



Date: August 8, 2005
 Committee Meeting Date: August 18, 2005
 Board Meeting Date: September 1, 2005
 ACTION X DISCUSSION INFO

BOARD MEMORANDUM

TO: Administration and Finance Committee
 Santa Clara Valley Transportation Authority
 Board of Directors

THROUGH: Suzanne B. Gifford
 General Manager Pro Tempore

FROM: Carolyn M. Gonot
 Chief Development Officer

SUBJECT: Lease Agreements with Clear Channel Outdoor for Eight Billboard Sites
 on the Western Pacific Milpitas Line

RECOMMENDATION:

Authorize the General Manager to execute eight signboard lease agreements with Clear Channel Outdoor to allow for placement of billboards on VTA property for an initial term of five years each, plus five additional one-year extensions, at a rate of \$1,500 per year for single-faced signs and \$3,000 per year for double-faced signs. This agreement is subject to termination by VTA on 90-day written notice to accommodate transportation uses, or a sale, lease, or transfer of the property.

BACKGROUND:

As part of the Western Pacific (WP) Milpitas Line acquisition from Union Pacific Railroad (UPRR) for the Silicon Valley Rapid Transit Corridor (SVRTC) Project, VTA took possession on February 21, 2003 of eight billboard sign leases with Clear Channel Outdoor (CCO). Since that time, VTA has been negotiating new lease terms with CCO. Rental fees paid by CCO by UPRR under the current lease agreement totaled \$9,437 per year.

Six of the eight sign locations are located along a portion of the corridor that will not be used for the planned SVRTC Project. Those sites are located south of U.S. 101 where, as currently designed, the SVRTC Project will be in an underground subway section. Two of the billboard sites, which would be impacted by the construction of the SVRTC Project, are located near Mabury Road north of U.S. 101.

DISCUSSION:

As negotiated, the lease agreements for each site specify a lease term of a five-year initial period, with up to five subsequent one-year extensions. However, the agreements also specify that VTA retains the right to terminate each lease at any time upon 90 days' written notice to CCO to allow for transportation uses that displace the sign, or due to a sale, lease or transfer of the property. Upon termination, the signs are to be removed by CCO within 30 days. The annual rent for all of the signs totals \$15,000, an increase of approximately 59% from the existing UPPR leases. The rent will increase 3% each year after the initial 5-year period.

Under the leases, CCO agrees to relinquish any claim for relocation benefits, loss of goodwill, damages, or any other compensation, if required to remove the signs at the end of the full 10-year period. If a lease is terminated prior to that time, CCO will be entitled to seek recovery of the unamortized portion of any compensation resulting from the early termination. Under this scenario, CCO could claim 50% of such compensation if the lease is terminated in five years. VTA expressly reserves all defenses it may have to such a claim, if made.

This matter was deferred from the Board's June 2, 2005 meeting to allow staff to determine the legal status of the billboards. CCO has located permits for half of the sites, but has been unable to find permits for the remaining billboards. The billboards were erected by predecessor sign companies between 28 and 45 years ago, and much of the permit information has been lost or cannot be located. Also, some of the signs were built at a time when the area was unincorporated. CCO has pointed out that under Business and Professions Code Section 5216.1 (a part of California's Outdoor Advertising Act), the signs are presumed to be lawfully erected because they have been in place for five years or longer, without the owner having received written notice of nonconformity during that time period from the City. Due to ages of the signs, such a 5-year period would have run many times over. It is also important to note that all of the signs predate the 1985 City ordinance prohibiting new billboards in the City.

However, to protect VTA if the signs are later found not to comply with existing sign ordinances, the leases will provide for termination at no cost to VTA should the City mandate removal, and indemnification of VTA for any claims or expenses arising from a non-legal condition. The leases will also state that the City will not be precluded from asserting non-compliance with applicable sign ordinances. The City Attorney's Office has been consulted on this subject and concurs with these additional provisions.

ALTERNATIVES:

The VTA Board could choose not to renew these lease agreements, in which case VTA would forgo the revenue to be received and staff would request immediate removal of the signboards from the property. CCO could then request compensation for relocation benefits and loss of goodwill.

FISCAL IMPACT:

The lease agreements will result in an increase in rental income to VTA of \$5,563 from the current \$9,437 to \$15,000 annually, with a further 3 percent increase for each year after the initial five-year period.