

**TOWN OF
APPLE VALLEY, CALIFORNIA**

AGENDA MATTER

Subject Item:

AUTHORIZE EXECUTION OF LICENSE FOR USE OF WALMART BUS STOP

Summary Statement:

The Town of Apple Valley participates in the Victor Valley Transit Authority (VVTA), a regional public transit system operating among the cities of Apple Valley, Hesperia, Victorville, Adelanto and unincorporated areas of the high desert. Individual city members are responsible for determining routes that operate within their respective city boundaries as well as the individual bus stops and the level of amenities at each bus stop.

Most of the bus stops located within the Town of Apple Valley are on public rights-of-way and are maintained by the Town. The bus stop located at Walmart Store #2333 is the exception. This bus stop is on private property and the shelter located at the site was constructed by Walmart.

Town staff has frequently received complaints from individual bus passengers as well as from VVTA bus drivers about sub-standard conditions at the Walmart bus shelter, including overflowing trash container, food and beverages spilled on the bench and floor of the shelter area, and shopping carts blocking the path of both passengers and buses. Over the years, these complaints have been forwarded to a series of Walmart Store managers who would see that the shelter was temporarily cleaned.

Most recently, staff contacted the Walmart corporate offices about ongoing problems at the bus stop. Walmart proposed the Town execute its standard bus stop license which articulates the parties' responsibilities. Attached is a copy of the revised license agreeing that Walmart is responsible for maintenance of the bus shelter located on its property. The term of the license is five years.

Recommended Action:

Authorize Mayor to execute the attached Transit Station License Agreement with Walmart for the bus stop and shelter located on its property at 20251 Highway 18, Apple Valley, California.

Proposed by: _____ Diana McKeen _____ **Item Number** _____

T. M. Approval: _____ **Budgeted Item** Yes No N/A

TRANSIT STATION LICENSE AGREEMENT

THIS TRANSIT STATION LICENSE AGREEMENT (this “Agreement”) is entered into as of this 9th day of February, 2010, by and between the **WAL-MART STORES EAST, LP** (“**WAL-MART**”), and the **TOWN OF APPLE VALLEY** (“**TOWN**”), whose address is 14955 Dale Evans Parkway, Apple Valley, CA 92307.

WITNESSETH

WHEREAS, TOWN participates in Victor Valley Transit Authority (“**VVTA**”), a regional public transit system that transports the public throughout the high desert area of San Bernardino County, California; and

WHEREAS, it is critical to the success of the public transit system that passengers have safe and convenient locations to wait for and to board vehicles; and

WHEREAS, it is beneficial to **WAL-MART** and their officials, employees, agents and guests that vehicles operated by **VVTA** pick-up and drop-off passengers at the transit site located at Store/Club #2333 in Apple Valley, California; and

WHEREAS, the parties agree that it is in their mutual best interests that the transit site is an integral part of the community and functions as a community activity station; and

WHEREAS, the parties agree that it is in their mutual best interests that a bus stop facility be maintained at the specified site for use as the established transit station, which will provide facilities for the embarking and disembarking of passengers that are safe, convenient, accessible and more comfortable for passengers to wait for transit vehicles.

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties, **WAL-MART** and **Licensee** hereby agree as follows:

Section 1 - Transit Site Agreement. **WAL-MART** hereby grants **Licensee** a license (the “License”) to enter upon that certain parcel of real property located at Store/Club #2333 in Apple Valley, California, for the sole and limited purpose of providing bus service at the existing transit stop previously constructed by **WAL-MART**, subject to all of the terms and conditions provided for herein. **WAL-MART** agrees **Licensee** may use facility which consists of a trash receptacle (s), a bench (es), a sign (s), a passenger waiting shelter (s), and such other items as may be mutually agreed upon by the parties and referred to as (the “Transit Station”) on the Transit Site.

Section 2 - Term. This Agreement shall commence on the date included in the introductory paragraph of this Agreement (the “Date of Commencement”) and, unless extended by the undersigned, shall terminate on the earlier of: (i) five (5) years from the Date of Commencement; or (ii) Ninety (90) days after notice is given by either party of the desire to

terminate the Agreement. At the time this Agreement is terminated, **Licensee** shall cease to serve the Transit Station and shall remove any of **Licensee's** equipment then located at the Transit Site.

Section 3 - Effective Date. This Agreement shall become effective upon being executed by the parties hereto and shall remain in full force and effect until such time as either party terminates this Agreement as provided in Section 2 hereof.

Section 4 - Damage to the Transit Station. **WAL-MART** shall be responsible for day-to-day normal and customary maintenance of the Transit Site and the Transit Station, and every part thereof, including, but not limited to, washing the Transit Station from time to time and picking up trash on the Transit Station on a regular basis. **WAL-MART** shall also be responsible for heavy maintenance, including, but not limited to, painting, removal of graffiti, and concrete repair. Any and all repair of any damage to the Transit Station caused by **Licensee** or its agent shall be the sole responsibility of **Licensee** and its agent. Such repair will be commenced within three (3) days after **Licensee** is notified by **WAL-MART**, in writing, of such damage.

Section 5 - Advertising. **Licensee** may place or permit placement of any public notices similar to those customarily placed on or in transit stations within the **Licensee** system on the exterior or interior of the Transit Station or on the Transit Site. **Licensee** shall have the right to retain all amounts generated by such advertising. **Licensee** shall not place or allow advertising of any nature, including signage, in or around the Station which would either (i) promote or encourage the use of products legally prohibited to minors, such as tobacco products, alcohol or adult entertainment of any type, or (ii) promote or encourage major competitors to Wal-Mart. Wal-Mart retains the right to demand that **Licensee** remove any advertisement for any reason without liability for contractual obligations of the **Licensee** that are related to the advertisement. Such demand may be written or verbal and may be made with 72 hours notice.

Section 6 - Security. **WAL-MART** shall not be responsible for providing security for the Transit Site or for any persons using the Transit Station.

Section 7 - No Partnership. Nothing contained herein shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or of partnership or of joint venture between the parties hereto, it being understood that nothing contained herein, or any acts of the parties hereto other than the relationship of licensor and licensee.

Section 8 - Notices. Any notice, request, demand, approval, consent or other communication which **WAL-MART** or **Licensee** may be required or permitted to give to the other party shall be in writing and shall be mailed or hand delivered to the other party at the addresses set forth below:

If to **WAL-MART**: Wal-Mart Stores East, LP
2001 S.E. 10th Street
Bentonville, AR 72716-0550
Attn: Realty Manager

If to **Licensee**: Town of Apple Valley
14955 Dale Evans Parkway
Apple Valley, CA 92307
Attn: Transit Coordinator

or to such other address as either party shall have designated by notice to the other pursuant to this paragraph. The time of the rendition of such notice shall be one of the following: (1) two (2) days after same is deposited in an official United States Post Office with postage prepaid, and with certified or registered mail, return receipt requested; (2) the date of when same is hand delivered; or (3) the date delivered by overnight courier with confirmation of delivery required.

Section 9 - Authorization. **WAL-MART** and **Licensee** hereby represent and warrant to the other that as of the date of this Agreement, the undersigned are duly authorized to execute this Agreement on behalf of **WAL-MART** and **Licensee**, respectively.

Section 10 - Choice of Law; Venue. This Agreement and the provisions contained herein shall be construed, controlled, and interpreted in accordance with the laws of the State of California. Venue for any dispute arising as a result of this Agreement shall be San Bernardino County, California.

Section 11 - Attorneys Fees. In connection with any legal proceedings arising out of this Agreement, the prevailing party shall be entitled to recover its costs, expenses, attorney and paralegal fees, including without limitation, those incurred whether or not litigation is commenced, and also those incurred at trial and in any administrative, arbitration, mediation, bankruptcy or appellate proceedings.

Section 12 - Time of the Essence. Time is of the essence of the Agreement.

Section 13 - Severability. If any sentence, phrase, paragraph, provision or portion of this Agreement is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such holding shall not affect the validity of the remaining portion hereto.

Section 14 - Indemnification. To the extent permitted by California law and subject to the limitations provided by California law, **Licensee** shall indemnify **WAL-MART** against, and hold **WAL-MART** harmless from all losses, damages, costs, claims, suits, liabilities, and expenses (including reasonable attorneys' fees including those for services rendered at the appellate court level) resulting from any of **Licensee's** use, construction, removal or maintenance under this Agreement.

AGREED TO by the parties hereto as of the date first above written.

TOWN OF APPLE VALLEY
(“Licensee”)

WAL-MART STORES EAST, LP

By: _____
Mayor Peter Allan

By: _____
Frances Coberly
Director of Realty Management

Date: _____

Date: _____

ATTEST:

Ms. La Vonda M. Pearson, Town Clerk

APPROVED AS TO CONTENT:

Frank Robinson, Town Manager

APPROVED AS TO FORM:

BEST BEST & KRIEGER LLP

John Brown, Town Attorney