

**AGREEMENT FOR MANAGEMENT AND OPERATION OF
CABLE CAR MUSEUM BETWEEN
CITY AND COUNTY OF SAN FRANCISCO AND
FRIENDS OF THE CABLE CAR MUSEUM**

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This Management and Operation Agreement ("**Agreement**"), dated as of July 1, 2009, is made by and between the City and County of San Francisco, a municipal corporation ("**City**"), by and through its San Francisco Municipal Transportation Agency ("**SFMTA**") and Friends of the Cable Car Museum, Inc. ("**Operator**").

RECITALS

- A. City owns the San Francisco Cable Car Museum located at 1201 Mason Street in San Francisco (the "**Cable Car Museum**").
- B. Operator owns various artifacts and displays relating to the history of cable cars in San Francisco, including the Clay Street Hill Railroad Cable Car No. 8, the Sutter Street Cable Railway dummy #46 and trailer #54 (collectively, the "**Artifacts**").
- C. Operator desires to operate and manage the Cable Car Museum as well as the Cable Car gift shop (the "**Gift Shop**").
- D. City desires to have Operator manage the Cable Car Museum and Gift Shop pursuant to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, In consideration of the covenants and agreements contained in this Agreement, and other good and valuable consideration, receipt of which is acknowledged, it is hereby agreed as follows:

1. Operation and Management Services.

1.1. Authority to Operate. Operator is hereby given the general authority to operate and manage the day-to-day operation of the Cable Car Museum and to perform the specific duties hereinafter set forth, subject to, governed by, conditioned upon, and in accordance with the terms and provisions of this Agreement, in the following areas of the Cable Car Barn at Washington and Mason Streets in San Francisco:

- (a) First floor mezzanine area, and the lobby and stairway from the ground level to the mezzanine at the Mason Street entrance to the corner of Washington Street. City also grants Operator, its customers, patrons, invitees, purveyors, suppliers, employees, officers and agents direct access and egress to and from the Museum Areas through the Cable Car Barn during normal business hours. Said access and egress shall be through the regular entrance on Mason Street at Washington Street, and not through SFMTA maintenance or repair areas.

This Agreement is subject to the terms, conditions and restrictions set forth below. This Agreement gives Operator the right to occupy, operate and manage the Museum Areas only. This Agreement does not constitute a grant by City of any ownership, leasehold,

easement or other property interest or estate whatsoever in the Museum Areas, or any portion thereof. The privilege given to Operator under this Agreement is effective only insofar as the rights of City in the Museum Areas are concerned, and Operator shall obtain any further permission necessary because of any other existing rights affecting the Museum Areas.

1.2. Use of Concession Area. The concession area shall be used as a museum gift shop, solely for the sale of gifts; merchandise, souvenirs, art work, stationary products, photographic supplies, and books, primarily relating to cable car and other forms of past and present urban transportation, but not exclusively so. Additional products or merchandise may be sold by Operator with the prior written consent of the Executive Director ("**Director**") of the SFMTA.

If, during the term of this Agreement, SFMTA manufactures or markets merchandise for retail sale, Operator agrees to sell said articles for SFMTA in the museum Gift Shop. The terms and conditions of any such merchandising activity shall be set forth in a separate agreement between the parties.

1.3. Trade Fixtures. Operator may install in the concession area such trade fixtures as may be deemed necessary to accommodate the sale of the merchandise described above. No racks or other displays of merchandise or trade fixtures shall be placed or installed outside the boundaries of the concession area. Any racks, displays of merchandise or trade fixtures which remain in the Museum Areas more than 30 days after the termination of this Agreement shall be the property of the City.

1.4. Relocation of Concession Facilities. City reserves the right, in Director's sole discretion, to require Operator to relocate the concession facilities to another area within the Cable Car Barn if such relocation is deemed necessary to assure safe operation and maintenance of the machinery and equipment kept in the Cable Car Barn.

1.5. Use of Museum Areas. Operator shall act as curator of the Cable Car Museum. Operator shall establish displays within the museum areas for permanent and temporary exhibits related to the operation of the cable car system. In the museum areas, Operator shall be responsible for the placing and display of exhibit items, said responsibility to include arrangements and graphics necessary for tasteful exhibition. Operator shall have sole authority for determining the time, place, and manner of museum displays. Said authority shall be exercised in a reasonable manner. Operator shall provide professional quality graphics following a central theme adaptable and consistent to the Cable Car Barn motif, and said theme shall also be evident in the concession area. Any displays or exhibit items brought to the Museum Areas by Operator and which remain in the Museum Areas more than 30 days after the termination of this Agreement shall be the property of the City.

Operator's right to display any exhibits provided by City shall be no greater than the City's rights in those exhibits.

2. Term of Agreement; Option to Extend.

2.1. Term of Agreement. The term of this Agreement shall be for a period of ten (10) years ("Term"), commencing on July 1, 2009 ("Commencement Date") and terminating on June 30, 2019, unless sooner terminated as provided herein.

2.2. Extension of Term. The Term of this Agreement may be extended for up to a maximum of two (2) additional five (5) year terms upon the mutual written agreement of the Operator and the City. If Operator elects to extend the Term of this Agreement, it may do so by providing notice of intent to extend to City at least ninety

(90) days prior to expiration of the Term and not more than one hundred eighty (180) days prior to the expiration of the Term. Such extension shall be on the same terms and conditions of this Agreement, except as otherwise provided herein. SFMTA shall respond to Operator's notice of intent to extend the Term within thirty (30) days receipt of said notice.

3. Concession Payments.

During the term of this Agreement, the Concession Payment payable to SFMTA shall be calculated as Fifty Thousand Dollars (\$50,000) per year (the "**Concession Payment**"). The parties agree that no Concession Payment shall be due during the initial Term of this Agreement. If the parties elect to extend the Term of this Agreement, the Concession Payment shall be adjusted by three percent (3%), compounded annually over the duration of the extension of the Term.

4. Security for Performance.

At or before the date for commencement of this Agreement, Operator shall deposit with City the sum of Ten Thousand Dollars (\$10,000) to secure Operator's faithful performance of all terms and conditions of this Agreement, including, without limitation, its obligation to surrender the Museum Areas in the condition required by this Agreement. Such deposit shall be in the form of cash. City's obligations with respect to the security deposit are solely that of debtor and not trustee. City shall not be required to keep the security deposit separate from its general funds, and Operator shall not be entitled to interest on the security deposit. The amount of the security deposit shall not limit Operator's obligations under this Agreement. In lieu of such security deposit, Operator may deliver to City a valid surety bond in the sum equal to amount specified, issued by a surety company acceptable to City's Controller in such form as approved by the City Attorney, or a clean irrevocable letter of credit in favor of the City and County of San Francisco, a municipal corporation, issued by a financial institution with at least a Moody's A rating and having at least one branch office within the City and County of San Francisco. The Operator shall keep such surety bond or letter of credit, at its expense, in full force and effect until the thirtieth (30th) day after the expiration or sooner termination of this Agreement, to insure the faithful performance by Operator of all of the covenants, terms and conditions of this Agreement. Such bond or letter of credit shall provide thirty (30) days' prior written notice to City of cancellation or material change thereof.

5. Operation of Premises and Concessions.

5.1. Hours of Operation. The hours of operation of the Cable Car Museum and Gift Shop shall be from 10:00 a.m. to 6:00 p.m., April through October, and from 10:00 a.m. to 5:00 p.m., November through March, daily, including Saturdays and Sundays.

At all times entrance to the Cable Car Museum shall be free of charge.

Operator may close the Cable Car Museum and Gift Shop on Thanksgiving, Christmas and New Year's Day. Subject to mutual agreement between City and Operator, hours of operation may be modified. Operator shall be responsible for opening and closing the Cable Car Museum and Gift Shop.

5.2. Professional Manner of Operation. Operator shall operate the Museum Areas, using its best efforts to further the operation thereof. Operator shall conduct and operate the Museum Areas in a professional and dignified manner satisfactory to

Director. All employees of Operator or of any of its subcontractors shall be neatly dressed and shall be courteous at all times. Each employee of Operator shall wear a badge bearing either his/her number or his/her name so that the employee may be identified. In the operation of the Museum Areas, Operator shall comply with all federal, state and local laws, and all rules and regulations as the City shall from time to time reasonably prescribe.

5.3. Operator Representative. Operator shall, during business hours, retain in the concession area a qualified representative, authorized to represent and act for Operator in matters pertaining to the concession, and shall keep Director informed in writing of the identity of such person or persons, provided that Operator shall not be required to update the list of qualified representatives more than twice yearly.

6. Other Uses.

6.1. City Retained Rights. Operator recognizes and acknowledges that the areas governed by this Agreement may from time to time be used by City for its functions. The City retains exclusive right to Museum Areas and to govern additional uses of the Cable Car Barn, including the concession and museum areas. The City will give the Operator two (2) weeks' notice of such events.

6.2. Insurance, Payments by Other Users. Where the City issues a temporary use agreement for use of the Cable Car Museum outside normal business hours, the temporary use operator will be required to maintain insurance during the full term of the Agreement to limits established by the City and naming the City and County of San Francisco, its officers, agents, and employees, Director, and Operator as additional insureds.

In order that the museum Gift Shop be open during such events, the City shall require from the Temporary Use Operator a payment of Five Hundred Dollars (\$500) to the Operator.

7. Operator Performance Standards.

Operator shall, annually on the anniversary of the Commencement Date, submit the following to City: (a) marketing plan, (b) performance goals and standards for the following twelve (12) months, (c) maintenance requests, and (d) any such other information related to the performance of this Agreement. City and Operator agree to meet every six (6) months to evaluate and discuss Operator's adherence to and satisfaction of the marketing plan and performance goals and standards.

At least one representative of Operator shall be present at each meeting. Neither party shall be default of its obligation to meet with the other party if the party has made a good faith effort to schedule such meeting by providing the other party with a list of at least five (5) dates that it is available to meet.

8. Prohibited Uses.

The Museum Areas shall be used only for the purposes specified in Sections 1.1.2 and 1.1.5 of this Agreement. Operator shall at all times during the Term of this Agreement actively use the Museum Areas for those purposes and shall not at any time leave them vacant without the written consent of Director. Operator shall not do or allow anything to be done in or about the museum or Museum Areas, or bring or keep anything in the Museum Areas, which will in any way increase the risk of fire hazard upon the Cable Car Barn or any of its contents, or which will in any way conflict with any law, ordinance,

rule or regulation which may now or hereafter be enacted or promulgated by any public authority. Operator shall not create a nuisance or allow the Museum Areas to be used for any improper, immoral, unlawful or objectionable purpose. Operator shall not place any loads upon the floor, walls or ceiling which endanger the structure, or obstruct the sidewalk or passageways or stairways in front of, within, or adjacent to the Museum Areas, or do or permit any of its agents to do anything in any way tending to disturb the occupation of neighboring property or tending to injure the reputation or appearance of buildings.

9. Sanitation and Waste Disposal.

Operator agrees to keep the Museum Areas and all fixtures, and equipment clean, neat, safe, sanitary and in good order at all times. All waste matter shall be stored in a manner satisfactory to Director.

Operator shall not store any hazardous materials, as defined under federal, state or local law, in the Museum Areas without permission of Director. Operator shall not cause, nor shall Operator allow any of its agents or invitees (as defined in Section 14 below) to cause any hazardous material (as defined below) to be brought upon, kept, used, stored, generated or disposed of in, on or about the Museum Areas, or transported to or from the Museum Areas. Operator shall immediately notify City when Operator learns of, or has reason to believe that, a release of hazardous material has occurred in, on or about the Museum Areas. Operator shall further comply with all laws requiring notice of such releases or threatened releases to governmental agencies, and shall take all action necessary to mitigate the release or minimize the spread of contamination. In the event that Operator or its agents or invitees cause a release of hazardous material, Operator shall, without cost to City and in accordance with all laws and regulations, return the Museum Areas to the condition immediately prior to the release. In connection therewith, Operator shall afford City a full opportunity to participate in any discussion with governmental agencies regarding any settlement agreement, cleanup or abatement agreement, consent, decree or other compromise proceeding involving hazardous material. For purposes of this Agreement, "hazardous material" means material that, because of its quantity, concentration or physical or chemical characteristics, is at any time now or hereafter deemed by any federal, state or local governmental authority to pose a present or potential hazard to public health, welfare or the environment.

Hazardous material includes, without limitation, any material or substance defined as a "hazardous substance, pollutant or contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sections 9601 et seq., or pursuant to Section 25316 of the California Health & Safety Code; a "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the Museum Areas or are naturally occurring substances in the Museum Areas, and any petroleum, including, without limitation, crude oil or any fraction thereof, natural gas or natural gas liquids. The term "release" or "threatened release" when used with respect to hazardous material shall include any actual or imminent spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing in, on, under or about the Museum Areas.

10. Artifacts.

10.1. Possession of Artifacts. Operator shall display the Artifacts in the Cable Car Museum as long as the Museum remains open and Operator continues to operate and manage the Cable Car Museum pursuant to this Agreement.

10.2. Value of Artifacts; Transfer of Title of Artifacts. For the purpose of this Agreement, the parties agree that the Artifacts shall be valued at Six Hundred Sixty Thousand Dollars (\$660,000).

Upon the expiration of the Term or earlier termination of this Agreement, Operator shall convey all right, title and interest in the Artifacts to the City. Operator shall execute a corporate resolution, substantially in the form attached hereto as Exhibit _____. Such corporate resolution shall be executed by Operator, certified by Operator's corporate Secretary, and delivered to SFMTA upon the earlier of the last day of the Term of this Agreement, or within thirty (30) days of any earlier termination of this Agreement.

10.3. Maintenance of the Artifacts. For so long as Operator operates and manages the Cable Car Museum under the terms of this Agreement, including any amendments hereto or extensions hereof, Operator shall, at its own expense maintain the Artifacts in their current or better condition using appropriate methods of historic conservation and (where appropriate) renovation accepted for museum use. Operator agrees to arrange for the erection and maintenance of an enclosure for the Clay Street Hill Cable Car No. 8. City agrees to contribute up to Twenty-Five Thousand Dollars (\$25,000) to pay for such an enclosure.

10.4. Expiration of Operator. In the event that Operator should cease to exist through insolvency, abandonment, liquidation, or, if Operator shall lose its non-profit status in a final determination by the Internal Revenue Service, this Agreement shall terminate and all right, title and interest to the Artifacts shall vest in the City pursuant to Section 10.2 above and Section 10.5 below.

10.5. Purchase Price for Artifacts. Upon the expiration of the Term, in consideration of City's receipt of Operator's resolution conveying all right, title and interest in the Artifacts to the City, City shall pay Operator One Hundred Sixty Thousand Dollars (\$160,000) as the remaining value of the Artifacts.

In the event this Agreement is terminated prior to the expiration of the Term, the City shall have the exclusive right to purchase the Artifacts. In such case, the purchase price of the Artifacts shall be equal to the outstanding Concession Payments, prorated on a monthly basis (\$4,166.67), that would have been due to the City for the remainder of the Term.

For example, if this Agreement is terminated and there are 32 months remaining until the expiration of the Term, the purchase price for the Artifacts would be \$293,333.44 (32 months x \$4,166.67) + \$160,000.00.

11. Utilities.

City shall provide in or in the vicinity of the Museum Areas the following utility services: water, electricity, and sewage outlets. Any changes or alterations in utility installations shall be the sole responsibility of Operator. The user charge for said utility services will be paid by the City.

12. Janitorial Services.

Janitorial services and interior window washing in the Concession and museum areas shall be provided by Operator. City shall provide janitorial services for all public restrooms in the Cable Car Museum.

13. Notices.

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

To City: Finance and Information Technology Department
Attn: Real Estate Section
San Francisco Municipal Transportation Agency
1 South Van Ness Avenue, 8th Floor
San Francisco, CA 94103-5417

To Operator: Friends of the Cable Car Museum
Attn: Jose Godoy
1201 Mason Street
San Francisco, CA 94108

14. Indemnity.

Operator shall indemnify, defend and hold harmless City, its officers, agents, employees and contractors, and each of them, from and against any and all demands, claims, legal or administrative proceedings, losses, costs, penalties, fines, liens, judgments, damages and liabilities of any kind (collectively, "losses"), arising in any manner out of (a) any injury to or death of any person or damage to or destruction of any property occurring in, on or about the Museum Areas, or any part thereof, whether the person or property of Operator, its officers, agents, employees, contractors or subcontractors (collectively, "agents"), its invitees, guests or business visitors (collectively, "invitees"), or third persons, relating in any manner to any use or activity under this Agreement, (b) any failure by Operator to faithfully observe or perform any of the terms, covenants or conditions of this Agreement, (c) the use of the Museum Areas or any activities conducted thereon by Operator, its agents or invitees, or (d) any release or discharge, or threatened release or discharge, of any hazardous material caused or allowed by Operator, its agents or invitees, on, in, under or about the Museum Areas, any improvements agreed to thereon, or into the environment; except solely to the extent of losses resulting directly from the gross negligence or willful misconduct of City or City's authorized representatives. The foregoing indemnity shall include, without limitation, reasonable attorneys' and consultants' fees, investigation and remediation costs and all other reasonable costs and expenses incurred by the indemnified parties, including, without limitation, damages for decrease in the value of the Museum Areas and claims for damages or decreases in the value of adjoining property. Operator specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to Operator by City and continues at all times thereafter. Operator's obligations under this section shall survive the expiration or other termination of this Agreement.

Operator shall indemnify and hold City harmless from all loss and liability, including

attorney's fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark of any person or persons in consequence of the use by City, or any of its officers or agents, of articles or services to be supplied in the performance of this Agreement.

15. Insurance. Operator shall procure and keep in effect at all times during the term of this Agreement, at Operator's expense insurance as follows:

15.1. General Liability Insurance with limits not less than Two Million Dollars (\$2,000,000) each occurrence Combined Single Limit for Bodily Injury and Property Damage, including coverage's for Contractual Liability, Personal Injury, Independent Contractors, Explosion, and Products Liability;

15.2. Automobile Liability Insurance with limits not less than Two Million Dollars (\$2,000,000) each occurrence Combined Single Limit for Bodily Injury and Property Damage, including coverages for owned, non-owned and hired automobiles, as applicable; and

15.3. Workers' Compensation Insurance with Employer's Liability Coverage with limits of not less than Two Million Dollars (\$2,000,000) each accident.

15.4. Comprehensive Crime Insurance, including coverages for employee dishonesty, forgery or alteration, theft, disappearance and destruction, and robbery (inside and outside) in the amount of Ten Thousand Dollars (\$10,000), with any deductible not to exceed One Thousand Dollars (\$1,000).

15.5. Comprehensive Property Insurance, including coverage for the Artifacts with limits of not less than Six Hundred Sixty Thousand Dollars (\$660,000) each occurrence. The parties agree to share in the cost of the insurance premium for such comprehensive property coverage as set forth in Exhibit A attached hereto and incorporated herein by this reference.

15.6. All liability policies required hereunder shall provide for the following: (i) name as additional insureds the City and County of San Francisco, its officers, agents and employees; and (ii) specify that such policies are primary insurance to any other insurance available to the additional insureds, with respect to any claims arising out of this Agreement and that insurance applies separately to each insured against whom claim is made or suit is brought. Such policies shall also provide for severability of interests and that an act or omission of one of the named insureds which would void or otherwise reduce coverage shall not reduce or void the coverage as to any insured, and shall afford coverage for all claims based on acts, omissions, injury or damage which occurred or arose in whole or in part during the policy period.

15.7. All policies shall be endorsed to provide thirty (30) days prior written notice of cancellation, non-renewal or reduction in coverage to City.

Prior to the commencement date of this Agreement, Operator shall deliver to City certificates of insurance in form and with insurers satisfactory to City, evidencing the coverages required hereunder, together with complete copies of the policies at City's request. In the event Operator shall fail to procure such insurance, or to deliver such policies or certificates, City may procure, at its option, the same for the account of Operator, and the cost thereof shall be paid to City within five (5) days after delivery to Operator of bills therefore.

Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense

costs be included in such general annual aggregate limit, such general aggregate limit shall double the occurrence or claims limits specified above.

Should any of the required insurance be provided under a claims made form, Operator shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three (3) years beyond the Agreement expiration, to the effect that, should any occurrences during the Agreement term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

Upon City's request, Operator and City shall periodically review the limits and types of insurance carried pursuant to this Section. If the general commercial practice in the City and County of San Francisco is to carry liability insurance in an amount or coverage materially greater than the amount or coverage then being carried by Operator for risks comparable to those associated with the Museum Areas, then City in its sole discretion may require Operator to increase the amounts or coverage carried by Operator hereunder to conform to such general commercial practice.

Operator's compliance with the provisions of this Section shall in no way relieve or decrease Operator's indemnification obligations under this Agreement or any of Operator's other obligations hereunder. Notwithstanding anything to the contrary in this Agreement, this Agreement shall terminate immediately, without notice to Operator, upon the lapse of any required insurance coverage. Operator shall be responsible, at its expense, for separately insuring Operator's personal property.

16. City's Right to Cure Defaults by Operator.

If Operator fails to perform any of its obligations under this Agreement, or if Operator defaults in the performance of any of its other obligations under this Agreement, then City may, at its sole option, remedy such failure on Operator's account and at Operator's expense by providing Operator with three (3) days' prior written or oral notice of City's intention to cure such default (except that no such prior notice shall be required in the event of an emergency as determined by City). Such action by City shall not be construed as a waiver of any rights or remedies of City under this Agreement, and nothing herein shall imply any duty of City to do any act that Operator is obligated to perform. Operator shall pay to City upon demand, all reasonable costs, damages, expenses or liabilities incurred by City, including, without limitation, reasonable attorneys' fees, in remedying or attempting to remedy such default. Operator's obligations under this Section shall survive the termination of this Agreement.

17. Sales of Unlicensed Muni Merchandise Prohibited.

17.1. No Sale or Display of Unlicensed Merchandise. Operator shall not sell or display any unlicensed merchandise bearing the following marks: "San Francisco Municipal Railway," "MUNI," "S.F. Muni," "S.F. Municipal Railway" and the symbols known as the "O'Shaughnessy" and the "MUNI Worm" ("Marks").

17.2. Penalty for Sale or Display of Unlicensed Merchandise. If Operator inadvertently sells or displays any unlicensed merchandise bearing trademarks belonging to the City, Operator shall inform City, in writing, within ten (10) business days, of Operator's discovery of the error and shall pay to City its net profits from the sale or display of such merchandise. If Operator fails to inform City in writing within ten (10) business days of its inadvertent sale or display of any unlicensed merchandise bearing

trademarks belonging to the City, Operator shall pay to City one hundred percent (100%) of the greater of the fair market value of the items or the entire proceeds that Operator receives for the sale or display of such items. This paragraph in no way limits or affects City's rights to any other revenues under this Agreement.

17.3. Operator Will Not Seek To Impair City's Marks. Operator agrees that it shall not do or cause to be done any act or thing contesting or in any way impairing or tending to impair any of City's rights, title or interests in or to the Marks, or any portion thereof. In the event Operator discovers or otherwise becomes aware that any of the rights embodied in the Marks have been or are being infringed upon by any third party, Operator shall promptly notify City of such infringement. Operator agrees to provide City reasonable assistance and cooperation concerning any such matter provided that Operator shall not incur any significant expense in so cooperating.

17.4. Merchandising License. City and Operator agree that they will enter into a short-term merchandising license for the design, manufacture and sale of transit souvenirs. This license shall become effective upon execution by the parties.

17.5. Mark Validity. In the event any Mark is held invalid, void, and/or unenforceable in a final order, decree or judgment by a court of competent jurisdiction, or there is a refusal by City to timely enforce a Mark against a known infringing competitor of Operator after thirty (30) business days written notice to City by Operator, or unenforceable by agreement between City and a third party, then this Agreement shall no longer apply to said Mark but shall continue in effect with reference to each other Mark.

18. No Waiver of Subsequent Breaches or Defaults.

The failure of either party at any time to insist upon a strict performance of any of the terms, conditions and covenants herein shall not be deemed a waiver of any subsequent breach of default in the terms, conditions and covenants contained herein.

19. No Liability Outside Terms of Agreement.

It is agreed that all duties, obligations and liabilities of either of the parties hereto must necessarily be founded upon the terms of this Agreement, that any liability in connection with the transaction contemplated by this Agreement is exclusively that of each of the principals appearing respectively as City and Operator, and that any Director, servant, agent, officer or employee of either party is not to be held liable for any act, neglect, default or alleged representation or statement.

20. Waiver of Claims/Consequential and Incidental Damages.

Neither City nor any of its commissions, departments, boards, officers, agents or employees, shall be liable for any damage to the property of Operator, its officers, agents, employees, contractors or subcontractors, or their employees, or for any bodily injury or death to such persons, resulting or arising from the use of the Museum Areas by Operator.

Without limiting any indemnification obligations of Operator or other waivers contained in this Agreement and as a material part of the consideration for this Agreement, Operator fully releases, waives and discharges forever any and all claims, demands, rights, and causes of action against, and covenants not to sue, City, its departments, commissions, officers, directors and employees, and all persons acting by, through or under each of them, under any present or future laws, statutes, or regulations, including, but not limited to, any claim for inverse condemnation or the payment of just

compensation under the law of eminent domain, or otherwise at equity, in the event that City exercises its right to revoke or terminate this Agreement.

Operator acknowledges that it will not be a displaced person at the time this Agreement expires by its own terms, and Operator fully releases, waives and discharges forever any and all claims, demands, rights, and causes of action against, and covenants not to sue, City, its departments, commissions, officers, directors and employees, and all persons acting by, through or under each of them, under any present or future laws, statutes, or regulations, including, without limitation, any and all claims for relocation benefits or assistance from City under federal and state relocation assistance laws.

21. Bookkeeping and Accounting.

Operator shall keep full, complete and proper books, records and accounts of its monthly gross receipts on a current basis. Any and all such records shall be kept on the premises or in a location satisfactory to Director, and shall be made available to City or its representative upon request.

22. Inspection and Audit.

City and its designated agents and employees shall have the right at any and all times, during the Term of this Agreement, during regular business hours, to examine and inspect all of the books and records of Operator for the purpose of investigating and verifying the accuracy of any of Operator's reports to the City. Operator shall, on an annual basis, provide City with a certified financial report related to the management and operation of the Cable Car Museum, certified by Operator's Board of Directors.

City may conduct an audit of the books and records of Operator on the third (3rd), sixth (6th) and ninth (9th) anniversaries of the Commencement Date of this Agreement.

23. Alteration and Repair.

23.1. Operator may not perform any alteration or repair work in the Museum Areas without the prior written approval of Director or his designee. Operator shall obtain permission, in writing, to perform any alteration or repair work in the Cable Car Museum. City shall respond to such request to perform alteration or repair work within ten (10) business days. Upon the Director's approval of any alteration and/or repair work, Operator shall give Director at least three (3) days written notice in order that City may post notices of non-responsibility until completion and acceptance of all such work. Operator shall obtain at its sole cost and expense all required agreements, licenses and permits and shall exhibit them to Director upon demand. In the event of any planned alteration or repair to the Museum Areas by City, City shall give Operator as least three (3) days notice.

23.2. Operator shall be responsible for painting the walls of the Museum and all other painted surfaces, when needed, and will repair minor vandalism to the Museum and its exhibits within a reasonable timeframe, up to a cost not to exceed Twenty-Five Thousand Dollars (\$25,000) over the term of this Agreement.

23.3. The Operator shall contact Mr. Chris Hill, Cable Car Maintenance Superintendent, at 415-292-2061 on all property and facility repair needs.

24. Events of Default; Remedies.

24.1. Events of Default. Each of the following events shall constitute an "Event of Default" by Operator upon which the City may terminate this Agreement:

(a) **Material Provisions.** In the sole discretion of City, Operator fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement: 3, 15, 27.1, 27.12.

(b) **Failure to Operate the Cable Car Museum.** Operator fails to open and keep Cable Car Museum open during the hours prescribed in Section 5 of this Agreement, except to the extent that Operator shuts the Cable Car Museum temporarily upon its reasonable belief that such closure is necessary to protect public health and safety. In the event such closure is necessary, if the closure will exceed twenty-four (24) hours, Operator shall notify SFMTA of the closure and obtain SFMTA approval for continued closure.

(c) **Failure to Cure Breach.** Operator fails to comply with any other term, covenant or condition of this Agreement; and such failure continues for a period of thirty (30) days after written notice thereof from the City, except that if such default is of a nature that would reasonably require more than thirty days to remedy, Operator shall have up to sixty (60) days to remedy such default provided that Operator has diligently commenced curative actions within thirty (30) days of the notice of notice of default.

24.2. Notice of Event of Default.

Upon determining the occurrence of an Event of Default, City shall provide notice of such default to Operator, in writing ("**Written Notice of Event of Default**"). The Written Notice of Event of Default shall clearly identify the Event of Default, include a statement explaining what is required to cure the Event of Default and the period of time to cure the Event of Default, as determined in the sole discretion of the Director, which shall in no case be less than thirty (30) days from the Written Notice of Default.

24.3. Remedies.

(a) On and after any Event of Default by Operator, the City shall have the right to exercise all legal and equitable remedies including, but not limited to, the right to terminate this Agreement or seek specific performance of all or parts of this Agreement.

(b) If Operator fails after thirty (30) days notice from City to perform any of its obligations under this Agreement, as determined by the City in its sole discretion, the City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Operator any Event of Default; Operator shall pay to City on demand all costs and expenses incurred by City in effecting such cure from the date of incurrence.

(c) All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

(d) Notwithstanding anything in this Agreement to the contrary, it is agreed that under no circumstances shall any claim of breach, violation or default of the terms, obligations, covenants, or conditions of this Agreement be asserted by City as a basis for terminating the Agreement or refusing to extend the Term without Operator first having been provided notice and an opportunity to cure, as follows:

(i) City must give Operator written notice and opportunity to cure pursuant to the terms set forth above.

(ii) If, by the expiration of the cure period provided for above, Operator has not cured, City shall have all rights and remedies allowed to City under this Agreement for Operator's default.

(iii) Any effort by a party to assert a breach or default by the other party shall be consistent with the notice and cure provisions set forth above.

25. Surrender of Possession.

Operator agrees to yield and deliver to City possession of the Museum Areas at the termination of this Agreement by expiration, in good condition and repair and in accordance with the express obligations hereunder, except for ordinary wear and tear, loss, damages, and destruction occasioned by fire, the elements, public enemy or other casualty not the fault of Operator.

26. Termination for Cause.

The City or the Director, with the authorization of the SFMTA Board of Directors, by written notice to Operator, shall have the right to terminate this Agreement upon the occurrence of any Event of Default; provided, Operator shall have the opportunity to cure such default no later than thirty (30) days following notice of said default from City. Termination under this section shall be effective immediately upon such notice of termination being given by the City to Operator and after the expiration of any applicable cure periods. Upon such termination, Operator shall immediately thereupon vacate the Cable Car Museum premises.

27. General Provisions.

27.1. Assignment. Operator shall not assign or transfer any right, privilege or license conferred by this Agreement, either in whole or in part, or in any manner encumber the museum and concession areas, or any part thereof, without obtaining in advance the written consent of City.

27.2. Conflict of Interest. Through its execution of this Agreement, Contractor acknowledges that it is familiar with the provision of Section 15.103 of the City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitutes a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the term of this Agreement.

27.3. Independent Contractor. Operator shall be deemed at all times to be an independent contractor and shall be wholly responsible for the manner in which Operator performs the service required of Operator by the terms of this Agreement. Operator shall be liable for the acts and omission of itself, its employees and its agents. Nothing contained herein shall be construed as creating an employment or agency relationship between the City and Operator.

27.4. MacBride Principles – Northern Ireland. The City and County of San Francisco urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1, et seq. The City and County of San Francisco also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. Licensees acknowledge that they

have read and understand the above statement of the City and County of San Francisco concerning doing business in Northern Ireland.

27.5. Nondiscrimination. In the performance of this License, Licensees covenant and agree not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability, height, weight or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee of, any City employee working with, or applicant for employment with, Licensees, in any of Licensees' operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Licensees.

27.6. Tropical Hardwoods and Virgin Redwoods. The City and County of San Francisco urges companies not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood, virgin redwood wood product.

27.7. Drug-Free Workplace Place. Contractor acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on City premises. Contractor agrees that any violation of this prohibition by Contractor, its employees, agents or assigns will be deemed a material breach of this Agreement.

27.8. Compliance with Americans with Disabilities Act. Contractor acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Contractor shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Contractor agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Contractor, its employees, agents or assigns will constitute a material breach of this Agreement.

27.9. Food Service Reduction Requirements. Effective June 1, 2007, Contractor agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Agreement as though fully set forth. This provision is a material term of this Agreement. By entering into this Agreement, Contractor agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of One Hundred Dollars (\$100) liquidated damages for the first breach, Two Hundred Dollars (\$200) liquidated damages for the second breach in the same year, and Five Hundred Dollars (\$500) liquidated damages for subsequent breaches in the same year is a reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this Agreement was made. Such amount shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's failure to comply with this provision.

27.10. 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.

27.11. 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.

27.12. Compliance with Laws. Contractor shall keep itself fully informed of the City's Charter, codes, ordinances and regulations of the City and of all state and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.


27.13. Entire Agreement. This contract sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. This contract may be modified only as provided in Section 27.10.

27.14. Severability. Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

CITY:

OPERATOR:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation



Nathaniel P. Ford, Sr.
Executive Director/CEO
San Francisco Municipal Transportation Agency
Dated: _____



Jose Godoy
Chief Executive Officer
Friends of the Cable Car Museum
Date: AUG 14, 2009

APPROVED AS TO FORM:

DENNIS J. HERRERA,
City Attorney

By 
Stephanie J. Stuart
Deputy City Attorney

AUTHORIZED BY:

MUNICIPAL TRANSPORTATION
AGENCY BOARD OF DIRECTORS

Resolution: 09-155

Adopted: Sept. 1, 2009


Attest: 
Roberta Boomer, Secretary to the
SFMTA Board of Directors

EXHIBIT A

Comprehensive Property Insurance

Year	FCCM Portion	SFMTA Portion	FCCM Share	SFMTA Share
Year 1	\$660,000.00	\$50,000.00	92.4242%	7.5758%
Year 2	\$610,000.00	\$100,000.00	84.8485%	15.1515%
Year 3	\$560,000.00	\$150,000.00	77.2727%	22.7273%
Year 4	\$510,000.00	\$200,000.00	69.6970%	30.3030%
Year 5	\$460,000.00	\$250,000.00	62.1212%	37.8788%
Year 6	\$410,000.00	\$300,000.00	54.5455%	45.4545%
Year 7	\$360,000.00	\$350,000.00	46.9697%	53.0303%
Year 8	\$310,000.00	\$400,000.00	39.3939%	60.6061%
Year 9	\$260,000.00	\$450,000.00	31.8182%	68.1818%
Year 10	\$210,000.00	\$500,000.00	24.2424%	75.7576%
Remainder Value	\$160,000.00	N/A	N/A	N/A