

Communication from Public

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February 3, 2023

Honorable Members of the Public Works Committee of the
Los Angeles City Council
200 N. Main Street
Los Angeles, CA 90012

Re: Sidewalk and Transit Amenities Program (“STAP”)

Dear Honorable Councilmembers:

We are writing on behalf of our client, Outfront Decaux Street Furniture, LLC (Outfront Decaux), the operator of the City’s prior street furniture contract (which also included Automated Public Toilets (APTs)) from 2001-2022. We commented on several occasions during the City’s contract negotiation process with Tranzito-Vector, LLC (Tranzito), the vendor selected to operate the new STAP, about our concerns with the STAP.

In particular, the City’s decision to act as a venture capitalist, financing the business of a company with no experience operating a bus shelter program in a major city, appeared ill-advised. Further, the City’s decision to decommission the 15 APTs that provided much needed public health services throughout the City, without a solid plan for financing and operating a replacement toilet program, also appeared imprudent.

Although the City has been working on the STAP for five (5) years, there is still – one month into the program – no certainty: (i) that funding will be available to finance the STAP, which in turn means uncertainty that new bus shelters, shade structures and other amenities will be provided to ensure transit rider equity and achieve the goals of the STAP; (ii) that the toilets will be replaced; or (iii) that the City will honor its contractual obligations to Outfront Decaux regarding the use of the existing street furniture.

We respectfully request that the City consider terminating the existing STAP contract for convenience and releasing a new RFP that is dependent on private – not public – funding to ensure that the goals of the STAP can be met.

A. Hundreds of Millions of Dollars in City Investment Are Required to Achieve the STAP’s Goals.

The original projection for the City’s capital investment for the STAP was \$236 million. After the STAP contract was awarded, the anticipated costs for the STAP increased by \$142 million – or 61% more than

the original projections. This would bring the City's total required funding for the new street furniture program to almost **\$380 million**.

Much of this additional cost is earmarked for new sidewalk construction, new technology and new digital screens, but does not include costs for:

- (1) new shade structures or other amenities contemplated to be part of the STAP;
- (2) 18 new City staff positions needed to operate and implement the STAP, anticipated to cost the City at least \$935,000 for just the first year (and well over an additional \$10 million over the life of the STAP); or
- (3) the purchase, installation, operation and maintenance of new City replacement toilets.

Justifications for the massive cost increase have not been shared with the City Council and the public. Additionally, it is unknown whether this requested increase in the City's capital expenditure is a "final" number or simply an early estimate before actual construction starts, with more cost increases to come. Thus, the costs for the STAP and the replacement toilets could be considerably higher, running more than \$400 or even \$500 million.

Also unknown is how much of this money the City will have available to fund the STAP – particularly, given the other important social programs to which it is already committed (such as the millions of dollars recently set aside for homeless programs). Without the necessary funding, the STAP will not be able to achieve the program's most basic goals of providing bus shelters and shade. Thus, for example, it is unknown whether Tranzito will be able to install the projected 3,000 new bus shelters, or whether it will have the necessary funding only to refurbish/re-use the existing 1,800 shelters. With an estimated STAP budget of \$380M, if Tranzito installs 3,000 new shelters, the average cost to the City per new bus shelter = \$126,600 each. It is also unknown whether the City will be able to access all the monies it needs to have all new bus shelters and other amenities installed (including completion of necessary sidewalk repairs) by the time of the Olympics – an oft-repeated goal – given that this effort would require the City to spend ***an average of \$76 million per year for each of the next 5 years***.

Tranzito has promised a minimum annual guarantee to the City of only \$5-9 million per year; any revenue beyond that amount is entirely speculative. While the vendor has created a rosy and optimistic scenario in which the City would receive revenues of \$386 million over the contract's 10-year term – an amount that would barely cover the City's currently anticipated capital investment even in the best case – this is a "pie in the sky" projection. A more realistic scenario would produce far lower revenues for the City given the uncertainty of available funding, and especially given that the implementation and project roll-out schedule is already off to a rocky and delayed start because of the ongoing CEQA litigation.

As a reminder, under the prior street furniture contract operated by Outfront Decaux, every single piece of equipment – all bus shelters, kiosks, trash receptacles, APTs, and other amenities – were provided to the City ***at no cost***. Outfront Decaux made all of these items available to the City solely in exchange for the right to display advertising. Moreover, as a result of that contract's revenue-sharing provisions, Outfront Decaux paid the City tens of millions of dollars over the term of the contract, which the City

received “free and clear” (meaning the monies were not used to repay any capital expenditures or loans on the part of the City). Further, no additional City staff positions were needed to operate and implement the contract: Outfront Decaux ran the program entirely in-house.

B. The City is Violating Outfront Decaux’s Contract by Allowing the Existing Street Furniture to be Used for Advertising without the Payment of Fair Market Value.

Because the City has not yet provided sufficient funding to Tranzito to replace and install new bus shelters on which to sell advertising (and thereby generate revenues to fund the STAP), Tranzito is currently using the existing street furniture, paid for by Outfront Decaux, to commence operations. The use of the existing furniture for advertising purposes is contrary to the RFP’s prohibition against such use, contrary to Tranzito’s explicit statements that it did not intend to use the existing furniture for advertising purposes, and contrary to its STAP proposal, which did not include the use of the existing street furniture to generate revenue, not to mention contrary to the City’s contract with Outfront Decaux.

Specifically, pursuant to the City’s contract with Outfront Decaux, the existing street furniture may be used for advertising purposes only if the City causes Tranzito to pay Outfront Decaux an amount equal to the fair market value of the furniture. To date, the City has not caused any such payment to be made, nor has the City participated in any meaningful negotiations for such payment, essentially leaving the matter entirely up to Tranzito and Outfront Decaux to work out between themselves. With little incentive to resolve the payment issue (after all, Tranzito is already using the existing street furniture without City objection), Tranzito has allowed the “negotiations” to drag. In effect, the City is endorsing a breach of its contract with Outfront Decaux.

The City’s actions are surprising, considering the City has known since the contract with Outfront Decaux was executed more than 20 years ago, that the fair market value payment would need to be made if another operator wished to use the existing street furniture for advertising in a successor street furniture program. Notwithstanding the clear contractual requirement for payment of fair market value, and notwithstanding the explicit direction from the Public Works Committee to City staff to determine the fair market value nearly four (4) years ago in preparation for the release of the STAP RFP, the issue continues to linger. It should have been resolved before the RFP was released, or before the contract was awarded, or at the very least, before performance on the contract and the use of the existing street furniture was commenced.

The City must honor its contractual obligation to ensure that Tranzito makes the requisite payment for the existing street furniture that Outfront Decaux funded. Those units were paid for and installed upon the City’s obligation to ensure that Outfront Decaux would receive the fair market value of the units in the event a successor concessionaire was given the benefit of using them for advertising purposes. That substantial benefit has now been granted to Tranzito but no payment has been made, nor have any meaningful payment discussions even been undertaken. The current situation is improper and unfair and cannot continue indefinitely.

C. The City has been Unable to Install New Functioning Toilets.

As noted, the 15 Outfront Decaux APTs are now gone, having been removed between August and December, 2022. The City planned to have one of the 15 new City toilets replaced and operational every two weeks from the first removal in August, with all 15 replacements complete by December, 2022.

To our knowledge, only one new toilet may be in place and functioning at this point. We understand that a few more have been placed but are awaiting utility connections and are therefore not operational (and apparently have been vandalized in the meantime). The remaining units have yet to be installed.

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The costs for the STAP have skyrocketed, before the project has even begun. And, under even the current projected investment scenario of \$380 million, the City has no guarantee that it will receive new shelters, shade structures, or any of the technological amenities promised by Tranzito and enthusiastically embraced by City officials and the community. Of course, the City would need significant additional funding to install and maintain public toilets throughout the City to provide for the public's most basic human needs.

In essence, the City traded a fully funded street furniture program and no-cost APTs that guaranteed repayment of the City's entire capital investment for a speculative, risky and wholly untested venture that will require the City to invest well over \$400 million (or more) when all costs are calculated. And, given that the current plan provides bus shelters at only 40% of the City bus stops, with no commitment by the City or Tranzito to ensure the delivery of additional shade structures or amenities, the STAP is unlikely to achieve its goal of transit equity.

There are better options for the City, its transit riders and its taxpayers, to obtain the transit equity, shade, shelters and toilets it needs. The City can select an experienced vendor that can fund the City's bus shelter program while the City retains the full control and ownership of the program. Doing so would eliminate the funding roadblock without the need to increase City staff and expend precious City financial resources.

Very truly yours,

A handwritten signature in dark ink, appearing to read 'E. Wallace', with a long horizontal flourish extending to the right.

Edward C. Wallace

Co-Chairman/New York