

12376



**Memorandum  
Department of Transportation**

**DATE: July 8, 2010**

**TO: BOARD OF ACQUISITION AND CONTRACT**

**FROM: JOHN J. HSU, P.E.  
ACTING COMMISSIONER OF TRANSPORTATION**

**SUBJECT: AUTHORITY TO RESCIND A RESOLUTION APPROVED ON  
AUGUST 6, 2009 AND ENTER INTO A SECOND AMENDMENT OF A  
LICENSE AGREEMENT WITH TITAN OUTDOOR, LLC, TO EXTEND  
THE AGREEMENT TO PERMIT ADVERTISING ON DESIGNATED  
WESTCHESTER COUNTY BEE-LINE BUSES FOR A PERIOD  
COMMENCING ON OCTOBER 1, 2009 THROUGH DECEMBER 31,  
2010 FOR CONSIDERATION TO BE PAID TO THE COUNTY OF  
\$1,562,499.90**

On June 8, 2006, your Honorable Board approved a Resolution authorizing an agreement (which was subsequently executed on October 1, 2006 ("Agreement")) between the County of Westchester ("County") and Titan Outdoor, LLC, ("Titan") of New York City under which Titan was granted the exclusive right to post exterior advertising on 670 sides of buses in the Bee-Line Bus System for three years, commencing on October 1, 2006, in return for a fee of \$4,000,000. That Agreement also provided the County with the right to extend the Agreement at the County's sole option for an additional three (3) years, commencing on October 1, 2009, in the amount of \$5,000,000 payable to the County over the term of the Agreement.

On April 16, 2009, your Honorable Board authorized a First Amendment to the Agreement, which was executed on April 27, 2007, reducing the number of sides available for advertising displays by 25 percent for the remainder of the initial three year contract period and reducing the fee due by \$138,888.90. The reductions reflected the fact that 84 high floor buses were being replaced by low floor hybrid electric buses with inadequate sidewall space to accommodate exterior advertising.

On August 6, 2009, your Honorable Board approved a resolution authorizing the County to exercise its option to extend the Agreement for three years commencing on October 1, 2009, at a revised fee of \$3,750,000, payable in 36 monthly installments of \$104,166.66. The revised fee reflected again the reduced number of sides available for the display of advertising in the bus fleet and on the routes the County expected at that time to continue to operate during the contract period.

Material to the initial agreement and the extension is a provision requiring Titan to provide the County with an Irrevocable Letter of Credit for one third of the fee due so that in event of the failure of Titan to meet the terms of the contract, the County's revenue stream would be protected.

Although Titan has provided all required insurance coverage and made all required payments to date, Titan has not been able to provide the Irrevocable Letter of Credit for the extension period and has informed the County that it has no expectation of being able to provide such a letter in the near future because of internal financial problems brought on by the general economic slowdown and its particular impacts on the advertising industry. As a result, the Second Amendment has not been fully executed.

Titan has also informed the County that it believes that the reduction of hours of bus service implemented by the County in February of 2010 and the reductions anticipated in June of 2010, including approximately three quarters of all trips into Manhattan have materially reduced the value of its rights under the Agreement.

After extensive discussions with Titan, Department of Transportation ("DOT") staff believe that it is in the best business interests of the County to rescind the resolution approved on August 6, 2009 and replace it with a resolution authorizing the County to enter into a Second Amendment that allows Titan to continue providing advertising concessions only through the end of this year at the full budgeted compensation rate of \$1,562,499.90 pursuant to a revised payment schedule. Accordingly, the concession to display advertising would terminate on December 31, 2010. Payments for the 2010 concession would continue, at a reduced monthly rate after June 2010, through June 2011.

This amendment will allow DOT adequate time to conduct a new procurement process for a replacement contract effective January 1, 2011. The new contract would reflect expected revisions to the Bee-Line operating schedules and require the presentation of a Bond or Letter of Credit in advance of the concessionaire's commencement of operations.

The proposed course of action would reduce the risk of loss to the County of revenue attributable to the current budget year, reduce the likelihood of litigation and improve DOT's ability to plan both revenue and service for the next budget year.

Because resolution of the revenue issue for this and preparation for the budget and service needs of the County and its bus riders next year are so important, I request approval of the attached Resolution.

JJH/HJS/TSA

# RESOLUTION

Upon a communication from the Acting Commissioner of Transportation, be it hereby

**RESOLVED**, that the Resolution approved by this Board on August 6, 2009, for the County of Westchester ("County") to enter into a Second Amendment of an existing agreement with Titan Outdoor LLC, ("Titan") is hereby rescinded; and be it further

**RESOLVED**, that the County of Westchester ("County") is hereby authorized to enter into a Second Amendment agreement with Titan for a term commencing October 1, 2009 and terminating December 31, 2010; and be it further

**RESOLVED**, that Titan shall pay the County a total amount not to exceed \$1,562,499.90 pursuant to an agreed upon schedule of payments with payments to be completed no later than June 30, 2011; and be it further

**RESOLVED**, that all other terms and conditions of the Agreement shall remain in effect, except that the County may waive the requirement for an irrevocable letter of credit during the term of the Second Amendment; and be it further

**RESOLVED**, that the County Executive, or his designee is hereby authorized to execute all instruments necessary to implement this Resolution.

Original Agreement	\$4,000,000.00
First Amendment	(\$ 138,888.90)
This Second Amendment	\$1,562,499.90
Total	\$5,423,611.00

Account to be Charged/Credited

Fund	Dept	Major Program, Program & Phase Or Unit	Object/ Sub-Object	Trust Account	Dollars
101	44	2100	9289	NA	\$ 312,499.98 -- 2009
101	44	2100	9289	NA	\$ 1,249,999.92 -- 2010

Start Date 10/1/09      End Date 12/31/10

Funding Source	Tax Dollars	NA
\$1,562,499.90	State Aid	
	Federal Aid	NA
(Must match resolution)	Other	