

SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT AND RELEASE (hereinafter the “Agreement”) is made and entered into as of this 16th day of August 2022, by and between the **State of Oklahoma, ex rel., Department of Transportation** (hereinafter “ODOT”) **Lamar Central Outdoor, LLC, Lamar TLC Properties, Inc. (together, referred to as “Lamar”)**, Intervenor, **the City of Oklahoma City** (hereinafter “City”), and Intervenor **Hearts for Hearing Foundation** (hereinafter “Hearts for Hearing”) (collectively the “Parties”). This Settlement Agreement once executed by all Parties, will resolve all issues among the Parties in *Lamar v. ODOT*, et al; CJ-2020-5370, which was removed from Oklahoma County to the U.S. District Court for the Western District of Oklahoma, Case No. 20-CV-1194, (hereafter referred to as “the Litigation”).

WHEREAS Lamar has acquired and still retains a Relocation Permit, # 15223, as a part of a settlement reached with ODOT in a condemnation action in which the State had to acquire land and remove an existing Lamar billboard.

WHEREAS the Litigation filed is a result of legal disputes that arose among the Parties regarding the multiple approvals and revocations of the use of Relocation Permit #15223 on property that abuts State Highway 74 (also known as Lake Hefner Parkway) on the west side of the highway approximately 1.6 miles south of the Kilpatrick Turnpike (the “Subject Property”) on the permanent grant of sign easement owned by Lamar (the “Sign Site”) *See Attached Exhibit A, Aerial Photograph of Sign Site and surrounding area.*

WHEREAS, the City and Hearts for Hearing have become parties to the Litigation after being granted the right to intervene in the above captioned lawsuit in order to, among other things, dispute the ability of Lamar to use relocation permits issued by ODOT without adherence to Oklahoma City zoning ordinances and to stop Lamar from building a billboard sign on the Subject Property.

WHEREAS ODOT acknowledges that Lamar relied upon the mistakenly approved relocation permit at the Sign Site when purchasing the sign easement and that the Sign Site has significant market value that was significantly impacted when ODOT revoked permission for Lamar to use Relocation Permit #15223 at the Sign Site.

WHEREAS, on April 4, 2018, Lamar applied for a relocation permit at the Sign Site and on April 10, 2018, ODOT issued a relocation permit at the Sign Site. Lamar asserts that the relocation permit was properly granted to Lamar for the Sign Site and ODOT revoked the relocation permit on October 24, 2018, after Lamar had relied upon the issuance of the relocation permit to purchase an easement at the Sign Site, to purchase and fabricate a digital mono-pole, 14 x 48 back to back billboard sign, and to secure advertisers at that location.

WHEREAS the Parties have reached a mutual agreement to resolve all claims and issues between them that have or could be raised in the Litigation, including those claims in relation to the Sign Site.

WHEREAS the Parties desire to compromise and upon execution of this Agreement, agree that all claims and causes of action that have been asserted in the Litigation or could have been asserted by any Party in the Litigation, including but not limited to all due process, equal protection inverse condemnation, encroachment, nuisance and/or tort claims as well as any and all actions for statutory interpretation, injunctive or declaratory relief that is or could be brought in relation to the granting and/or denial of an outdoor advertising sign permit at the Sign Site, are hereby settled pursuant to the terms of this Agreement. The Parties also agree to be bound by the duties and deadlines set forth in this Agreement.

WHEREAS the Parties all declare and represent that they are executing this Agreement with binding authority and wholly upon their own volition, individual judgment, belief and knowledge of all facts, terms and circumstances. The Parties acknowledge they at all times have been represented by counsel during these proceedings and that once the terms of this Agreement are fully executed by all Parties, they agree to administratively close the litigation and will not dismiss the Litigation until all terms of this agreement have been fully completed by all Parties.

NOW, THEREFORE, for and in consideration of the covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

TERMS OF SETTLEMENT

- 1. Land Exchange.** Within thirty (30) days of the execution of this Agreement, Lamar shall assign to Hearts for Hearing all its interests obtained and currently held in the Grant of Easement recorded at Book 13811, Page 592 Oklahoma County Clerk's Office attached as Exhibit "B" (the "Easement"). ODOT shall transfer to Lamar by quit claim deed the surplus Right of Way owned by ODOT at the following locations: *Site 1* located at the Kilpatrick Turnpike and Western in Oklahoma City, which shall be no less than Fifty (50) by Eighty (80) feet in dimension with the shortest area along the highway, with a legal description to be mutually agreed upon. ODOT shall also grant mutually agreeable roadway, visibility and utility easement rights across the larger parcel owned by ODOT to the site to be conveyed to Lamar. *See Exhibit "C" Photo / Schematic of Site 1*; and *Site 2*, located at I-235 and Sheridan in Oklahoma City, which shall be no less than Fifty (50) by Eighty (80) feet in dimension with the shortest area along the highway, with a legal description to be mutually agreed upon. ODOT shall also grant mutually agreeable roadway, visibility and utility easement rights across the larger parcel owned by ODOT to the site to be conveyed to Lamar. *See Exhibit "D" Photo / Schematic of Site 2.* ("Site 1" and "Site 2", respectively). ODOT shall transfer the surplus parcels, by quit claim deed for the erection and operation of an outdoor advertising signs at Site 1 and Site 2 and ODOT agrees to provide any existing survey and write the property descriptions for both Sites. The City shall approve any lot split as may be necessary for the land exchange contemplated herein and the City agrees to waive any other requirements that would prohibit the construction and operation of the billboard signs at either site. ODOT shall deed the properties for Site 1 and Site 2 within thirty (30) days of the execution of this Agreement.

- 2. Land Exchange Escrow.** The Parties agree that the land exchange discussed in Paragraph 1 of this Agreement shall be closed in escrow with the costs of to be borne by Lamar. Counsel for Lamar shall hold the assignment of the Easement to Hearts for Hearing in escrow until the terms of this Agreement are fully completed by all of the Parties. Within five (5) days of these terms being completed, counsel for Lamar shall deliver to counsel for Hearts for Hearing the assignment of the Easement. Counsel for ODOT shall hold the deeds conveying Site 1 and Site 2 in escrow until Lamar completes its due diligence, which may include, but is not limited to, a phase 1 environmental study, a title opinion, and a survey of the parcel conveyed. Lamar shall bear all costs of its due diligence and shall have up to one-hundred twenty (120) days to complete its due diligence from the execution of this Agreement. Should Lamar need additional time to complete its due diligence, it shall request such additional time in writing and ODOT shall not unreasonably withhold its approval. Should Lamar discover from its due diligence that on, or both of the sites described in Paragraph 1 cannot be used for the intended purpose; title related issues are identified; or, Lamar determines that there are costs required to remediate any issues identified, Lamar may reject a site and the Parties shall negotiate in good faith a replacement site. Should a replacement site not be reasonably plausible, Lamar may re-open the Litigation. If Lamar notifies ODOT that it has completed its due diligence and requests the delivery of the deed(s) for Site 1 and / or Site 2, ODOT shall deliver said deed(s) to counsel for Lamar within five (5) days of said request.
- 3. Relocation Permits.** Within ten (10) days of the execution of this Agreement, ODOT shall reinstate in writing the Relocation Permit #15223 and shall issue one (1) additional relocation permit to Lamar for the exclusive use at Site 1 and Site 2. These two relocation permits granted as part of this Agreement shall only be used by Lamar for the purposes set forth herein and will not be valid for use at any other sign site relocation other than at Site 1 and Site 2.
- 4. Abandonment of Lake Hefner Billboard Site & Billboard Moratorium; Prohibition.** Lamar agrees to abandon and forgo any future plans to acquire, apply for or gain permission or permit to erect an outdoor advertising billboard along the Lake Hefner Parkway approximately covering the area between NW Expressway to the south and Memorial Road to the north, including specifically at the Sign Site, that Oklahoma City wishes to remain a “scenic corridor.” In exchange, the City agrees to propose and adopt a moratorium to be effective until a permanent ban is enacted by the City on billboard signs on the Lake Hefner Parkway corridor within thirty (30) days of this fully executed Agreement. Further, the City agrees to propose and intends to adopt a permanent ban on billboard signs along that portion of Lake Hefner Parkway identified

herein within twelve (12) months of the execution of this Agreement; provided however, the moratorium will remain in-place until a permanent ban is enacted. In the event the City allows the moratorium to lapse, or fails to adopt a permanent ban on billboard signs along the identified stretch of Lake Hefner Parkway within twelve (12) months of the execution of this Agreement, Lamar is released from its duty to abandon and forgo plans to acquire, apply for or gain permission or permit to erect an outdoor advertising billboard along Lake Hefner Parkway such that Lamar may engage in such conduct; provided however, Lamar shall still not pursue erecting a billboard on the Easement unless the Litigation is re-opened as provided for herein.

5. **Administrative Closing of Litigation.** Within ten (10) days of the Parties fully executing this Agreement, all Parties will sign off upon an agreed order to administratively close the Litigation with the right to reopen should settlement negotiations fail or should the terms of settlement set forth herein not be fully completed by one or more parties hereto within the time periods prescribed.
6. **Dismissal.** Once all of the settlement terms are fully completed, to include, but not limited to, the City adopting the permanent ban on billboard signs along the identified area on the Lake Hefner Parkway, Plaintiff Lamar shall circulate and file an agreed order dismissing the case in its entirety, including the Intervenor's claims, with prejudice. In any event, the Parties agree that either the case will be dismissed with prejudice, action to enforce this Agreement will be initiated, or the Litigation will be re-opened within twelve (12) months of the execution of this Agreement.
7. **No Billboard.** The Parties each agree and represent to the other that they will not authorize or erect a free-standing pole with a display face larger than two hundred (200) square feet, an off-premises sign, and / or a non-accessory sign (i.e., "Billboard") along Lake Hefner Parkway in the area identified in Paragraph 4, or on the Easement described in Exhibit B.
8. **No Refiling.** Except as otherwise provided for in this Agreement, all Parties agree they will not reopen or refile any litigation over any and all current or future claims brought in or arising from the Litigation.
9. **Mutual Release.** Each party does for itself and their respective officers, directors, stockholders, agents, employees, legal representatives, successors and assigns hereby irrevocably and unconditionally release and forever discharge the other and their respective officers, directors, stockholders, agents, employees, legal representatives, successors and assigns from any and all actions, suits, causes of action, damages, injuries, costs, losses, claims or rights which either has or ever had, known or unknown, now existing or that might arise hereafter directly or indirectly attributable to or relating to the Litigation, including any damages, fees, or costs.

- 10. No Admissions.** It is agreed that this Agreement is executed solely to compromise and settle disputed claims and thereby avoid the uncertainty and expense of litigation relating to the Litigation. This Agreement shall not be construed as an admission of fault or wrongdoing or waiver of legal arguments by any party.
- 11. Consolidation.** This Agreement constitutes the entire agreement of the Parties, supersedes all prior or contemporaneous agreements or understandings relating to the subject matter herein, whether verbal or written, and may not be modified except by a writing executed by the party against whom the modification or amendment is asserted.
- 12. Governing Law, Venue and Prevailing Party.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oklahoma. The Parties agree that any dispute regarding this Agreement shall be resolved in the U.S. District Court for the Western District of Oklahoma. The prevailing party in any action brought to enforce this Agreement shall be entitled to recover reasonable attorney fees and costs.
- 13. Further Acts and Documentation.** The Parties agree to do such further acts and to execute and deliver such further and additional documents, instruments, and writings as may be necessary, proper, or required to fully effectuate the terms and provisions of this Agreement.
- 14. Legal Consultation.** The Parties represent to one another that they have carefully read this Agreement and understand its terms and conditions without reservation. The Parties acknowledge that they have been advised by legal counsel prior to the execution of this Agreement.
- 15. Counterparts.** This Agreement may be executed in any number of counterparts and by different Parties and separate counterparts, and any copy, telecopy, telefax or facsimile of same may be used for execution or any other purpose with the same force and effect as the original, but all of such counterparts shall constitute but one (1) instrument.
- 16. Binding Effect.** This Agreement, and all rights and obligations hereunder, shall be binding upon all Parties, and shall inure to the benefit of the Parties hereto, their respective predecessors, successors, heirs, directors, officers, employees, trustees, legal representatives, shareholders, and assigns.

- 17. Signatories' Authority.** The signatories to this Agreement represent and warrant that they have the requisite authority to bind their respective party.
- 18. Costs and Attorney Fees.** The Parties shall bear and pay all costs, expenses, and attorneys' fees that they have each incurred in connection with the current and past litigation involving the issues and disputes resolved herein.
- 19. Enforcement.** The Parties agree that this Agreement may be enforced by any party should the terms and conditions set forth herein not be fulfilled and the prevailing party shall be entitled to reasonable attorney fees and the cost of litigation.
- 20. Order of Prohibition.** In lieu of litigating the issues of whether the Highway Beautification Act preempts all municipal zoning regulations, the City will prepare and submit a joint motion to confirm the Agreement and proposed order of the Court in the Litigation regarding same within 5 days after the execution by the Parties of this Agreement. In accordance with the terms of this Agreement, the City is prohibited from enforcing its ordinances regulating signage at Site 1 and Site 2, which the City believes would otherwise prohibit the construction of the signs contemplated in Section 1 of this Agreement and as specifically depicted in Exhibits C and D. Should the joint motion not result in an order from the Court consistent with this paragraph, or should the Litigation be re-opened as provided for herein, the Parties agree to vacate, waive, or otherwise release the City from any obligation prohibiting the City from arguing the enforceability of the City's ordinances.
- 21. Billboard Prohibition.** The Parties shall support ordinances and/or legislation that prohibits the erection of off-premises or non-accessory signs, to include, but not limited to, electronic message display signs on Highway 74, also known as, Lake Hefner Parkway "scenic corridor" that is located between the Northwest Expressway and Memorial Road
- 22. No Objection; 911 Addresses.** The City shall not object to or challenge in anyway ODOT's issuance of relocation permits for both Site 1 and Site 2. The City shall not take any action to impede, interfere, prolong, or otherwise prohibit Lamar from erecting a billboard sign at both Site 1 and Site 2. Within 20 days of Lamar providing the City with a legal description for Site 1 and Site 2, the City shall provide to Lamar the 911 addresses for Site 1 and Site 2.
- 23. Time is of Essence; Revocation.** The parties agree that time is of the essence in performing the terms of settlement in this Agreement. Should one or more party fail to perform the obligations set forth herein within the time period specified, any Party that has otherwise not failed to perform hereunder may revoke this Agreement, which shall render the Agreement null and void, and no Party will object to the re-opening the Litigation.

24. **No Billboard.** By approving this Agreement, Hearts for Hearing agrees that it shall not allow a billboard sign on its property along Lake Hefner Parkway so long as it is the owner of said property. Additionally, Hearts for Hearing will include in any deed conveying title that billboards are prohibited on the property unless the City has already enacted a ban on billboards along Lake Hefner Parkway. Hearts for Hearing also agrees that it shall not allow a billboard to be erected on the Easement.
25. **Vegetation Removal.** ODOT shall provide reasonable assistance and cooperation and shall work in good faith with Lamar to authorize the removal of any vegetation within one thousand feet in each direction of both Site 1 and Site 2, that is obstructing the view of the signs at either location whether the vegetation is on the right of way or on property owned by ODOT. To the extent Lamar is not getting timely and reasonable cooperation from other offices within ODOT, Lamar may contact ODOT's legal division for assistance.
26. **Further Assurances.** The Parties hereby agree and acknowledge that they shall take whatever actions and execute whatever documents may reasonably be necessary to ensure that the purpose and intent of this Agreement are fulfilled. A Party that is requested to provide further assurance, such as the execution of certain documentation, shall take such action with reasonable diligence acknowledging that time is of the essence in fulfilling this Agreement.

[Signatures on the Pages that Follow]

DATED: _____

**Brian Taylor, Chief Engineer
For Defendant ODOT**

ACKNOWLEDGEMENT OF ODOT

State of Oklahoma)

) ss:

County of _____)

Before me, the undersigned, a Notary Public in and for said county and State on this _____ day of _____, 2022, personally appeared _____, to me known to be the identical person who executed the above and foregoing Settlement Agreement and Release and acknowledged to me that they had the authority to execute this agreement and executed this agreement as a free and voluntary act and deed for the uses and purposes therein set forth.

Given under my hand and seal the day and year last above written.

Notary Public

My Commission No. & Expiration:
[Seal]

DATED: _____

Bill Condon
For Plaintiff, Lamar Central Outdoor, LLC

ACKNOWLEDGEMENT OF LAMAR Central Outdoor

State of Oklahoma)
) ss:
County of _____)

Before me, the undersigned, a Notary Public in and for said county and State on this _____ day of _____, 2022, personally appeared _____, to me known to be the identical person who executed the above and foregoing Settlement Agreement and Release and acknowledged to me that they had the authority to execute this agreement and executed this agreement as a free and voluntary act and deed for the uses and purposes therein set forth.

Given under my hand and seal the day and year last above written.

Notary Public

My Commission No. & Expiration:
[Seal]

DATED: _____

Bill Condon
For Plaintiff, Lamar TLC Properties, Inc.

ACKNOWLEDGEMENT OF LAMAR TLC Properties, Inc.

State of Oklahoma)
) ss:
County of _____)

Before me, the undersigned, a Notary Public in and for said county and State on this _____ day of _____, 2022, personally appeared _____, to me known to be the identical person who executed the above and foregoing Settlement Agreement and Release and acknowledged to me that they had the authority to execute this agreement and executed this agreement as a free and voluntary act and deed for the uses and purposes therein set forth.

Given under my hand and seal the day and year last above written.

Notary Public

My Commission No. & Expiration:
[Seal]

APPROVED AND ADOPTED by the City Council and **SIGNED** by the Mayor of The
City of Oklahoma City, Oklahoma, this 16th day of August, 2022.

THE CITY OF OKLAHOMA CITY

ATTEST:


City Clerk




VICE- MAYOR

REVIEWED for form and legality.


Assistant Municipal Counselor

[Seal]

DATED: _____

Joanna T. Smith
For Intervenor, Hearts for Hearing Foundation

ACKNOWLEDGEMENT OF HEARS FOR HEARING

State of Oklahoma)
) ss:
County of _____)

Before me, the undersigned, a Notary Public in and for said county and State on this ____ day of _____, 2022, personally appeared Joanna T. Smith, to me known to be the identical person who executed the above and foregoing Settlement Agreement and Release and acknowledged to me that they had the authority to execute this agreement and executed this agreement as a free and voluntary act and deed for the uses and purposes therein set forth.

Given under my hand and seal the day and year last above written.

Notary Public

My Commission No. & Expiration:
[Seal]