

Meeting Date
7/21/15



AGENDA	
Section	NEW BUSINESS
Item No.	VL.B.1

AGENDA REPORT
 BREVARD COUNTY BOARD OF COUNTY COMMISSIONERS

SUBJECT:	Board direction: re Bus Shelter Advertising in unincorporated Brevard
DEPT/OFFICE:	Transit Services

Requested Action:
 It is requested that the Board terminate the Bus Shelter contract with 20/20 Media Holdings, Inc. and provide staff direction on the method to provide bus shelters in the unincorporated areas of the County.

Summary Explanation & Background:

In 2000, the County entered into an agreement with 20/20 Media Holdings, Inc. to erect and maintain bus shelters at bus stops in the unincorporated areas of the County. Since that time, fixed route bus ridership has increased from 274,000 yearly boardings to 2,340,000 boardings in FY14, an increase of 750%. During that 14 year timeframe, only 10 bus shelters were built by 20/20 Media Holdings and no new shelters have been constructed since about 2006. Approximately 240 of the 860 fixed route bus stops are in the unincorporated area.

Space Coast Area Transit currently operates 6 routes that mainly service the unincorporated areas of the county that could use additional bus shelters:

- Route 1 Viera/Suntree
- Route 3 Merritt Island
- Route 4 Merritt Island
- Route 5 Mims/Scottsmoor
- Route 7 Viera
- Route 8 West Cocoa

County staff submitted a letter to 20/20 Media Holdings on June 11, 2015 stating that 20/20 Media is currently in breach of contract and informed them that they are not eligible to renew the contract in August 2015. As of July 8, 2015, staff has not received a reply from 20/20 Media. We are requesting approval by the Board to terminate this contract.

Staff recommends that we go to bid for a new bus shelter contract with well-defined performance standards targeting unincorporated areas of the County.

Clerk to the Board Instructions:

Exhibits Attached: Photographs of passengers waiting without shelters, Correspondence to 20/20 Media Holdings, Inc.

Contract /Agreement (If attached): Reviewed by County Attorney Yes No PR

County Manager	Assistant County Manager	Department Director / Extension James P. Liesenfelt, Transit Services Director 635-7815, ext. 601
Stockton Whitten	Venetta Valdengo	

Staff has provided two options for the Board to consider.

1. Direct staff to prepare and issue a Request for Proposal (RFP) to procure a bus shelter advertising program in which a new private vendor will build and maintain shelters using advertising revenue generated by the shelters in the unincorporated areas of the County and include municipalities as an option in the RFP. This option will require staff to prepare a RFP according to the procurement requirements of the Federal Transit Administration (FTA) and will include well-defined performance standards that were not included in the existing bus shelter contract.
2. Build shelters, without advertising, using FTA grant funding and maintain the shelters using County funding. This option will require the addition of County staff or hiring of a contractor to procure, design, permit and construct shelters before issuing a RFP to procure a firm to sell advertising on the built shelters. There is not an identified funding source for ongoing maintenance in this option.

Fiscal Impact Analysis:

Option 1 will not result in any budgetary impact other than staff time, procurement costs and management of the awarded contract.

Option 2 will require staff time and procurements cost for two RFPs. The cost for each shelter is estimated to be \$4500 to \$6000 and construction costs for location estimated to be \$3000 to \$13,000. The shelter and construction costs would be funded under FTA Transit Capital Grants.



Tammy Etheridge, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001

Fax: (321) 264-6972

July 22, 2015

MEMORANDUM

TO: James Liesenfelt, Transit Services Director

RE: Item VI.B.1., Board Direction on Bus Shelter Advertising in Unincorporated Brevard County

The Board of County Commissioners, in regular session on July 21, 2015, approved Option 1, to direct stall to prepare and issue a Request for Proposal (RFP) to procure a bus shelter advertising program in which a new private vendor will build and maintain shelters using advertising revenue generated by the shelters in the unincorporated areas of the County and include municipalities as an option in the RFP. This option will require staff to prepare a RFP according to the procurement requirements of the Federal Transit Administration (FTA) and will include well-defined performance standards that were not included in the existing bus shelter contract.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Etheridge, Deputy Clerk

/af





Space Coast Area Transit

401 South Varr Avenue
Cocoa, FL 32922

Phone: (321) 635-7815
Bus Info: (321) 633-1878
Fax: (321) 633-1905



**Space Coast
Commuter Assistance**

460 S. Harbor City Blvd.
Melbourne, FL 32901

Phone: (321) 952-4563
Fax: (321) 952-4546



Volunteers in Motion

Volunteers In Motion

401 S. Varr Avenue
Cocoa, FL 32922

Phone: (321) 635-7999
Fax: (321) 633-1905



RideSCAT.com

MOVING BREVARD INTO THE FUTURE

CERTIFIED MAIL: 7010 3090 0002 8958 6318

June 11, 2015

Joel C. Davis, President
20/20 Media Holdings, Inc.
215 West Donnegan Avenue
Kissimmee, FL 34741

RE: Notice of Violation of Transit Shelter Agreement

Dear Mr. Davis,

This letter is a Notice of Violation of the Transit Shelter Agreement ("Agreement") entered into on August 29, 2000 between Brevard County Board of County Commissioners ("Brevard County"), 20/20 Media Holdings, Inc. ("20/20 Media"), and Merritt Island Jaycees. This Agreement required 20/20 Media to build and maintain transit shelters throughout Brevard County in locations that were to be coordinated between Brevard County and 20/20 Media. As we are both aware, and in direct conflict with the intent of the Agreement, 20/20 Media has failed to build any transit bus shelters under this Agreement for a period of over 6 years.

As you are also aware, ridership of Space Coast Area Transit buses has increased dramatically. For example, in the last 13 years SCAT's ridership has increased approximately 750%, unfortunately, despite this huge increase in ridership, and consequently, the need for more transit shelters, only about 10 shelters total have been provided by your company under this Agreement. Your lack of performance with regard to this Transit Shelter Agreement is not only troubling, but a breach of the Agreement.

Pursuant to §8 of the Agreement, 20/20 Media is required to coordinate all construction efforts for transit shelters with Brevard County. From August 4, 2009, to January 8, 2014, Brevard County has made numerous attempts to coordinate construction of transit shelters with 20/20 Media at the following locations in Viera: (1) the Northside of Viera Health Department; (2) the Avenues; (3) Viera Government Center; and (4) Publix. 20/20 Media has failed to make any efforts to coordinate the construction of the requested transit shelters with Brevard County.

20/20 Media's failure coordinate the construction of transit shelters with Brevard County is a breach of the Agreement.

Joel C. Davis, President
20/20 Media Holdings, Inc.
June 8, 2015
Page 2

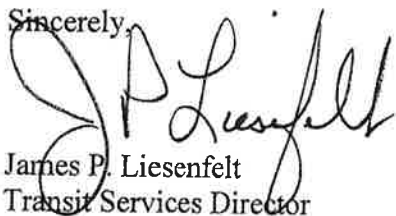
In addition, pursuant to §2 of Exhibit "A" attached to the Agreement, 20/20 Media is required to submit Public Service Reports, Shelter Maintenance Weekly Check Lists, Shelter Incidence Reports Forms, and Advertisers Reports on a quarterly basis. 20/20 Media has not submitted any of these reports since July 2002.

20/20 Media's failure to fulfill its contractual obligations of coordinating with Brevard County to construct transit shelters, and the failure to timely submit the required reports constitute a breach of the Agreement.

Under §5 of the Agreement, as 20/20 Media is currently in breach of the Agreement, this Agreement is not eligible for renewal in August 2015.

Furthermore, Brevard County requests assurances, in the form of a certificate from 20/20 Media's insurer, that all required insurance policies are in place.

Sincerely,



James P. Liesenfelt
Transit Services Director

Enclosure: Transit Shelter Agreement
Cc: Venetta Valdengo, Assistant County Manager
Matthew Soss, Assistant County Attorney

TRANSIT SHELTER AGREEMENT

THIS AGREEMENT ("Agreement") is entered into by and between BREVARD COUNTY, a Florida political subdivision ("County"), 20/20 MEDIA HOLDINGS, INCORPORATED, a Florida corporation ("20/20 Media"), and the MERRITT ISLAND JAYCEES, on behalf of all Jaycee clubs in Brevard County, ("Sponsor"), this 29th day of August, 2000.

WITNESSETH:

WHEREAS, the County has the authority to provide written authorization to a qualified private supplier for installing and operating transit shelters ("Transit Shelters"), including advertising at official bus route stops for the comfort and convenience of the general public pursuant to *Florida Statutes 125.01(1)(l), 337.408*, and in any event pursuant to the home rule powers both proprietary and governmental, granted it by the State of Florida and the County Charter.

WHEREAS, the Sponsor proposes to place same transit shelters within the County, and located on the public rights of way.

WHEREAS, 20/20 Media has proposed to build transit shelters for public usage associated with the County's mass transit system at absolutely no cost to the County or Sponsor and maintain same, also at no cost to the County or Sponsor. A portion of the revenues received from advertising to be displayed on the shelters will be returned to the Sponsor in consideration of this Agreement.

NOW, THEREFORE, BE IT AGREED BETWEEN THE PARTIES HERETO AS FOLLOWS:

1. **EXCLUSIVE AGREEMENT.** Pursuant to the terms and conditions set forth herein to the extent allowed by law, the County hereby agrees that 20/20 Media shall be the exclusive provider of bus shelters in the rights of way of the road system in the unincorporated areas of Brevard County. 20/20 Media shall be the exclusive provider for the purposes of constructing, installing, or erecting any transit shelters, including advertisements displayed thereon, for the comfort and convenience of the general public, at designated bus routes of the Space Coast Area Transit system and its successors or assigns.

2. FEE. For and in consideration of this Agreement, 20/20 Media shall pay to the Sponsor annually, during the term of this Agreement, a fee expressed as a percentage of 20/20 Media's net annual receipts (net being the amount received by 20/20 Media after any non-related agency commissions) attributable to its transit shelter operations pursuant to this Agreement during the preceding calendar year. The annual fee shall be two and one half percent (2.5%) of the net annual receipts. For purposes of this Agreement, net annual receipts shall include all revenues derived from advertising displayed on the transit shelters existing pursuant to the authority of this and shall include said revenues from such transit shelters located on all public roads within the County.

3. PUBLIC SERVICE. 20/20 Media shall provide the advertisement boxes for advertising messages of the County or Sponsor on a space available basis. Any such public service announcements shall be removed by 20/20 Media, in the event 20/20 Media rents such advertising space, upon (5) days notice by 20/20 Media to the County or Sponsor. In no event shall a paying customer be removed from an ad space for public service announcements. 20/20 Media shall not be responsible for paying for public service message materials. The County or Sponsor will provide all necessary ad materials at their sole cost and expense. However, 20/20 Media will install at no cost to the County or Sponsor, such public service advertisements within five (5) days after such advertisements are provided to 20/20 Media for installation. Sponsors name shall appear on the end fascias of all shelters.

4. SHELTER USAGE. 20/20 Media shall not use, or suffer, cause, or permit the use of the locations permitted hereby for any commercial purpose other than advertising. 20/20 Media shall not charge a fee, surcharge, or any other consideration to the public for usage of any transit shelters permitted hereby. Each and every transit shelter operated pursuant to this Agreement shall be available to the general public on a gratis basis. 20/20 Media shall not allow any location permitted hereby to be let, sub-let, or otherwise transferred to any other person or party without the prior written consent of the County.

5. TERM. This Agreement shall be for a term of fifteen (15) years from and after the date first above written. In addition to the foregoing, this Agreement shall renew for additional five (5) year period, so long as 20/20 Media is not currently in breach of this agreement. This Agreement may be renewed or extended upon terms mutually agreeable between the parties hereto thereafter. Upon termination of this Agreement and any renewals or extensions,

20/20 Media shall remove or cause to be removed, each and every transit shelter from and after the date of termination. All removals shall be performed so that County property and facilities will not be damaged as a result. The County acknowledges that concrete slabs must be poured for purposes of providing a foundation for the transit shelters and walkways connecting the adjacent sidewalk and curbs to the transit shelter, which slabs will remain without removal and will be the property of the County in all respects.

6. COMPLIANCE WITH LAWS. 20/20 Media shall comply with all applicable state, federal, and local laws, ordinances, rules, and regulations, including the Americans with Disabilities Act in the construction, erection, installation, maintenance, and operation of the transit shelters, including without limitation, permitting. Throughout the term of the Agreement, 20/20 Media shall maintain in good standing a license for outdoor advertising with the Florida Department of Transportation issued pursuant to the provision of *Florida Statutes, Chapter 479*, and a current County Occupational License .

7. INDEMNITY AND INSURANCE. To the fullest extent permitted by Florida Law, 20/20 Media shall indemnify, save, and hold harmless, and defend the County, The State of Florida and Sponsor against all losses, damages, costs, claims, causes of action, suits, liabilities, and expenses (including costs of reasonable attorney's fees) resulting from 20/20 Media's use, construction, maintenance, and operation of any transit shelter. Additionally, 20/20 Media shall maintain in full force and effect throughout the term of this Agreement and all extensions or renewals thereof a policy of comprehensive general liability insurance with a company duly authorized to engage in the business of issuing such a policy in Florida in the amount of at least \$1,000,000 per occurrence with \$2,000,000 aggregate which names the County and Sponsor as a additional insured, said policy to cover any losses and claims occurring or arising from the installation, location, maintenance and/or operation of the shelters. The insurance certificate shall also be endorsed with a provision that the County shall be entitled to at least ten (10) days advance written notice prior to cancellation of the then existing policy. Proof of such insurance shall be supplied to the County and Sponsor prior to the commencement of installation of any shelter and, throughout the term of this Agreement and all extensions and renewals thereof, 20/20 Media shall supply the County and Sponsor with appropriate certifications. The County may at any time, and from time to time, request from 20/20 Media assurances in the form of a certificate

from the insurer that such policy of insurance is in effect and 20/20 Media shall appropriately respond within ten (10) calendar days from receipt of such request.

8. SHELTER DESIGN, MAINTENANCE, AND LOCATION. 20/20 Media shall design, provide plans and specifications for, and erect shelters as provided under paragraphs 14-20.001 through 4-20.005 of the *Florida Administrative Code (FAC)* and Sections 337.408 and 337.409 of the *Florida Statutes*. The size, shape, configuration, and location of each and every transit shelter shall be subject to approval by the County. In addition to all standards imposed by law, ordinance, rule, and regulation, each transit shelter shall be located and designed so as to not hinder or impede the free and safe flow of vehicular and pedestrian traffic and will be built, erected, installed, and operated in a manner to preserve the public safety and welfare and to cause the minimum possible disruption to vehicular and pedestrian traffic, as well as right-of-way maintenance and repair. 20/20 Media shall coordinate all construction efforts with the County. All shelters shall be erected in public rights-of-way along the street frontage. Notwithstanding the above, 20/20 Media may locate shelters on private property provided, however, that 20/20 Media shall secure, at its own expense, written leases, authorizations, or grants of easements from the owners of such property as may be necessary. Construction materials, techniques, design, and lighting shall be subject to approval by the County. Also, 20/20 Media shall locate and design the shelters so that access for utilities and cable TV is not substantially impaired and will coordinate with utilities and cable TV companies. 20/20 Media shall pay all electrical expenses and service costs incurred by the use of any electrical lighting in any shelter. The County agrees to allow 20/20 Media access to and the right to connect up to, or tap into, any electric service, which the County has the authority to authorize, which is now or hereafter being furnished to any public street lights located in a close proximity to any shelter provided, however, 20/20 Media agrees to reimburse the County for reasonable costs of such electricity consumed in the operation or lighting of any such shelters. 20/20 Media shall make all necessary arrangements with utility companies for the provision of service. 20/20 Media shall maintain each and every shelter in a neat, orderly, and sanitary condition, by way of performing maintenance as listed on Exhibit "A". Exhibit "A" may be changed from time to time as needed. Graffiti and/or acts of vandalism shall be removed or repaired within 48 hours so as to restore the shelter to an aesthetically pleasing appearance consistent with its condition as originally

installed. 20/20 Media shall have the absolute right to remove any shelter prior to the expiration of this Agreement.

9. ADVERTISING. 20/20 Media retains full and sole authority and discretion in selecting advertisers and advertising copy for display. Rates, charges, terms and conditions of advertising shall be as negotiated between 20/20 Media and its advertiser. It is agreed that 20/20 Media shall not place on shelters advertising for any product not lawfully for sale to minors; provided, however, advertising the Florida Lottery is permitted. No such advertising shall consist of, or include, any depictions, messages, graphics or other content which is or would be patently offensive to the general public based upon contemporary community standards in the County or would pose a threat to safety by distracting motorists, bicyclists, and/or pedestrians due to its shocking or inflammatory nature. It is agreed that the advertising pertinent to the shelters erected under this Agreement shall not constitute signage for regulatory purposes and that such shelters when erected and operated in public rights-of-way are not subject to zoning restrictions pertaining to permitted uses and location standards.

10. TERMINATION. If 20/20 Media fails to fulfill any obligation hereunder or violates any material covenant, term or condition of this Agreement, the County shall give it written notice of such failure or violation. If such failure or violation is not cured within sixty (60) days from the date 20/20 Media receives such notice, the County may terminate this Agreement which shall be effective upon 20/20 Media receiving a written notice from the County to that effect or such other date as specified in this notice. If the County terminates this Agreement pursuant to this paragraph, then 20/20 Media shall, at its expense, remove all transit shelters from the rights-of-way within ninety (90) days after receipt of the termination notice from the County or such other date as may be agreed upon by the parties. If after the expiration of the 90 days the shelters have not been removed, the County may remove or have the shelters removed and charge 20/20 Media for the full cost of removal as well as any administrative fees and reasonable attorney's fees. In the event Sponsor fails to exist or wishes to withdraw from this agreement, 20/20 Media shall have the right to substitute another sponsor in their place.

11. REMEDIES. This Agreement shall be governed by and be subject to the laws of Florida. Venue for any and all actions necessary to enforce this Agreement shall be in Brevard County, Florida. No remedy herein conferred upon any party is intended to be exclusive of any other remedy and each remedy shall be cumulative and shall be in addition to every other remedy

given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereby shall preclude any other or further exercise thereof.

12. Modifications to Contract: This agreement, together with any exhibits, task assignments and schedules constitute the entire Agreement between the County and 20/20 Media and supersedes all prior written or oral understandings. This Agreement and any exhibits, task assignments and schedules may only be amended, supplemented or canceled by a written instrument duly executed by the parties hereto.

13. NOTICES. Any notices provided for herein must be given in writing and must be sent by certified, United States mail return receipt requested, by personal delivery with receipt required, or by facsimile with confirmation receipt required, or by recognized courier such as Federal Express with confirmation receipt requested to the following address:

To County: Brevard County Manager
2725 Judge Fran Jamieson Way
Viera, Fl 32940

To Sponsor: Merritt Island Jaycees
C/O Steve Carlson
P.O. Box 540799
Merritt Island, Fl 32954

To 20/20 Media: 20/20 Media Incorporated
3055 Vest Road
St. Cloud, Florida 34772

14. ATTORNEY'S FEES: In the event of any legal action to enforce the terms of this Agreement, each party shall bear its own attorney's fees and costs.

BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY

By: Nancy Higgs
Nancy Higgs, Chairman

(SEAL)

ATTEST:

By: Sandy Crawford
Sandy Crawford, Clerk

As approved by the Board on 8-29-00

20/20 MEDIA HOLDINGS, INCORPORATED

By: Joel C. Davis
Joel C. Davis, President

The MERRITT ISLAND JAYCEES

By: Steve Carlson
Steve Carlson, President

ATTEST:

EXHIBIT "A"

20/20 Media Incorporated "Performance Criteria" Transit Shelter Maintenance Schedule

Section 1

Weekly

1. Clean all glass areas
2. Mow grass 10' around shelter and 4' beside all concrete walks
3. Weed eat all grass/concrete
4. Blow off concrete area
5. Herbicide any weeds growing through joints or cracks in concrete
6. Check for and remove any gum
7. Check for and remove any insect nests (ants, wasps, mud daubers)
8. Check for and remove any graffiti
9. Check for and notify 20/20 Media of any vandalism
10. Empty trash can, pick up any trash in surrounding area and haul away
11. Spray trash can with disinfectant/deodorizer (supplied by 20/20)
12. Check light box for proper operations (all bulbs working)

Every 4 Weeks

1. Check all exposed fasteners for proper tightness
2. Trim all brush and tree limbs within close proximity

Every 26 Weeks

1. Pressure clean all concrete areas
2. Clean glass and Plexiglas inside light box
3. Remove dirt and bugs from bottom of light box
4. Lightly oil light box door hinges and trash receptacle locking mechanism

Every 52 Weeks

1. Steam clean the shelter
2. Wax aluminum areas of shelter

Section 2

Public Service, 20/20 Media shall report quarterly the Public Service Agencies that have been advertised in the previous quarter and the value of each.

Maintenance Reports, 20/20 Media shall submit copies of the "Shelter Maintenance Weekly Check List" on a quarterly basis.

Service Calls, 20/20 Media shall submit copies of all "Shelter Incidence Reports Forms" on a quarterly basis.

Advertisers, 20/20 Media shall submit a list of all advertisers that have been on the shelters on quarterly basis.