



# Memorandum

**TO:** Honorable Mayor and  
City Council

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

**SUBJECT:** SEE BELOW

**DATE:** May 24, 2010

Approved

Date

6/1/10

**COUNCIL DISTRICT:** City-Wide

**SUBJECT: APPROVAL OF A SECOND AMENDMENT TO THE CLEAR CHANNEL  
ADVERTISING CONCESSION AGREEMENT**

## **RECOMMENDATION**

Approve a second Amendment to the Advertising Concession Agreement between the City of San Jose and Clear Channel Outdoor, Inc. d/b/a Clear Channel Airports ("Clear Channel") to add Terminal B to the advertising concession areas covered by the Agreement, revise the capital investment requirements to reflect changes in advertising sites at the Airport, and revise the Concession Fee provisions of the Agreement, retroactive to the commencement of the Agreement, to reduce the Minimum Annual Guarantee (MAG) by \$330,545 from \$4,575,000 to \$4,244,455, and to reduce the MAG by an additional \$22,131 from to \$4,222,324, beginning on July 1, 2010.

## **OUTCOME**

The Second Amendment to the Agreement would provide financial relief to Clear Channel by reducing MAG and capital investment requirements as a result of advertising sites that were eliminated or impacted by Airport construction. It would also benefit the City by removing redundant accounting for the MAG and simplify the administration of advertising inventory and sites.

## **BACKGROUND**

On June 5, 2007, after an extensive Request for Proposals (RFP) process, Council adopted a resolution authorizing the City Manager to negotiate and execute an Advertising Concession Agreement with Clear Channel to conduct advertising operations at Norman Y. Mineta San Jose

International Airport for a period of seven (7) years beginning on July 1, 2007, with a three (3) year extension at the option of the City. Upon execution of the Agreement, Clear Channel remitted a contractually obligated one time signing bonus to the City in the amount of \$1,500,000. On October 1, 2008, a Minor First Amendment to the Agreement was entered into to make a clerical correction to the Agreement.

The Agreement provides that Clear Channel pay a percentage of its gross revenues (Percentage Rent) to the City or a Minimum Annual Guarantee (MAG), whichever is higher. The Agreement has four (4) separate options for advertising opportunities, with specific Percentage Rent, MAG and capital investment requirements. The MAG is further broken down in Options I – III by each of the roughly 150 advertising sites, which is updated each time an advertising site is relocated.

- Option I - Fixed display in-Terminal equipment, including wall and floor displays, hotel/motel reservation boards, wraps and banners with a Percentage Rent of 65%, a MAG of \$4,000,000 and a capital improvement expenditure requirement of \$1,577,966.
- Option II – Outdoor advertising, including a Monument Sign, garage banner and light pole advertising with a Percentage Rent of 65% with a MAG of \$500,000 and a capital improvement expenditure requirement of \$572,493.
- Option III – Transit/bus shelter advertising with a Percentage Rent of 50%, a MAG of \$75,000 and a capital improvement expenditure requirement of \$273,541.
- Option IV – Marketing income opportunities which include sponsorships, promotions, naming rights, licensing rights and other opportunities not provided for under Options I through III. The terms, including Percentage Rent and MAG, are to be negotiated for each opportunity.

## ANALYSIS

Clear Channel's gross revenues have been roughly half of the MAG since the MAG Commencement Date, resulting in Clear Channel paying the Airport roughly double its gross revenues. If new advertising sites were added to the Agreement under its current terms, Clear Channel would be required to pay additional MAG under Options I through III. This creates a disincentive to Clear Channel, and Clear Channel has been unwilling to add additional advertising sites which would increase its current MAG deficit. The proposed Second Amendment removes the MAG obligation from additional advertising sites, which gives Clear Channel an opportunity to increase sales without paying the City an additional concession fee until Percentage Rent is higher than the existing MAG. The City would be under no obligation to accept additional advertising sites and would retain control over types and locations of advertising.

The Monument Sign in Option II was intended to be a welcome sign to the Airport with an advertising component. Over the past two years, the Airport has coordinated with Clear Channel, City Planning, and the City Attorney's office to evaluate a number of potential sites for the Monument Sign. It has not been installed due to a preferred site not being readily available.

Existing sites either impact roadway directional signage or conflict with the City's Sign Ordinance. The Monument Sign has a \$239,965 MAG and the associated capital improvement expenditure requirement of \$500,000. The Airport has reduced, and continues to reduce its fleet of buses that are serving employees and the general public. The Agreement promises Clear Channel a specific number of buses, but they have been reduced far below this number and will be reduced again in the near future. Other advertising sites have also either been eliminated or impacted by Airport construction to a degree that reduces their advertising value. The proposed Second Amendment would compensate Clear Channel for these lost and impacted advertising sites by reducing the total MAG from \$4,575,000 to \$4,244,455 retroactive to the MAG Commencement Date and reducing the total MAG to \$4,222,324 on July 1, 2010 to account for additional site impacts. The associated capital investment requirement of \$545,000 for the lost advertising sites will be eliminated.

It is administratively time consuming and redundant to have the MAG broken down by Option and by advertising site. The proposed Second Amendment would maintain the overall MAG, but eliminate the further breakdown by Option and by advertising site. Total MAG to the Airport would remain unaffected. In addition, the proposed Second Amendment eliminates Exhibit A and simplifies Exhibit J and updates the advertising site list. Both exhibits currently identify locations for advertising sites and require a new amendment each time an advertising site is added, modified or replaced. Eliminating MAG breakdown and simplifying exhibits reduces the administrative aspects of the Agreement and allows for more flexibility when advertising sites must be relocated. The Airport would retain control over approval of replacement advertising site locations.

When the RFP and Agreement were prepared, the development of new Airport terminal facilities was still in design and review. Only Terminal A and Terminal C were identified in the Agreement. The Agreement requires that Clear Channel prepare a proposal with associated MAG for any new facilities that is not less on a percentage basis than existing facilities. The proposed Second Amendment removes this requirement to provide additional MAG for new facilities and adds Terminal B to the Agreement.

The advertising fixtures at the Airport were new when they were installed and all of the fixtures are less than three years old and in excellent condition. The Agreement requires that Clear Channel spend twenty percent (20%) of the original capital investment at two different times during the Agreement to ensure that the fixtures remain in good condition. The first 20% refurbishment investment is due now with an additional 20% refurbishment investment due within six (6) months of the commencement of the seventh (7<sup>th</sup>) year. The proposed Second Amendment maintains the second refurbishment requirement, but replaces the first refurbishment requirement with a requirement that the fixtures are maintained in "like-new" condition as determined by the Airport.

The proposed Second Amendment also clarifies and updates other aspects of the Agreement that Clear Channel and the Airport have mutually agreed to that do not have an affect on revenue to the City.

### **EVALUATION AND FOLLOW UP**

The Director of Aviation shall be responsible for coordination of this Agreement and shall render overall supervision of the progress and performance.

### **PUBLIC OUTREACH/INTEREST**

- Criterion 1: Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website posting)**
  
- Criterion 2: Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and website posting)**
  
- Criterion 3: Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a community group that requires special outreach. **(Required: E-mail, website posting, community meetings, notice in appropriate newspapers)**

This item does not meet the above criteria requiring additional notification; however, it will be posted on the City's Council Agenda Website for the June 15, 2010 Council Meeting.

### **COORDINATION**

This memorandum has been coordinated with the City Attorney's Office and the Budget Office.

### **COST SUMMARY/IMPLICATIONS**

The City's guaranteed annual revenue from this concession agreement will be reduced from \$4,575,000 to \$4,244,455 retroactive to the MAG Commencement Date and will be further reduced to \$4,222,324 on July 1, 2010.

HONORABLE MAYOR AND CITY COUNCIL

**Subject: Second Amendment to the Clear Channel Advertising Concession Agreement**

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**CEQA**

Resolutions No. 67380 and 71451, PP 09-190.1

/s/

WILLIAM F. SHERRY, A.A.E.

Director of Aviation

Airport Department

For more information or answers to questions, please contact William F. Sherry, Director of Aviation, at (408) 501-7669