

**STAFF REPORT FOR CALENDAR ITEM NO.: 8.3
FOR THE MEETING OF: May 9, 2024**

TRANSBAY JOINT POWERS AUTHORITY

BRIEF DESCRIPTION:

Authorize the Executive Director to execute a fourth amendment to the lease agreement with Onsite Dental, LLC for commercial/retail space on the second floor of the transit center (Suites 216, 218, and 220).

EXPLANATION:

Original Lease

On July 12, 2018 the TJPA Board authorized the Executive Director to complete negotiations and execute a lease agreement with Onsite Dental, LLC (“Tenant”) for about 3,475 square feet of commercial/retail space on the second level of the new transit center (Suites 216/218/220) for a 10-year term with one five-year option to renew at full market value. On February 27, 2019, TJPA and Tenant entered a First Amendment to the lease, to document certain terms and understandings between TJPA and Tenant with respect to the completion of construction drawings by Tenant. The stated base rent over the initial term of the lease is \$2,987,774, expressed as a gross lease with no percentage rent owed beyond base rent (average \$86 psf per year). The TJPA’s tenant improvement allowance was \$139,000 (\$40 per square foot), and the Tenant’s total capital investment in the space was \$1,623,325. The business terms under the lease were within or more favorable than the proforma for the premises at the time of Board approval.

Tenant Prior Request for Relief

Tenant opened for business on November 18, 2019, immediately following completion of tenant improvements. Just four months later, the City and County of San Francisco issued a Shelter-in-Place (“SIP”) Order to facilitate the reduction of the impact of the virus that causes coronavirus disease (“COVID-19”). Tenant closed operations at the transit center pursuant to the SIP Order of March 16, 2020.

Tenant was able to resume operations under applicable health orders that outlined restricted operating conditions on June 22, 2020. Nonetheless, there was very little time to build its business before the SIP Order. Tenant relies on a business model that benefits from proximity to office workers, usually their locations are imbedded within an office building, and identified through the anchor tenant, making dental visits convenient to the worker. Their model of downtown locations primarily draws from those office employees, not from residential occupants, thus the continued closure of adjacent non-essential offices in downtown has directly affected revenues.

This circumstance negatively affected Tenant's revenues after re-opening. As a result, Tenant requested certain relief from its obligations under the lease.

On December 10, 2020, the TJPA Board of Directors authorized a Second Amendment to the lease. Under the Second Amendment, Tenant's rental obligation was a common area base fee of \$2,000/month plus percentage rent equal to 8% of gross revenues for the period from August 1, 2020 until June 30, 2021. Tenant resumed paying base rent in July of 2021.

On August 10, 2023, the TJPA Board of Directors authorized a Third Amendment to the lease. Under the Third Amendment, Tenant's rental obligation was a common area base fee of \$2,500/month plus percentage rent equal to 6% of gross revenues for the period from April 1, 2023 until March 31, 2024.

Tenant Current Request for Relief

As of the date of this report, San Francisco has made significant progress toward re-opening the economy after the conclusion of the COVID-19 public health emergency, but economic ramifications in downtown San Francisco remain a concern, mainly resulting from a delayed return for office workers and thus of transit riders. The economy is slowly re-opening in San Francisco, however office occupancies remain very low, and transit ridership through the Salesforce Transit Center is roughly half of what it was pre-pandemic.

Tenant recently approached TJPA staff and TJPA's asset management team at Lincoln Property seeking a renewed economic relief from April 1, 2024 through March 31, 2025 due to lower than expected volume of patients, and correlating lower than projected revenue.

The TJPA team again engaged due diligence review and negotiations with Tenant. Due diligence included, among other things, a review of Tenant's membership, and consultations with our brokerage firm as well as other brokers as to status of market conditions. Gross revenue reports provided to TJPA by Tenant clearly show payment of full contract rent at this time as economically infeasible. As a result of that due diligence review and negotiations, a proposed Fourth Amendment to the lease has been developed and executed by Tenant, enclosed herewith.

- Tenant's rental obligation shall be a common area base fee of \$2,500/month plus percentage rent equal to 6.5% of gross revenues for the period from April 1, 2024 until March 31, 2025 or such time as the contract rent amount is matched if earlier.

The fiscal impact of approving the terms and conditions of the Fourth Amendment is estimated at \$122,304. Of the \$122,304, \$29,841 will apply in FY23-24, with no impacts to the FY23-24 Budget since staff factored this potential relief into the approved budget. The remaining \$92,463 will apply in FY24-25; the preliminary FY24-25 Retail Rent Revenue projection portion of the preliminary FY24-25 Budget includes this potential relief, and this Fourth Amendment would slightly increase the revenue presented in the preliminary budget. Staff will continue to evaluate alternatives to minimize the impacts of implementing these measures to increase revenues and decrease expenses. Additionally, the initial term of the lease has been extended to reflect the rent relief period, moving the initial termination date to allow the TJPA to financially re-capture

the relief granted. The form of relief proposed under the Fourth Amendment is similar to the relief the TJPA has granted other tenants materially affected by market conditions arising after COVID-19 and reflect current market conditions for downtown San Francisco recovery.

RECOMMENDATION:

Authorize the Executive Director to execute the Fourth Amendment to the lease with Onsite Dental, LLC as presented herein, adjusting terms and conditions of the lease.

ENCLOSURE:

1. Resolution
2. Fourth 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 complete negotiations and execute a lease agreement with Onsite Dental, LLC ("Tenant") for about 3,475 square feet of commercial/retail space on the second level of the new transit center (Suites 216/218/220) for a 10 year term with one five-year option to renew at full market value ("Lease"). On February 27, 2019, TJPA and Tenant entered a First Amendment to the Lease; and

WHEREAS, Tenant occupied the leased premises and opened for business on November 18, 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 and County of San Francisco issued a Shelter-in-Place ("SIP") Order to facilitate the reduction of the impact of the virus that causes coronavirus disease 2019 ("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. On December 10, 2020, the TJPA Board approved a Second Amendment to the Lease that provided certain economic relief to Tenant; and

WHEREAS, On August 10, 2023, the TJPA Board approved a Third Amendment to the Lease that provided certain economic relief to Tenant; 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 has requested additional relief from its obligations under the Lease, after which negotiations with Tenant ensued; and

WHEREAS, Tenant and the TJPA have negotiated a Fourth Amendment to the Lease that provides certain short term economic relief to Tenant, consistent with the relief offered to other similarly situated tenants; 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 Fourth Amendment to the Lease is accounted for in the overall adopted budget for Fiscal Year 2023-2024 and the financial impact has been incorporated into the proposed budget for Fiscal Year 2024-2025; now, therefore, be it

RESOLVED, That the TJPA Board of Directors finds the terms and conditions of the Fourth 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 Fourth Amendment to the Lease with Onsite Dental, LLC for Suites 216, 218, and 220 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 May 9, 2024.

Secretary, Transbay Joint Powers Authority

FOURTH AMENDMENT TO LEASE

This FOURTH AMENDMENT TO LEASE (this “**Amendment**”) is made and entered into as of the ___ day of _____, 2024, 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 ONSITE DENTAL, LLC, a Delaware limited liability company, dba Onsite Dental (“**Tenant**”), with reference to the following facts and understandings:

RECITALS

A. Landlord and Tenant entered into that certain “Salesforce Transit Center Lease” dated as of July 12, 2018 (together with all exhibits and addenda attached thereto, the “**Original Lease**”), as amended by that certain First Amendment to Lease dated February 27, 2019, that certain Second Amendment to Lease dated December 10, 2020 and that certain Third Amendment to Lease dated August 10, 2023 (the Original Lease as so amended, the “**Existing Lease**”), whereby Tenant leased from Landlord approximately 3,475 usable square feet of retail space (the “**Premises**”) known as Space Numbers 216, 218 and 220, located in the retail usage area on the second 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. The continuation of the unprecedented circumstances surrounding the COVID-19 pandemic has impacted Tenant’s ability to operate its business at the Premises and accordingly, Tenant has requested additional rent abatement.

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

D. The parties acknowledge that this Amendment has been entered into at the request of Tenant as a result 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 adjustment to the Base 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, during the period (the “**Alternative Rent Period**”) commencing on April 1, 2024 and ending on the earlier of (A) the last day of the month immediately preceding the Threshold Rent Reversion Month (as defined in Section 2(c) below), and (B) March 31, 2025 (as applicable, the “**Alternative Rent Period Outside Expiration Date**”), Tenant shall pay Alternative Rent (as defined in Section 2(a)(ii)(C) below) in lieu of paying the Base Rent specified in the Basic Lease Information for such Alternative Rent Period. Tenant acknowledges and agrees that, notwithstanding anything to the contrary contained herein, from and after the expiration of the Alternate 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, including but not limited to Section 2(b)(iii) thereof, during the Alternative Rent Period, Tenant shall pay to Landlord an amount equal Two Thousand Five Hundred and No/100 Dollars (\$2,500.00) per month (“**Tenant’s Monthly Expense Contribution**”) as Tenant’s contribution towards costs relating to the operation, maintenance, repair and replacement of the Center. 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, in addition to the payment of Tenant’s Monthly Expense Contribution, Tenant shall pay to Landlord “**Percentage Rent**” during the Alternative Rent Period at the times and in the manner provided under this Section 2(a)(ii)(B). Percentage Rent for each month during the Alternative Rent Period shall be calculated by multiplying Tenant’s Gross Revenues (as hereinafter defined) for such month by six and one-half percent (6.5%) 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. As used herein, the term “**Gross Revenues**” shall mean the sum of the entire amount of the actual gross receipts, whether for cash or otherwise, from all sales of merchandise sold and services provided at the Premises, the entire amount of the rental or other charges for all items leased or rented at the Premises, and all other receipts whatsoever of all business conducted on or from the Premises by Tenant, its sublessees, concessionaires or licensees or any party claiming by or through any of them. Gross Revenues includes, without limitation, (A) mail, catalog, telephone, internet or other remote orders made, received or filled at or from the Premises, or credited or attributable to the Premises, (B) all deposits not refunded to purchasers, (C) orders taken in, on or from the Premises although said orders may be filled elsewhere, (D) advance sales and sales of gift certificates, vouchers and the like at the Premises, (E) sales for credit, (F) merchandise or services exchanged for other merchandise or services (unless previously included in Gross Revenues), and (G) sales by any sublessee, concessionaire or licensee or any other person or entity in, on or from the Premises. Each lease or rental of merchandise shall be treated as a sale in the month during which such lease or rental is made, for a price equal to the total rental

payable. The only exclusions from Gross Revenues are (1) sums collected and paid out by Tenant for sales or excise tax imposed by any duly constituted United States, California or local government authority where such taxes are both added to the selling price (or absorbed therein) and paid to the taxing authorities by Tenant (but not by any vendor of Tenant), (2) sums collected by Tenant and paid out by Tenant for postage, delivery and handling of merchandise, (3) the exchange or transfer of merchandise between stores of Tenant or its affiliates, if any, where such exchange or transfer of goods or merchandise is not made for the purpose of depriving Landlord of the benefit of a sale that otherwise would be made in, on or from the Premises, (4) the amount of returns to shippers or manufacturers or other sources, (5) proceeds from the sale of used trade fixtures, equipment or property which are not stock in trade, (6) the amount of any cash or credit refund or adjustment made upon any sale in, on or from the Premises where the merchandise sold, or some part thereof, is thereafter returned by the purchaser and accepted by Tenant or otherwise voided sales, (7) proceeds from sales to employees of Tenant at discounts of twenty percent (20%) or more of retail price, not to exceed two percent (2%) of Gross Revenues, and (8) alteration charges.

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

(b) Reversion to Base Rent. Notwithstanding anything to the contrary contained in Section 2(a) above, if the Alternative Rent provided for under this Amendment for any month from and after the month of April 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 “**Threshold Rent Reversion Month**”), Tenant shall resume paying the Base Rent specified in the Basic Lease Information and Tenant shall not be obligated to pay Tenant’s Monthly Expense Contribution or Alternative Percentage Rent for the Threshold Rent Reversion Month or for any month thereafter. If Tenant has already paid Tenant’s Monthly Expense Contribution for the Threshold Rent Reversion Month, Tenant shall pay the difference between the Base Rent specified in the Basic Lease Information for the Threshold Rent Reversion Month and Tenant’s Monthly Expense Contribution within ten (10) days following the last day of the Threshold 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 regardless of whether the sum of Two Thousand Five Hundred and No/100 Dollars (\$2,500.00) plus six and one-half percent (6.5%) of Tenant’s Gross Revenues for a particular month equals or exceeds the Base Rent due for such month specified in the Basic Lease Information 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. Financial Information.

(a) Monthly Financial Statements. In addition to and without limitation of the provisions of Article 25 of the Existing Lease, Tenant agrees to provide to Landlord, within thirty (30) days after the end of each calendar month during the Alternative Rent Period, internally prepared monthly financial statements for Tenant, for the immediately preceding

month, which financial statements shall be rendered in accordance with Tenant's generally accepted accounting practices, consistently applied and certified to be true, complete and correct by Tenant's chief financial officer or by a principal, general partner or managing member of Tenant. All such financial statements shall reflect all Gross Revenues and Expenses for the month to which the same pertain, on a line item basis, as well as all cash or cash equivalent reserves held by Tenant.

(b) Audit Rights. For a period of two (2) years after the last day of the Alternative Rent Period (or, in the event of a claim by Landlord, until such claim for payments hereunder have been fully ascertained, fixed, and paid), Tenant shall keep full and accurate books and records of all transactions from the Premises during the Alternative Rent Period in accordance with Tenant's generally accepted accounting practices in the United States consistently applied. Tenant shall require each subtenant, concessionaire, licensee, and assignee to maintain the same records. Landlord shall have the right, from time to time, to audit Tenant's records and books in order to verify Tenant's Gross Revenues and Expenses (an "Audit"). For a period of two (2) years after the last day of the Alternative Rent Period, Tenant shall make all such books and records available for the Audit at the Premises or at Tenant's offices in the State of California. If the Audit discloses an underpayment of Percentage Rent, Tenant shall immediately pay to Landlord the amount of the underpayment, with interest at the Interest Rate set forth in the Basic Lease Summary from the date the payment should have been made. If the Audit discloses an underreporting of Gross Revenues in excess of two percent (2%) of the reported Gross Revenues, and additional Percentage Rent is due, then Tenant shall also pay to Landlord the cost of the Audit and collection of the underpayment, including reasonable attorneys' fees. If the Audit discloses an overpayment of Percentage Rent, Tenant may offset the excess against its next payment(s) of Rent. The acceptance by Landlord of Percentage Rent payments shall be without prejudice to Landlord's right to verify the amount of annual Gross Revenues made at or from the Premises and to make appropriate adjustments in amounts due.

4. Expiration Date. All references to the "Expiration Date" in the Existing Lease are hereby amended to be the date that is one hundred forty-one and one-half (141.5) months following the month in which the Commencement Date occurs.

5. 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>
1-12	\$75.00	\$21,718.75	\$260,625.00
13-24	\$77.25	\$22,370.32	\$268,443.75
25-36	\$79.57	\$23,042.15	\$276,505.75

37-48	\$81.96	\$23,734.25	\$284,811.00
49-60	\$84.42	\$24,446.63	\$293,359.50
61-72	\$86.96	\$25,182.17	\$302,186.00
73-84	\$89.57	\$25,937.98	\$311,255.75
85-96	\$92.26	\$26,716.96	\$320,603.50
97-108	\$95.03	\$27,519.11	\$330,229.25
109-120	\$97.89	\$28,347.32	\$340,167.75
121-132	\$100.83	\$29,198.69	\$350,384.25
133-141.5	\$103.86	\$30,076.13	\$360,913.50

6. Preservation of Claims and Defenses. Landlord and Tenant acknowledge and agree that if an Event of Default in the payments to be made by Tenant under Section 2, above, shall occur (following any applicable notice and cure periods set forth in Section 19(a) of the Existing Lease), 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.

7. 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:

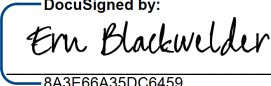
TRANSBAY JOINT POWERS
AUTHORITY

By: _____
Name: _____
Its: _____

Date: _____, 2024

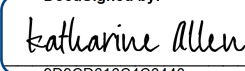
TENANT:

ONSITE DENTAL, LLC,
a Delaware limited liability company

By:  _____
Name: _____
Its: _____

Date: 4/9/2024 | 10:27 AM PDT
_____, 2024

APPROVED AS TO FORM.

By:  _____
Legal counsel, TJPA

Transbay Joint Powers Authority Board of Directors

Resolution No.: _____

Adopted: _____

Attest:

Secretary, TJPA Board