

BILLBOARD AGREEMENT

THIS AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2018, by and between the CITY OF HOLLYWOOD, FLORIDA, a municipal corporation of the State of Florida, (hereinafter "City"), and BLUE ROOSTER MEDIA, LLC, a Florida limited liability corporation (hereinafter "BRM").

WITNESSETH

WHEREAS, BRM is in the outdoor advertising business; and

WHEREAS, the Hollywood Jaycees Foundation, Inc. a Florida non-profit corporation, (hereinafter "Owner") owns a double-face static billboard sign (hereinafter "Existing Billboard") located at 2930 Hollywood Blvd., Hollywood, Florida 33020 (Parcel ID#514217000071), described in "Exhibit I" (hereinafter "Property") within the City, a municipal corporation of the State of Florida; and

WHEREAS, BRM has leased the portion of the Property with the Existing Billboard from the Owner; and

WHEREAS, BRM currently operates the Existing Billboard; and

WHEREAS, the Owner and Nonprofit Organization (defined hereinafter) desire to be one in the same; and

WHEREAS, the Existing Billboard is one of 14 billboard signs authorized by the City's Land Development Code (the "LDC") to be maintained and operated within the City and, therefore, is a lawful conforming sign; and

WHEREAS, in accordance with the lease between the Owner and BRM, BRM has removed the Existing Billboard, or portions thereof, due to hurricane damage; and

WHEREAS, BRM is requesting to replace the Existing Billboard with one new double-face monopole billboard on the Property, utilizing two light-emitting diode (LED) faces (hereinafter "Digital Billboard"), or such other automatic changeable faces as it may elect to utilize from time to time (all such automatic changeable facing, whether now in existence or developed in the future (hereinafter "LED FACES")); and

WHEREAS, on \_\_\_\_\_ 2018, the City Commission adopted Resolution No. R-2018-\_\_\_\_ authorizing the execution of this Agreement; and

WHEREAS, the City desires to ensure that the Digital Billboard continues to be operated in a manner consistent with Florida law and conforming to the LDC, and in a manner satisfactory to the City.

NOW, THEREFORE, in consideration of the mutual promises, covenants and other considerations herein contained, the parties hereto agree as follows:

1. **Recitals as Contractual Terms.** The above recitals are true and correct and incorporated herein by reference as material contractual terms, and not merely recitals.

2. **Digital Billboard.** The City hereby approves this Billboard Agreement and authorizes BRM to construct and operate the Digital Billboard pursuant to the terms and conditions set forth herein, the LDC, and in accordance with State and Federal law. BRM agrees that, absent prior approval from the City Commission, otherwise, it will construct, operate and maintain only one Digital Billboard structure pursuant to the terms and conditions set forth herein. Further, the City hereby approves this Billboard Agreement and authorizes BRM to replace the Existing Billboard and associated components and replace them with a Digital Billboard, subject to compliance with all applicable State and Local Laws, including applicable Building Codes.

3. **Term.** This Agreement shall be satisfied after a term of 40 years, consistent with the Charitable Contribution Agreement, unless earlier terminated.

4. **Conditions.** The Digital Billboard shall be constructed, operated, maintained and replaced in compliance with the following:

a. The Digital Billboard and sign faces shall be constructed/installed by licensed, registered contractors in a manner that meets or exceeds the City's building and electrical requirements, and upon completion of construction, structural certifications by State-Licensed Engineers will be provided to the City by BRM. The Digital Billboard shall constructed/reconstructed in substantially the location approved by the FDOT and City for the Existing Billboard. For the purposes of this Agreement, provided the Digital Billboard is constructed on the Property, it will be deemed to be in "substantially the location" approved by the City.

b. Prior to any necessary tree removal, BRM must obtain prior approval of the Department of Development Services. Any and all tree removal shall comply with the City's Code of Ordinances and the LDC.

c. Advertising shall not include any tobacco product, adult retail, performance, entertainment establishment or service, or any advertising messages that may be reasonably construed as "hate speech" against any person or organization or obscene or offensive materials as determined by the City. If the City reasonably objects to any advertisement, such advertisement shall be removed within 24 hours of written notice by the City.

d. BRM agrees that the Digital Billboard will not be in a location having a residential zoning designation in accordance with State law.

e. BRM shall submit to the City signed and sealed site plan(s) and survey(s) for any proposed construction to the Digital Billboard, evidencing compliance with applicable conditions of this Agreement prior to issuance of any Building Permits by the City.

f. The height of the Digital Billboard shall conform to the requirements of Chapter 479, *Florida Statutes*, and Chapter 14-10, *Florida Administrative Code*, and shall be permitted to a limited access arterial roadway.

g. There shall be no side-by-side or stacked billboards, and the Digital Billboard shall not emit noise or utilize/employ flashing lights. The Digital Billboard shall not include embellishments or extensions exceeding five feet above the sign face(s),

two feet on either side of the sign face(s), or that result in total sign area in excess of 750 square feet.

h. Pursuant to the State of Florida, Department of Transportation (FDOT), requirements, the Digital Billboard may not be located within 1,500 linear feet of another billboard located on the same side of I-95. BRM shall submit a copy of the FDOT permit(s) and any other documentation verifying that this requirement is met.

i. The placement of the Digital Billboard must conform with Chapter 479, Florida Statutes, and all other applicable federal, state, county and municipal regulations.

j. BRM shall maintain adequate records to substantiate that all required Annual Contributions (hereinafter defined) have been made to both the City and the designated Non-Profit Organization ("NPO") in accordance with the terms and conditions set forth herein. The City shall have access to such books, records, financial documents and any other document, solely related to the operation of this Digital Billboard, as required in this section for the purpose of audit during normal business hours, at a designated location mutually agreed upon by the parties and upon reasonable notification of the City's intention. Notwithstanding the foregoing, BRM shall have no obligation to preserve such records for more than five years following the end of the calendar year to which such records relate.

k. BRM shall submit to the City by January 31<sup>st</sup> of each year a sworn statement executed by a Certified Public Accountant, certifying that the appropriate Annual Contributions have been made to the NPO and/or the City for revenues collected during the preceding calendar year. In the event that the City decides to audit the Annual Contribution of BRM, BRM shall bear the expense of such audit.

l. BRM shall preserve and make available all financial records and supporting documents evidencing revenue received from operation of the Digital Billboard for a period of three years after termination of this Agreement, or if an audit has been initiated before expiration of such three year period and auditing findings have not been resolved at the end of these three years, the records shall be retained until resolution of the audit.

5. **Contributions.** In accordance with the City's LDC, BRM shall enter into a Charitable Contribution Agreement with a Non-Profit Organization (NPO), as that term is defined in that agreement. BRM's NPO selected is the Hollywood Jaycees Foundation, Inc., a Florida non-profit corporation (hereinafter "Jaycees"), which is also the current owner of the Property.

For purposes of this Agreement, Annual Contribution shall mean 5% of BRM's gross revenue per calendar year, solely related to the Digital Billboard subject to this Agreement, for the term of this Agreement or \$25,000.00 per year, whichever is greater. The Annual Contribution shall be made as follows: (a) should the Annual Contribution be made at the \$25,000.00 cap then 100% of the Annual Contribution will be paid by BRM to Jaycees; or (b) should the Annual Contribution exceed the \$25,000.00 minimum, the excess revenue shall be made paid by BRM to Hollywood to be distributed to another NPO designated by the City Commission. The Annual Contribution shall be made on a quarterly basis on the last day of each third month commencing on the first payment date after the date that the LED sign faces are erected and in use pursuant to the permits ("Start Date").

The foregoing notwithstanding, the Start date shall be no later than 24 months following the date of execution of this Agreement by all parties. To the extent that the permits do not entitle BRM to conduct its Billboard advertising for a complete quarter following the Start Date or any anniversary thereof, the quarterly contributions of any such partial quarter shall be prorated and reduced accordingly. In the event that BRM terminates the Charitable Contribution Agreement entered into with Jaycees, BRM shall within 30 days enter into another Charitable Contribution Agreement with a different NPO. BRM shall notify the City of its decision to terminate the Charitable Contribution Agreement simultaneously with the notice to the Jaycees. BRM shall continue to pay the required charitable contribution set forth herein to the City until such time as BRM has executed the new Charitable Contribution Agreement.

6. **Indemnity of City.** In consideration of the City's permitting placement of the LED Billboard within the City, BRM hereby agrees to defend, indemnify and hold harmless the City, its officers, agents and employees, from and against any and all claims, suits, actions, damages and causes of action whatever, arising during the term of this Agreement and resulting in personal injury, loss of life or damage to property sustained by any person or entity, or as a result of the doing of any work herein authorized or the failure to do any work herein required, or as a result of this Agreement or through the Billboard contemplated thereby, the construction, maintenance, advertising and use of the Billboard and the site upon which the Billboard is located. Such obligation to indemnify and hold harmless shall continue notwithstanding any negligence or comparative negligence on the part of the City relating to such loss or damage and shall include all costs, expenses and liabilities incurred by the City in connection with any such claim, suit, action or cause of action, including the investigation thereof and the defense of any action or proceeding brought thereon and any order, judgment or decree which may be entered in any such action or proceeding or as a result thereof. These provisions shall survive the expiration or earlier termination of the Agreement. Nothing in this Agreement shall be construed to affect in any way Hollywood's rights, privileges, and immunities under the doctrine of "sovereign immunity" and as set forth in Section 768.28, Florida Statutes.

7. **Insurance.** BRM shall not commence construction, installation or any other work relating to the Digital Billboard and the site until it has obtained all insurance required under this provision and such insurance has been approved by the Risk Manager of the City, nor shall BRM allow any contractor or subcontractor to commence work on its contract or subcontract until all similar such insurance required of the contractor or subcontractor has been obtained.

BRM shall, at their sole expense, provide the City with evidence of liability insurance for bodily injury and property damage to protect against damage, costs and attorneys' fees arising out of accidents or occurrences of any kind on or about the Digital Billboard and the Property.

The insurance shall have liability limits of not less than \$1,000,000.00 for Each Occurrence, \$1,000,000.00 for Personal and Adv. Injury and \$100,000.00 for property damage. The above coverages shall be maintained and remain in force at all times during the term of this Agreement. The City shall be named as an additional insured on all such policies.

BRM shall provide Certificates of Insurance reflecting evidence of the required insurance to the City's Risk Manager prior to commencement of construction. These certificates shall contain a provision that coverage afforded under these policies will not

be canceled until at least 30 days prior written notice has been given to the City. Policies shall be issued by companies authorized to do business under the laws of the State of Florida and must maintain a minimum rating of A-, V11 as authorized in the latest ratings of A.M. Best and be part of the Florida Insurance Guarantee Association Act.

In the event that the Certificates of Insurance provided indicate that the insurance shall terminate and lapse during the period of this Agreement, BRM shall furnish, at least 30 days prior to the expiration of the date of insurance, a renewed Certificates of Insurance as proof that equal and like insurance coverage for the balance of the period of the Agreement and extension thereunder is in effect. BRM shall not commence any construction, installation or any other work at the sites unless all required insurance remains in full force and effect.

8. **Default and Termination.** In the event that BRM shall fail to perform any of its obligations under this Agreement (other than payment), the City shall give written notice thereof to BRM, which notice shall state the nature of the failure. BRM shall have 90 days from the receipt of the City's notice to cure such default, or if the default is not reasonably capable of being cured within 90 days, to commence to cure the default. In the event that BRM fails to cure any such violation of this Agreement within the 90 day period, or to commence a cure as the case may be, this Agreement shall automatically terminate, and any permits issued for the Digital Billboard shall be revoked. Notwithstanding anything herein to the contrary, this Agreement shall not serve as a limitation on any other rights which the City may have with respect to the enforcement of the permits issued by the City.

The parties agree that if BRM fails to pay its Annual Contributions to the City and/or the Jaycees if the original charitable contribution agreement is terminated by BRM, and does not cure such failure within 90 days after receiving written notice of such non-payment, then this Agreement shall automatically terminate. All required Annual Contribution payments shall be made through the date of termination. Upon termination of this Agreement, BRM will have 90 days to remove the Digital Billboard structure from the site, and if it fails to do so the City has the right to remove the Digital Billboard structure at the sole expense of BRM.

In addition, BRM may terminate this Agreement upon removal of the Digital Billboard from the Property after providing 30 days prior written notice, to the City and Jaycees that BRM no longer intends to maintain or use the Digital Billboard at the Property. Prior to this Agreement terminating, BRM shall deliver to both the City and the Jaycees any Annual Contributions then due and owing, together with a final accounting substantiating that all Annual Contributions through the date of termination have been paid in full.

9. **Compliance with Laws.** BRM hereby agrees that it shall operate the Digital Billboard in accordance with all laws, rules, ordinances and regulations (i) pursuant to which the permits are issued; and (ii) promulgated by the Florida Department of Transportation.

10. **Advertising and Notifications by the City.** Unless specifically stated otherwise in subsections 10.A, B or C of this paragraph the following applies: All of the City's announcements and advertising slots provided by BRM to the CITY shall be at no cost. The artwork/design/graphics relating to the City's chosen advertisements, shall be provided by the City to BRM at least 10 days prior to the scheduled advertising run date. In the event that the City desires to utilize BRM advertising artwork/design/graphics, BRM shall provide the artwork/design/graphics to the City at least 10 days prior to the scheduled advertising run date for the CITY's approval.

For purposes of Paragraph 10 above, contract person(s) shall be:

CITY: Director of Communications, Marketing and Economic Development (or equivalent) at (954) 921-3620; and

BRM's: Yves Barroukh at (786) 480-1818.

A. Public Service Advertising. Upon a space available basis, BRM will allow CITY approved public service announcements ("City Announcements") to be advertised on the Digital Billboard. Any such public service announcements may be removed by BRM in the event that space so occupied by City Announcements is leased or rented to third parties by BRM. BRM hereby agrees to give the City reasonable notice of anticipated space availability on the Digital Billboard for City Announcements; provided, however, that BRM shall have no obligation to notify the City if such space availability is limited to time periods of less than 30 days.

In addition, to the space availability opportunity for City Announcements set forth above BRM shall:

- i. Provide the City with four 10 day twenty-four slots each calendar year. The City shall provide its requested times to BRM at least 30 days in advance;
- ii. Provide the City with one slot for the advertisement of City-sponsored civic events or programs any time if there is an unsold "slot" available at no cost to the City.

B. Advertising by the City. Separate and independent from subsection 10.A above, BRM shall provide the City with six additional seven day twenty-four slots once a quarter. The City may utilize these slots to post advertisements of its choosing other than the slots identified in subsection 10.A alone, such as advertisements for local businesses or other organizations of the City's choosing. The City shall provide its requested times to BRM at least 30 days in advance.

C. Notifications. The City will have immediate access to use of the LED faces upon official activation and/or declaration of emergency by the state, county or City as well as for Police and/or Fire emergency situations.

12. Emergency Notifications. During times of declared weather emergencies affecting the City, as defined from time to time pursuant to the terms of the Emergency Notification Program defined herein below, BRM will add one Slot on each face of the Digital Billboard and make that Slot available for the sole and limited purpose of communicating emergency information to the City's citizens and the travelling public, in accordance with the terms and conditions of the emergency alert notification program adopted by the Florida Outdoor Advertising Association (the "FOAA") and the applicable governmental agency/agencies (the "Emergency Notification Program").

BRM will also add one Slot on each face of the Digital Billboard and make that Slot available for the display of "amber alerts" issued by the Florida Department of Law Enforcement ("FDLE"), or such other law enforcement agency that may from time to time be responsible for issuance of same, when it is determined, pursuant to guidelines and procedures already in place between the FDLE (or such other agency/agencies) and the outdoor advertising industry, to identify appropriate situations, duration and sign locations that display of the "amber alert" on the Digital Billboard will provide information to the

travelling public that could be instrumental in assisting authorities in resolving an abduction.

13. **Notices.** All notices, demands, requests for approvals or other communications required or authorized to be given by either party to another shall be in writing and shall be hand-delivered or sent by registered or certified mail, postage prepaid, return receipt requested, or by a recognized overnight courier service to each party indicated below, addressed as follows:

If to Blue Rooster Marketing, LLC:

Blue Rooster Media, LLC  
Attn: Yves Barroukh-CEO

and

Harvey Rogers, Esq.  
Attn: General Counsel  
44 W. Flagler St., Ste.1100  
Miami, FL 33130

If to City:

City Manager  
2600 Hollywood Boulevard, Room 419  
Hollywood, Florida 33020

With copies to:

City Attorney, City of Hollywood  
2600 Hollywood Boulevard, Room 407  
Hollywood, Florida 33020

Notices given by courier service or by hand delivery shall be effective upon delivery and notices given by mail shall be effective on the fifth (5) business day after mailing. Refusal by any person to accept delivery of any notice delivered at the address indicated above (or as it may be changed) shall be deemed to have been an effective delivery as provided in this Section as of the date/time of such refusal. The addresses to which notices are to be sent may be changed from time to time by written notice delivered to the other parties in accordance herewith, and such notices shall be effective upon receipt. Until notice of change of address is received as to any particular party hereto, all other parties may rely upon the last address given.

13. **Invalid Provisions.** The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of the remaining provisions; provided the invalid provisions do not materially affect the rights or benefits contracted for by the parties herein.

14. **Assignment.** This Agreement is freely assignable and its obligations, benefits, rights, title, and interests shall be binding upon and enforceable against any

and/or all assignees of BRM during the entire term of the Digital Billboard's existence on the Property. BRM shall provide City with thirty (30) days prior written notice of any assignment, which assignment shall expressly bind the assignees to the terms of this Agreement. BRM shall provide the City with documentation evidencing the acceptance by the assignee of this Agreement and its agreement to comply with the terms hereof.

15. **Choice of Laws.** This Agreement shall be construed and enforced under the laws of the State of Florida. Any proceeding relating to or arising out of this Agreement shall be brought solely in State Courts of the Seventeenth Judicial Circuit in and for Broward County, Florida, to the exclusion of any other court or venue.

16. **Entire Agreement.** This Agreement, and all the terms and provisions contained herein, constitute the full and complete agreement between the parties hereto with respect to the matters covered herein to the date hereof, and supersedes and controls over any and all prior agreements, understanding, representations, correspondence and statements whether written, oral or implied, which are deemed to be merged into this Agreement.

17. **Amendment.** The parties may amend this Agreement only by a written instrument signed by each of the parties. There cannot be any waiver, variation, modification, amendment or change to the terms of this Agreement except as may be made in writing and executed by each party hereto. If any party fails to enforce its respective rights under this Agreement, or fails to insist upon the performance of another party's obligations hereunder, such failure shall not be construed as a permanent waiver of any rights or obligations in this Agreement. Similarly, should the City amend its LDC and/or Code of Ordinances to permit the erection and/or maintenance of billboards, including but not limited to LED (or other similar digital display technology) billboard(s), on terms other than those set forth in the LDC as it exists on the date of this Agreement, BRM shall have the right to terminate this Agreement and elect to be governed by the terms of the amended Code provision(s). If BRM elects to be so governed, it shall give written notification of its election to the City, in accordance with the notice provisions of this Agreement. The election shall be effective as of the date of the election and shall not be retroactive.

18. **Miscellaneous.**

a. This Agreement may be terminated without notice in the event of threat to public health or the public safety as may be determined in the reasonable discretion of federal, state or local officials charged with making such determinations. Hollywood shall not be liable to BRM for any losses incurred by reason of such termination.

b. In the event that BRM terminates this Agreement BRM shall be responsible for all required contributions through the date of termination.

c. The provisions of this Agreement shall not be construed in favor of or against any particular party as each party has reviewed the terms and conditions hereof and, by execution of this Agreement, acknowledges that said party has carefully considered the legal ramifications of this instrument, has consulted with legal counsel or has knowingly and willingly chosen not to do so. This Agreement has been negotiated by the City and BRM, and this Agreement shall not be deemed to have been prepared by any one party but, rather, by all equally.



IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement on the day and year first above written.

**CITY OF HOLLYWOOD, FLORIDA, a  
municipal corporation of the State of  
Florida**

ATTEST: \_\_\_\_\_

By: \_\_\_\_\_  
JOSH LEVY, MAYOR

APPROVED AS TO FORM & LEGAL  
SUFFICIENCY for the use and reliance  
Of the City of Hollywood, Florida, only.

\_\_\_\_\_  
Douglas R. Gonzales, CITY ATTORNEY

**BLUE ROOSTER MEDIA, LLC**

By: \_\_\_\_\_  
Yves Barroukh  
Title: CEO

EXHIBIT I

<b>Site Address</b>	<b>2930 HOLLYWOOD BOULEVARD, HOLLYWOOD FL 33020</b>	<b>ID #</b>	5142 17 00 0071
<b>Property Owner</b>	GREATER HOLLYWOOD JAYCEES INC	<b>Millage</b>	0513
<b>Mailing Address</b>	2930 HOLLYWOOD BLVD HOLLYWOOD FL 33020	<b>Use</b>	77
<b>Abbreviated Legal Description</b>	17-51-42 SE1/4 DESC AS IN OR 3138/577		

