



Council Meeting: March 1, 2011

SUBJECT: Approval of Amendment No. 5 to the Transit Shelter Advertisement Program Implementation Agreement With the Valley Transportation Authority and Clear Channel Outdoor and Authorization for the City Manager to Execute Future Amendments

REPORT IN BRIEF

The Santa Clara Valley Transportation Authority (VTA) entered into a Transit Shelter Advertising Program Agreement with Clear Channel Outdoor (CCO, formerly known as Eller Media and Patrick Media Group, Inc.) on June 9, 1994. The agreement provided for the construction of new bus shelters at bus stop locations throughout the County of Santa Clara, with three fourths (3/4) of all bus shelters to contain advertising panels as part of the program.

On October 31, 1995, VTA, CCO, and nine local jurisdictions, including the City of Sunnyvale, entered into an implementation agreement that among other items, transferred certain rights granted to VTA under the original agreement with CCO to local participating jurisdictions, including revenue sharing. Subsequently, there were four other amendments between September 1997 and July 2003 to add a few more cities into the program and added a liquidated damages clause.

The current agreement with CCO expired on October 31, 2010. VTA has negotiated a modified short term (2 year) extension agreement with CCO until a successful replacement is found through a Request for Proposal process. The VTA is now asking participating agencies to approve an amended agreement to allow for the extension and to modify the terms of the agreement. Staff recommends the City Council approve the amended agreement. Staff also recommends that authority be given to the City Manager to execute future amendments to this agreement. The agreement has been subject to a number of administrative-type amendments which could be more efficiently executed by the City Manager.

EXISTING POLICY

Land Use and Transportation Element R1.2 Support coordinated regional transportation system planning and improvements.

DISCUSSION

The agreement with CCO expired on October 31, 2010. VTA issued a Request for Proposal (RFP) in February 2010. However, due to market conditions and restricted credit availability at the time, VTA only received two proposals and both were rejected as non-responsive. The present contractor (CCO) did not submit a proposal. In order to provide for ongoing shelter maintenance and advertising sales, and to allow the market some time to recover in order to receive better proposals, VTA negotiated a short term (2 year) extension of the contract. Changes in the agreement terms, due to lower than expected advertising sales and the increased costs of garbage and waste disposal, include reduction of no more than 50 percent of advertising and cutback in the trash collection and disposal schedule. Advertising panels that will no longer display commercial advertisements will not be removed but rather VTA and the participating cities and the County will be able to use the space for public service announcements. CCO will post material at no cost and provide in-kind services up to \$15,000 per month towards the production cost of public information. VTA will continue to share proposed revenue with participating agencies, based on the new percentage of advertising shelters in that jurisdiction per the terms of the original implementation agreement. During this two-year extension, VTA will investigate new ways to improve the program and prepare a new RFP accordingly.

This short term (2 year) extension was approved by the VTA Board on October 16, 2010. VTA is now requesting the participating agencies to approve the amendment. A short term extension will continue the advertisement program and trash collection at a reduced level. Cities and the County will continue to receive revenue which may be less than the annual revenue received to date.

FISCAL IMPACT

Presently, Sunnyvale receives revenue of approximately \$8,000 annually which may get reduced to \$4,000 per year for the next two years.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City's Web site.

ALTERNATIVES

- 1) City Council approve Amendment No. 5 to the Implementation Agreement between the Valley Transportation, Clear Channel Outdoor and the City of Sunnyvale for a two year extension, and authorize the City Manager to execute future amendments to this agreement.
- 2) Do not approve Amendment No. 5 to the Implementation Agreement between the Valley Transportation, Clear Channel Outdoor and the City of Sunnyvale for a two year extension.

RECOMMENDATION

Staff recommends Alternative No. 1: City Council approve Amendment No. 5 to the Implementation Agreement between the Valley Transportation, Clear Channel Outdoor and the City of Sunnyvale for a two year extension.

A short term extension will continue the advertisement program and trash collection at a reduced level. Cities and the County will continue to receive revenue which may be less than the annual revenue received to date. The City will have an opportunity to place public service advertisements at certain bus shelters. Authorizing the City Manager to execute future amendments will streamline the management of this agreement.

Reviewed by:

Marvin Rose, Director, Public Works

Prepared by: Jack Witthaus, Transportation and Traffic Manager

Approved by:

Gary M. Luebbers
City Manager

Attachments

- A. New 2 Year Extended and Amended Agreement between the Valley Transportation Authority and Clear Channel Outfit

**AMENDMENT NO. 5 TO
IMPLEMENTATION AGREEMENT FOR
TRANSIT SHELTER ADVERTISING PROGRAM**

This Amendment No. 5 to Implementation Agreement ("Amendment") for Transit Shelter Advertising Program is made this 1st day of November, 2010 (hereinafter referred to as the "Effective Date"), by and among the Santa Clara Valley Transportation Authority ("VTA") (formerly known as the Santa Clara County Transit District); Clear Channel Outdoor (formerly known as Eller Media and Patrick Media Group, Inc.) ("Contractor"); and the following California county and cities: the County of Santa Clara and the Cities of San Jose, Sunnyvale, Santa Clara, Mountain View, Milpitas, Gilroy, Cupertino, Los Altos, Morgan Hill, Campbell, and Palo Alto (the foregoing county and cities are hereinafter sometimes referred to collectively as the "Participating Entities" and individually as a "Participating Entity" or the "County" and/or a "City," as the case may be).

RECITALS

A. VTA and Contractor entered into that certain Transit Shelter Advertising Program Agreement dated June 9, 1994 (the "Advertising Agreement"). The Advertising Agreement provides for the construction by Contractor of up to 564 new bus shelters at bus stop locations throughout the County of Santa Clara, with three-fourths (3/4) of all bus shelters to contain advertising panels, as part of a transit advertising program ("Program").

B. On October 31, 1995, VTA, Contractor and nine local jurisdictions, consisting of the County of Santa Clara and the Cities of San Jose, Sunnyvale, Santa Clara, Mountain View, Milpitas, Gilroy, Cupertino, Los Altos, entered into an Implementation Agreement for Transit Shelter Advertising Program ("Implementation Agreement"), which amended the Advertising Agreement to, among other things, include the local jurisdictions in the Program and transferred certain rights that were granted to VTA under the Advertising Agreement to the local participating jurisdictions.

C. On September 8, 1997, VTA, Contractor and the participating jurisdictions entered into Amendment No. 1 to the Implementation Agreement, to add the City of Morgan Hill as a participating entity in the Program.

D. On March 23, 1997, VTA, Contractor and the participating jurisdictions entered into Amendment No. 2 to the Implementation Agreement, to add the City of Campbell as a participating entity in the Program.

E. On March 23, 1999, VTA, Contractor and the participating jurisdictions entered into Amendment No. 3 to the Implementation Agreement, to establish a schedule of liquidated damages to be assessed in the event Contractor fails to comply with certain requirements of the Implementation Agreement.

F. On July 1, 2003, VTA, Contractor and the participating jurisdictions entered into a fourth amendment to the Implementation Agreement, erroneously entitled "Amendment No. 5", to add the City of Palo Alto as a participating entity in the Program.

G. VTA, Contractor and the Participating Entities now wish to extend the term of the Implementation and Advertising Agreements for two years, reduce advertising space on the shelters by no more than 50%, and reduce the collection and disposal of trash from the shelters by Contractor, as more specifically set forth herein;

NOW, THEREFORE, for valuable consideration, the parties agree to amend the Implementation Agreement, as follows:

- (1) The term of the Implementation Agreement, and the Advertising Agreement, is hereby extended for two years, through October 31, 2012.
- (2) Advertising space on the shelters shall be reduced by no more than fifty percent (50%). Contractor shall have the authority to designate which shelters will continue to be posted with commercial advertising. The remaining non-commercial advertising space may be utilized by VTA and the Participating Entities to display public service announcements. Contractor will post the announcements at no cost to VTA or the Participating Entities, and shall contribute the sum of \$15,000 per month of in-kind services to cover costs associated with the production and printing of the announcements and related materials. These in-kind services shall be available to VTA and the Participating Entities on a first-come, first-served basis until exhausted.
- (3) Collection and disposal of trash from the shelters by Contractor shall be reduced from 1,034 pickups per week to 375 pickups per week. VTA, in consultation with the Participating Entities, shall determine which shelters will retain trash containers and the frequency of service each week at those shelters.
- (4) The first sentence of Section 9.b. of the Implementation Agreement is hereby amended to read:

"SCCTD shall pay each Participating Entity fifty percent (50%) of all Shared Advertising Revenue received by SCCTD for advertising shelters located in each Entity's respective jurisdiction as of November 1, 2010."

CITY OF GILROY

By: _____
Name: _____
Title: _____

CITY OF CUPERTINO

By: _____
Name: _____
Title: _____

CITY OF LOS ALTOS

By: _____
Name: _____
Title: _____

CITY OF MORGAN HILL

By: _____
Name: _____
Title: _____

CITY OF CAMPBELL

By: _____
Name: _____
Title: _____

CITY OF PALO ALTO

By: _____
Name: _____
Title: _____

(5) Except as hereby amended, each of the terms and conditions of the Implementation Agreement, and Advertising Agreement, shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have signed this Amendment as of the date first set forth above.

SANTA CLARA VALLEY
TRANSPORTATION AUTHORITY

By: Michael T. Burns
Name: Michael T. Burns
Title: General Manager

CLEAR CHANNEL OUTDOOR

By: [Signature]
Name: Fred Hansen
Title: President / GM

COUNTY OF SANTA CLARA

By: _____
Name: _____
Title: _____

CITY OF SAN JOSE

By: _____
Name: _____
Title: _____

CITY OF SUNNYVALE

By: _____
Name: _____
Title: _____

CITY OF SANTA CLARA

By: _____
Name: _____
Title: _____

CITY OF MOUNTAIN VIEW

By: _____
Name: _____
Title: _____

CITY OF MILPITAS

By: _____
Name: _____
Title: _____