

STANDBY LETTER OF CREDIT AGREEMENT

THIS STANDBY LETTER OF CREDIT AGREEMENT (this “**Agreement**”), dated and effective as of _____, 2015 is for the provision of a letter of credit, and is by and between the TRANSBAY JOINT POWERS AUTHORITY, a joint powers authority created under California Government Code Sections 6500 *et seq.* (“**TJPA**”), and _____, a _____ (“**Bidder**”).

RECITALS

A. On May 21, 2015, and as subsequently amended, the TJPA publicly distributed a notice that the TJPA would receive bids at an auction for the sale of portions of State Parcel F, 75 Natoma, 546 Howard, 564 Howard, 568 Howard, and 77-79 Natoma (collectively, “**Parcel F**”).

B. To participate in the auction to purchase Parcel F, each bidder is required to meet certain pre-qualification requirements. On July 23, 2015, Bidder timely submitted its application for prequalification. The TJPA determined that Bidder met the prequalification requirements.

C. To participate in the auction, each bidder is also required to submit to the TJPA a fully-executed written bid package, including a Binding Offer to Purchase Parcel F (“**Binding Offer**”) and an Agreement of Purchase and Sale for Real Estate (“**Purchase Agreement**”), each in the form prescribed by the TJPA, offering an initial purchase price (“**Initial Offered Purchase Price**”) that met or exceeded a One Hundred Sixty Million Dollar (\$160,000,000) minimum bid price (“**Minimum Bid Price**”) established by the TJPA and which bind the bidder if the Initial Offered Purchase Price is accepted by the TJPA.

D. To participate in the auction, each bidder is also required to submit to the TJPA in its written bid package a good faith deposit in the amount of Ten Million Dollars (\$10,000,000) (“**Good Faith Deposit**”) by certified check or irrevocable standby letter of credit (“**LOC**”) in a form required by this Agreement. Bidder has elected to satisfy the requirement for a good faith deposit by entering into this Agreement and providing an LOC in the form attached.

E. The TJPA has scheduled the live auction in San Francisco for September 2, 2015. The highest written Initial Offered Purchase Price submitted by a prequalified bidder meeting or exceeding the Minimum Bid Price will be the opening bid for the live auction. The TJPA will accept oral bids at the live auction. The TJPA will then allow the two highest oral bidders to submit final written sealed bids at the live auction. The TJPA will determine the highest bid at the auction (“**Highest Bid**”). The TJPA will insert the amount of the Highest Bid in Section 2.2 of the Purchase Agreement and (1) execute the signature page confirming that the Highest Bid is the binding final purchase price for the Property (“**Final Purchase Price**”) and replaces the Initial Offered Purchase Price, and (2) execute this Agreement and hold the LOC as security for Bidder’s obligations under the Purchase Agreement.

ACCORDINGLY, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the TJPA and Bidder agree as follows:

AGREEMENT

Pursuant to and in consideration of the foregoing recitals, all of which are deemed to be true and correct and part of this Agreement, the TJPA and Bidder, in consideration of the mutual agreements and promises herein contained, hereby make the agreements and covenants herein contained.

1. General. Upon execution and delivery of this Agreement, Bidder is providing to the TJPA an original LOC issued by a bank with an office in San Francisco (“**Issuing Bank**”) in the form attached as Exhibit A. The LOC shall name the TJPA as the beneficiary thereof, and shall be absolute and unconditional with respect to the obligation to honor demands, non-transferable, and payable upon the written demand of the executive director of the TJPA, or other TJPA employee duly authorized for that purpose. The LOC shall state that it is not subject to any defense as between the LOC issuer and Bidder or Bidder and the TJPA. If the delivered LOC does not meet the requirements of this Agreement, then the TJPA may reject the bid or may request a revision to the LOC to make it conforming to the requirements of this Agreement, in the TJPA’s sole discretion. Bidder understands and agrees that the LOC is an irrevocable Good Faith Deposit as defined in the Purchase Agreement, and the TJPA has the right to draw upon the LOC and retain the funds from such draw upon the occurrence of an event in which the TJPA has the right to keep the Good Faith Deposit under the Purchase Agreement and as described below.
2. Expiration of LOC. The LOC shall expire, and the TJPA shall return the LOC to Bidder, on the earliest of the following:
 - a. The selection by the TJPA’s Board of Directors of a bidder for the purchase of Parcel F other than Bidder;
 - b. The closing of the sale of Parcel F from the TJPA to Bidder;
 - c. The TJPA’s termination of the auction for Parcel F without accepting a bid;
 - d. The closing of the sale of Parcel F from the TJPA to Bidder does not occur by a December 1, 2015 closing date (“**Closing Date**”) as a result of a failure of a “Buyer Closing Condition” (as that term is defined in Section 5.2 of the Purchase Agreement) not caused by Bidder, and the TJPA and Bidder, each in its own discretion, have not agreed in writing to further extend the Closing Date;
 - e. The closing of the sale of Parcel F from the TJPA to Bidder does not occur by the Closing Date because the TJPA frustrated the fulfillment of a “TJPA Closing Condition” (as that term is defined in Section 5.3 of the Purchase Agreement) by some affirmative act or negligent omission, and the TJPA and Bidder, each in its own discretion, have not agreed in writing to further extend the Closing Date;

- f. Any Event of Default by the TJPA under Section 10.3 of the Purchase Agreement (following notice and cure periods, as set forth in the Purchase Agreement), and the TJPA and Bidder, each in its own discretion, have not agreed in writing to further extend the Closing Date to allow cure of the default; or
 - g. The termination of the Purchase Agreement under Section 12.2 of the Purchase Agreement.
3. Rating. The LOC (and any replacement LOC) shall be provided by an Issuing Bank rated and continuously maintaining a long term obligation rating of “A” or higher, without regard to numerical or other modifiers, of the long term obligation rating by any nationally recognized rating agencies. Bidder shall provide notice to the TJPA immediately upon discovery of any downgrade of the Issuing Bank to a rating below “A” by a nationally recognized rating agency.
4. Amount of LOC. The amount of the LOC (the “security amount”) required by this Agreement is Ten Million Dollars (\$10,000,000).
5. Draws on LOC. The draw on the LOC shall be made in person or by courier at a location of the Issuing Bank in the City and County of San Francisco (as stated in the LOC) or by United States Mail to an address of the Issuing Bank in the City and County of San Francisco. The TJPA may draw on the full amount of the LOC or other security without any further notice to Bidder upon the occurrence of any one or more of the following events:
- a. Failure to close: The closing of the sale of Parcel F from the TJPA to Bidder does not occur by the Closing Date for any reason other than as specified in Paragraphs 2.d, 2.e, or 2.f above, including a failure of a Buyer Closing Condition caused by Bidder as set forth in Section 5.2 of the Purchase Agreement, and the TJPA and Bidder, each in its own discretion, have not agreed in writing to further extend the Closing Date;
 - b. Reduction in rating: If the rating for the institution supplying the LOC then in effect falls below the “A” category (irrespective of modifiers) for the long term obligation rating, and Bidder does not deliver a substitute or replacement LOC meeting the requirements of this Agreement to the TJPA within five (5) days after the date that such downgrade in such rating is announced;
 - c. Bidder Event of Default: Any Event of Default by Bidder under Section 10.1 of the Purchase Agreement;
 - d. Bidder attempt to revoke this Agreement or the Purchase Agreement: Any attempt by Bidder to revoke or terminate this Agreement or the Purchase Agreement for a reason other than an Event of Default by the TJPA, or any claim made by Bidder that this Agreement or the Purchase Agreement is not enforceable

or that Bidder was not or is not authorized to enter into this Agreement or the Purchase Agreement.

6. No liability. Neither the TJPA, its board members, or any of its employees shall be liable for the payment of any costs of the LOC or other security, for payments or reimbursements for drawings which may become due and payable to any institution which has issued or provided all or any portion of the LOC or other security required by this Agreement, or costs or reimbursements to or required from or by Bidder in connection with the LOC or other security. The foregoing notwithstanding, nothing in this Paragraph 6 shall release the TJPA from liability for any drawing which the TJPA was not entitled to make under the Purchase Agreement or this Agreement.
7. Successors and assigns. This Agreement shall be binding upon Bidder and Bidder's successors and assigns for as long as the LOC or other security is required to be maintained by and under the terms of this Agreement and the Purchase Agreement.
8. Notices. Unless otherwise agreed in writing, all notices given hereunder shall be written and either personally delivered or mailed, by certified mail, postage prepaid, return receipt requested or by reputable overnight courier.

To TJPA. In the case of a notice or communication to the TJPA:

Transbay Joint Powers Authority
201 Mission Street, Suite 2100
San Francisco, CA 94105
Attn: Executive Director Maria Ayerdi-Kaplan
Telephone: (415) 597-4620

With a copy to:

Office of the City Attorney
Room 234, City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
Attn: Charles Sullivan
Telephone: (415) 554-4735

And to:

Shute, Mihaly & Weinberger LLP
396 Hayes Street
San Francisco, CA 94102
Attn: Andrew W. Schwartz
Telephone: (415) 552-7272

To Bidder. And in the case of a notice or communication sent to Buyer:

Attn: _____
Telephone: _____

With a copy to:

Attn: _____
Telephone: _____

Notices given by personal delivery shall be conclusively presumed given when delivered to the individuals named above or left at the address specified during normal business hours. Notices given by mail or overnight courier shall be presumed given when received or when delivery is first refused.

9. Indemnity. Bidder agrees to indemnify, defend, and hold harmless the TJPA and its officers, employees, agents, consultants, and contractors (each an “indemnified party”) from and against any and all claims, liabilities, losses, damages, costs, and expenses, including reasonable attorneys’ fees (for employee attorneys and consulting attorneys) and disbursements and other dispute resolution expenses directly or indirectly arising out of or relating to this Agreement, the LOC, or any other document or matter directly or indirectly related thereto, except to the extent such liability, loss, damage, cost, or expense is found to have resulted directly from the TJPA’s gross negligence or willful misconduct, breach of this Agreement or the Purchase Agreement, or a TJPA drawing of the LOC to which the TJPA was not entitled under this Agreement. The provisions of Section 12.6 of the Purchase Agreement pertaining to attorney fees and costs, and not the provisions of this Paragraph 9, shall govern any dispute between Bidder and the TJPA pertaining to this Agreement, the LOC, or any other document or matter directly or indirectly related thereto.

[NO FURTHER TEXT ON THIS PAGE]

IN WITNESS WHEREOF, this Agreement has been executed by Bidder and the TJPA as of the day and year first above written.

BIDDER:

By: _____
Name: _____
Its: _____

TJPA:

TRANSBAY JOINT POWERS AUTHORITY

By: _____
Name: Maria Ayerdi-Kaplan
Its: Executive Director

APPROVED AS TO FORM:

By: _____
Counsel for TJPA

EXHIBIT A

DATE: _____, 2015

IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER: [NUMBER]

ISSUING BANK

[Name of Bank]

[Address of Bank

in San Francisco, CA]

BENEFICIARY

Transbay Joint Powers Authority

201 Mission Street, Suite 2100

San Francisco, CA 94105

Attn: Ms. Maria Ayerdi-Kaplan

Executive Director

Telephone: (415) 597-4620

APPLICANT

[Name of Bidder]

[Address of Bidder]

Attn: [Name of responsible officer of Bidder, title, and address and telephone number]

AMOUNT: TEN MILLION UNITED STATES DOLLARS [US \$10,000,000]

EXPIRATION DATE: DECEMBER [1], 2015.

[NAME OF BANK] ("BANK") HEREBY ESTABLISHES IN FAVOR OF THE TRANSBAY JOINT POWERS AUTHORITY ("BENEFICIARY") OUR IRREVOCABLE LETTER OF CREDIT NO _____ (THE "LETTER OF CREDIT") IN THE AMOUNT OF TEN MILLION DOLLARS (\$10,000,000) FOR THE ACCOUNT OF [NAME OF BIDDER] ("APPLICANT"). WE UNDERSTAND THAT PURSUANT TO THE TERMS AND PROVISIONS OF THE AGREEMENT ("AGREEMENT") OF PURCHASE AND SALE FOR REAL ESTATE BY AND BETWEEN BENEFICIARY AND APPLICANT FOR THE PURCHASE AND SALE OF PORTIONS OF STATE PARCEL F (APN 3721-015A), 75 NATOMA (APN 3721-031), 546 HOWARD (APN 3721-016), 564 HOWARD (APN 3721-019), 568 HOWARD (APN 3721-020) AND 77-79 NATOMA (APN 3721-029), SAN FRANCISCO, CALIFORNIA (COLLECTIVELY, "PROPERTY"), AND THE RELATED LETTER OF CREDIT AGREEMENT, THE AMOUNT OF FUNDS AVAILABLE UNDER THIS LETTER OF CREDIT ARE PAYABLE TO BENEFICIARY BY BANK WITHIN TWO (2) BUSINESS DAYS AFTER BANK'S RECEIPT IN SAN FRANCISCO AT THE ADDRESS SET FORTH ABOVE, PRIOR TO BANK'S CLOSE OF BUSINESS ON THE EXPIRATION DATE, OF:

(A) A DRAW STATEMENT SIGNED BY BENEFICIARY'S AUTHORIZED OFFICER OR REPRESENTATIVE OR, IF THIS LETTER OF CREDIT IS TRANSFERRED, BY AN

AUTHORIZED OFFICER OR REPRESENTATIVE OF ANY TRANSFEREE BENEFICIARY
READING AS FOLLOWS:

“WE HEREBY DEMAND USD \$10,000,000 UNDER [NAME OF BANK] LETTER OF
CREDIT NO. -----, THE AMOUNT OF THIS DRAW IS CURRENTLY DUE TO
TRANSBAY JOINT POWERS AUTHORITY (“BENEFICIARY”). PROCEEDS OF THIS
DRAW ARE TO BE WIRE TRANSFERRED TO:

Bank:	U. S. Bank N.A.
SWIFT Code:	USBKUS44IMT
ABA Routing:	121122676
Account Name:	Transbay Joint Powers Authority
Account #:	153495473537 ”

AND

(B) PRESENTATION OF THE ORIGINAL LETTER OF CREDIT AND ALL
AMENDMENTS THERETO, IF ANY, APPROVED IN WRITING BY BENEFICIARY.

AS USED HEREIN, THE TERM “BUSINESS DAY” MEANS ANY DAY OTHER THAN A
SATURDAY, SUNDAY, OR A DAY ON WHICH BANKS IN THE STATE OF
CALIFORNIA ARE AUTHORIZED OR REQUIRED TO BE CLOSED, AND A DAY ON
WHICH PAYMENTS CAN BE EFFECTED ON THE FEDWIRE SYSTEM.

THE DRAW STATEMENT SHOULD BE ADDRESSED TO BANK, REFERENCE THIS
LETTER OF CREDIT BY NUMBER, SPECIFY THE AMOUNT OF THE DRAW REQUEST,
AND SET FORTH WIRE TRANSFER INSTRUCTIONS, WITH THE AMOUNT OF THE
DRAW REQUEST AND WIRE TRANSFER INSTRUCTIONS COMPLETED.

THIS LETTER OF CREDIT IS NOT SUBJECT TO ANY CONDITION OR QUALIFICATION
AND IS OUR INDIVIDUAL OBLIGATION WHICH IS IN NO WAY CONTINGENT UPON
REIMBURSEMENT FROM APPLICANT OR ANY OTHER PERSON.

BENEFICIARY MAY MAKE DEMAND UPON BANK FOR PAYMENT OF US \$10,000,000
PER THE LETTER OF CREDIT. BENEFICIARY'S STATEMENT MAY BE SIGNED BY
ANY AUTHORIZED OFFICER OF BENEFICIARY. NO SIGNATURE AUTHENTICATION
SHALL BE REQUIRED ON ANY STATEMENT OR OTHER DOCUMENT PRESENTED IN
CONNECTION WITH ANY DRAW UNDER THIS LETTER OF CREDIT. FUNDS IN
RESPECT OF THIS DRAW REQUEST WOULD BE WIRE TRANSFERRED FOR CREDIT
TO THE TRANSBAY JOINT POWERS AUTHORITY ACCOUNT PER ITS
INSTRUCTIONS.

PRESENTATION OF THE ORIGINAL LETTER OF CREDIT AND DRAW REQUEST MAY
BE SUBMITTED IN PERSON, BY COURIER, OR BY UNITED STATES MAIL TO BANK'S
ADDRESS IN THE CITY AND COUNTY OF SAN FRANCISCO STATED ABOVE NOT
LATER THAN THE EXPIRATION DATE.

DRAW REQUESTS DRAWN HEREUNDER MUST BE MARKED: "DRAWN UNDER _____
STANDBY LETTER OF CREDIT NUMBER _____ ISSUED _____."

BENEFICIARY MAY REQUEST TO TRANSFER THIS LETTER OF CREDIT IN ITS ENTIRETY TO ANY SUCCESSOR OF BENEFICIARY IN TITLE TO THE PROPERTY WITHOUT ANY LIMIT ON THE NUMBER OF SUCH TRANSFERS UPON BANK'S RECEIPT OF A TRANSFER REQUEST SIGNED BY THE THEN CURRENT BENEFICIARY AND PAYMENT OF THE BANK'S THEN CUSTOMARY TRANSFER FEE, PROVIDED THAT SUCH TRANSFER WOULD NOT VIOLATE ANY GOVERNMENTAL RULE, ORDER OR REGULATION APPLICABLE TO BANK. IF BENEFICIARY WISHES TO TRANSFER THE LETTER OF CREDIT, BENEFICIARY SHOULD CONTACT US FOR THE TRANSFER FORM WHICH WE SHALL PROVIDE UPON YOUR REQUEST.

THIS LETTER OF CREDIT IS SUBJECT TO THE INTERNATIONAL STANDBY PRACTICES 1998 (ICC PUBLICATION NO. 590).

VERY TRULY YOURS,

[Name of Bank]

[Signature of Bank Officer authorized to issue binding letter of credit]

[Print name]

[Title]

[Address and telephone number]