

MEMORANDUM OF UNDERSTANDING
BETWEEN THE CITY OF CHULA VISTA
AND THE SAN DIEGO METROPOLITAN TRANSIT SYSTEM
REGARDING INSTALLATION AND MAINTENANCE OF TRANSIT SHELTERS & BENCHES

This Memorandum of Understanding Regarding Installation and Maintenance of Transit Shelters and Benches (“MOU”), dated _____, 2020 is entered into by and between the CITY OF CHULA VISTA, a municipal corporation (“CITY”), and the SAN DIEGO METROPOLITAN TRANSIT SYSTEM, a public entity (also known as San Diego Metropolitan Transit Development Board or MTDB) (“MTS”).

RECITALS

- A. MTS is the statutorily designated public transit provider for the portion of San Diego County that includes the CITY, as set forth in Public Utilities Code section 120000, *et seq.*;
- B. MTS and CITY are authorized by Public Utilities Code section 120268 to enter into cooperative agreements to establish uniform policies and procedures governing the use of bus passenger loading zones and establishing responsibility and standards for the maintenance of bus loading zones and any associated improvements
- C. CITY and MTS are parties to that certain Memorandum of Understanding Between the City of Chula Vista and The San Diego Metropolitan Transit System Regarding Chula Vista’s Divestment of Public Transportation Services dated January 3, 2015 (“Divestment MOU”). Pursuant to section B(4) the Divestment MOU, CITY and MTS contemplated entering into a bench and shelter contract in the future by means of a separate agreement;
- D. MTS has recently purchased new transit shelters with solar lighting and receptacles for trash and recycling, and CITY and MTS desire to install such shelters and amenities at various locations throughout the City;
- E. MTS has recently purchased new transit benches that will improve the streetscape of the CITY, and CITY and MTS desire to install such benches at various locations throughout the CITY;
- F. MTS has a third-party contract for installation, maintenance and advertising at transit shelters and related appurtenances throughout MTS’s jurisdiction;
- G. MTS has a third-party contract for the maintenance, and advertising at transit benches throughout MTS’s jurisdiction;
- H. The revenue generated from the MTS advertising contracts is intended to fund the purchase of the new transit shelters and benches, as well as to fund continued transit services within MTS’s jurisdiction; and
- I. Chula Vista Municipal Code (“CVMC”) section 12.36.060 generally prohibits the installation or maintenance of benches within the City’s public right-of-way without first obtaining permission from the CITY’s Director of Public Works;

- J. CITY's Director of Public Works has provided permission to MTS and its contractors to install and maintain benches within the City's Public Rights-of-Way in accordance with the terms and conditions of this MOU;
- K. CVMC 12.36.070 generally prohibits advertising on any benches installed in the public rights-of-way. CVMC 12.36.070 provides that the City may be exempt from the provisions of CVMC 12.36.070 at the discretion of the City Council;
- L. On _____, the City Council, per resolution 2020-_____, exempted the City from the provisions of CVMC 12.36.070 to allow advertising on bus benches installed in accordance with the terms and conditions of this MOU;
- M. MTS and CITY desire to enter into this MOU to formally acknowledge their cooperative agreement regarding transit shelters, transit benches, and bus transit bench advertising within the CITY.

AGREEMENT

- 1. Grant of Authorization/Term. CITY grants to MTS for a period of up to ten (10) years (five (5) base years and five (5) one year options) the authority to install, or cause to be installed, transit shelters, transit benches, and appurtenances within the public-right-of-way of the CITY, in accordance with the terms and conditions of this MOU. This MOU shall commence upon approval. After completion of the initial ten (10) year period, this MOU shall continue on a year-over-year basis unless terminated by either party pursuant to this MOU.
- 2. Location Criteria for Transit Shelters and Benches
 - a. *City Approval.* Prior to installing any transit shelter, transit bench, or appurtenance, MTS shall submit the proposed location for such installation to the City for consideration. The City Manager or his/her designee shall have the sole authority to approve or deny any proposed installation.
 - b. *Facilities With Advertising.* The parties understand and agree that transit shelters and benches *with advertising* shall be permitted only in commercial, industrial, or multifamily housing areas in CITY unless otherwise authorized by the City Manager.
 - c. *Facilities Without Advertising.* The parties understand and agree that transit shelters and benches *without advertising* will generally be permitted in areas where a MTS bus stop is located, so long as CITY has not exercised its authority under this MOU to (i) reject a proposed transit shelter or bench location or (ii) remove an existing transit shelter or bench.
 - d. *Ratio.* As transit shelter and bench maintenance contracts depend on advertising revenue to be sustainable, CITY shall allow a ratio of at least 4-to-1 advertising to non-advertising transit shelters and benches.

e. *List of Locations.* MTS shall provide CITY with a list of existing locations of all transit shelters and benches within the CITY and notify the CITY whenever changes to the locations are made. All new transit shelter and bench installations shall conform to the terms of this MOU.

f. *Removal.* CITY shall have the authority to cause any transit shelter, transit bench, or appurtenance to be removed or relocated from any location at no cost to the CITY upon making a written demand to MTS for such removal. MTS shall complete such removal or relocation within a reasonable period and in no event by no later than thirty (30) calendar days after receipt of a written demand from CITY. In the event that City determines, in City's sole discretion, that a transit shelter, transit bench, or appurtenance needs to be removed for safety of the public or other municipal purpose, City shall have the option, but not the obligation, to complete such removal without making a written demand to MTS. MTS shall reimburse CITY for all costs (including but not limited to CITY staff time at fully burdened hourly rates, equipment, and material costs) related to such removals.

3. Advertising Policy and Permissible Signage

a. *Shelters.* Transit shelter advertising is typically limited to two advertising panels that do not exceed four feet in width and six feet in height. Some advertising panels may be in a digital or electronic format. Other permissible advertising includes "wrap" materials that are applied to the shelter structure.

b. *MTS Policy No. 21.* All advertising under this MOU shall comply with MTS Policy No. 21 titled "MTS REVENUE-GENERATING DISPLAY ADVERTISING, CONCESSIONS, AND MERCHANDISE," attached as Exhibit A, which may be revised from time-to-time by the MTS Board of Directors. CITY may request that MTS exercise its right to remove any advertisement, commercial, or noncommercial that does not conform to MTS Policy No. 21 or any CITY policy. 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 and legal requirements.

4. Maintenance

a. *Maintenance Obligation.* MTS shall be responsible for providing ongoing maintenance for every MTS-owned or controlled transit shelter, transit bench, and appurtenance which it installed under this MOU and in the CITY's public right-of-way as of the effective date of this MOU.

b. *Standard.* MTS shall maintain all transit shelters, transit benches, and appurtenances in a state of good repair throughout the life of this MOU, and such services shall include, but not be limited to, refurbishing, reconditioning, and replacing worn or damaged transit shelters or benches as necessary.

- c. *Inspections.* MTS shall perform routine inspections, maintenance, and trash removal on each transit shelter. MTS shall perform routine inspections and maintenance of transit benches and the clean-up of the immediate surrounding area at each transit bench location.
- d. *Damage, Vandalism, and Graffiti.* MTS shall repair or replace transit shelters and benches within 48 hours of notification to MTS of any damage, vandalism, or graffiti found on any transit shelter or bus bench.
5. Notices To Property Owners. 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 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 currently exists and is simply being replaced by a new shelter or bus bench unless it is significantly modified.
6. Encroachment Permits. In order to allow the CITY to track approved installation locations, MTS or their contractor shall obtain a no-cost encroachment permit for all new transit shelters and benches installed per this MOU.
7. Compliance with Laws. MTS and their contractor shall comply with all rules, regulations, and laws of the CITY, and any and all applicable state or federal laws.
8. Electrification. MTS or their contractor shall secure all electrical permits necessary for the installation of new shelters. Solar-powered shelters shall not require any permits. MTS shall assume all costs associated with lighting and powering transit shelters.
9. Identification of New and/or Upgraded Shelter and Bench Locations. MTS and CITY shall work cooperatively to identify potential locations for additional shelters or benches to be installed by MTS pursuant to this MOU. MTS and CITY acknowledge that some locations may require modifications to meet legal or operational needs. MTS and CITY will work to create a list of priority locations and improvements needed to facilitate safer and more accessible use of transit services within the CITY's jurisdiction. MTS and CITY will work in good faith to make the improvements identified, subject to the availability of funding from MTS, CITY, or third-party grant opportunities.
10. Third Party Shelters and Benches
- a. Notwithstanding that the CITY has granted MTS the authority to install transit shelters and benches within the public right-of-way in the CITY, 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.
- i. Process. Private entities authorized to install transit shelters, benches, and appurtenances pursuant to this MOU 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 this MOU.

ii. 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 manner arising by reason of or incident to the third party installation of transit shelters, transit benches, and appurtenances within the CITY's right-of-way, except for the negligence of MTS or any of MTS's officers, agents, and employees, in which case MTS shall defend, indemnify, hold harmless the CITY.

iii. Advertising. All advertising posted on the shelters and benches installed by parties other than MTS or its contractors must conform to the advertising criteria set forth in Section 3 of this MOU. 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. 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. MTS shall be given first-right-of-refusal to utilize one advertising panel in each shelter for the purpose of posting transit information.

iv. Insurance. The CITY shall require any permitted private entity to maintain insurance to same extent required of MTS pursuant to this MOU.

v. Maintenance. For pre-existing and future benches, shelters, trash receptacles, and other bus stop infrastructure and amenities not installed by MTS: MTS does not assume any responsibility in this MOU for repairs, maintenance, cleaning, installation, replacement, removal, trash and recycling service, graffiti abatement, painting, or any other work for transit infrastructure or appurtenances not installed or maintained by MTS under this MOU. MTS will not be responsible for damage caused by furniture and amenities not installed or maintained by MTS under this MOU, nor for the restoration of the area to City standard from any condition caused by the installation, damage, repair, or removal of any such infrastructure.

MTS shall maintain responsibility for all work related to the bus stop pole (if any), bus stop blade, and any MTS-provided information or amenities attached to the

bus stop pole, including installation, repair, replacement, removal, cleaning, and graffiti abatement. MTS shall be responsible for MTS-provided, installed, or maintained benches and shelters as specified in this MOU.

11. Duty to Defend, Indemnify, and 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 MOU 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 for such active negligence.

12. Termination of this MOU.

a. By CITY: CITY may terminate this MOU if MTS materially breach any term or condition set forth in this MOU, and the CITY shall owe no payment to MTS or any other party. In the event the CITY terminates this MOU, the CITY may require MTS to remove each and every transit shelter and bench in the CITY’s public rights-of-way. City may terminate this MOU without cause by serving upon MTS written notice of termination of this MOU 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 bench in the public right-of-way.

The method of calculating the “current value” of a transit shelter or bench under this MOU will be as follows:

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

For purposes of calculating the “current value” the transit shelter or 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 bench or transit shelter;
- the depreciation period for transit shelters and benches will be ninety-six (96) months; and
- the number of months in service will be calculated from the date the transit shelter or bench is placed in service to the date of termination.

b. By MTS: MTS may terminate this MOU without cause by serving upon CITY written notice of termination of this MOU three hundred sixty five (365) days in advance of said date of termination. No later than the date of termination, MTS shall either (i) reach an agreement with CITY for CITY to take possession and ownership of the transit shelters and benches that remain installed within the CITY, or (ii) remove each and every transit shelter and bench and restore the sidewalk to a safe and usable condition.

13. Insurance. During the term of the MOU, MTS shall require its agents, contractors, or other parties performing any of its obligations under this MOU 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 dollars (\$2,000,000.00) combined single limit per occurrence. Coverages included shall be:

- i. Premises and operations;
- ii. Contractual liability expressly, including liability assumed under this MOU, 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.
- vi. 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 MOU;
 - (2) Inclusion of MTS, and its subsidiaries, its officers, agents, and employees as additional insureds with respect to activities, services, or operations under this MOU; 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 dollars (\$2,000,000.00) 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 MOU, 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.

14. 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:

Gary Halbert
City Manager
City of Chula Vista
276 Fourth Avenue
Chula Vista, California 91910

To MTS:

Paul C. Jablonski
Chief Executive Officer
Metropolitan Transit System
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 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.

15. Attorneys' Fees. If legal action be commenced to enforce or to declare the effect of any provisions of the MOU, the court as part of its judgment shall award reasonable attorneys' fees and costs to the prevailing party.
16. No Waiver. The waiver by one (1) party of the performance of any covenant, condition, or promise shall not invalidate this MOU 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 MOU for any remedy shall not exclude other consistent remedies unless they are expressly excluded.

- 17. Severance. If any provision of this MOU is found to be unenforceable, the remainder of the provisions shall continue to be given full force and effect.
- 18. Amendments. No change in or addition to this MOU or any part hereof shall be valid unless in writing and properly authorized by the CITY and MTS.

SAN DIEGO METROPOLITAN
TRANSIT SYSTEM

CITY OF CHULA VISTA



Paul C. Jablonski
Chief Executive Officer

Mary Casillas-Salas
Mayor

APPROVED AS TO FORM:

APPROVED AS TO FORM:



Karen Landers
General Counsel

Glen Googins
City Attorney