Business Item
Item: 2010-11

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Transportation Committee

Meeting date: January 11, 2010

Metropolitan Council Meeting: January 27, 2010

ADVISORY INFORMATION	
Date:	January 8, 2010
Subject:	Amendment to Titan Outdoor, LLC., Advertising Sales Contract
District(s), Member(s):	All
Policy/Legal Reference:	Council Policy 3.3 Expenditures – Procurement of Goods and Services of $250,000
Staff Prepared/Presented:	Brian J. Lamb, General Manager, Metro Transit (612-349-7510) Bruce Howard, Director of Marketing, Metro Transit (612-349-7694) Ed Petrie, Director of Finance, Metro Transit (612-349-7624) Dave Theisen, Deputy General Counsel (651-602-1706)
Division/Department:	Metro Transit, Marketing Division

Proposed Action

That the Metropolitan Council: (1) find that the current economic climate has had a significant and adverse effect on advertising and the advertising industry; (2) determine that the best alternative for maximizing its advertising revenue under prevailing circumstances is to renegotiate and amend its current contract with Titan; and (3) authorize its Regional Administrator to negotiate and execute amendments to the Titan Outdoor, LLC., contract substantially in compliance with the attached term sheet.

Background

Titan Outdoor, LLC was awarded a five-year contract beginning January 1, 2007 for purposes of selling advertising on Metro Transit buses, trains, kiosks and other properties. Titan's bid was selected as most advantageous from a field of five candidates in a competitive process. The contract terms include a revenue share of 60% of net ad sales to Metro Transit and an increasing minimum annual guarantee (MAG) over the five years of the contract totaling $20 million dollars. During the first two years of the contract, Titan increased net ad sales 24% (15% in 2007 and 9% in 2008) generating $3.4 million and $3.8 million in revenue share to Metro Transit. This 60% revenue share for the first two years of the contract exceeded the minimum annual guarantees ($3.3 million in 2007 and $3.6 million in 2008) by $300,000. However, in 2009 Titan began to experience cash flow problems as a result of the steep decline in advertising spending brought on by the recession and earlier this year they notified all 44 of the transit agencies with which it has contracts that Titan would not be able to honor the minimum annual guarantees for 2009. In Metro Transit's case, the 2009 guarantee was $4 million dollars. The revenue share will generate $3.5 million, so essentially Metro Transit stands to loose $500,000 versus the guarantee.

Titan has since asked each of its clients, including Metro Transit, to renegotiate their contracts as part of a business restructuring. To date 41 of the 44 transit agencies have either reached tentative agreements with Titan to restructure their contracts or have awarded their contract to Titan again after a competitive bidding process. This includes BART in San Francisco, MBTA in Boston, King County in Seattle, SEPTA in Philadelphia, NJ Transit and CTA in Chicago.

Staff believes that the proposed amendments negotiated for Metro Transit are comparatively more advantageous than most any of the other transit system agreements reached to date.

Rationale

For the past several months Council staff has conferred with several other transit agencies to monitor their experiences with Titan and other advertising agencies, learn how those agencies' actual revenues compared to the level of revenues they expected under the terms of their advertising contracts, and obtain information about what results those agencies had when they rebid their advertising contracts. Council staff and its attorneys also were able to benefit from an accounting firm's ongoing analyses (at no cost to the Council) of Titan's financial circumstances.

Prevailing market conditions and the current state of the national economy have significantly affected advertising and the advertising industry. Nearly all of the transit authorities contacted by Metro Transit staff reported diminishing advertising revenues during 2009 and the financial difficulties of advertising agencies were widely reported. Recent competitive bids from transit authorities in other cities indicate those transit agencies are receiving far less value in terms of both revenue share and minimum annual guarantees for their advertising contracts compared to revenues earned before the current economic downturn. During the negotiation process with Titan, it became apparent that while Titan was asking for some concessions in either revenue share or minimum annual guarantees, it still was willing to agree to an above-market value amendment in order to retain Metro Transit's contract. Titan has also included an option as part of the term sheet to extend the current contract for three additional years at a revenue share of 65% compared to the current 60%.

As an example, CTA in Chicago put its contract with Titan out for bids this fall. In December, CTA again awarded the contract to Titan. However, the winning bid Titan submitted was far less than the existing contract CTA had just canceled. The canceled contract had a 67% revenue share and a $24 million minimum annual guarantee for the remaining two years of the contract. Comparatively, the winning Titan bid included a 62.5% revenue share for the first through third years and a 63% share for years four and five with a $14 million minimum annual guarantee. The only other serious bidder, CBS Outdoor, offered a revenue share of between 55% and 60% and minimum annual guarantees that were less than half the value of Titan's winning bid. Similar results occurred in other cities.

Recent bids from from other transit authorities around the country indicate the same trend of lower revenue shares and lower minimum annual guarantees from what were being paid just a year ago. However, Titan continues to win bids despite its contract restructurings, including new contracts won in Chicago (CTA), San Francisco (Muni), Seattle (Community Transit), Oakland (AC Transit), and Long Beach in 2009. This seems to indicate that despite its current restructuring Titan continued to offer the most advantageous contracts for the transit agencies.

Funding

The proposed Titan contract amendment would increase the Metro Transit revenue share compared to the current contract from 60% to 63.5% in 2010 and 65% in 2011 the last year of the contract. However, the proposed amendment would reduce the minimum annual guarantee from $4.4 million in 2010 and $4.7 million in 2011 to $3.1 million and $3.4 million respectively.

Metro Transit has budgeted $3.6 million in advertising revenue in 2010 and $3.7 million in 2011. Titan will need to grow net sales revenues between 3% and 4% in 2010 and about 5% in 2011 in order to meet the budgeted advertising revenues. Staff believes this is a realistic scenario with an improving economy and the addition of two new LRT stations, including Target Field Station generating additional sales revenues.

Known Support / Opposition

No known support or opposition.

Term Sheet for Proposed Amendments to the Agreement Between Titan Outdoor LLC ("Titan") and the Metropolitan Council ("Met Council")

January 7, 2010

Set forth below are the proposed terms of amendments to the existing Agreement between Titan and Met Council (Council Contract No. 06R033) which Met Council staff and attorneys have recommended for approval by the members of the Met Council at its meeting next Wednesday, January 13, 2010. Other than the amendments proposed below, or the attachments hereto, all other terms of the Agreement would remain unchanged.

Payments by Contractor: Section II of the Agreement will be amended to reflect the following:

Calendar Year	Minimum Annual Guarantee ("MAG")	Payment Terms
2009	None[1]	65% of Net Revenue
2010	\$3,150,000[1, 2]	Greater of 63.5% of Net Revenue Collected or MAG
2011	\$3,450,000[1, 2]	Greater of 65% of Net Revenue Collected or MAG
2012 (*)	TBD[2]	Greater of 65% of Net Revenue Collected or MAG
2013 (*)	TBD[2]	Greater of 65% of Net Revenue Collected or MAG
2014 (*)	TBD[2]	Greater of 65% of Net Revenue Collected or MAG

(*) = Option Years (at Met Council's Option)

Monthly Payment: On or before the 20th day of each month, Titan shall pay Met Council the applicable percentage of Net Revenue Collected for the previous month. By way of example, the payment on February 20th shall be for amounts actually collected for the month of January.

Annual True-Up: Within sixty (60) days of (i) the end of each Calendar Year and (ii) the end of the Term, Titan shall pay Met Council the amount, if any, by which the total previous Monthly Payments during that Calendar Year are less than the applicable Minimum Annual Guarantee for that Calendar Year (the "True-Up Amount"). The True-Up Amount, if any, shall be accompanied by a schedule of Net Revenue Collected for such Calendar Year.

2010 New Media: Any revenue generated on new media formats in the 2010 Calendar Year shall (i) count against the 2010 Minimum Annual Guarantee above and on the attached and (ii) shall be subject to a sixty-five (65%) revenue share (rather than 63.5%).

Letter of Credit: The existing Letter of Credit requirements of the contract will be amended per the terms of Exhibit B attached hereto. Additionally, Titan will secure an additional amendment to the existing irrevocable standby

[1] See "Bankruptcy" terms, page 2
[2] See MAG computation paragraph on page 2

	Letter of Credit as set forth on said Exhibit B. If Met Council exercises its option to extend the contract in 2012 or thereafter, the Letter of Credit requirements for such time period shall be negotiated at the time of such extension.
Target Date for Implementation:	Immediately following Met Council Members approval of these amendments. The Agreement term shall be retroactive to January 1, 2009.
Minimum Annual Guaranty Amounts and Computation:	The Minimum Annual Guaranty as set forth in the chart on the preceding page for 2010 and 2011, include an additional guaranty which assumes the addition of the facilities near Target Field and 28th Avenue per the calculations on the sheet attached as Exhibit A. These MAGs are calculated as projected net revenue, multiplied by the Met Council's revenue sharing percentage, multiplied by 85%. The computations for 2010 and 2011 are set forth in more detail on Exhibit A. MAG will be increased or decreased should additional media be added or should media be subtracted from this contract based upon this formula and a negotiated agreement and projection of the effect of such addition or subtraction on net revenue collected. Should the Met Council exercise the options for years 2012, 2013 and/or 2014, projections will be negotiated as part of the exercise of such option and MAGs will be calculated for such years based on the formula set forth in this paragraph and as more fully set forth in Exhibit A.
Bankruptcy:	The Met Council, if this amendment is approved, has agreed to these amendments based upon the express representations by Titan that Titan has, or within the next few weeks will have, accomplished a renegotiation of all contracts, loan agreements and similar financial obligations, such that Titan will not need to seek relief under the United States Bankruptcy Code Title 11 United States Code. Therefore, should Titan either voluntarily seek relief under any chapter of Title 11 or should an involuntary bankruptcy case be filed against Titan and should Titan fail to successfully cause the dismissal of such case within 60 days, then the minimum annual guarantees (MAGs) for calendar years 2009, 2010 and 2011 shall be restored to the amounts currently provided in the contract (i.e. 2009 -$4,000,000, 2010 - $4,400,000 and 2011 - $4,700,000). Met Council shall be entitled to exercise all remedies with respect to such increased MAG, including immediate draw on the letter of credit to secure payment of the difference between such MAG amount and payments actually received from Titan. This paragraph shall apply to any bankruptcy filed on or before December 31, 2011.