




MEMORANDUM

November 4, 2022

TO: MEMBERS, PORT COMMISSION
Hon. Willie Adams, President
Hon. Kimberly Brandon, Vice President
Hon. John Burton
Hon. Gail Gilman
Hon. Steven Lee

FROM: Elaine Forbes
Executive Director 

SUBJECT: Proposed Second Amendment to Transit Shelter Advertising Agreement with the San Francisco Municipal Transportation Agency and Clear Channel Outdoor, Inc., to exercise the option to extend for five years through December 10, 2027, and reduce the minimum annual guarantee and administrative and marketing payments for the extended term

DIRECTOR'S RECOMMENDATION: Approve the Attached Resolution No. 22-61

EXECUTIVE SUMMARY

In 2007, Port entered into a Transit Shelter Advertising Agreement (“the Agreement”) with the San Francisco Municipal Transportation Agency (SFMTA) and Clear Channel Outdoor, Inc., for the purpose of providing and maintaining transit shelters in exchange for the right to display advertising on Port and other City property. SFMTA’s jurisdiction comprises 97.42% of the transit shelters in the Agreement while Port’s jurisdiction comprises 2.58%. The Agreement was approved by Port Commission Resolution 07-75 and the Board of Supervisors Ordinance No. 240-07. The 15-year term of the Agreement expires on December 9, 2022. There is one five-year option to extend at the City’s sole discretion, which the SFMTA and Port wish to exercise.

Under the terms of the Agreement, Clear Channel is required to pay Minimum Annual Guarantee (MAG) payments based on minimum gross revenues. The Port, SFMTA and Clear Channel entered into a First Amendment to the Agreement in June 2021, as approved by the Board of Supervisor Ordinance No. 297-21, wherein the parties agreed to forgive certain payments and reduce MAG payment requirements for the period from May

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1, 2020 through June 30, 2022 due to impacts from the COVID-19 pandemic, but to restore the Full Agreement Rate and revenue distribution to SFMTA and Port from July 1-December 31, 2022.

However, the impacts from the COVID-19 pandemic have continued to have an adverse effect on Clear Channel's ability to generate revenue from advertising and Clear Channel has requested a further reduction in the required payments due to SFMTA and Port under the Agreement. The SFMTA and Clear Channel have negotiated an amendment acknowledging the exercise of option to extend the term of the Agreement and reduce the amount of the MAG and certain administrative and marketing payments due the SFMTA and Port, however the amendment will increase the maintenance and service obligations of Clear Channel. Specifically, approving this amendment will allow for the MAG to the Port to decrease from \$2.9M to \$1.4M during the 5-year option period. In exchange for a MAG reduction reflecting expected lower revenues, SFMTA staff have negotiated a 50% increase in maintenance of transit shelters and a minimum \$3M capital investment in repair or replacement of transit shelters. These maintenance and capital investments are real improvements for transit riders, including in key Port transit-line corridors along 3rd Street and Embarcadero.

While this reduction in revenue is a negative outcome, the parties have negotiated for a fair sharing of revenues and costs. Port staff recommend approval of a Second Amendment to the Agreement to extend its term, maintain the available advertising revenues, to realize the increases in maintenance and capital investment in transit shelters, and to avoid disruption in these services.

STRATEGIC OBJECTIVE

Economic Recovery:

Allows the contract to continue which is continued revenue to the Port.

Equity:

Clear Channel will initiate a Shelter Refresh Program to replace and/or repair aging shelters over the five-year period and increase the level of maintenance to the transit shelters and platforms, improving the riding experience for those dependent on public transit.

Evolution:

Coordinate with City and regional agencies to improve access to the waterfront.

BACKGROUND

The San Francisco Municipal Transportation Agency (SFMTA), Clear Channel Outdoor, Inc., and the Port of San Francisco ("Port"), entered a Transit Shelter Advertising Agreement (the "Agreement") in December 2007 for a period of 15 years with one five-year option to extend at the City's sole discretion. There are over 1,300 transit shelters citywide covered under the Agreement with 44 or 2.58% of the advertising panels on the 20 transit

shelters within Port jurisdiction. Pursuant to the Agreement, Clear Channel maintains these transit shelters and pays a percentage of advertising revenue to SFMTA and Port, in exchange for the right to display advertising panels and collect advertising revenues.

First Amendment to Transit Shelter Advertising Agreement

Under the Agreement, Clear Channel pays a Minimum Annual Guarantee (MAG) payment based on minimum gross revenues in the previous fiscal year. The COVID-19 pandemic had a material adverse effect on Clear Channel’s ability to generate revenue from advertising sales. The table below shows the most recent amount of advertising revenue collected annually by Clear Channel relative to the revenue collected pre-pandemic.

Table 1. Summary of Advertising Revenue, Pre- and Post-COVID

| MONTH | 2021-2022 | 2018-2019 | Variance % |
|---------------|--------------------|---------------------|-------------------|
| October | \$1,161,933 | \$1,582,810 | -26% |
| November | \$1,209,431 | \$1,404,389 | -14% |
| December | \$978,347 | \$1,486,619 | -34% |
| January | \$270,644 | \$466,652 | -42% |
| February | \$174,545 | \$521,969 | -66% |
| March | \$304,334 | \$872,826 | -65% |
| April | \$274,390 | \$989,668 | -72% |
| May | \$529,925 | \$1,511,997 | -64% |
| June | \$485,097 | \$1,534,724 | -68% |
| July | \$617,192 | \$1,026,586 | -40% |
| August | \$723,555 | \$1,164,578 | -38% |
| September | \$1,243,984 | \$1,514,092 | -18% |
| TOTALS | \$7,973,377 | \$14,076,910 | -43% |

[1] Note on the **Totals** in this table: As shown, the total actual advertising revenue decreased significantly between 2018-19 and 2021-22. In addition, the total projected advertising revenue - which formed the basis for the MAG in the original contract – even before COVID was much higher than actual revenues. For example, projected revenue in 2021-22 was \$46M in the original contract (versus \$7.9M actual) and in 2018-19 was \$41M (versus \$14.1M). The much lower actual advertising revenue compared with the revenue projected when the contract was signed in 2007 indicates the major changes in the advertising industry. Along with the impacts from COVID, these significant decreases in actuals versus projected are the rationale for the amendment which recognizes all parties to the agreement will receive lower revenues from advertising.

Due to the reduction in revenue during the onset of the COVID pandemic, Clear Channel requested a reduction in the MAG payments. In April 2021, the Port Commission approved the First Amendment to Transit Shelter Advertising Agreement (“First Amendment”) (Resolution 21-22) that 1) maintained revenues from January – April 2020 to SFMTA and the Port according to the pre-pandemic MAG rate (“Full Agreement Rate”); 2) forgave certain payments and reduced MAG payment requirements for the period from May 1, 2020 through June 30, 2022; and 3) restored the Full Agreement Rate and revenue distribution to SFMTA and Port from July 1-December 31, 2022. The table below presents the revenues for each of these segments of time.

Table 2. Share of MAG to City and Port, Under First Amendment to Agreement

| | Total MAG to City | Port's Share (2.58%) | | |
|--------------------------|-------------------|-----------------------------|--------------------------------|------------------|
| | | Estimated MAG per Agreement | Actual MAG per First Amendment | |
| January - April 2020 | \$5,681,333 | \$146,578 | Full Agreement Rate | \$146,578 |
| May – June 2020 | \$0 | \$73,289 | No Payment per Amendment | \$0 |
| July 2020 - June 2021 | \$ 5,900,000 | \$440,000 | Reduced MAG per Amendment | \$152,220 |
| July 2021 - June 2022 | \$ 6,300,000 | \$440,000 | Reduced MAG per Amendment | \$162,540 |
| July - December 2022 | \$ 9,330,500 | \$240,726 | Full Agreement Rate | \$240,726 |
| Total MAG to City & Port | | \$1,340,593 | | \$702,064 |

The First Amendment resulted in total revenues of \$702,064 to the Port during the forgiveness period instead of approximately \$1,340,000 that was anticipated under the Full Agreement Rate.

Proposed Second Amendment to Transit Shelter Advertising Agreement

Throughout the first 15 years of the Agreement, Clean Channel has never exceeded the MAG nor been able to achieve the advertising revenues anticipated throughout the term of the Agreement. Because of this lower revenue performance, Clear Channel's ability to perform the maintenance and service obligations while providing the anticipated MAG for the five-year option period is not considered to be financially viable. Clear Channel therefore requested reductions in the MAG for the option period. The table below shows the MAG amount under the Agreement for the option period.

Table 3. MAG to City Assuming the Option is Exercised Under the Agreement without Amendments

| | Projected Advertising Revenues & Projected MAGs | | |
|------------|---|--------------|--------------------------|
| | Advertising Revenue | MAG to City | Port's MAG Share (2.58%) |
| FY 2022-23 | \$48,000,000 | \$21,082,000 | \$543,916 |
| FY 2023-24 | \$50,000,000 | \$22,073,000 | \$569,483 |
| FY 2024-25 | \$53,000,000 | \$23,114,000 | \$596,341 |
| FY 2025-26 | \$56,000,000 | \$24,207,000 | \$624,541 |
| FY 2026-27 | \$59,000,000 | \$25,353,000 | \$654,107 |

| Projected Advertising Revenues & Projected MAGs | | | |
|--|----------------------------|----------------------|---------------------------------|
| | <i>Advertising Revenue</i> | <i>MAG to City</i> | <i>Port's MAG Share (2.58%)</i> |
| Total MAG Revenue | \$266,000,000 | \$115,829,000 | \$2,988,388 |

The following table reflects the changes negotiated by the SFMTA for both the MAG and revenue share (which is a percentage of advertising sales).

Table 4. Summary of Proposed Amendment #2 to Agreement between SFMTA, Port, and Clear Channel

| | Advertising Revenues | | | Required Maintenance and Capital Improvements | |
|--------------------------|----------------------------------|---------------------|---------------------------------|---|---|
| | <i>Total Advertising Revenue</i> | <i>MAG to City</i> | <i>Port's MAG Share (2.58%)</i> | <i>Maintenance</i> | <i>Capital Improvements</i> |
| FY 2022-23 | \$14,200,000 | \$7,000,000 | \$175,000 | 50% increase in maintenance, <u>increasing from 2 to 3x/ week</u> cleaning per transit shelter. | Invest \$3M or more in transit shelter repair or replacement. |
| FY 2023-24 | \$14,900,000 | \$7,800,000 | \$195,000 | | |
| FY 2024-25 | \$15,700,000 | \$9,800,000 | \$245,000 | | |
| FY 2025-26 | \$16,400,000 | \$11,300,000 | \$282,500 | | |
| FY 2026-27 | \$17,300,000 | \$13,700,000 | \$342,500 | | |
| FY 2027-28 (1/2) | \$8,650,000 | \$6,850,000 | \$171,250 | | |
| Total MAG Revenue | \$87,150,000 | \$56,450,000 | \$1,411,250 | 50% increase in maint. | \$3M add't capital investment |

By entering the Second Amendment to Transit Shelter Agreement (“Second Amendment”), the SFMTA and Port will receive reduced but ongoing financial benefits during the extend term. Agreeing to reduce the MAG payment, will also help Clear Channel preserve jobs and continue its critical services for the SFMTA and its customers. With the reopening of the transit system and restoration of service throughout the City, it is a priority for the SFMTA to focus efforts on the maintenance and service response of transit shelters. The Second Amendment significantly increases Clear Channel’s maintenance obligations for shelters and platforms. This customer service experience improvement will enable the SFMTA to better welcome back its ridership.

The City will receive increased maintenance service nearly equal to 100% of anticipated shelter advertising revenues. Originally Clear Channel was required to inspect and clean all transit shelters twice per week. Under the Second Amendment, all shelters will be cleaned at least three times a week which is a 50% increase in maintenance. Clear Channel will also initiate a Shelter Refresh Program to replace and/or repair aging shelters totaling \$3 million in capital improvements over the extended term. This is a new capital investment commitment resulting from the Second Amendment.

If approved by the Port Commission, the Second Amendment will be submitted to the Board of Supervisors for final approval. The SFMTA Board approved the terms of the Second Amendment on October 4, 2022.

Alternatives Considered

The City, through the SFMTA, the Port, or the Board of Supervisors could decline to enter the Second Amendment, but such an action might lead to Clear Channel's inability to fulfill its financial commitments and deliver other benefits to the SFMTA and Port provided in the Agreement. If Clear Channel defaulted, the City would lose the service and would be independently responsible for maintaining the transit shelters at its own cost.

There is no guarantee that the SFMTA would be able to enter into another transit shelter contract if the Agreement were to terminate. At a minimum, it would take nine months to a year to rebid this work and new bids, if any, would likely be inferior to the guaranteed amounts and services in the current Agreement.

Revised contract requirements include the following:

- Inspect and clean all transit shelters (approximately 1,300) at least three times week.
- Clarification of platform areas has been completed to ensure cleaning of platforms and shelters along the Embarcadero to Fisherman's Wharf, on the 3rd St. T-line, and along Market Street, all of which will be cleaned five days per week.
- Clear Channel will initiate a Shelter Refresh Program, based on an Asset Management approach, to replace and/or repair aging shelters, totaling \$3 million in capital improvements over the five-year period.
- At the end of the Agreement, there is now an option for Clear Channel to transfer title to the shelters to the City at no cost. The current Agreement includes an option for the City to purchase the shelters.

RECOMMENDATION

Under the original agreement, the Port anticipated receiving approximately \$2,988,388 in advertising revenues during the option period. Per the proposed Second Amendment, revenues would be reduced to \$1,411,250 or a decrease of about 53% over the total five-year option term. Per the proposed amendment, Clear Channel and the City (SFMTA and the Port) would receive proportionally similar reductions in revenue and Clear Channel would continue its obligations to provide and maintain transit shelters throughout the City, including on Port property. In addition, Clear Channel will increase maintenance of transit shelters by 50% and will invest at least \$3M in capital improvements to shelters. While the reduction in revenue to SFMTA and Port is undesirable, SFMTA staff have negotiated for maintenance and capital improvements to benefit transit rides, including along the Port's key transit routes on 3rd Street and on the Embarcadero. Port staff recommends that the Port Commission approve the attached resolution authorizing the Port's Executive Director to enter into the Second Amendment of the Clear

Channel/SFMTA/Port Transit Shelter Agreement to extend the term for five years, reduce the minimum annual guaranteed payments, reduce administrative and marketing payments to the City], and increase the maintenance requirements as outlined in the Second Amendment.

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Real Estate and Development

For: Rebecca Benassini, Deputy Director
Real Estate and Development

Attachment 1 – Transit Shelter Advertising Agreement

Attachment 2 – First Amendment to Transit Shelter Advertising Agreement

Attachment 3 – Second Amendment to Transit Shelter Advertising Agreement

**PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO**

RESOLUTION NO. 22-61

WHEREAS, The Transit Shelter Advertising Agreement (“Agreement”) between the City through its Municipal Transportation Agency (SFMTA), and its Port Commission (Port), and Clear Channel Outdoor, Inc. (Clear Channel) began on December 10, 2007, and continues for a term of 15 years, plus one five-year option to extend at the City’s sole discretion; and;

WHEREAS, The term of the Agreement will expire on December 7, 2022 and the City desires to exercise the option; and

WHEREAS, Due to the impacts from the COVID-19 pandemic, which have had, and continue to have, an unprecedented and material adverse effect on Clear Channel’s ability to generate revenue from advertising, Clear Channel; and

WHEREAS, Revenue payments are based on transit shelter advertising panels, of which 44 or 2.58% are located on Port property; and

WHEREAS, The proposed Second Amendment to the Clear Channel contract provides for reductions in Minimum Annual Guarantee (MAG) payments from December 8, 2022 through December 10, 2027 and in administrative and marketing payments; and

WHEREAS, By entering the Second Amendment, will help to ensure that the SFMTA and the Port will receive reduced, but still substantial, financial benefits during the extended term, plus all of the other benefits provided in the Agreement; and

WHEREAS, The Amendment will help Clear Channel preserve jobs as well as continuing its critical services for the SFMTA and its customers, including maintaining the transit shelters, boarding platforms, and advertising kiosks; and

WHEREAS, Clear Channel has performed satisfactorily in fulfilling the requirements of the Agreement; and

WHEREAS, On September 27, 2022, the SFMTA under authority delegated by the Planning Department determined that the Second Amendment to the Transit Shelter Advertising Agreement with Clear Channel Outdoor, Inc., is not a project under the California Environmental Quality Act (CEQA) pursuant to Title 14 of the California Code of Regulations Sections 15060(c) and 15378(b); and

WHEREAS, On October 4, 2022, the SFMTA Board approved the Second Amendment and has now submitted it to the Port Commission and the Board of Supervisors for final approval; now, therefore, be it

RESOLVED, That the San Francisco Port Commission authorizes its Executive Director to executive Director to execute the Second Amendment to the Transit Shelter Advertising Agreement with the SFMTA and Clear Channel Outdoor, Inc., to extend the term for five years from December 8, 2022 to December 10, 2027, and to reduce the minimum annual guaranteed payments, as well as administrative and marketing payments due to the impacts from the COVID-19 pandemic through the option period; and be it further

RESOLVED, That the Port Commission recommends this matter to the Board of Supervisors for its approval.

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of November 8, 2022.

Secretary