

File No. 170994

Committee Item No. 10  
Board Item No. \_\_\_\_\_

**COMMITTEE/BOARD OF SUPERVISORS**  
AGENDA PACKET CONTENTS LIST

Committee: Budget & Finance Committee

Date October 5, 2017

Board of Supervisors Meeting

Date \_\_\_\_\_

**Cmte Board**

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| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Resolution                                   |
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| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Legislative Digest                           |
| <input type="checkbox"/>            | <input type="checkbox"/> | Budget and Legislative Analyst Report        |
| <input type="checkbox"/>            | <input type="checkbox"/> | Youth Commission Report                      |
| <input type="checkbox"/>            | <input type="checkbox"/> | Introduction Form                            |
| <input type="checkbox"/>            | <input type="checkbox"/> | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/>            | <input type="checkbox"/> | MOU  |
| <input type="checkbox"/>            | <input type="checkbox"/> | Grant Information Form                       |
| <input type="checkbox"/>            | <input type="checkbox"/> | Grant Budget                                 |
| <input type="checkbox"/>            | <input type="checkbox"/> | Subcontract Budget                           |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Contract/Agreement                           |
| <input type="checkbox"/>            | <input type="checkbox"/> | Form 126 – Ethics Commission                 |
| <input type="checkbox"/>            | <input type="checkbox"/> | Award Letter                                 |
| <input type="checkbox"/>            | <input type="checkbox"/> | Application                                  |
| <input type="checkbox"/>            | <input type="checkbox"/> | Public Correspondence                        |

**OTHER** (Use back side if additional space is needed)

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Completed by: Linda Wong Date September 28, 2017  
Completed by: Linda Wong Date \_\_\_\_\_

1 [Revenue Agreement Amendment - JC Decaux San Francisco, Inc. - Extending Term to  
2 December 16, 2017]

3 **Resolution approving the Third Amendment to the Revenue Agreement between San**  
4 **Francisco Public Works and JC Decaux San Francisco, LLC, for the Automatic Public**  
5 **Toilet and Public Service Kiosk Program extending the contract term by 60 days,**  
6 **changing the termination date from October 17, 2017, to December 16, 2017.**

7  
8 WHEREAS, San Francisco Public Works entered into an agreement with JC Decaux  
9 San Francisco, Inc., for a public toilet and public service kiosk pilot program, with an effective  
10 date of August 2, 1994; and

11 WHEREAS, The Board of Supervisors approved a First Amended and Restated  
12 Automatic Public Toilet and Public Service Kiosk Agreement ("JC Decaux Agreement") on  
13 December 7, 1998, which expanded the program beyond the trial phase with a term ending on  
14 October 17, 2016; and

15 WHEREAS, On December 14, 2015, the parties executed a first amendment to the JC  
16 Decaux Agreement to allow installation of temporary personal wireless services in the kiosks;  
17 and

18 WHEREAS, On October 28, 2016, the Board of Supervisors approved a second  
19 amendment to the JC Decaux Agreement to extend the term of the agreement to October 17,  
20 2017; and

21 WHEREAS, The JC Decaux Agreement, the First Amendment to the Agreement, and  
22 the Second Amendment to the Agreement are on file with the Clerk of the Board of  
23 Supervisors in Files No. 161019 and 981599, which are hereby declared to be a part of this  
24 Resolution as if set forth fully herein; and

1           WHEREAS, SF Public Works needs additional time to complete negotiations with JC  
2           Decaux on a subsequent agreement to ensure that proposed new public toilets and public  
3           service kiosks meet all City design and review requirements; and

4           WHEREAS, SF Public Works cannot complete all of the required reviews and  
5           approvals for the new Toilets and Kiosks before the current agreement expires; and

6           WHEREAS, Charter, Section 9.118(a) requires that amendments to contracts that  
7           when entered into had anticipated revenues of \$1,000,000 or more be approved by the Board  
8           of Supervisors; now, therefore, be it

9           RESOLVED, That the San Francisco Board of Supervisors approves the Third  
10          Amendment to the JC Decaux Agreement as amended, which extends the term of the JC  
11          Decaux Agreement by 60 days to December 16, 2017; and, be it

12          FURTHER RESOLVED, That within thirty (30) days of the amendment being fully  
13          executed by all parties, SF Public Works shall provide the final amendment to the Clerk of the  
14          Board for inclusion into the official file.

**Item 10**  
**File 17-0994**

**Department:**  
General Services Agency - Department of Public Works  
(DPW)

## EXECUTIVE SUMMARY

### Legislative Objectives

- The proposed resolution approves the Third Amendment to the Revenue Agreement between San Francisco Public Works (Public Works) and JC Decaux San Francisco, LLC (JC Decaux), for the Automatic Public Toilet and Public Service Kiosk Program, extending the contract term by 60 days, changing the termination date from October 17, 2017 to December 16, 2017.

### Key Points

- Public Works entered into an agreement with JC Decaux for a public toilet and public service kiosk pilot program in 1994. In 1998, the Board of Supervisors expanded the program beyond the pilot phase and extended it through October 17, 2016. Public Works issued a Request for Proposals (RFP) in 2015 to select a new contractor, but due to problems in the RFP process, was not able to proceed. Therefore, the Board of Supervisors approved an amendment to the agreement with JC Decaux to extend the term for an extra year through October 17, 2017, pending a new RFP process. Public Works reissued the RFP in April 2016 and JC Decaux was the only bidder.
- The current agreement between Public Works and JC Decaux expires on October 17, 2017. Public Works needs additional time to complete negotiations with JC Decaux on a new agreement and has requested a 60 day extension to the current agreement, extending it through December 16, 2017.

### Fiscal Impact

- Public Works receives a base fee as well as 7 percent of JC Decaux's annual advertising revenues from the public toilets and kiosks. In 2016, the most recent calendar year with complete revenue information, Public Works received \$778,539 in revenues. Assuming that advertising revenues continue at the same rate for 2017, and that the base fee increases 3.37 percent with the Consumer Price Index (CPI), Public Works can expect to receive approximately \$129,981 over the 60 day extension of the agreement.

### Recommendation

- Approve the proposed resolution.



**MANDATE STATEMENT**

City Charter Section 9.118(a) states that contracts entered into by a department, board, or commission that (i) have anticipated revenues of \$1 million or more, or (ii) have anticipated revenues of \$1 million or more and require modifications, are subject to Board of Supervisors approval.

**BACKGROUND**

In 1994, San Francisco Public Works (Public Works) and JC Decaux San Francisco, Inc. (JC Decaux) entered into an agreement for a public toilet and public service kiosk pilot program. Under the agreement, JC Decaux installs, owns, and maintains the toilets and kiosks, in exchange for the right to sell advertisements. In December 1998, the Board of Supervisors approved an expansion of the agreement (File No. 98-1599) beyond the pilot phase, extending the term through October 17, 2016. The length of the agreement provided long-term revenue certainty to JC Decaux for making a large upfront capital investment. In December 2015, the agreement was amended to allow installation of temporary personal wireless facilities in anticipation of events related to Super Bowl 50.

According to Ms. Julia Dawson, Public Works Deputy Director of Finance and Administration, Public Works issued a Request for Proposals (RFP) in mid-2015 for vendors to continue the program and received three bids: JC Decaux, Intersection, and Clear Channel. However, because the RFP lacked clarity, the bids could not be evaluated. As a result, Public Works rejected all bids. On April 29, 2016, Public Works re-advertised the revised RFP, and JC Decaux was the only responsive bidder. Public Works needed additional time to negotiate a replacement revenue agreement with JC Decaux, and on October 28, 2016, the Board of Supervisors approved an extension of the agreement (File No. 16-1019) for an additional year, through October 17, 2017.

**DETAILS OF PROPOSED LEGISLATION**

The proposed resolution approves the third amendment to the existing agreement between Public Works and JC Decaux, extending the agreement end date by approximately two months from October 17, 2017 to December 16, 2017. According to Ms. Dawson, Public Works needs additional time to complete negotiations with JC Decaux on a subsequent agreement and has requested to extend the current agreement for an additional 60 days. Under the forthcoming new agreement, subject to future Board of Supervisors approval, JC Decaux will remove the existing toilets and kiosks and replace them with new facilities featuring both digital and print advertising.

**FISCAL IMPACT**

Under its current agreement with JC Decaux, Public Works receives both an annual base fee and 7 percent of advertising revenue each calendar year. The base fee was \$25,000 at the beginning of the agreement in 1998 and has been adjusted annually based on the Consumer

Price Index (CPI), to the most recent amount of \$40,000 in 2016. Assuming the CPI increases by 3.37 percent<sup>1</sup> in 2017, the base fee in 2017 would be \$41,348. The prorated base fee for the 60 day extension would be \$6,891. In 2016, the total advertising revenue was \$10,550,550, and the revenue share paid to Public Works was \$738,539. Assuming that the advertising revenue remains constant for 2017, Public Works would receive \$123,090 for the 60 day extension period. Between the base fee and the revenue share, Public Works would receive \$129,981 total. The revenue projections are shown in Table 1 below.

**Table 1: 2016 Revenues and 2017 Projected Revenues**

Year	Annual Advertising Revenues	7% Revenue Share to Public Works	Base Fee	Total Payment to Public Works
2016	\$10,550,550	\$738,539	\$40,000	\$778,539
2017 (expected)	10,550,550	738,539	41,348	779,887
<b>Agreement Extension (60 days, prorated)*</b>	<b>\$1,758,425</b>	<b>\$123,090</b>	<b>\$6,891</b>	<b>\$129,981</b>

*\*Assumes 3.37 percent increase in annual base fee and no increase in annual advertising revenues. Agreement extension period is calculated as 1/6 (2 months) of the total 2017 projected revenues.*

**RECOMMENDATION**

Approve the proposed resolution.

<sup>1</sup> The amount the CPI increased from the first half of 2016 to the first half of 2017.

**City and County of San Francisco  
San Francisco Public Works  
1155 Market Street, 4<sup>th</sup> Floor  
San Francisco, CA 94103**

**Third Amendment to Agreement**

THIS THIRD AMENDMENT (this "Amendment") is made as of September 12, 2017, in San Francisco, California, by and between **JC Decaux San Francisco, LLC** ("Contractor"), and the City and County of San Francisco, a municipal corporation ("City"), acting by and through its Director of Public Works.

**RECITALS**

WHEREAS, City and Contractor have entered into the Agreement as amended (as defined below); and

WHEREAS, City and Contractor desire to modify the Agreement on the terms and conditions set forth herein to extend the contract duration by 60 days;

NOW, THEREFORE, Contractor and the City agree as follows:

**1. Definitions.** The following definitions shall apply to this Amendment:

**1a. Agreement.** The term "Agreement" shall mean the Agreement dated August 2, 1994, between Contractor and City, as amended by the:

**First Amended and Restated Agreement**, approved by the Board of Supervisors on December 7, 1998; and

**First Amendment to Agreement**, dated December 14, 2015; and

**Second Amendment to Agreement**, dated October 28, 2016.

**1b. Other Terms.** Terms used and not defined in this Amendment shall have the meanings assigned to such terms in the Agreement.

**2. Modifications to the Agreement.** The Agreement is hereby modified as follows:

**2a. Section 1.03.** *Section 1.03. Term of Agreement* of the Agreement currently reads as follows:

This Agreement shall commence as of the Original Effective Date and shall continue, subject to the terms of this Agreement regarding termination, to 11:59 p.m. on October 17, 2017.

**Such section is hereby amended in its entirety to read as follows:**

This Agreement shall commence as of the Original Effective Date and shall continue, subject to the terms of this Agreement regarding termination, to 11:59 p.m. on December 16, 2017.

IN WITNESS WHEREOF, Contractor and City have executed this Amendment as of the date first referenced above.

**CITY**

**CONTRACTOR**

**DEPARTMENT OF PUBLIC WORKS**

**JC DECAUX SAN FRANCISCO, LLC**

\_\_\_\_\_  
**MOHAMMED NURU**  
**DIRECTOR**

By: \_\_\_\_\_

Print Name: J. Francois Nion

Title: Executive Vice President

Federal Tax ID #: 94-3211833

City Vendor Number: 47073

Approved as to Form:

Dennis J. Herrera  
City Attorney

By: \_\_\_\_\_  
Randy Parent  
Deputy City Attorney

**City and County of San Francisco  
San Francisco Public Works  
1155 Market Street, 4<sup>th</sup> Floor  
San Francisco, CA 94103**

**Second Amendment to Agreement**

THIS SECOND AMENDMENT (this "Amendment") is made as of October 28, 2016, in San Francisco, California, by and between **JC Decaux San Francisco, LLC** ("Contractor"), and the City and County of San Francisco, a municipal corporation ("City"), acting by and through its Director of Public Works.

**RECITALS**

WHEREAS, City and Contractor have entered into the Agreement (as defined below); and

WHEREAS, City and Contractor desire to modify the Agreement on the terms and conditions set forth herein to extend the contract duration by 365 days;

NOW, THEREFORE, Contractor and the City agree as follows:

**1. Definitions.** The following definitions shall apply to this Amendment:

**1a. Agreement.** The term "Agreement" shall mean the Agreement dated August 2, 1994, between Contractor and City, as amended by the:

**First Amended and Restated Agreement**, approved by the Board of Supervisors on December 7, 1998; and

**First Amendment to Agreement**, dated December 14, 2015.

**1b. Contract Monitoring Division.** Effective July 28, 2012, with the exception of Sections 14B.9(D) and 14B.17(F), all of the duties and functions of the Human Rights Commission under Chapter 14B of the Administrative Code (LBE Ordinance) were transferred to the City Administrator, Contract Monitoring Division ("CMD"). Wherever "Human Rights Commission" or "HRC" appears in the Agreement in reference to Chapter 14B of the Administrative Code or its implementing Rules and Regulations, it shall be construed to mean "Contract Monitoring Division" or "CMD" respectively.

**1c. Other Terms.** Terms used and not defined in this Amendment shall have the meanings assigned to such terms in the Agreement.

**2. Modifications to the Agreement.** The Agreement is hereby modified as follows:

**2a. Section 1.03.** *Section 1.03, Term of Agreement* of the Agreement currently reads as follows:

This Agreement shall commence as of the Original Effective Date and shall continue, subject to the terms of this Agreement regarding termination, to 11:59 p.m. on October 17, 2016.

**Such section is hereby amended in its entirety to read as follows:**

This Agreement shall commence as of the Original Effective Date and shall continue, subject to the terms of this Agreement regarding termination, to 11:59 p.m. on October 17, 2017.

**2b. Section 1.08. *Section 1.08. Grant of Advertising Rights.*** of the Agreement currently reads as follows:

A. CITY hereby grants to CONTRACTOR, and represents and warrants that CONTRACTOR shall have, during the term of this Agreement, the exclusive right to erect and maintain Public Service Kiosks on CITY property, and the exclusive right to place advertising on Public Service Kiosks as authorized. CITY shall retain and reserve to itself and its assigns all advertising rights not expressly granted to CONTRACTOR hereunder, subject to the limitations and conditions of this Agreement. The City shall compensate the Contractor only for those services performed under authorized CSOs. The Contractor acknowledges and agrees that no minimum compensation is assured under this Agreement.

B. Except for advertising displayed by the CONTRACTOR on Public Service Kiosks authorized hereunder, and except as provided in Paragraph C below, CITY agrees not to display nor will it authorize nor permit the display of advertising panels of from eighteen (18) to fifty-five (55) square feet on any freestanding structure located on any public right-of-way or other CITY owned property (i) anywhere within the Downtown Area, and/or (ii) outside the Downtown Area, within a 300 foot radius of any Public Service Kiosk authorized hereunder. For purposes of this Section 1.08, the term "freestanding structure" includes structures of any shape, size or number of advertising panels, but shall not include buildings of at least 250 square feet of floor area.

C. Notwithstanding any other provisions of Paragraph A or B of this Section 1.08, CITY shall have the right to display or to authorize or permit display of advertising panels, each of which shall not exceed twenty-four (24) square feet in area, provided that such panels are physically attached to transit shelters, excluding, however, transit shelters on Market Street with the Downtown Area; provided further that the CITY's right to display advertising on such transit shelters shall survive the expiration or termination of the Advertising Transit Shelter Agreement between the CITY and Gannett Outdoor Company, Inc. of Northern California, dated as of January 5, 1990.

D. Notwithstanding any other provisions of Paragraph A or B of this Section 1.08, CITY shall have the right to display or to authorize or permit display of up to two (2) advertising panels, each of which shall not exceed twenty-four (24) square feet in area, on the twenty-six (26) "Market Street Kiosks" authorized as of the Original Effective Date hereof pursuant to the First Amendment to Advertising Transit Shelter Agreement between the CITY and Gannett Outdoor Company, Inc. of Northern California dated as of January 5, 1990 (the locations of which are listed in Appendix A hereto); provided that such "Market Street Kiosks" may be

relocated as part of any relocation of the transit shelters on Market street; and provided further that CITY's right to display advertising on the twenty-six (26) "Market Street Kiosks" shall survive the expiration or termination of such Advertising Transit Shelter Agreement.

E. Notwithstanding the provisions of Paragraph A through D of this Section 1.08, the PORT shall have the right to display or to authorize or permit display of advertising, including informational and directional displays, related exclusively to the business activities of the PORT, its lessees and licensees, within Port Property; except that any such displays of a commercial nature on freestanding structures shall be no larger than eighteen (18) square feet.

F. CITY shall not enter into any contract or agreement granting to any third party any exclusive advertising rights which would have the effect of precluding the CITY from permitting Public Service Kiosks anywhere in the CITY otherwise permitted hereunder; provided, however, that CITY may impose reasonable standards, such as those imposed pursuant to Department of Public Works Order Number 163,368, (as set forth in Appendix G hereto, on the distance between individual pieces of street furniture containing advertising.)

**Such section is hereby amended by adding the following new subsection:**

G. Notwithstanding the provisions of Paragraphs A through F of this section, CONTRACTOR shall not advertise or authorize or permit display of advertising of cigarettes or tobacco products or alcoholic beverages pursuant to Section 4.20 of the San Francisco Administrative Code.

**2c. Section 1.14. *Section 1.14 Insurance.*** is hereby replaced in its entirety to read as follows:

**1.14 Insurance.**

**A. Insurance Policies.** Without in any way limiting Contractor's liability pursuant to the "Hold Harmless and Indemnification" section of this Agreement, Contractor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

- 1) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness; and
- 2) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence and \$2,000,000 general aggregate for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and
- 3) Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence; "Combined Single Limit" for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.
- 4) Excess Liability Coverage following the provisions of the insurance referred to in clauses 1), 2) and 3) above in the amount of \$5,000,000 per occurrence, Combined Single limit and \$5,000,000 in the aggregate for each annual policy period.

**B. Other Provisions.**

1) Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to provide:

(a) Name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

(b) 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.

2) All policies shall be endorsed to provide thirty (30) days' advance written notice to the City of cancellation for any reason, intended non-renewal, or reduction in coverages. Notices shall be mailed to the following address:

San Francisco Public Works  
Contract Administration Division  
1155 Market Street, 4<sup>th</sup> Floor  
San Francisco, CA 94103

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

4) Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

5) Before commencing any Services, Contractor shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Approval of the insurance by City shall not relieve or decrease Contractor's liability hereunder.

6) The Workers' Compensation policy(ies) shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and subcontractors.

7) If Contractor will use any subcontractor(s) to provide Services, Contractor shall require the subcontractor(s) to provide all necessary insurance and to name the City and County of San Francisco, its officers, agents and employees and the Contractor as additional insureds.

**2d. Section 7.11. Section 7.11. Minority/Women Business Utilization.** is deleted in its entirety.

**3. Effective Date.** Each of the modifications set forth in Section 2 shall be effective on and after October 18, 2016.



4. **Legal Effect.** Except as expressly modified by this Amendment, all of the terms and conditions of the Agreement shall remain unchanged and in full force and effect.

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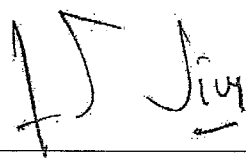
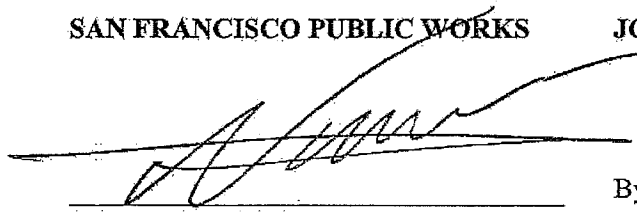
IN WITNESS WHEREOF, Contractor and City have executed this Amendment as of the date first referenced above.

**CITY**

**CONTRACTOR**

**SAN FRANCISCO PUBLIC WORKS**

**JC DECAUX SAN FRANCISCO, LLC**



\_\_\_\_\_  
**MOHAMMED NURU**  
**DIRECTOR**

By: \_\_\_\_\_

Print Name: J. Francois Nion

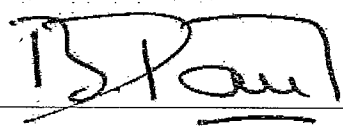
Title: Executive Vice President

Federal Tax ID #: 94-3211833

City Vendor Number: 47073

Approved as to Form:

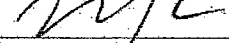
Dennis J. Herrera  
City Attorney



By: \_\_\_\_\_

Print Name: Bernard Parisot

Title: Co-CEO

By:   
\_\_\_\_\_  
Yadira Taylor  
Deputy City Attorney

By:   
\_\_\_\_\_

Print Name: Sandra Boisseau

Title: CFO

**CITY AND COUNTY OF SAN FRANCISCO**

**FIRST AMENDMENT TO AGREEMENT**

THIS FIRST AMENDMENT to the Agreement ("Amendment") is made as of December 14, 2015, in San Francisco, California, by and between JCDecaux San Francisco, LLC ("CONTRACTOR"), and the City and County of San Francisco, a municipal corporation ("CITY"), acting by and through its Public Works Department.

**RECITALS**

WHEREAS, CITY and CONTRACTOR have entered into the Agreement;

WHEREAS, At least one provider of Personal Wireless Services in San Francisco has requested that CONTRACTOR allow it to install Personal Wireless Service Facilities on one or more of its Public Service Kiosks;

WHEREAS, CITY and CONTRACTOR desire to modify the Agreement on the terms and conditions set forth in this Amendment to enable CONTRACTOR to allow the installation of Personal Wireless Service Facilities on certain of the Public Service Kiosks identified in the Agreement;

WHEREAS, At least one Personal Wireless Service in San Francisco has informed CITY of its need to increase the number of Personal Wireless Service Facilities in the downtown area in order to provide adequate service to its customers attending certain of the festivities in San Francisco related to Superbowl 50;

WHEREAS, CITY and CONTRACTOR have determined that certain of CONTRACTOR's Public Service Kiosks are resources that could be used for this purpose; and

WHEREAS, CITY and CONTRACTOR have determined that the use of certain of CONTRACTOR's Public Service Kiosks for this purpose for a limited period of time is an additional public service that may be approved by the Director of Public Works pursuant to Section 5.10D of the Agreement;

NOW, THEREFORE, CITY and CONTRACTOR agree as follows:

1. **Definitions.** The following definitions shall apply to this Amendment:

**1a. Agreement.** The term "Agreement" shall mean the First Amended and Restated Automatic Public Service Toilet and Public Service Agreement between CITY and CONTRACTOR approved by the Board of Supervisors on December 11, 1998.

**1b. Personal Wireless Service.** The term "Personal Wireless Service" shall mean commercial mobile radio services, unlicensed wireless services, and common carrier wireless exchange access services.

**1c. Personal Wireless Service Facilities.** The term "Personal Wireless Service Facilities" shall mean antennas and equipment used to provide, or to facilitate the provision of, Personal Wireless Service.

**1d. Utility Conditions Permit.** The term "Utility Conditions Permit" shall mean a permit issued to a telecommunications provider under Section 11.9 of the San Francisco Administrative Code.

**1e. Other Terms.** Terms used and not defined in this Amendment shall have the meanings assigned to such terms in the Agreement.

**2. Modifications to the Agreement.** The Agreement is hereby modified as follows:

**2a. Section 5.10.G. Installation of Personal Wireless Service Facilities.** Section 5.10.G is hereby added to the Agreement to read in its entirety as follows:

**Section 5.10.G. Installation of Personal Wireless Service Facilities.**

1. CITY hereby authorizes CONTRACTOR to allow any entity that has obtained a Utility Conditions Permit to install and maintain the Personal Wireless Service Facilities meeting the specifications set forth in Appendix H to this Agreement on the Public Service Kiosks identified in Appendix I to this Agreement. As shown in Appendix J attached hereto, the Planning Department has determined that the installation of these Personal Wireless Service Facilities on the Public Service Kiosks is categorically exempt under the California Environmental Quality Act.

2. As all required permits have previously been obtained for the installation of the Public Service Kiosks identified in Appendix I to this Agreement, no further permits are required for the installation of such Personal Wireless Service Facilities on such Public Service Kiosks. CONTRACTOR agrees to pay to the CITY a one-time payment in the amount of Twenty Thousand Dollars (\$20,000) upon execution of this Agreement.

3. As shown in Appendix K attached hereto, the Department of Public Health has determined that human exposure to radio frequency emissions from the Personal Wireless Service Facilities meet the requirements promulgated by the Federal Communications Commission.

**2b. Section 7.25. Consideration of Criminal History in Hiring and Employment Decisions.** Section 7.25 is hereby added to the Agreement to read in its entirety as follows:

**Section 7.25. Consideration of Criminal History in Hiring and Employment Decisions.**

a. CONTRACTOR agrees to comply fully with and be bound by all of the provisions of Chapter 12T "City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions," of the San Francisco Administrative Code (Chapter 12T), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Chapter 12T are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the Chapter 12T is available on the web at [www.sfgov.org/olse/fco](http://www.sfgov.org/olse/fco). A partial listing of some of Contractor's obligations under Chapter 12T is set forth in this Section. Contractor is required to comply with all of the applicable provisions of 12T, irrespective of the listing of obligations in this Section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12T.

b. The requirements of Chapter 12T shall only apply to a Contractor's or Subcontractor's operations to the extent those operations are in furtherance of the performance of this Agreement, shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement, shall apply only when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City of San Francisco, and shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

c. CONTRACTOR shall incorporate by reference in all subcontracts the provisions of Chapter 12T, and shall require all subcontractors to comply with such provisions. CONTRACTOR's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

d. CONTRACTOR or Subcontractor shall not inquire about, require disclosure of, or if such information is received, base an Adverse Action on an applicant's or potential applicant for employment's, or employee's: (1) Arrest not leading to a Conviction, unless the Arrest is undergoing an active pending criminal investigation or trial that has not yet been resolved; (2) participation in or completion of a diversion or a deferral of judgment program; (3) a Conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise rendered inoperative; (4) a Conviction or any other adjudication in the juvenile justice system; (5) a Conviction that is more than seven years old, from the date of sentencing; or (6) information pertaining to an offense other than a felony or misdemeanor, such as an infraction.

e. CONTRACTOR or Subcontractor shall not inquire about or require applicants, potential applicants for employment, or employees to disclose on any employment application the facts or details of any conviction history, unresolved arrest, or any matter identified in subsection (d) above. CONTRACTOR or Subcontractor shall not require such disclosure or make such inquiry until either

after the first live interview with the person, or after a conditional offer of employment.

f. CONTRACTOR or Subcontractor shall state in all solicitations or advertisements for employees that are reasonably likely to reach persons who are reasonably likely to seek employment to be performed under this Agreement, that the CONTRACTOR or Subcontractor will consider for employment qualified applicants with criminal histories in a manner consistent with the requirements of Chapter 12T.

g. CONTRACTOR and Subcontractors shall post the notice prepared by the Office of Labor Standards Enforcement (OLSE), available on OLSE's website, in a conspicuous place at every workplace, job site, or other location under the CONTRACTOR or Subcontractor's control at which work is being done or will be done in furtherance of the performance of this Agreement. The notice shall be posted in English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the workplace, job site, or other location at which it is posted.

h. CONTRACTOR understands and agrees that if it fails to comply with the requirements of Chapter 12T, the City shall have the right to pursue any rights or remedies available under Chapter 12T, including but not limited to, a penalty of \$50 for a second violation and \$100 for a subsequent violation for each employee, applicant or other person as to whom a violation occurred or continued, termination or suspension in whole or in part of this Agreement.

**2c. Section 7.26. First Source Hiring Program.** Section 7.26 is hereby added to the Agreement to read in its entirety as follows:

**Section 7.26 First Source Hiring Program.**

- a. Incorporation of Administrative Code Provisions by Reference. The provisions of Chapter 83 of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with, and be bound by, all of the provisions that apply to this Agreement under such Chapter, including but not limited to the remedies provided therein. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 83.
- b. First Source Hiring Agreement. As an essential term of, and consideration for, any contract or property contract with the City, not exempted by the FSHA, the CONTRACTOR shall enter into a first source hiring agreement ("agreement") with the City, on or before the effective date of the contract or property contract. CONTRACTOR shall also enter into an agreement with the City for any other work that it performs in the City. Such agreement shall:

- 1) Set appropriate hiring and retention goals for entry level positions. The employer shall agree to achieve these hiring and retention goals, or, if unable to achieve these goals, to establish good faith efforts as to its attempts to do so, as set forth in the agreement. The agreement shall take into consideration the employer's participation in existing job training, referral and/or brokerage programs. Within the discretion of the FSHA, subject to appropriate modifications, participation in such programs maybe certified as meeting the requirements of this Chapter. Failure either to achieve the specified goal, or to establish good faith efforts will constitute noncompliance and will subject the employer to the provisions of Section 83.10 of this Chapter.
- 2) Set first source interviewing, recruitment and hiring requirements, which will provide the San Francisco Workforce Development System with the first opportunity to provide qualified economically disadvantaged individuals for consideration for employment for entry level positions. Employers shall consider all applications of qualified economically disadvantaged individuals referred by the System for employment; provided however, if the employer utilizes nondiscriminatory screening criteria, the employer shall have the sole discretion to interview and/or hire individuals referred or certified by the San Francisco Workforce Development System as being qualified economically disadvantaged individuals. The duration of the first source interviewing requirement shall be determined by the FSHA and shall be set forth in each agreement, but shall not exceed 10 days. During that period, the employer may publicize the entry level positions in accordance with the agreement. A need for urgent or temporary hires must be evaluated, and appropriate provisions for such a situation must be made in the agreement.
- 3) Set appropriate requirements for providing notification of available entry level positions to the San Francisco Workforce Development System so that the System may train and refer an adequate pool of qualified economically disadvantaged individuals to participating employers. Notification should include such information as employment needs by occupational title, skills, and/or experience required, the hours required, wage scale and duration of employment, identification of entry level and training positions, identification of English language proficiency requirements, or absence thereof, and the projected schedule and procedures for hiring for each occupation. Employers should provide both long-term job need projections and notice before initiating the interviewing and hiring process. These notification requirements will take into consideration any need to protect the employer's proprietary information.

- 4) Set appropriate record keeping and monitoring requirements. The First Source Hiring Administration shall develop easy-to-use forms and record keeping requirements for documenting compliance with the agreement. To the greatest extent possible, these requirements shall utilize the employer's existing record keeping systems, be nonduplicative, and facilitate a coordinated flow of information and referrals.
  - 5) Establish guidelines for employer good faith efforts to comply with the first source hiring requirements of this Chapter. The FSHA will work with City departments to develop employer good faith effort requirements appropriate to the types of contracts and property contracts handled by each department. Employers shall appoint a liaison for dealing with the development and implementation of the employer's agreement. In the event that the FSHA finds that the employer under a City contract or property contract has taken actions primarily for the purpose of circumventing the requirements of this Chapter, that employer shall be subject to the sanctions set forth in Section 83.10 of this Chapter.
  - 6) Set the term of the requirements.
  - 7) Set appropriate enforcement and sanctioning standards consistent with this Chapter.
  - 8) Set forth the CITY's obligations to develop training programs, job applicant referrals, technical assistance, and information systems that assist the employer in complying with this Chapter.
  - 9) Require the developer to include notice of the requirements of this Chapter in leases, subleases, and other occupancy contracts.
- c. Hiring Decisions. CONTRACTOR shall make the final determination of whether an Economically Disadvantaged Individual referred by the System is "qualified" for the position.
- d. Exceptions. Upon application by CONTRACTOR, the First Source Hiring Administration may grant an exception to any or all of the requirements of Chapter 83 in any situation where it concludes that compliance with this Chapter would cause economic hardship.
- e. Liquidated Damages. CONTRACTOR agrees:
- 1) To be liable to the CITY for liquidated damages as provided in this section;
  - 2) To be subject to the procedures governing enforcement of breaches of contracts based on violations of contract provisions required by this Chapter as set forth in this section;
  - 3) That CONTRACTOR's commitment to comply with this Chapter is a material element of the CITY's consideration for this contract; that the failure of the contractor to comply with the contract



provisions required by this Chapter will cause harm to CITY and the public which is significant and substantial but extremely difficult to quantify; that the harm to CITY includes not only the financial cost of funding public assistance programs but also the insidious but impossible to quantify harm that this community and its families suffer as a result of unemployment; and that the assessment of liquidated damages of up to \$5,000 for every notice of a new hire for an entry level position improperly withheld by the contractor from the first source hiring process, as determined by the FSHA during its first investigation of a contractor, does not exceed a fair estimate of the financial and other damages that CITY suffers as a result of the CONTRACTOR's failure to comply with its first source referral contractual obligations.

- 4) That the continued failure by a CONTRACTOR to comply with its first source referral contractual obligations will cause further significant and substantial harm to CITY and the public, and that a second assessment of liquidated damages of up to \$10,000 for each entry level position improperly withheld from the FSHA, from the time of the conclusion of the first investigation forward, does not exceed the financial and other damages that CITY suffers as a result of the contractor's continued failure to comply with its first source referral contractual obligations;
- 5) That in addition to the cost of investigating alleged violations under this Section, the computation of liquidated damages for purposes of this section is based on the following data:
  - (a) The average length of stay on public assistance in San Francisco's County Adult Assistance Program is approximately 41 months at an average monthly grant of \$348 per month, totaling approximately \$14,379; and
  - (b) In 2004, the retention rate of adults placed in employment programs funded under the Workforce Investment Act for at least the first six months of employment was 84.4%. Since qualified individuals under the First Source program face far fewer barriers to employment than their counterparts in programs funded by the Workforce Investment Act, it is reasonable to conclude that the average length of employment for an individual whom the First Source Program refers to an employer and who is hired in an entry level position is at least one year; Therefore, liquidated damages that total \$5,000 for first violations and \$10,000 for subsequent violations as determined by FSHA constitute a fair, reasonable, and conservative attempt to quantify the harm caused to CITY by the failure of CONTRACTOR to comply with its first source referral contractual obligations.

6) Violation of the requirements of Chapter 83 is subject to an assessment of liquidated damages in the amount of \$5,000 for every new hire for an Entry Level Position improperly withheld from the first source hiring process. The assessment of liquidated damages and the evaluation of any defenses or mitigating factors shall be made by the FSHA.

f. Subcontracts. Any subcontract entered into by CONTRACTOR shall require the subcontractor to comply with the requirements of Chapter 83 and shall contain contractual obligations substantially the same as those set forth in this Section.

**2d. Section 7.27. Cooperative Drafting.** Section 7.27 is hereby added to the Agreement to read in its entirety as follows:

**Section 7.27. Cooperative Drafting.** This Agreement has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

**2e. Section 7.28. Protection of Private Information.** Section 7.28 is hereby added to the Agreement to read in its entirety as follows:

**Section 7.28. Protection of Private Information.** CONTRACTOR has read and agrees to the terms set forth in San Francisco Administrative Code Sections 12M.2, "Nondisclosure of Private Information," and 12M.3, "Enforcement" of Administrative Code Chapter 12M, "Protection of Private Information," which are incorporated herein as if fully set forth. CONTRACTOR agrees that any failure of CONTRACTOR to comply with the requirements of Section 12M.2 of this Chapter shall be a material breach of the Agreement. In such an event, in addition to any other remedies available to it under equity or law, the CITY may terminate the Agreement or bring a false claim action against the CONTRACTOR pursuant to Chapter 6 or Chapter 21 of the Administrative Code.

**2f. Section 7.29. Limitations on Contributions.** Section 7.29 is hereby added to the Agreement to read in its entirety as follows:

**Section 7.29. Limitations on Contributions.** Through execution of this Agreement, CONTRACTOR acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with CITY for the rendition of personal services, for the furnishing of any material, supplies, or equipment, for the sale or lease of any land or building, or for a grant, loan, or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or a board on which an appointee of that individual serves, or the board of

a state agency on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. CONTRACTOR acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. CONTRACTOR further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of CONTRACTOR's board of directors; CONTRACTOR's chairperson, chief executive officer, chief financial officer, and chief operating officer; any person with an ownership interest of more than 20 percent in CONTRACTOR; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by CONTRACTOR. Additionally, CONTRACTOR acknowledges that CONTRACTOR must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. CONTRACTOR further agrees to provide to CITY the names of each person, entity, or committee described above.

**2g. Section 7.30. Prohibition on Political Activity with City Funds.** Section 7.30 is hereby added to the Agreement to read in its entirety as follows:

**Section 7.30. Prohibition on Political Activity with City Funds.** In accordance with San Francisco Administrative Code Chapter 12.G, CONTRACTOR may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, "Political Activity") in the performance of the services provided under this Agreement. CONTRACTOR agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the City's Controller. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event CONTRACTOR violates the provisions of this section, CITY may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement, and (ii) prohibit CONTRACTOR from bidding on or receiving any new City contract for a period of two (2) years. The Controller will not consider CONTRACTOR's use of profit as a violation of this section.

**2h. Section 7.31. Preservative-treated Wood Containing Arsenic.** Section 7.31 is hereby added to the Agreement to read in its entirety as follows:

**Section 7.31. Preservative-treated Wood Containing Arsenic.** CONTRACTOR may not purchase preservative-treated wood products containing arsenic in the performance of this Agreement unless an exemption from the requirements of Chapter 13 of the San Francisco Environment Code is obtained from the Department of the Environment under Section 1304 of the Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniacal copper zinc arsenate preservative, or ammoniacal

copper arsenate preservative. Contractor may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of the Environment. This provision does not preclude CONTRACTOR from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

**2i. Appendices H and I.** Appendices H, I, and J attached hereto are hereby added to the Agreement to read in their entirety as contained therein.

**2j. Section 1.14. Insurance.** Section 1.14 Insurance of the Agreement currently reads as follows:

- A. Insurance Policies. CONTRACTOR shall maintain in force, during the Full term of this Agreement, insurance as follows:
- (1) Workers' Compensation, with Employers' Liability limits not less than One Million Dollars (\$1,000,000) each accident;
  - (2) Commercial General Liability Insurance, including all coverages contained in an unamended I.S.O. 1988 Occurrence Form with limits not less than One Million Dollars (\$1,000,000) each occurrence Combined Single Limit Bodily Injury and Property Damage. Such form includes Contractual Liability, Personal Injury, Advertising Liability, Broad Form Property Damage, Products and Completed Operations coverages; and
  - (3) Comprehensive Automobile Liability Insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence Combined Single Limit Bodily Injury and Property Damage, including owned, non-owned and hired auto coverages, as applicable.
  - (4) Excess Liability Coverage following the provisions of the insurance referred to in clauses (1), (2) and (3) above in the amount of Five Million Dollars (\$5,000,000) per occurrence, Combined Single limit, and Five Million Dollars (\$5,000,000) in the aggregate for each annual policy period.
- B. Endorsements. Commercial General Liability and Comprehensive Automobile Liability Insurance policies shall be endorsed to provide the following:
- (1) To name as additional insureds with respect to the operations of CONTRACTOR under this Agreement, the CITY and County of San Francisco, its Department of Public Works, San Francisco Port Authority, and San Francisco Recreation and Park Department, and their officers, agents, and employees, and,
  - (2) To provide 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.

- C. Notice. All policies shall be endorsed to provide that there will be thirty (30) days advance written notice to CITY of cancellation, non-renewal or reduction in coverage, which shall be mailed to the following address:

Director of Public Works  
Bureau of Street-Use and Mapping  
875 Stevenson Street, Room 460  
San Francisco, California 94103  
Attention: Manager of the Bureau of Street Use and Mapping

- D. Condition Precedent. Certificates of insurance, satisfactory to CITY, evidencing all coverages above, shall be furnished to CITY before the Original Effective Date of this Agreement, with complete copies of policies to be delivered to CITY upon its request.
- E. Approval by CITY. Approval of insurance contracts required under this Agreement shall not relieve CONTRACTOR, its subcontractors, consultants, successors or assigns, from the obligation to indemnify and hold harmless, the CITY pursuant to Section 1.16, Hold Harmless and Indemnification, of this Agreement.
- F. Copies of Policies and General Provisions. If at any time during the term of this Agreement CONTRACTOR fails to maintain the required insurance in full force and effect, CONTRACTOR shall discontinue immediately all work under the Agreement and shall not resume work until authorized by the Department of Public Works after having given proper notice that the required insurance has been restored to full force and effect and that the premiums therefor have been paid and are current.
- G. Insurers. The insurance required herein shall be placed in a company or companies having policy holders' surplus of not less than ten (10) times the amount of coverage required hereunder.
- H. Breach. In the event of any uncured breach of any provision of this Section 1.14 Insurance, or in the event that any insurance coverage required by this Agreement is canceled or diminished in any way, during any period that any insurance coverage or endorsements required under this Section 1.14 is not in effect, CITY, in addition to any other remedies available under this Agreement or by law, and notwithstanding any other provision of this Agreement to the contrary, shall have the option, upon notice to the CONTRACTOR, to suspend the further exercise by CONTRACTOR of all rights and privileges granted to CONTRACTOR under this Agreement until such coverage is provided.

**Such section is hereby amended in its entirety to read as follows:**

**Section 1.14. Insurance.**

- a. Without in any way limiting CONTRACTOR's liability pursuant to the "Hold Harmless and Indemnification" section of this Agreement, CONTRACTOR must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:
- 1) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness; and
  - 2) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence and \$2,000,000 general aggregate for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and
  - 3) Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence, "Combined Single Limit" for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.
- b. Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to provide:
- 1) Name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.
  - 2) 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.
- c. All policies shall be endorsed to provide thirty (30) days' advance written notice to CITY of cancellation for any reason, intended non-renewal, or reduction in coverages. Notices shall be sent to the CITY address set forth in the Section entitled "Notices to the Parties."
- d. Should any of the required insurance be provided under a claims-made form, CONTRACTOR shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.
- e. Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until CITY receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, CITY may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.
- f. Within thirty (30) days of the effective date of this Amendment, CONTRACTOR shall furnish to CITY certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to CITY, in form evidencing all coverages set forth above. Approval of the insurance by CITY shall not relieve or decrease CONTRACTOR's liability hereunder.

- g. If CONTRACTOR will use any subcontractor(s) to provide Services, CONTRACTOR shall require the subcontractor(s) to provide all necessary insurance and to name the City and County of San Francisco, its officers, agents and employees and CONTRACTOR as additional insureds.

2k. **Section 7.02. Conflict of Interest.** Section 7.02 Conflict of Interest of the Agreement currently reads as follows:

**Section 7.02. Conflict of Interest.** CONTRACTOR states that it is familiar with provisions of Section 8.105 of the Charter of City, and Section 87100 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts, which constitute a violation of, said provisions.

**Such section is hereby amended in its entirety to read as follows:**

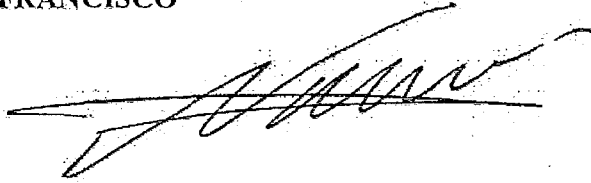
**Section 7.02. Conflict of Interest.** Through its execution of this Agreement, CONTRACTOR acknowledges that it is familiar with the provision of Section 15.103 of the City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 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 CITY if it becomes aware of any such fact during the term of this Agreement.

- 3. **Effective Date.** Each of the modifications set forth in this Amendment shall be effective on the date this Amendment has been fully executed by the parties.
- 4. **Legal Effect.** Except as expressly modified by this Amendment, all of the terms and conditions of the Agreement shall remain unchanged and in full force and effect.

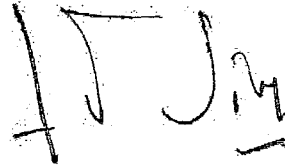
IN WITNESS WHEREOF, CONTRACTOR and CITY have executed this Amendment as of the date first referenced above.

**CITY AND COUNTY OF SAN FRANCISCO**

**JCDECAUX SAN FRANCISCO LLC**



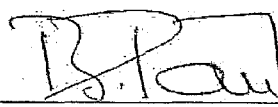
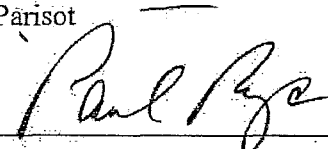
Mohammed Nuru  
Director, Public Works



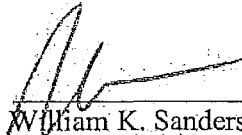
Francois Nion  
COO

Approved as to Form:

Dennis J. Herrera  
City Attorney

  
Bernard Parisot  
Co-CEO  
Paul Ryan  
CFO

By:



William K. Sanders  
Deputy City Attorney

City vendor number:

**Appendix H: Specifications for Personal Wireless Service Facilities**

**Appendix I: Locations of Public Service Kiosks**

**Appendix J: Planning Department CEQA Categorical Exemption Determination**

**Appendix K: Department of Public Health Report Radio Frequency Report**



# Appendix H

## **Appendix H: Specifications for Personal Wireless Service Facilities**

### **1. Pilot Project Description:**

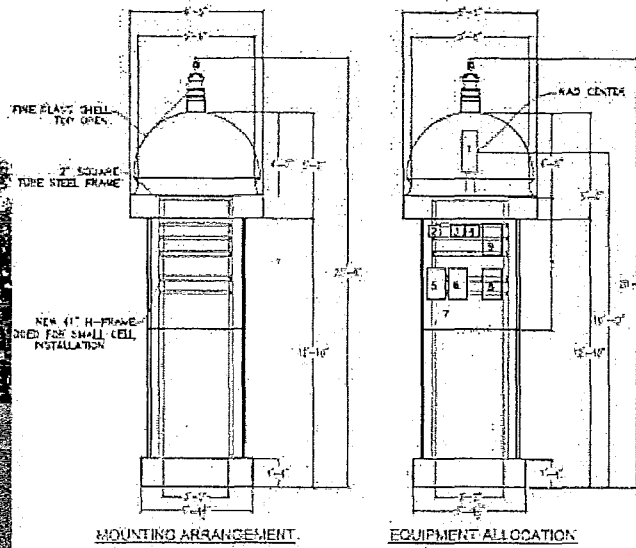
Design, procure, deploy, operate and evaluate a state of the art small cell network pilot network that reinforces the capacity and improves the performance of Verizon's mobile network in a dense urban sector of San Francisco using existing infrastructure that will not change the current aesthetics. The pilot Small Cell network is proposed to use JCDecaux large pillar kiosks sites along Market Street in San Francisco, California.

### **2. Site Integration:**

- List of small cell and ancillary equipment to be integrated at JCDecaux sites:
  - Two or Four Ericsson MRRU Small Cell Access Points per site
  - Fiber termination unit
  - Cabling
  - Power connector
  - Single pylon-type antenna

#### **JCDecaux Site Design Description/pictures:**

- The integration of Verizon's selected equipment and configuration is very feasible, and will only require slight internal structure adaptation to accommodate small cells
- A "skeleton" frame is planned on which the Ericsson small cell access points will be securely attached and set inside the kiosk
- The height of the dome is sufficient to accommodate the antenna specified by Verizon
- The dome is made of polyester, so there will not be any impairment for RF propagation
- The antenna will be positioned at a height just above 4m
- There is also sufficient volume on top of the kiosk (inside the column) to integrate the Ericsson small cell Access points, fiber termination unit and cabling



1	Antenna
2	Fiber Termination Box
3, 4	Diplexer
5, 6, 8, 9	Small Cell Access Point (either two or Four SCAPs at each site)
7	Ground Bar

### 3. Public visibility of equipment at sites

The small cell equipment, antenna and other ancillary materials are contained completely within each Heritage kiosk, and thus are not visible to the public. The RF emitting elements are in the antenna which is located within the crown of the Heritage Kiosk; approximately 15 to 17 feet above ground.

### 4. Fiber connectivity and Power

Verizon will be responsible for deployment of fiber facilities to each site and will seek to minimize disruption of City streets as much as possible by using JCDecaux-provided conduit at each site for fiber placement into the site. Electrical power is available 24/7/365 at each site.



**Appendix I: Locations of Public Service Kiosks**

<b>JCDecaux Properties ID</b>	<b>Address</b>	<b>Latitude</b>	<b>Longitude</b>
SF0008SF	333 MARKET ST	37.792026	-122.397797
SFO0010SF	443 MARKET ST	37.791346	-122.39864
SFO0022SF	595 MARKET ST	37.789338	-122.40119
SFO0023SF	544 MARKET ST	37.790161	-122.40045
SFO0048SF	744 MARKET ST	37.786946	-122.40451
SFO0057SF	798 MARKET ST	37.785944	-122.4058
SFO0072SF	989 MARKET ST	37.782413	-122.409945





# SAN FRANCISCO PLANNING DEPARTMENT

## CEQA Categorical Exemption Determination

### PROPERTY INFORMATION/PROJECT DESCRIPTION

Project Address		Block/Lot(s)	
Nine (9) locations along Market Street		Public Right of Way	
Case No.	Permit No.	Plans Dated	
2015-014413ENV	N/A		
<input checked="" type="checkbox"/> Addition/ Alteration	<input type="checkbox"/> Demolition (requires HRRER if over 45 years old)	<input type="checkbox"/> New Construction	<input type="checkbox"/> Project Modification (GO TO STEP 7)
Project description for Planning Department approval. Proposed temporary pilot installation of Personal Wireless Services Facilities, within nine (9) existing JC Decaux heritage kiosks, along Market Street between Beale and Taylor Streets. Installations will occur completely within existing kiosks with no associated external (outside kiosk) equipment, trenching, electric meters, or surface mounted facilities. See attached four (4) page summary letter marked as Exhibit A.			

### STEP 1: EXEMPTION CLASS

TO BE COMPLETED BY PROJECT PLANNER

<b>Note: If neither Class 1 or 3 applies, an <i>Environmental Evaluation Application</i> is required.</b>	
<input checked="" type="checkbox"/>	<b>Class 1 – Existing Facilities.</b> Interior and exterior alterations; additions under 10,000 sq. ft.
<input type="checkbox"/>	<b>Class 3 – New Construction/ Conversion of Small Structures.</b> Up to three (3) new single-family residences or six (6) dwelling units in one building; commercial/office structures; utility extensions; change of use under 10,000 sq. ft. if principally permitted or with a CU.
<input type="checkbox"/>	Class _____

### STEP 2: CEQA IMPACTS

TO BE COMPLETED BY PROJECT PLANNER

<b>If any box is checked below, an <i>Environmental Evaluation Application</i> is required.</b>	
<input type="checkbox"/>	<b>Air Quality:</b> Would the project add new sensitive receptors (specifically, schools, day care facilities, hospitals, residential dwellings, and senior-care facilities) within an Air Pollution Exposure Zone? Does the project have the potential to emit substantial pollutant concentrations (e.g., backup diesel generators, heavy industry, diesel trucks)? <i>Exceptions: do not check box if the applicant presents documentation of enrollment in the San Francisco Department of Public Health (DPH) Article 38 program and the project would not have the potential to emit substantial pollutant concentrations. (refer to EP_ArcMap &gt; CEQA Catex Determination Layers &gt; Air Pollutant Exposure Zone)</i>
<input type="checkbox"/>	<b>Hazardous Materials:</b> If the project site is located on the Maher map or is suspected of containing hazardous materials (based on a previous use such as gas station, auto repair, dry cleaners, or heavy manufacturing, or a site with underground storage tanks): Would the project involve 50 cubic yards or more of soil disturbance - or a change of use from industrial to residential? If yes, this box must be checked and the project applicant must submit an Environmental Application with a Phase I

	Environmental Site Assessment. <i>Exceptions: do not check box if the applicant presents documentation of enrollment in the San Francisco Department of Public Health (DPH) Maher program, a DPH waiver from the Maher program, or other documentation from Environmental Planning staff that hazardous material effects would be less than significant (refer to EP_ArcMap &gt; Maher layer).</i>
<input type="checkbox"/>	<b>Transportation:</b> Does the project create six (6) or more net new parking spaces or residential units? Does the project have the potential to adversely affect transit, pedestrian and/or bicycle safety (hazards) or the adequacy of nearby transit, pedestrian and/or bicycle facilities?
<input type="checkbox"/>	<b>Archeological Resources:</b> Would the project result in soil disturbance/modification greater than two (2) feet below grade in an archeological sensitive area or eight (8) feet in a non-archeological sensitive area? <i>(refer to EP_ArcMap &gt; CEQA Catex Determination Layers &gt; Archeological Sensitive Area)</i>
<input type="checkbox"/>	<b>Noise:</b> Does the project include new noise-sensitive receptors (schools, day care facilities, hospitals, residential dwellings, and senior-care facilities) fronting roadways located in the noise mitigation area? <i>(refer to EP_ArcMap &gt; CEQA Catex Determination Layers &gt; Noise Mitigation Area)</i>
<input type="checkbox"/>	<b>Subdivision/Lot Line Adjustment:</b> Does the project site involve a subdivision or lot line adjustment on a lot with a slope average of 20% or more? <i>(refer to EP_ArcMap &gt; CEQA Catex Determination Layers &gt; Topography)</i>
<input type="checkbox"/>	<b>Slope = or &gt; 20%:</b> Does the project involve excavation of 50 cubic yards of soil or more, new construction, or square footage expansion greater than 1,000 sq. ft. outside of the existing building footprint? <i>(refer to EP_ArcMap &gt; CEQA Catex Determination Layers &gt; Topography)</i> If box is checked, a geotechnical report is required.
<input type="checkbox"/>	<b>Seismic: Landslide Zone:</b> Does the project involve excavation of 50 cubic yards of soil or more, new construction, or square footage expansion greater than 1,000 sq. ft. outside of the existing building footprint? <i>(refer to EP_ArcMap &gt; CEQA Catex Determination Layers &gt; Seismic Hazard Zones)</i> If box is checked, a geotechnical report is required.
<input type="checkbox"/>	<b>Seismic: Liquefaction Zone:</b> Does the project involve excavation of 50 cubic yards of soil or more, new construction, or square footage expansion greater than 1,000 sq. ft. outside of the existing building footprint? <i>(refer to EP_ArcMap &gt; CEQA Catex Determination Layers &gt; Seismic Hazard Zones)</i> If box is checked, a geotechnical report will likely be required.
<b>If no boxes are checked above, GO TO STEP 3. If one or more boxes are checked above, an <u>Environmental Evaluation Application</u> is required, unless reviewed by an Environmental Planner.</b>	
<input type="checkbox"/>	Project can proceed with categorical exemption review. The project does not trigger any of the CEQA impacts listed above.
Comments and Planner Signature <i>(optional)</i> :	

**STEP 3: PROPERTY STATUS – HISTORIC RESOURCE  
TO BE COMPLETED BY PROJECT PLANNER**

<b>PROPERTY IS ONE OF THE FOLLOWING:</b> <i>(refer to Parcel Information Map)</i>	
<input checked="" type="checkbox"/>	<b>Category A: Known Historical Resource. GO TO STEP 5.</b>
<input type="checkbox"/>	<b>Category B: Potential Historical Resource (over 45 years of age). GO TO STEP 4.</b>
<input type="checkbox"/>	<b>Category C: Not a Historical Resource or Not Age Eligible (under 45 years of age). GO TO STEP 6.</b>



**STEP 4: PROPOSED WORK CHECKLIST  
TO BE COMPLETED BY PROJECT PLANNER**

<b>Check all that apply to the project.</b>	
<input type="checkbox"/>	1. <b>Change of use and new construction.</b> Tenant improvements not included.
<input type="checkbox"/>	2. <b>Regular maintenance or repair</b> to correct or repair deterioration, decay, or damage to building.
<input type="checkbox"/>	3. <b>Window replacement</b> that meets the Department's <i>Window Replacement Standards</i> . Does not include storefront window alterations.
<input type="checkbox"/>	4. <b>Garage work.</b> A new opening that meets the <i>Guidelines for Adding Garages and Curb Cuts</i> , and/or replacement of a garage door in an existing opening that meets the Residential Design Guidelines.
<input type="checkbox"/>	5. <b>Deck, terrace construction, or fences</b> not visible from any immediately adjacent public right-of-way.
<input checked="" type="checkbox"/>	6. <b>Mechanical equipment installation</b> that is not visible from any immediately adjacent public right-of-way.
<input type="checkbox"/>	7. <b>Dormer installation</b> that meets the requirements for exemption from public notification under <i>Zoning Administrator Bulletin No. 3: Dormer Windows</i> .
<input type="checkbox"/>	8. <b>Addition(s)</b> that are not visible from any immediately adjacent public right-of-way for 150 feet in each direction; does not extend vertically beyond the floor level of the top story of the structure or is only a single story in height; does not have a footprint that is more than 50% larger than that of the original building; and does not cause the removal of architectural significant roofing features.
<b>Note: Project Planner must check box below before proceeding.</b>	
<input type="checkbox"/>	Project is not listed. <b>GO TO STEP 5.</b>
<input type="checkbox"/>	Project does not conform to the scopes of work. <b>GO TO STEP 5.</b>
<input type="checkbox"/>	Project involves four or more work descriptions. <b>GO TO STEP 5.</b>
<input checked="" type="checkbox"/>	Project involves less than four work descriptions. <b>GO TO STEP 6.</b>

**STEP 5: CEQA IMPACTS – ADVANCED HISTORICAL REVIEW  
TO BE COMPLETED BY PRESERVATION PLANNER**

<b>Check all that apply to the project.</b>	
<input checked="" type="checkbox"/>	1. Project involves a known historical resource (CEQA Category A) as determined by Step 3 and conforms entirely to proposed work checklist in Step 4.
<input type="checkbox"/>	2. <b>Interior alterations to publicly accessible spaces.</b>
<input type="checkbox"/>	3. <b>Window replacement</b> of original/historic windows that are not "in-kind" but are consistent with existing historic character.
<input type="checkbox"/>	4. <b>Façade/storefront alterations</b> that do not remove, alter, or obscure character-defining features.
<input type="checkbox"/>	5. <b>Raising the building</b> in a manner that does not remove, alter, or obscure character-defining features.
<input type="checkbox"/>	6. <b>Restoration</b> based upon documented evidence of a building's historic condition, such as historic photographs, plans, physical evidence, or similar buildings.
<input checked="" type="checkbox"/>	7. <b>Addition(s)</b> , including mechanical equipment that are minimally visible from a public right-of-way and meet the <i>Secretary of the Interior's Standards for Rehabilitation</i> .

<input checked="" type="checkbox"/>	8. <b>Other work consistent</b> with the <i>Secretary of the Interior Standards for the Treatment of Historic Properties</i> (specify or add comments): No visible modification would occur to exterior of existing kiosks. All work to be confined within existing kiosk.
<input type="checkbox"/>	9. <b>Other work</b> that would not materially impair a historic district (specify or add comments):  (Requires approval by Senior Preservation Planner/Preservation Coordinator) _____
<input type="checkbox"/>	10. <b>Reclassification of property status</b> to Category C. (Requires approval by Senior Preservation Planner/Preservation Coordinator) a. Per HRER dated: _____ (attach HRER) b. Other (specify): _____
<b>Note: If ANY box in STEP 5 above is checked, a Preservation Planner MUST check one box below.</b>	
<input type="checkbox"/>	<b>Further environmental review required.</b> Based on the information provided, the project requires an <i>Environmental Evaluation Application</i> to be submitted. <b>GO TO STEP 6.</b>
<input checked="" type="checkbox"/>	<b>Project can proceed with categorical exemption review.</b> The project has been reviewed by the Preservation Planner and can proceed with categorical exemption review. <b>GO TO STEP 6.</b>
<b>Comments (optional):</b> No exterior changes to facility or surrounding public right-of-way	
<b>Preservation Planner Signature:</b>	

**STEP 6: CATEGORICAL EXEMPTION DETERMINATION  
TO BE COMPLETED BY PROJECT PLANNER**

<input type="checkbox"/>	<b>Further environmental review required.</b> Proposed project does not meet scopes of work in either (check all that apply): <input type="checkbox"/> Step 2 – CEQA Impacts <input type="checkbox"/> Step 5 – Advanced Historical Review <b>STOP! Must file an <i>Environmental Evaluation Application</i>.</b>	
<input checked="" type="checkbox"/>	<b>No further environmental review is required. The project is categorically exempt under CEQA.</b>	
	<b>Planner Name:</b> Omar Masry	<b>Signature:</b>  Omar Masry <small>Digitally signed by Omar Masry DN: dc=org, dc=sfgov, dc=cityplanning, ou=CityPlanning, ou=Current Planning, cn=Omar Masry, email=Omar.Masry@sfgov.org Date: 2015.10.28 17:19:20 -0700</small>
	<b>Project Approval Action:</b> <b>City Agreement</b> If Discretionary Review before the Planning Commission is requested, the Discretionary Review hearing is the Approval Action for the project.	
Once signed or stamped and dated, this document constitutes a categorical exemption pursuant to CEQA Guidelines and Chapter 31 of the Administrative Code. In accordance with Chapter 31 of the San Francisco Administrative Code, an appeal of an exemption determination can only be filed within 30 days of the project receiving the first approval action.		

**STEP 7: MODIFICATION OF A CEQA EXEMPT PROJECT  
TO BE COMPLETED BY PROJECT PLANNER**

In accordance with Chapter 31 of the San Francisco Administrative Code, when a California Environmental Quality Act (CEQA) exempt project changes after the Approval Action and requires a subsequent approval, the Environmental Review Officer (or his or her designee) must determine whether the proposed change constitutes a substantial modification of that project. This checklist shall be used to determine whether the proposed changes to the approved project would constitute a "substantial modification" and, therefore, be subject to additional environmental review pursuant to CEQA.

**PROPERTY INFORMATION/PROJECT DESCRIPTION**

Project Address (If different than front page)		Block/Lot(s) (If different than front page)
Case No.	Previous Building Permit No.	New Building Permit No.
Plans Dated	Previous Approval Action	New Approval Action
Modified Project Description:		

**DETERMINATION IF PROJECT CONSTITUTES SUBSTANTIAL MODIFICATION**

Compared to the approved project, would the modified project:	
<input type="checkbox"/>	Result in expansion of the building envelope, as defined in the Planning Code;
<input type="checkbox"/>	Result in the change of use that would require public notice under Planning Code Sections 311 or 312;
<input type="checkbox"/>	Result in demolition as defined under Planning Code Section 317 or 19005(f)?
<input type="checkbox"/>	Is any information being presented that was not known and could not have been known at the time of the original determination, that shows the originally approved project may no longer qualify for the exemption?

If at least one of the above boxes is checked, further environmental review is required **CATEX FORM**

**DETERMINATION OF NO SUBSTANTIAL MODIFICATION**

<input type="checkbox"/>	The proposed modification would not result in any of the above changes.
If this box is checked, the proposed modifications are categorically exempt under CEQA, in accordance with prior project approval and no additional environmental review is required. This determination shall be posted on the Planning Department website and office and mailed to the applicant, City approving entities, and anyone requesting written notice.	
Planner Name:	Signature or Stamp:



**SUMMARY OF PROPOSED  
SAN FRANCISCO HERITAGE SMALL CELL PILOT PROJECT**

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October 26, 2015

MR. OMAR MASRY, AICP | WIRELESS PLANNER  
San Francisco Planning Department  
omar.masry@sfgov.org  
P. 415.575.9116 | F. 415.558.6409  
1650 Mission Street | 4th Floor | San Francisco | CA 94103

**Dear Mr. Masry,**

The purpose of this letter is to provide you with the relevant details of the San Francisco Heritage Kiosk Small Cell Pilot Project presented by JCDecaux and Verizon Wireless to the City and County Department of Public Works for approval. JCDecaux is working with the Department of Public Works to finalize an Agreement and are seeking any assistance you can provide to expedite the receipt of a Categorical Exemption to the California Environmental Quality Act (CEQA).

Upon review of the project description and materials set forth below, we trust that you will agree that the proposed JCDecaux-hosted wireless facilities clearly qualify for Class 1 (existing facilities ) and Class 3 (new construction or conversion of small structures) exemptions under CEQA. The electronics for each small cell will be installed entirely within the existing decorative JCDecaux kiosks that have enhanced the appearance of San Francisco’s Market Street for nearly 20 years. Installed in the top half of the existing kiosks, the small cells have no moving parts and generate no noise or light. Their appearance will be completely invisible to pedestrians and passersby on Market Street. Radiofrequency emissions from these small cells are a small fraction of permissible limits under FCC guidelines. In sum, the JCDecaux small cell facilities will have no environmental impacts, will be entirely contained within existing structures, will extend Verizon Wireless’s existing wireless network, and clearly qualify as Class 1 and Class 3 exemptions under CEQA.

**1. Project Background**

Mobile network operators are faced with a number of challenges, for example data demands at macro sector footprint level are not growing uniformly; and much of the demand is localized in the form of hotspots or clustered hotspots. Coverage and capacity relief varies by carrier, but all US carriers face growing network performance challenges. To alleviate this problem and drive maximum network efficiency, solutions must be localized, making small cells in dense urban settings a practical solution.

JCDecaux’s most recent innovation of mobile network connected street furniture represents the company’s vision for digital services and connectivity in the urban environment where the public expects more connectivity everywhere all the time. Considering San Francisco’s world-leading technology sector and its role as a vibrant tourist destination, pervasive mobile broadband capability is an even higher priority in order to enable the people living, working and playing in the city to enjoy both their physical and digital worlds. JCDecaux has pioneered the deployment of small cells nicely integrated in our street furniture assets to add localized mobile capacity while facilitating the involvement of cities and major mobile operators.

**2. Pilot Project Overview**

JCDecaux San Francisco and Verizon Wireless have developed and presented the San Francisco Heritage Kiosk Small Cell Pilot Project to the City and County Department of Public Works for approval. The pilot project’s goal is to deploy small cells that reinforce the capacity and improve the performance of Verizon’s mobile network in a very dense pedestrian traffic area of the city. The Market Street locale

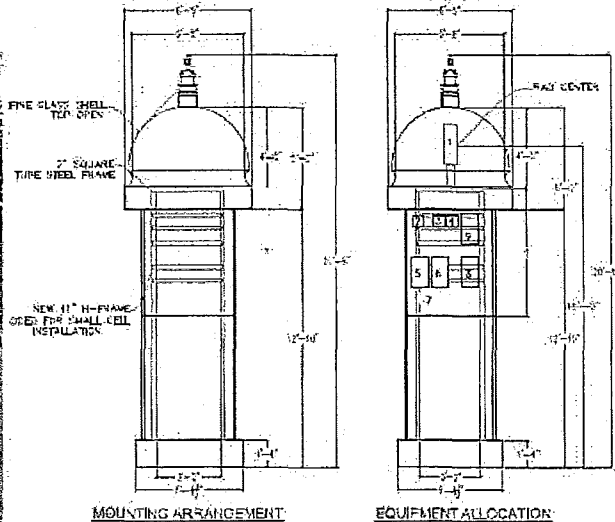
**SUMMARY OF PROPOSED  
SAN FRANCISCO HERITAGE SMALL CELL PILOT PROJECT**

will be a very important venue for Super Bowl 50 related events upcoming in early 2016, thus adding to Verizon's further need to re-inforce its network capacity. Verizon's network reinforced with small cells is expected to also provide the needed capacity for Emergency Services, as well as Enterprise, City & Government services, e.g. EMS First Responders direction routing from a 911 call and dedicated channels for law enforcement data (FBI, Border Patrol, Homeland Security).

**3. Pilot Project Elements**

- The pilot Small Cell network project using street furniture is the first of its kind in the USA and is planned to begin as soon as possible in 2015 and to run for the duration of JCDecaux's contract with the City, which is currently scheduled to terminate in early 2017.
- Nine tall Heritage Kiosks sites along Market St will house Verizon's small cell equipment.
- No noticeable changes will occur to the exterior of the site. The entire installation occurs inside the kiosk. No equipment will be visible to the public.
- The low power RF emitting elements in the antenna will be located within the crown roof area of the Kiosk, and will be approximately 14 to 17 feet above ground.
- No RF warning signage is necessary as the RF EME will meet general public requirements.
- Power source is completely contained inside each kiosk using existing power source. [No electric meter pedestal will be required by PG&E, near or on the outside of the facility.]
- No trenching is necessary for fiber or power. Existing conduits will be utilized for both.
- No GPS antenna is needed.
- Sites selected for pilot project are limited to either newspaper kiosks, or advertising public service kiosks (without newspaper stand)
- Upon receipt of final approval from the City of San Francisco, the parties are prepared to begin implementation immediately and expect to complete deployment by November 30, 2015.
- A map of the locations proposed is provided on page 4 of this letter

**4. JCDecaux Site Picture and Design Notes:**



**SUMMARY OF PROPOSED  
SAN FRANCISCO HERITAGE SMALL CELL PILOT PROJECT**

- The integration of Verizon’s selected equipment and configuration has been carefully evaluated, is quite feasible and will only require slight internal mounting structural modification for new hardware devices.
- A “skeleton” frame is planned on which Verizon’s selected equipment will be securely attached and set inside the kiosk.
- The height of the dome is sufficient to accommodate the antenna specified by Verizon
- As noted above, the entire installation occurs inside the kiosk. No equipment will be visible to the public. No internal structural, or external modification to the sites is necessary.
- The dome is made of polyester, so there will not be any impairment for RF propagation
- The antenna will be positioned at a height just above 4m

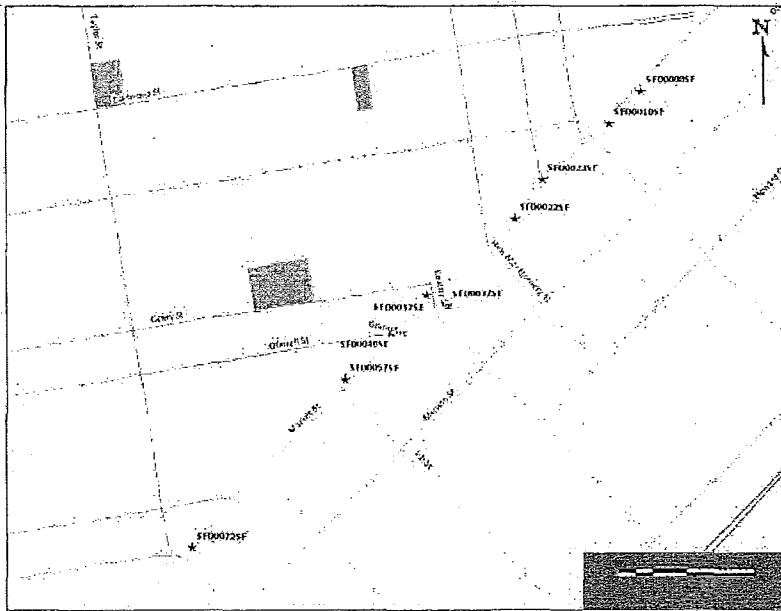
**5. Pilot Project Locations**

Candidate Name (NODE ID)	Street Address	Zip	Lon	Lat
SFO0010SF	443 Market Street	94111	-122.39864	37.791346
SFO0022SF	595 Market Street	94111	-122.40119	37.789338
SFO0023SF	544 Market Street	94105	-122.40045	37.790161
SFO0047SF	700 Market Street	94104	-122.40356	37.787718
SFO0048SF	744 Market Street	94102	-122.40451	37.786946
SFO0057SF	798 Market Street	94102	-122.4058	37.785944
SFO0008SF	333 Market Street	94105	-122.39779	37.792026
SFO0072SF	989 Market Street	941003	-122.40995	37.782413
SFO0037SF	699 Third Street	94105	-122.40328	37.787504

SUMMARY OF PROPOSED  
SAN FRANCISCO HERITAGE SMALL CELL PILOT PROJECT

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6. Location Map ★ Denotes Kiosk Location



Thanks in advance for your assistance and guidance in this matter. Please let myself or Jacob Hamilton of Verizon Wireless know if you need any further information about the pilot project.

Sincerely yours,

Jim Melonas  
Senior Vice President  
Small Cells and Connectivity Solutions  
JCDecaux North America  
Mobile: 703.673.6576  
jim.melonas@jcdecauxna.com

CC: Jacob Hamilton, Director of Engineering, Verizon Wireless  
Francois Nion, Chief Operating Officer, JCDecaux San Francisco







City and County of San Francisco  
**DEPARTMENT OF PUBLIC HEALTH**  
**ENVIRONMENTAL HEALTH SECTION**

Edwin Lee, Mayor  
Barbara A. Garcia, MPA, Director of Health  
Richard Lee, MPH, CIH, REHS, Director of EH

November 10, 2015

**TO:** Department of Public Works, Bureau of Street Use and Mapping  
**FROM:** Patrick Fosdahl, Dept. Of Public Health, Environmental Health Services *PF*  
**RE:** Verizon Kiosk Mounted Commscope 3X-V65S-G-3XR

<u>Location:</u> 333 Market Street	<u>DPW Permit Application:</u> Not Applicable	<u>Node#</u> SF0008SF
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As requested, I have reviewed the documentation that Verizon provided to me regarding the proposed installation of an antenna, Commscope 3X-V65S-G-3XR, on a kiosk located at the above listed location in the City and County of San Francisco.

This review included the October 30, 2015 radio frequency energy report prepared by Waterford Consultants. The report states that one Commscope 3X-V65S-G-3XR antenna will be mounted on a kiosk near the location listed above. The antenna will be at least 16 feet above the ground level. The orientation of the antenna will be 20° and 260° pointing east and west on Market Street. Due to the mounting location, the antenna would not be accessible to the general public.

The maximum effective radiated power from the antenna in any direction is estimated to be 132 watts.

The maximum calculated exposure level at the ground level will not exceed 0.0172 mW/cm<sup>2</sup>, which is 1.7730% of the FCC public exposure standard. The three dimensional perimeter of the radio frequency (RF) levels equal to the public exposure limit is calculated to extend a maximum of 2 feet from the face of the antenna and does not reach any publicly accessible areas. The highest level of radio frequency energy reported for any nearby building is significantly less than the ground level predictions. Ground level predictions should be verified with post installation measurements.

Based on the information provided in the Waterford report, it is my opinion that this Verizon, Commscope antenna, kiosk installation would be in compliance with the FCC standards and would not produce radio frequency energy exceeding the FCC public exposure limits in publicly accessible areas. General information signs or labels should be posted near the antenna to alert workers of the antennas location along with Verizon contact information. No public access should be allowed within 2 feet of the antenna.

Please note that this review applies only to the equipment and installation as described. If any changes in the equipment or any increase in the effective radiated power described above are made a new review by the Department of Public Health should be conducted.



City and County of San Francisco  
**DEPARTMENT OF PUBLIC HEALTH**  
**ENVIRONMENTAL HEALTH SECTION**

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Richard Lee, MPH, CIH, REHS, Director of EH

November 10, 2015

**TO:** Department of Public Works, Bureau of Street Use and Mapping  
**FROM:** Patrick Fosdahl, Dept. Of Public Health, Environmental Health Services *PF*  
**RE:** Verizon Kiosk Mounted Amphenol WB080X0FX60

<u>Location:</u>	<u>DPW Permit Application:</u>	<u>Node#</u>
443 Market Street	Not Applicable	SF00010SF

As requested, I have reviewed the documentation that Verizon provided to me regarding the proposed installation of an antenna, WB080X0FX60, on a kiosk located at the above listed location in the City and County of San Francisco.

This review included the October 31, 2015 radio frequency energy report prepared by Waterford Consultants. The report states that one WB080X0FX60 antenna will be mounted on a kiosk near the location listed above. The antenna will be at least 16 feet above the ground level. The orientation of the antenna will be 50° and 230° pointing east and west on Market Street. Due to the mounting location, the antenna would not be accessible to the general public.

The maximum effective radiated power from the antenna in any direction is estimated to be 147 watts.

The maximum calculated exposure level at the ground level will not exceed 0.0148 mW/cm<sup>2</sup>, which is 1.4785% of the FCC public exposure standard. The three dimensional perimeter of the radio frequency (RF) levels equal to the public exposure limit is calculated to extend a maximum of 1 foot from the face of the antenna and does not reach any publicly accessible areas. The highest level of radio frequency energy reported for any nearby building is significantly less than the ground level predictions. Ground level predictions should be verified with post installation measurements.

Based on the information provided in the Waterford report, it is my opinion that this Verizon, Amphenol antenna, kiosk installation would be in compliance with the FCC standards and would not produce radio frequency energy exceeding the FCC public exposure limits in publicly accessible areas. General information signs or labels should be posted near the antenna to alert workers of the antennas location along with Verizon contact information. No public access should be allowed within 1 foot of the antenna.

Please note that this review applies only to the equipment and installation as described. If any changes in the equipment or any increase in the effective radiated power described above are made a new review by the Department of Public Health should be conducted.



City and County of San Francisco  
**DEPARTMENT OF PUBLIC HEALTH**  
**ENVIRONMENTAL HEALTH SECTION**

Edwin Lee, Mayor  
Barbara A. Garcia, MPA, Director of Health  
Richard Lee, MPH, CIH, REHS, Director of EH

November 10, 2015

**TO:** Department of Public Works, Bureau of Street Use and Mapping

**FROM:** Patrick Fosdahl, Dept. Of Public Health, Environmental Health Services *PF*

**RE:** Verizon Kiosk Mounted Commscope 3X-V65S-G-3XR

<u>Location:</u> 544 Market Street	<u>DPW Permit Application:</u> Not Applicable	<u>Node#</u> SF00023SF
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As requested, I have reviewed the documentation that Verizon provided to me regarding the proposed installation of an antenna, Commscope 3X-V65S-G-3XR, on a kiosk located at the above listed location in the City and County of San Francisco.

This review included the October 30, 2015 radio frequency energy report prepared by Waterford Consultants. The report states that one Commscope 3X-V65S-G-3XR antenna will be mounted on a kiosk near the location listed above. The antenna will be at least 16 feet above the ground level. The orientation of the antenna will be 320° and 200° pointing north across Market and west on Market Street. Due to the mounting location, the antenna would not be accessible to the general public.

The maximum effective radiated power from the antenna in any direction is estimated to be 138 watts.

The maximum calculated exposure level at the ground level will not exceed 0.0187 mW/cm<sup>2</sup>, which is 1.869% of the FCC public exposure standard. The three dimensional perimeter of the radio frequency (RF) levels equal to the public exposure limit is calculated to extend a maximum of 2 feet from the face of the antenna and does not reach any publicly accessible areas. The highest level of radio frequency energy reported for any nearby building is significantly less than the ground level predictions. Ground level predictions should be verified with post installation measurements.

Based on the information provided in the Waterford report, it is my opinion that this Verizon, Commscope antenna, kiosk installation would be in compliance with the FCC standards and would not produce radio frequency energy exceeding the FCC public exposure limits in publicly accessible areas. General information signs or labels should be posted near the antenna to alert workers of the antennas location along with Verizon contact information. No public access should be allowed within 2 feet of the antenna.

Please note that this review applies only to the equipment and installation as described. If any changes in the equipment or any increase in the effective radiated power described above are made a new review by the Department of Public Health should be conducted.



City and County of San Francisco  
**DEPARTMENT OF PUBLIC HEALTH**  
**ENVIRONMENTAL HEALTH SECTION**

Edwin Lee, Mayor  
Barbara A. Garcia, MPA, Director of Health  
Richard Lee, MPH, CIH, REHS, Director of EH

November 10, 2015

**TO:** Department of Public Works, Bureau of Street Use and Mapping

**FROM:** Patrick Fosdahl, Dept. Of Public Health, Environmental Health Services *PF*

**RE:** Verizon Kiosk Mounted Commscope 3X-V65S-G-3XR

<u>Location:</u> 595 Market Street	<u>DPW Permit Application:</u> Not Applicable	<u>Node#</u> SF00022SF
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As requested, I have reviewed the documentation that Verizon provided to me regarding the proposed installation of an antenna, Commscope 3X-V65S-G-3XR, on a kiosk located at the above listed location in the City and County of San Francisco.

This review included the October 30, 2015 radio frequency energy report prepared by Waterford Consultants. The report states that one Commscope 3X-V65S-G-3XR antenna will be mounted on a kiosk near the location listed above. The antenna will be at least 16 feet above the ground level. The orientation of the antenna will be 140° and 260° pointing south towards 2nd Street and west on Market Street. Due to the mounting location, the antenna would not be accessible to the general public.

The maximum effective radiated power from the antenna in any direction is estimated to be 138 watts.

The maximum calculated exposure level at the ground level will not exceed 0.0187 mW/cm<sup>2</sup>, which is 1.869% of the FCC public exposure standard. The three dimensional perimeter of the radio frequency (RF) levels equal to the public exposure limit is calculated to extend a maximum of 2 feet from the face of the antenna and does not reach any publicly accessible areas. The highest level of radio frequency energy reported for any nearby building is significantly less than the ground level predictions. Ground level predictions should be verified with post installation measurements.

Based on the information provided in the Waterford report, it is my opinion that this Verizon, Commscope antenna, kiosk installation would be in compliance with the FCC standards and would not produce radio frequency energy exceeding the FCC public exposure limits in publicly accessible areas. General information signs or labels should be posted near the antenna to alert workers of the antennas location along with Verizon contact information. No public access should be allowed within 2 feet of the antenna.

Please note that this review applies only to the equipment and installation as described. If any changes in the equipment or any increase in the effective radiated power described above are made a new review by the Department of Public Health should be conducted.



City and County of San Francisco  
**DEPARTMENT OF PUBLIC HEALTH**  
**ENVIRONMENTAL HEALTH SECTION**

Edwin Lee, Mayor  
Barbara A. Garcia, MPA, Director of Health  
Richard Lee, MPH, CIH, REHS, Director of EH

November 12, 2015

**TO:** Department of Public Works, Bureau of Street Use and Mapping  
**FROM:** Patrick Fosdahl, Dept. Of Public Health, Environmental Health Services *PF*  
**RE:** Verizon Kiosk Mounted Commscope 3X-V65S-G-3XR

<u>Location:</u>	<u>DPW Permit Application:</u>	<u>Node#</u>
699 Market Street	Not Applicable	SF00037SF

As requested, I have reviewed the documentation that Verizon provided to me regarding the proposed installation of an antenna, Commscope 3X-V65S-G-3XR, on a kiosk located at the above listed location in the City and County of San Francisco.

This review included the October 30, 2015 radio frequency energy report prepared by Waterford Consultants. The report states that one Commscope 3X-V65S-G-3XR antenna will be mounted on a kiosk near the location listed above. The antenna will be at least 16 feet above the ground level. The orientation of the antenna will be 230° and 350° pointing south towards 3rd Street and north across Market Street. Due to the mounting location, the antenna would not be accessible to the general public.

The maximum effective radiated power from the antenna in any direction is estimated to be 195 watts.

The maximum calculated exposure level at the ground level will not exceed 0.0259 mW/cm<sup>2</sup>, which is 2.586% of the FCC public exposure standard. The three dimensional perimeter of the radio frequency (RF) levels equal to the public exposure limit is calculated to extend a maximum of 2 feet from the face of the antenna and does not reach any publicly accessible areas. The highest level of radio frequency energy reported for any nearby building is significantly less than the ground level predictions. Ground level predictions should be verified with post installation measurements.

Based on the information provided in the Waterford report, it is my opinion that this Verizon, Commscope antenna, kiosk installation would be in compliance with the FCC standards and would not produce radio frequency energy exceeding the FCC public exposure limits in publicly accessible areas. General information signs or labels should be posted near the antenna to alert workers of the antennas location along with Verizon contact information. No public access should be allowed within 2 feet of the antenna.

Please note that this review applies only to the equipment and installation as described. If any changes in the equipment or any increase in the effective radiated power described above are made a new review by the Department of Public Health should be conducted.



City and County of San Francisco  
**DEPARTMENT OF PUBLIC HEALTH**  
**ENVIRONMENTAL HEALTH SECTION**

Edwin Lee, Mayor  
Barbara A. Garcia, MPA, Director of Health  
Richard Lee, MPH, CIH, REHS, Director of EH

November 10, 2015

**TO:** Department of Public Works, Bureau of Street Use and Mapping

**FROM:** Patrick Fosdahl, Dept. Of Public Health, Environmental Health Services *PF*

**RE:** Verizon Kiosk Mounted Commscope 3X-V65S-G-3XR

<u>Location:</u>	<u>DPW Permit Application:</u>	<u>Node#</u>
700 Market Street	Not Applicable	SF00047SF

As requested, I have reviewed the documentation that Verizon provided to me regarding the proposed installation of an antenna, Commscope 3X-V65S-G-3XR, on a kiosk located at the above listed location in the City and County of San Francisco.

This review included the October 30, 2015 radio frequency energy report prepared by Waterford Consultants. The report states that one Commscope 3X-V65S-G-3XR antenna will be mounted on a kiosk near the location listed above. The antenna will be at least 16 feet above the ground level. The orientation of the antenna will be 15° and 135° pointing north towards Kearny Street and south across Market Street. Due to the mounting location, the antenna would not be accessible to the general public.

The maximum effective radiated power from the antenna in any direction is estimated to be 138 watts.

The maximum calculated exposure level at the ground level will not exceed 0.0187 mW/cm<sup>2</sup>, which is 1.869% of the FCC public exposure standard. The three dimensional perimeter of the radio frequency (RF) levels equal to the public exposure limit is calculated to extend a maximum of 2 feet from the face of the antenna and does not reach any publicly accessible areas. The highest level of radio frequency energy reported for any nearby building is significantly less than the ground level predictions. Ground level predictions should be verified with post installation measurements.

Based on the information provided in the Waterford report, it is my opinion that this Verizon, Commscope antenna, kiosk installation would be in compliance with the FCC standards and would not produce radio frequency energy exceeding the FCC public exposure limits in publicly accessible areas. General information signs or labels should be posted near the antenna to alert workers of the antennas location along with Verizon contact information. No public access should be allowed within 2 feet of the antenna.

Please note that this review applies only to the equipment and installation as described. If any changes in the equipment or any increase in the effective radiated power described above are made a new review by the Department of Public Health should be conducted.



City and County of San Francisco  
**DEPARTMENT OF PUBLIC HEALTH**  
**ENVIRONMENTAL HEALTH SECTION**

Edwin Lee, Mayor  
Barbara A. Garcia, MPA, Director of Health  
Richard Lee, MPH, CIH, REHS, Director of EH

November 10, 2015

**TO:** Department of Public Works, Bureau of Street Use and Mapping  
**FROM:** Patrick Fosdahl, Dept. Of Public Health, Environmental Health Services *PF*  
**RE:** Verizon Kiosk Mounted Amphenol WB080X0FX60

<u>Location:</u>	<u>DPW Permit Application:</u>	<u>Node#</u>
744 Market Street	Not Applicable	SF00048SF

As requested, I have reviewed the documentation that Verizon provided to me regarding the proposed installation of an antenna, WB080X0FX60, on a kiosk located at the above listed location in the City and County of San Francisco.

This review included the October 31, 2015 radio frequency energy report prepared by Waterford Consultants. The report states that one WB080X0FX60 antenna will be mounted on a kiosk near the location listed above. The antenna will be at least 16 feet above the ground level. The orientation of the antenna will be 70° and 250° pointing east and west on Market Street. Due to the mounting location, the antenna would not be accessible to the general public.

The maximum effective radiated power from the antenna in any direction is estimated to be 147 watts.

The maximum calculated exposure level at the ground level will not exceed 0.0148 mW/cm<sup>2</sup>, which is 1.4785% of the FCC public exposure standard. The three dimensional perimeter of the radio frequency (RF) levels equal to the public exposure limit is calculated to extend a maximum of 1 foot from the face of the antenna and does not reach any publicly accessible areas. The highest level of radio frequency energy reported for any nearby building is significantly less than the ground level predictions. Ground level predictions should be verified with post installation measurements.

Based on the information provided in the Waterford report, it is my opinion that this Verizon, Amphenol antenna, kiosk installation would be in compliance with the FCC standards and would not produce radio frequency energy exceeding the FCC public exposure limits in publicly accessible areas. General information signs or labels should be posted near the antenna to alert workers of the antennas location along with Verizon contact information. No public access should be allowed within 1 foot of the antenna.

Please note that this review applies only to the equipment and installation as described. If any changes in the equipment or any increase in the effective radiated power described above are made a new review by the Department of Public Health should be conducted.



City and County of San Francisco  
**DEPARTMENT OF PUBLIC HEALTH**  
**ENVIRONMENTAL HEALTH SECTION**

Edwin Lee, Mayor  
Barbara A. Garcia, MPA, Director of Health  
Richard Lee, MPH, CIH, REHS, Director of EH

November 10, 2015

**TO:** Department of Public Works, Bureau of Street Use and Mapping

**FROM:** Patrick Fosdahl, Dept. Of Public Health, Environmental Health Services *PF*

**RE:** Verizon Kiosk Mounted Commscope 3X-V65S-G-3XR

<u>Location:</u> 798 Market Street	<u>DPW Permit Application:</u> Not Applicable	<u>Node#</u> SF00057SF
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As requested, I have reviewed the documentation that Verizon provided to me regarding the proposed installation of an antenna, Commscope 3X-V65S-G-3XR, on a kiosk located at the above listed location in the City and County of San Francisco.

This review included the October 31, 2015 radio frequency energy report prepared by Waterford Consultants. The report states that one Commscope 3X-V65S-G-3XR antenna will be mounted on a kiosk near the location listed above. The antenna will be at least 16 feet above the ground level. The orientation of the antenna will be 20° and 260° pointing northeast on Market Street and west on Market Street toward Stockton. Due to the mounting location, the antenna would not be accessible to the general public.

The maximum effective radiated power from the antenna in any direction is estimated to be 138 watts.

The maximum calculated exposure level at the ground level will not exceed 0.0187 mW/cm<sup>2</sup>, which is 1.869% of the FCC public exposure standard. The three dimensional perimeter of the radio frequency (RF) levels equal to the public exposure limit is calculated to extend a maximum of 2 feet from the face of the antenna and does not reach any publicly accessible areas. The highest level of radio frequency energy reported for any nearby building is significantly less than the ground level predictions. Ground level predictions should be verified with post installation measurements.

Based on the information provided in the Waterford report, it is my opinion that this Verizon, Commscope antenna, kiosk installation would be in compliance with the FCC standards and would not produce radio frequency energy exceeding the FCC public exposure limits in publicly accessible areas. General information signs or labels should be posted near the antenna to alert workers of the antennas location along with Verizon contact information. No public access should be allowed within 2 feet of the antenna.

Please note that this review applies only to the equipment and installation as described. If any changes in the equipment or any increase in the effective radiated power described above are made a new review by the Department of Public Health should be conducted.





City and County of San Francisco  
**DEPARTMENT OF PUBLIC HEALTH**  
**ENVIRONMENTAL HEALTH SECTION**

Edwin Lee, Mayor  
Barbara A. Garcia, MPA, Director of Health  
Richard Lee, MPH, CIH, REHS, Director of EH

November 10, 2015

**TO:** Department of Public Works, Bureau of Street Use and Mapping  
**FROM:** Patrick Fosdahl, Dept. Of Public Health, Environmental Health Services *PF*  
**RE:** Verizon Kiosk Mounted Amphenol WB080X0FX60

<u>Location:</u>	<u>DPW Permit Application:</u>	<u>Node#</u>
989 Market Street	Not Applicable	SF00072SF

As requested, I have reviewed the documentation that Verizon provided to me regarding the proposed installation of an antenna, WB080X0FX60, on a kiosk located at the above listed location in the City and County of San Francisco.

This review included the October 31, 2015 radio frequency energy report prepared by Waterford Consultants. The report states that one WB080X0FX60 antenna will be mounted on a kiosk near the location listed above. The antenna will be at least 16 feet above the ground level. The orientation of the antenna will be 45° and 225° pointing east and west on Market Street. Due to the mounting location, the antenna would not be accessible to the general public.

The maximum effective radiated power from the antenna in any direction is estimated to be 147 watts.

The maximum calculated exposure level at the ground level will not exceed 0.0148 mW/cm<sup>2</sup>, which is 1.4785% of the FCC public exposure standard. The three dimensional perimeter of the radio frequency (RF) levels equal to the public exposure limit is calculated to extend a maximum of 1 foot from the face of the antenna and does not reach any publicly accessible areas. The highest level of radio frequency energy reported for any nearby building is significantly less than the ground level predictions. Ground level predictions should be verified with post installation measurements.

Based on the information provided in the Waterford report, it is my opinion that this Verizon, Amphenol antenna, kiosk installation would be in compliance with the FCC standards and would not produce radio frequency energy exceeding the FCC public exposure limits in publicly accessible areas. General information signs or labels should be posted near the antenna to alert workers of the antennas location along with Verizon contact information. No public access should be allowed within 1 foot of the antenna.

Please note that this review applies only to the equipment and installation as described. If any changes in the equipment or any increase in the effective radiated power described above are made a new review by the Department of Public Health should be conducted.

FIRST AMENDED AND RESTATED  
AUTOMATIC PUBLIC TOILET AND PUBLIC SERVICE KIOSK AGREEMENT

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FIRST AMENDED AND RESTATED  
AUTOMATIC PUBLIC TOILET AND PUBLIC SERVICE KIOSK AGREEMENT  
BY AND BETWEEN  
THE CITY AND COUNTY OF SAN FRANCISCO  
AND JCDECAUX SAN FRANCISCO, INC. (FORMERLY  
JCDECAUX UNITED STREET FURNITURE, INC.)

This First Amended and Restated AGREEMENT, hereinafter referred to as "Agreement," is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 19\_\_, by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation, hereinafter referred to as "CITY", acting by and through its Department of Public Works, and JCDECAUX SAN FRANCISCO, INC. (formerly JCDECAUX UNITED STREET FURNITURE, INC.) a California corporation, hereinafter referred to as "CONTRACTOR".

Recitals

1. CITY and CONTRACTOR entered into an original agreement entitled Automatic Public Toilet and Public Service Kiosk Agreement dated August 2, 1994 and First, Second and Third Amendments thereto dated August 2, 1994 (collectively the "Original Agreement").

2. Pursuant to said Original Agreement CONTRACTOR agreed to provide Automatic Public Toilets in exchange for the right to place Public Service Kiosks on public property and to sell advertising on said Public Service Kiosks subject to the terms and conditions set forth in the Original Agreement.

3. CONTRACTOR and CITY desire to terminate the Trial Phase of the Agreement and allow for the placement of Automatic Public Toilets and Public Service Kiosks in excess of the number permitted in the Trial Phase, but no more than the maximum number otherwise allowed under this Agreement.

4. CONTRACTOR and CITY desire to amend the Original Agreement in several respects and to restate it in its entirety as hereinafter set forth.

Accordingly, in consideration of the mutual promises and undertakings hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

## **Part I. General Provisions.**

### **1.01. Definitions.**

Where any word or phrase defined below or a pronoun used in place thereof, is used in any part of this Agreement, it shall have the meaning herein set forth.

- (A) "Agreement" means this contract, as originally executed and as amended or extended from time to time; words such as "herein," "hereinafter," "hereof," "hereto" and "hereunder," when used with reference to this Agreement, refer to this Agreement as a whole, unless the context otherwise requires.
- (B) "Approval" means the written consent of the Director, or his or her designated agent, unless the context otherwise requires.
- (C) "Authorization" means an order or other written authorization of the CITY properly executed by the Director, or his or her designated agent, unless the context otherwise requires.
- (D) "Automatic Public Toilet" means a free standing enclosure containing an automatic self-cleaning toilet available for use by the general public as provided herein.
- (E) "CITY" means the City and County of San Francisco, a municipal corporation; except where otherwise indicated by the context, all references to CITY shall also mean and include the Port of San Francisco.
- (F) "CONTRACTOR" means JCDecaux San Francisco, Inc. a California corporation, and its successors and assigns permitted hereunder.
- (G) "Controller" means the Controller of the City and County of San Francisco.
- (H) "Director" means the Director of the CITY's Department of Public Works.
- (I) "Downtown Area" means the geographic area of the CITY bounded on the south by the southerly line of Folsom Street, on the west by the westerly line of Van Ness Avenue extended north to the San Francisco Bay, and on the north and east by the shoreline of the San Francisco Bay.
- (J) "Initial Phase" means the twenty-seven (27) Automatic Public Toilets and one hundred twenty-one (121) Public Service Kiosks initially authorized pursuant to this Agreement.
- (K) "Original Effective Date of Agreement" means August 2, 1994.
- (L) "PORT" means the Port of San Francisco.

- (M) "Port Director" means the Executive Director of the Port of San Francisco.
- (N) "Port Property" means the geographic area of the CITY shown on the map of the San Francisco waterfront attached hereto as Appendix F.
- (O) "Public Service Kiosk" means a free standing circular kiosk, the exterior of which is divided into three sections, two of which display advertising panels of approximately fifty-one (51) square feet each, and one of which provides access to a public service, such as public art, a newsstand, newsrack, display of map or local information, telephone booth, recycling bin, vending machine, interactive video information system, or other public service authorized pursuant to Section 5.10 of this Agreement.
- (P) "Reference Rate" means the reference rate charged by the Bank of America, NT & SA, San Francisco, California, at the beginning of each month.
- (Q) "Start Date" means January 17, 1997.
- (R) "Vandalism" shall mean willful or malicious damage or destruction of an Automatic Public Toilet or any part thereof caused by a party other than CONTRACTOR or CITY but shall exclude graffiti, ordinary wear and tear, and any damage caused during riots and other civil disturbance.
- (S) Whenever the words "as directed", "as required", "as permitted", or words of like effect are used, it shall be understood as the direction, requirement, or permission of the Department of Public Works. The words "sufficient", "necessary", or "proper", and the like, mean sufficient, necessary or proper in the judgment of the Department of Public Works. The words "approval", "acceptable", "satisfactory", or words of like import, shall mean approved by, or acceptable to, or satisfactory to the Department of Public Works, unless otherwise expressly provided herein.



1.02. Certification of Funds Budget and Fiscal Provisions: Termination in the Event of Non-Appropriation. This Agreement is subject to the budget and fiscal provisions of the CITY's Charter.

CITY has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. CITY budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. CONTRACTOR's assumption of risk of possible non-appropriation is part of the consideration for this Agreement. THIS SECTION CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT. Notwithstanding the foregoing, if CITY should fail to appropriate amounts as and when due CONTRACTOR hereunder, CONTRACTOR shall have the right, at its sole option, to terminate this Agreement, effective immediately upon notice to CITY.

1.03. Term of Agreement. This Agreement shall commence as of the Original Effective Date and shall continue, subject to the terms of this Agreement regarding termination, to 11:59 p.m. on October 17, 2016.

1.04. Effective Date of First Amended and Restated Agreement. This First Amended and Restated Agreement shall become effective on the date occurring thirty (30) days after the CITY's Mayor signs the ordinance approving this First Amended and Restated Agreement.

1.05. Guaranteed Maximum Costs.

A. The CITY's financial obligations hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification.

B. Except as may be provided by CITY ordinances governing emergency conditions, the CITY and its employees and officers are not authorized to request CONTRACTOR to perform services or to provide materials, equipment and supplies that would result in CONTRACTOR performing services or providing materials, equipment and supplies that are beyond the scope of the services, materials, equipment and supplies agreed upon in the Agreement unless the Agreement is amended in writing and approved as required by law to authorize the additional services, materials, equipment or supplies. CITY is not required to reimburse CONTRACTOR for services, materials, equipment or supplies that are provided by CONTRACTOR which are beyond the scope of the services, materials, equipment and supplies agreed upon in the Agreement and which were not approved by a written amendment to the Agreement having been lawfully executed by the CITY.

C. CITY and its employees and officers are not authorized to offer or promise to CONTRACTOR additional funding for the Agreement which would exceed the maximum amount of funding provided for in the Agreement for CONTRACTOR's performance under the Agreement. Additional funding for the Agreement in excess of the maximum provided in the Agreement shall require lawful approval and certification by the Controller of the CITY. The CITY is not required to honor any offered or promised additional funding for an Agreement which exceeds the maximum provided in

the Agreement which requires lawful approval and certification by the Controller when the lawful approval and certification by the Controller has not been obtained.

D. The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

1.06. Contractor to Provide Automatic Public Toilets. CONTRACTOR shall install, operate and maintain, on public property, Automatic Public Toilets as provided in Part 2, Automatic Public Toilet Installation, hereof, subject to all of the terms and conditions set forth in this Agreement.

1.07. License to Install and Maintain Public Service Kiosks as Consideration for Automatic Public Toilets. In consideration for the installation, operation and maintenance of Automatic Public Toilets according to the terms and conditions of this Agreement, the CITY hereby agrees to grant to CONTRACTOR the right, to occupy and use public property for the installation, operation and maintenance of Public Service Kiosks as provided in, and subject to all of the terms and conditions of, this Agreement, and the right to place advertising on such Public Service Kiosks, subject to the terms, conditions and limitations set forth in Part 4 of this Agreement.

1.08. Grant of Advertising Rights.

A. CITY hereby grants to CONTRACTOR, and represents and warrants that CONTRACTOR shall have, during the term of this Agreement, the exclusive right to erect and maintain Public Service Kiosks on CITY property, and the exclusive right to place advertising on Public Service Kiosks as authorized. CITY shall retain and reserve to itself and its assigns all advertising rights not expressly granted to CONTRACTOR hereunder, subject to the limitations and conditions of this Agreement.

B. Except for advertising displayed by the CONTRACTOR on Public Service Kiosks authorized hereunder, and except as provided in Paragraph C below, CITY agrees not to display nor will it authorize nor permit the display of advertising panels of from eighteen (18) to fifty-five (55) square feet on any freestanding structure located on any public right-of-way or other CITY owned property (i) anywhere within the Downtown Area, and/or (ii) outside the Downtown Area, within a 300 foot radius of any Public Service Kiosk authorized hereunder. For purposes of this Section 1.08, the term "freestanding structure" includes structures of any shape, size or number of advertising panels, but shall not include buildings of at least 250 square feet of floor area.

C. Notwithstanding any other provisions of Paragraph A or B of this Section 1.08, CITY shall have the right to display or to authorize or permit display of advertising panels, each of which shall not exceed twenty-four (24) square feet in area, provided that such panels are physically attached to transit shelters, excluding, however, transit shelters on Market Street within the Downtown Area; provided further that the CITY's

right to display advertising on such transit shelters shall survive the expiration or termination of the Advertising Transit Shelter Agreement between the CITY and Gannett Outdoor Company, Inc., of Northern California, dated as of January 5, 1990.

D. Notwithstanding any other provision of Paragraph A or B of this Section 1.08, CITY shall have the right to display or to authorize or permit display of up to two (2) advertising panels, each of which shall not exceed twenty-four (24) square feet in area, on the twenty-six (26) "Market Street Kiosks" authorized as of the Original Effective Date hereof pursuant to the First Amendment to Advertising Transit Shelter Agreement between the CITY and Gannett Outdoor Company, Inc. of Northern California dated as of January 5, 1990 (the locations of which are listed in Appendix A hereto); provided that such "Market Street Kiosks" may be relocated as part of any relocation of the transit shelters on Market Street; and provided further that CITY's right to display advertising on the twenty-six (26) "Market Street Kiosks" shall survive the expiration or termination of such Advertising Transit Shelter Agreement.

E. Notwithstanding the provisions of Paragraphs A through D of this Section 1.08, the PORT shall have the right to display or to authorize or permit display of advertising, including informational and directional displays, related exclusively to the business activities of the PORT, its lessees and licensees, within Port Property; except that any such displays of a commercial nature on freestanding structures shall be no larger than eighteen (18) square feet.

F. CITY shall not enter into any contract or agreement granting to any third party any exclusive advertising rights which would have the effect of precluding the CITY from permitting Public Service Kiosks anywhere in the CITY otherwise permitted hereunder; provided, however, that CITY may impose reasonable standards, such as those imposed pursuant to Department of Public Works Order Number 163,368, (as set forth in Appendix G hereto, on the distance between individual pieces of street furniture containing advertising.)

1.09. Ownership of Automatic Public Toilets and Public Service Kiosks. All Automatic Public Toilets and Public Service Kiosks constructed, installed and maintained pursuant to this Agreement shall be the property of CONTRACTOR.

1.10. Payment by Contractor. CONTRACTOR agrees to pay the CITY an annual fee according to the following terms and conditions, to defray CITY's costs of administering this Agreement.

A. Base Payment; Adjustments. Subject to the exception provided herein, CITY's base fee shall be twenty-five thousand dollars (\$25,000) for all those Automatic Public Toilets provided in the Initial Phase pursuant to this Agreement. In Year One (1) of the Agreement (commencing on the Start Date), CONTRACTOR shall pay the base fee without adjustment. CONTRACTOR's bid security, a certified check in the amount of twenty-five thousand (\$25,000) submitted with CONTRACTOR's bid and presently held by the CITY, shall be retained as CONTRACTOR's Year One (1) base fee. In

each succeeding year during the term of the Agreement (Years Two (2) through Twenty (20), ) CONTRACTOR shall pay CITY on or after each anniversary date of the Start Date of this Agreement, adjusted as follows: (i) the base fee shall be adjusted based on the percentage change in the most recently published Consumer Price Index (CPI) (Urban Wage Earners and Clerical Workers in San Francisco - Oakland Standard Metropolitan Statistical Area (1982 84 = 100)) as calculated from the Start Date, and (ii) a fee of Five Hundred Dollars (\$500) shall be added for each Automatic Public Toilet for which all permits have been issued over and above the twenty-seven (27) Automatic Public Toilets in the Initial Phase. Notwithstanding the foregoing, the first two (2) payments due on or after the Effective Date of the First Amended and Restated Agreement (i.e., the payment due on the first anniversary of the Start Date following the Effective Date of this First Amended and Restated Agreement and the payment due on the next anniversary of the Start Date thereafter) shall be in the amount of Thirty-Five Thousand Dollars (\$35,000.00). The above fees include both the Automatic Public Toilets and the associated Public Service Kiosks authorized hereunder.

B. Late Payments. Payments due hereunder which are not received by the CITY within fifteen (15) days after such amount becomes due shall bear interest at the Reference Rate from and after the date said payment was due until the date paid.

C. Payments. CONTRACTOR shall make all payments to: City and County of San Francisco, Department of Public Works, Bureau of Street-Use and Mapping, 875 Stevenson Street, Room 460, San Francisco, California 94103, or at such other place as CITY may from time to time designate by written notice to CONTRACTOR.

1.11. Performance Bond. CONTRACTOR shall provide the CITY with a performance bond as a guarantee for CONTRACTOR's performance of the supply and installation of the Automatic Public Toilets in accordance with the terms and specifications of this Agreement.

A. Initial Amount of Bond. CONTRACTOR agrees that within three (3) business days after the Original Effective Date of this Agreement, CONTRACTOR shall deliver to the Department of Public Works a Performance bond valued at two million dollars (\$2,000,000).

B. Qualifications of Surety. The bond shall be executed by a guaranty or surety company legally authorized to engage in the business of furnishing performance bonds in the State of California and listed in the latest issue of the United States Treasury Circular 570. The total bond liability of any guaranty or surety company engaged by CONTRACTOR shall not exceed the therein specified underwriting limitation for that company.

C. Duration of Bond Requirement. Except as otherwise provided herein or authorized in writing by the Director, CONTRACTOR shall maintain said performance bond in full force and effect throughout the period of installation of the Automatic Public Toilets. After CONTRACTOR has completed installation of twenty (20) Automatic Public Toilets in accordance with the requirements of this Agreement, the

required amount of such performance bond shall be reduced to Five Hundred Thousand Dollars (\$500,000). When CONTRACTOR has satisfactorily completed installation of all of the Automatic Public Toilets in the Initial Phase in accordance with the requirements of this Agreement, such performance bond shall no longer be required. After installation of the first twenty (20) toilets, the five hundred thousand dollar (\$500,000) Performance Bond shall be reduced pro rata at a rate of Forty Thousand Dollars (\$40,000) per Automatic Public Toilet as CONTRACTOR completes installation of each Automatic Public Toilet installed hereunder; except that CONTRACTOR shall not be required to maintain said Performance Bond in effect for more than five (5) years after the Start Date.

D. Failure to Provide Performance Bond: Failure of Surety.

1. If CONTRACTOR fails to deliver the performance bond as required by the Agreement, the CITY shall be entitled to cancel the Agreement effective immediately upon notice to CONTRACTOR and shall be entitled to exercise any other rights and remedies granted hereunder or by law.

2. During the period covered by this Agreement, if any of the sureties upon the bond shall become insolvent or, in the opinion of the Department of Public Works, unable to pay promptly the amount of such bond to the extent to which the surety might be liable, CONTRACTOR, within thirty (30) days after notice given by the Department of Public Works to CONTRACTOR, shall by supplemental bond or otherwise, substitute another and sufficient surety approved by the Director in place of the surety becoming insolvent or unable to pay. If CONTRACTOR fails within such thirty (30) day period to substitute another and sufficient surety, the Department of Public Works may elect to find CONTRACTOR in default of the performance of its obligations under this Agreement. The Department of Public Works, in addition to any and all other remedies available to it by law, may terminate the Agreement, withhold monies then due or which thereafter may become due to CONTRACTOR, and bring any proper suit or proceeding against CONTRACTOR under the Agreement. The amount for which the surety shall have justified on the bond and the monies so deducted shall be held by CITY as collateral for the performance of the conditions of the bond.

E. Letter of Credit as Alternative. Notwithstanding any other provision of this Section 1.11, CONTRACTOR shall have the right to substitute a letter of credit for the performance bond otherwise required hereunder as a guarantee for CONTRACTOR's performance of the supply and installation of the Automatic Public Toilets under the terms of this Agreement (hereinafter "Alternative Letter of Credit"). The required amount of any such Alternative Letter of Credit shall be the same as that required for a performance bond pursuant to Paragraphs A and C above. Any such Alternative Letter of Credit shall be established with a bank registered to do business in the State of California and having at least one branch office within the City and County of San Francisco, and the place for CITY's presentation of a demand shall be a branch office

in the City and County of San Francisco. The Alternative Letter of Credit shall have an original term of one (1) year, with automatic extensions of the full amount required hereunder to be maintained until the date five (5) years after the Start Date. The original of the Alternative Letter of Credit shall be held by CITY throughout its term. The Alternative Letter of Credit shall provide that payment of the entire face amount of the letter of credit, or any portion thereof, shall be made to the City and County of San Francisco, upon presentation of a written demand to the Bank signed by the Director on behalf of the City and County of San Francisco, accompanied by a copy of the demand for performance delivered to CONTRACTOR and a copy of the certified mail, return receipt requested form. If CONTRACTOR defaults, as described in Section 1.19 Event of Default: Remedies, of this Agreement with respect to its obligation to supply and install the Automatic Public Toilets required hereunder, CITY may, but shall not be required to, make its demand under the Alternative Letter of Credit for all or any portion thereof to compensate CITY for any loss or damage which CITY may have incurred by reason of CONTRACTOR's default. CITY shall present its written demand to the Bank for payment under the Alternative Letter of Credit only after the CITY shall have made its demand for performance directly to CONTRACTOR by certified mail, return receipt requested, and after five (5) full business days have elapsed without performance by CONTRACTOR.

F. Non-Extension of Letter of Credit Alternative: Replacement. The Alternative Letter of Credit permitted under this Section 1.11 shall provide for sixty (60) days notice by the issuer to CITY in the event of termination or non-renewal of the Alternative Letter of Credit. Upon receipt of notice from the issuer that the Alternative Letter of Credit will not be renewed or extended, CITY may demand that CONTRACTOR replace the Alternative Letter of Credit within at least twenty (20) days prior to its expiration. If CONTRACTOR fails to do so, CITY shall be entitled to present its written demand for payment of the entire face amount of the Alternative Letter of Credit. Any amounts so received by CITY shall be held as cash collateral, in the manner provided in Paragraph G of Section 1.12 Letter of Credit, below, and shall be returned to CONTRACTOR upon replacement of the Alternative Letter of Credit.

1.12. Letter of Credit. In addition to the guaranty of performance required hereunder pursuant to the provisions of Section 1.11, above, CONTRACTOR shall provide CITY with a letter of credit or Alternate Security (as hereinafter defined) according to the following terms and conditions, which shall constitute security for the faithful performance by CONTRACTOR of all terms, covenants, and conditions, including all monetary obligations set forth in this Agreement.

A. Amount and Term of Letter of Credit. Subject to Paragraph G below, CONTRACTOR agrees that, in addition to the required guarantee of performance provided pursuant to Section 1.11, within seventy-two (72) hours after the Start Date of this Agreement, CONTRACTOR shall establish a confirmed irrevocable letter of credit in the amount of three hundred fifty thousand dollars (\$350,000) in favor of the City and County of San Francisco, a municipal corporation, acting by and through its Department of Public Works. The letter of credit shall be established with a bank

registered to do business in the State of California and having at least one branch office within the City and County of San Francisco, and the place for CITY's presentation of a demand shall be a branch office in the City and County of San Francisco. The letter of credit shall have an original term of one (1) year, with automatic extensions of the full three hundred fifty thousand dollar (\$350,000) amount to be maintained throughout the term of this Agreement. The original copy of the letter of credit shall be held by the CITY throughout the term of this Agreement.

B. Payment on Demand. The letter of credit shall provide that payment of the entire face amount of the letter of credit, or any portion thereof, shall be made to CITY, upon presentation of a written demand to the bank signed by Director of Public Works on behalf of CITY, accompanied by a copy of the demand for payment delivered to CONTRACTOR and a copy of the certified mail, return receipt requested form, in accordance with Paragraph C below.

C. Default of Contractor. If CONTRACTOR defaults with respect to any provision of this Agreement, as described in Section 1.19 Event of Default; Remedies, of this Agreement, CITY may, but shall not be required to make its demand under the letter of credit for all or any portion thereof to compensate CITY for any loss or damage which the CITY may have incurred by reason of CONTRACTOR's default. CITY shall present its written demand to the bank for payment under the letter of credit only after the CITY shall have made its demand for payment directly to CONTRACTOR by certified mail, return receipt requested, and after five (5) full business days have elapsed without payment by CONTRACTOR. CITY need not terminate this Agreement in order to receive compensation for its damages hereunder. If any portion of the letter of credit is so used or applied, CONTRACTOR, within twenty (20) business days after written demand therefor, shall reinstate the letter of credit to its original amount, and upon such reinstatement, the excess of the proceeds of the letter of credit over the amount of the loss or damage suffered by the CITY shall be returned to CONTRACTOR pursuant to Paragraph E below. CONTRACTOR's failure to comply with any of the provisions herein above shall constitute a material breach of this Agreement.

D. Non-Extension of Letter of Credit Replacement. The letter of credit shall provide for sixty (60) days notice by the issuer to CITY in the event of termination or non-renewal of the letter of credit. Upon receipt of notice from the issuer that the letter of credit will not be renewed or extended, CITY may demand that CONTRACTOR replace the letter of credit within at least twenty (20) days prior to its expiration. If CONTRACTOR fails to do so, CITY shall be entitled to present its written demand for payment of the entire face amount of the letter of credit. Any amounts so received by CITY shall be held as cash collateral pursuant to Paragraph G below, and shall be returned to CONTRACTOR upon replacement of the letter of credit.

E. Wrongful or Excessive Demand: Return of Receipts. If CITY receives any payments from the aforementioned bank under the letter of credit by reason of having made a wrongful or excessive demand for payment, CITY shall return to

CONTRACTOR the amount by which CITY's total receipts from CONTRACTOR and from the bank under the letter of credit exceeds the amount to which CITY rightfully is entitled, together with interest thereon at the Reference Rate, but CITY shall not otherwise be liable to CONTRACTOR for any damages or penalties.

F. Return On Faithful Performance. The letter of credit shall be returned to CONTRACTOR upon the termination of the Agreement, provided that the CONTRACTOR has faithfully performed throughout the duration of the Agreement and, upon termination of the Agreement, has removed all Automatic Public Toilets and Public Service Kiosks and has restored all affected CITY streets and sidewalks.

G. Alternate Security. In lieu of a letter of credit, CONTRACTOR may deposit \$350,000 in cash, (referred to herein as "Alternate Security"). Any cash deposited with CITY as Alternate Security, or any cash proceeds of a draw upon a letter of credit posted hereunder which are in excess of the loss or damage suffered by the CITY shall be held in a segregated account separate from other funds held by CITY, and shall be invested by CITY, in the name of CITY, but for the account of CONTRACTOR, in one or more investments which are lawful for investments of public funds, but subject to a security interest in favor of CITY to secure payment of any loss or damage which CITY may incur by reason of CONTRACTOR's default hereunder. At the request of CITY, CONTRACTOR shall execute and deliver to CITY a security Agreement, in such form as CITY may reasonably request, a UCC-1 financing statement in proper form for filing and recording, and with respect to any Alternate Security, written notice satisfying the requirements of California Commercial Code Section 9302(1) (g) (ii) (or any successor section), to create and perfect such security interest. So long as CONTRACTOR is not in default hereunder, interest earned on any Alternate Security shall be disbursed to the CONTRACTOR no less than annually.

#### 1.13. Maintenance and Complaint Log.

A. Maintenance Logs. CONTRACTOR shall prepare maintenance logs as described in Section 5.04, Maintenance Schedule, and submit to CITY copies of the log for the preceding month within fifteen (15) days after the end of every month during the first six (6) months following completion of the installation of the Automatic Public Toilets for which permits were issued by the Start Date. Thereafter, copies of such logs shall be provided upon the request of the Director. Unless less frequent submittals are authorized by the Director, CONTRACTOR shall also furnish to the Director within thirty (30) days after the end of each calendar quarter a narrative summary of its maintenance operations during the preceding quarter, noting problem areas, corrective actions taken, and the number and cost of repairs attributable to Vandalism.

B. Complaint Log. CONTRACTOR shall maintain and make available to CITY a written complaint log in format reasonably acceptable to CITY. The purpose of this document will be to record complaints and/or incidents that occur with respect to the Automatic Public Toilets and Public Service Kiosks. In addition to the date, time,



location, etc., the log shall include disposition and final resolution of the complaint. Copies of this document will be submitted to the CITY upon request.

1.14. Insurance.

A. Insurance Policies. CONTRACTOR shall maintain in force, during the full term of this Agreement, insurance as follows:

- (1) Workers' Compensation, with Employers' Liability limits not less than One Million Dollars (\$1,000,000) each accident;
- (2) Commercial General Liability Insurance, including all coverages contained in an unamended I.S.O. 1988 Occurrence Form with limits not less than One Million Dollars (\$1,000,000) each occurrence Combined Single Limit Bodily Injury and Property Damage. Such form includes Contractual Liability, Personal Injury, Advertising Liability, Broad Form Property Damage, Products and Completed Operations coverages; and
- (3) Comprehensive Automobile Liability Insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence Combined Single Limit Bodily Injury and Property Damage, including owned, non-owned and hired auto coverages, as applicable.
- (4) Excess Liability Coverage following the provisions of the insurance referred to in clauses (1), (2) and (3) above in the amount of Five Million Dollars (\$5,000,000) per occurrence, Combined Single limit, and Five Million Dollars (\$5,000,000) in the aggregate for each annual policy period.

B. Endorsements. Commercial General Liability and Comprehensive Automobile Liability Insurance policies shall be endorsed to provide the following:

- (1) To name as additional insureds with respect to the operations of CONTRACTOR under this Agreement the City and County of San Francisco, its Department of Public Works, San Francisco Port Authority, and San Francisco Recreation and Park Department, and their officers, agents, and employees, and,
- (2) To provide 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.

C. Notice. All policies shall be endorsed to provide that there will be thirty (30) days advance written notice to CITY of cancellation, non-renewal or reduction in coverage, which shall be mailed to the following address:

Director of Public Works  
Bureau of Street-Use and Mapping  
875 Stevenson Street, Room 460  
San Francisco, California 94103  
Attention: Manager of the Bureau of Street Use and Mapping

D. Condition Precedent. Certificates of insurance, satisfactory to CITY, evidencing all coverages above, shall be furnished to CITY before the Original Effective Date of this Agreement, with complete copies of policies to be delivered to CITY upon its request.

E. Approval by CITY. Approval of insurance contracts required under this Agreement shall not relieve CONTRACTOR, its subcontractors, consultants, successors or assigns, from the obligation to indemnify and hold harmless the CITY pursuant to Section 1.16, Hold Harmless and Indemnification, of this Agreement.

F. Copies of Policies and General Provisions. If at any time during the term of this Agreement CONTRACTOR fails to maintain the required insurance in full force and effect, CONTRACTOR shall discontinue immediately all work under the Agreement and shall not resume work until authorized by the Department of Public Works after having given proper notice that the required insurance has been restored to full force and effect and that the premiums therefor have been paid and are current.

G. Insurers. The insurance required herein shall be placed in a company or companies having policy holders' surplus of not less than ten (10) times the amount of coverage required hereunder.

H. Breach. In the event of any uncured breach of any provision of this Section 1.14 Insurance, or in the event that any insurance coverage required by this Agreement is canceled or diminished in any way, during any period that any insurance coverage or endorsements required under this Section 1.14 is not in effect, CITY, in addition to any other remedies available under this Agreement or by law, and notwithstanding any other provision of this Agreement to the contrary, shall have the option, upon notice to the CONTRACTOR, to suspend the further exercise by CONTRACTOR of all rights and privileges granted to CONTRACTOR under this Agreement until such coverage is provided.

1.15. Hold Harmless and Indemnification.

A. CONTRACTOR shall indemnify, defend, and hold harmless CITY, its employees, officers, representatives, and agents from and against any claim, loss, damages, injury, expense, judgment or liability associated with the Automatic Public Toilets and Public Service Kiosks to the extent such claim, loss, damages, injury, expense, judgment or liability is caused either by defects in products supplied by CONTRACTOR hereunder or by the willful or negligent act or omission of CONTRACTOR, its employees, officers, representatives and agents.

B. CITY shall indemnify, defend, and hold harmless CONTRACTOR, its employees, officers, representatives, and agents from and against any claim, loss, damages, injury, expense, judgment or liability associated with the Automatic Public Toilets and Public Service Kiosks to the extent such claim, loss, damages, injury, expense, judgment or liability is caused by the willful or negligent act or omission of CITY, its employees, officers, representatives and agents.

C. CONTRACTOR shall indemnify and hold 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 and all other intellectual property claims 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.

1.16. Social Security, Unemployment Compensation. CONTRACTOR, upon request, shall furnish to CITY adequate evidence of compliance with laws relating to Social Security and Unemployment Compensation.

1.17. Notices: When Effective. Notices, as herein provided, shall be given by either personal service or by first class mail and shall be addressed as follows:

To CITY:                    Director of Public Works  
                                  Bureau of Street-Use and Mapping  
                                  875 Stevenson Street, Room 460  
                                  San Francisco, California 94103  
                                  Attention: Manager of the Bureau of Street Use and Mapping

To CONTRACTOR: JCDecaux San Francisco, Inc.  
                                  470 8th Street  
                                  San Francisco, CA 94103  
                                  Attention: Senior Vice President

Notices shall be deemed effective upon delivery, if given by personal service, or, if by mail, three (3) days after deposit in the mail. In the event of any change in the above mailing addresses, the affected party shall notify the other promptly in writing.

1.18. Termination of Agreement.

A. Termination Upon Expiration. This Agreement shall terminate twenty (20) years from the Original Effective Date, as provided in Section 1.03, unless the Agreement has been extended as provided herein, including in Section 2.03, and unless terminated earlier as provided in this Section.

B. Removal of Automatic Public Toilets and Public Service Kiosks Upon Termination. Upon termination of this Agreement, CITY may direct CONTRACTOR

to remove its Automatic Public Toilets and Public Service Kiosks and restore the respective sidewalks and curbs at CONTRACTOR's own cost and expense, and CONTRACTOR shall promptly thereafter file applications for the necessary permits to do so. CONTRACTOR shall complete such removal and restoration within one hundred twenty (120) days of the issuance of such permits. If CONTRACTOR fails to complete such removal and restoration within said one hundred twenty (120) day period, CITY, without further notice and at CONTRACTOR's cost and expense, may remove the Automatic Public Toilets and Public Service Kiosks and restore the sidewalks and curbs. CITY shall promptly issue permits for removal of Automatic Public Toilets and/or Public Service Kiosks whenever such removal is required hereunder.

C. Termination for Default. In the event of any uncured default by either party to this Agreement, as defined in Section 1.19, Event of Default, Remedies, the non-breaching party shall have the option to terminate the Agreement as provided therein.

D. Termination for Delays in Issuance of Permits for Initial Phase. If through no fault of CONTRACTOR, CITY has not issued permits for all of the Automatic Public Toilets in the Initial Phase by the date two (2) years after the Effective Date of this First Amended and Restated Agreement, then CONTRACTOR, at its option may at any time after the end of said two (2) year period, but in no event later than the date four (4) years after said Effective Date elect to terminate this Agreement upon sixty (60) days notice to CITY during which period CITY shall have an opportunity to cure said delay. In the event CITY fails to issue permits for all such Automatic Public Toilets within said sixty (60) day period, this Agreement shall terminate without further notice and the parties shall be discharged from any and all obligations hereunder without penalty or liability, excepting liability for breach of this Agreement arising prior to the date of such termination and excepting also CONTRACTOR's obligations pursuant to Paragraph B of this Section 1.18.

E. Change in Laws. If CITY, the State of California, the federal government or any other governmental agency should adopt a change in laws or regulations, including Department of Public Works Orders, applicable to the Automatic Public Toilets, Public Service Kiosks or the use of the Public Service Kiosks for advertising, which significantly affects CONTRACTOR's ability to sell advertising, significantly restricts the areas in which the Public Service Kiosks (including the advertising to be placed thereon) are permitted, or significantly increases the cost of operation, including the cost of manufacture or installation of new Automatic Toilets or Public Service Kiosks, but excluding any tax or change in business regulation of general applicability, then at the request of CONTRACTOR, CITY and CONTRACTOR shall negotiate in good faith possible modifications to this Agreement to compensate for the effect of such change. In no event shall CITY be required to agree to any particular modification of this Agreement. If no modification of the Agreement satisfactory to CONTRACTOR is agreed upon after one hundred twenty (120) days, CONTRACTOR may, at its option, elect to terminate this Agreement upon ninety (90) days notice to CITY.

1.19. Event of Default; Remedies:

A. Default of Contractor. In the event that CONTRACTOR shall fail to comply with or carry out any material term, covenant, condition, or promise herein set forth, CITY may elect to serve upon CONTRACTOR a First Notice of Default. If CONTRACTOR fails to cure such default within thirty (30) days after receipt of said notice, or, if such default cannot be cured within such period, if CONTRACTOR does not commence to cure within such thirty (30) days and thereafter diligently pursue such cure to completion, then CITY may elect to terminate this Agreement. Termination shall be effective after ten (10) days written notice to CONTRACTOR. CONTRACTOR shall undertake no new work after the date of receipt of any notice of termination or five days after the date of the notice, whichever date is earlier.

B. Bankruptcy or Reorganization Proceedings. CONTRACTOR shall be deemed to be in default of this Agreement in the event that CONTRACTOR shall cease conducting business in the normal course, become insolvent, make a general assignment for the benefit of creditors, suffer or permit the appointment of a receiver for its business or assets or shall avail itself of, or become subject to, any proceeding under the Federal Bankruptcy Act or any other statute of any state of these United States or any other foreign country relating to the insolvency or the protection of rights of creditors, then at the option of the other party, this Agreement shall terminate and be of no further force and effect, and any property or rights of such other party, tangible or intangible, shall forthwith be returned to it. Upon the occurrence of any of the foregoing events, the CITY shall have the right to terminate this Agreement forthwith and CONTRACTOR or its successor in interest by operation of law or otherwise shall thereafter have no rights in or to this Agreement or to any of the privileges herein conferred.

C. Option to Demand Payment on Letter of Credit; Performance Bond. In the event of a default by CONTRACTOR under this Agreement which causes CITY to suffer any loss or damage, whether or not said default is timely cured, CITY shall be entitled to demand the immediate payment of the full amount of the letter of credit as provided in Section 1.12 Letter of Credit, of this Agreement, from which the CITY may be compensated for said loss or damages incurred as a result of CONTRACTOR's failure to comply with the Agreement, including but not limited to the CITY's costs of operating and maintaining the Automatic Public Toilets and Public Service Kiosks in the event of CONTRACTOR's default. If CONTRACTOR has not fulfilled its obligations to install any Automatic Public Toilets in the Initial Phase at the time of said default, the CITY shall also be entitled to make a demand on CONTRACTOR's performance bond or other guarantee of performance, as provided in Section 1.11, Performance Bond, of this Agreement, in addition to any other remedies available in law or equity.

D. Default of CITY. In the event that the CITY shall fail to comply with or carry out any material term, covenant, condition, or promise herein set forth, CONTRACTOR may elect to serve upon CITY a Notice of Default. If the CITY fails

to cure such default within thirty (30) days after receipt of said notice, or, if such default cannot be cured within such period, if CITY does not commence to cure within such thirty (30) days and thereafter diligently pursue such cure to completion, then CONTRACTOR may elect to serve upon CITY a Second Notice of Default. If CITY fails to cure such default within twenty (20) days after receipt of said Second Notice of Default, or, if such default cannot be cured within such period, CITY does not commence to cure such default and thereafter diligently pursue such cure to completion then CONTRACTOR may elect to terminate this Agreement. Termination shall be effective after ten (10) days written notice to the CITY. CONTRACTOR shall then be entitled to the return of its letter of credit or Alternate Security and any performance bond, in addition to any other remedies available in law or equity.

E. Actual Damages. In the event that either party serves a Notice of Default on the other and such default is subsequently cured, the non-defaulting party shall nevertheless be entitled to recover from the defaulting party any loss or damage which the non-defaulting party may have incurred by reason of such default. Each party shall have available to it the remedies provided for in this Section 1.19 as well as all remedies available in law and equity, to resolve its claim for loss or damage.

F. Rights of Parties Accrued Prior to Termination. Termination of this Agreement shall not in any way affect the rights and obligations of the parties with respect to damages or amounts payable to the other party which have accrued prior to such termination.

G. Other Remedies. The exercise of the remedies provided for in this Section 1.19 shall be cumulative and shall in no way affect any other remedy the parties may have available in law or equity. The exercise by either party of any of the options set forth in this paragraph by commencement of legal proceedings, audit, or otherwise, shall not be deemed a waiver of its right to exercise any other option provided herein.

H. No Termination for Certain Defaults. Notwithstanding any other provision of this Agreement, the CITY shall not have the right to terminate this Agreement due to any failure of the CONTRACTOR to comply with the provisions of Section 7.11, below, but may exercise any or all other remedies as provided in Section 7.11 or as are otherwise available in law or equity.

#### 1.20. No Waiver of Subsequent Breaches or Defaults.

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

#### 1.21. Subcontracting.

CITY grants CONTRACTOR the authority to hire such subcontractors as CONTRACTOR deems necessary to fulfill the requirements detailed in this Agreement, provided if an

MBE/WBE subcontractor is unable to perform successfully and is to be replaced, CONTRACTOR will be required (i) to give prompt notice thereof to the CITY and, (ii) make good faith efforts to replace the original MBE/WBE subcontractor with another MBE/WBE subcontractor, pursuant to Section 7.11, Minority/Women Business Utilization, below.

1.22. Audited Financial Report.

On or before the first (1st) day of the fifth (5th) calendar month of the CONTRACTOR's succeeding fiscal year for the duration of this Agreement, CONTRACTOR shall submit to CITY, through its Director, copies of CONTRACTOR's annual Audited Financial Statements, audited by an independent certified public accountant. CITY shall also be entitled to audit CONTRACTOR's books pertaining to the Automatic Public Toilet program on demand.

1.23. Initial Capital.

As of the Start Date, CONTRACTOR shall have shareholders' equity capital, calculated in accordance with generally accepted accounting principles, of at least One Million Five Hundred Thousand Dollars (\$1,500,000) and shall provide to CITY within forty-five (45) days after the Start Date a certificate to that effect audited by an independent certified public accountant.

1.24. Guaranty of Obligation.

CONTRACTOR shall, prior to the Original Effective Date, provide a guaranty of its obligation to install the Automatic Public Toilets in the Initial Phase, as provided hereunder from JCDecaux USA, which guaranty shall be substantially in the form attached hereto as Appendix E.

1.25. Additional Payments by CONTRACTOR.

A. Beginning with respect to the Advertising Revenue (as hereinafter defined) for calendar year 1998 CONTRACTOR shall pay to CITY an additional fee (the "Additional Fee") as provided in, and subject to the terms and conditions of, this Section 1.25. In the event that CONTRACTOR fails to pay to CITY the Additional Fee in the manner or within the time period provided herein, CITY may elect to treat such failure by CONTRACTOR as an event of default, and CITY shall have all rights and remedies provided under Section 1.19 of the Agreement relating to such event of default.

B. In any such calendar year, if CONTRACTOR's Advertising Revenue (as defined below) equals or exceeds the First Threshold Amount (as defined below), then CONTRACTOR shall pay to CITY an Additional Fee in an amount equal to the Applicable Percentage (as defined below) of the CONTRACTOR's Advertising Revenue. Within two months after the end of each such calendar year, CONTRACTOR shall furnish to CITY a statement of the amount of CONTRACTOR's Advertising Revenue for such preceding calendar year.

CONTRACTOR shall pay to CITY the Additional Fee, if any, for such calendar year simultaneously with delivery to CITY of such statement. Such statement shall be certified as accurate and complete by a duly authorized officer of CONTRACTOR. CONTRACTOR shall maintain at its office in San Francisco accurate and complete books and records of all Advertising Revenue, and shall retain such books and records for not less than five (5) years after the end of each such calendar year. CITY shall have the right upon demand in accordance with Section 1.22 of the Agreement to audit, copy and inspect such books and records. If such audit discloses any discrepancies which result in an underpayment of the Additional Fee due to CITY for any calendar year during the term of the Agreement, CONTRACTOR shall immediately pay to CITY the amount of such underpayment, plus interest thereon at the Reference Rate, or the maximum amount allowable by law. If any such discrepancy disclosed by the audit has resulted in an underpayment to CITY of more than five percent (5%) of the Additional Fee for any calendar year, then CONTRACTOR shall reimburse CITY for the cost of such audit. If such audit discloses an overpayment, CITY shall promptly return such overpayment without interest.

C. "Advertising Revenue" means all revenue of CONTRACTOR from the sale of advertising on the Public Service Kiosks, excluding advertising agency commissions, calculated on an accrual basis in accordance with generally accepted accounting principles.

D. "Applicable Percentage" means (i) during calendar years 1998 through 2004 the Applicable Percentage shall be two percent (2%) and (ii) during the remaining term of this Agreement, in any year in which CONTRACTOR's Advertising Revenue is less than the Second Threshold Amount (as defined below), the Applicable Percentage shall be five percent (5%), and in any year in which CONTRACTOR's Advertising Revenue equals or exceeds the Second Threshold Amount, the Applicable Percentage shall be seven percent (7%).

E. "First Threshold Amount" means the amount for each calendar year calculated as follows:

- (i) the sum of Eighteen Thousand Dollars (\$18,000), multiplied by
- (ii) the percentage increase, if any, in the Consumer Price Index (CPI) (Urban Wage Earners and Clerical Workers in San Francisco - Oakland Standard Metropolitan Statistical Area (1982-84=100) (the "Index'') as of July 1 of such calendar year over the Index as of the Start Date, multiplied by
- (iii) the number of Public Service Kiosks installed during such calendar year; provided that Public Service Kiosks which are installed for only a portion of the year shall be counted proportionately, based on a fraction equal to the number of days remaining in the calendar year after installation, divided by the actual number of days in the year.



- F. "Second Threshold Amount" means the amount for each calendar year calculated as follows:
- (i) the sum of Twenty-Five Thousand Dollars (\$25,000), multiplied by
  - (ii) the percentage increase, if any, in the Consumer Price Index (CPI) (Urban Wage Earners and Clerical Workers in San Francisco - Oakland Standard Metropolitan Statistical Area (1982-84=100) (the "Index") as of July 1 of such calendar year over the Index as of the Start Date, multiplied by
  - (iii) the number of Public Service Kiosks installed during such calendar year; provided that Public Service Kiosks which are installed for only a portion of the year shall be counted proportionately, based on a fraction equal to the number of days remaining in the calendar year after installation, divided by the actual number of days in the year.

## **Part 2. Automatic Public Toilet Installation.**

### **2.01. Installation of Automatic Public Toilets.**

A. CONTRACTOR shall install Automatic Public Toilets only for which (i) the design complies with the requirements of Section 2.08, Automatic Public Toilet Design, below, (ii) all required permits have been issued and all applicable fees have been paid by CONTRACTOR, and (iii) locations have been determined pursuant to Section 2.05, Locations and Sites of Automatic Public Toilets, below. CONTRACTOR shall be and shall keep fully informed of the CITY Charter, codes, ordinances and regulations and of all state, local and federal laws in any manner affecting the performance of this Agreement, including but not limited to local and state planning, public works, electrical, plumbing and other applicable codes, and shall at all times comply with said codes. Citation of specific code sections in this Agreement shall not exonerate CONTRACTOR from its obligation of compliance with all applicable local, state, federal laws and ordinances.

B. CONTRACTOR agrees that it shall neither have nor acquire any possessory interest in any of the CITY's real property, such as a lease or exclusive easement, on which an Automatic Public Toilet has been installed pursuant to this Agreement. Such acknowledgment in no way affects or limits CONTRACTOR's obligation to pay any possessory interest taxes as further provided in Section 7.06.

### **2.02. Permit Approvals Required for Automatic Public Toilets.**

A. CONTRACTOR must obtain all applicable permits and pay all required permit fees before proceeding with installation of any Automatic Public Toilet. Within five (5) days following the Original Effective Date of this Agreement, the Director shall notify CONTRACTOR to commence work under this Agreement (the "Notice to Proceed").

Unless otherwise directed by the Director, within ninety (90) days after the Director has issued the Notice to Proceed, CONTRACTOR shall submit to the Department of Public Works location drawings for the twenty (20) Automatic Public Toilet sites in the Initial Phase described in Appendix B, or substitute sites designated by the Director, together with an encroachment permit fee of three hundred fifty dollars (\$350) for each Automatic Public Toilet. Within thirty (30) days of the Effective Date of this First Amended and Restated Agreement, CONTRACTOR shall submit to the Department of Public Works location drawings for the twenty-first and twenty-second toilets of the Initial Phase or substitute sites designated by the Director, together with an encroachment permit fee of three hundred fifty dollars (\$350) for each such Automatic Public Toilet. The Department of Public Works shall review each location drawing, inspect each location and site and, if required, hold public hearings on each proposed Automatic Public Toilet location and site, and thereafter, unless the location is determined by the CITY to be unsuitable for installation of an Automatic Public Toilet, shall approve and issue encroachment and excavation permits for each proposed Automatic Public Toilet site all in accordance with the procedures and guidelines set forth in the DPW orders attached as Appendix G herein and as may be modified from time to time by the Director. To the extent such procedures and guidelines are inconsistent with the San Francisco Public Works Code, they shall be deemed to supersede the Public Works Code. If a location is determined to be unsuitable, no additional encroachment permit fee shall be payable for substitute sites.

B. Where any Automatic Public Toilet is to be installed on Port Property, CONTRACTOR shall submit location drawings to the PORT's Chief Harbor Engineer, together with an encroachment permit fee of three hundred fifty dollars (\$350) for each such Automatic Public Toilet, and the PORT (in lieu of the Department of Public Works) shall, as required or as necessary, review such drawings, conduct inspections and hold public hearings in accordance with the terms of this Agreement. CONTRACTOR shall obtain building permits from the PORT's Chief Harbor Engineer prior to any Automatic Public Toilet installation on Port Property. No PORT building permit fee shall be payable for such sites on Port Property.

2.03. CITY Review of Plans and Submittals. If CONTRACTOR has faithfully submitted site plans as required by this Agreement, CITY agrees (i) to use its best efforts to review and, if appropriate, approve permits for installation of the Initial Phase within six (6) months of CONTRACTOR's initial submittals, and (ii) if the Start Date has not occurred within three (3) months after the Original Effective Date, the term of this Agreement shall be extended on a day-for-day basis until the Start Date has occurred. A reasonable schedule for submitting site plans to the Department for additional Automatic Public Toilets, if required by the CITY in accordance with Section 2.04C, shall be jointly determined by the parties.

2.04. Automatic Public Toilets Required To Be Installed.

A. CONTRACTOR agrees to install Automatic Public Toilets in accordance with this Agreement within the following limits:

B. Initial Phase. CONTRACTOR shall provide twenty-seven (27) Automatic Public Toilets under this Agreement during the Initial Phase. CONTRACTOR has completed installation of the first twenty (20) Automatic Public Toilets. CONTRACTOR shall complete the installation of the remaining Automatic Public Toilets in the Initial Phase in three (3) sub-phases. CONTRACTOR shall install two (2) Automatic Public Toilets in the first such sub-phase within 60 days after the issuance of all applicable permits for the Automatic Public Toilets (and associated Public Service Kiosks) for that subphase. CONTRACTOR shall install two (2) Automatic Public Toilets in the second subphase and three (3) Automatic Public Toilets in the remaining such sub-phase within six (6) months after the issuance of all applicable permits for all of the Automatic Public Toilets (and associated Public Service Kiosks) in that sub-phase. There shall be ninety (90) Public Service Kiosks installed within the first six (6) months of the Start Date, nine (9) Public Service Kiosks in each of the first two (2) sub-phases, and thirteen (13) Public Service Kiosks installed in the remaining such sub-phase as described herein.

C. Maximum Requirement. The CITY, at its sole discretion, but subject to the terms and conditions of this Agreement, including without limitation Section 3.05, Locations and Sites of Public Service Kiosks, Paragraph B; Additional Public Service Kiosk Locations, may require CONTRACTOR to provide up to a maximum of fifty (50) Automatic Public Toilets (inclusive of the twenty-seven (27) Automatic Public Toilets in the Initial Phase) during the term of the Agreement; provided, however, that (i) CONTRACTOR shall not be required to install more than ten (10) of such additional Automatic Public Toilets in any one (1) year, and (ii) CONTRACTOR shall not be required to install any Automatic Public Toilet unless all required permits for the toilet and the associated Public Service Kiosks have been issued by the date five (5) years and six (6) months after the Start Date. If CITY does not issue all required permits for a total of fifty (50) Automatic Public Toilets by the date five (5) years and six (6) months after the Start Date, but thereafter wishes to increase the number of Automatic Public Toilets up to said total, then CITY and CONTRACTOR shall negotiate in good faith a possible modification to this Agreement only as to an extension of the term of the Agreement.

2.05. Locations and Sites of Automatic Public Toilets. CITY shall designate the locations for all Automatic Public Toilets. CONTRACTOR shall install the Automatic Public Toilets at locations designated and approved in accordance with this Section 2.05.

A. Initial Phase. Appendix B shows the location of the first twenty (20) Automatic Public Toilets installed in the Initial Phase and a list of preliminary locations for the remaining Automatic Public Toilets in the Initial Phase. In the event any of the locations listed in Appendix B are determined by the CITY to be unsuitable for Automatic Public Toilet installation prior to the issuance of permits therefor, or are disapproved by CONTRACTOR pursuant to Paragraph C of this Section 2.05, then the CITY shall designate an equal number of alternate locations.

B. Additional Automatic Public Toilet Locations. If CITY elects to require the installation of additional Automatic Public Toilets pursuant to Section 2.04, Automatic Public Toilets Required To Be Installed, Paragraph C, Maximum Requirement, above, or orders or permits the relocation of any Automatic Public Toilet in accordance with this Agreement, CITY shall designate locations for installation of those additional Automatic Public Toilets, as provided herein.

C. Review and Approval of Automatic Public Toilet Locations. CITY and CONTRACTOR shall inspect the proposed locations and exchange information regarding the suitability of each such location for an Automatic Public Toilet. CITY acknowledges that the installation of the Automatic Public Toilets requires clear space of at least three and one-half feet (3 1/2') below the surface of the slab. If a proposed location will not provide the clear space necessary for the installation of the Automatic Public Toilet, CONTRACTOR may disapprove the location and CITY shall designate a substitute location. Except as provided in Paragraph D of this Section 2.05, CONTRACTOR shall be obligated to incur a maximum cost of Twenty Thousand Dollars (\$20,000) for each Automatic Public Toilet for the cost of utility connections, including sewer, electrical, water and telephone connections, the costs of any trenching and street restoration required in connection with such utility connections and costs of extraordinary site preparation, such as demolition of existing structures or construction of a sidewalk bulb. In the event that such costs would exceed a total of Twenty Thousand Dollars (\$20,000), CONTRACTOR may disapprove the location, and CITY shall designate a substitute location.

D. Specific Sites. CONTRACTOR shall present site plans showing the precise site of the Automatic Public Toilet to the Department of Public Works for approval as more specifically required in Section 2.10, Location Drawings and Engineering Plans for Automatic Public Toilets, which approval shall not be unreasonably withheld. At some locations, the Automatic Public Toilet may be installed on a new sidewalk bulb to be constructed by CONTRACTOR, subject to CITY approval and upon the conclusion of proper street encroachment proceedings; provided, however, that any additional fees payable to the CITY as a result of such bulb shall count against the twenty thousand dollar (\$20,000) maximum cost referred to in Paragraph C above. Without limitation on the provisions of Paragraph C, Review and Approval of Automatic Public Toilet Locations, above, if CONTRACTOR finds a location to be unsuitable or infeasible as a site for installation of an Automatic Public Toilet, CONTRACTOR may appeal to the Director for abandonment of that location and for a substitute location.

2.06. Relocation of Automatic Public Toilets. CONTRACTOR may not relocate or remove an Automatic Public Toilet without the CITY's permission. The CITY may, at the order of the Director, direct the relocation of up to one (1) Automatic Public Toilet in any twelve month period (non-cumulative) for which CONTRACTOR will bear the full cost of removal and relocation, subject to Section 5.11, Relocation Costs, below. In the event that the terms and conditions of Section 5.11, Relocation Costs, are met and CONTRACTOR fails to remove and relocate an Automatic Public Toilet within the time directed by the CITY, CITY may, at its sole discretion, cause the removal and storage or relocation of said Automatic Public Toilet

and recover any and all costs incurred from CONTRACTOR as provided in Section 1.12, Letter of Credit, Paragraph C, Default of CONTRACTOR. Any costs not so recovered shall be paid directly to CITY by CONTRACTOR upon the invoice therefor. CONTRACTOR may also, with the CITY's permission, elect to relocate and remove any Automatic Public Toilet, for which CONTRACTOR shall bear the full cost of removal and relocation, including sidewalk and curb repair if the same is affected by the removal. The new location of any such relocated Automatic Public Toilet shall be determined in accordance with Section 2.05, Locations and Sites of Automatic Public Toilets, Paragraph C, Review and Approval of Automatic Public Toilet Locations, above. In the event the Port Director directs CONTRACTOR to remove any Automatic Public Toilet on Port Property, CONTRACTOR shall remove such toilet within seventy-two (72) hours (excluding Sundays and holidays) provided that the PORT has at the time of removal issued permits for installation at another location for the Automatic Public Toilet, which location shall have been approved by CONTRACTOR under the terms of this Agreement. Such removal and relocation shall be subject to the limits set forth above in this Section 2.06 and in Section 5.11, Relocation Costs.

2.07. Clearance Requirements for Automatic Public Toilets. All Automatic Public Toilets, wherever located, shall be placed in accordance with the terms of the Department of Public Work Orders issued by the Director, and as modified from time to time by subsequent Director's orders. After the installation of an Automatic Public Toilet, CITY shall use its best efforts not to place any new structures or obstacles within the specified clearance area or which would obstruct the access to such Automatic Public Toilet. If after the installation of the Automatic Public Toilet, CITY shall place any new structures or obstacles within the specified clearance area, CONTRACTOR shall not be required to relocate that Automatic Public Toilet to accommodate the CITY's structure, except as provided in Section 2.06, Relocation of Automatic Public Toilets, above.

2.08. Automatic Public Toilet Design. Subject to the provisions of this Section 2.08 and Section 2.09, Approval of Other Agencies, below, CONTRACTOR shall design, construct, and install the Automatic Public Toilets contracted for under this Agreement in conformity with the plans and specifications attached hereto as Appendix C. Such plans and specifications may be modified by the CONTRACTOR, only with the prior written approval of the Director. Such approval shall not be unreasonably withheld if the proposed change does not materially affect the external appearance or the disabled access requirements of the Automatic Public Toilets or adversely affect the operation of the Automatic Public Toilets. The two (2) display panels on the Automatic Public Toilets shall be illuminated during nighttime hours. CONTRACTOR shall also create, reproduce and install on one side of each Automatic Public Toilet, on display panels which may be illuminated, a map of the City and County of San Francisco, which shall have been approved by the CITY, which approval shall not be unreasonably withheld or delayed. CONTRACTOR shall create, reproduce and install on one side of each Automatic Public Toilet located on Port Property, a map of the waterfront of the CITY, which shall have been approved by the Port Director, which approval shall not have been unreasonably withheld or delayed. All such maps to be created and installed by CONTRACTOR shall be based on information which shall have been provided to CONTRACTOR by the CITY and the Port Director. CONTRACTOR shall update said maps at least every six (6) years.

2.09. Approval of Other Agencies.

A. Approval of Recreation and Park Commission -- When Required. Additional locations of Automatic Public Toilets on real property owned by or under the jurisdiction of or fronting the property of the San Francisco Recreation and Park Department shall be subject to review and approval by the Recreation and Park Commission.

B. Approval of Port Commission: Bay Conservation Development Commission -- When Required. Locations of Automatic Public Toilets on real property owned by or under the jurisdiction of the Port of San Francisco shall be subject to review and approval by the Port Commission which shall consider the Department of Public Works Work Orders attached as Appendix G hereto in issuing such approval or disapproval. In addition, any such additional locations within one hundred feet (100') of the San Francisco Bay shoreline shall be reviewed by the Bay Conservation and Development Commission.

C. Approval of Port Director -- When Required. Location, relocation or removal of any Automatic Public Toilet on Port Property shall be subject to the review and approval of the Port Director and of Port engineering staff (in lieu of the Department of Public Works), in accordance with this Agreement, including but not limited to Appendix G.

2.10. Location Drawings and Engineering Plans for Automatic Public Toilets. Location drawings shall contain a twenty feet (20') to one inch (1") scale (20:1 scale) representation of the proposed Automatic Public Toilet site covering the area from the property line to the street centerlines at the nearest intersection. Mid-block sites can be shown with broken line ties. The drawing also shall give all necessary street dimensions, such as sidewalk width and street width, and denote all surface and subsurface structures, including hydrants, utility poles and catch basins, subsidewalk basements, transit shelters, bus stops and their accurate positions. After approval of a particular location (including any required public hearing), CONTRACTOR must also submit to the Department of Public Works engineering plans showing sewer connections, water service connections, electrical service connections and foundation details for each Automatic Public Toilet, which plans must be stamped and signed by an engineer registered with the State of California. CONTRACTOR is responsible for identifying all utility lines located beneath the Automatic Public Toilet and for showing all such utility lines on the location drawing and notifying underground service alert prior to any excavation. Under this Agreement, the CITY must approve the location and engineering drawings and issue encroachment and excavation permits before CONTRACTOR may commence work on a particular site or location.

2.11 Electrical, Sewage, Telephone and Water Services; Installation. Subject to Paragraph C below, CONTRACTOR shall bear the full cost of the connection of the Automatic Public Toilets to water supply and electrical, sewer and telephone services, and the operating charges for water supply and electrical, sewer and telephone service charge to each Automatic Public

Toilet. If feasible, CITY shall permit CONTRACTOR to utilize the CITY's electrical system, in which event CONTRACTOR shall pay the same rate charged to CITY agencies.

A. Electrical Connections and Related Work. CONTRACTOR shall arrange and perform all internal electrical components and hook-up procedures in accordance with the San Francisco Electrical Code. All electrical service lines in each Automatic Public Toilet site shall be underground and shall originate from the point-of-services designated by CITY or by Pacific Gas & Electric Company ("PG&E"). CONTRACTOR shall contact PG&E and arrange for additional service not provided by CITY and shall pay CITY or PG&E directly for all charges for service connections and electricity.

B. Sewage, Water Service and Drainage. CONTRACTOR shall contact the San Francisco Water Department and arrange for water service and shall pay the San Francisco Water Department for all charges for service connections and water use. CONTRACTOR shall arrange and perform sewer hook-up procedures in accordance with the San Francisco Plumbing Code. CONTRACTOR shall contact the Department of Public Works to establish sewer service and to arrange to pay for all sewer service charges.

C. Unanticipated Conditions. In the event that during the installation of any Automatic Public Toilet, the CONTRACTOR encounters unanticipated conditions beyond its reasonable control which would significantly increase the cost of installation of the Automatic Public Toilet, CONTRACTOR, upon notice to the CITY, may restore the work area to its pre-installation condition, and an alternate location for the Automatic Public Toilet shall be designated in accordance with Section 2.05 of this Agreement.

2.12. Restoration of Sites. When each Automatic Public Toilet installation is complete, CONTRACTOR shall remove all excess materials and restore the work area.

### **Part 3. Public Service Kiosk License.**

3.01. Installation of Public Service Kiosks.

A. CONTRACTOR shall have the right, subject to the terms and conditions of this Agreement, to install Public Service Kiosks only for which (i) the design complies with the requirements of Section 3.08, Kiosk Design, (ii) all required permits have been issued, and (iii) locations have been determined pursuant to Section 3.05, Location and Sites of Public Service Kiosks, and all applicable fees have been paid by the CONTRACTOR. CONTRACTOR shall be and shall keep fully informed of the CITY Charter, codes, ordinances and regulations and of all state, local and federal laws in any manner affecting the performance of this Agreement, including but not limited to local and state planning, public works, electrical, plumbing and other applicable codes, and shall at all times comply with said codes. Citation of specific code sections in this

Agreement shall not exonerate CONTRACTOR from its obligation of compliance with all applicable local, state, federal laws and ordinances.

B. CONTRACTOR agrees that it shall neither have nor acquire any possessory interest in any of the CITY's real property, (such as a lease or exclusive easement), on which a Public Service Kiosk has been installed pursuant to this Agreement. Such acknowledgment in no way affects or limits CONTRACTOR's obligation to pay any possessory interest taxes as further provided in Section 7.06.

3.02. Permit Approvals Required For Public Service Kiosks.

A. CONTRACTOR must obtain all applicable permits before proceeding with installation of any Public Service Kiosk. Within ninety (90) days of the Effective Date of this First Amended and Restated Agreement, CONTRACTOR shall submit to the Department of Public Works location drawings for thirty one (31) Public Service Kiosks in the Initial Phase, together with an encroachment fee of Three Hundred Fifty Dollars (\$350) for each Public Service Kiosk. The Department of Public Works shall review each location drawing, and inspect each location and site and hold public hearings, if required, on each proposed Public Service Kiosk location and site, and thereafter, unless the site is determined to be unsuitable for installation of a Public Service Kiosk, shall approve and issue encroachment and excavation permits for each proposed Public Service Kiosk site. CITY shall use its best efforts to assist CONTRACTOR to receive permit approvals from any applicable state or regional agencies with jurisdiction over any particular locations, including BCDC and CalTrans.

B. Where any Public Service Kiosk is to be installed on Port Property, CONTRACTOR shall submit location drawings to the PORT's Chief Harbor Engineer, together with an encroachment fee of Three Hundred Fifty Dollars (\$350) for each Public Service Kiosk, and the PORT (in lieu of the Department of Public Works) shall, as required or as necessary, review such drawings, conduct inspections and hold public hearings in accordance with this Agreement. CONTRACTOR shall obtain building permits from the PORT's Chief Harbor Engineer prior to any Public Service Kiosk installation on Port Property. No PORT building permit fee shall be payable for such sites on Port Property.

3.03. CITY Review of Plans And Submittals. If CONTRACTOR has faithfully submitted site plans as required by this Agreement, CITY agrees to use its best efforts to review and, if appropriate, approve permits for installation of the Initial Phase within six (6) months of CONTRACTOR's initial submittals, all in accordance with Section 2.03 of this Agreement. A reasonable schedule for submitting site plans to the Department for additional Public Service Kiosks, if additional Automatic Public Toilets are required by the CITY in accordance with the Section 2.04C, shall be jointly determined by the parties.

3.04. Number of Public Service Kiosks Permitted. At any time during this Agreement CONTRACTOR shall have the right to install, operate and maintain Public Service Kiosks at a ratio of no more than four and one-half (4.5) Public Service Kiosks for each one (1) Automatic



Public Toilet provided pursuant to this Agreement. CONTRACTOR shall not display advertising on any Public Service Kiosks pursuant to this Agreement, on or before the date the associated Automatic Public Toilet under this Agreement first becomes fully operational. In the Initial Phase of the Agreement, CONTRACTOR shall have the right to install a maximum of one hundred twenty one (121) Public Service Kiosks at a ratio of no more than 4.5 kiosks to each Automatic Public Toilet installed pursuant to this Agreement. Thereafter, except as expressly provided by the terms of this Agreement, CONTRACTOR shall have the right to install additional Public Service Kiosks at no more than the ratio set forth herein. If an odd number of additional Automatic Public Toilets in excess of those in the Initial Phase is required, the permitted number of associated Public Service Kiosks shall be rounded up to the next whole number.

3.05. Locations and Sites of Public Service Kiosks.

A. Initial Phase. The CITY retains the right to approve the locations of all Public Service Kiosks proposed by CONTRACTOR, which approval shall not be unreasonably withheld. In the event one or more locations for the Public Service Kiosks proposed by CONTRACTOR are disapproved by CITY, then CITY and CONTRACTOR shall cooperate to identify suitable alternate locations for installation of the Public Service Kiosks, within the same general area if possible. Permits shall not be issued for any location unless and until CITY and CONTRACTOR have mutually agreed upon such location. The first ninety (90) Public Service Kiosks for which permits were issued as of the Start Date are located in the Downtown Area, and of those, at least thirty-five (35) shall be located on Market Street and at least sixty-eight (68) shall be Newsstand Kiosks, unless CITY and CONTRACTOR otherwise agree. Of the remaining thirty-one (31) Public Service Kiosks in the Initial Phase (i) at least ten (10) shall be located in the Downtown Area, and (ii) none shall be located on Market Street in the Downtown Area. If CONTRACTOR finds any previously approved location to be unsuitable or infeasible as a site for a Public Service Kiosk, CONTRACTOR may appeal to the Director for abandonment of that location and may propose an alternate or substitute location, which shall be subject to the CITY's approval according to the provisions of this Paragraph. Any substitution of locations for Public Service Kiosks shall not change the ratio of Public Service Kiosks to Automatic Public Toilets authorized by this Agreement.

B. Additional Public Service Kiosk Locations. If CITY elects to require the installation of additional Automatic Public Toilets pursuant to Section 2.04, Paragraph C, or orders or permits the relocation of any Public Service Kiosk CONTRACTOR may, within thirty (30) days of notice of such action or order by CITY, propose locations for additional Public Service Kiosks in the ratio set forth above. The CITY retains the right to approve the locations for all such Public Service Kiosks proposed by CONTRACTOR, which approval shall not be unreasonably withheld. In the event one or more locations for the Public Service Kiosks proposed by CONTRACTOR are disapproved by the CITY, then CONTRACTOR and CITY shall cooperate to identify suitable alternate locations for installation of the Public Service Kiosks. Permits shall not be issued for any location until CITY and CONTRACTOR have mutually agreed

upon such location. Of the additional locations approved pursuant to this Section 3.05B, approximately fifty-eight percent (58%) (60 of the total possible 104 additional Public Service Kiosks) shall be located in the Downtown Area, and of those, approximately seventeen percent (17%) (10 of the 60 additional Public Service Kiosks located in the Downtown Area) shall be located on Market Street, unless CONTRACTOR otherwise agrees. Any Public Service Kiosks relocated pursuant to Section 3.06, if previously located in the Downtown Area shall be relocated in the Downtown Area, and if previously located on Market Street shall be relocated on Market Street, except with the consent of CONTRACTOR. If CONTRACTOR finds any previously approved location to be unsuitable or infeasible as a site for a Public Service Kiosk, CONTRACTOR may appeal to the Director for abandonment of that location and may propose an alternate or substitute location, which shall be subject to the CITY's approval according to the provisions of this Paragraph. Any substitution of locations for Public Service Kiosks shall not change the ratio of the Public Service Kiosks to Automatic Public Toilets authorized by this Agreement.

C. Specific Sites. CONTRACTOR shall be responsible for determining the precise site, and the orientation of the advertising and public service panels, for each Public Service Kiosk at the designated location and to present site plans to the Department of Public Works for approval in the manner provided in Section 3.10, Location Drawings and Engineering Plans for Public Service Kiosks.

3.06: Relocation of Public Service Kiosks. CONTRACTOR may not relocate or remove a Public Service Kiosk without CITY's permission. CITY does not guarantee any specific location or site for the duration of this Agreement. Subject to the provisions of Section 5.11 below, CITY may request CONTRACTOR to remove or relocate up to three (3) Public Service Kiosks in any twelve month period (non-cumulative) because of private development, public works projects, public convenience or any other reason, for which CONTRACTOR shall bear the full cost of removal and relocation, including sidewalk and curb repair if the same is affected by the removal or relocation and if said removal and relocation is ordered by the CITY. If in any twelve month period, the CITY orders the relocation of more than three (3) of the Public Service Kiosks provided pursuant to this Agreement, regardless of how many Public Service Kiosks have been relocated in prior years, CITY shall bear the full costs thereof, including sidewalk and curb repair if the same is affected by the relocation, subject to Section 5.11, below, of this Agreement. CITY shall reimburse CONTRACTOR for such costs within one hundred twenty (120) days of the invoice therefor, accompanied by reasonable documentation of the costs incurred, in the event that the terms and conditions of Section 5.11, Relocation Costs, are met and CONTRACTOR fails to remove and relocate a Public Service Kiosk within the time directed by the CITY, CITY may, at its sole discretion, cause the removal and storage or relocation of said Public Service Kiosk and recover any and all costs incurred from CONTRACTOR as provided in Section 1.13, Letter of Credit, Paragraph C, Default of Contractor. Any costs not so recovered shall be paid directly to CITY by CONTRACTOR upon the invoice therefor. The new location of any relocated Public Service Kiosk shall be determined in accordance with Section 3.05, Paragraph B above. In the event the Port Director directs CONTRACTOR to remove any Public Service Kiosk on Port Property, CONTRACTOR shall remove such kiosk within seventy-two (72) hours (excluding

Sundays and holidays) provided that the PORT has at the time of removal issued permits for installation at another location for the Public Service Kiosk, which location shall have been approved by CONTRACTOR under the terms of this Agreement. Such removal and relocation shall be subject to the limits set forth above in this Section 3.06 and Section 5.11, Relocation Costs.

3.07. Clearance Requirements For Public Service Kiosks. All Public Service Kiosks, wherever located, shall be placed in accordance with the terms of Department of Public Works Order No. 163,368 (Appendix G hereto), issued by the Director, and as modified from time to time by subsequent Director's orders; provided, however, that such subsequent orders are subject to the provisions of Paragraph E of Section 1.18. After the installation of a Public Service Kiosk, to the extent feasible, CITY shall use its best efforts not to place any new structures or obstacles within the specified clearance area or which would obstruct the visibility of or access to such Public Service Kiosk. If after the installation of a Public Service Kiosk, CITY shall place any new structures or obstacles within the specified clearance area, CONTRACTOR shall not be required to relocate that Public Service Kiosk to accommodate the CITY's structure except as provided in Section 3.06.

3.08. Public Service Kiosk Design. Subject to the provisions of this Section 3.08 and Section 3.09 below, CONTRACTOR shall design, construct and install the Public Service Kiosks provided under this Agreement in conformity with the plans and specifications attached hereto as Appendix D, which have been approved by CITY, including its Art Commission. Such plans and specifications may be modified by CONTRACTOR, only with the prior written approval of the Director. Such approval shall not be unreasonably withheld if the proposed change does not materially affect the external appearance or accessibility of the Public Service Kiosks. Unless expressly approved by the Director and all appropriate City agencies and departments, all Public Service Kiosks shall be stationary and shall not rotate, except manually for service.

3.09. Approval of Other Agencies.

A. Approval of Recreation and Park Commission -- When Required. Locations of Public Service Kiosks on real property owned by or under the jurisdiction of or immediately adjacent to property of the San Francisco Recreation and Park Department shall be subject to review and approval by the Recreation and Park Commission.

B. Approval of Port Commission: Bay Conservation Development Commission When Required. Locations of Public Service Kiosks on real property owned by or under the jurisdiction of the Port of San Francisco shall be subject to review and approval by the Port Commission which shall consider the Department of Public Works Work Orders in Appendix G and as may be modified from time to time by subsequent Director's orders in issuing such approval or disapproval. In addition, locations of Public Service Kiosks on real property located within one hundred feet (100') of the San Francisco Bay shoreline shall be reviewed by the Bay Conservation and Development Commission, in addition to any other necessary approvals.

3.10. Location Drawings and Engineering Plans for Public Service Kiosks. Location drawings submitted to CITY for approval for each licensed Public Service Kiosk shall contain a twenty feet (20') to one inch (1") scale (20:1 scale) representation of the proposed Public Service Kiosk site covering the area from the property line to the street centerlines at the nearest intersection. Mid-block sites can be shown with broken line ties. The drawing also shall give all necessary street dimensions, such as sidewalk width and street width, and denote all surface and subsurface structures, including hydrants, utility poles and catch basins, subsidewalk basements, transit shelters, bus stops and their accurate positions. After approval of a particular location (including any required public hearing), CONTRACTOR must also submit to the Department of Public Works engineering plans showing electrical service connections and foundation details for each Public Service Kiosk, which plans must be stamped and signed by an engineer registered with the State of California. CONTRACTOR is responsible for identifying all utility lines located beneath the Public Service Kiosk site and for showing all such utility lines on the location drawing. As described in Section 2.10, Location Drawings and Engineering Plans for Automatic Public Toilets, of this Agreement, the CITY must approve the location and engineering drawings and issue encroachment and excavation permits before CONTRACTOR may commence work on a particular site or location.

3.11. Electrical Connections and Service Responsibility of Contractor. CONTRACTOR shall bear the full responsibility, including all costs, of furnishing, installing and maintaining electrical services to each Public Service Kiosk permitted under this Agreement. CONTRACTOR shall arrange and perform all internal electrical components and hook-up procedures necessary to the installation of the Public Service Kiosks in accordance with the San Francisco Electrical Code. All electrical service lines at each Public Service Kiosk site shall be underground and shall originate from the point-of-service designated by CITY or by Pacific Gas & Electric Company (PG&E), respectively. CONTRACTOR may use City owned street lighting conduit provided that there is available space in the conduits. CONTRACTOR must obtain prior approval from CITY's Bureau of Light Heat and Power and provide said Bureau with a schedule in advance of any work on conduits and pull boxes. The CONTRACTOR must also maintain a log of its activities when performing such work. CONTRACTOR may not tap into the street lighting circuit unless approved by the Bureau of Light, Heat and Power. CONTRACTOR shall pay the same rate charged to CITY agencies. CONTRACTOR shall contact PG&E and arrange for additional service not provided by CITY and shall pay CITY or PG&E directly for all charges for service connections and electricity.

3.12. Restoration of Sites. When each Public Service Kiosk installation is complete, CONTRACTOR shall remove all access materials and restore the work area.

#### **Part 4. Advertising.**

4.01. Advertising Displays. Advertising posters may be displayed on Public Service Kiosks as provided in this Section.

4.02. Size and Location of Advertising. Advertising posters displayed pursuant to this Agreement shall not exceed fifty-two (52) square feet in area nor be greater than twelve feet (12') in height nor five feet (5') in width, and shall be located only within the two (2)

advertising display panels of each Public Service Kiosk, as selected by CONTRACTOR. The panels on the Public Service Kiosks may be illuminated up to twenty-four (24) hours a day at the discretion of CONTRACTOR; provided, however, in unusual circumstances CONTRACTOR shall, at the request of the Director, cooperate to agree upon mutually agreeable hours of illumination.

#### 4.03. Advertising Rights.

A. Commercial Advertising. CONTRACTOR, its employees or approved subcontractors, may contract with others to sell space for commercial advertising on the Public Service Kiosks. CONTRACTOR may also display on such panels its own advertisements and promotions designed to increase the sale of advertising space.

B. Noncommercial Advertising Space. CITY shall have the right to place informative material on the two (2) display panels on each Automatic Public Toilet and on one display panel on each Information Kiosk (as defined in Section 5.10, Public Service Use of Public Service Kiosks, Paragraph C, Information Kiosks, of this Agreement). Display panels on Information Kiosks located on Port Property shall be used exclusively for noncommercial PORT purposes. CONTRACTOR agrees to install and display informative material provided by CITY at no cost to CITY in a manner which neither interferes with advertising placed by CONTRACTOR nor generates overtime costs for CONTRACTOR; CITY agrees not to sell such reserved space to commercial advertisers either directly or through any intermediary.

C. Public Service Announcements. CONTRACTOR shall have the right, at its own discretion, to display free of charge certain public, educational, and charitable displays on space not contracted for use by paid advertisers and not otherwise being used by CONTRACTOR for purposes described in this Section.

4.04. Changes in Authorized Advertising. The parties mutually acknowledge and agree that the advertising rights granted under this Agreement are only incidental to the conduct of the CITY's municipal business. Accordingly, CONTRACTOR understands and agrees that the advertising rights granted herein may be affected by changes in the conduct of the CITY's municipal affairs. CITY shall have no liability for any such change affecting the level or scope of advertising authorized by this Agreement. CONTRACTOR acknowledges that the particular locations available for Public Service Kiosks may vary from time to time for various reasons, including administrative and/or legislative determinations by CITY relative to the desirability of having Public Service Kiosks in a particular location. CITY will give CONTRACTOR at least ninety (90) days written notice of any decision regarding changes required in advertising Public Service Kiosks. CITY will, where possible, identify replacement locations for any such advertising required to be removed from another location pursuant to such administrative and or legislative determination. Nothing in this Section 4.04 shall be construed to limit the provisions of Section 1.18, Termination of Agreement, Paragraph E, Change in Laws of this Agreement.

4.05. Design Considerations and Use of Materials. It is the intent of both CITY and CONTRACTOR to provide an advertising program which is effective and aesthetically pleasing to residents and visitors of San Francisco and which will be beneficial to both parties. The parties accordingly agree to maintain throughout the term of this Agreement a continual liaison and exchange of plans and information to assure successful implementation of this Agreement.

4.06. Advertising Material. CONTRACTOR is expected at all times to use good judgment in accepting any material for advertising on Public Service Kiosks. CONTRACTOR agrees to remove promptly, upon written demand by the Director of Public Works, or, with respect to advertising displays on Port Property, upon written demand by the Port Director, any advertisement deemed to be objectionable, on stated grounds which shall be reasonable and lawful.

4.07. Tobacco Advertising Prohibited. No advertising of cigarettes or tobacco products, including the display of the name of any company producing, selling or distributing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product, shall be displayed on any Public Service Kiosk installed under this Agreement. This prohibition shall not apply to any advertisement sponsored by a state, local or non-profit entity, which advertisement is designed to communicate the health hazards of cigarettes or tobacco products or to encourage people not to smoke or to stop smoking.

4.08. Public Information Campaign. CONTRACTOR shall develop and implement a public information campaign designed to educate the public about the Automatic Public Toilets and Public Service Kiosks and to encourage public cooperation in protecting the Automatic Public Toilets from misuse.

The public information campaign shall take place around the time that the Initial Phase of the Automatic Public Toilets become operational and shall include, but not be limited to, the following:

- A. Design and reproduction of printed material describing the use of the Automatic Public Toilets, and encouraging the public cooperation in the Automatic Public Toilets from misuse;
- B. Distribution of the printed materials, particularly through schools and nonprofit agencies serving the disabled and the homeless;
- C. Design, reproduction and installation of posters to be displayed in the Automatic Public Toilets and/or Public Service Kiosks; and
- D. Press releases to major media, including newspapers and radio and television stations.

#### Part 5. Maintenance and Operation.

5.01. Automatic Public Toilet and Public Service Kiosk Maintenance and Operation. CONTRACTOR shall have full responsibility to operate and maintain all Automatic Public Toilets and Public Service Kiosks installed under this Agreement as provided herein.

5.02. Hours of Operation. Each Automatic Public Toilet shall be operational twenty-four (24) hours every day; provided, however, that with the consent of the Director, which shall not be unreasonably withheld, the CONTRACTOR may close Automatic Public Toilets at particular locations from 12:00 a.m. to 6:00 a.m. if twenty-four (24) hour operation is resulting in unreasonably increased costs, including the cost of Vandalism. Any other change in the hours of operation must be agreed to by CONTRACTOR and Director.

5.03. Services to be Furnished by CONTRACTOR. CONTRACTOR, its employees, or authorized subcontractors shall provide the following services in connection with the maintenance and operation of the Automatic Public Toilets and Public Service Kiosks during the entire term of this Agreement:

A. Continuously maintain in a clean, graffiti-free, safe, and first-class condition, in a manner consistent with the more specific standards elsewhere provided in this Agreement, all Automatic Public Toilets, Public Service Kiosks, advertising panels, and any other displays installed under this Agreement;

B. Place, replace and maintain in a clean, graffiti-free, safe, in first-class condition, in manner consistent with the more specific standards elsewhere provided in this Agreement, all advertising copy, advertisements, posters, public information and display materials;

C. Make a continuous, full-time, and good faith effort to sell the greatest practicable amount of advertising;

D. Provide an experienced sales force;

E. Maintain an office and shop facilities in the City and County of San Francisco for JCDecaux San Francisco, Inc. which shall serve as the western United States headquarters and training center for JCDecaux public toilets and street furniture;

F. Assure the best quality design and production of exhibits and advertising material to be installed or used in advertising displays;

G. Provide the necessary personnel to assure the maintenance of Automatic Public Toilets and Public Service Kiosks and displays of advertising as provided herein.

5.04. Maintenance Schedule. CONTRACTOR shall be responsible for maintaining all Automatic Public Toilets and Public Service Kiosks installed under this Agreement in clean, graffiti-free, safe, first-class condition, throughout the duration of this Agreement, including refurbishing, reconditioning, and if necessary, replacing any Automatic Public Toilets and

Public Service Kiosks at no cost to the CITY. CONTRACTOR shall also develop a log for recording all inspections and maintenance work performed on each Automatic Public Toilet and Public Service Kiosk, as required in Section 1.13 Maintenance and Complaint Log, Paragraph A, Maintenance Log.

5.05. Inspection and Clean-Up of Automatic Public Toilets and Public Service Kiosks.

CONTRACTOR shall inspect each Automatic Public Toilet at least once per day (Sundays and bank holidays included) and shall inspect each Public Service Kiosk at least once per week. The foregoing is a minimum standard, and CONTRACTOR acknowledges that two or more inspections per day may be required, particularly at certain locations. CONTRACTOR shall inspect any site more frequently if conditions at that site so require. At the time of every inspection, CONTRACTOR shall, if necessary, clean and wash each Automatic Public Toilet and Public Service Kiosk. In addition, CONTRACTOR shall inspect all fixtures at each site and, if needed, shall replace defective fixtures within the time frames provided in Section 5.06 below. CONTRACTOR shall remove all graffiti, stickers, unauthorized posters and flyers, litter, dust, dirt and weeds and other rubbish from each Automatic Public Toilet and Public Service Kiosk. Notwithstanding any other provision of this Agreement, CONTRACTOR shall not be required to provide security personnel at the site of the Automatic Public Toilets or Public Service Kiosks.

5.06. Repair and Replacement. Upon observing or receiving notification of any damage, vandalism, or graffiti in, on or around any Automatic Public Toilet or Public Service Kiosk CONTRACTOR shall commence to repair or replace said damage, vandalism, or graffiti, within twenty-four (24) hours, exclusive of weekends and bank holidays. If an Automatic Public Toilet or Public Service Kiosk is destroyed, CONTRACTOR shall within twenty-four (24) hours secure or remove the remains of the Automatic Public Toilet or Public Service Kiosk and shall thereafter replace the Automatic Public Toilet or Public Service Kiosk at that site within three (3) months. In conjunction with such removal, CONTRACTOR shall, at its own expense, restore the affected sidewalk and curb area to a safe, finished condition. If CONTRACTOR does not maintain inspections as scheduled and remedy existing deficiencies within such time periods, CITY shall be entitled, upon twenty-four hours notice to CONTRACTOR (or such shorter notice as may be feasible in an emergency), to make the repairs and, at CITY's election, to (i) bill CONTRACTOR for the work performed, or (ii) recover any and all costs incurred from CONTRACTOR as provided in Section 1.13, Letter of Credit, Paragraph C, Default of Contractor. Any costs not so recovered shall be paid directly by CONTRACTOR to CITY upon submission of a proper invoice therefore Subject to extension for force majeure, if any Automatic Public Toilet requires repair such that it is out of operation for forty-eight (48) consecutive hours, exclusive of weekends and bank holidays, or if any Automatic Public Toilet is destroyed and has not been replaced within three (3) months, then CONTRACTOR shall pay to CITY the sum of one hundred eight dollars (\$108.00) per each day thereafter that such Automatic Public Toilet remains out of operation. For purposes of this Paragraph 5.06, "force majeure" shall mean delays in CONTRACTOR's performance of its obligations hereunder due to acts of God or of the public enemy, fires, floods, strikes, criminal acts of third parties, freight embargoes and unusually severe weather.



5.07. Vandalism of Automatic Public Toilets. Nothing in this Agreement shall be construed to impose on CITY any responsibility or liability for costs incurred by CONTRACTOR on account of Vandalism. In the event that CONTRACTOR's cost of repair and replacement of Automatic Public Toilets due to Vandalism during any of the first two years of operation should exceed Two Thousand Dollars (\$2,000) per Automatic Public Toilet per year, CONTRACTOR may, by notice to CITY, request that CITY negotiate in good faith possible modifications of this Agreement to reduce such cost or provide additional revenues. Such modifications may include relocation of Automatic Public Toilets for which maintenance is a particular problem, change in the ratio of Public Service Kiosks to Automatic Public Toilets, or any other modification which would reduce such costs or provide offsetting additional revenues. In no event shall CITY be required to agree to any particular modification of this Agreement, provided, however, that it will not unreasonably withhold approval of the relocation of an Automatic Public Toilet if the cost or replacement of such Automatic Public Toilet due to Vandalism has exceeded \$2,000 per year in both of its first two years of operation. If no modification of the Agreement satisfactory to CONTRACTOR is agreed upon after six (6) months, CONTRACTOR may, at its option, elect to terminate this Agreement upon ninety (90) days notice to CITY.

5.08. Charge For Use of Automatic Public Toilets.

A. CONTRACTOR shall have the right to charge for each use of the Automatic Public Toilets, subject to the limitations of this Section, and all revenue from such charges shall be retained by CONTRACTOR. The initial cost per use shall be twenty-five cents (\$.25). The cost per use may be increased (but need not be decreased) no more than once in any twelve (12) month period based on the percentage change since the Start Date in the most recently published Consumer Price Index (CPI) (Urban Wage Earners and Clerical Workers in San Francisco - Oakland Standard Metropolitan Statistical Area) as calculated on the date of the increase and rounded down to the next lower multiple of five cents (\$.05), unless a larger increase is approved by the Director.

B. At the discretion of CONTRACTOR, the Automatic Public Toilets may be coin-operated or operated by magnetically coded debit cards (similar to that currently used on the BART system). In addition, the Automatic Toilets may be operated by another revenue collection system approved by the Director, which approval shall not be unreasonably withheld. If CONTRACTOR adopts a magnetic card system or other system, the program for distribution of such cards shall be subject to the reasonable approval of the Director.

C. CONTRACTOR shall provide to the CITY a minimum of forty-thousand (40,000) tokens or cards which can be used to operate the Automatic Public Toilets or such higher number of tokens or cards as agreed to by CONTRACTOR and CITY. CONTRACTOR will distribute these tokens or cards through non-profit agencies to the homeless. As these tokens or cards are collected by the CONTRACTOR, they will be re-used for the purposes described in this Paragraph. From time to time, CONTRACTOR will provide additional tokens or cards, as necessary in CONTRACTOR's reasonable judgment, to replace lost tokens so that the estimated

total in circulation remains approximately forty thousand (40,000) tokens or such higher number as agreed to by CONTRACTOR and CITY.

5.09. Parking and Traffic Restrictions. CONTRACTOR shall install all Automatic Public Toilets and Public Service Kiosks whenever possible at hours of minimum pedestrian activity or at such hours as are approved by CITY. The Director will assist CONTRACTOR in obtaining from the Department of Parking and Traffic clearance to park CONTRACTOR's vehicles without penalty while CONTRACTOR is conducting installation and maintenance of the Automatic Public Toilets and Public Service Kiosks.

5.10. Public Service Use of Public Service Kiosks. One side of each of the Public Service Kiosks licensed pursuant to this Agreement shall not be used to display commercial advertising, but shall be used for public services as provided in this Section. CONTRACTOR shall determine which of the three sides of each Public Service kiosk is devoted to public service.

A. Newsstand Kiosks. Approximately eighty (80) of the Public Service Kiosks in the Initial Phase may be used as newsstands ("Newsstand Kiosks") and may replace existing newsstands operated by the San Francisco Newspaper Agency (the "Agency") or others. CONTRACTOR shall use its best efforts to obtain the permission of the Agency to replace its existing newsstands with a Public Service Kiosk which the Agency would continue to operate as a newsstand. CONTRACTOR intends to engage the Agency, which performs distribution functions for The San Francisco Chronicle, The San Francisco Examiner, and The San Francisco Sunday Examiner and Chronicle, to sell newspapers from the Newsstand Kiosks, subject of the requirements of this Agreement. CONTRACTOR shall use best efforts to cause the Agency, either itself or through a vendor's union or association, to carry and offer for sale in the Newsstand Kiosks various newspapers, based on a constitutional, non-content based allocation scheme such as frequency of circulation, with particular emphasis on satisfying customer interest and demand and maximizing income to the Agency or other vendor. The parties acknowledge and agree that the Agency or other vendor cannot carry and offer for sale all newspapers due to space limitations. At the option of the CITY, Newsstand Kiosks may be used for storage by the CITY.

B. Information Kiosks. A Public Service Kiosk may be an Information Kiosk. The public service panel of the Information Kiosks may display public information, maps, or cultural or public service announcement as determined by CITY, which displays shall in all events be of a non-commercial nature, except that identification of any commercial sponsorship may be up to ten percent (10%) of the display, contained in a band along the bottom of the display poster. Advertisements or announcements of or for nonprofit cultural events or institutions shall be considered to be of a non-commercial nature, so long as they contain no identification of any commercial sponsorship. CITY shall have sole responsibility for the selection, scheduling and coordination of all materials to be displayed on the public-service panels of the Information Kiosks, and CITY is expected at all times to use good judgment in accepting any materials for such display. CITY will be responsible for the delivery to

CONTRACTOR of the information to be displayed, printed in the size specified by CONTRACTOR and ready for installation, and for the provision of any specific instructions regarding the display locations for particular posters; provided, however, that CONTRACTOR shall provide maps pursuant to Section 2.08 of this Agreement. CONTRACTOR will be responsible for the installation of such materials in designated locations; provided, however, that CONTRACTOR may only be required to install such materials on the same day as it is otherwise installing new advertising posters in such Information Kiosks, which installation shall be performed at least monthly and on a schedule which CONTRACTOR shall provide in advance to CITY.

C. Public Art Kiosks; Contribution.

(1) Public Art Kiosks. A Public Service Kiosk may be a Public Art Kiosk. The public service panel of a Public Art Kiosk may be used solely for the display of art, designs, photos and graphics ("Public Art") furnished by the Art Commission. All Public Art display panels shall be back-lit at all times that CONTRACTOR's advertising panels on such kiosk are back-lit. All public agencies or non-profit arts groups wishing to display public art on the Public Art Kiosk display panels shall contact the Art Commission which will have sole responsibility for the selection, scheduling and coordination of all materials to be displayed on the Public Art panels, except that the Port Director shall also review and approve all Public Art displayed on kiosks on Port Property. The Art Commission will be responsible for the delivery to CONTRACTOR of the Public Art displays, printed in the size specified by CONTRACTOR and ready for installation, and for the provision of any specific instructions regarding the display locations for particular posters. CITY is expected at all times to use good judgment in accepting any Public Art for display on the Public Art Kiosks. Such displays shall in all events be of a non-commercial nature, except that identification of any commercial sponsorship may be up to ten percent (10%) of the display, contained in a band along the bottom of the Public Art display. CONTRACTOR will be responsible for the installation of the Public Art in designated locations; provided, however, that CONTRACTOR may only be required to install or remove such Public Art materials on the same day as it is otherwise installing new advertising posters in such Public Art Kiosk, which installation shall be performed no more than monthly and on a schedule which CONTRACTOR shall provide in advance to the Art Commission. CONTRACTOR shall use good faith efforts to carefully remove Public Art from the Public Art Kiosks and shall return any undamaged Public Art to the Art Commission; provided, however, that CONTRACTOR shall in no event be liable for damage to Public Art.

(2) Contribution. CONTRACTOR agrees to pay the Art Commission a contribution (the "Contribution") toward the cost of reproduction or extended print runs of such public art materials. The amount of the Contribution shall be Three Thousand Dollars (\$3,000.00) per year, adjusted as set forth below, provided, however, that after completion of the installation of the Automatic

Public Toilets and Public Service Kiosks in the Initial Phase, the amount of such Contribution shall be increased to Seventeen Thousand Two Hundred Dollars (\$17,200.00) per year, adjusted as set forth below, beginning with the first payment following the completion of installation of twenty (20) Automatic Public Toilets and ninety (90) Public Service Kiosks in the Initial Phase. CONTRACTOR shall pay the first such Contribution without adjustment on the Start Date. In each succeeding year during the term of the Agreement, CONTRACTOR shall pay the Art Commission the Contribution, adjusted on January 1 each year based on the percentage change in the most recently published Consumer Price Index ("CPI") (Urban Wage Earners and Clerical Workers in San Francisco - Oakland Standard Metropolitan Statistical Area (1982-1984 = 100)) on or after the anniversary date of the Start Date of this Agreement.

D. Other Public Services. From time to time during the term of this Agreement, CONTRACTOR may develop and make available additional public services which can be incorporated into the Public Service Kiosks. If such additional public services, including newspaper vending machines, and the terms and conditions upon which such services will be provided are agreed upon by the Director and CONTRACTOR, such new or additional public services may be a permitted use of the Public Service Kiosks hereunder.

E. Additional Public Service Kiosks. If CITY, in accordance with Section 2.04, Automatic Public Toilets Required To Be Installed. Paragraph C, Maximum Requirement, requires additional Automatic Public Toilets in excess of those in the Initial Phase, CITY, by notice to the CONTRACTOR, may designate the public service use of the associated additional Public Service Kiosks as Newsstand Kiosks, Information Kiosks, Public Art Kiosks or any combination thereof; provided, however that a maximum of one-half (1/2) of such additional Public Service Kiosks may be Newsstand Kiosks, and provided further that any increase in the number of Newsstand Kiosks above that in the Initial Phase shall be subject to the approval of the Agency or other vendor operating the Newsstand Kiosks. If new or additional public services are agreed upon pursuant to Paragraph E of this Section 5.10, such public services may be provided in additional Public Service Kiosks in accordance with the terms and conditions agreed upon by the Director and CONTRACTOR.

F. Interactive Media Kiosks. City has expressed an interest in Public Service Kiosks designed to accommodate an interactive media terminal which would provide information and could also process transactions, such as payment of parking fines, renewing municipal licenses, or purchasing tickets to cultural or sporting events ("Interactive Media Kiosks"). At the request of CITY, CITY and CONTRACTOR shall negotiate in good faith possible modifications to this Agreement to provide for the installation of Interactive Media Kiosks in the future, provided however, that with the following exception, in no event shall either CITY or CONTRACTOR be required to agree to any particular modification to this Agreement. In the event of such modification, the Agreement shall state that CITY may provide interactive media

terminals itself or through a separate contract with an interactive media provider, at CITY's sole option.

5.11. Relocation Costs. CONTRACTOR's obligation to relocate or remove Automatic Public Toilets and Public Service Kiosks pursuant to Sections 2.06, Relocation of Automatic Public Toilets, and 3.06, Relocation of Public Service Kiosks shall be subject to the provisions of this Section 5.11. In any twelve-month period CONTRACTOR shall be obligated to remove, at the CITY's direction, but at CONTRACTOR's cost and expense, either (i) one (1) Automatic Public Toilet, or (ii) up to three (3) Public Service Kiosks. In the event that the Director orders the removal or relocation of any Automatic Public Toilet or Public Service Kiosk which would exceed the limits of CONTRACTOR's obligation for such twelve-month period, and if CITY nonetheless instructs the CONTRACTOR to remove or relocate such Automatic Public Toilet or Public Service Kiosk after CONTRACTOR notifies CITY that such limit will be exceeded, then CITY shall reimburse CONTRACTOR for the costs incurred by CONTRACTOR in excess of such limit within one hundred twenty (120) days after submission of an invoice therefore by CONTRACTOR, accompanied by such supporting documentation as CITY may reasonably require. CONTRACTOR shall not be obligated to remove or relocate any such Automatic Public Toilet or Public Service Kiosk in excess of the limits provided in this Paragraph unless CITY provides a certification from its Controller that funds have been certified as available in the budget or by supplemental appropriation for such purpose. Even if CITY has the right to order the relocation of any Automatic Public Toilet or Public Service Kiosk at the cost of CONTRACTOR, CITY may nonetheless, subject to the foregoing provisions regarding reimbursement of CONTRACTOR, designate a particular relocation order to be at the cost of CITY or of a third party; provided that if the order is designated to be at the cost of a third party, assurances of payment, reasonably satisfactory to CONTRACTOR, shall be provided prior to such relocation.

#### **Part 6. Accessibility Requirements.**

6.01. Accessibility. All Automatic Public Toilets and Public Service Kiosks shall be universally accessible.

6.02. Accessible Design. Design of Automatic Public Toilets shall comply with all applicable federal, state and local law and regulation or barrier-free design, including but not limited to: the applicable provisions of the Uniform Fair Accessibility Standards (UFAS); the Americans with Disabilities Act, (ADA) (42 U.S.C. section 12101 et seq.); the Americans with Disabilities Act Accessibility Guidelines (See 28 CFR, Part 36); Title 24 of the California Code of Regulations, Part 2; the California State Accessibility Standards Interpretive Manuals; and all other applicable federal, state and local regulations. In the event of conflict between applicable laws and regulations, the more restrictive shall apply.

6.03. Path of Travel. Location of Automatic Public Toilets and Public Service Kiosks shall not obstruct the path of travel for persons with disabilities. See DPW Orders 163,368 and 163,369 for the specific clearance requirements with which CONTRACTOR shall comply.

6.04. Approved Cleaning Products. CONTRACTOR shall only use cleaning products that meet all applicable laws and regulations pertaining to accommodation of chemical sensitivities.

6.05. Automatic Public Toilet Review Committee. There shall be established an Automatic Public Toilet Review Committee comprised of the following: the Director, or another employee of the Department of Public Works designated by the Director; the Department of Public Works Disability Coordinator; the Port Director, or another employee of the PORT designated by the Port Director; up to three (3) representatives of CONTRACTOR; and the following four members who shall be appointed by the Mayor: one (1) private citizen active in issues of importance to the disabled community; one (1) representative from the tourism industry; one (1) representative from the business community; and one (1) representative knowledgeable in issues affecting the homeless. Meetings of the Committee shall be scheduled by the Director or his designee as necessary during the term of the Agreement to evaluate the Automatic Public Toilet system and make recommendations to CITY and CONTRACTOR with respect thereto. If pursuant to Section 5.07, Vandalism of Automatic Public Toilets, CONTRACTOR gives notice to the CITY of a request to negotiate possible modifications of the Agreement because of excess costs of vandalism, the Committee shall meet and make recommendations regarding possible modifications or other means to reduce vandalism or misuse of the Automatic Public Toilets.

6.06. Disabled Access Advisory Committee. CONTRACTOR shall establish a Disabled Access Advisory Committee to meet regularly to ensure that the Automatic Public Toilet program fully serves the needs of the entire community.

#### **Part 7. Miscellaneous Contract Provisions.**

7.01. San Francisco Office. CONTRACTOR shall maintain a fully staffed business office within the City and County of San Francisco in order to facilitate coordination between CITY and CONTRACTOR. This office shall serve as CONTRACTOR's western United States headquarters and training center. All training conducted by CONTRACTOR on and for the western United States shall take place at this center.

7.02. Conflict of Interest. CONTRACTOR states that it is familiar with provisions of Section 8.105 of the Charter of CITY, and Section 87100 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitute a violation of said provisions.

7.03. Other Agreements between CITY and CONTRACTOR. CONTRACTOR agrees that to the best of its knowledge and belief neither it nor any of CONTRACTOR's employees has any interest, however remote, in any other agreement with CITY, whether or not such agreement is with CONTRACTOR's firm, affiliate firms, or through separate employment. Failure to disclose such information may result in termination of this Agreement pursuant to Section 1.19 Event of Default, Remedies, herein.

7.04. Assignment. This Agreement and the rights granted therein may not be assigned by CONTRACTOR without the prior written consent of CITY, except as otherwise herein

provided. The CITY's consent to any such assignment may be conditioned upon an increase in payments to be made by CONTRACTOR to CITY under this Agreement. If CONTRACTOR is a corporation, any dissolution, merger, consolidation, or other reorganization of CONTRACTOR assets or operations, or the sale or other transfer of a controlling percentage of CONTRACTOR's capital stock, except by reason of death or mental incapacity, or the sale of fifty-one percent (51%) of the value of CONTRACTOR's assets, shall be deemed an involuntary assignment not requiring the CITY's approval or consent. The phrase "controlling percentage" shall mean the ownership of and the right to vote upon, stock possessing at least fifty-one percent (51%) of the total combined voting power of all classes of CONTRACTOR's capital stock issued, outstanding and entitled to vote for the election of directors.

7.05. Binding Effect of Agreement. This Agreement shall bind and inure to the benefit of the all the successors or assigns of the parties hereto.

7.06. Taxes.

A. CONTRACTOR acknowledges and agrees that during the entire term of this Agreement, CONTRACTOR shall pay prior to delinquency, all lawful taxes and assessments, including, but not limited to, possessory interest taxes and California Sales and Use Taxes, assessed, imposed or levied upon this Agreement, the transaction, CONTRACTOR's interest under this Agreement, any of CONTRACTOR's property or the CITY's property which is the subject of this Agreement or the services delivered pursuant hereto to the full extent of installments or amounts payable arising during the term of this Agreement.

B. Without limiting Section 7.06A, CONTRACTOR agrees as follows:

(1) CONTRACTOR, on behalf of itself and any permitted successors, assigns and subcontractors, recognizes and understands that this Agreement may create a possessory interest subject to property taxation and CONTRACTOR, and any permitted successor assign, or subcontractor may be subject to the payment of such taxes.

(2) CONTRACTOR, on behalf of itself and any permitted successors, assigns and subcontractors, further recognizes and understands that any subcontract or assignment permitted hereunder and any exercise of any option to renew or other extension of this Agreement may constitute a change in ownership within the meaning of the California Revenue and Taxation Code and therefore may result in a reassessment of any possessory interest created hereunder in accordance with applicable laws. CONTRACTOR shall report any subcontract, assignment or other transfer of any interest in this Agreement or any renewal or extension thereof to the County Assessor within sixty days after such assignment, transfer, renewal or extension.

(3) San Francisco Administrative Code Sections 6.63-1 and 6.63-2 require CITY to report certain information relating to this Agreement and the creation,

renewal, extension, assignment or the transfer of any interest granted hereunder to the County Assessor within sixty (60) days after any such transaction and within thirty (30) days following the date of any transaction that is subject to reporting requirements. CONTRACTOR shall provide such information as may be requested by the CITY to enable the CITY to comply with any reporting requirements under applicable law with respect to possessory interests.

C. CONTRACTOR shall pay or reimburse CITY, as the case may be, for any fine, penalty, interest or costs which may be added by the collecting authority to late payment or any nonpayment of any tax or other imposition required to be paid by CONTRACTOR under this Agreement.

D. Within a reasonable time following the CITY's written request, given from time to time, CONTRACTOR shall deliver to CITY copies of official receipts of the appropriate taxing authorities, or other proof reasonably satisfactory to CITY, evidencing the timely payment of such taxes.

E. All taxes and impositions for the tax years in which the Original Effective Date occurs or during the tax year in which this Agreement terminates shall be apportioned and prorated between CITY and CONTRACTOR on the basis of the number of days occurring in such period.

7.07. No Other Fees. Except as expressly provided in this Agreement, and except for taxes, fees and charges duly imposed and of general applicability, no other tax, fee or charge imposed by the CITY shall be due to CITY from CONTRACTOR on account of the Automatic Public Toilets and Public Service Kiosks authorized hereunder, including, but not limited to, the installation, location or use thereof for advertising. In the event that such a tax, fee or charge is imposed, CITY agrees to reimburse CONTRACTOR for the amount of any such tax, fee or charge.

7.08. Legal Relationship. The parties hereby declare that it is not their intention by this Agreement or any of the terms thereof to create a partnership, joint venture or agency relationship between them.

7.09. Independent Contractor.

A. CONTRACTOR shall be deemed at all times to be an independent contractor and shall be wholly responsible for the manner in which CONTRACTOR performs the service required of CONTRACTOR by the terms of this Agreement. CONTRACTOR shall be liable for the acts and omissions of it, its employees and its agents. Nothing contained herein shall be construed as creating an employment or agency relationship between CITY and CONTRACTOR. Terms in this Agreement referring to direction from CITY shall be construed as providing for direction as to policy and the result of CONTRACTOR's work only and not as to the means by which such a result is obtained.



B. Should the CITY, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that CONTRACTOR is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by CONTRACTOR which can be applied against this liability). The CITY shall then forward those amounts to the relevant taxing authority.

C. A determination of employment status pursuant to the preceding paragraph shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, CONTRACTOR shall not be considered an employee of the CITY. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that CONTRACTOR is an employee for any other purpose, then CONTRACTOR agrees to a reduction in the CITY's liability resulting from this Agreement pursuant to principles similar to those stated in the foregoing paragraphs so that the total expenses of the CITY under this Agreement shall not be greater than they would have been had the court, arbitrator, or administrative authority determined that CONTRACTOR was not an employee.

7.10. Qualified Personnel. Work under this Agreement shall be performed only by competent personnel under the supervision of and in the employment of CONTRACTOR. CONTRACTOR will conform with CITY's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at CITY's request, shall be supervised by CONTRACTOR.

7.11. Minority/Women Business Utilization.

A. CONTRACTOR shall make good faith efforts to use the services of Minority Business Enterprises and Women Business Enterprises in the service agencies, suppliers, contractors and subcontractors utilized in the performance of this Agreement. The terms "good faith efforts", "Minority Business Enterprise", and "Women Business Enterprise" shall have the meanings set forth in Section 12D.5 of the San Francisco Administrative Code as of the date hereof, the provisions of which are incorporated herein by reference and made a part of this Agreement as though fully set forth.

B. CONTRACTOR shall demonstrate hiring practices to include minorities, people with disabilities, and homeless. Except as expressly set forth above, it agreed that this Agreement is not subject to the provisions of San Francisco Administrative Code Sections 12D.

C. CONTRACTOR agrees to prepare and submit to CITY within twelve (12) months after the Start Date of this Agreement a written report of efforts undertaken by CONTRACTOR to obtain and use the services of Minority Business Enterprises and Women Business Enterprises in the service agencies, suppliers, contractors and

subcontractors utilized in the performance of this Agreement. Thereafter, CONTRACTOR shall submit such reports to CITY upon request.

7.12. Nondiscrimination; Penalties.

A. CONTRACTOR Shall Not Discriminate. In the performance of this Agreement, CONTRACTOR agrees 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 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 CONTRACTOR, in any of CONTRACTOR's 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 CONTRACTOR.

B. Subcontracts. CONTRACTOR shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code (copies of which are available from CITY) and shall require all subcontractors to comply with such provisions. CONTRACTOR's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

C. Non-Discrimination in Benefits. CONTRACTOR does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco or where the work is being performed for the CITY or elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

D. Condition to Contract. As a condition to this Agreement, CONTRACTOR shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.

E. Incorporation of Administrative Code Provisions by Reference. The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement

as though fully set forth herein. CONTRACTOR shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, CONTRACTOR understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against CONTRACTOR and/or deducted from any payments due CONTRACTOR.

7.13. MacBride Principles -- Northern Ireland. The CITY urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The CITY urges San Francisco companies to do business with corporations that abide by the MacBride Principles. By signing below, the persons executing this Agreement on behalf of the CONTRACTOR acknowledge and agree that they have read and understood this section.

7.14. Tropical Hardwood and Virgin Redwood Ban. The CITY urges contractors not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood products, virgin redwood or virgin redwood products.

7.15. Resource Conservation. Reports required to be submitted under this Agreement shall be on recycled paper and printed on double-sided pages to the maximum extent possible.

7.16. Non-Waiver of Rights. The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

7.17. Modification and Amendment of Agreement. This Agreement may be modified or amended only by a written instrument signed by both CITY and CONTRACTOR, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement.

7.18. Section Headings. The section headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provision hereof.

7.19. Agreement Made in California; Venue. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California, excluding its conflict of laws rules. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

7.20. Construction. All paragraph captions are for reference only and shall not be considered in construing this Agreement.

7.21. Entire Agreement. This Agreement, including all Appendices hereto, sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. This Agreement may be modified only as provided in Section 7.17, Modification and Amendment of Agreement.

7.22. RELOCATION AND TERMINATION: WAIVER OF RIGHTS. CONTRACTOR ACKNOWLEDGES THAT THIS AGREEMENT INCLUDES PROVISIONS GRANTING TO CITY, SUBJECT TO CERTAIN TERMS AND CONDITIONS, THE RIGHT TO ORDER THE REMOVAL AND RELOCATION OF A LIMITED NUMBER OF PUBLIC SERVICE KIOSKS AND, SUBJECT TO CERTAIN TERMS AND CONDITIONS, THE RIGHT TO TERMINATE THE AGREEMENT AND UPON SUCH TERMINATION TO ORDER THE REMOVAL OF ALL PUBLIC SERVICE KIOSKS. CONTRACTOR FULLY WAIVES, RELEASES AND RELINQUISHES FOREVER ANY AND ALL CLAIMS, DEMANDS, RIGHTS AND CAUSES OF ACTION THAT IT MAY HAVE AGAINST THE CITY UNDER THE OUTDOOR ADVERTISING ACT (BUSINESS AND PROFESSIONS CODE, SECTION 5200 ET SEQ.), ANY AMENDMENTS THERETO OR OTHER FUTURE LAWS, FOR ANY COMPENSATION FROM CITY NOT OTHERWISE PROVIDED FOR HEREIN, INCLUDING THE PAYMENT OF JUST COMPENSATION, AS DEFINED IN THE EMINENT DOMAIN LAW (TITLE 7, COMMENCING WITH SECTION 1230.010, OF PART 3 OF THE CODE OF CIVIL PROCEDURE), IN THE EVENT CITY LAWFULLY EXERCISES ANY SUCH RIGHTS IN ACCORDANCE WITH THE PROVISIONS OF THIS AGREEMENT.

7.23. Submitting False Claims; Monetary Penalties.

CONTRACTOR acknowledges that it is subject to San Francisco Administrative Code Section 6.57, which provides that any contractor, subcontractor or consultant who submits a false claim shall be liable to the CITY for three times the amount of damages which the CITY sustains because of the false claim. A contractor, subcontractor or consultant who submits a false claim shall also be liable to the CITY for the costs, including attorney's fees, of a civil action brought to recover any of those penalties or damages, and may be liable to the CITY for a civil penalty of up to \$10,000 for each false claim. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the CITY if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the CITY a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the CITY; (c) conspires to defraud the CITY by getting a false claim allowed or paid by the CITY; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the CITY; or (e) is a beneficiary of an inadvertent submission of a false claim to the CITY, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the CITY within a reasonable time after discovery of the false claim.

7.24. Prohibiting CITY Business With Burma.

By its execution of this Agreement, CONTRACTOR attests that it is not the government of Burma (Myanmar), a person or business entity organized under the laws of Burma (Myanmar) or a "prohibited person or entity" as defined in San Francisco Administrative Code section 12J.2(G). The CITY may terminate this Agreement for default if CONTRACTOR violates the terms of section 12J.2(G).

Chapter 12J of the San Francisco Administrative Code is hereby incorporated by reference as though fully set forth herein. The failure of CONTRACTOR to comply with any of its requirements shall be deemed a material breach of contract. In the event that CONTRACTOR fails to comply in good faith with any of the provisions of Chapter 12J of the San Francisco Administrative Code, CONTRACTOR shall be liable for liquidated damages for each violation in an amount equal to CONTRACTOR's net profit under the contract, or 10% of the total amount of the contract, or \$1,000, whichever is greatest. CONTRACTOR acknowledges and agrees that the liquidated damages assessed shall be payable to the CITY upon demand and may be set off against any moneys due to the CONTRACTOR from any CITY contract.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed, in quintuplicate, by their duly authorized officers, on the day and year first herein above written.

CITY

CITY AND COUNTY OF SAN FRANCISCO, a California municipal corporation

Recommended by:

*Barbara L. Moy*

Barbara L. Moy  
Printed Name

Manager, Bureau of Street-Use & Mapping  
Title and Department

Approved as to Form:

Louise H. Renne  
City Attorney

By Angela Karikas  
Deputy City Attorney

Approved:

*Mark Primeau*  
Mark Primeau  
Director, Department of Public Works

Approved:

*Douglas F. Wong*  
Douglas F. Wong  
Port of San Francisco

Approved:

*Willie L. Brown, Jr.*  
The Honorable Willie L. Brown, Jr.  
Mayor of San Francisco

CONTRACTOR

JCDecaux San Francisco, Inc.,  
a California corporation

*JCDecaux*  
Authorized Signature

Jean-Francois Decaux  
Printed Name

Chief Executive Officer  
Title

*JF Nion*  
Authorized Signature

Jean-Francois Nion  
Printed Name

Sr. Vice President  
Title

470 Eighth Street  
Address

San Francisco, CA 94103  
City, State and ZIP

(415) 487-2300  
Phone Number

94-3211833  
Federal Employer Number

APPENDIX A

LOCATIONS OF TRANSIT SHELTER KIOSKS IN THE DOWNTOWN AREA



## Locations of Transit Shelter Kiosks in the Downtown Area

	<u>Location</u>	<u>Corner</u>
1.	Steuart/Market (2 kiosks)	SE
2.	Market/Steuart	SW
3.	Market/Drumm	NE
4.	Market/Front	NE
5.	Market/Sansome	NW
6.	Market/Beale	SE
7.	Market/Montgomery	NW
8.	Market/Grant	NW
9.	Market/Grant	SE
10.	Market/Powell	NE
11.	Market/Powell	SE
12.	Market/Mason	NW
13.	Market/Mason	SE
14.	Market/Third	SE
15.	Market (S/S) Mid-block 1 <sup>st</sup> -2 <sup>nd</sup> Streets	
16.	Market (S/S) Mid-block 6 <sup>th</sup> -7 <sup>th</sup> Streets	
17.	Market (S/S) Mid-block 7 <sup>th</sup> -8 <sup>th</sup> Streets	
18.	Market (S/S) Mid-block 8 <sup>th</sup> -9 <sup>th</sup> Streets	
19.	Market/7 <sup>th</sup> Streets	NE
20.	Market/Hyde	NE
21.	Market/Larkin	NW
22.	Market/Polk	NW
23.	Market/Van Ness	NW
24.	Market/11 <sup>th</sup> Streets	SW
25.	Market/10 <sup>th</sup> Streets	SE

APPENDIX B

LOCATION OF FIRST 20 PUBLIC TOILETS AND PRELIMINARY LOCATIONS OF  
THE REMAINING 7 PUBLIC TOILETS IN THE INITIAL PHASE

## **Locations of Automatic Public Toilets (APT) Already Installed**

1. St. Mary's Square (Pine and Quency)
2. Mission and 6th
3. Mission and 24th
4. Mission and 16th
5. Grove/Larkin (Civic Center Plaza)
6. Market and 7<sup>th</sup> (UN Plaza)
7. Larkin and O'Farrell (MaCauley Park)
8. Eddy and Jones (Boedecker Park)
9. Market and Powell
10. Geary and Powell (Union Square)
11. Market and California
12. Justin Herman Plaza
13. Fisherman's Wharf (Jefferson and Powell)
14. Fisherman's Wharf (Jefferson and Powell)
15. Bay and Taylor
16. Marginal Wharf at Pier 7
17. Stanyan/Waller
18. Union/Columbus, Washington Square
19. First/Mission (Transbay Terminal)
20. Market/17<sup>th</sup>

## **Preliminary Locations of the Remaining 7 APTs in the Initial Phase**

(All Locations subject to Public Hearing)

21. Coit Tower
22. John McLaren Park
23. Treasure Island (near guard shad)
24. Treasure Island (near fishing pier)
25. Cesar Chavez and Mission
26. Page and Buchanan
27. Kearny and Jackson

APPENDIX C

AUTOMATIC PUBLIC TOILET PLANS AND SPECIFICATIONS

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## GENERAL INFORMATION

The JCDecaux automatic public toilet is a self-cleaning oval-shaped self-contained structure with three main components:

- A) Exterior
- B) Interior Public Area
- C) Technical Area

## A. SPECIFICATIONS FOR EXTERIOR

The unit is constructed of a concrete shell with decorative exterior panels of painted textured aluminum, an aluminum door, cast iron base and corner panel, glass-covered information panels, and a fiberglass roof.

From the exterior, the public area is accessed by a coin-operated automatic door and the technical area is accessed by a door operated by an infrared device. The location of each unit will be selected to provide easy access for the public and the maintenance crew. A minimum clearance of 3.5' is necessary to open the two doors of the glass information panels and the technical door.

### 1. DIMENSIONS

The overall exterior dimensions of the unit are approximately:

Height: 9'10"

Width: Base: 7'1"  
Body: 6'10"

Length: 12'5"

Footprint Area: 77.5 square feet

Weight: 22,000 pounds

---

## 2. INFORMATION PANELS

The two long sides of the unit each carry a 5.7' x 4' back-lit framed glass panel to display city information posters. The two panels are equipped with 4 fluorescent tubes diffused by translucent plastic. The posters are hung from the top and protected by the locked glass panels. The panels are hinged at the top and open at the bottom for mounting the posters.

## 3. COINER PANEL

The coiner panel is constructed of painted cast iron. It includes a coin slot and coin return, back-lit instructions in different languages (including Braille), the word "TOILET" in raised letters, an LED display indicating "Vacant," "In Use," "Cleaning," "Closed/Open From X:00 To X:00," "Out Of Order," as well as additional information on how to use the public toilet.

## B. SPECIFICATIONS FOR PUBLIC AREA

### 1. DIMENSIONS

The public area has approximately 42 square feet of space.

### 2. ACCESS

Access to the public area is gained by a door that travels a quarter-circle sector, and is suspended from the ceiling and guided at the bottom. To gain access to the public area, the user inserts 25 cents or a special token into the coin slot, which activates the release of the door. This can occur only when the cleaning cycle is complete and the indicator panel shows "Vacant."

### 3. PUBLIC DOOR

The public access door is a metal sandwich panel filled inside with rockwool. The exterior panel is made of painted textured aluminum and the interior of stainless steel. The door has a translucent window.

The door is electrically-powered, but it can be opened manually from inside in the event of an electric power failure or at any other time.

In case of emergency, a special key mechanism allows the public door to be opened from the exterior by authorized personnel (JCDecaux technicians, police, fire, or other security personnel).

The public door is approximately 7.3' high, 2.8' wide, and 2" deep.

**To enter the unit:** The door can be closed manually by the user, either by operating the interior door handle or by pushing a button. The door will not close, however, if the weight detection system in the unit has not registered a weight that is at least equivalent to the approximate weight of 55 lbs. If the user enters the unit but does not activate the door, it will close automatically after 10 seconds. The door will also close automatically after 60 seconds if a user has activated it from the exterior but has not yet entered the unit.



To exit the unit: The public area door can be opened from the interior, by two methods:

- By operating the interior handle which releases the opening catch, even in case of power failure.
- By operating either of two interior push plates on the wall adjacent to the door which releases the opening catch. One is located at footrest level for wheelchair users or for an ill or injured user lying on the floor, the other at a height of 36".

The door contains a special sensitive feature that enables it to re-open automatically if pressure is applied to the edge. The door will try to close again and will slow its movement at the precise location where it had made contact.

The door opens automatically after 20 minutes and stays open until the user leaves, as determined by the detection system. If the user has not exited after five minutes more, an alarm rings in the unit, and the JCDecaux office is alerted that the door has remained open for too long.

After the user has exited — as determined by the unit's detection systems — the door will automatically close/lock for the unit's cleaning cycle prior to the next use.

#### 4. PUBLIC AREA FLOOR

The public area floor is made of painted grooved aluminium.

The floor is fitted with an electronic weight detection system to detect the presence of a user in the public area.

The floor has a self-cleaning system which operates after each cycle, and is slightly inclined towards the bowl (at a maximum of 1/4 of an inch per foot) to facilitate drainage of the water during washing. There is a gap of 3 inches between the floor and part of the wall under the sink and toilet bowl to allow water and dirt to be deposited in a specially-designed basin inside the technical area.

The floor can be removed for maintenance by means of a mechanism in the technical area.

## 5. WALLS AND CEILING

The walls and ceiling are made of polished concrete protected by an anti-graffiti, anti-adhesive paint. The ceiling is fitted with the following features:

- Central light fixture.
- Ventilation exhaust.
- Red light that flashes when a user has been in the unit for 18 minutes, to warn him or her that the door will open in two minutes.

## 6. TOILET BOWL

The toilet bowl is made of enameled porcelain. The seat contains an antifreeze system to ensure that a comfortable temperature is maintained.

The toilet bowl and seat are automatically washed, disinfected and air-dried after each use. The bowl and seat retract into the wall, where sewage is released into a trap that is directly below the bowl when it is in this upright position. The seat and bowl are washed with high-pressurized water and a cleaning agent. After air drying, the mechanisms pivot back into the public area, and the bowl is refilled with clean water.

The cleaning cycle consumes approximately 1.3 gallons of water, and an additional .4 gallons of water are used to refill the bowl.

The bowl is fitted with a weight sensitive device so that it will not retract (or will stop the retracting or cleaning cycle) if more than 6 pounds is detected on the front edge of the bowl.

The bowl retraction movement is inhibited if the bowl has not tilted after 12 seconds.

## 7. BACKREST

The painted aluminum backrest tilts back into the wall for cleaning, disinfecting, and air drying after each use. This is accomplished during the automatic self-cleaning cycle of the toilet bowl and seat.

## 8. SINK

The recessed sink contains an infrared sensor that detects the user's hands and triggers the automatic washing cycle – providing soapy water for washing, clear water for rinsing, and warm air for drying.

The water and dryer automatically shut off and cannot be activated after the 20 minute time limit for each user.

## 9. FEATURES

- Two coat hooks mounted at two convenient heights.
- "Accordion feed" toilet paper dispenser stocking over 700 feet of paper.
- Built-in trash bin, capacity 4 gallons.
- Full-length oval mirror, dimensions 63" x 16".
- Audio instructions activated by a push button.
- Written instructions in Braille and multiple languages.
- Five grab bars, three of which exceed accessibility requirements.
- Door handle.
- One "Open/Close" push plate at 36".
- One "Open" push plate at floor level.
- Two 911 push buttons to connect a sick or injured user directly to 911 personnel. The buttons must be activated twice to connect to 911 – after the first activation an audio message asks the user to confirm that there is an emergency by pushing the button again. One button is located above the large horizontal grab bar on the wall adjacent to the toilet, the other near the floor. The speaker and microphone are built into the unit itself so that the user can communicate hands-free. Instructions on and around the buttons describe how to use them.
- Audio message and warning light that are triggered when a user has remained in the unit for 18 minutes, signaling that the door will open in 2 minutes.

## **10. LIGHTING**

### **10.1. Natural Lighting**

Natural lighting is provided through two translucent windows – one located in the public door and the other in the wall.

### **10.2. Artificial Lighting**

Electric lights are mounted in the center of the ceiling.

## **11. VENTILATION**

There are two types of ventilation:

### **11.1. Mechanical Ventilation**

Air is exhausted from the public area through an opening located on the ceiling near the ceiling light. Fresh air is supplied to the public area via the ventilation panel which is located under the sink.

### **11.2. Natural Ventilation**

Natural ventilation is available via an opening at the top of skydome and through free space under the door.

## **12. HEATING**

The heating system is located in the technical area, and is thermostatically controlled. Heat is pumped into the public area through the ventilation panel located under the sink.

The heating system provides a minimum temperature of approximately 45°F when the public area is vacant and a temperature between approximately 55°F and 65°F when the public area is occupied.

## C. SPECIFICATIONS FOR THE TECHNICAL AREA

### 1. ACCESS

An aluminum door on the exterior of the unit gives access to the technical area, including the bowl and cleaning mechanism, the water tank/pump, space heater, programmable controller, electrical cabinet, water filter, and cleaning supplies.

The door is opened by means of an infrared key system used only by authorized personnel.

An aluminum panel surrounding the toilet bowl and backrest can be unlocked from the technical area to gain access to the mechanical cleaning and bowl retraction components from the public area.

### 2. COIN BOX UNIT

The cast aluminum coin box, meter, and cover are located behind the coiner panel next to the public access door.

They are mechanically locked and unlocked by JCDecaux technicians by means of an infrared system.

### 3. MAIN COMPONENTS OF THE TECHNICAL AREA

The technical area includes several subassemblies:

#### 3.1. A mechanical assembly performing the following functions:

- Retraction of the toilet bowl and backrest
- Washing
- Drying

3.2. A cabinet housing the electronic components and the computer that monitors the unit's performance. Information about the unit's systems are transmitted to the computer via built-in sensors and devices that monitor all functions of the unit — such as the drying duct that dries the toilet seat and backrest, the level of water in the trap and the water supply system, and the functioning and timing of all mechanical movements. In the event of the detection of any faults, the cleaning cycle is inhibited, the unit goes "Out Of Order", and the JCDecaux office is alerted for technical assistance.

Each main piece of electrical equipment — pumps, heater, motors — has its own fuse for security, while some smaller electrical components which don't run together are connected on the same fuse.

3.3. A water system including:

- 3 gallon tank.
- Centrifugal pump supplying the toilet bowl and floor washing system. This pump provides a constant supply of pressure to the washing mechanics.
- Back flow preventer.
- Internal circuit stopcocks, gatevalves and solenoid valves.

3.4. A ventilation system providing the following functions:

- Ventilation for the unit.
- Heating for the unit.
- Hand dryer system.

#### 4. ROOF

The roof is constructed of molded fiberglass polyester.

The roof tilts upward to allow access to:

- Door mechanism.
- Water tank for the floor cleaning system.
- Electrical components for the lighting system of the information panels.
- Light fixture for the interior of the unit — if necessary, this can be removed for access through the ceiling to the public area.
- Emergency access to open the public door.

A small gap all along the roof and the two holes holding the decorative balls on the roof provide ventilation of the roof area.

### 5. SEWAGE

The trap is located just underneath the toilet bowl when it is in a vertical position. A 5" diameter U-bend connects directly to the sewer. The trap is fitted with a sensor that monitors the water level, in case of a U-bend clog. Just beyond the U-bend there is an air vent that connects to the roof.

### 6. RAINWATER

The unit is covered by an overhanging waterproof roof. A gutter located above the door and coiner drains rainwater from the roof via a 2" pipe which discharges into the trap.

### 7. DISINFECTION

The disinfection system includes a dosage pump which mixes a premeasured amount of a cleaning agent with water to wash the toilet bowl, seat, backrest, and hand basin.

### 8. EQUIPMENT PROTECTION

- Steel: SA3 shot blasting and 80 micron metal plating, with a polyester powder paint.
- Stainless Steel: no protection necessary.
- Aluminum: degreased, cleaned and coated with a polyester powder paint, oven-blasted at 356°F, thickness 100 microns.
- Concrete: Interior walls are polished concrete, protected by anti-graffiti and anti-adhesive paint.

## D. SPECIFICATIONS FOR INSTALLATION OF THE UNIT

### 1. FOUNDATION

The foundation consists of a reinforced concrete slab block which allows space for the connections to water, electricity, telephone and sewer systems. Each location must be selected to facilitate these connections.

The unit is bolted to the slab.

Total depth of excavation: approximately 3 feet.

The foundation is designed to be installed on stable ground, with a resistance of 1 bar. Soil resistance analysis may be required.

Concrete slab: 350 kg (771.75 pounds) cement per each meter<sup>3</sup> (1.093 yard<sup>3</sup>) of concrete.

Total weight of the structure: approximately 22,000 lbs.

### 2. SEWAGE

A 5-inch pipe connects the unit to the sewer.

### 3. WATER SUPPLY

The minimum internal diameter of the water supply pipe is 1 inch.

### 4. TELEPHONE

The unit must be connected to local telephone lines for 911 calls and for the transmittal of information from the computer checking the operations of the unit to JCDecaux's local office.



## 5. ELECTRICITY

Electric power required is:

. 7 KVA three phases 120/208V . 60HZ (3 phases, 4 wires multiwire branch circuit with neutral grounded)

or:

. 7 KVA single phase 120V . 60HZ (1 phase, 2 wires multiwire branch circuit with neutral grounded)

or:

. 7 KVA single phase 120V/240V . 60HZ (1 phase, 3 wires multiwire branch circuit with neutral grounded)

There is a separate cabinet, accessible from the exterior, that contains the electric meter and a general fuse disconnect switch.

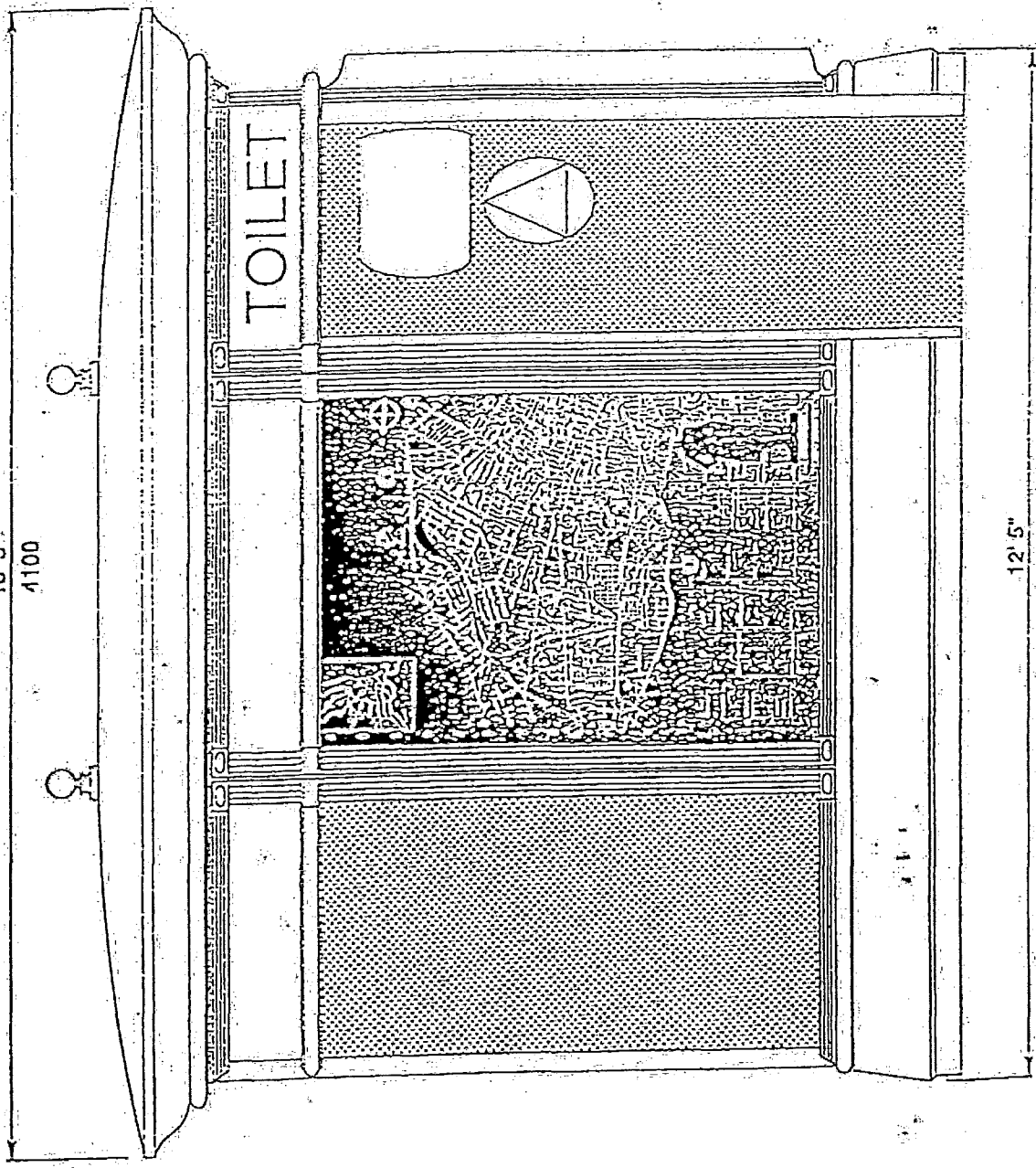
A ground mat will be placed below the foundation.

The user is never in contact with the electrical circuit inside the unit. The push buttons requiring power are on low voltage 24V.



13' 5"

4100

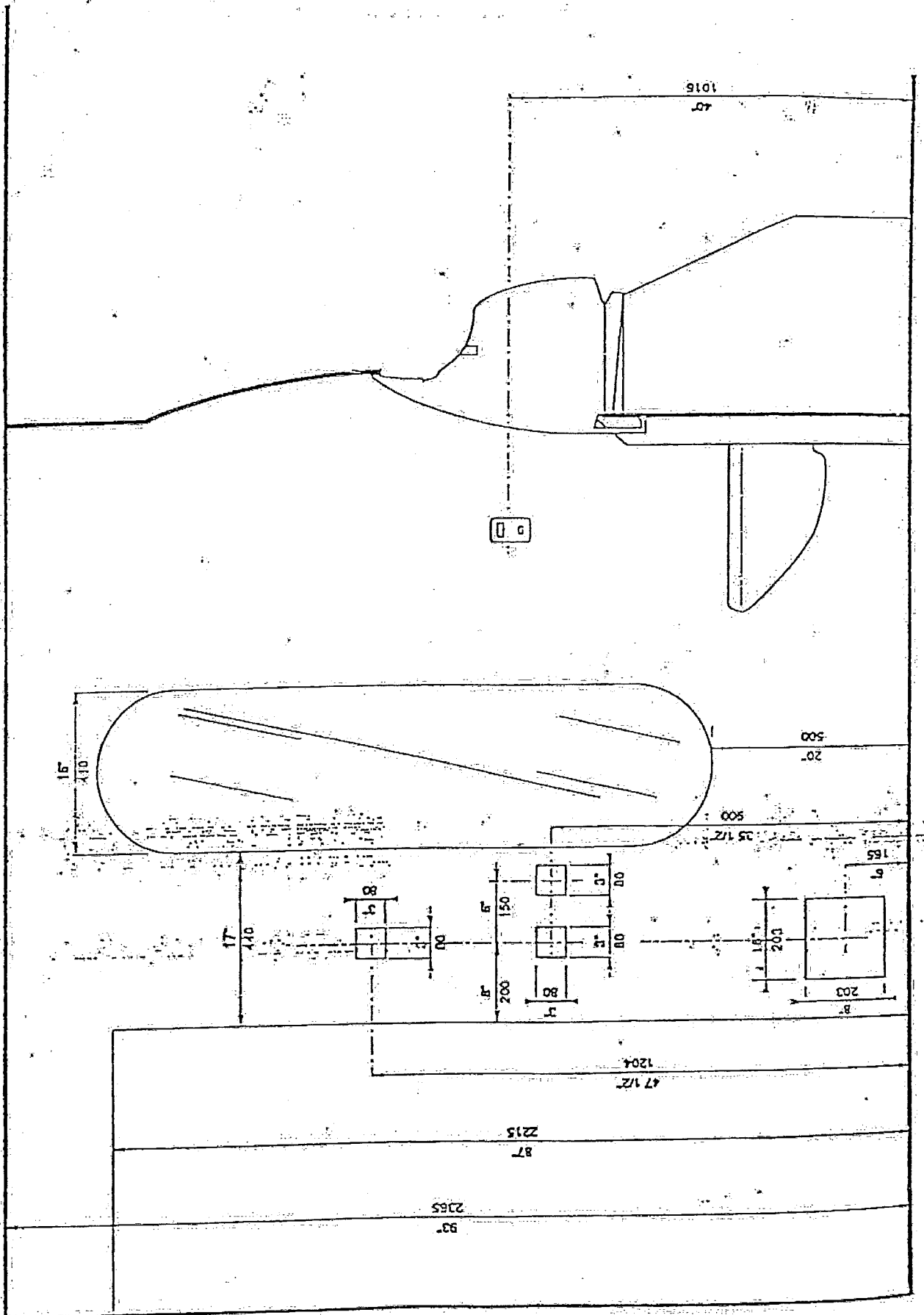


12' 5"

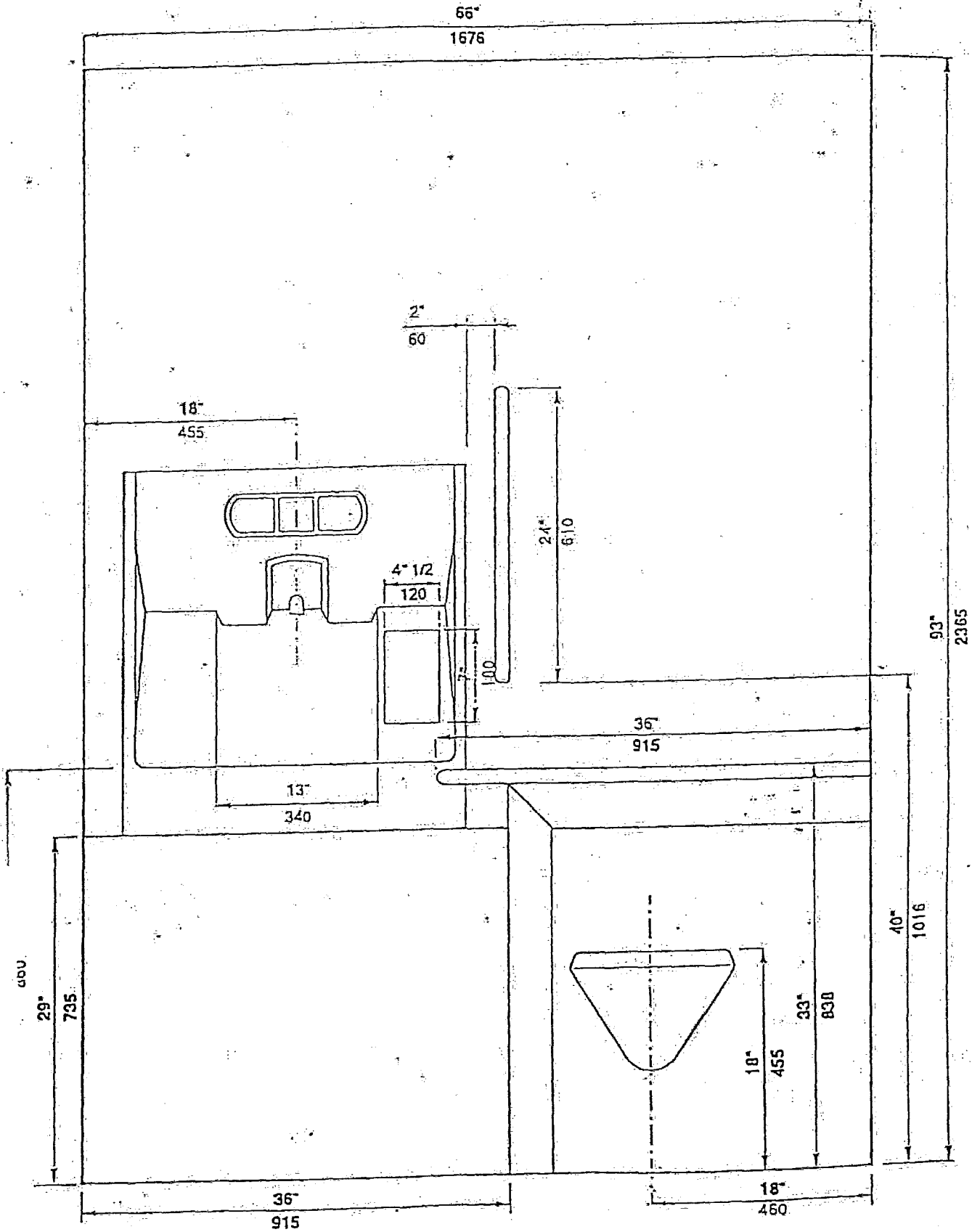
3790

JCDecaux United Street Furniture  
Copyright 1994

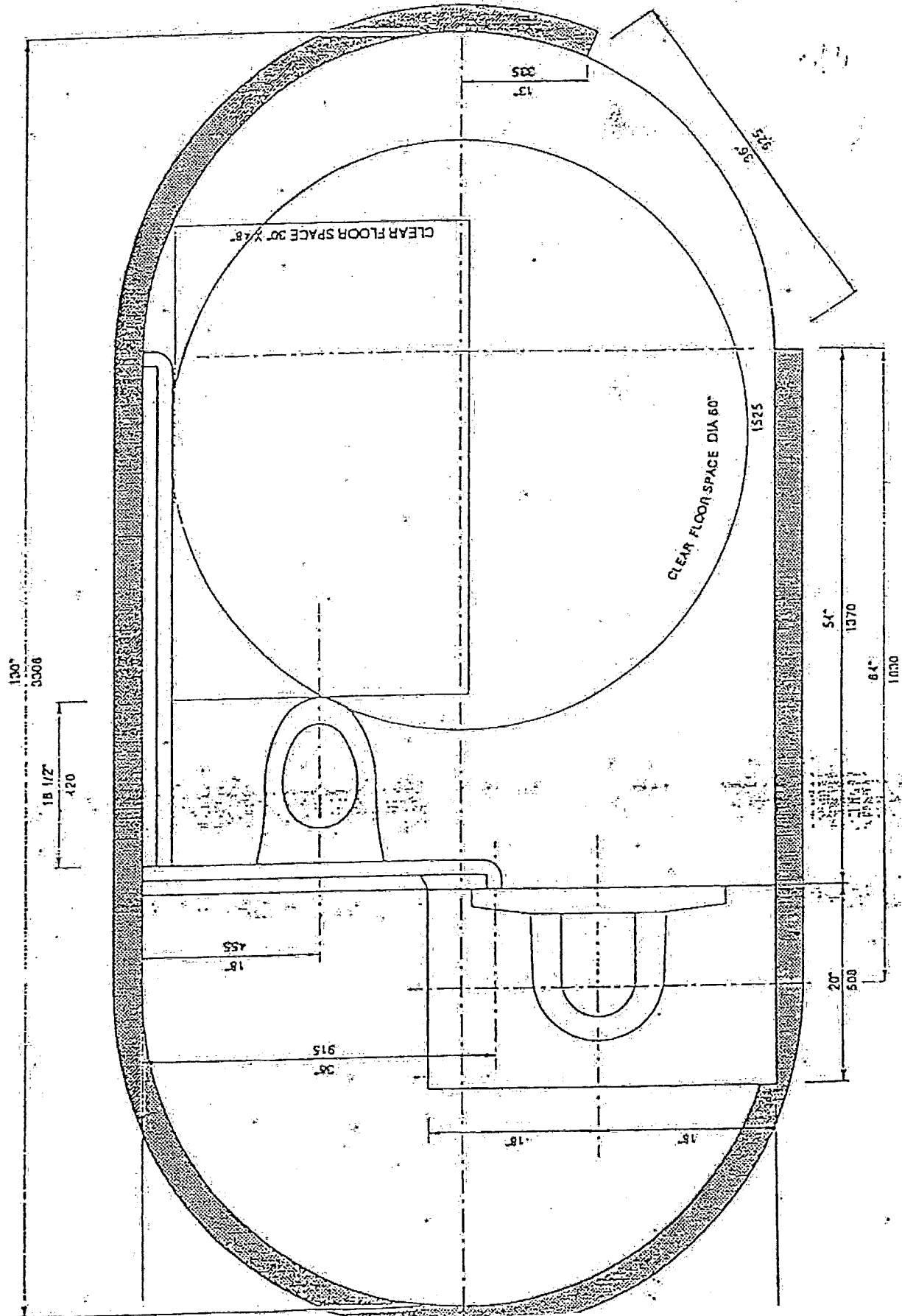
LONGITUDINAL VIEW



# FRONT VIEW

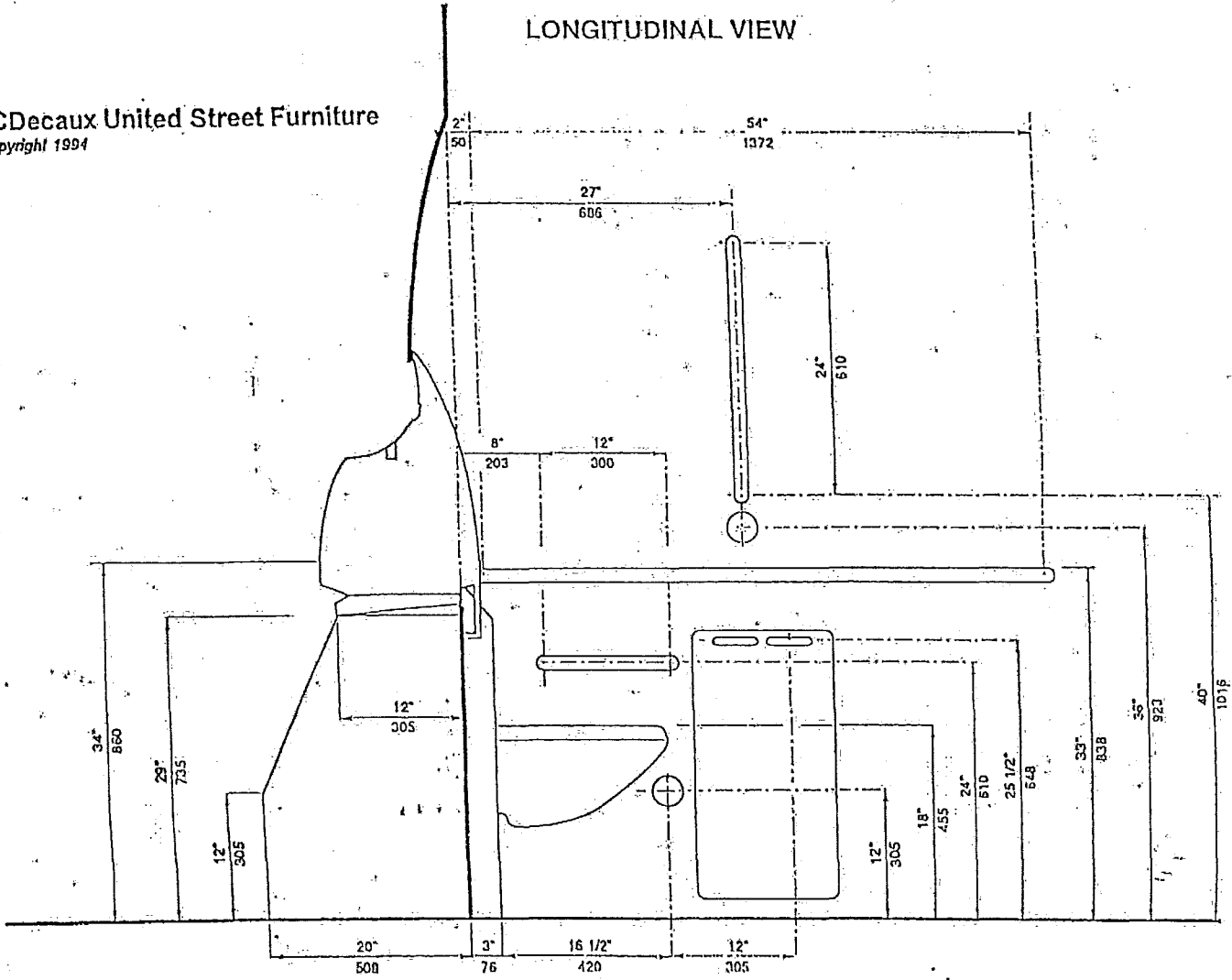


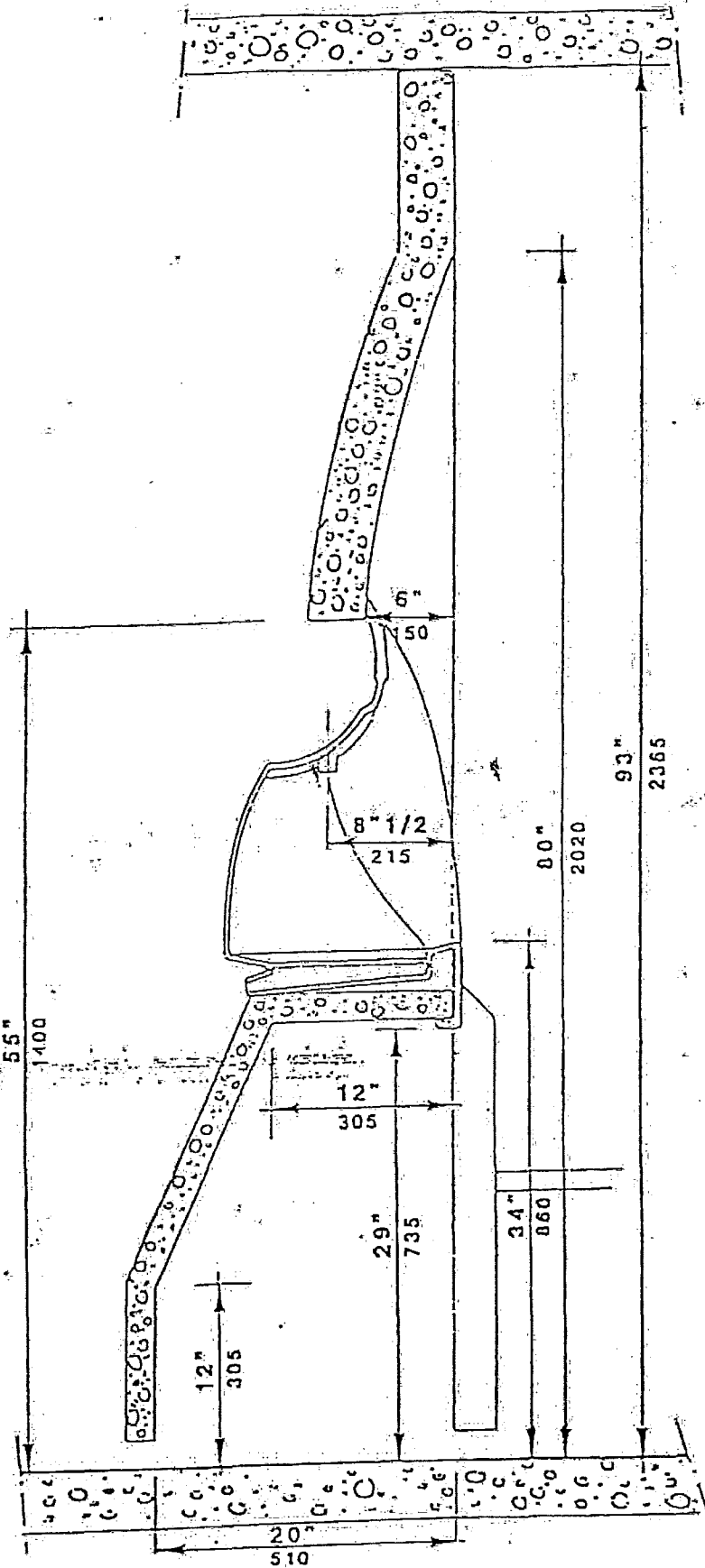
# FLOOR VIEW



JCDecaux United Street Furniture  
Copyright 1994

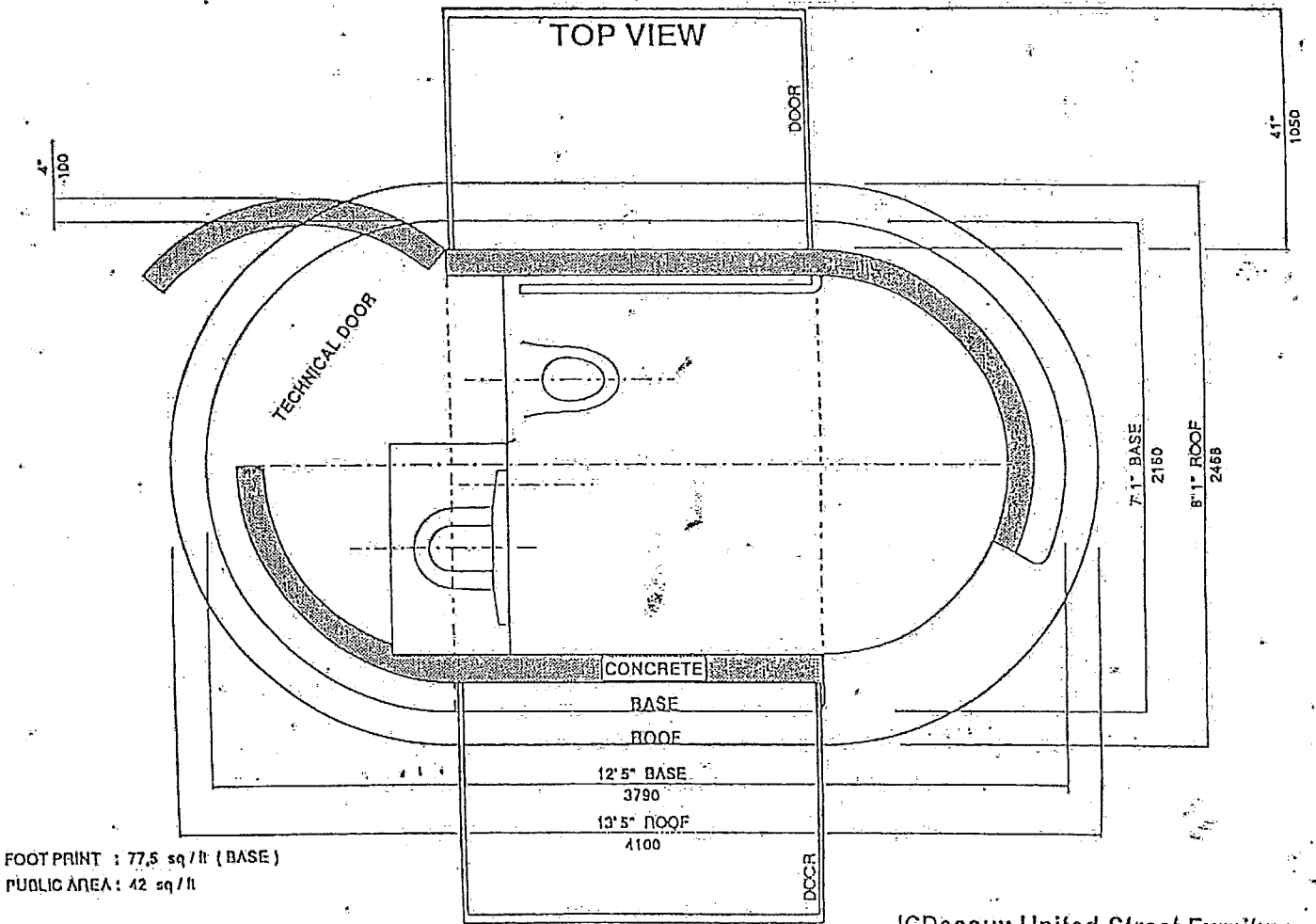
### LONGITUDINAL VIEW







[REDACTED]  
[REDACTED] AND SPECIFICATIONS



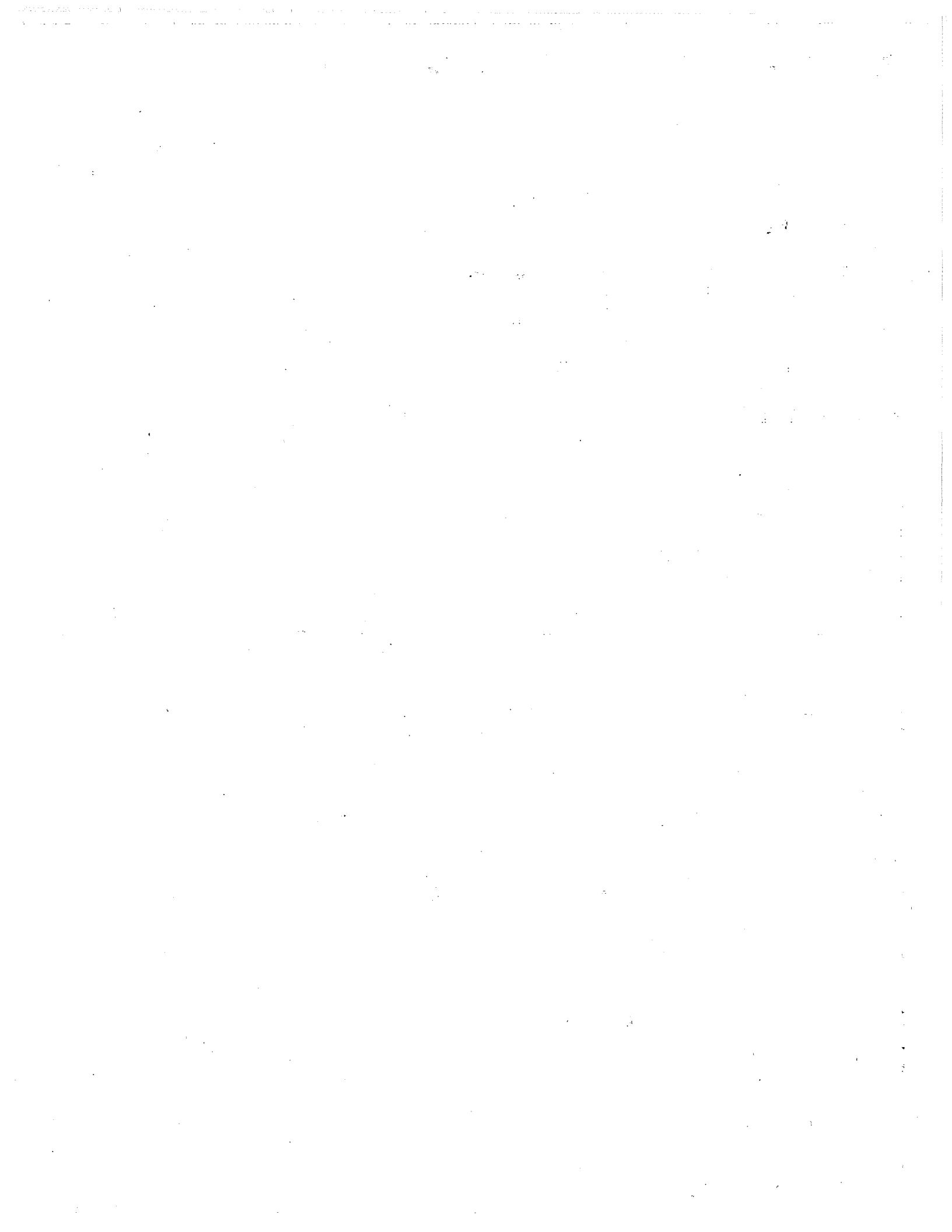
FOOT PRINT : 77,5 sq / ft (BASE)  
 PUBLIC AREA : 42 sq / ft

JCDecaux United Street Furniture  
 Copyright 1994

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APPENDIX D

PUBLIC SERVICE KIOSKS PLANS AND SPECIFICATIONS



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## 1. GENERAL INFORMATION

The "Pillar" style Public Service Kiosk incorporating a newsstand is an internally-lit columnar structure with two faces for commercial advertising, and a third face giving access to a newsstand operated by a vendor.

## 2. TECHNICAL DESCRIPTION

### 2.1. FOUNDATION

The foundation is a concrete anchor block with electric duct, J-bolts, and earth rod.

On a temporary basis the kiosk may be bolted to a steel base plate on the surface of the sidewalk.

### 2.2. BASE

The cast iron base is protected by a coat of paint.

### 2.3. NEWSSTAND FEATURES

The face of the kiosk that incorporates the newsstand has two fiberglass polyester door panels that are hinged at the sides to open out from the center. These doors are fitted on the inside with newspaper display racks.

The newsstand is designed so that it is fully accessible to disabled vendors and patrons, with a clear floor space area of 48" x 30".

A 33" high, 20" deep counter forms the frontage of the newsstand. This counter is divided into two sections and pivots open from the middle to allow the vendor to enter and exit the newsstand.

For extra storage, the front of the counter has four tilting display racks. Additional display racks line the interior walls of the unit. There are two drawers under the counter for the vendor's use.

#### JCDecaux Public Service Kiosk incorporating a newsstand, "Pillar" Style

The ceiling is composed of colored fiberglass. Internal lighting is available at the discretion of the vendor, and there is extra interior electrical outlet.

Some newsstands can be equipped with a rolling door located in the ceiling instead of two swinging doors. In this configuration the doors and the counter do not protrude on the exterior.

#### **2.4. BODY OF KIOSK**

The body of the kiosk consists of:

- An interior steel frame structure composed of three main posts supporting the 4.7' diameter shaft, the roof, two exterior door panels, and the door frame of the newsstand.
- Each door panel is composed of two translucent thermal-formed panels that are positioned one above the other – they support the posters and diffuse the light.
- The door panel frames are made of decorative aluminum and of a Plexiglas cover that protects each of the two panels. The door panels are hinged at the top to open out from the bottom.

The panels are back-lit.

#### **2.5. ROOF**

The cylindrical roof of the kiosk is composed of molded fiberglass polyester. The roof is slightly rounded and is topped by a spire and ball.

There is also a special awning above the doors of the newsstand designed to protect the vendor and goods from rain. This is constructed of cast aluminum bars supporting reinforced glass.



## 2.6. ELECTRICITY

- Lighting: fluorescent tubes of 90 watts for posters, and additional lighting for the interior of the newsstand.
- Electrical box with circuit-breaking switch and power points. The meter box must be located outside the kiosk, or the consumption can be calculated on a lump sum basis.

## 2.7. COLORS

The kiosk is green, with a grey base. The spire and ball on top of the roof and the trim are gilded.

## 2.8. PROTECTION OF MATERIALS

- Steel: SA3 shot blasting, 80-micron metal plating.
- Aluminum: degreased, cleaned and coated with a polyester powder paint, oven-blasted at 356°F, thickness 100 microns.

**2.9. DIMENSIONS**

All dimensions are approximate:

Height to roof, not including spire: 14.4'

Height to awning: 8.7'

Diameter of body: 4.75'

Diameter of base: 5.5'

Diameter of roof: 6.6'

Width of open doors: 6.3'

Width of awning: 10'

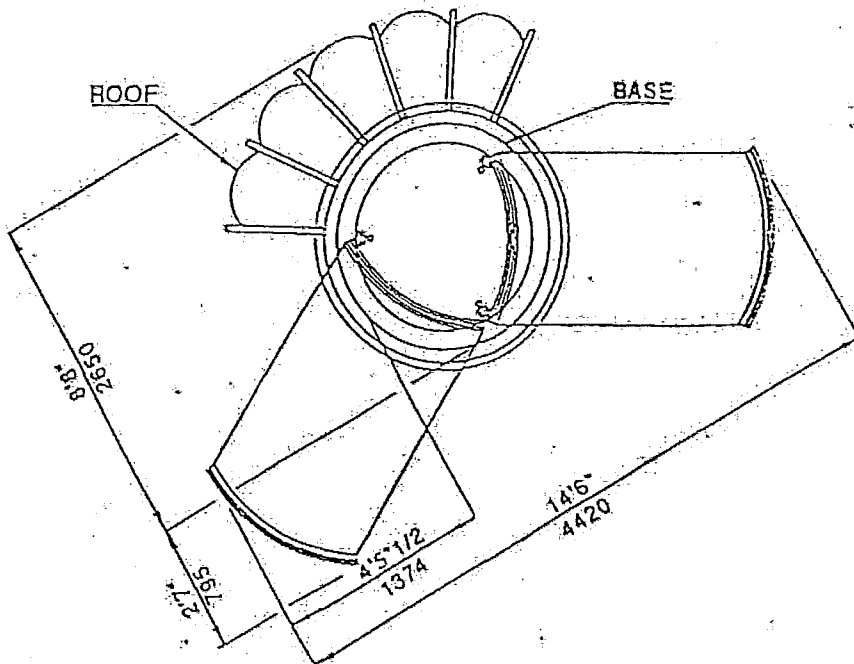
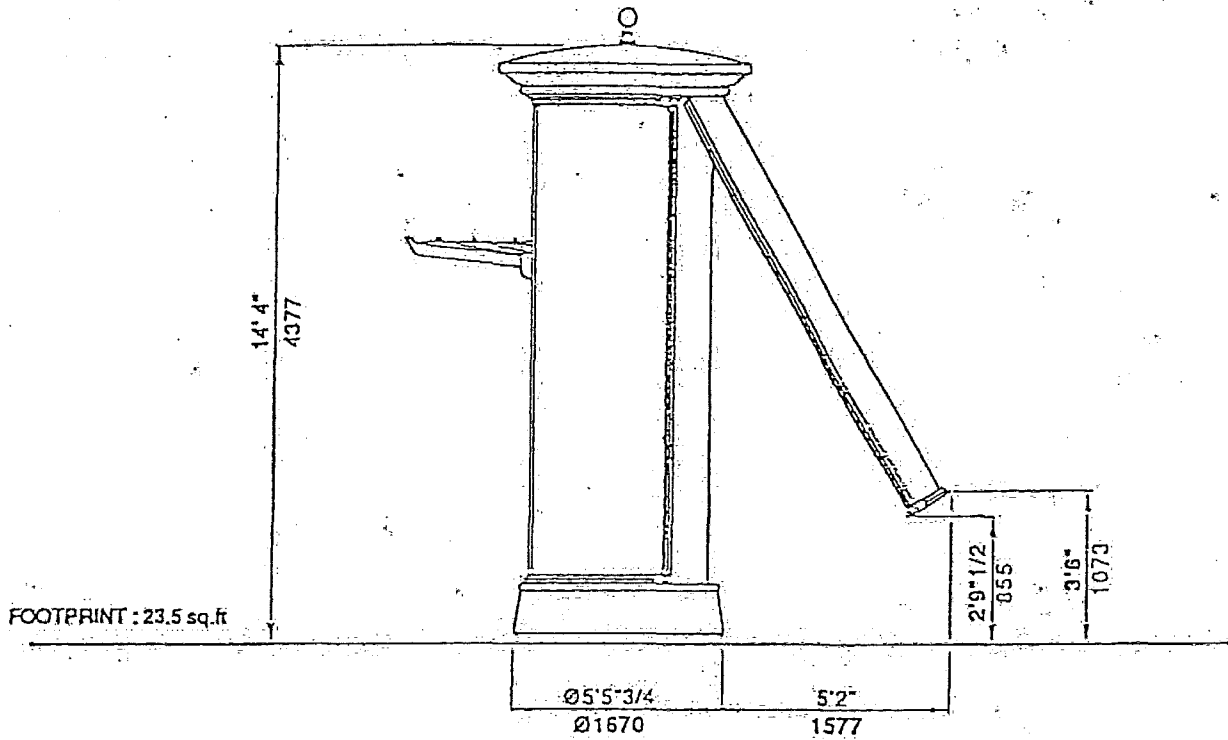
Poster dimension: Height: 11.5'  
Width: 4.4'

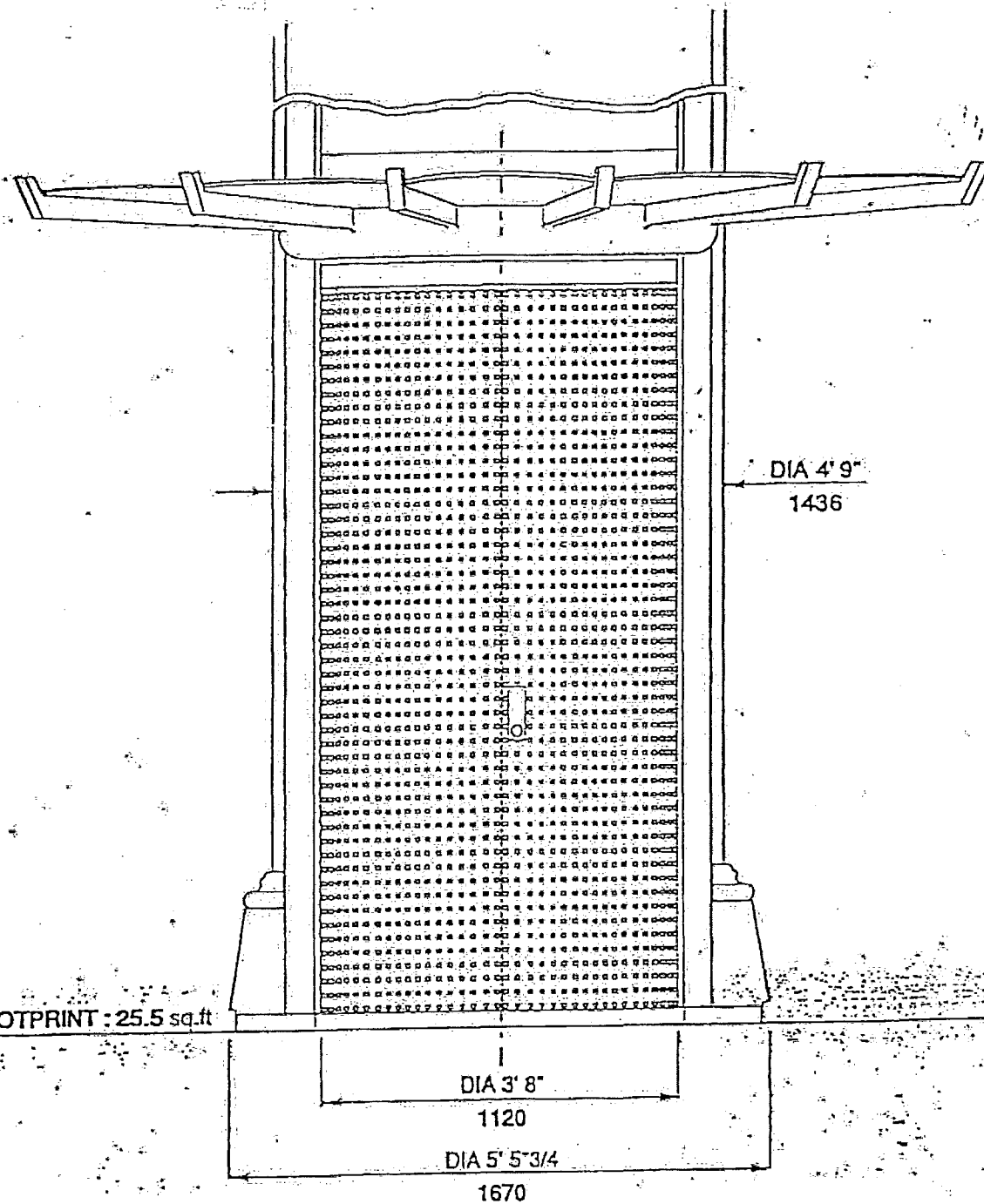
Visible viewing area of poster: Height: 11.3'  
Width: 4.3'

Footprint: approximately 25 square feet

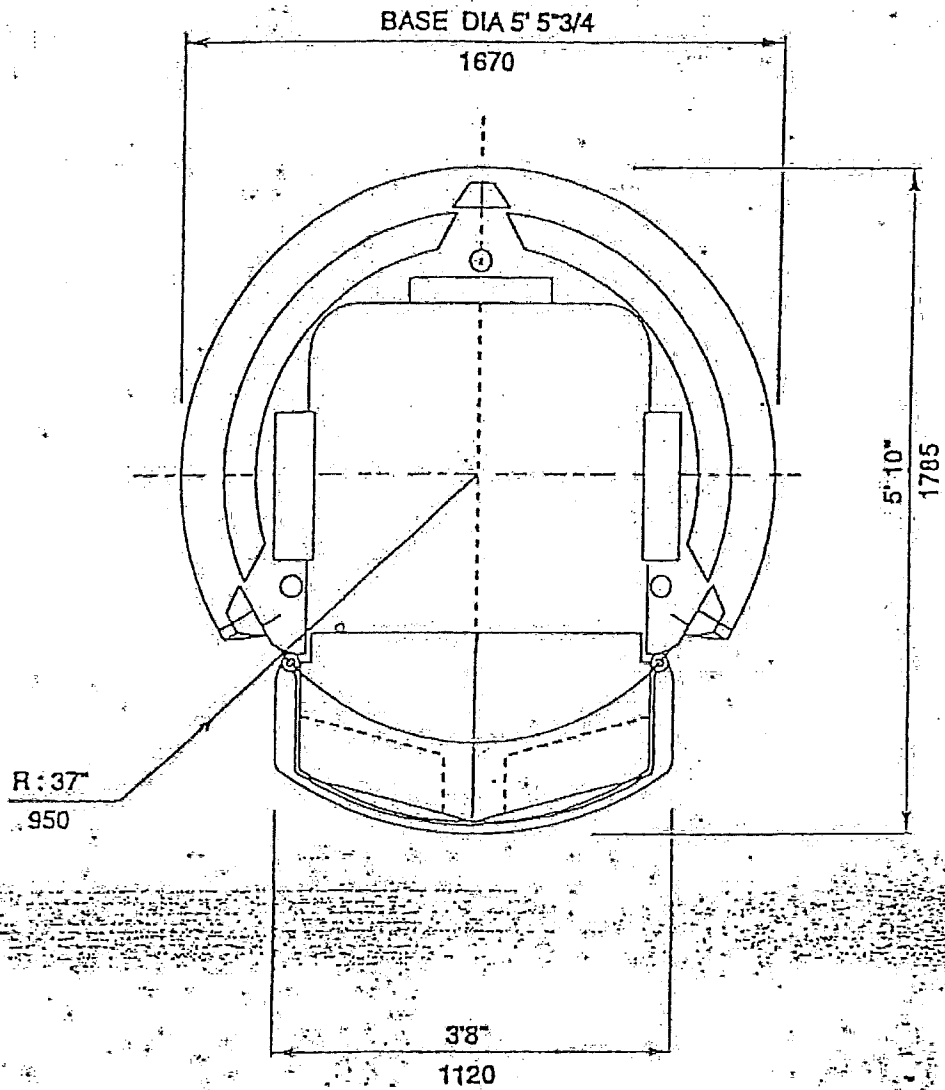
Weight: 3300 pounds

# DOOR OPENING NEWSSTAND KIOSK

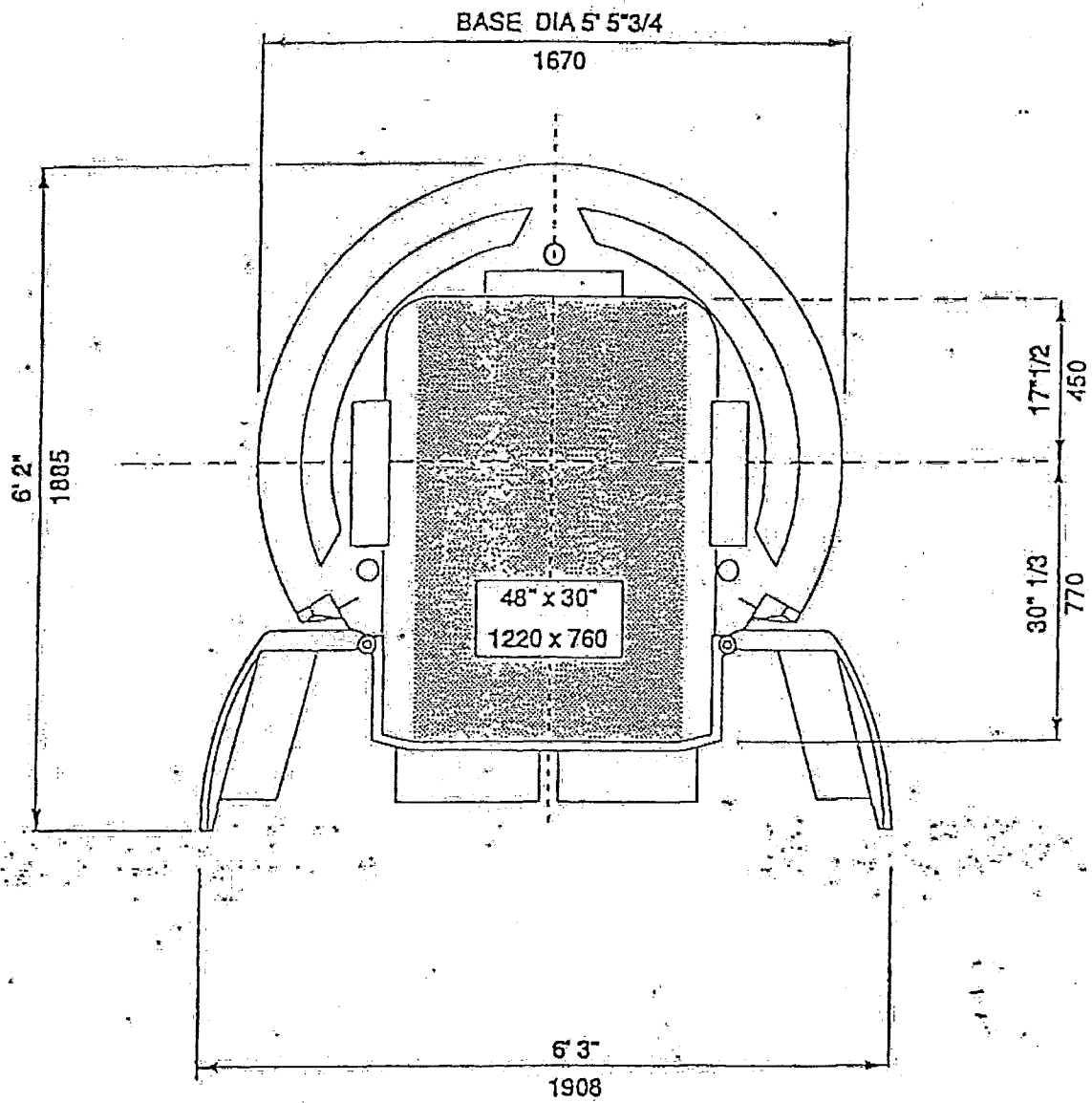




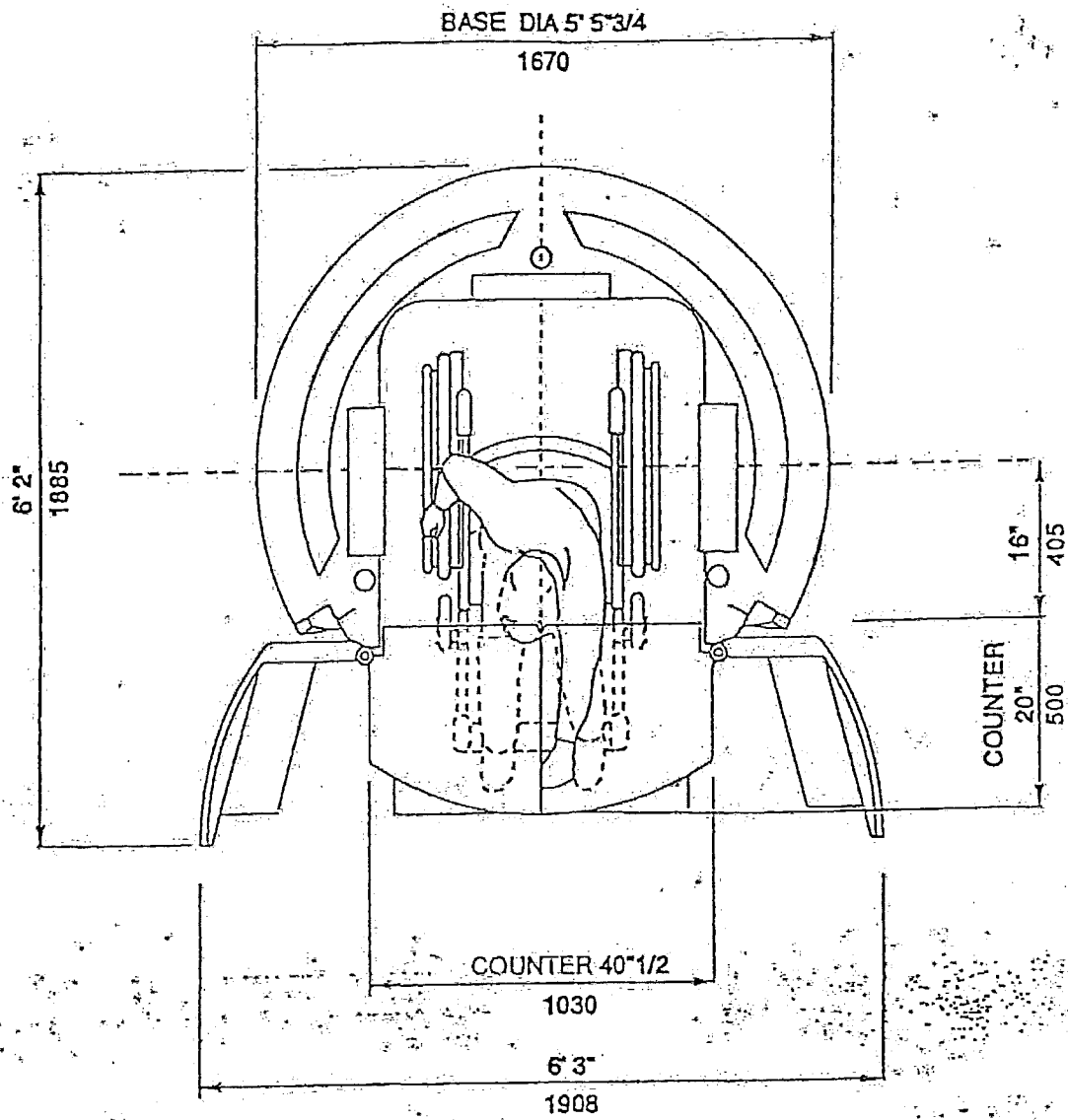
NEWSSTAND KIOSK  
 Front view  
 Closed doors



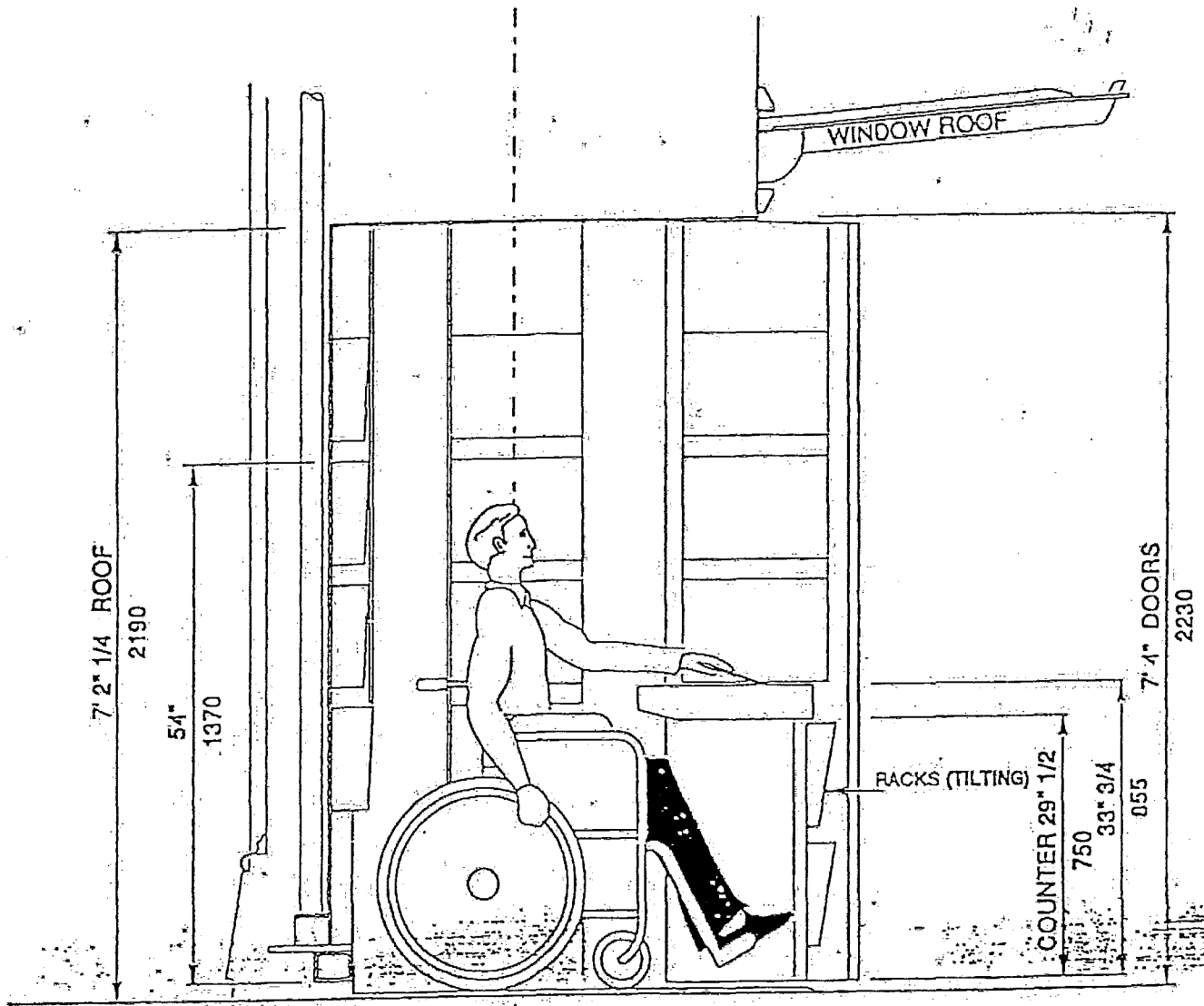
**NEWSSTAND KIOSK**  
Closed doors



## NEWSSTAND KIOSK



## NEWSSTAND KIOSK



NEWSSTAND KIOSK  
 Section side view  
 Open doors



APPENDIX D-2

"HERITAGE" STYLE NEWSSTAND KIOSKS

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## 1. GENERAL INFORMATION

The "Heritage" style Public Service Kiosk incorporating a newsstand is an internally-lit columnar structure with two faces for commercial advertising, and a third face giving access to a newsstand operated by a vendor.

## 2. TECHNICAL DESCRIPTION

### 2.1. FOUNDATION

The foundation is a concrete anchor block with electric duct, J-bolts, and earth rod.

On a temporary basis the kiosk may be bolted to a steel base plate on the sidewalk.

### 2.2. BASE

The decorated cast iron base is protected by a coat of paint.

### 2.3. NEWSSTAND FEATURES

The face of the kiosk that incorporates the newsstand has two fiberglass polyester door panels that are hinged at the sides to open out from the center. These doors are fitted on the inside with newspaper display racks.

The newsstand is designed so that it is fully accessible to disabled vendors and patrons, with a clear floor space area of 48" x 30".

A 33" high, 20" deep counter forms the frontage of the newsstand. This counter is divided into two sections and pivots open from the middle to allow the vendor to enter and exit the newsstand.

For extra storage, the front of the counter has four tilting display racks. Additional display racks line the interior walls of the unit. There are two drawers under the counter for the vendor's use.

#### JCDecaux Public Service Kiosk incorporating a newsstand, "Heritage" Style

The ceiling is composed of colored fiberglass. Internal lighting is available at the discretion of the vendor, and there is extra interior electrical outlet.

Some newsstands can also be equipped with a rolling door located in the roof instead of the two swinging doors. In this configuration the doors and counter do not protrude on the exterior.

#### 2.4. BODY OF KIOSK

The body of the kiosk consists of:

- An interior steel frame structure composed of three main posts supporting the 4.7' diameter shaft, the roof, two exterior door panels, and the door frame of the newsstand.
- Each door panel is composed of two translucent thermal-formed panels that are positioned one above the other — they support the posters and diffuse the light.
- The door panel frames are made of decorative aluminum and of a Plexiglas cover that protects each of the two panels. The door panels are hinged at the top to open out from the bottom.

The panels are back-lit.

#### 2.5. ROOF

The roof of the kiosk is composed of molded fiberglass polyester, and consists of three sections:

- Band divided into three faces, each carrying the name and seal of the city in gold color
- Crown-shaped dome
- Spire

There is also a special awning above the doors of the newsstand designed to protect the vendor and goods from rain. This is constructed of aluminum bars supporting reinforced glass.

## 2.6. ELECTRICITY

- Lighting: fluorescent tubes of 90 watts for posters, and additional lighting for the interior of the newsstand
- Electrical box with circuit-breaking switch and power points. The meter box must be located outside the kiosk, or the consumption can be calculated on a lump sum basis.

## 2.7. COLORS

The kiosk is green, with gold detailing.

## 2.8. PROTECTION OF MATERIALS

- Steel: SA3 shot blasting, 80-micron metal plating.
- Aluminum: degreased, cleaned and coated with a polyester powder paint, oven-blasted at 356°F, thickness 100 microns.

## 2.9. DIMENSIONS

All dimensions are approximate:

Height to roof: 17.6'

Height to band below roof: 12.8'

Height to awning: 8.7'

Diameter of body: 4.7'

Diameter of base: 5.5'

Diameter of roof: 6.6'

Width of open doors: 6.3'

Width of awning: 10'

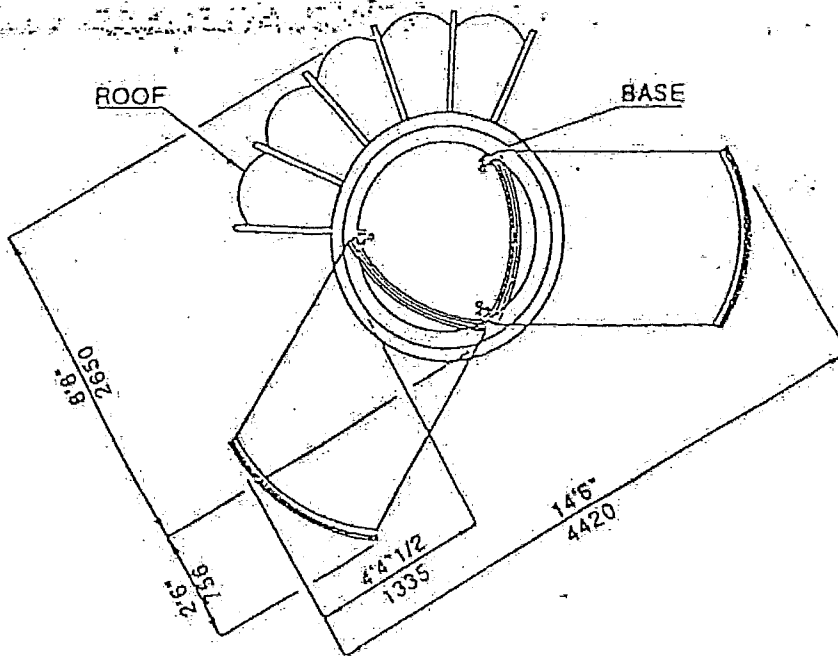
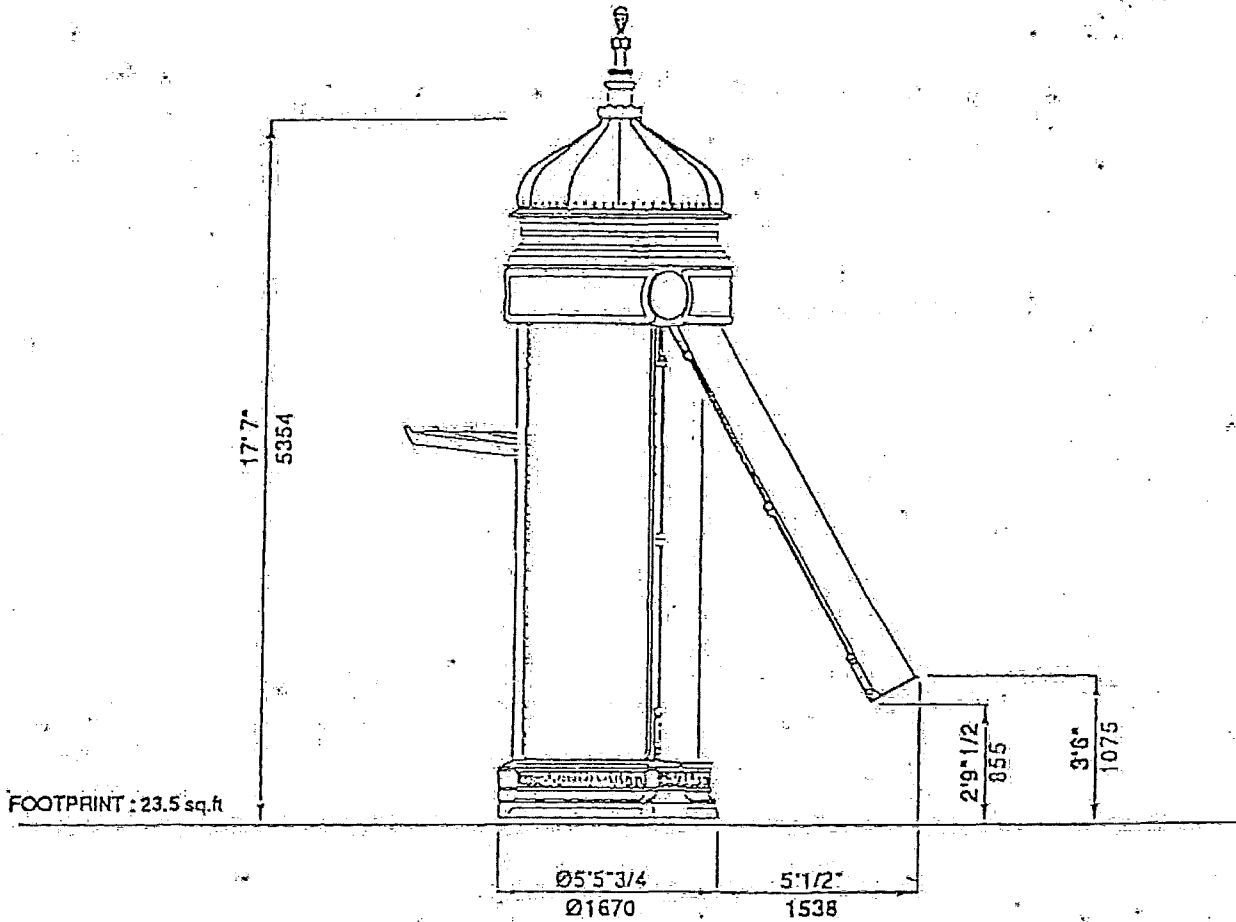
Poster dimension: Height: 11.5'  
Width: 4.4'

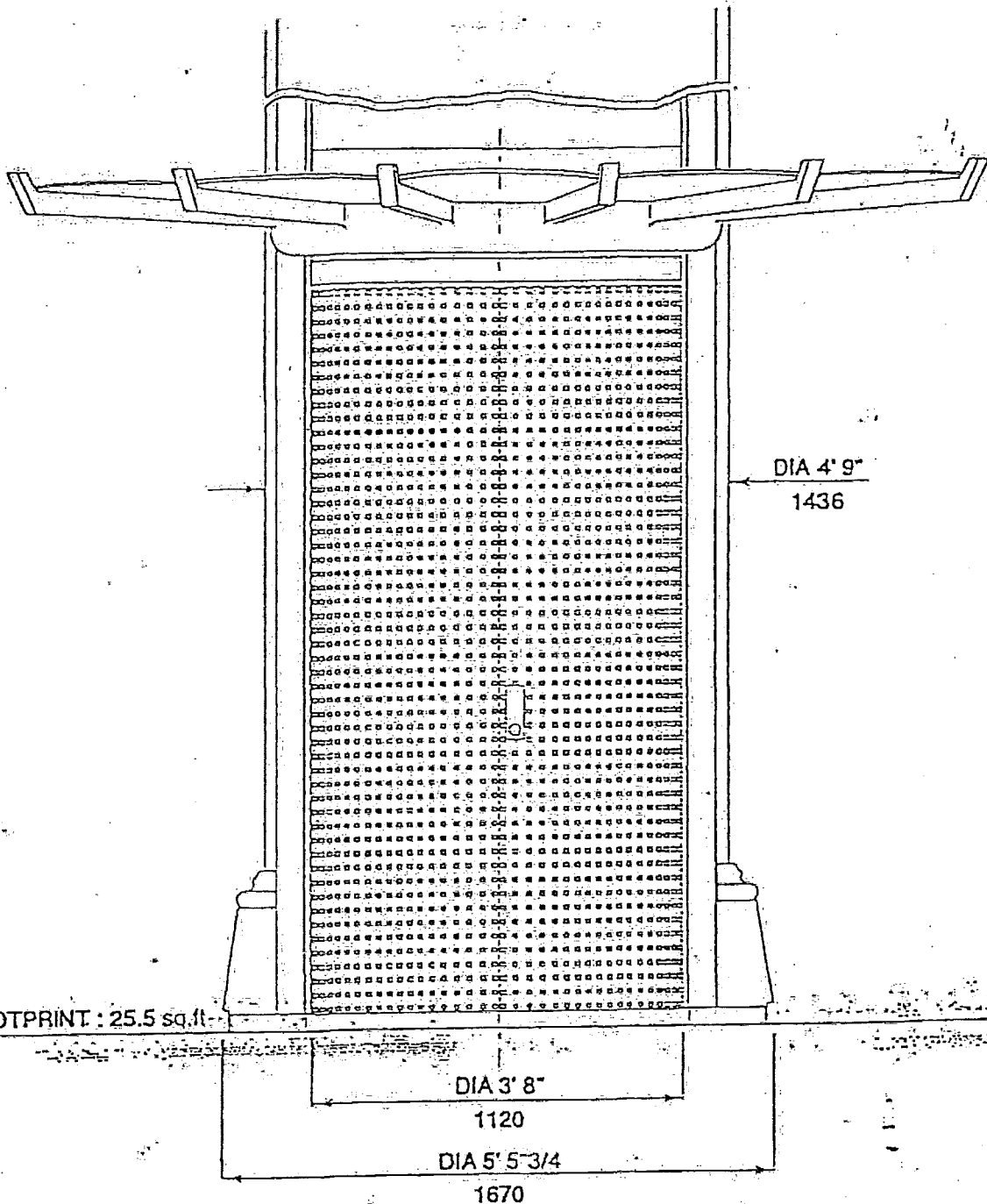
Visible viewing area of poster: Height: 11.3'  
Width: 4.3'

Footprint: approximately 25 square feet

Weight: 3300 pounds

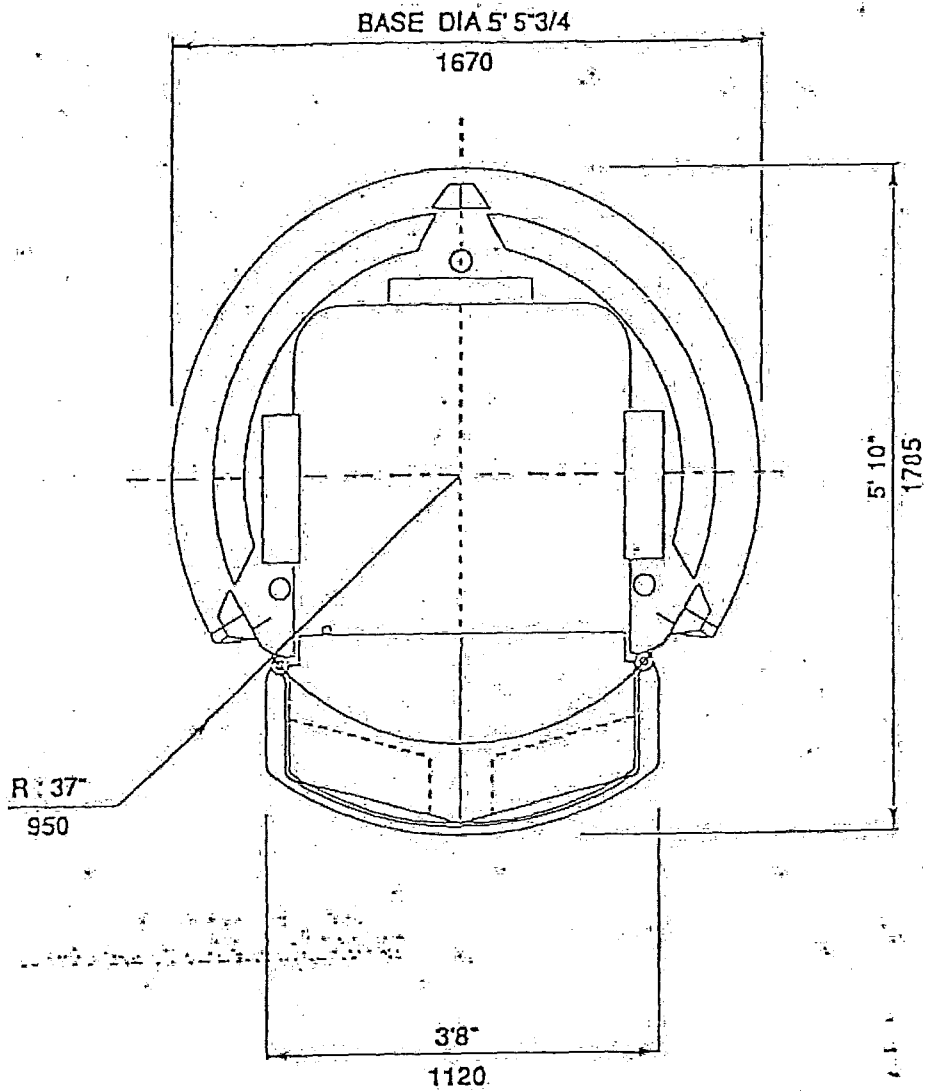
# DOOR OPENING NEWSSTAND KIOSK



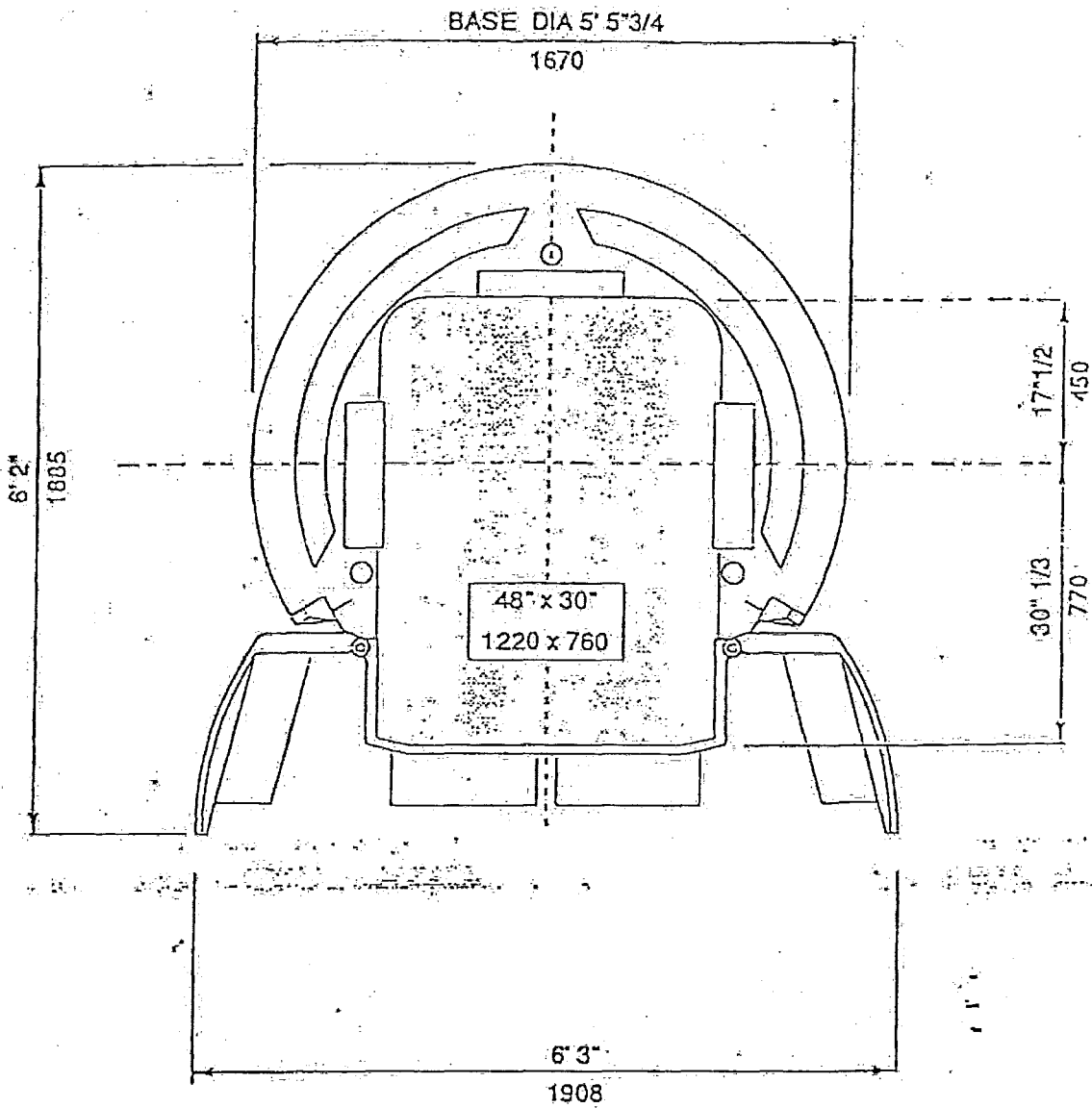


NEWSSTAND KIOSK  
Front view  
Closed doors

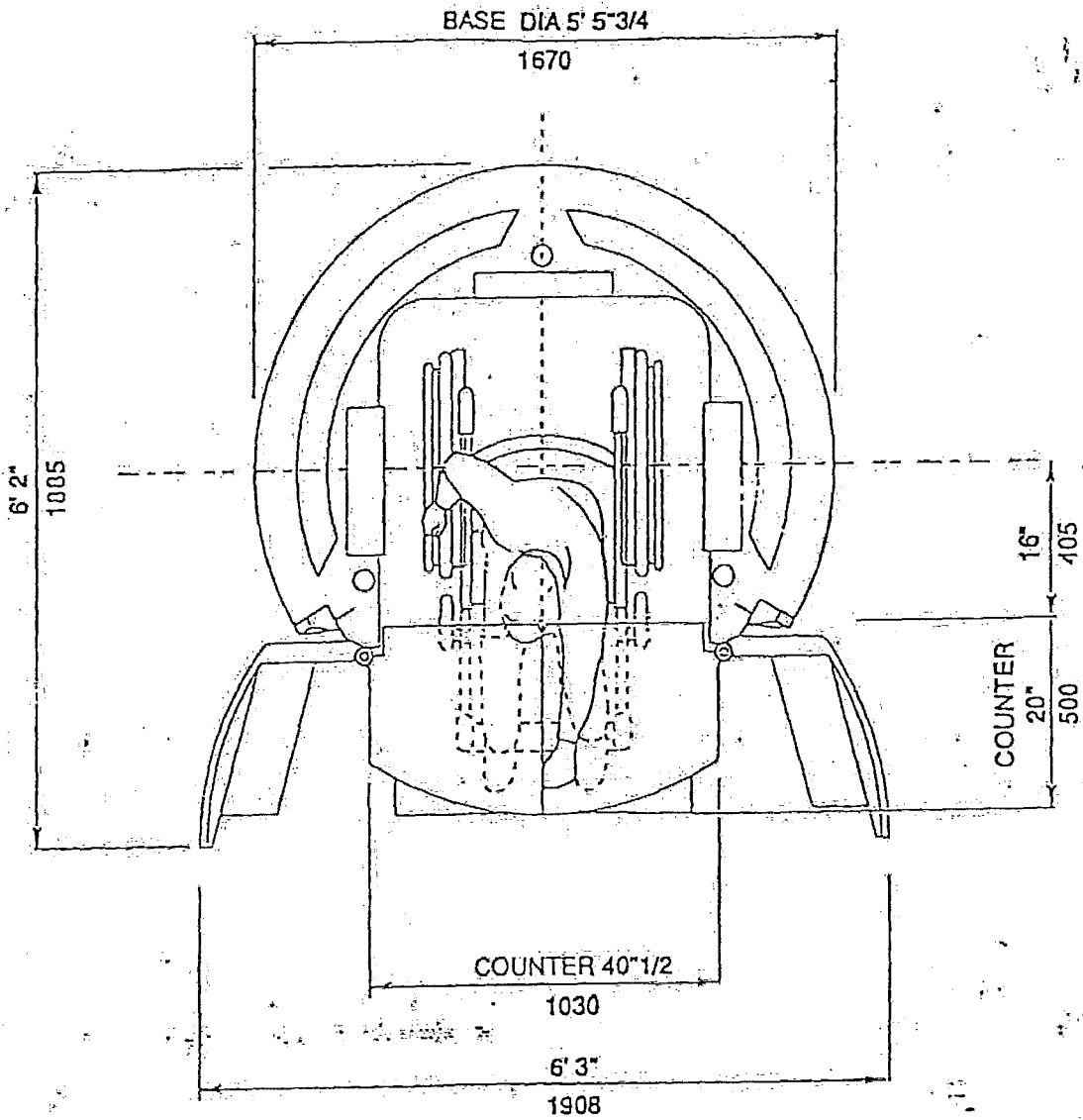




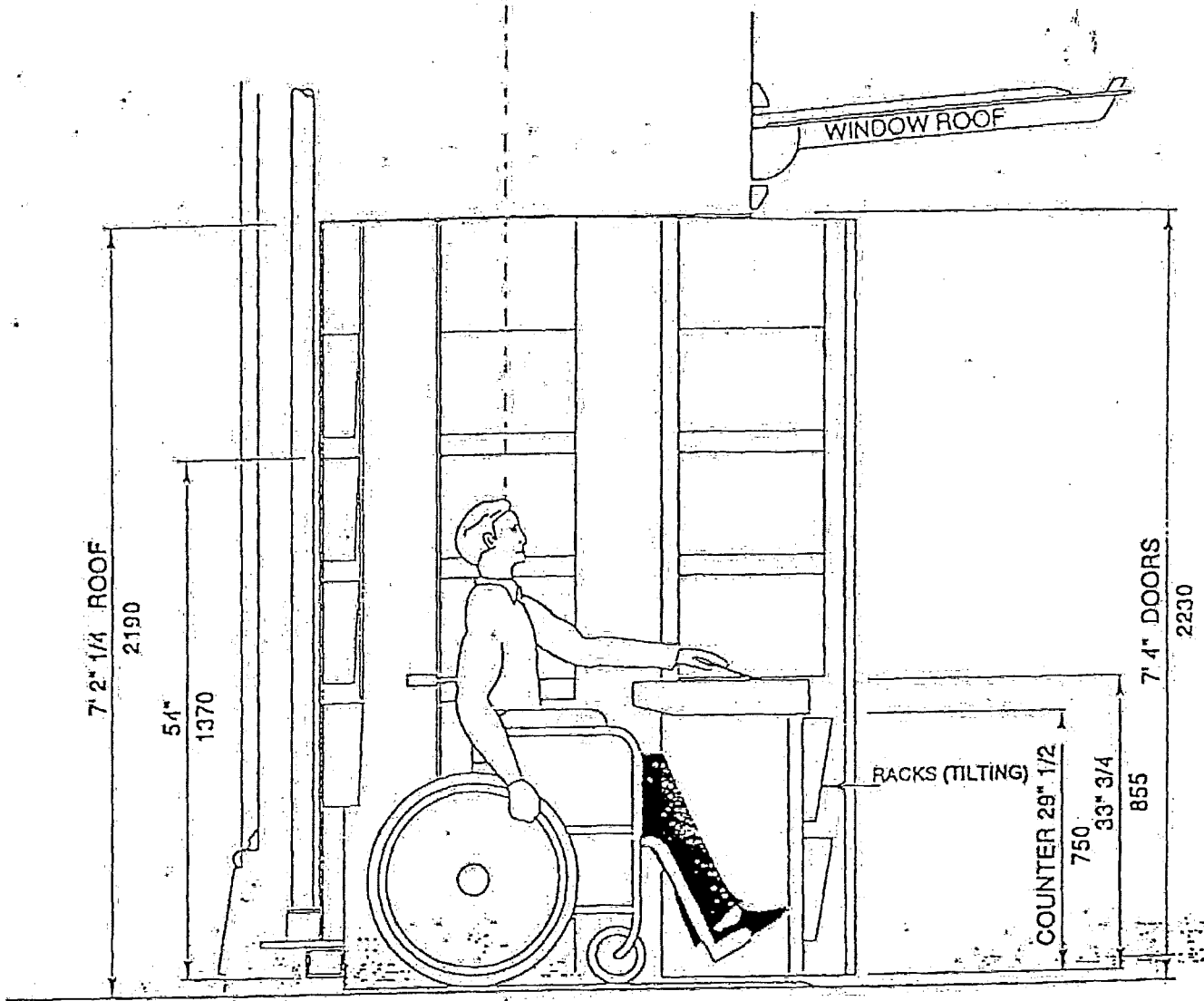
**NEWSSTAND KIOSK**  
**Closed doors**



**NEWSSTAND KIOSK**



## NEWSSTAND KIOSK



NEWSSTAND KIOSK  
 Section side view  
 Open doors

APPENDIX D-3

"PILLAR" STYLE PUBLIC SERVICE KIOSKS

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## 1. GENERAL INFORMATION

The "Pillar" style Public Service Kiosk is an internally-lit columnar structure with three faces — two for commercial advertising and a third for a public service poster.

## 2. TECHNICAL DESCRIPTION

### 2.1. FOUNDATION

The foundation is a concrete anchor block with electric duct, J-bolts, and earth rod.

On a temporary basis the kiosk may be bolted to a steel base plate on the surface of the sidewalk.

### 2.2. BASE

The cast iron base is protected by a coat of paint. The base is bolted to the ground by a ring with ball bearings, which allows the column to rotate for the hanging of the posters.

### 2.3. BODY OF KIOSK

The body of the kiosk consists of:

- An interior steel frame structure composed of three main posts supporting the 4.7' diameter shaft, the roof, and three exterior door panels.
- Each door panel is composed of two translucent thermal-formed panels that are positioned one above the other — they support the posters and diffuse the light.
- The door panel frames are made of decorative aluminum and of a Plexiglas cover that protects each of the three panels. The door panels are hinged at the top to open out from the bottom.

The panels are back-lit.

The interior is equipped with electrical components for lighting.

As an option the kiosk – body and roof – can rotate. A small engine inside the kiosk develops the rotating movement. Any weight or force exceeding 10 DdaN applied on the kiosk will automatically stop the movement.

#### 2.4. ROOF

The cylindrical roof of the kiosk is composed of molded fiberglass polyester. The roof is slightly rounded and is topped by a spire and ball.

#### 2.5. ELECTRICITY

- Power supply: Single phase, 120V, 60 HZ
- Lighting: fluorescent tubes of 90 watts.
- Electrical panel consisting of a general fuse disconnecting switch, 2 circuit breakers with fuses, and ballasts for the fluorescent tubes.

#### 2.6. COLORS

The kiosk is green, with a grey base. The spire and ball on top of the roof and the trim are gilded.

#### 2.7. PROTECTION OF MATERIALS

- Steel: SA3 shot blasting, 80-micron metal plating.
- Aluminum: degreased, cleaned and coated with a polyester powder paint, oven-blasted at 356°F, thickness 100 microns.



**2.8. DIMENSIONS**

All dimensions are approximate:

Height to roof, not including spire: 14.4'

Diameter of column: 4.7'

Diameter of base: 5.5'

Diameter of roof: 6.6'

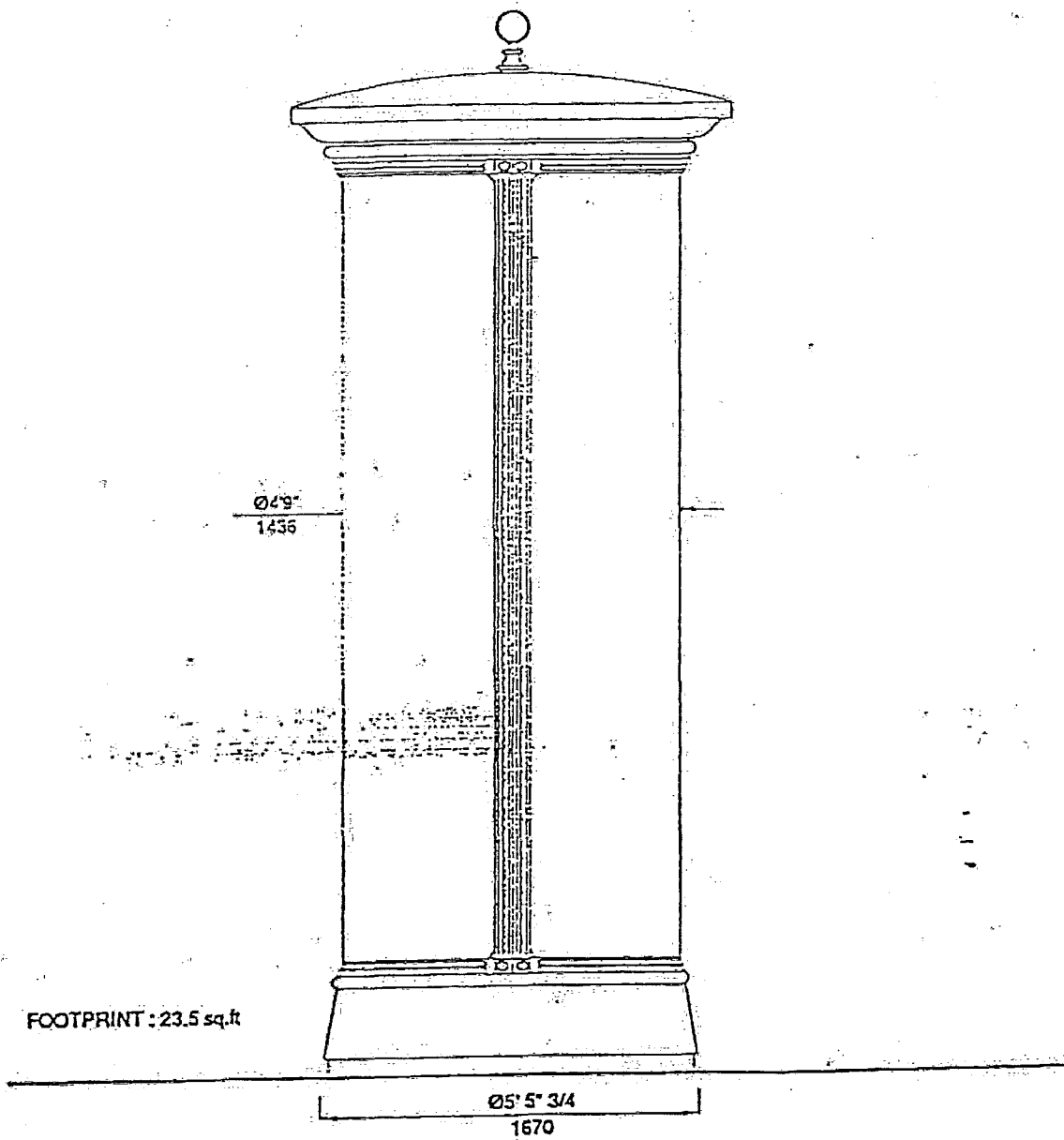
Poster dimensions: Height: 11.5'  
Width: 4.4'

Visible viewing area of poster: Height: 11.3'  
Width: 4.3'

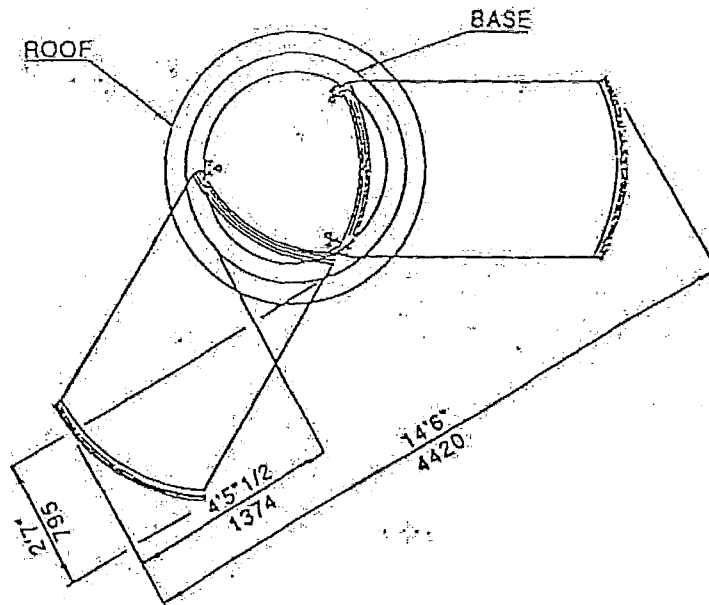
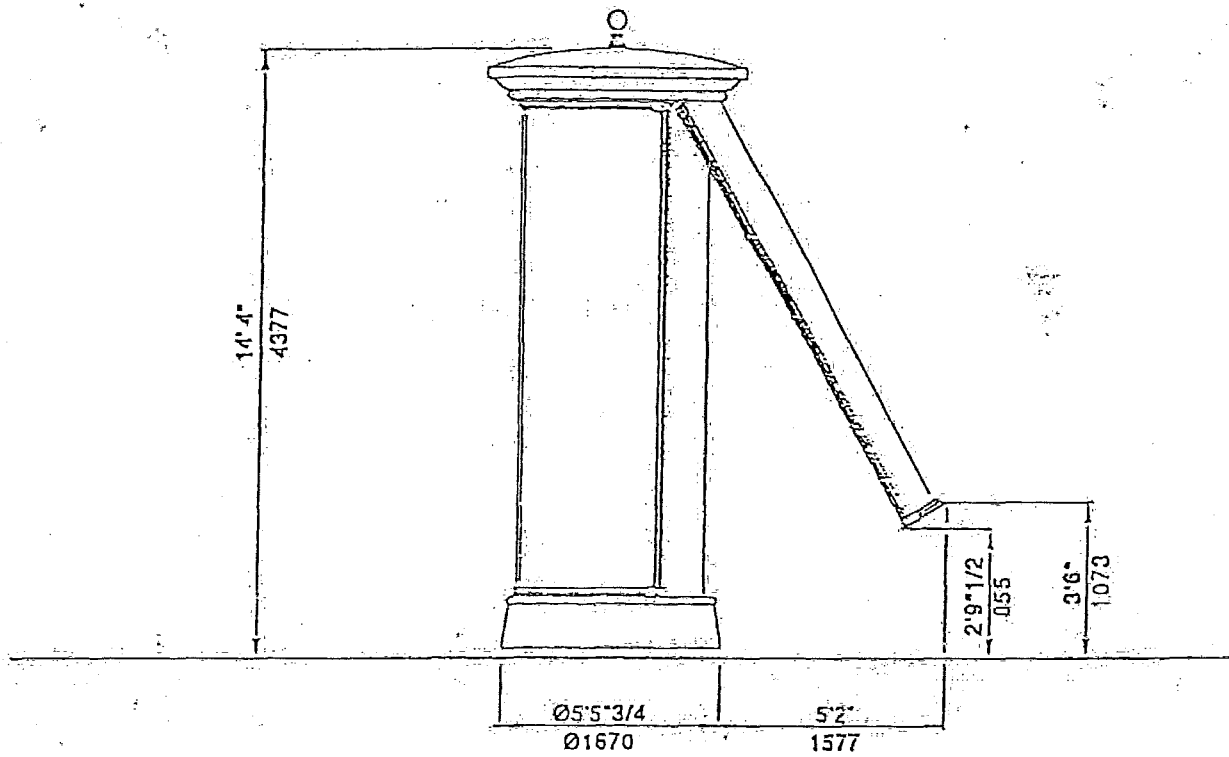
Footprint: 23.5 square feet

Weight: 2,600 pounds

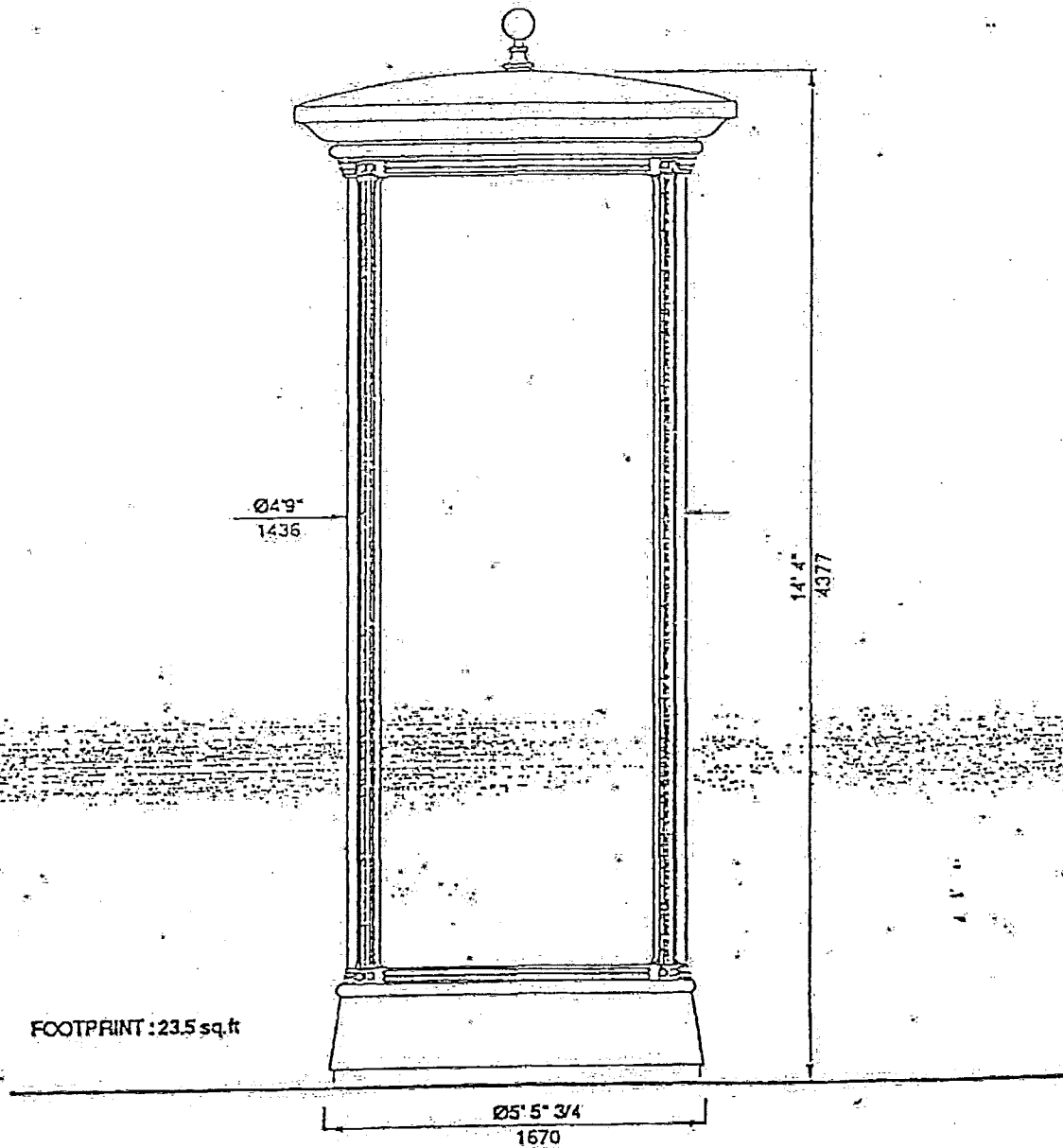
# PILLAR KIOSK



# DOOR OPENING PILLAR KIOSK

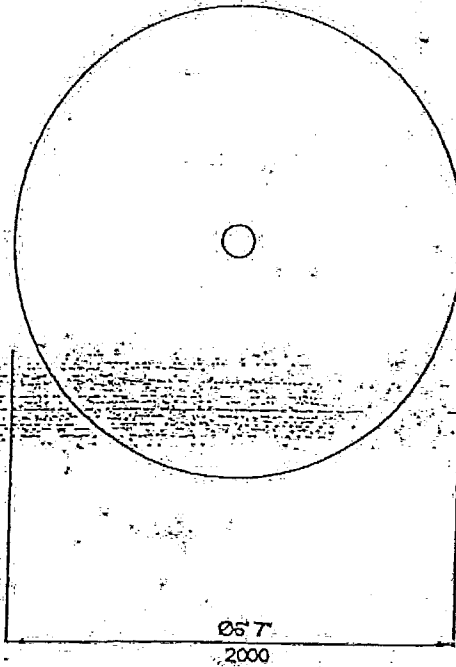


# PILLAR KIOSK



# PILLAR KIOSK

## TOP VIEW



APPENDIX D-4

"HERITAGE" STYLE PUBLIC SERVICE KIOSKS

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## 1. GENERAL INFORMATION

The "Heritage" style Public Service Kiosk is an internally-lit columnar structure with three faces – two for commercial advertising and a third for a public service poster.

## 2. TECHNICAL DESCRIPTION

### 2.1. FOUNDATION

The foundation is a concrete anchor block with electric duct, J-bolts, and earth rod.

On a temporary basis the kiosk may be bolted to a steel base plate on the surface of the sidewalk.

### 2.2. BASE

The decorated cast iron base is protected by a coat of paint. The base is bolted to the ground by a ring with ball bearings, which allows the column to rotate for the hanging of the posters.

### 2.3. BODY OF KIOSK

The body of the kiosk consists of:

- An interior steel frame structure composed of three main posts supporting the 4.7' diameter shaft, the roof, and three exterior door panels.
- Each door panel is composed of two translucent thermal-formed panels that are positioned one above the other – they support the posters and diffuse the light.
- The door panel frames are made of decorative aluminum and of a Plexiglas cover that protects each of the three panels. The door panels are hinged at the top to open out from the bottom.

The panels are back-lit.



The interior is equipped with electrical components for lighting.

As an option the kiosk — body and roof — can rotate. A small engine inside the kiosk develops the rotating movement. Any weight or force above 10 DdaN applied on the kiosk will automatically stop the rotating movement.

#### 2.4. ROOF

The roof is composed of molded fiberglass polyester, and consists of three sections:

- Band divided into three faces, each carrying the name and seal of the city in gold color
- Crown-shaped dome
- Spire

#### 2.5. ELECTRICITY

- Power supply: Single phase, 120 V, 60 HZ
- Lighting: fluorescent tubes of 90 watt
- Electrical panel consisting of a general fuse disconnecting switch, 2 circuit breakers with fuses, and ballasts for the fluorescent tubes.

#### 2.6. COLORS

The kiosk is green, with gold detailing.

#### 2.7. PROTECTION OF MATERIALS

- Steel: SA3 shot blasting, 80-micron metal plating.
- Aluminum: degreased, cleaned and coated with a polyester powder paint, oven-blasted at 356°F, thickness 100 microns.

**2.8. DIMENSIONS**

All dimensions are approximate:

Height to roof, not including spire: 17.6'

Height to band below roof: 12.8'

Diameter of column: 4.7'

Diameter of base: 5.5'

Diameter of roof: 6.6'

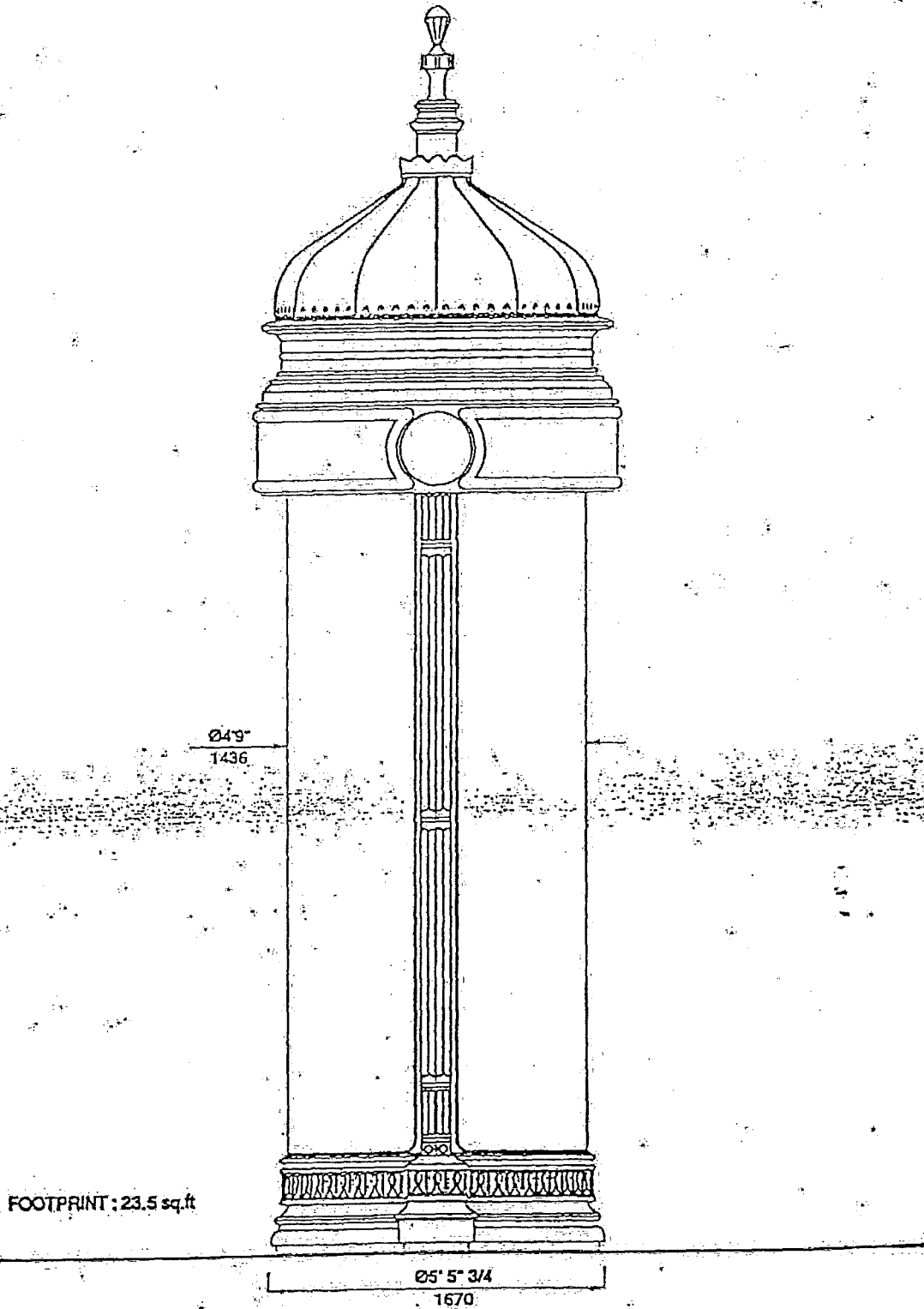
Poster dimension: Height: 11.5'  
Width: 4.4'

Visible viewing area of poster: Height: 11.3'  
Width: 4.3'

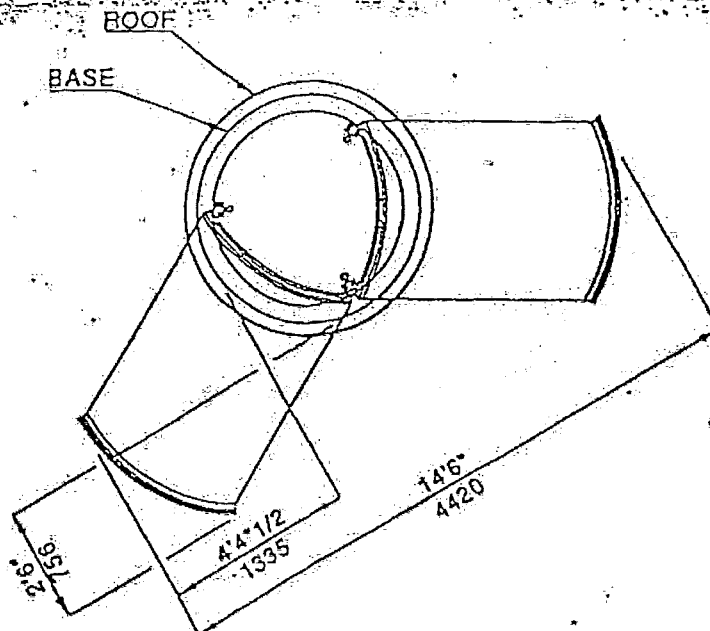
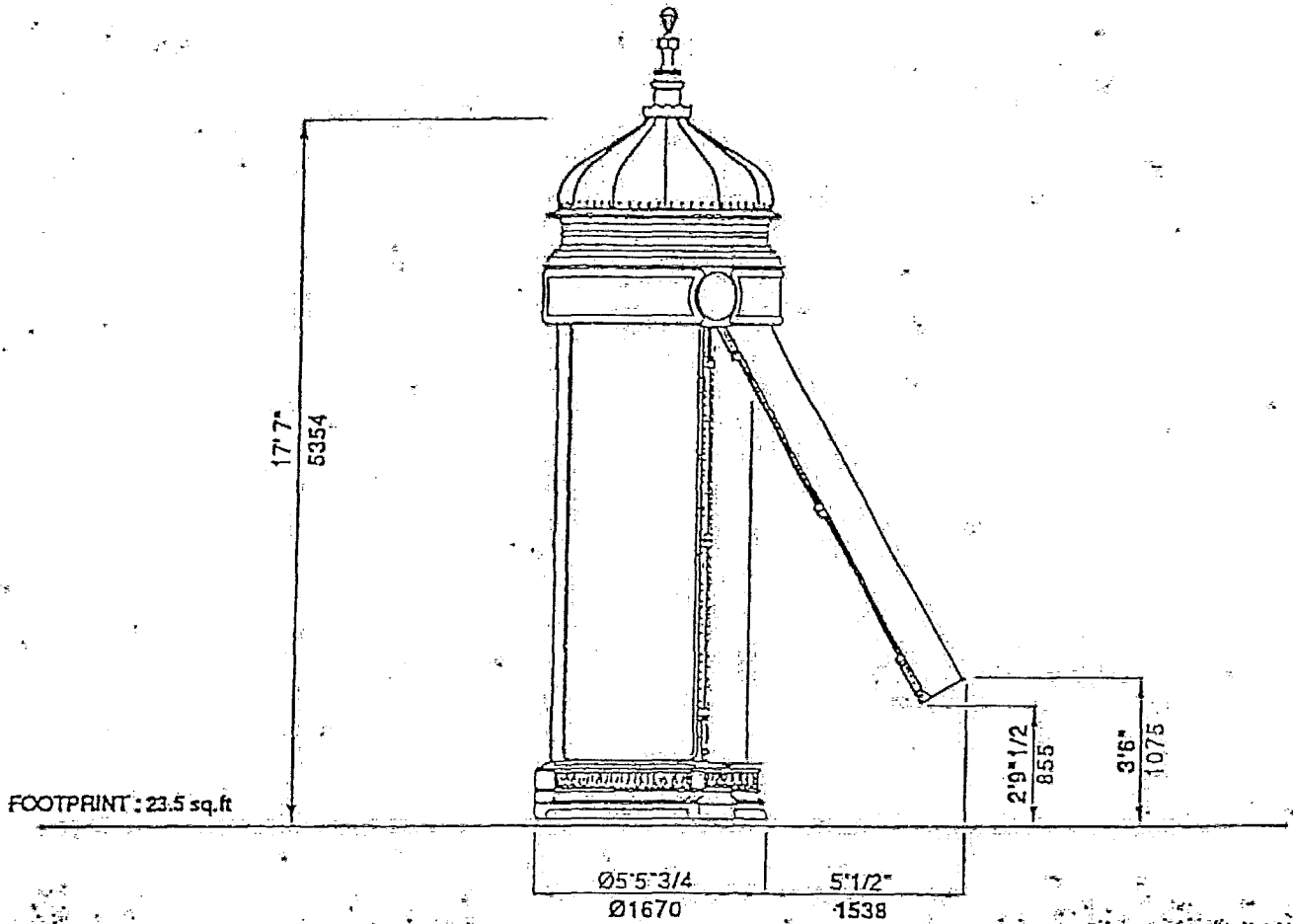
Footprint: 23.5 square feet

Weight: 2,600 pounds

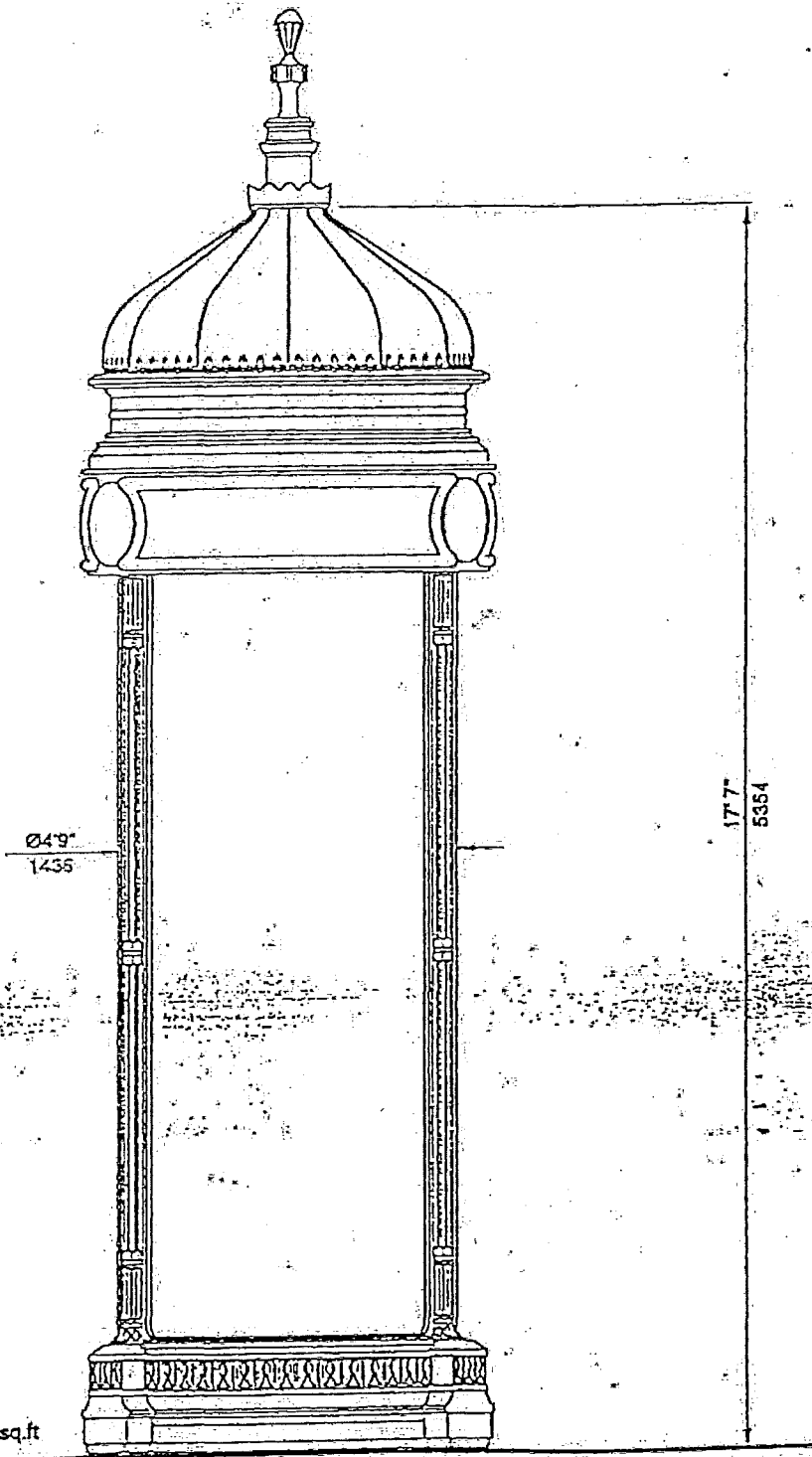
# HERITAGE KIOSK



# DOOR OPENING HERITAGE KIOSK

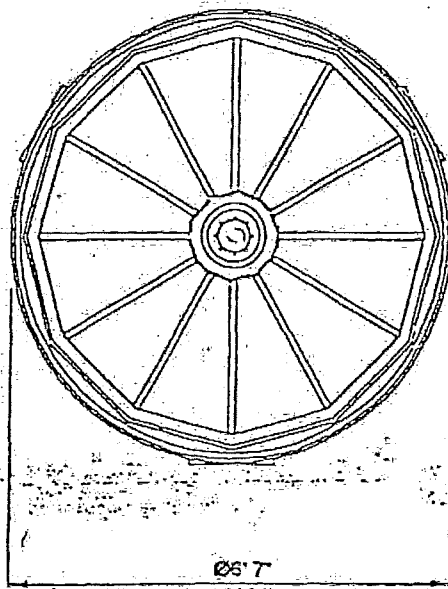


# HERITAGE KIOSK



# HERITAGE KIOSK

## TOP VIEW



[REDACTED]

[REDACTED]

APPENDIX E  
FORM OF GUARANTY



APPENDIX E  
FORM OF GUARANTY

GUARANTY

1. For good and valuable consideration, the receipt of which is hereby acknowledged, the undersigned, JCDecaux USA, a Delaware corporation ("Guarantor") hereby guarantees, subject to the provisions of this Guaranty, the prompt and complete performance by JCDecaux United Street Furniture, Inc., a California corporation ("Contractor") of the Guaranteed Obligations (as defined in paragraph 2 below) contained in that certain agreement (the "Agreement") dated as of August 2nd 1994 between Contractor and the City and County of San Francisco ("City"), a copy of which is annexed hereto as Exhibit A. This Guaranty includes the payment of all damages, costs and expenses which are recoverable by City from Contractor under the Agreement as a result of a breach of such Guaranteed Obligations.
2. This Guaranty applies solely to the obligations of Contractor with respect to the initial installation of the Automatic Public Toilets (the "Guaranteed Obligations"). At such time as Contractor has completed the initial installation of each Automatic Public Toilet pursuant to the Agreement, or at such time as Contractor's obligation to install the Automatic Public Toilet has terminated for any reason, then Guarantor shall have no obligation under this Guaranty as to such Automatic Public Toilet, and this Guaranty shall automatically terminate. For this purpose, Contractor shall be deemed to have completed the initial installation at such time as such Automatic Public Toilet is first available for use by the public. Without limitation on the generality of the foregoing, in no event shall Guarantor be responsible or liable for any obligation of Contractor pursuant to Section 1.15 of the Agreement to indemnify or defend City for any damage, liability, cost or expense arising out of the negligence of Contractor or defective products.
3. City shall take no action to enforce the provisions of this Guaranty unless and until an event of default has occurred under the Agreement with respect to the Guaranteed Obligations, the City has given written notice of such default as required under Section 1.19 of the Agreement and Contractor has failed to cure such default within the applicable cure period. No right or action shall accrue on this Guaranty to any person or entity other than City.

4. In the event legal action is brought by one party against the other arising out of or in connection with this Guaranty, the prevailing party shall be entitled to recover from the losing party its reasonable attorneys' fees and costs of suit.
5. This Guaranty shall be governed by and construed in accordance with the laws of the State of California.
6. Capitalized terms used herein, but not specifically defined herein, shall have the meaning set forth in the Agreement.

IN WITNESS WHEREOF the undersigned has executed this Guaranty this August 30<sup>th</sup> 1994 day of \_\_\_\_\_, 1994.

JCDECAUX USA, a Delaware corporation

By: \_\_\_\_\_

Its: \_\_\_\_\_

*[Handwritten Signature]*

CEO.

APPENDIX F

MAP OF THE SAN FRANCISCO WATERFRONT

APPENDIX G

DEPARTMENT OF PUBLIC WORKS ORDERS

**CITY AND COUNTY OF SAN FRANCISCO  
DEPARTMENT OF PUBLIC WORKS**

ORDER NO. 163,368

**ESTABLISHING GUIDELINES FOR THE PLACEMENT OF PUBLIC SERVICE KIOSKS ON CITY STREETS AND PUBLIC PROPERTY.**

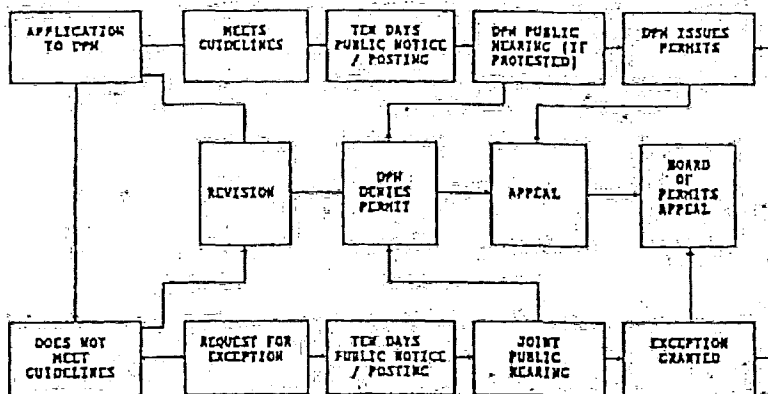
Pursuant to Public Works Code Article 8, the Director of Public Works hereby establishes the following guidelines for the placement of public service kiosks on City streets and public property.

"Public Service Kiosk" means a free standing circular kiosk, the exterior of which is divided into three sections, two of which display advertising panels of approximately fifty (50) square feet each, and one of which provides access to a public service, such as public art, a newsstand, newsrack, display of map or local information, telephone booth, recycling bin, vending machine, interactive video information system, or other public service.

These guidelines are in addition to all provisions of the Public Works Code and are enforceable as part of Article 8.

**I APPLICATION AND APPROVAL:**

A. The application process is summarized in the following chart:



B. Application to install public service kiosks shall be submitted to the Department of Public Works. Applications shall consist of Location Drawings showing public service kiosk placement, together with an application fee of three hundred fifty dollars (\$350.00). Location drawings shall include the following:

1. A twenty feet (20') to one inch (1") scale (20:1 scale) representation of the proposed public service kiosk site covering the area from the property line to the street centerlines at the nearest intersection. Mid-block sites can be shown with broken line ties.
2. All necessary street dimensions, such as sidewalk width, the location of any curb ramp and driveway and street width, and all surface structures, including hydrants, utility poles and catchbasins.

CITY AND COUNTY OF SAN FRANCISCO  
DEPARTMENT OF PUBLIC WORKS

ORDER NO. 163,368

3. Electrical service connections and foundation details for public service kiosk.
  4. Location of utilities under and in the vicinity of the proposed kiosk site.
  5. Electrical and foundation plans shall be stamped and signed by an engineer registered with the State of California.
- C. Notification of application to install public service kiosks shall be sent to fronting businesses, property owners, San Francisco Municipal Railway and Department of City Planning. Notices shall be posted within one hundred feet (100') of proposed public service kiosk site a minimum of ten (10) days prior to the hearing date.
- D. At the end of the ten days posting period, public hearing will be held by DPW for sites that received protest. The Director of Public Works or the Director's designee shall decide whether to issue permit after considering testimony received at the hearing.
- E. Applicant may request an exception for those public service kiosk sites which do not meet the guidelines set forth in this Order. A request for an exception shall be considered at a public hearing conducted jointly by the Director's designee, a representative appointed by the Director of the Art Commission, and a representative appointed by the Director of City Planning. The hearing shall be a public hearing for which notice shall be given as described in paragraph (C) above. The three hearing officers may authorize public service kiosks which do not comply with the guidelines if facts presented show that measures will be taken to minimize the impact of the kiosks or that the public toilet program benefits outweigh the anticipated impact. The Art Commission's designee may require the request for exception be referred to the Art Commission if the proposed site has a major urban design impact on the City.
- F. For those public service kiosk sites that are denied, the applicant may appeal by writing within fifteen days of the denial to the Executive Director of the Board of Permit Appeals, City Hall, Room 154A, San Francisco, CA 94102 to request that the matter be considered by the Board of Permit Appeals.

II. PLACEMENT GUIDELINES:

- A. All public service kiosks must conform to all applicable State, Federal and Local accessibility codes and regulations. A minimum of four feet (4') of pedestrian clearance (free of all obstacles for a clear path of travel) must be maintained on the sidewalk at all times. (Figure One) A minimum of six feet should be provided where sidewalk widths allow.

CITY AND COUNTY OF SAN FRANCISCO  
DEPARTMENT OF PUBLIC WORKS

ORDER NO. 163,368

- B. Public service kiosks may not intrude on pedestrian "clear zones" at corners. Kiosks shall be set back a minimum of five feet (5') from edge of crosswalk. (Figure Two)

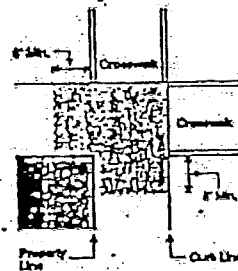
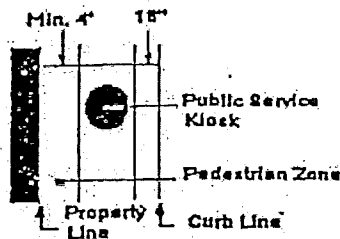


FIGURE ONE: Sidewalk Zones. FIGURE TWO: Corner Clear Zone

- C. Public service kiosks shall be placed not less than:
1. Eighteen (18") from the outside edge of the curb. Overhangs of roof line are permitted on all sides. However, an overhang may not protrude to within eighteen inches (18") of the edge of the curb except where overhang is more than ten feet (10') above the surface of the sidewalk. At no time may overhangs protrude beyond face of curb.
  2. Eight feet (8') from any fire escape and/or fire exit.
  3. Five feet (5') from any fire hydrant, driveway, wheelchair ramp, blue zone parking space, curb cut, crosswalk, pedestrian reservoir or corner.
  4. Sixty feet (60') from any Muni transit shelter and/or Kiosk.
  5. Five feet (5') from any certified street artist's designated area.
  6. Sixty feet (60') from any public art work under the jurisdiction of the Art Commission, except for public art on kiosks.
  7. Forty inches (40") from any other structure not otherwise specified herein, including but not limited to street light poles, parking meters, trees, etc.
- D. Public service kiosks shall not be placed on sidewalks which are less than twelve feet (12') wide.
- E. Public service kiosks shall not be placed over any storm drain or similar structure.
- F. Public service kiosks shall not obstruct any traffic sign or traffic signal.

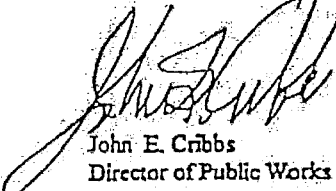
CITY AND COUNTY OF SAN FRANCISCO  
DEPARTMENT OF PUBLIC WORKS

ORDER NO. 163,368

- G. Public service kiosks shall not be placed on medians or traffic islands.
- H. Three (3) public service kiosks may be placed at intersections on Market Street only if they replace existing newsstands. Otherwise, no more than two (2) kiosks shall be placed at any Market Street intersection.
- I. Public service kiosks shall be placed not less than one hundred fifty feet (150') apart on any block face on Market Street. Kiosks shall be placed at random, rather than in a fixed, predictable pattern.
- J. Public service kiosks shall not be installed where placement would significantly impede the flow of pedestrian traffic. Kiosks which replace existing newsstands shall not worsen pedestrian congestion. New kiosks shall not be placed where their placement would reduce the pedestrian level of service below Level D.
- K. Public service kiosks shall not intrude, obstruct, diminish or reduce a significant view or become overwhelming objects of key views including planned and significant street elements.

III. CONSTRUCTION REQUIREMENTS

- A. The applicant shall obtain the required permits, if any, from regulating agencies of the State of California.
- B. The applicant shall contact the Department of Parking and Traffic at 25 Van Ness Avenue, phone 554-2300 for traffic requirements prior to beginning construction.
- C. The applicant shall conduct his construction operations in accordance with the requirements of Article 11 of the Traffic Code and the applicable sections under Section 110, Traffic Routing Work, of the Standard Specifications.
- D. The applicant shall call Underground Service Alert (U.S.A.) telephone number 1-800-642-2444, 48 hours prior to any excavation.
- E. Applicant shall be solely responsible for any damage to existing facilities.
- F. Construction must conform to all applicable City specifications and regulations.

  
John E. Cribbs  
Director of Public Works



CITY AND COUNTY OF SAN FRANCISCO  
DEPARTMENT OF PUBLIC WORKS

ORDER NO. 163,368

RECOMMENDED:

*Denise M. Brady*  
Denise M. Brady, Chief  
Bureau of Street-Use and Mapping

APPROVED:

*Vitaly B. Troyan*  
Vitaly B. Troyan  
Deputy Director, Public Services

Distribution

Outside B.S.M.  
Dept Files (2)  
Street Repair  
SFPD - Traffic Survey

Central Permit Bureau  
Traffic - H. Quan  
Attached List

Inside B.S.M.  
J. Rodriguez - 450 McAllister  
F. Casey - Inspector

JS/dl

APPROVED: SEPTEMBER 8, 1993

JOHN E. CRIBBS, DIRECTOR

CITY AND COUNTY OF SAN FRANCISCO  
DEPARTMENT OF PUBLIC WORKS

Order No. 163,369

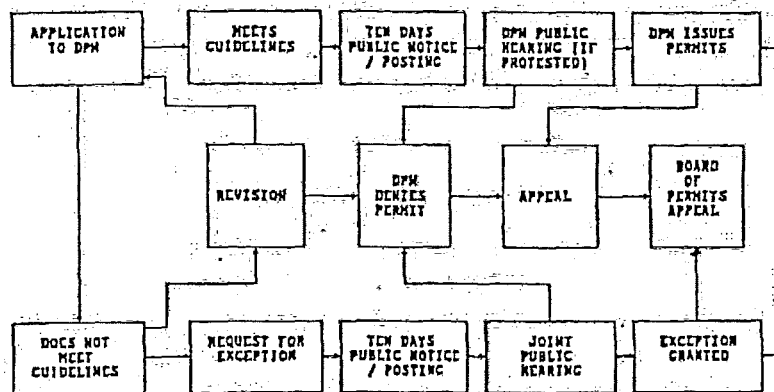
ESTABLISHING GUIDELINES FOR THE PLACEMENT OF PUBLIC  
TOILETS ON CITY STREETS AND PUBLIC PROPERTY.

Pursuant to Public Works Code Article 8, the Director of Public Works hereby establishes the following guidelines for the placement of public toilets on City streets and public property.

These guidelines are in addition to all provisions of the Public Works Code and are enforceable as part of Article 8.

I. APPLICATION AND APPROVAL:

A. The application process is summarized in the following chart:



B. Application to install public toilets shall be submitted to the Department of Public Works. Applications shall consist of Location Drawings showing public toilet placements, together with an application fee of three hundred fifty dollars (\$350.00). Location drawings shall include the following:

1. A twenty feet (20') to one inch (1") scale (20:1 scale) representation of the proposed public toilet site covering the area from the property line to the street centerlines at the nearest intersection. Mid-block sites can be shown with broken line ties.
2. All necessary street dimensions, such as sidewalk width and street width, the location of any curb, ramp and driveway and all surface structures, including hydrants, utility poles and catchbasins.
3. Sewer connections, water service connections, electrical service connections and foundation details for public toilets
4. Location of utilities under and in the vicinity of the proposed toilet site.

CITY AND COUNTY OF SAN FRANCISCO  
DEPARTMENT OF PUBLIC WORKS

ORDER NO. 163,368

3. Electrical service connections and foundation details for public service kiosk.
  4. Location of utilities under and in the vicinity of the proposed kiosk site.
  5. Electrical and foundation plans shall be stamped and signed by an engineer registered with the State of California.
- C. Notification of application to install public service kiosks shall be sent to fronting businesses, property owners, San Francisco Municipal Railway and Department of City Planning. Notices shall be posted within one hundred feet (100') of proposed public service kiosk site a minimum of ten (10) days prior to the hearing date.
- D. At the end of the ten days posting period, public hearing will be held by DPW for sites that received protest. The Director of Public Works or the Director's designee shall decide whether to issue permit after considering testimony received at the hearing.
- E. Applicant may request an exception for those public service kiosk sites which do not meet the guidelines set forth in this Order. A request for an exception shall be considered at a public hearing conducted jointly by the Director's designee, a representative appointed by the Director of the Art Commission, and a representative appointed by the Director of City Planning. The hearing shall be a public hearing for which notice shall be given as described in paragraph (C) above. The three hearing officers may authorize public service kiosks which do not comply with the guidelines if facts presented show that measures will be taken to minimize the impact of the kiosks or that the public toilet program benefits outweigh the anticipated impact. The Art Commission's designee may require the request for exception be referred to the Art Commission if the proposed site has a major urban design impact on the City.
- F. For those public service kiosk sites that are denied, the applicant may appeal by writing within fifteen days of the denial to the Executive Director of the Board of Permit Appeals, City Hall, Room 154A, San Francisco, CA 94102 to request that the matter be considered by the Board of Permit Appeals.

II. PLACEMENT GUIDELINES:

- A. All public service kiosks must conform to all applicable State, Federal and Local accessibility codes and regulations. A minimum of four feet (4') of pedestrian clearance (free of all obstacles for a clear path of travel) must be maintained on the sidewalk at all times. (Figure One) A minimum of six feet should be provided where sidewalk widths allow.

CITY AND COUNTY OF SAN FRANCISCO  
DEPARTMENT OF PUBLIC WORKS

Order No. 163,369

5. Sewer connections, water service connections, electrical service connections and foundation plans shall be stamped and signed by an engineer registered with the State of California.
- C. Notification of application to install public toilets shall be sent to fronting businesses, property owners, San Francisco Municipal Railway and Department of City Planning. Notices shall be posted within one hundred feet (100') of proposed public toilet site a minimum of ten (10) days prior to the hearing date.
- D. At the end of the ten days posting period, public hearing will be held by DPW for sites that received protest. The Director of Public Works or the Director's designee shall decide whether to issue permit after considering testimony received at the hearing.
- E. Applicant may request an exception for those public toilet sites which do not meet the guidelines set forth in this Order. A request for an exception shall be considered at a public hearing conducted jointly by the Director's designee, a representative appointed by the Director of the Art Commission, and a representative appointed by the Director of City Planning. The hearing shall be a public hearing for which notice shall be given as described in paragraph (C) above. The three hearing officers may authorize public toilets which do not comply with the guidelines if facts presented show that measures will be taken to minimize the impact of the toilets or that the public toilet program benefits outweigh the anticipated impact. The Art Commission's designee may require the request for exception be referred to the Art Commission if the proposed site has a major urban design impact on the City.
- F. For those public toilet sites that are denied, the applicant may appeal by writing within fifteen days of the denial to the Executive Director of the Board of Permit Appeals, City Hall, Room 154A, San Francisco, CA 94102 to request that the matter be considered by the Board of Permit Appeals.

II. PLACEMENT GUIDELINES:

- A. All public toilets must conform to applicable State, Federal and Local accessibility codes and regulations. A minimum of five feet (5') of pedestrian clearance (free of all obstacles for a clear path of travel) must be maintained on the sidewalk at all times. (Figure One)
- B. Public toilets may not intrude on pedestrian "clear zones" at corners. Public Toilets shall be set back a minimum of five feet (5') from edge of crosswalk. (Figure Two).

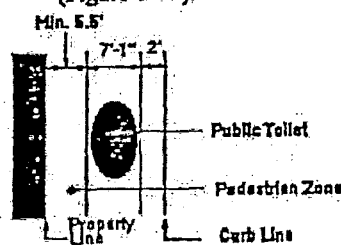


FIGURE ONE: Sidewalk Zones

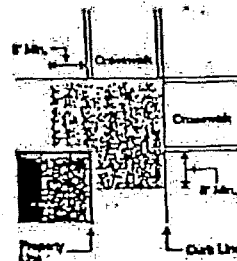


FIGURE TWO: Corner Clear Zone

CITY AND COUNTY OF SAN FRANCISCO  
DEPARTMENT OF PUBLIC WORKS

ORDER NO. 163,369

- C. Public toilets shall be placed not less than:
1. Twenty four inches (24") from the outside edge of the curb. Overhangs of roof line are permitted on all sides. However, an overhang may not protrude to within eighteen inches (18") of the edge of the curb except where overhang is more than ten (10') above the surface of the sidewalk. At no time may overhangs protrude beyond the face of curb.
  2. Eight feet (8') from any fire escape and/or fire exit.
  3. Five feet (5') from any fire hydrant, driveway, wheelchair ramp, blue zone parking space, curb cut, crosswalk, pedestrian reservoir or corner.
  4. Sixty feet (60') from any Muni. Transit Shelter and/or Kiosk.
  5. Five feet (5') from any certified street artist's designated area.
  6. Sixty feet (60') from any public work of art under the jurisdiction of the Art Commission, except for public art on public toilets.
  7. Forty inches (40") from any other structure not otherwise specified herein, including but not limited to street light poles, parking meters, power poles and trees.
- D. Public toilets shall not be placed on sidewalks which are less than fourteen feet (14') wide.
- E. Public toilets shall not be placed over any storm drain or similar structure.
- F. Public toilets shall not obstruct any traffic sign or traffic signal.
- G. Public toilets shall not be placed on medians and traffic islands.
- H. Public toilets shall not be installed where placement would significantly impede the flow of pedestrian traffic.
- I. Public toilets shall not intrude, obstruct, diminish or reduce a significant view or become overwhelming objects of key views including planned and significant street elements.

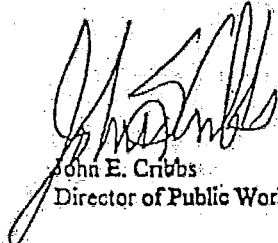
III. CONSTRUCTION REQUIREMENTS

- A. The applicant shall obtain the required permits, if any, from regulating agencies of the State of California.
- B. The applicant shall contact the Department of Parking and Traffic at 25 Van Ness Avenue, phone 554-2300 for traffic requirements prior to beginning construction.

**CITY AND COUNTY OF SAN FRANCISCO  
DEPARTMENT OF PUBLIC WORKS**

**ORDER NO. 163,369**

- C. The applicant shall conduct his construction operations in accordance with the requirements of Article 11 of the Traffic Code and the applicable sections under Section 110, Traffic Routing Work, of the Standard Specifications.
- D. The applicant shall call Underground Service Alert (U.S.A.) telephone number 1-800-642-2444, 48 hours prior to any excavation.
- E. Applicant shall be solely responsible for any damage to existing facilities.
- F. Construction must conform to all applicable City specifications and regulations.

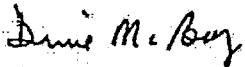


John E. Critts  
Director of Public Works

CITY AND COUNTY OF SAN FRANCISCO  
DEPARTMENT OF PUBLIC WORKS

ORDER NO. 163,369

RECOMMENDED:

  
Denise M. Brady, Chief  
Bureau of Street-Use and Mapping

APPROVED:

  
Vitaly B. Troyan  
Deputy Director, Public Services

Distribution

Outside B.S.M.  
Dept Files (2)  
Street Repair  
SFPD - Traffic Survey

Central Permit Bureau  
Traffic - H. Quan  
Attached List

Inside B.S.M.  
J. Rodriguez -450 McAllister  
F. Casey - Inspector

JS/dl

APPROVED: SEPTEMBER 8, 1993

JOHN E. CRIBBS, DIRECTOR

**CITY AND COUNTY OF SAN FRANCISCO  
DEPARTMENT OF PUBLIC WORKS**

**ORDER NO. 169,739**

**MODIFYING PROCEDURE FOR THE NOTIFICATION PROCESS REQUIRED TO PLACE  
PUBLIC SERVICE/ADVERTISING KIOSKS ON CITY STREETS AND PUBLIC PROPERTY IN  
CONJUNCTION WITH THE PUBLIC TOILET PROGRAM.**

Pursuant to Public Works Code Article 8, the Director of Public Works hereby modifies the procedure set forth in DPW Order No. 163,368 for the placement of public service/advertising kiosks on City streets and public property. This Order is intended to supersede Order No. 169,653 in its entirety.

"Public Service/Advertising Kiosk" means a free standing circular kiosk, the exterior of which is divided into three sections, two of which display advertising panels of approximately fifty (50) square feet each, and one of which provides access to a public service, such as public art or a newsstand.

The following procedure shall apply to all proposed public service/advertising kiosks as well as kiosks that are exceptions as described in Section E, DPW Order No. 163,368 approved on September 8, 1993.

- A. The Department of Public Works shall prepare a Public Hearing Notice that contains:
1. Date, time and place of public hearing.
  2. Deadline (one day before the hearing date) by which the public may submit written comments on the proposed kiosk installation.
  3. Drawing showing the area/intersection of the proposed installation and drawing of the proposed kiosk.
  4. Name of contact person and phone number and address of such person.
- B. DPW shall send the Public Hearing Notice twenty (20) days prior to the hearing date to:
1. Owners of property within one hundred and fifty foot (150') radius of the proposed kiosk site by **certified mail**.
  2. All occupants of dwelling units and/or commercial spaces of property within one hundred and fifty foot (150') radius of the proposed kiosk site. Notices shall be delivered by Decaux to all ground floor commercial occupants fronting on a public street by hand. For all other occupants, a supply of hearing notices shall be delivered by hand by Decaux to the owner or Property Manager of said building for delivery to the tenants

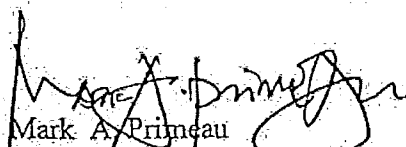


CITY AND COUNTY OF SAN FRANCISCO  
DEPARTMENT OF PUBLIC WORKS

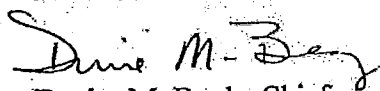
ORDER NO. 169,739

3. Any neighborhood or business organization listed in the "Neighborhood Organization Directory" published by the San Francisco Department of City Planning dated January 1996, that has submitted to DPW a written request for such notices and organizations determined by DPW that the proposed kiosk would have direct or indirect impact by such installation shall receive a notice by regular mail.
- C. Public Hearing Notice shall be posted within one hundred feet (100') of proposed Public Service Kiosk site a minimum of twenty (20) days prior to the hearing date.
- D. In order to facilitate the public hearing process, JCDecaux United Furniture, Inc. shall submit to DPW:
1. A 150-foot radius map.
  2. A list of current property owners fronting and adjacent to the proposed kiosk.
  3. Mailing labels of property owners using the addresses of properties contained in the records of the Tax Collector.
  4. Postage stamps.

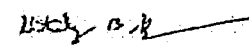
Except as provided herein, DPW Order No. 163,368 remains unmodified and in full force and effect. In the event if any inconsistency between this Order and Order No. 163,368, this Order shall control.

  
Mark A. Primeau  
Director of Public Works

RECOMMENDED:

  
Denise M. Brady, Chief  
Bureau of Street-Use and Mapping

APPROVED:

  
Vitaly B. Troyan  
Deputy Director, Public Services

Distribution

Outside B.S.M

Dept Files (2)

Traffic - H. Quan

Cliff Jarrard-Port

Stuart Sunshine-Mayor's Office

Supervisor Barbara Kaufman

Attached list

Jesse Smith-Deputy City Attorney

Francois Nion-JCDecaux

APPROVED: May 31, 1996

MARK A. PRIMEAU, DIRECTOR

# Introduction Form

By a Member of the Board of Supervisors or Mayor

RECEIVED  
 BOARD OF SUPERVISORS  
 SAN FRANCISCO  
 2017 SEP 12 PM 2:14  
 Time stamp  
 or meeting date  
 AK

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee. (An Ordinance, Resolution, Motion or Charter Amendment).
- 2. Request for next printed agenda Without Reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning : "Supervisor [ ] inquiries"
- 5. City Attorney Request.
- 6. Call File No. [ ] from Committee.
- 7. Budget Analyst request (attached written motion).
- 8. Substitute Legislation File No. [ ]
- 9. Reactivate File No. [ ]
- 10. Question(s) submitted for Mayoral Appearance before the BOS on [ ]

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission
- Youth Commission
- Ethics Commission
- Planning Commission
- Building Inspection Commission

**Note: For the Imperative Agenda (a resolution not on the printed agenda), use the Imperative Form.**

Sponsor(s):

Supervisor Aaron Peskin

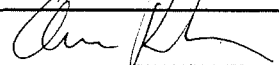
Subject:

Amendment to Revenue Agreement -- JC Decaux San Francisco, Inc. -- Extending Term to December 16, 2017

The text is listed:

Resolution approving the Third Amendment to the Revenue Agreement between San Francisco Public Works and JC Decaux San Francisco, LLC, for the Automatic Public Toilet and Public Service Kiosk Program extending the contract by 60 days, changing the termination date from October 17, 2017, to December 17, 2017

Signature of Sponsoring Supervisor:



For Clerk's Use Only