

REQUEST FOR COUNCIL ACTION CITY OF SAN DIEGO	CERTIFICATE NUMBER (FOR COMPTROLLER'S USE ONLY) n/a
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TO: CITY COUNCIL	FROM (ORIGINATING DEPARTMENT): Transportation&Storm Water Dept	DATE: 06/05/2013
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SUBJECT: First Amendment to MOU with MTS for Transit Shelters and Benches

PRIMARY CONTACT (NAME, PHONE): Stephen Celniker,619-533-3611	SECONDARY CONTACT (NAME, PHONE): ,
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COMPLETE FOR ACCOUNTING PURPOSES

FUND					
DEPT / FUNCTIONAL AREA					
ORG / COST CENTER					
OBJECT / GENERAL LEDGER ACCT					
JOB / WBS OR INTERNAL ORDER					
C.I.P./CAPITAL PROJECT No.					
AMOUNT	\$0.00	0.00	0.00	0.00	0.00

FUND					
DEPT / FUNCTIONAL AREA					
ORG / COST CENTER					
OBJECT / GENERAL LEDGER ACCT					
JOB / WBS OR INTERNAL ORDER					
C.I.P./CAPITAL PROJECT No.					
AMOUNT	0.00	0.00	0.00	0.00	0.00

COST SUMMARY (IF APPLICABLE): This action authorizes a one-year extension until June 30, 2014 to the MOU with MTS for advertising on transit shelters and benches that was approved by City Council on July 29, 2008 and expires on June 30, 2013. Revenue to the City will be at least \$69,600.

ROUTING AND APPROVALS

CONTRIBUTORS/REVIEWERS:	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
Financial Management	ORIG DEPT.	Sturdevan, Kip	6/6/2013
Liaison Office	CFO		
	DEPUTY CHIEF		
	COO		
	CITY ATTORNEY		
	COUNCIL PRESIDENTS OFFICE		

PREPARATION OF: RESOLUTIONS ORDINANCE(S) AGREEMENT(S) DEED(S)

Authorizing the Mayor to enter into a First Amendment to a Memorandum of Understanding with the San Diego Metropolitan Transit System for the purpose of extending the agreement for advertising on transit shelters and buses until June 30, 2014.

STAFF RECOMMENDATIONS: Adopt the resolution	
SPECIAL CONDITIONS (REFER TO A.R. 3.20 FOR INFORMATION ON COMPLETING THIS SECTION)	
COUNCIL DISTRICT(S):	Citywide
COMMUNITY AREA(S):	Citywide
ENVIRONMENTAL IMPACT:	This activity is not a "project" and is therefore not subject to State CEQA Guidelines Section 15060(c)(3).
CITY CLERK INSTRUCTIONS:	Please send copies of resolutions to Stephen Celniker at MS 609.

**COUNCIL ACTION
EXECUTIVE SUMMARY SHEET
CITY OF SAN DIEGO**

DATE: 06/05/2013

ORIGINATING DEPARTMENT: Transportation&Storm Water Dept

SUBJECT: First Amendment to MOU with MTS for Transit Shelters and Benches

COUNCIL DISTRICT(S): Citywide

CONTACT/PHONE NUMBER: Stephen Celniker/619-533-3611

DESCRIPTIVE SUMMARY OF ITEM:

This action authorizes an extension until June 30, 2014 of an MOU with the San Diego Metropolitan Transit System (MTS) for advertising on transit shelters and benches on City streets. The existing MOU was adopted by the City Council on July 29, 2008 and expires June 30, 2013.

STAFF RECOMMENDATION:

Adopt the resolution

EXECUTIVE SUMMARY OF ITEM BACKGROUND:

The City receives a portion of the revenues from advertising on transit shelters and benches on City streets through a program administered by the San Diego Metropolitan Transit System (MTS). The current MOU was adopted by the City Council on July 29, 2008 and expires June 30, 2013. This First Amendment to the MOU extends the MOU until June 30, 2014.

Transit shelters and benches are owned and maintained by separate vendors under contract with MTS.

Under the Agreement, MTS has sent the City a fixed amount of \$69,600 annually from their revenue from advertising on transit shelters. For bus benches, MTS sends the City 50% of their net revenues. The revenue from advertising on benches varies each year depending on market conditions.

The City's revenue from the MOU must be used for capital improvements in the vicinity of bus stops, such as concrete bus pads. City staff performs all work. Having concrete pads at bus stops enhances the life of the roadway because concrete is better than asphalt at withstanding the wear and tear from bus tire friction.

Over the five years of the MOU the revenues to the City have been as follows:

Year 1 - FY 2009 - Shelters: \$69,600; Benches: \$27,928; TOTAL: \$97,528

Year 2 - FY 2010 - Shelters: \$69,600; Benches: \$25,104; TOTAL: \$94,704

Year 3 - FY 2011 - Shelters: \$69,600; Benches: \$39,347; TOTAL: \$108,947

Year 4 - FY 2012 - Shelters: \$69,600; Benches: \$34,759; TOTAL: \$104,359

Year 5 - FY 2013 - (in progress, payment due August 15, 2013 per current MOU)

Year 6 - FY 2014 - (proposed one-year extension of MOU)

MTS is preparing to accept new proposals from vendors for advertising on transit shelters and benches and they are unsure of their revenues beyond June 30, 2014. Thus, they have offered only a one-year extension of the current MOU.

FISCAL CONSIDERATIONS:

Under the proposed one-year extension, the City's revenue will be at least \$69,600, payable August 15, 2014.

EQUAL OPPORTUNITY CONTRACTING INFORMATION (IF APPLICABLE):

This MOU is subject to the City's Equal Opportunity Contracting (San Diego Ordinance No. 18173, Section 22.2701 through 22.2708) and the City's Non-Discrimination in Contracting Ordinance (San Diego Municipal Code Sections 22.3501 through 22.3517).

PREVIOUS COUNCIL and/or COMMITTEE ACTION (describe any changes made to the item from what was presented at committee):

The MOU was approved by City Council Resolution R-303026 on July 29, 2008.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

None

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

Transit passengers will continue to benefit from transit shelters and benches at bus stops. The City's roadway maintenance efforts will also benefit from additional concrete pads in the vicinity of bus stops.

Sturdevan, Kip

Originating Department

Deputy Chief/Chief Operating Officer

AMENDMENT NO. 1 TO MEMORANDUM OF UNDERSTANDING
BETWEEN THE CITY OF SAN DIEGO
AND THE SAN DIEGO METROPOLITAN TRANSIT SYSTEM

This Amendment No. 1, dated _____, 2013, is entered into by and between the CITY OF SAN DIEGO, a municipal corporation, herein called "CITY," and the SAN DIEGO METROPOLITAN TRANSIT SYSTEM, a public entity, herein called "MTS".

RECITALS

WHEREAS, MTS and CITY entered into an agreement, MTS Doc. No. G1124.0-08 ("Bus Shelter Advertising MOU"), to set forth the terms and conditions of CITY's participation in MTS's bus shelter advertising program; and

WHEREAS, MTS and CITY desire to extend the Bus Shelter Advertising MOU for a one year period, through June 13, 2014.

AGREEMENT

MTS and CITY agree as follows:

1. The CITY's point of contact for Notice in Section 8 of the Bus Shelter Advertising MOU shall be changed to reflect the current CITY Mayor, Bob Filner.
2. Section 15 of the Bus Shelter Advertising MOU shall be replaced with the following:

This Memorandum of Understanding shall commence upon approval. MTS shall have the right to administer its transit shelter and bus bench programs through June 30, 2014. MTS's obligation to make payments to the CITY and the CITY's obligation to program and expend those funds shall terminate on June 30, 2015.

3. All other terms and conditions shall remain the same.

SAN DIEGO METROPOLITAN TRANSIT SYSTEM CITY OF SAN DIEGO

Paul C. Jablonski
Chief Executive Officer

By: _____
Title: _____

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Karen Landers
General Counsel

San Diego City Attorneys' Office

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE CITY OF SAN DIEGO
AND
THE SAN DIEGO METROPOLITAN TRANSIT SYSTEM

THIS AGREEMENT is entered into by and between THE CITY OF SAN DIEGO, a municipal corporation, herein called "CITY," and the SAN DIEGO METROPOLITAN TRANSIT SYSTEM, a public entity, herein called "MTS."

WHEREAS, MTS and the CITY have for the last 16 years operated a successful transit shelter and bus bench advertising and maintenance program; and

WHEREAS, MTS desires to install new transit shelters of the highest possible quality and aesthetic appeal and maintain transit shelters that are already in place in keeping with the image of the CITY; and

WHEREAS, MTS desires to install and/or maintain its transit shelters to provide a higher level of service to all patrons; and

WHEREAS, MTS will require all transit shelters to meet Americans with Disabilities Act requirements;

WHEREAS, MTS will endeavor to include new technologies, such as next-bus information and solar power, into the shelter design; and

WHEREAS, MTS plans to incorporate "showcase" transit shelters with electronic advertising in high-visibility areas within the CITY; and

WHEREAS, public funding is unavailable for the construction and maintenance of transit shelters; and

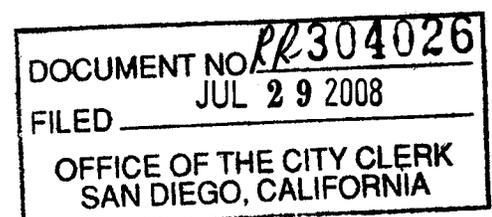
WHEREAS, MTS will utilize any advertising revenue generated over the length of this MOU to operate, maintain and enhance transit services within the City of San Diego;

WHEREAS, MTS will provide the City an annual update on the installation of new shelters within the City;

WHEREAS, MTS proposes to enter into an agreement, such as this one, with each of the other cities within its service territory wishing to participate in the new transit shelter program; and

WHEREAS, Section 3D of City Council Policy No. 600-34 calls for the CITY to maximize transit-operating efficiency and to maintain a reasonable high farebox recovery rate in order to minimize the need for other sources of funding; and

WHEREAS, the transit shelter program would provide a significant improvement in the area's transit system potentially increasing ridership without incurring any public costs; NOW, THEREFORE, be it ordained that the CITY and MTS agree as follows:



1. The CITY Council hereby grants to MTS for a period of five (5) years the exclusive authority to install, or cause to be installed, bus benches and transit shelters within the public rights-of-way in the CITY contingent upon the following:

- A. Maximum Number of Transit Shelters

No more than six hundred and ninety (690) transit shelters shall be permitted in the CITY. Any additional transit shelters that MTS proposes to install shall require prior approval from the CITY.

- B. Maximum Number of Bus Benches

No more than two thousand five hundred (2,500) bus benches shall be permitted in the city. Any additional bus benches that MTS proposes to install shall require prior approval from the CITY.

- C. Location Criteria for Transit Shelters and Bus Benches

Transit shelters and bus benches with advertising will be permitted only in commercially or industrially zoned areas in the City of San Diego and will not be permitted in single family residentially zoned areas without the specific written authorization of the CITY. Transit shelters and bus benches without advertising will be permitted in single family residentially zoned areas.

- D. Standard Signage and Advertising

Standard size for poster ads within transit shelters is four (4) feet in width and six (6) feet in height. Showcase transit shelters in the CITY right-of-way may also include electronic advertising including, but not limited to, electronic message boards and video displays. All such signage and/or electronic advertising shall comply with Section 2, Advertising Policy, below.

- E. Installation of Transit Shelters or Bus Benches

MTS will develop a list of existing locations of all bus benches and transit shelters and provide the list to the CITY. All new installations shall conform to the terms of this Agreement. The CITY shall have the right to approve or deny the installation of any bus bench or transit shelter.

- F. Removal of Transit Shelters or Bus Benches

The CITY shall have the authority to cause a transit shelter or bus bench to be removed or relocated from any location at no cost to the CITY, upon making written demand to MTS for such removal.

- G. Maintenance

Through its contractor, MTS shall be responsible for providing ongoing maintenance for every bus bench or transit shelter that is installed under this agreement. Transit shelters and bus benches shall be repaired or replaced upon notification to MTS of any damage, vandalism, or graffiti on any MTS transit shelter or bench. Through its subcontractor, MTS will repair, replace, or remove damage, vandalism, or graffiti within forty-eight (48)

hours of notification or such longer period as may be needed in order to reasonably complete the repairs. If the transit shelter or bus bench is destroyed, it shall be removed within twenty-four (24) hours of notification and shall be replaced within thirty (30) days. In conjunction with such removal, the curbs and sidewalk, if affected by the removal, shall be restored to a safe, finished condition.

H. Notices

MTS shall use its best efforts to notify the underlying property owners, as indicated on the most recent tax assessor's rolls, and building occupants that a new transit shelter or bus bench with or without advertising is proposed to be installed within 100 feet of their property in the public right-of-way prior to any transit shelter installation. Such notice will not be required if a shelter or bus bench currently exists and is simply being replaced by a new shelter or bus bench unless it is significantly modified.

I. Permits

All new transit shelters will require an encroachment, excavation, or other permit from the CITY. MTS's contractor will be required to comply with all rules, regulations, and laws of the CITY and any applicable state or federal laws. Permit fees shall be paid by MTS's contractor for each permit issued. All permit applications for new shelters shall require proof of notification of the proposed transit shelter installation to adjacent property owners and tenants.

J. Electrification

MTS's contractor will secure all electrical permits necessary for the installation of new shelters. MTS's contractor shall assume all costs associated with lighting and powering transit shelters.

K. Private Shelters and Benches

- i. Notwithstanding that the CITY has granted to MTS the exclusive authority to install bus benches and transit shelters within the public right-of-way in the CITY of San Diego, MTS agrees to allow the CITY to authorize others to place transit shelters, benches and appurtenances in the public right-of-way conditioned upon those shelters, benches, and appurtenances being placed in such locations as the CITY and MTS may agree to from time to time.
 1. Process. Private entities authorized to install transit shelters, benches, and appurtenances pursuant to this amendment will be required to provide the design, construction, and maintenance for the shelter and bench. Installation will be permitted through a CITY encroachment permit process. The location of the shelters or benches shall conform to the MTS Design Standard Guidelines. MTS will provide the plan review for comment, but will not be responsible or liable for design, construction, or maintenance of the transit shelters or benches that are not installed as part of its existing shelter or bench contract.
 2. Indemnity. The CITY undertakes and agrees to defend, indemnify, and hold harmless MTS and any and all of MTS's officers, agents, employees, assigns, and successors in interest from and against all suits and causes

of action, claims, losses, demands, and expenses including, but not limited to: attorney's fees and costs of litigation, damage or liability of any nature whatsoever for death or injury to any person including CITY employees and agents, or damage or destruction of any property of either party hereto or any third person in any section on the part of the CITY or its permitted private entities whether or not contributed to by an act or omission whether passive, active, or otherwise except for the sole negligence of MTS or any of MTS's officers, agents, and employees, in which case MTS shall hold the CITY harmless.

3. Advertising. Advertising on the CITY's shelters or benches shall be solely for the purpose of announcing events of noncommercial nature taking place at an adjacent public facility owned or operated by the private entity authorized to install the shelter or bench and shall not be used for posting schedules of public meetings at the facility. Advertising space shall not be leased to any third party. Acknowledgement of sponsorship shall be permitted, and if desired, it shall be displayed in such a way as to not be visible and legible from passing automobiles. All advertising posted on the shelters and benches must conform to the advertising criteria set forth in Section 2 of this agreement. MTS may make demand upon the CITY for the removal of any advertisement that does not conform to the aforementioned advertising criteria. Such demand shall be in writing and shall state reasonable grounds for the demand. The CITY shall consider and act upon the demand in accordance with those advertising criteria. Advertising display panels shall be configured in such a way to be similar to MTS's shelters and benches. Advertising display panels shall be no greater in size than those used in MTS's shelters and benches, and one advertising panel in each shelter shall be reserved for MTS's use for the purpose of posting transit information.
4. Insurance. The CITY shall require any permitted private entity to maintain insurance to same extent required of MTS pursuant to this Memorandum of Understanding.

L. Revenue to MTS

- i. Transit Shelters. MTS may derive revenue from the sale of advertising on its transit shelters within the CITY's public right-of-way. MTS will administer the transit shelter program. Eighty-seven percent (based upon 292 of the 334 shelters with advertising located within the CITY representing 87% of the total advertising revenue) of 10 percent of the \$4 million paid to MTS by CBS Outdoor (\$348,000) shall be payable to the CITY in five installments (\$69,600 each) on 8/15/09, 8/15/10, 8/15/11, 8/15/12, and 8/15/13. In addition, 10 percent of the net advertising revenue payable to MTS for any new advertising on transit shelters (including advertising added to shelters that currently have no advertising, or any new shelters) installed in the CITY right-of-way shall be payable to the CITY by MTS in five installments on the payment dates set forth above. Net revenue shall mean revenue received by MTS from CBS after any capital costs for installation of the advertising panels and/or new shelters has been paid in full. The CITY shall program all revenue received under this Agreement for transit shelter advertising into its Capital Improvement Program for the following fiscal year (i.e. money received on August 15, 2009, shall be

programmed for the fiscal year 2011). All revenue received under this Agreement shall be spent on the installation of concrete bus pads (or other transit improvements mutually agreed upon by the parties) at bus stop locations selected by and located in the CITY. All revenue received under this Agreement shall be spent on or before June 30, 2014.

- ii. Bus Benches. MTS may derive revenue from the sale of advertising on its bus benches. MTS will administer the bus bench program. MTS shall be entitled to recover all costs to administer the bus bench program. Remaining revenues from the bus bench program (after payment of MTS's administrative costs) shall be divided equally between the CITY and MTS and payable to the CITY by MTS in five installments on the payment dates set forth above. The CITY shall program all revenue received under this Agreement from bus bench advertising into its Capital Improvement Program for the following fiscal year (i.e. money received on August 15, 2009, shall be programmed for the fiscal year 2011). All revenue received under this Agreement shall be spent on the installation of concrete bus pads (or other transit improvements mutually agreed upon by the parties) at bus stop locations selected by and located in the CITY. All revenue received under this Agreement shall be spent on or before June 30, 2014.

2. Advertising Policy

A. Standards

In its agreements with its advertising contractors, MTS shall reserve the right to reject any advertisement that does not meet the standards set forth in MTS Policy No. 21, which includes the CITY's advertising policy. A copy of MTS Policy No. 21 is attached hereto and incorporated into this agreement.

B. Removal

The CITY may request that MTS exercise its right to remove any advertisement, commercial, or noncommercial that does not conform to MTS Policy No. 21. Such demand shall be in writing and state reasonable grounds for the demand. MTS shall consider and act upon the demand in accordance with the policy.

3. Hold Harmless

MTS undertakes and agrees to defend, indemnify, and hold harmless the CITY and any and all of the CITY's officers, agents, employees, assigns, and successors in interest from and against all suits and causes of actions, claims, loss, demands, expenses, including, but not limited to, attorneys' fees and costs of litigation, damage or liability, or any nature whatsoever, for death or injury to any person, including MTS's employees and agents, or damage or destruction to any property of either party hereto or third person in any manner arising by reason of or incident to the performance of this agreement on the part of MTS, except for active negligence of the CITY or any of the City's officers, agents, contractors or employees, in which case the CITY shall hold MTS harmless and MTS shall have no obligation to defend and indemnify the CITY or its officers, agents, employees, assigns or successors.

4. Termination of this Agreement

The CITY may terminate this Agreement if MTS or its contractor materially breaches the terms and conditions set forth herein, and the CITY shall owe no payment to MTS or its contractor. In the event the CITY terminates this Agreement, the CITY may require MTS to remove every transit shelter and/or bus bench in the public rights-of-way. The City may terminate this Agreement without cause, by serving upon MTS written notice of termination of this Agreement three hundred sixty five (365) days in advance of said date of termination, and the CITY shall pay MTS the current value for every transit shelter or bus bench in the public right-of-way.

The method of calculating the current value of a transit shelter or bus bench will be as follows:

$$\text{CURRENT VALUE} = \left[\frac{\text{Transit Shelter/Bus Bench Unit Price}}{\text{Depreciation Period (in months)}} \right] \left[\text{Depreciation Period (in months)} - \text{Months in Service} \right]$$

For purposes of calculating the current value the transit shelter or bus bench:

- the unit price shall be the unit price listed in the contractor's financial plan submitted with the bid documents plus the installation costs of the bus bench or transit shelter;
- the depreciation period for transit shelters and bus benches will be ninety-six (96) months; and
- the number of months in service will be calculated from the date the transit shelter or bus bench is placed in service to the date of termination.

5. Insurance

During the term of the agreement, MTS shall require its contractor to maintain the following levels and types of insurance:

- A. Comprehensive general liability insurance for bodily injury (including death) and property damage, which provides total limits of not less than two million five hundred thousand dollars (\$2,500,000.00) combined single limit per occurrence. Coverages included shall be:
 - i. Premises and operations;
 - ii. Contractual liability expressly, including liability assumed under this agreement, with deletion of the exclusion as to performance of operations within the vicinity of any railroad bridge, trestle, track, roadbed, tunnel, underpass, and crossway;
 - iii. Personal injury liability;
 - iv. Independent contractors; and
 - v. Cross-liability clause providing that the insurance applies separately to each insured except with respect to the limits of liability.

Such insurance shall include the following endorsement (copies of which shall be provided):

1. Inclusion of the CITY, its officers, agents, and employees as additional insureds with respect to activities, services, or operations under this agreement;
 2. Inclusion of MTS, and its subsidiaries, its officers, agents, and employees as additional insureds with respect to activities, services, or operations under this agreement; and
 3. Stipulation that the contractor's insurance is primary insurance and that no insurance of the CITY or MTS will be called upon to contribute to a loss.
- B. Comprehensive automobile liability insurance for bodily injury (including death) and property damage, which provides total limits of not less two million five hundred thousand dollars (\$2,500,000.00) combined single limit per occurrence applicable to all owned, nonowned, and hired vehicles.
- C. Statutory workers' compensation coverage including a broad form all states endorsement; employer's liability insurance for not less than one million dollars (\$1,000,000.00) per occurrence for all individuals engaged in services or operations to implement this agreement, including an insurer's waiver of subrogation in favor of the CITY, their directors, officers, representatives, agents, and employees.
- D. MTS shall also provide CITY with satisfactory evidence of self-insurance that meets or exceeds the types and levels of insurance outlined above.

6. Condition Precedent

Certificates of insurance, satisfactory to the CITY, evidencing all coverages above shall be furnished to the CITY before commencing any operations under this agreement with complete copies of policies to be delivered to CITY upon its request.

7. Approval

Approval of the insurance by the CITY shall not relieve or decrease the liability of MTS.

8. Notices

No notice, request, demand, instruction, or other document to be given hereunder to any party shall be effective for any purpose unless personally delivered to the person at the appropriate address set forth below (in which event, such notice shall be deemed effective only upon such delivery) or delivered by certified mail, return receipt requested, as follows:

To The CITY:
Jerry Sanders
Mayor
City of San Diego
202 C Street

To MTS:
Paul C. Jablonski
Chief Executive Officer
Metropolitan Transit System
1255 Imperial Avenue, Suite 1000

Notices so mailed shall be deemed to have been given forty-eight (48) hours after the deposit of same in any United States Post Office mailbox. The addresses and addressees, for the purpose of this paragraph, may be changed by giving written notice of such change in the manner herein provided for giving notice. Unless and until such written notice of change is received, the last address and addressee stated by written notice, or provided herein if no such written notice of change has been received, shall be deemed effective.

9. Time

It is agreed that time is of the essence in this agreement.

10. Attorneys' Fees

If legal action be commenced to enforce or to declare the effect of any provisions of the agreement, the court as part of its judgment shall award reasonable attorneys' fees and costs to the prevailing party.

11. No Waiver

The waiver by one (1) party of the performance of any covenant, condition, or promise shall not invalidate this agreement nor shall it be considered a waiver by such party of any other covenant, condition, or promise hereunder. The waiver by either or both parties of the time for performing any act shall not constitute a waiver of the time for performing any other act or identical act required to be performed at a later time. The exercise of any remedy provided by law and the provisions of this agreement for any remedy shall not exclude other consistent remedies unless they are expressly excluded.

12. Severance

If any provision of this agreement is found to be unenforceable, the remainder of the provisions shall continue to be given full force and effect.

13. Amendments

No change in or addition to this agreement or any part hereof shall be valid unless in writing and properly authorized by the CITY and MTS.

14. Computation of Periods

All periods of time referred to in this agreement shall include all Saturdays, Sundays, and state or national holidays, unless the period of time specifies business days, provided that if the date or last date to perform any act or give any notice with respect to the Agreement shall fall on a Saturday, Sunday, or state or national holiday, such act or notice may be timely performed or given on the next succeeding day that is not a Saturday, Sunday, or state or national holiday.

15. Term

This Memorandum of Understanding shall commence upon approval. MTS shall have the right to administer its transit shelter and bus bench programs through June 30, 2013. MTS's obligation to make payments to the CITY and the CITY's obligation to program and expend those funds shall terminate on June 30, 2014.

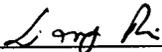
Dated this 29th day of July, 2008.

METROPOLITAN TRANSIT SYSTEM

CITY OF SAN DIEGO



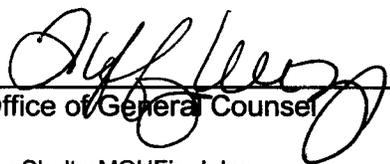
Paul C. Jablonski
Chief Executive Officer

By: 

Tammy Rimes
Purchasing & Contracting
Assistant Director

APPROVED AS TO FORM

APPROVED AS TO FORM



Office of General Counsel



San Diego City Attorneys' Office

BusShelterMOUFinal.doc

Attachment: MTS Policy No. 21

1255 Imperial Avenue, Suite 1000
San Diego, CA 92101-7490
619/231-1466
FAX 619/234-3407

Policies and Procedures No. 21

SUBJECT:

Board Approval: 2/26/04

MTS REVENUE-GENERATING DISPLAY ADVERTISING, CONCESSIONS, AND MERCHANDISE

PURPOSE:

To establish a policy and guidelines concerning a revenue-generating advertising, concessions, and merchandise program encompassing trolley stations, MTS property and facilities, and selected printed materials.

Advertising on bus shelters and benches within the public rights-of-way shall be governed by the applicable policies of the applicable jurisdiction. The City of San Diego policy is included as Attachment A to this policy.

BACKGROUND:

Public transit operators and administration agencies have historically utilized advertising, concessions, and merchandising programs to supplement operational and capital funds. A sound advertising and concessions program can be a viable, alternative income source while maintaining aesthetic standards and promoting transit use.

POLICY:

The following guidelines will be reviewed annually to reflect the current policies of the MTS Board of Directors and to reflect changes in the trends of social and economic acceptance and appropriateness of various forms of advertising and concessions.

21.1 Advertising - General

21.1.1 Safety, aesthetic considerations, rider convenience, and information needs will take precedence over revenue generation.

21.1.2 Quantity, quality, and placement of all advertising will be controlled by and subject to the specific approval of MTS.

21.1.3 MTS reserves the right to reject any advertisement, commercial or noncommercial, which does not meet the Board's standards as set forth



Metropolitan Transit System (MTS) is a California public agency and is comprised of San Diego Transit Corporation and San Diego Trolley, Inc. nonprofit public benefit corporations, in cooperation with Chula Vista Transit and National City Transit. MTS is the taxicab administrator for eight cities and the owner of the San Diego and Arizona Eastern Railway Company.

MTS member agencies include: City of Chula Vista, City of Coronado, City of El Cajon, City of Imperial Beach, City of La Mesa, City of Lemon Grove, City of National City, City of Poway, City of San Diego, City of Santee, and the County of San Diego.

250411

in this policy. Before any advertisement is rejected, it shall be referred to the Chief Executive Officer and General Counsel for MTS for appropriate action and a final decision.

21.1.4 The advertising program will serve the needs of local as well as national advertisers and encourage the promotion of public transit. Local advertisers will be guided by the appropriate transit agency staff in promoting specific routes/lines serving their areas.

21.1.5 No advertisement will be permitted that:

- a. appears to make a personal attack on any individual or upon any company, product, or institution; or falsely disparages any service or product or is defamatory in any respect;
- b. might be interpreted to be offensive to any religious, ethnic, racial, or political group;
- c. might be interpreted as condoning any type of criminal act or which might be considered as derogatory toward any aspect of the law enforcement profession;
- d. portrays acts of violence, murder, sedition, terror, vandalism, or other acts of violence against persons or institutions; or
- e. depicts nudity or portions of nudity that would be considered as offensive, distasteful, pornographic, or erotic, is obscene, or advertises adult entertainment. The rule of "public acceptance" should be used in such cases; i.e., if the advertisement has already gained public acceptance, then it may be considered as acceptable to MTS.
- f. might be interpreted as condoning any type of discrimination; or
- g. might be interpreted as condoning or soliciting any unlawful act or conduct.

21.1.6 No advertisement will be permitted that is in conflict with any applicable federal, state, or local law, statute, or ordinance.

21.1.7 No advertisement will be permitted that contains false or grossly misleading information.

21.1.8 No liquor, tobacco, religious, political, or firearms advertisements will be permitted.

21.1.9 Upon written demand by the Chief Executive Officer of MTS on stated grounds that shall be reasonable and upon review by General Counsel of MTS, any advertisement or other display deemed to be objectionable will be removed. No refund shall be made for the time such objectionable material was on display.

21.1.10 Advertising treatments will not impede vehicular or pedestrian traffic, will not restrict the visibility of directional/traffic signs and informational material, and will not encroach on necessary sight lines (e.g., driver/operator view of waiting patrons) nor present any other safety risks or hazards.

21.1.11 Advertising industry standard sizes will be used for all advertising treatments.

21.1.12 Advertising treatments will be maintained in "like-new" condition. Damage to the advertisement or its housing will be corrected within forty-eight (48) hours.

21.2 Advertising - Light Rail Vehicles and Buses

21.2.1 Light rail vehicles (LRVs) will not carry commercial advertising. Buses may continue the practice of having interior and exterior advertising.

21.2.2 For buses, a maximum of 10 percent of the full fleet may carry full-bus advertising formats rather than conventional advertising formats. Vehicle fronts must remain "unwrapped" with standard paint schemes and materials. The San Diego Transit Executive Committee, serving as the advertising design review committee, shall review and approve all full-bus advertisements in advance of installation.

21.2.3 Transit information material may be placed inside LRVs and buses at the discretion of the operating corporation's Chief Executive Officer. Such information can include, in accordance with this policy, the promotion of regularly scheduled public transit routes that will serve major community events open to the public with no admission charge.

21.2.4 At the request of a recognized public entity and with the approval of the individual operating corporation's Chief Executive Officer, LRVs and buses may carry notices of events that are served by regularly scheduled transit routes and open to the public for an entrance or other fee in accordance with this policy and under the following conditions only:

- Such notices shall be limited to no more than once per month.
- More than one event may be shown on the same notice.
- The listing order within the monthly notice will be by event dates. Should more than one event start on the same date, alphabetical ranking will then be used.
- Notices will be produced in English and Spanish.
- The production costs of each notice (including translation, typesetting, camera work, and printing) will be reimbursed by the

participating public entity/event. If more than one public entity/event is involved, costs will be divided equally among all participants.

21.2.5 Metropolitan Transit System advertising would be excluded from the 10 percent cap on full-bus advertising formats.

21.2.6 Super King and Mural formats are approved for acceptable use on buses. The size specification for the Super King is 226 inches x 30 inches and is placed between the front and rear wheel wells on the street side of the bus. Murals are defined as encompassing the space under the vehicle passenger windows on each side of the bus and extending from the front of the bus to just past the rear wheel well. These advertising formats will not be subject to the 10 percent cap assigned to full-bus wraps.

21.3 Advertising - Transit Centers, Major Transit Points, Stations, and Stops

21.3.1 Advertising treatments (housings) will be designed to complement the architecture of the transit centers/stations and the flavor of the surrounding community. MTS plan specifications will be followed wherever applicable. Advertising treatments will be designed, constructed, and placed in accordance with all applicable local, state, and federal standards.

21.3.2 Any unsold transit center, major transit points, and station display advertising space will be allocated for graphics and/or other nonrevenue-producing functions approved by the MTS Board. At least one full display panel per transit center and station will be reserved exclusively for transit-related items.

21.4 Advertising - Printed Materials

21.4.1 Advertising space may be allowed in printed materials (e.g., timetables, maps, and informational brochures) at the discretion of the operating corporation's Chief Executive Officer.

21.4.2 Advertising space may be allowed on the reverse side of regional passes, tickets, and transfers at the discretion of the MTS Chief Executive Officer.

21.4.3 No advertising space shall supersede necessary transit information and/or regulations.

21.4.4 At the discretion of the respective Chief Executive Officer, MTS and operating corporations may allocate space in printed materials to inform transit customers about private entities actively participating in transit services, e.g., pass and ticket-sales outlets.

21.5 Concessions

- 21.5.1 Concession formats, quantity, and placement will be approved and controlled by the MTS Board.
- 21.5.2 Acceptable concession formats are: pay telephones, automatic teller machines (ATMs), child-care facilities, and kiosks/shops for the sale of prepaid transit fares, transit-related merchandise, and rider convenience items approved by the MTS Board. Any additional concession formats are subject to Board approval.
- 21.5.3 Contracts for any concession format or related development will be awarded in accordance with existing MTS policies.
- 21.5.4 During hours of business, concessionaires will provide the public with transit information materials as directed and supplied by MTS or its designated representative.
- 21.5.5 Concession treatments/structures will be designed to complement the architecture of the transit centers/stations and the flavor of the surrounding community. MTS plan specifications will be followed wherever applicable. Concession treatments/structures will be designed, constructed, and placed in accordance with all applicable local, state, and federal standards.
- 21.5.6 Concession treatments/structures will not impede vehicular or pedestrian traffic, will not restrict the visibility of directional signs and informational materials, and will not encroach on necessary sight lines.
- 21.5.7 Concessionaire contracts will include remittance to MTS or its designated operating corporation. Said remittance will be made monthly and include a flat rate, plus percentage of gross revenue, as approved by the MTS Board.
-
- 21.5.8 Any and all concession on-site signing and displays will be in accordance with existing MTS policies and subject to approval of the MTS Chief Executive Officer.

21.6 Merchandise

- 21.6.1 Any and all system-related merchandise will be of the highest available quality and project a positive transit image.
- 21.6.2 Merchandise licensing agreements and royalty payments will be made in accordance with existing MTS policies.

21.7 Revenue

- 21.7.1 Except as otherwise provided, revenue from advertising in transit centers, major transit points, stations, and stops shall accrue to MTS.
- 21.7.2 Revenue received by each corporation for vehicle and printed material advertising, concessions, and merchandise will be retained by the

respective corporation and used to offset the need for public subsidy. Revenue received from electronic message boards located at San Diego Trolley stations will be retained by San Diego Trolley.

21.7.3 Revenue received from advertising on the reverse side of regional passes, tickets, and transfers shall be utilized as reimbursement to the MTS "Transfers, Tickets, Passes" line item.

21.7.4 In lieu of revenue, MTS may elect to accept an equivalent value of goods and/or services, including, but not limited to, capital improvements, information services, and site maintenance.

21.8 Contractor Services

21.8.1 MTS may engage contractor(s) services for the development, implementation, management, and maintenance of advertising, concessions, and/or merchandise programs in conformance with existing Board policies and in the best interests of MTS.

LTresc/SChamp/JGarde
POLICY.21.REV GENERATE DISPLAY AD CONCESSIONS & MERCHANDISE
7/13/06

Attachment A – City of San Diego Advertising Policy

Original Policy approved on 5/9/83.

Policy revised on 6/6/85.

Policy revised on 7/9/87.

Policy revised on 6/23/88.

Policy revised on 3/22/90.

Policy revised on 3/14/91.

Policy revised on 4/9/92.

Policy revised on 5/12/94.

Policy revised on 8/11/94.

Policy revised on 6/22/95.

Policy revised on 3/27/97.

Policy revised on 6/11/98.

Policy revised on 2/22/01

Policy revised on 2/26/04.

ATTACHMENT A
MTS POLICY NO. 21
CITY OF SAN DIEGO
ADVERTISING POLICY

Subject:

ADVERTISING ON BUS STOP SHELTERS AND BENCHES

Background:

The City of San Diego (City) entered into a Memorandum of Understanding (MOU) with the Metropolitan Transit Development Board (MTS), adopted July 25, 1988, and amended February 25, 1991, and June 21, 1999, authorizing MTS to install bus stop shelters and bus benches in public rights-of-way in the City. Pursuant to the MOU, MTS contracted with third parties for the construction, installation, and maintenance of the bus stop shelters and benches. In exchange, MTS's contractors receive the proceeds from the sale of advertising space on the shelters and benches.

MTS regulated the content of the advertising placed on the bus stop shelters and benches according to its Policies and Procedures No. 21. After advertising containing a religious message was removed pursuant to that policy, valid concerns were raised that the policy may violate due process and first amendment rights governing public speech.

Purpose:

It is the intent of the City Council to establish a policy governing advertising on bus stop shelters and benches in the public rights-of-way within the City that will be included by amendment in the MOU between the City and MTS, and administered by MTS.

It is the further intent of the City Council to prohibit advertising on bus stop shelters and benches of alcoholic beverages, tobacco products, and firearms in recognition of the fact that many public transit patrons are minors, that possession of these products by minors is illegal and dangerous, and that advertising is a persuasive medium for encouraging the use of these products by minors.

This policy applies only to advertising space located in designated areas on bus stop shelters and benches, as described in the MOU between the City and MTS.

Policy:

Advertising on Bus Stop Shelters and Benches:

1. In its agreement with its advertising contractors, MTS shall reserve the right to reject any advertisement, commercial or noncommercial, which does not meet the standards set forth in this policy.
2. All advertising posted on bus stop shelters and benches must conform to the following criteria:
 - A. Defamatory Advertising. No advertising will be permitted that falsely disparages any person, product, or company, or that is likely to damage the reputation of any person, product, or company.
 - B. Advertising Condoning Criminal Conduct. No advertising will be permitted that is likely to incite or produce imminent unlawful activity.
 - C. Obscene Advertising. No advertising will be permitted that contains obscene matter or matter harmful to minors, as defined in California Penal Code Sections 311 and 313.
 - D. False Advertising. No advertisement will be permitted that contains false or grossly misleading information.
 - E. Alcohol, Tobacco, and Firearms. No advertisement will be permitted that promotes the sale of alcoholic beverages, tobacco or tobacco products, or firearms.
 - F. Existing Laws. All advertisements must conform to applicable federal, state, and local laws.
3. The City may make demand upon the Chief Executive Officer of MTS for the removal of any advertisement, commercial or noncommercial, that does not conform to this policy. Such demand shall be in writing and shall state reasonable grounds for the demand. MTS shall consider and act upon the demand in accordance with this policy.

SGreen/SChamp/JGarde
POLICY.21.REV GENERATE DISPLAY
AD CONCESSIONS & MERCHANDISE
7/13/06



RESOLUTION NUMBER R- 304026

DATE OF FINAL PASSAGE AUG 08 2008

A RESOLUTION AUTHORIZING AN MOU WITH METROPOLITAN TRANSIT SYSTEM FOR TRANSIT SHELTERS AND BENCHES.

BE IT RESOLVED, by the Council of the City of San Diego that the Mayor is authorized to enter into a Memorandum of Understanding with the San Diego Metropolitan Transit System (MTS) for transit shelters and bus benches in the public right-of-way effective August 1, 2008 through June 30, 2013.

BE IT FURTHER RESOLVED, that existing Memorandum of Understanding approved by Resolution R-277415 in 1991, and all subsequent amendments are terminated.

BE IT FURTHER RESOLVED, that this activity is exempt from California Environmental Quality Act [CEQA] pursuant to State CEQA Guidelines Section 15060(c)(3).

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By 
Ryan Kohut
Deputy City Attorney

RK:sc
07/21/08
Aud.Cert.: N/A
Or.Dept:E&CP
R-2009-106

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of JUL 29 2008.

ELIZABETH S. MALAND
City Clerk

By *Sara Richards*
Deputy City Clerk

Approved: 8.6.08
(date)

JSL
JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor

Passed by the Council of The City of San Diego on July 29, 2008, by the following vote:

YEAS: PETERS, FAULCONER, ATKINS, YOUNG, MADAFFER, & HUESO.

NAYS: MAIENSCHIN & FRYE.

NOT PRESENT: NONE.

RECUSED: NONE.

AUTHENTICATED BY:

JERRY SANDERS

Mayor of The City of San Diego, California

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California

(Seal)

By: GIL SANCHEZ, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of
RESOLUTION NO. R-304026, approved by the Mayor of The City of San Diego,
California on August 6, 2008.

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California

(SEAL)

By:  Deputy

RECEIVED
CITY CLERK
OFFICE
AUG 12 2008