

**REVENUE SHARING AGREEMENT BETWEEN
SANTA CLARA VALLEY TRANSPORTATION AUTHORITY
AND CITY OF SAN JOSE**

This REVENUE SHARING AGREEMENT, (“Agreement”) is entered into by and between the Santa Clara Valley Transportation Authority, a public agency organized as special district under California law, (“VTA{ XE "Landlord" }”) and CITY OF SAN JOSE, a municipal corporation of the State of California (“Agency{ XE "Licensee" }”) (collectively referred to as the “Parties” and/or individually as a “Party”).

RECITALS

- A. Whereas, VTA is the owner and operator of bus shelters located across Santa Clara County, including approximately 242 within Agency’s right of way.
- B. Whereas, the bus shelters are comprised of both advertising shelters and non-advertising shelters. The number, type, and location of bus shelters fluctuates based upon VTA’s bus transit needs and plans. As of December 31, 2018, Agency has 169 advertising shelters in its right of way reflecting 43.9 % share of all VTA advertising shelters.
- C. Whereas, VTA entered into a bus shelter advertising contract with Clear Channel Outdoor effective January 1, 2018, wherein Clear Channel Outdoor manages a paid advertising program for VTA’s bus shelters and provides annual revenue to VTA from the program (“**Advertising Contract**”).
- D. Whereas, VTA has historically shared a portion of the revenue from its bus shelter advertising program with eleven local agencies on whose right of way advertising bus shelters were located (including Agency), pursuant to agreements with such local agencies. The previous agreements with local agencies expired on December 31, 2017 along with VTA’s previous bus shelter advertising contract with Clear Channel Outdoor.
- E. Whereas, the Parties desire to continue a revenue sharing arrangement, wherein VTA will share a portion of the revenue generated from the Advertising Contract with Agency.

NOW, THEREFORE, in consideration of the mutual agreements and undertakings contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. Advertising Contract

The Agency acknowledges the Advertising Contract and the terms and conditions set forth therein for VTA’s bus shelter advertising program. The Agency further acknowledges VTA’s exclusive authority to select the advertising vendor(s) for its transit assets, and to negotiate the terms of any contract (and amendments thereof) between VTA and such vendor(s) for advertising services.

2. Term

The term of this Agreement shall be retroactively aligned with the term of the Advertising Contract, which commenced on January 1, 2018 and will terminate on December 31, 2021, with an option to extend for one additional five-year term. In the event the Advertising Contract is extended for the option term or for any additional term as agreed upon between VTA and Clear Channel Outdoor, this Agreement will automatically extend to align with the term of the Advertising Contract.

Furthermore, in the event of the earlier expiration or termination of the Advertising Contract, this Agreement shall also expire or terminate on the same date as the Advertising Contract.

3. Revenue Share

For each year of the Advertising Contract, VTA receives certain net advertising revenue from Clear Channel Outdoor according to the formula set forth in the Advertising Contract (“Bus Shelter Revenue”). Bus Shelter Revenue will be used first to reimburse VTA for program management expenses associated with bus shelter advertising. VTA will then distribute fifty percent (50%) of remaining annual Bus Shelter Revenue amongst all local agencies on whose right of way advertising bus shelters are located, based upon each agency’s pro-rata share of advertising shelters covered by Advertising Contract during that year (“**Revenue Share**”). The remaining fifty percent (50%) of Bus Shelter Revenue will be retained by VTA to fund transit operations.

Calculation of the revenue share will be based on the VTA bus shelter inventory as of December 31st of each year. In the event the number of advertising bus shelters increases or decreases in Agency’s right of way during that calendar year, the Revenue Share for Agency will be increased or decreased accordingly.

4. Annual Payment

Payments to Agency under this Agreement shall be made annually, following VTA’s receipt (and where applicable, audit) of Clear Channel Outdoor’s annual payment to VTA under the Advertising Contract and VTA’s review of the number of advertising shelters within Agency’s right of way.

VTA will provide to Agency a statement with each payment that shows the calculations for the annual payment with the following information:

- a) Summary of Bus Shelter Revenue paid by Clear Channel Outdoor to VTA for that calendar year of Advertising Contract.
- b) VTA’s program management expenses associated with bus shelter advertising
- c) Total number of VTA advertising shelters within Santa Clara County and total number of advertising shelters within Agency’s right of way on December 31 of that calendar year.
- d) Agency’s Revenue Share, based on Agency’s pro-rata share of advertising shelters.

Payments to Agency for revenues under the Advertising Contract collected by VTA prior to the Effective Date (defined below), shall be paid retroactively within 90 days after the Effective Date.

5. VTA to Post Advertising

Agency acknowledges and consents to VTA posting advertising on bus shelters and related transit assets within Agency's right of way. Advertising content on VTA transit assets shall be governed by VTA's Advertising Policy, which is attached hereto as Exhibit A and which may be amended from time to time. VTA will defend, indemnify and hold harmless the Agency and its officers, employees and agents against all claims, losses, damages, injuries, expenses and liabilities as set forth in the encroachment permits issued by Agency for the bus shelters. The posting of advertising on bus shelters and related transit assets within Agency's right of way will be considered "activities" for which the VTA will indemnify the Agency pursuant to such permits.

6. Notices

All notices required to be given hereunder, or which either party may wish to give, shall be in writing and shall be served either by personal delivery or by certified or registered mail, postage prepaid, addressed as follows:

To VTA:
Santa Clara Valley Transportation Authority
Real Estate & TOD Department
3331 N. First Street, Bldg. A-1
San Jose, CA 95134-1927

To Agency:
City of San Jose
Attention: _____
200 E Santa Clara Street, 13th Fl
San Jose, CA 95113

or to such other place as either Party may designate by written notice.

7. Miscellaneous

(a) This Agreement constitutes the entire agreement between the Parties, and supersedes all understandings, offers, negotiations, and other agreements concerning the subject matter contained herein. There are no representations or understandings of any kind not set forth herein. Any amendments, modifications, or waivers of any of the terms and conditions of this Agreement must be in writing and executed by both Parties.

(b) If any provision of the Agreement is invalid or unenforceable with respect to either Party, the remainder of this Agreement or the application of such provision to persons other than those as to whom it is held invalid or unenforceable, shall not be affected and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

- (c) The Parties hereto acknowledge and agree that, although this Agreement has been drafted by VTA’s legal counsel, Agency has had an opportunity to review and negotiate the terms of this Agreement, as well as consult with Agency’s own legal counsel regarding the meaning of its terms. Consequently, the doctrine that ambiguities in an agreement should be resolved against the drafting party shall not be employed in connection with this Agreement and this Agreement shall be interpreted in accordance with its fair meaning.
- (d) This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.
- (e) This Agreement shall be binding on and inure to the benefit of the successors and permitted assignees of the respective Parties.
- (f) This Agreement shall be governed by the laws of the State of California, and be binding on and inure to the benefit of the successors and permitted assignees of the respective Parties.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the last date set forth below (“**Effective Date**”):

VTA:

AGENCY:

Evelyn Tran
General Counsel and Interim General Manager/CEO
Date: _____

Toni Taber, CMC
City Clerk
Date: _____

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Victor Pappalardo
Senior Assistant Counsel

Glenn Schwarzbach
Senior Deputy City Attorney