

## **SETTLEMENT AGREEMENT**

THIS SETTLEMENT AGREEMENT (“Agreement”) is entered into as of November 5, 2020 by and between the City of Clarkston, Georgia (“City”) and Railroad Outdoor, LLC (“Railroad”) (City and Railroad are collectively referred to herein as “Parties;” each may be referred to as “Party” in the singular). The Parties are executing this Agreement with respect to the following matters:

### **RECITALS**

WHEREAS, on or about September 10, 2020, Railroad submitted four (4) sign applications to the City for signs at the following locations: 3611 Church Street, 3874 East Ponce de Leon Avenue, CSX Railway Outside I-285, and CSX Railway Inside I-285;

WHEREAS, the City denied the four (4) applications;

WHEREAS, Railroad appealed the City’s denials as to the four (4) sign applications to the City Council;

WHEREAS, the City Council denied Railroad’s appeals;

WHEREAS, Railroad intends to seek review of the City Council’s decision through a petition for writ of certiorari filed in DeKalb County Superior Court and perhaps other litigation;

WHEREAS, the City firmly maintains that its denials were proper and its ordinances valid in all respects but desires to avoid litigation; and

WHEREAS, certain other disputes have arisen or might arise in the future between the Parties and because the Parties wish to settle any and all disputes or claims between them in their entirety, they enter into this Agreement.

NOW THEREFORE, in light of the foregoing and based upon the exchange of valuable consideration by and between the Parties to this Agreement – including the City’s agreement to

allow the sign referenced below and the waiver of certain permits and legal claims by Railroad as set forth below – the Parties to this Agreement hereby agree to a mutual release of any and all claims, future or current, arising from or otherwise related to Railroad’s September 2020 sign applications, as follows:

### **TERMS**

1. Each of the respective Parties to this Agreement hereby mutually releases and forever discharges each of the other Parties to this Agreement and all of such Parties’ successors, assigns, agents, affiliates, officers, directors, employees, representatives, insurers, and attorneys and each of them of and from any and all claims, debts, liabilities, demands, obligations, damages, costs, expenses, attorneys' fees, actions and causes of action, of every nature, character and description, known or unknown, which any of the respective Parties to this Agreement, now own or hold or may have at any time heretofore owned or held, or may at any time own or hold against any other Party to this Agreement with respect to Railroad’s September 2020 sign applications. This does not restrict either Party, or any of their assignees, from enforcing this Agreement.
2. Subject to the terms hereof, by signing this Agreement Railroad accepts the City’s denials of the four (4) sign applications previously submitted to the City and waives any challenge to such denials.
3. The City will allow Railroad to permanently construct, erect, maintain, repair, and/or replace one (1) new double-sided (back-to-back or “V” shaped) outdoor advertising sign inside Interstate 285 (“the Subject Sign”) on property directly adjacent to the westerly right of way of Interstate 285. The location and dimensions of this sign are depicted on Exhibit “A” hereto. The Subject Sign may be erected utilizing LED sign faces, provided

however that nothing herein shall require both faces to be constructed with LED sign faces. At the election of Railroad, any sign face may be constructed as a static sign face. Any LED face shall be operated in accordance with state law and regulations. Any LED displays must be accessible to City law enforcement at all times for emergency messaging information, such as Amber Alerts or emergency management information. Such messages will be added immediately upon request to and will remain in the advertising rotation for 48 hours or such lesser time period as requested. The Subject Sign shall otherwise comply with Georgia law and Georgia Department of Transportation (“GDOT”) regulations for outdoor advertising signs.

4. Within ten (10) days of Railroad’s submission of a complete application to the City for the Subject Sign and the payment of any applicable fees, the City shall issue all necessary local permits. “Complete application” shall mean a completed City application form, aerial site plan, and engineering plans stamped by a Georgia-certified professional engineer.
5. To the extent Railroad is required to obtain permits from the Georgia Department of Transportation (“GDOT”) for the construction and alteration of the Subject Sign, the City agrees that, upon request by Railroad for same, it will execute and deliver to Railroad the GDOT standard application forms for outdoor advertising structures and multiple message signs within ten (10) days. The relevant GDOT forms have been attached hereto as Exhibits “B” and “C”.
6. Railroad may assign its rights herein and the terms shall be binding on all successors or assigns of Railroad.
7. This Agreement sets forth all, and is intended to be an integration of all, of the covenants,

promises, agreements, warranties, and representations among the Parties hereto, and, other than as expressly set forth herein, there are no covenants, promises, agreement, warranties, representations, or other understandings, oral or written, express or implied, among them relating to any and all disputes that exist or might exist between the Parties. This Agreement constitutes the entire agreement between the Parties.

8. This Agreement shall not be modified by either Party by oral representation made before or after the execution of this Agreement. All modifications must be in writing and signed by the Party to be charged therewith.
9. This Agreement represents the compromise of disputed claims and is not an admission of liability by any Party.
10. This instrument may be executed in separate counterparts and shall become effective when such separate counterparts have been exchanged among the Parties. Scanned or faxed signatures shall be binding.
11. No presumption against or in favor of any person or Party shall apply due to the drafting of this document.
12. This Agreement shall be governed by the substantive and procedural laws of the State of Georgia. Any suit brought to enforce any provisions of this Agreement must be brought in the state or federal courts of DeKalb County, Georgia.
13. Each of the Parties and each of the undersigned individuals hereby warrant to the other Parties that the undersigned have the authority to execute this Agreement and to bind the respective Parties to this Agreement. The Parties represent and warrant that they are the owners of all claims settled and released herein, that they have the authority to release all claims settled and released herein, and that they have not heretofore assigned to any other

person or entity all or any portion of any claim settled and released herein.

14. This Agreement represents the Agreement of the Parties in compromise of their disputed claims, notwithstanding that it may conflict with existing City ordinances governing signs. To the extent of conflict between this Agreement and City sign ordinance regulations, the provisions of this Agreement shall prevail and be controlling as to the Subject Sign and the four September applications.
15. The Parties acknowledge that the terms of this Agreement have been read, that its provisions are fully understood, that it has been approved by each of them as represented by counsel, and that same has been fully signed by them as their free act, and shall be binding upon all Parties upon execution.

REVIEWED, APPROVED, AND ACCEPTED BY RAILROAD OUTDOOR, LLC:

BY:   
MICHAEL B. FITZGERALD, Managing Member

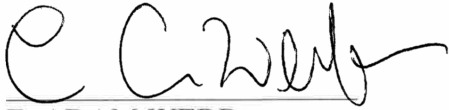
REVIEWED, APPROVED, AND ACCEPTED BY CITY OF CLARKSTON, GEORGIA:

BY: \_\_\_\_\_  
AWET EYASU, Vice Mayor

ATTEST: \_\_\_\_\_  
TRACY ASHBY, City Clerk



APPROVED AS TO FORM BY:

BY:   
E. ADAM WEBB  
Webb, Klase & Lemond, LLC  
Counsel to Railroad Outdoor, LLC

APPROVED AS TO FORM BY:


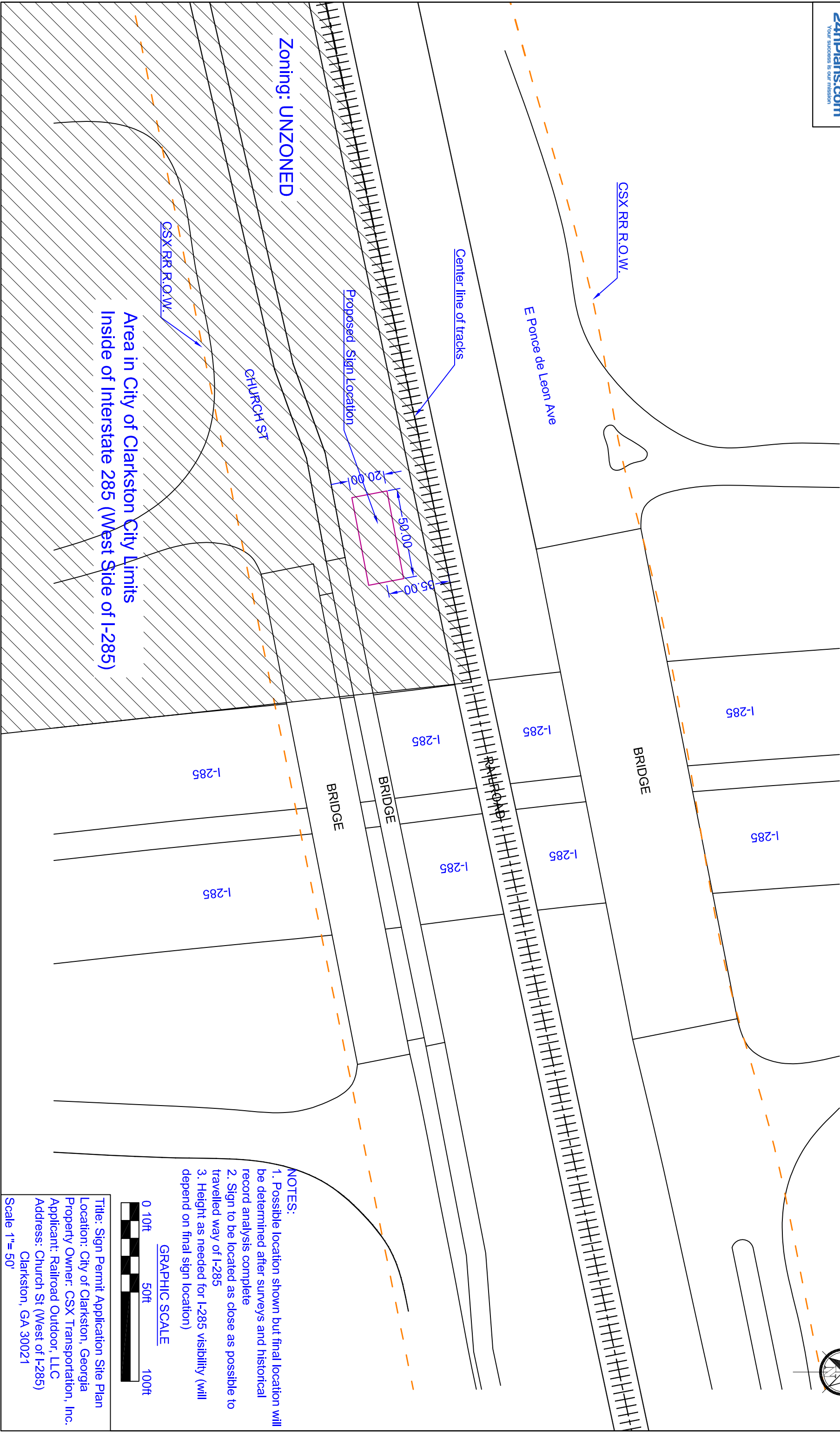
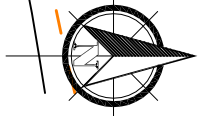
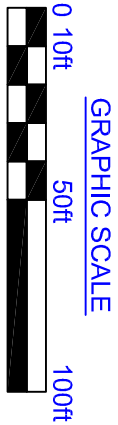
BY:   
STEPHEN QUINN  
City of Clarkston Attorney

Exhibit “A”



- NOTES:**
1. Possible location shown but final location will be determined after surveys and historical record analysis complete
  2. Sign to be located as close as possible to travelled way of I-285
  3. Height as needed for I-285 visibility (will depend on final sign location)



**Title:** Sign Permit Application Site Plan  
**Location:** City of Clarkston, Georgia  
**Property Owner:** CSX Transportation, Inc.  
**Applicant:** Railroad Outdoor, LLC  
**Address:** Church St (West of I-285)  
Clarkston, GA 30021

**Scale** 1"= 50'



# Exhibit “B”

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## Local Government Certification for Outdoor Advertising

### To be completed by Applicant:

Name of Applicant or Company: \_\_\_\_\_

Sign is: ☐ existing ☐ proposed

County: \_\_\_\_\_ Municipality (if applicable): \_\_\_\_\_

State Route Name & Number: \_\_\_\_\_

Parcel Number: \_\_\_\_\_

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### To be completed by appropriate Zoning Official:

#### Part 1.

I hereby certify that the (City of) (County of) \_\_\_\_\_

(Check all that apply):

- ☐ Has a zoning plan and ordinance. Original adoption date: \_\_\_\_\_.
- ☐ Date of last amendment (revision) to zoning plan: \_\_\_\_\_.
- ☐ Does not have a zoning plan and ordinances.
- ☐ Has other land use controls or ordinance. Please specify \_\_\_\_\_.
- ☐ Has a sign ordinance dated \_\_\_\_\_ separate from any zoning or land use plan.
- ☐ Has a sign ordinance which requires sign spacing of more than 500', size or height limits, or includes the "I-95 plan". Please specify \_\_\_\_\_.
- ☐ \_\_\_\_\_
- ☐ Has no sign controls of any kind.

#### Part 2.

#### (MUST BE FILLED OUT COMPLETELY)

Current zoning of the parcel where the sign is to be located: \_\_\_\_\_

Approved uses for this zoning type: \_\_\_\_\_

Date of MOST RECENT zoning of this parcel: \_\_\_\_\_

Previous zoning of this parcel: \_\_\_\_\_

I \_\_\_\_\_, a duly qualified official of the City/County of \_\_\_\_\_, do hereby certify that I have reviewed the location and description of the outdoor advertising structure described on the attached application and find the sign is to be located in an area appropriate for such structures and is in compliance with all local laws, ordinances or regulations. I further understand that in evaluating any application for an Outdoor Advertising permit GDOT does not review for compliance with local ordinances and that any such permit issued by GDOT is not a building permit.

This the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Authorized Official Signature

\_\_\_\_\_  
Printed Name and Title

Phone #: \_\_\_\_\_ Email: \_\_\_\_\_

Exhibit “C”

# APPLICATION FOR MULTIPLE MESSAGE SIGN PERMIT

## GEORGIA DEPARTMENT OF TRANSPORTATION

One Georgia Center  
600 West Peachtree Street N.W., 10<sup>th</sup> Floor  
Atlanta, Georgia 30308

TYPE OR PRINT LEGIBLY (Please sign original in blue ink- All Sections Must Be Completed)

\_\_\_\_\_  
Date of Application

\_\_\_\_\_  
GDOT Permit Number

**“Multiple Message” sign means, a sign, display, or device, which changes the message or copy of the sign electronically or mechanically by movement or rotation of panels or slats. (O.C.G.A §32-6-71)**

### Applicant Information

\_\_\_\_\_  
Corporate Name

\_\_\_\_\_  
Name of Applicant (agent)

\_\_\_\_\_  
Corporate Title

\_\_\_\_\_  
Address

\_\_\_\_\_  
City

\_\_\_\_\_  
State

\_\_\_\_\_  
Zip

\_\_\_\_\_  
Phone #

\_\_\_\_\_  
Email

### Property Owner Information

\_\_\_\_\_  
Corporate Name

\_\_\_\_\_  
Name of Landowner

\_\_\_\_\_  
Corporate Title

\_\_\_\_\_  
Address

\_\_\_\_\_  
City

\_\_\_\_\_  
State

\_\_\_\_\_  
Zip

\_\_\_\_\_  
Phone #

\_\_\_\_\_  
Email

### Sign Location Information

County: \_\_\_\_\_ City: \_\_\_\_\_ State Route #: \_\_\_\_\_ on the ☐ N ☐ E ☐ S ☐ W side  
of the roadway and \_\_\_\_\_ feet ☐ N ☐ E ☐ S ☐ W of milepost number \_\_\_\_\_.

Latitude: \_\_\_\_\_ Longitude: \_\_\_\_\_ (i.e. decimal degrees)

### Sign Description

Is this application to change the multi-message type for an already permitted multiple message sign? ☐ Yes ☐ No

Multiple Message Sign (MMS) Type: ☐ Mechanical ☐ Electronic Number of existing faces: \_\_\_\_\_

Number of faces to be Multiple Message: \_\_\_\_\_

Length: \_\_\_\_\_ Height: \_\_\_\_\_ Area: \_\_\_\_\_ Sq. Ft. Viewed from ☐ N ☐ E ☐ S ☐ W Direction ☐ MMS

Length: \_\_\_\_\_ Height: \_\_\_\_\_ Area: \_\_\_\_\_ Sq. Ft. Viewed from ☐ N ☐ E ☐ S ☐ W Direction ☐ MMS

Length: \_\_\_\_\_ Height: \_\_\_\_\_ Area: \_\_\_\_\_ Sq. Ft. Viewed from ☐ N ☐ E ☐ S ☐ W Direction ☐ MMS

Length: \_\_\_\_\_ Height: \_\_\_\_\_ Area: \_\_\_\_\_ Sq. Ft. Viewed from ☐ N ☐ E ☐ S ☐ W Direction ☐ MMS

Type of Construction (circle all that apply): ☐ Single Face ☐ Back-to-Back ☐ Double Face ☐ Type - V

### Local Government Approval [FOR CITY OR COUNTY USE ONLY]

I hereby certify that the (City or County of) \_\_\_\_\_, allows the type of multiple message sign (mechanical or electronic), provided all zoning requirements are met at the time application for building permit is submitted.

\_\_\_\_\_  
Authorized Official Name (print)

\_\_\_\_\_  
Title

\_\_\_\_\_  
Authorized Official Signature

City of \_\_\_\_\_, County of \_\_\_\_\_, Date: \_\_\_\_\_

**After Hours Contact Person**Name: \_\_\_\_\_ Phone #: \_\_\_\_\_ Email: \_\_\_\_\_

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\_\_\_\_\_  
Applicant / Agent Signature\_\_\_\_\_  
Corporate Title

**Note: This is not a building permit. Nothing in this permit shall be construed to abrogate or affect any lawful ordinance, regulation or resolution which is more restrictive than State Law as it pertains to the structure permitted.** (O.C.G.A §32-6-97) In the event this multiple message application is approved, all work must be completed within twelve (12) months from the date of approval, and the underlying outdoor advertising permit must also be kept in good standing during the entire twelve (12) month period.

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**Department Approval for Multiple Message Sign [FOR GDOT USE ONLY]**

Effective Date: \_\_\_\_\_

Permit #: \_\_\_\_\_

\_\_\_\_\_  
Outdoor Advertising Control Manager\_\_\_\_\_  
State Maintenance Engineer

**Required Attachments:** The following attachments (if applicable) are required for a complete application.

- a. A Copy of your W-9 Form.
- b. A detailed Shop Drawing of the sign indicating the plan, elevation, and side views of the sign.
- c. For corporate entities or Trusts who are the Applicant and/or Landowner: A signed statement from a corporate officer or executor, on company letterhead, authorizing the Agent(s) to sign this application on their behalf.
- d. A photograph of the existing sign or proposed sign site showing the location markings. A photograph showing the permit identification tag and where it is affixed to the structure.
- e. The correct permit fee. (fee amounts are available on the Outdoor Advertising webpage)

**Sign Installation Notification**

The permit holder shall provide notice of completion to the Department within ten (10) days of completion of construction of Multiple Message revision to the sign. The notice shall include an electronic photograph of the sign as viewed from the main travelled way of the roadway from which the sign is permitted.

**Submission of Application:**

Submit the application and all required attachments to the Georgia Department of Transportation, One Georgia Center, 600 West Peachtree Street N.W, 10<sup>th</sup> Floor, Atlanta, Georgia 30308, Attn: Outdoor Advertising Office

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## Multiple Message Application Instructions

Applications must be typed or filled out in ink. Only completed applications will be reviewed. Incomplete applications will be returned to the applicant.

### GDOT Permit Number

1. **Current Number:** Provide the current GDOT permit number for which you are requesting to revise to a multiple message status. Please leave this space blank if you are submitting a multi-message application concurrent with the outdoor advertising application.

### Applicant / Property Owner Information

2. **Name of Applicant or Company:** Person, corporate entity, or Trust in whose name the permit is listed. The person or corporate entity name and F.E.I.# / Social Security # you provide on the application should match the name and F.E.I.# / Social Security # on the copy of the W-9 Form you provide.
3. **Name of Landowner:** Person, corporate entity, or Trust in whose name the Landowner is listed. This will be the name used by the Department for all correspondence to the landowner.

### Sign Location Information

4. **County and Road Information:** Indicate the county and city (if applicable) in which the sign is or will be located. Indicate the state route number of the roadway the sign will be adjacent to. Some roads have two state route number designations. The Department uses the lower route number.
5. **Milepost Information:** Provide the distance in feet to the lower number milepost (not necessarily the closest milepost).
6. **Latitude / Longitude:** Provide the latitude/longitude coordinates of your proposed or existing sign location in decimal degrees. If you use *Google Earth* and it shows coordinates in degrees, minutes, seconds, you can change it to read in decimal degrees by clicking on "Tools" and choosing "Options". In the "Options" box you will see a "show Lat/long" section that allows you to select "decimal degrees".

### Sign Description Information

7. **Mechanical or Electronic:** Indicate which type, mechanical or electronic (LED), of multiple message sign for which you are applying.
8. **Face Length, Width, and Area:** These measurements are taken to the nearest whole foot. The Area is the total square feet (length times the height). The area of a face cannot exceed 1,200 square feet. Indicate which faces will be multiple message (MMS).
9. **Types of Construction:** Select the configuration that best describes your sign.

### Local Government Approval

10. **Local Government Certification:** An authorized official from the appropriate city or county signs the local government approval section certifying that their government entity allows the type of multiple message sign that the applicant is requesting to build at that designated location.

### After Hours Contact

11. **Contact Name:** Provide the name and contact information of the person the Department should contact if there is a sign issue that needs immediate attention.

### Applicant Signature

12. Provide Signature and corporate title.