

BILLBOARD RELOCATION AGREEMENT

THIS BILLBOARD RELOCATION AGREEMENT (“Relocation Agreement”) is entered into as of this ____ day of ____, 2018, by and between THE PEOPLE OF THE STATE OF CALIFORNIA, acting by and through the Department of Transportation (“Caltrans”) and LAMAR CENTRAL OUTDOOR, LLC, a Delaware limited liability company (“Lamar”). Hereafter, Caltrans and Lamar are sometimes individually referred to as “Party” or collectively as the “Parties.”

RECITALS

WHEREAS, Caltrans engaged in a highway improvement project for the reconstruction and expansion of the Interstate 215 Freeway (“I-215 Freeway”) within portions of the cities of San Bernardino, Colton, and Riverside, known as the I-215 Bi-County HOV Interchange Public Improvement Project (“Project”); and

WHEREAS, Lamar owned and operated one (1) double-faced, illuminated outdoor advertising display structure upon a parcel of real property .2 miles south of I-10 Freeway, Post Mile 3.85R, State permit number 40795, **Caltrans Parcel _____**, in the City of Colton (“Subject Billboard”). The Subject Billboard is further described in **Exhibit “A,”** hereto, and

WHEREAS, The Subject Billboard was located within the right-of-way necessary for completion of the Project and, therefore needed to be removed; and

WHEREAS, on March 22, 2012, Lamar and the San Bernardino Associated Governments (“SANBAG”) entered into that certain Agreement for Possession and Use, whereby Lamar agreed to the removal of the Subject Billboard and that SANBAG could take early possession of the property in exchange for payment of the value of the structural fixtures and equipment; and agreed to continue negotiations regarding the totality of the compensation owed to Lamar. Lamar subsequently removed the Subject Billboard; and

WHEREAS, Section 5443.5 of the *California Outdoor Advertising Act, Business & Professions Code*, permits the California Department of Transportation to allow a legally permitted display situated on property being acquired for a public use to be relocated, subject to the approval, among other things, of the jurisdiction in which the display will be relocated so long as the relocation would not cause a reduction in federal-aid highway funds or increase the number of nonconforming displays within the jurisdiction of a governmental entity; and

WHEREAS, on April 10, 2017, the San Bernardino County Transportation Authority (“SBCTA”) and Lamar entered into a Release and Settlement Agreement whereby SBCTA agreed to pay Lamar for lost profits due to the removal of the Subject Billboard through July 31, 2017. SBCTA and Lamar acknowledged that Lamar intended to relocate the Subject Billboard; and

WHEREAS, Lamar intends to relocate the Subject Billboard to another location in San Bernardino County adjacent to a landscaped segment of the I-210 freeway in the City of Rialto at post mile 15.5 in lieu of receiving compensation for future lost advertising revenue and damages for the taking of the Subject Billboard (“Relocated Billboard”) separate and apart from, and not including, compensation Lamar received pursuant to the executed Agreement for Possession and Use and Release and Settlement Agreement; and

WHEREAS, section 5412 of the *California Outdoor Advertising Act* codified at California Business and Professions Code section 5200 et seq. encourages local entities and display owners to enter into relocation agreements which allow local entities to continue development in a planned manner without expenditure of public funds while allowing the continued maintenance of private investment and a medium of public communication;

WHEREAS, the City of Rialto is willing to accept a relocated V-shaped structure on the I-210 freeway upon APN# _____, at post mile 15.5 as described in **Exhibit B** (“Relocation Property”), and Lamar and all affected public entities are willing to surrender additional outdoor advertising permits on landscaped segments as set forth in **Exhibit C**, including ODA permits 17042, 17045, 35312, and S08-0176; and

WHEREAS, the City of Rialto has approved the relocation through the approval of a Billboard Removal and Relocation Agreement (“City Relocation Agreement”) as set forth in City Council Resolution No. _____, adopted _____, 2018, attached hereto as **Exhibit D**; and

WHEREAS, the Relocated Billboard will be placed adjacent to a landscaped freeway, on parcels for which the State of California would be prohibited from granting an outdoor advertising permit, but for the removal of the legal nonconforming displays listed above which are all adjacent to landscaped freeways;

WHEREAS, Caltrans is willing to issue the permits for the Relocated Billboard, provided that as partial consideration for issuing the permits, the State does not assume any potential liability to pay compensation for the relocated outdoor advertising displays; and

WHEREAS, Caltrans is willing to cooperate with Lamar and the City of Rialto regarding the relocation of the Subject Billboard to the Relocation Property, including with regard to the issuance of the requisite permits therefor; and

WHEREAS, Caltrans and Lamar now wish to enter into this Relocation Agreement to memorialize the terms and conditions upon which Lamar will have the right to remove the Subject Billboard and relocate it to the Relocation Property, subject to the terms, conditions and provisions of the Outdoor Advertising Permit, applicable law and this Relocation Agreement.

OPERATIVE PROVISIONS

NOW, THEREFORE, in consideration of the foregoing Recitals, which Recitals are incorporated herein by reference, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in consideration of the mutual covenants set forth herein, the Parties hereby agree as follows:

1. Term of Agreement. Unless terminated earlier as provided in this Relocation Agreement, this Relocation Agreement shall continue in full force and effect for so long as any obligation is owed by either Party pursuant to the terms of this Relocation Agreement.

2. Effective Date. This Relocation Agreement shall become binding and effective upon execution by Lamar and Caltrans.

3. Permits. As a condition precedent to relocating the Subject Billboard to the Relocation Property, Lamar shall, at its sole cost and expense, submit Two (2) outdoor advertising permit applications along with accompanying fees to Caltrans for the Relocated Billboard adjacent to I-210 at post mile 15.5. As part of its outdoor advertising permit applications, Lamar shall include copies of any and all permits relating to the installation of the Relocated Billboard to the extent required by the Outdoor Advertising Act. All work within Caltrans's ROW, if any, shall be subject to the issuance of an encroachment permit issued by the Caltrans District 8 Encroachment Permits Office and all terms and conditions, including attached general provisions and special provisions. The Outdoor Advertising Program is separate from the Encroachment Permits Office in District 8.

4. Future Projects. Lamar waives and release any claim for compensation against the State if the Relocated Billboard is subsequently acquired at any time for a public project of the State and/or if a project of the State otherwise interferes with the utility or value of the Relocated Billboard, provided that the Relocated Billboard is again relocated at no expense to Lamar. As used herein, the term "compensation" includes compensation or benefits payable under the Eminent Domain Law (including goodwill benefits), the Uniform Relocation Assistance Act, the Outdoor Advertising Act, inverse condemnation, or any legal or judicial theory that may give rise to a claim for compensation. The term "State" includes all projects funded in whole, or in part, through any State Transportation or State Highway Account funds.

If the Relocated Billboard is acquired by the State, or a project of the State otherwise interferes with the utility or value of the Relocated Billboard, the State shall not be obligated to pay Lamar monetary compensation, provided that the State allows Lamar to again relocate the Relocated Billboard on landscaped or non-landscaped freeways anywhere in the State's jurisdiction where placing new displays would not subject the State to a loss of federal-aid highway funds pursuant to 23 U.S.C. section 131, at no additional cost to Lamar.

5. Caltrans Cooperation. Upon receipt of complete outdoor advertising applications, Caltrans shall issue 2 outdoor advertising permits required for the placement of the Relocated Billboard (including as Digital Displays) on the Relocation Property. Caltrans shall provide Lamar with any documentation it requests in order to obtain the issuance of all discretionary and non-discretionary permits from local agencies. Encroachment permits for the temporary occupation of state-owned rights of way for construction or maintenance shall be handled by the District 8 encroachment permits office.

6. Forbearance. Lamar hereby covenants and agrees to forbear the receipt of any compensation for future lost advertising revenue and other damages resulting from the removal and loss of the Subject Billboard. This forbearance does not include compensation previously received by way of the Agreement for Possession and Use dated March 22, 2012, and Release

and Settlement Agreement dated April 10, 2017, which was supported by separate consideration. This forbearance is further expressly conditioned upon Caltrans' cooperation in securing permits from other entities, including the District 8 encroachment permits office, if necessary and the issuance of an outdoor advertising permit for the Relocated Billboard at the location identified above and in **Exhibit B**. The forbearance of compensation and associated costs from Caltrans shall become effective upon the issuance of an outdoor advertising permit.

7. General Provisions.

a. Waiver. The waiver by any Party of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of any other term, covenant or condition, or of any subsequent breach of the same term, covenant or condition.

b. Notices. All notices and other communications required or permitted to be given hereunder shall be in writing and shall be sent by: (a) certified or registered mail, postage pre-paid, return receipt requested, (b) personal delivery, or (c) a recognized overnight carrier that provides proof of delivery, and shall be addressed as follows:

If to Lamar:

Lamar Central Outdoor
Attn:
449 East Parkcenter Circle South
San Bernardino, CA 92408

With a Copy to:

Theodore K. Stream, Esq.
Stream Kim Hicks Wragge & Alfaro, PC
3403 Tenth Street, Suite 700
Riverside, CA 92501

If to Caltrans:

Caltrans HQ Sacramento
Attn: Velessata Kelley, Office Chief of ODA
1120 N Street, MS-36
Sacramento, CA 95814

With a Copy to:

California Department of Transportation,
Legal Division
P.O. Box 1438 – MS 57
Sacramento, CA 95812-1438

Notices shall be deemed effective upon receipt or rejection only.

c. Authority to Enter Agreement. All Parties have the requisite power and authority to execute, deliver and perform the Relocation Agreement. All Parties warrant that the individuals who have signed the Relocation Agreement have the legal power, right, and authority to make this Relocation Agreement and bind each respective Party.

d. Amendment/Modification. No supplement, modification, or amendment of this Relocation Agreement shall be binding unless executed in writing and signed by all Parties.

e. Attorneys' Fees. In the event of litigation between the Parties arising out of this Relocation Agreement, the prevailing Party shall be entitled to recover its reasonable attorneys' fees and other costs and expenses incurred, including attorneys' fees on appeal, and all

other reasonable costs and expenses for investigation of such action, including the conducting of discovery, in addition to whatever other relief to which it may be entitled.

f. Time is of the Essence. Time is of the essence of each and every provision of this Relocation Agreement.

g. Integration. This Relocation Agreement embodies the understandings between the Parties related to the Relocation of one V-shaped display to the City of Rialto, County of San Bernardino, adjacent to the I-210 Freeway.

h. Governing Law. This Relocation Agreement shall be interpreted and enforced according to, and the Parties' rights and obligations governed by, the domestic law of the State of California, without regard to its laws regarding choice of applicable law.

i. Severability. If any provision of this Relocation Agreement is held to be invalid, the balance shall remain binding upon the Parties. This Relocation Agreement shall be interpreted in accordance with its plain meaning, and not in favor of or against either Party.

j. Counterparts. This Relocation Agreement may be signed in counterparts, each of which shall constitute an original.

IN WITNESS WHEREOF, the Parties have caused this Relocation Agreement to be executed on the date set forth below.

“CALTRANS”:

CALIFORNIA DEPARTMENT OF
TRANSPORTATION

By: _____
Velessata Kelley, Office Chief of ODA

APPROVED AS TO FORM:

By: _____

“LAMAR”

LAMAR CENTRAL OUTDOOR

By: _____

By: _____

Its: _____

By: _____

By: _____

Its: _____

APPROVED AS TO FORM:

By: _____

THEODORE K. STREAM

Exhibit “A”

DESCRIPTION OF

BILLBOARD

1. One (1) double-faced illuminated outdoor advertising structure, located .2 miles south of Interstate 10 Freeway, Post Mile 3.85R, State Outdoor Advertising Permit #40795, in the City of Colton, California.

Exhibit “B”

RELOCATED BILLBOARD

1. One (1) double-faced illuminated outdoor advertising structure, located north of Interstate 210, San Bernardino County Assessor’s Parcel Number , , Mile Post 15.5, in the City of Rialto, California.

Exhibit “C”

ADDITIONAL RELINQUISHED ODA PERMITS

1. Permit No. 17042, Post Mile 7.01, State Route 60, Riverside County.
2. Permit No. 17045, Post Mile 14.60R, State Route 60, Riverside County.
3. Permit No. 35312, Post Mile 3.80L, State Route 60, Riverside County.
4. Permit No. 508-0176, Post Mile 3.80L, State Route 60, Riverside County.

Exhibit “D”

CITY RELOCATION AGREEMENT APPROVAL