COUNCIL AGENDA: April 19, 2005

SUBJECT: TRANSIT BUS ADVERTISING

SOURCE: Administration

COMMENT: At the March 15, 2005 City Council meeting, Staff presented the Council with preliminary information relating to advertising on City buses.

At the Council’s direction, staff met with Deborah Kaltoft, of the Kaltoft Company, to obtain further information relating to this subject in an effort to assist the Council with its decision regarding the possible implementation of Transit Bus Advertising for the City of Porterville City Operated Local Transit (C.O.L.T.) system.

The Kaltoft Company is the consultant currently under contract with the City of Visalia, the City of Tulare, The County of Tulare, and Kings County Area Public Transit Agency. She stated there are three main areas of a transit bus conducive to wrap advertising – (1) the left side of the bus referred to as the “King” side, (2) the right side of the bus referred to as the “Queen” side, and the rear of the bus referred to as the “Tail.” Depending on the number of buses available, and the available space on the bus models in question, it appears it would be possible to eventually expect a possible revenue each year of approximately $59,000. This estimate is based on $290 per month for each side of the bus, and $240 per month for the tail of each bus, multiplied by a maximum of six buses available for advertising purposes. These fees are based on the current fees being charged by the City of Tulare, with that City being the most comparable to the C.O.L.T. system. The City of Tulare is in its second year of bus advertising, and currently receives close to $25,000 in bus advertising revenue. She cautions that it takes a minimum of one and one-half years to two years for the advertising program to reach its full potential.

The Consultant would obtain all bus ads, work with each advertiser to create and complete each ad based on specific guidelines, provide all marketing materials, coordinate the delivery and installation of each ad, and communicate with Staff on a regular basis to assure collection of all account receivables and smooth transition for installation or removal of all ads. Staff’s only responsibility would be the actual monthly billing to the advertisers. If problems occur with account delinquencies, the consultant intervenes and attempts to assist with collection efforts. The consultant does

DD _____ Appropriated/Funded _____ CM _____ Item No. 27
absorb costs relating to ad damage created, as long as such damage has not occurred through fault of the City. Compensation to the Consultant, based on these services, is forty percent (40%) of the ad revenue generated.

Staff has provided the consultant with pictures of the C.O.L.T. MST 28-passenger buses, and with the use of these pictures, a short power point presentation will be available during the agenda item presentation to provide examples of possible ad placement on our City buses, as well as potential fees related to monthly ads.

Proceeds of advertisement activities will remain in the Transit Fund. These revenues can be used to cover operational costs within the system.

RECOMMENDATION: That the City Council approve:

1. The Draft City Operated Local Transit Policy for Advertising, or as revised by the City Attorney;
2. Transit Advertising Contract; and
3. Service Agreement with The Kaltoft Company, and authorize the Mayor to execute the same.

ATTACHMENTS:

2. Draft Transit Advertising Contract; and
3. Draft Service Agreement with The Kaltoft Company.
PURPOSE

It is the primary purpose and function of C.O.L.T. to provide public transportation. Consistent with that purpose and function, C.O.L.T. hereby makes available to Advertiser guidelines for the sale of advertising space and acceptability of the advertising display which is to be displayed on C.O.L.T. buses.

POLICY

It is the policy of C.O.L.T. to accept and display advertising messages on the exterior and interior of C.O.L.T. buses in accordance with the following guidelines:

1. The advertising space available is limited to the designated areas of the interior and exterior of C.O.L.T. buses. The limited advertising space made available by C.O.L.T. minimizes the chances of abuse, the appearance of favoritism and the risk of imposing upon a captive audience. Spaces shall be available for commercial advertising on a first paid, first served basis. No refunds will be made on payments received.

2. All non-profit organizations and governmental agencies may, on a space available basis only, use advertisement spaces located in the interior of the C.O.L.T. buses for public service announcements. Non-profit organizations and governmental agencies can also purchase, on a space available basis only, advertising space at 25% off the standard rate schedule.

3. Advertisers are responsible for design, production, production cost, and delivery of signs to C.O.L.T. at a specified time and location.

4. Advertisements involving competitive products or services shall not be displayed on the same bus.

5. Advertisers competing for the same bus, or for the same specific panel(s), shall submit written proposals to C.O.L.T. Proposals will be reviewed by the C.O.L.T. Advertising Review Team. Proposals will be rated based on design, benefit to the community, benefit to C.O.L.T., and how payments will be made to C.O.L.T. If all proposals are determined to be equal, then the City of Porterville reserves the right to accept bids for the advertising space.

6. C.O.L.T. reserves the right to reasonably reject any advertisement proposed by Advertiser to be displayed on or in the C.O.L.T. buses. It is C.O.L.T.’s policy to only accept advertising related to the sales of goods and services. C.O.L.T.’s right to reasonably reject any proposed advertisement is based upon C.O.L.T.’s desire to protect the safety and personal feelings of its passengers. In exercising this right, C.O.L.T. intends to avoid consequences that may discourage, rather than enhance ridership, may result in either reduced subsidies, increased fares or diminished services, and/or may promote conduct otherwise legal, but not permitted on the C.O.L.T. buses.

The following includes, but is not limited to, the types of advertisements C.O.L.T. shall not accept for display on its buses because C.O.L.T. believes they may reasonably interfere with the ridership, services, and/or the privacy rights of C.O.L.T.’s passengers:
1. C.O.L.T. shall not display any advertising matter or signs of any nature advertising or implying a position, for or against, any political purpose, position, candidate or subject;

2. C.O.L.T. shall not display any advertising matter or signs of any nature advertising, promoting or implying conduct otherwise legal if such conduct is not permitted on the C.O.L.T. buses;

3. C.O.L.T. shall not display any advertising matter or signs of any nature advertising, promoting or implying conduct or activity which is illegal in the City of Porterville and/or the County of Tulare;

4. C.O.L.T. shall not display any advertising matter or signs of any nature advertising, promoting or implying any religious beliefs, behavior, affiliation or activities or any religious matter in general; and

5. C.O.L.T. shall not display any advertising matter or signs of any nature that C.O.L.T. in its sole discretion, determines to be controversial, designed to encourage public reaction or public uproar, or designed to invoke anger or a hostile response.

Advertisement text and illustrations shall be subject to final approval of C.O.L.T. C.O.L.T. requires that the advertisement conform with community standards of appropriateness, decency, dignity and accuracy.

Prior to rejecting the proposed advertisement, C.O.L.T. will give written notice to Advertiser of any perceived problems with any proposed advertisement. Advertiser will be given an opportunity to revise, at Advertiser’s sole expense, the unacceptable advertisement. If the proposed advertisement is not revised by the Advertiser, then C.O.L.T. shall reject the proposed advertisement in writing.

C.O.L.T.’s rejection of any proposed advertisement may be appealed by Advertiser to the C.O.L.T. Advertising Review Team. (ONE WILL HAVE TO BE FORMED UPON APPROVAL OF THE PROGRAM.)

7. Advertisers paying the full amount of advertising fees due under the Contract in advance are eligible for a 5% discount for advertising placed with C.O.L.T.

8. All advertising displayed on the C.O.L.T. system shall be authorized by a fully executed “City of Porterville Transit Advertising Contract,” by and between the City of Porterville (C.O.L.T.) and the Advertiser.
This Contract is made and entered into on this ___ day of ___________________, by and between the City of Porterville, hereinafter called “C.O.L.T.” AND ________________________________, hereinafter referred to as ADVERTISER.

SECTION I – TERMS OF AGREEMENT

1. Advertising authorized by this Contract shall have ___ term of _____ months, commencing on __________________________, _____, and ending on _____________________, __ __ __. Additional terms will be by mutual consent in writing of both C.O.L.T. and ADVERTISER and attached as a subsequent addendum to this Contract executed by both parties hereto.

2. Advertiser desires to rent the following advertising display space under this Contract:

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<tr>
<th>No. of Units</th>
<th>Type</th>
<th>Installation Date</th>
<th>Removal Date</th>
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<th>Unit Monthly Cost</th>
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<th>Discount</th>
<th>5% Full Payment</th>
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SECTION II – PAYMENT

1. Advertiser agrees to pay advertising fees due based on this Contract on the following terms: Amount paid in advance ______________. Remainder to be invoiced monthly ________________________________.

2. Full payment in advance will receive a 5% discount in addition to any frequency or multiple unit discounts which apply.

3. If full payment is not made in advance, the Advertiser shall be invoiced by the City of Porterville. Payments for advertising are expected within 20 days following the billing date unless otherwise stated within this contract.
Contract. After 20 days, unpaid invoices will bear interest at the City of Porterville investment rate per month at the time the invoice becomes delinquent, until delinquent balance is paid.

4. In the event the monthly costs incurred by this Contract remain unpaid by the Advertiser for a period of twenty-one (21) days or more after the invoice date, an advertisement may be removed by C.O.L.T. without recourse to Advertiser. Advertiser shall remain liable for the advertising fees due based on the term of this Contract.

5. Credit will be issued to Advertiser for loss of advertising exposure resulting from physical loss of bus advertising poster(s), where it is mutually agreed by C.O.L.T. and Advertiser that C.O.L.T. is at fault, unless such advertising can be replaced within a reasonably timely manner by C.O.L.T.

SECTION III – DISPLAY MATERIAL

ADVERTISER AGREES:

1. To deliver the displays called for in this Contract according to specifications issued by C.O.L.T. Displays shall be produced at the Advertiser’s expense and delivered to C.O.L.T. Sign-in delivery and pickup procedures are required.

2. To allow C.O.L.T. at least three (3) working days from the date of delivery to install mounted panel displays in advertising frames. Advertisements will not be displayed prior to the installation date specified herein above.

3. To provide qualified, professional installation and removal of direct vinyl application advertisements. Advertiser shall be responsible for all costs and liabilities associated with such installation and removal.

4. The text and illustrations on displays shall be subject to final approval of C.O.L.T. in accordance with the “City of Porterville Policy for Advertising on C.O.L.T.,” which has been provided to Advertiser by C.O.L.T.

5. To replace, during the period of this Contract, upon written notice from C.O.L.T., and mutual agreement between C.O.L.T. and Advertiser, any display which has deteriorated from improper production or improper third-party installation; and to share an equal portion of the replacement costs of any displays damaged due to vandalism or defacing.

6. To pick up advertising materials within 30 days of contract termination and/or removal of display. After that date, C.O.L.T. will dispose of the advertising materials.

7. Advertiser understands that advertising displayed and billed under a non-profit rate is handled on a “space available” basis. This advertising shall be displayed when vacant space is available and when other advertisers paying commercial rates do not desire the space. “Non-profit” rate displays that are removed to make room for commercial rate displays will be reinstalled for display when space is available and will be displayed for the additional applicable time indicated on the contract.

C.O.L.T. AGREES:

8. To install mounted panel displays in advertising frames, within three (3) working days from the date of signed delivery of said displays or by the installation date specified herein above. Advertisements will not be displayed prior to the installation date specified herein above.

9. To make Advertiser’s display available for advertising exposure to the public on said bus(es) a minimum of 85% of the days available during this Contract, it being understood that buses are normally out-of-service periodically for short periods for repair and maintenance.

10. To have reproduced and replace a display which is damaged due to vehicular collision or as a direct result of
acts by C.O.L.T. whether intentional or unintentional, or the omission of an act by C.O.L.T. and to share an equal portion of the replacement costs of any displays damaged due to vandalism or defacing.

11. To make “painted” transit bus(es) available to the Advertiser for promotional events or community relations events under terms that would be separately agreed upon in writing. C.O.L.T. shall use its sole discretion to decide whether such events will sufficiently promote the services of C.O.L.T. to justify said use without additional compensation. Any such events must not be in violation of the Federal Transit Administration Charter Regulations.

12. To promptly notify the Advertiser whenever C.O.L.T. discovers the deterioration, defacement, or disappearance of an advertisement which might require the replacement of the display. It will be Advertiser’s responsibility thereafter to determine whether the advertisement should be repaired or replaced in accordance with the provisions of this Contract.

SECTION IV – LOSS OF SERVICE

1. Loss of service, due to failure of Advertiser to furnish displays for installation shall be the Advertiser’s loss. In the event advertiser fails to timely furnish C.O.L.T. with the displays, Advertiser shall remain responsible for the advertising fees provided above from and after the installation date specified above. Advertiser shall not be entitled to additional service or any extension of the term of service provided herein. In the event Advertiser fails to furnish C.O.L.T. with the displays within thirty (30) days from the installation date specified above, C.O.L.T. shall consider the space vacated and shall reasonably pursue other advertisers to purchase the vacated space. Advertiser shall remain responsible for all advertising fees due based on the term of this Contract, except for those periods of time when a replacement advertiser, if any, has purchased the vacated space at issue. C.O.L.T. shall use reasonable efforts and diligence to obtain a replacement advertiser for the vacated space.

2. Loss of service, due to the failure of C.O.L.T. to install displays on time or in the space contracted shall not constitute a breach of this Contract, but the Advertiser shall be entitled to additional service or extension of the term of service equivalent to the period of delay, as the Advertiser may elect.

3. Loss of service due to strike, lockout, fire, flood, riot, loss of operational funds, or other causes beyond the control of C.O.L.T. shall not constitute a breach, but in the event of such loss of service, the Advertiser shall be entitled to additional units, if available, or an extension of the term of service, as the Advertiser may elect.

4. The Advertiser accepts this Contract subject to all federal, state, and municipal laws and regulations with respect to the advertising matter to be displayed. If the advertising display becomes illegal, or a request is received from the Advertiser to terminate the advertising display, C.O.L.T. shall remove the advertisement display from C.O.L.T. buses; however, Advertiser shall remain responsible for the advertising fees due based on the term of this Contract.

SECTION V – ADVERTISER LIABILITY

1. Advertiser will indemnify C.O.L.T. against all liability for infringement of trademarks, trade names, copyrights, invasion of privacy rights, defamation, illegal competition, or unfair trade practices arising out of the installation and displaying of Advertiser’s advertisement(s) on C.O.L.T. buses.

SECTION VI – TERMINATION

1. Either party may terminate this Contract without cause at the end of any month of advertising, by 30 days written notice to the other party as provided within Section VIII – NOTICE. In the event Advertiser is the terminating party, all outstanding fees for the remaining term are immediately due and payable to C.O.L.T. C.O.L.T., upon receipt of the advertiser’s termination notification, will reasonably pursue other advertisers to purchase the vacated space. The terminating advertiser will receive credit for space filled by another advertiser for the remainder of the original term, if any. In the event C.O.L.T. is the terminating party, the
advertiser is responsible for fees up to the date their materials are removed from C.O.L.T. buses as reflected in SECTION I and SECTION II of this Agreement.

2. If either party is in material default of any provision of this Contract and fails to cure the same within seven (7) days of receiving written notice of same from the non-defaulting party (or fails to commence a cure of the default within the seven (7) day period, if the cure cannot be reasonably made within that seven (7) day period), then the non-defaulting party may immediately terminate the Contract for cause. In the event of a termination for cause, the non-defaulting party shall be entitled to any and all damages or remedies available to it by law or in equity; provided, however, it is expressly agreed that notwithstanding anything to the contrary, the maximum liability of C.O.L.T. to the Advertiser and the Advertiser’s liability to C.O.L.T. shall not exceed an amount equal to the Advertising fee agreed to under this Contract.

SECTION VII – OTHER PROVISIONS

1. This Contract contains the entire agreement of the parties and supersedes any prior agreement or understandings oral or written and can be changed, terminated, or modified only by a written agreement executed by both parties.

2. This Contract shall be binding upon and inure to the benefit of the successors and assigns of the parties to this Contract.

3. This Contract shall be interpreted, construed, and applied according to the laws of the State of California and venue of any cause of action arising out of this Contract shall be in Tulare County, California.

4. The invalidity or unenforceability of a particular provision of this Contract shall not invalidate the remaining provisions contained in this Contract.

5. The waiver by either party of a breach of any provision of this Contract by the other shall not operate or be construed as a waiver of any subsequent breach by that party.

6. In the event it becomes necessary for either party to incur costs and/or expenses including, but not limited to, attorney’s fees for Court costs, in connection with any claim or demand under this Contract, the prevailing party shall be entitled to payment of such reasonable costs and fees incurred.

7. Advertiser agrees to hold harmless and indemnify C.O.L.T. against any claim or demand for damages arising from Advertiser’s acts in conjunction with the performance of this Contract.

8. Advertiser expressly agrees to C.O.L.T.’s use of any of its displays for C.O.L.T. promotions without charge or royalty; C.O.L.T. agrees to inform and receive prior written consent before using Advertiser’s display(s) for C.O.L.T. promotions.

9. Advertiser may not sublease, assign or transfer this Contract or any of the Advertiser’s rights hereunder, without C.O.L.T.’s prior written consent. Any act in derogation of this Contract shall be null and void and C.O.L.T. may, at C.O.L.T.’s option, immediately terminate the Contract.

SECTION VIII – NOTICE

1. Any notice given under this Contract must be in writing and either hand-delivered or sent by first class United States mail to the address shown below or an address either party to this Contract specified in writing to the other party:

ADVERTISER
CITY OF PORTERVILLE
CITY OPERATED LOCAL TRANSIT
<table>
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<th>Signature of Authorized Representative</th>
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<td>Title</td>
<td>Mayor</td>
</tr>
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<td>Date: __________</td>
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SERVICE AGREEMENT

This Agreement entered into this ____ day of ________________, 2005, by and between the CITY OF PORTERVILLE, hereinafter referred to as “CITY,” and THE KALTOFT COMPANY, hereinafter referred to as “CONSULTANT,” for certain services as outlined herein in connection with the duties and responsibilities of assisting CITY staff with the development and implementation and direct sales of a transit advertising program.

TERMS AND CONDITIONS

1. **Term of Contract**: The service to be performed pursuant to this agreement shall commence on the day and year first above written for a period of three (3) years. This agreement may be terminated by written notice at least thirty (30) days prior to termination by either party. The agreement may be extended subject to mutual agreement by and between both parties.

2. **Administration of Contract**: Services under this agreement are to be performed for CITY under the direction of the Assistant to City Manager.

3. **Scope of Services**: For, and in consideration of, the mutual obligations hereby assumed and the acts hereinafter set forth, the parties hereto agree as follows:

   1. **General**: CONSULTANT agrees to provide professional services for the development and implementation, and on-going direct sales and program coordination for the CITY transit advertising program.

   2. **Duties**: The CONSULTANT agrees to perform, in a manner satisfactory to CITY, those tasks described in Exhibit A “Scope of Work,” attached hereto and incorporated herein by this reference as if set forth in full.

4. **Consideration**: CITY agrees to pay CONSULTANT forty percent (40%) of gross transit advertising sales revenue.

   The CONSULTANT shall be paid monthly on or before the 15th day. CONSULTANT’s compensation shall be based on forty percent (40%) of total transit advertising revenue collected by CITY during the fiscal reporting month.

5. **Hold Harmless**: CITY and CONSULTANT each agree to indemnify, defend and hold harmless the other Party, its officers, agents, employees, and members of its governing board, from and against any and all claims, demands, losses, judgments, liabilities, causes of action and expenses, including reasonable attorney’s fees and costs, of any kind or nature they may sustain or incur or which may be imposed upon them for injury to or death of persons or damage of property caused by the indemnifying party’s neglect or wrongful performance or failure to perform its obligations under this agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized
representatives on the day and year first above written.

CITY OF PORTERVILLE

Pedro R. Martinez, Mayor

THE KALTOFT COMPANY

Deborah Kaltoft, Owner

SCOPE OF WORK
Services to be performed by The Kaltoft Company

1. Develop and implement a transit advertising program for C.O.L.T. including:
   • Policy for Advertising on C.O.L.T.
   • C.O.L.T. Transit Advertising Contract
   • C.O.L.T. Advertising Rates
   • Production and Specification Guidelines
   • Marketing strategy and materials

2. Direct Sales and Marketing of C.O.L.T. transit advertising including:
   • Direct Sales
   • Tele-Marketing
   • Correspondence

3. Production Coordination
   • Assist advertisers with development and production of advertising panels
   • Coordinate delivery and installation of ad panels with advertisers and C.O.L.T.

4. Program Coordination
   • Keep C.O.L.T. staff informed of program status on a regular basis
   • Assist C.O.L.T. with collection of delinquent account receivables.

EXHIBIT “A”