

From: [Fontana, Georgianne](#)
To: [Peskin, Aaron \(BOS\)](#); [Haney, Matt \(BOS\)](#); [Carroll, John \(BOS\)](#); [elaine.o"neil@sfgov.org](mailto:elaine.o);
martha.bailey@jcdeaux.com; francois.nion@jcdeaux.com
Cc: [O'Brien, Harry](#)
Subject: File No 200222; Resolution Urging Invalidation of the 2019 Revenue Agreement - JCDeaux
Date: Thursday, July 16, 2020 4:41:31 PM
Attachments: [JCDeaux Letter re File No 200222 071620 4851-7135-9939 v.1.pdf](#)

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Greetings,

Attached is your copy of the letter that Harry O'Brien sent to Supervisor Mar.

Georgianne

Georgianne Fontana | Secretary to Jeffrey A. Bernstein, Seth J. Pardee, Jessica N. Wilson, Harry O'Brien (Temporary)

Coblentz Patch Duffy & Bass LLP

415-677-5228 | Office 415-391-4800

This transmittal is intended solely for use by its addressee, and may contain confidential or legally privileged information. If you receive this transmittal in error, please email a reply to the sender and delete the transmittal and any attachments.

From: Fontana, Georgianne
Sent: Thursday, July 16, 2020 4:28 PM
To: Gordon.Mar@sfgov.org
Cc: O'Brien, Harry <hobrien@coblentzlaw.com>
Subject: File No 200222; Resolution Urging Invalidation of the 2019 Revenue Agreement - JC Deaux

Supervisor Mar,

Attached for your review is a letter from Harry O'Brien.
Please confirm receipt of this email transmission.

Thank you. Georgianne

Georgianne Fontana | Secretary to Jeffrey A. Bernstein, Seth J. Pardee, Jessica N. Wilson, Harry O'Brien (Temporary)

Coblentz Patch Duffy & Bass LLP

415-677-5228 | Office 415-391-4800

This transmittal is intended solely for use by its addressee, and may contain confidential or legally privileged information. If you receive this transmittal in error, please email a reply to the sender and delete the transmittal and any attachments.

Harry O'Brien
D 415.772.5723
hobrien@coblentzlaw.com

July 16, 2020

VIA ELECTRONIC MAIL

Hon. Gordon Mar, Chair
Government Audit & Oversight Committee
San Francisco Board of Supervisors
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102

Re: File No. 200222; Resolution Urging Invalidation of the 2019 Revenue Agreement —
JCDecaux

Dear Supervisor Mar:

As the above-referenced resolution has been calendared for further consideration by the Committee on July 17, 2020, we write again on behalf of JCDecaux San Francisco, LLC ("JCDecaux San Francisco") and its parent company JCDecaux North America, Inc. (together, "JCDecaux").

As we described in our June 30, 2020 letter to you, JCDecaux completed an internal investigation and found no evidence that Mr. Nuru had any inappropriate influence on the negotiation of the Public Toilet and Public Service Kiosk Agreement (the "Agreement"), nor that Mr. Nuru or anyone else acted improperly in connection with or subsequent to the execution of the Agreement. Mr. Nuru's involvement in the negotiation and execution of the Agreement was relatively minimal, and all communications between Mr. Nuru and JCDecaux involved other San Francisco ("City") personnel, none of whom is alleged, to our knowledge, to be implicated in any of Mr. Nuru's alleged wrongdoing. The entry into the Agreement by the Department of Public Works ("DPW") was subject to considerable oversight by multiple City departments and Commissions including the Office of the City Attorney, the San Francisco Arts Commission, and the Historical Preservation Commission. Ultimately, the Agreement was unanimously (10-0) approved by the Board of Supervisors. The Agreement has been in effect for nearly a year and JCDecaux is diligently engineering and manufacturing the new street furniture required by the Agreement.

The Committee's July 2, 2020 hearing on the above-referenced Resolution focused on the RFP process that led to the Agreement. The hearing took a strange turn when Bob Schmitt, a regional president and representative of Clear Channel Outdoor ("CCO"),¹ called in to offer his

¹ CCO, a competitor of JCDecaux's in the out-of-home advertising industry, holds three contracts with the City for advertising on transit shelters and news racks and at SFO, in addition to its many billboards on private properties throughout the City.

Hon. Gordon Mar, Chair
Government Audit & Oversight Committee
July 16, 2020
Page 2

own, flawed recollection of the process. Fortunately, the documentation that Mr. Schmitt subsequently submitted to the Committee corrects a number of misstatements made in his testimony, as illustrated below:

First, Mr. Schmitt testified that, with respect to the 2015 RFP, CCO asked DPW in writing whether JCDecaux would be willing to sell CCO its equipment, and that DPW responded that JCDecaux would not be interested in that arrangement. Mr. Schmitt's testimony mischaracterizes the record. In fact, the written material provided by CCO indicates that CCO asked DPW whether the existing public toilets would "become the property of the City and/or [be] transferred to the possible new contractor for operation until the new toilet and kiosks are installed." The City responded in the negative in an Addendum to the RFP. Nevertheless, CCO's bid in response to the 2015 RFP assumed that it could purchase JCDecaux's existing equipment.

Second, Mr. Schmitt testified (1) that the 2016 RFP allowed a transition time of only 90 days for the successful bidder to provide new service, kiosks, and toilets; (2) that CCO responded that these requirements would have been "onerous and cumbersome and—impossible—virtually impossible" for any proposer other than the incumbent to perform; and (3) that CCO asked whether they could purchase JCDecaux's equipment in order to fulfill those requirements, to which CCO received "negative responses" from DPW. Mr. Schmitt's first point is incorrect – there was no such 90 day requirement. The 2016 RFP stated that new toilets should be installed within one year after the contract was awarded. See Exhibit 1 (Official Advertisement of Request for Proposals for Public Toilets and Advertising Kiosks (Re-Advertised) (April 29, 2016)). CCO submitted no written evidence to support Mr. Schmitt's second or third points.²

Third, Mr. Schmitt testified that CCO decided not to respond to the 2016 RFP despite its belief that the potential contract would have been "lucrative." The internal CCO memorandum submitted after the hearing tells a much different story. The memorandum states that the expected return "does not make this an attractive opportunity" given the significant capital cost, the costs of providing attendants, the costs of complying with CEQA review of 15 new public

² It appears that all of the written submissions (except the internal memorandum) CCO provided to the Committee relate to the 2015 RFP, not the 2016 RFP. This might suggest that Mr. Schmitt was confusing the two RFPs in his testimony. In fact, though, neither the 2016 RFP nor the 2015 RFP required that toilets be operating within 90 days from the award of the contract. The 2015 RFP indicated that new toilets should be installed within 120 days *after permits are issued*. Furthermore, in response to a question from CCO regarding this requirement, DPW responded in writing that additional time could be negotiated in the contract.

Coblentz
Patch Duffy
& Bass LLP

Hon. Gordon Mar, Chair
Government Audit & Oversight Committee
July 16, 2020
Page 3

toilets, and the City's expectations for greater financial benefits "in terms of Minimum Annual Guarantee (MAG) and a percentage of the advertising revenue."

As stated in our June 30, 2020 letter, the proposed resolution appears to have been prompted by a misunderstanding of the facts. Mr. Schmitt's misleading account of the process was designed to further confuse, rather than to clarify, those facts. While CCO had every opportunity to express any concerns it had with the City's process at the time the Agreement was approved by the Board of Supervisors, it chose not to do so then. The materials submitted now are irrelevant to the resolution before the Committee, inconsistent with Mr. Schmitt's testimony at the last hearing, and a distraction from the Committee's review of the entirely appropriate negotiation and execution of the Agreement, as previously approved by the full Board.

Respectfully submitted,



Harry O'Brien
For Coblentz Patch Duffy & Bass LLP

cc: Hon. Aaron Peskin
Hon. Matt Haney
John Carroll, Clerk to Government Audit & Oversight Committee
Elaine O'Neil, Deputy City Attorney
Martha Bailey, General Counsel, JCDecaux North America
Francois Nion

Exhibit 1

OFFICIAL ADVERTISEMENT

**CITY AND COUNTY OF SAN FRANCISCO
REQUEST FOR PROPOSALS
PUBLIC TOILETS AND ADVERTISING KIOSKS (Re-Advertised)**

April 29, 2016

San Francisco Public Works (Public Works) of the City and County of San Francisco (City) is seeking proposals from qualified firms to occupy and place advertising on Kiosks, to procure, install, and maintain public toilets (Toilets), and to provide an attendant to monitor the Toilets installed in the public right-of way.

The City intends to award one contract with an original term of ten years. In addition, the City shall have two options to extend the term for a period of five years each (two five-year extension terms), which the City may exercise in its sole, absolute discretion.

Proposers are encouraged to form partnerships with other parties with experience in providing all of the products and services requested in this Request for Proposals (RFP). Specifically, companies whose primary business is advertising are strongly encouraged to partner with one or more Community Based Organizations that can provide a job training component in addition to providing the Toilet attendant and maintenance services for street furniture.

Proposers would be responsible for replacing all of the currently-installed Toilets and Kiosks with new units within one year of contract award. Proposers shall coordinate replacement activities with removal of the existing Toilets and Kiosks, which will be performed by the City's current service provider, JC Decaux.

Proposers should note that for installation, removal, relocation and maintenance of either Toilets or Kiosks the City requires compliance with Prevailing Wage and Local Hire as outlined in the RFP.

Proposals and completed forms must be received by the City on or before **June 3, 2016, 3:00 P.M.** at the following address:

**San Francisco Public Works
Contract Administration
1155 Market Street, 4th Floor
San Francisco, California 94103
Attention: Tiffany Tsang
E-mail: toiletandkioskrfp@sfdpw.org**

Interested Parties may obtain the RFP, and additional information on this contract, including the forms to be submitted with the proposal, at www.sfdpw.org/biddocs.

A pre-proposal conference will be held on **May 18, 2016 at 1:00 p.m.** at San Francisco Public Works, 1155 Market Street, 4th Floor, San Francisco, California 94103.

Proposers will be required to comply with all applicable City, State, and Federal laws and regulations.