

CITY MANAGER'S OFFICE MEMORANDUM
#36-2021

DATE: Sept. 27, 2021

TO: Honorable Mayor Meredith Leighty and City Council Members

THROUGH: Heather Geyer, City Manager 

FROM: Rupa Venkatesh, Assistant to the City Manager 

SUBJECT: CR-92 – Outdoor Promotions Fee Waiver

PURPOSE

To consider CR-92, a resolution approving a waiver of monthly payments for the Transit Shelter Agreement with Outdoor Promotions for the second, third, and fourth quarters of 2020 and all of 2021.

BACKGROUND

The City entered into a Transit Shelter Agreement with Outdoor Promotions on Sept. 28, 1995. The agreement was most recently amended on March 13, 2008, to consent to the assignment of the agreement to Outdoor Promotions, LLC. A copy of Resolution No. 08-48, which includes the initial agreement is included in Attachment 2.

Under the agreement, Outdoor Promotions can construct and maintain transit shelters on public rights of way that are mutually agreed upon by the City and the Regional Transportation District. In addition, they have full and exclusive rights to solicit commercial advertisements and receive revenues. In exchange, Outdoor Promotions pays the City a monthly percentage equal to 10% of the gross receipts derived from the advertisement sales.

Due to the COVID-19 pandemic, Outdoor Promotions is requesting that the amounts due for the second, third, and fourth quarters of 2020 and all of 2021 be waived.

Richard W. Ebersole, President of Outdoor Promotions, will attend this meeting.

BUDGET/TIME IMPLICATIONS

As of June 30, 2021, the amount of unpaid fees due to the City since April 2020 is \$7,227.49. Outdoor Promotions projects the total amount of unpaid fees through the end of December 2021 to be \$9,900.

STAFF RECOMMENDATION

Staff recommends approval of CR-92.

STAFF REFERENCE

If Council members have any questions, please contact Rupa Venkatesh, Assistant to the City Manager, at rvenkatesh@northglenn.org or 720.376.8069.

ATTACHMENTS

1. Letter from Outdoor Promotions
2. Resolution No. 08-48

CR-92 – Outdoor Promotions Fee Waiver



5100 S. College Avenue, Ste. A • Fort Collins, CO 80525 • O: 970.266.0979 • F: 970.225.1560

July 21, 2021

VIA E-mail

Ms. Heather Geyer
City Manager
City of Northglenn
11701 Community Center Drive
Northglenn, CO 80233

Re: Transit Shelter Contract Agreement

Dear Ms. Geyer,

I am writing to follow up on a call I had with Rupa Venkatesh on July 14th to discuss the status of our agreement with the city and our response to the Covid-19 pandemic over the last several months.

Outdoor Promotions is currently in default due the nonpayment of fees due according to the shelter agreement since April 2020. When Covid-19 hit, many of our local businesses that we rely on for advertising with us had to shut their doors and close and several of them cancelled their advertising contracts with us. In addition, business from our national agencies and customers virtually stopped with a very few exceptions. At that time, we made the very difficult decision to stop all payments to municipalities.

When we notified the city that we were suspending all municipal payments we had no idea how long or how much impact the pandemic would have on us as a small business. During the twelve months following April 2020, our revenues in the Denver market declined 32%. First quarter 2021 revenue was down 36% compared to 2020. Despite that, we have continued to keep our maintenance crew members employed, cleaning and maintaining the shelters the entire time. We treated our crew members as essential personnel at considerable cost. The shelters and benches were getting more damage than we have ever seen before because the busses were running intermittently, riders were spending an inordinate of time waiting, and they were getting bored and more destructive. Notwithstanding that, our crews were able to keep them well maintained and continue to do so.

As of June 30th, of this year, the amount of unpaid fees due to the city since April of 2020 is \$7,227.49. Due to the Covid-19 pandemic, the resulting major reduction in our revenues and the fact that we have continued to maintain the shelters and benches in the city, we are requesting that all unpaid fees due under the shelter agreement for the second, third and fourth quarters of 2020, and calendar 2021, be waived.

While businesses have gradually opened up, we are still facing an uphill climb to get back to where we were before the pandemic started. We appreciate your willingness to consider our proposal and look forward to a continued mutually beneficial relationship.

This plan should give us time to turn things around as small businesses recover and start advertising again. In the last few weeks, we have allowed our sales and administrative folks to return to their offices and our sales reps have started having in-person meetings with local clients and prospects. In addition, we are seeing national advertising increases this summer. We would keep you informed throughout the year as to how things are progressing and plan to revisit everything at the end of the year and see what the future looks like.

Please let me know if you have any questions. Thank you and we look forward to hearing from you.

Sincerely,

A handwritten signature in blue ink that reads "Richard W. Ebersole". The signature is fluid and cursive, with the first name "Richard" being more prominent and the last name "Ebersole" following in a similar style.

Richard W. Ebersole
President

Cc: Rupa Venkatesh
Melissa Ferris

SPONSORED BY: MAYOR NOVAK

COUNCILMAN'S RESOLUTION

RESOLUTION NO.

No. CR-52
Series of 2008

08-48
Series of 2008

A RESOLUTION APPROVING THE ASSIGNMENT OF THE CONTRACT OBLIGATIONS OF OUTDOOR PROMOTIONS, INC. TO OUTDOOR PROMOTIONS, LLC, AND AUTHORIZING THE MAYOR TO EXECUTE A CONSENT TO THE ASSIGNMENT

WHEREAS, on September 28, 1995, the City entered into a Transit Shelter Contract Agreement, attached hereto as Exhibit A, with Outdoor Promotions, LLC (the "Agreement"); and

WHEREAS, on July 23, 1998, the City, by Resolution 98-64, approved assignment of the Agreement from Outdoor Promotions, LLC to Outdoor Promotions West, LLC; and

WHEREAS, on March 25, 2004, the City, by Resolution 04-41, approved assignment of the Agreement from Outdoor Promotions West, LLC to Outdoor Promotions, Inc.; and

WHEREAS, the City is now requested to consent to assignment of the Agreement to Outdoor Promotions, LLC,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NORTHGLENN, COLORADO, THAT:

Section 1. The assignment of the Transit Shelter Contract Agreement dated September 18, 1995, a copy of which is attached hereto as Exhibit A, between the City of Northglenn, Colorado and Outdoor Promotions, Inc. as the successor in interest to Outdoor Promotions, LLC, back to Outdoor Promotions, LLC, is hereby approved and the Mayor is authorized to execute the Consent to said assignment, in the form attached hereto as Exhibit B.

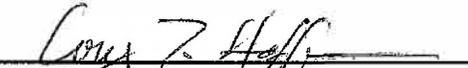
DATED at Northglenn, Colorado, this 13th day of March, 2008.


KATHLEEN M. NOVAK
Mayor

ATTEST:


JOHANNA SMALL, CMC
Acting City Clerk

APPROVED AS TO FORM:


COREY Y. HOFFMANN
City Attorney

TRANSIT SHELTER CONTRACT AGREEMENT

THIS AGREEMENT made this 28th day of September, 1995, between the CITY OF NORTHGLENN, COLORADO, a Colorado municipal corporation (the "City"), and OUTDOOR PROMOTIONS, a Colorado company ("OP").

1. CONSTRUCTION OF TRANSIT SHELTERS:

OP shall design, provide plans and specifications for, and erect transit shelters at certain bus stop locations in the City of Northglenn, Colorado, with such locations being selected in the manner set forth hereinafter. The design of such shelters shall be approved by the City Council prior to construction. The parties hereto contemplate and intend that approximately twenty (20) or more bus stop shelters shall be erected. OP will initially erect twenty (20) shelters and will only erect additional shelters with the City's approval. Twenty (20) shelters represent forty (40) advertising panels.

2. LOCATION OF BUS STOP TRANSIT SHELTERS:

OP shall erect such bus stop shelters at those locations that are mutually agreed upon by the City, OP, and the Regional Transportation District ("RTD"). Prior to erecting any such shelters at any locations, OP shall secure any necessary approval and/or zoning variance that may be required from any governmental entity, including RTD.

3. BUS STOP SHELTERS TO BE ERECTED ON THE PUBLIC RIGHT-OF-WAY OR PRIVATE PROPERTY:

All bus stop shelters shall be erected on public rights-of-way along the street frontage and shall be subject to the City's normal licensing agreement and any rules, regulations or ordinances governing the use of the City's rights-of-way. Notwithstanding the above, OP may locate bus shelters on private property, provided, however, that OP shall secure, at its own expense, written leases, authorizations, or grants of easement from the owners of such property, with such leases, authorizations, or grants of easement giving OP the right to erect and maintain such bus stop shelter on the applicable parcel of real estate.

4. MAINTENANCE OF SHELTERS:

OP agrees to make bi-weekly inspections and service stops of all such shelters, and OP shall maintain all such bus stop shelters in good condition, including, but not limited to, making all necessary repairs, repainting. OP shall replace, at its own expense, any shelters or advertising signs which have been

destroyed. After receiving notice of any unsanitary condition, state of disrepair, defect, dangerous condition or any unsightly condition existing in any bus stop shelter, OP agrees to forthwith repair, replace, or remove such shelter. If OP breaches this provision requiring the maintenance of bus stop shelters in good repair or condition, the City shall have all remedies as are available for breaches of contract, including the right to terminate the Agreement. OP shall pay all electrical expenses and service costs incurred by the use of any electrical lighting in any bus stop shelter. The City agrees to allow and grant to OP access to and the right to connect up, or tap into, any electrical service which is now or hereafter being furnished to any public street light located in a close proximity to any bus stop shelter, provided, however, OP agrees to reimburse the City for the reasonable costs of such electricity consumed in the operation of lighting of any such bus stop shelters.

5. CONTENTS OF ADVERTISEMENTS:

OP shall have the full and exclusive right to secure commercial advertisements to be displayed in all bus stop shelters and to receive any monies in revenues derived therefrom. All advertisements secured by OP shall conform to the standard codes of advertising, and OP agrees to not display advertising relating to or displaying promotion of politics, alcohol, tobacco, pornographic, religious, controversial, or immoral advertising. This provision is not severable from the remainder of this Agreement. Should this provision be challenged by OP or any third party, and should it be declared unenforceable or invalid by any court of competent jurisdiction, this Agreement will immediately terminate.

6. PAYMENTS:

OP shall pay the City a monthly percentage equal to ten percent (10%) of the gross receipts of OP during the term of this Agreement from advertisements placed by OP in or upon all bus stop shelters located on public rights-of-ways. The term "gross receipts" as used herein is defined to mean the receipts from gross rentals of all advertising placed in or upon all bus stop shelters, less any sales tax and related taxes, (excluding any state or federal corporate income tax), whether such sales of advertising be evidenced by check, credit, charge account, or other exchange. Each charge or sale upon installment or credit shall be treated as a sale for the full price in the month during which such charge or sale shall be made, irrespective of the time when OP shall receive payment therefore. Such sum shall be due and payable monthly on or before the fifteenth (15th) day of the month following collection of such receipt.

7. TERM OF AGREEMENT:

The term of this Agreement shall be for ten (10) years commencing on September 28, 1995, and terminating on September 28, 2005, provided, however, that the City, pursuant to Section 11.11 of its City Charter, may, at its pleasure, revoke OP'S right to use or occupy any portion of any street, alley or City-owned place. In the event of such a revocation, this Agreement shall terminate and the parties shall be relieved of any further obligation to perform same. OP shall have the option to extend and renew this Agreement on the same terms and conditions set forth herein for three (3) additional periods of ten (10) years, to commence on September 28, 2005, and to end September 28, 2035. Upon termination of this Agreement, OP may remove any and/or all bus stop shelters, and OP shall remove any such bus stop shelters that the City has in writing requested the removal thereof within thirty (30) days and restore its affected sites to substantially the same condition as before the construction of the shelters within ninety (90) days after the date of said termination.

8. MAINTENANCE OF BOOKS:

For the purpose of ascertaining the amount payable as provided above, OP shall keep at its premises accurate accounts of all gross advertising receipts, with these accounts to be entered in a book of permanent nature. The City shall have the right at all reasonable times to examine the books and records of OP for the purpose of determining the gross receipts.

9. PUBLIC LIABILITY INSURANCE:

OP shall, for and during the period of the erection of the bus stop shelters, and the period for which the same are to be maintained and kept in repair by OP, hold the City harmless from any and all liability whatsoever growing out of any injury or damage to property or persons because of any neglect or fault of OP, its agents or employees, in the execution of this Agreement or any matter connected therewith or related thereto, and to pay any judgment with costs which may be obtained against said City, growing out of any such injury, or damage. In connection with the above insurance and indemnification, OP agrees to provide and maintain during the life of the Agreement public liability insurance in the amount of One Million Dollars (\$1,000,000.00) or the limits of liability established by the Governmental Immunity Act, whichever is greater, covering such bus stop shelters. This policy procured by OP shall name the City of Northglenn, Colorado as an additional insured. A copy of all such current policy or policies shall be delivered to the City.

10. COOPERATION WITH RTD:

OP agrees that in performing all obligations imposed upon hereunder, including by way of example and not limitation, the selection of any proposed location for the placement of a bus stop shelter and the maintenance of any bus stop shelter, to fully cooperate with RTD. If a majority of the homeowners living wholly within a distance of five hundred (500) feet in every direction from any such shelter sign a written petition requesting the removal of such shelter, OP shall remove such shelter forthwith upon receipt of a written request by the City.

11. DEFAULTS:

If either OP or the City fails, neglects or refuses to perform any of its covenants, terms and conditions when and as required under this Agreement, or if OP fails, neglects or refuses to make any payment under this Agreement when due, each party shall have such remedies as are available at law or in equity. OP shall have thirty (30) working days from the posting of any such notice to correct any default in the payment of any monies agreed to be paid upon under this Agreement, and upon failure to correct and cure such default in the payment of monies, the City shall have the right to terminate this Agreement.

CITY OF NORTHGLENN

By: *D.L. Parsons*
D.L. Parsons, Mayor

ATTEST:

Joan M. Baker
Joan M. Baker, City Clerk
Deputy

[SEAL]

APPROVED AS TO FORM:

Herbert C. Phillips
Herbert C. Phillips, City Attorney

OUTDOOR PROMOTIONS

By: *Gary D. Young*
Gary D. Young, President/CEO

ATTEST:

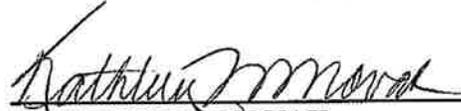
Julie Johnson
Julie Johnson, Office and Personnel Manager

CONSENT

The City of Northglenn hereby approves of, and consents to, the assignment to Outdoor Promotions, LLC, a Delaware limited liability company ("Assignee"), by Outdoor Promotions, Inc. a Colorado corporation and parent company of Assignee ("OPI"), of its rights, title, interests and obligations in and to the Agreement dated, September 28, 1995, by and between OPI and the City of Northglenn, for the installation and maintenance of certain transit shelters and benches and all rights to solicit advertising on them under the Agreement with the City of Northglenn.

Dated this 13th day of March 2008.

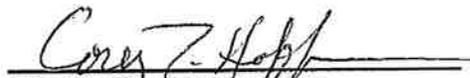
CITY OF NORTHGLENN, COLORADO


KATHLEEN M. NOVAK
Mayor

ATTEST:


DIANA L. LENTZ, CMC
City Clerk

APPROVED AS TO FORM:


COREY Y. HOFFMANN
City Attorney

SPONSORED BY: MAYOR LEIGHTY

COUNCILMAN'S RESOLUTION

RESOLUTION NO.

No. CR-92
Series of 2021

Series of 2021

A RESOLUTION WAIVING TRANSIT SHELTER AGREEMENT PAYMENTS FOR OUTDOOR PROMOTIONS, LLC

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NORTHGLENN, COLORADO, THAT:

Section 1. City Council hereby waives the shared advertising revenue payments due to the City of Northglenn from Outdoor Promotions, LLC required under Section 6 of the Transit Shelter Contract Agreement for the months of April through December 2020 and January through December 2021.

DATED at Northglenn, Colorado, this ____ day of _____, 2021.

MEREDITH LEIGHTY
Mayor

ATTEST:

JOHANNA SMALL, CMC
City Clerk

APPROVED AS TO FORM:

COREY Y. HOFFMANN
City Attorney