

17303

February 14, 2011

To: Board of Acquisition and Contract

From: John J. Hsu, P.E.
Commissioner of Public Works and Transportation

Mary J. Mahon
Director of Real Estate

Re: Authority to enter into a license agreement with Clear Channel Outdoor, Inc.
for the operation and maintenance of Westchester County Bus Shelters
(Agreement No. WCT-11BS)

The County of Westchester, acting by and through the Westchester County Department of Public Works and Transportation ("WCDPWT"), issued a Request for Proposals ("RFP") on December 9, 2010 seeking a vendor to advertise on, operate and maintain all of Westchester County's Bus Shelters. Though seventeen (17) potential proposers received the RFP directly and the RFP was advertised in a transit trade publication and posted on the County's website, only one (1) response was received. The services for this license agreement are fairly specialized in nature in that they involve advertising, construction and maintenance.

WCDPWT thoroughly reviewed the proposal that was received. The proposal submitted by Clear Channel Outdoor, Inc. ("Clear Channel") was commercially reasonable and will provide the County with bus shelter upgrades which are needed as well as with revenue. In addition, Clear Channel has performed exceptionally in providing these services to the County since September of 1996.

The proposed license agreement will have a term of five (5) years from April 1, 2011 through March 31, 2016, with the County having the option to renew for an additional five (5) year term. Clear Channel will sell advertising on the shelters and will pay to the County a license fee of \$675,000 in the first year of the agreement. This fee will increase each year by \$50,000 resulting in a fee of \$875,000 in the fifth year of the agreement. In addition to the flat annual license fee, Clear Channel will also pay to the County in the first year: 5% of net revenue in excess of \$1,370,000; in the second year: 10% of net revenue in excess of \$1,570,000; in the third year: 15% of net revenue in excess of \$1,700,000; in the fourth year: 20% of net revenue in excess of \$1,740,000; and in the fifth year: 25% of net revenue in excess of \$1,770,000. Net revenue is defined as the gross annual revenue received by Clear Channel pursuant to the License less agency commissions paid by Clear Channel for such advertising.

Should the County choose to renew the agreement, the license fee will be \$875,000 for each year of the five-year renewal term. During the renewal term, in addition to the flat annual license fee, Clear Channel will also pay to the County in the sixth year: 25% of net revenue in excess of \$1,810,000; in the seventh year: 25% of net revenue in excess of \$1,840,000; in the eighth year: 25% of net revenue in excess of \$1,880,000; in the ninth year: 25% of net revenue in excess of \$1,920,000; and in the tenth year: 25% of net revenue in excess of \$1,990,000. In addition, Clear Channel will replace fifty (50) existing steel shelters designated by the County at the rate of ten per year and will install twenty five (25) new shelters at the rate of five per year during the initial contract term. All existing steel shelters will be painted in the third and fourth year of the agreement.

As part of the license agreement, Clear Channel will be required to deposit with the County a performance and payment security in the sum of \$775,000, which represents twenty (20%) percent of the five-year aggregate license fee, in a form acceptable to the Office of the County Attorney. In addition, Clear Channel will pay the sum of \$25,000 to the County to be deposited into a maintenance and security fund to be maintained by the County to assure the proper maintenance of bus shelters.

The objective of this agreement is to operate and maintain the County's bus shelters during the term of this license. This agreement is in the public's best interest because it will provide revenue to the County and provide bus shelter upgrades, thus addressing the County Executive's priority area: Fiscal Responsibility (FR).

The department will track scheduling and accomplishments by the licensee and perform on-site inspections to ensure the successful completion of this project.

Approval of the attached resolution by your Honorable Board is requested.

JJH/MM/di/rge
Encl

RESOLUTION

Agreement No. WCT-11BS

Upon a communication from the Commissioner of Public Works and Transportation and the Director of Real Estate, be it hereby

RESOLVED, that the County of Westchester (the "County") is authorized to enter into a license agreement with Clear Channel Outdoor, Inc. ("Clear Channel") for the operation and maintenance of Westchester County Bus Shelters for a term of five years from April 1, 2011 through March 31, 2016, with the County having the option to renew for an additional five year term; and be it further

RESOLVED, that Clear Channel will pay to the County a license fee of \$675,000 in the first year of the agreement. This fee will increase each year by \$50,000 resulting in a fee of \$875,000 in the fifth year of the agreement. In addition to the flat annual license fee, Clear Channel will also pay to the County in the first year: 5% of net revenue in excess of \$1,370,000; in the second year: 10% of net revenue in excess of \$1,570,000; in the third year: 15% of net revenue in excess of \$1,700,000; in the fourth year: 20% of net revenue in excess of \$1,740,000; and in the fifth year: 25% of net revenue in excess of \$1,770,000. Net revenue is defined as the gross annual revenues received by Clear Channel pursuant to the License less agency commissions paid by Clear Channel for such advertising. Should the County choose to renew the agreement, the license fee will be \$875,000 for each year of the five-year renewal term. During the renewal term, in addition to the flat annual license fee, Clear Channel will also pay to the County in the sixth year: 25% of net revenue in excess of \$1,810,000; in the seventh year: 25% of net revenue in excess of \$1,840,000; in the eighth year: 25% of net revenue in excess of \$1,880,000; in the ninth year: 25% of net revenue in excess of \$1,920,000; and in the tenth year: 25% of net revenue in excess of \$1,990,000. In addition, Clear Channel will replace fifty (50) existing steel shelters designated by the County at the rate of ten per year and will install twenty five (25) new shelters at the rate of five per year during the initial contract term. All existing steel shelters will be painted in the third and fourth year of the agreement; and be it further

RESOLVED, that the agreement will require Clear Channel to deposit with the County a performance and payment security in the sum of \$775,000, which represents twenty (20%) percent of the five-year aggregate license fee, in a form acceptable to the Office of the County Attorney. In addition, Clear Channel will pay the sum of \$25,000 to the County to be deposited into a maintenance and security fund to be maintained by the County to assure the proper maintenance of bus shelters; and be it further

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

Account to be Charged/credited	Fund	Dept	Major Program, Program & Phase Or Unit	Object/ Sub Object	Trust Account	Dollars
	101	44	2100	9289		\$506,250.00 2011
	101	44	2100	9289		\$712,500.00 2012
	101	44	2100	9289		\$762,500.00 2013
	101	44	2100	9289		\$812,500.00 2014
	101	44	2100	9289		\$862,500.00 2015
	101	44	2100	9289		\$218,750.00 2016

Budget Funding Year(s) 2011-2016 Start Date 04/01/2011 End Date 03/31/2016
 (must match resolution)

Revenue Source Tax Dollars \$3,875,000.00
 State Aid _____
 Federal Aid _____
\$3,875,000.00
 (must match resolution) Other _____

APPROVED BOARD OF ACQUISITION & CONTRACT - 5-3-2011 - JOMARIS SECRETARY