

RESOLUTION NO. 04-213

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF MIAMI LAKES, FLORIDA, APPROVING A LICENSE AGREEMENT WITH HFT MANAGEMENT, INC. d/b/a GATEWAY OUTDOOR ADVERTISING TO PROVIDE BUS BENCHES IN THE TOWN'S RIGHTS-OF-WAY; AUTHORIZING TOWN OFFICIALS TO TAKE ALL STEPS NECESSARY TO FINALIZE THE TERMS OF THE AGREEMENT; AUTHORIZING THE TOWN MANAGER TO EXECUTE THE AGREEMENT ON BEHALF OF THE TOWN; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, upon transfer of Miami-Dade County's (the "County") roadways to the Town of Miami Lakes (the "Town"), the Town also obtained jurisdiction over certain bus benches located in the rights-of-way (the "Bus Benches"); and

WHEREAS, prior to the Town's incorporation, HFT Management, Inc. d/b/a/ Gateway Outdoor Advertising ("HTF") was selected to provide bus benches on County roadways, through the County's competitive bidding process; and

WHEREAS, the Town, pursuant to its purchasing procedures, intends to complete a competitive bidding process for the provision of bus benches; and

WHEREAS, until such a competitive bidding process is performed, the Town Council finds that it is in the best interests of the Town to enter into an agreement with HTF to continue providing bus benches to the Town.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF MIAMI LAKES, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The foregoing Recitals are true and correct and are incorporated herein by this reference.

Section 2. Approval of Agreement. The Bus Bench License Agreement for the provision of bus benches between the Town of Miami Lakes and HTF Management, Inc. (the

“Agreement”), a copy of which is attached as Exhibit “A,” together with such non-material changes as may be acceptable to the Town Manager and approved as to form and legality by the Town Attorney, is approved.

Section 3. Authorization of Town Officials. The Town Manager and Town Attorney are authorized to take all actions necessary to implement the terms and conditions of the Agreement.

Section 4. Execution of Agreement. The Town Manager is authorized to execute the Agreement on behalf of the Town.

Section 5. Effective Date. This Resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED this 9th day of March, 2004.

Motion to adopt by Meador, second by Pizzi.

FINAL VOTE AT ADOPTION

Mayor Wayne Slaton	<u>Yes</u>
Vice Mayor Roberto Alonso	<u>Absent</u>
Councilmember Mary Collins	<u>Yes</u>
Councilmember Robert Meador	<u>Yes</u>
Councilmember Michael Pizzi	<u>Yes</u>
Councilmember Nancy Simon	<u>Yes</u>
Councilmember Peter Thomson	<u>Yes</u>


Wayne Slaton
Wayne Slaton
MAYOR

ATTEST:



Beatris M. Arguelles, CMC
TOWN CLERK

Approved as to form and legality for the use
and benefit of the Town of Miami Lakes only:



Weiss, Serota, Helfman, Pastoriza, Guedes
Cole & Boniske, P.A.
TOWN ATTORNEY

BUS BENCH LICENSE AGREEMENT

THIS Agreement is made and entered into this 9th day March, 2004 by and between the Town of Miami Lakes (the "Town"), a Florida municipal corporation having its principal place of business at 6853 Main Street, Miami Lakes, Florida 33014 and HFT Management, Inc. dba Gateway Outdoor Advertising ("Licensee"), a Florida corporation having its principal place of business at 320 NW 24th Street, Miami, FL, 33127.

WITNESSETH

WHEREAS, the Licensee is in the business of providing bus benches to local governments and selling advertising for such bus benches; and

WHEREAS, prior to the incorporation of the Town, the Licensee was selected in accordance with Section 21-151, et seq., Miami-Dade County Code (now the Town Code), through a competitive process by the Miami-Dade County Board of County Commissioners, to provide bus benches in the County's rights-of-ways (the "Bus Benches"); and

WHEREAS, upon the transfer of the County's roadways to the Town, the Bus Benches are located in what is now the Town's rights-of ways; and

WHEREAS, the Town in accordance with its Purchasing regulations intends to initiate a competitive process for the provision of Bus Benches; and

WHEREAS, the Bus Benches already existing in the Town provide a benefit to the Town's residents and the Town desires to encourage the Licensee to keep the Bus Benches in place until the competitive process takes place.

NOW THEREFORE, in consideration of the following mutual covenants and conditions, the parties agree as follows:

1. GRANT OF LICENSE/SERVICES

1.1. The Town grants Licensee a non-exclusive license to utilize the Town's rights-of-ways to erect, place, install and maintain Bus Benches.

1.2 The location or relocation of any of the Bus Benches shall be approved by the Town Manager.

1.3 At a minimum upon execution of this Agreement the Licensee shall provide 15 Bus Benches to the Town. Upon written request of the Town Manager, the Licensee shall remove, replace, or add a bus bench at the location specified in the Town Manger's request.

1.4 The Licensee shall receive no compensation from the Town for the provision of the Bus Benches.

Rw.04-013

2. LICENSE FEE/COMPENSATION

- 2.1. The Licensee shall pay the Town a License fee of \$8.33 per month for each Bus Bench located within the Town.
- 2.2. The License fee shall be paid to the Town in advance no later than the 1st day of each month.
- 2.3. In the License fee is not received by the Town by the 5th day of the month, the Licensee shall owe the Town an additional late fee of \$15.00.

3. TERM/TERMINATION

- 3.1 The License provided pursuant to this Agreement shall be effective April 1, 2004 and shall continue on a month-to-month basis.
- 3.2 The Town or the Licensee may without cause terminate the License upon 30 days written notice to the other party.
- 3.3 The Town Manager may immediately terminate the License granted in this Agreement should the Licensee default on any material term of this Agreement and fail to cure the default within five (5) calendar days from receipt of written notice by the Town Manager. Notwithstanding the provisions of this Subsection, the Town Manager may immediately terminate the License and remove the Bus Benches with no cure period if the Licensee violates Section 5 of this Agreement.
- 3.4 Upon termination or expiration of this Agreement, the Licensee shall promptly remove all Bus Benches from the Town's rights-of-way, but in no event more than 14 days after the effective date of the termination or expiration.
- 3.5 If the Licensee fails to timely remove the Bus Benches pursuant to either Section 3.4 or 4.5 , the Town may remove the Bus Benches and dispose of the same with no further liability to the Licensee.

4. LOCATION/MAINTENANCE

- 4.1 Bus Benches shall be placed on the rights-of-way in accordance with the provisions of Rule 14-20.0032, Florida Administrative Code and Section 21-158 of the Town Code.

- 4.2 Bus Bench construction shall conform to the approved standards and specifications listed in Chapter 14, Florida Administrative Code, and Section 21-159 of the Town Code.
- 4.3 Licensee shall not permit graffiti on any Bus Bench. Graffiti shall be removed by the Licensee upon 48 hours notice by the Town Manager.
- 4.4 Bus Benches shall be located so as to not create a traffic and/or pedestrian hazard, a public nuisance, or to otherwise interfere with the public's use of the right-of-way.
- 4.5 Upon the request of the Town Manager, the Licensee shall immediately remove or relocate any Bus Bench that violates Section 4.4 or in the opinion of the Town Engineer, poses a risk of harm to others, interferes with any public improvement or utility maintenance, repair or construction activities, causes a public nuisance, or obstructs the view of oncoming vehicles or pedestrians.
- 4.6 The Licensee shall comply with all applicable Federal, State, County and Town regulations, including but not limited to, the American's with Disabilities Act, the Florida Department of Transportation regulations on Bus Benches and applicable sections of Section 21-151, et seq., of the Town Code.

5. BUS BENCH ADVERTISING

- 5.1 The Licensee may place advertising on the Bus Benches only with the prior written approval of the Town Manager and any advertising shall be subject to the restrictions in this Section.
- 5.2 The following type of advertising shall not be placed on any Bus Benches:
 1. Alcohol, tobacco or political advertisements,
 2. Adult oriented entertainment,
 3. Adult oriented books and stores,
 4. X-rated theaters and/or video stores,
 5. Phone numbers with adult entertainment themes, or
 6. Obscenity.

6. ASSIGNMENT

The License granted under this Agreement shall not be assignable by Licensee without the prior approval of the Town Council, and only at the Town's sole discretion.

7. COST AND ATTORNEY'S FEES

If either the Town or the Licensee is required to enforce the terms of this Agreement by court proceedings or otherwise, whether or not formal legal action is required, the prevailing party shall be entitled to recover from the other party all such costs and expenses, included but not limited to, costs and reasonable attorneys' fees.

8. INSURANCE

8.1 The Licensee shall obtain and keep in force during the term of this License a Commercial General Liability Policy, with coverage as a minimum of \$1,000,000 combined single limit, per occurrence, for personal injury and property damage.

8.2 The Town shall be named as an additional insured on the Licensee's liability policy.

8.3 The Town shall be provided with a certificate of insurance and such policy shall require the insurance carrier to notify the Town of any cancellations and shall not allow cancellation without 30 days notice.

9. GOVERNING LAW

This Agreement shall be construed in accordance with and governed by the laws of the State of Florida.

10. CONSENT TO JURISDICTION

The parties submit to the jurisdiction of any Florida state or federal court in any action or proceeding arising out of relating to this Agreement. Venue of any action to enforce this Agreement shall be in Miami-Dade County, Florida.

11. AMENDMENTS

No modification, amendment or alteration in the terms or conditions of this Agreement shall be effective unless contained in a written document executed with the same formality as this Agreement.

12. WAIVER OF JURY TRIAL

Both Town and the Agreement knowingly, voluntarily, and irrevocably waive their right to a trial by jury in any civil proceedings that may be initiated by either party with respect to any term or condition to this Agreement.

13. NOTICE

Any notice required by this Agreement shall be sent by hand delivery, certified mail or private postal service addressed to:

FOR TOWN

Alex Rey, Town Manager
Town of Miami Lakes
6853 Main Street
Miami Lakes, Florida 33014
Telephone: (305) 558-8244
Fascimile: (305) 558-8511

With a copy to:

Nina Boniske, Town Attorney
Weiss Serota Helfman Pastoriza Guedes Cole & Boniske, P.A.
2665 South Bayshore Drive, Suite 420
Miami, Florida 33133
Telephone: (305) 854-0800
Fascimile: (305) 854-2323

FOR LICENSEE

HFT Management, Inc. dba Gateway Outdoor Advertising
320 N.W. 24th Street
Miami, Florida 33127
Telephone: 305-826-7447 NJ Executive Office 908-684-8122
Fascimile: 305-826-0816 NJ Fax 908-684-8133

14. SEVERABILITY

If any provision of this Agreement or the application thereof to any person or situation shall to any extent be held invalid or unenforceable, the remainder of this Agreement, and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable shall not be affected thereby, and shall continue in full force and effect, and be enforced to the fullest extent permitted by law.

15. INDEMNIFICATION

Licensee shall defend, indemnify, and hold harmless the Town, its officers, agents and employees, from and against any and all demands, claims, losses, suits, liabilities, causes of action, judgment or damages, arising out of, related to, or in any way connected with any acts of Licensee's officers, agents or employees including, but not limited to, liabilities arising from the Licensee's placement and maintenance of the Bus Benches in the Town's rights-of-says, and advertising contracts between Licensee and third parties

made pursuant to this Agreement. Licensee shall reimburse the Town for its expenses, including reasonable attorney's fees and costs incurred in and about the defense of any such claim or investigation and for any judgment or damages arising out of or related to such claim.

16. ENTIRE AGREEMENT/MODIFICATION/AMENDMENT

16.1 This writing contains the entire agreement of the parties and supercedes any prior oral or written representations. No representations were made or relied upon by either party, other than those that are expressly set forth herein.

16.2 No agent, employee, or other representative of either party is empowered to modify and amend the terms of this Agreement, unless executed with the same formality as this document.

17. INDEPENDENT CONTRACTOR

Licensee is and shall remain an independent contractor and is not an employee or agent of the Town. Services provided by Licensee shall be by employees of Licensee working under the supervision and direction of Licensee and nothing in this Agreement shall in any way be interpreted or construed to deem said employees to be agents, employees, or representatives of the Town

18. ACCESS TO RECORDS/AUDITS.

18.1 Licensee shall maintain any and all records pertaining to work performed under this Agreement during the term of this Agreement and for a period of three (3) years following termination or expiration of this Agreement.

18.2 The Town Manager or his designee shall, during the term of this Agreement and for a period of three (3) years from the date of termination or expiration of this Agreement, have access to and the right to examine and audit any records of Licensee involving transactions related to this Agreement.

18.3 The Town Manager may cancel this Agreement pursuant to the provisions of Section 3.3 for refusal by Licensee to allow access by the Town Manager or his designee to any records pertaining to work performed under this Agreement that are subject to the provisions of Chapter 119, Florida Statutes.


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IN WITNESS WHEREOF the undersigned parties have executed this Agreement on the date indicated above. HFT Management, Inc.

WITNESS:


HFT Management, Inc.

BY:



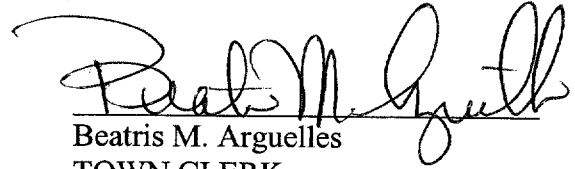
TOWN OF MIAMI LAKES

BY:



Alex Rey
TOWN MANAGER

ATTEST:



Beatris M. Arguelles
TOWN CLERK

Approved as to form and legality for the use
and benefit of the Town of Miami
Lakes only



Weiss, Serota, Helfman, Pastoriza
Guedes Cole & Boniske, P.A.
TOWN ATTORNEY