

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: 3/24/2014
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SUBJECT: Second Amendment to MOU with MTS for Bus Shelter and Bus Bench Advertising

PRIMARY CONTACT (NAME, PHONE): Stephen Celniker,619-533-3611, MS 609	SECONDARY CONTACT (NAME, PHONE): Linda Marabian, 619-533-3082, MS 609
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COMPLETE FOR ACCOUNTING PURPOSES

FUND					
FUNCTIONAL AREA					
COST CENTER					
GENERAL LEDGER ACCT					
WBS OR INTERNAL ORDER					
CAPITAL PROJECT No.					
AMOUNT	0.00	0.00	0.00	0.00	0.00

FUND					
FUNCTIONAL AREA					
COST CENTER					
GENERAL LEDGER ACCT					
WBS OR INTERNAL ORDER					
CAPITAL PROJECT No.					
AMOUNT	0.00	0.00	0.00	0.00	0.00

COST SUMMARY (IF APPLICABLE):

ROUTING AND APPROVALS

CONTRIBUTORS/REVIEWERS:	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
Equal Opportunity Contracting	ORIG DEPT.	McFadden, Kris	04/21/2014
Liaison Office	CFO		
Environmental Analysis	DEPUTY CHIEF		
Financial Management	COO		
Comptroller	CITY ATTORNEY		
	COUNCIL PRESIDENTS OFFICE		

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

Authorizing the Mayor to enter into a Second Amendment to a Memorandum of Understanding with the San Diego Metropolitan Transit System for the purpose of extending until December 31, 2024 the agreement for advertising on bus shelters and bus benches at bus stops on City streets.

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 the executed resolutions to Stephen Celniker at MS 609.

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

DATE: 3/24/2014

ORIGINATING DEPARTMENT: Transportation&Storm Water Dept

SUBJECT: Second Amendment to MOU with MTS for Bus Shelter and Bus Bench Advertising

COUNCIL DISTRICT(S): Citywide

CONTACT/PHONE NUMBER: Stephen Celniker/619-533-3611, MS 609

DESCRIPTIVE SUMMARY OF ITEM:

This action authorizes an extension until December 31, 2024 of a Memorandum of Understanding (MOU) with the San Diego Metropolitan Transit System (MTS) for advertising on bus shelters and bus benches at bus stops on City streets. The existing MOU was approved by the City Council on July 29, 2008. The First Amendment, approved on June 27, 2013, extended the MOU until June 30, 2014.

STAFF RECOMMENDATION:

Adopt the resolution

EXECUTIVE SUMMARY OF ITEM BACKGROUND:

MTS places and maintains shelters and benches for the benefit of passengers waiting at bus stops on public streets. Most of the shelters and benches have advertising panels which provide revenue. MTS's primary use of the revenue is for procuring and maintaining the shelters and benches. When there is surplus revenue, MTS uses it to fund transit programs and shares a portion with the City to be used only for capital improvements in the vicinity of bus stops.

Per an MOU adopted in 2008, the City's annual share of revenue from bus shelters has been fixed at \$69,600, which is based on 10% of MTS's revenue derived from shelters within the City limits. For advertising on bus benches, the arrangement is that the City's annual share is 50% of the net revenue, which has ranged from \$25,104 to \$52,738 based on market conditions.

The five-year MOU adopted in 2008 expired on June 30, 2013, and by a First Amendment adopted last year was extended for a sixth year until June 30, 2014. The terms of the First Amendment were the same as the 2008 MOU. The sixth and final payment to the City under the current arrangement will be on August 15, 2014 (FY 2015 revenue).

The proposed Second Amendment makes changes to the arrangement involving bus shelters. It includes a new advertising contractor, new shelters, and changes to the revenue sharing arrangement with the City.

MTS will change its shelter contractor from CBS Outdoor to Clear Channel and will be guaranteed \$950,000 of revenue from shelter advertising per year. Because the existing shelters are about 25 years old and past their service life, MTS proposes to purchase 500 new shelters to be placed throughout the MTS area. MTS proposes to use the entirety of their revenue from shelter advertising for the next five to seven years to cover the cost of procuring the new shelters. Thus, the City would not see revenue from shelters for five to seven fiscal years beginning with FY 2016.

Upon completion of the shelter procurement, MTS will again share revenue with the City under the previous formula (10% of annual revenue derived within the City limits). MTS's current forecasts based on estimated costs are that they will complete paying for the procurement in the middle of the sixth year, and provide the City with a partial payment of \$40,696 in for FY 2021. Under that forecast, full payments of an estimated \$84,783 would be provided for years seven through ten (FY 2022 through FY 2025). These are forecasts based on expected purchase and installation costs of 500 shelters. Costs may vary and per Agreement MTS may need up to seven years to finish paying for the shelter procurement and not begin revenue sharing until year eight (FY 2023).

Regarding benches, MTS's contract with Coast United will expire on January 31, 2015. The existing terms of revenue sharing with the City will remain in effect until then. Terms of City-MTS revenue sharing are subject to negotiation and a subsequent MOU amendment.

FISCAL CONSIDERATIONS:

The City's revenue from advertising on bus shelters has been \$69,600 for fiscal years 2010 through 2014, with one more payment due on August 15, 2014 for FY 2015. The City's share will go to zero for at least five years and up to seven years starting with FY 2016. The beginning of revenue sharing will depend on MTS shelter procurement costs. Their current forecasts indicate a partial payment of \$40,696 for FY 2021, and then \$84,783 annually for FY 2022-2025. However, revenue sharing may not begin until FY 2023. Regarding advertising on bus benches, the City's revenue share which has ranged from \$25,104 to \$52,738, will be unchanged by this action but subject to a future amendment.

EQUAL OPPORTUNITY CONTRACTING INFORMATION (IF APPLICABLE):

This agreement is not subject to the City's Equal Opportunity Contracting (San Diego Ordinance No. 18173, Section 22.2701 through 22.2708).

This agreement is subject to 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 adopted by City Council Resolution R-303026 on July 26, 2008. The First Amendment was adopted by City Council Resolution R-308296 on June 27, 2013.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

None.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

Transit passengers will benefit from new shelters and benches placed at bus stops as a result of this action.

McFadden, Kris

Originating Department

Deputy Chief/Chief Operating Officer



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: 12/10/09

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:

It is the policy of the Metropolitan Transit System (MTS) that advertising spaces on MTS property, which includes buses, light rail vehicles, and related transportation facilities, shall constitute a nonpublic forum.

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 The subject matter for all advertising materials displayed on MTS property shall be limited to speech which proposes a commercial transaction as its primary purpose.



- a. Acceptable advertising must promote for sale, lease, or other financial benefit a product, service, event, or other property interest in primarily a commercial manner for primarily a commercial purpose.
- 21.1.2 Safety, aesthetic considerations, rider convenience, and information needs will take precedence over revenue generation.
- 21.1.3 Quantity, quality, and placement of all advertising will be controlled by and subject to the specific approval of MTS.
- 21.1.4 MTS reserves the right to reject any advertisement that does not meet the Board's standards as set forth 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.
- 21.1.5 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.
- 21.1.6 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. directly or indirectly refers to religion;
 - d. is of a political or electoral nature, as determined by MTS;
 - e. 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;
 - f. portrays acts of violence, murder, sedition, terrorism, vandalism, or other acts of violence against persons, animals, or institutions;
or
 - g. 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.

- h. depicts, suggests, or refers to alcohol, tobacco, or firearms, which includes promoting or offering in commerce the sale or use of alcohol, tobacco or firearms, or firearms-related products.
 - i. might be interpreted as condoning any type of discrimination; or
 - j. might be interpreted as condoning or soliciting any unlawful act or conduct; or
 - k. contains profane language and/or appearance or suggestion of profane language.
- 21.1.7 No advertisement will be permitted that is in conflict with any applicable federal, state, or local law, statute, or ordinance.
- 21.1.8 No advertisement will be permitted that contains false or grossly misleading information.
- 21.1.9 MTS reserves the right to allow exceptions to the policy if MTS determines that application of the policy as written would likely be unconstitutional in any particular situation.
- 21.1.10 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 noncompliant with this policy will be removed. No refund shall be made for the time such objectionable material was on display.
- 21.1.11 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.
- 21.1.12 Advertising industry standard sizes will be used for all advertising treatments.
- 21.1.13 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 For light rail vehicles (LRVs) and 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.
- 21.2.2 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. The subject matter and proposed advertisement regarding such event must comply with the provisions set forth under section 21.1 of this policy.

21.2.3 At the request of a recognized public entity and with the approval of the 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:

- The subject matter and proposed advertisement of the noticed event must comply with the provisions set forth under section 21.1 of this policy.
- 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.

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

21.2.5 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 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 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 Chief Executive Officer, MTS 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 Contracts for any concession format or related development will be awarded in accordance with existing MTS policies.

21.5.3 During hours of business, concessionaires will provide the public with transit information materials as directed and supplied by MTS or its designated representative.

21.5.4 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.

21.5.5 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.

21.5.6 Concessionaire contracts will include remittance to MTS on a monthly basis and shall include a flat rate, plus percentage of gross revenue, as approved by the MTS Board.

21.5.7 Any and all concession on-site signing and displays will be in accordance with existing MTS policies and subject to approval of the 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 All revenue received from any form of advertising shall be accrued according to MTS policy and allocated during the annual budget process.

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
DEC10-09.12.AttA.POLICY 21.ABOEKAMP.doc
12/10/09

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.
Policy revised on 12/10/09.

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



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

Agenda Item No. 30

MEETING OF THE METROPOLITAN TRANSIT SYSTEM BOARD OF DIRECTORS

October 24, 2013

SUBJECT:

BUS SHELTER ADVERTISING - CONTRACT AWARD (ROB SCHUPP)

RECOMMENDATION:

That the Board of Directors authorize the Chief Executive Officer (CEO) to

1. execute MTS Doc. No. B0596.0-13 (in substantially the same format as Attachment A) with Clear Channel Outdoor, Inc., as a revenue contract for bus shelter advertising services for a five-year base period with 5 one-year option terms (for a total of 10 years); and
2. exercise each option year at the CEO's discretion.

Budget Impact

This would be a revenue-generating contract. MTS's revenue would be based upon an annual minimum guarantee and annual percentage share between Clear Channel Outdoor and MTS. Based on the revenue proposal, this contract would generate a minimum of \$950,000 per year over the term of the contract. This would be gross revenue and would not include the cost of procuring shelters, the carrying cost of capital for shelters, or the administration of the shelter program.

DISCUSSION:

This contract for bus shelter installation, maintenance and advertising is the first step in MTS's two-step plan to replace the 444 MTS-maintained shelters (322 advertising and 122 non-advertising) throughout the MTS transit system. Under this two-step process, MTS will purchase up to 500 new shelters, replacing the existing 20+ year old shelters and also potentially installing new shelters at stops where they are needed in the

1255 Imperial Avenue, Suite 1000, San Diego, CA 92101-7490 • (619) 231-1466 • www.sdmts.com

Metropolitan Transit System (MTS) is a California public agency comprised of San Diego Transit Corp., San Diego Trolley, Inc., San Diego and Arizona Eastern Railway Company (nonprofit public benefit corporations), and San Diego Vintage Trolley, Inc., a 501(c)(3) nonprofit corporation, in cooperation with Chula Vista Transit. MTS is the taxicab administrator for seven cities. MTS member agencies include the cities of Chula Vista, Coronado, El Cajon, Imperial Beach, La Mesa, Lamon Grove, National City, Poway, San Diego, Santee, and the County of San Diego.



system. The new shelters are projected to cost approximately \$7 million. The procurement process for new shelters will be complete in 2014. The revenue from the contract before the Board today will help fund this shelter replacement project.

This procurement differs from the current contract in which the shelter maintenance and advertising service provider purchased the shelters, owned the shelters, maintained the shelters and sold advertising. For the first 20 years of the existing contract, MTS was compensated only for administrative costs. Over the five-year extension that began in 2008, MTS was paid \$800,000 per year.

MTS anticipates that using its capital to purchase the shelters will earn more revenue over the life of the shelters.

RFP Process

MTS Policy No. 52 governing procurement of services requires a formal competitive-bidding process for procurements exceeding \$100,000. In the event that the circumstances dictate other than the competitive bid process, a written statement by staff is required setting forth the reasons for not pursuing all or part of any of the processes.

A Request for Proposals (RFP) was issued on June 2, 2013, for bus shelter advertising services. The services include advertising, installation, maintenance, and repair of MTS bus shelters.

On August 16, 2013, proposals were received from CBS Outdoor and Clear Channel Outdoor in response to the RFP. A selection committee consisting of representatives from various MTS departments met and rated the proposals based upon the following criteria:

- | | | |
|----|--|-----|
| 1. | Qualifications and Experience of the Firm and Management Team | 25% |
| 2. | Work Plan: Purchase, Installation, Advertising and Maintenance | 25% |
| 3. | Cost and Revenue Payment/Financial Benefit | 50% |

Based upon on the evaluation panel's analysis of the aforementioned criteria, MTS staff determined that Clear Channel Outdoor Inc.'s proposal represented the best overall value to MTS while meeting the requirements set forth in the RFP.



Paul C. Jablonski
Chief Executive Officer

Key Staff Contact: Sharon Cooney, 619.557.4513, Sharon.Cooney@sdmts.com

Attachment: A. Draft MTS Doc. No. B0596.0-13 (without exhibits)

DRAFT

STANDARD SERVICES AGREEMENT

B0596.0-13
CONTRACT NUMBER

FILE NUMBER(S)

THIS AGREEMENT is entered into this _____ day of _____ 2013, in the State of California by and between San Diego Metropolitan Transit System ("MTS"), a California public agency, and the following, hereinafter referred to as "Contractor":

Name: Clear Channel Outdoor, LLC. Address: 19230 Harborgate Way

Form of Business: Corporation Torrance CA 90501
(Corporation, partnership, sole proprietor, etc.)

Telephone: 310-755-7200

Authorized person to sign contracts: John Duong VP of Real Estate & Public Affairs
Name Title

The attached Standard Conditions are part of this agreement. The Contractor agrees to furnish to MTS services, as follows:

Provide Bus Shelter Advertising, including maintenance, repair and installation as set forth in the MTS Scope of Work (attached as Exhibit A), Clear Channel Outdoor, LLC., Best and Final Offer (BAFO) dated 10/10/13 (attached as Exhibit B), Revenue Summary (attached as Exhibit C) in accordance with the Standard Services Agreement, including Standard Conditions Services (attached as Exhibit D).

The contract term is for up to a 10 year period (5-year base with five 1-year options exercisable at MTS' sole discretion). Base period shall be effective January 1, 2014 through December 31, 2018 and Option Years 1 through 5 shall be effective January 1, 2019 through December 31, 2023. Monthly revenue payment shall be paid directly to MTS, which is due on or before the 30th day following each calendar month.

The total revenue for this contract is estimated at \$4,750,000 for the base period and \$4,750,000 for the option years for a total of \$9,500,000.

SAN DIEGO METROPOLITAN TRANSIT SYSTEM		CONTRACTOR AUTHORIZATION	
By: _____ Chief Executive Officer		Firm: _____	
Approved as to form:		By: _____ Signature	
By: _____ Office of General Counsel		Title: _____	
AMOUNT ENCUMBERED	BUDGET ITEM	FISCAL YEAR	
\$4,750,000 – Base Period			
\$4,750,000 – Option Years 1-5			
\$9,500,000 – Total Est. Revenue	911-42310	FY14-23	

By: _____ Chief Financial Officer Date _____

(____ total pages, each bearing contract number)

Failure to complete appropriate sections will cause a delay in contract processing.
 PLEASE USE INK IF FILLING IN BY HAND (BLACK OR BLUE)

BOS 96.0-13
Clear Channel

General Information

File No. _____

Firm/Agency/Contractor Name & Address:

Clear Channel Outdoor, LLC.
 19320 Harbortate Way
 Torrance, CA 90501
 John Duong, VP of Real Estate/Pub. Affairs
 310-755-7263

Document/Contract #: B0596.0-13 W.O.# _____

This Contract Amendment Amendment Amount: \$ _____

Use Tax (MTS pays directly): \$ _____

Total Amendment Cost: \$ _____

Total Contract (Incl. all amendments): Contract Amount (Estimated Revenue): \$4,750,000 (Base period)

Total Use Tax (MTS pays directly): \$ _____

Total Contract Cost(Estimated Revenue): \$9,500,000

Total Board Approval Amount \$9,500,000

Board Approval Date: 10/24/13 Agenda Item No: 30

- Corporation Partnership
- Public Agency Sole Proprietor
- Other Local Vendor

Vendor No.: _____

FAS Ellipse

Revenue -or- Expenditure

Type of Funds to be Used (Check all that apply): Local State Federal

Document/Contract Purpose:

Budget Line Item(s)/Project/WBS No.

Amount

Revenue contract for Bus Shelter Advertising Contract# B0596.0-13 for up to 10-years (5 base years with 5 one-year options). 911-42310 \$4,750,000 (base period estimated revenue)

Base Contract Term: 1 / 1 / 14 to 12 / 31 / 18

Option Years: OY1: 1/1/19 OY2: 1/1/20 OY3: 1/1/21 OY4: 1/1/22 OY5: 1/1/22

CONTRACT TYPE: Construction (C) Services (S) Goods/Commod. (P) Specialty (L) Sole Source/Other (N)

DBE / SBE/ MBE/ WBE / DVBE Firm: YES NO If "YES", attach "MTS Contractor and Subcontractor Designation Form" to Log Sheet (base contract only)

Insurance Monitored by: MTS Insur. Consult N/A Less than 100k 100k or more

Procurement justification attached: Project Manager: Rob Schupp Contracting Officer: Andrew Conriquez

Routing Review/Approval

Document Mail-out

- 1. Proj. Mgr *(Signature)* Date: 10/18/13
- 2. Director *(Signature)* Date: 10/21/13
- 3. Proc. Mgr. *(Signature)* Date: 10/24/13
- 4. Typist *(Signature)* Date: 10/25/13
- 5. Finance *(Signature)* Date: 10/25/13
- 6. Counsel *(Signature)* Date: 10/29/13
- 7. CEO *(Signature)* Date: 10/29/13

Date Mailed: 10/30/13 Mailed By: *(Signature)*
 Special Handling: overnight Database Entry:

Doc Name in Global: B0596.0-13 CLEARCHANNEL.BUS SHELTER ADV

Executed Document Date: 12.9.13

Completion Date: 12/31/18 Distributions: Project Mgr Finance Read Chron Other cc: _____

Comments:

ins overnighted P.1 11/14/13 Sent Fed Ex to AZ 12.3.13
 non overnighted full 11/22/13



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

STANDARD SERVICES AGREEMENT

B0596.0-13
 CONTRACT NUMBER
OPS 850.3
 FILE NUMBER(S)

THIS AGREEMENT is entered into this _____ day of _____ 2013, in the State of California by and between San Diego Metropolitan Transit System ("MTS"), a California public agency, and the following, hereinafter referred to as "Contractor":

Name: Clear Channel Outdoor, LLC, Inc. Address: 19230 Harborgate Way
 Form of Business: Corporation Torrance CA 90501
 (Corporation, Partnership, Sole Proprietor, etc.)
 Telephone: (310) 755-7200
 Authorized person to sign contracts: Bryan Parker EVP
 Name Title

The attached Standard Conditions are part of this agreement. The Contractor agrees to furnish to MTS services, as follows:

Provide Bus Shelter Advertising, including bus shelter maintenance, repair and installation as set forth in the MTS Scope of Work (attached as Exhibit A), Clear Channel Outdoor, LLC., Best and Final Offer (BAFO) dated 10/10/13 and Associated Clarification Letter dated 10/22/13 (attached as Exhibit B), Revenue Summary (attached as Exhibit C) in accordance with the Standard Services Agreement, including Standard Conditions Services (attached as Exhibit D).

MTS shall purchase new bus shelters as set forth in the MTS Scope of Work (Section 1.5).

The contract term is for up to a 10 year period (5-year base with five 1-year options exercisable at MTS' sole discretion). Base period shall be effective January 1, 2014 through December 31, 2018 and Option Years 1 through 5 shall be effective January 1, 2019 through December 31, 2023. Monthly revenue payment shall be paid directly to MTS, which is due on or before the 30th day following each calendar month.

The total revenue for this contract is estimated at \$4,750,000 for the base period and \$4,750,000 for the option years for a total of \$9,500,000.

SAN DIEGO METROPOLITAN TRANSIT SYSTEM	CONTRACTOR AUTHORIZATION
By: <u>[Signature]</u> Chief Executive Officer	Firm: <u>Clear Channel Outdoor Inc.</u>
Approved as to form:	By: <u>[Signature]</u>
By: <u>[Signature]</u> Office of General Counsel	Title: <u>EVP</u>

AMOUNT ENCUMBERED	BUDGET ITEM	FISCAL YEAR
\$4,750,000 – Base Period		
\$4,750,000 – Option Years 1-5		
\$9,500,000 – Total Est. Revenue	911-42310	2014-2023
By: <u>[Signature]</u> Chief Financial Officer		<u>12/2/2013</u> Date

(38 total pages, each bearing contract number)

LMARQUIS-SA
 SA-B0596.0-13.CLRCHNLOTDR.ACONRIQUEZ
 10/25/13



EXHIBIT A

B.1 SCOPE OF WORK/TECHNICAL SPECIFICATION FOR SERVICES

NOTE: Technical deviations have been accepted that affect Exhibit A.
See Sections 2, 9.1, and 10.1.1

B.1 GENERAL OVERVIEW

The San Diego Metropolitan Transit System (MTS), hereinafter referred to as "MTS," is soliciting proposals from qualified parties for the operation, maintenance and sale of advertising space of a coordinated street furniture program located in the public right of way within selected cities within the MTS service territory. Street furniture includes bus shelters and trash receptacles.

MTS has approximately 444 bus shelters within its service territory. Of those, 322 include advertising panels with two visible faces. These are Tolar bus shelters. MTS will assume ownership of these shelters beginning January 1, 2014. The maintenance and repair of these shelters will become the responsibility of the successful proposer, which will also assume the placement of advertising on all inventory.

Additionally, MTS is considering the replacement of all shelters and may expand its shelter inventory to 500 units over the length of the contract. MTS may either require the successful bidder to purchase new shelter inventory, or it may utilize its own capital to purchase the shelters over three to five years.

As part of the response to the RFP, MTS requires proposers to include the following:

- The cost Annual maintenance and repair costs
- Per unit removal and installation costs associated with the replacement of old shelters with new, to be completed over a maximum time period of five years
- The costs associated with purchasing shelters amortized over a 15-year term
- Advertising revenue to MTS

Proposers must provide Price and Cost Proposals on the above requirements.

The coordinated street furniture program for MTS shall improve the quality of shelters for MTS customers, maintain the shelters to the highest of standards, improve and maintain safe pedestrian through ways, comply with all Americans with Disability Act requirements, and provide MTS a significant revenue source through the placement of advertising.

This request for proposal seeks to engage a business partner to install, maintain, and repair MTS bus shelters from accidental, intentional, and environmental damage including providing MTS with a stable revenue source from the sale of ad spaces. An additional requirement may include the purchase of new shelters based on the description provided Section 1.5.1 of this document.

B.2 MTS BACKGROUND

MTS operates more than 90 fixed routes in the greater San Diego area. There are about 275,000 trips taken each day aboard MTS buses and trolleys. Approximately 60 percent of these trips are on buses. The vast majority of MTS services are within the urban core of San Diego County.

MTS currently has, or is in negotiations for, Memorandums of Understanding to locate shelters in the City of San Diego, City of National City and shelters in the City of La Mesa, City of Santee, City of Lemon Grove and City of Imperial Beach. These agreements allow the placement of transit amenities in the public rights-of-way in their respective jurisdictions. **Attachment C** shows the number of shelters with and without advertising in each city. Additionally, the number of shelters with and without advertising has been broken out for the communities within the City of San Diego.

MTS replace 500 bus shelters and has provided a description of the shelter types in the Scope of Work under Section 1.5.1. MTS will evaluate whether to purchase the shelters directly or include the purchase as an option under this contract.

The Memorandums of Understanding have no percentage requirements for non-advertising shelters; only that advertising panels cannot be located in residential neighborhoods or adjacent to parks.

Currently, bus shelter services are provided by CBS Outdoor. CBS Outdoor has been a partner with MTS in this effort since 1988. Within the MTS service territory, CBS Outdoor maintains 322 advertising shelters and 122 non-advertising shelters. CBS Outdoor maintains all amenities, removes and replaces amenities as directed by MTS, and provide revenue to MTS through the sale of advertising.

The 90 fixed bus routes operate on major thoroughfares in the San Diego region, providing advertisers with maximum visibility and high-volume impressions. Advertising programs for shelters have proven to be cost effective for both national and local advertisers. For a complete listing of the region's traffic counts, please refer to the following site:

http://www.sandag.org/resources/demographics_and_other_data/transportation/advtv/index.asp

Areas served by MTS include the beach communities of La Jolla, Pacific Beach, Mission Beach, Ocean Beach, Coronado and Imperial Beach. It also has a major presence Downtown San Diego, UC San Diego, San Diego State University, University of San Diego, all community colleges, the International border with Mexico, Balboa Park, Mission Bay, Mission Valley and more. A Regional Transit Map is included as **Attachment B**.

MTS also serves major venues such as Petco Park (home of the San Diego Padres) and operates transit facilities at all major malls, including Westfield University Town Center, Fashion Valley, Westfield Mission Valley, Westfield Parkway Plaza, Westfield Horton Plaza and Westfield Plaza Bonita. MTS Bus also connects to MTS Trolley, a 53-mile light-rail system serving the San Diego region, as well as commuter rail services.

More than 3 million people live in the region and San Diego has a diverse population. Advertising on MTS assets reaches Hispanic, various Asian and African-American communities.

The region of San Diego has a small number of billboards, making its out-of-home advertising opportunities on shelters an extremely valuable commodity.

B.3 GENERAL OBJECTIVES OF MTS TRANSIT BUS STOP AMENITIES AND ADVERTISING CONTRACT

1. Install and repair all MTS bus shelters.
 - a. MTS will own all existing shelters in this contract.
 - b. During this contract, MTS will be replacing its older bus shelters with new shelters.
 - c. Successful proposer shall maintain shelters and sell advertising and pay compensation to MTS for bus shelter advertising (a list of shelters and their locations is included in **Attachment C**).
 - d. Existing shelters shall be repaired and/or replaced in a timely fashion according to a schedule specified by the responder and agreed upon by MTS. An evaluation criterion will be the proposer's replacement schedule.
 - e. Installation of new shelters shall be provided by the proposer at an annual rate of up to 100 per year.
2. Maintain all shelter furniture to the highest standards. Maintenance schedules will be an evaluation criterion.

3. Sell advertising on shelters to maximize revenue to MTS. Responders' revenue-sharing proposal will be an evaluation criterion. Advertising shall be in the form of traditional 4x6-foot posters and electronic advertising in select locations.
4. Enhance advertising opportunities, including electronic displays that also allow MTS to communicate passenger updates and general MTS marketing messages as well as to maximize advertising revenue.
5. Provide to MTS space within the bus shelters to post Customer Information panels. Proposers should consider providing to MTS a service to place updated information as many as three times a year (January, June, and September).
6. Provide to MTS unsold space for MTS advertising.
7. It is anticipated that the contractor will establish a local office to handle all aspects of the shelter contract, including maintenance and advertising sales.

B.4 SCOPE OF WORK: BUS SHELTERS

1. MAINTENANCE SERVICE REQUIREMENTS

During the engagement period, MTS expects the Contractor will provide the following services using its own assets and resources. The MTS will provide neither the equipment nor the supplies to contractor. Supplies provided should include applicable sales tax.

1.1 Shelter Cleaning and Replacement

Transit shelters shall be maintained in a "like new" condition throughout the life of this Agreement and such maintenance service shall include, but not be limited to, refurbishing, recondition, and if necessary, replacing worn or damaged transit shelters.

1.1.1 Shelter Cleaning will be performed a minimum of twice a week at all locations. A specified number of stops, up to 30% of all locations, will require cleaning 3-4 times a week.

1.1.2 Common Area Platform Sweeping: all common area platforms, to include all cement floor surface so that after sweeping the platforms that area is free of spills, trash, visible litter, dust and debris. No dirt shall be left in corners, or behind walls (where applicable).

1.1.3 Disinfectants and Chemical solutions: disinfectants used to clean surface areas and to remove stickers, gum and graffiti should be environmentally-friendly and should not damage surface area.

1.1.4 Trash Removal: All trash containers shall be emptied and wiped down with disinfectant. Plastic trash liners shall be replaced with proper fitting liners. The contractor is responsible for trash removal for each service location and its transport to an authorized disposal site.

1.1.5 High Power Pressure Wash: On a monthly basis, or more often as needed, the Contractor shall be responsible for removing caked mud, stains, dirt, etc. from all bus stop grounds, structure, and MTS site property by power washing each station, including but not limited to platform, walls, curbs, structure, seats, trash bins, wind screen panels, canopy panels, and display sign kiosk. NOTE: Plexiglas Acrylic advertising kiosk viewing panels are not to be power washed.

- 1.1.5.1 Water pressure and temperature for all power washing shall not exceed 1000 psi and 135 degrees Fahrenheit.
- 1.1.5.2 Contractor will be responsible for operating in accordance with the San Diego Municipal Code 43.03 Wash Water Regulations for mobile businesses, see the following link; <http://www.sandiego.gov/thinkblue/pdf/mobilebusinessbrochure.pdf>.
- 1.1.6 Graffiti Removal: The contractor shall remove all graffiti, no later than 24 hours after vandalism occurred, from all surfaces located within the bus stop area. These surfaces include but are not limited to: bus shelters, canopies, advertising kiosk, trash container, glass windscreens, ceiling panels, seating, pedestrian rails, walls, frame, signs, and light poles. A visible inspection of these surfaces shall be part of the contractor's daily duties.
- 1.1.7 Daily log: the contractor shall maintain a daily log (electronically and hand written) for each bus stop certifying scheduled services were performed. The daily log shall include a check list of scheduled duties and the date and time services were performed. In addition, the daily log shall include space for reporting site discrepancies that were found during site inspection. Discrepancies reported shall include, at a minimum, vandalism, graffiti, that was removed and the location it was found. Burnt out light fixtures, broken and unserviceable equipment shall be reported to MTS upon discovery and should be included in the daily log. The daily log shall be provided on a monthly basis along with the monthly compensation.
- 1.1.8 Shelter Replacement: Transit shelters shall be repaired or replaced within forty-eight (48) hours of notification to MTS and Contractor of any damage, vandalism or graffiti found on or around any transit shelter. If the damage or vandalism is of an emergency, offensive or hazardous nature, or if the transit shelter is destroyed, the contractor will repair, replace or remove the same within twenty-four (24) hours. All bus shelter replacements, repairs, and spare parts shall be provided at Contractors expense.
- 1.2 Electrical Maintenance
 - 1.2.1 Replacement of bulbs, led lighting, or led light-ropes; verification of levels of lighting; and if solar powered, the maintenance of panels and batteries; the maintenance and adjustment of light timers or photoelectric sensors as needed to maintain a fully lighted passenger waiting area.
 - 1.2.2 On an annual basis the contractor will be responsible for inspecting the integrity/condition of electrical wiring, operation of lamps, ballast, and conduit and pull boxes. In addition, Contractor will confirm ground resistance test at 25 OHMS or less at each station on all station structures (including, but not limited to, shelters, free standing ad panels, electrified bus stop poles and other powered equipment or amenity) and report their results to MTS. MTS will provide a sample report. Contractor must have the ability to turn off all electrically powered station amenities if resistance test results exceed maximum permissible limits.
 - 1.2.3 Ensure there are no exposed electrical wires. Secure or repair any that may be found.
 - 1.2.4 Check bonding of circuit breakers box to shelter frame and ad shelter frame.

- 1.2.5 Check bond supply neutral circuit breaker box or ballasts.
- 1.2.6 Manually test operation of circuit breaker/ disconnect switch and inspect for integrity / condition.
- 1.2.7 Document all the results of all electrical tests and report the same to MTS. **Attachment D** (MTS will provide a sample acceptable documentation and reporting format to Contractor as part of the Notice to Proceed.)

1.3 Paint and Hardware

- 1.3.1 The testing for loose or missing bolts and mountings and their repair or reinstallation; remount loose amenities; replace if missing.
- 1.3.2 Replace ad and public information display Plexiglas as a result of natural wear and tear, vandalism, etchings, graffiti or other damage regardless of its origin.
- 1.3.3 MTS will conduct ongoing field checks for these facilities by way of its Bus Operators, Supervisors and Contract Management Staff. Reports on all findings that require specific attention per the details of this contract will be provided to the contractor through a work order to be submitted via email or fax.

1.4 Emergency Services

- 1.4.1 Contractor shall provide a telephone number(s) which will be answered 24 hours per day in the event MTS representative(s) must contact the Contractor to request emergency services.
- 1.4.2 Proposer will respond to all emergency removal requests within three (3) hours of the request.
- 1.4.3 Emergency removal, containment and disposal of biohazard debris (as applicable). MTS will not be held liable for any improperly handled or disposed biohazard materials.
- 1.4.5 Proposer will respond and complete all related tasks within three (3) hours of notification by MTS staff unless approved otherwise in writing by MTS. The contractor will also take the necessary steps to sanitize contaminated sites.

1.5 Installation Service Requirements

MTS plans to purchase up to 500 new bus shelters in the two years of the Shelter Advertising and Maintenance contract term. Following is a general description of the bus shelters that MTS plans to purchase. This description can be used to help determine installation and maintenance costs as required in this document.

- 1.5.1 Shelters shall be of varying lengths and constructed of extruded aluminum material which shall be shapes extruded in a manner to minimize visible welds but protect structural integrity of the shelter. All aluminum shall be 6063 T-5 or greater unless noted and fabricated by AWS certified welders, with super durable backed powder coat finish process which shall include at minimum product sandblast, washing, pre-treat and top coat in a color approved by MTS. Shelters shall consist of four bolt-on posts with adjustable leveling shoes allowing for a grade variation of up to 12". Expansion anchors shall be used to make the attachment. No piers or poured in place anchors are acceptable. The shelters shall include perforated metal backs and sides. The MTS logo will be included in metal

perforations on back panels. Roofing will be opaque roofing panes of either flat-angled or barrel design. There will be an attached two-sided media display panel at the industry standard size of approximately 4'W and 6' H. The advertising panel will include two side-swing and gasketed doors with a continuous piano hinge and tamper resistant fasteners to secure the doors. The illumination of the media display kiosk and the shelter roof shall be through the use of LED fixtures (hard wire and solar options accepted as long as the solar option allows for a minimum of 6 hours illumination in the media display kiosk after dusk and dusk to dawn roof illumination). The shelter will include a minimum 2 seat bench with no back and anti-vagrant bars and be installed in a manner to ensure protection of the required ADA wheelchair space, a 22"W and 33"H customer information insert panel with an acrylic face and a permanent (attached to sidewalk) trash receptacle. Examples of the designs that incorporate the above description include: Tolar Signature with Radius Roof, Tolar Sunset Signature with Radius Roof, the Tolar Euro with integrated gutter, DayTech Vangarde, DayTech Vista or any other comparable design by qualified transit shelter manufacturers.

1.6 Delivery and Storage

1.6.1 Successful contractor shall have a facility in which to accept and store new shelters upon delivery.

1.6.2 Successful contractor shall inspect new shelter components to ensure that manufacturing standards are met.

1.7 Removal of Existing Shelters and Installation of New Shelters, Relocation and New Installations

Currently, MTS has 444 shelters in its inventory. With few exceptions, all of these existing shelters will be removed and replaced with no change in location. Existing shelters are of similar design to the new shelters in that they are four-post bolt on shelters with or without advertising panels.

MTS may also indicate where existing shelters shall be removed but replaced at an alternative close by location. The number of these locations is anticipated to be no more than 25 locations.

MTS may also indicate new locations for the installation of new shelters unrelated to locations of existing shelters. MTS anticipates the need for up to 50 new locations over the term of the contract.

In all cases, successful bidders shall be responsible for the removal and disposal of the existing shelters and, where necessary, repair sidewalk conditions.

Upon award of contract, MTS will provide a priority list of those shelters to removed and replaced, alternative locations for new shelters close to existing locations, and new locations unrelated.

1.8 Permits

1.8.1 The successful proposer shall be solely responsible for identifying the need and for obtaining permits necessary for the replacement of existing shelters with new shelters or the installation of shelters at new locations. Successful contract shall be responsible for complying with all building, public works and electrical codes.

1.9 Location Drawings

1.9.1 For all shelter relocations and new shelter locations, the successful contractor shall provide to MTS location drawings containing a representation of the proposed shelter site covering the area from the property line to the curb and provide all necessary dimensions, including shelter length and width, setbacks from curb, and distance from behind the shelter to the edge of sidewalk. The drawings should also identify adjacent buildings.

1.10 Installation Requirements

1.10.1 Successful contractor shall be required to remove and install new shelters within 30 days of receipt of shelters and/or all necessary permits. MTS expects new shelters to be manufactured and delivered at a rate of 10 shelters per week, although delivery of all 500 shelters may be allocated in a two-year period.

1.11 Electrification of Shelters

1.11.1 The successful contractor shall install and maintain electrical service and illumination for all shelters. All electrical service lines in the shelter site shall be underground, and shall originate from a point-of-service designed by MTS or San Diego Gas & Electric. Electrical service to every shelter must be maintained in working order at all times.

1.11.2 An unknown number of shelters may rely solely on solar panels for power. The successful bidder shall include a cost analysis for four scenarios: 1) No shelters with solar panels; 2) 25% of shelters having solar panels; 3) 50% of shelters having solar panels, and 4) 75% of shelters having solar panels.

2. LIQUIDATED DAMAGES

Liquidated damages shall be assessed at the MTS Project Manager's discretion for tasks not performed or performed insufficiently. MTS will notify the Contractor when it is determined that tasks are not being performed as contracted. The Contractor will be required to perform the tasks within three (3) hours of notification or be subject to liquidated damages due to a failure to perform. **Failure to not perform all commercially reasonable standards within the timeframe provided shall be considered a failure to perform. However, MTS and Contractor shall determine which circumstances are applicable to liquidated damages.** The liquidated damages shall be 125% of the Contractor's fees in order to compensate MTS for additional fees of hiring another contractor and related administrative functions. In addition, the Contractor's invoice will be audited to ensure services were not invoiced that were not provided in that month. MTS will notify the Contractor of impending liquidated damages. Liquidated damages will be deducted from the Contractors monthly invoice.

Rates

The rates for liquidated damages are based on expenses which MTS would reasonably expect to incur if required to contract with another company not familiar with the tasks. The liquidated damage of 125% of the contractor's line item price is based on the difference in price between the contracted price and non-contracted price, plus administrative expenses.

Appeal Process

If the Contractor feels liquidated damages are being imposed unjustly the Contractor can file an appeal with the MTS Project Manager within seven (7) days of the MTS notification of impending liquidated damages. The letter must provide details of the situation and why the Contractor feels the liquidated damages are unjust. The MTS Project Manager shall review the situation and if necessary, meet with the Contractor to provide an opportunity to state their reasons why liquidated damages should not be assessed. The MTS Project Manager shall render a written decision to the Contractor.

If the Contractor feels the decision is not acceptable and the situation warrants further consideration, appeal reconsideration may be filed in writing with the MTS Manager of Procurement within seven (7) days of receiving the Project Managers written decision. The MTS Manager of Procurement shall review the reconsideration and a final determination shall be made in writing. The decision of the MTS Manager of Procurement shall be final. No other appeals shall be heard for this particular incident. During the appeal process, the Contractor shall continue to diligently perform per the requirements of the contract including those in dispute.

3. MITIGATION OF ADVERSE ENVIRONMENTAL EFFECTS

Should adverse environmental effects arise from the performance of this contract, the Contractor agrees to take all reasonable steps to minimize such effects pursuant to 49 U.S.C. app. § 1610, other applicable statutes, and the procedures set forth in 23 C.F.R. Part 771 and 49 C.F.R. Part 622.

4. UNAUTHORIZED WORK

Any services not required by the terms of the Contract that are performed without written authority from MTS will be considered as unauthorized and at the sole expense of the Contractor.

Services so performed will not be paid for and no extension in the period of performance shall be granted on account thereof.

5. INSPECTION OF SERVICES AND ACCEPTANCE

5.1 MTS' Right to Inspect

5.1.1 MTS reserves the right to inspect all and every part of the services at any time during the performance and after completion, as it may see fit.

5.1.2 If the services or any part thereof have not been performed in accordance with the Contract, the Contractor will be notified, in writing, that such services are rejected.

5.1.3 MTS is not under obligation to hold any inspections. However, neither the inspection of the services, nor the lack thereof, shall relieve the Contractor of its responsibility for performing and providing the services in accordance with the terms of this Contract.

5.2 Corrective Action Required

5.2.1 Contractor shall take the necessary corrective action to assure compliance with the terms of the Contract and all other legal requirements.

5.2.2 Such corrective actions shall be implemented expeditiously. Time is of the Essence.

5.3 Notice of Final Acceptance

5.3.1 Contractor's fulfillment of this contract shall be accepted only after MTS or its designated representative has given written notice of final acceptance.

5.3.2 Payment, whether in whole or in part, shall not be construed to be acceptance of services.

6. PRODUCT LIABILITY

In the absence of specific manufacturer warranties for items installed or applied in the provision of maintenance and repair services by the Contractor, the Contractor shall assume responsibility for the safe and proper performance of such items.

7. MODIFICATIONS TO THE SCOPE OF WORK

7.1 MTS may, from time to time, make changes to the scope of work under the Contract, through a Contract amendment process.

7.2 Any amendment issued shall not modify the overall purpose of the Contract.

7.3 At any time during the term of the Contract, MTS may order Additional Services to be performed by the Contractor by an amendment signed by the Chief Executive Officer.

7.3.1 Additional Services are defined as those services that were not contained in the original scope of work and are determined by the MTS to be necessary, and where a reasonable relationship to the services originally required exists.

7.3.2 Contractor shall not be entitled to make any changes in the services or perform any Additional Services unless so authorized, in advance, by a written amendment signed by the MTS Chief Executive Officer.

7.3.3 Contractor and MTS hereby agree and acknowledge that execution of any future amendment constitutes a mutual accord and satisfaction as to the work covered thereby. Contractor specifically waives and releases any and all claims; rights or interest; including, but not limited to, those for impact; disruption; loss of efficiency; "ripple"; other extraordinary; or consequential costs, arising directly or indirectly out of the work described in the amendment except as specifically included herein.

7.4 Authorization of Additional Work

7.4.1 Authorization to make changes to the Scope of Work under the Contract shall be completed through a written amendment.

7.4.2 For the purposes of this contract, temporary work ordered for special occasions that is not meant to affect the overall purpose and intent of this contract will be issued by MTS under a separate contract or purchase order, whichever applies. Any such additional work will be under the terms and conditions of that contract or purchase order, but may reference portions of this contract.

7.5 Price Adjustments

- 7.5.1 Any change in the contract that causes an increase or decrease in cost to MTS, or the time required for the performance of the contract, must be approved as prescribed herein. An equitable adjustment in the compensation and schedule will be made as may be necessary.
- 7.5.2 Contractor shall be liable for all costs resulting from, or for satisfactorily correcting, any and all unauthorized changes not properly ordered by written modification to the contract.
- 7.5.3 Except as otherwise expressly provided in the Contract, when costs are a factor in any determination of a contract price adjustment, such costs shall be in accordance with the applicable cost principles of Subpart 31.2 of the Federal Acquisition Regulations (FAR) in effect at the onset of the Contract.

8. CONTRACT OPTION YEARS AND ADDITIONAL SERVICES

MTS will have the unilateral right in the contract by which, for a specified time, it may purchase additional services under the resultant contract, or may elect to extend the term of the contract. MTS may exercise its options individually, all at once, or not at all.

- 8.1 Should the MTS decide to exercise its options the conditions below will apply:
 - 8.1.1 Any options that were requested by MTS and/or contained in the Contractor's original proposal must have been evaluated prior to contract award.
 - 8.1.2 Contractor, at the time MTS determines the need to exercise any options, must have been performing under the Contract to the MTS' satisfaction, with no reported defaults or recorded complaints arising out of poor performance.
 - 8.1.3 Since Contractor's proposed pricing for the option years and additional services are considered in evaluating the Contractor's original proposal and form the basis for awarding the contract, Contractor shall be bound by the proposal pricing for additional services and/or option years, unless otherwise provided for in the resultant Agreement.
- 8.2 MTS will provide a minimum of thirty days' written notice to the Contractor of MTS' intent to exercise any contract. MTS may issue its notice of intent to exercise any option at any time during the contract term. The minimum time for the written notice may be waived by mutual agreement.

9. INADEQUATE SERVICES

The rights and remedies of MTS provided herein are not exclusive and are in addition to any other rights and remedies provided under the contract or by law.

- 9.1 Should Contractor fail, neglect, or refuse to perform all of the requirements in this contract, its amendments, modifications, and accepted portions of the Contractor's proposal in the time and manner required **which will be ten days from a notice to cure date**, MTS will have the right to take any combination, or all, of the following actions without limitation to MTS' other rights:
 - 9.1.1 Terminate the Contract for Contractor Default.

9.1.2 Cancel any portions of the contract and affect any remedy MTS deems necessary to fulfill the requirements of the canceled portions of the contract.

9.1.3 Procure such Services necessary to meet the contract requirements at Proposer's expense.

10. DELAYS IN CONTRACT PERFORMANCE

10.1 Extension of Time

10.1.1 MTS **shall** grant an extension of time based on the following circumstances **that are beyond the control of the Contractor and subject to MTS approval**, but only if such circumstances directly cause delays related to the performance of the contract:

- a) An act or neglect of MTS;
- b) An act or neglect of a third party;
- c) Separate Contractor employed by MTS;
- d) Changes ordered in the work;
- e) Labor dispute;
- f) Fire;
- g) Unusual delay in deliveries;
- h) Unavoidable casualties;
- i) Other causes beyond Contractor's control;
- j) Delay authorized by MTS pending arbitration; and
- k) Other causes which MTS determines may justify delay.

10.1.2 Any extension in time based on the preceding, for completion of the work, shall be extended by change order for a period commensurate with such delay.

10.1.3 Any extension in time will not extend the gross duration of the contract, but is only for the period of performance window that is within the duration of the contract.

10.2 No Damage for Delays

10.2.1 Contractor hereby expressly acknowledges and agrees that Contractor waives any and all claims, and/or rights, for damages or relief from MTS for any delays in prosecution and completion of the work as a result of any action or inaction of MTS with the following exceptions:

- a) MTS caused the delay and it was so long in duration or was of such a nature, that it was not within the contemplation of the parties when the contract was awarded;
- b) MTS deliberately intended to delay Contractor; or
- c) MTS acted in bad faith.

10.2.2 Contractor shall not be subject to any claim for liquidated damages by MTS for the period of delay, which meets those conditions.

10.3 Obligation to Continue Work

10.3.1 Contractor, in the event of any dispute or controversy with MTS over any matter whatsoever, shall not cause any delay or cessation in or of Contractor's work, but shall proceed under the contract with the performance of the work required thereby.

10.3.2 Contractor shall include in their documents, with any and all levels of tier Subcontractors, the following:

10.3.3 Subcontractor, in the event of any dispute or controversy with Contractor or any other Subcontractor over any matter whatsoever, shall not cause any delay or cessation in or for subcontract's work or the work of any other subcontract or of Contractor but shall proceed under that subcontract agreement with the performance of the work required thereby.

10.4 Suspension of Work by MTS

10.4.1. MTS may, without cause, order Contractor, in writing, to suspend, delay, or interrupt the work in whole or in part for such period of time as MTS may determine.

10.4.2 An adjustment shall be made for increases in the cost of performance of the contract, including profit on the increased cost of performance caused by suspension, delay or interruption.

10.4.3 No adjustment shall be made to the extent that:

- a) Performance is, was or would have been so suspended, delayed or interrupted by another cause for which Contractor is responsible;
- b) Force Majeure;
- c) An equitable adjustment was made under another provision of this contract.

10.4.4 Adjustments made in the cost of performance may have a mutually agreed fixed or percentage fee. Any such petitions for adjustments are subject to audit, Federal Cost Principles, and any other provision of this contract.

11. MANAGEMENT REPORTS

11.1 Implementation Schedule

The Contractor shall provide a schedule to include:

11.2 Maintenance Schedule as described in section B.4

11.3 Monthly Advertising Sales Report

11.3.1 Gross dollar sales per shelter location

11.3.2 Commissions per shelter location

11.3.3 Net revenue to MTS per shelter location

11.3.4 Cumulative total dollars for above category for all shelters on a year-to-date basis.

B.5 BUS SHELTER ADVERTISING

The Contractor shall have the right to solicit and sell advertising to be installed on MTS bus shelters and have the right to negotiate the advertising rates. Advertising shall include standard 4x6-foot posters and electronic displays at select locations to be agreed upon by MTS and the proposer.

The Contractor shall adhere to generally accepted principles of advertising in relation to good taste and truth in advertising. No advertising which is considered objectionable and offensive in its content or method of presentation shall be displayed.

The Contractor is solely responsible for all design, development, production, redesign, and installation of advertising but MTS shall have final approval of contents. Proposers are encouraged

to review MTS Policy 21 MTS Revenue-Generating Display Advertising, Concessions, and Merchandise for Revenue-Generating Display Advertising (see **Attachment A** for guidance).

All advertising shall be in accordance with MTS Policy 21 for Revenue-Generating Display Advertising.

B.6 CONTRACT TERMS

OPTION 1: CONTRACTOR PURCHASES SHELTERS

If MTS elects to have the proposer purchase the shelters, this contract will be for up to a 20-year period (15-year base with five 1-year options, exercisable at MTS' sole discretion). Proposers are required to submit its revenue payment proposal for all fifteen (15) years or its proposal may be deemed non-responsive.

BASE PERIOD:

- Year One (1):	January 1, 2014 – December 31, 2014
- Year Two (2):	January 1, 2015 – December 31, 2015
- Year Three (3):	January 1, 2016 – December 31, 2016
- Year Four (4):	January 1, 2017 – December 31, 2017
- Year Five (5):	January 1, 2018 – December 31, 2018
- Year Six (6)	January 1, 2019 – December 31, 2019
- Year Seven (7)	January 1, 2020 – December 31, 2020
- Year Eight (8)	January 1, 2021 – December 31, 2021
- Year Nine (9)	January 1, 2022 – December 31, 2022
- Year Ten (10)	January 1, 2023 – December 31, 2023
- Year Eleven (11)	January 1, 2024 – December 31, 2024
- Year Twelve (12)	January 1, 2025 – December 31, 2025
- Year Thirteen (13)	January 1, 2026 – December 31, 2026
- Year Fourteen (14)	January 1, 2027 – December 31, 2027
- Year Fifteen (15)	January 1, 2028 – December 31, 2028

OPTION YEARS:

- Year Sixteen (16) – Option Year 1:	January 1, 2029 – December 31, 2029
- Year Seventeen (17) – Option Year 2:	January 1, 2030 – December 31, 2030
- Year Eighteen (18) – Option Year 3:	January 1, 2031 – December 31, 2031
- Year Nineteen (19) – Option Year 4:	January 1, 2032 – December 31, 2032
- Year Twenty (20) – Option Year 5:	January 1, 2033 – December 31, 2033

OPTION 2: MTS PURCHASES SHELTERS

If MTS does not elect to purchase shelters under this contract, the contract term will be for up to a 10 year term (five year base plus five one-year options exercisable at MTS' sole discretion).

BASE PERIOD:

- Year One (1):	January 1, 2014 – December 31, 2014
- Year Two (2):	January 1, 2015 – December 31, 2015
- Year Three (3):	January 1, 2016 – December 31, 2016
- Year Four (4):	January 1, 2017 – December 31, 2017
- Year Five (5):	January 1, 2018 – December 31, 2018

OPTION YEARS

- Year Six (6)	January 1, 2019 – December 31, 2019
- Year Seven (7)	January 1, 2020 – December 31, 2020
- Year Eight (8)	January 1, 2021 – December 31, 2021
- Year Nine (9)	January 1, 2022 – December 31, 2022
- Year Ten (10)	January 1, 2023 – December 31, 2023

B.7 REVENUE PROPOSAL

MTS anticipates receiving the maximum revenue possible. Proposers are to provide the percentage revenue split in the form of a commission on gross sales and/or annual guaranteed minimum payments proposed to MTS. MTS considers gross sales as the amount received by the Contractor from the advertiser. No costs associated with the selling, printing, posting or maintenance of the advertisement shall be deducted. Percentage splits and minimum guarantees should be provided for each shelter purchase scenario (purchased by MTS vs. purchased by proposer).

Required elements of Revenue Proposal

Proposer may develop its own pricing sheet methodology to determine expenses, revenues and revenue payments to MTS. The pricing worksheet must include the following:

1. Per unit shelter procurement costs.
2. Annual amortization costs, amortized over the 15-year contract base period and assuming the purchase of 100 shelters in each of the first five years of the contract.
3. Estimate of the per unit installation costs, including the removal of existing shelters and repair to existing conditions (for MTS evaluation purposes only).
4. Per unit maintenance cost estimate (for MTS evaluation only).
5. New revenue to MTS for either Option 1 or Option 2 based on current number of shelters (322 ad shelters and 122 non-ad shelters) in years one through five) and 500 shelters in years six through the end of the term. Net revenue should be provided in terms of a percentage of gross and/or an annual guarantee.

Proposers should also include a worksheet that will demonstrate how it will detail the revenue generated from each shelter location on a monthly report. This report shall be provided to MTS no later than 15 days following each calendar month.

The Contractor shall pay MTS revenue generated based on the mutually agreed proposed rate stated in the Contractor's Revenue Payment Proposal or final agreement. Revenue payments will be paid directly to MTS on a monthly basis on or before the thirtieth (30th) day following each calendar month.

Payment shall be made in the form of a commission check for bus shelter advertising. Commission checks should be made payable to MTS and mailed to:

San Diego Metropolitan Transit System (MTS)
Attn: Accounting Department
1255 Imperial Avenue, Suite 1000
San Diego, CA 92101

NOTE: ALL PROPOSERS MUST COMPLETE PROPOSAL FORMS AS PROVIDED, FAILURE TO DO SO WILL DEEM THE PROPOSAL NON-RESPONSIVE.

EXHIBIT B



October 10, 2013

Andrew Conriquez
Contract Officer
San Diego Metropolitan Transit System
1255 Imperial Avenue, Suite 1000
San Diego, CA 92101-7490

RE: MTS Bus Shelter Advertising, MTS Doc. No. B0596.0-13, Clear Channel's Response to Request for Best and Final Offer.

Dear Mr. Conriquez:

Thank you for your October 1, 2013 letter seeking further clarifications on our RFP response and presentation as well as requesting from Clear Channel Outdoor's (CCO), our "Best and Final Offer."

Please find below, our clarifications to the following items:

- A. Storage for Shelter Parts** – (i) We currently store shelter parts at our Torrance office and warehouse facility (19320 Harborage Way, Torrance, CA 90501) to service over 1,800 shelter locations in Los Angeles and Orange Counties. Our company-owned property is approximately 4 acres large, housing an approximately 70,000-square foot office and warehouse building, along with an enclosed/secured work and storage "yard." Because the Torrance facility is also our primary receiving center, we envision continuing to utilize it as the main storage facility for shelter parts. (ii) That said, we also have a San Diego facility (9660 Granite Ridge Drive, San Diego, CA 92108) that houses Clear Channel's radio and outdoor operations. We currently use the San Diego facility to temporarily store billboard vinyls used to rotate amongst our billboard sites. Our operations crews do conduct weekly and often time more frequent trips between the Torrance and San Diego offices to exchange and supply trucks, crane trucks, parts and other equipment – and we foresee this readied delivery system to facilitate the supply of shelter parts between our Torrance and San Diego offices to support the MTS bus shelter operations. (iii) Furthermore, as is with our current bus shelter operations practice, our subcontractors are also provided with a supply of frequently used parts so they could conduct repairs/replace in the field as part of their scheduled maintenance/service visits. In short, we have options and existing logistical mechanism in place to ensure timely replacements of part for the MTS bus shelters when needed.
- B. Transition Plan** – The transition plan consists of two components – (i) managing existing advertisers' needs and relations (sales), and (ii) ensuring that there is no lapse in services (operations). On managing existing advertiser's relations, we request that MTS assists in securing the list of advertisers from the incumbent operator. Should that not be timely secured, CCO will conduct a field survey to collect data on existing advertisers. CCO will then request MTS to provide an introductory letter to advertisers regarding the change in bus shelter operator. CCO will then reach out to the existing advertisers and/or the respective advertising agencies to facilitate contract renewals, etc. CCO will assist MTS in the preparations of the necessary materials in this process.

Mr. Andrew Conriquez
October 10, 2013
Page Two

With regards to the operations component of the transition, CCO would like to have sufficient lead time to work with MTS staff, and to conduct a field survey and to inventory the condition of each shelter in the streets. This assessment process will help provide CCO and MTS staff a baseline report on the existing condition of the shelters. Should CCO be awarded the RFP, we would immediately engage our subcontractor and MTS staff with a kick-off meeting to establish and/or to re-confirm operational procedures, service routes, communication protocols, etc., as we gear up to assume full operational services by January 1, 2014.

- C. **Contract Termination** – MTS requests clarifications on whether CCO has terminated a similar bus shelter contract. To our present knowledge, the Southern California Division has not terminated a bus shelter contract in which there is remaining term. MTS may be interested in a situation where we did request a reduction on the guaranteed payment to a particular municipality. In that case, there were two sets of dynamics that forced us to seek some relief on the guaranteed payment. First, we were not immune to the drastic down turn in the economy during the 2007-2009 time periods, whereby our contract was executed while the economy was at its peak. Secondly, this particular service contract provides that we service roughly 135 bus shelters with advertising panel, and an additional 550 non-advertising bus benches – totaling nearly 700 bus stops that require scheduled maintenance, trash receptacle pick-ups, and other services. While we were experiencing a declining advertising demand on the 135 bus shelters, we had to provide full operational services at nearly 700 bus stops. Logically, the economics in the above condition could not be supported and thus this particular City understood and granted CCO relief in the form of payment reduction made to the city. That said, we are confident that this City is beyond satisfactory in our level of service to the community.

Revenue Proposal: We are revising our revenue proposal to reflect an increase in the annual percentage revenue share portion to MTS from 52.50% to 55.00%, versus a minimum annual guarantee (MAG) of \$950,000, whichever is greater. The 55% percentage revenue share applies annually, from year 1 to year 10 as reflected in the original proposal.

We hope the above provides some clarity to the remaining questions from MTS. Please do not hesitate to contact us should you have further questions and/or requiring explanations to the above response. We very much appreciate the opportunity to participate in this process.

Thank you again for your review and consideration of Clear Channel's proposal.

Sincerely,

CLEAR CHANNEL OUTDOOR, INC.


John Q. Duong,
Vice President
Real Estate & Public Affairs



October 22, 2013

Andrew Conriquez
Contract Officer
San Diego Metropolitan Transit System
1255 Imperial Avenue, Suite 1000
San Diego, CA 92101-7490

RE: MTS Bus Shelter Advertising, MTS Doc. No. B0596.0-13. Clarification to the Percentage Revenue.

Dear Mr. Conriquez:

You had asked us to help clarify the revenue proposal in our Best and Final Offer response dated October 10, 2013. To recap, we had revised our revenue offer to reflect a minimum annual guarantee (MAG) of \$950,000.00 per annum *or* a percentage revenue share of 55%, *whichever is greater*. The MAG amount is payable to MTS on a monthly basis while the percentage revenue is reconciled annually. Should the percentage amount gauged against the gross revenue (less advertising agency commission) exceeds the MAG amount, then MTS would be paid the difference between the MAG and the product of the percentage share times the gross revenue.

As an example, should gross revenue (less agency commission) for a certain year-end totals to \$2 million, then the percentage revenue at 55% would result in a \$1.1 million in payment to MTS. However, given that \$950,000.00 would have already been paid out in annual minimum payment, MTS under this scenario is owed an additional \$150,000.00 (\$1,100,000.00 minus \$950,000.00) of the percentage share.

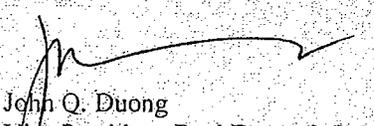
Likewise, for example should gross revenue for a certain year-end totals to \$1.5 million, then the percentage revenue based on a 55% revenue share would be \$825,000.00. Given that the MAG payment of \$950,000.00 is already a greater amount than the revenue share amount of \$825,000.00, MTS would not be paid any additional revenue share payment under this scenario.

We hope the above sample scenarios help clarify the intent of the revenue proposal involving the calculation on when the percentage revenue share would be applied. Please do not hesitate to let us know should you have any additional questions.

We look forward to working with you and the MTS team.

Sincerely,

CLEAR CHANNEL OUTDOOR, INC.



John Q. Duong
Vice President, Real Estate & Public Affairs
Southern California Division

Clear Channel Outdoor
19320 Harbortgate Way, Los Angeles, CA 90501
Call 310.755.7263 / Fax 310.755.7353 / Visit ClearChannelOutdoor.com / Follow @CCOutdoor

EXHIBIT C

Exhibit C
Revenue Summary
Bus Shelter Advertising
MTS Doc. No. B0596.0-13

Contract Base Years	Clear Channel Outdoor	
	Minimum Annual Gurantee (MAG)	Percentage Revenue Share
Base Year 1	\$ 950,000	55.00%
Base Year 2	\$ 950,000	55.00%
Base Year 3	\$ 950,000	55.00%
Base Year 4	\$ 950,000	55.00%
Base Year 5	\$ 950,000	55.00%

Option Years	Minimum Annual Gurantee (MAG)	Percentage Revenue Share
Option Year 1	\$ 950,000	55.00%
Option Year 2	\$ 950,000	55.00%
Option Year 3	\$ 950,000	55.00%
Option Year 4	\$ 950,000	55.00%
Option Year 5	\$ 950,000	55.00%
Total 10 Year Term	\$ 9,500,000	

Note: Revenue is based on an miminum annual guarantee or percentage share of gross sales.

EXHIBIT D

STANDARD CONDITIONS SERVICES

1. INDEPENDENT CONTRACTOR

Contractor hereby declares that it is engaged in an independent business and agrees that in the performance of this Agreement it shall act as an independent contractor and not as an employee of MTS. Contractor has and hereby retains full control of all the employment, compensation, and discharge of all employees of Contractor assisting in its performance hereunder. Contractor shall be fully responsible for all matters relating to payment of its employees, including compliance with Social Security, withholding tax, and all other laws and regulations governing such matters. Contractor shall be responsible for its own acts and those of its agents and employees during the term of this Agreement. MTS shall be responsible for its own acts and those of its agents and employees during the term of this Agreement. Except as otherwise specifically provided, as an independent contractor, Contractor is solely responsible for determining the means and methods of performing the services described in the scope of work. Contractor shall perform the work contemplated with resources available within its own organization.

2. INSURANCE

Contractor will include the contract number on all insurance-related correspondence, i.e., the insurance certificate itself.

All policies required shall be issued by companies who are licensed or approved to do business in the State of California and hold a current policyholder's alphabetic and financial-size category rating of not less than A-VI, in accordance with A.M. Best.

MTS utilizes the services of a third party insurance monitoring company. As a condition of contract award, Contractor shall submit any required insurance certificates and relevant endorsements to the third party monitoring company of MTS' choosing.

A. COVERAGE REQUIRED - ALL CONTRACTS

(1) Liability

- (a) Commercial General Liability At all times during this contract and, with respect to Products and Completed Operations Liability, for twelve (12) months following the acceptance of the work by MTS, Contractor agrees to maintain Commercial General Liability Insurance utilizing Insurance Services Office (ISO) coverage form CG0001, edition date 10/01 or later, or an equivalent form and with insurance companies acceptable to MTS. The coverage shall contain no restricting or exclusionary endorsements with respect to the performing of services described in the scope of work.

All such liability policies shall name in the endorsement, as their interests may appear, San Diego Metropolitan Transit System (MTS), San Diego Trolley, Inc. (SDTI), San Diego and Arizona Eastern Railway (SD&AE)

and San Diego Transit Corporation (SDTC), their directors, officers, agents, and employees as additional insureds.

- (b) Automobile Liability At all times during this contract, Contractor agrees to maintain Automobile Liability Insurance for bodily injury and property damage including coverage for all owned, nonowned, and hired vehicles.
- (c) Workers' Compensation/Employer Liability At all times during this contract, Contractor agrees to maintain Workers' Compensation and Employers' Liability Insurance in compliance with the applicable statutory requirements. Contractor waives any rights of subrogation against MTS, SDTI, SD&AE, and SDTC, and the policy form must permit and accept such waiver.

B. ADDITIONAL COVERAGES REQUIRED (AS INDICATED)

- (1) Owner-Provided Builder's Risk
PROVIDED

MTS will provide Builder's Risk Insurance on a special form basis, excluding the perils of earthquake and flood, at a limit of not less than the full replacement value of the work and covering the work and all materials and equipment to be incorporated therein, including property in transit elsewhere, and insuring the interests of the Contractor, subcontractors, materialmen, and MTS, SDTI, SD&AE, SDTC, MTS's contractor for design, and MTS's contractor for construction management. However, Contractor is responsible for the portion of any loss that is within the deductible amount of this Builder's Risk Insurance, which is currently at \$50,000 but is subject to change.

- (2) Railroad Protective or Equivalent
REQUIRED

Any exclusions relating to performance of operations within the vicinity of any railroad, bridge, trestle, track, roadbed, tunnel, underpass, or crossing must be deleted. Option: purchase separate Railroad Protective Liability Policy as required.

- (3) Professional Liability
REQUIRED

At all times during this contract, and for twelve (12) months following acceptance of work by owner, Contractor agrees to maintain Professional Liability Insurance with respect to services or operations under this Agreement.

- (4) Pollution Legal Liability
REQUIRED

At all times during this contract, and for twenty four (24) months following, Contractor agrees to maintain Pollution Legal Liability Insurance with respect to

services or operations under this Agreement. The extended discovery period must be no less than twenty four (24) months.

(5)
REQUIRED

Contractor Equipment

At all times during this contract, Contractor agrees to maintain Contractor's Equipment Insurance on a special form basis covering equipment owned, leased, or used by Contractor. Contractor waives any rights of subrogation against MTS, SDTI, SD&AE, and SDTC, and the policy form must permit and accept such waiver. Contractor hereby releases and holds harmless MTS for any loss or damage to its equipment.

(6)
REQUIRED

Installation Floater

At all times during this contract, Contractor agrees to maintain Installation Floater Insurance on a special form basis covering property owned or provided by Contractor. Contractor waives any rights of subrogation against MTS, SDTI, SD&AE and SDTC, and the policy form must permit and accept such waiver. Contractor hereby releases and holds harmless these entities for any loss or damage to its property.

(7)
REQUIRED

Garage Keeper's Legal Liability & Automobile Portion

At all times during this contract, Contractor agrees to maintain Garage Keeper's Legal Liability as well Automobile Portion which covers the risk of loss or damage to MTS vehicles while in the care, custody or control of Contractor. Automobile portion shall cover the Contractor in the event of a vehicle accident while they are driving a MTS vehicle, which results in a third party claim of physical damage or bodily injury.

(8)
REQUIRED

Construction Work Agreements

- (a) Contractor agrees to utilize ISO coverage forms CG2010, 10/85 or ISO coverage forms CG2010 and CG2037, or equivalent forms, to comply with the additional Insured requirement stated in section 2.A.(1)(b).
- (b) Contractor agrees to provide a Designated Project Aggregate Limit Endorsement (per project aggregate) utilizing form CG2503 or equivalent Form.

(9)
REQUIRED

Crime Fidelity Insurance

At all times during this contract, Contractor agrees to maintain Crime Fidelity Insurance with respect to services or operations under this agreement. The coverage should include the following:

- Employee dishonesty/theft
- Theft, disappearance and destruction on the premises
- Theft, disappearance and destruction while in transit
- Forgery/alteration

(10) Umbrella or Excess Liability (if required to meet liability limits above)
REQUIRED

Contractor agrees that any Umbrella or Excess Liability Policy utilized to provide the required limits of liability shall contain coverage at least as broad as that provided by the General Liability Policy, and be written for a term concurrent with the General Liability Policy.

(11) Primary and Non-Contributory Insurance
REQUIRED

Contractor agrees that all general liability coverages required under this insurance section are PRIMARY and that any insurance of MTS, SDTI, SD&AE and SDTC shall be excess and noncontributory (endorsement required).

C. MINIMUM POLICY LIMITS REQUIRED

	<u>Limits</u>
Commercial General Liability (Per Occurrence):	\$1,000,000 _____
(General Aggregate)	\$2,000,000 _____
(Completed Operations & Products Aggregate)	\$2,000,000 _____
Automobile Liability: (Combined Single Limit)	\$1,000,000 _____
Worker's Compensation:	<u>Statutory Limits</u>
Employer's Liability per Accident /or Disease:	\$1,000,000 _____

Additional Coverages (as indicated under Section B, Additional Coverages Required):

<input type="checkbox"/> B (1) Builder's Risk	Replacement Cost
<input type="checkbox"/> B (2) Railroad Protective	\$ _____
<input type="checkbox"/> B (3) Professional Liability	\$ _____
<input type="checkbox"/> B (4) Pollution Liability	\$ _____
<input type="checkbox"/> B (5) Contractor Equipment	<u>Replacement Cost</u>
<input type="checkbox"/> B (6) Installation Floater	<u>Replacement Cost</u>
<input type="checkbox"/> B (7) Garage Keeper's Legal Liability (Combined Single Limit (CSL) Per Occurrence)	\$ _____
<input type="checkbox"/> B (8) Construction Work Agreements	\$ _____
<input type="checkbox"/> B (9) Crime Fidelity Insurance	\$ _____

B (10) Umbrella or Excess Liability
(if required to meet liability limits above)

\$ _____

D. NOTICE OF POLICY CHANGES

Contractor shall not materially amend or cancel the insurance policy and coverage required by this Agreement without providing MTS with at least thirty (30) days prior written notice. Contractor shall notify MTS within ten (10) days of insurer-initiated material amendments or cancellations to the insurance coverage required by this Agreement. Under no circumstances shall these notice provisions be deemed a waiver of the insurance requirements set for herein. Any material changes in or cancellation of the insurance policy on file with MTS pursuant to Section 2(E) will result in an immediate stop work order until proof of substitute coverage meeting the requirements of this Agreement is provided to MTS. In the alternative, in MTS' sole discretion, MTS retains the right to declare Contractor in default and immediately terminate this Agreement if the insurance coverage required by this Section 2 is cancelled, otherwise lapses or fails to meet the coverage limits at any time, and for any duration, during the term of this Agreement.

E. EVIDENCE REQUIRED

Within ten (10) working days following receipt of notice that a contract has been awarded, Contractor shall have provided the MTS Contracts Specialist with satisfactory certification by a qualified representative of the Insurer(s) that Contractor's insurance complies with all provisions in this insurance section.

F. SPECIAL PROVISIONS

The foregoing requirements as to the types and limits of insurance coverage to be maintained by Contractor, and any approval of said insurance by MTS, SDTI, SD&AE and SDTC, or their insurance Contractor(s) are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by Contractor pursuant to this Agreement, including but not limited to the provisions concerning indemnification.

MTS reserves the right to withhold payments to Contractor in the event of material noncompliance with the insurance requirements outlined above.

3. TERMINATION OF AGREEMENT

A. TERMINATION FOR CONVENIENCE

Performance under this agreement may be terminated by MTS in accordance with this clause in whole or, from time-to-time, in part, whenever MTS shall elect. Any such termination shall be effected by delivery to Contractor of a Notice of Termination specifying the extent to which performance under this agreement is terminated, and the date upon which such termination becomes effective. Upon receipt of any such notice, Contractor shall, unless the notice requires otherwise:

- (1) immediately discontinue performance on the date and to the extent specified in the notice;
- (2) place no further orders for materials other than as may be necessarily required for completion of such portion of the agreement that is not terminated;
- (3) promptly make every reasonable effort to either obtain cancellation on terms satisfactory to MTS of all orders to Contractor's suppliers to the extent they relate to the performance of that portion terminated, or upon MTS concurrence assign to MTS those orders; and
- (4) assist MTS, upon request, in the maintenance, protection and disposition of property acquired by MTS under this agreement. MTS shall reimburse Contractor for reasonable costs incurred in connection with disposition of property.

If claimed in writing within thirty (30) calendar days after Notice of Termination, MTS will pay to Contractor an equitable adjustment to include (without duplication of any item):

- (1) all amounts due and not previously paid to Contractor for goods completed in accordance with this agreement prior to such notice;
- (2) a reasonable amount for any goods and materials then in production; provided that no such adjustment be made in favor of Contractor with respect to any goods which are Contractor's standard stock;
- (3) costs of settling and paying supplier's claim arising out of the canceled orders; and
- (4) a reasonable profit for costs incurred in the performance of that portion terminated; provided, however, that if it appears that Contractor would have sustained a loss on the entire agreement had it been completed, no profit shall be included.

The total sum to be paid to Contractor under this clause, shall not exceed the total order price as reduced by the amount of payments otherwise made, and as further reduced by the order price of that portion not terminated, and will not include any consideration for loss of anticipated profits on the terminated portion all claims for which seller agrees to waive.

B. TERMINATION FOR DEFAULT

In case of Contractor breach or failure to perform, MTS reserves the right to terminate the contract for default. MTS may award the contract to the next lowest responsive, responsible Proposer, solicit new bids, or pursue any other remedy authorized by law.

In addition to any remedy authorized by law, money due to the Contractor under and by virtue of contract, as shall be considered necessary by MTS, may be retained by MTS until disposition has been made of such suits or claims for damages. The retention of money due to the Contractor shall be subject to the following:

- (1) MTS will give the Contractor ten (10) days notice of its intention to retain funds from any partial payment, which may become due to the Contractor prior to

acceptance by MTS of the contract. Retention of funds from any payment made after acceptance may be made without such prior notice to the Contractor.

- (2) No retention of additional amounts out of partial payments will be made if the amount to be retained does not exceed the amount being withheld from partial payments.
- (3) If MTS has retained funds, and it is subsequently determined that MTS is not entitled to be indemnified and saved harmless by the Contractor in connection with the matter for which such retention was made, MTS shall be liable for interest earned on the amount retained for the period of such retention.

MTS may terminate the contract by serving a notice of termination on the Contractor. Notice shall set forth the manner in which the Contractor is in default, and provide the Contractor with ten (10) day's time to cure the default to the satisfaction of MTS. This cure period may be adjusted if the parties so agree in writing. If MTS determines after the cure period that the default is not cured, MTS will issue a "show cause" letter to the Contractor requesting from the Contractor reasons why this contract should not be terminated. If MTS does not find that the Contractor has demonstrated sufficient reason for its failure to cure, the contract shall be deemed terminated. The Contractor shall only be paid the contract price for supplies received and accepted, or services performed in accordance with the manner set forth in the contract. If MTS determines that the Contractor had an excusable reason for not performing such as a strike, fire, flood, or other events, which are not the fault of, or beyond the control of the Contractor, MTS may allow the Contractor to continue work or terminate the contract for convenience.

4. INDEMNITY

As between MTS and Contractor, Contractor is deemed to assume responsibility and liability for, and Contractor shall indemnify and hold harmless, MTS, SDTI, SDTC, SD&AE, and any and all of its directors, officers, agents or employees from and against any and all claims, loss, damage, charge, or expense, whether direct or indirect, which MTS, SDTI, SDTC, SD&AE, or such directors, officers, agents or employees may be put or subjected, by reason of any damage, loss, or injury of any kind or nature whatever to persons or property caused by or resulting from or in connection with any negligent act or action, or any neglect, omission, or failure to act when under a duty to act on the part of Contractor or any of its officers, agents, servants, employees or subcontractors in its or their performance under this Agreement. In addition to any other remedy authorized by law, so much of the money due Contractor under this Agreement as shall be considered necessary by MTS may be retained for any such claims above for which Contractor is obligated to, but has refused to provide such indemnification.

5. ASSIGNABILITY

- (a) By MTS. This contract is assignable, in whole or in part, to any other government agency, including the North County Transit District and/or the San Diego Association of Governments and/or the Metropolitan Transit System. The party wishing to exercise the assignment (also known as a "piggyback") shall perform an independent cost estimate to determine fair and reasonable pricing, and shall enter into its own contract with the

vendor based upon the terms and conditions of this Request for Proposal. Any assignment or piggyback shall comply with Federal Transit Administration (FTA) requirements if applicable. MTS shall have no responsibility or liability for any such assignment or piggyback.

- (b) By Contractor. Any attempt by Contractor to assign, subcontract, or transfer all or part of this Agreement shall be void and unenforceable without MTS' prior written consent; which consent shall not be unreasonably withheld. Any such consent shall not relieve Contractor from full and direct responsibility for all services performed prior to the date of assigning, subcontracting, or transferring this Agreement.

6. SUBCONTRACTORS

Any contract in excess of \$25,000, entered into as a result of this contract, shall contain all of the provisions stipulated in this contract to be applicable to subcontractors, including, but not limited to, provisions pertaining to costs, records, and payment methods.

7. NOTICES

All notices or other communications to either party by the other shall be deemed given when made in writing and deposited in the United States Post Office, addressed as follows:

To MTS:

San Diego Metropolitan Transit System (MTS)
Attention: Chief Executive Officer
1255 Imperial Avenue, Suite 1000
San Diego, CA 92101-7490

To Contractor:

As shown on front page.

8. CONSIDERATION PAID

Contractor shall pay MTS its percentage revenue split as set forth in the Contractor's Proposal in an amount estimated to be \$4,750,000 for the base period and \$4,750,000 for the option years, for a minimum revenue of \$9,500,000 over the duration of the agreement or fifty-five (55%) percent annual percentage revenue share whichever is greater. Revenue payments will be paid directly to MTS on a monthly basis on or before the thirtieth (30th) day following each calendar month (refer to Section B.7 of the Scope).

9. EQUAL EMPLOYMENT OPPORTUNITY PROGRAM

MTS's Equal Employment Opportunity Program for Contractors, MTS Policy No. 25, is part of this Agreement (a copy can be obtained from MTS's Clerk of the Board). A Certificate of

Compliance and a Workforce Report form signed by the Contractor is a condition for the award of this contract.

Each Contractor who provides MTS labor, equipment, materials and services of \$50,000 or more per year with fifty (50) or more employees shall have, maintain, and submit an Equal Employment Opportunity (EEO) Plan to the Director of Human Resources and Labor Relations for MTS each year of the contract, and a Workforce Utilization Report on or before January 1 and July 1 for each year of the contract.

The objective of this plan is to assure that the Contractor will not discriminate against any employee or applicant for employment because of race, color, creed, sex, disability, age, or national origin. The Contractor agrees to take action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, sex, disability, age, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

With respect to construction activities, the Contractor shall comply with all applicable EEO requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e), and any federal statutes, executive orders, regulations and federal policies that may in the future affect construction activities undertaken in the course of the Project.

10. COST PRINCIPLES

The Contractor agrees that the Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31, shall be used to determine the allowability of individual items of cost.

The Contractor also agrees to comply with federal procedures in accordance with 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to state and local governments.

Any costs for which payment has been made to the Contractor that are determined by subsequent audit to be unallowable under 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31, or 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to state and local governments, are subject to repayment by the Contractor to MTS.

11. NOTICE OF POTENTIAL CLAIM FOR OUT-OF-SCOPE WORK

The Contractor shall not be entitled to additional compensation for out-of-scope work unless he has given MTS a written notice of potential claim for any such work. The written notice of potential claim shall set forth the reasons for which the Contractor believes additional

compensation will or may be due, the nature of the out-of-scope work involved, and, insofar as possible, the amount of the potential claim. The notice must be given to MTS prior to the time Contractor shall have performed the work, if based on an act or failure to act by MTS or in all other cases within fifteen (15) days after the happening of the event, thing, occurrence, or other cause, giving rise to the potential claim.

It is the intention of this section that any claim for out-of-scope work be brought to the attention of MTS at the earliest possible time in order that matters related to any such work can be settled in a prompt manner. The Contractor hereby agrees that he shall have no right to additional compensation for any claim for out-of-scope work for which no written notice of potential claim as herein required was filed.

12. LITIGATION EXPENSES

Should litigation be necessary to enforce any term or provision of this Agreement, or to collect any portion of the amount payable under this Agreement, then all litigation and collection expenses, witness fees, court costs, and attorney's fees shall be paid to the prevailing party.

13. EXCLUSIVE USE

The services hereunder are provided for the exclusive use of MTS and such services, data, recommendations, proposals, reports, design criteria, and similar information provided by Contractor, are not to be used or relied upon by other parties except as authorized by MTS.

14. DISADVANTAGED BUSINESS ENTERPRISE (DBE) PARTICIPATION (*applies to federally funded contracts only*)

This project is subject to Title 49, Code of Federal Regulations part 26 (49 C.F.R. 26), entitled "Participation by Disadvantaged Business Enterprises (DBEs) in Department of Transportation Financial Assistance Programs." MTS' DBE program has an aspirational goal of 4.1% participation by certified DBE's over the Fiscal years 2013 to 2015 time period. In order to help MTS achieve its federally mandated overall DBE goal, MTS encourages the participation of DBEs as defined in 49 C.F.R. 26 in the performance of contracts financed, in whole or in part, with federal funds. Contractor is also encouraged to use services offered by financial institutions owned and controlled by DBEs. The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of subcontracts.

In order to ascertain whether its overall DBE goal is being achieved, MTS is tracking DBE participation on all federal-aid contracts. Therefore, all successful proposers are required to report the DBE status of all participants after award of any contract. If only a portion of any contract will be performed by a certified DBE, then the portion of work performed and associated contract price shall also be reported. If the proposed prime contractor is not a certified DBE, MTS encourages the proposer to outreach to DBEs for subcontracting opportunities on this project. There is no specific DBE goal for this project; participation of DBEs is not a condition of execution of this Agreement.

Contractor shall be fully informed in respect to the requirements of the DBE regulations. The DBE regulations in their entirety are incorporated herein by this reference (see 49 USC 26; 49 CFR 26). Contractor's attention is directed to the following matters:

- A. A DBE must be a small business concern as defined pursuant to Section 3 of U.S. Small Business Act and relevant regulations promulgated pursuant thereto.
- B. A DBE may participate as a prime contractor, subcontractor, joint-venture partner with a prime or subcontractor, vendor of materials or supplies, or as a trucking company.
- C. A DBE joint-venture partner must be responsible for specific contract items of work or clearly defined portions thereof. Responsibility means actually performing, managing, and supervising the work with its own forces. The DBE joint venture partner must share in the capital contribution, control, management, risks, and profits of the joint venture commensurate with its ownership interest.
- D. A DBE must perform a commercially useful function; i.e., must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing, and supervising the work.
- E. DBEs must be certified by the California Unified Certification Program (CUCP). Listings of DBEs certified by the CUCP are available from the following sources:
 - 1. Caltrans' "Civil Rights" Web site at: <http://www.dot.ca.gov/hq/bep>.
 - 2. Caltrans' DBE Directory This Directory may be obtained from the Department of Transportation, Material Operations Branch, Publication Distribution Unit, 1900 Royal Oaks Drive, Sacramento, California 95815, Telephone: (916) 445-3520.
- F. When reporting DBE participation, the Contractor may count the cost of materials or supplies purchased from DBEs as follows:
 - 1. If the materials or supplies are obtained from a DBE manufacturer, 100 percent of the cost of the materials or supplies. A DBE manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.
 - 2. If the materials or supplies are purchased from a DBE regular dealer, count 60 percent (60%) of the cost of the materials or supplies. A DBE regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a DBE regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A person may be a DBE regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business as provided in this paragraph if the person both owns and operates distribution equipment for the products. Any supplementing of regular

dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not DBE regular dealers within the meaning of this paragraph.

3. If the DBE is neither a manufacturer nor a regular dealer, count only the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, provided the fees are reasonable and not excessive as compared with fees charged for similar services.
 4. Materials or supplies purchased from a DBE, which is neither a manufacturer nor a regular dealer, will be limited to the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on the job site, provided the fees are reasonable and not excessive as compared with fees charged for similar services.
- G. When reporting DBE participation, the Contractor may count the participation of DBE trucking companies as follows:
1. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract.
 2. The DBE must itself own and operate at least one (1) fully licensed, insured, and operational truck used on the contract.
 3. The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.
 4. The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.
 5. The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE.
 6. For the purposes of paragraph 14(G), a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

7. Prior to the fifteenth of each month, the Contractor shall submit documentation to MTS showing the amount paid to DBE trucking companies. The Contractor shall also obtain and submit documentation to MTS showing the amount paid by DBE trucking companies to all firms, including owner-operators, for the leasing of trucks. If the DBE leases trucks from a non-DBE, the Contractor may count only the fee or commission the DBE receives as a result of the lease arrangement. The Contractor shall also submit to MTS documentation showing the truck number, name of owner, California Highway Patrol CA number, and if applicable, the DBE certification number of the truck owner for all trucks used during that month.

If a DBE subcontractor is decertified during the life of the project, the decertified subcontractor shall notify the Contractor in writing with the date of decertification. If a subcontractor becomes a certified DBE during the life of the project, the subcontractor shall notify the Contractor in writing with the date of certification. The Contractor shall furnish the written documentation to the Engineer.

15. PROMPT PAYMENT

No retainage will be held by the agency from progress payments due to the prime contractor. Any retainage kept by the prime contractor or by a subcontractor must be paid in full to the earning subcontractor in thirty (30) days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment may take place only for good cause and with MTS's prior written approval. Any violation of these provisions shall subject the violating contractor or subcontractor to the penalties, sanctions, and remedies specific in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise, available to the prime contractor, or subcontractor in the event of a dispute involving late payment, or nonpayment by the contractor, or deficient subcontractor's performance, or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

16. RECORDS RETENTION

The Contractor shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the performance of the contract including, but not limited to, the costs of administering the contract. The Contractor shall make such materials available at its respective office at all reasonable times during the Agreement and for three (3) years from the date of final payment under the contract. MTS, the state, the State Auditor, or any duly authorized representative of the federal government shall have access to any books, records, and documents of the Contractor that are pertinent to the contract for audit examination, excerpts, and transactions, and copies thereof shall be furnished if requested.

17. OWNERSHIP OF DOCUMENTS

Tracings, plans, specifications, and maps prepared or obtained under the terms of this Agreement shall be delivered to and become the property of MTS. Basic survey notes and

sketches, charts, computations, and other data prepared or obtained under this Agreement shall be made available, upon request, to MTS without restriction or limitation on its use.

18. TIME

The Contractor acknowledges that timely performance is an important element of this Agreement. Accordingly, the Contractor shall put forth its best professional effort to complete its services in accordance with the agreed-upon schedule.

19. ENTIRE AGREEMENT

This Agreement is the entire agreement of the parties and no attempted modification shall be binding unless in writing and signed by MTS and the Contractor. All questions pertaining to the validity and interpretation of this Agreement shall be determined in accordance with the laws of California applicable to contracts made to be performed within the state.

20. NONDISCRIMINATION BY CONTRACTOR

The Contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as MTS deems appropriate.

21. DISPUTES, CLAIMS, AND RESOLUTION

MTS and the Contractor agree that every effort shall be made to resolve any dispute arising under this Agreement informally through their designated representatives. If the informal efforts are unsuccessful, then either party may request mediation by submitting a written request signed by an officer with the authority to bind the Contractor or MTS. Within five (5) business days of the request of any party, the parties shall mutually agree on the person or alternative dispute resolution agency to conduct the mediation. If the parties are unable to agree on the person or alternative dispute resolution agency to conduct the mediation, the initiating party may arrange for the office of the American Arbitration Association in downtown San Diego, California, to perform the mediation. The initiating party shall then schedule the mediation so that it is conducted within fifteen (15) business days of the mediator's appointment. The costs of the mediation and fees of the mediator, if any, shall be borne by the requesting party. Any dispute not resolved through the mediation may proceed to litigation in a court of competent jurisdiction in the County of San Diego, State of California, unless the parties agree in writing to submit the dispute to binding arbitration.

Should the Contractor suffer any injury or damage to person or property because of any alleged act or omission of MTS, or if any of Contractor's employees, agents, or others for whose acts the Contractor is legally liable suffers any injury or damages to person or property because of any alleged act or omission of MTS, a written claim for damages shall be filed with the MTS

Office of General Counsel in accordance with the provisions of California Government Code section 800 et seq.

The duties and obligations imposed by this Agreement and the rights and remedies available hereunder shall be in addition to and not a limitation of any duties, obligations, rights, and remedies otherwise imposed or available by law. No action or failure to act by MTS or Contractor shall constitute a waiver of any right or duty afforded any of them under this Agreement, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder except as may be specifically agreed to in writing.

22. DUTY TO CLARIFY OBVIOUS AMBIGUITY

The Contractor is required to seek clarification of any obvious ambiguity contained in the contract documents. Failure to do so will result in an interpretation of the ambiguous provision favorable to MTS should a dispute later arise concerning that provision.

23. PREVAILING WAGE

Work to be performed by Contractor in accordance with this Contract may be a "public work" under Labor Code § 1720, et seq. If Contractor will receive federal funds, this Contract may also be subject to the payment of prevailing wages pursuant to the Davis-Bacon Act, 40 U.S.C. § 3141 et seq., and other federal laws. It is the sole responsibility of Contractor to ensure that all workers who perform work pursuant to this Contract are paid the correct rate of prevailing wages.

When working on a federally funded project, Contractor shall ensure that all workers entitled to the payment of prevailing wages receive the higher of the applicable State or federal prevailing wage.

MTS has obtained from the Director of the California Department of Industrial Relations general prevailing wage determinations for the locality in which work is being performed. These determinations are on file and available at MTS' offices located 1255 Imperial Avenue, Suite 1000, San Diego, California 92101, and are available from the Department of Industrial Relations on the internet at www.dir.ca.gov. Federal prevailing wage rates are available from the U.S. Department of Labor on the internet at www.access.gpo.gov.

24. ROYALTIES AND PATENT FEES

The Contractor shall pay all royalties and patent fees, and shall defend all suits and claims for infringements of any patent rights, and shall hold MTS harmless from loss on account thereof. If however, the Contractor has information that the procedures or articles specified are an infringement of a patent, the Contractor shall be responsible for any loss unless said information is promptly given to MTS by Contractor.

25. PATENT RIGHTS

A. General.

If any invention, improvement, or discovery of MTS, or any of its third party contractors, is conceived or first actually reduced to practice in the course of, or under this Project, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, MTS is required to notify FTA immediately and provide a detailed report.

B. Federal Rights.

Unless the Federal Government later makes a contrary determination in writing, the rights and responsibilities of MTS, third party contractor, subrecipient and the Federal Government pertaining to that invention, improvement, or discovery will be determined in accordance with applicable federal laws, regulations, including any waiver thereof. Unless the Federal Government later makes a contrary determination in writing, MTS, irrespective of its status or the status of any subrecipient or any third party contractor at any tier (i.e., a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual, etc.), MTS shall transmit to FTA those rights due the Federal Government in any invention resulting from that third party contract described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business firms Under Government Grants, Contracts, and cooperative Agreements," 37 C.F.R. Part 401.

26. ACCESS REQUIREMENTS FOR PERSONS WITH DISABILITIES

The Contractor shall comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §§ 12101 et seq.; section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794; 49 U.S.C. § 5301(d); and the following federal regulations including any amendments thereto:

- A. U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;
- B. U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;
- C. U.S. DOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 49 C.F.R. Part 38;
- D. U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;
- E. U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;
- F. U.S. GSA regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;

- G. U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;
- H. U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for the Hearing and Speech Disabled," 47 C.F.R. Part 64, Subpart F;
- I. FTA Regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609; and
- J. Any implementing requirements FTA may issue.

27. METRIC SYSTEM

As required by U.S. DOT or FTA, Contractor agrees to use the metric system of measurement in its Project activities, in accordance with the Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act, 15 U.S.C. §§ 205a *et seq.*; Executive Order No. 12770, "Metric Usage in Federal Government Programs," 15 U.S.C. §§ 205a note; and any U.S. DOT or FTA regulations, guidelines, and policies. To the extent practicable and feasible, Contractor agrees to accept products and services with dimensions expressed in the metric system of measurement.

28. SUBSTANCE ABUSE

Pursuant to the rules and regulations of the Department of Transportation, Contractor will be required to comply with all applicable drug and alcohol testing requirements, including the amendments to 49 C.F.R. parts 655.

As a condition of this Contract, the following are the Contractor's Drug and Alcohol Testing Obligations:

- A. Contractors Certification: Contractor certifies that it will comply with all applicable drug and alcohol testing requirements provided by law, including, but not limited to, the drug and alcohol testing requirements set forth in the Department of Transportation's regulations.
- B. Indemnification of MTS: Contractor agrees to indemnify, defend and hold harmless MTS, SDTI and SDTC, and their directors, employees and agents from and against any loss, damage, expense and liability that MTS, SDTI or SDTC, may incur as a result of Contractor's failure to comply with any applicable drug and alcohol testing obligations.
- C. Survival of MTS' Indemnification Rights: The rights and obligations contained in "B" (Indemnification of MTS) will survive any termination or expiration of this Agreement.
- D. Failure to comply with Drug and Alcohol Testing Obligations May Result in Termination of Contract: If, at any time during the period of this Agreement, Contractor fails to comply with any applicable drug and alcohol testing

requirements, MTS will consider such failure a material breach of this Agreement, and MTS may terminate this Agreement immediately.

29. IDENTIFICATION OF PERSONNEL/SECURITY

MTS shall provide Contractor personnel who enter upon MTS property with "Contractor Identification Badges." All personnel shall display these badges prominently upon their persons while on MTS properties. MTS will allow only properly certified personnel of the Contractor on its properties. MTS shall have the right to require the Contractor to conduct background checks on its employees and to remove from MTS properties an employee MTS considers incompetent, careless, or who constitutes a security risk or safety hazard. The Contractor's personnel must have appropriate documentation, as determined by the Contract Administrator, to gain access to MTS properties. The Contract Administrator will advise the Contractor in writing of necessary documentation and identification required to gain access to MTS properties based upon the Federal Department of Homeland Security threat level in effect from time-to-time, and subject to any additional security requirements mandated by the Federal Department of Homeland Security, the Federal Transit Administration, or any other federal or state agency.

30. NONWAIVER

Failure of MTS to insist upon strict performance of any of the terms and conditions hereof, or failure or delay to exercise any rights or remedies provided herein, or by law, or to properly notify Contractor in the event of breach, or the acceptance of payment for any goods hereunder, or review of design, shall not release Contractor from any of the warranties or obligations of this agreement, and shall not be deemed a waiver of any right of MTS to insist regardless when shipped, received, or accepted or as to any prior or subsequent default hereunder, nor shall any revision of this agreement by MTS operate as a waiver of any of the terms hereof. A requirement that a Contractor's document be submitted for or subject to "authorization to proceed," "approval," "acceptance," "review," "comment," or combinations of such words or words of like import shall mean, unless the context clearly indicates otherwise, that Contractor shall, before implementing the information in the document, submit the document, obtain resolution of any comments, and obtain written authorization from MTS to proceed, and shall mean that a complete check will be performed. Authorization to proceed shall not constitute acceptance or approval of design details, calculations, analyses, test methods, or materials developed or selected by Contractor and shall not relieve Contractor from full compliance with contractual obligations.

TYPIST ID
SA-SERVICES REVISED (REV 6-13)
DATE

Attachments: Certificate of Compliance

CERTIFICATE OF COMPLIANCE
WITH MTS EQUAL OPPORTUNITY PROGRAMS AND DBE CONTRACTOR INFORMATION FORM

I hereby certify that, in performing under contract(s) or purchase order(s) awarded by the San Diego Metropolitan Transit System (MTS), I will comply with the provisions of MTS Equal Employment Opportunity Program, and rules and regulations adopted pursuant thereto, Title VI of the Civil Rights Act of 1964, the California Fair Employment Practices Act, and any other applicable federal and state laws and regulations relating to equal employment opportunity, including laws and regulations hereinafter enacted.

DBE subcontractor participants are listed below, the successful bidder must execute and return this form even if no DBE participation will be reported:

Company Name and Address	Description of Work	Dollar Amount

If 100% of item is not to be performed or furnished by DBE, describe exact portion of item to be performed or furnished by DBE. I agree to make a good-faith effort to meet the goals of this plan as part of my contractual obligations to MTS.

Date: _____

Firm: Clear Channel Outdoor, Inc

By: _____ 

Title: EVP

DOCKET SUPPORTING INFORMATION
CITY OF SAN DIEGO

EQUAL OPPORTUNITY CONTRACTING PROGRAM EVALUATION

DATE:

April 24, 2014

SUBJECT: Second Amendment to MOU with MTS for Bus Shelter and Bus Bench Advertising

GENERAL CONTRACT INFORMATION

Recommended Agency: Metropolitan Transit System (MTS – Public Entity)

Amount of this Action: N/A

Funding Source: N/A

Goal: N/A

SUBCONTRACTOR PARTICIPATION

There is no subcontractor participation identified with this action. Any future subcontracting activity will be subject to Agency requirements.

EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE

Equal Opportunity: Required.

Metropolitan Transit System (MTS) is a Public Entity and, is therefore exempt from the Work Force Report analysis. See San Diego Municipal Code section 22.2703(b).

This agreement is not subject to the City's Equal Opportunity Contracting (San Diego Ordinance No. 18173, Section 22.2701 through 22.2708). This agreement is subject to the City's Non-Discrimination in Contracting Ordinance (San Diego Municipal Code Sections 22.3501 through 22.3517).

ADDITIONAL COMMENTS

This action authorizes an extension until December 31, 2024 of a Memorandum of Understanding (MOU) with the San Diego Metropolitan Transit System (MTS) for advertising on bus shelters and bus benches at bus stops on City streets. The existing MOU was approved by the City Council on July 29, 2008. The First Amendment, approved on June 27, 2013, extended the MOU until June 30, 2014.

Their current forecasts indicate a partial revenue payment of \$40,696 for FY 2021, and then \$84,783 annually for FY 2022-2025 from advertising on bus shelters.

KM

AMENDMENT NO. 2 TO MEMORANDUM OF UNDERSTANDING
BETWEEN THE CITY OF SAN DIEGO
AND THE SAN DIEGO METROPOLITAN TRANSIT SYSTEM
REGARDING BUS SHELTER AND BUS BENCH ADVERTISING

This Amendment No. 2, dated _____, 2014, 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 and City Doc. No. RR-304026 ("Bus Shelter Advertising MOU"), to set forth the terms and conditions of CITY's participation in MTS's bus shelter advertising program;

WHEREAS, MTS and CITY executed Amendment No. 1 to the Bus Shelter Advertising MOU (MTS Doc. No. G1124.1-08) for a one year extension, through June 30, 2014;

WHEREAS, MTS is undertaking a new transit shelter program, in two parts. Part 1 is the execution of a new ten-year contract with Clear Channel Outdoor for installation, maintenance and advertising at transit shelters throughout MTS's jurisdiction. Part 2 is a procurement of up to 500 new transit shelters to replace the 444 existing shelters and install up to 56 new transit shelters at bus stop locations throughout MTS' jurisdiction.

WHEREAS, in 2012-2013, the San Diego Association of Governments replaced 13 MTS transit shelters including advertising panels with updated shelter structures to benefit the Super Loop bus routes operated and maintained by MTS.

WHEREAS, the revenue generated from the MTS contract with Clear Channel Outdoor is intended to first fund the purchase of the new transit shelters.

WHEREAS, after funding the new transit shelter procurement, any additional revenue generated by the MTS contract with Clear Channel Outdoor will be divided and spent as designated in this Amendment No. 2.

WHEREAS, MTS's bus bench advertising contract does not expire until February 1, 2015 and the terms of advertising and revenue share for bus bench advertisements shall remain unchanged.

AGREEMENT

1. The terms and conditions of MTS Doc. No. G1124.0-08 shall remain unchanged, except as follows:

SECTION 1. C Location Criteria for Transit Shelters and Bus Benches is revised to read:

Transit shelters and bus benches with advertising will be permitted only in commercially, industrially or multi-family 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.

SECTION 1. L (i) Revenue to MTS – Transit Shelters is replaced with the following:

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, including procuring new transit shelters and hiring a contractor to replace the existing shelters at bus stops located within MTS’s jurisdiction. MTS has entered into a 10 year contract (5 year base and 5 one-year options) with Clear Channel Outdoor, beginning January 1, 2014. MTS intends to complete a procurement for new transit shelters by the end of 2014.

MTS and CITY agree to use the revenue generated from the Clear Channel Outdoor contract to fund the transit shelter procurement. Depending on the cost of the shelters, it is estimated that the first five to seven years of revenue from the contract will be dedicated to the transit shelter procurement project.

After all expenses related to the transit shelter procurement have been paid for, MTS agrees to pay to CITY, in quarterly installments, ten percent of all additional revenue generated for advertising at shelters located on CITY right-of-way. CITY agrees to program all revenue received under this agreement into its Capital Improvement Program for the following fiscal year. All revenue received under this Agreement by CITY shall be spent on the installation of concrete bus pads, Americans with Disabilities Act improvements or other transit improvements mutually agreed upon by the parties at or near bus stop locations selected by and located in the CITY.

At the time of execution of this amendment, eighty-nine percent (based upon 301 of the 338 shelters with advertising located in within the CITY) of the shelter revenue is attributed to transit shelters located in the CITY.

SECTION 1. L (2) Advertising Policy:

Attached to this Amendment No. 2 is the current, effective version of MTS Policy No. 21 titled “MTS REVENUE-GENERATING DISPLAY ADVERTISING, CONCESSIONS, AND MERCHANDISE.”

SECTION 1. L (8) Notices is revised to read:

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 upon such delivery) or delivered by first class mail, as follows:

To the CITY:

Mayor
City of San Diego

To MTS:

Chief Executive Officer
San Diego Metropolitan Transit System

202 C Street
San Diego, California 92101

1255 Imperial Avenue, Suite 1000
San Diego, California 92101

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 provided herein 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.

SECTION 1. L (15) Term is revised to read:

This Amendment No. 2 shall be effective upon approval. MTS shall have the right to administer its transit shelter program through December 31, 2023. MTS shall have the right to administer its bus bench program through February 1, 2015. Upon execution of a new bus bench advertising contract by MTS, a subsequent amendment to this agreement shall be negotiated between MTS and CITY. MTS's obligation to make payments to the CITY and CITY's obligation to program and expend those funds shall terminate on December 31, 2024.

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

MOU with MTS for Bus Stop Advertising

Infrastructure Committee



**TRANSPORTATION
& STORM WATER**

MTS Bus Shelter and Bus Bench Program

- Shelters and benches at bus stops for the comfort of bus transit passengers
- Most shelters and benches have an advertising panels
- Revenue primarily for procurement and maintenance
- Surplus revenue: MTS uses the funding for additional public transit programs, sends share to City
- City share: for City crews to make capital improvements near bus stops

Previous Arrangement for Shelters

- Shelters originally purchased in 1988
- Past their service life
- CBS Outdoor was advertising vendor
- MTS annual revenue of \$800,000
- Five-year MOU adopted in 2008, City annual revenue share of \$69,600
- First Amendment adopted last year extended arrangement for one year

Proposed 2nd Amendment

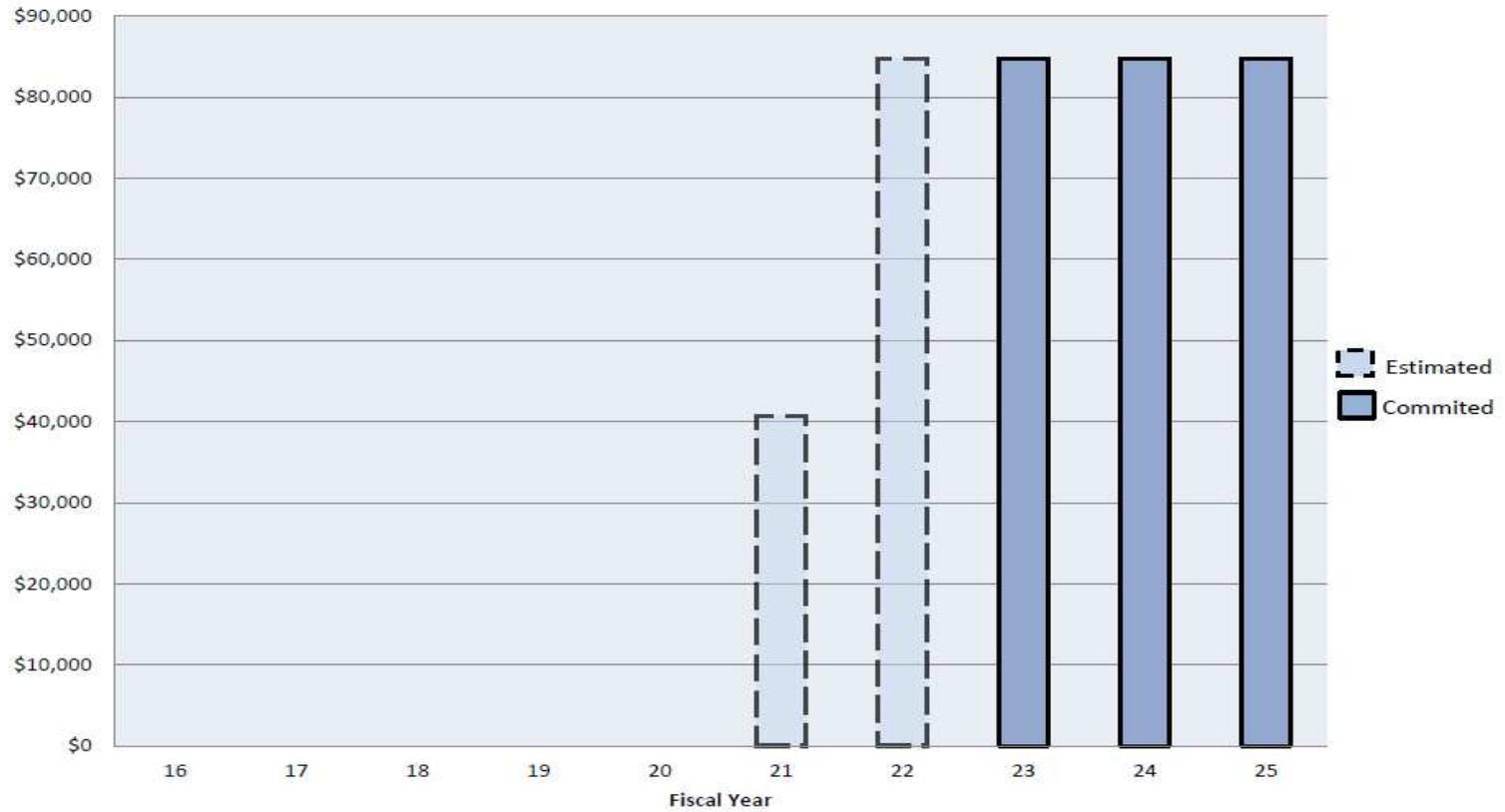
- Clear Channel will be new advertising vendor for shelters, replacing CBS Outdoor
- MTS annual revenue from Clear Channel will be \$950,000 for ten years
- Procurement of new shelters will use all revenue for first 5 to 7 years
- Revenue sharing with City will return when procurement is paid; maybe year 6, definitely by year 8
- City's annual share estimated at \$84,743

New Shelter



City Revenue Share

City Revenue from Shelter Revenue
Second Amendment to MOU



Arrangement for Benches

- Originally a City program dating back to 1975
- Transferred to MTS in 2000 on condition of revenue sharing
- City's share is 50% of net; varies annually based on market conditions
- Has ranged from \$25,104 to \$52,738 per year
- Coast United is contractor; their contract with MTS expires on January 31, 2015
- Future 3rd amendment to MOU will address bench program

City Use of Revenue Since 2008

- Concrete bus pads and other small capital improvements at bus stops
- All work is by City staff
- About 30 pads have been installed with about 20 more coming within the next year
- Other funding sources also provide for concrete bus pads (City public works and utility projects, developer exactions, SANDAG projects)

Recommendation

- Approve 2nd Amendment to MOU with MTS

Questions?

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

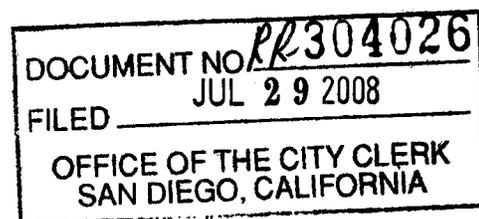
WHEREAS, MTS will utilize any advertising revenue generated over the length of this MOU to operate, maintain and enhance transit services within the City of San Diego;

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.

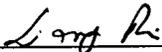
Dated this 29th day of July, 2008.

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



Metropolitan Transit System

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.

RECEIVED
CITY CLERK'S OFFICE
AUG 11 2008

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'S OFFICE
AUG 11 2008

DUPLICATE

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 JUL 23 2013, 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 and CITY Doc. No. RR-304026 ("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.

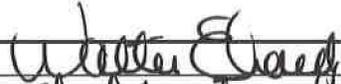
3. All other terms and conditions shall remain the same.

SAN DIEGO METROPOLITAN TRANSIT SYSTEM

CITY OF SAN DIEGO



Paul C. Jablonski
Chief Executive Officer

By: 

Title: Chief Operating Officer

APPROVED AS TO FORM:

APPROVED AS TO FORM:



Karen Landers
General Counsel

 9/18/2013

San Diego City Attorneys' Office
Ryan Kohut

0-20284

00-20284
DOCUMENT NO. JUL 23 2013
FILED
OFFICE OF THE CITY CLERK
SAN DIEGO, CALIFORNIA

50
MONDAY, 7/30/13
(O-2013-106)

ORDINANCE NUMBER O- 20284 (NEW SERIES)

DATE OF FINAL PASSAGE AUG 05 2013

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO AUTHORIZING THE EXECUTION OF THE FIRST AMENDMENT TO THE MEMORANDUM OF UNDERSTANDING WITH METROPOLITAN TRANSIT SYSTEM FOR THE INTSTALLATION OF ADVERTISING ON TRANSIT SHELTERS AND BENCHES.

WHEREAS, on July 29, 2008, the City Council adopted the existing Memorandum of Understanding (MOU) between the City and the Metropolitan Transit System (MTS); and

WHEREAS, this First Amendment to the prior MOU will extend the term of the prior agreement until June 13, 2014; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That the Mayor is hereby authorized and directed to execute, for and on behalf of said City, the First Amendment to the MOU with MTS under the terms and conditions set forth in the First Amendment on file in the Office of the City Clerk as Document No.

OO- 20284 together with any reasonably necessary modifications or amendments thereto which do not increase project scope or cost and which the Mayor shall deem necessary from time to time in order to carry out the purposes and intent of this project and agreement.

Section 2. That a full reading of this ordinance is dispensed with prior to its passage, a written or printed copy having been made available to the City Council and the public prior to the day of its passage.

Section 3. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

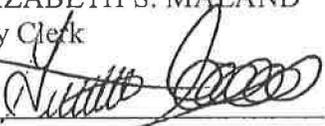
APPROVED: JAN I. GOLDSMITH, City Attorney

By 
Ryan P. Kohut
Deputy City Attorney

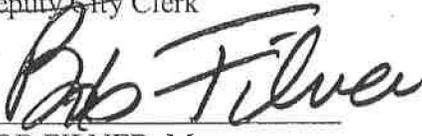
RPK:cfq
6/24/2013
Or.Dept:Transportation & Storm Water Dept.
Document Number: 586565

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of JUL 30 2013.

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

Approved: 8/2/13
(date)


BOB FILNER, Mayor

Vetoed: _____
(date)

BOB FILNER, Mayor

This ordinance is effective August 5, 2013, which represents the day this ordinance was returned to the Office of the City Clerk with the Mayor's signature of approval.

Passed by the Council of The City of San Diego on JUL 30 2013, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Sherri Lightner	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Kevin Faulconer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Todd Gloria	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Myrtle Cole	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mark Kersey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lorie Zapf	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
David Alvarez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marti Emerald	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage AUG 05 2013.

AUTHENTICATED BY:

BOB FILNER
Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By [Signature], Deputy

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on

JUL 15 2013

AUG 05 2013

, and on _____.

~~I FURTHER CERTIFY that said ordinance was read in full prior to its final passage.~~

I FURTHER CERTIFY that the reading of said ordinance in full was dispensed with by a vote of not less than a majority of the members elected to the Council, and that there was available for the consideration of each member of the Council and the public prior to the day of its passage a written or printed copy of said ordinance.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By [Signature], Deputy

Office of the City Clerk, San Diego, California

Ordinance Number O- 20284

Passed by the Council of The City of San Diego on July 23, 2013 by the following vote:

YEAS: LIGHTNER, FAULCONER, GLORIA, COLE, KERSEY,
SHERMAN, ALVAREZ, EMERALD.
NAYS: NONE.
NOT PRESENT: ZAPF,
RECUSED: NONE.
VACANT: NONE.

AUTHENTICATED BY:

BOB FILNER

Mayor of The City of San Diego, California

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California

(Seal)

By:  Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of ORDINANCE NO. O – 20284 (New Series) of The City of San Diego, California.

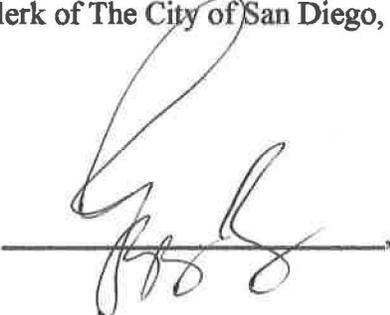
I FURTHER CERTIFY that said ordinance was passed on the day of its introduction, to wit, on August 5, 2013.

I FURTHER CERTIFY that the reading of said ordinance in full was dispensed with by a vote of not less than a majority of the members elected to the Council, and that there was available for the consideration of each member of the Council and the public prior to the day of its passage a written or printed copy of said ordinance.

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California

(SEAL)

By:  Deputy