

RESOLUTION NO. 64-02

CONCERNING THE ISSUANCE OF REVOCABLE PERMITS TO OUTDOOR PROMOTIONS, INC.

Recitals.

1. Outdoor Promotions, Inc., a Colorado corporation, hereinafter referred to as the Petitioner, represents that it is a legally created entity authorized to conduct business in the State of Colorado. Petitioner represents that it has entered into agreements with the City and the County of Mesa, respectively, which authorizes the Petitioner to provide Transit shelters at various transit stops in the City's limits and in Mesa County.
2. The Petitioner has requested that the City Council issue two Revocable Permits: one to allow the Petitioner to install Transit shelters, with advertising where allowed, in the public right-of-way at 28 locations in the City limits and the second, to allow for benches, addressed in a separate revocable permit. The Petitioner warrants and represents that the Transit shelters the Petitioner proposes to install at the locations described below, the locations of which were provided by the Petitioner and described by the Petitioner by GPS coordinate data in UTM Zone 12 metric format, shall be situated entirely within the limits of the City's public right-of-way.
3. Based on representations made by the Petitioner, and the fact that Mesa County has entered into an agreement with the Petitioner, the City Council has determined that the request would not at this time be detrimental to the inhabitants of the City of Grand Junction.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GRAND JUNCTION, COLORADO:

1. That the City Manager is hereby authorized and directed to issue the attached Revocable Permit to the above-named Petitioner for the stated purposes, within the City's public right-of-way in the specific locations shown, subject to each and every term and condition contained herein and in the attached Revocable Permit.
2. The City's existing prohibitions against advertising and signs in residential areas shall apply to each Transit shelter located adjacent to a residentially zoned area of the City ("residential shelter").
3. Permittee shall not use or construct any Transit shelter in the City's limits unless it also uses and maintains the five residential shelters without any signs or advertising on or within or a part of the residential shelters.

PASSED and ADOPTED this 26th day of June, 2002

Attest:

/s/ Stephanie Tuin
City Clerk

/s/ Cindy Enos-Martinez
President of the City Council

To Outdoor Promotions, Inc.
For Transit Benches

Recitals.

1. Outdoor Promotions, Inc., a Colorado corporation, hereinafter referred to as the Petitioner, represents that it is a legally created entity authorized to conduct business in the City and the State of Colorado. Petitioner represents that it has entered into an agreement with the County of Mesa, Colorado pursuant to which the Petitioner will provide Transit benches at various transit stops in Mesa County.

2. The Petitioner has requested that the City Council issue a Revocable Permit to allow the Petitioner to install 72 Transit benches in the public right-of-way in the City limits, seventeen (17) of which shall have no advertising. The Petitioner warrants and represents that the Transit benches shall be located only at the locations described, which locations were provided by the Petitioner and described by the Petitioner by GPS coordinate data in UTM Zone 12 metric format, and shall be situated entirely within the limits of public right-of-way:

Bench No.	UTM North	UTM East	Advertising Allowed	General Location
1015	4332683.91300	713486.26200	Yes	MOTEL 6 SOUTH BOUND
1014	4332663.44400	713502.32200	Yes	MOTEL 6 NORTH BOUND
1016	4332514.94700	713326.84200	Yes	HORIZON DR AND HILLARY AVE. NORTH
1017	4332384.06300	713139.89000	Yes	HORIZON DR BEST WESTERN NORTH
1018	4332308.98800	713039.13400	Yes	HORIZON DR AND CROSSROADS BLVD. NORTH
1019	4332304.81800	712986.07700	Yes	HORIZON DR VILLAGE INN SOUTH
1021	4331657.82600	712417.11700	Yes	HORIZON DR SHANGHAI GARDEN SOUTH
1022	4331617.70200	712425.57100	Yes	HORIZON DR DENNYS NORTH
1020	4331454.79200	712292.32400	Yes	HORIZON DR PIZZA HUT SOUTH
1058	4329881.26800	714615.07200	No	PATTERSON RD AND INDIAN CREEK EAST
1057	4329863.88900	713895.83800	No	PATTERSON RD AND GRAND CASCADE WAY EAST
1055	4329874.26100	713315.97200	No	PATTERSON AND 28 RD WEST
1080	4329083.83500	714145.34500	No	ORCHARD AND 28 1/2 RD EAST
1081	4329072.70600	713783.76500	Yes	ORCHARD AND 28 1/4 RD EAST
1082	4329089.79300	713773.42600	Yes	ORCHARD AND 28 1/4 RD WEST
1087	4328292.19800	714245.51700	Yes	NORTH AVE @ LE MASTER MOTEL WEST
1085	4328289.87100	714093.39500	Yes	NORTH AVE AND 28 1/2 RD WEST
1086	4328266.74000	714167.65700	Yes	NORTH AVE AND 28 1/2 RD EAST
1023	4330631.75300	711295.12000	No	HORIZON DR - LAKESIDE DR SOUTH
1056	4329859.11800	712819.91700	No	PATTERSON RD AND BEECHWOOD ST WEST
1083	4329047.59500	713197.89900	Yes	ORCHARD AND 26 TH ST EAST
1054	4329812.71800	711932.06000	No	1441 PATTERSON RD EAST
1053	4329189.87900	711690.48400	Yes	12 TH STREET AND WALNUT AVE SOUTH
1052	4329010.67100	711768.58300	Yes	ORCHARD AND 12TH ST EAST
1026	4330307.79200	708640.53400	Yes	UTEC -BLICHMAN
1040	4329615.72700	710681.93100	Yes	ST MARY HOSPITAL WEST ENTRANCE
1027	4329908.17800	709264.01900	Yes	251/2 RD DEWEY PLACE SOUTH
1028	4329879.75300	709283.13900	No	251/2 RD DEWEY PLACE NORTH
1029	4329540.50700	709296.80900	Yes	251/2 RD PARADISE VALLEY NORTH
1024	4329911.31600	708478.56800	Yes	25 RD @ KIDPLEX NORTH

Bench No.	UTM_North	UTM_East	Advertising Allowed	General Location
1025	4329922.51400	708458.45200	Yes	25 RD @ KIDPLEX SOUTH
1084	4328223.87600	712530.20200	Yes	NORTH AVE AND VETERANS HOSPITAL EAST
1033	4328193.76500	711327.23300	Yes	NORTH AVE AT CANNEL AVE EAST
1032	4328213.88200	711146.65700	Yes	NORTH AVE AND 8TH WEST
1034	4327577.89100	711749.50500	No	12 ST AND OURAY AVE NORTH
1035	4327429.74300	711396.89900	Yes	GRAND AVE AT MDS WEST
1037	4327312.15000	711015.14000	Yes	7TH AND WHITE AVE NORTH
1036	4327245.17700	710989.55900	Yes	7TH AND WHITE AVE SOUTH
1030	4328498.10200	710107.35200	Yes	1ST STREET AND KENNEDY SOUTH
1031	4328326.23400	710112.28200	No	1ST STREET AT SHERWOOD DR SOUTH
1039	4327057.15000	710290.33400	Yes	MAIN AND 2ND ST EAST
1038	4327074.08200	710276.58700	Yes	MAIN AND 2ND ST WEST
1048	4325011.62000	712656.49000	No	UNAWEEP AVE AND 27 1/2 RD EAST
1047	4325024.26700	712393.56500	Yes	UNAWEEP AVE AND 27 3/8 RD WEST
1050	4324245.91900	713406.34400	Yes	B 1/2 RD AND 28 RD WEST
1049	4324238.77800	713134.07500	Yes	B 1/2 RD AND E LYNWOOD ST WEST
1046	4324995.46700	712009.98300	No	UNAWEEP AVE AND PINON ST EAST
1045	4325006.29300	711698.04700	No	UNAWEEP AVE AND KATHY LYNN WEST
1044	4325010.63800	711387.34300	Yes	UNAWEEP AVE AND ROUBIDEAU ST WEST
1043	4325004.39500	711012.63700	No	UNAWEEP AVE AND ASPEN ST WEST
1041	4325181.60200	710566.25000	Yes	5TH ST AND SANTA CLARA AVE NORTH
1042	4325197.32300	710531.70300	Yes	5TH ST AND SANTA CLARA AVE SOUTH
1013	4328370.47900	712924.90500	Yes	23 RD ST @ BUNTING AVE
1012	4328132.22300	712929.64300	Yes	23 RD ST @ VA HOSPITAL
1011	4327969.82700	713039.07100	No	24 TH ST @ TELLAR AVE
1014	4328247.15200	712438.51000	Yes	NORTH AVE @ 18 ST
1015	4328241.76200	712271.19200	Yes	NORTH AVE @ 16 ST
1016	4328236.25000	712042.82300	Yes	NORTH AVE @ 14 ST
1017	4328342.00000	711733.09100	Yes	12 TH ST @ GLENWOOD AVE
1000	4326941.63700	711308.61000	Yes	9 TH ST @ COLORADO AVE
1002	4328874.43300	710668.33300	Yes	5 TH ST @ HALL AVE
1003	4328568.03300	710678.82400	Yes	5 TH ST @ ELM CT
1004	4328342.56500	710668.26200	Yes	5 TH ST @ GLENWOOD
1005	4328202.51400	710660.24500	Yes	NORTH AVE @ 5 TH ST
1006	4328194.58300	710349.44700	Yes	NORTH AVE @ 3 TH ST
1001	4327796.32600	710699.34900	No	5 TH ST @ GUNNISON ST
1010	4328769.83400	709296.92900	Yes	25 1/2 RD @ TENNIS CT
1007	4327436.03300	710549.96200	Yes	4 TH ST @ GRAND AVE
1009	4327054.19100	710720.33600	Yes	5 TH ST @ MAIN ST
1008	4326897.76000	710725.91000	Yes	5 TH ST @ UTE AVE
1022	4324236.38100	713030.59600	Yes	B 1/2 RD @ 27 3/4 RD
1021	4325008.57000	711806.49100	No	UNAWEEP AVE @ 27 RD

3. Based on representations made by the Petitioner, the City Council has determined that such action would not at this time be detrimental to the inhabitants of the City of Grand Junction.

NOW, THEREFORE, IN ACCORDANCE WITH THE ACTION OF THE CITY COUNCIL OF THE CITY OF GRAND JUNCTION, COLORADO:

There is hereby issued to the above-named Petitioner a Revocable Permit for the purposes described and within the limits of the public right-of-way described; provided, however, that Petitioner warrants and promises to abide by the following conditions and terms:

1. The Petitioner warrants and represents that the Transit benches to be installed or maintained by the Petitioner at the above stated locations:
 - (a) will be situated entirely within the limits of public right-of-way except as otherwise approved by the Director of Public Works and Utilities in writing upon his receipt of evidence that each affected landowner has consented in writing;
 - (b) will not encroach over or across, or be located above, any buried utility or if so, is done at the risk of Petitioners; and
 - (c) No Transit bench in the City shall be lawful or authorized unless each Transit bench that is adjacent to a residentially zoned area has no advertising or signs, consistent with the City's Zoning and Development Code.
2. The Petitioner shall at all times maintain in effect suitable comprehensive general liability and hazard insurance which will protect the City, its officers, employees, agents and assets from liability in the event of loss of life, personal injury or property damage suffered by any person or persons arising from the facilities of the Petitioner authorized pursuant to this Permit. Such insurance policy shall have terms and amounts approved by the Risk Manager of the City. Such insurance shall not be cancelable without thirty (30) days prior written notice to the City and shall be written for at least a minimum of One Million Dollars (\$1,000,000), combined single limit. A current certificate of insurance shall at all times while this Permit is effective be on deposit with the City's Risk Manager. Such certificate shall designate "the City of Grand Junction, its officers, employees and agents" as additional insureds.
3. The installation, operation, maintenance, repair and replacement of Transit benches by the Petitioner within the public right-of-way as authorized pursuant to this Permit shall be performed with due care or any other higher standard of care as may be required to avoid creating hazardous or dangerous situations to persons and/or property, and to avoid damaging public or private property and assets, including roadways, sidewalks, utilities, or any other facilities presently existing or which may in the future exist in said right-of-way.
4. Petitioner's use hereunder is subject to the City's, and its assignees and designees, right and privilege to use all or any portion of an City right of way for any purpose whatsoever. As provided in the City's charter, Petitioner acknowledges the risk that the City may, without reason being stated, revoke this Permit at any time and in such event Petitioner shall remove all such Transit benches and appurtenances and shall restore the right of way, or private property as the case may be, to the original or better condition prior to Petitioner's use and installation of such Transit bench(s). The City Council may revoke particular locations and/or uses under this Permit without revoking the entire permit.
5. The Petitioner, for itself, its officers, share holders, successors and assigns, agrees and covenants that by acceptance of this Permit it releases and waives and covenants that it shall not hold, nor attempt to hold, the City of Grand Junction (and the City's officers, employees and agents, collectively herein "City"), liable for damages caused to the facilities, personnel, assets, and property to be installed by the Petitioner within the limits of said public right-of-way (including the removal thereof), or any other property of the Petitioner or any other party, as a result of the Petitioner's occupancy, possession or use of said public right-of-way or as a result of any City activity or use thereof or as a result of the installation, operation,

maintenance, repair and replacement of public improvements or City authorized public service providers including utilities.

6. The Petitioner agrees that it shall at all times keep the above described public right-of-way and the facilities authorized pursuant to this Permit in good condition and repair.
7. This Revocable Permit shall not be effective except upon concurrent execution by the Petitioner of an agreement that the Petitioner and the Petitioner's successors and assigns shall save and hold the City of Grand Junction, its officers, employees and agents harmless from, and indemnify the City, its officers, employees and agents, with respect to any claim or cause of action however stated arising out of, or in any way related to, the encroachment or use permitted, and that upon revocation of this Permit by the City the Petitioner shall, at the sole expense and cost of the Petitioner, within thirty (30) days of notice of revocation (which may occur by mailing a first class letter to the last known address), peaceably surrender said public right-of-way and, at its own expense, remove any encroachment so as to make the described public right-of-way available for use by the City or the general public.
8. The provisions concerning release, waiver, holding harmless and indemnity shall survive the expiration, revocation, termination or other ending of this Permit .
9. The Petitioner, for itself and for its successors and assigns, agrees that it shall be solely responsible for maintaining and repairing the condition of facilities authorized pursuant to this Permit. The schedule and standards provided for in the City Council's hearing and/or in the approving resolution, which ever is the most strict and beneficial to the City and its citizens, shall govern.
10. This Revocable Permit, the foregoing Resolution and the following Agreement shall be recorded by the Petitioner, at the Petitioner's expense, in the office of the Mesa County Clerk and Recorder.
11. The Petitioner shall not assign this Permit or any right or privilege connected therewith, or allow any other person to install any other facility within the described right-of-way or any part thereof without first obtaining the written consent of the City, which consent must be approved and ratified by the City Council of the City. Any attempt to sublet, assign or transfer without the prior written consent of the City shall be void *ab initio*. Any consent by the City shall not be a consent to a subsequent assignment or occupation by any other party. Any unauthorized assignment or permission to occupy by the Petitioner shall be void and shall, at the option of the City, provide reasonable cause for the City to revoke this Permit. This Permit shall not be assignable by operation of law without the formal approval and ratification by the City Council of the City.
12. By signing this Permit, Gary Young affirmatively represents that he has authority to bind Outdoor Promotions, Inc., to the terms and conditions of this Permit.

Dated this _____ day of _____, 2002.

Attest: The City of Grand Junction,
a Colorado home rule municipality

City Clerk

City Manager

Attest: Outdoor Promotions, Inc.

Secretary of Outdoor Promotions

Gary D. Young, President

To Outdoor Promotions, Inc.
For Transit Shelters

Recitals.

1. Outdoor Promotions, Inc., a Colorado corporation, hereinafter referred to as the Petitioner, represents that it is a legally created entity authorized to conduct business in the City and the State of Colorado. Petitioner represents that it has entered into an agreement with the County of Mesa, Colorado pursuant to which the Petitioner will provide Transit shelters at various transit stops in Mesa County.

2. The Petitioner has requested that the City Council issue a Revocable Permit to allow the Petitioner to install 28 Transit shelters in the public right-of-way in the City limits, four (4) of which shall have no advertising. The Petitioner warrants and represents that the Transit shelters shall be located only at the locations described, which locations were provided by the Petitioner and described by the Petitioner by GPS coordinate data in UTM Zone 12 metric format, and shall be situated entirely within the limits of public right-of-way:

Shelter No.	Utm North	Utm East	Advertising Allowed	General Location
5043	4332396.1030	713113.9240	Yes	Horizon Drive at the Grand Vista Hotel
5032	4332200.3570	712898.5500	Yes	Horizon Drive at Wendy's Restaurant
5031	4332199.2350	712845.3500	Yes	Horizon Drive at Holiday Inn Hotel
5029	4331974.6650	712599.8500	Yes	Horizon Drive at Burger King Restaurant
5033	4331904.0470	712591.7000	Yes	Horizon Drive at Super 8 Motel
5028	4331618.9020	712395.0390	Yes	Horizon Drive at Applebee's Restaurant
5017	4329910.7640	715740.9810	Yes	Southeast Cor. Patterson Rd. & 29.5 Rd.
5036	4329893.1120	714968.9060	Yes	Southeast Cor. Patterson Rd. & 29 Rd.
5013	4329856.7240	713621.0790	No	Southwest Cor. Patterson Rd. & 28.25 Rd.
5019	4328270.9200	714588.9390	Yes	Southeast Cor. North Ave. & 28.75 Rd.
5018	4328297.2510	714450.6310	Yes	Northwest Cor. North Ave. & 28.75 Rd.
5020	4328285.2860	713916.3230	Yes	North Avenue at City Market Fuel Station
5021	4328255.4540	713772.6530	Yes	Southeast Cor. North Ave. & 28.25 Road
5022	4328250.1970	713548.6420	Yes	North Avenue at K-Mart
5038	4331436.9890	712314.4170	Yes	Northeast Cor. Horizon Drive & G Road
5037	4329830.1050	712706.7400	No	Patterson Rd. South of Spring Valley Sub.
5010	4329817.4830	712152.9680	No	Southeast Cor. Patterson Rd. & 15 th St.
5011	4329840.3500	712053.7810	Yes	Northwest Cor. Patterson Rd. & 15 th St.
5023	4328270.8200	713318.1870	Yes	Northwest Cor. North Avenue & 28 Road
5024	4328237.8330	713085.0150	Yes	Southwest Cor. North Avenue & 25 th St.
5003	4328228.0700	711619.3020	Yes	Northwest Cor. North Avenue & 12 th St.
5002	4328022.8800	711744.6630	Yes	12 th Street at Lincoln Park
5001	4327970.1710	711719.7560	Yes	12 th Street at Messiah Lutheran Church
5035	4328189.7880	711189.2960	Yes	Southeast Cor. North Avenue & 8 th St.
5039	4327317.7960	711018.2320	Yes	7 th Street at R-5 High School
Shelter No.	Utm North	Utm East	Advertising Allowed	General Location
5006	4328346.1240	710131.6960	No	1 st Street & Sherwood Drive
5027	4328202.7630	710660.6030	Yes	Northwest Cor. North Avenue & 5 th St.
5025	4328178.5550	710734.7590	Yes	Southeast Cor. North Avenue & 5 th St.

3. Based on representations made by the Petitioner, the City Council has determined that such action would not at this time be detrimental to the inhabitants of the City of Grand Junction.

NOW, THEREFORE, IN ACCORDANCE WITH THE ACTION OF THE CITY COUNCIL OF THE CITY OF GRAND JUNCTION, COLORADO:

There is hereby issued to the above-named Petitioner a Revocable Permit for the purposes described and within the limits of the public right-of-way described; provided, however, that Petitioner warrants and promises to abide by the following conditions and terms:

1. The Petitioner warrants and represents that the Transit shelters to be installed or maintained by the Petitioner at the above stated locations:
 - (a) will be situated entirely within the limits of public right-of-way except as otherwise approved by the Director of Public Works and Utilities in writing upon his receipt of evidence that each affected landowner has consented in writing;
 - (b) will not encroach over or across, or be located above, any buried utility or if so, is done at the risk of Petitioners; and
 - (c) No Transit shelter in the City shall be lawful or authorized unless each Transit shelter that is adjacent to a residentially zoned area has no advertising or signs, consistent with the City's Zoning and Development Code.
2. The Petitioner shall at all times maintain in effect suitable comprehensive general liability and hazard insurance which will protect the City, its officers, employees, agents and assets from liability in the event of loss of life, personal injury or property damage suffered by any person or persons arising from the facilities of the Petitioner authorized pursuant to this Permit. Such insurance policy shall have terms and amounts approved by the Risk Manager of the City. Such insurance shall not be cancelable without thirty (30) days prior written notice to the City and shall be written for at least a minimum of One Million Dollars (\$1,000,000), combined single limit. A current certificate of insurance shall at all times while this Permit is effective be on deposit with the City's Risk Manager. Such certificate shall designate "the City of Grand Junction, its officers, employees and agents" as additional insureds.
3. The installation, operation, maintenance, repair and replacement of Transit shelters by the Petitioner within the public right-of-way as authorized pursuant to this Permit shall be performed with due care or any other higher standard of care as may be required to avoid creating hazardous or dangerous situations to persons and/or property, and to avoid damaging public or private property and assets, including roadways, sidewalks, utilities, or any other facilities presently existing or which may in the future exist in said right-of-way.
4. Petitioner's use hereunder is subject to the City's, and its assignees and designees, right and privilege to use all or any portion of an City right of way for any purpose whatsoever. As provided in the City's charter, Petitioner acknowledges the risk that the City may, without reason being stated, revoke this Permit at any time and in such event Petitioner shall remove all such Transit shelters and appurtenances and shall restore the right of way, or private property as the case may be, to the original or better condition prior to Petitioner's use and installation of such Transit shelter(s).

The City Council may revoke particular locations and/or uses under this Permit without revoking the entire permit.

5. The Petitioner, for itself, its officers, share holders, successors and assigns, agrees and covenants that by acceptance of this Permit it releases and waives and covenants that it shall not hold, nor attempt to hold, the City of Grand Junction (and the City's officers, employees and agents, collectively herein "City"), liable for damages caused to the facilities, personnel, assets, and property to be installed by the Petitioner within the limits of said public right-of-way (including the removal thereof), or any other property of the Petitioner or any other party, as a result of the Petitioner's occupancy, possession or use of said public right-of-way or as a result of any City activity or use thereof or as a result of the installation, operation, maintenance, repair and replacement of public improvements or City authorized public service providers including utilities.
6. The Petitioner agrees that it shall at all times keep the above described public right-of-way and the facilities authorized pursuant to this Permit in good condition and repair.
7. This Revocable Permit shall not be effective except upon concurrent execution by the Petitioner of an agreement that the Petitioner and the Petitioner's successors and assigns shall save and hold the City of Grand Junction, its officers, employees and agents harmless from, and indemnify the City, its officers, employees and agents, with respect to any claim or cause of action however stated arising out of, or in any way related to, the encroachment or use permitted, and that upon revocation of this Permit by the City the Petitioner shall, at the sole expense and cost of the Petitioner, within thirty (30) days of notice of revocation (which may occur by mailing a first class letter to the last known address), peaceably surrender said public right-of-way and, at its own expense, remove any encroachment so as to make the described public right-of-way available for use by the City or the general public.
8. The provisions concerning release, waiver, holding harmless and indemnity shall survive the expiration, revocation, termination or other ending of this Permit .
9. The Petitioner, for itself and for its successors and assigns, agrees that it shall be solely responsible for maintaining and repairing the condition of facilities authorized pursuant to this Permit. The schedule and standards provided for in the City Council's hearing and/or in the approving resolution, which ever is the most strict and beneficial to the City and its citizens, shall govern.
10. This Revocable Permit, the foregoing Resolution and the following Agreement shall be recorded by the Petitioner, at the Petitioner's expense, in the office of the Mesa County Clerk and Recorder.
11. The Petitioner shall not assign this Permit or any right or privilege connected therewith, or allow any other person to install any other facility within the described right-of-way or any part thereof without first obtaining the written consent of the City, which consent must be approved and ratified by the City Council of the City. Any attempt to sublet, assign or transfer without the prior written consent of the City shall be void *ab initio*. Any consent by the City shall not be a consent to a subsequent assignment or

occupation by any other party. Any unauthorized assignment or permission to occupy by the Petitioner shall be void and shall, at the option of the City, provide reasonable cause for the City to revoke this Permit. This Permit shall not be assignable by operation of law without the formal approval and ratification by the City Council of the City.

12. By signing this Permit, Gary Young affirmatively represents that he has authority to bind Outdoor Promotions, Inc., to the terms and conditions of this Permit.

Dated this _____ day of _____, 2002.

Attest:

The City of Grand Junction,
a Colorado home rule municipality

City Clerk

City Manager

Attest:

Outdoor Promotions, Inc.

Secretary of Outdoor Promotions

Gary D. Young, President

AGREEMENT

This Agreement is made and signed this ____ day of _____, 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 must apply for a revocable permit for benches in the City.
- 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) Regardless of whether cured within the thirty (30) day cure period, (d) above, the City shall have the right to terminate this Agreement based on the fault of OPRO, if a material term hereof is breached three (3) or more times in any sixty (60) month period.

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, telephone or by mail. [Insert: This issue needs Council direction. OPRO’s position is: “We would request that Section 5.(b.) delete reference to citizen complaints initiated by telephone. Outdoor Promotions is willing to allow citizen complaints to be telephoned into the City and relayed by the City to Outdoor Promotions. This would allow the City to document a telephone complaint that had, in fact, been made and would provide the assurance that the complaint was relayed by telephone by the City to Outdoor Promotions.”]
- (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. 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.

5. Acceptance of Terms of Revocable Permits.

- (a) The terms and provisions of two revocable permits authorized by the City Council on _____ and on _____, 2002 are incorporated herein as though fully set forth. OPRO agrees to comply with each and every term thereof.
- (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.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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:

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.

13. 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.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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.

19. Conduct. Ethics.

OPRO agrees to comply with the City's charter, specifically § 101, the Code of Ethics of the state; §§24-18-101 *et seq* C.R.S.; 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.

20. 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.

21. 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.

22. 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

23. 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.

24. 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.

25. 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.

26. Ambiguities.

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

27. 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, City Clerk

Kelly Arnold, City Manager

OUTDOOR PROMOTIONS, Inc.

Gary Young