

THIS PRINT COVERS CALENDAR ITEM NO.: 10.2

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Office of the Chief Strategy Officer

BRIEF DESCRIPTION:

Authorizing the Director of Transportation to execute the second 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, effective July 1, 2024.

SUMMARY:

- On September 1, 2009, the SFMTA Board 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.
- On November 16, 2021, the SFMTA Board approved First Amendment for five-year extension term under Resolution No. 211116-135 and further adopted by the Board of Supervisors under Resolution No. 191-22 on May 10, 2022.
- The First Amendment is set to expire on June 30, 2024; FCCM wishes to continue to manage and operate the Cable Car Museum and Gift Shop for the second five-year extension term.
- The SFMTA and FCCM have agreed to extend the Management and Operation Agreement for the second five-year term, and FCCM will pay a concession fee of \$44,778 per year beginning July 1, 2024, and that fee will adjust in accordance with the terms of the Second Amendment.

ENCLOSURES:

1. SFMTAB Resolution
2. Second Amendment Agreement with FCCM

APPROVALS:

	DATE
DIRECTOR 	<u>March 27, 2024</u>
SECRETARY 	<u>March 27, 2024</u>

ASSIGNED SFMTAB CALENDAR DATE: April 2, 2024

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PURPOSE

Authorizing the Director of Transportation to execute the second amendment to the Agreement between the SFMTA and FCCM for management and operation of the Cable Car Museum for an additional five-year term effective July 1, 2024.

STRATEGIC PLAN GOALS AND TRANSIT FIRST POLICY PRINCIPLES

Strategic Goal Supported:

Goal 7: Build stronger relationships with stakeholders.

Goal 10: Position the agency for financial success.

Transit First Policy Supported:

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

Established in 1974, the Cable Car Museum holds a significant presence on the mezzanine level of the SFMTA Cable Car Barn located at 1201 Mason Street. Within the Friends of the Cable Car Museum (FCCM) space, visitors can enjoy panoramic views of the cable machinery and a machine shop located at the Cable Car Barn. Notably, a section of the museum is dedicated to a gift shop, providing patrons with a unique shopping experience.

One of the distinctive features of the Cable Car Museum is its commitment to accessibility, as entry is free of charge. Furthermore, the museum extends its educational outreach by offering free guided tours to schools and the general public. This reflects the institution's dedication to fostering a deeper understanding of cable car history and technology within the community.

On September 1, 2009, the SFMTA Board of Directors adopted Resolution 09-155 which authorized the Director of Transportation 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, and 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 the same terms.

On November 16, 2021, the SFMTA Board of Directors adopted Resolution 211116-135 which authorized the Director of Transportation to execute an amendment to extend the Management and Operation Agreement with FCCM for five additional years, and on May 10, 2022, the Board of Supervisors adopted Resolution No. 191-22, approving the First Amendment of the

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Management and Operation Agreement between the SFMTA and the FCCM.

Due to both post-pandemic and current market conditions, FCCM has faced challenges in generating the same level of revenue needed to operate the museum at pre-pandemic levels. Despite these obstacles, FCCM has expressed a keen interest in continuing to manage and operate the Cable Car Museum for a second five-year term. Following staff's thorough review of FCCM's recent financial statements, including discussion between representatives from both parties and after careful consideration, it has been mutually agreed that maintaining the current concession fee level with annual adjustments reflected in the Second Amendment is in the best interest of both parties.

The SFMTA and FCCM wish to continue their relationship by exercising the second of two five-year extension options via the proposed second amendment to the Operating Agreement. 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.

The City Attorney has reviewed this report.

STAKEHOLDER ENGAGEMENT

The SFMTA has conducted stakeholder engagement while negotiating this second 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 Second 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

Alternative considered would involve negotiating a new contract with another museum and gift shop operator but that action is not feasible because this is an existing agreement with an extension option. FCCM already has in-depth management experience operating the Cable Car Museum and this second 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 second amendment to the Operating Agreement.

FUNDING IMPACT

The First Amendment to Management and Operation Agreement generated \$174,744 in Concession Fees over five years. This Second Amendment will generate \$237,733 in Concession Fees over five years, an increase of \$62,989. Each year during the five-year extension term the Concession Fee will adjust based on set amounts specified in the Second Amendment.

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ENVIRONMENTAL REVIEW

On February 20, 2024, the SFMTA, under authority delegated by the Planning Department, determined that the Second 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 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 Second Amendment to the Management and Operation Agreement.

The City Attorney’s Office has reviewed this calendar item.

RECOMMENDATION

The recommendation is to authorize the Director of Transportation to execute the second 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, effective July 1, 2024.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, The Cable Car Museum, located in the San Francisco Municipal Transportation Agency (SFMTA) Cable Car Barn at 1201 Mason Street, 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,

WHEREAS, On November 16, 2021, the SFMTA Board of Directors adopted Resolution No. 211116-135, which approved the First Amendment to Management and Operation Agreement (First Amendment) to authorize FCCM to manage and operate the Cable Car Museum for an additional five years, and on May 10, 2022, the Board of Supervisors adopted Resolution No. 191-22 which also approved the First Amendment between the SFMTA and the

FCCM for the same terms; and,

WHEREAS, The First Amendment expires on June 30, 2024; and,

WHEREAS, FCCM has expressed keen interest to continue manage and operate the Cable Car Museum for the second five-year extension term; 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 by executing a Second Amendment; and,

WHEREAS, execution of Second Amendment of the Management and Operation Agreement, it will generate \$237,733 in total concession fees for the SFMTA; and,

WHEREAS, On February 20, 2024, the SFMTA, under authority delegated by the Planning Department, determined that the Second Amendment to the Cable Car Museum Management and Operation Agreement 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 the Second 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 effective July 1, 2024; and be it further

RESOLVED, That the San Francisco Municipal Transportation Agency 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 April 2, 2024.

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

SECOND 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 Second Amendment to Agreement (“Amendment”) is made as of March 5, 2024, 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. The SFMTA and Operator exercised first 5-year extension term in 2021. Operator expressed interest in continuing management of the Cable Car Museum for the second 5-year extension term.
- D. City agrees to extend the term and have Operator manage the Cable Car Museum for another 5 years effective July 1, 2024, 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, 2029, 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”). The parties agree that Concession Payment payable to SFMTA for the remainder of the term of this Agreement shall be as follows:

Second Extension Term

- July 1, 2024 thru June 30, 2025 - \$44,778
- July 1, 2025 thru June 30, 2026 - \$46,122
- July 1, 2026 thru June 30, 2027 - \$47,505
- July 1, 2027 thru June 30, 2028 - \$48,930

July 1, 2028 thru June 30, 2029 - \$50,398

Concession Payments due during for the remainder of the Term shall be paid in quarterly installments each year on the following schedule:

- 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, 2024-September 30, 2024 shall be due 30 days after this Amendment has been fully executed.

3. Holdover Concession Fee.

Upon expiration of the Term period, Operator desires to hold over, the monthly rent shall be increased on the Expiration Date and on each subsequent annual anniversary during which this MOU is still in effect by three percent (3%).

4. 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.”

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

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

Date: _____

Date: March 5, 2024

AUTHORIZED BY:
MUNICIPAL TRANSPORTATION AGENCY BOARD OF DIRECTORS

Resolution No. _____

Adopted: _____

Attest:

Christine Silva, Secretary

APPROVED AS TO FORM:
David Chiu, City Attorney

By:

Stephanie Stuart
Deputy City Attorney