

Legislation Text

File #: 240429, **Version:** 1

Authorizing the Procurement Commissioner and the Chief Executive Officer of the Department of Aviation, on behalf of the City of Philadelphia, to enter into an amendment to a concession agreement for the development, operation and maintenance of an airport advertising program at Philadelphia International Airport; all under certain terms and conditions.

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. The Procurement Commissioner, on behalf of the City of Philadelphia, is hereby authorized to enter into an amendment to the concession agreement with Clear Channel Airports, Inc., f/k/a In-Ter-Space Services, Inc., for an additional renewal period of three years and to modify the financial arrangement between the parties pursuant to which Clear Channel Airports, Inc. will continue to develop, operate and maintain an airport advertising program. The amendment to the Concession Agreement will be substantially in the form attached hereto as Exhibit "A."

SECTION 2. The Procurement Commissioner, the Director of Aviation, and the City Solicitor are hereby authorized, jointly and severally, to take all actions and to review and approve all documents and agreements necessary to effectuate this Ordinance, and to impose such terms as the City of Philadelphia deems necessary to carry out the purpose of this Ordinance.

SECTION 3. This Ordinance shall be effective immediately.

Exhibit "A"

FIRST AMENDMENT TO ADVERTISING CONCESSION AGREEMENT

THIS FIRST AMENDMENT TO ADVERTISING CONCESSION AGREEMENT ("**Amendment**") is made and effective as of the ___ day of _____, 2024 ("**Effective Date**"), by and between THE CITY OF PHILADELPHIA, acting by and through its PROCUREMENT DEPARTMENT and its DEPARTMENT OF AVIATION, as successor in interest to the DEPARTMENT OF COMMERCE, DIVISION OF AVIATION ("**City**"), and CLEAR CHANNEL AIRPORTS, INC. f/k/a IN-TER-SPACE SERVICES, INC. ("**Concessionaire**"), a wholly owned subsidiary of Clear Channel Outdoor, Inc. ("**CCO**") a corporation organized and existing under the laws of the Commonwealth of Pennsylvania.

WHEREAS, the City owns and operates the Philadelphia International Airport ("**Airport**") located in Philadelphia and Delaware Counties in the Commonwealth of Pennsylvania;

WHEREAS, the City determined that there was a need for the development, management and operation of an airport advertising concession program at the Airport. After following all City procedures, the City and the Concession Manager entered into an Advertising Concession Agreement with an effective date of May 1, 2019 ("**Agreement**");

WHEREAS, certain capital investments contemplated by the Agreement were deferred due to the COVID-19 pandemic and its resulting impacts on, inter alia, the airport and the airport advertising program;

WHEREAS, certain MAG (as defined in Section 2.C below) payments otherwise due for the periods of May 2020 through April 2023 were waived by the City in light of the impacts of the COVID-19 pandemic; and

WHEREAS, the parties desire to extend, amend, and modify the Agreement as hereinafter set forth herein;

NOW, THEREFORE, City and Concessionaire for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, intending to be legally bound, agree as follows:

1. **Incorporation of Recitals.** The Recitals set forth above are hereby incorporated by reference into the Agreement.

2. **Amendments to the Agreement.**

A. Section 2 of the Agreement is hereby deleted in its entirety and replaced with the following:

A. **Term.** The Term shall commence on May 1, 2019 and shall terminate on April 30, 2026, unless otherwise terminated or extended pursuant to the terms of this Agreement (“**Initial Term**”).

B. **Renewal Term.** The Concessionaire shall have the option (“**Option**”) to renew the Agreement for one (1) additional term of three (3) years (“**Renewal Term**”). Concessionaire shall notify City in writing of its intent to exercise the Option no later than one hundred and eighty (180) days before the end of the Initial Term, which is November 1, 2025. (“**Renewal Notice Date**”). The exercise of the Option shall be in the discretion of the Concessionaire, provided the Concessionaire meets the Renewal Performance Criteria, as defined below, to the City’s satisfaction. Under no circumstances will the Term of the Agreement extend beyond April 30, 2029 in entirety.

The City shall approve exercising the Option to renew this Agreement, only if the renewal performance criteria, as defined below (“**Renewal Performance Criteria**”) have been satisfied by the Renewal Notice Date. The Renewal Performance Criteria are:

1. Concessionaire develops a strategic program to enhance the Airport’s appeal to passengers attending the City’s 2026 signature events, including the capital investment outlined in Section 2.B.2. below (“**2026 Advertising Plan**”). The Concessionaire shall provide a proposal for the 2026 Advertising Plan no later than September 1, 2024. The proposal shall contemplate experiential and digital advertising offerings, sponsorships, in addition to commercially reasonable recommendations to implement campaigns benefitting small local startup, nonprofit and community-based organizations at an affordable cost.

2. Concessionaire implements certain capital investments, collectively the (“**Pre-Renewal**”

Investment”), by the Renewal Notice Date, including:

- (a) At least \$354,073.00 to install and program two (2) digital interactive wayfinding kiosks at the D-E Connector common-use lounge entry portal. The kiosks shall be installed and fully functional by November 1, 2024;
- (b) At least \$2,000,000.00 to refresh and/or upgrade certain digital columns in the B-C Food Court by November 1, 2025; and
- (c) For clarity, the aforementioned amounts above will include \$485,408.00 in heretofore unmet Initial Capital Investment and \$361,980.00 in heretofore unmet Second Capital Investment from the Initial Term.

3. ACDBE participation of not less than the percentage requirements set forth in Exhibit N of the Agreement.

B. Section 4.B.1.(a) of the Agreement is further amended by adding the following to the end thereof:

- (iii) Up to \$150,000.00 in one-time system configuration expenses and \$100,000.00 in annual operational expenses as required for implementation of an interactive kiosk pilot program. The City reserves the right to waive the exclusion of annual operation expenses in its sole determination based upon the annual sales performance and profitability of the kiosks per contract year.

C. Section 4.B.2. of the Agreement deleted in its entirety and replaced with the following:

- 2. Minimum Annual Guarantee. The “**MAG**” as used herein shall mean \$3,550,000.00 in year one with scheduled increases per annum, all as more specifically set forth below:

	Minimum Annual Guarantee
May 1, 2019 - April 30, 2020	\$3,550,000.00
May 1, 2020 - April 30, 2021	\$3,600,000.00 (Waived: COVID-19 Relief)
May 1, 2021 - April 30, 2022	\$3,600,000.00 (Waived: COVID-19 Relief)
May 1, 2022 - April 30, 2023	\$3,650,000.00 (Reduced to \$3,083,333.33 - COVID-19 Relief)
May 1, 2023 - April 30, 2024	\$3,750,000.00
May 1, 2024 - April 30, 2025	\$3,800,000.00
May 1, 2025 - April 30, 2026	\$3,850,000.00
May 1, 2026 - April 30, 2027	\$3,850,000.00
May 1, 2027 - April 30, 2028	\$3,850,000.00
May 1, 2028 - April 30, 2029	\$3,850,000.00
Total	\$29,583,333.00

3. **No Other Changes.** Except as herein specifically amended, all of the terms and conditions of the Lease remain in full force and effect without modification and are hereby ratified and confirmed. If and to the extent the provisions of this Amendment conflict with, or are inconsistent with, the terms of the Lease, the terms of this Amendment shall control.

4. **Entire Agreement.** The Agreement, as amended hereby, constitutes the entire agreement between the parties regarding the matters described therein and supersedes all prior agreements, negotiations, and understandings, oral or written, with respect to the matters described herein.

5. **Governing Law.** The Agreement shall be construed, governed, and enforced in accordance with the laws of the City and County of Philadelphia and the Commonwealth of Pennsylvania.

6. **Binding Effect.** This Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

7. **Execution by Both Parties; Counterparts.** Notwithstanding any law, custom, or usage to the contrary, neither party shall be bound by this Amendment unless and until counterparts have been signed by authorized representatives of City and Concessionaire and fully executed copies have been delivered to each party. This Amendment may be executed in any number of counterparts, each of which shall be deemed an original, and all such counterparts together shall constitute one and the same instrument. This Amendment may be executed by Portable Document Format (PDF) or through an electronic signature platform (including, DocuSign), and the exchange of such electronic signature page thereafter shall have the same force and effect as if an original executed copy and shall constitute effective delivery of such signature pages and may be used in lieu of the original signature pages for all purposes.

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IN WITNESS WHEREOF, the parties hereto have executed this Amendment the day and year first above written.

CITY:

Approved as to Form:
Renee Garcia, City Solicitor

THE CITY OF PHILADELPHIA,
acting through its Department of Aviation

By: _____
Carrie Dougherty
Deputy City Solicitor

By: _____
Atif Saeed, A.A.E, IAP
CEO/Director of Aviation
Philadelphia International Airport

CONCESSIONAIRE:

WITNESS:

CLEAR CHANNEL AIRPORTS, INC.

Attest: _____

By: _____

