

File No. 140661

Committee Item No. _____

Board Item No. 31

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee _____

Date _____

Board of Supervisors Meeting

Date June 10, 2014

Cmte Board

- | | | |
|--------------------------|-------------------------------------|--|
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Motion |
| <input type="checkbox"/> | <input type="checkbox"/> | Resolution |
| <input type="checkbox"/> | <input type="checkbox"/> | Ordinance |
| <input type="checkbox"/> | <input type="checkbox"/> | Legislative Digest |
| <input type="checkbox"/> | <input type="checkbox"/> | Budget Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Legislative Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Introduction Form (for hearings) |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/> | <input type="checkbox"/> | MOU |
| <input type="checkbox"/> | <input type="checkbox"/> | Grant Information Form |
| <input type="checkbox"/> | <input type="checkbox"/> | Grant Budget |
| <input type="checkbox"/> | <input type="checkbox"/> | Subcontract Budget |
| <input type="checkbox"/> | <input type="checkbox"/> | Contract/Agreement |
| <input type="checkbox"/> | <input type="checkbox"/> | Award Letter |
| <input type="checkbox"/> | <input type="checkbox"/> | Application |
| <input type="checkbox"/> | <input type="checkbox"/> | Public Correspondence |

OTHER

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|--------------------------|-------------------------------------|--|
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | <u>BOS Ordinance (File No. 140371)</u> |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Environmental Review Determination dated 5/9/2014</u> |
| <input type="checkbox"/> | <input checked="" type="checkbox"/> | <u>Settlement Agreement</u> |

Completed by: Joy Lamug

Date June 5, 2014

Completed by: _____

Date _____

An asterisked item represents the cover sheet to a document that exceeds 20 pages. The complete document is in the file.

1 [Closed Session - Existing Litigation - Contest Promotions, LLC - City to Receive \$375,000]

2
3 **Motion that the Board of Supervisors convene in closed session on June 10, 2014, for**
4 **the purpose of conferring with, or receiving advice from the City Attorney regarding**
5 **existing litigation relating to the lawsuit filed on September 22, 2009, in the United**
6 **States District Court for the Northern District of California, Case No. CV-09-4434 SI**
7 **(MEJ); entitled Contest Promotions, LLC, v. City of San Francisco, et al.; in which the**
8 **City is a defendant; pursuant to California Government Code, Section 54956.9(a), and**
9 **San Francisco Administrative Code, Section 67.10(d)(1), which permits this closed**
10 **session because discussion in open session concerning this matter would likely and**
11 **unavoidably prejudice the position of the City in the existing litigation.**

12
13 WHEREAS, California Government Code, Section 54956.9(a), and San Francisco
14 Administrative Code, Section 67.10(d)(1), allow the Board of Supervisors to convene in closed
15 session to confer with or receive advice from Legal Counsel regarding existing litigation; and

16 WHEREAS, The City and County of San Francisco is a defendant in the lawsuit filed on
17 September 22, 2009, in the United States District Court for the Northern District of California,
18 Case No. CV-09-4434 SI (MEJ); entitled Contest Promotions, LLC v. City of San Francisco, et
19 al.; and

20 WHEREAS, On June 17, 2014, the Board of Supervisors will consider an Ordinance
21 (Board File No. 140371) approving the settlement of the lawsuit, under which Contest
22 Promotions, LLC, will pay the City \$375,000 and the parties will resolve Notices of Violation
23 for unpermitted general advertising signs; now, therefore, be it

24 MOVED, That the Board of Supervisors convene in closed session on June 10, 2014,
25 for the purpose of conferring with, or receiving advice from, Legal Counsel regarding existing

1 litigation in the lawsuit filed on September 22, 2009, in the United States District Court for the
2 Northern District of California, Case No. CV-09-4434 SI (MEJ); entitled Contest Promotions,
3 LLC v. City of San Francisco, et al.

4 FURTHER MOVED, That Government Code Section, 54956.9(a), and Administrative
5 Code, Section 67.10(d)(1), permit this closed session because discussion in open session
6 concerning this matter would likely and unavoidably prejudice the position of the City in the
7 existing litigation.

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1 [Settlement of Lawsuit - Contest Promotions, LLC - City to Receive \$375,000]

2
3 Ordinance authorizing settlement of the lawsuit filed by Contest Promotions, LLC,
4 against the City and County of San Francisco for \$375,000; the lawsuit was filed on
5 September 22, 2009, in the United States District Court for the Northern District of
6 California, Case No. CV-09-4434 SI (MEJ); entitled Contest Promotions, LLC, v. City of
7 San Francisco, et al.; other material terms of said settlement include resolution of
8 Notices of Violation for unpermitted general advertising signs.

9
10 Be it ordained by the People of the City and County of San Francisco:

11 Section 1. The Planning Department has determined that the actions contemplated in
12 this ordinance comply with the California Environmental Quality Act (California Public
13 Resources Code Section 21000 et seq.). Said determination is on file with the Clerk of the
14 Board of Supervisors in File No. 140371 and is incorporated herein by reference.

15 Section 2. Pursuant to Charter section 6.102(5), the Board of Supervisors hereby
16 authorizes the City Attorney to settle the action entitled Contest Promotions, LLC v. City of
17 San Francisco, et al.; United States District Court for the Northern District of California, Case
18 No. CV-09-4434 SI (MEJ) by the payment of \$375,000 by Contest Promotions, LLC and
19 execution of a Settlement Agreement in substantially the form contained in Board of
20 Supervisors in File No. 140371. In addition to the monetary payment, the Settlement
21 Agreement requires Contest Promotions, LLC to apply for new permits for its entire inventory
22 of signs in San Francisco, ensuring that all its signs comply with San Francisco law.

23 Section 3. The above-named action was filed in the United States District Court for the
24 Northern District of California, on September 22, 2009, and the following parties were named

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in the lawsuit: Contest Promotions, LLC as Plaintiff, and City of San Francisco, County of San Francisco, and City and County of San Francisco as Defendants.


APPROVED AS TO FORM AND RECOMMENDED:

RECOMMENDED:

DENNIS J. HERRERA
City Attorney

PLANNING DEPARTMENT


JAMES M. EMERY
Deputy City Attorney


JOHN S. RAHAIM
Director

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BOARD of SUPERVISORS



City Hall
Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

May 9, 2014

File No. 140371

Sarah Jones
Environmental Review Officer
Planning Department
1650 Mission Street, 4th Floor
San Francisco, CA 94103

Dear Ms. Jones:

On April 22, 2014, the City Attorney's Office will introduced the following proposed legislation:

File No. 140371

Ordinance authorizing settlement of the lawsuit filed by Contest Promotions, LLC, against the City and County of San Francisco for \$375,000; the lawsuit was filed on September 22, 2009, in the United States District Court for the Northern District of California, Case No. CV-09-4434 SI (MEJ); entitled Contest Promotions, LLC, v. City of San Francisco, et al.; other material terms of said settlement include resolution of Notices of Violation for unpermitted general advertising signs.

This legislation is being transmitted to you for environmental review.

Angela Calvillo, Clerk of the Board

A handwritten signature in cursive script that reads "Alisa Miller".

By: Alisa Miller, Committee Clerk
Rules Committee

Attachment

c: Jeanie Poling, Environmental Planning
Nannie Turrell, Environmental Planning

*Not a project under CEQA
Guidelines Sections 15060(c)
and 15378 because there
is no direct or indirect
physical change in the
environment.
Maxine R. Farrell
May 9, 2014*

SETTLEMENT AGREEMENT

This Settlement Agreement and Mutual General Release (the "**Settlement Agreement**") is made and entered into as of the Operative Date by and between Contest Promotions, LLC, a California limited liability company ("**Contest Promotions**") and the City and County of San Francisco, a chartered city and county of the State of California (the "**City**").

Contest Promotions and the City are sometimes collectively referred to as "**Parties**," and each is sometimes individually referred to as a "**Party**." This Settlement Agreement is intended by the Parties hereto to settle and extinguish the obligations, disputes and differences as hereinafter set forth.

RECITALS

WHEREAS Contest Promotions promotes and operates contests in which prospective contest participants are invited to enter various businesses to complete application materials for promotional sweepstakes. Contest Promotions places signs on the exterior wall of a building located at these businesses. Such signs typically consist of a series of posters and a small placard stating that the businesses, commodities, services, industries or other activities which are depicted on these posters, as well as related prizes, are being sold, offered, or conducted on the businesses upon which the signs are located, or to which they are affixed. The placard also directs people to enter the building for additional information;

WHEREAS Contest Promotions has previously obtained permits under the City Planning and Building Codes for some of the signs it has erected in the City;

WHEREAS the City has issued various Notices of Violation for signs purportedly owned or erected by Contest Promotions, including signs erected at the following locations within the City: 1350 Howard Street; 5050 Mission Street; 2146 Mission Street; 1270 Mission Street; 1124 Harrison Street; 353 Kearny Street; 322 Eddy Street; 6583 6th Street; 1745 Market Street; 1101 Oak Street; 500 Grant Avenue; 2081 Mission Street; 2011 Folsom Street/1799 16th Street 2801 Folsom Street/3085 24th Street; 2801 22nd Street; 2950 23rd Street; 2944 24th Street; 4701 Mission Street; 3727/3729 Mission Street; 360 Hyde Street; 172 Golden Gate Avenue; 6199 3rd Street; 689/699 3rd Street; 1900 Hayes Street; 900 Columbus Avenue; 716 Columbus Avenue; 2200 Lane Street; 915 Folsom Street; 250 Divisadero Street; 376 Castro Street; 3300 Mission Street / 3308 Mission Street; 300 Sanchez Street / 3506 16th Street; 2847 24th Street; 237 Eddy Street; 2601 Folsom Street; 3084 24th Street; 1850 Cesar Chavez Street; 160 Pierce Street; 685 Geary Street; and 2332 Lombard Street (collectively, the "**NOVs**");

WHEREAS the NOVs state that the signs located at the identified locations were erected in violation of Article 6 of the Planning Code;

WHEREAS on October 31, 2008, the City and Contest Promotions entered into a stay agreement (the "**Stay Agreement**"), effective October 21, 2008, staying the enforcement of certain NOVs;

WHEREAS Contest Promotions filed a Request for Reconsideration of the Notice of Violation issued in respect to the sign erected by Contest Promotions at 1350 Howard Street,

which Request was denied in a written decision by the Administrative Law Judge dated February 12, 2010 (the "ALJ Proceedings"). On February 12, 2010, the ALJ issued his decision finding that Contest Promotions' sign was an illegal off-site advertising sign. Contest Promotions did not seek judicial review of the ALJ's decision;

WHEREAS on September 2, 2009, Contest Promotions filed a lawsuit against the City in the Federal District Court for the Northern District of California entitled, *Contest Promotions, LLC v. City and County of San Francisco*, Case No. CV 09-4434 SI (the "Lawsuit");

WHEREAS on November 12, 2010, the Court in the above-entitled action issued an Order in connection with Contest Promotions' Motion for Temporary Restraining Order and Order to Show Cause re Preliminary Injunction requiring the Parties to continue to abide by the Stay Agreement until the Lawsuit is resolved (the "Order"), which Order was affirmed by the United States Court of Appeals for the Ninth Circuit on appeal on April 27, 2011;

WHEREAS the Parties now desire to settle their issues related to the NOV's, the Lawsuit and the Order, and thereby extinguish their differences, disputes and claims and exchange mutual releases as set forth herein.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

DEFINITIONS

The following definitions shall apply to the following terms when used in this Settlement Agreement:

Business Sign: A sign that meets the definition of a Business Sign as set forth in Section 602.3 of the City's Planning Code.

Category A Sign: A Business Sign that directs attention to the businesses, commodities, services, industries or other activities which are sold, offered or conducted on the premises upon which such sign is located, or to which it is affixed. If multiple businesses, commodities, services, industries or other activities are depicted on such Business Sign, to be deemed a Category A Sign, each such activity must be offered on the premises upon which the Business Sign is located, or to which it is affixed.

Category B Sign: A Business Sign that directs attention to businesses, commodities, services, industries or other activities for each of which one or more Related Prizes are offered in a Sweepstakes conducted on the premises. If multiple businesses, commodities, services, industries or other activities are depicted on such Business Sign, to be deemed a Category B Sign, each such activity must have a Related Prize in the Sweepstakes conducted on the premises.

Without limiting the foregoing, this definition includes the following, if the awarded prize in each Sweepstakes taking place at a particular sign location corresponds to the posted sign at each premises:

Entertainment	First-run movies	Movie passes capable of being redeemed to see the movie depicted on the sign.
Entertainment	Movies available on DVD or other electronic format	DVD or other electronic format of the movie depicted on the sign.
Entertainment	Television	DVD or other electronic format containing episodes of the television series depicted on the sign.
Entertainment	Recorded music	CD or other electronic format of the recorded music depicted on the sign.
Entertainment	Live music	Tickets to the live event.
Entertainment	Theater/Events	Tickets to the event.
Entertainment	Video games	The video game depicted on the sign.
Consumer goods	Tangible good intended for consumption by the mass market. To the extent an item depicted on the sign can be classified into another category in addition to the Consumer Goods category, the intent is that the sign shall be categorized into the more specific category, and only into the Consumer Goods category where no more specific category applies.	The item depicted on the sign.
Electronics	Electronic devices.	The item depicted on the sign, or an item incorporating the item depicted on the sign.

Internet	Internet websites. Signs in which the main message is to direct the viewer to an Internet website; distinguished from a sign that directs attention to a website, but only secondarily to the main message of the sign.	Gift certificate redeemable on the website depicted on the sign
Apparel/Clothing	Apparel/Clothing	The item(s) depicted on the sign or a gift certificate capable of being redeemed for the item depicted on the sign.
Food and Beverage	Food and Beverage	The item depicted on the sign or a gift certificate capable of being redeemed for the item depicted on the sign.
Automotive	Automotive-related products and services.	The product depicted on the sign or, if a service, a gift certificate redeemable for the services depicted on the sign.
Health and Healthcare	Healthcare-related products	The item depicted on the sign, a gift card redeemable at a major retailer where such items can be purchased, or a gift card from the retailer depicted on the sign.
Travel and Hospitality	Travel-related products and services	Gift certificate redeemable for products or services from the provider depicted on the sign.
Restaurants	Restaurant	Gift certificate redeemable at the restaurant depicted on the sign.

Erect, to: To construct, erect, install, locate, or place.

Existing Inventory: Signs erected by Contest Promotions within the City prior to the execution of this Settlement Agreement as follows:

Street Address	Block/Lot
3 rd Street, 6199	4940/023
3 rd Street, 699	3788/014
6 th Street, 65	3704/026
8 th Street, 397	3755/137
16 th Street, 2799	3572/019
22 nd Street, 2801	4149/001
23 rd Street, 2950	4148/013A
24 th Street, 2847	4267/030
24 th Street, 2948	4207/020
24 th Street, 3085	6521/040
Balboa Street, 447-449	1639/046
Castro Street, 376	2623/006
Columbus Avenue, 716	0090/027
Columbus Avenue, 900	0065/013
Columbus Avenue, 930	0065/012
Divisadero Street, 250	1238/021
Eddy Street, 326	0333/007
Ellis Street, 595	0334/021
Folsom Street, 2801	6521/040
Folsom Street, 917	3753/145
Golden Gate Avenue, 172	0344/005
Grant Street, 500	0258/012
Haight Street, 901	1240/001
Harrison Street, 1122	3755/021
Hayes Street, 1900	1195/002D
Hayes Street, 698	0806/018
Kearny Street, 359	0270/001
Lane Street, 2200	5414/028
Market Street, 1745-1755	3503/003
Mission Street, 1270	3701/021
Mission Street, 2097	3570/020
Mission Street, 3300	6635/001
Mission Street, 3729	5719/002
Mission Street, 4701	6084/033
Mission Street, 5050	6969/011
Oak Street, 1101	1218/001
Sanchez Street, 300	3564/107

General Advertising Sign: A sign that meets the definition of a General Advertising Sign as set forth in Section 602.7 of the Planning Code.

Operative Date: The date on which the Mayor approves the ordinance authorizing the settlement of this litigation. If the Mayor fails to approve or to disapprove the ordinance authorizing the settlement of this litigation, then this Agreement will become operative at the expiration of the tenth day after such ordinance is delivered to the Mayor's Office for consideration. If, however, the Mayor disapproves the ordinance authorizing the settlement of

this litigation, then this Settlement Agreement will not become operative unless, within 30 days after the Mayor's disapproval, not less than two-thirds of the Board of Supervisors shall vote in favor of such ordinance.

Planning Code: The City's Planning Code, which is a portion of the San Francisco Municipal Code.

Planning Department: The City's Planning Department, as identified under the Charter of the City and County of San Francisco.

Sweepstakes: A sweepstakes run by Contest Promotions in which both (1) an entrant may enter a business at the premises on which a Contest Promotions sign is erected, or affixed to, and (2) the drawing or selection of sweepstakes winners is held at the same business.

AGREEMENT

1. Classification of Signs

The Parties agree and acknowledge that Category A Signs and Category B Signs erected by Contest Promotions within the City are and shall be deemed Business Signs for all purposes of the Planning Code, including but not limited to the filing, processing and approval of permits by and with the Planning Department, so long as they are consistent with the dimensional, locational, and other requirements applicable to Business Signs under Article 6 of the Planning Code.

2. Permit Requirements and Limitations

(a) Permitting of Existing Inventory. Within two-hundred-and-seventy (270) days of the Operative Date, for each sign within the Existing Inventory, Contest Promotions shall (i) submit all documents and other materials with the Planning Department and any other departments of the City necessary to erect a Business Sign in compliance with the City's laws, (ii) pay all applicable permit application fees, and (iii) thereafter diligently seek the approval of such permit applications by the Planning Department.

(b) For each permit application Contest Promotions shall submit all information required by Article 6 of the Planning Code, including but not limited to the following materials:

i. a scaled drawing of the proposed sign, including the location and dimensions of the proposed sign and any existing sign or signs on any building or other structure located at the relevant lot;

ii. color photographs of the façade or any building or other structure located on the relevant lot to which is affixed a sign;

iii. the proposed devices and/or inscriptions for the proposed sign, sufficient to demonstrate that the sign qualifies as a Business Sign; and

iv. the fee for a sign permit application published on the most recent Planning Department's Schedule of Application Fees, per Section 355(e) of the Planning Code, plus the then-applicable Board of Appeal surcharge.

(c) The Planning Department shall not withhold the issuance of any sign permits sought by Contest Promotions so long as the Planning Department reasonably determines that the permit application and the sign to which it relates meet and satisfy the requirements of the Planning Code and this Settlement Agreement.

(d) In the event that the Business where are sold, offered or conducted the businesses, commodities, services, industries or other activities which are depicted by a Category A Sign ceases operation permanently at the premises, Contest Promotions shall remove such Category A Sign within five (5) business days of such cessation.

(e) In the event that the Business to which a Category B Sign directs the public ceases operation permanently at the premises, Contest Promotions shall remove such Category B Sign within five (5) business days of such cessation.

(f) The Parties agree and acknowledge that the customary use of signs erected by Contest Promotions may involve frequent and periodic changes of copy within the meaning of Section 604(f) of the Planning Code. If Contest Promotions proposes to erect signs that will have such frequent and periodic changes of copy, then each permit application for such signs shall indicate that the copy will change on frequent and periodic basis.

3. Compliance with Applicable Codes

For each sign erected by Contest Promotions within the City, Contest Promotions shall comply with all applicable provisions of the city's Charter, ordinances, administrative bulletins, and other written regulations in effect at the time the permit for the subject sign is issued ("Applicable Local Laws") including, without limitation, applicable provisions of the Planning Code, the Building Code, the Electrical Code and the Public Works Code.

4. Placard Requirements for Category B Signs

(a) All Category B Signs erected by Contest Promotions in the City shall include a placard with a device or inscription directing members of the public to the Business where they may enter the Sweepstakes. Such placards shall comply with the following requirements:

i. the placard shall be at least six-inches (6") high and run the width of the entire sign;

ii. the placard shall include only the name, address, and hours of operation of the Business where members of the public may enter the Sweepstakes, as well as arrows or other suitable devices indicating the location of the entrance to such Business; and

(b) Notwithstanding the previous subsection (a), nor any other provision of this Settlement Agreement, Contest Promotions may include on any Category B

Sign an inscription of the applicable rules and regulations for the Sweepstakes, as deemed necessary by Contest Promotions and its counsel to comply with all applicable laws.

5. Contest Requirements for Category B Signs

(a) All Category B Business Signs erected by Contest Promotions in the City shall comply with the following requirements:

i. Contest Promotions shall award related prizes at the premises on which such Category B Sign is erected, or affixed to, no less frequently than once per calendar month ("Sweepstakes Period").

ii. Contest Promotions shall award at least one (1) related prize corresponding to each advertising campaign posted on such Category B Sign within the Sweepstakes Period. For purposes of this provision, an advertising campaign related to a single business, commodity, service, industry or other activity shall be deemed to be a single advertising campaign regardless of the number of Category B signs posted at the premises where such signs are erected, or affixed.

iii. The total retail value of a related prize awarded in each Sweepstakes Period shall be no less than fifty dollars (\$50).

6. Verification of Compliance of Category B Signs

(a) Within ninety (90) days of the Operative Date, Contest Promotions shall create and establish a dedicated, private website (the "Verification Website") to be used exclusively by Contest Promotions and the Planning Department. The website shall contain essential information concerning the Contests related to all Category B Signs erected by Contest Promotions within the City. Such information shall comprise: (1) the name and address of each Business associated with the Sweepstakes; (2) the location of each sign at the relevant premises; (3) the dimensions of the sign; (4) a photograph of the copy of the sign, or in the case of signs that will have frequent and periodic changes of copy, of representative copy; (5) the date when the Sweepstakes began; (6) the category of the businesses, commodities, services, industries or other activities for which Related Prizes are offered in the Sweepstakes; (7) an identification of the Related Prize(s) to be awarded in connection with the Sweepstakes; and (8) the authorizing permit number for the particular sign. The parties may meet and confer to modify the categories of information that Contest Promotions will provide in the Verification Website. The City shall not require additional categories of information more frequently than once annually.

(b) Planning Department staff shall have constant access to the Verification Website, subject to routine downtimes due to technical outages and/or scheduled maintenance.

(c) Contest Promotions shall post to the Verification Website new photographs of sign copy (except in the case of signs that will have frequent and periodic change of copy) and update relevant Sweepstakes information within seventy-two (72) hours of a copy change.

(d) The Verification Website shall be available at a specified web address accessible only by Contest Promotions and Planning Department staff. The home page shall list each location, the name of the store and its address. Each location shall include a link to individual location pages. Location pages shall include additional detail not provided on the home page.

(e) The City agrees to use best efforts to notify Contest Promotions promptly upon receipt of a Public Records Act Request or a Sunshine Request that calls for aggregate information contained in the Verification Website. For purposes of this subsection 6(e), aggregate information means information relating to two or more signs. This notice provision shall not apply if the City's response to a Public Records Act request or a Sunshine Request includes only information derived from separate public records independent of information contained in the Verification Website.

(f) Contest Promotions shall pay an annual fee to the City of one hundred dollars (\$100) per sign for each Category B Sign included in the Verification Website. This annual fee shall be due on July 1 each year. A late payment fee of 1% shall apply if the payment is not delivered by July 15, and an additional 1% late payment fee shall apply for any additional month or partial month that the annual payment is delinquent. This annual payment is intended to compensate the City for its costs to verify compliance of Contest Promotions' Category B signs, and is in lieu of a one-time payment for existing signs under Planning Code section 355(a)(1). The parties agree that the annual fee reasonably approximates the City's verification costs.

7. **Dismissal of Lawsuit and Requests for Reconsideration.**

The Parties shall file a stipulation for dismissal of the Lawsuit in its entirety with prejudice, and Contest Promotions shall submit all documents necessary to withdraw any pending requests for reconsideration, within ten (10) days after Contest Promotions has delivered the payment set forth in Section 9 of this Settlement Agreement.

8. **Mutual Releases.** Effective upon the Operative Date, other than the rights and obligations of the Parties under this Settlement Agreement, Contest Promotions on the one hand and the City on the other hand, on behalf of themselves and their respective present and future affiliates, related entities, partners, employees, agents, representatives, attorneys, predecessors, successors and assigns (collectively, "**Related Persons**"), hereby irrevocably, unconditionally and fully release, forever discharge and covenant not to sue, each other and each other's respective Related Persons from and on account of any and all claims, demands, causes of action or charges of any nature whatsoever, known or unknown, suspected or unsuspected, including without limitation costs and fees of attorneys and experts, arising directly or indirectly from or related in any way to the Lawsuit, the NOV's, the ALJ Proceedings and the Order (collectively, "**Claims**").

9. **Costs and Fees.** Subject to Paragraph 13 below, the Parties shall bear their own costs and attorneys' fees incurred prosecuting the Lawsuit or the preparation of this Settlement Agreement. Within five (5) days of the Operative Date, Contest Promotions shall pay the City \$150,000. Starting thirty (30) days after the Operative Date, Contest Promotions shall

begin making twenty-four (24) monthly payments of \$9,375 to the City. Each monthly payment will be due on the last business day of each month.

All payments pursuant to this Settlement Agreement, including payments under this section 9 and section 6(f) of this Settlement Agreement, shall be made to the San Francisco Planning Department, 1650 Mission Street, 4th floor, San Francisco CA 94103-2479 Attn: Finance Division, Keith DeMartini.

10. **Breach and Cure.** In the event the City contends that Contest Promotions is in breach of any of its obligations under this Settlement Agreement, or that any sign erected by Contest Promotions is not in compliance with the terms of this Settlement Agreement or any applicable code, then the City shall give written notice (the "Notice") specifying in reasonable detail the alleged breach or lack of compliance. Contest Promotions shall be given a thirty (30) day period (the "Cure Period") from the date of receipt of the Notice in which to correct or cure the breach or lack of compliance. The City hereby agrees and acknowledges that with respect to violations of the Planning Code no Notices of Violation shall be issued and no action, lawsuit or administrative proceeding shall be commenced within the Cure Period.

11. **Notices.** Any notice, request, consent, waiver or other communication required or permitted hereunder shall be effective only if it is in writing and personally delivered or sent by certified or registered mail, postage prepaid, by nationally recognized overnight courier or by telecopier (with confirmation of delivery of telecopy), addressed as set forth below:

If to Contest Promotions:

Contest Promotions, LLC
c/o Saul Janson, Esq.
213 Rose Avenue, Suite B
Venice, CA 90291
Telecopy: (310) 452-7978
E-Mail: sacoja@aol.com

With copies to:

Reuben, Junius & Rose, LLP
One Bush Street, Suite 600
San Francisco, CA 94104
Attention: James A. Reuben, Esq.
Telecopy: (415) 567-9000
E-Mail: jreuben@reubenlaw.com

If to the City:

San Francisco Planning Department

c/o Daniel Sider

1650 Mission Street, Suite 400

San Francisco, CA 94103-2479

Fax: (415) 558-6409

E-Mail: dan.sider@sfgov.org

With copies to:

San Francisco City Attorney's Office

City Hall, Room 234

San Francisco, CA 94102

Attention: James M. Emery

Telecopy: (415) 554-4757

E-Mail: jim.emery@sfgov.org

or such other person or address as the addressee may have specified in a notice duly given to the sender as provided herein. Such notice or communication shall be deemed to have been given as of the date received by the recipient thereof or the date of rejection of attempted delivery. All notices given hereunder shall also be given by electronic mail at the electronic mail addresses set forth above.

12. Representations and Warranties.

a. Each Party represents and warrants to the other that neither he or she, nor any of his or her respective agents, representatives or attorneys nor any other person or entity, in order to induce any of the Parties to enter into this Settlement Agreement, have made any promise, assurance, representation, inducement or warranty whatsoever, whether express or implied or statutory, which is not specifically set forth in writing in this Settlement Agreement and further acknowledge that this Settlement Agreement has not been entered into in reliance upon any promise, assurance, representation, inducement or warranty not expressly set forth in writing in this Settlement Agreement.

b. Each Party represents and warrants to the other that he or she has read and understands this Settlement Agreement, and that this Settlement Agreement is executed voluntarily and without duress or undue influence on the part of or on behalf of the other Party hereto. The Parties hereby acknowledge that they have been represented or have had the opportunity to be represented in the negotiations and preparation of this Settlement Agreement by counsel of their own choice and that they are fully aware of the contents of this Settlement Agreement and of the legal effect of each and every provision herein.

c. Each Party represents and warrants to the other that the individual executing this Settlement Agreement on behalf of any Party has the authority to execute and thereby bind the Party for whom he/she executes this Settlement Agreement to the terms of this Settlement Agreement, and agrees to indemnify and hold harmless each other Party from any claim that such authority did not exist.

13. **Enforcement of Settlement Agreement.** If either Party to this Settlement Agreement brings an action or motion to enforce its rights hereunder, the prevailing Party shall be entitled to recover all costs and expenses, including all costs or expenses not otherwise recoverable under the Federal Rules of Civil Procedure or California Code of Civil Procedure and all attorneys' fees, incurred in connection with such action or motion.

14. **Further Assurances.** The Parties shall each execute any and all other documents and take any and all further steps which may be necessary or appropriate to further implement the terms of this Settlement Agreement.

15. **Construction of Settlement Agreement.** This Settlement Agreement shall be construed as a whole in accordance with its fair meaning and in accordance with the laws of the State of California. The Parties stipulate and agree that this Settlement Agreement and the language used herein is the product of all Parties' efforts in consultation with their attorneys and other consultants, and each Party hereby irrevocably waives the benefit of any rule of contract construction which disfavors the drafter of an agreement. The language of this Settlement Agreement shall not be construed for or against any particular Party. The headings used herein are for reference only and shall not affect the construction of this Settlement Agreement.

16. **Sole Agreement.** Except as otherwise stated in this Settlement Agreement, this Settlement Agreement represents the sole and entire agreement between the Parties with respect to the subject matters covered hereby and supersedes all prior agreements, negotiations and discussions between the Parties hereto and/or their respective counsel with respect to the subject matters covered hereby.

17. **Amendment to Settlement Agreement.** Any amendment to this Settlement Agreement must be in a writing signed by duly authorized representatives of the Parties hereto and stating the intent of the Parties to amend this Settlement Agreement.

18. **Counterparts.** This Settlement Agreement may be executed in one or more counterparts, each of which shall be an original but all of which, together, shall be deemed to constitute a single document. Facsimile and electronically scanned signatures shall be deemed to constitute original signatures.

*(The remainder of this page is left blank intentionally.
Signatures appear on the following page.)*

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement on the date(s) set forth hereinafter.

For Contest Promotions:

CONTEST PROMOTIONS, LLC, a California limited liability company

Date: JANUARY 7, 2014

By: 
Its: VP

For the City:

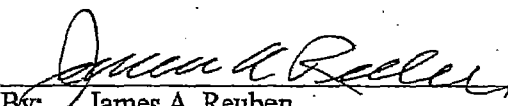
CITY AND COUNTY OF SAN FRANCISCO, a chartered city and county of the State of California

Date: _____, 2013

By: John Rahaim
Its: Planning Director

APPROVED AS TO FORM:
REUBEN, JUNIUS & ROSE

Date: January 13, 2014


By: James A. Reuben
Counsel for Contest Promotions, LLC

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

Date: _____, 2013

By: Thomas S. Lakritz
Deputy City Attorney

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement on the date(s) set forth hereinafter.

For Contest Promotions:

CONTEST PROMOTIONS, LLC, a California limited liability company

Date: _____, 2013

By:
Its:

For the City:

CITY AND COUNTY OF SAN FRANCISCO, a chartered city and county of the State of California

Date: 4-9, 2013

By: *John Rahaim*
Its: Planning Director

APPROVED AS TO FORM:
REUBEN, JUNIUS & ROSE

Date: _____, 2013

By: James A. Reuben
Counsel for Contest Promotions, LLC

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

Date: _____, 2013

By: Thomas S. Lakritz
Deputy City Attorney

LEGISLATION RECEIVED CHECKLIST

Date 4/10/14

File Number (if applicable) 140371

- | | | |
|-------------------------------------|--|--------------------------------|
| <input checked="" type="checkbox"/> | Legislation for Introduction (NEW) | ▶▶▶ Legislation Clerk |
| <input type="checkbox"/> | Legislation Pending in Committee (AMENDED) | ▶▶▶ Committee Clerk |
| <input type="checkbox"/> | Legislation for Board Agenda (AMENDED) | ▶▶▶ Dep Clerk, Legislative Div |

Supervisor, Mayor, and Departmental Submittals

Grant Ordinance

- Legislation:** Original and 2 hard copies and 1 electronic copy in word format
- Signature:** Department Head, Mayor or the Mayor's designee, plus the Controller
- Back-up materials:** 2 full sets (see below) and 1 electronic copy in pdf format*
 - Cover letter (original and 1 hard copy)
 - Grant budget/application
 - Grant information form, including disability checklist
 - Letter of Intent or grant award letter from funding agency
 - Contract, Leases/Agreements (if applicable)
 - Ethics Form 126 (if applicable)*Word format
- E-Copy of legislation/back-up materials: Sent to BOS.Legislation@sfgov.org**

Ordinance

- Legislation:** Original and 2 hard copies and 1 electronic copy in word format
- Signature:** City Attorney (For Settlement of Lawsuits - City Attorney, Department Head, Controller, Commission Secretary)
- Back-up materials:** 2 hard copies (see below) and 1 electronic copy in pdf format
 - Cover letter (original and 1 hard copy)
 - Settlement Report/Agreement (for settlements)
 - Other (Explain)
- E-Copy of legislation/back-up materials: Sent to BOS.Legislation@sfgov.org**

Grant Resolution

- Legislation:** Original and 2 hard copies and 1 electronic copy in word format
- Signature:** Department Head, Mayor or the Mayor's designee, plus the Controller
- Back-up materials:** 2 hard copies (see below) and 1 electronic copy in pdf format*
 - Cover letter (original and 1 hard copy)
 - Grant budget/application
 - Grant information form, including disability checklist
 - Letter of Intent or grant award letter from funding agency
 - Contract, Leases/Agreements (if applicable)
 - Ethics Form 126 (if applicable)*Word format
- E-Copy of legislation/back-up materials: Sent to BOS.Legislation@sfgov.org**

Resolution

- Legislation:** Original and 2 hard copies and 1 electronic copy in word format
- Signature:** None (Required for Settlement of Claims - City Attorney, Department Head, Controller, Commission Secretary)
- Back-up materials:** 2 full sets (see below) and 1 electronic copy in pdf format
 - Cover letter (original and 1 hard copy)
 - Settlement Report/Agreement (for settlements)
 - Other (Explain)
- E-Copy of legislation/back-up materials: Sent to BOS.Legislation@sfgov.org**

Shona Noware 554-3889
Name and Telephone Number

CITY ATTORNEY
Department

Print Form

Introduction Form

By a Member of the Board of Supervisors or the Mayor

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO

JUN-4 AM 10:14



Time stamp
or meeting date

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee. (An Ordinance, Resolution, Motion, or Charter Amendment)
- 2. Request for next printed agenda Without Reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning "Supervisor inquires"
- 5. City Attorney request.
- 6. Call File No. from Committee.
- 7. Budget Analyst request (attach written motion).
- 8. Substitute Legislation File No.
- 9. Reactivate File No.
- 10. Question(s) submitted for Mayoral Appearance before the BOS on

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission
- Youth Commission
- Ethics Commission
- Planning Commission
- Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use a Imperative Form.

Sponsor(s):

Subject:

The text is listed below or attached:

Motion that the Board of Supervisors convene in closed session on June 10, 2014, for the purpose of conferring with, or receiving advice from the City Attorney regarding existing litigation relating to the lawsuit filed on September 22, 2009, in the United States District Court for the Northern District of California, Case No. CV-09-4434 SI (MEJ); entitled Contest Promotions, LLC, v. City of San Francisco, et al.; in which the City is a defendant; pursuant to California Government Code, Section 54956.9(a), and San Francisco Administrative Code, Section 67.10(d)(1), which permits this closed session because discussion in open session concerning this matter would likely and unavoidably prejudice the position of the City in the existing litigation.

140661

Signature of Sponsoring Supervisor: A. O. Casillo

For Clerk's Use Only:

