

CITY CLERK
ORIGINAL

C-9244
09/09/2014

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release (hereinafter "Agreement") is made and entered into between LAMAR ADVERTISING COMPANY, ~~INC.~~ a Delaware corporation, LAMAR CENTRAL OUTDOOR, ~~LLC~~ L.L.C., a Delaware limited liability company (together "Lamar"), AMERICAN OUTDOOR ADVERTISING, LLC, a Nevada limited liability company ("American Outdoor"), and the City of Glendale ("City") (each a "Party, collectively, the "Parties") this 9th day of September 2014, in consideration of the mutual promises contained herein, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged.

RECITALS

- A. In 2009, American Outdoor and the City entered into two digital marquee placement license agreements, Contract Nos. C-6855 and C-6855-1 (collectively, "License Agreements"), for the use of City-owned property to operate digital marquees/digital billboards.
- B. The rights and obligations of American Outdoor in the License Agreements have been assigned or otherwise acquired by Lamar.
- C. A dispute exists concerning the amount of compensation due the City pursuant to the License Agreements. The City contends that payments of both rent and business royalty, calculated separately, are required and that additional business royalty amounts are due and owing for the period beginning October 15, 2009 to October 14, 2013. Lamar and American Outdoor contend that rent amounts are an offset to the calculation of business royalties and that full payment has been provided for the period beginning October 15, 2009 to October 14, 2013.
- D. The parties desire to settle and compromise this dispute under the terms set forth herein. This Agreement does not constitute an admission as to any fact, legal principle, or liability by any Party.

SETTLEMENT TERMS

In consideration of the agreements, mutual covenants, conditions, promises and releases contained herein, and with reference to the foregoing facts, the Parties to this Agreement agree as follows:

1. The Recitals are adopted herein by reference
2. SETTLEMENT PAYMENT. In full and complete settlement of any and all business royalty payments due under License Agreements for the time period beginning on the Effective Date of the License Agreements through October, 14 2013, the last completed fiscal year of the License Agreements, Lamar shall pay to the City the sum of \$425,000 (the "Settlement Payment") to be paid by cashier's check contemporaneously with the approval and execution ("Effective Date") by the City of Digital Billboard License Placement Agreements for the following two locations. 7691 North 99th Avenue and 9802 West Bethany Home Road ("New Agreements").

3. REVISED LICENSE AGREEMENTS Paragraph 4(A)(2), Rent, Royalty and Other Consideration, of Contract No. C-6855 and Contract No C-6855-1 shall be deleted and replaced with the following:

Beginning with the royalty period of October 15, 2013 through October 14, 2014, and continuing annually thereafter, Licensee shall pay City an ongoing annual business royalty ("Royalty Payment") calculated as follows:

- a) Thirty-three percent (33%) of the Total Revenue (as defined below) less than or equal to \$425,000 received during the previous 12 months for the use or operation of the Marquee or License Area; and
- b) Forty percent (40%) of the Total Revenue (as defined below) exceeding \$425,000 received during the previous 12 months for the use or operation of the Marquee or License Area.
- c) Minus the amount of the monthly rent paid during the same previous 12-month period.
- d) By way of example:

For Total Revenue of \$400,000 in 12 months where rent is \$10,000 per month, a Royalty Payment of \$12,000 is required and calculated as follows.

$$\begin{aligned} & 33\% \text{ of Total Revenue minus Sum of 12 monthly rent payments} \\ & .33 \times \$400,000 = \$132,000 \\ & \$132,000 - \$120,000 = \$12,000 \\ & \$12,000 = \text{Annual Royalty Payment} \end{aligned}$$

For Total Revenue of \$600,000 in 12 months where rent is \$10,000 per month, a Royalty Payment of \$90,250 is required and calculated as follows:

$$\begin{aligned} & 33\% \text{ of Total Revenue of } \$425,000 \text{ plus } 40\% \text{ of Total Revenue over } \$425,000 \text{ minus Sum} \\ & \text{of 12 monthly rent payments} \\ & 33 \times \$425,000 = \$140,250 \\ & 40 \times \$175,000 = \$70,000 \\ & \$140,250 + \$70,000 - \$120,000 = \$90,250 \end{aligned}$$

- e) In the event the Royalty Payment calculation results in a negative number, no Royalty Payment is required and no refund, offset, or reduction against past or future monthly rent payments is due Licensee.
- f) "Total Revenue," as that term is used in this section, means all revenue, income or receipts Licensee receives or collects for use or operation of the Marquee or License Area, minus applicable taxes and any advertising agency commissions.

4. RELEASE.

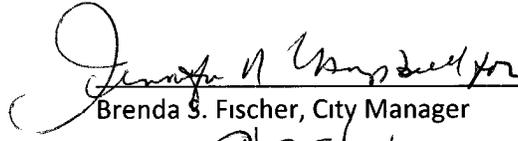
- 4.1. Lamar, for itself, its officers, directors, employees, agents, successors and assigns, releases and forever discharges the City and its officials, officers, directors, employees, agents, successors and assigns from any and all past, present and future actions, causes of action, claims, party actions, suits at law or in equity, including claims or suits for contribution and/or indemnity, of whatever nature, and all general, special, and consequential damages, whether known or unknown at this time, which have or may result from any actions, actions, errors, and omissions of the City to the date of this Agreement and that are in any way related to the business royalty payments due to the City pursuant to the License Agreements for the time period up to and including October 14, 2013. This release extends to all claims that could have been asserted in any lawsuit on the date of this Agreement.
 - 4.2. The City, for itself, its officers, directors, employees, agents, successors and assigns, releases and forever discharges Lamar and American Outdoor and its officials, officers, directors, shareholders, employees, agents, successors and assigns from any and all past, present and future actions, causes of action, claims, party actions, suits at law or in equity, including claims or suits for contribution and/or indemnity, of whatever nature, and all general, special, and consequential damages, whether known or unknown at this time, which have or may result from any actions, actions, errors, and omissions of Lamar and American Outdoor to the date of this Agreement and that are in any way related to the business royalty payments due to the City pursuant to the License Agreements for the time period up to and including October 14, 2013. This release extends to all claims that could have been asserted in any lawsuit on the date of this Agreement; provided however that this release shall not apply to any future claims by the City against Lamar for Royalty Payments for the current fiscal year of October 15, 2013 through October 14, 2014 ("Current Fiscal Year"), which has not concluded or been tabulated. Notwithstanding this exception, the Revised License Agreements (Paragraph 3, herein) shall apply to the Current Fiscal Year.
 - 4.3. American Outdoor, for itself, its officers, directors, employees, agents, successors and assigns, releases and forever discharges the City and its officials, officers, directors, employees, agents, successors and assigns from any and all past, present and future actions, causes of action, claims, party actions, suits at law or in equity, including claims or suits for contribution and/or indemnity, of whatever nature, and all general, special, and consequential damages, whether known or unknown at this time, which have or may result from any actions, actions, errors, and omissions of the City to the date of this Agreement and that are in any way related to the business royalty payments due to the City pursuant to the License Agreements for the time period up to and including October 14, 2013. This release extends to all claims that could have been asserted in any lawsuit on the date of this Agreement.
5. CONTINGENCY. If the New Agreements are not approved and executed by the City and Lamar, or if the City otherwise does not issue final approval for operation of the Digital Billboards built pursuant to the New Agreements, except for reasons other than noncompliance with construction standards, this Agreement shall be void and have no effect, and the City shall immediately refund the Settlement Payment made by Lamar

6. MISCELLANEOUS.

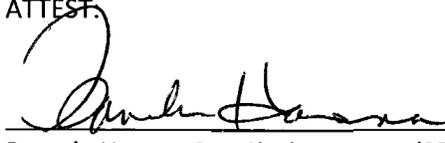
- 6.1. Each party to this Agreement represents and warrants to each other party to this Agreement that each has full power, capacity and authority to enter into this Agreement
- 6.2. Each of the Parties hereto agrees to execute and deliver to each of the other Parties hereto all additional documents required to implement the terms and conditions of this Agreement.
- 6.3. The Parties agree that the rights and obligations arising out of the Agreement, and each of its terms, shall inure to the benefit of and be binding upon the successors and assigns of the Parties, and each of them.
- 6.4. In any action at law or in equity to enforce any of the provisions or rights under this Agreement, the prevailing party shall be entitled to recover from the unsuccessful party all costs, expenses and reasonable attorney's fees incurred by the prevailing party (including, without limitation, such costs, expenses and fees on appeal) and, if such prevailing party shall recover judgment in any such action or proceeding, such costs, expenses and fees, including those of expert witnesses and attorney's fees, shall be included as part of the judgment.
- 6.5. This Agreement contains the entire and final agreement and understanding concerning the subject matter herein, and supersedes, cancels and replaces any prior negotiations or agreements between the Parties relating to the business royalty payments due to the City pursuant to the License Agreements for the period beginning on the Initial Date of the License Agreements through October 14, 2013
- 6.6. This Agreement is made and entered into in the State of Arizona, and shall in all respects be interpreted, enforced and governed by and under the laws of the State of Arizona, including any disputes hereunder, and shall be construed according to its fair meaning. This Agreement shall be construed without regard to the identity of the person who drafted its various provisions; each and every provision of this Agreement shall be construed as though each of the Parties participated equally in drafting same, and any rule of construction that a document is to be construed against the drafting party shall not be applicable to this Agreement. The paragraph and section headings herein have been inserted for convenience only, and shall not be construed or referred to in resolving questions of interpretation or construction.
- 6.7. The Parties may execute duplicate originals of this Agreement, or any documents they are required to sign or furnish hereunder, in counterparts, any of which shall be deemed to be the original if fully executed by all of the Parties. Signatures by facsimile shall be acceptable to all Parties hereto.
- 6.8. This Agreement may not be amended, altered, modified or otherwise changed except in a writing that is signed by the party against whom the change is alleged to be effective and expressly stating that it is an amendment of this Agreement.
- 6.9. If any part of this Agreement is held by a court of competent jurisdiction to be unenforceable, the remainder of this Agreement shall continue to remain in full force and effect.

6.10 The signators below represent and warrant that each has authority to enter this Agreement on behalf of and bind hereto each party for whom/which he or she signs

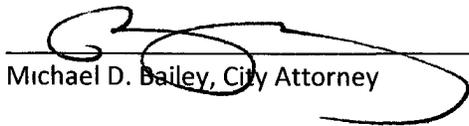
CITY OF GLENDALE, an Arizona municipal corporation


Brenda S. Fischer, City Manager
Date 9/25/14

ATTEST:


Pamela Hanna, City Clerk (SEAL)

APPROVED AS TO FORM:


Michael D. Bailey, City Attorney

