

Meeting Date
10/07/14



AGENDA	
Section	CONSENT
Item No.	II.B.5

AGENDA REPORT
BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

SUBJECT:	Billboard Lease Agreement # 13728 between Clear Channel Outdoor, Inc. and Brevard County, located at Scottsmoor Flatwoods Sanctuary-District 1
DEPT/OFFICE:	Parks and Recreation Department Environmentally Endangered Lands (EEL) Program

Requested Action:

It is requested that the Board of County Commissioners (BoCC) approve billboard lease #13728 between Clear Channel Outdoor, Inc. and Brevard County.

Summary Explanation & Background:

The existing billboard lease on Scottsmoor Flatwoods Sanctuary with Clear Channel Outdoor, Inc. was approved by the BoCC on October 8, 2013. On October 7, 2014, the lease is due to terminate.

This request is for the Board of County Commissioners to approve a new lease between Clear Channel Outdoor, Inc. and Brevard County that includes a term of one (1) year, commencing on October 7, 2014. At the end of the one year term, the lease will automatically terminate, unless renewed by the County.

- The new lease will collect the same amount of income as the existing lease, which is \$4,000, payable in twelve (12) equal monthly installments, beginning on October 7, 2014.
- The new lease contains the same terms as the existing lease.

Fiscal Impacts:


FY 14/15 - The fiscal impact of this action is estimated to generate an additional revenue collection of \$4,000 to the EEL budget.

FY 15/16- The fiscal impact of this action is estimated to generate an additional revenue collection of \$83.25 to the EEL budget.

Name: Mike Knight, EEL Program Manager
Phone: 321-255-4466
mike.knight@brevardparks.com

Clerk to the Board Instructions: Please return two (2) fully executed originals to the EEL Program office.

Exhibits Attached: Three (3) originals of Lease #13728

Contract /Agreement (If attached): Reviewed by County Attorney		Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>	PR	<input type="checkbox"/>
County Manager	Assistant County Manager, Mel Scott	Department Director, Parks & Recreation, Jack Masson					
Stockton Whitten	Assistant County Manager, Venetta Valdengo						



Tammy Etheridge, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001
Fax: (321) 264-6972

October 8, 2014

MEMORANDUM

TO: Jack Masson, Parks and Recreation Director

RE: Item II.B.5., Billboard Lease Agreement #13728 with Clear Channel Outdoor, Inc. for Scottsmoor Flatwoods Sanctuary

The Board of County Commissioners, in regular session on October 7, 2014, executed Billboard Lease Agreement #13728 with Clear Channel Outdoor, Inc. for the billboard located at Scottsmoor Flatwoods Sanctuary. Enclosed are two fully-executed copies of the Agreement.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Etheridge

Tammy Etheridge, Deputy Clerk

Encls. (2)

cc: Contracts Administration
EEL Program Manager
Finance
Budget

**BREVARD COUNTY
BOARD OF COUNTY COMMISSIONERS**

PROJECT ADMIN
CLERK'S OFFICE

INITIAL CONTRACT FORM


SECTION I

The following information must be completed on all new contracts submitted to the Board.

1. Contractor: SFS-CLEAR CHANNEL LEASE 2014	
2. Fund/Account #: 1610/300114	Division Name: EEL PROGRAM
4. Contract Description: SFS-CLEAR CHANNEL LEASE 2014	
5. Contract Monitor: JENNY ASHBURY	6. Mail Stop #: 74
7. Dept./Office Director: JACK MASSON	8. Contract Type:
ACTION DATE: PLEASE CALL JENNY 321-369-8169 WHEN ORIGINALS AND AO 29 ARE READY	ACTION REQUIREMENT: Need complete data

SECTION II

The following departments must approve all contracts submitted to the Board:

<u>COUNTY OFFICE</u>	<u>APPROVAL</u>		<u>INITIALS</u>	<u>DATE</u>
	<u>YES</u>	<u>NO</u>		
User Agency	x		MK	09/18/14
Risk Management	X		 GV	9/22/14
County Attorney				

If any office denies approval, the package will be returned immediately to the User Agency.

NOTE: This form should be attached to all new contracts being submitted to the Board for approval. After the contract has been approved, the contract package, including this form, will go to the Clerk to the Board. The Clerk's office will return the Initial Contract Form to department for contract to be entered into the Contract Management System. See AO-29 for additional information.

AO-29: EXHIBIT I

**BREVARD COUNTY
BOARD OF COUNTY COMMISSIONERS**

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Risk Management			<u> </u>	<u> </u>
County Attorney	<u> </u>	<u> </u>	<u> </u>	<u> </u>

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AO-29: EXHIBIT I



LEASE # 13728
BOARD #3160
COUNTY Brevard

Daytona Beach/Melbourne
Lease Agreement

1. This Lease Agreement ("Lease") # **13728** is effective **UPON THE DATE OF APPROVAL BY THE COUNTY COMMISSION**, and entered into between **Brevard County Board of Commissioners** ("Landlord") and CLEAR CHANNEL OUTDOOR, INC., a Delaware Corporation ("Tenant"). Landlord hereby leases to Tenant the real estate commonly known as **I-95 ES 1.3mi S/O CR 5A CCO Display 3160** in the County of **Brevard** in the State of **Florida** ("Property"). The Property is leased for the purpose of maintaining, operating, posting, painting, repairing, or removing an existing outdoor advertising structure, including, , panels, the existing sign, copy and any equipment and accessories as Tenant may place thereon (collectively, the "Structure"). The Structure may not be upgraded, and must remain as a wooden pole structure as it is currently designed. The Structure may not include any lighting. Access to the billboard will be restricted to the access road identified on the attached map marked Exhibit A__.

2. This Lease shall be in effect for a term of one (1) year, commencing on **The date of approval by the County Commission**. At the end of this initial term, the lease will automatically terminate unless renewed by the Landlord.

3. This Lease rent shall commence at the rate of **\$4,000.00 for one year payable in twelve (12) equal monthly installments beginning upon approval by the County Commission**.

Tenant shall not license or otherwise allow to be displayed on the Structure any advertising related to alcohol, tobacco, firearms, adult entertainment, other churches or religious organizations or any depiction of violence, sex (or of a sexual nature), politically inflammatory or offensive speech. Tenant further agrees not to display advertising that Landlord deems offensive to the moral standards of the community, or (b) is false, misleading or deceptive, or (c) is in violation of applicable laws. Tenant shall defend, indemnify and hold Landlord harmless from, any and all losses, reasonable costs, liabilities, claims and demands of any kind or nature arising from, out of or in connection with the style, character, content or subject matter displayed on the property.

4. This Lease shall continue in full force and effect for a term of 1 year. At the end of the Lease term, the Lease will automatically terminate as noted in paragraph 2 above. If ownership of the Property changes, Landlord shall promptly notify Tenant of such change. Prior to transferring ownership of the Property, Landlord shall furnish the new owner with a copy of this Lease.

If either party fails or refuses to perform any of the provisions of this Agreement or otherwise fails to timely satisfy the contract provisions, either may notify the other party in writing of the nonperformance and terminate the Agreement or such part of the Agreement as to which there has been delay or a failure to properly perform. Such termination is effective upon the other party's receipt of the Notice of Termination.

5. Tenant is the owner of the Structure and has the right to remove the Structure at any time or within 72 hours following the termination of this Lease. If for any reason, Tenant's Structure is removed, or destroyed, all rent payments shall cease until the Structure is rebuilt, if the Structure can lawfully be rebuilt. If the Structure is removed for any reason, all portions of the Structure must be promptly removed from the property. Tenant has the sole right to make any necessary applications with, and obtain permits from, governmental entities for the construction, use and maintenance of the Structure, and Landlord hereby grants Tenant a limited power of attorney for this purpose. All such permits shall remain the property of Tenant. Neither Landlord or Tenant shall have any obligation to pursue any zoning matter or to continue to maintain any permit. Any such action shall be at Tenant's option.

This Lease does NOT allow for the installation of an upgraded billboard structure, including the type of sign surface area. This Lease is limited to the existing wood pole structure only, and only allows for maintenance or

repairs that are consistent with its current design. Nothing in this Lease shall constitute or be construed as a waiver of any county ordinances.

The Structure shall be maintained and/or repaired at Tenant's sole expense in accordance with all applicable local, state and federal codes and regulations and in a manner consistent with Landlord's primary use of the property on which the Structure is located

6. Landlord and Landlord's tenants, agents, employees or other persons acting on Landlord's behalf, shall not place or maintain any object on the Property or any neighboring property owned or controlled by Landlord which, would unreasonably obstruct the view of the advertising copy on the Structure. If Landlord fails to remove the obstruction within five (5) days after notice from Tenant, due to the fact that it would be inconsistent with the Site Specific Management Plan or the Conservation Goals for the property, Tenant may cancel this Lease, remove the Structure, and receive all pre-paid rent for any unexpired term of this Lease. Tenant may not trim any trees and vegetation currently on the Property and on any neighboring property owned or controlled by the Landlord without approval from Landlord.

7. If, in Tenant's sole opinion: (a) the view of the Structure advertising copy becomes entirely or partially obstructed, (b) the Property cannot safely be used for the maintenance of the Structure for any reason; (c) the Property becomes unsightly; (d) there is a diversion, reduction or change in directional flow of traffic from the street or streets currently adjacent to or leading to or past the Property; (e) the Structure value for advertising purposes is diminished; (f) Tenant is unable to obtain or maintain any necessary permit for the erection, use and/or maintenance of the Structure; or (g) the Structure use is prevented or restricted by law, or Tenant is required by any governmental entity to reduce the number of billboards operated by it in the city, county or state in which the Structure are located; then Tenant may immediately cancel this Lease and receive all pre-paid rent for any unexpired term of this Lease.

8. If the Structure or the Property, or any part thereof, is condemned by proper authorities; taken by inverse condemnation, whether permanently or temporarily; or any right-of-way from which the Structure is visible is relocated, Tenant shall have the right to terminate this Lease upon not less than thirty (30) days' notice and to receive all pre-paid rent for any unexpired term of this Lease. Tenant shall be entitled to all compensation and other remedies provided by law, including, without limitation, just compensation for the taking of the Structure and Tenant's leasehold interest in this Lease, and/or relocation assistance. Landlord shall assert no rights in such interests, with the exception of the right to claim damages for the loss of income associated with termination of the lease. If condemnation proceedings are initiated, Landlord shall use its best efforts to include Tenant as a party thereto. If the property is transferred to the State of Florida for the purposes of financial reimbursement for future land acquisitions, the Landlord reserves the right to terminate the lease with thirty (30) days written notice so as not to prevent the transfer of the property to the State.

9. During prescribed burn operations, Landlord's fire crews will take all necessary steps to protect the billboard structure from fire damage. Burn operations are weather dependent. Landlord's fire crews will notify Tenant at least two days in advance of a prescribed fire. In the event the sign material is not removed, the prescribed fire operations will not be delayed and Landlord will not be responsible for any sign material damage. Tenant's maintenance of the access roadway (fill, grading, vegetation trimming, mowing, etc.), must be approved in writing, in advance, by the EEL Program Land Manager. Tenant is responsible for removing any and all debris associated with its sign structure or daily operations of such.

10. Landlord represents that it is the owner (or owner's authorized agent) of the Property and has the authority to enter into this Lease.

11. NOTICE and PAYMENTS: Notice and Payments under this agreement shall be given to the Landlord by certified mail or hand delivery as follows: Brevard County Environmentally Endangered Lands Program, 91 East Drive, Melbourne, FL 32904, Attention Program Manager, and Notice shall be given to Tenant by certified mail or hand delivery as follows: Clear Channel Outdoor, 2890 Harper Road, Melbourne, FL 32904.

12. Tenant shall indemnify and hold Landlord harmless from all injuries to the Property or third persons caused by Tenant, Tenant's employees, agents, licensees and contractors. To the extent allowed by law, Landlord agrees to indemnify and hold harmless Tenant against all claims, damages, losses, and expenses, including attorney's fees, arising out of or resulting from Landlord's use of the Property, if such claims,

damages, losses, or expenses are caused solely by the negligent or wrongful acts of Landlord. Nothing contained in this Agreement shall be construed as a waiver of Landlord's right to sovereign immunity under Section 768.28, *Florida Statutes*, or other limitations imposed on Landlord's potential liability under state or federal law.

13. This Lease is binding upon the heirs, assigns and successors of both Landlord and Tenant. Tenant shall have the right to assign or sublet this Lease, subject to the written approval of Landlord, which will not be unreasonably withheld.

14. Any notice to any party under this Lease shall be in writing by certified or registered mail, and shall be effective on the earlier of (a) the date when delivered and receipted for by a person at the address specified within this Lease, or (b) the date which is three (3) days after mailing (postage prepaid) by certified or registered mail, return receipt requested, to such address; provided that in either case notices shall be delivered to such other address as shall have been specified in writing by such party to all parties hereto prior to the notice being delivered.

15. In the event of any legal action to enforce the terms of this Lease each party shall bear its own attorney's fees and costs.

16. Neither Landlord nor Tenant shall be bound by any terms, conditions or oral representations that are not set forth in this Lease. This Lease represents the entire agreement of Tenant and Landlord with respect to the Structure and the Property and supercedes any previous agreement. Landlord hereby grants Tenant all rights necessary to record a memorandum of this Lease without Landlord's signature, including a limited power of attorney for such purpose.

17. In the performance of this Lease, Tenant shall keep books, records, and accounts of all activities, related to this Agreement, in compliance with generally accepted accounting procedures. Books, records and accounts related to the performance of this agreement shall be open to inspection during regular business hours by an authorized representative of Landlord and shall be retained by Tenant for a period of three (3) years after termination of the agreement. All records, books and accounts related to the performance of this Lease shall be subject to the applicable provisions of the Florida Public Records Act, Chapter 119, Florida Statutes

18. This Lease shall be deemed to have been executed and entered into the State of Florida and this Agreement, and any dispute arising hereunder, shall be governed, interpreted and construed according to the laws of the State of Florida.

19. Venue for any legal action brought by any party to this Agreement to interpret, construe or enforce this agreement shall be in a court of competent jurisdiction in and for Brevard County, Florida, and any trial shall be non-jury.

20. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

Clear Channel Outdoor, Inc.

By: [Signature] Date: 9-18-14
Larry McIntyre

Its: President

[Signature] Date: 09/18/14
Witness

[Signature] Date: 9/18/14
Witness

Branch Address: 2890 Harper Road, Melbourne, FL 32904; Tel No 321-726-6611

**Board of County Commissioners
Of Brevard County, Florida**

Attest: [Signature]
Scott Ellis, Clerk of Court

[Signature]
Mary Bolin Lewis, Chairperson
As approved by the Board on
10-7-2014

Reviewed for legal form and content:

Christine Lepore, Assistant County Attorney

Clear Channel Outdoor, Inc.

By: _____ Date: _____
Larry McIntyre

Its: President

Date: _____
Witness

Date: _____
Witness

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Of Brevard County, Florida**

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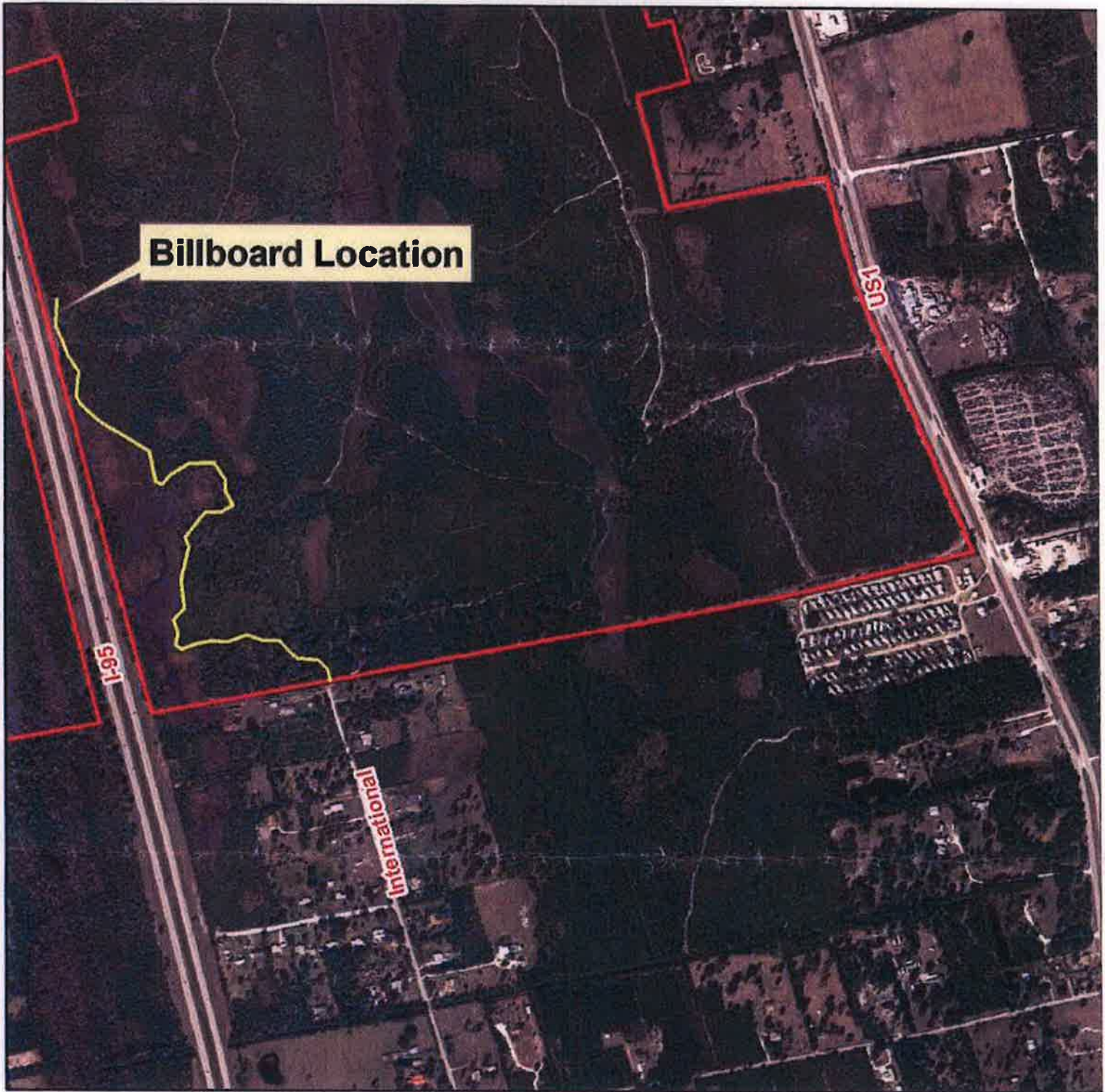
10-7-2014

Reviewed for legal form and content:





Christine Lepore, Assistant County Attorney

Exhibit A



Legend

-  Sanctuary Boundary
-  Proposed Access

