



Meeting Date: 3/20/2007

| ACTION | TYPE OF ITEM |
|--|--|
| <input type="checkbox"/> Approved Recommendation | <input checked="" type="checkbox"/> Info/Consent |
| <input type="checkbox"/> Ord. No(s). _____ | <input type="checkbox"/> Report |
| <input type="checkbox"/> Res. No(s). _____ | <input type="checkbox"/> Public Hearing (Info/consent) |
| <input type="checkbox"/> Other _____ | <input type="checkbox"/> Other _____ |

Prepared By: Cynthia Daniels, AICP *Cd* Agenda Item No. I-2
 Reviewed By: City Manager *[Signature]* City Attorney Gillig *G* Finance SW Other NA *[Signature]*

DATE: March 1, 2007

TO: City Council

FROM: *[Signature]*
Lou Balderrama, City Engineer
Public Works Department *[Signature]*

SUBJECT: Agreement with Clear Channel Outdoor, Inc. to Acquire Property at 2651 E. Ventura Blvd. for the Rice Avenue/Santa Clara Avenue Interchange on U.S. Highway 101

RECOMMENDATION

That City Council:

1. Approve and authorize the Mayor to execute an amended settlement agreement with Clear Channel Outdoor, Inc. in the amount of \$177,000 (an increase of \$97,000) for acquisition by the City of an outdoor advertising sign at 2651 E. Ventura Blvd. for the Rice Avenue/Santa Clara Avenue interchange improvements on U.S. Highway 101 (Agreement No. A-6691).
2. Authorize the City Manager or Public Works Director to execute such other documents as are appropriate to implement and close the transaction.

DISCUSSION

The Project. On February 26, 2002 the City Council adopted a mitigated negative declaration and mitigation monitoring program, and approved the project to improve the Rice Avenue/Santa Clara Avenue interchange on U.S. Highway 101. The improvements include reconstruction and widening of the existing Rice Avenue/Santa Clara overcrossing from two to six through lanes (plus two southbound left turn lanes), reconfiguration of the existing U.S. 101 on- and off-ramps, and the realignment of Ventura Boulevard. The City made a written offer to the owner for just compensation based on a professional appraisal of fair market value in compliance with federal and State laws, rules, and regulations. The property is needed for the construction of the interchange. The City Council adopted Resolution No. 12,582 on April 6, 2004 to authorize condemnation of the property. The court order for prejudgment possession gave the City possession of the property on April 3, 2006.

Clear Channel for Rice/101 Amended Settlement
March 1, 2007
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The Property. The City Council approved Agreement No. A-6691 on May 16, 2006 to acquire the property for \$80,000. The agreement allowed the owner to remain on the property until May 2, 2008. The City owns the underlying real estate. The \$80,000 paid for the sign, loss of goodwill, and relocation benefits. Clear Channel was required to remove the sign at its expense on or before May 18, 2008. The City paid settlement amount of \$80,000 to Clear Channel in June 2006. The amended agreement is needed because the City has accelerated the expected start of construction, and needs the sign removed by May 31, 2007. The increase of \$97,000 is to pay for the early removal of the sign.

FINANCIAL IMPACT

The project cost is \$97,000. There are sufficient appropriations in account number 308-9718-871-8605 (Project No. 873114) to fund this request.

LB:CD

Attachment #1 - Amended Settlement Agreement No. A-6691

000028

APN: 149-0-100-360
TITLE REPORT NO:
PROJECT: RICE AVENUE INTERCHANGE PROJECT

AMENDED SETTLEMENT AGREEMENT

This AMENDED SETTLEMENT AGREEMENT (hereinafter "Amended Settlement Agreement" or "Agreement") is entered into effective as of this _____ day of February, 2007 by and between the CITY OF OXNARD (hereinafter called "City"), and CLEAR CHANNEL OUTDOOR, INC., a Delaware corporation (hereinafter called "Clear Channel") and amends the prior Settlement Agreement between the Parties dated May 16, 2006 ("Settlement Agreement").

RECITALS

- A. The City and Clear Channel entered into the Settlement Agreement, dated May 16, 2006 relating to the removal of a double-faced poster panel outdoor advertising sign ("Sign") at the Rice/Santa Clara Avenue interchange on Highway 101.
- B. The City acquired real property for the reconstruction of the Rice/Santa Clara Avenue interchange on Highway 101 and realignment of Ventura Boulevard ("Rice Avenue Interchange Project"). The City acquired a portion of Assessor's Parcel No. 149-0-100-360 ("Subject Property") through a negotiated transaction.
- C. The Sign on the Subject Property will need to be removed prior to construction of the Rice Avenue Interchange Project.
- D. The City filed an eminent domain action to acquire and remove the Sign, *City of Oxnard v. Clear Channel Outdoor, Inc.*, Ventura County Superior Court Case No. CIV 237261 ("Eminent Domain Case"). Through this Eminent Domain Case, the City obtained an order for prejudgment possession of the Sign authorizing the City to take possession of the Sign as of April 3, 2006 ("Order for Possession"). However, aware that construction of the Rice Avenue Interchange would not begin immediately, the City and Clear Channel entered into the Settlement Agreement to provide for the interim use of the Sign, removal of the Sign and settlement of all issues in the Eminent Domain Case.
- E. Per the terms of the Settlement Agreement, Clear Channel was to continue to have the right to operate and maintain the Sign until May 2, 2008. Clear Channel was to remove the Sign at its sole cost and expense on or before May 18, 2008.
- F. The projected date for commencement of reconstruction of the Rice Avenue Interchange has since been moved up to June 1, 2007. Accordingly, the Sign must be removed on or before May 31, 2007.
- G. Therefore, the City and Clear Channel desire to enter into this Amended Settlement Agreement to provide for the removal of the Sign on or before May 31, 2007.

IT IS HEREBY MUTUALLY AGREED BETWEEN THE PARTIES AS FOLLOWS:

1. INTERIM USE OF SIGN. For the period having commenced on May 3, 2006 and ending on May 31, 2007, Clear Channel shall have the right to operate and maintain the Sign

including, but not limited to, contracting outdoor advertising on both faces of the Sign, with free access to and upon the Subject Property and the Sign. Clear Channel will have no obligation to pay rent to the City for the right granted to Clear Channel during that period. The City shall not cause or otherwise permit the Sign faces' visibility to be obstructed in any fashion by any instrumentality under the City's control (including its agents or employees), including, without limitation, any structure, fixture, equipment, or landscaping, on the Subject Property or on any other property owned, acquired, or otherwise controlled by the City during the period ending May 31, 2007.

2. REMOVAL OF SIGN. Clear Channel will remove the Sign at Clear Channel's sole cost and expense on or before May 31, 2007.

3. COMPENSATION. The City shall pay Clear Channel just compensation in the amount of \$177,000 for all property interests taken or damaged in connection with the City's taking of the Sign prior to the termination of the Settlement Agreement, including, but not limited to, leasehold interest in the Subject Property, improvements pertaining to the realty, lost rent, loss of goodwill, relocation benefits, precondemnation or inverse condemnation damages, severance damages, interest, costs and attorneys fees and other litigation expenses. Pursuant to the Settlement Agreement, the City has paid Clear Channel \$80,000 of that amount. The balance due of \$97,000 shall be paid to Clear Channel on or before May 16, 2007.

4. INDEMNITY. Clear Channel agrees to indemnify, defend and hold the City harmless from and against any claim, action, suit, proceeding, loss, cost, damage, liability, deficiency, fine, penalty, punitive damage, or expense (including, without limitation, attorneys' fees), resulting from, arising out of, or based upon Clear Channel's use of the Sign pursuant to this Agreement.

5. MUTUAL RELEASE. Except as to the obligations arising out of or created by this Agreement, the City, on the one hand, and Clear Channel, on the other hand, hereby release and discharge the other, and their heirs and assigns, shareholders, officers, directors, employees, agents, successors and assigns as applicable, from any and all sums of money, accounts, rents, claims, demands, contracts, actions, debts, controversies, agreements, damages, and causes of action whatsoever or of whatever kind or nature related this Agreement, including, but not limited to, claims for leasehold interest in the Subject Property, improvements pertaining to the realty, lost rent, loss of goodwill, relocation benefits, precondemnation or inverse condemnation damages, and severance damages, whether known or unknown, or suspected or unsuspected, which either of them now owns, holds, has or claims to have, or at any time heretofore owned, held, had or claimed to have had against the other, or which either of them may own, hold, have or claim to have in the future.

6. WAIVER OF SECTION 1542. The City, on the one hand, and Clear Channel, on the other hand, each acknowledge that they are familiar with Section 1542 of the 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 its favor at the time of executing the release, which if known by him must have materially affected the settlement with the debtor.

The City and Clear Channel each waive and relinquish any right or benefit which they have or may have under Civil Code § 1542 to the full extent that such rights or benefits may lawfully be waived. In connection with such waiver and relinquishment, the City and Clear Channel

each acknowledge that they or their attorneys may hereafter discover claims or facts in addition to, or different from, those they now know or believe to exist with respect to the subject matter of this Agreement, but that it is their intention to settle and release the matters which are the subject of this Agreement fully, finally and forever.

7. CERTIFICATION OF OWNERSHIP. Clear Channel hereby warrants and certifies under penalty of perjury that Clear Channel is the owner of the Sign and that no document has been signed by or on behalf of Clear Channel for the purpose of creating any lien, encumbrance, or security interest in the Sign, and that Clear Channel does not know of any claim of lien, encumbrance, or other security interest therein, EXCEPT realty and personal property taxes.

8. COMPROMISE AGREEMENT. It is acknowledged by the parties that this Agreement is an agreement to compromise and settle claims, and that this Agreement shall not be used as an admission by any party of liability for or the validity of any claims of any other party. It is hereby further acknowledged that the City's payment in full of the sums set forth herein is made in settlement of all claims asserted by all the parties hereto with respect to the City's condemnation of the Sign, including, but not limited to, just compensation for leasehold interest in the Subject Property, improvements pertaining to the realty, lost rent, loss of goodwill, relocation benefits, precondemnation or inverse condemnation damages, severance damages, interest, costs and attorneys fees and other litigation expenses.

9. NOTICES. All notices to be given under this Agreement shall be either (a) personally delivered (including sent by courier such as Federal Express, United Parcel Service and Express Mail of the U.S. Postal Service, as long as a signed receipt for delivery is obtained), (b) sent by certified U.S. mail, postage prepaid, to the parties at the addresses set forth below, or (c) sent by fax to the fax numbers set forth below, or to such other addresses or fax numbers as the parties may from time to time designate by notice given in accordance with this Paragraph 10.

If to the City:

Cynthia Daniels
Project Manager
City of Oxnard
305 West Third Street
Oxnard, California 93030
FAX: 805-385-7907

With a copy to:

June Ailin
Aleshire & Wynder, LLP
18881 Von Karman Ave.
Tower 17, Suite 400
Irvine, California 92612
FAX: 949-223-1180

If to Clear Channel:

John F. Carroll
Clear Channel Outdoor, Inc.
19320 Harborgate Way
Torrance, California 90501
FAX: 310-755-7353

With a copy to:

Marnie Christine Cody
Richard Hamlin Attorneys
7131 W. Manchester Avenue, Suite 200
Los Angeles, California 90045-3554
FAX: 310-215-3815

Notices shall be deemed given (1) if personally delivered (including via any courier service), when received; (2) if by certified mail, postage pre-paid with return receipt requested, three business days after mailing; or (3) if sent by fax, one business day after automated confirmation of successful sending by fax.

10. AUTHORITY. The parties to this Agreement represent, with the intent that the other party will rely thereon, that the parties to this Agreement are authorized to enter into this Agreement and all actions necessary to authorize execution of this Agreement have been taken.

11. COUNTERPARTS. This Agreement may be executed in any number of counterparts, at different times and locations, all of which taken together shall constitute one and the same instrument.

12. SEVERABILITY. If any provision of this Agreement is determined to be invalid, illegal or unenforceable, such provision shall be deemed deleted from this Agreement and the invalidity, illegality or unenforceability of such provision shall not affect the enforceability of the balance of this Agreement.

13. EFFECT OF HEADINGS. The subject headings of the paragraphs of this Agreement are included for convenience only and will not affect the construction or interpretation of any of its provisions.

14. WORD USAGE. Unless the context clearly requires otherwise:

- (a) Plural and singular numbers will each be considered to include the other;
- (b) The masculine, feminine, and neuter genders will each be considered to include the others;
- (c) "Shall," "will," "must," "agree," and "covenants" are each mandatory;
- (d) "May" is permissive;
- (e) "Or" is not exclusive; and
- (f) "Includes" and "including" are not limiting.

15. ENTIRE AGREEMENT; MODIFICATION; WAIVER. This Agreement constitutes the entire agreement between the parties pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations, and understandings of the parties. No supplement, modification or amendment of this Agreement will be binding unless executed in writing by all the parties. No waiver of any of the provisions of this Agreement will constitute a waiver of any other provision, whether or not similar, nor will any waiver constitute a continuing waiver. No waiver will be binding unless executed in writing by the party making the waiver.

16. SUCCESSORS. The terms and conditions, covenants, and agreements set forth herein shall apply to and bind the heirs, executors, administrators, assigns and successors of the parties hereto.

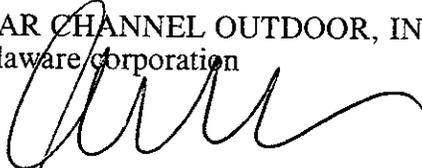
17. GOVERNING LAW. This Agreement shall be governed, construed, interpreted and enforced in accordance with and under the laws of the State of California.

18. EXECUTION BY CITY. It is understood and agreed that this Agreement shall not be effective until it is signed by the City and that the City will not sign this Agreement until it has been signed by Clear Channel.

The parties hereto have executed this Agreement as of the day and year first above written.

DATED: February 16, 2007

CLEAR CHANNEL OUTDOOR, INC.,
a Delaware corporation

By: 
Greg McGrath
President, Southern California

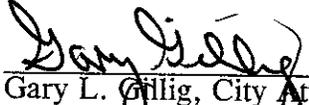
CITY OF OXNARD:

Dr. Thomas E. Holden, Mayor

ATTEST:

Daniel Martinez, City Clerk

APPROVED AS TO FORM:

 03-12-07
Gary L. Gillig, City Attorney

APPROVED AS TO FORM

June Ailin
Special Counsel

APPROVED AS TO CONTENT:

Ken Ortega, Director of Public Works