



## City Council Staff Report

Date: June 17, 2009

CONSENT CALENDAR

Subject: SUNLINE BUS SHELTERS

From: David H. Ready, City Manager

Initiated by: Public works and Engineering Department

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### SUMMARY

This item recommends an approval of an agreement between the City of Palm Springs and SunLine Transit Agency concerning advertising, installation and maintenance related to SunLine Bus Shelters.

### RECOMMENDATION:

- 1) Approve Agreement No. \_\_\_\_\_ with SunLine Transit Agency for a term of 5 years.
- 2) Authorize the City Manager to execute all necessary documents.

### STAFF ANALYSIS:

Currently there are 35 bus shelters in Palm Springs. About half were constructed as condition of development and required (in most cases) to architecturally match the proposed development. The remainder are generic shelters matching SunLine's Standards in place at the time of installation. Twenty two new shelters are scheduled for installation in Palm Springs in 2009.

Previously City Council reviewed a proposal from SunLine regarding proposed bus shelter locations and details. Council requested they change the color of the bus shelter and asked for staff to review the proposed locations. Staff has reviewed the proposed locations and find them consistent with previous SunLine actions. The attachments indicate the new color of the proposed bus shelters.

SunLine is now attempting to get all cities to execute agreements with them which will cover not only installation and maintenance of the bus shelters, but will provide dollars to the cities for the advertising. The proposed agreement will provide \$25.00 per month per paid panel to the city from advertising revenue. Each shelter has 1 or 2 panels. In addition the agreement has a clause that provides that the City of Palm Springs will receive funds equivalent to those received under any other agreement with a Coachella Valley city effective during the life of this proposed agreement.

Item No. **2.M.**

FISCAL IMPACT

City will receive \$25.00 per month per paid panel from advertising revenue for all bus shelters within the public right of way. Currently there are 35 bus shelters in Palm Springs with 22 additional being placed by SunLine this year.



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David J. Barakian  
Director of Public Works/City Engineer



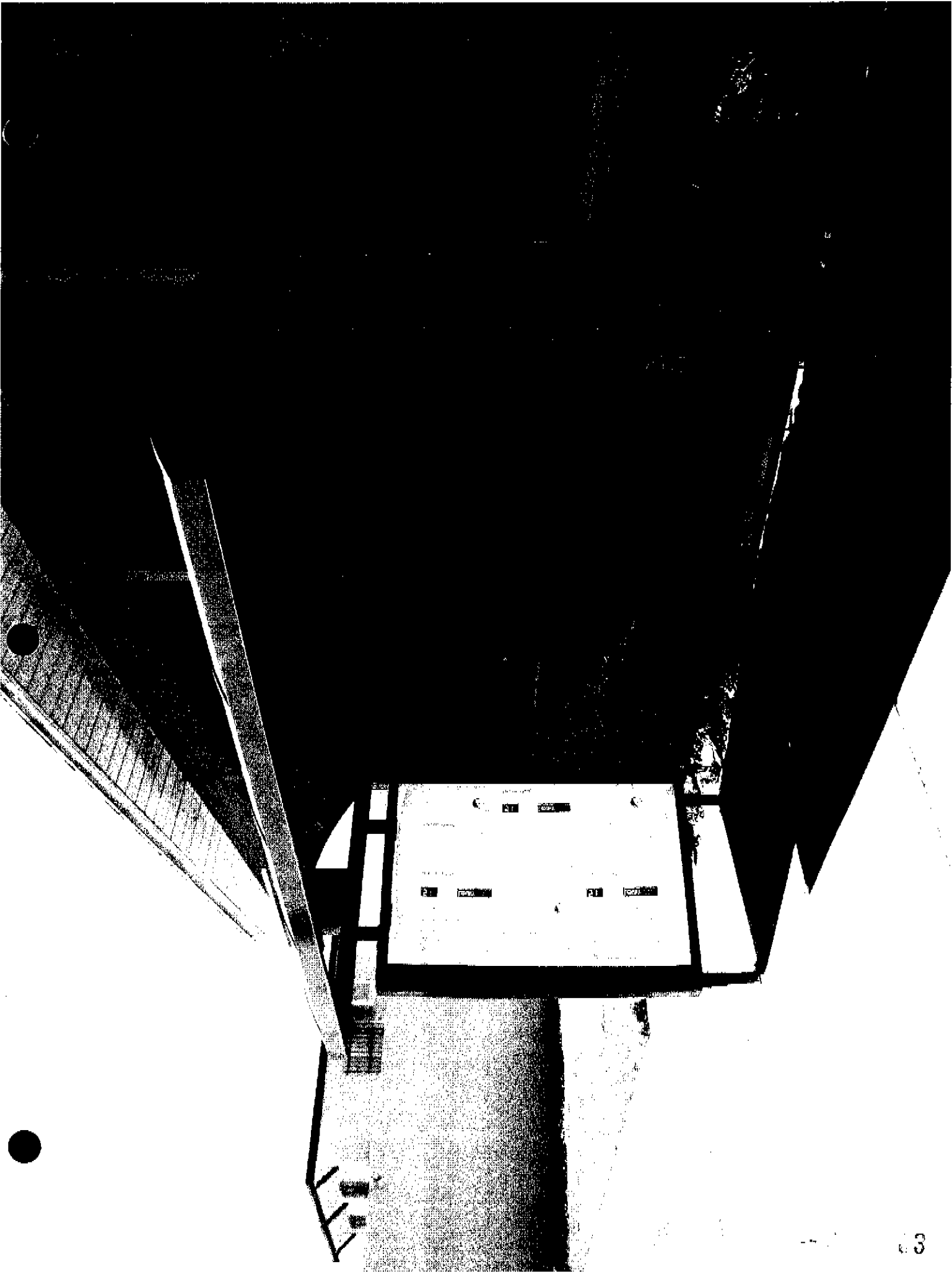
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Thomas J. Wilson  
Assistant City Manager

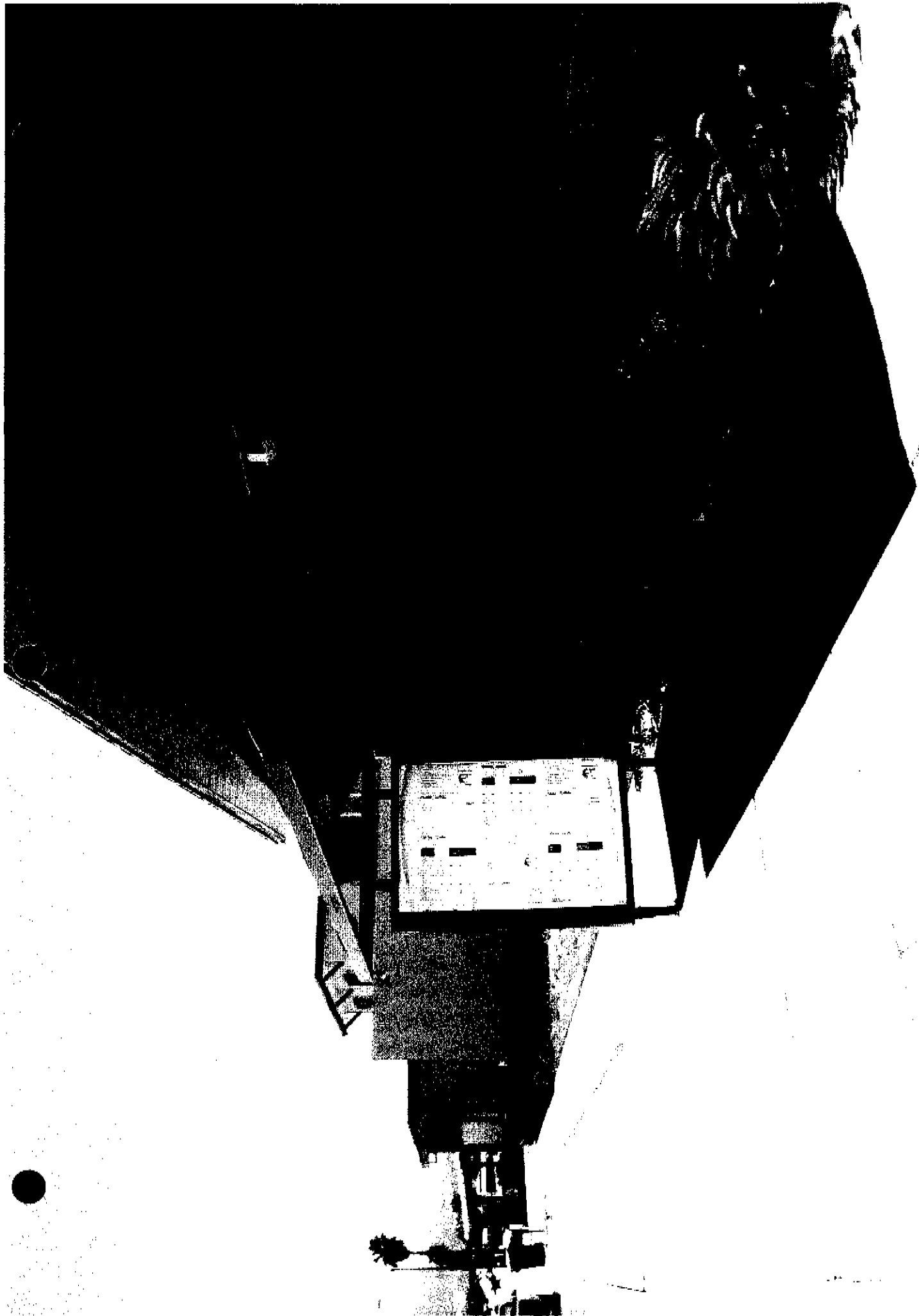


\_\_\_\_\_  
David H. Ready, City Manager

**ATTACHMENTS:**

1. Bus shelter photos
2. Agreement









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

This Agreement is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2009, by and between SunLine Transit Agency ("SunLine"), a California joint powers authority and the City of Palm Springs ("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. 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.

## II

### COMPENSATION

2.01 For each shelter that displays paid advertising, SunLine shall pay to City the sum of \$25 per month per paid panel from advertising revenue for use of the public right of way. Payments are due quarterly, with payments due within 45 days of the close of the preceding quarter. The above amount shall be adjusted such that it is at least equivalent to that received under any other agreement with a Coachella Valley City during the life of this agreement.

## III

### DURATION

3.01 The term of this Agreement shall be for a period of five (5) years. SunLine shall provide written notice to City no less than 30 days prior to the expiration of this agreement if it wishes to apply for an extension of the term or any modification of said agreement. City shall have the right to terminate this agreement at any time during the term of the Agreement upon 30 days advance notice to SunLine, with or without cause.

## IV

### INSURANCE



## 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. If shelters are equipped with pay telephones, such phones shall be capable of access to emergency lines (911) without first depositing a coin or coins. If in the City's opinion, any particular telephone creates a problem in any respect, the City shall have the right to order restricted use or removal of the telephone from a particular shelter. The City recognizes that GTE or other telephone vendor has the right to remove phones for business reasons, or to decline to install service at certain locations. 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 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 Indio, 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 venturer 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:

C. Mikel Oglesby  
General Manager  
SunLine Transit Agency  
32-505 Harry Oliver Trail  
Thousand Palms, CA 92276

David Ready  
City Manager  
City of Palm Springs  
3200 E. Tahquitz Cyn. Way  
Palm Springs, CA 92262

Either party may change its address for notice purposes by giving notice to the other in accordance with Section 6.03, 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.

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

SUNLINE TRANSIT AGENCY

DATED: \_\_\_\_\_

By \_\_\_\_\_  
C. Mikel Oglesby  
General Manager, SunLine Transit  
Agency

APPROVED AS TO FORM:

By \_\_\_\_\_  
David Erwin  
General Counsel for  
SunLine Transit Agency

CITY OF PALM SPRINGS

DATED: \_\_\_\_\_

By \_\_\_\_\_  
Steven Pougnet  
Mayor of the City of Palm Springs

ATTEST:

By \_\_\_\_\_  
City Clerk