

RESOLUTION NO. R-2020-36

**A RESOLUTION APPROVING AN APPLICATION FOR
AN ELECTRONIC BILLBOARD AT 1600 SOUTH 10TH AVENUE (NORTH SIDE OF HARRISON STREET
AT APPROXIMATELY 12TH AVENUE) AND APPROVAL AND EXECUTION OF AN ELECTRONIC
BILLBOARD SIGN AGREEMENT BY AND BETWEEN THE VILLAGE OF MAYWOOD AND FHE, LLC**

WHEREAS, FHE, LLC (“FHE”) has submitted a request to the Village of Maywood (“Village”) pursuant to Section 153.04 (Regulations Applicable To Electronic Billboards) of the Maywood Village Code, to erect an electronic billboard on property commonly known as 1600 South 10th Avenue, at a location more specifically described as the north side of Harrison Street at approximately 12th Avenue) (the “Subject Property”). The Subject Property is owned by School District Number 89 (“SD 89”) and FHE has entered into a lease with SD 89 for the erection and operation of the Electronic Billboard on the Subject Property (the “Lease”); and

WHEREAS, FHE has also proposed that it and the Village enter into an “Electronic Billboard Sign Agreement by and between the Village of Maywood and FHE, LLC” (the “Sign Agreement”), a copy of which is attached hereto as **Exhibit “A”** and made a part hereof.

WHEREAS, on September 15, 2020, the Village President and Board of Trustees, pursuant to Section 153.04 (Regulations Applicable To Electronic Billboards) of the Maywood Village Code, held a public hearing on the request of FHE for the erection of an electronic billboard on the Subject Property; and

WHEREAS, having considered the application and the evidence presented at the public hearing, the Village President and Board of Trustees find and determine that approval of the request to erect an electronic billboard on the Subject Property as presented, subject to certain conditions as set forth below, and approval and execution of the Sign Agreement, with certain changes as directed by the Village Board, are in the best interests of the Village and in furtherance of the general public health, safety and welfare.

NOW, THEREFORE, BE IT RESOLVED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF MAYWOOD, ILLINOIS, AS FOLLOWS:

SECTION 1: The Village President and Board of Trustees of the Village approve the request of FHE, LLC for erection of an electronic billboard on the Subject Property commonly known as 1600 South 10th Avenue, Maywood, Illinois, and at a location more specifically described as the north side of Harrison Street at approximately 12th Avenue, subject to the following conditions:

1. The Electronic Billboard that will be erected and maintained on the Subject Property by FHE shall contain light shielding baffles or similar design technology to aid in preventing light from impacting nearby residents; and
2. FHE shall ensure that the Electronic Billboard is equipped with an automated timer or controller that allows the brightness of the Electronic Billboard to be decreased during nighttime hours and FHE shall ensure that the brightness of the Electronic Billboard is significantly decreased during nighttime hours; and
3. Prior to the issuance of a Village building permit, FHE shall reconcile discrepancies between its lease with SD 89, which indicates FHE is an Illinois corporation, and the Sign

Agreement and documents provided to the Village by FHE, which indicates it is a Michigan-based limited liability company.

SECTION 2: The Village President and Board of Trustees further approve the Sign Agreement attached hereto as **Exhibit "A"**, incorporating certain conditions and changes as directed by the Village Board, and authorize and direct the Village President, or her designee, to execute the Sign Agreement as revised and all other instruments and documents necessary to fulfill the Village's obligations under the Agreement. The Village's Community Development Department may issue a building permit upon confirmation that all pre-conditions to such issuance set forth in this Resolution and the Sign Agreement have been met.

SECTION 3: The Village authorization and approvals to operate the Electronic Billboard shall only be in effect and exist for as long as the term of FHE's Lease with SD 89 remains in effect, or cessation of the operation of the Electronic Billboard for a period of sixty (60) consecutive calendar days following commencement of its operation for a period of thirty (30) consecutive calendar days, excluding any time period that the Electronic Billboard is not operating due to replacement, repair and maintenance work, whichever is earlier. All Village approvals and authorization to operate the Electronic Billboard shall expire on the same date and time that the Lease terminates or upon cessation of the operation of the Electronic Billboard for a period of thirty (30) consecutive calendar days, excluding any time period that the Electronic Billboard is not operating due to replacement, repair and maintenance work.

ADOPTED this 6th day of October, 2020, pursuant to a roll call vote as follows:

AYES: Mayor Perkins, Trustee(s) I. Brandon, M. Jones, A. Sanchez, K. Wellington, M. Lightford and N. Booker

NAYS: None

ABSENT: None

APPROVED this 6th day of October, 2020, by the Village President of the Village of Maywood, and attested by the Village Clerk, on the same day.

Edwenna Perkins, Village President

ATTEST:

Viola Mims, Village Clerk

Date: _____

EXHIBIT "A"

**ELECTRONIC BILLBOARD SIGN AGREEMENT
BY AND BETWEEN
THE VILLAGE OF MAYWOOD AND FHE, LLC**

**Electronic Billboard Sign Agreement
By and Between
the Village of Maywood and FHE, LLC**

This Electronic Billboard Sign Agreement ("Sign Agreement") is dated _____, 2020 and entered into between Village of Maywood, an Illinois municipal corporation (Village) and FHE, LLC, (FHE) a Michigan limited liability company, for purposes of regulating the impacts related to, access to, installation, replacement, maintenance and operation of an electronic billboard (the "Billboard") on a portion of the real estate commonly known as north-side of Harrison Street between 10th and 13th Avenues in the Village of Maywood, County of Cook, Illinois (the "Subject Property") at the location designated in the attached Location Map, which is marked as Exhibit "A" and made a part hereof ("Billboard Location").

School District 89 is the fee simple owner of the Billboard Location. FHE has entered into a lease agreement with School District 89 for the installation, maintenance and operation of the Billboard at the Billboard Location. FHE desires to enter into this Sign Agreement with the Village for purposes of installing, maintaining, operating, improving, supplementing, posting, painting, illuminating, repairing, repositioning and/or removing outdoor advertising signs and related equipment, including without limitation, fixture connections, electrical supply and connections, panels, signs, copy and any equipment and accessories as may be installed on, placed on or affixed to the Billboard or the Subject Property (collectively the "Structures").

1. This Sign Agreement includes all necessary rights of ingress and egress to access the Structures, to the extent such ingress and egress is controlled by the Village.
2. Prior to the issuance of a Village building permit(s) for installation of the Billboard, including any of the Structures, from the Village's Building Department, FHE shall deposit an amount equal to Twenty Five Thousand and No/100 Dollars (\$25,000.00) as a one-time "Installment/Impact Fee" into a non-interest bearing escrow account with Village attorneys Klein, Thorpe and Jenkins, Ltd. ("Escrowee"). Upon completion of the installation of the Billboard and its related Structures in accordance with all applicable Village codes, ordinances and regulations, as determined and confirmed in writing by the Village's Code Enforcement Department with the issuance of certificate of compliance, the Escrowee shall release to the Village the full amount of the escrowed Installment/Impact Fee funds. In the event either the Village President and Board of Trustees, School District 89, or the Illinois Department of Transportation does not approve the Billboard, or if no building permit is issued by the Village within six (6) months of the deposit of the Installment/Impact Fee funds with the Escrowee, or for any other reason prior to issuance of a final certificate of compliance by the Village, the FHE may submit a written notification to the Escrowee and the Village Manager stating that it is terminating its efforts to install the Billboard and/or that it withdraws its application for the Billboard, and may request release of the escrowed Installment/Impact Fee funds back to it. Upon receipt of such written notice, the Escrowee shall promptly return the escrowed Installment/Impact Fee funds to FHE, and all rights of FHE to erect the proposed Billboard at the Billboard Location shall terminate.

The Installment/Impact Fee shall be used by Village to reimburse certain Village residents for actual light shielding / mitigating improvements to a bedroom(s) or a living room or

dining room made and paid for by the Village residents within or adjacent to the light radius shown on the WatchFire Light Report provided by FHE in support of its request where the bedroom(s) or living room or dining room faces the Billboard. Specific homes identified as eligible BASED on a Light Study performed by Watchfire and provided by FHE as part of its application materials include:

- 15 homes on 10th Avenue immediately north of Harrison Street (north of I-290);
- 15 homes on 13th Avenue immediately north of Harrison Street (north of I-290);
- 5 homes on 10th Avenue immediately south of Bataan Drive (south of I-290);
- 5 homes on 11th Avenue immediately south of Bataan Drive (south of I-290);
- 5 homes on 12th Avenue immediately south of Bataan Drive (south of I-290);
- 5 homes on 13th Avenue immediately south of Bataan Drive (south of I-290); and

The reimbursement is only for proof of actual purchase and installation of: (1) window tinting or (2) window blinds or (3) light-blocking curtains within bedrooms or living rooms or dining rooms for any residence within or adjacent to the light radius impacted by the Billboard light. The maximum amount of reimbursement per eligible residence under this subsection is \$500.00. Residents shall have a one (1) year period from the commencement of the operation of the Billboard to request the reimbursement. The reimbursement request shall be made in writing, directed to the Village Manager and shall include copies of invoice(s) and proof of payment and proof of installation of the window tinting or window blinds or light-blocking curtains. After the one (1) year period, the balance of the Village Installment/Impact Fees shall be used by the Village for any other lawful municipal purposes. **FHE shall provide the Village Manager with written notice of the date and time that the Billboard commences operation.**

3. Issuance of a building permit for the Billboard pursuant to this Sign Agreement and direction from and approval by the Village President and Board of Trustees is authorized only upon confirmation by the Village that the Billboard will comply with all Village Codes and regulations, and of ongoing compliance by FHE with all terms and conditions set forth herein.
4. Prior to commencement of operation of the Billboard, FHE will install and maintain, in good condition and free from litter and other debris, an aesthetically pleasing circular brick paver planter or other landscaping approved by the Village Manager surrounding the Billboard's column pipe at its base. Landscape installation and annual maintenance of such landscaping is an on-going obligation of FHE. Any failure to perform annual landscape maintenance or to correct landscaping maintenance deficiencies following notice from the Village shall be deemed a default under the terms of this Sign Agreement.
5. FHE shall be responsible for and shall maintain the Billboard and its related Structures, including advertising copy, in a safe, clean and orderly condition. FHE shall not allow any graffiti to remain on the Billboard or related Structures. Any failure to correct maintenance deficiencies shall be deemed a default under the terms of this Sign Agreement.
6. Except as otherwise provided in the lease between the FHE and School District 89, FHE shall pay all real property taxes, all insurance premiums, electric, utility and other bills or liens incurred as a result of FHE's use of the Billboard Location during the term of this Sign

Agreement. FHE shall also pay School District 89, both before and after erection of the Billboard, all funds it owes the School District pursuant to their separate lease.

7. FHE shall obtain the approval of the Illinois Department of Transportation for the Billboard, keep in good standing with School District 89 and the terms of its lease with School District 89 for the Billboard Location, and shall comply with all laws, regulations and ordinances applicable to installing, maintaining, operating, improving, supplementing, posting, painting, illuminating, repairing, repositioning and/or removing outdoor advertising signs and related equipment, including without limitation, fixture connections, electrical supply and connections, panels, signs, copy and any equipment and accessories pertaining to the Billboard or its related Structures, the Subject Property and FHE's use of the Subject Property.
8. No distilled spirit advertisements, gentlemen's clubs or morally objectionable advertising copy or picture(s) shall be displayed on the Billboard. FHE agrees to comply with any notice from the Village that objects to prohibited content posted on the Billboard or any morally objectionable advertising copy or picture(s) and shall immediately cease displaying such copy or picture(s) on the Billboard.
9. FHE shall periodically and upon request, at no cost to the Village, provide community event and public service announcement advertising for the Village of Maywood on the Billboard and post amber alerts on the Billboard.
10. As directed by the Village Board of Trustees as conditions of approval of the Billboard at the September 15, 2020 public hearing, FHE shall:
 - A. Erect and maintain the Billboard on the Subject Property that contains light shielding baffles or other similar design technology to the Billboard, at FHE's sole cost and expense, to aid in preventing light from impacting nearby residents; and
 - B. Ensure that the Billboard is equipped with an automated timer or controller that allows the brightness of the Electronic Billboard to be decreased during nighttime hours and FHE shall ensure that the brightness of the Billboard is significantly decreased during nighttime hours; and
 - C. Prior to the issuance of a Village building permit, reconcile discrepancies between its lease with SD 89, which indicates FHE is an Illinois corporation, and this Sign Agreement and documents provided to the Village by FHE, which indicates it is a Michigan-based limited liability company.
11. FHE shall defend, indemnify and hold harmless the Village and its officers, current/past/future appointed and elected officials, President and Board of Trustees, employees, volunteers, attorneys, engineers and agents (the "Village Affiliates") from and against any and all causes of action, lawsuits, liabilities, obligations, claims, damages, penalties, attorney's fees, litigation costs and expenses of any kind brought by or awarded to any person, including but not limited to nuisance, personal injuries, illness, death or copyright, trademark, service mark or other intellectual property rights, arising from or related to the installation, maintenance and operation of the Billboard and its related Structures, the condition of the Subject Property or the acts or omissions of FHE and its employees, contractors, advertising partners, agents or licensees.

12. This Sign Agreement is binding upon the heirs, assigns and successors of both Village and FHE. In the event of any change of ownership of the Subject Property or of the Billboard, FHE agrees to notify the Village promptly of such change.
13. Any notice to any party under this Sign Agreement shall be in writing by overnight delivery service, or by certified mail, directed to the address specified immediately below the signature lines of this Agreement, and shall be effective, if by overnight delivery service, on the date after placed with the overnight delivery service, or if by certified mail, two days after mailing. Notice to the Escrowee shall be directed to Klein, Thorpe and Jenkins, Ltd., Attn: Michael Jurusik, 20 North Wacker Drive, Suite 1660, Chicago, Illinois 60606.
14. If lawsuit is brought by any party to this Sign Agreement because the other party breached this Sign Agreement, the prevailing party shall be entitled to reimbursement for reasonable attorneys' fees and all related costs and expenses.
15. Neither Village nor FHE shall be bound by any terms, conditions or oral representations that are not set forth in this Sign Agreement or a Resolution of the Village President and Board of Trustees of the Village approving the Billboard. This Sign Agreement and approving Resolution represent the entire agreement of Village and FHE with respect to the Billboard and related Structures and their installation and operation at the Billboard Location.
16. The term of this Sign Agreement and authorization for erection of the Billboard by the Village Board runs concurrently with the term of the lease between FHE and SD 89, and this Agreement and Village approvals for the Billboard shall only exist for as long as the term of FHE's lease with SD 89, or cessation of operation of the Billboard for a period of sixty (60) consecutive calendar days following commencement of the operation for a period of thirty (30) consecutive calendar days, excluding any time period that the Billboard is not operating due to replacement, repair and maintenance work, whichever is earlier. If the lease terminates or expires, this Sign Agreement and Village authorizations shall terminate and expire and any re-issuance of the Permit will require compliance with state law and Village code provisions regulating billboards, including another public hearing, another impact fee and another Electronic Billboard Sign Agreement. Upon termination, or cessation of operation of the Billboard, as provided for above, FHE, at its sole cost and expense, shall remove the Billboard and related Structures from the Billboard Location within thirty (30) calendar days. Upon termination, the defense, indemnification and hold harmless obligations of Section 10 above shall remain in effect for two (2) calendar years after the date of lease termination or removal of the Billboard.
17. During the term of this Agreement, FHE agrees to maintain the below insurance coverages and shall have the Village and the Village Affiliates expressly named as additional insureds on its insurance policies, in its endorsements and on its certificates covering its defense, indemnification and hold harmless obligations set forth in Section 10 above. FHE shall provide the following types of insurance, written on the comprehensive form and as an "occurrence" policy, in not less than the following amounts:
 - a. Comprehensive General Liability – \$1,000,000 per occurrence and \$2,000,000 in the aggregate

- b. Umbrella Coverage – \$3,000,000
- c. Property Damage – \$500,000 per occurrence
- d. Workers’ Compensation – Statutory
- e. Surety Bond for removal of Billboard - \$200,000

FHE shall furnish certificates of insurance, with premiums paid in full, prior to the effective date of this Sign Agreement, copies of which are incorporated herein and attached hereto as **Exhibit “B”** and made a part hereof. FHE’s policy or policies of insurance shall specifically recognize and cover FHE’s indemnification obligations under this Agreement, and shall contain cross-liability endorsements. FHE’s insurance coverages shall be primary to the Village’s own insurance coverages, and any provision of any contract of insurance or other risk protection benefit or self-insurance policy purchased or in effect or enacted by the Village and any other insurance or benefit of the Village shall be in excess of FHE’s insurance coverages. All certificate(s) of insurance shall contain the following endorsement: “Should any of the above-described policies be canceled before the expiration date thereof, the issuing company shall serve thirty (30) calendar days prior written notice to the Village.” In the event of the cancellation of any insurance policy required herein, or upon FHE’s failure to procure said insurance, the Village shall have the right to immediately terminate this Sign Agreement.

- 18. The Parties agree that for purposes of any lawsuit(s) between them concerning the subject matter of this Sign Agreement, and all questions of construction, interpretation, enforcement hereof, that all such controversies shall be governed by the statutory and common law of the State of Illinois; venue shall be in the Circuit Court of Cook County, Illinois and the Parties consent to the jurisdiction of said Court for any such proceedings or action.
- 19. Wherever possible each provision of this Sign Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Sign Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Sign Agreement.
- 20. Compliance With Laws. The Parties to this Agreement shall comply with all applicable federal, State and local laws, rules and regulations in carrying out the terms and conditions of this Sign Agreement, including the following:
 - a. Certification. FHE and its owners, members, officers, employees and agents certify that they are not barred from entering into this Sign Agreement as a result of a violation of either 720 ILCS 5/33E-3 or 5/33E-4 (bid rigging or bid rotating) or 5/33E-6 (interference with contract submission and award by public official) or as a result of a violation of 820 ILCS 130/1 *et seq.* (the Illinois Prevailing Wage Act) or as a result of: (1) a delinquency in the payment of any tax administered by the Illinois Department of Revenue or any fee required by any unit of local government or the State, unless the party is contesting, in accordance with the procedures established by the appropriate revenue act, its liability for the tax or the amount of the tax or the fee, as set forth in Section 11-42.1-1 *et seq.* of the Illinois Municipal Code, 65 ILCS 5/11-42.1-1 *et seq.* FHE and its officers, corporate authorities, employees and agents further certify by signing this Sign Agreement that FHE and its owners, members, officers, employees and agents have not been convicted of, or are not barred for attempting to, rig bids, price-fixing or attempting to fix prices as

defined in the Sherman Anti-Trust Act and Clayton Act. 15 U.S.C. § 1 *et seq.*; and has not been convicted of or barred for bribery or attempting to bribe an officer or employee of a unit of state or local government or school district in the State of Illinois in that officer's or employee's official capacity. Nor has FHE or its owners, members, officers, employees and agents made admission of guilt of such conduct which is a matter of record, nor has any such person been so convicted nor made such an admission.

- b. Non-Discrimination. FHE and its owners, members, officers, employees and agents agree not to commit unlawful discrimination and agree to comply with all applicable provisions of the Illinois Human Rights Act, Title VII of the Civil Rights Act of 1964, as amended, the Americans with Disabilities Act, the Age Discrimination in Employment Act, Section 504 of the Federal Rehabilitation Act, and all applicable rules and regulations. FHE maintains a written Sexual Harassment Policy in compliance with Section 2-105 of the Illinois Human Rights Act (775 ILCS 5/2-105(A)(4)). FHE certifies that it is an "Equal Opportunity Employer" as defined by federal and State laws and regulations, and agrees to comply with the Illinois Department of Human Rights ("IDHR") Equal Opportunity Employment clause as required by the IDHR's Regulations (44 Ill. Adm. Code, Part 750, Appendix A). As required by Illinois law and IDHR Regulation, the Equal Opportunity Employment clause is incorporated by reference in its entirety as though fully set forth herein. FHE certifies that it agrees to comply with Prohibition of Segregated Facilities clause, which is incorporated by reference in its entirety as though fully set forth herein. See, Illinois Human Rights Act (775 ILCS 5/2-105). See also, Illinois Department of Human Rights Rules and Regulations, Title 44, Part 750. Administrative Code, Title 44: Government Contracts, Procurement and Property Management, Subtitle B: Supplemental Procurement Rules, Chapter X: Department of Human Rights, Part 750: Procedures Applicable to All Agencies, Section 750.160: Segregated Facilities (44 Ill. Adm. Code 750.160).
- c. Illinois Freedom of Information Act. The definition of a public record in the Freedom of Information Act (5 ILCS 140/1 *et seq.*) ("FOIA") includes a "public record that is not in the possession of a public body but is in the possession of a party with whom the agency has contracted to perform a governmental function on behalf of the public body and that directly relates to the governmental function and is not otherwise exempt under this Act." (5 ILCS 140/7(2)). Consequently, FHE and its owners, members, officers, employees and agents must maintain and make available to the Village, upon request, their records relating to the performance of this Sign Agreement in compliance with the requirements of the Local Records Act (50 ILCS 205/1 *et seq.*) and the FOIA.

- 21. The Village, in its discretion and at FHE's cost, shall record a fully executed certified copy of this Sign Agreement against title to the Subject Property by filing it with the Cook County Recorder of Deeds ("CCRD"). After filing the Sign Agreement, the Village will send copies of the CCRD file-stamped Sign Agreement to SD 89 and FHE.

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FHE, LLC

VILLAGE OF MAYWOOD

By: _____
Name: _____
Authorized Member

By: _____
Edwenna Perkins
Village President

Address:
FHE, LLC
9870 Greenwood Avenue
Attn: Jim Parrilli, Registered Agent
Union Pier, Michigan 49129
Phone: 269-469-5014

Address:
Village of Maywood
40 E. Madison Street
Attn: Village Manager
Maywood, Illinois 60153
Phone: 708- 450-4050

Exhibit "A"

**Location Map for the Billboard
Located at north-side of Harrison Street
between 10th and 13th Avenues, Maywood, Illinois**

(attached)

Exhibit "B"

FHE Insurance Certificate(s)

(attached)

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

CLERK'S CERTIFICATE

I, Viola Mims, Clerk of the Village of Maywood, in the County of Cook and State of Illinois, do hereby certify that the annexed and foregoing is a true and correct copy of that certain Resolution now on file in my Office, entitled:

RESOLUTION NO. R-2020-36

A RESOLUTION APPROVING AN APPLICATION FOR AN ELECTRONIC BILLBOARD AT 1600 SOUTH 10TH AVENUE (NORTH SIDE OF HARRISON STREET AT APPROXIMATELY 12TH AVENUE) AND APPROVAL AND EXECUTION OF AN ELECTRONIC BILLBOARD SIGN AGREEMENT BY AND BETWEEN THE VILLAGE OF MAYWOOD AND FHE, LLC

which Resolution was passed by a roll call vote of the Board of Trustees of the Village of Maywood at a Special Village Board Meeting on the 6th day of October, 2020, at which meeting a quorum was present, and approved by the President of the Village of Maywood on the 6th day of October, 2020.

I further certify that the vote on the question of the passage of said Resolution by the Board of Trustees of the Village of Maywood was taken by Ayes and Nays and recorded in the minutes of the Board of Trustees of the Village of Maywood, and that the result of said vote was as follows, to-wit:

AYES: Mayor Perkins, Trustee(s) I. Brandon, M. Jones, A. Sanchez, K. Wellington, M. Lightford and N. Booker

NAYS: None

ABSENT: None

I do further certify that the original Resolution, of which the foregoing is a true copy, is entrusted to my care for safekeeping, and that I am the lawful keeper of the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Village of Maywood, this 7th day of October, 2020.

Viola Mims, Village Clerk

[SEAL]