

Chairman Lilliquist stated that Mary Anderson provided an overview of the service changes during the Public Hearing.

MOTION BY KORTHUIS, SECONDED BY HUTHMAN THAT THE BOARD OF DIRECTORS APPROVE THE PROPOSED JUNE 2021 SERVICE CHANGES ON ROUTES 15, 26, AND 29.

Comments from Board members included appreciation for the additional service to Lynden and to the Cordata medical facilities. Ms. Anderson also pointed out that there will be a stop ¼ mile from Cordata Elementary which is an area for which WTA has received many requests for service.

*The motion passed 9 – 0.*

### **G.3 Consideration of Transit Advertising Contract**

**Recommendation:** That the Board of Directors approve a revenue contract with Lamar Transit, LLC for Transit Advertising, and authorize the General Manager to extend this agreement under its renewal options without further Board approval.

Maureen McCarthy, Community Relations and Marketing Manager, gave an overview of this item.

MOTION BY HUTHMAN, SECONDED BY DONOVAN AND KORTHUIS THAT THE BOARD OF DIRECTORS APPROVE A REVENUE CONTRACT WITH LAMAR TRANSIT, LLC FOR TRANSIT ADVERTISING, AND AUTHORIZE THE GENERAL MANAGER TO EXTEND THIS AGREEMENT UNDER ITS RENEWAL OPTIONS WITHOUT FURTHER BOARD APPROVAL.

*The motion passed 9-0.*

### **G.4 Consideration of Renewal of Interlocal Agreement with Whatcom County for Investment Services (Res. #322-21)**

**Recommendation:** That the Board of Directors renew WTA's Interlocal agreement with Whatcom County for Investment Services and approve Resolution 322-21 confirming the original contract and any subsequent renewals. The agreement will be for two years with options to extend.

Shonda Shipman, Finance Director, gave an overview of this item.

A Board member asked about WTA's typical rate of return. Ms. Shipman stated the rate of return is around 1.4% - 1.8% right now. She stated while this is low, it is more than WTA could get by keeping the reserve in our bank account. A

**MEMORANDUM**

**TO:** Chairperson and Members of the Board of Directors

**FROM:** Maureen McCarthy, Manager of Community Relations and Marketing  
Magan Waltari, Procurement and Contracts Manager

**DATE:** January 21, 2021

**SUBJECT:** Consideration of Transit Advertising Contract

**RECOMMENDATION**

That the Board of Directors approve a revenue contract with Lamar Transit, LLC for Transit Advertising, and authorize the General Manager to extend this agreement under its renewal options without further board approval.

**BACKGROUND**

WTA contracts with a third party to sell advertising space on its fixed route and paratransit buses. With WTA's current contract with Lamar Transit, LLC ending this month, staff issued a Request for Proposals this fall. The RFP was advertised in five locations including Washington State's Office of Women & Minority Business Enterprise, Washington State's Procurement Technical Assistance Center, WTA's website, the Bellingham Herald, and Washington Enterprise Business Solutions.

Lamar was the only respondent. Fortunately, Lamar has been a strong partner for the past five years. In addition to providing annual revenues between \$140,000 and \$190,000 (with the exception of 2020, which will see revenues closer to \$90,000), they have been responsive and professional partners. They have also worked to ensure all ads are pre-approved by staff and therefore consistent with WTA's Transit Advertising Policy.

**FISCAL IMPACT**

WTA will receive a minimum revenue share of 55 percent of all advertising sold. Over the course of this contract, which is two years plus three optional extensions, Lamar has also committed to a \$470,000 Minimum Annual Guarantee over a five-year period, increasing incrementally from \$70,000 in year one to \$110,000 in year five.

**CONTRACTUAL SERVICE AGREEMENT**  
**TRANSIT ADVERTISING SALES**

This CONTRACTUAL SERVICE AGREEMENT (Agreement) is made and entered into between WHATCOM TRANSPORTATION AUTHORITY (WTA), a Washington Public Transportation Benefit Area, and LAMAR TRANSIT, LLC, a Washington state limited liability corporation (CONTRACTOR).

WTA and CONTRACTOR agree as follows:

CONTRACTOR hereby agrees to provide WTA with transit advertising services, for an initial term of two (2) years to commence on February 1, 2021, pursuant to the following agreed terms and conditions:

1. The Agreement documents in order of precedence, and the terms and conditions that will govern this Agreement, are set out herein, and in the following documents, which are incorporated by reference:
  - This agreement
  - Request for Proposal 2020 - 294 Appendix A, General Terms and Conditions
  - CONTRACTOR Option 1 Pricing submitted November 25, 2020
  - CONTRACTOR Proposal submitted November 25, 2020
  - Request for Proposal 2020 – 294 Addenda 1 issued November 28, 2020
  - Request for Proposal 2020 – 294 issued October 27, 2020
  - CONTRACTOR completed Exhibits from Request for Proposal 2020 - 294
2. CONTRACTOR shall perform all the work required by the scope of work in the Request for Proposal (RFP 2020-294). WTA will provide a quarterly fleet report reflecting active fleet by bus number and any bus removed from service due to retirement, service reduction, or damage requiring long term repair.
3. Whenever possible, WTA will provide CONTRACTOR with 60-day notice of fleet changes.
4. Force Majeure
  - a. No Liability. Neither party will be liable for performance delays nor for non-performance due to causes that were not reasonably foreseeable, unavoidable and (a "Force Majeure") beyond its/his/her reasonable control, except for payment obligations for services or goods previously received by WTA.
  - b. Best Efforts to Cure. In the event of a threatened default or default caused by a Force Majeure the defaulting party shall nonetheless exercise its/his/her best efforts to avoid and cure such default.
  - c. Right to Terminate. In the event that a Force Majeure prevents performance thereunder for a period in excess of ninety (90) calendar days, then the non-defaulting party may elect to terminate this Contract and/or cancel or suspend any Purchase Orders thereunder by a written notice to the defaulting party.

For purposes of this Agreement, a Force Majeure shall be an event that prevents the Contractor from proceeding with at least seventy-five percent (75%) of its/his/her normal labor and equipment force for at least five (5) hours per day toward completion of any current controlling item on an accepted critical path schedule, and such was outside the control of the Contractor. Such causes include, but are not limited to, war, riot, government action, act of God or public enemy, damage to or destruction of facilities, strike, a labor dispute, plague, pandemic, epidemic, or apocalypse.

During any period of time that there is a reduction by more than 10% of the WTA fleet in active service or a reduction in monthly advertising revenue by more than 10% due to a Force Majeure Event or any other reason outside of the Contractor's control, Contractor shall be relieved of any obligation to pay the Minimum Annual Guarantee and shall only owe the Revenue Share.

5. CONTRACTOR will pay WTA in US funds to the address below. CONTRACTOR will pay the Minimum Annual Guarantee in twelve (12) equal installments. At the end of each year the

contract is in effect, any applicable Revenue Share overage amount will be paid to WTA. CONTRACTOR will provide WTA the applicable Revenue Share overage payment on or before the 20th of the following month after the contract anniversary when annual reconciliation is complete.

- 6. WTA may, at its option, renew the agreement for an additional three (3) years in increments that are in the agency's best interest. Renewal will be by amendment executed by both parties.
- 7. No alterations or variation of any of the terms, conditions, prices, quantities, or specifications of this Agreement shall be effective without prior written consent of WTA's General Manager. Oral changes, amendments or agreements are not permitted and shall not be paid for by WTA. Prior to becoming a contract modification, all changes must be prepared in writing and executed by the Parties. Only WTA's General Manager shall have the express, implied, or apparent authority to alter, amend, modify, add, or waive any section or condition of this Agreement on behalf of WTA.

8. Notices will be provided to:

WTA  
ATTN: Procurement  
4011 Bakerview Spur  
Bellingham, WA 98226  
[procurement@ridewta.com](mailto:procurement@ridewta.com)  
360-788-9332

CONTRACTOR  
LAMAR TRANSIT  
ATTN: Ted Mann, Vice President / GM  
2501 SW First Ave. Suite 220  
Portland, OR 97201  
tmann@lamar.com  
503-849-0703

- 9. Invoices will be sent to [ap@ridewta.com](mailto:ap@ridewta.com) or ATTN: Accounts Payable at the WTA address below. Payment will be made in Net 30 Terms from the date of invoice acceptance. WTA reserves the right to refuse payment on invoices for work that completed sixty (60) days prior to the invoice receipt.
- 10. CONTRACTOR shall throughout the term of this Agreement, be a registered with the Washington State Secretary of State as a corporation doing business within the State of Washington and maintain a registered agent in the state of Washington.
- 11. The parties agree that this Agreement is the complete expression of the terms. Any oral representation or understandings not incorporated are excluded. Failure to comply with any of the provisions shall constitute material breach of the Agreement and be cause for termination. Both parties recognize time is of the essence in the performance of the provisions of this Agreement. The forgiveness of the nonperformance of any provision of this Agreement does not constitute a waiver of all provisions.
- 12. Original signatures transmitted and received via electronic transmission of a scanned document (e.g. PDF or similar format) are true and valid signatures for all purposes of this Agreement and shall bind the parties to the same extent as that of an original signature. Signatures submitted electronically must be fully legible to be valid.

WTA:

CONTRACTOR:

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Les Reardanz, General Manager  
Whatcom Transportation Authority  
4011 Bakerview Spur  
Bellingham, WA 98226

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Casey Sexton, Vice President/US Territory  
Lamar Transit, LLC  
4645 Avon Lane  
Frisco, TX 75033