

**STAFF REPORT FOR CALENDAR ITEM NO.: 4
FOR THE MEETING OF: March 24, 2017**

TRANSBAY JOINT POWERS AUTHORITY

BRIEF DESCRIPTION:

Authorize the Executive Director to enter into an Asset Management Agreement (Agreement) with a special-purpose entity created by Lincoln Property Company (Lincoln) as Manager for the Transbay Transit Center (Transit Center) for a six (6) year term, with an option to extend the term for an additional five (5) years, and substantially in accordance with the terms detailed in the Agreement attached hereto. Lincoln and Transbay Joint Powers Authority (TJPA) staff have reached agreement on all material terms of the Agreement. Should any material terms of the Agreement change, the revised Agreement will be brought to the TJPA Board of Directors (Board) for approval prior to execution.

SUMMARY:

This staff report and its attachments document key aspects of the TJPA Master Lessee Request for Proposals (RFP) process and resulting negotiation of the Agreement with Lincoln.

In June 2015, the TJPA engaged HR&A Advisors (HR&A) to assist in identifying and procuring a partner to operate and manage the Transit Center. During the solicitation process, promotional platform consultants Sensory Interactive and legal counsel Sheppard Mullin were also engaged (together with HR&A, the Consultant Team). The Consultant Team worked with staff from the TJPA and the TJPA's Program Management/Program Controls consultant to i) evaluate potential partnership structures for the Transit Center, including peer review, and market this opportunity to a broad range of potential respondents (between June 2015 and June 2016); ii) draft and release an RFP that would be attractive to the market and elicit a robust response (between June 2015 and March 2016); iii) implement an evaluation process to determine which of the respondents brought the most qualified and valuable proposal to the TJPA (between June 2016 and October 2016); iv) respond to requests for clarifications and negotiate initial terms with the three respondents (Cushman & Wakefield, Lincoln, and YoungWoo Associates) (between November 2016 and January 2017); and v) negotiate the terms of an Asset Management Agreement with the finalist respondent, Lincoln and their subcontractors (together, the Lincoln team, between January 2017 and March 2017). A summary of the activities performed during each of these stages is included below and in the attachments to this staff report.

The final stage of this work began in January 2017, when staff, supported by the Consultant Team, entered into exclusive negotiations of an Asset Management Agreement with the Lincoln team on the basis of the Lincoln team's quality and experience, written proposal and subsequent clarifications, and economic offer. After several rounds of negotiation, Lincoln and Staff agreed on all material terms in the Agreement (Attachment 2), and staff recommends that the Board approve the Agreement substantially in the form attached.

EXPLANATION:

RFP Process

The drafting of the RFP included an evaluation of different partnership structures to inform the TJPA's perspective, as well as outreach to a wide range of potential partners, to gauge the market's appetite for this opportunity. This process, leading to the release of the RFP, is described below.

Evaluation of Partnership Structures

HR&A worked with staff to evaluate four potential deal structures under which an agreement might be reached between the TJPA and a private partner to operate, activate, and maintain the Transit Center. Each structure was evaluated based on its ability to meet project goals and relative opportunities and constraints around factors such as revenue maximization, public oversight and control, and financial risk/benefits.

HR&A also evaluated a set of local, national, and international precedents to examine the most common deal structures in the San Francisco market, the structures that have been most successful in other cities, and the applicability of innovative or alternative structures used internationally. Evaluation of these structures supported the identification of key goals for the TJPA in seeking a private-sector partner, which were then reflected in the RFP. A detailed description of the precedents and partnership structures analyzed can be found in the staff report for the February 11, 2016 Board meeting (Attachment 3).

Marketing and Community Outreach

HR&A worked with staff to draft a compelling, comprehensive RFP document that would attract strong interest from the market and allow for respondents to provide proposed terms based on their experience and vision for the Transit Center. To support this effort, HR&A performed initial marketing and outreach to over 40 firms involved in real estate development, retail development, leasing, and management, facilities management, open space management and operations, and event management across local, national, and international firms. HR&A understood that fulfilling the full scope of services detailed in the RFP would likely require multiple disciplines and a team made up of multiple firms, and ensured that outreach included organizations from all major disciplines required. Feedback gathered during this initial marketing stage was also used to ensure that the RFP contained and highlighted information necessary for respondents to fully understand the TJPA's goals and requested services and to gain an understanding of the Transit Center—a large, complex facility.

HR&A also met with representatives of local community organizations to review the draft RFP, including:

- TJPA Citizens Advisory Committee (12/8/15)
- Greater Rincon Hill Community Benefit District (CBD) Board (1/11/16)
- South Beach, Rincon Hill, Mission Bay Neighborhood Association (1/11/16)

- San Francisco Chamber of Commerce (1/12/16)
- San Francisco Beautiful (1/13/16)
- Millennium Homeowners Association (1/13/16)
- San Francisco Office of Community Investment and Infrastructure's Transbay Citizens Advisory Committee (1/14/16)

These organizations provided thoughtful feedback and highlighted the issues of key importance to their groups, with a focus on the Transit Center's retail character, and particularly the retail mix, including national versus local retail, the use of the Rooftop Park for programming, and the public character of the Transit Center and Rooftop Park. As appropriate, HR&A incorporated these themes into the RFP. A summary of feedback received during these meetings can be found in the Community Outreach Summary Memo (Attachment 4).

Key RFP Contents

The resulting RFP included comprehensive descriptions of the following:

- Intended scope of services for a master lessee, including management of the facility's maintenance and fit-out of commercial spaces, leasing and management of retail spaces, activation and operations of the Rooftop Park, activation and management of the promotional platform, and production of non-promotional events
- Facility's level of fit-out upon turnover
- Transit operations that would take place in the Transit Center, both in Phase 1 and later in Phase 2
- Requirements for responses, including the components of an economic proposal
- Available public funding sources that would be utilized to support the Transit Center's operations
- Evaluation criteria that would be used to guide the TJPA's selection of a partner to manage the Transit Center

The RFP presented four goals that the TJPA sought in the partner:

- Operation of a clean, safe, and well maintained Transit Center, benefiting a world-class transit destination
- Delivery of a visionary program that reflects local character and context
- Creation of a high-quality user experience
- Maximization of the economic value of the Transit Center

To ensure a strong market response and guided by the market's inquiries around a potential alternative structure, the RFP allowed respondents flexibility in proposing alternative deal structures and economic terms to the master lease structure. Alternative proposals were required to address the same submission requirements, and provide a rationale for the alternative structure.

Peer Review

At the Board's recommendation, the Consultant Team worked with staff to facilitate a peer review process of the RFP prior to its release. This process solicited review of the RFP's structure and contents from a panel of local experts, including real estate staff at the City and County of San Francisco, San Francisco International Airport, and Port of San Francisco; representatives from the City of San Francisco Police Department; and a design and planning consultant. The peer review panel provided questions for discussion and comments to be incorporated into the final RFP, and generally approved of the structure and contents of the RFP. A detailed summary of the peer review process can be found in the Peer Review Summary memorandum that is included with the February 11, 2016 Board report.

RFP Release

The RFP was issued by the TJPA on March 4, 2016. HR&A facilitated a pre-proposal conference and site tour on March 24, 2016, and supported staff in preparation of responses to submitted questions during the RFP response period. Respondents inquired about the Transit Center's key functions and the makeup of the facility, as well as the potential for TJPA to entertain alternative deal structures. The Consultant Team and staff worked to ensure that responses were clear and guided respondents toward producing clear, complete proposals.

RFP Responses and Evaluation

The TJPA received proposals from three respondents: Cushman & Wakefield¹, Lincoln Property Company, and YoungWoo & Associates, all of whom led teams made up of multiple firms. The Consultant Team and staff coordinated to structure and guide an evaluation process, drawing on the expertise of real estate professionals and transit professionals from the City and County of San Francisco, the TJPA Citizens Advisory Committee, AC Transit, a national real estate development firm, and a local real estate and economic development consulting firm (along with a member of HR&A and TJPA staff, the Evaluation Committee). The Evaluation Committee provided an initial review of proposals, interviewed each respondent team, made clarification requests of the teams and reviewed responses, and evaluated each proposal against the evaluation criteria included in the RFP.

¹ The proposal team referred to as Cushman & Wakefield was originally led by a firm named Millennium Partners. Shortly after submitting, Millennium Partners notified TJPA that they planned to withdraw their response. Cushman & Wakefield, an existing member of the Millennium Partners team, made a substitution request to the TJPA to be considered as team lead and continue in the RFP review process. This request was approved by the TJPA and Cushman & Wakefield led the team through the remaining stages of the review, clarification, and negotiation process.

The Evaluation Committee recommended that all three teams progress to the next stage of the process. The Evaluation Committee process and outcome are summarized in an Evaluation of Responses to the Master Lessee RFP memorandum (Attachment 5).

Additionally, the retail portions of responses were reviewed by a group of retail experts, including individuals from the brokerage community and the Port of San Francisco. These experts provided reactions to the retail vision proposed by each team, input on the key areas of focus to strengthen respondents' proposals, and issues for further discussion with each respondent. The retail experts' feedback is summarized in a Retail Expert Evaluation of Transbay Master Lessee RFP Responses memorandum included here as Attachment 6.

Based on the Evaluation Committee's and retail experts' feedback, the HR&A team supported the TJPA in making further clarification and information requests from the three qualified respondent teams, to guide the TJPA toward a decision to shortlist two teams. This stage of the evaluation process focused on gathering additional information about team structures, programming concepts, and economic offers from each respondent. The estimated revenues and expenses provided in each respondent's economic offer are included in Figure 1 below. The key strengths and weaknesses of the respondent teams, based on the information gathered and analyzed during this period, is described below.

- *Cushman & Wakefield*: Cushman & Wakefield proposed an asset management structure, with Cushman & Wakefield Asset Services overseeing asset management and facilities maintenance, Cushman & Wakefield Retail Leasing overseeing tenancing and brokerage for facility retail, MJM Management Group managing and activating the Rooftop Park, and Ross & Baruzzini and Outfront Media managing the content management system and promotional platform, respectively. Cushman & Wakefield Asset Services and Retail Leasing brought both strong local and national relationships and experience, particularly with respect to managing and leasing mixed-use facilities in the Bay Area. While the team also referenced management of transit facilities nationally, this experience was not apparent within the local team. MJM Management Group brought significant local experience and expertise in managing and activating public spaces in San Francisco, with a community-focused program concept for the Rooftop Park. The team also included Ross & Baruzzini to manage the content management system and technical aspects of the promotional platform and signage system, partnered with Outfront Media to manage digital advertising, sponsorship, and naming rights. While Ross & Baruzzini displayed expertise in managing the technical aspects of the platform, the promotional platform team structure did not appear streamlined. Regarding revenue generation, Outfront Media's proposal was significantly focused on digital advertising, and did not appear to bring an innovative, comprehensive approach to selling all promotional platform elements.
- *Lincoln Property Company*: Lincoln also proposed an asset management structure, with Lincoln acting as a central point of contact and team lead, overseeing asset management and facilities management, and with team members Colliers International, managing retail leasing; Biederman Redevelopment Ventures for management and programming of the Rooftop Park; and Pearl Media for promotional platform management and activation.

The Lincoln team provided both mixed-use and transit facility management experience, managing the Runway at Playa Vista in Los Angeles, a 350,000-square-foot, mixed-use (office, retail, and residential) property; Charlotte Transportation Center; and Anaheim Regional Transportation Intermodal Center. The Lincoln team also displayed a high level of organization and coordination of their team throughout initial discussions. Colliers International brings significant local relationships and a national presence, on par with Cushman & Wakefield's retail leasing team, while Biederman Redevelopment Ventures and Pearl Media both bring national experience to their areas of the scope. Biederman Redevelopment Ventures emphasized programming on the Rooftop Park to both generate revenue and ensure that the open space is well-utilized. Pearl Media projected the most lucrative promotional platform for the TJPA, and a creative, positive approach to marketing and selling its multiple components.

- *Young Woo & Associates:* YoungWoo & Associates proposed a hybrid master lease structure, in which they would make an agreement with Enovity to manage the facility. The team also included Town Square, managing an event-driven Rooftop Park program, and Big Outdoor, managing the promotional platform. The YoungWoo & Associates team presented a compelling and creative retail vision, but their economic offer was not as advantageous to the TJPA as the other proposals. Their team did not appear to bring the same level of local experience in retail leasing as the other teams, or as strong a plan for execution of the complex management of the full facility. Town Square's Rooftop Park program relied on a number of subconsultants, which may have been burdensome to execute, and their promotional platform proposal was focused on digital advertising; it did not appear to have a strong, cohesive marketing plan for its components.

Discussions were held with all three teams to clarify their respective deal structures. Upon completion of this review, TJPA decided to suspend negotiations with the YoungWoo & Associates team. This decision was based on the team's structure and experience in comparison to Cushman & Wakefield and Lincoln teams, as described above, as well as their economic offer to the TJPA, which included an apparently significantly lower revenue stream to the TJPA than the other respondents, and appeared to result in a higher overall cost for operations to the TJPA, despite YoungWoo's initial investment in tenant improvements, as shown in Figure 1 below. Staff notified YoungWoo & Associates of this decision in a letter sent on December 22, 2016. At that time, the TJPA offered term sheets to the two remaining respondents, Cushman & Wakefield and Lincoln, whose proposals were judged to provide a significantly larger amount of revenues earned within the Transit Center to the TJPA and who appeared to convey a clearer understanding of the TJPA's goals in engaging a partner.

Figure 1: Estimated Revenues & Expenses (Stabilized Year Estimates – FY 20-21)

	Cushman & Wakefield	Lincoln	YoungWoo & Associates
Estimated Revenues			
Retail	\$7.03M	\$5.51M	\$5.22M
Advertising	\$4.16M	\$3.96M	\$1.61M
Promotional Events and Event Rentals	\$2.66M	\$3.13M	\$1.01M
Naming Rights and Sponsorship	\$2.28M	\$8.04M	\$2.96M
Total Revenue	\$16.14M	\$20.65M	\$10.80M
Base & Participation Rent	N/A	N/A	\$0.43M
Total Revenue to TJPA	\$16.14M	\$20.65M	\$0.43M
Estimated Ongoing Expenses (excludes facility reserve*)			
O&M Cost (janitorial, repairs, etc.)	-\$9.78M	-\$13.20M	-\$11.14M
Respondent Incentive Payments, Fees, and Admin Cost	-\$5.05M	-\$6.04M	-\$5.29M
TJPA Administrative & Insurance Costs	-\$4.80M	-\$4.80M	-\$4.80M
Security	-\$6.89M	-\$6.89M	-\$6.89M
Total Ongoing Expenses	-\$26.51M	-\$30.93M	-\$28.12M
Ongoing Tenant Improvements	-\$2.08M	-\$1.68M	\$0.00M
TJPA NET INCOME SUBTOTAL (Year 3, stab. year)	-\$12.45M	-\$11.96M	-\$27.69M
Initial Tenant Improvements	-\$20.30M	-\$27.10M	\$0M**

*Facility reserve will be funded by tax increment revenues.

**Initial tenant improvement cost of \$20M paid by YoungWoo, per the team's proposed structure.

Asset Management Agreement Negotiations with Lincoln

After an intensive period of negotiations of the term sheets with the two finalist respondents, the Consultant Team and staff entered exclusive negotiations with Lincoln. This decision was based on the team's determination that Lincoln offered a superior proposal, including the strength of its team's quality, experience, and economic offer.

The TJPA's legal counsel Sheppard Mullin revised the template form of Agreement released with the RFP to reflect the specific details of the Lincoln proposal during the week of January 16, 2017, and provided this to Lincoln for initial review. Since that date, the Lincoln team has worked with staff, HR&A, and Sheppard Mullin to review, negotiate, and revise the Agreement to be acceptable to both parties. As of March 22, 2017, Lincoln and staff have reached agreement on all material terms of the Agreement. With the Board's approval, Lincoln and the TJPA will execute the Agreement substantially in the form attached as soon as possible after the Board's approval.

Asset Management Agreement Key Terms

The Agreement lays out the responsibilities of both the Lincoln team and the TJPA, the flow of funds generated within the Transit Center as well as funds required to pay operating and capital expenses, the insurance and indemnifications provided by both parties as partners in this Agreement, and the regulations and requirements that the Lincoln team must follow in entering into a partnership with the TJPA, a public entity in the State of California. Key components of the Agreement are described below, and the full draft Agreement is attached to this report.

Term

The Agreement is for an initial term of six (6) years, which can be extended for an additional five (5) years upon mutual agreement of the TJPA and Lincoln. This extension option, which includes a requirement to notify Lincoln of an intent to extend no less than twelve (12) months before the expiration of the initial term, allows the TJPA the necessary time to negotiate an extension with Lincoln, or if needed, to identify a suitable replacement before the end of the initial term.

Scope of Services and Lincoln's Responsibilities

The Agreement lays out Lincoln's responsibilities and the full scope of services to be performed by the Lincoln team. As described in the RFP and term sheet, the Lincoln team is responsible for:

- Management of the construction of tenant improvements and other necessary improvements to make the Transit Center ready for commercial activation.
- Leasing of retail spaces, including creation of an initial retail plan to be shared with the TJPA Board, and management of ongoing leases and lease renewals.
- Programming and management of the Rooftop Park, including creation of a programming plan that will be shared with the TJPA and CBD.
- Activation and management of the promotional platform, including the sale of advertising, sponsorship opportunities and naming rights.
- Maintenance and janitorial services of the full facility, including areas used for commercial use and transit operations.
- Selection and oversight of any contractors or subcontractors performing the tasks described above, and management of these contracts, to ensure smooth day-to-day operations of the Transit Center. Lincoln will solicit competitive bids for tenant improvements, other necessary improvements, maintenance services, and janitorial services and be required to present TJPA with the rationale for selecting the chosen contractor or subcontractor, and will enter into contracts for these services with the selected bidders on terms approved by TJPA.

Performance Guarantee

Lincoln will provide a performance guarantee covering damages or claims attributable to the gross negligence, willful misconduct or fraud of Lincoln or its employees in the performance or non-performance of their duties, including costs incurred by the TJPA that cannot be recovered through insurance. While the Agreement with the TJPA will be with a special-purpose entity created by Lincoln, the performance guarantee will be backed by the special-purpose entity's parent company (Lincoln Property Company Commercial, Inc. a Texas Corporation), at a base amount of \$0.5 million to be increased by the amount of fees earned above \$0.5 million over the course of the term.

Facility Revenues

Lincoln will generate facility revenues through the following facility components:

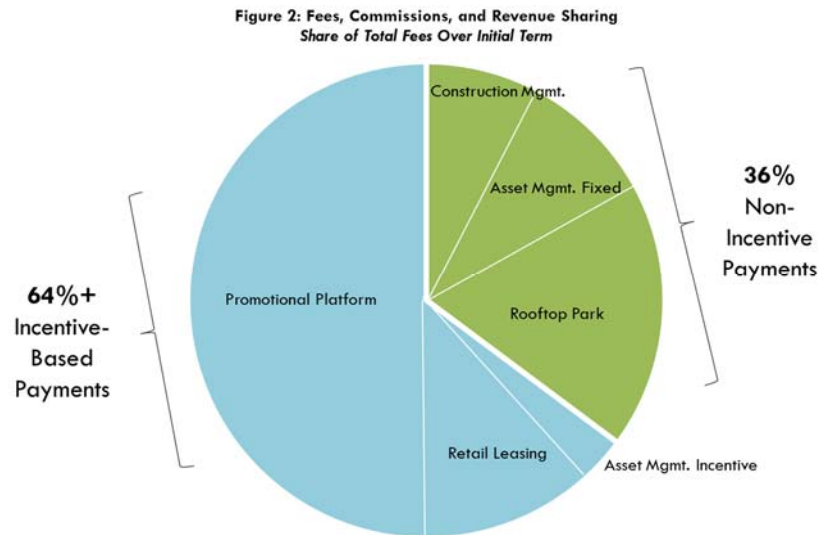
- **Commercial Space:** The Colliers International team, with oversight by Lincoln, will be responsible for creating a leasing plan and marketing, leasing, managing, and collecting revenues from the approximately 100,000 square feet of leasable commercial space within the Transit Center. Lincoln has projected that these spaces would be tenanted by a mix of tenants, from restaurants to cafes and fast casual food and beverage establishments to service providers to dry goods retailers.
- **Promotional Platform:** Pearl Media will program and manage the promotional platform, including developing and managing the content management system, running content on the Transit Center's digital screens, as well as managing the sale of advertising, sponsorship, and naming rights agreements. The promotional platform will also include, potentially as a part of the above items, promotional events. Biederman Redevelopment Ventures will be responsible for the sale of some promotional opportunities on the Rooftop Park, such as event series in the amphitheater, other sponsored events, and potentially naming and activation of specific elements of the park, such as the central plaza or children's play spaces.
- **Events:** The Lincoln team will also oversee events held throughout the facility. Biederman Redevelopment Ventures will program and manage events within the Rooftop Park, some of which may be private events collecting rental or facility usage fees, while Lincoln could also program other internal facility events, charging rental or usage fees.

Based on its proposal, Lincoln anticipates generating approximately \$20.65 million in revenues from the above-described sources in a stabilized year. Refer to Figure 1 for detail on the revenue projections.

Consistent with the asset management structure, revenues generated through commercial activities within the Transit Center will flow to the TJPA, but for the most part are not guaranteed by the Lincoln team. However:

- *The Agreement's structure of fees incentivizes Lincoln to maximize revenues. As described further below, staff has negotiated each component of the Lincoln team's fees, commissions, and revenue shares to align the incentive for Lincoln to pursue maximum*

revenues with the TJPA’s goals for realizing the value of the Transit Center. As shown in Figure 2, a projected 64% of fees are incentive-based payments.



- *A portion of revenues generated by the digital advertising component of the promotional platform will be guaranteed to the TJPA each year. Pearl Media is committed to providing the greater of i) \$1.25 million or ii) 80% of the prior year’s digital advertising net revenue to the TJPA as a minimum annual guarantee (MAG). This guarantee will be backed by a letter of credit, to be drawn on in the case that Pearl misses this target in any given year. Each year, Lincoln will provide a reconciliation of promotional platform revenues to ensure that this MAG was reached through the revenue sharing structure described below. In any case in which the MAG is not reached, Pearl will owe the TJPA the remaining amount.*

Budgeting and Payment of Operating and Capital Expenses

The Lincoln team will prepare an annual budget of anticipated operating costs, capital expenditures, and revenues, to be shared with and approved by the Board. Any change orders or changes to contracts will be required to be approved by the TJPA. Within this budget, the Agreement structure seeks to fix certain costs and make certain costs controllable by the TJPA.

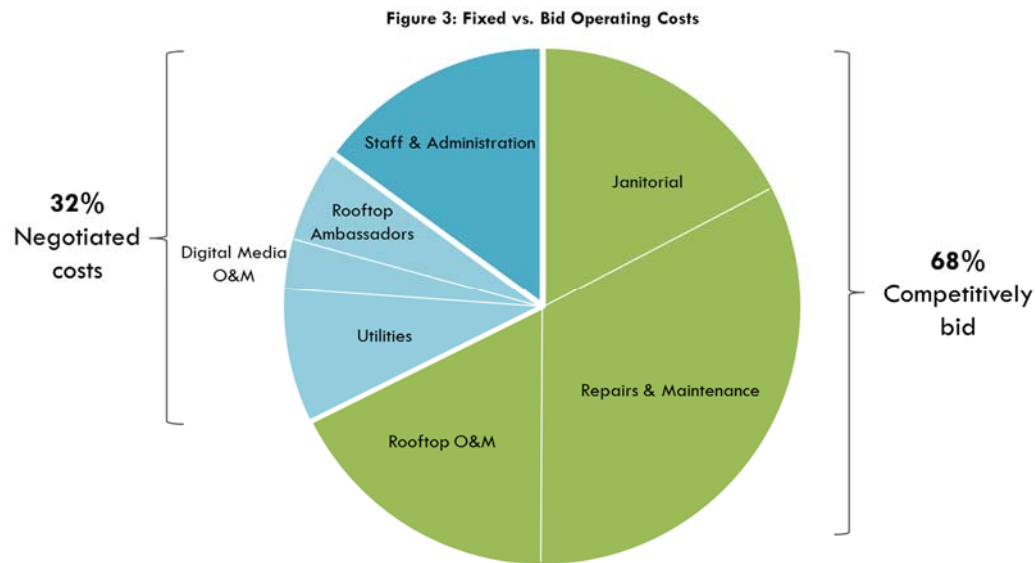
Fixed costs include those incurred for administrative and overhead costs, for which Lincoln will set a budget for the Transition Period (from the execution date to the turnover date) and Stabilization/Stabilized Periods.

This cost will not change by more than a set increase each year, unless there are changes to the number or position of staff required to operate the facility, which will jointly be approved by TJPA and Lincoln. Lincoln has estimated that the administrative and overhead costs for this line will total approximately \$780,000 for the first year and approximately \$1.3M at stabilization (fiscal year). These estimated costs do not yet include the cost of software licensing and management of the content management system, which will be determined in coordination with the TJPA as the system is built and installed. These costs are estimated to be between \$130,000

and \$390,000 per year, after initial ramp up costs, and may be subject to change depending on the type of system being installed.

Variable costs including other budgeted costs, such as those for janitorial services and repairs and maintenance services, will be determined through a competitive bid process overseen by Lincoln. Within these items, the TJPA can control costs by altering the scope of services required and coordinating with Lincoln on the selection of the appropriate subcontractors. As the Transit Center builds an operating history, the TJPA will be able to appropriately calibrate the scope and level of service required to maintain the facility, which will govern costs.

A breakout of the share of fixed and bid operating costs is shown in Figure 3.



- To collect revenues and pay expenses, the TJPA will establish separate accounts for operating revenues (the operating account), for capital expenditures (capital account), and for CBD funds (Rooftop Park account) for rooftop park maintenance. These accounts will be funded by revenues produced within the Transit Center and, for the Rooftop Park account, CBD funds allocated to the Rooftop Park. The CBD will deposit funds in the Rooftop Park account for disbursement by Lincoln based on invoices for expenses within the approved budget. Any non-recurring and all capital expenditures will need to be approved in advance by the TJPA. Based on analysis of the Transit Center's operating budget, there will be instances in which funds are not available in the accounts to cover operating expenses or capital expenditures. In these cases, Lincoln will be required to forward approved invoices to TJPA for payment directly by or through the TJPA.

Fees, Commissions, and Revenue Share

The Lincoln team will be compensated for its work through a set of fees, commissions, and shared revenues, as described below.

Asset management fee: The Lincoln team will receive a fixed, annual asset management fee of:

- \$200,000 for the first and second years of the agreement (pro-rated for any partial years) and \$300,000 for the following four years of the agreement, and
- 15% of retail revenues (based on base rent) achieved above \$3 million in FY 18-19 and above \$5.3 million in FY 19-20 and onward, increasing by 3% each year.

Construction management fee: The Lincoln team will receive a construction management fee of i) 5% of all construction hard costs totaling up to \$500,000 in any year, plus ii) 3.5% of all construction hard costs totaling over \$500,000 in any year.

Rooftop Park management fee: Biederman Redevelopment Ventures will receive a fixed, annual management fee of \$798,000 for all years of the term.

Promotional platform revenue sharing: Pearl Media will share revenues generated through the promotional platform with the TJPA, as described below:

- The TJPA will receive 75% of any promotional platform net revenues received for digital advertising, sponsorship and promotional events, and Pearl will receive 25%, and
- The TJPA will receive 85% and Pearl will receive 15% of any net revenues received for naming rights procured by Pearl. If TJPA elects to procure a naming rights agreement directly, it would not be subject to this revenue share.

Retail leasing commissions: Colliers International will be paid commissions for leasing retail space within the Transit Center according to a schedule as follows:

For long-term or traditional retail tenants, half of commissions will be paid upon lease execution, and half will be paid when the tenant occupies and begins to pay rent in the space, unless otherwise approved by the TJPA. Colliers will earn commissions of:

- 5% of Base Commercial Rent for the total term when including a tenant's co-broker.
- 4% of Base Commercial Rent for the total term when excluding a tenant's co-broker.
- 2.5% of Base Commercial Rent for the full term of renewals and any expansions.

For short-term or "pop-up" retail tenants that can activate the Transit Center while long-term tenancing occurs or to draw additional traffic, Colliers will earn commissions of 10% of the cumulative gross rent over the lease term, as long as the term is no longer than one year. This commission will be payable only at the end of the lease term.

Insurance and Indemnification

Lincoln will be required to carry the following insurance coverages, naming the TJPA as an additional insured: commercial property insurance covering all Lincoln-owned furniture, fixtures and equipment, fidelity, crime, workers compensation, commercial general liability, business automobile liability, excess liability and professional errors & omissions liability insurance, in the coverages and amounts specified in the Agreement. In addition, the Agreement specifies the coverages that each tenant and construction subcontractor must carry.

Lincoln is also required to indemnify the TJPA against any claims or damages arising out of the gross negligence, willful misconduct and fraud of Lincoln or any of its employees, including any gross negligence or willful misconduct in failing to properly manage and supervise any of its subcontractors or vendors, all of whom must agree to indemnify both Lincoln and the TJPA from their own active negligence or willful misconduct. Lincoln, however, will not be responsible to the extent any claims or damages are attributable to the acts or omissions of the TJPA, its contractors (including the security contractor), transit agencies or rail operators, all of whom will have direct contracts with the TJPA.

Small Business Enterprise Requirement

The RFP included an 18% percent Small Business Enterprise utilization goal for operations and maintenance. Lincoln will be required to show that good faith efforts are being pursued to meet this goal.

TJPA Funding

Based on analysis of Lincoln's estimated revenues and operating expenses, it is anticipated that the Transit Center will run at an operating loss for at least its first four years of ramp-up and operations, from fiscal year (FY) 17-18 to FY 20-21. Figure 4 shows the anticipated gap during this period, utilizing HR&A's analysis of Lincoln's estimates for revenues and operating expenses and the TJPA estimates for the facility operating reserve, additional sources of funding, and other leases.

Figure 4: Projected Transit Center Operating Surplus/Gap

	FY 17-18	FY 18-19	FY 19-20	FY 20-21
Total TJPA Revenue	\$0.59M	\$9.18M	\$17.59M	\$20.65M
Total Ongoing Expenses	-\$11.36M	-\$29.76M	-\$29.44M	-\$30.93M
Ongoing Tenant Improvements	\$ -	-\$0.57M	-\$1.63M	-\$1.68M
Contribution to Facility Operating Reserve	\$ -	\$ -	\$ -	-\$0.50M
TJPA NET INCOME SUBTOTAL	-\$10.77M	-\$21.15M	-\$13.48M	-\$12.46M
<i>Committed TJPA Funding</i>				
CBD	\$0.80M	\$1.62M	\$1.67M	\$1.72M
MTC Existing RM-2	\$2.43M*	\$5.03M	\$5.20M	\$5.38M
<i>Other Tenant Revenue</i>	\$0.20M	\$0.41M	\$0.42M	\$0.43M
TJPA NET INCOME (GAP/SURPLUS)	-\$7.34M	-\$14.09M	-\$6.19M	-\$4.93M

*half of the FY18 amount

Staff is working to fund this gap through a combination of funding sources and contributions from transit operators to ensure that the facility can remain operational at a high standard of service.

NEXT STEPS:

Following execution of the Agreement, Lincoln will begin ramp-up activities to:

- Familiarize their team with the Transit Center’s operations, maintenance, and security procedures and all key building systems.
- Create protocols for budgets, reporting, notifications, events programming, and performance metrics.
- Begin bidding for service contracts based on the TJPA’s scope of services, including janitorial and other services.
- Develop construction documents and order furnishings for the Greyhound and Amtrak facilities and the facility mail room.
- Begin developing a retail leasing plan and marketing retail spaces for leasing.
- Begin creating content and design for signage systems and marketing the promotional platform.
- As soon as possible in coordination with Webcor-Obayashi, the construction manager/general contractor, begin build-out of building improvements and retail spaces, in preparation for tenant fit-out (and with the goal that some, but not all, retail space will be leased and can open with the Transit Center’s opening).

The TJPA anticipates that the Transit Center will be substantially complete in December 2017, and that Lincoln will assume full management of the facility upon turnover from the TJPA's contractor (Webcor-Obayashi), anticipated to occur in March 2018.

RECOMMENDATION:

Authorize the Executive Director to enter into an Asset Management Agreement with a special-purpose entity created by Lincoln Property Company as Manager for the Transbay Transit Center (Transit Center) for a six (6) year term, with an option to extend the term for an additional five (5) years and substantially in accordance with the terms detailed in the Agreement attached hereto. Should any material terms of the Agreement change, the revised Agreement will be brought to the Board for approval prior to execution.

ENCLOSURES:

1. Resolution
2. Asset Management Agreement
3. February 11, 2016 Staff Report
4. Community Outreach Summary Memo
5. Evaluation Committee Evaluation of Responses to the Master Lessee RFP memorandum
6. Retail Expert Evaluation of Transbay Master Lessee RFP Responses memorandum

**TRANSBAY JOINT POWERS AUTHORITY
BOARD OF DIRECTORS**

Resolution No. _____

WHEREAS, The Transbay Joint Powers Authority (TJPA) is a joint powers agency organized and existing under the laws of the State of California; and

WHEREAS, Pursuant to the Joint Powers Agreement creating the TJPA, dated April 4, 2001, the TJPA has the authority to, among other things, make and enter into contracts and exercise all powers necessary and proper to carry out the provisions of the Joint Powers Agreement; and

WHEREAS, The TJPA requires the services of an entity to operate and manage the Transit Center, including its commercial space, promotional platform, and common areas; and

WHEREAS, On March 4, 2016, the TJPA issued a Request for Proposals (RFP) No. 16-02 for Master Lessee services for a consultant to operate and manage the Transbay Transit Center; and

WHEREAS, The TJPA timely received three proposals in response to the RFP, and of the proposals received, two were for asset management services and one was for a hybrid master lease; and

WHEREAS, A selection committee evaluated the proposals for technical merit, found the three proposals to be responsive to the RFP, and recommended negotiations proceed with all three respondents; and

WHEREAS, The negotiations process resulted in a final proposal submitted by Lincoln Property Company that was superior to the other proposals in terms of, among other things, the strength of the team's quality, experience, and economic offer, and Lincoln is well qualified to perform the scope of services in a cost-effective manner while generating revenue for the Transit Center operation; and

WHEREAS, The Lincoln Property Company proposal addresses all of the tasks necessary to program and manage engaging public and private events within the Transit Center; program, lease, and manage 103,300 square feet of commercial space slated for retail use; operate a high-impact digital signage program for delivery of the promotional platform and promotion of events and providing Transit Center information to patrons and visitors; coordinate and oversee a maintenance program for all spaces associated with the Transit Center; coordinate with other Transit Center stakeholders, such as transit operators; and participate in safety and security management programs; and

WHEREAS, TJPA staff has negotiated an Asset Management Agreement with Lincoln Property Company for a term of six (6) years, with an option to extend the term for an additional five (5) years, and subject to the material terms and conditions detailed in the Agreement; and

WHEREAS, In 2004 the TJPA certified the Final Environmental Impact Statement/Environmental Impact Report (the “Transbay Program Final EIS/EIR”) for the Transbay Terminal/Caltrain Downtown Extension/Redevelopment Project, and adopted certain findings, Statement of Overriding Considerations, and Mitigation Monitoring and Reporting Program under the California Environmental Quality Act (“CEQA”). The TJPA has subsequently adopted several addenda to the Transbay Program Final EIS/EIR, determining in each case that modifications to the project would not require subsequent environmental review and would not require major revisions to the Transbay Program Final EIS/EIR; and

WHEREAS, There have been no changes in the terms and conditions of the Transbay Program, no changes in circumstances, and no new information regarding a new significant impact or a substantial increase in the severity of a significant impact relating to the Asset Management Agreement contemplated here that would require major revisions in the Transbay Program Final EIS/EIR; now, therefore, be it

RESOLVED, That the TJPA Board of Directors authorizes the Executive Director to execute an Asset Management Agreement with Lincoln Property Company, substantially in accordance with the Asset Management Agreement attached hereto, with further direction to staff to attempt in good faith to negotiate the points addressed by the Board prior to execution; and, be it further

RESOLVED, That the Board authorizes the Executive Director to do any and all things, to execute any and all documents, and to take any and all actions, which he deems necessary and advisable to implement the Asset Management Agreement consistent with the terms thereof.

I hereby certify that the foregoing resolution was adopted by the Transbay Joint Powers Authority Board of Directors at its meeting of March 24, 2017.

Secretary, Transbay Joint Powers Authority

ASSET MANAGEMENT AGREEMENT

BETWEEN

TRANSBAY JOINT POWERS AUTHORITY, AS OWNER

AND

LINCOLN PROPERTY COMPANY, AS MANAGER

TRANSBAY TRANSIT CENTER

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Attachments:

Index of Defined Terms

Exhibit A = Description of the Land

Exhibit B = Description of the Premises/Commercial Usage Area

Exhibit B-1 = Description of Center

Exhibit B-2 = Commercial Usage Areas

Exhibit B-3 = Transit Agency Areas

Exhibit B-4 = Park and Rooftop Park Café

Exhibit B-5 = First and Second Floor Transit Lease Space

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Exhibit B-7 = Description of Existing Center Signage and Permitted Locations for
Manager Controlled Signage

Exhibit B-8 = Bus Storage Facility

Exhibit B-9 = TJPA Office Space

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Exhibit P = USDOT Requirements

Exhibit Q = Card Check Policy

ASSET MANAGEMENT AGREEMENT

This **ASSET MANAGEMENT AGREEMENT** (this "Agreement") is made and entered into as of the _____ day of _____, 20____, between Transbay Joint Powers Authority, a joint exercise of powers authority established pursuant to _____ ("TJPA" or "Owner"), and _____, a _____ ("Manager"). Owner and Manager are sometimes herein referred to individually as a "Party" and collectively as the "Parties."

WITNESSETH:

WHEREAS, on the Commencement Date, Owner owns the following real property (collectively, the "Center") as more particularly described on **Exhibit A** and **Exhibit B-1** attached hereto and made a part hereof: (a) the Land; (b) all buildings, structures, and other improvements and appurtenances located on the Land or otherwise constituting part of the Center (the "Improvements"); and (x) all Center Equipment and Center FF&E, if any, attached or appurtenant to any of the foregoing;

WHEREAS, Owner desires to engage Manager to perform certain services with respect to the management and operation of the Center, excluding the portion of the Center identified as the Bus Storage Facility in **Exhibit B-8** attached hereto and made a part hereof and, upon completion thereof but subject to the provisions of Section 5.3 below, Phase II of the Center (the "Premises"), and Manager has agreed to perform such services in accordance with, and subject to, the terms and conditions set forth herein;

WHEREAS, on the Commencement Date, (a) _____, a _____ (the "Guarantor,") is executing and delivering to Owner the Performance Guaranty with respect to Manager's indemnification obligations under this Agreement and (b) the Promotional Platform Subcontractor is delivering to Owner the Minimum Annual Promotional Platform Revenue Letter of Credit with respect to Owner's right to receive payment of the Minimum Annual Promotional Platform Revenue under this Agreement;

WHEREAS, the parties desire to enter into this Agreement to set forth their rights and obligations to each other relating to the Premises; and

NOW, THEREFORE, for good and valuable consideration, Owner hereby appoints Manager as asset manager of the Premises, and Manager hereby accepts such appointment, for the Term specified in Section 2 below and on the terms and conditions set forth in this Agreement.

1. Definitions. The following definitions apply in this Agreement. An index of all defined terms follows the signature page.

"AC Transit" means the Alameda-Contra Costa Transit District.

"Additional Signage" means all of that certain signage now or hereafter existing in the Premises, and certain other portions of the Center installed by Manager or any Tenant, and utilized, maintained and repaired by Manager and/or any Tenant, any of which may be located in those portions of the Premises, designated on **Exhibit B-7** as permitting Additional Signage or

such other areas designated by Owner, and which includes the wayfinding and schedule digital signage on which advertising content may be displayed.

"Affiliate" of any specified Person means any other Person Controlling or Controlled by or under common Control with such specified Person.

"Affiliated" shall have the correlative meaning.

"Agreement Year" means the twelve (12) month period commencing on the Commencement Date and ending on the date immediately preceding the first anniversary of the Commencement Date and each successive twelve (12) month period occurring thereafter.

"Amtrak" means the National Railroad Passenger Corporation dba Amtrak.

"Approvals" means (i) any and all licenses, permits (including building, demolition, alteration, use, and special permits), approvals, consents, certificates (including certificate(s) of occupancy), rulings, variances, authorizations, or amendments to any of the foregoing as shall be necessary or appropriate as determined by Owner, subject to the terms and conditions of Section 7.2 hereof, under any Law for the commencement, performance, or completion of any Construction, or the zoning, use, occupancy, maintenance, or operation of the Premises and (ii) any and all approvals required from TJPA, as Owner, under this Agreement.

"Arbitration" means a form of binding alternative dispute resolution filed with JAMS.

"Architect" means an architect that is: (a) selected by Manager or any Tenant; (b) not Affiliated with any Principal; (c) licensed in the State; (d) reasonably qualified and experienced in overseeing projects similar to the Major Construction for which such architect is engaged; and (e) approved by Owner.

"Architect's Certificate" means a certificate of an Architect, so-called "self-certifying" to Owner for any Major Construction, as to Costs and Development Criteria.

"Architect's Contract". A contract, in assignable form, between Manager and/or any Tenant, and their respective Architects, relating to such Architect's preparation of the Plans and Specifications in accordance with the Design Guidelines and any other development criteria promulgated by Owner for the Center from time to time and provided to Manager in writing and supervision of Construction to the extent required by Law.

"Back of House Functions" means noncommercial functions supporting Center operations, maintenance and security, including, without limitation, janitorial and maintenance support facilities, mechanical, electrical and plumbing equipment rooms and storage, a security operations center and related administrative facilities.

"Bankruptcy Law" means Title 11, United States Code, and any other or successor state or federal statute relating to assignment for the benefit of creditors, appointment

of a receiver or trustee, bankruptcy, composition, insolvency, moratorium, reorganization, or similar matters.

"Bankruptcy Proceeding" means any proceeding, whether voluntary or involuntary, under any Bankruptcy Law.

"Bankruptcy Sale" means a sale of any property, or any interest in any property, under 11 U.S.C. §363 or otherwise in any bankruptcy, insolvency, or similar proceeding affecting the owner of such property.

"Base Signage" means all of that certain signage now or hereafter existing in the Premises, and certain other portions of the Center installed by Owner as part of the Owner's Work.

"Base Year" means the first full Fiscal Year occurring after the Turnover Date.

"BID" means any business improvement district or similar district or program, proposed or actual, that includes, may include, or affects any Premises.

"Budget" means each annual Operating Budget and updated Capital Budget for the operation, maintenance and repair of the Premises prepared and approved in accordance with Section 8.2 below.

"Building Improvements" mean, collectively, (i) any tenant improvements to the Commercial Usage Areas and the Rooftop Park Restaurant required to be made under applicable Leases, including but not limited to the installation of a topping slab and finished flooring and any additional mechanical, electrical, plumbing and distribution equipment required to serve each applicable Leased Premises, (ii) demising walls to divide the Commercial Usage Area for leasing purposes, (iii) Construction of the shell and all other improvements to the Rooftop Park Café, (iv) tenant improvements to the portion of the First and Second Floor Transit Lease Space leased to Amtrak and Greyhound under the Transit Agency Ticketing and Waiting Room Leases, (v) tenant improvements to the TJPA Office Space and (vi) capital replacements to Center Equipment.

"Business Day" means any weekday on which California State-chartered banks are open to conduct regular banking business with bank personnel.

"Capital Budget" means the initial budget or annual update to the prior Fiscal Year's budget, as applicable, outlining projected Capital Expenses over the next succeeding five (5) Fiscal Year period and included as part of the overall annual Budget for the operation, maintenance and repair of the Premises prepared and approved in accordance with Section 8.2 below.

"Capital Expenses" means the aggregate of all costs and expenses paid or incurred by or on behalf of Owner in connection with the Construction of Building Improvements, replacement(s) and/or repair(s) of all, or any portion(s), of the Premises or Improvements of a capital nature, as defined in accordance with generally accepted accounting principles, other than Excluded Expenses.

"Casualty" means any damage or destruction of any kind or nature, ordinary or extraordinary, foreseen or unforeseen, affecting any or all Improvements, whether or not insured or insurable.

"Casualty Termination" means a termination of this Agreement because of a Substantial Casualty, when and as this Agreement expressly allows such a termination.

"Center Construction Plans" means the June 2013 Construction Document Package and subsequent Architects Supplemental Instructions (ASI) Packages, copies of which have been provided to Manager.

"Center Equipment" means all systems, equipment and fixtures incorporated in the Center used, useful, or necessary to operate the Center including, without limitation, all systems, equipment and fixtures incorporated in the Premises, all utility systems serving the Premises (other than those serving only a Leased Premises), public art installations, media/signage equipment and security and surveillance items, but excluding any and all Tenant Equipment.

"Center Events" means ticketed or sponsored events at the Center arranged by Manager in accordance with Section 5.1.4 below.

"Center FF&E" means all movable furniture, furnishings, equipment, and personal property of Owner or anyone claiming through Owner (excluding Center Equipment), including, without limitation, any equipment necessary or desirable for the maintenance and repair of the Center which is owned by Owner.

"Center Signage" means all of (i) the Base Signage, (ii) the Transit Agency Controlled Signage (to the extent not included in the Base Signage) and (iii) the Additional Signage, whether now or hereinafter existing, any of which is located in the areas described on **Exhibit B-7** attached hereto and made a part hereof or such other additional areas as may be designated by Owner.

"Certificates of Occupancy" means a copy of the temporary certificate of occupancy, or the equivalent, for such Construction, to the extent Law requires.

"Claims" mean any liabilities, damages (including without limitation for Claims filed against Owner by a third-party, for direct, special and/or consequential damages alleged by such third party), costs, expenses, suits, losses, claims, actions, fines and penalties, including, without limitation, court costs, reasonable attorneys' fees and any other reasonable costs of litigation.

"Code Compliance" means that Manager's Construction, and/or particular items or portions thereof, are in compliance with all building and fire codes applicable to same.

"Commencement Date" shall mean the date of mutual execution of this Agreement.

"Commercial Usage Areas" shall mean those portions of the Premises available for use for retail, office and other commercial income generating uses, as more particularly shown on **Exhibit B-2** attached hereto and made a part hereof.

"Comparison Stores" shall mean those stores designated as comparison stores in **Exhibit L-2** attached hereto and made a part hereof.

"Compliance Review Process" means the process for determining Code Compliance required by Owner as the governmental authority with respect thereto pursuant to Section 9.3(b) below.

"Concept of Operations" means the manual outlining specifications for the security of the Premises, attached hereto as **Exhibit L** and made a part hereof.

"Condemnation" means: (a) any temporary or permanent taking of (or of the right to use or occupy) any portion of the Premises by condemnation, eminent domain, or any similar proceeding; or (b) any action by any Government not resulting in an actual transfer of an interest in (or of the right to use or occupy) any Premises but creating a right to compensation, such as a change in grade of any street upon which the Premises abut.

"Condemnation Award" means any award(s) paid or payable to Owner after the Commencement Date because of, or as compensation for, any Condemnation, including: (1) any award made for any improvements that are the subject of the Condemnation; (2) the full amount paid or payable by the condemning authority for the estate that is the subject of the Condemnation, as determined in Condemnation; (3) any interest on such award; and (4) any other sums payable on account of such Condemnation.

"Condemnation Effective Date" means, for any Condemnation, the first date when the condemning authority has acquired title to or possession of any Premises subject to the Condemnation.

"Construction" means any alteration, construction, demolition, development, expansion, reconstruction, redevelopment, repair, Restoration, or other work affecting any Improvements, including new construction; provided, however, that in no event shall routine repairs and maintenance or non-routine repairs necessitated by an Emergency Situation be deemed to be "Construction". Construction consists of Minor Construction and Major Construction and includes, among other work, Building Improvements.

"Construction Contract". Contract(s), in assignable form, between Manager and/or Tenant, as applicable, and such parties' general contractor and any and all subcontractors under Major Subcontracts, providing for performance of the Major Construction.

"Construction Documents" means, with respect to any Major Construction, any Architect's Contract, Construction Contract, Major Subcontracts and other ancillary contracts and permits, in each instance as Manager, with Owner's consent, and/or any Tenant, as applicable, shall modify them from time to time but not in violation of this Agreement, which such Construction Documents shall include an agreement from the respective Architect, contractor and any and all subcontractors, as applicable, to continue to perform for Owner all of

their respective obligations under the Construction Documents in the event that this Agreement terminates or Owner re-enters any Leased Premises after a default under the applicable Lease, provided, that such Architect, contractor and subcontractors, as applicable, are paid for their services in accordance with such applicable Construction Documents.

“Content Management System” means a turn-key system to operate the Promotional Platform inclusive of all end-device visual content, control and management capabilities, monitoring interfaces, content modification interfaces, third-party data integration, and traveler mobile application implementation.

“Contractor” means any person or entity entering into a contract directly with Owner and, for the purposes of this Agreement, shall mean Manager.

“Control” means the possession, directly or indirectly, of: (a) at least fifty-one percent (51%) direct or indirect ownership of the Equity Interests of a Person; or (b) the power to direct or cause the direction of the management and policies of such Person, whether by ownership of Equity Interests, by contract, or otherwise.

“Core and Shell” means the Structure of the Premises and the portion of the Center Equipment not included in the Building Improvements together with all of Owner's Work.

“Costs”. The reasonably estimated cost of any Major Construction and of any related demolition.

“County” means the City and County of San Francisco.

“CPI” means the United States Department of Labor, Bureau of Labor Statistics “Consumer Price Index” for Urban Wage Earners and Clerical Workers (CPI-W) published for San Francisco-Oakland-San Jose, with a base of 1982-1984 = 100. If the CPI ceases to be published, with no successor index, then the parties shall reasonably agree upon a reasonable substitute index. The CPI for any date means the CPI last published before the calendar month that includes such date.

“CPI Adjustment Factor” means, as of any date, the greater of (a) 1.00 or (b) the CPI for such date divided by the CPI for the Commencement Date.

“Default” means Manager's uncured default or breach under this Agreement.

“Default Interest” means interest at an annual rate equal to the lesser of: (a) the Prime Rate plus Four (4%) percent per annum; or (b) the Usury Limit.

“Design Guidelines” means those guidelines more particularly set forth on **Exhibit M** attached hereto and made a part hereof governing the prescribed use of the Commercial Usage Area.

"Design Review Process" means the process for review of the Plans and Specifications submitted by Manager and approved by Owner in accordance with **Exhibit M-1** attached hereto and made a part hereof.

"Development Criteria". That any Major Construction, if completed substantially in accordance with the Plans and Specifications, will comply with the Design Guidelines.

"Digital Content Development Guidelines" means the digital content development guidelines for the Center set forth in **Exhibit O-1** attached hereto and made a part hereof.

"Digital Guidelines" means the digital guidelines for the Center set forth in **Exhibit O** attached hereto and made a part hereof.

"Emergency Situation" means any event, occurrence or circumstances in which there is an imminent and substantial risk of danger to any Person and/or damage to any portion of the Center.

"Environmental Law" means any Law about the following at, in, under, above, or upon the Premises: (a) air, environmental, ground water, or soil conditions; or (b) clean-up, control, disposal, generation, storage, release, transportation, or use of, or liability or standards of conduct concerning, Hazardous Substances.

"Equipment Lien" means any security interest, financing lease, personal property lien, conditional sales agreement, chattel mortgage, security agreement, title retention arrangement or similar arrangement (including any related financing statement) for Manager's, or any Tenant's, acquisition or leasing of any Financed Manager/Tenant FF&E used in the Premises that is leased, purchased under conditional sale or installment sale arrangements, encumbered by a security interest, or used under a license, provided that each Equipment Lien encumbers or otherwise relates only to the Financed Manager/Tenant FF&E for which such secured party provides bona fide purchase-money financing or a bona fide equipment lease after the Commencement Date.

"Equity Interest" means, with respect to any Person, all or any part of any direct or indirect equity or ownership interest(s) (whether stock, partnership interest, beneficial interest in a trust, membership interest, or other interest of an ownership or equity nature) in any entity at any tier of ownership that directly or indirectly owns or holds any ownership or equity interest in such Person.

"Estoppel Certificate" means a statement, addressed to Owner, or as Owner directs, in substantially the form of **Exhibit H** attached hereto and made a part hereof, and containing such other assurances as Owner may reasonably request.

"Excluded Expenses" mean (a) franchise, income or excess profit taxes or similar taxes imposed upon Manager and/or Manager's business; (b) principal, interest and other payments due from Manager under any financing arrangement entered into by Manager, (c) any charge for depreciation; (d) leasing commissions other than the Leasing Commission paid to Manager and/or its Leasing Subcontractor pursuant to Section 4.4 of this Agreement; (e) management fees other than (i) the Asset Management Fee payable to Manager pursuant to

Section 4.1.1 of this Agreement, (ii) the Roof Top Staffing and Management Fee payable to Manager and/or its Park Subcontractor pursuant to Section 4.1.2 of this Agreement and (iii) the Construction Management Fee payable to Manager pursuant to Section 4.3 of this Agreement; (f) wages, salaries, payroll taxes, fees and benefits paid to any staff or employees of Manager providing services with respect to the Premises in excess of the Maximum Staffing Costs for the applicable period, unless otherwise expressly agreed to by the Parties in writing; (g) legal and accounting fees relating to disputes with Manager or Manager's employees, officers, directors, contractors and/or subcontractors, (h) costs in the nature of penalties or fines due to the acts or omissions of Manager or Manager's employees, officers, directors, contractors and/or subcontractors and not to the failure of Owner to perform any of its obligations under the terms of this Agreement; (i) costs for services, supplies or repairs paid to any Affiliate of Manager in excess of costs that would be payable for comparable services, supplies or repairs absent such relationship in first class buildings in San Francisco, California; (j) costs associated with the operation of the business of the partnership or entity which constitutes the Manager, as the same are distinguished from the costs of operation of the Premises; (k) Manager's general corporate overhead and general and administrative expenses; (l) charitable or political contributions and cost of entertainment which are not contemplated under the applicable Operating Budget approved by Owner; (m) reserves; (n) costs which are reimbursed through Loss Proceeds or Condemnation Awards paid to Manager in accordance with Article 17 of this Agreement; (o) costs attributable to losses arising from the gross negligence, willful misconduct, fraud or breach of this Agreement on the part of Manager or Manager's employees, officers, and/or directors; (p) wages, salaries, payroll taxes, fees and benefits paid to any management or executive staff or employees of Manager and/or its Park Subcontractor providing services with respect to the Park; (q) any other expense which is expressly excluded from Operating Expenses and/or Capital Expenses pursuant to the terms of this Agreement; and (r) any other expense which is not included in the Budget approved by Owner for the applicable year or in any amendment to the Budget for such year approved by Owner, subject to the Permitted Variance for such year.

"Expiration Date" means the date when this Agreement terminates or expires in accordance with its terms, whether on the Scheduled Expiration Date, by either Party's exercise of remedies for an Event of Default, or otherwise.

"Fee Estate" means Owner's fee estate in the Premises, including Owner's reversionary interest in the Premises after the Expiration Date.

"Fees" mean, collectively, the Asset Management Fee, the Roof Top Management Fee, the Incentive Fee, the Construction Management Fee and any Leasing Commissions payable to Manager pursuant to Article 4 of this Agreement.

"Financed Manager/Tenant FF&E" means any Manager/Tenant FF&E subject to an Equipment Lien in favor of a lessor or lender that: (a) is not an Affiliate of Manager or such Tenant, as applicable, and (b) actually provides bona fide financing or a bona fide equipment lease after the Commencement Date for Manager's or such Tenant's, as applicable, acquisition or use of such Manager/Tenant FF&E. Manager shall deliver, or cause to be delivered, to Owner a copy of any document evidencing an Equipment Lien, upon request by Owner.

"First and Second Floor Transit Lease Space" means a portion of the commercial space located on the ground floor of the Center consisting of approximately 557 rentable square feet and the portion of the second floor of the Center within the western end of the commercial space located therein consisting of approximately 5,243 rentable square feet, all as more particularly shown on **Exhibit B-5** attached hereto and made a part hereof.

"First Stabilized Operating Year" means the first full Fiscal Year following the Fiscal Year in which the earlier of (i) the date that is twenty-four (24) months after the first day of the Base Year occurs, or (ii) the first day on which Leases for at least seventy-five percent (75%) of the Commercial Usage Areas at the Center have been executed by Tenants occurs.

"Fiscal Year" means each twelve (12) month period commencing July 1st through and including the following June 30th; provided, however, that the first Fiscal Year shall be the period commencing on _____, 20__ and ending on June 30, 20__.

"Golden Gate Transit" means the Golden Gate Bridge Highway & Transportation District.

"Government" means each and every governmental agency, authority, bureau, department, quasi-governmental body, or such other entity or instrumentality acknowledged by Owner to have jurisdiction over the Premises (or any activity this Agreement allows), including the United States federal government, the State and County governments and their subdivisions and municipalities, and all other applicable governmental agencies, authorities, and subdivisions thereof.

"Greater Rincon Hill CBD" means the Greater Rincon Community Benefit District.

"Greyhound" means Greyhound Lines, Inc.

"Hard Costs of Construction of Building Improvements" means costs for work, labor and materials required to construct and complete Building Improvements, including, without limitation, those items identified as "Hard Costs" on the applicable Operating Budget and costs of Building Improvements paid for by Tenants, but expressly excluding the cost of any furniture, fixtures and equipment.

"Hazardous Substances" includes flammable substances, explosives, radioactive materials, asbestos, asbestos-containing materials, polychlorinated biphenyls, chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, medical wastes, toxic substances or related materials, explosives, petroleum and petroleum products, and any "hazardous" or "toxic" material, substance or waste that is defined by those or similar terms or is regulated as such under any Law, including any material, substance or waste that is: (i) defined as a "hazardous substance" under Section 311 of the Water Pollution Control Act (33 U.S.C. § 1317), as amended, or California Hazardous Substances Account Act, Health and Safety Code Sections 26300, et seq.; (ii) defined as a "hazardous waste" under Section 1004 of The Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901, et seq., as amended or the California Hazardous Waste Control Act, Health and Safety Code Sections 25100, et seq.; (iii) defined as a "hazardous substance" or "hazardous waste" under Section 101 of The

Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Reauthorization Act of 1986, 42 U.S.C. § 9601 et seq. or any so-called "superfund" or "superlien" law, including the judicial interpretations thereof; (iv) defined as a "pollutant" or "contaminant" under 42 U.S.C.A. § 9601(33); (v) defined as "hazardous waste" under 40 C.F.R. Part 260; (vi) defined as a "hazardous chemical" under 29 C.F.R. Part 1910; (vii) subject to the California Safe Drinking Water and Toxic Enforcement Act, Health and Safety Code Sections 25249.5, et seq., California Health and Safety Code Sections 25280, et seq. (Underground Storage of Hazardous Substances), the California Hazardous Waste Management Act, Health and Safety Code Sections 25170.1, et seq., the California Health and Safety Code Sections 25501. et seq. (Hazardous Materials Response Plans and Inventory), California Health and Safety Code Sections 25214.9 et seq. (Electronic Waste) or the Porter-Cologne Water Quality Control Act, California Water Code Sections 13000, et seq.; or (viii) subject to any other Law regulating, relating to or imposing obligations, liability or standards of conduct concerning protection of human health, plant life, animal life, natural resources, property or the enjoyment of life or property free from the presence in the environment of any solid, liquid, gas, odor or any form of energy from whatever source.

"Hazardous Substances Discharge" means any deposit, discharge, generation, release, or spill of Hazardous Substances that occurs at or from the Premises, or into the Land, or that arises at any time from the use, occupancy, or operation of the Premises or any activities conducted therein or any adjacent or nearby real property, or resulting from seepage, leakage, or other transmission of Hazardous Substances from other real property to the Land, whether or not caused by a party to this Agreement and whether occurring before or after the Commencement Date.

"Impositions" means (i) all taxes, assessments including, without limitation, all assessments for public improvements or benefits, whether or not commenced or completed prior to the date hereof and whether or not to be completed within the Term (including, without limitation, all interest and penalties thereon), water and sewer rents and charges, charges for public utilities, excises, levies, license fees, permit fees, inspection fees and other authorization fees and other charges of every nature and kind whatsoever, and legal fees associated with any reduction proceedings relative to such taxes, not in excess of such reduction, in each case, whether general or special, (ii) business improvement district charges, special district charges, (iii) possessory interest taxes, and (iv) all other governmental, administrative and/or quasi-governmental levies, impositions or charges, ordinary, extraordinary, foreseen or unforeseen, of every type and nature whatsoever, in each case, which at any time during or in respect of the Term may be assessed, levied, charged, confirmed or imposed on Manager, this Agreement, any Tenant or any Lease, or in respect of, or be (a) a lien upon the Premises or any Leased Premises, (b) any rent therefrom or any estate, right or interest therein, (c) any occupancy, use or possession of or activity conducted on the Premises or any part thereof including, without limitation, any Leased Premises (including, without limitation, any taxes and/or assessments levied in lieu of, the foregoing due to a change in the method of taxation); and (d) all taxes and assessments that may, during the Term, be levied or assessed against any personal property located in, or upon the Premises, or any portion thereof including, without limitation, any Leased Premises, and either owned by any Tenant or used by any Tenant in connection with the operation of its Leased Premises, to the extent that such taxes and assessments, if unpaid, would result in a lien against the Premises or any portion thereof, including, without limitation, any

Leased Premises; provided, however, that, notwithstanding anything to the contrary contained in this Agreement, in no event shall Impositions include any income taxes assessed against Owner, franchise or transfer taxes of Owner unless such taxes, or any one or more of them, shall hereafter be implemented by the taxing authority in lieu of, or in replacement or substitution of the foregoing.

"Indemnify" means, where this Agreement states that Manager shall "Indemnify" any Indemnitee from, against, or for a particular matter (the "Indemnified Risk"), that the Manager shall indemnify the Indemnitee and defend and hold the Indemnitee harmless from and against any and all loss, cost, claims, liability, penalties, judgments, damages, and other injury, detriment, or expense (including Legal Costs, interest and penalties) that the Indemnitee suffers or incurs: (a) from, as a result of, or on account of the Indemnified Risk; or (b) in enforcing the Manager's indemnity. Manager's counsel shall be subject to Indemnitee's approval, not to be unreasonably withheld. Any counsel satisfactory to Manager's insurance carrier shall be automatically deemed satisfactory.

"Indemnitee" means Owner, the Additional Insureds (as defined on **Exhibit J** attached hereto and made a part hereof), the member agencies of TJPA and any and all subsidiaries and Affiliates of any of the foregoing, their agents, servants, directors, officers, employees and any Equity Interest holders.

"Insubstantial Condemnation" means any Condemnation except a Substantial Condemnation or a Temporary Condemnation.

"Key Performance Indicators" means, for any applicable Fiscal Year, the applicable standards utilized to establish performance standards for the Premises as provided in Section 6.2 below. The initial Key Performance Indicators for the first Fiscal Year are set forth on **Exhibit D-1** attached hereto and made a part hereof.

"Land" means the real property beneath the Premises and described on **Exhibit A** attached hereto and made a part hereof.

"Laws" means all laws, ordinances, requirements, orders, proclamations, directives, rules, and regulations of any Government affecting the Premises, this Agreement, or any Construction in any way, including any use, maintenance, taxation, operation, or occupancy of, or environmental conditions affecting, the Premises, or relating to any Impositions, or otherwise relating to this Agreement or any party's rights and remedies under this Agreement, or any Transfer of any of the foregoing, whether in force at the Commencement Date or passed, enacted, or imposed at some later time, subject in all cases, however, to any applicable waiver, variance, or exemption.

"Lease" means, for the Commercial Usage Areas or any portion thereof, any: (a) lease; (b) agreement or arrangement (including a concession, license, management, or occupancy agreement and/or any advertising license agreements, sponsorship agreements and the like) allowing any Person to occupy, use or possess or otherwise exploit; (c) sublease or any further level of subletting; or (d) Modification or assignment of "(a)" through "(c)". (Any reference to Leases does not diminish, impair, limit, or waive any limit on Leases.)

"Leased Premises" means any portion of the Premises leased by a Tenant pursuant to any Lease made and entered into in accordance with Section 5.1.2 of this Agreement.

"Leasing Subcontractor" means Colliers International and any successor subcontractor retained by Manager and approved by Owner to assist Manager in fulfilling its obligations under Section 5.1.2 of this Agreement.

"Legal Costs" of any Person means all reasonable costs and expenses such Person incurs in any legal proceeding (or other matter for which such Person is entitled to be reimbursed for its Legal Costs) including, without limitation, reasonable attorneys' fees, court costs, and expenses, and in or as a result of any Bankruptcy Proceeding.

"Loss" means any Casualty or Condemnation.

"Loss Proceeds" means Condemnation Award(s) and/or Property Insurance Proceeds.

"Lower Concourse" means the first subterranean level of the Center.

"Lower Levels Support Space" means the portions of the Lower Concourse and the Train Platform to be used exclusively for Back of House Functions, as more particularly shown on **Exhibit B-6** attached hereto and made a part hereof.

"Major Construction" means any Construction which has any effect on any glass surfaces (interior or exterior), the aluminum skin of the Premises, internal transportation (elevator, escalator or stairways), or Structure of the Premises, or adversely (or potentially adversely) affects any utilities or systems of the Center or which constitutes a replacement and/or repair of a capital nature in accordance with generally accepted accounting principles.

"Major Subcontracts" means any subcontracts entered into, or to be entered into, by Manager or Owner, as applicable, and/or any Tenant for any Major Construction for an aggregate value in excess of \$50,000.00, as such contracts may from time to time be modified, amended, waived, cancelled, terminated, substituted, or replaced in good faith.

"Manager/Tenant FF&E" means all movable furniture, furnishings, equipment, and personal property of Manager or any Tenant(s), as applicable, (excluding Center Equipment and Tenant Equipment) that may be removed without material damage to the Premises and without adversely affecting: (a) the Structure of the Premises; (b) any electrical, plumbing, mechanical, or other system in the Premises; (c) the present or future operation of any such system; or (d) the present or future provision of any utility service to the Premises. Manager/Tenant FF&E owned by Manager includes, without limitation, items such as merchandise, signs, goods, trade fixtures, factory equipment, furniture, movable equipment, telephone, telecommunications and facsimile transmission equipment, point of sale equipment, televisions, radios, network racks, computer systems and peripherals, and equipment purchased, at Manager's cost, and used by Manager to perform its obligations to maintain and repair the Center.

"Manager's Primary Subcontractors" means the Park Subcontractor, the Promotional Platform Subcontractor and the Leasing Subcontractor.

"Material O&M Default" means Manager's failure to commence (i) any of its material maintenance and repair obligations under this Agreement where such failure materially impairs the operation of any component of the Center in accordance with the Commercial Standard and/or (ii) any repair necessitated by an Emergency Situation, in each instance, within twenty-four (24) hours after Owner provides Notice to Manager thereof, including without limitation taking preliminary actions necessary to prevent further damage to property or injury to persons and to engage required subcontractors, and to thereafter diligently pursue such maintenance and/or repair to completion. The determination of whether a maintenance and repair obligation is material shall be made by Owner, in its reasonable discretion.

"Maximum Staffing Costs" means, for any period during the Term of this Agreement, the maximum amount of wages, salaries, bonuses, payroll taxes, fees and benefits paid to any staff or employees of Manager (and not any of Manager's Primary Subcontractors) providing services with respect to the Premises that are includable in Operating Expenses for the Premises for such period. The Maximum Staffing Costs for the Transition Period shall be Five Hundred and One Thousand and No/100 Dollars (\$501,000.00), which amount is based on the staffing plan for the Transition Period included in Exhibit C attached hereto and incorporated herein. The Maximum Staffing Costs for the first full Fiscal Year commencing during the Stabilization Period shall be One Million Twenty-Four Thousand and No/100 Dollars (\$1,024,000.00) which amount is based on the staffing plan for the first full Fiscal Year commencing during the Stabilization Period included in Exhibit C attached hereto and incorporated herein. In the event that the Stabilization Period commences on a date other than July 1st, the Maximum Staffing Costs for the period commencing on the first day of the Stabilization Period through and including the last day immediately preceding the first day of the first full Fiscal Year commencing during the Stabilization Period (the "Partial Fiscal Year Period") shall be an amount equal to the product obtained by multiplying Eighty-Five Thousand Three Hundred Thirty-Three and 33/100 Dollars (\$85,333.33) by the actual number of full or partial months during such Partial Fiscal Year Period. Commencing on the first calendar day of the Fiscal Year immediately following the first Full Fiscal Year commencing during the Stabilization Period and continuing on each July 1st occurring thereafter (each, an "Adjustment Date"), the Maximum Staffing Costs shall be increased annually, over the Maximum Staffing Costs in effect immediately prior to such Adjustment Date, by a percentage equal to the percentage increase, if any, in the CPI published for the Comparison Month (as hereinafter defined) over the CPI published for the Base Month (as hereinafter defined); provided, however, in no event shall the Maximum Staffing Costs for a particular Fiscal Year be less than the Maximum Staffing Costs for the Fiscal Year immediately preceding the date of adjustment. For purposes of computing such increases, the "Base Month" shall be the month that is three (3) months prior to the month in which the applicable Adjustment Date occurs, and the "Comparison Month" shall be the month that is twelve (12) months prior to the Base Month. Notwithstanding the above, the Maximum Staffing Costs may be adjusted pursuant to any Operating Budget (or amendment thereto) approved by Owner in accordance with this Agreement.

"Minimum Annual Promotional Platform Revenue" means, for any Fiscal Year commencing on or after the Base Year, an amount equal to the greater of (a) One Million Two-

Hundred Fifty Thousand and No/100 Dollars (\$1,250,000.00), which amount shall be prorated for any partial Fiscal Year commencing on or after the Base Year by multiplying such amount by a fraction, the numerator of which is the actual number of days in such partial Fiscal Year and the denominator of which is 365 or (b) an amount equal to eighty percent (80%) of the “net revenues” (as defined in Section 4.5.3 below) derived from the digital advertising component of the Promotional Platform paid to Owner pursuant to Section 4.5.2 of this Agreement for the immediately preceding Fiscal Year.

"Minimum Annual Promotional Platform Revenue Letter of Credit" means an unconditional, irrevocable letter of credit on a form acceptable to Owner in the amount of the Minimum Annual Promotion Platform Revenue Letter of Credit Security and which shall (i) be issued by a Permissible Letter of Credit Issuer; (ii) be a standby, at-sight, irrevocable letter of credit; (iii) be payable to Owner, as beneficiary thereunder; (iv) permit multiple, partial draws; (v) provide that any draw on the Minimum Annual Promotional Platform Revenue Letter of Credit shall be made upon receipt by the Permissible Letter of Credit Issuer of a sight draft accompanied by a letter from Owner stating that Owner is entitled to draw on the Minimum Annual Promotional Platform Revenue Letter of Credit in the amount of such draw pursuant to the provisions of this Agreement; (vi) provide for automatic annual extensions, without amendment (so-called “evergreen” provision) with a final expiry date no sooner than ninety (90) days after the end of the Term; (vii) provide that is governed by the Uniform Customs and Practice for Documentary Credits (1993 revisions) International Chamber of Commerce Publication 500; and (viii) be cancelable if, and only if, the Permissible Letter of Credit Issuer delivers to Owner no less than sixty (60) days advance written notice of the Permissible Letter of Credit Issuer’s intent to cancel.

"Minimum Annual Promotional Platform Revenue Letter of Credit Amount" means an amount equal to One Million Two-Hundred Fifty Thousand and No/100 Dollars (\$1,250,000.00).

"Minor Construction" means any Construction that is not Major Construction.

"Modification" means any abandonment, amendment, cancellation, discharge, extension, modification, rejection, renewal, replacement, restatement, substitution, supplement, surrender, termination, or waiver of a specified agreement or document, or of any of its terms or provisions, or the acceptance of any cancellation, rejection, surrender, or termination of such agreement, document, or terms.

"Modify" means agree to, cause, make, or permit any Modification.

"Monetary Default" means Manager's or Owner’s, as applicable, failure to pay any amounts as and when this Agreement requires.

"MTC" means the Metropolitan Transportation Commission.

"Net Retail Revenues" for a particular Fiscal Year mean the aggregate amount of base rent received from Tenants under Leases with respect to all or any portion of the Commercial Usage Area and shall expressly exclude all rent and other revenues received under

the Transit Agency Ticketing and Waiting Room Leases and all rent and other revenues derived from the TJPA Office Space.

"Net Retail Revenue Threshold" for a particular Fiscal Year means (a) for the 2018-2019 Fiscal Year, Three Million Dollars (\$3,000,000.00), (b) for the 2019-2020 Fiscal Year, Five Million Three Hundred Thousand and No/100 Dollars (\$5,300,000.00) and (c) for each Fiscal Year thereafter, an amount equal to 103% of the Net Retail Revenue Threshold for the immediately preceding Fiscal Year. In the event of any partial Fiscal Year, the Net Retail Revenue Threshold for such partial Fiscal Year shall be prorated by multiplying the Net Retail Revenue Threshold for such partial Fiscal Year by a fraction, the numerator of which is the actual number of days in such partial Fiscal Year and the denominator of which is 365. In the event of an Unavoidable Delay resulting directly in lost Retail Revenue, the Net Retail Revenue Threshold for the Fiscal Year in question shall be reduced by the actual Net Retail Revenue lost for each day of such Unavoidable Delay.

"Nonmonetary Default" means Manager's or Owner's, as applicable: (a) failure to comply with any affirmative or negative covenant or obligation in this Agreement, except a Monetary Default; or (b) breach of any representation or warranty (as of the date made or deemed made).

"Notice" means any consent, demand, designation, election, notice, or request relating to this Agreement, including any Notice of Default. Notices shall be delivered, and shall become effective, only in accordance with the "Notices" Article of this Agreement.

"Notice of Default" means any Notice claiming or giving Notice of a Default or alleged Default.

"Notify" or "Notifies" means the giving of a Notice.

"O & M Guidelines" means the manual outlining specifications for the maintenance, repair, leasing and operation of the Premises, attached hereto as **Exhibit L-1** and made a part hereof

"Opening Date" means the date on which the Center opens for bus and passenger operations.

"Opening Date Building Improvements" mean, collectively, (i) all tenant improvements required under the Transit Agency Ticketing and Waiting Room Leases to the portion of the First and Second Floor Transit Lease Space leased to Amtrak and Greyhound under the Transit Agency Ticketing and Waiting Room Leases, (ii) fit out and installation of all necessary furniture, fixtures and equipment in the Security Operations Center, (iii) any improvements required for janitorial and maintenance and Back of House Functions, and (iv) any improvements required for the loading dock offices at the Center.

"Operating Budget" means each annual budget outlining projected Operating Expenses for the succeeding Fiscal Year and included as part of the overall annual Budget for the operation, maintenance and repair of the Premises prepared and approved in accordance with Section 8.2 below.

"Operating Expenses" means the aggregate of all costs and expenses paid or incurred in connection with the operation, repair and maintenance of the Premises, excluding any Capital Expenses and Excluded Expenses.

"Operating Hours" means those hours designated under the O & M Guidelines set forth in **Exhibit L-1** attached hereto and made a part hereof for the operation of the Commercial Usage Area.

"Owner" initially means the Owner named in the opening paragraph of this Agreement and any successor agency succeeding to such entity(ies') assets, or functions.

"Owner's Code Compliance Officer" means a duly designated representative of Owner or its subsidiaries or affiliates, responsible for monitoring and determining Code Compliance matters, from time to time during the Term.

"Owner's Contractor" means Webcor-Obayashi.

"Owner's Representative" means an agent of Owner responsible for (i) determining whether Owner's Work is substantially complete in accordance with the Center Construction Plans, which agent, for purposes of this function may be an Architect, or third party commissioning agent, and (ii) monitoring the Key Performance Indicators with respect to Manager's compliance with the O & M Guidelines attached hereto and made a part hereof as **Exhibit L-1** and the Design Guidelines attached hereto and made a part hereof as **Exhibit M**.

"Owner's Work" means the Construction of the work described as the "Base Building" in the Center Construction Plans, which work is to be performed by Owner, at Owner's sole cost and expense.

"Park" means the approximately 5.4 acre roof top park comprising a portion of the Center all as more particularly described in **Exhibit B-4** attached hereto and made a part hereof.

"Park Subcontractor" means Biederman Redevelopment Ventures and any successor subcontractor retained by Manager and approved by Owner to assist Manager in fulfilling its obligations under this Agreement with respect to the Park.

"Performance Guaranty" means a Guaranty, executed by the Guarantor, in substantially the form of **Exhibit E-1** attached hereto and made a part hereof.

"Permissible Letter of Credit Issuer" means a commercial money center bank reasonably satisfactory to Owner with retail branches in San Francisco, California.

"Person" means any association, corporation, Government, individual, joint venture, joint-stock company, limited liability company, partnership (of any type), trust, unincorporated organization, or other entity of any kind.

"Phase I" means the first phase of the Construction of the Center which includes design and Construction of the ground floor, first and second floors and the Park, together with

the construction of the Core and Shell of Lower Concourse Space and the Train Platform Level which will house future rail operations.

"Phase II" means the second phase of the Construction of the Center which will include a complete build-out of all rail facilities and ancillary uses in the Lower Concourse Space and on the Train Platform Level and additional Construction of infrastructure required to link the Center to the rail network within the City and County of San Francisco through the Downtown Rail Extension tunnel.

"Plans and Specifications" means plans and specifications for Major Construction, prepared by an Architect, submitted in such machine-readable format as is then customary in the architectural profession, consisting of architectural plans; minimum estimated electrical capacity and distribution system; general type of plumbing system; facade, placement, and orientation; gross and rentable square foot analysis; and principal types of HVAC systems. Manager may modify, or cause to be modified, the Plans and Specifications at any time or from time to time, so long as they comply with the approved Budget and the Design Guidelines set forth on **Exhibit M** attached hereto and made a part hereof. The "Plans and Specifications" shall mean the original Plans and Specifications as so modified.

"Prime Rate" means the prime rate or equivalent "base" or "reference" rate for corporate loans that, at Owner's election, by Notice to Manager, is from time to time: (a) published in the Wall Street Journal; (b) announced by any large United States "money center" commercial bank Owner designates; or (c) if such rate is no longer so published or announced, then a reasonably equivalent rate published by an authoritative third party that Owner reasonably designates. Notwithstanding anything to the contrary in this paragraph, the Prime Rate shall never exceed the Usury Limit.

"Prohibited Lien" means any mechanic's, vendor's, laborer's, or material supplier's statutory lien or other similar lien that (a) arises from work, labor, services, equipment, or materials supplied, or claimed to have been supplied, at the direction of any Tenant (or anyone claiming through Tenant) and (b) attaches (or may attach upon termination of this Agreement) to the Center. An Equipment Lien on Manager's or any Tenant's personal property is not a Prohibited Lien.

"Promotional Platform" means the platform through which Manager, either directly or through its Promotional Platform Subcontractor, will generate revenue by leveraging a variety of digital advertising, sponsorship, media space and other assets provided on the Premises, subject to the Digital Guidelines set forth in **Exhibit O** attached hereto and made a part hereof and the Digital Content Development Guidelines set forth in **Exhibit O-1** attached hereto and made a part hereof. The Promotional Platform includes (i) advertising content across Center Signage, and (ii) Sponsorship Agreements entered into in accordance with Section 5.1.3(b). For avoidance of doubt, the Promotional Platform does not include Center Events.

"Promotional Platform Subcontractor" means Pearl Media and any successor subcontractor retained by Manager and approved by Owner to assist Manager in fulfilling its obligations under this Agreement with respect to the Promotional Platform.

"Property Insurance" means any and all property insurance carried (or caused to be carried) by Manager in accordance with Section 16.2.1 hereof and any and all property insurance carried by Owner in accordance with Section 16.1.1 hereof.

"Property Insurance Proceeds" means net proceeds (after reasonable costs of adjustment and collection, including Legal Costs) of Property Insurance, when and as received by Owner or Manager, excluding proceeds of Manager's business interruption insurance.

"Qualified Transferee" means a Person (or any Person wholly owned and Controlled directly or indirectly by such Person) that has experience generally commensurate with that of Manager hereunder, including experience operating mass transit facilities or other public mixed-use properties or who otherwise meets the qualifications set forth in the Request for Proposals issued by Owner for the Scope of Services described herein, in each case as reasonably demonstrated to Owner.

"Rail Operators" means Caltrain and the California High-Speed Rail Authority.

"Reconciliation Deadline" means (i) for any Fiscal Year during which the actual Operating Expenses and Capital Expenses incurred for such Fiscal Year exceed the estimated amounts for such Operating Expenses and Capital Expenses set forth in the Budget for such Fiscal Year and Manager is requesting additional funds from Owner as a result thereof, the date that is twenty (20) calendar days following the end of the applicable Fiscal Year and (ii) for any other Fiscal Year, the date that is ninety (90) calendar days following the end of such Fiscal Year.

"Restoration" means, after a Loss, each of Owner's and Manager's respective obligations as set forth in Article 17 hereof with respect to the alteration, clearing, rebuilding, reconstruction, repair, replacement, restoration, and safeguarding of any damaged or remaining aspects of the Center, substantially consistent with their condition before the Loss, which shall be in conformity with this Agreement, subject to any changes in Law that would limit the foregoing.

"Restore" means accomplish a Restoration.

"Rooftop Park Café" means the café to be located in the Park in the approximate location described in **Exhibit B-4** attached hereto and made a part hereof.

"Rooftop Park Restaurant" means the signature restaurant to be located in the Park in the approximate location described in **Exhibit B-4** attached hereto and made a part hereof.

"SamTrans" means the San Mateo County Transit District.

"Scheduled Expiration Date" means 11:59 p.m. on [_____, 2023][**TO BE THE DATE THAT IS 6 YEARS FROM THE COMMENCEMENT DATE**]. To the extent that Owner exercises the Renewal Option and Manager consents to the exercise thereof pursuant to Section 2.2 below, the Scheduled Expiration Date means 11:59 p.m. on the last day of the Renewal Term.

"Scope of Services" means the services to be provided by Manager with respect to the Premises set forth on **Exhibit D** attached hereto and made a part hereof or as otherwise expressly provided under this Agreement, together with any other services which Manager agrees to provide, at Owner's request, with respect to the Premises pursuant to the terms of this Agreement.

"SFFD" means the City and County of San Francisco Fire Department.

"SFMTA" means the San Francisco Municipal Transportation Agency, as constituted from time to time.

"SFMTA Police Department" means the police department of the San Francisco Municipal Transportation Agency, as constituted from time to time.

"SFPD" means the City and County of San Francisco Police Department.

"SFSD" means the City and County of San Francisco Sheriff's Department.

"Stabilization Period" means the period commencing on 12:00 am PT on the Turnover Date and ending at 11:59 pm PT on the date immediately preceding the first day of the First Stabilized Operating Year.

"Stabilized Period" means the period commencing on 12:00 am PT on the first day of the First Stabilized Operating Year and ending at 11:59 pm PT on the Expiration Date

"State" means the State of California.

"Structure" of the Premises means only the concrete floors, footings, foundation, load-bearing walls, interior or exterior glass surfaces, undulating metal exterior façade, roof, roof support systems, escalators, elevators or stairs, and structural steel or other structural support systems of the Premises.

"Substantial Casualty" means a Casualty that results in damage or destruction which (a) Owner decides, for any reason or no reason at all, not to Restore or (b) is not capable of being Restored within two (2) years from the date of such Casualty, as reasonably estimated by an Architect pursuant to an Architect's Certificate.

"Substantial Condemnation" means any Condemnation that (a) takes the entire Premises; or (b) in Owner's reasonable determination renders the remaining Premises economically unviable.

"Temporary Condemnation" means a Condemnation of the temporary right to use or occupy all or part of the Premises.

"Tenant" means any Person entitled to occupy, use, or possess any portion of the Commercial Usage Area of the Premises or any of the Center Signage under a Lease.

"Tenant Equipment" means any and all fixtures or equipment incorporated in the Premises and installed by any Tenant(s), at such Tenant's expense, and used, useful, or necessary to operate the Premises, exclusive of Center Equipment and the Manager/Tenant FF&E, and which shall become the property of Owner upon the expiration, or earlier termination of the applicable Lease.

"Term" means the Initial Term and, to the extent that Owner exercises its Renewal Option, the Renewal Term.

"TJPA Office Space" means the approximately 3,000 square foot portion of space S05 in the Commercial Usage Area at the Center as more particularly described in **Exhibit B-9** attached hereto and made a part hereof.

"Train Platform Level" means the portion of the Center located on the second (2nd) subterranean level of the Center.

"Transfer" means, with respect to Manager or Guarantor, as applicable, any of the following, whether by operation of law or otherwise, whether voluntary or involuntary, and whether direct or indirect: (a) any assignment, conveyance, hypothecation, pledge, sale, or other transfer, whether direct or indirect, of all or any rights or obligations of Manager or Guarantor, as applicable, under this Agreement or the Performance Guaranty, respectively; (b) any conversion, exchange, issuance, modification, reallocation, sale, or other transfer of any direct or indirect Equity Interest(s) in Manager or Guarantor, as applicable, or in any other direct or indirect owner of Manager or Guarantor, as applicable, at any higher tier of ownership; (c) any transaction described in "(b)" affecting any Equity Interest(s) in Manager or Guarantor or in any other direct or indirect owner of Manager or Guarantor, as applicable, at any higher tier of ownership through any manner or means whatsoever; or (d) any transaction that is in substance equivalent to any of the foregoing. A transaction affecting Equity Interest(s), as referred to in clauses "(b)" through "(d)," shall be deemed a Transfer by Manager or Guarantor, respectively, even though Manager or Guarantor, as applicable, is not technically the transferor. Notwithstanding the foregoing, the transfer of outstanding capital stock of any corporate Person, for purposes of this definition, shall not include a sale of such stock by Person effected through any "over the counter" market, or recognized stock exchange.

"Transit Agencies" means SFMTA, AC Transit, Amtrak, Golden Gate Transit, Greyhound, SamTrans, WestCAT and any other public or private transportation company granted rights to use any portion of the bus deck or any other portions of the Center dedicated exclusively for use by transit providers.

"Transit Agency Areas" means those areas of the Center that are being leased directly by Owner to one or more Transit Agencies for their exclusive use and operation, all as more particularly shown on **Exhibit B-3** attached hereto and made a part hereof.

"Transit Agency Leases" means any lease, sublease, agreement or arrangement (including a concession, license, management, or occupancy agreement and/or any advertising license agreements, sponsorship agreements and the like) allowing any Transit Agency to occupy, use or possess or otherwise exploit any Transit Agency Areas, including, without

limitation, any lease, sublease, agreement or arrangement between individual Transit Agencies for the use of any Transit Agency Areas.

"Transit Agency Controlled Signage" means all of that certain signage, which is installed and utilized by any Transit Agency and which such Transit Agency is responsible for maintaining and repairing.

"Transition Period" means the period commencing on the Commencement Date and ending at 11:59 pm PT on the date immediately preceding the Turnover Date.

"Turnover Date" means the date that Owner turns the Center over to Manager for operations which date shall occur upon substantial completion of the Core and Shell in accordance with Section 3.2 below, commissioning of the building systems and completion of training of Manager's employees and subcontractors on the operation of the building systems.

"Unavoidable Delay" means actual delay in performing any obligation under this Agreement arising from or on account of any cause whatsoever beyond the obligor's reasonable control, despite such obligor's reasonably diligent efforts including, without limitation, (a) industry-wide strikes, labor troubles or other union activities (but only to the extent such actions generally affect the Premises and other properties at that time and do not result from an act or omission of the obligor), (b) the obligor's inability to obtain required labor or materials after commercially reasonable efforts to do so, (c) Loss, (d) accidents, (e) Laws, governmental preemption, war, or riots, (f) with respect to any specific obligation of Manager under this Agreement to complete the Building Improvements, unavailability of access to the Premises as needed to complete the Building Improvements, (g) with respect to any specific obligations of Manager under this Agreement that require Owner's approval of any proposed Lease or Budget or funding any approved expenses required to be funded by Owner under this Agreement in order to adequately perform such obligations, any delays by Owner in approving any proposed Lease or Budget or in funding any approved expenses required to be funded by Owner under this Agreement which actually impairs Manager's performance, notwithstanding reasonable efforts by Manager to mitigate the consequences of Owner's delay, (h) in the case of any specific obligation of Manager under this Agreement, any breach or default by Owner of its obligations under this Agreement where such breach or default makes performance of such specific obligation of Manager not reasonably capable of being adequately performed by Manager, and (i) delays by a Government (other than TJPA) in issuing any Approvals, except to the extent such delay is caused by Manager's failure to timely submit requests for Approvals, together with all necessary or reasonably requested supporting documentation. Unavoidable Delay shall exclude delay caused by the obligor's financial condition, illiquidity, or insolvency. Any obligor claiming Unavoidable Delay shall Notify the obligee: (i) within thirty (30) days after such obligor knows of any such Unavoidable Delay; and (ii) within ten (10) days after such Unavoidable Delay ceases to exist. To be effective, any such Notice must describe the Unavoidable Delay in reasonable detail. Where this Agreement states that performance of any obligation is subject to Unavoidable Delay(s) or words of similar import, such Unavoidable Delay(s) shall extend the time for such performance only by the number of days by which such Unavoidable Delay(s) actually delayed such performance. Notwithstanding anything to the contrary contained herein, if an Unavoidable Delay results in actual delay in Manager's performance of one or more specific obligations under this Agreement but other obligations of

Manager under this Agreement are not affected by such Unavoidable Delay or are reasonably capable of being performed notwithstanding such Unavoidable Delay, the Unavoidable Delay shall extend performance of only those obligations actually affected by the Unavoidable Delay and not all obligations of Manager under this Agreement.

"Under Ramp Park" means the park to be constructed by Owner as more particularly described in **Exhibit B-8** attached hereto and made a part hereof.

"Usury Limit" means the highest rate of interest, if any, that Law allows under the circumstances.

"WestCAT" means the Western Contra Costa County Transit.

2. Term.

2.1 *Initial Term.* The initial term of this Agreement (the "Initial Term") shall: (a) commence on the Commencement Date; and (b) continue until the Scheduled Expiration Date, unless terminated sooner in accordance with the provisions of this Agreement.

2.2 *Renewal Option.* Subject to this Section 2.2, Owner shall have the right (the "Renewal Option") to extend and renew this Agreement upon all the same terms and conditions set forth herein, for one additional period of five (5) years (the "Renewal Term") commencing immediately after the Initial Term expires. Owner shall exercise its Renewal Option, if at all, by giving Manager notice of such exercise (the "Renewal Exercise Notice") at least twelve (12) months before the first day of the Renewal Term. In the event that Owner delivers a Renewal Exercise Notice in accordance with the foregoing sentence, Manager shall have thirty (30) days following delivery of such Renewal Exercise Notice to notify Owner in writing (a "Renewal Response Notice") as to whether or not Manager consents to the extension and renewal of this Agreement for the Renewal Term as provided herein, it being agreed by the Parties that Manager's consent to such extension and renewal may be given or withheld in Manager's sole and absolute discretion. In the event that Manager, in its Renewal Response Notice delivered to Owner in accordance with the foregoing sentence, withholds its consent to the extension and renewal of this Agreement pursuant to Owner's Renewal Option, Owner's Renewal Exercise Notice shall be rendered null and void and this Agreement shall, subject to the remaining terms and conditions hereof, expire at the end of the Initial Term. Manager's failure to deliver a Renewal Response Notice to Owner within the foregoing thirty (30) day period shall be deemed to constitute Manager's disapproval of Owner's exercise of the Renewal Option, in which event, this Agreement shall terminate as of the then-applicable Scheduled Expiration Date, unless earlier terminated in accordance with the terms and provisions of this Agreement. If Manager consents to the extension and renewal of this Agreement pursuant to Owner's Renewal Option, this Agreement shall, subject to the remaining terms and conditions hereof, be extended and renewed upon all of the same terms and conditions set forth herein for the Renewal Term commencing immediately after the expiration of the Initial Term.

2.3 *Owner's Right to Terminate without Cause.* Owner shall have the right to terminate this Agreement at any time, for any reason or no reason whatsoever, upon ninety (90) days prior written notice to Manager. In the event that this Agreement is terminated pursuant to

this Section 2.3, (i) Owner shall pay to Manager, within thirty (30) days of such termination, all Fees accruing to the date of such termination, (ii) Owner shall (or shall cause any replacement manager designated by Owner to) assume, from and after the date of termination of this Agreement, all Service Contracts and Subcontracts that were approved by Owner and were entered into by Manager in accordance with the Budget approved by Owner for the Fiscal Year in which such termination occurs which Owner elects to assume or which cannot be terminated in accordance with their respective terms, provided, that Owner shall not be required to assume any contracts with Manager's Primary Subcontractors, all of which shall remain the sole responsibility of Manager unless Owner, in its sole and absolute discretion, elects to assume the same, and (iii) Manager shall comply with its obligations and duties upon termination of this Agreement as set forth in Section 25 below.

3. Access during Transition Period; Owner's Work; Turnover Condition.

3.1 *Manager's Access during the Transition Period.* Manager acknowledges and agrees that Manager shall have limited access to the Center prior to the Turnover Date. During the Transition Period, any access to the Center desired by Manager shall be coordinated with Owner and Owner's Contractor at least two (2) Business Days in advance of the desired access to ensure a smooth turnover of the facility and necessary ramp-up activities to take place. Manager and Manager's agents, employees, representatives and contractors shall avoid interfering with any ongoing Owner's Work at all times during any access to the Center during the Transition Period.

3.2 *Owner's Work.* Owner shall, at Owner's sole cost and expense, construct the Core and Shell of the Center in accordance with the Center Construction Plans. Manager acknowledges and agrees that the Core and Shell may be modified by Owner, in Owner's sole discretion, during the planning and construction of the Center; provided, however, that Owner shall Notify Manager of any modification to the Core and Shell being considered by Owner during the Transition Period if the same would materially and adversely affect Manager's ability to perform the Scope of Services under this Agreement and will confer with Manager prior to any such modification. If, after the date hereof, Owner modifies the Core and Shell during the initial construction of the Center and such modification materially and adversely affects interferes with Manager's ability to perform any specific obligation of Manager included in the Scope of Services, Manager's failure to perform such specific obligation shall not be deemed a Default by Manager under this Agreement. Owner shall diligently and in good faith pursue to substantial completion Owner's Work. For purposes hereof, the term "substantial completion" or "substantially complete" shall mean the completion of Owner's Work in the condition required by the Center Construction Plans, but for certain minor punch list items which will not materially interfere with or delay the completion of the Building Improvements or the day-to-day operation of the Premises (collectively, the "Punch List Items"). Owner shall provide at least thirty (30) days prior Notice to Manager as to the anticipated date of such substantial completion and Owner and Manager shall conduct a joint inspection of the Premises within ten (10) days after the anticipated date of substantial completion to confirm the Punch List Items. If Manager fails to respond to Owner's request to schedule such joint inspection within the foregoing ten (10)-day period or fails to participate in such inspection once scheduled, then Manager shall be deemed to have waived any right to dispute Owner's determination of substantial completion of the Owner's

Work and the list of Punch List Items determined by Owner with respect to the Premises. All Punch List Items shall be reasonably promptly completed by, or on behalf of, Owner.

3.3 *Turnover.*

3.3.1 *Conditions.* Upon (i) substantial completion of the Owner's Work, (ii) completion of commissioning of all building systems serving the Center, and (iii) completion of training of Manager's employees and agents in the operation of such building systems, Owner shall turn over to Manager, and Manager shall accept, the Premises, as hereinafter provided.

3.3.2 *Notice of Turnover.* Owner shall endeavor to provide Manager with at least thirty (30) days prior notice of the date on which Owner anticipates being ready to turn over the Premises to Manager pursuant to this Agreement. Notwithstanding anything to the contrary contained herein, in event shall Owner be deemed to be in default of this Agreement as a result of Owner's failure to provide such notice.

3.4 *Following the Turnover Date and Owner's Work.* In order to accommodate certain functions of the Transit Agencies and Rail Operators and to facilitate the safety and security of the Center, Owner reserves the right from time to time: (a) to install, use, maintain, repair, replace, remove and relocate shafts, pipes, ducts, conduits, wires, risers and other facilities and appurtenant fixtures in the ceiling above the Premises, the walls adjacent to the Premises, and in other parts of the Center, and (b) to alter or relocate any facility, whether located in the Premises or in other parts of the Center. Owner reserves the right from time to time to designate the days and hours during which any areas of the Center shall be open to the public; to close temporarily or permanently all or any portion of such areas for any purpose; to erect any gate, chain or other obstruction or to close off any portion of the Center to the public at any time to prevent injury to persons or property, or as may be required in connection with any Center operations, and, in connection therewith, to seal off all entrances to the Center, or any portion thereof. Owner shall Notify Manager of any actions taken by Owner under this Section 3.4 and will confer with Manager prior to taking any such action under this Section 3.4 if the same would materially and adversely affect Manager's ability to perform the Scope of Services under this Agreement. If any action taken by Owner under this Section 3.4 materially and adversely affects interferes with Manager's ability to perform any specific obligation of Manager included in the Scope of Services, Manager's failure to perform such specific obligation shall not be deemed a Default by Manager under this Agreement.

4. *Manager Compensation.*

4.1 *Management Fees.*

4.1.1 *Asset Management Fee.* In consideration for Manager's performance of the Scope of Services hereunder (other than the Scope of Services relating to the Park and the Promotional Platform) during the Term, Manager shall receive an annual management fee (a "Asset Management Fee") equal to (a) Two Hundred Thousand and No/100 Dollars (\$200,000.00) per Agreement Year for the first (1st) Agreement Year and the second (2nd) Agreement Year and (b) Three Hundred Thousand and No/100 Dollars (\$300,000.00) per

Agreement Year for the third (3rd) Agreement Year and each subsequent Agreement Year during the Term. The Asset Management Fee shall be prorated for any partial Agreement Year during the Term based on the actual number of days in such Agreement Year. The Asset Management Fee shall appear as a separate line item in each Operating Budget covering any portion of the Agreement Year for which such Asset Management Fee is paid and shall be paid in equal monthly installments over the course of the applicable Agreement Year, in arrears, in accordance with the general procedure for payment of Operating Expenses and Capital Expenses set forth in Section 8.1 below, unless Owner, in its sole discretion, elects to pay the Asset Management Fee in a lump sum at the beginning of the applicable Fiscal Year.

4.1.2 *Roof Top Staffing and Management Fee.* In consideration for Manager's performance of the Scope of Services hereunder relating to the Park during the Term, Manager shall receive an annual management fee (a "Roof Top Staffing and Management Fee") equal to Seven Hundred Ninety-Eight Thousand and No/100 Dollars (\$798,000.00) per Agreement Year during the Term. The Roof Top Staffing and Management Fee shall be prorated for any partial Agreement Year during the Term based on the actual number of days in such Agreement Year. The Roof Top Staffing and Management Fee shall appear as a separate line item in each Operating Budget covering any portion of the Agreement Year for which such Roof Top Staffing and Management Fee is paid and shall be paid in equal monthly installments of the course of the applicable Agreement Year, in arrears, in accordance with the general procedure for payment of Operating Expenses and Capital Expenses set forth in Section 8.1 below, unless Owner, in its sole discretion, elects to pay the Roof Top Staffing and Management Fee in a lump sum at the beginning of the applicable Fiscal Year. The parties agree and acknowledge that the Roof Top Staffing and Management Fee includes compensation for all costs incurred in connection with management and executive staff of Manager and/or its Park Subcontractor performing services with respect to the Park (including, without limitation, all wages, salaries, payroll taxes, fees and benefits paid to any such management and executive staff) and, as a result, such costs shall not be included in Operating Expenses and shall be the sole responsibility of Manager and/or its Park Subcontractor, as applicable. Additionally, the parties agree that Manager's right to receive the Roof Top Staffing and Management Fee shall be conditioned upon Manager and/or its Park Subcontractor, as applicable, maintaining the appropriate level of management and executive staffing for the Park. For purposes of the foregoing sentence, six (6) full time equivalent employees with appropriate expertise shall constitute an appropriate level of management and executive staffing for the Park (the "Park Staffing Plan"), provided, that, following the Transition Period, the Park Staffing Plan may be adjusted with the prior written approval of Owner.

4.2 *Incentive Fee.*

4.2.1 *Incentive Fee.* In addition to the Asset Management Fee payable pursuant to Section 4.1.1 above, commencing with the 2018-2019 Fiscal Year and for each Fiscal Year occurring thereafter, if the Net Retail Revenues for the applicable Fiscal Year exceeds the applicable Net Retail Revenue Threshold for such Fiscal Year, as it may be adjusted for any applicable Unavoidable Delay (as applicable, a "Positive Incremental Net Retail Revenues"), Manager shall be entitled to receive an incentive fee for such Fiscal Year (an "Incentive Fee") equal to fifteen percent (15%) of the amount of such Positive Incremental Net Retail Revenues for such Fiscal Year in accordance with Section 4.2.2 below.

4.2.2 *Calculation and Payment.* As part of the Annual Reporting Package submitted by Manager for each Fiscal Year pursuant to Section 19.2, Manager shall include its good faith calculation of any Incentive Fee due to Manager pursuant to Section 4.2.1. above for the applicable Fiscal Year. Subject to Owner's rights under Section 8.2.6, payment of any undisputed Incentive Fee payable under this Section 4.2 for a particular Fiscal Year shall be payable by Owner to Manager within sixty (60) days following submission of the applicable Annual Reporting Package to Owner. In the event Owner disputes the amount of any Incentive Fee for a particular Fiscal Year set forth in an Annual Reporting Package, the Incentive Fee payable under this Section 4.2 shall be payable by Owner to Manager within sixty (60) days after final determination of the amount thereof in accordance with Section 8.2.6. Notwithstanding the foregoing, if an Incentive Fee is payable for the last Fiscal Year, or portion thereof, occurring during the Term, such Incentive Fee shall be paid in one lump sum within sixty (60) days of the Expiration Date of the Term. In the event of any partial Fiscal Year, the Net Retail Revenue Threshold for such partial Fiscal Year shall be prorated by multiplying the Net Retail Revenue Threshold for such partial Fiscal Year by a fraction, the numerator of which is the actual number of days in such partial Fiscal Year and the denominator of which is 365.

4.2.3 *Owner's Audit Right.* Following Manager's delivery of any applicable Annual Reporting Package, Owner shall have the right, during normal business hours and upon no less than five (5) days prior written notice to Manager, to examine all books and records for the purpose of confirming Manager's calculation of any Incentive Fee due to Manager for the Fiscal Year to which such Annual Reporting Package applies. In connection with Owner's exercise of its rights under this Section 4.2.3, Owner agrees that it shall not engage the services of any legal counsel or other professional consultant who charges for its services on a so-called contingency fee basis. Owner's review of any books and records pursuant to this Section 4.2.3 shall be at Owner's sole cost and expenses, provided, however, that if such audit discloses a discrepancy between the actual Incentive Fee owed for the applicable Fiscal Year and the amount of the Incentive Fee stated by Manager in the applicable Annual Reporting Package in excess of five percent (5%), Manager shall reimburse Owner for the reasonable costs of the audit.

4.3 *Construction Management Fee.* Owner shall pay Manager an annual construction management fee (a "Construction Management Fee") equal to (a) five percent (5%) of the first Five Hundred Thousand Dollars (\$500,000.00) in Hard Costs of Construction of Building Improvements paid for by Owner, or paid for by a Tenant but to be constructed by Owner under the terms of the applicable Lease, during each Fiscal Year plus (b) three and one-half percent (3.5%) of any Hard Costs of Construction of Building Improvements paid for by Owner, or paid for by a Tenant but to be constructed by Owner under the terms of the applicable Lease, in excess of Five Hundred Thousand Dollars (\$500,000.00) during such Fiscal Year plus (c) one and one-half percent (1.5%) of any Hard Costs of Construction of Building Improvements paid for and constructed by a Tenant during such Fiscal Year, in each case in accordance with the applicable Budget for such Fiscal Year or any amendment to such Budget approved by Owner. The Construction Management Fee shall appear as a separate line item in each Budget and shall be paid in arrears in accordance with the general procedure for payment of Operating Expenses and Capital Expenses set forth in Section 8.1 below. The parties agree and acknowledge that the Construction Management Fee includes compensation for any costs incurred in connection with additional staffing needs arising from Manager's management and

oversight of Construction of the Building Improvements or, in the case of a Tenant's construction of its own Building Improvements, acting as Owner's representative (including, without limitation, all wages, salaries, bonuses, payroll taxes, fees and benefits paid to any such additional staff) and, as a result, such costs shall not be included in Operating Expenses and shall be the sole responsibility of Manager.

4.4 Commercial Leasing Commission. Owner shall pay Manager a leasing commission (a "Leasing Commission") in connection with any Leases of Commercial Usage Areas at the Center obtained by Manager (whether directly or through Manager's Leasing Subcontractor) based on the schedule set forth in **Exhibit D-3** attached hereto and made a part hereof. Any Leasing Commission payable to Manager under this Section 4.4 shall be deemed earned and shall be paid to Manager (i) one-half (1/2) within ten (10) days after execution of the applicable Lease by the Tenant and Owner and (ii) one-half (1/2) within ten (10) days after the time the Tenant under the applicable Lease takes occupancy of the Leased Premises and begins paying rent due under the Lease, unless Owner agrees in writing, in its sole discretion, to a more accelerated commission payment schedule for any individual Lease.

4.5 Promotional Platform Revenue Sharing. All revenue generated from the Promotional Platform shall be shared between Owner and Manager in accordance with this Section 4.5.

4.5.1 Prior to the Base Year. Commencing on the Opening Date and continuing through the date immediately preceding the first day of the Base Year, Owner and Manager agree that all revenues derived from the Promotional Platform shall be paid to Owner and Manager as follows: (a) seventy-five percent (75%) of any "net revenues" derived from the Promotional Platform, excluding any revenues derived from Sponsorship Agreements granting naming rights with respect to all or any portion of the Center, shall be paid to Owner and twenty-five percent (25%) of any "net revenues" derived from the Promotional Platform, excluding any revenues derived from Sponsorship Agreements granting naming rights with respect to all or any portion of the Center, shall be paid to Manager, on a pari passu basis, and (b) eighty-five percent (85%) of any "net revenues" derived from Sponsorship Agreements granting naming rights with respect to all or any portion of the Center shall be paid to Owner and fifteen percent (15%) of any "net revenues" derived from Sponsorship Agreements granting naming rights with respect to all or any portion of the Center shall be paid to Manager, on a pari passu basis. Payments pursuant to the foregoing sentence shall be made to the applicable party within ten (10) Business Days after receipt of the applicable revenues from the Promotional Platform by Manager.

4.5.2 From and After the Base Year. Commencing on the first day of the Base Year and continuing throughout the Term (including any Renewal Term), Manager shall pay to Owner an amount equal to the sum of (a) the greater of (i) seventy-five percent (75%) of any "net revenues" derived from the Promotional Platform, excluding any revenues derived from Sponsorship Agreements granting naming rights with respect to all or any portion of the Center, or (ii) the applicable Minimum Annual Promotional Platform Revenue for such period, and (b) an amount equal to eighty-five percent (85%) of any "net revenues" derived from Sponsorship Agreements granting naming rights with respect to all or any portion of the Center as provided in this Section 4.5.2. In furtherance of the foregoing, Owner and Manager

agree that all revenues derived from the Promotional Platform during a particular Fiscal Year shall be paid to Owner and Manager as follows: (1) seventy-five percent (75%) of any “net revenues” derived from the Promotional Platform, excluding any revenues derived from Sponsorship Agreements granting naming rights with respect to all or any portion of the Center, shall be paid to Owner and twenty-five percent (25%) of any “net revenues” derived from the Promotional Platform, excluding any revenues derived from Sponsorship Agreements granting naming rights with respect to all or any portion of the Center, shall be paid to Manager, on a pari passu basis, and (2) eighty-five percent (85%) of any “net revenues” derived from Sponsorship Agreements granting naming rights with respect to all or any portion of the Center shall be paid to Owner and fifteen percent (15%) of any “net revenues” derived from Sponsorship Agreements granting naming rights with respect to all or any portion of the Center shall be paid to Manager, on a pari passu basis. Payments pursuant to the foregoing sentence shall be made to the applicable party within ten (10) Business Days after receipt of the applicable revenues from the Promotional Platform by Manager. In the event that amounts paid to Owner pursuant to item (1) above for a particular Fiscal Year are less than the Minimum Annual Promotional Platform Revenue for such Fiscal Year, Manager shall pay the amount of such deficiency to Owner within sixty (60) days after the end of such Fiscal Year.

4.5.3 *Net Revenues.* For purposes of this Section 4.5, “net revenues” shall mean gross revenue generated from the Promotional Platform, less a sales commission of five percent (5%) of all such gross revenue. Revenues generated from sponsored activations or promotional events within the Center shall include only those revenues attributable to the media fee or “rate card,” and shall not include any charges by Manager or its Promotional Platform Subcontractor for production expenses and no such production expenses shall be an Operating Expense under this Agreement.

4.6 *Staffing Cost Reimbursement.* During the Transition Period, Owner shall reimburse Manager for the lesser of (1) actual wages, salaries, bonuses, payroll taxes, fees and benefits paid to any staff or employees of Manager providing services with respect to the Premises during the Transition Period and (2) the Maximum Staffing Costs applicable to such Fiscal Year(s) in which the Transition Period occurs, prorated based on the actual number of months of the Transition Period occurring during such Fiscal Year.

5. *Scope of Asset Management Services.*

5.1 *General Scope of Services.* Beginning on the Commencement Date and continuing throughout the Term (including the Renewal Term, if applicable), Manager shall provide asset management services with respect to the Premises consistent with the Scope of Services and as a fiduciary of Owner. In performing its duties hereunder, Manager shall use good faith commercially reasonable efforts to manage and operate the Premises in such a manner as to maximize the revenue derived from the Premises and to minimize Operating Expenses, in each instance subject to the O&M Guidelines, Leasing Guidelines and Digital Guidelines, as applicable.

5.1.1 *Facility Management.*

(a) *Maintain, Repair and Service.* Except to the extent that this Agreement otherwise expressly provides or allows, Manager, as part of the Scope of Services, shall, commencing on the Turnover Date and continuing at all times thereafter during the Term (including any Renewal Term), keep, repair and maintain, or cause to be kept, repaired and maintained, as part of Operating Expenses and/or Capital Expenses, as applicable, the Premises and all Center Signage other than Transit Agency Controlled Signage in good clean order and condition, in accordance with all applicable Laws, the O & M Guidelines set forth on **Exhibit L-1** attached hereto and made a part hereof, and otherwise in accordance with the Commercial Standard and the Digital Guidelines, subject to Loss (governed by other provisions of this Agreement), reasonable wear and tear, and any other conditions that this Agreement does not require Manager to repair or maintain. Except to the extent that this Agreement otherwise expressly provides or allows, Manager's obligation to repair and maintain the Premises includes, without limitation, an obligation to make, or cause to be made, all repairs that the Premises (including but not limited to plumbing, heating, air conditioning, ventilating, electrical, lighting, fixtures, walls, Structure, building systems, ceilings, floors, windows, doors, plate glass, skylights, landscaping, driveways, site improvements, curb cuts, bus ramp, fences and signs located in, on or at the Premises, together with any sidewalks and streets adjacent to the Premises and the street islands located between the blocks of the Center) may require by Law or the O & M Guidelines from time to time, whether structural or nonstructural, foreseen or unforeseen. All such repair and maintenance obligation shall be fulfilled by Manager specifically within the time frames provided for in the O & M Guidelines. Manager shall remove, or cause to be removed, trash and debris from the Premises, the bus ramps and all of the adjoining sidewalks and the street islands located between the blocks of the Center, and maintain them, or cause them to be maintained, in a clean and passable condition, all in accordance with the O & M Guidelines and otherwise required by applicable Law.

(b) *Capital Replacement and/or Repair.* With respect to replacement(s) and/or repair(s) of all, or any portion(s), of the Premises or Improvements of a capital nature, as defined in accordance with generally accepted accounting principles, Manager shall be responsible for causing such capital replacement and/or repair to be performed in accordance with the terms and conditions of this Agreement including, without limitation, approval by Owner of the cost thereof as part of the Capital Budget pursuant to Section 8.2.1 or as otherwise provided in this Agreement, as part of Capital Expenses. Notwithstanding anything to the contrary contained elsewhere herein, no capital replacement and/or repair shall be undertaken without the prior approval of Owner, in advance and in each instance.

(c) *Roof Top Park Management.* Owner hereby approves of Biederman Redevelopment Ventures as Manager's initial Park Subcontractor. During the Transition Period, Manager will prepare (or cause its Park Subcontractor to prepare) and submit to Owner, for Owner's approval, a reasonably detailed plan for the programming and maintenance of the Roof Top Park (the "Roof Top Management Plan"). Manager shall promptly address (or cause its Park Subcontractor to promptly address) any revisions to the Roof Top Management Plan requested by Owner. During the Stabilization Period, Manager will begin management activities for the Roof Top Park in accordance with the Roof Top Management Plan approved by Owner, including activation through events and programs, as well as oversight of maintenance.

(d) *Passenger Circulation.* Owner shall have the right (together with the Transit Agencies and Rail Operators) with respect to the Premises, to review and adjust passenger circulation flows and issues related thereto on an as needed basis throughout the Term. Owner will designate escalator directions, from time to time during the Term, and will review potential placements of kiosk, or totems to insure that they do not conflict with or impede passenger flow and so as to enable Owner (together with the Transit Agencies and Rail Operators) to adjust passenger flow as and when necessary during the Term. Owner shall use good faith efforts to endeavor to cause the Transit Agencies and Rail Operators to refrain from exercising their rights to adjust passenger circulation flows and issues related thereto in a way which would materially and adversely impair Manager's ability to perform the Scope of Services or would materially increase Manager's obligations under this Agreement; provided, however, that the foregoing shall not require Owner to incur any cost or expense, take any action or fail to take any action that in either case could constitute a breach or violation of any agreement between Owner and any Transit Agency or Rail Operator, or institute any litigation, proceeding or other dispute resolution procedure.

(e) *Storage Areas/Deliveries.* During Phase I, Manager (including Manager's Primary Subcontractors and Manager's other agents, employees, contractors and subcontractors) and any Tenants so authorized by Manager shall have the right to use the Train Platform Level and the Lower Concourse for storage relating to their respective business activities at the Center in accordance with Article 20 below. Any property which is stored by any of the foregoing parties within or outside of the Premises is stored at such party's sole risk and Owner shall not be liable to Manager, Manager's Primary Subcontractors or Manager's other agents, employees, contractors and subcontractors, or any Tenant in any manner whatsoever for any loss, whether or not the result of Owner's negligence or the negligence of any of its employees, servants, agents or workers. Notwithstanding the foregoing, in no event shall Manager or Manager's Primary Subcontractors or other agents, employees, contractors and subcontractors or any Tenants have the right to use the Transit Agency Areas reflected on **Exhibit B-3** attached hereto and made a part hereof, except for Manager's provision of routine maintenance, repairs and replacements in accordance with this Agreement, the subleasing of any kiosks within the Transit Agency Areas in locations approved by the applicable Transit Agencies and as otherwise permitted or directed by Owner. Deliveries may be made to the Premises only through the loading facilities and Center entrances reasonably designated by Owner from time to time for such purposes, and may be brought through the Center only through the service corridors designated by Owner for such purposes. Manager may use such reasonably designated loading facilities and Center entrances and corridors on a non-exclusive basis with Owner, the Transit Agencies and any Tenants. Without limiting the generality of Section 3.4 hereof or the foregoing provisions of this Section 5.1.1(e), Owner reserves the right, in its sole discretion, to change and/or relocate the loading facilities and/or any Center entrances and corridor(s); provided Owner provides reasonable alternate accommodations for Manager (including Manager's Primary Subcontractors and Manager's other agents, employees, contractors and subcontractors) and any Tenants, to reasonably operate their respective permitted uses. All deliveries through any area of the Center shall be made only in accordance with **Exhibit L-1** attached hereto and made a part hereof.

(f) *Operating Hours.* Manager agrees that the Commercial Usage Area shall be open to the public during the applicable Operating Hours designated in the

O & M Guidelines set forth in **Exhibit L-1** attached hereto and made a part hereof. Manager further agrees that any illuminated or so-called "active" signage within the Premises, shall be illuminated twenty-four (24) hours per day, seven (7) days per week. Owner reserves the right in its sole discretion to change the hours during which the entire Center, or portions thereof, is open to the public.

(g) *Manager's Manner of Operation: No Unauthorized Use of Public Areas.* Manager shall furnish and install all trade fixtures which may be necessary or desirable for carrying on Manager's business. Manager shall also enforce each Tenant's obligations under its respective Lease to install all trade fixtures which may be necessary or desirable for carrying on such Tenant's business (and Manager shall cause such obligation on the part of the Tenants to be included in all Leases), shall maintain, or cause to be maintained, adequately trained personnel for efficient service to customers, and shall light, or cause to be lit, the display window and signs of the Premises during hours designated in the O & M Guidelines attached hereto as **Exhibit L-1** and made a part hereof, and shall use commercially reasonable efforts to cause the Tenants to operate the respective Leased Premises and their businesses, in a first-class manner commensurate with the Commercial Standard. Manager shall otherwise operate and maintain the Premises, and shall use commercially reasonable efforts to cause the Tenants to operate and maintain their respective Leased Premises as applicable in accordance with **Exhibit L-1** attached hereto and made a part hereof and otherwise as required by this Article 6. Neither Manager nor any Tenant shall use the public areas of the Center and/or the sidewalks adjacent thereto other than the sidewalk areas on Minna Street included within the Commercial Usage Area for any purpose other than ingress to or egress from the Premises, nor, without limiting the generality of the foregoing, shall Manager or any Tenant place or conduct any advertising, marketing, promotion, distribution of samples, or storage of goods, materials or trash in, on, or about such areas, except as permitted by **Exhibits M and P** attached hereto and made a part hereof.

(h) *Service Contracts.* Owner has previously entered into maintenance contracts for the vertical transportation systems within the Center to be installed as part of Phase I and for landscape maintenance of portions of the Park (collectively, "Existing Service Contracts"). On or prior to the Commencement Date, Owner shall assign to Manager, without warranty, and Manager shall assume, such Existing Service Contracts. Following the Turnover Date, Manager may, on behalf of itself only and not on behalf of or as agent of Owner, enter into service contracts which are necessary for the efficient operation of the Premises (collectively, "Future Service Contracts"), provided that all such Future Service Contracts (a) shall be consistent with the O & M Guidelines and the then-applicable Budget, (b) shall expressly require the contractor thereunder to Indemnify the Indemnitees from and against any Claims that any of the Indemnitees may suffer, sustain or incur arising out of or in connection with the negligence, willful misconduct or fraud of the contractor and/or its officers, directors and employees in the performance of the contractor's obligations and duties under its Future Service Contract, whether active or passive, actual or alleged, whether in the provision of such services, failure to provide any or all of the applicable services, or otherwise, and (c) shall name Owner as an intended third party beneficiary of the applicable Future Service Contract with rights to directly enforce the obligations of the contractor under such Future Service Contract. Notwithstanding Manager's assumption of the Existing Service Contracts or Manager's execution of any such Future Service Contracts, as between Owner and Manager, Owner shall be

responsible for all payments for services rendered by the subcontractor under the Existing Service Contracts and Future Service Contracts, in each case, in approved amounts (including approved change orders) unless caused by a Manager Default so long as, in the case of Future Service Contracts only (i) such subcontract complies with items (a), (b) and (c) above, and (ii) such Future Service Contract has been approved by Owner.

5.1.2 *Leasing of Commercial Usage Area.*

(a) *Permitted Use.* Manager acknowledges and agrees that the Commercial Usage Area shall be used only for lawful commercial purposes with a preference toward retail or restaurant (selling food and beverages for on and/or off Premises consumption) purposes (the "Retail Permitted Use") commensurate with the applicable standards for the same under the O & M Guidelines set forth on **Exhibit L-1** attached hereto and made a part hereof (the "Commercial Standard"). Notwithstanding the foregoing, in any and all events, the use of the Commercial Usage Area by any Tenants shall at all times be a Retail Permitted Use (i) in accordance with the Design Guidelines, the Commercial Standard and the Lease approval procedures set forth in Section 5.1.2(c) below, (ii) with the retail and restaurant uses equal or better in quality of product and operations to the Comparison Stores and (iii) restricted by the list of "Prohibited Uses and Users" attached hereto and made a part hereof as **Exhibit N**, except, as and to the extent Owner may permit in its sole and absolute discretion.

(b) *Leasing Activities.* Subject to Section 5.2 below, Owner hereby appoints Manager as its exclusive leasing agent for the leasing of space in the Commercial Usage Area during the Term. Owner hereby approves of Colliers International as Manager's initial Leasing Subcontractor, acting under Manager's supervision and at Manager's direction but as an agent of Owner. Manager shall use (and shall cause its Leasing Subcontractor to use) good faith commercially reasonable efforts to solicit, on Owner's behalf subject to this Section 5.1.2 and any other applicable provisions of this Agreement, Leases for the Commercial Usage Area with Tenants in accordance with the Commercial Standard or the Digital Guidelines, as applicable, and otherwise so as to maximize revenues derived from leasing activities at the Center and draw patrons to the Center. Subject to the Commercial Standard or the Digital Guidelines, as applicable, Manager shall, in consultation with Owner, negotiate all Leases using a form of lease approved in advance by Owner (subject to the Commercial Standard or the Digital Guidelines, as applicable). Provided that (i) Manager complies with the conditions of this Section 5.1.2 and any other applicable provisions of this Agreement and (ii) the Lease satisfies the requirements set forth in the Commercial Standard or the Digital Guidelines, as applicable, then Owner shall, following Manager's request, consent to and execute such Lease. No Lease shall affect any obligations of Manager, or rights of Owner, under this Agreement, all of which shall continue in full force and effect notwithstanding any Lease.

(c) *Lease Approval Procedure.* Prior to preparing an initial draft of a Lease with a proposed Tenant, Manager shall first provide to Owner the following information (collectively, the "Lease Information Packet"): (i) the name and address of the proposed Tenant; (ii) a term sheet setting forth all material business terms of the proposed Lease, including, without limitation, the nature of the applicable Tenant's proposed use of the space, all sums or other consideration paid or to be paid to Owner, as landlord, by or for the account of the proposed Tenant for, or in connection with, such Lease and all sums to be paid by Owner, as

landlord, for tenant improvements or otherwise and any free rent; (iii) information as to the nature, character and history of the business of the proposed Tenant; and (iv) such other information as is required under the leasing guidelines for the Premises to be agreed upon by the Parties during the Transition Period and, upon agreement, attached hereto as **Exhibit L-3** (the “Leasing Guidelines”) or which Owner may reasonably request. Owner shall use good faith efforts to either tentatively approve or object to the identity of the proposed Tenant and the essential terms of the proposed Lease (including, without limitation, the applicable Tenant’s proposed use of the space) as set forth in the applicable Lease Information Packet delivered to Owner, within three (3) Business Days following receipt of a complete Lease Information Packet from Manager. If Owner has provided its tentative approval in accordance with the foregoing sentence, Manager may proceed to draft and negotiate a Lease and any related instruments and agreements with the proposed Tenant as provided in this Section 5.1.2. In connection with Manager’s request to Owner to execute any proposed Lease that has been negotiated by Manager in accordance with this Section 5.1.2, Manager shall provide to Owner the following information (collectively a “Lease Review Request Packet”): (1) a draft of the applicable Lease, as negotiated by Manager, together with a memorandum of the essential terms of the proposed Lease as Owner reasonably may request, including, without limitation, a statement of the nature of the applicable Tenant’s proposed use of the space, all sums or other consideration paid or to be paid to Owner, as landlord, by or for the account of the Tenant for, or in connection with, such Lease and all sums to be paid by Owner, as landlord, for tenant improvements or otherwise and any free rent; (2) drafts of all other instruments or agreements pertaining to such Lease, including, without limitation, and guaranties; and (3) such other information as is required under the Leasing Guidelines or which Owner may reasonably request. Owner shall use good faith efforts to obtain the approval of its board of directors to the proposed Lease as presented in the applicable Lease Review Request Packet or object to the proposed Lease described therein on the basis that the same does not comply with the conditions of this Section 5.1.2 and any other applicable provisions of this Agreement and/or the requirements set forth in the Commercial Standard or the Digital Guidelines, as applicable, within thirty (30) days following receipt of a complete Lease Review Request Packet from Manager. If Owner’s board of directors approves the applicable Lease, Owner shall execute such Lease promptly following such approval.

(d) *Collection of Rents; Tenant Relations.* Manager shall use diligent efforts in pursuing the collection of rents and other charges payable by Tenants under the terms of their Leases. Manager shall notify Owner of all instances of delinquency in rents as part of the monthly reporting package. Manager shall enforce the provisions of all Leases affecting the Commercial Usage Area and promptly handle all complaints and requests from Tenants under Leases affecting the Commercial Usage Area. Manager shall notify Owner of any complaint made by any Tenant that is reasonably likely to result in any economic loss to Owner or impair, jeopardize, or interfere with the smooth and efficient operation of the Premises or Owner’s interest in the Premises in any manner or otherwise be detrimental to Owner’s interests. Unless otherwise directed by Owner, following notice to Owner and an opportunity for comment by Owner (no fewer than three (3) Business Days unless the nature of the default is such that in the reasonable business judgment of Manager the operation of the Premises requires more immediate notice), Manager shall promptly serve notice of default on any Tenant that is not in full compliance of its Lease obligations, with copies of such notices sent to Owner, and work with any such Tenant toward a cure of such default. Subject to Owner’s prior consent as to each step, Manager shall pursue all claims against Tenants, using counsel approved by Owner, and

shall not settle, compromise or waive any such claim without Owner's prior consent. Manager shall update Owner with regular reports as to any and all Tenant disputes, claims, enforcement actions and/or litigation, as required by the O & M Guidelines.

5.1.3 *Promotional Platform.* Subject to Section 5.1.3(b) and Section 5.2 below, Owner hereby appoints Manager as Owner's exclusive agent with respect to all content design, marketing and maintenance with respect to the Promotional Platform during the Term. Owner hereby approves of Pearl Media as Manager's initial Promotional Platform Subcontractor. Manager shall be responsible, subject to this Section 5.1.3, for all content design, marketing and maintenance with respect to the Promotional Platform and shall use good faith commercially reasonable efforts to maximize the revenue derived from the Promotional Platform, subject to the Digital Guidelines set forth in **Exhibit O** attached hereto and made a part hereof and the Digital Content Development Guidelines set forth in **Exhibit O-1** attached hereto and made a part hereof.

(a) *Advertising.* Without limiting the foregoing, Manager shall be responsible for all programming of content for and, with respect to all Center Signage other than Transit Agency Controlled Signage, the sale of digital advertising on all digital and static signage included in the Center Signage in accordance with the Digital Guidelines set forth in **Exhibit O** attached hereto and made a part hereof and the Digital Content Development Guidelines set forth in **Exhibit O-1** attached hereto and made a part hereof. Manager may subcontract with its Promotional Platform Subcontractor for the provision of such programming. Manager shall repair and maintain all Center Signage other than Transit Agency Controlled Signage, all in accordance with the provisions of, and subject to, **Exhibit L-1** and **Exhibit M** attached hereto and made a part hereof. In addition to any Additional Signage, from and after the Commencement Date hereof, Manager or any Tenant so authorized by Manager shall have the right to place additional sign(s) in or about the additional areas designated on **Exhibit B-7** attached hereto and made a part hereof and in any Leased Premises, with Owner's prior written consent, which consent shall not be unreasonably withheld provided, and on the condition, that such additional signage complies with the Design Guidelines set forth on **Exhibit M** attached hereto and made a part hereof. Any additional sign(s) installed by Manager or any Tenant authorized by Manager in accordance with this Section 5.1.3(a) shall be installed, maintained and repaired in accordance with **Exhibit L-1** attached hereto and made a part hereof. Notwithstanding anything to the contrary contained herein, including without limitation Section 29.10 below, all licenses and other rights or agreements for digital advertising at the Center shall be the sole property of Owner and neither Manager nor its Promotional Platform Subcontractor shall have any right, title or interest in the same.

(b) *Sponsorships and Naming Rights.* Manager shall use good faith, commercially reasonable efforts, and shall cause its Promotional Platform Subcontractor to use good faith, commercially reasonable efforts, to solicit sponsorships with respect to the Center, including, without limitation, sponsored events and naming rights to the Center or to portions of the Center ("Sponsorship Agreements"). All such Sponsorship Agreements shall comply with any requirements relating to time devoted to sponsor content on the digital signage included as part of the Center Signage and any restrictions on the type of digital advertising permitted on the digital signage included as part of the Center Signage. Owner reserves the right, with notice to Manager, to directly seek additional sponsorships and to enter into

Sponsorship Agreements in its own name, to the extent not in conflict with any sponsorships generated by Manager and/or its Promotional Platform Subcontractor and previously approved by Owner.

5.1.4 *Events.* Manager shall use good faith, commercially reasonable efforts to arrange for the use of the Center for Center Events, subject to Owner's prior approval of each such Center Event, which approval shall not be unreasonably withheld so long as such Center Event is in keeping with the character of the Center and the surrounding community, in Owner's reasonable judgment, and such Center Event does not unreasonably interfere with the use of the Transit Agency Areas by the Transit Agencies or the use of the Lower Concourse and Train Platform Level by the Rail Operators. Without limiting the other provisions of this Agreement, including without limitation Section 8.1 below, Manager shall cooperate with any policies, protocols and procedures established by Owner or Owner's Security Contractor in connection with any such Center Event, including without limitation the obligation to consult with the Greater Rincon Hill CBD concerning Center Events planned to take place on the Park.

5.2 *Right to Exclude Services.* Notwithstanding the foregoing, in the event that Owner reasonably determines that (i) Manager has failed to deliver any services required of Manager under the Scope of Services and/or to meet the standards for such services required for a first-class transit facility and/or (ii) Owner can reasonably demonstrate that any such services can be provided directly to Owner at significantly lower cost and/or in a manner that may generate significantly higher revenue than that obtainable by Manager (each an "Exclusion Condition"), Owner shall have the right (the "Exclusion Option") to exclude from the Scope of Services any specific subset(s) of services otherwise included in the Scope of Services to be provided by Manager pursuant to this Agreement (the "Excluded Services"). In the event Owner desires to exercise its Exclusion Option, Owner shall give Notice thereof to Manager (an "Exclusion Exercise Notice"), which shall describe in reasonable detail the Exclusion Condition that has occurred and the Excluded Services to which the Exclusion Condition applies. Manager shall have a reasonable opportunity to make changes to its performance of the Excluded Services in order to address the issues that gave rise to the applicable Exclusion Condition, which reasonable opportunity shall not extend for a period longer than sixty (60) days from the date of Owner's Exclusion Exercise Notice (the "Opportunity Period"), provided that the Opportunity Period shall be extended by one day for each day of Unavoidable Delay which makes it impossible for Manager to demonstrate that it can address the specific issues which gave rise to the Exclusion Condition, provided further that Owner's failure to act on any requested increase in the then applicable Budget shall not give rise to any extension of the Opportunity Period. If Manager has failed to remedy any Exclusion Condition(s) to Owner's reasonable satisfaction as of the expiration of the Opportunity Period, the Excluded Services shall thereafter be excluded from the Scope of Services to be provided by Manager under this Agreement and any Fees payable to Manager under this Agreement shall be equitably adjusted.

5.3 *Manager's Right to Negotiate for Management of Phase II.* If Owner, in its sole and absolute discretion, constructs Phase II and elects to retain a third party asset manager to manage Phase II, Owner shall first Notify Manager thereof (a "Phase II Management Notice") and Manager shall have a right of first negotiation for the management of Phase II in accordance with this Section 5.3. In the event Owner delivers a Phase II Management Notice, Manager and Owner shall negotiate in good faith, for a period of forty-five (45) days following

the Phase II Management Notice (the “Negotiation Period”), the material terms for management of Phase II (including, but not limited to, the scope of services applicable to Phase II and all management fees associated therewith). If, at the end of the Negotiation Period, Owner and Manager have reached a mutual agreement on all material terms for management of Phase II and have executed a letter of intent describing the same, Owner and Manager shall negotiate in good faith, for an additional period of thirty (30) days following the earlier of execution of such letter of intent or the expiration of the Negotiation Period (the “Documentation Period”), to attempt to agree on an amendment to this Agreement memorializing the retention of Manager as asset manager for Phase II on the terms agreed to by Owner and Manager during the Negotiation Period. In the event that Owner and Manager are unable to agree on the material terms for management of Phase II prior to the expiration of the Negotiation Period or, if Owner and Manager have reached agreement as to the material terms for management of Phase II prior to the expiration of the Negotiation Period but are unable to agree on an amendment to this Agreement memorializing such terms, Manager shall have no further rights under this Section 5.3 and Owner shall be entitled to engage any third party asset manager desired by Owner to manage Phase II.

6. Manager’s Performance.

6.1 *Standard of Care.* Manager shall perform all of its duties hereunder in good faith in a diligent, prudent and businesslike manner and in accordance with usual and customary professional asset management practices owed by a fiduciary to its principal, and shall exercise in the performance of such duties at least the care, skill and diligence customarily exercised by prudent professional property asset managers of properties similar in nature, size and quality to the Center in properly conducting the affairs of the Premises. Manager shall make available to Owner the full benefit of the judgment, experience and advice of Manager's senior management team in performing the services called for hereunder. Without limiting the foregoing, in performing its duties hereunder, Manager shall use good faith commercially reasonable efforts to manage and operate the Premises in such a manner as to maximize the revenue derived from the Premises and to minimize Operating Expenses, in each instance subject to the O&M Guidelines, Leasing Guidelines and Digital Guidelines.

6.2 *Key Performance Indicators.* Manager shall satisfy the Key Performance Indicators applicable to each Fiscal Year during the Term. The Key Performance Indicators for the first Fiscal Year are set forth on **Exhibit D-1** attached hereto and made a part hereof. The Key Performance Indicators will be reviewed on an annual basis and updated as agreed upon by Owner and Manager, each acting in good faith. Once agreed upon by Owner and Manager, the updated Key Performance Indicators shall be appended to **Exhibit D-1**. If, despite their good faith efforts, Owner and Manager are unable to agree upon any annual update(s) to the Key Performance Indicators for a particular Fiscal Year, the Key Performance Indicators for the prior Fiscal Year shall be applicable to such Fiscal Year (unless clearly not applicable) until such time as Owner and Manager agree upon the annual update(s) to the Key Performance Indicators for such Fiscal Year. Notwithstanding the foregoing, Manager shall not be deemed to be in default of this Agreement as a result of Manager’s failure to satisfy the Key Performance Indicators applicable to a particular Fiscal Year, or the failure of the Center to meet Owner’s income projections due to a general failure in the overall financial performance of the Center notwithstanding Manager’s exercise of good faith commercially reasonable efforts to

manage and operate the Premises in such a manner as to maximize the revenue derived from the Premises and to minimize Operating Expenses, in each instance subject to the O&M Guidelines, Leasing Guidelines and Digital Guidelines.

6.3 *Subcontracts.* With respect to any contracts entered into by Manager with any third party (i.e. any party that is not Owner or Manager) for the subcontracting or performance of any services for the Premises included in the Scope of Services, including, but not limited to, any contracts with Manager's Primary Subcontractors (collectively, "Subcontracts"), and without limiting the provisions of Section 5.1.1(h) above, all such Subcontracts (a) shall be consistent with the O & M Guidelines and the then-applicable Budget, (b) shall expressly require the subcontractor thereunder to Indemnify the Indemnitees from and against any Claims that any of the Indemnitees may suffer, sustain or incur arising out of or in connection with the negligence, willful misconduct or fraud of the contractor and/or its officers, directors and employees in the performance of the subcontractor's obligations and duties under its Subcontract, whether active or passive, actual or alleged, whether in the provision of such services, failure to provide any or all of the applicable services, or otherwise, and (c) shall name Owner as an intended third party beneficiary of the applicable Subcontract with rights to directly enforce the obligations of the subcontractor thereunder. Notwithstanding Manager's execution of any such Subcontracts, as between Owner and Manager, Owner shall be responsible for all payments for services rendered by the subcontractor under such Subcontracts in approved amounts (including approved change orders) unless caused by a Manager Default so long as (i) such subcontract complies with items (a), (b) and (c) above, and (ii) such Subcontract has been approved by Owner.

6.4 *Security for Manager's Performance.*

6.4.1 *Performance Guaranty.* Concurrently with its execution of this Agreement and in any event prior to the Commencement Date, Manager shall cause Guarantor to execute and deliver the Performance Guaranty to Owner. Execution and delivery of the Performance Guaranty shall be a condition precedent to Owner's obligations under this Agreement, including, without limitation, Owner's obligation to turn over the Premises to Manager.

6.4.2 *Minimum Annual Promotional Platform Revenue Letter of Credit.*

(a) *Delivery.* Prior to the Commencement Date, Manager shall cause its Promotional Platform Subcontractor to deliver to Owner the Minimum Annual Promotional Platform Revenue Letter of Credit. Manager, or its Promotional Platform Subcontractor, as applicable, shall pay all costs, expenses, points and/or fees incurred in obtaining the Minimum Annual Promotional Platform Revenue Letter of Credit.

(b) *Owner's Right to Draw.* The Minimum Annual Promotional Platform Revenue Letter of Credit shall be held by Owner as security for the faithful performance by Manager and its Promotional Platform Subcontractor of the obligation to pay the Minimum Annual Promotional Platform Revenue under this Agreement. In the event that Owner does not receive net revenue from the digital advertising portion of the Promotional Platform equal to the Minimum Annual Promotional Platform Revenue in any Fiscal Year in

accordance with Section 4.5 of this Agreement, Owner shall have the right to draw upon the Minimum Annual Promotional Platform Revenue Letter of Credit in the amount of the shortfall upon three (3) Business days prior written notice to Manager and its Promotional Platform Subcontractor at any time and from time to time. The Minimum Annual Promotional Platform Revenue Letter of Credit and its proceeds shall constitute Owner's sole and separate property (and not Manager's or its Promotional Platform Subcontractor's property or, in the event of a bankruptcy filing by or against Manager or its Promotional Platform Subcontractor, property of Manager's or its Promotional Platform Subcontractor's bankruptcy estate) and Owner may immediately upon any draw (and without notice to Manager or its Promotional Platform Subcontractor) apply or offset the proceeds of the Minimum Annual Promotional Platform Revenue Letter of Credit against any deficiency owed to Owner under this Agreement as a result of the revenues derived from the digital advertising portion of the Promotional Platform for a particular year not being at least equal to the Minimum Annual Promotional Platform Revenue for such Fiscal Year. If any portion of the Minimum Annual Promotional Platform Revenue Letter of Credit is so drawn upon or applied, Manager shall, or shall cause its Promotional Platform Subcontractor to, within five (5) Business Days after written demand therefore, deposit cash with the applicable Permissible Letter of Credit Issuer in an amount sufficient to restore the Minimum Annual Promotional Platform Revenue Letter of Credit to its original amount. It is expressly understood that Owner shall be relying on the applicable Permissible Letter of Credit Issuer rather than Manager for the timely payment of proceeds under the Minimum Annual Promotional Platform Revenue Letter of Credit and the rights of Owner pursuant to this Section 6.3.2(b) are Owner's sole and exclusive remedy in the event the revenues generated from the digital advertising portion of the Promotional Platform during any Fiscal Year are less than the Minimum Annual Promotional Platform Revenue for such Fiscal Year, and in no event shall the same be deemed a Default by Manager unless Manager has failed to perform its duties and obligations with respect to the Promotional Platform under this Agreement, including, but not limited to, Manager's failure to adequately monitor and/or supervise its Promotional Platform Subcontractor. Owner shall not be required to keep the proceeds from the Minimum Annual Promotional Platform Revenue Letter of Credit separate from Owner's general funds or be deemed a trustee of same.

(c) *Replacement.* If, for any reason whatsoever, the Minimum Annual Promotional Platform Revenue Letter of Credit becomes subject to cancellation or expiration during the Term, within forty-five (45) days prior to expiration of the Minimum Annual Promotional Platform Revenue Letter of Credit, Manager shall, or shall cause its Promotional Platform Subcontractor to, cause the applicable Permissible Letter of Credit Issuer or another Permissible Letter of Credit Issuer to issue and deliver to Owner a Minimum Annual Promotional Platform Revenue Letter of Credit to replace the expiring Minimum Annual Promotional Platform Revenue Letter of Credit (the "Replacement Minimum Annual Promotional Platform Revenue Letter of Credit"). The Replacement Minimum Annual Promotional Platform Revenue Letter of Credit shall be on the same terms and conditions as the then expiring Minimum Annual Promotional Platform Revenue Letter of Credit. Failure to cause the Replacement Minimum Annual Promotional Platform Revenue Letter of Credit to be issued forty-five (45) days prior to the then pending expiration or cancellation shall entitle Owner, as its sole and exclusive remedy, to draw down on the existing Minimum Annual Promotional Platform Revenue Letter of Credit by the full amount of the Minimum Annual Promotional

Platform Revenue for the applicable Fiscal Year and in no event shall the same be deemed a Default by Manager.

(d) *Transfer of Beneficiary.* During the Term, if Owner transfers its interest in this Agreement or the Premises, Owner may request a change to the beneficiary under the Minimum Annual Promotional Platform Revenue Letter of Credit to the successor of Owner (the "Transferee"). Manager shall, or shall cause its Promotional Platform Subcontractor to, cooperate and to cause the applicable Permissible Letter of Credit Issuer, at Owner's cost, to timely issue a new Minimum Annual Promotional Platform Revenue Letter of Credit on the same terms and conditions as the then existing Minimum Annual Promotional Platform Revenue Letter of Credit, except that the new Minimum Annual Promotional Platform Revenue Letter of Credit shall be payable to the Transferee. Owner shall surrender the existing Minimum Annual Promotional Platform Revenue Letter of Credit to Manager or its Promotional Platform Subcontractor, as applicable, simultaneously with the delivery of the new Minimum Annual Promotional Platform Revenue Letter of Credit to the Transferee.

(e) *Return.* The Minimum Annual Promotional Platform Revenue Letter of Credit or any balance thereof shall be returned (without interest) to Manager or its Promotional Platform Subcontractor, as applicable, within thirty (30) days after the expiration or earlier termination of this Agreement; provided that if prior to the such date a voluntary bankruptcy provision is filed by Manager or its Promotional Platform Subcontractor, or an involuntary bankruptcy is filed against Manager or its Promotional Platform Subcontractor by any of their respective creditors other than Owner, under 11 U.S.C. § 101 et seq., or Manager or its Promotional Platform Subcontractor executes an assignment for the benefit of creditors, then Owner shall not be obligated to return the Minimum Annual Promotional Platform Revenue Letter of Credit or any proceeds of the Minimum Annual Promotional Platform Revenue Letter of Credit until all statutes of limitations for any preference avoidance statutes applicable to such bankruptcy or assignment for the benefit of creditors have elapsed or the bankruptcy court or assignee, whichever is applicable, has executed a binding release releasing Owner of any and all liability for the preferential transfers relating to payments of the Minimum Annual Promotional Platform Revenue under this Agreement, and Owner may retain and offset against any remaining Minimum Annual Promotional Platform Revenue Letter of Credit proceeds the full amount Owner is required to pay to any third party on account of preferential transfers relating to the payment of the Minimum Annual Promotion Platform Revenue under this Agreement.

(f) *Acknowledgment of Parties.* Owner and Manager, on behalf of itself and its Promotional Platform Subcontractor, (i) acknowledge and agree that in no event or circumstance shall the Minimum Annual Promotional Platform Revenue Letter of Credit or any renewal thereof or substitute therefor or any proceeds thereof be deemed to be or treated as a "security deposit" under any law applicable to security deposits in the commercial context, including, but not limited to Section 1950.7 of the California Civil Code, as such Section now exists or as it may be hereafter amended or succeeded (the "Security Deposit Laws"), (ii) acknowledge and agree that the Minimum Annual Promotional Platform Revenue Letter of Credit (including any renewal thereof or substitute therefor or any proceeds thereof) is not intended to serve as a security deposit, and the Security Deposit Laws shall have no applicability or relevancy thereto, and (iii) waive any and all rights, duties and obligations that any such party may now, or in the future will, have relating to or arising from the Security Deposit Laws.

7. Compliance.

7.1 *Generally.* Manager shall not violate any express written order or notice of violation issued by any Government; cause an imminent risk to health or safety; take any action (or permit any inaction) which will, or may, result in any lien, charge, or other liability affecting Owner or the Center or any portion thereof; or create a material risk of forfeiture or loss of the Center or any portion thereof. Subject to Section 8.2 hereof, Manager shall during the Term, in all material respects: (a) comply with all Laws, and (b) procure on behalf of Owner and comply with all Approvals required by Law.

7.2 *Owner as Government Agency.*

7.2.1 *Compliance.* Wherever in this Section 7.2 or in any other provision of this Agreement, Manager is directed and agrees to comply or cause to be complied, with any Laws or to obtain any Approvals as required by any Laws, or reference is made to any Government authorities "having jurisdiction", or language of like import is used, it is the intention of Owner and Manager that Manager shall comply with such Laws and obtain such Approvals as if such Government authorities actually had jurisdiction with respect to the Premises, notwithstanding Owner's status as a joint powers authority of the State. However, notwithstanding the foregoing or any other provision of this Agreement, (i) no provision of this Agreement shall be deemed to constitute a waiver by Owner of its immunity or exemption from any Laws, whether for the benefit of Manager, Government authority or any other Person, and (ii) Owner reserves the right to assert its immunity or exemption from any such Laws relating to the Premises, and to direct Manager or any Tenant(s) to refrain from complying with any such Laws, as Owner, in its discretion, shall see fit from time to time.

7.2.2 *Laws applicable due to Owner's Status.* To the extent that Manager or any Tenant shall be required to comply with Laws that would not be applicable to the Premises but for the status of Owner as a Governmental entity, it shall be Owner's responsibility to apprise Manager in writing of the existence of such Laws, to provide Manager with copies of such Laws for Manager's reference, and to instruct Manager as to how Owner wishes Manager and, if applicable, Tenant to proceed with respect to any inconsistencies between such Laws and any Laws that would otherwise govern the Premises.

7.2.3 *Approvals.* If any Approvals, including, without limitation, any licenses required for Manager's, or any Tenant's, employees, shall be required for the proper and lawful conduct of Manager's or any Tenant's business in the Premises or any part thereof, Manager, or any Tenant, as applicable, at their respective expense, shall duly procure and thereafter maintain such Approvals and submit the same to Owner for inspection. Manager shall at all times comply, or cause to be complied, with the terms and conditions of each such Approval. To the extent required by law, Manager and any Tenant shall cause its employees and the employees of any Tenant (including independent contractors hired by Manager or any Tenant) to maintain proper Approvals for all services performed by such employees at the Premises. Notwithstanding any other provision of this Agreement, no exemptions from local laws, resolutions, ordinances, rules and regulations that are applicable to Owner under Law shall be applicable to or inure to the benefit of Manager, any Tenant and/or Manager's, or any Tenant's, use of the Premises, except for those exemptions, if any, that are either (x) consented

to in writing by Owner, in its sole and absolute discretion, and, with such consent, are legally applicable to Manager, any Tenant and/or Manager's, or any Tenant's use of the Premises, or (y) not consented to by Owner, but are nonetheless legally applicable to Manager, Tenant and/or Manager's, or any Tenant's, use of the Premises.

7.3 *Copies of Notices.* Owner shall promptly give Manager a copy of any notice of any kind regarding the Premises and any notice of nonrenewal or threatened nonrenewal of any Approval that Owner receives from any Government, utility company, insurance carrier, or insurance rating bureau.

7.4 *Energy Disclosure Requirements.* Manager acknowledges that, pursuant to California Public Resources Code Section 25402.10 and the regulations adopted pursuant thereto (collectively, together with any future law or regulation regarding disclosure of energy efficiency data with respect to the Center, "Energy Disclosure Requirements"), Owner may be required in the future to disclose information concerning energy usage at the Center to certain third parties, including, without limitation, prospective purchasers, lenders and tenants of the Building ("Energy Use Disclosure"). Manager shall reasonably cooperate with Owner, at no cost or expense to Manager (other than staff time and de minimis cost), with respect to any Energy Use Disclosure so long as the same does not include any confidential or proprietary data. Without limiting the generality of the foregoing, (a) Manager shall, on Owner's behalf, timely provide any Energy Use Disclosures required to be provided to Tenants under applicable Laws and (b) Manager shall, within ten (10) Business Days following request from Owner, disclose to Owner or provide Owner with access to all information reasonably requested by Owner in connection with such Manager Energy Use Disclosure, including, but not limited to, the amount of power or other utilities consumed within the Premises, the number of employees working within the Premises, the operating hours for the Premises, and the type and number of equipment operated by Manager in the Premises. Manager acknowledges that this information shall be provided on a non-confidential basis. Without limiting the foregoing, Owner may provide any such information to the applicable utility providers, the California Energy Commission (and other governmental entities having jurisdiction with respect to the Energy Disclosure Requirements), and any third parties to whom Owner is obligated by applicable Laws to make any Energy Use Disclosure. In furtherance of the foregoing, Manager hereby (i) consents to all such Energy Use Disclosures, and (ii) acknowledges that Owner shall not be required to notify Manager of any Energy Use Disclosure. Manager agrees that neither Owner nor any Indemnitees shall be liable for, and Manager hereby releases the Owner and the Indemnitees from, any and all loss, cost, damage, expense and liability relating to, arising out of and/or resulting from any Energy Use Disclosure. The terms of this Section 7.4 shall survive the expiration or earlier termination of this Agreement.

7.5 *Coordination with Greater Rincon Hill CBD.* In performing its obligations under Article 8 below for Construction, maintenance, repairs and services in and to the Park and in establishing the annual budget for maintenance and operation of the Park, Manager shall coordinate with the Greater Rincon Hill CBD Board of Directors and the committee established by the Greater Rincon Hill CBD to provide guidance with respect to the operation of the Park.

8. *Payment of Operating Expenses; Budgets.*

8.1 *Payment of Operating Expenses and Capital Expenses.*

8.1.1 *Direct Payment by Manager.* Manager shall, subject to the applicable Budget and compliance with Section 8.1.2 below, arrange and pay directly from the Operating Account established and maintained in accordance with Section 19.1.1(a), for all repairs, maintenance, replacements, equipment and services to the Premises during the Term, as part of Operating Expenses or Capital Expenses, as applicable. Without limiting the foregoing, subject to the applicable Budget and compliance with the procedures set forth in Section 8.1.2 below, Manager shall arrange and pay directly from the Operating Account, as part of Operating Expenses, for all fuel, gas, light, power, water, sewage, garbage disposal, telephone, and any and all other utility or other charges, and the expenses of installation, maintenance, use, and service in connection with the foregoing, for the Premises during the Term. To the extent there are funds in the CBD Funds Account, any payments of Operating Expenses and/or Capital Expenses incurred in accordance with the applicable Budget for repairs, maintenance, replacements and services to the Park shall be made first using funds from the CBD Funds Account (which payment shall be made from the CBD Account directly by Owner) and second, to the extent there are not sufficient funds in the CBD Funds Account to make such payments, by Manager from the Operating Account.

8.1.2 *Procedure for Payment of Expenses.*

(a) *Recurring Operating Expenses.*

(1) *Payment.* To the extent there are sufficient funds in the Operating Account, Manager shall pay from the Operating Account any recurring Operating Expenses which were properly incurred in accordance with the applicable Budget and this Agreement, subject to Section 8.1.1 above.

(2) *Supporting Documentation.* Concurrently with any payments made by Manager from the Operating Account in accordance with Section 8.1.2(a)(1) above, Manager shall provide the following supporting documentation to Owner, in an organized manner: (i) a summary of each account for the applicable monthly accounting period including the vendor, amount, and description of each expense followed by the total for that account, (ii) a copy of the check for each disbursement, and (iii) a copy of the bill with all backup documentation as reasonably deemed necessary by Owner.

(b) *Non-Recurring Operating Expenses and Capital Expenses.*

(1) *Payment Applications.* With respect to any non-recurring Operating Expenses and any Capital Expenses, Manager shall submit an itemized monthly invoice (each a "Payment Application") to Owner detailing any eligible non-recurring Operating Expenses and any Capital Expenses properly incurred in accordance with the applicable Budget and this Agreement for each calendar month during the Term no later than the fifteenth (15th) calendar day after the end of the applicable calendar month. Each Payment Application shall be in the form required by Owner and shall describe in detail (a) all non-recurring Operating Expenses and any Capital Expenses for the immediately preceding calendar month which were properly incurred in accordance with the applicable Budget and this

Agreement, (b) all Operating Expenses for the immediately preceding calendar month incurred which were paid by Manager from the Operating Account in accordance with Section 8.1.2(a) above, and (c) a statement of Fiscal Year-to-date Operating Expenses and Capital Expenses and comparison to the applicable Budget for such Fiscal Year. To the extent any Payment Application includes amounts payable to third party contractors, such Payment Application shall include (i) a certification by Manager in the form attached hereto as **Exhibit D-2** and (ii) a summary of each account for the applicable monthly accounting period including the vendor, amount, and description of each expense followed by the total for that account. Owner shall use good faith efforts to review and approval or reasonably disapprove a proposed Payment Application within ten (10) days of receipt thereof.

(2) *Payment of Expenses.* After receiving approval from Owner of a Payment Application submitted to Owner in accordance with Section 8.1.2(b) above, to the extent there are funds sufficient in the Operating Account, Manager shall pay from the Operating Account, all non-recurring Operating Expenses and any Capital Expenses set forth in the applicable approved Payment Application and properly incurred in accordance with the applicable Budget and this Agreement.

(c) *Insufficient Funds.* Notwithstanding anything to the contrary set forth in Section 8.1.2(a) or Section 8.1.2(b) above, in the event that the funds then held in the Operating Account are insufficient to pay Operating Expenses and Capital Expenses properly incurred or to be incurred in accordance with the applicable Budget and this Agreement during any calendar month of the Term as provided in Sections 8.1.2(a) and 8.1.2(b)(2) above, Manager shall submit a Payment Application to Owner for such Operating Expenses and Capital Expenses no later than the fifteenth (15th) calendar day after the end of the applicable calendar month. Owner shall use good faith efforts to review and approve or reasonably disapprove a proposed Payment Application within ten (10) days of receipt thereof. Promptly following Owner's approval of a Payment Application submitted to Owner in accordance with this Section 8.1.2(c), Owner shall pay directly to the applicable contractor(s), vendor(s), supplier(s) or other payee(s) all Operating Expenses and any Capital Expenses set forth in the applicable approved Payment Application submitted to Owner in accordance with this Section 8.1.2(c) and properly incurred or to be incurred in accordance with the applicable Budget and this Agreement.

8.1.3 *Processing of Payments.* Manager will process payments made in accordance with Section 8.1.2(a) and/or Section 8.1.2(b)(2) above in a timely manner to avoid late charges and other penalties. Owner shall only be responsible for late fees, penalties and any other similar costs or damages with respect to payments made by Manager in accordance with Section 8.1.2(a) and/or Section 8.1.2(b)(2) above in the event the same result from the unavailability of funds (notwithstanding Manager's exercise of good faith commercially reasonable efforts to manage and operate the Premises in such a manner as to maximize the revenue derived from the Premises and to minimize Operating Expenses, in each case subject to the O&M Guidelines, Leasing Guidelines and Digital Guidelines) or Owner's failure to provide timely approvals or payments with respect to the applicable Payment Application.

8.1.4 *Availability of Funds.* Notwithstanding anything to the contrary contained herein, in the event that the revenues from operation of the Premises during a particular period are insufficient to pay the Operating Expenses and Capital Expenses set forth

in the Budget for such period approved by Owner and Owner is unable to provide additional funding to pay for such Operating Expenses and Capital Expenses, and as a result of such unavailability of funds, Manager cannot adequately perform one or more specific obligations under this Agreement in accordance with the Commercial Standard, Manager shall use diligent efforts to avoid any interruption in services to the Premises as a result of such unavailability of funding and shall continue management of the Premises at a reduced level agreed upon by the Parties consistent with the level of revenue and additional funding available during such period.

8.2 *Annual Operating and Capital Budgets; Books and Records.*

8.2.1 *Initial Budgets.*

(a) A preliminary Budget covering the period commencing on the Commencement Date and continuing through and including June 30, 2017 (the “Preliminary Budget”) is attached hereto as **Exhibit F**.

(b) No later than April 30, 2017, Manager and Owner shall work together in good faith to produce an initial annual Operating Budget and initial Capital Budget (collectively, the “Initial Budget”) for the operation, maintenance and repair of the Premises for the 2017-2018 Fiscal Year. Upon agreement between Owner and Manager and receipt of any necessary third party approvals in accordance with Section 8.2.3 below, the Initial Budget shall replace the Preliminary Budget and shall be attached hereto as **Exhibit F**.

8.2.2 *Annual Operating Budget and Capital Budget.* Following the expiration of the Initial Budget, an Operating Budget for the ensuing Fiscal Year (or portion thereof) and an updated Capital Budget for the ensuing five (5) Fiscal Year Period shall be prepared on an annual basis by Manager in similar form to **Exhibit F** and submitted annually by the Manager to Owner for review and approval no later than September 1st of the calendar year immediately preceding the commencement of the applicable Fiscal Year, starting with September 1, 2017. In preparing each Operating Budget and updated Capital Budget, Manager shall consult with the Greater Rincon Hill CBD to the extent required in connection with the portion of the Budgets relating to the Park. With respect to each Operating Budget and updated Capital Budget, each item included in such Operating Budget for janitorial services, R&M and similar services shall be based upon the estimated cost of such item as determined using at least three (3) vetted bids collected from vendors in order to establish to Owner’s reasonable satisfaction that the proposed estimate reflects the lowest possible cost to satisfy the required level of service, which bids and any background information related to the same shall be provided to Owner at the time the Manager submits the corresponding Operating Budget and updated Capital Budget to which the same relate. Owner shall use good faith efforts to provide Manager with any comments or required revisions to each proposed updated Budget within sixty (60) days of Owner’s receipt of the same.

8.2.3 *Third Party Approvals of Budgets.* In addition to Owner’s approval, the Initial Budget and each subsequent Budget shall be subject to the approval of AC Transit and any other Transit Agency and Rail Operator whose approval is required pursuant to the terms of their respective Transit Agency Lease or Rail Operator Agreement (as hereinafter defined), as applicable. The Initial Budget and any subsequent Budget approved pursuant to the

terms hereof, may be amended or modified, with the prior approval of Owner, and AC Transit and any other Transit Agency and Rail Operator whose approval is required pursuant to the terms of their respective Transit Agency Lease or Rail Operator Agreement. Owner shall be responsible for seeking the approval of AC Transit and any other Transit Agencies and Rail Operators whose approval is required pursuant to the terms of their respective Transit Agency Lease or Rail Operator Agreement with respect to the Initial Budget and any subsequent Budget and any subsequent amendments and modifications thereto. Without limiting the foregoing, Owner shall promptly, following receipt thereof, submit the Initial Budget and each subsequent Budget to AC Transit and any other Transit Agencies and Rail Operators whose approval is required pursuant to the terms of their respective Transit Agency Lease or Rail Operator Agreement for review and approval and shall thereafter use good faith diligent efforts to timely obtain any and all such approvals. All communications with AC Transit and any other Transit Agencies and Rail Operators whose approval is required pursuant to the terms of their respective Transit Agency Lease or Rail Operator Agreement with respect to the Initial Budget or any subsequent Budget or any subsequent amendments thereto shall be made by Owner. Manager shall, at Owner's request and at no out-of-pocket cost or expense to Manager (other than staff time and a de minimis out-of-pocket cost and expense), cooperate with Owner in connection with Owner's efforts to obtain the approval of AC Transit and such other Transit Agencies and Rail Operators, including without limitation attending meetings with such parties and preparing such back-up materials and quarterly estimates of Expenses as Owner may reasonably request.

8.2.4 *Permitted Variance.* Manager shall utilize commercially reasonable good faith efforts to operate the Premises within the parameters of the Initial Budget and subsequent approved Budgets; provided, however, that Manager's failure to operate the Premises within the Initial Budget or any subsequent Budget parameters shall not be deemed a default by Manager hereunder unless such failure was the result of Manager's failure to act in good faith or Manager's failure to obtain Owner's consent to any expenditures or overages as required hereunder. Without limiting the foregoing, Manager shall not make expenditures for the operation and maintenance or improvement of the Premises in any Fiscal Year that would exceed the corresponding line item in the applicable Budget for such Fiscal Year without obtaining Owner's prior written consent. Notwithstanding the foregoing, Manager shall have the right, without obtaining Owner's prior written consent, to reallocate funds from the contingency line item in the Initial Budget and any subsequent approved Budget to another line item in such Budget so long as such reallocation does not result in a cumulative increase of ten percent (10%) or more under the line item to which such funds are reallocated and the amount so reallocated from the contingency line item does not exceed ten percent (10%) of the original amount of the contingency line item set forth in the applicable Budget (the "Permitted Variance"). In the event of Emergency Situation, Manager may seek verbal approval from Owner's Executive Director or another authorized employee of Owner to make expenditures in excess of applicable line items in the approved Budget for emergency repairs required to prevent further immediate damage to property or injury to persons, but shall thereafter follow the procedures set forth in this Section 8.2 in reallocating funds or in seeking an amendment to the approved Budget for any expenditures for longer-term repairs.

8.2.5 *Annual Reconciliation.* No later than the applicable Reconciliation Deadline for each Fiscal Year during the Term, Manager shall deliver to Owner

a reasonably detailed written statement (each an “Annual Reconciliation”) setting forth (i) Manager’s final determination of the actual Operating Expenses and Capital Expenses incurred with respect to the operation, maintenance and repair of the Premises for the immediately preceding Fiscal Year and (ii) the amount of any variance between the actual Operating Expenses and Capital Expenses incurred for the immediately preceding Fiscal Year and the estimated amounts for such Operating Expenses and Capital Expenses set forth in the applicable Budget.

8.2.6 *Books and Records.* Manager shall prepare, keep and maintain at the Premises or at Manager's principal office within the City and County of San Francisco, for a period of not less than seven (7) years following the end of each Fiscal Year (including following the Expiration Date, as to which Manager's obligations hereunder shall survive the Expiration Date (or any earlier termination of this Agreement pursuant to any provision hereof or by law)), complete and accurate books of account and records in accordance with generally accepted accounting principles (collectively, the "Books and Records"), in form and substance reasonably satisfactory to Owner, of all Operating Expenses and Capital Expenses with respect to the Premises. The Books and Records, whether manually or electronically maintained and operated, shall have controls in place that are satisfactory to Owner, in its reasonable judgment, to prevent the alteration or manipulation of the recorded Operating Expenses and Capital Expenses. Supplementing the foregoing, the Books and Records for any particular period occurring during the Term (each, an "Audit Period") shall include all information recorded by Manager that Owner, in its reasonable discretion, deems pertinent to the determination of Operating Expenses and/or Capital Expenses for such Audit Period. Manager's obligations under this Section 8.2.5 shall survive the Expiration Date.

8.2.7 *Audits.* Owner (and its representatives) shall have the right, from time to time, to examine and/or cause a complete audit (and to make copies) of any or all Annual Reconciliations and Manager's Books and Records. In connection with any such examination and/or audit, Owner (or its representatives) shall have the right, from time to time, to request, in a written notice given to Manager (each, a "Records Request"), that Manager make, or cause to be made, available to Owner (or its representatives), at the Premises or at Manager’s principal office within the City and County of San Francisco, the Books and Records relating to any Audit Period. Manager, within thirty (30) days after Manager's receipt of any Records Request (each such 30 day period, a "Submission Period"), shall make, or cause to be made, available to Owner (or its representatives) the Books and Records requested by Owner in such Records Request, which Books and Records shall be sufficient to permit an accurate determination of Operating Expenses and Capital Expenses for the applicable Audit Period. If, with respect to any Records Request, Manager fails to make, or cause to be made, available the Books and Records requested by such Records Request at the Premises or at Manager’s principal office within the City and County of San Francisco within the applicable Submission Period (a "Records Default") and such Records Default shall continue for a period of ten (10) Business Days following written notice thereof to Manager, such Records Default shall constitute an immediate Event of Default by Manager hereunder. For purposes of this Section 8.2.7, the phrase "make available" or other words of similar import shall be deemed to require that Manager make, or cause to be made, the Books and Records requested by any Records Request available to Owner (or its representatives) either at the Premises or at Manager's principal office within the City and County of San Francisco.

9. Construction.

9.1 *Construction.*

9.1.1 *Building Improvements.* During the Term, Manager shall supervise and coordinate the commencement and completion, or shall use diligent efforts to cause the Tenants to commence and complete, as applicable, Construction of all Building Improvements in the Premises in accordance with the applicable Capital Budget. In connection with the foregoing, Manager shall use diligent efforts to cause the Opening Date Building Improvements to be completed on or before the Opening Date, subject to Unavoidable Delay. Manager shall cause all Leases to include an obligation for each applicable Tenant to complete Construction of tenant improvements under its Leases no later than three hundred sixty-five (365) days following execution of the applicable Lease, subject to Unavoidable Delay, and Manager will enforce each such Lease obligation.

9.1.2 *Other Construction.* During the Term, Manager shall also be obligated, in accordance with the terms and provisions of this Article 9, to supervise and coordinate the commencement and completion, or to use diligent efforts to cause the Tenants to commence and complete, as applicable, Construction in the Premises of any other Building Improvements approved or directed by Owner and provided for in the applicable Capital Budget.

9.2 *Construction Requirements.* All Construction, including but not limited to the Construction of the Building Improvements, shall be subject to Owner's prior written consent in each and any instance, which consent shall not be unreasonably withheld, conditioned or delayed. In the case of Construction of any Building Improvements, Owner shall use good faith efforts to respond to any request for consent submitted by Manager hereunder within ten (10) Business Days of receipt of proposed Construction Documents for the same. In connection with any Construction, Manager shall comply, or shall use diligent efforts to cause the Tenant performing such Construction to comply, as applicable, with the following requirements:

(a) From and after the commencement of any Construction through and including the completion of same, Manager shall arrange on behalf of Owner, or in the event of Construction performed by a Tenant shall use diligent efforts to cause such Tenant to carry, or cause to be carried, the insurance required pursuant to Section 16.2 hereof.

(b) Manager shall deliver, or in the event of Construction performed by a Tenant shall use diligent efforts to cause such Tenant to deliver, to Owner or the designated Owner's Representative:

(1) in connection with any Major Construction, a copy of all Construction Documents with respect thereto;

(2) in connection with any and all Construction, a copy of any and all Approvals as required by Law and Owner's Code Compliance Officer necessary to enable the commencement and completion of the proposed Construction;

(3) in connection with any and all Construction, Plans and Specifications prepared in accordance with the Design Review Process set forth in **Exhibit M-1** attached hereto and made a part hereof;

(4) in connection with any and all Construction, an Architect's Certificate; and

(5) any other materials required under the Design Review Process set forth in **Exhibit M-1** attached hereto and made a part hereof.

(c) All Construction shall adhere to the Design Review Process set forth in **Exhibit M-1** attached hereto and made a part hereof and the Design Guidelines, set forth on **Exhibit M** attached hereto and made a part hereof, and all Owner required Code Compliance in connection with any Construction. Manager shall cause all Construction to be completed with reasonable diligence and within a reasonable period of time; provided that with respect to Construction performed by Tenants, Manager shall cause each Lease to expressly require the applicable Tenant to cause such Construction to be completed within a reasonable period of time, subject to a firm outside date which shall be reasonably determined on a case-by-case basis based on the extent and nature of the Construction, and Manager shall use diligent efforts to enforce each such Lease obligation. Subject to Section 8.1 above, Manager shall pay for all Construction (other than Construction that is to be performed and/or paid for by Tenants) from the Operating Account when and as required by the parties that perform such Construction. With respect to any Construction performed by Tenants, Manager shall cause each Lease to expressly require the applicable Tenant to pay for all Construction performed by the applicable Tenant when and as required by the parties that perform such Construction, subject to Owner's obligation to pay any Owner's tenant improvement allowance if and when required under the terms of the applicable Lease, and Manager shall use diligent efforts to enforce each such Lease obligation. In addition, with respect to any Construction paid for by Tenants (regardless of whether such Construction is to be performed by the Tenant or by Owner, as landlord under such Tenant's Lease), Manager shall cause each Lease to expressly require the applicable Tenant to pay all costs and expenses relating to such Construction, subject to Owner's obligation to pay any Owner's tenant improvement allowance if and when required under the terms of the applicable Lease, and Manager shall use diligent efforts to enforce each such Lease obligation. All Improvements that Manager, or any Tenant, constructs in the Premises (other than Manager/Tenant FF&E) shall become part of the Center and shall be and remain the property of Owner.

(d) Notwithstanding anything to the contrary contained elsewhere herein, in no event shall Manager permit any Construction in the Premises to unreasonably interfere with, in any manner whatsoever, any Transit Agency or Rail Operator facilities and operations, Transit Agency or Rail Operator installed equipment, or Transit Agency Controlled Signage including, without limitation, any safety equipment such as cameras. Each Transit Agency and Rail Operator, as applicable, shall have unrestricted access to any such facilities and operations, Transit Agency Controlled Signage and Transit Agency or Rail Operator installed equipment, including, without limitation, cameras for the repair and maintenance of same (including, without limitation, within and/or adjacent to any vertical transportation equipment (elevators and escalators)), all in accordance with **Exhibit L-1** attached hereto and made a part hereof;

provided, however, that Owner shall use good faith efforts to endeavor to cause the Transit Agencies and Rail Operators to refrain from exercising their rights to access any such facilities and operations, Transit Agency Controlled Signage and Transit Agency or Rail Operator installed equipment in a manner which would materially and adversely impair Manager's ability to perform the Scope of Services or would materially increase Manager's obligations under this Agreement. Notwithstanding anything to the contrary contained herein, the foregoing shall not require Owner to incur any cost or expense, take any action or fail to take any action that in either case could constitute a breach or violation of any agreement between Owner and any Transit Agency or Rail Operator, or institute any litigation, proceeding or other dispute resolution procedure.

(e) Insofar as any Construction adjoins, or would otherwise affect in any way any Transit Agency or Rail Operator facilities and operations, Manager shall use diligent efforts to cause any Contractors performing such work to comply with the rules, regulations and procedures promulgated from time to time during the Term by the applicable Transit Agency or Rail Operator. If any Construction affects any Transit Agency or Rail Operator facilities or operations, Manager shall, subject to Section 8.1 above, reimburse the applicable Transit Agency or Rail Operator from the Operating Account for its standard charges in effect from time to time imposed by such Transit Agency or Rail Operator, as applicable, in connection with their inspection and supervision of any such Construction.

(f) Upon completion of any Construction, Manager shall (i) cause a Notice of Completion to be recorded in the office of the Recorder of the City and County of San Francisco in accordance with Section 3093 of the Civil Code of the State of California or any successor statute, (ii) deliver to Owner or the designated Owner's Representative a reproducible copy of the "as built" drawings of the Construction, and (iii) deliver to Owner evidence of payment, contractors' affidavits and full and final waivers of all liens for labor, services or materials.

9.3 *Design Review; Code Compliance.*

(a) Plans and Specifications (including working plans and specifications and "as-built" plans and specifications and surveys, as and to the extent required) for any Construction, including but not limited to the Construction of the Building Improvements, shall be prepared by the Architect and promptly submitted to Owner or the designated Owner's Representative in accordance with the Design Review Process set forth in **Exhibit M-1** attached hereto and made a part hereof.

(b) Manager shall cause any and all Construction managed by Manager to be completed in compliance with the applicable building and fire codes specified from time to time by Owner's Code Compliance Officer and, with respect to Construction performed by Tenants, Manager shall cause each Lease to expressly require the applicable Tenant to cause such Construction to be completed in compliance with the applicable building and fire codes specified from time to time by Owner's Code Compliance Officer and Manager shall use diligent efforts to enforce each such Lease obligation. Owner, in its capacity as a governmental authority in determining Code Compliance and not as a party to this Agreement, will not act in an arbitrary, or capricious manner in connection therewith (such review process in Owner's capacity as such a governmental authority being sometimes referred to herein as the "Compliance Review").

Process"). Manager acknowledges that (x) the Compliance Review Process is separate from, and in addition to, the Design Review Process and (y) the Compliance Review Process and Design Review Process may be conducted by different individuals any one of whom may be deemed to be Owner's Code Compliance Officer in processing any required approvals, permits and certificates of compliance and occupancy in conformity with Code Compliance. In reviewing Plans and Specifications in connection with any Construction in its capacity as a governmental authority, pursuant to the Compliance Review Process, Owner and Owner's Code Compliance Officer shall not be bound by any of the restrictions on scope of review, standards of reasonableness, or any other limitations, or restrictions imposed by this Agreement, if any; provided, however, Owner shall endeavor to perform any Compliance Review Process simultaneously (given any constraints with the relative scope of such review) with the corresponding time frame to review the applicable submittal and/or approval request in its capacity as Owner including, without limitation, the Design Review Process.

9.4 *Labor Harmony.* Manager shall not, at any time prior to or during the Term, either directly or indirectly, use any contractors, laborers or materials the use of which would create any conflicts with other contractors and/or laborers employed by Owner in the construction, maintenance or operation of the Center or would cause any jurisdictional or other labor disputes thereat. Manager shall cause each Lease to expressly require the applicable Tenant to not, at any time prior to or during the term of such Lease, use any contractors, laborers or materials the use of which would create any conflicts with other contractors and/or laborers employed by Owner in the construction, maintenance or operation of the Center or would cause any jurisdictional or other labor disputes thereat and Manager shall use diligent efforts to enforce each such Lease obligation.

10. Required Leases.

10.1 *Transit Agency Ticketing and Waiting Room Leases.* Owner shall negotiate and enter into one or more direct leases with Amtrak and Greyhound (collectively, the "Transit Agency Ticketing and Waiting Room Leases") for the use of the portion of the First and Second Floor Transit Lease Space located on the second floor as ticketing and waiting room spaces during Phase I and with Greyhound for use of the portion of the First and Second Floor Transit Lease Space located on the ground floor for package services provided by Greyhound. Such Transit Agency Ticketing and Waiting Room Leases shall be on such terms as are agreed upon by Owner and Greyhound or Amtrak, as applicable. Owner shall provide Manager with complete copies of the Transit Agency Ticketing and Waiting Room Leases promptly following the mutual execution thereof. Following mutual execution thereof, Manager shall provide ongoing management of the First and Second Floor Transit Lease Space in accordance with the scope of its duties and services hereunder; provided, however, that no rent or other revenues under the Transit Agency Ticketing and Waiting Room Leases shall be included in Net Retail Revenues for purposes of calculating any Positive Incremental Net Retail Revenues for any particular Fiscal Year.

10.2 *Lower Concourse Support Space.* Owner or its Security Contractor shall be permitted to use, on an exclusive basis, a portion of the Lower Concourse Support Space for Center security and operations purposes (the "Security Operations Center"). The portion of the

Lower Concourse Support Space that is intended for use for the Security Operations Center is generally depicted on **Exhibit B-6** attached hereto.

10.3 TJPA Office Space. The TJPA Office Space shall, at all times during the Term, be reserved for use by TJPA as its primary offices and, notwithstanding anything to the contrary contained in this Agreement, will not be leased by Manager to any Tenant nor shall Manager otherwise grant any Tenant or other Person any right to use or occupy the TJPA Office Space. Manager, as part of the Scope of Services, shall provide ongoing management of the TJPA Office Space; provided, however, that no rent or other revenues derived from the TJPA Office Space shall be included in Net Retail Revenues for purposes of calculating any Positive Incremental Net Retail Revenues for any particular Fiscal Year.

11. *Role of Responsibilities and Protocols.*

11.1 Responsibility for Relationship with Transit Agencies and Rail Operators. Owner shall retain a primary relationship with all Transit Agencies and Rail Operators at the Center. Without limiting the foregoing, Owner, not Manager, shall be responsible for (i) preparing and providing to the Transit Agencies and Rail Operators all reports and projections required under the Transit Agency Leases and Rail Operator Agreements, (ii) collecting all contributions from the Transit Agencies and Rail Operators toward Operating Expenses and Capital Expenses of the Center in accordance with the terms of the Transit Agency Leases and Rail Operator Agreements, as applicable, (iii) maintaining all reserves required under the Transit Agency Lease with AC Transit and any other Transit Agency Lease or Rail Operator Agreement (collectively, "Transit and Rail Reserves") and (iv) making all disbursements from such Transit and Rail Reserves in accordance with any applicable requirements under the Transit Agency Leases and Rail Operator Agreements. Manager shall cooperate with Owner, at Owner's request but at no out-of-pocket cost to Manager (other than staff time and any de minimus out-of-pocket costs and expenses), in connection with Owner's efforts regarding the foregoing, including, without limitation, assisting Owner with the preparation of any reports and projections to be provided to any of the Transit Agencies or Rail Operators, creating presentation materials, and explaining any individual Budget items or calculations.

11.2 Communication Protocols. Manager agrees that for purposes of communications with Owner hereunder, as well as with any designees of Owner and/or appropriate Government agencies or authorities, it will refer at all times and comply with the protocols set forth on the communications protocols as set forth on **Exhibits L and L-1** attached hereto and made a part hereof, as same may be amended from time to time upon Notice to Manager (the "Communications Protocols"). The Communications Protocols shall set forth which specific agencies or individuals within those agencies shall be designated as contacts with respect to particular responsibilities including, without limitation, the granting of consents hereunder, guidance in connection with contract compliance and compliance with the other Exhibits of this Agreement, general communication and communication and procedures in the event of emergencies affecting the Center. Manager shall address all inquiries and communications to those entities or individuals set forth on the Communications Protocols set forth on **Exhibits L and L-1** attached hereto and made a part hereof.

12. *Security.*

12.1 *Center Security.* Owner shall, at Owner's sole cost and expense, contract directly with a third party security provider (the "Security Contractor") selected by Owner, in its sole discretion, to provide security service in the Center, excluding any Leased Premises, security for which shall be the sole responsibility of the applicable Tenant. The Security Contractor shall provide security, at locations and levels determined appropriate by Owner in its sole discretion, as is incidental to the operation of the Center as a transit facility, and otherwise in accordance with the protocols included in the Concept of Operations for the Center set forth on **Exhibit L** attached hereto and made a part hereof. Manager acknowledges that in order to maintain safety and security to the Center, Owner retains the right to install safety and security systems and devices, and promulgate and enforce such procedures and regulations as to its Managers, their employees, contractors and agents, as may be deemed necessary or desirable by Owner in its sole discretion; which may include the establishment of Center security procedures such as background checks and appropriate Government security clearance and the distribution to certain of Manager's employees of photo identification cards and requiring the presentation of such photo identification cards in order to gain access to certain portions of the Center. Manager shall comply, and cause to be complied, with any and all such safety and security protocols, procedures and requirements adopted by Owner. Notwithstanding anything contained herein to the contrary, Manager shall have no obligation to maintain, or repair, any non-Manager and non-Tenant installed security cameras and/or systems in the Center. Notwithstanding anything contained in **Exhibit L** to the contrary, Manager shall reasonably cooperate with Owner, its Security Contractor, any Transit Agency, SFPD, SFSD and/or the SFMTA Police Department with respect to, and Manager shall have no right to dispute, contest or challenge, any security protocols, procedures or requirements now or hereafter adopted by Owner (including, without limitation, Owner's chief security officer and deputy chief security officer), its Security Contractor, any Transit Agency, any Rail Operators, SFPD, SFSD and/or the SFMTA Police Department. Without limiting the foregoing, Manager shall, as part of the Scope of Services, maintain sufficient staffing to efficiently coordinate with Owner, its Security Contractor, each Transit Agency and Rail Operator, SFPD, SFSD and/or the SFMTA Police Department with respect to security protocols, procedures or requirements for the Center and shall alert appropriate law enforcement authorities, including, without limitation, Owner, Owner's Security Contractor, the SFMTA Police Department, SFSD and SFPD, of any and all suspicious activities, or individuals in, or around the Premises.

12.2 *Security Program.* All Leases shall expressly require that the Tenants shall be solely responsible for security inside their respective Leased Premises. In connection therewith, Tenants shall have the right to employ their own security protocols for such Leased Premises, subject to the provisions of this Section 12.2. Each Lease shall require any and all Tenants to cooperate with all security protocols, procedures and requirements of Owner (including, without limitation, Owner's chief security officer and deputy chief security officer), the SFMTA Police Department, SFPD, SFSD and the Transit Agencies and Rail Operators. Without limiting the foregoing, each Lease shall require any and all Tenants to alert appropriate law enforcement authorities including, without limitation, Owner, Owner's Security Contractor, the SFMTA Police Department, SFSD and SFPD, of any and all suspicious activities, or individuals in, or around the Premises.

13. *Prohibited Liens.*

13.1 *Manager's Covenant.* It is the mutual expectation of the parties hereto that no lien can attach to the Premises or any other portion of the Center other than liens created by or with the express consent of Owner. If a Prohibited Lien is filed then Manager shall promptly Notify Owner and, unless otherwise instructed by Owner within three (3) Business Days following Owner's receipt of such notice, shall, on Owner's behalf as part of the Scope of Services, commence appropriate action to cause such Prohibited Lien to be paid, discharged, bonded, or cleared from title and shall thereafter prosecute such action with reasonable diligence and continuity, subject to Owner's prior consent as to each step. To the extent included in the Budget for the applicable Fiscal Year approved by Owner or otherwise expressly approved by Owner, the cost to pay, discharge, bond, or clear a Prohibited Lien from title and to prosecute such action shall, to the extent not paid by the applicable Tenant, be subject to payment by Owner as an Operating Expense in accordance with Section 8.1 above. If Owner receives notice of the filing of a Prohibited Lien, then Owner shall promptly Notify Manager.

13.2 *Protection of Owner and Manager.* NOTICE IS HEREBY GIVEN THAT NEITHER OWNER NOR MANAGER SHALL BE LIABLE FOR ANY LABOR OR MATERIALS FURNISHED OR TO BE FURNISHED TO ANY TENANTS UPON CREDIT, AND THAT NO MECHANIC'S OR OTHER LIEN FOR ANY SUCH LABOR OR MATERIALS SHALL ATTACH TO OR AFFECT THE FEE ESTATE. NOTHING IN THIS AGREEMENT SHALL BE DEEMED OR CONSTRUED IN ANY WAY TO CONSTITUTE OWNER'S OR MANAGER'S CONSENT OR REQUEST, EXPRESS OR IMPLIED, BY INFERENCE OR OTHERWISE, TO ANY CONTRACTOR, SUBCONTRACTOR, LABORER, EQUIPMENT OR MATERIAL SUPPLIER FOR THE PERFORMANCE OF ANY LABOR OR THE FURNISHING OF ANY MATERIALS OR EQUIPMENT FOR ANY CONSTRUCTION.

14. *Hazardous Substances.*

14.1 *Restrictions.* Manager shall not cause to occur on, under or at the Premises during the Term: (a) any violation of any Environmental Law; or (b) the use, generation, release, manufacture, refining, production, processing, storage, or disposal of any Hazardous Substance, or transportation to or from the Premises of any Hazardous Substance, unless both: (i) reasonably necessary and customary to conduct any legal business in the Premises in accordance with customary standards in such business, or to operate and maintain the Premises or any Leased Premises for uses this Agreement permits and (ii) in compliance with all Environmental Laws. Manager shall cause each Lease to expressly require the applicable Tenant to not cause on, under or at the Premises during the term of such Lease: (A) any violation of any Environmental Law; or (B) the use, generation, release, manufacture, refining, production, processing, storage, or disposal of any Hazardous Substance, or transportation to or from the Premises of any Hazardous Substance, unless both: (i) reasonably necessary and customary to conduct any legal business in the applicable Leased Premises in accordance with customary standards in such business, or to operate and maintain the applicable Leased Premises for uses this Agreement permits and (ii) in compliance with all Environmental Laws, and Manager shall use diligent efforts to enforce each such Lease obligation.

14.2 *Compliance; Clean-Up.*

14.2.1 Manager shall: (a) comply with Environmental Law and, to the extent Environmental Law requires, clean up any Hazardous Substance Discharge on, at, or under the Premises caused by Manager; (b) make all submissions to, deliver, or cause to be delivered, all information required by, and otherwise fully comply with all requirements of any Government under Environmental Laws related to any Hazardous Substance Discharge on, at, or under the Premises caused by Manager; (c) if any Government requires any clean-up plan or clean-up because of a Hazardous Substances Discharge on, at or under the Premises caused by Manager, prepare and submit the required plans and all related bonds and other financial assurances; (d) promptly and diligently carry out all such clean-up plans required by Manager's acts or omissions; and (e) Indemnify Owner against any Hazardous Substances Discharge or violation of Environmental Law caused by Manager. Manager's obligations under this paragraph shall not limit Owner's rights against third parties. Notwithstanding the foregoing, in no event shall Manager be obligated to remove any Hazardous Substance Discharge, comply with Environmental Laws, or Indemnify Owner, as hereinabove provided to the extent that any of same relate solely to conditions that existed prior to the Commencement Date, or are caused by any Person that is unrelated to Manager or its agents, employees, or contractors.

14.2.2 Manager shall cause each Lease, Service Contract and Subcontract to expressly require the applicable Tenant, contractor or subcontractor, as applicable, to (a) comply with Environmental Law and, to the extent Environmental Law requires, clean up any Hazardous Substance Discharge on, at, or under the Premises caused by such Tenant, contractor or subcontractor, as applicable; (b) make all submissions to, deliver, or cause to be delivered, all information required by, and otherwise fully comply with all requirements of any Government under Environmental Laws related to any Hazardous Substance Discharge on, at, or under the Premises caused by such Tenant, contractor or subcontractor, as applicable; (c) if any Government requires any clean-up plan or clean-up because of a Hazardous Substances Discharge on, at or under the Premises caused by such Tenant, contractor or subcontractor, as applicable, prepare and submit the required plans and all related bonds and other financial assurances; (d) promptly and diligently carry out all such clean-up plans required by the acts or omissions of such Tenant, contractor or subcontractor, as applicable; and (e) Indemnify Owner against any Hazardous Substances Discharge or violation of Environmental Law caused by such Tenant, contractor or subcontractor, as applicable. Manager shall use diligent efforts to enforce each such Lease obligation.

15. Indemnification; Liability of Owner.

15.1 *Obligations.* To the fullest extent permitted by applicable Law, but in all events subject to Section 16.7 below, Manager shall Indemnify the Indemnitees from and against any Claims not actually covered by insurance (or, if Owner fails to carry any insurance expressly required to be carried by Owner under Section 16.1 of this Agreement, Manager shall Indemnify the Indemnitees from and against any Claims to the extent such Claims would not have been covered by the insurance required to be carried by Owner under Section 16.1 of this Agreement), but expressly including any deductible amounts or self-insured retentions, that any of the Indemnitees may suffer, sustain or incur arising out of or in connection with the gross negligence, willful misconduct or fraud of Manager and/or its officers, directors and employees in the performance of Manager's obligations and duties under this Agreement (which obligations and duties expressly include, without limitation, the obligation to supervise and enforce the terms

of all subcontracts), whether active or passive, actual or alleged (provided that if any allegation of Manager's gross negligence, willful misconduct or fraud is determined to be false in a final, unappealable decision by a court of competent jurisdiction, then Owner shall reimburse Manager for all out-of-pocket costs and expenses (including reasonable attorneys' fees and costs) actually incurred by Manager in performing its obligation to Indemnify the Indemnities from the applicable Claim under this Section 15.1, whether in the provision of the Scope of Services, failure to provide any or all of the services within the Scope of Services, or otherwise. The foregoing obligation to Indemnify shall apply irrespective of whether (i) Claims are asserted by any Indemnitees or by unrelated third parties against the Indemnitees, including but not limited to patrons, occupants, Tenants, and invitees of or to those portions of the Premises which fall under Manager's control, authority, duties, responsibility, management, or oversight, or (ii) whether the Indemnitees or others are partially, or are alleged to be partially, at fault for the Claims, provided that, if the Indemnitees or others are partially at fault for the Claims, Manager shall only be responsible for a proportionate share of any such Claim based on the extent of Manager's gross negligence, willful misconduct or fraud. Notwithstanding the foregoing, Manager is not required to Indemnify the Indemnitees against Claims to the extent that such Claims result directly from Owner's breach of this Agreement or from the active negligence, willful misconduct, or fraud of the Indemnitees, their officials, employees, agents, contractors, or others performing work for, or on behalf of, the Indemnitees. Nothing contained herein shall relieve Manager of any responsibility for Claims regardless of whether Manager is required to provide insurance covering such Claims or whether the matter giving rise to the Claims is the responsibility of Manager's agents, employees, contractors, or subcontractors. Each Indemnitee shall have the right to participate in the defense of any claim against it that is covered by Manager's obligations hereunder, including the right to retain its own legal counsel of its choice in the event a conflict of interest exists between Indemnitee and Manager; provided that nothing herein shall limit an Indemnitee's rights as an additional insured on Manager's insurance required under Section 16.2 below. Except as otherwise provided for herein regarding third-party claims, Manager shall not be liable to Indemnitees for loss of profits or for indirect, special, or consequential damages. Manager shall promptly pay over, reimburse, and make good to Indemnitees all sums of money that Manager is obligated to pay by any reason of Manager's obligations to Indemnify under this Agreement. The provisions of this Section 15.1 shall survive the expiration or the termination of this Agreement.

15.2 *Liability of Owner.* To the fullest extent permitted by applicable Law but subject to Section 16.7 below, during the Term, none of Owner or any of its Affiliates shall be liable for any injury or damage to (a) any property of Manager or any other Person occurring on or about the Premises, or (b) any Person occurring on or about the Premises, unless caused by Owner's willful misconduct, gross negligence or breach of this Agreement; provided, however, that notwithstanding whether the injury or damage is caused by any act or failure to act of any Indemnitee, neither Owner, nor any Indemnitee shall have any liability for any injury or damage for which Manager would have been reimbursed under policies of insurance required by the terms of this Agreement to be maintained by Manager (i) had Manager not failed to procure or maintain such policies of insurance or (ii) had Manager not failed to procure or maintain such policies of insurance with at least the limits herein specified. Owner's right to enter and inspect the Premises is intended solely to allow Owner to ascertain whether Manager is complying with this Agreement and (to the extent this Agreement allows) to cure any Default. Such provisions shall not impose upon Owner any liability to third parties, but nothing in this Agreement shall be

construed to exculpate, relieve, or Indemnify Owner from or against any liability of Owner: (y) to third parties existing at or before the Commencement Date; or (z) arising from Owner's intentional acts or omissions or negligence.

15.3 *Indemnification Procedures.* Wherever this Agreement requires Manager to Indemnify any Indemnitee:

15.3.1 *Selection of Counsel.* Manager shall select counsel reasonably acceptable to Indemnitee. Counsel to Manager's insurance carrier shall be deemed satisfactory. Even though Manager shall defend the action, Indemnitee may, at its option and its own expense, engage separate counsel to advise it regarding the claim and its defense. Such counsel may attend all proceedings and meetings. Manager's counsel shall actively consult with Indemnitee's counsel.

15.3.2 *Settlement.* Manager may, with Indemnitee's consent, not to be unreasonably withheld, settle the claim. Indemnitee's consent shall be given for any settlement by which: (w) Manager procures (by payment, settlement, or otherwise) a release of Indemnitee by which Indemnitee need not make any payment to the claimant; (x) neither Indemnitee, nor Manager on behalf of Indemnitee, admits liability; (y) the continued effectiveness of this Agreement is not jeopardized in any way; and (z) Indemnitee's interest in the Premises is not jeopardized in any way, each as determined in Indemnitee's reasonable discretion.

15.4 *Survival.* The provisions of this Section 15 shall survive the expiration or sooner termination of the Term.

16. *Insurance Requirements.*

16.1 *Owner's Insurance.*

16.1.1 Owner shall maintain in full force and effect during the Term the following insurance coverages pertaining to the Center (collectively, "Owner Maintained Insurance"):

- A.** **Commercial Property Insurance**, including special form perils endorsement or equivalent insuring the Center, Center Equipment and Center FF&E (excluding Manager/Tenant FF&E, Tenant Equipment and Tenants work, improvement and betterments, inventory, merchandise, signs, goods, trade fixtures, furnishings, equipment, furniture, wall coverings, floor coverings, and other personal property including personal property in the Manager's and all Tenants' care, custody and control) including plate glass, and other breakables in the Center. Such insurance may insure for loss from flood, earthquake, terrorism and any other causes or coverages that Owner may elect. Such property insurance (excluding any terrorism coverage) shall include a minimum replacement cost for Phase I of the Center equal to \$747,335,000.

- B.** **Commercial General Liability** in the Owner's name with limits of liability in the amount of at least \$1,000,000 each occurrence/\$1,000,000 general aggregate limit

(other than products-completed operations)/\$1,000,000 products/completed operations aggregate limit on a combined single limit basis for injuries to persons (including death) and damage to property and otherwise on whatever terms and with whatever limits Owner chooses. The limits may be provided in the form of a primary policy or combination of primary and umbrella/excess policy.+

- C. **Excess or Umbrella Liability Insurance** excess of the underlying Commercial General Liability Insurance, in an amount such that when added to the primary coverage required above shall not be less than \$10,000,000 in the aggregate for this location and Agreement.

In addition to the foregoing, Owner may carry such other types of insurance in connection with the Center as Owner may deem appropriate or necessary, including, without limitation, increases liability or terrorism insurance, in whatever limits Owner chooses.

16.1.2 All policies of Owner Maintained Insurance shall (i) be in Owner's name, (ii) shall be secondary to the policies required to be carried by Manager hereunder and (iii) name Manager, AC Transit and any other Transit Agencies and Rail Operators as may be required by the terms the Transit Agency Leases or Rail Operator Agreements, respectively, as additional insureds.

16.1.3 The premiums for any Owner Maintained Insurance shall be treated as Operating Expenses of the Center, payable as provided under Section 8.1 above. Any deductibles under Owner Maintained insurance shall be Operating Expenses of the Center, payable as provided under Section 8.1 above except as set forth in Section 15.1.

16.1.4 Manager shall be responsible for administering all Owner's Maintained Insurance, including without limitation, processing and overseeing any claims thereunder. For purposes of the foregoing, Owner shall deliver to Manager, within five (5) Business Days of a request therefor, a copy of the policies of Owner's Maintained Insurance.

16.2 *Manager's Insurance.*

16.2.1 Owner requires Manager to procure, at its sole cost and expense unless otherwise provided in the applicable Budget, policies of insurance to be in force and maintained at all times during the Term in accordance with the terms and conditions set forth below or its then reasonably available equivalent:

- A. **Commercial Property Insurance**, including special form perils endorsement or equivalent, insuring the Manager/Tenant FF&E owned by Manager for the full replacement value, without deduction for depreciation. This policy shall have an agreed value endorsement or equivalent wording. Such insurance shall insure for loss from flood, including coverage for water damage from all causes including but not limited to sprinkler damage, sewer discharge or backup, water line breakage, and overflow from any portion of the Center which is not part of the Premises.

- B. Fidelity Insurance** for the benefit of Owner, including both first-party and third-party fidelity coverage, covering all of Manager's employees involved in handling or accounting for cash and other types of monetary instruments taken in by manager in the course of business (including but not limited to checks and credit card transaction records).
- C. Crime Insurance** covering Manager's collection and retention of funds received in the course of business for loss exposures including but not limited to theft (inside and outside), robbery, mysterious disappearance, computer fraud, and depositor's forgery.
- D. Workers' Compensation** (including employer's liability insurance with limits of not less than \$1,000,000, which limit may be met by a combination of primary and excess insurance) meeting the statutory limits of the State.
- E. Commercial General Liability** (I.S.O. 2001 Form or equivalent approved by the Owner) in the Manager's name with limits of liability in the amount of at least \$1,000,000 each occurrence/\$1,000,000 general aggregate limit (other than products-completed operations)/\$1,000,000 products/completed operations aggregate limit on a combined single limit basis for injuries to persons (including death) and damage to property.

Such policy should be written on an occurrence form, and shall include:

- a. Contractual coverage for liability assumed by the Manager under this Agreement (including Manager's indemnification obligations under Article 15 hereof);
 - b. Personal and advertising injury coverage;
 - c. Products-completed operations;
 - d. Independent contractors coverage;
 - e. Liquor liability coverage, when applicable; and
 - f. Additional insured endorsement (I.S.O. Form CG 20 10 11/85 'Form B' version or its equivalent approved by the Owner naming the Additional Insureds as set forth on **Exhibit J** attached hereto and made a part hereof.
- F. Business Automobile Liability** (I.S.O. Form CA 00 01 10 01 or equivalent approved by Owner) in the Manager's name with limits of liability in the amount of at least \$1,000,000 each accident for claims for bodily injuries (including death) to persons and for damage to property arising out of the ownership, maintenance or use of any owned, hired or non-owned motor vehicle.
- G. Excess or Umbrella Liability Insurance** in excess of the underlying Commercial General Liability, Business Automobile Liability and Employer's Liability, in an

amount such that when added to the primary coverage required above shall not be less than \$10,000,000 per occurrence, written on an occurrence form, and not less than \$10,000,000 in the aggregate for the Center and this Agreement. The policy shall be concurrent with and follow the form of the underlying insurance, including additional insured provisions and shall be primary and noncontributing with any insurance maintained by the additional insureds. Should the insurance have claims filed against it that are reasonably expected to erode 70% of the aggregate limits for any policy period, Manager shall arrange with the insurer to reinstate the aggregate limit, at Manager's expense.

- H. Professional Errors & Omission Liability** with limits of at least \$5,000,000 for each claim and \$5,000,000 in the aggregate and having a retroactive coverage date no later than the effective date of this Agreement, at Manager's expense. Coverage shall be sufficiently broad to respond to the duties and obligations as are undertaken by Manager in this Agreement and shall include, but not be limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. Such insurance shall provide coverage for breach response costs as well as regulatory fines and penalties and credit monitoring expenses with limits sufficient to respond to these obligations. Manager shall maintain either active policy coverage or an extended reporting period providing coverage for claims first made and reported to the insurance company within twelve (12) months after termination or expiration of this Agreement. Defense costs must be in addition to the limit of liability. Should the insurance have claims filed against it that are reasonably expected to erode 70% of the aggregate limits for any policy period, Manager shall arrange with the insurer to reinstate the aggregate limit, at Manager's expense.

16.2.2 During the performance of any Construction, Manager shall cause the contractor to carry the following insurance and such additional insurance having limits as Owner may from time to time require which shall meet all general policy provisions as set forth in this Agreement:

- A. Workers' Compensation** (including employer's liability insurance with limits of not less than \$1,000,000, which limit may be met by a combination of primary and excess insurance) meeting the statutory limits of the State.
- B. Commercial General Liability** (I.S.O. 2001 Form or equivalent approved by Owner) in the contractor's name with limits of liability in the amount of at least \$1,000,000 each occurrence/\$1,000,000 general aggregate limit (other than products- completed operations)/\$1,000,000 products/completed operations aggregate Limit on a combined single limit basis for injuries to persons (including death) and damage to property.

Such policy should be written on an occurrence form, and shall include:

- a. Contractual coverage for liability assumed by the Manager and its contractor under this Agreement;
- b. Personal and advertising injury coverage;
- c. Products-completed operations;
- d. Independent contractors coverage;
- e. "XCU" coverage (explosion, collapse, and underground hazards) where necessary;
- f. Contractual liability exclusion, applicable to construction or demolition operations to be performed within 50 feet of railroad tracks, must be removed, where necessary; and
- g. Additional Insured endorsement (I.S.O. Form CG 20 10 11/85 "Form B" version or its equivalent approved by the Owner) naming the Additional Insureds listed on **Exhibit J** attached hereto and made a part hereof.

C. Business Automobile Liability (I.S.O. Form CA 00 01 10 01 or equivalent approved by the Owner) in the contractor's name with limits of liability in the amount of at least \$1,000,000 each accident for claims for bodily injuries (including death) to persons and for damage to property arising out of the ownership, maintenance or use of any owned, hired or non-owned motor vehicle.

D. Builder's Risk/Installation Floater on an all-risk completed value form in an amount equal to the total contract price. The insurance shall cover any and all real and personal property owned, used or intended for use or hereafter created, installed or acquired, including while in the course of building, erection, installation and assembly.

The policy shall also include coverage for machinery, supplies and equipment, and other personal property of any kind owned, rented or in the care, custody and control of the contractor, and its subcontractors to be incorporated in the building, erection, assembly and installation of the project. Said policy shall remain in force until the construction is completed and accepted.

The policy shall provide that:

- a. Any requirement for co-insurance must be removed;
- b. Said policy is to be written with the contractor as First Named Insured and naming the Additional Named Insureds and Loss Payee listed on **Exhibit J** attached hereto and made a part hereof;
- c. Losses are to be adjusted with the Additional Named Insureds as listed on **Exhibit J** attached hereto and made a part hereof;

- d. Policy shall be endorsed to provide that "all premium considerations are the sole responsibility of the contractor;" and
- e. Evidence of coverage requires submission of a policy; however, a temporary binder may be accepted pending issuance of the policy.

E. Professional Liability Insurance, which shall be required if professional services are to be performed, covering actual or alleged negligent acts, errors or omissions committed in the performance of activities and/or arising out of work performed by such contractor, regardless of the type of damages, and shall include, but not be limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. Such insurance shall provide coverage for breach response costs as well as regulatory fines and penalties and credit monitoring expenses with limits sufficient to respond to these obligations. The policy shall also extend to include personal injury, bodily injury and property damage. The policy shall have a limit of liability of not less than \$2,000,000 per claim and \$2,000,000 in the aggregate, unless otherwise specified in writing by Owner. Defense costs must be in addition to the limit of liability. Should the insurance have claims filed against it that are reasonably expected to erode 70% of the aggregate limits for any policy period, Manager shall arrange with the insurer to reinstate the aggregate limit, at Manager's expense.

In addition to the coverage requirements above, the policy shall include:

- a. A retroactive date to coincide with or precede the insureds' initial services;
- b. Policy allows for reporting of circumstances or incidents that might give rise to future claims; and
- c. Either active policy coverage or an extended reporting period of at least one (1) year after termination of the agreement pursuant to which the services of contractor are provided.

16.3 *Tenant's Insurance.*

16.3.1 Unless otherwise approved by Owner, all Leases shall require all Tenants to procure at such Tenant's sole cost and expense policies of insurance to be in force and maintained at all times during the term of their respective Lease in accordance with the terms set forth below:

A. Commercial Property Insurance, including special form perils endorsement or equivalent insuring the Manager/Tenant FF&E owned by such Tenant and the Tenant Equipment including plate glass, and other breakables in the Premises for the full replacement value, without deduction for depreciation. This policy shall have an agreed value endorsement or equivalent wording. This insurance must

include all Tenants work, improvement and betterments, inventory, merchandise, signs, goods, trade fixtures, furnishings, equipment, furniture, wall coverings, floor coverings, and other personal property including personal property in the Tenants' care, custody and control. The Tenants shall insure for loss from flood, including coverage for water damage from all causes including but not limited to sprinkler damage, sewer discharge or backup, water line breakage, and overflow from other Tenants space or any portion of the Center which is not part of the Premises. Where available, Tenants shall insure for earthquake. Owner shall be named as loss payee with respect to the coverage for the Tenant's improvements and betterments. All policies have a waiver of subrogation endorsement in favor of all Additional Insureds set forth on **Exhibit J** attached hereto and made a part hereof.

- B. Loss of Business Income Insurance**, including extra expense and contingent business income coverage. The insurance limits for this insurance shall be based upon a minimum of twelve (12) months of income with a three hundred sixty five (365) day "Extended Period of Indemnity" endorsement.
- C. Workers' Compensation** including Employer's Liability Insurance with limits of not less than \$1,000,000, which limit may be met by a combination of primary and excess insurance) meeting the statutory limits of the State.
- D. Commercial General Liability** (I.S.O. 2001 Form or equivalent approved by Manager) in the Tenant's name with limits of liability in the amount of at least \$1,000,000 each occurrence/\$1,000,000 general aggregate limit (other than products-completed operations)/\$1,000,000 products/completed operations aggregate limit on a combined single limit basis for injuries to persons (including death) and damage to property.

Such policy should be written on an occurrence form, and shall include:

- a. Contractual coverage for liability assumed by the Tenant under its Lease;
- b. Personal and advertising injury coverage;
- c. Products-completed operations;
- d. Independent contractors coverage;
- e. Liquor liability coverage, when applicable;
- f. "XCU" coverage (explosion, collapse, and underground hazards) where necessary;
- g. Contractual liability exclusion, applicable to construction or demolition operations to be performed within 50 feet of railroad tracks, must be removed, where necessary; and

- h. Additional Insured endorsement (I.S.O. Form CG 20 26 07/04 and CG 20 37 07/04 or its equivalent approved by the Manager) naming the Additional Insureds as set forth on **Exhibit J** attached hereto and made a part hereof.

- E. **Business Automobile Liability** - (I.S.O. Form CA 00 01 10 01 or equivalent approved by the Manager) in the Tenant's name with limits of liability in the amount of at least \$1,000,000 each accident for claims for bodily injuries (including death) to persons and for damage to property arising out of the ownership, maintenance or use of any owned, hired or non-owned motor vehicle.

16.3.2 Unless otherwise approved by Owner, all Leases shall require that, during the performance of any construction, installation or alteration work by the applicable Tenant, such Tenant cause its contractor to carry the following insurance and such additional insurance having limits as Owner may from time to time require which shall meet all general policy provisions as set forth in this Agreement:

- A. **Workers' Compensation** including employer's liability insurance with limits of not less than \$1,000,000, which limit may be met by a combination of primary and excess insurance) meeting the statutory limits of the State.
- B. **Commercial General Liability** (I.S.O. 2001 Form or equivalent approved by Owner) in the contractor's name with limits of liability in the amount of at least \$1,000,000 each occurrence/\$1,000,000 general Aggregate Limit (other than products-completed operations)/\$1,000,000 products/completed operations aggregate limit on a combined single limit basis for injuries to persons (including death) and damage to property.

Such policy should be written on an occurrence form, and shall include:

- a. Contractual coverage for liability assumed by the contractor;
- b. Personal and advertising injury coverage;
- c. Products-completed operations
- d. Independent contractors coverage;
- e. "XCU" coverage (explosion, collapse, and underground hazards) where necessary;
- f. Contractual liability exclusion, applicable to construction or demolition operations to be performed within 50 feet of railroad tracks, must be removed, where necessary; and
- g. Additional Insured endorsement (I.S.O. Form CG 20 26 07/04 and CG 20 37 07/04 or its equivalent approved by the Manager) naming the

Additional Insureds as set forth on **Exhibit J** attached hereto and made a part hereof.

C. **Business Automobile Liability** (I.S.O. Form CA 00 01 10 01 or equivalent approved by Owner) in the contractor's name with limits of liability in the amount of at least \$1,000,000 each accident for claims for bodily injuries (including death) to persons and for damage to property arising out of the ownership, maintenance or use of any owned, hired or non-owned motor vehicle.

D. **Builder's Risk/Installation Floater** on an all-risk completed value form in an amount equal to the total contract price. The insurance shall cover any and all real and personal property owned, used or intended for use or hereafter created, installed or acquired, including while in the course of building, erection, installation and assembly.

The policy shall also include coverage for machinery, supplies and equipment, and other personal property of any kind owned, rented or in the care, custody and control of the contractor, and its subcontractors to be incorporated in the building, erection, assembly and installation of the project. Said policy shall remain in force until the construction is completed and accepted.

The policy shall provide that:

- a. Any requirement for co-insurance must be removed;
- b. Said Policy is to be written with contractor as First Named Insured and the Additional Named Insured and Loss Payee as listed on **Exhibit J** attached hereto and made a part hereof;
- c. Losses are to be adjusted with the Additional Named Insureds as listed on **Exhibit J** attached hereto and made a part hereof;
- d. Policy shall be endorsed to provide that "all premium considerations are the sole responsibility of the contractor;" and
- e. Evidence of coverage requires submission of a policy. However, a temporary binder may be accepted pending issuance of the policy.

E. **Professional Liability Insurance**, which shall be required if professional services are to be performed, covering actual or alleged negligent acts, errors or omissions committed in the performance of activities and/or arising out of work performed by such contractor, regardless of the type of damages, and shall include, but not be limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. Such insurance shall provide coverage for breach response costs as well as regulatory fines and penalties and credit monitoring

expenses with limits sufficient to respond to these obligations. The policy shall also extend to include personal injury, bodily injury and property damage. The policy shall have a limit of liability of not less than \$2,000,000 per claim and \$2,000,000 in the aggregate, unless otherwise specified in writing by Owner. Defense costs must be in addition to the limit of liability. Should the insurance have claims filed against it that are reasonably expected to erode 70% of the aggregate limits for any policy period, Manager shall arrange with the insurer to reinstate the aggregate limit, at Manager's expense.

In addition to the coverage requirements above, the policy shall include:

- a. A retroactive date to coincide with or precede the insureds' initial services;
- b. Policy allows for reporting of circumstances or incidents that might give rise to future claims; and
- c. Either active policy coverage or an extended reporting period of at least one (1) year after termination of the agreement pursuant to which the services of contactor are provided.

F. *General Insurance Requirements applicable to Manager's and Tenants' Insurance:*

16.3.3 All policies of insurance required pursuant to Sections 16.2 and 16.3 above must be written in accordance with the following requirements:

- A.** Shall be endorsed to be primary insurance coverage at least as broad as ISO CG 10 01 04 13 as respects Owner and the other Indemnitees and shall be non-contributory to any other valid and collectible insurance and must be exhausted before implicating any Owner's policy available.
- B.** Shall be written by companies with an A.M. Best Company rating of A, VII or better, licensed to do business in California, unless otherwise approved by the Owner.
- C.** Each policy shall provide that coverage shall not be canceled, materially changed or not renewed unless thirty (30) days' advance notice (ten (10) days' advance notice for non-payment of premiums) shall be delivered to the Owner.
- D.** Policies written on a "claims-made" basis are not acceptable except for Professional Liability.
- E.** Shall endeavor to provide evidence of renewal or replacement insurance with the same terms and conditions as required in the agreement at least two (2) weeks prior to the expiration date of the then-current policy.
- F.** All such insurance shall contain deductibles of not more than \$25,000 unless approved by the Owner. Self-insured retentions must be declared to and approved

by Owner. The party responsible for procuring the applicable insurance shall be responsible for all claim expense and loss payments within the deductible or self-insured retention on the same basis as would be the case if commercial insurance was available for the loss. Owner may require that the party procuring the applicable insurance provide proof of ability to pay losses and related investigations, claim administration and defense expenses with any self-insured retention.

G. Owner and the other Indemnities are to be covered as additional insured on all such insurance other than (i) Manager’s Personal Property Insurance maintained pursuant to Section 16.2.1(A) above, (ii) each Tenant’s Personal Property Insurance to the extent of coverage for loss to Manager/Tenant FF&E owned by such Tenant and any Tenant Equipment owned by such Tenant only, (iii) any worker’s compensations insurance maintained pursuant to Section 16.2 or 16.3 hereof.

H. All references to the required forms shall comply with the Insurance Services Office, Inc. ("ISO") or its equivalent approved by the Insurance Department of the State of California.

16.4 *Insurance Submission Requirements.*

16.4.1 The Manager shall furnish evidence of all policies prior to occupancy or start of any work to:

16.4.2 Certificates of insurance may be supplied as evidence of such aforementioned policies. However, if requested by the Owner, the Manager shall deliver to the Owner, within forty-five (45) days of such request, a copy of such policies required to be carried by Manager pursuant to Section 16.2, certified by the insurance carrier as being true and complete. With respect to any policies required to be carried by any contractor pursuant to Section 16.2.2 or any Tenant pursuant to Section 16.3, if requested by the Owner, the Manager shall use commercially reasonable efforts to obtain and deliver to the Owner, within forty-five (45) days of such request, a copy of such policies, certified by the insurance carrier as being true and complete. If a certificate of insurance is submitted it must: (1) be signed by an authorized representative of the insurance carrier or producer and notarized; (2) disclose any deductible, sub-limit, self-insured retention, aggregate limit or any exclusions to the policy that materially change the coverage; (3) indicate the Additional Insureds and Named Insureds as required herein. The Manager must provide (or use commercially reasonable efforts to cause any contractor or Tenant to provide, as applicable) a copy of the Additional Insured endorsement (s) as required in the foregoing and must include the policy number(s); and (5) expressly reference the inclusion of all required endorsements. The Manager shall be responsible for managing and tracking insurance compliance for all Tenants and their contractors throughout the Term.

16.5 *No Limit on Manager's Liability.* The minimum amounts of insurance required under Sections 16.2 and 16.3 of this Agreement shall not be construed to limit the extent of Manager's liability under this Agreement.

16.6 *Right to Request Additional Insurance and Limits.* Owner reserves the right to modify the requirements for the insurance required under this Article 16, including changes to the limits, based on the nature of the risk, prior experience, insurer, coverage or other special circumstances; provided, however, that Owner shall not require Manager to carry additional types of insurance that is to be carried by Manager at Manager's sole cost and expense if such additional type of insurance is not available at commercially reasonable rates or is not customarily required of other property managers providing similar asset management services to projects reasonably similar in scope to the Center. In furtherance of the foregoing, Manager agrees to provide, or cause any Tenants or contractors, as applicable, such increased limits, or expanded insurance coverages as the Owner may, from time to time, deem appropriate.

16.7 *Waiver of Subrogation.* All policies of Commercial Property Insurance shall include an appropriate clause in, or endorsement upon, each such insurance policy pursuant to which the insurance company waives subrogation or permits the insured, prior to any loss, to agree with a third party to waive any claim it might have against said third party without invalidating the coverage under the insurance policy. The waiver of subrogation or permission for waiver of any claim shall extend to Owner and Manager, respectively as well as each of their respective agents and employees. Owner and Manager each hereby releases the other party hereto and their respective agents and employees in respect of any claim (including a claim for negligence) which it might otherwise have against the other party hereto or their respective agents or employees for loss, damage, or destruction with respect to the Center and the Center FF&E, Manager/Tenant FF&E, and all Owner's, Manager's and all Tenants work, improvement and betterments, inventory, merchandise, signs, goods, trade fixtures, furnishings, equipment, furniture, wall coverings, floor coverings, and other personal property including personal property in the Owner's, the Manager's and all Tenants' care, custody and control, respectively, by fire or other casualty occurring during the Term. Each Lease shall require the applicable Tenant thereunder to provide similar releases in favor of Owner, Manager and their respective agents and employees for loss, damage, or destruction with respect to all Manager/Tenant FF&E owned by such Tenants and all Tenants work, improvement and betterments, inventory, merchandise, signs, goods, trade fixtures, furnishings, equipment, furniture, wall coverings, floor coverings, and other personal property including personal property in such Tenants' care, custody and control, respectively, by fire or other casualty.

16.8 *Blanket and/or Master Policies.* The insurance required to be carried by Manager pursuant to the provisions of this Agreement may, at Manager's option, be effected by so-called "blanket", "wrap-up" and/or "master" policies issued to Manager and/or its Affiliates covering the Premises and other properties owned, leased or managed by Manager or its Affiliates, provided such policies (a) otherwise comply with the provisions of this Agreement and (b) by endorsement, allocate to the Premises the specified coverage and limits of coverage herein required for all insureds required to be named as insureds hereunder.

16.9 *Suspension of Work / Event of Default.* If, at any time during the period of this Agreement, any insurance required to be maintained by Manager under this Agreement is

not in effect, or proof thereof is not provided to the Owner, the Owner without any liability to the Manager shall have the option to: (i) direct the Manager to suspend work or operation with no additional cost or extension of time due on account thereof; or (ii) if such failure continued for more than three (3) Business Days after Owner delivers Notice of such failure to Manager, treat such failure as an Event of Default; and Owner may, at its option immediately terminate this Agreement, and in such event, all the rights and privileges of Manager hereunder shall thereupon immediately cease and terminate.

17. Losses and Loss Proceeds.

17.1 *Prompt Notice.* If either party becomes aware of any Casualty or actual, contemplated, Condemnation, then such party shall promptly so Notify the other party.

17.2 *Casualty.* If any Casualty occurs after the Commencement Date, then, unless this Agreement is terminated as hereinafter provided (x) this Agreement shall continue in full force and effect and (y) Owner shall, at its sole cost and expense (subject to the provisions of this Section 17.2), promptly commence and complete the Restoration of the Premises (including the Building Improvements paid for by Owner, the Center FF&E and the Center Equipment, to substantially the condition as they were in as of the Commencement Date (unless the parties agree otherwise). During any period of Restoration, all Fees payable to Manager under Article 4 shall abate in proportion to the portion the percentage of the Premises that were affected by the Casualty and are the subject of the Restoration, provided that Manager shall have the right to negotiate with Owner a mutually acceptable restoration management fee if Owner selects Manager to perform such function. Manager shall exercise reasonable efforts to cooperate with Owner and coordinate, to the maximum extent reasonably possible, Manager's own operations and Restoration obligations to enable Owner to perform its applicable Restoration obligations as expeditiously and efficiently as possible, it being acknowledged that, subject to Section 15.1 above, Manager's sole obligation to commence and complete Restoration with respect to the Premises in the event of a Casualty shall be to Restore any Manager/Tenant FF&E owned by Manager that was damaged as a result of such Casualty. Furthermore, Owner shall exercise reasonable efforts to cooperate with Manager and coordinate where and to the maximum extent reasonably possible Owner's own operations and respective Restoration obligations to enable Manager to perform its respective Restoration obligations as expeditiously and efficiently as possible. In any event, the parties shall use commercially reasonable efforts to commence their respective Restoration work promptly after the damage and destruction, subject to extension of time due to Unavoidable Delays, and each party shall diligently pursue its respective Restoration work with continuity and shall be completed as soon as reasonably possible, subject to Unavoidable Delays. Owner will not carry insurance of any kind on, and shall have no obligation to repair any damage to, or to replace, any Manager/Tenant FF&E, Tenant Equipment, or any other property or effects of Manager or any Tenant; the obtaining of insurance coverage for loss of any of same shall be at the sole cost and expense of Manager and any Tenant, as applicable. If the Casualty is a Substantial Casualty, then either Owner or Manager may, by Notice to the other party hereto given within ninety (90) days after the Casualty, elect a Casualty Termination effective ninety (90) days after such Notice. Unless Owner or Manager has validly elected a Casualty Termination: (a) this Agreement shall not terminate; and (b) Manager shall be solely responsible for negotiating and adjusting any of Manager's Property Insurance Proceeds; it

being agreed and understood that Owner shall be solely responsible for negotiating and adjusting any of Owner's Property Insurance Proceeds.

17.3 Substantial Condemnation. If a Substantial Condemnation occurs after the Commencement Date, then as of the Condemnation Effective Date the Expiration Date shall occur. Owner shall be entitled to receive the entire Condemnation Award, with respect to the Premises for any such Substantial Condemnation, and Manager shall have no claim against Owner or the condemning authority and Manager hereby expressly assigns to Owner all of its right, if any, in and to any such Condemnation Award. Nothing contained in this Section 17.3 shall be deemed to prevent Manager or any Tenant from making a separate claim in any condemnation proceedings against the condemning authority for the value of any of Manager/Tenant FF&E installed by and at the sole expense of Manager or such Tenant, provided that such claim does not diminish or adversely affect Owner's Condemnation Award. Owner shall settle or compromise any Condemnation Award in its sole discretion.

17.4 Insubstantial Condemnation. If an Insubstantial Condemnation occurs after the Commencement Date, then any Condemnation Award(s) shall be paid to Owner and applied first toward Restoration of the Core and Shell, Center FF&E and Center Equipment; provided, however, that Manager shall have the right to make a separate claim with the applicable condemning authority, and receive any condemnation award made in connection with such separate claim, for the value of any Manager/Tenant FF&E installed by and at the sole expenses of Manager so long as such separate claim does not diminish or adversely affect Owner's Condemnation Award. The balance of the Condemnation Award shall belong to Owner free of any claim by Manager. Whether or not the Condemnation Award is adequate, Owner shall, at its expense, Restore the Premises, inclusive of any Building Improvements paid for by Owner, Center FF&E and Center Equipment, in compliance with this Agreement.

18. Representations and Warranties.

18.1 Due Authorization and Execution. Owner represents and warrants that (a) Owner has full right, title, authority, and capacity to execute and perform this Agreement and any other agreements and documents to which Owner is a party and referred to or required by this Agreement (collectively, the "Related Documents"); the execution and delivery of the Related Documents have been duly authorized by all requisite actions of Owner; the Related Documents constitute valid, binding, and enforceable obligations of Owner; and neither the execution of the Related Documents nor the consummation of the transactions they contemplate violates any agreement (including Owner's organizational and charter documents), contract, or other restriction to which Owner is a party or is bound.

(b) Manager represents and warrants that Manager has full right, authority, and capacity to execute and perform this Agreement and any other Related Documents; the execution and delivery of the Related Documents have been duly authorized by all requisite actions of Manager; the Related Documents constitute valid, binding, and enforceable obligations of Manager; and neither the execution of the Related Documents nor the consummation of the transactions they contemplate violates any agreement (including Manager's organizational documents), contract, or other restriction to which Manager is a party or is bound.

(c) Guarantor represents and warrants that Guarantor has full right, title, authority and capacity to execute and perform the Performance Guaranty; the execution and delivery of the Performance Guaranty have been duly authorized by all requisite actions of Guarantor; the Performance Guaranty constitute the valid, binding, and enforceable obligations of Guarantor; and neither the execution of the Performance Guaranty nor the consummation of the transactions the same contemplate violates any agreement (including Guarantor's organizational documents), contract, or other restriction to which Guarantor is a party or is bound.

(d) The parties hereby agree that the respective parties' representations and warranties in this paragraph shall continue to apply in full force and effect throughout the Term as if made continuously during the Term.

18.2 *No Litigation.* Manager and Guarantor each represents and warrants that there is no existing or, to Manager's or Guarantor's knowledge after diligent inquiry, pending or threatened claim, litigation, suit, action, or proceeding before any court or administrative agency affecting Manager or Guarantor that would, if adversely determined, materially adversely affect Owner, the Premises, this Agreement, or Manager's ability to manage and operate the Premises as provided herein.

18.3 *FIRPTA.* Manager is not a "foreign person" within the meaning of Section 1445(f)(3) of the United States Internal Revenue Code of 1986.

18.4 *Office of Foreign Assets Control.* Manager represents and warrants that (i) neither Manager nor any person, group or entity who owns any direct or indirect beneficial interest in Manager, is listed on the list maintained by the United States Department of the Treasury, Office of Foreign Assets Control (commonly known as the OFAC List) or otherwise qualifies as a terrorist, specially designated national and blocked person or a person with whom business by a United States citizen or resident is prohibited; and (ii) neither Manager nor any person, group or entity who owns any direct or indirect beneficial interest in Manager is in violation of any anti-money laundering or anti-terrorism statute, including, without limitation, the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, U.S. Public Law 107-56 (commonly known as the PATRIOT Act), and the related regulations issued thereunder, including temporary regulations, and Executive Orders (including, without limitation, Executive Order 13224) issued in connection therewith, all as amended from time to time. Manager shall indemnify and hold Owner harmless from and against all claims, damages, losses, risks, liabilities and costs (including fines, penalties and legal costs and expenses) arising from any misrepresentation in this subsection or Owner's reliance thereon. Manager's obligations under this subsection shall survive the expiration or sooner termination of the Term.

18.5 *Land.* Owner represents and warrants that it owns fee simple title to the Land, subject to all matters of record in the Official Records of the City and County of San Francisco, State of California.

19. *Bank Accounts and Reporting Requirements.*

19.1 *Bank Accounts.*

19.1.1 *Operating Accounts.*

(a) *General Operating Account.* Owner shall establish a separate special account for the Premises at a banking institution that is accredited and authorized to do business in California for which Manager shall have signature authority, as Owner's authorized representative (the "Operating Account"), and Manager shall deposit all monies received from the operation of the Premises (other than revenue derived from the Promotional Platform which shall be shared between Manager and Owner as provided in Section 4.5 above) in the Operating Account. Manager shall not commingle such monies with funds of Manager or with funds received from the operation of any other property. Manager shall make payments from the Operating Account only as provided in Section 8.1.

(b) *CBD Funds Account.* Owner shall establish a separate special account for the Premises at a banking institution that is accredited and authorized to do business in California (the "CBD Funds Account") and shall deposit, or cause to be deposited, in the CBD Funds Account any monies provided by the Greater Rincon Hill CBD for the maintenance and repair of the Park. Funds in the CBD Funds Account shall only be used to pay Operating Expenses and Capital Expenses incurred in accordance with the applicable Budget for repairs, maintenance, replacements and services to the Park. Manager acknowledges that Manager shall not have signature authority, as Owner's authorized representative or otherwise, with respect to the CBD Funds Account and that any payments from the CBD Funds Account must be made by Owner following submission of a Payment Application pertaining thereto by Manager.

(c) *Manager's Funds.* Manager shall not be required to advance any of its own funds to pay Operating Expenses or Capital Expenses in the event that there are insufficient funds in the Operating Account to pay any such expenses.

19.1.2 *Security Deposit Account.* All security deposits collected by Manager from Tenants under any Leases shall be segregated from other funds received in connection with the Premises and deposited immediately upon receipt in a special separate interest-bearing account for the Premises (the "Security Deposit Account"), established by Owner at a banking institution that is accredited and authorized to do business in California. Manager shall maintain accurate records of all security deposits held by Owner, including the amount of each security deposit, the party from whom each security deposit is collected, interest earned on each security deposit, the amount of such interest required (if applicable law so requires) to be paid to each Tenant with respect to such Tenant's security deposit, and the date(s) upon which Manager collected each security deposit. Manager shall deliver a monthly report to Owner that indicates when any refund of all or any portion of a security deposit is required, and Manager shall keep an accurate record of all refunds. Manager is solely responsible for complying with all applicable state, local, and other laws, rules, and regulations regarding security deposits, including laws, rules and regulations regarding the payment of interest thereon and the return thereof. All interest earned on such security deposits that is not required to be paid to Tenants shall be deposited monthly by Manager in the Operating Account.

19.2 *Reporting Requirements.*

19.2.1 *Monthly Reports.* Within thirty (30) days after the end of each calendar month, Manager shall furnish to Owner the following reports for the previous calendar month: (i) a balance sheet as of month end, prepared on an accrual basis, showing current month and prior month balances with the change from prior month; (ii) an accrual basis statement of income and expense; (iii) an unaudited related statement of cash flow for such month; (iv) a budget versus actual variance report for the Premises for the then current month and cumulatively year-to-date, showing variances from the approved Operating Budget and Capital Budget; (v) a status report on any Construction managed or supervised by Manager; (vi) a calculation of the Fees due and payable for the previous calendar month; (vii) a current rent roll (including vacancies, security deposits and other information specified by Owner) for the Commercial Usage Areas; (viii) a current leasing summary report; (viii) copies of the most recent account statement for each of the Operating Account and the Security Deposit Account; and (ix) any other reports required to be provided under this Agreement or reasonably requested by Owner.

19.2.2 *Annual Reports.* Within ninety (90) days after the end of each Fiscal Year, Manager shall furnish to Owner the following reports for the previous Fiscal Year: (i) a balance sheet as of Fiscal Year end, prepared on an accrual basis; (ii) an accrual basis statement of income and expense for such Fiscal Year; (iii) a calculation of the Fees due and payable for such Fiscal Year; and (iv) any other reports required to be provided under this Agreement, including but not limited to the Annual Reconciliation under Section 8.2.5, or reasonably requested by Owner (the "Annual Reporting Package").

20. *Train Platform Level, Lower Concourse and Transit Agency Areas.*

20.1 *Train Platform Level.* The Train Platform Level has been reserved for the use and operation by the Rail Operators and Owner reserves the right to enter into agreements with the Rail Operators for the use and operation of the Train Platform Level ("Rail Operator Agreements") on such terms as Owner desires, in Owner's sole and absolute discretion. This Agreement and the rights of Manager hereunder are subject and subordinate to any such Rail Operator Agreements and the rights of the Rail Operators thereunder. Without limiting the foregoing, Manager shall have no rights or obligations with respect to day-to-day operation and management of the Train Platform Level, which shall be operated and managed solely by the Rail Operators; provided, however, that Manager shall be responsible during Phase I for all maintenance or repair with respect to the platform areas located within the Train Platform Level in accordance with the provisions of this Agreement and, subject to Section 20.4 below, shall have the right to use the train platform space within the Train Platform Level solely for temporary use for Back of House Functions. Rail Operator personnel, agents and contractors shall at all times have unrestricted access to the Train Platform Level and Manager hereby agrees to cooperate fully with each of the Rail Operators in connection therewith.

20.2 *Lower Concourse.* During Phase I, the Lower Concourse Support Space may be used by Manager solely for Back of House Functions, subject to Section 20.4 below, and Manager shall be responsible during Phase I for all maintenance or repair with respect to the Lower Concourse Support Space in accordance with the provisions of this Agreement. The

remainder of the Lower Concourse has been reserved for use for rail ticketing, passenger waiting areas and support areas relating to the Rail Operators uses and will remain unoccupied during Phase I. Owner reserves the right to enter into Rail Operator Agreements with the Rail Operators for the use and operation of the Lower Concourse during Phase II on such terms as Owner desires, in Owner's sole and absolute discretion. This Agreement and the rights of Manager hereunder are subject and subordinate to any such Rail Operator Agreements and the rights of the Rail Operators thereunder. Without limiting the foregoing, during Phase II, Manager shall have no rights or obligations with respect to day-to-day operation and management of the Lower Concourse, including, without limitation, the Lower Concourse Support Space, which shall be operated and managed solely by the Rail Operators and any Manager with whom Owner may contract for the lease of all or portions of the Lower Concourse. Rail Operator personnel, agents and contractors shall at all times have unrestricted access to the Lower Concourse and Manager hereby agrees to cooperate fully with each of the Rail Operators in connection therewith.

20.3 Transit Agency Areas. The Transit Agency Areas shown on **Exhibit B-3** have been reserved for the use and operation by the applicable Transit Agencies pursuant to the Transit Agency Leases. This Agreement and the rights of Manager hereunder are subject and subordinate to the Transit Agency Leases and the rights of the Transit Agencies thereunder. Without limiting the foregoing, Manager shall have no rights or obligations with respect to day-to-day operation and management of the Transit Agency Areas, which shall be operated and managed solely by the Transit Agencies in accordance with the Transit Agency Leases; provided, however, that Manager shall be responsible for all maintenance or repair with respect to the Transit Agency Areas in accordance with the provisions of this Agreement. Notwithstanding the foregoing, Manager shall have the right to locate temporary, movable carts and kiosks providing retail services to Transit Agency customers on the platforms within the Transit Agency Areas in locations approved in advance by Owner and the Transit Agencies, which approval may be withheld, conditioned or delayed in the sole discretion of Owner and the Transit Agencies, respectively. Transit Agency personnel, agents and contractors shall at all times have unrestricted access to the Transit Agency Areas and Manager hereby agrees to cooperate fully with each of the Transit Agencies in connection therewith.

20.4 Train Platform Level and Lower Concourse Programming Rights. Provided that no Event of Default by Manager is then continuing, Manager shall have the right to temporarily program the Train Platform Level and Lower Concourse with retail or other commercial use, events or promotional programming prior to completion of Phase II, subject to Owner's approval of Manager's plans for such programming and otherwise in accordance with the terms and conditions set forth in this Section 20.4 ("Programming Rights"). Prior to exercising any such Programming Rights, Manager shall first give Notice to Owner of its proposed plan for programming of the Train Platform Level and/or Lower Concourse, or any portion thereof (a "Proposed Use Notice"), which shall include, in reasonable detail, any improvements for ingress and egress, fire and life safety systems and other systems affecting the Train Platform Level and/or Lower Concourse, as applicable, that would be required in connection with such proposed programming ("Programming Improvements"). Owner shall have the right to approve or disapprove, in Owner's sole and absolute discretion, any proposed plan for programming of the Train Platform Level and/or Lower Concourse, or any portion thereof, as summarized in a Proposed Use Notice. If Owner approves of any proposed plans for

use of the Train Platform Level and/or Lower Concourse, or any portion thereof, pursuant to the foregoing, any Programming Improvements required in connection therewith shall be completed by Manager, at Manager's sole cost or at Owner's sole cost, as provided in the approved Proposed Use Notice or in any subsequent written agreement between Owner and Manager with respect to the proposed plan.

21. Transfers.

21.1 Manager. No Transfer shall occur with respect to Manager or Manager's interest in this Agreement without Owner's prior written consent. In the event of any assignment of Manager's interest in this Agreement, the assignee shall assume in writing all obligations and liabilities of Manager accruing under this Agreement from and after the effective date of such assignment. Manager shall promptly Notify Owner prior to any Transfer with respect to Manager or Manager's interest in this Agreement and shall supply Owner with all materials Owner may reasonably request in connection therewith. Notwithstanding the foregoing, Manager shall have the right, without Owner's consent, but upon notice thereof, to (a) assign this Agreement to an Affiliate of Manager, provided that Manager remains fully liable for its obligations hereunder and the Guarantor remains liable under the Performance Guaranty and such Transfer is for a valid business purpose and not to circumvent any obligations under this Agreement, (b) assign this Agreement to any party acquiring all or substantially all of the assets of Manager by purchase, merger, contribution, consolidation, or otherwise, provided that the assignee is a Qualified Transferee, (c) effect Transfers of Equity Interests in Manager, or in any party holding a direct or indirect ownership interest in Manager, for estate planning purposes so long as, after giving effect to such Transfers, Control of the Manager is held, directly or indirectly, by the same Person, and (d) effect Transfers of Equity Interest in Manager, or in any party holding a direct or indirect ownership interest in Manager, so long as (i) such Transfers are for a valid business purpose and not to circumvent any obligations under this Agreement and (ii) after giving effect to such Transfers, Control of the Manager is held, directly or indirectly, by the same Person or, if not by the same Person, by a Qualified Transferee.

21.2 Guarantor. No Transfer shall occur with respect to Guarantor or the obligations of Guarantor under the Performance Guaranty without Owner's prior written consent. Notwithstanding the foregoing, Guarantor shall have the right, without Owner's consent, but upon notice thereof, to (a) effect Transfers of Equity Interests in Guarantor, or in any party holding a direct or indirect ownership interest in Manager, for estate planning purposes so long as (i) immediately following any such Transfer, Guarantor shall have a net worth of at least Four Million Dollars (\$4,000,000.00) and (ii) if requested by Owner, Guarantor shall reaffirm in writing its obligations under the Performance Guaranty for the benefit of Owner, and (b) Transfer its obligations under the Performance Guaranty to any party acquiring all or substantially all of the assets of Guarantor by purchase, merger, contribution, consolidation, or otherwise so long as (i) the transferee shall expressly assume in writing all of Guarantor's obligations under the Performance Guaranty for the benefit of Owner and (ii) the transferee shall have a net worth of at least Four Million Dollars (\$4,000,000.00) as of the date of such Transfer.

22. Owner's Self Help Right.

22.1 Owner's Right to Cure. If Manager at any time fails to make any payment or take any action this Agreement requires, then Owner shall have the right at any time in the event of a Material O&M Default or upon thirty (30) days' Notice to Manager in all other circumstances, to take such actions as this Agreement may permit without waiving or releasing Manager from any obligation or Default and without waiving Owner's right to immediately take such action as Owner deems appropriate under the circumstances, as a result of such Default, and may (but need not) make such payment or take such actions. Manager shall reimburse Owner for an amount equal to (a) all reasonable sums paid, and reasonable costs and expenses (including Legal Costs) incurred by Owner in exercising its cure rights under this paragraph, and (b) Default Interest.

23. Title to Certain Premises; Certain Agreements.

23.1 Access and Inspection. Notwithstanding anything to the contrary in this Agreement, Owner and its agents, representatives, and designees shall have the right to enter the Premises at any time and from time to time to: (a) ascertain whether Manager is complying with this Agreement; (b) cure Manager's Defaults; (c) inspect the Premises and any Construction; (d) perform such tests, borings, and other analyses as Owner determines may be necessary or appropriate relating to (non)compliance with any Law or possible Hazardous Substances Discharge; or (e) show the Premises to a prospective Transferee of Owner's interest. In entering the Premises, Owner and its designees shall not unreasonably interfere with operations on the Premises.

23.2 Title. Notwithstanding anything to the contrary in this Agreement, all Improvements, Center Signage (excluding any signage belonging to any Tenants), Center Equipment, and Center FF&E located in, on, or at the Premises or otherwise constituting part of the Premises shall during the Term be owned by, and belong to, Owner, unless herein elsewhere specifically provided. All benefits and burdens of ownership of the foregoing including, without limitation, title, depreciation, tax credits, and all other tax items, shall be and remain in Owner.

24. Default; Remedies.

24.1 Defaults by Manager.

24.1.1 Events of Default. An "Event of Default" means the occurrence of any one or more of the following:

(a) **Monetary Default.** If a Monetary Default by Manager occurs and continues for five (5) Business Days after Notice from Owner, specifying in reasonable detail the amount of money not paid and the nature and calculation of each such payment.

(b) **Prohibited Liens.** If Manager fails to comply with any obligation of Manager under this Agreement regarding Prohibited Liens and does not remedy such failure within ninety (90) days after Notice from Owner.

(c) *Bankruptcy or Insolvency.* If Manager or Guarantor ceases to do business as a going concern, ceases to pay its debts as they become due or admits in writing that it is unable to pay its debts as they become due, or becomes subject to any Bankruptcy Proceeding (except an involuntary Bankruptcy Proceeding dismissed within ninety (90) days after commencement), or a custodian or trustee is appointed to take possession of, or an attachment, execution or other judicial seizure is made with respect to, substantially all of Manager's or Guarantor's assets or Manager's interest in this Agreement (unless such appointment, attachment, execution or other seizure was involuntary and is contested with diligence and continuity and is vacated and discharged within ninety (90) days).

(d) *Nonmonetary Default.* If any other Nonmonetary Default by Manager occurs and Manager does not cure it within thirty (30) Business Days after Notice from Owner describing it in reasonable detail, or, in the case of a Nonmonetary Default that cannot with due diligence be cured within thirty (30) Business Days from such Notice, if Manager shall not (x) within thirty (30) Business Days from Owner's Notice advise Owner of Manager's intention to take all reasonable steps to cure such Nonmonetary Default; (y) duly commence such cure within such period, and then diligently prosecute such cure to completion; and (z) complete such cure within a reasonable time under the circumstances (not necessarily limited to thirty (30) Business Days but in no event exceeding one hundred eighty (180) days).

(e) *Chronic Material O&M Defaults.* If there are three (3) or more Material O&M Defaults in any twelve (12) month period.

24.1.2 *Remedies.* If an Event of Default occurs, Owner shall have, in addition to any other remedies available to Owner at law or in equity, the option to pursue any one or more of the following remedies, each and all of which shall be cumulative and nonexclusive, without any notice or demand whatsoever.

(a) *Termination.* Terminate this Agreement, in which event (a) the authority of Manager under this Agreement shall immediately cease, (b) Manager shall immediately surrender the Premises to Owner, and if Manager fails to do so, Owner may, without prejudice to any other remedy which it may have for possession, enter upon and take possession of the Premises and expel or remove Manager and any other person who may be occupying the Premises or any part thereof, without being liable for prosecution or any claim or damages therefor, and (c) Manager shall otherwise comply with its obligations and duties upon termination of this Agreement as set forth in Section 25 below. In the event that this Agreement is terminated pursuant to this Section 24.1.2, Owner shall pay to Manager, within thirty (30) days of such termination, all Fees accruing to the date of such termination.

(b) *No Waiver.* No failure by Owner to insist upon strict performance of any covenant, agreement, term, or condition of this Agreement or to exercise any right or remedy upon a Default, shall waive any such breach or Default or such covenant, agreement, term, or condition. No covenant, agreement, term, or condition of this Agreement to be performed or complied with by Manager, and no Default, shall be Modified except by a written instrument executed by Owner. No waiver of any Default shall affect or alter this Agreement. Each and every covenant, agreement, term and condition of this Agreement shall

continue in full force and effect with respect to any other then existing or subsequent Default of such covenant, agreement, term or condition of this Agreement.

(c) *Injunction of Breaches.* Whether or not an Event of Default has occurred, Owner may obtain a court order enjoining Manager from continuing any Default or from committing any threatened breach or Default. Manager specifically and expressly acknowledges that damages would not constitute an adequate remedy for any Nonmonetary Default by Manager.

24.2 *Default by Owner.*

24.2.2 *Owner Events of Default.* An "Owner Event of Default" means the occurrence of any one or more of the following:

(a) *Monetary Default.* A Monetary Default by Owner occurs, which Monetary Default is not due to a failure or delay of any third party or available funding source to fund amounts requested by Owner, and such Monetary Default continues for five (5) Business Days after Notice from Manager, specifying in reasonable detail the amount of money not paid and the nature and calculation of each such payment.

(b) *Nonmonetary Default.* If any other Nonmonetary Default by Owner occurs and Owner does not cure it within thirty (30) Business Days after Notice from Manager describing it in reasonable detail, or, in the case of a Nonmonetary Default that cannot with due diligence be cured within thirty (30) Business Days from such Notice, if Owner shall not (x) within thirty (30) Business Days from Manager's Notice advise Manager of Owner's intention to take all reasonable steps to cure such Nonmonetary Default; (y) duly commence such cure within such period, and then diligently prosecute such cure to completion; and (z) complete such cure within a reasonable time under the circumstances (not necessarily limited to thirty (30) Business Days but in no event exceeding one hundred eighty (180) days).

24.2.3 *Remedies.* If an Owner Event of Default occurs, Manager, as its sole and exclusive remedy as a result of such Owner Event of Default, shall have the right to elect one of the following remedies:

(a) *Termination.* Terminate this Agreement upon written Notice thereof to Owner, in which event (a) the authority of Manager under this Agreement shall immediately cease, (b) Manager shall immediately surrender the Premises to Owner, and if Manager fails to do so, Owner may, without prejudice to any other remedy which it may have for possession, enter upon and take possession of the Premises and expel or remove Manager and any other person who may be occupying the Premises or any part thereof, without being liable for prosecution or any claim or damages therefor, and (c) Manager shall otherwise comply with its obligations and duties upon termination of this Agreement as set forth in Section 25 below. In the event that this Agreement is terminated pursuant to this Section 24.2.3, Owner shall pay to Manager, within thirty (30) days of such termination, all Fees accruing to the date of such termination.

(b) *No Waiver.* No failure by Manager to insist upon strict performance of any covenant, agreement, term, or condition of this Agreement or to exercise any right or remedy expressly provided hereunder upon an Owner Event of Default, shall waive any such Owner Event of Default or such covenant, agreement, term, or condition. No covenant, agreement, term, or condition of this Agreement to be performed or complied with by Owner, and no Owner Event of Default, shall be Modified except by a written instrument executed by Manager. No waiver of any Owner Event of Default shall affect or alter this Agreement. Each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent Owner Event of Default of such covenant, agreement, term or condition of this Agreement.

(c) *Injunction of Breaches.* Manager may obtain a court order enjoining Owner from continuing any Owner Event of Default. In furtherance of the foregoing, Owner acknowledges that damages would not constitute an adequate remedy for non-monetary Owner Events of Default.

24.3 *Waivers.* TO THE EXTENT PERMITTED BY APPLICABLE LAW, OWNER AND MANAGER IRREVOCABLY WAIVE ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, PROCEEDING, COUNTERCLAIM, OR OTHER LITIGATION ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE RELATIONSHIP OF OWNER AND MANAGER REGARDING THE PREMISES, ENFORCEMENT OF THIS AGREEMENT, MANAGER'S USE OR OCCUPANCY OF THE PREMISES, ANY CLAIM OF INJURY OR DAMAGE ARISING BETWEEN OWNER AND MANAGER, OR ANY ACTIONS OF OWNER IN CONNECTION WITH OR RELATING TO THE ENFORCEMENT OF THIS AGREEMENT. MANAGER WAIVES ANY RIGHT OF REDEMPTION PROVIDED FOR BY LAW. MANAGER WAIVES ANY RIGHT TO INTERPOSE ANY COUNTERCLAIM IN ANY ACTION, ARBITRATION OR PROCEEDING BY OWNER TO ENFORCE THIS AGREEMENT OR OWNER'S RIGHTS AND REMEDIES UNDER THIS AGREEMENT.

24.4 *Accord and Satisfaction; Partial Payments.* No payment by Manager or Owner, as applicable, or receipt by Owner or Manager, as applicable, of a lesser amount than the amount owed under this Agreement shall be deemed to be other than a part payment on account by Manager or Owner, as applicable. Any endorsement or statement on any check or letter accompanying any check or payment shall not be deemed an accord or satisfaction. Owner or Manager, as applicable, may accept any such check or payment without prejudice to Owner's or Manager's right to recover the balance of any amount due to it hereunder or pursue any other remedy.

25. *Duties upon Termination of this Agreement.* Upon the Expiration Date or any earlier termination of this Agreement in accordance with the terms hereof: (a) all Manager Controlled Signage (excluding any signage belonging to any Tenants) and Tenant Equipment shall become Owner's property; (b) the authority of Manager under this Agreement shall immediately cease and Manager shall deliver to Owner possession of the Premises, in the condition this Agreement requires, subject to any Loss that this Agreement does not require Manager to Restore; (c) Manager shall surrender any right, title, or interest in and to the Premises and deliver such evidence and confirmation thereof as Owner reasonably requires; (d) Manager shall assign to Owner, without recourse, and give Owner copies or originals of, all assignable

licenses, permits, contracts, warranties, and guarantees then in effect for the Premises which Owner elects in writing to assume, such assumption to be effective only with respect to obligations first arising from and after the date of assignment; (e) the parties shall cooperate to achieve an orderly transition of operations from Manager to Owner (or a substitute manager designated by Owner) without interruption, including delivery of such books and records (or copies thereof) as Owner reasonably requires; (f) the parties shall adjust, as of the Expiration Date or any earlier termination date, as applicable, for all Operating Expenses and income of the Premises and any prepaid or accrued Fees and shall make such payments as shall be appropriate on account of such adjustment in the same manner as for a sale of the Premises (but any sums otherwise payable to Manager shall first be applied to cure any Default); (g) Manager shall assign to Owner (or a substitute Manager designated by Owner), and Owner shall reimburse Manager for, all utility and other service provider deposits for the Premises under contracts assigned to Owner pursuant to this Section 25; and (h) in the event Owner has prepaid any portion of the Asset Management Fee and/or the Rooftop Staffing and Management Fee, Manager shall reimburse or shall cause the Park Subcontractor, as applicable, to reimburse any portion of such Fees which have not been earned as of the date of termination of this Agreement. Notwithstanding anything to the contrary in this Section 25, Manager may remove from the Premises any Manager/Tenant FF&E owned by Manager and acquired after the Commencement Date, but Manager must do so, if at all, before or within thirty (30) days after the Expiration Date. Manager shall not, however, remove any Center Equipment or Tenant Equipment or any portion thereof. Manager shall repair any damage from such removal. During such thirty (30) day period: (x) Manager may enter the Premises for such purposes; (y) Owner shall have no obligation to preserve or protect such Manager/Tenant FF&E; and (z) in entering the Premises, Manager shall comply with Owner's instructions and requirements relating thereto. Any Manager/Tenant FF&E that is owned by Manager and not removed within thirty (30) days after the Expiration Date shall be deemed abandoned.

26. *Notices.* All Notices shall be in writing and shall be addressed to Owner and Manager (and their designated copy recipients) as set forth in **Exhibit G** attached hereto and made a part hereof. Notices (including any required copies as set forth in **Exhibit G**) shall be delivered either (x) personally, by hand delivery (against a signed receipt), (y) by Federal Express or other overnight (one-night) courier service or (z) by certified mail (return receipt requested) to the addresses set forth in **Exhibit G**, in which case they shall be deemed delivered on the date of delivery (or when delivery has been first attempted, as evidenced by a receipt) to such address(es). Either party may change its address by giving Notice in compliance with this Agreement. Notice of such a change shall be effective only upon receipt. Any party giving a Notice may request the recipient to acknowledge receipt of such Notice. The recipient shall promptly comply with any such request, but failure to do so shall not limit the effectiveness of any Notice. The parties' attorneys may give any Notice on behalf of its respective client.

27. *Brokers.* Each party: (a) represents and warrants that it did not engage or deal with any broker or finder in connection with this Agreement and no person is entitled to any commission or finder's fee on account of any agreements or arrangements made by such party; and (b) shall Indemnify the other party against any breach of such representation. Owner's sole obligation with respect to any broker or finder's fees, commission, or other forms of compensation which may be due and payable in connection with any Lease permitted hereunder shall be for the payment of the Leasing Commission provided in Section 4.4.

28. Additional Deliveries; Third Parties.

28.1 *Estoppel Certificates.*

(a) *Manager's Obligation.* Up to twice a year, Owner may require Manager to execute, acknowledge, and deliver to Owner (or directly to a designated third party) up to four original counterparts of an Estoppel Certificate. Manager shall sign, acknowledge, and return such Estoppel Certificate within fifteen (15) days after request, even if Owner is in default of any obligation under this Agreement. Any Estoppel Certificate shall bind the Manager.

(b) *Owner's Obligation.* Upon request from Manager (prospective or current) which request shall be made no more frequently than twice a year, Owner shall promptly certify, and shall use diligent efforts to endeavor to do so within fifteen (15) days after request, subject to any then exception reasonably specified, that this Agreement is in full force and effect, that to Owner's knowledge no Default exists, the date through which all Fees has been paid, and other similar matters as reasonably requested by Manager.

28.2 *Further Assurances.* Each party shall execute and deliver such further documents, and perform such further acts, as may be reasonably necessary to achieve the parties' intent in entering into this Agreement.

28.3 *Modification.* Any Modification of this Agreement must be in writing signed by the party to be bound.

28.4 *Successors and Assigns.* This Agreement shall bind and benefit Owner and Manager and their successors and permitted assigns, but this shall not limit or supersede any Transfer restrictions. Nothing in this Agreement confers on any Person (except Owner and Manager,) any right to insist upon, or to enforce against Owner or Manager, the performance or observance by either party of its obligations under this Agreement.

29. General Contracting Requirements.

29.1 *Submitting False Claims; Monetary Penalties.* Pursuant to San Francisco Administrative Code Chapter 6, Article V, Manager or any subcontractor or consultant who submits a false claim shall be liable to the TJPA for three times the amount of damages which the TJPA sustains because of the false claim, plus a civil penalty of up to \$10,000, and other damages as provided by statute. Manager or any such subcontractor or consultant will be deemed to have submitted a false claim to the TJPA if Manager or such subcontractor or consultant (a) knowingly presents or causes to be presented to an officer or employee of the TJPA a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the TJPA; (c) conspires to defraud the TJPA by getting a false claim allowed or paid by the TJPA; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the TJPA; or (e) is a beneficiary of an inadvertent submission of a false claim to the TJPA, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the TJPA within a reasonable time after discovery of the false claim. Notwithstanding anything in this Section 29.1 which may be

construed to the contrary, Manager shall not be liable to TJPA for any acts or omissions of any subcontractor or consultant in violation of San Francisco Administrative Code Chapter 6, Article V or this Section 29.1; provided, however, Manager shall be obligated to notify Owner of any violations by its subcontractors or consultants of which it becomes aware and shall cooperate with Owner in connection with any investigation or prosecution of any such violation or alleged violation.

29.2 *Disallowance.* If Manager claims or receives payment from the TJPA for a service, reimbursement for which is later disallowed by the State of California or United States Government, the Manager shall promptly refund the disallowed amount to the TJPA upon the TJPA's request. At its option, the TJPA may offset the amount disallowed from any payment due or to become due to Manager under this Agreement or any other Agreement. By executing this Agreement, the Manager certifies that the Manager is not suspended, debarred or otherwise excluded from participation in federal assistance programs. The Manager acknowledges that this certification of eligibility to receive federal funds is a material term of the Agreement.

29.3 *Taxes.* Payment of any taxes, including possessory interest taxes and California sales and use taxes, levied upon this Agreement, the transaction, or the services delivered pursuant hereto, shall be the obligation of the Manager.

29.4 *Qualified Personnel.* The Manager represents and warrants to the TJPA that the Manager is qualified to perform the services as contemplated by this Agreement. The Manager further represents and warrants to the TJPA that it has all required licenses and approvals to perform the work contemplated by this Agreement, and that all work performed under this Agreement shall be performed only by personnel under the supervision and in the employment of the Manager. All personnel engaged in the work shall be fully qualified and shall be authorized, licensed and certified under state and local law to perform such work if authorization, licensing or certification is required.

29.5 *Independent Contractor.* The Manager or any agent or employee of Manager shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by the TJPA under this Agreement. The Manager or any agent or employee of the Manager shall not have employee status with the TJPA, nor be entitled to participate in any plans, arrangements, or distributions by the TJPA pertaining to or in connection with any retirement, health or other benefits that the TJPA may offer its employees. The Manager or any agent or employee of the Manager, as applicable, is liable for the acts and omissions of itself, its employees and its agents. All matters pertaining to the selection, direction, employment, supervision, compensation (subject to any applicable approved staffing plan and the Budget for the applicable Fiscal Year approved by Owner), promotion and discharge of such personnel are the sole responsibility of Manager or Manager's subcontractor, as the case may be, which shall be in all respects the employer of such personnel, except that Manager shall have total responsibility for and shall fully comply with all applicable laws and regulations having to do with workers' compensation, social security, unemployment insurance, hours of labor, wages, working conditions, and other employer-employee related subjects. Without limiting the foregoing, the Manager shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, Federal Insurance Contributions Act (FICA), income tax withholdings,

unemployment compensation, insurance, and other similar responsibilities related to the Manager's performing services and work, or any agent or employee of the Manager providing same. Nothing in this Agreement shall be construed as creating an employment or joint venture relationship between the TJPA and the Manager. Any terms in this Agreement referring to direction from the TJPA shall be construed as providing for direction as to policy and the result of the Manager's work only, and not as to the means by which such a result is obtained.

29.6 *Proprietary or Confidential Information of the TJPA; California Public Records Act.* The Manager understands and agrees that, in the performance of the work or services under the Agreement or in contemplation thereof, the Manager may have access to private or confidential information which may be owned or controlled by the TJPA and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to the TJPA. The Manager agrees that all information disclosed by the TJPA to the Manager shall be held in confidence and used only in performance of this Agreement. The Manager shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary data.

Notwithstanding the foregoing, the restrictions on the use and disclosure of private or confidential information shall not apply to and shall not include the following (the "Confidentiality Exclusions"):

- (a) the disclosure of information or techniques which are or become generally known in the property management industry (other than through disclosure in violation of this Section 29.6);
- (b) the disclosure of information to the extent required under Laws, including reporting requirements applicable to public companies;
- (c) the disclosure of information to the extent necessary to assert any right or defend any claim arising under this Agreement;
- (d) the disclosure of information to the extent the disclosing party is legally compelled to do so under the terms of a subpoena, order, civil investigative demand or similar process issued by the Government; provided, however, that prior to any such disclosure, such disclosing party shall, to the extent legally permissible: (i) promptly notify the non-disclosing party of the existence, terms and circumstances surrounding such request; (ii) consult with the non-disclosing party regarding the advisability of taking legally available steps to resist or narrow such disclosure; (iii) furnish only that portion of the information that, in the opinion of independent counsel for the non-disclosing party, such disclosing party is legally compelled to disclose; and (iv) cooperate with the non-disclosing party (or any other Person having an interest in the information) to obtain a protective order or other reliable assurance that confidential treatment will be accorded the information;
- (e) the disclosure of any information that is or has become generally available to the public other than as a result of disclosure by the disclosing party in breach of any of the provisions of this Agreement; or

(f) the disclosure of any information made available to the disclosing party on a non-confidential basis by any third party who is not prohibited from disclosing such information by a legal, contractual or fiduciary obligation to the non-disclosing party.

Additionally, the Manager acknowledges that all data and documentation collected, created, received, maintained or disseminated for any purpose in the course of Manager's performance of this Agreement is governed by the California Public Records Act, Government Code Section 6250, *et seq.* ("CPRA") and any other applicable state statutes, any regulations adopted to implement the CPRA and any federal statutes and regulations on data privacy.

29.7 Protection of Private Information. The Manager agrees to comply fully with and be bound by all of the provisions of Chapter 12M of the San Francisco Administrative Code (the "Nondisclosure of Private Information Ordinance"), including the remedies provided. The provisions of the Nondisclosure of Private Information Ordinance are incorporated herein by reference and made a part of this Agreement as though fully set forth. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in the Nondisclosure of Private Information Ordinance. Consistent with the requirements of the Nondisclosure of Private Information Ordinance, the Manager agrees to all of the following:

(a) Neither the Manager nor any of its subcontractors shall disclose Private Information obtained from the TJPA or the City in the performance of this Agreement to any other subcontractor, person, or other entity, unless one of the following is true.

- (1) The disclosure is authorized by this Agreement;
- (2) The Manager received advance written approval from the TJPA to disclose the information; or
- (3) Any Confidentiality Exclusion is applicable.

(b) Any disclosure or use of Private Information authorized by this Agreement shall be in accordance with any conditions or restrictions stated in this Agreement. Any disclosure or use of Private Information authorized by the TJPA shall be in accordance with any conditions or restrictions stated in the approval.

(c) Private Information shall mean any information that (1) could be used to identify an individual, including without limitation, name, address, social security number, medical information, financial information, date and location of birth, and names of relatives or (2) the law forbids any person from disclosing.

(d) Any failure of the Manager to comply with the Nondisclosure of Private Information Ordinance shall, subject to applicable notice and cure periods, be a material breach of this Agreement. In such an event, in addition to any other remedies available to it under equity or law, the TJPA may terminate this Agreement, debar Manager, or bring a false claim action against the Manager.

29.8 *News Releases/Interviews.* All Manager news releases, media interviews, testimony at hearings and public comment relating to the Transbay Transit Center Program shall be prohibited unless expressly authorized by the TJPA.

29.9 *Ownership of Results.* Any interest of the Manager or its subcontractors, in drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media, or other documents prepared by the Manager or its subcontractors in connection with services to be performed under this Agreement, shall become the property of and will be transmitted to the TJPA. However, the Manager may retain and use copies for reference and as documentation of its experience and capabilities.

29.10 *Works for Hire.* If, in connection with services performed under this Agreement, the Manager or its subcontractors create artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, source codes or any other original works of authorship, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works are the property of the TJPA. If it is ever determined that any works created by the Manager or its subcontractors under this Agreement are not works for hire under U.S. law, the Manager hereby assigns all copyrights to such works to the TJPA, and agrees to provide any material and execute any documents necessary to effectuate such assignment. With the approval of the TJPA, the Manager may retain and use copies of such works for reference and as documentation of its experience and capabilities. Notwithstanding the foregoing or anything else in this Agreement to the contrary, Manager and its subcontractors shall retain any and all of their respective intellectual property rights not developed solely for the performance of this Agreement or any subcontract pertaining to performance of this Agreement, including rights under patent, copyright, trademark, trade secret, or rights of publicity laws, or any other statutory provision, regulation or common law doctrine.

29.11 *San Francisco Sunshine Ordinance.* In accordance with S.F. Administrative Code Section 67.24(e), the Managers' bids, responses to solicitations and all other records of communications between the TJPA and persons or firms seeking contracts shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefits until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

29.12 *Public Access to Meetings and Records.* If the Manager receives a cumulative total per year of at least \$250,000 in TJPA funds or TJPA-administered funds and is a nonprofit organization as defined in Chapter 12L of the S.F. Administrative Code, the Manager shall comply with and be bound by all the applicable provisions of that Chapter. By executing this Agreement, the Manager agrees to open its meetings and records to the public in the manner set forth in Sections 12L.4 and 12L.5 of the Administrative Code. The Manager further agrees to make good faith efforts to promote community membership on its Board of Directors in the manner set forth in Section 12L.6 of the Administrative Code. The Manager acknowledges that its material failure to comply with any of the provisions of this paragraph shall constitute a material breach of this Agreement. The Manager further acknowledges that such material breach

of the Agreement shall be grounds for the TJPA to terminate and/or not renew the Agreement, partially or in its entirety.

29.13 *Conflict of Interest.* Through its execution of this Agreement, the Manager acknowledges that it is familiar with the provisions of the Conflict of Interest Code of the TJPA; Section 15.103 of the San Francisco City Charter; Article III, Chapter 2 of San Francisco's Campaign and Governmental Conduct Code; and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitute a violation of said provisions.

29.14 *Limitations on Contributions.* Through execution of this Agreement, the Manager acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the TJPA for the rendition of personal services, for the furnishing of any material, supplies or equipment, or for the sale or lease of any land or building, from making any campaign contribution to (1) a TJPA elective officer if the contract must be approved by the individual, a board on which that individual serves, or a board on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. The Manager acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. The Manager further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of the Manager's board of directors; the Manager's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in the Manager; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by the Manager. Additionally, the Manager acknowledges that the Manager must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126.

29.15 *Prohibition on Political Activity with TJPA Funds.* In accordance with San Francisco Administrative Code Chapter 12.G, the Manager may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, "Political Activity") in the performance of the services provided under this Agreement. The Manager agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the TJPA's Chief Financial Officer. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event that the Manager violates the provisions of this Section, the TJPA may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement, and (ii) prohibit the Manager from bidding on or receiving any new TJPA contract for a period of two (2) years. The TJPA will not consider the Manager's use of profit as a violation of this Section.

29.16 *Equal Employment Opportunity/Nondiscrimination; Penalties.*

(a) ***Manager Shall Not Discriminate.*** In the performance of this Agreement, the Manager agrees not to discriminate against any TJPA or City employee working with such

Manager or subcontractor, applicant for employment with such Manager or subcontractor, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability, weight, height, or Acquired Immune Deficiency Syndrome or Human Immunodeficiency Virus (AIDS/HIV) status, or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

Such action shall include, but shall not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; lay-offs or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Manager further agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause. The Manager is encouraged to actively recruit minorities and women for its workforce and take other steps, such as on-the-job training and education, to ensure nondiscrimination in the Manager's employment practices.

(b) *Subcontracts.* The Manager shall incorporate by reference in all subcontracts the provisions of Chapters 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code (copies of which are available from the TJPA upon request) and shall require all subcontractors to comply with such provisions. Manager's failure to comply with Manager's obligations in this subsection shall, subject to applicable notice and cure periods, constitute a material breach of this Agreement.

(c) *Nondiscrimination in Benefits.* The Manager does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where the work is being performed for the TJPA elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Chapter 12B.2(b) of the San Francisco Administrative Code.

(d) *Condition to Contract.* As a condition to this Agreement, the Manager shall execute the appropriate "San Francisco Administrative Code Chapters 12B & 12C Declaration: Nondiscrimination in Contracts and Benefits" form (Form HRC-12B-101, HRC-12B-102, or HRC-12B-103) with supporting documentation and file the form with the TJPA Contract Compliance Manager.

(e) *Incorporation of Administrative Code Provisions by Reference.* The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. The Manager shall comply fully with and be bound by all of the provisions that apply to this

Agreement under such Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, the Manager understands that pursuant to Section 12B.2(h) and 12C.3(g) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against the Manager and/or deducted from any payments due the Manager.

29.17 Disadvantaged Business Enterprise (DBE) Requirements. The Manager or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this agreement. The Manager shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the Manager to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the TJPA deems appropriate.

Pursuant to the monitoring requirements outlined in Section XIII of the TJPA's DBE Program (49 CFR 26.37), the Manager will be required to update and submit the TJPA's "Bidders/Proposers Information Request Form," regardless of DBE participation. Upon award of the contract, the Manager shall submit the TJPA's "Progress Payment Report" with every invoice, the "Subcontractor Payment Declaration" within five days of each payment by Manager to a subcontractor, and a "Final Expenditure Report" with the completion of the contract.

29.18 Requiring Minimum Compensation for Covered Employees. The Manager agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 12P are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the MCO is available on the Web at <http://www.sfgov.org/olse>. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12P. Consistent with the requirements of the MCO, Manager agrees to all of the following:

(a) For each hour worked by a Covered Employee during a Pay Period on work funded under the TJPA contract during the term of this Agreement, the Manager shall provide to the Covered Employee no less than the Minimum Compensation, which includes a minimum hourly wage and compensated and uncompensated time off consistent with the requirements of the MCO. Note that the gross hourly compensation for covered employees is \$13.02 as of January 1, 2015.

If a Covered Employee of a Nonprofit Corporation works in San Francisco, then the gross hourly compensation as of January 1, 2015, is \$11.05 per hour.

(b) The Manager shall not discharge, reduce in compensation, or otherwise discriminate against any employee for complaining to the TJPA with regard to the Manager's compliance or anticipated compliance with the requirements of the MCO, for opposing any practice proscribed by the MCO, for participating in proceedings related to the MCO, or for seeking to assert or enforce any rights under the MCO by any lawful means.

(c) The Manager understands and agrees that the failure to comply with the requirements of the MCO shall constitute a material breach by the Manager of the terms of this Agreement. The TJPA shall determine whether such a breach has occurred.

(d) If, within thirty (30) days after receiving written notice of a breach of this Agreement for violating the MCO, the Manager fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty (30) days, the Manager fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the TJPA shall have the right to pursue the following rights or remedies and any rights or remedies available under applicable law:

(1) The right to charge the Manager an amount equal to the difference between the Minimum Compensation and any compensation actually provided to a Covered Employee, together with interest on such amount from the date payment was due at the maximum rate then permitted by law;

(2) The right to set off all or any portion of the amount described in Subsection (d)(1) of this Section against amounts due to the Manager under this Agreement;

(3) The right to terminate this Agreement in whole or in part;

(4) In the event of a breach by the Manager of the covenant referred to in Subsection (b) of this Section, the right to seek reinstatement of the employee or to obtain other appropriate equitable relief; and

(5) The right to bar the Manager from entering into future contracts with the TJPA for three (3) years.

Each of the rights provided in this Subsection (d) shall be exercisable individually or in combination with any other rights or remedies available to the TJPA. Any amounts realized by the TJPA pursuant to this subsection shall be paid to the Covered Employee who failed to receive the required Minimum Compensation.

(e) The Manager represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the MCO.

(f) The Manager shall keep itself informed of the current requirements of the MCO, including increases to the hourly gross compensation due Covered Employees under the MCO, and shall provide prompt written notice to all Covered Employees of any increases in compensation, as well as any written communications received by the Manager from the TJPA, which communications are marked to indicate that they are to be distributed to Covered Employees.

(g) The Manager shall provide reports to the TJPA in accordance with any reporting standards promulgated by the TJPA under the MCO, including reports on subcontractors.

(h) The Manager shall provide the TJPA with access to pertinent records after receiving a written request from the TJPA to do so and being provided at least five (5) business days to respond.

(i) The TJPA may conduct random audits of the Manager. Random audits shall be (1) noticed in advance in writing; (2) limited to ascertaining whether Covered Employees are paid at least the minimum compensation required by the MCO; (3) accomplished through an examination of pertinent records at a mutually agreed upon time and location within ten (10) days of the written notice; and (4) limited to one audit of Manager every two years for the duration of this Agreement. Nothing in this Agreement is intended to preclude the TJPA from investigating any report of an alleged violation of the MCO.

(j) Any subcontract entered into by the Manager shall require the subcontractor to comply with the requirements of the MCO and shall contain contractual obligations substantially the same as those set forth in this Section. A subcontract means an agreement between the Manager and a third party which requires the third party to perform all or a portion of the services covered by this Agreement. The Manager shall notify the TJPA when it enters into such a subcontract and shall certify to the TJPA that it has notified the subcontractor of the obligations under the MCO and has imposed the requirements of the MCO on the subcontractor through the provisions of the subcontract. Manager shall require all subcontractors to comply with the requirements of the MCO and will use commercially reasonable, diligent efforts to pursue all rights and remedies available to Manager under such subcontract, at law or in equity if such subcontractor fails to comply with the MCO.

(k) Each Covered Employee is a third-party beneficiary with respect to the requirements of subsections (a) and (b) of this Section, and may pursue the following remedies in the event of a breach by the Manager of subsections (a) and (b), but only after the Covered Employee has provided the notice, participated in the administrative review hearing, and waited the 21-day period required by the MCO. The Manager understands and agrees that if the Covered Employee prevails in such action, the Covered Employee may be awarded (1) an amount equal to the difference between the Minimum Compensation and any compensation actually provided to the Covered Employee, together with interest on such amount from the date payment was due at the maximum rate then permitted by law; (2) in the event of a breach by the Manager of subsections (a) or (b), the right to seek reinstatement or to obtain other appropriate equitable relief; and (3) in the event that the Covered Employee is the prevailing party in any legal action or proceeding against the Manager arising from this Agreement, the right to obtain all costs and expenses, including reasonable attorney's fees and disbursements, incurred by the Covered Employee. The Manager also understands that the MCO provides that if the Manager prevails in any such action, the Manager may be awarded costs and expenses, including reasonable attorney's fees and disbursements, from the Covered Employee if the court determines that the Covered Employee's action was frivolous, vexatious or otherwise an act of bad faith.

(l) If the Manager is exempt from the MCO when this Agreement is executed because the cumulative amount of agreements with this department for the fiscal year is less than \$25,000 (\$50,000 for nonprofits), but the Manager later enters into an agreement or agreements that cause the Manager to exceed that amount in a fiscal year, the Manager shall thereafter be required to comply with the MCO under this Agreement. This obligation arises on the effective

date of the agreement that causes the cumulative amount of agreements between the Manager and the TJPA to exceed \$25,000 (\$50,000 for nonprofits) in the fiscal year.

29.19 Requiring Health Benefits for Covered Employees.

Unless exempt, the Manager agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (“HCAO”), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of Chapter 12Q are incorporated herein by reference and made a part of this agreement as though fully set forth. The text of the HCAO is available on the Web at <http://www.sfgov.org/olse>. Capitalized terms used in this Section and not defined in this agreement shall have the meanings assigned to such terms in Chapter 12Q.

(a) For each Covered Employee, the Manager shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If the Manager chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.

(b) Notwithstanding the above, if the Manager is a small business as defined in Section 12Q.3(e) of the HCAO, it shall have no obligation to comply with part (a) above.

(c) The Manager's failure to comply with the HCAO shall constitute a material breach of this agreement. The TJPA shall notify the Manager if such a breach has occurred. If, within thirty (30) days after receiving the TJPA's written notice of a breach of this Agreement for violating the HCAO, the Manager fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty (30) days, the Manager fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the TJPA shall have the right to pursue the remedies set forth in 12Q.5(f)(1-6). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the TJPA.

(d) Any Subcontract entered into by the Manager shall require the subcontractors to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. The Manager shall notify the TJPA when it enters into such a subcontract and shall certify to the TJPA that it has notified the subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on subcontractor through the Subcontract. Manager shall require all subcontractors to comply with the requirements of HCAO and will use commercially reasonable, diligent efforts to pursue all rights and remedies available to Manager under each such subcontract, at law or in equity, if such subcontractor fails to comply with the HCAO.

(e) The Manager shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying the TJPA with regard to Manager's compliance or anticipated compliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

(f) The Manager represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.

(g) The Manager shall maintain employee and payroll records in compliance with the California Labor Code and Industrial Welfare Commission orders, including the number of hours each employee has worked on the TJPA agreement.

(h) The Manager shall keep itself informed of the current requirements of the HCAO.

(i) The Manager shall provide reports to the TJPA in accordance with any reporting standards promulgated by the TJPA under the HCAO, including reports on subcontractors and subtenants, as applicable.

(j) The Manager shall provide the TJPA with access to records pertaining to compliance with HCAO after receiving a written request from the TJPA to do so and being provided at least ten (10) Business Days to respond.

(k) The Manager shall allow the TJPA to inspect the Manager's job sites and have reasonable access to the Manager's employees in order to monitor and determine compliance with HCAO, provided that TJPA shall not unreasonably interfere with or impair Manager's operations in the exercise of such inspection rights.

(l) The TJPA may conduct random audits of the Manager to ascertain its compliance with HCAO, provided that TJPA shall not unreasonably interfere with or impair Manager's operations in the exercise of such audit rights. The Manager agrees to cooperate with the TJPA when it conducts such audits.

(m) If the Manager is exempt from the HCAO when this Agreement is executed because its amount is less than \$25,000 (\$50,000 for nonprofits), but the Manager later enters into an agreement or agreements that cause the Manager's aggregate amount of all agreements with TJPA to reach \$75,000, all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the Manager and the TJPA to be equal to or greater than \$75,000 in the fiscal year.

29.20 *First Source Hiring Program.*

(a) *Incorporation of Administrative Code Provisions by Reference*

The provisions of Chapter 83 of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. The Manager shall comply fully with, and be bound by, all of the provisions that apply to this Agreement under such Chapter, including but not limited to the remedies provided therein. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 83.

(b) *First Source Hiring Agreement*

(1) The Manager will comply with First Source interviewing, recruitment and hiring requirements, which will provide the San Francisco Workforce Development System with the exclusive opportunity to initially provide Qualified Economically Disadvantaged Individuals for consideration for employment for Entry Level Positions. The duration of the First Source interviewing requirement shall be ten (10) days, unless business necessity requires a shorter period of time.

(2) The Manager will comply with requirements for providing timely, appropriate notification of available Entry Level Positions to the San Francisco Workforce Development System so that the System may train and refer an adequate pool of Qualified Economically Disadvantaged Individuals to participating Employers.

(3) The Manager agrees to use good faith efforts to comply with the First Source hiring requirements. Manager may establish its good faith efforts by filling (i) its first available Entry Level Position with a job applicant referred through the First Source Program; and (ii) fifty percent (50%) of its subsequent available Entry Level Positions with job applicants referred through the San Francisco Workforce Development System. Failure to meet this target, while not imputing bad faith, may result in a review of the Manager's employment records.

(c) *Hiring Decisions*

The Manager shall make the final determination of whether an Economically Disadvantaged Individual referred by the System is "qualified" for the position.

(d) *Exceptions*

Upon application by Employer, the First Source Hiring Administration ("FSHA") may grant an exception to any or all of the requirements of Chapter 83 in any situation where it concludes that compliance with this Chapter would cause economic hardship.

(e) *Liquidated Damages*

Violation of the requirements of Chapter 83 is subject to an assessment of liquidated damages in the amount of \$2,070 for every new hire for an Entry Level Position improperly withheld from the First Source hiring process. The assessment of liquidated damages and the evaluation of any defenses or mitigating factors shall be made by the FSHA.

(f) *Subcontracts*

Any subcontract entered into by the Manager shall require the subcontractor to comply with the requirements of Chapter 83 and shall contain contractual obligations substantially the same as those set forth in this Section.

29.21 *MacBride Principles – Northern Ireland.* Pursuant to San Francisco Administrative Code Section 12F.5, the TJPA urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The TJPA urges San Francisco companies to do business with

corporations that abide by the MacBride Principles. By signing below, the person executing this agreement on behalf of the Manager acknowledges and agrees that he or she has read and understood this Section.

29.22 *Drug-Free Workplace Policy.* The Manager acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on TJPA premises. The Manager agrees that any violation of this prohibition by the Manager, its employees, agents or assigns will be deemed a material breach of this Agreement.

29.23 *Resource Conservation.* Chapter 5 of the San Francisco Environment Code ("Resource Conservation") is incorporated herein by reference. Failure by the Manager to comply with any of the applicable requirements of Chapter 5 will be deemed a material breach of contract.

29.24 *Tropical Hardwood/Virgin Redwood Ban.* Pursuant to Section 804(b) of the San Francisco Environment Code, the TJPA urges Manager not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

29.25 *Preservative-treated Wood Containing Arsenic.* The Manager may not purchase preservative-treated wood products containing arsenic in the performance of this Agreement unless an exemption from the requirements of Chapter 13 of the San Francisco Environment Code is obtained from the Department of the Environment under Section 1304 of the Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniacal copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Manager may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of the Environment. This provision does not preclude the Manager from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

29.26 *Food Service Waste Reduction Requirements.* Manager agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this agreement as though fully set forth. This provision is a material term of this agreement. By entering into this agreement, Manager agrees that if it breaches this provision, the TJPA will suffer actual damages that will be impractical or extremely difficult to determine; further, Manager agrees that the sum of one hundred dollars (\$100.00) liquidated damages for the first breach, two hundred dollars (\$200.00) liquidated damages for the second breach in the same year, and five hundred dollars (\$500.00) liquidated damages for subsequent breaches in the same year is a reasonable estimate of the damage that the TJPA will incur based on the violation, established in light of the circumstances existing at the time this agreement was

made. Such amounts shall not be considered a penalty, but rather agreed monetary damages sustained by the TJPA because of Manager's failure to comply with this provision.

29.27 Graffiti Removal. Graffiti is detrimental to the health, safety and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a sense of disrespect of the law that results in an increase in crime; degrades the community and leads to urban blight; is detrimental to property values, business opportunities and the enjoyment of life; is inconsistent with the City and County of San Francisco's property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property. Graffiti results in visual pollution and is a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on the City and County and its residents, and to prevent the further spread of graffiti.

The Manager shall remove all graffiti from the Premises within forty eight (48) hours of the earlier of the Manager's (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the City's Department of Public Works or the TJPA, the cost of which removal shall be an Operating Expense. The term "graffiti" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including by way of example only and without limitation, signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and which is visible from the public right-of-way. "Graffiti" shall not include (a) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code or the San Francisco Building Code; or (b) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (California Civil Code Sections 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. Sections 101 et seq.).

29.28 USDOT Requirements. The provisions contained in "USDOT Requirements for Professional Services Contracts," attached as **Exhibit P**, are incorporated into this Agreement, and the Manager agrees to abide by such provisions. Such provisions supplement the provisions in this Agreement, and shall be interpreted in the broadest possible manner to avoid any conflicts. If there is an unavoidable conflict between the USDOT terms and conditions and any other terms and conditions of this Agreement, in the TJPA's reasonable determination, the USDOT terms and conditions shall take precedence.

29.29 Compliance With Laws and Policies. The Manager shall keep itself fully informed of the Charter of the City and County of San Francisco, of codes, ordinances and regulations of the City, of all state and federal laws and regulations in any manner affecting the performance of this Agreement, and of all published policies of the TJPA and must at all times comply with such Charter, codes, ordinances, regulations, and all applicable laws, and published policies as they may be amended from time to time.

29.30 *Compliance with Americans with Disabilities Act.* The Manager acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. The Manager shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. The Manager agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agree that any violation of this prohibition on the part of the Manager, its employees, agents or assigns will, subject to applicable notice and cure periods, constitute a material breach of this Agreement.

29.31 *Compliance with Card Check Policy.* The provisions contained in the “Labor Representation Policy,” attached as **Exhibit Q** (the “Card Check Policy”), are incorporated into this Agreement, and the Manager agrees to abide by such provisions. Such provisions supplement the provisions in this Agreement, and shall be interpreted in the broadest possible manner to avoid any conflicts. If there is an unavoidable conflict between the terms and provisions contained in the Card Check Policy and any other terms and provisions of this Agreement, in the TJPA’s sole determination, the terms and provisions contained in the Card Check Policy shall take precedence.

30. Miscellaneous.

30.1 *Legal Costs.* In the event of any litigation or dispute (except an Arbitration) between the parties, or claim made by either party against the other, arising from this Agreement or the owner-manager relationship under this Agreement, or to enforce or interpret this Agreement or seek declaratory or injunctive relief in connection with this Agreement, or to exercise any right or remedy under or arising from this Agreement, or to regain or attempt to regain possession of the Premises or terminate this Agreement, or in any Bankruptcy Proceeding affecting the other party to this Agreement, the prevailing party shall be entitled to reimbursement of its Legal Costs. Furthermore, Manager shall reimburse Owner for all expenditures made and obligations incurred by Owner in collecting or attempting to collect amounts due from Manager under this Agreement or in enforcing or attempting to enforce any rights of Owner under this Agreement or pursuant to law, including, without limitation, all Legal Costs so expended. The parties’ obligations under this Section 30.1 shall survive the expiration or sooner termination of the Term.

30.2 *No Consequential Damages.* Whenever either party may seek or claim damages against the other party (whether by reason of a breach of this Agreement by such party, in enforcement of any indemnity obligation, for misrepresentation or breach of warranty, or otherwise), neither Owner nor Manager shall seek, nor shall there be awarded or granted by any court, arbitrator, or other adjudicator, any speculative, consequential, collateral, special, punitive, or indirect damages, whether such breach shall be willful, knowing, intentional, deliberate, or otherwise. The parties intend that any damages awarded to either party shall be limited to actual, direct damages sustained by the aggrieved party. Neither party shall be liable for any loss of profits suffered or claimed to have been suffered by the other.

30.3 *No Waiver by Silence.* Failure of either party to complain of any act or omission on the part of the other party shall not be deemed a waiver by the noncomplaining party of any of its rights under this Agreement. No waiver by either party at any time, express or implied, of any breach of this Agreement shall waive such breach or any other breach.

30.4 *Performance Under Protest.* If a dispute arises regarding performance of any obligation under this Agreement, the party against which such obligation is asserted shall have the right to perform it under protest, which shall not be regarded as voluntary performance. A party that has performed under protest may institute appropriate proceedings to recover any amount paid or the reasonable cost of otherwise complying with any such obligation, with interest at the Prime Rate.

30.5 *Survival.* All rights and obligations that by their nature are to be performed after any termination of this Agreement shall survive any such termination.

30.6 *Unavoidable Delay.* Each party's obligation to perform or observe any nonmonetary obligation under this Agreement shall be suspended during such time as such performance or observance is prevented or delayed by Unavoidable Delay.

30.7 *Financial Statements.* Manager shall cause each Lease to expressly require the applicable Tenant to not deliver, upon request, a financial statement, certified as true and complete by a financial officer of the subject entity, and Manager shall use diligent efforts to enforce each such Lease obligation.

30.8 *Development Rights.* Owner and Manager agree that Owner retains any and all air rights, development rights, or comparable rights of any kind and nature with respect to the Center and the Premises and that Manager has no rights in and to same and Manager hereby consents, without further consideration to any utilization of such rights by Owner.

30.9 *Subordination.* This Agreement is subject and subordinate to the following instruments: (i) the Transit Agency Leases; (ii) the Rail Operator Agreements; and (ii) any matters of record pertaining to the Center in the Official Records of the City and County of San Francisco, California. Manager shall execute, acknowledge and deliver any instrument requested by Owner to evidence such subordination, but no such instrument shall be necessary to make such subordination effective.

31. *Interpretation, Execution, and Application.*

31.1 *Captions.* The captions of this Agreement are for convenience and reference only. They in no way affect this Agreement.

31.2 *Counterparts.* This Agreement may be executed in counterparts.

31.3 *Delivery of Drafts.* Neither party shall be bound by this Agreement unless and until both parties shall have executed and delivered at least one counterpart of this Agreement. The submission of draft(s) or comment(s) on drafts shall bind neither party in any way. Such draft(s) and comment(s) shall not be considered in interpreting this Agreement.

31.4 *Entire Agreement.* This Agreement contains all terms, covenants, and conditions about the Premises. The parties have no other understandings or agreements, oral or written, about the Premises or Manager's use or occupancy of, or any interest of Manager in, the Premises.

31.5 *Governing Law.* This Agreement, its interpretation and performance, the relationship between the parties, and any disputes arising from or relating to any of the foregoing, shall be governed, construed, interpreted, and regulated under the laws of the State, without regard to principles of conflict of laws. The parties agree that any state or federal district court located in the City and County of San Francisco, State of California shall have exclusive jurisdiction over any case or controversy arising from, under or in connection with this Agreement and shall be the sole and exclusive forum in which to adjudicate any such dispute(s).

31.6 *Partial Invalidity.* If any term or provision of this Agreement or its application to any party or circumstance shall to any extent be invalid or unenforceable, then the remainder of this Agreement, or the application of such term or provision to persons or circumstances except those as to which it is invalid or unenforceable, shall not be affected by such invalidity. All remaining provisions of this Agreement shall be valid and be enforced to the fullest extent Law allows.

31.7 *Principles of Interpretation.* No inference in favor of or against any party shall be drawn from the fact that such party has drafted any part of this Agreement. The parties have both participated substantially in its negotiation, drafting, and revision, with advice from counsel and other advisers. A term defined in the singular may be used in the plural, and vice versa, all in accordance with ordinary principles of English grammar, which also govern all other language in this Agreement. The words "include" and "including" shall be construed to be followed by the words: "without limitation." Each of these terms shall be interpreted as if followed by the words "(or any part of it)" except where the context clearly requires otherwise: Center Equipment; Center FF&E; Land; Premises; Structure; and any other similar collective noun. Every reference to any document, including this Agreement, refers to such document as Modified from time to time (except, at Owner's option, any Modification that violates this Agreement), and includes all exhibits, schedules, and riders to such document. The word "or" includes the word "and."

[Signatures on Next Page.]

IN WITNESS WHEREOF, Owner and Manager have executed this Agreement on the Commencement Date.

TRANSBAY JOINT POWERS AUTHORITY

By: _____
Name:
Its:

[MANAGER]

By: _____
Name:
Its:

With respect to Sections 18.1(c) and (d), 18.2 and 21.2 hereof and in no way limiting any requirements and responsibilities of the Guarantor, as set forth in the Performance Guaranty:

[GUARANTOR]

By: _____
Name:
Its:

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EXHIBIT B

DESCRIPTION OF THE PREMISES/COMMERCIAL USAGE AREAS

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EXHIBIT B-1

DESCRIPTION OF CENTER

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EXHIBIT B-2

COMMERCIAL USAGE AREAS

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EXHIBIT B-3

TRANSIT AGENCY AREAS

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EXHIBIT B-4

PARK AND ROOFTOP PARK CAFÉ

DRAFT

EXHIBIT B-5

FIRST AND SECOND FLOOR TRANSIT LEASE SPACE

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LOWER CONCOURSE SUPPORT SPACE

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**DESCRIPTION OF EXISTING CENTER SIGNAGE
AND PERMITTED LOCATIONS FOR MANAGER CONTROLLED SIGNAGE**

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BUS STORAGE FACILITY

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EXHIBIT B-9

TJPA OFFICE SPACE

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EXHIBIT C
STAFFING PLAN

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EXHIBIT D

SCOPE OF SERVICES

Transition Period

The Scope of Services during the Transition Period will include:

- *Asset management:* Manager will be responsible for hiring the appropriate staff with the sufficient capacity and expertise to create and implement:
 - Regular financial reporting to Owner;
 - Regular performance and status reports to Owner;
 - Bidding and execution of subcontractor agreements necessary for facility management. Owner reserves the right to review or request alterations to subcontractors or subcontract agreements, in Owner's sole discretion.
- *Building Improvements:* Manager will prepare for, budget, and manage construction of those Building Improvements which are scheduled to be completed prior to the Opening Date, including but not limited to:
 - Building Improvements for Amtrak and Greyhound in the portions of the First and Second Floor Transit Lease Space leased to Amtrak and Greyhound pursuant to the Transit Agency Ticketing and Waiting Room Leases;
 - Building Improvements required for facility operations, including, without limitation, completion of construction of (i) the mail room, (ii) furniture, fixtures and equipment for the security operations center and offices, (iii) any improvements required for janitorial and maintenance storage and Back of House Functions, and (iv) loading dock offices; and
 - Tenant improvements for any Tenants, as needed to fulfill Leases executed during this time.
- *Premises operations and maintenance:* Manager will undertake operations and maintenance preparations, including but not limited to:
 - Receiving turnover training and maintenance manuals for all operations and maintenance responsibilities from Owner and its consultants, and beginning operations and maintenance duties;
 - Renting or purchasing all equipment deemed necessary for operation of the Premises;
 - Coordinating with Owner's Security Contractor on necessary protocols and begin necessary security practices; and

- Arranging access to and payment of utilities for the Premises, including, without limitation, all fuel, gas, power, water, data service, sewage, garbage disposal, and telephone.
- *Commercial Usage Areas concept, leasing, and management:* Manager will prepare a retail concept plan for the Commercial Usage Areas, for review and approval by Owner within three (3) months of the Commencement Date.
- *Promotional Platform management:* Manager will design, procure, and implement any necessary software to support the Content Management System, and engage in marketing activities for the sale of advertising, sponsorship, promotional event, and naming rights opportunities. During the Transition Period, Manager will design and install the Content Management System and ramp-up any technical support services that will be provided on an ongoing basis. This will include coordination with the Transit Agencies and Rail Operators to feed transit information into the Content Management System, and programming for all signage included in the Base Signage and Additional Signage.
- *Park management:* Manager will create a programming and management plan for the Park, for review and approval by Owner.
- *Event management:* Manager will create an event calendar and scheduling protocol for the Center, for review and approval by Owner.

Stabilization Period

During the Stabilization Period, the Scope of Services will include continuation of the above preparations for the Opening Date, as well as:

- *Asset management:* Manager will be responsible for beginning regular reporting to Owner based on activities during this period, and overseeing continued subcontractor procurement and work.
- *Building Improvements:* Manager will manage construction of the Building Improvements, and during this period, use diligent and good faith efforts to cause completion of those required prior to the Opening Date, in each instance subject to any Unavoidable Delays. During the Stabilization Period, Manager will also manage commencement of construction of the Rooftop Park Café. Building Improvements in this period will include tenant improvements for Tenants as needed to fulfill Leases executed previously or during this time.
- *Premises operations and maintenance:* Manager will manage operations and maintenance of the Premises in accordance with standards for a high quality project. Manager will begin all operations and maintenance duties associated with the ongoing operations of the Center, including but not limited to:
 - Routine janitorial services and grounds keeping for the Premises;
 - Routine repairs and maintenance for the Premises and any hardware or fixtures that are part of the Promotional Platform;

- Regular cleaning and maintenance of building systems and equipment within the Premises, including the building's façade, all public spaces and any areas used for Back of House Functions within the Premises;
- Coordination with Owner and the Transit Agencies and Rail Operators to respond to service requests.
- *Commercial Usage Areas concept, leasing, and management:* Manager will continue marketing and leasing activities for the Commercial Usage Areas and begin management activities for signed Leases.
- *Promotional Platform management:* Manager will continue marketing activities for the sale of advertising, sponsorship, promotional event, and naming rights opportunities. Manager will also begin management and maintenance of the Content Management System and the Promotional Platform, including a mobile application and programming of all signage included in the Base Signage and Additional Signage.

All Promotional Platform content will be required to comply with the Digital Guidelines set forth in **Exhibit O** attached to the Agreement and made a part thereof and the Digital Content Development Guidelines set forth in **Exhibit O-1** attached to the Agreement and made a part thereof. All revenues generated by the Promotional Platform will be shared between Owner and Manager as described in the Promotional Platform Revenue Sharing & Fees section of the Agreement.

- *Park management:* Manager will begin management activities for the Park, including activation through events and programs, as well as oversight of maintenance and landscaping. Manager will also coordinate its working relationship with the Greater Rincon Hill CBD.
- *Event management:* Manager will begin to implement the event scheduling protocol and event calendar created for the Center.

Stabilized Period

During the Stabilized Period, the Scope of Services will include the above Scope of Services, as needed, as well as:

- *Asset management:* On an ongoing basis, Manager's asset management responsibilities will include:
 - Managing staffing levels across the Premises, including renewing or procuring new subcontractor agreements as needed.
 - Accounting and budgeting, including routine reporting to Owner.
 - Monitoring the Center's performance, including routine reporting to Owner.
- *Building Improvements:* On an ongoing basis, Manager will manage construction of (i) tenant improvements for Tenants as needed to fulfill Leases executed previously or during

this time and (ii) any Building Improvements necessary for capital replacements for facility components and equipment as directed by Owner.

- *Premises operations and maintenance:* On an ongoing basis, Manager will continue the operations and maintenance activities undertaken in the Transition Period, including replacement of any equipment needed to maintain the facility and ongoing janitorial and repairs and maintenance services.
- *Commercial Usage Areas concept, leasing, and management:* Manager will be responsible for ongoing lease management and managing turnover of existing Leases. Manager's scope with regard to Commercial Usage Areas is modified as described in Transit Agency Ticketing and Waiting Room Leases and in Section 10.3 of the Agreement with respect to the TJPA Office Space.
- *Promotional Platform management:* On an ongoing basis, Manager will be responsible for the sale of advertising and the execution of agreements for sponsorship, naming rights, and promotional events, and will manage all ongoing operations of the digital signage system including integration of all transit information and any other Owner-provided content. Manager will also be responsible for routine maintenance of the signage and other fixtures associated with the Promotional Platform.

EXHIBIT D-1

KEY PERFORMANCE INDICATORS

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EXHIBIT D-2

FORM OF PAYMENT APPLICATION CERTIFICATION

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EXHIBIT D-3

SCHEDULE OF COMMERCIAL LEASING COMMISSIONS

The Leasing Commission due in connection with Leases of the Commercial Usage Areas, or portions thereof, at the Center shall be calculated as follows:

- If there is a co-broker that is owed a commission with respect to a new Lease, the total Leasing Commission payable by Owner in connection with such Lease shall be an amount equal five percent (5%) of the Base Commercial Rent for the initial term of such Lease.
- If there is no co-broker that is owed a commission with respect to a new Lease, the total Leasing Commission payable by Owner in connection with such Lease shall be an amount equal to four percent (4%) of the Base Commercial Rent for the initial term of such Lease.
- With respect to any Extension, the total Leasing Commission payable by Owner in connection with such Extension shall be an amount equal to two and one-half percent (2.5%) of the Base Commercial Rent for the renewal or extended term under such Extension.
- With respect to any Expansion, the total Leasing Commission payable by Owner in connection with such Expansion shall be an amount equal to two and one-half percent (2.5%) of the Base Commercial Rent attributable to the expansion premises for the remainder of the then applicable term of the Lease to which such Expansion applies.

As used herein, "Base Commercial Rent" means the total amount of base rent due and payable by a Tenant under its Lease during the applicable Calculation Period, irrespective of any rental concessions provided to such Tenant under its Lease [and excluding any participation rent].

"Calculation Period" means (i) with respect to a new Lease, the initial term of such Lease, (ii) with respect to any renewal or extension of an existing Lease (an "Extension"), the renewal term of such Lease and (iii) with respect to any expansion of the premises leased under an existing Lease either through amendment of such existing Lease or execution of a new lease (an "Expansion"), the term of the Lease with respect to such expansion.

EXHIBIT E

RESERVED

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EXHIBIT E-1

FORM OF PAYMENT AND PERFORMANCE GUARANTY

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EXHIBIT F
INITIAL BUDGET

DRAFT

EXHIBIT G

NOTICE ADDRESSEES (INCLUDING REQUIRED COPY RECIPIENTS)

MANAGER'S NOTICE ADDRESSES:

OWNER'S NOTICE ADDRESSES:

[_____]

With additional copies to each of:

[_____]

and:

[_____]

DRAFT

EXHIBIT H

FORM OF ESTOPPEL CERTIFICATE

DRAFT

EXHIBIT I

[Reserved]

DRAFT

EXHIBIT J

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[_____]

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[_____]

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[_____]

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[_____]

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OWNER'S FORMS OF REQUIRED CERTIFICATES OF INSURANCE

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EXHIBIT L
CONCEPT OF OPERATIONS

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EXHIBIT L-1
O & M GUIDELINES

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COMPARISON STORES

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EXHIBIT M
DESIGN GUIDELINES

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EXHIBIT M-1

DESIGN REVIEW PROCESS

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EXHIBIT N

LIST OF PROHIBITED USES AND USERS

In addition to any of the use restrictions set forth in the Lease, the term Prohibited Uses shall mean any of the following uses:

1. Any use by a Prohibited Person;
2. Any pornographic use, which shall include, without limitation: (x) a store displaying for sale or exhibition books, magazines or other publications containing any combination of photographs, drawings or sketches of a sexual nature, which are not primarily scientific or educational or similar to those sold in first-class national bookstores; (y) a store offering for exhibition, sale or rental video cassettes or other medium capable of projecting, transmitting or reproducing, independently or in conjunction with another device, machine or equipment, an image or series of images, the content of which has been rated or advertised generally as NC-17 or "X" or unrated by the Motion Picture Rating Association, or any successor thereto or (z) a massage parlor;
3. Any use which emits or results in unreasonably offensive odors, fumes, dust or vapors, is a public nuisance, emits noise or sounds which are reasonably objectionable due to intermittence, beat, frequency, shrillness or loudness, creates a hazardous condition, or is used, in whole or in part, as or for warehousing or the dumping or disposing of garbage or refuse;
4. Any so-called "head shop", or other establishment primarily selling or exhibiting drug- related paraphernalia;
5. Any "second hand" store, "surplus" store, "99 cent" store, or low end discount store or thrift store;
6. Any operation primarily used as a storage facility and any assembling, manufacturing, distilling, refining, smelting, agricultural, or mining operation;
7. Any central laundry, laundromat or on-site dry cleaning, but not including a store where clothing can be dropped off for cleaning and picked-up when cleaned;
8. Any pet store, veterinary hospital or animal raising or boarding facilities;
9. Any amusement or video arcade or other business deriving income from coin operated games, pool, billiard hall or ping pong parlor unless specifically approved by Owner;
10. Daycare center, community center, teen center, recreational center or karate center;
11. Employment agency or social services center

12. Any gambling facility or operation, including but not limited to: off-track or sports betting parlor; table games such as black jack or poker; slot machines; video poker/black-jack/keno machines or similar devices or bingo hall;
13. Any church, temple, or mosque or other place for religious worship or spiritualist services;
14. Any mortuary or funeral home or chapel, sale or manufacture of tombstones or monuments;
15. Any car wash, automobile repair shop, or any business servicing motor vehicles in any respect, including, without limitation, any quick lithe oil change service, tire center or gasoline or service station or facility;
16. Any check cashing service store, except as an incidental use to a bank as permitted under this Agreement;
17. Agency, Department or Bureau of any governmental authority;
18. Auction house or for the conduct of a public auction of any kind;
19. Dating or escort service;
20. Fund raising or solicitation for other purposes by means of telephone "bank" calls to the public from the Premises;
21. Messenger service;
22. Any pawn shop, gun shop, or tattoo parlor;
23. Headquarters, center or other facility devoted or opposed to the promotion, advancement, representation, purpose or benefit of: (a) any political party, political movement or political candidate, (b) any religion, religious group or religious denomination, (c) any foreign governmental;
24. Shoe repair; and
25. Gypsy, fortune teller or palm reader or card reader.

EXHIBIT O
DIGITAL GUIDELINES

DRAFT

EXHIBIT O-1

DIGITAL CONTENT DEVELOPMENT GUIDELINES

DRAFT

EXHIBIT P

USDOT REQUIREMENTS FOR AGREEMENTS WITH THE TJPA

The USDOT's requirements for agreements between the TJPA and a third party are summarized below. Certain USDOT provisions described below may not be applicable to all agreements with the TJPA. The italicized text is intended to assist the Contractor in understanding which Federal requirements may be applicable to an agreement. The USDOT and the TJPA have sole discretion to apply any particular provision described below.

These provisions supplement the provisions in the Agreement, and shall be interpreted in the broadest possible manner to avoid any conflicts. If there is an unavoidable conflict between the USDOT requirements and any other terms and conditions of the Agreement, in the TJPA's sole determination, the USDOT requirements shall take precedence.

The following provisions (1-12) apply to all Agreements (excluding micropurchases—purchases of \$3,000.00 or less).

1. DEFINITIONS

****** *The Definitions apply to all Agreements.*

- (a). **Agreement** means a contract, purchase order, memorandum of understanding or other agreement awarded by the TJPA to a Contractor, financed in whole or in part with Federal assistance awarded by FTA or FRA.
- (b). **Approved Project Budget** means the most recent statement, approved by the FTA, of the costs of the Project, the maximum amount of Federal assistance for which the TJPA is currently eligible, the specific tasks (including specified contingencies) covered, and the estimated cost of each task.
- (c). **Contractor** means the individual or entity awarded an Agreement financed in whole or in part with Federal assistance originally derived from FTA.
- (d). **Federal Cooperative Agreement** means the instrument by which FRA or FTA awards Federal assistance to the TJPA to support a particular Project, and in which FRA or FTA takes an active role or retains substantial control
- (e). **Federal Grant Agreement** means the instrument by which FTA or FRA awards Federal assistance to the TJPA to support a particular Project, and in which FTA or FRA does not take an active role or retain substantial control, in accordance with 31 U.S.C. Section 6304.
- (f). **FRA** is the acronym for the Federal Railroad Administration, one of the operating administrations of the U.S. DOT.
- (g). **FRA Directive** includes any FRA regulation, policy, procedure, directive, circular, notice, order or guidance providing information about FRA's programs, application processing procedures, and Project management guidelines.
- (h). **FTA** is the acronym for the Federal Transit Administration, one of the operating administrations of the U.S. DOT.
- (i). **FTA Directive** includes any FTA regulation, policy, procedure, directive, circular, notice, order or guidance providing information about FTA's programs, application processing procedures, and

Project management guidelines, including the Master Agreement between FTA and the TJPA.

- (j). **Government** means the United States of America and any executive department thereof.
- (k). **Project** means the Transbay Transit Center Program, which will extend Caltrain to Transbay Terminal and replace Transbay Terminal with the new Transbay Transit Center Building. Total project consists of three major components: a new, multi-modal Transbay Transit Center (TTC) on the site of the present Transbay Terminal; the extension of Caltrain commuter rail from its current SF terminus at 4th and Townsend St. to a new underground terminus under a proposed new TTC; and the establishment of a Redevelopment Area with related development projects, including transit-oriented development on publicly owned land in the vicinity of the new multi-modal TTC.
- (l). **Recipient** means the TJPA.
- (m). **Secretary** means the U.S. DOT Secretary, including his or her duly authorized designee.
- (n). **Subcontract** means a subcontract at any tier entered into by Contractor or its subcontractor relating to the Agreement, financed in whole or in part with Federal assistance originally derived from FTA or FRA. Unless otherwise specified, the Contractor must include each of these Federal provisions in any Subcontract related to this Agreement.
- (o). **U.S. DOT** is the acronym for the U.S. Department of Transportation, including its operating administrations.
- (p). **U.S.DOT Directives** means any U.S. DOT regulation, policy, procedure, directive, circular, notice, order or guidance providing information about U.S.DOT's programs, application processing procedures, and Project management guidelines.

2. NO GOVERNMENT OBLIGATION TO THIRD PARTIES

** *This requirement applies to all Agreements.*

The TJPA and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the Agreement, absent the express written consent by the Federal Government, the Federal Government is not a party to this Agreement and shall not be subject to any obligations or liabilities to the TJPA, Contractor, or any other party (whether or not a party to that Agreement) pertaining to any matter resulting from the Agreement.

3. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS

** *This provision applies to all Agreements.*

- (a). The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. Section 3801 et seq., and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions under the Agreement. Upon execution of the Agreement, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the Agreement or the FTA- or FRA-assisted Project for which this Agreement work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

- (b). The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under an Agreement connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA or FRA under the authority of 49 U.S.C. Section 5307, the Government reserves the right to impose the penalties of 18 U.S.C. Section 1001 and 49 U.S.C. Section 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

4. ACCESS TO DOCUMENTS

****** *This requirement applies to all Agreements. FRA requires the inclusion of these requirements in Subcontracts over \$100,000.*

****** *Please be aware that the requirements in the Agreement regarding audit and inspection of records may require the Contractor to maintain files relating to this Agreement for a longer period of time than described in the requirement below. Please also be aware that, as described in the Agreement, the TJPA follows the provisions of the City and County of San Francisco Sunshine Ordinance regarding responses to public requests for certain bid documents. The Contractor must comply with the requirements described below and in the Agreement.*

- (a). Where the TJPA is considered a "local government" and is a Recipient or a subgrantee of a Recipient, in accordance with 49 CFR Section 18.36(i), the Contractor agrees to provide the TJPA, the FTA or FRA Administrator, the Comptroller General of the United States and/or any of their authorized representatives access to any books, documents, accounts papers and records of the Contractor which are directly pertinent to this Agreement ("Documents") for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 CFR Section 633.17, to provide the FTA or FRA Administrator or its authorized representatives, including any project management oversight Contractor, access to Contractor's Documents and construction sites pertaining to a major capital project, defined at 49 U.S.C. Section 5302(a)1, which is receiving Federal financial assistance through the programs described at 49 U.S.C. sections 5307, 5309 or 5311.
- (b). Where the TJPA is a Recipient or a subgrantee of a Recipient, in accordance with 49 U.S.C. Section 5325(a), and enters into a contract for a capital project or improvement (defined at 49 U.S.C. Section 5302[a]1) through other than competitive bidding, the Contractor agrees to provide the TJPA, the Secretary and the Comptroller General, or any authorized officer or employee of any of them, access to any Documents for the purposes of conducting an audit and inspection.
- (c). The Contractor agrees to permit any of the foregoing parties to reproduce, by any means whatsoever, or to copy excerpts and transcriptions, as reasonably needed, of any Documents.
- (d). The Contractor agrees to maintain all Documents required under this Agreement for a period of not less than three years after the date of termination or expiration of this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case Contractor agrees to maintain same until the TJPA, the FTA or FRA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. (See 49 CFR Section 18.39[i][11]).

5. FEDERAL CHANGES

****** *This requirement applies to all Agreements.*

Contractor shall at all times comply with all applicable federal laws and regulations, and all FTA Directives, FRA Directives and U.S. DOT Directives applicable to the Project, as they may be amended or promulgated from time to time during the term of this Agreement. It is Contractor's responsibility to be aware of any amendments or changes to such federal requirements and directives. Contractor's failure to so comply shall constitute a material breach of this Agreement.

6. CIVIL RIGHTS REQUIREMENT

** *This requirement applies to all Agreements.*

** *Please be aware that the requirements in the Agreement regarding nondiscrimination are broader than the USDOT Requirements described below. The Contractor must comply with the requirements described below and in the Agreement.*

- (a). **Nondiscrimination** - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. Section 2000d et seq.; the Age Discrimination Act of 1975, as amended, 42 U.S.C. Section 6101 et seq.; the Americans with Disabilities Act of 1990, 42 U.S.C. Section 12101 et seq.; Federal transit law at 49 U.S.C. Section 5332; and the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794 et seq.; the Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. 1101 et seq.; the Comprehensive Alcohol Abuse and Alcoholism Prevention Act of 1970, as amended, 42 U.S.C. 4541 et seq.; and the Public Health Service Act, as amended, 42 U.S.C. 290dd et seq., the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, disability, or other protected class. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements federal agencies may issue, including U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act," 49 CFR part 21; and U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 CFR parts 27 and 37.
- (b). **Equal Employment Opportunity** - The following equal employment opportunity requirements apply to the Agreement:
- (1). **Race, Color, Creed, National Origin, Sex** - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. Section 2000e, and Federal transit laws at 49 U.S.C. Section 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR Parts 60, (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. Section 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA or FRA may issue.
- (2). **Age** - In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. Section 623, and Federal transit law at 49 U.S.C. Section 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA or FRA may issue.
- (3). **Disabilities** - In accordance with Section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. Section 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA or FRA may issue.

7. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

** *The specific provisions checked below apply to this Agreement.*

- (a). This Agreement is subject to the requirements of 49 CFR Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBEs) is 10 percent. The TJPA's Anticipated DBE Participation Level for each Federal Fiscal Year is published on the TJPA website by August 1 of each year.

A separate Agreement goal of _____ percent DBE participation has been established for this Agreement.

A separate Agreement goal **has not** been established for this Agreement.

- (b). The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted Agreement. Failure by the Contractor to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the TJPA deems appropriate. Each Subcontract the Contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR Section 26.13[b]).

- (c). *(Checked box is applicable to this Agreement.)*

(If a separate Agreement goal has been established, use the following)

The Contractor was required to document sufficient DBE participation to meet the separate Agreement goal established for this Agreement or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR Section 26.53.

(If no separate Agreement goal has been established, use the following)

The Contractor is required to report its DBE participation obtained through race-neutral means throughout the period of performance.

- (d). The Contractor is required to pay its subcontractors performing work related to this Agreement for satisfactory performance of that work no later than ten (10) days after the Contractor's receipt of payment for that work from the TJPA. In addition, the Contractor is required to return any retainage payments to those subcontractors within thirty (30) days after incremental acceptance of the subcontractor's work by the TJPA and Contractor's receipt of the partial retainage payment related to the subcontractor's work.
- (e). The Contractor must promptly notify the TJPA whenever a DBE subcontractor performing work related to this Agreement is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The Contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the TJPA.

8. AMERICANS WITH DISABILITIES ACT

** *This requirement applies to all Agreements.*

The Consultant agrees that all facilities constructed under this Agreement will be designed to meet the applicable Accessibility Guidelines for Transportation Facilities set out as appendix A to 49 CFR Part 37.

9. INCORPORATION OF U.S. DEPARTMENT OF TRANSPORTATION TERMS

****** *This requirement applies to all Agreements.*

The preceding provisions include, in part, certain standard terms and conditions required by U.S. DOT, FTA and FRA of the TJPA's agreements, whether or not expressly set forth in the preceding Agreement provisions. All contractual provisions required by U.S. DOT, FTA, and FRA are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all USDOT, FTA, and FRA-mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any TJPA requests which would cause the TJPA to be in violation of the USDOT, FTA, or FRA terms and conditions.

10. FLY AMERICA REQUIREMENTS

****** *This provision applies to all Agreements that involve the transportation of persons or property, by air, between a place in the U.S. and a place outside the U.S., or between places outside the U.S.*

- (a). The Contractor agrees to comply with 49 U.S.C. Section 40118 (the "Fly America Act") in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act.
- (b). The Contractor shall submit the "Fly America Certification" if the regulation is applicable to the particular Agreement.
- (c). The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier.
- (d). Notwithstanding the foregoing, transportation on a foreign air carrier is permissible when provided by a foreign air carrier under a code share agreement when the ticket identifies the U.S. air carrier's designator code and flight number. Transportation by a foreign air carrier is also permissible if there is a bilateral or multilateral air transportation agreement to which the U.S. Government and a foreign government are parties and which the U.S. DOT has determined meets the requirements of the Fly America Act.

11. CARGO PREFERENCE REQUIREMENTS

****** *This provision applies to all Agreements involving equipment, materials, or commodities which may be transported by ocean vessels.*

The Contractor agrees to:

- (a). use privately owned United States flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the Agreement to the extent such vessels are available at fair and reasonable rates for United States flag commercial vessels;
- (b). furnish within twenty (20) working days following the date of loading for shipments originating within the United States or within thirty (30) working days following the date of leading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-landing in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the TJPA (through the Contractor in the case of a subcontractor's bill-of-landing).

12. ENERGY CONSERVATION REQUIREMENTS

****** *This provision applies to all Agreements.*

The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. Section 6201 *et seq.*

The following provision (13) applies to Agreements exceeding \$10,000.

13. RECYCLED PRODUCTS

****** *This provision applies to all Agreements to procure \$10,000 or more of any one item designated by the EPA under 40 CFR Part 247, Subpart B in a single fiscal year, and to all Agreements to procure any items designated in 40 CFR Part 247, Subpart B where the TJPA or the Contractor has used Federal funds to procure \$10,000 or more of any one item in the previous fiscal year.*

****** *Please be aware that the requirements in the Agreement regarding resource conservation may be more restrictive than the USDOT Requirements described below. The Contractor must comply with the requirements described below and in the Agreement.*

The Contractor agrees to comply with the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. Section 6962 *et seq.*), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in 40 CFR Part 247, Subpart B.

The following provision (14) applies to Agreements exceeding \$25,000.

14. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NON-PROCUREMENT)

****** *This requirement applies to all Agreements and Subcontracts greater than or equal to \$25,000, and to any Agreement for auditing services at any dollar value.*

- (a). This Agreement is a “covered transaction” for purposes of federal suspension and debarment laws, including 2 CFR part 1200, and the provisions of U.S. Office of Management and Budget Appendix A “Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” 2 CFR part 180 , and the Contractor is required to comply with same. In particular, the Contractor is required to verify that the Contractor, its “principals,” and its “affiliates” are not “excluded” or “disqualified,” as defined by federal suspension and debarment laws.
- (b). The Contractor shall submit the “Certification Regarding Debarment, Suspension, and Other Responsibility Matters.”

The following provisions (15-16) apply to Agreements exceeding \$50,000.

15. CLEAN AIR

****** *This provision applies to all Agreements greater than \$50,000 and to subcontracts greater than \$50,000.*

- (a) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. Section 7401 *et seq.* The Contractor agrees to report each violation to the TJPA and understands and agrees that the TJPA will, in turn, report each violation as required to assure notification to FTA and FRA and the appropriate EPA Regional Office.

- (b) The Contractor also agrees to include these requirements in each subcontract exceeding \$50,000.

16. CLEAN WATER REQUIREMENTS

****** *This provision applies to all Agreements greater than \$50,000.*

- (a). The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. Section 1251 et seq. The Contractor agrees to report each violation to the TJPA and understands and agrees that the TJPA will, in turn, report each violation as required to assure notification to FTA and FRA and the appropriate EPA Regional Office.
- (b). The Contractor also agrees to include these requirements in each Subcontract exceeding \$50,000 financed in whole or in part with Federal assistance provided by FTA and FRA.

The following provisions (17-20) apply to Agreements exceeding \$100,000.

17. BUY AMERICA REQUIREMENTS

****** *This provision applies only to the following types of Agreements: construction agreements of any value; agreements for the acquisition of goods or rolling stock of any value if funded by FRA, and valued at more than \$100,000 if funded by FTA.*

- (a). The Contractor agrees to comply with 49 U.S.C. Section 5323(j), 49 CFR Part 661, and 49 U.S.C. 24405, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA- and FRA-funded projects, such as the Transbay Transit Center Program that is the subject of this Agreement, are produced in the United States, unless a waiver has been granted by FTA, FRA, or the product is subject to a general waiver. General waivers, when FTA funds are used, are listed in 49 CFR Section 661.7. Separate requirements for rolling stock are set out at 49 U.S.C. Section 5323(j)(2)(C) and 49 CFR Section 661.11 when FTA funds are used, and 49 CFR 24405(a) when FRA funds are used.
- (b). The Contractor shall submit the "Buy America Certification" at the time of bid/offer if the regulation is applicable to the particular agreement. The Prime Contractor is responsible for ensuring that lower tier subcontractors are in compliance.

18. BREACHES AND DISPUTE RESOLUTION

****** *This requirement applies to all Agreements in excess of \$100,000.*

- (a). **Disputes** - Disputes arising in the performance of this Agreement which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of TJPA's Executive Director. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Executive Director. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Executive Director shall be binding upon the Contractor and the Contractor shall abide by the decision.
- (b). **Performance During Dispute** - Unless otherwise directed by the TJPA, Contractor shall continue performance under this Agreement while matters in dispute are being resolved.
- (c). **Claims for Damages** - Should either party to the Agreement suffer injury or damage to person or property because of any act or omission of the party or of any of the party's employees, agents or others for whose acts the party is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

- (d). **Remedies** - Unless this Agreement provides otherwise, all claims, counterclaims, disputes and other matters in question between the TJPA and the Contractor arising out of or relating to this Agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the state in which the TJPA is located.
- (e). **Rights and Remedies** - The duties and obligations imposed by the Agreement Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the TJPA or Contractor shall constitute a waiver of any right or duty afforded any of them under the Agreement, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

19. LOBBYING

****** *This provision applies to the following types of Agreements, if the Agreement is equal to or greater than \$100,000: construction, architectural and engineering; acquisition of rolling stock; professional services; operational services; and Turnkey.*

****** *Please be aware that the requirements in the Agreement regarding limitations on contributions may be more restrictive than the USDOT Requirements described below. The Contractor must comply with the requirements described below and in the Agreement.*

- (a). The contractor shall submit the "New Restrictions on Lobbying Certification" if the regulation is applicable to the particular agreement.
- (b).
 - (1). No Federal appropriated funds have been or will be paid by or on behalf of the Contractor to any person to influence or attempt to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress regarding the award of a Federal grant, loan (including a line of credit), cooperative agreement, loan guarantee, or loan insurance, or the extension, continuation, renewal, amendment, or modification of any Federal grant, loan (including a line of credit), cooperative agreement, loan guarantee, or loan insurance;
 - (2). If any funds other than Federal appropriated funds have been or will be paid to any person to influence or attempt to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any application for a Federal grant, loan (including a line of credit), cooperative agreement, loan guarantee, or loan insurance, the Applicant assures that it will complete and submit Standard Form- LLL, 'Disclosure Form to Report Lobbying,' in accordance with its instructions. Such forms are forwarded from tier to tier up to the TJPA.

20. AGREEMENT WORK HOURS AND SAFETY STANDARDS ACT

****** *This requirement applies to Agreements and Subcontracts for construction over \$100,000, and to non-construction Agreements valued at more than \$100,000 that employ "laborers or mechanics on a public work," as defined by 42 U.S.C. Section 3701.*

- (a). **Overtime requirements** - No Contractor or subcontractor contracting for any part of the Agreement work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- (b). **Violation; liability for unpaid wages; liquidated damages** - In the event of any violation of the clause set forth in paragraph (a) of this section the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall

be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

- (c). **Withholding for unpaid wages and liquidated damages** - The TJPA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such Agreement or any other Federal contract with the same Contractor, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b) of this section.

The following provisions (21-23) apply to Construction Agreements.

21. SEISMIC SAFETY REQUIREMENTS

****** *This provision applies only to Agreements for the construction of new buildings or additions to existing buildings.*

The Contractor agrees that any new building or addition to an existing building that is the subject of this Agreement will be designed and constructed in accordance with the standards for Seismic Safety required in U.S. DOT Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance with such regulations to the extent required by the regulations. The Contractor also agrees to ensure that all work performed under this Agreement, including work performed by a subcontractor, is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

22. BONDING REQUIREMENTS

****** *This provision applies to Agreements for construction or facility improvements. For those Agreements or Subcontracts exceeding \$100,000, however, USDOT may accept the bonding policy and requirements of the TJPA, provided that the TJPA's bonding policy and requirements meet the minimum requirements as follows:*

- (a). *A bid guarantee from each bidder equivalent to 5 percent of the bid price. The "bid guarantees" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.*
- (b). *A performance bond on the part of the Contractor for 100 percent of the Agreement price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the Contractor's obligations under such contract.*
- (c). *A cash deposit, certified check or other negotiable instrument may be accepted by the TJPA in lieu of performance and payment bonds, provided the TJPA has established a procedure to assure that the interest of USDOT is adequately protected. An irrevocable letter of credit would also satisfy the requirement for a bond.*

TJPA requirements regarding payment bonds are more stringent than USDOT amounts stated below. The TJPA requires a payment bond on the part of the Contractor for 100 percent of the Agreement price.

(1). Bid Bond Requirements (Construction)

- (a). **Bid Security**
A Bid Bond must be issued by a fully qualified surety company acceptable to TJPA and listed as a company currently authorized under 31 CFR Part 223 as possessing a Certificate of Authority.
- (b). **Rights Reserved**
In submitting a bid, it is understood and agreed by bidder that the right is reserved by TJPA to reject any and all bids, or part of any bid, and it is agreed that a bid may not be withdrawn for a period of ninety (90) days subsequent to the opening of bids, without the written consent of the TJPA.

It is also understood and agreed that if a bidder should withdraw any part or all of its bid within ninety (90) days after the bid opening without the written consent of the TJPA, shall refuse or be unable to enter into this Agreement, or refuse or be unable to furnish adequate and acceptable Performance Bonds and Labor and Material Payments Bonds, or refuse or be unable to furnish adequate and acceptable insurance, it shall forfeit its bid security to the extent of TJPA's damages occasioned by such withdrawal, or refusal, or inability to enter into an agreement, or provide adequate security therefor.

It is further understood and agreed that to the extent the defaulting bidder's Bid Bond, Certified Check, Cashier's Check, Treasurer's Check, and/or Official Bank Check (excluding any income generated thereby which has been retained by the TJPA) shall prove inadequate to fully recompense the TJPA for the damages occasioned by default, then a bidder agrees to indemnify the TJPA and pay over to the TJPA the difference between the bid security and the TJPA's total damages, so as to make the TJPA whole.

A bidder understands that any material alteration of any of the above or any of the material contained on this form, other than that requested, will render the bid unresponsive.

(2). **Performance and Payment Bonding Requirements (Construction)**

The Contractor shall be required to obtain performance and payment bonds as follows:

- (a). **Performance Bonds**
 - 1. The penal amount of performance bonds shall be 100 percent of the original Agreement price, unless the TJPA determines that a lesser amount would be adequate for the protection of the TJPA.
 - 2. The TJPA may require additional performance bond protection when an Agreement price is increased. The increase in protection shall generally equal 100 percent of the increase in Agreement price. The TJPA may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.
- (b). **Payment Bonds**
 - 1. The penal amount of the payment bonds shall equal:
 - (i) 50 percent of the Agreement price if the Agreement price is not more than \$1 Million;
 - (ii) 40 percent of the Agreement price if the Agreement price is more than \$1 Million but not more than \$5 Million; or
 - (iii) \$2.5 Million if the Agreement price is more than \$5 Million.
 - 2. If the original Agreement price is \$5 Million or less, the TJPA may require additional protection, as required by subparagraph 1, if the Agreement price is increased.

(3). **Performance and Payment Bonding Requirements (Non-Construction)**

The Contractor also may be required to obtain performance and payment bonds when necessary to protect the TJPA's interest.

- (a). The following situations may warrant a performance bond:
 - 1. TJPA property or funds are to be provided to the Contractor for use in performing the Agreement or as partial compensation (as in retention of salvaged material).
 - 2. A Contractor sells assets to or merges with another concern, and the TJPA, after recognizing the latter concern as the successor in interest, desires assurance that it is financially capable.
 - 3. Substantial progress payments are made before delivery of end items starts.
 - 4. Agreements are for dismantling, demolition, or removal of improvements.
- (b). When it is determined that a performance bond is required, the Contractor shall be required to obtain performance bonds as follows:
 - 1. The penal amount of performance bonds shall be 100 percent of the original Agreement price, unless the TJPA determines that a lesser amount would be adequate for the protection of the TJPA.
 - 2. The TJPA may require additional performance bond protection when an Agreement price is increased. The increase in protection shall generally equal 100 percent of the increase in Agreement price. The TJPA may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.
- (c). A payment bond is required only when a performance bond is required, and if the use of payment bond is in the TJPA's interest.
- (d). When it is determined that a payment bond is required, the Contractor shall be required to obtain payment bonds as follows:
 - 1. The penal amount of payment bonds shall equal:
 - (i) 50 percent of the Agreement price if the Agreement price is not more than \$1 Million;
 - (ii) 40 percent of the Agreement price if the Agreement price is more than \$1 Million but not more than \$5 Million; or
 - (iii) \$2.5 Million if the Agreement price is increased.
- (4). **Advance Payment Bonding Requirements**

The Contractor may be required to obtain an advance payment bond if the Agreement contains an advance payment provision and a performance bond is not furnished. The TJPA shall determine the amount of the advance payment bond necessary to protect the TJPA.
- (5). **Patent Infringement Bonding Requirements (Patent Indemnity)**

The Contractor may be required to obtain a patent indemnity bond if a performance bond is not furnished and the financial responsibility of the Contractor is unknown or doubtful. The TJPA shall determine the amount of the patent indemnity to protect the TJPA.
- (6). **Warranty of the Work and Maintenance Bonds**
 - (a). The Contractor warrants to the TJPA, the architect and/or engineer that all materials and equipment furnished under this Agreement will be of highest quality and new unless otherwise specified by the TJPA, free from faults and defects and in conformance with the Agreement documents. All work not so conforming to these standards shall be considered defective. If required by the Executive Director, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.
 - (b). The work furnished under the Agreement must be of first quality and the workmanship must be the best obtainable in the various trades. The work must be of safe, substantial and durable construction in all respects. The Contractor hereby guarantees the work

against defective materials or faulty workmanship for a minimum period of one (1) year after Final Payment by the TJPA and shall replace or repair any defective materials or equipment or faulty workmanship during the period of the guarantee at no cost to the TJPA. As additional security for these guarantees, the Contractor shall, prior to the release of final payment, furnish separate Maintenance (or Guarantee) Bonds in form acceptable to the TJPA written by the same corporate surety that provides the Performance Bond and Labor and Material Payment Bond for this Agreement. These bonds shall secure the Contractor's obligation to replace or repair defective materials and faulty workmanship for a minimum period of one (1) year after final payment and shall be written in an amount equal to 100 percent of the Agreement sum, as adjusted (if at all).

23. DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS

****** *This requirement applies to any Agreement for construction greater than \$2,000. "Construction," for purposes of this requirement, includes "actual construction, alteration and/or repair, including painting and decorating." (29 CFR Section 5.5[a]).*

(a). Minimum Wages

- (1). All laborers and mechanics employed or working upon the site of the work that is the subject of this Agreement (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the Project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act [29 CFR Part 3]), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein, provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

- (2). (A). The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the Agreement shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:
- (i). Except with respect to helpers as defined as 29 CFR Section 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and

- (ii). The classification is utilized in the area by the construction industry; and
- (iii). The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
- (iv). With respect to helpers as defined in 29 CFR Section 5.2(n)(4), such a classification prevails in the area in which the work is performed.

(B). If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within thirty (30) days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C). In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within thirty (30) days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D). The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this Agreement from the first day on which work is performed in the classification.

- (3). Whenever the minimum wage rate prescribed in the Agreement for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
- (4). If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.
- (5). (A). The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the Agreement shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:
 - (i). The work to be performed by the classification requested is not performed by a classification in the wage determination; and
 - (ii). The classification is utilized in the area by the construction industry; and
 - (iii). The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B). If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within thirty (30) days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C). In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with thirty (30) days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D). The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this Agreement from the first day on which work is performed in the classification.

(b). **Withholding** - The TJPA shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this Agreement or any other Federal contract with the same Contractor, or any other federally assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the Agreement. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the Agreement, the TJPA may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(c). **Payrolls and Basic Records**

(1). Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three (3) years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR Section 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to

the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

- (2). (A). The Contractor shall submit weekly for each week in which any Agreement work is performed a copy of all payrolls to the TJPA for transmission to the USDOT. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under Section 5.5(a)(3)(i) of Regulations, 29 CFR Part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The Contractor is responsible for the submission of copies of payrolls by all subcontractors.
- (B). Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the Agreement and shall certify the following:
- (i). That the payroll for the payroll period contains the information required to be maintained under Section 5.5(a)(3)(i) of Regulations, 29 CFR Part 5 and that such information is correct and complete;
 - (ii). That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the Agreement during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR Part 3;
 - (iii). That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the Agreement.
- (C). The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.
- (D). The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.
- (3). The Contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the USDOT or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR Section 5.12.

(d). **Apprentices and Trainees**

- (1). Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first ninety (90) days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- (2). Trainees - Except as provided in 29 CFR Section 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and

Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- (3). Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.
- (e). **Compliance with Copeland Act Requirements** - The Contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this Agreement.
- (f). **Subcontracts** - The Contractor or subcontractor shall insert in any Subcontracts the clauses contained in 29 CFR Section 5.5(a)(1) through (10) and such other clauses as the USDOT may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier Subcontracts. The Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR Section 5.5.
- (g). **Agreement Termination: Debarment** - A breach of the contract clauses in 29 CFR Section 5.5 may be grounds for termination of the Agreement, and for debarment as a contractor and a subcontractor as provided in 29 CFR Section 5.12.
- (h). **Compliance with Davis-Bacon and Related Act Requirements** - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this Agreement.
- (i). **Disputes Concerning Labor Standards** - Disputes arising out of the labor standards provisions of this Agreement shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.
- (j). **Certification of Eligibility**
 - (1). By entering into this Agreement, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR Section 5.12(a)(1).
 - (2). No part of this Agreement shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR Section 5.12(a)(1).
 - (3). The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. Section 1001.

FLY AMERICA CERTIFICATION

49 U.S.C. Section 40118
41 CFR Part 301-10

Certificate of Compliance

The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 C.F.R. Part 301-10.

Date _____

Signature _____

Company Name _____

Title _____

Certificate of Non-Compliance

***If a foreign air carrier was used, the certification shall adequately explain why services by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier.*

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 C.F.R. Part 301-10.

Date _____

Signature _____

Company Name _____

Title _____

Explanation: _____

BUY AMERICA CERTIFICATION

FTA Certification requirement relating to procurement of steel, iron, or manufactured products.

Certificate of Compliance

The Contractor hereby certifies that it will comply with the requirements of 49 U.S.C. § 5323(j)(1), the applicable regulations in 49 C.F.R. Part 661.

Date _____

Contractor Name _____

Authorized Representative Name _____

Signature _____

Title _____

OR

Certificate of Non-Compliance

The Contractor hereby certifies that it cannot comply with the requirements of 49 U.S.C. § 5323(j)(1), but it may qualify for an exception to the requirement pursuant to 49 U.S.C. § 5323(j)(2), as amended, and the applicable regulations in 49 C.F.R. 661.7.

Date _____

Contractor Name _____

Authorized Representative Name _____

Signature _____

Title _____

FRA Certification requirement relating to procurement of steel, iron, or manufactured products.

Certificate of Compliance

The Contractor hereby certifies that it will comply with the FRA Buy America requirements of 49 U.S.C. Section 24405(a)(1).

Date _____

Contractor Name _____

Authorized Representative Name _____

Signature _____

Title _____

OR

Certificate of Non-Compliance

The Contractor hereby certifies that it cannot comply with the requirements of 49 U.S.C. Section 24405(a)(1), but it may qualify for an exception to the requirement pursuant to 49 U.S.C. Section 24405(a)(2).

Date _____

Contractor Name _____

Authorized Representative Name _____

Signature _____

Title _____

NEW RESTRICTIONS ON LOBBYING CERTIFICATION

The Contractor certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The Contractor shall require that the language of this certification be included in all Subcontracts, and that all subcontractors shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. Section 1352 (as amended by the Lobbying Disclosure Act of 1995) and U.S. DOT regulations, "New Restrictions on Lobbying," specifically 49 CFR 20.110. Pursuant to 31 U.S.C. 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Contractor certifies and affirms the truthfulness and accuracy of each statement of this certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Section 3801 *et seq.*, apply to this certification and disclosure, if any.

Date _____

Contractor Name _____

Authorized Representative Name _____

Signature _____

Title _____

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER
RESPONSIBILITY MATTERS**

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

- (1) The prospective participant certifies to the best of its knowledge and belief that it and its principals:
 - a. Are not presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
 - b. Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1) b. of this certification; and
 - d. Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default.
- (2) The prospective proposer also certifies that if, later it becomes aware of any information contradicting the statements of paragraphs (a) through (d) above, it will promptly provide that information to the TJPA.
- (3) Where the prospective proposer is unable to certify to any of the statements in this certification, such prospective primary participant shall attach and provide a written explanation to the TJPA.

The certification in this clause is a material representation of fact relied upon by the TJPA. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the TJPA, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of federal suspension and debarment laws, including 2 CFR part 1200, and the provisions of U.S. Office of Management and Budget Appendix A "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 CFR part 180 while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Bidder/Offeror Name: _____

Authorized Representative Name: _____

Authorized Representative Title: _____

Authorized Representative Signature: _____

Date: _____

EXHIBIT Q
CARD CHECK POLICY

[see attached]

TRANSBAY JOINT POWERS AUTHORITY

Board Policy No. 011

Category: Workplace Matters

LABOR REPRESENTATION POLICY

I. DEFINITIONS. FOR PURPOSES OF THIS POLICY, THE FOLLOWING DEFINITIONS SHALL APPLY

A. "Card check agreement" means a written agreement between an employer and a labor organization providing a procedure for determining employee preference on the subject of whether to be represented by a labor organization for collective bargaining, and if so, by which labor organization to be represented, which provides, at a minimum, the following:

1. Determining employee preference regarding union representation shall be by a card check procedure conducted by a neutral third party in lieu of a formal election;

2. All disputes over interpretation or application of the parties' card check agreement, and over issues regarding how to carry out the card check process or specific card check procedures shall be submitted to binding arbitration;

3. Forbearance by any labor organization from economic action against the employer at the worksite of an organizing drive covered by this Policy, and in relation to an organizing campaign only (not to the terms of a collective bargaining agreement), so long as the employer complies with the terms of the card check agreement;

4. Language and procedures prohibiting the labor organization or the employer from coercing or intimidating employees, explicitly or implicitly, in selecting or not selecting a bargaining representative.

B. "Contract" means a lease, management agreement, service agreement, loan, bond, guarantee, or other similar agreement in which one party is anyone operating a hotel or restaurant project.

C. "Collective bargaining agreement" means an agreement between an employer and a labor organization regarding wages, hours and other terms and conditions of employment of the employer's employees. For purposes of this Policy, a collective bargaining agreement does not include a card check agreement as defined herein.

D. "Developer" means any person, corporation, association, general or limited partnership, limited liability company, joint venture or other entity which does or which proposes to purchase, lease, develop, build, remodel or otherwise establish a hotel or restaurant project.

E. "Economic action" means concerted action initiated or conducted by a labor union and/or employees acting in concert therewith, to bring economic pressure to bear against an employer, as part of a campaign to organize employees or prospective employees of that employer, including such activities as striking, picketing, or boycotting.

F. "Employer" means any developer, manager/operator or subcontractor who employs individuals in a hotel or restaurant in a hotel or restaurant project.

G. "Hotel or restaurant project" means a development project or facility within the Transbay Transit Center or Transit Tower which contains a hotel or restaurant. For purposes herein a "hotel" shall mean any use or facility falling within either definition of Section 314.1(g) or (h) of the San Francisco Planning Code. For purposes herein a "restaurant" shall mean any facility that has as its principal purpose the sale of food and beverage for primarily on-site consumption, including any such facility operating within or as part of another facility, such as a hotel or retail store.

H. "Labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

I. "Manager/operator" means any person, corporation, association, limited or general partnership, joint venture or other entity (including a developer) that operates or manages a hotel or restaurant in a hotel or restaurant project, or provides any material portion of the services provided by such hotel or restaurant in a hotel or restaurant project.

J. "Subcontract" means any lease, sublease, management agreement or other similar agreement between a developer or a manager/operator and a subcontractor which contemplates or permits the subcontractor to operate or manage all or a portion of a hotel or restaurant in a hotel or restaurant project.

K. "Subcontractor" means any person, corporation, association, limited or general partnership, limited liability company, joint venture or other entity that enters into a subcontract with a developer or manager/operator.

II. POLICY, REQUIREMENTS AND PROCEDURES TO MINIMIZE LABOR/MANAGEMENT CONFLICT

A. General Policy. The Board of Directors declares as a matter of general policy that employers operating a hotel or restaurant in a hotel or restaurant project within the Transbay Transit Center or Transit Tower shall agree to abide by the procedures of a card check agreement for determining employee preference on the subject of labor union representation, as specified in this Policy.

B. Pursuant to this Policy, the following requirements are imposed, except that no Employer, Developer or Manager/Operator, however, shall be responsible for obligations under this Policy if that person or entity is otherwise exempt from those obligations as described below.

1. Employers. An employer of employees working in a hotel or restaurant in a hotel or restaurant project within the Transbay Transit Center or Transit Tower shall:

a. Enter into a card check agreement with a labor organization which requests such an agreement for the purpose of seeking to represent those employees before executing the subcontract or contract pursuant to which it will operate a hotel or restaurant in a hotel or restaurant project;

b. If the parties are unable to agree to the terms of a card check agreement within 60 days of the commencement of such negotiations, they must enter into expedited binding arbitration in which the terms of a card check agreement will be imposed by an arbitrator. In such proceedings, to be conducted by an experienced labor arbitrator selected as provided by the rules of the American Arbitration Association or equivalent organization, the arbitrator shall consider any model card check agreement provided by the TJPA and/or prevailing practices and the terms of card check agreements in the same or similar industries, except that such card check agreement must include the mandatory terms identified in this Policy;

c. Comply with the terms of that card check agreement and this Policy;

d. Include in any subcontract (with a subcontractor) which contemplates or permits a Subcontractor to operate or manage a hotel or restaurant in a Hotel or Restaurant Project within the Transbay Transit Center or Transit Tower or to provide a service essential to the operation of such a hotel or restaurant, a provision requiring that subcontractor to comply with this Policy. This provision shall be a material and mandatory term of such subcontract, binding on all successors and assigns, and shall state (modified as necessary to accommodate particular circumstances):

"The Transbay Joint Powers Authority has a Policy which may apply to [Subcontractor]. Its terms are expressly incorporated by reference hereto. To the extent [Subcontractor] or its successors or assigns employs employees in a hotel or restaurant in [this facility] within the scope of that Policy, [Subcontractor] hereby agrees as a material condition of this [Subcontract] to enter into and abide by a card check agreement with a Labor Organization or Organizations seeking to represent [Subcontractor's] employees, if and as required by that Policy. [Subcontractor] recognizes that, as required by that Policy, it must enter into a card check agreement with a Labor Organization(s) as specified by that Policy before executing this [Subcontract], and that being party to such a card check agreement(s) is a condition precedent of rights or obligations under this [Subcontract]."

Notwithstanding the requirements provided in (a) - (d), any employer who has in good faith fully complied with those requirements will be excused from further compliance as to a labor organization which has taken economic action against that employer at that site in furtherance of a campaign to organize that employer's employees at that site for collective bargaining. This clause shall not be interpreted, however, to apply to economic action against an employer at other locations where that employer does business, or at any location for purposes other than organizing the employer's employees; nor shall economic action by one labor

organization excuse an employer from the obligations of this Policy or a card check agreement as to a different labor organization.

2. Developers and Manager/Operators. Any developer or manager/operator of a hotel or restaurant project must:

a. To the extent it employs employees in a hotel or restaurant in a hotel or restaurant project, abide by the requirements stated in Subsection (1);

b. Include the provision specified in (1)(d) in any subcontract, modified as necessary to accommodate the circumstances of that particular subcontract;

c. Refrain from executing a subcontract by which an employer subject to (1) is authorized or permitted to operate a hotel or restaurant in a hotel or restaurant project until that employer has entered into a card check agreement with a labor organization, as required in (1);

d. Notify local labor council(s) and/or federation(s) of any hotels(s) or restaurant(s) and/or any employer(s) that will operate a hotel or restaurant in a hotel or restaurant project within the Transbay Transit Center or Transit Tower which may be subject to the requirements of (1), as soon as the developer or manager/operator identifies such hotel(s) or restaurant(s) or employer(s), but in no event later than 21 days before requiring an employer to sign a subcontract. This notification requirement applies only to hotels or restaurants or employers that will operate in a Hotel or Restaurant Project.

e. Inform any prospective subcontractor, that if the subcontractor acts as an employer subject to the requirements of (1), it must enter into a card check agreement pursuant to this Policy before it may execute the subcontract, and as a condition precedent to any rights or obligations under such document;

f. Take reasonable steps to enforce the terms of any subcontract requiring compliance with this Policy.

3. The TJPA.

a. TJPA Contracts. This Policy shall be included and incorporated in any contract entered into by the TJPA which contemplates the use or operation of a hotel or restaurant in a hotel or restaurant project within the Transbay Transit Center or Transit Tower. Such contract shall state that any developer or operator/manager of a hotel or restaurant project within the Transbay Transit Center or Transit Tower, and any employer(s) operating in such hotel or restaurant project, agree to comply with this Policy as essential consideration for the TJPA entering into the contract, and that failure to comply with this policy shall constitute a material breach of the contract.

b. Executive Director Authority to Issue Implementation Guidelines. To facilitate the requirements imposed by this Section, the TJPA may provide a model recommended card check agreement that includes the mandatory terms identified in this Policy and which provides the maximum protection against labor/management conflict arising out of an

organizing drive, and make such model recommended agreement available to parties required to enter into such agreement. The TJPA's Executive Director, or designee, may also prepare guidelines establishing standards and procedures related to this Policy.

III. SCOPE AND EXEMPTIONS

A. Scope. This Policy is not intended to favor any particular outcome in the determination of employer preference regarding union representation, nor to skew the procedures in such a determination to favor or hinder any party to such a determination. Likewise, this Policy is not intended to enact or express any generally applicable policy regarding labor/management relations, or to regulate those relations in any way. The requirements of this Policy apply only to the procedures for determining employee preference regarding whether to be represented by a labor organization for purposes of collective bargaining and/or by which labor organization to be represented. Accordingly, this Policy does not apply to the process of collective bargaining in the event a labor organization has been recognized as the bargaining representative for employees of employers subject to this Policy. Moreover, nothing in the Policy requires an employer or other entity subject to this Policy to recognize a particular labor organization; nor does any provision of this Policy require that a collective bargaining agreement be entered into with any labor organization, or that an employer submit to arbitration regarding the terms of a collective bargaining agreement.

B. Exemptions. The requirements of this Policy shall not apply to:

1. Employers employing fewer than the equivalent of 50 full-time or parttime employees, provided that when a restaurant is located on the same premises as a hotel and routinely provides food or beverage services to the hotel's guests, employees of the restaurant and hotel shall be aggregated for purposes of determining the applicability of this ordinance;

2. Any employer which is signatory to a valid and binding collective bargaining agreement covering the terms and conditions of employment for its employees at that hotel or restaurant project, or which has entered into a card check agreement with a labor organization regarding such employees which agreement provides at least equal protection, as determined by the Executive Director of the TJPA, from labor/management conflict as provided by this Policy;

3. Any hotel or restaurant project where the developer, manager/operator or employer, is an agency of the federal government or a statewide agency or entity ("public agency") and that public agency would prohibit application of this Policy; or

4. Any hotel or restaurant project where the requirements of this Policy would violate or be inconsistent with the terms or conditions of a grant, subvention or agreement with a public agency related to such hotel or restaurant project, or any related rules or regulations.

**STAFF REPORT FOR CALENDAR ITEM NO.: 9
FOR THE MEETING OF: February 11, 2016**

TRANSBAY JOINT POWERS AUTHORITY

BRIEF DESCRIPTION:

Recommendation to finalize and issue the Master Lessee Request for Proposals (RFP) to procure an entity or team to operate and manage Phase 1 of the Transbay Program under a long-term master lease structure. A peer review panel was convened to review the recommended master lease structure and RFP procurement process prior to its release in February; a summary of the peer review, affirming the recommendation, is enclosed.

REPORT:

The Transbay Program presents a unique opportunity to program and manage one of the leading multi-modal transit facilities in the nation. Given the potential of this opportunity, staff determined that the process to evaluate options for operating the facility and its retail program would benefit from a strategic advisor with significant depth of experience with facilities comparable to the Transit Center. In June 2015, HR&A Advisors, Inc. (HR&A), was engaged on the basis of, among other things, its expertise in structuring public-private agreements for complex mixed-use urban development projects, specifically the Fulton Center in Lower Manhattan, described at the end of this report.

HR&A's work for the TJPA involves:

- Identifying project goals and objectives as a prerequisite for an appropriate deal structure and a successful RFP process
- Conducting Bay Area market research to assess the economic viability of the proposed deal structure, including outreach to the market
- Defining Transit Center operating costs and revenue sources to identify potential tradeoffs associated with the goals and objectives and help determine if the proposed public-private partnership framework is likely to result in a mutually beneficial agreement
- Leading development of the RFP document and the assessment of respondent teams

HR&A, working closely with staff; the Pelli Clarke Pelli Architects (PCPA) design team; Sensory Interactive, a digital media platform design and consulting firm; and legal counsel specializing in commercial leasing from Sheppard Mullin, built on the work done during the previous Request for Qualifications (RFQ) stage to refine and clarify the master lessee's scope of work and the retail opportunity, and propose an appropriate partnership structure.

Rationale for the Procurement Process

In 2014, staff began the process of developing a scope of work for an entity to operate and manage the Transit Center upon opening. At that time, it was envisioned that the selected entity would oversee operations and maintenance, security, retail tenants, and event programming

under a master lease. Procurement was planned as a two-step process. The first step would evaluate the qualifications of interested firms/teams, and the second step would evaluate full proposals from the prequalified firms/teams. The initial work led to development of a Master Retail Lessor/Facilities Operator/Event Programmer RFQ, which was issued in December 2014 and resulted in one response. It was at this time that the TJPA brought HR&A on board.

HR&A's due diligence has clarified the recommended deal structure, which HR&A anticipates will be responsive to market expectations, improving prospects for a successful response. HR&A has engaged with 40+ potential respondents, evaluated revenues against operating costs and capital requirements, and completed case studies to understand how an agreement should be structured to make operation of the Transit Center an attractive opportunity for private-sector entities.

Rationale for a Master Lease

HR&A evaluated four deal structure options in terms of their strengths/weaknesses and ability to meet project goals for the management of the Transit Center, ranging from a direct management structure, in which public oversight, control, and resources are maximized, to disposition, in which commercial facilities are sold to a private sector entity, minimizing public control. The four structures are:

- **Direct management:** A public owner also acts as the operator, overseeing all building operations, management, and maintenance (both ongoing and capital improvements and expenses). The public owner also takes on the direct responsibility for the leasing and management of retail spaces.
- **Asset management:** A public owner hires a private sector entity to execute building maintenance and operations work, as well as lease and manage retail spaces and run programming throughout the facility, for a fee set within their contract. This structure may not incentivize the private sector to take risks and reap rewards from innovative, creative programming. This may require multiple contracts with individual firms to provide these services.
- **Master lease:** A public owner provides a long-term leasehold of the full facility to a private sector entity charged with performing most, if not all, operations and maintenance work and responsible for some costs associated with operations and maintenance and capital improvements. The private sector entity is also responsible for programming and revenue creation/collection, for the master leased areas.
- **Disposition:** A public owner sells all or some portion of the facility's commercial space to a private sector entity, who then has most, if not all, control over operations and management, including maintenance obligations, capital replacements, and is entitled to all revenues created.

The following table summarizes the strengths and weaknesses of each of the four options:

Strengths	Weaknesses
Direct Management	
<ul style="list-style-type: none"> ▪ Public retains all revenue streams ▪ Direct public control and oversight 	<ul style="list-style-type: none"> ▪ Public assumes all financial costs and risks from O&M and capital expenses ▪ Requires significant in-house staff with leasing and management expertise
Asset Management	
<ul style="list-style-type: none"> ▪ Public retains all revenue streams ▪ High degree of public control and oversight ▪ Leverages private expertise and efficiencies in leasing and management 	<ul style="list-style-type: none"> ▪ Public assumes all financial costs and risks from O&M; private partner is paid through management fee and assumes no risk ▪ Requires in-house expertise to oversee and hold private partner accountable to performance standards ▪ May require coordination of multiple contracts to procure all services necessary to operate the facility
Master Lease	
<ul style="list-style-type: none"> ▪ Transfers some O&M financial risks to private sector ▪ Significantly reduces public role in O&M services ▪ Leverages private expertise and efficiencies in leasing, management, and development ▪ Attracts private funding to fund fit-outs and capital improvements 	<ul style="list-style-type: none"> ▪ Transfers some, but not all, O&M financial risk to private sector
Disposition	
<ul style="list-style-type: none"> ▪ Transfers all O&M financial risks to private sector ▪ Eliminates public role in O&M ▪ Leverages private expertise and efficiencies in leasing, management, and development ▪ Potential to attract significant private funding to recoup public capital costs 	<ul style="list-style-type: none"> ▪ Limited market potential given imbalance of costs and revenues ▪ Substantially eliminates public control and oversight ▪ Only the areas that can produce revenue would be attractive to the private sector, likely limited to the Transit Center’s retail areas

HR&A also looked at local projects involving retail to evaluate whether their management structures would provide good precedent for the Transit Center. Two examples are the Ferry Building in San Francisco and San Francisco International Airport, both transportation facilities with strong retail programs.

Ferry Building, San Francisco [Master Lease]. Equity Office Properties (Equity) has a 66-year master lease agreement with the Port of San Francisco for the Ferry Building. Equity paid for the capital cost to renovate the Ferry Building, and leases retail and commercial spaces within the Ferry Building to a variety of retail and office tenants who pay rent and common area maintenance charges. Equity manages the space and provides operations and maintenance services. Equity pays rent to the Port of San Francisco.

The Ferry Building serves as a strong precedent for a visionary retail program. The Ferry Building's diverse mix of tenants draws both members of the local community and visitors and ensures that the facility is active throughout the day. The inclusion of a significant share of local tenants supports local businesses and gained valuable community support. The Ferry Building provides a useful precedent for a Transit Center master lessee in conceiving of a creative retail program reflective of local character.

Equity is able to deliver a retail program filled with local businesses because it improved the value of the upper floor office space. The Ferry Building includes 175,000 square feet of office space above the 65,000 square foot retail market. During the initial years of operation after the facility opened in 2003, the valuable office space cross-subsidized retail rents. Although retail rents have risen, the valuable office space continues to provide a significant revenue stream to Equity. In contrast, the Transit Center does not have the opportunity to cross-subsidize retail rents with office rents.

While at the Transit Center the master lessee would be responsible for all operations and maintenance associated with the building and programming, including transit space and commercial space, the physical separation of ferry operations from the Ferry Building alters this dynamic for Equity. The Port is responsible for operations and maintenance of the portion of the Ferry Building related to ferry operations and outdoor areas associated with the ferries, including waiting areas and docks outside the Ferry Building. Equity is responsible for operations and maintenance of the commercial spaces within the building and outdoor dining areas associated with their retailers.

San Francisco International Airport [Direct Management]. SFO directly manages retail leasing and facility management, while separately contracting advertising sales. Security at SFO is provided by the Transportation Security Administration (TSA); however, SFO also directly funds San Francisco Police Department forces at the airport. While SFO previously contracted leasing and management of retail spaces to major national concessionaires, a desire to improve the quality of the airport's retail offerings, particularly the food and beverage options, led SFO to begin to move to a direct management model. Under this model, a team of approximately 19 SFO property management staff oversee:

- A leasing program for retail space in which each space is filled through a competitive RFP process, marketed directly to retailers

- A robust marketing and outreach program to locally owned businesses, which benefits the airport's and the City's brand
- A comprehensive operations and maintenance program for the airport, managed by internal staff with a share of costs passed on to all tenants for garbage removal and to food court tenants for upkeep of common food court spaces
- A contract with ClearChannel for the sale of advertising space throughout the facility

SFO benefits from multiple revenue streams to fund operations and maintenance besides retail and advertising. At SFO, retail and advertising constitute 18% of total revenues. Other revenue streams include parking, payments from airlines, passenger ticket taxes, and other miscellaneous sources. The Transit Center, however, will not have access to similar revenue streams, and does not maintain a large property management team.

In addition, HR&A evaluated models at the following transit stations:

- 30th Street Station, Philadelphia, PA*
- Port Authority Bus Terminal, New York, NY*
- Grand Central Terminal, New York, NY*
- Union Depot, St. Paul, MN*
- Ogilvie Transportation Center, Chicago, IL*
- Union Station, Washington, DC*
- Union Station, Denver, CO*
- Fulton Center, New York, NY*
- South Station, Boston, MA
- World Trade Center Transit Hub, New York, NY
- Kings Cross, London*
- St. Pancras, London*
- Union Station, Toronto

Based on the analysis described above, including evaluation of deal structures' strengths and weaknesses and local and national precedents, and in alignment with TJPA's goals, HR&A recommended the master lease structure for the Transit Center. A master lease structure allows the TJPA to:

- Remain a lean organization, as is their current operating model, without adding significant staff capacity (as would be required for the direct management model)
- Transfer some operations and maintenance risk, and responsibility for providing capital for retail fit-out, to the private sector (which would not be possible under direct or asset management models)

* HR&A spoke with representatives of the owner of the facility, the master lessee of the facility, or another party familiar with its operation.

- Retain ownership of the full Transit Center and control over major decisions about the facility's future plans (as opposed to the disposition model)

HR&A has discussed this model with the market through the RFP outreach process, and received positive interest.

Community Meetings and Outreach

The TJPA and the consultant team also met with local community organizations to gain feedback on the proposed master lease structure. Completed and upcoming meetings include:

- TJPA Citizens Advisory Committee (12/8/15)
- Greater Rincon Hill Community Benefit District (CBD) Board (1/11/16)
- South Beach, Rincon Hill, Mission Bay Neighborhood Association (1/11/16)
- San Francisco Chamber of Commerce (1/12/16)
- San Francisco Beautiful (1/13/16)
- Millennium Homeowners Association (1/13/16)
- San Francisco Office of Community Investment and Infrastructure's Transbay Citizens Advisory Committee (1/14/16)
- San Francisco Small Business Network (TBD)

Community meetings provided each group with the opportunity to ask specific questions about the proposed deal structure, the RFP process, and future Transit Center operations. Common themes surfacing between groups included local retail, the Rooftop Park, and master lessee performance standards and regulations. Recurring comments are summarized here:

- The Rooftop Park should be actively programmed, but events should be sensitive to the surrounding context, both in terms of number and type.
- The governance structure, and structure for day-to-day operations of the Rooftop Park, should be clear.
- The Transit Center's retail program should be responsive to local community needs, while reflecting a creative mix of retailers.
- The retail program should also emphasize inclusion of locally owned retailers, and this should be expressed in the RFP and evaluation criteria.
- The master lessee should be held to a high standard of operations, in line with TJPA and the community's vision for the Transit Center.

RFP Structure

The RFP document and process have been shaped to include:

- A comprehensive description of the facility as it relates to master lessee programming, fit out, and operation of the space. including descriptions of the condition of spaces at delivery and the required level of tenant improvements as well as a complete set of clear illustrative figures consisting of plans that indicate leasable area, types of retail spaces,

available utilities, and the promotional platform (naming and signage rights, static and digital general advertising, event programming, mobile digital applications, and website)

- A description of scope including the opportunities for revenue generation from retail, the promotional platform, and other events, as well as responsibilities of the master lessee related to programming the facility and facility-wide operations and maintenance
- A description of the required components of an economic proposal to the TJPA
- A description of the available public funding sources flowing to the TJPA that will enable the TJPA to share operating costs with the master lessee

The RFP also lays out four goals for a future master lessee, which will guide the TJPA's evaluation of responses. These include:

- Operation of a clean, safe, and well maintained Transit Center, befitting a world-class transit destination
- Delivery of a visionary program that reflects local character and context
- Creation of a high-quality user experience
- Maximization of the economic value of the Transit Center

Master Lessee Scope of Services

The proposed scope of work for the master lessee includes operating and maintaining the Transit Center's commercial space, promotional platform, and common areas. As described below, it is recommended that security management and oversight be procured separately.

The master lessee will generate three main streams of revenue:

- **Retail/commercial space:** In Phase 1, the master lessee will be able to lease, manage, and collect revenue from the 103,300 square feet of leasable commercial space within the Transit Center. The Transit Center's retail space is located throughout the ground floor, second floor, and Rooftop Park and is intended to serve passengers, local residents and employees, as well as visitors. The master lessee will be encouraged to develop a visionary retail program which includes a variety of types of tenants including local businesses. HR&A anticipates that at full occupancy retail rents could reach up to \$95 per square foot (average across all retail spaces), generating approximately \$10M in gross annual revenue to the master lessee.
- **Promotional platform:** The high volume of foot traffic throughout the facility, and the opportunity to coordinate promotional content across the facility, will result in strong advertising sales and naming rights potential. The master lessee will have the opportunity to create a cohesive promotional platform to be deployed across a variety of assets throughout the Transit Center. The promotional platform will enable the master lessee to integrate media assets through a single content management system and provide naming sponsors and advertisers with an exclusive presence throughout the facility. The promotional platform can also enable experiential brand activation through events, interactive devices, mobile tools, and web tools. Sensory Interactive anticipates that the promotional platform (advertising, events, mobile, and other methods) could yield significant gross annual revenue to the master lessee comparable to the retail rents.

- **Other events:** In addition to events held as part of the promotional platform (including promotional and marketing events), the master lessee may also hold private events, ticketed events available to the public, and free public events. Events will support creation of an identity for the Transit Center by bringing foot traffic, enhancing the facility's or naming sponsor's brand, bolstering destination appeal. Events held on the Rooftop Park should activate the space and align with the park's role as a central open space for the San Francisco community. It should be noted that the RFP emphasizes public events and those that do not completely shut the park to public use. Revenues from events could vary widely due to a number of factors. Specifically, a scheduling protocol approved by the TJPA must be defined through the negotiation process.

The master lessee will also be responsible for:

- **Facility-wide maintenance:** Coordinate and oversee a maintenance program for all spaces associated with Phase 1 of the Transit Center.
- **Stakeholder coordination:** Coordinate with other stakeholders within the Transit Center, such as transit operators, as well as the Greater Rincon Hill CBD Owners' Non-Profit Association Board of Directors, specifically for the operation of the Rooftop Park, and owners of neighboring properties connected by pedestrian bridges and a gondola, for purposes of safety, access, and bridge and gondola maintenance.
- **Security cooperation and coordination:** Participate in safety and security management programs in cooperation and coordination with the TJPA's security team.

Other RFP Elements

The four sections that follow address specific questions asked by the TJPA Board of Directors with regard to the master lease deal structure and Master Lessee RFP, including the level of flexibility provided by the RFP, the decision to separate security services from the master lessee's scope, the retail concept envisioned for the master lessee, and the potential to activate the lower levels of the Transit Center during Phase 1 operations.

Flexibility within the RFP

The RFP encourages creative proposals and allows respondents flexibility for the retail program and deal terms, while providing clear guidance on the scope of services that the future master lessee must fulfill.

The RFP does not prescribe specific retail tenant types, but rather encourages responses that include creative retail visions within the building envelope. For instance, the future master lessee will be responsible for dividing retail spaces as best suits its tenants' needs, providing them with the flexibility to lease space to small to mid-sized tenants, or leaving spaces open to accommodate larger retailers. The westernmost second floor retail cluster provides an example of a space that could be leased and programmed as a food hall, with small stalls or stands for food production and sale, or entirely leased to a retailer in need of a mid-sized to large space, depending on the master lessee's vision and market demand.

The configuration of the building's retail space has not raised any significant concerns during the initial outreach work. Although it does not require specific types of tenants, the RFP does

encourage inclusion of local retail tenants within the retail program. The RFP is designed to allow respondents to create a retail program that is responsive to market needs and realities.

Additionally, the RFP is written to invite respondents to describe their preferred economic terms in the context of an overall business terms framework. Respondents are asked to propose an economic offer to the TJPA including fixed and participation rent to be paid to the TJPA, an annual operations and maintenance budget, a 5-year capital budget, the share of operations and maintenance and capital replacement costs to be reimbursed by the TJPA, and a management fee to be paid to the master lessee. Respondents also have the flexibility to propose an alternative economic structure. The terms of the economic agreement and structure will be negotiated and finalized between the TJPA and respondents.

At the same time, the RFP provides the necessary clarity to allow respondents to develop proposals efficiently. This includes HR&A's recommendation of a master lease model that excludes security services, management and oversight from the master lessee scope; includes the full advertising and sponsorship scope; and recognizes the need for cost sharing and a management fee, among other deal term clarifications. This deal structure has been developed in coordination with Sheppard Mullin and is aligned with a draft master lease agreement. A draft of this agreement will be provided for respondents' review as part of the RFP.

Rationale for Segregating Security

The Transit Center safety and security program will involve managing physical security equipment (bollards/ barriers), operational security measures (the security/guard staffing), and technology security (access control, video equipment, etc.) consistent with the TJPA's security planning.

It is anticipated that procuring security services separately from the master lessee will enhance the marketability of the master lessee opportunity, and provide TJPA better control and flexibility over security services. HR&A assessed the benefits and challenges of procuring a security contractor separately from the master lessee in coordination with TJPA's security consultants. The analysis of separating these procurements concluded the following:

- Risk will be reduced for the master lessee. Typical entities that may serve as a master lessee for the Transit Center are accustomed to providing security services to commercial shopping centers and retail or commercial spaces within public spaces. If they do operate security services at transportation facilities, they are an accessory to on-site local and state police or the TSA or other federal security presence. A comprehensive security responsibility for the Transit Center, which will include security staff, equipment, and protocols designed for incidents above and beyond those generally required for a commercial facility, and particularly those required for transit security, may deter interest in the master lessee RFP, and could trigger the need for insurance coverage exceeding that typically carried by commercial/retail master lessees.
- The TJPA will have more control and flexibility to ensure performance by the security services provider. With security services under complete control of the TJPA, it will be able to more swiftly adjust levels of service as appropriate. Once the facility opens, security needs may change. Instead of having to revisit the agreement with the master lessee and the master lessee's agreement with its security services provider, the TJPA

will only have to revisit its direct agreement with the security services provider and, if needed, procure additional or different security service providers at its discretion.

- Security costs represent a significant share of the overall cost to operate and maintain the Transit Center. Eliminating those costs will reduce the master lessee's annual expense. While the TJPA could cover/share the costs with the master lessee, that cash flow does not present an attractive return or upside—it simply covers costs.

The Transit Center's security requirements are explained in more detail in the following section.

The consultant team believes that there is one potential challenge to separating security services from the master lessee scope and provides a recommendation for managing the relationship between these parties: The TJPA will establish a security operating protocol between the TJPA and master lessee to address any concerns about potential overlaps or gaps in coverage between the master lessee's routine security (for routine security within commercial spaces) and the security services provider's scope. If the master lessee were to be responsible for all Transit Center security, it could directly ensure that security needs of the spaces important to it would be addressed. If separated, the master lessee would need to coordinate with the TJPA and the TJPA's security firm. We believe this is a manageable challenge and that coordination is feasible through the establishment of an operating protocol.

HR&A's recommendation to segregate security from the scope of the master lease is informed by market feedback and an objective to balance risk and potential returns to draw private sector interest to the master lessee opportunity. The peer review panel concurred that separating the security would be valuable to the TJPA since it would allow more flexibility in responding to safety concerns and holding the security firm accountable for the level of service provided. In addition, a separate contract could be better tailored to the security needs of the Transit Center.

Transit Center Security Requirements

Although the Transit Center will include a strong retail program, it is primarily a transportation facility and, as such, its security needs will differ from those of a shopping mall venue. Shopping malls typically employ hourly security guard services whose main responsibility is to assist patrons in wayfinding, report potential hazardous and physical plant conditions, and maintain general order by addressing mall safety and security rules as appropriate to foster a pleasant retail environment. Security guards also handle "after-the-fact" commonplace events, such as retail shoplifting and minor assaults; they are trained to be prepared to respond to manmade events by calling in local law enforcement after the event occurs.

By contrast, transit facilities in the United States typically rely upon a mix of federal, state, and local law enforcement (multi-jurisdictional) to provide security for transit centers and operations. This is the standard operating procedure for most transit agencies and facilities on the East Coast, Midwest, and in the mid-Atlantic states including the Metropolitan Atlanta Rapid Transit Authority (MARTA); Union Station in Washington, D.C.; Metropolitan Transportation Authority's Penn Station, Grand Central Station, and Fulton Street Station; Port Authority of New York and New Jersey; South Station in Boston; and Chicago Transit Authority. Private security guards are minimal if used at all (e.g., MARTA has two private security guards to handle lost baggage). All security staff provided for these transit agencies and facilities are

sworn officers who carry weapons. For example, MARTA has 372 sworn law enforcement officers who handle all bus, train, and transit centers throughout Atlanta, and, similar to other transit agencies, uses Department of Homeland Security, TSA, and Viper (canine support) teams as well as the National Guard in an elevated threat environment.

Currently, no local, state, or federal law enforcement staff are expected to be dedicated to the Transit Center. However, under the TJPA's recommended security program, security guards would have specialized training, and knowledge and experience with transit operations. Moreover, the TJPA intends to obtain certification under the Department of Homeland Security's Support Anti-terrorism by Fostering Effective Technologies (SAFETY) Act, which requires specialized, knowledgeable and experienced transit operations security services. Specialized training includes:

- Comprehensive Transit Center Concept of Operation protocols
- Incident Command System standards (such as the National Incident Management System)
- Enhanced coordination with local law enforcement and first responders using established procedures
- Participation in tabletop simulation exercises and actual live incident response training exercises
- Cooperative support to emergency responders and master lessee facility management staff in their roles for vertical transportation system management, HVAC system management, smoke and stair pressurization management, securing and/or providing access to critical spaces, and monitoring and controlling other Transit Center systems designed to address events beyond conventional crimes

Neighborhood and Retail Concept

The Transit Center is located within San Francisco's SoMa neighborhood, a dynamic urban downtown district with high density residential and office uses concentrated around the project. Rapid development of this area, fueled by the arrival of major technology industry tenants in search of office space, including Salesforce, Google, and LinkedIn, is shifting the energy of San Francisco's central business district south of Market Street to the Transbay neighborhood. The neighborhood currently includes 18 million square feet of Class A office space and thousands of residential units. Completion of projects currently in the development pipeline within a ¾-mile radius of the Transit Center will add 7 million square feet of office space and over 6,400 residential units, but is anticipated to add only 200,000 square feet of retail space.

The Transit Center is positioned to become a thriving retail center serving a diverse and rapidly growing number of customers including workers, residents, visitors, and transit riders. Within the Transbay neighborhood, a daytime population of 80,000 workers, with 50% employed in the professional services, insurance, finance, and technology industries, brings significant spending potential, especially for convenient shops and restaurants. Also, approximately 9,400 residents currently live within close proximity of the Transit Center and over 6,400 new residential units are under construction or planned within ¾ mile of the Transit Center. The surrounding area is also home to numerous civic and cultural attractions including the Moscone Center, which draws

over one million annual attendees to a diverse calendar of events. In the initial phase of operation, an estimated 37,000 daily bus passengers are anticipated to utilize the Transit Center, growing to approximately 100,000 daily transit riders with the commencement of train operations in Phase 2.

The proposed retail approach incentivizes a master lessee to maximize retail revenue generation over time. The master lease structure enables a private entity with experience in retail development, leasing, and management to create a retail vision reflective of market trends that can be updated and adjusted appropriately. Due to the long-term nature of the master lease, the master lessee will have flexibility to change the program over time based on trends and evolving retail demand as the neighborhood grows. By providing the master lessee with the opportunity to simultaneously manage the promotional platform and production of other events, the master lessee will have the opportunity to create a cohesive retail, sponsorship, and advertising offer at the Transit Center.

The proposed retail approach rewards respondents that propose a creative retail program reflective of local character and context. The draft selection criteria in the RFP allows for more points to be awarded to respondents that propose a retail program that envisions local retail.

The master lease model leverages private sector expertise that can tap into the market potential of not only passengers, but also workers, residents, and visitors in the neighborhood. The success of the Transit Center's retail, events, and promotional program is not dependent on commuters. The Transit Center's location in a growing neighborhood, the proximity of major civic and cultural attractions, and the Rooftop Park at the Transit Center ensures significant foot traffic.

The draft RFP provides the master lessee the first right to negotiate for the up to 60,000 square feet of additional retail space in Phase 2. The arrival of Caltrain and high-speed rail will bring more spending potential from more passengers, more operations and maintenance responsibility, and more retail space. As a result, the master lessee opportunity should become more valuable. The master lease model provides the opportunity for both the TJPA and the master lessee to capture that upside.

Potential Use of Phase 2 Components

The train box includes approximately 595,000 square feet of space, inclusive of the additional 60,000 square feet of retail space, on two levels that have not been planned and designed to be programmed for commercial use during Phase 1 operations. These levels house building-wide systems and the security operations center for the entire facility. In the future, these levels will accommodate passenger circulation, waiting space, additional commercial space, and train traffic. In the undefined interim period, they are intended to be maintained by the master lessee and accessed primarily for back-of-house services.

While the train box provides a large-scale space that may have some commercial appeal, these spaces are constrained by several factors that affect economic feasibility for the private sector and ease of Phase 2 implementation for the public sector.

- Major improvements and renovations would be needed to make the spaces viable for commercial use. A number of considerations would need to be considered around

providing code-required fire-life safety systems to enable the use of the lower concourse, given the current Phase 1 design, including vertical access (elevator, escalator, adequate emergency egress stairs), lighting (emergency lighting, adequate overhead lighting), areas of refuge, fire sprinkler system distribution, topping slab (uneven walking surface), environmental controls (HVAC), IT/telecom systems, and security systems.

- Phase 2 construction would conflict with commercial operations in those spaces. Depending on the anticipating timing for Phase 2 construction and completion, the operating timeframe for this space may not be sufficient to draw the interest of retailers.

Addressing these factors would require significant expenditure, and some improvements and renovations would need to be undone when the train box is fitted out for its ultimate use. Nonetheless, although staff does not think commercial use of the train box is feasible, a position supported by the peer reviewers, the RFP will allow for creative proposals from respondents.

Master Lessee Business Terms Framework

The TJPA and future master lessee's relationship will be governed by a master lease agreement that will lay out financial obligations and performance obligations for both parties, all of which are to be negotiated within the RFP process, and particularly within the negotiations stage once entities propose their starting terms in RFP responses. The framework envisioned for the relationship between TJPA and the future master lessee is as follows.

- The TJPA will provide a long-term master lease to the master lessee.
- The master lessee will:
 - provide operations and maintenance services and capital replacements for the Transit Center.
 - pay a fixed and percentage rent, described below, to the TJPA.
 - propose an annual operations and maintenance budget and five-year capital budget to the TJPA.
- The TJPA will:
 - pay a management fee to the master lessee for services performed.
 - reimburse the master lessee for a share of operations and maintenance and capital replacement costs incurred for public areas.
 - share costs and savings above and below the budgets established between the parties.
- TJPA will receive funding from a series of public revenue streams, detailed below, to partially support this activity.

TJPA and the consultant team have performed due diligence on the elements of this framework, described further below.

As the master lessee is unlikely to be able to fully cover operations and maintenance and capital replacement costs for the facility, the TJPA has identified the following public sources of revenue, which it will rely on to share costs:

- A portion of Regional Measure 2 funds, raised through regional bridge tolls, is allocated under statute to the TJPA to support annual operations and maintenance costs.
- The Greater Rincon Hill CBD will also contribute funds to the operations and maintenance of the Rooftop Park, with an anticipated annual contribution of approximately \$1.5 million beginning in the 2017/2018 fiscal year.
- Tax increment funds from local properties are intended to be applied towards capital expenses. These funds are expected to be available beginning in 2019.
- In accordance with the Lease and Use Agreement between the TJPA and AC Transit, adopted September 29, 2008, AC Transit has responsibility to contribute to the operations and maintenance and capital costs of the Transit Center to the extent that they exceed revenues.

A master lessee will need to earn a return on investment above the costs associated with its agreement:

- The master lessee will pay for its share of capital and operating costs. The master lessee will make an initial investment to support tenant space fit-out and facility lease-up, including contributions to tenant improvements and leasing commissions. If they choose, the master lessee may also pay for the cost to install additional kiosks and screens that create a more robust promotional platform.
- Once the facility is operating, the master lessee must pay for its share of operations and maintenance costs. While a portion of these costs, particularly maintenance of retail spaces, will be reimbursed through tenant common area maintenance charges, the cost of operations and management of the remaining areas of the facility will be the master lessee's own.
- The master lessee will also need to pay a rent to the TJPA. The RFP specifies that respondents should propose an annual fixed and percentage rent. Fixed rent is set to be paid each year regardless of the performance of the master lessee's retail, promotional platform, or events programs. Percentage rent is a portion of the revenue from programming that will be shared by the master lessee and paid to TJPA if the commercial program within the facility reaches a certain level of performance. Percentage rent is paid over and above base, fixed rent.

It remains to be determined how much rent can be paid to the TJPA and what share of operating costs the master lessee will cover. These figures will be determined through the RFP and negotiation process.

Expertise

The TJPA's consultants bring decades of expertise in helping public sector clients achieve their objectives. Information on each firm included in this report is below.

HR&A Advisors, Inc.

For over 35 years, HR&A has advised clients on public-private agreements on behalf of public sector clients. HR&A has both evaluated deal structures and supported their implementation for both public transportation facilities and general urban redevelopment. These include efforts for

direct management, asset management, master lease, and disposition transactions. From these experiences, HR&A brings expertise in how to successfully design and execute a public-private agreement. Representative projects include:

- 30th Street, Philadelphia, PA (Direct) – HR&A is supporting creation of a master plan for the 30th Street Station District including for the future of 30th Street Station itself which serves Amtrak, regional rail, and local rail passengers. Amtrak directly owns and operates the station. HR&A is helping Amtrak evaluate retail configuration options take advantage of market opportunities. HR&A is also evaluating public-private partnership models, including a master lessee model where a third-party retail developer would reconceive the retail program and bring the capital needed to pay for retail reconfiguration.
- Union Depot, Saint Paul, MN (Asset Manager) | HR&A advised on the redevelopment of the historic Union Depot including recommendations for retail and event programming. Union Depot has a small number of passengers and residents and workers in the area, limiting its market potential for a master lease or disposition. Further, the authority that owns the station has limited expertise in operating a facility of this nature. As such, HR&A advised on the procurement process for an asset manager that led to the selection of Jones Lang LaSalle.
- Fulton Center, New York, NY (Master Lease) | HR&A worked with the Metropolitan Transportation Authority to develop a retail vision for Fulton Center, and determine the preferred public-private partnership model for the Center. HR&A supported the MTA through the master lessee solicitation process, negotiations, and final selection of Westfield as master lessee of the facility. Westfield is developing the retail and advertising program, and manages the facility with the exception of the subway platforms and facility security.
- CityCenter DC, Washington, D.C. (Disposition) | HR&A advised on a redevelopment program and plan for the 10-acre former Washington Convention Center site. HR&A led the District of Columbia's RFQ and RFP processes that resulted in the selection of Hines as a master developer of the site.

Shuprotim Bhaumik, Partner, has over two decades of experience in the fields of real estate, economic development, and public policy consulting. His practice focuses on market and economic analysis, strategic planning, and development advisory services for real estate investors and developers, public agencies, financial institutions, and non-profit organizations. Shuprotim is currently working with a variety of clients across the United States and abroad. He recently advised the MTA in structuring a public-private-partnership to manage and operate the \$1.4 billion Fulton Street Transit Center, which opened in 2014. Shuprotim is also leading the implementation effort for the first phase of the proposed Konza Technology City in Kenya, and working in partnership with Enterprise Community Partners to develop an affordable housing strategy for the City of Atlanta. Prior to joining HR&A, Shuprotim was a Senior Vice President at AECOM, where he led the firm's Economics practice (formerly Economics Research Associates) in North America, and was responsible for managing real estate and economic development projects throughout the country.

Kumar Kintala, Principal, advises clients on development strategy and structuring public-private partnerships, specializing in master planning, transit-oriented development, and community revitalization. Kumar frequently leads assignments involving negotiating transactions and establishing business cases for proposed investments or policies. His core skills include financial feasibility analysis, economic impact analysis, fiscal impact analysis, market research, and cost-benefit analysis. Kumar recently managed the master plan and business plan for the first phase of the proposed Konza Technology City in Kenya; recommended a development strategy for the former Michael Reese Hospital site in Chicago; and advised the City of Long Branch in New Jersey on its decision to invest in a future phase of Pier Village, a mixed-use oceanfront project. Kumar leads many of HR&A's transportation and transit-oriented development assignments on behalf of cities, agencies, and non-profits. He is currently advising NJ Transit and the Metro-North Railroad on real estate transactions that will bring new transit-oriented development to station areas. For the City of Calgary and for Washington County, Minnesota, he is guiding the planning of proposed transit corridors to maximize economic development and transit-oriented development.

Olivia Moss, Director, achieves HR&A's public and private clients' development goals by drawing on her expertise in New York City real estate and on her experience supporting planning projects of all scales nationwide. Olivia provides project management, modeling and analytical services for the firm's real estate advisory projects, from large-scale pre-development processes to single-site feasibility studies. She recently provided analytical, modeling, and project coordination services for the firm's pre-development advisory to Miami Beckham United, a partnership led by David Beckham, seeking a site for a new Major League Soccer team in Miami, Florida. Previously, she participated in HR&A's work as development advisors to Major League Soccer in its efforts to locate a new soccer stadium in New York City. Olivia has also performed development feasibility studies for single-site projects in New York City, including the downtown Brooklyn headquarters of Brooklyn Community Services, in support of negotiations to establish a public-private partnership for site redevelopment.

Sensory Interactive

Sensory Interactive is a design firm that develops, launches, and provides operational support for digital media platforms covering a variety of vertical markets, including digital out-of-home, sports arenas, hospitals, convention centers, retail centers, malls, and education facilities. Many of these installations have generated successful revenue streams, and others have used interactivity to deliver engaging and informative experiences.

Sensory Interactive's full range of digital media capabilities and its methodology enable it to approach engagements using a single-consultant model. This ensures that all phases of a project's process—from definition of requirements and design development through technology evaluation and selection, construction management, content development, and operations—are closely coordinated and fully in line with the owner's singular vision.

Sensory Interactive is product and technology agnostic, thanks to its lack of reliance on manufacturer or distributor relationships or product markups. Without a financial incentive to promote a particular product, Sensory is free to explore the broadest possible range of hardware and software solutions, and recommend the approach that best meets a project's specific needs.

Greg Giordano, Director, Design and Strategy, is a licensed architect with over 20 years of experience working at the intersection of information, interactions, and the environment. He draws on the disciplines of design research, architecture, environmental graphics, graphic design, interaction design, and process design to create comprehensive user experiences in the built environment.

Greg's recent work with Sensory Interactive includes developing project strategy and setting design direction for multiple digital media applications at University of California San Francisco Mission Bay Hospital, Mitikah, a multi-use development in Mexico City, Mexico, and Saint Luke's Hospital in Kansas City; developing content and interaction concepts for an interactive wall in a children's hospital; and developing promotional platforms at venues ranging from shopping malls to World Cup venues.

Truc Bui, Associate, Design and Strategy, holds a Master of Architecture degree from the University of Oregon in Eugene and a Bachelor of Science degree in mathematics from Trinity University in San Antonio, Texas. This unique background makes Truc a flexible thinker and outstanding problem solver, and enables her to develop creative approaches to the challenges facing Sensory Interactive clients.

Before joining Sensory Interactive, Truc was most recently with architecture firm HOK in Houston, where she utilized her analysis and design backgrounds in the development of architectural programming for large commercial construction projects, the creation of strategies for industrial and municipal masterplans, and the analysis of property portfolios for clients.

Prior to her work at HOK, Truc was a project analyst with global energy efficiency consulting firm CLEAResult, where her projects included assessing energy usage in commercial buildings and providing recommendations for improvements.

Sheppard Mullin

Founded in 1927, Sheppard Mullin is a full service Global 100 firm handling corporate and technology matters, high stakes litigation and complex financial transactions, including commercial leasing.

Joan H. Story is a partner in the Real Estate, Land Use and Environmental Practice Group. Ms. Story's practice emphasizes real estate investment, financing and leasing transactions. Her clients include developers, institutional and foreign investors, corporate real estate users, pension funds and pension fund advisors and lenders. Her experience encompasses land acquisition and development, construction, permanent and tax-exempt financings, joint venture and limited liability entity formation, acquisition and disposition of commercial properties, leasing and other portfolio management issues, as well as loan and partnership workouts. Representative projects include:

- MacArthur Transit Community Partners, an affiliate of BRIDGE Housing Corporation, in developing the MacArthur BART Transit Village. The 624 residential unit project includes the construction of a BART Garage on land to be acquired for BART; a 90-unit, below-market rental phase to be constructed on land ground-leased from BART; and three market-rate phases with market-rate and below-market condominiums, 4,500 sq. ft.

of retail and commercial space, 5,000 sq. ft. of community space, and related off-site improvements. Funding for the project derived from a combination of Proposition 1C grants, a federal transportation grant, tax-increment financing and private debt capital.

- DHL Express in connection with a major expansion of its primary hub at Wilmington, OH, the financing of the expansion through private activity bonds issued by the Dayton Montgomery County Port Authority and the subsequent divestiture of the hub facility.
- DHL Express in ground-leasing, constructing and financing a number of regional distribution and sortation facilities, including the development, installation and financing either through private activity bonds or leveraged leases of state-of-the-art sort systems.
- Lend Lease Corporation in connection with the development of the Watermark luxury high-rise condominium project and the negotiation of a development and disposition agreement and related ground lease for the development of a proposed mixed-use cruise ship terminal facility to be located on Piers 30-32 in San Francisco.
- Investment groups acquiring and selling commercial real estate assets and portfolios, including ownership interests in the Santa Barbara Biltmore Hotel, the Parker House in Boston and the Parc 55 Hotel in San Francisco. Represent major international spirits companies in connection with the acquisition, sale and lease of vineyard properties and wineries in the Napa and Sonoma Valleys and elsewhere in California. Recently concluded the sale and leaseback under a long-term lease of 18 vineyard and winery properties in the Napa Valley.

NEXT STEPS:

Finalize the Master Lessee RFP and launch the solicitation process in late February. Moving forward, staff anticipates proceeding as described below.

Milestone	Draft Date
Master lease structure and RFP procurement strategy presented to the TJPA Board	February 11, 2016
RFP finalized and released	Week of February 22, 2016
RFP response period	February 22–May 20, 2016 (3 months)
All proposals due	May 20, 2016
Evaluation period	May 20–July 4, 2016
Anticipated master lease execution	Q1 2017

Adherence to this schedule is critical for the following reasons:

- **A delay in RFP issuance diminishes the prospect of opening the retail space when the Transit Center opens for bus operations.** The Transit Center is scheduled to open at the end of 2017. The TJPA plans to negotiate a master lease by the first quarter of 2017, leaving less than 12 months for the master lessee to lease up, fit out, and open retail space. This is aggressive, but our goal is to have some portion of the retail and digital platform open and operational. Any delay in the RFP and negotiation process will delay the opening of retail.

- **A delay in RFP issuance may require the TJPA to pay for operating expenses that could otherwise be paid for by the master lessee.** By the end of 2017, the Transit Center will be open and incurring operating expenses. Without a corresponding revenue stream, the master lessee will be unable to pay for its share of operating expenses, leaving that cost to be picked up by the TJPA.
- **A delay in RFP issuance could diminish market interest.** HR&A has reached out to 40+ potential respondents, building momentum for the RFP release, which was originally scheduled for mid-January 2016. Further delays may dampen market interest by sending a signal that future processes such as the master lease negotiation, fit out coordination, design review, and budget approval could be protracted and expensive for the master lessee.

RECOMMENDATION:

Staff recommends that the Board of Directors authorize the Executive Director to finalize and issue the Master Lessee RFP to procure an entity or team to operate and manage Phase 1 of the Transbay Program under a long-term master lease structure.

ENCLOSURES:

Resolution
Peer Review Summary

**TRANSBAY JOINT POWERS AUTHORITY
BOARD OF DIRECTORS**

Resolution No. _____

WHEREAS, The Transbay Joint Powers Authority (TJPA) is a joint powers agency organized and existing under the laws of the State of California; and

WHEREAS, Pursuant to the Joint Powers Agreement creating the TJPA, dated April 4, 2001, the TJPA has the authority to, among other things, make and enter into contracts and exercise all powers necessary and proper to carry out the provisions of the Joint Powers Agreement; and

WHEREAS, The Transbay Program presents a unique opportunity to program and manage a multi-modal transit facility and requires an entity to operate and maintain the facility, program events, manage the Rooftop Park and a promotional platform, and manage and lease over 100,000 square feet of retail space; and

WHEREAS, TJPA determined that the process to evaluate options for operating the facility and its retail program would benefit from an advisor with significant experience with similar facilities and engaged HR&A Advisors, Inc. (HR&A) on the basis of, among other things, its expertise in structuring public-private agreements for complex mixed-use urban development projects. TJPA also engaged advisors with expertise in promotional platform development and retail special counsel; and

WHEREAS, Based on detailed information about the Transbay Program and due diligence, HR&A recommended that the TJPA enter into a long-term master lease with an entity or team (Master Lessee) and developed a Request for Proposals (RFP) procurement process for a Master Lessee; and

WHEREAS, The recommended master lease structure and RFP procurement process were presented to the TJPA Board of Directors on December 10, 2015, and the TJPA Board requested that a Peer Review Panel examine the recommendation, including the master lease scope, facility operations, procurement strategy, and master lease structure, to determine whether it is the appropriate model; and

WHEREAS, The Peer Review Panel reviewed the recommended master lease structure, RFP procurement process, and related documents, and concurred with TJPA staff and HR&A that a master lease is the appropriate structure and recommended that the RFP be issued; now, therefore, be it

RESOLVED, That the TJPA Board of Directors authorizes the Executive Director to finalize and issue a Master Lessee Request for Proposals to procure an entity or team to operate and manage Phase 1 of the Transbay Program under a long-term master lease structure.

I hereby certify that the foregoing resolution was adopted by the Transbay Joint Powers Authority Board of Directors at its meeting of February 11, 2016.

Secretary, Transbay Joint Powers Authority

Transbay Transit Center Master Lessee Procurement Peer Review

To Transbay Joint Powers Authority

Date: February 4, 2016

This peer review report was drafted by the TJPA's Program Management/Program Controls (PMPC) team at the request of the peer review panel. It is based on comments received during the peer review session and provided by individual peer reviewers after the session. The chronology of the development of this report is as follows:

- January 20, 2016: Peer review session held at TJPA offices
- January 21–26: Individual peer reviewers provided additional comments and feedback to PMPC
- January 26–28: Per peer review panel direction, PMPC drafts report incorporating individual comments
- January 29: PMPC provides report to peer reviewers for any additional comments
- February 2: Additional comments received
- February 4: PMPC completes final draft peer review report and sends it back to peer reviewers for final review and concurrence

The peer review panel reviewed the Transbay Transit Center master lessee opportunity, the recommended master lease structure, and the recommended RFP procurement process. The peer review panel reviewed and commented on this report. Based on the completion of this process and the feedback received from the panel, it is our understanding that the peer review panel concurs that the recommended master lease structure and RFP procurement process are appropriate models for selecting an entity to operate and maintain the Transit Center, including its retail and other programs.

Peer Review Report

The Transbay Joint Powers Authority (TJPA), with assistance from HR&A Advisors, Inc., Sensory Interactive, and Sheppard Mullin, is soliciting proposals from firms to master lease the Transbay Transit Center under a long-term master lease. The TJPA will select a master lessee to operate and manage the Transit Center, including its retail space, events, and digital signage.

HR&A presented key aspects of the recommended master lease deal structure and Request for Proposals (RFP) procurement process for the master lessee at the December 2015 TJPA Board of Directors meeting. The TJPA Board requested that TJPA convene a peer review panel to examine whether the recommended master lease structure and RFP procurement process are appropriate models for operating and maintaining the Transit Center and to provide feedback on key documents produced by the consultant team to date.

On January 20, 2016, TJPA and its consultants hosted a meeting with the peer review panel to review the master lessee opportunity and the RFP. HR&A presented various aspects of the RFP ranging from the scope, deal structure, evaluation criteria, and schedule to addressing specific questions posed by the TJPA Board and peer review panel. Prior to the meeting, documents including the RFP, along

with appendices and exhibits, were made available for review. The peer review panel comprises the following participants.

Name	Title
John Updike	Director of Real Estate, City & County of San Francisco
Todd Rufo	Director, San Francisco Office of Economic and Workforce Development
Cheryl Nashir	Associate Deputy Airport Director for Revenue Development and Management, San Francisco International Airport (SFO)
Byron Rhett	Deputy Director of Planning and Development, Port of San Francisco
Cmdr. Bob Moser	Operation Commander, San Francisco Police Department
Peter David Cavaluzzi, FAIA	Design Principal and Board Director, Perkins Eastman Architects

TJPA and its consultants:

- HR&A – Kumar Kintala, Shuprotim Bhaumik, Olivia Moss
- Sensory Interactive – Randy Byrd, Greg Giordano
- TJPA – Scott Boule
- Program Management/Program Controls team – Mark O’Dell, Anne Ording, Shruti Namjoshi
- Sheppard Mullin – Joan Story

The following notes are based on the discourse during the peer review meeting and organized by topic. Because questions and comments were contemplated by multiple peer reviewers, the individuals who asked the questions are not noted. TJPA’s responses appear below each question/comment.

Master Lessee Scope

Explain the security model and whether security is a responsibility of the master lessee.

The current approach separates security services from the master lessee’s scope. The rationale and benefits for a separate security RFP:

- Makes the master lessee RFP more attractive by reducing financial risk to responders
- Provides better control and flexibility in the management of security services for TJPA

How do the security plan and recommendations compare to other facilities?

The security plan and recommendations are comparable to those of other facilities in that the security services are separate from the operator of the facility. As noted in a report provided to the peer reviewers, other transportation facilities are generally served by local, state, and federal security forces. Master lessees and their subtenants, on the other hand, typically hire security for stores only, and only as needed.

Will there be any required coordination protocol between the master lessee and security provider?

Yes, there will be close coordination between the master lessee and the security provider. The RFP describes the general coordination that will be required, as well as the requirement that the master lessee participate in safety and security management programs in cooperation with TJPA's security team. TJPA's security team will also work in close coordination with the San Francisco Police Department regarding larger public safety issues. TJPA welcomes input from Bob Moser during the upcoming development of the security RFP. Presentation of the Safety and Security Concept of Operations is planned for an upcoming TJPA Board meeting.

Retail Concept

What is the permitting process with regard to open spaces at the ground level?

The master lessee will be provided the right to program the ground level spaces outside the facility. The RFP, in particular, encourages programming and activation of spaces along Natoma Pedestrian Way. Some of these spaces are within TJPA property. An example given by the peer review panel was to lease this space to bike rentals. Permitting requirements will be clarified in the RFP.

The relatively small/shallow retail spaces on the first floor, the single-loaded nature of the retail on Minna and Natoma, and breakup resulting from the passageways may not result in a single comprehensive retail vision.

This is a useful perspective that will be taken into consideration when reviewing proposals for feasibility.

What is the anticipated tenant mix and how will locally owned retailers be incorporated? Is there a requirement for inclusion of locally owned retailers?

The tenant mix is expected to be a blend of food and beverage and dry retail that serve the diverse and growing markets of Transbay commuters and neighborhood residents, workers, and visitors. HR&A's market analysis indicates significant market potential and that the area is significantly undersupplied in terms of retail space.

Most of the retail spaces have been designed to allow for a full service kitchen, but the RFP does not specify a required mix of store types to leave as much flexibility as possible for respondents to conceive a retail program that maximizes value.

Respondents who propose a retail program with locally owned retail shops and restaurants will better achieve goals for the Transit Center and would score higher under the proposed evaluation criteria. Respondents who have experience successfully developing and managing retail featuring locally owned retail shops and services will also score higher under the proposed evaluation criteria.

Are there concepts that are not food oriented? What are the mixes elsewhere?

At Union Station in Washington, D.C., of the 200,000 square feet of space, about 25% is dedicated to food; there are other retailers. Union Station serves transit passengers and the office district around the station, which contains a lot of residential, similar to the Transit Center.

The Office of Economic and Workforce Development (OEWD) offered to work with TJPA and the future master lessee to refer locally owned businesses.

This would be welcomed, and TJPA could encourage that relationship between the master lessee and the OEWD. This opportunity will be added to the RFP.

Will the master lessee be required to comply with the First Source Hiring Program?

Yes, OEWD's First Source Hiring Program (which connects dislocated workers and economically disadvantaged individuals with entry-level jobs), has been incorporated into the master lease to the extent required.

Rooftop Park Operations

Is the Community Benefit District (CBD) revenue a stabilized annual stream of revenue, and how are the numbers derived?

The Greater Rincon Hill CBD will reimburse up to 79.1% of operations and maintenance, some utilities, and security costs of the Rooftop Park. The amount the CBD will provide to the Rooftop Park annually is set based on the amount of specific assessments allocated to the Park, per the CBD Management Plan and Engineer's Report. The Park will open with Phase 1 of the Transit Center at the end of 2017; peak year for revenue is after 2018. The CBD Management Plan is a reference document attached to the RFP.

What will the CBD Board's role be in operations of the facility/Rooftop Park?

The CBD Board is a funding partner, and will have some oversight to ensure their funds are spent according to the requirements in the CBD Management Plan. The CBD Board will not have management control over the Park, but will serve as a resource for community input.

Will the master lessee also have control over the common areas in the Park?

Yes, the master lessee will be responsible for programming the whole area according to a protocol that needs to be approved by TJPA.

Will CBD staff service the Park?

No, CBD staff will provide security and maintenance services to parks in the district, but not to the Rooftop Park.

How will events be scheduled/permitted? How will local resident concerns regarding event hours, noise, crowd control, etc. be handled? Will this be similar to the public-private operation of Yerba Buena Gardens?

The RFP describes the need to establish a scheduling protocol approved by TJPA. Details of the protocol will need to be clarified (e.g., operating hours, maximum number of events). The master lessee will be responsible for establishing and administering a permit process as needed. Most events are envisioned to be public, not private. The RFP will be updated to clarify the framework for the scheduling protocol, the permitting activity the master lessee should expect, and the flow of

approvals. By way of comparison, the public-private agreement/protocol for Yerba Buena Gardens will be reviewed.

How will any protocol regulate first amendment activities? What rights will the master lessee or TJPA have in the case of a protest staged at the Park?

Protocols will protect first amendment rights, while ensuring the safety and security of Transit Center visitors.

Revenue and Expense Categories

Who will be responsible for shortfalls that are not covered by the master lessee revenues? What other funding will support facility operations?

TJPA is ultimately responsible for these costs. Regional Measure 2 (RM 2) bridge toll funds were used to maintain the old Transbay Terminal, and these funds will be transferred to the new Transit Center. The funds were shifted to TJPA when the Temporary Terminal opened in 2010. It is anticipated that the value of the RM 2 funds will be \$4.7M when Phase 1 of the new Transit Center opens in late 2017. Transit Center operation and maintenance needs are significantly higher for this new facility, which includes a 5.4-acre rooftop park and many other amenities. Because funding for the operation and maintenance of the former terminal was not adequate, it is anticipated that additional RM 2 funds could help maintain and operate the new Transit Center.

It is envisioned that shortfalls in operations and maintenance will also be covered by the transit agencies utilizing the Transit Center.

Why isn't facility renewal included in the anticipated O&M costs?

Facility renewal will be funded by tax increment funds, which can only be used for capital expenses. TJPA receives a portion of property tax increment from development of the state-owned parcels in the Transbay Redevelopment Project Area. While a majority of these funds is currently funding construction of both phases of the Program, a portion of the funds will be used for facility renewal.

What other O&M services are not covered by the master lessee?

None, other than security and TJPA overhead. The master lessee will provide services associated with all other line items.

Is there a profit and loss (P&L) statement for the facility?

A P&L will be required of the proposers; however, a complete P&L study has not been performed to date, but could be if required.

Phase 2 and Use of Lower Level Space

Will the type of retail demand shift once Phase 2 space becomes available?

Phase 2 will include Caltrain commuter rail and intercity, high-speed rail. It will increase the number of daily commuters to the Transit Center from 37,000 to nearly 100,000, improving retail demand.

However, the majority of retail spending is still expected to come from neighborhood residents, workers, and visitors, even with Phase 2 services in place.

The respondents' retail vision and how it addresses the needs of various customer segments—commuters, office workers, visitors or residents—would be an important consideration.

Phase 2 will also result in additional leasable space on the Lower Concourse level of up to 60,000 square feet. This will be most visible to Caltrain and high-speed rail passengers.

Is Phase 2 desirable to master lessees?

Yes, potential master lessees see a lot of potential in Phase 2, and the successful master lessee will have the right of first refusal to negotiate for the Phase 2 facilities.

Can the Lower Concourse and Train Platform be used for commercial purposes in Phase 1?

The train box (Lower Concourse and Train Platform levels) includes around 595,000 square feet of space inclusive of the planned 30,000–60,000 square feet of additional retail space. The use of the train box during Phase 1 has been explored, and there are significant challenges to using this space for commercial programs in Phase 1. Major investment would be needed to make spaces viable for commercial use, including investment in the vertical transportation, lighting, sprinkler, and ventilation systems. Development of the train box during Phase 1 would likely conflict with Phase 2 construction activities. TJPA may update the RFP to note that lower levels may be made available for commercial opportunities within certain guidelines and at the master lessee's cost, subject to an evaluation of each proposal.

RFP Process

Has outreach provided a sufficient understanding of the market and respondents such that an RFQ is not necessary? Has outreach effectively reached the local market?

Yes, HR&A has completed extensive outreach to 40+ parties in the real estate development, open space management, and facilities management markets. An RFQ was previously issued, and while it did not generate many responses, HR&A has worked with the TJPA to ensure that the RFP is clearer and more attractive to potential respondents.

Responses may come from national firms with local experience, national firms seeking a local presence, and local firms seeking to expand their profile. Respondents will likely include partnerships that pair national firms with local firms.

Peer reviewers also raised questions regarding the potential ability for TJPA, during the proposal phase, to ask the proposers to replace specific members of the proposer's team and if the TJPA would maintain the right to approve changes in the winning proposer's team during the course of the contract.

We believe TJPA will be able to request substitutions during the negotiations phase, and we will ensure that TJPA's right to approve the replacement of exiting master lessee team members is written into the agreement.

Evaluation criteria should balance flexibility and opportunity for alternate proposals against the need to compare proposals on an apples-to-apples basis.

Evaluation will need to compare proposals that may involve different term lengths on an equal footing through net present value analysis and other cash flow analysis methods.

Transit Center Construction / Operations & Maintenance

How will tenant improvements be handled? Whose responsibility are these?

The building will be delivered with retail spaces still requiring painting, millwork, equipment, furnishings, retailer signage, and finished flooring. These improvements will be the responsibility of the master lessee.

Timeline

What is the anticipated timing of the master lease, retail tenants coming in and construction?

Execution of the master lease is planned by the first quarter of 2017. The master lessee will have about a year to lease the spaces and complete tenant improvements before the opening of the Transit Center. The goal is to open as much retail as possible with the opening of the Transit Center in late 2017.

Promotional Platform

Randy Byrd of Sensory Interactive gave an overview of the promotional platform concept, which is designed to reduce clutter and allow a single advertiser to broadcast over all of the signs. Currently, the proposed assets are being reviewed with the San Francisco Planning Department for content and location. Peer review panel members noted the importance of striking a balance between the promotional platform and maintaining the aesthetic appeal of the Transit Center as a world-class facility.

Does the TJPA have an advertising policy that prohibits certain types of advertising/ sponsorship material?

Yes, TJPA has an existing advertising policy, and the master lessee will be required to comply with this policy. TJPA will compare the advertising policy at SFO to its current advertising policy.

Post Meeting – Peer Reviewer Comments

The peer reviewers were provided an opportunity to send additional comments following the peer review meeting. Comments that were received are noted below.

John Updike

- I support the approach of one master lessee and one security contractor, with the noted expectations of a robust protocol between them to ensure smooth operations and coordination of events (planned or unplanned).
- Consideration should be given to engage in a more formal San Francisco-centric RFI, than the proposed RFP, to better facilitate local hire/local flavor to ultimate proposals. Consider

tinkering with the point scoring system as well to really emphasize the import of local inclusion.

- Prior to full operations (inclusive of full rail), consideration may have to be given to alternatives to the second floor retail, depending upon market conditions and demand. May need to entertain things like maker space, low TI pop-up retail, or even some limited office uses.
- Expense categories and draft pro-forma seem reasonable and thoughtful. Revenue projections should take into consideration my above comment, and the reduced revenue streams that could result.
- After learning of the complexities of using the train box, I can understand the reluctance to entertain interim uses.
- While the coordination and tight control over the digital advertising platform is a very smart move, it still appears that the user experience may be overwhelmed with commercial advertising. Recommend that TJPA reserve a right to down-scale the scope (number and/or size) of actual media platforms based on user feedback (to avoid contractual glitches downstream if reductions are warranted).

Bob Moser

I agree with the approach of one master lessee and one security contractor. I see the value of separating the security services contract from the Master Lease. It appears that negotiating a separate security contract will allow TJPA greater flexibility in responding to safety concerns. A separate contract will assist TJPA in holding the security contractor accountable for the level of service they provide. A separate contract will also allow TJPA to tailor the security needs of the Transbay Transit Center as needs change.

Peter David Cavaluzzi, FAIA

The following comments are focused on retail design and urban design issues and priorities that should be included in the RFP narrative. The overarching theme is to implement a retail and place-making development that is so attractive that people will want to be there regardless of whether or not they are boarding a train or bus. This is the big lesson that we have learned from the success of Grand Central Terminal. The focus at Grand Central is on real estate value, creating an address, and creating great places where people want to be.

The overall master lease strategy appears sound and will shift the burden and risk to the private sector. Since there is a wide variety of spaces and expertise required of the master leaseholder the RFP process should give high priority to specific expertise for the different spaces particularly the park space. The Park is the big “wow” and will require specific expertise and creativity to maximize its overall value to the terminal. Preference should be given to teams that show strong and very specific expertise in each type of space and opportunity.

The terminal facility is a big feature within the urban fabric. There is nothing comparable to it within the downtown. Its “bigness” is its greatest challenge from an urban development perspective in terms of creating desirable urban-scaled places that people will be attracted to. Diversity and sensitivity to the variety of spaces and places. Goal should be to make places feels smaller, more inviting, more valuable, and cared for. Since the master lease strategy will likely attract larger retail developers. Respondents should articulate a design and merchandising response to the big scale and offer ideas

that are different from a traditional shopping mall and national retailing approaches. This should be a focus and given priority.

- The RFP should reinforce the value of a retail and merchandising plan that leverages and responds to the unique characteristics and retail opportunities on each street. This is not a one size fits all. TJPA should look for creativity and diversity in the street-level merchandizing concepts.
- The retail along the long streets Minna and Natoma is recessed behind the upper level curved façade. From a retailing perspective this retail will appear hidden, less visible and disconnected to the street life. If possible retailers should be allowed to extend beyond the current glass line/lease line to make Minna and Natoma more animated and lively. This can create significantly more gross leasable area as well. The sidewalk space appears excessive, and the first floor retail could project out in bays (it already does modestly) and perhaps even host second level outdoor terrace space above this added retail area enlivening and exposing the second level retail level. The RFP should encourage creativity here and ask respondents to describe how the retail program can extend out beyond the glass line with additional leasable area and outdoor dining, kiosks, and other street retail opportunities.
- Give priority to neighborhood retail and merchandising plan so that it can succeed as an attraction without the passengers, Shaw alley needs to be thought about in the larger context at least a block north and south of the terminal. TJPA should ask respondents for their ideas on the place-making and merchandising strategy for the whole system. Ask respondents to offer options or suggestions on how best to integrate and influence the larger merchandising and place making environment.
- While it is clear that effective use of the below-grade space will be difficult, the RFP should be open to creative interim uses and encourage ideas. The RFP should solicit creative solutions for the below-grade space but not make it a requirement of the development.
- RFP should ask for a clear strategy and proposal that illustrates how the retail space and merchandising plan will evolve over time especially when the rail program is opened. The terminal and neighborhood will change and evolve dramatically over the next 10 years. The respondents should be required to clearly present a strategy that addresses the change and evolution.
- Lighting should be included and a key identity and place making feature of the plan. The white screen and many of the dramatic architectural features will be greatly enhanced and more attractive for visitors and residents if there is an artistic and engaging light concept for the building.

Todd Rufo

There is a need to strike a balance on the promotional platform to ensure it's a world-class facility. Too many ads, even if they are coordinated, starts to trade off against that.

MEMORANDUM

To: Transbay Joint Powers Authority

From: HR&A Advisors, Inc.

Date: March 2016

Re: Master Lessee Procurement: Summary of Community Meetings

TJPA arranged and HR&A participated in six community meetings the week of January 11, 2016 to provide community groups an overview of the master lease concept and the procurement process. The input of these groups will inform the Master Lessee Request for Proposals (RFP) and the evaluation of responses. This memorandum provides a summary of outcomes from these meetings. HR&A Principal Kumar Kintala, Scott Boule the TJPA Legislative Affairs and Community Outreach Manager, Mark O'Dell and Anne Ording from the PMPC Team and a representative from Singer Associates participated in these meetings. At each of these meetings, HR&A gave a presentation and then responded to questions. The six meetings included:

1. Greater Rincon Hill Community Benefit District Board of Directors on January 11
2. South Beach, Rincon Hill, Mission Bay Neighborhood Association on January 11
3. San Francisco Chamber of Commerce Public Policy Forum on January 12
4. San Francisco Beautiful on January 13
5. Millennium Tower Residents on January 13
6. San Francisco Office of Community Investment and Infrastructure Transbay Citizens Advisory Committee on January 14

HR&A also met with April Ang of Supervisor Kim's office on January 14th. It should also be noted that HR&A presented to the TJPA Citizens Advisory Committee on December 8, 2015.

GREATER RINCON HILL COMMUNITY BENEFIT DISTRICT BOARD OF DIRECTORS

- The Board underscored the importance of the Transit Center retail and public spaces serving the neighborhood residents rather than just office workers.
- The Board would like to have a better understanding of when events will take place and noise level restrictions. TJPA clarified that a joint committee composed of TJPA and the GRHCBD representatives will be informed about event guidelines, protocol, and other relevant matters. The RFP makes this clear as well.

- A Director wanted to understand whether the master lessee or the GRHCBD would be responsible for Rooftop Park management. TJPA clarified that the master lessee would be responsible for Rooftop Park management.
- The GRHCBD management plan estimates an operating budget for the Rooftop Park. One member wanted to understand whether that budget estimate aligns with TJPA's expectations for the annual operating cost for the Rooftop Park. TJPA clarified that the numbers generally align.

Action item: HR&A will provide a link to the GRHCBD management plan in the RFP.

- The Board noted the importance of ensuring the funding they provide for Rooftop Park operations does not get siphoned off for other use. HR&A clarified that there will be an annual budget approval process between the TJPA and the master lessee. There, the sources and uses of funding for the Rooftop Park will be explicit. The RFP describes the need for this annual budget approval process, and that funding for the Rooftop Park will be coming, in part, from the GRHCBD requiring its oversight via the joint committee.
- A Director recommended that the "experience" category in the selection criteria for the RFP be more explicit about experience with respect to managing transportation facilities. Also, that local retail reference should rather be referred to as locally-owned businesses.

SOUTH BEACH, RINCON HILL, MISSION BAY NEIGHBORHOOD ASSOCIATION

- A resident commented that they would like to see retail that serves neighborhood residents, rather than office workers. HR&A explained that is a goal for this process, to find a master lessee that proposes a retail concept that serves all customer segments (residents, workers, commuters, and visitors) and not just one.
- A resident suggested that more weight be given to the retail proposal criterion in the evaluation criteria.

Action item: HR&A does not recommend adjusting the criteria.

- A resident asked what checks would be on the master lessee for poor performance. HR&A explained that there would be a lease term that would expire, but more applicable elements of the deal include a set of performance standards embedded in the master lease that must be met and a budget approval process for operations & maintenance and capital improvements. The TJPA will be able to ensure performance by enforcing those standards and approving acceptable budgets. It should also be noted that there will be appropriate remedy and liquidated damages clauses in the master lease.
- A resident asked what amenities would be available on the Rooftop Park, particularly whether there would be places for active recreation. TJPA explained the Rooftop Park program, and noted that there would not be sports courts but there would be significant green space for passive recreation.
- A resident asked about opening and closing hours. One resident hoped that the retail would be open later in the afternoon/evening, and another hoped that the Transit Center would generally be active at night. TJPA explained that bus operations will be 24 hours, with reduced service from 1am to 5am. The Rooftop Park has been envisioned to be open from dawn until dusk, with the exception of the restaurant and the amphitheater in the case of evening events. HR&A explained that retail

developers are likely to see market potential from residents, and not just workers, which would result in retail being open in the late afternoon and evening.

Action item: HR&A and TJPA to explain facility/bus and Rooftop Park opening and closing hours in the RFP. HR&A assumes retail operating hours will be negotiated in the master lease.

- A resident asked how the TJPA will prevent homeless persons from lingering in the Transit Center. TJPA explained that security will be run by the TJPA via its security operations contractor, and that security will not be the responsibility of the master lessee.
- A resident asked about the market potential for the second-floor retail space at the Transit Center given that second floor retail spaces at other buildings face challenges. HR&A and PMPC responded that the second floor space will have strong visibility from the street and from passengers vertically circulating to/from the Rooftop Park and to/from the third-floor bus deck.

SAN FRANCISCO CHAMBER OF COMMERCE PUBLIC POLICY FORUM

- An attendee wanted to know if San Francisco's formula retail regulations or processes would apply to the master lessee's retail subtenants. HR&A explained its recommendation to not impose a formula retail restriction, given the importance of providing a master lessee the opportunity to maximize revenue to help pay for Transit Center operating costs. HR&A also explained that a key goal is to select a master lessee that can develop and operate the Transit Center with local character and context, and that respondents would score higher if they have experience developing retail with locally-owned businesses and propose a retail concept that calls for locally-owned businesses.

Action item: HR&A will clarify in the RFP that the City's formula retail restrictions do not apply to the Transit Center.

- An SF Chamber representative shared her perspective that the Transit Center should be allowed to cultivate a mix of national, regional, and local tenants to ensure the space can be filled and sustained. The representative noted the Ferry Building as an example that struggled in its early years with its high percentage of local businesses.
- An attendee noted that SFO provides excellent retail featuring regional retailers and restaurants. HR&A explained that SFO is directly managed by government and has in place a large-scale team that deploys an extensive business outreach program.
- An attendee asked how many RFP responses could be expected. HR&A explained that there is a limited universe of potential respondents for these types of market opportunities, citing the Fulton Center master lessee RFP which received two responses. HR&A noted there is no way to predict the number of responses to the Transit Center master lessee RFP, but hoped for a number between 3 and 10 responses.
- An attendee asked what small business opportunities are available. TJPA explained the significant level of small business activity involved with the construction of the Transit Center.

The RFP requires respondents to include their plan for leasing space to locally-owned retail tenants and small business owners, and says the TJPA may grant special consideration to proposals that offer a compelling plan.

Action item: TJPA to follow-up with Sheppard Mullin to ensure small business requirements, if any, are made clear in the draft master lease.

SAN FRANCISCO BEAUTIFUL

- The team met with the organization’s executive director and its communication manager only.
- The Executive Director underscored that the signage plan for the Transit Center should align with San Francisco’s signage policy and intent. TJPA explained that they have been meeting with the San Francisco Planning Department signage team to ensure that any signage at the Transit Center aligns with the Planning Department guidance.

Action item: TJPA to advise HR&A on whether the City has jurisdiction on any additional signage concepts, and how to articulate that in the RFP.

Action item: TJPA to consider secondary outreach to SF Beautiful to clarify signage approach.

- The Executive Director felt that the Transit Center should aspire to be a “community square” with respect to the Rooftop Park and the retail. In other words, the Transit Center should strive to be active and a draw for those living and working in the community. TJPA and HR&A agreed and noted that a goal is to select a master lessee that has experience creating those environments, and proposes an environment that shares that vision.

MILLENNIUM TOWER RESIDENTS

- Residents sought clarity on the opening and closing hours for the Rooftop Park and retail uses. For retail, they expressed that many shops and restaurants in the area close after work hours and hoped that would not be the case at the Transit Center. TJPA responded that the Rooftop Park, with the exception of the restaurant, has been envisioned to be open from dawn until dusk, with exceptions for any evening events at the amphitheater. For retail, HR&A explained that these hours are to be determined and their feedback will be considered in the negotiation process with the master lessee.
- A resident asked whether there would be restrictions on retail mix; specifically, whether national fast food chains would be permitted. HR&A explained its recommendation that the master lessee be provided flexibility to develop a retail program they feel best meets the TJPA’s goals which include developing a retail program reflective of local character. HR&A also explained that vision, and the respondent’s experience, will be considered in the evaluation criteria.
- A resident asked how the master lessee will be seeking subtenants, and how a business owner could go about leasing space at the Transit Center. HR&A explained that the leasing process will be executed by the master lessee. A business owner could inquire with the selected master lessee, its leasing agent if any, or be in touch with the TJPA who will be closely coordinating with the master lessee.
- Residents asked about dog policy for the Rooftop Park. TJPA explained that the current thinking is that dogs would not be allowed on the Rooftop Park.
- Some tenants said they were not aware that Phase 1 included a Bus Plaza adjacent to 301 Mission. TJPA advised that this had been the plan, and has been public since 2007 (actually 2004 in the

EIR). Also some residents were not aware that a Ground Level Intercity Bus Terminal was planned as part of Phase 2 and will be located at grade between Main and Beale, Natoma and Minna. TJPA agreed to come back and provide a presentation on Phase 2 to Millennium Tower residents at a future date.

SAN FRANCISCO OFFICE OF COMMUNITY INVESTMENT AND INFRASTRUCTURE TRANSBAY CITIZENS ADVISORY COMMITTEE

- A committee member suggested and requested that the selected master lessee meet with the CAC to explain the master lessee's proposed approach to retail and events.

Action item: TJPA to determine whether this is appropriate. HR&A does not recommend obligating the master lessee to meet with the OCII CAC.

- An audience member asked whether the Transit Center is subject to Proposition M, or the Office Development Annual Limit Program. TJPA responded that since the office space contemplated is less than 50,000 SF that Proposition M would not apply.
- Committee members underscored that the Rooftop Park should be a public use and not dominated by private and/or sponsored events. HR&A explained that the master lessee will need to establish a scheduling protocol approved by the TJPA, and that protocol will account for TJPA's goal that Rooftop Park be a public space.
- For the scheduling protocol, committee members suggested that the TJPA consider guidelines such as a cap on the number of events, ensuring some level of event-free public use on the weekends for resident enjoyment, and a reminder to account for the time needed to take-down an event.
- Committee members recommended that retail not only include locally-owned businesses but also innovative businesses in line with San Francisco's status as a hub for innovation. HR&A explained that the TJPA shares this goal, and will be evaluating respondents based on their experience creating and managing retail developments that include such businesses and their vision for creating that type of retail environment at the Transit Center.

MEMORANDUM

To: Transbay Joint Powers Authority

From: Master Lessee RFP Evaluation Committee

Date: October 26, 2016

Re: Evaluation of responses to the Master Lessee RFP

The TJPA published a Request for Proposals (RFP) for a Master Lessee to operate and manage the Transbay Transit Center on March 4, 2016. The TJPA laid out four goals for procuring a partner in operations of the Transit Center, laid out in the RFP as:

- Operate a clean, safe, and well maintained Transit Center, befitting a world class transit facility.
- Deliver a visionary program that reflects local character and context.
- Ensure a high quality user experience within this new civic facility.
- Maximize the economic value of the Transit Center.

The RFP also included a detailed description of each portion of the scope that the partner should perform on behalf of, or in partnership with, the TJPA, including:

- Fit-out, leasing, and management of 103,300 square feet of retail space.
- Development and operations of a high-quality promotional platform.
- Management and production of private and public events within the Rooftop Park and throughout the facility.
- Operations and maintenance of the facility, including the lower concourse space, and management and execution of capital improvements.
- At respondents' option, programming for the lower concourse space.

The TJPA received three responses on June 17, 2016 from teams led by Lincoln Property Company, Millennium Partners, and YoungWoo & Associates. Teams also included subconsultants to manage facility operations and maintenance, Rooftop Park management and programming, and design and management of the promotional platform.¹

Respondents were required to submit information about their team's qualifications and experience, concepts for each component of management and operations, and economic proposal to the TJPA. The RFP also included a set of evaluation criteria for scoring responses (attached to this memo as Attachment 1) and a process for scoring. Scoring was performed in two phases: 1) an evaluation of the written proposals as submitted by respondents (out of 270 points), and 2) for respondents who qualified, an additive score for their in-person interview (out of 30 points), for a total maximum score of 300 points. Respondents receiving 220 points or more in the first stage qualified for interviews, and respondents receiving a total of 240 points or more after the interview stage qualified to enter negotiations with the TJPA, at the TJPA's discretion.

At the Board of Directors' recommendation, an Evaluation Committee was formed to review written submissions and interview respondents. This committee (whose members are listed in Attachment 2) included

¹ Millennium Partners' original proposal did not include a promotional platform subconsultant.

a member of the TJPA, member of the TJPA's consulting team, local community members, and local real estate experts, a number of whom also sit on the TJPA's Citizens Advisory Committee. The committee engaged in a multi-step review process, described further below, to reach their recommendations.

EVALUATION COMMITTEE PROCESS

The Evaluation Committee was engaged in mid-June 2016, and first participated in an introductory conversation around the RFP and objectives of their involvement on June 15, 2016, in advance of receiving RFP responses. Upon receiving RFP responses, submissions were distributed to the Committee for review, and HR&A Advisors, Inc. (HR&A) facilitated a second discussion via conference call on June 23, 2016. This call was used to gather initial feedback on the proposals. Based on their evaluation of the original proposals, the Evaluation Committee and HR&A agreed that further clarification was necessary to accurately evaluate the proposals. Requests for clarification were issued to each respondent during the first week of July (and are attached to this memo as Attachment 3), and responses collected on July 15, 2016. The Evaluation Committee reconvened for a discussion of these materials on July 19, 2016, before submitting their scores for the written proposals on July 21, 2016. Initially, the teams received the following scores:

- Lincoln Property Company received a score of 236 on their original written proposal.
- Millennium Partners received a score of 220 on their original written proposal.
- YoungWoo & Associates received a score of 228 on their original written proposal.

All respondents qualified for interviews with the Evaluation Committee, members of the TJPA, and the TJPA's consultant team. However, before the August 4 interviews, Millennium Partners withdrew their interest in the Transit Center Master Lessee opportunity. The former subconsultants of the Millennium Partners team, led by Cushman & Wakefield, requested permission to submit a substitute proposal. Separately, YoungWoo & Associates requested permission to make a substitution request for two of their original team members. The TJPA granted substitution requests to both YoungWoo & Associates and Cushman & Wakefield (and their team members), with materials due on August 24.

The Evaluation Committee met in San Francisco on August 4 to interview qualified respondents, and conducted interviews with Lincoln Property Company and YoungWoo & Associates (in advance of their substitution request). After the interviews, the Committee submitted scores for the interview portion of respondent scores.

Upon receipt of substitution requests and accompanying materials, the Evaluation Committee reviewed these materials and issued a revised score for YoungWoo & Associates' and Cushman & Wakefield's written proposals. The Evaluation Committee then issued final scores for YoungWoo & Associates and Lincoln Property Company, and interviewed the Cushman & Wakefield team on September 7, 2016. Based on this interview, the Evaluation Committee requested additional clarification on key aspects of Cushman & Wakefield's proposal. Clarification materials were submitted on September 24, and the Evaluation Committee issued final scores for Cushman & Wakefield on September 26, 2016.

TEAM OVERVIEWS

As noted above, the TJPA received three responses to the Master Lessee RFP, described here.

Lincoln Property Company

The Lincoln team proposed an asset management structure, in which the TJPA would pay Lincoln and their partners fees to manage and operate the Transit Center and perform the scope described in the RFP. The proposal emphasized Lincoln's transit center and facilities management experience and their team's

commitment to a coordinated approach to providing the full scope of services to the TJPA. Partner firms included:

- **Lincoln Property Company**, who will serve as team lead and asset manager.
- **Biederman Redevelopment Ventures**, who will lead Rooftop Park management.
- **Colliers International**, who will lead retail leasing.
- **Pearl Media**, who will lead promotional platform development and operations.
- **LaVoz**, who will lead marketing.

Cushman & Wakefield

The Cushman & Wakefield team proposed a master operating agreement between Cushman & Wakefield and the TJPA. Cushman & Wakefield would oversee facilities management services and retail leasing and management, as well as the subcontracts held under this agreement. The full team includes:

- **Cushman & Wakefield**, who will serve as team lead, asset manager, and retail leasing and management agent.
- **MJM Management Group**, who will lead open space management and programming.
- **Network Rail**, who will advise on station operations.
- **Whelley Consulting**, who will serve as an advisor. The firm's role as advisor is not clearly detailed in the proposal.
- **Ross & Baruzzini**, who will lead digital platform development and operations.

YoungWoo & Associates

The YoungWoo & Associates team proposed a structure that includes separate master lease and asset management agreements. The proposal describes an innovative concept for retail and events which aligns with many of the TJPA's goals for the Transit Center. Based on the substitution request materials provided, the final, full team includes the following firms:

- **YoungWoo & Associates**, who will serve as team lead and executive retail leasing and management.
- **Enovity**, who will lead facility management.
- **Town Square**, who will lead open space management and programming, replacing Biederman Redevelopment Ventures. Town Square will oversee event programming by a set of specialized programming firms including, Musicant Group, Skylight Studios, and Superfly.
- **BIG Outdoor**, who will lead an advertising program and operations, and BIG will oversee a subconsultant to manage sponsorship activity, replacing Pearl Media.
- **Gensler**, who will advise on retail strategy. Gensler was added to the team during the revision process.

EVALUATION COMMITTEE RECOMMENDATION

Based on a review of the proposals and the interview, the Evaluation Committee issued the following final scores, recommending that the TJPA begin negotiations with Lincoln Property Company, YoungWoo & Associates, and Cushman & Wakefield. The breakdown of final scores is attached here as Attachment 4.

- Lincoln Property Company received a total score of 261 out of 300 points.
- Cushman & Wakefield received a score of 246 out of 300 points.
- YoungWoo & Associates received a total score of 250 out of 300 points.

In addition, the Evaluation committee found:

- The Lincoln Property Company team to have a complete, strong written proposal, and compelling subconsultants to manage the Rooftop Park and promotional platform.
- However, the Lincoln Property Company's proposed asset management structure requires further exploration to understand its advantages to TJPA, and the Committee discussed the potential to encourage their responsibility for the retail concept and greater authority over lease management.
- The Cushman & Wakefield team to demonstrate local expertise and capacity to fulfill the facilities management, retail leasing, and Rooftop Park management aspects of the scope.
- The Cushman & Wakefield team's addition of Ross & Baruzzini to manage the promotional platform is seen as a positive change, though requires further discussion and clarification around the anticipated revenue and proposed deal structure for the promotional platform
- The YoungWoo & Associates team to have the most compelling retail and activation program, with a strong vision for the retail spaces and events.
- A need to further explore the YoungWoo & Associates' team's structure and economic offer, and to ensure that they could provide adequate coverage of the full promotional platform.

ATTACHMENT 1: TJPA Master Lessee RFP Scoring Criteria

(Page intentionally left blank, please see following pages, excerpted from RFP 16-02)

VIII. Evaluation and Selection

Selection Criteria

The TJPA will evaluate complete proposals based on Respondents’ experience in the core capabilities required to manage and operate the Transit Center, economic proposal to the TJPA, overall financial health, and quality of the proposal. Only complete proposals, addressing all elements described in Section VI, will be evaluated.

These criteria will be graded, as described in Figure 23, with a maximum number of points allowed in each category. Each category will be considered independently, and respondents may receive partial or full points for each criteria. Points awarded within each category will be added to calculate a preliminary score out of 270, to be combined with a potential interview score of 30, for a total of 300 points. Specific items required to fulfill this criteria are described in Section VI of this RFP. The TJPA reserves the right to consider criteria other than the criteria listed in Section VI and to adjust evaluation criteria and scoring as it deems necessary.

Figure 23: Proposal Scoring Criteria

CRITERIA	MAXIMUM SCORE
QUALIFICATIONS AND EXPERIENCE	80 points
Experience managing large-scale, mixed-use facilities, with an emphasis on high traffic facilities.	20 points
Experience in local and destination-oriented retail tenanting, and event management.	20 points
Experience managing open spaces, including landscaping and horticulture.	20 points
Experience managing fully integrated promotional platforms, including content design and delivery.	20 points
CONCEPT	90 points
A compelling vision for the retail program, including a strong local retail component. Up to 15 points within this category will be awarded to Respondents who present a plan that incorporates a significant amount (number or area) of high quality, locally owned businesses in their concept.	60 points
A compelling vision for the development of a promotional platform including naming rights, sponsorship, advertising, and events. A compelling vision for open space management and programming.	30 points
ECONOMIC PROPOSAL	100 points
Overall economic offer to the TJPA inclusive of proposed deal terms and projected revenue generation.	70 points
Financial capability to operate the facility and provide a steady stream of funds to the TJPA over the long-term.	30 points
PROPOSAL EVALUATION SUBTOTAL	270 points
INTERVIEW	30 points
TOTAL MAXIMUM POINTS	300 points

Selection Process

Based on review and evaluation of responses to this RFP, the TJPA intends to designate one Respondent as Master Lessee. The TJPA will review all proposals for completeness and compliance with the requirements and criteria described in this RFP. Proposals will be evaluated to ensure that the Respondent satisfies the requirements described in Section VI of this RFP and the selection criteria described above. The TJPA reserves the right, at any time during this process, to request additional or supporting information in addition to the Respondent's original submission. Except at this request from the TJPA, Respondents will not be entitled to change their proposals after submission.

Respondents must receive a minimum of 220 points to qualify to enter the interview phase with the TJPA. The TJPA may invite some or all qualified Respondents to participate in oral interviews at a specified time, date, and location. The TJPA shall impose a time limit for each oral interview. During the oral interview, Respondents will be required to deliver a brief presentation and respond to questions from the selection committee, including questions concerning the Respondent's proposal and presentation. The proposed key individuals of the Respondent's team will be expected to actively participate in the interviews and to respond to the selection committee's questions.

Upon completion of the interview phase, the TJPA and the selection committee will score the remaining 30 points allocated to the interview based on Respondents' presentation, consistency with their proposal, and thoroughness in addressing open questions during the interview. Respondents must receive a total score of 240 points to move forward to negotiations with the TJPA. If multiple Respondents receive a score of 240 or more points, the TJPA may choose to negotiate with one or more Respondents.

The final selection of a Master Lessee and the business terms of this agreement will be subject to approval by the TJPA Board. The TJPA anticipates moving forward with this review and interview process following the schedule described in Section VII of this RFP.

The TJPA reserves the right, at any time, and at its sole discretion and without liability, to accept or reject any and all proposals. The TJPA may also, at any time, exclude proposals that are deemed to fail to comply with the requirements of this RFP.

ATTACHMENT 2: RFP 16-02 Master Lessee Evaluation Committee Members

- **Keysha Bailey**, TJPA Citizens Advisory Committee Member, Strategic Finance and Real Estate Consultant
- **Shuprotim Bhaumik**, Partner at HR&A Advisors
- **Anthony Birdsey**, TJPA Citizens Advisory Committee Member, Greater Rincon Hill Community Benefits District Member of the Board of Directors, Senior Director at Tishman Speyer
- **Scott Boule**, Legislative Affairs and Community Outreach Manager at TJPA
- **Lois Rawlings**, Real Estate Manager at AC Transit
- **Ben Sigman**, Executive Vice President at Economic & Planning Systems
- **John Updike**, Director of Real Estate at the City & County of San Francisco

ATTACHMENT 3: Requests for Clarifications

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LINCOLN PROPERTY COMPANY REQUESTS FOR CLARIFICATION

EVENTS

1. What is the Lincoln team's approach for programming of the amphitheater on the Rooftop Park?

RETAIL

2. Explain the differences between the roles of Lincoln Property Company and Colliers International regarding leasing and management.
3. Please clarify if the TJPA will be expected to fund the tenant improvements needed for retail development up front.

DIGITAL/PROMOTIONAL PLATFORM

4. What is the approach for the creation of a content management system for the digital screens at the Transit Center, to ensure inclusion of transit information and Transit Center wayfinding, visitor information, and emergency announcements?

O&M

5. Please provide an organization chart for how the Lincoln team will be deployed to manage day-to-day O&M.
6. Please clarify if your scope includes the bus ramp extending to Interstate 80 and lower levels of the Transit Center (as requested in the RFP), and whether that cost is included in your estimate. If not, please provide an update as to how this impacts your approach to facility management and your cost estimate in your pro forma as well.

PRO FORMA

7. Please provide an XLS file for the sheets provided in the submission and requested below, including a separate worksheet containing assumptions.
8. Please provide multi-year expense and revenue projections, as requested in the RFP, for Lincoln's proposed initial term of 6 years.
9. The estimate seems to exclude sponsorship and naming rights revenue, with the exception of Rooftop Park sponsorship revenue. Please elaborate on the rationale for excluding those revenue streams.
10. The estimate includes security costs. As stated in the RFP, the TJPA will be responsible for Transit Center security as part of a separate contract. Does your assumed security cost represent security costs for retail-specific purposes, or cost to participate and be involved with the TJPA's security program? If you believe these costs can be excluded from your proposal, please update your pro forma accordingly.

CUSHMAN & WAKEFIELD REQUESTS FOR CLARIFICATION

RETAIL

1. Please provide a schedule for the team's anticipated retail marketing, leasing, fit-out, and ramp up periods.

O&M

2. Please confirm the team's ability to sign one asset management agreement with TJPA, under which all other agreements will sit.
3. Please provide the team's desired term for an agreement with the TJPA, including a proposed initial term and any renewal options.
4. Please provide an estimate of revenue for the promotional platform, broken out by its components (digital advertising, promotional event revenues, and sponsorship and naming rights revenues), and expenses including the required management fee or proposed revenue share to TJPA.
5. Based on our discussion during the team's interview, please provide a revised O&M cost estimate for the facility, including maintenance of the third floor bus deck, bus ramp leading to I-80, and the lower concourse and train platform floors (to preserve their cleanliness only during Phase 1). For your reference, we are attaching the O&M report provided as Key Reference Document #3 with the RFP, which provides guidance on the anticipated O&M approach.

OTHER

6. Please provide firm profile information, resumes, and a concept and/or scope narrative for the team's content management system and promotional platform partners (including all additional team members), including the aspects of the scope (as described in the RFP) that are addressed by this team, and those that are not, including how the team plans to fill any gaps in the scope and additional team members who may be required.
7. Please confirm in your written response that Millennium Partners is no longer affiliated with this team's proposal to the TJPA.

YOUNGWOO & ASSOCIATES REQUESTS FOR CLARIFICATION

EVENTS

1. Is Superfly joining the team to produce events? If so, please elaborate on how they will coordinate with YoungWoo & Associates and Biederman Redevelopment Ventures.
2. Does the team anticipate using space outside of the leased “premises” for events?

RETAIL

3. Who will YoungWoo & Associates assign to manage the leasing of the retail space? Please elaborate on that person’s ability to execute the local, entrepreneurial program envisioned in your proposal?
4. Are “Appear Here” and Smorgasburg included in the proposal as part of the retail team or as sample tenants, or solely to communicate the team’s vision?
5. Will pop-up retail be within the existing retail spaces or a separate kiosk program?
6. Please provide additional details for retail tenant mix on the first and second floors, based on your understanding of each space and overall vision.
7. Please confirm that YoungWoo & Associates will fund all tenant improvements for the 103,300 SF of retail on the ground and second floors, the Rooftop Park restaurant, and the buildout and tenant improvement of the café, and that the TJPA will not need to fund those improvements.

DIGITAL/PROMOTIONAL PLATFORM

8. What is the approach for the creation of a Content Management System for the digital screens at the Transit Center, to ensure inclusion of transit information and Transit Center wayfinding?
9. Please expand on the approach for advertising, sponsorship, and naming rights, including what services Pearl will provide to create value from this part of the scope.

O&M

10. Please clarify who will be completing the O&M of the “premises” defined in your term sheet.
11. Please clarify who will be completing the O&M outside of those premises, and the associated cost of this scope of work. What portion of the building O&M is represented by the estimated expenses on page 55?
12. Please clarify if your scope includes the bus ramp extending to Interstate 80 and lower levels of the Transit Center (as requested in the RFP), and whether that cost is included in your estimate. If not, please provide an update as to how this impacts your approach to facility management and your cost estimate in your pro forma as well.
13. Please provide an approach for facility management in terms of vendor procurement approach and staffing, including the number and type of positions that would be dedicated to the Transit Center, and whether they will be based on or off-site.

PRO FORMA

14. Please provide a XLS file for the sheets provided in the submission, including a separate worksheet containing assumptions.
15. Please explain what is included in YoungWoo & Associates’ initial “capex” investment, in addition to the separate line item for tenant improvements.
16. Please indicate projected timing for the return of YoungWoo & Associates’ investment, triggering participation rent.

ECONOMIC TERMS

17. Please confirm if YoungWoo & Associates will fund all of the O&M within the retail spaces within the “premises” – the 103,300 SF of retail on the ground and second floors, the Rooftop Park restaurant, the Rooftop Park café.

18. Please elaborate on the anticipated deal structure and economic terms for providing O&M services for the areas elsewhere in the Transbay Transit Center, but *outside* of the “premises.”

OTHER

19. Please provide all requested forms as indicated in the RFP.
20. Please provide a description of your equity and debt sources for funding YoungWoo’s proposed capital investments and operating budget. For equity sources, please include any letters from investors that describe their willingness to invest in this project and their terms. For debt sources, please provide evidence of YoungWoo’s ability to secure debt, including commitment letters from prospective lenders.

ATTACHMENT 4: Final Evaluation Committee Scores
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Transbay Master Lessee RFP Scoring

Evaluation Criteria	Max. Points	Lincoln								Cushman & Wakefield								YoungWoo								
		1	2	3	4	5	6	7	AVG.	1	2	3	4	5	6	7	AVG.	1	2	3	4	5	6	7	AVG.	
Qualifications and Experience																										
Experience managing large-scale, mixed-use facilities, with an emphasis on high traffic facilities.	20	20	18	20	20	20	20	17	19	20	17	20	20	20	20	18	19	20	18	20	20	20	20	20	16	19
Experience in local and destination-oriented retail tenancing, and event management.	20	20	19	15	20	15	20	17	18	20	19	20	20	20	20	18	20	15	18	15	20	20	20	13	17	
Experience managing open spaces, including landscaping and horticulture.	20	20	19	20	20	20	20	15	19	20	19	20	20	20	20	17	19	20	19	20	20	20	20	16	19	
Experience managing fully integrated promotional platforms, including content design and delivery.	20	20	16	20	15	18	15	17	17	0	12	5	0	0	10	8	5	20	15	20	15	18	17	17	17	
Subtotal	80	80	72	75	75	73	75	66	74	65	67	65	55	60	70	61	63	75	70	75	75	78	77	62	73	
Concept																										
Overall retail vision score: A compelling vision for the retail program.	45	45	40	35	45	40	45	42	42	45	40	45	45	45	40	40	43	40	35	40	45	42	45	37	41	
Locally-owned business score: Up to 15 points within this category will be awarded to Respondents who present a plan that incorporates a significant amount (number or area) of high quality, locally owned businesses in their concept.	15	0	12	15	15	10	10	14	11	0	14	15	10	14	13	14	11	0	10	5	10	10	10	10	8	
A compelling vision for the development of a promotional platform including naming rights, sponsorship, advertising, and events. A compelling vision for open space management and programming.	30	30	20	30	25	25	30	26	27	20	20	20	10	15	25	15	18	25	20	30	30	20	20	26	24	
Subtotal	90	75	72	80	85	75	85	82	79	65	74	80	65	74	78	69	72	65	65	75	85	72	75	73	73	
Economic Proposal																										
Overall economic offer to the TJPA inclusive of proposed deal terms and projected revenue generation.	70	65	55	55	60	65	65	65	61	65	65	60	55	58	62	65	61	70	60	60	50	60	60	65	61	
Financial capability to operate the facility and provide a steady stream of funds to the TJPA over the long-term.	30	30	25	15	0	25	30	27	22	30	20	30	30	30	30	25	28	30	25	15	30	25	25	24	25	
Subtotal	100	95	80	70	60	90	95	92	83	95	85	90	85	88	92	90	89	100	85	75	80	85	85	89	86	
PROPOSAL EVALUATION SUBTOTAL	270	250	224	225	220	238	255	240	236	220	226	235	210	222	240	220	225	240	220	225	240	235	237	224	232	
INTERVIEW	30	25	20	25	30	25	27	22	25	20	22	20	30	19	23	15	0	20	16	20	15	18	20	17	18	
TOTAL MAXIMUM POINTS	300	275	244	250	250	263	282	262	261	240	248	255	240	241	263	235	246	260	236	245	255	253	257	241	250	

MEMORANDUM

To: Transbay Joint Powers Authority

From: Master Lessee RFP Retail Expert Panel

Date: October 26, 2016

Re: Retail Expert Evaluation of Transbay Master Lessee RFP Responses

The Transbay Joint Powers Authority's (TJPA) Request for Proposals for a Master Lessee to manage and operate the Transbay Transit Center (the RFP) includes a significant opportunity to lease and manage 103,300 square feet of retail. The retail program is intended to be a defining feature for the Transit Center, as well as a significant source of revenue for the TJPA and the private sector master lessee or asset management partner. Given the scale of this opportunity and potential value to the local community, the TJPA Board of Directors requested that a group of retail experts be convened to review respondent submissions.

At the Board's recommendations, a group of retail experts were engaged by the TJPA, TJPA staff, and the consultant team. The retail expert panel includes local members whose work focuses on retail in and around San Francisco representing both private and public sector organizations and members from HR&A Advisors, the TJPA's consultants for the Master Lessee RFP and negotiations. The retail expert panel includes:

- **Jeff Badstubner**, Jones Lang LaSalle, Senior Vice President, Retail Market Lead
- **Byron Rhett**, Port of San Francisco, Deputy Director, Planning & Development
- **Susan Reynolds**, Port of San Francisco, Deputy Director, Real Estate
- **Kate Coburn**, HR&A Advisors, Partner, Retail Practice Leader
- **Justin Schultz**, HR&A Advisors, Director

The group was asked to evaluate the retail concepts and relevant materials from the three RFP respondents, including:

- Cushman & Wakefield, who will lead retail leasing and management for their team, as well as asset management. Their proposal includes a set of tenant letters of interest in the project.
- Lincoln, who will provide asset management with retail leasing provided by Colliers.
- YoungWoo & Associates, who will provide the retail vision, strategy, and execution, with branding support provided by Gensler. Their proposal includes potential anchor tenants and a platform for leasing pop-up retail spaces.

The TJPA requested that the retail experts review each proposal individually and participate in a panel discussion of their impressions and reactions to the proposal, facilitated by PMPC and HR&A. The TJPA provided a set of questions to guide review of proposals and discussion, listed below.

- How well do respondent concepts address the TJPA's goal for the Transit Center to become a vibrant, civic destination?
- How well do respondents' concepts address the retail demands of the surrounding market?
- How thoroughly do respondents describe their approach to execution and management of retail?
- Is there synergy between the respondents' retail concepts and promotional platform concept?
- Do project rents align with your expectations for this market?

The retail experts were provided with excerpts of the retail sections of each proposal for review and convened on September 2, 2016 to provide feedback on the proposals. Two evaluation committee members, Jeff Badstubner and Justin Schultz, were unable to attend the September 2 meeting and provided feedback separately.

RETAIL EXPERT FEEDBACK

How well do respondent concepts address the TJPA's goal for the Transit Center to become a vibrant, civic destination? How well do respondent concepts address the retail demands of the surrounding market?

The TJPA's vision is to create a vibrant retail hub that is reflective of local context and inclusive of local businesses while also maximizing revenues. Due to the multiple blocks and floors of retail included within the Transit Center, a strong concept is required to unite the retail spaces. Furthermore, innovative concepts are required to make "brick and mortar" retail competitive with newer, creative retail concepts such as food trucks and temporary activations.

YoungWoo's proposal includes a strong vision for retail that is the most aligned with and responsive to the TJPA's vision. YoungWoo's retail vision has the strongest potential to deliver a unique concept to the market and create a destination able to draw a mix of local residents, employees, and visitors. In particular, Appear Here is an exciting pop-up retail leasing platform.

Compared to YoungWoo's proposal, Cushman & Wakefield and Lincoln's proposals lack strongly-defined retail concepts. The details provided in these proposals regarding types of retail tenants are similar to existing local retail offerings, and run the risk of competing directly with existing retail. Moreover, Cushman & Wakefield and Lincoln's proposals may require a greater level of input and guidance from the TJPA to generate a program that is aligned with the TJPA's vision.

How thoroughly do respondents describe their approach to execution and management of retail?

The retail at the Transit Center requires a strong initial leasing effort to fill retail space as well as ongoing management and leasing efforts. The selected team must be prepared to expend significant on-the-ground resources to conduct ongoing local outreach and leasing.

Cushman & Wakefield and Lincoln (with Colliers) have the necessary expertise to execute leasing and management of retail. Both teams include the local leasing teams of major national firms. These teams have experience with leasing and management in the local market and existing relationships with a diverse network of retailers.

YoungWoo's proposal does not thoroughly describe an approach to execution and management of retail and the team does not currently have a local retail leasing presence. In particular, the lack of a local retail presence could pose a challenge for the YoungWoo team in curating a truly San Francisco-centric retail experience. However, the team intends to build capacity in the San Francisco market, building on a strong foundation of conceptualizing, leasing, and managing retail in New York City.

Is there synergy between the respondents' retail concepts and promotional platform concept?

Close coordination of the retail concept and promotional platform will allow for powerful alignment of event programming with the retail concept and serve to draw customers into the Transit Center. In particular, the Rooftop Park was noted as an opportunity to provide active programming not currently available in other spaces within the local area which could serve as a benefit to retail.

None of the proposals provided descriptions of strong alignment between retail concept and promotional platform, though all respondents included a description of their programming and promotional platform concepts (these sections of responses were not provided to the retail experts).

Do projected rents align with experts' expectations for this market?

Assumed retail rents in all proposals are aligned and reflect that rents throughout the facility may vary widely based on tenant size and type. Reflecting an understanding of the variation of rents throughout the facility, Lincoln provided a merchandising plan indicating a sample tenant for each space and projected rents reflective of the type of tenant and space. Cushman & Wakefield provided projected rents for four different categories of tenants.

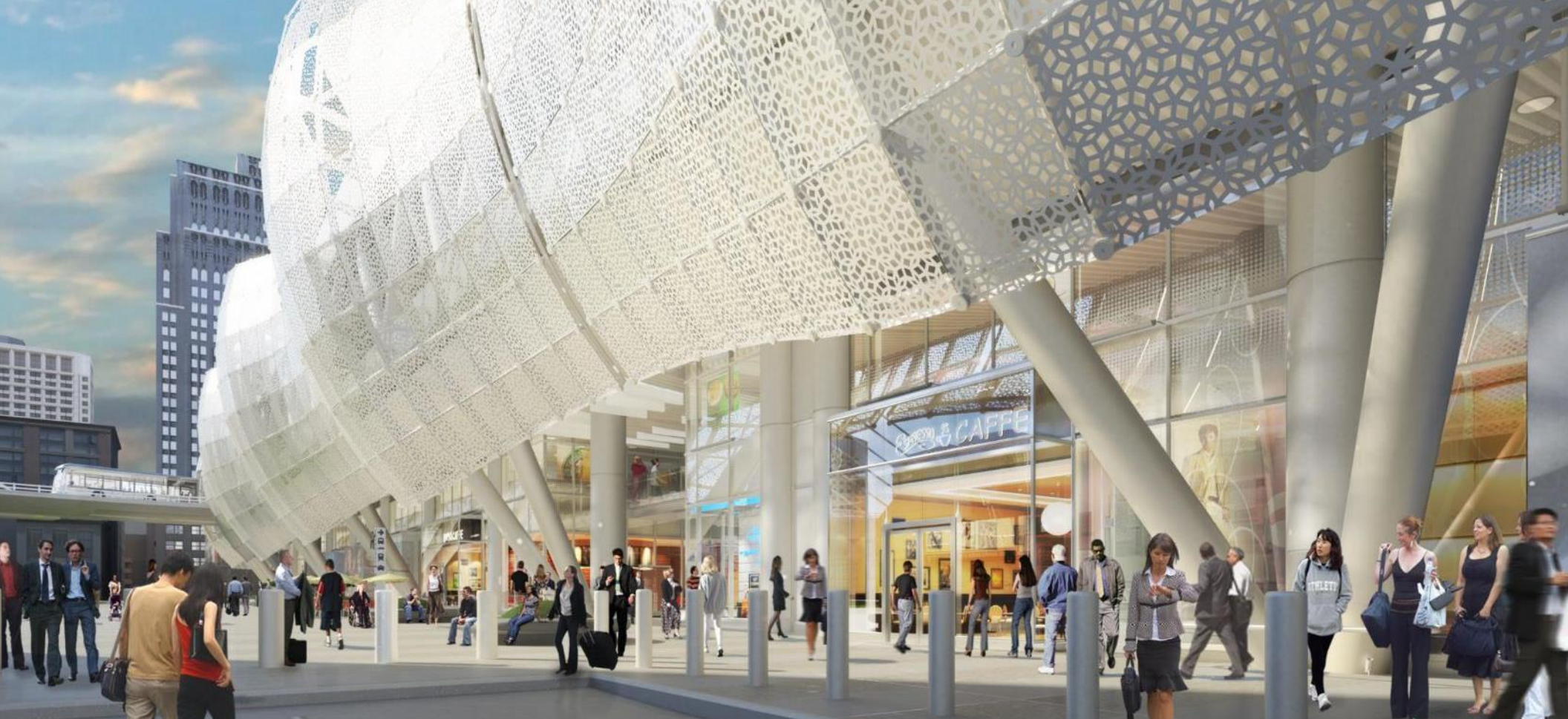
To ensure a diversity of tenants, the respondents may need to consider offering graduated rents or concessions. In particular, graduated rents or concessions are required to support local vendors and smaller service-oriented tenants.

NEXT STEPS

While each of the respondents' retail concepts has merits, the TJPA's negotiating team, led by HR&A Advisors, will seek to clarify key points for each respondent in the negotiations process, including:

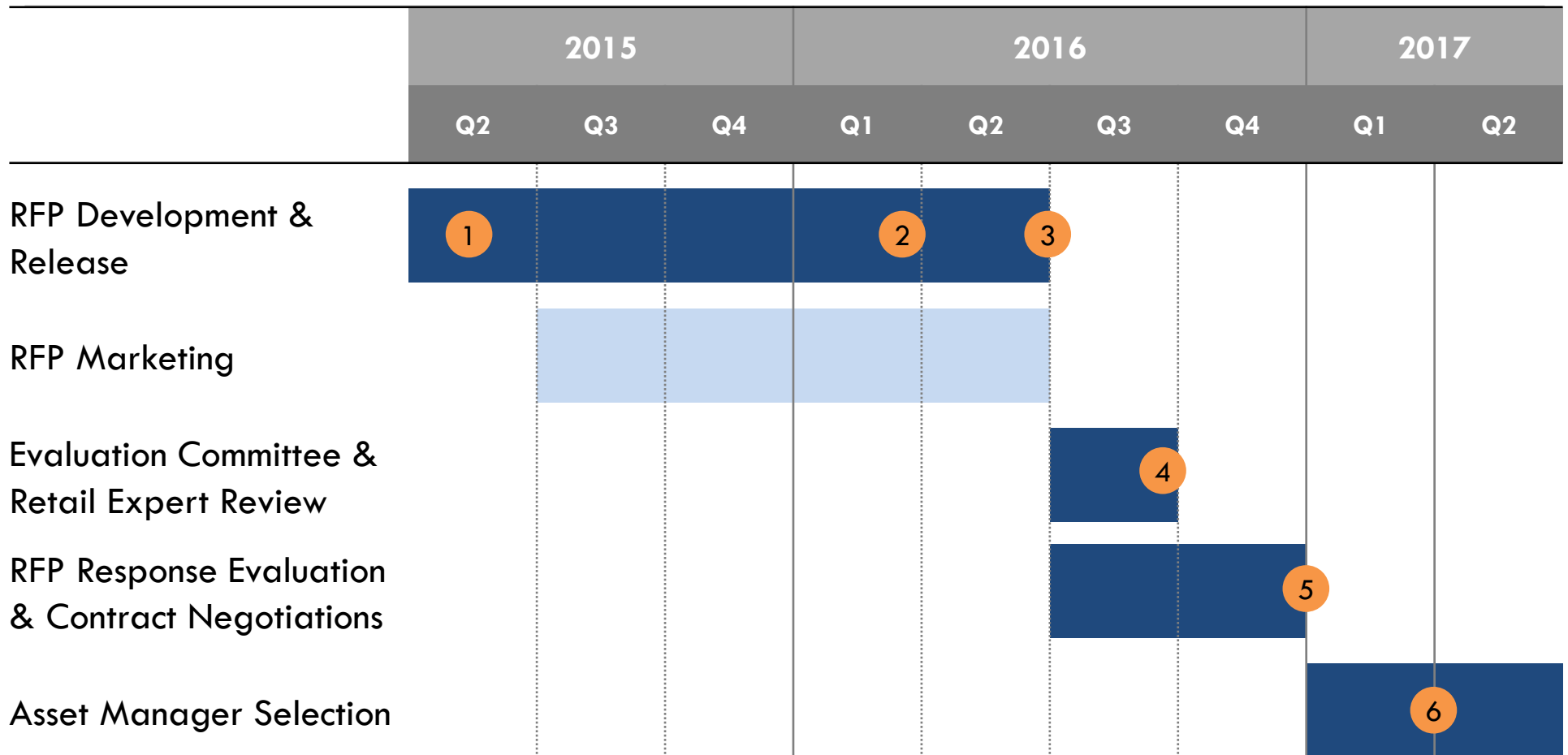
- All respondents' approaches to rent breakout by type of tenant, including approaches to graduated rents or concessions to draw small and local tenants.
- All respondents' approaches to continuously conducting outreach to prospective tenants, particularly local tenants, to ensure that spaces are occupied in the case of tenant turnover.
- All respondents' projected timing for marketing, leasing, capital and tenant improvements, retail store opening, and stabilization, particularly with respect to how these align with the Transit Center's completion.
- Cushman & Wakefield and Lincoln's approaches to developing more detailed and cohesive retail concepts.
- YoungWoo's plan to create local capacity for retail leasing and management.

The TJPA's negotiating team will continue to discuss these points with respondents moving into the negotiation phase over the coming months, moving toward selection of a finalist in November.



TRANSBAY JOINT POWERS AUTHORITY
FACILITY MANAGEMENT AGREEMENT UPDATE
MARCH 24, 2017

Transbay RFP Process



1 **Jun. 2015** HR&A engaged

2 **Mar. 2016** RFP released

3 **Jun. 2016** RFP submissions received

4 **Sep. 2016** Selection of qualified respondents for negotiations

5 **Jan. 2017** Entered exclusive contract negotiations

6 **Q1 2017** Execution of final asset management agreement

Transbay Transit Center RFP Overview

RFP Response Evaluation

Asset Management Agreement Negotiation & Recommendation

Next Steps

Funding Analysis

The Transit Center presents a unique opportunity for a private sector partner.



**Creation of a thriving
retail center within a
rapidly growing office
and residential
neighborhood**



**Operation of the nation's
newest multi-modal
transit station, the "Grand
Central of the West"**



**Management of world
class civic amenities
including unique
public spaces and
artwork**

The opportunity includes four distinct scope elements.

The RFP included a scope for Phase 1 and the opportunity to propose interim programming for the Lower Concourse and Train Platform prior to completion of Phase 2.



Fit-out, leasing, and management of **facility-wide retail space**



Development and operation of a high-quality **promotional platform**



Management and production of **private and public events**



Facility **operations and maintenance and capital improvements**

Successful execution of this scope requires a team with strong, multidisciplinary expertise.



The RFP was widely marketed and made publicly available to provide the opportunity for all qualified firms to respond.

HR&A reached out to **40+ firms** across a wide spectrum of disciplines to garner interest in the RFP.

Outreach included local and national firms that have the necessary expertise to build a team, including:

- Mixed-use and retail-focused developers and managers
- Promotional platform managers
- Open space managers
- Facility managers

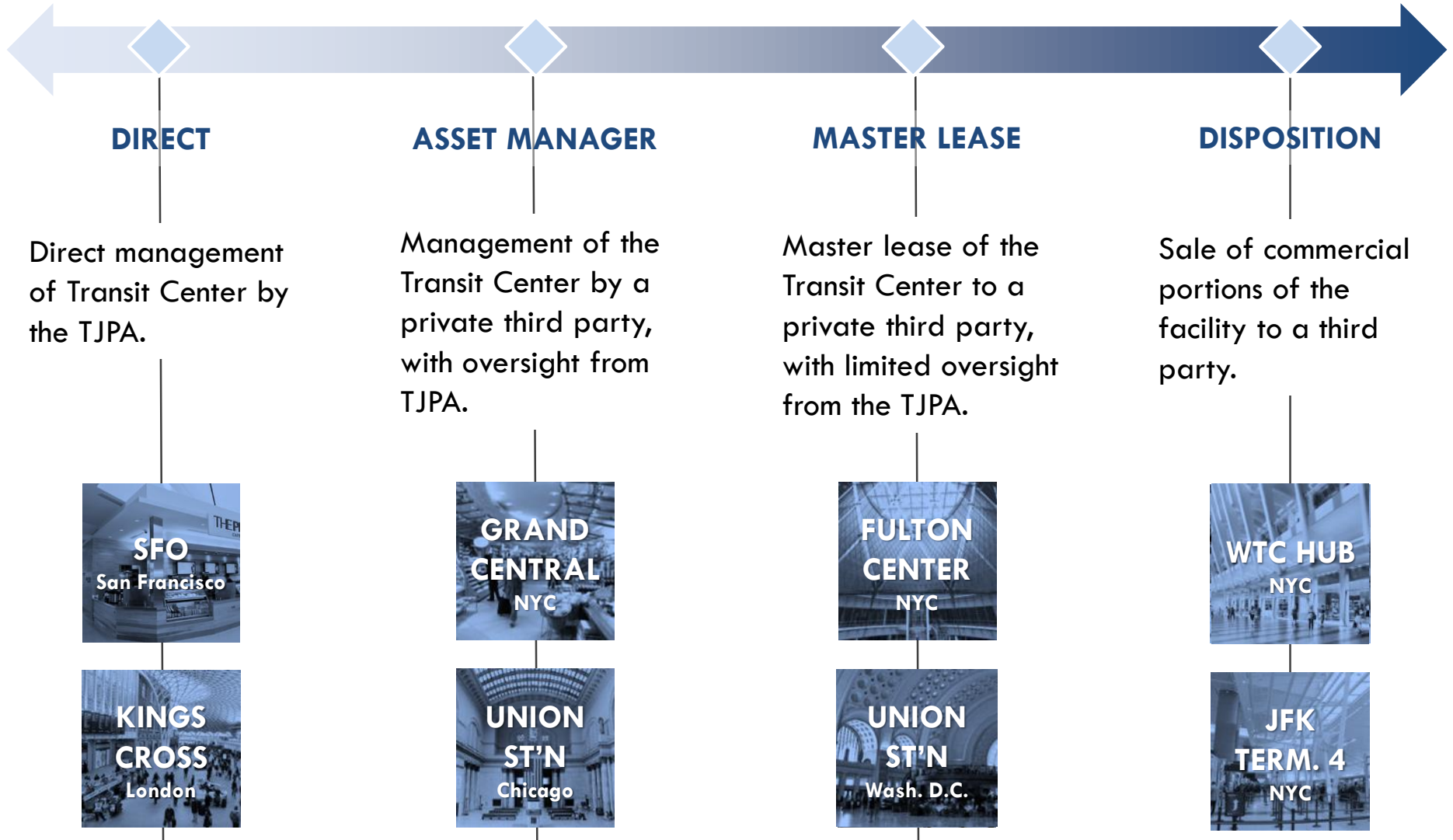
HR&A's outreach process included:

- Development of marketing materials
- Telephone and in-person presentations
- Site tours surrounding the Transbay Transit Center construction site

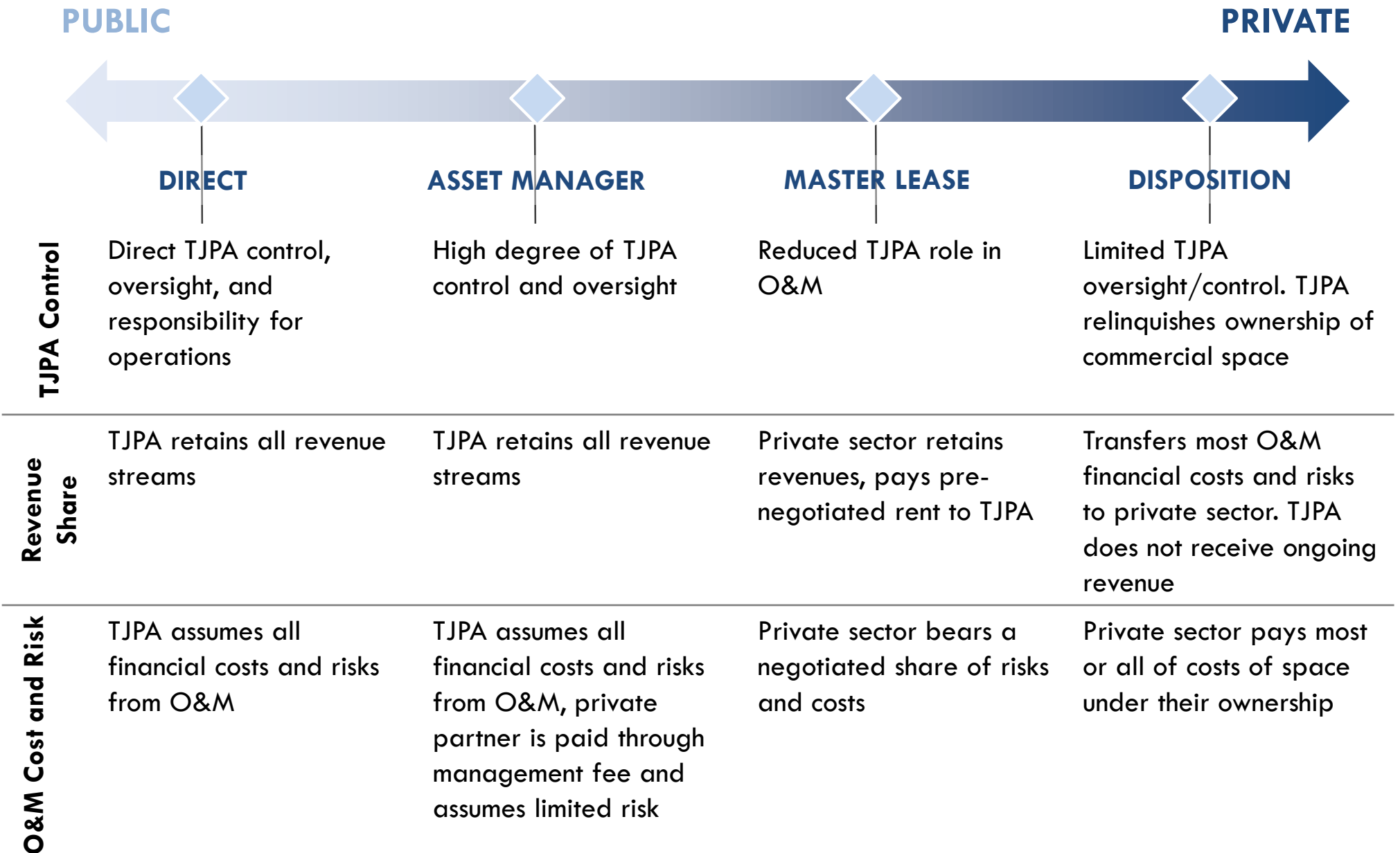
The TJPA explored a range of partnership options.

PUBLIC

PRIVATE



Partnership options were evaluated against TJPA priorities and the evaluated risks and rewards for each option.



A panel of local market experts reviewed the RFP, including its structure and contents, and provided feedback prior to its release.

Purpose To confirm the RFP's contents, objectives, and structure, ensuring that the RFP attracted a robust market response

Panel Members

- **John Updike**, Director of Real Estate, City and County of San Francisco
- **Todd Rufo**, Director, San Francisco Office of Economic and Workforce Development
- **Cheryl Nashir**, Associate Deputy Airport Director for Revenue Development and Management, SFO
- **Byron Rhett**, Deputy Director of Planning and Development, Port of San Francisco
- **Robert Moser**, Commander, San Francisco Police Department
- **Peter David Cavaluzzi** FAIA, Design Principal and Board Director, Perkins Eastman Architects

Within the RFP, TJPA outlined four goals for a private sector partnership for management of the Transit Center.

1. **Operate a clean, safe and well maintained Transit Center, befitting a world class transit facility.** The selected partner will ensure high standards of operations and maintenance for the benefit of the Transit Center's visitors and subtenants.
 2. **Deliver a visionary program that reflects local character and context.** The selected partner will have an ambitious vision for the retail, digital, and events program within the Transit Center, and the experience necessary to lead a team to execute the concept.
 3. **Ensure a high quality user experience within this new civic facility.** The selected partner should ensure that its program complements, and builds upon the Transit Center's unique and engaging features to become a hub of neighborhood activity.
 4. **Maximize the economic value of the Transit Center.** The selected partner will maximize the value of the facility by executing a premier commercial program that generates revenues to the TJPA.
-

The RFP required respondents to propose on a key set of terms.

1. Deal structure

- Preference for master lease with flexibility to accept alternative structures

2. Term

- Initial Term
- Renewals

3. Projected revenues and operating costs

4. Revenues to the TJPA

- Fixed Rent
- Participation Rent or Revenue Share

5. Shared and reimbursed costs

- Operating Expense Sharing
- Capital Expenditure Sharing
- Cost Overrun Sharing

6. Management fees

Transbay Transit Center RFP Overview

RFP Response Evaluation

Asset Management Agreement Negotiation & Recommendation

Next Steps

Funding Analysis

The evaluation criteria guided evaluation of the proposals.

Criteria	Components	Max. Score
Qualifications and Experience	<ul style="list-style-type: none"> • Experience managing large mixed-use facilities • Experience in retail tenanting • Experience managing open spaces • Experience managing promotional platforms 	80 points
Concept		
<i>Retail Concept</i>	<ul style="list-style-type: none"> • Vision for retail program* 	60 points
<i>Promotional Platform Concept</i>	<ul style="list-style-type: none"> • Vision for the promotional platform & open space management and programming 	30 points
<i>Open Space Concept</i>		
Economic Proposal	<ul style="list-style-type: none"> • Economic offer to the TJPA • Financial capability 	100 points
Proposal Evaluation Subtotal		270 points
Interview (for respondents receiving 220+ points)		30 points
Total Maximum Points		300 points

*Up to 15 of the 60 points allocated to retail concept were awarded to plans incorporating a significant amount of high-quality, locally owned businesses in their concept.

A committee of local experts reviewed and evaluated the proposals and guided the TJPA's selection of qualified respondents.

Purpose To review and evaluate the proposals, conduct interviews, and score responses to guide TJPA decision-making

Evaluation Committee Members

- **Keysha Bailey**, TJPA Citizens Advisory Committee (CAC) Member, Executive Consultant
- **Shuprotim Bhaumik**, Partner, HR&A Advisors
- **Anthony Birdsey**, TJPA CAC Member; Board of Directors member, Greater Rincon Hill Community Benefit District; Senior Director, Tishman Speyer
- **Scott Boule**, Legislative Affairs and Community Outreach Manager, TJPA
- **Lois Rawlings**, Real Estate Manager, AC Transit
- **Ben Sigman**, Executive Vice President, Economic & Planning Systems
- **John Updike**, Director of Real Estate, City & County of San Francisco

Additionally, a committee of retail experts reviewed and commented on proposed retail concepts.

Purpose To review and evaluate proposal retail concepts

Evaluation Committee Members

- **Jeff Badstubner**, Senior Vice President, Retail Market Lead, Jones Lang LaSalle
- **Byron Rhett**, Deputy Director, Planning & Development, Port of San Francisco
- **Susan Reynolds**, Deputy Director, Real Estate, Port of San Francisco
- **Kate Coburn**, Partner, Retail Practice Leader, HR&A Advisors
- **Justin Schultz**, Director, HR&A Advisors

TJPA received three proposals, summarized below and in the following slides.



- Asset management structure led by Cushman & Wakefield.
- Sub-agreements for retail leasing and management, Rooftop Park management, promotional platform, and station advisory consulting.



- Asset management structure led by Lincoln Property Company.
- Sub-agreements for retail leasing and management, Rooftop Park management, promotional platform management.



- Hybrid master lease with YoungWoo as the master operator with subconsultants for retail strategy, Rooftop Park management, promotional platform management, and facilities management.

Team Overview



**Team Lead, Retail Leasing
and Management**



MJM Management Group

**Open Space
Management**



Whelley Consulting

**Stations Operation
Advisory**

Ross & Baruzzini
Vicki Sundstrom



**Promotional Platform
Management**

- **Asset Management:** National experience managing large-scale, mixed-use facilities, and the necessary in-house capacity and industry relationships to execute the full scope of services.
- **Retail Leasing and Management:** Strong local capacity and market understanding coupled with an existing network of potential tenant relationships.
- **Open Space Management:** Local experience executing open space management and a programming vision that highlights participation of community groups.
- **Promotional Platform Management:** Provides all required functions through multiple subcontractors. Revenue generation strategy is focused on digital advertising.

Relevant Management Experience



Bay Area Headquarters
San Francisco, CA
C&W Asset Services



Four Season Retail
San Francisco, CA
C&W Retail Leasing



Union Square
San Francisco, CA
MJM



MTA
New York City, NY
Outfront Media



SFO
San Francisco, CA
Vicki Sundstrom

Proposed Retail Approach



VISION AND MIX

- Focused on high-quality dining and everyday service amenities, emphasis on food.
- Food-focused tenants would be concentrated in ground floor spaces, with services located on the second floor.
- The rooftop restaurant is called out as a destination opportunity.

LOCAL RETAIL

- Proposal suggests a predominantly local retail program across all categories.

ROOFTOP PARK

- Vision for a signature rooftop restaurant and build-out of rooftop café.

SAMPLE POTENTIAL TENANTS

TARTINE BAKERY
& CAFE



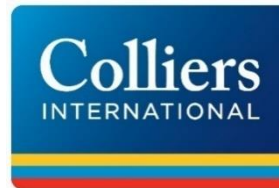
wework



Team Overview



BIEDERMAN
REDEVELOPMENT
VENTURES



LAVOZ
MARKETING

**Team Lead and
Asset Manager**

**Rooftop Park
management**

**Retail Leasing and
Management**

**Digital Content
Management**

Marketing

- **Asset Management:** Local and national experience managing large-scale real estate as well as transit facilities. Necessary in-house capacity and industry contacts to execute the full scope of services.
- **Retail Leasing and Management:** Strong local capacity and market understanding with proven relationships and leasing and management capabilities.
- **Open Space Management:** Plan for the Rooftop Park emphasizes a high standard of maintenance and robust programming strategy.
- **Promotional Platform Management:** Offers a robust concept for coordinating all aspects of the promotional platform, while incorporating brand activation and strategic positioning through digital assets and experiential promotions.

Relevant Management Experience



ARTIC
Anaheim, CA
Lincoln



CTC
Charlotte, NC
Lincoln



Market Square
San Francisco, CA
Colliers



Klyde Warren Park
Dallas, TX
Biederman Redevelopment Ventures



Bryant Park
New York City, NY



Brookfield Place
New York City, NY
Pearl Media



Chelsea Market
New York City, NY

Proposed Retail Approach



VISION AND MIX

- Recommends a wide mix of potential tenants, from full-service food and beverage to pharmacies to fitness to apparel and sundries stands.
- Preliminary retail merchandising plan lays out the sample tenants that may lease each retail space.
- Proposed vision includes local, regional, and national tenants.

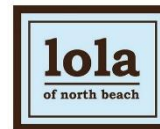
LOCAL RETAIL

- Vision for a locally tenanted program with a concentration of food and beverage tenants.

ROOFTOP PARK

- Vision for a full-service rooftop restaurant and build-out of the rooftop café.

SAMPLE POTENTIAL TENANTS



ZARA

Team Overview



TOWN SQUARE



Team Lead

**Rooftop Park
Management**

**Retail Strategy
Consultant**

**Promotional Platform
Management**

Facility Management



- **Asset Management:** Expertise to manage facility O&M; although, the team's proposed hybrid master lease structure bears only a minimal portion of facility O&M costs.
- **Retail Leasing and Management:** Innovative retail concept, but no local experience.
- **Open Space Management:** Proposal for active, event-driven Rooftop Park program with multiple event partners to implement the program.
- **Promotional Platform Management:** Capacity to manage digital advertising for the facility, clear approach to developing and operating the content management system (CMS).

Relevant Management Experience



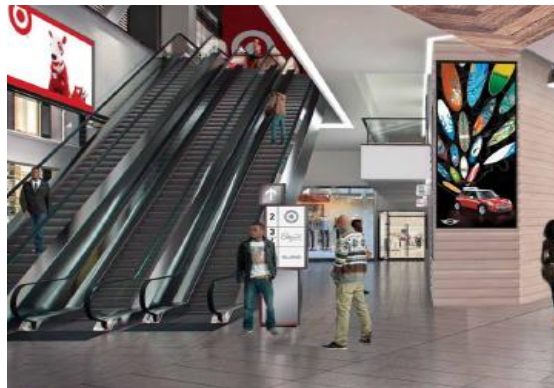
Pier 57
New York City, NY
YoungWoo



The Commons
Minneapolis, MN
Town Square



McEvoy Ranch
San Francisco, CA
Gensler



City Point
Brooklyn, NY
Big Outdoor



Oakland Int'l Airport
Oakland, CA
Enovity

Respondents provided estimates for projected revenues and costs for facility operation.

Estimated Revenues & Expenses (Stabilized Year Estimates – FY 20-21)

	Cushman & Wakefield	Lincoln	YoungWoo & Associates
Estimated Revenues			
Retail	\$7.03M	\$5.51M	\$5.22M
Advertising	\$4.16M	\$3.96M	\$1.61M
Promotional Events and Event Rentals	\$2.66M	\$3.13M	\$1.01M
Naming Rights and Sponsorship	\$2.28M	\$8.04M	\$2.96M
Total Revenue	\$16.14M	\$20.65M	\$10.80M
Base & Participation Rent	N/A	N/A	\$0.43M
Total Revenue to TJPA	\$16.14M	\$20.65M	\$0.43M
Estimated Ongoing Expenses (excludes facility reserve*)			
O&M Cost (janitorial, repairs, etc.)	-\$9.78M	-\$13.20M	-\$11.14M
Respondent Incentive Payments, Fees, and Admin Cost	-\$5.05M	-\$6.04M	-\$5.29M
TJPA Administrative & Insurance Costs	-\$4.80M	-\$4.80M	-\$4.80M
Security	-\$6.89M	-\$6.89M	-\$6.89M
Total Ongoing Expenses	-\$26.51M	-\$30.93M	-\$28.12M
Ongoing Tenant Improvements	-\$2.08M	-\$1.68M	\$0.00M
TJPA NET INCOME SUBTOTAL (Year 3, stab. year)	-\$12.45M	-\$11.96M	-\$27.69M
Initial Tenant Improvements	-\$20.30M	-\$27.10M	\$0M**

*Facility reserve will be funded by tax increment revenues.

**Initial tenant improvement cost of \$20M paid by YoungWoo, per the team's proposed structure.

Respondents provided estimates for projected revenues and costs for facility operation.

Estimated Cash Flow to TJPA (Stabilized Year Estimates – FY 20-21)

	Cushman & Wakefield	Lincoln	YoungWoo & Associates
Total TJPA Revenue	\$16.14M	\$20.65M	\$0.43M
Total Ongoing Expenses (excludes facility reserve)	-\$26.51M	-\$30.93M	-\$28.12M
Ongoing Tenant Improvements	-\$2.08M	-\$1.68M	\$0.00M
TJPA NET INCOME SUBTOTAL (Year 3, stab. year)	-\$12.45M	-\$11.96M	-\$27.69M
Committed TJPA Funding			
Estimate CBD contribution (per CBD Management Plan)	\$1.72M	\$1.72M	\$1.72M
MTC (per temporary terminal contribution)	\$5.38M	\$5.38M	\$5.38M
Current Leases	\$0.43M	\$0.43M	\$0.43M
TJPA NET INCOME (Year 3, stab. year)	-\$4.92M	-\$4.43M	-\$20.16M
Contribution to Facility Operating Reserve	-\$0.50M	-\$0.50M	-\$0.50M
TJPA NET INCOME (Year 3, stab. year)	-\$5.42M	-\$4.93M	-\$20.66M

Following their evaluation, the committee issued the highest average score to Lincoln.



- Complete, strong written proposal, and compelling team with ability to execute full scope
- Highest scores in each category of all teams
- Score of 261 of 300
- Recommendation: advance team to negotiations phase



- Demonstration of local expertise and ability to execute retail leasing and asset management scope
- Need for clarification of promotional platform team and deal structure
- Score of 246 of 300
- Recommendation: advance team to negotiations phase



- Most compelling retail and activation program
- Need for clarification of the team structure and economic offer
- Score of 250 of 300
- Recommendation: advance team to negotiations phase

After a period of clarification and negotiation, the TJPA entered an exclusive negotiation period with Lincoln.

Response Evaluation & Clarification		Term Sheet Negotiations		Exclusive Contract Negotiations	
June '16	Sep. '16	Jan '17	Mar '17		



TJPA concluded negotiations with YWA in 12/16, prior to term sheet negotiations.



C&W was notified that TJPA was entering exclusive negotiations.



Team Selection Rationale

TJPA entered exclusive negotiations with **Lincoln Property Company**. The rationale for selecting Lincoln includes:

Proposal Quality

- Highest quality proposal that fully addressed the scope and met all RFP requirements.
- Provision of requested additional information and attention to strengthening the approach to the revenue-generating portions of the scope.

Team Capability and Experience

- Prior experience managing large mixed-use facilities and transit facilities coupled with a high degree of professionalism and collaborative approach.
- Significant local San Francisco management experience and market understanding.

Deal Structure and Economic Offer

- Presentation of most competitive offer based on the strongest approach to driving revenues.
- O&M costs anticipated to be similar to other respondents based on market pricing.

Transbay Transit Center RFP Overview

RFP Response Evaluation

Asset Management Agreement Negotiation & Recommendation

Next Steps

Funding Analysis

Asset Management Agreement Structure

Lincoln will:

- Manage the team of experts required to activate and operate the Transit Center, including:
 - Building improvements and tenant fit-out
 - Facility maintenance
 - Retail leasing and management
 - Rooftop Park activation and maintenance
 - Promotional platform activation and management
 - Other facility activation and programming
- Optimize revenues generated through commercial program elements, which will flow directly to TJPA
- Manage contractor and service provider scopes and contracts, including managing the cost of services procured on behalf of the TJPA
- Coordinate with the TJPA's security provider to ensure safe operations
- Coordinate with transit agencies and community groups

Lincoln will receive:

- Fees for asset management, construction management, Rooftop Park management, and commissions or shared revenue for retail leasing and promotional platform activation

Asset Management Agreement Key Terms

Term

- Initial term: 6 years
- Optional extension: 5 years, at the agreement of both TJPA and Lincoln

Performance Guarantee

- Lincoln has provided a performance guarantee equivalent to fees paid to date.

Termination

- TJPA has the right to terminate the agreement if Lincoln is not performing adequately and does not cure defaults.

Revenues

- All facility revenues will flow to the TJPA, with the team's performance encouraged by guaranteed revenues and incentive fees.
- Promotional Platform revenues will be guaranteed for the greater of \$1.25 million or 80% of the prior year's digital advertising net revenue to the TJPA.

Asset Management Agreement Key Terms (cont.)

The TJPA will pay or reimburse the Lincoln team for:

Management Fees, Commissions, and Revenue Sharing

The Lincoln team will collect fees, commissions, and revenues for their services and based on performance, as described on the following slides.

Operating Expenses

The Lincoln team will oversee operations and maintenance of the facility, including directly providing some services and providing remaining services through service contracts.

Staffing Costs

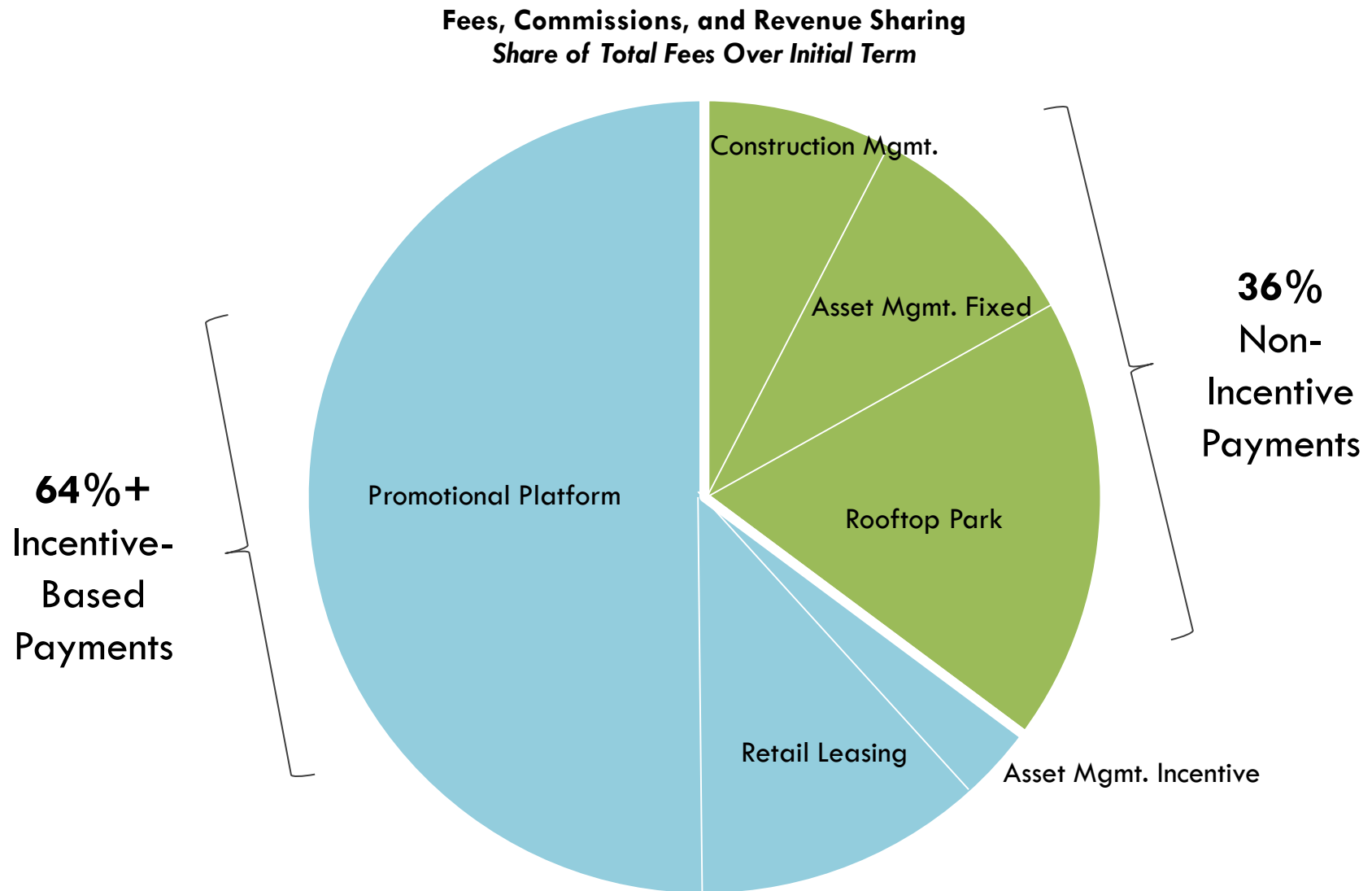
The cost of management staff will be capped within the agreement and charged annually to the TJPA.

Asset Management Agreement Key Terms (cont.)

Management Fees, Commissions, and Revenue Sharing

- The team will receive:
 - Fixed and incentive fees for:
 - Asset management (A fixed fee of \$200,000 in Y1 and Y2, followed by \$300,000 in Y3-Y6, plus 15% of retail revenues over set thresholds)
 - Rooftop Park (A fixed annual fee of \$798,000. Includes estimated management staff cost of \$574,000)
 - Construction management (5% of hard costs up to \$500,000, and 3.5% of hard costs above \$500,000)
 - Commissions for retail leasing (5% of directly leased long-term leases, 10% of short-term “pop-up” leases)
 - Revenue share for promotional platform activation (25% of advertising and sponsorship revenues and 15% of naming rights revenues flow to the promotional platform mgr.)
- 64% + of fees, commissions, and revenue share are incentive-based, driving team performance, with the remaining amount made up of fixed base fees.

Asset Management Agreement Key Terms (cont.)



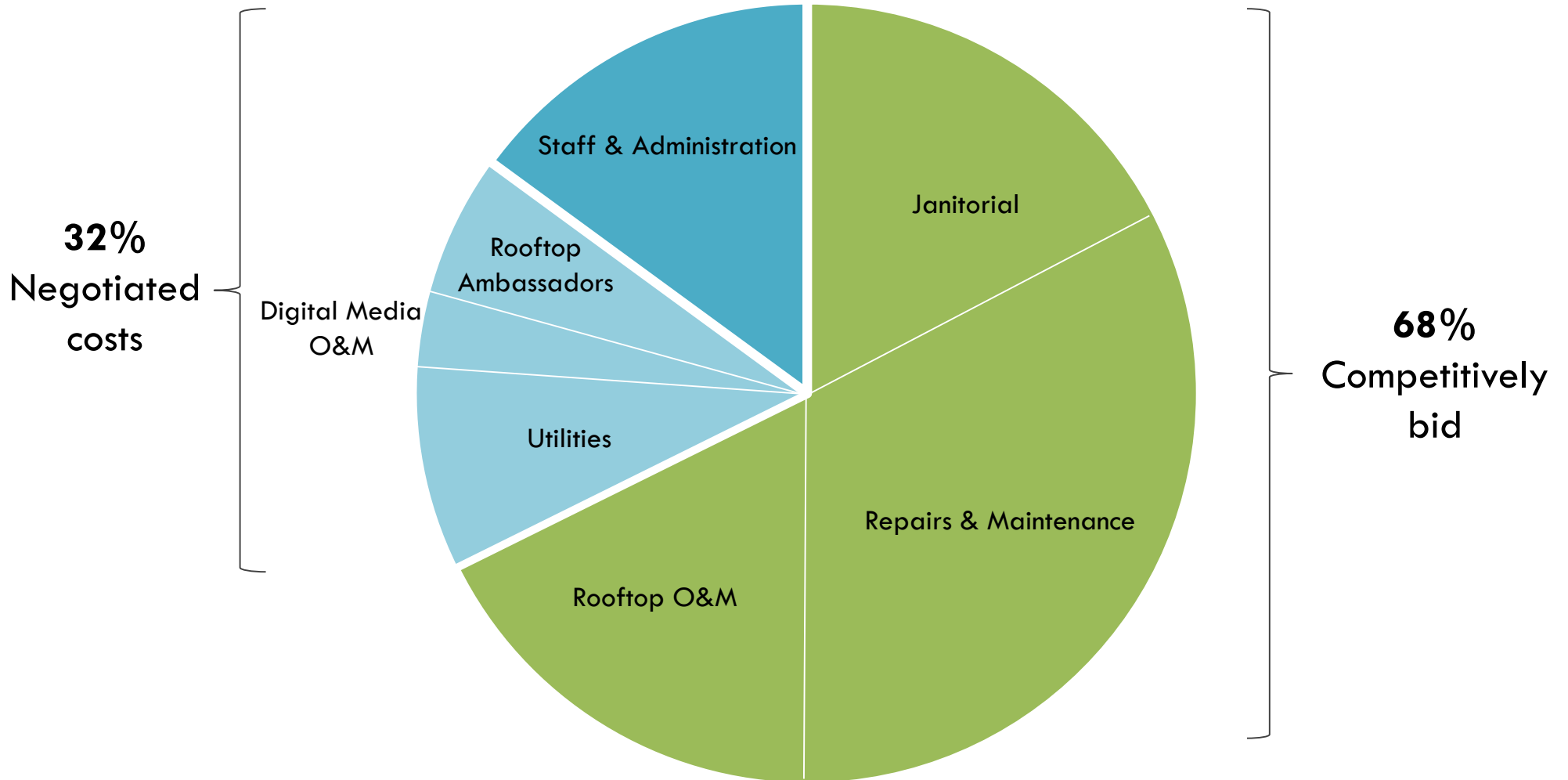
Asset Management Agreement Key Terms (cont.)

Cost Control Mechanisms

- TJPA will approve Lincoln's staffing and administrative plan to fix these costs.
- Lincoln will competitively bid a fixed scope of services for janitorial and repairs & maintenance services to the market to procure the most competitive pricing.
- Annual budgeting procedures will ensure predictability and TJPA oversight of costs.
- TJPA will review and approve an annual operating and capital expenditures budget, produced by Lincoln, each year.
- Lincoln will provide monthly reports on expenditures to TJPA for recurring expenses (such as utilities) and TJPA approval will be required for any non-recurring expenses (such as one-time repairs).
- Any costs incurred over this budget will be approved by TJPA prior to Lincoln signing a contract or change order.

Operating cost breakdown: Competitively bid vs. negotiated costs

Figure 3: Fixed vs. Bid Operating Costs



Transbay Transit Center RFP Overview

RFP Response Evaluation

Asset Management Agreement Negotiation & Recommendation

Next Steps

Funding Analysis

Next Steps

Date	Activities
3/24	Board approval of Asset Management Agreement
Q2 2017	<p>Begin ramp-up activities:</p> <ul style="list-style-type: none">• Train all employees in facility operations, maintenance, and security• Create protocols for budgeting, reporting, metrics tracking, and event programming• Begin planning and design for tenant improvements & base building improvements• Begin procurement of vendors and service contracts• Develop and present retail merchandising plan to Board• Commence retail marketing and leasing• Create content and messaging for digital screens <p>On-board TJPA Facility Manager</p>

Transbay Transit Center RFP Overview

RFP Response Evaluation

Asset Management Agreement Negotiation & Recommendation

Next Steps

Funding Analysis

Projected Transit Center Operating Need

Estimated Cash Flow to TJPA (FY 17-18 to FY 20-21)

	FY 17-18	FY 18-19	FY 19-20	FY 20-21
Total TJPA Revenue	\$0.59M	\$9.18M	\$17.59M	\$20.65M
Total Ongoing Expenses	-\$11.36M	-\$29.76M	-\$29.44M	-\$30.93M
Ongoing Tenant Improvements	\$ -	-\$0.57M	-\$1.63M	-\$1.68M
Contribution to Facility Operating Reserve	\$ -	\$ -	\$ -	-\$0.50M
TJPA NET INCOME SUBTOTAL	-\$10.77M	-\$21.15M	-\$13.48M	-\$12.46M
Committed TJPA Funding				
CBD	\$0.80M	\$1.62M	\$1.67M	\$1.72M
MTC	\$2.43M	\$5.03M	\$5.20M	\$5.38M
Other Tenant Revenue				
Current Leases	\$0.20M	\$0.41M	\$0.42M	\$0.43M
TJPA NET INCOME (GAP/SURPLUS)	-\$7.34M	-\$14.09M	-\$6.19M	-\$4.93M

*Projections based on Lincoln Property Company estimates.

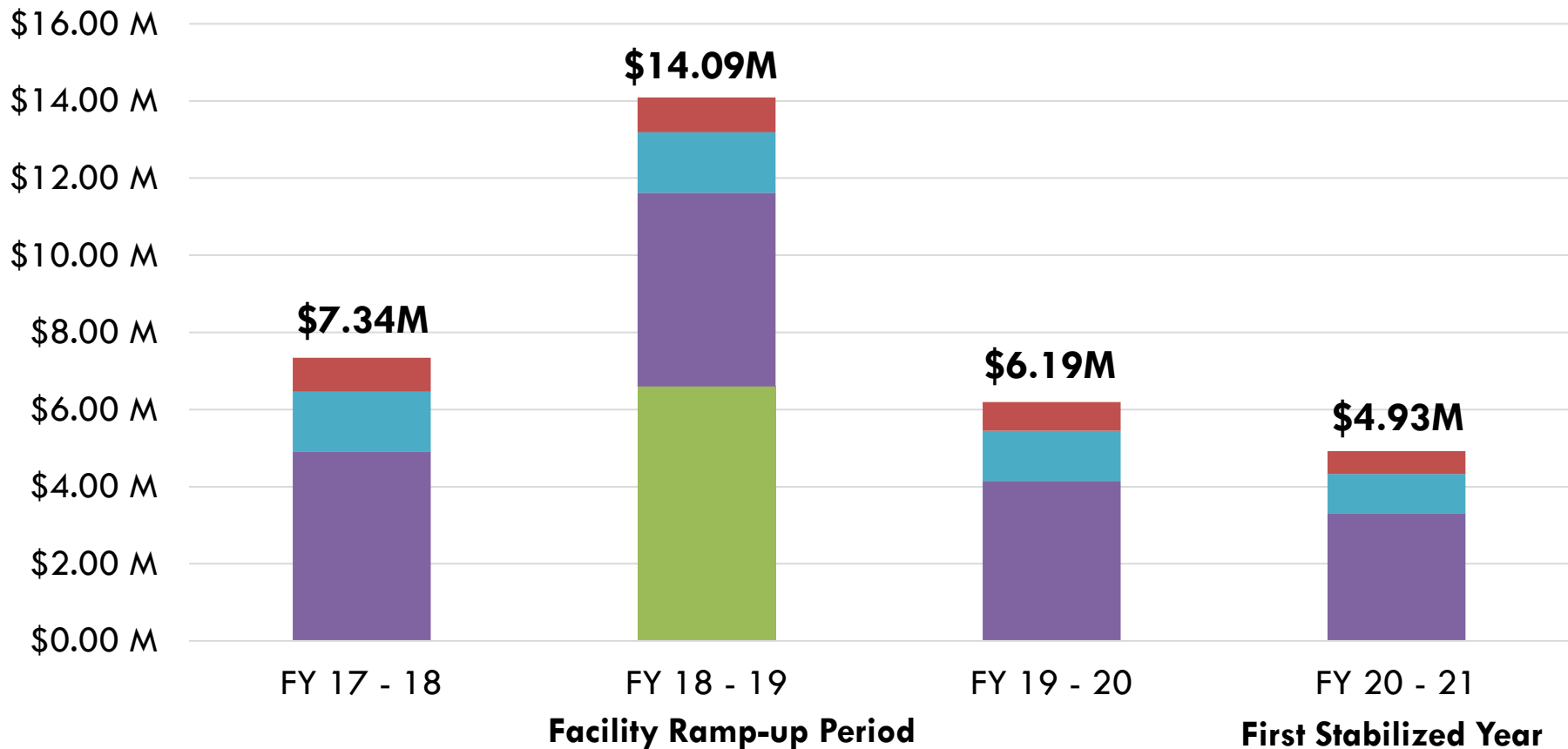
**Projected facility reserve of \$7.75 - \$9.5M available at facility opening.

***Facility renewal reserve will be funded from tax increment.

****Projected initial capital improvement costs of \$28.14M will be funded from program capital reserve and other sources.

Projected Operations Funding Strategy

Potential Transit Center Funding Need Allocation



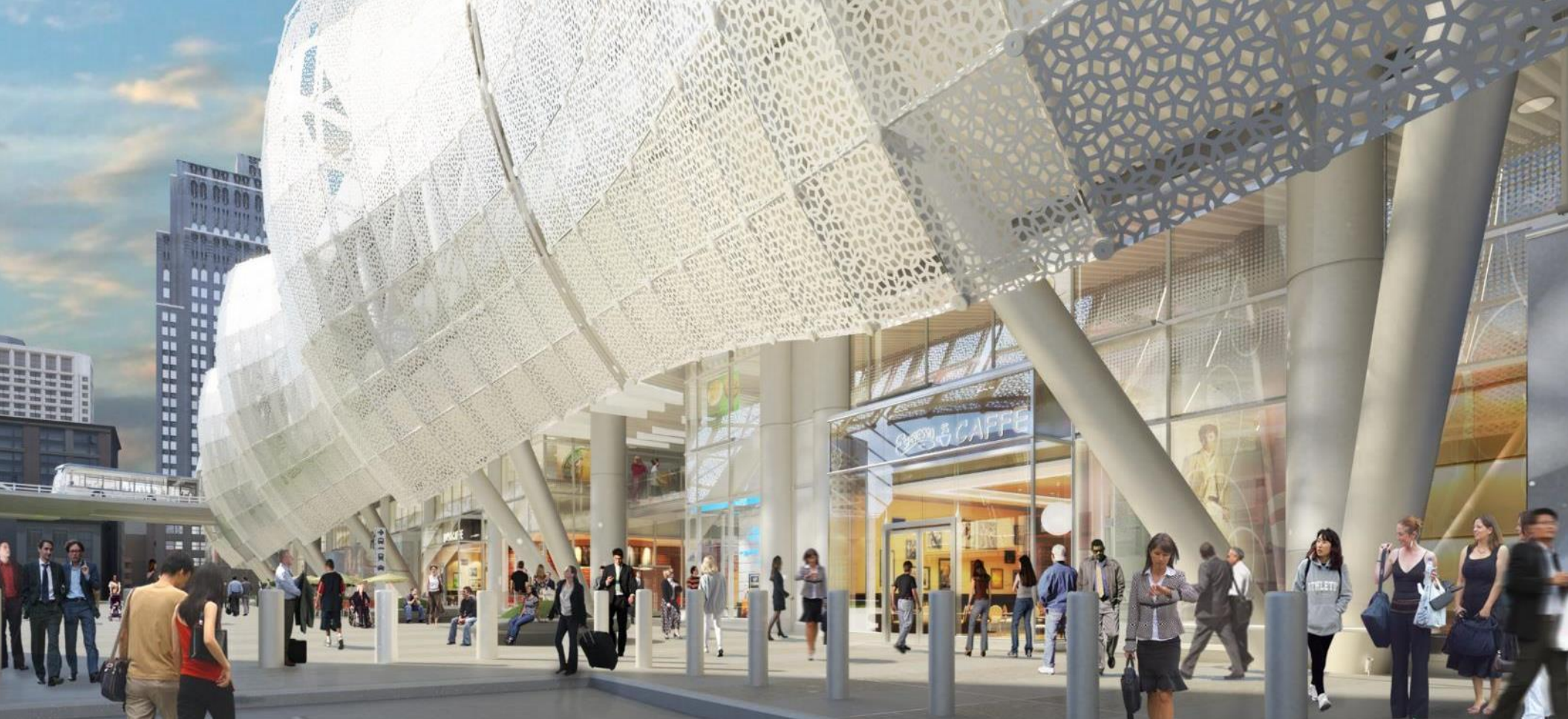
Existing Operating Reserve/Site License Fees AC Transit SFMTA Other Operators

**Projections based on Lincoln Property Company estimates. Costs as shown assume that initial capital improvements are funded by sources other than the operators.*

Projected Operations Funding Strategy

	FY 17 - 18	FY 18 - 19	FY 19 - 20	FY 20 - 21
TJPA NET INCOME (GAP/SURPLUS)	-\$7.34 M	-\$14.09 M	-\$6.19 M	-\$4.93 M
<i>Funding Allocation:</i>				
Existing Operating Reserve/Site License Fees	\$ -	\$6.60 M	\$ -	\$ -
AC Transit (67%)	\$4.92 M	\$5.02 M	\$4.15 M	\$3.30 M
SFMTA (21%)	\$1.54 M	\$1.57 M	\$1.30 M	\$1.03 M
Other Operators (12%)	\$0.88 M	\$0.90 M	\$0.74 M	\$0.60 M
Total Funding	\$7.34 M	\$14.09 M	\$6.19 M	\$4.93 M

**Projections based on Lincoln Property Company estimates. Costs as shown assume that initial capital improvements are funded by sources other than the operators.*



TRANSBAY JOINT POWERS AUTHORITY
FACILITY MANAGEMENT AGREEMENT UPDATE
MARCH 24, 2017