

**STAFF REPORT FOR CALENDAR ITEM NO.: 8.4
FOR THE MEETING OF: December 14, 2023**

TRANSBAY JOINT POWERS AUTHORITY

BRIEF DESCRIPTION:

Authorize the Executive Director to execute a Fifth Amendment to the lease agreement with Transbay Fitness, Inc. a California corporation, dba Fitness SF Transbay, for commercial/retail space on the second floor of the transit center (Suites 208 and 212).

EXPLANATION:

Original Lease

On July 12, 2018, the TJPA Board of Directors authorized the Executive Director to complete negotiations and execute a lease agreement with Transbay Fitness, Inc. (“Tenant”) for about 34,508 square feet of commercial/retail space on the second level of the new transit center (suites 208 and 212) for a 15-year term with three five-year options to renew. The lease was fully executed on September 11, 2018 (“Lease”). The initial year stated base rent of the Lease was \$1,449,336, expressed as a gross lease with a percentage rent above the breakpoint of 6% owed beyond base rent. Base rent was scheduled to increase pursuant to the schedule contained in the Lease. The TJPA’s tenant improvement allowance was \$3,450,800 (\$100 per square foot). Tenant invested a total of \$6,476,240 in improvements to the Lease premises prior to opening. The business terms under the Lease were within or more favorable than the proforma for the premises.

Tenant Prior Requests for Relief

As a result of COVID-19, Tenant requested relief from its obligations under the Lease. Consistent with the Board’s Retail/Commercial Leasing Strategy to Address COVID-19 Impacts, TJPA staff, with the assistance of Lincoln Property Company (LPC), Colliers, and retail legal counsel, engaged due diligence review and negotiations with the Tenant. Due diligence included, among other things, confirmation of Tenant’s assertion that Tenant did not receive assistance through the Small Business Administration but did receive a Payroll Protection Program (“PPP”) loan of \$484,000. The PPP loan was for all of Tenant’s locations, thus the amount of the loan that could be legally applied toward rent for the Lease premises was only \$15,125. TJPA staff has spoken with the landlord of Tenant at other similarly affected locations to confirm the rent relief package developed here is consistent with other offerings.

On December 10, 2020, the TJPA Board authorized a First Amendment to the Lease. The key terms and conditions of the First Amendment were:

- Suspension of rent for April through September 2020;
- Tenant’s rental obligation was a common area base fee of \$5,000/month from the period October 1, 2020 through December 31, 2020;

- Tenant's rental obligation was a common area base fee of \$10,000/month from the period January 1, 2021 until June 30, 2021, plus percentage rent equal to 10% of gross revenues, unless explicitly extended by the Board, and if so, to no later than December 31, 2021;
- The 6 months of suspended rent period was deferred through an extension of the initial term by 6 months.

On May 13, 2021, the TJPA Board approved an extension of the above-described relief program through December 31, 2021.

On January 13, 2022, the TJPA Board authorized a Second Amendment to the Lease. The key terms and conditions of the Second Amendment were:

- Tenant's rental obligation was a base fee of \$20,000/month from the period January 1, 2022 through the earlier of the rent reversion month or June 30, 2022, plus percentage rent equal to 10% of gross revenues.
- The initial term of the Lease was extended to March 31, 2036, allowing TJPA to financially re-capture the relief granted.

On June 9, 2022, the TJPA Board authorized a Third Amendment to the Lease. The key terms and conditions of the Third Amendment were:

- Extended Tenant's rental obligation base fee of \$20,000/month from the period July 1, 2022 through the earlier of the rent reversion month or December 31, 2022, plus percentage rent equal to 10% of gross revenues.
- The initial term of the Lease was extended to December 31, 2036, allowing TJPA to financially re-capture the relief granted.

On December 8, 2022, the TJPA Board authorized a Fourth amendment to the Lease. The key terms and conditions of the Fourth Amendment are:

- The alternative rent increased compared to the prior alternative rent by 7.5% from \$20,000 to \$21,500 from January 1, 2023 to June 30, 2023 with the ability for the TJPA to extend the term to December 31, 2023.
- The initial term of the Lease is extended to March 31, 2037. This allows the TJPA to financially re-capture the relief granted.

The Fourth Amendment contemplated that the alternative rent could be extended an additional six months, from July 1, 2023 through December 31, 2023, with timely request from Tenant and subject to the TJPA Board of Directors approval in its discretion. On August 10, 2023, the TJPA Board authorized an extension of six months, through December 31, 2023, as contemplated under the Fourth Amendment.

Tenant Current Request for Continued Relief

Tenant recently approached TJPA staff and TJPA's asset management team, LPC, seeking economic relief.

Staff have been monitoring tenant's revenues, transit ridership and commercial business activity in the Transbay neighborhood and throughout the City. While indicators generally are improving, they have not yet rebounded to pre-COVID levels. Staff and LPC believe that the proposed Fifth Amendment to the Lease is consistent with the commercial leasing market.

As a result of that due diligence review and negotiations, a proposed Fifth Amendment to the Lease has been developed and executed by the Tenant, enclosed herewith. Under the negotiated Fifth Amendment to Lease:

- The Alternative Rent increases from \$21,500 per month to \$23,000 per month from January 1, 2024 to June 30, 2024. Alternative Rent could be extended beyond June 30, 2024, with timely request from tenant and subject to TJPA Board of Directors approval in its discretion; and
- The Percentage Rent component of the Alternative Rent shall remain unchanged at 10% of gross revenues.

The fiscal impact of approving this Fifth Amendment for the period January 1 to June 30, 2024 is estimated at \$342,176, when comparing the projected Fifth Amendment revenue versus the original lease revenue during the six-month timeframe. The FY23-24 Budget assumes the continuation of rent relief, but current projections indicate that total retail lease income is approximately 10% less than the FY23-24 Budget. TJPA staff will continue to evaluate alternatives to minimize the impacts of implementing these measures to increase revenues and decrease expenses. The form of relief proposed under this extension is similar to the relief the TJPA has granted other tenants materially affected by COVID-19 and reflect current market conditions for downtown San Francisco recovery.

RECOMMENDATION:

Authorize the Executive Director to execute the Fifth Amendment to the Lease with Transbay Fitness Inc. adjusting the terms and conditions of the Lease.

ENCLOSURES:

1. Resolution
2. Fifth Amendment to Lease

**TRANSBAY JOINT POWERS AUTHORITY
BOARD OF DIRECTORS**

Resolution No. _____

WHEREAS, On July 12, 2018, the Transbay Joint Powers Authority (TJPA) Board of Directors authorized the TJPA’s Executive Director to finalize negotiations and execute a lease agreement with Transbay Fitness, Inc. (“Tenant”) for about 34,508 square feet of commercial/retail space on the second level of the new transit center (Suites 208 and 212) for a 15-year term with three five-year options to renew (“Lease”); and

WHEREAS, Tenant occupied the Lease premises and opened for business on December 27, 2019; and

WHEREAS, On March 4, 2020, Governor Newsom proclaimed a state of emergency in California in connection with the Coronavirus Disease 2019 (“COVID-19”) pandemic. On February 25, 2020, the Mayor of the City and County of San Francisco declared a local emergency, and on March 6, 2020, the City’s Health Officer declared a local health emergency. On March 16, 2020, the City issued a Shelter-in-Place Order to facilitate the reduction of the impact of the virus that causes COVID-19, and that order generally required everyone to stay safe at home except for certain essential activities and work to provide essential businesses and government service or perform essential public infrastructure construction. Since these original proclamations, orders, and declarations were issued, there have been subsequent updates, supplements, and refinements, guiding the City to recovery (collectively, “Health Orders”); and

WHEREAS, As a result of COVID-19 and the Health Orders, Tenant requested relief from its obligations under the Lease; and

WHEREAS, On December 10, 2020, the TJPA Board authorized a First Amendment to the Lease, providing certain economic relief to Tenant; and

WHEREAS, On May 13, 2021, the TJPA Board approved an extension of the First Amendment, extending certain economic relief to Tenant to December 31, 2021; and

WHEREAS, On January 13, 2022, the TJPA Board authorized a Second Amendment to the Lease, extending certain economic relief to Tenant to June 30, 2022; and

WHEREAS, On June 9, 2022, the TJPA Board authorized a Third Amendment to the Lease, extending certain economic relief to Tenant to December 31, 2022; and

WHEREAS, On December 8, 2022, the TJPA Board authorized a Fourth Amendment to the Lease, extending certain economic relief to Tenant to June 30, 2023; and

WHEREAS, On August 10, 2023, the TJPA Board approved an extension of the Fourth Amendment, extending certain economic relief to Tenant to December 31, 2023; and

WHEREAS, Tenant and the TJPA have negotiated a Fifth Amendment to the Lease that provides economic relief to Tenant in the form of an extended period of the alternative rent schedule; and

WHEREAS, While the COVID-19 emergency and associated Health Orders have been lifted, as a result of COVID-19, including associated delayed re-occupancy of downtown office buildings and temporary but substantive reduction in transit passenger use of the transit center, Tenant requested additional relief under the Lease; and

WHEREAS, Every effort has been made to mitigate the fiscal impact of any rent relief afforded to affected tenancies through operating expense reductions and securing of unanticipated revenues; and

WHEREAS, The fiscal impact of executing the Fifth Amendment to the lease in the overall adopted budget for Fiscal Year 2023-2024 is minimal; now, therefore, be it

RESOLVED, That the TJPA Board of Directors finds the terms and conditions of the Fifth Amendment to the Lease in the best interest of the public; and, be it

FURTHER RESOLVED, That the TJPA Board of Directors authorizes the Executive Director to execute the Fifth Amendment to Lease with Transbay Fitness, Inc. for Suites 208 and 212 in the form presented herewith.

I hereby certify that the foregoing resolution was adopted by the Transbay Joint Powers Authority Board of Directors at its meeting of December 14, 2023.

Secretary, Transbay Joint Powers Authority

FIFTH AMENDMENT TO LEASE

This FIFTH AMENDMENT TO LEASE (this “**Amendment**”) is made and entered into as of the ___ day of _____, 2023, by and among TRANSBAY JOINT POWERS AUTHORITY, a joint exercise of powers agency duly created and existing under the Joint Exercise of Powers Act of the State of California, California Government Code Sections 6500 et seq. (“**Landlord**”), and TRANSBAY FITNESS, INC., a California corporation, dba FITNESS SF Transbay (“**Tenant**”), with reference to the following facts and understandings:

RECITALS

A. Landlord and Tenant are parties to that certain “Salesforce Transit Center Lease” dated as of September 11, 2018, as amended by (i) that certain First Amendment to Lease (the “**First Amendment**”) dated December 10, 2020, (ii) that certain Second Amendment to Lease (the “**Second Amendment**”) dated January 13, 2022, (iii) that certain Third Amendment to Lease (the “**Third Amendment**”) dated ~~May~~ June 9, 2022, (iv) that certain Fourth Amendment to Lease (the “**Fourth Amendment**”) dated December 8, 2022, and (v) that certain letter agreement (the “**Letter Agreement**” and, together with the First Amendment, the Second Amendment, the Third Amendment and the Fourth Amendment, the “**Prior Amendments**”) dated August 21, 2023 (together with all exhibits and addenda attached thereto and as so amended by the Prior Amendments, the “**Existing Lease**”), whereby Tenant leases from Landlord approximately 34,508 usable square feet of retail space (the “**Premises**”) known as Space Numbers 208 and 212, located in the retail usage area on the second (2nd) floor of the Salesforce Transit Center in San Francisco, California (the “**Center**”). Capitalized terms used but not specifically defined herein shall be deemed to have the meanings ascribed to such terms in the Existing Lease.

B. Pursuant to the Prior Amendments, Landlord agreed to make certain adjustments to the Rent payable by Tenant under the Lease all as provided in more particularity therein. The last of the foregoing adjustments is currently scheduled to end no later than December 31, 2023.

C. Landlord has agreed to make certain additional adjustments to the Rent payable by Tenant under the Lease, and to otherwise amend the Lease, all on and subject to the terms and conditions set forth in this Amendment.

D. The parties acknowledge that the provisions of this Amendment concerning payment of Alternative Rent (as hereinafter defined) have been entered into at the request of Tenant as a result of the continuation of the unprecedented circumstances surrounding the COVID-19 pandemic and that, in entering into this Amendment, Landlord is suffering an acknowledged financial loss on account of the adjustments to the Rent otherwise payable to Landlord under the Lease provided for hereunder.

NOW THEREFORE, in consideration of the mutual promises and covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

AGREEMENT

1. References. All references to the “Lease” or “lease” appearing in this Amendment or in the Existing Lease shall mean, collectively, this Amendment and the Existing Lease, as amended by this Amendment.

2. Alternative Rent Period.

(a) Payment of Alternative Rent in lieu of Base Rent.

(i) Alternative Rent Period. Notwithstanding anything to the contrary contained in the Existing Lease but subject to Section 5 below, during the period (the “**Alternative Rent Period**”) commencing on January 1, 2024 and ending on the earlier of (A) the last day of the month immediately preceding the Rent Reversion Month (as defined in Section 2(b) below) and (B) June 30, 2024 (the “**Alternative Rent Period Outside Expiration Date**”), Tenant shall pay Alternative Rent (as defined in Section 2(b)(ii)(C) below) in lieu of paying the Base Rent specified in the Basic Lease Information for such Alternative Rent Period. If the Rent Reversion Month has not then occurred, Tenant may request an extension of the Alternative Rent Period Outside Expiration Date set forth in clause (B) above to December 31, 2024 by providing written notice of such request to Landlord on or before May 1, 2024; provided, however, that Tenant acknowledges and agrees that Landlord shall have no obligation to grant such request. If Landlord elects, in its sole and absolute discretion, to extend the Alternative Rent Period Outside Expiration Date following receipt of a request from Tenant to do so pursuant to the foregoing, then, (1) notwithstanding anything to the contrary contained herein, the Alternative Rent Period Outside Expiration Date set forth in clause (B) above shall be December 31, 2024 as opposed to June 30, 2024 and (2) as a condition to such extension, the “Expiration Date” of the Lease shall be extended by an additional six (6) months to September 30, 2038. Tenant acknowledges and agrees that, notwithstanding anything to the contrary contained herein, from and after the expiration of the Alternative Rent Period, Tenant shall be obligated to pay the Base Rent specified in the Basic Lease Information.

(ii) Alternative Rent.

(A) Expense Contribution. Notwithstanding anything to the contrary contained in the Existing Lease, during the Alternative Rent Period, Tenant shall pay to Landlord Tenant’s Monthly Expense Contribution (as hereinafter defined) as Tenant’s contribution towards costs relating to the operation, maintenance, repair and replacement of the Center. As used here, “**Tenant’s Monthly Expense Contribution**” shall mean an amount equal to Twenty-Three Thousand and No/100 Dollars (\$23,000.00) per month. Tenant’s Monthly Expense Contribution for each month during the Alternative Rent Period shall be paid to Landlord, without notice, demand, setoff, deduction, or counterclaim, on or before the first (1st) day of the applicable month and otherwise in accordance with Section 2(a) of the Existing Lease.

(B) Percentage Rent. Notwithstanding anything to the contrary contained in the Existing Lease, including but not limited to Section 2(c) of the Existing Lease, in addition to the payment of Tenant’s Monthly Expense Contribution and in lieu of the Percentage Rent payments otherwise provided for in Section 2(c) of the Existing Lease,

commencing with the month of January of 2024 and for each month thereafter during the Alternative Rent Period, Tenant shall pay to Landlord “**Alternative Percentage Rent**” in the manner provided under this Section 2(a)(ii)(B). Alternative Percentage Rent for each month during the Alternative Rent Period that the same is payable hereunder shall be calculated by multiplying Tenant’s Gross Sales for such month by ten percent (10%) and shall be due and paid to Landlord, without notice, demand, setoff, deduction, or counterclaim, within ten (10) days after the end of each month for which the same is due. For avoidance of doubt, the Alternative Percentage Rent payable by Tenant under this Section 2(a)(ii)(B) shall be calculated without regard to any breakpoint (including, but not limited to, the Breakpoint set forth in Section 2(c) of the Existing Lease). All references to “Percentage Rent” in Sections 2(a), 2(c)(vi), 2(d), 19(a)(i), 24(a) and 26(k) shall be deemed to include, without limitation, Alternative Percentage Rent. Tenant acknowledges and agrees that it will provide the quarterly and annual statements required under Section 2(c)(v) of the Existing Lease during the Alternative Rent Period.

(C) Alternative Rent. As used herein, “**Alternative Rent**” shall mean Tenant’s Monthly Expense Contribution and, if applicable, Alternative Percentage Rent.

(b) Reversion to Base Rent. Notwithstanding anything to the contrary contained in Section 2(a) above, if an amount equal to ten percent (10%) of Tenant’s Gross Sales for any month commencing with January of 2024 through and including the month in which the Alternative Rent Period Outside Expiration Date occurs equals or exceeds the amount of Base Rent specified in the Basic Lease Information that would otherwise be payable by Tenant for such month, then commencing with such month (such month being herein referred to as the “**Rent Reversion Month**”), Tenant shall resume paying the Base Rent specified in the Basic Lease Information (and, to the extent applicable, Percentage Rent as provided in Section 2(c) of the Existing Lease) and Tenant shall not be obligated to pay Tenant’s Monthly Expense Contribution or Alternative Percentage Rent for the Rent Reversion Month or for any month thereafter. If Tenant has already paid Tenant’s Monthly Expense Contribution for the Rent Reversion Month, Tenant shall pay the difference between the Base Rent specified in the Basic Lease Information for the Rent Reversion Month and Tenant’s Monthly Expense Contribution within ten (10) days following the last day of the Rent Reversion Month. For avoidance of doubt, Tenant acknowledges and agrees that commencing on the first day immediately following the Alternative Rent Period Outside Expiration Date, Tenant shall be obligated to return to paying the Base Rent specified in the Basic Lease Information (and, to the extent applicable, Percentage Rent as provided in Section 2(c) of the Existing Lease) regardless of whether ten percent (10%) of Tenant’s Gross Sales for a particular month equals or exceeds the Base Rent due for such month and that Tenant shall no longer be obligated to pay Tenant’s Monthly Expense Contribution or Alternative Percentage Rent from and after such date.

3. Expiration Date. All references to the “Expiration Date” in the Existing Lease are hereby amended to be March 31, 2038.

4. Schedule of Base Rent. The schedule of Base Rent set forth in the Basic Lease Information is hereby amended and restated as follows:

<u>Months</u>	<u>Annual Rate per Useable Square Foot</u>	<u>Monthly Installment of Base Rent</u>	<u>Annual Base Rent</u>
January 2020 – March 2020	\$42.00	\$120,778.00	\$1,449,336.00
April 2020 – September 2020	Waived by Landlord pursuant to Section 2(a) of the First Amendment.		
October 2020 – December 2021*	\$42.00*	\$120,778.00*	\$1,449,336.00*
January 2022 – September 2023**	\$42.00**	\$120,778.00**	\$1,449,336.00**
October 2023 – September 2025***	\$44.00***	\$126,529.34***	\$1,518,352.00***
October 2025 – September 2030	\$49.28	\$141,712.86	\$1,700,554.24
October 2030 – September 2035	\$55.19	\$158,708.05	\$1,904,496.52
October 2035 – March 2038	\$61.82	\$177,773.72	\$2,133,284.56

* Subject to payment of “Alternative Rent” (as defined in the First Amendment) in lieu of Base Rent to the extent provided in Sections 2(b) and 2(c) of the First Amendment.

** Subject to (i) payment of “Alternative Rent” (as defined in the Second Amendment) in lieu of Base Rent to the extent provided in Sections 2(a) and 2(b) of the Second Amendment (as Section 2(a)(i) thereof was amended and restated pursuant to the Third Amendment) and (ii) payment of “Alternative Rent” (as defined in the Fourth Amendment) in lieu of Base Rent to the extent provided in Sections 2(a) and 2(b) of the Fourth Amendment and as provided in the Letter Agreement.

*** Subject to (i) payment of “Alternative Rent” (as defined in the Fourth Amendment) in lieu of Base Rent to the extent provided in Sections 2(a) and 2(b) of the Fourth Amendment and as provided in the Letter Agreement and (ii) payment of Alternative Rent in lieu of Base Rent to the extent provided in Sections 2(a) and 2(b) above.

5. Preservation of Claims and Defenses. Landlord and Tenant acknowledge and agree that if the payments set forth in Section 2 of the Second Amendment, as amended by Section 2 above, are not made by Tenant, this Amendment shall become null and void and Landlord and Tenant may assert any and all claims and/or defenses, as if this Amendment had never been executed.

6. Miscellaneous.

(a) Severability. If any provision of this Amendment or the application of any provision of this Amendment to any person or circumstance is, to any extent, held to be invalid or unenforceable, the remainder of this Amendment or the application of that provision to persons or circumstances other than those as to which it is held invalid or unenforceable, will not be affected, and each provision of this Amendment will be valid and be enforced to the fullest extent permitted by law.

(b) Entire Agreement/Modification. This Amendment contains all of the agreements of the parties hereto with respect to the matters contained herein, and no prior agreement, arrangement or understanding pertaining to any such matters shall be effective for any purpose. Except for any subsequent amendments or modifications to the Lease made in accordance with the terms thereof, any agreement made after the date of this Amendment is ineffective to modify or amend the terms of this Amendment, in whole or in part, unless that agreement is in writing, is signed by the parties to this Amendment, and specifically states that that agreement modifies this Amendment.

(c) Counterparts. This Amendment may be executed in any number of counterparts and each counterpart shall be deemed to be an original document. All executed counterparts together shall constitute one and the same document, and any counterpart signature pages may be detached and assembled to form a single original document.

(d) Heirs and Successors. This Amendment shall be binding upon the heirs, legal representatives, successors and permitted assigns of the parties hereto.

(e) Authority. Each individual executing this Amendment on behalf of his or her respective party represents and warrants that he or she is duly authorized to execute and deliver this Amendment on behalf of said entity in accordance with the governing documents of such entity, and that upon full execution and delivery this Amendment is binding upon said entity in accordance with its terms.

(f) Drafting. In the event of a dispute between any of the parties hereto over the meaning of this Amendment, both parties shall be deemed to have been the drafter hereof, and any applicable law that states that contracts are construed against the drafter shall not apply.

(g) Headings. Captions used herein are for convenience and reference only, and shall in no way be deemed to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Amendment.

(h) Ratification. Except as modified by this Amendment, the Existing Lease shall continue in full force and effect and Landlord and Tenant do hereby ratify and confirm all of the terms and provisions of the Existing Lease, subject to the modifications contained herein.

(Signature Page to Follow)

IN WITNESS WHEREOF, the parties have caused this Amendment to be executed as of the dates below their respective signatures.

LANDLORD:
TRANSBAY JOINT POWERS AUTHORITY

By: _____
Name: _____
Its: _____

Date: _____, 2023

TENANT:
TRANSBAY FITNESS, INC.,
a California corporation

By: _____
Name: Esolt Jacksonics _____
Its: _____
DocuSigned by:
6937C0D06F3240F...

By: _____
Name: [Signature] _____
Its: _____
DocuSigned by:
678DF50158D64A0...

Date: _____, 2023

APPROVED AS TO FORM
By: Katharine Allen _____
Legal Counsel, TJPA
DocuSigned by:
9D9CD616C4C6440...

Transbay Joint Powers Authority Board of
Directors

Resolution No.: _____

Adopted: _____

Attest: _____
Secretary, TJPA Board