



TRANSBAY JOINT POWERS AUTHORITY

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Parcel F Auction Procedures

1. Written Bid Package

- 1.1. Written Bid Package Required. TJPA will require all pre-qualified Bidders to submit a Written Bid Package in advance of the Live Auction. TJPA will only accept Written Bid Packages from pre-qualified Bidders.
- 1.2. Written Bid Package Schedule. Written Bid Packages must be received by TJPA no later than Wednesday, August 26, 2015, 4:00 p.m. Pacific Time at TJPA's offices.
- 1.3. Contents of Written Bid Package. The Written Bid Package shall contain the following:
 - 1.3.1. Bidder Certification. The Written Bid Package shall contain a fully-executed certification ("Bidder Certification") signed by Bidder's authorized entity confirming certain matters.
 - 1.3.2. Good Faith Deposit. The Written Bid Package shall contain a Good Faith Deposit in the amount of \$10,000,000 (Ten Million Dollars) (legal tender of the United States), by either (a) certified check made payable to TJPA, or (b) irrevocable standby Letter of Credit with TJPA as the beneficiary.
 - 1.3.2.1. If Bidder elects to submit its Good Faith Deposit by certified check, Bidder shall have no right to receive any interest on the amount of the Good Faith Deposit except if Bidder is the Highest Bidder/Buyer in which case any interest on the Good Faith Deposit shall be governed by Purchase and Sale Agreement section 2.4(a).
 - 1.3.2.2. If Bidder elects to submit its Good Faith Deposit by a Letter of Credit, Bidder must fully-execute and submit TJPA's form of Letter of Credit Agreement and Letter of Credit.
 - 1.3.2.3. Bidders who fail to meet TJPA's requirements for the Good Faith Deposit will not be permitted to bid or participate in the Auction.
 - 1.3.3. Binding Offer to Purchase, and Purchase and Sale Agreement. The Written Bid Package shall contain a fully-executed and notarized (a) Binding Offer to Purchase and (b) Purchase and Sale Agreement (collectively, "Binding Written Offer") signed by Bidder's authorized entity, offering at least the Minimum Bid Price.

1.3.3.1. Minimum Bid Price. The Binding Written Offer must make an Initial Offered Purchase Price that meets or exceeds the Minimum Bid Price of \$160,000,000. No offer below the Minimum Bid Price will be recognized, and failure to meet or exceed the Minimum Bid Price in the Initial Offered Purchase Price will disqualify Bidders from participation in the Auction.

1.4. TJPA Form of Documents; No Modifications, Conditions, or Addenda. The TJPA will provide each pre-qualified Bidder the mandatory forms for the Written Bid Package. Bidders must fully-execute the Written Bid Package in the form provided by the TJPA without exceptions, omissions, modifications, conditions, or addenda. A Bidder's failure to use the mandatory forms or a Bidder's modification of such forms may result in rejection of the Written Bid Package, at TJPA's sole discretion, in which case Bidder would not be permitted to bid or participate in the Auction.

1.5. Submission of Written Bid Package. TJPA will accept Written Bid Packages delivered by hand, overnight delivery, or USPS, although the Package must be received by (not postmarked by) the specified deadline. Failure to timely submit a complete Package may result in rejection of the Package, at TJPA's sole discretion, in which case Bidder would not be permitted to bid or participate in the Auction.

1.6. Review of Written Bid Package. In advance of the Live Auction, TJPA will convene a review panel to confirm that the Written Bid Package contains all required materials, is in the proper form, and otherwise meets all minimum criteria. TJPA reserves the right to waive irregularities and omissions in the information contained in the Written Bid Package. TJPA also reserves the right to request, receive, and evaluate supplemental information after the Written Bid Packages are due. TJPA will only permit pre-qualified Bidders that submitted a timely and complete Written Bid Package to participate in the Live Auction.

2. Live Auction

2.1. Attendance at Live Auction. TJPA will hold a Live Auction on September 2, 2015 at 10:00 a.m. Pacific Time in San Francisco City Hall, South Light Court. (Bidder check in will begin at 9:30 a.m. Pacific Time at the same location.)

2.1.1. Physical Presence at Live Auction. To participate in the Live Auction, pre-qualified Bidders that submitted a timely and complete Written Bid Package must have an assigned Authorized Bidder (defined below) physically present at the Live Auction. TJPA will not accept bids at the Live Auction via telephone, web, email, text, or other method. A Bidder that does not have an assigned Authorized Bidder attend the Live Auction will be excluded from participating in the Live Auction, and may only rely on its Binding Written Offer as its best and final offer for the purchase of Parcel F.

- 2.1.2. Authorized Bidder Check In. Each pre-qualified Bidder must assign an Authorized Bidder for the Live Auction. The Authorized Bidder must check in with TJPA prior to the start of the Live Auction.
- 2.1.2.1. The Live Auction begins at 10:00 a.m. Pacific Time. Bidders are asked to arrive at 9:30 a.m. Pacific Time to check in.
- 2.1.2.2. To facilitate the check-in process, pre-qualified Bidders will be asked to identify in advance the name of their Authorized Bidder that will attend the Live Auction.
- 2.1.2.3. TJPA will require each Authorized Bidder to sign a check-in form, identifying the name, title, and signature of the Authorized Bidder. The Authorized Bidder will be required to present valid photo identification confirming their identity.
- 2.1.2.4. The Authorized Bidder must be an individual representative of Bidder that is authorized to bid and to bind Bidder at the Live Auction. The Authorized Bidder must be an individual identified in the Bidder's Pre-qualification Application as an entity or individual with legal authority to bid and to bind Bidder; TJPA reserves the right, however, to permit another representative of Bidder to participate in the Live Auction based on adequate demonstration of authority to bid and to bind Bidder. While Bidder will be permitted to bring a team of representatives to the Live Auction, Bidder will be required to specify on the check-in form the one and only Authorized Bidder who may place a bid on Bidder's behalf at the Live Auction; TJPA will not accept bids at the Live Auction from any person that is not designated on Bidder's check in form as the Authorized Bidder.
- 2.1.3. Bidder Paddle. TJPA will assign each Authorized Bidder a unique number ("Bidder Number") on a paddle ("Bidder Paddle") that the Authorized Bidder will utilize to clearly indicate to the Auctioneer the Bidder's bid at the Live Auction.
- 2.1.4. Bidder Seating. TJPA will ensure that each Authorized Bidder has priority seating in the Live Auction room within sight and hearing distance of the Auctioneer. TJPA will endeavor to provide, but cannot guarantee, any other Bidder representatives sufficient space to be seated near to the Authorized Bidder. If an Authorized Bidder is experiencing difficulty hearing or seeing the Auctioneer, it shall immediately notify TJPA staff and TJPA staff will reasonably try to accommodate the Authorized Bidder. TJPA accepts no responsibility or liability, however, for a Bidder's claim that it was unable to hear, see, or understand the Auctioneer.
- 2.1.5. Bidder and Audience Decorum. TJPA expects Bidders and audience members to exercise appropriate decorum at the Live Auction. The ringing and use of cell phones, pagers and similar sound-producing

electronic devices in a manner that is disruptive to the conduct of the Auction will be prohibited at the Live Auction. The Auctioneer or any other TJPA staff may order the removal from the Live Auction room of any person(s) responsible for the ringing or use of a cell phone, pager, or other similar sound-producing electronic devices in a disruptive manner.

2.1.6. ASL/Sound Enhancement/Reader. If a pre-qualified Bidder or member of the public requires the use of an American Sign Language interpreter, a sound enhancement system, or a reader during the meeting, such person or system can be made available upon request; please contact Nila Gonzales at (415) 597-4620 or NGonzales@TransbayCenter.org, at least 72 hours prior to the Live Auction. Late requests will be honored if possible.

2.1.7. Interpretation/Translation. Any pre-qualified Bidder that requires interpretation or translation of the proceedings into a language other than English shall bear the cost of providing such interpreter.

2.2. Auctioneer. TJPA will designate an Auctioneer to run the Live Auction. The Auctioneer and Contracts Compliance Officer may request assistance from TJPA staff and consultants as needed during the Live Auction. The decisions of the TJPA during the Live Auction are final; there is no right of appeal.

2.3. Start of Live Auction. After allowing a reasonably adequate time for Bidder to check in, the Auctioneer will begin the Live Auction. The Live Auction will proceed as follows:

2.3.1. Introductions; Summary of Procedures. TJPA will open the Live Auction with introductory remarks. The Auctioneer will provide a summary of these Auction procedures.

2.3.2. Announcing the Bidders. The Auctioneer will publicly announce, in alphabetical order, the name of each pre-qualified Bidder that submitted a timely and complete Written Bid Package.

2.3.3. Announcing the Starting Bid. The TJPA Executive Director will hand the Auctioneer a sealed envelope containing the amount of the Highest Written Bid. The Highest Written Bid is determined based on the Binding Written Offers submitted by pre-qualified Bidders that meet all of the requirements described in Section 1. The Auctioneer will announce the amount of the Highest Written Bid and the name of the Bidder making the Highest Written Bid. The Highest Written Bid will be the starting (or minimum) dollar amount for the Live Auction.

2.3.3.1. Written Bids in a Tie. If TJPA receives two or more valid Binding Written Offers of the same amount which are determined to be the Highest Written Bid, TJPA will announce the amount of the Highest Written Bid and all of the Bidder names that submitted the Highest Written Bid. TJPA will proceed with Oral Bidding, allowing all qualified Bidders to submit oral bids that exceed the Highest Written Bid.

- 2.4. Oral Bidding. The Auctioneer will accept oral bids that exceed the Highest Written Bid (“Oral Bidding”).
- 2.4.1. Auctioneer Suggested Bid. The Auctioneer will suggest a bid price that exceeds the amount of the Highest Written Bid. The Auctioneer will exercise its discretion in determining the appropriate increment by which to increase the suggested bid price above the Highest Written Bid. If no Authorized Bidders accept the Auctioneer’s suggested bid price, the Auctioneer will reduce the increment (lower the suggested amount) until a suggested bid price is accepted.
- 2.4.2. Bidder Accepts Suggested Bid. Each Authorized Bidder will be provided a Bidder Paddle with a unique Bidder Number during registration. An Authorized Bidder shall indicate its binding bid by raising its Bidder Paddle in the air in response to the Auctioneer’s suggested bid. Only the Authorized Bidder may indicate an oral bid using the Bidder Paddle. An Authorized Bidder may, however, consult in person or via electronic or telephonic means, whether the Bidder representatives are present at the Live Auction or not (e.g., an Authorized Bidder may speak on the phone during the Live Auction to receive direction). **Each time an Authorized Bidder raises its Bidder Paddle to accept a suggested bid, it is making a binding and non-revocable offer to purchase the Parcel F property, on the terms and conditions in the Purchase and Sale Agreement, for the amount of the oral bid price.**
- 2.4.3. Auctioneer Acknowledgment of Bid. The Auctioneer will orally acknowledge an Authorized Bidder’s acceptance of a suggested bid by stating the Bidder Number and binding bid price. The Auctioneer may be assisted by the Contracts Compliance Officer, pointing out for the Auctioneer all Authorized Bidders with raised paddles. If more than one Authorized Bidder raises a Bidder Paddle for the same suggested bid price, the Auctioneer will acknowledge all of the Bidder Numbers accepting the suggested bid price.
- 2.4.4. Auctioneer Next Suggested Bid. After acknowledging a Bidder Number(s) and binding bid price, the Auctioneer will suggest another bid price that exceeds the amount of the previously acknowledged binding bid price. The Auctioneer will exercise its discretion in determining the appropriate increment for the next suggested bid. If no Authorized Bidders accept the Auctioneer’s suggested bid price, the Auctioneer will lower the increment until a suggested bid price is accepted. Within the time allowed to conduct the Live Auction, the Auctioneer will continue to suggest successively higher bid prices until the Auctioneer determines in its discretion that the highest oral bid price has been made.
- 2.4.5. Auctioneer Determination of Two Highest Oral Bids. The Auctioneer will announce the Bidder Numbers and bid amount(s) for the two highest oral bids. The two highest oral bids will be determined as follows:

2.4.5.1. First, the Auctioneer will determine if there are two or more oral bids for the same highest oral bid. If yes, the Auctioneer will close Oral Bidding and all Bidders submitting the highest oral bid will proceed to Best and Final Written Offers, as defined below.

2.4.5.2. If the first scenario is not met, then the Auctioneer will determine the single Bidder submitting the highest oral bid and the Bidder (or Bidders) submitting the second highest oral bid. The Auctioneer will close Oral Bidding and all Bidders submitting the highest and second highest oral bid will proceed to Best and Final Written Offers.

2.4.5.3. If no oral bids are received at Oral Bidding that exceed the amount of the Highest Written Bid, the Auctioneer will close Oral Bidding and all Bidders qualified to participate in the Live Auction will proceed to Best and Final Written Offers.

2.4.6. Recording Oral Bids. The Contracts Compliance Officer will act as the clerk, recording each Bidder Number acknowledged by the Auctioneer as offering a binding bid price and the corresponding bid price. TJPA may also arrange for a video recording of the Live Auction. In the event of any discrepancy, the Auctioneer will confirm the Bidder Number and the bid price that the Auctioneer acknowledged.

2.5. Best and Final Written Offer. After the close of Oral Bidding, the Auctioneer will invite Best and Final Written Offers, which will be a binding written offer to purchase the property.

2.5.1. Who Is Permitted to Make Best and Final Written Offer. Only the Authorized Bidders submitting the two highest oral bids (as determined in Section 2.4.5 above) will be permitted to make a Best and Final Written Offer; TJPA will not accept oral or written offers from any other Bidders.

2.5.2. Minimum Amount of Best and Final Written Offer. The Best and Final Written Offer must equal or exceed that amount of the highest oral bid. The highest oral Bidder cannot offer less in its Best and Final Written Offer than the amount of its highest oral bid since that previously submitted oral bid was a binding offer to purchase the parcel and cannot be rescinded. The second highest oral Bidder can either (a) make a Best and Final Written Offer that exceeds the amount of the highest oral bid, or, (b) in writing on its bid form, decline to make another offer.

2.5.3. Form of Best and Final Written Offer. The Contracts Compliance Officer will provide a form and envelope on which the highest and second highest oral Bidders will make a Best and Final Written Offer. Bidders must fully-execute the Best and Final Offer using the form provided by the TJPA without exceptions, omissions, modifications, conditions, or addenda. A Bidder's failure to use the mandatory form or a Bidder's modification of such form may result in rejection of the Best and Final Offer, at TJPA's sole discretion, in which case Bidder would not be

permitted to make a Best and Final Offer (although its last offer would remain binding). TJPA will not accept oral best and final offers. The Authorized Bidder will be required to execute the final written offer form in the presence of the Contracts Compliance Officer, except for the dollar amount of the Best and Final Written Offer, which the Authorized Bidder will fill in during Caucus, defined below.

- 2.5.4. Caucus; Time to Make Best and Final Written Offer. The Auctioneer will determine and announce the appropriate amount of time for the highest and second highest oral Bidders to caucus with their representatives and complete the Best and Final Written Offer form (“Caucus”). TJPA will determine, in its discretion, the amount of time for Caucus, which is not anticipated to exceed approximately 15 minutes. The Auctioneer will make a two minute warning regarding the end of Caucus. The Auctioneer’s time piece will be the official time piece. In the event that Bidders are prepared to submit their Best and Final Written Offers before the expiration of the Caucus, the Auctioneer may terminate the Caucus and resume the Live Auction.
- 2.5.5. Announcement of Final Written Offer. The highest and second highest oral Bidders will complete the Best and Final Written Offer form and seal it in the envelope. They will provide the sealed envelopes to the TJPA’s Executive Director who will provide the sealed envelopes to the Auctioneer. The Auctioneer will unseal, in alphabetical order, the highest and second highest oral Bidder envelopes and read the amount of each Best and Final Written Offer. The Auctioneer will confirm which Best and Final Written Offer is the highest (“Overall Highest Bid”).
- 2.5.6. Best and Final Written Offer in a Tie. If the highest Best and Final Written Offers are for the same amount, the Auctioneer will invite the Bidders making such tied offer for the highest price to make another Best and Final Written Offer. The procedure for gathering and announcing the results will repeat until one of the Bidders submits a Best and Final Written Offer that exceeds the amount offered by the other Bidder. If the Best and Final Written Offers are for the same amount after two rounds (i.e., in two rounds each bidder bids the same amount as the other bidder and the same amount as in the prior round), TJPA will conclude the Live Auction without determining which Bidder submitted the highest written bid, and make a recommendation to the TJPA Board at its next regularly scheduled Board meeting. In the event of a tie in the highest amount of the Best and Final Written Offers, all tied offers would remain valid and binding for the term of the Acceptance Period (defined below).
- 2.5.7. Recording Best and Final Written Offers. The Contracts Compliance Officer will act as the clerk, collecting and retaining the Best and Final Written Offers.

- 2.6. Time Management. The Auctioneer and Contracts Compliance Officer have discretion to manage the pace of the Live Auction as necessary to allow all bids to be received and the Highest Bidder/Buyer determined in the time allotted.
- 2.7. Second Execution of Purchase and Sale Agreement. After the Auctioneer announces the amount of the Overall Highest Bid and the identity of the Highest Bidder/Buyer, but before the Live Auction is concluded, TJPA and the Highest Bidder/Buyer will modify and the Highest Bidder/Buyer will sign the amended Purchase and Sale Agreement that the Highest Bidder/Buyer previously submitted with its Written Bid Package. The modifications include:
 - 2.7.1. Final Purchase Price. TJPA will insert by hand the amount of Overall Highest Bid as the “Final Purchase Price” in the Binding Offer and in the Purchase and Sale Agreement.
 - 2.7.2. Signature and Acknowledgement. The Bidder submitting the Overall Highest Bid (“Highest Bidder/Buyer”) will execute the second signature page to the Purchase and Sale Agreement, confirming its acceptance of the Overall Highest Bid as the Final Purchase Price and the terms contained in the Purchase and Sale Agreement. A notary (TJPA’s Chief of Staff) will be present at the Live Auction to acknowledge the Highest Bidder’s/Buyer’s signature. The Highest Bidder/Buyer’s Overall Highest Bid, and its signature on the modified Purchase and Sale Agreement, shall be binding on the Highest Bidder/Buyer and irrevocable for the period described in Paragraph 3.1.
- 2.8. Confirmation to Highest Bidder/Buyer. The Contracts Compliance Officer will execute a form confirming the amount of the Overall Highest Bid and the identity of the Highest Bidder/Buyer and describing the TJPA staff’s intention to present the Purchase and Sale Agreement with the Highest Bidder/Buyer to the TJPA Board for its consideration at the first scheduled Board meeting after the Live Auction (“Confirmation Certificate”).
- 2.9. Conclusion of Live Auction. After the Highest Bidder/Buyer signs the second signature page of the Purchase and Sale Agreement and TJPA prepares the Confirmation Certificate, the TJPA Executive Director will make closing remarks and conclude the Live Auction.
- 2.10. Return of Good Faith Deposit to Unsuccessful Bidders. After the Live Auction is concluded, the Contracts Compliance Officer will return to all unsuccessful Bidders their Good Faith Deposits. If an unsuccessful Bidder is not present at the Live Auction, TJPA will return the Good Faith Deposit via overnight delivery (receipt confirming delivery required) to such Bidder within 2 business days after the Live Auction.

3. Post-Auction

- 3.1. Binding Offer Acceptance Period. TJPA may accept a binding offer at any time within forty-five (45) days following Bidders submission of the binding offer (i.e.,

45 days after August 26, 2015 or 45 days after September 2, 2015) (“Acceptance Period”).

- 3.2. TJPA Staff Recommendation. TJPA will not execute the Purchase and Sale Agreement at the Live Auction. Rather, TJPA staff will recommend to the TJPA Board that the Board approve the sale of the Parcel F property to the Highest Bidder/Buyer for the Overall Highest Bid and on the terms of the Purchase and Sale Agreement, and authorize the TJPA Executive Director to execute the Purchase and Sale Agreement; TJPA staff expects to bring the item to the TJPA Board for its consideration at the first scheduled Board meeting after the Live Auction.
- 3.3. TJPA Acceptance. TJPA will indicate its acceptance of the Overall Highest Bid by obtaining TJPA Board approval, executing the acceptance of the Binding Offer and the Purchase and Sale Agreement, and delivering such acceptance to the Highest Bidder/Buyer at the address for notices specified in the Purchase and Sale Agreement.

4. Bidder Default

- 4.1. Event of Default Before TJPA Accepts Offer. The following are among potential events of default by the Highest Bidder/Buyer (“Default”) before the TJPA Board accepts the Overall Highest Bid:
 - 4.1.1. The Highest Bidder/Buyer shall be in Default if it purports to withdraw the Overall Highest Bid or otherwise indicates an intention not to perform after its submission but before the termination of the Acceptance Period.
 - 4.1.2. TJPA may deem it an event of default for Bidders to engage in Collusion.
- 4.2. Forfeit Good Faith Deposit. If the Highest Bidder/Buyer Defaults before the TJPA Board accepts the Overall Highest Bid, the Highest Bidder/Buyer shall forfeit and TJPA shall keep the Good Faith Deposit as liquidated damages.
- 4.3. Offer to Next Highest Bidder. In the case of Default before TJPA accepts the Overall Highest Bid, TJPA may, in its sole discretion, elect to offer the property to the next highest Bidder at the next highest bid price.
- 4.4. Events of Default After TJPA Accepts Offer. Events of default after TJPA accepts the Overall Highest Bid and signs the Purchase and Sale Agreement are addressed in the Purchase and Sale Agreement.

5. Disclaimers and Other

- 5.1. Non-collusion. Any agreement between two or more Bidders to (a) set their bid prices, or (b) not to submit bids against each other, or (c) cease bidding in the oral portion of the Auction, for the purpose of purchasing the property at a more advantageous price or terms (“Collusion”), is prohibited. Where such an agreement comes to the knowledge of TJPA, any bids made pursuant to such agreement will be disqualified and the offending Bidders will be disqualified from

the Live Auction. If TJPA learns that the Highest Bidder/Buyer engaged in such Collusion after TJPA concludes the Live Auction, TJPA may deem an Event of Default to have occurred. The prohibition against Collusion does not preclude joint ventures or other similar legally permissible combination. In an effort to prevent Collusion, the TJPA will not, prior to the commencement of the Live Auction release to the public the identify of Bidders, potential Bidders, or entities or persons that have inquired about the Parcel F opportunity, including but not limited to (a) potential Bidders attending the Site Inspection(s), (b) Bidders submitting questions regarding the opportunity, and (c) pre-qualified Bidders. The TJPA will not, prior to the commencement of the Live Auction, release to the public the amount of the Highest Written Bid.

- 5.2. Informalities, Irregularities, or Errors. TJPA reserves the right to waive informalities, irregularities or errors in any documents submitted to or prepared by TJPA in the Auction, in a manner that is fair and nondiscriminatory, as determined by the TJPA.
- 5.3. Auction Documents Control. If there is any conflict between these Auction Procedures and the documents distributed by the TJPA to bidders related to the Parcel F auction, the latter will control.
- 5.4. Interpretation of and Revisions to Auction Procedures. The TJPA retains general discretion to interpret or revise these Auction Procedures and make decisions in a manner designed to further the purpose and intent of the auction to maximize the sale price for Parcel F in a manner that is fair and nondiscriminatory, as determined by the TJPA.
- 5.5. Rejection of Offers. TJPA reserves the right in its sole discretion to reject any and all offers for the Parcel F property. TJPA's authority to reject an offer applies even if the offer is a Binding Written Offer, Best and Final Offer, or Overall Highest Bid that meets the Minimum Bid Price.
- 5.6. Cancellation of Live Auction. TJPA reserves the right to cancel the Auction in its sole discretion at any time and for any reason. TJPA's authority to cancel applies even if there has been a Binding Written Offer, Best and Final Offer, or Overall Highest Bid that meets the Minimum Bid Price.
- 5.7. No Obligation Prior to Board Approval. The sale of the Parcel F property is subject to the approval of the TJPA Board of Directors, in its sole and absolute discretion. If the Board does not approve the sale, the Good Faith Deposit, absent a Default, will be immediately refunded without interest to the Highest Bidder and TJPA shall not be liable for any damages or costs incurred by the Highest Bidder.
- 5.8. Bidders Bear Costs. Each Bidder shall bear its own cost of participation in the Auction. TJPA accepts no financial responsibility for any costs incurred by any Bidder in preparing an application for pre-qualification, conducting due diligence, preparing a Written Bid Package, or participating in the Live Auction.