

File No. 130072

Committee Item No. 6

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance Sub-Committee

Date: 05/8/2013

Board of Supervisors Meeting

Date: _____

Cmte Board

- | | | |
|-------------------------------------|--------------------------|--|
| <input type="checkbox"/> | <input type="checkbox"/> | Motion |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Resolution |
| <input type="checkbox"/> | <input type="checkbox"/> | Ordinance |
| <input type="checkbox"/> | <input type="checkbox"/> | Legislative Digest |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Budget and Legislative Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Legislative Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Youth Commission Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Introduction Form (for hearings) |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/> | <input type="checkbox"/> | MOU |
| <input type="checkbox"/> | <input type="checkbox"/> | Grant Information Form |
| <input type="checkbox"/> | <input type="checkbox"/> | Grant Budget |
| <input type="checkbox"/> | <input type="checkbox"/> | Subcontract Budget |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Contract/Agreement |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Form 126 - Ethics Commission |
| <input type="checkbox"/> | <input type="checkbox"/> | Award Letter |
| <input type="checkbox"/> | <input type="checkbox"/> | Application |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Public Correspondence |

OTHER (Use back side if additional space is needed)

<input type="checkbox"/>	<input type="checkbox"/>	_____
<input type="checkbox"/>	<input type="checkbox"/>	_____
<input type="checkbox"/>	<input type="checkbox"/>	_____
<input type="checkbox"/>	<input type="checkbox"/>	_____
<input type="checkbox"/>	<input type="checkbox"/>	_____
<input type="checkbox"/>	<input type="checkbox"/>	_____
<input type="checkbox"/>	<input type="checkbox"/>	_____
<input type="checkbox"/>	<input type="checkbox"/>	_____
<input type="checkbox"/>	<input type="checkbox"/>	_____

Completed by: Victor Young Date May 3, 2013

Completed by: Victor Young Date _____

1 [Airport Concession Lease - Clear Channel Outdoor, Inc., dba Clear Channel Airports -
2 \$10,000,000 Minimum Annual Guarantee]

3 **Resolution approving the Airport Advertising Lease between Clear Channel Outdoor,**
4 **Inc., dba Clear Channel Airports, acting by and through its Airport Commission, for an**
5 **eight year term with a minimum annual guarantee of \$10,000,000.**

6
7 WHEREAS, The Airport Commission has requested proposals for the Airport
8 Advertising Lease; and

9 WHEREAS, Clear Channel Outdoor, Inc. dba Clear Channel Airports was the highest,
10 most responsive and responsible proposer; and,

11 WHEREAS, The Airport Commission approved Resolution No. 12-0231, adopted
12 October 30, 2012, awarding the Airport Advertising Lease to Clear Channel Outdoor, Inc. dba
13 Clear Channel Airports; now, therefore, be it

14 RESOLVED, That the Board of Supervisors hereby approves the Airport Advertising
15 Lease No. 12-0231, copies of which are contained in Board of Supervisors' file number
16 130072, for an eight year term with a minimum annual guarantee of
17 \$10,000,000.

Item 6
File 13-0072
(Continued from March 6, 2013)

Department:
 San Francisco International Airport (Airport)

EXECUTIVE SUMMARY

Legislative Objectives

- The proposed resolution would approve a new eight-year Airport Advertising Lease between the City, on behalf of the Airport and Clear Channel Outdoor Inc. dba Clear Channel Airports (Clear Channel), with a Minimum Annual Guarantee (MAG) of \$10,000,000.

Key Points

- Clear Channel currently has an existing 12-year lease to provide advertising services at 286 locations in the Airport. Under the existing lease, Clear Channel pays the Airport (a) 70% of gross revenues or (b) a MAG, which is adjusted each year, whichever is higher. Over the 12-year term of the existing lease, Clear Channel will pay the Airport a total of \$72,233,621. The Airport extended the existing lease, which expired on March 31, 2013, on a month-to-month basis, pending the outcome of the proposed agreement.
- In July of 2012, the Airport issued a Request for Proposal (RFP) to provide advertising services at up to 300 locations in the Airport. On September 5, 2012, the Airport received three proposals from (a) JC Decaux N.A., Inc., (b) Titan Outdoor, LLC and (c) Clear Channel Outdoor, Inc. An evaluation panel determined that Clear Channel was the highest ranking responder.

Policy Consideration

- JC Decaux Airports, Inc. filed a written protest of the award of the subject lease agreement, which the Airport Commission rejected on October 30, 2012. JC Decaux filed another written protest with the City Attorney's Office and the President of the Board of Supervisors. The Board of Supervisors is not responsible for considering bid protests on the subject lease.

Fiscal Impacts

- Under the proposed lease, Clear Channel would pay the Airport rent equal to a MAG of \$10,000,000 or \$833,333 per month, or a total MAG of \$80,000,000 over the eight-year term. Each year, the MAG would be adjusted by the Consumer Price Index. However, the proposed lease has no provisions for Clear Channel to pay percentage of gross revenue rent to the Airport.
- Under the existing Clear Channel lease, the percentage of gross revenues rent exceeded the MAG rent in five of the last 11 years, or over 45% of the time. As a result, the Airport realized additional rent revenues of \$5,571,141 which exceeded the MAG rent. These additional rent revenues resulted in \$835,671 contribution to the City's General Fund. Gross advertising revenues realized by Clear Channel increased from \$8,137,767 in FY 2005-06 to \$13,000,000 in FY 2012-13, an increase of \$4,862,233 or approximately 60% over eight years, which is the same term of the proposed new advertising lease.
- Based on a survey of 28 other U.S. airport advertising leases, the City's existing advertising leases, and other San Francisco Airport leases, all such agreements require that revenues be paid based on a percentage of gross revenues or the MAG, whichever is higher. Therefore, the proposed lease with Clear Channel would be unlike any of these other agreements. In addition, (a) 15 of the 28 surveyed airports contract with Clear Channel, and (b) 19 of the 28 surveyed airports, or 68%, received advertising revenues in 2012 based on a percentage of gross advertising sales, which were higher than the MAG.

- Approval of this lease would therefore preclude the Airport from benefitting from increased advertising sales made by Clear Channel and therefore preclude the Airport and the City's General Fund from receiving higher potential revenues in the future.
- In the professional judgment of the Budget and Legislative Analyst, the elimination of the requirement to pay percentage rent to the Airport, if such percentage rent exceeds the Minimum Annual Guarantee, is not in the best interests of the City.

Recommendation

- Disapprove the proposed resolution.

MANDATE STATEMENT AND BACKGROUND

Mandate Statement

Charter Section 9.118(c) requires that any lease having anticipated revenue of \$1,000,000 or more be subject to approval of the Board of Supervisors.

Background

On February 16, 2001, based on the results of a Request for Proposal (RFP) process in which the Airport received only one proposal, the Board of Supervisors approved a lease agreement between the Airport and Clear Channel Outdoor, Inc. (Clear Channel)¹ for the five-year term from April 1, 2001 through March 31, 2006, including three one-year options to extend the term through March 31, 2009 at the discretion of the Airport Commission (File 00-2145). Under the original lease agreement, Clear Channel paid the Airport annual rent equal to the greater of (a) 70% of Clear Channel's annual gross advertising revenues, or (b) a Minimum Annual Guarantee (MAG) of \$4,050,000 beginning in 2001, with annual adjustments thereafter, for the right to advertise on 85 Airport locations.

On August 23, 2002, the Board of Supervisors approved Amendments 1 and 2 (File 02-1230), which among other provisions, (a) provided an additional five-year extension of the lease, from April 1, 2006 through March 31, 2011 under the Concession Support Program², (b) revised the MAG annual adjustment calculations and schedule, and (c) added 240 advertising locations, for a total of 325 Airport advertising locations. According to Ms. Gigi Ricasa, Senior Property

¹ The original lease agreement was between the Airport and Transportation Media, Inc., which was subsequently sold to Clear Channel.

² Under the Airport's Concession Support Program, the Airport suspended the Minimum Annual Guarantee for 43 Airport concession lessees that experienced declines in business due to reduced levels of air travel from the events of September 11, 2001. Under this Program, 42 lessees were also granted five-year extensions to their leases in order to allow more time for these lessees to recoup their initial capital investments.

Manager for the Airport, based on provisions in the existing lease, in January of 2011, Clear Channel surrendered 39 advertising locations in the rental car center, parking garages, and various arrival corridors because Clear Channel was having difficulty selling advertising on these spaces and there were restrictions due to Airport operations. Clear Channel surrendered the 39 advertising locations in exchange for fewer, but higher-profile advertising locations in the terminal lobbies, and the International Terminal boarding areas, resulting in a revised total of 286 advertising locations in the Airport, or approximately 11,700 square feet of advertising space. Although the Airport reduced the number of advertising locations from 325 to 286, or 39 fewer advertising locations, because the new locations were higher-profile locations, the required MAG annual payments to the Airport were not adjusted. In FY 2012-13, Clear Channel is required to pay the Airport a MAG of \$7,937,218.

On December 21, 2010, the Airport Commission approved the first option to extend the advertising lease agreement with Clear Channel by one year from April 1, 2011 through March 31, 2012. On July 19, 2011, the Airport Commission approved the second option to extend the advertising lease agreement with Clear Channel by one additional year from April 1, 2012 through March 31, 2013. In accordance with the existing lease provisions, the Airport has extended the existing lease with Clear Channel from April 1, 2013 on a month-to-month basis, pending the outcome of the proposed new advertising agreement. Although the original lease agreement included three one-year options to extend the lease at the discretion of the Airport Commission, the Airport decided to issue a Request for Proposal (RFP) for a new advertising lease agreement, instead of exercising the last one-year option. The existing lease has been in effect for a total of 12 years. In July of 2012, the Airport issued a RFP for advertising in the Airport's terminals, including the lobby, concourses and boarding areas on the departure and arrival levels, and specified areas in the parking connectors (tunnels that connect the Airport terminal buildings to the parking garages), Air Train bridges and stations, and the Rental Car Center, for a total of up to 300 locations, or 14 more than the existing 286 advertising locations. On September 5, 2012, the Airport received three proposals from (a) JC Decaux N.A., Inc., (b) Titan Outdoor, LLC and (c) Clear Channel Outdoor, Inc. Both JC Decaux N.A., Inc. and Titan Outdoor, LLC proposed MAGs of \$8,500,000 and Clear Channel Outdoor, Inc. proposed a MAG of \$10,000,000. A three-person evaluation panel, consisting of an Airport staff marketing manager, private architect/designer and a San Francisco State University marketing professor, reviewed the proposals and determined that Clear Channel was the highest ranking responder.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would approve a new eight-year Airport Advertising Lease between the City, on behalf of the Airport and Clear Channel Outdoor Inc. dba Clear Channel Airports, with no options to extend, and a Minimum Annual Guarantee of \$10,000,000 payable by Clear Channel to the Airport.

Although the Airport anticipates that the proposed new eight-year advertising lease would commence upon approval by the Board of Supervisors and extend through approximately May 31, 2021, under the proposed lease, Clear Channel must first refurbish, redecorate and modernize the interiors and exteriors of the advertising spaces at Clear Channel's expense, prior

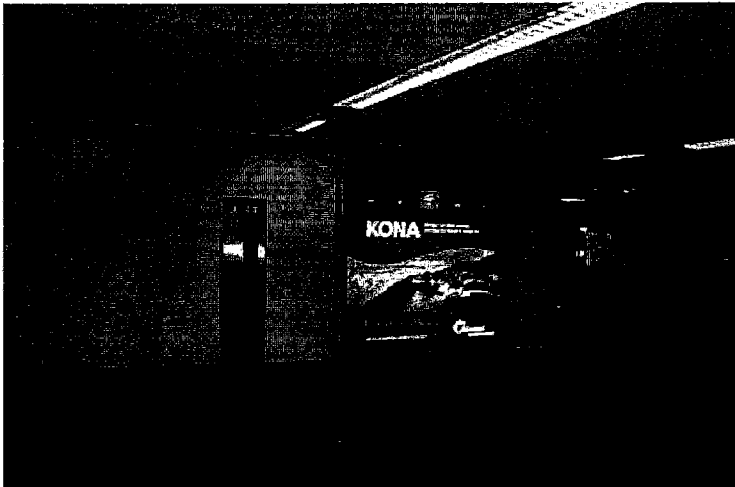
to commencement of the operating term of the lease. Completion of such capital improvements could extend for up to 180 days, or six months. However, during this initial refurbishment period, Clear Channel would be responsible for paying the Airport advertising revenues equal to \$833,333 per month, or \$10,000,000 annually.

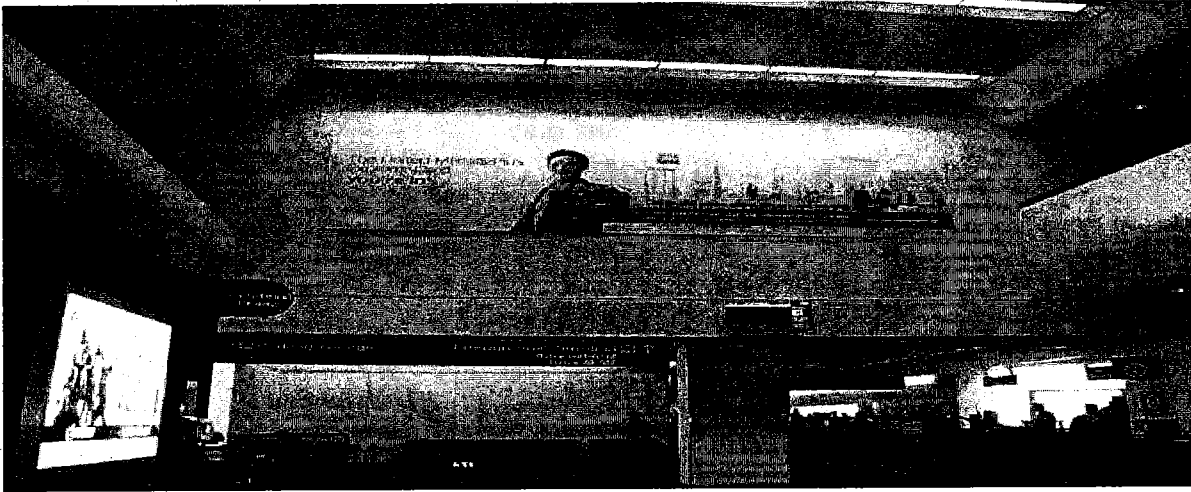
In addition, at the mid-term of the proposed lease, or after the fourth anniversary in 2017, Clear Channel would again be responsible for refurbishing, redecorating and modernizing the interior and exterior advertising spaces at Clear Channel's expense. Although the proposed lease does not specify a required dollar amount that Clear Channel must invest in order to complete either the initial or mid-term capital improvements, the lease specifies that the amount of such capital improvements be sufficient to conform to the Airport's design standards, as approved by the Airport's Design Review Committee³.

Although the RFP allowed for up to 300 advertising locations, under the proposed lease, Clear Channel would be responsible for installing, managing, operating and maintaining a total of 179 commercial advertising displays in specified locations in the Airport, as approved by the Airport Director, at Clear Channel's sole expense. In accordance with the proposed lease, Clear Channel must (a) deposit an amount equal to one-half of the current MAG, as adjusted, or \$5,000,000 in the first year, and (b) use reasonable commercial efforts to occupy at least 75% of all Airport advertising spaces and charge an average minimum rate equal to or exceeding \$2,500 per month for each advertising display.

As shown below and on the following pages, Clear Channel plans to use various types of media advertising, including digital displays, dioramas, column facades, wall wraps and other type of advertising displays. All advertising content must be in compliance with the requirements of the Airport's Advertising Standards Policy, as shown in Attachment I to this report. The proposed lease specifically states that tobacco or alcoholic beverage advertising would not be allowed at the Airport.

³ The Airport's Design Review Committee is comprised of three members appointed by the Airport Director, which currently includes the Airport's staff architect, one private design consultant and one private architect. The Airport's Design Review Committee is responsible for reviewing all tenant facilities that are in public view.





Under the proposed lease, Clear Channel would be required to pay the Airport rent equal to a Minimum Annual Guarantee (MAG) of \$10,000,000 or \$833,333 per month or a total MAG of \$80,000,000 over the eight-year term. Each year, the MAG would be adjusted by the Consumer Price Index⁴ on the anniversary date of the commencement of the lease. However, the proposed lease provides that in no year, may the adjustment result in a lower MAG than the prior year, unless the total number of square feet of advertising is reduced by greater than 10%.

⁴ The Consumer Price Index would be the Department of Labor's, Bureau of Labor Statistics for All Urban Consumers-Not Seasonally Adjusted-San Francisco/Oakland/San Jose, California.

Given the current and future renovation and construction projects at the Airport, the proposed lease also provides that the Airport Director may require Clear Channel to add, eliminate or relocate advertising installations and equipment at Clear Channel's sole expense, based on the structural and operational needs of the Airport. However, if such changes directed by the Airport are greater than 10% of the total advertising display square footage, the MAG would be adjusted to reflect such pro rata changes in square footage advertising space.

As noted above, Clear Channel currently advertises on 286 locations, comprising approximately 11,700 square feet of advertising space. Under the proposed lease, Clear Channel would advertise on a total of 179 locations, comprising approximately 8,100 square feet of advertising space. Therefore, the proposed agreement provides for 107 (286 less 179) fewer locations and 3,600 less square feet of advertising space in the Airport. However, Ms. Ricasa notes that the actual square footage of advertising space under the proposed lease may change depending on the specific type of advertising displays approved and installed in each location.

POLICY CONSIDERATIONS

On October 17, 2012, JC Decaux Airports, Inc. filed a written protest of the award of the subject lease agreement between the Airport and Clear Channel. Mr. David Serrano Sewell, Deputy City Attorney advises that JC Decaux's two main contentions were that (a) the methodology used by the Airport to allocate points for the MAG proposals did not conform to the RFP, and (b) Clear Channel's MAG offer of \$10,000,000 was commercially unreasonable and should be rejected as a financially irresponsible offer. On October 30, 2012, the Airport Commission rejected this protest and approved a resolution (Resolution No. 12-0231) awarding the subject Airport Advertising lease to Clear Channel Outdoor Inc. dba Clear Channel Airports.

On February 8, 2013, JC Decaux filed another written protest with the City Attorney's Office and the President of the Board of Supervisors challenging the award of the subject lease agreement between the Airport and Clear Channel. According to Mr. Jon Givner of the City Attorney's Office, under Charter Section 9.118, the Board of Supervisors has the authority to approve or disapprove the subject lease, but cannot amend the resolution to award the lease to JC Decaux, as JC Decaux has requested in its protest. Mr. Givner further advises that the Board of Supervisors is not responsible for considering bid protests on the subject lease.

FISCAL IMPACTS

Table 1 below identifies the MAG, gross revenues received by Clear Channel, the calculated 70% of gross revenues and the total annual payments made by Clear Channel to the Airport for each of the past 12 years under the existing advertising agreement.

Table 1: Clear Channel Annual Payments to the Airport under the Existing Advertising Agreement

Lease Year	Period	Minimum Annual Guarantee (MAG)	Gross Revenues	70% of Gross Revenues	Total Annual Rent Payments to Airport
Lease Year 1	4/1/2001 - 9/10/2001	\$4,050,000	\$301,533	\$211,073	\$1,800,000 ⁵
Lease Year 1	9/11/2001 - 3/31/2002	No MAG ⁶	813,231	569,262	569,262*
Lease Year 2	4/1/2002 - 3/31/2003	4,100,000	2,705,591	1,893,914	4,100,000
Lease Year 3	4/1/2003 - 3/31/2004	4,300,000	3,758,400	2,630,880	4,300,000
Lease Year 4	4/1/2004 - 3/31/2005	4,800,000	6,427,376	4,499,163	4,800,000
Lease Year 5	4/1/2005 - 3/31/2006	5,700,000	8,137,767	5,696,437	5,700,000
Option Year 1	4/1/2006 - 3/31/2007	5,850,000	9,751,660	6,826,162	6,826,162*
Option Year 2	4/1/2007 - 3/31/2008	6,009,000	9,250,167	6,475,117	6,475,117*
Option Year 3	4/1/2008 - 3/31/2009	6,176,000	9,055,968	6,339,178	6,339,178*
Option Year 4	4/1/2009 - 3/31/2010	6,351,000	7,577,241	5,304,069	6,351,000
Option Year 5	4/1/2010 - 3/31/2011	6,535,000	8,344,321	5,841,025	6,535,000
Extension Year 1	4/1/2011 - 3/31/2012	6,535,000	13,339,861	9,337,902	9,337,902*
Extension Year 2	4/1/2012 - 3/31/2013	7,937,218	13,000,000 ⁷	9,100,000	9,100,000*
Total			\$92,463,116		\$72,233,621

*Percentage of Gross Revenues Rent exceeded the Minimum Annual Guarantee.

As shown in the Table above, under the existing 12-year lease, based on \$92,463,116 of gross revenues realized by Clear Channel, Clear Channel will pay the Airport a total of \$72,233,621, with such annual rent revenues paid by Clear Channel to the Airport generally increasing each year. In addition, as shown in the Table above, beginning in Lease Year 2, (which excludes the first year due to the suspension of the MAG), the percentage of gross revenues rent exceeded the Minimum Annual Guarantee rent in five of the 11 years, or over 45% of the time. As a result, the Airport realized additional rent revenues of \$5,571,141 compared to the MAG.

Given that the City's General Fund receives 15% of such Airport concession and lease revenues, the additional percentage of gross rental revenues resulted in \$835,671 of additional revenues for the City's General Fund.

However, under the proposed lease, Clear Channel would not pay either a percentage of gross revenues or a MAG, whichever is higher. Instead, under the proposed lease, Clear Channel would only pay the Airport a MAG of \$10,000,000, which would be adjusted annually by a COLA. Ms. Ricasa advises that the Airport cannot estimate future annual COLAs, and is therefore conservatively projecting that Clear Channel would pay the Airport a total MAG rent of \$80,000,000 over the eight-year term of the subject advertising lease.

According to Ms. Ricasa, the recent RFP included only a MAG rent in order to increase competition for the Airport's subject advertising lease and to communicate the Airport's intent to

⁵ The annual MAG in Lease Year 1 was \$4,050,000. There are 162 days between April 1, 2001 and September 10, 2001, such that 162 days of \$4,050,000 is \$1,797,534, which the Airport rounded up to \$1,800,000.

⁶ The MAG was suspended due to Amendments No. 1 and 2 resulting from events from September 11, 2001.

⁷ Projected 2012-2013 gross revenues based on actuals received to date.

not expand to additional advertising locations. Ms. Ricasa advises the Airport wants to minimize visual clutter and advertising at multiple locations in the Airport in order to enhance the Airport customer's experience. In contrast, Ms. Ricasa advises that the Airport felt that a percentage rent structure would incentivize the lessee to pursue additional advertising locations in order to obtain higher revenues.

However, the Budget and Legislative Analyst notes that given that the proposed lease would extend for eight years, and the rates that Clear Channel will charge to advertising customers will likely increase significantly over the 8-year period, the likely gross revenues to be realized by Clear Channel from advertising at the Airport will also likely increase significantly over the 8-year lease term. As shown in Table 1 above, gross advertising revenues realized by Clear Channel, which have totaled \$92,463,116 over the 12 year term of the existing lease, have increased from \$8,137,767 in FY 2005-06 to \$13,000,000 in FY 2012-13, an increase of \$4,862,233 or nearly 60% over eight years, which is the same term of the proposed new advertising lease.

Even if additional advertising locations are not added, Clear Channel will likely realize significant additional gross advertising revenues over the 8-year term of the proposed lease. Under the proposed lease, such additional advertising revenues would not be shared with the Airport, because a percentage of gross revenue rent is not included in the proposed lease.

The Airport provided a memorandum to the Budget and Legislative Analyst dated February 28, 2013, shown as Attachment II to this report, to further explain why the Airport included a MAG-only rent structure, and why the Airport did not also include a percentage of gross revenue rent, whichever is higher, as is contained in the existing lease with Clear Channel.

In response to the Airport's memorandum, citing that auditing Clear Channel's gross receipts has been a problem, the Budget and Legislative Analyst believes the Airport should require the advertising contractor to devise a system which enables the Airport to accurately and easily audit the gross advertising receipts that are attributable to San Francisco's Airport, in order to calculate a percentage of gross revenues. It should be noted that the existing lease with Clear Channel does provide for a percentage of gross revenue rent. In fact, not only have audits been conducted of such gross receipts, but also as noted above, the percentage of gross revenue rent paid to the Airport by Clear Channel exceeded the Minimum Annual Guarantee rent in five of the last 11 years, or over 45% of the time, which resulted in an additional \$5,571,141 of revenue to the Airport and an additional \$835,671 to the City's General Fund.

The Airport's February 28, 2013 memorandum also pointed out that the proposed MAG of \$10,000,000 is significantly larger than the \$4,050,000 that Clear Channel submitted as their MAG in 2001. What the Airport did not state in their memorandum is that in Fiscal Year 2011-2012, Clear Channel paid the Airport rent of \$9,337,902, based on the required percentage of gross revenues provision.

In addition, although the Airport states in their memorandum that proposers will "tend to submit a lower MAG when a percentage rent is included", the Airport has provided no documentation to substantiate that statement. In fact, if that were valid, the Budget and Legislative Analyst

questions why the Airport has awarded hundreds of leases in the past and presently has numerous leases which require having a provision to pay the Airport rent equal to the MAG or the percentage of gross revenues, whichever is higher. The Airport has never previously advised the Board of Supervisors that the Airport was receiving lower MAG bids from these other leases as a result of also requiring a percentage of gross revenue rent. In fact, out of the hundreds of leases awarded by the Airport, the Airport could not identify one other lease which required a MAG rent payment that also did not require a percentage of gross revenue rent payment, whichever is higher.

Our recommendation to require a percentage of gross revenues payable to the Airport addresses the increased gross revenues that Clear Channel would potentially receive in the future, without requiring any sharing of such increased revenues with the Airport, because the MAG will only protect the Airport from downturns in the economy, but not from increases in the economy.

Follow-up

On March 6, 2013, the Budget and Finance Committee continued the proposed resolution to the Call of the Chair and requested that the Budget and Legislative Analyst obtain additional information regarding whether both a percentage of gross revenues and a Minimum Annual Guarantee (MAG) are included in (a) other City advertising agreements and (b) other U. S. airports' advertising agreements.

Other City Advertising Agreements

The other two City departments that have major advertising agreements are the San Francisco Municipal Transportation Agency (SFMTA) and the Department of Public Works (DPW).

- The SFMTA has three advertising agreements: (a) on transit shelters with Clear Channel, (b) on SFMTA vehicles with Titan, and (c) through the Bay Area Rapid Transit System (BART) at shared BART/SFMTA stations with Titan. All three of these advertising agreements require both a MAG and a percentage of gross revenues, whichever is higher. In 2012, Clear Channel paid SFMTA \$9,076,000 based on the MAG for transit shelters, Titan paid SFMTA \$4,758,319 based on the percentage of gross revenues for most months and the MAG for a few months and BART paid SFMTA \$1,260,422 based on the MAG.
- DPW has two advertising agreements with (a) Clear Channel for news racks and (b) JC Decaux for toilets and kiosks. According to Mr. Douglas Legg of DPW, DPW does not receive any revenues under the Clear Channel news rack agreement because the agreement allows Clear Channel to advertise in exchange for installing and maintaining the news racks. The JC Decaux advertising agreement for toilets and kiosks requires both a MAG and a percentage of gross revenue provision and DPW received \$653,476 of revenues in 2012 based on the percentage of gross revenues.

Other U.S. Airports

Based on the Budget and Legislative Analyst's survey of 28 U. S. airports, the results of which are shown in Attachment III to this report, all 28 airports⁸ reported requiring both a MAG and a percentage of gross revenue provision, whichever is higher, in their contracted advertising agreements. In fact, none of the airports reported requiring only a MAG, as is being proposed by San Francisco's Airport.

As shown in Attachment III to this report, 15 of the 28 airports surveyed, or 54%, contract with Clear Channel to provide their contracted advertising services, such that Clear Channel will be responsible for paying advertising revenues to these airports based on both a MAG and a percentage of gross revenues, whichever is higher. The contracts with Clear Channel include the following airports:

Albuquerque (ABQ)
Atlanta (ATL)
Chicago (ORD)
Chicago (MDW)
Dallas/Ft Worth (DFW)
Dayton (DAY)
Denver (DIA)
Ft Lauderdale (FLL)
Indianapolis (IND)
Oakland (OAK)
Palm Beach (PBI)
San Jose (SJC)
Sarasota (SRQ)
Seattle-Tacoma (SEA)
Tampa (TPA)

Ten airports or 36% of the 28 surveyed airports reported having advertising contracts with JC Decaux. The contracts with JC Decaux include the following airports:

Houston (IAH)
Houston (HOU)
Los Angeles (LAX)
Minneapolis-St Paul (MSP)
Newark (EWR)
New York (LGA)
New York (JFK)
Orlando (MCO)
San Diego (SAN)
Washington National & Dulles (DCA & IAD)

⁸ Phoenix Airport reported currently receiving revenues based on percent of gross sales only, however, also reported that a new advertising agreement was recently awarded which will commence on June 1, 2013 and will contain both a MAG and percentage of gross revenues.

The remaining three airports contract with two other advertising vendors (Aliance Airport at Phoenix and Portland Airports and Miami Airport Concession LLC at the Miami Airport).

As shown in Attachment III, based on the reported 2012 revenues received at each of these 28 airports, 19 airports or 68% were paid advertising revenues in 2012 based on the percentage of gross advertising sales, which were therefore higher than their MAG. Only nine of the 28 surveyed airports, or 32%, were paid advertising revenues in 2012 based on their MAG.

Airport's Response

On April 23, 2013, Mr. John Martin, Airport Director sent an email to members of the Budget and Finance Sub-Committee and the Budget and Legislative Analyst addressing the request for approval of the proposed advertising agreement. This email and accompanying analysis addressed the Airport's reduction of the number of advertising locations, specific limitations on San Francisco's advertising, such as prohibition of alcohol and tobacco advertising, the Airport's MAG of \$10 million per year or a total of \$80 million over the proposed eight-year agreement and projected revenues based on number of locations and passenger traffic, in comparison with other US airports. However, the Airport's email and analysis did not address the primary question of why the San Francisco Airport did not include both a MAG and a percentage of gross revenues in the proposed advertising agreement.

As noted above, all 28 other surveyed US airports require both a MAG and percentage of gross revenues in their advertising agreements, whichever is higher, and all other major City advertising agreements require both a MAG and a percentage of gross revenues, whichever is higher. In addition, the Airport could not identify one other San Francisco Airport lease that specifically contains only a MAG, which does not also require an annual percentage of gross revenue rental payments, whichever is higher⁹.

Therefore, the Budget and Legislative Analyst continues to question why the San Francisco Airport should be the only airport out of the 28 surveyed airports in the United States which would be paid advertising revenues based solely on a MAG, instead of being paid rent on the basis of the MAG or the percentage of gross revenues, whichever is higher.

⁹ The Airport noted that it has one lease for cellular service equipment site leases which has flat rental rates.

In summary:

- Under the existing Clear Channel lease, the percentage of gross revenues rent exceeded the MAG rent in five of the last 11 years, or over 45% of the time. As a result, the Airport realized additional rent revenues of \$5,571,141 which exceeded the MAG rent, which contributed an additional \$835,671 to the City's General Fund. It should be noted that gross advertising revenues realized by Clear Channel increased from \$8,137,767 in FY 2005-06 to \$13,000,000 in FY 2012-13, an increase of \$4,862,233 or approximately 60% over eight years, which is the same term of the proposed new advertising lease.
- However, under the proposed lease, there are no provisions for Clear Channel to pay percentage of gross revenue rent to the Airport. Under the proposed lease, Clear Channel would only be required to pay the Airport a MAG of \$10,000,000, which would be adjusted annually by a COLA. In fact, as noted above, in Fiscal Years 2011-2012 and 2012-2013, Clear Channel was required to pay the Airport percentage rent of \$9,100,000 to \$9,337,902 based on the percentage of gross revenues rental provision required under the existing lease with Clear Channel.
- Based on a survey of 28 other U.S. airport advertising leases, the City's existing advertising leases, and other San Francisco Airport leases, all such agreements require that revenues be paid based on a percentage of gross revenues or the MAG, whichever is higher. Therefore, the proposed lease with Clear Channel would be unlike any of these other agreements both locally and nationwide. In addition, (a) 15 of the 28 surveyed airports contract with Clear Channel, and (b) 19 of the 28 surveyed airports, or 68%, received advertising revenues in 2012 based on a percentage of gross advertising sales, which were therefore higher than the MAG.
- Approval of this lease would preclude the Airport from benefitting from increased advertising sales made by Clear Channel and therefore preclude the Airport and the City's General Fund from participating in higher percentage rents in the future. As previously noted, under the existing lease with Clear Channel because of the required percentage of gross revenues rental provision, the City's General Fund has realized an additional \$835,671.
- Even if additional advertising locations are not added, Clear Channel will likely realize significant additional gross advertising revenues over the 8-year term of the proposed lease. Under the proposed lease, such additional advertising revenues would not be shared with the Airport or the City's General Fund, because the payment of a percentage of gross revenue rent would not be required.
- In the professional judgment of the Budget and Legislative Analyst, the elimination of the requirement to pay percentage rent to the Airport, if such percentage rent exceeds the Minimum Annual Guarantee, is not in the best interests of the City.

RECOMMENDATION

Disapprove the proposed resolution.

AIRPORT ADVERTISING STANDARDS

The following is the Airport Advertising Standards Policy, approved by the Airport Commission on June 6, 2000. Tenant must abide by the Airport Advertising Standards Policy, as amended from time to time.

1. Three weeks prior to posting, all proposed and advertising graphic designs shall be submitted to the Director or his designee for review and approval. The designs must be submitted in sufficient detail to determine the content and final general appearance of the advertisement.
2. Any advertisement that does not comply with the standards as set forth by the Airport in #4, shall be rejected.
3. The subject matter of all advertising shall be limited to those advertisements which propose a commercial transaction. ("Commercial Transaction" does not include political or religious views.)
4. Advertisements may not be displayed which:
 - a. Advertise alcohol or tobacco products
 - b. Relate to an illegal activity
 - c. Depict violence or contain words or images that arouse anger, alarm or resentment in others
 - d. Advertise services in direct competition with the Airport's business objectives
 - e. Contain obscene matter as that term is defined in California Penal Code § 311(a) or contain statements or words of an obscene, indecent or immoral character, or any picture or illustration of the human figure in such detail as to offend public morals or decency.
 - f. Are false, misleading or deceptive
 - g. Relate to gambling
 - h. Contain material that is offensive to the ordinary person.



February 28, 2013

Mr. Harvey Rose
Budget Analyst Office
1390 Market Street, Suite 1025
San Francisco, CA 94102

Dear Mr. Rose:

The Airport made the business and policy decision to pursue a MAG-only rent structure under the RFP for the Advertising Lease in order to achieve the highest possible MAG. The following explains why we took this approach:

- San Francisco is a high-value market which commands higher revenue for nationwide contracts. However, advertisers allocate revenue based on the enplanements at various airports. Therefore, we are credited with less advertising sales than the true value of having the advertising at SFO. Large brands will buy a multi-airport campaign in order to get advertising at SFO, not at the smaller airports.
- Because of SFO's high-value market, we believe a MAG-only proposal fosters greater competition in the submission of MAG amounts and in the number of proposals. Previously, when the RFP for the current lease was conducted, which included the greater of MAG or percentage, only one proposal was received with a MAG of \$4,050,000 million. This time, under the MAG-only approach, we received three proposals and the highest MAG offered was \$10 million which is \$1.5 million more than the other two proposals and \$3 million more than the minimum bid amount. We received the highest possible revenue with MAG-only rent instead of a MAG or percentage rent. Proposers will tend to submit a lower MAG when a percentage rent is included.
- The percentage rent structure incentivizes a tenant to seek additional new locations. This is validated by the Airport's experience in managing the current lease. The Airport purposefully reduced the number of advertising locations in the RFP, and the winning proposer sought 179 locations, further reducing visual clutter and providing the best passenger experience. We do not want to encourage more locations.
- By offering a MAG-only lease that encouraged MAG amount competition, the high MAG locks in an amount that the Airport can count on for the term of the contract, regardless of marketing trends. Social Media and other non-traditional advertising platforms are moving advertising dollars away from standard wall graphics. In addition, unstable economic conditions often affect advertising dollars first. In the event of an economic downturn, we prefer to have a higher MAG achieved through a MAG-only RFP, rather than having a lower MAG under the MAG or percentage rent structure RFP.

AIRPORT COMMISSION CITY AND COUNTY OF SAN FRANCISCO

EDWIN M. LEE
MAYOR

LARRY MAZZOLA
PRESIDENT

LINDA S. CRAYTON
VICE PRESIDENT

ELEANOR JOHNS

RICHARD J. GUGGENHEIM

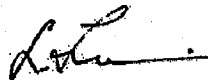
PETER A. STERN

JOHN L. MARTIN
AIRPORT DIRECTOR

- The potential for increasing the revenue generated by percentage rent, as was realized over the last five years, is not feasible given the reduction in locations. As noted, the winning proposal reduces the number of locations to 179, a reduction from the current lease of 278 locations. Additional locations will not be added. After careful analysis with the Design Review Committee and Marketing, Museum and Operations staff, we believe these locations provide the appropriate balance between revenue generating opportunities while still maintaining the highest standards in providing for a positive passenger experience.
- MAG-only rent is not unique to SFO. Other airports and their MAG-only rents for their advertising leases are: Seattle (\$5 million); Washington National (\$3.75 million); Phoenix (\$2.7 million); and San Diego (\$1.8 million). In comparison, the MAG-only submission of \$10 million at SFO illustrates the high value of the SFO market and why allocation of nation-wide advertising contracts based on enplanements penalizes SFO.
- MAG rent avoids the very difficult process of auditing nationwide advertising campaigns due to the nature of these contracts. Besides the biased nature of the allocation method; other complications such as duration of campaigns at each airport make auditing problematic.

Please let me know if I can provide any additional information.

Sincerely,



Leo Fermin
Deputy Airport Director
Business and Finance

Airport	Advertising Contractor	Minimum Annual Guarantee	Percentage of Gross	2012 Advertising Revenue Paid to Airport	Minimum Annual Guarantee (MAG) or Percentage of Gross (%) Paid in 2012
Albuquerque (ABQ)	Clear Channel	\$283,308	45%-50%	\$284,889	%
Atlanta (ATL)	Clear Channel	\$6,077,500	65.00%	\$8,450,000	%
Chicago (ORD)	Clear Channel	*	60.00%	\$16,505,844	%
Chicago (MDW)	Clear Channel	*	60.00%	\$728,413	%
Dallas/Ft Worth (DFW)	Clear Channel	5,160,000	61.50%	\$7,605,920	%
Dayton (DAY)	Clear Channel	210,000	37.0-50.0%	\$210,000	MAG
Denver (DIA)	Clear Channel	2,310,621	61.00%	\$6,640,624	%
Ft Lauderdale (FLL)	Clear Channel	1,833,333	60.00%	\$1,833,333	MAG
Houston (IAH)	JC Decaux	7,940,477	15% - 70%	\$12,177,938	%
Houston (HOU)	JC Decaux	1,068,591	15% - 70%	\$1,778,404	%
Indianapolis (IND)	Clear Channel	582,000	44%-52%	\$796,500	%
Los Angeles (LAX)	JC Decaux	14,000,000	75.00%	\$27,000,000	%
Miami (MIA)	Miami Airport	4,500,000	65.00%	\$11,744,076	%
Minneapolis-St Paul (MSP)	Concession LLC	2,002,374	65.00%	\$2,002,374	MAG
Newark (EWR)	JC Decaux	**	50% - 70%	\$17,623,938	%
New York (LGA)	JC Decaux	**	50%-70%	\$10,074,457	%
New York (JFK)	JC Decaux	**	50% - 70%	\$39,095,404	%
Oakland (OAK)	Clear Channel	850,000	60.00%	\$850,000	MAG
Orlando (MCO)	JC Decaux	2,545,032	65.00%	2,897,059	%
Palm Beach (PBI)	Clear Channel	350,000	50-60%	350,000	MAG
Phoenix (PHX)	Alliance Airport	***	50% - 65%	2,717,000	%
Portland (PDX)	Alliance Airport	388,572	60.00%	648,303	%
San Diego (SAN)	JC Decaux	1,750,000	65.25%	1,750,000	MAG
San Jose (SJC)	Clear Channel	4,222,324	50% - 65%	4,222,324	MAG
Sarasota (SRQ)	Clear Channel	57,300	36.00%	\$64,855	%
Seattle-Tacoma (SEA)	Clear Channel	5,000,000	65.00%	\$5,000,000	MAG
Tampa (TPA)	Clear Channel	975,000	50.00%	975,000	MAG
Washington National & Dulles (DCA & IAD)	JC Decaux	7,500,000	50% - 65%	10,835,495	%

* Under the advertising agreement with Clear Channel, the Minimum Annual Guarantee for both Chicago's O'Hare and Midway Airports is \$8,600,000.

** Under the advertising agreement with JC Decaux, the Minimum Annual Guarantee for all three New York airports is \$45,000,000.

*** Under the existing agreement, Alliance Airport Advertising pays the Phoenix Airport between 50%-65% of gross sales. Under the new advertising agreement, effective on June 1, 2013, Alliance Airport Advertising will pay the Phoenix Airport a MAG of \$3,100,000 or percentage of gross sales, whichever is greater.

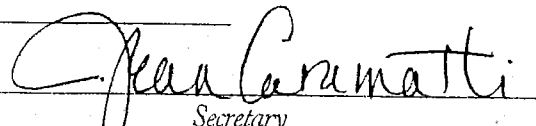
AIRPORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO
RESOLUTION NO. 12 0231

AWARD OF THE AIRPORT ADVERTISING LEASE TO CLEAR CHANNEL OUTDOOR, INC. DBA CLEAR CHANNEL AIRPORTS

- WHEREAS, by Resolution No. 12-0008, adopted January 17, 2012, the Commission authorized staff to commence the competitive selection process for the Airport Advertising Lease (the "Lease") through a Request for Proposals ("RFPs"); and
- WHEREAS, by Resolution No. 12-0162, adopted July 17, 2012, the Commission authorized staff to accept proposals for the Lease; and
- WHEREAS, on the RFP submittal deadline of September 5, 2012, staff received three (3) proposals for the Lease; and
- WHEREAS, a three-member panel evaluated and scored the qualifying proposals and determined Clear Channel Outdoor, Inc. dba Clear Channel Airports to be the highest ranking, responsive and responsible proposer; now, therefore, be it
- RESOLVED, that this Commission hereby awards the Airport Advertising Lease to Clear Channel Outdoor, Inc. dba Clear Channel Airports under the conditions set forth in the staff memorandum on file with the Commission Secretary, including, but not limited to a term of eight (8) years, and a Base Rent of a Minimum Annual Guarantee of \$10,000,000.00 for the first year of the Lease; and be it further
- RESOLVED, that the Commission Secretary is hereby directed to request approval of the Lease by Resolution of the Board of Supervisors pursuant to Section 9.118 of the Charter of the City and County of San Francisco.

*I hereby certify that the foregoing resolution was adopted by the Airport Commission
at its meeting of*

OCT 30 2012


Secretary

LEASE AGREEMENT
FOR THE
AIRPORT ADVERTISING PROGRAM
AT SAN FRANCISCO INTERNATIONAL AIRPORT

by and between
CLEAR CHANNEL OUTDOOR, INC., d/b/a CLEAR CHANNEL AIRPORTS

and

CITY AND COUNTY OF SAN FRANCISCO
ACTING BY AND THROUGH ITS AIRPORT COMMISSION,

and

CITY AND COUNTY OF SAN FRANCISCO
as landlord

Edwin M. Lee
Mayor

AIRPORT COMMISSION
Hon. Larry Mazzola, President
Hon. Linda S. Crayton, Vice President
Hon. Eleanor Johns
Hon. Richard J. Guggenime
Hon. Peter A. Stern

October 30, 2012

Lease No. 12-0231

TABLE OF CONTENTS

MAJOR LEASE TERM SUMMARY i

1. PREMISES

 1.1 Extent of Leasehold 1

 1.2 Relocation, Expansion, Contraction..... 1

 1.3 Remeasurement of Premises 2

 1.4 Changes to Airport..... 2

 1.5 Common Areas 3

2. TERM

 2.1 Commencement and Expiration..... 3

 2.2 Phased Delivery and Required Opening 3

 2.3 Late Opening Charge 4

 2.4 Delivery Delay by City 4

 2.5 [Intentionally Deleted - City’s Right to Extend Term] 4

 2.6 Holding Over 4

3. USE AND OPERATION

 3.1 Permitted Use..... 4

 3.2 No Exclusivity 5

 3.3 Operation of Business 5

 3.4 [Intentionally Deleted - Support Space]..... 5

 3.5 Hours of Operation 5

 3.6 [Intentionally Deleted – Prices] 5

 3.7 References to Airport..... 5

 3.8 Other Operational Requirements 5

 3.9 Prohibited Activities 6

 3.10 Audit of Operations..... 7

 3.11 Representative of Tenant 7

 3.12 Investigation Reports 7

 3.13 Compliance with Laws 7

4. RENT

 4.1 Definitions..... 8

 4.2 Monthly Rent Payments..... 8

 4.3 Adjustments to Minimum Annual Guarantee 9

 4.4 [Intentionally Deleted - Construction Period Operations] 9

 4.5 [Intentionally Deleted - Rent During Construction] 9

 4.6 [Intentionally Deleted - Sales Reports] 9

 4.7 Annual Certification of Sales and Adjustment 9

 4.8 [Intentionally Deleted - Cash Register Requirements] 9

 4.9 [Intentionally Deleted - Books and Records; Audit Rights] 9

 4.10 Other Reports and Submissions 9

 4.11 Additional Rent..... 10

 4.12 Prepay Rent..... 10

 4.13 Nature of Lease 10

 4.14 [Intentionally Deleted - Severe Decline in Enplanements]..... 11

5. ASSIGNMENT OR SUBLETTING

 5.1 No Assignment..... 11

5.2	Changes in Tenant	11
5.3	No Release	11
5.4	Subleasing	11
5.5	Excess Rent.....	12
5.6	Acceptance of Rent.....	12
5.7	Waiver.....	12
6.	TAXES, ASSESSMENTS AND LIENS	
6.1	Taxes.....	12
6.2	Other Liens.....	13
7.	INVESTMENTS; ALTERATIONS	
7.1	Minimum Investment.....	13
7.2	City's Approval Rights	13
7.3	Structures and Fixtures	14
7.4	Notice and Permits.....	14
7.5	Title to Alterations	14
7.6	Effect of Alterations on Airport.....	15
7.7	Mid-Term Refurbishment.....	15
7.8	Labor Harmony	15
7.9	Vacating of Premises	16
8.	UTILITIES	
8.1	Services Provided.....	16
8.2	Utility Costs	16
8.3	Shared Telecommunications Services	16
8.4	Waiver of Damages.....	17
9.	MAINTENANCE AND REPAIR	
9.1	"As-Is" Condition	17
9.2	Tenant's Maintenance Obligations	17
9.3	Tenant's Pest Management Obligations	18
10.	SIGNS AND ADVERTISING	
10.1	Signs and Advertising.....	18
10.2	Prohibition of Tobacco Advertising.....	18
10.3	Prohibition of Alcoholic Beverage Advertising.....	19
11.	[INTENTIONALLY DELETED - PROMOTIONAL PROGRAM]	
12.	WAIVER; INDEMNITY; INSURANCE	
12.1	Waiver.....	19
12.2	Indemnity	19
12.3	Losses.....	19
12.4	Immediate Obligation to Defend.....	20
12.5	Notice.....	20
12.6	Insurance	20
12.7	Form of Policies.....	20
12.8	Delivery of Policies or Certificates	21
12.9	Subrogation.....	21
13.	DEPOSIT	
13.1	Form of Deposit.....	21
13.2	Maintenance of Deposit	21
13.3	Alternative Forms of Deposit.....	22
13.4	Use of Deposit.....	22
13.5	Other Agreements	22

14. DAMAGE OR DESTRUCTION	
14.1	Partial Destruction of Premises..... 23
14.2	Total Destruction of Premises..... 23
14.3	Partial Destruction of Terminal Building..... 23
14.4	Damage Near End of Term 23
14.5	No Abatement of Rent; Tenant’s Remedies..... 24
15. DEFAULT; REMEDIES	
15.1	Events of Default 24
15.2	Statutory Notices 25
15.3	Remedies..... 25
15.4	City’s Right to Perform..... 27
15.5	Rights Related to Termination 27
15.6	Cumulative Rights 27
15.7	Prepayment 27
15.8	Fines..... 28
15.9	City Lien 28
15.10	Commencement of Legal Actions 28
15.11	Waiver of Notice 28
16. SURRENDER	29
17. HAZARDOUS MATERIALS	
17.1	Definitions..... 29
17.2	Tenant’s Covenants..... 30
17.3	Environmental Indemnity 30
17.4	Environmental Audit..... 30
17.5	Closure Permit 30
18. EMINENT DOMAIN	
18.1	Definitions..... 31
18.2	General..... 31
18.3	Total Taking; Automatic Termination..... 31
18.4	Partial Taking; Election to Terminate..... 31
18.5	Tenant’s Monetary Obligations; Award 32
18.6	Partial Taking; Continuation of Lease 32
18.7	Temporary Takings..... 32
19. CITY AND OTHER GOVERNMENTAL PROVISIONS	
19.1	Charter 32
19.2	MacBride Principles – Northern Ireland..... 32
19.3	Tropical Hardwood and Virgin Redwood Ban 32
19.4	No Representations 33
19.5	Effect of City Approvals..... 33
19.6	Limitation on Damages..... 33
19.7	Sponsor’s Assurance Agreement 33
19.8	Federal Nondiscrimination Regulations..... 33
19.9	Federal Affirmative Action Regulations..... 34
19.10	City’s Nondiscrimination Ordinance 34
19.11	Conflict of Interest 35
19.12	Prevailing Rates of Wage..... 35
19.13	Declaration Regarding Airport Private Roads 35
19.14	No Relocation Assistance; Waiver of Claims..... 36
19.15	Drug-Free Workplace 36

19.16	Compliance with Americans With Disabilities Act.....	36
19.17	Sunshine Ordinance	36
19.18	Pesticide Prohibition	36
19.19	First Source Hiring Ordinance	36
19.20	Labor Peace/Card Check Rule.....	37
19.21	Requiring Minimum Compensation.....	37
19.22	Airport Intellectual Property	38
19.23	Requiring Health Benefits for Covered Employees.....	38
19.24	Notification of Limitations on Contributions.....	40
19.25	Food Service Waste Reduction Ordinance	40
19.26	Wages and Working Conditions	40
19.27	Prohibition of Tobacco Sales and Advertising	41
19.28	Prohibition of Alcoholic Beverages Advertising.....	41
19.29	Resource-Efficient Facilities and Green Building Requirements.....	41
19.30	Multi-Employer Bargaining Group Participation	41
20.	GENERAL PROVISIONS	
20.1	Notices	41
20.2	No Implied Waiver	42
20.3	Entire Agreement.....	42
20.4	Amendments	42
20.5	Interpretation of Lease	42
20.6	Successors and Assigns.....	42
20.7	No Third-Party Beneficiaries.....	42
20.8	No Joint Venture	42
20.9	Brokers.....	42
20.10	Severability	43
20.11	Governing Law	43
20.12	Attorneys' Fees	43
20.13	Cumulative Remedies	43
20.14	Time of Essence.....	43
20.15	Reservations by City	43
20.16	Survival of Indemnities.....	44
20.17	Quiet Enjoyment and Title.....	44
20.18	No Right of Redemption	44
20.19	Accord and Satisfaction	44
20.20	Joint and Several Liability	44
20.21	Estoppel Statements	44
20.22	Authority	45
20.23	Consents	45
20.24	Options Personal	45
20.25	Counterparts.....	45
	Signature Page	46
	List of Exhibits	47
	Exhibit A – Description of Premises	
	Exhibit B – Use and Operational Requirements	
	Exhibit C-1 – Form of Performance Bond	
	Exhibit C-2 – Form of Letter of Credit	

**LEASE AGREEMENT
FOR THE AIRPORT ADVERTISING PROGRAM
AT SAN FRANCISCO INTERNATIONAL AIRPORT**

MAJOR LEASE TERM SUMMARY

For the convenience of Tenant and City (as such terms are defined below), this Major Lease Term Summary (this "**Summary**") summarizes certain terms of this Lease (as defined below). This Summary is not intended to be a detailed or complete description of this Lease, and reference must be made to the other Sections below for the particulars of this Lease. In the event of any inconsistency between the terms of this Summary and any other provision of this Lease, such other provision shall prevail. Capitalized terms used elsewhere in this Lease and not defined elsewhere shall have the meanings given them in this Summary.

Effective Date: _____, 20__.

Tenant: Clear Channel Outdoor, Inc. d/b/a Clear Channel Airports
a Delaware corporation.

Tenant's Notice Address: 4635 Crackersport Road
Allentown, PA 18104
Attn: Toby Sturek, President, Clear Channel Airports Division
Fax No. (610) 395-4450
Tel. No. (610) 395-8002

City: The City and County of San Francisco, a municipal corporation,
acting by and through its Airport Commission.

City's Notice Address: San Francisco International Airport
International Terminal, North Shoulder Bldg., 5th Floor
Attn: Airport Director
P. O. Box 8097
San Francisco, CA 94128
Fax No. (650) 821-5005
Tel. No. (650) 821-5000.

City's Rent Payment Address: San Francisco International Airport
Attn: Accounting
575 N. McDonnell Road, 2nd Floor
P. O. Box 7743
San Francisco, CA 94120.

City's Monthly Gross Receipt Report Address: SFOConcessReport@flysf.com

**City's Insurance/
Deposit Notice
Address:** San Francisco International Airport
Attn: Revenue Development and Management
575 N. McDonnell Road, Suite 3-329
P. O. Box 8097
San Francisco, CA 94128
Fax No. (650) 821-4519
Tel. No. (650) 821-4500.

Premises: Terminal Buildings including lobby, concourses and boarding areas on the
(§ 1) departure level and arrivals level, certain areas in the parking connectors, Air
Train bridges and stations, and Rental Car Center, as shown on the attached
Exhibit A.

Airport Advertising Equipment location shall mean the area wherein Tenant
shall install its Advertising Equipment as approved by the Airport.

**Relevant Boarding
Area:** Boarding Area(s) A + B + C + D + E + F + G
(§ 4.14)

Term: Development Term, plus the Operating Term, collectively.
(§ 2)

Development Term is the period commencing on the delivery date of the first
Facility delivered by City to Tenant (the "**Commencement Date**") and ending
at 11:59 p.m. on the day prior to the Rent Commencement Date for the *last*
Facility delivered to the Tenant by City (the "**Full Rent Commencement
Date**").

Operating Term is the period commencing on the Full Rent Commencement
Date, and ending at 11:59 p.m. on the day prior to the eighth (8th) anniversary
thereof (the "**Expiration Date**").

**Commencement
Date:** The date on which the Airport Director gives notice to Tenant that the
(§ 2.1) Premises are ready for Tenant to take possession.

(actual date to be inserted upon determination)

**Rent Prior to Full
Rent
Commencement
Date:** Tenant shall be charged the pro-rated MAG based on months in Development
(§ 4.2) Term.
(actual amount to be inserted upon determination)

Rent Commencement Date: (§ 4) The earlier of: (a) the first day of the first calendar month following the date on which the Initial Improvements (as defined below) are substantially complete and Tenant opens for business therein, and (b) the first day of the first calendar month following the date that is one hundred eighty (180) days after the Commencement Date.

Actual Dates (to be inserted upon determination):

Commencement Date: _____
Development Term: _____ - _____
Full Rent Commencement Date: _____
Operating Term: _____ - _____
Expiration Date: _____ 11:59 p.m.

Expiration Date: (§ 2) 11:59 p.m. on the day before the ninth (9th) anniversary of the Full Rent Commencement Date.

(actual date to be inserted upon determination)

Reference Year: (§ 4.14) The calendar year immediately prior to the year in which this Lease is awarded: 2011.

Permitted Use: (§ 3) Install, manage and operate, maintain and display commercial advertising using various media types as generally found on airports and approved by the Airport Director (the "Advertising Equipment").

All Advertising Equipment must be approved by the Airport Director before being installed in each location. All advertising content must satisfy the requirements of the Airport's Advertising Standards Policy, which is described in more detail on the attached Exhibit B, as the same may be amended from time to time.

Base Rent: (§ 4) **Ten Million Dollars (\$10,000,000.00)**
(Minimum Annual Guarantee)

Lease Year: (§ 4) The period commencing on the Full Rent Commencement Date and terminating on the day before the first MAG Adjustment Date (as defined below), and each subsequent 12-month period, commencing on each MAG Adjustment Date and expiring on the day before the subsequent MAG Adjustment Date, or expiring on the Expiration Date, as the case may be.

Minimum Annual Guarantee: **Ten Million Dollars (\$10,000,000.00)** (the "Initial MAG"), per annum; **(Eight Hundred Thousand Eight Hundred Thirty Three Dollars and 33/100 Cents (\$833,333.33 per month))**, subject to adjustments upward as described below and (b) suspension and reinstatement under certain circumstances as described herein.
(§ 4)

MAG Adjustment Date: The first anniversary of the Rent Commencement Date or the first day of the first calendar month following such anniversary if the Rent Commencement Date does not fall on the first day of a calendar month, and each anniversary of such adjustment date thereafter.
(§ 4.3)

(to be inserted upon determination)

Rent: Base Rent, together with all other amounts owing by Tenant to City hereunder.
(§ 4)

Deposit Amount: Equal to one-half (1/2) of the then current MAG (subject to adjustment).
(§ 13)

Advertising Improvements and Investments: Amount sufficient to conform to the Airport's design standards and/or to the base building design and materials. All tenant improvements are subject to review and approval by the Design Review Committee. Tenant shall provide, install and maintain the Advertising Equipment at its sole cost and expense.
(§ 7.1)

Resolution: Number 12-0231, approved by the Airport Commission on October 30, 2012.

Initial Tenant Representative: Meredith Haggerty
Tel. No. (415) 307-5329
(§ 3.11)

Other Agreements: _____
(§ 13.5)

Exhibits: A – Premises
B – Use and Operational Requirements
C-1 – Form of Performance Bond
C-2 – Form of Letter of Credit

All such exhibits are incorporated into this Lease and made a part hereof.

Initial of Authorized Representative of City _____ *ct*

Initial of Authorized Representative of Tenant _____ *RK*

**LEASE AGREEMENT
FOR THE AIRPORT ADVERTISING LEASE
AT SAN FRANCISCO INTERNATIONAL AIRPORT**

THIS LEASE AGREEMENT (this "Lease"), dated as of the Effective Date, is entered into by and between Tenant, and the City and County of San Francisco, a municipal corporation ("City"), acting by and through its Airport Commission ("Commission"). This Lease is made with reference to the following facts:

A. City owns the San Francisco International Airport (the "Airport") located in the County of San Mateo, State of California, which Airport is operated by and through the Airport Commission (the "Commission"), the chief executive officer of which is the Airport Director ("Director"). The Airport's "Terminal Building Complex" is currently comprised of Terminal 1, Terminal 2, Terminal 3, and an International Terminal, together with connecting concourses, piers, boarding areas and extensions thereof, and satellite buildings now or hereafter constructed. Tenant acknowledges that, from time to time, the Airport undergoes certain construction and renovation projects. Unless otherwise specified, the term "Airport" or "Terminal Building Complex" as used herein shall mean the Airport or the Terminal Building Complex, respectively, as the same may be expanded, contracted, improved, modified, renovated, or changed in any way. Unless otherwise specified below, references to the "City" shall mean the City, acting by and through its Airport Commission.

B. Tenant desires to provide and operate the service described in the Permitted Use at the Airport, and City has determined that such service would be an accommodation and convenience for airline passengers and the public using the Terminal Building Complex or the Airport.

C. Following a competitive process, pursuant to Section 2A.173 of the San Francisco Administrative Code, the Commission has determined that Tenant is the highest or best responsible bidder or proposer. Pursuant to the Resolution, Commission has awarded this Lease to Tenant.

Accordingly, Tenant and City agree as follows:

1. PREMISES

1.1 Extent of Leasehold On the terms, conditions, and covenants in this Lease, City hereby leases to Tenant and Tenant hereby leases from City, the Premises. In addition, Tenant shall possess the non-exclusive right of ingress and egress to and from the Premises as may be necessary on areas designated by Director, subject to Airport Rules and Regulations, as amended from time to time (as amended, the "Airport Rules"), provided that Tenant's exercise of such right shall not impede or interfere unduly with the operation of the Airport by City, its tenants, customers, and other authorized occupants. Tenant shall not place or install any racks, stands or other display of merchandise or trade fixtures in any Airport property outside the Premises, without the express prior consent of Airport Director.

1.2 Relocation, Expansion, Contraction City grants Tenant the right to use the Premises identified on the attached Exhibit A, or portions thereof, from the date of delivery of each portion of the Premises through the remainder of the Term of this Agreement to provide and operate the service described in the Permitted Use. As of the Effective Date, the Premises identified in

Exhibit A, is subject to a final correction in accordance with the Airport's requirements after completion of Tenant's installation of initial advertising Improvements.

Airport Director, in his sole and absolute discretion, may require Tenant's Advertising Equipment to be added, eliminated or relocated, and in such event, Tenant shall add, remove and/or relocate Advertising Equipment at Tenant's sole cost. Such addition, removal and/or relocation is not intended to increase the Premises, rather the decision is based on the structural and operational needs of the Airport in consideration of the value of advertising location and a comparable replacement location. Such addition, elimination or relocation shall be performed by Tenant within thirty (30) days after notice of such requirement ("Airport Notice") has been given to Tenant. Exceptions may be granted on a case by case basis to extend the installation period from thirty (30) days after notice of such requirement given a reasonable lead time to order Advertising Equipment. Locations for any advertising premises may be relocated at the Airport Director's discretion.

If a Premises change is more than ten percent (10%) of total advertising display square footage, MAG will be adjusted pro rata in accordance with Section 4.3.

All such addition, elimination, or relocation can be accomplished by Airport Director without formal amendment to this Lease. Initial number and total square feet of Advertising Equipment are shown on Exhibit A.

1.3 Remeasurement of Premises. At any time and from time to time, Director may cause City to conduct a space audit pursuant to which City remeasures the Premises using the Airport's then-current measurement specifications, and in such event, the Lease terms based on square footage shall be deemed automatically adjusted to reflect such remeasurement.

1.4 Changes to Airport. Tenant acknowledges and agrees that (a) City shall have the right at all times to change, alter, expand, and contract the Airport, including the Terminal Building Complex; (b) City has made no representations, warranties, or covenants to Tenant regarding the design, construction, pedestrian traffic, enplanements, airline locations, or views of the Airport or the Premises. Without limiting the generality of the foregoing, Tenant acknowledges and agrees that the Airport (i) is currently undergoing, and may from time to time hereafter undergo, renovation, construction, and other Airport modifications; and (ii) may from time to time adopt rules and regulations relating to security and other operational concerns that may affect Tenant's business. Although City will use reasonable efforts to minimize the effect of such changes on Tenant's business, Tenant acknowledges that such activity may have some effect on its operations located at the Airport. Such construction and renovation programs might involve barricading, materials storage, noise, the presence of workers and equipment, rearrangement, utility interruptions, and other inconveniences normally associated with construction and renovation. Although City will use reasonable efforts to minimize the effect of such changes on Tenant's business, Tenant acknowledges that such activity may have some effect on its operations located at the Airport, and Tenant shall not be entitled to any rent credit or other compensation therefor. At any time and from time to time, City may, without the consent of Tenant, and without affecting Tenant's obligations under this Lease, at City's sole discretion, (a) change the shape, size, location, number and extent of the improvements in any portion of the Airport, including without limitation the concourses, piers, boarding areas, concession areas and security areas located within the Terminal Building, (b) build additional stories above or below the Airport buildings, including of the Terminal Building, (c) eliminate or relocate public entrances to the Premises so long as there is at all times one public entrance to the

Premises, (d) construct multi-level, elevated or subterranean parking facilities, and (e) expand or contract the Airport, including redefining the Airport boundaries so as to include additional lands within the Airport or exclude lands from the Airport or both. Without limiting waivers set forth elsewhere in this Lease, Tenant hereby waives all claims against City and releases City from all Losses (as defined below) that Tenant suffers or incurs arising out of or in connection with any changes to the Airport or any portion of the Airport and Tenant further agrees that Tenant will not be entitled to any rent abatement or any other rent relief in connection with any changes to the Airport or any portion of the Airport. Specifically, the Airport is undergoing a renovation of Boarding Area "E" which tentatively will reopen in the fall of 2013. The Airport is also planning on reconfiguring the security checkpoint in Terminal 3. The Airport will undergo a major renovation of Terminal 1 which is scheduled for 2014 through 2017.

1.5 Common Areas. The term "common areas" means all areas and facilities located within the Airport that are designated by City from time to time for the general use and convenience of the tenants of the Airport and other occupants of the airport, and airline passengers and other visitors to the Airport such as concourses, sidewalks, elevators, escalators, moving walkways, parking areas and facilities, restrooms, pedestrian entrances, driveways, loading zones and roadways. City may, in its sole discretion, and without any liability to Tenant (a) change the common areas, (b) increase or decrease the common areas (including the conversion of common areas to leaseable areas and the conversion of leaseable areas to common areas), and (c) impose parking charges. City will, in its sole discretion, maintain the common areas, establish and enforce Airport Rules concerning the common areas, close temporarily portions of the common areas for maintenance purposes, and make changes to the common areas including changes in the location of security check points, driveways, entrances, exits, parking spaces, parking areas, and the direction of the flow of traffic. City reserves the right to make additional Airport Rules affecting the Airport throughout the Term, including the requirement that Tenant participate in a parking validation program.

2. TERM

2.1 Commencement and Expiration. The Term shall commence on the Full Rent Commencement Date and expire on the Expiration Date, unless terminated prior thereto as provided herein. If for any reason (including, without limitation, the existing tenant's failure to vacate timely the Premises) City cannot deliver possession of the Premises to Tenant on the Commencement Date, this Lease shall remain in effect, City shall not be subject to any liability, and such failure shall not extend the Term hereof. In such event, and provided such delay is not caused by the act or omission of Tenant, or Tenant's principal, affiliate, contractor, employee, agent, licensee or invitee (a "Tenant Entity"), the Rent Commencement Date shall be extended day for day to reflect such delay. If for any reason City is unable to deliver possession of the Premises to Tenant on the date that is one hundred eighty (180) days after the Commencement Date, each of City and Tenant shall have the right to terminate this Lease by notice to the other. After the Rent Commencement Date has occurred, upon Director's request, Tenant will execute a written acknowledgment of the Commencement Date and the Rent Commencement Date. In the event Tenant fails to execute and return promptly such acknowledgment to City, the dates described therein shall be deemed conclusive.

2.2 Phased Delivery and Required Opening. Tenant must deliver a detailed phasing installation plan to the City for approval not less than 45 days prior to Commencement Date. As to each Advertising Equipment location, on the Delivery Date, Tenant shall (i) take possession of such Advertising Equipment location, (ii) ensure that all locations have advertising or filler copy installed, (iii) cause the initial improvements necessary and appropriate to commence operations in the Advertising Equipment location (the "Initial Improvements") to be substantially completed at Tenant's sole cost.

Tenant must ensure that all Advertising Equipment must be installed and operational no later than one hundred twenty (120) days from the Commencement Date. As used herein, the term "Tenant's Work" shall mean all improvements, alterations, fixture, equipment, and installation, or appropriate for the conduct of the Permitted Use.

2.3 Late Opening Charge. In the event Tenant fails to install and have commercial advertising displays on all of the initial Advertising Equipment locations on or the agreed-upon Full Rent Commencement Date, City will incur substantial damages, the exact amount of which are extremely difficult to fix. Accordingly, for each day after the Full Rent Commencement Date until the day on which Tenant installs the complete initial Advertising Equipment for business, Tenant shall pay to City Five Hundred Dollars (\$500.00) (in addition to Rent as provided below), as liquidated damages. The parties have agreed that this amount represents a reasonable approximation of the damages likely to be suffered by City in the event Tenant shall fail to install all Advertising Equipment on or before the Rent Commencement Date. In the event the Advertising Equipment are not installed, on the date that is sixty (60) days after the Rent Commencement Date, City shall have the option to terminate this Lease, or to remove the applicable Advertising Equipment location from the Lease, exercisable by notice to Tenant. In the event the applicable Advertising Equipment location is removed from the Lease, any Rent components based on square footage shall be reduced accordingly. Tenant shall be liable for all damages associated with such termination or removal, including City's releasing costs.

2.4 Delivery Delay by City. If for any reason City cannot deliver possession of an Advertising Equipment location to Tenant on the Commencement Date, this Lease shall remain in effect, City shall not be subject to any liability, and such failure shall not extend the Term hereof. In such event, and provided such delay is not caused by the act or omission of Tenant, or Tenant's principal, affiliate, contractor, employee, agent, licensee or invitee (a "Tenant Entity"), the Rent Commencement Date applicable to such Advertising Equipment location shall be extended day for day to reflect such delay. If for any reason City is unable to deliver possession of the Premises to Tenant on the date that is one (1) year after the Commencement Date, each of City and Tenant shall have the right to terminate this Lease by notice to the other.

2.5 [Intentionally Deleted - City's Right to Extend Term.]

2.6 Holding Over. If, without objection by City, Tenant holds possession of the Premises after the Expiration Date, Tenant shall become a tenant from month to month, upon the terms of this Lease except that, the MAG shall remain applicable and shall be based on the then-current MAG. No such holdover shall be deemed to operate as a renewal or extension of the Term. Such month-to-month tenancy may be terminated by City or Tenant by giving thirty (30) days' notice of termination to the other at any time. Tenant shall have no rights to renew or extend the Term of this Lease.

3. USE AND OPERATION

3.1 Permitted Use. Tenant shall use the Premises for the Permitted Use and for no other purpose. Tenant shall, at all times, operate the Premises in strict conformance with the Permitted Use attached as Exhibit B herein. In the event Tenant desires to use the Premises for any purpose other than the Permitted Use (including selling an item or service outside the scope of the Permitted Use). Tenant must submit a request to Director. Director may, in his/her sole and absolute discretion approve or deny such request. Any such decision shall be binding on Tenant.

3.2 No Exclusivity. Tenant acknowledges and agrees that Tenant has no exclusive rights to conduct the business of the Permitted Use and that City may arrange with others for similar activities at the Airport.

3.3 Operation of Business. Subject to the terms of this Lease, Tenant will operate Tenant's business in the Premises so as to maximize Gross Receipts (as defined below) and in accordance with the requirements set forth on Exhibit B. Without limiting the generality of the foregoing, Tenant shall (a) conduct the business in a first-class, businesslike, safe, efficient, courteous and accommodating manner; and (b) employ sufficient and experienced staff. In the event Director shall give notice to Tenant that any of the foregoing covenants (a) - (b) are not being satisfied, Tenant shall immediately discontinue or remedy the objectionable practice. Tenant shall take all reasonable measures in every proper manner to maintain, develop, and increase the business conducted by it. Tenant will not divert or cause to be diverted any business from the Airport.

3.4 [Intentionally Deleted - Support Space].

3.5 Hours of Operation. Tenant shall ensure that its advertising displays are operational twenty-four (24) hours a day, seven (7) days a week.

3.6 [Intentionally Deleted - Prices].

3.7 References to Airport. Tenant shall not, without the prior written consent of Director, reference City or the Airport for any purpose other than the address of the business to be conducted by Tenant in the Premises, nor will Tenant do or permit anything in connection with Tenant's business or advertising which in the judgment of City may reflect unfavorably on City or the Airport, or confuse or mislead the public as to the relationship between City and Tenant.

3.8 Other Operational Requirements.

(a) Installation of Advertising. Tenant shall install new Advertising Equipment within sixty (60) days after approval thereof by the Airport Director.

(b) Inspection and Cleaning. Tenant shall visually inspect and clean each Advertising Equipment daily in order to maintain a polished and professional appearance. Tenant shall also ensure that the Advertising Equipment that are lit are suitably illuminated at all times.

(c) Repair of Advertising Equipment. Tenant shall repair or replace damaged Advertising Equipment within twenty-four (24) hours following notice thereof by Airport on a weekday or the next Monday following any weekend.

(d) Removal of Advertising Content. Tenant shall remove any expired, or non-revenue producing advertisements within seventy-two (72) hours beyond expiration or termination of revenue, and replace with Airport-approved filler copy within seventy-two (72) hours of the expiration of the advertiser's contract. Tenant shall make best efforts to replace creative with revenue-generating advertisement.

(e) Occupancy Rates. Tenant shall use reasonable commercial efforts to have at least seventy-five percent (75%) of all Advertising Equipment in all locations occupied. Within ten (10)

business days after the Effective Date, Tenant shall provide to the Director a written plan for achieving this goal.

(f) Maximization of Revenue. Tenant shall use reasonable commercial efforts to maintain an average minimum monthly advertising rate equal to or exceeding \$2,500 per month per advertising using advertising other than Lodging, Transportation and Attractions Boards.

(g) Technology. Within ten (10) business days after the Effective Date, Tenant shall provide to the Director a written description of the technology it intends to use with respect to the Advertising Equipment.

(h) Tenant must dispose of all trash and debris in areas and in containers designated by Director. If City provides common trash areas, Tenant may request a permit to use the same for a charge determined by Director from time to time. Tenant may not place or leave or permit to be placed or left in or upon any part of the common areas or corridors adjacent to the Premises any garbage, debris or refuse.

(i) Tenant acknowledges that the operational requirements of the Airport as an airport facility, including without limitation security requirements, are of paramount importance. Tenant acknowledges and agrees that it must conduct its business in a manner that does not conflict with the operational requirements of the Airport as an airport facility and that fully accommodates those requirements. Without limiting other waivers herein, Tenant waives all claims for any Losses arising out of or connected to the operation of the Airport as an airport facility. Without limitation on the foregoing, Tenant must:

- (i) comply with the Airport Rules;
- (ii) cause all deliveries and dispatches of supplies, fixtures, equipment and furniture to be made and conveyed to or from the Premises by means and during hours established by Director in Director's sole discretion. City has no responsibility regarding the delivery or dispatch of Tenant's merchandise, supplies, fixtures, equipment and furniture. Tenant may not at any time park its trucks or other delivery vehicles in common areas; and
- (iii) not park within the parking areas of the Airport except in those areas, if any, designated by City pursuant to permits obtained from the Airport's Permit Bureau. Nothing herein shall imply that Tenant shall be able to secure any on-Airport parking privileges.

3.9 Prohibited Activities. Without limiting any other provision herein, Tenant shall not, without the prior written consent of Director: (a) use or permit the use of the Premises for the conduct of an outlet store or a second-hand store; (b) advertise any distress, fire, bankruptcy, liquidation, relocation, closing, or going-out-of-business sales; (c) use or permit the use on the Premises of any pinball machines, videogames, or other devices or equipment for amusement or recreation, or any vending machines, newspaper racks, pay telephones, or other coin, token, or credit card-operated devices; (d) cause or permit anything to be done in or about the Premises, or bring or keep anything thereon, which might (i) increase in any way the rate of fire insurance on the Terminal Building Complex or any of its contents; (ii) create a nuisance; (iii) in any way obstruct or interfere with the rights of others in the Terminal Building Complex or injure or annoy them; (e) commit or suffer to be committed any waste upon the Premises; (f) use or

allow the Premises to be used for any improper, immoral, unlawful or objectionable purpose; (g) place any loads upon the floor, walls or ceiling which endanger the structure or obstruct the sidewalk, passageways, stairways or escalators, in front of, within, or adjacent to the Terminal Building Complex; (h) use any advertising or promotional medium that may be seen, heard, or otherwise experienced outside the Premises (such as searchlights, barkers or loudspeakers); (i) distribute handbills or circulars to Airport patrons or to cars in the parking lots, or engage in any other advertising in the Airport; (j) engage in any activity on the Airport outside the Premises for the recruitment or solicitation of business; or (k) do or permit to be done anything in any way tending to injure the reputation of City or appearance of the Airport.

3.10 Audit of Operations. At any time and from time to time, City may conduct an audit of Tenant's operations at the Airport (in addition to City's right to audit pursuant to Section 4.7 [Books and Records; Audit Rights] hereof) to confirm that such operations comply with the requirements set forth herein. Tenant shall cooperate with such audit. In the event such audit shows that Tenant is not complying with such requirements, without limiting City's ability to call a default hereunder, City may require that Tenant reimburse City for the costs of such audit. Tenant shall promptly remedy any noncompliance shown in any such audit.

3.11 Representative of Tenant. Tenant shall at all reasonable times retain in the Terminal Building Complex at least one qualified representative authorized to represent and act for it in matters pertaining to its operation, and shall keep Director informed in writing of the identity of each such person. The initial person so designated is the Initial Tenant Representative.

3.12 Investigation Reports. Tenant shall, if required by Director, employ, at its own cost and expense, an investigative organization approved by Director for the purpose of making investigations and observations and preparing a written report of the carrying out of any pricing policies, revenue control, and operational techniques being used on the Premises. Tenant shall cause such investigation and observation to be made at such reasonable times and in the manner directed by Director, and the investigator shall deliver forthwith to Director a true and complete written copy of any such reports made to Tenant.

3.13 Compliance with Laws. Tenant shall promptly, at its sole expense, cause the Premises (including any permitted Alterations (as defined below)), and Tenant's and any Tenant Entity's use of the Premises and operations therein, to comply at all times with all Laws (as defined below). Notwithstanding the foregoing, this Section 3.13 shall not impose on Tenant any liability to make any structural alterations to the Terminal's roof, foundation, bearing and exterior walls and subflooring; or heating, ventilating, air conditioning, plumbing, electrical, fire protection, life safety, security and other mechanical, electrical and communications systems of the Terminal (collectively "**Building Systems**"), except to the extent the same is (i) installed by Tenant or Tenant Entity, or (ii) necessitated by Tenant's Alterations or by any act or omission of Tenant or any Tenant Entity. As used herein, the term "**Laws**" shall mean all present and future laws, ordinances, rules, judgments, decrees, injunctions, regulations, permits, authorizations, orders and requirements, to the extent applicable to Tenant or the Premises or any portion of any of them whether or not in the contemplation of the parties, including, without limitation, all consents or approvals required to be obtained from, and all rules and regulations of, and all building and zoning laws of, all federal, state, county and municipal governments, the departments, bureaus, agencies or commissions thereof, authorities, board of officers, any national or local board of fire underwriters, or any other body or bodies exercising similar functions, having or acquiring jurisdiction of the Site or any portion thereof, including the Occupational Safety and Health Act and all other applicable laws relating to workplace safety or toxic materials, substances or wastes, Title XV (commencing with Section 3082) of the

California Civil Code relating to works of improvement and all other applicable laws relating to construction projects, the provisions of the American with Disabilities Act, 42 U.S.C. Section 12101 et. seq. and any governmental regulations with respect thereto (the "ADA") (including, without limitation, the requirements under the ADA for the purposes of "public accommodations", as that term is used in the ADA), Title 24 of the California Administrative Code, all Environmental Laws, the Airport Rules, the Tenant Improvement Guide (including any design criteria) as the same may be amended from time to time (the "TI Guide"), and the requirements referenced in Section 19 [City and Other Governmental Provisions] hereof.

4. RENT

4.1 Definitions. For purposes of this Lease, the following capitalized terms shall have the following meanings:

(a) "**Gross Receipts**" means the gross amount received by Tenant from the advertiser or media buyer without deduction of any overhead expense incurred by Tenant; provided, however, that gross receipts shall be reduced by (i) any state or local tax imposed upon gross receipts or gross revenue (as opposed to net profits), including, without limitation, sales or gross receipts tax, (ii) commissions paid to advertising agencies or other media buyers on behalf of advertisers, and (iii) telephone charges paid by Tenant on Lodging, Transportation and Attractions Boards.

(b) "**Consumer Price Index**" means that index published by the United States Department of Labor, Bureau of Labor Statistics known as "**All Urban Consumers-Not Seasonally Adjusted- San Francisco/Oakland/San Jose, CA.**" In the event such index is discontinued, then "Consumer Price Index" shall mean an index chosen by Director which is, in Director's reasonable judgment, comparable to the index specified above.

(c) "**MAG Adjustment Date**" has the meaning given it in the Summary.

(d) "**Base Index**" means the most recent Consumer Price Index published immediately prior to the Commencement Date.

(e) "**Comparison Index**" means the most recent Consumer Price Index available at the time of MAG Adjustment review.

(f) "**First Month**" means the month in which the Full Rent Commencement date occurs.

(g) "**Lease Year**" has the meaning given it in the Summary.

4.2 Monthly Rent Payments. Tenant shall pay, as rent for the Premises, monthly Base Rent in advance, on or before the first (1st) day of each calendar month of the Term, as set forth below:

(a) On or before the Rent Commencement Date and the first (1st) day of each calendar month thereafter, Tenant shall pay the current monthly Minimum Annual Guarantee to the City's Rent Payment Address.

(b) During the Development Term (as defined in the Summary), for purposes of determining Base Rent, the MAG shall be prorated based on months in Development Term. From and after the Full Rent Commencement Date, the MAG shall no longer be prorated.

(c) All payments hereunder shall be paid to City's Rent Payment Address, or at such other place as City may from time to time designate in writing.

(d) All Rent shall be paid in lawful money of the United States, free from all claims, demands, setoffs, or counterclaims of any kind.

(e) Any Rent not paid when due shall be subject to a service charge equal to the lesser of the rate of one and one-half percent (1½%) per month, and the maximum rate permitted by law. Acceptance of any service charge shall not constitute a waiver of Tenant's default on the overdue amount or prevent City from exercising any of the other rights and remedies available to City.

4.3 Adjustments to Minimum Annual Guarantee. On each MAG Adjustment Date, the Minimum Annual Guarantee will be adjusted if the Comparison Index exceeds the Base Index. The Minimum Annual Guarantee with respect to the Upcoming Lease Year shall then be increased to equal the following amount:

$$\text{Initial MAG} \quad \times \quad \frac{\text{Comparison Index}}{\text{Base Index}}$$

Notwithstanding anything to the contrary herein, in no event will the Minimum Annual Guarantee for any Lease Year of the Term be lower than the Minimum Annual Guarantee with respect to the prior Lease Year except if, in any Lease Year, the annual review of the total square feet of Advertising Equipment location result in a minimum of ten percent (10%) expansion or contraction, the MAG shall be adjusted as follows:

$$\text{Initial MAG} \quad \times \quad \frac{\text{Comparison Index}}{\text{Base Index}} \quad \times \quad \frac{\text{New Lease Year Square Feet}}{\text{Prior Lease Year Square Feet}}$$

The first MAG adjustment Date shall occur on the anniversary of the Rent Commencement Date. For example: If the Rent Commencement Date occurs on July 1, 2014, the first MAG Adjustment Date shall occur on July 1, 2015 and every July 1 thereafter until expiration of the Lease term.

4.4 [Intentionally Deleted - Construction Period Operations.]

4.5 [Intentionally Deleted - Rent During Construction.]

4.6 [Intentionally Deleted - Sales Reports.]

4.7 Annual Certification of Sales and Adjustment. Within ninety (90) days after the end of each Lease Year, Tenant shall submit to Director an unqualified year-end financial report certified by an officer of the Tenant showing Gross Revenues achieved with respect to the prior Lease Year. In addition, Tenant shall submit to City such other financial or other reports as Director may reasonably require.

4.8 [Intentionally Deleted - Cash Register Requirements.]

4.9 [Intentionally Deleted - Books and Records; Audit Rights.]

4.10 Other Reports and Submissions. Tenant shall furnish City with such other financial or statistical reports as Director or his/her representative from time to time may reasonably require. Upon

request by Director, Tenant shall furnish to City copies of its quarterly California sales and use tax returns covering the Premises operations as well as that pertinent portion of both the California and Federal income tax returns and possessory interest tax returns on the Premises operations at the time of filing, and any amendments thereto. All copies of such returns must be certified as exact copies of the original documents by a Certified Public Accountant. Tenant and all subtenants (to the extent permitted) shall also promptly notify Director of and furnish to City copies of any audit reports covering this facility conducted by the California Franchise Tax Board or the Board of Equalization.

4.11 Additional Rent. Tenant shall pay to City any and all charges and other amounts under this Lease as additional rent, at the same place where Base Rent is payable. City shall have the same remedies for a default in the payment of any such additional charges as for a default in the payment of Base Rent.

4.12 Prepay Rent. Notwithstanding anything to the contrary herein, in the event Tenant shall fail to pay any Rent when due hereunder, Director shall have the right to require Tenant to pay estimated monthly Rent (including Base Rent, utility charges, and all other amounts) one (1) month in advance of when such payment would otherwise be due. Such prepayment would be based on the highest monthly Rent previously due from Tenant. Such right shall be exercised by a notice from Director to Tenant, which notice may be given any time after such default by Tenant, regardless of whether the same is cured by Tenant.

4.13 Nature of Lease. Under no circumstances will City be expected or required to make any payment of any kind with respect to Tenant's use or occupancy of the Premises, except as may be otherwise expressly set forth herein. Except as may be specifically and expressly provided otherwise in this Lease, no occurrence or situation arising during the Term, nor any present or future Law, whether foreseen or unforeseen, shall relieve Tenant from its liability to pay all of the sums required by this Lease, or relieve Tenant from any of its other obligations under this Lease, or give Tenant the right to terminate this Lease in whole or in part. Tenant waives any rights now or hereafter conferred upon it by any existing or future Law to terminate this Lease or to receive any abatement, diminution, reduction, or suspension of payment of such sums, on account of such occurrence or situation. Except as otherwise expressly provided herein, this Lease shall continue in full force and effect, and the obligations of Tenant hereunder shall not be released, discharged or otherwise affected, by reason of: (a) any damage to or destruction of the Premises or any portion thereof or any improvements thereon, or any taking thereof in eminent domain; (b) any restriction or prevention of or interference with any use of the Premises or the improvements or any part thereof; (c) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other proceeding relating to City, Tenant or any constituent partner of Tenant or any sublessee, licensee or concessionaire or any action taken with respect to this Lease by a trustee or receiver, or by any court, in any proceeding; (d) any claim that Tenant or any other person has or might have against City; (e) any failure on the part of City to perform or comply with any of the terms hereof or of any other agreement with Tenant or any other person; (f) any failure on the part of any sublessee, licensee, concessionaire, or other person to perform or comply with any of the terms of any sublease or other agreement between Tenant and any such person; (g) any termination of any sublease, license or concession, whether voluntary or by operation of law; or (h) any other occurrence whatsoever, whether similar or dissimilar to the foregoing in each case whether or not Tenant shall have notice or knowledge of any of the foregoing. The obligations of Tenant hereunder shall be separate and independent covenants and agreements. Tenant hereby waives to the full extent permitted by applicable law, all rights now or hereafter conferred by statute, including without limitation the provisions of Civil Code Sections 1932 and 1933, to quit, terminate or surrender this Lease or the Premises or any part thereof, or to any abatement, suspension, deferment, diminution or reduction of any rent hereunder.

4.14 [Intentionally Deleted - Severe Decline in Enplanements.]

5. ASSIGNMENT OR SUBLETTING

5.1 No Assignment. Tenant shall not assign, sublet, encumber, or otherwise transfer, whether voluntary or involuntary or by operation of law, the Premises or any part thereof, or any interest herein, without City's prior written consent, which consent may be granted or denied in City's sole and absolute discretion (the term "**Transfer**" shall mean any such assignment, subletting, encumbrance, or transfer). City's consent to one Transfer shall not be deemed a consent to subsequent Transfers. Any Transfer made without City's consent shall constitute a default hereunder and shall be voidable at City's election. Notwithstanding or limiting the foregoing, the City will allow a Tenant, including an individual or entity with any level of ownership in an Airport tenancy, to hold a maximum of eight (8) retail or food and beverage, or a combination therein, leases at the Airport at any given time. This policy does not include subleases. Any transfer made without the City's consent shall constitute a default hereunder and shall be voidable at the City's election.

5.2 Changes in Tenant. The merger of Tenant with any other entity or the transfer of any controlling ownership interest in Tenant, or the assignment or transfer of a substantial portion of the assets of Tenant, whether or not located on the Premises, shall constitute a Transfer. Without limiting the generality of the foregoing, if Tenant is a partnership, a withdrawal or change, voluntary, involuntary or by operation of law of the partner or partners owning twenty-five percent (25%) or more of the partnership, or the dissolution of the partnership, or the sale or transfer of at least twenty-five percent (25%) of the value of the assets of Tenant, shall be deemed a Transfer. If Tenant is a corporation or limited liability company, any dissolution, merger, consolidation or other reorganization of Tenant, or the sale or other transfer of a controlling percentage of the capital stock or membership interests of Tenant, or the sale or transfer of at least twenty-five percent (25%) of the value of the assets of Tenant, shall be deemed a Transfer. The phrase "**controlling percentage**" means the ownership of, and the right to vote, stock or interests possessing at least twenty-five percent (25%) of the total combined voting power of all classes of Tenant's capital stock or interests issued, outstanding and entitled to vote for the election of directors. Without limiting the restrictions on asset transfers, this paragraph shall not apply to stock or limited liability company interest transfers of corporations or limited liability companies the stock or interests of which is traded through an exchange or over the counter.

5.3 No Release. In no event will City's consent to a Transfer be deemed to be a release of Tenant as primary obligor hereunder.

5.4 Subleasing. Without limiting City's discretion in approving or disapproving a proposed Transfer, if and to the extent City permits Tenant to sublease the Premises, the following shall apply: (a) Prior to negotiating a sublease agreement, Tenant must submit to City a sublease proposal for City's approval, which approval may be granted or withheld in City's absolute and sole discretion; (b) Every sublease must be on a Standard Sublease Agreement form approved by Director, and the actual sublease must be approved by Director; (c) Each and every covenant, condition or obligation imposed upon Tenant by this Lease and each and every right, remedy or benefit afforded City by this Lease will not be impaired or diminished as a result of any sublease agreement; (d) No subtenant shall be obligated to pay to Tenant, and Tenant shall not be permitted to charge any rent, percentage rent, bonus rent, key money, administration fee, or the like, which exceeds, in the aggregate, the total sums that Tenant pays to City under this Lease for the portion of the Premises subleased by the subtenant under its sublease agreement (the "**Excess Rent**"). If, notwithstanding the foregoing prohibition, Tenant receives any Excess Rent, Tenant shall pay the same to City; (e) Tenant assigns to City all rent and other payments due from all

subtenants under any sublease agreements; provided however, Tenant is hereby granted a license to collect rents and other payments due from subtenants under their sublease agreements until the occurrence of an Event of Default, regardless of whether a notice of that default has been given by City. At any time, at Director's option, City may notify a subtenant of this assignment and upon such notice the subtenant will pay its rent other payments directly to City. City will credit Tenant with any rent received by City under such assignment, but the acceptance of any payment on account of rent from any subtenants as a result of an Event of Default will in no manner whatsoever serve to release Tenant from any liability under this Lease. No payment of rent or any other payment by a subtenant directly to City or other acceptance of such payments by City, regardless of the circumstances or reasons therefor, will in any manner whatsoever be deemed an attornment by the subtenants to City in the absence of either a specific written agreement signed by City to such an effect.

5.5 Excess Rent. City shall receive fifty percent (50%) of all Excess Rent payable in connection with any Transfer. "**Excess Rent**" means the excess of (a) all consideration received by Tenant from a Transfer over (b) Rent payable under this Lease after deducting reasonable tenant improvements paid for by Tenant, reasonable attorneys' fees and any other reasonable out-of-pocket costs paid by Tenant as a result of the Transfer (but specifically excluding any Rent paid to Landlord while the Premises is vacant).

5.6 Acceptance of Rent. The acceptance of rent by City from any person or entity does not constitute a waiver by City of any provision of this Lease or a consent to any Transfer. City's consent to one Transfer will not be deemed to be a consent to any subsequent Transfer. If Tenant defaults in the performance of any of the terms of this Lease, City may proceed directly against the transferor (or if there has been more than one Transfer, then each transferor) without necessity of exhausting remedies against Tenant. City may consent to subsequent Transfers or amendments or modifications to this Lease with transferees, without notifying transferor (or if there has been more than one Transfer, then each transferor) and without obtaining its or their consent thereto and such action shall not relieve any transferor of liability under this Lease as amended.

5.7 Waiver. Tenant waives the provisions of Civil Code Section 1995.310 with respect to remedies available to Tenant should City fail to consent to a Transfer.

6. TAXES, ASSESSMENTS AND LIENS

6.1 Taxes.

(a) Tenant recognizes and understands that this Lease may create a possessory interest subject to property taxation and that Tenant may be subject to the payment of property taxes levied on such interest. Tenant further recognizes and understands that any Transfer permitted under this Lease and any exercise of any option to renew or other extension of this Lease may constitute a change in ownership for purposes of property taxation and therefore may result in a revaluation of any possessory interest created hereunder. Tenant shall pay all taxes of any kind, including possessory interest taxes, that may be lawfully assessed on the leasehold interest hereby created and to pay all other taxes, excises, licenses, permit charges and assessments based on Tenant's usage of the Premises, all of which shall be paid when the same become due and payable and before delinquency.

(b) Tenant shall report any Transfer, or any renewal or extension hereof, to the County of San Mateo Assessor within sixty (60) days after such Transfer transaction, or renewal or extension. Tenant further agrees to provide such other information as may be requested by the City to enable the

City to comply with any reporting requirements under applicable law with respect to possessory interests and any applicable rules and regulations of the Internal Revenue Service and the Securities and Exchange Commission in connection with any tax-exempt Airport revenue bonds financing the property leased to Tenant hereunder. Tenant agrees to make an irrevocable election not to claim depreciation or an investment credit with respect to any property leased hereunder.

6.2 Other Liens. Tenant shall not permit or suffer any liens to be imposed upon the limitation, mechanics', materialmen's and tax liens, as a result of its activities without promptly discharging the same. Notwithstanding the foregoing, Tenant may in good faith contest any such lien if Tenant provides a bond in an amount and form acceptable to City in order to clear the record of any such liens. Tenant shall assume the defense of and indemnify and hold harmless City against any and all liens and charges of any and every nature and kind which may at any time be established against said premises and improvements, or any part thereof, as a consequence of any act or omission of Tenant or as a consequence of the existence of Tenant's interest under this Lease.

7. INVESTMENTS; ALTERATIONS

7.1 Minimum Investment. Prior to the Rent Commencement Date, Tenant shall refurbish, redecorate and modernize the interiors and exteriors of the Premises, and otherwise complete the Initial Improvements, at a minimum cost of the Minimum Investment Amount. Within ninety (90) days after substantial completion of Tenant's Work, Tenant must provide to City an electronic **AUTOCAD file** and a hard copy set of as-built drawings and an affidavit, signed under penalty of perjury by both the Tenant and the Tenant's general contractor, architect or construction manager, stating the hard construction costs paid by Tenant to complete Tenant's Work, together with copies of paid invoices and lien waivers substantiating the costs stated in the affidavit. Such "hard construction costs," which must equal or exceed the Minimum Investment Amount, may include architectural and engineering fees, provided the credit for such costs against the Minimum Investment Amount shall not exceed fifteen percent (15%) of the Minimum Investment Amount. The minimum investment may not include financial costs, interest, inventory, pre-opening expenses, inter-company charges related to construction, business interruption, overhead, or debt service on any construction loan, or any charges paid by Tenant to an affiliate. If City determines that the said actual investment cost is less than the Minimum Investment Amount, the deficiency will be paid to City within sixty (60) days from the date City provides Tenant with written notice of said deficiency. If Director disputes the amount of investment claimed by Tenant, Director may, at City's expense, hire an independent appraiser to determine the cost of the investment. If the independent appraiser determines that the investment is less than the Minimum Investment Amount, the deficiency, as well as City's costs of hiring such independent appraiser, will be paid to City by Tenant within sixty (60) days of City's written notice of the appraiser's determination. At any time, upon three (3) business days notice, City or its representatives may audit all of Tenant's books, records and source documents related to the hard construction costs paid by Tenant to complete Tenant's Work. If the audit reveals that the hard construction costs paid by Tenant were less than those stated in Tenant's affidavit, then Tenant must pay City for the costs incurred by City in connection with the audit plus any additional deficiency discovered between the hard construction costs paid by Tenant and the Minimum Investment Amount.

7.2 City's Approval Rights. Tenant shall not make or suffer to be made any alterations, additions, or improvements to the Premises or any part thereof or attach any fixtures or equipment thereto, including the Initial Improvements (collectively, "Alterations") without City's prior written consent. Without limiting the generality of the foregoing, the initial layout and design of all Alterations shall conform to Commission's established architectural design scheme for the Terminal Building Complex

and the provisions of Airport's TI Guide. Prior to the construction of any Alterations (including the Initial Improvements), Tenant shall submit detailed plans and specifications to the Airport's Design Review Committee for approval. Tenant shall include with its plans and specifications schematic renderings of the public retail area, materials, a color board(s) and a detailed layout of the overall merchandising plan. All decisions by the Airport's Design Review Committee shall be made subject to the approval of the Airport Commission. City's approval rights will extend to and include architectural and aesthetic matters and City reserves the right to reject any designs submitted and to require Tenant to resubmit designs and layout proposals until they meet City's approval. The Rent Commencement Date shall not be extended if City elects to reject any designs or layout proposals submitted. In the event of disapproval by City of any portion of the plans and specifications, Tenant will promptly submit necessary modifications and revisions thereof. No changes or alterations will be made in said plans or specifications after approval by City. City agrees to act within a reasonable period of time upon such plans and specifications and upon requests for approval of changes or alterations in said plans or specifications. One copy of plans for all improvements or subsequent changes therein or alterations thereof will, within fifteen (15) days after approval thereof by City, be signed by Tenant and deposited with City as an official record thereof. All Alterations shall be effected through the use of contractors approved by City who shall furnish to City upon demand such completion bonds and labor and material bonds as City may require so as to assure completion of the Alterations on a lien-free basis. Without limiting the requirements set forth above, Tenant acknowledges and agrees that Tenant may be required to obtain approvals for any desired Alterations from the Airport's Quality Control Department.

7.3 Structures and Fixtures. Tenant shall, at its sole cost and expense, design, erect, construct and install all fixtures, furnishings, carpeting, decorations, finishings, equipment, counters, or other necessary Alterations for its operation under this Lease. All construction shall be in conformity with the latest edition of the Airport TI Guide, and in conformity with the approved plans and specifications submitted by Tenant, and shall meet all applicable local building codes and ordinances as well as all other Laws. Tenant shall submit complete plans and specifications to Director, and prior to the commencing any construction work, obtain Director's written approval of said plans and specifications. Tenant shall make no change or alteration in the plans and specifications without prior written approval of Director. In the event that Tenant fails to submit plans and specifications which meet the approval of City within thirty (30) days after the Effective Date, City may terminate this Lease. Nothing herein contained shall be construed to delay or otherwise affect the Commencement Date or the Rent Commencement Date.

7.4 Notice and Permits. Tenant shall give written notice to Director not less than seven (7) days prior to the commencement of any work in construction, alteration or repairs of the Premises, in order that City may post appropriate notices of non-responsibility, and agrees that such notices may remain posted until the acceptance of such work by City. Tenant shall obtain, and pay all fees for all permits required by the City or other legal jurisdictions, for improvements that it is required to construct or install, and it shall furnish copies of all such permits to City prior to the commencement of any work.

7.5 Title to Alterations. Title to all Alterations of such a nature as cannot be removed without damage to the Terminal, including all carpeting, decorations, finishings, and counters, shall vest in City on the Expiration Date. All other equipment of such nature as to constitute trade fixtures shall remain the property of Tenant. On the Expiration Date, Tenant may remove said trade fixtures or Director may require that Tenant remove same at Tenant's expense. Prior to the Rent Commencement Date, Tenant shall submit to Director a proposed list of such trade fixtures; said list may be subsequently amended during the term of this Lease to reflect any changes in said trade fixtures. Tenant agrees and understands that "fixture" is defined as a thing affixed to premises that is bolted, nailed, screwed, cemented and/or plastered. For the purpose of this Lease, fixtures shall include slat wall, counters and the

like, attached to the physical structure of the premises in any matter whatsoever. On the Expiration Date, all fixtures, other than those deemed trade fixtures by City, shall become the property of City. Tenant shall be liable to City for City's costs for storing, removing and disposing of any alterations of Tenant's personal property, and of restoration of the Premises.

7.6 Effect of Alterations on Airport. If and to the extent that Tenant's activities or proposed Alterations trigger an obligation or requirement on the part of City to make changes to the Airport premises (including ADA requirements), Tenant shall indemnify, defend, and hold harmless City from and against any and all Losses (as defined below) arising out of such activities or Alterations.

7.7 Mid-Term Refurbishment.

(a) Tenant shall refurbish, redecorate and modernize the interior and exterior of the public retail area of the Premises after the fourth (4th) anniversary of the Full Rent Commencement Date (the "**Mid-Term Refurbishment Date**"). On or before the date that is thirty (30) days before the Mid-Term Refurbishment Date, Tenant shall give notice to Director of its intended plan with respect to such mid-term refurbishment requirements. All such mid-term refurbishments will be subject to the requirements of this Lease, including Director's approval rights under this Section 7. Tenant shall complete all such refurbishments on or before the date that is six (6) months after the Mid-Term Refurbishment Date.

(b) The Airport Director shall be authorized to waive, reduce or delay such requirement provided Director is satisfied that Tenant has developed and shall implement a maintenance program necessary or appropriate to keep the facilities in good condition throughout the term of the Lease.

(c) Upon completion of the mid-term refurbishment, Tenant shall provide City with documentation of expenses as specified in Section 7.1 [Minimum Investment] for mid-term refurbishment investment.

7.8 Labor Harmony. The parties acknowledge that it is of the utmost importance to City, Tenant, and all those occupying or to occupy space in the Domestic and International Terminals that there be no interruption in the progress of the construction work. Accordingly, City and Tenant agree as follows:

(a) In any contract or undertaking which Tenant may make with a contractor for work in the Premises, provision shall be made for the dismissal from the job of workmen whose work is unskilled or otherwise objectionable, in the Director's (and, for this purpose, "**the Director**" shall include a reference to the Airport's Architect) reasonable judgment. Tenant shall cause any such workmen to be discharged from the project within twenty-four (24) hours after Director shall give notice to Tenant requiring such discharge.

(b) Tenant shall use, and Tenant shall require its contractor and subcontractors to use, their respective best efforts to prevent work stoppages on the Premises, and/or elsewhere on the Airport, to the extent attributable to work being performed on the Premises, irrespective of the reason of any such stoppage. In the event that the conduct or presence of any employee(s) of Tenant or Tenant's contractor(s) or subcontractor(s) causes a labor dispute or work stoppage, Tenant shall have such employee(s) immediately removed from the Airport upon Director's request.

(c) Tenant shall include, and shall cause its contractor to include, the following clause in all contracts with its general contractors and subcontractors:

Harmony Clause

There shall be no manifestations on the project of any dispute between any labor organization and any Tenant contractor or subcontractor, including but not limited to, any area standards picketing against said contractor or subcontractor. Should there be any manifestation of a labor dispute between any Tenant contractor or subcontractor and any union, which results in a stoppage of work on the part of said contractor or subcontractor's employees or the employees of any other employer or supplier on the project or at the Airport, which in the sole judgment of the Director will cause, or is likely to cause, unreasonable delay in the progress of construction or operation of any business at the Airport, then upon written notice from Director, Tenant shall declare the contractor or subcontractor in default of its contract, and upon such notice, Tenant shall have the right to take such steps as are necessary to finish the uncompleted portion of the work to be performed by the contractor or subcontractor.

(d) Without limiting the generality of indemnities elsewhere in this Lease, Tenant shall indemnify, defend, and hold harmless City and each City Entity for any and all Losses which arise from the actions taken pursuant to this Section 7.8.

7.9 Vacating of Premises. At end of Term, Tenant shall remove the Advertising Equipment and make repairs to walls/floors, including but not limited to, patching up holes, painting walls to match paint, and replace patched up floor. Tenant shall remove from Premises all telecommunications and other low voltage special systems cables which are not integrated with the Airport's Special Systems and Communications systems, if use of system(s) is discontinued.

8. UTILITIES

8.1 Services Provided. City shall provide in the Terminal Building Complex the following utility services: reasonable amounts of water, electricity, telephone, sewage outlets, heating, ventilation, and air conditioning, to a point determined by the Director. All extensions of the facilities requested by Tenant for said utility services from said points shall be at the sole cost and expense of Tenant. In the event of any change desired by Tenant as to said points of supply by City, the expense of making such changes or alterations shall be at the sole cost of Tenant.

8.2 Utility Costs. Tenant shall pay the whole cost for all utility services as invoiced to Tenant by City and for such other special services which it may require in the Premises, and Tenant hereby expressly waives the right to contest any utility rates.

8.3 Shared Telecommunications Services. Tenant acknowledges that City has implement a shared telecommunications service program ("**STS Program**") to provide telecommunications services. The STS Program may involve City's provision of telephone, telefacsimile, local access, long distance service, internet, intranet, and other computer and telecommunications services. In such event, at City's option, Tenant shall participate in the STS Program by engaging City or its agent to provide such services

at Tenant's expense, provided that the charges for such services are generally competitive. Further, Tenant shall pay to City when invoices, the Airport Communication Infrastructure Charge, as the same may be modified from time to time. All payments for STS services shall be due and payable when invoiced by City.

8.4 Waiver of Damages. Tenant hereby expressly waives any and all claims for damages arising or resulting from failures or interruptions of utility services to the Premises, including electricity, gas, water, plumbing, sewage, telephone, communications, heat, ventilation, air conditioning, or for the failure or interruption of any public or passenger conveniences. Without limiting the generality of the foregoing, Tenant shall have no rights to abate Rent or terminate this Lease in the event of any interruption or failure of utility services.

9. MAINTENANCE AND REPAIR

9.1 "As-Is" Condition. TENANT SPECIFICALLY ACKNOWLEDGES AND AGREES THAT CITY IS LEASING THE PREMISES TO TENANT ON AN "AS IS WITH ALL FAULTS" BASIS AND THAT TENANT IS NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, FROM CITY OR ITS AGENTS, AS TO ANY MATTERS CONCERNING THE PREMISES, INCLUDING: (i) the quality, nature, adequacy and physical condition and aspects of the Premises, including, but not limited to, landscaping, utility systems, (ii) the quality, nature, adequacy, and physical condition of soils, geology and any groundwater, (iii) the existence, quality, nature, adequacy and physical condition of utilities serving the Premises, (iv) the development potential of the Premises, and the use, habitability, merchantability, or fitness, suitability, value or adequacy of the Premises for any particular purpose, (v) the zoning or other legal status of the Premises or any other public or private restrictions on use of the Premises, (vi) the compliance of the Premises or its operation with any applicable codes, laws, regulations, statutes, ordinances, covenants, conditions and restrictions of any governmental or quasi-governmental entity or of any other person or entity, (vii) the presence of Hazardous Materials on, under or about the Premises or the adjoining or neighboring property, (viii) the quality of any labor and materials used in any improvements on the real property, (ix) the condition of title to the Premises, and (x) the agreements affecting the Premises, including covenants, conditions, restrictions, ground leases, and other matters or documents of record or of which Tenant has knowledge.

9.2 Tenant's Maintenance Obligations. Tenant, at all times during the Term and at Tenant's sole cost and expense, shall keep the Premises and every part thereof in good condition and repair, and in compliance with applicable Laws, including the replacement of any facility of City used by Tenant which requires replacement by reason of Tenant's use thereof, excepting (a) ordinary wear and tear, and (b) damage due to casualty with respect to which the provisions of Section 14 [Damage or Destruction] shall apply. Tenant hereby waives all right to make repairs at the expense of City or in lieu thereof to vacate the Premises as provided by California Civil Code Section 1941 and 1942 or any other law, statute or ordinance now or hereafter in effect. In addition, if it becomes reasonably necessary during the term of this Lease, as determined by Director, Tenant will, at its own expense, redecorate and paint fixtures and the interior of the Premises and improvements, and replace fixtures, worn carpeting, curtains, blinds, drapes, or other furnishings. Without limiting the generality of the foregoing, at all times, Tenant shall be solely liable for the facade of the Premises separating the Premises from the Terminal common areas, including the external face thereof, all windows and display areas therein, and all finishes thereon. As provided below in Section 15.4 [City's Right to Perform], in the event Tenant fails to perform its maintenance and repair obligations hereunder, City shall have the right to do so, at Tenant's expense. The parties acknowledge and agree that Tenant's obligations under this Section are a material part of the

bargained-for consideration under this Lease. Tenant's compliance obligations shall include, without limitation, the obligation to make substantial or structural repairs and alterations to the Premises (including the Initial Improvements), regardless of, among other factors, the relationship of the cost of curative action to the Rent under this Lease, the length of the then remaining Term hereof, the relative benefit of the repairs to Tenant or City, the degree to which curative action may interfere with Tenant's use or enjoyment of the Premises, the likelihood that the parties contemplated the particular requirement involved, or the relationship between the requirement involved and Tenant's particular use of the Premises. No occurrence or situation arising during the Term, nor any present or future requirement, whether foreseen or unforeseen, and however extraordinary, shall relieve Tenant of its obligations hereunder, nor give Tenant any right to terminate this Lease in whole or in part or to otherwise seek redress against City. Tenant waives any rights now or hereafter conferred upon it by any existing or future requirement to terminate this Lease, to receive any abatement, diminution, reduction or suspension of payment of Rent, or to compel City to make any repairs to comply with any such requirement, on account of any such occurrence or situation.

9.3. Tenant's Pest Management Obligations. Tenant shall, at all times during the Term of the Lease and at Tenant's sole cost and expense, keep the Premises and every part thereof in clean and sanitary conditions, including having a pest control program in place in accordance to the Airport's standards. Tenant shall hire a licensed pest control company or may contract with the Airport to provide these services. Tenant and the pest control company must adhere to the following set of standards in accordance to the City and County of San Francisco (CCSF) Environment Code, Chapter 3, including but not limited to the following:

(a) Using pesticides on the CCSF allowed list only when application is made on City property i.e. SFO.

(b) Any pesticide exemption must be granted by the San Francisco Department of Environment before using non-approved pesticides.

(c) All posting requirements regarding pesticide application must be adhered to prior to use.

(d) Pesticide use reports shall be made to Airport IPM (Integrated Pest Management) staff by the 10th of the month following application.

(e) Tenant must provide Airport the name of the pest control company providing service within thirty (30) days from the effective date of the service contract.

10. SIGNS AND ADVERTISING

10.1 Signs and Advertising. Tenant may, at its own expense, install and operate necessary and appropriate identification signs on the Premises, subject to the approval of Director and the requirements of the TI Guide, including but not limited to, the approval of the number, size, height, location, color and general type and design. Such approval shall be subject to revocation by Director at any time. Without express written consent of Director, Tenant shall not display any advertising, promotional, or informational pamphlets, circulars, brochures or similar materials.

10.2 Prohibition of Tobacco Advertising. Tenant acknowledges and agrees that no advertising of cigarettes or tobacco products is allowed on the Premises. This advertising prohibition includes the

placement of the name of a company producing, selling or distributing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. This advertising prohibition does not apply to any advertisement sponsored by a state, local, nonprofit or other entity designed to (i) communicate the health hazards of cigarettes and tobacco products, or (ii) encourage people not to smoke or to stop smoking.

10.3 Prohibition of Alcoholic Beverage Advertising. Tenant acknowledges and agrees that no advertising of alcoholic beverages is allowed on the Advertising Equipment. For purposes of this Section, "**alcoholic beverage**" shall be defined as set forth in California Business and Professions Code Section 23004, and shall not include cleaning solutions, medical supplies and other products and substances not intended for drinking. This advertising prohibition includes the placement of the name of a company producing, selling or distributing alcoholic beverages or the name of any alcoholic beverage in any promotion of any event or product. This advertising prohibition does not apply to any advertisement sponsored by a state, local, nonprofit or other entity designed to (i) communicate the health hazards of alcoholic beverages, (ii) encourage people not to drink alcohol or to stop drinking alcohol, or (iii) provide or publicize drug or alcohol treatment or rehabilitation services.

11. [INTENTIONALLY DELETED - PROMOTIONAL PROGRAM]

12. WAIVER; INDEMNITY; INSURANCE

12.1 Waiver. Tenant, on behalf of itself and its assigns, waives its rights to recover from and releases and discharges City and all City Entities and their respective heirs, successors, personal representatives and assigns, from any and all Losses whether direct or indirect, known or unknown, foreseen or unforeseen, that may arise on account of or in any way connected with (a) the physical or environmental condition of the Premises or any law or regulation applicable thereto, (b) any damage that may be suffered or sustained by Tenant or any person whosoever may at any time be using or occupying or visiting the Premises, or in or about the Airport, or (c) any act or omission (whether negligent, non-negligent or otherwise) of Tenant or any Tenant Entity, whether or not such Losses shall be caused in part by any act, omission or negligence of any of City, Commission, its members, or any officers, agents, and employees of each of them, and their successors and assigns (each, a "**City Entity**"), except if caused by the sole gross negligence or willful misconduct of City. In connection with the foregoing waiver, Tenant expressly waives the benefit of Section 1542 of the California Civil Code, which provides as follows: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR EXPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN TO HIM MUST HAVE MATERIALLY AFFECTED THE SETTLEMENT WITH THE DEBTOR."

12.2 Indemnity. In addition to, and not in limitation of the foregoing, Tenant shall forever indemnify, defend, hold and save City and each City Entity free and harmless of, from and against any and all Losses caused in whole or in part by or arising out of (a) any act or omission of Tenant or any Tenant Entity, (b) Tenant's use of the Premises or operations at the Airport, or (c) any default by Tenant or any Tenant Entity hereunder, whether or not Losses shall be caused in part by any act, omission or negligence of City or any City Entity. The foregoing indemnity shall not extend to any Loss caused by the sole gross negligence or willful misconduct of City.

12.3 Losses. For purposes hereof "**Losses**" shall mean any and all losses, liabilities, judgments, suits, claims, damages, costs and expenses (including reasonable attorneys' fees, investigation costs, remediation costs, and court costs), of any kind or nature.

12.4 Immediate Obligation to Defend. Tenant specifically acknowledges that it has an immediate and independent obligation to defend City or the City Entity from any claim which is actually or potentially within the scope of the indemnity provision of this Section 12 or any other indemnity provision under this Lease, even if such allegation is or may be groundless, fraudulent or false, and such obligation arises at the time such claim is tendered to Tenant and continues at all times thereafter.

12.5 Notice. Without limiting the foregoing waiver and indemnity, each party hereto shall give to the other prompt and timely written notice of any Loss coming to its knowledge which in any way, directly or indirectly, contingently or otherwise, affects or might affect either, and each shall have the right to participate in the defense of the same to the extent of its own interest.

12.6 Insurance. Tenant shall procure and maintain during the Term the following insurance:

(a) Workers' Compensation Insurance with Employer's Liability limits not less than \$1,000,000 each accident.

(b) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products Liability and Completed Operations Coverages.

(c) Comprehensive Automobile Liability Insurance with limits not less than \$2,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Employer's non-ownership liability and hired auto coverages.

(d) Property Insurance on all causes of loss-special form covering all Premises tenant improvements, fixtures, and equipment insuring against the perils of fire, lightning, extended coverage perils, vandalism and malicious mischief in the demised premises in an amount equal to the full replacement value of tenant improvements, fixtures and equipment.

(e) Business Interruption Insurance insuring that the Base Rent will be paid to City for a period of at least one (1) year if Tenant is unable to operate its business at the Premises. Said insurance shall also cover business interruptions due to failures or interruptions in telecommunications services, strikes, employee lockouts, riots, or other civil commotion. To calculate Base Rent during any such interruption of business, the Gross Revenues for the 12-month period immediately preceding the incident causing the business interruption shall be used.

12.7 Form of Policies. All insurance required by Tenant hereunder shall be pursuant to policies in form and substance and issued by companies satisfactory to City and City's City Attorney. City may, upon reasonable notice and reasonable grounds increase or change the required insurance hereunder, in which event Tenant shall obtain such required insurance. Without limiting the generality of the foregoing, all Comprehensive General Liability Insurance, and Comprehensive Automobile Liability Insurance, policies shall be endorsed to provide the following:

(a) Name as additional insured the City and County of San Francisco, the Airport Commission and its members, and all of the officers, agents, and employees of each of them (collectively, "Additional Insureds");

(b) That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Lease, and that insurance applies separately to each insured against whom claim is made or suit is brought.

(c) That the insurance company shall give thirty (30) days prior written notice to City of cancellation, non-renewal or reduction in coverage or limits, delivered to City at City's Insurance/Deposit Notice Address.

12.8 Delivery of Policies or Certificates. Within five (5) days after Director's request, and in any event on or before the Commencement Date, Tenant shall provide to City copies of its insurance policies or certificates thereof evidencing the above insurance, at City's Insurance/ Deposit Notice Address.

12.9 Subrogation. Notwithstanding anything to the contrary herein, Tenant waives any right of recovery against City for any loss or damage to the extent the same is required to be covered by Tenant's insurance hereunder. Tenant shall obtain from its insurer, if possible, a waiver of subrogation the insurer may have against City or any City Entity in connection with any Loss covered by Tenant's property insurance policy.

13. DEPOSIT

13.1 Form of Deposit. On or before the date specified by the Director, Tenant will deliver to Director a security deposit (the "Deposit") in the Deposit Amount. Such Deposit shall be in the form of (a) a surety bond payable to City, naming City as obligee, in the form attached as Exhibit C-1, and otherwise in form satisfactory to City's City Attorney, and issued by a surety company satisfactory to Director, or a (b) letter of credit naming City as beneficiary, in the form attached as Exhibit C-2, and otherwise in form satisfactory to City's City Attorney, issued by a bank satisfactory to Director. Notwithstanding the foregoing, as may be provided in the Airport Commission Policy on Concession Deposits (Resolution No. 04-0153, August 3, 2004) as the same may be amended from time to time, Tenant shall be permitted to submit as the Deposit alternative forms of deposit as specified therein. Such Deposit shall be renewed annually and increased annually such that at all times, the Deposit is equal to one-half (1/2) the then current Minimum Annual Guarantee, all at Tenant's cost. Such Deposit shall be kept in full force and effect during the Term to ensure the faithful performance by Tenant of all covenants, terms, and conditions of this Lease, including payment of Rent. The sum designated as the "Deposit" is and will remain the sole and separate property of City until actually repaid to Tenant (or at City's option, the last assignee (if any) of Tenant's interest hereunder), said sum not being earned by Tenant until all provisions precedent for its payment to Tenant have been fulfilled. For Deposits in the form of a bond or letter of credit, Tenant shall cause the surety company or bank issuing such bond or letter of credit to give Director notice in writing by registered mail at least forty-five (45) days prior to the expiration date of such bond or letter of credit of its intention not to renew said bond or letter of credit.

13.2 Maintenance of Deposit. Tenant shall cause the Deposit to be increased from time to time such that at all times the Deposit is equal to one-half (1/2) the then current Minimum Annual Guarantee, all at Tenant's cost. Tenant shall cause the bond or letter of credit to be kept in full force and effect during the Term and any holdover period to ensure the faithful performance by Tenant of all covenants, terms, and conditions of this Lease, including payment of Rent. If and to the extent City accepts a Deposit which has an expiration date or cancellation/termination provision, Tenant shall cause the surety company or bank issuing such bond or letter of credit to give Director notice in writing by registered mail at least forty-five (45) days prior to the expiration date of such bond or letter of credit of

its intention not to renew or to cancel or terminate said bond or letter of credit. Tenant shall cause such bond or letter of credit to be renewed, extended, or replaced, at Tenant's sole cost, at least thirty (30) days before the expiration date or cancellation date of the bond or letter of credit, with another bond or letter of credit that complies with the requirements herein. If Tenant fails to do so, City may, without notice to Tenant, draw on the entirety of the Deposit and hold the proceeds thereof as security hereunder. Tenant shall cause all notices to be given to City under this Section 13 to be given to City at City's Insurance/Deposit Notice Address.

13.3 Alternative Forms of Deposit. Notwithstanding the foregoing, if and to the extent alternative form(s) of Deposit are permitted pursuant to the Airport Bid Deposit and Performance Guarantee Policy, as authorized by Commission Resolution No. 04-0153, as such Policy may be amended from time to time, then Tenant may provide such alternative forms of Deposit. Tenant shall cause such Deposit to be increased from time to time such that at all times the Deposit is equal to one-half (1/2) the then current Minimum Annual Guarantee, all at Tenant's cost.

13.4 Use of Deposit. If Tenant fails to pay Rent or otherwise defaults with respect to any provision of this Lease, City may use, apply or retain all or any portion of the Deposit for the payment of Rent or other charge in default or for the payment of any other sum to which City may become obligated by reason of Tenant's default or to compensate City for any loss or damage which City may suffer thereby. If City so uses or applies all or any portion of the Deposit, Tenant, within ten (10) days after request therefore, shall deposit other security acceptable to Director with City in an amount sufficient to restore the Deposit to the full amount thereof, and Tenant's failure to do so shall be a breach of this Lease. City shall not be required to keep the Deposit or any proceeds thereof, as applicable, separate from its general accounts. Any proceeds of the Deposit is and will remain the sole and separate property of City until actually repaid to Tenant, said sum not being earned by Tenant until all provisions precedent for its payment to Tenant have been fulfilled. If Tenant performs all of Tenant's obligations hereunder, the Deposit, or the proceeds thereof, or so much thereof as has not theretofore been applied by City, shall be returned, without payment of interest or other increment for its use, to Tenant (or, at City's option, to the last assignee, if any, of Tenant's interest hereunder) within sixty (60) days after the expiration of the Term, and after Tenant has vacated the Premises. No trust relationship is created herein between City and Tenant with respect to the Deposit or any proceeds thereof.

13.5 Other Agreements. If Tenant defaults with respect to any provision of any other agreement between City and Tenant, including the Other Agreements, City may use, apply or retain all or any portion of the Deposit for payment of any sum owing to City or to which City may become obligated by reason of Tenant's default or to compensate City for any loss or damage which City may suffer thereby. Likewise, if Tenant defaults with respect to any provision under this Lease, City may use, apply, or retain all or any portion of any deposit provided under any other agreement between City and Tenant, including the Other Agreements, for payment of any sum owing to City or to which City may become obligated by reason of Tenant's default or to compensate City for any loss or damage which City may suffer thereby. In the event the Deposit or any other deposit is so used, Tenant shall deposit other security acceptable to Director with City in an amount sufficient to restore the Deposit to the full amount thereof.

14. DAMAGE OR DESTRUCTION

14.1 Partial Destruction of Premises.

(a) In the event the improvements on the Premises are damaged by any casualty which is required to be insured against pursuant to this Lease, then Tenant shall repair such damage as soon as reasonably possible, at its own cost, and this Lease shall continue in full force and effect.

(b) In the event such improvements are damaged by any casualty not covered under an insurance policy required to be maintained pursuant to this Lease, then City may, at City's option, either (i) repair such damage as soon as reasonably possible at City's expense, in which event this Lease shall continue in full force and effect, or (ii) give written notice to Tenant within sixty (60) days after the date of occurrence of such damage of City's intention to terminate this Lease. Such termination shall be effective as of the date specified in such notice.

(c) Notwithstanding the foregoing, if such damage is caused by an act or omission to act of Tenant or a Tenant Entity, then Tenant shall repair such damage, promptly at its sole cost and expense.

(d) In the event City elects to terminate this Lease pursuant to this Section 14.1, Tenant shall have the right within ten (10) days after receipt of the required notice to notify City of Tenant's intention to repair such damage at Tenant's expense, without reimbursement from City, in which event this Lease shall continue in full force and effect and Tenant shall proceed to make such repairs as soon as reasonably possible. If Tenant does not give such notice within the ten (10) day period, this Lease shall be terminated as of the date specified in City's notice. City shall not be required to repair any injury or damage by fire or other cause, or to make any restoration or replacement of any paneling, decorations, office fixtures, partitions, railings, ceilings, floor covering, equipment, machinery or fixtures or any other improvements or property installed in the Premises by Tenant or at the direct or indirect expense of Tenant. Tenant shall be required to restore or replace same in the event of damage.

14.2 Total Destruction of Premises. If the improvements on the Premises are totally destroyed during the Term from any cause whether or not covered by the insurance required herein (including any destruction required by any authorized public authority), this Lease shall automatically terminate as of the date of such total destruction.

14.3 Partial Destruction of Terminal Building. If fifty percent (50%) or more of the Terminal Building shall be damaged or destroyed by an insured risk, or if fifteen percent (15%) or more of the Terminal Building shall be damaged or destroyed by an uninsured risk, notwithstanding that the Premises may be unaffected thereby, each of City and Tenant may elect to terminate this Lease by giving notice to the other within ninety (90) days from the date of occurrence of such damage or destruction, in which event the Term of this Lease shall expire on a mutually agreed upon date and Tenant shall thereupon surrender the Premises to City as required hereunder.

14.4 Damage Near End of the Term. If during the last year of the Term the improvements on the Premises are partially destroyed or damaged, City may at City's option terminate this Lease as of the date of occurrence of such damage by giving written notice to Tenant of City's election to do so within thirty (30) days after the date of occurrence of such damage. In the event City elects to terminate this Lease pursuant hereto, Tenant shall have the right within ten (10) days after receipt of the required notice to notify City in writing of Tenant's intention to repair such damage at Tenant's expense, without

reimbursement from City, in which event this Lease shall continue in full force and effect and Tenant shall proceed to make such repairs as soon as reasonably possible.

14.5 No Abatement of Rent; Tenant's Remedies.

(a) If the Premises are partially destroyed or damaged, Tenant shall have no claim against City for any damage suffered by reason of any such damage, destruction, repair or restoration. Tenant waives California Civil Code Sections 1932(2) and 1933(4) providing for termination of hiring upon destruction of the thing hired.

(b) In no event will Tenant be entitled to an abatement of Rent resulting from any damage, destruction, repair, or restoration described herein.

15. **DEFAULT; REMEDIES**

15.1 Event of Default. The occurrence of any one or more of the following events shall constitute a breach of this Lease and an "**Event of Default**" hereunder:

(a) Tenant shall fail duly and punctually to pay Rent, or to make any other payment required hereunder, when due to City, and such failure shall continue beyond the date specified in a written notice of such default from Director, which date shall be no earlier than the third (3rd) day after the effective date of such notice. Notwithstanding the foregoing, in the event there occurs two (2) defaults in the payment of Rent or other payment during the Term, thereafter Tenant shall not be entitled to, and City shall have no obligation to give, notice of any further defaults in the payment of Rent or other payment. In such event, there shall be deemed to occur an Event of Default immediately upon Tenant's failure to duly and punctually pay Rent or other payment hereunder; or

(b) Tenant shall become insolvent, or shall take the benefit of any present or future insolvency statute, or shall make a general assignment for the benefit of creditors, or file a voluntary petition in bankruptcy, or a petition or answer seeking an arrangement for its reorganization, or the readjustment of its indebtedness under the federal bankruptcy laws, or under any other law or statute of the United States or of any state thereof, or consent to the appointment of a receiver, trustee, or liquidator of any or substantially all of its property; or

(c) A petition under any part of the federal bankruptcy laws, or an action under any present or future insolvency law or statute, shall be filed against Tenant and shall not be dismissed within thirty (30) days after the filing thereof; or

(d) There shall occur a Transfer without the prior approval of the City; or

(e) Tenant shall voluntarily abandon, desert or vacate the Premises; or

(f) Any lien shall be filed against the Premises as a result of any act or omission of Tenant, and shall not be discharged or contested by Tenant in good faith by proper legal proceedings within twenty (20) days after receipt of notice thereof by Tenant; or

(g) Tenant shall fail to provide, maintain, increase, or replace, the Deposit as required herein; or

(h) Tenant shall fail to obtain and maintain the insurance required hereunder, or provide copies of the policies or certificates to City as required herein; or

(i) Tenant shall fail to keep, perform and observe each and every other promise, covenant and agreement set forth in this Lease, and such failure shall continue for a period of more than three (3) days after delivery by Director of a written notice of such failure (the "First Notice"); or if satisfaction of such obligation requires activity over a period of time, if Tenant fails to commence the cure of such failure within three (3) days after receipt of the First Notice, or thereafter fails to diligently prosecute such cure, or fails to actually cause such cure within one hundred twenty (120) days after the giving of the First Notice; or

(j) Tenant shall use or give its permission to any person to use any portion of Airport or the Terminal Buildings used by Tenant under this Lease for any illegal purpose, or any purpose not approved by Director; or

(k) There shall occur a default under any other agreement between Tenant and City, including the Other Agreements, if any, and such default is not cured as may be provided in such agreement; provided, however, that nothing herein shall be deemed to imply that Tenant shall be entitled to additional notice or cure rights with respect to such default other than as may be provided in such other agreement.

15.2 Statutory Notices. Notwithstanding anything to the contrary in this Section 15, any written notice, other than as specifically set forth in this Section 15, required by any statute or law now or hereafter in force is hereby waived by Tenant to the fullest extent available under law. Any notice given by City pursuant to Section 15.1 may be the notice required or permitted pursuant to Section 1161 *et seq.* of the California Code of Civil Procedure or successor statutes, and the provisions of this Lease will not require the giving of a notice in addition to the statutory notice to terminate this Lease and Tenant's right to possession of the Premises. The periods specified in Section 15.1 within which Tenant is permitted to cure any default following notice from City will run concurrently with any cure period provided by applicable laws.

15.3 Remedies. Upon the occurrence and during the continuance of an Event of Default, City shall have the following rights and remedies in addition to all other rights and remedies available to City at law or in equity:

(a) City shall have the rights and remedies provided by California Civil Code Section 1951.2 (damages on termination for breach), including the right to terminate Tenant's right to possession of the Premises. In the event this Lease is so terminated, City may recover from Tenant the following damages:

- (i) The "**worth at the time of the award**" of the unpaid Rent earned to the time of termination hereunder;
- (ii) The "**worth at the time of the award**" of the amount by which the unpaid Rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided;

- (iii) The “**worth at the time of the award**” of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of such rental loss that Tenant proves could be reasonably avoided; and
- (iv) Any other amount necessary to compensate City for all the detriment proximately caused by Tenant’s failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom.

For purposes of the foregoing, the “**worth at the time of award**” of the amounts referred to in clauses (i) and (ii) above is computed by allowing interest at the lower of 18% per annum and the highest rate legally permitted under applicable law. The “**worth at the time of award**” of the amount referred to in clause (iii) above is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus 1% (one percent). Notwithstanding any other provisions hereof, any efforts by City to mitigate damages caused by Tenant’s breach of this Lease shall not constitute a waiver of City’s right to recover damages hereunder and shall not affect the right of City to indemnification pursuant to the provisions of Section 12 [Waiver; Indemnity; Insurance] hereof. For purposes of calculating City’s damages comprising Base Rent based on Gross Revenues, that amount will be computed by determining the highest Base Rent accruing in any Lease Year during the immediately preceding three Lease Years or such shorter period if the Term prior to termination was less than three Lease Years. Tenant agrees that Tenant’s obligations under this Lease, including the payment of Base Rent, are independent covenants and are not conditioned on the covenants or warranties of City.

(b) City shall have the right and remedy described in California Civil Code Section 1951.4. City may elect not to terminate this Lease and let this Lease continue, in which case City may enforce all its rights and remedies under this Lease, including the right to recover Rent as it becomes due under this Lease. Acts of maintenance or preservation or efforts to relet the Premises or the appointment of a receiver upon the initiative of City to protect City’s interest under this Lease shall not constitute a termination of Tenant’s right to possession.

(c) City shall have the right and power, as attorney in fact for Tenant, to enter and to sublet the Premises, to collect rents from all subtenants and to provide or arrange for the provision of all services and fulfill all obligations of Tenant (as permitted in accordance with the terms of this Lease) and City is hereby authorized on behalf of Tenant, but shall have absolutely no obligation, to provide such services and fulfill such obligations and to incur all such expenses and costs as City deems necessary in connection therewith. Tenant shall be liable immediately to City for all costs and expenses City incurs in collecting such rents and arranging for or providing such services or fulfilling such obligations. City is hereby authorized, but not obligated, to relet the Premises or any part thereof on behalf of Tenant, to incur such expenses as may be necessary to effect a relet and make said relet for such term or terms, upon such conditions and at such rental as City in its sole discretion may deem proper. Tenant shall be liable immediately to City for all reasonable costs City incurs in reletting the Premises required by the reletting, and other costs. If City relets the Premises or any portion thereof, such reletting shall not relieve Tenant of any obligation hereunder, except that City shall apply the rent or other proceeds actually collected by it as a result of such reletting against any amounts due from Tenant hereunder to the extent that such rent or other proceeds compensate City for the nonperformance of any obligation of Tenant hereunder. Such payments by Tenant shall be due at such times as are provided elsewhere in this Lease, and City need not wait until the termination of this Lease, by expiration of the Term hereof or otherwise, to recover them by legal action or in any other manner. City may execute any lease made pursuant hereto in its own name,

and the lessee thereunder shall be under no obligation to see to the application by City of any rent or other proceeds, nor shall Tenant have any right to collect any such rent or other proceeds. City shall not by any reentry or other act be deemed to have accepted any surrender by Tenant of the Premises or Tenant's interest therein, or be deemed to have otherwise terminated this Lease, or to have relieved Tenant of any obligation hereunder, unless City shall have given Tenant express written notice of City's election to do so as set forth herein.

(d) City shall have the right to have a receiver appointed upon application by City to take possession of the Premises and to collect the rents or profits therefrom and to exercise all other rights and remedies pursuant to this Section 15.3.

(e) City shall have the right to enjoin, and any other remedy or right now or hereafter available to a landlord against a defaulting tenant under the laws of the State of California or the equitable powers of its courts, and not otherwise specifically reserved herein.

(f) City may elect to terminate any other agreement between Tenant and City, including the Other Agreements, if any.

15.4 City's Right to Perform. All agreements and provisions to be performed by Tenant under any of the terms of this Lease shall be at its sole cost and expense and without any abatement of Rent. If Tenant shall fail to make any payment or perform any act on its part to be performed hereunder and such failure shall continue for ten (10) days after notice thereof by City, City may, but shall not be obligated to do so, and without waiving or releasing Tenant from any obligations of Tenant, make any such payment or perform any such other act on Tenant's part to be made or performed as provided in this Lease. All sums so paid by City and all necessary incidental costs shall be deemed additional rent hereunder and shall be payable to City on demand, and City shall have (in addition to any other right or remedy of City) the same rights and remedies in the event of the nonpayment thereof by Tenant as in the case of default by Tenant in the payment of Rent.

15.5 Rights Related to Termination. In the event of any termination based on any breach of the covenants, terms and conditions contained in this Lease, City shall have the option at once and without further notice to Tenant to enter upon the Premises and take exclusive possession of same. City may remove or store any personal property located therein, at the sole cost and expense of Tenant without City being liable to Tenant for damage or loss thereby sustained by Tenant. Upon such termination by City, all rights, powers and privileges of Tenant hereunder shall cease, and Tenant shall immediately vacate any space occupied by it under this Lease, and Tenant shall have no claim of any kind whatsoever against City or any City Entity by reason of such termination, or by reason of any act by City or any City Entity incidental or related thereto. In the event of the exercise by City of such option to terminate, Tenant shall have no right to or claim upon any improvements or the value thereof, which may have been previously installed by Tenant in or on the Premises.

15.6 Cumulative Rights. The exercise by City of any remedy provided in this Lease shall be cumulative and shall in no way affect any other remedy available to City under law or equity.

15.7 Prepayment. As provided in Section 4.10 [Prepay Rent], if Tenant defaults in the payment of Rent, City may require prepayment of Rent. Such right shall be in addition to and not in lieu of any and all other rights hereunder, or at law or in equity.

15.8 Fines. If Tenant defaults under any of the Lease terms specified below, Director may elect to impose the fines described below on the basis of per violation per day:

<u>Violation</u>	<u>Section</u>	<u>Fine</u>
Violation of Premises Clause	1	\$100
Violation of Use Section	3	\$300
Failure to open Facility by Rent Commencement Date	2.3	\$500
Failure to cause operations or Premises to comply with	3.13	\$100
<u>Laws</u>		
Failure to submit required documents and reports, including Sales Reports	4.4, 4.5, 4.6	\$100
Construction or Alterations without City approval	7	\$100
Failure to make required repairs	9	\$300
Unauthorized advertising or signage	10	\$100
Failure to obtain/maintain insurance	12	\$300
Failure to obtain or maintain Deposit	13	\$300
Failure to abide by any other term in this Lease		\$300

Director's right to impose the foregoing Fines shall be in addition to and not in lieu of any and all other rights hereunder, in the Airport Rules, or at law or in equity. City shall have no obligation to Tenant to impose Fines on or otherwise take action against any other tenant at the Airport. Such Fines shall constitute "Additional Rent."

15.9 City Lien. Tenant hereby grants to City a lien upon and security interest in all fixtures, chattels and personal property of every kind now or hereafter to be placed or installed in or on the Premises, and agrees that in the event of any default on the part of Tenant City has all the rights and remedies afforded the secured party by the chapter on "Default" of the Uniform Commercial Code in the state wherein the Premises are located on the date of this Lease and may, in connection therewith, also (a) enter on the Premises to assemble and take possession of the collateral, (b) require Tenant to assemble the collateral and make its possession available to the City at the Premises, (c) enter the Premises, render the collateral, if equipment, unusable and dispose of it in a manner provided by the Uniform Commercial Code on the Premises. Tenant agrees to execute such instruments as City may request to perfect such lien, and designates also Director his attorney-in-fact for purposes of executing such documents.

15.10 Commencement of Legal Actions. Any legal action by City to enforce any obligation of Tenant or in the pursuit of any remedy hereunder shall be deemed timely filed if commenced at any time prior to one (1) year after the expiration or termination of the Term hereof or prior to the expiration of the statutory limitation period that would be applicable except for this Section 15.10, whichever period expires later.

15.11 Waiver of Notice. Except as otherwise expressly provided in this Section 15, Tenant hereby expressly waives, so far as permitted by law, the service of any notice of intention to enter or re-enter provided for in any statute, or of the institution of legal proceedings to that end, and Tenant, for and

on behalf of itself and all persons claiming through or under Tenant, also waives any right of redemption or relief from forfeiture under California Code of Civil Procedure Sections 1174 or 1179, or under any other present or future law, if Tenant is evicted or City takes possession of the Premises by reason of any default by Tenant hereunder.

16. SURRENDER

Tenant shall at the end of the Term surrender to City the Premises and all Alterations, additions and improvements thereto in the same condition as when received, ordinary wear and tear and damage by fire, earthquake, act of God, or the elements excepted. Subject to City's right to require removal pursuant to Section 7 [Investments; Alterations] hereof, all Alterations and improvements installed in the Premises by Tenant (other than Tenant's trade fixtures), shall, without compensation to Tenant, then become City's property free and clear of all claims to or against them by Tenant or any third person. In the event that Tenant shall fail to remove its personal property, including trade fixtures, on or before the Expiration Date, such personal property shall become City's property free and clear of all claims to or against them by Tenant or any third person. In such event, City shall not be responsible for any Losses related to such personal property, and City may sell or otherwise dispose of such personal property.

17. HAZARDOUS MATERIALS

17.1 Definitions. As used herein, the following terms shall have the meanings hereinafter set forth:

(a) "**Environmental Laws**" shall mean any federal, state, local or administrative law, rule, regulation, order or requirement relating to industrial hygiene, environmental conditions or Hazardous Materials, whether now in effect or hereafter adopted, including the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Sections 9601, et seq.), the Resources Conservation and Recovery Act of 1976 (42 U.S.C. Section 9601, et seq.), the Clean Water Act (33 U.S.C. Section 1251, et seq.), the Safe Drinking Water Act (14 U.S.C. Section 401; et seq.), the Hazardous Materials Transportation Act (49 U.S.C. Section 1801, et seq.), the Toxic Substance Control Act (15 U.S.C. Section 2601, et seq.), the California Hazardous Waste Control Law (California Health and Safety Code Section 25100, et seq.), the Porter-Cologne Water Quality Control Act (California Water Code Section 13000, et seq.), and the Safe Drinking Water and Toxic Enforcement Act of 1986 (California Health and Safety Code Section 25249.5, et seq.)

(b) "**Hazardous Material**" shall mean any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment. "Hazardous Material" includes, without limitation, any material or substance defined as a "hazardous substance," or "pollutant" or "contaminant" pursuant to any Environmental Law; any asbestos and asbestos containing materials; petroleum, including crude oil or any fraction thereof, natural gas or natural gas liquids; and any materials listed in the Airport's TI Guide.

(c) "**Release**" when used with respect to Hazardous Material shall include any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into or inside the Building, or in, on, under or about the Property.

(d) "**Pre-Existing Condition**" means the existence of any Hazardous Materials on the Premises immediately prior to the Commencement Date.

17.2 Tenant's Covenants.

(a) Neither Tenant nor any Tenant Entity shall cause any Hazardous Material to be brought upon, kept, used, stored, generated or disposed of in, on or about the Premises or the Airport, or transported to or from the Premises or the Airport; provided that Tenant may use such substances as are customarily used in retail sales so long as such use is in compliance with all applicable Environmental Laws and the Airport's TI Guide.

(b) Tenant shall handle Hazardous Materials discovered or introduced on the Premises during the Term in compliance with all Environmental Laws and the Airport's TI Guide. Tenant shall protect its employees and the general public in accordance with all Environmental Laws.

(c) In the event Tenant becomes aware of the actual or possible Release of Hazardous Materials on the Premises or elsewhere on the Airport, Tenant shall promptly give notice of the same to City. Without limiting the generality of the foregoing, Tenant shall give notice to City of any of the following: (i) notice of a Release of Hazardous Materials given by Tenant, any subtenant, or other occupant to any governmental or regulatory agency; (ii) notice of a violation or potential or alleged violation of any Environmental Law received by Tenant, any subtenant, other occupant on the Premises from any governmental or regulatory agency; (iii) any inquiry, investigation, enforcement, cleanup, removal, other action that is instituted or threatened by a government or regulatory agency; (iv) any claim that is instituted or threatened by a third party against Tenant, any subtenant, or other occupant on the Premises that relates to Hazardous Materials; and (v) any notice of termination, expiration, or material amendment to any environmental operating permit or license necessary for the use of the Premises.

(d) At Director's request, Tenant shall provide information necessary for City to confirm that Tenant is complying with the foregoing covenants.

17.3 Environmental Indemnity. Tenant shall indemnify, defend, and hold harmless City from and against any and all Losses arising during or after the Term as a result of or arising from: (a) a breach by Tenant of its obligations contained in the preceding Section 17.2 [Tenant's Covenants], or (b) any Release of Hazardous Material from, in, on or about the Premises or the Airport caused by the act or omission of Tenant or any Tenant Entity, or (c) the existence of any Hazardous Materials on the Premises, except to the extent that Tenant can demonstrate that such Hazardous Materials constitutes a Pre-Existing Condition.

17.4 Environmental Audit. Upon reasonable notice, Director shall have the right but not the obligation to conduct or cause to be conducted by a firm acceptable to Director, an environmental audit or any other appropriate investigation of the Premises for possible environmental contamination. Such investigation may include environmental sampling and equipment and facility testing, including the testing of secondary contamination. No such testing or investigation shall limit Tenant's obligations hereunder or constitute a release of Tenant's obligations therefor. Tenant shall pay all costs associated with said investigation in the event such investigation shall disclose any Hazardous Materials contamination as to which Tenant is liable hereunder.

17.5 Closure Permit. Prior to the termination or expiration of this Lease, Director shall have the right to require Tenant to file with the City an application for a Closure Permit for decontamination of the site and investigation and removal of all Hazardous Materials in compliance with the Airport's TI Guide, the Airport Rules, and all Laws. The Closure Permit may require a plan for long-term care and surveillance of any contamination allowed to remain at the Premises or Airport property and an

acknowledgment of responsibility and indemnification for any and all Losses associated with any such contamination. Without limiting the foregoing provision, City reserves the right to require Tenant to, and in such event Tenant shall, at Tenant's sole cost and expense, decontaminate the Premises and remove any Hazardous Materials discovered during the Term, except those Hazardous Materials which constitute Pre-Existing Conditions. Such removal shall be performed to the Director's reasonable satisfaction.

18. EMINENT DOMAIN

18.1 Definitions. For purposes of this Section 18, the following capitalized terms shall have the following meanings:

(a) "*Award*" means all compensation, sums or value paid, awarded or received for a Taking, whether pursuant to judgment, agreement, settlement or otherwise.

(b) "*Date of Taking*" means the earlier of: (a) the date upon which title to the portion of the Premises taken passes to and vests in the condemnor, and (b) the date on which Tenant is dispossessed

(c) "*Taking*" means a taking or damaging, including severance damage, by eminent domain, inverse condemnation or for any public or quasi-public use under applicable Laws. A Taking may occur pursuant to the recording of a final order of condemnation, or by voluntary sale or conveyance in lieu of condemnation or in settlement of a condemnation action.

18.2 General. If during the Term or during the period between the execution of this Lease and the Commencement Date, any Taking of all or any part of the Premises or any interest in this Lease occurs, the rights and obligations of the parties hereunder shall be determined pursuant to this Section 18. City and Tenant intend that the provisions hereof govern fully in the event of a Taking and accordingly, the Parties each hereby waives any right to terminate this Lease in whole or in part under Sections 1265.120 and 1265.130 of the California Code of Civil Procedure or under any similar Law now or hereafter in effect.

18.3 Total Taking; Automatic Termination. If a total Taking of the Premises occurs, then this Lease shall terminate as of the Date of Taking.

18.4 Partial Taking; Election to Terminate.

(a) If a Taking of any portion (but less than all) of the Premises occurs, then this Lease shall terminate in its entirety if all of the following exist: (a) the partial Taking renders the remaining portion of the Premises untenable or unsuitable for continued use by Tenant for the Permitted Use; (b) the condition rendering the Premises untenable or unsuitable either is not curable or is curable but City is unwilling or unable to cure such condition; and (c) City elects to terminate.

(b) If a partial Taking of a material portion of the Terminal occurs, City shall have the right to terminate this Lease in its entirety.

(c) City's elections to terminate this Lease pursuant to this Section 18 shall be exercised by City's giving notice to Tenant on or before the date that is one hundred twenty (120) days after the Date of Taking, and thereafter this Lease shall terminate upon on the thirtieth (30th) day after such notice is given.

18.5 Tenant's Monetary Obligations: Award. Upon termination of this Lease pursuant to an election under Section 18.4 [Partial Taking; Election to Terminate] above, then: (a) Tenant's obligation to pay Base Rent shall continue up until the date of termination, and thereafter shall cease, and (b) City shall be entitled to the entire Award in connection therewith (including any portion of the Award made for the value of the leasehold estate created by this Lease), and Tenant shall have no claim against City for the value of any unexpired term of this Lease, provided that Tenant may make a separate claim for compensation, and Tenant shall receive any Award made specifically to Tenant, for Tenant's relocation expenses or the interruption of or damage to Tenant's business or damage to Tenant's personal property.

18.6 Partial Taking; Continuation of Lease. If a partial Taking of the Premises occurs and this Lease is not terminated in its entirety under Section 18.4 [Partial Taking; Election to Terminate] above, then this Lease shall terminate as to the portion of the Premises so taken, but shall remain in full force and effect as to the portion not taken, and the rights and obligations of the Parties shall be as follows: (a) the Minimum Annual Guarantee shall be adjusted by Director to reflect the Taking, and (b) City shall be entitled to the entire Award in connection therewith (including, but not limited to, any portion of the Award made for the value of the leasehold estate created by this Lease). Tenant shall have no claim against City for the value of any unexpired Term of this Lease, provided that Tenant may make a separate claim for compensation. Tenant shall retain any Award made specifically to Tenant for Tenant's relocation expenses or the interruption of or damage to Tenant's business or damage to Tenant's personal property.

18.7 Temporary Takings. Notwithstanding anything to contrary in this Section, if a Taking occurs with respect to all or any part of the Premises for a limited period of time not in excess of one hundred eighty (180) consecutive days, this Lease shall remain unaffected thereby, and Tenant shall continue to pay Rent, and to perform all of the terms, conditions and covenants of this Lease. In the event of such temporary Taking, City shall be entitled to receive any Award.

19. CITY AND OTHER GOVERNMENTAL PROVISIONS

19.1 Charter. This Lease shall be governed by and subject to the budget and fiscal provisions of the Charter of the City and County of San Francisco and its' Municipal Codes (available at www.sfgov.org). The policies described or referenced in this Lease are incorporated by reference as though fully set forth in this Lease. The descriptions below are not comprehensive but are provided for notice purposes only; Tenant is charged with full knowledge of each such ordinance and policy and any related implementing regulations as they may be amended from time to time. Tenant understands and agrees that its failure to comply with any provision of this Lease relating to any such code provision shall be deemed a material breach of this Lease and may give rise to penalties under the applicable ordinance. Capitalized or highlighted terms used in this Section and not defined in this Lease shall have the meanings ascribed to them in the cited ordinance.

19.2 MacBride Principles - Northern Ireland. City urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City and County of San Francisco urges San Francisco companies to do business with corporations that abide by the MacBride Principles. By signing below, the person executing this agreement on behalf of Tenant acknowledges that he or she has read and understood this section.

19.3 Tropical Hardwood and Virgin Redwood Ban. City urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin

redwood or virgin redwood wood product. Except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environmental Code, Tenant shall not provide any items to the construction of Alterations, or otherwise in the performance of this Lease which are tropical hardwoods, tropical hardwood wood products, virgin redwood, or virgin redwood wood products. In the event Tenant fails to comply in good faith with any of the provisions of Chapter 8 of the San Francisco Environmental Code, Tenant shall be liable for liquidated damages for each violation in any amount equal to Tenant's net profit on the contract, or five percent (5%) of the total amount of the contract dollars, whichever is greater.

19.4 No Representations. Tenant acknowledges and agrees that neither City nor any person on behalf of City has made, and City hereby disclaims, any representations or warranties, express or implied, regarding the business venture proposed by Tenant at the Airport, including any statements relating to the potential success or profitability of such venture. Tenant represents and warrants that it has made an independent investigation of all aspects of the business venture contemplated by this Lease and the Permitted Use.

19.5 Effect of City Approvals. Notwithstanding anything to the contrary herein, Tenant acknowledges and agrees that City is entering into this Lease as a landowner, and not as a regulatory agency with police powers. Accordingly, any construction, alterations, or operations contemplated or performed by Tenant hereunder may require further authorizations, approvals, or permits from governmental regulatory agencies, including the Airport's Quality Control Department. Nothing in this Lease shall limit Tenant's obligation to obtain such other authorizations, approvals, or permits. No inspection, review, or approval by City pursuant to this Lease shall constitute the assumption of, nor be construed to impose, responsibility for the legal or other sufficiency of the matter inspected, reviewed, or approved. In particular, but without limiting the generality of the foregoing, in approving plans and specifications for Alterations, City (a) is not warranting that the proposed plan or other action complies with applicable Laws, and (b) reserves its right to insist on full compliance in that regard even after its approval has been given or a permit has been issued.

19.6 Limitation on Damages. Notwithstanding anything to the contrary herein, in no event will City or any City Entity be liable to Tenant or any Tenant Entity for any consequential, incidental, or special damages, or special damages, or lost revenues or lost profits.

19.7 Sponsor's Assurance Agreement. This Lease shall be subordinate and subject to the terms of any "Sponsor's Assurance Agreement" or any like agreement heretofore or hereinafter entered into by City and any agency of the United States of America.

19.8 Federal Nondiscrimination Regulations.

(a) Tenant understands and acknowledges that City has given to the United States of America, acting by and through the Federal Aviation Administration, certain assurances with respect to nondiscrimination, which have been required by Title VI of the Civil Rights Act of 1964, as effectuated by Title 49 of the Code of Federal Regulations, Subtitle A - Office of the Secretary of Transportation, Part 21, as amended, as a condition precedent to the government making grants in aid to City for certain Airport programs and activities, and that City is required under said Regulations to include in every agreement or concession pursuant to which any person or persons other than City, operates or has the right to operate any facility on the Airport providing services to the public, the following covenant, to which Tenant agrees as follows: "*Tenant in its operation at and use of San Francisco International Airport, covenants that (1) no person on the grounds of race, color, or national origin shall be excluded*

from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities; (2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, and (3) that the grantee, licensee, permittee, etc., shall use the Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Subtitle A, Office of the Secretary of Transportation, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation Effectuations of Title VI of the Civil Rights Act of 1964, and as said regulations may be amended."

(b) (i) This agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR part 23. The concessionaire or contractor agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR part 23. (ii) The concessionaire or contractor agrees to include the above statements in any subsequent concession agreement or contract covered by 49 CFR part 23 that it enters and cause those businesses to similarly include the statements in the further agreements.

19.9 Federal Affirmative Action Regulations. Tenant assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. Tenant assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. Tenant assures that it will require that its covered sub-organizations provide assurances to Tenant that they similarly will undertake affirmative action programs and that they will require assurances from their sub-organizations, as required by 14 CFR Part 152, Subpart E, to the same effect.

19.10 City's Nondiscrimination Ordinance.

(a) Covenant Not to Discriminate. In the performance of this agreement, Tenant agrees not to discriminate against any employee, City and County employee working with Permittee, applicant for employment Tenant, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Tenant, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

(b) Subleases and Other Contracts. Tenant shall include in all subleases and other subcontracts relating to the Premises hereunder a nondiscrimination clause in substantially the form of subsection (a) above. In addition, Tenant shall incorporate by reference in all subleases and other subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subtenants and other subcontractors to comply with such provisions. Tenant's failure to comply with the obligations in this subsection shall constitute a material breach of this Lease.

(c) **Nondiscrimination in Benefits.** Tenant does not as of the date of this Lease and will not during the Term, in any of its operations in San Francisco, where the work is being performed for the City, or elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

(d) **HRC Form.** Tenant hereby represents that prior to execution of this Lease (i) Tenant executed and submitted to the Human Rights Commission of the City and County of San Francisco (the "HRC") the Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits form (Form HRC-12B-101), with supporting documentation, and (ii) the HRC approved such form.

(e) **Penalties.** The provisions of Chapters 12B and 12C of the San Francisco Administrative Code relating to nondiscrimination by parties contracting for the lease of City property are incorporated in this Section by reference and made a part of this Lease as though fully set forth herein. Tenant shall comply fully with and be bound by all of the provisions that apply to this Lease under such Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Tenant understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Lease may be assessed against Tenant and/or deducted from any payments due Tenant.

19.11 **Conflict of Interest.** Through its execution of this Agreement, Tenant acknowledges that it is familiar with the provisions of section 15.103 of City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and sections 87100 et seq and sections 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitute a violation of said provision and agrees that if it becomes aware of any such fact during the term of this Agreement it shall immediately notify City/Landlord.

19.12 **Prevailing Rates of Wage.** Tenant shall abide by Airport Commission Policy No. 80-0031, requiring that Tenant pay prevailing rates of salaries, wages, and employee benefits, to its employees working at San Francisco International Airport pursuant to this Lease.

19.13 **Declaration Regarding Airport Private Roads.** Tenant hereby acknowledges and agrees that all roads existing at the date of execution hereof within the boundaries of the Airport, as shown on the current official Airport plan and as it may be revised, are the private property and private roads of the City and County of San Francisco, with the exception of that portion of the old Bayshore Highway which runs through the southern limits of the City of South San Francisco and through the northern portion of the Airport to the intersection with the North Airport Road as shown on said Airport Plan, and with the exception of that portion of the North Airport Road which runs from the off and on ramps of the State Bayshore Freeway to the intersection with said old Bayshore Highway as shown on said Airport Plan. It further acknowledges that any and all roads hereafter constructed or opened by City within the Airport boundaries will be the private property and road of City, unless otherwise designated by appropriate action.

19.14 No Relocation Assistance; Waiver of Claims. Tenant acknowledges that it will not be a displaced person at the time this Lease is terminated or expires by its own terms, and Tenant fully releases, waives, and discharges forever any and all claims or other Losses, against and covenants not to sue City or any City Entity under any Laws, including any and all claims for relocation benefits or assistance from City under federal and state relocation assistance laws. Without limiting Section 5 [Assignment or Subletting], Tenant shall cause any Transferee to expressly waive entitlement to any and all relocation assistance and benefits in connection with this Lease. Tenant shall indemnify, defend, and hold harmless City for any and all Losses arising out of any relocation assistance or benefits payable to any Transferee.

19.15 Drug-Free Workplace. Tenant acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1988 (41 U.S.C §§ 701 et seq.), the unlawful manufacture, distribution, possession or use of a controlled substance is prohibited on City or Airport premises.

19.16 Compliance with Americans With Disabilities Act. Tenant acknowledges that, pursuant to the ADA, programs, services and other activities provided by a public entity, whether directly or through a contractor, must be accessible to the disabled public. Tenant shall provide the services specified in this Lease in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Tenant agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Lease, and further agree that any violation of this prohibition on the part of Tenant, its employees, agents or assigns shall constitute a material breach of this Lease.

19.17 Sunshine Ordinance. In accordance with S.F. Administrative Code Section 67.24(e), contractors' bids, responses to RFPs and all other records of communications between the City and persons or firms seeking contracts shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefits until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

19.18 Pesticide Prohibition. Tenant shall comply with the provisions of Section 308 of Chapter 3 of the San Francisco Environment Code (the "**Pesticide Ordinance**") which (i) prohibit the use of certain pesticides on City property, (ii) require the posting of certain notices and the maintenance of certain records regarding pesticide usage and (iii) require Tenant to submit to the Airport an integrated pest management ("**IPM**") plan that (a) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Tenant may need to apply to the Premises during the terms of this Lease, (b) describes the steps Tenant will take to meet the City's IPM Policy described in Section 300 of the Pesticide Ordinance and (c) identifies, by name, title, address and telephone number, an individual to act as the Tenant's primary IPM contact person with the City. In addition, Tenant shall comply with the requirements of Sections 303(a) and 303(b) of the Pesticide Ordinance.

19.19 First Source Hiring Ordinance. Tenant shall comply with the San Francisco First Source Hiring Ordinance (Board of Supervisors Ordinance No. 264-98, as amended from time to time) and related program and work in cooperation with the Airport Commission Office of Employment and Community Partnerships pursuant to the First Source Hiring Agreement entered into between the Airport Commission and the Tenant concurrently herewith, and incorporated herein by reference.

19.20 Labor Peace/Card Check Rule. Without limiting the generality of other provisions herein requiring Tenant to comply with all Airport Rules, Tenant shall comply with the Airport's Labor Peace/Card Check Rule, adopted on February 1, 2000, pursuant to Airport Commission Resolution No. 00-0049 (the "**Labor Peace/Card Check Rule**"). Capitalized terms not defined in this provision are defined in the Labor Peace/Card Check Rule. To comply with the Labor Peace/Card Check Rule, Tenant shall, among other actions: (a) Enter into a Labor Peace/Card Check Agreement with any Labor Organization which requests such an agreement and which has registered with the Airport Director or his/her designee, within thirty (30) days after the Labor Peace/Card Check Agreement has been requested; (b) Not less than thirty (30) days prior to the modification of this Lease, Tenant shall provide notice by mail to any Labor Organization or federation of labor organizations which have registered with the Director or his/her designee ("**registered labor organization**"), that Tenant is seeking to modify or extend this Lease; (c) Upon issuing any request for proposals, invitations to bid, or similar notice, or in any event not less than thirty (30) days prior to entering into any Subcontract, Tenant shall provide notice to all registered labor organizations that Tenant is seeking to enter into such Subcontract; and (d) Tenant shall include in any subcontract with a Subcontractor performing services pursuant to any Covered Contract, a provision requiring the Subcontractor to comply with the requirements of the Labor Peace/Card Check Rule. If Airport Director determines that Tenant shall have violated the Labor Peace/Card Check Rule, Airport Director shall have the option to terminate this Lease, in addition to exercising all other remedies available to him/her.

19.21 Requiring Minimum Compensation.

(a) Tenant agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 12P are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the MCO is available on the web at www.sfgov.org/olse/mco. A partial listing of some of Tenant's obligations under the MCO is set forth in this Section. Tenant is required to comply with all the provisions of the MCO, irrespective of the listing of obligations in this Section.

(b) The MCO requires Tenant to pay Tenant's employees a minimum hourly gross compensation wage rate and to provide minimum compensated and uncompensated time off. The minimum wage rate may change from year to year and Tenant is obligated to keep informed of the then-current requirements. Any subcontract entered into by Tenant shall require the subcontractor to comply with the requirements of the MCO and shall contain contractual obligations substantially the same as those set forth in this Section. It is Tenant's obligation to ensure that any subcontractors of any tier under this Agreement comply with the requirements of the MCO. If any subcontractor under this Agreement fails to comply, City may pursue any of the remedies set forth in this Section against Tenant.

(c) Tenant shall not take adverse action or otherwise discriminate against an employee or other person for the exercise or attempted exercise of rights under the MCO. Such actions, if taken within 90 days of the exercise or attempted exercise of such rights, will be rebuttably presumed to be retaliation prohibited by the MCO.

(d) Tenant shall maintain employee and payroll records as required by the MCO. If Tenant fails to do so, it shall be presumed that the Tenant paid no more than the minimum wage required under State law.

(e) The City is authorized to inspect Tenant's premises and conduct interviews with employees and conduct audits of Tenants.

(f) Tenant's commitment to provide the Minimum Compensation is a material element of the City's consideration for this Agreement. The City in its sole discretion shall determine whether such a breach has occurred. The City and the public will suffer actual damage that will be impractical or extremely difficult to determine if the Tenant fails to comply with these requirements. Tenant agrees that the sums set forth in Section 12P.6.1 of the MCO as liquidated damages are not a penalty, but are reasonable estimates of the loss that the City and the public will incur for Tenant's noncompliance. The procedures governing the assessment of liquidated damages shall be those set forth in Section 12P.6.2 of Chapter 12P.

(g) Tenant understands and agrees that if it fails to comply with the requirements of the MCO, the City shall have the right to pursue any rights or remedies available under Chapter 12P (including liquidated damages), under the terms of the contract, and under applicable law. If, within 30 days after receiving written notice of a breach of this Agreement for violating the MCO, Tenant fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Tenant fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the City shall have the right to pursue any rights or remedies available under applicable law, including those set forth in Section 12P.6(c) of Chapter 12P. Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City.

(h) Tenant represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the MCO.

(i) If Tenant is exempt from the MCO when this Agreement is executed because the cumulative amount of agreements with this department for the fiscal year is less than \$25,000, but Tenant later enters Tenant an agreement or agreements that cause Tenant to exceed that amount in a fiscal year, Tenant shall thereafter be required to comply with the MCO under this Agreement. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the Tenant and this department to exceed \$25,000 in the fiscal year.

19.22 Airport Intellectual Property. Pursuant to Resolution No. 01-0118, adopted by the Airport Commission on April 18, 2001, the Airport Commission affirmed that it will not tolerate the unauthorized use of its intellectual property, including the SFO logo, CADD designs, and copyrighted publications. All proposers, bidders, contractors, tenants, permittees, and others doing business with or at the Airport (including subcontractors and subtenants) may not use the Airport intellectual property, or any intellectual property confusingly similar to the Airport intellectual property, without the Airport Director's prior consent.

19.23 Requiring Health Benefits for Covered Employees. Tenant agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of Chapter 12Q are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the HCAO is available on the web at www.sfgov.org/olse. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12Q.

(a) For each Covered Employee, Tenant shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Tenant chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.

(b) Notwithstanding the above, if the Tenant is a small business as defined in Section 12Q.3 of the HCAO, it shall have no obligation to comply with part (a) above.

(c) If, within 30 days after receiving written notice of a breach of this Lease for violating the HCAO, Tenant fails to cure such breach or, if such breach cannot reasonably be cured within such 30-day period, Tenant fails to commence efforts to cure within such period, or thereafter fails to diligently pursue such cure to completion, the City shall have the remedies set forth in Section 12Q.5(f). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City.

(d) Any Sublease or Contract regarding services to be performed on the Premises entered into by Tenant shall require the Subtenant or Contractor and Subcontractors, as applicable, to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in Chapter 12Q of the Administrative Code. Tenant shall notify the Purchasing Department when it enters into such a Sublease or Contract and shall certify to the Purchasing Department that it has notified the Subtenant or Contractor of the obligations under the HCAO and has imposed the requirements of the HCAO on the Subtenant or Contractor through written agreement with each Subtenant or Contractor. Tenant shall be responsible for ensuring compliance with the HCAO for each Subtenant, Contractor and Subcontractor performing services on the Premises. If any Subtenant, Contractor or Subcontractor fails to comply, the City may pursue the remedies set forth in Section 12Q.5 of the Administrative Code against Tenant based on the Subtenant's, Contractor's, or Subcontractor's failure to comply, provided that the Contracting Department has first provided Tenant with notice and an opportunity to cure the violation.

(e) Tenant shall not discharge, reprimand, penalize, reduce the compensation of, or otherwise discriminate against, any employee for notifying the City of any issue relating to the HCAO, for opposing any practice proscribed by the HCAO, for participating in any proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

(f) Tenant represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the requirements of the HCAO.

(g) Tenant shall keep itself informed of the requirements of the HCAO, as they may change from time to time.

(h) Upon request, Tenant shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Subtenants, Contractors, and Subcontractors.

(i) Within ten (10) business days of any request, Tenant shall provide the City with access to pertinent records relating to any Tenant's compliance with the HCAO. In addition, the City and its agents may conduct random audits of Tenant at any time during the Term. Tenant agrees to cooperate with City in connection with any such audit.

(j) If a Contractor or Subcontractor is exempt from the HCAO because the amount payable to such Contractor or Subcontractor under all of its contracts with the City or relating to City-owned property is less than \$25,000.00 (or \$50,000.00 for nonprofits) in that fiscal year, but such Contractor or Subcontractor later enters into one or more agreements with the City or relating to City-owned property that cause the payments to such Contractor or Subcontractor to equal or exceed \$75,000.00 in that fiscal year, then all of the Contractor's or Subcontractor's contracts with the City and relating to City-owned property shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements to equal or exceed \$75,000.00 in the fiscal year.

19.24 Notification of Limitations on Contributions. San Francisco Campaign and Governmental Conduct Code (the "Conduct Code") Section 1.126 prohibits any person who contracts with the City for selling or leasing any land or building to or from the City whenever such transaction would require the approval by a City elective officer or the board on which that City elective officer serves, from making a contribution to such an officer, or candidate for such an office, or committee controlled by such officer or candidate at any time from the commencement of negotiations for such contract until the termination of negotiations for such contract or three months has elapsed from the date the contract is approved by the City elective officer, or the board on which that City elective officer serves. San Francisco Ethics Commission Regulation 1.126-1 provides that negotiations are commenced when a prospective tenant first communicates with a City officer or employee about the possibility of obtaining a specific contract. This communication may occur in person, by telephone or in writing, and may be initiated by the prospective tenant or a City officer or employee. Negotiations are completed when a lease is finalized and signed by the City and the Tenant. Negotiations are terminated when the City and/or the prospective tenant end the negotiation process before a final decision is made to award the contract.

19.25 Food Service Waste Reduction Ordinance. Tenant agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. By entering into this Lease, Tenant agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Tenant agrees that the sum of one hundred dollars (\$100.00) liquidated damages for the first breach, two hundred dollars (\$200.00) liquidated damages for the second breach in the same year, and five hundred dollars (\$500.00) liquidated damages for subsequent breaches in the same year is a reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this Lease was made. Such amounts shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Tenant's failure to comply with this provision.

19.26 Wages and Working Conditions. If applicable, Tenant agrees that any person performing labor in the construction of any Alterations or Improvements to the Premises, which Tenant provides under this Lease, shall be paid not less than the highest prevailing rate of wages as required by Section 6.22(E) of the Administrative Code, shall be subject to the same hours and working conditions, and shall receive the same benefits as in each case are provided for similar work performed in San Francisco, California. Tenant shall include in any contract for construction of such Alterations or Improvements a requirement that all persons performing labor under such contract shall be paid not less than the highest prevailing rate of wages for the labor so performed. Tenant shall require any contractor to provide, and shall deliver to City upon request, certified payroll reports with respect to all persons performing labor in the construction of such Alterations or Improvements to the Premises.

19.27 Prohibition of Tobacco Sales and Advertising. Tenant acknowledges and agrees that no sales or advertising of cigarettes or tobacco products is allowed on the Premises. This advertising prohibition includes the placement of the name of a company producing, selling or distributing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. This advertising prohibition does not apply to any advertisement sponsored by a state, local, nonprofit or other entity designed to (i) communicate the health hazards of cigarettes and tobacco products, or (ii) encourage people not to smoke or to stop smoking.

19.28 Prohibition of Alcoholic Beverages Advertising. Tenant acknowledges and agrees that no advertising of alcoholic beverages is allowed on the Premises. For purposes of this section, "alcoholic beverage" shall be defined as set forth in California Business and Professions Code Section 23004, and shall not include cleaning solutions, medical supplies and other products and substances not intended for drinking. This advertising prohibition includes the placement of the name of a company producing, selling or distributing alcoholic beverages or the name of any alcoholic beverage in any promotion of any event or product. This advertising prohibition does not apply to any advertisement sponsored by a state, local, nonprofit or other entity designed to (i) communicate the health hazards of alcoholic beverages, (ii) encourage people not to drink alcohol or to stop drinking alcohol, or (iii) provide or publicize drug or alcohol treatment or rehabilitation services.

19.29 Resource-Efficient Facilities and Green Building Requirements. Tenant agrees to comply with all applicable provisions of Environment Code Chapters 7 and 13C relating to resource-efficiency and green building design requirements.

19.30 Multi-Employer Bargaining Group Participation. Tenant agrees and acknowledges that a multi-employer bargaining group is an established mechanism for employers to bargain collectively with any lawful labor organization representing its employees in an appropriate bargaining unit in conformity with the Airport Commission's labor peace/card check agreement. Tenant will maintain membership in the Airport Restaurant Employers Council or its successor multi-employer bargaining group, and further agrees to become a party to, and be bound by, a collective bargaining agreement for its operations under this Lease in the event a collective bargaining agreement is negotiated on behalf of its employees authorizing, by majority determination through the labor peace/card check resolution or otherwise, the negotiation of such collective bargaining agreement. Tenant agrees to be an active member of the Airport Restaurant Employers Council or its successor multi-employer bargaining group by attending and participating in the groups meetings.

20. GENERAL PROVISIONS

20.1 Notices. Except as otherwise specifically provided in this Lease, any notice, consent, request, demand, or other correspondence given under this Lease shall be in writing and given by delivering the notice in person or by commercial courier, or by sending it by first-class mail, certified mail, return receipt requested, or overnight courier, return receipt requested, with postage prepaid, to: (a) Tenant at Tenant's Notice Address; or (b) City at City's Notice Address; or (c) such other address as either Tenant or City may designate as its new address for such purpose by notice given to the other in accordance with this Section. Any notice hereunder shall be deemed to have been given and received and effective two (2) days after the date when it is mailed, if sent by first-class, certified mail, one day after the date when it is mailed if sent by overnight courier, or upon the date personal delivery is made. For convenience of the parties, copies of notices may also be given by facsimile to the number set forth in the Summary or such other number as may be provided from time to time; however, neither party may give official or binding notice by facsimile.

20.2 No Implied Waiver. No failure by either party to insist upon the strict performance of any obligation of the other party under this Lease or to exercise any right, power or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or of such term, covenant or condition. No express written waiver of any default or the performance of any provision hereof shall affect any other default or performance, or cover any other period of time, other than the default, performance or period of time specified in such express waiver.

20.3 Entire Agreement. The parties intend that this Lease (including all of the attached exhibits, which are made a part of this Lease) shall be the final expression of their agreement with respect to the subject matter hereof and may not be contradicted by evidence of any prior or contemporaneous written or oral agreements or understandings. The parties further intend that this Lease shall constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever (including prior drafts hereof and changes therefrom) may be introduced in any judicial, administrative or other legal proceeding involving this Lease.

20.4 Amendments. Except as specifically provided herein, neither this Lease nor any term or provisions hereof may be changed, waived, discharged or terminated, except by a written instrument signed by the party against which the enforcement of the change, waiver, discharge or termination is sought.

20.5 Interpretation of Lease. The captions preceding the articles and sections of this Lease and in the table of contents have been inserted for convenience of reference only and such captions shall in no way define or limit the scope or intent of any provision of this Lease. This Lease has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein and shall be interpreted to achieve the intents and purposes of the parties, without any presumption against the party responsible for drafting any part of this Lease. Provisions in this Lease relating to number of days shall be calendar days. Use of the word "**including**" shall mean "including, without limitation." References to statutes, sections, ordinances or regulations are to be construed as including all statutory, ordinance, or regulatory provisions consolidating, amending, replacing, succeeding or supplementing the statute, section, ordinance or regulation. Whenever the singular number is used in this Lease and when required by the context, the same includes the plural, the plural includes the singular, and the masculine gender includes the feminine and neuter genders, and the word "**person**" shall include corporation, partnership, firm, limited liability company, and association.

20.6 Successors and Assigns. Subject to the provisions of Section 5 [Assignment or Subletting], the terms, covenants and conditions contained in this Lease shall bind and inure to the benefit of Tenant and City and, except as otherwise provided herein, their personal representatives and successors and assigns.

20.7 No Third-Party Beneficiaries. There are no third-party beneficiaries to this Lease.

20.8 No Joint Venture. It is expressly agreed that City is not, in any way or for any purpose, a partner of Tenant in the conduct of Tenant's business or a member of a joint enterprise with Tenant, and does not assume any responsibility for Tenant's conduct or performance of this Lease.

20.9 Brokers. Neither party has had any contact or dealings regarding the leasing of the Premises, nor any communication in connection therewith, through any licensed real estate broker or other person who could claim a right to a commission or finder's fee in connection with the lease contemplated herein. In the event that any broker or finder perfects a claim for a commission or finder's

fee based upon any such contact, dealings or communication, the party through whom the broker or finder makes his/her claim shall be responsible for such commission or fee and shall indemnify, defend, and hold harmless the other party from any and all Losses incurred by the indemnified party in defending against the same. The provisions of this Section shall survive any termination or expiration of this Lease.

20.10 Severability. If any provision of this Lease or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each other provision of this Lease shall be valid and be enforceable to the full extent permitted by law.

20.11 Governing Law. This Lease shall be construed and enforced in accordance with the laws of the State of California and the Charter of the City and County of San Francisco.

20.12 Attorneys' Fees. In the event that either City or Tenant fails to perform any of its obligations under this Lease or in the event a dispute arises concerning the meaning or interpretation of any provision of this Lease, the defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights hereunder (whether or not such action is prosecuted to judgment), including, without limitation, court costs and reasonable attorneys' fees. For purposes of this Lease, reasonable fees of attorneys of City's Office of the City Attorney shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney. Without limiting the generality of the foregoing, Tenant shall also pay all costs and expenses incurred by City related to City's participation in or monitoring of any Tenant bankruptcy, insolvency, or similar proceeding involving creditors' rights generally and any proceeding ancillary thereto. This Section shall survive expiration or earlier termination of this Lease.

20.13 Cumulative Remedies. All rights and remedies of either party hereto set forth in this Lease shall be cumulative, except as may otherwise be provided herein.

20.14 Time of Essence. Time is of the essence with respect to all provisions of this Lease in which a definite time for performance is specified.

20.15 Reservations by City. City may (a) at any time, upon reasonable advance written or oral notice, enter the Premises to show the Premises to prospective tenants or other interested parties, to post notices of non-responsibility, to re-measure the Premises, to repair any part of the Premises or adjoining areas, to install equipment for adjoining areas, and for any other lawful purpose; (b) without advance notice, enter the Premises to conduct an environmental audit, operational audit, or general inspection, or in an emergency. City shall use reasonable efforts to minimize disruption in Tenant's business. Such entry shall not constitute a forcible or unlawful entry into or a detainer of the Premises, or an eviction, actual or constructive of Tenant from the Premises. City reserves the exclusive right to use all areas of the Airport not comprising the Premises, and the exterior walls and roofs the Premises. City reserves the exclusive right to use such areas together with the right to install, maintain, use, repair, and replace pipes, ducts, conduits, wires, columns, and structural elements serving other parts of the Airport in and through the Premises. This reservation in no way affects maintenance obligations imposed in this Lease.

20.16 Survival of Indemnities. Expiration or termination of this Lease shall not affect the right of either party to enforce any and all indemnities and representations and warranties given or made to the other party under this Lease, nor shall it effect any provision of this Lease that expressly states it shall survive termination hereof. Each party hereto specifically acknowledges and agrees that, with respect to each of the indemnities contained in this Lease, the indemnitor has an immediate and independent obligation to defend the indemnitees from any claim which actually or potentially falls within the indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to the indemnitor by the indemnitee. Further, Tenant's obligation to make payments to City in respect of accrued charges (including those which have not yet been billed) and to make repairs (including those relating to the return of the Premises to City) which are accrued at the expiration or earlier termination of this Lease shall survive the expiration or earlier termination of this Lease.

20.17 Quiet Enjoyment and Title. Tenant, upon paying the Rent hereunder and performing the covenants hereof, shall peaceably and quietly have, hold and enjoy the Premises and all appurtenances during the full Term as against all persons or entities claiming by and through City. Tenant expressly acknowledges that Tenant's right to quiet possession of the Premises does not preclude City's right to make changes and additions to the Airport, including the Premises, and to do work in the Premises as permitted by this Lease.

20.18 No Right of Redemption. Tenant waives any right of redemption or reinstatement of Tenant under any present or future case law or statutory provision (including Code of Civil Procedure Sections 473 and 1179 and Civil Code Section 3275) in the event Tenant is dispossessed from the Premises for any reason. This waiver applies to future statutes enacted in addition or in substitution to the statutes specified herein.

20.19 Accord and Satisfaction. The payment by Tenant or the receipt by City of a lesser amount than the rent stipulated in this Lease may be, at City's sole option, deemed to be on account of the earliest due stipulated rent, or deemed to be on account of rent owing for the current period only, notwithstanding any instructions by or on behalf of Tenant to the contrary, which instructions shall be null and void, and no endorsement or statement on any check or any letter accompanying any such check or payment will be deemed an accord and satisfaction, and City may accept such check or payment without prejudice to City's right to recover the balance of such rent or payment or pursue any other remedy available in this Lease, at law or in otherwise, including possession of the Premises. City may accept any partial payment from Tenant without invalidation of any contractual notice required to be given herein (to the extent such contractual notice is required) and without invalidation of any notice given or required to be given pursuant to applicable law. In such event, if City shall receive any such partial payment after it shall have commenced an action against Tenant, City may amend its action as contemplated by Section 1161.1(c) of the California Civil Code to reflect any such partial payment, and no such payment shall limit any of City's rights to continue the action.

20.20 Joint and Several Liability. The liabilities hereunder of the entities and/or person(s) comprising Tenant shall be joint and several.

20.21 Estoppel Statements. Within ten (10) days after request therefor by City, Tenant shall deliver, in recordable form, an estoppel statement certifying that this Lease is in full force and effect; the date of Tenant's most recent payment of Rent, and that Tenant has no defenses or offsets outstanding, or stating those claimed, and any other information reasonably requested. Failure to deliver said statement within the specified period shall be conclusive upon Tenant that: (i) this Lease is in full force and effect,

without modification except as may be represented by City; (ii) there are no uncured defaults in City's performance and Tenant has no right of offset, counterclaim or deduction against Rent hereunder; and (iii) no more than one month's Base Rent has been paid in advance. Notwithstanding the conclusiveness of Tenant's failure to deliver such statement, Tenant's failure shall constitute a breach of this Lease.

20.22 Authority. If Tenant signs as a corporation, a limited liability company, or a partnership, each of the persons executing this Lease on behalf of Tenant does hereby covenant and warrant that Tenant is a duly authorized and existing entity, that Tenant has and is duly qualified to do business in California, that Tenant has full right and authority to enter into this Lease, and that each and all of the persons signing on behalf of Tenant are authorized to do so. Upon City's request, Tenant shall provide City evidence reasonably satisfactory to City confirming the foregoing representations and warranties.

20.23 Consents. If City is required to reasonably grant consent or approval, but does not do so, Tenant's sole and exclusive remedy is to seek specific performance and in no event will City be liable for any monetary damages.

20.24 Options Personal. If and to the extent Tenant has an option to extend the Term of this Lease, such option is personal to the original Tenant and may be exercised only by the original Tenant while occupying the Premises who does so without the intent of thereafter making any Transfer, and may not be exercised by or assigned, voluntarily or involuntarily, by or to any person or entity other than Tenant, unless the foregoing prohibition is waived by Director. The options, if any, herein granted to Tenant are not assignable separate and apart from this Lease, nor may any option be separated from this Lease in any manner, either by reservation or otherwise.

20.25 Counterparts. This Lease may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

///

///

IN WITNESS WHEREOF, the parties have executed this Lease as of the Effective Date.

TENANT: Clear Channel Outdoor, Inc. d/b/a Clear Channel
[signatories to also initial Summary] Airports,
a Delaware corporation

By: Renee Krug

Name: Renee Krug
(type or print)

Title: Chief Financial Officer

CITY: CITY AND COUNTY OF SAN FRANCISCO,
[signatories to also initial Summary] a municipal corporation,
acting by and through its Airport Commission

John L. Martin *cf*
Airport Director

AUTHORIZED BY
AIRPORT COMMISSION

Resolution No.: 12-0231

Adopted: October 30, 2012

Attest: _____
Secretary
Airport Commission

APPROVED AS TO FORM:
DENNIS J. HERRERA,
City Attorney

By: David Bennett
Deputy City Attorney

X:\TENANTS\ClearChannel\Agreements\L12-0231 v1-11-13.docx

LIST OF EXHIBITS

EXHIBIT A – Description of Premises

EXHIBIT B – Use and Operational Requirements

EXHIBIT C-1 – Form of Performance Bond

EXHIBIT C-2 – Form of Letter of Credit

**EXHIBIT A
PREMISES**

Initially, a total of 179 Advertising locations at San Francisco International Airport, as listed below.

Static and digital advertising in the following areas:

- Pre-security terminal wall, column and floor locations in ticket lobbies, connectors, arrival areas, tunnels, Air Train Bridges and Air Train Stations.
- Post-security wall and floor locations in boarding areas and connectors
- On Airport-owned baggage carousels
- On Tenant-provided Lodging, Transportation and Attractions Boards/Kiosks and Clocks
- Rental Car Center

Six (6) exhibit areas measuring no more than 10' x 10', as follows:

- 2 location each in Terminals 1 and 2
- 2 locations each in Terminal 3
- 2 locations each in the International Terminal

Seven (7) Lodging, Transportation and Attractions Boards located on the Arrivals Level:

- 2 locations in Terminal 1
- 1 location in Terminal 2
- 2 locations in Terminal 3
- 2 locations the International Terminal

SFO Location Number	General Description of Location	Adv. Type
A & G Parking Garage Connector		
GarConn-A101	A garage connector	Mini Spectacular
GarConn-G101	G garage connector	Mini Spectacular
Terminal 1 South, Departures Level		
T1-B001	BA/B, Alaska Lounge	80" Digital
T1-B004	BA/B, near Gate 21	Diorama
T1-B005	BA/B, across Gate 24	Diorama
T1-B006	BA/B, near Gate 24	Diorama
T1-B011	BA/B, hallway leading to Gates 26-31	80" Digital
T1-C001	BA/C in Gates 41/43 holdroom	Non-Lit TFD
T1-C002	BA/C in Gates 41/43 holdroom	Non-Lit TFD
T1-C003	BA/C in Gates 40/42 holdroom	Non-Lit TFD
T1-C004	BA/C in Gates 40/42 holdroom	Non-Lit TFD
T1-C005	BA/C in Gates 40/42 holdroom	Non-Lit TFD
T1-C006	BA/C in Gates 44/46 holdroom	Non-Lit TFD
T1-C007	BA/C in Gate 46 holdroom	Non-Lit TFD
T1-C008	BA/C in Gate 46 holdroom	Non-Lit TFD
T1-B101	BA/B, hallway leading to Gates 32-36	80" Digital
T1-B301	BA/B escalator	1x5 Digital Video Soffit
T1-C302	BA/C escalator	2x5 Digital Video Soffit
T1-B501	BA/B checkpoint	Non-Lit TFD
T1-601	entrance to Terminal 2 connector	Non-lit TFD
T1-B602	BA/B checkpoint	Large Format LED Static Backlit
T1-B603	BA/B checkpoint	Large Format LED Static Backlit
T1-602	Terminal 1, above Just Desserts	Non-lit TFD
T1-C605 <small>See Footnote 1</small>	BA/C checkpoint	Large Format LED Static Backlit
T1-C606 <small>See Footnote 1</small>	BA/C checkpoint	Large Format LED Static Backlit
T1-C502 <small>See Footnote 1</small>	Exit out of BA/C	Wall Wrap
T1-B801	BA/B next to Alaska Lounge	Spectacular
T1-901 <small>See Footnote 2</small>	TBD (not shown on map)	Exhibit
T1-B951	pre-security of BA/B	Clock Sponsorship
T1-C952	pre-security of BA/C	Clock Sponsorship
Terminal 1 South Concourse Lower Level Baggage Claim		
T1-Arr001	BA/B, Arrivals	Spectacular
T1-Arr006	BA/B, Arrivals	Mini-Spectacular
T1-Arr008	BA/B, Arrivals	Spectacular
T1-Arr009	BA/C Arrivals	Spectacular

SFO Location Number	General Description of Location	Adv. Type
T1-Arr014	BA/C Arrivals, by Delta baggage carousels	Spectacular
T1-Arr101	BA/B, Arrivals	Mini-Spectacular
T1-Arr102	BA/B, Arrivals	Mini-Spectacular
T1-Arr104	BA/B, Arrivals (Alaska baggage carousels)	Mini-Spectacular
T1-Arr202	BA/C, Arrivals (by Carousel 16)	Spectacular
T1-Arr301	BA/C, baggage claim to garage connector	Non-lit TFD
T1-Arr351	old BA/A to baggage claim	Non-lit TFD
T1-LTA001	T1, middle	Hotel Board / Video Wall
T1-LTA002	T1, near BA/C	Hotel Board / Video Wall

Terminal 3 North, Departures Level

T3-007	BA/F, across ticket counter	Spectacular
T3-008	BA/F, across ticket counter	Spectacular
T3-010	BA/F, across ticket counter	80" Digital
T3-F001	BA/F, by Gordon Biersch	80" Digital
T3-F002	BA/F, by UA Lounge	80" Digital
T3-F003	BA/F, b/w Gates 82 and 84	Diorama
T3-F004	BA/F, b/w Gates 82 and 84	Diorama
T3-F005	BA/F, near Gate 85	80" Digital
T3-F006	BA/F, b/w Gates 81 and 83	Diorama
T3-F007	BA/F, b/w Gates 81 and 83	Diorama
T3-018	BA/F, across ticket counter	Diorama
T3-019	BA/F, across ticket counter	Diorama
T3-020	BA/F, across ticket counter	Diorama
T3-023	T3, airline ticket counter, near main security	80" Digital
T3-F008	BA/F Hub end of walkway, exiting pier	1x4 Digital Video Stripe
T3-F009	BA/F, beginning of moving walkway	1x4 Digital Video Stripe
T3-111 ^{See Footnote 3}	NEW - T3 BA/E Lobby, seating (PENDING)	
T3-112 ^{See Footnote 3}	NEW - T3 BA/E Lobby, seating (PENDING)	
T3-F202	BA/F, near Gate 84	Spectacular
T3-211 ^{See Footnote 3}	NEW - T3, BA/E Lobby (PENDING)	
T3-301	T3-ITB North Connector	Large Format LED Static Backlit
T3-F302	T3 post-security, across Gate 70	2x3 Digital Video Soffit
T3-F303	BA/F, across Gate 73	2x3 Digital Video Soffit
T3-511	BA/F, near Gate 75 secured connector	Non-lit TFD
T3-501	end of BA/F, pre-security	Non-lit TFD
T3ITBN-501	T3-IT North Connector, by sec chkpt	Non-lit TFD
T3-502	T3, north end across from F3 checkpoint	Large Format LED Static Backlit
T3-503	T3, at F3 checkpoint	Non-lit TFD

SFO Location Number	General Description of Location	Adv. Type
T3-F551	BA/F, Gate 81	Column Façade TFD
T3-F552	BA/F, Gate 82	Column Façade TFD
T3-F553	BA/F, Gate 83	Column Façade TFD
T3-F554	BA/F, Gate 84	Column Façade TFD
T3-F555	BA/F, Gate 86	Column Façade TFD
T3-F556	BA/F, Gates 87-90	Column Façade TFD
T3-F557	BA/F, Gates 87-90	Column Façade TFD
T3-F558	BA/F, Gates 87-90	Column Façade TFD
T3-F512	BA/F, Gate 79	Non-lit TFD
T3-F513	BA/F, Gate 76	Non-lit TFD
T3-F514	BA/F Hub (octagon)	Core Hanging Banner
T3-F801	BA/F, b/w Gates 83 and 85	4x4 Digital Video Wall
T3-F802	BA/F Hub	3x10 Digital Video Wall (+Row)
T3-801 <small>See Footnote 3</small>	NEW - BA/E	Pending
T3-F902 <small>See Footnote 2</small>	TBD (not shown on map)	Exhibit
T3-F903	BA/F Hub	Core Lounge/Charging Station
T3-F951	near Gate 81	Clock Sponsorship
T3-F952	near Gate 80	Clock Sponsorship
T3-F953	BA/F Hub, towards Thumb	Clock Sponsorship
T3-F954	BA/F Hub, towards Long Finger	Clock Sponsorship

Terminal 3 North, Lower Level Baggage Claim

T3-Arr002	BA/F, baggage claim	Spectacular
T3-Arr004 <small>See Footnote 3</small>	NEW - above carousel 15, dbl sided (PENDING)	70" digital
T3-Arr005 <small>See Footnote 3</small>	NEW - above carousel 14, dbl sided (PENDING)	70" digital
T3-Arr006 <small>See Footnote 3</small>	NEW - above carousel 11 north, single sided (PENDING)	70" digital
T3-Arr007 <small>See Footnote 3</small>	NEW - above carousel 11 north, single sided (PENDING)	70" digital
T3-Arr008 <small>See Footnote 3</small>	NEW - above carousel 10, dbl sided (PENDING)	70" digital
T3-Arr009 <small>See Footnote 3</small>	NEW - above carousel 9, dbl sided (PENDING)	70" digital
T3-Arr101	BA/F, baggage claim	Mini-Spectacular
T3-Arr103	BA/F, baggage Claim, escalator	Mini-Spectacular
T3-Arr104	BA/F, baggage Claim, escalator	Mini-Spectacular
T3-Arr201	BA/F, baggage claim	Spectacular
T3-Arr301	BA F/G	Non-Lit TFD
T3-Arr302 <small>See Footnote 3</small>	NEW - escalator to parking connector (PENDING)	Non-Lit TFD
T3-Arr501	BA/F	Non-Lit TFD

SFO Location Number	General Description of Location	Adv. Type
T3-LTA003	T3, north end	Hotel Board / Video Wall
T3-LTA004	T3, near BA/E	Hotel Board / Video Wall

ITB; BA/A; BA/G Departures Level

ITG-001	BA/G, near Gate G94	80" Digital
ITG-003	BA/G, near Gate G93	Diorama
ITG-005	BA/G, near Gate G95	Diorama
ITG-008	BA/G, near Gate G98	Spectacular
ITA-001	BA/A, near Gate A1	Spectacular
ITA-002	BA/A, near Gate A2	80" Digital
ITA-003	BA/A, near Gate A3	Diorama
ITA-006	BA/A, near Gate A4	Spectacular
ITA-007	BA/A, near Gate A5	Diorama
ITA-501	FID WRAPS A Side	Large Format LED Static Backlit
ITA-502	FID WRAPS A Side	Large Format LED Static Backlit
ITA-503	FID WRAPS A Side	Large Format LED Static Backlit
ITG-501	FID WRAPS G Side	Large Format LED Static Backlit
ITG-502	FID WRAPS G Side	Large Format LED Static Backlit
ITG-503	FID WRAPS G Side	Large Format LED Static Backlit
ITG-504	FID WRAPS G Side	Large Format LED Static Backlit
ITG-201	BA/G, near Gate G96	Spectacular
ITG-202	BA/G, near Gate G96	4x4 Digital Video Wall
ITA-203	BA/A, near Gate A3	4x4 Digital Video Wall
ITA-204	BA/A, near Gate A2	Spectacular
IT-904 <small>See Footnote 2</small>	TBD TENTATIVE; shown on ITA map	Exhibit
IT-906 <small>See Footnote 2</small>	TBD TENTATIVE; not shown on map	Exhibit
ITG-951	ITG, near Gate G94	Clock Sponsorship
ITG-952	ITG, near Gate G91	Clock Sponsorship
ITB-953	ITB, near InMotion	Clock Sponsorship
ITB-954	ITB, retail corridor	Clock Sponsorship
ITB-955	ITB, South food court	Clock Sponsorship
ITA-956	BA/A, near Gate A6	Clock Sponsorship

International Terminal Lower Level Customs Baggage Claims

ITB1-FIS001	ITB-FIS, on baggage carousel 2	SGL-Sided 70" Digital
ITB1-FIS002	ITB-FIS, on baggage carousel 2	SGL-Sided 70" Digital
ITB1-FIS003	ITB-FIS, on baggage carousel 2	SGL-Sided 70" Digital
ITB1-FIS010	ITB-FIS, on baggage carousel 5	SGL-Sided 70" Digital
ITB1-FIS011	ITB-FIS, on baggage carousel 5	SGL-Sided 70" Digital
ITB1-FIS012	ITB-FIS, on baggage carousel 5	SGL-Sided 70" Digital

SFO Location Number	General Description of Location	Adv. Type
ITB1-FIS028	ITB-FIS, on baggage carousel 11	SGL-Sided 70" Digital
ITB1-FIS029	ITB-FIS, on baggage carousel 11	SGL-Sided 70" Digital
ITB1-FIS030	ITB-FIS, on baggage carousel 11	SGL-Sided 70" Digital
ITB1N-501	ITG Connector	Non-lit TFD
ITB1N-502	ITG Connector	Non-lit TFD
ITB1N-503	ITG Connector	Non-lit TFD
ITB1S-506	ITA Connector	Non-lit TFD
ITB1S-507	ITA Connector	Non-lit TFD
ITB1S-508	ITA Connector	Non-lit TFD
ITBN-Car571	Carousel 3 carousel wrap	Bagg Carousel wrap
ITBN-Car572	Carousel 9 carousel wrap	Bagg Carousel wrap
ITBN-LTA005	ITB North	Hotel Board / Video Wall
ITBS-LTA006	ITB South	Hotel Board / Video Wall

Terminal 2

T2-Post001	T2 post-security, Gate 59 holdroom	80" Digital
T2-Post002	T2 post-security, near Lark Creek Grill restaurant	80" Digital
T2-Pre501	T2 Lobby TFD (American)	Non-lit TFD
T2-Pre502	T2 Lobby TFD (Virgin America)	Non-lit TFD
T2-Post503	T2 post-security, to jetbridge (Gate 59)	Non-lit TFD
T2-Post504	T2 post-security, to jetbridge (Gate 50)	Non-lit TFD
T2-Arr505	T2 Arrivals, north end (American)	Large Format LED Static Backlit
T2-Arr506	T2 Arrivals, south end (Virgin)	Large Format LED Static Backlit
T2-Arr507	T2 Arrivals baggage carousel (American)	Large Format LED Static Backlit
T2-Arr508	T2 Arrivals baggage carousel (Virgin America)	Large Format LED Static Backlit
T2-905 <small>See Footnote 2</small>	TENTATIVE post-security seating area, across Gate 54	Floor exhibit
T2-LTA007	T2 Arrivals	Hotel Board

Platform Level & Airtrain Station

AIRTT1-001	T1, bridge	Pedestal Diorama
AIRTT1-002	T1, bridge	Pedestal Diorama
AIRTT3-009	T3, bridge	Pedestal Diorama
AIRTT3-010	T3, bridge	Pedestal Diorama
AIRTT2-017	T2, bridge	Pedestal Diorama
AIRTT2-018	T2, bridge	Pedestal Diorama

General Description of Location		Adv. Type
Rental Car Center		
RCC-4FL106	RCC, 4th floor, north end	LTA Board
RCC-1FL501	RCC, 1st floor, north end	Static, non-lit TFD
RCC-2FL502	RCC, 2nd floor, north end	Static, non-lit TFD
RCC-2FL503	RCC, 2nd floor, south end	Static, non-lit TFD
RCC-3FL504	RCC, 3rd floor, north end	Static, non-lit TFD
RCC-3FL505	RCC, 3rd floor, south end	Static, non-lit TFD
RCC-4FL506	RCC, 4th floor, south end	Static, non-lit TFD

Footnote 1 - Locations impacted by the Air Traffic Control Tower (ATCT) project. These locations will be removed.

Footnote 2 - Locations are pending.

Footnote 3 - Locations are part of the BA/E Project. These locations are yet to be finalized.

***The final approval for each location dimension and Advertising equipment will be granted or denied by the Design Review Committee and the Bureau of Construction and Engineering.**

EXHIBIT B
USE AND OPERATIONAL REQUIREMENTS

- 1) **REQUIRED USE:** On a non-exclusive basis, Tenant shall install, manage, operate, maintain, and display commercial advertising using advertising mediums as generally found in airports and subject to the approval by the Airport Director.
- A. All Advertising Equipment and content must be approved by the Airport Director before being installed in each location. All advertising content must satisfy the requirements of the Airport's Advertising Policy, as the same may be amended from time to time. Tenant shall not display any advertisements that:
- Contains profanity or obscenity;
 - Promotes the use or sale of tobacco or alcohol;
 - Promotes the use or sale of pornography;
 - Promotes the use or sale of weapons;
 - Promotes unlawful goods or services;
 - Promotes or encourages unlawful conduct;
 - Promotes or encourages "Adult" oriented goods or services (e.g. adult books, stores, adult video stores, films rates "X", adult telephone services, adult internet sites, etc.);
 - Contains political or campaign speeches;
 - Implies or declares an endorsement by the City and County of San Francisco, without prior authorization of the City and County of San Francisco;
 - Contains any material in violation of allocable laws, including and without limitation to laws regulating copyrights, trademarks, and other forms of intellectual property;
 - Is deceptive or misleading;
 - Depicts (through words or photos) explicit sexual acts or sexual suggestions;
 - Depicts (through words) acts of violence;
 - Is demeaning or disparaging;
 - Contains ANY reference to the Transportation Security Administration ("TSA");
 - Contains disparaging remarks against airports or services provided by airports and/or airlines (e.g. luggage handling, ticketing, security, etc.);
 - Contains words which common sense dictates, in the discretion of the City, should not be broadcasted inside an airport facility (e.g. killer bomb, terrorist, etc.)
- B. Tenant will provide, at minimum, ten (10) locations for the Airport's marketing and promotional program.
- C. For the Lodging Transportation and Attractions ("LTA") Boards, Tenant shall only allow ground transportation operators which are environmentally responsible companies to advertise on the LTA Boards. Tenant shall verify with the Airport whether or not a ground transportation operator is environmentally responsible prior to signing a contract with such ground transportation operator.
- D. For exhibit areas, Tenant is allowed a footprint of up to 10' by 10' to promote client's product or service. In the exhibit areas, Tenant and its client may not sell their products or

services. Tenant is responsible for infrastructure needs of clients. Client cannot compete with existing operators.

- E. Use best efforts to utilize equipment/investment that are environmentally sustainable. Designs of advertising equipment will include:
- Life cycle considerations: recycled materials content, and end of life recyclability
 - Energy efficiency: lighting (LED< photocell dimmers, etc.) and monitors and dynamic displays
 - Finishes and adhesives: low VOC paint finishes, low VOC adhesives, screws not glues
 - Printing, reproduction: water-based inks and substrates selection

2) **OPTIONAL USE:** Tenant, at its own option, may provide advertising, on a non-exclusive basis, on:

- A. Phone apps – Clear Channel has upgraded its mobile app, FlySmart™ 2.0. Upgrades include increased number of airports - more than 100 airports, including international destinations, more detailed maps, push alerts, flight tracking w/ multiple segments, integrated directories, dynamic concession promotions. The push alert feature, which requires passengers to enter their travel information once, sends alerts to passengers as to when they should proceed to their gate or any changes to their flight. This feature concentrates on proximity marketing and helps passengers locate concessions near them.
- B. Social media, such as Facebook and Twitter
- C. WiFi – Tenant may work out a deal with the Airport's courtesy WiFi provider, which is currently Advanced Wireless Group, LLC.
- D. Upsell customer service. Work with concessionaire to upsell their merchandise or promote their services.

3) **DESIGN AND CONSTRUCTION**

- A. All Tenant Advertising Equipment will undergo a design review approval.
- B. Transition team will consist of a senior operations manager, construction consultant/technical representative, operations general manager, sales general manager and a local sales manager as well as several sub-contractors consisting of technical engineering and design, public relations, architectural design, general contractor and electrical contractor, with support from Tenant's corporate office, including engineering, design, accounting, graphics and administration.
- C. Tenant's contractors will attend pre-construction meetings to review airport's requirements and design guidelines. Tenant's contractors will be badged or escorted appropriately and will comply with all construction, safety, security and insurance requirements.
- D. Delivery of equipment and staging will be coordinated with Tenant's local team and Airport staff prior to installation schedule and agreed-upon dates.
- E. Existing display with electrical service will be disconnected and capped to meet building code. Displays will be dismantled and removed for off-site recycling.
- F. For new displays, power will be reconfigured and new display will be installed and electric will be re-energized along with any required data. Any repairs to the wall or floors will be completed to match or complement existing terminal finishes. All power and data will be provided according to building code.

4) PRICING STRUCTURE.

Group	Monthly Base Rate
Dioramas	
Premium	\$7,500
Value	\$5,000
Digital Network	
Premium	\$50,000
Value	\$25,000
Tension Fabric Displays/Large Format	
Premium	\$40,500
Value	\$25,000
Mini Spectacular	
Premium	\$12,500
Value	\$9,000
Spectacular	
Premium	\$20,000
Value	\$10,000
Floor Exhibit	
Premium	\$35,000
Value	N/A
Sponsorship -- Clock	
Premium	\$50,000
Value	N/A
Sponsorship -- Column Façade	
Premium	\$50,000
Value	N/A
Sponsorship -- Lounge	
Premium	\$50,000
Value	N/A

5) OPERATIONS.

- A. Upon completion of transition/build-out, the following team will remain to manage the operation: senior operations manager, operational general manager, sales general manager, and local sales manager, as well as collections, accounting, graphics, and administration team from corporate office. This team will facilitate all on-going maintenance, repairs, inventory management and releases, inspections, meetings with clients and agencies, sales presentations, content installation and removal.

- B. After award of the Lease and approved by the Airport Director, Tenant will hold a launch event to invite largest buyers of airport advertising and local and regional business leaders for the launch of San Francisco International Airport's new advertising program. Launch event will include dynamic presentations, demonstrations and tours. Immediately following the launch, renderings, fly-through animations, rates, maps, market information and specifications will be distributed electronically to Tenant's world network.
- C. Multiple launch webinars will be held for Tenant's sales force so all offerings are clear.
- D. Tenant will adhere to SFO's policies and procedures at all times.
- E. Tenant shall provide all service maintenance, replacements and cleaning of all Tenant fixtures and other advertising space as required to maintain them in "as new" condition.
- F. Tenant shall have a personnel on-site starting at 7:00 a.m., which provides ten-hour-a-day full time presence during peak times and available 24 hours, seven days, 365 days a year with a minimum 24-hour response time.

AIRPORT ADVERTISING STANDARDS

The following is the Airport Advertising Standards Policy, approved by the Airport Commission on June 6, 2000. Tenant must abide by the Airport Advertising Standards Policy, as amended from time to time.

1. Three weeks prior to posting, all proposed and advertising graphic designs shall be submitted to the Director or his designee for review and approval. The designs must be submitted in sufficient detail to determine the content and final general appearance of the advertisement.
2. Any advertisement that does not comply with the standards as set forth by the Airport in #4, shall be rejected.
3. The subject matter of all advertising shall be limited to those advertisements which propose a commercial transaction. ("Commercial Transaction" does not include political or religious views.)
4. Advertisements may not be displayed which:
 - a. Advertise alcohol or tobacco products
 - b. Relate to an illegal activity
 - c. Depict violence or contain words or images that arouse anger, alarm or resentment in others
 - d. Advertise services in direct competition with the Airport's business objectives
 - e. Contain obscene matter as that term is defined in California Penal Code § 311(a) or contain statements or words of an obscene, indecent or immoral character, or any picture or illustration of the human figure in such detail as to offend public morals or decency.
 - f. Are false, misleading or deceptive
 - g. Relate to gambling
 - h. Contain material that is offensive to the ordinary person.

EXHIBIT C-1
FORM OF PERFORMANCE BOND FOR AIRPORT LEASES

_____ (Surety)

KNOW ALL MEN BY THESE PRESENT:

That we, _____, as Principal, and _____, a corporation duly organized and existing under and by virtue of the laws of the State of _____, as Surety, are held and firmly bound unto the City and County of San Francisco, acting by and through its Airport Commission, as Obligee, in the sum of _____ Dollars (\$ _____) lawful money of the United States of America, to be paid to the City and County of San Francisco, acting by and through its Airport Commission, for which payment, well and truly to be made, we bind ourselves, our heirs, executors and successors, jointly and severally, firmly by these presents.

WHEREAS, the Principal has entered into one or more leases, permits, or agreements with the City and County of San Francisco, Airport Commission (collectively, the "Agreements").

NOW, THEREFORE, the condition of this obligation is such that if the Principal shall perform all terms of the Agreements (which by reference are made a part hereof), including the payment of rent or fees, in accordance with the terms of such Agreements, then this obligation shall be null and void, otherwise to remain in full force and effect; and shall be effective _____.

This bond may be called upon by Obligee by a notice sent to the Surety in person or by registered mail, overnight mail, overnight courier service, or other courier service sent to our offices at:

Any such call by Obligee shall include a statement signed by the Airport Director of the Airport Commission of the City and County of San Francisco, or his/her designee, to the effect that any of the following events has occurred or is continuing:

- a) Principal has defaulted under one or more of the Agreements; or
- b) Principal has become insolvent, or has taken the benefit of any present or future insolvency statute, or has made a general assignment for the benefit of creditors, or has filed a voluntary petition in bankruptcy, or a petition or answer seeking an arrangement for its reorganization, or the readjustment of its indebtedness under the federal bankruptcy laws, or under any other law or statute of the United States or any state thereof, or any jurisdiction available to Principal, or has consented to the appointment of a receiver, trustee, or liquidator of any or substantially all of its property; or
- c) A petition under any of the federal bankruptcy laws or an action under any present or future insolvency law or statute has been filed against Principal; or
- d) This bond is cancelled, terminated, or not renewed, and City has not received an acceptable replacement letter of credit or bond at least thirty (30) days prior to the cancellation, termination, or expiration date.

We shall honor and pay on such call within ten (10) days after receipt.

We shall give you notice in writing by registered mail at least forty-five (45) days prior to the cancellation date, termination date or expiration date of this bond, if any is stated, of our intention to cancel, terminate, or non-renew this bond. In the event we fail to give such notice promptly, then this bond shall be deemed renewed for an additional one-year period.

Signed, sealed and dated this ___ day of _____, 20__.

Principal: By: _____

Title: _____

Seal: _____

Surety By: _____
Company:

Title: _____

Seal:

(Attach Notary Public Certificate and Attorney-in-Fact form)

EXHIBIT C-2
FORM OF LETTER OF CREDIT FOR AIRPORT LEASES

Date _____

Irrevocable Letter of Credit No. _____

Airport Commission
City and County of San Francisco
Att'n: Deputy Director, Business & Finance
San Francisco International Airport
International Terminal, No. Shoulder Bldg., 5/F
PO Box 8097
San Francisco, CA 94128

Ladies and Gentlemen:

We hereby establish an irrevocable letter of credit in your favor in the amount of _____ United States Dollars (US\$ _____) for the account of _____ ("Account Party"), available by your draft at sight, when accompanied by the following document:

A statement signed by the Airport Director of the Airport Commission of the City and County of San Francisco, or his/her designee, to the effect that any of the following events has occurred or is continuing:

- a) Account Party has defaulted under the one or more agreements with the City and County of San Francisco, acting by and through its Airport Commission at San Francisco International Airport; or
- b) Account Party has become insolvent, or has taken the benefit of any present or future insolvency statute, or has made a general assignment for the benefit of creditors, or has filed a voluntary petition in bankruptcy, or a petition or answer seeking an arrangement for its reorganization, or the readjustment of its indebtedness under the federal bankruptcy laws, or under any other law or statute of the United States or any state thereof, or any jurisdiction available to Account Party, or has consented to the appointment of a receiver, trustee, or liquidator of any or substantially all of its property; or
- c) A petition under any of the federal bankruptcy laws or an action under any present or future insolvency law or statute has been filed against Account Party; or
- d) This letter of credit is cancelled or not renewed, and City has not received an acceptable replacement letter of credit or bond at least thirty (30) days prior to the cancellation or expiration date.

Drafts drawn under and in compliance with the terms of this letter of credit will be duly honored by us upon presentation and delivery of the statement specified above. Partial draws are permitted. Such drafts may be presented in person or by registered mail, overnight mail, overnight courier service, or other courier service sent to our offices at:

We shall give you notice in writing by registered mail at least forty-five (45) days prior to the cancellation date or expiration date of this letter of credit, if any is stated, of our intention to cancel or non-renew this letter of credit. In the event we fail to give such notice promptly, then this letter of credit shall be deemed renewed for an additional one-year period. Notwithstanding the foregoing, this letter of credit shall finally expire on _____, 20__.

Sincerely,



San Francisco International Airport
RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO

2013 FEB -1 PM 2:08
BT

January 29, 2013

Ms. Angela Calvillo
Clerk of the Board
Board of Supervisors
City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4689

Subject: Approval of the Airport Advertising Lease No. 12-0231, between Clear Channel Outdoor, Inc. dba Clear Channel Airports and the City and County of San Francisco, acting by and through its Airport Commission

Dear Ms. Calvillo:

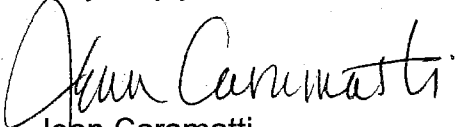
Pursuant to Section 9.118 of the City Charter, I am forwarding for the Board of Supervisors' approval the Airport Advertising Lease No.12-0231, between Channel Outdoor, Inc. dba Clear Channel Airports, and the City and County of San Francisco, acting by and through its Airport Commission.

Five sets of the following documents are enclosed for review:

- Board of Supervisors Resolution;
- Approved Airport Commission Resolution No. 12-0231;
- Ethics Forms SFEC-126 for the Board of Supervisors;
- Ethics Forms SFEC-126 for the Mayor's Office; and
- Copy of Airport Advertising Lease No. 12-0231.

Please contact Nanette Hendrickson of Airport Revenue Development and Management at (650) 821-4500 if you have questions or concerns regarding this matter.

Very truly yours,


Jean Caramatti
Commission Secretary

Enclosures

cc: Nanette Hendrickson



BOS-11

File 130072
B/F Clerk
CPAGE

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO

2013 MAR -6 PM 4:22

March 4, 2013

San Francisco Board of Supervisors
City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

Re: SFO Advertising RFP

Dear Honorable Supervisors:

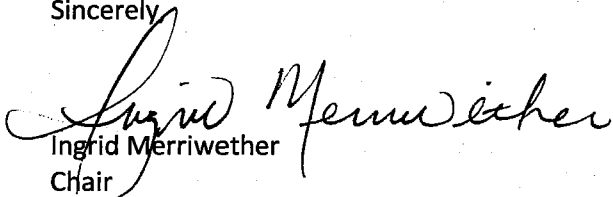
The Coalition for Economic Equity (CEE) for over 30+ years has been a strong advocate for small, minority and woman owned business participation in City contracts, including concession leases. We'd like to take this opportunity to highlight San Francisco International Airport's "out of the box" approach in maximizing local community and business engagement in the RFP for SFO Advertising Lease.

The CEE is pleased to see the extent to which the Airport made its desires clear to proposers that their proposals were expected to include diverse concepts and local owners, and that this RFP goal would be seriously considered as part of the contract award decision. The Airport's creative approach, in turn, spawned innovative proposals in response. As we understand it, one proposer introduced a way to utilize technology as a tool to provide advertising exposure of the City's smaller and diverse businesses to the incoming Airport travelers. This opens up a major advertising medium for small businesses to millions of San Francisco's visitors that would otherwise be out of their economic reach.

In addition, we see the engagement of small women owned professional firms like Davis & Associates who will have exposure to mainstream advertising and marketing germane to airport operations, giving the firm the opportunity to expand capacity and access new markets. It is this type of response to the City's expectations that personifies the letter, and more importantly the spirit of the City's LBE and Small Business programs.

In closing, we offer "kudos" to the Airport and its leadership for representing the City's commitment to our small and diverse local businesses- the life blood and the authentic character of San Francisco!

Sincerely


Ingrid Merriwether
Chair



ROSALES LAW PARTNERS LLP
February 28, 2013

file 130072
BOS-11
cpage

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO
2013 MAR - 1 PM 2:25

Honorable Members of the Board of Supervisors
c/o Angela Calvillo, Clerk
San Francisco, City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4698

Re: Supplemental item to Exhibit J to JCDecaux North America, Inc. Protest Letter

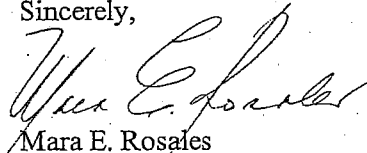
Dear Supervisors:

On February 8, 2013, the undersigned, on behalf of JCDecaux North America, Inc., presented correspondence and supporting documentation entitled: "Protest to the Airport Commission's Award of the SFO Advertising Lease to Clear Channel Airports" (hereinafter "JCDecaux Protest"). Exhibit J to that JCDecaux Protest is identified as "Summary of Clear Channel's practices at other Airports" and describes Clear Channel's business practices with the City of Los Angeles and ongoing litigation involving Clear Channel and the City of Los Angeles in the California Court of Appeal.

Attached to this letter is a February 23, 2013 Los Angeles Times online news article¹ stating that Clear Channel has provided notice to Los Angeles of its intent to pursue a \$100MM claim against the city if the city complies with the Court's decision to remove illegal digital signs erected by Clear Channel across Los Angeles.

We ask that this news article be considered a supplemental to JCDecaux Protest's Exhibit J, filed with the Board of Supervisors' Clerk Office on February 8, 2013. I enclose eleven courtesy copies for Board members.

Sincerely,



Mara E. Rosales

cc: City Attorney Dennis Herrera
John L. Martin, Airport Director
Hon. Airport Commission, c/o Jean Caramatti, Secretary
Sheryl Bregman, Airport General Counsel
Harvey Rose, Board of Supervisors Budget Analyst
Bernard Parisot, Co-CEO, JCDecaux

¹ Source: <http://latimesblogs.latimes.com/lanow/2013/02/digital-billboard-company-issues-100-million-threat-against-la.html>



ROSALES LAW PARTNERS LLP

March 4, 2013

BOS-11
File # 130072
RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO

2013 MAR -4 PM 1:30

C-PAGES

Mara E. Rosales
mara@rosaleslawpartners.com

Honorable Members of the Board of Supervisors
c/o Angela Calvillo, Clerk of the Board
San Francisco, City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4698

Re: Written Statement of Susana Razo in Support of JCDecaux North America, Inc. Protest Letter

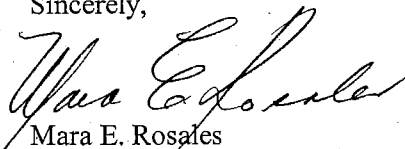
Dear Supervisors:

On February 8, 2013, the undersigned, on behalf of JCDecaux North America, Inc., presented correspondence and supporting documentation entitled: "Protest to the Airport Commission's Award of the SFO Advertising Lease to Clear Channel Airports" (hereinafter "JCDecaux Protest").

Attached to this letter is a written statement by Susana Razo wherein she provides a first-hand account of SFO's presentation at the non-mandatory Informal Conference for the SFO Advertising Lease RFP regarding the Minimum Annual Guarantee ("MAG") scoring issue, as well as her interpretation that the historical data provided in the RFP did not support a MAG offer higher than the Minimum Acceptable Financial Offer. While Ms. Razo is not available to appear on March 6, 2013, she can be reached by telephone or she may be able to appear in person on another date and time that is convenient.

We ask that Ms. Razo's statement be considered in support of JCDecaux Protest, filed with the Board of Supervisors' Clerk Office on February 8, 2013. I enclose eleven courtesy copies for Board members.

Sincerely,


Mara E. Rosales

cc: City Attorney Dennis Herrera
John L. Martin, Airport Director
Hon. Airport Commission, c/o Jean Caramatti, Secretary
Sheryl Bregman, Airport General Counsel
Harvey Rose, Board of Supervisors Budget Analyst
Bernard Parisot, Co-CEO, JCDecaux

433 California Street, Suite 630 • San Francisco, CA 94104 • (415) 986-4760 Office • (415) 766-4510 Fax
www.rosaleslawpartners.com

March 1, 2013

President David Chiu
Supervisor Mark Farrell, Finance Committee Chair
Honorable Members of the Board of Supervisors
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4689

Re: **Written Statement of Susana Razo**
SFO Airport Advertising Lease (Item #7; 130072 Budget and Finance Committee)

Dear Members of the Board of Supervisors:

I provide you with this written statement of the following facts from my own, first-hand, knowledge. I apologize that I cannot personally attend the hearing for the Board of Supervisors relating to this matter on March 6, 2013, but I have another obligation that requires my presence on that day.

I am a public relations professional, with over 15 years of experience in strategic planning, program development, communications and community/stakeholder/client engagement. In the past three years, I have been working with a large public utility as a public relations consultant, developing and executing public relations and communication strategies. In that role, I facilitate and help my clients prepare for meetings that require public comment.

On May 10, 2012, I personally attended the informal Pre-proposal Conference for the SFO Advertising Lease Request for Proposals on behalf of AstraPacific. AstraPacific was interested in responding to the Request for Proposal (RFP) for the Airport's advertisement contracting opportunity.

At the conference, on May 10, 2012, the presenter, Gigi Ricasa, made her presentation with the help of PowerPoint slides. She did not deviate from the PowerPoint presentation, and in fact, she read directly from the slides. Also, attendees at the Informal Conference were instructed to submit any and all questions formally and in writing. Consequently, no information was presented at the Conference that was not part of the PowerPoint presentation.

At the Conference, Ms. Ricasa shared only what was already stated in the RFP. New information was not presented. I am confident of this because of my own experience with public meetings and knowledge of presentation styles.

I distinctly recall that Ms. Ricasa only reiterated what was listed in the written RFP with regard to the scoring of the Minimum Annual Guarantee amount. She did not present any new information or provide any additional scoring methodology for the Minimum Annual Guarantee that was not included in the Airport's written Request for Proposal. Based on the Request for Proposal and the information received at the Informal Conference, I understood that if a proposer satisfied the Minimum Annual Financial Offer, the proposer would get the full amount of points for the MAG category. It was never suggested orally or otherwise that a competitive advantage could be gained by exceeding the MAG.

March 1, 2013
Written Statement of Susana Razo
Page 2

My client ultimately declined to pursue the Airport's advertising opportunity. During our discussions regarding whether to submit a proposal, AstraPacific never contemplated exceeding the Minimum Acceptable Financial Offer identified in the Request for Proposal, because an analysis of the available data simply did not support a guarantee of income to the Airport in an amount beyond the Minimum Acceptable Financial Offer of \$7 Million. This was reinforced by the tour we received of San Francisco Airport's advertising spaces. Moreover, the data provided showed gross annual receipts averaged approximately \$9 Million. The overall advertising market experienced an increase in 2011, which was reflected in an increase in revenue for that year. When projecting income for an 8-year lease period it would not be prudent to base projected earnings on one year for a variety of reasons, included amongst them, the advertising market's sensitivity to financial markets and catastrophic events.

Please accept this written statement in lieu of my personal appearance before your honorable Board.

Sincerely,



Susana Razo
(415) 810-8717
razosusana@gmail.com

cc: John L. Martin, Airport Director



BOS-11
B+F Clerk page
RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO

2013 FEB -4 PM 3:32

BY *lp*

File 130072

January 29, 2013

San Francisco Board of Supervisors
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102

RE: SFO Airport Advertising Lease

To Whom It May Concern:

I am happy to provide a letter of reference for Clear Channel Airports (CCA) to the San Francisco Board of Supervisors. The staff at CCA has worked closely with San Jose International Airport to deliver a comprehensive and quality advertising program. CCA has been a reliable performer with a professional and cooperative attitude.

CCA has operated at the San Jose Mineta International Airport since 2007. During this period, Clear Channel Airports has met both their MAG and capital obligations generating over \$25 million in revenue for the City of San Jose. Many businesses have struggled since the 2008 economic collapse and CCA was not immune to the downturn. However, under these unique unforeseeable circumstances, Clear Channel continued to perform under the terms and conditions set forth in their contract.

It is with great pleasure that I recommend Clear Channel Airports for the advertising program at SFO.

Sincerely,

William F. Sherry, A.A.E.
Director of Aviation



ROSALES LAW PARTNERS LLP

February 8, 2013

Mara E. Rosales
mara@rosaleslawpartners.com

Honorable David Chiu
President, San Francisco Board of Supervisors
City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4689

Honorable Dennis J. Herrera
City Attorney
City Hall
1 Dr. Carlton B. Goodlett Place, Room 234
San Francisco, CA 94102-4689

Re: JCDecaux's Protest to the Airport Commission's Award of the SFO Advertising
Lease to Clear Channel Airports

Dear Supervisor Chiu and City Attorney Herrera:

The undersigned represents JCDecaux North America Inc. ("JCDecaux"). We understand that the Airport Commission has submitted a proposed resolution seeking the Board of Supervisors' ("Board") action on the Commission's October 30, 2012 award of the SFO Advertising Lease ("Lease") to Clear Channel Airports ("Clear Channel"). This letter and its attachments constitute JCDecaux's protest to the Airport Commission's requested action. A similar protest was presented to, and denied, by the Airport Commission.

Under Charter Section 9.118(c) "any lease of real property...having an anticipated revenue to the City and County of one million dollars or more...shall *first* be approved by resolution of the Board of Supervisors." (Emphasis added.) The Board of Supervisors' authority under this Charter section is plenary: it may agree or disagree, in whole or in part, with the Commission's recommendation. Accordingly, the Board may: (1) entertain JCDecaux's bid protest de novo, and sustain it; (2) reject or not adopt the proposed resolution awarding the Lease to Clear Channel; and (3) proceed with the award of the Lease to JCDecaux because all the information necessary to find JCDecaux as the most responsible and responsive proposer in the competition is before the Board; or

433 California Street, Suite 630 • San Francisco, CA 94104 • (415) 986-4760 Office • (415) 766-4510 Fax
www.rosaleslawpartners.com

(4) return the matter to the Commission with specific guidance on the factors the Board requires the Commission to consider before the Board will accept a recommendation to award the Lease.

We ask that the Board sustain JCDecaux's protest, which would result in a near numerical tie between JCDecaux and Clear Channel according to the analysis of SFO staff. (As discussed below, if its protest is sustained, JCDecaux's proposal is the highest ranked.) The Board may then conduct a process that allows JCDecaux and Clear Channel to present the merits of their respective proposals to a committee of the Board, followed by a recommendation of contract award to the full Board.¹ In the alternative, we ask that the Board sustain JCDecaux's protest and return the matter to the Airport Commission with appropriate instructions on how to correct the errors identified in the JCDecaux protest and fairly complete the RFP process.

Our request is based on the following:

1. The scoring methodology applied by staff for the financial offer or Minimum Annual Guarantee ("MAG") category in the RFP is not defined in the RFP or its addenda as is customary in City contracting and required by law.

The plain language of the RFP provides that the MAG category will carry 50 points if the RFP instructions are followed. All three proposers complied with the RFP instructions regarding the MAG or financial offer. However, only Clear Channel's proposal received the entire 50 points identified in the RFP. This error is material and prejudicial to JCDecaux. Once the MAG points are properly applied, JCDecaux is the highest ranked proposer by a fraction of a point.

No explanation offered by the City Attorney's Office or Airport staff negates the conclusion that there is error in the scoring of the proposals. Principles of fair play in public contract competitions require that instructions to proposers be clearly stated in writing and material deviations from such instructions (by either the proposers or government decision makers) are not acceptable. This sound public policy, which has been at the center of the City's contracting practices for more than two decades², was emphasized in one of the Airport Commission's own published cases. (See *MCM Construction Inc. v. City and County of San Francisco* (1998) 66 Cal. App. 4th 359.) There, the Court of Appeal stated "[t]he importance of maintaining integrity in government and the ease with which policy goals underlying the requirement for open competitive bidding may be surreptitiously undercut, mandate strict compliance with bidding requirements." (*MCM Construction, Inc.*, supra at

¹ The Airport Commission's authority to award the Lease is pursuant and subject to S.F.Adm. Code Sec. 2A.173, which requires that the Lease be subject to a fair competitive process.

² A review of RFPs issued by SFO between 2006 and 2012, reveals that on at least five occasions, SFO has included an explanation of its sliding scale methodology: RFP for Distributed Antenna Systems at SFO for Cellular and Other Wireless Systems (May 2008); RFP for Operation, Maintenance and Upgrade of Wireless-Fidelity System at SFO (Feb. 2010); RFP for Management and Operations of Public and Employee Parking (Oct. 2011); RFP for SFO Proposals to Provide Shuttle Bus Services (June 2012); and RFP for Contract 9194, Maintenance and Support of Baggage Handling Control Systems (August 2012). MTA's Contract No. CS-163 for professional services also states in writing its scoring methodology (Oct. 2010). (See Exhibit H for illustrations.)

369.) The award of the Lease to Clear Channel is a material deviation from the published RFP, runs afoul of the law and must be reversed by the Board.

2. JCDecaux asks the Board to closely examine the responsiveness of the proposals with respect to other RFP criteria, in particular certified disadvantaged business (DBE/ACDBE) participation and local owner/flavor offerings.

Among other terms, the RFP asks proposers to provide their best proposal on certified disadvantaged business participation and local flavor/offerings. While these categories are not scored, the RFP includes these categories in the contract award considerations. (RFP, Part III, p.9.) It is noteworthy that JCDecaux, unlike its competitors, heeded the public policy incentives in the RFP and included two minority owned advertising firms in its proposal (essentially creating new capacity/competition in the lucrative airport advertising market) as well as two local business partners that offer significant and innovative opportunity for SFO's 45,000,000 passengers to engage with San Francisco local business and neighborhood communities in ways not seen before. (See Exhibit I.)

3. JCDecaux asks that the Board request the Budget Analyst to assess the commercial reasonableness of Clear Channel's \$10M MAG offer.

The RFP asks proposers to provide their best proposal on (1) business plan and operations/management plan; and (2) minimum economic offer or MAG. The City specifically reserved the right to accept a proposal other than the highest financial offer. (RFP, Part III. 4, p.10.) The incentive to bid higher than the minimum acceptable offer is stated in the RFP: it states that the MAG "is equal to or greater than the Minimum Acceptable Financial Offer..." (RFP, Part II.6(c), p.8.) This language, combined with the guidance that the "most responsive and responsible" proposal is what will determine the winner, pushes the proposer to bid as high as is commercially reasonable. However, the incentive to bid more does not constitute notice that a higher bid will result in more points being awarded. In addition, it does not negate the other factors that go into evaluating the best overall value offered, including qualitative factors.

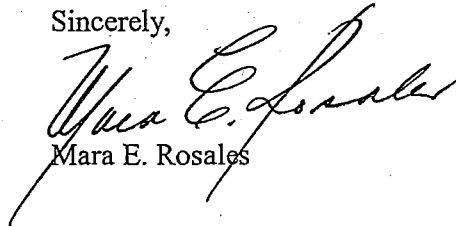
Clear Channel is the incumbent on the current SFO Advertising Lease with average annual gross revenue sales over the past 5 years, as represented by SFO (presumably as reported to SFO by Clear Channel), of \$9.2 million. Clear Channel's \$10M MAG offer for the new Lease opportunity is commercially untenable given its prior sales performance. The unreasonableness of Clear Channel's MAG offer is evident when compared to the two other proposed MAGs (JCDecaux \$8.5M and Titan also \$8.5M) and to SFO's initial Minimum Acceptable Financial Offer of \$7.5M, which was subsequently revised down to \$7M to reflect the removal of several key advertising locations which Clear Channel itself indicated represent \$1.8 million of its current revenue. Clear Channel's MAG offer is 18% above its two similarly situated competitors on the RFP and 43% above the Airport's estimate of a reasonable market based minimum bid. These facts strongly indicate that Clear Channel

Hon. David Chiu
Hon. Dennis Herrera
February 8, 2013
Page 4

is knowingly attempting to “buy” the award of the Lease by overbidding. A contractor that intentionally overbids is not a “responsible” bidder, as that term is legally understood in competitive solicitation matters. (*Taylor Bus Service, Inc. v. San Diego Bd. of Education* (1987) 195 Cal.App.3d 1331, 1341 fn. 4: [“Responsibility means the fitness, quality and capacity of the bidder to satisfactorily perform the proposed work.”]). Moreover, Clear Channel has a demonstrated track record of overbidding MAGs at Bay Area Airports and after contract award seeking MAG adjustments through contract modifications. Clear Channel engaged in this practice at San Jose International and Oakland International Airports during the same time it negotiated a higher MAG at SFO in exchange for additional advertising locations. (See Exhibit J.) These business tactics are known as “loss leader” strategies which are contrary to the public policy of the State of California and should not be tolerated by the City and County of San Francisco.

For all of the foregoing reasons, JCDecaux respectfully requests that the Board of Supervisors decline to adopt the Airport Commission’s proposed resolution awarding the SFO Advertising Lease to Clear Channel and conduct or direct a process which ensures adherence to the published RFP and is consistent with the City’s best practices in the award of contracts, leases and concession agreements.

Sincerely,



Mara E. Rosales

cc: Hon. Members, Board of Supervisors
John L. Martin, Airport Director
Hon. Larry Mazzola, Airport Commission President
Hon. Members, Airport Commission c/o Jean Caramatti, Secretary
Sheryl Bregman, Airport General Counsel
Bernard Parisot, Co-CEO, JCDecaux

EXHIBITS

TO

**JCDECAUX PROTEST OF AIRPORT COMMISSION PROPOSED AWARD OF
ADVERTISING LEASE TO CLEAR CHANNEL**

- A.** October 11, 2012 Letter to JCDecaux from Airport announcing plan to award advertising lease to Clear Channel
- B.** JCDecaux protest documents presented to Airport Commission on October 26, 2012
- C.** October 24, 2012 Response from City Attorney with attachments (1) October 22, 2012 inviting Clear Channel to respond to JCDecaux Protest and (2) October 23, 2012 response to JCDecaux protest
- D.** October 29, 2012 Letter from City Attorney responding to October 26, 2012 Rosales Law Partners letter
- E.** December 21, 2012 Quadra & Coll, LLP letter to City Attorney
- F.** RFP Procedural Timeline
- G.** Clear Channel's history of contract modifications at SFO
- H.** Excerpts from RFPs setting forth scoring methodology
- I.** JCDecaux Local Business/DBE Proposal and Chart
- J.** Summary of Clear Channel's practices at other Airports



San Francisco International Airport

October 11, 2012

VIA EMAIL Bernard.parisot@jcdecauxna.com
AND AND U.S. MAIL

Bernard Parisot
co-Chief Executive Officer
JCDecaux Airport, Inc.
3 Park Avenue, 33rd Floor
New York, NY 10016
646-834-1300
Fax 646-834-1400

RE: Result of the San Francisco International Airport ("Airport") Request for Proposal ("RFP") for the Airport Advertising Lease ("Lease")

Dear Mr. Parisot:

Thank you for participating in the proposal process for the above-mentioned Lease. We received proposals from your company as well as Clear Channel Airports and Titan Outdoor, LLC. An evaluation by a three-member panel has determined that Clear Channel Airports is the highest ranking, responsive and responsible proposer, and has been identified as the apparent successful proposer.

We plan to recommend that the Commission award the Lease to Clear Channel on October 30, 2012. Upon the award of the Lease, we will return your original proposal deposit in the amount of \$1,750,000.

The Airport appreciates your interest and hopes that JCDecaux will continue to participate in future opportunities. Please feel free to contact Gigi Ricasa of my staff at (650) 821-4500 if you have any questions.

Very truly yours,

Cheryl Nashir
Associate Deputy Airport Director
Revenue Development and Management

cc: Gigi Ricasa
Stacy Kodak, JCDecaux (via email Stacey.kodak@jcdecauxna.com)

AIRPORT COMMISSION CITY AND COUNTY OF SAN FRANCISCO

EDWIN M. LEE LARRY MAZZOLA LINDA S. CRAYTON ELEANOR JOHNS RICHARD J. GUGGENHIME PETER A. STERN JOHN L. MARTIN
MAYOR PRESIDENT VICE PRESIDENT AIRPORT DIRECTOR

Post Office Box 8097 San Francisco, California 94128 Tel 650.821.5000 Fax 650.821.5005 www.flysfo.com

Airport Advertising Lease

10/4/2012

CRITERIA	Clear Channel			JCDecaux			Titan		
	WEIGHT	P1	P2	P3	Weighted Points	P1	P2	P3	Weighted Points
1 Business Plan (15 points)									
(i) Eight years proforma showing projected sales, revenue to the Airport, expenses, and net income. Proposers are to use the format shown on Submittal 7, attached hereunder. The pro forma should demonstrate an understanding of the proposed lease and will be considered for its reasonableness and viability of proposed operation and financial offer, and the ability to fund continuing operations from the cash flow generated by the operation.	15%	12.00	9.00	12.00	11.00	9.00	9.00	9.00	9.00
	15%	12.00	9.00	12.00	11.00	9.00	9.00	9.00	9.00
2 Design Intent/Construction (20 points)									
(i) Overall appeal and quality of advertising mediums, reflecting the location's aesthetics.	10%	8.00	6.00	6.00	6.67	6.00	8.00	6.00	6.67
(ii) Identify the source of funds and amounts for capital investment required by the Lease and working capital	5%	4.00	4.00	5.00	4.33	4.00	4.00	4.00	3.67
(iii) Plan for construction, reflecting on the plan check period and construction period.	5%	4.00	3.00	3.00	3.33	3.00	3.00	4.00	3.67
	20%	16.00	13.00	14.00	14.33	13.00	15.00	14.00	14.00
3 Operations/Management Plan (15 points)									
(i) Ability to maximize sales, revenue, taking into consideration the Airport's Advertising Policy	4%	3.20	2.40	3.20	2.93	3.20	2.40	2.40	2.40
(ii) Marketing efforts	4%	3.20	3.20	4.00	3.47	3.20	4.00	1.60	2.13
(iii) Pricing Structure	3%	2.40	1.80	2.40	2.20	2.40	1.80	1.80	2.00
(iv) Installation procedures taking into account Airport procedures	2%	1.60	1.20	1.60	1.47	1.60	1.20	1.60	1.47
(v) Maintaining of Advertising Equipment	2%	1.60	1.20	1.60	1.47	1.60	1.20	1.60	1.33
	15%	12.00	9.30	12.80	11.53	12.00	9.80	9.00	9.33
4 Proposed Minimum Annual Guarantee (50 points)	50%	50.00	50.00	50.00	50.00	42.50	42.50	42.50	42.50
TOTAL POINTS:	100%	90.00	81.80	88.80	86.87	76.50	72.30	74.50	74.83

JCDecaux

Jean Caramatti
Secretary
San Francisco Airport Commission
San Francisco International Airport
International Terminal G, North Shoulder Building, 5th Floor
P. O. Box 8097
San Francisco, CA 94128-8097

October 26, 2012

Out of Home Media

Subject: JCDecaux's Protest to the Recommended Award of the Advertising Lease to Clear Channel Airports

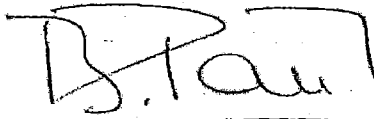
Dear Ms. Caramatti:

I request that you provide a copy of the attached documents to the Airport Commissioners before their meeting on October 30, 2012. The documents contain the basis and support for JCDecaux's protest to the staff recommendation to award to Clear Channel Airports.

In short, JCDecaux's position is that Clear Channel Airport is not entitled to the award of the lease because it is not the "highest ranked responsible and responsive Proposer" as set forth in the RFP.

We also ask that this letter and attachments be made part of the Commission's records.

Sincerely,



Bernard Parisot
Co-Chief Executive Officer

cc: Mara E. Rosales

JCDecaux

VIA HAND-DELIVERY, EMAIL Leo.Fermin@flysfo.com
AND FACSIMILE (650) 821-5005

Out of Home Media

Leo Fermin

October 17, 2012

Deputy Airport Director, Business & Finance
San Francisco International Airport, International Terminal
North Shoulder Building, 5th Floor
P. O. Box 8097
San Francisco, CA 94128

Re: Protest to Proposed Contract Award to Clear Channel Airports
(RFP Airport Advertising Lease)

Dear Mr. Fermin:

On October 11, 2012, JCDecaux received notice from SFO staff that Clear Channel Outdoor Inc., doing business as Clear Channel Airports (Clear Channel) is the highest ranked proposer pursuant to the Request for Proposals (RFP) for the award of the Airport Advertising Lease (Lease).

JCDecaux respectfully submits this protest to the proposed award of the Lease to Clear Channel. The basis of our protest is summarized as follows:

1. The proposals have not been scored in a manner consistent with the Evaluation Criteria specified in the RFP.
2. There is a mathematical error in the addition of JCDecaux's scores.
3. The scores awarded to JCDecaux by scorer P2 on two criteria are impermissibly irrational.
4. Clear Channel's Minimum Annual Guarantee (MAG) offer is commercially unreasonable and should be rejected as a financially irresponsible offer.

For all of the above reasons, JCDecaux is the successful proposer pursuant to the RFP and should be awarded the Lease. We discuss these points in detail below.

JCDecaux

1. Misapplication of RFP Evaluation Criteria

The RFP plainly states the controlling evaluation and award process. It describes four principal components of what proposals must contain and how proposals will be evaluated: (1) proposers must satisfy the RFP's minimum qualifications; (2) proposers must also recognize and address the goals stated in the RFP; (3) proposals must offer a concession opportunity which is reflective of the City and the Bay Area; and (4) proposers "must propose a [MAG] for the first Lease Year which is equal to or greater than the Minimum Acceptable Financial Offer..." (RFP Part II, par. 6. c. "Evaluation Criteria, Minimum Annual Guarantee Offer, and Financial Pro Forma"; Part III "Evaluation and Award Process".) The RFP's "Evaluation Criteria" is more specifically set forth in Submittal 4. Submittal 4 describes how the scoring points will be applied during the evaluation of the proposal:

Submittal 4 will consist of the Proposer's response to the Evaluation Criteria below. A thorough discussion/demonstration of all points below must be included in proposal with the exception of the Minimum Annual Guarantee Offer, which will be submitted on the attached form "Submittal 5." Proposals will be evaluated on the criteria below and scored according to the point scale shown.

The RFP clearly provides an evaluation process which is both qualitative and quantitative. "The Business Plan, Design/Intent Construction and Operations/Management Plan" categories in a proposal will be judged on the quality of the proposal's offerings. Given the subjectivity of these categories, one easily understands that the points will be awarded on a rational but not rigidly mathematical basis given the nature of the qualification (e.g. design) which is being evaluated. Naturally, in such a subjective process the "score" or "grade" a proposer receives may vary from panelist to panelist within reasonable parameters. By contrast, the Minimum Annual Guarantee criterion is stated simply as a quantitative category. Any MAG offer consistent with the RFP's instruction that it match or exceed the Minimum Acceptable Offer should receive a score of 50 points. (See RFP, Part II, par. 6.c.)

Given the above, JCDecaux's MAG offer must receive 50 points. The score sheet provided by staff reflects that JCDecaux's MAG offer received 42.50 points. This point allocation is erroneous pursuant to the RFP's instructions. If the Airport intended a qualitative approach to the evaluation of the MAG offer, it

JCDecaux

was required to provide notice to the proposers in the RFP. Applying an after-the-fact subjective standard to the published Evaluation Criteria is contrary to the principles of due process and fair play underlying a competitive solicitation process. (See *Domar Electric, Inc v. City of Los Angeles* (1994) 9 Cal.4th 161, 173.) Such an approach is also inconsistent with the manner the Airport itself and the City approach RFPs for other solicitations. (See and cf. SFO RFP for Contract 9194, Maintenance and Support of Baggage Handling Control Systems, dated August 24, 2012, Section IV "Evaluation & Selection Criteria", par. B4 "Fee Proposal"; HRC Rules & Regulations implementing Local Business Enterprise Ordinance (2010) Section IV.G.7.: ["Each evaluator will score each consultant on a predetermined point system,...in a fair and objective fashion."])

2. The Mathematical Errors in the Score Sheet

Your October 11, 2012 letter included a spreadsheet, which purports to set forth the scores received for each proposer. The "Weighted Points" totals for sections 2 and 3 were miscalculated. JCDecaux should have received 14.34 points for section 2 and 11.54 points for section 3. When added, together with the section 1 points and full points awarded for the MAG offer, JCDecaux's total score should be 86.88, placing it ahead of Clear Channel.

3. Scorer P2 did not score JCDecaux fairly or within permissible limits

Scorer P2 gave JCDecaux a 4.0 on the overall appeal and quality of advertising mediums, while awarding Clear Channel a 6.0 and Titan Outdoor, LLC (Titan) an 8.0. Scorers P1 and P3 gave JCDecaux a 6.0 and a 10.0 respectively. JCDecaux is universally acknowledged to be the industry leader in design and aesthetic quality not just in the United States, but specifically in San Francisco where JCDecaux street furniture has received consistently high reviews for the past 17 years. It is not rational, therefore, that JCDecaux would be awarded half the points that were given to Titan, a company that specializes in transit advertising and does not have a single advertising panel anywhere, including in San Francisco, that could be even remotely compared to one of JCDecaux's fixtures.

Similarly, on the ability to maximize sales, scorer P2 gave JCDecaux a 1.6 score versus 2.4 to both Clear Channel and Titan. The other 2 scorers gave JCDecaux the maximum score on this criterion, i.e. 3.2. As presented in our response to this RFP, JCDecaux's advertising sales performance in large U.S. airports comparable to SFO is second to none. Over the difficult 2006-2011 period, JCDecaux's revenue in large U.S. airports grew by 82%, while Clear Channels revenues in large U.S. airports increased by 5% only and by 23% at San

JCDecaux

Francisco International Airport. In terms of revenue generated by passenger, JCDecaux held seven of the eight top spots in large U.S. airports in 2011. SFO came in 10th, 65% lower than JFK and 30% lower than LAX where JCDecaux operates the advertising concessions. As far as Titan is concerned, their sole advertising concession is Westchester County Airport, a small regional New York State airport, which they won two months ago. Their track record in terms of advertising sales for their transit contracts is such that in 2009, they negotiated reductions in their fees obligations for all of their contracts, except in New York where the MTA terminated their concession agreement for default of payment of their MAG. It is therefore hard to understand how JCDecaux could score less than these two companies on that criterion.

4. Clear Channel's MAG offer is Commercially Unreasonable and Constitutes a Financially Irresponsible and Illusory Proposal

Clear Channel is the incumbent on the current SFO Advertising Lease. Its average annual sales, over the past 5 years, as represented by SFO (presumably as reported to SFO by Clear Channel) are \$9.2 million. Clear Channel's \$10M MAG offer for the new Lease opportunity is commercially untenable given its own sales performance on the same lease. The unreasonableness of Clear Channel's MAG offer is evident when compared to the two other proposed MAGs (JCDecaux \$8.5M and Titan also \$8.5M) as well as the SFO's Minimum Acceptable Offer of \$7.5M initially, which was subsequently revised down to \$7M to reflect the removal from the inventory made available to the new concessionaire of several key advertising locations which Clear Channel itself indicated represent \$1.8 million of its current revenue. Clear Channel's MAG offer is 18% above its two similarly situated competitors on the RFP and 43% above the Airport's estimate of a reasonable market based minimum bid. These facts strongly support a conclusion that Clear Channel is knowingly attempting to "buy" the award of the Lease unfairly by overbidding.

A contractor who intentionally overbids is not a "responsible" bidder, as that term is legally understood in competitive solicitation matters. (*Taylor Bus Service, Inc. v. San Diego Bd. of Education* (1987) 195 Cal.App.3d 1331, 1341: ["Responsibility means the fitness, quality and capacity of the bidder to satisfactorily perform the proposed work."]; see also Public Contract Code §1103: ["'Responsible bidder,' as used in this part, means a bidder who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity, and experience to satisfactorily perform the public works contract".] The Airport should investigate Clear Channel's financial responsibility to honor its MAG commitment for the 8-year term of the Lease to ensure Clear Channel meets the RFP's and legal standard of "responsible" proposer/bidder. (RFP, Part

JCDecaux

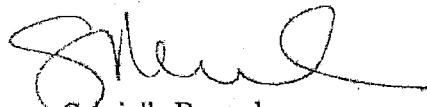
IV, par. 13.c: [Airport Commission has right to “[r]equest a credit report and additional financial information from each Proposer.”]

Irrespective of that “responsibility” determination, in light of facts known to us, Clear Channel’s bid is commercially unreasonable and amounts to an illusory proposal. Clear Channel is not new to this type of unreasonable bidding: in 2007, Clear Channel bid \$4.075M in MAG for the advertising concession at Mineta San Jose International Airport, where JCDecaux’s revenue history was between \$3M to \$4M. Since then, Clear Channel’s sales at that airport have not exceeded \$2.05M. Similarly, that same year, Clear Channel offered a \$3.75M to \$5M MAG for the advertising concession at Seattle-Tacoma International Airport, where JCDecaux previously generated \$5M in sales. Since then, Clear Channel’s sales have not exceeded \$5.05M at that airport, and were down to \$3.7M in 2011, with a further 18% decline in the first half of 2012. Under California law it is against public policy for a company to win a public contract award with a bid that is offered at a loss to the company. This type of practice is referred to as a “loss leader”. California law identifies a “loss leader” practice – e.g. the sale of a product where the effect is to divert trade from or otherwise injure competitors, as an unfair trade practice. (See Bus.Prof. Code §17030.) A monetary offer which is commercially unreasonable and unreliable should not be entertained by the City, particularly from an incumbent with insider information that promises to perform better for the City going forward than its record demonstrates it has done in the past. If Clear Channel’s MAG offer is rejected, Clear Channel becomes a non-responsive proposer and is not entitled to the award of the Lease.

CONCLUSION

When the RFP’s scoring criteria and points are properly applied, JCDecaux is the highest ranked proposer. Accordingly, we respectfully request that the Airport sustain this bid protest and recommend that the Airport Commission award the Lease to JCDecaux on October 30, 2012.

Sincerely,



Gabrielle Brussel
Executive Vice President, Legal Affairs and General Counsel

cc: Bernard Parisot



ROSALES LAW PARTNERS LLP

October 26, 2012

Mara E. Rosales
mara@rosaleslawpartners.com

VIA MESSENGER; EMAIL

David Serrano Sewell
Deputy City Attorney
Office of the City Attorney
San Francisco International Airport
International Terminal G, No. Shoulder Bldg., 5th Floor
P. O. Box 8097
San Francisco, CA 94128

Subject: Reply to Denial of Protest Letter, dated October 24, 2012; Request for
Reconsideration of JCDecaux North America, Inc.'s Protest

Dear David,

Your October 24, 2012 letter to JCDecaux's General Counsel Gabrielle Brussel has been referred to me for response. We ask that the City Attorney reconsider its legal position based on the following two points: (A) the interpretation of the RFP as stated in your letter is not well supported in fact or law and (B) Clear Channel Airports' ("Clear Channel") response to the protest letter, upon which you rely, does not address the key issue addressed in the protest letter, namely, Clear Channel's irresponsible pattern and practice of bidding higher than a reasonably achievable Minimum Annual Guarantee ("MAG") at sister airports and thereafter seeking MAG or economic relief once awarded the lease. It is our contention that this practice is particularly relevant to a determination of whether Clear Channel is the "most responsive and responsible Proposer" entitled to the award of the lease as set forth in the RFP (RFP, Part III, para.4.)

A. Misapplication of the RFP Evaluation Criteria

We are pleased that you read the RFP as we do--"that the MAG score of 50 points was assigned using a specific methodology." We disagree, however, with your statement that "the methodology was not applied after the fact or contrary to the RFP." Your support for this statement is that the sliding scale application of the MAG methodology was explained orally at a non-mandatory informational conference. This admission alone is sufficient cause for you to sustain JCDecaux's protest that its proposal is entitled to receive the 50 points for the MAG category. The RFP clearly states that:

1. "Proposers are encouraged to attend the Informational Conference ...", where "questions will be addressed" and "any new information will be provided..." (RFP, Part II, para. 2.) The public is told that the "Airport will keep a record of all parties who attend the Informational Conference" and that "substantive replies will be issued as written addenda and posted on-line..." (*Id.*)
2. Any amendments to the RFP will be issued in writing by an addendum. (RFP, Part IV, para. 7.)

Under the RFP rules established by the Airport Commission, oral representations or modifications do not suffice to change the instructions in the RFP. The Airport's own website explaining the competitive selection process for concessions contracts states that the RFP documents will include "the selection criteria that the Airport will use in evaluating the proposal" and goes on to explain that following the Informational Conferences, notices will be sent to the participants "of any changes to the qualifying criteria, business terms, or selection process." (<http://www.flysfo.com/web/page/about/b2b/conces/general.html>).

Notably, your "oral amendment" argument is also without any legal basis. The Commission is bound to follow its own RFP solicitation procedure. (*MCM Construction, Inc. v. City & County of San Francisco* (1998) 66 Cal.App.4th 359, 368-9 quoting *Valley Crest Landscape, Inc. v. City Council* (1996) 41 Cal.App.4th 1432, 1435 [re: award of SFO construction contract].) As the Court of Appeal stated in one of the Airport Commission's own published cases, "[t]he importance of maintaining integrity in government and the ease with which policy goals underlying the requirement for open competitive bidding may be surreptitiously undercut, mandate strict compliance with bidding requirements." (*MCM Construction, Inc. supra* at 369.) Furthermore, the failure of a public agency to follow the "precise specifications in its public call for bids leaves bidders in the unfair position of having to guess what will satisfy the [agency's] needs." (*Konica Business Machines U.S.A. v. Regents of the University of California* (1988) 206 Cal.App. 3d 449, 457.) In an action for writ of mandate, the Court has the power to "direct an agency to follow its own rules when it has a ministerial duty to do so or when it has abused its discretion." (*Pozar v. Department of Transportation* (1983) 145 Cal.App. 3d 269, 271, citing *Glendale City Employees' Assn., Inc. v. City of Glendale* (1975) 15 Cal.3d 328, 344-345.)

The public interest is not served when the Commission does not comply with its own published rules of procedure. Such action will undermine the credibility of the fairness of the Commission's competitive processes.

Following the applicable law and as a matter of public policy, JCDecaux's MAG proposal must receive 50 points. We ask that you re-visit your conclusion to the contrary.

B. Clear Channel's MAG Offer is Commercially Unreasonable and Constitutes a Financially Irresponsible and Illusory Proposal

Your response letter to JCDecaux's challenge to the commercial viability of Clear Channel's MAG offer misses the central point of the protest. Asking Clear Channel whether it will stand

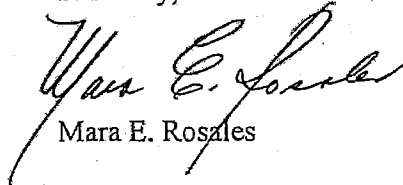
David Serrano Sewell
October 26, 2012
Page 3

by its financial proposal today does not address the legitimate question raised by Clear Channel's conceded business practices, to overbid MAG offers and not perform. Based on public information we have obtained thus far, Clear Channel has a current practice with at least two Bay Area airports to promise to meet its contractual obligations at contract award only to reverse course once the contract is awarded. We have attached information from San Jose International and Oakland International Airports which confirm that Clear Channel's promises at contract award are unreliable precisely because, as here, they have proposed a MAG, which under similar circumstances, was not reasonably achievable.

Tellingly, Clear Channel does not rebut these allegations other than to dismiss them as "irrelevant" and to note it has "not defaulted" on the mentioned contracts. These explanations are unsatisfactory as well as inaccurate. Avoiding the question does not answer the concern. Indeed, a close look at Clear Channel's actions at San Jose and Oakland Airports reveals that Clear Channel is not in default only because it has managed to successfully negotiate contract amendments with those airports. Clear Channel explains that it leverages its SFO relationship "as part of its pitch" to obtain advertisers in its advertising network. It appears that Clear Channel also relies on the SFO business relationship to overpromise to other Bay Area airports its ability to successfully market their airports. These business practices are in fact "loss leader" strategies which are contrary to the public policy of the State of California.

The facts warrant a deeper inquiry by SFO to San Jose, Oakland and Sea-Tac Airports than your letter states has occurred.

Sincerely,



Mara E. Rosales

MER:rp

cc: Dennis J. Herrera, City Attorney
Sheryl Bregman, Airport General Counsel
Leo Fermin, Deputy Airport Director – Business Finance (RFP Protest Officer)
Gabrielle Brussel, JCDecaux, General Counsel
Bernard Parisot, JCDecaux

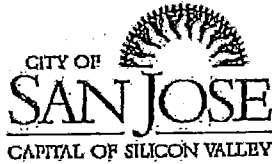
SAN JOSE INTERNATIONAL AIRPORT

SENT TO COUNCIL:

Distributed on:

NOV - 9 2011

City Manager's Office



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: William F. Sherry, A.A.E.

SUBJECT: RESPONSE TO COUNCIL
REFERRAL 10-25-11-2.7
REGARDING CLEAR
CHANNEL

DATE: November 7, 2011

Approved

Date

11/9/11

INFORMATION

During the October 25, 2011 Council Meeting, Councilmember Rocha asked the Airport Staff for information on the timing of the negotiations with Clear Channel Advertising and how often the Airport staff is meeting with them.

The Clear Channel 3rd Amendment was dropped from the Council Agenda due to receipt of Clear Channel's October 14 letter that again requested to restructure the Agreement and reduce the Minimum Annual Guarantee (MAG) even further than we already have. The City has provided Clear Channel with \$4,297,349 in financial relief and we offered to provide an additional \$296,000 in savings by consolidating their capital investment requirements and offering them free office space that would normally carry a charge of \$64,879 per year. It's important to note that Clear Channel set their financial responsibilities under this contract through a bidding process, fully aware of the business risks. In other words, it was not the City that set the MAG and other financial requirements but, rather, Clear Channel. Additionally, as a self-sufficient enterprise operation, the Airport would have to shift any further financial relief granted to Clear Channel to other airport tenants, something staff believes is not appropriate given the circumstances.

During the negotiations with Clear Channel, the parties (Clear Channel and Airport staff) agreed to these concessions on the belief that Clear Channel was satisfied with them and would not seek further reductions. After receiving Clear Channel's October 14 letter it became clear that was not the case. We have written a response to Clear Channel explaining our position.

Staff is in regular contact with Clear Channel. Clear Channel typically comes to the Airport a couple of times a year to meet in person to discuss their concerns with the MAG and request

HONORABLE MAYOR AND CITY COUNCIL

November 7, 2011

Subject: Response to Council Referral 10-25-11-2.7 on Clear Channel

Page 2.

financial relief. The last meeting was on March 9, 2011. We are certainly available to meet more frequently, but this is all that Clear Channel has requested. We have always had an open dialog and will continue to do so.

/s/

William F. Sherry, A.A.E.

Director of Aviation

For questions, please contact Kim Aguirre at 408-392-3620.

Attachments: Letter to Clear Channel dated November 4, 2011
Letter from Clear channel dated October 14, 2011

NORMAN Y. MINETA
SAN JOSE
INTERNATIONAL
AIRPORT



SILICON VALLEY'S AIRPORT

November 4, 2011

Toby Sturek
President
Clear Channel Airports
4635 Crackersport Road
Allentown, PA 18104

Dear Toby:

In response to your letter dated October 14, 2011, in which you again requested to restructure our agreement, I simply cannot provide you with additional financial relief. I believe that I have addressed your concerns in my previous letter to you dated August 3, 2011, but I want to respond to your latest letter.

The current economic state of this country has been a surprise to most observers and the result at SJC has been reduced flights and passengers. This has impacted the bottom line of concessionaires and the Airport. The Airport has taken drastic steps by cutting its staff in half and requiring that remaining employees take significant reductions in pay. We are not in a position to provide you with additional financial relief.

Please remember that the Airport has already provided Clear Channel with \$4,297,349 in financial relief and the City has offered to provide you with an additional \$296,000 in savings by consolidating your capital investment requirements and providing you with office space free of charge that would normally rent for \$64,879 per year. This is contingent on you not pursuing any further MAG reduction. This will bring your total financial relief to almost \$5 million, a significant amount that the Airport was not obligated to offer and much greater than any temporary relief provided to the food & beverage and retail concessionaires in Terminal A+.

The City has provided Clear Channel with premium advertising sites, many of which remain undeveloped and underutilized. In addition, we amended the agreement to provide Clear Channel with new advertising sites without a corresponding increase in MAG and without a minimum capital investment requirement. We believe that these additional sites are more than adequate to compensate Clear Channel for any lost advertising opportunities that may have resulted from the temporary inactivation of the six gates in Terminal A+, and we hope that you will take advantage of these opportunities.

November 3, 2011

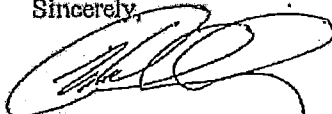
Page 2

The current gate capacity in Terminal A+ will allow for expansion by existing airlines and provide space for new and relocated airlines. Due to the growth of Alaska Airlines, and the unbalanced passenger traffic between the terminals, I expect that Delta Airlines will relocate to Terminal A+ in the next few months. Based on the previous 12 months, that will bring an additional 460,000 total passengers to Terminal A+ when combining Delta Airlines and its affiliates.

While the closure of the American Airlines lounge was disappointing to both you and the Airport, the lounge is not a condition of our agreement. However, you should be aware that we have begun working with an architect to design a new common use lounge. In addition, one existing domestic airline and one potential international airline have expressed interest in exclusive lounges of their own.

As always, thank you for your continued understanding and cooperation. Should you have any questions or would like to discuss these issues further, please feel free to contact me.

Sincerely,



William F. Sherry
Director of Aviation

Cc: Mayor Chuck Reed
City Council
Kim Aguirre



4635 Crackersport Road, Allentown, PA 18104
T 610.395.8002 Toll Free 800.628.6800 F 610.395.4450

October 14, 2011

Mr. Bill Sherry
Director of Aviation
San Jose International Airport
1701 Airport Boulevard, Suite B-1130
San Jose, CA 95110-1206

RECEIVED

OCT 17 2011

Director of Aviation
San Jose Intl. Airport

Dear Bill,

I was disappointed to receive your letter dated August 3, 2011, declining my request to grant Clear Channel Airports (CCA) MAG relief consistent with other concessionaires as a result of the gate closures in terminal A+.

In your letter, you indicate that, unlike HOST, CCA was offered substitute concession space in other locations. Unfortunately, although CCA was offered additional locations, that does not rectify the situation. In fact, what has occurred as a result of the compressed traffic flow is advertisers can now reach the same number of passengers by purchasing less signage. Unlike Food and Beverage concessions, advertising does not take money directly from passengers. Duplicating locations in the same area only cannibalizes existing advertising revenue streams. Additionally, relocating inventory does not resolve the fact that we are expected to continue paying rent in an area that the airport has reduced weekly flights from 147 to 14 or 88%.

In our concession agreement dated July 1, 2007, CCA is contractually obligated to pay a MAG for each individual sign location. If the reduction in flights and closure of gates impact the area of which these signs are located, how can we possibly be expected to pay rent at 100% when traffic has declined 88%? The attached map illustrates the number of advertising locations impacted by the gate closures. In this particular space, CCA pays a total annual lease cost of \$1.2 million. To add to the matter, American Airlines closed their VIP lounge in Terminal A+ and has no plans to relocate this prestigious space. The American Frequent Flyers are a highly sought after demographic which attracts the national advertiser. This area is essential to our sales packaging across all terminals. The loss of this particular space only magnifies our problem beyond the value of the MAG. In fact, the loss of this space impacts our total advertising sales program at SJC.

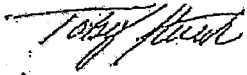
In April 2011, we offered the airport a proposal to restructure the contract that included a \$10 million one-time lump-sum payment. Assuming we were able to restructure the contract under those terms, the closure of gates in terminal A+ would not be an issue. However, that proposal was simply denied. In fact, in both cases, there was no negotiation or dialogue from airport staff as to how a deal could be structured.

Bill, I respectfully request that this matter be seriously considered. I also request that you and your team consider an open dialogue with me to amicably resolve this matter. As proposed in my letter dated July 19, 2011, I am

readily available to meet directly with you and your team to resolve this matter expeditiously.

Thank you in advance for your time and consideration.

Respectfully,

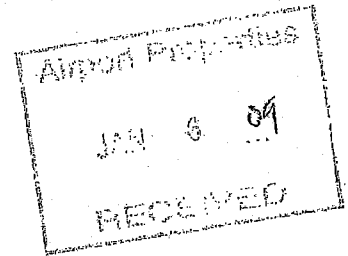


Toby Sturek
President, Clear Channel Airports

cc: Kimberly J. Aguirre, Chief Operating Officer, SJC Airport
Mayor Chuck Reed
Pete Constant, City Council, District 1
Ash Kalra, City Council, District 2
Sam Liccardo, City Council, District 3
Kansen Chu, City Council, District 4
Xavier Campos, City Council, District 5
Pierluigi Oliverio, City Council, District 6
Vice Mayor Madison Nguyen, City Council, District 7
Rose Herrera, City Council, District 8
Donald Rocha, City Council, District 9
Nancy Pyle, City Council, District 10
Jerry Strangis, Strangis Properties

OAKLAND INTERNATIONAL AIRPORT

December 30, 2008



Mr. Steve Grossman
Director of Aviation
Port of Portland
530 Water Street
Oakland, CA 94607

RE: Advertising Concession Contract

Dear Mr. Grossman,

As you are aware, Alliance Airport Advertising participated in the spring 2008 advertising RFP for Oakland International Airport. Alliance held the highest scores in all categories except one (guaranteed payment to the Port) and in fact, averaged the highest score overall by the Evaluation Committee.

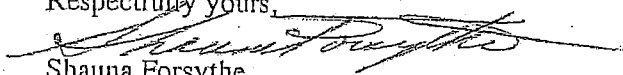
Alliance foresaw the challenges coming in the airline industry and the financial markets. We bid a Minimum Annual Guarantee based on this belief. We did comply with the 50/50 revenue share, and all other components of the RFP. Our track record in other airports proves that with only one exception, we generate far more revenue in our splits than is required in a MAG.

As the final scores were tight, and though Alliance had the higher score overall, the Committee felt that our nearest competitor, Clear Channel Interspace, must be awarded the contract solely because of the guaranteed payment (MAG) offered the Port. We did not protest the award out of respect for OAK and the factors affecting your decision.

We are aware that passenger counts have reduced significantly at OAK during the past few quarters. True to our belief, the airport and airline industries, and the overall economy have weakened significantly.

We write today to advise that, if the Port or Airport is asked to reconsider the MAG due and payable by Clear Channel Interspace, we request the entire contract be reconsidered. This is especially significant in light of Alliance's overall performance in every other category within the RFP. It would be unfair to allow Clear Channel/Interspace to reduce or change the payments under the terms of this agreement when Alliance was penalized only for a lower guaranteed MAG.

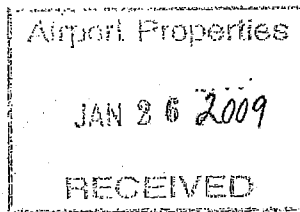
Respectfully yours,


Shauna Forsythe
President & CEO

cc: Skip Conrad, Mgr, Airport Properties
Janet Deutch, Concession Manager, Airport Properties



Michael Riley
President



January 19, 2009

Mr. Marcel E. Conrad, III
Airport Properties Department
Oakland International Airport
9532 Earhart Road, Suite 201
Oakland, CA 94621

RE: Request for Delayed Payment of Minimum Annual Guarantee

Dear Skip:

Due to many design revisions and continuing delays in the approval of Clear Channel Airports' display advertising fixture program installation at Oakland International Airport, we respectfully request that the Port of Oakland allow for a temporary delay in the payment of the monthly installments of the Minimum Annual Guarantee, which were scheduled to begin upon the installation of our display inventory program, or January 1, 2009, whichever came first.

Over the past five months, we have submitted several sets of plans and detail drawings to your staff, yet we are still awaiting final approval of said plans and the appointment of a Port of Oakland Project Manager. These approvals and appointments will allow us to begin fabrication of our displays, as well as our final engineering and permit drawings, so that we would be able to install new electrical connections, ship and install all units in time for an early April '09 install.

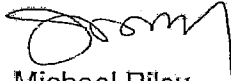
I have attached a time line of activities and meeting notes to illustrate that we have contributed our best efforts in getting all of the design comments and changes completed and to your office for final review and approval. If further delays are encountered and unless we can not start building anything, the potential install date will move accordingly.

The request for the delay in the MAG payments comes from the fact that without the installation of our new program, we simply cannot sell those inventory locations to our potential clients, and in turn, pay either a percentage of those sales as rent to the Port of Oakland as an off-set or overage to our monthly Minimum Annual Guarantee installment. As it stands today, due to the delays in approvals and installation of our new, custom-built OAK program, we have already had to delay new billing rates and contracts from clients we had assured would begin on January 1, 2009. Coupled with the extreme downturn in advertising across all markets, including the airport advertising market, the delay in the start of the OAK program as we presented in our RFP response leads us to make this unusual request.

312	475 • 1970 Tel
	642 • 7378 Fax

I hope you can understand our predicament and can speed along the approval process. I am more than willing to discuss several options by which the MAG can be paid to the Port of Oakland, and invite you to contact me with any questions, comments or concerns. Thank you for your willingness to consider our request.

Sincerely,



Michael Riley
President

TJS:sh

cc: Toby Sturek
Sam Hart
Meredith Haggerty

MEMO



Timeline of Design Submittals, Reviews and Comments

- May 6, 2008: Contract Award to Clear Channel;
- June 16-27, 2008: Field Survey by CCA to develop submittal plans for Airport Design Review Committee;
- July 29, 2008: Meeting with OAK Design Review Committee to discuss for approval all location plans and inventory types; meeting notes provided to OAK staff on August 1, 2008; comments returned from OAK staff on August 1, but no formal approval-to-proceed provided;
- September 23, 2008: CCA provided, via e-mail, the OAK Design Review Committee with revised plans covering comments from the July 29th DRC meeting; staff response received on October 13, 2008, setting another follow-up presentation with the DRC for October 21, 2008;
- October 21, 2008: Second DRC meeting was held at OAK and we received approval on bag belt LCD cabinets, FreeCharge stations and partial approval on Recycle Unit Dioramas and Directories. DPASS units required another round of design adjustments subject to further review;
- November 18, 2008: CCA provided a third design submittal of the DPASS units;
- November 25, 2008: OAK staff returns comments via e-mail regarding the DPASS units, asking for a fourth revision to the design;
- November 26, 2008: CCA submits, via e-mail, proposed layout of text and openings on the Recycle Diorama and Directory units; comments received by OAK staff via phone on November 27th;
- November 28, 2008: CCA submits, via e-mail, fourth design revision for OAK staff approval of the DPASS displays; comments received from OAK staff on December 7, 2008 via telephone conversation;
- December 13, 2008: CCA submits, via FedEx, final design plans, location plans and all associated site photo renderings encompassing all OAK staff and DRC comments; no approvals/responses or further comments have been received by CCA as of January 12th;
- January 12th: Phone conversation with OAK staff requesting approvals and updating CNN installation and data inspection team to be in OAK on 1/13/09 to finalize plans/drawings/routings for digital component submittal; OAK staff comments that they agreed they owed CCA approvals and would be forthcoming, but with no time-frame provided.
- January 14th: CCA receives bag deck plastic-laminate color information; still waiting on recycle station graphics approvals, as well as confirmed written approval on the DPASS submittals.



PORT OF OAKLAND

Via Electronic Mail

February 27, 2009

Clear Channel Outdoor Inc.
dba Clear Channel Airports
555 12th Street, Suite 950
Oakland, CA 94607
Attention: Michael Riley (mriley@clearchannel.com)

Re: Request for Delayed Payment of Minimum Annual Guarantee (MAG)

Dear Mr. Riley:

Thank you for your letter of January 19, 2009. We have reviewed your request with the Director of Aviation and he concurs with the following response.

Unfortunately, the Port can not delay the commencement of the Minimum Annual Guaranty (MAG) beyond January 1, 2009, the date stated within the lease. As you may know, the decision to award this concession opportunity to Clear Channel Airports (CCA) was extremely close; in fact the overriding reason to make the award to CCA specifically was the amount of the guaranteed rent. To modify or alter that consideration after the award is patently unfair to proposers who offered a lower MAG based on the degree of acceptable risk, but were otherwise rated higher in the Request for Proposals process. Further, we have yet to receive your proposed and agreed MAG for January and February 2009; please remit those amounts upon receipt of this letter.

Regarding CCA's claim that the Port's processes resulted in a delay, we dispute that assertion. First, the design revisions and perceived delays in approval are mostly the result of CCA's submittal of designs that differed from those submitted in the proposal and CCA's expectation of a formal approval notification. In fact, approvals were given both verbally by the design review committee and via e-mail for the designs submitted to date. Until we received your letter, we were unaware of any ambiguity regarding the approval of submitted designs and improvements with a resultant delay in fabrication. [It should be noted that designs have not yet been submitted for the LCD screens or the Information Booth.] Second, formal design reviews of concessionaire improvements are common practice at large U.S. airports. In fact, the lease in Sec. 2.4 specifically notes that a design review is required. And Sec. 1 states in part: "Permittee waives any rights now or hereafter conferred upon it... to receive any abatement, diminution, reduction or suspension of payment of Rent."

Third, CCA's contract commenced July 1, 2008. A large number of displays making up almost half the program were not subject to Design Review (Moss banners, wall wraps and floor


Clear Channel Airports
Request For Delayed Payment of Minimum Annual Guarantee (MAG)
February 27, 2009
Page 2

adhesives). These displays could have been installed as early as July 1st but not one single display of this type appears to have been marketed or sold. Finally, gross receipts are markedly down from the prior program, which is extremely disappointing.

As a last comment, the first installment of the MAG was due January 1, 2009 and is deemed late January 10, 2009. In light of your letter, the Port will consider removing any late penalties associated with full payment of the MAGs for January and February if payment is promptly made.

If you have any questions, I am most willing to discuss this further. I am at (510) 563-3674. I remain,

Sincerely,



Marcel E. Conrad
Manager of Aviation Properties

cc: Steven J. Grossman, Director of Aviation
Toby Sturek (tobysturek@clearchannel.com)
Sam Hart (samhart@clearchannel.com)
Meredith Hegarty
Janet Deutsch



April 16, 2009

Omar Benjamin
Executive Director
Port of Oakland
530 Water Street
Oakland, CA 94604

Dear Omar:

Thank you for taking the time to meet with us last week. We appreciated the opportunity to discuss our situation with both you and Steve and look forward to arriving at a solution that is mutually beneficial.

John Moyer's phone conversation with Steve on this matter a week or so prior to our meeting last week had already prompted us to earnestly explore and analyze what our best options might be and we want you to know that we came into our meeting with you having already given the situation a great deal of thought. Your participation and perspective, however, was very useful in helping us reach further toward finding an acceptable solution. We want to work with you to develop a program that will flourish and become the best that it can be for the Port of Oakland and us.

As we discussed, there are a number of dynamics at play. Some have been within our mutual control and some have been situations over which we have no control at all. Unfortunately, these dynamics all came together to create what seemed to be an insurmountable obstacle to our launching an advertising program that would deliver the level of results we both envisioned at the onset of our relationship. In our meeting, Steve articulated well the extremely harsh turn that the economy took just as we were selected to lead this program. He outlined the very depressing reality worldwide that has hit California, Oakland, and the advertising industry particularly hard. Steve also astutely framed the well-known historic challenges of marketing advertising at Oakland International Airport considering the many other media options available in the area, the competing venues that exist, and the media pricing depression currently underway in the industry.

I think we all recognize and agree that both our "A" team efforts are needed to help insure the kind of success we envision. We became aware, via numerous communications with some of the Airport staff that were involved in the selection process and are also involved in our day-to-day management, that they did not want nor would they support Clear Channel Interspace Airports active participation in local sales support. This did prove to be a hindrance and it is an obstacle we are extremely pleased to now have cleared. Clear Channel Interspace Airports is a valuable player on the "A" team that was established by Clear Channel Airports and their participation with us was expressly set forth in our proposal and original response to the RFP. We are pleased that both you and Steve see the benefit of full participation by Interspace.

These are the factors that we believe have challenged our ability to effectively launch the new advertising program. Having now a clear understanding and agreement on these fundamental issues, we are prepared to move ahead in a way that allows Clear Channel Airports to begin installation of the investment we discussed. We are ready to employ the full service of the original team we proposed and that was selected by the Board.

Having listened carefully to your expectations, we wish to make the following response:

The Port clearly wants and expects the best financial offer and we have made every effort to offer the maximum possible and still provide a sustainable business model and the level of service both Clear Channel and the Port expect.

Minimal Annual Guarantee:

<u>Year</u>	<u>MAG proposed at our meeting</u>	<u>Revised MAG offer per our meeting</u>
1	\$250,000	\$300,000
2	\$250,000	\$350,000*
3	\$500,000	\$500,000*
4	\$650,000	\$650,000*
5	\$650,000	\$650,000*
6	\$650,000	\$650,000*
7	\$650,000	\$650,000*
8	\$650,000	\$650,000*
9	\$650,000	\$650,000*
10	\$650,000	\$650,000*

*Current agreement is that the MAG gets increased (but not decreased) to 70% of previous year's percentage payment if that payment is higher than the pre-established MAG for that year. We are willing to increase the MAG to 85% of previous year's percentage payment so the MAG can rise earlier and faster as we hopefully begin to see the economy respond.

Capital Investment:

\$1,200,000

Percentage Payment:

50% for year one moving to 60% for all following years.**

**The current agreement is for 50% across the entire 10 year term unless gross receipts exceed \$2,000,000 then it would increase to 55%. We are prepared to automatically increase this percentage payment to 60% after year one for the remaining term of the agreement. Again this will allow for larger payments faster to the Port.

As you will see, we increased our MAG schedule from our meeting with you and modified both the MAG increase mechanism and percentage payment to reflect terms that are actually better and more lucrative than the existing terms in the current agreement. This will allow the Port to benefit greatly and have much more up-side quicker when the economy does come back while creating a viable business solution to move forward now. One thing for certain is that it is good for the Port and a dramatically better financial package than what is available on the market. It also offers more than any other proposals that were submitted at the time of the RFP. In fact, the combination of the proposed MAG exceeds Alliance's offer by **\$1,700,000** and capital exceeds Alliance's by **\$550,000** for a total of **\$2,225,000**. It should also be considered that these improvements are ready to go immediately.

The Port wants national and local sales capability:

Only the team of Clear Channel Airports and Clear Channel Interspace Airports has a national sales network and local/regional sales resources. No other company exists that can represent Oakland International as effectively on the **national** and local/regional media scene and this **will** be a large benefit as the economy turns.

The Port wants a local presence and national reach:

Clear Channel Airports has a long-established office in Oakland and a staff of four in the Bay area. Additionally, we have some 80 airport advertising specialists located around the Country in the major media buying centers. Clear Channel Outdoor and its predecessor companies have had an office in Oakland for 44 years and currently have a local staff of 79.

The Port wants improvements in technology and design:

Clear Channel was the only proponent to include the CNN Airport network in our proposal and, partnering with CNN, we delivered what has been a very well received effort free of charge. This is a large capital and operational expense that CNN usually charges for in airports the size of Oakland. Additionally, as you know, we have **\$1,200,000** of capital investment ready to go. This large capital investment includes but is not limited to the following:

- A new T1 volunteer visitor center
- Two Digital Passenger Service Systems with six touch-screens and Mobile Media.
- Ten 57" multi-use LCDs on the bag-belts
- Three 65" multi-use LCDs at security check points
- 11 sponsored recycle stations
- Two FreeCharge sponsored work stations

Omar Benjamin, Executive Director
April 16, 2009
Page 4 of 4

We remain committed to the success of this program and look forward to hearing from you soon. Time is of the essence as we have 17 existing clients that have already contracted space into the new digital displays that are pending installation and any more delay or change of plans will easily hold up revenue flow and the effective launch of a new ad program for another year. We are prepared to move forward with any necessary next steps that will advance these discussions in the most expeditious timeframe. Thank you again for your interest and participation.

Very truly,



Toby Sturek
CFO, CCA/CCIA

cc: Steve Grossman

TS/mln



August 3, 2009

Marcel Conrad
Manager of Properties
Port of Oakland - Oakland International Airport
9532 Earhart Road, Suite 201
Oakland, CA 94621

Dear Mr. Conrad:

Thank you for taking the time to participate in the meeting between representatives of the Port of Oakland (Port) and Clear Channel Airports (Clear Channel) on July 27, 2009. This was much needed after the months of negotiation effectively brought on by the drastic and severe economic downturn that started in the second half of 2008. We thought the meeting and Airport tour was very positive and productive. Your input was insightful and will be taken to heart. We look forward to working closer with you and the rest of the staff at Oakland International Airport through this very challenging economy.

I am sending this letter as a formal request to amend our permit according to what was discussed during our meeting, the terms which are outlined as follows:

1).

Year	Proposed MAG	Current MAG
1.	\$850,000	\$ 850,000
2.	\$850,000	\$ 850,000
3.	\$850,000	\$ 850,000
4.	\$850,000	\$ 900,000
5.	\$850,000	\$ 900,000
6.	\$850,000	\$ 900,000
7.	\$850,000	\$ 950,000
8.	\$850,000	\$ 950,000
9.	\$900,000	\$ 950,000
10.	\$900,000	\$1,000,000

2). Increase the Airport's current percentage payment from 50% to 60% of sales starting immediately and being effective for the life of the agreement.

3). Delete any restrictions on Clear Channel owned entities cooperating on the project.

This plan will keep the MAG the same in the early years of the contract and during the current economic downturn while also giving the Port quicker access to potential incremental revenue with a higher percentage payment in better times. This concept retains a large multi-million dollar advantage to the Port over all other past proposals. It also allows us to apply all of Clear Channel's best resources to your airport advertising program.

Marcel Conrad, Manager of Properties
August 3, 2009
Page 2 of 2

We hope you can present this at the September 2, 2009 Aviation Committee meeting and in turn the September Board meeting. Please don't hesitate to contact me with any questions.

Thank you and kind regards,

A handwritten signature in black ink, appearing to read "John Moyer", with a long horizontal stroke extending to the right.

John Moyer

CITY AND COUNTY OF SAN FRANCISCO



DENNIS J. HERRERA
City Attorney

OFFICE OF THE CITY ATTORNEY

DAVID SERRANO SEWELL
Deputy City Attorney

Direct Dial: (650) 821-5075
Email: david.serrano-sewell@sf.gov.org

October 24, 2012

Ms. Gabrielle Brussel
Executive Vice President, Legal Affairs and General Counsel
JCDecaux North America, Inc.
3 Park Avenue, 33rd Floor
New York, New York 10016

SUBJECT: San Francisco International Airport ("Airport") Response to JCDecaux North America, Inc.'s ("JCDecaux") Protest Letter for the Proposed Award of that certain Request for Proposals ("RFP") for the Advertising Lease ("Lease") to Clear Channel Outdoor, Inc., dba Clear Channel Airports ("Clear Channel")

Dear Ms. Brussel:

At the Airport's request, this letter responds to JCDecaux's protest letter dated October 17, 2012 for the proposed award of the Advertising Lease to Clear Channel. In the letter, JCDecaux argues that the proposed award to Clear Channel should be set aside and award should be made to JCDecaux. We have reviewed JCDecaux's protest, the RFP, the proposals, and the score sheets, and find that the competitive selection proceeded in conformance with the RFP and the law; the protest is without merit.

Specifically, JCDecaux raises four issues to which the Airport responds as follows:

I. Misapplication of the RFP Evaluation Criteria

Airport Response: The RFP clearly states the process by which the proposals are to be evaluated. Specifically, RFP Submittal 4 Evaluation Criteria outlines the subject matter and the allocation of the total number of points available in this RFP.

The three-member review panel (the "Review Panel") was convened and the members of the panel reviewed and scored the proposals within the Evaluation Criteria point system. There was a possible 100 points under the RFP. The Evaluation Criteria clearly stated the points for each sub-criteria: Business Plan 15 points, Design Intent/Construction 20 points, Operations/Management Plan 15 points, and Minimum Annual Guarantee Offer ("MAG") 50 points. Further, the RFP includes additional language for each sub-criteria, providing clear and unambiguous guidance to the Proposers and the Review Panel concerning the specific elements the Airport was seeking in the proposals. The Review Panel's scores are contained in the Airport's summary sheet, of which JCDecaux has a copy. The Airport is confident that the Review Panel evaluated each proposal objectively and

CITY AND COUNTY OF SAN FRANCISCO

OFFICE OF THE CITY ATTORNEY

Letter to Gabrielle Brussel
Page 2
October 24, 2012

consistently with the RFP criteria. There is no evidence that the RFP process or the Review Panel's decision was arbitrary, capricious, or lacking in support.

JCDecaux is correct in stating that the MAG score of 50 points was assigned using a specific methodology. The methodology used was a rational, objective, and fair system to assign points in the MAG sub-criteria. Here, the highest MAG offer received the full 50 points and the remaining (and lower) MAG proposals received a proportionally lower score. This methodology is standard practice, both at the Airport and the greater industry.

Under this methodology, Clear Channel received 50 points because it submitted the highest MAG offer of Ten Million Dollars (\$10,000,000). JCDecaux's MAG offer was Eight Million Five Hundred Thousand Dollars (\$8,500,000). To appropriate a proportionate score, Airport staff divided JCDecaux's MAG offer by the highest MAG offer and multiplied the result by the total points possible under this criterion ($\$8,500,000 \div \$10,000,000 = .85 \times 50 = 42.50$). JCDecaux therefore received 42.50 points. Another way to articulate the methodology is 85% of the 50 points, which is 42.50 points.

Further, the methodology was not applied after the fact or contrary to the RFP, as claimed by JCDecaux. Airport staff thoroughly discussed and explained the methodology at the informational conference of May 10, 2012. JCDecaux attended this meeting and was afforded the opportunity to ask questions and seek clarification on the MAG scoring methodology or any RFP item.

2. The Mathematical Errors in the Score Sheet.

Airport Response. The Airport's compilation of scores are correct, as is JCDecaux's assertion that two individual scores were off by one one hundredth of a point. The difference, which is immaterial, amounted to a difference in rounding methods.

Assuming the Airport used JCDecaux's system, the other proposers would have also received an additional hundredth point, thus making JCDecaux's revision to the points immaterial to the outcome and ranking of the proposals. Indeed, even if the Airport rounded only JCDecaux's score to the hundredth, the outcome would be the same.

3. Scorer P2 did not score JCDecaux fairly or within permissible limits.

Airport Response. The Review Panel was comprised of individuals with relevant experience in marketing, advertising, and signage and design in airport settings. The panelists were impartial and were screened for any conflict of interest. Airport staff instructed the members of the Review Panel to review the proposals and to exercise their own independent professional judgment in assigning scores to each proposal applying the Evaluation Criteria as set forth in the RFP.

Although the panel was not unanimous on every point, two of the three panelists scored Clear Channel the highest overall. P2 scored Clear Channel lower in some areas but highest in advertising mediums and revenue potential. There is nothing in P2's scores to indicate anything improper in the scoring process. Note that California courts give the greatest possible deference to the agency's bid

CITY AND COUNTY OF SAN FRANCISCO

OFFICE OF THE CITY ATTORNEY

Letter to Gabrielle Brussel
Page 3
October 24, 2012

evaluation. (See *Mike Moore's 24-Hour Towing v. City of San Diego* (1996) 45 Cal. App. 4th 1294, 1305-1306 (1996)). A review is limited to an inquiry into whether the decision was arbitrary, capricious or entirely lacking in evidentiary support. (See *Citizens for Improved Sorrento Access, Inc. v. City of San Diego* 118 Cal. App. 4th 808, 814 (2004)). Contentions that the scores are improper or questionable constitute mere disagreement with the evaluation, and are insufficient to establish that the evaluation is unreasonable, arbitrary, or capricious. (See *Cube Corp. v. United States* 46 Fed. Cl. 368, 386 (2000)).

There is no evidence to support a finding that P2 Scorer's evaluation was arbitrary, capricious, or lacking in support.

4. Clear Channel's MAG Offer is Commercially Unreasonable and Constitutes a Financially Irresponsible and Illusory Proposal.

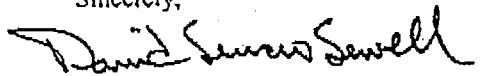
Airport Response. Under the RFP terms, each proposer determines the achievable gross sales and submits a MAG offer. The Airport accepts Clear Channel's commitment to fulfill its MAG offer of Ten Million Dollars. The Airport has no reason to believe that Clear Channel's proposed MAG is anything other than commercially reasonable. Through the enforcement of the Lease, the Airport will hold Clear Channel accountable to meet its MAG obligation, as the Airport does for all of its concession tenants.

Since this particular claim suggests that Clear Channel is financially unable to meet its MAG offer, the Airport invited Clear Channel to comment on this discrete issue. Please see the attached letters. Given the financial information and representations contained in Clear Channel's proposal, as highlighted in Clear Channel's response to JCDecaux's protest, the Airport is satisfied that Clear Channel is ready, willing, and able to meet its MAG obligations as proposed.

* * * * *

For the reasons addressed above, the Airport confirms that JCDecaux's protest of the RFP is without merit and therefore denied. We understand that the Airport Director intends to recommend to the Airport Commission award of the Lease to Clear Channel at its next regularly scheduled meeting of Tuesday, October 30, 2012.

Sincerely,



David Serrano Sewell
Deputy City Attorney

Enclosures

cc: John L. Martin, Airport Director
Sheryl Bregman, Airport General Counsel
Leo Fermin, Deputy Airport Director
Cheryl Nashir, Assistant Deputy Director

CITY AND COUNTY OF SAN FRANCISCO



DENNIS J. HERRERA
City Attorney

OFFICE OF THE CITY ATTORNEY

DAVID SERRANO SEWELL
Deputy City Attorney

Direct Dial: (650) 821-5075
Email: david.serrano-sewell@sfgov.org

October 22, 2012

Michael O'Brien
Operations Counsel
Clear Channel Outdoor - Americas
2325 E Camelback Road, Suite 400
Phoenix, AZ 85016

Re: Response by Clear Channel Outdoor, Inc. to Issue Raised in Protest Letter filed by
JCDecaux

Dear Mr. O'Brien:

We understand that Clear Channel Outdoor, Inc., doing business as Clear Channel Airports (Clear Channel), is in receipt of the protest letter filed by JCDecaux (JCD) of the proposed lease award to Clear Channel by the San Francisco International Airport (Airport) under that certain Request for Proposals (RFP) for the Airport Advertising Lease (Lease). An additional copy is enclosed for your reference.

The JCD protest letter outlines four reasons in its requests that the Airport set aside the proposed award to Clear Channel in favor of JCD, including: "4. Clear Channel's MAG offer is Commercially Unreasonable and Constitutes a Financially Irresponsible and Illusory Proposal."

We invite Clear Channel to respond to JCD's protest, specifically with reference to item number four. The response is due by the close of business on Tuesday, October 23, 2012. Kindly address your comments to the undersigned.

Finally, please note that this letter constitutes neither notice of award nor intent to award the Lease. The Lease is subject to the approval of the Airport Commission and the Board of Supervisors for the City and County of San Francisco, each acting in their sole and absolute discretion.

Very truly yours,

DENNIS J. HERRERA
City Attorney

David Serrano Sewell
Deputy City Attorney



2325 East Camelback Road, Suite 400, Phoenix, AZ 85016
T 602.381.5700 F 602.381.5781

October 23, 2012

David Serrano Sewell
Deputy City Attorney
San Francisco City Attorney's Office
San Francisco International Airport
International Terminal, 5th Floor
P.O. Box 8097
San Francisco, CA 94128

RE: Response to JCDecaux Protest Letter dated October 17, 2012

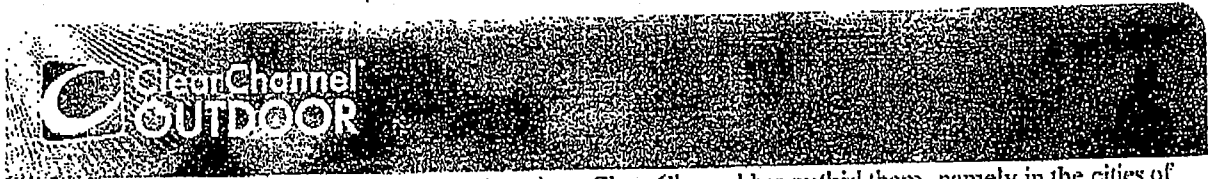
Dear David,

Per your request in your letter dated October 22, 2012, Clear Channel Outdoor, Inc., d/b/a Clear Channel Airports ("Clear Channel") is writing this letter in response to the Letter from JCDecaux North America, Inc. ("JCD"), dated as of October 17, 2012, Re: Protest to Proposed Contract Award to Clear Channel Airports (the "JCD Protest Letter").

In particular, we would like to address point #4 of the JCD Protest Letter, which states that "Clear Channel's Minimum Annual Guarantee (MAG) offer is commercially unreasonable and should be rejected as a financially irresponsible offer." For all of the reasons stated below, Clear Channel disagrees with this point, and feels that the award of the Airport Advertising Lease (the "Lease") was in fact commercially reasonable.

First, in order to respond to any request for proposals which could potentially result in a contract similar in size and scope to the Lease, Clear Channel undertakes a rigorous evaluation process, including financial, legal and operational review. As part of the substantial and detailed financial review, each such contract must meet minimum internal rate of return thresholds which have been set by Clear Channel's executive leadership team and board of directors. This internal rate of return requirement applies to any new opportunity the company explores; if a contract does not meet this requirement, Clear Channel will not respond. In the case of the Lease, Clear Channel's internal rate of return requirements were met when factoring in all aspects of Clear Channel's bid, including the MAG. Additionally, for a contract which would obligate Clear Channel for \$25 million or more in guaranteed expenditure, as the Lease will, Clear Channel must obtain board of director approval. Clear Channel thus was required to, and did, obtain the requisite board approval for the Lease. This comprehensive financial analysis by an industry-leading and experienced operator negates any argument that Clear Channel's MAG offer was commercially unreasonable or financially irresponsible. Of course, Clear Channel also complied with all financial requirements of the RFP, including providing financial statements showing the ability to meet MAG obligations, as well as posting the required bond to secure all such obligations.

clearchannel.com



Second, JCD points to other examples where Clear Channel has outbid them, namely in the cities of San Jose and Seattle. In regards to the Lease at hand, these other city contracts are, quite frankly, irrelevant. With that said, it should be noted that Clear Channel has not defaulted on either of the aforementioned contracts. Moreover, throughout its long and successful tenure as the advertising concessionaire at SFO Airport, Clear Channel has never defaulted on any of its payment obligations. It should also be noted that, contrary to JCD's position in the JCD Protest Letter regarding "loss leader" contracts, Clear Channel has no intention of losing any money on the Lease. On the contrary, any forecast of a loss on the transaction would have precluded Clear Channel from responding to the RFP based on its own internal financial criteria and board approval requirements.

Third, Clear Channel's MAG for the Lease was based on, among other things, forward-looking revenue assumptions and new products. As an experienced advertising concessionaire at SFO Airport and in other large airports across the country, Clear Channel is in the best position to determine what it feels would be a reasonable estimate of its future revenue for an advertising program.

Finally, as the largest operator of airport advertising concessions in the United States, Clear Channel evaluates opportunities such as the one presented by the Lease both individually and in the context of its entire business portfolio. As reflected in its bid, Clear Channel attributes great value not only to SFO Airport on its own, but also to having SFO Airport as a part of its overall advertising program. SFO Airport is a key strategic market in Clear Channel's stable of airport advertising locations, and an important part of its pitch to advertising clients seeking national presence in major hubs across the country. Thus, Clear Channel is more than willing (and able) to pay a premium amount to retain the concession at SFO Airport, which it considers one of the premium airports in the country.

In conclusion, the assertions set forth in the JCD Protest Letter are unsupported. The MAG Amount was allocated 50% of the total points available in the scoring criteria; Clear Channel responded accordingly and took into consideration the weight attributed to this aspect of its response. As detailed above, Clear Channel's bid for the Lease was both commercially reasonable and financially responsible. JCD's Protest Letter should be disregarded, and the award of the Lease to Clear Channel should stand. If you have any further questions regarding this matter, please do not hesitate to contact me at the above-listed contact information. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read 'Sara Lee Keller', written over a horizontal line.

Sara Lee Keller
Executive Vice President & General
Counsel

cc: Leo Fermin
Toby Stirek

CITY AND COUNTY OF SAN FRANCISCO



DENNIS J. HERRERA
City Attorney

OFFICE OF THE CITY ATTORNEY

DAVID SERRANO SEWELL
Deputy City Attorney

Direct Dial: (650) 821-5075
Email: david.serrano-sewell@sfgov.org

October 29, 2012

By Facsimile to (415) 766-4510 and Email: mara@rosaleslawpartners.com

Mara E. Rosales, Esq.
Rosales Law Partners LLP
433 California Street, Suite 630
San Francisco, California 94104

Subject: JCDecaux North America, Inc. ("JCDecaux") Protest of the Proposed Award of that certain Request for Proposals ("RFP") for the Advertising Lease ("Lease" to Clear Channel Outdoor, Inc., dba Clear Channel Airports ("Clear Channel"))

Dear Mara:

I am in receipt of your letter dated October 26, 2012 in which, on JCDecaux's behalf, you reply to the letter dated October 24, 2012 from this office rejecting JCDecaux's protest of the proposed award of the Lease to Clear Channel. We have reviewed the two assertions raised in your letter and found no reason to change our earlier conclusion that the Airport's selection process was fair and proper.

First, as to the assignment of points for the Minimum Annual Guarantee ("MAG"), the Airport disagrees with your characterization that there was a misapplication of the RFP evaluation criteria. As described in our letter of October 24, 2012, the Airport used a simple mathematical formula to assign points to each proposal proportionate to the maximum points available, with the highest offer receiving the maximum number of points. The Airport uses this standard methodology for its concession lease competitions of this type, as do other airports around the country. Second, as to the amount of Clear Channel's MAG offer, the Airport disagrees with your conclusion that the offer is commercially unreasonable. The Airport is confident that Clear Channel will uphold its MAG offer. Suggestions that Clear Channel sought renegotiation of its leases in Oakland or San Jose is of no relevance to the Lease for SFO. The Airport Review Panel carefully reviewed the financial information required for submission and scored the proposals in conformance with the evaluation criteria in the RFP.

The Airport Commission will consider award of the Lease at its meeting scheduled for tomorrow, Tuesday, October 30, 2012.

Sincerely,

DENNIS J. HERRERA
City Attorney

A handwritten signature in black ink, appearing to read "David Serrano Sewell".

David Serrano Sewell
Deputy City Attorney

CITY AND COUNTY OF SAN FRANCISCO

OFFICE OF THE CITY ATTORNEY

cc: John L. Martin, Airport Director
Sheryl Bregman, Airport General Counsel
Leo Fermin, Deputy Airport Director
Cheryl Nashir, Assistant Deputy Airport Director

Quadra & Coll, LLP

649 Mission Street · Fifth Floor · San Francisco · California · 94105

Tel: 415.426.3502 Fax: 415.625.9936

Writer's direct e-mail:
jqadra@quadracoll.com

December 21, 2012

Hon. Dennis Herrera
City Attorney San Francisco
City Hall Room 234
1 Dr. Carlton B. Goodlet Place
San Francisco, CA 94102

Re: JCDecaux North America—Resolution of Protest to SFO Advertising Lease Award

Dear Dennis:

On behalf of Bernard Parisot and Stacey Kodak of JCDecaux North America (“JCDecaux”), I thank you for the meeting in your office on December 18, 2012. As I indicated, we are seeking an amicable and fair resolution of our stated concerns regarding the Airport Commission’s award of the SFO Advertising Lease (“Advertising Lease”) to Clear Channel Airports (“Clear Channel”). Based on the letter from Leo Fermin, SFO Deputy Director for Business and Finance, dated November 1, 2012, we understand SFO’s position to be that the Board of Supervisors (“the Board”) is the final awarding authority with respect to the Advertising Lease under City Charter Section 9.118. Attached is a copy of Mr. Fermin’s letter for your review. We further understand that SFO’s position has been ratified your office. As such, the Board has the discretionary authority to approve, amend or reject the Airport Commission’s award of the Advertising Lease, and thus to also decide the merits of JCDecaux’s protest to the award of the Advertising Lease to Clear Channel. Accordingly, we suggest the following administrative procedure to address our concerns.

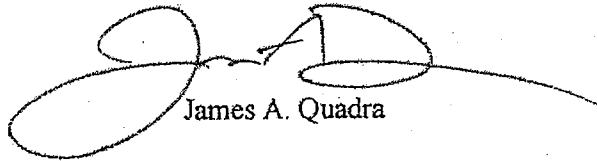
At or shortly before the time the Board receives the Clear Channel lease award recommendation from the Airport Commission Secretary, JCDecaux will renew its protest to the award recommendation with the Clerk of the Board. We will request the President of the Board to first refer the protest to the Rules Committee for adjudication, since that is the Committee which handles legal claims. We expect that the Rules Committee will hold a public hearing on the protest and would reach a decision, which would be forwarded to the full Board of Supervisors for action. After adjudication of our protest by the Board of Supervisors, we expect the lease award decision to be referred to the Finance Committee by the Board for determination of next steps. If the protest is sustained, given that the Board is the final awarding authority, the Finance Committee should hold a public hearing at which time Clear Channel and JCDecaux would be able to present their qualifications and proposals to the City. After the proposers are interviewed by the Finance Committee, the Committee would select the successful awardee and forward its recommendation to the full Board of Supervisors for action.

Hon. Dennis Herrera
December 21, 2012
Page 2

The above mechanism is consistent with the Board being the final awarding authority and allows for a final resolution of the pending dispute within an acceptable time frame given that the current lease for this opportunity is due to expire in March, 2013. For your information and consideration, also included with this letter is a copy of the protest and related documents.

As we discussed at our meeting on December 18th, JCDecaux values its long-standing and successful business relationship with the City and County of San Francisco. As we mentioned to you during the meeting, our sole interest is to ensure fairness in the competitive process for the SFO Advertising Lease, not only for the proposers but for the City as well. We look forward to your hearing your thoughts on our recommendations.

Regards,



James A. Quadra

cc: Marisa Moret
Bernard Parisot
Stacey Kodak
Chris Moscone
Mara Rosales



San Francisco International Airport

November 1, 2012

(via Facsimile: (415) 766-4510 and Email: mara@rosaleslawpartners.com)

Mara E. Rosales, Esq.
Rosales Law Partners LLP
433 California Street, Suite 630
San Francisco, CA 94104

Subject: San Francisco International Airport ("Airport") Response to the Immediate Disclosure Request for Documents Relating to the Airport Advertising Lease Request for Proposal ("RFP")

Dear Mara:

This letter responds to your letter dated October 31, 2012 seeking disclosure of certain documents regarding the above referenced RFP (hereinafter referred to as the "Disclosure Request").

The Disclosure Request is styled as an Immediate Disclosure Request under the City's Sunshine Ordinance. But it seeks a multitude of documents; the totality being extensive and demanding. Under these circumstances, it is not a "simple, routine or otherwise readily answerable request," and thus does not qualify as an Immediate Disclosure Request under the Sunshine Ordinance. See S.F. Admin. Code Section 67.25(a). Accordingly, the time deadlines governing public records requests under the Public Records Act will apply. Even so, the Airport will move expeditiously to gather and review responsive records so that we may get non-exempt records to you as soon as reasonably possible.

As to the first item requested, the "Clear Channel Airports' (Clear Channel) proposal submitted in response to the Airport Advertising Lease RFP", the communications between the Airport and the proposers relating to the RFP and the award of the lease, including Clear Channel's, JCDecaux's, and Titan's proposals will be made available after the Board of Supervisors awards the lease contract. See Admin. Code Section 67.24(e)(1).

The Airport will make all reasonable efforts to produce those readily available documents sought in the Disclosure Request on a rolling basis. As responsive documents become available following their review, my staff will contact your office by email for retrieval. The documents will be made available at the front desk reception at the Airport's administrative offices on the Fifth Floor, International Terminal.

At this time, given the voluminous nature of the Disclosure Request, it is difficult to estimate the copying costs. As a professional courtesy, your office may submit payment for the copying costs for the previous retrieval of documents, please advise if this is acceptable.

Do not hesitate to call if you have any questions.

Sincerely,

Leo Fermin
Deputy Airport Director
Business and Finance

cc: John L. Martin
David Serrano-Sewell

AIRPORT COMMISSION CITY AND COUNTY OF SAN FRANCISCO

EDWIN M. LEE
MAYOR

LARRY MAZZOLA
PRESIDENT

LINDA S. CRAYTON
VICE PRESIDENT

ELEANOR JOHNS

RICHARD J. GUGGENHIME

PETER A. STERN

JOHN L. MARTIN
AIRPORT DIRECTOR

PROCEDURAL TIMELINE

SFO AIRPORT ADVERTISING LEASE RFP

- April 2012 Airport Advertising Lease RFP distributed. Evaluation Criteria states that 50 points will be awarded for meeting the \$7.5 million Minimum Acceptable Offer (MAO).
- May 10, 2012 Informal (non-mandatory) Conference to inform interested parties about the competitive selection process for the RFP. SFO asserts that the presentation included an oral modification regarding the MAO scoring methodology to be used. SFO's characterization of the modification as an "explanation" is inconsistent with the express language of the written RFP. Attendees do not recall SFO discussing the change.
- May 23, 2012 Deadline for submission of written questions or requests for clarification.
- July 17, 2012 Airport Commission approves amended RFP, including lowered MAO.
- July 27, 2012 Addendum No. 2 approved on 7/17 (including a reduction in advertising locations and a reduction of the MAO to \$7 million) and compilation of questions and answers circulated to potential respondents. Addendum did not include the verbal modification of the RFP allegedly given at the 5/10 Informal Conference regarding the Minimum Annual Guarantee (MAG) scoring methodology.
- September 5, 2012 Deadline for the submission of proposals.
- October 11, 2012 SFO announces that an evaluation panel has determined that Clear Channel Airports is the highest ranking, responsible, and responsive proposer and is the apparent successful proposer on the Advertising Lease RFP.
- October 17, 2012 JCDecaux submits a bid protest to SFO on the following grounds: (1) proposals have not been scored in a manner consistent with the Evaluation Criteria specified in the RFP; (2) there is a mathematical error in the addition of JCDecaux's bid; (3) the scores awarded by JCDecaux by scorer P2 are impermissibly irrational; and (4) Clear Channel's MAG offer is commercially unreasonable and should be rejected as a financially irresponsible offer.
- October 18, 2012 Deadline to submit a bid protest.
- October 24, 2012 City Attorney denies JCDecaux's bid protest for the following reasons: (1) despite the fact that the RFP does not mention a sliding scale methodology, the City Attorney asserts that the RFP clearly states the process by which proposals are to be evaluated, the methodology is standard practice, and the methodology was discussed at the Informal Conference; (2) SFO's compilation of the scores is correct and the difference asserted by JCDecaux amounted to a difference in rounding methods; (3) Scorer P2's evaluation was not arbitrary, capricious, or lacking in support; and (4) notwithstanding SFO public records suggesting concern that the \$7 MAO was too high, the City Attorney states that SFO has no reason to believe that Clear Channel's proposed MAG is anything other than commercially reasonable.

PROCEDURAL TIMELINE

SFO AIRPORT ADVERTISING LEASE RFP

Furthermore, the City Attorney provides Clear Channel with notice of the JCDecaux bid protest and allows Clear Channel the opportunity to respond.

- October 26, 2012 Rosales Law Partners (RLP) reply to denial of protest. RLP refutes the City Attorney's contention that the sliding scale application of the MAG methodology was explained orally at the non-mandatory Informal Conference because by the terms of the RFP itself and California case law, oral representations or modifications do not suffice to change the instructions in an RFP. RLP also stresses that the MAG offer by Clear Channel is commercially unreasonable. Clear Channel has a demonstrated business practice of overbidding MAG offers at sister airports and not performing. The only reason that Clear Channel is not in default is that it has managed to successfully negotiate contract amendments with other Bay Area airports. RLP emphasizes that these facts warrant a deeper inquiry by SFO into the San Jose, Oakland, and Sea-Tac Airport contracts with Clear Channel.
- October 29, 2012 The City Attorney's Office, through DCA David Serrano Sewell, responds to RLP's 10/26 letter regarding the rejection of JCDecaux's bid protest. The City Attorney disagrees with JCDecaux's argument that the RFP evaluation criterion was misapplied, but does not address the prohibition against oral amendments of an RFP. The City Attorney also states that SFO believes that Clear Channel's MAG offer is commercially reasonable and is confident that Clear Channel will uphold its MAG offer. The City Attorney ignores JCDecaux's concerns that Clear Channel has a practice of overbidding MAG offers and instead says that suggestions that Clear Channel sought renegotiation of its leases are irrelevant to the Airport Advertising Lease for SFO.
- October 26, 2012 JCDecaux renews protest to award of lease to Clear Channel to Airport Commission.
- October 30, 2012 Airport Commission approves award of Airport Advertising Lease to Clear Channel.
- November 1, 2012 In response to a Sunshine Ordinance request by RLP, Leo Fermin, SFO Deputy Director for Business, stated that certain requested documents "will be made available after the Board of Supervisors awards the lease contract."
- December 18, 2012 JCDecaux meets with City Attorney Dennis Herrera.
- December 21, 2012 Correspondence from James Quadra on behalf of JCDecaux to City Attorney Dennis Herrera suggesting a course of action for the Board of Supervisors and emphasizing that JCDecaux's sole interest is to ensure fairness in the competitive process.
- January 18, 2013 The City Attorney's Office, through DCA Jon Givner, responds to James Quadra's 12/21 letter. Mr. Givner stated that the City Attorney's Office "will be advising the Board of Supervisors regarding the legal options when the resolution approving the contract is introduced."

PROCEDURAL TIMELINE

SFO AIRPORT ADVERTISING LEASE RFP

February 6, 2013
(approximately)

Airport Commission forwards proposed resolution regarding its award of lease to Clear Channel to Board of Supervisors for action.

Clear Channel's History of Contract Modification at SFO

April 20, 2001	Clear Channel (through a predecessor company), the sole-competitor for the Airport Advertising Program RFP, entered into a Lease Agreement with SFO. This Agreement called for a 5-year term and three, 1-year options at SFO's option.
February 19, 2002	To address the decline in airport travel due to September 11, 2001, the Airport Commission approved the Airport Concession Support Program which (1) suspended the MAG until monthly enplanements equaled or exceeded 85% of the enplanements for the same month in 2000 for two consecutive months and (2) granted, at the tenant's discretion, an extension of the lease term for one-year period. Airport staff and Clear Channel subsequently engaged in further lease modification discussions. The Board of Supervisors approved the Airport Concession Support Program retroactive to September 11, 2001 and the lease modifications negotiated by Clear Channel on August 12, 2002.
March 5, 2002	Airport Commission approved additional advertising locations in the baggage claim level and reinstatement of the MAG effective April 1, 2002.
April 2, 2002	Airport Commission approved an amended MAG Increase Schedule and amended the MAG adjustment schedule that governed the MAG recalculation for each year (instead of using the Consumer Price Index, the MAG was now recalculated each year based on the greater of 85% of previous year's rent or the amount in the amended MAG Increase Schedule).
July 30, 2003	Letter Agreement between SFO and Clear Channel for additional advertising locations and increase to the MAG.
October 4, 2005	Letter Agreement between SFO and Clear Channel for additional advertising locations and increase to the MAG.
2007-2010	The parties negotiated an amendment that would have (1) approved additional advertising locations; (2) authorized half of the rent collected from some of these locations to be shared with the appropriate airline or SFOTEC; and (3) exercised all three, 1-year options for a new expiration date of March 31, 2014. The Airport Commission approved this amendment, but on September 22, 2007, SFO staff requested that the Board of Supervisors Budget & Finance Committee table the resolution addressing this amendment. Later, SFO informed Clear Channel that "based on the considerable challenges" that SFO met in obtaining the Board of Supervisors' approval, SFO had opted not to pursue this amendment.

CITY AND COUNTY OF SAN FRANCISCO

AIRPORT COMMISSION



Request for Proposals

**Distributed Antenna System ("DAS")
at the San Francisco International Airport
for Cellular and Other Wireless Services
(Contract No. 8848)**

RFP Release Date:	May 28, 2008
Pre-proposal Conference:	June 13, 2008, 10:00 a.m.
Site Visit:	June 19, 2008, 9:30 a.m.
Deadline for Submission:	July 25, 2008, 5:00 p.m.

IV. Evaluation and Selection Criteria

A. Minimum Qualifications

Any proposal that does not demonstrate that the proposer meets the minimum qualifications by the deadline for submittal of its response to this RFP will be considered non-responsive, will not be reviewed by the evaluation committee and will not be eligible for award of the contract.

A Proposer may be comprised of any combination as a prime firm, joint venture, and/or subcontractors. Qualifications shall be determined based on the combined qualifications of the Proposer's team. No one (1) member of the Proposer's team must be qualified in all areas of expertise. Proposers must meet the following minimum qualifications to be eligible for further consideration in the selection process:

- Proposers or at least one (1) member of a team or joint venture shall have a minimum of three (3) completed design, installation, integration and implementation of centralized, modular, expandable, neutrally-hosted common network DAS in the past five (5) years, capable of supporting commercial cellular service and other RF-based services, and serving a minimum of three (3) major national cellular carriers.
- Proposers or at least one (1) member of a team or joint venture shall have a minimum of five (5) years of experience in operation and management of a centralized, open architecture, modular, expandable, neutrally-hosted common network DAS in the past ten (10) years, capable of supporting commercial cellular service and other RF-based services, and serving a minimum of three (3) major national cellular carriers.

B. Selection Criteria

Airport staff will screen the submittals to ensure that the firms identified as qualified to provide these services meet the minimum qualifications. Submittals that meet the minimum qualification requirements will be evaluated by an evaluation committee. The Airport intends to evaluate the proposals generally in accordance with the criteria itemized below. The Airport reserves the right to interview any number of the proposers with the highest scoring proposals by the committee to make the final selection.

The descriptions following each evaluation criteria are provided as a guide and are not intended to be comprehensive.

1. Project Approach (400 points)

- a. Understanding of the project, tasks to be performed and deliverables.
- b. Level of detail and thoroughness in the proposed solution, and level of responsiveness to the technical requirements outlined in Appendix C, Section 6.
- c. Compliance of the proposed DAS with project requirements, responsiveness to the proposal requirements regarding DAS Applications outlined in Appendix C, Section 6.2, and proposer's ability to provide an open-access, flexible, scalable system.

- d. Preliminary design approach and responsiveness to the proposal requirements regarding system architecture outlined in Appendix C, Sections 6.3 and 6.4, including but not limited to data collection and analysis, level of detail about design parameters, floor space requirements, HVAC and power requirements, cabling and connections, security and access requirements, weight loading and structural requirements, and aesthetic impact of any system components inside and outside the airport buildings, and system capacity enhancements and expansion capability.
 - e. Quality, thoroughness and logic of preliminary installation plan, meeting the requirements outlined in Appendix C, Section 6.5, and merit of the quality assurance plan for the DAS to ensure reliable and efficient service for users, and proposed measures to safeguard against degradation or interruption of current telecommunication applications at the Airport, including cellular service, during installation and testing of the new DAS.
 - f. Preliminary system testing plan.
 - g. Extent and duration of warranty for the DAS and all its components, including equipment, hardware, software, services and all other items necessary or proper for, or incidental to operating and maintaining the system in accordance with the performance specifications.
 - h. Proposed Operation and Maintenance Plan.
 - i. Work plan and schedule.
 - j. Experience, ability and willingness to work collaboratively with a potential non-cellular prime contractor (see Appendix C, Section 7.1).
2. **Assigned Project Staff (200 points)**
- a. Recent experience of staff assigned to the project and a description of the tasks to be performed by each staff person;
 - b. Professional qualifications and education; and
 - c. Workload, staff availability and accessibility.
3. **Experience of Firm and Subconsultants (300 points)**
- a. Expertise of the firm and subconsultants in the fields necessary to complete the tasks;
 - b. Quality of recently completed projects, including adherence to schedules, deadlines and budgets;
 - c. Experience with similar projects; and

d. Results of reference checks.

4. Fee Proposal (100 points)

SFO's selection will not be made solely on the basis of the lowest bid. However, the fee proposals will be considered and points will be awarded as follows: Points will be determined based on the lowest applicable fee proposal determined by SFO among proposers meeting the minimum qualifications, considering the total of all the various amounts submitted in the Pricing Schedule (Appendix D). A weighed total fee proposal will be determined as follows: The total fee proposal for Phases 1, 2 and 3 will have 30%, 25% and 10% of the total weight, respectively; the total fee proposal for O&M services in Years 1 to 3 will have 25% of the total weight, and the fee proposal for O&M will have 10% of the total weight. The proposer with the lowest weighed total fee proposal shall receive the maximum number of points for this evaluation criterion (100 points); the other proposals will be scored dividing the amount of the lowest weighed fee proposal by the weighed fee proposal being evaluated and multiplying this result by 100 points (total possible points).

For example, three fee proposals are submitted with the following total weighed amounts: \$1,000, \$1,200 and \$1,300. The lowest amount (\$1,000) will receive 100 points, the \$1,200 proposal will receive 83 points (100 points multiplied by \$1,000 and divided by \$1,200), and the \$1,300 proposal will receive 77 points (100 points multiplied by \$1,000 and divided by \$1,300).

5. Optional Oral Interview (250 points)

Following the evaluation of the written proposals, SFO reserves the right to invite any number of proposers receiving the highest scores to an oral interview. The interview, if conducted, will consist of standard questions asked of each of the proposers. For each firm, the interview score will be combined with the scores in the other categories to determine the overall final score. Evaluation criteria may be based on, but not be limited to, the following:

- a. Information provided by the firm about its relevant experience: Relevance of the team experience as demonstrated by types and complexity of previous work presented. Evidence of the expertise the team brings to the project.
- b. Discussion about approach to implementation: Understanding of the key long-range and short-range implementation issues that affect the project. Quality of the insight or conceptualization of the issues relevant to the project.
- c. Quality and clarity of the communication presented orally during the interview plus any additional written and graphic communication used to represent the skills of the team. Clarity in the organization and exposition of the document and the presentation.
- d. Degree to which the technical expertise is complete for the anticipated scope of work. Evidence presented during the interview that the team is structured for a comprehensive approach.
- e. Discussion about firm's project management abilities. Evidence that previous work was well managed, within budget and on-time. Documentation of relevant problems and how they were resolved.



San Francisco International Airport

Request For Proposal

Management and Operations of Public and Employee Parking at
San Francisco International Airport

Contract Number 9121

Date Issued:

Wednesday, October 26, 2011

Pre-Proposal Conference:

Tuesday, November 8, 2011, 10:00 AM

Proposal Deadline:

Tuesday, November 29, 2011, 3:00 PM

CITY AND COUNTY OF SAN FRANCISCO

Edwin M. Lee, Mayor

AIRPORT COMMISSION

Hon. Larry Mazzola, President

Hon. Linda S. Crayton, Vice President

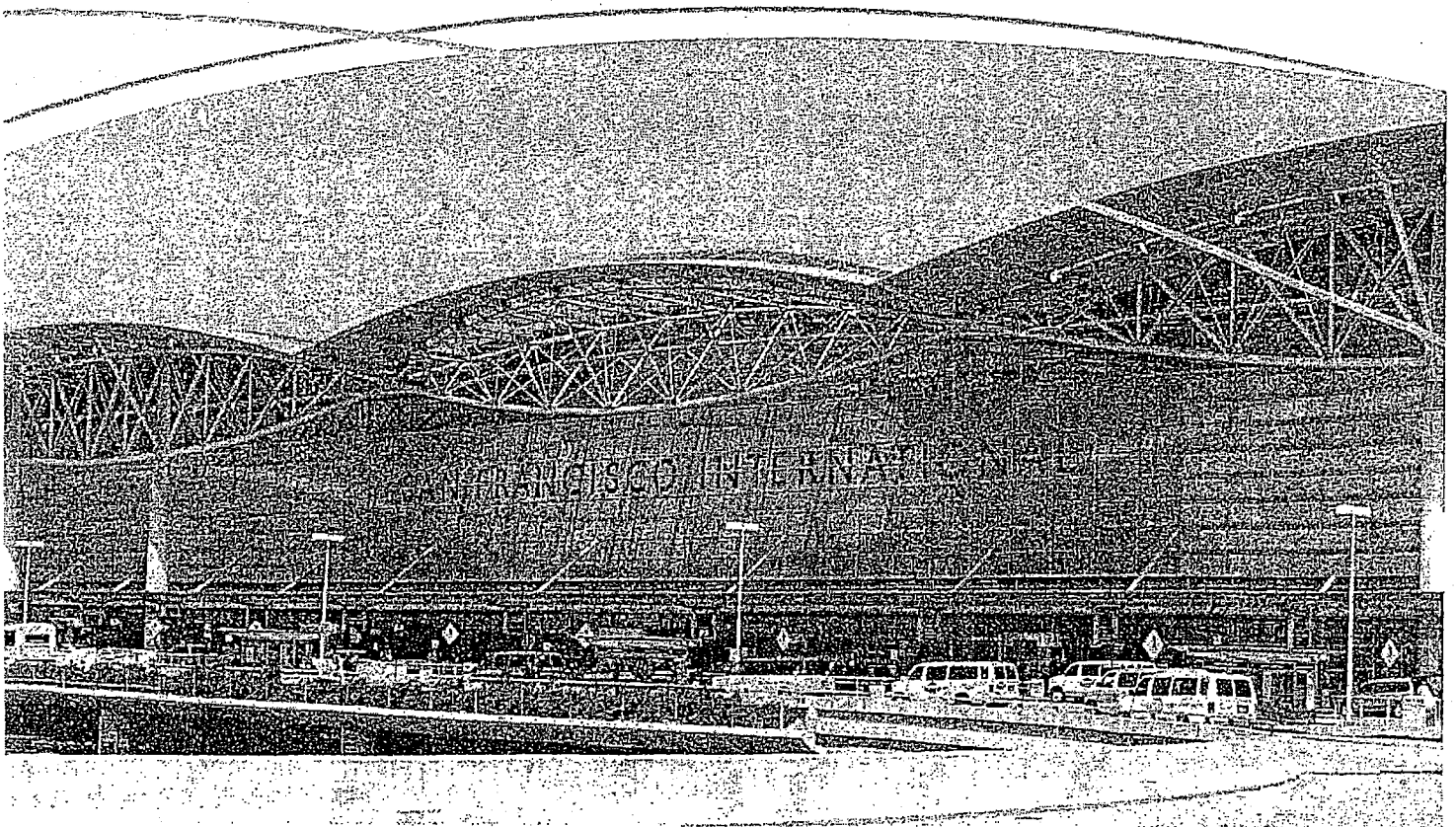
Hon. Eleanor Johns

Hon. Richard J. Guggenheimer

Hon. Peter A. Stern

AIRPORT DIRECTOR

John L. Martin



Direct Labor only include that portion of costs related to the direct labor salary or wages incurred.

- d) Payroll Additives are the costs incurred by the employer related to payroll costs. These costs are generally statutory requirements such as payroll taxes and workers' compensation insurance; however in some instances, other costs such as general liability insurance may be included.
- e) The total "Indirect Costs" comprising the not-to-exceed amount are: indirect labor, fringe benefits, payroll additives, operating expenses (materials, supplies, sundries and bonds), and general and administrative expenses. The cost of outside and contracted services is not to be included in the indirect cost pool for computing the indirect cost ceiling or the Fee. The cost of contracted services and services provided by third parties such as janitorial, security, armored car and equipment maintenance are to be provided in the "Sub-Contracted Services" section of the Fee proposal form.
- f) Hourly rates for all team members must comply with the Prevailing Rate of Wages Ordinance No. 3-03 (*San Francisco Administrative Code Sec.21C.3, Appendix C*).
- g) Proposed Management Fee as shown in the Cost Proposal Form as a not-to-exceed percentage of the Total Fee Base is the sum of Direct Labor costs plus the Total Indirect Costs. A Management Fee needs to be proposed for each year of the five (5) year term.
- h) A Guaranteed Maximum Price (GMP) consisting of total reimbursable costs for the Base Contract Year, including the proposed Management Fee. Annual adjustments to the GMP not to exceed a cap of 3% per year for each subsequent contract year.

IV. EVALUATION AND SELECTION CRITERIA

A. Minimum Qualifications

Any proposal that does not demonstrate that a proposer meets these minimum requirements by the deadline for submittal of proposals will be considered non-responsive and will not be reviewed by an evaluation panel and will not be eligible for award of the contract. These qualifications have been established based on the size, operational characteristics, and volume of revenue currently generated at the Airport's parking facilities. At a minimum, a proposer and/or joint venture partner must meet the following qualifications:

- A minimum of 5 years verifiable continuous experience, within the last 7 years operating parking facilities serving an airport that has at least 15,000 spaces that is open 24-hours per day, 365 days per year and generates at least 2.5 Million exit transactions per year and \$60 Million in annual revenue; and
- A minimum of 5 years verifiable continuous experience within the last 7 years with a fully on-line revenue control system. Proposer must have experience generating revenue and facility operations reports; and operating and performing light maintenance on systems components, including ticket issuing machines, loop detectors and actuated gates, and cashier terminals; and

- A minimum of 5 years verifiable, continuous experience within the last 7 years managing staff of at least 60 full-time employees.

It is mandatory that the individual, partnership, joint venture, corporation, or the officers or principals thereof, submitting a proposal, either as presently constituted or existing as a result of some business reorganization or executive affiliation, have the above minimum qualifications. If such is found not to be the case, any proposal submitted by any such individual, partnership, joint venture, or corporation may be rejected. In the case of a proposal submitted by a partnership or joint venture, at least one (1) of the general partners thereof or one of the constituent members with a minimum of 35% ownership share of joint venture must possess said minimum qualification.

B. Selection Criteria

Airport staff will screen the proposals to ensure the Proposers meet the minimum qualification requirements. Proposals that meet the minimum qualifications will be evaluated by an evaluation committee with expertise in Airport Operations, Parking Management or other related activities. City intends to evaluate the proposals generally in accordance with the criteria set forth below. Following the evaluation of the written proposals, the top two proposers receiving the highest scores will be invited to an oral interview. The interview will consist of standard questions asked of each of the proposers invited to the interview.

There are 200 maximum possible points for the evaluation process; 150 for the written evaluation and 50 for the oral interview. All scoring will be cumulative.

In the event that the scores of the highest ranked proposers are within one percentage point of each other, as further described below, the City, at its sole discretion, will request a Best and Final Bid of Management Fees from each to determine the highest ranked proposer.

The descriptions following each evaluation criteria are provided as a guide and are not intended to be comprehensive.

1. Written Proposals 150 Points Maximum

<u>Evaluation Criteria</u>	<u>Maximum Points</u>
----------------------------	-----------------------

Qualifications:	(25 Points)
------------------------	--------------------

Recent relevant firm experience, extent of expertise, and review of proposed local and off-site management team including, but not limited to, experience with comparable parking operations and a description of tasks to be performed by each staff person.

Operating Plan:	(25 Points)
------------------------	--------------------

The Operating Plan must demonstrate an understanding of the scope of work and requirements specific to the Airport's parking operations; including proposed methods for cash handling and auditing. Proposed staffing plans for current and future conditions should be well reasoned and show a clear understanding of operational requirements. A transition plan must be included to demonstrate proven experience in effecting smooth transitions from incumbent parking contractor.

Maintenance Plan:

(15 Points)

The proposed Maintenance Plan will be evaluated based upon its strength, scope and its probability for continued success in keeping the Airport's parking facilities well maintained, clean and welcoming. The plan should incorporate strategies to ensure annual deep cleanings occur for each public garage and maintenance issues are addressed proactively.

Safety and Security Plan:

(15 Points)

The Safety and Security Plan will be evaluated based upon its ability to provide a safe and secure environment for our parking customers. This plan should address how the proposer will provide safety and security for employee and public customers, their vehicles, as well as the Airport's parking assets, including parking equipment and facility surveillance.

Customer Service and Marketing Plan:

(15 Points)

The Customer Service and Marketing Plan should include proposed methods for enhancing level of customer service, maintaining high employee morale, increasing public parking facility patronage and net revenues. The plan will be evaluated on how creative and innovative it is as well as how well it responds to the above criteria.

Financial Qualifications:

(10 Points)

Strength of a proposer's finances will be based on the financial statements. Nature and quantity of outstanding litigation against proposer will also be reviewed and evaluated.

Fee Proposal:

(45 Points)

Fee Proposals will be ranked based on the lowest proposal offered. Fee proposals will be evaluated using Net Present Value calculation of the five-year proposed management fees and the total cost of the direct, indirect and subcontract services costs for the base year proposed budget.

The most favorable Fee Proposal to the City is the lowest Guaranteed Maximum Price proposed. The lowest Guaranteed Maximum Price will receive the total number of points assigned to the Fee Proposal evaluation criteria. The other Fee Proposals will be scored by dividing the amount of the lowest Guaranteed Maximum Price by the Guaranteed Maximum Price of the Fee Proposal being scored and multiplying the result by the maximum number of points assigned to the Fee evaluation criteria.

An example of the scoring of the Fee Proposal would be: if a total of 45 points are assigned to rate fee proposals responding to an RFP, the Proposer who offers the lowest fee proposal of \$10,000 receives all 45 points. The next lowest proposal that offers \$15,000 receives a score of 30 points (\$10,000 divided by \$15,000, multiplied by 45 points) and the next lowest proposal that offers \$17,500 receives a score of 26 points (\$10,000 divided by \$17,500, multiplied by 45 points).

	Proposal #1	Proposal #2	Proposal #3
Total Guaranteed Maximum Price	\$10,000	\$15,000	\$17,500
Total Guaranteed Maximum Price Proposed / Lowest Total Guaranteed Maximum Price Proposed	100%	67%	57%
Points Awarded	45	30	26

2. Oral Interviews 50 Points Maximum

The two highest ranked proposers will be invited to participate in an oral interview and presentation of their proposals with the evaluation committee. Oral interviews will count for a maximum of 50 points. The interview will consist of standard questions that will be asked of each of the Proposers invited to the oral interview, and any follow-up or clarification questions from the Evaluation Panel. The Evaluation Panel will evaluate oral interviews in accordance with the same criteria for the written proposals. Proposers invited to the interview, along with members of proposed subcontractors and its proposed management team will be required to appear before the Evaluation Panel. Questions from the Evaluation Panel may be directed to a specific member of the Proposer's team. After the interview, the oral score will be added to the written score to derive a final score for those highest ranking Proposers invited to the interview.

3. Best and Final Offer

In the event that the scores of the highest ranked proposers are within one percentage point of each other's combined score, the City will request a Best and Final Bid of Management Fees to determine the highest ranked proposer. For example, if the cumulative average scores of the top two proposers are the following:

Proposer No.1 185 points
Proposer No.2 184 points

Proposer No.1's score is within one percentage point of Proposer No. 2's score $(185/184) - 1 = 0.5\%$. In this example the City would invite the top two proposers to submit a best and final offer on its Management Fees to determine the highest ranked proposer. The firm with the lowest Net Present Value of its proposed Best and Final five-year Management Fee offer would be deemed the highest ranked proposer.

V. PRE-PROPOSAL CONFERENCE AND CONTRACT AWARD

A. Pre-Proposal Conference

Proposers are encouraged to attend a pre-proposal conference at 10:00 a.m., Tuesday, November 8, 2011, at Airport Commission Administration Offices, Conference Room 28R, located at the San Francisco International Airport, International Terminal, 5th floor of the North Shoulder Building. The lobby entrance is located to the right of the International Terminal Security Checkpoint for the "G" boarding gates next to the CNBC News store.

This conference provides an opportunity to ask questions and seek clarifications. Any available new information will be provided at that time. If you have further questions regarding the RFP, please contact the individual designated in Section VI. B. No questions or requests for interpretation will be accepted after 5:00 p.m. (PST) on November 15, 2011.

Questions raised at the pre-proposal conference may be answered orally. If any substantive new information is provided in response to questions raised at the pre-proposal conference, it will also be memorialized in a written addendum to this RFP posted on the City's website <http://mission.sfgov.org/OCABidPublication/>. No questions or requests for interpretation will be accepted after November 15, 2011.

ARTICLE 4 - EVALUATION AND SELECTION CRITERIA

4.1 Selection Process

The selection process used by SFMTA generally follows City and FTA procurement guidelines. All Proposals will be evaluated by a Selection Committee comprised mainly of SFMTA staff. SFMTA will be the sole judge as to which Proposal is best and, in ascertaining the best Proposal, will take into consideration the financial resources, reputation, experience in performing similar work, as generally described below.

Step One: The SFMTA will evaluate each written Proposal based on the evaluation criteria listed in Section 4.2.1 A through E, using a 100-point rating system. Each member of the Selection Committee will separately score each firm's written Proposal. The Selection Committee's scores for each firm will be totaled, and the result will be divided by the number of Selection Committee members to obtain an averaged written evaluation score for each firm, which will be a maximum of 100 points.

The SFMTA will evaluate written criteria listed in Section 4.2.1 F Cost Proposal, using a 50-point rating system. The lowest price responsive proposal from a responsible Proposer will receive 50 points; every other Price Proposal will be scored proportionately based on the percentage by which that Price Proposal exceeded the price of the lowest-priced Proposal.

The SFMTA will multiply the averaged scores for each firm from evaluation of the written Proposal for criteria A through E by 30 percent and add the scores for each firm from the evaluation of the criteria F Cost Proposal. Based on those resulting scores, the SFMTA will determine which firms are within the competitive range (the "short list"). Those firms in the short list will be invited to attend an oral presentation/interview with the Selection Committee.

Step Two: The short-listed firms and their sub-proposers will be required to appear (in no particular order) before the Selection Committee for an oral interview, presentation of their Proposal and detailed discussion of the elements of their Proposal. Presentations at the oral interview must be made by the Proposer's key team members who will be assigned to perform the Contract. The key team members should actively participate in the oral presentations to the Selection Committee. Members of the Selection Committee may direct questions to specific members of the Proposer's team. The SFMTA may require short-listed firms to furnish additional information prior to or at the interview.

Using the evaluation criteria in Section 4.2.2 each member of the Selection Committee will separately score each firm's oral interview and presentation (20 point maximum). The SFMTA will total individual the evaluation scores from all Selection Committee members and then divide the total by the number of

Selection Committee members, to obtain an average interview evaluation score for each firm.

Step Three: The SFMTA will multiply the averaged score for each Proposer from the evaluation of the written Proposal for criteria A through E (Step 1) by 30 percent, add the score received for criteria F, the Cost Proposal, (Step 1) and add the averaged score received from the evaluation of the oral interview (Step 2). The result will determine the ranking of the Proposers.

$$\text{Proposer Score} = [\text{average (A + B + C + D + E) X 0.30}] + \text{F} + \text{average (G)}$$

The selection of any proposal shall not imply acceptance by the City of all terms in the proposal, which may be subject to further negotiations and approvals before the City may be legally bound thereby. In the event that the SFMTA determines that an agreement cannot be reached with the highest-ranked Proposer, SFMTA may choose to discontinue negotiations with the highest-ranked Proposer and enter into negotiations with other qualified firms in the order of their ranking. SFMTA reserves the right to accept other than the lowest-priced offer and to reject proposals that are not responsive to this RFP.

4.2 Evaluation Criteria

4.2.1 Written Proposal

The SFMTA will review each written Proposal to ensure that it meets the minimum qualifications, is otherwise responsive to the RFP, and complies with City contracting requirements. The Selection Committee will then evaluate all responsive Proposals based on the following criteria:

- A. Proposal (5 points maximum):** Responsiveness to all items requested in the RFP, overall organization and clarity of proposal.
- B. Team Organization and Qualifications (15 points maximum):** Evaluation of Proposer capabilities, relevant project experience, knowledge of subway tunnel and transit construction; consulting team's composition, structure, roles/function; team's qualifications in providing OCIP services.
- C. Project Organization, Key Personnel and Staffing Ability (20 points maximum):** Evaluation of the Proposer's team organizational and management structure in managing the sub-proposers, staff, tasks and quality; ability to provide timely/readily available qualified and adequate staffing and services to support Project demands. The Evaluation Committee reserves the right to visit the local offices of the Proposer and sub-proposers as part of its evaluation.
- D. Relevant Experience and References (30 points maximum):** Evaluation of capability, specific relevant experience, qualifications of

each firm and each sub-proposer, especially the proposed key personnel for each task, and client references as to past project performance. The Selection Committee retains the right to independently verify and evaluate relevant experience and client references, including any sources not mentioned in the Proposal.

- E. Methodology and Approach (30 points maximum):** Evaluation of Proposer's understanding of the services for each task; effectiveness of its plan, program and method of execution; understanding of special issues, risks, problems and constraints, and approach towards mitigating and resolving them.
- F. Cost Proposal (50 points maximum):** The lowest price responsive proposal from a responsible Proposer will receive 50 points; every other Price Proposal will be scored proportionately based on the percentage by which that Price Proposal exceeded the price of the lowest-priced Proposal.

4.2.2 Oral Interview/Presentation

The SFMTA Selection Committee will conduct oral interviews at the Bay Area office of each short-listed Proposer. Prior to the interviews, SFMTA will notify the short-listed candidates in writing as to the time and length of the interview, the general format of the interview.

- G. Oral Interview/Presentation (20 points maximum):** In general, the oral interview will consider the Proposer's overall presentation, communication skills and ability to explain and answer questions from the Selection Committee regarding the Proposer's written Proposal. The Selection Committee will score the Oral Interview/Presentation based on the quality of responses provided and the quality of the team attending and presenting at the interview, including their expertise, communication skills, knowledge of the Proposal and Program, and the overall quality of their presentation.

SFO's request for proposals regarding the advertising lease states that:

The Airport Commission is desirous of maximizing participation by local owners and in featuring local concepts.

Despite SFO's stated interest in local involvement and its public mission to serve airport users, the relatively small number of advertising locations at SFO and the high cost of these locations makes it virtually impossible for local businesses to advertise at SFO or for small local businesses to participate in the advertising contract.

FastCityGuide offers a vehicle that would finally allow local businesses an opportunity to advertise to the millions of travelers that use SFO and for a small local business such as RBP to participate in the SFO advertising contract.

FastCityGuide would provide valuable information to travelers about San Francisco and the surrounding areas (eg. hotels, restaurants, shopping, events, transportation, tourism, maps, etc.) while allowing local businesses to advertise on "virtual" walls that would be limited only by the imagination of the advertisers.

Travelers would be invited to use FastCityGuide while at SFO but would be able to take the information with them on their mobile devices after they leave SFO.

The ability for local advertisers to access SFO through innovative technology would satisfy SFO's local flavor goals while adding a new revenue source.

RFP REQUIREMENT	JCDECAUX
<p>Minimum Guarantee Offer</p> <p>Proposer must propose a MAG for the first Lease Year which is equal to or greater than the Minimum Acceptable Financial Offer of \$7 Million.</p>	<p>\$8.5 Million</p>
<p>Goals</p>	
<p>Certified Airport Concession Disadvantaged Business Enterprise (ACDBE) participation (including Disadvantaged Business Partners (DBE)</p>	<ul style="list-style-type: none"> • Davis & Associates, a full-service communication agency who would be responsible for Local and Regional Sales. • Rosales Business Partners (RBP), a local Small Business Enterprise that specializes in innovative public-private business partnerships using creative technology. RBP with JCDecaux will launch FastCityGuide (see below).
<p>Airport Concession Program that maximizes participation by local owners and in featuring local concepts.</p>	<p><u>Local Owners</u></p> <p>In addition to San Francisco based Davis & Associates and RBP listed above, JCDecaux other local partners include:</p> <ul style="list-style-type: none"> • IW Group, a marketing and communication firm that specializes in reaching the Asian-American community who would be responsible for Local and Regional Sales. <p><u>Local Concepts</u></p> <p>The proposal includes several optional programs aimed at improving the passenger's experience while promoting San Francisco and the Bay Area at SFO:</p> <ul style="list-style-type: none"> • Partnership with San Francisco Travel to feature promotional materials at the Airport as well as in 30 major U.S., European, Asian and South American cities. Together JCDecaux and San Francisco Travel will develop a Community Outreach Program that will inform, educate and entertain visitors and will be incorporated into the advertising program by using unsold inventory to post promotional campaigns and by incorporating a dedicated link on its Interactive Visitor's Centers and Interactive Directories. Through San Francisco Travel, JCDecaux will also donate advertising space for two promotional campaigns for the City

	<p>of San Francisco which will run domestically and internationally.</p> <ul style="list-style-type: none"> • A partnership with GateGuru, the leader in smartphone applications for airport travelers that will synchronize the information provided on the application with that made available on the interactive Passenger Information Kiosks. Through this mobile application, passengers will be able to view real-time flight status information, view an itinerary, refer to airport maps, and see a structured list of airport foods, shops and services. • FastCityGuide San Francisco, a powerful promotional tool for the City of San Francisco, its community, business and economy. FastCityGuide to develop a new smart phone mobile website application that will serve local residents and visitors alike by providing them with access to all the information they need to make the most out of their stay or life in San Francisco and the Bay Area. FastCityGuide SF will, in effect, take over where GateGuru left them, starting with transportation options from the airport all the way to hotels, restaurants, entertainment, sightseeing and community events. The information provided by FastCityGuide will also be synchronized with Interactive Visitor's Centers and Interactive Directories, allowing for a seamless transition and ensuring that it remains current. FastCityGuide can be a powerful promotional tool for the City of San Francisco, its community, businesses and economy. In order to help its adoption rate and boost its positive impact, JC Decaux would promote FastCityGuide at the Airport using unsold inventory and the Interactive Visitor's Kiosk. The information presented will be from the perspective of a local/native San Franciscan and will showcase the entire City, not only the areas traditionally promoted to tourists. • An entertainment hub centered on the AerStream radio platform developed and operated by AerStream Media. In-terminal radio can be a new and exciting source of incremental revenue for San Francisco International Airport. While capitalizing on the average estimated 120 minutes of dwell time at O'Hare and 90 minutes at Midway, AERSTREAMRADIO is the perfect response to passengers' admitted need for a little
--	---

time to relax and decompress post-security or between flights. And because it is 'commercial radio' supported with advertising dollars from local, regional and national brands, the City of San Francisco wins in a number of ways – content travelers spend more at retail and food and beverage concessions, and the City shares in the dollars generated by advertising placed on the radio channel. Consequently, AerStream can deliver goodwill, image enhancements and hard dollars to the City.

AerStream will come to life through two platforms at San Francisco International Airport:

Terminal Radio - Using a mix of music genres that appeal to diverse audiences, AerStream will provide closed-circuit audio programming for the listening enjoyment of air travelers throughout the airports' footprints – concourses, hallways, gates, lounges and baggage claim. Programmed for active listening, the station will offer fifty minutes of music, eight minutes of commercial messaging and two minutes of airport, TSA and San Francisco tourism announcements. This airport platform is also called 'community' radio.

Web-based Radio - Through the AerStream URL or app, passengers will also have the opportunity to personalize their listening pleasure by creating their own playlists with over 400 (channels of diverse music to choose from including: jazz, rock, easy listening, reggae, R&B, country, Broadway show hits, classical and many more. Listeners will also enjoy the added features of a San Francisco Scenes feature which promotes the City, its many attractions and its musical talent. Phase Two of the online programming will include several custom-produced channels that feature children's entertainment, self-improvement, finance, movie critiques, news and sports. Passengers will be able to enjoy the streaming entertainment using personal computers, mobile phones or other wireless devices with internet access. Both versions of AerStream will reflect a strong "sense of place". It is important that the online and off-line stations mirror the vibrancy of the City and its rich heritage in music. Drawing from the plethora

	<p>of talent hailing from or associated with San Francisco (i.e. Tony Bennett, Jerry Garcia, Gary Holt, Metallica, Jefferson Airplane, Courtney Love, Carlos Santana, etc.), the stations will feature San Francisco-specific playlists i.e. every fourth song), use popular San Francisco artists for announcements and music lead-ins, and feature special interviews.</p>
SOCIAL RESPONSIBILITY	
<p>Local contractors and labor for SFO based work under Lease</p>	<p>JCDecaux will hire additional staff for its local workforce to perform the maintenance at SFO. JC Decaux maintenance technicians are part of Teamsters Local 856.</p> <p>JC Decaux will use local subcontractors for the implementation of the program at SFO, from engineering to electrical and general contractors. Whenever possible, JC Decaux hires local DBE, SBE, LBE, MWE or WBEs to do the work.</p>



ROSALES LAW PARTNERS LLP

February 7, 2013

SUBJECT: Summary of Clear Channel Practices at San Jose International, Oakland International, San Francisco International, and City of Los Angeles

SAN JOSE

Clear Channel submitted a proposal to the Airport's Advertising Concession RFP that included a MAG that was \$2 million more than the closest competitor. Clear Channel was awarded the contract and on July 19, 2007, the parties entered into a Lease and Concession Agreement for Advertising and Promotions.

On January 11, 2008, shortly before MAG payments were scheduled to begin, Clear Channel began to request MAG relief, arguing that their inventory was not completely installed because of delays in receiving final design approval and notice-to-proceed. The Airport denied this request. In November 2008, Clear Channel verbally requested to restructure the MAG. The Airport denied the request. In December 2008, Clear Channel made another request for MAG relief because of the "current economic crisis" and proposed that they receive a \$1 million MAG reduction in 2009 and repay this amount in two \$500,000 installments in 2010 and 2011. The Airport rejected this proposal and reminded Clear Channel that the Agreement does provide for MAG abatement in specific circumstances which had not occurred. In June 2009, Clear Channel continued to request MAG abatement, stating the economic climate and advertising market constituted a force majeure event under the Agreement; its ability to generate advertising revenue was compromised by construction at the Airport; and the City had delayed approvals. The Airport rejected this request.¹ In March 2011, Clear Channel offered to make a pre-payment of the MAG of \$9 million and pay 60% of the gross revenues in exchange for a three-year extension of the contract. The Airport rejected this offer and Clear Channel countered by offering a \$10 million pre-payment and 65% of gross revenues. In July 2011, Clear Channel argued that they were entitled to a MAG reduction because a food and beverage concessionaire had received a MAG reduction. The Airport rejected this argument because the factors that led to

¹ In this letter, Clear Channel also requested the removal of one location (Airport Monument Sign) and the Airport responded that it was willing to negotiate the removal of this advertising space and a corresponding MAG reduction. The parties negotiated in writing from October 2009 to January 2010.

Summary of Clear Channel Practices at San Jose International, Oakland International, San Francisco International (SFO) and City of Los Angeles

Date: February 7, 2012

Page: 2

the concessionaire reduction do not apply to Clear Channel. In October 2011, Clear Channel renewed its request for a restructuring of the payment terms, which the Airport rejected.

While the Airport did not agree to the MAG relief requested by Clear Channel, by November 2011, the Airport had provided Clear Channel with nearly \$4.3 million in other financial relief, including MAG reductions for removal of advertising space and Monument Sign (\$3,267,549 through the term and option term of the Agreement) and reductions in the capital investment requirement (\$1,029,800). The City had also proposed an additional savings by consolidating Clear Channel's capital investment requirements (\$296,000) and by providing free office space (\$64,879).

Contact information for the individual managing Clear Channel's contract at San Jose Airport:

Seth Turner, Property Manager II
Norman Y. Mineta San Jose International Airport - SJC
1701 Airport Boulevard, Suite B-1130
San Jose, CA 95110
408-392-3683 - phone
408-441-2617 - fax
seturner@sjc.org

OAKLAND

The Airport issued an RFP for an in-terminal advertising contract, which allowed proposers to offer a MAG.² The proposals were scored on overall economic potential. Another proposer, Alliance received .05 points more than Clear Channel, but because Clear Channel listed a MAG that was almost twice as much as Alliance, the panel selected Clear Channel. The Airport entered into the Space/Use Permit for Non-Exclusive In-Terminal Advertising Concession with Clear Channel on July 1, 2008.

In January 2009, Clear Channel Airports asked for a temporary delay in the payment of the monthly MAG installments which were due to begin January 1, 2009 because of the delay in design approval from Airport staff. Oakland denied this request saying that the delays in the design process are mostly the result of Clear Channel's submittal of designs that differed from those submitted in the proposal and its expectation of a formal approval notification, and also almost half of the displays were not subject to design review. On April 16, 2009 Clear Channel proposed a significantly reduced MAG for the entire term of the Agreement. Clear Channel also proposed to change the MAG to 85% of the previous year's percentage payment, an increase from the 70% set forth in the Agreement, as well as an increase in the percentage payment to 60% for all years after the first year of the term. On August 3, 2009, Clear Channel again

² The information regarding the RFP process was obtained from an email from Janet Deutsch in response to an email inquiring about Oakland's MAG scoring methodology.

Summary of Clear Channel Practices at San Jose International, Oakland International, San Francisco International (SFO) and City of Los Angeles

Date: February 7, 2012

Page: 3

proposed a decrease in the MAG and an increase of the percentage of gross receipts payment. This proposal was memorialized in Amendment No. 1. This amendment was executed in September 2009, wherein the parties agreed that Clear Channel would provide 60% of gross receipts to the Airport and would receive a MAG reduction of \$50,000 to \$100,000 per year.

Despite the fact that Oakland has given approximately \$700,000 in financial relief³, Clear Channel has continued to request additional financial relief.

Contact information for the individual managing Clear Channel's contract at Oakland Airport:

Janet Deutsch
Concession Manager - Airport Properties
Oakland International Airport
9532 Earhart Road, Suite 201
Oakland, CA 94621
510.563.3673
jdeutsch@portoakland.com

SAN FRANCISCO

SFO entered into a Lease Agreement for the Airport Advertising Program at San Francisco International Airport with Clear Channel Airports (at that time known as Transportation Media, a division of Eller Media Company) on April 20, 2001. That Agreement called for a five year term, plus three, 1-year options at SFO's option. A 5-year option at Clear Channel's discretion was added later. The first 1-year option was exercised on December 21, 2010, effective April 1, 2011 to March 31, 2012. The second 2-year option was exercised July 19, 2011, effective April 1, 2012 to March 31, 2013.

As a result of the decline in travel due to the September 11, 2001 terrorist attacks, SFO adopted the Airport Concession Support Program wherein the MAG was temporarily suspended until monthly enplanements equaled or exceeded 85% of the enplanements for the same month in year 2000 for two consecutive months and granted, at tenant's discretion, an extension of the term for one 5-year period. The MAG was reinstated effective April 1, 2002. On April 2, 2002, the Airport Commission approved an amended MAG Increase Schedule and amended the adjustment schedule that governed the MAG recalculation for each year. Following the adoption of the Airport Concession Program and the other negotiated lease modifications, the parties entered into Amendments No. 1 and 2 on October 18, 2002. Additional advertising locations were approved and the MAG was increased in March 2002, July 2003, and October 2005.

Over a period of approximately three years, the parties also negotiated a third amendment that would have, among other things, approved additional advertising locations; authorized half of the

³ This number was shared by Janet Deutsch.

Summary of Clear Channel Practices at San Jose International, Oakland International, San Francisco International (SFO) and City of Los Angeles

Date: February 7, 2012

Page: 4

rent collected from certain locations to be shared with the appropriate airline or SFOTEC; and exercised all three, 1-year options for a new expiration date of March 31, 2014. This amendment was approved by the Airport Commission and sent to the Board of Supervisors for approval, but SFO staff subsequently requested that the resolution be tabled. On October 22, 2010, SFO informed Clear Channel that because of the "considerable challenges" that it had faced trying to obtain the Board of Supervisors' approval of the amendment, SFO had opted to not pursue this amendment any further.

LOS ANGELES

The practices of Clear Channel Outdoor, Inc., the company that operates Clear Channel Airports, with the City of Los Angeles are also revealing. In 2006, Clear Channel Outdoor, Inc., along with CBS Outdoor, Inc. entered into an extremely favorable settlement agreement, which was approved as a Stipulated Judgment, with the City of Los Angeles that exempted them from a series of ordinances that banned the placement or modification of new off-site signs and granted them the right to obtain permits to modernize up to one-quarter of their inventory. This settlement agreement afforded them significant business advantages over their competitors. For example, pursuant to the terms of the settlement agreement, Clear Channel Outdoor, Inc. received permits to convert at least 40 off-site signs to digital display. Such permits violate the Los Angeles municipal code.

In August 2008, Summit Media LLC, another outdoor sign company, sought a writ of mandate to order the City of Los Angeles to set aside this settlement agreement because it was "an invalid, illegal and ultra vires act." It also requested the revocation of all permits and authorizations issued pursuant to the settlement agreement.

While the case was pending before the Court of Appeals, Clear Channel Outdoor, Inc. made "sporadic efforts...to find a willing ear in the City for its overtures" to discuss settlement of the case. As late as July 2012, Clear Channel Outdoor, Inc. took the position that the Los Angeles "City Council could initiate legislative action which would moot the underlying dispute" in the Summit Media LLC litigation and tried to convince the City that Summit Media did not need to be part of any settlement discussions. A decision was issued earlier this month by the Court of Appeal.

The Court found the settlement agreement illegal and void because a settlement agreement cannot contractually exempt a party from currently existing ordinances that apply to everyone else, and but for the settlement agreement, would apply to the parties. And because the settlement agreement was unlawful, the Court also ordered the revocation of all digital conversion permits granted.



ROSALES LAW PARTNERS LLP

February 8, 2012

BOS-11
File 130072

Mara E. Rosales
mara@rosaleslawpartners.com

Via Hand Delivery

Ms. Angela Calvillo
Clerk of the Board of Supervisors
1 Dr. Carlton B. Goodlett Place
City Hall, Room 244
San Francisco, Ca. 94102-4689

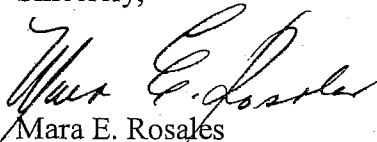
Subject: Courtesy Copies of JCDecaux North America Inc.'s Protest to the Airport Commission's Award of the SFO Advertising Lease to Clear Channel Airports.

Dear Ms. Calvillo:

The Airport Commission has submitted a proposed resolution seeking the Board of Supervisors' approval of the Airport Advertising Lease to Clear Channel Airports. Enclosed please find eleven (11) courtesy copies of JCDecaux North America Inc.'s Protest to the Airport Commission's Award of the SFO Advertising Lease to Clear Channel Airports. President David Chiu's copy has been delivered directly to his office. I request that you provide a courtesy copy to each of the other members of the Board of Supervisors. The remaining copy is for the Board's files.

Please do not hesitate to contact me at 415.986.0523 should you have any questions about this matter.

Sincerely,



Mara E. Rosales

MER/tp
Enc.



ROSALES LAW PARTNERS LLP

BOS-11

File 130072

February 8, 2012

Mara E. Rosales
mara@rosaleslawpartners.com

Via Hand Delivery

Ms. Angela Calvillo
Clerk of the Board of Supervisors
1 Dr. Carlton B. Goodlett Place
City Hall, Room 244
San Francisco, Ca. 94102-4689

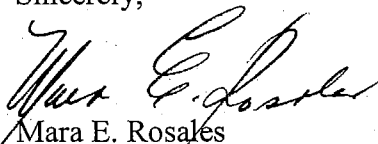
Subject: Courtesy Copies of JCDecaux North America Inc.'s Protest to the Airport Commission's Award of the SFO Advertising Lease to Clear Channel Airports.

Dear Ms. Calvillo:

The Airport Commission has submitted a proposed resolution seeking the Board of Supervisors' approval of the Airport Advertising Lease to Clear Channel Airports. Enclosed please find eleven (11) courtesy copies of JCDecaux North America Inc.'s Protest to the Airport Commission's Award of the SFO Advertising Lease to Clear Channel Airports. President David Chiu's copy has been delivered directly to his office. I request that you provide a courtesy copy to each of the other members of the Board of Supervisors. The remaining copy is for the Board's files.

Please do not hesitate to contact me at 415.986.0523 should you have any questions about this matter.

Sincerely,



Mara E. Rosales

MER/rp
Enc.



ROSALES LAW PARTNERS LLP

February 8, 2013

Mara E. Rosales
mara@rosaleslawpartners.com

Honorable David Chiu
President, San Francisco Board of Supervisors
City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102-4689

Honorable Dennis J. Herrera
City Attorney
City Hall
1 Dr. Carlton B. Goodlett Place, Room 234
San Francisco, CA 94102-4689

Re: JCDecaux's Protest to the Airport Commission's Award of the SFO Advertising
Lease to Clear Channel Airports

Dear Supervisor Chiu and City Attorney Herrera:

The undersigned represents JCDecaux North America Inc. ("JCDecaux"). We understand that the Airport Commission has submitted a proposed resolution seeking the Board of Supervisors' ("Board") action on the Commission's October 30, 2012 award of the SFO Advertising Lease ("Lease") to Clear Channel Airports ("Clear Channel"). This letter and its attachments constitute JCDecaux's protest to the Airport Commission's requested action. A similar protest was presented to, and denied, by the Airport Commission.

Under Charter Section 9.118(c) "any lease of real property...having an anticipated revenue to the City and County of one million dollars or more...shall *first* be approved by resolution of the Board of Supervisors." (Emphasis added.) The Board of Supervisors' authority under this Charter section is plenary: it may agree or disagree, in whole or in part, with the Commission's recommendation. Accordingly, the Board may: (1) entertain JCDecaux's bid protest de novo, and sustain it; (2) reject or not adopt the proposed resolution awarding the Lease to Clear Channel; and (3) proceed with the award of the Lease to JCDecaux because all the information necessary to find JCDecaux as the most responsible and responsive proposer in the competition is before the Board; or

433 California Street, Suite 630 • San Francisco, CA 94104 • (415) 986-4760 Office • (415) 766-4510 Fax
www.rosaleslawpartners.com

(4) return the matter to the Commission with specific guidance on the factors the Board requires the Commission to consider before the Board will accept a recommendation to award the Lease.

We ask that the Board sustain JCDecaux's protest, which would result in a near numerical tie between JCDecaux and Clear Channel according to the analysis of SFO staff. (As discussed below, if its protest is sustained, JCDecaux's proposal is the highest ranked.) The Board may then conduct a process that allows JCDecaux and Clear Channel to present the merits of their respective proposals to a committee of the Board, followed by a recommendation of contract award to the full Board.¹ In the alternative, we ask that the Board sustain JCDecaux's protest and return the matter to the Airport Commission with appropriate instructions on how to correct the errors identified in the JCDecaux protest and fairly complete the RFP process.

Our request is based on the following:

1. The scoring methodology applied by staff for the financial offer or Minimum Annual Guarantee ("MAG") category in the RFP is not defined in the RFP or its addenda as is customary in City contracting and required by law.

The plain language of the RFP provides that the MAG category will carry 50 points if the RFP instructions are followed. All three proposers complied with the RFP instructions regarding the MAG or financial offer. However, only Clear Channel's proposal received the entire 50 points identified in the RFP. This error is material and prejudicial to JCDecaux. Once the MAG points are properly applied, JCDecaux is the highest ranked proposer by a fraction of a point.

No explanation offered by the City Attorney's Office or Airport staff negates the conclusion that there is error in the scoring of the proposals. Principles of fair play in public contract competitions require that instructions to proposers be clearly stated in writing and material deviations from such instructions (by either the proposers or government decision makers) are not acceptable. This sound public policy, which has been at the center of the City's contracting practices for more than two decades², was emphasized in one of the Airport Commission's own published cases. (See *MCM Construction Inc. v. City and County of San Francisco* (1998) 66 Cal. App. 4th 359.) There, the Court of Appeal stated "[t]he importance of maintaining integrity in government and the ease with which policy goals underlying the requirement for open competitive bidding may be surreptitiously undercut, mandate strict compliance with bidding requirements." (*MCM Construction, Inc.*, supra at

¹ The Airport Commission's authority to award the Lease is pursuant and subject to S.F. Adm. Code Sec. 2A.173, which requires that the Lease be subject to a fair competitive process.

² A review of RFPs issued by SFO between 2006 and 2012, reveals that on at least five occasions, SFO has included an explanation of its sliding scale methodology: RFP for Distributed Antenna Systems at SFO for Cellular and Other Wireless Systems (May 2008); RFP for Operation, Maintenance and Upgrade of Wireless-Fidelity System at SFO (Feb. 2010); RFP for Management and Operations of Public and Employee Parking (Oct. 2011); RFP for SFO Proposals to Provide Shuttle Bus Services (June 2012); and RFP for Contract 9194, Maintenance and Support of Baggage Handling Control Systems (August 2012). MTA's Contract No. CS-163 for professional services also states in writing its scoring methodology (Oct. 2010). (See Exhibit H for illustrations.)

369.) The award of the Lease to Clear Channel is a material deviation from the published RFP, runs afoul of the law and must be reversed by the Board.

2. JCDecaux asks the Board to closely examine the responsiveness of the proposals with respect to other RFP criteria, in particular certified disadvantaged business (DBE/ACDBE) participation and local owner/neighbor offerings.

Among other terms, the RFP asks proposers to provide their best proposal on certified disadvantaged business participation and local neighbor offerings. While these categories are not scored, the RFP includes these categories in the contract award considerations. (RFP, Part III, p.9.) It is noteworthy that JCDecaux, unlike its competitors, heeded the public policy incentives in the RFP and included two minority owned advertising firms in its proposal (essentially creating new capacity/competition in the lucrative airport advertising market) as well as two local business partners that offer significant and innovative opportunity for SFO's 45,000,000 passengers to engage with San Francisco local business and neighborhood communities in ways not seen before. (See Exhibit I.)

3. JCDecaux asks that the Board request the Budget Analyst to assess the commercial reasonableness of Clear Channel's \$10M MAG offer.

The RFP asks proposers to provide their best proposal on (1) business plan and operations/management plan; and (2) minimum economic offer or MAG. The City specifically reserved the right to accept a proposal other than the highest financial offer. (RFP, Part III. 4, p.10.) The incentive to bid higher than the minimum acceptable offer is stated in the RFP: it states that the MAG "is equal to or greater than the Minimum Acceptable Financial Offer..." (RFP, Part II.6(c), p.8.) This language, combined with the guidance that the "most responsive and responsible" proposal is what will determine the winner, pushes the proposer to bid as high as is commercially reasonable. However, the incentive to bid more does not constitute notice that a higher bid will result in more points being awarded. In addition, it does not negate the other factors that go into evaluating the best overall value offered, including qualitative factors.

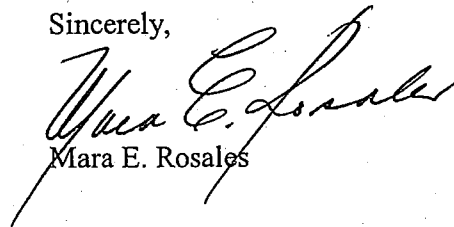
Clear Channel is the incumbent on the current SFO Advertising Lease with average annual gross revenue sales over the past 5 years, as represented by SFO (presumably as reported to SFO by Clear Channel), of \$9.2 million. Clear Channel's \$10M MAG offer for the new Lease opportunity is commercially untenable given its prior sales performance. The unreasonableness of Clear Channel's MAG offer is evident when compared to the two other proposed MAGs (JCDecaux \$8.5M and Titan also \$8.5M) and to SFO's initial Minimum Acceptable Financial Offer of \$7.5M, which was subsequently revised down to \$7M to reflect the removal of several key advertising locations which Clear Channel itself indicated represent \$1.8 million of its current revenue. Clear Channel's MAG offer is 18% above its two similarly situated competitors on the RFP and 43% above the Airport's estimate of a reasonable market based minimum bid. These facts strongly indicate that Clear Channel

Hon. David Chiu
Hon. Dennis Herrera
February 8, 2013
Page 4

is knowingly attempting to “buy” the award of the Lease by overbidding. A contractor that intentionally overbids is not a “responsible” bidder, as that term is legally understood in competitive solicitation matters. (*Taylor Bus Service, Inc. v. San Diego Bd. of Education* (1987) 195 Cal.App.3d 1331, 1341 fn. 4: [“Responsibility means the fitness, quality and capacity of the bidder to satisfactorily perform the proposed work.”]). Moreover, Clear Channel has a demonstrated track record of overbidding MAGs at Bay Area Airports and after contract award seeking MAG adjustments through contract modifications. Clear Channel engaged in this practice at San Jose International and Oakland International Airports during the same time it negotiated a higher MAG at SFO in exchange for additional advertising locations. (See Exhibit J.) These business tactics are known as “loss leader” strategies which are contrary to the public policy of the State of California and should not be tolerated by the City and County of San Francisco.

For all of the foregoing reasons, JCDecaux respectfully requests that the Board of Supervisors decline to adopt the Airport Commission’s proposed resolution awarding the SFO Advertising Lease to Clear Channel and conduct or direct a process which ensures adherence to the published RFP and is consistent with the City’s best practices in the award of contracts, leases and concession agreements.

Sincerely,



Mara E. Rosales

cc: Hon. Members, Board of Supervisors
John L. Martin, Airport Director
Hon. Larry Mazzola, Airport Commission President
Hon. Members, Airport Commission c/o Jean Caramatti, Secretary
Sheryl Bregman, Airport General Counsel
Bernard Parisot, Co-CEO, JCDecaux

EXHIBITS

TO

JCDECAUX PROTEST OF AIRPORT COMMISSION PROPOSED AWARD OF ADVERTISING LEASE TO CLEAR CHANNEL

- A. October 11, 2012 Letter to JCDecaux from Airport announcing plan to award advertising lease to Clear Channel
- B. JCDecaux protest documents presented to Airport Commission on October 26, 2012
- C. October 24, 2012 Response from City Attorney with attachments (1) October 22, 2012 inviting Clear Channel to respond to JCDecaux Protest and (2) October 23, 2012 response to JCDecaux protest
- D. October 29, 2012 Letter from City Attorney responding to October 26, 2012 Rosales Law Partners letter
- E. December 21, 2012 Quadra & Coll, LLP letter to City Attorney
- F. RFP Procedural Timeline
- G. Clear Channel's history of contract modifications at SFO
- H. Excerpts from RFPs setting forth scoring methodology
- I. JCDecaux Local Business/DBE Proposal and Chart
- J. Summary of Clear Channel's practices at other Airports



San Francisco International Airport

October 11, 2012

VIA EMAIL Bernard.parisot@jcdecauxna.com
AND AND U.S. MAIL

Bernard Parisot
co-Chief Executive Officer
JCDecaux Airport, Inc.
3 Park Avenue, 33rd Floor
New York, NY 10016
646-834-1300
Fax 646-834-1400

RE: Result of the San Francisco International Airport ("Airport") Request for Proposal ("RFP") for the Airport Advertising Lease ("Lease")

Dear Mr. Parisot:

Thank you for participating in the proposal process for the above-mentioned Lease. We received proposals from your company as well as Clear Channel Airports and Titan Outdoor, LLC. An evaluation by a three-member panel has determined that Clear Channel Airports is the highest ranking, responsive and responsible proposer, and has been identified as the apparent successful proposer.

We plan to recommend that the Commission award the Lease to Clear Channel on October 30, 2012. Upon the award of the Lease, we will return your original proposal deposit in the amount of \$1,750,000.

The Airport appreciates your interest and hopes that JCDecaux will continue to participate in future opportunities. Please feel free to contact Gigi Ricasa of my staff at (650) 821-4500 if you have any questions.

Very truly yours,

Cheryl Nashir
Associate Deputy Airport Director
Revenue Development and Management

cc: Gigi Ricasa
Stacy Kodak, JCDecaux (via email Stacey.kodak@jcdecauxna.com)

AIRPORT COMMISSION CITY AND COUNTY OF SAN FRANCISCO

EDWIN M. LEE
MAYOR

LARRY MAZZOLA
PRESIDENT

LINDA S. CRAYTON
VICE PRESIDENT

ELEANOR JOHNS

RICHARD J. GUGGENHIME

PETER A. STERN

JOHN L. MARTIN
AIRPORT DIRECTOR

Post Office Box 8097 San Francisco, California 94128 Tel 650.821.5000 Fax 650.821.5005 www.flysfo.com

Airport Advertising Lease

10/4/2012

CRITERIA	Clear Channel			JCDecaux			Titan		
	WEIGHT	P1	P2	P3	Weighted Points	P1	P2	P3	Weighted Points
1 Business Plan (15 points)									
(i) Eight years proforma showing projected sales, revenue to the Airport, expenses, and net income. Proposers are to use the format shown on Submittal 7, attached hereunder. The pro forma should demonstrate an understanding of the proposed lease and will be considered for its reasonableness and viability of proposed operation and financial offer, and the ability to fund continuing operations from the cash flow generated by the operation.	15%	12.00	9.00	12.00	11.00	9.00	9.00	9.00	9.00
	15%	12.00	9.00	12.00	11.00	9.00	9.00	9.00	9.00
2 Design Intent/Construction (20 points)									
(i) Overall appeal and quality of advertising mediums, reflecting the location's aesthetics.	10%	8.00	6.00	6.00	6.67	6.00	8.00	6.00	6.67
(ii) Identify the source of funds and amounts for capital investment required by the Lease and working capital	5%	4.00	4.00	5.00	4.33	4.00	4.00	4.00	3.67
(iii) Plan for construction, reflecting on the plan check period and construction period.	5%	4.00	3.00	3.00	3.33	3.00	3.00	4.00	3.67
	20%	16.00	13.00	14.00	14.33	13.00	15.00	14.00	14.00
3 Operations/Management Plan (15 points)									
(i) Ability to maximize sales, revenue, taking into consideration the Airport's Advertising Policy	4%	3.20	2.40	3.20	2.93	3.20	1.60	3.20	2.67
(ii) Marketing efforts	4%	3.20	3.20	4.00	3.47	3.20	4.00	4.00	3.73
(iii) Pricing Structure	3%	2.40	1.80	2.40	2.20	2.40	1.80	2.40	2.20
(iv) Installation procedures taking into account Airport procedures	2%	1.60	1.20	1.60	1.47	1.60	1.20	1.60	1.47
(v) Maintaining of Advertising Equipment	2%	1.60	1.20	1.60	1.47	1.60	1.20	1.60	1.47
	15%	12.00	9.60	12.80	11.53	12.00	9.60	12.80	11.53
4 Proposed Minimum Annual Guarantee (50 points)	50%	50.00	50.00	50.00	50.00	42.50	42.50	42.50	42.50
TOTAL POINTS:	100%	90.00	61.80	68.80	86.87	76.50	72.30	89.30	79.37
		74.60	75.50	74.60	74.63	74.60	75.50	74.60	74.63

JCDecaux

Jean Caramatti
Secretary
San Francisco Airport Commission
San Francisco International Airport
International Terminal G, North Shoulder Building, 5th Floor
P. O. Box 8097
San Francisco, CA 94128-8097

October 26, 2012

Out of Home Media

Subject: JCDecaux's Protest to the Recommended Award of the Advertising Lease to Clear Channel Airports


Dear Ms. Caramatti:

I request that you provide a copy of the attached documents to the Airport Commissioners before their meeting on October 30, 2012. The documents contain the basis and support for JCDecaux's protest to the staff recommendation to award to Clear Channel Airports.

In short, JCDecaux's position is that Clear Channel Airport is not entitled to the award of the lease because it is not the "highest ranked responsible and responsive Proposer" as set forth in the RFP.

We also ask that this letter and attachments be made part of the Commission's records.

Sincerely,



Bernard Parisot
Co-Chief Executive Officer

cc: Mara E. Rosales

JCDecaux

VIA HAND-DELIVERY, EMAIL Leo.Fermin@flysfo.com
AND FACSIMILE (650) 821-5005

Out of Home Media

Leo Fermin

October 17, 2012

Deputy Airport Director, Business & Finance
San Francisco International Airport, International Terminal
North Shoulder Building, 5th Floor
P. O. Box 8097
San Francisco, CA 94128

Re: Protest to Proposed Contract Award to Clear Channel Airports
(RFP Airport Advertising Lease)

Dear Mr. Fermin:

On October 11, 2012, JCDecaux received notice from SFO staff that Clear Channel Outdoor Inc., doing business as Clear Channel Airports (Clear Channel) is the highest ranked proposer pursuant to the Request for Proposals (RFP) for the award of the Airport Advertising Lease (Lease).

JCDecaux respectfully submits this protest to the proposed award of the Lease to Clear Channel. The basis of our protest is summarized as follows:

1. The proposals have not been scored in a manner consistent with the Evaluation Criteria specified in the RFP.
2. There is a mathematical error in the addition of JCDecaux's scores.
3. The scores awarded to JCDecaux by scorer P2 on two criteria are impermissibly irrational.
4. Clear Channel's Minimum Annual Guarantee (MAG) offer is commercially unreasonable and should be rejected as a financially irresponsible offer.

For all of the above reasons, JCDecaux is the successful proposer pursuant to the RFP and should be awarded the Lease. We discuss these points in detail below.

JCDecaux

1. Misapplication of RFP Evaluation Criteria

The RFP plainly states the controlling evaluation and award process. It describes four principal components of what proposals must contain and how proposals will be evaluated: (1) proposers must satisfy the RFP's minimum qualifications; (2) proposers must also recognize and address the goals stated in the RFP; (3) proposals must offer a concession opportunity which is reflective of the City and the Bay Area; and (4) proposers "must propose a [MAG] for the first Lease Year which is equal to or greater than the Minimum Acceptable Financial Offer..." (RFP Part II, par. 6. c. "Evaluation Criteria, Minimum Annual Guarantee Offer, and Financial Pro Forma"; Part III "Evaluation and Award Process".) The RFP's "Evaluation Criteria" is more specifically set forth in Submittal 4. Submittal 4 describes how the scoring points will be applied during the evaluation of the proposal:

Submittal 4 will consist of the Proposer's response to the Evaluation Criteria below. A thorough discussion/demonstration of all points below must be included in proposal with the exception of the Minimum Annual Guarantee Offer, which will be submitted on the attached form "Submittal 5." Proposals will be evaluated on the criteria below and scored according to the point scale shown.

The RFP clearly provides an evaluation process which is both qualitative and quantitative. "The Business Plan, Design/Intent Construction and Operations/Management Plan" categories in a proposal will be judged on the quality of the proposal's offerings. Given the subjectivity of these categories, one easily understands that the points will be awarded on a rational but not rigidly mathematical basis given the nature of the qualification (e.g. design) which is being evaluated. Naturally, in such a subjective process the "score" or "grade" a proposer receives may vary from panelist to panelist within reasonable parameters. By contrast, the Minimum Annual Guarantee criterion is stated simply as a quantitative category. Any MAG offer consistent with the RFP's instruction that it match or exceed the Minimum Acceptable Offer should receive a score of 50 points. (See RFP, Part II, par. 6.c.)

Given the above, JCDecaux's MAG offer must receive 50 points. The score sheet provided by staff reflects that JCDecaux's MAG offer received 42.50 points. This point allocation is erroneous pursuant to the RFP's instructions. If the Airport intended a qualitative approach to the evaluation of the MAG offer, it

JCDecaux

was required to provide notice to the proposers in the RFP. Applying an after-the-fact subjective standard to the published Evaluation Criteria is contrary to the principles of due process and fair play underlying a competitive solicitation process. (See *Domar Electric, Inc v. City of Los Angeles* (1994) 9 Cal.4th 161, 173.) Such an approach is also inconsistent with the manner the Airport itself and the City approach RFPs for other solicitations. (See and *cf.* SFO RFP for Contract 9194, Maintenance and Support of Baggage Handling Control Systems, dated August 24, 2012, Section IV "Evaluation & Selection Criteria", par. B4 "Fee Proposal"; HRC Rules & Regulations implementing Local Business Enterprise Ordinance (2010) Section IV.G.7.: ["Each evaluator will score each consultant on a predetermined point system,...in a fair and objective fashion."])

2. The Mathematical Errors in the Score Sheet

Your October 11, 2012 letter included a spreadsheet, which purports to set forth the scores received for each proposer. The "Weighted Points" totals for sections 2 and 3 were miscalculated. JCDecaux should have received 14.34 points for section 2 and 11.54 points for section 3. When added, together with the section 1 points and full points awarded for the MAG offer, JCDecaux's total score should be 86.88, placing it ahead of Clear Channel.

3. Scorer P2 did not score JCDecaux fairly or within permissible limits

Scorer P2 gave JCDecaux a 4.0 on the overall appeal and quality of advertising mediums, while awarding Clear Channel a 6.0 and Titan Outdoor, LLC (Titan) an 8.0. Scorers P1 and P3 gave JCDecaux a 6.0 and a 10.0 respectively. JCDecaux is universally acknowledged to be the industry leader in design and aesthetic quality not just in the United States, but specifically in San Francisco where JCDecaux street furniture has received consistently high reviews for the past 17 years. It is not rational, therefore, that JCDecaux would be awarded half the points that were given to Titan, a company that specializes in transit advertising and does not have a single advertising panel anywhere, including in San Francisco, that could be even remotely compared to one of JCDecaux's fixtures.

Similarly, on the ability to maximize sales, scorer P2 gave JCDecaux a 1.6 score versus 2.4 to both Clear Channel and Titan. The other 2 scorers gave JCDecaux the maximum score on this criterion, i.e. 3.2. As presented in our response to this RFP, JCDecaux's advertising sales performance in large U.S. airports comparable to SFO is second to none. Over the difficult 2006-2011 period, JCDecaux's revenue in large U.S. airports grew by 82%, while Clear Channels revenues in large U.S. airports increased by 5% only and by 23% at San

JCDecaux

Francisco International Airport. In terms of revenue generated by passenger, JCDecaux held seven of the eight top spots in large U.S. airports in 2011. SFO came in 10th, 65% lower than JFK and 30% lower than LAX where JCDecaux operates the advertising concessions. As far as Titan is concerned, their sole advertising concession is Westchester County Airport, a small regional New York State airport, which they won two months ago. Their track record in terms of advertising sales for their transit contracts is such that in 2009, they negotiated reductions in their fees obligations for all of their contracts, except in New York where the MTA terminated their concession agreement for default of payment of their MAG. It is therefore hard to understand how JCDecaux could score less than these two companies on that criterion.

4. Clear Channel's MAG offer is Commercially Unreasonable and Constitutes a Financially Irresponsible and Illusory Proposal

Clear Channel is the incumbent on the current SFO Advertising Lease. Its average annual sales, over the past 5 years, as represented by SFO (presumably as reported to SFO by Clear Channel) are \$9.2 million. Clear Channel's \$10M MAG offer for the new Lease opportunity is commercially untenable given its own sales performance on the same lease. The unreasonableness of Clear Channel's MAG offer is evident when compared to the two other proposed MAGs (JCDecaux \$8.5M and Titan also \$8.5M) as well as the SFO's Minimum Acceptable Offer of \$7.5M initially, which was subsequently revised down to \$7M to reflect the removal from the inventory made available to the new concessionaire of several key advertising locations which Clear Channel itself indicated represent \$1.8 million of its current revenue. Clear Channel's MAG offer is 18% above its two similarly situated competitors on the RFP and 43% above the Airport's estimate of a reasonable market based minimum bid. These facts strongly support a conclusion that Clear Channel is knowingly attempting to "buy" the award of the Lease unfairly by overbidding.

A contractor who intentionally overbids is not a "responsible" bidder, as that term is legally understood in competitive solicitation matters. (*Taylor Bus Service, Inc. v. San Diego Bd. of Education* (1987) 195 Cal.App.3d 1331, 1341: ["Responsibility means the fitness, quality and capacity of the bidder to satisfactorily perform the proposed work."]; see also Public Contract Code §1103: ["'Responsible bidder,' as used in this part, means a bidder who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity, and experience to satisfactorily perform the public works contract".] The Airport should investigate Clear Channel's financial responsibility to honor its MAG commitment for the 8-year term of the Lease to ensure Clear Channel meets the RFP's and legal standard of "responsible" proposer/bidder. (RFP, Part

JCDecaux

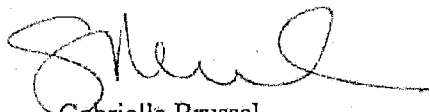
IV, par. 13.c: [Airport Commission has right to “[r]equest a credit report and additional financial information from each Proposer.”]

Irrespective of that “responsibility” determination, in light of facts known to us, Clear Channel’s bid is commercially unreasonable and amounts to an illusory proposal. Clear Channel is not new to this type of unreasonable bidding: in 2007, Clear Channel bid \$4.075M in MAG for the advertising concession at Mineta San Jose International Airport, where JCDecaux’s revenue history was between \$3M to \$4M. Since then, Clear Channel’s sales at that airport have not exceeded \$2.05M. Similarly, that same year, Clear Channel offered a \$3.75M to \$5M MAG for the advertising concession at Seattle-Tacoma International Airport, where JCDecaux previously generated \$5M in sales. Since then, Clear Channel’s sales have not exceeded \$5.05M at that airport, and were down to \$3.7M in 2011, with a further 18% decline in the first half of 2012. Under California law it is against public policy for a company to win a public contract award with a bid that is offered at a loss to the company. This type of practice is referred to as a “loss leader”. California law identifies a “loss leader” practice – e.g. the sale of a product where the effect is to divert trade from or otherwise injure competitors, as an unfair trade practice. (See Bus.Prof. Code §17030.) A monetary offer which is commercially unreasonable and unreliable should not be entertained by the City, particularly from an incumbent with insider information that promises to perform better for the City going forward than its record demonstrates it has done in the past. If Clear Channel’s MAG offer is rejected, Clear Channel becomes a non-responsive proposer and is not entitled to the award of the Lease.

CONCLUSION

When the RFP’s scoring criteria and points are properly applied, JCDecaux is the highest ranked proposer. Accordingly, we respectfully request that the Airport sustain this bid protest and recommend that the Airport Commission award the Lease to JCDecaux on October 30, 2012.

Sincerely,



Gabrielle Brussel
Executive Vice President, Legal Affairs and General Counsel

cc: Bernard Parisot



ROSALES LAW PARTNERS LLP

October 26, 2012

Mara E. Rosales
mara@rosaleslawpartners.com

VIA MESSENGER; EMAIL

David Serrano Sewell
Deputy City Attorney
Office of the City Attorney
San Francisco International Airport
International Terminal G, No. Shoulder Bldg., 5th Floor
P. O. Box 8097
San Francisco, CA 94128

Subject: Reply to Denial of Protest Letter, dated October 24, 2012; Request for
Reconsideration of JCDecaux North America, Inc.'s Protest

Dear David,

Your October 24, 2012 letter to JCDecaux's General Counsel Gabrielle Brussel has been referred to me for response. We ask that the City Attorney reconsider its legal position based on the following two points: (A) the interpretation of the RFP as stated in your letter is not well supported in fact or law and (B) Clear Channel Airports' ("Clear Channel") response to the protest letter, upon which you rely, does not address the key issue addressed in the protest letter, namely, Clear Channel's irresponsible pattern and practice of bidding higher than a reasonably achievable Minimum Annual Guarantee ("MAG") at sister airports and thereafter seeking MAG or economic relief once awarded the lease. It is our contention that this practice is particularly relevant to a determination of whether Clear Channel is the "most responsive and responsible Proposer" entitled to the award of the lease as set forth in the RFP (RFP, Part III, para.4.)

A. Misapplication of the RFP Evaluation Criteria

We are pleased that you read the RFP as we do--"that the MAG score of 50 points was assigned using a specific methodology." We disagree, however, with your statement that "the methodology was not applied after the fact or contrary to the RFP." Your support for this statement is that the sliding scale application of the MAG methodology was explained orally at a non-mandatory informational conference. This admission alone is sufficient cause for you to sustain JCDecaux's protest that its proposal is entitled to receive the 50 points for the MAG category. The RFP clearly states that:

1. "Proposers are encouraged to attend the Informational Conference ...", where "questions will be addressed" and "any new information will be provided..." (RFP, Part II, para. 2.) The public is told that the "Airport will keep a record of all parties who attend the Informational Conference" and that "substantive replies will be issued as written addenda and posted on-line..." (*Id.*)
2. Any amendments to the RFP will be issued in writing by an addendum. (RFP, Part IV, para. 7.)

Under the RFP rules established by the Airport Commission, oral representations or modifications do not suffice to change the instructions in the RFP. The Airport's own website explaining the competitive selection process for concessions contracts states that the RFP documents will include "the selection criteria that the Airport will use in evaluating the proposal" and goes on to explain that following the Informational Conferences, notices will be sent to the participants "of any changes to the qualifying criteria, business terms, or selection process." (<http://www.flysfo.com/web/page/about/b2b/conces/general.html>).

Notably, your "oral amendment" argument is also without any legal basis. The Commission is bound to follow its own RFP solicitation procedure. (*MCM Construction, Inc. v. City & County of San Francisco* (1998) 66 Cal.App.4th 359, 368-9 quoting *Valley Crest Landscape, Inc. v. City Council* (1996) 41 Cal.App.4th 1432, 1435 [re: award of SFO construction contract].) As the Court of Appeal stated in one of the Airport Commission's own published cases, "[t]he importance of maintaining integrity in government and the ease with which policy goals underlying the requirement for open competitive bidding may be surreptitiously undercut, mandate strict compliance with bidding requirements." (*MCM Construction, Inc. supra* at 369.) Furthermore, the failure of a public agency to follow the "precise specifications in its public call for bids leaves bidders in the unfair position of having to guess what will satisfy the [agency's] needs." (*Konica Business Machines U.S.A. v. Regents of the University of California* (1988) 206 Cal.App. 3d 449, 457.) In an action for writ of mandate, the Court has the power to "direct an agency to follow its own rules when it has a ministerial duty to do so or when it has abused its discretion." (*Pozar v. Department of Transportation* (1983) 145 Cal.App. 3d 269, 271, citing *Glendale City Employees' Assn., Inc. v. City of Glendale* (1975) 15 Cal.3d 328, 344-345.)

The public interest is not served when the Commission does not comply with its own published rules of procedure. Such action will undermine the credibility of the fairness of the Commission's competitive processes.

Following the applicable law and as a matter of public policy, JCDecaux's MAG proposal must receive 50 points. We ask that you re-visit your conclusion to the contrary.

B. Clear Channel's MAG Offer is Commercially Unreasonable and Constitutes a Financially Irresponsible and Illusory Proposal

Your response letter to JCDecaux's challenge to the commercial viability of Clear Channel's MAG offer misses the central point of the protest. Asking Clear Channel whether it will stand

David Serrano Sewell

October 26, 2012

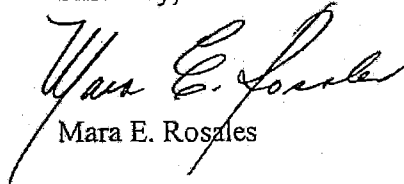
Page 3

by its financial proposal today does not address the legitimate question raised by Clear Channel's conceded business practices, to overbid MAG offers and not perform. Based on public information we have obtained thus far, Clear Channel has a current practice with at least two Bay Area airports to promise to meet its contractual obligations at contract award only to reverse course once the contract is awarded. We have attached information from San Jose International and Oakland International Airports which confirm that Clear Channel's promises at contract award are unreliable precisely because, as here, they have proposed a MAG, which under similar circumstances, was not reasonably achievable.

Tellingly, Clear Channel does not rebut these allegations other than to dismiss them as "irrelevant" and to note it has "not defaulted" on the mentioned contracts. These explanations are unsatisfactory as well as inaccurate. Avoiding the question does not answer the concern. Indeed, a close look at Clear Channel's actions at San Jose and Oakland Airports reveals that Clear Channel is not in default only because it has managed to successfully negotiate contract amendments with those airports. Clear Channel explains that it leverages its SFO relationship "as part of its pitch" to obtain advertisers in its advertising network. It appears that Clear Channel also relies on the SFO business relationship to overpromise to other Bay Area airports its ability to successfully market their airports. These business practices are in fact "loss leader" strategies which are contrary to the public policy of the State of California.

The facts warrant a deeper inquiry by SFO to San Jose, Oakland and Sea-Tac Airports than your letter states has occurred.

Sincerely,



Mara E. Rosales

MER:rp

cc: Dennis J. Herrera, City Attorney
Sheryl Bregman, Airport General Counsel
Leo Fermin, Deputy Airport Director – Business Finance (RFP Protest Officer)
Gabrielle Brussel, JCDecaux, General Counsel
Bernard Parisot, JCDecaux

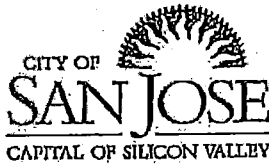
SAN JOSE INTERNATIONAL AIRPORT

SENT TO COUNCIL:

Distributed on:

NOV - 9 2011

City Manager's Office



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: William F. Sherry, A.A.E.

SUBJECT: RESPONSE TO COUNCIL
REFERRAL 10-25-11-2.7
REGARDING CLEAR
CHANNEL

DATE: November 7, 2011

Approved

Date

11/9/11

INFORMATION

During the October 25, 2011 Council Meeting, Councilmember Rocha asked the Airport Staff for information on the timing of the negotiations with Clear Channel Advertising and how often the Airport staff is meeting with them.

The Clear Channel 3rd Amendment was dropped from the Council Agenda due to receipt of Clear Channel's October 14 letter that again requested to restructure the Agreement and reduce the Minimum Annual Guarantee (MAG) even further than we already have. The City has provided Clear Channel with \$4,297,349 in financial relief and we offered to provide an additional \$296,000 in savings by consolidating their capital investment requirements and offering them free office space that would normally carry a charge of \$64,879 per year. It's important to note that Clear Channel set their financial responsibilities under this contract through a bidding process, fully aware of the business risks. In other words, it was not the City that set the MAG and other financial requirements but, rather, Clear Channel. Additionally, as a self-sufficient enterprise operation, the Airport would have to shift any further financial relief granted to Clear Channel to other airport tenants, something staff believes is not appropriate given the circumstances.

During the negotiations with Clear Channel, the parties (Clear Channel and Airport staff) agreed to these concessions on the belief that Clear Channel was satisfied with them and would not seek further reductions. After receiving Clear Channel's October 14 letter it became clear that was not the case. We have written a response to Clear Channel explaining our position.

Staff is in regular contact with Clear Channel. Clear Channel typically comes to the Airport a couple of times a year to meet in person to discuss their concerns with the MAG and request

HONORABLE MAYOR AND CITY COUNCIL

November 7, 2011

Subject: Response to Council Referral 10-25-11-2.7 on Clear Channel

Page 2

financial relief. The last meeting was on March 9, 2011. We are certainly available to meet more frequently, but this is all that Clear Channel has requested. We have always had an open dialog and will continue to do so.

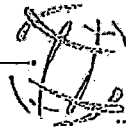
/s/

William F. Sherry, A.A.E.
Director of Aviation

For questions, please contact Kim Aguirre at 408-392-3620.

Attachments: Letter to Clear Channel dated November 4, 2011
Letter from Clear channel dated October 14, 2011

NORMAN Y. MINETA
SAN JOSE
INTERNATIONAL
AIRPORT



SILICON VALLEY'S AIRPORT

November 4, 2011

Toby Sturek
President
Clear Channel Airports
4635 Crackersport Road
Allentown, PA 18104

Dear Toby:

In response to your letter dated October 14, 2011, in which you again requested to restructure our agreement, I simply cannot provide you with additional financial relief. I believe that I have addressed your concerns in my previous letter to you dated August 3, 2011, but I want to respond to your latest letter.

The current economic state of this country has been a surprise to most observers and the result at SJC has been reduced flights and passengers. This has impacted the bottom line of concessionaires and the Airport. The Airport has taken drastic steps by cutting its staff in half and requiring that remaining employees take significant reductions in pay. We are not in a position to provide you with additional financial relief.

Please remember that the Airport has already provided Clear Channel with \$4,297,349 in financial relief and the City has offered to provide you with an additional \$296,000 in savings by consolidating your capital investment requirements and providing you with office space free of charge that would normally rent for \$64,879 per year. This is contingent on you not pursuing any further MAG reduction. This will bring your total financial relief to almost \$5 million, a significant amount that the Airport was not obligated to offer and much greater than any temporary relief provided to the food & beverage and retail concessionaires in Terminal A+.

The City has provided Clear Channel with premium advertising sites, many of which remain undeveloped and underutilized. In addition, we amended the agreement to provide Clear Channel with new advertising sites without a corresponding increase in MAG and without a minimum capital investment requirement. We believe that these additional sites are more than adequate to compensate Clear Channel for any lost advertising opportunities that may have resulted from the temporary inactivation of the six gates in Terminal A+, and we hope that you will take advantage of these opportunities.

November 3, 2011

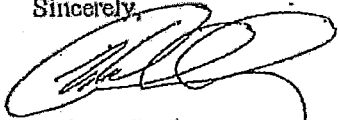
Page 2

The current gate capacity in Terminal A+ will allow for expansion by existing airlines and provide space for new and relocated airlines. Due to the growth of Alaska Airlines, and the unbalanced passenger traffic between the terminals, I expect that Delta Airlines will relocate to Terminal A+ in the next few months. Based on the previous 12 months, that will bring an additional 460,000 total passengers to Terminal A+ when combining Delta Airlines and its affiliates.

While the closure of the American Airlines lounge was disappointing to both you and the Airport, the lounge is not a condition of our agreement. However, you should be aware that we have begun working with an architect to design a new common use lounge. In addition, one existing domestic airline and one potential international airline have expressed interest in exclusive lounges of their own.

As always, thank you for your continued understanding and cooperation. Should you have any questions or would like to discuss these issues further, please feel free to contact me.

Sincerely,



William F. Sherry
Director of Aviation

Cc: Mayor Chuck Reed
City Council
Kim Aguirre

NORMAN Y. MINETA
SAN JOSE
INTERNATIONAL
AIRPORT

SILICON VALLEY'S AIRPORT

1701 Airport Boulevard, Suite B-1130 • San Jose, CA 95110-1206 • Tel 408.392.3600 • Fax 408.443.4591 • www.flysanjose.com

CITY OF
SAN JOSE
CIVILICITY



4635 Crackersport Road, Allentown, PA 18104
T 610.395.8002 Toll Free 800.628.6800 F 610.395.4450

October 14, 2011

Mr. Bill Sherry
Director of Aviation
San Jose International Airport
1701 Airport Boulevard, Suite B-1130
San Jose, CA 95110-1206

RECEIVED
OCT 17 2011
Director of Aviation
San Jose Intl. Airport

Dear Bill,

I was disappointed to receive your letter dated August 3, 2011, declining my request to grant Clear Channel Airports (CCA) MAG relief consistent with other concessionaires as a result of the gate closures in terminal A+.

In your letter, you indicate that, unlike HOST, CCA was offered substitute concession space in other locations. Unfortunately, although CCA was offered additional locations, that does not rectify the situation. In fact, what has occurred as a result of the compressed traffic flow is advertisers can now reach the same number of passengers by purchasing less signage. Unlike Food and Beverage concessions, advertising does not take money directly from passengers. Duplicating locations in the same area only cannibalizes existing advertising revenue streams. Additionally, relocating inventory does not resolve the fact that we are expected to continue paying rent in an area that the airport has reduced weekly flights from 147 to 14 or 88%.

In our concession agreement dated July 1, 2007, CCA is contractually obligated to pay a MAG for each individual sign location. If the reduction in flights and closure of gates impact the area of which these signs are located, how can we possibly be expected to pay rent at 100% when traffic has declined 88%? The attached map illustrates the number of advertising locations impacted by the gate closures. In this particular space, CCA pays a total annual lease cost of \$1.2 million. To add to the matter, American Airlines closed their VIP lounge in Terminal A+ and has no plans to relocate this prestigious space. The American Frequent Flyers are a highly sought after demographic which attracts the national advertiser. This area is essential to our sales packaging across all terminals. The loss of this particular space only magnifies our problem beyond the value of the MAG. In fact, the loss of this space impacts our total advertising sales program at SJC.

In April 2011, we offered the airport a proposal to restructure the contract that included a \$10 million one-time lump-sum payment. Assuming we were able to restructure the contract under those terms, the closure of gates in terminal A+ would not be an issue. However, that proposal was simply denied. In fact, in both cases, there was no negotiation or dialogue from airport staff as to how a deal could be structured.

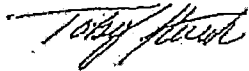
Bill, I respectfully request that this matter be seriously considered. I also request that you and your team consider an open dialogue with me to amicably resolve this matter. As proposed in my letter dated July 19, 2011, I am

clearchannelAIRPORTS.com

readily available to meet directly with you and your team to resolve this matter expeditiously.

Thank you in advance for your time and consideration.

Respectfully,

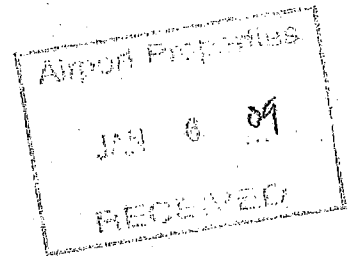


Toby Sturek
President, Clear Channel Airports

cc: Kimberly J. Aguirre, Chief Operating Officer, SJC Airport
Mayor Chuck Reed
Pete Constant, City Council, District 1
Ash Kalra, City Council, District 2
Sam Liccardo, City Council, District 3
Kansen Chu, City Council, District 4
Xavier Campos, City Council, District 5
Pierluigi Oliverio, City Council, District 6
Vice Mayor Madison Nguyen, City Council, District 7
Rose Herrera, City Council, District 8
Donald Rocha, City Council, District 9
Nancy Pyle, City Council, District 10
Jerry Strangis, Strangis Properties

OAKLAND INTERNATIONAL AIRPORT

December 30, 2008



Mr. Steve Grossman
Director of Aviation
Port of Portland
530 Water Street
Oakland, CA 94607

RE: Advertising Concession Contract

Dear Mr. Grossman,

As you are aware, Alliance Airport Advertising participated in the spring 2008 advertising RFP for Oakland International Airport. Alliance held the highest scores in all categories except one (guaranteed payment to the Port) and in fact, averaged the highest score overall by the Evaluation Committee.

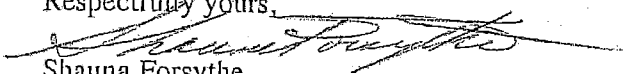
Alliance foresaw the challenges coming in the airline industry and the financial markets. We bid a Minimum Annual Guarantee based on this belief. We did comply with the 50/50 revenue share, and all other components of the RFP. Our track record in other airports proves that with only one exception, we generate far more revenue in our splits than is required in a MAG.

As the final scores were tight, and though Alliance had the higher score overall, the Committee felt that our nearest competitor, Clear Channel Interspace, must be awarded the contract solely because of the guaranteed payment (MAG) offered the Port. We did not protest the award out of respect for OAK and the factors affecting your decision.

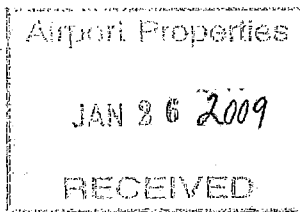
We are aware that passenger counts have reduced significantly at OAK during the past few quarters. True to our belief, the airport and airline industries, and the overall economy have weakened significantly.

We write today to advise that, if the Port or Airport is asked to reconsider the MAG due and payable by Clear Channel Interspace, we request the entire contract be reconsidered. This is especially significant in light of Alliance's overall performance in every other category within the RFP. It would be unfair to allow Clear Channel/Interspace to reduce or change the payments under the terms of this agreement when Alliance was penalized only for a lower guaranteed MAG.

Respectfully yours,


Shauna Forsythe
President & CEO

cc: Skip Conrad, Mgr, Airport Properties
Janet Deutch, Concession Manager, Airport Properties



Michael Riley
President

January 19, 2009

Mr. Marcel E. Conrad, III
Airport Properties Department
Oakland International Airport
9532 Earhart Road, Suite 201
Oakland, CA 94621

RE: Request for Delayed Payment of Minimum Annual Guarantee

Dear Skip:

Due to many design revisions and continuing delays in the approval of Clear Channel Airports' display advertising fixture program installation at Oakland International Airport, we respectfully request that the Port of Oakland allow for a temporary delay in the payment of the monthly installments of the Minimum Annual Guarantee, which were scheduled to begin upon the installation of our display inventory program, or January 1, 2009, whichever came first.

Over the past five months, we have submitted several sets of plans and detail drawings to your staff, yet we are still awaiting final approval of said plans and the appointment of a Port of Oakland Project Manager. These approvals and appointments will allow us to begin fabrication of our displays, as well as our final engineering and permit drawings, so that we would be able to install new electrical connections, ship and install all units in time for an early April '09 install.

I have attached a time line of activities and meeting notes to illustrate that we have contributed our best efforts in getting all of the design comments and changes completed and to your office for final review and approval. If further delays are encountered and unless we can not start building anything, the potential install date will move accordingly.

The request for the delay in the MAG payments comes from the fact that without the installation of our new program, we simply cannot sell those inventory locations to our potential clients, and in turn, pay either a percentage of those sales as rent to the Port of Oakland as an off-set or overage to our monthly Minimum Annual Guarantee installment. As it stands today, due to the delays in approvals and installation of our new, custom-built OAK program, we have already had to delay new billing rates and contracts from clients we had assured would begin on January 1, 2009. Coupled with the extreme downturn in advertising across all markets, including the airport advertising market, the delay in the start of the OAK program as we presented in our RFP response leads us to make this unusual request.

312	475 • 1970 Tel
	642 • 7378 Fax

I hope you can understand our predicament and can speed along the approval process. I am more than willing to discuss several options by which the MAG can be paid to the Port of Oakland, and invite you to contact me with any questions, comments or concerns. Thank you for your willingness to consider our request.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Riley", written in a cursive style.

Michael Riley
President

TJS:sh

cc: Toby Sturek
Sam Hart
Meredith Haggerty

MEMO



Timeline of Design Submittals, Reviews and Comments

- May 6, 2008: Contract Award to Clear Channel;
- June 16-27, 2008: Field Survey by CCA to develop submittal plans for Airport Design Review Committee;
- July 29, 2008: Meeting with OAK Design Review Committee to discuss for approval all location plans and inventory types; meeting notes provided to OAK staff on August 1, 2008; comments returned from OAK staff on August 1, but no formal approval-to-proceed provided;
- September 23, 2008: CCA provided, via e-mail, the OAK Design Review Committee with revised plans covering comments from the July 29th DRC meeting; staff response received on October 13, 2008, setting another follow-up presentation with the DRC for October 21, 2008;
- October 21, 2008: Second DRC meeting was held at OAK and we received approval on bag belt LCD cabinets, FreeCharge stations and partial approval on Recycle Unit Dioramas and Directories. DPASS units required another round of design adjustments subject to further review;
- November 18, 2008: CCA provided a third design submittal of the DPASS units;
- November 25, 2008: OAK staff returns comments via e-mail regarding the DPASS units, asking for a fourth revision to the design;
- November 26, 2008: CCA submits, via e-mail, proposed layout of text and openings on the Recycle Diorama and Directory units; comments received by OAK staff via phone on November 27th;
- November 28, 2008: CCA submits, via e-mail, fourth design revision for OAK staff approval of the DPASS displays; comments received from OAK staff on December 7, 2008 via telephone conversation;
- December 13, 2008: CCA submits, via FedEx, final design plans, location plans and all associated site photo renderings encompassing all OAK staff and DRC comments; no approvals/responses or further comments have been received by CCA as of January 12th;
- January 12th: Phone conversation with OAK staff requesting approvals and updating CNN installation and data inspection team to be in OAK on 1/13/09 to finalize plans/drawings/routings for digital component submittal; OAK staff comments that they agreed they owed CCA approvals and would be forthcoming, but with no time-frame provided.
- January 14th: CCA receives bag deck plastic-laminate color information; still waiting on recycle station graphics approvals, as well as confirmed written approval on the DPASS submittals.



PORT OF OAKLAND

Via Electronic Mail

February 27, 2009

Clear Channel Outdoor Inc.
dba Clear Channel Airports
555 12th Street, Suite 950
Oakland, CA 94607
Attention: Michael Riley (mriley@clearchannel.com)

Re: Request for Delayed Payment of Minimum Annual Guarantee (MAG)

Dear Mr. Riley:

Thank you for your letter of January 19, 2009. We have reviewed your request with the Director of Aviation and he concurs with the following response.

Unfortunately, the Port can not delay the commencement of the Minimum Annual Guaranty (MAG) beyond January 1, 2009, the date stated within the lease. As you may know, the decision to award this concession opportunity to Clear Channel Airports (CCA) was extremely close; in fact the overriding reason to make the award to CCA specifically was the amount of the guaranteed rent. To modify or alter that consideration after the award is patently unfair to proposers who offered a lower MAG based on the degree of acceptable risk, but were otherwise rated higher in the Request for Proposals process. Further, we have yet to receive your proposed and agreed MAG for January and February 2009; please remit those amounts upon receipt of this letter.

Regarding CCA's claim that the Port's processes resulted in a delay, we dispute that assertion. First, the design revisions and perceived delays in approval are mostly the result of CCA's submittal of designs that differed from those submitted in the proposal and CCA's expectation of a formal approval notification. In fact, approvals were given both verbally by the design review committee and via e-mail for the designs submitted to date. Until we received your letter, we were unaware of any ambiguity regarding the approval of submitted designs and improvements with a resultant delay in fabrication. [It should be noted that designs have not yet been submitted for the LCD screens or the Information Booth.] Second, formal design reviews of concessionaire improvements are common practice at large U.S. airports. In fact, the lease in Sec. 2.4 specifically notes that a design review is required. And Sec. 1 states in part: "Permittee waives any rights now or hereafter conferred upon it... to receive any abatement, diminution, reduction or suspension of payment of Rent."

Third, CCA's contract commenced July 1, 2008. A large number of displays making up almost half the program were not subject to Design Review (Moss banners, wall wraps and floor

Clear Channel Airports
Request For Delayed Payment of Minimum Annual Guarantee (MAG)
February 27, 2009
Page 2

adhesives). These displays could have been installed as early as July 1st but not one single display of this type appears to have been marketed or sold. Finally, gross receipts are markedly down from the prior program, which is extremely disappointing.

As a last comment, the first installment of the MAG was due January 1, 2009 and is deemed late January 10, 2009. In light of your letter, the Port will consider removing any late penalties associated with full payment of the MAGs for January and February if payment is promptly made.

If you have any questions, I am most willing to discuss this further. I am at (510) 563-3674. I remain,

Sincerely,



Marcel E. Conrad
Manager of Aviation Properties

cc: Steven J. Grossman, Director of Aviation
Toby Sturek (tobysturek@clearchannel.com)
Sam Hart (samhart@clearchannel.com)
Meredith Hegarty
Janet Deutsch



April 16, 2009

Omar Benjamin
Executive Director
Port of Oakland
530 Water Street
Oakland, CA 94604

Dear Omar:

Thank you for taking the time to meet with us last week. We appreciated the opportunity to discuss our situation with both you and Steve and look forward to arriving at a solution that is mutually beneficial.

John Moyer's phone conversation with Steve on this matter a week or so prior to our meeting last week had already prompted us to earnestly explore and analyze what our best options might be and we want you to know that we came into our meeting with you having already given the situation a great deal of thought. Your participation and perspective, however, was very useful in helping us reach further toward finding an acceptable solution. We want to work with you to develop a program that will flourish and become the best that it can be for the Port of Oakland and us.

As we discussed, there are a number of dynamics at play. Some have been within our mutual control and some have been situations over which we have no control at all. Unfortunately, these dynamics all came together to create what seemed to be an insurmountable obstacle to our launching an advertising program that would deliver the level of results we both envisioned at the onset of our relationship. In our meeting, Steve articulated well the extremely harsh turn that the economy took just as we were selected to lead this program. He outlined the very depressing reality worldwide that has hit California, Oakland, and the advertising industry particularly hard. Steve also astutely framed the well-known historic challenges of marketing advertising at Oakland International Airport considering the many other media options available in the area, the competing venues that exist, and the media pricing depression currently underway in the industry.

I think we all recognize and agree that both our "A" team efforts are needed to help insure the kind of success we envision. We became aware, via numerous communications with some of the Airport staff that were involved in the selection process and are also involved in our day-to-day management, that they did not want nor would they support Clear Channel Interspace Airports active participation in local sales support. This did prove to be a hindrance and it is an obstacle we are extremely pleased to now have cleared. Clear Channel Interspace Airports is a valuable player on the "A" team that was established by Clear Channel Airports and their participation with us was expressly set forth in our proposal and original response to the RFP. We are pleased that both you and Steve see the benefit of full participation by Interspace.

These are the factors that we believe have challenged our ability to effectively launch the new advertising program. Having now a clear understanding and agreement on these fundamental issues, we are prepared to move ahead in a way that allows Clear Channel Airports to begin installation of the investment we discussed. We are ready to employ the full service of the original team we proposed and that was selected by the Board.

Having listened carefully to your expectations, we wish to make the following response:

The Port clearly wants and expects the best financial offer and we have made every effort to offer the maximum possible and still provide a sustainable business model and the level of service both Clear Channel and the Port expect.

Minimal Annual Guarantee:

<u>Year</u>	<u>MAG proposed at our meeting</u>	<u>Revised MAG offer per our meeting</u>
1	\$250,000	\$300,000
2	\$250,000	\$350,000*
3	\$500,000	\$500,000*
4	\$650,000	\$650,000*
5	\$650,000	\$650,000*
6	\$650,000	\$650,000*
7	\$650,000	\$650,000*
8	\$650,000	\$650,000*
9	\$650,000	\$650,000*
10	\$650,000	\$650,000*

*Current agreement is that the MAG gets increased (but not decreased) to 70% of previous year's percentage payment if that payment is higher than the pre-established MAG for that year. We are willing to increase the MAG to 85% of previous year's percentage payment so the MAG can rise earlier and faster as we hopefully begin to see the economy respond.

Capital Investment:

\$1,200,000

Percentage Payment:

50% for year one moving to 60% for all following years.**

**The current agreement is for 50% across the entire 10 year term unless gross receipts exceed \$2,000,000 then it would increase to 55%. We are prepared to automatically increase this percentage payment to 60% after year one for the remaining term of the agreement. Again this will allow for larger payments faster to the Port.

As you will see, we increased our MAG schedule from our meeting with you and modified both the MAG increase mechanism and percentage payment to reflect terms that are actually better and more lucrative than the existing terms in the current agreement. This will allow the Port to benefit greatly and have much more up-side quicker when the economy does come back while creating a viable business solution to move forward now. One thing for certain is that it is good for the Port and a dramatically better financial package than what is available on the market. It also offers more than any other proposals that were submitted at the time of the RFP. In fact, the combination of the proposed MAG exceeds Alliance's offer by **\$1,700,000** and capital exceeds Alliance's by **\$550,000** for a total of **\$2,225,000**. It should also be considered that these improvements are ready to go immediately.

The Port wants national and local sales capability:

Only the team of Clear Channel Airports and Clear Channel Interspace Airports has a national sales network and local/regional sales resources. No other company exists that can represent Oakland International as effectively on the **national** and local/regional media scene and this **will** be a large benefit as the economy turns.

The Port wants a local presence and national reach:

Clear Channel Airports has a long-established office in Oakland and a staff of four in the Bay area. Additionally, we have some 80 airport advertising specialists located around the Country in the major media buying centers. Clear Channel Outdoor and its predecessor companies have had an office in Oakland for 44 years and currently have a local staff of 79.

The Port wants improvements in technology and design:


Clear Channel was the only proponent to include the CNN Airport network in our proposal and, partnering with CNN, we delivered what has been a very well received effort free of charge. This is a large capital and operational expense that CNN usually charges for in airports the size of Oakland. Additionally, as you know, we have **\$1,200,000** of capital investment ready to go. This large capital investment includes but is not limited to the following:

- A new T1 volunteer visitor center
- Two Digital Passenger Service Systems with six touch-screens and Mobile Media.
- Ten 57" multi-use LCDs on the bag-belts
- Three 65" multi-use LCDs at security check points
- 11 sponsored recycle stations
- Two FreeCharge sponsored work stations

Omar Benjamin, Executive Director
April 16, 2009
Page 4 of 4

We remain committed to the success of this program and look forward to hearing from you soon. Time is of the essence as we have 17 existing clients that have already contracted space into the new digital displays that are pending installation and any more delay or change of plans will easily hold up revenue flow and the effective launch of a new ad program for another year. We are prepared to move forward with any necessary next steps that will advance these discussions in the most expeditious timeframe. Thank you again for your interest and participation.

Very truly,



Toby Sturek
CFO, CCA/CCIA

cc: Steve Grossman

TS/mln



August 3, 2009

Marcel Conrad
Manager of Properties
Port of Oakland - Oakland International Airport
9532 Earhart Road, Suite 201
Oakland, CA 94621

Dear Mr. Conrad:

Thank you for taking the time to participate in the meeting between representatives of the Port of Oakland (Port) and Clear Channel Airports (Clear Channel) on July 27, 2009. This was much needed after the months of negotiation effectively brought on by the drastic and severe economic downturn that started in the second half of 2008. We thought the meeting and Airport tour was very positive and productive. Your input was insightful and will be taken to heart. We look forward to working closer with you and the rest of the staff at Oakland International Airport through this very challenging economy.

I am sending this letter as a formal request to amend our permit according to what was discussed during our meeting, the terms which are outlined as follows:

1).

<u>Year</u>	<u>Proposed MAG</u>	<u>Current MAG</u>
1.	\$850,000	\$ 850,000
2.	\$850,000	\$ 850,000
3.	\$850,000	\$ 850,000
4.	\$850,000	\$ 900,000
5.	\$850,000	\$ 900,000
6.	\$850,000	\$ 900,000
7.	\$850,000	\$ 950,000
8.	\$850,000	\$ 950,000
9.	\$900,000	\$ 950,000
10.	\$900,000	\$1,000,000

2). Increase the Airport's current percentage payment from 50% to 60% of sales starting immediately and being effective for the life of the agreement.

3). Delete any restrictions on Clear Channel owned entities cooperating on the project.

This plan will keep the MAG the same in the early years of the contract and during the current economic downturn while also giving the Port quicker access to potential incremental revenue with a higher percentage payment in better times. This concept retains a large multi-million dollar advantage to the Port over all other past proposals. It also allows us to apply all of Clear Channel's best resources to your airport advertising program.

Marcel Conrad, Manager of Properties
August 3, 2009
Page 2 of 2

We hope you can present this at the September 2, 2009 Aviation Committee meeting and in turn the September Board meeting. Please don't hesitate to contact me with any questions.

Thank you and kind regards,

A handwritten signature in black ink, appearing to read "John Moyer", with a long horizontal flourish extending to the right.

John Moyer

CITY AND COUNTY OF SAN FRANCISCO



DENNIS J. HERRERA
City Attorney

OFFICE OF THE CITY ATTORNEY

DAVID SERRANO SEWELL
Deputy City Attorney

Direct Dial: (650) 821-5075
email: david.serrano-sewell@sfgov.org

October 24, 2012

Ms. Gabrielle Brussel
Executive Vice President, Legal Affairs and General Counsel
JCDecaux North America, Inc.
3 Park Avenue, 33rd Floor
New York, New York 10016

SUBJECT: San Francisco International Airport ("Airport") Response to JCDecaux North America, Inc.'s ("JCDecaux") Protest Letter for the Proposed Award of that certain Request for Proposals ("RFP") for the Advertising Lease ("Lease") to Clear Channel Outdoor, Inc., dba Clear Channel Airports ("Clear Channel")

Dear Ms. Brussel:

At the Airport's request, this letter responds to JCDecaux's protest letter dated October 17, 2012 for the proposed award of the Advertising Lease to Clear Channel. In the letter, JCDecaux argues that the proposed award to Clear Channel should be set aside and award should be made to JCDecaux. We have reviewed JCDecaux's protest, the RFP, the proposals, and the score sheets, and find that the competitive selection proceeded in conformance with the RFP and the law; the protest is without merit.

Specifically, JCDecaux raises four issues to which the Airport responds as follows:

1. Misapplication of the RFP Evaluation Criteria

Airport Response: The RFP clearly states the process by which the proposals are to be evaluated. Specifically, RFP Submittal 4 Evaluation Criteria outlines the subject matter and the allocation of the total number of points available in this RFP.

The three-member review panel (the "Review Panel") was convened and the members of the panel reviewed and scored the proposals within the Evaluation Criteria point system. There was a possible 100 points under the RFP. The Evaluation Criteria clearly stated the points for each sub-criteria: Business Plan 15 points, Design Intent/Construction 20 points, Operations/Management Plan 15 points, and Minimum Annual Guarantee Offer ("MAG") 50 points. Further, the RFP includes additional language for each sub-criteria, providing clear and unambiguous guidance to the Proposers and the Review Panel concerning the specific elements the Airport was seeking in the proposals. The Review Panel's scores are contained in the Airport's summary sheet, of which JCDecaux has a copy. The Airport is confident that the Review Panel evaluated each proposal objectively and

CITY AND COUNTY OF SAN FRANCISCO

OFFICE OF THE CITY ATTORNEY

Letter to Gabrielle Brussel
Page 2
October 24, 2012

consistently with the RFP criteria. There is no evidence that the RFP process or the Review Panel's decision was arbitrary, capricious, or lacking in support.

JCDecaux is correct in stating that the MAG score of 50 points was assigned using a specific methodology. The methodology used was a rational, objective, and fair system to assign points in the MAG sub-criteria. Here, the highest MAG offer received the full 50 points and the remaining (and lower) MAG proposals received a proportionally lower score. This methodology is standard practice, both at the Airport and the greater industry.

Under this methodology, Clear Channel received 50 points because it submitted the highest MAG offer of Ten Million Dollars (\$10,000,000). JCDecaux's MAG offer was Eight Million Five Hundred Thousand Dollars (\$8,500,000). To appropriate a proportionate score, Airport staff divided JCDecaux's MAG offer by the highest MAG offer and multiplied the result by the total points possible under this criterion ($\$8,500,000 \div \$10,000,000 = .85 \times 50 = 42.50$). JCDecaux therefore received 42.50 points. Another way to articulate the methodology is 85% of the 50 points, which is 42.50 points.

Further, the methodology was not applied after the fact or contrary to the RFP, as claimed by JCDecaux. Airport staff thoroughly discussed and explained the methodology at the informational conference of May 10, 2012. JCDecaux attended this meeting and was afforded the opportunity to ask questions and seek clarification on the MAG scoring methodology or any RFP item.

2. The Mathematical Errors in the Score Sheet.

Airport Response. The Airport's compilation of scores are correct, as is JCDecaux's assertion that two individual scores were off by one one hundredth of a point. The difference, which is immaterial, amounted to a difference in rounding methods.

Assuming the Airport used JCDecaux's system, the other proposers would have also received an additional hundredth point, thus making JCDecaux's revision to the points immaterial to the outcome and ranking of the proposals. Indeed, even if the Airport rounded only JCDecaux's score to the hundredth, the outcome would be the same.

3. Scorer P2 did not score JCDecaux fairly or within permissible limits.

Airport Response. The Review Panel was comprised of individuals with relevant experience in marketing, advertising, and signage and design in airport settings. The panelists were impartial and were screened for any conflict of interest. Airport staff instructed the members of the Review Panel to review the proposals and to exercise their own independent professional judgment in assigning scores to each proposal applying the Evaluation Criteria as set forth in the RFP.

Although the panel was not unanimous on every point, two of the three panelists scored Clear Channel the highest overall. P2 scored Clear Channel lower in some areas but highest in advertising mediums and revenue potential. There is nothing in P2's scores to indicate anything improper in the scoring process. Note that California courts give the greatest possible deference to the agency's bid

CITY AND COUNTY OF SAN FRANCISCO

OFFICE OF THE CITY ATTORNEY

Letter to Gabrielle Brussel

Page 3

October 24, 2012

evaluation. (*See Mike Moore's 24-Hour Towing v. City of San Diego* (1996) 45 Cal. App. 4th 1294, 1305-1306 (1996)). A review is limited to an inquiry into whether the decision was arbitrary, capricious or entirely lacking in evidentiary support. (*See Citizens for Improved Sorrento Access, Inc. v. City of San Diego* 118 Cal. App. 4th 808, 814 (2004)). Contentions that the scores are improper or questionable constitute mere disagreement with the evaluation, and are insufficient to establish that the evaluation is unreasonable, arbitrary, or capricious. (*See Cube Corp. v. United States* 46 Fed. Cl. 368, 386 (2000)).

There is no evidence to support a finding that P2 Scorer's evaluation was arbitrary, capricious, or lacking in support.

4. Clear Channel's MAG Offer is Commercially Unreasonable and Constitutes a Financially Irresponsible and Illusory Proposal.


Airport Response. Under the RFP terms, each proposer determines the achievable gross sales and submits a MAG offer. The Airport accepts Clear Channel's commitment to fulfill its MAG offer of Ten Million Dollars. The Airport has no reason to believe that Clear Channel's proposed MAG is anything other than commercially reasonable. Through the enforcement of the Lease, the Airport will hold Clear Channel accountable to meet its MAG obligation, as the Airport does for all of its concession tenants.

Since this particular claim suggests that Clear Channel is financially unable to meet its MAG offer, the Airport invited Clear Channel to comment on this discrete issue. Please see the attached letters. Given the financial information and representations contained in Clear Channel's proposal, as highlighted in Clear Channel's response to JCDecaux's protest, the Airport is satisfied that Clear Channel is ready, willing, and able to meet its MAG obligations as proposed.

* * * * *

For the reasons addressed above, the Airport confirms that JCDecaux's protest of the RFP is without merit and therefore denied. We understand that the Airport Director intends to recommend to the Airport Commission award of the Lease to Clear Channel at its next regularly scheduled meeting of Tuesday, October 30, 2012.

Sincerely,



David Serrano Sewell
Deputy City Attorney

Enclosures

cc: John L. Martin, Airport Director
Sheryl Bregman, Airport General Counsel
Leo Fermin, Deputy Airport Director
Cheryl Nashir, Assistant Deputy Director

CITY AND COUNTY OF SAN FRANCISCO



DENNIS J. HERRERA
City Attorney

OFFICE OF THE CITY ATTORNEY

DAVID SERRANO SEWELL
Deputy City Attorney

Direct Dial: (650) 821-5075
Email: david.serrano-sewell@sfgov.org

October 22, 2012

Michael O'Brien
Operations Counsel
Clear Channel Outdoor - Americas
2325 E Camelback Road, Suite 400
Phoenix, AZ 85016

Re: Response by Clear Channel Outdoor, Inc. to Issue Raised in Protest Letter filed by JCDecaux

Dear Mr. O'Brien:

We understand that Clear Channel Outdoor, Inc., doing business as Clear Channel Airports (Clear Channel), is in receipt of the protest letter filed by JCDecaux (JCD) of the proposed lease award to Clear Channel by the San Francisco International Airport (Airport) under that certain Request for Proposals (RFP) for the Airport Advertising Lease (Lease). An additional copy is enclosed for your reference.

The JCD protest letter outlines four reasons in its requests that the Airport set aside the proposed award to Clear Channel in favor of JCD, including: "4. Clear Channel's MAG offer is Commercially Unreasonable and Constitutes a Financially Irresponsible and Illusory Proposal."

We invite Clear Channel to respond to JCD's protest, specifically with reference to item number four. The response is due by the close of business on Tuesday, October 23, 2012. Kindly address your comments to the undersigned.

Finally, please note that this letter constitutes neither notice of award nor intent to award the Lease. The Lease is subject to the approval of the Airport Commission and the Board of Supervisors for the City and County of San Francisco, each acting in their sole and absolute discretion.

Very truly yours,

DENNIS J. HERRERA
City Attorney

David Serrano Sewell
Deputy City Attorney



2325 East Camelback Road, Suite 400, Phoenix, AZ 85016
T 602.381.5700 F 602.381.5781

October 23, 2012

David Serrano Sewell
Deputy City Attorney
San Francisco City Attorney's Office
San Francisco International Airport
International Terminal, 5th Floor
P.O. Box 8097
San Francisco, CA 94128

RE: Response to JCDecaux Protest Letter dated October 17, 2012

Dear David,

Per your request in your letter dated October 22, 2012, Clear Channel Outdoor, Inc., d/b/a Clear Channel Airports ("Clear Channel") is writing this letter in response to the Letter from JCDecaux North America, Inc. ("JCD"), dated as of October 17, 2012, Re: Protest to Proposed Contract Award to Clear Channel Airports (the "JCD Protest Letter").

In particular, we would like to address point #4 of the JCD Protest Letter, which states that "Clear Channel's Minimum Annual Guarantee (MAG) offer is commercially unreasonable and should be rejected as a financially irresponsible offer." For all of the reasons stated below, Clear Channel disagrees with this point, and feels that the award of the Airport Advertising Lease (the "Lease") was in fact commercially reasonable.

First, in order to respond to any request for proposals which could potentially result in a contract similar in size and scope to the Lease, Clear Channel undertakes a rigorous evaluation process, including financial, legal and operational review. As part of the substantial and detailed financial review, each such contract must meet minimum internal rate of return thresholds which have been set by Clear Channel's executive leadership team and board of directors. This internal rate of return requirement applies to any new opportunity the company explores; if a contract does not meet this requirement, Clear Channel will not respond. In the case of the Lease, Clear Channel's internal rate of return requirements were met when factoring in all aspects of Clear Channel's bid, including the MAG. Additionally, for a contract which would obligate Clear Channel for \$25 million or more in guaranteed expenditure, as the Lease will, Clear Channel must obtain board of director approval. Clear Channel thus was required to, and did, obtain the requisite board approval for the Lease. This comprehensive financial analysis by an industry-leading and experienced operator negates any argument that Clear Channel's MAG offer was commercially unreasonable or financially irresponsible. Of course, Clear Channel also complied with all financial requirements of the RFP, including providing financial statements showing the ability to meet MAG obligations, as well as posting the required bond to secure all such obligations.

clearchannel.com



Second, JCD points to other examples where Clear Channel has outbid them, namely in the cities of San Jose and Seattle. In regards to the Lease at hand, these other city contracts are, quite frankly, irrelevant. With that said, it should be noted that Clear Channel has not defaulted on either of the aforementioned contracts. Moreover, throughout its long and successful tenure as the advertising concessionaire at SFO Airport, Clear Channel has never defaulted on any of its payment obligations. It should also be noted that, contrary to JCD's position in the JCD Protest Letter regarding "loss leader" contracts, Clear Channel has no intention of losing any money on the Lease. On the contrary, any forecast of a loss on the transaction would have precluded Clear Channel from responding to the RFP based on its own internal financial criteria and board approval requirements.

Third, Clear Channel's MAG for the Lease was based on, among other things, forward-looking revenue assumptions and new products. As an experienced advertising concessionaire at SFO Airport and in other large airports across the country, Clear Channel is in the best position to determine what it feels would be a reasonable estimate of its future revenue for an advertising program.

Finally, as the largest operator of airport advertising concessions in the United States, Clear Channel evaluates opportunities such as the one presented by the Lease both individually and in the context of its entire business portfolio. As reflected in its bid, Clear Channel attributes great value not only to SFO Airport on its own, but also to having SFO Airport as a part of its overall advertising program. SFO Airport is a key strategic market in Clear Channel's stable of airport advertising locations, and an important part of its pitch to advertising clients seeking national presence in major hubs across the country. Thus, Clear Channel is more than willing (and able) to pay a premium amount to retain the concession at SFO Airport, which it considers one of the premium airports in the country.

In conclusion, the assertions set forth in the JCD Protest Letter are unsupported. The MAG Amount was allocated 50% of the total points available in the scoring criteria; Clear Channel responded accordingly and took into consideration the weight attributed to this aspect of its response. As detailed above, Clear Channel's bid for the Lease was both commercially reasonable and financially responsible. JCD's Protest Letter should be disregarded, and the award of the Lease to Clear Channel should stand. If you have any further questions regarding this matter, please do not hesitate to contact me at the above-listed contact information. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read 'Sara Lee Keller', written over a horizontal line.

Sara Lee Keller
Executive Vice President & General
Counsel

cc: Leo Fermin
Toby Sturek

CITY AND COUNTY OF SAN FRANCISCO



DENNIS J. HERRERA
City Attorney

OFFICE OF THE CITY ATTORNEY

DAVID SERRANO SEWELL
Deputy City Attorney

Direct Dial: (650) 821-5075
Email: david.serrano-sewell@sfgov.org

October 29, 2012

By Facsimile to (415) 766-4510 and Email: mara@rosaleslawpartners.com

Mara E. Rosales, Esq.
Rosales Law Partners LLP
433 California Street, Suite 630
San Francisco, California 94104

Subject: JCDecaux North America, Inc. ("JCDecaux") Protest of the Proposed Award of that certain Request for Proposals ("RFP") for the Advertising Lease ("Lease" to Clear Channel Outdoor, Inc., dba Clear Channel Airports ("Clear Channel"))

Dear Mara:

I am in receipt of your letter dated October 26, 2012 in which, on JCDecaux's behalf, you reply to the letter dated October 24, 2012 from this office rejecting JCDecaux's protest of the proposed award of the Lease to Clear Channel. We have reviewed the two assertions raised in your letter and found no reason to change our earlier conclusion that the Airport's selection process was fair and proper.

First, as to the assignment of points for the Minimum Annual Guarantee ("MAG"), the Airport disagrees with your characterization that there was a misapplication of the RFP evaluation criteria. As described in our letter of October 24, 2012, the Airport used a simple mathematical formula to assign points to each proposal proportionate to the maximum points available, with the highest offer receiving the maximum number of points. The Airport uses this standard methodology for its concession lease competitions of this type, as do other airports around the country. Second, as to the amount of Clear Channel's MAG offer, the Airport disagrees with your conclusion that the offer is commercially unreasonable. The Airport is confident that Clear Channel will uphold its MAG offer. Suggestions that Clear Channel sought renegotiation of its leases in Oakland or San Jose is of no relevance to the Lease for SFO. The Airport Review Panel carefully reviewed the financial information required for submission and scored the proposals in conformance with the evaluation criteria in the RFP.

The Airport Commission will consider award of the Lease at its meeting scheduled for tomorrow, Tuesday, October 30, 2012.

Sincerely,

DENNIS J. HERRERA
City Attorney

A handwritten signature in black ink, appearing to read "David Serrano Sewell".

David Serrano Sewell
Deputy City Attorney

cc: John L. Martin, Airport Director
Sheryl Bregman, Airport General Counsel
Leo Fermin, Deputy Airport Director
Cheryl Nashir, Assistant Deputy Airport Director

Quadra & Coll, LLP

649 Mission Street · Fifth Floor · San Francisco · California · 94105

Tel: 415.426.3502 Fax: 415.625.9936

Writer's direct e-mail:
jquadra@quadracoll.com

December 21, 2012

Hon. Dennis Herrera
City Attorney San Francisco
City Hall Room 234
1 Dr. Carlton B. Goodlet Place
San Francisco, CA 94102

Re: JCDecaux North America—Resolution of Protest to SFO Advertising Lease Award

Dear Dennis:

On behalf of Bernard Parisot and Stacey Kodak of JCDecaux North America ("JCDecaux"), I thank you for the meeting in your office on December 18, 2012. As I indicated, we are seeking an amicable and fair resolution of our stated concerns regarding the Airport Commission's award of the SFO Advertising Lease ("Advertising Lease") to Clear Channel Airports ("Clear Channel"). Based on the letter from Leo Fermin, SFO Deputy Director for Business and Finance, dated November 1, 2012, we understand SFO's position to be that the Board of Supervisors ("the Board") is the final awarding authority with respect to the Advertising Lease under City Charter Section 9.118. Attached is a copy of Mr. Fermin's letter for your review. We further understand that SFO's position has been ratified your office. As such, the Board has the discretionary authority to approve, amend or reject the Airport Commission's award of the Advertising Lease, and thus to also decide the merits of JCDecaux's protest to the award of the Advertising Lease to Clear Channel. Accordingly, we suggest the following administrative procedure to address our concerns.

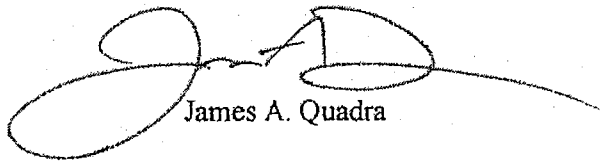
At or shortly before the time the Board receives the Clear Channel lease award recommendation from the Airport Commission Secretary, JCDecaux will renew its protest to the award recommendation with the Clerk of the Board. We will request the President of the Board to first refer the protest to the Rules Committee for adjudication, since that is the Committee which handles legal claims. We expect that the Rules Committee will hold a public hearing on the protest and would reach a decision, which would be forwarded to the full Board of Supervisors for action. After adjudication of our protest by the Board of Supervisors, we expect the lease award decision to be referred to the Finance Committee by the Board for determination of next steps. If the protest is sustained, given that the Board is the final awarding authority, the Finance Committee should hold a public hearing at which time Clear Channel and JCDecaux would be able to present their qualifications and proposals to the City. After the proposers are interviewed by the Finance Committee, the Committee would select the successful awardee and forward its recommendation to the full Board of Supervisors for action.

Hon. Dennis Herrera
December 21, 2012
Page 2

The above mechanism is consistent with the Board being the final awarding authority and allows for a final resolution of the pending dispute within an acceptable time frame given that the current lease for this opportunity is due to expire in March, 2013. For your information and consideration, also included with this letter is a copy of the protest and related documents.

As we discussed at our meeting on December 18th, JCDecaux values its long-standing and successful business relationship with the City and County of San Francisco. As we mentioned to you during the meeting, our sole interest is to ensure fairness in the competitive process for the SFO Advertising Lease, not only for the proposers but for the City as well. We look forward to your hearing your thoughts on our recommendations.

Regards,

A handwritten signature in black ink, appearing to read 'James A. Quadra', with a long horizontal line extending to the right.

James A. Quadra

cc: Marisa Moret
Bernard Parisot
Stacey Kodak
Chris Moscone
Mara Rosales



San Francisco International Airport

November 1, 2012

(via Facsimile: (415) 766-4510 and Email: mara@rosaleslawpartners.com)

Mara E. Rosales, Esq.
Rosales Law Partners LLP
433 California Street, Suite 630
San Francisco, CA 94104

Subject: San Francisco International Airport ("Airport") Response to the Immediate Disclosure Request for Documents Relating to the Airport Advertising Lease Request for Proposal ("RFP")

Dear Mara:

This letter responds to your letter dated October 31, 2012 seeking disclosure of certain documents regarding the above referenced RFP (hereinafter referred to as the "Disclosure Request").

The Disclosure Request is styled as an Immediate Disclosure Request under the City's Sunshine Ordinance. But it seeks a multitude of documents; the totality being extensive and demanding. Under these circumstances, it is not a "simple, routine or otherwise readily answerable request," and thus does not qualify as an Immediate Disclosure Request under the Sunshine Ordinance. See S.F. Admin. Code Section 67.25(a). Accordingly, the time deadlines governing public records requests under the Public Records Act will apply. Even so, the Airport will move expeditiously to gather and review responsive records so that we may get non-exempt records to you as soon as reasonably possible.

As to the first item requested, the "Clear Channel Airports' (Clear Channel) proposal submitted in response to the Airport Advertising Lease RFP", the communications between the Airport and the proposers relating to the RFP and the award of the lease, including Clear Channel's, JCDcaux's, and Titan's proposals will be made available after the Board of Supervisors awards the lease contract. See Admin. Code Section 67.24(e)(1).

The Airport will make all reasonable efforts to produce those readily available documents sought in the Disclosure Request on a rolling basis. As responsive documents become available following their review, my staff will contact your office by email for retrieval. The documents will be made available at the front desk reception at the Airport's administrative offices on the Fifth Floor, International Terminal.

At this time, given the voluminous nature of the Disclosure Request, it is difficult to estimate the copying costs. As a professional courtesy, your office may submit payment for the copying costs for the previous retrieval of documents, please advise if this is acceptable.

Do not hesitate to call if you have any questions.

Sincerely,

Leo Fermin
Deputy Airport Director
Business and Finance

cc: John L. Martin
David Serrano-Sewell

AIRPORT COMMISSION CITY AND COUNTY OF SAN FRANCISCO

EDWIN M. LEE
MAYOR

LARRY MAZZOLA
PRESIDENT

LINDA S. CRAYTON
VICE PRESIDENT

ELEANOR JOHNS

RICHARD J. GUGGENHIME

PETER A. STERN

JOHN L. MARTIN
AIRPORT DIRECTOR

PROCEDURAL TIMELINE

SFO AIRPORT ADVERTISING LEASE RFP

- April 2012 Airport Advertising Lease RFP distributed. Evaluation Criteria states that 50 points will be awarded for meeting the \$7.5 million Minimum Acceptable Offer (MAO).
- May 10, 2012 Informal (non-mandatory) Conference to inform interested parties about the competitive selection process for the RFP. SFO asserts that the presentation included an oral modification regarding the MAO scoring methodology to be used. SFO's characterization of the modification as an "explanation" is inconsistent with the express language of the written RFP. Attendees do not recall SFO discussing the change.
- May 23, 2012 Deadline for submission of written questions or requests for clarification.
- July 17, 2012 Airport Commission approves amended RFP, including lowered MAO.
- July 27, 2012 Addendum No. 2 approved on 7/17 (including a reduction in advertising locations and a reduction of the MAO to \$7 million) and compilation of questions and answers circulated to potential respondents. Addendum did not include the verbal modification of the RFP allegedly given at the 5/10 Informal Conference regarding the Minimum Annual Guarantee (MAG) scoring methodology.
- September 5, 2012 Deadline for the submission of proposals.
- October 11, 2012 SFO announces that an evaluation panel has determined that Clear Channel Airports is the highest ranking, responsible, and responsive proposer and is the apparent successful proposer on the Advertising Lease RFP.
- October 17, 2012 JCDecaux submits a bid protest to SFO on the following grounds: (1) proposals have not been scored in a manner consistent with the Evaluation Criteria specified in the RFP; (2) there is a mathematical error in the addition of JCDecaux's bid; (3) the scores awarded by JCDecaux by scorer P2 are impermissibly irrational; and (4) Clear Channel's MAG offer is commercially unreasonable and should be rejected as a financially irresponsible offer.
- October 18, 2012 Deadline to submit a bid protest.
- October 24, 2012 City Attorney denies JCDecaux's bid protest for the following reasons: (1) despite the fact that the RFP does not mention a sliding scale methodology, the City Attorney asserts that the RFP clearly states the process by which proposals are to be evaluated, the methodology is standard practice, and the methodology was discussed at the Informal Conference; (2) SFO's compilation of the scores is correct and the difference asserted by JCDecaux amounted to a difference in rounding methods; (3) Scorer P2's evaluation was not arbitrary, capricious, or lacking in support; and (4) notwithstanding SFO public records suggesting concern that the \$7 MAO was too high, the City Attorney states that SFO has no reason to believe that Clear Channel's proposed MAG is anything other than commercially reasonable.

PROCEDURAL TIMELINE

SFO AIRPORT ADVERTISING LEASE RFP

Furthermore, the City Attorney provides Clear Channel with notice of the JCDecaux bid protest and allows Clear Channel the opportunity to respond.

- October 26, 2012 Rosales Law Partners (RLP) reply to denial of protest. RLP refutes the City Attorney's contention that the sliding scale application of the MAG methodology was explained orally at the non-mandatory Informal Conference because by the terms of the RFP itself and California case law, oral representations or modifications do not suffice to change the instructions in an RFP. RLP also stresses that the MAG offer by Clear Channel is commercially unreasonable. Clear Channel has a demonstrated business practice of overbidding MAG offers at sister airports and not performing. The only reason that Clear Channel is not in default is that it has managed to successfully negotiate contract amendments with other Bay Area airports. RLP emphasizes that these facts warrant a deeper inquiry by SFO into the San Jose, Oakland, and Sea-Tac Airport contracts with Clear Channel.
- October 29, 2012 The City Attorney's Office, through DCA David Serrano Sewell, responds to RLP's 10/26 letter regarding the rejection of JCDecaux's bid protest. The City Attorney disagrees with JCDecaux's argument that the RFP evaluation criterion was misapplied, but does not address the prohibition against oral amendments of an RFP. The City Attorney also states that SFO believes that Clear Channel's MAG offer is commercially reasonable and is confident that Clear Channel will uphold its MAG offer. The City Attorney ignores JCDecaux's concerns that Clear Channel has a practice of overbidding MAG offers and instead says that suggestions that Clear Channel sought renegotiation of its leases are irrelevant to the Airport Advertising Lease for SFO.
- October 26, 2012 JCDecaux renews protest to award of lease to Clear Channel to Airport Commission.
- October 30, 2012 Airport Commission approves award of Airport Advertising Lease to Clear Channel.
- November 1, 2012 In response to a Sunshine Ordinance request by RLP, Leo Fermin, SFO Deputy Director for Business, stated that certain requested documents "will be made available after the Board of Supervisors awards the lease contract."
- December 18, 2012 JCDecaux meets with City Attorney Dennis Herrera.
- December 21, 2012 Correspondence from James Quadra on behalf of JCDecaux to City Attorney Dennis Herrera suggesting a course of action for the Board of Supervisors and emphasizing that JCDecaux's sole interest is to ensure fairness in the competitive process.
- January 18, 2013 The City Attorney's Office, through DCA Jon Givner, responds to James Quadra's 12/21 letter. Mr. Givner stated that the City Attorney's Office "will be advising the Board of Supervisors regarding the legal options when the resolution approving the contract is introduced."

PROCEDURAL TIMELINE

SFO AIRPORT ADVERTISING LEASE RFP

February 6, 2013
(approximately)

Airport Commission forwards proposed resolution regarding its award of lease to Clear Channel to Board of Supervisors for action.

Clear Channel's History of Contract Modification at SFO

April 20, 2001	Clear Channel (through a predecessor company), the sole-competitor for the Airport Advertising Program RFP, entered into a Lease Agreement with SFO. This Agreement called for a 5-year term and three, 1-year options at SFO's option.
February 19, 2002	To address the decline in airport travel due to September 11, 2001, the Airport Commission approved the Airport Concession Support Program which (1) suspended the MAG until monthly enplanements equaled or exceeded 85% of the enplanements for the same month in 2000 for two consecutive months and (2) granted, at the tenant's discretion, an extension of the lease term for one -year period. Airport staff and Clear Channel subsequently engaged in further lease modification discussions. The Board of Supervisors approved the Airport Concession Support Program retroactive to September 11, 2001 and the lease modifications negotiated by Clear Channel on August 12, 2002.
March 5, 2002	Airport Commission approved additional advertising locations in the baggage claim level and reinstatement of the MAG effective April 1, 2002.
April 2, 2002	Airport Commission approved an amended MAG Increase Schedule and amended the MAG adjustment schedule that governed the MAG recalculation for each year (instead of using the Consumer Price Index, the MAG was now recalculated each year based on the greater of 85% of previous year's rent or the amount in the amended MAG Increase Schedule).
July 30, 2003	Letter Agreement between SFO and Clear Channel for additional advertising locations and increase to the MAG.
October 4, 2005	Letter Agreement between SFO and Clear Channel for additional advertising locations and increase to the MAG.
2007-2010	The parties negotiated an amendment that would have (1) approved additional advertising locations; (2) authorized half of the rent collected from some of these locations to be shared with the appropriate airline or SFOTEC; and (3) exercised all three, 1-year options for a new expiration date of March 31, 2014. The Airport Commission approved this amendment, but on September 22, 2002, SFO staff requested that the Board of Supervisors Budget & Finance Committee table the resolution addressing this amendment. Later, SFO informed Clear Channel that "based on the considerable challenges" that SFO met in obtaining the Board of Supervisors' approval, SFO had opted not to pursue this amendment.

CITY AND COUNTY OF SAN FRANCISCO

AIRPORT COMMISSION



Request for Proposals

**Distributed Antenna System ("DAS")
at the San Francisco International Airport
for Cellular and Other Wireless Services
(Contract No. 8848)**

RFP Release Date:	May 28, 2008
Pre-proposal Conference:	June 13, 2008, 10:00 a.m.
Site Visit:	June 19, 2008, 9:30 a.m.
Deadline for Submission:	July 25, 2008, 5:00 p.m.

IV. Evaluation and Selection Criteria

A. Minimum Qualifications

Any proposal that does not demonstrate that the proposer meets the minimum qualifications by the deadline for submittal of its response to this RFP will be considered non-responsive, will not be reviewed by the evaluation committee and will not be eligible for award of the contract.

A Proposer may be comprised of any combination as a prime firm, joint venture, and/or subcontractors. Qualifications shall be determined based on the combined qualifications of the Proposer's team. No one (1) member of the Proposer's team must be qualified in all areas of expertise. Proposers must meet the following minimum qualifications to be eligible for further consideration in the selection process:

- Proposers or at least one (1) member of a team or joint venture shall have a minimum of three (3) completed design, installation, integration and implementation of centralized, modular, expandable, neutrally-hosted common network DAS in the past five (5) years, capable of supporting commercial cellular service and other RF-based services, and serving a minimum of three (3) major national cellular carriers.
- Proposers or at least one (1) member of a team or joint venture shall have a minimum of five (5) years of experience in operation and management of a centralized, open architecture, modular, expandable, neutrally-hosted common network DAS in the past ten (10) years, capable of supporting commercial cellular service and other RF-based services, and serving a minimum of three (3) major national cellular carriers.

B. Selection Criteria

Airport staff will screen the submittals to ensure that the firms identified as qualified to provide these services meet the minimum qualifications. Submittals that meet the minimum qualification requirements will be evaluated by an evaluation committee. The Airport intends to evaluate the proposals generally in accordance with the criteria itemized below. The Airport reserves the right to interview any number of the proposers with the highest scoring proposals by the committee to make the final selection.

The descriptions following each evaluation criteria are provided as a guide and are not intended to be comprehensive.

1. **Project Approach (400 points)**
 - a. Understanding of the project, tasks to be performed and deliverables.
 - b. Level of detail and thoroughness in the proposed solution, and level of responsiveness to the technical requirements outlined in Appendix C, Section 6.
 - c. Compliance of the proposed DAS with project requirements, responsiveness to the proposal requirements regarding DAS Applications outlined in Appendix C, Section 6.2, and proposer's ability to provide an open-access, flexible, scalable system.

- d. Preliminary design approach and responsiveness to the proposal requirements regarding system architecture outlined in Appendix C, Sections 6.3 and 6.4, including but not limited to data collection and analysis, level of detail about design parameters, floor space requirements, HVAC and power requirements, cabling and connections, security and access requirements, weight loading and structural requirements, and aesthetic impact of any system components inside and outside the airport buildings, and system capacity enhancements and expansion capability.
- e. Quality, thoroughness and logic of preliminary installation plan, meeting the requirements outlined in Appendix C, Section 6.5, and merit of the quality assurance plan for the DAS to ensure reliable and efficient service for users, and proposed measures to safeguard against degradation or interruption of current telecommunication applications at the Airport, including cellular service, during installation and testing of the new DAS.
- f. Preliminary system testing plan.
- g. Extent and duration of warranty for the DAS and all its components, including equipment, hardware, software, services and all other items necessary or proper for, or incidental to operating and maintaining the system in accordance with the performance specifications.
- h. Proposed Operation and Maintenance Plan.
- i. Work plan and schedule.
- j. Experience, ability and willingness to work collaboratively with a potential non-cellular prime contractor (see Appendix C, Section 7.1).

2. Assigned Project Staff (200 points)

- a. Recent experience of staff assigned to the project and a description of the tasks to be performed by each staff person;
- b. Professional qualifications and education; and
- c. Workload, staff availability and accessibility.

3. Experience of Firm and Subconsultants (300 points)

- a. Expertise of the firm and subconsultants in the fields necessary to complete the tasks;
- b. Quality of recently completed projects, including adherence to schedules, deadlines and budgets;
- c. Experience with similar projects; and

- d. Results of reference checks.

4. Fee Proposal (100 points)

SFO's selection will not be made solely on the basis of the lowest bid. However, the fee proposals will be considered and points will be awarded as follows: Points will be determined based on the lowest applicable fee proposal determined by SFO among proposers meeting the minimum qualifications, considering the total of all the various amounts submitted in the Pricing Schedule (Appendix D). A weighed total fee proposal will be determined as follows: The total fee proposal for Phases 1, 2 and 3 will have 30%, 25% and 10% of the total weight, respectively; the total fee proposal for O&M services in Years 1 to 3 will have 25% of the total weight, and the fee proposal for O&M will have 10% of the total weight. The proposer with the lowest weighed total fee proposal shall receive the maximum number of points for this evaluation criterion (100 points); the other proposals will be scored dividing the amount of the lowest weighed fee proposal by the weighed fee proposal being evaluated and multiplying this result by 100 points (total possible points).

For example, three fee proposals are submitted with the following total weighed amounts: \$1,000, \$1,200 and \$1,300. The lowest amount (\$1,000) will receive 100 points, the \$1,200 proposal will receive 83 points (100 points multiplied by \$1,000 and divided by \$1,200), and the \$1,300 proposal will receive 77 points (100 points multiplied by \$1,000 and divided by \$1,300).

5. Optional Oral Interview (250 points)

Following the evaluation of the written proposals, SFO reserves the right to invite a limited number of proposers receiving the highest scores to an oral interview. The interview, if conducted, will consist of standard questions asked of each of the proposers. For each firm, the interview score will be combined with the scores in the other categories to determine the overall final score. Evaluation criteria may be based on, but not be limited to, the following:

- a. Information provided by the firm about its relevant experience: Relevance of the team experience as demonstrated by types and complexity of previous work presented. Evidence of the expertise the team brings to the project.
- b. Discussion about approach to implementation: Understanding of the key long-range and short-range implementation issues that affect the project. Quality of the insight or conceptualization of the issues relevant to the project.
- c. Quality and clarity of the communication presented orally during the interview plus any additional written and graphic communication used to represent the skills of the team. Clarity in the organization and exposition of the document and the presentation.
- d. Degree to which the technical expertise is complete for the anticipated scope of work. Evidence presented during the interview that the team is structured for a comprehensive approach.
- e. Discussion about firm's project management abilities. Evidence that previous work was well managed, within budget and on-time. Documentation of relevant problems and how they were resolved.



San Francisco International Airport

Request For Proposal

Management and Operations of Public and Employee Parking at
San Francisco International Airport

Contract Number 9121

Date Issued:

Wednesday, October 26, 2011

Pre-Proposal Conference:

Tuesday, November 8, 2011, 10:00 AM

Proposal Deadline:

Tuesday, November 29, 2011, 3:00 PM

CITY AND COUNTY OF SAN FRANCISCO

Edwin M. Lee, Mayor

AIRPORT COMMISSION

Hon. Larry Mazzola, President

Hon. Linda S. Crayton, Vice President

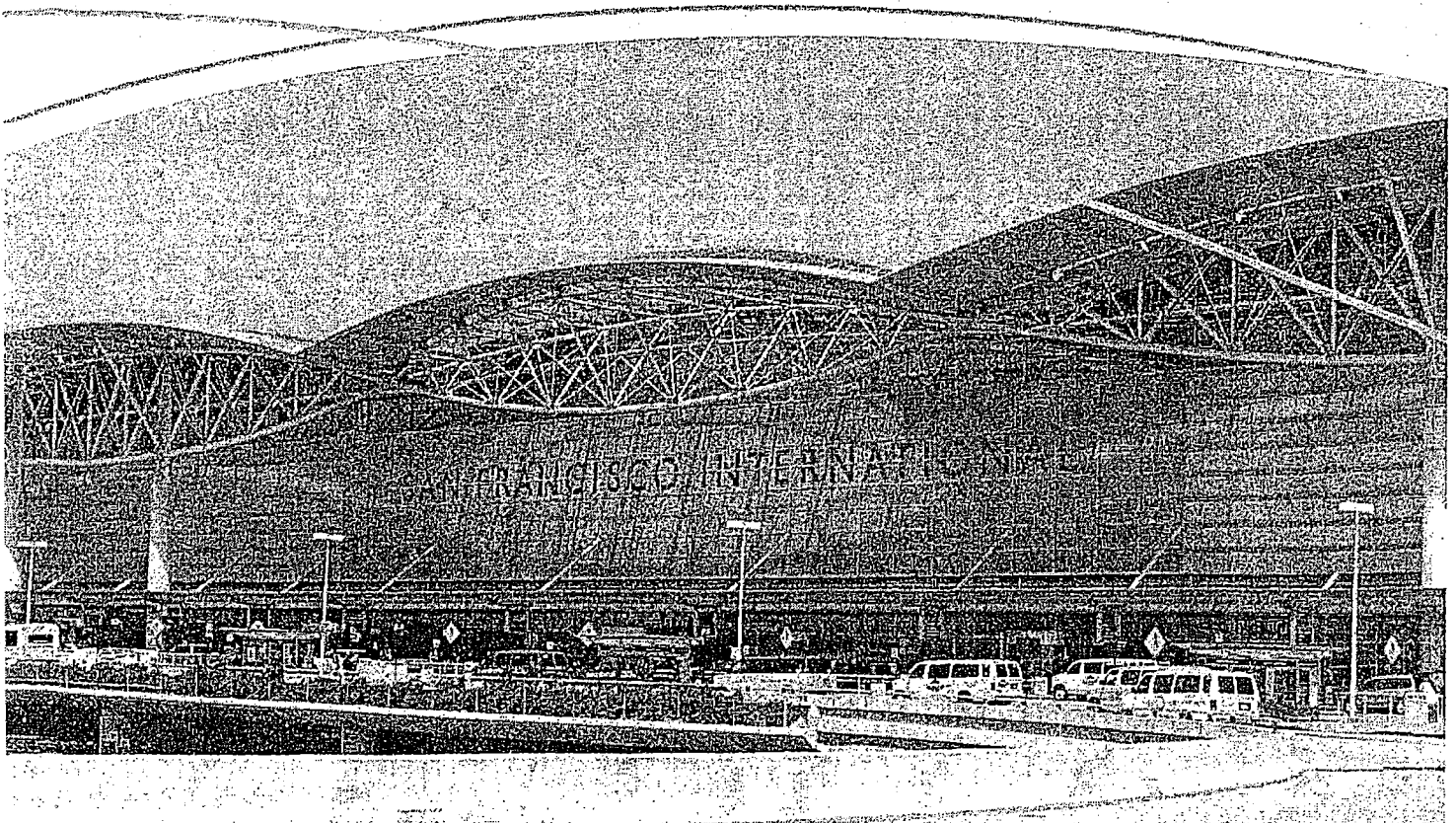
Hon. Eleanor Johns

Hon. Richard J. Guggenheimer

Hon. Peter A. Stern

AIRPORT DIRECTOR

John L. Martin



Direct Labor only include that portion of costs related to the direct labor salary or wages incurred.

- d) Payroll Additives are the costs incurred by the employer related to payroll costs. These costs are generally statutory requirements such as payroll taxes and workers' compensation insurance; however in some instances, other costs such as general liability insurance may be included.
- e) The total "Indirect Costs" comprising the not-to-exceed amount are: indirect labor, fringe benefits, payroll additives, operating expenses (materials, supplies, sundries and bonds), and general and administrative expenses. The cost of outside and contracted services is not to be included in the indirect cost pool for computing the indirect cost ceiling or the Fee. The cost of contracted services and services provided by third parties such as janitorial, security, armored car and equipment maintenance are to be provided in the "Sub-Contracted Services" section of the Fee proposal form.
- f) Hourly rates for all team members must comply with the Prevailing Rate of Wages Ordinance No. 3-03 (*San Francisco Administrative Code Sec.21C.3, Appendix C*).
- g) Proposed Management Fee as shown in the Cost Proposal Form as a not-to-exceed percentage of the Total Fee Base is the sum of Direct Labor costs plus the Total Indirect Costs. A Management Fee needs to be proposed for each year of the five (5) year term.
- h) A Guaranteed Maximum Price (GMP) consisting of total reimbursable costs for the Base Contract Year, including the proposed Management Fee. Annual adjustments to the GMP not to exceed a cap of 3% per year for each subsequent contract year.

IV. EVALUATION AND SELECTION CRITERIA

A. Minimum Qualifications

Any proposal that does not demonstrate that a proposer meets these minimum requirements by the deadline for submittal of proposals will be considered non-responsive and will not be reviewed by an evaluation panel and will not be eligible for award of the contract. These qualifications have been established based on the size, operational characteristics, and volume of revenue currently generated at the Airport's parking facilities. At a minimum, a proposer and/or joint venture partner must meet the following qualifications:

- A minimum of 5 years verifiable continuous experience, within the last 7 years operating parking facilities serving an airport that has at least 15,000 spaces that is open 24-hours per day, 365 days per year and generates at least 2.5 Million exit transactions per year and \$60 Million in annual revenue; and
- A minimum of 5 years verifiable continuous experience within the last 7 years with a fully on-line revenue control system. Proposer must have experience generating revenue and facility operations reports, and operating and performing light maintenance on systems components, including ticket issuing machines, loop detectors and actuated gates, and cashier terminals; and

- A minimum of 5 years verifiable, continuous experience within the last 7 years managing staff of at least 60 full-time employees.

It is mandatory that the individual, partnership, joint venture, corporation, or the officers or principals thereof, submitting a proposal, either as presently constituted or existing as a result of some business reorganization or executive affiliation, have the above minimum qualifications. If such is found not to be the case, any proposal submitted by any such individual, partnership, joint venture, or corporation may be rejected. In the case of a proposal submitted by a partnership or joint venture, at least one (1) of the general partners thereof or one of the constituent members with a minimum of 35% ownership share of joint venture must possess said minimum qualification.

B. Selection Criteria

Airport staff will screen the proposals to ensure the Proposers meet the minimum qualification requirements. Proposals that meet the minimum qualifications will be evaluated by an evaluation committee with expertise in Airport Operations, Parking Management or other related activities. City intends to evaluate the proposals generally in accordance with the criteria set forth below. Following the evaluation of the written proposals, the top two proposers receiving the highest scores will be invited to an oral interview. The interview will consist of standard questions asked of each of the proposers invited to the interview.

There are 200 maximum possible points for the evaluation process; 150 for the written evaluation and 50 for the oral interview. All scoring will be cumulative.

In the event that the scores of the highest ranked proposers are within one percentage point of each other, as further described below, the City, at its sole discretion, will request a Best and Final Bid of Management Fees from each to determine the highest ranked proposer.

The descriptions following each evaluation criteria are provided as a guide and are not intended to be comprehensive.

1. Written Proposals 150 Points Maximum

<u>Evaluation Criteria</u>	<u>Maximum Points</u>
Qualifications:	(25 Points)
Recent relevant firm experience, extent of expertise, and review of proposed local and off-site management team including, but not limited to, experience with comparable parking operations and a description of tasks to be performed by each staff person.	
Operating Plan:	(25 Points)
The Operating Plan must demonstrate an understanding of the scope of work and requirements specific to the Airport's parking operations; including proposed methods for cash handling and auditing. Proposed staffing plans for current and future conditions should be well reasoned and show a clear understanding of operational requirements. A transition plan must be included to demonstrate proven experience in effecting smooth transitions from incumbent parking contractor.	

Maintenance Plan:

(15 Points)

The proposed Maintenance Plan will be evaluated based upon its strength, scope and its probability for continued success in keeping the Airport's parking facilities well maintained, clean and welcoming. The plan should incorporate strategies to ensure annual deep cleanings occur for each public garage and maintenance issues are addressed proactively.

Safety and Security Plan:

(15 Points)

The Safety and Security Plan will be evaluated based upon its ability to provide a safe and secure environment for our parking customers. This plan should address how the proposer will provide safety and security for employee and public customers, their vehicles, as well as the Airport's parking assets, including parking equipment and facility surveillance.

Customer Service and Marketing Plan:

(15 Points)

The Customer Service and Marketing Plan should include proposed methods for enhancing level of customer service, maintaining high employee morale, increasing public parking facility patronage and net revenues. The plan will be evaluated on how creative and innovative it is as well as how well it responds to the above criteria.

Financial Qualifications:

(10 Points)

Strength of a proposer's finances will be based on the financial statements. Nature and quantity of outstanding litigation against proposer will also be reviewed and evaluated.

Fee Proposal:

(45 Points)

Fee Proposals will be ranked based on the lowest proposal offered. Fee proposals will be evaluated using Net Present Value calculation of the five-year proposed management fees and the total cost of the direct, indirect and subcontract services costs for the base year proposed budget.

The most favorable Fee Proposal to the City is the lowest Guaranteed Maximum Price proposed. The lowest Guaranteed Maximum Price will receive the total number of points assigned to the Fee Proposal evaluation criteria. The other Fee Proposals will be scored by dividing the amount of the lowest Guaranteed Maximum Price by the Guaranteed Maximum Price of the Fee Proposal being scored and multiplying the result by the maximum number of points assigned to the Fee evaluation criteria.

An example of the scoring of the Fee Proposal would be: if a total of 45 points are assigned to rate fee proposals responding to an RFP, the Proposer who offers the lowest fee proposal of \$10,000 receives all 45 points. The next lowest proposal that offers \$15,000 receives a score of 30 points (\$10,000 divided by \$15,000, multiplied by 45 points) and the next lowest proposal that offers \$17,500 receives a score of 26 points (\$10,000 divided by \$17,500, multiplied by 45 points).

	Proposal #1	Proposal #2	Proposal #3
Total Guaranteed Maximum Price	\$10,000	\$15,000	\$17,500
Total Guaranteed Maximum Price Proposed / Lowest Total Guaranteed Maximum Price Proposed	100%	67%	57%
Points Awarded	45	30	26

2. Oral Interviews 50 Points Maximum

The two highest ranked proposers will be invited to participate in an oral interview and presentation of their proposals with the evaluation committee. Oral interviews will count for a maximum of 50 points. The interview will consist of standard questions that will be asked of each of the Proposers invited to the oral interview, and any follow-up or clarification questions from the Evaluation Panel. The Evaluation Panel will evaluate oral interviews in accordance with the same criteria for the written proposals. Proposers invited to the interview, along with members of proposed subcontractors and its proposed management team will be required to appear before the Evaluation Panel. Questions from the Evaluation Panel may be directed to a specific member of the Proposer's team. After the interview, the oral score will be added to the written score to derive a final score for those highest ranking Proposers invited to the interview.

3. Best and Final Offer

In the event that the scores of the highest ranked proposers are within one percentage point of each other's combined score, the City will request a Best and Final Bid of Management Fees to determine the highest ranked proposer. For example, if the cumulative average scores of the top two proposers are the following:

Proposer No.1 185 points
Proposer No.2 184 points

Proposer No.1's score is within one percentage point of Proposer No. 2's score $(185/184) - 1 = 0.5\%$. In this example the City would invite the top two proposers to submit a best and final offer on its Management Fees to determine the highest ranked proposer. The firm with the lowest Net Present Value of its proposed Best and Final five-year Management Fee offer would be deemed the highest ranked proposer.

V. PRE-PROPOSAL CONFERENCE AND CONTRACT AWARD

A. Pre-Proposal Conference

Proposers are encouraged to **attend a pre-proposal conference at 10:00 a.m., Tuesday, November 8, 2011**, at Airport Commission Administration Offices, Conference Room 28R, located at the San Francisco International Airport, International Terminal, 5th floor of the North Shoulder Building. The lobby entrance is located to the right of the International Terminal Security Checkpoint for the "G" boarding gates next to the CNBC News store,

This conference provides an opportunity to ask questions and seek clarifications. Any available new information will be provided at that time. If you have further questions regarding the RFP, please contact the individual designated in Section VI. B. **No questions or requests for interpretation will be accepted after 5:00 p.m. (PST) on November 15, 2011.**

Questions raised at the pre-proposal conference may be answered orally. If any substantive new information is provided in response to questions raised at the pre-proposal conference, it will also be memorialized in a written addendum to this RFP posted on the City's website <http://mission.sfgov.org/OCABidPublication/>. No questions or requests for interpretation will be accepted after **November 15, 2011**.

ARTICLE 4 - EVALUATION AND SELECTION CRITERIA

4.1 Selection Process

The selection process used by SFMTA generally follows City and FTA procurement guidelines. All Proposals will be evaluated by a Selection Committee comprised mainly of SFMTA staff. SFMTA will be the sole judge as to which Proposal is best and, in ascertaining the best Proposal, will take into consideration the financial resources, reputation, experience in performing similar work, as generally described below.

Step One: The SFMTA will evaluate each written Proposal based on the evaluation criteria listed in Section 4.2.1 A through E, using a 100-point rating system. Each member of the Selection Committee will separately score each firm's written Proposal. The Selection Committee's scores for each firm will be totaled, and the result will be divided by the number of Selection Committee members to obtain an averaged written evaluation score for each firm, which will be a maximum of 100 points.

The SFMTA will evaluate written criteria listed in Section 4.2.1 F Cost Proposal, using a 50-point rating system. The lowest price responsive proposal from a responsible Proposer will receive 50 points; every other Price Proposal will be scored proportionately based on the percentage by which that Price Proposal exceeded the price of the lowest-priced Proposal.

The SFMTA will multiply the averaged scores for each firm from evaluation of the written Proposal for criteria A through E by 30 percent and add the scores for each firm from the evaluation of the criteria F Cost Proposal. Based on those resulting scores, the SFMTA will determine which firms are within the competitive range (the "short list"). Those firms in the short list will be invited to attend an oral presentation/interview with the Selection Committee.

Step Two: The short-listed firms and their sub-proposers will be required to appear (in no particular order) before the Selection Committee for an oral interview, presentation of their Proposal and detailed discussion of the elements of their Proposal. Presentations at the oral interview must be made by the Proposer's key team members who will be assigned to perform the Contract. The key team members should actively participate in the oral presentations to the Selection Committee. Members of the Selection Committee may direct questions to specific members of the Proposer's team. The SFMTA may require short-listed firms to furnish additional information prior to or at the interview.

Using the evaluation criteria in Section 4.2.2 each member of the Selection Committee will separately score each firm's oral interview and presentation (20 point maximum). The SFMTA will total individual the evaluation scores from all Selection Committee members and then divide the total by the number of

Selection Committee members, to obtain an average interview evaluation score for each firm.

Step Three: The SFMTA will multiply the averaged score for each Proposer from the evaluation of the written Proposal for criteria A through E (Step 1) by 30 percent, add the score received for criteria F, the Cost Proposal, (Step 1) and add the averaged score received from the evaluation of the oral interview (Step 2). The result will determine the ranking of the Proposers.

$$\text{Proposer Score} = [\text{average (A + B + C + D + E) X 0.30}] + F + \text{average (G)}$$

The selection of any proposal shall not imply acceptance by the City of all terms in the proposal, which may be subject to further negotiations and approvals before the City may be legally bound thereby. In the event that the SFMTA determines that an agreement cannot be reached with the highest-ranked Proposer, SFMTA may choose to discontinue negotiations with the highest-ranked Proposer and enter into negotiations with other qualified firms in the order of their ranking. SFMTA reserves the right to accept other than the lowest-priced offer and to reject proposals that are not responsive to this RFP.

4.2 Evaluation Criteria

4.2.1 Written Proposal

The SFMTA will review each written Proposal to ensure that it meets the minimum qualifications, is otherwise responsive to the RFP, and complies with City contracting requirements. The Selection Committee will then evaluate all responsive Proposals based on the following criteria:

- A. Proposal (5 points maximum):** Responsiveness to all items requested in the RFP, overall organization and clarity of proposal.
- B. Team Organization and Qualifications (15 points maximum):** Evaluation of Proposer capabilities, relevant project experience, knowledge of subway tunnel and transit construction; consulting team's composition, structure, roles/function; team's qualifications in providing OCIP services.
- C. Project Organization, Key Personnel and Staffing Ability (20 points maximum):** Evaluation of the Proposer's team organizational and management structure in managing the sub-proposers, staff, tasks and quality; ability to provide timely/readily available qualified and adequate staffing and services to support Project demands. The Evaluation Committee reserves the right to visit the local offices of the Proposer and sub-proposers as part of its evaluation.
- D. Relevant Experience and References (30 points maximum):** Evaluation of capability, specific relevant experience, qualifications of

each firm and each sub-proposer, especially the proposed key personnel for each task, and client references as to past project performance. The Selection Committee retains the right to independently verify and evaluate relevant experience and client references, including any sources not mentioned in the Proposal.

- E. Methodology and Approach (30 points maximum):** Evaluation of Proposer's understanding of the services for each task; effectiveness of its plan, program and method of execution; understanding of special issues, risks, problems and constraints, and approach towards mitigating and resolving them.
- F. Cost Proposal (50 points maximum):** The lowest price responsive proposal from a responsible Proposer will receive 50 points; every other Price Proposal will be scored proportionately based on the percentage by which that Price Proposal exceeded the price of the lowest-priced Proposal.

4.2.2 Oral Interview/Presentation

The SFMTA Selection Committee will conduct oral interviews at the Bay Area office of each short-listed Proposer. Prior to the interviews, SFMTA will notify the short-listed candidates in writing as to the time and length of the interview, the general format of the interview.

- G. Oral Interview/Presentation (20 points maximum):** In general, the oral interview will consider the Proposer's overall presentation, communication skills and ability to explain and answer questions from the Selection Committee regarding the Proposer's written Proposal. The Selection Committee will score the Oral Interview/Presentation based on the quality of responses provided and the quality of the team attending and presenting at the interview, including their expertise, communication skills, knowledge of the Proposal and Program, and the overall quality of their presentation.

SFO's request for proposals regarding the advertising lease states that:

The Airport Commission is desirous of maximizing participation by local owners and in featuring local concepts.

Despite SFO's stated interest in local involvement and its public mission to serve airport users, the relatively small number of advertising locations at SFO and the high cost of these locations makes it virtually impossible for local businesses to advertise at SFO or for small local businesses to participate in the advertising contract.

FastCityGuide offers a vehicle that would finally allow local businesses an opportunity to advertise to the millions of travelers that use SFO and for a small local business such as RBP to participate in the SFO advertising contract.

FastCityGuide would provide valuable information to travelers about San Francisco and the surrounding areas (eg. hotels, restaurants, shopping, events, transportation, tourism, maps, etc.) while allowing local businesses to advertise on "virtual" walls that would be limited only by the imagination of the advertisers.

Travelers would be invited to use FastCityGuide while at SFO but would be able to take the information with them on their mobile devices after they leave SFO.

The ability for local advertisers to access SFO through innovative technology would satisfy SFO's local flavor goals while adding a new revenue source.

RFP REQUIREMENT	JCDECAUX
<p>Minimum Guarantee Offer</p> <p>Proposer must propose a MAG for the first Lease Year which is equal to or greater than the Minimum Acceptable Financial Offer of \$7 Million.</p>	<p>\$8.5 Million</p>
<p>Goals</p>	
<p>Certified Airport Concession Disadvantaged Business Enterprise (ACDBE) participation (including Disadvantaged Business Partners (DBE)</p>	<ul style="list-style-type: none"> • Davis & Associates, a full-service communication agency who would be responsible for Local and Regional Sales. • Rosales Business Partners (RBP), a local Small Business Enterprise that specializes in innovative public-private business partnerships using creative technology. RBP with JCDecaux will launch FastCityGuide (see below).
<p>Airport Concession Program that maximizes participation by local owners and in featuring local concepts.</p>	<p><u>Local Owners</u> In addition to San Francisco based Davis & Associates and RBP listed above, JCDecaux other local partners include:</p> <ul style="list-style-type: none"> • IW Group, a marketing and communication firm that specializes in reaching the Asian-American community who would be responsible for Local and Regional Sales. <p><u>Local Concepts</u> The proposal includes several optional programs aimed at improving the passenger's experience while promoting San Francisco and the Bay Area at SFO:</p> <ul style="list-style-type: none"> • Partnership with San Francisco Travel to feature promotional materials at the Airport as well as in 30 major U.S., European, Asian and South American cities. Together JCDecaux and San Francisco Travel will develop a Community Outreach Program that will inform, educate and entertain visitors and will be incorporated into the advertising program by using unsold inventory to post promotional campaigns and by incorporating a dedicated link on its Interactive Visitor's Centers and Interactive Directories. Through San Francisco Travel, JCDecaux will also donate advertising space for two promotional campaigns for the City

	<p>of San Francisco which will run domestically and internationally.</p> <ul style="list-style-type: none"> • A partnership with GateGuru, the leader in smartphone applications for airport travelers that will synchronize the information provided on the application with that made available on the interactive Passenger Information Kiosks. Through this mobile application, passengers will be able to view real-time flight status information, view an itinerary, refer to airport maps, and see a structured list of airport foods, shops and services. • FastCityGuide San Francisco, a powerful promotional tool for the City of San Francisco, its community, business and economy. FastCityGuide to develop a new smart phone mobile website application that will serve local residents and visitors alike by providing them with access to all the information they need to make the most out of their stay or life in San Francisco and the Bay Area. FastCityGuide SF will, in effect, take over where GateGuru left them, starting with transportation options from the airport all the way to hotels, restaurants, entertainment, sightseeing and community events. The information provided by FastCityGuide will also be synchronized with Interactive Visitor's Centers and Interactive Directories, allowing for a seamless transition and ensuring that it remains current. FastCityGuide can be a powerful promotional tool for the City of San Francisco, its community, businesses and economy. In order to help its adoption rate and boost its positive impact, JC Decaux would promote FastCityGuide at the Airport using unsold inventory and the Interactive Visitor's Kiosk. The information presented will be from the perspective of a local/native San Franciscan and will showcase the entire City, not only the areas traditionally promoted to tourists. • An entertainment hub centered on the AerStream radio platform developed and operated by AerStream Media. In-terminal radio can be a new and exciting source of incremental revenue for San Francisco International Airport. While capitalizing on the average estimated 120 minutes of dwell time at O'Hare and 90 minutes at Midway, AERSTREAMRADIO is the perfect response to passengers' admitted need for a little
--	---

	<p>time to relax and decompress post-security or between flights. And because it is 'commercial radio' supported with advertising dollars from local, regional and national brands, the City of San Francisco wins in a number of ways – content travelers spend more at retail and food and beverage concessions, and the City shares in the dollars generated by advertising placed on the radio channel. Consequently, AerStream can deliver goodwill, image enhancements and hard dollars to the City.</p> <p>AerStream will come to life through two platforms at San Francisco International Airport:</p> <p>Terminal Radio - Using a mix of music genres that appeal to diverse audiences, AerStream will provide closed-circuit audio programming for the listening enjoyment of air travelers throughout the airports' footprints – concourses, hallways, gates, lounges and baggage claim. Programmed for active listening, the station will offer fifty minutes of music, eight minutes of commercial messaging and two minutes of airport, TSA and San Francisco tourism announcements. This airport platform is also called 'community' radio.</p> <p>Web-based Radio - Through the AerStream URL or app, passengers will also have the opportunity to personalize their listening pleasure by creating their own playlists with over 400 channels of diverse music to choose from including: jazz, rock, easy listening, reggae, R&B, country, Broadway show hits, classical and many more. Listeners will also enjoy the added features of a San Francisco Scenes feature which promotes the City, its many attractions and its musical talent. Phase Two of the online programming will include several custom-produced channels that feature children's entertainment, self-improvement, finance, movie critiques, news and sports. Passengers will be able to enjoy the streaming entertainment using personal computers, mobile phones or other wireless devices with internet access. Both versions of AerStream will reflect a strong "sense of place". It is important that the online and off-line stations mirror the vibrancy of the City and its rich heritage in music. Drawing from the plethora</p>
--	--

	<p>of talent hailing from or associated with San Francisco (i.e. Tony Bennett, Jerry Garcia, Gary Holt, Metallica, Jefferson Airplane, Courtney Love, Carlos Santana, etc.), the stations will feature San Francisco-specific playlists i.e. every fourth song), use popular San Francisco artists for announcements and music lead-ins, and feature special interviews.</p>
SOCIAL RESPONSIBILITY	
<p>Local contractors and labor for SFO based work under Lease</p>	<p>JCDecaux will hire additional staff for its local workforce to perform the maintenance at SFO. JC Decaux maintenance technicians are part of Teamsters Local 856.</p> <p>JC Decaux will use local subcontractors for the implementation of the program at SFO, from engineering to electrical and general contractors. Whenever possible, JC Decaux hires local DBE, SBE, LBE, MWE or WBEs to do the work.</p>



ROSALES LAW PARTNERS LLP

February 7, 2013

SUBJECT: Summary of Clear Channel Practices at San Jose International, Oakland International, San Francisco International, and City of Los Angeles

SAN JOSE

Clear Channel submitted a proposal to the Airport's Advertising Concession RFP that included a MAG that was \$2 million more than the closest competitor. Clear Channel was awarded the contract and on July 19, 2007, the parties entered into a Lease and Concession Agreement for Advertising and Promotions.

On January 11, 2008, shortly before MAG payments were scheduled to begin, Clear Channel began to request MAG relief, arguing that their inventory was not completely installed because of delays in receiving final design approval and notice-to-proceed. The Airport denied this request. In November 2008, Clear Channel verbally requested to restructure the MAG. The Airport denied the request. In December 2008, Clear Channel made another request for MAG relief because of the "current economic crisis" and proposed that they receive a \$1 million MAG reduction in 2009 and repay this amount in two \$500,000 installments in 2010 and 2011. The Airport rejected this proposal and reminded Clear Channel that the Agreement does provide for MAG abatement in specific circumstances which had not occurred. In June 2009, Clear Channel continued to request MAG abatement, stating the economic climate and advertising market constituted a force majeure event under the Agreement; its ability to generate advertising revenue was compromised by construction at the Airport; and the City had delayed approvals. The Airport rejected this request.¹ In March 2011, Clear Channel offered to make a pre-payment of the MAG of \$9 million and pay 60% of the gross revenues in exchange for a three-year extension of the contract. The Airport rejected this offer and Clear Channel countered by offering a \$10 million pre-payment and 65% of gross revenues. In July 2011, Clear Channel argued that they were entitled to a MAG reduction because a food and beverage concessionaire had received a MAG reduction. The Airport rejected this argument because the factors that led to

¹ In this letter, Clear Channel also requested the removal of one location (Airport Monument Sign) and the Airport responded that it was willing to negotiate the removal of this advertising space and a corresponding MAG reduction. The parties negotiated in writing from October 2009 to January 2010.

Summary of Clear Channel Practices at San Jose International, Oakland International, San Francisco International (SFO) and City of Los Angeles

Date: February 7, 2012

Page: 2

the concessionaire reduction do not apply to Clear Channel. In October 2011, Clear Channel renewed its request for a restructuring of the payment terms, which the Airport rejected.

While the Airport did not agree to the MAG relief requested by Clear Channel, by November 2011, the Airport had provided Clear Channel with nearly \$4.3 million in other financial relief, including MAG reductions for removal of advertising space and Monument Sign (\$3,267,549 through the term and option term of the Agreement) and reductions in the capital investment requirement (\$1,029,800). The City had also proposed an additional savings by consolidating Clear Channel's capital investment requirements (\$296,000) and by providing free office space (\$64,879).

Contact information for the individual managing Clear Channel's contract at San Jose Airport:

Seth Turner, Property Manager II
Norman Y. Mineta San Jose International Airport - SJC
1701 Airport Boulevard, Suite B-1130
San Jose, CA 95110
408-392-3683 - phone
408-441-2617 - fax
seturner@sjc.org

OAKLAND

The Airport issued an RFP for an in-terminal advertising contract, which allowed proposers to offer a MAG.² The proposals were scored on overall economic potential. Another proposer, Alliance received .05 points more than Clear Channel, but because Clear Channel listed a MAG that was almost twice as much as Alliance, the panel selected Clear Channel. The Airport Airport entered into the Space/Use Permit for Non-Exclusive In-Terminal Advertising Concession with Clear Channel on July 1, 2008.

In January 2009, Clear Channel Airports asked for a temporary delay in the payment of the monthly MAG installments which were due to begin January 1, 2009 because of the delay in design approval from Airport staff. Oakland denied this request saying that the delays in the design process are mostly the result of Clear Channel's submittal of designs that differed from those submitted in the proposal and its expectation of a formal approval notification, and also almost half of the displays were not subject to design review. On April 16, 2009 Clear Channel proposed a significantly reduced MAG for the entire term of the Agreement. Clear Channel also proposed to change the MAG to 85% of the previous year's percentage payment, an increase from the 70% set forth in the Agreement, as well as an increase in the percentage payment to 60% for all years after the first year of the term. On August 3, 2009, Clear Channel again

² The information regarding the RFP process was obtained from an email from Janet Deutsch in response to an email inquiring about Oakland's MAG scoring methodology.

Summary of Clear Channel Practices at San Jose International, Oakland International, San Francisco International (SFO) and City of Los Angeles

Date: February 7, 2012

Page: 3

proposed a decrease in the MAG and an increase of the percentage of gross receipts payment. This proposal was memorialized in Amendment No. 1. This amendment was executed in September 2009, wherein the parties agreed that Clear Channel would provide 60% of gross receipts to the Airport and would receive a MAG reduction of \$50,000 to \$100,000 per year.

Despite the fact that Oakland has given approximately \$700,000 in financial relief³, Clear Channel has continued to request additional financial relief.

Contact information for the individual managing Clear Channel's contract at Oakland Airport:

Janet Deutsch
Concession Manager - Airport Properties
Oakland International Airport
9532 Earhart Road, Suite 201
Oakland, CA 94621
510.563.3673
jdeutsch@portoakland.com

SAN FRANCISCO

SFO entered into a Lease Agreement for the Airport Advertising Program at San Francisco International Airport with Clear Channel Airports (at that time known as Transportation Media, a division of Eller Media Company) on April 20, 2001. That Agreement called for a five year term, plus three, 1-year options at SFO's option. A 5-year option at Clear Channel's discretion was added later. The first 1-year option was exercised on December 21, 2010, effective April 1, 2011 to March 31, 2012. The second 2-year option was exercised July 19, 2011, effective April 1, 2012 to March 31, 2013.

As a result of the decline in travel due to the September 11, 2001 terrorist attacks, SFO adopted the Airport Concession Support Program wherein the MAG was temporarily suspended until monthly enplanements equaled or exceeded 85% of the enplanements for the same month in year 2000 for two consecutive months and granted, at tenant's discretion, an extension of the term for one 5-year period. The MAG was reinstated effective April 1, 2002. On April 2, 2002, the Airport Commission approved an amended MAG Increase Schedule and amended the adjustment schedule that governed the MAG recalculation for each year. Following the adoption of the Airport Concession Program and the other negotiated lease modifications, the parties entered into Amendments No. 1 and 2 on October 18, 2002. Additional advertising locations were approved and the MAG was increased in March 2002, July 2003, and October 2005.

Over a period of approximately three years, the parties also negotiated a third amendment that would have, among other things, approved additional advertising locations; authorized half of the

³ This number was shared by Janet Deutsch.

rent collected from certain locations to be shared with the appropriate airline or SFOTEC; and exercised all three, 1-year options for a new expiration date of March 31, 2014. This amendment was approved by the Airport Commission and sent to the Board of Supervisors for approval, but SFO staff subsequently requested that the resolution be tabled. On October 22, 2010, SFO informed Clear Channel that because of the "considerable challenges" that it had faced trying to obtain the Board of Supervisors' approval of the amendment, SFO had opted to not pursue this amendment any further.

LOS ANGELES

The practices of Clear Channel Outdoor, Inc., the company that operates Clear Channel Airports, with the City of Los Angeles are also revealing. In 2006, Clear Channel Outdoor, Inc., along with CBS Outdoor, Inc. entered into an extremely favorable settlement agreement, which was approved as a Stipulated Judgment, with the City of Los Angeles that exempted them from a series of ordinances that banned the placement or modification of new off-site signs and granted them the right to obtain permits to modernize up to one-quarter of their inventory. This settlement agreement afforded them significant business advantages over their competitors. For example, pursuant to the terms of the settlement agreement, Clear Channel Outdoor, Inc. received permits to convert at least 40 off-site signs to digital display. Such permits violate the Los Angeles municipal code.

In August 2008, Summit Media LLC, another outdoor sign company, sought a writ of mandate to order the City of Los Angeles to set aside this settlement agreement because it was "an invalid, illegal and ultra vires act." It also requested the revocation of all permits and authorizations issued pursuant to the settlement agreement.

While the case was pending before the Court of Appeals, Clear Channel Outdoor, Inc. made "sporadic efforts...to find a willing ear in the City for its overtures" to discuss settlement of the case. As late as July 2012, Clear Channel Outdoor, Inc. took the position that the Los Angeles "City Council could initiate legislative action which would moot the underlying dispute" in the Summit Media LLC litigation and tried to convince the City that Summit Media did not need to be part of any settlement discussions. A decision was issued earlier this month by the Court of Appeal.

The Court found the settlement agreement illegal and void because a settlement agreement cannot contractually exempt a party from currently existing ordinances that apply to everyone else, and but for the settlement agreement, would apply to the parties. And because the settlement agreement was unlawful, the Court also ordered the revocation of all digital conversion permits granted.

FORM SFEC-126:
NOTIFICATION OF CONTRACT APPROVAL
(S.F. Campaign and Governmental Conduct Code § 1.126)

City Elective Officer Information <i>(Please print clearly.)</i>	
Name of City elective officer(s): Members, SF Board of Supervisors	City elective office(s) held: Members, SF Board of Supervisors
Contractor Information <i>(Please print clearly.)</i>	
Name of contractor: Clear Channel Outdoor, Inc. dba Clear Channel Airports	
<i>Please list the names of (1) members of the contractor's board of directors; (2) the contractor's chief executive officer, chief financial officer, and chief operating officer; (3) any person who has an ownership of 20 percent or more in the contractor; (4) any subcontractor listed in the bid or contract; and (5) any political committee sponsored by controlled by the contractor. Use additional pages as necessary.</i>	
(1) Directors: Thomas W. Casey; Robert H. Walls, Jr. (2) Officers: Chief Executive Officer – N/A; Executive Vice President and Chief Financial Officer – Americas – Renee Krug; Chief Operating Officer – N/A; Executive Vice President, General Counsel and Assistant Secretary – Sara Lee Keller; Executive Vice President – Real Estate and Public Affairs – Bryan A. Parker; Executive Vice President and Secretary – Robert H. Walls, Jr.; Executive Vice President – Thomas W. Casey; Chief Revenue Officer – Americas – Franklin G. Sisson, Jr.; Senior Vice President, Treasurer and Assistant Secretary – Brian D. Coleman; Vice President, Associate General Counsel and Assistant Secretary – Hamlet T. Newsom, Jr.; Vice President – Corporate Tax – Scott T. Bick; (3) Clear Channel Outdoor, Inc. is wholly owned by Clear Channel Outdoor Holdings, Inc., which is: 88.5% owned by Clear Channel Holdings, Inc., and 11.5% publicly traded. (4) and (5) N/A	
Contractor address: 4635 Crackersport Road, Allentown, PA 18104	
Date that contract was approved:	Amount of contract: \$10,000,000 (MAG for first year of contract)
Describe the nature of the contract that was approved: On a non-exclusive basis, install, manage, operate, maintain and display commercial advertising using various media types.	
Comments: Lease awarded through a Request for Proposal process	

This contract was approved by (check applicable):

the City elective officer(s) identified on this form

a board on which the City elective officer(s) services San Francisco Board of Supervisors
Print Name of Board

the board of a state agency (Health Authority, Housing Authority Commission, Industrial Development Authority Board, Parking Authority, Redevelopment Agency Commission, Relocation Appeals Board, Treasure Island Development Authority) on which an appointee of the City elective officer(s) identified on this form sits.

Print Name of Board

File Information <i>(Please print clearly.)</i>	
Name of filer: Angela Calvillo, Clerk of the SF Board of Supervisors	Contact telephone number: (415) 554-5184
Address: City Hall, Room 244, 1 Dr. Carlton B. Goodlett Pl., SF, CA 94102	E-mail: Board.of.Supervisors@sfgov.org

Signature of City Elective Officer (if submitted by City elective officer)

Date Signed

Signature of Board Secretary or Clerk (if submitted by Board Secretary or Clerk)

Date Signed