

AGENDA REPORT

Ordinance: Approve Amendment No. 3 to Space/Use Permit for Non-Exclusive In Terminal Advertising Concession with Clear Channel Outdoor dba Clear Channel Airports to Extend the Term on a Month-to-Month Basis until March 31, 2019 with Guaranteed Monthly Revenue of \$35,000; and Authorize Director of Aviation to Enter into such Amendment with Clear Channel. (1 Airport Drive) (**Aviation**)

MEETING DATE: 5/24/2018

AMOUNT: \$35,000 (month-to-month) RevenueChoose an item.

PARTIES INVOLVED: Clear Channel Outdoor d/b/a Clear Channel Airports,
Chicago, IL
Gene Leeham, EVP Senior Regional President

SUBMITTED BY: Bryant L. Francis C.M., Director of Aviation

APPROVED BY: J. Christopher Lytle, Executive Director

ACTION TYPE: Ordinance

EXECUTIVE SUMMARY

The existing *Space/Use Permit for Non-Exclusive In-Terminal Advertising Concession* with Clear Channel Outdoor dba Clear Channel Airport will expire on June 30, 2018 ("**SUP**"). Staff requires additional time to conduct a competitive proposal process to award the in-terminal advertising agreement, a concession, in conformance with the Port's Concession Policy. This action would adopt an Ordinance to approve an Amendment No. 3 to SUP with Clear Channel (i) to extend the term on a month-to-month basis until March 31, 2019 with a minimum monthly guarantee of \$35,000 and (ii) to require Clear Channel to remove the two hotel/motel information boards (located in baggage claim areas of Terminal 1 and Terminal 2).

BACKGROUND

At its meeting of June 3, 2008, the Board adopted Port Ordinance No. 4060 approving the SUP with Clear Channel Outdoor dba Clear Channel Airports ("**Clear Channel**"). The SUP has a term of 10 years, commencing July 1, 2008 and terminating June 30, 2018. The initial rental of the SUP provided for the higher of a Minimum Annual Guarantee ("**MAG**") of \$9.1 Million vs. 50% of Gross Receipts.

On September 28, 2009, in light of significant downturn in advertising across all markets as a result of the recession, Amendment No. 1 to the SUP was approved allowing for: 1) a downward adjustment of the MAG from \$9.1 Million to \$8.6 Million offset by an upward adjustment of the Gross Receipts percentage from 50% to 60%; and 2) amending and removing the restriction previously limiting members of its “sales blitz” team to direct employees of Clear Channel to include employees from Clear Channel Interspace, a subsidiary company, thus broadening its ability to reach a wider audience of potential advertisers.

On February 23, 2017, Amendment No. 2 to the SUP was approved to correct and resolve rental calculation issues identified following the Port’s Office of Audit Services’ audit of Clear Channel for the period from January 1, 2012 through December 31, 2014. Other than the rental calculation issues found in 2013 which was resolved through a settlement agreement, the report found that Clear Channel’s annual payments to the Port in 2012 and 2014 were correctly remitted based on the MAG. Further, a review by Port staff of Clear Channel’s annual payments for all other years show Clear Channel as having paid their annual rent based on the MAG.

ANALYSIS

Following award of the contract, Clear Channel substantively fulfilled the terms of the agreement which, in addition to rental payments, have included a \$1 million capital investment towards the installation of 75 advertising locations and 6 concession directories throughout the Terminal Complex, as well as the installation of new hotel/motel information boards and concession directories throughout the Terminal Complex. Unfortunately, despite recovery in the economy leading to increased passenger traffic at OAK and notwithstanding Clear Channel’s competitive advantage in having also been awarded the advertising agreements at San Francisco International Airport and San Jose International Airport, Clear Channel’s annual gross receipts have consistently underperformed resulting in percentage rents significantly lower than the MAG.

Fiscal Year	Gross Receipts	Percentage Rents	MAG
08/09	\$378,097.67	\$189,048.84	\$850,000
09/10	\$474,662.53	\$262,387.38	\$850,000
10/11	\$573,400.26	\$344,040.16	\$850,000
11/12	\$572,569.90	\$343,541.94	\$850,000
12/13	\$839,248.18	\$503,548.91	\$850,000
13/14	\$878,416.55	\$527,049.93	\$850,000
14/15	\$683,843.42	\$410,306.05	\$850,000
15/16	\$743,616.65	\$446,169.99	\$850,000
16/17	\$627,620.67	\$376,572.40	\$900,000
17/18	TBD	TBD	\$900,000

The current agreement with Clear Channel will expire on June 30, 2018. While advertising revenues have improved since the recession, they remain significantly below Clear Channel’s original projections and Clear Channel has sustained a net loss in excess of \$2.4 Million to date

under this agreement. Clear Channel has advised that the current rental structure is not sustainable and is unwilling to extend the SUP at the existing MAG of \$75,000/month.

Staff requires additional time to issue a competitive proposal for a new in-terminal advertising concession in line with the Port's Concession Policy. Having empty advertising frames located throughout the terminals is both unsightly and a loss of revenue. Based on a review of annual gross receipts received under the current agreement, Port staff has negotiated an amendment to the SUP to:

1. Extend the SUP on a month-to-month basis through March 31, 2019 – although we fully anticipate completing the RFP and contracting process prior to year-end 2018 – staff requests through the end of March 2019;
2. Adjust MAG to a monthly guaranteed rental under the extension of \$35,000¹ or 60% Gross Receipts; and,
3. Require Clear Channel to remove the two hotel/motel information boards currently located in baggage claim halls of both Terminal 1 and Terminal 2 because this type of advertising/marketing technology is antiquated with the advent of mobile telephone technology and applications ("apps") that connect passengers with hotel, motel, restaurant and local attraction.

BUDGET & STAFFING

The approval of Amendment to the SUP will result in the higher of either \$35,000 or 60% Gross Receipts on a monthly basis, terminable upon 30 days' written notice by either party. The extension of the SUP is intended to remain in effect until the new Space/Use Permit for Non-Exclusive in-Terminal Advertising Concession has been awarded, currently anticipated to occur in early 2019. There is no staffing impact.

MARITIME AVIATION PROJECT LABOR AGREEMENT (MAPLA)

This Amendment to the SUP does not fall within the scope of the Port of Oakland Maritime and Aviation Project Labor Agreement (MAPLA) and the provisions of the MAPLA do not apply.

STRATEGIC PLAN

The action described herein would help the Port achieve the following goals and objectives in the Port's Strategic Plan (<https://www.portofoakland.com/strategic-business-plan-2018-2022/>).

- Goal A: Grow Net Revenue.
- Goal B: Improve Customer Service.

¹ Revised Monthly MAG calculated on average monthly Percentage Rents for prior three fiscal years (\$1,233,048 ÷ 36 months = \$34,251 per month rounded up to \$35,000 per month.)

LIVING WAGE

Living wage requirements, in accordance with the Port's Rules and Regulations for the Implementation and Enforcement of the Port of Oakland Living Wage Requirements (the "Living Wage Regulations"), do not apply to this agreement as the tenant does not employ 21 or more employees working on Port-related work. However, the tenant will be required to certify that should living wage obligations become applicable, the tenant shall comply with the Living Wage Regulations.

SUSTAINABILITY

Port staff have reviewed the Port's 2000 Sustainability Policy and did not complete the Sustainability Opportunities Assessment Form. There are no sustainability opportunities related to this proposed action because it does not involve a development project, purchasing of equipment, or operations that present sustainability opportunities.

ENVIRONMENTAL

This action was reviewed in accordance with the requirements of the California Environmental Quality Act (CEQA) and the Port's CEQA Guidelines. Per its CEQA Guidelines, the Port has determined that renewals, extensions or amendments to leases or to license and concession agreements, or the execution of leases or license and concession agreements, where the premises or licensed activity was previously leased or licensed to the same or another person and involving negligible or no expansion of use beyond that previously existing, are categorically exempt from CEQA. Therefore, this action is not subject to CEQA and no environmental review is required.

GENERAL PLAN

This action does not change the use of any existing facility, make alterations to an existing facility, or create a new facility; therefore, a General Plan conformity determination pursuant to Section 727 of the City of Oakland Charter is not required.

OWNER-CONTROLLED INSURANCE PROGRAM (OCIP)

The Owner Controlled Insurance Program (OCIP) does not apply to the matters addressed by this Agenda Report as they are not capital improvement construction projects.

OPTIONS

- Adopt an ordinance to approve an *Amendment No. 3 to Space/Use Permit for Non-Exclusive In-Terminal Advertising Concession* with Clear Channel Outdoor dba Clear Channel Airports (i) to extend on a month-to-month basis the existing agreement at a new MAG of \$35,000/month until a new in-terminal advertising agreement is awarded in early 2019, but no later than March 31, 2019 and (ii) to require Clear Channel to

remove the two hotel/motel information boards (located in baggage claim areas of Terminal 1 and Terminal 2). This is the recommended action.

- Do not approve an *Amendment No. 3 to Space/Use Permit for Non-Exclusive In-Terminal Advertising Concession* with Clear Channel Outdoor dba Clear Channel Airports to extend on a month-to-month basis the existing agreement and revise the MAG. Because of the time required to secure a new in-terminal advertising agreement, this will result in the loss of in-terminal advertising revenue and the terminals will appear unsightly during the interim.

RECOMMENDATION

Adopt an ordinance approving an *Amendment No. 3 to Space/Use Permit for non-Exclusive In-Terminal Advertising Concession* with Clear Channel Outdoor dba Clear Channel Airports to extend on a monthly basis the existing agreement until March 31, 2019 at a new Minimum Annual Guarantee of \$35,000/month until a new in-terminal advertising concession proposal is awarded in early 2019, and to require Clear Channel to remove the two hotel/motel information boards (located in baggage claim areas of Terminal 1 and Terminal 2), subject to approval as to form and legality by the Port Attorney.