

**STAFF REPORT FOR CALENDAR ITEM NO. : 10**  
**FOR THE MEETING OF:** April 12, 2012

**TRANSBAY JOINT POWERS AUTHORITY**

**BRIEF DESCRIPTION:** Authorize the Executive Director to execute an Advertising Agreement for the Temporary Transbay Terminal with Fuel Outdoor San Francisco LLC (Fuel), for a five-year term and minimum annual payments to the TJPA of 42.5% of net revenues or \$50,000, whichever is greater.

**EXPLANATION:**

Public transportation agencies frequently make available certain areas of facilities, equipment, and property for advertising in order to generate revenue for the agencies. TJPA originally issued a Request for Proposals for Temporary Terminal Advertising in March 2011, with the intent of generating additional revenue for the Operating and Maintenance Reserve established for the Temporary Terminal and the Transbay Transit Center.

The initial RFP was sent to 331 firms and individuals, including outdoor advertising firms and real estate consultants. No proposals were received in response to the initial RFP; feedback from potential proposers indicated that the RFP may have included excessive qualification requirements, such as requiring ten years of transit advertising selling experience in metropolitan markets rather than five years experience. TJPA consequently revised the RFP and reissued it in June 2011, this time sending it to 373 firms and individuals. One proposal was received in September 2011, from Fuel Outdoor. TJPA again solicited feedback from the industry to try to determine why more proposals were not received. Responses ranged from “too busy” (this is a relatively small advertising contract) to “we were only interested if could be the preferred vendor for advertising in the new Transit Center” (advertising in the new Transit Center is reserved for a new competitive procurement).

Fuel is a 9-year old traditional out-of-home media company with an active presence in nine of the fifteen largest markets in the U.S., including San Francisco. Negotiations were initiated, and the attached agreement is the result of those negotiations. Under the proposed agreement, Fuel will have the exclusive right to sell outdoor advertising, subject to the provisions of TJPA’s Advertising Policy and the constraints of the Redevelopment Plan, on the existing shelters and signage at the Temporary Terminal for a five year term, with the option to extend the agreement if needed.

Fuel will install 48 panels on the existing canopy shelters and sell standard size 4’ x 6’ advertising to be placed in the panels. The advertising will be installed on alternating panels that do not contain transit maps or other transit information (see attached mock-up image). TJPA retains the right to have signage promoting the Transbay Transit Center Program placed on unused panels. No advertising will face the exterior of the Temporary Terminal; under the Redevelopment Plan guidelines, all advertising must be inward facing. The successor agency to the San Francisco Redevelopment Agency has reviewed the Fuel Outdoor proposal and given its approval for installation. The Advertising Policy adopted by the TJPA Board is attached to the

Agreement, and the contractor acknowledges it is subject to the Policy, as it may be amended from time to time by the Board.

The contractor will be responsible for maintaining the advertising panels in a like new condition—refurbishing and replacing the panels as necessary, and removing graffiti and other unauthorized materials, with an obligation to inspect the advertising at least twice per week. All installation and maintenance activities are to be scheduled during non-peak commute hours, unless damaged advertising panels present a hazard to passengers (e.g., broken glass).

Fuel will pay TJPA either 42.5% of its net revenues from advertising under the contract, or a Minimum Annual Guarantee (MAG) of \$50,000 per year, whichever is greater. The MAG shall be subject to annual CPI escalation. Additional space for advertising is available at the Temporary Terminal; should the contractor wish to expand the number of advertising panels in the future, the revenues shall be increased accordingly.

**RECOMMENDATION:**

Staff recommends that the Board authorize the Executive Director to execute the Advertising Agreement for the Temporary Transbay Terminal with Fuel Outdoor San Francisco LLC, for a five-year term and minimum annual payments to the TJPA of 42.5% of net revenues or \$50,000, whichever is greater.

**ENCLOSURES:**

1. Resolution
2. Advertising Mock-Up and Fuel Information Sheet
3. Agreement

**TRANSBAY JOINT POWERS AUTHORITY  
BOARD OF DIRECTORS**

**Resolution No. \_\_\_\_\_**

WHEREAS, The Transbay Joint Powers Authority (TJPA) is a joint powers agency organized and existing under the laws of the State of California; and

WHEREAS, Pursuant to the Joint Powers Agreement creating the TJPA, dated April 4, 2001, the TJPA has the authority to, among other things, make and enter into contracts and exercise all powers necessary and proper to carry out the provisions of the Joint Powers Agreement; and

WHEREAS, The TJPA wishes to generate revenue for the Program by selling advertising space at certain limited, designated places on TJPA property; and

WHEREAS, The TJPA issued a Request for Proposals for Temporary Terminal Advertising and Fuel Outdoor San Francisco LLC (Fuel) responded; and

WHEREAS, TJPA Staff negotiated an Advertising Agreement with Fuel for a five-year term and minimum annual payments to the TJPA of 42.5% of net revenues or \$50,000, whichever is greater; and

WHEREAS, Advertising under the Agreement is subject to compliance with the TJPA Advertising Policy and the Transbay Redevelopment Plan; now, therefore, be it

RESOLVED, That the TJPA Board of Directors authorizes the Executive Director to execute the Advertising Agreement with Fuel Outdoor for a five-year term and minimum annual payments to the TJPA of 42.5% of net revenues or \$50,000, whichever is greater.

I hereby certify that the foregoing resolution was adopted by the Transbay Joint Powers Authority Board of Directors at its meeting of April 12, 2012.

\_\_\_\_\_  
Secretary, Transbay Joint Powers Authority

## REAL ESTATE PARTNERS



NEW YORK – Wallscape - Delta



MIAMI – Wallscape - iPod



MIAMI – Bulletin - Converse

AAG MANAGEMENT INC  
 ANDREWS BUILDING CORP  
 BOYMEGREEN DEVELOPERS  
 CALIFORNIA PARKING SYSTEMS  
 CB RICHARD ELLIS  
 CENTRAL PARKING  
 CITY APARTMENTS SAN FRANCISCO  
 CITY OF MIAMI  
 EBM DEVELOPMENT CO.  
 EQUITY OFFICE PROPERTIES  
 FEIL ORGANIZATION  
 FLORIDA EAST COAST REALTY  
 GVA WILLIAMS  
 HELMSLEY SPEAR  
 ICON PARKING  
 IMPERIAL PARKING  
 JEFFREY MANAGEMENT COMPANY  
 KAUFMAN ADLER REALTY  
 KAUFMAN MANAGEMENT CO.  
 KEY REAL ESTATE ASSOCIATES  
 LAZ PARKING  
 MACY'S EAST  
 MAXWELL KATES INC  
 MIAMI PARKING AUTHORITY  
 MOINON GROUP.  
 NEWMARK & NIGHT FRANK REAL ESTATE  
 OLMSTEAD PROPERTIES  
 PHILADELPHIA PARKING AUTHORITY  
 RELATED GROUP  
 ROSE ASSOCIATES  
 RUDD REALTY  
 RUDIN MANAGEMENT  
 SHASTONE CORPORATION  
 SILVERSTEIN PROPERTIES INC  
 SITT ASSET MANAGEMENT, LLC  
 SL GREEN REALTY CORP  
 STOLLER GROUP INC  
 SOUTHLAND CORPORATION  
 TAMARES REAL ESTATE ASSOCIATES  
 THE LOVETT COMPANY  
 THE MOINIAN GROUP  
 RECKSON ASSOCIATES  
 TRIZEC HAHN  
 VERIZON  
 WELLS GROUP  
 W+H GROUP

## FUEL'S NATIONAL ADVERTISERS

### » FOOD & BEVERAGES



### » ALCOHOL



### » AUTOMOTIVE



### » ENTERTAINMENT/BROADCAST



### » TECHNOLOGY/SERVICE PROVIDERS



### » FINANCIAL



### » FASHION



### » TRAVEL/TOURISM





APPROVED BY: \_\_\_\_\_

DATE: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_



APPROVED BY: \_\_\_\_\_  
DATE: \_\_\_\_\_  
SIGNATURE: \_\_\_\_\_

## ADVERTISING AGREEMENT

THIS AGREEMENT ("Agreement") is entered into as of the \_\_\_\_\_ day of \_\_\_\_\_ 2012, by and between the TRANSBAY JOINT POWERS AUTHORITY ("TJPA") and FUEL OUTDOOR SAN FRANCISCO LLC ("Contractor").

### Recitals

A. The TJPA desires to enter into an Advertising Agreement with a firm that has expertise in outdoor and transit shelter advertising for the benefit of users of the Temporary Terminal (the "Temporary Transbay Terminal"), a component of the Transbay Transit Center Program ("Program").

B. After a competitive solicitation for advertising proposals, the TJPA negotiated this Agreement with the Contractor.

C. The Contractor represents and warrants that it is qualified to perform the services required by this Agreement.

E. On \_\_\_\_\_, 2012, the TJPA Board of Directors adopted Resolution No. \_\_\_\_\_, authorizing the TJPA's Executive Director to execute this Agreement with the Contractor.

Now, THEREFORE, the parties agree as follows

### 1. Effective Date of the Agreement

This Agreement shall become effective when the Contractor has been notified in writing via a Notice To Proceed ("NTP"). The NTP is a written letter authorizing the Contractor to begin work under this Agreement.

### 2. Term of the Agreement

The term of this Agreement shall be for five years from the Effective Date of the Agreement, as described above, provided that (i) the TJPA shall have the right to extend this Agreement for an additional period of up to five (5) years, by providing to the Contractor written notice of such extension within thirty (30) days prior to the expiration of this Agreement, and (ii) any such extension shall be subject to and conditioned upon the written agreement of the Contractor and the approval of such extension by the TJPA.

Contractor shall not enter any contracts related to performance under this Agreement that extend beyond the termination date of this Agreement without written approval from the TJPA. Contractor shall immediately assign and transfer to TJPA any contract in effect upon expiration of this Agreement, and such contracts shall become the property of TJPA. Following such transfer, TJPA shall pay the Contractor when and as received from advertisers 20 percent (20%) of the gross income received from such contracts for a period of no greater than 180 days following expiration of this Agreement.

### 3. Grant of Advertising Rights and Privileges

#### a. Rights TJPA Grants to Contractor

During the term of this Agreement, and subject to the terms and conditions of this Agreement and applicable laws, TJPA grants to Contractor the exclusive right to place and maintain outdoor advertising materials on transit shelters and monument signs at the Temporary Transbay Terminal. In the exercise of the rights herein granted, Contractor agrees to use commercially reasonable efforts to enter into advertising contracts and maximize advertising revenues through the sale of advertising space to third parties.

## **b. Rights Retained by TJPA**

**(1) Advertising.** Contractor acknowledges that TJPA retains and reserves all advertising rights that are not specifically granted by this Agreement. The rights retained and reserved by TJPA include, but are not limited to, the right to sell or contract to sell advertising other than outdoor advertising ads on TJPA property, and the right to license or otherwise provide for the use of any trade name, trade mark, or other identifying device or symbol used, owned or registered by TJPA. TJPA may not sell space for outdoor advertising to advertisers either directly or through any intermediary, but may refer advertisers to Contractor.

**(2) Promotion of Transbay Transit Center Program.** The TJPA retains the right to have signage promoting the Transbay Transit Center Program placed in six of the glass windscreen panels or on the panels of the “Z-shape” sign at all times from the panel/sign inventory not allotted under this Agreement. Location of project promotional materials shall be decided jointly by Contractor and TJPA in order to maximize advertising revenue.

**(3) Advertising Space Subject to Change.** Contractor acknowledges and agrees that the space available for advertising in the Temporary Transbay Terminal may vary from time to time for various reasons. Except as otherwise provided in Section 20 entitled “Termination”, TJPA will give Contractor a minimum of ninety (90) days notification of any decision regarding changes in advertising. If feasible, TJPA will designate a replacement space for any advertising space deleted. Contractor agrees that any and all contracts it enters into with advertisers will contain a clause permitting cancellation without penalty, except for proration of fee, upon sixty (60) days notice. If the space available to Contractor for advertising is changed in a material respect such that the selling of advertising at the Temporary Transbay Terminal is no longer commercially viable for Contractor then Contractor shall have the right to terminate this Agreement upon thirty (30) days prior written notice to TJPA.

**(4) Transportation Priority.** Contractor acknowledges and agrees that advertising, and the grant of advertising rights provided for in this Agreement, are only incidental to the TJPA’s primary objective of operating and maintaining the Temporary Transbay Terminal as part of the Transbay Transit Center Program, which may undergo changes affecting the advertising rights granted. TJPA will have no liability to Contractor for any change in the number of transit vehicles operating at the Temporary Transbay Terminal, in ridership, or for any other change affecting the level or scope of advertising authorized by TJPA. Notwithstanding the foregoing, if TJPA makes changes to the Temporary Transbay Terminal such that the selling of advertising is no longer commercially viable, Contractor shall have the right to terminate this Agreement upon thirty (30) days prior written notice to TJPA.

## **c. Limitations on Contractor’s Rights**

Contractor’s rights to advertise as granted in this Section of the Agreement are subject to the following limitations:

**(1) Use of Space.** Contractor may not use the advertising spaces for any purpose other than those expressly provided in this Agreement.

**(2) No Damage to TJPA or City Property.** Contractor and its subcontractors may not damage TJPA or City and County of San Francisco (“City”) property (other than ordinary wear and tear). If in the course of its activities under the Agreement, Contractor or any of its employees or subcontractors damages any property belonging to TJPA or City (except for ordinary wear and tear), TJPA, at its sole option, may require Contractor to a) compensate TJPA for the actual losses resulting from the damage, or, b) repair any such damage.

**(3) Nuisances.** Contractor agrees to conduct its activities under this Agreement in a manner that does not constitute waste, nuisance or unreasonable annoyance (including, without limitation, emission of objectionable odors, noises or lights) to TJPA or to the public.



#### 4. Commercial Advertising

**a. General.** In consideration for the exclusive advertising rights granted in Section 3 above, subject to change at the reasonable discretion of TJPA upon reasonable prior written notice to Contractor, Contractor agrees to design, install and maintain advertising spaces and displays as set forth below. All advertising spaces governed by this Agreement remain the property of TJPA. Upon receipt of an NTP, Contractor shall begin the installation process and shall concurrently begin selling the advertising space. The advertising space shall be ready to be placed in service within 60 days of the date of Contractor's receipt of the NTP.

**b. Number of Advertising Spaces.** Contractor will install advertising on 48 glass windscreen panels designated in Exhibit A, "Site Plan". Additional glass windscreen panels, three (3) backlit glass panel monument signs, and a six-panel "Z-shape" sign are also available for advertising and, at the Contractor's request, rights to install advertising on these additional available spaces may be granted to the Contractor at the TJPA's sole discretion.

**c. Locations and Size of Advertising Displays.** The standard locations for placement of advertising material through the term of this Agreement are designated in the Site Plan attached as Exhibit A. TJPA retains the right to designate all advertising locations. TJPA does not guarantee any specific site for advertising for the duration of the Agreement. All advertising shall be inward facing along the perimeter of the site (cannot face public streets), but may be both inward and transportation facing on the inner island of the Temporary Transbay Terminal. No portion of any advertising shall be higher than fifteen (15) feet above ground level. No advertisement may exceed the panel size.

Notwithstanding any other provisions of this Agreement, Contractor may propose experimental advertisements on a limited basis, and may implement such experimental advertisements with the prior written approval of the TJPA, subject to all conditions in the approval.

#### **d. Removal or Relocation of Advertising Displays.**

**(1) TJPA Request.** TJPA will have the right to require Contractor, at Contractor's expense, to remove advertising displays due to the transportation needs of the Temporary Transbay Terminal, improved accessibility, or repeated vandalism.

**(2) Contractor Request.** Contractor may request permission of the TJPA Executive Director to relocate advertising, at Contractor's expense, if the advertising space or display has been repeatedly vandalized or damaged.

**(3) Time for Relocation.** All removals or relocations must commence within ten (10) days of written notification by TJPA to Contractor unless otherwise authorized by the TJPA Executive Director.

**(4) Failure to Remove.** In the event that Contractor fails to remove advertising within such ten (10) day period, TJPA will impose liquidated damages under the Section entitled "Liquidated Damages" in the amount of Three Hundred Dollars (\$300) per day or fraction thereof, until the advertising has been removed. If such advertising is not removed by Contractor within such time frame, TJPA may, at its sole discretion, cause removal of said advertising and invoice the Contractor for expenses incurred to remove.

#### 5. Non Commercial Displays

**a. TJPA Information.** Exclusive of all advertising space referred to in this Agreement, TJPA reserves the right to place in designated locations in the Temporary Transbay Terminal its informative material about the Transbay Transit Center Program, including signage promoting the Transbay Transit Center Program placed on six of the glass windscreen panels or on the panels of the "Z-shape" sign at all times as described in Section 3.b.(2) above.

## **b. Unsold Space**

**(1) TJPA Use of Unsold Space.** By the first day of each month, Contractor shall provide a projection of all unsold advertising space anticipated over the next 60 days. The TJPA, at no charge to TJPA except as specifically set forth herein, will have the option to use advertising space that has not been sold by Contractor for public purposes, including promoting the Transbay Transit Center Program, for a minimum of 14 days. TJPA will be responsible for providing all printed materials ready for posting by Contractor no later than five (5) days prior to posting at TJPA's sole cost and expense. The TJPA Executive Director will notify the Contractor in writing of TJPA's intention to use the unsold advertising space at least thirty (30) days prior to the date on which TJPA's scheduled use is to begin. Notwithstanding the foregoing, in the event Contractor sells advertising on such previously unsold space after TJPA notifies Contractor of its desire to use such space, Contractor shall have the first right to use such space for the posting of its sold advertising. If Contractor is unable to deliver said space for any reason (other than by reason of force majeure) after being notified properly by the TJPA Executive Director of TJPA's intention to use unsold advertising space, Contractor agrees to reimburse TJPA for all printing and related costs incurred by TJPA in anticipation of the use of said advertising space if the materials are time sensitive and cannot be reused.

**(2) Contractor's Use of Unsold Space.** Subject to TJPA's rights under Section 5.b (1) above, Contractor may use, at its sole cost and expense, available unsold advertising space for its own advertisements and promotion designed to increase the sale of advertising space.

**(3) Public Service Announcements.** Subject to TJPA's rights under Section 5.b (1) above and subject to the Section entitled "Approval of Advertising Material", Contractor will have the right to display public, educational and charitable announcements free of charge on any spaces not contracted for use by paid advertisers.

## **6. Payments by Contractor to TJPA**

**a. General.** During the term of this Agreement, Contractor agrees to pay to TJPA the sums as set forth below, without any deduction or offset whatsoever, to the TJPA, 201 Mission Street, Suite 2100, San Francisco, California, 94105, or at such other address as TJPA may from time to time designate by written notice to Contractor. The Contractor may make payments electronically at its option.

Contractor agrees to provide the greater of 42.5 percent of its Net Revenues earned under the Agreement or the Minimum Annual Guarantee ("MAG"). Net Revenues shall be calculated after (i) payment of any independent advertising agency commissions, (ii) payment of any and all costs associated with constructing, installing, removing, changing, illuminating and maintaining the panels, and (iii) payment of any and all costs associated with obtaining and maintaining the required permits from appropriate governmental authorities having jurisdiction over the Temporary Transbay Terminal for the use of the panels for advertising purposes. The MAG for the initial contract year (12 months from the date of the NTP) shall be \$50,000. The MAG will be increased annually by the percentage change in the most recently published 12 month average Consumer Price Index for the Consolidated Metropolitan Statistical Area covering San Francisco – Oakland – San Jose. The MAG shall be payable in equal monthly installments due by the first business day of each month to TJPA. Notwithstanding the foregoing, Contractor shall pay the first MAG payment within 15 days of Contractor's receipt of NTP; the first MAG may be prorated based on the date of issuance of NTP.

As required in the Section entitled "Reporting Requirements; Audits" Contractor shall, by March 1 each year, provide the TJPA with documentation of its (i) gross revenues, (ii) independent advertising agency commissions, (iii) costs associated with installing, removing, changing, illuminating, maintaining and repairing the panels, and (iv) total MAG payments for the previous year as part of its Annual Financial Report. Contractor shall apply the revenue share percentage listed above in this Section to the Net Revenues for the previous year to determine TJPA's "Annual Revenue Share". If the Annual Revenue Share exceeds the total MAG payments made to the TJPA pursuant to this Section (as they may be pro-

rated for any partial year), Contractor shall pay the TJPA any difference between the total payments made and the Annual Revenue Share by March 31. In the event this Agreement terminates for any reason before completion of a year, Contractor shall submit the documentation required by this subsection and any final payment required by this subsection within sixty (60) days of termination.

**b. Interest on Late Payments.** Payments from Contractor that are not received by TJPA within five (5) days after such payment is due will bear interest from and after the date said payment was due until the date paid at the rate of six percent. Acceptance of a late payment by TJPA will not constitute a waiver of Contractor's default with respect to the overdue amount, nor prevent TJPA from exercising any of the other rights and remedies granted under this Agreement or by law. TJPA shall have no responsibility to notify the Contractor of payments not received by the due dates.

## 7. Installation

**a. Materials Specifications.** Materials must be chosen for ruggedness and ability to withstand graffiti, vandalism, weathering, corrosion, and other abuse. Panels must be of a sufficient thickness to be resistant and durable to vandalism and be able to maintain transparency. Materials and design must conform to all applicable Public Works and Electrical Codes. Contractor must use recycled-content and sustainable materials to the extent feasible. Materials may not contain PVC building materials.

**b. Installation Approval and Schedule.** Contractor agrees to begin installation upon receipt of an NTP, which shall constitute approval by the TJPA and any applicable permitting agency such as the San Francisco Redevelopment Agency. Advertising space shall be ready for advertising displays within sixty (60) days of the date of Contractor's receipt of a copy of the NTP.

Except for emergency maintenance or repairs, or unless expressly authorized by TJPA, Contractor must not conduct installation activities between the hours of 6 am to 9 am and from 4 pm to 7 pm. When each display installation is complete, Contractor must remove all excess materials and restore the work area to its pre-installation condition.

**c. Power to Displays.** If Contractor desires powered advertising displays, Contractor will bear the full responsibility, including all costs of, furnishing, installing and maintaining electrical service to each powered display. To the extent feasible, Contractor should rely solely on solar power. To the extent necessary, Contractor will be responsible for contracting with Pacific Gas & Electric Company ("PG&E") for required electricity. If obtaining service directly from PG&E, Contractor will be responsible for obtaining an agreement from PG&E to allow electrical service. Contractor may, if reasonably available and subject to agreement with the San Francisco Public Utilities Commission ("SFPUC"), use City-owned street lighting circuits and conduits, including the nearest available connection, to obtain power for a display. All electrical service lines at each display site must be underground and must originate from point-of-service designated by the SFPUC or PG&E.

## 8. Maintenance and Repair

**a. General.** Contractor agrees to maintain all displays in accordance with the standards of this Agreement and be responsible for maintaining displays in "like new" condition throughout the term of this Agreement, including refurbishing, reconditioning, and, if necessary, replacing displays that cannot be readily rehabilitated with normal maintenance. Contractor agrees to remove all graffiti, stickers, unauthorized posters, and similar unauthorized materials from each display.

**b. Inspection and Clean up.** Contractor must routinely inspect each display at least twice per week. Contractor will make more inspections if conditions warrant in Contractor's reasonable discretion. At each inspection, if needed, Contractor agrees to clean and wash each display. Additionally, Contractor will inspect LED equipment, if any, and replace defective lights. In addition, Contractor agrees to furnish to TJPA a monthly narrative summary of its inspection and clean up operations, noting specific times each display was inspected and identifying any problem areas and corrective actions taken under the

provisions of the Section entitled "Reporting Requirements; Audits". This report shall also include all maintenance and repair costs.

**c. Repair and Replacement.** Within forty-eight (48) hours of discovery by Contractor, or notification by the public or TJPA, Contractor agrees to repair any damage, including, but not limited to, damage from vandalism or graffiti found on any display. If the display damage is of a hazardous nature (e.g. broken glass), or if light sources need replacing, Contractor agrees to repair, replace or remove the same within twenty-four (24) hours of discovery or notification, or as needed. If the display is destroyed, Contractor agrees to remove the display remains within twenty-four (24) hours of notification and replace the display within fifteen (15) days. Except for emergency maintenance or repairs, or unless expressly authorized by TJPA, Contractor must not conduct repair and replacement activities between the hours of 6 am to 9 am and from 4 pm to 7 pm. When each repair or replacement is complete, Contractor must remove all excess materials and restore the work area to its pre-repair/replacement condition.

**d. Remedies for Failure to Maintain or Repair.** In the event that Contractor fails to repair, maintain or relocate displays within the timeframe specified by TJPA, the TJPA may, in its sole discretion, cause the repair, maintenance, removal or relocation of said display(s) and invoice the Contractor. Contractor agrees to pay TJPA for its actual costs within ten (10) days following receipt by Contractor of an invoice for such costs. TJPA may assess liquidated damages under the provisions of the Section entitled "Liquidated Damages" for breaches of the maintenance and repair provisions of this Agreement.

## 9. Approval of Advertising Material

**a. General.** The TJPA has adopted an Advertising Policy (Exhibit B) that prohibits certain types of advertisements. Contractor agrees to comply with the advertising standards set forth in this Policy and any amendments to this Policy (provided Contractor is given a copy thereof) during the term of the Agreement. Upon written demand by the TJPA Executive Director, Contractor agrees to remove within two (2) calendar days or sooner any advertisements that are in violation of TJPA's Advertising Policy.

**b. Decals.** Contractor agrees to install a decal on each advertising poster that reads: "The views expressed in this advertisement do not necessarily reflect the views of the Transbay Joint Powers Authority." Contractor will provide the decals and TJPA will determine the locations on the advertising displays where the decals are to be placed; provided that TJPA agrees that such decals shall not be placed in a location which obstructs the advertisement in any way.

## 10. Reporting Requirements; Audits

**a. Reporting Requirements.** For the duration of this Agreement, Contractor must submit an Annual Financial Report containing the following information to the TJPA, certified by Contractor's Chief Financial Officer, by March 1 each year for the prior calendar year:

- i. Number of displays installed, relocated or removed.
- ii. Independent advertising agency commissions.
- iii. Costs associated with installing removing, changing, illuminating, maintaining, and repairing the panels.
- iv. MAG payments to the TJPA.
- v. Number of advertising agreements; name(s) of advertising company(ies); length of respective advertising agreements; type of advertisement and number of displays used in the advertising campaign.

vi. Gross revenues, expenses, net revenues less expenses and profit from the TJPA advertising program, and total payments to the TJPA both on a cash and accrual basis, broken down by month.

**b. Audits and Inspection of Records.** Contractor agrees to maintain and make available to the TJPA, during regular business hours and upon reasonable prior written notice, in accordance with generally accepted accounting principles and business practices, all books, accounts and records created in the performance of and relating to its work under this Agreement. Contractor will permit the TJPA 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. The Contractor shall maintain such data and records at Contractor's main office and in good 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. Data shall be made available to the TJPA without TJPA incurring travel costs to the Contractor's main office. The State of California or any federal or other governmental agency having an interest in the subject of this Agreement shall have the same rights conferred upon the TJPA by this Section.

## 11. Liquidated Damages

Contractor acknowledges that its failure to perform certain obligations under this Agreement will cause TJPA to incur inconvenience not contemplated under this Agreement, which cost and inconvenience will constitute damage to TJPA and the public, and that the exact amount of such damage will be extremely difficult or impractical to fix. TJPA and Contractor agree that the amounts described as liquidated damages in this Agreement are not penalties, but represent a fair and reasonable estimate of the costs that TJPA will incur by reason of Contractor's failure to perform, and are fair compensation to TJPA for its losses. Failure by TJPA to impose liquidated damages for specified violations will not be a waiver of the right to enforce this Section, nor will it constitute a waiver of any other right of TJPA under this Agreement, including, but not limited to, Contractor's obligation to TJPA to pay any overdue amounts or perform any services under this Agreement. For purposes of this Section, written notice by TJPA of a violation will constitute enforcement even though TJPA may not assess liquidated damages at the time of such initial written notice of violation.

**a. Maintenance Breaches.** TJPA may assess liquidated damages for the following breaches of the maintenance and repair provisions of this Agreement:

(1) Failure to perform maintenance or repair work to an advertising display in accordance with the requirements of this Agreement in any material respect within forty-eight (48) hours of notification of damage: \$250 per occurrence per day until the violation is remedied.

(2) Failure to perform maintenance or repair work to an advertising display in accordance with the requirements of this Agreement in any material respect within twenty-four (24) hours of notification of damage of a hazardous nature: \$500 per occurrence per day until the violation is remedied.

(3) Failure to perform graffiti removal work in accordance with the requirements of this Agreement within forty-eight (48) hours of notification: \$250 per occurrence per day until the violation is remedied.

(4) Failure to remove advertising displays as required by TJPA in accordance with the requirements of this Agreement within the timeframe specified by the TJPA elsewhere in this Agreement: \$150 per day or fraction thereof, until the advertising has been removed.

**b. Installation Schedule Breaches.** TJPA may assess liquidated damages for Contractor's failure to comply with the approved installation schedule under Section 7.b: \$500 for each display that is not completed within 60 days of the date of an NTP.

**c. Annual Report.** Contractor's failure to submit its Annual Financial Report, with all required information as set forth in Section 10(a)(2): \$250 for each day the report is late until the report is submitted with such required information.

## **12. Submitting False Claims; Monetary Penalties**

Pursuant to San Francisco Administrative Code Chapter 6, Article V, any Contractor, subcontractor, or consultant who submits a false claim shall be liable to the TJPA for three times the amount of damages which the TJPA sustains because of the false claim, plus a civil penalty of up to \$10,000, and other damages as provided by statute. A Contractor, subcontractor or consultant will be deemed to have submitted a false claim to the TJPA if the Contractor, subcontractor or consultant (a) knowingly presents or causes to be presented to an officer or employee of the TJPA 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 TJPA; (c) conspires to defraud the TJPA by getting a false claim allowed or paid by the TJPA; (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 TJPA; or (e) is a beneficiary of an inadvertent submission of a false claim to the TJPA, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the TJPA within a reasonable time after discovery of the false claim.

## **13. Taxes**

Payment of any taxes, including possessory interest taxes and California sales and use taxes, levied upon this Agreement, the transaction, or the services delivered pursuant hereto, shall be the obligation of the Contractor.

## **14. Responsibility for Equipment**

The TJPA shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Contractor, or by any of its employees, even though such equipment be furnished, rented or loaned to Contractor by the TJPA, except if such damage is the result of the gross negligence or willful misconduct of TJPA, its employees or agents.

## **15. Independent Contractor, Payment of Taxes and Other Expenses**

**a. Independent Contractor.** The 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 the TJPA under this Agreement. The Contractor or any agent or employee of the Contractor shall not have employee status with the TJPA, nor be entitled to participate in any plans, arrangements, or distributions by the TJPA pertaining to or in connection with any retirement, health or other benefits that the TJPA may offer its employees. The Contractor or any agent or employee of the Contractor is liable for the acts and omissions of itself, its employees and its agents. The Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, Federal Insurance Contributions Act (FICA), income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to the Contractor's performing services and work, or any agent or employee of the Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or joint venture relationship between the TJPA and the Contractor.

Any terms in this Agreement referring to direction from the TJPA shall be construed as providing for direction as to policy and the result of the Contractor's work only, and not as to the means by which such a result is obtained.

**b. Payment of Taxes and Other Expenses.** Should the Internal Revenue Service or the State Employment Development Division, or both, or other applicable taxing authority determine that the

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 the Contractor which can be applied against this liability). The TJPA shall then forward those amounts to the relevant taxing authority.

Should a relevant taxing authority determine a liability for past services performed by the Contractor for the TJPA, upon written notification of such fact by the TJPA, the Contractor shall promptly remit such amount due or arrange with the TJPA to have the amount due withheld from future payments to the Contractor under this Agreement (again, offsetting any amounts already paid by the 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, The Contractor shall not be considered an employee of the TJPA. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that the Contractor is an employee for any other purpose, then the Contractor agrees to a reduction in the TJPA's financial liability so that the TJPA's total expenses under this Agreement are not greater than they would have been had the court, arbitrator, or administrative authority determined that the Contractor was not an employee.

## **16. Insurance**

a. Without in any way limiting the Contractor's other indemnification obligations under this Agreement, the Contractor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages.

(1) If required under California law, Worker's Compensation, in statutory amounts, with Employers' liability limits not less than \$1,000,000 each accident, injury, or illness; and

(2) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products, and Completed Operations; and

(3) Business 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

(4) Professional Liability Insurance with limits not less than \$1,000,000 each claim, with respect to negligent acts, errors or omissions in connection with professional services to be provided under this Agreement.

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

(1) Name as Additional Insured the TJPA, its members, directors, officers, agents, and employees.

(2) 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. All policies shall be endorsed to provide thirty (30) days' advance written notice to the TJPA of reduction or nonrenewal of coverages or cancellation of coverages for any reason. Notices shall be sent to the address specified in the Section entitled "Notices to the Parties".

d. Should any of the required insurance be provided under a claims-made form, the Contractor

shall maintain such coverage continuously throughout the term of this Agreement, and without lapse, for a period of three (3) years beyond the expiration of this Agreement, to the effect that, should occurrences during the agreement term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

e. Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs are included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

f. Should any required insurance lapse during the term of this Agreement, requests for payment originating after such lapse shall not be processed until the TJPA receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the TJPA may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

g. Before commencing any operations under this Agreement, the Contractor shall do the following: (a) furnish to the TJPA certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VII or higher, that are authorized to do business in the State of California, and that are satisfactory to the TJPA, in form evidencing all coverages set forth above, and (b) furnish complete copies of policies promptly upon TJPA request. Failure to maintain insurance shall constitute a material breach of this Agreement.

h. Approval of the insurance by the TJPA shall not relieve or decrease the liability of the Contractor under this Agreement.

## **17. Indemnification**

Contractor shall indemnify and save harmless the TJPA and its officers, directors, agents and employees from, and if requested shall defend them against, any and all actual loss, cost, actual damage, injury, liability, and claims thereof for injury to or death of a person, including employees of the Contractor or loss of or damage to property, arising directly or indirectly from the Contractor's performance of this Agreement, including, but not limited to, the Contractor's use of facilities or equipment provided by the TJPA or others. Contractor shall have no indemnity obligation where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of the TJPA 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. In the event that a court makes a final determination that the TJPA is contributorily liable with Contractor for such loss, damage, injury, liability or claim based on the TJPA's active negligence or willful misconduct, Contractor shall be eligible to receive reimbursement of Contractor's actual and reasonable cost of defense of such claim in the same proportion as TJPA's contributory liability. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related out-of-pocket costs and the TJPA's costs of investigating any claims against the TJPA.

In addition to the Contractor's obligation to indemnify the TJPA, the Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend the TJPA from any claim which actually 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 the Contractor by the TJPA and continues at all times thereafter. The Contractor shall have the exclusive right to select and retain attorneys to defend against such indemnified claims (subject to the reasonable approval of the TJPA) and the TJPA shall cooperate with the Contractor and its attorneys, at no cost to the TJPA.

As to any intellectual property that Contractor provides to the TJPA in the performance of this Agreement, Contractor agrees to indemnify and hold TJPA 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 as a consequence of the use by TJPA of the intellectual property supplied by the Contractor, or any of its officers or agents.

As to any intellectual property that TJPA provides to Contractor in materials Contractor is required to post under this Agreement, TJPA agrees to indemnify and hold Contractor 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 as a consequence of the required posting by Contractor of intellectual property supplied by the TJPA or any of its officers or employees.

## **18. Incidental and Consequential Damages**

Contractor shall be responsible for incidental and consequential damages to the TJPA resulting in whole or in part from Contractor's acts or omissions. Notwithstanding the foregoing, such damages shall be limited to \$250,000. This limitation is not a limitation on indemnification under Section 17 above, and applies solely to the amount of incidental or consequential damages. Nothing in this Agreement shall constitute a waiver or limitation of any rights that the TJPA may have under applicable law to seek a defense, indemnity, or damages for such acts or omissions.

## **19. Liability of TJPA**

Notwithstanding any other provision of this Agreement, in no event shall the TJPA 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.

## **20. Termination**

**a. Termination for Convenience.** The TJPA shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience and without cause. The TJPA shall exercise this option by giving the Contractor written Notice of Termination. The notice shall specify the date on which termination shall become effective, which date shall be no sooner than one hundred twenty (120) days from the date of such notice. Upon receipt of the Notice of Termination, Contractor shall commence and perform with diligence all actions necessary on the part of the Contractor, in Contractor's reasonable discretion, to effect the termination of this Agreement on the date specified by TJPA and to minimize the liability of Contractor and TJPA to third parties as a result of termination. All such actions shall be subject to the prior reasonable approval of the TJPA. In the event that TJPA exercises its option to terminate for convenience within the first six months from the date of NTP, Contractor shall be eligible for pro-rated reimbursement of its actual and reasonable capital costs incurred to perform this Agreement in an amount not to exceed \$5,000 per month for any portion of the initial six month term that post dates the date of the TJPA's termination for convenience (e.g., if TJPA terminates for convenience effective at the conclusion of the fourth month after the date of NTP, Contractor would be eligible for reimbursement of up to \$5,000 for the two months remaining in the initial six month period, or \$10,000 total). In the event that TJPA exercises its right to terminate for convenience and Contractor has pre-paid its MAG obligation under Section 6 above, Contractor shall be entitled to a pro-rated reimbursement of the MAG.

No later than 90 days prior to the termination of this Agreement by expiration of its term or termination for convenience, TJPA will, without limiting its rights and remedies, have the right to direct Contractor, at Contractor's own cost and expense, to remove its advertising displays and return the advertising locations to a condition acceptable to the TJPA within 30 days of the termination date of this Agreement; if Contractor fails to do so within 30 days, TJPA, without further notice, may remove the advertising displays, to their proper condition, and bill Contractor for the cost of the work.

**b. Default of Contractor.** In the event that Contractor fails or refuses to perform or observe any term, covenant or condition or promise herein set forth, the TJPA may give Contractor 30 days written Notice of Default of this Agreement; provided, however, if such default cannot reasonably be cured within such thirty (30) day period, so long as Contractor is diligently pursuing to cure, in TJPA's reasonable discretion, Contractor shall have an additional time not to exceed sixty (60) days in the aggregate to cure such default. If Contractor does not cure the default within 30 days of the date of the Notice of Default or such later period as permitted hereunder, TJPA may terminate this Agreement in whole or in part by sending a Notice of Termination to Contractor. In the event of termination of the entire Agreement for Contractor's default, TJPA may require Contractor to remove any advertising and/or advertising displays located in the Temporary Transbay Terminal in accordance with the provisions of this Agreement. If TJPA elects not to terminate this Agreement, TJPA may seek damages in accordance with the provisions of this Agreement.

**c. Waiver of Contractor's Rights.** Contractor acknowledges that this Agreement includes provisions granting to TJPA the right to terminate the Agreement and upon such termination to order the removal of all advertising and advertising displays. Contractor fully waives, releases and relinquishes forever any and all claims, demands, rights and causes of action that it may have against the TJPA under the Outdoor Advertising Act (Business and Professions Code, §§ 5200, et seq.), any amendments thereto or other future laws, for any compensation from TJPA not otherwise provided for herein, including the payment of just compensation, as defined in the eminent domain law (Title 7, commencing with Section 1230.010, of Part 3 of the Code of Civil Procedure), in the event TJPA lawfully exercises any such rights in accordance with the provisions of this Agreement.

**d. Protection of TJPA Property.** Upon receiving a Notice of Termination from TJPA, Contractor shall take such action as may be necessary, or as TJPA may direct, for the protection and preservation of any property related to this Agreement which is in the possession of Contractor and in which TJPA has or may acquire an interest.

**e. Actual Damages.** In the event that TJPA elects not to terminate the Agreement after Contractor's failure to cure a default set forth in a Notice of Default of this Agreement, TJPA will be entitled to recover from Contractor any actual loss or damage that TJPA may have incurred by reason of Contractor's default.

**f. Non-exclusive Remedies.** The exercise of the remedies provided for in this Section will be cumulative and will in no way affect any other remedy available under the law to TJPA.

**g. Survival.** This Section 20 and the following Sections of this Agreement shall survive termination or expiration of this Agreement: Removal or Relocation of Advertising Displays; Payments by Contractor to TJPA; Liquidated Damages; Submitting False Claims, Monetary Penalties; Taxes; Responsibility for Equipment; Independent Contractor; Insurance; Indemnification; Incidental and Consequential Damages; Liability of TJPA; Proprietary or Confidential Information of TJPA; Protection of Private Information; Notices to the Parties; Audit and Inspection of Records; Non-Waiver of Rights; Limitations on Contributions; Modification of Agreement; Administrative Remedy for Agreement Interpretation; Agreement Made in California, Venue; Construction; Entire Agreement; Severability.

**h. Cooperation.** In the event of termination of this Agreement for any reason, Contractor shall reasonably cooperate in any transition of the contract to a new vendor. Upon written request by TJPA, Contractor shall provide TJPA with complete records related to the installation, maintenance, relocation and/or removal of each individual advertising display.

## **21. 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, overnight courier or fax, and shall be addressed as follows:

To TJPA: Maria Ayerdi-Kaplan, Executive Director  
Transbay Joint Powers Authority  
201 Mission Street, Suite 2100  
San Francisco, CA 94105  
(415) 597-4615 fax  
[MAyerdi-Kaplan@TransbayCenter.org](mailto:MAyerdi-Kaplan@TransbayCenter.org)

To Contractor: Jon Lavallee, Chief Financial Officer  
Fuel Outdoor Holdings LLC  
443 Park Avenue South  
New York, NY 10016  
(212) 967-7337 fax  
[jlavallee@fueloutdoor.com](mailto:jlavallee@fueloutdoor.com)

Any notice of default must be sent by registered mail. Any notice under this Agreement shall be deemed to have been delivered (i) if by email, when so delivered, (ii) if sent by overnight courier, on the next business day following delivery with such overnight courier, (iii) if sent by mail, 3 days after delivery with the postal service and (iv) if sent by fax, upon confirmation of delivery of such fax.

## **22. Proprietary or Confidential Information of the TJPA**

The Contractor understands and agrees that, in the performance of the work or services under the Agreement or in contemplation thereof, the Contractor may have access to private or confidential information which may be owned or controlled by the TJPA and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to the TJPA. The Contractor agrees that all information disclosed by the TJPA to the Contractor shall be held in confidence and used only in performance of this Agreement, except as required by applicable law or regulation, court, deposition, interrogatory, request for documents, subpoena, civil investigative demand or similar process. Confidential information does not include information which: (i) is in the possession of Contractor at the time of disclosure, provided that Contractor shall have the burden of proof with respect to the factual issue of such prior possession; (ii) prior to or after the time of disclosure becomes part of the public knowledge or literature, not as a result of any inaction or action of Contractor; (iii) is approved for release by TJPA in writing; (iv) is received without restriction from a third party that, to the best knowledge of Contractor, did not have an obligation of confidentiality to the disclosing party; or (v) was independently developed by employees of Contractor who had no knowledge of or access to such information, provided that Contractor shall have the burden of proof with respect to the factual issue of independent development. The Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary data.

Contractor understands and agrees that the California Public Records Act (Gov. Code Section 6250 et seq.), apply to the Agreement. Contractor shall clearly identify to TJPA all information that Contractor provides to TJPA that it considers to be proprietary, trade secret or is otherwise protected from disclosure under the California Public Records Act and other applicable laws. If a public records request made to the TJPA includes information that Contractor has identified as confidential or proprietary, TJPA will endeavor to provide Contractor reasonable notice of such request prior to disclosure of any such records. Contractor may at its option and own expense take whatever legal steps it deems appropriate to protect said information from disclosure to the public.

## **23. Protection of Private Information**

The Contractor agrees to comply fully with and be bound by all of the provisions of Chapter 12M of the San Francisco Administrative Code (the "Nondisclosure of Private Information Ordinance"), including the remedies provided. The provisions of the Nondisclosure of Private Information Ordinance are incorporated herein by reference and made a part of this Agreement as though fully set forth. Contractor

agrees that any failure of Contractor to comply with the requirements of the Ordinance shall be a material breach of the Contract. In such an event, in addition to any other remedies available to it under equity or law, the TJPA may terminate the Contract, bring a false claim action against the Contractor pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar the Contractor.

#### **24. San Francisco Sunshine Ordinance**

In accordance with S.F. Administrative Code Section 67.24(e), the Contractors' bids, responses to solicitations and all other records of communications between the TJPA and persons or firms seeking contracts shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefits until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph and is not deemed confidential and proprietary pursuant to Section 22 of this Agreement will be made available to the public upon request.

#### **25. News Releases/Interviews**

All Contractor news releases, media interviews, and public testimony and comment relating to the Transbay Transit Center Program shall be prohibited unless expressly authorized by the TJPA.

#### **26. Assignment**

The services to be performed by the 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 the TJPA by written instrument executed and approved by TJPA.

#### **27. Bankruptcy or Reorganization Proceedings**

In the event that Contractor files a voluntary petition in bankruptcy, or in the event that proceedings in bankruptcy are instituted against Contractor and Contractor is thereafter adjudicated bankrupt pursuant to such proceedings, or in the event that a court takes jurisdiction of Contractor and its assets pursuant to proceedings brought under the provisions of any federal reorganization act, or in the event that a receiver of Contractor's assets is appointed, or in the event that Contractor executes an assignment for the benefit of its creditors, TJPA will have the right to terminate this Agreement forthwith. Such termination will be deemed to occur upon the happening of any of said events and, after that time, Contractor or its successor in interest by operation of law or otherwise will have no rights in or to this Agreement or to any of the privileges conferred under this Agreement.

#### **28. 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. There shall be no waiver except in writing, signed by the party to be charged.

#### **29. Conflict of Interest**

Through its execution of this Agreement, the Contractor acknowledges that it is familiar with the provisions of the Conflict of Interest Code of the TJPA; Section 15.103 of the San Francisco City Charter; Article III, Chapter 2 of San Francisco's Campaign and Governmental Conduct Code; and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitute a violation of said provisions.

### **30. Limitations on Contributions**

Through execution of this Agreement, the Contractor acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the TJPA for the rendition of personal services, for the furnishing of any material, supplies or equipment, or for the sale or lease of any land or building, from making any campaign contribution to (1) a TJPA elective officer if the contract must be approved by the individual, a board on which that individual serves, or a board 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 Contractor acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. The Contractor further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of the Contractor's board of directors; the 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 the Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by the Contractor. Additionally, the Contractor acknowledges that the Contractor must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126.

### **31. Prohibition on Political Activity with TJPA Funds**

In accordance with San Francisco Administrative Code Chapter 12.G, the Contractor may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, "Political Activity") in the performance of the services provided under this Agreement. The Contractor agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the TJPA's Chief Financial Officer. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event that the Contractor violates the provisions of this Section, the TJPA may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement, and (ii) prohibit the Contractor from bidding on or receiving any new TJPA contract for a period of two (2) years. The TJPA will not consider the Contractor's use of profit as a violation of this Section.

### **32. Equal Employment Opportunity/Nondiscrimination; Penalties**

**a. Contractor Shall Not Discriminate.** In the performance of this Agreement, the Contractor agrees not to discriminate against any TJPA or City employee working with such Contractor or subcontractor, applicant for employment with such Contractor or subcontractor, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, 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, weight, height, or Acquired Immune Deficiency Syndrome or Human Immunodeficiency Virus (AIDS/HIV) status, or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

Such action shall include, but shall not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; lay-offs or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor further agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. The Contractor is encouraged to actively recruit minorities and women for its workforce and take other steps, such as on-the-job training and education, to ensure nondiscrimination in the Contractor's employment practices.

**b. Subcontracts.** The Contractor shall incorporate by reference in all subcontracts the provisions

of Chapters 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code (copies of which are available from the TJPA upon request) and shall require all subcontractors to comply with such provisions. Contractor's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

**c. Nondiscrimination in Benefits.** The Contractor does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where the work is being performed for the TJPA elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Chapter 12B.2(b) of the San Francisco Administrative Code.

**d. Condition to Contract.** As a condition to this Agreement, the Contractor shall execute the appropriate "San Francisco Administrative Code Chapters 12B & 12C Declaration: Nondiscrimination in Contracts and Benefits" form (Form HRC-12B-101, HRC-12B-102, or HRC-12B-103) with supporting documentation and file the form with the TJPA Contract Compliance Manager.

**e. Incorporation of Administrative Code Provisions by Reference.** The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. The Contractor shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, the Contractor understands that pursuant to Section 12B.2(h) and 12C.3(g) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against the Contractor and/or deducted from any payments due the Contractor.

### **33. Disadvantaged Business Enterprise (DBE) and Small Business Enterprise (SBE) Requirements**

Information pertaining to TJPA's DBE and SBE Programs is available on the TJPA website at [www.transbaycenter.org](http://www.transbaycenter.org) > Doing Business with the TJPA. The Contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this agreement.

To the extent that Contractor procures supplies or services in connection with this Agreement, or subcontracts or joint ventures work under this Agreement, Contractor agrees to make good faith efforts to achieve participation by DBEs and SBEs. Contractor further shall encourage advertisers and advertising agencies to utilize SBEs. Contractor shall maintain records of any DBE and SBE participation in the performance of this Agreement and submit DBE/SBE participation reports to TJPA on a quarterly basis or as otherwise requested by TJPA in writing. The reports shall identify the name, address, and certification of each DBE/SBE performing work on the project, and show the total dollar amounts both invoiced by and paid to each DBE/SBE. Within 30 days of completion or termination of this Agreement, the Contractor will submit a final summary report to the TJPA.

### **34. Prevailing Wages**

Contractor and any subcontractors agree to pay prevailing wages for those construction or crafts classifications for which a prevailing wage has been established for work performed in San Francisco, for any work necessary under the Agreement which is subject to prevailing wage.

### 35. Requiring Minimum Compensation for Covered Employees

The Contractor agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 12P are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the MCO is available on the Web at <http://www.sfgov.org/olse>. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12P. Consistent with the requirements of the MCO, Contractor agrees to all of the following:

a. For each hour worked by a Covered Employee during a Pay Period on work funded under the TJPA contract during the term of this Agreement, the Contractor shall provide to the Covered Employee no less than the Minimum Compensation, which includes a minimum hourly wage and compensated and uncompensated time off consistent with the requirements of the MCO. Note that the gross hourly compensation for covered employees is \$11.69 as of January 2011.

If a Covered Employee of a Nonprofit Corporation works in San Francisco, then that employee is covered by San Francisco's Minimum Wage Ordinance, which is Chapter 12R of the San Francisco Administrative Code. As of January 1, 2011, Chapter 12R's minimum wage is \$9.92 per hour.

b. The Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any employee for complaining to the TJPA with regard to the Contractor's compliance or anticipated compliance with the requirements of the MCO, for opposing any practice proscribed by the MCO, for participating in proceedings related to the MCO, or for seeking to assert or enforce any rights under the MCO by any lawful means.

c. The Contractor understands and agrees that the failure to comply with the requirements of the MCO shall constitute a material breach by the Contractor of the terms of this Agreement. The TJPA shall determine whether such a breach has occurred.

d. If, within thirty (30) days after receiving written notice of a breach of this Agreement for violating the MCO, the Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty (30) days, the Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the TJPA shall have the right to pursue the following rights or remedies and any rights or remedies available under applicable law:

(1) The right to charge the Contractor an amount equal to the difference between the Minimum Compensation and any compensation actually provided to a Covered Employee, together with interest on such amount from the date payment was due at the maximum rate then permitted by law;

(2) The right to set off all or any portion of the amount described in Subsection (d)(1) of this Section against amounts due to the Contractor under this Agreement;

(3) The right to terminate this Agreement in whole or in part;

(4) In the event of a breach by the Contractor of the covenant referred to in Subsection (b) of this Section, the right to seek reinstatement of the employee or to obtain other appropriate equitable relief; and

(5) The right to bar the Contractor from entering into future contracts with the TJPA for three (3) years.

Each of the rights provided in this Subsection (d) shall be exercisable individually or in combination with any other rights or remedies available to the TJPA. Any amounts realized by the TJPA pursuant to this subsection shall be paid to the Covered Employee who failed to receive the required

#### Minimum Compensation.

e. The Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the MCO.

f. The Contractor shall keep itself informed of the current requirements of the MCO, including increases to the hourly gross compensation due Covered Employees under the MCO, and shall provide prompt written notice to all Covered Employees of any increases in compensation, as well as any written communications received by the Contractor from the TJPA, which communications are marked to indicate that they are to be distributed to Covered Employees.

g. The Contractor shall provide reports to the TJPA in accordance with any reporting standards promulgated by the TJPA under the MCO, including reports on subcontractors.

h. The Contractor shall provide the TJPA with access to pertinent records after receiving a written request from the TJPA to do so and being provided at least five (5) business days to respond.

i. The TJPA may conduct random audits of the Contractor. Random audits shall be (1) noticed in advance in writing; (2) limited to ascertaining whether Covered Employees are paid at least the minimum compensation required by the MCO; (3) accomplished through an examination of pertinent records at a mutually agreed upon time and location within ten (10) days of the written notice; and (4) limited to one audit of Contractor every two years for the duration of this Agreement. Nothing in this Agreement is intended to preclude the TJPA from investigating any report of an alleged violation of the MCO.

j. Any subcontract entered into by the Contractor shall require the subcontractor to comply with the requirements of the MCO and shall contain contractual obligations substantially the same as those set forth in this Section. A subcontract means an agreement between the Contractor and a third party which requires the third party to perform all or a portion of the services covered by this Agreement. The Contractor shall notify the TJPA when it enters into such a subcontract and shall certify to the TJPA that it has notified the subcontractor of the obligations under the MCO and has imposed the requirements of the MCO on the subcontractor through the provisions of the subcontract. It is the Contractor's obligation to ensure that any subcontractors of any tier under this Agreement comply with the requirements of the MCO. If any subcontractor under this Agreement fails to comply, the TJPA may pursue any of the remedies set forth in this Section against the Contractor, provided that TJPA has first provided Contractor with notice and an opportunity to obtain a cure of the violation.

k. Each Covered Employee is a third-party beneficiary with respect to the requirements of subsections (a) and (b) of this Section, and may pursue the following remedies in the event of a breach by the Contractor of subsections (a) and (b), but only after the Covered Employee has provided the notice, participated in the administrative review hearing, and waited the 21-day period required by the MCO. The Contractor understands and agrees that if the Covered Employee prevails in such action, the Covered Employee may be awarded (1) an amount equal to the difference between the Minimum Compensation and any compensation actually provided to the Covered Employee, together with interest on such amount from the date payment was due at the maximum rate then permitted by law; (2) in the event of a breach by the Contractor of subsections (a) or (b), the right to seek reinstatement or to obtain other appropriate equitable relief; and (3) in the event that the Covered Employee is the prevailing party in any legal action or proceeding against the Contractor arising from this Agreement, the right to obtain all costs and expenses, including reasonable attorney's fees and disbursements, incurred by the Covered Employee. The Contractor also understands that the MCO provides that if the Contractor prevails in any such action, the Contractor may be awarded costs and expenses, including reasonable attorney's fees and disbursements, from the Covered Employee if the court determines that the Covered Employee's action was frivolous, vexatious or otherwise an act of bad faith.

l. If the Contractor is exempt from the MCO when this Agreement is executed because the cumulative amount of agreements with this department for the fiscal year is less than \$25,000 (\$50,000



for nonprofits), but the Contractor later enters into an agreement or agreements that cause the Contractor to exceed that amount in a fiscal year, the Contractor shall thereafter be required to comply with the MCO under this Agreement. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the Contractor and the TJPA to exceed \$25,000 (\$50,000 for nonprofits) in the fiscal year.

### **36. Requiring Health Benefits for Covered Employees**

Unless exempt, the Contractor agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of Chapter 12Q are incorporated herein by reference and made a part of this agreement as though fully set forth. The text of the HCAO is available on the Web at <http://www.sfgov.org/olse>. Capitalized terms used in this Section and not defined in this agreement shall have the meanings assigned to such terms in Chapter 12Q.

a. For each Covered Employee, the Contractor shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If the Contractor chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.

b. Notwithstanding the above, if the Contractor is a small business as defined in Section 12Q.3(e) of the HCAO, it shall have no obligation to comply with part (a) above.

c. The Contractor's failure to comply with the HCAO shall constitute a material breach of this agreement. The TJPA shall notify the Contractor if such a breach has occurred. If, within thirty (30) days after receiving the TJPA's written notice of a breach of this Agreement for violating the HCAO, the Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty (30) days, the Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the TJPA shall have the right to pursue the remedies set forth in 12Q.5(f)(1-6). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the TJPA.

d. Any Subcontract entered into by the Contractor shall require the subcontractors to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. The Contractor shall notify the TJPA when it enters into such a subcontract and shall certify to the TJPA that it has notified the subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on subcontractor through the Subcontract. Each Contractor shall be responsible for its subcontractors' compliance with this Chapter. If a subcontractor fails to comply, the TJPA may pursue the remedies set forth in this Section against Contractor based on the subcontractor's failure to comply, provided that TJPA has first provided Contractor with notice and an opportunity to obtain a cure of the violation.

e. The Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying the TJPA with regard to Contractor's compliance or anticipated compliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

f. The Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.

g. The Contractor shall maintain employee and payroll records in compliance with the California Labor Code and Industrial Welfare Commission orders, including the number of hours each employee has worked on the TJPA agreement.

- h. The Contractor shall keep itself informed of the current requirements of the HCAO.
- i. The Contractor shall provide reports to the TJPA in accordance with any reporting standards promulgated by the TJPA under the HCAO, including reports on subcontractors and subtenants, as applicable.
- j. The Contractor shall provide the TJPA with access to records pertaining to compliance with HCAO after receiving a written request from the TJPA to do so and being provided at least five (5) business days to respond.
- k. The Contractor shall allow the TJPA to inspect the Contractor's job sites and have access to the Contractor's employees during normal business hours and upon reasonable prior notice in order to monitor and determine compliance with HCAO.
- l. The TJPA may conduct random audits of the Contractor to ascertain its compliance with HCAO upon reasonable prior written notice. The Contractor agrees to cooperate with the TJPA when it conducts such audits.
- m. If the Contractor is exempt from the HCAO when this Agreement is executed because its amount is less than \$25,000 (\$50,000 for nonprofits), but the Contractor later enters into an agreement or agreements that cause the Contractor's aggregate amount of all agreements with TJPA to reach \$75,000, all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the Contractor and the TJPA to be equal to or greater than \$75,000 in the fiscal year.

### **37. MacBride Principles – Northern Ireland**

Pursuant to San Francisco Administrative Code Section 12F.5, the TJPA urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The TJPA urges San Francisco companies to do business with corporations that abide by the MacBride Principles. By signing below, the person executing this agreement on behalf of the Contractor acknowledges and agrees that he or she has read and understood this Section.

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

The Contractor acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on TJPA premises. The Contractor agrees that any violation of this prohibition by the Contractor, its employees, agents or assigns will be deemed a material breach of this Agreement.

### **39. Resource Conservation**

Chapter 5 of the San Francisco Environment Code ("Resource Conservation") is incorporated herein by reference. Failure by the Contractor to comply with any of the applicable requirements of Chapter 5 will be deemed a material breach of contract.

### **40. Tropical Hardwood/Virgin Redwood Ban**

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

#### **41. Preservative-treated Wood Containing Arsenic**

The Contractor may not purchase preservative-treated wood products containing arsenic in the performance of this Agreement unless an exemption from the requirements of Chapter 13 of the San Francisco Environment Code is obtained from the Department of the Environment under Section 1304 of the Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniacal copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Contractor may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of the Environment. This provision does not preclude the Contractor from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

#### **42. Graffiti Removal**

Graffiti is detrimental to the health, safety and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a sense of disrespect of the law that results in an increase in crime; degrades the community and leads to urban blight; is detrimental to property values, business opportunities and the enjoyment of life; is inconsistent with the City and County of San Francisco's property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property. Graffiti results in visual pollution and is a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on the City and County and its residents, and to prevent the further spread of graffiti.

In addition to its obligation to promptly remove graffiti from advertising displays at the Temporary Transbay Terminal, the Contractor shall remove all graffiti from any real property owned or leased by the Contractor in the City and County of San Francisco within forty eight (48) hours of the earlier of the Contractor's (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the City's Department of Public Works or the TJPA. This Article is not intended to require the Contractor to breach any lease or other agreement that it may have concerning its use of the real property. The term "graffiti" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including by way of example only and without limitation, signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and which is visible from the public right-of-way. "Graffiti" shall not include (a) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code or the San Francisco Building Code; or (b) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (California Civil Code Sections 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. Sections 101 et seq.).

#### **43. Modification of Agreement**

This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved by both Contractor and TJPA according to TJPA requirements.

#### **44. Administrative Remedy for Agreement Interpretation**

Should any question arise as to the meaning and intent of this Agreement, the question shall, prior to any other action or resort to any other legal remedy, be referred to the TJPA who shall decide the true

meaning and intent of the Agreement. Nothing in this Section shall be interpreted as the Contractor waiving any legal rights or remedies to which it is entitled.

#### **45. 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.

#### **46. Construction**

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

#### **47. Entire Agreement**

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

#### **48. 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.

#### **49. Compliance With Laws**

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

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

The Contractor acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. The Contractor shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. The Contractor agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agree that any violation of this prohibition on the part of the Contractor, its employees, agents or assigns will constitute a material breach of this Agreement.

#### **51. Authority to Execute Agreement**

Each individual executing this Agreement, on behalf of one of the parties, represents that he or she is duly authorized to sign and deliver the Agreement on behalf of such party and that this Agreement is binding on such party in accordance with its terms. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day first mentioned above.

TRANSBAY JOINT POWERS AUTHORITY

Approved as to Form by:

\_\_\_\_\_  
Maria Ayerdi-Kaplan, Executive Director

\_\_\_\_\_  
TJPA Legal Counsel

Transbay Joint Powers Authority  
Board of Directors  
Resolution No. \_\_\_\_\_  
Adopted: \_\_\_\_\_  
Attest:

\_\_\_\_\_  
Secretary, TJPA Board

FUEL OUTDOOR SAN FRANCISCO LLC

By signing this Agreement, I certify that I comply with the requirements of the Minimum Compensation Ordinance, which entitles Covered Employees to certain minimum hourly wages and compensated and uncompensated time off.

I have read and understood the Section entitled "MacBride Principles—Northern Ireland", San Francisco's statement urging companies doing business in Northern Ireland to move towards resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles.

  
\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
443 Park Avenue South, 9<sup>th</sup> Floor  
Address

\_\_\_\_\_  
Jon Lavallee  
Printed Name

\_\_\_\_\_  
New York, NY 10016  
City, State, Zip Code

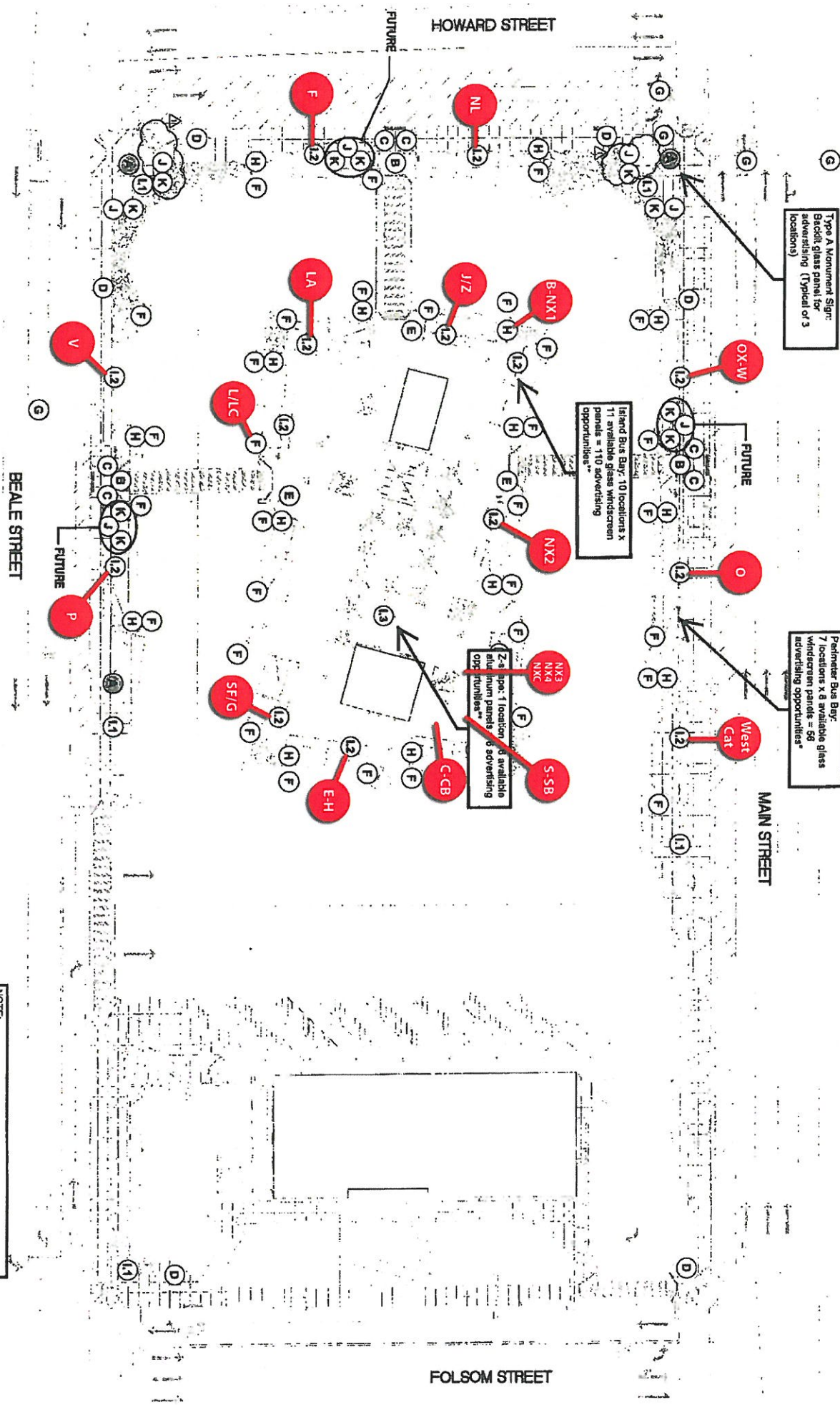
\_\_\_\_\_  
Chief Financial Officer  
Title

\_\_\_\_\_  
(212) 967-7333  
Phone Number

\_\_\_\_\_  
Fuel Outdoor San Francisco LLC  
Company Name

\_\_\_\_\_  
20-4663829  
Federal Employer ID Number

**EXHIBIT A**  
**SITE PLAN**



Type A Monument Sign:  
Backlit glass panel for  
advertising (Typical of 3  
locations)

Island Bus Bay: 10 locations x  
11 available glass windshield  
panels = 110 advertising  
opportunities\*

Perimeter Bus Bay:  
7 locations x 8 available glass  
windshield panels = 56  
advertising opportunities\*

2-4 Top 1 location of available  
advertising  
opportunities\*

NOTE:  
\* Advertising on perimeter bus bay windshields must face  
inward to the Temporary Terminal site.  
\* Advertising on island bus bays windshields can be on both  
sides of windshield

## EXHIBIT B

### TJPA ADVERTISING POLICY BOARD POLICY No. 16 Adopted December 9, 2010

#### I. Introduction

The TJPA may from time to time chose to make limited, designated TJPA property (“Advertising Space”) available for posting of print, electronic, or other forms of advertisements (“Advertising”). All such Advertising Space is a nonpublic forum. All Advertising must strictly comply with the terms and conditions of this Policy.

The primary purpose of TJPA property is to provide public transportation services to paying passengers. Most passengers use TJPA property to commute to and from home, work, and school, and to engage in retail, professional services, and other commercial transactions. Many passengers that use TJPA property have limited alternative methods of transportation. Many passengers that use TJPA property are minors.

#### II. Objectives

The purposes and objectives of this Policy are to:

- (1) Maximize revenue for the Transbay Program. The class and consumer friendliness of Advertising directly relates to the goal of maximizing revenue.
- (2) Promote the Transbay Program and ridership on the public transportation systems that partner with the TJPA.
- (3) Maintain a safe and welcoming environment for passengers, particularly minors, using TJPA property and riding the public transportation systems that use TJPA property by encouraging a minimum level of decorum.
- (4) Maintain the TJPA’s position of neutrality on issues not directly related to the Transbay Program.
- (5) Not promote illegal activity.

#### III. General Policy

In order to advance the above purposes and objectives, Advertising shall not:

- (1) concern a political campaign or candidate, ballot measure, initiative, or other legislation;
- (2) contain false, misleading, or deceptive commercial speech;
- (3) contain profanity;
- (4) be libelous, slanderous, or defamatory;
- (5) contain nude, obscene, or pornographic images, by community standards;
- (6) advocate or promote the use of illegal goods or services, or unlawful conduct;
- (7) depict graphic violence;
- (8) contain or use a graffiti style to convey a message;
- (9) infringe on any copyright, trademark, or other protected intellectual property;
- (10) demean or disparage an individual or group;
- (11) conflict with the requirements of the TJPA’s funding partners, including the US Department of Transportation, or any applicable federal, state, or local law;



- (12) contain, imply, or declare an endorsement by the TJPA, except as expressly permitted by the TJPA.

The TJPA reserves the right to require that any Advertising identify the entity posting the Advertising in clearly visible type.

The TJPA reserves the right to require that any Advertising include the following statement in clearly visible type: "The views expressed in this advertisement do not necessarily reflect the views of the Transbay Joint Powers Authority."

Any contract granting the right to advertise in the Advertising Space shall attach this Policy and require compliance with this Policy, as it may be amended from time to time. The TJPA reserves the right to review and approve all proposed Advertising prior to posting to ensure consistency with this Policy. Upon written demand by the TJPA, the contractor must promptly remove any Advertising that is in violation of this Policy at the contractor's sole expense.

The TJPA Board may amend this Policy at any time without prior written notice to any entity that purchases or sells Advertising in the Advertising Space.