

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

This First Amendment to Agreement (“Amendment”) is made as of _____, 2021, in San Francisco, California, by and between the City and County of San Francisco, a municipal corporation (“City”), acting by and through its San Francisco Municipal Transportation Agency (“SFMTA”) and Friends of the Cable Car Museum, Inc. (“Operator”).

RECITALS

- A. City owns the San Francisco Cable Car Museum location at 1201 Mason Street in San Francisco (“Cable Car Museum”).
- B. The SFMTA and Operator signed an Agreement for Management and Operation of Cable Car Museum dated July 1, 2009 (“Agreement”) to allow Operator to manage the Cable Car Museum for a 10 year term ending June 30, 2019 with two 5-year extension options.
- C. Operator submitted a request, dated January 21, 2019, to exercise its option to extend the term for five years, pursuant to Section 2.2 of the Agreement.
- D. City agrees to extend the term and have Operator manage the Cable Car Museum for another 5 years effective retroactively to July 1, 2019, pursuant to Section 2.2 of the Agreement.

ACCORDINGLY, in consideration of the covenants and agreements contained in this Amendment, and other good and valuable consideration, receipt of which is acknowledged, the parties hereto agree as follows:

- 1. **Term of Agreement.** Section 2.1 is amended and replaced in its entirety to read as follows:

“2.1 Term of Agreement. The term of this agreement shall be for a period of five (5) years (“TERM”), commencing on July 1, 2019 and terminating on June 30, 2024, unless sooner terminated as provided herein or extended pursuant to Section 2.2.”

- 2. **Concession Payments.** Section 3 is hereby amended and restated to read in its entirety as follows:

“3 Concession Payments. During the term of this Agreement, the Operator shall pay an annual concession payment to SFMTA (“Concession Payment”). SFMTA acknowledges that Operator has paid the Concession Payment in the amount of Fifty-One Thousand Five Hundred Dollars (\$51,500) for the period of July 1, 2019-June 30, 2020. The parties agree that Concession Payment payable to SFMTA for the remainder of the term of this Agreement shall be as follows:

First Extension Term

July 1, 2020 thru June 30, 2021 - \$0 due to COVID-19 pandemic closure

July 1, 2021 thru June 30, 2022 - \$37,563

July 1, 2022 thru June 30, 2023 - \$42,207

July 1, 2023 thru June 30, 2024 - \$43,474

Concession Payments due during the Term shall be paid in quarterly installments each year on the following schedule for the period beginning July 1, 2021 and ending June 30, 2024:

- First quarterly payment – July 1st
- Second quarterly payment – October 1st
- Third quarterly payment – January 1st
- Fourth quarterly payment – April 1st

Each quarterly installment payment will be 25% of the amount due for the July 1st through June 30th period specified above.

Notwithstanding the foregoing, the parties agree that the first quarterly payment for the period commencing July 1, 2021-June 30, 2022 shall be due 30 days after this Amendment has been fully executed.

3. **Maintenance of Artifacts.** Section 10.3 is hereby amended and restated to read in its entirety as follows:

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

4. **Insurance.** Section 15.5 is deleted in its entirety.
5. **Legal Effect.** Except as expressly modified by this Amendment, all of the terms and conditions of the Agreement for Management and Operation shall remain unchanged and in full force and effect.
6. **No Joint Venture.** This Amendment or any activity by the City hereunder does not create a partnership or joint venture between the City and Tenant relating to the Lease or otherwise. This Amendment does not constitute authorization or approval by the City of

any activity conducted by Tenant, and the City shall in no way be responsible for the acts or omissions of Tenant on the Premises or otherwise.

7. **Attorney's Fees.** In the event a dispute arises concerning this Amendment, the party not prevailing in such dispute shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorneys' fees. For purposes of this Amendment, reasonable fees of attorneys of the City's Office of the City Attorney shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney.
8. **Applicable Law.** This Amendment shall be governed by, construed and enforced in accordance with the laws of the State of California.
9. **Miscellaneous.** Except as expressly modified herein, the terms, covenants and conditions of the Agreement shall remain unmodified and in full force and effect. The Agreement as amended by this Amendment constitutes the entire agreement of the parties concerning the subject matter hereof, and supersedes any and all previous negotiations, agreements, or understandings, if any, regarding matters contained herein. The execution of this Amendment shall not constitute a waiver or relinquishment of any rights that either party may have relating to the Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the date first written above.

CITY:

CITY AND COUNTY OF SAN FRANCISCO,
a municipal corporation

OPERATOR:

FRIENDS OF THE CABLE CAR MUSEUM, INC.,
a

BY: _____

Jeffrey Tumlin
Director of Transportation
SFMTA

By: Jose Godoy

Jose Godoy
Chief Executive Officer
Friends of the Cable Car Museum

Date: _____

Date: October 13, 2021

AUTHORIZED BY:

MUNICIPAL TRANSPORTATION AGENCY BOARD OF DIRECTORS

Resolution No. _____

Adopted: _____

Attest:

Christine Silva, Secretary

APPROVED AS TO FORM:

Dennis J. Herrera,
City Attorney

By: _____

Stephanie Stuart
Deputy City Attorney

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