



CITY OF MARTINEZ

**CITY COUNCIL AGENDA
September 21, 2011**

TO: Mayor and City Council
FROM: Michael Chandler, Senior Management Analyst
SUBJECT: CBS Billboard Relocation Project
DATE: September 16, 2011

RECOMMENDATION:

Adopt a resolution authorizing the City Manager to execute a Relocation Agreement with CBS Outdoor, Inc.

BACKGROUND

The City Council held a public hearing at the September 7, 2011 Council Meeting to consider adoption of a Mitigated Negative Declaration, adoption of Zoning Code Text Amendments, and a resolution authorizing the City Manager to execute a Relocation Agreement with CBS Outdoor, Inc. The Mitigated Negative Declaration was adopted at the meeting, and the ordinance making the Zoning Code Text Amendments was introduced at that time. In response to Councilmember inquiries, the Relocation Agreement was deferred until the September 21, 2011 Council Meeting in order to provide staff the opportunity to meet with CBS to discuss possible modifications to the Relocation Agreement related to enforcement of regulations, indemnification, and remedies for breach of the agreement which would be available to the City.

The City Attorney and City staff subsequently revisited the pertinent sections of the Agreement with CBS legal counsel and staff. CBS stated its position that as a rule it does not provide indemnification relating to its activities to third parties or permitting entities. CBS noted that it had provided indemnity in this instance in accordance with the City's adopted indemnification ordinance. CBS further noted that in no case does CBS indemnify billboard advertisers. Because the parcel on which the new billboard will be situated is private and not public property, the City's involvement in this project is limited to its permitting authority and its activity as a free advertiser on the billboard. Unlike a situation where the City owns the underlying property (such as exists with a lease or license agreement, the City's exposure relating to the operation of the billboard is limited. Notwithstanding CBS's position relating to further indemnification of the City, several key additions were made to the Agreement, which strengthen the protections to the City:

- 1) Stipulation that CBS shall operate the New Billboard in accordance with all applicable Federal, State and City laws and regulations, including, without limitation, conditions of approval imposed on the Project by the City (Section 4).
- 2) Establishment of a formal process for noticing and curing alleged breaches of the Agreement (Section 15).

- 3) Clarification that nothing in the Agreement is intended or shall be construed to create or reflect any form of partnership or joint venture between the parties (Section 20).

These additions would permit the City to require compliance with all regulations in the operation of the billboard, and any failure of CBS to so comply would constitute a breach of the Relocation Agreement.

The Relocation Agreement cannot go into effect until 30 days after the second reading of the ordinance containing the new Zoning Code Text Amendments, which action is also included on this September 21, 2011 agenda.

FISCAL IMPACT:

Revenue will be paid quarterly by CBS upon operation of the new billboard. The City is expected to receive approximately \$120,000 to \$160,000 each year from its 11% revenue share per the attached Relocation Agreement.

ACTION:

Motion to adopt Resolution authorizing the City Manager to execute a Relocation Agreement with CBS Outdoor, Inc.

Attachments:

Resolution
Exhibit A, Relocation Agreement



APPROVED BY: City Manager

RESOLUTION NO. -11

**AUTHORIZING THE CITY MANAGER TO EXECUTE A RELOCATION AGREEMENT
WITH CBS OUTDOOR, INC.**

WHEREAS, the City of Martinez ("City") has had a longstanding arrangement with CBS Outdoor, Inc. and its predecessors ("CBS") that allows the City to advertise a community message on the north facing side of the outdoor advertising structure ("Existing Billboard") located at 35 Bridgehead Road in Martinez on the west side of Interstate 680; and

WHEREAS, said arrangement was included as a condition of the Use Permit granted to CBS by the City Planning Commission on January 25, 1979; and

WHEREAS, CBS met with City staff in July 2010 and presented numerous options for the City to consider in exchange for the City's exclusive rights to advertise on the Existing Billboard; and

WHEREAS, one of the options presented by CBS was to enter into an agreement with the City to relocate the Existing Billboard ("Relocation Agreement") by constructing a digital LED billboard ("New Billboard") at a location approximately 550 feet to the north; and

WHEREAS, CBS proposed to include the City in a percentage of revenue share from advertising revenues generated on the New Billboard, and to allow the City to participate in advertising its community message on the north facing side of the New Billboard; and

WHEREAS, after several months of informal discussions between the parties, CBS provided the City with its formal request to initiate the billboard relocation project on May 11, 2011; and

WHEREAS, the parties have reached agreement on the terms of the Relocation Agreement, a copy of which is included as Exhibit A to this resolution; and

WHEREAS, the terms include the provision for the City to participate in a revenue share of 11% of the CBS Quarterly Net Receipts as defined in the Relocation Agreement, and to change out the community message advertisement up to 24 times per year on the north facing side of the New Billboard; and

WHEREAS, the terms of the Relocation Agreement also include public safety provisions to use of the New Billboard for various time-sensitive emergency alert messages, including Amber Alerts and other public safety notifications, including those of the City's Police Department, and

WHEREAS, an Initial Study was conducted to evaluate any potential adverse impacts of the relocation; and

WHEREAS, the City Planning Commission on August 21, 2011, approved a Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program and Conditional Use Permit for the relocation, and recommended approval of the Municipal Code Text Amendments, allowing the possible relocation of existing nonconforming Non-Accessory Signs (billboards), subject to the City Council's approval of a Relocation Agreement; and

WHEREAS, the City Council approved the Initial Study and adopted the Mitigated Negative Declaration by resolution on September 7, 2011; and

WHEREAS, on September 7, 2011, the City Council introduced an Ordinance amending the Martinez Municipal Code, allowing the possible relocation of existing nonconforming Non-Accessory Signs (billboards), subject to the City Council's approval of a Relocation Agreement; and

WHEREAS, on September 21, 2011, the City Council adopted an Ordinance amending the Martinez Municipal Code, allowing the possible relocation of existing nonconforming Non-Accessory Signs (billboards), subject to the City Council's approval of a Relocation Agreement.

NOW THEREFORE BE IT RESOLVED that the City Council of the City of Martinez hereby authorizes the City Manager to execute the Relocation Agreement with CBS Outdoor, Inc., substantially in the form attached hereto, with any non-substantive modifications subject to the review and approval of the City Manager and City Attorney.

BE IT FURTHER RESOLVED that the Relocation Agreement shall not go into effect until the effective date of the enacting Ordinance amending the Martinez Municipal Code, allowing the billboard relocation to occur; and

BE IT FURTHER RESOLVED that the Use Permit granted by the City Planning Commission to CBS on January 25, 1979, for the Existing Billboard located at 35 Bridgehead Road in Martinez is hereby repealed, contingent upon the construction and operation of the New Billboard.

* * * * *

I **HEREBY CERTIFY** that the foregoing is a true and correct copy of a resolution duly adopted by the City Council of the City of Martinez at a Regular Meeting of said Council held on the 21st day of September, 2011, by the following vote:

AYES:

NOES:

ABSENT:

RICHARD G. HERNANDEZ, CITY CLERK
CITY OF MARTINEZ

RELOCATION AGREEMENT

As of this _____ day of October, 2011 (“Effective Date”), CBS Outdoor Inc., a Delaware corporation (“CBS”), and the City of Martinez, a municipal corporation in the State of California (“City”), hereby agree to enter into this Relocation Agreement (“Agreement”) on the terms and condition set forth herein. CBS and the City may collectively be referred to herein as the “Parties” or individually as a “Party.”

RECITALS

A. WHEREAS, Kenneth A. and Paulette M. Waters (collectively, “Waters”) own real property lying within the City where such real property is commonly known as Assessor’s Parcel Number 378-010-028-9 and by a mailing address of 35 Bridgehead Road, and is more particularly described in Exhibit “A” attached hereto (referred to herein as the “Waters Property”); and

B. WHEREAS, Union Pacific Railroad holds, and Clear Channel Outdoor, Inc. manages on behalf of Union Pacific Railroad, a perpetual easement burdening a portion of the Waters Property (and where the real property subject to the easement shall be referred to herein as the “Railroad Easement”); and

C. WHEREAS, CBS constructed and operates a general advertising sign on the Railroad Easement identified as Display No. _____ and consisting of back-to-back display facings each measuring 14 feet by 48 feet (hereinafter referred to as “Existing Billboard”). The general location of the Existing Billboard is shown on Exhibit “B” attached hereto and labeled “Existing Billboard”; and

D. WHEREAS, CBS seeks to relocate the Existing Billboard from the Railroad Easement by removing the Existing Billboard and constructing a new sign on that certain parcel of real property within the City commonly known as Assessor’s Parcel Number 378-010-024-8 and by a street address of 37 Bridgehead Road, and more particularly described in Exhibit “C” attached hereto (referred to herein as “Bridgehead Road Property”); and

E. WHEREAS, the Bridgehead Road Property is owned by Waters Warehouse Properties, LLC (the “Bridgehead Road Property Owner”); and

F. WHEREAS, relocation of the Existing Billboard to the Bridgehead Road Property will result in certain benefits to the City, including the ability to efficiently and effectively display information of public interest, including information on City-sponsored events and programs; and

G. WHEREAS, further benefits to the City and the surrounding region include the timely ability to display information regarding matters of public safety, such as Amber Alerts and updates on emergency and disaster response situations; and

H. WHEREAS, the City further seeks to increase municipal revenues in order to promote the public safety, health, and welfare of the citizens of the City insofar as such sources of revenue are not detrimental to the public safety, health, and welfare of the citizens of the City and do not foster inharmonious or unworkable relationships among land uses; and

I. WHEREAS, in exchange for the City’s diligent processing and consideration of all entitlements, approvals, and permits (collectively, “City Entitlements”) under its control and

jurisdiction that are necessary to effect the relocation of the Existing Billboard and to construct the New Billboard (as that term is defined in Paragraph 1 below), as set forth in greater detail below, the Parties have agreed to the consideration described and the terms stated below.

AGREEMENT

1. CBS intends to apply for, pursue, and seek to obtain, in accordance with applicable law, the City Entitlements from the City as well as any additional entitlements, approvals, and permits from the California Department of Transportation and other applicable City, State, or Federal public agencies (collectively, "Other Agency Entitlements") that are necessary: (1) to remove the Existing Billboard from the Railroad Easement; and (2) to construct a new, 48-foot tall, double-sided light-emitting diode ("LED") billboard unit capable of holding two displays measuring 14 feet by 48 feet and any supporting structures, illumination facilities and connections, service ladders, and other appurtenances and ancillary equipment (collectively, the "New Billboard") at the Bridgehead Road Property in the location labeled "New Billboard" in Exhibit "D", attached hereto, effecting a relocation of CBS's Existing Billboard approximately five hundred fifty (550) feet north of its current location. Collectively, these activities shall be referred to herein as the "Relocation." CBS agrees to pay all applicable fees, processing costs, and other charges associated with the processing of the City Entitlements and any Other Agency Entitlements (collectively, "Entitlements") that are necessary for the Relocation.

2. CBS shall be solely responsible for obtaining any authorizations ("Authorizations") from the Union Pacific Railroad, Clear Channel Outdoor, Inc., the Waters, the Bridgehead Road Property Owner, and any other persons or entities necessary to obtain the Entitlements. CBS also shall be solely responsible for obtaining the necessary property rights from the Bridgehead Road Property Owner and any other persons or entities for the Relocation of the New Billboard on the Bridgehead Road Property.

3. CBS agrees to perform all construction work necessary to effect the Relocation, including the removal of the Existing Billboard and the construction of the New Billboard, so long as this Agreement has not been terminated pursuant to Paragraph 9 below.

4. CBS shall remove the Existing Billboard within fifteen (15) days of, but not before, the date on which the New Billboard is constructed, completed, and passes any and all necessary inspections by the City and/or other public agency, and CBS lawfully is able to operate the New Billboard and all Entitlements are otherwise obtained and conditions of approval related to such Entitlements are otherwise fulfilled. The date identified in this Paragraph 4 shall be referred to herein as the "Operation Date." CBS shall operate the New Billboard in accordance with all applicable Federal, State and City laws and regulations, including, without limitation, conditions of approval imposed on the Project by the City.

5. The New Billboard may display multiple alternating advertisements on each display facing, with each advertisement displayed for a duration in accordance with applicable state law and regulations. CBS shall have sole discretion in determining the order of the alternating advertisements and other terms of operation in accordance with applicable law.

6. CBS agrees to permit the City to display one (1) advertisement on the north facing display of the New Billboard that promotes the City ("City Promotion") subject to the operational terms and durations set forth in Paragraph 5 above and all other applicable Federal, State

and City laws and regulations, for no charge to the City. The City may change the copy of the City Promotion, also at no charge to the City, upon five (5) business days' written notice and receipt of the digital image to be displayed to CBS, but no more than twenty-four (24) times per Calendar Year. In addition to the 24 times per Calendar Year that the City may advertise on the New Billboard as detailed in this Paragraph 6, CBS also shall display, at the City's request, emergency alert messages, including but not limited to, Amber Alerts, public safety alerts (including those of the City's Police Department), and emergency/disaster alerts ("Emergency Alerts"). CBS shall display such Emergency Alerts as quickly as practicable upon receipt of the City's request and the digital image to be displayed, taking into consideration the urgency of the Emergency Alert at issue.

7. The City shall have the right to display the City Promotion as set forth in Paragraph 6 above so long as CBS, its successors or assigns (collectively, "CBS") maintains a property right to and does operate the New Billboard on the Bridgehead Road Property, or until any such earlier time that CBS, in its sole discretion and for any reason, ceases operation of the New Billboard; provided, however, if the cessation is temporary and CBS begins operation of the New Billboard again at any time, the City shall again have the right to display the City Promotion as set forth in Paragraph 6 above. The City shall lose the right to display the City Promotion if, under the power of eminent domain, the City or another public agency acquires any portion of the Bridgehead Road Property that interferes in any manner with CBS' operation of the New Billboard. The Parties agree that in the event and to the extent CBS does not obtain all necessary Entitlements and/or otherwise determines, in its sole discretion, not to construct or operate the New Billboard, CBS shall have no obligation to display the City Promotion.

CBS shall quarterly pay to the City eleven (11) percent of CBS's Quarterly Net Receipts from the New Billboard ("Quarterly Net Receipts"), being defined as revenue actually received by CBS solely from advertising on the New Billboard within the applicable quarter of the Calendar Year, less any agency commissions actually paid by CBS, with such agency commission not to exceed sixteen and two-thirds percent of the gross sales amount (16.66 %). The percentage of Quarterly Net Receipts, as set forth above in this Paragraph 7, shall be due and payable within thirty (30) days following the end of each quarter, beginning with the quarterly anniversary date of the Operation Date. An annual sales audit shall be provided to the City for verification of income. The sales audit shall consist of, at a minimum, a list of the month-by-month sales figures with an accompanying summary for the location and, upon request by the City, CBS shall provide the City with a copy of each advertising agreement between CBS and its advertising client(s) referenced in the sales audit. The City agrees the contents of the sales audits and copies of advertising agreements constitute the confidential, proprietary information of CBS, and that except as may be required by applicable law, including but not limited to, the California Public Records Act, the City shall not disclose, publish, or circulate any sales audit(s) or the contents thereof or copies of the advertising agreements to any person, entity, or association other than employees of the City who must review the contents of the sales audits or the advertising agreements to ensure compliance with this Agreement. Under this Agreement, no monies shall be due to the City until after the Operation Date has occurred and CBS is operating the New Billboard. Further, the Parties agree that in the event and to the extent CBS does not obtain all necessary Entitlements and/or otherwise determines, in its sole discretion, not to construct or operate the New Billboard, CBS shall have no obligation to pay to the City eleven (11) percent of CBS's Quarterly Net Receipts nor make any other payments in lieu thereof.

In the event that CBS ceases to operate the New Billboard for a continuous period in excess of one (1) year, CBS shall remove the New Billboard and restore the Bridgehead Road Property to its original condition, at the sole cost and expense of CBS, in compliance with all applicable Federal,

State and City laws and regulations including, but not limited to, Title 4, section 2272 of the California Code of Regulations; provided, however, that if CBS is engaged in active good faith negotiations to continue to maintain the New Billboard on the Bridgehead Property, then the removal and restoration obligations set forth in this Paragraph 7 shall not be triggered so long as those negotiations continue.

8. The City shall have the right to receive the agreed-upon percentage of Quarterly Net Receipts, as set forth in Paragraph 7 above, so long as CBS or any successor thereof, maintains a property right to and does operate the New Billboard on the Bridgehead Road Property, or until any such earlier time that CBS or its successor, in its sole discretion and for any reason, ceases operation of the New Billboard, though if the cessation is temporary and CBS begins operation of the New Billboard again at any time, the City shall again have the right to receive the agreed-upon percentage of Quarterly Net Receipts, as set forth in Paragraph 7 above. The City shall lose the right to receive the agreed-upon percentage of Quarterly Net Receipts, as set forth in Paragraph 7 above, if under the power of eminent domain, the City or another public agency acquires any portion of the Bridgehead Road Property that interferes in any manner with operation of the New Billboard.

9. If CBS is prevented by law, government order, or other causes from constructing the New Billboard to include LED technology and/or CBS is otherwise prevented from effecting the Relocation or operating the New Billboard, including but not limited to, not obtaining all Entitlements, then this Agreement shall terminate upon ten (10) days' notice from CBS to the City. Further, the Parties agree that if CBS determines, in its sole discretion, not to pursue the Entitlements (or defend the Entitlements in the event of litigation) and/or not to construct or operate the New Billboard, CBS shall have the right to terminate this Agreement upon ten (10) days' notice to the City.

10. To the extent that ministerial City Entitlements are necessary to effect the Relocation, the City agrees to act promptly and diligently in its processing and consideration of the Relocation in accordance with applicable law and upon satisfaction by CBS of all applicable City ordinances and requirements, as set forth in the City's Municipal Code and other City documents, including any conditions of approval the City lawfully may impose in connection with the City Entitlements. To the extent that discretionary City Entitlements are necessary to effect the Relocation, the City agrees to act promptly and diligently in its processing and consideration of the Relocation applications. Nothing in this Paragraph 10 is intended to restrict the City's discretion in considering the City's application for discretionary City Entitlements, and the City shall comply with all applicable City, State, and Federal laws in approving, conditionally approving, or disapproving the Relocation. In acting diligently, the City shall use its best efforts to take action prior to deadlines set forth in the Permit Streamlining Act (Government Code section 65920 *et seq.*), the California Environmental Quality Act (Public Resources Code section 21000 *et seq.*) and any other applicable City, State, or Federal law, except to the extent that accelerated action would result in the violation of any applicable law. The City further agrees to act cooperatively with CBS in CBS' processing of any Other Agency Entitlements (e.g., the provision of requested documents), although the City shall have no obligation to pay for or otherwise contribute funding towards obtaining such Other Agency Entitlements.

11. Except as otherwise provided for in this Agreement, the terms, covenants and conditions herein shall apply to and bind the heirs, successors, executors, administrators, and assigns of all the parties hereto. The Parties agree that CBS shall, in its sole discretion, have the right to

assign its rights and obligations under this Agreement to any individual or entity (“Assignee”) so long as the Assignee expressly assumes all obligations in this Agreement and stands in the same position of CBS with respect thereto. To effect such assignment, CBS and the Assignee shall enter into an agreement whereby CBS agrees to assign its obligations and rights under this Agreement to the Assignee and Assignee agrees to assume said obligations and rights (“Assignment and Assumption Agreement”). CBS shall notify the City within ten (10) days of such assignment, and shall provide the City with contact information regarding the Assignee. Upon such assignment made in accordance with this Paragraph 11, CBS shall no longer have any rights or obligations under this Agreement, and the City shall look solely to the Assignee for performance hereunder.

12. CBS shall defend, indemnify and hold harmless the City and its agents, officers, attorneys and employees from any claim, action, or proceeding (collectively, “Action”) against the City or its agents, officers, attorneys or employees, which is brought within the applicable statute of limitations to attack, set aside, void or annul approval of the City Entitlements, including but not limited to, any Action brought under the California Environmental Quality Act (Pub. Res. Code § 21000 *et seq.*). This indemnification shall include damages awarded against the City, if any, cost of suit, attorneys' fees, and other costs and expenses incurred in connection with such Action whether incurred by CBS, the City, and/or the parties initiating or bringing such Action.

CBS shall defend, indemnify and hold harmless the City, its agents, officers, employees and attorneys for all costs incurred in additional investigation of, or study of, or for supplementing, preparing, redrafting, revising, or amending the environmental document relied upon to approve the City Entitlements, if made necessary by said Action and if CBS desires to pursue securing the City Entitlements, after initiation of such litigation, which are conditioned on the approval of such document.

In the event that an Action is brought, the City shall promptly notify CBS of any such Action and shall cooperate fully in the defense and settlement thereof. If City fails to so promptly notify CBS, then CBS' indemnification obligations as set forth in this Paragraph 12 shall immediately terminate. City may defend any such Action if City (i) bears its own outside attorneys' fees and costs in the event and to the extent the City decides to retain counsel other than the City Attorney; (ii) City defends the action in good faith; and (iii) CBS is not required to enter into, pay for, or perform any settlement unless CBS approves of such settlement; provided, however, CBS agrees to pay for the fees and expenses of the City Attorney incurred in connection with the City's defense of any such Action. The City shall have the right not to defend said Action, except that the City agrees to cooperate with CBS in the defense of the Action. If CBS enters into a settlement agreement to resolve said Action, the City shall have the right to consent to such settlement in the event and to the extent it obligates the City to take certain actions; such consent shall not be unreasonably withheld. CBS further agrees that it has no right to enter into a settlement to the extent it seeks to unilaterally bind the City.

Notwithstanding the foregoing, if CBS elects, in its sole discretion, not to defend the City Entitlements or otherwise participate in such Action, then CBS' indemnification obligations as set forth in this Paragraph 12 shall immediately terminate upon notice of such election to the City (“Election Notice”), except to the extent any such obligations were incurred prior to CBS providing the Election Notice. The Parties further agree that CBS' indemnification obligations shall terminate as provided herein even if the City decides to defend or otherwise participate in such Action after CBS provides the Election Notice; provided, however, that CBS shall be obligated to pay any attorneys' fees awarded by the court to the petitioner(s) in said Action that were incurred prior to

CBS' provision of the Election Notice.

CBS shall indemnify the City for all the City's costs, fees, and damages (if any), which the City incurs in enforcing the above indemnification provisions.

13. Each Party represents and warrants that it has the sole right and exclusive authority to execute this Agreement and, subject to the assignment provisions set forth in Paragraph 11 above, is the only Party or entity entitled to receive the consideration specified in this Agreement.

14. Each Party agrees to perform such other acts, and to execute, acknowledge, and/or deliver such other instruments, documents and other materials as the City or CBS may reasonably request in order to effectuate consummation of this Agreement or the transactions contemplated herein.

15. In the event of any breach of a provision in this Agreement, the party alleging such breach shall give the breaching party not less than thirty (30) days' written notice of breach ("Notice of Breach"). The Notice of Breach shall specify the nature of the alleged breach and the manner in which said breach may be satisfactorily cured. The breaching party shall have the right to demonstrate that it was never, in fact, in breach or shall cure the breach within thirty (30) days; provided, however, that if the nature of the alleged breach is such that it cannot be reasonably cured within such 30-day period, the commencement of the cure within such time period and the diligent prosecution to completion of the cure shall be deemed a cure within such period. During any period of curing, the party charged shall not be considered in breach for purposes of instituting legal action. If the breach is cured, then no breach shall exist or be deemed to have existed and the noticing party shall take no further action. After proper notice and the expiration of such 30-day cure period without cure, (a) the Parties may pursue alternative dispute resolution, so long as the Parties mutually consent to do so, and/or (b) the noticing Party, at its option, may institute legal action and may seek any and all remedies available at law or in equity.

16. In the event of any alleged breach of a provision in this Agreement, the prevailing Party in any action filed to enforce this Agreement shall be entitled to recover costs, reasonable attorneys' fees, and all other expenses incurred or arising out of any effort to enforce this Agreement.

17. This Agreement and its terms inure to the benefit of the Parties and their respective successors, assigns, heirs, executors and administrators.

18. No breach of the provisions of this Agreement can be waived except expressly and in writing. An express waiver of any one breach of this Agreement shall not be deemed a waiver of any other breach of the same or any other provision of this Agreement.

19. Time is of the essence of this Agreement and the performance by each Party hereto of the obligations on that Party's part to be performed.

20. The parties agree that nothing in this Agreement is intended or shall be construed to create or reflect any form of partnership or joint venture between the Parties.

21. The Parties represent that this Agreement is a fully integrated agreement. This Agreement may be modified only by a writing executed by the Parties to this Agreement. This Agreement sets forth the entire understanding between the Parties with respect to the matters stated in this Agreement and supersedes any and all prior agreements or understanding between the Parties, whether oral or written.

22. Notwithstanding anything to the contrary contained in this Agreement, the Parties agree that any notice required herein shall be delivered by facsimile to the numbers listed below. Any notice delivered by facsimile shall be deemed delivered upon electronic verification that the transmission to the recipient was completed; provided, however, that if such facsimile was sent after 5:00 p.m. Pacific Time on a business day or anytime on a non-business day, then such facsimile shall be deemed received on the next business day.

- (a) Fax to CBS: CBS Outdoor Inc.
1695 Eastshore Highway
Berkeley, CA 94710
Attention: Collin Smith
Fax: (510) 527-7041
- With a copy to: Miller Starr Regalia
1331 N. California Blvd.
Fifth Floor
Walnut Creek, CA 94596
Attention: Anthony M. Leones
Fax: (925) 933-4126
- (b) Fax to City: Michael Chandler
Senior Management Analyst
City of Martinez
525 Henrietta Street
Martinez, CA 94553
Fax (925) 229-5012

23. The Parties represent and declare that, in executing this Agreement, they relied solely upon their own judgment, belief and knowledge, and that they have obtained the advice and recommendations of their own independently selected counsel concerning the nature, extent or duration of their rights and claims; and that they have not been influenced to any extent whatsoever in executing this Agreement by any representations or statements not expressly contained or referred to in this Agreement.

24. It is the intention of the Parties that laws of the State of California govern the validity of this Agreement and construction of the terms and the interpretation of the rights and duties of the Parties hereto.

25. No waiver of any breach of this Agreement, or any provision contained herein, shall be deemed a waiver of any preceding or succeeding breach thereto or of any other agreement or provision herein contained. No extension of time for performance of any obligation or act shall be deemed an extension of the time for performance of any other obligations or act.

26. The preparation of this Agreement has been a joint effort of the Parties, and thus any term or provision contained herein may not be construed more strictly or liberally for or against any of the Parties.

27. If, for whatever reason, any part of this Agreement is deemed invalid by a court of competent jurisdiction, that determination shall in no way effect the validity of the remaining portions of this Agreement.

28. This Agreement may be executed in counterparts, each of which will be deemed an original and will be deemed duly executed upon the signing of this Agreement.

CBS OUTDOOR, INC.:

**CITY OF MARTINEZ,
a Municipal Corporation;**

Date: _____

Date: _____

By: _____

By: _____

Its: _____

Its: _____

RECOMMENDED FOR APPROVAL:

Date: _____

By: _____

Its: _____

APPROVED AS TO FORM:

By: _____

_____, **City Attorney**

EXHIBIT A
TO
RELOCATION AGREEMENT

Description of Property:

The real property and improvements situated in the City of Martinez, County of Contra Costa, State of California more particularly described as:

[Legal description attached, consisting of four (4) pages]

City of Martinez Initials _____

CBS Outdoor, Inc. Initials _____

Escrow No.: 05-38600312
 Locate No.: CACTI7707-7707-2386-0038600312
 Title No.: 05-38600312-SC

EXHIBIT "A"

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF MARTINEZ, COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

Parcel One:

A portion of the Rancho Las Juntas, being all of Parcel 3 of that certain Lot Line Adjustment Number LLA 97-3, filed August 11, 1997, Series No. 97-143282, Contra Costa County Records, and a portion of Parcel 4 of same said Lot Line Adjustment, further described as follows:

Beginning at the most northeasterly corner of said Parcel 3; thence from said Beginning, south 11° 30' 28" east, 112.14 feet to the beginning of a curve concave northeasterly, having a radius of 1900.78 feet; thence along said curve, through a central angle of 3° 49' 04", an arc distance of 126.66 feet; thence south 20° 14' 32" east, 48.51 feet to the southeast corner of said Parcel 3, said corner also being the northeast corner of said Parcel 4; thence south 21° 54' 13" east, 61.17 feet to the beginning of a curve concave easterly, having a radius of 1900.11 feet, a radial line of said curve bears north 67° 10' 55" east; thence along said curve, through a central angle of 5° 33' 35", an arc length of 184.38 feet to a point; thence from said point, along a line radial with last said curve, south 61° 37' 20" west, 64.80 feet; thence north 29° 51' 53" west, 118.65 feet; thence south 87° 08' 10" west, 217.69 feet to the beginning of a non-tangent curve, concave easterly, having a radius of 614.00 feet, a radial line of said curve bears north 66° 35' 30" east; thence northwesterly along said curve, through a central angle of 9° 11' 52", an arc distance of 98.57 feet; thence north 35° 51' 16" west, 42.53 feet; thence north 75° 26' 13" west, 5.38 feet; thence south 14° 28' 00" west, 1.00 feet; thence north 75° 25' 31" west, 55.19 feet to the beginning of a non-tangent curve, concave westerly, having a radius of 3191.82 feet, a radial line to said curve bears north 76° 45' 03" west; thence northerly along said curve, through a central angle of 5° 10' 45", an arc distance of 288.52 feet to the northwest corner of said Parcel 3; thence north 86° 47' 14" east, 216.29 feet to the point of beginning.

Excepting therefrom:

The rights reserved in the Deed from Southern Pacific Transportation Company, recorded July 9, 1997, Series No. 97-118039, Contra Costa County Records, as follows:

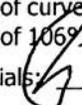
"Grantor excepts from the Property and reserves unto itself, its successors and assigns, all minerals and mineral rights, interest and royalties, including, without limiting the generality thereof, oil, gas and other hydrocarbon substances, as well as metallic or other solid minerals, in and under the Property; however, Grantor, or its successors and assigns, shall not have the right for any purpose whatsoever to enter upon, into or through the surface of the Property in connection therewith."

Parcel Two:

An easement (not to be exclusive) for access roadway purposes, and for utility purposes, over the following described property:

A portion of the property of the Southern Pacific Railroad Company described in the Deed recorded April 1, 1929, in Book 156, Page 412 of Official Records (156 OR 412), at the Contra Costa County Recorder's Office, State of California, being a portion of the Rancho las Juntas described as follows:

Commencing at a point on the most southeasterly corner of the parcel of land described in the Deed to Don Clemetson, et al, recorded August 6, 1998, Recorder's Series No. 98-185231, said point also being the beginning of a non-tangent curve, concave to the northeast, having a radius of 101.90 feet, a radial line through said beginning of curve bears north 6° 39' 51" west; thence northerly along said curve, an arc length of 95.33 feet, through a central angle of 56° 36' 02" to a radial line of said curve which bears north 49° 56' 17" east; thence north 68° 37' 08" west, 23.69 feet to a point herein designated for the purpose of this description, Point "E"; thence north 68° 37' 08" west, 23.69 feet to the beginning of a non-tangent curve, concave to the northwest, having a radius of 30.47 feet, a radial line through said beginning of curve bears south 59° 26' 43" west; thence southerly along said curve, an arc length of 56.79 feet, through a central angle of 106° 47' 54" to a radial line of

Initials: 

ILLEGIBLE NOTARY SEAL DECLARATION

(GOVERNMENT CODE 27361.7)

I declare under penalty of perjury that the notary seal on the document to which this statement is attached, reads as follows:

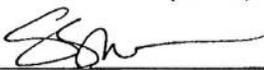
NAME OF NOTARY PUBLIC: L. Balding-Smith

COMMISSION NUMBER: #1510411

NOTARY PUBLIC STATE: CALIFORNIA

COUNTY: Contra Costa

MY COMM. EXPIRES: 8/29/08
(DATE)

SIGNATURE OF DECLARANT: 

PRINT NAME OF DECLARANT: S. Shen

CITY & STATE OF EXECUTION: Walnut Creek, California

DATE SIGNED: 9/20/05

END OF DOCUMENT

THE ABOVE INFORMATION MUST BE LEGIBLE FOR SCANNING

EXHIBIT B
TO
RELOCATION AGREEMENT

Description of Property:

The real property and improvements situated in the City of Martinez, County of Contra Costa, State of California more particularly described as:

[Parcel map attached, consisting of one (1) page]

City of Martinez Initials _____

CBS Outdoor, Inc. Initials _____

EXHIBIT C
TO
RELOCATION AGREEMENT

Description of Property:

The real property and improvements situated in the City of Martinez, County of Contra Costa, State of California more particularly described as:

[Legal description attached, consisting of one (1) page]

City of Martinez Initials _____

CBS Outdoor, Inc. Initials _____



Escrow No.: 07-38002168-JV
Locate No.: CACTI7707-7707-2380-0038002168
Title No.: 07-38002168

EXHIBIT "A"

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF MARTINEZ, COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

A portion of the Rancho Las Juntas, being a portion of Parcel 2 of that certain Lot Line Adjustment Number LLA 97-3, recorded August 11, 1997, Series No. 97-143282, Official Records, described as follows:

BEGINNING AT THE MOST WESTERLY CORNER OF SAID PARCEL ONE DESCRIBED IN THAT CERTAIN GRANT DEED TO KENNETH WATERS, ET AL, RECORDED AUGUST 18, 2006 AS DOCUMENT NO. 2006-0262334, OFFICIAL RECORDS; THENCE ALONG THE SOUTHERLY LINE OF SAID PARCEL ONE, NORTH 86°47'14" EAST, 172.40 FEET TO THE GENERAL EASTERLY LINE THEREOF; THENCE ALONG LAST SAID LINE, NORTH 12°03'57" WEST, 10.00 FEET; THENCE SOUTH 82°48'47" WEST, 55.99 FEET; THENCE SOUTH 85°09'02" WEST, 35.01 FEET; THENCE SOUTH 86°47'14" WEST, 56.58 FEET TO A LINE PARALLEL WITH, DISTANT 22.00 FEET EASTERLY, MEASURED AT RIGHT ANGLES FROM THE GENERAL WESTERLY LINE OF SAID PARCEL ONE; THENCE ALONG SAID PARALLEL LINE THE FOLLOWING FOUR (4) COURSE: 1) FROM A TANGENT THAT BEARS NORTH 07°54'03" EAST, ALONG A CURVE TO THE LEFT WITH A RADIUS OF 3213.82 FEET, THROUGH A CENTRAL ANGLE OF 01°50'27", AN ARC LENGTH OF 103.26 FEET; 2) NORTH 06°39'51" EAST, 98.62 FEET; 3) NORTH 06°38'52" EAST, 36.34 FEET; AND 4) NORTH 06°40'31" EAST, 9.85 FEET; THENCE AT A RIGHT ANGLE, NORTH 83°19'29" WEST, 22.00 FEET TO SAID GENERAL WESTERLY LINE OF SAID PARCEL ONE; THENCE ALONG LAST SAID LINE THE FOLLOWING FOUR (4) COURSES: 1) SOUTH 06°40'31" WEST, 9.85 FEET; 2) SOUTH 06°38'52" WEST, 36.34 FEET; 3) SOUTH 06°39'51" WEST, 98.73 FEET; AND 4) FROM A TANGENT THAT BEARS SOUTH 06°03'28" WEST, ALONG A CURVE TO THE RIGHT WITH A RADIUS OF 3191.82 FEET, THROUGH A CENTRAL ANGLE OF 02°00'44", AN ARC LENGTH OF 112.10 FEET TO THE POINT OF BEGINNING.

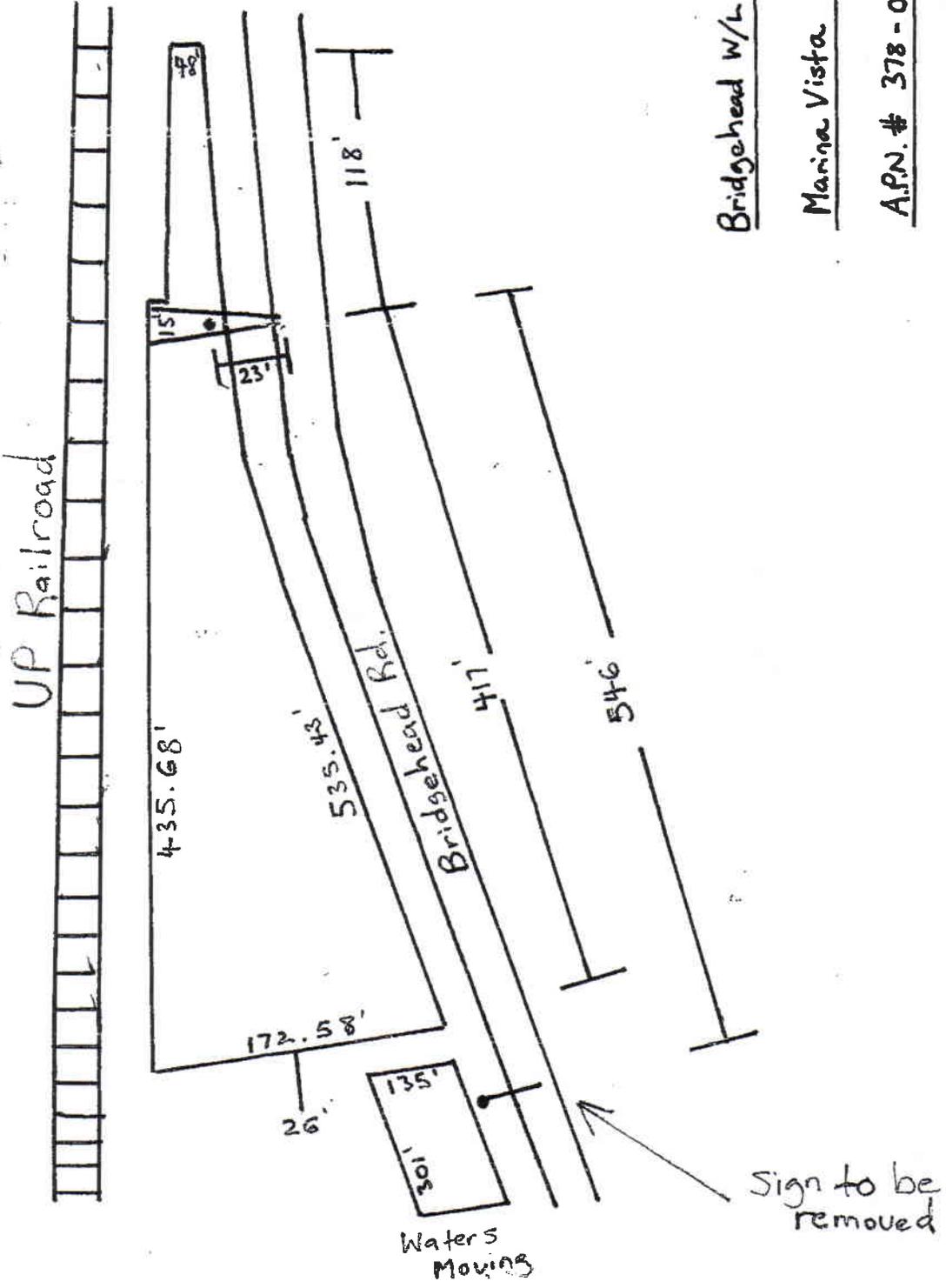
EXCEPTING THEREFROM:

The rights reserved in the Deed from Southern Pacific Transportation Company, recorded July 9, 1997, Series No. 97-118039, Official Records of Contra Costa County, as follows:

"Grantor excepts from the Property and reserves unto itself, its successors and assigns, all minerals and mineral rights, interest and royalties, including, without limiting the generality thereof, oil, gas and other hydrocarbon substances, as well as metallic or other solid minerals, in and under the Property; however, Grantor, or its successors and assigns, shall not have the right for any purpose whatsoever to enter upon, into or through the surface of the Property in connection therewith."

END OF DOCUMENT

Site Map



Bridgehead W/L 2112' N/O
Marina Vista
A.P.N. # 378-010-024-8