

THIS PRINT COVERS CALENDAR ITEM NO.: 10.4

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Finance and Information Technology

BRIEF DESCRIPTION:

Authorizing the Director of Transportation to execute the First Amendment to the Transit Shelter Advertising Agreement with Clear Channel Outdoor, Inc. to reduce the minimum annual guarantee payments, as well as administrative and marketing payments, from May 1, 2020 through June 30, 2022, due to the impacts from the COVID-19 pandemic.

SUMMARY:

- The Transit Shelter Advertising Agreement (Agreement) between the City and Clear Channel Outdoor, Inc. (Clear Channel) began on December 10, 2007, and continues for a term of 15 years, plus one five-year option to extend at the City's sole discretion.
- 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; the Amendment provides for changes in Minimum Annual Guarantee payments from May 1, 2020 through June 30, 2022, and in certain administrative and marketing payments.
- By entering into the Amendment, the SFMTA will receive reduced, but still substantial, financial benefits during fiscal years 2021 and 2022, plus all of the other benefits provided in the Agreement; it will also help Clear Channel to survive and preserve jobs, as well as continuing its critical services for the SFMTA and its customers.
- If approved by the SFMTA Board, the Amendment will be submitted to the Port Commission and Board of Supervisors for final approval.
- The Board of Supervisors has 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.

ENCLOSURES:

1. Resolution
2. First Amendment to Transit Shelter Advertising Agreement

APPROVALS:

DIRECTOR

SECRETARY Caroline Celaya

DATE

February 23, 2021

February 23, 2021

ASSIGNED SFMTAB CALENDAR DATE: March 2, 2021

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PURPOSE

This calendar item authorizes the Director of Transportation to execute an amendment to the Transit Shelter Advertising Agreement with Clear Channel Outdoor, Inc. to reduce the minimum annual guarantee payments, as well as administrative and marketing payments, from May 1, 2020 through June 30, 2022, due to the impacts from the COVID-19 pandemic.

STRATEGIC PLAN GOALS AND TRANSIT FIRST POLICY PRINCIPLES

This item will support the following goal and objectives of the SFMTA Strategic Plan:

Goal 3: Improve the quality of life and environment in San Francisco and the region
Objective 3.5: Achieve financial stability for the agency

This item will support the following Transit First Policy Principles:

1. To ensure quality of life and economic health in San Francisco, the primary objective of the transportation system must be the safe and efficient movement of people and goods.

DESCRIPTION

The Transit Shelter Advertising Agreement (Agreement) between the City and Clear Channel Outdoor, Inc. (Clear Channel) began on December 10, 2007, and continues for a term of 15 years, plus one five-year option to extend at the City's sole discretion. To date, Clear Channel has performed satisfactorily in fulfilling the requirements of the Agreement. Contract requirements include the following:

- Inspect and clean all transit shelters (approximately 1,100) at least twice per week, except for shelters on Market Street, which must be inspected at least three times 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 reports 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.

The SFMTA deemed Clear Channel's maintenance staff to be essential workers at the outset of the pandemic. Clear Channel has retained all of these workers, who have performed all of the required maintenance during this time. Clear Channel has also continued to provide a skilled subcontractor to assist the SFMTA and San Francisco Public Works project managers with critical capital work throughout the pandemic. Projects have included Geary Bus Rapid Transit,

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L Taraval, and 22 Fillmore (16th Street). Going forward, Clear Channel’s financial responsibilities include significant new transit shelter purchases for both the Van Ness Bus Rapid Transit and Better Market Street projects.

Due to the impacts from the COVID-19 pandemic, which have had, and continue 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. The advertising market is very weak as a result of the pandemic, which has resulted in City and State lockdowns and public health/stay-at-home orders, reductions in transit service to core levels, and customers staying away from transit. Successful transit advertising requires large numbers of people to view the ads on the street and on transit. As of early February, the SFMTA estimates that ridership is at approximately 30-40% of pre-pandemic levels. It is unclear when ridership will return to pre-pandemic numbers. A snapshot of the reduction in advertising revenues for calendar year 2020 is included below:

Month	2020	2019	Variance %
April	\$ 397,936	\$ 989,668	-60%
May	\$ 262,602	\$1,511,997	-83%
June	\$ 349,041	\$1,534,724	-77%
July	\$ 307,772	\$1,026,586	-70%
August	\$ 139,652	\$1,164,578	-88%
September	\$ 530,197	\$1,514,092	-65%
October	\$ 283,769	\$1,674,636	-83%
November	\$ 307,797	\$1,420,520	-78%
December	\$ 480,930	\$1,494,665	-68%
January (2021/2020)	\$ 275,379	\$1,009,216	-73%

The amendment to the Agreement with Clear Channel (Amendment), attached as Enclosure 2, will help Clear Channel to survive and preserve jobs while continuing its critical services for the SFMTA and its customers. The SFMTA has received approximately \$373 million in Federal relief funding as of early February that has been applied to offset deficits in fiscal years 2019-20 and 2020-21, including reductions in advertising revenue. The SFMTA also expects to receive \$230 million in additional Federal relief funding to offset deficits in fiscal years 2020-21 and 2021-22.

In response to Clear Channel’s request, the SFMTA has 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; forgiveness of those payments requires the approval of a contract amendment.

The SFMTA is now proposing to forgive certain payments and has negotiated the Amendment, which will cover the period from May 1, 2020 through June 30, 2022. The table below is the original table from the Agreement:

Table 1: MAG Amounts and Revenue Share Percentage (contract)

Fiscal Year	MAG	Minimum Gross Revenues in Previous Fiscal Year	Alternate MAG	Revenue Share
2007-08	\$ 6,909,000	\$21,000,000	\$10,318,000	55%
2008-09	\$ 7,614,000	\$23,000,000	\$11,553,000	55%
2009-10	\$ 8,232,000	\$25,000,000	\$12,607,000	55%
2010-11	\$ 8,644,000	\$27,000,000	\$13,237,000	55%
2011-12	\$ 9,076,000	\$29,000,000	\$13,899,000	55%
2012-13	\$11,812,000	\$31,000,000	\$14,595,000	55%
2013-14	\$12,339,000	\$33,000,000	\$15,324,000	55%
2014-15	\$12,893,000	\$35,000,000	\$16,090,000	55%
2015-16	\$13,474,000	\$34,000,000	\$16,895,000	55%
2016-17	\$14,084,000	\$36,000,000	\$17,739,000	55%
2017-18	\$15,577,000	\$38,000,000	\$18,626,000	55%
2018-19	\$16,293,000	\$41,000,000	\$19,558,000	55%
2019-20	\$17,044,000	\$42,000,000	\$20,536,000	55%
2020-21	\$17,834,000	\$44,000,000	\$21,563,000	55%
2021-22	\$18,661,000	\$46,000,000	\$22,640,000	55%
2022-23*	\$21,082,000*	\$48,000,000*	\$24,637,000*	57%*
2023-24*	\$22,073,000*	\$50,000,000*	\$25,869,000*	57%*
2024-25*	\$23,114,000*	\$53,000,000*	\$27,162,000*	57%*
2025-26*	\$24,207,000*	\$56,000,000*	\$28,521,000*	57%*
2026-27*	\$25,353,000*	\$59,000,000*	\$29,946,000*	57%*
Total	\$306,315,000		\$381,315,000	

*Assumes the option is exercised to extend the term

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

Table 1: MAG Amounts and Revenue Share Percentage (revised)

Contract Year+	MAG	Minimum Gross Revenues in Previous Fiscal Year	Alternate MAG	Revenue Share
2007-08	\$ 6,909,000	\$21,000,000	\$10,318,000	55%
2008-09	\$ 7,614,000	\$23,000,000	\$11,553,000	55%
2009-10	\$ 8,232,000	\$25,000,000	\$12,607,000	55%
2010-11	\$ 8,644,000	\$27,000,000	\$13,237,000	55%
2011-12	\$ 9,076,000	\$29,000,000	\$,899,000	55%
2012-13	\$11,812,000	\$31,000,000	\$14,595,000	55%
2013-14	\$12,339,000	\$33,000,000	\$15,324,000	55%
2014-15	\$12,893,000	\$35,000,000	\$16,090,000	55%
2015-16	\$13,474,000	\$34,000,000	\$16,895,000	55%
2016-17	\$14,084,000	\$36,000,000	\$17,739,000	55%
2017-18	\$15,577,000	\$38,000,000	\$18,626,000	55%
2018-19	\$16,293,000	\$41,000,000	\$19,558,000	55%
January - June 2020	\$ 5,681,333			55%
July 2020 - June 2021	\$ 5,900,000			50%
July 2021 - June 2022	\$ 6,300,000			50%
July - December 2022	\$ 9,330,500			55%
2022-23*	\$21,082,000*	\$48,000,000*	\$24,637,000*	57%*
2023-24*	\$22,073,000*	\$50,000,000*	\$25,869,000*	57%*
2024-25*	\$23,114,000*	\$53,000,000*	\$27,162,000*	57%*
2025-26*	\$24,207,000*	\$56,000,000*	\$28,521,000*	57%*
2026-27*	\$25,353,000*	\$59,000,000*	\$29,946,000*	57%*

*Assumes the option is exercised to extend the term

+Clarifies that payments are based on the contract year, December 10 – December 9

The Amendment eliminates administrative payments (approximately \$700,000 per year) and marketing support (approximately \$280,000 per year) for two years. It does not, however, affect the annual payments to the San Francisco Arts Commission that support its programs (approximately \$370,000 per year).

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 our 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 has 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.

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Transit advertising contractors other than Clear Channel have had similar difficulties, have also made requests for financial relief to transit agencies, and in many cases have received it. These requests have involved contracts for both transit shelter and transit vehicle advertising. Contract changes have generally eliminated MAG payments for some period of time and substituted a revenue share only. The SFMTA, however, will still be receiving some MAG payments from Clear Channel (see second table above). Examples of transit agencies that have approved revenue share payments only for transit vehicle advertising contracts due to the pandemic include the Bay Area Rapid Transit District (BART), Los Angeles County Metropolitan Transportation Agency, Washington Metropolitan Area Transit Authority, Massachusetts Bay Transportation Authority (Boston), Metropolitan Atlanta Rapid Transit Authority and King County Metro (Seattle). The SFMTA's transit vehicle advertising contractor has made a similar request, which is currently under discussion. Clear Channel also has transit shelter contracts with the District (of Columbia) Department of Transportation, which has not made any changes to revenue payments thus far, and with AC Transit, which is operating under a one-year extension and is not receiving its customary administrative fee (its contracts have not included MAGs or a revenue share).

The Board of Supervisors has recently approved a rent relief program for the San Francisco International Airport (SFO), which acknowledges the economic challenges posed by the pandemic and which is intended to assist with business survival and recovery. This program includes Clear Channel Airports, a subsidiary of Clear Channel Outdoor. SFO's program provides for rent forgiveness rather than rent deferral/forbearance.

STAKEHOLDER ENGAGEMENT

The SFMTA made presentations to the Citizens' Advisory Council about its advertising agreements prior to approval. The Amendment relates to financial terms only and does not impact the operational terms of the Agreement, such as maintenance, which might affect the SFMTA's customers.

The SFMTA has also received communications from Teamsters Local 853, which represents Clear Channel's maintenance workers, in support of contract changes that would continue their employment and, more recently, in support of this proposed Amendment.

ALTERNATIVES CONSIDERED

The SFMTA 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 SFMTA and the City provided in the Agreement. 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 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,

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it would likely 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.

FUNDING IMPACT

Under the terms of the Amendment, Clear Channel's MAG, administrative and marketing payments to the City would be reduced from May 1, 2020 through June 30, 2022. The reductions to the MAG would total approximately \$900,000 less than budgeted for Fiscal Year (FY) 21 and approximately \$6,000,000 less than budgeted for Fiscal Year 22 due to the slower than expected economic recovery from the COVID-19 pandemic. The Amendment also eliminates administrative payments (approximately \$700,000 per year) and marketing support (approximately \$280,000 per year) for these two fiscal years.

The SFMTA has received approximately \$373 million in Federal relief funding as of early February that has been applied to offset deficits in FY20 and FY21, including reductions in advertising revenue. The SFMTA also expects to receive \$230 million in additional Federal relief funding to offset deficits in Fiscal Years 21 and FY 22.

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.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

The Amendment will require the approval of the Port Commission and the Board of Supervisors.

The City Attorney's Office has reviewed this Calendar Item.

RECOMMENDATION

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

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

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

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

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

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

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

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

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

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

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

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Director of Transportation to execute the First Amendment to the Transit Shelter Advertising Agreement with Clear Channel Outdoor, Inc., to reduce the

minimum annual guarantee payments, as well as administrative and marketing payments, from May 1, 2020 through June 30, 2022, due to the impacts from the COVID-19 pandemic; and be it

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

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

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

Enclosure 2

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> <p>Jeffrey P. Tumlin Director of Transportation</p> <p>SFMTA Board of Directors Resolution No. _____ Dated: _____</p> <p>Attest:</p> <p>_____</p> <p>Secretary, Municipal Transportation Agency Board of Directors</p> <p>San Francisco Port Commission</p> <p>_____</p> <p>Executive Director</p> <p>Port Commission Resolution No. _____ Dated: _____</p> <p>Board of Supervisors Resolution No. _____ Dated: _____</p> <p>Attest:</p> <p>_____</p> <p>Clerk of the Board</p> <p>Approved as to Form: Dennis J. Herrera, City Attorney</p> <p>By: _____ Robin M. Reitzes Deputy City Attorney</p>	<p>CONTRACTOR</p> <p>Clear Channel Outdoor</p> <p>_____</p> <p>Robert Schmitt Senior Vice President and Regional President—Northern California</p>
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