

RESOLUTION NO. 2020- _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF FRESNO, CALIFORNIA, DETERMINING THAT PUBLIC INTEREST AND NECESSITY REQUIRES ACQUISITION OF A LEASEHOLD INTEREST, TENANT IMPROVEMENTS PERTAINING TO THE REAL PROPERTY, AND ALL OTHER INTERESTS RELATED TO BILLBOARD NUMBER 068080, PANELS A AND O, LOCATED ON CITY-OWNED REAL PROPERTY AND RIGHT OF WAY, (APN 505-080-36ST) ON THE EAST SIDE OF STATE ROUTE 99, APPROXIMATELY ONE MILE NORTH OF WEST SHAW AVENUE, OWNED AND OPERATED BY OUTFRONT MEDIA, LLC, FOR THE PURPOSE OF CONSTRUCTING THE VETERANS BOULEVARD PROJECT, AND AUTHORIZING EMINENT DOMAIN PROCEEDINGS FOR PUBLIC USE AND PURPOSE

WHEREAS, the City of Fresno proposes to construct a six lane road facility beginning near Grantland Avenue north of Ashlan Avenue, running northeasterly and intersecting Highway 99 near the Bullard Avenue alignment, then continuing northeasterly to connect with Herndon Avenue, west of Polk Avenue in the City of Fresno, a public use, with related improvements known as the Veterans Boulevard Project (Project); and,

WHEREAS, the Project will provide sufficient right-of-way for a standard partial cloverleaf interchange at Veterans Boulevard/ Highway 99, a bridge over Golden State Boulevard, a bridge over the Union Pacific Railroad tracks, a connector ramp from Golden State Boulevard to Veterans Boulevard, and the embankments or fill slopes associated with the elevated roadways; and

WHEREAS, the Project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury and it is necessary

1 of 6

Date Adopted:

Date Approved:

Effective Date:

City Attorney Approval: 

Resolution No.

to acquire a leasehold interest, tenant improvements pertaining to the real property, lost business goodwill, and all other real property interests related to billboard number 068080, panels A & O (Billboard), installed on city-owned real property and right of way, located on Assessor's Parcel Number 505-080-36ST, on the eastside of State Route 99, approximately one mile north of the Shaw Avenue, owned and operated by Outfront Media, LLC, (Outfront) for the purpose of constructing a public street for the Veteran's Boulevard Project.; and

WHEREAS, the design of the Project has been reviewed and it has been determined that the Project cannot be completed without acquiring and removing the Billboard, including any and all interests associated with the Billboard being sought; and

WHEREAS, it appears necessary and desirable that the City acquire the Billboard leasehold interest, remove the tenant improvements pertaining to the real property, lost business goodwill, including any and all interests associated with the Billboard and removal of the Billboard to construct Veterans Boulevard, Phase II, and to complete the initial design of the Project; and

WHEREAS, the Billboard is located within feet of the planned and designed Veterans Blvd. State Route 99 Interchange which necessitates its removal to construct the Veterans Blvd. State Route 99 Interchange without endangering the public while operating a vehicle, or other mode of transportation on the Veterans Blvd. State Route 99 Interchange; and

WHEREAS, the general location of the Billboard and current ownership of Billboard leasehold interest, tenant improvements pertaining to the real property, lost

business goodwill, including any and all interests associated with the Billboard being sought are as follows:

City-owned Assessor's Parcel Number (APN) 505-808-36ST, on the eastside of State Route 99, approximately one mile north of the Shaw Avenue overpass; a leasehold interest owned and operated by Outfront Media, LLC (Outfront), for the placement and operation of a billboard, and

WHEREAS, the original lease executed by the former owner with Outfront is attached; and

WHEREAS, acquisition, or possession of all other necessary real property to construct the Project have been secured; and

WHEREAS, the City of Fresno has the power and authority to exercise eminent domain and acquire leasehold rights for the public use set forth herein in accordance with the Constitution of the State of California, California Eminent Domain Law, Code of Civil Procedure Section 1230.010 et seq., and pursuant to Government Code Sections 37350.5 and 40404, Streets and Highway Code Section 10102, and Section 200 of the Charter of the City of Fresno; and

WHEREAS, in accordance with Section 7267.2 of the Government Code, on May 21, 2019, the City offered Outfront \$344,000 for the loss of business goodwill, and the cost to remove the Billboard based on the full appraised amount as conducted by Dave Girbovan, ASA, which was rejected by lack of response; and

WHEREAS, in accordance with Section 1245.235 of the Code of Civil Procedure, notice and reasonable opportunity to respond and be heard on this matter has been given to the persons whose property are to be acquired by eminent domain and whose names and addresses have been supplied by the attorneys representing Outfront; and

WHEREAS, at such time and place, or as soon thereafter as the matter could be heard, the Council received, heard and considered information pertinent to the matters required by Section 1245.230 of the Code of Civil Procedure to be determined herein; and

WHEREAS, the benefit of the removal of the Billboard will be appropriated to public use and in accordance with Code of Civil Procedure Section 1240.510.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Fresno as follows:

1. The public interest and necessity require the Project.
2. The Project was planned or located in the manner that is most compatible with the greatest public good and the least private injury.
3. The leasehold interest that is sought is necessary for completion of the Project.
4. The offer for loss of business goodwill required by Section 7267.2 of the Government Code has been made to the owner of record.
5. The leasehold interest which is sought is situated in the City of Fresno, County of Fresno, State of California, and is more particularly described herein and in the original lease executed by the former owner with Outfront, attached; and
6. The City Attorney of the City of Fresno is authorized and directed to institute and conduct to conclusion, in the name of the City of Fresno, a proceeding in eminent domain, including arbitration of compensation, in accordance with the provisions of the Constitution of the State of California and the California Eminent Domain Law, to acquire the leasehold interest, tenant improvements pertaining to the

realty and all other property interests for the leasehold interest Property in the name of the City for public purposes.

7. The Project is budgeted in the Council adopted current fiscal year City budget, which provides the necessary funds for the acquisition of the leasehold interest and to pay for litigation expenses, including staff time. Project ID PW00669, Fund 22504, Org 189901, has been established to disburse the necessary funds for the acquisition and to pay for litigation expenses, including staff time.

8. The Controller of the City of Fresno is authorized and directed to disburse out of the above account, as approved by the City Attorney, such amounts as may be required including costs, witness fees and attorneys' fees, to acquire the leasehold interest.

* * * * *

STATE OF CALIFORNIA)
COUNTY OF FRESNO) ss.
CITY OF FRESNO)

I, YVONNE SPENCE, City Clerk of the City of Fresno, certify that the forgoing resolution was adopted by the Council of the City of Fresno, at a regular meeting held on the _____ day of _____, 2020.

AYES :
NOES :
ABSENT :
ABSTAIN :

Mayor Approval: _____, 2020
Mayor Approval/No Return: _____, 2020
Mayor Veto: _____, 2020
Council Override Vote: _____, 2020

YVONNE SPENCE, MMC
City Clerk

By: _____
Deputy

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By: _____
Tracy N. Parvanian Date
Senior Deputy City Attorney

Attachment:
Original Lease Executed by the former Owner with Outfront

Fresno
Branch Office
5678 E. Shields Fresno, Calif.
93727-9984
Lease # 272-068069
271-68080A

NATIONAL ADVERTISING COMPANY
(Subsidiary of Minnesota Mining & Manufacturing Co.)
Home Office: Bedford Park, Illinois 60501

THIS AGREEMENT, made this 13th day of March, 19 87, by and between Joseph Pistacchio of G & J Pistacchio Trucking* hereinafter called the Lessor, and National Advertising Company, of Bedford Park, Illinois, hereinafter called the Lessee.

WITNESSETH:

- The Lessor hereby leases unto the Lessee, and the Lessee hereby leases from the Lessor, the use and possession of the portion to be occupied of the following described premises, for the purposes of erecting and maintaining advertising displays (painted, reflectorized, printed, illuminated, or otherwise), including necessary structures, devices, power poles and connections.
- The property herein demised is located about 1.1 miles N-E-S-W of Shaw Ave, on the N-E-S-W side of Route No. HWY 99 for display(s) facing N-E-S-W, such leased property being part of the Lessor's property situated in the Township of Fresno County of Fresno State of California. (If Legal Description is required, see reverse side hereof.)
- The term of this lease shall commence on April 1st 1987, and unless terminated earlier in the manner hereinafter set forth, shall continue for an initial term of ten years from the first day of the first month following erection of the advertising display(s) (hereinafter called "the effective date"), and shall continue thereafter, at the option of the Lessee, for a second term of ten years, and thereafter from year to year, on the same terms, until terminated as of any subsequent anniversary of the effective date by written notice of termination given not less than sixty days prior to such anniversary date by either the Lessor or Lessee.
- In consideration of the foregoing and the mutual promises herein contained, and other good and valuable consideration, the Lessee agrees to pay the Lessor at the rate of \$ N/A per year for such periods of time as the display(s) contemplated hereunder is(are) not in advertising position, and at the rate of \$ 1,200.00 per year for such periods of time as the display(s) contemplated hereunder is(are) in position. Such yearly rental is to be paid in advance (subject to a 30 day delay for processing) with supplementary adjustments to be made promptly when the advertising status of the display(s) is changed. When feasible, the payment date will be adjusted to coincide with an anniversary of the effective date. Rent shall be deemed to have been made on the date(s) scheduled unless Lessor notifies Lessee of non-receipt of payment.
- ADDITIONAL PROVISIONS.** The provisions printed on the reverse hereof are hereby incorporated herein by specific reference thereto and constitute a part of this agreement.

(EXISTING)

AREA SKETCH OF LEASED PREMISES

Size ... 14 X 48 / .12 X .25 Ft.
 HAGL ... 30 Ft
 EOP Ft
 Power Yes Ft
 Mileage Panel Mi
 Location Staked
 Display Facing North / . South

This Lease Agreement shall provide for annual increases in the lease rate. The increases of 5% per annum shall commence on the first anniversary of this Lease Agreement and shall continue for the term of this Lease Agreement. In consideration for annual increases the Lessor shall co-operate with the Lessee in obtaining electrical power service for the display described herein. Lessee shall hold the Lessor harmless for any cost of obtaining said service.

* Payments to be made to G & J Pistacchio Trucking.

Note This Lease Agreement supercedes all previous leases and agreements between the parties of this Lease Agreement.

Executed by Lessor in the presence of:

Joseph Pistacchio (Owner)
 APPROVED: _____ (Tenant)
 (If applicable)

Accepted by: _____
NATIONAL ADVERTISING COMPANY, LESSEE

By: _____

558 32 3225 Social Sec. Tax I.D.
Joseph Pistacchio G & J Pistacchio Trucking
 (Print Lessor's Name)
 By: Joseph Pistacchio
 (Signature)
22517 Ave 18^{1/2} (Mailing Address)
Madera, Calif. 93637 (City, County, State)
 MAR 18 1987

(209) 673-5783

STOCKTON

Circle Classification: Comm-Agr-Ind-Res
 Former P.O. _____
 Ren. Repl. Avail. N. Erect Avail. Reloc. _____
 Date _____
 New Erect. Reloc. N.P.O. _____
 POST _____
 SF _____
 DF _____
 App. or Permit No.: _____

STANDARD LEASE AGREEMENT
Form 656S, B, Revised 6/81

6. In the event of any change of ownership of the property hereby leased, the Lessor agrees to notify the Lessee promptly of such change, and the Lessor also agrees to give the new owner formal written notice of the existence of this lease and to deliver a copy thereof to such new owner.

7. Unless specifically stated otherwise herein, the Lessor represents and warrants that he is either the Owner or the Agent of the Owner of the property herein demised, and that he has full authority to enter into this lease. The Lessor covenants and warrants that if the Lessee shall pay the rental as herein provided and shall keep and perform the other covenants herein stated, the Lessee shall and may, peaceably and quietly have, hold and enjoy the use of the premises herein demised for the term of this lease, such use to include access to the site over any lands under the control of the Lessor.

8. Neither the Lessor nor the Lessee shall be bound by any agreement or representation, expressed or implied, not contained herein. This lease shall be deemed to have been accepted and its terms enforceable only upon the acceptance hereof by the Lessee in the space provided. Following such acceptance, it shall inure to the benefit of and be binding upon the parties hereto and to their respective tenants, heirs, successors, personal representatives, executors, administrators, and assigns.

9. In the event that the portion of the Lessor's property occupied by the Lessee's displays is to be improved by erecting a permanent private commercial or residential building, as evidenced by a building permit, requiring removal of Lessee's displays, the Lessor may terminate this Lease upon giving the Lessee ninety (90) days written notice of termination, together with a copy of the building permit, sent by registered mail to either the Lessee's Home Office or the Branch Office listed, and upon the Lessor's refunding to the Lessee the rent previously paid for the unexpired portion of this Lease beyond the termination date plus the total cost of the construction and the removal of Lessee's displays, less 1/180th of such cost for each full month of this Lease prior to the notice of termination. The Lessee agrees to remove its displays within the ninety (90) day period. If the Lessor does not commence the construction within ninety (90) days after the displays have been removed, the Lessee may, at its option, reinstate this Lease by written notice to the Lessor, and if so reinstated, the Lessor agrees to reimburse the Lessee for its reasonable expenses in replacing the Lessee's displays on the Lessor's property. If any portions of the property are not to be utilized for such building, the Lessee has the option to use the remaining portion on the same terms, except that the rent shall be equitably reduced if the highway view of the display is less than what it was before the sign was moved. **The right of termination stated herein shall not exist and cannot be exercised if the demised premises shall be condemned or taken by power of eminent domain, or if the property is conveyed to an entity acting as or on behalf of any public entity which has the power of eminent domain.**

10. If at any time the highway view of the Lessee's displays is obstructed or obscured, or the advertising value of the displays is impaired or diminished, or the use or installation of such displays is prevented or restricted by law or by the Lessee's inability to obtain any necessary permits or licenses, or if the Lessee is unable, for any period of ninety (90) consecutive days or more, to secure and maintain a suitable advertising contract for the displays, or if there occurs a diversion of traffic from, or a change in the direction of traffic on highways leading past the Lessee's displays, the Lessee may, at its option, terminate this lease by giving the Lessor fifteen (15) days written notice, and the Lessor agrees to refund to the Lessee the rent previously paid for the unexpired portion of this lease. If any of the conditions described in this paragraph shall at any time temporarily exist, then the Lessee may, at its option, instead of terminating this lease, be entitled to an abatement of rent payable hereunder during the period such conditions or any of them exist, and to the refund of any rent paid in advance for the period of such abatement.

11. All structures, displays and materials placed upon the said property by the Lessee are Lessee's trade fixtures and equipment, and shall be and remain the Lessee's property, and may be removed by the Lessee at any time prior to or within a reasonable time after the termination of this lease or any extension thereof. The Lessor agrees to allow the Lessee full access to the property occupied by the displays for the purpose of erecting, maintaining, changing or removing the displays at any time.

12. The Lessor agrees not to erect or permit any other party to erect any advertising displays or other advertising matter on any property owned or controlled by the Lessor within a radius of six hundred (600) feet of Lessee's displays, nor to permit any other obstruction to partially or completely obscure the normal highway view of said displays, and the Lessee is hereby authorized to remove any such other advertising display or other obstruction at its option.

13. The Lessee agrees to save the Lessor harmless from any and all claims or demands on account of bodily injury or physical property damage, caused by or resulting from any negligent or willful act of the Lessee's agents or employees in the construction, maintenance, repair, change or removal of the Lessee's displays on the property, and agrees to carry, at its own cost and expense, adequate public liability insurance covering any such contingency so long as this lease shall remain in effect. The Lessor agrees to save the Lessee harmless from any and all claims or demands on account of bodily injury or physical property damage caused by or resulting from any negligent or willful act of the Lessor.

LEGAL DESCRIPTION OF LEASED PREMISES (for recording purposes): _____

State of _____)

County of _____)

On this _____ day of _____, 19____, before me, _____ (Print Name of Notary)

the undersigned officer, personally appeared _____ known to me (or satisfactorily proven) to be the person whose name is subscribed to the above instrument, and being informed of the contents of said instrument, acknowledged that he or she voluntarily executed the same for the uses and purposes herein contained.

In witness whereof, I have hereunto set my hand and official seal.

EXISTING STRUCTURE LEASE: LESSOR WARRANTS THAT SINCE

19____ OR EARLIER, THIS LOCATION HAS BEEN OCCUPIED BY THE EXISTING SIGN STRUCTURE, WHICH STRUCTURE HAS NOW BECOME LESSOR'S OWN PROPERTY, AND LESSOR HEREBY ASSIGNS TO LESSEE ALL OF LESSOR'S RIGHTS TO SUCH STRUCTURE.

(LESSOR'S SIGNATURE) _____

(Signature of Officer)

(Title of Officer)

My Commission Expires _____ 19____