



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

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”) and CITY OF SANTA CLARA, a municipal corporation of the State of California (“Agency”) (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 40 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 29 advertising shelters in its right of way reflecting 7.5 % 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 an amount up to fifty percent (50%) of 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%) or more of Bus Shelter Revenue will be retained by VTA to fund transit operations.

In the event the number of advertising bus shelters increases or decreases in Agency's right of way during the term of this Agreement, 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.

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.



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 Department
3331 N. First Street, Bldg. A-1
San Jose, CA 95134-1927

To Agency:

City of Santa Clara
Attention: _____
1500 Warburton Avenue
Santa Clara, CA 95050

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 and 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:

Nuria I. Fernandez
General Manager/CEO
Date: _____

Deanna Santana
City Manager
Date: _____

APPROVED AS TO FORM:

Victor Pappalardo
Senior Assistant Counsel



EXHIBIT A: VTA ADVERTISING POLICY

VTA ADVERTISING	POLICY	
	Document Number:	CS-PA-PL-2016
	Version Number:	02

1.0 Purpose:

By implementing this Advertising Policy, VTA intends to establish uniform, viewpoint-neutral standards for the display of advertising on VTA property and equipment.

2.0 Scope:

This policy applies to all advertisements sold through VTA's transit advertising contractor and bus shelter advertising contractor.

3.0 Responsibilities:

3.1 Review of Advertisements

The Advertising Vendor shall review each advertisement submitted for display on or in VTA property or equipment to determine whether the advertisement falls within, or may fall within, one or more of the categories of the "Prohibited Advertising Content" section (i.e. Section 4.3). If the Advertising Vendor determines that an advertisement falls within, or may fall within, one or more of those categories, then the Advertising Vendor shall promptly send the advertisement along with all supporting information (i.e. name of the advertiser, the size and number of advertisements, dates and locations of display, etc.) to the appropriate VTA Contract Administrator ("the Administrator") for review of the advertisement.

3.1.1 Initial Review

Upon VTA Contract Administrator's receipt of the advertisement and supporting information, the Administrator shall review the advertisement and supporting information to determine whether the advertisement falls within one or more of the categories set forth in Section 4.3. In reaching this determination, the Administrator may consider any materials submitted by the advertiser and may consult with the Advertising Vendor. In the event that the Administrator determines that the advertisement does not fall within any of the categories set forth in Section 4.3, the Administrator shall advise the Advertising Vendor that the advertisement is in conformity with VTA's Advertising Policy.

3.1.2 Final Review

In the event that the Administrator determines that the advertisement falls within, or may fall within, one or more of the categories set forth in Section 4.3, then the Administrator shall, in writing, specify which of the categories the advertisement falls within, or may fall within, and shall refer the advertising and supporting information to the VTA General Counsel. Likewise, the General Counsel shall review the advertisement and supporting information to determine whether the advertisement falls within one or more of the categories set forth in Section 4.3. In reaching this determination, the General Counsel may consider any materials submitted by the advertiser and may consult with the Administrator. In the event



Original Date:	Revision Date:	Page 1 of 8
11/25/14	11/04/2016	

<i>VTA ADVERTISING</i>	POLICY	
	Document Number:	CS-PA-PL-2016
	Version Number:	02

that the General Counsel determines that the advertisement does not fall within any of the categories set forth in Section 4.3, the Administrator shall advise the Advertising Vendor that the advertisement is in conformity with VTA's Advertising Policy.

3.1.3 Rejection of Advertisement

In the event that the General Counsel determines that the advertisement falls within one or more of the categories set forth in Section 4.3, then the General Counsel shall, in writing, specify which of the categories the advertisement falls within, and the Administrator shall advise the Advertising Vendor that VTA has determined that the advertisement is not in conformity with the VTA Advertising Policy.

3.1.4 Opportunity for Revision by Advertiser

In the event that VTA determines that the advertisement falls within one or more of the categories of Section 4.3, the Advertising Vendor may, in consultation with the VTA Contract Administrator, discuss with the advertiser one or more revisions to the advertisement, which, if undertaken, would bring the advertisement into conformity with the VTA Advertising Policy. The advertiser shall then have the option of submitting a revised advertisement for review by VTA.

3.1.5 Formal Determination

In the event that VTA and the advertiser do not reach agreement with regard to a revision of the advertisement, the advertiser may request that VTA memorialize its formal determination in the form of a final written notice of its decision, which shall then be relayed to the advertiser. VTA's formal determination shall be final.

3.1.6 Notification of Non-Complying Advertisements

Notwithstanding the foregoing, if the VTA Contract Administrator and the General Counsel determine at any time that an advertisement already accepted for display by the Advertising Vendor falls within one or more of the categories set forth in Section 4.3, they shall:

- in writing, specify which of the categories the advertisement falls within;
- notify the advertiser that VTA has determined that the advertisement is not in conformity with its Advertising Policy and that the advertisement shall be promptly removed; and
- instruct the Advertising Vendor to remove the advertisement.

3.1.7 Removal of Non-Complying Advertisements

Upon receiving a notification of a non-complying advertisement, the Advertising Vendor:

Original Date:	Revision Date:	Page 2 of 8
11/25/14	11/04/2016	

<i>VTA ADVERTISING</i>	POLICY	
	Document Number:	CS-PA-PL-2016
	Version Number:	02

- a. shall promptly remove the advertisement;
- b. shall provide the advertiser with a copy of the VTA Advertising Policy; and
- c. may, with the VTA Contract Administrator, discuss with the advertiser one or more revisions to the advertisement, which, if undertaken, would bring the advertisement into conformity with the VTA Advertising Policy, and the advertiser shall have the opportunity for revision as set forth in the "Opportunity for Revision by Advertiser" provision above.

4.0 Policy:

4.1 Objectives

4.1.1 Increase Revenue

VTA transit operations are funded by public funds and fare box revenue. Advertising revenue is an important additional source of income that supports transit operations. Therefore, VTA's fundamental purpose in accepting advertising is to generate revenue to augment VTA's operating budget.

4.1.2 Promote VTA's Mission

VTA's mission is to provide sustainable, accessible, community-focused transportation options that are innovative, environmentally responsible, and promote the vitality of its region. Consistent with this stated purpose, VTA will accept advertising that will allow VTA to accomplish the following:

- a. Maximize revenue by attracting, maintaining, and increasing ridership;
- b. Maintain the safe and orderly operation of VTA;
- c. Prevent the appearance of favoritism by VTA;
- d. Prevent the risk of imposing views on a captive audience;
- e. Maintain a position of neutrality on controversial issues;
- f. Preserve the marketing potential of the advertising space by avoiding content that the community could view as offensive, inappropriate or harmful to the public generally or to minors in particular;
- g. Avoid claims of discrimination and maintaining a non-discriminatory environment for riders;
- h. Prevent any harm or abuse that may result from running controversial or offensive advertisements; and
- i. Reduce the diversion of resources from transit operations that are caused by controversial or offensive advertisements.

4.1.3 Retain Non-Public Forum Status of VTA's Advertising Space

Through this Advertising Policy, VTA intends to ensure that its advertising spaces constitute non-public fora. In keeping with this specified intention, VTA will reject any advertising material that will create a public forum for expressive

<i>VTA ADVERTISING</i>	POLICY	
	Document Number:	CS-PA-PL-2016
	Version Number:	02

activities, and VTA will actively enforce the viewpoint-neutral restrictions set forth in the Advertising Policy.

4.2 Permitted Advertising Content

The following classes of advertising are authorized (subject to the exclusions set forth under "Prohibited Advertising Content" below):

4.2.1 Commercial and Promotional Advertising

- a. Advertising that promotes or solicits the sale, rental, distribution or availability of goods, services, food, entertainment, events programs, transactions, donations, products, or property (real or personal) for commercial purposes; or
- b. Advertising that generally promotes an entity that engages in the sale, rental, distribution or availability of goods, services, food, entertainment, events programs, transactions, donations, products, or property (real or personal) for commercial purposes.

4.2.2 Public Service Announcements

VTA will, from time to time, make advertising space available for public service announcements ("PSA") proposed by non-profit corporations. In order to be permissible, proposed PSA must meet the following criteria:

- 4.2.2.1 The sponsor of a PSA must be a governmental entity or a nonprofit corporation that is exempt from taxation under Internal Revenue Code Section 501(c)(3).
- 4.2.2.2 Content must be directed to the general public or a significant segment of the public and relate to:
 1. Prevention or treatment of illnesses;
 2. Promotion of safety or personal well-being;
 3. Education or training;
 4. Provision of children and family services;
 5. Solicitation by broad-based contribution campaigns which provide funds to multiple charitable organizations; or
 6. Provision of services and programs that provide support to low income citizens, senior citizens, and people with disabilities.

- 4.2.2.3 The PSA may be required to bear the following legend if the sponsor is not readily or easily identifiable from the content or copy of the proposed PSA: "This message is sponsored by _____."

Original Date:	Revision Date:	Page 4 of 8
11/25/14	11/04/2016	

<i>VTA ADVERTISING</i>	POLICY	
	Document Number:	CS-PA-PL-2016
	Version Number:	02

4.3 Prohibited Advertising Content

The following classes of advertising are prohibited:

Advertisements that contain:

4.3.1 Demeaning or disparaging material

Content that a reasonably prudent person who is knowledgeable of VTA's ridership and using prevailing community standards would believe ridicules or mocks, is abusive or hostile to, or debases the dignity or stature of, an individual or group of individuals.

4.3.2 Profanity

Content that includes profane language.

4.3.3 Violence

Content that depicts an image or contains description of graphic violence, including but not limited to:

- a. The depiction of human or animal bodies, body parts or fetuses, in states of mutilation, dismemberment, decomposition or disfigurement; or
- b. The depiction of weapons or other implements or devices used in the advertisement in an act or acts of violence or harm on a person or animal.

4.3.4 Unlawful goods or services

Content that promotes, encourages, or appears to promote or encourage the use or possession of unlawful or illegal goods or services.

4.3.5 Unlawful conduct

Content that promotes, encourages, or appears to promote or encourage unlawful or illegal behavior or activities.

4.3.6 Obscenity or nudity

Content that depicts obscene material or images of nudity. Content shall be considered "obscene" if an average person would find that the material, taken as a whole, appeals to a lewd curiosity; depicts or describes, in an offensive way, sexual conduct or excretory functions; and, taken as a whole, lacks serious literary, artistic, political, or scientific value. "Nudity" is construed as the depiction of a state of undress as to expose any part or portion of the pubic or anal region or genitalia of any person or any portion of the breast at or below the areola thereof of any female person.

<i>VTA ADVERTISING</i>	POLICY	
	Document Number:	CS-PA-PL-2016
	Version Number:	02

4.3.7 Prurient sexual suggestiveness

Content that describes, depicts, or represents sexual activities or aspects of the human anatomy in a way that the average adult, applying contemporary community standards, would find appeals to the prurient interest of minors or adults in sex.

4.3.8 "Adult" goods or services

Content that promotes, encourages, or appears to promote or encourage a transaction related to, or uses brand names, trademarks, slogans or other materials which are identifiable with films rated "X" or "NC-17," video games rated M or AO, adult products, adult book stores, adult video stores, nude dance clubs and other adult entertainment establishments, adult telephone services, adult Internet sites, and escort services.

4.3.9 Advertisements that promotes the sale or use of any of the following:

a. Alcohol

Content that advertises an alcohol product or a brand of alcohol products.

b. Firearms

Content that advertises a firearm or a brand of firearms and/or contains an image of a firearm in the foreground of the main visual.

c. Tobacco

Content that promotes the sale or use of tobacco or tobacco-related products (e.g., chewing tobacco, snuff, electronic cigarettes, etc.), including but not limited to depicting such products.

d. Marijuana

Content that promotes the sale or use of marijuana or cannabis related products, including but not limited to depicting such images.

4.3.10 Advertisements which are to the knowledge of the Vendor:

- a. False, misleading, or deceptive;
- b. Defamatory or likely to scorn or ridicule any person or group;
- c. Obscene or pornographic according to local community standards; or
- d. Advocates lawlessness or violent action.

Original Date:	Revision Date:	Page 6 of 8
11/25/14	11/04/2016	

<i>VTA ADVERTISING</i>	POLICY	
	Document Number:	CS-PA-PL-2016
	Version Number:	02

4.3.11 Political

- a. Advertisements promoting or opposing a political party, or promoting or opposing the election of any candidate or group of candidates for federal, state, judicial, or local government offices; or
- b. Advertisements that are political in nature or contain political messages, including but not limited to those involving an issue that directly or indirectly implicates the action, inaction, prospective action or policies of a governmental entity.

4.3.12 Religious Advertisements containing images or content intended to promote a particular religion, religious idea or viewpoint.

4.3.13 Adverse to VTA

- a. Advertisements that contain material that is adverse to the commercial and administrative interests of VTA; or
- b. Advertisements that tend to disparage VTA's services and/or public transportation generally.

5.0 *Definitions:*

N/A.

6.0 *Summary of Changes:*

The policy reflects the following changes to Prohibited Advertising Content (4.3)...

In section 4.3.9(c), expanded the description of tobacco-related products with examples such as chewing tobacco, snuff, and electronic cigarettes.

Added section 4.3.9(d) to include Marijuana or cannabis related products as Prohibited Advertising Content.

Original Date:	Revision Date:	Page 7 of 8
11/25/14	11/04/2016	

<i>VTA ADVERTISING</i>	POLICY	
	Document Number:	CS-PA-PL-2016
	Version Number:	02

7.0 Approval Information:

<i>Prepared by</i>	<i>Reviewed by</i>	<i>Approved by</i>
 Dino Guevarra Manager, Marketing & Business Development	 Bernice Alaniz Director of Communications	 Nuria I. Fernández General Manager

November 7, 2016
Date Signed

Original Date:	Revision Date:	Page 8 of 8
11/25/14	11/04/2016	