

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

953



FROM: Transportation Department

SUBMITTAL DATE:
November 10, 2009

SUBJECT: Outdoor Advertising Display Acquisition and Relocation Agreement for the State Highway 60 and Valley Way Interchange Project

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve the attached Outdoor Advertising Display Acquisition and Relocation Agreement between the County and Lamar Central Outdoor, LLC regarding the outdoor advertising displays (Display(s)) which occupy a portion of Assessor's Parcel Number 174-150-012 and authorize the Chairman of the Board to execute on behalf of the County; and
2. Authorize the undersigned Director of the Transportation Department, or his designee, to execute any other documents and administer all actions to complete this transaction; and

BACKGROUND: (Commences on Page 2)

Juan C. Perez, Director
Transportation Department

FORM APPROVED COUNTY COUNSEL
BY: Synthia M. Gunzel 11-10-09
DATE: 11-10-09
CONCURRENCE

FINANCIAL DATA	Current F.Y. Total Cost:	\$ 356,000	In Current Year Budget:	Yes
	Current F.Y. Net County Cost:	\$ -0-	Budget Adjustment:	No
	Annual Net County Cost:	\$ -0-	For Fiscal Year:	09/10
SOURCE OF FUNDS: Federal Congestion Mitigation and Air Quality (CMAQ) Funds 43% and Measure A (western) Funds 57%. W.O. B0-0491			Positions To Be Deleted Per A-30	<input type="checkbox"/>
			Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION:

APPROVE

BY:
Tina Grande

County Executive Office Signature

Policy
 Policy
 Consent
 Consent
 Dept't Recomm.:
 Per Exec. Ofc.:

Prev. Agn. Ref.:

District: 2

Agenda Number:

ATTACHMENTS FILED
WITH THE CLERK OF THE BOARD

3.121

RECOMMENDED MOTION: (Continued)

3. That the Board of Supervisors find the approval of this Agreement is exempt from CEQA pursuant to CEQA Guidelines Section 15302. CEQA Guidelines Section 15302 is a categorical exemption for the replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced; and
4. Further, that the Board of Supervisors direct the Transportation Department to file the Notice of Exemption with the County Clerk for filing and posting; and
5. Authorize and allocate the sum of \$301,000 for the removed display located on a portion of Assessor's Parcel Number 174-150-012; and
6. Authorize and allocate the sum of an amount not to exceed \$25,000 for relocation of the relocated display located on a portion of Assessor's Parcel Number 174-150-012; and
7. Authorize and allocate \$5,000 per month or the sum of an amount not to exceed \$30,000 for loss rent during the relocation process of the relocated display located on a portion of Assessor's Parcel Number 174-150-012.

BACKGROUND:

The County of Riverside Transportation Department (County) plans to replace the eastbound Valley Way on/off-ramp on State Highway 60. The County plans to construct a hook ramp which will feed exiting and entering traffic through a signalized intersection at Mission Boulevard/Byrne Road, approximately 200 yards westerly of the Valley Way and Mission Boulevard intersection (Road Project).

On May 10, 2005, the State of California Department of Transportation (Caltrans) determined that the Project was categorically exempt from the California Environmental Quality Act (CEQA) and the National Environmental Protection Agency (NEPA) and issued a categorical exemption.

The County has negotiated the acquisition of one of the Displays located on a portion of Assessor's Parcel Number 174-150-012 from Lamar Central Outdoor, LLC, a Delaware limited liability corporation (Lamar) for \$301,000.

The same parcel is improved with a second Display. It was determined that the second Display can be relocated on another part of the property. The cost to relocate the second Display is \$25,000. In addition, an amount of \$5,000 per month for six months or the sum of an amount not to exceed \$30,000 for loss rent during the relocation process of the second Display will be paid to Lamar.

This Form 11 has been reviewed and approved by County Counsel as to legal form.

FINANCIAL DATA:

The following summarizes the funding that will be necessary for the acquisition of Removed Display and relocation costs and loss of revenue associated with the Relocated Display located on Assessor's Parcel Number 174-150-012:

Purchase Price for Removed Display	\$301,000
Relocation Costs for Relocated Display	\$ 25,000
Loss of Rent for Relocated Display	\$ 30,000
Total Estimated Billboard Purchase:	\$356,000

All costs associated with the Display acquisition and relocation is fully funded in the Transportation Department's budget for FY 09/10. Thus, no net county cost will be incurred as a result of this transaction.

The construction of the Project is expected to be fully funded by multiple sources. The County competed for Federal Economic Stimulus funds under the American Recovery and Reinvestment Act for this project and was successful in obtaining \$4,482,000. The Project will create construction jobs, and vastly improve traffic operations and safety at this congested interchange.

OUTDOOR ADVERTISING DISPLAY ACQUISITION
AND RELOCATION AGREEMENT

This Outdoor Advertising Display Acquisition and Relocation Agreement (“Agreement”) is made and entered into as of _____, _____, by and between, the County of Riverside, a political subdivision of the State of California, (“County”), and Lamar Central Outdoor, LLC, a Delaware limited liability company (“Lamar”). Hereafter County and Lamar are sometimes referred to as “Party” or collectively as “Parties.”

This Agreement is made for the following purposes and with respect to the following facts, which the County and Lamar agree to be true and correct:

RECITALS

A. The County has undertaken a project to construct improvements on the State Route 60 at the Valley Way Interchange (“Project Area”) entitled SR 60/Valley Way Interchange Improvements Project located in the unincorporated area of Riverside County.

B. The Redevelopment Agency for the County of Riverside (“Agency”) is the owner of that certain real property located within the Project Area in the County of Riverside, State of California, commonly known as Assessor’s parcel number (“APN”) 174-150-012, depicted in Exhibit “A” (“Property”), attached hereto and by this reference incorporated herein.

C. Lamar owns and operates two (2) outdoor advertising displays within the County of Riverside and within the Project Area of County (each a “Display” and collectively the “Displays”), on Agency’s Property, as further depicted on Exhibit “A”.

D. County desires to facilitate the permanent removal of one Display (“Display #3341”) and relocation of the other Display (“Display #3342”) from their current locations in order to construct the SR 60 / Valley Way Interchange Improvements, thereby improving traffic and circulation within this portion of the County.

E. The County of Riverside, on behalf of the Transportation Department, is acquiring Display #3341 and providing just compensation to Lamar for the costs identified herein associated with the removal of the Displays and relocation of Display #3342.

F. Lamar desires to relocate one existing Display(s) currently located in the planned public right-of-way to another location on Agency’s Property which is outside the planned public right-of-way.

G. All the real property ownership rights of the Agency pertaining to Agency granting permission to Lamar to relocate its Display on another location within Agency’s Property and Lamar’s occupation of the Property is addressed in separate agreements.

H. Agency and Lamar intend to enter into that certain Outdoor Advertising Display Relocation Agreement (“Relocation Agreement”) on or around the same time as this Agreement

will be executed to memorialize the terms and conditions upon which Lamar will have the right to relocate and reconstruct the Display #3342.

I. The California Outdoor Advertising Act, Business and Professions 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.

J. The California Outdoor Advertising Act specifically empowers, and encourages, local agencies to enter into relocation agreements on whatever terms are agreeable to the County and display owners and to adopt ordinances and resolutions providing for relocation of displays.

K. Riverside County Ordinance No. 348 ("Ordinance No. 348"), Section 19.3 empowers County to enter into an outdoor advertising display relocation agreement with an outdoor advertising display owner for an existing outdoor advertising display is being relocated when the following two conditions are present: (1) the original location of the outdoor advertising display is within a contemplated public right-of-way and (2) the outdoor advertising display complied with all applicable County ordinances and regulations in effect at the time it was erected.

L. In consideration of the removal and relocation of the Displays, County desires to compensate Lamar in an amount acceptable to both Parties.

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which are acknowledged, the parties agree as follows:

AGREEMENT

1. Existing Displays:

a. **County's Acknowledgment:** The County acknowledges that the Existing Displays as depicted in Exhibit "A" are located within a contemplated public right-of-way.

b. **Display's Legal Status:** Lamar represents and warrants that the Displays complied with all applicable State laws and County ordinances and regulations in effect at the time they were erected.

2. Removal of Display:

a. The terms and conditions pertaining to the removal of the Displays are consistent with and further addressed in the Relocation Agreement between the Agency and Lamar.

b. Lamar shall completely remove the existing Display currently located on the western portion of parcel APN 174-150-012 (the "Removed Display" or "Display #3341", as depicted in Exhibit "B", attached hereto and by this reference incorporated herein) no later than December 11, 2009. Complete removal shall include concrete footings, electrical facilities,

including power poles and underground services, and leave the site in a condition that is comparable to existing or better.

c. If the Displays are not removed on or before December 11, 2009, the County shall have the right to remove the Displays and Lamar shall have the obligation to reimburse the County for the total cost of removal of the Displays.

3. Relocation of Displays:

a. **Display Relocation:** Lamar desires to relocate one existing Display to a location on Agency's Property more specifically described and depicted in Exhibit "C" attached hereto and by this reference incorporated herein, (the "Relocated Display" or "Display #3342"). Lamar shall remove Display #3342 no later than December 11, 2009.

b. **Processing of Permit Applications:** Within one hundred and twenty (120) days of the approval of this Agreement, Lamar shall submit an outdoor advertising display permit application(s) to the Planning Department of the County of Riverside for the development of the Display #3342 (the "Permit Applications"). The Permit Applications shall be consistent with the requirements of Section 19.3 of Ordinance No. 348. Lamar acknowledges that, in addition to sign permits, Lamar must obtain building permits from County prior to construction and installation of a Display #3342. The County shall timely process the Permit Applications as well as the applications for any permits necessary for the development of the Display #3342.

c. The terms and conditions pertaining to the relocation of Display #3342 are consistent with and further addressed in the Relocation Agreement between the Agency and Lamar.

4. Compensation:

a. **Just Compensation:** The Parties acknowledge that Lamar possesses a valuable property interest in the Displays and Lamar shall be entitled to monetary compensation from County for Lamar's agreement to remove Display #3341 as described in Section 2 and to relocate Display #3342 as described in Section 3.a. County shall pay to Lamar the amount of Three Hundred and One Thousand Dollars (\$301,000) in accordance with the Statement of Just Compensation prepared by Overland Pacific & Cutler, Inc. on behalf of the County, attached hereto as Exhibit "D", attached hereto and by this reference incorporated herein, within sixty (60) days of removal of the Displays.

b. **Loss of Revenue:** To allow Lamar sufficient time to prepare and the County to process the Permit Applications, County shall pay to Lamar a monthly payment of Five Thousand Dollars (\$5,000), representing earnings lost during the relocation process not to exceed a total of Thirty Thousand Dollars (\$30,000). County shall make one such payment for each one month period beginning the day after Lamar removes the Display #3342 for a total of six (6) months. Compensation for any portion of a month shall be compensated on a pro rata basis.

c. **Costs and Fees:** In addition to the consideration provided for in Sections 4 above, the County shall provide compensation for costs and fees pertaining to processing and issuing permits for the Display #3342, including but not limited to outdoor advertising display

permit application(s) fees, plan check fees, and building permit fees, and for costs associated with the relocation, including but not limited to construction costs, up to a maximum of Twenty Five Thousand Dollars (\$25,000).

5. Indemnification:

a. **Lamar's Responsibilities:** Lamar shall defend, indemnify and hold harmless the County, its Board of Supervisors, and its agents, officers and employees from any claim, action, or proceeding brought or asserted by a third person or entity against the County, its Board of Supervisors, or its agents, officers or employees to attack, set aside, void, or annul the Project, or any prior or subsequent development approvals, or any other action by the County in connection with the Project, or Project conditions imposed by the County or any of its agencies, departments, commissions, agents, officers or employees concerning the said Project, or to impose personal liability against such agents, officers or employees resulting from their involvement in the Project, which claim, action, or proceeding is brought within the time period provided by law, including any claim for private attorney general fees claimed by or awarded to any party from the County. To the extent that the County uses any of its resources responding to such claims, action, or proceeding, Lamar will reimburse the County within thirty (30) days of the submission of an itemized statement for these resources. Such resources include, but are not limited to the reasonable expenses and charges related to staff time, court costs, County Counsel's time at their regular rate for external or non-County agencies, or any other reasonable direct or indirect costs associated with responding to the claim, action or proceeding.

b. **Procedures:** The County will promptly notify Lamar in writing of any such claim, action, or proceeding. After receipt from the County of notice of any claim, or the commencement of any action or proceeding with respect to which indemnification is being sought under this Agreement by the County, Lamar will assume the defense of such claim, action or proceeding, including the employment of counsel reasonably satisfactory to the County and Lamar and the prompt payment of the fees and disbursements of such counsel. In the event, however, the County reasonably determines that having common counsel would present such counsel with a conflict of interest, or if Lamar fails to assume the defense of the claim, action or proceeding or to employ counsel reasonably satisfactory to the County, in either case in a timely manner, the County may employ separate counsel to represent or defend it in any such claim, action or proceeding and Lamar will promptly pay the fees and disbursements of such counsel.

c. **County's Responsibilities:** The County shall, within its unlimited discretion, in good faith, participate and cooperate in the defense of any such claim, action or proceeding.

d. **County's Right to Settle:** The County shall have the right to decide whether to litigate or settle any claim, action or proceeding without Lamar's approval.

e. **Security for Performance of Obligations:** Performance of Lamar's indemnification obligations pursuant to the Agreement shall be secured by a letter of guaranty by "Lamar Media Corporation", Lamar's parent company, provided to the County.

6. **Binding Effect:** Unless terminated earlier as provided in this Agreement, this 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 Agreement.

7. **Notices:** All notices and other communications required or permitted to be given hereunder shall be in writing and shall be deemed valid and effective five (5) calendar days following deposit in the United States mail, postage prepaid, by certified and/or registered mail, and shall be addressed as follows:

If to Lamar:

Lamar Central Outdoor
24541 Redlands Boulevard
Loma Linda, CA 92354

If to County:

County of Riverside
Economic Development Agency
P.O. Box 1180
Riverside, CA 92502

With a Copy to:

Gresham Savage Nolan & Tilden
Attn: Ted Stream, Esq.
3750 University Avenue, Suite 250
Riverside, California 92501

With a Copy to:

County Counsel
3960 Tenth Street, 5th Floor
Riverside, California 92501

8. **Governing Law:** This Agreement shall be construed in accordance with the laws of the State of California.

9. **Others Affected:** Each and all of the provisions of this Agreement shall inure to the benefit of and shall be binding upon the parties, their successors-in-interest, agents, representatives, assignees, and transferees.

10. **No Third Party Beneficiaries:** No person or entity shall be deemed to be a third party beneficiary hereof, and nothing in this Agreement (either expressed or implied) is intended, nor shall it be construed to confer upon any person or entity, other than Lamar and the County, any rights, remedies, obligations or liabilities under or by reason of this Agreement. This Section 12 shall not be construed to compromise in any way the rights of successors-in-interest, agents, representatives, assignees, and transferees, as described in Section 8, above.

11. **Advice of Counsel:** In entering into this Agreement, the parties represent that they have relied upon the legal advice of their attorneys, who are the attorneys of their own choice, and that these terms are fully undertaken and voluntarily accepted by them. The parties further represent that they have no question with regard to the legal import of any term, word, phrase, or portion of this Agreement, or the Agreement in its entirety, and accept the terms of this Agreement as written.

12. **Authority to Execute:** The parties hereto represent and warrant to each other that they have full authority to execute this Agreement.

13. **Headings:** The headings employed to identify the provisions contained herein are solely for the convenience of the parties to this Agreement. If any ambiguity appears in either the headings or the provisions attendant thereto, such ambiguity shall not be construed against any party to this Agreement on the grounds that such party drafted this Agreement.

14. **Counterparts:** This Agreement may be executed in counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument.

16. **Integration:** This Agreement contains the complete expression of the whole agreement between the parties hereto, and there are no promises, representations, agreements, warranties or inducements, either expressed verbally or implied, except as are fully set forth herein. This Agreement cannot be enlarged, modified, or changed in any respect except by written agreement between the parties.

17. **Effective Date:** The Effective Date of this Agreement is the date the parties sign the Agreement. If the parties sign the Agreement on more than one date, then the last date the Agreement is signed by a party shall be the Effective Date.

IN WITNESS WHEREOF, the parties have executed this Agreement as of _____, _____.

COUNTY OF RIVERSIDE, a political
subdivision of the State of California

LAMAR CENTRAL OUTDOOR, LLC
a Delaware limited liability company

By: _____
Chairman, Board of Supervisors

By: _____
Name _____
Its _____

ATTEST:
CLERK OF THE BOARD

By: _____
Deputy

(SEAL)

FORM APPROVED COUNTY COUNSEL
BY: Synthia M. Guenzel DATE 11-12-09
SYNTHIA M. GUENZEL DATE

Exhibit "B" Removed Display

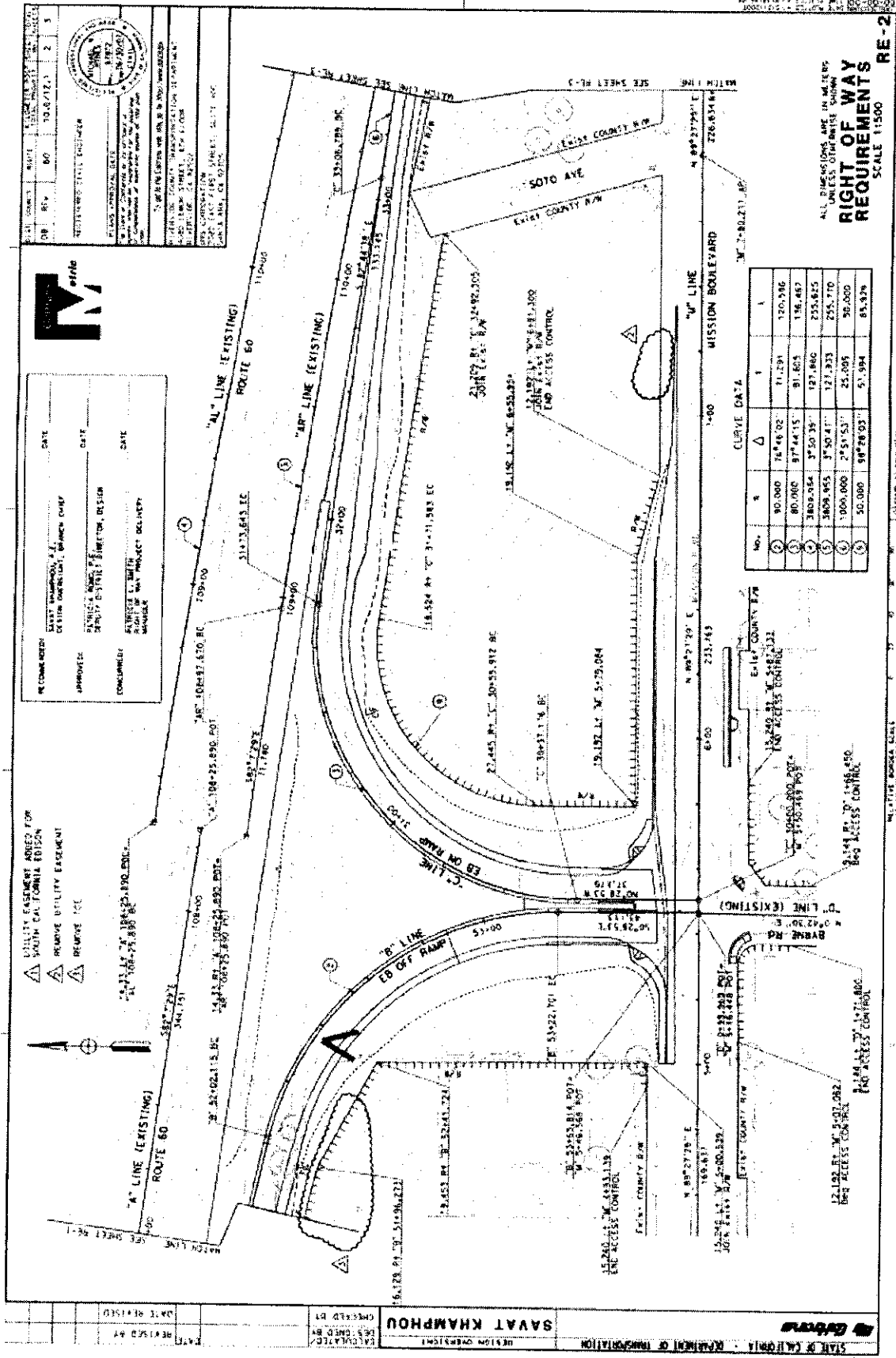


Exhibit "C" Relocated Display

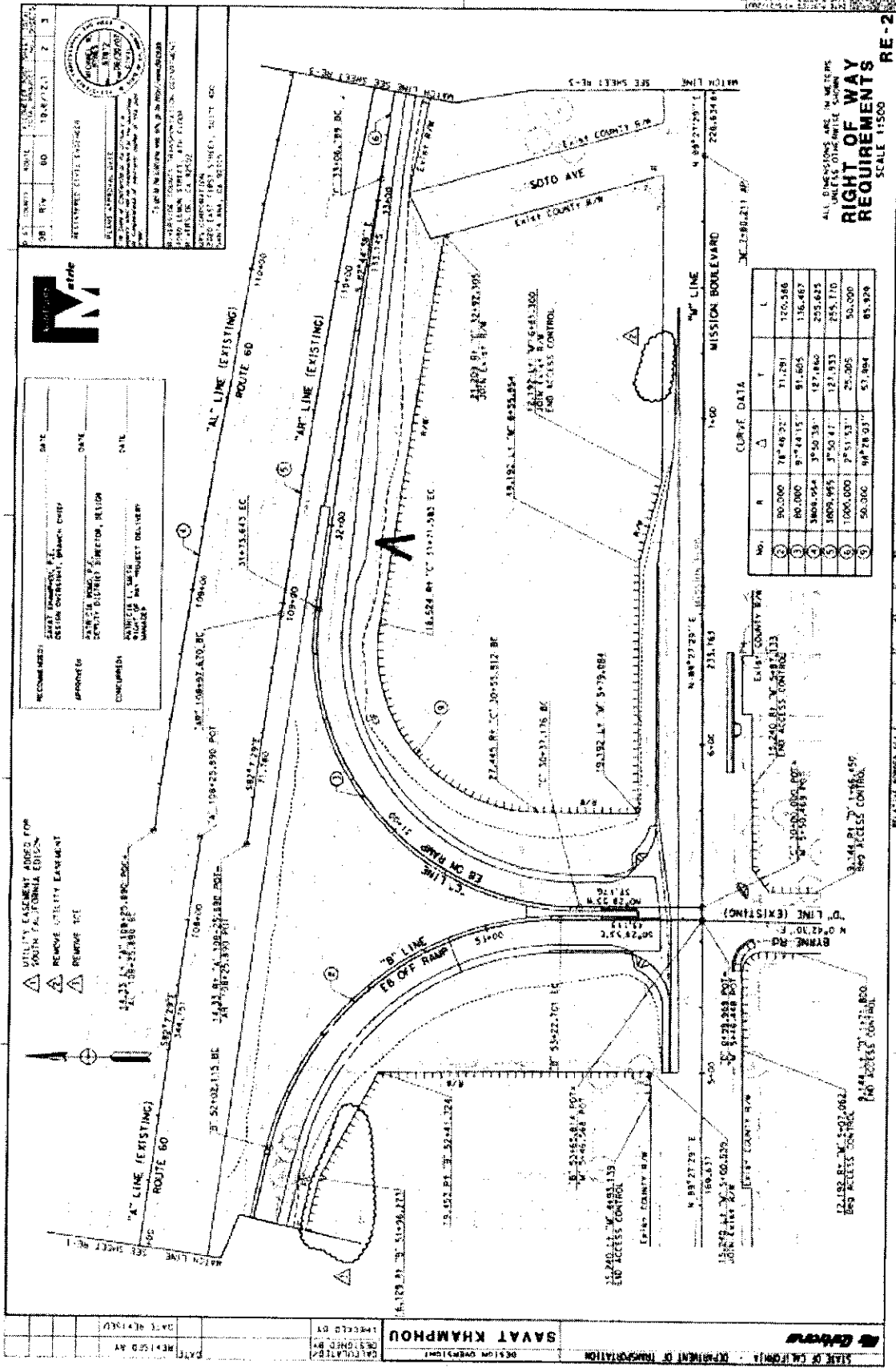


Exhibit "D"

Statement of Just Compensation



4155 Cook Street, Suite 250
Palm Desert, CA 92260
(760) 776-1238 ph
(760) 776-1858 fax
www.OPC.com

June 26, 2007

Mr. Brian Smith
The Lamar Companies
24-541 Redlands Blvd.
Loma Linda, CA 92354

Regarding: **SR60/Valley Way Interchange Improvements**
Sign No: 33414/33411
APN: 174-150-012
Parcel No. 20074

Dear Mr. Smith,

As you may know, the property on which your billboard is located, and which is referenced above, is located within the SR60/Valley Way Interchange Improvements Project area. The County of Riverside ("County") has made an offer to acquire the property and wishes to enter into negotiations with your firm to acquire your interest.

As part of the independent valuation appraisal of the property, a list of items which are classified under California law as "Improvements Pertaining to the Realty" and are eligible for acquisition was developed and is attached to this letter. Although we believe you have an interest in the signboard improvements located on the property, no determination of ownership has been made at this time; this is a matter to be resolved by you and the owner of the real property. Assuming your legal claim is supported and can provide clear title to your interest, the County is prepared to tender an offer in the amount of:

Three Hundred One Thousand Dollars
(\$301,000.00)

The amount of this offer is the full amount believed to be "just compensation" for the signboard being acquired and is not less than the approved appraisal of its fair market value. The basis for that determination is explained in the attached Statement of Just Compensation. It is our sincere desire that your interest be acquired amiably and expeditiously.

Overland, Pacific & Cutler, Inc. (OPC) has been retained as the County's acquisition consultant and will answer any questions you have regarding this offer letter and its attachments. You can reach Bob Stoddard of OPC at (760) 776-1238 or (760) 535-9014. In the meantime, and to facilitate establishment of your real property rights, it would be most helpful if you could send our firm a copy of your agreement with the owner. Please send the information to: Bob Stoddard, Overland, Pacific & Cutler, Inc., 41-555 Cook Street, Suite 250, Palm Desert, CA 92260.