION 8. INSURANCE REQUIREMENTS.

- A. General Liability Insurance. During the term of this Agreement, CCO shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than Five Million Dollars (\$5,000,000) per occurrence for bodily injury, personal injury, and property damage, including without limitation, blanket contractual liability. If a general aggregate limit

applies, the general aggregate limit shall be twice the required occurrence limit. The general liability policy so maintained by CCO shall be primary and non-contributory and be endorsed using Insurance Services Office form CG 20 10 to provide that City and its officers, officials, employees, and agents shall be additional insureds under such policy.

- B. Workers' Compensation Insurance. During the term of this Agreement, CCO shall maintain Workers' Compensation insurance for all of CCO's employees working on the New Billboard sites. In addition, CCO shall require each contractor and subcontractor engaged by CCO for work on the New billboard sites to provide Workers' Compensation insurance for its respective employees working at such sites site.
- C. Evidence of Insurance. Prior to City Council approval of this Agreement, CCO shall furnish the City satisfactory evidence of the insurance required in Sections 9(a) and 8(b) and evidence that the carrier will endeavor to give the City thirty (30) days' (ten (10) days for non-payment of premium) prior written notice in the event coverage is substantially changed, canceled, or non-renewed. Further, an endorsement must be attached to all policies stating that coverage is primary insurance with respect to the City and its officers, officials, employees and volunteers, and that no insurance or self-insurance maintained by the City shall be called upon to contribute to a loss under the coverage with respect to the liabilities assumed by CCO under this Agreement:
 - (i) During the term of this Agreement, in the event of a reduction (below the limits required in this Agreement) or cancellation in coverage, CCO shall, prior to such reduction or cancellation, provide at least ten (10) days prior written notice to the City, regardless of any notification by the applicable insurer. If the City discovers that the policies have been cancelled or reduced below the limits required in this Agreement and that neither the insurer nor CCO has provided prior notice to the City as required under this Agreement, said failure shall constitute a material breach of this Agreement.
 - (ii) During the term of this Agreement, in the event of a reduction (below the limits required by this Agreement) or cancellation in coverage, CCO shall have five (5) days in which to provide evidence of the required coverage being reinstated or replaced, during which time no persons shall enter the sites to construct improvements thereon, including construction activities related to the landscaping and common improvements.
 - (iii) If CCO fails to obtain reinstated or replacement coverage within five (5) days as required under the preceding subparagraph, the City may obtain, but is not required to obtain, substitute coverage and charge CCO the cost of such coverage plus an administrative fee equal to ten percent (10%) of the premium for said coverage.

SECTION 9. INDEMNIFICATION AND HOLD HARMLESS.

- A. CCO agrees to indemnify, defend, and hold harmless the City and its elected and appointed councils, boards, commissions, officers, agents, employees and representatives (collectively, the "city Indemnitees") from any and all claims, costs (including reasonable legal fees and costs) and liability for any personal injury, death or property damage

B. CCO agrees that it will not file any legal action or claim against or otherwise challenge or oppose the City's approval of a digital sign located on the City owned property adjacent to Red Top Road (APN No. _____) that is constructed pursuant to a lease with the City.

C. The Parties' obligations under this Section 10 shall survive the expiration or earlier termination of this Agreement and shall be independent of any other applicable indemnity agreements.

Any communication or notice which either of the Parties is required to send to the other, or which either of the Parties desires to send to the other, shall be in writing and shall be either: personally delivered; mailed using the United States Postal Service, postage prepaid, return receipt requested; delivered by a recognized overnight courier service; or sent by facsimile to the office of the respective Parties as identified below:

With copies to: CLEAR CHANNEL OUTDOOR, LLC
2325 East Camelback Road, Suite 400
Phoenix, AZ 85016
Attn: Senior Operations Counsel

Either of the Parties may change its address by sending notice of the new address to the other pursuant to this section.

SECTION 11. ENTIRE AGREEMENT.

This Agreement, including exhibits, represent the entire understanding of the Parties as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder.

SECTION 12. MISCELLANEOUS PROVISIONS.

- A. The parties agree that this Agreement shall be governed and construed in accordance with the laws of the State of California. In the event that suit shall be brought by either party to this Agreement, the parties agree that venue shall be vested exclusively in Solano County Superior Court, or, where otherwise appropriate, exclusively in the United States District Court, Northern District of California.
- B. The headings of the sections and subsections of this Agreement are inserted for convenience only. They do not constitute a part of this Agreement and shall not be used in its construction.
- C. No provision of this Agreement will be deemed waived by either Party unless expressly waived in a writing signed by the waiving Party. No waiver shall be implied by delay or any other act or omission of either Party. The waiver by any party to this Agreement of a breach or violation of any provision of this Agreement shall not be deemed a continuing waiver, a waiver of any other term or condition contained herein, or a waiver of any subsequent breach or violation of that or any other provision of this Agreement.
- D. Any and all exhibits that are referred to in this Agreement are incorporated herein by reference and are deemed a part of this Agreement.
- E. This Agreement may be amended only by written agreement executed by both Parties.
- F. If a court of competent jurisdiction adjudges any provision of this Agreement as void or unenforceable, the remaining provisions shall not be affected thereby and shall remain in full force and effect to the maximum possible extent.
- G. Where this Agreement refers to the City and no officer of the City is named, the City Manager of the City shall have the authority to act on behalf of the City.
- H. The provisions of this Agreement shall be binding upon and inure to the benefit of the successors and assigns of each Party.
- I. This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which shall constitute a single instrument.

- J. In the event either Party is in default of any provision hereof, the non-defaulting Party, as a condition precedent to the exercise of its remedies, shall be required to give the defaulting Party written notice of the same pursuant to this Agreement.
- K. Unless otherwise specified herein, the defaulting Party shall have thirty (30) calendar days from the receipt of such notice to cure the default, or, if the default cannot be cured within thirty (30) calendar days, to commence and diligently pursue a cure. If the defaulting Party timely cures the default, then the default shall be deemed waived and this Agreement shall continue in full force and effect.
- L. In the event that either Party elects to terminate this Agreement due to default of the other Party, then CCO agrees that it shall remove the above-ground portions of the New Billboards within ninety (90) days from the date of termination. Except as otherwise expressly provided in this Agreement, if the performance of any act required by this Agreement to be performed by either CCO or City is prevented or delayed because of a Force Majeure Event, as defined below, 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. An extension of time for any such Force Majeure Event will be for the period of the enforced delay and will commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other Party within thirty (30) days of the commencement of the cause. Times of performance under this Agreement may also be extended in writing by the mutual agreement of City and CCO. "Force Majeure Event," for purposes of this Agreement, 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, pandemics, the actions or inactions of any governmental entity or that entity's agents, litigation, labor shortages (including shortages caused by strikes or walkouts), and materials shortages.
- M. In the event of litigation, the prevailing Party in any action filed to enforce this Agreement will be entitled to recover costs, attorneys' fees, and all other expenses incurred or arising out of any effort to enforce this Agreement.

[SIGNATURES TO FOLLOW]

WITNESS THE EXECUTION HEREOF as of the date first hereinabove written.

CITY OF FAIRFIELD:

By: _____

ATTEST:

_____, City Clerk

APPROVED AS TO FORM:

_____, City Attorney

CLEAR CHANNEL OUTDOOR, LLC


By:  _____
Bryan Parker (Jan 4, 2021 13:40 MST)
Bryan Parker – EVP Real Estate/Operations

EXHIBIT A
REMOVED BILLBOARDS

On Parcel No. 63899, one double-faced, printed 19' x 48' outdoor advertising structure with Caltrans State Permit No. 4838 at Post Mile 12.310R on Interstate Rte. 80;

On Parcel No. 63899, one double-faced, printed 14' by 48' outdoor advertising structure with Caltrans State Permit No. 3688 at Post Mile 12.18R on Interstate Rte. 80; and

On Parcel Nos. 63903-1 and 63903-4, one double-faced, printed 14' x 48' outdoor advertising structure with CalTrans State Permit Nos. 41081 and D04-0187 at Post Mile 12.44 on Interstate Rte. 80.

EXHIBIT B
NEW BILLBOARDS

Static/Printed Outdoor Advertising Structure on APN# 180-110-250 with dimensions of approximately 19' by 48'

Digital Outdoor Advertising Structure on APN# 180-110-040 with dimensions of approximately 20' by 60'






CCO Relocation Agreement (City of Fairfield)

Final Audit Report

2021-01-04

Created:	2021-01-04
By:	ChristianFuller@clearchannel.com
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"CCO Relocation Agreement (City of Fairfield)" History

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