



STAFF REPORT

City Council

Meeting Date:

12/6/2016

Staff Report Number:

16-211-CC

Consent Calendar:

Authorize the City Manager to enter into a license agreement with the San Mateo County Transit District for the installation of bus shelters

Recommendation

Staff recommends the City Council authorize the City Manager to enter into a license agreement with the San Mateo County Transit District for the installation of bus shelters.

Policy Issues

As part of the City Council Work Plan for 2016 (Item No. 67), staff is pursuing installation of new bus shelters in the Belle Haven neighborhood of Menlo Park. The Circulation Element of the General Plan includes policies that support and encourage the use of public transit. The installation of bus shelters would support these policies.

Background

Bus shelters are an amenity provided at major transit stops, providing cover from sun or weather, seating and information about the transit system. Typically, bus shelter and transit stop amenities such as benches, trash cans, maps, and signs are provided by the transit agency that provides the service. Within Menlo Park, public transit service is provided by SamTrans and Alameda County (AC) Transit, which operates the Dumbarton Express bus service.

In 2006, SamTrans, through its contract with Outfront Media, initiated a program to replace existing bus shelters throughout the County with a new design. Outfront Media currently replaces and maintains shelters at no-cost to SamTrans or local agencies by allowing advertisements to be posted within the shelter. The revenue generated by advertisements fully covers the capital cost of installation as well as ongoing maintenance for the shelter.

SamTrans' bus shelter policy states that shelters are considered for installation based on the following criteria:

- Stops serving more than 200 passengers each day
- 75 percent of shelters shall be located in census tracts on routes associated with urbanized areas
- Distribution of shelters county-wide should match the distribution of minority census tracts
- Locations for shelters with advertisements are chosen by the vendor based on the visibility and traffic

On March 15, 2016 and October 25, 2016, staff provided informational updates to the Council on the status of bus shelter installation. Staff has now narrowed down locations that, with some construction by the City to

fit the required footprint, could accommodate a SamTrans bus shelter. These locations are:

- Market Place Park
- Onetta Harris Community Center

Staff has approved the locations for SamTrans to order shelters for those stops that would be served by SamTrans (Market Place Park and Onetta Harris Community Center). The lead time to receive the shelters once ordered is several months, followed by installation. In the meantime, City crews or contractors would perform the necessary site work to prepare the locations for shelter installation.

As mentioned previously, staff will continue to coordinate with AC Transit, which operates Dumbarton Express bus service on Willow Road, to determine feasibility of shelters at stops on Willow Road at Newbridge Street, Ivy Drive and/or Hamilton Avenue. Additional coordination with Caltrans may also be required depending on the specific location.

Analysis

Since bus shelters would be installed in the City right-of-way, a license agreement with SamTrans would be needed to document the approved locations and permitted advertising in new and existing shelters. A prior license agreement was executed in 1986 for two bus shelter locations within the City on Willow Road, as provided in Attachment A. Five other SamTrans shelters exist at the following locations, but no record of a license agreement or other document could be found:

- Middlefield Road in the vicinity of USGS (2)
- Ravenswood Avenue near SRI (1)
- Willow Road near Durham Avenue (1)
- El Camino Real near Encinal Avenue (1)

City and SamTrans staff are coordinating to prepare a revised agreement noting all existing and new locations and acceptance of advertising. In order to maintain momentum on the process through the end of 2016 and early 2017, staff is requesting Council authorization for the City Manager to enter into a license agreement, as approved by the City Attorney.

As described above, the revenue generated by the advertisements covers the capital cost and ongoing maintenance for the shelters. Within Menlo Park, the City's Municipal Code (section 16.92, sign ordinance) prohibits signs and advertising within the public right-of-way except in explicitly defined circumstances (such as for building rentals or sales). The use of advertising within bus shelters was identified as a potential violation of the sign ordinance. However, in December 2015, staff was provided a copy of SamTrans advertising policy, which limits the type and content allowable within shelters and other areas within their control (trains, buses, etc.). Upon review of SamTrans advertising policy, as well as court decisions limiting a City's ability to regulate signs by other governmental agencies, the City Attorney's concerns regarding posting of advertisements in the public right-of-way were alleviated. A copy of SamTrans advertising policy is included in Attachment B.

Impact on City Resources

It is anticipated that this project can be installed with existing staff and budget resources. If further City funds are needed to install or maintain the shelters, staff will bring the information forward as part of a future request for the Council's consideration.

Public Notice

Public Notification was achieved by posting the agenda, with the agenda items being listed, at least 72 hours prior to the meeting.

Attachments

- A. 1986 License Agreement for Bus Shelter Installation
- B. San Mateo County Transit District Advertising Policy

Report prepared by:

Nicole H. Nagaya, P.E., Transportation Manager

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samTra



MENLO PARK

② Coleman Way/
Willow Road
EB/WB

BOARD OF DIRECTORS

JACK BLAND
FRANK T. CANNIZZARO Vice Chairman
MIRIAM L. GHOUKELY
TOM NOLAN
C. ROBERT PAYNE Chairman
RALPH ROY RAMIREZ
WILLIAM J. STANGEL
ALBERT M. TEGLIA
JOHN M. WARD
GERALD T. HAUGH
General Manager

April 14, 1986

Mr. Michael A. Bedwell
City Manager
City of Menlo Park
701 Laurel Street
Menlo Park, CA 94015-3483

Dear Mr. Bedwell:

Attached for your file is a fully executed copy of an agreement to install two bus shelters on Willow Road and Coleman Way, one in the eastbound direction and one in the westbound direction, in the city of Menlo Park.

Thank you very much for your cooperation.

Sincerely,

Victoria Farnan for Earl Moore

Earl Moore, Manager
Security/Special Services

EM/vf

Attachment: Copy of Agreement

SAN MATEO COUNTY TRANSIT DISTRICT
945 California Drive, Burlingame, California 94010 (415) 872-6748



LICENSE AGREEMENT

This License Agreement is made as of the 26th day of March, 1986, by and between the CITY OF MENLO PARK, 701 Laurel Street, Menlo Park, California, 94025, hereafter referred to as LICENSOR, and the SAN MATEO COUNTY TRANSIT DISTRICT, 945 California Drive, Burlingame, California, 94010, hereafter referred to as LICENSEE. The parties hereto agree as follows:

1. LICENSOR hereby permits LICENSEE to construct, maintain operate and repair a bus stop and shelter upon property owned by LICENSOR commonly known and described as property located on Willow Road and Coleman Way in the city of Menlo Park, California. The location of the bus stop shelter is depicted on the plan which is attached hereto and incorporated herein by this reference.
2. The bus stop shelter shall be of a 6 foot by 12 foot plastic design, with a concrete floor. LICENSEE shall comply with all applicable state, county and local laws, ordinances and regulations in connection with the construction, maintenance, operation, use, repair and removal of the bus stop shelter.
3. LICENSEE shall clean, service and maintain the bus stop shelter, adjacent garbage receptacle, and the six foot perimeter around the shelter not less than two (2) times per week. LICENSEE shall also steam clean the bus stop shelter once a month.

4. LICENSEE shall not use the bus stop shelter to lay over or temporarily park its buses.

5. LICENSEE shall, at its sole expense, defend, indemnify and hold LICENSOR harmless from any suits, claims or actions arising out of any injury to persons or property that may occur, or that may be alleged to have occurred, in the course of the performance of this Agreement by LICENSEE caused by the negligent act or omission of LICENSEE, provided that LICENSEE is not undertaking to indemnify, defend or hold harmless LICENSOR against the willful misconduct or negligence of LICENSOR, its officers, agents, or employees.

6. Either party may terminate this License upon the giving of thirty (30) days prior written notice to the other party and upon the expiration of the 30-day period, this License shall automatically terminate. On or before the effective date of termination of this License, LICENSEE shall, at its sole expense, remove the bus stop shelter and restore the area on and around which the shelter is located to the condition which existed immediately prior to the construction of the shelter, reasonable wear and tear excepted.

7. All notices and communications required by this Agreement or deemed necessary or desirable by either party to be given to the other party shall be in writing and shall be deemed given when personally delivered or mailed, postage pre-paid, addressed as follows:

If to the LICENSOR: City of Menlo Park
Civic Center
701 Laurel Street
Menlo Park, CA 94025

ATTENTION: Michael A. Bedwell
City Manager

If to the LICENSEE: SamTrans
945 California Drive
Burlingame, CA 94010

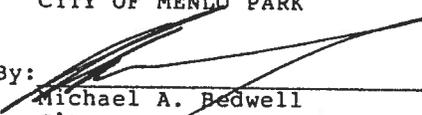
ATTENTION: General Manager

The address to which mailings may be made may be changed from time to time by notice mailed as described above. Any notice given by mail shall be deemed given on the day after that on which it is deposited in the United States Mail as provided above.

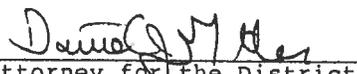
8. This License Agreement shall be governed by the laws of the State of California.

IN WITNESS WHEREOF, the parties hereto have executed this License Agreement by their duly authorized officers as of the day and year first above written.

SMCTD
By: 
General Manager

CITY OF MENLO PARK
By: 
Michael A. Bedwell
City Manager

APPROVED AS TO FORM:


Attorney for the District

SAN MATEO COUNTY TRANSIT DISTRICT
ADVERTISING POLICY

The San Mateo County Transit District (“District”) provides public transportation services (“SamTrans”) within San Mateo County, San Francisco County and Santa Clara County, California. The District is also the Managing Agency of the Peninsula Corridor Joint Powers Board (“Caltrain”), a joint powers agency whose membership is comprised of the San Mateo County Transit District, the City and County of San Francisco and the Santa Clara Valley Transportation Authority. Caltrain provides passenger rail service between San Francisco and Gilroy. The District and Caltrain are referred to collectively as the “Agencies.”

The District is engaged in the sale of advertising in and upon the property and rolling stock of the Agencies (“Transit Facilities”), consisting of: (1) print advertising on the exterior of the District’s buses; (2) print advertising displayed on bus shelters in the District’s service area; (3) print advertising on the interior of the District’s buses; (4) advertising on the exterior of Caltrain’s rail cars in the form of a “wrap;” (5) advertising displayed in Caltrain train stations; and (6) print advertising on the interior of Caltrain’s rail cars. This Advertising Policy (“Policy”) shall apply to the sale of all forms of advertising on all Transit Facilities owned and/or managed by the District.

I. PURPOSE

The District will make space on its Transit Facilities available for limited types of advertising (“Permitted Advertising”). By allowing limited types of advertising on or within the Transit Facilities, the District does not intend to create a public forum for public discourse or expressive activity or to provide a forum for all types of advertisements. All advertising shall be subject to this uniform, viewpoint-neutral Policy.

The District will not permit the types of advertising defined as Excluded Advertising in Section III below. By not allowing Excluded Advertising, the Agencies can: (a) maintain a professional advertising environment that maximizes advertising revenues and minimizes interference with or disruption of their transit systems; (b) maintain an image of neutrality on political, religious or other issues that are not the subject of Commercial Advertising and are the subject of public debate and concern; and (c) continue to build and retain transit ridership.

II. PERMITTED ADVERTISING

A. Exterior Advertising

The display of Permitted Advertising on the exterior of the Transit Facilities (“Exterior Advertising”) is intended only to supplement fare revenue, tax proceeds and other income that fund the Agencies’ operations and to promote the Agencies’ transit operations. In order to realize the maximum benefit from the sale of space, the advertising program must be managed in a manner that will procure as much revenue as practicable, while ensuring that the advertising is of a type that does not discourage the use of the transit systems, does not diminish

the Agencies' reputations in the communities they serve or the good will of their patrons, and is consistent with the principal purpose of providing safe and efficient public transportation. To attain these objectives, the District's Board of Directors has established the following regulations governing Exterior Advertising. Exterior Advertising permitted under this section cannot contain displays or messages that qualify as Excluded Advertising, as defined below under Section III.

Exterior Advertising includes advertising in the following categories:

1. **Commercial Advertising.** Commercial Advertising is advertising the sole purpose of which is to sell products, goods or services. It does not include advertising that both offers to sell products, goods or services and also conveys a political or religious message, or issue advocacy, and/or expresses or advocates opinions or positions related to any of the foregoing.

2. **Transit Operations of SamTrans or Caltrain.** Transit Operations Advertising is advertising that promotes SamTrans or Caltrain.

B. Interior Advertising

The District recognizes that passengers are a captive audience to any advertisements posted on the interior of the District's buses and Caltrain's rail cars ("Interior Advertising"). The District desires that such passengers not be subject to advertisements containing material relating to political, religious, or issue advocacy about which public opinion can be widely divergent and which some passengers may, therefore, find offensive. If passengers are so offended, it could adversely affect the ridership and revenue of the Agencies. The District's Board of Directors has, therefore, established the following regulations governing Interior Advertising. Like Exterior Advertising, Interior Advertising permitted under this section cannot contain displays or messages that qualify as Excluded Advertising, as defined below under Section III.

Interior Advertising includes advertising in the following categories:

1. **Public Service Advertising.** Public Service Advertising is advertising proposed by governmental entities, academic institutions or tax-exempt nonprofit organizations that relates to community, art, cultural, educational, health, or safety events, programs and/or messages and does not include Commercial Advertising or contain any direct or indirect reference to religious, political or issue advocacy. Upon the District's request, nonprofit entities must document their tax-exempt status. Unless the source of the public service advertising is obvious from the content or copy, the advertisement must specifically identify the sponsor of the advertisement or the message.

2. **Transit Operations of SamTrans or Caltrain.** Transit Operations Advertising is advertising that promotes SamTrans or Caltrain.

3. **Cross-promotional Advertising.** Cross-promotional Advertising is advertising in which the Agencies collaborate with for-profit entities to promote using SamTrans

or Caltrain as a conveyance to a specific event; such advertising may not contain any direct or indirect reference to religious, political or issue advocacy.

III. EXCLUDED ADVERTISING APPLICABLE TO EXTERIOR AND INTERIOR ADVERTISING

Exterior and Interior Advertising cannot be displayed or maintained on Transit Facilities if information contained in the advertisement falls within one or more of the following categories of Excluded Advertising:

1. False, misleading, or deceptive.
2. Clearly defamatory or likely to hold up to scorn or ridicule a person or group of persons.
3. Obscene or pornographic.
4. In advocacy of imminent lawlessness or violent action.
5. Promoting alcohol or tobacco products or their use.
6. Religious.
7. Political.
8. Intellectual property infringement, including piracy or infringement of copyright, trade dress, service mark, title or slogan.
9. Unauthorized Endorsement.

For purposes of this Policy, the following definitions apply:

Religious Advertisements are defined as advertisements that contain any direct or indirect reference to religion, or to any religion, or to any deity or deities, or which includes the existence, nonexistence or other characteristics of any deity or deities, or to any religious creed, denomination, belief, tenet, cause or issue relating to (including opposing or questioning) any religion. This prohibition shall include the depiction of text, symbols, or images commonly associated with any religion or with any deity or deities, or any religious creed, denomination, belief, tenet, cause or issue relating to (including opposing or questioning) any religion.

Political Advertisements are defined as advertisements that contain political speech referring to a particular ballot question, initiative, petition, referendum, candidate, or political party or viewpoint or expresses or advocates opinions or positions upon any of the foregoing. This prohibition includes any advertisement referring to or depicting a candidate for public office in any context.

Unauthorized Endorsement Advertising is advertising that implies or declares that the District or Caltrain endorses a product, service, point-of-view, event or program. The

prohibition against endorsements does not apply to advertising for a service, event or program for which the District or Caltrain is an official sponsor, cosponsor or participant.

IV. ADMINISTRATION AND ENFORCEMENT OF POLICY

A. Review by Contractor

The District shall incorporate this Policy into its advertising management contracts. The District's Contractor shall submit for display on or in the Transit Facilities only advertisements that comply with the standards set forth in this Policy. If the Contractor is in doubt whether an advertisement complies with the standards set forth in this Policy, then the Contractor shall notify the District's Executive Officer, Customer Service and Marketing, or designee, of the specific standard or standards of this Policy with which the Contractor believes the advertisement may not comply.

B. Review by Executive Officer, Customer Service and Marketing

If the Contractor determines that an advertisement may not comply with the Policy in Section A, the Contractor shall send the advertisement and supporting information (the name of the advertiser, the size and number of the proposed advertisements, the dates and locations of proposed display, and notation of standards of concern) to the Executive Officer, Customer Service and Marketing, or designee, for review. The Executive Officer, Customer Service and Marketing, shall review the advertisement and supporting information to determine whether or not the advertisement complies with this Policy. If the Executive Officer, Customer Service and Marketing, determines that the advertisement does not comply with this Policy, he or she shall, in writing, specify the standard or standards with which the advertisement does not comply, and shall so notify the Contractor.

C. Notification to Advertiser

The Contractor will send prompt, written notification to the advertiser of the rejection of the advertisement and will include in that notification a copy of this Policy and written specification of which standard or standards the advertisement fails to comply with.

D. Appeal to General Manager/CEO

Rejection of an advertisement may be appealed to the District's General Manager/CEO, or designee, by written notification to the Executive Officer, Customer Service and Marketing. The General Manager/CEO will allow the advertiser and the Executive Officer, Customer Service and Marketing to present any argument or evidence they wish to offer. The General Manager/CEO's decision shall be final.

Adopted 4/13/11
Revised 1/11/13