

THIS LICENSE AGREEMENT MADE THIS 19th DAY OF FEBRUARY IN THE YEAR 2019

**BETWEEN:**

The City of Hattiesburg

(Hereinafter called the "THE CITY")

- And -

CREATIVE OUTDOOR ADVERTISING of AMERICA INC

(Hereinafter called "COA")

**WHEREAS** COA is engaged in providing Streetscaping™ transit Amenities and related appurtenances and selling advertising space thereon for the purpose of advertising goods and services;

**AND WHEREAS** COA has asked The City of Hattiesburg for the privilege of placing such street amenities on untraveled portions of public highways within the jurisdiction of The City of Hattiesburg;

**NOW THEREFORE IN CONSIDERATION OF** the mutual covenants hereinafter contained, the parties do hereby agree as follows:

***DEFINITIONS***

1. For the purposes of this Agreement,

1.1. **"Street Furniture"** means the actual piece of functioning street furniture placed within the City right of way such as the seating, recycling container, bus shelter, bike rack, trash can, or newspaper box organizer with integrated trash receptacles and/or recycling containers

1.2. **"Amenities"** means: Handi-Hut Bus Shelter and The Lexington Bench (where agreed upon), advertising faces, a mounting pad for each Amenity, and an area of three feet surrounding all visible vertical sides of each piece of street furniture. The parties agree that the style and design of the Amenities provided are to be approved by the DIRECTOR OF URBAN DEVELOPMENT.

- 1.3. "CITY" and "CITY (s)" means The Incorporated entity known as The City of Hattiesburg.
- 1.4. "CITY MANAGER" means Director of Urban Development or his or her designate.
2. COA agrees to install all Amenities on a mounting pad unless a suitable base exists. Where a mounting pad does not exist and is required, COA agrees to install, at COA's sole expense, a mounting pad for every Amenity installed pursuant to this Agreement. COA shall be responsible for ensuring that all mounting pads provide for the safe movement of pedestrians to, from and around the Amenity.
  - 2.1. If any given location will require major reconfiguration to accommodate safe installation and movement of pedestrians to, from and around the Amenity, COA holds the right, without any contractual consequences, to refuse installation at such sites due to unfeasible economical investment.
  - 2.2. If THE CITY requires a concrete mounting pad larger than 60 square feet for the benches and larger than 72 square feet for the bus shelters, THE CITY will be responsible for the cost of the additional concrete required. If THE CITY requires construction to occur at the location a COA mounting pad has been installed THE CITY will be responsible for replacing the mounting pad. This will be at the expense of THE CITY.
  - 2.3. COA shall ensure that the installation of and all maintenance and repair of the Amenities is carried out in a proper and workmanlike manner and so as not to create hazards to utilities or THE CITY and shall ensure the safety of pedestrians and the safe movement of vehicles.
3. COA shall conform to any environmental policies or recycling programs adopted by the federal or State governments or by CITY Council prior to the term of this Agreement. THE CITY will not reimburse COA for any costs associated with conforming to any such policies or programs. The CITY agrees to advise COA of any such proposed policies and programs prior to their consideration by CITY Council.

#### ***TERM***

- 3.1. The term of this Agreement shall be 15-years commencing May 1, 2019 and ending April 30, 2034 (the "Term") with renewal options, as stated herein, unless terminated earlier pursuant to the terms of this Agreement, and except that COA may unilaterally terminate the agreement at any time after the first 10-years provided that COA provides one-hundred, eighty (180) days notice prior to ceasing revenue-generating activity at a site. It is further hereby acknowledged that state statute prohibits one City Council from binding a future Council.
- 3.2. The term length as set out in clause 3.1 will commence at COA's receipt of the municipal authorizations required to install the Amenities pursuant to this Agreement. The CITY will not count the wait period towards this Agreement term.
- 3.3. Providing that COA has met all of the contractual obligations hereinafter contained, the contract will renew for successive one year terms at the end of the original term of the contract.
- 3.4. The CITY MANAGER agrees to provide COA with notice, in writing, of the intent NOT to renew this Transit Amenity Agreement – Creative Outdoor Advertising – 2/19/2019 – Page 2 of 11

agreement under the same terms and conditions, at least one-hundred, eighty (180) days before the expiry of this agreement. If said notice is not provided in writing, this agreement will automatically renew for the period contained within 3.3.

- 3.5. Thereafter, in the absence of one-hundred, eighty (180) days notice, this contract shall continue to renew each 12 months, for an additional 12 months, until such time as notice is issued.

#### ***INSTALLATIONS & MAINTENANCE***

4. COA agrees during the construction or installation of the Amenities to keep each location in a clean and orderly condition and remove all waste and unusable material from each location upon completion of the construction or installation of each Amenity or as required by the CITY MANAGER.
5. COA shall be solely responsible for obtaining all authorizations and the like before any Amenity is installed and for any other work undertaken by COA pursuant to this Agreement. As sites shall serve a public purpose, directly serving the transit system's ridership, any city permitting fees shall be waived as a term of this agreement, this waiver being consistent and compliant with the city's Right-of-Way ordinance.
6. COA shall maintain all Amenities as defined herein in good repair and is solely responsible for ensuring the provision of normal maintenance to those amenities as follows:
  - 6.1. to keep the grass trimmed,
  - 6.2. to keep the area free of debris,
  - 6.3. to keep the Amenities clean and free of graffiti, and
  - 6.4. to inspect amenities for damage during regular maintenance and make arrangements for timely repair.

COA shall provide normal maintenance to the amenities once a month or as often as reasonably required, limited to a maximum of 1.2 visits per week (1.2 times the total Amenities installed). If an Amenity requires more than 2 visits per week, the contractor has the right to remove the Amenity or the CITY and Contractor may reach a mutually agreeable alternative solution.
7. COA agrees to continuously maintain all Amenities and keep them free from damage and to protect the property of THE CITY from injury or loss.
8. The CITY agrees to enforce applicable bylaws (ordinances) with regards to the placement of larger than casual volumes of trash or leaving household trash bags on COA amenities.
9. THE CITY agrees to permit COA to install amenities on untraveled portions of public highways within the jurisdiction of Hattiesburg:
  - 9.1. COA agrees to install Amenities at locations that are agreed upon by COA and approved by the CITY MANAGER.
  - 9.2. Amenities will be placed at locations within THE CITY as mutually determined by the CITY MANAGER and

COA. Both the CITY MANAGER and COA may request sites anywhere in the CITY, but final approval of all sites rests with the CITY MANAGER.

9.3. Amenities cannot be placed within the traffic sight triangle.

10. Amenities must not interfere with the pedestrian right of way.

11. It is acknowledged by the parties that, in the selection of each location, consideration will be given to the convenience of the public. It is further acknowledged that the placement of the Amenities shall be in such a manner so as not to obscure signs, transit stops or interfere with the visibility or effectiveness of advertising on transit shelters. The placement of all Amenities must be approved by the CITY MANAGER although COA has the right to refuse to install at any location. The CITY will permit installations at up to a 30-degree angle provided the placement does not impede sidewalk traffic or otherwise create a danger to citizens

12. COA shall comply with all requirements of THE CITY with respect to parking and street occupancy during all installations and maintenance of Amenities.

#### ***EMERGENCY REPAIR - MAINTENANCE***

13. THE CITY may provide written notice to COA when any Amenity requires regular maintenance or repair and COA, as soon as is reasonably possible, and not later than 48 hours after the giving of such notice, shall undertake the maintenance or repair required at COA's sole expense.

14. THE CITY may provide written notice to COA when any Amenity requires emergency maintenance or repair if its condition is such that, in the CITY MANAGER's sole opinion, the condition renders a serious danger to the public. In such an event, COA as soon as possible and not later than 24 hours after the giving of such notice, repair and make safe the Amenity at COA's sole expense and to the satisfaction of the CITY MANAGER. In an emergency situation where a 24 hour wait is in the CITY MANAGER'S sole opinion considered unacceptable, THE CITY may arrange for work to be done to eliminate public danger and COA shall be solely responsible for paying all costs incurred by THE CITY for such work.

#### ***REMOVAL AND RELOCATION***

15. COA acknowledges and agrees that THE CITY shall have the right to order the removal or relocation of any Amenity installed within the jurisdiction of THE CITY. COA agrees to remove or relocate any such Amenity within 48 hours of THE CITY giving notice to COA. COA shall restore the site from which the Amenity was removed to the condition the site was in immediately prior to the installation of the Amenity and to the satisfaction of the City Manager. Such removal, relocation and restoration shall be at no expense to THE CITY and all such costs associated therewith shall be borne and paid by COA. Where COA fails to remove or relocate such Amenity within 48 hours or where COA fails to restore the site as required, THE CITY may arrange for such removal, relocation and restoration and COA shall be solely responsible for paying THE CITY all costs incurred by THE CITY for such work.

### ***TRANSIT SHELTER PROXIMITY***

16. COA shall not install Amenities in locations where City-owned amenities exist except when the City Manager specifically approves the site, noting details on appropriate distance and/or placement in the approval.

16.1. All site requests require the approval of the City Manager. Approval/denial shall not be unreasonably held.

### ***OTHER ADVERTISING PRODUCTS***

17. The CITY MANAGER will not allow the placement of any other advertising products within the jurisdiction of THE CITY but generally understood to be a transit stop, which interferes with the visibility or effectiveness of COA products.

17.1. The CITY MANAGER will not allow the placement of any other advertising products or amenities that serve a similar purpose to those provided under this agreement (as defined "Amenities") to be placed in the same vicinity (generally understood to be a transit stop) of a properly placed COA Amenity. These include but are not limited to recycling containers or newspaper receptacles with third party advertising within the jurisdiction of THE CITY.

### ***REVENUE, ACCOUNTING & AUDIT***

18. COA shall pay to THE CITY:

For the duration of this agreement,

18.1. 7.5% of gross advertising revenues for each installed advertising amenity.

19. COA shall pay installments to THE CITY for each installed Advertising Amenity at the rate set out herein, each and every month commencing on the first month of this Agreement. This payment will be due within 90 days following the completion of the month the payment relates to.

20. Any annual payments set out in herein will be due by April 30 of each calendar year.

21. By April 30 of each year, COA shall, if so, requested by THE CITY, provide THE CITY with financial statements satisfactory to the CITY MANAGER showing the revenues received or receivable for all Advertising Amenities for the previous calendar year.

22. THE CITY or anyone designated by THE CITY in writing shall have the right at all reasonable times to audit and inspect accounts, records, receipts, vouchers and other documents as it relates to those Amenities owned and operated by COA under this agreement and shall have the right to make copies thereof and take extracts therefrom. COA shall make available all facilities reasonably necessary for such audits or inspections. All associated audit costs shall be borne by THE CITY.

### ***EXCLUSIVITY***

23. COA shall have the exclusive right to supply advertising on the Advertising Amenities owned and operated by COA as described under this Agreement during the Term provided the Agreement is in good standing.

### ***REGULATION OF ADVERTISING COPY/STANDARDS***

24. COA covenants and agrees that all sponsorship panels must be aesthetically pleasing and fit into the environments in which they are placed. Sponsorship panel copy and design must not contain any material, language, representation or image which discriminates on any prohibited grounds of discrimination as set out in the Human Rights Code, and all advertising copy and design must comply with Advertising Standards Codes and Guidelines including but not limited to the American Code of Advertising Standards and with all laws. Advertisements shall not:
- 24.1. contain inaccurate or deceptive claims or statements;
  - 24.2. present products prohibited from Sale to minors;
  - 24.3. bail bond entities or services;
  - 24.4. cash advance, payday lending, or title loan entities or services;
  - 24.5. present demeaning or derogatory portrayals of individuals or groups;
  - 24.6. take a stand on controversial societal issues;
  - 24.7. exploit violence or sexuality;
  - 24.8. promote tobacco products;
  - 24.9. interfere with the operation of equipment of the provision of programs and services; and
  - 24.10. violate or conflict with any existing THE CITY policies or any new policies which may be adopted.
25. COA shall remove any advertising that is deemed by the CITY MANAGER in his or her sole discretion not to comply with the provisions herein or is otherwise objectionable within 24 hours of THE CITY giving COA notice, failing which THE CITY may remove such a panel at the sole expense of COA.

### ***PROVISION OF PROMOTION AMENITIES & TERMS***

26. COA agrees to make accessible to THE CITY (upon 30 days written notice), 10% of the available amenities of THE CITY under this Agreement during any month for use by THE CITY (or their agencies) free of charge for public service messages or advertising for municipal purposes. THE CITY will be responsible for the cost of designing, producing and supplying such public service messages or municipal advertising to COA. COA will be responsible for installation and removal of the advertising at COA's sole expense.

### ***OWNERSHIP***

27. COA shall provide Amenities (where space requirements permit), and retain the full ownership. COA shall be solely responsible for the maintenance and repair of the Amenities provided.
28. It is agreed that Amenities provided under this Agreement will remain the property of COA and on the termination of this Agreement shall be removed by COA or otherwise disposed of, unless otherwise agreed to

by the parties in writing, and COA shall restore the sites to the condition they were in immediately prior to the installation of the Amenities, all at COA's sole expense.

***TERMINATION FOR JUST-CAUSE/REMEDY***

29. If COA neglects or fails to carry out or to comply with any of the terms, covenants, undertakings or conditions of this Agreement, the CITY MANAGER may, after having given written notice to COA of such default and which default was not corrected to the satisfaction of the CITY MANAGER within 30 days of the notice being given, terminate this Agreement by giving 90 days notice in writing to COA and this Agreement shall be deemed to be terminated on the day specified in the notice. Upon such notice having been so delivered or sent, COA shall forthwith at COA's entire expense remove all Amenities. The sites from which the Amenities were removed shall be restored at COA's expense to the condition they were in immediately prior to the installation of the Amenities and to the satisfaction of the CITY MANAGER.
30. Where COA fails to remove any Amenity or to restore any site as required by this Agreement at the termination of this Agreement or as otherwise required under this Agreement, THE CITY may arrange for the removal of all or any of the Amenities and the related site restoration and COA shall be solely responsible for paying to THE CITY all reasonable costs incurred by THE CITY for such work.

***NOTICE***

31. The parties hereto further agree that all notices, demands and requests in writing may be sent by ordinary prepaid mail or by fax to:

To: CITY of Hattiesburg  
Name / Title: Andrew Ellard, Director of Urban Development  
Address: 200 Forrest Street/PO Box 1898  
Hattiesburg, Mississippi, 39401/39403  
Office # 601.545.4609  
Fax # 601-544-0392  
Email aellard@hattiesburgms.com

COA: Creative Outdoor Advertising  
Municipal Affairs  
8875 Hidden River Parkway, Suite 300  
Tampa, Florida, 33637  
Fax: 866-426-2237  
Email: Municipal@CreativeOutdoor.com

32. Service by mail shall be deemed effective the 3rd day after mailing and service by fax shall be deemed upon sending by fax. Each party shall ensure that the other party is notified in writing immediately of any changes in the contact information above.

### ***INSOLVENCY***

33. It is further agreed that should COA become insolvent, bankrupt, unable to pay its debts, make an authorized assignment, or compromise to their creditors and be unable to perform their duties under this Agreement, THE CITY without prejudice to its other lawful rights and remedies may forthwith terminate this Agreement by written notice and the time limit set forth in Clause 29 of this Agreement shall be waived.

### ***ASSIGNMENT***

34. COA may not assign their rights or obligations under this Agreement, or portions thereof without the written approval of THE CITY which shall not be unreasonably withheld.

### ***INDEMNITY***

35. Except as provided in Sections 38-40, herein, and except as provided expressly below in this paragraph, COA will not be liable or obligated to Hattiesburg or any other person or entity with respect to any matter or thing relating, directly or indirectly, to this agreement under any contract, negligence, strict liability or other legal or equitable theory for any indirect, incidental, special or consequential damages including, without limitation, any capital expenditures, reliance costs, lost profits, lost revenues or lost business opportunities even if the parties hereto had been advised of the possibility of such damages. Subject to the foregoing exclusions, COA aggregate liability in connection with or arising, directly or indirectly, out of or from this agreement and its performance or non-performance shall not exceed, under any circumstances whatsoever, in aggregate the greater of (a) the aggregate amount paid by COA to the City pursuant to this agreement as of the date of any claim made against COA by the City hereunder and (b) the stated face amount of any letter of credit, performance bond or similar instrument provided to the City by COA (or provided to the City by any financial institution or insurance or bonding company on behalf of COA) as security for the performance by COA to the City of its obligations under this agreement.
36. COA shall be responsible for any and all damages, or claims for damages for injuries or accidents done or caused by it or its employees or contractors, or resulting from the prosecution of the work, or any of its operations, or caused by reason of the existence or location or condition of the work, or of any materials, paint or machinery used hereon or herein or which may happen by reason hereof, or arising from any failure, neglect or omission on their part, or on the part of any of their employees or contractors, to do or perform any or all of the several acts or things required to be done by it or them under and by this Agreement. COA covenants and agrees to hold THE CITY harmless and indemnified for all such damages and claims for damage; and in case COA's failure, neglect or omission to observe and perform faithfully and strictly, all the provisions of this Agreement, THE CITY may, 30 days after having given notice in writing of such failure, neglect or omission, take such steps, procure such material, items, trucks and workers and do such work or things as they may deem advisable toward carrying out and enforcing the same and may, to the extent of the costs thereof, charge these costs back to be paid by COA and may recover such costs in any court of competent jurisdiction as a debt due and owing by COA to THE



CITY.

37. COA covenants and agrees to, from time to time and at all times hereafter, well and truly save, defend and keep harmless and fully indemnify THE CITY and their officers, servants or agents, from and against all actions, suits, claims, liens, and demands which may be brought against or made upon THE CITY, their officers, servants, or agents and of, from and against all loss, costs, charges, damages and expenses which may be paid, sustained or incurred by THE CITY, their officers, servants by reason of, or on account of or in consequence of the execution and performance of the contract work, or the non-execution or imperfect execution of the contract work or the supply or non-supply of the work or otherwise by reason of or arising out of the right to occupy portions of the untraveled public highways hereby granted. COA will pay to THE CITY or any of their officers, servants or agents, on demand, as the case may be, which may be paid, sustained or insured by the suits, claims, liens, executions or demands and all monies paid or payable by THE CITY or such officers, servants, or agents in settlement or in discharge thereof or on account, thereof and that in default of such payment all loss, costs, changes, damages and expenses and all monies so paid or payable by THE CITY or such officers, servants, or agents may or may be recovered from COA in any Court of competent jurisdiction as monies paid at COA's request. COA hereby authorize and empower THE CITY or thereafter their solicitors for the time being to settle or compromise as THE CITY or their solicitors may deem expedient, any actions, suits, claims, liens, executions or demands which may be brought against or made upon THE CITY, their officers, servants, or agents by reason of, or on account of or in performance of the Agreement and the performance of the Agreement or the non-execution or imperfect execution of the contract work and the supply or non-supply of the contract work or otherwise by reason of or arising out of or as a result of this Agreement or the permission to occupy portions of the highways hereby given.
38. In addition to and without limiting any of the other indemnification obligations of COA pursuant to this Agreement, COA covenants to indemnify and save harmless THE CITY from any and all claims, liabilities, damages, costs, expenses, suits or actions, or other proceedings by whomsoever made, sustained, brought or prosecuted in any manner resulting from any claim relating to the placement or removal of advertisement(s) on any Amenities and to inventions, copyrights, trademarks, patents, industrial designs and rights thereto used in the work done or in the advertising placed on the Amenities, provided that COA shall have no obligation of indemnity hereunder with respect to any advertisement supplied to COA by THE CITY.

#### ***INSURANCE***

39. COA agrees to procure and maintain for the duration of this agreement, liability insurance relative to each Amenity installed in which THE CITY is named insured equal to or in excess of the following minimum requirements and COA further agrees to file with THE CITY and, a copy of the certificate of Liability Insurance evidencing such requirements. The Liability insurance policy shall:
40. Have a limit of liability of not less than FIVE MILLION DOLLARS (\$5,000,000.00) for any one occurrence and the amount of such liability insurance shall be increased at the request of THE CITY based on reasonable grounds
- Transit Amenity Agreement – Creative Outdoor Advertising – 2/19/2019 – Page 9 of 11

acceptable to COA.

41. Be comprehensive Liability Insurance covering all operations and liability assumed under this Agreement;
42. Not contain any exclusions or limitations in respect of shoring, underpinning, razing or demolition of any building or structure, collapse of any structure or subsidence of any property, structure or land from any cause;
43. Be endorsed to provide that the policy will not be altered, cancelled, or allowed to lapse without thirty (30) days prior written notice to THE CITY;
44. Contain a cross-liability clause.
45. COA shall be responsible for deductible amounts (which amounts shall be mutually satisfactory to COA and THE CITY) under the policies.

#### ***AGREEMENT DEFINITION***

46. No amendment of this Agreement shall be deemed valid unless effected by a written amendment signed by both parties and no waiver of rights of any kind under this Agreement shall be effective unless in writing by the party for whom they are a benefit
47. This Agreement shall be subject to, and interpreted in accordance with the State of MISSISSIPPI.
48. Clauses 35 to 38 shall survive termination or expiration of this Agreement, and shall continue in full force and effect subsequent to and notwithstanding such termination or expiration until or unless they are satisfied, by their very nature expire, or they are waived in writing by the party for whom they are a benefit.
49. If any provision of this Agreement is held to be unenforceable or invalid, then the remaining provisions of this Agreement will remain in full force and effect.
50. This Agreement constitutes the entire Agreement between the parties to this Agreement and supersedes any prior agreements and understandings, oral or written.
51. The parties agree and expressly confirm that the CITY has conferred upon COA certain license rights to use municipal lands in connection, and solely in accordance, with the terms of this Agreement and COA has no leasehold and/or tenancy and/or other interests or rights of any nature or kind whatsoever in any real property of the CITY in connection with the execution, delivery and/or performance of this Agreement by the parties.
52. COA shall be responsible for all property taxes levied in association with any premises occupied by COA that are not located on CITY property.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals.

Dated at \_\_\_\_\_ this 19<sup>th</sup> day of February, 2019

The City of Hattiesburg



\_\_\_\_\_

Toby Barker, Mayor

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

CREATIVE OUTDOOR ADVERTISING

\_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

I have the authority to bind the corporation