

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

Second Amendment to Agreement

THIS SECOND AMENDMENT (this “Amendment”) is made as of October __, 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, 4th 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

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: _____
Yadira Taylor
Deputy City Attorney