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Title: CONSIDER (1) APPROVAL OF A TRANSIT SHELTER ADVERTISING SERVICES AGREEMENT WITH CLEAR CHANNEL OUTDOOR, LLC AND (2) ADOPTION OF RESOLUTION NO. 24-013 APPROVING A POLICY REGARDING ADVERTISING ON CITY-OWNED BUS STOP SHELTERS (CITY COUNCIL)

Sponsors:

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Attachments: 1. Exhibit No. 1 - Resolution 24-013, 2. Exhibit 1.A - Advertising Policy, 3. Exhibit No. 2 - Contract

Date	Ver.	Action By	Action	Result
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Report to Mayor and City Council

Tuesday, January 23, 2024

Consent

SUBJECT:

CONSIDER (1) APPROVAL OF A TRANSIT SHELTER ADVERTISING SERVICES AGREEMENT WITH CLEAR CHANNEL OUTDOOR, LLC AND (2) ADOPTION OF RESOLUTION NO. 24-013 APPROVING A POLICY REGARDING ADVERTISING ON CITY-OWNED BUS STOP SHELTERS (CITY COUNCIL)

I. SUMMARY

The City of Carson (“City”) previously maintained an arrangement with Clear Channel Outdoor, LLC (“CCO”) for displaying third-party advertisements at approved transit shelters. In exchange for advertising in City’s rights-of-way, CCO remitted certain proceeds of revenues. In a recent effort to beautify City bus stops, staff replaced shelters belonging to CCO with modern examples owned by the City.

A new proposed agreement with CCO has been drafted that would give CCO a right to place advertisements in the display panels on the existing City-owned shelters and their respective locations for a five-year term in exchange for compensation to the City detailed below. Furthermore, a proposed advertising policy of general applicability has been drafted to regulate advertising on City-owned bus stop shelters. The proposed policy would prohibit the display of material that may foreseeably result in harm to, disruption of, or

interference with City's public bus transportation system.

Should the City Council approve the proposed agreement, CCO would be required to pay to City a license fee equal to twenty percent (20%) of all shelter advertising revenues received by CCO pursuant to the agreement. There is no contract sum as the City will not be required to make any payments under the proposed agreement terms.

II. RECOMMENDATION

TAKE all of the following actions:

1. ADOPT Resolution No. 24-013, "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARSON, CALIFORNIA, APPROVING AND ADOPTING A POLICY REGARDING ADVERTISING ON CITY-OWNED BUS STOP SHELTERS" (Exhibit No. 1 - 1.A); and
2. APPROVE the TRANSIT SHELTER ADVERTISING SERVICES AGREEMENT between the City and Clear Channel Outdoor, LLC (Exhibit No. 2; "Contract"); and
3. AUTHORIZE the Mayor to execute the Contract, following approval as to form by the City Attorney.

III. ALTERNATIVES

TAKE another action the City Council deems appropriate.

IV. BACKGROUND

Transit shelters are designed to provide riders of fixed-route service with protection against outdoor elements at bus stops meeting minimum clearances for such structures. Certain models also feature advertising windows, in which media can be displayed to promote advertisements.

A shelter advertising agreement was previously maintained between City and Eller Media Company ("Eller Media"), a predecessor to Clear Channel Outdoor, LLC ("CCO"). The former agreement granted Eller Media a license to install transit shelters and oversee third-party advertising at each shelter. In exchange, Eller Media compensated City with a certain share of the proceeds with the City. After its acquisition of Eller Media, CCO continued to remit certain proceeds of revenues to the City on a monthly basis for a period of time, but the arrangement is no longer in effect.

In a recent effort to beautify City bus stops, staff replaced shelters belonging to CCO with modern examples owned by the City. The new shelters feature all-aluminum construction but required a large footprint for installation due to their weight. For this reason, not all bus stops were eligible candidates for new shelters due to limitations around existing sidewalk dimensions.

The proposed Contract was subsequently drafted to grant CCO a license to place third-party advertisements in the display panels on the presently existing City-owned shelters at their respective locations as set forth in Exhibit A to the proposed Contract. In exchange, throughout the duration of the proposed five-year term (unless the Contract is earlier

terminated by either party upon 30 days' notice), CCO would be required to pay the City the 20% license fee and regularly clean, maintain, and repair the shelters.

In connection with the proposed Contract and in light of the advent of City-owned bus shelters, an advertising policy (Exhibit No. 1.A; "Policy") has been drafted by the City Attorney's Office and is recommended by staff for approval. Although referenced in the Contract to ensure compliance with the policy in the course of CCO's performance of the Contract, the Policy is one of general applicability and is not limited to the scope of the Contract. For example, if the City installs more City-owned bus shelters in the future that are not subject to the Contract (meaning that CCO would not have a license to advertise on such shelters, and another party could be granted such a license), the policy would apply to advertising on such shelters just as it would apply to advertising on the shelters that are subject to the Contract.

The Policy has been drafted in accordance with applicable law, the First Amendment, which does not forbid a viewpoint-neutral exclusion of speakers who would disrupt a nonpublic forum and hinder its effectiveness for its intended purpose. The advertising space on the City's bus stop shelters is a nonpublic forum. The intended purpose of the City's bus transportation system, including the bus stops and shelters, is to provide safe and reliable public transportation, and the purpose of the advertising display panels within the bus stop shelters is to provide revenue to the City. Riders of the City's bus transportation must necessarily be in or around the bus stop shelters in order to use the relevant bus stops to access and use the City's bus transportation system. The material prohibited by the proposed policy, if displayed in the City-owned bus stop shelters, could foreseeably result in harm to, disruption of, or interference with City's public bus transportation system and hinder its effectiveness for its intended purpose.

More specifically, the Policy allows only commercial publicity (meaning speech which proposes a commercial transaction) and City public service announcements to be displayed in the advertising space. The Policy expressly prohibits any material that "is so objectionable under contemporary community standards as to be reasonably foreseeable that it will result in harm to, disruption of, or interference with the transportation system." For purposes of determining whether an advertisement contains such material, the City will determine whether a reasonably prudent person, knowledgeable of the City's ridership and using prevailing community standards, would believe that the material is so objectionable that it is reasonably foreseeable that it will result in harm to, disruption of or interference with the transportation system. The Policy also expressly prohibits any material that is objectively, factually and demonstrably false, inaccurate, misleading, deceptive or fraudulent, or that would constitute a tort of defamation or invasion of privacy. Applicable case law establishes the validity of these restrictions.

Per the Policy, in any City agreement(s) with advertising contractor(s) of City related to the advertising space in the City-owned bus stop shelters (including the proposed Contract, which provides for compliance with the Policy), the advertising contractor(s) shall be required to (i) reject any material proposed to be displayed in the advertising space which does not meet the standards set forth in the policy, and (ii) remove any material actually displayed which does not meet the standards set forth in the policy, and City shall reserve the right, in such agreements, to require rejection and/or removal of material proposed for display and/or actually displayed in the advertising space which City, in its sole discretion,

determines does not meet the standards set forth in the policy. Also per the Policy, the City Manager or designee would be responsible for administration and enforcement of the policy.

Should the City Council approve staff's recommendations, CCO shall pay to City a license fee equal to twenty percent (20%) of all advertising revenues received pursuant to the Contract. There is no contract sum, as the City will not be required to make any payments under the proposed terms.

V. FISCAL IMPACT

There is no fiscal impact as the City will not be required to make any payments under the proposed Contract terms, although the City will receive revenues and save maintenance expenses in exchange for the grant of the license to CCO. Quarterly payments of advertising revenues will be deposited in Proposition A account no. 218-99-999-999-4509.

VI. EXHIBITS

1. Resolution No. 24-013 (pgs. 5-7).
 - 1.A. Advertising Policy (pg. 8).
2. Contract (pgs. 9-23).

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