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CLERK OF THE BOARD
OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA

Memorandum

MIAMI-DADE COUNTY

Date: October 5, 2010

Agenda Item No. 8(J)(1)(B)

To: Honorable Chairman Dennis C. Moss
and Members, Board of County Commissioners

From: George M. Burgess
County Manager

Resolution No. R-976-10

Subject: Resolution Authorizing Execution of Second Amendment to Contract TR03-ADV with CBS Outdoor Group, Inc. (formerly known as Viacom Outdoor Group, Inc.)

RECOMMENDATION

It is recommended that the Board of County Commissioners (Board) approve the Second Amendment to Contract TR03-ADV with CBS Outdoor Group, Inc. (CBS Outdoor). This is a non-exclusive contract for the purpose of selling advertising space on transit vehicles, Metrorail stations, and the South Miami-Dade Busway advertising kiosks.

The proposed amendment will allow advertising of alcoholic beverages, with the following restrictions: (1) To avoid over-exposure, this category shall be limited to no more than 25 percent of the contract's Agreed-Upon Inventory to include Metrobuses, Metromover and Metrorail vehicles, Metrorail stations, and the South Miami-Dade Busway advertising kiosks; (2) Miami-Dade Transit (MDT) staff must pre-approve all ads for alcoholic beverages; and (3) All advertising of alcoholic beverages must include the disclaimer below as mandated by the Alcohol Beverage Labeling Act (ABLA) of 1988. Government warning disclaimers must be equal to at least 10% of the size of the ad:

> "GOVERNMENT WARNING: 1) According to the Surgeon General, women should not drink alcoholic beverages during pregnancy because of the risk of birth defects. 2) Consumption of alcoholic beverages impairs your ability to drive a car or operate machinery, and may cause health problems."

In addition, MDT maintains that its vehicles and facilities are non-public and proprietary in nature, not intended for use as a zone of free speech and expression. Therefore, the proposed amendment will update the regulations contained in the contract relating to advertisements.

SCOPE

The policy change is countywide and will increase advertising revenues for Miami-Dade County.

FISCAL IMPACT/FUNDING SOURCE

This amendment has the potential to increase MDT's net advertising revenues by an estimated $465,000 annually; therefore, this item will have no negative fiscal impact on current or future budgets.

TRACK RECORD/MONITOR

Since the commencement of the contract on September 2004, the contractor's overall performance has been satisfactory. The contractor has submitted all scheduled revenue payments and monthly reports in a timely manner. The staff responsible for monitoring the contract is Rosemary Cortes, MDT Contracts Administrator.

DELEGATED AUTHORITY

In accordance with Section 2-8.3 of the Miami-Dade County Code related to identifying delegation of Board authority, there are no authorities beyond that specified in the resolution.

BACKGROUND

On July 13, 2004, by Resolution No. R-862-04, the Board awarded Contract TR03-ADV to Viacom Outdoor Group, Inc. for the purpose of selling advertising space on transit vehicles, Metrorail stations, and the South Miami-Dade Busway advertising kiosks for MDT. The contract had an initial five year term (commencing in September 9, 2004) with two options to renew (OTR) for up to five additional years; the first OTR is for three (3) years and the second is for two (2) years.

On December 29, 2005, Viacom Outdoor Group, Inc. changed its name to CBS Outdoor Group, Inc. Under the current Contract, TR03-ADV, CBS Outdoor sells, installs, and maintains all advertising on Metrobus, Metromover and Metrorail vehicles, Metrorail passenger stations, and the South Miami-Dade Busway advertising kiosks. CBS Outdoor pays the county an Annual Minimum Guarantee (AMG), paid on a monthly basis, or, 60% of its net billings, whichever is greater. Total advertising revenues received by Miami-Dade County from CBS Outdoor since the inception of the contract in September 2004 through July 2010 is approximately $16,452,500. When advertising sales were at its peak during contract year 2006-2007, CBS Outdoor sold $5,751,078 and the County received its 60% share totaling $3,450,646. On December 16, 2008, the Board approved the First Amendment to the Contract increasing the AMG from $1,000,000 to $2,000,000 and exercising the first three-year renewal option (R-1424-08).

However, due to the economic downturn, advertising sales declined to $2,892,357 during contract year 2008-2009. Given that 60% of the revenues did not exceed the AMG, CBS Outdoor was contractually obligated to pay the $2 million guaranteed amount. This was the only instance in this contract's history where 60% of revenues did not exceed the AMG amount. However, for the current fiscal year, there has been a slight increase in sales. From September 2009 through July 2010, CBS Outdoor sales have increased to $3,379,818 with 60% of revenues to the County totaling approximately $2,027,800. Tapping into other potential revenue streams, such as alcoholic beverage advertising, will allow CBS Outdoor the opportunity to increase much needed revenues for the County.

Further, considering that advertising alcoholic beverages on the transit system will be a new untapped resource for CBS Outdoor in the Miami market, MDT is not recommending an increase to the AMG at this time. However, at the time of the second renewal option, CBS Outdoor would have had the opportunity to test the market's advertising revenue potential for alcoholic beverages and MDT staff will be able to evaluate the contract's AMG against the additional revenues generated by advertising alcoholic beverages.

Contract TR03 ADV, as it is currently written, prohibits the display of advertisements for the sale of alcoholic beverage products. The proposed Second Amendment to the Contract would allow the advertising of these products on Metrobuses, Metromover and Metrorail vehicles, Metrorail stations, and the South Miami-Dade Busway kiosks while limiting this category to no more than 25 percent of the contract's Agreed-Upon Inventory (AUI). As included in the current contract, the AUI allows advertising on: the interior and exterior of buses; interior and exterior of Metrorail vehicles; Metromover exterior roof tops; clocks, bench windscreens, diorama and wall mounted devices at the Metrorail Stations; and the South Miami-Dade Busway kiosk panels.

The County proposes to limit alcohol advertising to no more than 25% of the AUI to avoid overexposure and market saturation of alcoholic beverages on the transit system.

The advertisement of alcoholic beverages constitutes a very significant portion of the national market for outdoor advertising. Transit agencies in a number of large cities currently allow the advertising of alcoholic beverages on their transit systems, including Boston, New York City, Philadelphia, Cleveland and Minneapolis. MDT contacted these cities to compare restrictions on the percentage of inventory used for alcohol advertisements, as well as disclaimer requirements on the advertisement. All five (5) cities reported that they do not restrict the percentage of inventory for alcohol advertisement. Further, none of these cities have any additional disclaimer requirements except for the Government Warning disclaimer mandated by the ABLA of 1988. Boston is the only city that requires the size of the ABLA disclaimer to be equal to at least 3% of the size of the ad. As noted earlier, MDT is recommending increasing the size of the disclaimer to be equal to at least 10% of the size of the ad.

Advertising of alcoholic beverages is already a major approved revenue source for MDT. On September 9, 2004, the Board amended the contract for advertising bus passenger shelters to allow the advertising of alcoholic beverages on bus shelters. In 2009, bus shelter contract alcohol-related advertising represented 17.3 percent of annual revenues totaling $343,232. Other alcohol-related approved revenue sources for the County include alcohol advertising on the exterior of GSA facilities (R-568-10), bus passenger benches in unincorporated Miami-Dade County and the sale of alcoholic beverages at athletic events held in County parks and recreational facilities (Ord. 08-72).

In 2008, CBS Outdoor generated more than $2.7 million in billboard advertising revenues in the Miami/Fort Lauderdale market from the alcoholic beverage category and approximately $1.9 million in 2009. CBS Outdoor has been contacted by alcohol advertisers who have expressed interest in advertising on our system. According to Kantar Media, a major national market research firm, the alcohol beverage industry spent $9.5 million on outdoor advertising in the Miami/Fort Lauderdale market in 2007, $7.5 million in 2008 and $6.25 million during the lower point of the economic downturn in 2009; for an average of $7.75 million in the three years combined. Based on the three-year average, CBS Outdoor estimates that the program could capture as much as 10% of this market, representing an estimated additional $775,000 annually. As per the percentage provided in the contract, sixty percent ($465,000) would be realized as direct revenue for MDT.

Assistant County Manager

MEMORANDUM
(Revised)

TO: Honorable Chairman Dennis C. Moss and Members, Board of County Commissioners

DATE: October 5, 2010

FROM: R. A. Cuevas, Jr. County Attorney

SUBJECT: Agenda Item No. 8(J)(1)(B)

Please note any items checked.

_____ **"3-Day Rule" for committees applicable if raised**

_____ **6 weeks required between first reading and public hearing**

_____ **4 weeks notification to municipal officials required prior to public hearing**

_____ **Decreases revenues or increases expenditures without balancing budget**

_____ **Budget required**

_____ **Statement of fiscal impact required**

_____ **Ordinance creating a new board requires detailed County Manager's report for public hearing**

✓ **No committee review**

_____ **Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous _____) to approve**

_____ **Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required**

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(J)(1)(B)
10-5-10

RESOLUTION NO. R-976-10

RESOLUTION AUTHORIZING EXECUTION OF A SECOND AMENDMENT TO CONTRACT TR03-ADV WITH CBS OUTDOOR, INC. (FORMERLY KNOWN AS VIACOM OUTDOOR GROUP, INC.) FOR TRANSIT ADVERTISING SERVICES FOR TRANSIT VEHICLES, METRORAIL STATIONS, AND THE SOUTH MIAMI-DADE BUSWAY ADVERTISING KIOSKS; AND AUTHORIZING THE COUNTY MAYOR OR MAYOR'S DESIGNEE TO EXERCISE THE PROVISIONS CONTAINED THEREIN

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board approves this Second Amendment to Contract TR03-ADV between Miami-Dade County and CBS Outdoor, Inc. (formerly known as Viacom Outdoor Group, Inc.) to provide transit advertising services in substantially the form attached hereto and made a part hereof; and authorizes the County Mayor or Mayor's Designee to execute same for and on behalf of Miami-Dade County, and to exercise the provisions contained therein.

The foregoing resolution was offered by Commissioner **Katy Sorenson**, who moved its adoption. The motion was seconded by Commissioner **Dennis C. Moss** and upon being put to a vote, the vote was as follows:

Dennis C. Moss, Chairman **aye**
Jose "Pepe" Diaz, Vice-Chairman **absent**

Bruno A. Barreiro	**aye**	Audrey M. Edmonson	**aye**
Carlos A. Gimenez	**aye**	Sally A. Heyman	**aye**
Barbara J. Jordan	**nay**	Joe A. Martinez	**nay**
Dorrin D. Rolle	**aye**	Natacha Seijas	**nay**
Katy Sorenson	**aye**	Rebeca Sosa	**aye**
Sen. Javier D. Souto	**aye**		

The Chairperson thereupon declared the resolution duly passed and adopted this 5th day of October, 2010. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: **DIANE COLLINS**
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Bruce Libhaber

SECOND AMENDMENT TO CONTRACT TR03-ADV

BETWEEN

MIAMI-DADE COUNTY, FLORIDA

AND

CBS OUTDOOR GROUP, INC.

THIS SECOND AMENDMENT, made and entered into this _____ day of _____, 2010, by and between MIAMI-DADE COUNTY, FLORIDA, a political subdivision of the State of Florida (hereinafter referred to as "COUNTY"), and CBS Outdoor Group, Inc. (f/k/a Viacom Outdoor Group, Inc.) (hereinafter referred to as the "CONTRACTOR").

W I T N E S S E T H :

WHEREAS, by Resolution No. R-862-04 passed and adopted on July 13, 2004, the Board of County Commissioners (the BOARD) authorized Contract TR03-ADV between the above named parties for the purpose of providing advertising services for transit vehicles, Metrorail stations and South Miami-Dade Busway advertising kiosks (the "CONTRACT"); and

WHEREAS, the CONTRACTOR formerly known as Viacom Outdoor Group, Inc. is now known as CBS Outdoor Group, Inc.; and

WHEREAS, by R-1424-08, December 16, 2008, the party entered into the first amendment to Contract TR03-ADV; and

WHEREAS, the COUNTY and the CONTRACTOR agree to amend certain provisions of the CONTRACT as described below.

NOW, THEREFORE, in consideration of the premises and mutual covenants expressed herein the parties hereto agree as follows:

1. Article 4, Advertising Content, Section 4.01, third sentence shall be amended to read: "Tobacco advertising is not permitted."

2. Article 4, Advertising Content, Section 4.03, shall be amended in its entirety to read: "Noncommercial Advertising" - Advertisements consisting of noncommercial speech shall not be permitted. Exceptions to this are: (a) advertisements pertaining to candidates or issues on a public ballot in Miami-

Dade County provided that such advertisement be placed no more than six months before the election pertaining to such candidate or issue; and (b) public service announcements promoting Miami-Dade County sponsored facilities, events or activities. Advertising related to candidates on a public ballot in Miami-Dade County shall be charged consistently with applicable rate card. All copy of political advertisements shall contain a statement that reflects that it is a paid political advertisement and that such advertisements are fully paid in advance to posting."

3. Article 4, Advertising Content, Section 4.04, shall be added to read:

   "Advertising of alcoholic beverages shall be permitted with the following restrictions:

   a) To avoid overexposure, this category shall be limited to no more than 25 percent (25%) of the contract's Agreed-Upon Inventory to include Metrobuses, Metromover and Metrorail vehicles, Metrorail stations, and the South Miami-Dade Busway advertising kiosks;

   b) Miami-Dade Transit (MDT) staff must pre-approve all ads for alcoholic beverages (refer to Section 4.01);

   c) All advertising of alcoholic beverages must include the disclaimer below as mandated by the Alcohol Beverage Labeling Act (ABLA) of 1988. Government warning disclaimer must be equal to at least 10% of the size of the ad:

      "GOVERNMENT WARNING: 1) According to the Surgeon General, women should not drink alcoholic beverages during pregnancy because of the risk of birth defects. 2) Consumption of alcoholic beverages impairs your ability to drive a car or operate machinery, and may cause health problems."

4. The CONTRACTOR will continue to make all revenue payments as specified in the current CONTRACT. The annual minimum guarantee payment shall continue to be in the amount of $2,000,000 unless any adjustments are made as specified under amended Article 5.03.

All other terms and conditions shall remain the same.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to CONTRACT to be executed as of the date first above written.

CBS Outdoor Group, Inc.

ATTEST:

BY: _____
Assistant Secretary

BY: _____
EVP, CFO & CAO

(Seal)

ATTEST:

MIAMI-DADE COUNTY, a political Subdivision of the State of Florida

HARVEY RUVIN, CLERK

By Its Board of County Commissioners

BY: _____
Deputy Clerk

BY: _____
County Manager

Approved as to form
and legal sufficiency _____.