

THIS PRINT COVERS CALENDAR ITEM NO.: 10.3

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Finance and Information Technology

BRIEF DESCRIPTION:

Authorizing the Director of Transportation to execute a First Amendment to the agreement between the San Francisco Municipal Transportation Agency (SFMTA) and Friends of the Cable Car Museum (FCCM) for management and operation of the Cable Car Museum for an additional five-year term, retroactive to July 1, 2019.

SUMMARY:

- On September 1, 2009, the SFMTA approved Resolution No. 09-155 authorizing an Operating Agreement with FCCM for the operation and management of the Cable Car Museum and Gift Shop for a ten-year period with two five-year extension options.
- On November 3, 2009, the Board of Supervisors adopted Resolution No. 432-09 which approved the Management and Operations Agreements between the SFMTA and the FCCM for a term of ten years with two five-year options to extend the term.
- The Management and Operations Agreement grants up to two five-year extension periods and requires the SFMTA to acquire certain museum artifacts at the end of the ten-year period.
- That agreement expired on June 30, 2019 and FCCM currently occupies the Cable Car Museum on a month-to-month basis. The proposed First Amendment would be retroactive to July 1, 2019.
- Negotiation of the was on hold because FCCM was temporarily closed due to the COVID-19 pandemic.
- The SFMTA and FCCM have recently reached an agreement to extend the Management and Operation Agreement for another five-year term pursuant to which FCCM will pay a concession fee of \$51,500 that retroactively covers the period of July 1, 2019-June 30, 2020. The concession fee will be adjusted downward for subsequent years as set forth in the First Amendment.

ENCLOSURES:

1. SFMTAB Resolution
2. First Amendment Agreement with FCCM

APPROVALS:

DIRECTOR



DATE

November 11, 2021

SECRETARY



November 11, 2021

ASSIGNED SFMTAB CALENDAR DATE: November 16, 2021

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PURPOSE

Authorizing the Director of Transportation to execute a First Amendment to the Agreement between the SFMTA and FCCM for management and operation of the Cable Car Museum for an additional five-year term, retroactive to July 1, 2019.

STRATEGIC PLAN GOALS AND TRANSIT FIRST POLICY PRINCIPLES

This action supports the following SFMTA Strategic Plan Goals and Objectives:

Goal 3: Improve the quality of life and environment in San Francisco and the region.

- Objective 3.5: Achieve financial stability for the agency.

Goal 4: Create a workplace that delivers outstanding service.

- Objective 4.3: Enhance customer service, public outreach, and engagement.

This action supports the following Transit First Policy Principles:

1. To ensure quality of life and economic health in San Francisco, the primary objective of the transportation system must be the safe and efficient movement of people and goods.

DESCRIPTION

The Cable Car Museum, which has been in operation since 1974, is located on the mezzanine level of the SFMTA Cable Car Barn at 1201 Mason Street in the City and County of San Francisco. Part of the FCCM space overlooks the cable machinery and a machine shop at the Cable Car Barn.

On September 1, 2009, the SFMTA Board of Directors adopted Resolution 09-155 which authorized the Executive Director/CEO to execute a Management and Operation Agreement with FCCM to operate and manage the day-to-day operation of the Cable Car Museum and Gift Shop for a ten-year term with two five-year extension options. On November 3, 2009, the Board of Supervisors also adopted Resolution No. 432-09 which approved the Management and Operations Agreements between the SFMTA and the FCCM for the same terms.

The current agreement expired on June 30, 2019 and, if approved, the proposed five-year term extension amendment would be retroactive to July 1, 2019. FCCM is currently in a holdover period.

The Management and Operation Agreement required the SFMTA to purchase certain museum artifacts for \$160,000 at the end of the initial ten-year term. In December of 2019, FCCM approved a corporate resolution to convey all rights, title and interest in certain museum artifacts to the SFMTA. Subsequently, in December 2019, the SFMTA paid FCCM \$160,000 to acquire those museum artifacts.

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Due to the impact of the COVID-19 pandemic, FCCM was temporarily closed in accordance with the City's health order and for health and safety concerns. It recently reopened on August 1, 2021. FCCM expects revenue will be significantly lower because of fewer visitors, which is an anticipated trend for the remaining years of the extension term. Therefore, FCCM anticipates that it will not generate the same level of revenue necessary to operate the museum at pre-pandemic levels. Upon staff's review of FCCM's recent years' financial statements, staff and FCCM representatives agreed that SFMTA would waive the concession fee for FY20-21 due to COVID-19 closures and that the annual concession fee would be reduced for rest of the first extension period.

The SFMTA and FCCM wish to continue their relationship by exercising the first of two five-year extension options via the proposed First Amendment. This will provide consistency with respect to museum management, scheduling and continued SFMTA collaboration. The museum continues to provide free visits and tours to San Francisco residents and tourists.

STAKEHOLDER ENGAGEMENT

The SFMTA has conducted stakeholder engagement while negotiating this First Amendment. Those stakeholder representatives include SFMTA management, Facilities and Real Property management and FCCM management. The consensus derived from those negotiations was that by exercising the extension option via this First Amendment, FCCM will remain a viable operation and going concern, which is in the best interest of all parties and the public served.

ALTERNATIVES CONSIDERED

The SFMTA has analyzed alternative options to negotiate a new operating agreement with other operators. However, negotiating a new contract with another operator would result in additional overhead costs to the SFMTA, unnecessary operational challenges and schedule interruption. FCCM already has in-depth management experience operating the Cable Car Museum and this extension amendment will allow the Cable Car Museum to continue to serve the public without schedule interruption and unnecessary operational challenges. Therefore, it is most beneficial to the SFMTA to execute this First Amendment.

FUNDING IMPACT

The First Amendment to the Management and Operation Agreement will generate \$174,744 in total Concession Fees for the SFMTA. Each year during the five-year extension term the Concession Fee is adjusted as set forth in the proposed First Amendment.

ENVIRONMENTAL REVIEW

On January 14, 2020 the SFMTA, under authority delegated by the Planning Department, determined that the First Amendment to the Cable Car Museum Contract is not defined as a "project" under the California Environmental Quality Act (CEQA) pursuant to Title 14 of the

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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

Approval by the Board of Supervisors is required for this First Amendment.

The City Attorney has reviewed this report.

RECOMMENDATION

The recommendation is to authorize the Director of Transportation to execute a First Amendment to the agreement between the San Francisco Municipal Transportation Agency and Friends of the Cable Car Museum for management and operation of the Cable Car Museum for an additional five-year term, retroactive to July 1, 2019.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, The Cable Car Museum located in the SFMTA Cable Car Barn at 1201 Mason St. provides a free educational museum experience for residents and tourists alike; and,

WHEREAS, On September 1, 2009, the SFMTA Board of Directors adopted Resolution No. 09-155, which approved a ten-year Management and Operation Agreement to authorize Friends of the Cable Car Museum (FCCM) to manage and operate the Cable Car Museum and Gift Shop. The ten-year term expired on June 30, 2019 and FCCM is currently operating on a month-to-month status; and,

WHEREAS, The Management and Operation Agreement allows for two five-year extension terms and requires the FCCM to pay a concession fee of \$51,500 for the first year of the extension period. That fee will be waived for fiscal year 2020-2021 due to the COVID-19 pandemic and will be adjusted thereafter in accordance with the First Amendment; and,

WHEREAS, Upon discussions and negotiations with multiple stakeholders, the SFMTA and FCCM have agreed to extend the Management and Operation Agreement for an additional five-year term; and,

WHEREAS, On January 14, 2020, the SFMTA, under authority delegated by the Planning Department, determined that the First Amendment to the Cable Car Museum Contract is not defined as a “project” under the California Environmental Quality Act (CEQA) pursuant 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

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Director of Transportation to execute a First Amendment to the agreement between the San Francisco Municipal Transportation Agency and Friends of the Cable Car Museum for Management and Operations of the Cable Car Museum for an additional five-year term, retroactive to July 1, 2019; and, be it

FURTHER RESOLVED, That the SFMTA Board of Directors recommends this matter to the Board of Supervisors for its approval.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of November 16, 2021.

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

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.,

BY: _____
Jeffrey Tumlin
Director of Transportation
SFMTA

By: _____
Jose Godoy
Chief Executive Officer
Friends of the Cable Car Museum

Date: _____

Date: _____

AUTHORIZED BY:
MUNICIPAL TRANSPORTATION AGENCY BOARD OF DIRECTORS
Resolution No. _____
Adopted: _____
Attest:

Secretary, SFMTA Board of Directors

APPROVED AS TO FORM:
David Chiu, City Attorney

By: _____
Stephanie Stuart
Deputy City Attorney