

**THIS PRINT COVERS CALENDAR ITEM NO. : 10.11**

**SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY**

**DIVISION:** Finance and Information Technology

**BRIEF DESCRIPTION:**

Authorizing the Director of Transportation to execute an agreement with City Pass, Inc. (CityPASS) for the Marketing and Sale of Fare Media for an amount not to exceed \$750,000 and for a term of two years, with one option for up to one additional year to be exercised in the sole discretion of the Director or his or her designee.

**SUMMARY:**

- City Pass, Inc. (CityPASS) operates the San Francisco CityPASS program, combining admission passes to several San Francisco cultural and tourist attractions into a single-price ticket book sold primarily to visitors to San Francisco.
- The SFMTA has participated in this program by offering the inclusion of the Municipal Railway (Muni) Seven Day Passport with CityPASS since January, 2000.
- This proposed agreement would instead market the Muni Three Day Passport (Passport) through CityPASS to meet more visitors' needs at an affordable price.
- Muni Passports are a page contained in the CityPASS Ticket Book, and Muni accepts the ticket books, when presented by passengers, as valid Passports.
- SFMTA staff would also continue to sell CityPASS Ticket Books at SFMTA's retail locations.
- SFMTA would continue to receive full payment for the value of the Passports in CityPASS Ticket Books sold at the Agency's retail locations, and a proportionate share from each San Francisco CityPASS Ticket Book sold by other vendors.
- The CityPASS program generates approximately \$1,100,000 a year in pass-through revenue for the SFMTA.
- The SFMTA seeks to continue participation in the CityPASS program and requests authorization to enter into an agreement for the Marketing and Sale of Fare Media with CityPASS for a term of two years, with one option for up to one additional year that may be exercised in the sole discretion of the Director or his or her designee.

**ENCLOSURES:**

1. SFMTAB Resolution
2. Agreement

**APPROVALS:**

**DATE**

DIRECTOR \_\_\_\_\_ 2/10/17

SECRETARY R. Boomer \_\_\_\_\_ 2/10/17

**ASSIGNED SFMTAB CALENDAR DATE:** February 21, 2017

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### **PURPOSE**

The purpose of the calendar item is to authorize the Director of Transportation to enter into an Agreement with City Pass Inc. (CityPASS) for the Marketing and Sale of Fare Media for an amount not to exceed \$750,000 and a term of two years, with one extension for up to one additional year to be exercised in the sole discretion of the Director or his or her designee.

### **STRATEGIC PLAN GOALS AND TRANSIT FIRST POLICY PRINCIPLES**

This agreement supports the following Strategic Plan Goals:

- Goal 1: Make transit, walking, bicycling, taxi, ridesharing and carsharing the preferred means of travel.
- Goal 2: Improve the environment and quality of life in San Francisco by increasing the transportation system's positive impact to the economy.

This agreement supports that following Transit-First Policy Principle:

Public transit, including taxis and vanpools, is an economically and environmentally sound alternative to transportation by individual automobiles. Within San Francisco, travel by public transit, by bicycle and on foot must be an attractive alternative to travel by private automobile.

### **DESCRIPTION**

In January, 2000, SFMTA entered into a pilot program agreement with CityPASS to include the Muni Seven Day Passport in the San Francisco CityPASS Ticket Book as one of the several participating attractions of the San Francisco CityPASS program. Other participating San Francisco attractions include the Blue & Gold Fleet Bay Cruise Adventure, California Academy of Sciences, Aquarium of the Bay, the Exploratorium, and the de Young/Legion of Honor Fine Arts Museums.

Under the pilot program, the SFMTA agreed to sell the CityPASS Ticket Book at its retail locations. In return, SFMTA received the full face value of the Passport for each CityPASS Ticket Book sold at an SFMTA retail location. In addition, after deduction of a management fee by CityPASS, SFMTA received a percentage of the revenues from each San Francisco CityPASS Ticket Book sold by other vendors, including those sold by CityPASS and the other participating attractions. SFMTA received this share of revenue from each ticket book sold regardless of whether the Passport was actually used. The SFMTA continued to participate in the CityPASS program, and on August 4, 2010, The SFMTA and CityPASS entered into an agreement to operate under these terms for five years. On August 3, 2015, the parties extended the term of that agreement for one year, until August 3, 2016.

The proposed agreement retains the structure of the prior agreement but replaces the Seven Day Passport with Muni's Three Day Passport. As with the prior agreement, CityPASS would be responsible for marketing and distribution of the CityPASS Ticket Book and the SFMTA would agree to sell CityPASS Ticket Books at SFMTA ticket sales locations and transmit to CityPASS the revenue from such sales after subtracting the value of the Passport (\$32 per Ticket Book) and

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a commission of \$1.50 for each Ticket Book. The SFMTA will receive, on a monthly basis, a portion of the revenue from all other Ticket Book sales, including Ticket Books sold at other San Francisco attractions participating in the CityPASS program, in accordance with a formula set forth in the Agreement. The proposed agreement would be for a term of two years, with one option to, to be exercised by the Director in his or her discretion, extend the term of the agreement for one additional year.

Funds are distributed using a formula which weights number of visitors with an attraction's price. SFMTA would continue to receive payment for all ticket books regardless of whether or not the Passport is ever used. Consistent with the past agreements with this vendor, CityPASS would collect a management fee that is scaled downward from 23% of total revenue as sales unit volume increases. In 2016, the management fee average was 20%. Notwithstanding the above formula, the Agreement provides for a guaranteed minimum payment to SFMTA of \$12.00 for each Ticket Book sold.

## **STAKEHOLDER ENGAGEMENT**

CityPASS media contains information on how to use the MUNI system making the city more accessible to visitors who otherwise might find public transportation confusing and complicated. Customer reviews on the CityPASS site show that travelers (more than one-third of whom are from outside the US) value the passport inclusion in CityPASS. At least one in every three reviews includes some mention of how valuable the Muni passport was in helping them get to each of the participating attractions, in many cases specifically referencing that there is no need to rent a car or reach into their wallet each time. The result is that CityPASS users are incentivized not to rent a car, to choose environmentally conscious transportation and have limited impact on roadway congestion.

## **ALTERNATIVES CONSIDERED**

The SFMTA could decide to withdraw from participation in the CityPASS program. Staff concluded, however, that this program provides vital marketing of SFMTA services to San Francisco visitors and a convenient distribution channel to obtain fare media.

## **FUNDING IMPACT**

While SFMTA would be required to make payments to CityPASS for the revenue received from sales of Ticket Books at SFMTA locations, the Agency would subtract from that amount the face value of the Passports and a commission of \$1.50 for each Ticket Book sold. Accordingly, the CityPASS program generates approximately \$1,100,000 a year in net pass-through revenue for the SFMTA through its sales program. Payments to CityPass are capped at \$250,000 per year. Nothing in this agreement precludes the authority of the Board of Directors from setting fares for Passports.

## **ENVIRONMENTAL REVIEW**

On December 19, 2016 the SFMTA, under authority delegated by the Planning Department, determined that the Agreement with City Pass, Inc. for the Marketing and Sale of Fare Media is

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not a “project” under the California Environmental Quality Act (CEQA) pursuant to Title 14 of the California Code of Regulations Sections 15060(c) and 15378(b).

A copy of the CEQA determination is on file with the Secretary to the SFMTA Board of Directors and is incorporated herein by reference.

**OTHER APPROVALS RECEIVED OR STILL REQUIRED**

The City Attorney’s Office has reviewed this Calendar Item.

**RECOMMENDATION**

Staff recommends that the San Francisco Municipal Transportation Agency Board of Directors authorize the Director of Transportation to execute the proposed Agreement with City Pass, Inc. for the Marketing and Sale of Fare Media for an amount not to exceed \$750,000 and for a term of two years with one option for up to one additional year to be exercised in the sole discretion of the Director or his or her designee.

SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY  
BOARD OF DIRECTORS

RESOLUTION No. \_\_\_\_\_

WHEREAS, The San Francisco Municipal Transportation Agency (SFMTA) regularly markets a Municipal Railway (Muni) Three-Day Passport (“Passport”), a ticket good for three consecutive days of unlimited rides on revenue vehicles and streetcars operated by Muni, including cable cars; and

WHEREAS, City Pass, Inc. (CityPASS) operates the San Francisco CityPASS program, combining admission passes to several San Francisco cultural and tourist attractions, including the Blue & Gold Fleet Bay Cruise Adventure, California Academy of Sciences, and choice of the Exploratorium or the De Young and Legion of Honor Fine Arts Museums into a single-price ticket book sold primarily to visitors to San Francisco; and

WHEREAS, In January, 2000, the SFMTA entered into a pilot program with CityPASS to include a Seven-Day Passport in the San Francisco CityPASS Ticket Book as one of several participating attractions; and

WHEREAS, Under the pilot program and continuing with an agreement in August, 2010, the SFMTA agreed to market the CityPASS Ticket Book at its retail locations and forward the proceeds for each Ticket Book sold (minus a commission and the value of the Passport) to CityPASS while CityPASS agreed to provide SFMTA with a portion of the revenue from all other Ticket Book sales in accordance with a formula set forth in the agreement; and

WHEREAS, The SFMTA proposes to enter an Agreement with CityPASS for the Marketing and Sale of Fare Media for a term of two year with one extension option for one additional year, under which CityPASS would include a three-Day Passport in the San Francisco CityPASS Ticket Book as one of the several participating attractions of the San Francisco CityPASS program; and

WHEREAS, Under the Agreement, the Passport would be a page contained in the CityPASS Ticket Book, and Muni would accept CityPASS Ticket Books, when presented by passengers, as valid Passports; and

WHEREAS, The SFMTA would receive, on a monthly basis, a portion of the revenue from all Ticket Book sales, in accordance with a formula set forth in the Agreement; and,

WHEREAS, The SFMTA would agree to market the CityPASS Ticket Book at its retail locations and forward the proceeds for each Ticket Book sold (minus a commission and the value of the Passport) to CityPASS; and

WHEREAS, On December 19, 2016 the SFMTA, under authority delegated by the Planning Department, determined that the Agreement with City Pass, Inc. for the Marketing and Sale of Fare Media is not a “project” under the California Environmental Quality Act (CEQA) pursuant to Title 14 of the California Code of Regulations Sections 15060(c) and 15378(b); and

WHEREAS, A copy of the CEQA determination is on file with the Secretary to the SFMTA Board of Directors, and is incorporated herein by reference; now, therefore, be it now, therefore, be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Director of Transportation to execute an Agreement with City Pass, Inc. (CityPASS) for the Marketing and Sale of Fare Media for an amount not to exceed \$750,000 and for a two-year term with one option for up to one additional year, to be exercised in the sole discretion of the Director or his or her designee.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of February 21, 2017

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Secretary to the Board of Directors  
San Francisco Municipal Transportation Agency

**AGREEMENT BETWEEN**  
**THE CITY AND COUNTY OF SAN FRANCISCO AND**  
**CITYPASS, INC. FOR MARKETING AND SALE OF FARE MEDIA**

This Agreement is made this 1<sup>st</sup> day of March, 2017, in the City and County of San Francisco, State of California, by and between: City Pass, Inc. (CityPASS), a Wyoming corporation, hereinafter referred to as "Contractor," and the City and County of San Francisco, a municipal corporation, hereinafter referred to as "City," acting by and through its Municipal Transportation Agency, hereinafter referred to as "SFMTA."

**Recitals**

- A. The SFMTA regularly markets a Municipal Railway (Muni) Three-Day Passport, a ticket good for three consecutive days of unlimited rides on revenue vehicles and streetcars operated by Muni, including cable cars.
- B. The SFMTA proposes to enter into a two year agreement with Contractor to market Muni Three-Day Passports as one of several participating attractions of the San Francisco CityPASS program, whereby the Passport will be one of the pages in the CityPASS Ticket Book.
- C. Contractor represents and warrants that it is qualified to perform the services required by City as described in this Agreement.

NOW, THEREFORE, the parties agree as follows:

**1. 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. Charges will accrue only after prior written authorization certified by the Controller, and the amount of City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization.

This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated.

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.

## **2. Term of the Agreement**

Subject to Section 1, the term of this Agreement shall be from the date of execution of this Agreement by both parties and shall continue through February 28, 2019, unless extended further by mutual agreement of the parties. One extension shall be on the same terms and conditions as this Agreement. No extension shall be for more than one year.

## **3. General Description of Program and Services; Definitions**

The CityPASS program combines various attractions into a single-price Ticket Book, which is primarily marketed to visitors to the San Francisco area. Pursuant to this Agreement, SFMTA agrees to permit the Three-Day Muni Passport to be included as an attraction in the CityPASS Ticket Book. Contractor, in turn, agrees to perform the services fully set forth in this Agreement. Contractor is generally responsible for program administration, revenue distribution, marketing, advertising and sales management.

The following definitions shall apply to this Agreement:

City:	The City and County of San Francisco, a municipal corporation.
Commissions:	Selling fees paid to Participants for On-Site Sales, and to tour operators, hotels sales outlets and other sales organizations.
Distribution Pool:	A pool of funds from which Participants receive a monthly revenue distribution. The amount of the Distribution Pool equals the gross amount of all CityPASS Ticket Books sold or used during the prior month, less Commissions and the management fee paid to Contractor.
Muni:	The San Francisco Municipal Railway, the public transit system of City operated by the San Francisco Municipal Transportation Agency.
SFMTA On-Site Sales:	Sales of Ticket Books at SFMTA/City locations, including SFMTA-run facilities, the SFMTA website, and other City-owned or operated locations as may be agreed to by the parties, but not including other Participant locations.



On-Site Sales:	Sales of Ticket Books at Participant's location(s).
Participant:	One of several participating attractions in the San Francisco CityPASS Program, namely Blue & Gold Fleet Bay Cruise Adventure, California Academy of Sciences, Aquarium of the Bay, Exploratorium, the de Young/ Legion of Honor Fine Arts Museums, and Muni.
Passport or Three-Day Muni Passport:	A ticket good for three consecutive days of unlimited rides on revenue vehicles and streetcars operated by Muni, including cable cars. The ticket will be contained as a page in the CityPASS Ticket Book.
Redemptions:	Ticket Books sold at the locations other than SFMTA/City locations.
Revenue Weighting Percentage	The percentage obtained by dividing each Participant's retail admission price (in the case of SFMTA, the price of the Three-Day Muni Passport) by the sum of all retail admission prices for the Participants.
Ticket Book, or CityPASS Ticket Book:	A single-price ticket book containing tickets to participating attractions in the San Francisco CityPASS Program.

#### **4. City's Responsibilities**

**a. Promotional and Sales Responsibilities.** SFMTA shall offer CityPASS Ticket Books for sale at SFMTA On-Site Sales locations to the extent feasible. At all such SFMTA On-Site Sales locations, SFMTA shall incorporate, to the extent appropriate and feasible, the CityPASS logo, prices, and information. At any such location, SFMTA shall maintain an inventory of a sufficient number of Ticket Books to meet requirements for three days of sales.

SFMTA may order additional Ticket Books from Contractor, allowing for three business days for processing and delivery. Where appropriate, SFMTA will include Contractor on its web site and promotional literature. Contractor shall pay for all shipping costs in connection with the delivery of Ticket Books to SFMTA. If SFMTA requires Ticket Books sooner than within three working days, SFMTA will pay all shipping costs for such priority shipments.

SFMTA shall submit monthly reports of Ticket Book sales at SFMTA On-Site Sales locations to the Contractor by the tenth (10<sup>th</sup>) of the following month. SFMTA shall also remit to Contractor the gross revenue from each month's sale of Ticket Books, less

SFMTA's one dollar and fifty cent (\$1.50) commission per Ticket Book and less the full retail value of a Muni Three-Day Passport per Ticket Book. SFMTA shall send the remittance for a given month's Ticket Books sales to the Contractor by the 10<sup>th</sup> of the following month. In no event shall the amount paid by SFMTA to Contractor under this Agreement exceed \$250,000 per year, or \$750,000 over the term of this Agreement. In no event shall SFMTA be liable for interest or late charges for any late payments.

b. **Acceptance of Ticket Books.** SFMTA agrees to accept Three-Day Muni Passports contained in valid CityPASS Ticket Books on the entire Muni system to the same extent as any equivalent Three-Day Muni Passport sold separately. SFMTA will not accept CityPASS Ticket Books unless they have been date-stamped or have the date of first use written in on the cover of the CityPASS Ticket Book.

c. **Passport Price, Terms and Conditions.** The retail cost of a Three-Day Muni Passport is currently thirty-two dollars (\$32.00) for unlimited use for three consecutive days. If SFMTA changes the price of a Three-Day Muni Passport during the term of this Agreement, SFMTA may not change the price charged to users of CityPASS Ticket Books unless it notifies Contractor of any such planned price increases by December 15 prior to the increase. Any changes to the price of the Passport will take effect on March 1 of each year.

## 5. Contractor's Responsibilities

a. **Ticket Distribution.** Contractor shall provide SFMTA with Ticket Books which will be recorded in the CityPASS ticket inventory control system. Contractor shall be responsible for the cost of production, design and distribution of the Ticket Books; however, SFMTA shall exercise total editorial control over the design of the Passport page of the Ticket Book.

b. **Funds Disbursement.** Contractor shall distribute SFMTA's monthly revenue from the Distribution Pool as provided in Section 7(b)(ii).

c. **Reports.** Contractor shall provide a Monthly Revenue Distribution Report in a format approved by the SFMTA. Contractor shall send SFMTA a monthly report no later than the 10<sup>th</sup> of each month following Contractor's receipt of reports from Participants. The Monthly Revenue Distribution Report shall be accompanied by the funds disbursement described in Section 5(b) and 7(b)(ii).

By March 1<sup>st</sup> of each year of this Agreement, Contractor shall provide a report describing the number of Ticket Books ordered by Contractor for the following year, the location of all outstanding Ticket Books, and the number of Ticket Books from the prior year still in the Contractor's possession.

d. **Marketing of CityPASS.** Contractor agrees that it shall use its best efforts to sell Ticket Books to local off-site outlets such as visitor centers and hotels, as well as to wholesalers and through the Internet.

e. **Website.** Contractor shall maintain an Internet website for the marketing of Ticket Books. Contractor agrees that this site shall be kept up-to-date, and that it shall regularly review the site for factual errors and mistakes in grammar and style.

Contractor shall use its best efforts to construct an Internet sales system allowing visitors to SFMTA's website to hyperlink to a Contractor-created Ticket Book sales site. Any time a hyperlink from SFMTA's website results in the sale of a Ticket Book, that sale shall be treated as a SFMTA On-Site Sale for the purposes of this Agreement. Contractor may charge customers visiting its Ticket Book sales website a reasonable handling fee in addition to the retail value of the Ticket Books; however, such a fee will not be included as part of the price of the sale for purposes of calculating payments to SFMTA.

f. **Promotional Duties.** Contractor shall, at its own expense, distribute color brochures promoting the sale of Ticket Books, which brochures will make specific reference to the services available through use of the Passport. Contractor shall continue to develop point-of-sale materials to promote and explain the program and to promote the attractions. Contractor shall continue to conduct a comprehensive public relations program, and to pay for advertising of the Ticket Books in the primary City visitor publications. Contractor shall market the Ticket Books at leading international and domestic trade shows.

**6. Guaranteed Maximum Costs.** The City's payment obligation to Contractor hereunder shall not at any time exceed the amount certified by the City's Controller for the purpose and period stated in such certification. Absent an authorized Emergency per the City charter or applicable Code, no City representative is authorized to offer or promise, nor is the City required to honor, any offered or promised payments to Contractor under this Agreement in excess of the certified maximum amount without the Controller having first certified the additional promised amount and the Parties having modified this Agreement as provided in Section 31, Modification of this Agreement.

## **7. Payment; Delinquency**

a. **Minimum Guarantee.** City shall receive a minimum of twelve dollars (\$12.00) for every Three-Day Muni Passport sold by a Participant, or by unaffiliated tour operators, sales outlets or organizations. The Minimum Guarantee shall be paid whenever SFMTA's portion of the Revenue Distribution Pool for any given month (as calculated in subsection (b) below) fails to exceed the Minimum Guarantee, on a per Passport basis. Contractor guarantees City a minimum of two hundred thousand dollars (\$200,000) annually provided that SFMTA conducts On-Site Sales at the cable car ticket booths at Powell and Market Streets, Bay and Taylor Streets, and Hyde and Beach Streets. If one or both booths operate for less than a full year, but at least 15 days in each month they are in operation, the annual minimum guarantee will be pro-rated by month and by booth.

b. **Revenue to City.** City shall receive revenue from the following:

- i. **Commission for On-Site Sales.** SFMTA shall receive a fee of one dollar and fifty cents (\$1.50) from the sale of any Ticket Book sold by any City agency or contractor, excluding other Participants and the San Francisco Visitors and Convention Bureau ("Bureau").
- ii. **100% Reimbursement for On-Site Sales.** Except as provided above, SFMTA shall receive the full retail value of a Three-Day Muni Passport for each SFMTA On-Site Sale of a Ticket Book.
- iii. **Revenue Distribution Pool.** Revenue from all Ticket Book sales received by Contractor shall be held in a general account and shall be allocated to the Distribution Pool each month for the benefit of SFMTA. Distribution of proceeds to SFMTA shall be based on total Ticket Book sales and shall not be dependent on whether a ticket of any other Participant has been used or on whether a Ticket Book has been used on MUNI. This is in contrast to the distributions to other Participants, which are based on the actual number of Redemptions. Revenue from the Distribution Pool shall be dispensed to SFMTA each month as follows:
  - (a) A weighting formula for SFMTA will be computed by multiplying the Revenue Weighting Percentage times the total number of ticket books sold from all sources in a month, producing a value called "weighted ticket redemptions." The "weighted ticket redemptions" for each attraction (the actual number of Redemptions for attractions other than Muni) are totaled and the "weighted ticket redemptions" for Muni are divided by the total to produce the "distribution percentage" for SFMTA. .
  - (b) The distribution percentage is then multiplied by the proceeds of the Distribution Pool to determine the amount to be distributed to each Participant.

(c) Example:

Muni Passport Price: \$32.00

Ticket Book Price: \$86.00

Ticket Book Sales: 5,535

Sum of Retail Admission Prices: \$203.35

Muni Sales: 512

Muni Redemptions: 5,023

Muni Revenue Weighting Percentage: 15.74% ( $\$32.00 / \$203.35$ )

Muni Weighted Ticket Redemptions: 790.62 ( $5,023 \times .1574$ )

Hypothetical Total Weighted Ticket Redemptions: 2,941.76

SFMTA Distribution Percentage: .2687 (790.62 / 2,941.76)

Hypothetical Distribution Pool: \$236,579.39

SFMTA Distribution: \$63,568.88 (.2687 x \$236,579.39)

c. **Management Fee.** Contractor shall be entitled to a monthly management fee, to cover its management services. The management fee shall be a percentage of the gross revenues from sales of all Ticket Books. The fee shall be scaled as a function of volume in each 12-month period beginning January 1 and ending December 31. The fee will reduce to the next level in the first month after an incremental level is reached. The fee shall be as follows:

From 1 to 20,000 Ticket Book sales:	23%
From 20,001 to 40,000 Ticket Book sales:	21%
From 40,001 to 60,000 Ticket Book sales	19%
From 60,001 to 80,000 Ticket Book sales	17%
From 80,001 to 100,000 Ticket Book sales	15%
On Ticket Book sales over 100,000	13%

The above management fee covers all expenses incurred by Contractor under this Agreement. The above management fee covers all administrative functions including, but not limited to, program development, administration, accounting, public relations, advertising, ticket design and printing, brochure design and printing, design of point-of-sale materials, sales, trade shows, and travel expenses. Contractor may not deduct or seek reimbursement from SFMTA for any costs or expenses other than as expressly provided for in this Agreement.

d. **Payments.** Contractor shall distribute, at the address specified in the Section 19, all payments listed in Section 7(a) and (b) above to SFMTA, namely minimum guarantees, net proceeds, commissions and reimbursements, no later than the 10<sup>th</sup> of the following month after receipt of materials from Participants.

e. **Late Payments.** Any payment received by SFMTA or postmarked by Contractor five days or more after the due date of the payment shall be subject to a late fee of twenty-five Dollars (\$25). In addition, Contractor agrees to pay one percent per month interest on the unpaid balance of any late payment commencing on the first day of the following month. Contractor agrees to pay all collection fees, including reasonable attorney's fees, incurred by City in the collection of any delinquencies under this Agreement. Late fees shall not be assessed to the extent that Contractor's late payment is due to failure of Participants to submit reports timely.

**8. Submitting False Claims; Monetary Penalties.** The full text of San Francisco Administrative Code Chapter 21, Section 21.35, including the enforcement and penalty provisions, is incorporated into this Agreement. Pursuant to San Francisco Administrative Code §21.35, any contractor or subcontractor who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. A contractor

or subcontractor will be deemed to have submitted a false claim to the City if the contractor or subcontractor: (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.

## **9. Taxes**

a. Except for any applicable California sales and use taxes, Contractor shall pay all taxes, including possessory interest taxes levied upon or as a result of this Agreement, or the services delivered pursuant hereto. Contractor shall remit to the State of California any sales or use taxes paid to Contractor under this Agreement. Contractor agrees to promptly provide information requested by the City to verify Contractor's compliance with any State requirements for reporting sales and use tax paid by City under this Agreement.

b. Contractor acknowledges that this Agreement may create a "possessory interest" for property tax purposes. Generally, such a possessory interest is not created unless the Agreement entitles the Contractor to possession, occupancy, or use of City property for private gain. If such a possessory interest is created, then the following shall apply:

i. Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that Contractor, and any permitted successors and assigns, may be subject to real property tax assessments on the possessory interest.

ii. Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that the creation, extension, renewal, or assignment of this Agreement may result in a "change in ownership" for purposes of real property taxes and therefore may result in a revaluation of any possessory interest created by this Agreement. Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report on behalf of the City to the County Assessor the information required by Revenue and Taxation Code section 480.5, as amended from time to time, and any successor provision.

iii. Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that other events also may cause a change of ownership of the possessory interest and result in the revaluation of the possessory interest. (see, e.g., Rev. & Tax. Code section 64, as amended from

time to time). Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report any change in ownership to the County Assessor, the State Board of Equalization or other public agency as required by law.

iv. Contractor further agrees to provide such other information as may be requested by the City to enable the City to comply with any reporting requirements for possessory interests that are imposed by applicable law.

## **10. Independent Contractor; Payment of Taxes and Other Expenses**

### **a. Independent Contractor**

For purposes of this Section 10, “Contractor” shall be deemed to include not only Contractor, but also any agent or employee of Contractor. Contractor acknowledges and agrees that at all times Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Agreement. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor’s performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor.

Any 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. City does not retain the right to control the means or the method by which Contractor performs work under this Agreement. Contractor agrees to maintain and make available to City, upon request and during regular business hours, accurate books and accounting records demonstrating Contractor’s compliance with this section. Should City determine that Contractor, or any agent or employee of Contractor, is not performing in accordance with the requirements of this Agreement, City shall provide Contractor with written notice of such failure. Within five business days of Contractor’s receipt of such notice, and in accordance with Contractor policy and procedure, Contractor shall remedy the deficiency. Notwithstanding, if City believes that an action of Contractor, or any agent or employee of Contractor, warrants immediate remedial action by Contractor, City shall contact Contractor and provide Contractor in writing with the reason for requesting such immediate action.

### **b. Payment of Taxes and Other Expenses**

Should 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). City shall then forward those amounts to the relevant taxing authority.

Should a relevant taxing authority determine a liability for past services performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability).

A determination of employment status pursuant to the preceding two paragraphs 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 City. Notwithstanding the foregoing, Contractor agrees to indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all claims, losses, costs, damages, and expenses, including attorneys' fees, arising from this section6.

## **11. Insurance**

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

i. Worker's Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness; and

ii. 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

iii. 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; and

iv. Commercial Crime Insurance, of not less than Two Hundred and Fifty thousand Dollars (\$250,000), including coverages for employee dishonesty, forgery or alteration, theft, disappearance and destruction, and robbery (inside and outside), with any deductible not to exceed \$1,000, and including the City and County of San Francisco as loss payee/additional obligee.



b. Commercial General Liability, Commercial Crime, and Commercial Automobile Liability Insurance policies must provide the following:

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

ii. 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. Regarding Workers' Compensation, Contractor hereby agrees to waive subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. The Workers' Compensation policy 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.

d. All policies shall provide 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 Section 20, entitled "Notices to the Parties." All notices, certificates and endorsements shall include the SFMTA contract number and title on the cover page.

e. 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.

f. 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.

g. Before commencing any services under this Agreement, 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.

h. If Contractor will use any subcontractor(s) to provide services under this Agreement, Contractor shall require the subcontractor(s) to provide all necessary

insurance and shall name the City and County of San Francisco, its officers, agents and employees and the Contractor listed as additional insureds.

## **12. Indemnification**

Contractor shall indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them from and against any and all claims, demands, losses, costs, damages, expenses and liability (legal, contractual or otherwise), arising from or in any way connected with any: (i) injury to or death of a person, including employees of City or Contractor; (ii) loss of or damage to property; (iii) violation of local, state or federal common law, statute or regulation, including but not limited to privacy or personally identifiable information, health information, disability and labor laws or regulations; strict liability imposed by any law or regulation; or (v) losses arising from Contractor's execution of subcontracts not in accordance with the requirements of this Agreement applicable to subcontractors; so long as the injury, violation, loss, or strict liability (as set forth in subsections (i)-(v) above) arises directly or indirectly from Contractor's performance of this Agreement, including but not limited to, Contractor's use of facilities or equipment provided by City or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on City, except to the extent that such indemnity is void or otherwise unenforceable under applicable law, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its subcontractors or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any claims against the City.

In addition to Contractor's obligation to indemnify City, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Contractor by City and continues at all times thereafter.

Contractor shall indemnify and hold City harmless from all loss and liability, including attorneys' 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 arising directly or indirectly from the receipt by City, or any of its officers or agents, of Contractor's services.

## **13. Incidental and Consequential Damages**

Contractor shall be responsible for incidental and consequential damages resulting in whole or in part from Contractor's acts or omissions.

## **14. Liability of City**

City's payment obligations under this Agreement shall be limited to the payment of the net proceeds for ticket book sales provided for in Section 4 of this Agreement. Notwithstanding any other provision of this Agreement, in no event shall City be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits, arising out of or in connection with this Agreement or the services performed in connection with this Agreement.

## **15. Default; Remedies**

a. Each of the following shall constitute an immediate event of default ("Event of Default") under this Agreement:

i. Contractor fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement: 8, 9, 11, 12, 19, 23, 25, 36, and 38.

ii. Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, including any obligation imposed by ordinance or statute and incorporated by reference herein, and such default continues for a period of ten days after written notice thereof from City to Contractor.

iii. Contractor (A) is generally not paying its debts as they become due, (B) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction, (C) makes an assignment for the benefit of its creditors, (D) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Contractor or of any substantial part of Contractor's property or (E) takes action for the purpose of any of the foregoing.

iv. A court or government authority enters an order (A) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Contractor or with respect to any substantial part of Contractor's property, (B) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction or (C) ordering the dissolution, winding-up or liquidation of Contractor.

b. On and after any Event of Default, City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default; Contractor shall pay to City on demand all costs and expenses incurred by City in effecting such cure, with interest thereon from the

date of incurrence at the maximum rate then permitted by law. City shall have the right to offset from any amounts due to Contractor under this Agreement or any other agreement between City and Contractor: (i) all damages, losses, costs or expenses incurred by City as a result of such Event of Default; (ii) any liquidated damages due from Contractor pursuant to the terms of this Agreement; and (iii), any damages imposed by any ordinance or statute that is incorporated into this Agreement by reference, or into any other agreement with the City.

c. All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy. Nothing in this Agreement shall constitute a waiver or limitation of any rights the City may have under applicable law.

## **16. Termination for Convenience**

a. City shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience and without cause. City shall exercise this option by giving Contractor written notice of termination. The notice shall specify the date on which termination shall become effective.

b. Upon receipt of the notice of termination, Contractor shall commence and perform, with diligence, all actions necessary on the part of Contractor to effect the termination of this Agreement on the date specified by City and to minimize the liability of Contractor and City to third parties as a result of termination.

## **17. Rights and Duties Upon Termination or Expiration**

a. This Section and the following Sections of this Agreement shall survive termination or expiration of this Agreement: 8, 9-14, 19, 21, 32-38.

b. Subject to the survival of the Sections identified in Subsection 17(a.), upon termination of this Agreement prior to expiration of the term specified in Section 2, this Agreement shall terminate and be of no further force or effect. Upon termination or at the end of the Agreement term, Contractor shall within five business days:

- i. Remit to SFMTA any fees due SFMTA under Section 7.
- ii. Remove all references to Three-Day Muni Passports from the CityPASS web site.
- iii. Cease using any data or information collected in connection with this Agreement (e.g., email addresses) for solicitation or any other purpose.

c. City may request any data or information collected by Contractor as a result of this Agreement at any time during the Agreement or within three months following the

termination of Agreement or the end of the term of the Agreement. Contractor shall deliver the requested data or information to City within two weeks of the request.

**18. Conflict of Interest**

By executing this Agreement, Contractor certifies that it does not know of any facts which constitute a violation of Section 15.103 of the City's Charter; Article III, Chapter 2 of the City's Campaign and Governmental Conduct Code; Title 9, Chapter 7 of the California Government Code (Section 87100 *et. seq.*), or Title 1, Division 4, Chapter 1, Article 4 of the California Government Code (Section 1090 *et seq.*), and further agrees promptly to notify the City if it becomes aware of any such fact during the term of this Agreement.

**19. Proprietary or Confidential Information of City**

In the performance of services under this Agreement, Contractor may have access to City's proprietary or confidential information, the disclosure of which to third parties may damage City. If City discloses proprietary or confidential information to Contractor, such information must be held by Contractor in confidence and used only in performing the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary or confidential information.

**20. Notices to the Parties**

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

To City:                   ATTN: Fred Schouten, Manager  
SFMTA Revenue Operations  
1 South Van Ness Avenue, Basement Level  
San Francisco, CA 94103  
Phone (415) 701-4623  
Fax (415) 701-4778

To Contractor:           City Pass, Inc.  
27 Arrow Root Lane  
Victor, ID 83455  
Attn: Ms. Megan Allen  
Phone (208) 787-4300  
Fax (208) 787-4306

Any notice of default must be sent by registered mail.

## **21. Audit and Inspection of Records**

Contractor agrees to maintain and make available to the City, during regular business hours, accurate books and accounting records relating to its work under this Agreement. Contractor will permit City to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not less than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any federal agency having an interest in the subject matter of this Agreement shall have the same rights conferred upon City by this Section.

## **22. Subcontracting**

Contractor is prohibited from subcontracting this Agreement or any part of it unless such subcontracting is first approved by City in writing. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. An agreement made in violation of this provision shall confer no rights on any party and shall be null and void.

## **23. Assignment**

The services to be performed by Contractor are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by the Contractor unless first approved by City by written instrument executed and approved in the same manner as this Agreement. Any purported assignment made in violation of this provision shall be null and void.

## **24. Nondiscrimination**

**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.

## **25. Drug-Free Workplace Policy**

City reserves the right to deny access to, or require Contractor to remove from, City facilities personnel of any Contractor or subcontractor who City has reasonable

grounds to believe has engaged in alcohol abuse or illegal drug activity which in any way impairs City's ability to maintain safe work facilities or to protect the health and well-being of City employees and the general public. City shall have the right of final approval for the entry or re-entry of any such person previously denied access to, or removed from, City facilities. Illegal drug activity means possessing, furnishing, selling, offering, purchasing, using or being under the influence of illegal drugs or other controlled substances for which the individual lacks a valid prescription. Alcohol abuse means possessing, furnishing, selling, offering, or using alcoholic beverages, or being under the influence of alcohol..

## **26. Tropical Hardwood and Virgin Redwood Ban**

Pursuant to San Francisco Environment Code Section 804(b), the City urges Contractor not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

## **27. Compliance with Americans with Disabilities Act**

Contractor shall provide the Services in a manner that complies with the Americans with Disabilities Act (ADA), including but not limited to Title II's program access requirements, and all other applicable federal, state and local disability rights legislation..

## **28. Sunshine Ordinance**

Contractor acknowledges that this Agreement and all records related to its formation, Contractor's performance of Services, and City's payment are subject to the California Public Records Act (California Government Code §6250 et. seq.), and the San Francisco Sunshine Ordinance (San Francisco Administrative Code Chapter 67). Such records are subject to public inspection and copying unless exempt from disclosure under federal, state or local law.

## **29 Limitations on Contributions**

By executing 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 the 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 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. 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. Contractor must inform each such person of the limitation on contributions imposed by Section 1.126 and provide the names of the persons required to be informed to City.

### **30. 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.

### **31. Modification of Agreement**

This Agreement may not be modified, nor may compliance with any of its terms be waived, except as noted in Section 20, "Notices to Parties," regarding change in personnel or place, and except by written instrument executed and approved as required under City law and under the policy of the SFMTA Board of Directors.

### **32. Dispute Resolution**

a. Negotiation; Alternative Dispute Resolution. The Parties will attempt in good faith to resolve any dispute or controversy arising out of or relating to the performance of services under this Agreement. If the Parties are unable to resolve the dispute, then, pursuant to San Francisco Administrative Code Section 21.35, Contractor may submit to the Project Manager a written request for administrative review and documentation of the Contractor's claim(s). Upon such request, the contracting officer shall promptly issue an administrative decision in writing, stating the reasons for the action taken and informing the Contractor of its right to judicial review. If agreed by both Parties in writing, disputes may be resolved by a mutually agreed-upon alternative dispute resolution process. If the parties do not mutually agree to an alternative dispute resolution process or such efforts do not resolve the dispute, then either Party may pursue any remedy available under California law. The status of any dispute or controversy notwithstanding, Contractor shall proceed diligently with the performance of its obligations under this Agreement in accordance with the Agreement and the written directions of the City. Neither Party will be entitled to legal fees or costs for matters resolved under this section.

b. Government Code Claim Requirement. No suit for money or damages may be brought against the City until a written claim therefor has been presented to and rejected by the City in conformity with the provisions of San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq. Nothing set forth in this Agreement shall operate to toll, waive or excuse Contractor's compliance with the California Government Code Claim requirements set forth in San Francisco



Administrative Code Chapter 10 and California Government Code Section 900, et seq.

**33. Agreement Made in California; Venue**

The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

**34. Construction**

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

**35. Entire Agreement**

This contract sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. This contract may be modified only as provided in Section 31.

**36. Compliance with Laws**

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

**37. Severability**

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

**38. 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 Administrative Code Section 12M.2 shall be a material breach of this contract. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate this contract, bring a false claim action against the Contractor pursuant to Chapter 6 or Chapter 21 of

the Administrative Code, or debar the Contractor.

**39. Order of Precedence.**

Contractor agrees to perform the services described below in accordance with the terms and conditions of this Agreement, implementing task orders, the RFP, and Contractor's proposal dated March 1, 2017. The RFP and Contractor's proposal are incorporated by reference as though fully set forth herein. Should there be a conflict of terms or conditions, this Agreement and any implementing task orders shall control over the RFP and the Contractor's proposal.

**40. MacBride Principles -Northern Ireland.**

The provisions of San Francisco Administrative Code §12F are incorporated herein by this reference and made part of this Agreement. By signing this Agreement, Contractor confirms that Contractor has read and understood that the City urges companies doing business in Northern Ireland to resolve employment inequities and to abide by the MacBride Principles, and urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

**41. Large Vehicle Driver Training Requirement**

(a) Contractor agrees that before any of its employees and subcontractors drive large vehicles within the City and County of San Francisco, those employees and subcontractors shall successfully complete either (a) the SFMTA's Large Vehicle Urban Driving Safety training program or (b) a training program that meets the SFMTA's approved standards for large vehicle urban driving safety. The SFMTA's approved standards for large vehicle urban driving safety is available for download at [www.SFMTA.com/largevehicletainingstandards](http://www.SFMTA.com/largevehicletainingstandards). This requirement does not apply to drivers providing delivery services who are not employees or subcontractors of the Contractor. For purposes of this section, "large vehicle" means any single vehicle or combination of vehicle and trailer with an unladen weight of 10,000 pounds or more, or a van designed to carry 10 or more people.

(b) By entering into this Agreement, Contractor agrees that in the event the Contractor fails to comply with the Large Vehicle Driver Safety Training Requirements, the City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of up to One Thousand Dollars (\$1,000) per employee or subcontractor who is permitted to drive a large vehicle in violation of these requirements is not a penalty, but is a reasonable estimate of the loss that City will incur based on the Contractor's failure to comply with this requirement, established in light of the circumstances existing at the time this Contract was awarded. City may deduct a sum representing the liquidated damages from any money due to Contractor. Such deductions shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's failure to comply.

**IN WITNESS THEREOF**, the parties hereto execute this Agreement on the day first mentioned above in triplicate, by their duly authorized officers, on the day and year herein above written.

<p><b>CITY</b></p> <p>San Francisco Municipal Transportation Agency</p> <hr/> <p>Edward D. Reiskin Director of Transportation</p> <p>AUTHORIZED BY:</p> <p>MUNICIPAL TRANSPORTATION AGENCY BOARD OF DIRECTORS</p> <p>Resolution No: _____</p> <p>Adopted: _____</p> <p>Attest: _____ Roberta Boomer, Secretary</p> <p>Approved as to Form:</p> <p>Dennis J. Herrera City Attorney</p> <p>By:</p> <hr/> <p>David A. Greenburg Deputy City Attorney</p>	<p><b>CONTRACTOR</b></p> <p>City Pass, Inc.</p> <hr/> <p>Megan Allen, President</p> <p>City PASS, Inc. 27 Arrow Root Lane Victor, ID 83455</p> <p><u>Acknowledgement of Large Vehicle Driver Safety Training Requirements:</u></p> <p>By signing this Agreement, Contractor acknowledges that it has read and understands Article 13: Large Vehicle Driver Safety Training Requirements.</p> <p>City vendor number: 55125</p>
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