




MEMORANDUM

April 23, 2021

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

FROM: Elaine Forbes
Executive Director 

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

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

EXECUTIVE SUMMARY

The Transit Shelter Advertising Agreement (Agreement) between the San Francisco Municipal Transportation Agency (SFMTA), Clear Channel Outdoor, Inc. (Clear Channel), and the Port of San Francisco requires Clear Channel to provide and maintain transit shelters throughout the City including on Port property in exchange for the right to display advertising panels and collect advertising revenues. The Agreement includes provisions for distribution of a portion of the revenues to SFMTA and the Port, which began on December 10, 2007, and continues for a term of 15 years, plus one five-year option to extend at the City's sole discretion. To date, Clear Channel has performed satisfactorily in fulfilling the requirements of the Agreement.

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

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

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

PORT'S STRATEGIC PLAN OBJECTIVES

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

ECONOMIC RECOVERY

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

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

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

EVOLUTION

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

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

BACKGROUND

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

- The Agreement between SFMTA, Clear Channel, and the Port began on December 10, 2007, and continues for a term of 15 years, plus one five-year option to extend at the City's sole discretion.
- Revenue payments are based on transit shelter advertising panels, of which **2.58%** are located on Port property. Per the most recent pre-Covid payments the Port received **\$109,933 quarterly or about \$440,000 annually**.
- As stipulated in section 4 of the MOU (Port Revenue Share), the payment amount is based on the following formula:

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

Contract requirements include the following:

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

Proposed Amendment to the Agreement

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

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

\$146,578; 2) forgave certain payments and reduced MAG payment requirements for the period from May 1, 2020 through June 30, 2022; and 3) restores the Full Agreement Rate and revenue distribution to SFMTA and Port from July 1-December 31, 2022. The table below presents the revenues for each of these segments of time. The proposed amendment to the Agreement would result in total revenues of \$702,064 to the Port, instead of about \$1,340,000 that was anticipated to have been generated under the Full Agreement Rate. The SFMTA and Clear Channel seek Port approval of the proposed Agreement amendment.

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

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

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

Alternatives Considered

The City, through the SFMTA, the Port, or the Board of Supervisors could decline to enter into the Amendment, but such an action might lead to Clear Channel's inability to fulfill its financial commitments and deliver the financial and other benefits to the City provided in the Agreement. If Clear Channel defaulted, the City would lose the service and would be independently responsible for maintaining the transit shelters at its own cost. By entering into the Amendment as the SFMTA Board approved on March 2, 2021, the SFMTA will help to ensure that the City will receive reduced, but still substantial, financial benefits from May 1, 2020 through June 30, 2022, plus all of the other benefits provided in the Agreement. There is no guarantee that the SFMTA would be able to enter into another transit shelter contract in the event that the Agreement ends; at a minimum, it would take nine months to a year to rebid this work and new bids, if any, would likely be inferior to the guaranteed amounts and services in the current Agreement.

ENVIRONMENTAL REVIEW

On February 10, 2021, the SFMTA, under authority delegated by the Planning Department, determined that the First Amendment to the Transit Shelter Advertising Agreement with Clear Channel Outdoor, Inc. is not a "project" under the California Environmental Quality Act (CEQA) pursuant to Title 14 of the California Code of Regulations Sections 15060(c) and 15378(b).

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

RECOMMENDATION:

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

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

For: Diane Oshima, Deputy Director
Planning and Environment Division

EXHIBITS:

- A. First Amendment to Transit Shelter Advertising Agreement

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

RESOLUTION NO. 21-22

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

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

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

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

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

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

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

WHEREAS, On February 10, 2021, the SFMTA, under authority delegated by the Planning Department, determined that the First Amendment to the Transit Shelter Advertising Agreement with Clear Channel Outdoor, Inc., is not a "project" under the California Environmental Quality Act (CEQA) pursuant to Title 14 of the California Code of Regulations Sections 15060(c) and 15378(b); and

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

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

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

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

I hereby certify that the foregoing resolution was adopted by the Port Commission at its meeting of April 27, 2021.

DocuSigned by:


Secretary

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Exhibit A

FIRST AMENDMENT TO TRANSIT SHELTER ADVERTISING AGREEMENT

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

RECITALS

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

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

Article 1. Definitions

The following definitions shall apply to this Amendment:

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

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

Article 2. Modifications to the Agreement

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

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

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

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

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

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

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

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

Table 1: MAG Amounts and Revenue Share Percentage

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

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

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

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

Article 3. Effective Date

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

Article 4. Legal Effect

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

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

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

Port Commission

Resolution No. _____

Dated: _____

Board of Supervisors

Resolution No. _____

Dated: _____

Attest:

Clerk of the Board

Approved as to Form:

Dennis J. Herrera, City Attorney

By: _____

Robin M. Reitzes

Deputy City Attorney