

**SETTLEMENT AGREEMENT BETWEEN THE CITY OF RAPID CITY, LAMAR  
ADVERTISING OF SOUTH DAKOTA L.L.C., AND TLC PROPERTIES, INC., D/B/A  
LAMAR TLC PROPERTIES, INC.**

This Settlement Agreement (“Agreement”) is made and entered into on this \_\_\_ day of March, 2016, 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,” Lamar Advertising of South Dakota, L.L.C., a South Dakota limited liability company, located at 3839 Sturgis Road, Rapid City, South Dakota 57702, and TLC Properties, Inc. d/b/a Lamar TLC Properties, Inc., a Louisiana corporation, located at 5321 Corporate Blvd., Baton Rouge, LA 70808, herein after collectively referred to as “Lamar.”

**SECTION ONE: PURPOSE**

This Agreement is made between the City and Lamar 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 *Lamar Advertising of South Dakota, L.L.C. & TLC Properties, Inc. d/b/a Lamar TLC Properties Inc. v. Rapid City*, filed in Federal District Court for the District of South Dakota, File No. 11-5068; and *Lamar Advertising of South Dakota, L.L.C. & TLC Properties, Inc. d/b/a Lamar TLC Properties Inc. v. Rapid City* filed in the Seventh Judicial Circuit and venued in Pennington County, South Dakota, Case No. 51CIV15-001522.

**SECTION TWO: TERMS OF THE AGREEMENT**

The City and Lamar 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 actions 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 all current disputes 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. It is not the intent of this Agreement to release any claims, demands, damages or causes of action for acts or omissions that occur after the date of this Agreement or for breaches of this Agreement.

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

1. Within one-hundred and twenty (120) days of this Agreement being approved by the City, the City agrees to repeal Section 17.50.080(D)(20) and the portion of Section 17.50.090(C) of the Rapid City Municipal Code (RCMC) which prohibit off-premises signs which are internally illuminated or which operate to display electronic variable messages through light emitting diodes, liquid crystal displays, plasma image displays or any other light emitting mechanism. The parties acknowledge that this Agreement applies only to the City repealing the language of the above identified sections of the City Code as they currently exist and does not prohibit the City from adopting any reasonable regulations related to off-premises signs, including signs which are internally illuminated or which operate to display electronic variable messages through light emitting diodes, liquid crystal displays, plasma image displays or any other light emitting

mechanism, in the future. Conversely, this Agreement does not prevent Lamar from challenging any such future regulations at the time they are adopted.

2. Within one-hundred and twenty (120) days of this Agreement being approved by the City, the City agrees to amend Section 17.50.090(B)(5) of the RCMC to reduce the minimum radial distance between off-premises signs from 1,500 feet to 1,000 feet and reduce the minimum linear distance between off-premises signs along the same roadway from 2,000 feet to 1,500 feet. The parties acknowledge that this Agreement does not prohibit the City from adopting or amending its ordinances in the future to establish reasonable regulations related to the spacing between off-premises signs. Conversely, nothing in this Agreement prevents Lamar from challenging any future spacing regulations adopted by the City.
3. The City agrees to pay Lamar a total of \$100,000. The City will pay \$25,000 of this amount and the City's insurer will pay the balance. Full payment will be made within sixty (60) days of this Agreement being approved by the City.
4. The City acknowledges that the "sunset" provision contained in Section 17.50.090(D)(6) of the RCMC will not be applied retroactively to any off-premises sign credits issued to Lamar before the provision was adopted as part of an initiated ordinance on June 9, 2011.
5. The Parties agree to bear their own costs and attorney's fees in connection with the litigation and with the negotiation of this Agreement.
6. Within ten (10) days of this Agreement being executed by the City and Lamar, Lamar and the City will give their respective attorneys permission to sign a

Stipulation for the Court to enter a Judgment of Dismissal of the claims they each have made against the other in the pending lawsuits 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 Lamar 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 Lamar and the City and their respective legal representatives, successors, and assigns. Lamar 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, or the Federal District Court for the District of South Dakota, Western Division, which are both 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 acknowledges 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. If any provision or term of this Agreement is held to be unconstitutional, invalid, or unenforceable by any court or tribunal having jurisdiction over the parties, the remainder of this Agreement shall remain in full force and such invalidity shall not affect any other provision of this Agreement if the remaining sections or provisions can be given effect without the invalid section or provision. 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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