

File No. 221128

Committee Item No. 2

Board Item No. \_\_\_\_\_

## COMMITTEE/BOARD OF SUPERVISORS

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Committee: Budget and Finance Committee Date November 16, 2022

Board of Supervisors Meeting Date \_\_\_\_\_

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- MTAB Resolution No. 221101-104 11/1/2022
- Port Resolution No. 22-61 11/8/2022
- \_\_\_\_\_
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Completed by: Brent Jalipa Date November 10, 2022

Completed by: Brent Jalipa Date \_\_\_\_\_

1 [Agreement Amendment - Clear Channel Outdoor, LLC - Transit Shelter Advertising - Term  
2 Extension]

3 **Resolution approving the Second Amendment to the Transit Shelter Advertising**  
4 **Agreement between the City and County of San Francisco and Clear Channel Outdoor,**  
5 **LLC, to exercise the option to extend the Agreement for five years, from December 7,**  
6 **2022, through December 7, 2027; adjust the minimum annual guarantee payments, as**  
7 **well as administrative and marketing payments; and increase the maintenance and**  
8 **service obligations of Clear Channel.**

9  
10 WHEREAS, The Transit Shelter Advertising Agreement (Agreement) between the City  
11 and County of San Francisco (City), through its Municipal Transportation Agency (SFMTA) the  
12 Port of San Francisco, and Clear Channel Outdoor, LLC (Clear Channel) began on December  
13 10, 2007, and continues for a term of 15 years, plus one five-year option to extend the  
14 Agreement at the City's sole discretion; and

15 WHEREAS, Due to the impacts from the COVID-19 pandemic, which have had, and  
16 continue to have, an unprecedented and material adverse effect on Clear Channel's ability to  
17 generate revenue from advertising, Clear Channel approached the SFMTA in 2021 for  
18 reductions in certain payments due to the City under the Agreement; and

19 WHEREAS, Under the First Amendment to the Agreement, dated June 25, 2021, the  
20 City agreed to reduce Minimum Annual Guarantee (MAG) payments from May 1, 2020  
21 through June 30, 2022; in return, the Contractor gave the City additional advertising  
22 opportunities on the shelters and marketing support payments; and

23 WHEREAS, The City has given Clear Channel notice of its intent to exercise the five-  
24 year option to extend the Agreement: and

25 WHEREAS, Due to the continuing impacts from the pandemic, Clear Channel has

1 again requested reductions to the MAG and other payments under the Agreement; and

2 WHEREAS, The SFMTA and Clear Channel have negotiated the Second Amendment  
3 to the Agreement, which:

- 4 • adjusts the MAG payments for the last five years of the contract;
- 5 • adjusts administrative payments to the City;
- 6 • ties the amount of the performance bond to the MAG for each year and  
7 maintains the letter of credit at \$2,000,000 for the remainder of the Agreement;
- 8 • significantly increases Clear Channel’s maintenance obligations for shelters and  
9 platforms, including more frequent cleanings and initiation of a “Shelter Refresh  
10 Program” to replace and/or repair aging shelters;
- 11 • requires Clear Channel to invest \$3,000,000 in digital advertising prior to June  
12 2025;
- 13 • provides for the City’s guaranteed use of \$1,000,000 of digital and print  
14 advertising space and other media services per year; and

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

18 WHEREAS, On September 27, 2022, the SFMTA, under authority delegated by the  
19 Planning Department, determined that the Second Amendment to the Transit Shelter  
20 Advertising Agreement with Clear Channel Outdoor, Inc., is not a “project” under the California  
21 Environmental Quality Act pursuant to Title 14 of the California Code of Regulations, Sections  
22 15060(c) and 15378(b); and

23 WHEREAS, On October 4, 2022, the SFMTA Board of Directors adopted Resolution  
24 No. 221004-092, authorizing the Director of Transportation to execute the Second  
25 Amendment to the Transit Shelter Advertising Agreement with Clear Channel Outdoor, LLC,

1 to exercise the option to extend the Agreement for five years, from December 7, 2022,  
2 through December 7, 2027, adjust the minimum annual guarantee payments, as well as  
3 administrative and marketing payments, and increase the maintenance and service  
4 obligations of Clear Channel; and

5 WHEREAS, The SFMTA Board Resolution also directed staff, within 60 days of the  
6 approval of the Agreement, to complete a full assessment of the state of bus shelters and  
7 platforms with a plan to bring them up to the maximum condition score and report back at a  
8 hearing within six months on how many shelters and platforms were repaired, including an  
9 overlay of equity neighborhoods, and to what level, as well as the clearance of the backlog of  
10 repairs; and

11 WHEREAS, On November 1, 2022, the SFMTA adopted Resolution No. 221101-104,  
12 correcting the Second Amendment to the Agreement to remove surplus language from the  
13 Amendment; and

14 WHEREAS, On November 8, 2022, the Port Commission adopted Resolution  
15 No. 22-61, approving the Second Amendment to the Agreement (as corrected); now,  
16 therefore, be it

17 RESOLVED, That the Board of Supervisors approves the Second Amendment to the  
18 Transit Shelter Advertising Agreement with Clear Channel Outdoor, LLC (as corrected), to  
19 exercise the option to extend the Agreement for five years, through December 7, 2027, adjust  
20 the minimum annual guarantee payments, as well as administrative and marketing payments,  
21 and increase the maintenance and service obligations of Clear Channel; and, be it

22 FURTHER RESOLVED, That within 30 days after execution of the Second  
23 Amendment, the final document shall be provided to the Clerk of the Board for inclusion in the  
24 official file.

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<p><b>Item 2</b> <b>File 22-1128</b></p>	<p><b>Department:</b> Municipal Transportation Agency (MTA)</p>
<p><b>EXECUTIVE SUMMARY</b></p>	
<p style="text-align: center;"><b>Legislative Objectives</b></p> <ul style="list-style-type: none"> <li>• The proposed resolution approves the second amendment to the Clear Channel agreement, which (1) exercises the agreement’s option to extend for five-years through December 2027, (2) decreases revenues due to MTA for the final five-years, and (3) changes Clear Channel maintenance responsibilities, and makes other changes, described below.</li> </ul> <p style="text-align: center;"><b>Key Points</b></p> <ul style="list-style-type: none"> <li>• The City’s current agreement with Clear Channel began in 2007 and grants Clear Channel rights to own, operate and manage transit shelters and public advertising displays. The agreement is for 15 years through December 2022 with one five-year option to extend through December 2027, at the City’s sole discretion. The Agreement provides for Clear Channel to make the greater of either (1) annual minimum annual guaranteed (MAG) payments, or (2) a revenue share payment equal to 55 percent of advertising revenues, and make other annual payments to MTA and the Arts Commission</li> <li>• Clear Channel has never generated sufficient revenues to pay the revenue share during the term of the existing agreement and had revenues that were less than the MAG in the four-year period between 2016 and 2019. In June 2021, the Board of Supervisors approved the first amendment to the Clear Channel agreement which reduced MAG revenues from \$44.2 million to \$17.9 million for the period January 2020 to June 2022.</li> <li>• The proposed second amendment reduces MAG and other payments due to MTA for the five-year extension by \$64.7 million in exchange for (1) increasing the frequency of cleaning transit shelters from two to three times per week, (2) transferring ownership of 1,200 transit shelters to MTA at the end of the agreement, (3) providing MTA \$1 million in free advertising, and (4) \$3 million in capital investment to update advertising displays at 50 transit shelters, which together are valued at \$23 million.</li> </ul> <p style="text-align: center;"><b>Fiscal Impact</b></p> <ul style="list-style-type: none"> <li>• According to MTA, the Agency’s five-year financial plan assumes \$50.6 million in MAG revenues from this contract, or approximately \$5.8 million less than what would be provided in the proposed second amendment.</li> </ul> <p style="text-align: center;"><b>Policy Consideration</b></p> <ul style="list-style-type: none"> <li>• Clear Channel currently carries a performance bond of \$10 million, which is two to three years of transit shelter and platform maintenance. According to Jonathan Rewers, MTA Acting Chief Financial Officer, neither MTA nor Public Works have sufficient staffing to assume these maintenance responsibilities.</li> </ul> <p style="text-align: center;"><b>Recommendation</b></p> <p style="text-align: center;">Approval of the proposed resolution is a policy matter for the Board of Supervisors</p>	

**MANDATE STATEMENT**

City Charter Section 9.118(a) provides for Board of Supervisors approval by resolution for contracts with revenues of \$1 million or more, or for modification of such contracts.

**BACKGROUND**

**Clear Channel Agreement**

The proposed resolution is a request to the Board of Supervisors to amend the City’s agreement with Clear Channel Outdoor, Inc. (Clear Channel). This agreement, which is between the Port, San Francisco Municipal Transportation Agency (MTA), and Clear Channel, was initially approved in 2007, granting Clear Channel rights to own, operate and manage transit shelters and public advertising displays, including transit shelters and kiosks located on Port property. The agreement is for 15 years through December 2022 with one five-year option to extend through December 2027, at the City’s sole discretion. The MTA informed Clear Channel of its intention to exercise the option in late 2022 and began to re-negotiate the terms and conditions of the contract for the final five years to ensure continuous support and maintenance of Muni’s transit shelters throughout the City.

The Agreement provides for Clear Channel to make the greater of either (1) minimum annual guaranteed (MAG) payments, or (2) a revenue share payment equal to 55 percent of advertising revenues. In June 2021, the Board of Supervisors approved the first amendment to the Clear Channel agreement which reduced MAG revenues from \$44.2 million to \$17.9 million for the period January 2020 to June 2022 to account for decreased advertising revenues during the onset of the pandemic. The first amendment also reduced the revenue share from 55% to 50% in FY 2020-21 and FY 2021-22 and reduced the annual administrative and marketing fees due to MTA for two years, which totaled approximately \$700,000 per year. Total MAG payments from Clear Channel to MTA through 2022 are \$159.8 million.

**Clear Channel Financial Performance**

Clear Channel has never generated sufficient revenues to pay the revenue share during the term of the existing agreement and had revenues that were less than the MAG in the four-year period between 2016 and 2019. According to a September 2022 MTA staff report to the MTA Board of Directors, total Clear Channel advertising revenues were \$14.1 million in contract year 2018-19 or approximately \$2 million less than the MAG payments due to MTA that year and advertising revenues were \$8.0 million in contract year 2021-22, which was \$1.7 million more than the \$6.3 million in MAG payments due to MTA in FY 2021-22.<sup>1</sup>

According to its 2021 10-K (an annual financial report filed with the Securities and Exchange Commission), Clear Channel had a \$433.8 million net loss in 2021 (including \$375.1 million in

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<sup>1</sup> The original contract provided for a \$18.7 million MAG payment in FY 2021-22, however the payment was reduced to \$6.3 million in the first amendment to the contract.

negative cash flows) and the company's liabilities exceeded its assets by approximately \$3.2 billion. According to its 2022 third quarter report (10-Q filing), the company remains unprofitable but is losing cash at a slower rate than in 2021; Clear Channel had a \$193.8 million net loss through September 2022, including \$81.8 million in negative cash flows. In 2019, transit advertising accounted for 30% of Clear Channel's advertising inventory and 12 percent of global revenues.

## DETAILS OF PROPOSED LEGISLATION

The proposed resolution approves the second amendment to the Clear Channel agreement, which (1) exercises the agreement's option to extend for five years through December 2027, (2) decreases revenues due to MTA for the final five-years of the agreement, (3) changes Clear Channel maintenance responsibilities, and (4) makes other changes, described below.

### Revenues

Under the existing agreement, Clear Channel would pay \$115.8 million in MAG payments during the proposed five-year contract extension or approximately \$23.2 million annually in addition to the cost of maintenance expenses. This reflects an advertising revenue amount that has never been achieved over the first 15 years of the contract, which has ranged from \$5.8 million to \$14.5 million. On average, over the first 15 years of the contract, Clear Channel has achieved approximately \$11.4 million in advertising revenues annually. The proposed second amendment reduces the MAG payments for that period to \$56.45 million or by 51.3 percent, to reflect prior actual revenues and right-size the amount based on MTA's and Clear Channel's assessment of current economic conditions. The revised MAG would result in approximately \$9.9 million in MAG provided to the City per year, a reduction of 13 percent from prior average annual amounts through June 2022.<sup>2</sup>

In addition, the current agreement requires approximately \$1.1 million per year paid to the MTA for administrative fees and marketing support and \$400,000 paid to the Arts Commission, escalated annually by inflation. The proposed second amendment eliminates payments to the Arts Commission and reduces MTA's payments to \$500,000 per year in FY 2022-23 & FY 2023-24 and then \$700,000 per year through December 2027.

The proposed second amendment also extends the current agreement's \$1 million per year in free advertising for the City and removes the advertising revenue share, which is scheduled to increase to 57% under the current agreement. As noted above, under the current agreement, Clear Channel has never achieved revenues sufficient to pay the revenue share (that would exceed the MAG).

### Maintenance

The proposed second amendment increases Clear Channel's inspection and cleaning responsibilities for transit shelters from two to three times per week, an increase of 50% but

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<sup>2</sup> Average MAG payments were \$12.7 million through 2019. The \$9.9 million average MAG payment in the second amendment is 22 percent less than the average MAG payment prior to the pandemic.

reduces transit platform maintenance from daily to five times per week, to focus more resources across the entire Muni transit system. According to MTA, Clear Channel will increase maintenance staff from 15 to 30 FTEs to cover the increase maintenance frequency. The second amendment extends the period that Clear Channel must replace a destroyed transit shelter from 15 to 45 days, to match actual performance.

We have not been provided a record of the contractor's maintenance performance.

### **Security Deposits**

In consideration of Clear Channel's reduced financial commitment to the City, the proposed second amendment reduces the performance bond that Clear Channel would be required to carry from \$20 million to each year's MAG payment, which ranges from \$7 million to \$13.7 million, and reduces the letter of credit that Clear Channel would be required to carry from \$6 million to \$2 million. The City's Risk Management Division approved these changes.

### **Asset Management & Ownership**

The proposed second amendment requires Clear Channel to hire a contractor to rate all 1,200 transit shelters and develop a maintenance plan that prioritizes equity and shelters in poor condition. Though not specified in the contract, MTA expects that Clear Channel would spend \$3 million to replace and repair transit shelters, which would refresh approximately 400 shelters. Under the agreement, Clear Channel will also spend \$3 million by June 2025 on improving digital advertising displays within the shelters, which would provide 50 shelters with more durable advertising screens.

Under the second amendment, at the end of the extension term, Clear Channel would transfer ownership of all 1,200 transit shelters and advertising kiosks to MTA, which Agency staff believe is valued at \$6 million.

## **FISCAL IMPACT**

Exhibit 1 below shows the decreased revenues to the City under the proposed second amendment, which total \$64.8 million over the five-year extension (\$59.4 million in decreased MAG payments and \$5.35 million in other payments). As noted above, the advertising revenue share decreases from 57% to 0%.

**Exhibit 1: Fiscal Impact of Five-Year Extension with Proposed Second Amendment**

	<b>Current</b>	<b>Proposed</b>	<b>Difference</b>
MAG Payments	115,829,000	56,450,000	(59,379,000)
Other Payments	8,800,000	3,450,000	(5,350,000)
Free Advertising	0	5,000,000	5,000,000
Transit Shelter Ownership	0	6,000,000	6,000,000
Maintenance	18,000,000	27,000,000	9,000,000
Digital Advertising Capital	0	3,000,000	3,000,000
<b>Total</b>	<b>142,629,000</b>	<b>100,900,000</b>	<b>(41,729,000)</b>

Source: Clear Channel Agreement & Proposed Second Amendment

Note: Other Payments include \$1.1 million per year paid to the MTA for administrative fees and marketing support and \$400,000 per year to the Arts Commission, escalated annually by inflation

According to MTA staff, the Agency’s five-year financial plan assumes \$50.6 million in MAG revenues from this contract, or approximately \$5.8 million less than would be provided in the proposed second amendment.

In consideration of the decreased payment obligations, as noted above, the proposed amendment provides for the transfer of all transit shelters to MTA ownership at the end of the agreement, which are valued at \$6 million, provides \$1 million per year of advertising space for MTA, and includes \$3 million in capital investment to 50 existing advertising displays at shelters. Maintenance efforts are valued at \$5 million in contract year 2023 and \$27 million over the five-year term. The total value of these changes is \$23 million over five years.

**POLICY CONSIDERATION**

Although extension of the agreement is at the City’s sole discretion, Clear Channel currently carries a performance bond of \$10 million, which is two to three years of transit shelter and platform maintenance. According to Jonathan Rewers, MTA Acting Chief Financial Officer, neither MTA nor Public Works have sufficient staffing to assume these maintenance responsibilities.

**RECOMMENDATION**

Approval of the proposed resolution is a policy matter for the Board of Supervisors.

## SECOND AMENDMENT TO TRANSIT SHELTER ADVERTISING AGREEMENT

This SECOND AMENDMENT to the Transit Shelter Advertising Agreement is made and entered into \_\_\_\_\_ by and between the City and County of San Francisco (City), by and through its Municipal Transportation Agency (SFMTA), and its Port Commission (Port), and Clear Channel Outdoor, LLC, a Delaware limited liability company (Contractor).

### RECITALS

- A. City and Contractor have entered into the Agreement (as defined below).
- B. The Agreement was amended on June 25, 2021, to reduce revenue payments in Fiscal Years 20/21 and 21/22 due to loss of revenue as a result of the COVID pandemic, and to obtain additional advertising opportunities and support for the City.
- C. In recognition of the ongoing impacts from the COVID pandemic and other conditions beyond Contractor's control, which have had, and continue to have, a material adverse effect on Contractor's ability to generate revenue under the Agreement, and further recognizing the SFMTA's interest in providing transit shelters for its patrons under this Agreement, the City now wishes to exercise its sole option to extend the term of the Agreement for five years, through December 10, 2027, on the terms and conditions set forth below.

NOW, THEREFORE, Contractor and the City agree as follows:

### Article 1. Definitions

The following definitions shall apply to this Amendment:

**1.1 Agreement.** The term "Agreement" shall mean the Transit Shelter Advertising Agreement between City and Contractor, dated December 10, 2007 (as amended), for advertising on SFMTA and Port Transit Shelters and Kiosks.

**1.2 Other Terms.** Terms used and not defined in this Amendment shall have the meanings assigned to such terms in the Agreement.

### Article 2. Modifications to the Agreement

**2.1.** Section 1.24 (High-Level Boarding Platform) of the Agreement is replaced in its entirety to read as follows:

**1.24. High-Level Boarding Platform.** The boarding platforms supplying level boarding directly into light rail vehicles without the necessity of a ramp or lift. As of the latest Amendment of this Agreement, High-Level Boarding Platforms serve the Stonestown, Folsom Street, Brannan Street, King and 2<sup>nd</sup> Streets (Oracle Park), Caltrain Station, and T-Line transit stops, including 4th Street/Harrison, 4th St./Folsom, and the UCSF/Chase Center Station.

**2.2.** A new Section 1.51 (Visual Scan) is added to the Agreement to read as follows:

**1.51. Visual Scan.** An inspection of a Transit Shelter generated from Contractor's tracking system with a particular bar code, and with time stamps (a) on a

“before” photo of the Shelter on the date of the initial inspection, and (b) on an “after” photo once any required maintenance and repairs have been completed.

**2.3.** Section 2.1.1(a) (SFMTA to Contractor) of the Agreement is replaced in its entirety to read as follows:

**(a) SFMTA to Contractor.** During the term of this Agreement, and subject to the requirements of this Agreement and applicable laws, the SFMTA grants to Contractor the exclusive right to place digital and print advertising on Transit Shelters and Kiosks governed by this Agreement (a) on the City's Public Rights-of-Way outside the jurisdiction of the Port; and (b) on any Public Right-of-Way that is serviced by a public transit line under an arrangement between the SFMTA and another public entity.

**2.4.** Section 2.3 (Port to Contractor) of the Agreement is amended in its entirety to read as follows:

**2.3 Port to Contractor.** Port grants to Contractor the exclusive right to place print and digital advertising on Structures on City property within Port jurisdiction during the term of this Agreement, subject to the terms and conditions of this Agreement and approval of the Port.

**2.5.** A new Section 4.2.3(e) (Vandalized Shelters) is added to the Agreement to read as follows:

**(e) Vandalized Shelters.** In the event that during a consecutive six-month period any Shelter is vandalized more than two times (excluding graffiti, which Contractor shall remove), the parties shall meet and discuss, in good faith, solutions to mitigate continued vandalism, which could include removal of glass back panels, addition of back bars, or removal of the Shelter Implementation of any solution shall require approval of the SFMTA.

**2.6.** Section 5.3.1 of the Agreement is deleted.

**2.7.** Section 5.6 (City's Use of Digital and Print Advertising Space) of the Agreement is replaced in its entirety by the following:

**5.6 City's Use of Digital and Print Advertising Space.** Contractor shall provide guaranteed use of digital and print advertising space and other media services equivalent to amounts commercially available at an amount of \$1,000,000 per year on a space-available basis (based on Contractor's then current rates). The City will be responsible for providing all printed materials ready for posting by Contractor.

**2.8.** Section 6.7 (Experimental Advertising) of the Agreement is replaced in its entirety to read as follows:

**6.7. Experimental Advertising.** Notwithstanding anything to the contrary in the Contract, Contractor may at its discretion provide new advertising concepts on the digital signs, such as experiential, interactive, pilot and other programs and advertisements, provided any such campaigns shall comply with the SFMTA's advertising content guidelines.

2.9. Section 7.1.1(b)(iv) is renumbered as Section 7.1.1(b)(v).

2.10. Section 7.1.1(b) (Total Required Payments) is amended by adding a new subsection (iv) (Future Administrative Payments) to read as follows:

(iv) **Future Administrative Payments.** Notwithstanding the provisions of subsections (i), (ii), and (iii) of Section 7.1.1(b), Contractor shall remit one annual payment to the SFMTA to cover Administrative Payments, Payments for Arts Commission, and Marketing Support, as follows:

July 2022-June 2023: \$500,000  
July 2023-June 2024: \$500,000  
July 2024-June 2025: \$700,000  
July 2025-June 2026: \$700,000  
July 2026-June 2027: \$700,000  
July 2027-December 2027: \$350,000

2.11. Section 7.1.1(b)(v), Table 1 (MAG Amounts and Revenue Share Percentage) of the Agreement is replaced in its entirety by a new Table 1 (MAG Amounts) to read as follows:

**Table 1: MAG Amounts**

<b>Fiscal Year</b>	<b>Revenue</b>	<b>MAG</b>
July 2022 – June 2023	\$14,200,000	\$7,000,000
July 2023 – June 2024	\$14,900,000	\$7,800,000
July 2024 – June 2025	\$15,700,000	\$9,800,000
July 2025 – June 2026	\$16,400,000	\$11,300,000
July 2026 – June 2027	\$17,300,000	\$13,700,000
July 2027 – Dec. 7, 2027	\$8,650,000	\$6,850,000

2.12. A new Section 8.1.5 (Digital Capital Expenditures) is added to the Agreement to read as follows:

**8.1.5 Digital Capital Expenditures.** Contractor shall invest the following amounts in digital advertising displays and installation costs per year:

July 2022-June 2023: \$1,000,000  
July 2023-June 2024: \$1,500,000  
July 2024-June 2025: \$500,000

2.13. Section 8.4.7 (Power to Shelters and Kiosks) of the Agreement is replaced in its entirety to read as follows:

**8.4.7. Power to Shelters and Kiosks.** Contractor will bear the full responsibility, including all costs, of furnishing, installing and maintaining any required electrical service to each Structure authorized under this Agreement; provided, however, to the extent Contractor is required to procure electrical service, including, without limitation, metered service, through Pacific Gas & Electric Company (PG&E), Contractor shall not be liable, and shall

not be deemed in breach of this Agreement, for any delay on the part of PG&E to provide or connect such service to a Structure. To the extent necessary, Contractor will be responsible for contracting with PG&E for required electricity. If obtaining service directly from PG&E, Contractor will be responsible for obtaining an agreement from PG&E to allow unmetered electrical service. Contractor may use City-owned street lighting circuits and conduits, including the nearest available connection, to obtain power for a Structure where reasonably available and on terms approved by the San Francisco Public Utilities Commission (SFPUC). The rates charged by the SFPUC for electrical service will be the then-current rates approved by the SFPUC for commercial users. All electrical service lines at the site of each Structure must be underground and must originate from the point-of-service designated by the SFPUC or by PG&E. To the extent feasible, Contractor must incorporate solar power into Structures that have electrical components.

**2.14.** Section 9.4 (Inspection and Clean-up) of the Agreement is replaced in its entirety to read as follows:

**9.4 Inspection and Clean-up.** Except as otherwise provided in this Section 9.4, and once Contractor achieves appropriate staffing levels but no later than December 31, 2022, Contractor must conduct a Visual Scan of each Shelter and Kiosk at least three times per week, except Shelters and Kiosks on Market Street, which shall be inspected five times per week. Contractor shall make more frequent inspections if conditions warrant. In the course of each inspection of a Shelter or Kiosk or promptly thereafter, Contractor shall remove all Graffiti, stickers, posters, litter, dust, dirt, and weeds from each Shelter or Kiosk, and from a five-foot radius surrounding the Shelter or Kiosk, exclusive of private property and rail right-of-way (in coordination with the Department of Streets and Sewers). Contractor shall provide City with a monthly narrative summary of inspection and clean-up operations, documenting all Shelter and Kiosk inspections and identifying problem areas and corrective actions taken. The monthly report required by this Section shall include the results of the Visual Scans, fabrication and installation costs for all Shelters and Kiosks installed in the previous month, all maintenance and repair costs, and staffing levels of shelter maintenance crews, including total budgeted positions and existing vacancies. The parties shall meet at least quarterly to assess the maintenance program.

**2.15.** Section 9.4.1 (Additional Maintenance) of the Agreement is replaced in its entirety to read as follows:

**9.4.1. Additional Maintenance.** In addition to the level of service required under Section 9.4, City may elect for Contractor to perform maintenance of Shelters more than three times a week. In that event, the annual incremental cost for such maintenance will be \$3,500 per Shelter during the first year of the Agreement, as adjusted by the CPI annually thereafter. Upon submission of monthly documentation satisfactory to the City, Contractor may deduct any such costs for extra maintenance of the Shelters from Contractor's MAG payment submitted under Section 7.1.1(b)(v).

**2.16.** Section 9.4.2 (High Level, E-Line and F-Line Platforms) of the Agreement is replaced in its entirety to read as follows:

**9.4.2. High-Level, E-Line and F-Line Boarding Platforms.** With respect to all High-Level Boarding Platforms and E-Line and F-Line Low-Level Boarding Platforms, Contractor shall perform all maintenance duties set forth in Exhibit H. Notwithstanding the requirements of Section 9.4, Contractor will make inspections of all such Boarding Platforms five days a week and shall, as needed: pick-up trash, remove Graffiti, clean and wash each boarding platform; inspect LED signs and lighting fixtures, and replace defective lights.

**2.17.** Section 9.5.1 of the Agreement (Transit Shelters; Kiosks) is replaced in its entirety to read as follows:

**9.5.1. Transit Shelters; Kiosks.** Except as otherwise provided in this Section 9.5, within 48 hours of discovery by Contractor, or notification by the public or by City, Contractor shall repair any damage, including, but not limited to, damage from vandalism or Graffiti, found on or around the Shelter or Kiosk, exclusive of other street furniture not covered by this Agreement and private property. Contractor shall repair, replace or remove, as appropriate and feasible, any damage to a Shelter or Kiosk that is of a hazardous nature (e.g., broken glass, light sources that need replacing) within 24 hours of discovery or notification, or as appropriate under the circumstances. Contractor also shall maintain the pavement within a five-foot radius of each Shelter or Kiosk, repairing any damage that may have occurred during repair, removal or replacement of any Shelter or Kiosk. If the Shelter or Kiosk is destroyed, Contractor shall remove the Shelter or Kiosk remains within 48 hours of notification (or such longer period as reasonable under the circumstances provided Contractor is diligently pursuing removal) and replace the Shelter or Kiosk within 45 Days. In conjunction with such removal, Contractor agrees, at its own expense, to restore the affected sidewalk, median boarding island or curb area to a safe, finished condition.

**2.18.** Section 9.5.2 of the Agreement (High-Level and Low-Level Boarding Platforms on E-Line and F-Line) is replaced in its entirety to read as follows:

**(b) High-Level and Low-Level Boarding Platforms on E-Line and F-Line.** Contractor's repair duties with respect to all High-Level and E-Line and F-Line Low-Level Boarding Platforms are set forth in Exhibit H. Contractor's repair and replacement obligations regarding the High-Level Boarding Platforms, and the E-Line and F-Line Shelters (if constructed and owned by the SFMTA) will be limited to repairs and/or replacements necessitated by vandalism or intentional damage or destruction; if Contractor owns the Shelters, Contractor will have an obligation to repair or replace Platform or Shelter components on such Shelters as a result of construction defects, normal wear and tear, accidents or acts of God. Within 24 hours of discovery, Contractor will report any such damage to the SFMTA contact person by email (as provided from time to time by the SFMTA) and Contractor will coordinate and communicate timeline with the SFMTA to complete required repair work. Notwithstanding the above, if City requires Contractor to perform any repairs to High-Level Boarding Platforms, E-Line, or F-Line Low-Level Boarding Platforms that are not set forth in Exhibit H, Contractor shall perform said repairs. If using its own employees, Contractor shall charge on a time-and-materials basis.

**2.19.** A new Section 9.10 (Asset Management and Shelter Refresh Program) is added to the Agreement to read as follows:

**9.10 Asset Management and Shelter Refresh Program**

- (a) Asset Management Plan.** On or before six months after the approval of this Amendment, Contractor shall hire an independent consultant to prepare an Asset Management Plan (Plan) for all Transit Shelters. The Plan must include location, date of installation, amenities on the Shelter, and a "condition score," to be approved by the SFMTA.
- (b) Condition Scoring System.** Contractor shall implement a condition scoring system for each Shelter based on the following criteria:

Shelter Element	Grade High = 2 Points	Grade Medium = 1 Point	Grade Low = 0 Point	Picture	Part of Rating Calculation
Roof	Structurally Sound, no cracks	Structurally sound, one crack, with minor graffiti	Broken, major graffiti	x	Y
Map Case	Good condition, clear, current map	Opaque and/or cracked, current map, minor graffiti	Missing plexiglass, no map, no frame	x	Y
Ad Box	Good condition, functional, no damage	Opaque and/or cracked, minor graffiti	Missing plexiglass, no ad, no frame	x	Y
Supports	Structurally Sound, Minimal Rust	Structurally sound, minor rust or repairs	Broken, Significant Rust	x	Y
Lighting	Lights illuminate/signage illuminate	Lights illuminate, signage not illuminated	Lights broken or missing - signage does not illuminate	x	Y
Safety Concerns - Glass & Seating	No hazardous issue related to glass/seating	Missing glass panel with bar, seats loose	Shattered glass, missing components, exposed electrical/wiring, broken seats	x	Y
Glass	Minimal scratches, no acid damage and glass is intact	Glass is cracked but intact and/or some acid/ graffiti damage	Significant scratches and acid damage, glass not intact.	x	Y
Decals and stop ID	Available / Legible	Available / Illegible	Missing	x	N

Within 30 days from the date the Plan is issued, or such other time as may be reasonable under the circumstances (subject to approval by the SFMTA), Contractor shall commence repair of the Transit Shelters that fall below the minimum condition score, prioritizing repairs based on the shelter condition scores. Contractor shall diligently pursue all repairs as reasonable under the circumstances. Alternatively, in its sole discretion, Contractor may replace any of such Shelters with new Shelters.

- (c) **Shelter-Refresh Program.** Contractor will develop a Shelter Refresh Program based on the conditions of the Shelters as reflected on the Plan, monthly reports, Visual Scans, and information contained in the IMCDS system (see Section 9.7) and report on the Program to the SFMTA on a monthly basis. Contractor shall work with the SFMTA to ensure equity considerations remain a part of the Shelter Refresh Program such that the benefits contemplated by this Agreement are accessible to persons with disabilities and fairly distributed throughout the City, including to low-income communities.

2.20. Section 13.1.1 (Amount of Bond) is replaced in its entirety to read as follows:

**13.1.1. Amount of Bond.** In the event that the City exercises its option to extend this Agreement as provided in Section 15.2, Contractor shall reissue the performance bond annually for the duration of the extension of the term of this Agreement in an amount equal to the Contractor's MAG obligation under Section

7.1.1(b)(v), and throughout the performance of Contractor's remaining obligations under this Agreement. If Contractor fails to deliver the initial performance bond within five Days, or fails to notify City annually of the renewal of the bond within five Days before each anniversary of the Effective Date, City will be entitled to cancel this Agreement. Contractor shall maintain the performance bond during the term of this Agreement. In the event this Agreement is assigned, as provided for in Section 21.7, City will return or release the performance bond not later than the effective date of the assignment, provided that the assignee has delivered to City an equivalent performance bond, as determined by City. Notwithstanding anything to the contrary herein, in no event shall Surety's aggregate liability exceed the penal sum of the applicable bond amount; provided, however, that this limitation shall not affect Contractor's liability under this Agreement.

2.21. Section 13.2.3 of the Agreement (Extensions of Agreement) is replaced in its entirety to read as follows:

**13.2.3 Extensions of Agreement.** Should the City exercise the option to extend the Agreement as provided in Section 15.2, Contractor shall provide a letter of credit in the amount of \$2,000,000 for the term of the option and throughout the performance of Contractor's remaining obligations under this Agreement.

2.22. Section 16.1.1(b) is replaced in its entirety to read as follows:

**(b) Transfer of Title.** Direct Contractor to execute all required documents to transfer to the City title to all Shelters, Kiosks, and Associated Equipment free and clear of all encumbrances.

### **Article 3. Effective Date**

The modifications set forth in Section 2 shall be effective on and after the date first referenced above.

### **Article 4. Legal Effect**

Except as expressly modified by this Amendment, all of the terms and conditions of the Agreement shall remain unchanged and in full force and effect. Nothing herein shall be deemed to waive rights either party may have under the Agreement or at law, all of which are reserved.

IN WITNESS WHEREOF, Contractor and City have executed this Second Amendment as of the date first referenced above.

<p>CITY</p> <p>San Francisco Municipal Transportation Agency</p> <p>By _____</p> <p>Jeffrey P. Tumlin Director of Transportation</p> <p>MTA Board of Directors Resolution No. _____ Dated: _____ Attest: _____</p> <p>_____ Secretary, SFMTA Board of Directors</p> <p>San Francisco Port Commission</p> <p>_____ Elaine Forbes, Executive Director</p> <p>Port Commission Resolution No. _____ Dated: _____ Attest: _____</p> <p>_____ Secretary</p> <p>Board of Supervisors Resolution _____ Dated: _____ Attest: _____</p> <p>_____ Clerk of the Board</p> <p>Approved as to Form: David Chiu, City Attorney</p> <p>By: _____ Robin M. Reitzes Deputy City Attorney</p>	<p>CONTRACTOR</p> <p>Clear Channel Outdoor</p> <p> _____ Robert Schmitt Senior Vice President and Regional President—Northern California</p>
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## SECOND AMENDMENT TO TRANSIT SHELTER ADVERTISING AGREEMENT

This SECOND AMENDMENT to the Transit Shelter Advertising Agreement is made and entered into \_\_\_\_\_ by and between the City and County of San Francisco (City), by and through its Municipal Transportation Agency (SFMTA), and its Port Commission (Port), and Clear Channel Outdoor, LLC, a Delaware limited liability company (Contractor).

### RECITALS

- A. City and Contractor have entered into the Agreement (as defined below).
- B. The Agreement was amended on June 25, 2021, to reduce revenue payments in Fiscal Years 20/21 and 21/22 due to loss of revenue as a result of the COVID pandemic, and to obtain additional advertising opportunities and support for the City.
- C. In recognition of the ongoing impacts from the COVID pandemic and other conditions beyond Contractor's control, which have had, and continue to have, a material adverse effect on Contractor's ability to generate revenue under the Agreement, and further recognizing the SFMTA's interest in providing transit shelters for its patrons under this Agreement, the City now wishes to exercise its sole option to extend the term of the Agreement for five years, through December 10, 2027, on the terms and conditions set forth below.

NOW, THEREFORE, Contractor and the City agree as follows:

### Article 1. Definitions

The following definitions shall apply to this Amendment:

**1.1 Agreement.** The term "Agreement" shall mean the Transit Shelter Advertising Agreement between City and Contractor, dated December 10, 2007 (as amended), for advertising on SFMTA and Port Transit Shelters and Kiosks.

**1.2 Other Terms.** Terms used and not defined in this Amendment shall have the meanings assigned to such terms in the Agreement.

### Article 2. Modifications to the Agreement

**2.1.** Section 1.24 (High-Level Boarding Platform) of the Agreement is replaced in its entirety to read as follows:

**1.24. High-Level Boarding Platform.** The boarding platforms supplying level boarding directly into light rail vehicles without the necessity of a ramp or lift. As of the latest Amendment of this Agreement, High-Level Boarding Platforms serve the Stonestown, Folsom Street, Brannan Street, King and 2<sup>nd</sup> Streets (Oracle Park), Caltrain Station, and T-Line transit stops, including 4th Street/Harrison, 4th St./Folsom, and the UCSF/Chase Center Station.

**2.2.** A new Section 1.51 (Visual Scan) is added to the Agreement to read as follows:

**1.51. Visual Scan.** An inspection of a Transit Shelter generated from Contractor's tracking system with a particular bar code, and with time stamps (a) on a

“before” photo of the Shelter on the date of the initial inspection, and (b) on an “after” photo once any required maintenance and repairs have been completed.

**2.3.** Section 2.1.1(a) (SFMTA to Contractor) of the Agreement is replaced in its entirety to read as follows:

**(a) SFMTA to Contractor.** During the term of this Agreement, and subject to the requirements of this Agreement and applicable laws, the SFMTA grants to Contractor the exclusive right to place digital and print advertising on Transit Shelters and Kiosks governed by this Agreement (a) on the City's Public Rights-of-Way outside the jurisdiction of the Port; and (b) on any Public Right-of-Way that is serviced by a public transit line under an arrangement between the SFMTA and another public entity.

**2.4.** Section 2.3 (Port to Contractor) of the Agreement is amended in its entirety to read as follows:

**2.3 Port to Contractor.** Port grants to Contractor the exclusive right to place print and digital advertising on Structures on City property within Port jurisdiction during the term of this Agreement, subject to the terms and conditions of this Agreement and approval of the Port.

**2.5.** A new Section 4.2.3(e) (Vandalized Shelters) is added to the Agreement to read as follows:

**(e) Vandalized Shelters.** In the event that during a consecutive six-month period any Shelter is vandalized more than two times (excluding graffiti, which Contractor shall remove), the parties shall meet and discuss, in good faith, solutions to mitigate continued vandalism, which could include removal of glass back panels, addition of back bars, or removal of the Shelter Implementation of any solution shall require approval of the SFMTA.

**2.6.** Section 5.3.1 of the Agreement is deleted.

**2.7.** Section 5.6 (City's Use of Digital and Print Advertising Space) of the Agreement is replaced in its entirety by the following:

**5.6 City's Use of Digital and Print Advertising Space.** Contractor shall provide guaranteed use of digital and print advertising space and other media services equivalent to amounts commercially available at an amount of \$1,000,000 per year on a space-available basis (based on Contractor's then current rates). The City will be responsible for providing all printed materials ready for posting by Contractor.

**2.8.** Section 6.7 (Experimental Advertising) of the Agreement is replaced in its entirety to read as follows:

**6.7. Experimental Advertising.** Notwithstanding anything to the contrary in the Contract, Contractor may at its discretion provide new advertising concepts on the digital signs, such as experiential, interactive, pilot and other programs and advertisements, provided any such campaigns shall comply with the SFMTA's advertising content guidelines.

2.9. Section 7.1.1(b)(iv) is renumbered as Section 7.1.1(b)(v).

2.10. Section 7.1.1(b) (Total Required Payments) is amended by adding a new subsection (iv) (Future Administrative Payments) to read as follows:

(iv) **Future Administrative Payments.** Notwithstanding the provisions of subsections (i), (ii), and (iii) of Section 7.1.1(b), Contractor shall remit one annual payment to the SFMTA to cover Administrative Payments, Payments for Arts Commission, and Marketing Support, as follows:

July 2022-June 2023: \$500,000  
July 2023-June 2024: \$500,000  
July 2024-June 2025: \$700,000  
July 2025-June 2026: \$700,000  
July 2026-June 2027: \$700,000  
July 2027-December 2027: \$350,000

2.11. Section 7.1.1(b)(v), Table 1 (MAG Amounts and Revenue Share Percentage) of the Agreement is replaced in its entirety by a new Table 1 (MAG Amounts) to read as follows:

**Table 1: MAG Amounts**

<b>Fiscal Year</b>	<b>Revenue</b>	<b>MAG</b>
July 2022 – June 2023	\$14,200,000	\$7,000,000
July 2023 – June 2024	\$14,900,000	\$7,800,000
July 2024 – June 2025	\$15,700,000	\$9,800,000
July 2025 – June 2026	\$16,400,000	\$11,300,000
July 2026 – June 2027	\$17,300,000	\$13,700,000
July 2027 – Dec. 7, 2027	\$8,650,000	\$6,850,000

2.12. A new Section 8.1.5 (Digital Capital Expenditures) is added to the Agreement to read as follows:

**8.1.5 Digital Capital Expenditures.** Contractor shall invest the following amounts in digital advertising displays and installation costs per year:

July 2022-June 2023: \$1,000,000  
July 2023-June 2024: \$1,500,000  
July 2024-June 2025: \$500,000

2.13. Section 8.4.7 (Power to Shelters and Kiosks) of the Agreement is replaced in its entirety to read as follows:

**8.4.7. Power to Shelters and Kiosks.** Contractor will bear the full responsibility, including all costs, of furnishing, installing and maintaining any required electrical service to each Structure authorized under this Agreement; provided, however, to the extent Contractor is required to procure electrical service, including, without limitation, metered service, through Pacific Gas & Electric Company (PG&E), Contractor shall not be liable, and shall

not be deemed in breach of this Agreement, for any delay on the part of PG&E to provide or connect such service to a Structure. To the extent necessary, Contractor will be responsible for contracting with PG&E for required electricity. If obtaining service directly from PG&E, Contractor will be responsible for obtaining an agreement from PG&E to allow unmetered electrical service. Contractor may use City-owned street lighting circuits and conduits, including the nearest available connection, to obtain power for a Structure where reasonably available and on terms approved by the San Francisco Public Utilities Commission (SFPUC). The rates charged by the SFPUC for electrical service will be the then-current rates approved by the SFPUC for commercial users. All electrical service lines at the site of each Structure must be underground and must originate from the point-of-service designated by the SFPUC or by PG&E. To the extent feasible, Contractor must incorporate solar power into Structures that have electrical components.

**2.14.** Section 9.4 (Inspection and Clean-up) of the Agreement is replaced in its entirety to read as follows:

**9.4 Inspection and Clean-up.** Except as otherwise provided in this Section 9.4, and once Contractor achieves appropriate staffing levels but no later than December 31, 2022, Contractor must conduct a Visual Scan of each Shelter and Kiosk at least three times per week, except Shelters and Kiosks on Market Street, which shall be inspected five times per week. Contractor shall make more frequent inspections if conditions warrant. In the course of each inspection of a Shelter or Kiosk or promptly thereafter, Contractor shall remove all Graffiti, stickers, posters, litter, dust, dirt, and weeds from each Shelter or Kiosk, and from a five-foot radius surrounding the Shelter or Kiosk, exclusive of private property and rail right-of-way (in coordination with the Department of Streets and Sewers). Contractor shall provide City with a monthly narrative summary of inspection and clean-up operations, documenting all Shelter and Kiosk inspections and identifying problem areas and corrective actions taken. The monthly report required by this Section shall include the results of the Visual Scans, fabrication and installation costs for all Shelters and Kiosks installed in the previous month, all maintenance and repair costs, and staffing levels of shelter maintenance crews, including total budgeted positions and existing vacancies. The parties shall meet at least quarterly to assess the maintenance program.

**2.15.** Section 9.4.1 (Additional Maintenance) of the Agreement is replaced in its entirety to read as follows:

**9.4.1. Additional Maintenance.** In addition to the level of service required under Section 9.4, City may elect for Contractor to perform maintenance of Shelters more than three times a week. In that event, the annual incremental cost for such maintenance will be \$3,500 per Shelter during the first year of the Agreement, as adjusted by the CPI annually thereafter. Upon submission of monthly documentation satisfactory to the City, Contractor may deduct any such costs for extra maintenance of the Shelters from Contractor's MAG payment submitted under Section 7.1.1(b)(v).

**2.16.** Section 9.4.2 (High Level, E-Line and F-Line Platforms) of the Agreement is replaced in its entirety to read as follows:

**9.4.2. High-Level, E-Line and F-Line Boarding Platforms.** With respect to all High-Level Boarding Platforms and E-Line and F-Line Low-Level Boarding Platforms, Contractor shall perform all maintenance duties set forth in Exhibit H. Notwithstanding the requirements of Section 9.4, Contractor will make inspections of all such Boarding Platforms five days a week and shall, as needed: pick-up trash, remove Graffiti, clean and wash each boarding platform; inspect LED signs and lighting fixtures, and replace defective lights.

**2.17.** Section 9.5.1 of the Agreement (Transit Shelters; Kiosks) is replaced in its entirety to read as follows:

**9.5.1. Transit Shelters; Kiosks.** Except as otherwise provided in this Section 9.5, within 48 hours of discovery by Contractor, or notification by the public or by City, Contractor shall repair any damage, including, but not limited to, damage from vandalism or Graffiti, found on or around the Shelter or Kiosk, exclusive of other street furniture not covered by this Agreement and private property. Contractor shall repair, replace or remove, as appropriate and feasible, any damage to a Shelter or Kiosk that is of a hazardous nature (e.g., broken glass, light sources that need replacing) within 24 hours of discovery or notification, or as appropriate under the circumstances. Contractor also shall maintain the pavement within a five-foot radius of each Shelter or Kiosk, repairing any damage that may have occurred during repair, removal or replacement of any Shelter or Kiosk. If the Shelter or Kiosk is destroyed, Contractor shall remove the Shelter or Kiosk remains within 48 hours of notification (or such longer period as reasonable under the circumstances provided Contractor is diligently pursuing removal) and replace the Shelter or Kiosk within 45 Days. In conjunction with such removal, Contractor agrees, at its own expense, to restore the affected sidewalk, median boarding island or curb area to a safe, finished condition.

**2.18.** Section 9.5.2 of the Agreement (High-Level and Low-Level Boarding Platforms on E-Line and F-Line) is replaced in its entirety to read as follows:

**(b) High-Level and Low-Level Boarding Platforms on E-Line and F-Line.** Contractor's repair duties with respect to all High-Level and E-Line and F-Line Low-Level Boarding Platforms are set forth in Exhibit H. Contractor's repair and replacement obligations regarding the High-Level Boarding Platforms, and the E-Line and F-Line Shelters (if constructed and owned by the SFMTA) will be limited to repairs and/or replacements necessitated by vandalism or intentional damage or destruction; if Contractor owns the Shelters, Contractor will have an obligation to repair or replace Platform or Shelter components on such Shelters as a result of construction defects, normal wear and tear, accidents or acts of God. Within 24 hours of discovery, Contractor will report any such damage to the SFMTA contact person by email (as provided from time to time by the SFMTA) and Contractor will coordinate and communicate timeline with the SFMTA to complete required repair work. Notwithstanding the above, if City requires Contractor to perform any repairs to High-Level Boarding Platforms, E-Line, or F-Line Low-Level Boarding Platforms that are not set forth in Exhibit H, Contractor shall perform said repairs. If using its own employees, Contractor shall charge on a time-and-materials basis.

**2.19.** A new Section 9.10 (Asset Management and Shelter Refresh Program) is added to the Agreement to read as follows:

**9.10 Asset Management and Shelter Refresh Program**

- (a) Asset Management Plan.** On or before six months after the approval of this Amendment, Contractor shall hire an independent consultant to prepare an Asset Management Plan (Plan) for all Transit Shelters. The Plan must include location, date of installation, amenities on the Shelter, and a "condition score," to be approved by the SFMTA.
- (b) Condition Scoring System.** Contractor shall implement a condition scoring system for each Shelter based on the following criteria:

Shelter Element	Grade High = 2 Points	Grade Medium = 1 Point	Grade Low = 0 Point	Picture	Part of Rating Calculation
<b>Roof</b>	Structurally Sound, no cracks	Structurally sound, one crack, with minor graffiti	Broken, major graffiti	x	Y
<b>Map Case</b>	Good condition, clear, current map	Opaque and/or cracked, current map, minor graffiti	Missing plexiglass, no map, no frame	x	Y
<b>Ad Box</b>	Good condition, functional, no damage	Opaque and/or cracked, minor graffiti	Missing plexiglass, no ad, no frame	x	Y
<b>Supports</b>	Structurally Sound, Minimal Rust	Structurally sound, minor rust or repairs	Broken, Significant Rust	x	Y
<b>Lighting</b>	Lights illuminate/signage illuminate	Lights illuminate, signage not illuminated	Lights broken or missing - signage does not illuminate	x	Y
<b>Safety Concerns - Glass &amp; Seating</b>	No hazardous issue related to glass/seating	Missing glass panel with bar, seats loose	Shattered glass, missing components, exposed electrical/wiring, broken seats	x	Y
<b>Glass</b>	Minimal scratches, no acid damage and glass is intact	Glass is cracked but intact and/or some acid/ graffiti damage	Significant scratches and acid damage, glass not intact.	x	Y
<b>Decals and stop ID</b>	Available / Legible	Available / Illegible	Missing	x	N

Within 30 days from the date the Plan is issued, or such other time as may be reasonable under the circumstances (subject to approval by the SFMTA), Contractor shall commence repair of the Transit Shelters that fall below the minimum condition score, prioritizing repairs based on the shelter condition scores. Contractor shall diligently pursue all repairs as reasonable under the circumstances. Alternatively, in its sole discretion, Contractor may replace any of such Shelters with new Shelters.

- (c) **Shelter-Refresh Program.** Contractor will develop a Shelter Refresh Program based on the conditions of the Shelters as reflected on the Plan, monthly reports, Visual Scans, and information contained in the IMCDS system (see Section 9.7) and report on the Program to the SFMTA on a monthly basis. Contractor shall work with the SFMTA to ensure equity considerations remain a part of the Shelter Refresh Program such that the benefits contemplated by this Agreement are accessible to persons with disabilities and fairly distributed throughout the City, including to low-income communities.

2.20. Section 13.1.1 (Amount of Bond) is replaced in its entirety to read as follows:

**13.1.1. Amount of Bond.** In the event that the City exercises its option to extend this Agreement as provided in Section 15.2, Contractor shall reissue the performance bond annually for the duration of the extension of the term of this Agreement in an amount equal to the Contractor's MAG obligation under Section

7.1.1(b)(v), and throughout the performance of Contractor's remaining obligations under this Agreement. If Contractor fails to deliver the initial performance bond within five Days, or fails to notify City annually of the renewal of the bond within five Days before each anniversary of the Effective Date, City will be entitled to cancel this Agreement. Contractor shall maintain the performance bond during the term of this Agreement. In the event this Agreement is assigned, as provided for in Section 21.7, City will return or release the performance bond not later than the effective date of the assignment, provided that the assignee has delivered to City an equivalent performance bond, as determined by City. Notwithstanding anything to the contrary herein, in no event shall Surety's aggregate liability exceed the penal sum of the applicable bond amount; provided, however, that this limitation shall not affect Contractor's liability under this Agreement.

2.21. Section 13.2.3 of the Agreement (Extensions of Agreement) is replaced in its entirety to read as follows:

**13.2.3 Extensions of Agreement.** Should the City exercise the option to extend the Agreement as provided in Section 15.2, Contractor shall provide a letter of credit in the amount of \$2,000,000 for the term of the option and throughout the performance of Contractor's remaining obligations under this Agreement.

2.22. Section 16.1.1(b) is replaced in its entirety to read as follows:

**(b) Transfer of Title.** Direct Contractor to execute all required documents to transfer to the City title to all Shelters, Kiosks, and Associated Equipment free and clear of all encumbrances.

### **Article 3. Effective Date**

The modifications set forth in Section 2 shall be effective on and after the date first referenced above.

### **Article 4. Legal Effect**

Except as expressly modified by this Amendment, all of the terms and conditions of the Agreement shall remain unchanged and in full force and effect. Nothing herein shall be deemed to waive rights either party may have under the Agreement or at law, all of which are reserved.

IN WITNESS WHEREOF, Contractor and City have executed this Second Amendment as of the date first referenced above.

<p>CITY San Francisco Municipal Transportation Agency</p> <p>By _____ Jeffrey P. Tumlin Director of Transportation</p> <p>MTA Board of Directors Resolution No. _____ Dated: _____ Attest: _____</p> <p>_____ Secretary, SFMTA Board of Directors</p> <p>San Francisco Port Commission</p> <p>_____ Elaine Forbes, Executive Director</p> <p>Port Commission Resolution No. _____ Dated: _____ Attest: _____</p> <p>_____ Secretary</p> <p>Board of Supervisors Resolution _____ Dated: _____ Attest: _____</p> <p>_____ Clerk of the Board</p> <p>Approved as to Form: David Chiu, City Attorney</p> <p>By: _____ Robin M. Reitzes Deputy City Attorney</p>	<p>CONTRACTOR</p> <p>Clear Channel Outdoor</p> <p> _____ Robert Schmitt Senior Vice President and Regional President—Northern California</p>
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## FIRST AMENDMENT TO TRANSIT SHELTER ADVERTISING AGREEMENT

This FIRST AMENDMENT to the Transit Shelter Advertising Agreement is made and entered into June 25, 2021 by and between the City and County of San Francisco (City), by and through its Municipal Transportation Agency (SFMTA), and its Port Commission (Port), and Clear Channel Outdoor, LLC, a Delaware corporation (Contractor).

### RECITALS

- A. City and Contractor have entered into the Agreement (as defined below).
- B. Due to the impacts from the COVID-19 pandemic, which have had, and continue to have, an unprecedented, significant and material adverse effect on Contractor's ability to generate revenue under the Agreement, Contractor has been unable to maintain the minimum annual guarantee (MAG) payments under the Agreement. City and Contractor have agreed to modify the Agreement on the terms and conditions set forth herein to reduce revenue payments in Fiscal Years 20/21 and 21/22 and obtain additional advertising opportunities and support for the SFMTA.

NOW, THEREFORE, Contractor and the City agree as follows:

#### Article 1. Definitions

The following definitions shall apply to this Amendment:

**1.1 Agreement.** The term "Agreement" shall mean the Agreement between City and Contractor, dated December 10, 2007, for advertising on SFMTA transit shelters and kiosks.

**1.2 Other Terms.** Terms used and not defined in this Amendment shall have the meanings assigned to such terms in the Agreement.

#### Article 2. Modifications to the Agreement

**2.1.** A new Section 5.6 (City's Use of Digital and Print Advertising Space) is added to the Agreement to read as follows:

**5.6 City's Use of Digital and Print Advertising Space.** Contractor shall provide guaranteed use of digital and print advertising space and other media services equivalent to amounts commercially available at an amount of \$1,000,000 (based on Contractor's then current rates) in each of Fiscal Years 20/21 and 21/22.

**2.2.** Section 7.1.1(b)(i) (Administrative Payments) of the Agreement is replaced in its entirety to read as follows:

**(i) Administrative Payments.** No later than 30 Days after the Effective Date and no later than September 1 of each year thereafter during the term of the Agreement, Contractor shall pay the SFMTA a minimum of \$500,000 ("base rate"), as escalated each year by the percentage change in the most recently published 12-month average CPI. Notwithstanding the above, no payments shall be due on September 1, 2020 and September 1, 2021.

**2.3.** Section 7.1.1(b)(iii) (Marketing Support) of the Agreement is replaced in its entirety to read as follows:

**(iii) Marketing Support.** No later than 30 Days after the Effective Date and no later than September 1 each year thereafter during the term of the Agreement, Contractor shall contribute \$200,000 to the SFMTA, as escalated each year by the percentage change in the most recently published 12-month average CPI. Notwithstanding the above, no payments shall be due on September 1, 2020 and September 1, 2021.

**2.4.** Section 7.1.1(b)(iv), Table 1 (MAG Amounts and Revenue Share Percentage) of the Agreement is amended as to the time periods shown below to read as follows:

**Table 1: MAG Amounts and Revenue Share Percentage**

<b>Fiscal Year</b>	<b>MAG</b>	<b>Minimum Gross Revenues in Previous Fiscal Year</b>	<b>Alternate MAG</b>	<b>Revenue Share</b>
January - June 2020	\$ 5,681,333			55%
July 2020 - June 2021	\$ 5,900,000			50%
July 2021 - June 2022	\$ 6,300,000			50%

**2.5.** Section 21.7 (Assignment) of the Agreement is replaced in its entirety to read as follows:

**21.7 Assignment.** The Services to be performed by Contractor are personal in character. Neither this Agreement, nor any duties or obligations hereunder, may be directly or indirectly assigned, novated, hypothecated, transferred, or delegated by Contractor, or, where the Contractor is a joint venture, a joint venture partner, (collectively referred to as an “Assignment”) unless first approved by City by written instrument executed and approved as required under City law and under the policy of the SFMTA Board of Directors and the Port. The City’s consent may not be unreasonably withheld; however, the City’s approval of any such Assignment is subject to the Contractor demonstrating to City’s reasonable satisfaction that the proposed transferee is: (a) reputable and capable, financially and otherwise, of performing each of Contractor’s obligations under this Agreement and any other documents to be assigned, (b) not forbidden by applicable law from transacting business or entering into contracts with City; and (c) subject to the jurisdiction of the courts of the State of California. A change of ownership or control of Contractor or a sale or transfer of substantially all of the assets of Contractor shall be deemed an Assignment for purposes of this Agreement. Contractor shall immediately notify City about any Assignment. Any purported Assignment made in violation of this provision shall be null and void.

**Article 3. Effective Date**

The modifications set forth in Section 2 shall be effective on and after the date first referenced above.

**Article 4. Legal Effect**

Except as expressly modified by this Amendment, all of the terms and conditions of the Agreement shall remain unchanged and in full force and effect. Nothing herein shall be deemed to waive rights either party may have under the Agreement or at law, all of which are reserved.

IN WITNESS WHEREOF, Contractor and City have executed this Amendment as of the date first referenced above.

<p>CITY</p> <p>San Francisco Municipal Transportation Agency</p> <p>By:  _____</p> <p>Jeffrey P. Tumlin Director of Transportation</p> <p>MTA Board of Directors Resolution No. 210302-027 Dated: March 2, 2021</p> <p>Attest:  _____</p> <p>Secretary, Municipal Transportation Agency Board of Directors</p> <p>San Francisco Port Commission  _____</p> <p>Executive Director</p> <p>Port Commission Resolution No. 21-22 Dated: April 27, 2021</p> <p>Board of Supervisors Resolution No. 297-21 Dated: June 15, 2021</p> <p>Attest: _____</p> <p>Clerk of the Board</p> <p>Approved as to Form: Dennis J. Herrera, City Attorney</p> <p>By:  _____</p> <p>Robin M. Reitzes Deputy City Attorney</p>	<p>CONTRACTOR</p> <p>Clear Channel Outdoor</p> <p> _____</p> <p>Robert Schmitt Senior Vice President and Regional President—Northern California</p>
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### Transit Shelter Advertising Agreement, Second Amendment

The San Francisco Municipal Transportation Agency (SFMTA) seeks authorization for the Director of Transportation to execute Amendment No. 2 to the Transit Shelter Advertising Agreement with Clear Channel Outdoor, LLC, exercising the option to extend the contract five years through December 10, 2027; adjust the annual minimum guaranteed payments, as well as administrative and marketing payments; and increase the maintenance and service obligations of Clear Channel.

Not a "project" under CEQA pursuant to CEQA Guidelines Sections 15060(c) and 15378(b) because the action would not result in a direct or a reasonably foreseeable indirect physical change to the environment.

A handwritten signature in black ink that reads "Angela Alter".

September 26, 2022

Angela E. Alter, Environmental Review Planner Date  
*San Francisco Municipal Transportation Agency*

A handwritten signature in black ink that reads "JMcKellar".

September 27, 2022

Jennifer McKellar, Senior Planner Date  
*San Francisco Planning Department*

SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY  
BOARD OF DIRECTORS

RESOLUTION No. 221004-092

WHEREAS, The Transit Shelter Advertising Agreement (Agreement) between the City 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 the Agreement at the City's sole discretion; 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 approached the SFMTA in 2021 for reductions in certain payments due to the City under the Agreement; and

WHEREAS, Under the First Amendment to the Agreement, dated June 25, 2021, the City agreed to reduce Minimum Annual Guarantee (MAG) payments from May 1, 2020 through June 30, 2022, in return, Clear Channel gave the City additional advertising opportunities on the shelters and marketing support payments; and

WHEREAS, The City has given Clear Channel notice of its intent to exercise the five-year option to extend the Agreement: and

WHEREAS, Due to the continuing impacts from the pandemic, Clear Channel has again requested reductions to the MAG and other payments under the Agreement; and

WHEREAS, The parties have negotiated the Second Amendment to the Agreement, which:

- adjusts the MAG payments for the last five years of the contract;
- adjusts administrative payments to the City;
- ties the amount of the performance bond to the MAG for each year and maintains the letter of credit at \$2,000,000 for the remainder of the Agreement;
- significantly increases Clear Channel's maintenance obligations for shelters and platforms, including more frequent cleanings and initiation of a "Shelter Refresh Program" to replace and/or repair aging shelters;
- requires Clear Channel to invest \$3,000,000 in digital advertising prior to June 2025;
- provides for the City's guaranteed use of \$1,000,000 of digital and print advertising space and other media services; and

WHEREAS, The Amendment will also help Clear Channel to preserve jobs, as well as continue its critical services for the SFMTA and its customers, including maintaining the transit shelters, boarding platforms, and advertising kiosks; 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, A copy of the CEQA determination is on file with the Secretary to the SFMTA Board of Directors and is incorporated herein by reference; and

WHEREAS, In addition to approval by the SFMTA Board, the Second Amendment will be submitted to the Port Commission and Board of Supervisors for final approval; now, therefore, be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Director of Transportation, or his designee, to execute the Second Amendment to the Transit Shelter Advertising Agreement with Clear Channel Outdoor, LLC; to exercise the option to extend the Agreement for five years, from December 7, 2022 through December 7, 2027; adjust the minimum annual guarantee payments, as well as administrative and marketing payments; and increase the maintenance and service obligations of Clear Channel; and be it further

RESOLVED, That the SFMTA Board of Directors recommends this matter to the Port Commission and the Board of Supervisors for their approval; and be it further

RESOLVED, That the SFMTA Board of Directors direct staff that within 60 days of the approval of the contract agreement that staff complete a full assessment of the state of bus shelters and platforms with a plan to bring them up to the maximum condition score and that a hearing is scheduled within six months to report back on how many shelters and platforms were repaired, including an overlay of equity neighborhoods, and to what level, as well as the clearance of the backlog of repairs.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of October 4, 2022.



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Secretary to the Board of Directors  
San Francisco Municipal Transportation Agency

SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY  
BOARD OF DIRECTORS

RESOLUTION No. 210302-027

WHEREAS, The Transit Shelter Advertising Agreement (Agreement) between the City 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, 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 approached the SFMTA for reductions in certain payments due to the City under the Agreement; and

WHEREAS, The proposed First Amendment (Amendment) to the Clear Channel contract provides for reductions in Minimum Annual Guarantee (MAG) payments from May 1, 2020 through June 30, 2022, and in administrative and marketing payments; and

WHEREAS, By entering into the Amendment, the SFMTA will help to ensure that the SFMTA and the City will receive reduced, but still substantial, financial benefits during fiscal years 2021 and 2022, plus all of the other benefits provided in the Agreement; and

WHEREAS, The Amendment will also help Clear Channel to survive and 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 February 10, 2021, the SFMTA, under authority delegated by the Planning Department, determined that the First 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, A copy of the CEQA determination is on file with the Secretary to the SFMTA Board of Directors and is incorporated herein by reference; and

WHEREAS, If approved by the SFMTA Board, the Amendment will be submitted to the Port Commission and Board of Supervisors for final approval; now, therefore, be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Director of Transportation to execute the First Amendment to the Transit Shelter Advertising Agreement with Clear Channel Outdoor, Inc., to reduce the minimum annual guarantee payments, as well as administrative and marketing payments, from May 1, 2020 through June 30, 2022, due to the impacts from the COVID-19 pandemic; and be it

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

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of March 2, 2021.

*Caroline Celaya*

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Secretary to the Board of Directors  
San Francisco Municipal Transportation Agency

MUNICIPAL TRANSPORTATION AGENCY  
BOARD OF DIRECTORS  
CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION No. 07 - 149

WHEREAS, The City entered into a Transit Shelter Advertising Agreement in 1987, which is due to expire in December 2007; and

WHEREAS, On January 16, 2007, the Board of Directors adopted Resolution No. 07-011, which authorized the San Francisco Municipal Transportation Agency (SFMTA) to advertise a Request for Proposals (RFP) for a new Advertising Transit Shelter Agreement; and

WHEREAS, The SFMTA issued the RFP on February 1, 2007, and received three proposals; and

WHEREAS, After a thorough evaluation process, Clear Channel Outdoor, Inc. ("Clear Channel") emerged as the highest-ranked proposer; and

WHEREAS, On June 19, 2007, the SFMTA Board adopted Resolution No. 07-097, which authorized the Executive Director/CEO to enter into negotiations for a new Transit Shelter Advertising Agreement with Clear Channel; and

WHEREAS, The new Transit Shelter Advertising Agreement ("Agreement") proposed by staff for approval by the Board of Directors represents the results of the negotiations between SFMTA and Clear Channel; and

WHEREAS, The San Francisco Planning Department has determined that the replacement of existing transit shelters and kiosks proposed in the Agreement is exempt from environmental review as a Class 2 Categorical Exemption, and the Board of Directors will consider approval of the locations of the new transit shelters and kiosks proposed in the Agreement following any further required environmental review; and

WHEREAS, The Agreement is for a 15-year term, with an option for an additional five years; and

WHEREAS, If approved by the Board of Directors, the new Transit Shelter Advertising Agreement will be submitted to the San Francisco Port Commission and the San Francisco Board of Supervisors for approval; and

WHEREAS, The SFMTA has received extensive input from the public on the proposed designs, and these comments will be considered in the final decisions on designs required to be approved by the Arts Commission; and

WHEREAS, The Executive Director/CEO recommends that the SFMTA Board authorize the Executive Director/CEO to execute a new Transit Shelter Advertising Agreement with Clear Channel in a form substantially as presented to the SFMTA Board; now, therefore, be it

RESOLVED, That the Board of Directors authorizes the Executive Director/CEO to execute a new Transit Shelter Advertising Agreement with Clear Channel to provide design, installation, maintenance and repair of 1,100 to 1,500 transit shelters and up to 150 kiosks plus required payments to SFMTA for a 15-year term with an option for an additional five years, in a form substantially as presented to this Board; and be it

FURTHER RESOLVED, That the SFMTA Board recommends this matter to the Board of Supervisors for its approval.

I certify that the foregoing resolution was adopted by the Municipal Transportation Agency Board of Directors at its meeting of SEP 04 2007.



Secretary, Municipal Transportation Agency Board



## MEMORANDUM

April 23, 2021

**TO:** MEMBERS, PORT COMMISSION  
Hon. Kimberly Brandon, President  
Hon. Willie Adams, Vice President  
Hon. John Burton  
Hon. Gail Gilman  
Hon. Doreen Woo Ho

**FROM:** Elaine Forbes  
Executive Director 

**SUBJECT:** Proposed contract amendment to the Transit Shelter Advertising Agreement with the San Francisco Municipal Transportation Agency and Clear Channel Outdoor, Inc. to reduce the minimum annual guarantee payments, and administrative and marketing payments, from May 1, 2020 through June 30, 2022, due to the impacts from the COVID-19 pandemic.

**DIRECTOR'S RECOMMENDATION:** Approved Attached Resolution No. 21-22

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### EXECUTIVE SUMMARY

The Transit Shelter Advertising Agreement (Agreement) between the San Francisco Municipal Transportation Agency (SFMTA), Clear Channel Outdoor, Inc. (Clear Channel), and the Port of San Francisco requires Clear Channel to provide and maintain transit shelters throughout the City including on Port property in exchange for the right to display advertising panels and collect advertising revenues. The Agreement includes provisions for distribution of a portion of the revenues to SFMTA and the Port, which 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. To date, Clear Channel has performed satisfactorily in fulfilling the requirements of the Agreement.

The COVID-19 pandemic has had, and continues to have, an unprecedented and material adverse effect on Clear Channel's ability to generate revenue from advertising with revenues dropping 60-88% from April 2020 to January 2021. Clear Channel approached the SFMTA for reductions in certain payments due under the Agreement. The SFMTA and Clear Channel negotiated an amendment to the Agreement which provides for changes in Minimum Annual Guarantee (MAG) payments to SFMTA and

the Port from May 1, 2020 through June 30, 2022, and in certain administrative and marketing payments. The SFMTA Board approved a First Amendment to the Agreement on March 2, 2021, and the SFMTA and Clear Channel now seek Port approval of the First Amendment to the Agreement.

Of the 1706 transit shelters in the City, 44 or 2.58% of the total are located on Port property. The current Agreement provides for a MAG payment and if an income threshold is achieved, a revenue share of 55%. Since inception of the Agreement the revenue share has never been reached. The proposed amendment would provide a reduced MAG payment and again the ability for a revenue share, covering the period from May 1, 2020 through June 30, 2022. The Port anticipated about \$1,340,000 in advertising revenues over this period per the existing Agreement. Per the proposed amendment revenues would be reduced to \$702,064, or a decrease of about \$638,000 due to the impacts from the COVID-19 pandemic. 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.

## **PORT'S STRATEGIC PLAN OBJECTIVES**

The Transit Shelter Advertising Agreement, First Amendment, supports the goals and objectives of the Port's Strategic Plan as follows:

### **ECONOMIC RECOVERY**

**Develop and implement strategies to stabilize the Port's financial position from the COVID-19 Pandemic economic impacts.**

**Tenant Recovery.** Work with tenants to recover from the COVID-19 Pandemic.

**Tenant Rent.** Implement authorized rent forgiveness and repayment programs by processing complete and eligible applications and executing leases or related agreement .....

### **EVOLUTION**

**Evolve the waterfront to respond to changing public and Port needs.**

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

## **BACKGROUND**

There are 1706 transit shelters in the City of San Francisco of which 44, or 2.58% of the total are within Port of San Francisco jurisdiction. Clear Channel maintains these transit shelters in exchange for the right to display advertising panels and collect advertising revenues. The Agreement includes provisions for distribution of a portion of the revenues to SFMTA and the Port. To date, Clear Channel has performed satisfactorily in fulfilling the requirements of the Agreement. A summary of the Agreement is as follows:

- The Agreement between SFMTA, Clear Channel, and the Port 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.
- Revenue payments are based on transit shelter advertising panels, of which **2.58%** are located on Port property. Per the most recent pre-Covid payments the Port received **\$109,933 quarterly or about \$440,000 annually**.
- As stipulated in section 4 of the MOU (Port Revenue Share), the payment amount is based on the following formula:

$$\frac{(\# \text{ of Commercial Structures in Port Jurisdiction Area})}{(\text{Total } \# \text{ of Commercial Structures Citywide})} \times \text{CC Monthly Pymt} = \text{Quarterly Pymt} \\ \text{(for three months)}$$

Contract requirements include the following:

- Inspect and clean all transit shelters (approximately 1,100) at least twice per week;
- Daily maintenance of 150 boarding platforms;
- Timely response to calls for additional cleaning through the City's 3-1-1 system (Clear Channel reported approximately 141 requests per month for calendar year 2020);
- Provide new shelters, as requested, up to a total of 1,500 (between shelter removals and additions for City and SFMTA projects and other requests, the number of shelters has been stable since the beginning of the Agreement);
- Maintain and bring new power connections to shelters to support both safety lighting and the SFMTA's customer information system; and
- Support public and private construction projects with temporary shelter removals and reinstallations, links to power sources and, where appropriate, new shelter installations.

### **Proposed Amendment to the Agreement**

Due to the impacts from the COVID-19 pandemic which has had, and continues to have, an unprecedented material adverse effect on Clear Channel's ability to generate revenue from advertising, Clear Channel approached the SFMTA for reductions in certain payments due to the City under the Agreement. As of early February 2021, the SFMTA estimated that ridership was at approximately 30-40% of pre-pandemic levels and advertising revenues dropped between 60-88% in the period from April 2020 to January 2021. It is unclear when ridership will return to pre-pandemic numbers. SFMTA provided forbearance on Minimum Annual Guarantee (MAG) payments since May 1, 2020. The goal of forbearing, or deferring required payments was to provide time for the financial impacts of the pandemic to clarify. Forbearance did not reduce or forgive the revenue payments ultimately due to the SFMTA and the Port; forgiveness of those payments required the approval of a contract amendment.

On March 2, 2021, the SFMTA approved an amendment to the Agreement that 1) maintains revenues from January – April 2020 to SFMTA and the Port according to the pre-pandemic MAG rate ("Full Agreement Rate"), during which the Port received

\$146,578; 2) forgave certain payments and reduced MAG payment requirements for the period from May 1, 2020 through June 30, 2022; and 3) restores 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. The proposed amendment to the Agreement would result in total revenues of \$702,064 to the Port, instead of about \$1,340,000 that was anticipated to have been generated under the Full Agreement Rate. The SFMTA and Clear Channel seek Port approval of the proposed Agreement amendment.

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

By entering into the Amendment, the SFMTA and Port will receive reduced, but still substantial financial benefits during fiscal years 2021 and 2022, plus all of the other benefits provided in the Agreement to clean and maintain the transit shelters. The Agreement will also help Clear Channel to survive and preserve jobs and continue its critical services for the SFMTA and its customers. If approved by the Port Commission, it will be submitted to the Board of Supervisors for final approval. The Board of Supervisors recently approved a rent relief program for the San Francisco International Airport, which encourages business survival and recovery and includes Clear Channel Airports, a subsidiary of Clear Channel Outdoor.

The Amendment also adds guaranteed use of digital and print advertising space on transit shelters and kiosks and other media services, which will help with the SFMTA's public information campaigns to encourage customers to return to transit. Clear Channel has agreed to provide space valued at \$1,000,000 in each of fiscal years 2020-21 and 2021-22. Clear Channel also pledged to provide support for the SFMTA's recently awarded Public Transportation COVID-19 Research Demonstration Grant from the Federal Transit Administration. Clear Channel, which sent a letter to the FTA in support of the grant, will provide in-kind services to develop consumer messaging, design work and advertising campaigns to re-build confidence in using public transportation.

### **Alternatives Considered**

The City, through the SFMTA, the Port, or the Board of Supervisors could decline to enter into the Amendment, but such an action might lead to Clear Channel's inability to fulfill its financial commitments and deliver the financial and other benefits to the City 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. By entering into the Amendment as the SFMTA Board approved on March 2, 2021, the SFMTA will help to ensure that the City will receive reduced, but still substantial, financial benefits from May 1, 2020 through June 30, 2022, plus all of the other benefits provided in the Agreement. There is no guarantee that the SFMTA would be able to enter into another transit shelter contract in the event that the Agreement ends; 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.

### **ENVIRONMENTAL REVIEW**

On February 10, 2021, the SFMTA, under authority delegated by the Planning Department, determined that the First 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).

A copy of the CEQA determination is on file with the Secretary to the SFMTA Board of Directors and is incorporated herein by reference.

### **RECOMMENDATION:**

Approve the attached resolution authorizing the Port's Executive Director to enter into the First Amendment of the Clear Channel/SFMTA/Port Transit Shelter Agreement to reduce the minimum annual guarantee payments, as well as administrative and marketing payments, from May 1, 2020 through June 30, 2022, due to the impacts from the COVID-19 pandemic.

Prepared by: Dan Hodapp, Senior Waterfront Planner  
Planning and Environment Division

For: Diane Oshima, Deputy Director  
Planning and Environment Division

### **EXHIBITS:**

- A. First Amendment to Transit Shelter Advertising Agreement

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

**RESOLUTION NO. 21-22**

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, 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 approached the SFMTA for reductions in certain payments due to the City under the Agreement; and

WHEREAS, Revenue payments are based on transit shelter advertising panels, of which 44 of 1,706 panels, or 2.58% are located on Port property; and

WHEREAS, The proposed First Amendment (Amendment) to the Clear Channel contract provides for reductions in Minimum Annual Guarantee (MAG) payments from May 1, 2020 through June 30, 2022, and in administrative and marketing payments; and

WHEREAS, By entering into the Amendment, the SFMTA will help to ensure that the SFMTA and the City will receive reduced, but still substantial, financial benefits during fiscal years 2021 and 2022, plus all of the other benefits provided in the Agreement; and

WHEREAS, The Amendment will also help Clear Channel to survive and 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 February 10, 2021, the SFMTA, under authority delegated by the Planning Department, determined that the First 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, A copy of the CEQA determination is on file with the Secretary to the SFMTA Board of Directors and is incorporated herein by reference; and

WHEREAS, On March 2, 2021 the SFMTA Board approved the Amendment and has now submitted it to the Port Commission and Board of Supervisors for final approval; now, therefore, be it

RESOLVED, That the San Francisco Port Commission authorizes its Executive Director to execute the First Amendment to the Transit Shelter Advertising Agreement with the SFMTA and Clear Channel Outdoor, Inc., to reduce the minimum annual guarantee payments, as well as administrative and marketing payments, from May 1, 2020 through June 30, 2022, due to the impacts from the COVID-19 pandemic; 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 April 13, 2021.***

DocuSigned by:



Secretary

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## Exhibit A

### FIRST AMENDMENT TO TRANSIT SHELTER ADVERTISING AGREEMENT

This FIRST AMENDMENT to the Transit Shelter Advertising Agreement is made and entered into \_\_\_\_\_ by and between the City and County of San Francisco (City), by and through its Municipal Transportation Agency (SFMTA), and its Port Commission (Port), and Clear Channel Outdoor, LLC, a Delaware corporation (Contractor).

### RECITALS

- A.** City and Contractor have entered into the Agreement (as defined below).
- B** Due to the impacts from the COVID-19 pandemic, which have had, and continue to have, an unprecedented, significant and material adverse effect on Contractor's ability to generate revenue under the Agreement, Contractor has been unable to maintain the minimum annual guarantee (MAG) payments under the Agreement. City and Contractor have agreed to modify the Agreement on the terms and conditions set forth herein to reduce revenue payments in Fiscal Years 20/21 and 21/22 and obtain additional advertising opportunities and support for the SFMTA.

NOW, THEREFORE, Contractor and the City agree as follows:

#### Article 1. Definitions

The following definitions shall apply to this Amendment:

**1.1 Agreement.** The term "Agreement" shall mean the Agreement between City and Contractor, dated December 10, 2007, for advertising on SFMTA transit shelters and kiosks.

**1.2 Other Terms.** Terms used and not defined in this Amendment shall have the meanings assigned to such terms in the Agreement.

#### Article 2. Modifications to the Agreement

**2.1.** A new Section 5.6 (City's Use of Digital and Print Advertising Space) is added to the Agreement to read as follows:

**5.6 City's Use of Digital and Print Advertising Space.**

Contractor shall provide guaranteed use of digital and print advertising space and other media services equivalent to amounts commercially available at an amount of \$1,000,000 (based on Contractor's then current rates) in each of Fiscal Years 20/21 and 21/22.

**2.2.** Section 7.1.1(b)(i) (Administrative Payments) of the Agreement is replaced in its entirety to read as follows:

(i) **Administrative Payments.** No later than 30 Days after the Effective Date and no later than September 1 of each year thereafter during the term of the Agreement, Contractor shall pay the SFMTA a minimum of \$500,000 (“base rate”), as escalated each year by the percentage change in the most recently published 12-month average CPI. Notwithstanding the above, no payments shall be due on September 1, 2020 and September 1, 2021.

2.3. Section 7.1.1(b)(iii) (Marketing Support) of the Agreement is replaced in its entirety to read as follows:

(iii) **Marketing Support.** No later than 30 Days after the Effective Date and no later than September 1 each year thereafter during the term of the Agreement, Contractor shall contribute \$200,000 to the SFMTA, as escalated each year by the percentage change in the most recently published 12-month average CPI. Notwithstanding the above, no payments shall be due on September 1, 2020 and September 1, 2021.

2.4. Section 7.1.1(b)(iv), Table 1 (MAG Amounts and Revenue Share Percentage) of the Agreement is amended as to the time periods shown below to read as follows:

**Table 1: MAG Amounts and Revenue Share Percentage**

<b>Fiscal Year</b>	<b>MAG</b>	<b>Minimum Gross Revenues in Previous Fiscal Year</b>	<b>Alternate MAG</b>	<b>Revenue Share</b>
January - June 2020	\$ 5,681,333			55%
July 2020 - June 2021	\$ 5,900,000			50%
July 2021 - June 2022	\$ 6,300,000			50%

2.5. Section 21.7 (Assignment) of the Agreement is replaced in its entirety to read as follows:

**21.7 Assignment.** The Services to be performed by Contractor are personal in character. Neither this Agreement, nor any duties or obligations hereunder, may be directly or indirectly assigned, novated, hypothecated, transferred, or delegated by Contractor, or, where the Contractor is a joint venture, a joint venture partner, (collectively referred to as an “Assignment”) unless first approved by City by written instrument executed and approved as required under City law and under the policy of the SFMTA Board of Directors and the Port. The City’s consent may not be unreasonably withheld; however, the City’s approval of any such Assignment is subject to the Contractor demonstrating to City’s reasonable satisfaction that the proposed transferee is: (a) reputable and capable, financially and otherwise, of performing each of Contractor’s

obligations under this Agreement and any other documents to be assigned, (b) not forbidden by applicable law from transacting business or entering into contracts with City; and (c) subject to the jurisdiction of the courts of the State of California. A change of ownership or control of Contractor or a sale or transfer of substantially all of the assets of Contractor shall be deemed an Assignment for purposes of this Agreement. Contractor shall immediately notify City about any Assignment. Any purported Assignment made in violation of this provision shall be null and void.

**Article 3. Effective Date**

The modifications set forth in Section 2 shall be effective on and after the date first referenced above.

**Article 4. Legal Effect**

Except as expressly modified by this Amendment, all of the terms and conditions of the Agreement shall remain unchanged and in full force and effect. Nothing herein shall be deemed to waive rights either party may have under the Agreement or at law, all of which are reserved.

IN WITNESS WHEREOF, Contractor and City have executed this Amendment as of the date first referenced above.

<p>CITY</p> <p>San Francisco Municipal Transportation Agency</p> <p>By</p> <hr/> <p>Jeffrey P. Tumlin Director of Transportation</p> <p>SFMTA Board of Directors Resolution No. _____ Dated: _____</p> <p>Attest:</p> <hr/> <p>Secretary, Municipal Transportation Agency Board of Directors</p> <p>San Francisco Port Commission</p>	<p>CONTRACTOR</p> <p>Clear Channel Outdoor</p> <hr/> <p>Robert Schmitt Senior Vice President and Regional President—Northern California</p>
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\_\_\_\_\_  
Executive Director

Port Commission

Resolution No. \_\_\_\_\_

Dated: \_\_\_\_\_

Board of Supervisors

Resolution No. \_\_\_\_\_

Dated: \_\_\_\_\_

Attest:

\_\_\_\_\_  
Clerk of the Board

Approved as to Form:

Dennis J. Herrera, City Attorney

By: \_\_\_\_\_

Robin M. Reitzes

Deputy City Attorney

SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY  
BOARD OF DIRECTORS

RESOLUTION No. 221101-104

WHEREAS, The Transit Shelter Advertising Agreement (Agreement) between the City and Clear Channel Outdoor, Inc. (Clear Channel) began on December 10, 2007, for a term of 15 years, plus one five-year option to extend at the City's sole discretion; and

WHEREAS, On October 4, 2022, the SFMTA Board approved Resolution No. 221004-092, to approve the Second Amendment to the Agreement, to exercise the option to extend the Agreement for five years, through December 7, 2027, adjust the minimum annual guarantee payments, as well as administrative and marketing payments, and increase the maintenance and service obligations of Clear Channel; and

WHEREAS, The Second Amendment contained an error, in that the following language that should have been omitted from the Second Amendment was inadvertently left in the Amendment:

At the end of the term of the Agreement, effective December 11, 2027, ownership of any Shelters and Kiosks owned by Contractor shall transfer to the SFMTA on an "as is, where is" basis. At such time, the SFMTA shall assume all obligations associated with ownership, maintenance and repair of the Shelters and Kiosks. Contractor shall reasonably cooperate with the SFMTA to execute any documents required to effectuate transfer of ownership."; and

WHEREAS, This resolution corrects the error; 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 3 Quality Act (CEQA) pursuant to Title 14 of the California Code of Regulations Sections 15060(c) and 15378(b); and

WHEREAS, A copy of the CEQA determination is on file with the Secretary to the SFMTA Board of Directors and is incorporated herein by reference; and

WHEREAS, The Second Amendment, as corrected, has been submitted to the Port Commission for approval at its November 8, 2022, meeting, and has also been submitted to the Board of Supervisors for final approval; now, therefore, be it

RESOLVED, That the Second Amendment to the Transit Shelter Advertising Agreement with Clear Channel Outdoor, LLC, is corrected to remove the above surplus language from the Amendment.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of November 1, 2022.



Secretary to the Board of Directors  
San Francisco Municipal Transportation Agency



## 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

**THIS PRINT COVERS CALENDAR ITEM NO. 12A**

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 3<sup>rd</sup> 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

<b>MONTH</b>	<b>2021-2022</b>	<b>2018-2019</b>	<b>Variance %</b>
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%
<b>TOTALS</b>	<b>\$7,973,377</b>	<b>\$14,076,910</b>	<b>-43%</b>

[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

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

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

	<b>Projected Advertising Revenues &amp; Projected MAGs</b>		
	<i>Advertising Revenue</i>	<i>MAG to City</i>	<i>Port's MAG Share (2.58%)</i>
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

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

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

	<b>Advertising Revenues</b>			<b>Required Maintenance and Capital Improvements</b>	
	<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		
<b>Total MAG Revenue</b>	<b>\$87,150,000</b>	<b>\$56,450,000</b>	<b>\$1,411,250</b>	<b>50% increase in maint.</b>	<b>\$3M add't capital investment</b>

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 3<sup>rd</sup> 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 3<sup>rd</sup> 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.

Prepared by: Kimberley Beal, Assistant Deputy Director  
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.***

DocuSigned by:  
  
Secretary  
BFA59E31E3B84A8...



## San Francisco Ethics Commission

25 Van Ness Avenue, Suite 220, San Francisco, CA 94102

Phone: 415.252.3100 . Fax: 415.252.3112

[ethics.commission@sfgov.org](mailto:ethics.commission@sfgov.org) . [www.sfethics.org](http://www.sfethics.org)

Received On:

File #: 221128

Bid/RFP #:

### Notification of Contract Approval

SFEC Form 126(f)4

(S.F. Campaign and Governmental Conduct Code § 1.126(f)4)

A Public Document

Each City elective officer who approves a contract that has a total anticipated or actual value of \$100,000 or more must file this form with the Ethics Commission within five business days of approval by: (a) the City elective officer, (b) any board on which the City elective officer serves, or (c) the board of any state agency on which an appointee of the City elective officer serves. For more information, see: <https://sfethics.org/compliance/city-officers/contract-approval-city-officers>

#### 1. FILING INFORMATION

<b>TYPE OF FILING</b>	<b>DATE OF ORIGINAL FILING (for amendment only)</b>
Original	
<b>AMENDMENT DESCRIPTION – Explain reason for amendment</b>	

#### 2. CITY ELECTIVE OFFICE OR BOARD

<b>OFFICE OR BOARD</b>	<b>NAME OF CITY ELECTIVE OFFICER</b>
Board of Supervisors	Members

#### 3. FILER'S CONTACT

<b>NAME OF FILER'S CONTACT</b>	<b>TELEPHONE NUMBER</b>
Angela Calvillo	415-554-5184
<b>FULL DEPARTMENT NAME</b>	<b>EMAIL</b>
office of the clerk of the Board	Board.of.Supervisors@sfgov.org

#### 4. CONTRACTING DEPARTMENT CONTACT

<b>NAME OF DEPARTMENTAL CONTACT</b>	<b>DEPARTMENT CONTACT TELEPHONE NUMBER</b>
Janet Martinsen	415-994-3143
<b>FULL DEPARTMENT NAME</b>	<b>DEPARTMENT CONTACT EMAIL</b>
069 Municipal Transportation Agency	janet.martinsen@sfmta.com

5. CONTRACTOR	
<b>NAME OF CONTRACTOR</b> Clear Channel outdoor, Inc	<b>TELEPHONE NUMBER</b> 5108355900
<b>STREET ADDRESS (including City, State and Zip Code)</b> 555 12th St, Suite 950, Oakland Ca 94607	<b>EMAIL</b>

6. CONTRACT		
<b>DATE CONTRACT WAS APPROVED BY THE CITY ELECTIVE OFFICER(S)</b>	<b>ORIGINAL BID/RFP NUMBER</b>	<b>FILE NUMBER (If applicable)</b> 221128
<b>DESCRIPTION OF AMOUNT OF CONTRACT</b> Per formula		
<b>NATURE OF THE CONTRACT (Please describe)</b> Agreement to advertise on transit shelters and kiosks in San Francisco in exchange for revenue payments, maintenance and other services.		

7. COMMENTS
This is the second amendment to the original 2007 contract due to conditions related to the pandemic and current street conditions

8. CONTRACT APPROVAL	
This contract was approved by:	
<input type="checkbox"/>	THE CITY ELECTIVE OFFICER(S) IDENTIFIED ON THIS FORM
<input checked="" type="checkbox"/>	A BOARD ON WHICH THE CITY ELECTIVE OFFICER(S) SERVES Board of Supervisors
<input type="checkbox"/>	THE BOARD OF A STATE AGENCY ON WHICH AN APPOINTEE OF THE CITY ELECTIVE OFFICER(S) IDENTIFIED ON THIS FORM SITS

**9. AFFILIATES AND SUBCONTRACTORS**

List the names of (A) members of the contractor's board of directors; (B) the contractor's principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
1	Feldman	Lynn A.	Other Principal Officer
2	Coleman	Brian D	Other Principal Officer
3	wells	Scott R	CEO
4	Sailer	David	CFO
5	North Construction		Subcontractor
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**9. AFFILIATES AND SUBCONTRACTORS**

List the names of (A) members of the contractor’s board of directors; (B) the contractor’s principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
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**9. AFFILIATES AND SUBCONTRACTORS**

List the names of (A) members of the contractor’s board of directors; (B) the contractor’s principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
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50			
<input type="checkbox"/>	Check this box if you need to include additional names. Please submit a separate form with complete information. Select "Supplemental" for filing type.		

**10. VERIFICATION**

I have used all reasonable diligence in preparing this statement. I have reviewed this statement and to the best of my knowledge the information I have provided here is true and complete.

**I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.**

<p><b>SIGNATURE OF CITY ELECTIVE OFFICER OR BOARD SECRETARY OR CLERK</b></p>  <p>BOS Clerk of the Board</p>	<p><b>DATE SIGNED</b></p>
---	---------------------------

**From:** [Conine-Nakano, Susanna \(MYR\)](#)  
**To:** [BOS Legislation, \(BOS\)](#)  
**Cc:** [Paulino, Tom \(MYR\)](#); [Farrah, Michael \(BOS\)](#); [Martinsen, Janet \(MTA\)](#); [Sweet, Alexandra C. \(MYR\)](#)  
**Subject:** Mayor -- Resolution -- Clear Channel Outdoor  
**Date:** Tuesday, November 1, 2022 4:16:46 PM  
**Attachments:** [Mayor -- Resolution -- Clear Channel Outdoor.zip](#)

---

Hello Clerks,

Attached for introduction to the Board of Supervisors is a resolution approving the Second Amendment to the Transit Shelter Advertising Agreement with Clear Channel Outdoor, LLC, to exercise the option to extend the Agreement for five years, through December 7, 2027, adjust the minimum annual guarantee payments, as well as administrative and marketing payments, and increase the maintenance and service obligations of Clear Channel.

Please note that Supervisor Melgar is a co-sponsor of this legislation.

Best,  
Susanna

Susanna Conine-Nakano  
Office of Mayor London N. Breed  
City & County of San Francisco  
1 Dr. Carlton B. Goodlett Place, Room 200  
San Francisco, CA 94102  
415-554-6147