AGREEMENT BETWEEN THE CITY OF RAPID CITY
AND CREATIVE OUTDOOR ADVERTISING FOR
BUS PASSENGER BENCH AND BUSS PASSENGER BENCH ADVERTISING

This Agreement is entered into this ___ day of ___ , 2021 by and between the City of Rapid City, 300 Sixth Street, Rapid City, SD 57701, a municipal corporation organized under the laws of the state of South Dakota, ("City"), and Creative Outdoor Advertising, 8875 Hidden River Parkway, Tampa, Florida 33637("Contractor").

WHEREAS, on May 15, 2018, City issued a request for proposals for Transit Passenger Bench and Bench Advertising; and

WHEREAS, City awarded the contract to Contractor as part of the RFP process in August, 2018; and

WHEREAS, over the past three years, Contractor has performed its contractual obligations to the City’s satisfaction, and Contractor is similarly pleased with its work in the City; and

WHEREAS, this contract is outside of the realm of state bid law found in SDCL 5-18A to 5-18D, and therefore the parties can continue their contractual relationship without any statutory requirement for the City to re-solicit proposals; and

WHEREAS, and the parties wish to continue their contractual relationship and hereby agree to the following terms and conditions.

A. Work. The Contractor agrees to perform the work described in the Transit Passenger Bench and Bench Advertising RFP dated May 15, 2018 (including the Notice to Bidders, Instructions to Bidders, Specifications for Bus Passenger Bench and Bus Passenger Bench Advertising, General Conditions and Requirements, Advertising Specifications, Maintenance Specifications, and Appendix A), the Contractor’s Proposal submitted in response to the RFP, both of which are attached to this Agreement as Exhibits A and B and are hereby incorporated into this Agreement as if fully contained herein.

B. Payment. The Contractor shall pay the City an amount equal to $205 per bench per year. Such amount shall be split equally into twelve monthly payments, and Contractor shall make the payments no later than the 10th of each month. If the number of benches increases or decreases, as discussed in this Agreement, the Contractor may prorate its payment for any such benches in accordance with the date of installation or removal.

C. Advertising Rights and Privileges. In consideration for the Work and Payment discussed above, Contractor is granted the sole and exclusive advertising rights and privileges to install benches as specified locations on established bus routes and to sell advertising on said benches under conditions as discussed in the RFP. This award is not an exclusive grant of bench rights within the City’s corporate limits, and City may grant bench rights to other companies on other than established bus routes.

D. Changes in Bench Locations. City reserves the right to request additional benches, if deemed necessary. If Contractor wishes to add or remove a bench from any location, it shall make the request with an explanation for the request to the Rapid Transit System Division Manager, who shall consent in writing to the addition or removal.
E. **Indemnification.** Contractor agrees to assume all liability and responsibility and to indemnify, hold harmless and defend, at its own expense, City, its officers, agents, and employees, from and against any and all claims or suits for property loss or damage and/or personal injury, including death, to any and all persons, of whatsoever kind or character, whether real or asserted, arising out of or in connection with this Agreement.

F. **Contractor Property.** City shall not under any circumstances be responsible for any property belonging to Contractor, its officers, agents, employees, contractors, or subcontractors which may be lost, stolen, destroyed, or in any way damaged; and Contractor hereby indemnifies and holds harmless the City, its officers, agents, and employees, from and against any and all such claims.

G. **Advertising.** City and Contractor shall accept this Agreement subject to all federal, state, and city laws and regulations with respect to advertising matter to be displayed. If such advertising becomes illegal or a request is received to terminate the advertising, Contractor and City may terminate the same. Any cost associated with such termination is solely the responsibility of Contractor. Contractor shall indemnify City against all liability for infringement of trademarks, trade names, or copyrights, and against all liability for invasion of privacy, defamation, illegal competition, or unfair trade practices.

H. **Term.** This contract is for a term beginning upon execution and ending June 30, 2025. The parties may mutually agree to renew the Agreement for two additional years by written consent completed no later than 30 days prior to the date the contract terminates.

I. **Insurance.** The Contractor shall furnish a certificate of insurance as proof that it has secured and paid for a policy of public and product liability insurance covering all risks incident to or in connection with the exercise of privileges granted herein. Such insurance shall include the following coverage:

<table>
<thead>
<tr>
<th>Type of Coverage</th>
<th>Minimum Limits of Coverage</th>
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<tbody>
<tr>
<td>1. Workers' Compensation</td>
<td>Statutory</td>
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<tr>
<td>Employer's Liability</td>
<td>$500,000/$500,000/$500,000</td>
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<tr>
<td>2. Comprehensive General Liability</td>
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<tr>
<td>(Including Contractual Liability and Completed Operations)</td>
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<td>Bodily Injury and Property Damage</td>
<td>$1,000,000 each occurrence</td>
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<td>General Aggregate</td>
<td>$2,000,000</td>
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<tr>
<td>3. Commercial Automobile Liability</td>
<td>$1,000,000 combined single limit</td>
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Such insurance policies shall name the City of Rapid City as an additional insured with respect to all activities arising out of the performance of the work and/or services under this Agreement. Acceptable Certificates of Insurance and Endorsements confirming the above coverage shall be filed with the City before commencing any work and/or services. Such Certificates shall afford the City thirty (30) days written notice of cancellation or of a material change in coverage. The City's failure to obtain from the Contractor a Certificate of Insurance conforming to the foregoing requirements shall not be deemed a waiver of any of the foregoing requirements. This paragraph shall in no way limit the provisions of the indemnity section.
J. **Independent Contractor.** The parties agree that Contractor operates an independent business and is contracting to do work according to its own methods, without being subject to the control of City. The relationship between City and Contractor shall be that as between an independent contractor and the City and not as an employer-employee relationship.

K. **Controlling Law.** The parties agree that the terms of this Agreement shall be governed by the laws of the State of South Dakota. In the event of any conflict of laws, the law of the State of South Dakota shall be controlling. Any legal action arising out of or relating to this agreement shall be brought only in the Circuit Court of the State of South Dakota, Seventh Judicial Circuit, located in Rapid City, Pennington County, South Dakota.

L. **Severability.** The provisions of this Agreement shall be deemed severable, and the invalidity or unenforceability of any provision shall not affect the validity and enforceability of the other provisions hereof. If any portion of this Agreement is unenforceable for any reason whatsoever, such provision shall be appropriately limited and given effect to the extent that it may be enforceable.

M. **Time is of the Essence.** The parties agree that time is of the essence in the execution and performance of this Agreement.

N. **Disadvantaged Business Enterprise (DBE).** In connection with the performance of this contract, Contractor will cooperate with City in meeting its commitments and goals with regard to the maximum utilization of DBEs and will use its best efforts to ensure that DBEs shall have the maximum practicable opportunity to compete for subcontract work under this Agreement.

O. ** Entire Contract.** There are no representations, warranties, covenants, or undertakings other than those contained in this Agreement or its exhibits. This Agreement contains the entire understanding of the parties with respect to the subject matter hereof and no addition to, change, or modification of this Agreement shall be effective unless in writing and signed by all parties.

Dated this ___ day of October___, 2021.

CREATIVE OUTDOOR ADVERTISING

By: [Signature]

Liz Gaylord

Printed Name

[Signature]

Its: C.F.O.
Dated this _____ day of __________, 2021.

CITY OF RAPID CITY

________________________
Mayor Steve Allender

ATTEST:

________________________
Finance Director