




CITY OF LOS ANGELES
INTER-DEPARTMENTAL CORRESPONDENCE


DATE: February 28, 2017

TO: Honorable City Council
City of Los Angeles

FROM:  Nazario Saucedo, Director
Bureau of Street Services

 Sharon Tso, Chief Legislative Analyst
Office of the Chief Legislative Analyst

 Mike Feuer, City Attorney
Office of the City Attorney

 Francois Nion, Co-Managing Director
Outfront JC Decaux, LLC

**SUBJECT: COORDINATED STREET FURNITURE PROGRAM – YEAR SIX
REVIEW**

In 2000, the City Council directed the Chief Legislative Analyst (“CLA”), City Attorney, and Department of Public Works - Bureau of Street Services (“BSS”) to develop a program that would provide the City with automated public toilets and modular news racks (Council Files 98-1241 and 00-1073). On December 21, 2001, the City and Viacom Decaux LLC, now known as Outfront JC Decaux, LLC (“Contractor”) (collectively, the “Parties”) executed a 20-year agreement (Contract No. C-102477; “Agreement”) establishing the City’s Coordinated Street Furniture Program (“Program”).

In exchange for the exclusive right to sell and display outdoor advertising on City street furniture in the public right-of-way, the Contractor is required to:

- Provide for the design, manufacture and installation of all the street furniture including transit shelters, automated public toilets, public amenity kiosks, and newsstand vending kiosks (“Street Furniture”);
- Maintain the public service Street Furniture, including trash receptacles;
- Obtain all permits required for the installation of Street Furniture;
- Obtain approvals for each individual Street Furniture site from each City Council office and eight different City Departments, and perform community outreach; and
- Remit to the City a Minimum Annual Fee (“MAF”) and/or a percentage fee of annual gross revenues.

The Agreement provides for a review of Program operations at the end of year six of the Agreement (“YSR”). As part of the YSR process, the Agreement directs the CLA, BSS, City Attorney and Contractor to conduct a collaborative review of the Program and make findings regarding its actual operations and performance (“YSR Findings” or “Findings”). The Parties are to make mutually agreed upon adjustments or recommend modifications to the Program to achieve revenue and service goals contemplated by the Agreement. The YSR is to include the following:

1. *Street Furniture Quantities and Timeliness of Permit Issuance.* The amount and type of Street Furniture permits approved.
2. *Level of Service.* Service levels and goals including quantities and types of Street Furniture installed, Contractor performance and responsiveness, and the quality of Contractor's service levels.
3. *Revenue.* Advertising revenues generated, including location of Ad Panels and the amount of revenue received at each site.
4. *Maintenance.* The Contractor's performance in maintaining the Street Furniture in accordance with the Agreement.
5. *Taxes.* The impact of personal property or possessory interest taxes, if imposed.

The Parties agreed to postpone the YSR because there were pending amendments addressing the same matters to be included in the YSR. The YSR has since completed and provides the Parties' mutual conclusions, potential future options and recommendations.

FINDINGS

The YSR Findings are as follows:

1. *Street Furniture Quantities and Timeliness of Permit Issuance:*
The quantities of City approvals for Street Furniture, and the quantities of new Street Furniture installed from the working inception of the Agreement in 2002 to the current date are set forth in the attached tables. The Contractor has not obtained permits for all City pre-approved Street Furniture sites because of the quantity/types of Street Furniture that were pre-approved and when such approvals were received. The Street Furniture pieces summarized in the tables were approved as set forth in the Agreement.
2. *Levels of Service Relative to Program Goals and Public Need:*
 - (a) The Contractor has provided effective service for both receiving and responding to local community input and concerns regarding Street Furniture, advertising, and displaying public service announcements or other community posters and maps. The Contractor continues to attend community and neighborhood Council meetings and has effectively managed the advertising component of the Program to generate revenues for the Parties. The Contractor and City staff have balanced the distribution of services and Street Furniture based on community requests, Council District modifications, and Agreement requirements.
 - (b) The Contractor has provided service with respect to a majority of Street Furniture sites and types approved by Councilmembers and requirements set forth in the Agreement.
3. *Revenues Generated*
The Contractor pays the City annually in two separate payments based on different calculations. The MAF is guaranteed and paid up-front at the beginning of each year. A second Percentage Revenue payment for the same year is payable early in the following year when 20% of actual Gross Cash Receipts exceeds the MAF.

(a) *MAF Revenue:*

The City has received \$39.3 million in actual MAF revenues through January 2016. MAF revenue is based upon a schedule within the Agreement, which is adjusted according to the number of units of Street Furniture installed.

(b) *Percentage Revenue:*

The Agreement entitles the City to receive 20% of the Contractor's annual Gross Cash Receipts if that amount exceeds the adjusted MAF. Percentage Revenue Fees have exceeded the adjusted MAF revenues in every Program Year except 2002 and 2003. For the period 2004 to 2016, the City received an additional \$15.2 million in Percentage Revenues.

The City has received a total of \$54.5 million in revenues during the first 15 Program Years, including \$5.4 million in 2015.

4. *Level of Maintenance Relative to Program Goals and Actual Site Conditions:*

The Contractor has provided maintenance in accordance with Agreement requirements. The Contractor has also provided 1,856 trash receptacles and has emptied them at least twice per week, a benefit not required under the Agreement. The City has verified through its inspection system that maintenance is performed in accordance with the Agreement specifications.

5. *The Impacts of Personal Property Taxes or Possessory Interest Taxes:*

In 2002, the Los Angeles County Tax Assessor imposed a Possessory Interest Tax ("PIT") against the Contractor despite the Agreement stating that the Contractor has no possessory interest in the Street Furniture. The City and the Contractor jointly presented arguments to the County that the PIT did not apply to the installed Street Furniture. The County Tax Assessor modified the method for calculating the PIT which reduced but did not eliminate the PIT. The Contractor has paid approximately \$4.5 million in PIT and estimates it will pay a total of approximately \$6.5 million by the end of the Agreement term. The Contractor seeks relief from this County imposed tax.

DISCUSSION

The Parties have reviewed potential options to increase Program transit related street furniture and revenues, as set forth below:

1. Maintain the status quo of the Agreement. This option would not increase Program transit related street furniture or revenues, nor would it provide added benefits to the Parties or the community. Pending contractual matters would remain without resolution for the rest of the Agreement term.
2. Seek a term extension to the Agreement in exchange for more transit related street furniture and additional revenues. This option would require that there is certainty in the expeditious installation of the revised quantity and type of Street Furniture agreed to by the Parties and would require an extension of more than five years to the Agreement term. This option would allow for the added transit related street furniture and recovery of Program revenues by the City. The Contractor does not necessarily seek a long-term extension or the installation of a large quantity of Street Furniture at this time. However, if the City Council is willing to

facilitate a specific rollout of Street Furniture, the Contractor is amenable to further discussing this option.

3. Negotiate a resolution of issues noted in the YSR Findings including (a) streamline the Street Furniture site approval process (similar to the Bus Bench Program Contract C-119661); (b) determine the calculation of a new or adjusted MAF, or percentage thereof, due to the City over the remaining Agreement term; (c) determine a resolution to the PIT issue; and (d) determine monies that may be owed between the City and the Contractor relating to the MAF and the PIT.

RECOMMENDATIONS

Based upon the above Findings, the Parties recommend that the Council direct BSS and the CLA, with the assistance of the City Attorney, to complete negotiations with the Contractor to achieve the following recommendations:

1. Adjust the MAF to reflect the current status of the Agreement. To the extent revenues continue to increase as the result of higher advertising rates or increased sales, the City will continue to receive payments in excess of the adjusted MAF.
2. Clarify the past and future PIT payments.
3. Amend the Agreement's site approval process to help facilitate future Street Furniture installations moving forward in a timely manner
4. Pursue the installation of transit-related Street Furniture structures that reflects the types and quantities originally contemplated by the Agreement, including some upgraded services and technologies.
5. Extend the Program term by an additional ten years. It is anticipated this will allow for the better distribution of Program services and benefits while taking into consideration transit needs, community requests, and the use of existing and new permits. It would also serve to maximize revenue for the Parties.

APPENDIX 2

Viacom Decaux

PROJECTED ROLLOUT SCHEDULE

Structures	PHASE I										PHASE II			Total
	YEAR 1					YEAR 2					YEAR 3	YEAR 4	YEAR 5	
	P1	P2	P3	P4	Total	P5	P6	P7	P8	Total				
APTs (1) Qty	5	5	5	5	20	7	7	8	8	50	33	33	34	150
Ad Panels					0					0				0
Transit Shelters Qty	30	70	140	160	400	215	210	230	230	1285				1285
Ad Panels					550					1770				1770
OSF														
Pillar Qty	25	25	0	0	50	25	25	0	0	100				100
Ad Panels					200					400				400
Kiosks Qty	60	60	60	60	240	65	65	65	65	500				500
Ad Panels					480					1000				1000
Newsstands Qty	10	10	10	10	40	15	15	15	15	100				100
Ad Panels					104					260				260
Total # of Structures	130	170	215	235	750	327	322	318	318	2035				2135
Total New Ad Panels					1334					3430				3430

(1) The first APTs shall be installed irrespective of when Rollout Period 1 commences for all other OSF.

Actual Installed Street Furniture Sites																
	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	TOTALS
Transit Shelters	0	1	98	94	117	176	97	33	0	1	2	1	7	14	16	657
Public Amenity Kiosks	0	1	27	13	29	42	9	67	1	0	0	0	0	3	4	196
Pillar Kiosks	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Vending Kiosks	0	1	2	2	0	1	0	0	0	0	0	0	0	0	0	6
Automated Public Toilets	0	0	3	0	1	8	2	0	1	0	0	0	0	0	0	15
Totals by Year	0	3	130	109	147	227	108	100	2	1	2	1	7	17	20	874

Bus stops with and without a transit shelter and other site amenities

