

MEMORANDUM OF AGREEMENT

between

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

and

CITY AND COUNTY OF SAN FRANCISCO, SAN FRANCISCO PUBLIC WORKS

for the

PIT STOP PUBLIC TOILET PROGRAM

This Memorandum of Agreement (“Agreement”) is entered into as of the 17 day of FEBRUARY, 2016 by and between the San Francisco Bay Area Rapid Transit District (“BART”) and the City and County of San Francisco (“City”), acting by and through San Francisco Public Works, referred to collectively as “Parties” or individually as “Party.”

RECITALS

WHEREAS,

- A. The 16th Street Mission and Civic Center/United Nations Plaza BART stations have no public restrooms available for patrons.
- B. City, through San Francisco Public Works, launched a public toilet program known as the Pit Stop Program (“Program”) in 2014.
- C. By strategically placing Pit Stop public toilets near the 16th Street Mission and Civic Center/UN Plaza stations, BART patrons can use the restroom without infringing on the public facilities other patrons also need to utilize.
- D. BART and San Francisco Public Works would like to partner in regards to the operation of Pit Stop public toilets at the two subject BART stations.

AGREEMENT

Now, therefore, in consideration of the foregoing, the parties agree as follows:

1. **Agreement Purpose.** The purpose of this Agreement is to outline roles and responsibilities of BART and the City with respect to participation in Program activities.
2. **Pit Stop Locations.** Pit Stop public toilets will be located near two BART stations in San Francisco: the 16th Street Mission Station (on the northeast corner of 16th Street and

Mission Street) and the Civic Center/UN Plaza Station (exact location still to be mutually determined). The Pit Stop public toilets are to be located as mutually determined on property belonging only to the City and County of San Francisco, near to the BART station. No toilets are to be located on property belonging to BART.

3. **Roles and Responsibilities.** The Parties agree to the following roles and responsibilities.

a. **City:** The City shall:

- i. Contribute toward the Program an amount of \$200,000.
- ii. Pay for all costs associated with Pit Stop public toilet rental such as maintenance, installation and cleaning.
- iii. Pay for all costs associated with obtaining no parking permits and posting location.
- iv. Conduct outreach associated with placement of the Pit Stop public toilets.
- v. Replace broken supplies that are used at the Pit Stop public toilets, such as containers and stands.
- vi. Supervise, schedule, and coordinate overall operation of the Program.
- vii. Prepare and submit invoices and appropriate documentation to BART on a quarterly basis for payment for actual costs to perform the scope of work described in this document. Invoices shall be submitted to BART within 30 days of the end of each quarter during which City incurs expenditures for the Program.

b. **BART:** Bart shall:

- i. Contribute toward the pilot in an equal amount of \$200,000.
- ii. Provide feedback on the condition and cleanliness of the Pit Stop public toilets located near the 16th Street Mission and Civic Center/UN Plaza stations.
- iii. Pay City invoices accompanied by appropriate documentation for actual costs associated with performing these services.

4. **Data collection and sharing:** Staff contracted to operate the Pit Stop public toilets will collect data, such as number of users per day, type of user (e.g. BART user / Non BART user) if possible, amount of needle, dog waste disposal, etc. This data will be shared with both Parties.

5. **Term.** The term of this Agreement shall be until funding for the program is exhausted, unless earlier terminated by either agency. Time extensions shall be by amendment to this Agreement and by mutual agreement between the parties.

6. **Termination.** BART shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience and without cause.

BART shall exercise this option by giving the Parties written notice of termination. The notice shall specify the date on which termination shall become effective, which in no event shall be less than 10 days from the date of the notice. If terminated, the Parties shall be entitled to be reimbursed for services properly performed up to the effective date of termination of the Agreement.

7. **Notices:** Unless otherwise indicated elsewhere in this Agreement, all written communications sent by the Parties may be by U.S. mail or by e-mail and shall be addressed as follows:

To BART:

Marcia DeVaugn
Deputy General Manager
San Francisco Bay Area Rapid Transit District
300 Lakeside Drive, Suite 2300
Oakland CA 94612
Phone: (510) 464-6126
E-mail: mdevaug@bart.gov

To the City:

Larry Stringer
Deputy Director of Operations
San Francisco Public Works
City and County of San Francisco
2323 Cesar Chavez
San Francisco, CA 94107
Phone: (415) 641-2660
E-mail: larry.stringer@sfdpw.org

Any notice of default must be sent by registered mail or hand-delivered to each Party.

8. **Mutual Indemnification:** City shall defend, indemnify, and hold BART and its officers, directors, employees, and agents harmless from any and all claims, demands, suits, loss, damages, injury, and liabilities, direct or indirect (including reasonable attorney's fees and any and all costs and expenses in connection therewith), related to or as a result of City's performance of this Agreement to the extent caused, in whole or in part, by the negligence, recklessness, or willful misconduct of City, its employees, or subcontractors. City agrees at its own cost, expense and risk to defend any and all claims, actions, suits, or other legal proceedings brought or instituted against BART, its directors, officers, agents and employees, or any of them, arising out of City services, and to pay and satisfy any resulting judgments. Such indemnification includes without limitation any violation of proprietary rights, copyrights, rights of privacy, arising out of the publication, translation, reproduction, delivery, use or disposition of any data

furnished under this Program. BART shall indemnify and defend City and any of its employees performing services for BART from all suits, actions, and legal proceedings against City, resulting from the willful misconduct, recklessness or negligent acts or omissions of BART or of an employee of BART if the employee is acting in the employee's official capacity as an officer of BART. BART agrees at its own cost, expense and risk to defend any and all claims, actions, suits, or other legal proceedings brought or instituted against City, its directors, officers, agents and employees, or any of them, arising out of BART services, and to pay and satisfy any resulting judgments. Such indemnification includes without limitation any violation of proprietary rights, copyrights, rights of privacy, arising out of the publication, translation, reproduction, delivery, use or disposition of any data furnished under this Program.

9. **Insurance:** City will require that any contractor performing Project activities will comply with the City insurance requirements as provided in Exhibit A.
10. **Modification of Agreement.** This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement.
11. **Agreement Made in California; Venue.** The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.
12. **Audit and Inspection of Records.** The Parties agree to maintain and make available to each other, during regular business hours, accurate books and accounting records relating to their work under this Agreement and the work of any third parties performing work on the Project. The Parties will permit each other to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreements. The Parties shall maintain such data and records in an accessible location and condition for a period of not less than three years after final audit has been resolved, whichever is later. The State of California or any federal agency having an interest in the subject matter of this Agreement shall have the same rights conferred upon the Parties by this Section. Pursuant to California Government Code Section 8546.7, the Parties shall be subject to the examination and audit of the State Auditor, at the request of BART or as part of any audit of BART by the State Auditor, for a period of three years after final payment under this Agreement. The examination and audit shall be confined to those matters connected with the performance of this Agreement including, but not limited to, the cost of administering the Agreement.

IN WITNESS WHEREOF, the PARTIES hereto have caused this Agreement to be executed on the date set forth above.

San Francisco Bay Area Rapid Transit District

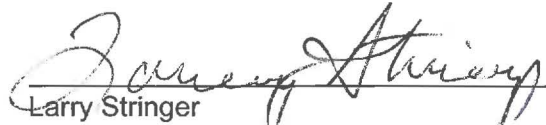
CITY AND COUNTY OF SAN FRANCISCO, acting by and through its Public Works Department

Approved by:



Marcia deVaughn
Deputy General Manager

Approved by:




Larry Stringer
Deputy Director for Operations

Date: 3/3/16

Date: 2-24-2016


Approved as to Form:



Andrew Houston
Attorney

Approved as to Form:
Dennis J. Herrera, City Attorney

By:



Deputy City Attorney

Date: 3/3/16

Date: _____

EXHIBITS

A. City Insurance Requirements

EXHIBIT -A-

CITY INSURANCE REQUIREMENTS

- Insurance required shall be placed in Company or Companies having policyholders' surplus of at least 10 times the amount or limit of liability afforded by the insurance company.
- Insurance companies shall be legally authorized and licensed through the California Department of Insurance to engage in the business of furnishing insurance in the State of California. All insurance companies shall have a current A.M. Best Rating not less than "A-, VIII" and shall be satisfactory to the City.
- Insurance coverage with limits not less than:
 - \$1,000,000 Commercial General Liability
 - \$1,000,000 Commercial Auto Liability
 - \$1,000,000 Worker's Compensation Insurance
- Attach all policy endorsements to certificates of insurance (see below). **Physical endorsements required.** Endorsement language stated on the Description of Operations will NOT suffice.
- Additional endorsements required:
 - General Liability:
 - Name as Additional Insured the *City and County of San Francisco, its Officers, Agents and Employees*
 - Automobile Liability:
 - Name as Additional Insured the *City and County of San Francisco, its Officers, Agents and Employees*
 - Worker's Compensation:
 - Waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and subcontractors
 - All policies shall provide thirty (30) days' advance written notice to the City of reduction or nonrenewal of coverages or cancellation of coverages for any reason. **Please include this as an endorsement.**
- Certificate Holder:

City and County of San Francisco
Contract Administration Division
1155 Market Street, 4th Floor
San Francisco, CA 94103