



Memorandum

**TO: HONORABLE MAYOR
AND CITY COUNCIL**

FROM: John Aitken, A.A.E.

SUBJECT: SEE BELOW

DATE: February 14, 2019

Approved

Date

2-14-19

**SUBJECT: DELEGATION OF AUTHORITY FOR THE CITY MANAGER TO
NEGOTIATE AND EXECUTE A SIXTH AMENDMENT TO THE CLEAR CHANNEL
AIRPORT ADVERTISING AGREEMENT**

RECOMMENDATION

Adopt a resolution authorizing the City Manager to negotiate and execute a Sixth Amendment to the Airport Advertising Concession Agreement ("Agreement") between the City of San José ("City") and Clear Channel Outdoor, Inc. ("Clear Channel") to:

- (a) Extend the term of the agreement for an additional seven years from June 30, 2020 through June 30, 2027;
- (b) Effective July 1, 2020, adjust the Minimum Annual Guarantee ("MAG") to increase annually by 2.5%, for a total MAG of \$15,472,232 to the City over the additional seven-year term;
- (c) Require a minimum capital investment of \$6.5 million by Clear Channel for its advertising facilities at the Airport, which converts currently approved static advertising sites to digital where practicable;
- (d) Effective nine (9) months from the execution of the Sixth Amendment, modify the percentage fees payable by Clear Channel for Options I (Fixed Display In-Terminal Advertising), II (Outdoor Advertising), and III (Transit/Bus Shelter Advertising) from 65% of Gross Revenues for Options I and II and 50% of Gross Revenues for Option III to 55% of Gross Revenues for each Option;
- (e) Add an additional advertising package "New Digital Program" at a percentage fee of 55% of Gross Revenues; and
- (f) Delegate authority to the Director to revise the media types and exhibit locations of all advertising packages.

OUTCOME

Delegation of Authority to the City Manager will allow the City Manager to negotiate and execute the Sixth Amendment ("Amendment") to the Agreement with Clear Channel to extend the term by seven years, add an additional advertising package for the new Foundation Brand Partnerships, modify the advertising option percentage fees to 55%, and require additional MAG payments totaling \$15,472,232 over the additional seven-year term, establish a capital investment by Clear Channel in the amount of \$6.5 million for the New Digital Program, and provide the Director of Aviation authorization to modify the advertising locations and mediums which would help ensure maximization of sales volume.

The new advertising program creates an opportunity for the City to receive additional revenue above the MAG, based on Clear Channel's commitments from the Foundation Brand Partnerships. Foundation Brand Partnerships are larger, longer term sponsorships with companies that are interested in launching new products, promoting brand awareness, and executing multiple year advertising and sponsorship type agreements. As part of the new program, Clear Channel will replace the current advertising inventory with state of the art, technology driven multi-media digital advertising.

BACKGROUND

On June 5, 2007, Council adopted a resolution authorizing the City Manager to negotiate and execute an Advertising Concession Agreement with Clear Channel to conduct advertising operations at the 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.

On October 1, 2008, the City Manager executed a minor First Amendment to the Agreement that was entered into to make a clerical correction to the Agreement.

On June 15, 2010, a Second Amendment to the Agreement was approved by Council that simplified the administration of advertising inventory, modified the advertising fixture refurbishment requirements, eliminated the MAG for new advertising sites, and eliminated some advertising sites and their associated capital investment requirements and MAGs.

On September 18, 2012, City Council approved a Third Amendment that was entered into to combine the minimum capital investment requirements for the various advertising categories, totaling \$1,879,000, provide Clear Channel with 261 square feet of space at no additional charge to be used for office and storage in support of its operations at the Airport, resolve all outstanding Clear Channel claims relating to the MAG and modify administrative requirements to benefit Clear Channel and the Airport.

On June 18, 2013 Resolution No.76681 was adopted authorizing the City Manager to exercise the City's option to extend the Advertising Concession Agreement between the City of San José

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and Clear Channel on the same terms and conditions for three years from July 1, 2014 through June 30, 2017, retaining the annual MAG of \$4,222,324.

On, February 18, 2014, Council approved a Fourth Amendment to extend the Agreement an additional 3 years from July 1, 2017 through June 30, 2020. It also modified the MAG from the current \$4,222,324 to \$1.8 million, \$1.9 million and \$2.0 million respectively for each year of the extension period.

On, December 11, 2015, Council approved a Fifth Amendment to the Agreement to increase the advertising sites approved by the Director and provide a percentage fee of 25% for these new sites in addition to the current MAG. Effective July 1, 2017, the percentage fee on the additional sites increased to 65%.

In May 2017, Clear Channel submitted a proposal to the Airport to convert to an all-digital advertising program, enabling SJC to lead the industry by establishing the first all-digital based airport advertising program in the country. By converting the ads to digital, Clear Channel will provide new ways for brands to connect with travelers through infinite creative and engaging advertising. One of the aspects of the proposed program is the Foundation Brand Partnerships that will enhance the overall program through their creative and flexible advertising medium.

On June 7, 2018, Council approved Resolution 78714 delegating authority to the City Manager through January 1, 2019, to negotiate and execute the Sixth Amendment to the Agreement. The execution of the Sixth Amendment was contingent on Clear Channel selling \$3-4 million dollars in advertising as part of this new digital program prior to December 31, 2018.

Following Council's approval, Clear Channel began to sell advertising space to establish their Foundation Brand Partnerships. Clear Channel had received commitments from various companies and has met the established threshold, however, the agreements with the Foundation Brand Partners were not fully executed until late December, which did not provide enough time for the City to negotiate and execute the Amendment prior to the expiration date of the City Manager's authority.

ANALYSIS

Clear Channel has met the terms as established by Council in June, and Delegation of Authority to the City Manager to negotiate and execute the Sixth Amendment, will allow the Airport to transition to the new all-digital based advertising program.

The new all-digital program will allow the Airport to establish the first of its kind "state of the art" all-digital based advertising program in the country that will aid the City's goal to enhance the City's image as the Capital of Silicon Valley. In addition, the Sixth Amendment will also provide a framework in which both the City and Clear Channel are expected to experience a

significant revenue increase through the established Foundation Brand Partnerships above the guaranteed revenue of \$15,472,232 over the additional seven years.

Clear Channel has committed to investing \$6.5 million into upgrading the advertising program to an all-digital platform. Modifying the advertising percentage fees to 55% for Options I, II, and III and Exhibit K and applying Exhibit K and the Foundation Brand Partnerships percentage fees to the current MAG before yielding additional revenue, will allow Clear Channel to amortize their capital investment and create a festive, interactive and high-tech atmosphere for our passengers.

EVALUATION AND FOLLOW-UP

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

POLICY ALTERNATIVES

Alternative #1: Council could choose not to delegate Authority to the City Manager to negotiate and execute the Sixth Amendment. At the conclusion of their Agreement, Clear Channel, if not the successful proposer, would cease operations at the Airport and would vacate their existing space. In the interim, the City would issue a Request for Proposal for advertising services.

Pros: The Airport would go through a competitive process for advertising services which would commence on July 1, 2020.

Cons: The Airport would forgo the \$15,472,232 in additional guaranteed revenue while losing the opportunity to have the first all-digital based advertising program in the nation. Going out for bid would not guarantee that the Airport would receive the same level of revenue.

Reason for not recommending: The Airport desires to create a high-tech atmosphere in line with the City's and Airport's innovation goals, in addition to increasing the revenue at the Airport.

PUBLIC OUTREACH

This item will be posted on the City's Council Agenda Website for the February 26, 2019 Council Meeting.

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COORDINATION

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

COMMISSION RECOMMENDATION/INPUT

As an extension of an existing agreement and the creation of a new potential revenue stream for an existing service, this item is an administrative function. Therefore, no action by the Airport Commission occurred.

CEQA

Not a Project, File No. PP17-003, Agreements/Contracts resulting in no physical changes to the environment.

/s/

John Aitken, A.A.E.
Director of Aviation

For questions, please contact John Aitken, A.A.E., Director of Aviation at (408) 392-3610.