



August 6, 2019

Honorable Mayor Sam Liccardo and City
Council Members
City of San Jose
200 East Santa Clara Street
18th Floor
San José, CA 95113

Re: 4.2 19-602 Council Policy Priority #4: Electronic Billboards - Approval of Scope and Timeline
for Request for Proposals for Large Format Signage/Billboards on City-Owned Property

Dear Honorable Mayor Liccardo and City Council Members:

Outfront writes in response to an August 2, 2019 letter the City received from Clear Channel Outdoor, regarding the City's Requests for Proposal for large format signs and digital billboards on City-owned property.¹ The subject letter requested that the City drastically reorganize its approach to outdoor advertising by requiring Outfront and other sign companies to share information they have spent months compiling — i.e., potential sign locations that optimize profits while respecting City zoning goals — with competitors.

Outfront commends the City's hard work and believes it has already formulated an effective plan to implement the Council's recent changes to the City's sign and billboard policies. Accordingly, Outfront believes that the two-tiered RFP process, outlined in City staff's July 23 and the August 2, 2019 Memorandum from Councilmember Raul Peralez, Vice Mayor Chappie Jones and Councilmember Sylvia Arenas, will foster the highest quality bids and prevent unnecessary delays and risks of challenge under the California Environmental Quality Act ("CEQA"). For these reasons, Outfront strongly urges the City to reject the proposals contained in the August 2 letter.

City staff's existing approach to RFP Phase 2 is preferable because it will optimize the ability of the City to evaluate the experience and capabilities of each company, including each company's skill at identifying appropriate billboard locations. A core aspect of each bidder's competence is its capacity to identify, research, and select advertising locations that are consistent with the City's planning goals *and* that maximize revenue potential for the City. As Outfront has communicated to the City, this site selection process is proprietary, and the quality of each company's site selections is a reflection of that company's experience, initiative, and dedication to the project. If the City has concerns about transparency, it should keep in mind that, ultimately, the approval of any sign at any particular location will undergo a public vetting process, in which all details of a proposal will be day-lighted, discussed, and voted on.

The proposed course of action would also result in heightened risks of public challenge and delay during environmental review. From a CEQA perspective, it is preferable for the City to select proposals for RFP Phase 1 and RFP Phase 2 *at the same time*. Under CEQA, the City must analyze the whole of the project being proposed to the City, which includes all direct and *reasonably foreseeable* indirect changes to the environment caused by a project. (Cal. Pub. Res. Code § 21065.) CEQA also requires an analysis of a project's cumulative impacts — i.e., how project impacts will combine with other proposals being contemplated by a lead agency. (CEQA Guidelines § 15130.)

¹ We note that the City's decision to undertake an RFP process is optional, as state law does not require competitive bidding for leases of City property for less than 55 years. (See Cal. Gov. Code § 37380.)

RFP Phase 2 will result in the selection of a proposal that will add new billboards to the City at alternative sites and remove existing billboards from City streets. Under City staff's proposal, the City will ascertain the total number of billboards added and removed under Phase 2 at the same time it makes a decision on a proposal for RFP Phase 1. This will involve a fairly straightforward environmental review, allowing the City to analyze selected proposals based on the net number and location of billboards added to the City, viewed against the number and location of billboards removed.

On the other hand, if the City were to delay Phase 2, as would occur under the proposed alternative, the City Council would be faced with great uncertainties. For instance, in considering the scope of Phase 1, the City Council would be left unaware of how many billboards will be added and how many billboards will be removed during Phase 2. The reason is that, under the alternative set forth in the August 2 letter, the selection of alternative sites will undergo a separate bidding process that could take months, if not more than a year, to complete. This will leave the City's consideration of Phase 1 vulnerable to a CEQA challenge on the basis that it is not adequately defining the "whole of the project" or properly analyzing the cumulative effect of approving both Phase 1 and Phase 2. Under the existing approach, there are sign companies that are ready to propose and execute sign relocations to facilitate the City's goal of approving a comprehensive, citywide sign program in short order.

Regardless of CEQA, it is our understanding the City Council, for the sake of policy, would like to know how many total signs would be constructed in the City before approving Phase 1.

In discussions of the alternative RFP approach, the Council has been told that "competition drives the best outcome for any city when considering something like the use of city-owned property for electronic billboards." We agree. But competition should take into account everything a company brings to the table, and long-term partner should have a history of demonstrating motivation, creativity, initiative, and problem-solving. These traits are symptomatic of a committed partner, and to disincentivize these behaviors would, in the long-run, result in a non-competitive environment. In terms of financials and the City negotiating the best deal, we again ask the City to consider that, ultimately, the terms of any sign-related agreement will undergo a thorough public vetting process, in full contemplation of Phase 1 sign deals and other public-private partnerships, and which will include input from the City's economic development staff and any other experts the City retains. For companies that have already identified viable sign locations, intense scrutiny still awaits.

Finally, we understand some sign companies have asked the City to reject the sign take-down requirements for alternative sites. Doing so would eliminate an important aesthetic benefit. Under the City staff's proposed course of action, the City would incentivize the consolidation and relocation of existing billboard inventory throughout the City, which would entail the removal of numerous signs in sensitive and unsuitable locations. This consolidation, then, would result in a smaller number of modern, revenue-producing billboards in more appropriate areas of the City, with a focus downtown. For these reasons, Outfront supports the course of action proposed in the City staff's July 23 and August 2, 2019 memoranda.

Again, Outfront would like to thank the City for its hard work and diligence on this matter. Please do not hesitate to contact us if you have any questions.

Best regards,

OUTFRONT FOSTER INTERSTATE, LLC

Collin Smith

John Foster

cc: City Clerk, City of San Jose