

## **BILLBOARD RELOCATION AGREEMENT**

**THIS BILLBOARD RELOCATION AGREEMENT** (“Relocation Agreement”) is entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2019, by and between the CITY OF RIALTO, a public body, corporate and politic (the “City”), and LAMAR CENTRAL OUTDOOR, LLC, a Delaware limited liability company (“Lamar”). Hereafter, the City and Lamar are sometimes referred to as “Party” or collectively as the “Parties.”

### **RECITALS**

**WHEREAS**, Lamar owned and operated seven (7) double-faced, illuminated Billboards in the City, which were removed in support of Conditional Development Permit No. 538 allowing replacement of a wooden billboard along the 10 Freeway with a digital display billboard;

**WHEREAS**, Lamar now owns and operates one (1) double-faced illuminated Billboard on Foothill Boulevard it acquired from General Outdoor Advertising after the approval of Conditional Development Permit 538, which it agrees to remove in exchange for the entitlement to replace some of the Removed Billboards (defined below) at other City locations;

**WHEREAS**, Lamar desires to relocate three (3) of the Removed Billboards to more appropriate locations within the City, incorporating changeable message digital displays;

**WHEREAS**, the California Outdoor Advertising Act, Business and Professions Code, Section 5200, *et. seq.* (in particular Bus. & Prof. Code Section 5412), 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 communications;

**WHEREAS**, the California Outdoor Advertising Act (in particular Bus. & Prof. Code Section 5412) specifically empowers, and encourages, local agencies to enter into relocation agreements on whatever terms are agreeable to the City and display owners and to adopt ordinances and resolutions providing for relocation of displays;

**WHEREAS**, the City desires to maintain an overall reduction of the number of Billboards within the City thereby reducing visual clutter and improving the aesthetic appearance of the City;

**WHEREAS**, the City and Lamar now wish to enter into an agreement to memorialize the terms and conditions upon which Lamar will have the right to relocate and reconstruct its Billboards.

## **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. Description of Project. Lamar has removed or will remove eight (8) Billboards containing a total of sixteen (16) display panels on or before the Commencement Date for the first lease subject to this Relocation Agreement, existing in various locations throughout the City as further described in Exhibit "A," attached hereto and incorporated herein by reference ("Removed Billboards"). Each of the Removed Billboards held the status of legal non-conforming use as the term is defined by Section 18.60.010 of the Rialto Municipal Code. Lamar shall be entitled to relocate two (2) of the Removed Billboards to locations specifically described and depicted in Exhibit "B," attached hereto and incorporated herein by reference ("Relocated Billboards"). Lamar shall further be entitled to construct each of the Relocated Billboards with a two-panel changeable message digital display. Failure by Lamar to remove the aforementioned eight (8) billboards within the time described herein shall cause this Relocation Agreement to terminate automatically on the day following the time such action is required to be taken and without the need for City to take any further action or provide notice to Lamar of such termination.

The City Council has found that this Agreement is in the public interest of the City and its residents. Adopting this Agreement constitutes a present exercise of the City's police power, and this Agreement is consistent with the City's General Plan and the City of Rialto Municipal Code. This Agreement is intended to achieve a number of the City's objectives including the reduction of visual clutter by reducing the number of billboards located within the City, without expenditure of public funds, thereby improving the City's appearance as a whole, while accommodating continued investment in the City and preservation of expectations of developers and property owners and the use of outdoor advertising as an important medium of communication.

3. City Approvals. Within sixty (60) days of the approval of this Agreement, Lamar shall, at its sole cost and expense, submit a sign permit application(s), with accompanying fees, to the City Planning Department for the development of the Relocated Billboards. Lamar's ability to construct and install the Relocated Billboards are expressly conditioned upon City approval of sign permits. Lamar further acknowledges that there may be other permits and approvals, including, but not limited to, building permits, that Lamar must obtain from City prior to construction and installation of the Relocated Billboards.

4. Revenue Sharing. As material consideration for City allowing Lamar to construct and operate the Relocated Billboards, Lamar shall enter into property leases and agree to pay to City a negotiated base rental amount or a percentage rent equal to not less than twenty-

five (25%) of the gross advertising revenue generated by the Relocated Billboards located on City property. The lease agreements negotiated between the Parties shall provide that such revenue sharing shall constitute Lamar's rental obligation under the lease.

5. Public Service Messages. As further consideration for the City's Agreement to allow Lamar to develop the Relocated Billboards, City shall be entitled to use of advertising space on the Signs on an "as available" basis; provided, however, that messages placed by City on the Signs must be limited to non-profit, public service messages (hereinafter "Public Service Messages"). The term Public Service Message shall expressly exclude any message advertising any business, company or event where such message would have a direct and tangible economic benefit to a private, for-profit company.

For all Public Service Messages, City shall be responsible for providing Lamar with the advertising copy. Lamar shall not be responsible for producing or substantially modifying any advertising copy for a Public Service Message, and shall have 48 hours after receipt and approval of advertising copy to display the Public Service Message.

6. Indemnity for Negligence. Lamar, as a material part of the consideration to be rendered to the City under the Agreement, shall indemnify the City, agents and employees and any successors or assigns to the City's rights under this Agreement (collectively "the City Parties") and shall hold and save them and each of them harmless from, any and all actions, suits, claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities (hereinafter "Indemnified Claims and Liabilities") that may be asserted or claimed by any person, firm or entity arising out of or in connection with or use and maintenance of the Relocated Billboards by Lamar, its officers, agents and employees (collectively "Lamar Parties"), to the extent any such Indemnified Claims and Liabilities arise from (a) the negligent acts or omissions of Lamar hereunder, or (b) Lamar's negligent performance of or failure to perform any term or covenant of this Agreement, and in connection with the foregoing indemnity:

7. Indemnity for Challenges to the Billboard Relocation Agreement and/or City Approval or Denial of Permits. Lamar shall also indemnify, defend and hold harmless the City, from any and all loss, liability, fines, penalties, forfeitures, costs and damages and from any and all claims, demands and actions in law or equity (including attorneys' fees and litigation expenses) (collectively, "Action") by any person or entity, directly or indirectly arising or alleged to have arisen out of or in any way related to the City approval of this Billboard Relocation Agreement or any future City approvals, denials or actions regarding a sign permit for the relocation of billboards covered by this Billboard Relocation Agreement, including but not limited to claims under the California Constitution or the United States Constitution. The City shall have the right to choose, in its sole discretion, legal counsel to represent the City in any such Action. Lamar shall pay to the City all costs (including, court costs) and attorneys' fees incurred by the City in any such Action. Lamar shall also pay to the City all other actual costs, fees and expenses incurred by the City, including overhead and City staff time, relating to any such Action.

a. Lamar shall defend any action or actions filed in connection with any of said Indemnified Claims and Liabilities and will pay all costs and expenses, including legal costs and attorneys' fees incurred in connection therewith;

b. Lamar shall promptly pay any judgment rendered against the City and the City Parties for any such Indemnified Claims and Liabilities; and Lamar shall save and hold the City and the City Parties harmless therefrom; and

c. In the event the City Parties are made a party to any action or proceeding filed or prosecuted against Lamar Parties for such Indemnified Claims and Liabilities, Lamar shall pay to the City any and all costs and expenses incurred by the City Parties in such action or proceeding, including but not limited to, legal costs and attorneys' fees.

Notwithstanding any other provision of this Agreement, Lamar's indemnification obligations as set forth in this Agreement shall survive the termination of this Agreement and shall continue for a period of five (5) years from the termination thereof. Lamar and the City further acknowledge that Lamar shall not indemnify the City Parties for any Indemnified Claims and Liabilities caused by or arising out of the gross negligence or willful misconduct of the City Parties.

8. Lamar's Advertising Policy. The City desires to allow public advertising while also preserving the character of the community and prevent exposure of its residents especially sensitive receptors including minors, to advertising which the City's residents might find offensive. Accordingly, Lamar shall be prohibited from displaying such offensive advertising material including, but not limited to, advertising for adult businesses, cabarets, strip clubs, or lingerie.

9. General Provisions.

a. Assignment. Lamar may only assign or otherwise transfer this Relocation Agreement to any other person, firm, or entity upon presentation to the City of an assignment and assumption agreement in a form reasonably acceptable to the City Attorney and receipt of the City's written approval of such assignment or transfer by the City Manager; provided, however, that Lamar may, from time to time and one or more times, assign this Agreement to one or more persons or entities without the City's approval, but with written notice to the City, as long as Lamar, or entities owned or controlled by it have and maintain at least a twenty-five percent (25%) ownership interest in such entities who are the assignees or transferees. After a transfer or assignment as permitted by this Section, the City shall look solely to such assignee or transferee for compliance with the provisions of this Agreement which have been assigned or transferred.

b. 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.

c. 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: Brian Smith  
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 City:

City of Rialto  
Attn: City Administrator  
150 S. Palm Avenue  
Rialto, CA 92376

With a Copy to:

Fred Galante  
City Attorney  
18881 Von Karman Avenue, Ste. 1700  
Irvine, CA 92612

Notices shall be deemed effective upon receipt or rejection only.

d. 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.

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

f. 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.

g. Miscellaneous. This Agreement embodies the entire Agreement between the Parties and supersedes any prior or contemporaneous understandings between the Parties related to the Agreement. If any provision of this Agreement is held to be invalid, the balance shall remain binding upon the Parties. This Agreement shall be interpreted in accordance with its plain meaning, and not in favor of or against either Party. This Agreement shall be construed according to the laws of the State of California.

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

*[Signature page follows]*

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

“The City”  
CITY OF RIALTO

By: \_\_\_\_\_  
Mayor

ATTEST:

By: \_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
City Attorney

“Lamar”  
LAMAR CENTRAL OUTDOOR, LLC

By: \_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

## **Exhibit “A”**

### **REMOVED BILLBOARDS**

1. One (1) billboard, double sided, on the south side of Valley Boulevard west of Lilac Avenue;
2. One (1) billboard, double sided, on the north side of Foothill Boulevard west of Sycamore Avenue;
3. Two (2) billboards, double sided, on the north side of Bloomington Avenue south of San Bernardino Avenue (at Merritt Oil);
4. Two (2) billboards, double sided, on the west side of Riverside Avenue south of San Bernardino Avenue;
5. One (1) billboard, double sided, on the south side of Foothill Boulevard east of Cactus Avenue.
6. One (1) billboard, double sided, on the north side of Foothill Boulevard west of Willow Avenue. \_\_\_\_\_



## **Exhibit “B”**

### **RELOCATED BILLBOARD SITES**

1. One (1) double-faced changeable message digital display outdoor advertising structure, located on the north side of the Rialto Senior Center, immediately across from the Wal-Mart Shopping Center on south Riverside Avenue (APN 0132-102-13)
2. One (1) double-faced changeable message digital display outdoor advertising structure, located at the southwest corner of Foothill Boulevard and Cactus Avenue (APN 0128-081-47)
3. One (1) double-faced changeable message digital display outdoor advertising structure, located west of Alder Avenue along Casmalia Street and the 210 Freeway (APN 1119-241-01)