

File No. 111370

Committee Item No. 15  
Board Item No. 7

### COMMITTEE/BOARD OF SUPERVISORS AGENDA PACKET CONTENTS LIST

Committee: Rules Date 1/19/11

Board of Supervisors Meeting Date 2/7/12

#### Cmte Board

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| <input type="checkbox"/>            | <input type="checkbox"/>            | Legislative Digest                           |
| <input type="checkbox"/>            | <input type="checkbox"/>            | Budget Analyst Report                        |
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| <input type="checkbox"/>            | <input type="checkbox"/>            | Introduction Form (for hearings)             |
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| <input type="checkbox"/>            | <input type="checkbox"/>            | Grant Information Form                       |
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#### OTHER

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Completed by: Linda Wong Date 1/13/12  
Completed by: Lisa Date 1/24/12

An asterisked item represents the cover sheet to a document that exceeds 25 pages. The complete document is in the file.

1 [Settlement of Lawsuit – Metro Fuel – City to Receive \$1,750,000; Approval of Settlement and  
2 Relocation Agreement; Waiver of Administrative Code Subsections 2.21(d) and (e)]

3 **Ordinance (1) authorizing settlement of the lawsuit filed by Metro Fuel against the City**  
4 **and County of San Francisco for payment to the City of \$1,750,000; the lawsuit was**  
5 **filed on November 30, 2007, in the United States District Court for the Northern District**  
6 **of California, Case No. C07-6067 PJH; entitled Metro Fuel LLC v. City and County of**  
7 **San Francisco, et al.; other material terms of said settlement include settlement of the**  
8 **City's Notices of Violation against unpermitted panel signs, setting up a process for**  
9 **approval of the relocation and disaggregation of existing lawful billboards to other**  
10 **locations and payment of settlement following the City's approval of relocation permits**  
11 **for such billboards; (2) approving a Relocation and Settlement Agreement for the**  
12 **relocation of certain existing lawful billboards; and (3) waiving the requirements of San**  
13 **Francisco Administrative Code Subsections 2.21(d) and (e).**

14  
15 Be it ordained by the People of the City and County of San Francisco:

16 Section 1. Findings. The Planning Department has determined that the actions  
17 contemplated in this ordinance comply with the California Environmental Quality Act  
18 (California Public Resources Code Section 21000 et seq.). Said determination is on file with  
19 the Clerk of the Board of Supervisors in File No. <sup>111370</sup> and is incorporated herein by reference.

20 Section 2. The City Attorney is hereby authorized to settle the action entitled "Metro  
21 Fuel LLC v. City and County of San Francisco, et al.," United States District Court for the  
22 Northern District of California, Case No. C07-6067 PJH; by the payment to the City of  
23 \$1,750,000 and execution and implementation of a Settlement and Relocation Agreement  
24  
25

1 ("Agreement") in substantially the form contained in Board of Supervisors File No.  
2 111370.

3 Section 3. The above-named action was filed in United States District Court for the  
4 Northern District of California on November 30, 2007, and the following parties were named in  
5 the lawsuit: Metro Fuel LLC as Plaintiff and City and County of San Francisco as Defendant.

6 Section 4. The Agreement is both a Settlement and Relocation Agreement and this  
7 Board of Supervisors approves the Relocation Agreement as required by San Francisco  
8 Administrative Code Section 2.21 and hereby waives the requirements set forth in  
9 Administrative Code Section 2.21(d) and (e).

10 Section 5. This Board of Supervisors hereby approves the Agreement contained in  
11 Board of Supervisors File No. 111370 and authorizes the Planning Director to enter  
12 into such Agreement on behalf of the City and County of San Francisco.

14 APPROVED AS TO FORM AND  
15 RECOMMENDED:

16 DENNIS J. HERRERA  
17 City Attorney

18   
19 KATE H. STACY  
20 Deputy City Attorney

RECOMMENDED:

PLANNING DIRECTOR

21   
22 John Rahaim  
23 Planning Director



# SAN FRANCISCO PLANNING DEPARTMENT

**MEMO**

**DATE:** January 17, 2012  
**TO:** Angela Calvillo, Clerk, Board of Supervisors  
**FROM:** Bill Wycko, Environmental Review Officer  
**RE:** Metro Fuel Settlement and Relocation Agreement and Ordinance  
Board of Supervisors File No. 111370

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San Francisco,  
CA 94103-2479

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Pending before the Board of Supervisors is a proposed Settlement and Relocation Agreement ("Agreement") with Metro Fuel LLC and an Ordinance approving the settlement and relocation agreement and waiving certain procedural requirements of the San Francisco Administrative Code.

The Agreement and Ordinance set up a process whereby the City will consider approving the relocation of large billboards to smaller panel signs, resulting in a new total square footage of signage that is equivalent to seventy-five percent (75%) of the existing square footage. No specific signs are proposed for relocation in this Agreement and Ordinance; rather the Agreement sets up the process for the City to consider specific relocation requests and for payment of outstanding penalties. In addition, the Agreement and Ordinance provide that Metro Fuel must remove all of its illegal signs within sixty (60) days of approval of the Agreement and Ordinance.

I have determined that the Agreement and Ordinance are categorically exempt under CEQA as a Class 1 exemption or a Class 11 exemption. The only physical activity that will result from approval of this Agreement and Ordinance would be removal of the illegal signs. Class 1 exemptions apply to minor alterations of existing public or private structures. The removal of the existing illegal signs qualifies as a minor alteration. In addition, Class 11 applies to construction or replacement of minor structures accessory to a principal use, and lists on-premises signs as this type of structure. The physical activities required to remove a sign are similar to those required for construction.

Establishment of a procedure through which the City will consider approving the relocation of lawfully erected billboards to other permitted sites in the City does not qualify as a "project" under CEQA. The approval of the process does not result in any physical changes to the environment, and the City has not committed itself to any specific sign removal or construction at any specific site.

## SETTLEMENT AND RELOCATION AGREEMENT

THIS SETTLEMENT AND RELOCATION AGREEMENT (this "Agreement") is entered into on December 16, 2011 by and among City and County of San Francisco ("City"); Fuel Outdoor San Francisco, LLC, a Delaware limited liability company ("Fuel Outdoor San Francisco"); Metro Fuel, LLC, a Delaware limited liability company ("Metro Fuel"); and Fuel Outdoor Holdings, LLC, a Delaware limited liability company ("Fuel Outdoor Holdings") (Fuel Outdoor San Francisco, Metro Fuel, and Fuel Outdoor Holdings collectively, "Fuel"). The City, Fuel Outdoor San Francisco, Metro Fuel, and Fuel Outdoor Holdings are sometimes referred to collectively as the "parties," or individually as "party."

### RECITALS

A. Metro Fuel is the plaintiff, and the City is the defendant, in the matter of *Metro Fuel LLC v. City of San Francisco, et al.*, which was filed November 30, 2007 as Case Number C07-6067 PJH, in the United States District Court for the Northern District of California, which entered judgment on March 23, 2011. Metro Fuel filed a notice of appeal on April 19, 2011, which is pending before the United States Ninth Circuit Court of Appeals (the "Court") (these actions, collectively, the "*Metro Fuel Litigation*"). The parties seek to enter into a settlement agreement to end the *Metro Fuel Litigation* against the City, to resolve pending enforcement actions involving Fuel signs, and to ensure compliance with all City requirements for the placement and maintenance of general advertising signs by Fuel.

B. Fuel operates advertising signage that is regulated by the City as "general advertising signs." The term "general advertising sign" shall have the meaning set forth in the City and County of San Francisco Planning Code ("**Planning Code**") section 602.7 ("**General Advertising Signs**"). Fuel maintains two types of regulated General Advertising Signs in San Francisco: (i) General Advertising Signs that are six foot (6') in height by four foot (4') in width ("**Panel Signs**") and (ii) General Advertising Signs that are larger in format but not standardized in size, and which are commonly referred to as "billboards" or "large format" signage ("**Large Format Signs**"). Fuel owns, operates, or rents approximately 17 lawfully permitted Panel Signs in the City, the locations of which are on file with the Planning Department ("**Existing Permitted Panel Signs**"). Fuel also maintains 84 non-permitted Panel Signs in the City, which the City considers to be unlawful, non-permitted signs ("**Existing Non-Permitted Panel Signs**"). Fuel also maintains approximately 27 permitted Large Format Signs, the locations of which are on file with the Planning Department ("**Existing Permitted Large Format Signs**"). Collectively, this information comprises Fuel's general advertising sign inventory. The parties acknowledge that documentation of Fuel's general advertising sign inventory submitted to the Planning Department pursuant to Planning Code section 604.2 may be covered in whole or in part by the Judgment in *Fuel Outdoor San Francisco, L.L.C. v. City and County of San Francisco, et al.*, Lead Case Number CGC-07-460062 ("*Fuel Outdoor Judgment*"), which may require that the City obtains prior written consent of Fuel prior to any release of all or a portion of such inventory documentation to the public except under circumstances set forth in *Fuel Outdoor Judgment*.

C. The City's Planning Department has issued Notices of Violations for some of Fuel's Existing Non-Permitted Panel Signs, collectively referred to as the "NOVs." The City asserts that administrative penalties have been accruing for Fuel's Existing Non-Permitted Panel Signs pursuant to standards set forth in Planning Code section 610(b)(2)(B) ("**NOV Penalties**"). The "responsible party" for the NOV Penalties is defined by Planning Code section 610(1)(B) as "the owner(s) of the real property on which the general advertising sign is located, as listed in the Assessor's record, and the current leaseholder(s) or owner(s) of the general advertising sign, if different from the owner(s) of the real property" ("**Responsible Parties**"). The parties to this Agreement seek to resolve all outstanding NOVs issued, and all outstanding NOV Penalties accruing up to and including the Effective Date against any and all Responsible Parties with regard to any and all General Advertising Signs owned, operated, maintained, or leased by Fuel in San Francisco.

D. Pursuant to this Agreement, Fuel will have the right to relocate certain of its Existing Large Format Signs pursuant to the relocation agreement provisions of Planning Code section 611(c), Planning Code section 303(l), and City and County of San Francisco Administrative Code ("**Administrative Code**") section 2.21. In particular, Fuel seeks to remove certain Existing Large Format Signs and relocate them to Permitted Relocation Locations, as defined below, as Panel Signs ("**Relocated Panel Signs**"). The parties explicitly acknowledge that the relocation of Existing Large Format Signs to Relocated Panel Signs is authorized under Planning Code section 303(l)(3) and Administrative Code section 2.21, and that any one of the Existing Large Format Signs may be relocated as one or more Relocated Panel Signs, so long as the Relocated Panel Signs meet other requirements that are outlined below in this Agreement.

E. This Agreement will result in a twenty-five percent (25%) reduction in square footage of Fuel's General Advertising Signs in the City, which furthers the purpose of Proposition G, passed by voters in March, 2002, and Planning Code section 611.

F. This Agreement also furthers the purpose of Proposition G and Planning Code section 611 by removing General Advertising Signs from undesirable locations in San Francisco, and permitting relocated signs only in areas currently authorized by the City.

G. Fuel will submit information with the Conditional Use Application to relocate Existing Large Format Signs for a determination under the California Environmental Quality Act (Cal. Pub. Res. Code §21000, et seq.) ("**CEQA**") that the relocation of the Existing Large Format Signs qualifies as a General Rule Exclusion and/or Categorical Exemption Classes 1 and/or 3. (CEQA Guidelines §§15061(b)(3); 15301; 15303.)

H. Fuel confirms that Fuel Outdoor San Francisco and Metro Fuel are wholly-owned subsidiaries of Fuel Outdoor Holdings, and that Fuel is authorized to enter into this Agreement on behalf of itself, Fuel Outdoor San Francisco and Metro Fuel.

I. The NOVs include an NOV issued for General Advertising Signs operated by Fuel at 376 Castro Street, San Francisco, California (the "**376 Castro NOV**"). The City asserted that NOV Penalties have accrued in the amount of Ninety-Six Thousand Three Hundred Dollars (\$96,300.00) on the 376 Castro NOV (the "**376 Castro Penalties**") up to and including March 12, 2009. The property owner at 376 Castro, Naz Auto Services, Inc. ("**Naz Auto Services**"),

entered into an "Installment Agreement" with the City to pay the 376 Castro Penalties on March 12, 2009 (the "**376 Castro Installment Agreement**") without consulting or otherwise providing notice of the 376 Castro Installment Agreement to Fuel. Naz Auto Services paid the first of the installment payments required by the 376 Castro Installment Agreement, but made no further installment payments. On December 11, 2009, the City issued Naz Auto Services a Final Notice of Delinquency stating that the amount due on the 376 Castro Installment Agreement was Eighty-Eight Thousand Two Hundred Seventy-Five Dollars (\$88,275.00). Naz Auto Services made no payments subsequent to the Final Notice of Delinquency.

### AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises, terms, conditions, provisions and covenants described below, which consideration is hereby acknowledged by all parties, the parties hereto hereby agree to settle and finally resolve their dispute with respect to the *Metro Fuel* Litigation, the NOV's, the NOV Penalties, Fuel's Existing Non-Permitted Panel Signs, the 376 Castro Penalties, and any matters related thereto, and to relocate Fuel's General Advertising Signs, on the following terms and conditions:

1. **Incorporation of Recitals.** The Recitals set forth above are incorporated herein by reference and are a part of this Agreement.

2. **Effective Date.** The effective date of this Agreement shall be the first day on which all of the following events occur or have previously occurred: this Agreement has been executed by Fuel, adopted by the City's Board of Supervisors, and approved by the City's Mayor (the "**Effective Date**").

3. **Dismissal of Metro Fuel Litigation.** No more than five (5) court days after the Effective Date of this Agreement, the parties shall file with the Court a stipulation of voluntary dismissal in the *Metro Fuel* Litigation pursuant to Federal Rules of Appellate Procedure 42.

4. **Relocated Panel Sign Allocation.** Fuel shall be permitted to remove its Existing Permitted Large Format Signs and relocate them as up to one hundred twenty-five (125) Relocated Panel Signs ("**Relocated Panel Sign Allocation**") subject to the following terms and Planning Code §303. The Relocated Panel Sign Allocation will consist of "**Square Footage Credits**" that will be allocated to Fuel upon removal of an Existing Permitted Large Format Sign ("**Removal**"), in an amount equal to seventy-five percent (75%) of the square footage of the Existing Large Format Sign, thus resulting in a twenty-five percent (25%) decrease in the square footage of General Advertising Sign area occupied by Fuel signs. Removal shall require Fuel to remove and relinquish any and all permits for and/or legal rights to display and/or operate a General Advertising Sign at the location of an Existing Permitted Large Format Sign, including any legal rights or obligations related to or arising from other Responsible Parties, including the property owner(s) where the Existing Permitted Large Format Signs are located. Fuel shall furnish evidence satisfactory to the Planning Department and City Attorney that (i) the owners of property at which the Existing Large Format Signs are located have agreed to relinquish any and all legal rights to display and/or operate a General Advertising Sign at the location of the Existing Permitted Large Format Signs, or (ii) there is no longer a legal right held by the property owner, Fuel, or any other Responsible Parties to maintain a General Advertising Sign at

the location. Satisfactory evidence may include: written permission of the property owner stating that Fuel may relocate the Existing Permitted Large Format Sign and relinquishing any and all legal rights to display and/or operate a General Advertising Sign at the location of the Existing Permitted Large Format Signs, demonstration by Fuel that the property owner does not have a legal right to maintain an Existing Permitted Large Format Sign, or demonstration by Fuel that the legal right to an Existing Permitted Large Format Sign has been abandoned. The City shall determine whether such evidence is satisfactory. Fuel shall receive a square footage credit for one or more Relocated Panel Signs equal to seventy-five percent (75%) of the square footage of the Existing Large Format Sign that was removed. In the event that any of the Existing Panel Signs may be authorized as lawful signs, such signs shall be considered Relocated Panel Signs and the square footage allocated to these signs shall be deducted from the Square Footage Credits generated by the removal of any Existing Large Format Signs.

5. **Timeline for filing and hearing Conditional Use Authorization to be heard by the Planning Commission.** As soon as practicable but no later than sixty (60) days following the Effective Date, Fuel will file a conditional use authorization application pursuant to Planning Code section 303(l) to relocate its Existing Permitted Large Format Signs ("**Relocation CU Application**"). The Relocation CU Application shall request no less than one hundred twenty (120) Relocation Panel Signs. Both parties acknowledge their mutual intent to expeditiously file for and calendar a Planning Commission hearing on the Relocation CU Application. Fuel shall submit Proposed Relocation Sites at the time of filing the Relocation CU Application, and may supplement or revise the Proposed Relocation Sites at any subsequent time until the date for which notice for the Planning Commission's hearing on the Relocation CU Application is provided at the mutual agreement of the parties. The hearing on the Relocation CU Application must be held within six (6) months of the filing of the Relocation CU Application, or at a subsequent date mutually agreeable to the parties.

6. **Relocation CU Application Procedures.**

a. **Overview.** The Relocation CU Application process will be governed by Planning Code sections 303(l) and 611, Administrative Code section 2.21, and this Agreement.

b. **Inventory.** The City certifies that Fuel has submitted an inventory of Fuel's General Advertising Signs as mandated by Planning Code section 604.2. Fuel shall pay all required registration and late registration fees set forth in Planning Code sections 358(b) and 604.2(g) according to the terms set forth in this Agreement.

c. **Signs to be relocated.** As part of the Relocation CU Application, Fuel shall provide to the Planning Department the location of as many Existing Permitted Large Format Signs that Fuel seeks to relocate as practicable. The Planning Department shall determine the amount of square footage of the Existing Permitted Large Format Signs available to be used to determine Square Footage Credits for the permitting of Relocated Panel Signs.

d. **Locations for Relocated Panel Signs.** Fuel shall also provide the Planning Department the locations of the proposed Relocated Panel Signs ("**Proposed Relocation Sites**"). Proposed Relocation Sites may include: (i) locations of Fuel's Existing Non-Permitted Panel Signs, if any, that may be lawfully permitted under current Code requirements; or (ii) new



locations where Fuel has obtained authorization from a property owner to erect a Relocated Panel Sign where such locations are permitted under current Code requirements; or (iii) any other location mutually agreeable to the parties and permitted by City law. In recognition that the Planning Commission may deny conditional use authorization for one or more Proposed Relocation Sites, Fuel has discretion in the number of Proposed Relocation Sites submitted to the Planning Commission, provided that Fuel will submit a CU application for no more than one hundred seventy-five (175) Proposed Relocation Sites. If Fuel submits a CU Application for more Proposed Relocation Sites than Relocated Panel Signs permitted under this Agreement, the Planning Commission shall consider all such Proposed Relocation Sites and may approve all or a portion of such relocation sites. If the Planning Commission approves more Proposed Relocation Sites than Relocated Panel Signs permitted under this Agreement, Fuel shall comply with the requirements of the approved Conditional Use Permit or, if requirements about the choice of Relocated Sites are not included in the approved Conditional Use Permit, Fuel shall work with the Planning Department in choosing which of the Proposed Relocation Sites Fuel uses for placement of its Relocated Panel Signs, provided that the Proposed Relocation Sites have been approved by the Planning Commission. In no event shall the square footage for the Relocated Panel Signs exceed 75% of the area of Existing Large Format Signs that have been removed, nor shall the number of Relocated Panel Signs exceed one hundred twenty five (125).

e. Approval. For purposes of this Agreement, the Relocation CU Application shall be deemed approved if the Planning Commission approves one hundred twenty (120) or more Proposed Relocation Sites in the Relocation CU Application ("**Planning Commission Approval**").

f. Appeal of the Relocation CU Application. An appeal of any Proposed Relocation Site approved in the Relocation CU Application shall be taken by filing written notice of appeal with the Board of Supervisors within thirty (30) days after the date that the Proposed Relocation Site has been approved as part of the Relocation CU Application by the Planning Commission (the "**Notice of Appeal**"). The Notice of Appeal shall be subscribed by either (i) the owners of at least twenty (20) percent of the property affected by a Proposed Relocation Site or (ii) five (5) members of the Board of Supervisors. The property affected shall be deemed to be all property within 300 feet of all exterior boundaries of the property for which a Proposed Relocation Site has been approved by the Planning Commission as part of the Relocation CU Application, excluding the property for which the approval for the Proposed Relocation Site has been given. The approval or denial of the Relocation CU Application may be appealed in its entirety when the Notice of Appeal for the entire Conditional Use Approval shall be subscribed by five (5) members of the Board of Supervisors.

7. Compliance. The parties agree that Fuel's submittal of general advertising sign documentation, payment of relevant inventory fees, payment of the NOV Penalties as set forth in this Agreement, as well as this Agreement's requirement for Fuel to remove Existing Non-Permitted Signs, is sufficient to meet compliance and inventory requirements for consideration of this Agreement, as required by Administrative Code Section 2.21, and of the Relocation CU Application, as required by Planning Code sections 303(l) and 611. Furthermore, the parties agree that documentation required in Planning Code subsections 303(l)(1)(C) and (D) and Administrative Code subsection 2.21(d)(6) must be provided prior to Removal of an Existing Large Format Sign, but not prior to the Board of Supervisors' hearing on this Agreement or the

Planning Commission's hearing on the Relocation CU Application. Furthermore, the parties agree that the application form required by Planning Code subsection 2.21(c) must be provided prior to the Planning Commission's hearing on the Relocation CU Application, but not prior to the Board of Supervisors' hearing on this Agreement. Furthermore, the parties agree that Fuel shall be deemed to have met the inventory requirements of Administrative Code subsections 2.21(d) or (e) by submittal of the information and documentation referenced in Recital B of this Agreement. Prior to the Planning Commission hearing on the Relocation CU Application, Fuel shall update any changes to information provided to the City pursuant to Planning Code section 604.2 at the time of the Board of Supervisors' hearing on this Agreement.

8. **Permitting of Relocated Panel Signs.** The City shall not approve a building permit to install a Relocated Panel Sign until the City has allocated and Fuel retains Square Footage Credits equal to or greater than the square footage of the Relocated Panel Sign to be installed. Following approval of the Conditional Use Permit, and the expiration of all applicable appeal periods for such Conditional Use determination for relocation of signs, the Planning Department shall confirm that the individual permit application is consistent with the Conditional Use Permit, but the City shall not exercise further discretionary review over the individual Relocated Panel Sign applications. Fuel shall file for a demolition permit to remove each Existing Large Format Sign at the time of its removal, and the City shall not exercise further discretionary review over such demolition permit, provided that it is consistent with the Conditional Use Permit.

9. **Removal of Non-Permitted Panel Signs.** Fuel shall remove all Existing Non-Permitted Panel Signs no later than sixty (60) days after the Effective Date of this Agreement, except that such removal shall not require Fuel to remove any Existing Non-Permitted Panel Signs that, upon mutual agreement of the parties, reasonably appear to be located in Permitted Relocation Locations ("**Removal of Non-Permitted Signs**"). If any part of this Agreement or the adequacy of environmental review required by CEQA for this Agreement is appealed or otherwise legally challenged in whole or in part by a non-party to this Agreement, the Removal of Non-Permitted Signs shall be extended to sixty (60) days after the resolution of any such appeal or legal challenge. No building permit to erect a Relocated Panel Sign shall be approved unless and until all Non-Permitted Panel Signs have been removed and Fuel and any owner of property where Non-Permitted Panel Signs exist have relinquished any and all permits for and/or legal rights to display and/or operate a General Advertising Sign at the location of the Non-Permitted Panel Signs, including any legal rights or obligations held by, related to or arising from other Responsible Parties. The Planning Department shall issue a Notice of Violation for each of the Existing Non-Permitted Panel Signs for which a Notice of Violation has not previously been issued. For each of Fuel's Existing Non-Permitted Panel Signs for which a Notice of Violation has been issued, Fuel shall file any required permit to remove the Existing Non-Permitted Panel Sign. The Notice of Violation issued by the City for the Existing Non-Permitted Panel Signs, Fuel's filing of a building permit to remove the Existing Non-Permitted Panel Signs, and Fuel's timely removal of the Existing Non-Permitted Panel Signs shall constitute conclusive evidence that no Responsible Party maintains a legal right to maintain the Existing Non-Permitted Panel Sign.

10. **Permitted Locations for Relocated Panel Signs.** Relocated Panel Signs may be relocated to those locations where General Advertising Signs were permitted on March 4, 2002,

the day prior to the effective date of Proposition G (“**Pre-Prop G Locations**”), and excluding from all Pre-Prop G Locations all the block and lot locations of landmarks, Category I, II, III and IV Buildings, historic districts and conservation districts listed in Article 10 and Article 11 of the Planning Code; and also excluding from all Pre-Prop G Locations all locations where General Advertising Signs were not permitted on the Effective Date of this Agreement and on the date of Conditional Use Permit approval (collectively, “**Permitted Relocation Locations**”).

11. **Payment.** Fuel shall pay the City the total sum of One Million Seven Hundred Fifty Thousand Dollars (\$1,750,000.00) in immediately available funds (the “**Payment**”), and such payment shall be full and final settlement of any and all amounts due and owing or claimed to be due and owing that arise from or are related to the NOVs, the NOV Penalties, the 376 Castro NOV, the 376 Castro Penalties, the 376 Castro Installment Agreement, or the *Metro Fuel* Litigation. The Payment shall be made in three installments, as detailed in this section.

a. The first installment of One Million Two Hundred Fifty Thousand Dollars (\$1,250,000.00) shall be due no later than (10) business days after the expiration of the appeal period for the Planning Commission Approval of one hundred twenty (120) or more Proposed Relocation Sites in the Relocation CU Application and the expiration of any appeal period for environmental review required by CEQA for any part of this Agreement. If any part of this Agreement or the adequacy of environmental review required by CEQA for this Agreement is appealed or otherwise legally challenged in whole or in part by a non-party to this Agreement, the First Installment shall be due ten (10) business days after resolution of any such appeal or legal challenge (“**First Installment**”). The second installment of Two Hundred Fifty Thousand Dollars (\$250,000.00) of the Payment shall be due no later than ten (10) business days after building permits for fifty (50) of the Relocated Panel Signs have been issued (“**Second Installment**”). The third installment of the Two Hundred Fifty Thousand Dollars (\$250,000.00) shall be due no later than ten (10) business days after building permits for a total of ninety (90) of the Relocated Panel Signs have been issued (“**Third Installment**”).

b. Fuel shall have no obligation to pay the Payment if Fuel terminates this Agreement pursuant to Section 15(d) of this Agreement. If this Agreement is otherwise terminated by Fuel prior to Payment, the City shall have the right to pursue any and all actions to abate the violations and collect the NOV Penalties already accrued and any NOV Penalties that the City determines have continued to accrue during the pendency of this Agreement.

c. The First Installment is inclusive of full payment of all amounts due and owing with regard to the 376 Castro Penalties, and satisfies all obligations, debts, and penalties of all Responsible Parties thus far accrued, or that may accrue in the future, with regard to the 376 Castro NOV, the 376 Castro Penalties, and the 376 Castro Installment Agreement.

12. **Fees.** In addition to the Payment, Fuel shall also pay all fees related to this Agreement (the “**6 Fees**”). The Applicable Fees are only those fees listed in this section, and are due to the City at the time stated in this section:

a. **Relocation Agreement Application Fee.** Fuel shall pay Forty Thousand Dollars (\$40,000.00) in satisfaction of the fees required by Planning Code section 358(a) for a relocation agreement application pursuant to Planning Code section 611 and Administrative

Code section 2.21, as well as all time and materials incurred by the City in preparing the relocation agreement, which shall be inclusive of all Planning Department staff time fees and the City Attorney's time and costs (the "**Relocation Agreement Application Fee**"). The Relocation Agreement Application Fee shall be paid before any required notice period prior to a meeting of the Board of Supervisors in which approval of this Agreement is an agenda item.

b. **Relocation CU Application Fee.** The fee for the Relocation CU Application will be based upon the conditional use fee schedule in Planning Code section 352(a) (the "**Relocation CU Application Fee**"). Fuel shall pay the Relocation CU Application Fee for the Relocation CU Application as calculated by the Planning Department, as required by Planning Code Section 352(a) equal to the costs of the Planning Department's time and materials required to prepare the Relocation CU Application for the hearing by the Planning Commission, which shall be itemized in a format similar to other time and materials charges assessed by the Planning Department to project proponents ("**Time and Materials Fees and Costs**"). The Relocation CU Application Fee shall be paid before any required notice period prior to a meeting of the Planning Commission in which approval of the Relocation CU Application is an agenda item. The Planning Department shall bill Fuel any Time and Materials Fees and Costs for the Relocation CU Application Fee after the hearing of the Planning Commission on the Relocation CU Application, or as otherwise assessed by the Planning Department for other similarly-situated project proponents.

c. **Registration and Inventory Update Fees.** The fee for initial inventory processing pursuant to Planning Code section 358(a) and Planning Code section 604.2 (the "**Registration Fee**") shall be paid as set forth in this section.

i. **Existing Permitted Panel Signs.** Fuel shall pay the Registration Fee for each of Fuel's Existing Permitted Panel Signs that have not been registered in Fuel's inventory prior to any required notice period prior to a meeting of the Board of Supervisors in which approval of this Agreement is an agenda item.

ii. **Relocated Panel Signs.** Fuel shall also pay the Registration Fee upon installation of each Relocated Panel Sign.

d. **Late Registration Fee.** Pursuant to Planning Code subsection 604.2(g)(1), Fuel shall pay a penalty for each of its Existing Permitted Panel Signs in the amount of One Thousand One Hundred Sixty Dollars (\$1,160.00) for each sign (the "**Late Registration Fee**") as applicable. All Late Registration Fees shall be paid before any required notice period prior to a meeting of the Board of Supervisors in which approval of this Agreement is an agenda item.

e. **Other Fees.** Other than the 6 Fees, any and all fees calculated as applicable to any action related to this Agreement shall be the same as those fees generally applicable to all Responsible Parties owning, operating, maintaining or leasing General Advertising Signs on the Effective Date of this Agreement. The City shall impose no other application fees, registration fees, or surcharges on Relocated Panel Signs other than the 6 Fees or fees otherwise generally applicable to General Advertising Signs in the City. In particular, the City may impose its annual maintenance fee under Planning Code section 358(d) for General

Advertising Signs to all Relocated Panel Signs for as long as it is generally applicable to all other General Advertising Signs in the City.

13. **Ownership of Relocated Panel Sign Permits.** To the extent permitted by law, all building permits, and any and all rights associated with the ownership of any building permit or other permit issued pursuant to this Agreement for the Relocated Panel Signs, shall be the exclusive property of Fuel.

14. **Stay.** The City agrees to stay enforcement of any and all NOV's; to stay enforcement against Fuel's Existing Non-Permitted Panel Signs; and to stay any and all assessment of NOV Penalties on the condition that Fuel meets and maintains its requirements under the terms of this Agreement (the "Stay"). The Stay shall be in effect from the date of the last signature to this Agreement and through the removal of the Non-Permitted Signs, as required by this Agreement, provided that if Fuel fails to comply with this Agreement, fails to provide the Payment to the City, and fails to timely remove all Non-Permitted Panel Signs, this Stay shall terminate and the City may assess and seek payment of penalties during the entire period of time that the Non-Permitted Signs have remained in place.

15. **Partial Approval and Termination Options.**

a. If this Agreement is approved by the Board of Supervisors and approved by the City's Mayor but Fuel fails to make reasonable efforts to seek approval of its Relocation CU Application by the Planning Commission, then: (i) the City may seek to enforce the NOV's and collect NOV Penalties against Fuel and all other Responsible Parties; (ii) the Stay in Section 14 of this Agreement shall be null and void; and (iii) the release granted to Fuel in Section 18 of this Agreement shall be null and void.

b. If there is Planning Commission Approval, as defined in Paragraph 6 (e) herein, of Fuel's Relocation CU Application, then the City shall abate all of the NOV's and NOV Penalties assessed upon receipt of the Third Installment of the Payment from Fuel.

c. If there is no Planning Commission Approval of Fuel's Relocation CU Application, and Fuel has made good faith efforts to obtain such Approval, then Fuel, at its election, may exercise an option to proceed to obtain building permits for each of the Proposed Relocation Locations approved for a Relocated Panel Sign by the Planning Commission ("**Option to Proceed with Proportional Approval**"). Fuel shall give notice of its exercise of the Option to Proceed with Proportional Approval within ten (10) days of the expiration of the appeal period for the Planning Commission's decision on Fuel's Relocation CU Application and the expiration of the appeal period for environmental review required by CEQA. If any part of this Agreement or the adequacy of environmental review required by CEQA for this Agreement is appealed or otherwise legally challenged in whole or in part by a non-party to this Agreement, the Option to Proceed with Proportional Approval shall be extended to ten (10) days after the resolution of any such appeal or legal challenge. Upon Fuel's exercise of the Option to Proceed with Proportional Approval, the Payment shall be reduced by a percentage equal to the ratio of the number of signs approved divided by one hundred twenty (120). (the "**Proportional Payment**"). The Proportional Payment shall be paid in three installments with the amount of each installment and the benchmark for each installment being proportional to the First

Installment, Second Installment, and Third Installment of the Payment. Upon Fuel's exercise of the Option to Proceed with Proportional Approval, payment of the Proportional Payment shall thereafter fulfill all the requirements, and discharge all the duties, otherwise applicable to the Payment in this Agreement. The City shall abate all of the NOVs and NOV Penalties assessed upon receipt of the Proportional Payment from Fuel. If Fuel should assign its Option to Proceed with Proportional Approval to a non-party to this Agreement ("Non-Party Assignee"), Fuel shall remain liable to the City for the Proportional Payment, provided that if the Non-Party Assignee should otherwise agree to accept liability for the Proportional Payment, then Fuel's liability shall only be the amount of the Proportional Payment that the Non-Party Assignee fails to pay the City.

d. If Fuel files a Relocation CU Application and the Planning Commission disapproves Fuel's Relocation CU Application, then Fuel may elect to terminate this Agreement in its entirety within ten (10) days of the expiration of the appeal period for the Planning Commission's decision on Fuel's Relocation CU Application and the expiration of the appeal period for environmental review required by CEQA, and the Agreement shall then be null and void ("Fuel Termination Option"). If any part of this Agreement or the adequacy of environmental review required by CEQA for this Agreement is appealed or otherwise legally challenged in whole or in part by a non-party to this Agreement, the Fuel Termination Option shall be extended to ten (10) days after the resolution of any such appeal or legal challenge. If Fuel elects to exercise the Fuel Termination Option and has removed all of the Existing Non-Permitted Panel Signs, including all Existing Non-Permitted Panel Signs in Permitted Relocation Locations, then: (i) the City shall abate all of the NOVs and NOV Penalties immediately upon notice that the Fuel Termination Option is exercised; (ii) the release in section 18 of this Agreement shall remain in full force and effect.

16. **Attorney Fees and Costs.** Unless otherwise stated in this section, each of the parties shall pay their own attorneys fees and costs related to the *Metro Fuel* Litigation, the drafting of and implementation of this Agreement, and any and all other attorney fees and costs incurred that are related to or resulting from the NOVs, or the NOV Penalties. In the event of any litigation or other legal or equitable proceeding initiated or filed to interpret or enforce any provision of this Agreement, or the settlement which gave rise thereto, the prevailing party shall be entitled to reasonable attorneys' fees and costs in addition to whatever other remedies may be available. Notwithstanding the foregoing, the First Installment is exclusive of full payment of all amounts due and owing with regard to costs filed by the City as part of the *Metro Fuel* Litigation.

17. **Inventory.** Following implementation of the terms of this Agreement, Fuel will be required to maintain its inventory pursuant to generally applicable General Advertising Sign inventory requirements of the Planning Code.

18. **Release.**

a. As of the date of Removal of the Existing Non-Permitted Panel Signs and payment of the Payment hereunder, the City, and each of its agents, affiliates, successors, attorneys, assigns, heirs and representatives hereby release, remise and forever discharge Fuel; any and all Responsible Parties related to the ownership, operation, or maintenance of a Fuel

General Advertising Sign ("Fuel Responsible Parties"); and Fuel and Fuel Responsible Parties' agents, affiliates, members, successors, attorneys, assigns, heirs, beneficiaries, and representatives, and each and all of them, from any and all claims, damages, demands, liabilities, costs and expenses whatsoever that they now have or may hereinafter acquire in law or in equity, past, present, and future, known and unknown, suspected and unsuspected and that, in whole or in part, arise out of, in any manner pertain to or are related to the *Metro Fuel* Litigation, the existing NOV's, the existing NOV Penalties, and the ownership, operation or maintenance of a Fuel General Advertising Sign at any time up to and including the Effective Date of this Agreement; and excluding therefrom any NOV or NOV Penalties that may arise as the result of a non-permitted Fuel General Advertising Sign not known by the City as of the Effective Date of this Agreement, or any non-permitted General Advertising Sign owned, operated, or maintained by Fuel subsequent to the Effective Date of Agreement (collectively, the "Released Claims").

b. Fuel and the Fuel Responsible Parties and each of their agents, affiliates, subsidiaries, members, successors, attorneys, assigns, heirs and representatives hereby release, remise and forever discharge the City and the City's agents, affiliates, successors, attorneys, assigns, heirs, beneficiaries, and representatives, and each and all of them, from any and all claims, damages, demands, liabilities, costs and expenses whatsoever which they now have or may hereinafter acquire in law or in equity, past, present, and future, known and unknown, suspected and unsuspected which, in whole or in part, arise out of, in any manner pertain to or are related to the Released Claims.

c. It is understood and agreed by Fuel that this Agreement shall constitute a general release and shall be effective as a full and final accord and satisfaction, and as a bar to all actions, causes of action, costs, expenses, attorneys' fees, damages, claims and liabilities whatsoever, whether or not now known, suspected, claimed or concealed with respect to the Released Claims. Fuel acknowledges that it is familiar with Section 1542 of the California Civil Code which provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

Fuel expressly waives and relinquishes any and all rights and benefits which they may have under, or which may be conferred upon it by the provisions of Section 1542 of the California Civil Code, as well as under any other similar state or federal statute or common law principle, to the fullest extent that it may lawfully waive such rights or benefits pertaining to the released claims.

d. In connection with the waiver and relinquishment set forth in the previous paragraph, Fuel acknowledges that it is aware that they may hereafter discover claims or facts in addition to or different from those which it now knows or believes to exist with respect to the Released Claims, but it is Fuel's intention to fully, finally and forever settle and release all of the disputes and differences known or unknown, suspected or unsuspected which do now exist, may exist in the future or have ever existed between the parties, arising out of or in connection with the Released Claims. In furtherance of such intention, the parties agree that this Agreement shall

remain in effect as a full and complete settlement and release of the Released Claims notwithstanding the discovery or existence of any said additional or different claims or facts arising out of or relating to the subject matter of this Agreement. The Released Claims do not include any claims arising out of or relating to the parties' obligations under this Agreement.

The parties hereto acknowledge that the foregoing waiver was separately bargained for and is a key element of this Agreement of which this release is a part.

19. **Indemnification.** Fuel shall indemnify, defend, protect and hold harmless the City from and against any and all claims, demands, losses, damages, costs, expenses, liability or causes of action (including, without limitation, court costs and reasonable attorneys' fees) for any damage either to person or property or resulting from the loss of use arising from or relating to claims by non-parties to this Agreement regarding: (i) the removal of Fuel's Existing Permitted Large Format Signs; (ii) the removal of the Non-Permitted Panel Signs; (iii) any and all efforts by Fuel to place the Relocated Panel Signs; and (iv) any matter related to collection of the 376 Castro Penalties, the 376 Castro Installment Plan, and the *Joseph* Litigation (the "**Indemnified Claims**"). If any action or proceeding shall be brought against the City by reason of any such Indemnified Claims, then Fuel, upon receipt of written notice thereof, shall defend such action or proceeding by immediately employing counsel therefor reasonably satisfactory to the City. The provisions of this section shall survive the termination or expiration of this Agreement.

20. **Administrative and Planning Code References.** This Agreement references the version of the Administrative Code and the Planning Code in effect on the Effective Date.

21. **No Admission.** The purpose of this Agreement is to accomplish the compromise and settlement of disputed and contested claims, and nothing in this Agreement shall be construed as an admission by any party to this Agreement of any liability of any kind to the other party to this Agreement.

22. **Entire Agreement.** This Agreement constitutes the complete and entire written agreement of compromise, settlement and release by and among the parties hereto and constitutes the complete expression of the terms of the settlement. All prior and contemporaneous agreements, representations, and negotiations regarding the matters resolved herein are superseded.

23. **Time Is Of The Essence.** Time is of the essence with regard to dates and timelines stated in this Agreement.

24. **No Modification.** The terms of this Agreement can only be amended or modified by a writing, signed by duly authorized representatives of all parties hereto, expressly stating that such modification or amendment is intended.

25. **Severability.** If any term or provision of this Agreement is found to be illegal, invalid, unenforceable, or void in any respect, then any such provision shall be deemed stricken and the parties shall determine whether the remaining provisions hereof shall, nevertheless, remain in full force and effect. In the absence of an agreement as to the remaining provisions of this Agreement shall remain in full force and effect, either party may terminate this Agreement. In the event of a breach, this Agreement may be specifically enforced.



26. **Jurisdiction.** The parties consent to the jurisdiction of the courts of the State of California to resolve any dispute regarding this Agreement. In mutual recognition of the fact that this Agreement is to be performed in the City and County of San Francisco, California, the parties agree that in the event any civil action is commenced regarding this Agreement, San Francisco County, California, is the proper venue for the commencement and trial of such action.

27. **No Waiver.** Waiver of any one breach of the provisions of this Agreement shall not be deemed a waiver of any other breach of any provision of this Agreement.

28. **Interpretation.** All parties to this Agreement and their counsel have reviewed and revised this Agreement or had the opportunity to review and revise this Agreement, and the normal rule of construction to the effect that any ambiguities in an agreement are to be resolved against the drafting parties shall not be employed in the interpretation of this Agreement.

29. **No Representation.** Except as otherwise provided in this Agreement, each of the parties hereto acknowledges that no other party, nor any agent nor any attorney of any other party has made any promise, representation or warranty whatsoever, express or implied, not contained herein concerning the subject matter hereof to induce said party to execute or authorize the execution of this Agreement and acknowledges that said party has not executed or authorized the execution of this Agreement in reliance upon any such promise, representation or warranty not contained herein.

30. **Counterparts.** It is understood and agreed by and between the parties hereto that this Agreement may be executed in counterparts and by facsimile or "pdf" signatures, and a signed copy shall have the full force and effect of a signature on any original and shall be considered an original as to the party signing any such copy.

31. **Section Headings.** The section headings contained in this contract are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

32. **Survival.** All representations and warranties expressly set forth in this Agreement shall survive the execution of this Agreement and the transactions contemplated hereunder, and are material and have been or will be relied upon by the parties hereto notwithstanding any investigation made by or on behalf of any party.

33. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of all parties hereto and their respective heirs, representatives, successors and assigns.

34. **California Law.** This Agreement shall be governed by and construed under and in accordance with the laws of the State of California.

35. **Notices.** All notices to be given under this Agreement may be hand-delivered or provided by first-class mail or e-mail. In any case, notice shall be deemed delivered upon receipt as follows:

*MCA*

If to the City: Name: City and County of San Francisco  
Attn: Kate Stacy  
Address: City Attorney  
City Hall Room 375  
San Francisco, CA 94102  
E-mail: [kate.stacy@sfgov.org](mailto:kate.stacy@sfgov.org)

If to Fuel: Name: Fuel Outdoor Holdings LLC  
Michael A. Freedman  
Address: 443 Park Avenue South,  
Ninth Floor  
New York, NY 10016  
E-mail: [maf@fueloutdoor.com](mailto:maf@fueloutdoor.com)

If to Fuel, a copy to: Name: Reuben & Junius LLP  
James A. Reuben  
Address: One Bush Street, Suite 600  
San Francisco, CA 94104  
E-mail: [jreuben@reubenlaw.com](mailto:jreuben@reubenlaw.com)

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement made and effective as of the date first hereinabove written.

METRO FUEL, LLC, a Delaware limited liability company

By: 

Name: Michael Freedman

Its: Chief Executive Officer

Date: 12/20/11

FUEL OUTDOOR SAN FRANCISCO, LLC, a Delaware limited liability company

By: 

Name: Michael Freedman

Its: Chief Executive Officer

Date: 12/20/11

[Signatures continue on next page]

FUEL OUTDOOR HOLDINGS, LLC, a  
Delaware limited liability company

By: 

Name: Michael Freedman

Its: Chief Executive Officer

Date: 12/20/11

CITY AND COUNTY OF SAN  
FRANCISCO PLANNING  
DEPARTMENT

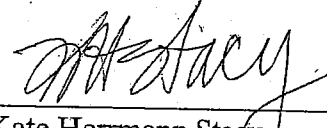
By: 

Name: John Rahaim

Its: Director

Date: 12/22/11

APPROVED AS TO FORM:  
DENNIS J. HERRERA  
SAN FRANCISCO CITY ATTORNEY

By:   
Kate Herrmann Stacy  
Deputy City Attorney

Date: 12/22/11

