

EXTENSION and AMENDMENT

to

LICENSE AGREEMENT

between

THE CITY OF LONG BEACH

and

CREATIVE ADVERTISING CONCEPTS, INC.

for

**FULL SERVICE REGIONAL MARKETING and ADVERTISING CAMPAIGN
SERVICES**

THIS EXTENSION and AMENDMENT dated this 15th day of April, 2019, by and between the City of Long Beach, a municipal corporation of the State of New York with a business address at 1 West Chester Street, Long Beach, New York 11561 (hereinafter "City" or "Licensor") and CREATIVE ADVERTISING CONCEPTS, INC., a domestic corporation with a business address at 74 West Park Avenue, Long Beach, New York 11561 (hereinafter "Creative" or "Licensee");

W I T N E S S E T H

WHEREAS, City Council Resolution No. 83/15 duly adopted on July 21, 2015, provides authority for the City Manager to enter into a contract with Creative for marketing services;

WHEREAS, the City Manager executed an agreement with Creative dated August 5, 2015, (the Agreement) for a period of three years with two separate and additional three year renewals, subject to mutual consent of the parties;

WHEREAS, the first term of the Agreement expired on August 5, 2018;

WHEREAS, the parties are desirous of retroactively renewing and extending the Agreement dated July 21, 2015 from August 5, 2018 through August 4, 2021, except for the Agreement as it pertain to bus advertisements, and subject to the following

The parties hereto agree as follows:

1. The terms and conditions of the Agreement dated August 5, 2018 remain in full force and effect unless specifically and explicitly modified herein. A copy of the Agreement is annexed hereto as "Exhibit A"

2. The Agreement is hereby extended through August 4, 2021 pursuant to the provisions of paragraph 2. See Exhibit A.

3. Paragraph 4, entitled "Compensation" is modified to extent of replacing \$6,000 per month to \$1,000 per month (the "Monthly Retainer"). The scope of Creative's services for the Monthly Retainer are annexed hereto and made a part hereof as "Exhibit B".

4. In no event shall Creative receive compensation for any service it provides if it should be compensated, in any way, for that service via any other provision of this Amendment or the Agreement. If compensation is received via any means by Creative from the City for advertising or advertising related services, there may be no other fee or charge back for compensation owed or expenses incurred. For purposes of clarity and by way of example, if Creative receives a commission or Monthly Retainer for services it provides, neither Creative nor any of its agents, employees, or independent contractors, may receive any additional compensation for services provided or expenses incurred. This provision may only be waived by the City Manager, in writing, if presented prior to the charge, fee, or expense is incurred.

5. Paragraph 6 entitled "Indemnification" is stricken in its entirety and replaced with the headline: "Defense and Indemnification"; and its body shall read as follows:

To the fullest extent permitted by law, the Licensee shall (1) immediately defend and (2) indemnify the City, and its councilmembers, officers, and employees from and against all liabilities, regardless of nature or type that arise out of, pertain to, or relate to the Agreement or the Amendment as defined in this Agreement, unless arising out of the City's gross negligence. Liabilities subject to the duties to defend and indemnify include, without limitation, all claims, losses, damages, penalties, fines, and judgments; associated investigation and administrative expenses; defense costs, including but not limited to reasonable attorneys' fees; court costs; and costs of alternative dispute resolution.

Additionally, Licensee shall be obligated to defend, in all legal, equitable, administrative, or special proceedings, with counsel approved by the City, the City and its councilmembers, officers, and employees, immediately upon tender to Licensee of the claim in any form or at any stage of an action or proceeding, whether or not liability is established. An allegation or determination that persons other than Licensee are responsible for the claim does not relieve Licensee from its separate and distinct obligation to defend under this section. The obligation to defend extends through final judgment, including exhaustion of any appeals. The defense obligation includes an obligation to provide independent defense counsel if Licensee asserts that liability is caused in whole or in part by the negligence or willful misconduct of the indemnified party. In order for Licensee to be relieved of the duty to defend, there must be no possible factual or legal basis on which

Licensee's duty to indemnify under any provision of this indemnity agreement could be held to attach.

6. The Agreement, with respect to bus advertisements only, is extended one year from the date of this Amendment and Extension. At the expiration of one year following the date of this Amendment and Extension, Creative's Agreement with respect to bus advertisements shall expire unless the parties agree otherwise in writing. Creative's commission for bus advertisements shall include: (1) placement and sale of bus advertisement space on City busses and other vehicles subject to the prior written consent of the City; and (2) all production costs for printing the advertisement; (3) any artwork that must be created for an advertisement; and (4) installation of the advertisement. In the event that any advertisement becomes significantly damaged, which must exceed regular wear and tear, the City agrees to pay for printing an identical advertisement to replace the damaged advertisement. The City's payment of 58% shall include all money collected by Creative, including any and all production fees collected by Creative, less actual expenses incurred from a third party as demonstrated by certified invoices.

IN WITNESS WHEREOF, this Amendment has been executed by a duly authorized representative of the parties:

CITY OF LONG BEACH

CREATIVE ADVERTISING CONCEPTS, INC.




Robert M. Agostisi
Acting City Manager



Brian Berkery
President, Creative Advertising Concepts, Inc.

Signed, Sealed and Delivered
on the presence of



City Clerk

Dated: 4/15/19

LICENSE AGREEMENT

between

THE CITY OF LONG BEACH

and

CREATIVE ADVERTISING CONCEPTS, INC.,

for

FULL SERVICE REGIONAL MARKETING and ADVERTISING CAMPAIGN SERVICES INCLUDING TRANSIT ADVERTISING SERVICES.

THIS LICENSE AGREEMENT made this 5th day of August, 2015, by and between the City of Long Beach, a municipal corporation of the State of New York with a business address at 1 West Chester Street, Long Beach, Nassau County, New York 11561 (hereinafter "City" or "Licensor") and CREATIVE ADVERTISING CONCEPTS, INC., a domestic corporation with a business address at 74 West Park Avenue, Long Beach, New York 11561 (hereinafter "Creative" or "Licensee");

WITNESSETH

Where as Creative has performed Marketing services for the City of Long Beach for the post Sandy "Open For Business" campaigns from 2013-2014 as well as multiple marketing and event supported executions. The city would like to continue the services as detailed within this agreement.

Where as Creative has satisfactorily performed services for advertisement placement on city buses, bus shelters and informational kiosks since 2007 creating a revenue generating asset for the city. The City would like to continue these services as per the below agreement.

Where as Creative has solicited, secured and executed sponsorships on behalf of the city for additional marketing funds support, community development and program funding. The city would like to continue these services as detailed in the below agreement.

Now the parties hereto agree as follows:

1. AUTHORITY

This Agreement is entered into pursuant to City Council Resolution No. 83/15, duly adopted on July 21, 2015.

2. TERM OF AGREEMENT

This Agreement shall commence on August 5, 2015 for a period of three (3) years with two (2) separate additional three (3) year renewals, which will be granted by mutual consent of the parties.

As related to the New York State Empire State Development Corporation Grant Funding, the said agreement shall be for a period of three (3) years, with two (2) separate three (3) year renewals which will be granted by mutual consent of the City Manager and the provider, *or* until the funds provided by the New York State Empire State Development Corporation – through the Market- NY Program, (hereinafter “NYSESDC”) and other corporate sponsors and/or government grants are exhausted, whichever occurs earlier.

As related to the Transit Advertising and Sponsorship Services, the said agreement shall be for a period of three (3) years, with two (2) separate three (3) year renewals which will be granted by mutual consent of the city.

Any change or absence of grant funds available for said advertising and marketing campaigns shall not impact the term of agreement for all other services included in this agreement.

3. SCOPE OF SERVICES

The City hereby retains Creative to engage in a full time regional marketing and advertising campaign promoting the theme of “More than Just the Beach-Open for Business Year Round”. Said marketing and advertising campaign shall be focused on driving visitors to the City by means, including but not limited to: (1) television advertising; (2) radio advertising; (3) print advertising; (4) web advertising; (5) social media advertising; and (6) promotional events. The City shall retain ownership of all promotional and any other marketing materials. As the opportunities arise, additional projects beyond this scope shall be negotiated on a case by case basis and agreed to in writing prior to commencement of said projects.

Creative shall be the agency of record for the City’s advertising and marketing initiatives and sponsorship sales efforts.

For sponsorship sales, Creative will identify revenue generating opportunities to include, but not limited to event and program sponsorships, naming rights, advertisements, signage, product rights and experiential marketing.

Said services shall include transportation advertising for the City’s Bus Transportation System. Advertising is to include interior and exterior advertising on the City’s buses; placement of advertisements on City bus shelters; placement of advertisements on the interior and rear exterior of the City’s closed trolleys; placement of advertisements only on the interior of the City’s open air trolley; and placement of advertisements in the City’s kiosks located on the boardwalk and at the LIRR. Creative shall pay for all expenses associated with the installation of all advertising materials. The

City shall clean, maintain and repair the bus shelters, kiosks, buses and trollies. In the event that an advertiser's ad need to be moved due to bus maintenance (after 30 days off the system) or ad unit leaving the system, the City shall incur the cost to re-print and install the advertising panels.

In accordance with the New York State Empire State Development Corporation requirements, Creative must maintain a minimum of thirty percent (30%) of the total contracts through selected Minority/Women Owned Businesses, which is currently OpAd Media Solutions LLC. This firm must be on the current New York State M/WBE certification list. Creative, with the advance approval of the city in writing, shall have the ability to change the above mentioned agency if Creative selects an alternate agency with advanced expertise for a particular project, provided such vendor is on the current New York State M/WBE certification list. Creative must comply with New York State Empire State Development Corporation Grant requirements and reporting for M/WBE.

In addition, all marketing and event projects and products must have the New York State "I LOVE NY" logo on them and must be preapproved by the New York State Empire State Development Corporation Market NY office through the City's Economic Development Department. All content for marketing, advertising and events must be preapproved by the City's Economic Development Department.

In addition, all transportation related advertisement must be approved by the City prior to installation.

Under the New York State Empire State Development Corporation Grant Market NY grant requirements, a minimum of 25% of the total project costs must come from local sources. Creative is responsible to solicit and secure sponsorship funds from private sources that include businesses, corporations and others entities approved by the City. These sponsors will be acknowledged in appropriate marketing materials as well as listed as sponsors for certain City run events.

Creative shall not use funds, in whole or in part, for political campaigns or the endorsement of sports teams.

Creative shall conduct a multi-media advertising campaign that includes the creation of television and radio commercials, the regular maintenance of a website, digital plans to include all web elements and designs, and management and promotion of agreed upon events. Creative shall also purchase and traffic all media and provide public relations support to the City.

4. COMPENSATION

Creative's compensation shall be \$6,000 per month for ten months, to equal \$60,000 for the regional marketing and advertising campaign program for the first year, if the minimum sponsorship funds raised equal \$125,000. If the minimum sponsorship funds are not raised, Creative's compensation will have to be renegotiated contingent

upon the amount of funding available. The terms for the subsequent two years shall be contingent upon available funds and will be re-negotiated prior to the beginning of the any new grant contract period.

Creative shall provide to the Department of Economic Development and the Comptroller's Office for all grant funded marketing campaigns, on a monthly basis, a detailed accounting of expenditures along with: (a) the number of distributed materials; (b) the number of posted advertisements; (c) the number of events held; (d) an estimate of the number of people reached through advertisements. They shall also provide a detailed accounting of all revenues and expenses in regard to grant funded marketing campaigns, to include all invoices and cancelled checks. Creative acknowledges and agrees that they will not be entitled to receive any of the proceeds set forth in this Agreement absent receipt of the materials set forth in this paragraph.

Creative shall maintain required record keeping, and acknowledges that these records will be open for inspection and audit subject to the City's discretion that is in compliance with both the City's and New York State Empire State Development Corporation Grant Market NY recordkeeping requirements under the grant.

The goal for Creative is to raise a minimum of \$125,000 in sponsorship funds for the regional marketing and advertising campaign, for year one of this contract. The minimum to be raised for subsequent years shall be negotiated prior to the start of each contract year. Creative will receive twenty percent (20%) of the total sponsorships funds that they raise. All sponsorship checks must be made payable to the City of Long Beach, and remitted to the City Comptroller. Creative shall receive sponsorship commission within thirty (30) days from receipt of completed claim voucher and invoice for such sponsorship payment.

Creative's compensation for Transportation Advertising shall be based upon their procurement and placement of advertising materials on the City owned buses, trollies, shelters and kiosks, as follows:

For fiscal year 2016 – 60% the City/40% Creative of Gross Revenues;
For fiscal year 2017 – 58% the City/42% Creative of Gross Revenues; and
For Fiscal year 2018 – 58% the City/42% Creative of Gross Revenues;

Creative shall provide the Comptroller's office a quarterly report of all bus, bus shelter and sponsorship activity including; advertiser/sponsor locations, and rates. Payment to the city for all bus and bus shelter advertising shall be on a quarterly basis within 30 days of the end of each quarter. Support for such reports, including but not limited to, copies of receipts, vendor payments, cancelled checks, advertising contracts, etc., shall be maintained by Creative for a minimum of three years beyond the expiration of this contract and shall be subject to inspection and/or audit at the City's discretion.

5. COMPLIANCE

Creative shall comply with all Federal, State, and local laws and regulations applicable to its business in general and to safety in particular. Creative shall adopt and perform such review and inspection procedures as are necessary to ensure compliance with all aforesaid laws and regulations. Creative agrees to indemnify the City for all claims arising out of its failure to comply with any rule or law intended for the safety of any persons.

6. INDEMNIFICATION

Creative shall indemnify the City and the NYSESDC program against any and all claims, demands, or injuries arising out of Creative's performance of scope of work outlined in this Agreement.

Creative shall indemnify and hold harmless the City, its officers, employees, and/or agents, including the NYSESDC, from any and all liability, damage, loss, claims, demands and actions of any nature whatsoever, for any reason whatsoever, foreseeable or unforeseeable, which arises out of or is connected with, or is claimed to arise out of or be connected with, any undertaking, product, goods, merchandise, products, services sold and/or work supplied, furnished or performed by Creative or its subcontractors, agents, servants, or employees, including without limiting the generality of the forgoing, all liability, damages, loss, claims, attorneys, court and adjusting fees, demands and actions on account of personal injury, death or property loss to the City, its officers, employees, agents or to any other persons, third parties, or property, including the NYSESDC, but shall not include claims resulting from the willful misconduct of the City of Long Beach. This indemnity and hold harmless is intended to be as broad as is permitted by law and to include claims of every kind and nature – for tort, under contract; for strict liability or other liability without fault; under statute, rule, regulation or order, and otherwise.

The City shall indemnify Creative against any and all claims, demands, or injuries arising out of Creative's performance of scope of work on behalf of the City outlined in this Agreement.

The City shall indemnify and hold harmless the Creative, its officers, employees, and/or agents, from any and all liability, damage, loss, claims, demands and actions of any nature whatsoever, for any reason whatsoever, foreseeable or unforeseeable, which arises out of or is connected with, or is claimed to arise out of or be connected with, any undertaking, product, goods, merchandise, products, services sold and/or work supplied, furnished or performed by Creative on behalf of the City or its subcontractors, agents, servants, or employees, including without limiting the generality of the forgoing, all liability, damages, loss, claims, attorneys, court and adjusting fees, demands and actions on account of personal injury, death or property loss to the Creative, its officers, employees, agents or to any other persons, third parties, or property, but shall not include claims resulting from the willful misconduct of the Creative. This indemnity and hold harmless is intended to be as broad as is permitted by law and to include claims of every kind and nature – for tort, under contract; for strict liability or other liability without fault; under statute, rule, regulation or order, and otherwise.

7. CONFLICT OF INTEREST

Creative agrees that it will not, during the term of this Agreement, engage in any activity which is contrary to and in conflict with the goals and purposes of the City. Specifically, Creative may not simultaneously represent other clients in matters or proceedings adverse to the City. Additionally, Creative is charged with the duty to disclose to the City the existence of any such adverse interest whether existing or potential. This duty shall continue for the duration of this agreement. Conflict of interest does not include limiting Creative from working with other entities related to marketing and sponsorship. The determination as to when a conflict exists shall ultimately be made by the Corporation Counsel of the City after full disclosure is obtained

8. CONFIDENTIALITY OF RECORDS

Any records, reports, or other documents of the City's used by Creative pursuant to this Agreement, or any document created as part of the Agreement, shall remain the separate property of the City and shall be kept confidential.

9. RELATIONSHIP OF PARTIES

The City and Creative acknowledge and agree that the relationship arising from this agreement does not constitute or create a general or limited agency, joint venture, partnership, employment relationship, or franchise between them. Creative agrees that they are independent contractors of the City and are not employees for any purpose. Neither party has the power to bind the other to any contract or other obligation and all transactions obtained and purposed by Creative for the benefit of the City must be approved by a representative of the City in accordance with their respective powers and authority.

10. NOTICES

All notices, requests, approvals, and consents of any kind made pursuant to this Agreement shall be in writing and shall be deemed to be effective as of the date it is sent by certified mail, return receipt requested. Such written notice shall be addressed to Creative Advertising Concepts, Inc. at 74 West Park Avenue, Long Beach, New York 11561 and to the City at its office, City Hall, 1 West Chester Street, Long Beach, New York 11561, attention: City Manager.

11. LIABILITY

Nothing contained in this Agreement or elsewhere shall impose any liability or duty whatsoever on the City or the NYSESDC or any agency or subdivision of the foregoing except as otherwise expressly stated in this Agreement.

Nothing contained in this Agreement or elsewhere shall impose any liability or duty whatsoever on the Creative or any agency or subdivision of the foregoing except as otherwise expressly stated in this Agreement.

12. SEVERABILITY

Should any part, term, or provision of this Agreement be decided by a Court of competent jurisdiction to be invalid, unenforceable, illegal, or in conflict with any law, the validity, legality, enforceability of the remaining portions shall not be affected or impaired.

13. NONWAIVER

The City's failure to insist upon the strict performance of any provision of this Agreement or to exercise any right based upon a breach thereof or the acceptance of any performance during such breach will not constitute a waiver of any of the City's rights under this Agreement.

14. ASSIGNMENT

This agreement and any interest arising hereunder may not be assigned by Creative without the prior written consent of the City. This agreement shall be binding upon and inure to the benefit of each of the parties' successors and, if permitted in writing, its assigns.

15. PHOTOGRAPHY RELEASE

Creative shall execute a photography release (an example of which is available on the internet at <http://www.nyshcr.org/Forms/NYS-CDBG>) or a release in substantially similar form thereof for all applicable images and recordings.

16. ENTIRE AGREEMENT


This Agreement constitutes the entire agreement between the parties and supersedes all prior oral and written agreements for the scope of work delineated in this Agreement. This agreement shall be governed by, construed, and enforced in accordance with the laws of the State of New York.

17. TERMINATION

In the event that either party is in breach of contract, the non-breaching party shall provide a written explanation of the breach(es), which shall be sent by certified mail, return receipt requested, and U.S. first class mail, to the parties' addresses set forth on page 1 of this Agreement. If the parties are unable to resolve the dispute within thirty (30) days from the date listed on the letter, either party may commence legal action to redress same.

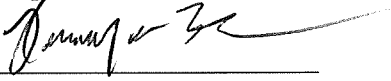
IN WITNESS WHEREOF, this Agreement has been executed by a duly authorized representative of the parties.

CITY OF LONG BEACH




Jack Schnirman
City Manager

Signed, Sealed and Delivered
in the presence of

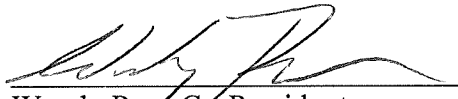


City Clerk

**CREATIVE ADVERTISING
CONCEPTS, INC.**



Brian T. Berkery, President
Creative Advertising Concepts, Inc.



Wendy Parr, Co-President
Creative Advertising Concepts, Inc.

Exhibit B

Agency Services - City of Long Beach

Creative Advertising Concepts is a full-service advertising agency committed to creating and executing organized, effective marketing programs to assist our clients in achieving their goals.

Below details the services Creative Advertising Concepts will provide throughout the year for the City of Long Beach related to our contracted monthly retainer.

- **Marketing Account Management-** Create proposals and maintain all marketing schedules, calendars, and budgets. Organization of all marketing related projects and review of proposed marketing opportunities. Assist in executing current and new marketing campaigns and concepts based on advertising funding available. Liaison for outside organizations and partners interested in working with the city for an event or marketing partnership.
- **Artwork / Collateral Materials** –Artwork is included each month for campaigns consistent with all style guidelines and approvals from city hall. This will include artwork for social media posts and ad units, posters, and brochure updates. Additional artwork that will require excessive time to produce not included in the above will require approval by the city prior to any work being performed.
- **Marketing Campaign Execution-** Management of marketing campaigns from conception to completion. Create, negotiate and contract all ad layouts, production and insertion orders to for Social Media campaigns to include Facebook & Instagram for Long Beach Life and Long Beach Life website updates. Manage all TV & Radio, outdoor advertising, business directory updates, and other mediums that are allowable with-in approved budgets.
- **Systems Administrator-** Maintain and manage Advertising Funds Account. Maintain billing and spending for each period. Apply for any advertising funds and provide billing documents. Attend monthly meetings with city hall for updates, and review of campaigns.

Monthly Retainer: As detailed in the attached agreement