

**CITY AND COUNTY OF SAN FRANCISCO
SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY
TAXI MEDALLION SALES PILOT PROGRAM
COLOR SCHEME PARTICIPATION AGREEMENT**

This Taxi Medallion Sales Pilot Program Color Scheme Participation Agreement (“Agreement”) is entered into this _____ day of _____, 2010 (“Effective Date”) by and between the San Francisco Municipal Transportation Agency (“SFMTA”) and _____ (“Company”), in connection with the San Francisco Taxi Medallion Sales Pilot Program (“Pilot Program”).

WHEREAS, Company seeks designation from the SFMTA as a “Participating Color Scheme” and approval to affiliate with San Francisco Taxi Medallions that are purchased under the Taxi Medallion Sales Pilot Program;

WHEREAS, Section 1109(e) of Division II of the San Francisco Transportation Code requires Medallion Holders of Purchased Medallions to affiliate with a Participating Color Scheme;

WHEREAS, Medallion Holders may receive financing from Qualified Lenders under the Program (“Lender”) to purchase their medallions, and

WHEREAS, Company acknowledges that Lender may foreclose upon a Purchased Medallion in the event that Medallion Holder defaults on a Loan, which will result in the SFMTA removing the Purchased Medallion from service until it can be resold;

WHEREAS, Company has a significant pecuniary interest in ensuring that its affiliated Foreclosed Medallions remain in service;

WHEREAS, subject to the terms of this Agreement, the SFMTA and Lender will permit Company to continue to operate an affiliated Foreclosed Medallion until it is resold by the SFMTA;

NOW, THEREFORE, in exchange for the mutual promises set forth below and the receipt of other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. DEFINITIONS

- a. Capitalized terms used in this Agreement have the meanings ascribed to them as set forth in San Francisco Transportation Code, unless otherwise set forth herein.
- b. “Foreclosed Medallion” shall mean a Purchased Medallion affiliated with Company regarding which a Lender has provided a Foreclosure Notice to

the SFMTA and to the Company substantially in the form of Appendix A to this Agreement.

- c. "Foreclosure Notice" shall mean a written notice, substantially in the form prescribed by the SFMTA and attached to this Agreement as "Appendix A," informing the SFMTA of Lender's intent to foreclose on a Purchased Medallion.
- d. "Loan" shall mean a loan made by a Qualified Lender under San Francisco Transportation Code Section 1109(e)(12)(A) to finance the purchase of a Medallion.
- e. "Loan Agreement" shall mean an agreement between a Qualified Lender and the Purchaser of a Medallion to finance the purchase of a Medallion.
- f. "Purchased Medallion" shall mean a San Francisco Taxi Medallion that was purchased by Medallion Holder through the Program.

2. COMPANY WARRANTIES AND REPRESENTATIONS

- a. Company warrants and represents that:
 - (1) Company is a Color Scheme permit Holder that has been in business from over five (5) years that is not under Administrative Probation status with the SFMTA;
 - (2) Company is affiliated with no fewer than ten (10) San Francisco Taxi or Ramp Taxi Medallions;
 - (3) Company has an established dispatch service meeting minimum SFMTA standards;
 - (4) Company has placed on file with the SFMTA a copy of its two (2) most recent federal tax returns and a financial statement for the most recent year that shall be made available for inspection by any Lender under the Program;
 - (5) Company has placed on file with the SFMTA current certificates of insurance evidencing general liability insurance with a minimum limit of \$1,000,000.00, and full Workers' Compensation insurance as required by applicable laws and regulations; and
 - (6) Company is a participant in good standing with the San Francisco Paratransit Broker.
- b. Company agrees to meet and maintain during the term of this Agreement the above-listed qualifications and any and all other qualifications that the SFMTA may, at its discretion, set as a condition for Company to be

allowed to affiliate with a Purchased Medallion and to operate a Foreclosed Medallion in connection with the Program.

3. AGREEMENT TO ALLOW COMPANY TO CONTINUE TO OPERATE MEDALLION

- a. In the event that a Lender provides a Foreclosure Notice to SFMTA, the Medallion Holder defaults on the Loan, and Lender forecloses on the Medallion, SFMTA shall, with the approval of Lender, allow the Company to continue to operate the Foreclosed Medallion subject to the terms and conditions of this Agreement.
- b. In exchange for Lender's permission to continue to operate the Foreclosed Medallion, Company may pay Lender amounts as described in Section 4 below.
- c. In order for Company to continue to operate the Foreclosed Medallion, Company shall continue to meet the requirements set forth in Section 2(a), above.
- d. When Lender provides a Foreclosure Notice to the SFMTA, the SFMTA shall review its records without delay to determine whether Company satisfies the requirements of Section 2(a), above. If Company fails to satisfy these requirements at the time the SFMTA receives Lender's Foreclosure Notice, or at any time thereafter, the SFMTA shall provide written notice to Lender within five (5) business days.
- e. Nothing in this Agreement shall prevent Lender from accepting and keeping payments from Company for the continued use of the Foreclosed Medallion even after Lender is advised by the SFMTA that Company has failed to satisfy the requirements set forth in section 2(a) above, unless and until the Medallion is reclaimed by the SFMTA and Lender receives written notice thereof from the SFMTA.

4. COMPANY'S COMMITMENT TO CONTINUE TO PAY LENDER

- a. Company agrees that, in consideration for the allowance to continue operating the Foreclosed Medallion during the period of any permitted, continued operation of the Foreclosed Medallion, Company must make monthly payments to Lender in an amount equal to 1/12th of the annual market lease price of the Medallion (the "Monthly Market Lease Price") as determined by Lender in its sole and absolute discretion. Lender shall advise Company of the Monthly Market Lease Price and any other terms and conditions Lender may require as soon as reasonably practicable after Medallion Holder's default. The Monthly Market Lease Price and any other terms and conditions Lender may require shall be set forth in an

Operating Agreement in a form that is substantially similar to Appendix B. In order to continue to operate the Foreclosed Medallion, Company agrees to execute and to be bound by the terms of such Operating Agreement within ten (10) business days after Lender provides Company with notice of the Medallion Holder's default.

- b. Nothing in this Agreement shall be construed as an assumption of all or any portion of the Loan by Company, and Company shall not be obligated or required to pay any balloon payment or other payment required to extinguish the Loan. The payment of the Monthly Market Lease Price by the Company shall in no way be construed as the Company assuming all or any portion of the Medallion Holder's debt, any ownership rights to the Medallion, or any responsibility for the Medallion beyond that of its permitted, continued operation in accordance with the terms of this Agreement and the terms of the Operating Agreement and the provisions of the San Francisco Transportation Code.

5. RIGHTS AND REMEDIES

Should the Company default under the Operating Agreement or under this Agreement during the term of this Agreement, the Company is obligated to immediately return the medallion to the SFMTA and the SFMTA has the right to immediately confiscate the medallion from Company. Any confiscation by SFMTA of the Foreclosed Medallion from Company shall not have any effect whatsoever on Lender's rights in or to the Foreclosed Medallion.

6. SALE OF FORECLOSED MEDALLION

The parties acknowledge and agree that this Agreement is separate and distinct from the Loan Agreement and payments made by Company to Lender hereunder shall not, for any reason, be construed as payments made by Medallion Holder.

7. THIRD PARTY BENEFICIARY

The parties agree that Lender is a third-party beneficiary of the obligations of the Company under this Agreement and shall have the right to enforce those obligations as if it were a signatory hereto.

8. MEDALLION AFFILIATION

Notwithstanding anything herein to the contrary, the parties agree that the execution of this Agreement does not obligate Company to agree to affiliate with, or to continue affiliation with, any particular Medallion, except in the case of a Foreclosed Medallion during the term of Company's continued operation of the Foreclosed Medallion pursuant to an Operating Agreement executed between Company and Lender.

9. TERM

This Agreement shall be in effect from the Effective Date until this Agreement is terminated as set forth herein.

10. TERMINATION

- a. This Agreement shall automatically terminate upon the termination of the Program.
- b. Either party may terminate this Agreement at any time, with or without cause, upon 90 days' written notice to the other party.
- c. Upon termination of this Agreement, Company:
 - (1) Shall no longer be designated as a Participating Color Scheme under the Program for the purpose of any future affiliation with Purchased Medallions; and
 - (2) Shall be ineligible to subsequently enter into a Medallion Operating Agreement with Lender (see Appendix B).

The termination of this Agreement will not affect Company's then-current obligations under any Medallion Operating Agreement that was entered into by the Company and a Lender prior to the termination of this Agreement and pursuant to which the Company is operating any Foreclosed Medallion.

11. ATTORNEYS' FEES

The prevailing party in any dispute between the parties, or between SFMTA and Lender, arising out of the interpretation, application, or enforcement of any provision of this Agreement shall be entitled to recover all of its reasonable attorneys' fees and costs whether suit be filed or not, including, without limitation, costs and attorneys' fees related to or arising out of any trial or appellate proceeding.

12. NOTICES

All notices, requests, demands, and other communications required or permitted hereunder shall be in writing and shall be deemed to have been duly given, made, and received only when personally delivered or delivered by Federal Express or other nationally recognized courier service, or two (2) days after having been deposited in the United States mail, certified mail, postage prepaid, return receipt requested (except when such notice is a termination notice, in which event any two (2) of the delivery methods described above must be used), addressed as set forth below:

If to SFMTA:

San Francisco Municipal Transportation Agency
One South Van Ness, 7th Floor
San Francisco, CA 94103
Attention: Taxi Services – Taxi Medallion Sales Pilot Program

If to Company:

_____ [Company Name]

_____ [Address]

Attention: _____
_____ [Title]

Any party may change the address to which communications or copies are to be sent by giving notice of such change of address in conformity with the provisions of this section for the giving of notice.

13. RELATIONSHIP

This Agreement does not create, and shall not be construed to create, any joint venture or partnership between the parties. No officer, employee, agent, servant, or independent contractor of either party shall at any time be deemed to be an employee, servant, agent, or contractor of the other party for any purpose whatsoever.

14. WAIVER

The failure of either party to seek a redress for violation of, or to insist upon the strict performance of, any covenant, agreement, provision, or condition hereof shall not constitute the waiver of the terms of any other covenant, agreement, provision, or condition, and each party shall have all remedies provided herein with respect to any subsequent act which would have originally constituted the violation hereunder.

15. ASSIGNMENT

Neither party may assign this Agreement or subcontract any right or interest hereunder.

16. GOVERNING LAW AND JURISDICTION

- a. This Agreement is entered into and will be performed in California and all questions relating to its validity, interpretation, performance, and enforcement (including, without limitation, provisions concerning limitations of action) shall be governed by and construed in accordance

with the Municipal Code of the City and County of San Francisco, and the laws of the State of California, notwithstanding any conflict-of-laws doctrines of such state or other jurisdiction to the contrary. Company agrees to submit to the personal jurisdiction of the courts of the State of California.

- b. Company acknowledges and agrees that it is bound by the provisions of San Francisco Transportation Code § 1109(e), by all other provisions of the San Francisco Municipal Code and by any additional requirements adopted by the SFMTA that are or may become applicable to Company.

17. HEADINGS

The headings herein are for convenience only; they form no part of this Agreement and shall not be given any substantive or interpretive effect whatsoever.

18. ENTIRE AGREEMENT

This Agreement contains the entire understanding between the parties hereto with respect to the subject matter hereof, and supersedes all prior and contemporaneous agreements and understandings, inducements, or conditions, express or implied, oral or written, except as herein contained. The express terms hereof control and supersede any course of performance or usage of the trade inconsistent with any of the terms hereof. This Agreement may not be modified or amended other than by an agreement in writing signed by an authorized representative of each party hereto.

19. PARTIAL INVALIDITY

If any part of this Agreement is determined to be invalid or unenforceable by a court, then such part or parts shall be severed from this Agreement without affecting the validity of the remaining provisions.

20. VOLUNTARY AGREEMENT.

The parties acknowledge that they have carefully read the foregoing Agreement, understand the contents thereof, and freely and voluntarily agree to the terms herein.

21. TIMELINESS

Time is of the essence in this Agreement.

22. RIGHTS AND REMEDIES

Unless expressly stated otherwise in this Agreement, all rights and remedies provided for in this Agreement will be cumulative and in addition to, and not in

lieu of, any other remedies available at law, in equity, or otherwise. If a party has a choice of possible actions, it may take any or all of those actions.

22. APPENDICES

This Agreement includes the following appendices:

- Appendix A: Form of Foreclosure Notice
- Appendix B: Form of Medallion Operating Agreement

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their authorized representative effective on the date written above.

SFMTA

Approved as to Form:

By: _____
Mariam Morley
Deputy City Attorney

Recommended by:

Christiane Hayashi
SFMTA Taxi Services

By: _____
Nathaniel P. Ford, Sr.
Executive Director/CEO
San Francisco Municipal Transportation Agency

COMPANY

Name of Company

Signature

Print Name & Title of Authorized Signature

APPENDIX A

FORECLOSURE NOTICE

DATE: _____

TO: SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY
One South Van Ness, 7th Floor
San Francisco, CA 94103
Attention: Taxi Services – Taxi Medallion Sales Pilot Program

[NAME OF COLOR SCHEME] (“Company”)
[Address]

FROM: [LENDER NAME]
[Address]

RE: [MEDALLION HOLDER NAME] (“Medallion Holder”)
[Address]
Medallion Number: _____

To Whom It May Concern:

This Notice is provided in conformity with Section 3(a) of the **CITY AND COUNTY OF SAN FRANCISCO SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY TAXI MEDALLION SALES PILOT PROGRAM COLOR SCHEME PARTICIPATION AGREEMENT** (“Participation Agreement”) to advise the SFMTA and the Company that (1) the Medallion Holder is in default under the terms of its loan agreement with us and (2) we intend to foreclose against the Medallion without delay.

In accordance with Section 4(a) of the Participation Agreement, the Company has the option to continue to operate the Foreclosed Medallion, provided that the Company (1) maintains its affiliation with the Foreclosed Medallion, (2) satisfies all of the conditions set forth in Section 3(c) of the Participation Agreement, (3) executes an Operating Agreement with Lender, and (4) timely pays to Lender the Monthly Market Lease Price of the Medallion each month, as determined by Lender in its sole and absolute discretion, the amount of which shall be set forth in the Operating Agreement. In accordance with Section 4(a) of the Participation Agreement, in the event that Company wishes to continue to operate the Foreclosed Medallion, Company must execute an Operating Agreement with Lender within ten (10) business days of the date of this Notice. Company must contact the undersigned to obtain an execution copy of the Operating Agreement.

In accordance with Section 3(d) of the Participation Agreement, the SFMTA must notify Lender within five (5) business days in the event that Company does not currently satisfy the requirements set forth in Section 3(c) of the Participation Agreement or at any time fails to satisfy such requirements.

If you have any questions regarding this Notice, please contact me.

Thank you.

[LENDER NAME]

[Authorized Representative Name], [Title]
[Contact Information]

APPENDIX B

MEDALLION OPERATING AGREEMENT FOR MEDALLION NUMBER: _____

This Medallion Operating Agreement ("Agreement") is entered into this _____ day of _____, 2010 ("Effective Date") by and between _____ ("Company") and _____ ("Lender"), in connection with the San Francisco Taxi Medallion Sales Pilot Program ("Pilot Program").

WHEREAS, on _____, 20____, the San Francisco Municipal Transportation Agency ("SFMTA") and _____ ("Purchaser") entered into an agreement for Purchaser to purchase the Medallion referenced above under the Pilot Program;

WHEREAS, the Purchaser received financing from Lender to purchase the Medallion;

WHEREAS, Purchaser has defaulted under the Loan and Lender has foreclosed or is in the process of foreclosing on the Medallion;

WHEREAS, as a result of the foreclosure, the SFMTA shall remove the Medallion from service until it can be resold, unless Company agrees to continue to operate the Medallion until it is resold under the terms of this Agreement and in accordance with the provisions of the San Francisco Transportation Code;

WHEREAS, Company has a significant pecuniary interest in ensuring that the Medallion remains in service;

WHEREAS, subject to the terms of this Agreement, the SFMTA and Lender will permit Company to continue to operate the medallion until it is resold by the SFMTA;

NOW THEREFORE, in consideration of the mutual promises, obligations, and covenants hereinafter recited, Lender and Company agree as follows:

1. DEFINITIONS

Capitalized terms used in this Agreement have the meanings ascribed to them as set forth in San Francisco Transportation Code, unless otherwise set forth herein.

2. MONTHLY MARKET LEASE PRICE

- a. As a condition for Company to continue to operate the Medallion, Company shall pay to Lender \$ _____ (the "Monthly Market Lease Price") on or before the _____ day of each month during Company's

continued operation of the Medallion. The first Monthly Market Lease Price payment shall be due on _____, 20___. All payments made to Lender hereunder are non-refundable.

- b. Company acknowledges and agrees that, notwithstanding anything in this Agreement or in any other agreement to the contrary, if Company fails to satisfy the requirements of Section 3 below, Lender may, nevertheless, accept payments from Company for the continued operation of the Foreclosed Medallion until such time the Medallion is removed from service by the SFMTA and Lender has actual knowledge thereof.

3. COMPANY WARRANTIES AND REPRESENTATIONS

Company warrants and represents to Lender that:

- a. Company is a Color Scheme permit Holder, has been an established Color Scheme business from more than five (5) years, and is not under administrative Probation status with the SFMTA;
- b. Company is and will remain affiliated with the Medallion during the term of this Agreement;
- c. Company is affiliated with no fewer than ten (10) San Francisco Taxi or Ramp Taxi Medallions;
- d. Company has placed on file with the SFMTA a copy of its federal tax returns for the past two years and a financial statement for the most recent year that shall be made available for inspection by Lender any time;
- e. Company has placed on file with the SFMTA current certificates of insurance evidencing \$1,000,000.00 of general liability insurance and Workers' Compensation insurance as required by applicable laws and regulations;
- f. Company is in good standing with the San Francisco Paratransit Broker;
- g. Company is not in default under the Taxi Medallion Sales Pilot Program Color Scheme Participation Agreement; and
- h. Company has an established dispatch service meeting minimum SFMTA standard.

4. ADDITIONAL OBLIGATIONS

Company agrees to meet and maintain during the term of this Agreement the qualifications set forth in Section 3 of this Agreement and any and all other qualifications necessary to be allowed to affiliate with the Medallion and to operate the Medallion in connection with the Program.

5. TERM

This Agreement shall be in effect from the Effective Date until this Agreement is terminated as set forth herein.

6. TERMINATION

- a. Either party may terminate this Agreement, at any time, with or without cause, upon fourteen (14) days' written notice to the other party.
- b. Upon termination of this Agreement, Company shall immediately cease use of the Medallion and shall immediately return the Medallion to the SFMTA.

7. ARBITRATION

Any controversy (whether on an individual or class action basis) regarding any provision of this Agreement, any Exhibit, or Addendum hereto, shall be submitted to binding arbitration in accordance with the then existing rules of the American Arbitration Association. Any award made by the American Arbitration Association may be enforced as a final judgment in any court of competent jurisdiction. The site for said arbitration shall be San Francisco County, California.

8. ATTORNEYS' FEES

The prevailing party in any dispute between the parties arising out of the interpretation, application, or enforcement of any provision of this Agreement shall be entitled to recover all of its reasonable attorneys' fees and costs whether suit be filed or not, including, without limitation, costs and attorneys' fees related to or arising out of any arbitration proceeding, trial, or appellate proceedings.

9. NOTICES

All notices, requests, demands, and other communications required or permitted hereunder shall be in writing and shall be deemed to have been duly given, made, and received only when personally delivered or delivered by Federal Express or other nationally recognized courier service, or two (2) days after having been deposited in the United States mail, certified mail, postage prepaid, return receipt requested (except when such notice is a termination notice, in which event any two (2) of the delivery methods described above must be used), addressed as set forth below:

If to Lender:

_____ [Lender Name]

[Address]

Attention: _____

[Title]

If to Company:

[Company Name]

[Address]

Attention: _____

[Title]

Any party may change the address to which communications or copies are to be sent by giving notice of such change of address in conformity with the provisions of this section for the giving of notice.

10. RELATIONSHIP

This Agreement does not create, and shall not be construed to create, any joint venture or partnership between the parties. No officer, employee, agent, servant, or independent contractor of either party shall at any time be deemed to be an employee, servant, agent, or contractor of the other party for any purpose whatsoever.

11. WAIVER

The failure of either party to seek a redress for violation, or to insist upon the strict performance, of any covenant, agreement, provision, or condition hereof shall not constitute the waiver of the terms or of the terms of any other covenant, agreement, provision, or condition, and each party shall have all remedies provided herein with respect to any subsequent act which would have originally constituted the violation hereunder.

12. ASSIGNMENT

Neither party may assign this Agreement or subcontract any right or interest hereunder.

13. GOVERNING LAW AND JURISDICTION

This Agreement is entered into and will be performed in California and all questions relating to its validity, interpretation, performance, and enforcement (including, without limitation, provisions concerning limitations of action) shall be governed by and construed in accordance with the Municipal Code of the City and County of San Francisco and the laws of the State of California, notwithstanding any conflict-of-laws doctrines of such state or other jurisdiction to the contrary. Company agrees to submit to the personal jurisdiction of the courts of the State of California.

14. HEADINGS

The headings herein are for convenience only; they form no part of this Agreement and shall not be given any substantive or interpretive effect whatsoever.

15. ENTIRE AGREEMENT

This Agreement contains the entire understanding between the parties hereto with respect to the subject matter hereof, and supersedes all prior and contemporaneous agreements and understandings, inducements, or conditions, express or implied, oral or written, except as herein contained. The express terms hereof control and supersede any course of performance or usage of the trade inconsistent with any of the terms hereof. This Agreement may not be modified or amended other than by an agreement in writing signed by an authorized representative of each party hereto.

16. PARTIAL INVALIDITY

If any part of this Agreement is determined to be invalid or unenforceable by a court, then such part or parts shall be severed from this Agreement without affecting the validity of the remaining provisions.

17. VOLUNTARY AGREEMENT.

The parties acknowledge that they have carefully read the foregoing Agreement, understand the contents thereof, and freely and voluntarily agree to the terms herein.

18. TIMELINESS

Time is of the essence in this Agreement.

19. RIGHTS AND REMEDIES

Unless expressly stated otherwise in this Agreement, all rights and remedies provided for in this Agreement will be cumulative and in addition to, and not in lieu of, any other remedies available at law, in equity, or otherwise. If a party has a choice of possible actions, it may take any or all of those actions.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their authorized representative effective on the date written above.

COMPANY

Name of Company

Signature

Print Name & Title of Authorized Signature

LENDER

Name of Lender

Signature

Print Name & Title of Authorized Signature