

**RESOLUTION NO. 2018-016**

RESOLUTION OF THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA APPROVING A RELOCATION AND RECONSTRUCTION AGREEMENT WITH CLEAR CHANNEL OUTDOOR, INC., A DELAWARE CORPORATION, A COPY OF WHICH IS ATTACHED HERETO AND MADE A PART HEREOF IN SUBSTANTIAL FORM AS EXHIBIT "1", AND FURTHER AUTHORIZING THE MAYOR AND THE CITY CLERK, AS ATTESTING WITNESS, ON BEHALF OF THE CITY, TO ENTER INTO THE AGREEMENT.

**WHEREAS**, the City and Clear Channel Outdoor, Inc. have agreed to relocate and/or reconstruct billboard signs with digital (LED) billboard faces as allowed by the City's regulations; and

**WHEREAS**, in furtherance of the public purpose of removing unsightly, deteriorating billboard signs and improving the aesthetics of the community together with gaining public service access for announcements on commercial billboards and pursuant to section 70.20, Florida Statutes, the City finds it in its best interest to enter into this relocation and reconstruction agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, THAT:

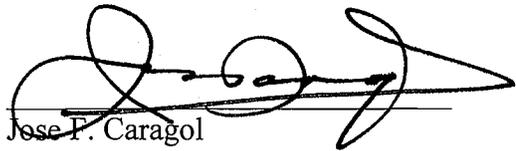
**Section 1:** The foregoing facts and recitations contained in the preamble to this resolution are hereby adopted and incorporated by reference as if fully set forth herein.

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**Section 2:** The City Council of the Hialeah, Florida hereby approves a Relocation and Reconstruction Agreement with Clear Channel Outdoor, Inc., a Delaware corporation, a copy of which is attached hereto and made a part hereof in substantial form as Exhibit "1" and further authorizes the Mayor and the City Clerk, as attesting witness, on behalf of the City, to enter into the Agreement.

PASSED AND ADOPTED this 27 day of February, 2018.

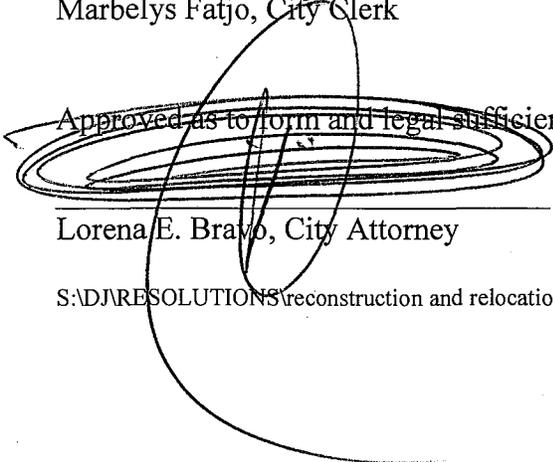
  
Jose P. Caragol  
Council Vice President

Attest:

Approved on this 5 day of March, 2018.

  
Marbelys Fatjo, City Clerk

  
Mayor Carlos Hernandez

  
Approved as to form and legal sufficiency:

Lorena E. Bravo, City Attorney

Resolution was adopted by a 5-0-2 vote with Councilmembers, Caragol, Zogby, Lozano, Cue-Fuente, and Hernandez voting "Yes" and Casals-Munoz and Garcia-Martinez being absent.

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EXHIBIT "1"

**RELOCATION AND RECONSTRUCTION AGREEMENT**

THIS RELOCATION AND RECONSTRUCTION AGREEMENT (this "**Agreement**") is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2018, (the "**Effective Date**"), by and between the City of Hialeah, Florida, a municipal corporation organized and existing under the laws of the State of Florida (the "**City**"), and Clear Channel Outdoor, Inc., a Delaware corporation, ("**the Billboard Company**").

**RECITALS:**

WHEREAS, the City of Hialeah Code of Ordinances (the "City Code") Chapter 74, Entitled "Signs" (the "Sign Code"), regulates the use and operation of signs throughout City; and

WHEREAS, the Sign Code regulates billboard signs and replacement in the City; and

WHEREAS, pursuant to Section 74-150 of the City's Sign Code, the permanent removal of legal non-conforming billboard signs within the City and replacement of such billboard signs with new traditional and/or digital billboards in certain locations within the City is encouraged, and the City is empowered to enter into relocation and reconstruction agreements with the owners of such signs that result in a reduction in the number of unsightly billboard signs within the City at a ratio of two sign faces for each LED sign face; and

WHEREAS, the City has determined that it is a good public purpose to reduce the number of nonconforming billboard signs that are esthetically unappealing, and provide for modern updated type billboard signs; and

WHEREAS, the Billboard Owner currently owns and operates, with the appropriate Florida State Department of Transportation (FDOT) and City permits, a legally existing, non-conforming billboard with three (3) 14' x 48' printed faces located at 8020 West 20<sup>th</sup> Avenue, Hialeah, Florida (the "Existing Sign"); and

WHEREAS, the City and the Billboard Owner have agreed that the Billboard Owner will relocate and remove the Existing Sign, and construct a new double faced 14' x 48' billboard with one printed and one digital (LED) billboard face located at 2050 West 56<sup>th</sup> Street, Hialeah, Florida (the "Replacement Sign"); and

WHEREAS, the legal description of the property where the Replacement Sign located at 2050 West 56<sup>th</sup> Street, Hialeah, Florida is:

Lots 1 and 2, Block 1, of PLAZA FELICIDAD, according to the Plat thereof as Recorded in Plat Book 134, at Page 86 of the Public Records of Miami-Dade County, Florida.

WHEREAS, Section 74-150 (k) of the Sign Code provides that the sign owner and operator shall sign a relocation and reconstruction agreement pursuant to Florida Statutes 70.20 prior to the issuance of the sign permit for the Replacement Sign; and

WHEREAS, Florida Statutes Section 479.15(2) provides that just compensation shall be paid for the removal of any legal non-conforming billboard signs located along an interstate or a federal-aid primary highway system; and

WHEREAS, Florida Statutes Section 70.20 (1) (2017), authorizes municipalities to enter into "relocation and reconstruction agreements" that allow governmental entities to undertake public goals without the expenditure of public funds while allowing the continued maintenance of private investment and signage as a medium of commercial and non-commercial communication and authorizes such "relocation and reconstruction" of billboards by agreement, ordinance, or resolution, which provides in part that:

"[m]unicipalities. . . are specifically empowered to enter into relocation and reconstruction agreements on whatever terms are agreeable to the sign owner and the municipality . . . and to provide for relocation and reconstruction of signs by agreement, ordinance, or resolution."; and

WHEREAS, the City and the Billboard Owner desire to enter into this Agreement to provide the terms and conditions under which the Billboard Owner will be permitted to remove the Existing Sign, and to construct the Replacement Sign; and

WHEREAS, the City finds that the provisions of this Agreement are in the public interest.

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and the Billboard Owner agree as follows:

1. **Incorporation of Recitals.** The above recitals are true and correct and are incorporated into and made part of this Agreement.

2. **Waiver of Just Compensation.** In consideration of the rights granted, the Billboard Owner hereby expressly waives any right to receive from the City just compensation for the removal of the billboard sign faces and supporting sign structures associated with the removal, relocation, and reconstruction of its billboards, whether such a claim for just compensation is predicated on Sections 70.001, 70.20(9), 479.15(2) or 479.24, Florida Statutes, or any other theory of law.

3. **70.20 Billboards/Voluntary Removal of Takedown Billboard.**

3.1 Within fifteen (15) days after the Billboard Owner's receipt of all necessary final governmental approvals, authorizations and permits for the erection, installation and operation of the replacement Sign, the Billboard Owner shall, at its sole cost and expense, permanently and voluntarily remove (if not already theretofore removed) the sign faces from the Existing Sign, and the underlying structure.

3.2 The Billboard Owner will provide display time to the City on the digital billboard Face(s) on the Replacement Billboard through the State of Florida's Office of Emergency Management (the "OEM"), upon official activation of the OEM for certain limited emergency reasons such as hurricanes, amber alerts, and police or fire emergency situations. Such access shall be subject to the agreements the Billboard Owner has in place from time to time with the FBI, State of Florida, and the OEM.

3.3 The Billboard Owner agrees not to permit advertising that promotes adult entertainment (i.e. containing or relating to nudity, sexual activity or pornography) uses on the billboard signs.

4. **Permit Amendment Fee.** Within thirty (30) days of the Effective Date of this Agreement, the Billboard Owner shall submit a complete permit application to the City for the Replacement Sign. The Billboard Owner shall pay the City a one-time permit amendment fee of Twenty Five Thousand Dollars (\$25,000.00) for the Replacement Sign (the “Permit Amendment Fee”) within 15 days of the issuance of all necessary local and state governmental approvals for the Replacement Sign (any or all of which are fully refundable by the City to the Billboard Owner in the event the Replacement Sign is not installed or erected).

5. **Neighborhood Enhancement Contribution:** In accordance with the provisions of Section 74-150 (i) of the City’s Sign code, the Billboard Owner shall pay the City a yearly fee of Fifteen Thousand and 00/100 Dollars (\$15,000.00) for the Digital Billboard Face located on the Replacement Sign located within the City for so long as said Digital Billboard Face remains erected. By mutual agreement of the parties hereto the Billboard Owner shall remit to the City (by no later than September 1 of each year) as refundable advance payment(s) (any or all of which are fully refundable by the City to the Billboard Owner in the event the Digital Billboard Face is not erected or installed) the Neighborhood Enhancement Contribution for the digital billboard face of \$15,000 per year. The Neighborhood Enhancement Contribution shall be paid within 120 days of the issuance of all local, state and other permits and other entitlements required by law and necessary for the construction and operation of the Digital Face. It is understood and agreed that both the Permit Amendment Fee and the Neighborhood Enhancement Contribution are being paid and will be used to mitigate any impact to the City and its residents from the rights granted hereunder and actions taken pursuant thereto.

6. **Billboard Owner and Landowner Consent.** The relocation and reconstruction of the Replacement Sign to its new location, shall require the consent of the Billboard Owner and the owner of the real property where it will be located.

7. **Indemnity and Hold Harmless.** This Agreement contemplates the removal of the Existing Sign in exchange for the Billboard Owner’s right to erect, install, operate, and maintain the Replacement Sign in accordance with the terms and conditions set forth in this Agreement. It is recognized that the Billboard Owner may have lease agreements with property owners (the “Property Owners”) relating to same, and that the Billboard Owner is voluntarily obligating itself to remove and relocate under the terms of this Agreement. Consequently, the Billboard Owner agrees to indemnify the City from any lawsuit, and shall defend with counsel designated

by the Billboard Owner and reasonably acceptable to the City, and hold the City harmless against any claim asserted by an affected Property Owner arising from the removal of the Existing Sign, and relocation, reconstruction and erection of the Replacement Sign. In the event of litigation or an administrative proceeding concerning the validity or enforceability of this Relocation and Reconstruction Agreement or the enabling City Ordinance, and the City shall be entitled to bring in the Billboard Owner as a party defendant in such a proceeding to defend or otherwise uphold the terms and conditions of this Relocation and Reconstruction Agreement.

**8. Assignments Binding Nature.** This Agreement will be binding upon and will inure to the benefit of and be enforceable by, the parties and their respective legal representatives, successors, or permitted assigns. The Billboard Owner agrees not to assign, transfer or convey (collectively "assignment") any ownership in the Replacement Sign unless the assignee shall execute an agreement to be bound by the terms and conditions of this Agreement.

**9. Governing Law/Jurisdiction/Venue.** This Agreement shall be construed and controlled by the laws of the State of Florida, and the parties' further consent to jurisdiction, if available, and venue in the federal district courts sitting in Miami-Dade County, Florida. If, and only if, the federal district court lacks jurisdiction, the parties consent to jurisdiction and venue in the state circuit court in Miami-Dade County, Florida. The Billboard Owner waives all defenses of lack of personal jurisdiction and *forum non conveniens*. Process may be served on either party in the manner authorized by applicable law or court rule.

**10. Future Billboard Regulations.** The Billboard Owner agrees to comply with and be bound by all federal, State of Florida, and City sign regulations regarding Billboard Signs; provided that the Replacement Sign shall be permitted to operate in accordance with this Agreement notwithstanding any future changes in such regulations.

**11. Authority; Rights; Severability.** The parties agree and acknowledge:

11.1 This Agreement was negotiated and entered into by the City pursuant to the authority conferred upon it by law including Section 74-150 of the City's Sign Ordinance and Section 70.20, Fla. Stat. (2017), which provides in part that:

“municipalities. . . are specifically empowered to enter into relocation and reconstruction agreements on whatever terms are agreeable to the sign owner and the municipality . . . involved and to provide for relocation and reconstruction of signs by agreement, ordinance, or resolution.”

Fla. Stat. § 70.20(1);

11.2 That, if any provision of this Agreement is held by a court of competent jurisdiction to be illegal, invalid, or unenforceable, then said provision shall be severed, and the remaining provisions shall remain in full force and effect. Notwithstanding any provision declared illegal, invalid, or unenforceable, this Agreement has valid purposes, which include *inter alia* facilitating the net reduction of billboard signs in the City in order to preserve and improve urban aesthetics and traffic safety while also properly balancing private property and commercial speech rights;

11.3 That nothing in this Agreement shall be read to impermissibly interfere with the lawful exercise of the City's police powers to protect the public from serious threats to health or safety; and

11.4 That to the extent any language in this Agreement is deemed inconsistent or contrary to this paragraph, the language contained in this paragraph shall control.

12. **Modification.** This Agreement may only be modified or amended by the express, written consent of the parties to this Agreement, executed with the same formalities that this Agreement was executed. The Agreement shall remain unmodified and in full force and effect, and the parties hereby ratify their respective obligations hereunder.

13. **Entire Agreement.** The Agreement, and all Exhibits attached hereto, shall constitute the entire agreement among the parties with respect to the subject matter hereof and merges all prior and contemporaneous communications.

**14. Representations and Warranties.** The Billboard Owner hereby represents and warrants that it: (a) is a corporation in good standing under the laws of the State of Delaware; (b) is duly authorized to transact businesses in the State of Florida; and (c) has taken all corporate actions necessary to authorize execution and performance of this Agreement. The City hereby represents and warrants that: (a) it is empowered to enter into this Agreement; and (b) this Agreement has been duly authorized by the Council of the City of Hialeah pursuant to the procedural requirements of Florida law.

**15. Agreement Running with the Billboard Owner.** This Agreement shall run with the Billboard Owners and the locations permitted hereunder, and shall be binding upon the parties hereto, their successors and assigns.

**16. Miscellaneous Provisions.**

**16.1 Notices.** All notices or other written communications required, contemplated or permitted under this agreement shall be in writing and shall be hand delivered, telecommunicated or mailed by registered or certified mail, return receipt requested, to the following address:

City of Hialeah:

Debora Storch  
Planning & Zoning Official  
501 Palm Avenue  
Hialeah, FL 33010

With a copy to:

City Attorney's Office  
501 Palm Avenue  
4<sup>th</sup> Floor  
Hialeah, FL 33010

Billboard Owner:

Clear Channel Outdoor, Inc.  
5800 NW 77<sup>th</sup> Court  
Miami, FL 33166  
Attn: General Manager

With a copy to:

Clear Channel Outdoor, Inc.  
2325 E. Camelback Rd., Suite 400  
Phoenix, AZ 85016  
Attn: Operations Counsel

**16.2** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which constitute the same Agreement.

**16.3** The headings contained herein are for the convenience of reference only and shall not limit or otherwise affect in any way the meaning or interpretation of this Agreement.

**16.4** The effective date of this Agreement shall be as of the date it has been executed by both parties hereto.

16.5 The parties acknowledge that each has shared equally in the drafting and preparation of this Agreement and, accordingly, no Court or Administrative Hearing Officer construing this Agreement shall construe it more strictly against one party than the other and every covenant, term and provision of this Agreement shall be construed simply according to its fair meaning.

16.6 This Agreement shall be recorded in the Public Records of Miami-Dade County, Florida.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the effective date shown above.

CITY OF HIALEAH

CLEAR CHANNEL OUTDOOR, INC.

By: \_\_\_\_\_  
Mayor Carlos Hernandez

By: \_\_\_\_\_

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

Dated: \_\_\_\_\_, 2018

Dated: \_\_\_\_\_, 2018

Attest:

Attest:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Corporate Secretary

Dated: \_\_\_\_\_, 2018

Approved as to form and sufficiency:

\_\_\_\_\_  
Lorena E. Bravo, City Attorney