



Jones Lang LaSalle Brokerage, Inc.
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February 26, 2019

Re: Request for Proposal ("RFP) to Lease

To whom it may concern:

Jones Lang LaSalle Brokerage, Inc. ("JLL") has been authorized by our client San Francisco Bay Area Rapid Transit District (BART) ("Tenant") to submit the following outline of terms (the "Transaction") pursuant to which it would enter into lease negotiations for space at your building (the "Building"). Tenant is prepared to enter into lease negotiations with landlord ("Landlord") with respect to the Building based upon Landlord's response to this RFP. Please note that we are submitting similar RFPs to competing projects.

Landlord

Please specify the landlord entity. Additionally, please provide a description on the Landlord's contributions to the local community (involvement in civic organizations, non-profits or other community benefits) and experience working with other public agencies.

Building Renovation:

Please provide a detailed description of the Landlord's planned base Building work, including the proposed completion schedule for such work. Please include any renderings, floorplans and other information that will help Tenant understand the proposed changes.

LEED Status:

Please provide Landlord's plans for the sustainability of the Building, specific sustainability programs and the LEED status Landlord intends to meet.

Floors/Area:

The Initial Premises will be approximately +/- 250,000 rentable square feet ("RSF") in the Building (the "Initial Premises"). Tenant shall have the right to adjust the size of the Initial Premises down by approximately one (1) full floor or up by approximately two (2) full floors. Tenant shall have expansion rights as hereinafter defined. The Initial Premises and any other space leased by Tenant, including space leased pursuant to the preferential right to lease provision set forth below, is hereinafter referred to as the "Premises".

All square footage areas in the Premises and the Building shall be measured according to ANSI/BOMA Z65.1 - 2010 and shall be subject to confirmation by Tenant's designated space planner/interior architect. Please provide the load factor from USF to RSF for Tenant's Premises. There shall be no remeasurement of Tenant's Premises during the term of this lease or any extensions.

Board Room

Tenant will require an approximately 7,000 RSF board room which would be available on an exclusive and unlimited basis to house public board meetings. This space would be located on the first or second floor of the Building and would include a dais, public seating area for 300 people, kitchen, conference room, green room, restrooms, and IT/Data infrastructure.

First Opportunity to Purchase:

Language shall be incorporated in the Lease that will allow Tenant the first opportunity to purchase the Building in the future in the event Landlord elects to place the Building on the market for sale. Such rights shall be expressly subordinate to all present and future mortgage loans and shall not apply to transfers among the existing owners and/or their respective affiliates or advisors, or to transfers (in lieu of foreclosure or otherwise) to present or future mortgage holders or their affiliates.

In addition to the foregoing and in consideration to Tenant for making a commitment to lease a minimum of 250,000 RSF of the Building, Tenant will participate in (as a percentage of) the net proceeds of the initial sale of the Building occurring at any time above a gross sales value in excess of the Landlord construction and carry costs as escalated by 2019 CPI less a proportional allocation of selling expenses ("**Tenant's Equity Share**"). The structure of Tenant's contingent payment right shall be subject to Tenant's legal and accounting review. Please specify Landlord's proposal for Tenant's Equity Share pursuant to the foregoing.

Purpose of Use:

During the "**Term**" (as hereinafter defined), Tenant shall be entitled to use and occupy the Premises for general business offices consistent with a local government agency's headquarters, which may include, but not be limited to data center/IT functions, employee training, employee lunch and/or kitchen facilities (including vending machines for Tenant's use only), exercise/health facilities and any other legally permitted uses consistent with the character of similar office buildings in the Oakland area ("**Comparable Buildings**").

Term of Lease:

The primary term of the Lease shall be ten (10) years commencing upon Tenant's complete occupancy of the Premises, which is estimated to be July 1, 2021. (the "**Commencement Date**") and terminating upon the last day of the full calendar month that is ten (10) years after the Commencement Date (the "**Primary Term**"). Please provide the estimated date for commencement of tenant improvement construction.

Full Service Gross (FSG) Rental Rates:

Inclusive of "**Operating Expenses**" (as hereinafter defined) and "**Taxes**" (as hereinafter defined), please state the annual rental rate per rentable square foot on a "FSG" lease basis, for the Initial Premises for the Primary Term (the "**Base Rental**"). Please include any concessions available as an inducement to attract Tenant to the Building.

Security Deposit:

Tenant shall not be required to tender any rental deposit (either first or last month's Base Rental), security deposit, letter of credit or other collateral to Landlord.

Operating Expenses and Taxes:

Tenant shall pay its pro rata share of the increase in operating costs over a Base Year to be established during the first twelve (12) months of Tenant's occupancy, grossed up to reflect a 100% occupied and 100% completed project (the "**Operating Expenses**"). Please note Tenant is a tax-exempt entity and shall not pay property or other taxes customary in typical

commercial leases. The definition of Operating Expenses, as to allowable inclusions and exclusions, shall be mutually agreed upon and incorporated within the Lease. In no event, however, shall Tenant be obligated to pay for: (a) capital improvements to the Building, unless such capital improvements are government mandated after the Commencement Date of the Lease, or (b) upgrades to the Common Area for ADA compliance during the Term. Increases in Landlord controllable Operating Expenses will be capped at 5% (non-cumulative) per year. Any capital improvements that are to be charged to Tenant shall be amortized over the period which shall be the greater of: (i) the manufacture warranty period, or (ii) the useful life as determined in accordance with Financial Accounting Standards Board Rule 13 as applied in generally accepted accounting principles consistently applied. The Landlord shall have the right to charge a maximum four percent (4%) interest charge per annum on any amortized capital expense item that may be passed along to Tenant for payment.

Tenant shall have the right to review and copy all documents and information pertaining to Operating Expenses, and the right to audit annual operating expense statements for a period of three (3) years following receipt. Any under or over payments revealed by the audit shall be paid immediately by Landlord or Tenant, as the case may be. Tenant shall pay the cost of the audit unless the amount of operating expense increases, as determined by the audit, differs by more than 3% from the figure in Landlord's statement, in which event the cost of the audit and related expenses shall be paid by Landlord up to a maximum cost per event of \$5,000.00.

Landlord shall have responsibility and financial obligation for the structural integrity and maintenance of the roof and membrane, foundation, plate glass, structural components and paved areas of the Building.

Please provide a line item estimate of all operating expense and tax components as if the Building is fully occupied (and assessed, as applicable).

Proposition 13:

Tenant shall not be obligated to pay any increases in real estate taxes during the Primary Term due to reassessment of real estate taxes for the project or any Building resulting from 1) the sale or refinancing of such Building; or 2) the sale or refinancing of any interest therein or any change in ownership whatsoever.

Services:

The services to be included within the Operating Expenses and extended to Tenant as standard for the Building and the Premises during the Term shall include, but not be limited to, utilities, janitorial, window and public area maintenance and cleaning, landscaping, security (on-site, 24-hour, 7-day a week), repairs and maintenance of the Building and all Building mechanical systems, trash removal, water, heating, ventilation and air conditioning maintenance, and condenser water. The level of services shall be commensurate with that of other Comparable Buildings. Tenant shall retain the right, at Tenant's option, to contract directly for electricity, janitorial

services and telecommunication utility suppliers with a corresponding adjustment to Base Rent or Operating Expenses.

Option to Contract:

Tenant shall have the right to contract the Premises by up to two (2) full floors in the Building after the first five (5) years of the Term upon nine (9) months prior written notice to the Landlord with a payment for the termination of the Lease as to the surrendered space in an amount equal to the sum of the unamortized Tenant Allowance and brokerage fees applicable to the surrendered space using a six percent (6%) interest factor with assumed payments made on the first day of each month. The Contraction payment shall be made on the date the Contraction floor(s) are terminated.

Termination Right:

Tenant shall have the one-time right to terminate the lease on the Premises at the end of the 84th month of the Term, upon twelve (12) months prior written notice to Landlord. In the event Tenant elects to exercise this Termination Right, Tenant shall pay a termination fee equal to the sum of the unamortized Tenant Allowance and Brokerage Fees associated with the terminated space calculated on a straight-line basis over the term using a six percent (6%) interest factor with payments made on the first day of each month. Such amounts shall be payable on the date of termination.

Options to Renew:

Tenant, upon giving Landlord at least nine (9) months prior written notice in each instance, shall have the right to renew the Lease with respect to all or any portion of the then leased Premises for up to ten (10) years, in five (5) year increments, at Tenant's option, at ninety percent (90%) of the "**Market Rate**" (as hereinafter defined) as of the date the respective renewal option is exercised by Tenant.

The Primary Term plus any exercised renewal options are hereinafter referred to, collectively, as the "**Term**".

At such time as Tenant notifies Landlord of its desire to renew its lease, Landlord shall, within fifteen (15) days thereafter notify Tenant of its interpretation of the Market Rate. Tenant may accept the rate as quoted or elect to enter into negotiations with Landlord for a period not to exceed thirty (30) days, during which both parties shall be required to negotiate on a diligent, good-faith basis to arrive at agreement concerning the Market Rate. Should agreement not be reached by both parties during said thirty (30) day period, then Tenant may, at its option, either i) terminate the negotiation at which time Tenant's option to renew shall expire and be of no further force or effect, or ii) submit same to arbitration as defined herein, or iii) elect to extend up to 18 months for all or part of the Premises at the rate quoted by the Landlord.

Definition of Market Rate:

With respect to the renewal option, expansion option and preferential right to lease provisions hereunder, the applicable fair market value rental rate (the "**Market Rate**") shall be that rate (determined on a "FSG" lease basis) charged to non-renewing/non-extending tenants for space of comparable size, location and conditions in comparable office buildings located in the Oakland area, further taking into consideration the following: the location, quality, condition

and age of the building; the use, location, size and floor level(s) of the space in question; the definition of "rentable area"; the extent of leasehold improvements (other than those already installed by Tenant in the Premises); leasehold improvement allowances; abatements (including with respect to base rental, operating expenses and real estate taxes, lease takeovers/assumptions; relocation/moving allowances; space planning/interior architecture and engineering allowances; refurbishment and repainting allowances; other concessions or inducements including signage and parking charges; extent of services provided or to be provided; distinction between "gross" and "net" lease; base year or dollar amount for escalation purposes (both operating expenses and ad valorem/real estate taxes); any other adjustments (including by way of indexes) to base rental; credit standing and financial stature of the tenant; term or length of lease; the time the particular rental rate under consideration was agreed upon and became or is to become effective; the payment of a leasing commission and/or fees/bonuses in lieu thereof, whether to Landlord, any person or entity affiliated with Landlord, or otherwise; and any other relevant term or condition in making such Market Rate determination.

**Preferential Right
to Lease:**

During the Term, Tenant shall have a continuing and recurring preferential right to lease with respect to any space in the Building, which from time to time may be or become available for direct lease, at the Market Rate as of when such preferential right to lease is exercised by Tenant. This preferential right shall be in the form of both a Right of First Offer ("**ROFO**") and/or a Right of First Refusal ("**ROFR**"), whichever is appropriate.

With regard to any exercise of the right during the first two (2) years of the Term, the rental rate will in no event exceed the Base Rental rate (per rentable square foot) then being paid by Tenant for the Initial Premises for the balance of the Term, whether or not Tenant shall have previously failed to exercise its preferential right to lease or expansion option(s) as to all or any portion of such space.

Landlord shall notify Tenant in writing of the availability of such additional space, said notice to include the relevant business terms and Landlord's good faith determination of the Market Rate therefore, and Tenant shall notify Landlord in writing of its intentions within (a) thirty (30) days after receipt of said availability notice absent a third-party tenant offer for such space or (b) twenty (20) days if there is a third-party tenant offer for such space.

If Tenant and Landlord are unable to agree on the Market Rate and/or other terms and conditions for such additional space (subject, however, to the arbitration provision set forth below), and for which reason Tenant elects not to lease same, then Landlord shall have the right to lease all or any portion of subject premises to another tenant or tenants, provided same shall be on terms and conditions no more favorable (to such other tenant or tenants) than those offered to Tenant. If a lease to another tenant(s) is not consummated within six (6) months next following the elapse of the above-mentioned thirty (30) or twenty (20) day notice period, as applicable, then Tenant's preferential right to lease as to such space shall be reinstated.

Base Rent shall not commence with respect to such preferential right to lease space until one-hundred and twenty (120) days after the date when Landlord tenders possession of such space in its entirety to Tenant (for the purposes of Tenant undertaking alterations and improvements therein) or when Tenant takes beneficial occupancy thereof, whichever shall occur later.

Such additional space shall be leased on an "as-is" basis, subject to latent defects, and in a vacuumed and broom-cleaned condition with all of any prior tenants' personal property removed therefrom, except that Landlord shall extend to Tenant a prorated allowance for leasehold improvements equal to the amount of the Tenant Allowance (as defined below) per rentable square foot per month times the number of months remaining in the Initial Term or exercised renewal option term, as applicable.

The failure of Tenant to exercise its preferential right to lease in any given instance shall not prejudice its right to exercise its preferential right to lease with respect to any other space or the same space, should all or any part of such space again become available for direct lease.

In the event Landlord and Tenant are unable to agree on the Market Rate for such additional space, then same shall be determined by arbitration as set forth below.

**Leasehold Improvement,
Space Planning/Interior
Architecture, Engineering
And Relocation Allowance:**

Over and above Landlord's plans and obligations to construct the base building at Landlord's expense, Landlord shall make available to Tenant an allowance for leasehold improvements, telecommunications, furniture, and infrastructure expenditures, plus space planning/interior architect, engineering and relocation costs, and/or any other related cost associated with Tenant's construction, relocation or occupancy in the amount of \$125.00 per rentable square foot contained in the Premises (the "Tenant Allowance"). Additionally, Tenant, at Tenant's option, shall have the right to access additional funds ("Additional Funds") from Landlord to pay for all or a portion of additional costs in excess of the Tenant Allowance required to complete Tenant's improvements to the Premises. Any Additional Funds requested by Tenant shall be amortized over the Term of the lease with interest at four percent (4%) per annum.

**Landlord Payment
of Allowances:**

Any allowances to be granted to Tenant by Landlord during the Term may, in Tenant's discretion, be applied directly against the costs of the work outlined in the preceding section to be undertaken by Landlord and/or its contractors/vendors on Tenant's behalf and subject to Tenant's direction and approval. At Tenant's option, in the case of same to be undertaken by Tenant's contractors/vendors, the Allowance and any other allowances shall be remitted directly to Tenant or Tenant's contractors/vendors upon presentation to Landlord of approved (by Tenant) invoices therefor. Landlord

shall provide from any current lender an agreement in writing to be bound to support the Allowance in the instance of any foreclosure or provide any outstanding balance as a rental credit off set right towards next due rent until the same is fully exhausted.

Base Building Improvements:

Landlord, at its sole cost and expense, shall be responsible for any latent defects in the Building (other than those improvements installed by Tenant).

Emergency Generator:

Please address the availability of an existing generator on-site and Tenant's ability to utilize same.

Notwithstanding the foregoing, during the Term, Landlord shall provide required space around the Building in a location mutually agreed upon, for an emergency generator. All expenses associated with the installation, operation, maintenance and insuring of such equipment shall be borne by Tenant. There shall be no additional rent for the space utilized by such equipment of Tenant.

Emergency Generator Fuel Supply:

During the Term, Landlord shall provide required space around the Building, in a location mutually agreed upon, for emergency generator fuel supply tanks. Expenses associated with the installation, operation, maintenance and insuring of such equipment shall be borne by Tenant. There shall be no additional rent for the space utilized by such equipment of Tenant.

Supplemental HVAC Equipment:

During the Term, Landlord shall provide the required space in, on or around the Building for Tenant's supplemental HVAC equipment. Expenses associated with the installation, operation, maintenance and insuring of such equipment shall be borne by Tenant. There shall be no additional rent for the space utilized by such equipment of Tenant.

Fresh Air Circulation:

The Premises shall meet the minimum ASHRAE (American Society of Heating, Refrigerating & Air Conditioning Engineers) standards in effect in 2016.

Building Storage:

Please address the any additional storage space outside of the Premises that can be made available to the Tenant.

Landlord Overhead and Supervision Charges:

On the initial or future construction during the Term, there shall be no profit, overhead or supervision fees. This shall include any charges with respect to the review and approval of Tenant's plans and specifications, or charges by Landlord with respect to any alterations, additions, improvements, renovations and/or refurbishments to the Premises, whether such work be undertaken by Landlord's contractors and/or Tenant's contractors.

Outside Contractors:

Subject to Landlord's approval, which consent shall not be unreasonably withheld, conditioned or delayed, with respect to the architectural and construction work to be performed in the Premises, Tenant shall have the right to undertake both "building standard" and "non-building standard" leasehold improvements (the "**Tenant Improvements**") within the Premises (except where same relate to base building structural and/or mechanical systems) through outside contractors of its own choosing, subject to Landlord's approval, which approval shall not be unreasonably withheld, conditioned or delayed, provided the entry and work on the part of such outside contractors (i) shall be in coordination with Landlord's contractors and their subcontractors and (ii) shall not unreasonably interfere with or delay completion of the work to be performed by Landlord in the Premises or elsewhere in the Building. Subject to coordination with the Landlord, Tenant's Outside Contractors shall have right of access to the roof, electrical rooms, above ceiling areas and risers which are part of the Landlord's common area.

Prior Access:

Tenant, at its option, along with its employees, agents, contractors, subcontractors, space planner/interior architect, engineers, consultants, suppliers and other representatives, and their respective employees, shall be permitted to enter the Premises at any time prior to the scheduled commencement date for the purposes of inspecting same, and for the installing of the Tenant Improvements therein, as well as the installing of furniture, fixtures and equipment (including telephone, communications and computer equipment, further including wiring and cabling for same).

Such right of prior access shall also include access to and use of loading dock facilities, parking facilities and freight elevator(s), as well as access to and use of appropriate electrical and other systems and related facilities, provided such entry and work shall be in harmony with Landlord's contractors and subcontractors, and shall not unreasonably interfere with or delay completion of the work to be performed by Landlord in the Premises or elsewhere in the Building.

Except as otherwise provided herein, there shall be no obligation on the part of Tenant to pay Base Rental, Tenant's pro rata share of Operating Expenses and Taxes by reason of any such prior access.

There shall be no charge to Tenant, its contractors or their subcontractors for electricity, heating, ventilation, air conditioning, security, insurance (except as relates to work which Tenant and/or its contractors or their subcontractors may undertake in the Premises, including general liability coverage) and/or taxes during the construction period, or for the use of the loading dock or freight elevator(s), or the personnel required for the operation thereof, during the construction period or otherwise prior to the commencement date of the Lease for the Premises or any additional space leased by Tenant in the Building during the Term, as applicable.

Special Tenant Improvements:

During the Term, Tenant shall have the right to incorporate special tenant improvements (in the way of improvements and/or upgrades) into the Building

and the Premises, including, but not limited to facilities for computers, separate, self-contained air conditioning systems (including rooftop equipment for same), conference and meeting room facilities, dining rooms and lunchrooms (including kitchens in support thereof, exercise/health facilities, day care, training, telephone equipment rooms, fiber optics, high-ceiling areas, and other special facilities incidental to Tenant's office operations, provided same shall be compatible with Landlord's base building systems. Said Special Tenant Improvements shall be subject to Landlord's consent/approval, which consent shall not be unreasonably withheld, conditioned or delayed. Such special improvements, to the extent that same are for Tenant's sole use, shall be furnished and installed at Tenant's sole cost and expense subject to the application of the Tenant Allowance. Tenant shall have no obligation to remove or restore any special improvements added to the Premises.

Alterations:

During the Term, Tenant shall have the right without the requirement for Landlord consent to replace the wall and floor finishes within the Premises space and surrender the same at the end of the Term to the Landlord.

Electrical Services:

Landlord, at its sole cost and expense, during the Term, shall furnish and install, or cause to be furnished and installed, transformers, risers, conduits, feeders and switchboards necessary to furnish the Premises with, and shall provide or cause to be provided, electricity for normal office purposes, including, but not limited to, (i) fluorescent and incandescent lighting (including task and task ambient lighting systems), and normal office equipment (including, but not limited to, personal computers, duplicating/reproduction, photocopy machines, employee lunchroom(s), coffee bars, dining areas, including kitchen equipment associated therewith, and other equipment of similar low electrical consumption (208/120/277 volts), and (ii) other equipment of high electrical consumption (480 volts); up to the total power consumption by said equipment of ten (10) watts per rentable square foot (or such increased amount in certain areas to accommodate Tenant's data center usage to be further defined and agreed upon), on an annualized basis, times all space then under lease by Tenant in the Building.

Heating, Ventilation and Air Conditioning:

During the Term, Landlord, shall furnish access to conditioned heating, ventilation and air conditioning to the Premises 24 hours per day, 365 days per year.

HVAC specifications and performance criteria shall be attached as an exhibit to the Lease.

Premises Security:

Tenant to have the right to install a card key access system to the Premises with connection to the Landlord's Building entry security system to ensure access for Tenant's employees and or authorized contractors. Tenant shall have the right to install camera security at the Building, in the Premises and any common area that Tenant may reasonable need to monitor. Tenant shall have the right to have BART Police Department enter BART operated property to ensure the safety and security of BART employees and contract staff.

Interruption of Services:

Landlord and Tenant agree that there are certain Building services without which Tenant cannot occupy the Premises for the purposes for which same were leased. Such services are heating, ventilation, air conditioning, electrical service, water service, elevator service, and plumbing services. Should Landlord fail to provide, during the Term, any one or more of the aforementioned services for a continuous period of three (3) days, or more than seven (7) days in any one calendar year, then Base Rental shall abate until such service or services are restored. After a continuous period of thirty (30) days in any one calendar year affecting fifty percent (50%) or more of the then leased Premises, during which Landlord has failed to provide any one or more of the aforementioned services, then Tenant, at its option, may either cancel the entire Lease or the specific floors so affected, at Tenant's option, upon giving written notice therefore to Landlord or off set against rent, all actual costs incurred by Tenant to remedy the deficiencies or seek specific performance or obtain a money judgment. Tenant shall identify certain critical areas within the Premises for which Tenant shall have the ability to provide its own services if Landlord fails to provide such services within twenty-four (24) hours after an interruption occurs, in which event Tenant shall have the right to bill Landlord or offset its payments of Base Rental by the reasonable cost of providing such services so interrupted.

**Communications
Equipment:**

Without liability for rental or any other charges therefor, except as expressly stated hereunder, Tenant and its vendors shall be permitted, at its sole cost and expense subject to the application of the Tenant Allowance, during the Term, to use the Building's risers, telecommunication areas and the percentage of the roof of the Building that Tenant leases to the total rentable area of the Building to install and operate thereon microwave dishes/earth satellite disks and whip antennae (collectively, the "**Rooftop Communications Equipment**"), in locations as selected by Tenant, provided the same complies with all applicable governmental rules, regulations, ordinances and codes.

Landlord shall not install and shall prohibit the installation and/or operation by any other party of, any additional microwave dishes/earth satellite disks, whip antennae, towers and/or other structures on the roof of the Building, which shall be reasonably deemed to interfere with the Rooftop Communications Equipment and/or any Tenant's equipment within the Building.

Tenant shall be permitted to select a contractor of its choice to undertake the installation of the Rooftop Communications Equipment, subject to Landlord's approval, which approval shall not be unreasonably withheld, conditioned or delayed. In addition, Tenant shall be permitted to construct equipment enclosures, if required, in locations, design and materials to be mutually agreed upon, for accommodation of the Rooftop Communications Equipment. Tenant shall also have the right to install necessary conduit and sleeving (of a capacity not less than a 4-inch riser) from the roof to the points of connection within the Premises. Subject to the application of the Tenant Allowance, Tenant shall be responsible for all costs of installation (including structural

reinforcing), repair and maintenance with respect to the Rooftop Communications Equipment.

Compliance with accessibility, health and safety codes and regulations:

Landlord shall, at the Commencement Date and during the Term, at Landlord's sole cost and expense, be responsible for placing and keeping the Building common areas and all Building systems (including, but not limited to fire, safety, security, and elevators, etc.) in compliance with all governmental regulations, codes, rules or laws including the Americans with Disabilities Act.

After the Commencement Date, Tenant shall be responsible for Code Compliance within the Premises.

Other Appurtenances:

During the Term, Tenant shall have the right to use Building shafts or conduits between the Premises and other parts of the Building (including the roof) for the installation and maintenance of conduits, cables, ducts, flues, pipes and other devices, supplementary HVAC and other facilities consistent with Tenant's use of the Premises and other portions of the Building.

In addition, Landlord shall permit access to the Building, at no cost, to any telecommunication providers specified by Tenant and permit them to use the Building shafts, conduits, risers and other inter-floor connections for the installation of cabling and other equipment.

Furthermore, Tenant shall also have the right to use, in common with other tenants, the lobbies and other public areas of the Building (as applicable), plus freight elevators, loading dock, mail room and other Building facilities.

Parking:

Please address the ways in which Landlord shall make available to Tenant, as requested from time to time by Tenant, the right but not the obligation to a minimum of one (1) parking space, on an unassigned basis, in proximate parking lots for each 1,000 rentable square feet contained within the Premises. Landlord to provide proposal for signed Tenant visitor parking at the Building.

The above ratios of parking shall apply to all additional space leased by Tenant in the Building during the Term.

Additionally, please address the number of EV charging stations available for the Tenant's use.

Bicycle Parking>Showers:

Landlord shall provide bike parking sufficient for Tenant's employees. Please address the amount of such parking planned for the Building. Additionally, the Building shall include shower and locker facilities for Tenant's employees.

Identity:

During the Term, with no rental for same, Tenant and any affiliate shall be entitled to any one or all of the following with regard to identity:

- Exclusive, illuminated building top signage, at Tenant's cost, in up to two locations in a quality, size, location, and materials mutually approved by Landlord and Tenant.
- Prominent monument signage, at Landlord's cost, in up to two locations in a quality, size, location, materials and lighting as mutually agreed upon by Tenant and Landlord.
- Lobby signage in a mutually acceptable location in or near Tenant's elevator bank(s)

**Right to Sublease
and Assign:**

During the Term, Tenant shall have the right to sublease all or any portion of the Premises, or assign all of the Premises, subject to Landlord's approval, which approval shall not be unreasonably withheld, conditioned or delayed. Landlord shall not have the right to cancel or "recapture" such subleased or assigned space, or restrict Tenant from subleasing or assigning to an existing tenant in the Building

During the Term, Tenant shall be entitled to retain the net profits, if any, from any subleasing of all or any portion of the Premises, or the assignment of all of the Premises, to an entity or person.

During the Term, Tenant shall have the right without the need for Landlord consent to provide space sharing in the Premises for Tenant's contractors that are retained by Tenant as part of its business operations. All such Tenant contractors shall be provided space within the Premises upon a revocable license where applicable to Tenant's business operation needs.

During the Term, Tenant shall have the right to transfer to an affiliate, successor entity or person by merger all renewal option, expansion option and preferential right to lease provisions set forth in the Lease, further including, but not limited to, Tenant's rights pertaining to parking and Building identification.

Landlord and Tenant shall mutually agree on a form non-disturbance agreement to be provided to subtenants from Landlord.

In the event of any subleasing or assignment, Tenant shall remain primarily liable for its obligations under the Lease.

Consent:

In all cases where the consent or approval shall be required or requested of either Tenant or Landlord pursuant to the Lease, the giving of such consent or approval shall not be unreasonably withheld, conditioned or delayed by the party from whom such consent is required or requested.

Insurance:

Landlord and Tenant shall agree upon commercially reasonable insurance limits for designated categories of insurance for the Lease Term. Landlord shall carry 100% of the replacement cost of the Building property insurance including plate glass. Tenant's obligation to insure the Premises shall be limited to the interior of the Premises and Tenant's property and trade fixtures. Landlord and Tenant shall waive rights of subrogation as to their respective insurance obligations. Tenant's indemnification of the Landlord shall be

limited to the insurance limits carried by Tenant and shall not cover the Landlord's negligent acts or omissions.

Non-Disturbance Agreement:

With respect to any first lien mortgages, deeds of trust or other liens entered into by and between Landlord and any such first lien mortgagee and/or any beneficiary of any deed of trust or other such lien granted by Landlord, or lessor under any ground lease (collectively, the "**Landlord's Mortgage**"), at or prior to the time the Lease is entered into, or thereafter, Landlord shall secure and deliver to Tenant, at or prior to the time the Lease is entered into, or as of the date of any subsequent first lien mortgage, deed of trust or other lien, or ground lease, as the case may be, a non-disturbance agreement from and executed by Landlord's Mortgagee for the benefit of Tenant whereby, as a condition to any attornment or subordination by Tenant to Landlord's Mortgagee, Tenant shall not be disturbed in its possession of the Premises during the Term nor its rights under the Lease terminated by Landlord's Mortgagee so long as Tenant is not in default under the Lease beyond any applicable cure period.

Casualty:

Tenant shall have the right to terminate the Lease if more than thirty percent (30%) of the Premises is destroyed, or the right to continue the Lease, abate all rents during the construction period, and require that Landlord rebuild all of the damaged Premises space utilizing the Landlord's building insurance. Tenant shall control and utilize the Tenant's property insurance monies only in the instance of construction to build the Tenant improvements of the Premises. If Tenant elects to terminate the Lease the date of termination shall be the date of delivery of the Tenant notice to the Landlord. All rents shall abate from the date of the casualty.

Non-Discrimination Program for Subcontracting:

It is the policy of the San Francisco Bay Area Rapid Transit District to ensure that Proposers who enter into agreements with the District do not discriminate or give a preference in the award of Subagreements, or subcontracts, on the basis of race, national origin, color, ethnicity, or gender.

Proposer is not required to subcontract any portion of the Services to be performed under this Agreement. **If the Proposer does not subcontract any portion of the services, this Non-Discrimination Program for Subcontracting shall not apply.** If the Proposer does subcontract a portion of the services to be performed under this Agreement and if the dollar amount of the Subagreements listed for Minority Business Enterprises ("MBEs") and Women Business Enterprises ("WBEs") reflects the Availability Percentage of MBEs and the Availability Percentages of WBEs as stated below, it shall be presumed that the Proposer has not discriminated on the basis of race, national origin, color, ethnicity, or gender.

The Availability Percentages for this Agreement for MBEs is 5.5% and WBEs is 2.8%. The Availability Percentages shall apply to the Subcontracted portion of services to be performed under this Agreement. Such Availability

Percentages for MBEs and WBEs is the level of MBE and the level of WBE Subcontractor participation that is expected for this Agreement in the absence of discrimination on the basis of race, national origin, color, ethnicity, or gender.

The terms of the Non-Discrimination Program for Subcontracting are more particularly set forth in Exhibit A, attached hereto.

Arbitration:

Any disputes under the Lease with respect to the determination of Operating Expenses and the Market Rate shall be resolved by binding arbitration under the method commonly known as "baseball" arbitration, per terms and conditions to be mutually agreed upon and set forth in the Lease. Pending the final determination of any dispute, Tenant shall pay the reasonable amount(s) claimed by Landlord; in the event of final determination in Tenant's favor, Landlord shall refund to Tenant, with interest, the amount of any such overpayment. All other forms of dispute shall be resolved by way of Judicial Reference with rights of appeal, however for any amounts exceeding \$100,000 the Landlord and Tenant will agree to mandatory mediation by senior representatives of each party prior to any litigation.

Rules and Regulations:
Hazardous Materials:

During the Term, Landlord shall not, at any time, use or permit the use of any portion of the site or the Building to be used in violation of, and Landlord shall be in compliance with, any governmental laws, ordinances, rules, regulations, orders or determinations relating to Building or the associated parking areas, including, but not limited to, (i) the provisions of the 1990 Clean Air Act, and the Americans with Disabilities Act (Public Law 101-336, July 26, 1990), *to the extent interpreted and enforced from time to time*, and (ii) asbestos, soil and ground water conditions and "**Hazardous Materials**" (as hereinafter defined) [collectively, the "**Regulations**"].

In the case of (i) in the foregoing paragraph, Landlord, at its sole cost and expense, shall be responsible, during the Term, for all consultation, architectural and engineering charges, and shall make (or cause to be made) alterations, additions, improvements and/or renovations to the common areas of the Building (including the associated parking areas) and path(s) of travel, plus the core restrooms, drinking fountains, fire alarm systems (including strobe lights), exit signs and elevator lobbies on the floors on which the Premises are situated, such that same, *to the extent interpreted and enforced from time to time*, shall be in compliance with the Regulations.

Tenant, at its sole cost and expense, shall comply during the Term, *to the extent interpreted and enforced from time to time*, with the Regulations relating to the Premises (except for the areas or items enumerated as Landlord's responsibility in the preceding paragraph).

In the case of (ii) in the first paragraph above in this section, Landlord shall defend, indemnify and hold Tenant harmless from and against any and all losses, costs (including reasonable attorney's fees), liabilities and claims arising from the existence of any Hazardous Materials that are now or hereinafter become located in, on, under or about the site, the project, the

Building, the Premises or the associated parking garages, and shall assume full responsibility and cost to remedy such violations, provided that such existence of Hazardous Materials is not caused solely by Tenant.

Neither Landlord nor Tenant shall at any time use, generate, sort or dispose of, in, on, under or about the site, the project, the Building, the Premises or the associated parking garages, including, but not limited to, soil and ground water conditions, or transport to or from the same any hazardous wastes, toxic substances or related materials, including, but not limited to, asbestos, PCB transformers, or other toxic or contaminated substances, storage tanks, etc. (the “**Hazardous Materials**”), or permit or allow any third party to do so, without complying with the Regulations. The foregoing shall not preclude the use of common office and cleaning supplies used and stored in customary quantities in accordance with applicable Regulations.

No clean-up, testing, or other costs incurred by Landlord with regard to Hazardous Materials located in, on, under or about, or suspected to be located in, on, under or about, the site, the project, the Building the Premises, or the associated parking garages (unless caused solely by Tenant) shall be included within Operating Expenses.

Whenever in this letter Landlord is to deliver space in its “as is” condition, with all latent defects, Landlord shall nevertheless deliver such space in conformity with the requirements of this paragraph and shall continue to bear the responsibilities with respect to such space provided for in this paragraph, any other provision of this letter or the Lease notwithstanding.

Publicity:

Landlord and Tenant expressly agree that there shall be no press releases or other publicity originated by the parties hereto, or any representatives thereof, concerning the Transaction without the prior consent of both parties, but in no event prior to when the Lease has been fully executed and mutually exchanged by and between Landlord and Tenant. Notwithstanding the foregoing, Landlord acknowledges that Tenant is subject to certain laws, including the California Public Records Act, which may obligate Tenant to release certain documents relating to this RFP, including the RFP itself.

Conditions Precedent:

The above terms and conditions, the Lease and related documents, are all subject to the final approval of Tenant’s senior management and Board of Directors.

Nothing contained herein shall be binding on either party unless and until all such documents have been fully executed and exchanged by and between both parties.

Self Help:

Tenant shall have the remedy of self-help if Landlord, after notice, fails to perform any of Landlord’s obligations under the Lease. If not reimbursed by Landlord after written demand, Tenant may set off against rent all costs incurred in exercising any such self-help right. Landlord shall waive all rights to pursue Tenant for consequential and punitive damages as to any default under the Lease including any holding over by Tenant.

Surrender & Holding Over:

Tenant shall remove all personal property and trade fixtures from the Premises which shall be surrendered to Landlord with all Tenant Improvements left in place, broom clean, reasonable wear and tear excepted. Any holding over period shall entitle Landlord to charge Tenant an increased rent at the rate of one hundred twenty five percent (125%) of the monthly rent immediately payable at the end of the Lease Term for such holding over period.

Tenant Representation:

Tom Maloney and Dave Churton of JLL shall solely represent the Tenant's interest in the negotiations. Pursuant to a separate agreement between JLL and Landlord, and consistent with JLL's separate agreement with Tenant, Landlord shall pay JLL a full procuring market commission ("Brokerage Fees"). The Lease shall include customary representations and indemnities regarding brokerage commissions, and all parties (Landlord, Tenant and the brokers) shall execute an appropriate State of California disclosure form.

On behalf of our client, we look forward to your response to the above terms and conditions. In the meantime, however, please advise if you have any questions regarding this Request for Proposal. **We ask that you red-line your response to this RFP.**

We agree that we do not intend this Request for Proposal to be a contract or to be bound by it. A contract to lease will not exist unless and until a lease has been executed between the Landlord and Tenant. We agree that this Request for Proposal does not set-forth, and that we have not agreed upon, all essential terms of the lease. We also agree that the above terms will be subject to further negotiation.

Kindly respond to the foregoing no later than 5:00 p.m., March 15th, 2019. We look forward to discussing this requirement in further detail.

Sincerely,

JLL



Thomas B. Maloney
International Director
RE License #: 0967243



David Churton
International Director
RE License #: 0106470

cc: Client Distribution

Exhibit A

Non-Discrimination Program for Subcontracting

It is the policy of the San Francisco Bay Area Rapid Transit District to ensure that Proposers who contract with the District do not discriminate or give a preference in the award of Subagreements on the basis of race, national origin, color, ethnicity, or gender.

A. Definitions For purposes of this Agreement:

1. "Minority Business Enterprise (MBE)" - a business enterprise that is at least 51% owned and controlled by a minority person(s).
2. "Women Business Enterprise (WBE)" - a business enterprise that is at least 51% owned and controlled by a woman or women.
3. "Minority Persons" - African Americans (i.e. persons having origins in any of the Black African racial groups), Hispanic Americans (i.e. Cuban, Mexican, Puerto Rican, Latin American, European Spanish (but not Portuguese), and other Hispanic origins and cultures), Asians and other minorities (i.e. Asian and Pacific Islander, ancestral groups of Asian Indians, Chinese, Japanese, Filipino, Hawaiian, and other Asian or Pacific Islander), and Native American ancestral groups of Aleut, Eskimo, and American Indian.

A list of available certified M/WBE firms can be downloaded from the District's website, www.bart.gov/ocr or may be obtained by contacting the District's Office of Civil Rights at 16th Floor, 300 Lakeside Drive, Oakland, California, telephone (510) 464-6100. In addition, Form A, Application for Certification as a Minority or Woman Owned Business Enterprise (M/WBE) for Non-Discrimination Program for Subcontracting, can be downloaded from www.bart.gov/ocr. All California Unified Certification Program (CUCP) certified minority and women-owned DBE firms, except brokers and manufacturers' representatives, are automatically qualified to be M/WBE firms for this Program and do not need to complete Form A. All other firms must complete the Form A. Brokers and manufacturers' representatives are not eligible for certification under this Program.

4. "Availability Percentage" - MBE and WBE availability shall be equal to the percentage of MBEs and the percentage of WBEs in the pool of all Subcontractors within the relevant market area that are available to bid on Subcontractor work in the absence of discrimination or preference.
5. "Broker" – A firm that arranges or expedites transactions and does not maintain a store, warehouse or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.
6. "Manufacturers' Representative" – A firm that arranges or expedites transactions and does not maintain a store, warehouse or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.

B. MBE and WBE Availability Percentages The Availability Percentages for this Agreement are for MBEs 5.5% and for WBEs 2.8%. The Availability Percentages shall apply to the subcontracted portion of Work.

C. MBE and WBE Participation

1. MBE and WBE participation includes agreements (other than employee contracts) between MBEs and WBEs and the Proposer for services specifically required for the completion of the Work under this Agreement except Subagreements with brokers and manufacturers' representative. The Proposer assumes responsibility for accurately identifying the first-tier status of MBE and WBE firms proposed in the Designation of Subcontractors and MBE/WBE Participation Form below.
2. If as firm is owned and controlled by a Minority Woman or Minority Women, then the firm may be counted towards both the MBE and WBE Availability Percentages.
3. MBE and WBE Participation Example
Agreement Amount \$100,000
Percent of Work to be completed by Proposer's own Work Force (varies) 75%
Dollar amount of Work to be completed by Proposer's own Work Force (varies) \$75,000
Subcontracted Dollar Amount (\$100,000-\$75,000) \$25,000
Availability Percentage for M/WBE 5.5%/2.8%
MBE Availability Percentage for 1st tier Subagreements ($\$25,000 \times .055$) \$1,375
WBE Availability Percentage for 1st tier Subagreements ($\$25,000 \times .028$) \$700

D. Presumption of Non-Discrimination

1. The Availability Percentages for MBEs and for WBEs set forth in Section B are the level of MBE and the level of WBE Subcontractor participation which would be expected in a proposal in the absence of discrimination on the basis of race, national origin, color, ethnicity, or gender.
2. Proposer is not required to subcontract any portion of the Work. If the Proposer does not subcontract any portion of the Work, this Non-Discrimination Program for Subcontracting shall not apply. If the Proposer does subcontract a portion of the Work and if the dollar amount of Subagreements listed for MBEs and WBEs reflects the Availability Percentage of MBEs and the Availability Percentage of WBEs, it shall be presumed that the Proposer did not discriminate on the basis of race, national origin, color, ethnicity, or gender.
3. If the dollar amount of MBEs listed for Subagreements is less than the MBE Availability Percentage, no presumption of non-discrimination exists and District staff shall undertake an investigation, as provided herein, to determine if the Proposer discriminated on the basis of race, national origin, color, or ethnicity.
4. If the dollar amount of WBE listed for Subagreements is less than the WBE Availability Percentage, no presumption of non-discrimination exists and District staff shall undertake an investigation, as provided herein, to determine if the Proposer discriminated on the basis of gender.
5. No Proposer shall be found non-responsive solely based on a Proposer's failure to list MBEs and WBEs for Subagreements in dollar amounts which reflect the Availability Percentages of MBEs and WBEs. A finding of non-responsiveness may be based only on

a finding, made after the Proposer is afforded an opportunity for a hearing, that the Proposer discriminated on the basis of race, gender, national origin, color, or ethnicity in the selection of Subcontractors; or on a finding that the Proposer did not provide the information or did not otherwise cooperate, as required herein, in the investigation of possible discrimination. At a hearing on the issue of discrimination, the hearing officer may consider, where deemed relevant, a Proposer's failure to list MBEs and WBEs for Subagreements in dollar amounts which reflect applicable Availability Percentages.

E. Information Required From Proposer Regarding Non-Discrimination

1. If the Proposer has listed MBEs and WBEs for Subagreements in dollar amounts it contends are reflective of the respective MBE and WBE Availability Percentages, the Proposer shall provide the following information at the time it submits its Proposal, or where applicable, within the time permitted by Section E.3.b below:
 - a. The dollar amount of each Subagreement and a statement of the scope of Work to be performed under the Subagreement.
 - b. Separately for each Subagreement, the name, address, telephone number, race, national origin, color, ethnicity, or gender of the owner of each business entity that was listed for the Subagreement.
2. If a Proposer has not listed MBEs and WBEs for Subagreements in dollar amounts reflective of their respective Availability Percentages, the District will notify the Proposer in a manner that provides verification of receipt, that the Proposer has not listed MBEs and WBEs for Subagreements in dollar amounts reflective of their respective Availability Percentages. This notice will include a summary of the calculations used by the District. In addition to the information listed in Section E.1. above, the Proposer shall provide the following information not later than the time prescribed in the notice from the District. If a Proposer has listed MBEs for Subagreements in dollar amounts reflective of MBE but not WBE availability percentages, or vice versa, the Proposer is required to submit the information listed below only as it relates to the Availability Percentage which was not achieved:
 - a. Separately for each Subagreement, the name, address, telephone number, race, national origin, color, ethnicity, or gender of the owner of each business entity that bid but was not listed for the Subagreement.
 - b. Separately for each Subagreement, the name, address, telephone number, race, national origin, color, ethnicity, or gender of the owner of each business entity that expressed an interest, on the telephone or in writing, in bidding for the Subagreement, but did not do so.
 - c. For each Subagreement that did not list an MBE or WBE, copies of the Proposals submitted by the non-MBE/WBE, who was listed for the Subagreement, and the Proposals submitted by each MBE and WBE. The Proposal documents covered by this paragraph shall contain at least the following information: the Proposal amount and a description of the scope of Work. If no written Proposals were submitted by some or all of the Subcontractors who bid the job, the Proposer shall provide a written statement containing the amount of each oral Proposal.
 - d. Separately for each Subagreement that listed a non-MBE/WBE firm, a full and complete statement of the reason(s) that the non-MBE/WBE firm was listed for this Subagreement and not an MBE or WBE. If the reason is based on relative qualifications, the statement must address the particular qualifications at issue. If the reason is the respective dollar amounts bid, the statement must state the

amounts and describe the similarities and/or dissimilarities in the scope of Work covered by the Proposals.

- e. A statement describing any efforts made by the Proposer to ensure Non-Discrimination in Subcontracting, including a description of any advertising and any other out-reach efforts.
 - f. Such other information as may be requested by District which is relevant to the issue of possible discrimination by the Proposer in subcontracting. This information may include the Proposer's record with respect to MBE and WBE subcontractor participation on other general agreements awarded to the Proposer in the previous 12 months.
3. Where paragraphs A and B require information on MBEs or WBEs, the Proposer shall:
- a. Submit, at the time it submits its Proposal, a completed Designation of Subcontractors and MBE/WBE Participation Form covering those MBEs and WBEs who are currently certified as such by the District.
 - b. Submit, within the time prescribed in the notice from the District described in Section E.2., a completed Form A - Application for Certification for those businesses which are claimed to be MBEs or WBEs, but which are not currently certified as such by the District. Firms who are currently certified by the California Unified Certification Program ("CUCP") as a DBE shall be presumed to meet all requirements for qualifying as an MBE or WBE and will not be required to submit an application for certification as an MBE or WBE, provided they are a member of a Presumptive Group as defined by 49 Code of Federal Regulations Part 26. A sample Application for Certification form can be obtained from the District's Office of Civil Rights, telephone (510) 464-6100 or downloaded from the District's internet website. The website address is **www.bart.gov/ocr**.

F. Enforcement/Hearing Procedures

1. If at any time during the solicitation process a Proposer fails to timely provide any requested information, including the information required by Sections E.1., E.2. and E.3., the District shall issue a Finding of Non-Compliance that sets forth the deficiencies in the Proposer's response. The Finding of Non-Compliance shall be transmitted to the Proposer in a manner that provides verification of receipt.
2. Where a Proposer submits information which it contends shows that it listed MBEs and WBEs for Subagreements in dollar amounts which reflect the Availability Percentages for MBEs and WBEs, the District shall determine if the Proposer is correct. If the Proposer is correct, the District shall issue a Finding of Non-Discrimination. If the District determines that the Proposer is incorrect, the District shall notify the Proposer in writing that the Proposer must provide the information set forth in Section E.2., within the time prescribed in the notice from the District.
3. A Proposer, given notice to provide additional information pursuant to Sections E.2., shall provide the information in a timely manner, even if the Proposer disputes the District's decision that the Proposer did not list MBEs and WBEs for Subagreements in dollar amounts which reflect the MBE and/or WBE Availability Percentages. If the Proposer does not provide all of the required information in a timely manner, the District shall issue a Finding of Non-Compliance.
4. If a Proposer does not contest the Finding of Non-Compliance within five (5) Days of the date of issuance of the Finding of Non-Compliance, the District shall issue a Final

Determination of Non-Compliance and a Finding of Non-Responsiveness. If the Proposer disagrees with the District's Finding of Non-Compliance, it may, within five (5) Days of the issuance of the Finding of Non-Compliance, request, in writing, a hearing before a hearing officer appointed by the District. Unless otherwise agreed by the District and the Proposer, the hearing shall be held within fourteen (14) Days of the request. The only issue to be addressed by the hearing officer is whether the Proposer timely provided the required information. At the hearing, the Proposer and the District may be represented by counsel and may present relevant witnesses and documents. The rules of evidence need not be observed. The hearing officer shall exercise all powers relating to the conduct of the hearing. Regardless of the outcome, the Proposer and the District shall bear their own costs and attorneys' fees. The District shall pay the hearing officer's fees. The hearing officer shall issue a written recommendation within ten (10) Days of the completion of the hearing. If following receipt of the hearing officer's recommendation the District determines that the required information was timely provided by the Proposer, the finding of Non-Compliance shall be withdrawn. However, if the District determines that the required information was not timely provided by the Proposer, the District shall issue a Final Determination of Non-Compliance and a Finding of Non-Responsiveness.

5. Where a Proposer submits, in a timely manner, the information required by Sections E.1., E.2, and E.3., the District shall review the information and any other information the District considers pertinent. In this regard, the Proposer shall not unreasonably refuse to provide additional information requested by the District. Based on this review and investigation, the District shall make a determination, within fifteen (15) Days of Bid opening, either that the Proposer did not discriminate in the award of Subagreements, or that a hearing is needed to determine if the Proposer discriminated. If the District determines there was no discrimination, the District shall issue a Finding of Non-Discrimination.
6. If the District determines that a hearing is needed on the issue of discrimination, the District shall notify the Proposer of this decision within five (5) Days of the date the determination is made. This written notice shall include the following: the date, time and location of the hearing; the name and address of the hearing officer; and a statement of the reasons the District has determined that a hearing is necessary.
7. Unless otherwise agreed in writing by the District and the Proposer, the hearing shall be held no later than fourteen (14) Days after the date of the notice given pursuant to Supplementary Section F. 5 above.
8. The hearing officer shall be selected by the District.
9. The only issue to be resolved by the hearing officer is whether the Proposer discriminated in its selection of one or more Subcontractors. If contested by the Proposer, resolution of this issue shall include a determination whether the Proposer's award of Subagreements reflected the Availability Percentages of MBEs and/or WBEs and/or whether the Availability Percentages stated in the Agreement are accurate.
10. At the hearing, the Proposer and the District may be represented by counsel and may present relevant witnesses and documents. The rules of evidence need not be observed. The hearing officer shall exercise all powers relating to the conduct of the hearing. Regardless of the outcome, the Proposer and the District shall bear their own costs and attorneys' fees. The District shall pay the hearing officer's fees.
11. The hearing officer shall issue a written recommendation within ten (10) days of the completion of the hearing.

12. Following receipt of the hearing officer's recommendation, the District will issue a Final Determination of Non-Discrimination or a Final Determination of Discrimination, and, if appropriate, a Finding of Non-Responsiveness.

G. Agreement Provisions Relating to Non-Discrimination Program for Subcontracting

If this Non-Discrimination Program for Subcontracting applies to a proposal, and the District accepts such proposal, any resulting Agreement will contain the following provisions:

1. MBE and WBE Participation

The Availability Percentages for this Agreement are for MBEs 5.5% and for WBEs 2.8%. The Availability Percentages shall apply to the subcontracted portion of Work.

2. Substitution of MBE/WBE Subcontractors

The Contractor is required to show that it has not discriminated or has not given a preference in substituting a MBE or WBE with a non-MBE or non-WBE. As used in this Section, the Contractor must document non-discrimination in the substitution of MBEs and/or WBEs as required in Section E.2, as relevant.

3. MBE/WBE Records

To ensure that the Contractor does not discriminate or give a preference in the performance of this Agreement, the Contractor shall maintain records to verify MBE or WBE participation as set forth in the Contractor's proposal and as modified in any way during the course of the Agreement. Such records shall show the name and business address of each MBE and/or WBE participating in the Agreement and the total dollar amount actually paid each MBE and/or WBE and the date of payment. A monthly report based on these records and certified to be correct by the Contractor shall be submitted with the monthly invoice. No invoice will be approved for payment unless the current report and all required attachments have been furnished.

4. Change Orders

The Contractor shall not discriminate or give a preference in the performance or administration of change orders that may be issued under this Agreement.

5. Noncompliance

Failure to comply with the above requirements shall be grounds for termination of this Agreement in whole or in part, or, at the discretion of BART, for withholding payments due Contractor during the period of non-compliance.

6. Protest of Award of Agreement

Award of an Agreement is subject to the District's protest procedures, as applicable. For Agreements not subject to the District's protest procedures, all findings, including the findings of the hearing officer, shall be final.

Designation of Subcontractors and MBE/WBE Participation Form
DESIGNATION OF SUBCONTRACTORS AND
MBE/WBE PARTICIPATION FORM

Name, Address and Telephone Number of All Subcontractors	Check if MBE	Check if WBE	Work Description	Total Dollar Amount
Name _____ _____ Address _____ _____ Phone Number _____ Age of Firm: _____ Annual Gross Receipt as of Last Tax Year: \$ _____				
Name _____ _____ Address _____ _____ Phone Number _____ Age of Firm: _____ Annual Gross Receipt as of Last Tax Year: \$ _____				
Name _____ _____ Address: _____ _____ Phone Number: _____ Age of Firm: _____ Annual Gross Receipt as of Last Tax Year: \$ _____				

DISCLOSURE REGARDING REAL ESTATE AGENCY RELATIONSHIP
(as required by the California Civil Code)

When you enter into a discussion with a real estate agent regarding a real estate transaction, you should from the outset understand what type of agency relationship or representation you wish to have with the agent in the transaction.

SELLER'S AGENT

A Seller's agent under a listing agreement with the Seller acts as the agent for the Seller only. A Seller's agent or a subagent of that agent has the following affirmative obligations:

To the Seller:

- a. A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Seller.

To the Buyer and the Seller:

- a. Diligent exercise of reasonable skill and care in performance of the agent's duties.
- b. A duty of honest and fair dealing and good faith.
- c. A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties.

An agent is not obligated to reveal to either party any confidential information obtained from the other party that does not involve the affirmative duties set forth above.

BUYER'S AGENT

A selling agent can, with a Buyer's consent, agree to act as agent for the Buyer only. In these situations, the agent is not the Seller's agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the Seller. An agent acting only for a Buyer has the following affirmative obligations:

To the Buyer:

- a. A fiduciary duty of utmost care, integrity, honesty, and loyalty in dealings with the Buyer.

To the Buyer and the Seller:

- a. Diligent exercise of reasonable skill and care in performance of the agent's duties.
- b. A duty of honest and fair dealing and good faith.
- c. A duty to disclose all facts known to the agent materially affecting the value or desirability of the property that are not known to, or within the diligent attention and observation of, the parties.

An agent is not obligated to reveal to either party any confidential information obtained from the other party that does not involve the affirmative duties set forth above.

AGENT REPRESENTING BOTH SELLER AND BUYER

A real estate agent, either acting directly or through one or more associate licensees, can legally be the agent of both the Seller and the Buyer in a transaction, but only with the knowledge and consent of both the Seller and the Buyer. In a dual agency situation, the agent has the following affirmative obligations to both the Seller and the Buyer:

- a. A fiduciary duty of utmost care, integrity, honesty and loyalty in the dealings with either the Seller or the Buyer.
- b. Other duties to the Seller and the Buyer as stated above in their respective sections.

In representing both Seller and Buyer, the agent may not, without the express permission of the respective party, disclose to the other party that the Seller will accept a price less than the listing price or that the Buyer will pay a price greater than the price offered.

The above duties of the agent in a real estate transaction do not relieve a Seller or Buyer from the responsibility to protect his or her own interests. You should carefully read all agreements to assure that they adequately express your understanding of the transaction. A real estate agent is a person qualified to advise about real estate. If legal or tax advice is desired, consult a competent professional.

Throughout your real property transaction you may receive more than one disclosure form, depending upon the number of agents assisting in the transaction. The law requires each agent with whom you have more than a casual relationship to present you with this disclosure form. You should read its contents each time it is presented to you, considering the relationship between you and the real estate agent in your specific transaction.

This disclosure form includes the provisions of Sections 2079.13 to 2079.24, inclusive, of the Civil Code set forth on the reverse hereof. Read it carefully.

I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS DISCLOSURE AND THE PORTIONS OF THE CALIFORNIA CIVIL CODE PRINTED ON THE FOLLOWING PAGE.

We acknowledge that Agent represents us as (check one):

Tenant/Buyer Landlord/Seller _____ Date __-

Agent: Jones Lang LaSalle Brokerage, Inc.

CA Civil Code Sections 2079.13 through 2079.24 (2079.16 appears on the previous page)

2079.13. As used in Sections 2079.14 to 2079.24, inclusive, the following terms have the following meanings: (a) "Agent" means a person acting under provisions of Title 9 (commencing with Section 2295) in a real property transaction, and includes a person who is licensed as a real estate broker under Chapter 3 (commencing with Section 10130) of Part 1 of Division 4 of the Business and Professions Code, and under whose license a listing is executed or an offer to purchase is obtained. (b) "Associate licensee" means a person who is licensed as a real estate broker or salesperson under Chapter 3 (commencing with Section 10130) of Part 1 of Division 4 of the Business and Professions Code and who is either licensed under a broker or has entered into a written contract with a broker to act as the broker's agent in connection with acts requiring a real estate license and to function under the broker's supervision in the capacity of an associate licensee. The agent in the real property transaction bears responsibility for his or her associate licensees who perform as agents of the agent. When an associate licensee owes a duty to any principal, or to any buyer or seller who is not a principal, in a real property transaction, that duty is equivalent to the duty owed to that party by the broker for whom the associate licensee functions. (c) "Buyer" means a transferee in a real property transaction, and includes a person who executes an offer to purchase real property from a seller through an agent, or who seeks the services of an agent in more than a casual, transitory, or preliminary manner, with the object of entering into a real property transaction. "Buyer" includes vendee or lessee. (d) "Commercial real property" means all real property in the state, except single-family residential real property, dwelling units made subject to Chapter 2 (commencing with Section 1940) of Title 5, mobilehomes, as defined in Section 798.3, or recreational vehicles, as defined in Section 799.29. (e) "Dual agent" means an agent acting, either directly or through an associate licensee, as agent for both the seller and the buyer in a real property transaction. (f) "Listing agreement" means a contract between an owner of real property and an agent, by which the agent has been authorized to sell the real property or to find or obtain a buyer. (g) "Listing agent" means a person who has obtained a listing of real property to act as an agent for compensation. (h) "Listing price" is the amount expressed in dollars specified in the listing for which the seller is willing to sell the real property through the listing agent. (i) "Offering price" is the amount expressed in dollars specified in an offer to purchase for which the buyer is willing to buy the real property. (j) "Offer to purchase" means a written contract executed by a buyer acting through a selling agent that becomes the contract for the sale of the real property upon acceptance by the seller. (k) "Real property" means any estate specified by subdivision (1) or (2) of Section 761 in property that constitutes or is improved with one to four dwelling units, any commercial real property, any leasehold in these types of property exceeding one year's duration, and mobilehomes, when offered for sale or sold through an agent pursuant to the authority contained in Section 10131.6 of the Business and Professions Code. (l) "Real property transaction" means a transaction for the sale of real property in which an agent is employed by one or more of the principals to act in that transaction, and includes a listing or an offer to purchase. (m) "Sell," "sale," or "sold" refers to a transaction for the transfer of real property from the seller to the buyer, and includes exchanges of real property between the seller and buyer, transactions for the creation of a real property sales contract within the meaning of Section 2985, and transactions for the creation of a leasehold exceeding one year's duration. (n) "Seller" means the transferor in a real property transaction, and includes an owner who lists real property with an agent, whether or not a transfer results, or who receives an offer to purchase real property of which he or she is the owner from an agent on behalf of another. "Seller" includes both a vendor and a lessor. (o) "Selling agent" means a listing agent who acts alone, or an agent who acts in cooperation with a listing agent, and who sells or finds and obtains a buyer for the real property, or an agent who locates property for a buyer or who finds a buyer for a property for which no listing exists and presents an offer to purchase to the seller. (p) "Subagent" means a person to whom an agent delegates agency powers as provided in Article 5 (commencing with Section 2349) of Chapter 1 of Title 9. However, "subagent" does not include an associate licensee who is acting under the supervision of an agent in a real property transaction.

2079.14. Listing agents and selling agents shall provide the seller and buyer in a real property transaction with a copy of the disclosure form specified in Section 2079.16, and, except as provided in subdivision (c), shall obtain a signed acknowledgment of receipt from that seller or buyer, except as provided in this section or Section 2079.15, as follows: (a) The listing agent, if any, shall provide the disclosure form to the seller prior to entering into the listing agreement. (b) The selling agent shall provide the disclosure form to the seller as soon as practicable prior to presenting the seller with an offer to purchase, unless the selling agent previously provided the seller with a copy of the disclosure form pursuant to subdivision (a). (c) Where the selling agent does not deal on a face-to-face basis with the seller, the disclosure form prepared by the selling agent may be furnished to the seller (and acknowledgment of receipt obtained for the selling agent from the seller) by the listing agent, or the selling agent may deliver the disclosure form by certified mail addressed to the seller at his or her last known address, in which case no signed acknowledgment of receipt is required. (d) The selling agent shall provide the disclosure form to the buyer as soon as practicable prior to execution of the buyer's offer to purchase, except that if the offer to purchase is not prepared by the selling agent, the selling agent shall present the disclosure form to the buyer not later than the next business day after the selling agent receives the offer to purchase from the buyer.

2079.15. In any circumstance in which the seller or buyer refuses to sign an acknowledgment of receipt pursuant to Section 2079.14, the agent, or an associate licensee acting for an agent, shall set forth, sign, and date a written declaration of the facts of the refusal.

2079.17. (a) As soon as practicable, the selling agent shall disclose to the buyer and seller whether the selling agent is acting in the real property transaction exclusively as the buyer's agent, exclusively as the seller's agent, or as a dual agent representing both the buyer and the seller. This relationship shall be confirmed in the contract to purchase and sell real property or in a separate writing executed or acknowledged by the seller, the buyer, and the selling agent prior to or coincident with execution of that contract by the buyer and the seller, respectively. (b) As soon as practicable, the listing agent shall disclose to the seller whether the listing agent is acting in the real property transaction exclusively as the seller's agent, or as a dual agent representing both the buyer and seller. This relationship shall be confirmed in the contract to purchase and sell real property or in a separate writing executed or acknowledged by the seller and the listing agent prior to or coincident with the execution of that contract by the seller. (c) The confirmation required by subdivisions (a) and (b) shall be in the following form:

_____(DO NOT COMPLETE, SAMPLE ONLY)_____ is the agent of (check one): the landlord/seller exclusively
(Name of Listing Agent) both the tenant/buyer and landlord/seller

_____(DO NOT COMPLETE, SAMPLE ONLY)_____ is the agent of (check one): the tenant/buyer exclusively
(Name of Selling Agent if not the same as Listing Agent) the landlord/seller exclusively
 both the tenant/buyer and the landlord/seller

(d) The disclosures and confirmation required by this section shall be in addition to the disclosure required by Section 2079.14.

2079.18. No selling agent in a real property transaction may act as an agent for the buyer only, when the selling agent is also acting as the listing agent in the transaction.

2079.19. The payment of compensation or the obligation to pay compensation to an agent by the seller or buyer is not necessarily determinative of a particular agency relationship between an agent and the seller or buyer. A listing agent and a selling agent may agree to share any compensation or commission paid, or any right to any compensation or commission for which an obligation arises as the result of a real estate transaction, and the terms of any such agreement shall not necessarily be determinative of a particular relationship.

2079.20. Nothing in this article prevents an agent from selecting, as a condition of the agent's employment, a specific form of agency relationship not specifically prohibited by this article if the requirements of Section 2079.14 and Section 2079.17 are complied with.

2079.21. A dual agent shall not disclose to the buyer that the seller is willing to sell the property at a price less than the listing price, without the express written consent of the seller. A dual agent shall not disclose to the seller that the buyer is willing to pay a price greater than the offering price, without the express written

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consent of the buyer. This section does not alter in any way the duty or responsibility of a dual agent to any principal with respect to confidential information other than price.

2079.22. Nothing in this article precludes a listing agent from also being a selling agent, and the combination of these functions in one agent does not, of itself, make that agent a dual agent.

2079.23. (a) A contract between the principal and agent may be modified or altered to change the agency relationship at any time before the performance of the act which is the object of the agency with the written consent of the parties to the agency relationship. (b) A lender or an auction company retained by a lender to control aspects of a transaction of real property subject to this part, including validating the sales price, shall not require, as a condition of receiving the lender's approval of the transaction, the homeowner or listing agent to defend or indemnify the lender or auction company from any liability alleged to result from the actions of the lender or auction company. Any clause, provision, covenant, or agreement purporting to impose an obligation to defend or indemnify a lender or an auction company in violation of this subdivision is against public policy, void, and unenforceable.

2079.24. Nothing in this article shall be construed to either diminish the duty of disclosure owed buyers and sellers by agents and their associate licensees, subagents, and employees or to relieve agents and their associate licensees, subagents, and employees from liability for their conduct in connection with acts governed by this article or for any breach of a fiduciary duty or a duty of disclosure.

