

**STAFF REPORT FOR CALENDAR ITEM NO.: 9.2  
FOR THE MEETING OF: March 9, 2017**

**TRANSBAY JOINT POWERS AUTHORITY**

**BRIEF DESCRIPTION:**

Authorize the Executive Director to execute Amendment No. 1 to the Advertising Agreement for the Temporary Transbay Terminal with Fuel Outdoor San Francisco LLC (“Fuel”), to extend the term of the Agreement through June 30, 2018, with minimum annual payments to the TJPA of \$57,512.

**EXPLANATION:**

Public transportation agencies frequently make available certain areas of facilities, equipment, and property for advertising in order to generate revenue for the agencies. In April of 2012, following a procurement process, Fuel was awarded the exclusive right to sell outdoor advertising, subject to the provisions of the 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 installed the 48 current advertising panels and has been 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.

The Agreement requires Fuel to pay either 42.5% of net advertising revenue, or a minimum annual guarantee (MAG), whichever is greater, to TJPA. The MAG was \$50,000 for the initial contract year (April 12, 2012 – April 11, 2013), and has increased each year by an escalation based on the Consumer Price Index (CPI), as follows:

April 2012	\$50,000
April 2013	\$51,100
April 2014	\$52,429
April 2015	\$53,844
April 2016	\$55,567

As Temporary Terminal operating expenses have been covered each year by an RM-2 operating grant, all advertising revenue has gone into the Operating Reserve for future Transit Center operations. Fuel submits annual reports and TJPA has verified through sampling a majority of the advertising contracts that the MAG is greater than 42.5% of net advertising revenues.

With substantial completion of the Transbay Transit Center scheduled for December 22, 2017, the TJPA anticipates utilizing the Temporary Transbay Terminal until the Transbay Transit Center is fully commissioned and operational in early 2018. Amendment No. 1, therefore, would extend the term of the Agreement through June 30, 2018. The MAG is also set in Amendment No. 1 at \$57,512, based on the annual CPI increase to the 2016 MAG.

**RECOMMENDATION:**

Authorize the Executive Director to execute Amendment No. 1 to the Advertising Agreement to provide outdoor and transit shelter advertising for the benefit of users of the Temporary Terminal with Fuel Outdoor San Francisco LLC to extend the term of the Agreement to June 30, 2018, with minimum annual payments to the TJPA of \$57,512.

**ENCLOSURES:**

1. Resolution
2. Amendment No. 1

**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, In April 2012, the TJPA entered into an Advertising Agreement with Fuel Outdoor San Francisco LLC (“Fuel”) to provide Temporary Terminal Advertising for a five-year term and minimum annual payments to the TJPA of 42.5% of net revenues or \$50,000, with annual increases based on 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, whichever is greater; and

WHEREAS, Fuel was awarded the exclusive right to sell outdoor advertising, subject to the provisions of the TJPA’s Advertising Policy and the constraints of the Redevelopment Plan, on the existing shelters and signage at the Temporary Terminal; and

WHEREAS, The TJPA wishes to continue generating revenue for the Program by selling advertising space at the Temporary Terminal for the duration of its operations; and

WHEREAS, The TJPA thus desires to extend the term of the Agreement through June 30, 2018 and set the Minimum Annual Guarantee at \$57,512; now, therefore, be it

RESOLVED, That the TJPA Board authorizes the Executive Director to execute Amendment No. 1 to the Advertising Agreement with Fuel Outdoor San Francisco LLC to extend the term of the Agreement to June 30, 2018, with minimum annual payments to the TJPA of \$57,512.

I hereby certify that the foregoing resolution was adopted by the Transbay Joint Powers Authority Board of Directors at its meeting of March 9, 2017.

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

**Amendment No. 01**  
**Advertising Agreement between**  
**the Transbay Joint Powers Authority and Fuel Outdoor San Francisco LLC**

THIS Amendment No. 1 to the Advertising Agreement (“Agreement”) to provide outdoor and transit shelter advertising for the benefit of users of the Temporary Transbay Terminal (the “Temporary Terminal”), a component of the Transbay Transit Center Program (“Program”), entered into on the 12th day of April 2012 in San Francisco, California, by and between **Fuel Outdoor San Francisco LLC** (“Contractor”), and the **Transbay Joint Powers Authority** (“TJPA”).

The TJPA and Contractor desire to extend the term of the Agreement and increase the minimum annual guarantee without changing the advertising rights and privileges, or commercial advertising sections under the Agreement. The TJPA and Contractor agree to amend Section 2 of the Agreement in its entirety to read as follows:

**2. Term of the Agreement.**

The term of this Agreement shall be from the Effective Date of the Agreement, as described in Section 1 above, through June 30, 2018; provided that the TJPA shall have the right to extend this Agreement on a month-to-month basis, by providing to the Contractor written notice of such extension by the 1<sup>st</sup> of the month prior to such extensions.

The TJPA and Contractor also agree to amend Section 6 of the Agreement in its entirety to read as follows:

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

**a. General.** For the remainder of the term of this Agreement, Contractor agrees to provide the greater of 42.5 percent of its 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 shall be \$57,512, payable in equal monthly installments of \$4,792.67 due by the first business day of each month. Contractor agrees to pay to TJPA the sum as set forth above, 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.

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.

All other provisions of the Agreement shall remain in full force and effect.

**TRANSBAY JOINT POWERS  
AUTHORITY**

**CONTRACTOR**

Fuel Outdoor San Francisco LLC

\_\_\_\_\_  
Mark Zabaneh, P.E.  
Executive Director

\_\_\_\_\_  
Signature

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

\_\_\_\_\_  
Printed Name

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

\_\_\_\_\_  
Tax Identification Number

Approved as to Form by:

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