

**STAFF REPORT FOR CALENDAR ITEM NO.: 13
FOR THE MEETING OF: December 14, 2017**

TRANSBAY JOINT POWERS AUTHORITY

BRIEF DESCRIPTION:

Authorize the Executive Director to execute a right of entry agreement with the San Francisco Municipal Transportation Agency (SFMTA) to conduct certain bus operations in a portion of the Bus Plaza on an interim basis.

EXPLANATION:

As construction work of the Salesforce Transit Center progresses toward completion, the TJPA is actively planning for operational readiness of the facility. One aspect of this planning is negotiation of lease and use agreements with transportation operators, including SFMTA.

The TJPA designed the new transit center to allow (1) SFMTA buses to operate from the bus deck level of the new facility, and (2) SFMTA buses to operate from the bus plaza of the new facility.

With regards to SFMTA's operation from the bus deck level, the TJPA expects SFMTA to sublease space from AC Transit. Under the terms of AC Transit's 2008 Lease and Use Agreement for the transit center, AC Transit is a "primary tenant" of the bus deck level and AC Transit has certain rights and obligations to sublease portions of its space on the bus deck level to other transit operators. The TJPA assumes AC Transit is negotiating with SFMTA pursuant to the terms of AC Transit's 2008 Lease and Use Agreement, and will timely enter a suitable sublease agreement for the bus deck level consistent with AC Transit's own lease.

With regards to SFMTA's operation from the bus plaza, the TJPA expects SFMTA to lease space direct from the TJPA. The TJPA is actively negotiating that lease agreement with SFMTA and expects to present the lease to the TJPA Board of Directors in early 2018.

Portions of the bus plaza are currently expected to be delivered in December 2017, while construction of the remainder of the transit center is currently expected to be substantially complete in the Spring of 2018.

SFMTA is willing to begin operations of its #5 Fulton motor coach/diesel bus at the bus plaza in December 2017, conditioned on the TJPA's completion of certain interim improvements and services, for an up to 6-month term, while the sublease with AC Transit and lease with TJPA are finalized, and the construction of the remainder of the transit center is completed.

TJPA staff has negotiated the attached right of entry agreement with SFMTA for its short term use of portions of the bus plaza ("Right of Entry Agreement"). The TJPA would be required to deliver certain interim improvements and services, which TJPA expects to accomplish by late December 2017. The Right of Entry Agreement would expire on the earliest to occur of the

effective date of a lease for the bus plaza, or June 30, 2018. SFMTA would not be required to pay rent to the TJPA during this pre-operations period.

TJPA and SFMTA are actively and cooperatively preparing ridership outreach for the successful transition of SFMTA's passengers during this pre-operations period.

RECOMMENDATION:

Authorize the Executive Director to execute a right of entry agreement with SFMTA to conduct certain bus operations in a portion of the bus plaza on an interim basis.

ENCLOSURES:

1. Right of Entry Agreement
2. Resolution

**TRANSBAY JOINT POWERS AUTHORITY
BOARD OF DIRECTORS**

Resolution No. _____

WHEREAS, The Transbay Joint Powers Authority (TJPA) is a joint powers agency organized and existing under the laws of the State of California to design, build, and operate the Transbay Transit Center Program (“Transbay Program”); and

WHEREAS, The TJPA’s construction of the new transit center is nearing completion and the TJPA is actively planning for operational readiness of the facility, including negotiation of lease and use agreements with transportation operators; and

WHEREAS, The TJPA designed the new transit center to allow (1) San Francisco Municipal Transportation Agency (SFMTA) buses to operate from the bus deck level of the new facility, and (2) SFMTA buses to operate from the bus plaza of the new facility; and

WHEREAS, The TJPA expects SFMTA to sublease space on the bus deck level of the transit center direct from AC Transit, as contemplated under the terms of AC Transit’s 2008 Lease and Use Agreement for the transit center, and the TJPA expects SFMTA to lease space in the bus plaza of the transit center direct from the TJPA; and

WHEREAS, For an interim period before the sublease with AC Transit and the lease with SFMTA are complete, and before construction of the entire transit center is complete, SFMTA is willing to begin operations of its #5 Fulton motor coach/diesel bus at the bus plaza under certain conditions; and

WHEREAS, TJPA staff has negotiated and recommends the attached right of entry agreement with SFMTA to conduct certain bus operations in a portion of the bus plaza on an interim basis (“Right of Entry Agreement”); now, therefore, be it

RESOLVED, That the TJPA Board approves the Right of Entry Agreement with SFMTA, in substantially the form attached; and, be it

FURTHER RESOLVED, That the TJPA Board authorizes the Executive Director to take all actions and execute all documents as he deems reasonably necessary to implement and effectuate the above approval.

I hereby certify that the foregoing resolution was adopted by the Transbay Joint Powers Authority Board of Directors at its meeting of December 14, 2017.

Secretary, Transbay Joint Powers Authority

RIGHT OF ENTRY AGREEMENT FOR BUS PLAZA

THIS RIGHT OF ENTRY AGREEMENT FOR BUS PLAZA (“Agreement”) is made and entered into on _____, 2017 (“Effective Date”), by and between the TRANSBAY JOINT POWERS AUTHORITY, a joint powers authority created under California Government Code Sections 6500 et seq. (“TJPA”), and the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (“City”) acting by and through the SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY (“SFMTA”). The TJPA and SFMTA are each individually referred to herein sometimes as a “Party” and are collectively referred to herein sometimes as the “Parties.” The Parties agree as follows:

RECITALS

This Agreement is entered into by the TJPA and SFMTA on the basis of the following recitals:

A. The TJPA is developing the Transbay Transit Center Program in San Francisco (“Transbay Program”). The Transbay Program includes, among other things, a new transit center generally located at First and Mission Streets (“Transit Center”), which includes a Bus Plaza. Portions of the Bus Plaza are currently expected to be delivered in December 2017, while construction of the Transit Center is currently expected to be substantially complete in Spring 2018.

B. SFMTA oversees transit, streets, and taxis in the City. SFMTA wishes to make the Transit Center a point of destination/departure for a portion of its transit operations in San Francisco. The Parties are negotiating, but have not yet finalized, a lease and use agreement setting forth the terms for SFMTA’s lease and use of the Bus Plaza.

C. The Parties wish to set forth the terms and conditions under which SFMTA will conduct certain operations on an interim basis from the Bus Plaza before the TJPA reaches substantial completion of the Transit Center and the Parties conclude negotiations for a lease and use agreement.

IT IS AGREED BETWEEN THE PARTIES AS FOLLOWS:

1. Interim Improvements and Services. On or before December 26, 2017, the TJPA plans to install certain interim improvements and provide certain interim services in the Bus Plaza of the Transit Center, as more particularly described on Exhibit A-1 (“Interim Improvements and Services”) and depicted on Exhibit A-2 (“Interim Improvements Location”). The TJPA shall bear the sole cost to install and provide the Interim Improvements and Services, in exchange for SFMTA’s acceptance of certain rights and responsibilities under this Agreement.

2. Interim Operation. Expressly conditioned on both (i) the TJPA’s satisfaction of its obligation as described in Section 1 to complete construction of, and begin providing, the Interim Improvements and Services, and (ii) the Interim Improvements Location is ready for occupancy and use by SFMTA and the public as a transportation facility for the #5 Fulton motor coach/diesel bus service and will not subject either SFMTA or the public to any hazard, delay or undue inconvenience, SFMTA shall begin operations of its regular #5 Fulton motor coach/diesel

bus service from the Interim Improvements Location on December 26, 2017 (“Interim Bus Operation Commencement Date”).

3. Right of Entry. Beginning on the Interim Bus Operations Commencement Date, the TJPA grants to SFMTA a temporary and non-exclusive right of entry to the Interim Improvements Location and such other locations as the Parties agree in writing are reasonably necessary (“Premises”), subject to the terms and conditions set forth in this Agreement, to conduct the interim operation of the regular #5 Fulton motor coach/diesel bus service, which shall include the parking of a supervisor car during the hours of such operation. The TJPA grants this right of entry at no cost to SFMTA in exchange for SFMTA’s acceptance of certain rights and responsibilities under this Agreement.

4. Termination. The term of this Agreement, including the right of entry, shall conclude on the earliest to occur of (a) June 30, 2018, or (b) the date that the parties mutually agree in writing, each in their own discretion, SFMTA will commence operations at the Bus Plaza pursuant to the terms and conditions of a lease and use agreement for the Bus Plaza, or (c) such date as the Parties mutually agree in writing in accordance with this Agreement.

5. Surrender of Premises.

(a) On or before the last day of the term of this Agreement, SFMTA shall peaceably and quietly leave, yield up, vacate, and surrender the Premises to the extent used and occupied by the SFMTA under this Agreement to the TJPA in good condition in accordance with its express obligations hereunder, except for damage or loss due to reasonable wear and tear, fire, or other casualty, or other cause beyond SFMTA’s control (including but not limited to the acts of any party other than SFMTA and/or its consultants, contractors, representatives, employees, or agents).

(b) SFMTA further agrees and acknowledges that in the event SFMTA does not promptly vacate the Premises to the extent used and occupied under this Agreement on or before the last day of the term of this Agreement and holds over without the TJPA’s prior written consent, in addition to any other rights or remedies of TJPA relating to such unlawful holdover, SFMTA agrees to indemnify, defend, and hold harmless the TJPA from any and all third party claims, losses, costs, and damages to the extent arising from such unlawful holdover (including, but not limited to attorneys’ fees and/or any claims asserted against TJPA by any party who has the right to use the Premises during such unlawful holdover).

6. Insurance and Indemnification.

(a) SFMTA agrees to defend, indemnify, and hold harmless the TJPA and the entities identified on the attached Exhibit B (“Additional Insureds”) from any and all liability, loss, damage, expense, cost, (including, without limitation, costs and fees of litigation), claims, demands, obligations, suits, judgments, penalties, causes of action, or liabilities at any time received, incurred, or accrued by the Additional Insureds as a result of or arising out of the acts, omissions, use, occupancy, or operation of SFMTA and/or its consultants, contractors, representatives, employees, or agents on the Premises or related to this Agreement, except to the

extent caused by the negligence or willful misconduct of any of the Additional Insureds. SFMTA's obligations under this Section shall survive termination of this Agreement.

(b) Without in any way limiting SFMTA's indemnification obligations under this Agreement, and except as otherwise set forth in subsection (1) below, SFMTA must maintain in force, during the full term of this Agreement, insurance coverages at least as broad as:

(i) Worker's Compensation, as required by the State of California in statutory amounts, and Employers' Liability Insurance with limits not less than one million dollars (\$1,000,000) each accident, injury, or illness; and

(ii) Commercial General Liability Insurance on an "occurrence" basis, including products and completed operations, property damage, bodily injury, personal and advertising injury, and contractual liability, with limits not less than ten million dollars (\$10,000,000) each occurrence; and

(iii) Automobile Liability Insurance with limits not less than twenty five million dollars (\$25,000,000) per accident for bodily injury (including death) and property damage, including owned, non-owned, and hired auto coverage, as applicable.

(c) SFMTA's Commercial General Liability Insurance policy must provide the following:

(i) Name as additional insured the entities identified in the attached Exhibit B.

(ii) That such policies are primary insurance to any other insurance available to the additional insureds, any insurance or self-insurance maintained by the additional insureds shall be excess of SFMTA's insurance and shall not contribute with it, and SFMTA's insurance applies severally and not collectively to each additional insured against whom claim is made or suit is brought.

(d) All policies shall be endorsed to provide thirty (30) days' advance written notice to the TJPA of material change in coverages, or nonrenewal of coverages, or cancellation of coverages for any reason. Notices shall be sent to the address specified in Section 11(b).

(e) SFMTA hereby grants to the TJPA a waiver of any right to subrogation which any insurer of SFMTA may acquire against the TJPA by virtue of the payment of any loss under such insurance. SFMTA agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the TJPA has received a waiver of subrogation endorsement from the insurer.

(f) Should any of the required insurance be provided under a claims-made form, SFMTA shall maintain such coverage continuously throughout the term of this Agreement, and without lapse, for a period of five (5) years beyond the expiration of this Agreement, to the effect that, should occurrences during the Agreement term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

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

(h) Except to the extent the SFMTA elects to self insure pursuant to subsection (l) below, on or before the Effective Date, SFMTA shall do the following: (i) furnish to the TJPA certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A.M. Best's A:VII or higher, that are authorized to do business in the State of California, and that are satisfactory to the TJPA, in form evidencing all coverages set forth above, and (ii) furnish complete copies of policies promptly upon the TJPA's request.

(i) Approval of the insurance by the TJPA shall not relieve or decrease the liability of SFMTA under this Agreement. If SFMTA maintains broader coverage and/or higher limits than the minimums shown above, the TJPA requires and shall be entitled to the broader coverage and/or the higher limits maintained by SFMTA. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the TJPA.

(j) Failure to maintain insurance shall constitute a substantial breach by SFMTA of this Agreement.

(k) The TJPA reserves the right to require increases to the aforesaid limits as necessary upon the written demand of the TJPA, provided that the TJPA provides a written justification for the increase to SFMTA, and such coverage is reasonably available and affordable and commercially reasonable.

(l) As a part of or in lieu of the insurance required in this Section, and subject to prior approval by the TJPA, SFMTA shall have the right to provide equivalent protection under a self-insurance program acceptable to the TJPA; provided, however, that the TJPA's approval shall not be unreasonably withheld.

(m) Notwithstanding anything to the contrary in this Section, the TJPA acknowledges that the SFMTA maintains a program of self-insurance and agrees that the SFMTA shall not be required to carry any third party insurance with respect to this Agreement. If the SFMTA elects to self-insure, the SFMTA shall be responsible for any losses or liabilities which would have been assumed by the insurance companies which would have issued the insurance required of the SFMTA under this Agreement. If the SFMTA elects to carry third party insurance instead of a program of self insurance with respect to this Agreement, the SFMTA shall provide the TJPA with at least thirty (30) days' prior written notice of such election.

7. Assignment. SFMTA may not assign its rights under the Agreement without the TJPA's prior written consent, which the TJPA may grant or withhold in its sole discretion.

8. Terms of Use. SFMTA's right to use and occupy the Premises under this Agreement shall be subject to the following terms and conditions:

(a) SFMTA may use the Premises for interim operation of the regular #5 Fulton motor coach/diesel bus service and for no other purpose.

(b) SFMTA shall comply with any rules and regulations adopted by the TJPA that are applicable for the operation, maintenance, security, and management of the Premises. These operating parameters must be reasonable and must not be inconsistent with the terms of this Agreement. The TJPA shall administer the rules and regulations in a fair and non-discriminatory manner and use reasonable efforts to cause other entities that are subject to the rules and regulations to comply with them.

(c) SFMTA shall not do, cause, or permit its employees, agents, or contractors to do anything in or about the Premises which will in any way (1) increase the rate of fire insurance for the Transit Center; (2) conflict with any law, ordinance, rule, or regulation now in effect or which may hereafter be enacted or promulgated by any public authority relating to or affecting the condition, use, or occupancy of the Premises; (3) create a nuisance; (4) be an unlawful purpose; or (5) commit or suffer to be committed any waste in or upon the Premises.

(d) SFMTA shall not place any permanent improvements of any kind in, on, or upon the Premises, and shall not make any alterations in, on, or upon the Premises.

(e) SFMTA shall not cause nor allow its consultants, contractors, representatives, employees, or agents to cause, the deposit or disposal of any hazardous materials on the Premises.

(f) SFMTA's rights under the Agreement are non-exclusive. TJPA shall have full right and authority to enter in and upon the Premises at any and all times during the term of this Agreement and to grant rights in the Premises to third parties, so long as the exercise of such rights do not unreasonably interfere with SFMTA's ability to conduct interim operation of the regular #5 Fulton motor coach/diesel bus service, and SFMTA's rights under this Agreement.

9. Default. The occurrence of any of the following shall constitute a material breach and default of this Agreement by SFMTA.

(a) The filing for SFMTA of any request for relief under any state insolvency statute.

(b) Any action of any governmental authority, legislative body, board, agency, or officer, other than the TJPA and any working for it, having jurisdiction thereof ceasing or suspending SFMTA's bus operations.

(c) The substantial breach by SFMTA of any of the covenants or agreements herein contained and the failure of SFMTA to remedy such breach within sixty (60) days after written notice from the TJPA of the default, except if the default by its nature cannot be cured within such sixty (60) day period and SFMTA commences to correct such default within said sixty (60) days and corrects the same as promptly as is reasonably practicable.

10. Remedies.

(a) In the event of any default or breach by SFMTA, the TJPA may at any time thereafter, without limiting the TJPA in the exercise of any right of remedy at law or in equity which the TJPA may have by reason of such default or breach, terminate this Agreement by any lawful means, in which case SFMTA shall surrender its possession of the Premises to the TJPA.

(b) If either Party fails to perform any of its obligations under this Agreement or a dispute arises concerning the meaning or interpretation of any provision of this Agreement, the defaulting Party or the non-prevailing Party in such dispute, as the case may be, shall pay the prevailing Party reasonable attorneys' and experts' fees and costs, and all court costs and other costs of action incurred by the prevailing Party in connection with the prosecution or defense of such action and enforcing or establishing its rights hereunder (whether or not such action is prosecuted to a judgment). For purposes of this Agreement, reasonable attorneys' fees of the City's Office of the City Attorney shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the City Attorney's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the Office of the City Attorney. The term "attorneys' fees" shall also include, without limitation, all such fees incurred with respect to appeals, mediations, arbitrations, and bankruptcy proceedings, and whether or not any action is brought with respect to the matter for which such fees were incurred. The term "costs" shall mean the costs and expenses of counsel to the Parties, which may include printing, duplicating and other expenses, air freight charges, hiring of experts, and fees billed for law clerks, paralegals, and others not admitted to the bar but performing services under the supervision of an attorney

(c) In no event shall the TJPA be liable for monetary damages of any kind for a breach of this Agreement by the TJPA; provided, however, that SFMTA may seek recovery of attorney's fees and costs, to the extent expressly provided under this Agreement.

(d) The remedies provided in this section shall be in addition to, and cumulative with, any remedies available under law or equity, or under any other provision of this Agreement.

(e) No waiver by either Party of any breach of any of the covenants to be performed shall be construed as a waiver of any other breach of any of the covenants.

11. General Provisions.

(a) **Governing Law.** This Agreement shall be deemed to have been made in, and be construed in accordance, with the laws of the State of California and the City's Charter. The Parties agree that any state or federal district court located in the City and County of San Francisco, State of California shall have exclusive jurisdiction over any case or controversy arising from, under or in connection with this Agreement and shall be the sole and exclusive forum in which to adjudicate any such dispute(s).

(b) **Notices.** All notices required by be given to SFMTA hereunder shall be in writing and given by registered mail addressed to SFMTA as follows:

San Francisco Municipal Transportation Agency
City and County of San Francisco
Municipal Transportation Agency
1 South Van Ness Avenue, 8th Floor
San Francisco, CA 94103

Attn: Senior Manager – SFMTA Strategic Real Estate

with copy to:

San Francisco City Attorney Office of the City Attorney
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4682
Attention: Special Projects Team

All notices required to be given to the TJPA hereunder shall be in writing and given by registered mail addressed to TJPA as follows:

Transbay Joint Powers Authority
Attn: Executive Director
201 Mission Street, Suite 2100
San Francisco CA 94105

with copy to:

Shute, Mihaly & Weinberger LLP
396 Hayes Street
San Francisco, CA 94102
Attn.: Deborah Miller

Either Party may designate in writing from time to time any changes in addresses or any addresses of substitute or supplementary persons in connection with said notices. The effective date of service of any such notice shall be the date such notice is mailed to SFMTA, or to the TJPA.

(c) **Waivers.** No waiver by either Party of any of the terms, covenants and conditions hereof to be performed, kept and observed by the other Party shall be construed as, or operate as, a waiver of any subsequent default of any of the terms, covenants or conditions herein contained, to be performed, kept and observed by the other Party.

(d) **Force Majeure.** Neither the TJPA nor SFMTA shall be deemed in violation of this Agreement if it is prevented from performing any of its obligations hereunder by reason of strikes, boycotts, labor disputes, embargoes, shortages of material, acts of terrorism, riots, rebellion, sabotage or any other casualty which is not within its control (except financial inability).

(e) **Invalid Provision.** In the event any covenant, condition or provision herein contained is held to be invalid by a court of competent jurisdiction, the invalidity of any such covenant, condition or provision shall in no way affect any other covenant, condition or provision herein contained, provided the invalidity of any such covenant, condition or provision does not materially prejudice either the TJPA or SFMTA in their respective rights and obligations contained in the valid covenants, conditions and provisions of this Agreement.

(f) **Headings.** The headings of the several Sections of this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of any provisions of this Agreement, and shall not be construed to affect in any manner the term and provisions hereof or the interpretation or construction thereof.

(g) **Withholding Required Approvals.** Whenever the approval of the TJPA or of SFMTA is required herein, no such approval shall be unreasonably refused, withheld, or delayed.

(h) **Successors and Assigns.** All of the terms, provisions, covenants, stipulations, conditions and considerations in this Agreement shall extend to and bind the legal representatives, successors, and assigns of the respective Parties hereto.

(i) **Non-Liability of Public Officials, Employees, and Agents.** Notwithstanding anything to the contrary in this Agreement, no elective or appointive board, commission, member, officer, employee or agent of City or the TJPA shall be personally liable to the other Party, its successors and assigns, in the event of any default or breach by SFMTA or the TJPA, respectively, or for any amount which may become due to the TJPA or SFMTA, respectively, or their successors and assigns, or for any obligation of SFMTA or the TJPA, respectively, under this Agreement.

(j) **Exhibits.** All exhibits referred to herein which may, from time to time, be referred to in any duly executed amendment hereto are (and with respect to future amendments, shall be) by such reference incorporated herein and shall be deemed a part of this Agreement as fully as if set forth herein.

(k) **Amendments.** This Agreement may be amended by a duly executed, mutual agreement of the Parties in writing.

(l) **Corporate Authority.** Each Party represents and warrants to the other that it has full right, authority, and capacity to execute and perform this Agreement; the execution and delivery of this Agreement has been duly authorized by all requisite actions of the Party; the Agreement constitutes a valid, binding, and enforceable obligation of the Party; and neither the execution of the Agreement nor the consummation of the Agreement violates any agreement, contract, or other restriction to which the Party is bound.

(m) **Recording.** Except as otherwise provided herein, neither the TJPA nor SFMTA shall record this Agreement.

(n) **Time Is of the Essence.** Time is of the essence with respect to each provision of this Agreement.

(o) **Entire Agreement.** This Agreement, including the Exhibits attached, contains all the terms and provisions between TJPA and SFMTA relating to the matters set forth herein, and no prior or contemporaneous agreement or understanding pertaining to the same will be of any force or effect.

(p) Counterparts; Facsimile Signature. This document may be executed in counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument. This Agreement may be executed by facsimile or similar signature.

12. Condemnation. If, as reasonably determined by TJPA, the Premises cannot be used by SFMTA because of a condemnation or sale in lieu of condemnation, then this Agreement shall automatically terminate as of the effective transfer of ownership from the TJPA to the acquiring party. This Agreement is not intended to convey any interest in property to SFMTA. TJPA shall be entitled to the entire award or proceeds for any total or partial condemnation or sale in lieu thereof, including, without limitation, any award of proceeds for the value of the Agreement. Notwithstanding the foregoing, SFMTA shall have the right to pursue recovery from the condemning authority of such compensation as may be separately awarded to SFMTA for the taking of SFMTA's personal property and fixtures, and the interruption of or damage to SFMTA's business.

13. Damage by Fire, Disaster, or Other Casualty. In case of damage to the Premises by fire or other casualty, the Agreement may, at the-option of either SFMTA or TJPA, be terminated immediately.

14. City Provisions.

(a) Macbride Principles - Northern Ireland. The provisions of San Francisco Administrative Code §12F are incorporated herein by this reference and made part of this Agreement. By signing this Agreement, TJPA confirms that it has read and understood that the City urges companies doing business in Northern Ireland to resolve employment inequities and to abide by the MacBride Principles, and urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

(b) Sunshine Ordinance. TJPA understands and agrees that the City's Sunshine Ordinance (San Francisco Administrative Code Chapter 67) and the State Public Records Law (Gov't Code Section 6250 et seq.) apply to this Agreement and any and all records, information, and materials submitted to City in connection with this Agreement. Accordingly, any and all such records, information and materials may be subject to public disclosure in accordance with the City's Sunshine Ordinance and the State Public Records Law. TJPA hereby authorizes City to disclose any records, information and materials submitted to City in connection with this Agreement.

(c) Conflict of Interest. Through its execution of this Agreement, TJPA acknowledges that it is familiar with the provisions of Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Sections 87100 et seq. and Sections 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which would constitute a violation of said provision, and agrees that if TJPA becomes aware of any such fact during the term of this Agreement, TJPA shall immediately notify the City.

IN WITNESS WHEREOF, the TJPA and SFMTA have duly executed and delivered this Agreement as of the date first written above.

TRANSBAY JOINT POWERS AUTHORITY,
a California joint powers agency

APPROVED AS TO FORM:

Shute, Mihaly & Weinberger LLP

By: _____
Mark Zabaneh
Executive Director

Counsel for the TJPA

CITY AND COUNTY OF SAN FRANCISCO,
ACTING BY AND THROUGH ITS SAN
FRANCISCO MUNICIPAL
TRANSPORTATION AGENCY

APPROVED AS TO FORM

DENNIS J. HERRERA, City Attorney:

By: _____
Edward D. Reiskin
Director of Transportation

Carol Wong, Deputy City Attorney

Right of Entry Agreement

Exhibit A-1

Interim Improvements and Services

Right of Entry Agreement

Exhibit A-1

Interim Improvements and Services

Reference to Diagram on Exhibit A-2	Interim Improvement or Service
1	Bus Plaza Fencing: areas not needed for SFMTA for interim use will be fenced off for security purposes.
2	Bus Plaza Gates: gates installed at either end of the drive aisles will be open for for SFMTA interim use of the Bus Plaza and will be closed at other times for security purposes.
3	Bus Plaza Lighting: temporary lighting to illuminate drive aisle, boarding platform, and pedestrian path of travel.
4	Bus Plaza Pedestrian Access: pedestrian access via sidewalks, crosswalks, and curb ramps along the east side of Fremont St.
5	Bus Plaza Security: private unarmed security guard will be posted during #5 Fulton operating hours of M-F 7am-7pm; security staff will also provide fire watch.
6	Bus Plaza Traffic Control: traffic control officers will be stationed at Fremont St. exit to facilitate bus exit as deemed necessary.
7	Bus/Vehicle Drive Aisles: paved drive aisles from Beale Street through the Bus Plaza to Fremont Street.
8	SFMTA Driver Restroom facilities will be provided, initially as portable trailer mounted facility parked in the north drive aisle.
9	SFMTA Passenger Boarding Platform: one boarding platform (second boarding platform/island from the north) with accessible bench seating for passengers and temporary signage as determined by SFMTA.
10	SFMTA Supervisor: space for a supervisor car to park will be provided within the Bus Plaza.
11	Future Crosswalks: crosswalks under construction.

Right of Entry Agreement

Exhibit A-2

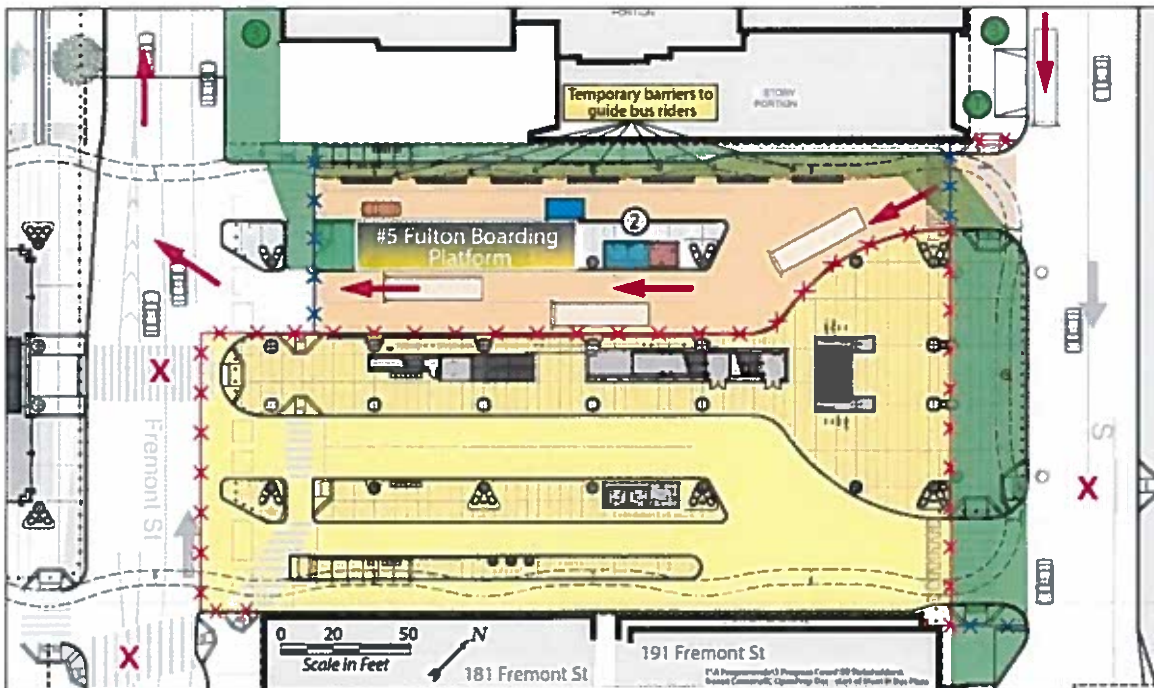
Interim Improvements Location

Right of Entry Agreement

Exhibit A-2

Interim Improvements and Services

Interim Improvement and Service Key		
1.	XXX	TJPA fence during construction
	[Yellow Box]	Area under construction, WEBCOR access only
2.	XXX	TJPA gate open during #5 Fulton operating hours
3.		Temporary lighting to illuminate drive aisle, boarding platform, and pedestrian path of travel
4.	[Green Box]	Pedestrian access – sidewalks, crosswalks, curb ramps via Fremont St. only
	[Green Box]	Sidewalk on west side of Beale Street limited to 301 Mission building access
5.		Private unarmed security guard will be posted during #5 Fulton operating hours; security staff will also provide fire watch.
6.		Traffic control officers will be stationed at Fremont St. to facilitate bus exit as deemed necessary.
7.		SFMTA/Service vehicle access
	[Red Arrow]	Paved drive aisle from Beale through Bus Plaza to Fremont for #5 Fulton buses
8.	[Blue Hatched Box]	Temporary flush bathroom with sink
	2	Restrooms and office (under construction)
9.	[Yellow Box]	#5 Fulton Passenger loading zone, seating, temporary signs
10.	[Bus Icon]	Muni Supervisor Vehicle
11.	X	Crosswalk NOT used
12.	[Green Box]	Signage added to pipe barriers north of figure allowing Muni passenger passage.



Right of Entry Agreement

Exhibit B

Additional Insureds

Transbay Joint Powers Authority

Alameda-Contra Costa Transit District

Peninsula Corridor Joint Powers Board - Caltrain

State of California, Department of Transportation

Trustee, the Series 1 Holders, the LC Banks and the Direct Placement Banks, and their officers, agents and employees, as those terms are defined in the "Sublease – TJPA Property, dated as of January 1, 2017, by and between U.S. Bank National Association, in its capacity as Trustee, as Sublessor, and City and County of San Francisco, as Sublessee" recorded in the official records of the City and County of San Francisco on January 17, 2017 as document number 2017-K395369

United States Department of Transportation, an agency of the United States of America, acting by and through the Executive Director of the Build America Bureau

Salesforce.com and all legal entities controlling, controlled by, or under common control with, directly or indirectly, salesforce.com

All of the officers, directors, agents, representatives, permitted assigns, and employees of each of the above.

The Additional Insureds listed in this Exhibit shall also include such other parties as the TJPA may request from time to time.



Edwin M. Lee, Mayor
Naomi Kelly, City Administrator

**CITY AND COUNTY OF SAN FRANCISCO
OFFICE OF THE
CITY ADMINISTRATOR
RISK MANAGEMENT DIVISION**



November 30, 2017

Martha Velez
Facility Manager
Transbay Joint Powers Authority
201 Mission Street, Suite 2100
San Francisco, CA 94105

RE: RIGHT OF ENTRY AGREEMENT FOR BUS PLAZA

This letter certifies that the City and County of San Francisco is self-insured and self-funded for the following insurance coverages, which cover the City and County of San Francisco, its officers and employees.

General Liability insurance in the amount of \$10,000,000 per occurrence for bodily injury, property damage, personal injury, advertising injury, and contractual liability.

Automobile Liability insurance with limits not less than \$25,000,000 per accident for bodily injury and property damage including owned, and non-owned and hired auto coverage as applicable.

Workers' Compensation in statutory amounts with Employer's Liability of \$1,000,000 per accident, injury or illness.

The City and County of San Francisco's self-insurance program is not commercial insurance and has no legal capacity to name another entity as additional insured.

Do not hesitate to contact this office should you have any questions.

Sincerely,

Matt Hansen
Director

cc: Jason A. Gallegos
Manager of Strategic Real Estate
SFMTA