

**SETTLEMENT AGREEMENT BETWEEN THE CITY OF RAPID CITY AND EPIC
OUTDOOR ADVERTISING INC.**

This Settlement Agreement (the “Agreement”) is made and entered into on this ___ day of April, 2018, by and between the City of Rapid City, a municipal corporation of the State of South Dakota, located at 300 Sixth Street, Rapid City, South Dakota 57701, herein after referred to as the “City,” and Epic Outdoor Advertising, Inc., a South Dakota corporation, located at 720 St. Anne Street, Rapid City, South Dakota 57702, herein after referred to as “Epic.”

SECTION ONE: PURPOSE

This Agreement is made between the City and Epic to memorialize the terms of a settlement reached between the parties for the complete and final disposition of their claims, differences, and causes of action arising out of *Epic Outdoor Advertising v. The Zoning Board of Adjustment of the City of Rapid City*, Case No. CIV15-1593, filed in the Seventh Judicial Circuit and venued in Pennington County, South Dakota. The parties are also currently involved in a separate cause of action captioned *Epic Outdoor Advertising v. Rapid City*, Case No. CIV12-002058. It is the intent of the parties to resolve only those claims brought in Case No. CIV15-1593 and the parties understand that they are not resolving any claims or causes of action other than the claims related to Case No. CIV15-1593.

SECTION TWO: TERMS OF THE AGREEMENT

The City and Epic wish to resolve all matters, known and unknown, discovered or discoverable by them, which may be in controversy between the parties and resolve all claims that were made, or could have been made, in the legal action described in Section One of this Agreement. This settlement and release extends to the individual employees, elected officials, shareholders, officers, directors, agents, affiliates and assigns of the parties in their official and individual capacities as well as to their respective insurers. Each party specifically denies any

liability whatsoever to each other on these claims, but specifically express their desire to settle the above identified dispute between them fully and finally. It is the intent of the parties that this Agreement shall release and discharge all claims that were brought, or that could have been brought, in the above described litigation, including any claims related to alleged conflicts of interest by elected officials who participated in the vote on this Agreement. However, any such release related to alleged conflicts of interest does not extend to participation in decisions on cases other than the case resolved in this settlement, or any future actions or decisions in which a conflict of interest is alleged. It is not the intent of this Agreement to release any claims, demands, damages or causes of action for acts or omissions outside of the case identified in Section One or which occur after the date of this Agreement or any claims arising out of an alleged breach of this Agreement.

In consideration of the mutual covenants set forth herein, the City and Epic agree as follows:

1. Within ninety (90) days of this Agreement being approved by the City, the City agrees to amend its ordinances to increase the maximum size of off-premises signs (billboards) along Interstate 90 within the City to Six Hundred and Seventy-two (672) square feet. The City also agrees as part of this ordinance amendment to increase the maximum sign pole height for off-premises signs along Interstate 90 from thirty (30) feet to forty (40) feet as measured from the base of the pole to the top of the pole. The City can accomplish these changes through the creation of a zoning overlay district along the Interstate.
2. Within ninety (90) days of this Agreement being approved by the City, the City agrees to amend its ordinances to remove any requirement to obtain a conditional

use permit for any work to an existing off-premises sign. The City will continue to require that a conditional use permit be obtained for any new off-premises signs.

3. The City agrees to remove the condition of approval which requires the billboards authorized under the “public purpose” exception at the Council meeting on July 18, 2005, must run public purpose advertising 20% of every hour. The four (4) signs this provision applies to are as follows: 1) the sign structure located in the railroad ROW on the southeast corner of the intersection of St. Joseph and St. Patrick Streets; 2) The sign structure located in the railroad ROW on the north side of Omaha Street at its intersection with 3rd Street; and 3) the sign structure located in the railroad ROW on the north side of East North Street just west of its intersection with North Maple Ave.; and 4) the sign structure located in the railroad ROW on the north side of West Main Street to the east of its intersection with Cross Street in the area commonly known as the “gap.” Upon the removal of this stipulation the parties agree that these signs will become legal non-conforming off-premises signs as defined by the Rapid City Municipal Code and be subject to all regulations applicable to such signs.
4. Epic will cease running full motion videos on all of its signs no matter how they were originally approved and agrees to operate all of its signs in full compliance with all City ordinances in the future.
5. That Epic and the City agree that it has been and is important to the City that there is not a proliferation of billboards. With that understanding, Epic has already obtained a conditional use permit on a location commonly referred to as

Dyess Avenue where it can currently construct a digital board in a size commonly known as poster size. This settlement would allow Epic to construct the digital board but in the size allowed in the interstate district as provided herein. The City of Rapid City agrees that this larger board will be permitted as provided for in Exhibit 1 and that will be granted contemporaneous with this agreement being signed. The parties agree that the issuance of the Dyess Avenue Board will require the use of two sign credits. The second board discussed is the Deadwood Avenue billboard which is an older existing billboard controlled by the same owner as my client. The City agrees that by ratifying this agreement it would also be approving the permit for the Deadwood Avenue sign under the interstate district contemplated herein and attached as Exhibit 2. The ratification of this agreement results in no billboards that are already approved or otherwise in existence. The parties agree that the issuance of the Deadwood Avenue Board would also require the use of two sign credits as required under the existing ordinance. Epic agrees as to the Deadwood Avenue Board that if any legal challenge is made to such Deadwood Avenue Board that Epic agrees to hold the City harmless, and indemnify it, for any claims made against the City in regards to this Agreement to include reasonable attorney's fees and costs. The City intends to immediately tender such claim if such to Epic, if made, and agrees that it will incur no attorney's fees or costs in defense of such action. The City agrees to cooperate in the defense of any such claims if necessary and based on any such claims made by any third party.

6. There will be no money exchanged between the parties. The parties agree to bear their own costs and attorney's fees in connection with the litigation and with the negotiation of this Agreement.
7. If this Agreement is ratified, the parties will jointly file a motion to the South Dakota Supreme Court seeking to continue the filing dates for the current appeal or otherwise hold this matter in abeyance pending the City fulfilling its obligations under this Agreement. Within ten (10) days after the ordinances identified in sub-sections (1) and (2) have been approved and the period in which they can be referred has past, the parties authorize their attorneys to execute a Stipulation for the Court to enter a Judgment of Dismissal of the claims they each have made against the other in the pending lawsuit identified in Section One of this Agreement. The parties agree to execute and deliver any additional papers, documents and other assurances, and take all acts that are reasonably necessary to carry out the intent of this Agreement.

SECTION THREE: EFFECT OF AGREEMENT

The City and Epic agree and warrant that no promises, inducements, or representations have been made or offered except as herein set forth. The parties further agree that this Agreement is executed without reliance upon any statement or representation by any of the parties, their attorneys, or representatives, concerning the nature and extent of damages, or legal liability therefore, or the strength, weakness, or merit of any claims as part of this settlement. Both parties and their attorneys have made their own determination as to the law and facts and assume any and all risk in that regard. The consideration identified in this Agreement is not a

mere recital. All agreements and understandings between the parties are embodied and expressed in this Agreement or otherwise excluded.

Each entity executing this Agreement represents that it has full legal authority to do so. Each party assumes the risk of any mistake of fact, whether the fact, or facts, be present, past, or future, including the extent of any injuries, damages, or losses that may have been incurred or may be incurred in the future. This Agreement shall be binding on and inure to the benefit of Epic and the City and their respective legal representatives, successors, and assigns. Epic and the City hereby represent that they have carefully read the foregoing Agreement, have consulted with their attorneys, know the contents thereof, and sign this Agreement of their own volition.

SECTION FOUR: CHOICE OF LAW AND VENUE

The parties' rights and obligations under this Agreement shall be governed by, and construed in accordance with, the laws of the State of South Dakota. Any dispute concerning this Agreement shall be venued and litigated in the Circuit Court for the Seventh Judicial Circuit, located in Rapid City, Pennington County, South Dakota.

SECTION FIVE: WAIVER

Failure of a party to insist upon adherence to any term of this Agreement on any occasion shall not be considered a waiver, or deprive that party of the right thereafter to insist upon adherence to that term, or any other term, of this Agreement.

SECTION SIX: CONSTRUCTION, SEVERABILITY AND MERGER

The parties acknowledge that they have each contributed to the making of this Agreement. The parties further acknowledge that they have had an adequate opportunity to consult with their own legal counsel in the negotiation and preparation of this Agreement. In the event of a dispute between the parties over interpretation of this Agreement, ambiguities shall

not be attributed to either party. The terms of this Agreement are non-severable and, unless otherwise agreed to by the parties, this Agreement shall terminate if any term or provision of this Agreement fails or is held by a court of competent jurisdiction or other competent authority to be invalid, void, or otherwise unenforceable. This document constitutes the entire agreement of the parties. No other promises or consideration form a part of this Agreement. All prior discussions and negotiations are merged into this document or intentionally omitted.

SECTION SEVEN: EXECUTION IN COUNTERPARTS

This Agreement may be executed in one or more counterparts which, taken together, shall constitute but a single agreement. Signatures exchanged by facsimile or electronically shall be considered binding.

CITY OF RAPID CITY

Steve Allender, Mayor

ATTEST:

Pauline Sumption, Finance Officer

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