

COP04CWO

TYPE OF RECORD: PERMANENT

CATEGORY OF RECORD: **CONTRACT**

NAME OF CONTRACTOR: ASSIGNMENT FROM OUTDOOR PROMOTIONS,
INC. TO COLORADO WEST OUTDOOR PROMOTIONS ADVERTISING, INC.

SUBJECT/PROJECT: INSTALLATION AND MAINTENANCE OF
CERTAIN ADVERTISING AND NON-ADVERTISING TRANSIT SHELTERS
AND BENCHES IN ACCORDANCE WITH RESOLUTION NO. 64-02 -
RATIFICATION OF THE CITY MANAGER'S CONSENT TO ASSIGNMENT OF
THE 7/17/02 REVOCABLE PERMIT

CITY DEPARTMENT: ADMINISTRATION

YEAR: 2004


EXPIRATION DATE: NONE

DESTRUCTION DATE: NONE

Consent to Assignment

The City of Grand Junction, Colorado ("City") hereby consents to the assignment to Colorado West Outdoor Advertising, Inc. ("Assignee") by Outdoor Promotions, Inc., of all its right, title, interest in and to the Agreement dated July 1, 2002, between Outdoor Promotions, Inc., a Colorado Corporation ("OP") and the City, for the installation and maintenance of certain advertising and non-advertising transit shelters and benches in accordance with the Agreement with the City, the City Council's Resolution No. 64-02 and related documents, the Assignment Agreement with Mesa County a copy of which is attached and pursuant to applicable law.

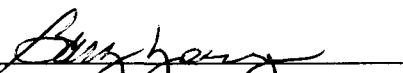
As of the date of execution hereof, the City acknowledges that it has no knowledge of any act or omission of OP that would constitute a breach under the Agreement with OP; provided that nothing herein shall constitute a waiver of any claims the City has or may have against OP or its Assignee(s).


Kelly Arnold, City Manager

3/4/04
Date

Assignor Representation

The undersigned acknowledges that as of the date of execution hereof by OP, its President has no knowledge of any act or omission on the part of OP that would constitute a breach under the Agreement or under the Revocable Permits and related Agreement(s).

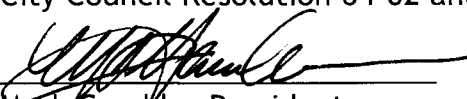

Gary Young, President

3/4/04
Date

Attest: Stephanie Tuin, City Clerk
Secretary, OP *Stephanie Tuin, City Clerk*

Acceptance and Assumption

Colorado West Outdoor Advertising, Inc. hereby agrees to assume all of the obligations, duties and liabilities of OP that are set forth or that result from the Agreement between OP and the City signed July 1, 2002, along with the related Revocable Permits, Agreements to Indemnify the City, the terms and provisions of the City Council Resolution 64-02 and the Assignment Agreement with Mesa County.


Mark Gamble, President
Colorado West Outdoor Advertising, Inc.

3/4/04
Date

Attest: Stephanie Tuin, City Clerk
~~Secretary, Colorado West Outdoor Advertising, Inc.~~
Stephanie Tuin, City Clerk

City Council Ratification

As required by Section 11 of the Revocable Permit dated July 17, 2002, the City Council has this 3rd day of March, 2004 ratified the City Manager's consent to this assignment.

**AGREEMENT BETWEEN MESA COUNTY AND
OUTDOOR PROMOTIONS, Inc.
ASSIGNMENT AUTHORIZATION**

This Agreement is made and entered into this 23rd day of February, 2004, by and between the COUNTY OF MESA, COLORADO ("County") and OUTDOOR PROMOTIONS, Inc., a Colorado Corporation ("Promotions").

WITNESSETH:

WHEREAS the Mesa County Board of County Commissioners is authorized and empowered by provision of the County to execute Agreements; and

WHEREAS public transit plays an important role in transporting large numbers of people to and from work places, social service organizations, public events and activity centers in an energy conscious manner; and

WHEREAS the County and Promotions has entered into a prior Agreement (February 12, 2001 (MCA 2001-13)) with two Addendums (May 13, 2001 (MCA 2001-13a), and October 8, 2001 (MCA 2001-13b)) to provide a mechanism to fund infrastructure which will provide for the safety, comfort and convenience of its public transit passengers, and to provide revenue for the operations of Grand Valley Transit (GVT); and

WHEREAS Promotions now wishes to assign that Agreement and Amendments to CWOA, Inc., a Colorado corporation in good standing; and

WHEREAS, pursuant to the Agreement, Paragraph 13.1, prior express written consent must be obtained from the County in order to assign the Agreement and Amendments to CWOA, Inc., Promotions.; and

WHEREAS, there have been several items outstanding between the County and Promotions that must be addressed in some manner prior to the assignment.

NOW, THEREFORE, in consideration of the foregoing mutual covenants and considerations hereinafter contained, it is agreed by and between the County and Promotions as follows:

1. The County will provide Promotions with a written consent to the assignment of the Agreement and two Addendums to CWOA, Inc.
2. Promotions agrees to do the following:

a. The Shelter located at approximately 845 North Avenue, Grand Junction, 81501, which was destroyed, will be replaced.

b. New Shelters will be placed at the following approximate locations:

- i. 2545 Rimrock Avenue, Grand Junction 81505
- ii. 2635 North 7th Street, Grand Junction 81502
- iii. 2424 US Hwy 6&50, Grand Junction 81505
- iv. 605 Grand Avenue, Grand Junction 81501

c. Safety Rails will be placed around the benches located at the following approximate locations:

- i. 521 32 Road, Clifton 81520
- ii. 530 32 Road, Clifton 81520

d. City permits shall be required for each bench and/or shelter at each of the following locations. Each transit bench and/or transit shelter ("transit amenity") within the City shall be constructed in compliance with the City of Grand Junction's standards. It's the parties understanding and agreement that the following locations will be approved for advertising upon issuance of a City permit for a specific transit amenity at each location and construction or a suitable guarantee for construction, of the required pad or access way to the transit amenity(ies). Any change of location and/or change of type of the permitted transit amenity(ies) at a location (i-xi below) will require compliance with City standards in effect at that time. Those standards may include but are not limited to the transit amenity not being allowed to display advertising:

- i. F Road and Broken Spoke Road, Grand Junction 81504
- ii. F Road and Cris-Mar Street, Grand Junction 81504
- iii. F Road and Indian Creek Drive, Grand Junction 81504
- iv. F Road and Mesa Valley Drive, Grand Junction 81504
- v. F Road and Placer Street, Grand Junction 81504
- vi. F Road and Round Table Road, Grand Junction 81504
- vii. F Road and 29 ¼ Road, Grand Junction 81504
- viii. F Road and 29 ½ Road, Grand Junction 81504
- ix. F Road and 30 Road, Grand Junction 81504 (north side of road)
- x. F Road and 30 Road, Grand Junction 81504 (south side of road)
- xi. F Road and east of 30 Road, Grand Junction 81504

e. Bicycle Ballard's will be provided at the transfer station located on the Mesa State College campus.

f. Work with the City of Fruita, Town of Palisade, Mesa County, and the City of Grand Junction to meet their bench and shelter needs.

g. Comply with all zoning codes associated with the City of Fruita, Town of Palisade, Mesa County, and the City of Grand Junction.

3. Promotions agrees to complete the above changes or improvements within 120 days of approval of this Agreement, with the exception of the permit requirements in paragraph 2.d. above. For the permit requirements in paragraph 2.d. above, Promotions agrees to complete the changes and improvements within 90 days of approval of this Agreement.

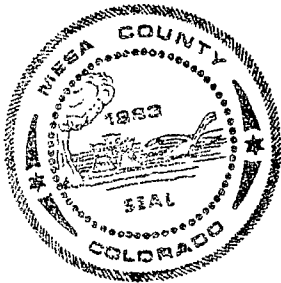
4. If Promotions does not complete the changes or improvements set out in paragraph 2 above, all items must be assigned to CWOA, Inc. for completion within the time frame defined in paragraph 3 above.

5. Paragraph 2.f. and 2.g. shall survive termination of this Agreement.

6. Todd Hollenbeck, Mesa County Transit Coordinator is hereby authorized to act as the agent for Mesa County and may approve and sign any appropriate assignment documents which fulfill the intent of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement for Assignment Authorization on this 23rd day of February, 2004.

MESA COUNTY



ATTEST:

Janice Ward
Janice Ward,
Mesa County Clerk and Recorder

By: Doralyn B. Genova
Doralyn B. Genova, Chair
Mesa County Commissioners

APPROVED AS TO FORM:

Valerie Robison
County Attorney

CWOA Inc.

By: [Signature]
Title: President

OUTDOOR PROMOTIONS Inc.

By: [Signature]
Title: President

OPR02GVT

TYPE OF RECORD: ACTIVE NON PERMANENT

CATEGORY OF RECORD: **CONTRACT**

NAME OF CONTRACTOR: OUTDOOR PROMOTIONS, INC. A COLORADO CORPORATION ("OPRO")

SUBJECT/PROJECT: ADVERTISING ON BUS BENCHES AND TRANSIT SHELTERS

CITY DEPARTMENT: ADMINISTRATION

YEAR: 2002

EXPIRATION DATE: 7/1/2007 - WITH POSSIBILITY OF (3) FIVE YEAR EXTENSIONS

DESTRUCTION DATE: 1/14

AGREEMENT

This Agreement is made and signed this 1st day of July, 2002 between the City of Grand Junction ("City" or "Grand Junction") and Outdoor Promotions, Inc., a Colorado Corporation ("OPRO").

Recitals.

- A. OPRO entered into a written contract with Mesa County, Colorado doing business as Grand Valley Transit ("GVT"). One of the terms of that Agreement required OPRO to obtain permits from, and comply with the rules of, the City of Grand Junction.
- B. Pursuant to the contract with Mesa County, OPRO and its successors must provide shelters and benches in coordination with GVT, including within the City.
- C. OPRO placed benches throughout the City during the spring of 2001 without having obtained permission from the City.
- D. OPRO applied for a revocable permit from the City, to obtain permission to maintain and install shelters within the City, and the City Council authorized its revocable permit for the transit shelters on October 17, 2001. OPRO has not accepted the permit, thus it has no authority to obtain advertising revenues from shelters and benches in the City.
- E. In order to comply with the City charter and codes, OPRO must accept a revocable permit from the City for shelters and benches.
- F. The City's Charter dictates that the only right-of-way permission the City can grant is a revocable permit which must be terminable on 30 days written notice from the City Council.
- G. OPRO has indicated that it is not willing to install and operate benches and shelters pursuant to such revocable permits unless it has reasonable assurances that if it invests in the shelters and benches to serve transit within the City it has a chance to make a profit. OPRO represents if the City cannot extend the term of the revocable permits, the City must at least agree to compensate OPRO as provided herein if the revocable permits are terminated without fault of OPRO.

NOW, THEREFORE, the parties agree as follows:

1. Term.

- (a) This Agreement shall be for five years, with the possibility of three (3) five (5)-year extensions each of which is contingent on the following:
 - (i) This Agreement is effective only while Mesa County provides transit services within the City on a basis substantially equivalent to that provided to other county residents; and
 - (ii) OPRO is not in breach of any approved Mesa County permit, contract or license between Mesa County and OPRO for the provision of shelters and benches to transit users; and
 - (iii) Notwithstanding any other provision to the contrary, this Agreement and any subsequent term is effective only while Mesa County and OPRO are bound to each other by contract whereby OPRO provides shelters and benches to Mesa County.

- (b) OPRO may elect to continue this Agreement for up to three successive five (5) year terms if all contingencies of this Agreement are met, including the preceding subparagraph (a), by giving written notice to the City Manager at least three (3) months before the end of a five (5) year term; if all extensions occur this Agreement can extend for twenty (20) years.

- (c) Notwithstanding any provision to the contrary, this Agreement and any additional term hereof shall terminate unless at all pertinent times, including the final three (3) months of a term:
 - (i) This Agreement is otherwise in full force and effect; and
 - (ii) Neither party is then in breach of any term of this Agreement;
 - (iii) OPRO provides benches and shelters throughout the GVT service area, including within the City's limits, pursuant to an Agreement with Mesa County; and
 - (iv) OPRO is not in breach of any term or provision of its Agreement(s) with Mesa County.

- (d) Each party shall have a thirty (30) day right to cure a breach, following written notice of such breach.

- (e) Notwithstanding any provision to the contrary regardless of whether cured within a thirty (30) day period: if OPRO has

breached a material term hereof three (3) or more times in any sixty (60) month period, the City shall have the right to terminate this Agreement based on the fault of OPRO.

2. Shelters and Benches.

- (a) General. OPRO shall install, repair and maintain transit shelters and benches at all bus and transit stops in the City in accordance with state, federal and City laws and standards, as amended from time-to-time, including but not limited to:
- (i) The Americans with Disabilities Act;
 - (ii) OPRO agrees to become familiar with and abide by the City's TEDS manual and other standards that govern the placement of such shelters and benches;
 - (iii) OPRO agrees to become familiar with and abide by the City's sign code which prohibits advertising and signs on benches and shelters in and adjacent to residential uses; nothing in this Agreement amends or changes the City's codes or standards;
 - (iv) For shelters and benches that are not made of concrete, anchoring/break-away design and construction systems, as required by the City Traffic Engineer ("Traffic Engineer").
- (b) Shelters/benches location. Owner consent. OPRO shall place shelters and benches at City approved locations within the City controlled right-of-ways as provided in the revocable permits relating thereto. OPRO may place a shelter or a bench on property other than City controlled right-of-way only after OPRO obtains the written permission of each such landowner and delivers a copy of the written consent to the Traffic Engineer. If a landowner engages an attorney to address a bench or shelter that has been placed without OPRO having first obtained the required written consent(s), OPRO shall pay the reasonable attorney's fees of such land owner(s).
- (c) Non-advertising benches and shelters. OPRO shall not allow or install any sign or advertising ("sign(s)") on any shelter or bench within the City until OPRO has placed shelters and benches without signs according to the following ratios:

For each bench in a residential area on which there are no commercial signs, OPRO may place no more than five (5) benches in non-residential areas of the City with signs;

For each shelter located in a residential area on which there are no commercial signs, OPRO may place no more than six (6) shelters in non-residential areas with signs.

(d) Bench and shelter specifications.

- (i) OPRO shall install each bench and shelter within the City's limits such that each is accessible, in accordance with ADAAG. OPRO shall not install any alternative to concrete without first obtaining the written permission of the City Traffic Engineer.
- (ii) OPRO shall only install shelters that are designed to be and are bolted or otherwise attached to a non-slippery surface, with an interior seating bench that has at least five feet (5') of seating width.
- (iii) Within each shelter, OPRO shall install a wheelchair waiting area sized and located such that the use thereof does not impede reasonable access to the seating bench nor will use of a wheelchair impede reasonable access for other transit users to the bench seating.
- (iv) Each shelter shall be constructed like the existing shelter located on the Mesa State campus near the intersection of Orchard Avenue and 12th Street, to wit: a domed roof design and shall be painted using Riger Drylac color No. RAL 5005, or some equivalent or better paint or construction, as approved in writing by the Director.
- (v) Within ninety (90) days of written notice from the City Manager, OPRO shall provide a display board for public notices and other non-commercial information within each shelter designated by the City Manager. The design and location of any display board shall be approved by the Director. The Director may authorize public notices and information on each shelter, in addition to bus schedules and information; the Director may designate others, including Mesa County (GVT) to post and police any such display boards.
- (vi) OPRO shall provide site and construction drawings of each shelter and bench location prior to installation. Such drawings shall be submitted to the Traffic Engineer for approval before placement or installation, and in any event within thirty (30) calendar days of the signing of this Agreement.
- (vii) Such drawings shall detail:
 - existing and proposed sidewalks or other access ways for wheelchairs and pedestrian users;

- nearby features such as sign posts, poles, curbs, utility boxes;
 - other facilities in the immediate vicinity of the bench or shelter that could impede access or use by transit users or that would otherwise constitute a danger or impediment to pedestrian or vehicular use;
 - the proposed location of OPRO's name and telephone number of its service provider;
 - the City's name and logo on the shelter/bench, if later required by the City Manager;
 - all proposed electrical facilities, including solar and 12 volt;
 - trash receptacle, including the proposed method of installation.
- (i) Within ninety (90) days of written notice by the City Manager, OPRO shall display the City's name and logo at both ends of each shelter.
- (ii) OPRO shall also display on each shelter and bench its name and a local telephone number of OPRO's shelter/bench service and/or maintenance provider.
- (iii) OPRO shall install and pay for continuous illumination of each shelter (24 hours/365 days per year) of each day between one half hour after sunset and one half hour before sunrise. All electrical services and installations shall be underground.
- (iv) OPRO shall provide a trash receptacle with each shelter like the one existing as of the date hereof at 12th and Orchard. Such trash receptacles shall be at least two feet (2') in diameter at the widest part of the opening and shall be bolted to the non-slippery surface pad or to the shelter's exterior. Each receptacle shall have a lid that is chained or connected to the receptacle.
- (v) Each shelter, trash receptacle, and advertising display frame shall have an identical color scheme to that approved by the Director for the shelter.

(e) Bench Upgrade.

OPRO shall replace the existing concrete benches with benches meeting the specifications and design, including paint, presently in use in the City of Fort Collins ("upgraded bench") as follows:

On or before the fifth anniversary hereof, and in any event before any extension of the term hereof; except that each time a transit stop is changed or added, only an upgraded bench shall

be placed or thereafter maintained for such different or new transit stop.

3. Shelter Advertising.

- (a) All signs on shelters and benches shall either be commercial advertising controlled by OPRO ("commercial signs") in accordance with its volunteered and long-standing policies to avoid certain products, services and messages or, shall be non-commercial advertising controlled by Grand Junction ("City signs"). Commercial and City signs and advertising shall comply with the City's Codes.
- (b) In addition to OPRO's policies regarding commercial signs, which are incorporated herein although initially volunteered by OPRO, OPRO shall obtain Grand Junction's approval of every sign before it is installed or placed. If the City Manager, or his designee, does not object in writing within two City business days of receipt of a proposed commercial sign, Grand Junction will be deemed to have approved. OPRO may deliver the proposed commercial sign by fax or in person to the City Manager's office. If Grand Junction has previously approved, or is deemed to have approved, a commercial sign but receives one or more complaints about the commercial sign, Grand Junction shall provide such complaint to OPRO and OPRO shall remove such signs unless OPRO and the City Manager otherwise agree.
- (c) Any sign or advertising that is dated by date or context shall be removed by OPRO within seven (7) calendar days after the last date or event cited or implied in the sign or advertisement.
- (d) The City and its designees may place non-commercial signs on all shelters and benches on which commercial signs are not allowed.

4. Shelter and Bench Maintenance.

- (a) OPRO shall clean and otherwise maintain in a neat, safe and workmanlike manner each shelter, bench and the nearby areas of each, whether or not commercial signs are located thereon.
- (b) OPRO shall clean, remove all trash and otherwise maintain each shelter, bench and nearby area of each at least two times each calendar week. Such twice weekly cleaning shall include washing and "squeegeing" the shelter and shelter panels, emptying each trash receptacle, replacing light bulbs as needed, and removing all trash and debris within, on and near each shelter and bench.

5. Complaints. Response. Repairs.

- (a) For purposes of determining compliance with this Agreement OPRO shall respond to each complaint by a citizen or Grand Junction within forty-eight (48) hours of delivery to OPRO of the complaint or information, or sooner if required by the City's Code. However, OPRO acknowledges that the City's Zoning Code, §4.3 (S) (7) requires response within 24 hours. OPRO shall have sufficient employees adequately trained and available to perform any and all maintenance activities in a timely and workmanlike manner, and to respond to complaints.
- (b) A citizen or the City may deliver a complaint to OPRO via email, fax, or by mail. OPRO shall not be in breach for failure to timely respond to a citizen complaint made by telephone, until OPRO has received the complaint via telephone from the City or in a written form; and has failed to timely respond as provided in this Agreement.
- (c) OPRO shall repair every damaged shelter and/or bench, or remove and replace as appropriate, within three (3) City business days of delivery of a complaint to OPRO.
- (d) OPRO shall install and maintain each shelter and bench in the City's limits in a safe and usable condition at all times. Nevertheless, if due to circumstances beyond OPRO's control, a shelter, bench or nearby area is unsafe or unusable by any transit user and it is not reasonable to make immediate repairs or replacements, OPRO shall sign and barricade the shelter and/or bench against public use only for so long as it reasonably takes to make the repairs or replacements. Except as needed in an emergency or to prevent imminent injury to person or property, OPRO shall notify the Traffic Engineer in advance of any such barricading or signing.

6. Termination. Removal of Benches and Shelters. Restoration of Sites. Payment of Depreciated Value.

- (a) Grand Junction reserves the right to terminate this Agreement without fault of OPRO if the City finds in its sole discretion that it is in the City's or its citizens' best interest or is otherwise needed to protect the public health, safety and/or welfare.
- (b) In addition to the foregoing subsection, at the sole option of the City Council this Agreement shall terminate or expire:
 - (i) If OPRO or its contractors are in breach of this Agreement or any Agreement between OPRO and Mesa County;

- (ii) If Mesa County fails at any time to provide transit services within the City's limits to City residents; or
 - (iii) If the City Council revokes either or both of the Revocable Permits allowing the placement of shelters and benches within the City's limits.
- (c) When this Agreement terminates with or without cause or if this Agreement expires, within thirty (30) days of such termination or expiration whichever occurs first, OPRO shall remove all existing shelters, benches and associated improvements from within the City's limits unless the City Manager determines otherwise in writing; and within sixty (60) days of such termination or expiration, shall return each site back to its original or better condition.
- (d) If OPRO fails to timely remove all such shelters and benches and to restore all such sites as provided, the City may elect to forthwith remove any shelter and/or bench and to restore each site by use of City forces or by contract; in such event OPRO agrees that it shall pay and reimburse the City for the City's reasonable costs and expenses; furthermore, no payments to OPRO for each shelter and/or bench, as described in the next subsection, shall be made.
- (e) If the City terminates this Agreement or the Revocable Permits without cause or fault of OPRO or its subcontractors, the City shall pay to OPRO:

\$1,000 per bench; and

\$8,000 per shelter; but only if all of the following are true or have occurred:

- (i) OPRO had previously completed its timely compliance with the requirements of the preceding subsection (requiring removal and restoration of each bench/shelter and site);
- (ii) OPRO had previously completed timely compliance with each Revocable Permit issued to OPRO;
- (iii) OPRO was not then in breach of any term of this Agreement or any contract between OPRO and Mesa County; and
- (iv) At the time of such termination without cause, Mesa County provides transit services to City residents on a basis equivalent to that provided to other County residents.

- (f) The amount to be paid per shelter and bench as set forth in (e), above, shall be decreased each year based on a twenty-year straight-line depreciation with the first year being 2002.
- (g) In any event, as of January 2, 2023, OPRO shall quitclaim to the City, for no additional consideration, all benches and shelters, at the City's sole option.
- (h) Notwithstanding any provision to the contrary, the City may purchase each shelter, with no liens and encumbrances, that OPRO intends to remove at the price provided for in this section 6. To implement this provision, even if OPRO intends to remove a shelter because the City has revoked its permit, OPRO shall notify the City in writing 30 days before demolition or removal of any shelter.

7. Acceptance of Terms of Revocable Permits.

(a) The terms and provisions of two revocable permits authorized by the City Council on June 26, 2002 are incorporated herein as though fully set forth. OPRO agrees to comply with each and every term thereof. To the extent permitted by law such revocable permits shall be construed in such a manner as to give full effect to all of the terms and provisions of this Agreement.

(b) If OPRO fails to comply with or violates any term of either revocable permit, such failure or violation is agreed to be a material breach hereof.

8. City designee.

The parties agree that unless the City gives OPRO written notice to the contrary from time-to-time, the Mesa County Board of County Commissioners, acting as the operators of the GVT, is the City designee for transit stop locations and for transit routes.

9. Advertising revenues. Credit. Reports.

(a) The parties agree that in the absence of OPRO's contract with Mesa County, OPRO would pay the City for the privilege of use of City controlled rights-of-way and the advertising revenues associated with signs on transit shelters and benches located within the City. The parties agree that instead of OPRO paying the City ten percent (10%) of the gross revenue associated with advertising on benches and shelters within the City, OPRO shall pay such sums to Mesa County pursuant to the contract between Mesa County and OPRO.

- (b) OPRO agrees to give written notice to the City's Finance Director of all amounts paid to, or for which credit is given to, Mesa County that relate to or are as a consequence advertising associated with benches and shelters located within the City.
- (c) In its business reports, press releases and similar informational efforts, OPRO shall acknowledge the annual value of money that would otherwise be delivered to the City but that is instead paid to Mesa County.
- (d) Unless directed otherwise in writing by the City Manager from time-to-time, OPRO shall deliver a copy to the City of every report, document or other information supplied or made available to Mesa County regarding the revenues, off-sets, credits costs and money paid to Mesa County by OPRO.

10. Commencement of the Work.

Within 30 days of execution hereof by both parties, OPRO shall commence services, relocate benches and shelters as required herein, and make such other changes as required to comply with each and every provision of this Agreement and the Revocable permits.

11. Amendments.

Neither party shall make any change or amendment of services or work, except as provided herein, unless authorized by written amendment executed by OPRO and the City Manager with the same formalities as done when this Agreement was executed.

12. Patents. Trademarks. Copyrights.

OPRO agrees that all work performed under this Agreement shall comply with all applicable patents, trademark, and copyright laws, rules, regulations and codes of the United States. OPRO further agrees that it will not utilize any protected patents, trademark or copyright in performance of its work unless OPRO has obtained proper permission and all releases and other necessary documents.

13. Release. Indemnity. Hold Harmless.

- (a) OPRO agrees to release, indemnify and hold harmless the City, its officers, agents and employees from any and all claims, damages, suits, costs, expenses, liabilities, actions, or proceedings of any kind or nature whatever resulting from or relating to, directly or indirectly:
 - (i) OPRO's actions or failure(s) to act;

- (ii) OPRO's acts and failure to act which infringe(s) or allegedly violate (s) any patent, trademark or copyright protected by law;
 - (iii) OPRO's failure to abide by applicable law, adopted standard(s) and/or applicable regulation(s);
 - (iv) Any injury, loss, or damage caused in whole or in part by, or claimed to be caused in whole and/or in part by, the negligent and other improper act(s), errors, or omissions of OPRO, a subcontractor of OPRO, and/or any officer, employee, or agent of OPRO.
- (b) The duties and obligations to release, indemnify and hold the City (including the City's officers, agents and employees) harmless shall not apply to an injury or damage for which the City (including the City's officers, agents and employees) is determined liable by a court of competent jurisdiction as a result of the negligent act, error, or omission of the City.

14. Insurance.

- (a) OPRO agrees to procure and maintain in force continuously during the term(s) of this Agreement and any revocable permit referred to herein:
- (i) Colorado Worker's Compensation Insurance;
 - (ii) Employer's Liability Insurance;
 - (iii) Commercial General Liability Insurance with minimum combined single limits of one million dollars (\$1,000,000) each occurrence and one million dollars (\$1,000,000) general aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, products, and completed operations;
 - (iv) With respect to each of OPRO's owned, hired or non-owned vehicles assigned to or used in performance of the services or work under this Agreement.
 - (v) Automobile Liability Insurance with minimum combined single limits for bodily injury and property damage of not less than one million dollars (\$1,000,000) for any one occurrence.
- (b) OPRO shall ensure that each subcontractor of OPRO performing work hereunder shall procure and maintain such insurance as described herein.

- (c) Such insurance shall be procured and maintained with forms and insurers acceptable to the City's Risk Manager.
- (d) OPRO shall provide a Certificate of Insurance to the City's Risk Manager showing that policies providing the required coverages, conditions, and minimum limits are in full force and effect. The Certificate shall identify this Agreement and shall provide that the coverages afforded under the policies shall not be canceled, terminated or materially changed until at least 30 days prior written notice has been given to Grand Junction's Risk Manager. The Certificate shall name Grand Junction, its officers and its employees as additional insured(s) with respect to the liability coverage in Paragraph A, above. All such certificates and notices shall be sent to:

City of Grand Junction
Attn: Risk Manager
250 N. 5th St.
Grand Junction CO 81501

- (e) Failure on the part of OPRO or any subcontractor to procure and continuously maintain policies providing the required coverages, conditions, and minimum limits shall constitute a material breach of this Agreement.
- (f) Every policy described herein shall be primary insurance.
- (g) Any insurance carried by Grand Junction, its officers and employees shall be excess, and not contributory, insurance to that provided by OPRO.
- (h) OPRO and its subcontractors shall be solely responsible for any deductible losses under the policies required above.
- (i) OPRO shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to this Agreement by reason of its failure to procure and maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, durations, or types.
- (j) OPRO agrees that Grand Junction and its officials, officers, agents and employees are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations and other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, § 24-10-101 *et seq.*, C.R.S., as from time to time amended.

15. Independent Contractor.

The parties agree that OPRO is an independent contractor. Neither OPRO nor its officials, employees or subcontractors are agents or employees of the City. No partnership or similar relationships are created by this Agreement.

16. Review.

(a) Grand Junction may conduct, independently of Mesa County and/or GVT or in cooperation with, an annual or other review of OPRO's services to City's residents, compliance with the standards and provisions provided herein, and the gross and net revenues including advertising revenues received by OPRO and/or paid to Mesa County.

(b) OPRO shall provide the City and its officials such information and writings, including access to its books, so that the City may perform an effective and accurate review.

(c) In connection with the work performed hereunder, Grand Junction shall have access to all of OPRO's books, documents, papers and any other records of OPRO's which relate to this Agreement. OPRO shall retain these records for three years after the termination date of this Agreement.

17. Colorado Law. Venue.

This Agreement shall be governed by the laws of the State of Colorado. Venue for any action will be brought only in Mesa County, Colorado unless otherwise ordered by the Court.

18. Entire Agreement.

The parties acknowledge and agree that the provisions contained herein constitute their entire Agreement. The parties agree that any and all representations made by any officer, agent or employee of the respective parties unless included herein are null and void and of no effect. No alterations, amendments, changes or modifications to this Agreement shall be valid unless contained in a document that is executed by all the parties with the same formality as this Agreement.

19. Assignment.

OPRO shall not assign, pledge or transfer its duties, obligations and rights in this Agreement, in whole or in part, without first obtaining the written consent of the City which shall not be withheld unreasonably.

20. No Waiver of Rights.
No City or City official or employee assent, expressed or implied, to any breach of any one or more of the terms and conditions of this Agreement shall waive the City's right to enforce each and every subsequent breach or violation.
21. Conduct. Ethics.
OPRO agrees to comply with the City's charter, specifically § 101, the Code of Ethics of the state; §§ 24-18-101, and 24-18-201, *et seq.* C.R.S., and all other applicable laws as though OPRO and its employees and subcontractors were either state officials, a local official or otherwise subject to the substantive provisions of those provisions.
22. Coordination.
OPRO shall coordinate its work and that of its subcontractors with the City's use of its rights-of-ways. OPRO shall follow the City's directions, including City consultants, contractors or other entities performing work in the City's right-of-ways or within the City.
23. Advertising and Public Disclosures.
OPRO shall not include any reference to this Agreement or to work performed hereunder in any of its advertising or public relations materials without first obtaining the written approval of the City Manager or his designee. Any oral presentation or written material related to OPRO's work hereunder shall include only presentation materials, work product, designs, renderings and technical data which have been accepted by Grand Junction.
24. Time is of the Essence.
The parties agree that time is of the essence in OPRO's performance of the terms and requirements of this Agreement
25. Headings.
The headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement.
26. Taxes. Licenses.
OPRO shall promptly pay when due, all taxes, excises, license fees and permit fees of whatever nature applicable to its Work and this Agreement. OPRO shall continuously maintain the required City, state and federal licenses required to comply with this Agreement and to perform the Work.

27. Severability.

In the event any of the provisions, or applications thereof, of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, the validity and enforceability of the remaining provisions, or applications thereof, shall not be affected.

28. Ambiguities.

The rule that ambiguities shall be construed against the drafter shall have no application to this Agreement.

29. Definitions.

Director means the Director of Community Development, or his designee.

Install or place: means installation, maintenance, placement and/or construction of.

Place or install: means the dropping off, placement, installation, maintenance of, and/or exercise control over.

Residential use or residential area: means those properties zoned or used for residential uses, as determined by the Director.

Signs: The term advertising and/or signs is as defined in the City's Code, and as interpreted by the Director of Community Development in case of question or ambiguity. In this Agreement, "sign" or "signs" includes advertising.

ATTEST:



CITY OF GRAND JUNCTION

Stephanie Tuin
Stephanie Tuin, City Clerk

Kelly Arnold
Kelly Arnold, City Manager

OUTDOOR PROMOTIONS, Inc.

Gary Young
Gary Young