

**AGREEMENT BETWEEN CITY OF COACHELLA AND SUNLINE TRANSIT AGENCY
CONCERNING ADVERTISING INSTALLATION AND MAINTENANCE RELATED TO
BUS SHELTERS**

This Agreement is made and entered into this 1st day of July, 2024, by and between SunLine Transit Agency ("SunLine"), a California joint powers authority and the City of Coachella ("City"), a California municipal corporation.

SunLine is a government entity composed of and represented by the County of Riverside and the cities of Desert Hot Springs, Palm Springs, Cathedral City, Rancho Mirage, Palm Desert, Indian Wells, La Quinta, Indio, and Coachella. The Board of Directors of SunLine is composed of one elected official from each of its member entities.

SunLine is the public transit provider for the City which enables both its citizens and visitors to enjoy a safe, reliable, nonpolluting mode of public transportation. SunLine's installation and maintenance of bus shelters in the City provides great benefit to citizens and visitors alike by providing clean sheltered places for travelers to wait for public transportation services. The placement of shelters within the City also provides an amenity of great benefit to the elderly and to senior citizens within the City.

SunLine owns certain advertising bus shelters within the City and wishes to provide for continued advertising in such shelters.

Revenue from advertising enables SunLine to install new additional shelters as a transit amenity at no cost to the public. Advertising revenue also pays for maintenance of shelters and for additional transit services at no cost to the public.

SunLine and City are now desirous of entering into an agreement with regard to the placement of present and future shelters and to provide for continued advertising in such shelters.

NOW, THEREFORE, the parties hereto agree as follows:

I.

GENERAL TERMS

1.01 City hereby grants SunLine the exclusive right to place advertising associated with bus shelters placed by SunLine within the public right of way within the City's jurisdiction. In exercising the exclusive right granted it under this Agreement, SunLine shall ensure that the following standards and requirements are met:

(a) Shelter designs meet and comply with all applicable SunLine design requirements and City building codes, zoning ordinances, vehicular code ordinances and regulations, and all other applicable City resolutions, ordinances and codes;

(b) All City design criteria and approvals have been obtained; and,

(c) Adequate easements, encroachment permits, licenses, and/or rights-of-way have been obtained.

1.02 The City shall waive all permit and/or license fees imposed by or on behalf of the City that may pertain to SunLine's installation and operation of the bus shelters within its jurisdiction.

1.03 In consideration for the grant of the exclusive rights referred to in paragraph 1.01 above, SunLine shall continue to clean and maintain all bus shelters as well as the area within a 25-foot radius of each shelter including emptying trash and separating recyclable items from collected trash. In addition, SunLine will remove or cause the removal of all graffiti appearing on any shelter within the City in an expeditious manner.

1.04 In the event that the City has any problems or questions related to advertising placed on the bus shelters within its jurisdiction, it shall contact SunLine. In any such case, SunLine shall endeavor to secure a prompt resolution of any issue within its legal power to resolve. City acknowledges and recognizes that certain limits may arise in connection with SunLine's ability to regulate the content of advertising, particularly those limits arising under the First Amendment to the United States Constitution and the California Constitution. Within such limits, SunLine will endeavor to correct or address any problem that the City might have with advertising placed in bus shelters within its jurisdiction in an expeditious manner.

1.05 SunLine will place and install City provided advertisements for City sponsored events, programs and City sponsored agencies on available bus shelter advertising space not occupied by a revenue generating advertisement within that City's city limits.

(a) Any advertising produced and provided by the City shall comply with SunLine's Advertising Policy attached in Exhibit "A" – SunLine Advertising Policy.

(b) SunLine reserves the right to relocate any City sponsored advertisement to another location if a revenue generating advertisement has requested the same location as the City advertisement.

II.

COMPENSATION

2.01 In lieu of payment for revenue generating advertisements, SunLine will place and install City provided advertisements for City sponsored events, programs and City sponsored agencies on available bus shelter advertising space not occupied by a revenue generating advertisement within that City's city limits.

III.

DURATION

3.01 The term of this Agreement shall be for a period of one year (1) year commencing on July 1, 2024, through June 30, 2025.

3.02 Either party may terminate this agreement upon thirty (30) days written notice to the other party. In the event this Agreement is terminated, the City may require SunLine to remove any or all paid advertisements from SunLine bus shelters within the City after the expiration or termination of any contracts between SunLine and third parties for such advertisements. All SunLine bus shelters that were installed with appropriate City permits and approvals shall be allowed to remain in place despite the termination of this Agreement.

IV.

INSURANCE

4.01 SunLine shall ensure the full repair or replacement of all shelters in the City as well as required appurtenances thereto during the entire term of this Agreement and any extensions thereof.

V.

SPECIAL PROVISIONS

5.01 It is SunLine's intent to illuminate all shelters during hours of darkness whenever possible and SunLine agrees to utilize its best efforts to accomplish illumination. However, the City acknowledges that illumination is not always feasible and agrees that SunLine is excused from providing illumination in such cases. SunLine and the City shall jointly approve the placement of any vending machines in any shelter in the City. No vending machine will be placed without the approval of both City and SunLine.

5.02 SunLine shall, upon at least 30 days' written notice, provide for the relocation or removal of any shelter at any time the City requires use of the right of way upon which any shelter is situated, whether for street or sidewalk realignment, street, highway, or utility line repairs, or for any other lawful purpose, and whether such removal or relocation is temporary or permanent. Upon a determination by the City that urgency dictates removal in a shorter period of time, SunLine shall act within ten (10) days to cause removal of the shelter if reasonably feasible.

5.03 City shall ensure that the cost of removal or relocation of shelters within the right of way is included in the budget of projects where such removal or relocation is required. In any case where the cost is included, SunLine shall be reimbursed for relocation or removal costs referenced in paragraph 5.02. In any case where the cost has not been budgeted, SunLine and the City shall negotiate and endeavor to agree upon an arrangement to share in the cost of removal or replacement of any shelter as provided under paragraph 5.02.

5.04 The City reserves the right to require conformity with design review standards, including site plan review showing actual physical locations with setbacks, sidewalk space remaining, adequate distances from corners and from driveways. All such features must be satisfactory to the City and to SunLine and shall be in compliance with the Americans with Disabilities Act ("ADA") and with Federal Transit Administration

("FTA") requirements. SunLine shall provide an adequate cement pad under shelters. Within the limits imposed by the FTA and the ADA, the City shall have the right to approve or deny approval to any particular design as to its specific site plan and location, including the right to specify a particular design for a specific location.

5.05 The parties acknowledge and agree that ADA and FTA requirements as to the configuration and approach to newly installed bus shelters may be extremely costly, depending upon the existing condition of the planned location and the adjoining or existing access features. In the event that the City requests placement of a bus shelter in an area that requires substantial expenditures in order to comply with the ADA and with FTA requirements, the City will be requested by SunLine to bear all or a major portion of the costs of installation. The parties shall cooperate in placement of shelters and in the negotiation of costs required to accommodate ADA and with FTA requirements.

VI.

MISCELLANEOUS PROVISIONS

6.01 Attorneys' Fees

In any dispute between the parties resulting in litigation, the prevailing party shall be entitled to recover from the other party all reasonable costs, including, without limitation, reasonable attorneys' fees. "Prevailing party" shall include, without limitation, a party which dismisses an action for recovery in exchange for sums allegedly due, or in exchange for performance for covenants allegedly breached, or in exchange for considerations substantially equal to the relief sought in the action, or which receives, in connection with any dispute, performance from the other party substantially equivalent to any of these.

6.02 Entire Agreement

This Agreement contains the entire agreement of the parties relating to the rights granted and the obligations assumed herein. Any oral representations or modifications concerning this instrument shall have no force or effect unless contained in a subsequent written modification signed by the parties.

6.03 Indemnity

SunLine shall indemnify, defend, and hold harmless the City, and its elected officials, officers, employees, agents, and representatives, against all liability, demands, claims, costs, losses, damages, recoveries, settlements, and expenses (including interest, penalties, attorney fees, expert witness fees, costs, and expenses) incurred by the City, known or unknown, contingent or otherwise, directly or indirectly arising from or related to any suit, action or claim that may arise from SunLine's performance under this Agreement.

The City shall indemnify, defend, and hold harmless SunLine, and its board of directors, officers, employees, agents, and representatives, against all liability, demands, claims, costs, losses, damages, recoveries, settlements, and expenses (including interest, penalties, attorney fees, expert witness fees, costs, and expenses) incurred by

SunLine, known or unknown, contingent or otherwise, directly or indirectly arising from or related to any suit, action or claim that may arise from City's performance under this Agreement.

6.04 Counterparts

This Agreement may be executed in counterparts, which shall be treated as originals in all respects.

6.05 This Agreement is entered into at Riverside County, California.

6.06 This Agreement shall not be construed in any way to create a partnership or joint venture in any respect between SunLine and the City, or between City and any contractor of SunLine or any of SunLine's remaining member entities. SunLine is acting purely as an independent contractor and not as an officer, agent, partner, joint venture and/or employee of City.

6.07 Notices

Any notices given under this Agreement shall be in writing and shall be served either personally or delivered by U.S. Mail, postage prepaid, registered or certified mail, return receipt requested. Notices shall be deemed received at the earlier of actual receipt or three days following deposit in U.S. Mail, postage prepaid. Unless otherwise specified, time limits based upon notice shall be computed from the date of mailing. Notices shall be directed to the following addresses:

SunLine Transit Agency
Mona Babauta
CEO/General Manager
32-505 Harry Oliver Trail
Thousand Palms, CA 92276

City of Coachella
Gabriel Martin
City Manager
53-990 Enterprise Way
Coachella, CA 92236

Either party may change its address for notice purposes by giving notice to the other, provided that the address change will not be effective until 10 days after notice of the change.

6.08 Non-Assignment

Neither SunLine nor City shall assign or otherwise transfer their rights and obligations under this Agreement without prior written consent of the other. Any such assignment without consent shall be void.

6.09 Headings

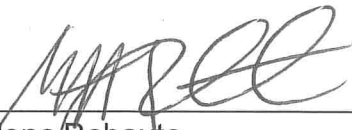
The title and headings of the various sections of this Agreement are intended solely for convenience of reference and are not intended to explain, modify, or alter the terms of this Agreement.

SIGNATURES ON NEXT PAGE

IN WITNESS WHEREOF, the parties hereto have executed this agreement on the date first written above.

SUNLINE TRANSIT AGENCY

DATED: 8/15/24

By: 
Mona Babauta
CEO/General Manager

APPROVED AS TO FORM:

By: 
Catherine Groves, General Counsel

CITY OF COACHELLA

DATED: 7/29/2024

By: 
Gabriel Martin, City Manager

ATTEST:

By: 
City Clerk

APPROVED AS TO FORM:

By: 
City Attorney

EXHIBIT A
SUNLINE ADVERTISING POLICY

ADVERTISING POLICY

PURPOSE

SunLine Transit Agency (STA), acting in a proprietary capacity, operates public bus service in the Coachella Valley. STA's desire to sell advertisement space stems from the recognized need to earn revenues to supplement operating costs that are not otherwise met through farebox revenue and local, state and federal levies, taxes and grants.

SCOPE

This policy applies to all SunLine Transit Agency employees or contractors.

POLICY

It is STA's policy that its buses, bus shelters and any and all other forums for advertising under this policy are not public forums for political discourse or expressive activity.

These areas are not intended to provide a forum for all types of advertisements, but only the limited advertisements accepted under the policy. All advertising shall be subject to this uniform view point neutral policy.

Excluded advertising: Copy may not be displayed and, if displayed, will be removed by STA if it falls within the categories listed below.

In excluding said advertising, STA seeks to maintain a professional advertising environment that will maximize advertising revenue and minimize interference with or disruption to its transit system.

It further seeks to maintain an image of neutrality on political, religious and other issues that are not the subject of commercial advertising and may instead be the subject of public debate and concern. Finally, STA's goal is to continue to build and retain ridership.

Subject thereto, a proposed advertisement will be excluded if SunLine, in its sole discretion, determines it:

1. Contains defamatory , libelous or obscene matter.
2. Is false, misleading or deceptive.
3. Supports or opposes any labor organization or any action by, on behalf of or

against any labor organization.

4. Relates to or promotes any illegal activity.
5. Contains implicit or explicit sexual references, pictures or text, or includes material harmful to minors.
6. Depicts or promotes the sale of alcohol, cannabis, tobacco products, any illegal products, service or entity and/or firearms.
7. Depicts or advocates violence.
8. Includes language that is obscene, vulgar or profane.
9. Demeans, degrades or has the effect of promoting discrimination against any group or individual on the basis of race, color, religion, national origin, age, sex, disability, ancestry or sexual orientation.
10. Opposes the nomination or election of a candidate for public office, the investigation, prosecution or recall of a public official or the passage of a levy or bond issue. Constitutes an unauthorized endorsement defined as advertising that implies or declares that STA endorses a product, service, viewpoint, event or program. This definition does not include advertising for a service, event or program for which STA is an official sponsor, co-sponsor or participant.
11. Constitutes a religious advertisement defined as advertising that contains direct or indirect reference to religion, a deity or which includes reference to the existence, non- existence or other characteristics of a deity or any religious creed, denomination, belief, tenet, cause or issue relating to, opposing or questioning any religion. This includes, text, symbols, images commonly associated with any religion or deity or any religious creed, denomination, belief, tenet, cause or issue relating to, opposing or questioning any religion.
12. Advertising that encourages person to refrain from using SunLine Transit Agency services or public transit in general.
13. Advertising that explicitly and directly promotes or encourages the use or means of transportation in direct competition with public transit.

PERMITTED ADVERTISING

In permitting limited advertising, STA seeks only to supplement fare revenue and other income that funds its operations and to promote its services.

STA does not desire to have its passengers subject to advertisements containing controversial material relating to political, religious or other issues about which public opinion can be widely divergent.

To realize the maximum benefit from the sale of space, all advertising programs must be managed in a manner that will generate as much revenue as practicable while ensuring that the advertising does not discourage use of the system, does not diminish STA's reputation in the communities it serves and is consistent with the goal of providing safe and efficient public transportation.

1. Commercial advertising has a sole purpose of promoting a business or to sell products, goods or services. It does not include advertising that both promotes a business or offers to sell products, goods or services and also conveys a political or religious message or can be construed as issue advocacy or which expresses an opinion or position.
2. Operations advertising is permitted. This is defined as advertising that promotes STA and its services.
3. Governmental advertising is permitted. This is defined as advertising that promotes programs and events of governmental entities, political subdivisions and state agencies.
4. Political advertising is permitted. Ad content must be approved and must state "Paid Advertisement" as part of the creative artwork. The font must be an appropriate size.
5. Entering into barter deals is permitted if SunLine determines that it is a benefit to SunLine Transit Agency.
6. Customers requesting advertisement orders will need to provide payment upfront – before each advertising period (flight) begins.

ADMINISTRATION AND ENFORCEMENT OF POLICY

Review by the General Manager.

The CEO/General Manager or designee shall review all advertisement content and determine whether it complies with this policy.

If the CEO/General Manager or designee determines that the advertisement does not comply, written notification of same shall be provided to the advertiser with a copy of this policy.

On an as needed basis, the CEO/General Manager may refer any controversial proposed ad content to the Board for approval or rejection with a majority vote.

The Board of Directors may override any decision by the CEO/General Manager on ad content with a majority vote.

SunLine Transit Agency shall submit bus shelter ad content to the corresponding city, delegated to the City Manager, for approval. The cities have five business days to respond. SunLine Transit Agency will have ad content approval discretion, if the corresponding city fails to respond within the five day period.

The Board designates the General Manager to administer the Advertising Policy. This delegation is with the power of re-delegation to appropriate staff.