

**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 22nd day of June, 2017, 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. Rapid City*, Case No. CIV12-002058 and *Epic Outdoor Advertising v. The Zoning Board of Adjustment of the City of Rapid City*, Case No. CIV15-1593, which were both filed in the Seventh Judicial Circuit and venued in Pennington County, South Dakota.

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 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. The parties understand and agree that Epic is not waiving future claims as to the City's authority to enact, regulate, or enforce sign credits. The parties understand and agree that Epic currently has sign credits issued to it. The parties understand and agree that no future challenge of such sign credits, if made by Epic at all or ever in the future, would occur within three years of the date of this Agreement.

In consideration of the mutual covenants set forth herein, and understanding that time is of the essence, the City and Epic agree as follows:

1. Within a prompt and reasonable time 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 I-90 within the City to Six Hundred and Seventy-two (672) square feet. City also agrees that such ordinance shall state that the sign pole height along Interstate I-90 within the City shall be a maximum of forty feet measured from the base of the pole to the top of the pole.
2. Within a prompt and reasonable time 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 subject to South Dakota law on legal non-conforming uses.
5. 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.
6. That Epic and the City agree that two separate interstate billboards have been discussed at length in settlement negotiations. They are referred to as the Dyess Avenue Board and the Deadwood Avenue Board. The parties agree and understand that attached as Exhibit 1 is the permit for the Dyess Avenue Board and that attached as Exhibit 2 is the permit for the Deadwood Avenue Board.

The parties agree that the permits for the Dyess Avenue and Deadwood Avenue Boards will be granted by the City on the date in which this Agreement is signed and issued to Epic contemporaneous with the ordinance changes identified in this Agreement. The parties agree that the issuance of the Dyess Avenue Board will require the use of two sign credits. 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.

7. Within ten (10) days of this Agreement being executed by the City and Epic, Epic 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 that such Stipulation for Dismissal will be held by the parties until such time as the ordinance changes identified in this Agreement occur and that the terms of this Agreement have been satisfied. 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. This section, however, should not be construed to change the provisions above identifying the covenants or terms that this Agreement is conditioned upon.

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.. 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.

Dated this ____ day of June, 2017.

CITY OF RAPID CITY

Steve Allender
Mayor of Rapid City

ATTEST:

Pauline Sumption, Finance Officer

