

THIS PRINT COVERS CALENDAR ITEM NO.: 10.5

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Finance and Information Technology

BRIEF DESCRIPTION:

Correcting the Second Amendment to the Transit Shelter Advertising Agreement with Clear Channel Outdoor, LLC, to remove surplus language from the Amendment.

SUMMARY:

- The Transit Shelter Advertising Agreement (Agreement) between the City and Clear Channel Outdoor, Inc. (Clear Channel) began on December 10, 2007, for a term of 15 years, plus one five-year option to extend at the City's sole discretion.
- On October 4, 2022, the SFMTA Board approved Resolution No. 221004-092, to approve the Second Amendment to the Agreement, to exercise the option to extend the Agreement for five years, through December 7, 2027, adjust the minimum annual guarantee payments, as well as administrative and marketing payments, and increase the maintenance and service obligations of Clear Channel.
- The Second Amendment contained an error, in that language that should have been omitted from the Second Amendment regarding disposition of the shelters at the end of the contract was inadvertently left in the Amendment. This resolution corrects the error.
- The Second Amendment, as corrected, has been submitted to the Port Commission for approval at its November 8, 2022, meeting, and has also been submitted to the Board of Supervisors for final approval.

ENCLOSURES:

1. SFMTAB Resolution
2. Second Amendment (corrected)

APPROVALS:

DIRECTOR



SECRETARY



DATE

October 27, 2022

October 27, 2022

ASSIGNED SFMTAB CALENDAR DATE: November 1, 2022

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PURPOSE

Correcting the Second Amendment to the Transit Shelter Advertising Agreement with Clear Channel Outdoor, LLC, to remove surplus language from the resolution.

DESCRIPTION

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

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

The Second Amendment contained an error, in that the following language that should have been omitted from the Second Amendment was inadvertently left in the Amendment (on page 2):

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

This language was replaced by the following provision on page 7 of the Amendment:

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

This resolution corrects the error.

The Second Amendment, as corrected, has been submitted to the Port Commission for approval at its November 8, 2022, meeting, and has also been submitted to the Board of Supervisors for final approval.

FUNDING IMPACT

None.

ENVIRONMENTAL REVIEW

On September 27, 2022, the SFMTA, under authority delegated by the Planning Department, determined that the Second Amendment to the Transit Shelter Advertising Agreement with Clear Channel Outdoor, Inc., is not a "project" under the California Environmental Quality Act

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

The Second Amendment, as corrected, requires approvals from the Port Commission and the Board of Supervisors.

RECOMMENDATION

Staff recommends correcting the Second Amendment to the Transit Shelter Advertising Agreement with Clear Channel Outdoor, LLC, to remove surplus language from the Amendment.

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, for a term of 15 years, plus one five-year option to extend at the City's sole discretion; and

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

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

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

WHEREAS, This resolution corrects the error; and

WHEREAS, On September 27, 2022, the SFMTA, under authority delegated by the Planning Department, determined that the Second Amendment to the Transit Shelter Advertising Agreement with Clear Channel Outdoor, Inc., is not a "project" under the California Environmental 3 Quality Act (CEQA) pursuant to Title 14 of the California Code of Regulations Sections 15060(c) and 15378(b); and

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

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

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

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

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

SECOND AMENDMENT TO TRANSIT SHELTER ADVERTISING AGREEMENT

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

RECITALS

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

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

Article 1. Definitions

The following definitions shall apply to this Amendment:

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

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

Article 2. Modifications to the Agreement

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

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

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

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

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

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

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

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

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

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

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

2.6. Section 5.3.1 of the Agreement is deleted.

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

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

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

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

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

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

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

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

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

Table 1: MAG Amounts

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9.10 Asset Management and Shelter Refresh Program

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

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

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

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

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

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

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

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

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

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

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

Article 3. Effective Date

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

Article 4. Legal Effect

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

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

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