

**AGREEMENT  
BETWEEN  
THE CITY OF OAKLAND  
AND  
JACK LONDON SQUARE EXISTING (OAKLAND) OWNER, LLC  
FOR THE BROADWAY SHUTTLE**

This Agreement is entered into by and between the City of Oakland, a municipal corporation (“City”), and Jack London Square Existing (Oakland) Owner, LLC, a Delaware limited liability company (“Sponsor”) (hereinafter collectively the “Parties” and separately a “Party”), as of the \_\_\_ day of December, 2020

**SECTION I**

**RECITALS**

1. The City, Sponsor’s predecessor-in-interest, Jack London Square Ventures LLC (“Original Sponsor”) and other business districts and business owners in the City’s Downton area created a free bus shuttle in July, 2010, that, among other outcomes, made it more convenient for:
  - A. Jack London District workers and business owners to more easily travel between their respective offices and businesses and the 12th Street Bay Area Rapid Transit District (“BART”) station, and
  - B. Downtown, Uptown and Lake Merritt Financial District workers, residents and, visitors to visit and patronize Jack London District restaurants and establishments, and
  - C. Jack London District workers and business owners to visit and patronize Downtown and Uptown restaurants, bars and other businesses.
2. The City, Sponsor, and other business districts and business owners desire to continue providing transit connectivity between the Jack London waterfront area and the Downtown and Uptown commercial districts of the City.
3. The bus shuttle service is known as the “Broadway Shuttle” and “The B” (hereafter the “Shuttle”).
4. The 2004 Jack London Square Redevelopment Final Environmental Impact Report (“EIR”) Mitigation, Monitoring and Reporting Program Item C.2g (“Mitigation C.2g”) requires “the project sponsor (to) provide shuttle service for employees of, and visitors to, the project site between the project site and the 12th Street BART station during peak traffic hours (page III-26).
5. The 2004 Jack London Square Project Condition of Approval 26 (“Condition of Approval 26”) states: “the Project Applicant shall prepare a shuttle operations plan” and “the shuttle service shall become operative within six months of occupancy of the first building” (page 13 of 25).
6. The Project Applicant submitted a draft shuttle operations plan to the City on February 19, 2009 prior to the required date of implementation.

7. On November 15, 2010, Original Sponsor and the City entered into an agreement for the Original Sponsor to contribute \$200,000 to subsidize Shuttle operations between July 27, 2010, and July 26, 2012.
8. On November 5, 2012, Original Sponsor and the City entered into an agreement for the Original Sponsor to contribute \$264,160 to subsidize Shuttle operations between July 27, 2012, and July 26, 2014.
9. On March 20, 2014, Original Sponsor and the City entered into an agreement for the Original Sponsor to contribute \$321,334 to subsidize Shuttle operations between July 27, 2014, and December 31, 2016.
10. Sponsor succeeded to the interest of Original Sponsor on March 10, 2016.
11. On February 28, 2017, Sponsor and the City entered into an agreement for the Original Sponsor to contribute \$280,256 to subsidize Shuttle operations between January 1, 2017 to December 31, 2018.
12. The City has also received funding commitments towards the operations of the Shuttle from the Downtown Community Business District, Lake Merritt-Uptown Community Business District, and Jack London Improvement District.
13. Sponsor and the City wish to continue Sponsor's funding of the Shuttle for another twenty-four months from January 1, 2019 to December 31, 2021.

NOW, THEREFORE, for good and valuable consideration, the parties hereby agree as follows:

## **SECTION II**

### **PARTY OBLIGATIONS**

1. The term of this Agreement is from January 1, 2019 to June 30, 2022, unless otherwise terminated earlier pursuant to the terms of this Agreement.
2. The Shuttle service shall remain in effect until June 30, 2022.
  - A. The Parties mutually acknowledge and agree that the Shuttle shall not be operational between April 1, 2020 and December 31, 2020 due to the ongoing Coronavirus Pandemic, commonly referred to as COVID-19.
3. Sponsor shall pay the City the amounts set forth in this Section 3 to support the operations, signage, vehicle wraps, educational brochures, advertising, project management staff costs, and feasibility analysis of the Shuttle service, which may in the future include bus or electric streetcar vehicles. Two individual payments are due. A first payment for the amount of One Hundred Fifty Thousand dollars (\$150,000) for the calendar year 2019 shall be made within thirty (30) days after this Agreement is signed by both parties and the City notifies Sponsor that this Agreement has received all necessary City Council approvals (the "Effective Date"). A second payment shall be made within thirty (30) days of the Effective Date for the amount of Thirty-Six Thousand Eight Hundred Eighty-Five 25/100 dollars (\$36,885.25) for the calendar year 2020. A third payment in the amount of the 2021 CPI Adjusted Amount (as hereinafter defined), shall be made on August 30, 2021 for the calendar year 2021. As used herein, the term "2021 CPI Adjusted Amount" shall mean the sum of

One Hundred Fifty Thousand dollars (\$150,000) as adjusted at a rate equal to the change in the Consumer Price Index for all Urban Consumers, San Francisco-Oakland-Hayward (the “Index”), between June 2020 and June 2021. A fourth payment in the amount of the 2022 CPI Adjusted Amount (as hereinafter defined) shall be made on June 30, 2022 to cover the period of January 1, 2022 – June 30, 2022. As used herein, the term “2022 CPI Adjusted Amount” shall mean one-half of the 2021 CPI Adjusted Amount, as defined above, further adjusted at a rate equal to the change in the Index between June 2021 and June 2022.

The City represents that these payments by Sponsor to the City shall fully satisfy any requirement by the “project sponsor” or the “Project Applicant” (Applicant) to provide shuttle service as set forth in the Mitigation C.2g and the Condition of Approval 26, respectively, over the term of the Agreement.

4. Payments shall be made payable to “City of Oakland” and mailed to:

City of Oakland  
Attention: Elma Flores  
250 Frank H Ogawa Plaza, 4<sup>th</sup> Floor  
Oakland, CA 94612

5. The City and the Alameda-Contra Costa Transit District, a public transit district established under the laws of the State of California (“AC Transit”) entered into that certain Transit Service Agreement dated as of January 9, 2015 (as amended, the “TSA”). Under the TSA, AC Transit will provide Shuttle service from July 27, 2016 through June 30, 2022, with to the Shuttle operating between 7:00am-10:00pm Monday-Friday at approximately 10-minute frequencies during peak hours (defined as 7am-9am and 5pm-7pm) and approximately 15-minute frequencies during off-peak hours. In addition, under the TSA, Shuttle frequencies may be increased and Shuttle hours may be extended. No modifications to the Shuttle service or the service hours in this Party Obligations Paragraph 5 shall be made without prior notice to and input from Sponsor. No material changes to the Shuttle service or Shuttle service hours in this Party Obligation Paragraph 5 shall be made without prior written approval from Sponsor.
6. The City reserves the right to terminate the TSA if the Shuttle service is not meeting the City’s expectations for customer service and/or performance. However, if the TSA is terminated, the City shall make reasonable attempts to secure a new TSA with a different operator prior to the conclusion of AC Transit’s service in order to ensure that there is no interruption in Shuttle service.
7. The City reserves the right to temporarily suspend the Shuttle service under the TSA if Shuttle service is suspended by AC Transit due to staffing shortages or public health concerns caused by the COVID-19 pandemic. If Shuttle service under the TSA is suspended, the City shall make reasonable attempts to re-establish service as soon as reasonably possible.
8. In the event that the City terminates the TSA and enters into a new TSA with a different operator to provide the Shuttle service within the term of this Agreement, Sponsor’s funding obligation under this Agreement shall remain in effect, provided that there is no material decrease to the Shuttle service or hours set forth in Paragraph 5 of Party Obligations, including, without limitation, the two Jack London Square Broadway Shuttle stops. In the event that the City enters into a new TSA with a different operator, the City shall make every reasonable attempt to include as many of the same provisions as possible that are outlined in the TSA – and shall include the two Jack London Square Broadway Shuttle stops.

9. If (a) the TSA is terminated prior to the end of the term of this Agreement, and the City does not enter into a new TSA with a different operator to provide comparable Shuttle service within the term of this Agreement, or (b) Shuttle Service is discontinued or suspended for any period of time during the term of this Agreement, the City shall refund or credit to Sponsor any unused and/or unobligated portion of Sponsor's payments made under this Agreement. The refunded amount shall be equal to the number of days in which service is not provided by AC Transit multiplied by the pro rata rate for the calendar year. For 2019, the pro rata rate shall be \$410.95 per day; for 2020, the pro rata rate shall be \$409.83 per day; for 2021 and 2022 the pro rata rate shall be determined by dividing the annual CPI-adjusted total by 365, to the nearest whole cent. (\$150,000 annual first year commitment divided by 365 days for 2019, 366 days for 2020). For example, if the service is terminated after 300 days, of the first year, the City would refund \$26,000.00 to Sponsor.
10. The City and the Sponsor shall give the other party written notice of any default or breach hereunder claimed by the party. The notice shall describe the default and give the party in breach the opportunity to cure said breach or default within 45 days. Should the party in breach not cure the breach or default within 45 days, the other party may terminate this Agreement upon written notice of termination to the party in breach and, in the event of an uncured City breach, without limiting Sponsor's other rights and remedies, the City shall refund to Sponsor any unused and/or unobligated portion, as determined by Party Obligation 8, of Sponsor's payments made under this Agreement.
11. BROADWAY SHUTTLE INFORMATION

Upon request from Sponsor, the City shall share the following information with Sponsor:

- i. Ridership data summaries for the Shuttle using Automated Passenger Counter with infrared technology. Ridership data can include trip data broken down by hour, days of the week and Shuttle stop.
  - ii. On-time performance data summaries for the Shuttle using the Automated Vehicle Location (AVL) system. Reports can include the number of occurrences that buses depart a timed stop more than one minute early, and arrive at a timed stop than more five minutes late.
  - iii. Summaries of Shuttle complaints, comments and commendations compiled by AC Transit Customer Relations Call Center.
12. The City shall make every reasonable effort to prominently place the Sponsor's logo on all Shuttle marketing and promotional materials, including brochures, posters and the website; mention Sponsor as a Shuttle sponsor in press releases; and incorporate Sponsor into the Shuttle launch media event.
  13. The City shall indemnify, defend, and hold harmless Sponsor, its affiliates and their respective directors, officers, employees, and agents against any and all suits, claims or actions of any sort or nature, including but not limited to injuries to or death of any persons, or for loss of or damage to any property (including costs of attorney's fees) arising out of the City's performance under this Agreement. The City shall hold Sponsor harmless against any loss suffered by Sponsor by virtue of this Agreement, except any such injury, loss or damage caused by the sole negligence or willful misconduct of Sponsor.
  14. The City shall also indemnify, defend, and hold harmless Sponsor, its affiliates and their respective directors, officers, employees, and agents against any and all suits, claims or actions arising out of

the AC Transit's or any successor's operation of the Shuttle, but only to the extent that the City is indemnified for such actions by AC Transit or such successor under the terms of the TSA. The City represents that the AC Transit indemnity of the City is materially similar to the City indemnity of Sponsor set forth above, and agrees to include a similar indemnity in any future TSA. The City's obligations under this Section 12 shall survive the termination of the Agreement.

15. This Agreement may only be changed, modified or extended by written agreement of both parties.
16. This Agreement is made in the State of California, and will be construed and enforced in accordance with the laws of the State of California.
17. All of the terms, provisions and conditions of the Agreement hereunder shall be binding upon and inure to the parties hereto and their respective successors, assigns and legal representatives. Notwithstanding the preceding sentence, neither party shall assign or transfer interest in this Agreement without the written consent of the other party.
18. This Agreement contains the entire agreement of the parties with respect to matters addressed herein, and supersede any prior negotiations. All prior or contemporaneous agreements, understandings, representations, and statements are merged into this Agreement and are of no further force or effect. Every provision of this Agreement is intended to be severable. If any provision of this Agreement is held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not be affected or impaired.
19. This Agreement may be signed in multiple counterparts, which, when signed by all parties, will constitute a binding agreement.
20. All notices and demands given under the terms of Agreement shall be in writing and may be effected by personal delivery, including by any commercial courier or overnight delivery service, or by United States registered or certified mail, return receipt requested, with all postage and fees fully prepaid. Notices shall be effective upon receipt by the Party being given notice, as indicated by the return receipt if mailed; except that if a Party has relocated without providing the other Party with its new address for service of notices, or if a Party refuses delivery of a notice upon its tender, the notice shall be effective upon the attempt to serve the notice at the last address given for service of notices upon that Party. Notices shall be sent to the address for each Party as follows:

To Sponsor:

c/o Jack London Square  
472 Water Street  
Oakland, California 94607  
Attention: General Manager

With a copy of all notices sent to:

c/o CIM Group, LP  
4700 Wilshire Boulevard  
Los Angeles, California 90010  
Attention: General Counsel

To the City:

City of Oakland  
250 Frank H Ogawa Plaza, 4<sup>th</sup> Floor  
Oakland, CA 94612  
Attention: Craig Raphael

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first set forth above.

**FOR THE SPONSOR**

**FOR THE CITY**

Jack London Square Existing (Oakland) Owner,  
LLC, a Delaware limited liability company

\_\_\_\_\_  
Edward D. Reiskin, City Administrator

By:\_\_\_\_\_

Approved as to form and legality:

Name:\_\_\_\_\_

Title:\_\_\_\_\_

\_\_\_\_\_  
City Attorney

