Legislation Text

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AUTHORIZATION TO ENTER INTO A DIGITAL BILLBOARD PLACEMENT LICENSE AGREEMENT WITH LAMAR CENTRAL OUTDOOR, LLC TO CONSOLIDATE PREVIOUSLY EXECUTED LICENSE AGREEMENTS INTO A NEW MASTER AGREEMENT

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Purpose and Recommended Action

This is a request for City Council to authorize the City Manager to enter into a Digital Billboard Placement License Agreement that will replace and supersede previously executed agreements with Lamar Central Outdoor, LLC for the operation of digital billboards along the Agua Fria Freeway (Loop 101) between Bethany Home Road and Orangewood Avenue.

Background

In 2009, the City Council authorized the City Manager to enter into 5 digital billboard license agreements (Resolution No. 4332 New Series) at specific locations on city-owned property in the vicinity of the Loop 101 corridor. License agreements for two out of the five locations were executed in 2009 (contracts C-6855 and C-6855-1); and, two signs were constructed. In 2014, the City entered into two additional license agreements for signs at locations consistent with the 2009 resolution (contracts C-9245 and C-9246); and those signs were also constructed. The proposed fifth location concept was abandoned due to site restrictions. These agreements created new General Fund revenue streams and currently create an annual General Fund revenue impact of $513,606 collectively.

Analysis

The contract provisions between the existing 2009 agreements and the 2014 agreements vary on vital terms such as due dates, the calculation method for the annual license fee increase, insurance requirements, and commencement and effective dates. This resulted in inefficiencies for both the City and Lamar in managing the compliance aspects of the contracts. A recent internal audit of these contracts also resulted in several findings that require amending the existing agreements. In discussions regarding the necessary amendments, both Lamar and the City agreed that it would be in the best interest of both parties to make the necessary language modifications and consolidate the agreements so that all four licenses had the same terms.

The consolidation of these licenses into one master agreement will result in significant efficiencies for the city, improved contract management and oversight, operational efficiencies, consistent terms, and modifies existing contract language that is ambiguous. The substantive modifications to the contract language are as follows:

Term:

- The full term of the 2009 agreements would have expired on 8/31/2029.
- The full term on the 2014 agreements would have expired on 9/6/2034.
- Staff recommendation is to have all four agreements expire at the same time and that it should include a full month of revenue to avoid partial month proration requirements.

Consolidated Agreement:

- The term expires September 30, 2034.

City Impact:

- Ability to collect ongoing monthly license fees for the 2009 licenses (guaranteed amounts) for 5 additional years.
- Included herein is a monthly rent comparative analysis which demonstrates that this change (if the entire term of the agreement is fulfilled) would result in an additional $1.8 million in General Fund revenue.

Monthly License Fees:

- All four agreements began with the base monthly license fee of $10,000 per month per sign.
- The 2009 agreements used a Consumer Price Index (CPI) calculation for an annual increase.
- The 2014 agreements negotiated a 2% flat rate increase because the CPI calculation is complex and created inconsistencies in how the annual increase was calculated.
- The variance in the monthly license fee between the 2009 agreements and the 2014 agreements created inefficiencies in contract management.
- Staff recommendation is to have the same monthly license fee moving forward for all four licenses, the same method for calculation on the annual increase, and the same date for the annual increase.

Consolidated Agreement:

- The monthly license fee in the consolidated agreement is $10,700.12. This is the average of the existing monthly fees ($10,996.23 for the 2009 agreements and $10,404.00 for the 2014 agreements)
- The annual increase for all four signs is a flat rate 2% increase.
- The date for the annual increase for all four signs is July 1st.

City Impact:

- The monthly rent comparative analysis demonstrates that using the average of the four signs as the base rent does not change the total amount of monthly license fees collected annually.

Royalty Payment:

- The dates for the period in which the royalty payment was to be calculated were inconsistent between the agreements.
- By way of example the reporting period for the FY2016 royalty reports for the 2009 agreements was 10/15/15-10/14/16 while the reporting period for the 2014 agreements was 1/1/15-12/31/16.
- Staff recommendation is to have the same reporting period for the royalty calculation for all four signs.

Consolidated Agreement:

- The royalty period will include July 1st through June 30th annually with the payment being due on the 15th day of August.
- There are no changes as to the method for calculating the royalty payment.

City Impact:

- To align the dates, the FY2017 royalty reporting period for the 2009 licenses is 10/15/2016-6/30/2017 and for the 2014 licenses it is 1/1/17-6/30/17 with payments Due 8/15/17.
- This results in a shorter period for all four signs for the first year under the consolidated agreement which means that it is unlikely that any of the licenses will achieve revenue in excess of $425,000 (the trigger for when the city collects a portion of those revenues).
- However, it is important to note that during the last full year of operation for all four signs, none of the signs reached the $425,000 threshold so the city was not due a royalty payment. The decrease in revenue generation of the digital billboards is likely the result of market saturation as there have been new digital billboards added at Glendale and the Loop 101 on private property and along the Loop 101 in the city of Phoenix.
- The city does not include projected revenues for royalty payments when forecasting as it is not a guaranteed source of revenue so there would be no impact to revenue forecasts.
- Royalty will continue to be calculated and collected in accordance with existing terms and this change provides significant efficiencies in ongoing contract management.

Financial Statements:

- The 2009 agreements did not require an independent audit verification.
- The 2014 agreements introduced a requirement for an annual independent CPA to review and attest to the total revenue collections for each of the signs, but it was only applicable to those agreements.
- Lamar believes requiring this term on an annual basis is onerous because they are a publicly exchanged corporation and are required to abide by stringent audit and reporting to the United States Securities and Exchange Commission (SEC).

- Staff recommendation is to have the same requirements for all four agreements regarding audits and review of financial documents. To include the 2009 agreements in the independent verification requirement, the frequency of the independent verification was adjusted to be less onerous but still provide for adequate protections for the city.

Consolidated Agreement:

- Lamar is required to submit an annual total revenue report which is to be certified by their CFO or equivalent attesting to its accuracy and the document must also be submitted in excel format so the city can easily verify the calculations.
- Lamar is required to have revenue reports for all four billboard locations verified by an independent licensed CPA every 5 years attesting to the accuracy of the total revenue collections reported during the entire five-year period.
- If there are any negative findings in the 5-year verification, the city can require an annual independent verification until there are two consecutive years of no negative findings.
- Lamar is required to maintain their internal audit process which includes a holistic audit by an independent accounting firm each year and filing of the proper forms to the SEC.
- If Lamar fails to maintain a favorable standing with the SEC or fails to provide internal verification of the reports, the city can require an annual independent verification.
- City still maintains the right to conduct its own inspection of Lamar's business and financial records relating to this agreement and is entitled to cost reimbursement if there are any negative findings.

City Impact:

- The two original agreements will be subject to independent verification which is a significant benefit to the city.
- The change from annual independent verification to the 5-year independent verification does not result in any gaps in review as the 5-year verification still requires a review of all years.
- The city is also provided with additional risk mitigation measures because of the ability to require annual review if there are any negative findings or if Lamar does not provide the required internally verified materials.

<u>Insurance and Bond Requirements:</u>

- The insurance coverage amounts and timeframes between the four agreements were inconsistent.
- The coverage timeframes for the Performance Bonds between the four agreements were inconsistent.
- Staff recommendation is to have the same requirements and coverage timeframes on all four agreements for Insurance and Performance Bonds.

City Consolidated Agreement:

- All four agreements require industry standard insurance amounts.
- Insurance and Performance Bond terms are to be July 1st through June 30th.

City Impact:

- Memorializes updated amounts for 2009 licenses.
- Improves operational efficiency for the city and Lamar.

Previous Related Council Action

On September 9, 2014, the City Council authorized the City Manager to execute C-9244 Settlement Agreement and Mutual Release pertaining to a dispute regarding how royalty payments were calculated for the 2009 agreements. On that same date, the City Council authorized the City Manager to execute C-9245 and C-9246, digital billboard license agreements, authorizing Lamar to install, operate, maintain, and repair digital advertising equipment on two additional city-owned parcels located in the vicinity of the Loop 101 corridor.

On December 22, 2009, City Council adopted a resolution authorizing the City Manager to execute and deliver a total of five (5) digital billboard license agreements.

On April 9, 2009, C-6855 and C-6855-1 were executed authorizing American to install, operate, maintain, and repair digital advertising equipment on city-owned property located in the vicinity of Glendale Avenue and the Agua Fria Freeway (Loop 101).

On March 24, 2009, City Council adopted a resolution authorizing the City Manager to enter into a digital billboard license agreement with American Outdoor Advertising, LLC.

Community Benefit/Public Involvement

Entering into this digital billboard placement license agreement has the effect of consolidating four existing agreements into one master agreement. The benefit to the public is that the city will achieve operational and management efficiencies which will make better use of city resources relating to contract management. This agreement also increases the city’s revenue generating potential over the life of the agreement by approximately $1.8 million in monthly license fees benefitting the City's General Fund which pays for a variety of services for City of Glendale residents. This agreement does not add any additional digital billboards.

Budget and Financial Impacts

This is a revenue contract, there are no expenditures associated with this agreement.