

**STAFF REPORT FOR CALENDAR ITEM NO.: 11  
FOR THE MEETING OF: June 8, 2023**

**TRANSBAY JOINT POWERS AUTHORITY**

**BRIEF DESCRIPTION:**

Authorize the Executive Director to enter into a refreshed Asset Management Agreement with the special purpose entity created by Lincoln Property Company as asset manager for the Salesforce Transit Center for a three-year term, consistent with the contemplated options to extend.

**EXPLANATION:**

**Background**

In 2017, at the conclusion of a two-year competitive procurement process, the TJPA entered into an Asset Management Agreement with LPC West Transit Management LLC, a special purpose entity created by Lincoln Property Company (referred to as “Lincoln”), for services including, but not limited to facility management, maintenance, repair, and service; commercial leasing and management (principally through its leasing subcontractor); promotional platform (advertising, sponsorship, and naming rights) sales and management (principally through its advertising subcontractor); and rooftop park and event management (principally through its park programming subcontractor). The agreement has been amended three times (the agreement, as amended, the “Original Agreement”).

The Original Agreement was negotiated before the TJPA substantially completed construction of the core and shell of the facility, commissioned the building systems, completed training of Lincoln’s employees and subcontractors on the operation of the building systems, or opened the facility for bus operations, retail leasing, and public use. Accordingly, the Original Agreement includes numerous provisions describing how the roles and responsibilities of TJPA and Lincoln were expected to change over time, during a transition period prior to completion of construction and during a stabilization period leading to full operation of the facility. The TJPA subsequently has completed construction and opened the facility for operations. Thus, many of the provisions in the Original Agreement are now moot and can be omitted from a refreshed agreement.

The Original Agreement also was negotiated before the onset of the global Covid-19 pandemic and the resulting health orders requiring shelter in place, social distancing, and other measures to reduce transmission. Despite the rescission of the health orders and full re-opening, economic ramifications in downtown San Francisco remain a concern, mainly resulting from a delayed return for office workers and thus of transit riders. With the natural end of the base term, it seems necessary and appropriate to reset certain expectations as between TJPA, Lincoln, and Lincoln’s subcontractors.

Over the base term of the Original Agreement, TJPA and Lincoln have made significant strides to deliver contemplated works and programs and refine early expectations and projections about

the use, flow, and function of the facility. For example, TJPA and Lincoln have overseen the lease-up of much of the available retail space in the facility and completion of significant retail tenant improvements, and developed park programming and community activations to respond to user demand. In some cases, the actual current practices have matured beyond the early expectations under the Original Agreement and the agreement could benefit from updates to make it more closely align with actual current practice.

The base term of the Original Agreement is about six years, expiring June 30, 2023. The Original Agreement includes the option to renew the agreement for an additional six years (two terms of three years each), based on the mutual agreement of the parties and with at least 12 months' prior written notice.

TJPA staff recommend exercising the option to renew the agreement for the first period of three years (July 1, 2023 – June 30, 2026). But, for the key reasons described above, TJPA staff recommend refreshing the agreement to remove provisions that are moot, respond to the Covid-19 pandemic and resulting economic challenges, and refine language to match actual practice and current circumstances.

On May 3, 2022, the TJPA provided timely notice to Lincoln of the TJPA's intent to exercise the first option to extend and renew the agreement, subject to the TJPA Board's approval. Over the last about one year, the TJPA and Lincoln have negotiated updates to the agreement. Attached is a refreshed form of Asset Management Agreement that is recommended by TJPA staff and has been approved by Lincoln ("Refreshed Agreement").

### **Refreshed Agreement - Key Changes Compared to Original Agreement**

#### Term

The Original Agreement was for a term of about six years (through June 30, 2023), with the option to renew the agreement for an additional six years (two terms of three years each) (through 2029). The Refreshed Agreement is for a term of three years (July 1, 2023 – June 30, 2026) and includes one option to renew for three additional years, consistent with the option extension contemplated under the Original Agreement (generally Section 2).

#### Scope

The scope of services under the Refreshed Agreement (generally Exhibit D) is generally the same as the Original Agreement. The scope has been revised, however, to remove certain scope that TJPA staff believe better-reside in-house (such as wayfinding gap analysis, landscape maintenance services, fire life safety sprinklers testing maintenance services, IT support services, and vertical transportation maintenance services). The scope has also been revised to expressly describe the potential for Lincoln to provide assistance related to minor maintenance of properties owned by TJPA in the area adjacent to the transit center. The scope has also been refined to better reflect the actual services and work of the park programming subcontractor.

#### Staffing and Subcontractors

The Original Agreement contemplated seven Lincoln staff assigned to provide asset management services at the transit center, while the Refreshed Agreement trims the staff assignment to five positions.

#### Fees, Commissions, and Revenue Share

The compensation to Lincoln and its subcontractors under the Original Agreement is made up of several parts. Under the Refreshed Agreement, TJPA staff recommend the following changes to the compensation structure:

- *Maximum Staffing Costs:* TJPA reimburses Lincoln for the actual fully-burdened staffing costs of staff assigned to the Transit Center, up to a maximum annual amount. Under the Original Agreement, the maximum staffing cost was \$1,024,000 (escalated annually) for seven staff positions. Under the Refreshed Agreement, the maximum staffing cost is reduced to \$789,063 (escalated annually) for five staff positions.
- *Asset Management Fee:* TJPA compensates Lincoln a flat fee for providing the asset management services. Under the Original Agreement, the asset management fee was \$300,000 with no escalation. Under the Refreshed Agreement, the asset management fee is increased to \$378,908 (escalated annually). When aggregated with the maximum staffing costs amount, the Refreshed Agreement represents a savings of \$156,029 in FY23-24 compared to the Original Agreement.
- *Park Programming Fee:* TJPA compensates Lincoln's park programming subcontractor for services related to activation in the Rooftop Park. Under the Refreshed Agreement, the fee for staffing services would remain unchanged in FY23-24 (\$520,000) compared to the Original Agreement, but would escalate annually thereafter.
- *Promotional Platform Revenue Share:* TJPA and Lincoln's promotional platform subcontractor share the revenue from advertising and sponsorship. Under the Original Agreement, the promotional platform subcontractor guaranteed advertising and sponsorship revenue of at least \$1.25 million and required the subcontractor to provide a letter of credit TJPA could draw on if the minimum payment was not made. The temporary shut-down of the facility due to the fissure and the on-set of the Covid-19 pandemic changed the market for advertising and sponsorship. Under the Refreshed Agreement, the promotional platform subcontractor will guarantee at least \$175,000 in advertising and sponsorship revenue for TJPA in FY23-24 (increasing to \$225,000 in FY24-25 and \$250,000 in FY25-26), and eliminate the obligation to provide a letter of credit to guarantee the payment.
- *Commercial Leasing Commission:* TJPA compensates Lincoln's commercial leasing broker a commission based on rent over the base term of commercial leases. The Original Agreement is silent as to the basis for commission on leases that are solely based on percentage rent. With changes to the commercial leasing market due to Covid-19, the Refreshed Agreement contemplates a basis for commissions on percentage rent leases.

The other compensation provisions (namely, construction management fee) remain unchanged in the Refreshed Agreement.

#### Mechanism for Paying Recurring Expenses

Under the Original Agreement, the mechanism for Lincoln to pay recurring facility operating expenses was cumbersome and resulted in longer than desired payment periods. Under the Refreshed Agreement, TJPA will deposit the estimated amount of certain recurring expenses so that Lincoln can more promptly process such payments. The Refreshed Agreement also cleans up references to payment processing structures to better-reflect current practice.

#### Guarantor

Under the Original Agreement, Lincoln Property Company Commercial, Inc. guaranteed the full, faithful, and timely payment and performance of the special purpose entity's obligations under the Original Agreement. Under the Refreshed Agreement, the guarantor would be substituted for Lincoln Property Company Commercial LLC, which accepted a transfer of the original guarantor's assets and is better capitalized than the original guarantor.

#### **RECOMMENDATION:**

Authorize the Executive Director to enter into a refreshed Asset Management Agreement with the special purpose entity created by Lincoln Property Company as asset manager for the Salesforce Transit Center for a three-year term, consistent with the contemplated options to extend.

#### **ENCLOSURE:**

1. Resolution
2. Refreshed Asset Management Agreement

**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, In 2017, the TJPA Board authorized the Executive Director to enter into an Asset Management Agreement with a special purpose entity created by Lincoln Property Company (the agreement, as subsequently amended, "Original Agreement"); and

WHEREAS, The base term of the Original Agreement is about six year, but includes the option to renew the agreement for an additional six years (two terms of three years each); and

WHEREAS, TJPA staff recommend exercising the option to renew the agreement for the first period of three years, but, for reasons detailed in the accompanying staff report, recommend refreshing the agreement to remove provisions that are moot, respond to the Covid-19 pandemic and resulting economic challenges, and refine language to match actual practice and current circumstances; now, therefore, be it

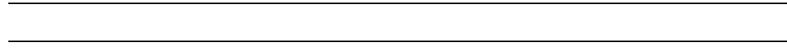
RESOLVED, That the TJPA Board of Directors authorizes the Executive Director to enter into a refreshed Asset Management Agreement with the special purpose entity created by Lincoln Property Company as asset manager for the Salesforce Transit Center for a three-year term, consistent with the contemplated options to extend, substantially in the form presented herewith.

I hereby certify that the foregoing resolution was adopted by the Transbay Joint Powers Authority Board of Directors at its meeting of June 8, 2023.

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Secretary, Transbay Joint Powers Authority

FINAL



**ASSET MANAGEMENT AGREEMENT**

BETWEEN

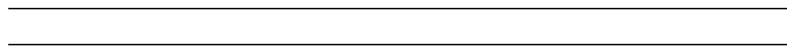
**TRANSBAY JOINT POWERS AUTHORITY, AS OWNER**

AND

**LPC WEST TRANSIT MANAGEMENT LLC, AS MANAGER**

**TRANSBAY TRANSIT CENTER**

**2023-2026**



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***Attachments:***

- Exhibit A** = Description of Center
- Exhibit B-1** = Depiction of Center and Premises
- Exhibit B-2** = Commercial Usage Areas
- Exhibit B-3** = Transit Agency Areas
- Exhibit B-4** = Lower Levels Support Space
- Exhibit B-5** = Description of Existing Center Signage
- Exhibit B-6** = Bus Storage Facility
- Exhibit C** = Staffing Plan
- Exhibit D** = Scope of Services
- Exhibit D-1** = Performance Reviews
- Exhibit D-2** = Schedule of Commercial Leasing Commissions
- Exhibit D-3** = Parking Programming Plan
- Exhibit E** = Form of Performance Guaranty
- Exhibit F** = Form of Budget
- Exhibit G** = Notice Addresses
- Exhibit H** = Form of Estoppel Certificate
- Exhibit I-1** = Manager’s Primary Subcontractors
- Exhibit I-2** = Existing Subcontracts
- Exhibit J** = Additional Insureds
- Exhibit K-1** = Form of Bus Storage Facility Side Agreement
- Exhibit K-2** = Proposed Bus Storage Facility Budget
- Exhibit L** = List of O & M Guidelines Documents
- Exhibit L-1** = Maintenance Plan
- Exhibit L-2** = Comparison Stores
- Exhibit L-3** = Leasing Guidelines
- Exhibit M** = Design Guidelines
- Exhibit M-1** = Design Review Process
- Exhibit N** = List of Prohibited Uses and Users
- Exhibit O** = Signage Guidelines
- Exhibit O-1** = Digital Content Development Guidelines
- Exhibit P** = USDOT Requirements
- Exhibit Q** = Card Check Policy

## ASSET MANAGEMENT AGREEMENT

This **ASSET MANAGEMENT AGREEMENT** (this “Agreement”), dated effective as of the 1st day of July, 2023 (“Effective Date”), is entered into by and between Transbay Joint Powers Authority, a joint exercise of powers agency duly created and existing under the Joint Exercise of Powers Act of the State of California, California Government Code Sections 6500 et seq. (“TJPA” or “Owner”), and LPC West Transit Management LLC, a Delaware limited liability company (“Manager”). Owner and Manager are sometimes herein referred to individually as a “Party” and collectively as the “Parties.”

### **WITNESSETH:**

**WHEREAS**, Owner owns the Salesforce Transit Center generally located at 425 Mission Street in San Francisco, California (collectively, the “Center”);

**WHEREAS**, pursuant to the terms of conditions of that certain Asset Management Agreement, dated May 8, 2017 between Owner and Manager (the “2017 Agreement”), Owner engaged Manager to perform certain services with respect to the management and operation of the portion of the Center identified as the Premises, and Manager agreed to perform such services in accordance with, and subject to, the terms and conditions set forth in the 2017 Agreement;

**WHEREAS**, on October 3, 2018, the Parties entered that certain Amendment No. 01 to the 2017 Agreement, pertaining to operation and management services at the Temporary Terminal for an interim period while the Center was temporarily closed. The term of Amendment No. 01 has expired and is no longer in effect;

**WHEREAS**, on January 30, 2019, the Parties entered that certain Amendment No. 02 to the 2017 Agreement, pertaining to operation and management services at the Bus Storage Facility as requested by the Alameda-Contra Costa Transit District;

**WHEREAS**, on April 1, 2023, the Parties entered that certain Amendment No. 03 to the 2017 Agreement, extending the Scheduled Expiration Date of the 2017 Agreement to June 30, 2023 (the 2017 Agreement, as amended by Amendment No. 02 and Amendment No. 03, the “Original Agreement”);

**WHEREAS**, the Initial Term of the Original Agreement expires on June 30, 2023. The Original Agreement contemplates that the term could be renewed for two (2) additional successive period of three (3) years each; and

**WHEREAS**, Owner desires to engage Manager to perform certain services with respect to the management and operation of the Center, and Manager desires to perform such services, in accordance with, and subject to, the terms and conditions set forth in this Agreement; and

**NOW, THEREFORE**, for good and valuable consideration, the Parties agree as follows:

1. Definitions. The following definitions apply in this Agreement.

“2017 Agreement” means the Asset Management Agreement, dated May 8, 2017 between Owner and Manager.

“AC Transit” means the Alameda-Contra Costa Transit District.

“Additional Insureds” is defined in **Exhibit J**.

“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, including the wayfinding and schedule digital signage on which advertising content may be displayed. The location of such Additional Signage existing as of the Effective Date is shown on **Exhibit B-5**.

“Adjustment Date” means, for purposes of Maximum Staffing Costs, each July 1st occurring after the first full Fiscal Year commencing with the Effective Date.

“Affiliate” and “Affiliated” of any specified Person means any other Person Controlling or Controlled by or under common Control with such specified Person.

“Agreement” means this Asset Management Agreement, dated effective as of the 1st of July, 2023.

“Amtrak” means the National Railroad Passenger Corporation dba Amtrak.

“Annual Reporting Package” is defined in Section 19.2.2.

“Annual Reconciliation” is defined in Section 8.2.5.

“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 (i) as to the estimated Restoration date, in the case of a Substantial

Casualty, or (ii) as to the completion of the Construction in accordance with the approved Plans and Specifications, in the case of Section 9.2(b)(4).

“Architect’s Contract” means 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.

“Asset Management Fee” is defined in Section 4.1.1.

“Audit Period” is defined in Section 8.3.1.

“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, 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 Month” means, for purposes of Maximum Staffing Costs, the month that is three (3) months prior to the month in which the applicable Adjustment Date occurs.

“Base Signage” means all of that certain signage now or hereafter existing in the Premises, installed by Owner.

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

“Books and Records” is defined in Section 8.3.1.

“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” means all buildings, structures, and other improvements and appurtenances constituting part of the Premises, including, (i) tenant improvements to the Commercial Usage Areas 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 Areas for leasing purposes, (iii) Construction of the shell and all other improvements to the 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) demising walls, tenant improvements and fit out and installation of all necessary furniture, fixtures, and equipment to the TJPA Office Space, Security Operations Center, and similar spaces used by Owner, (vi) demising walls, tenant improvements and fit out and installation of all necessary furniture, fixtures and equipment to the Manager Office Space, Back of House, and other similar spaces used by Manager to perform the services', (vii) capital replacements and/or repair of the Center Equipment, and (viii) any other improvements, replacements, or repairs required for Premises operations and to maintain the Premises in a state of good repair, as directed by Owner. For clarification purposes, the term "Building Improvements" are the portion of the Improvements which constitute the Premises.

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

"Bus Storage Facility" means that portion of the Center identified in **Exhibit B-6**, which does not constitute part of the Premises.

"Capital Budget" means the annual update to the prior Fiscal Year's budget, 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 (including replacement(s) and/or repair(s) of all, or any portion(s), of the Premises) of a capital nature, as defined in accordance with generally accepted accounting principles, other than Excluded Expenses.

"Card Check Policy" is described at **Exhibit Q**.

"Casualty" means any damage or destruction of any kind or nature, ordinary or extraordinary, foreseen or unforeseen, affecting any or all Building 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.

"CBD Funds Account" is defined in Section 19.1.1(b).

"Center" means the real property, as more particularly described in **Exhibit A** and depicted in **Exhibit B-1**, made up of the Land, the Improvements, and all Center Equipment and Center FF&E attached or appurtenant to any of the foregoing. The scope of the Center is subject to change, particularly with the addition of Phase II as described herein.



“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, fixtures, 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; the Center Signage existing as of the Effective Date is depicted in **Exhibit B-5**.

“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.

“Commercial Standard” is defined in Section 5.1.2.

“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**, and in such other areas of the Premises as may be permitted in writing upon the mutual agreement by Owner and Manager, in their respective sole discretion. For clarification purposes, the First and Second Floor Transit Lease Space, and Lower Levels Support Space do not constitute Commercial Usage Areas except to the extent Owner and Manager enter into a separate written agreement pursuant to which Manager (through its Leasing Subcontractor) is engaged as the leasing agent for the First and Second Floor Transit Lease Space, or Lower Levels Support Space on terms mutually agreeable to Owner and Manager in their respective sole discretion, including compensation.

“Communication Protocols” is defined in Section 11.2.

“Comparison Month” means, for purposes of Maximum Staffing Costs, the month that is twelve (12) months prior to the Base Month.

**Exhibit L-2.** “Comparison Stores” shall mean those stores designated as comparison stores in

“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).

“Concept of Operations” means the manual outlining specifications for the security of the Premises prepared by Owner, as the same may be amended from time to time upon Notice to Manager.

“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 Effective 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.

“Confidentiality Exclusion” is defined in Section 29.6.

“Construction” means any alteration, construction, demolition, development, expansion, reconstruction, redevelopment, repair, Restoration, or other work affecting any Building 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.

“Construction Contract” means 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 Construction 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.

“Construction Management Fee” is defined in Section 4.3.

“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.

“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.

“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 Effective 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 percent (4%) per annum; or (b) the Usury Limit.

“Design Guidelines” means those guidelines more particularly set forth on **Exhibit M** governing the prescribed use of the Commercial Usage Areas.

“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**.

“Digital Content Development Guidelines” means the digital content development guidelines for the Center set forth in **Exhibit O-1**.

“Documentation Period” is defined in Section 5.3.

“East Cut CBD” means The East Cut Community Benefit District, a nonprofit corporation formerly named “The Greater Rincon Hill Community Benefit District,” as same may be re-named from time to time.

“Effective Date” means July 1, 2023.

“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.

“Energy Disclosure Requirements” is defined in Section 7.4.

“Energy Use Disclosure” is defined in Section 7.4.

“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 Effective 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**, and containing such other assurances as Owner may reasonably request.

“Event of Default” is defined in Section 24.1.1.

“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 or management fees other than the Fees and Staffing Cost Reimbursement; (e) 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; (f) legal and accounting fees relating to disputes with Manager or Manager’s employees, officers, directors, contractors and/or subcontractors; (g) 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; (h) 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; (i) 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; (j) Manager's general corporate overhead and general and administrative expenses; (k) cost of entertainment which are not contemplated under the applicable Operating Budget approved by Owner and charitable or political contributions; (l) reserves; (m) costs which are reimbursed through Loss Proceeds or Condemnation Awards paid to Manager in accordance with Article 17 of this Agreement; (n) 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; (o) 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 except for the Fees and Staffing Cost Reimbursement; (p) any other expense which is expressly excluded from Operating Expenses and/or Capital Expenses pursuant to the terms of this Agreement; and (q) any other expense which is not included in the Budget approved by Owner for the applicable Fiscal Year or in any amendment to the Budget for such Fiscal Year approved by Owner, subject to the Permitted Variance for such year.

"Excluded Services" is defined in Section 5.2.

"Exclusion Condition" is defined in Section 5.2.

"Exclusion Exercise Notice" is defined in Section 5.2.

"Exclusion Option" is defined in Section 5.2.

"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 Park Programming Fee, the Incentive Fee, the Construction Management Fee, the Leasing Commissions, and the Promotional Platform Revenue Sharing 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 Effective 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 the portion of 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 consisting of approximately 5,243 rentable square feet, all as more particularly shown on **Exhibit B-3**.

“Fiscal Year” means each twelve (12) month period commencing July 1<sup>st</sup> through and including the following June 30<sup>th</sup>.

“Guarantor” means Lincoln Property Company Commercial, LLC, a Texas limited liability company.

“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.

“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 Effective 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 (BID) 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.

“Improvements” means all buildings, structures, and other improvements and appurtenances constituting part of the Center. For clarification purposes, unless otherwise specifically agreed in writing by Owner and Manager in their respective discretion, Manager’s

obligations and duties under this Agreement relate only to that portion of the Improvements which constitute the Building Improvements.

“Incentive Fee” is defined in Section 4.2.1.

“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, and any and all subsidiaries and Affiliates of any of the foregoing, their agents, servants, directors, officers, employees and any Equity Interest holders.

“Initial Term” is defined in Section 2.1.

“Insubstantial Condemnation” means any Condemnation except a Substantial Condemnation or a Temporary Condemnation.

“Land” means the real property beneath the Center as more particularly described on **Exhibit A** and depicted on **Exhibit B-1**.

“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 Effective 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, but excluding any Naming Rights Agreements solicited and entered into by Owner pursuant to Section 5.1.3(c)) 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.)

“Lease Information Packet” is defined in Section 5.1.2(c).

“Lease Review Request Packet” is defined in Section 5.1.2(c).



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

“Leasing Commission” is defined in Section 4.4.

“Leasing Guidelines” is defined in Section 5.1.2(c) and **Exhibit L-3**.

“Leasing Subcontractor” means the entity identified in **Exhibit I**, 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 Level generally reserved for Back of House Functions, Security Operations Center, Manager Office Space, and shared use space for similar functions and purposes, as more particularly shown on **Exhibit B-4**.

“Maintenance Plan” is defined at Section 5.1.1.(a) and attached at **Exhibit L-1**.

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

“Manager” means LPC West Transit Management LLC, a Delaware limited liability company.

“Manager/Tenant FF&E” means all movable furniture, furnishings, fixtures, 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, but shall not include any such items paid for by Owner as part of Operating Expenses pursuant to an approved Budget or otherwise.

"Manager Office Space" is defined in Section 10.4.

"Manager's Primary Subcontractors" means the Park Subcontractor, the Promotional Platform Subcontractor and the Leasing Subcontractor, as identified in **Exhibit I**.

"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 Fiscal Year during the Term of this Agreement, the maximum staffing fee paid by Owner to Manager for providing the services, inclusive of Manager's actual cost of wages, salaries, 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 first full Fiscal Year commencing with the Effective Date shall be Seven Hundred Eighty Nine Thousand and Sixty Three Dollars (\$789,063) which amount is based on the staffing plan included in **Exhibit C**. Each July 1<sup>st</sup> occurring thereafter (each, an "Adjustment Date"), the Maximum Staffing Costs shall be increased annually (on a compounded basis), 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; Owner will reasonably review

any request to adjust Maximum Staffing Costs pursuant to any Operating Budget, or any amendment thereto, based on market factors.

“Minimum Annual Promotional Platform Revenue” means, for any Fiscal Year commencing on or after the Effective Date, an amount equal to the greater of (a) (i) for the first Fiscal Year of the Term, One Hundred Seventy Five Thousand and No/100 Dollars (\$175,000), (ii) for the second Fiscal Year of the Term, Two Hundred Twenty Five Thousand and No/100 Dollars (\$225,000), and (iii) for the third Fiscal Year of the Term, Two Hundred Fifty Thousand and No/100 Dollars (\$250,000), each of which amounts shall be prorated for any partial Fiscal Year commencing on or after the Effective Date 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.

“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.

“Naming Rights Agreement” is defined in Section 5.1.3(c).

“Net revenues” is defined in Section 4.5.3.

“Naming Rights Agreements” is defined in Section 5.1.3(c).

“Negotiation Period” is defined in Section 5.3.

“Net Retail Revenues” for a particular Fiscal Year mean the aggregate amount of base rent and percentage rent (including alternative rent or other amounts collected in lieu of base rent or percentage rent) received from Tenants under Leases with respect to all or any portion of the Commercial Usage Areas, 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 except to the extent Owner and Manager enter into a separate written agreement pursuant to which Manager (through its Leasing Subcontractor) is engaged as the leasing agent for the Transit Agency Ticketing and Waiting Room Leases or TJPA Office Space on terms mutually agreeable to Owner and Manager in their respective sole discretion.

“Net Retail Revenue Threshold” for a particular Fiscal Year means (a) for the 2023-2024 Fiscal Year, Three Million Dollars (\$3,000,000.00), and (b) for each Fiscal Year thereafter, an amount equal to One Hundred Three Percent (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 Three Hundred Sixty Five (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.

“Nondisclosure of Private Information Ordinance” is defined in Section 29.7.

“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 all key reference documents outlining specifications for the maintenance, repair, leasing and operation of the Premises prepared by Owner listed on **Exhibit L**, copies of which have been delivered to Manager, as the same may be supplemented and amended from time to time upon Notice to Manager.

“Operating Account” is defined in Section 19.1.1(a).

“Operating Budget” means each Fiscal Year budget outlining projected Operating Expenses for the succeeding Fiscal Year and included as part of the overall Fiscal Year 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 Maintenance Plan for the operation of the Commercial Usage Areas.

“Opportunity Period” is defined in Section 5.2.

“Original Agreement” means the 2017 Agreement as amended by Amendment No. 02 and Amendment No. 03.

“Owner” means the TJPA and any successor agency succeeding to the TJPA’s assets or functions.

“Owner Event of Default” is defined in Section 24.2.2.

“Owner Maintained Insurance” is defined in Section 16.1.1.

“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.

“Park” means the approximately 5.4 acre rooftop park comprising a portion of the Center all as more particularly described in **Exhibit B-2**.

“Park Café” means the café to be located in the Park in the approximate location described in **Exhibit B-2**.

“Park Programming Fee” is defined in Section 4.1.2.

“Park Programming Plan” is defined in Section 4.1.2 and **Exhibit D-3**.

“Park Restaurant” means the signature restaurant to be located in the Park in the approximate location described in **Exhibit B-2**

“Park Staffing Plan” is defined in Section 4.1.2 and **Exhibit D-3**.

“Park Subcontractor” means the entity identified in **Exhibit I**, 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 programming, activations, and events in the Park.

“Party” or “Parties” means Owner, or Manager, or the Owner and Manager.

“Payment Application” is defined in Section 8.1.2(b)(1).

“Performance Guaranty” means a guaranty, executed by the Guarantor, in substantially the form of **Exhibit E**.

“Performance Review” is defined in Section 6.2 and **Exhibit D-1**.

“Permitted Variance” is defined in Section 8.2.4.

“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 the Lower Concourse and the Train Platform Level which will house future rail operations as part of Phase II.

“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 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.

“Phase II Management Notice” is defined in Section 5.3.

“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; I, 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**. The “Plans and Specifications” shall mean the original Plans and Specifications as so modified.

“Political Activity” is defined in Section 29.15.

“Positive Incremental Net Retail Revenues” is defined in Section 4.2.1.

“Pre-Fund Monthly Payment” is defined in Section 8.1.2(a)(1).

“Premises” means the Center, excluding the portion of the Center identified as the Bus Storage Facility. The scope of the Premises is subject to change, particularly with the future planned addition of Phase II.

“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.

“Programming Improvements” is defined in Section 20.3

“Programming Rights” is defined in Section 20.3.

“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.

"Prohibited Uses and Users" is attached at **Exhibit N**.

"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 Signage Guidelines set forth in **Exhibit O** and the Digital Content Development Guidelines set forth in **Exhibit O-1**. The Promotional Platform includes (i) advertising content across Center Signage, (ii) Sponsorship Agreements solicited and entered into by Manager in accordance with Section 5.1.3(b), and (iii) Naming Rights Agreements solicited and entered into by Manager with Owner's authorization in accordance with Section 5.1.3(c). For avoidance of doubt, the Promotional Platform does not include Center Events.

"Promotional Platform Revenue Share" is defined in Section 4.5.

"Promotional Platform Subcontractor" means the entity identified in **Exhibit I**, 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.

"Proposed Use Notice" is defined in Section 20.3.

"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.

"Rail Operator Agreement" is defined in Section 20.1.

"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.

“Records Request” is defined in Section 8.3.2.

“Records Default” is defined in Section 8.3.2.

“Related Documents” is defined in Section 18.1.

“Renewal Exercise Notice” is defined in Section 2.2.

“Renewal Option” is defined in Section 2.2.

“Renewal Response Notice” is defined in Section 2.2.

“Renewal Term” is defined in Section 2.2.

“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.

“Retail Permitted Use” is defined in Section 5.1.2.

“Scheduled Expiration Date” means 11:59 p.m. on June 30, 2026. To the extent that Owner exercises a 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 applicable Renewal Term.

“Scope of Services” means the services to be provided by Manager with respect to the Premises set forth on **Exhibit D** 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.

“Security Contractor” is defined in Section 12.1.

“Security Deposit Account” is defined in Section 19.1.2.

“Security Operations Center” is defined in Section 10.2.

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

“SFMTA” means the San Francisco Municipal Transportation Agency.

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



**Exhibit O.** “Signage Guidelines” means the signage guidelines for the Center set forth in

“Sponsorship Agreement” is defined in Section 5.1.3(b).

“Staffing Cost Reimbursement” is defined in Section 4.6.

“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.

“Subcontracts” is defined in Section 5.1.1(h). Major Construction Subcontracts are a subset of Subcontracts.

“Subcontractors” means any third party (i.e., any party that is not Owner or Manager) that Manager enters into a Subcontract for the performance of the Scope of Services, consistent with the terms and procedures required under this Agreement. Manager’s Primary Subcontractors are a subset of Subcontractors.

“Submission Period” is defined in Section 8.3.2.

“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 Areas 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, if applicable, the Renewal Term.

“TJPA” means the Transbay Joint Powers Authority, a joint exercise of powers agency duly created and existing under the Joint Exercise of Powers Act of the State of California, California Government Code Sections 6500 et seq.

“TJPA Office Space” means the approximately Three Thousand (3,000) square foot portion of space S05 at the Center as more particularly described in **Exhibit B-2**.

“Train Platform Level” means the second (2<sup>nd</sup>) 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 Bridge Highway & Transportation District, Greyhound, San Mateo County Transit District, Western Contra Costa County Transit Authority and any other public or private transportation provider granted rights to use any portion of the Center dedicated exclusively for use by transit providers.

“Transit Agency Areas” means those areas of the Center that are subject to a Transit Agency Agreement directly by Owner to one or more Transit Agencies for their exclusive use and operation, all as more particularly shown on **Exhibit B-3**.

“Transit Agency Agreements” 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 but excluding any Naming Rights Agreements solicited and entered into by Owner pursuant to Section 5.1.3(c)) allowing any Transit Agency to occupy, use, possess, operate, manage, maintain 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.

“Transit Agency Ticketing and Waiting Room Leases” is defined in Section 10.1.

“Transit and Rail Reserves” is defined in Section 11.1.

“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.

“USDOT Requirements for Professional Services Contracts” are described in

**Exhibit P.**

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

2. Term.

2.1 *Initial Term.* The initial term of this Agreement (the “Initial Term”) shall: (a) commence on the Effective 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 (a “Renewal Option”) to extend and renew this Agreement upon all the same terms and conditions set forth herein, for one (1) additional successive period of three (3) years (a “Renewal Term”) commencing immediately after the Initial Term expires. Owner shall exercise the Renewal Option, if at all, by giving Manager Notice of such exercise (a “Renewal Exercise Notice”) at least twelve (12) months before the first day of the applicable 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, the Renewal Exercise Notice shall be rendered null and void and this Agreement shall, subject to the remaining terms and conditions hereof, expire on the then-applicable Scheduled Expiration Date. 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 applicable 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 the 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 applicable Renewal Term commencing immediately after the expiration of the Initial Term or immediately preceding Renewal Term, as applicable.

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, Owner and Manager shall comply with their respective obligations and duties upon termination of this Agreement as set forth in Section 25 below.

3. Premises Condition.

3.1 *Premises Condition.*

As of the Effective Date, the Parties agree that (i) Owner has achieved substantial completion of construction of Phase I of the Center, (ii) Owner has completed commissioning of all building systems serving Phase I of the Center, (iii) Manager’s employees and agents have been trained in the operation of such building systems, and (iv) Owner has turned over to Manager, and Manager has accepted, the Premises.

3.2 *Owner's Reserved Rights.* Owner is actively engaged in planning and design for Phase II of the Center; during the Term of this Agreement, Owner, in its sole and absolute discretion, may initiate Construction of Phase II of the Center. Such work may involve, among other things, demolition, earth moving, boring, operation of heavy machinery, noise, vibration, dust, temporary disruptions and inconveniences, and other activities associated with major construction. In order to accommodate the construction of Phase II and certain functions of the Transit Agencies and Rail Operators, the development of parcels neighboring the Transit Center, and/or to facilitate the safety and security of the Center, Owner reserves the right from time to time to: (a) 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; (b) alter or relocate any facility, whether located in the Premises or in other parts of the Center; (c) designate the days and hours during which any areas of the Center shall be open to the public; (d) close temporarily or permanently all or any portion of such areas for any purpose; (e) 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; (f) temporarily or permanently relocate, reconfigure, down-size, or eliminate the Lower Levels Support Space and the uses thereof, provided that in such event Owner shall provide Manager suitable alternate space within the Center to replace such relocated, reconfigured, down-sized or eliminated Manager Office Space; in no event shall Manager be allocated less square footage or a material change in configuration or use (i.e., not less than two (2) private offices and three (3) desks in the lobby area) than that currently allocated to Manager; and (g) enter contracts related to the construction of Phase II. 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, including without limitation, that Owner's exercise of its rights under this Section 3.4 that results in breach by Owner of its obligations under any Lease shall not be deemed a Default by Manager under this Agreement. Manager shall notify Owner if any proposed action taken by Owner under this Section 3.4 is reasonably likely to materially and adversely affect any Tenant or the use and enjoyment of any Tenant's Leased Premises.

#### 4. Manager Compensation.

##### 4.1 *Management Fees.*

4.1.1 *Asset Management Fee.* In consideration for Manager's performance, generally, of the Scope of Services hereunder during the Term, Owner shall pay Manager an annual management fee (an "Asset Management Fee") equal to Three Hundred Seventy Eight Thousand and Nine Hundred Eight Dollars (\$378,908) per Fiscal Year. Each July 1<sup>st</sup> occurring thereafter (each, an "Adjustment Date"), the portion of the Asset Management Fee equal to Seventy Eight Thousand Nine Hundred Eight Dollars (\$78,908) shall be increased annually (on a compounded basis), over the Asset Management Fee 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 Asset Management Fee for a particular Fiscal Year be less than the Asset Management Fee 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 Asset Management Fee may be adjusted pursuant to any Operating Budget (or amendment thereto) approved by Owner in accordance with this Agreement.

The Asset Management Fee shall be prorated for any partial Fiscal Year during the Term based on the actual number of days in such Fiscal Year. The Asset Management Fee shall appear as a separate line item in each Operating Budget covering the Fiscal Year for which such Asset Management Fee is paid and shall be paid in equal monthly installments over the course of the applicable Fiscal 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 *Park Programming Fee.* In consideration for Manager’s performance of the Scope of Services hereunder relating to the programming, activations, and events in the Park during the Term, Owner shall pay Manager an annual management fee (a “Park Programming Fee”) equal to Five Hundred Twenty Thousand and No/100 Dollars (\$520,000.00) per Fiscal Year. The Park Programming Fee shall be prorated for any partial Fiscal Year during the Term based on the actual number of days in such Fiscal Year. The Park Programming Fee shall appear as a separate line item in each Operating Budget covering the Fiscal Year for which such Park Programming Fee is paid and shall be paid in equal monthly installments over the course of the applicable Fiscal 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 Park Programming Fee in a lump sum at the beginning of the applicable Fiscal Year. The Parties agree and acknowledge that the Park Programming Fee includes compensation for all costs incurred in connection with management and executive staff of Manager and/or its Park Subcontractor performing programming, activations, and event 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 for performing programming, activations, and event services with respect to the Park) 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. For clarification purposes, the Parties agree that the Park Programming Fee does not include fees and expenses paid to third parties to perform park programming and events and marketing related to the Park which fees and expenses are payable directly by Owner to Park Subcontractor, or third party vendor (as opposed to Manager), as appropriate. Additionally, the Parties agree that Manager’s right to receive the Park Programming Fee shall be conditioned upon Manager and/or its Park Subcontractor, as applicable, maintaining the appropriate level of management and executive staffing for the programming, activations, and events in the Park, consistent with the staffing plan (the “Park Staffing Plan”) described in **Exhibit D-3**.

## 4.2 *Incentive Fee.*

4.2.1 *Incentive Fee.* In consideration for Manager's performance of the Scope of Services hereunder relating to leasing Commercial Usage Areas during the Term, and in addition to the Asset Management Fee payable pursuant to Section 4.1.1 and the Commercial Leasing Commissions payable pursuant to Section 4.4, 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"), Owner shall pay Manager 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 8.3.2, 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 8.3.2. 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.* In consideration for Manager's performance of the Scope of Services hereunder relating to Construction management during the Term, 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 estimated Construction Management Fee for each Fiscal Year shall appear as a separate line item in each Budget (based on the forecasted Construction of Building Improvements set forth in that particular Budget), and the actual Construction Management Fee shall be paid in connection with each actual Construction project managed by Manager in accordance with this Agreement, 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, 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.* In consideration for Manager's performance of the Scope of Services hereunder relating to leasing of Commercial Usage Areas during the Term, 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-2**. 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 thirty (30) days after execution of the applicable Lease by the Tenant and Owner and (ii) one-half (1/2) within thirty (30) 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.* In consideration for Manager's performance of the Scope of Services hereunder relating to the Promotional Platform during the Term, all revenue generated from the Promotional Platform (other than revenue generated from any Naming Rights Agreements and/or Sponsorship Agreements solicited and entered into by Owner) (the "Promotional Platform Revenue Share") shall be shared between Owner and Manager in accordance with this Section 4.5.

4.5.1 Intentionally omitted.

4.5.2 *Promotional Platform Revenue Share.* Commencing on the Effective Date 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 (including, without limitation, any Sponsorship Agreements solicited and entered into by Manager in accordance with Section 5.1.3(b) below, but excluding any Naming Rights Agreements and Sponsorship Agreements solicited and entered into by Owner in accordance with Section 5.1.3(c) and Section 5.13(b) below, respectively) 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 any Naming Rights Agreements solicited and entered into by Manager with the express authorization of Owner in accordance with Section 5.1.3(c) below 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 (other than revenue generated from any Naming Rights Agreements and/or Sponsorship Agreements solicited and entered into by Owner) shall be paid to Owner and Manager as follows: (1) seventy-five percent (75%) of any “net revenues” derived from the Promotional Platform (including, without limitation, any Sponsorship Agreements solicited and entered into by Manager in accordance with Section 5.1.3(b) below, but excluding any Naming Rights Agreements and Sponsorship Agreements solicited and entered into by Owner in accordance with Section 5.1.3(c) and Section 5.13(b) below, respectively) shall be paid to Owner and twenty-five percent (25%) of any “net revenues” derived from the Promotional Platform (including, without limitation, any Sponsorship Agreements solicited and entered into by Manager in accordance with Section 5.1.3(b) below, but excluding any Naming Rights Agreements and Sponsorship Agreements solicited and entered into by Owner in accordance with Section 5.1.3(c) and Section 5.13(b) below, respectively) shall be paid to Manager, on a pari passu basis, and (2) eighty-five percent (85%) of any “net revenues” derived from any Naming Rights Agreements solicited and entered into by Manager with the express authorization of Owner in accordance with Section 5.1.3(c) below shall be paid to Owner and fifteen percent (15%) of any “net revenues” derived from any Naming Rights Agreements solicited and entered into by Manager with the express authorization of Owner in accordance with Section 5.1.3(c) below shall be paid to Manager, on a pari passu basis. Payments pursuant to the foregoing sentence shall be made to the applicable party within thirty (30) 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 (other than gross revenue generated from any Naming Rights Agreements solicited and entered into by Owner), 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. For avoidance of doubt, “net revenues” shall not include, and Manager acknowledges and agrees that in no event shall Manager be entitled to share in, any revenues generated from any Naming Rights Agreements and/or Sponsorship Agreements solicited and entered into by Owner.

4.5.4 *Termination.* Upon the expiration or earlier termination of this Agreement, Manager shall be entitled to receive its share (as calculated under this Section 4.5 above) of any “net revenues” actually received by Owner after such expiration or earlier termination under any Sponsorship Agreements or advertising contracts, licenses or agreements pertaining to the Promotional Platform entered into prior to the expiration or earlier termination of this Agreement.

4.6 *Staffing Cost Reimbursement.* In consideration for Manager’s performance, generally, of the Scope of Services hereunder during the Term (and in addition to the Asset Management Fee), Owner shall reimburse Manager for the lesser of (1) actual wages, salaries, payroll taxes, fees and benefits paid to any staff or employees of Manager providing the Scope of Services with respect to the Premises during the Fiscal Year (collectively, “Manager’s Actual Staffing Costs”), and (2) the Maximum Staffing Costs applicable to such Fiscal Year (the “Staffing Cost Reimbursement”). The Staffing Cost Reimbursement shall appear as a separate line item in each Operating Budget covering the Fiscal Year for which such Staffing Cost Reimbursement is paid and shall be paid each month, in arrears, in accordance with the general procedure for payment of Operating Expenses and Capital Expenses set forth in Section 8.1 below.

5. *Scope of Asset Management Services.*

5.1 *General Scope of Services.* Beginning on the Effective Date and continuing throughout the Term (including any Renewal Term, if applicable), Manager shall provide asset management services with respect to the Premises consistent with the Scope of Services, as described in **Exhibit D**, 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 Maintenance Plan, Leasing Guidelines and Signage Guidelines, as applicable. Notwithstanding anything in this Agreement (including, without limitation, the descriptions of Manager’s services to be provided as set forth in the Scope of Services and in any of the exhibits to this Agreement) which may be construed to the contrary, Manager shall not be deemed to have failed to satisfy its obligations under Sections 5.1.1(c), 5.1.2 and 5.1.3 below or its corresponding duties set forth in the Scope of Services and any related exhibits further describing such services to be provided due solely to a failure of any of Manager’s Primary Subcontractors in the performance of their respective services and duties so long as Manager engages and thereafter supervises Manager’s Primary Subcontractors in the performance of their respective services and duties in accordance with the standard required of Manager under this Agreement.

5.1.1 *Facility Management.*

(a) *Maintain, Repair and Service.* Manager prepared and Owner approved the plan for the operation, repair and maintenance of the Premises based on the O & M Guidelines, the Capital Improvement Plan, the Transit Asset Management Plan, and other relevant information provided by Owner, which plan is set forth on **Exhibit L-1** (the “Maintenance Plan”) at. Except to the extent that this Agreement otherwise expressly provides or allows, Manager, as part of the Scope of Services, shall, commencing on the Effective 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 Maintenance Plan and otherwise in accordance with the Commercial Standard and the Signage 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 to 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) that may be required by Law or the Maintenance Plan 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 Maintenance Plan. 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 Maintenance Plan 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 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) *Park Management.* Owner hereby approves of the entity identified in **Exhibit I** as Manager's Park Subcontractor. Manager's and the Park Subcontractor's plan for the programming, activations, and events in the Park (the "Park Programming Plan") is described in **Exhibit D-3**. Manager shall promptly address (or cause its Park Subcontractor to promptly address) any revisions to the Park Programming Plan requested by Owner. On the Effective Date, Manager (through its Park Subcontractor) will conduct management activities for the programming of the Park in accordance with the Park Programming Plan approved by Owner.

In addition to the Park programming, activations, and event services in the Park, Manager shall provide management, operation, maintenance, repair, replacements, and similar services for the Park as described in the Scope of Services.

(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.* Prior to the start of construction for Phase II, 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 applicable portions of the Lower Levels Support Space allocated for Back of House Functions or shared use 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. Owner may require the relocation, reconfiguration, down-sizing, or elimination of such uses in its discretion as provided in Section 3.2. 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 the Maintenance Plan.

(f) *Operating Hours.* Manager agrees that the Commercial Usage Areas shall be open to the public during the applicable Operating Hours designated in the Maintenance Plan. 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, except as directed by Owner. 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 Maintenance Plan, 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 the Maintenance Plan 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 Areas 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**.

(h) *Subcontracts.* Manager may, on behalf of itself only and not on behalf of or as agent of Owner, enter into subcontracts with any Subcontractor for the performance of the Scope of Services which Manager deems necessary for the efficient operation of the Premises (collectively, "Subcontracts"), provided that all such Subcontracts (a) shall be consistent with the Maintenance Plan 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 Subcontractor 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, (c) shall name Owner as an intended third party beneficiary of the applicable Subcontract with rights to directly enforce the obligations of the Subcontractor under such Subcontract, and (d) shall be procured in a manner consistent with Law, generally accepted property management procedures, and Owner's policies provided to Manager prior to the Effective Date (it being agreed that with respect to any changes hereafter made to policies provided to Manager prior to the Effective Date, then such Subcontract shall be procured in a manner consistent with such changes that are hereafter provided to Manager to the extent such change in Owner's policies do not materially increase Manager's obligations, or decrease Manager's rights, under this Agreement after the Effective Date). 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 the Subcontracts in approved amounts (including approved change orders) unless caused by a Manager Default so long as such Subcontract complies with items (a), (b), (c) and (d) above, and (ii) such Subcontract has been approved by Owner. Owner hereby approves the Subcontracts identified on **Exhibit I-2**.

5.1.2 *Leasing of Commercial Usage Areas.*

(a) *Permitted Use.* Manager acknowledges and agrees that the Commercial Usage Areas 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 this Agreement (the “Commercial Standard”). Notwithstanding the foregoing, in any and all events, the use of the Commercial Usage Areas 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 Areas during the Term. Owner hereby approves the entities identified in **Exhibit I** as Manager’s Leasing Subcontractor and Leasing legal counsel, acting under Manager’s supervision and at Manager’s direction but as agents of Owner. In furtherance of the foregoing, Manager shall cause Manager’s contract with its Leasing Subcontractor to expressly state that Manager’s Leasing Subcontractor, in performing its duties under such contract, is acting 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 Areas with Tenants in accordance with the Commercial Standard, 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, Manager shall, in consultation with Owner, negotiate all Leases using a form of lease approved in advance by Owner (subject to the Commercial Standard). 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, 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, 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, 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, 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 Areas and promptly handle all complaints and requests from Tenants under Leases affecting the Commercial Usage Areas. 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 legal 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.

5.1.3 *Promotional Platform.* Subject to Section 5.1.3(b), Section 5.1.3(c) 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 the entity identified in **Exhibit I** as Manager's 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 Signage Guidelines set forth in **Exhibit O** and the Digital Content Development Guidelines set forth in **Exhibit O-1**.

(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 Signage Guidelines set forth in **Exhibit O** and the Digital Content Development Guidelines set forth in **Exhibit O-1**. 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**, **Exhibit O** and **Exhibit O-1**. From and after the Effective Date hereof, Manager or any Tenant so authorized by Manager shall have the right to place Additional Signage in or about any portion of the Premises, and in any Leased Premises; the right to place such Additional Signage is subject to 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**. 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**. 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.* 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 to the Center or to portions of the Center but excluding any Naming Rights Agreements unless otherwise expressly authorized by Owner ("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.

(c) *Naming Rights.* Notwithstanding anything to the contrary contained herein, Owner shall have the exclusive right to solicit and enter into naming rights arrangements with respect to the Center ("Naming Rights Agreements"); Owner has entered that certain Naming and Signage Rights Agreement dated July 24, 2017 with salesforce.com; Manager shall comply with such requirements related to signage within the Naming Rights



Agreement as and to the extent directed by Owner. Unless otherwise expressly authorized by Owner, Manager shall not solicit any such Naming Rights Agreement. Manager acknowledges and agrees that Manager shall not be entitled to share in any revenue generated from any Naming Rights Agreements solicited and entered into 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 support Owner in consulting with I East Cut 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 the applicable 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. For the avoidance of doubt, any agreement between Owner and a Rail Operator to own, use, operate, manage, and/or maintain the Lower Concourse and/or the Train Platform Level, or any portion thereof pursuant to a Rail Operator Agreement, and any election by that Rail Operator to retain a third party asset manager to manage such space in connection with a Rail Operator Agreement, shall not trigger Manager’s right to negotiate under this Section 5.3.

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 Maintenance Plan, Leasing Guidelines and Signage Guidelines.

6.2 *Performance Reviews.* Owner and Manager will engage in good faith qualitative and quantitative evaluation of Manager’s performance of the Scope of Services (“Performance Review”) bi-annually, as described in **Exhibit D-1**. Notwithstanding the outcome of a Performance Review, Manager shall not be deemed to be in default of this Agreement as a result of Manager’s failure to satisfy any of the Performance Review metrics 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 Maintenance Plan, Leasing Guidelines and Signage Guidelines.

### 6.3 *Security for Manager's Performance.*

6.3.1 *Performance Guaranty.* Concurrently with the Effective 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.

## 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. As of the Effective Date, Owner has advised Manager and provided instructions relating to: (a) Requirements related to Federal Law, as described in Section 29, **Exhibit P**, and elsewhere; (b) Requirements related to Government procedures for procurement of Subcontracts, Leases, programming agreements, public works contracts, and similar opportunities; (c) Requirements

related to state and local law, as described in Section 29 and elsewhere; (d) Requirements related to the TJPA's Conflict of Interest Code and the Political Reform Act (Government Code Section 81000, et seq.), including the requirement for certain members of Manager's team to file annual Statements of Economic Interest; and (e) Requirements related to labor, including the TJPA's Project Labor Agreement, Card Check Policy, prevailing wage laws, DBE requirements, prompt payment to Subcontractors, and related requirements.

*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 East Cut CBD.* In performing its programming, activations, events, management, operations, maintenance, repairs, replacements, and similar services in and to the Park, and in establishing the annual budget for such services for the Park, Owner may require and direct Manager to consult and coordinate with The East Cut CBD Board of Directors, and committee(s) established by The East Cut CBD.

**8.** *Payment of Operating Expenses; Budgets; Audits.*

**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 recurring expenses directly using the Pre-Fund Monthly Payment from Owner for all repairs, maintenance, replacements, equipment and services (including 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) to the Premises during the Term, as part of Operating Expenses or Capital Expenses, as applicable. To the extent there are funds remaining from the Pre-Fund Monthly Payment, any payments of eligible Operating Expenses and/or Capital Expenses incurred in accordance with the applicable Budget for programming, activations, events, management, operations, maintenance, repairs, replacements and similar services to the Park shall be made first using funds from the Pre-Fund Monthly Payment.

**8.1.2** *Procedure for Payment of Expenses.*

**(a)** *Recurring Operating Expenses.*

**(1)** *Payment.* Upon the approval of each applicable Budget, an average of the monthly recurring Operating Expenses for such Fiscal Year shall be calculated (such average amount is referred to herein as the “Pre-Fund Monthly Payment”), and Owner shall deposit as a lump sum payment the applicable Pre-Fund Monthly Payment with Manager directly by no later than the 15th day of each calendar month during such Fiscal Year. Manager shall pay from the Pre-Fund Monthly Payment 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 Pre-Fund Monthly Payment 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 the applicable monthly accounting period including the vendor, amount, and description of each expense, and (ii) 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, Staffing Cost Reimbursement, Fees, 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 (15<sup>th</sup>) 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 Pre-Fund Monthly Payment 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 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 approve or reasonably disapprove a proposed Payment Application within thirty (30) 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, Owner shall pay Manager directly all non-recurring Operating Expenses, Staffing Cost Reimbursement, Fees, 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 remaining funds from the Pre-Fund Monthly Payment 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 (15<sup>th</sup>) 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 thirty (30) 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 the approved amounts directly to the Manager to pay 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 results from Owner's failure to provide timely approvals or payments with respect to the applicable Payment Application, Pre-Fund Monthly Payment, any other amounts payable by Owner pursuant to this Agreement, or any other unavailability of funds which is not the fault of Manager.

8.1.4 *Availability of Funds.* Notwithstanding anything to the contrary contained herein, Manager shall use diligent efforts to avoid any interruption in services to the Premises as a result of 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.*

### 8.2.1 Intentionally Omitted.

8.2.2 *Annual Operating Budget and Capital 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 1<sup>st</sup> of the calendar year immediately preceding the commencement of the applicable Fiscal Year, starting with September 1, 2023. In preparing each Operating Budget and updated Capital Budget, Owner may require Manager to consult with The East Cut 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, repair and maintenance, 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, each annual Budget shall be subject to the approval of AC Transit, SFMTA and any other Transit Agency and Rail Operator whose approval is required pursuant to the terms of their respective Transit Agency Agreement or Rail Operator Agreement, as applicable. The annual Budget approved pursuant to the terms hereof, may be amended or modified, with the prior approval of Owner, AC Transit, SFMTA and any other Transit Agency and Rail Operator

whose approval is required pursuant to the terms of their respective Transit Agency Agreement or Rail Operator Agreement. Owner shall be responsible for seeking the approval of AC Transit, SFMTA and any other Transit Agencies and Rail Operators whose approval is required pursuant to the terms of their respective Transit Agency Agreement or Rail Operator Agreement with respect to the annual Budget and any subsequent amendments and modifications thereto. Without limiting the foregoing, Owner shall promptly, following receipt thereof, submit the annual Budget to AC Transit, SFMTA and any other Transit Agencies and Rail Operators whose approval is required pursuant to the terms of their respective Transit Agency Agreement 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, SFMTA and any other Transit Agencies and Rail Operators whose approval is required pursuant to the terms of their respective Transit Agency Agreement or Rail Operator Agreement with respect to the annual 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, SFMTA 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 annual Budget; provided, however, that Manager's failure to operate the Premises within the annual 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 annual 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.

### 8.3 *Books and Records; Audit.*

8.3.1 *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 of all Operating Expenses and Capital Expenses with respect to the Premises in accordance with generally accepted accounting principles (collectively, the "Books and Records"), which Books and Records shall be sufficient to permit an accurate determination of Operating Expenses and Capital Expenses and shall be in form and substance reasonably satisfactory to Owner. 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 8.3.1 shall survive the Expiration Date.

8.3.2 *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 8.3.2, 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 or by email or other electronic or virtual means.

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 enforce the terms of the Leases requiring the Tenants to commence and complete, as applicable, Construction of all Building Improvements in the Premises in accordance with the applicable Capital Budget. 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.

9.2 *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 enforce the terms of the Leases requiring Tenants 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 enforce the terms of the Leases requiring 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 enforce the terms of the Leases requiring such Tenant to deliver, to Owner:

(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, if applicable, Plans and Specifications prepared in accordance with the Design Review Process set forth in **Exhibit M-1**;

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

(5) any other materials required under the Design Review Process set forth in **Exhibit M-1**.

(c) All Construction shall adhere to the Design Review Process set forth in **Exhibit M-1** and the Design Guidelines, set forth on **Exhibit M**, 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 Building 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 the Maintenance Plan; 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 Subcontractors 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 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 in accordance with the Design Review Process set forth in **Exhibit M-1**.

(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.** Owner has executed a Project Labor Agreement for the Transbay Transit Center Program. 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; the required language for the Leases to accomplish this Section 9.4 is included in the standard form of Lease, attached at **Exhibit L-3**.

**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 Levels Support Space.** Owner or its Security Contractor shall be permitted to use, on an exclusive basis, a portion of the Lower Levels Support Space for Center security and operations purposes (the “Security Operations Center”). The portion of the Lower Levels Support Space that is intended for use for the Security Operations Center is generally depicted on **Exhibit B-4**.

**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.

10.4 *Manager Office Space.* Manager shall be permitted to use a portion of the Lower Levels Support Space for Manager's on-site management office purposes (the "Manager Office Space"); Owner may co-locate staff in the Manager Office Space, provided that in no event shall Manager be allocated less square footage in the Manager Office Space and in the same configuration (i.e., not less than two (2) private offices and three (3) desks in the lobby area) than that currently allocated to Manager in the Manager Office Space as of the Effective Date. The portion of the Lower Levels Support Space that is intended for use for the Manager Office Space is generally depicted on **Exhibit B-4**. As of the Effective Date, the Manager Office Space is equipped with such furniture, fixtures, and equipment as reasonably necessary to serve its intended function.

## 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 Agreements 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 Agreements and Rail Operator Agreements, as applicable, (iii) maintaining all reserves required under the Transit Agency Lease with AC Transit, SFMTA 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 Agreements 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 communications protocols set forth in the Maintenance Plan (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.

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. Manager acknowledges that 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 includes established Center security procedures and distribution to certain of Manager's employees photo identification badges 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 in the Concept of Operations for the Center to the contrary, Manager shall reasonably cooperate with Owner, its Security Contractor, SFPD, and each Transit Agency and Rail Operator 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 security management team), Security Contractor, SFPD, and each Transit Agency and Rail Operator. Without limiting the foregoing, Manager shall, as part of the Scope of Services, maintain sufficient staffing to efficiently coordinate with Owner, its Security Contractor, SFPD, and each Transit Agency and Rail Operator with respect to security protocols, procedures or requirements for the Center and shall alert Owner's Security Operations Center 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's security management team. Without limiting the foregoing, each Lease shall require any and all Tenants to alert Owner's Security Operations Center 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 of the Original Agreement, 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 and Subcontract to expressly require the applicable Tenant 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 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 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 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 or Subcontractor, as applicable; and (e) Indemnify Owner against any Hazardous Substances Discharge or violation of Environmental Law caused by such Tenant 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 Indemnitees 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 Indemnities 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 of the Original Agreement; 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, SFMTA and any other Transit Agencies and Rail Operators as may be required by the terms the Transit Agency Agreements 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 (it being acknowledged that the premiums for the commercial general liability insurance required pursuant to Section 16.2.1.E below and the premiums for the excess or umbrella liability insurance required pursuant to Section 16.2.1.G below shall be Operating Expenses), 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**).
- 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**.

**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 Insureds listed on **Exhibit J**;
- c. Losses are to be adjusted with the Additional Insureds as listed on **Exhibit J**;

- 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.

### 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**.

- 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**.

- 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**.

- 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 Insureds as listed on **Exhibit J**;
  - c. Losses are to be adjusted with the Additional Insureds as listed on **Exhibit J**;
  - 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; provided, however, Owner, in its sole and absolute discretion, shall have the right to elect to place the primary commercial liability insurance and primary excess or umbrella liability insurance for the Premises in its own name, in which case (i) the commercial general liability insurance and excess or umbrella liability insurance required to be carried by Manager hereunder shall, notwithstanding anything to the contrary contained elsewhere in this Agreement, be obtained and maintained by Manager at Manager's sole cost and expense and not as an Operating Expense and (ii) Manager and, to the extent requested by Manager, any of Manager's Affiliates whose names have been provided to Owner in writing, shall be named as additional insureds under such primary commercial liability insurance and primary excess or umbrella liability insurance for the Premises.
- 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 Owner’s Notice address.

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 (i) Owner shall, at all time, acquire such insurance protection as it deems necessary to protect the interests of the Owner, the members of Owner and the public, and (ii) 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 Effective 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 Effective 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 Effective 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 Effective Date, then any Condemnation Award(s) shall be paid to Owner and applied first toward Restoration of the Center, 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 portion of the Land described as San Francisco County Assessor’s Block 3721 Lot 124, Block 3721 Lot 006 , Block 3720 Lot 010, Block 3720 Lot 011 and Block 3719 Lot 003 on **Exhibit A**, 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 “view only” access, as Owner’s authorized representative (the “Operating Account”), and Manager shall deposit, or cause to be deposited, 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.

(b) *Manager’s Funds.* Manager shall not be required to advance any of its own funds to pay Operating Expenses, Capital Expenses, or any other amounts payable by Owner under this Agreement in the event that there are insufficient funds in the Pre-Fund Monthly Payment or payments made by Owner in accordance with Section 8.1.2 to pay any such expenses.

19.1.2 *Security Deposit Account.* All security deposits collected by Manager from Tenants under any Leases (if any) shall be deposited in the Operating 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, whether interest is earned on each security deposit pursuant to the terms of such Tenant’s Lease, 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, if applicable, 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 to be made by Owner, and Manager shall keep an accurate record of all refunds which Owner Notifies Manager that Owner has made. Owner 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.

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, in a format reasonably

requested by Owner, 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; (ix) copies of the most recent account statement for the Operating Account; and (x) any other reports required to be provided under this Agreement or reasonably requested by Owner.

19.2.2 *Lease Reports.* Within five (5) days after the end of each calendar month, Manager shall furnish to Owner lease reports, in spreadsheet format, for the previous calendar month to summarize lease payments received during the month, including information such receipt date, description of receipt, and received amount. Manager will also indicate current rent payment according to the lease contract and follow up with tenants for any discrepancies.

19.2.3 *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 and Lower Concourse Reservation for Rail Operators.* After the completion of Phase II, the Train Platform Level and Lower Concourse are planned for rail operation, rail ticketing, passenger waiting areas, and support areas relating to the Rail Operators uses, as well as commercial leasing, concessions, and amenities for the benefit of rail passengers. Owner reserves the right to enter into leases, subleases, agreements or other arrangements with the Rail Operators for the ownership, occupancy, use, possession, operation, management, maintenance, and/or exploitation of the Train Platform Level and Lower Concourse (“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, after completion of Phase II, Manager shall have no rights or obligations with respect to day-to-day operation and management of the Train Platform Level and Lower Concourse, except and unless as described in Section 5.3. Prior to the start of construction for Phase II, Manager (a) shall be responsible for all maintenance or repair with respect to the platform areas located within the Train Platform Level and the Lower Concourse in accordance with the provisions of this Agreement, (b) may use the Lower Levels Support Space as described in this Agreement. Rail Operator personnel, agents and contractors shall at

all times have unrestricted access to the Train Platform Level and Lower Concourse, and Manager hereby agrees to cooperate fully with each of the Rail Operators in connection therewith.

**20.2** *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 Agreements. This Agreement and the rights of Manager hereunder are subject and subordinate to the Transit Agency Agreements 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 transit-related operation, programming, and management of the Transit Agency Areas, which shall be performed solely by the Transit Agencies in accordance with the Transit Agency Agreements; provided, however, that Manager shall be responsible for all general facility and asset-related operation, maintenance, repairs, and replacements with respect to the Transit Agency Areas in accordance with the provisions of this Agreement applicable to the Center generally. 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.

**20.3** *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 20.3 ("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. Access and Inspection; Title to Certain Premises.

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 Building 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 Section 2.3 or the other terms hereof: (a) Owner shall pay to Manager, within thirty (30) days of termination, all Fees accruing to the date of such termination; (b) Owner shall (or shall cause any replacement manager designated by Owner to) assume, from and after the date of termination of this Agreement, all Subcontracts which Owner, in its sole and absolute discretion, elects to assume or which cannot be terminated in accordance with their respective terms so long as such contracts were entered into by Manager consistent with the requirements of this Agreement and in accordance with the Budget approved by Owner, 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; (c) all Additional Signage (excluding any signage belonging to any Tenants) and Tenant Equipment shall become Owner's property; (d) 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; (e) Manager shall surrender any right, title, or interest in and to the Premises and deliver such evidence and confirmation thereof as Owner reasonably requires; (f) 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; (g) 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; (h) 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); (i) 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 (j) in the event Owner has prepaid any portion of the Asset Management Fee, the Park Programming Fee, the Staffing Cost Reimbursement, or any other Fees, Manager shall reimburse or shall cause its 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 Effective 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**. 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 \$13.64 as of July 1, 2017.

If a Covered Employee of a Nonprofit Corporation works in San Francisco, then the gross hourly compensation as of July 1, 2016, is \$13.00 per hour, and as of July 1, 2017, \$14.00 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.

(1) 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.

**29.32** *Prompt Payment to Subcontractors.*

(a) *Prompt Progress Payment to Subcontractors.*

A prime contractor or subcontractor shall pay a subcontractor not later than ten (10) days of receipt of each progress payment in accordance with the provision in Section 7108.5 of the California Business and Professions Code concerning prompt payment to subcontractors. The ten (10) days is applicable unless a longer period is agreed to in writing. Any violation of Section 7108.5 shall subject the violating contractor or subcontractor to the penalties, sanction and other remedies of that Section. Federal regulation (49 CFR 26.29) requires that any delay or postponement of payment over thirty (30) days of receipt of each payment may take place only for good cause and with the TJPA’s prior written approval. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise, available to the prime contractor or subcontractor in the event of a dispute involving late payment, or nonpayment by the prime contractor, deficient subcontract performance, or noncompliance by a subcontractor. This provision applies to both DBE/SBE and non-DBE/SBE prime contractors and subcontractors.

(b) *Prompt Payment of Withheld Funds to Subcontractors.*

If the TJPA requires retainage from the prime contractor and prompt and regular incremental acceptances of portions, as determined by the TJPA of the contract work and retainage is paid to the prime contractor based on these acceptances, then the prime contractor or subcontractor shall return all monies withheld in retention from all subcontractors within thirty (30) days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the TJPA. Any delay or postponement of payment may take place only for good cause and with the TJPA's prior written approval. Any violation of these provisions shall subject the violating prime contractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise, available to the prime contractor or subcontractor in the event of a dispute involving late payment, or nonpayment by the contractor, or deficient subcontractor's performance, or noncompliance by a subcontractor. This clause applies to both DBE/SBE and non-DBE/SBE subcontractors.

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 Legal Costs incurred by Owner in collecting or attempting to collect amounts due from Manager under this Agreement in connection with an Event of Default or in enforcing or attempting to enforce any rights of Owner under this Agreement or pursuant to law in connection with an Event of Default. 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 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 Agreements; (ii) the Rail Operator Agreements; and (iii) 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. All exhibits referenced herein are attached hereto and incorporated herein. 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.”

31.8 *Electronic Signatures.* Unless otherwise prohibited by law or Owner’s policy, the Parties agree that an electronic copy of this Agreement, or an electronically signed Agreement, has the same force and legal effect as the Agreement executed with an original ink signature. The term “electronic copy of this Agreement” refers to a transmission by facsimile, electronic mail, or other electronic means of a copy of the original signed Agreement in a portable document format. The term “electronically signed Agreement” means the Agreement that is executed by applying an electronic signature using technology approved by Owner.

*[Signatures on Next Page.]*

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

**TRANSBAY JOINT POWERS AUTHORITY**

By: \_\_\_\_\_  
Name: Adam Van de Water  
Its: Executive Director

Transbay Joint Powers Authority  
Board of Directors  
Resolution No. \_\_\_\_\_  
Adopted: \_\_\_\_\_  
Attest: \_\_\_\_\_  
Secretary, TJPA Board

APPROVED AS TO FORM FOR TJPA:

By: \_\_\_\_\_  
Deborah Miller  
Legal Counsel

**LPC WEST TRANSIT MANAGEMENT LLC**,  
a Delaware limited liability company

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:

**LINCOLN PROPERTY COMPANY COMMERCIAL LLC,**  
a Texas limited liability company

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

Name:

Its:

## **EXHIBIT A**

### **DESCRIPTION OF CENTER**

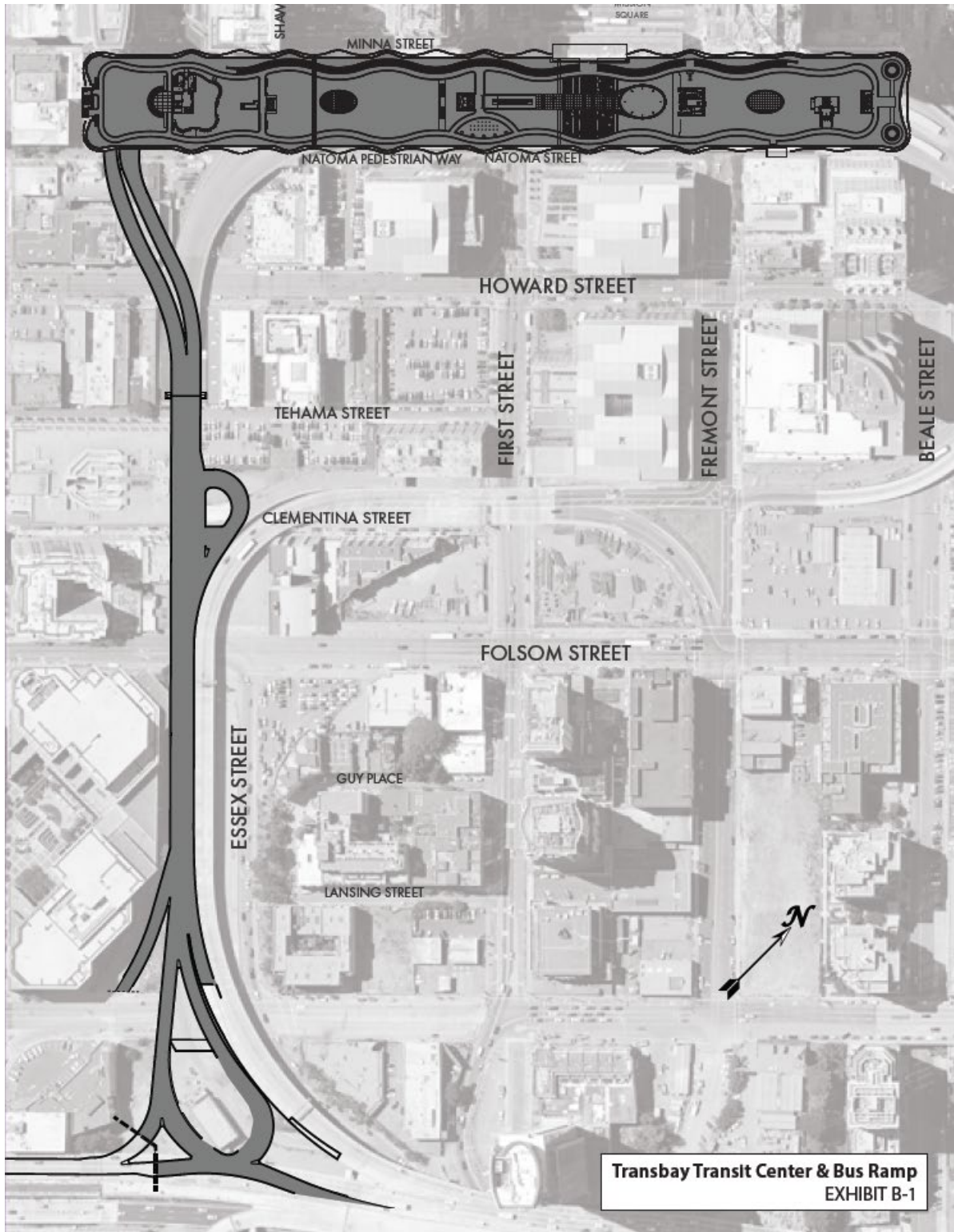
The real property located in the City and County of San Francisco, State of California generally comprised of San Francisco County Assessor's Block 3721 Lot 124, Block 3721 Lot 006, Block 3720 Lot 010, Block 3720 Lot 011 and Block 3719 Lot 003, together with (i) certain air and subsurface rights over, in, and about public streets surrounding the Center (including Beale Street, First Street, Fremont Street, Minna Street, and Natoma Street in San Francisco, California), and (ii) the ramps depicted on Exhibit B-1.

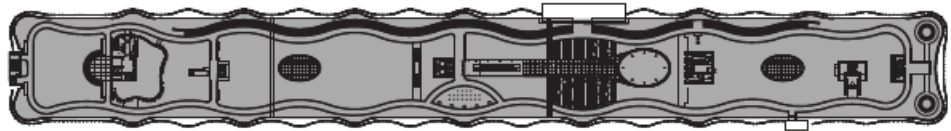


**EXHIBIT B-1**

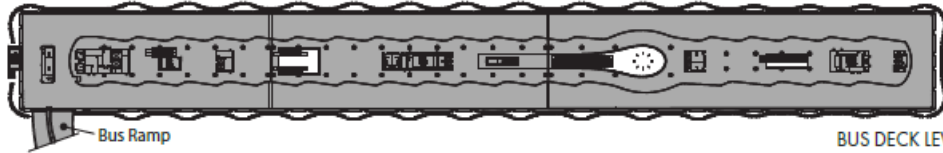
DEPICTION OF CENTER AND PREMISES

(see attached)

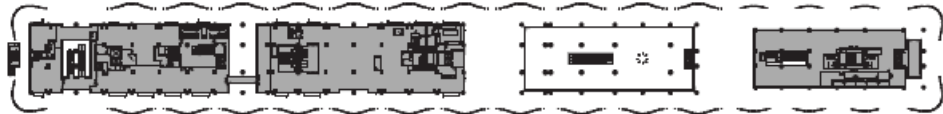




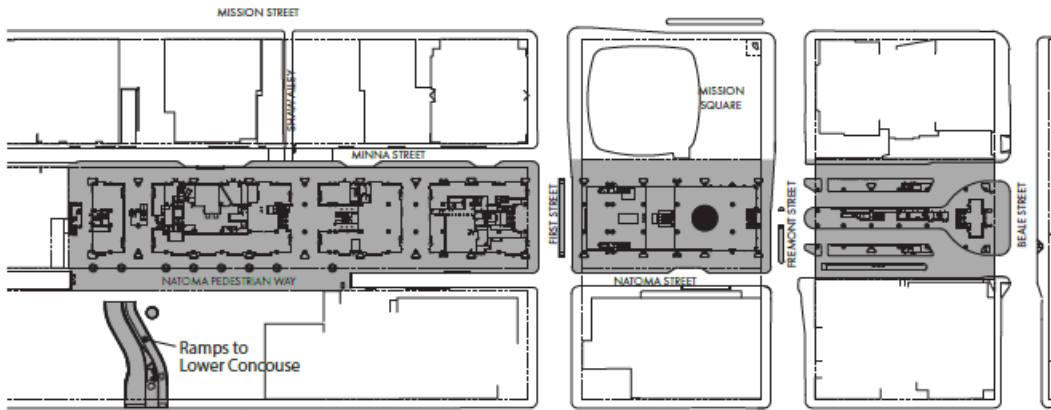
ROOF PARK LEVEL



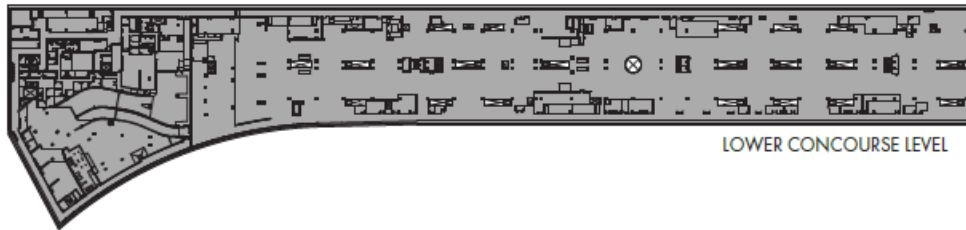
BUS DECK LEVEL



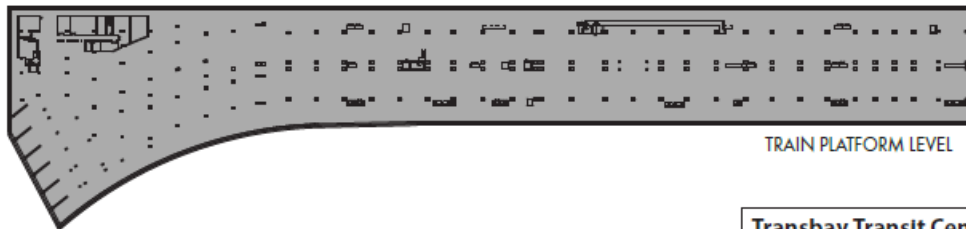
SECOND LEVEL



STREET LEVEL



LOWER CONCOURSE LEVEL



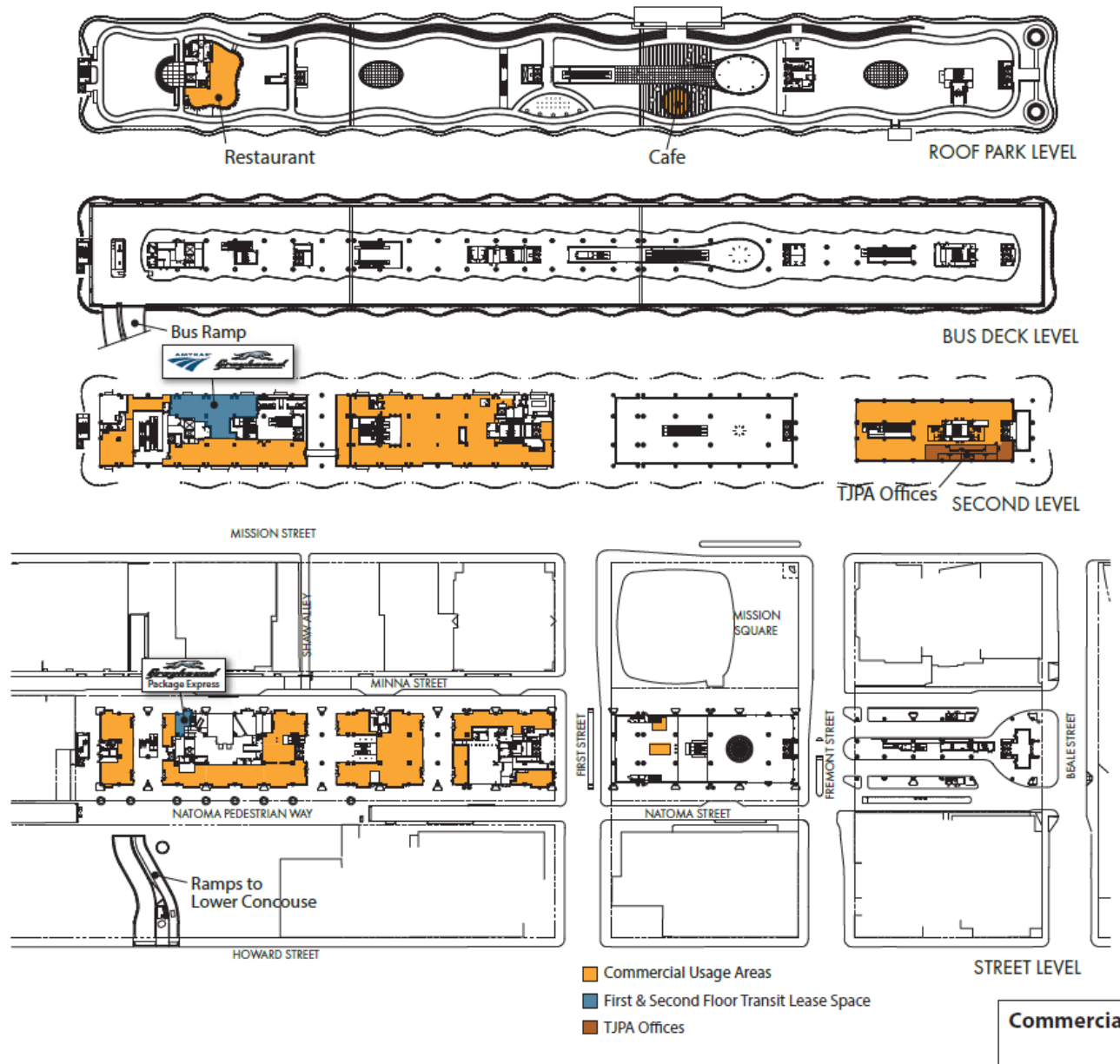
TRAIN PLATFORM LEVEL

**Transbay Transit Center**  
EXHIBIT B-1

**EXHIBIT B-2**

COMMERCIAL USAGE AREAS

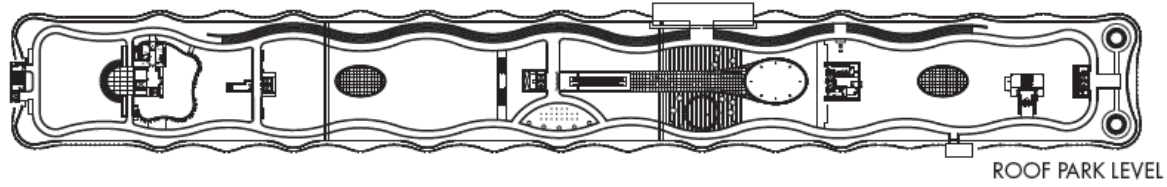
(see attached)



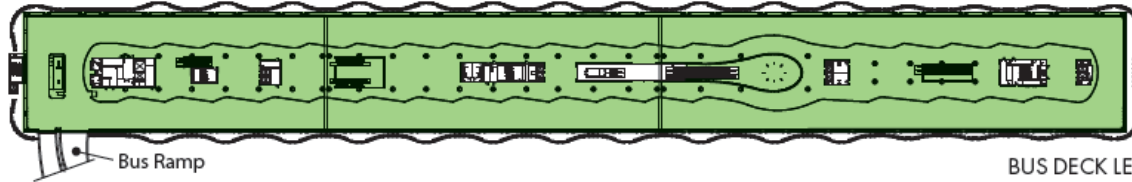
**EXHIBIT B-3**

TRANSIT AGENCY AREAS

(see attached)

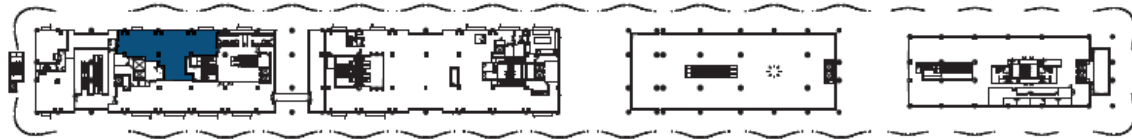


ROOF PARK LEVEL

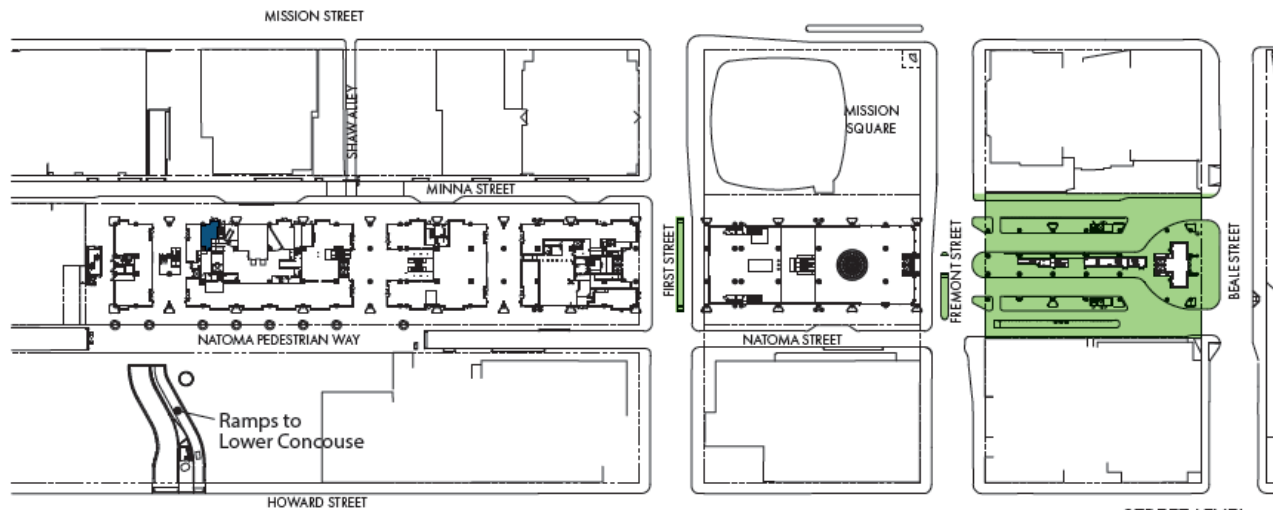


Bus Ramp

BUS DECK LEVEL



SECOND LEVEL



MISSION STREET

SHAW ALLEY

MINNA STREET

NATOMA PEDESTRIAN WAY

HOWARD STREET

Ramps to Lower Concourse

MISSION SQUARE

FIRST STREET

NATOMA STREET

FREMONT STREET

BEALE STREET

STREET LEVEL

- Transit Agency Areas
- First & Second Floor Transit Lease Space

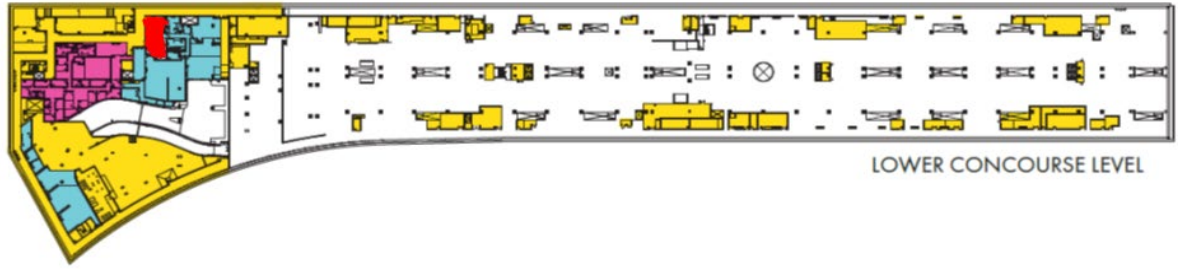
**Transit Agency Areas**  
EXHIBIT B-3

**EXHIBIT B-4**

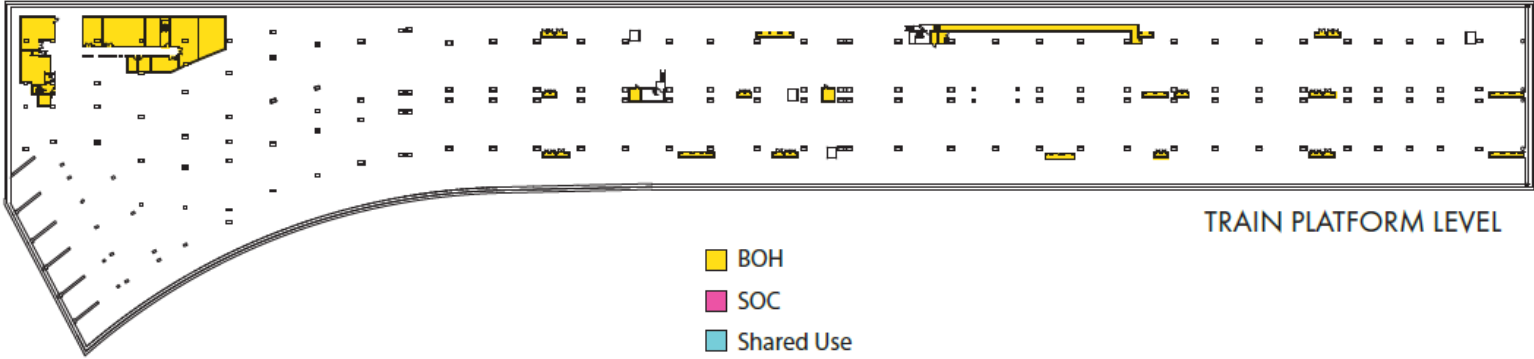
LOWER LEVELS SUPPORT SPACE

(see attached)





LOWER CONCOURSE LEVEL



TRAIN PLATFORM LEVEL

- BOH
- SOC
- Shared Use

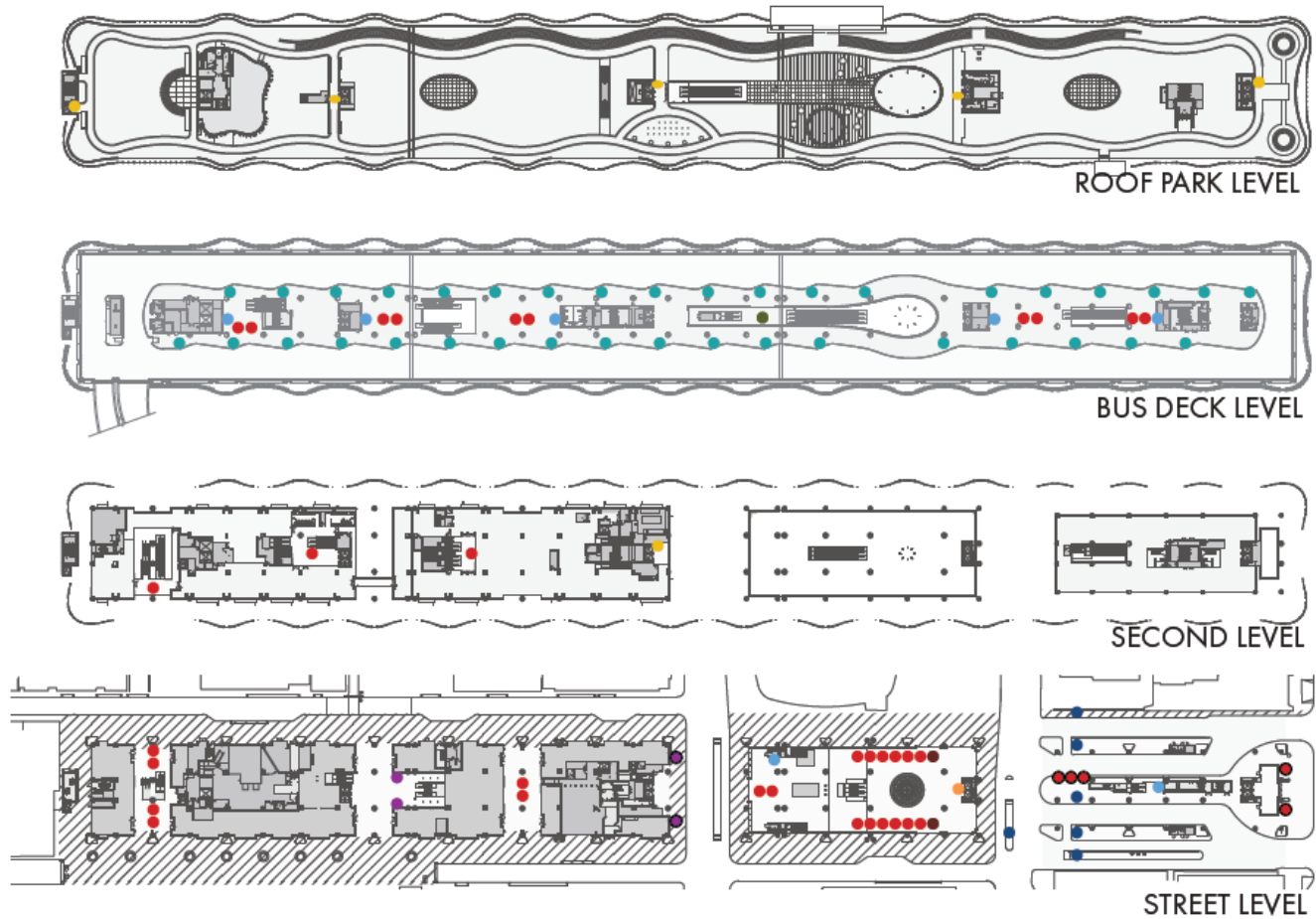
**Lower Levels Support Space**  
EXHIBIT B-4

Note: the area shaded in red on the Lower Concourse Level is the Manager Office Space

**EXHIBIT B-5**

DESCRIPTION OF EXISTING CENTER SIGNAGE

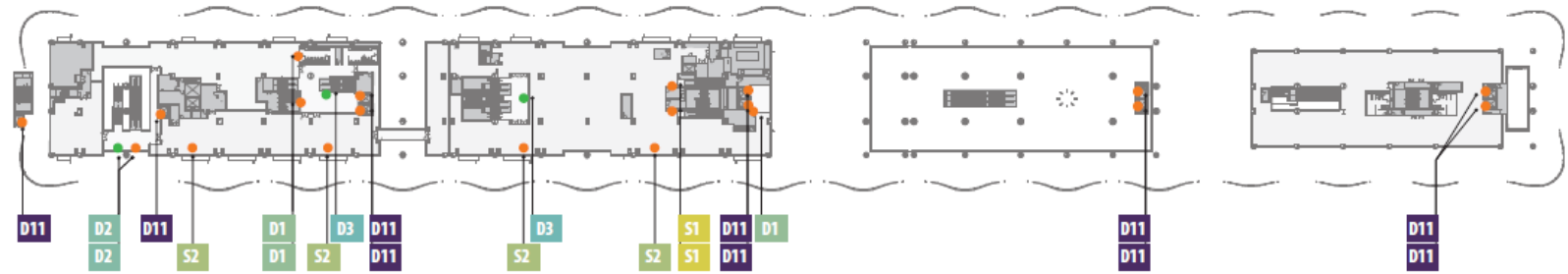
(see attached)



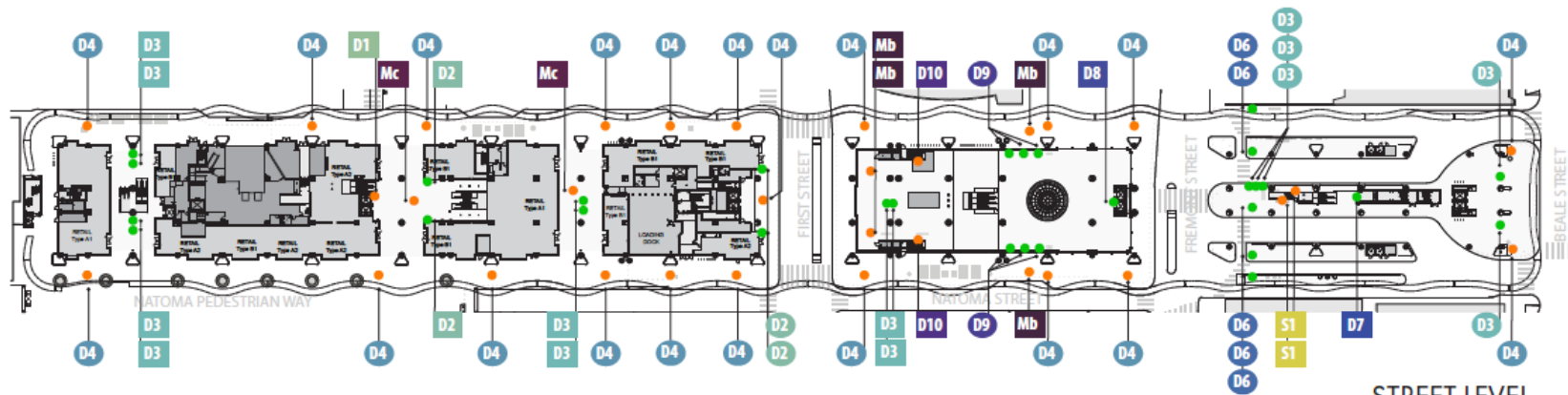
**LEGEND**

- PD1: Bus Deck Dock ID
- PD2: MUNI Plaza Bus ID
- SS1: Wall-Mounted Digital Display
- SM1: Wall-Mounted Schedule Board
- SX1: Grand Hall Schedule Board
- KC1.a: Combined Directory and Digital Display
- KC1.b: Combined Directory and Digital Display (MUNI Plaza)
- KP1.a: One Sided Digital Display
- KP1.b: One Sided Digital Display (Street Facing)
- KP3: Information Kiosk with Digital Display
- KM1: Static Map with Digital Display

**Transit Center Signage**  
EXHIBIT B-5



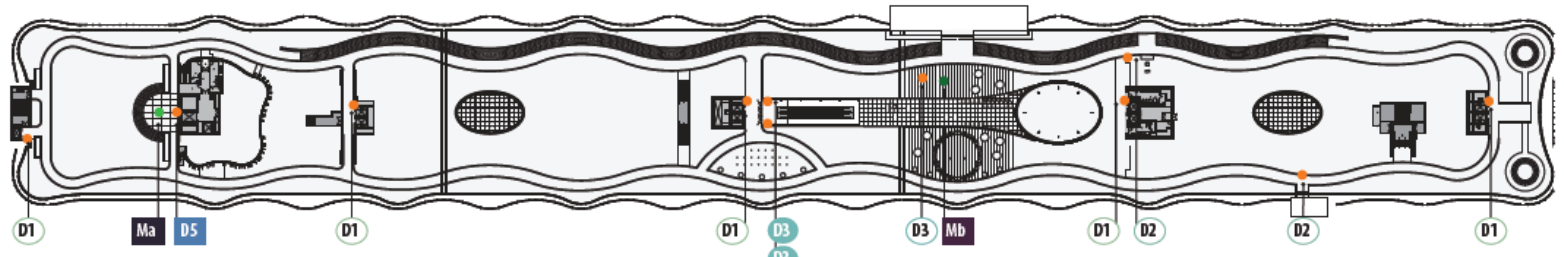
SECOND LEVEL



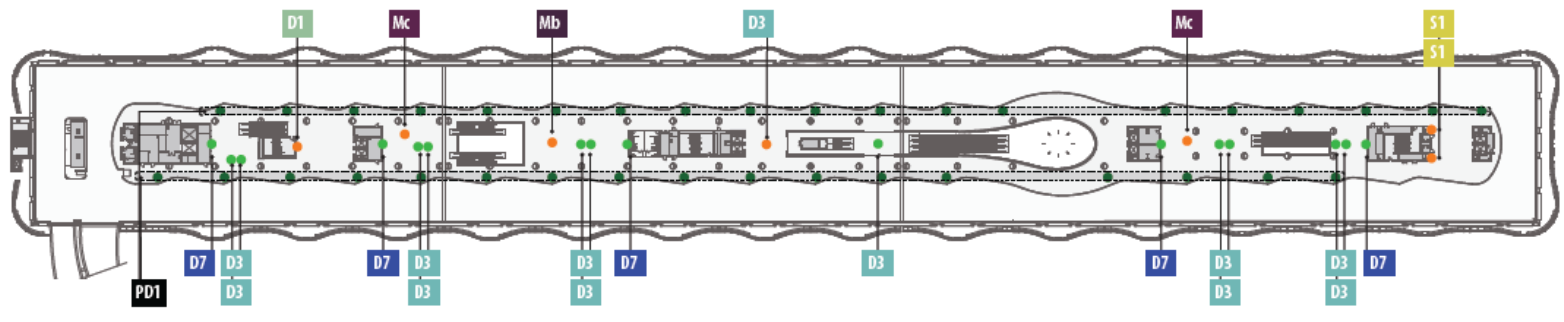
STREET LEVEL

- General Advertising & Other Content
- On Premise Brands & Directory / Transit Info Only
- Directory Only
- New Assets
- Existing Assets with Modifications
- Existing Assets with No Change

**Transit Center Signage**  
 EXHIBIT B-5



ROOF PARK LEVEL



BUS DECK LEVEL

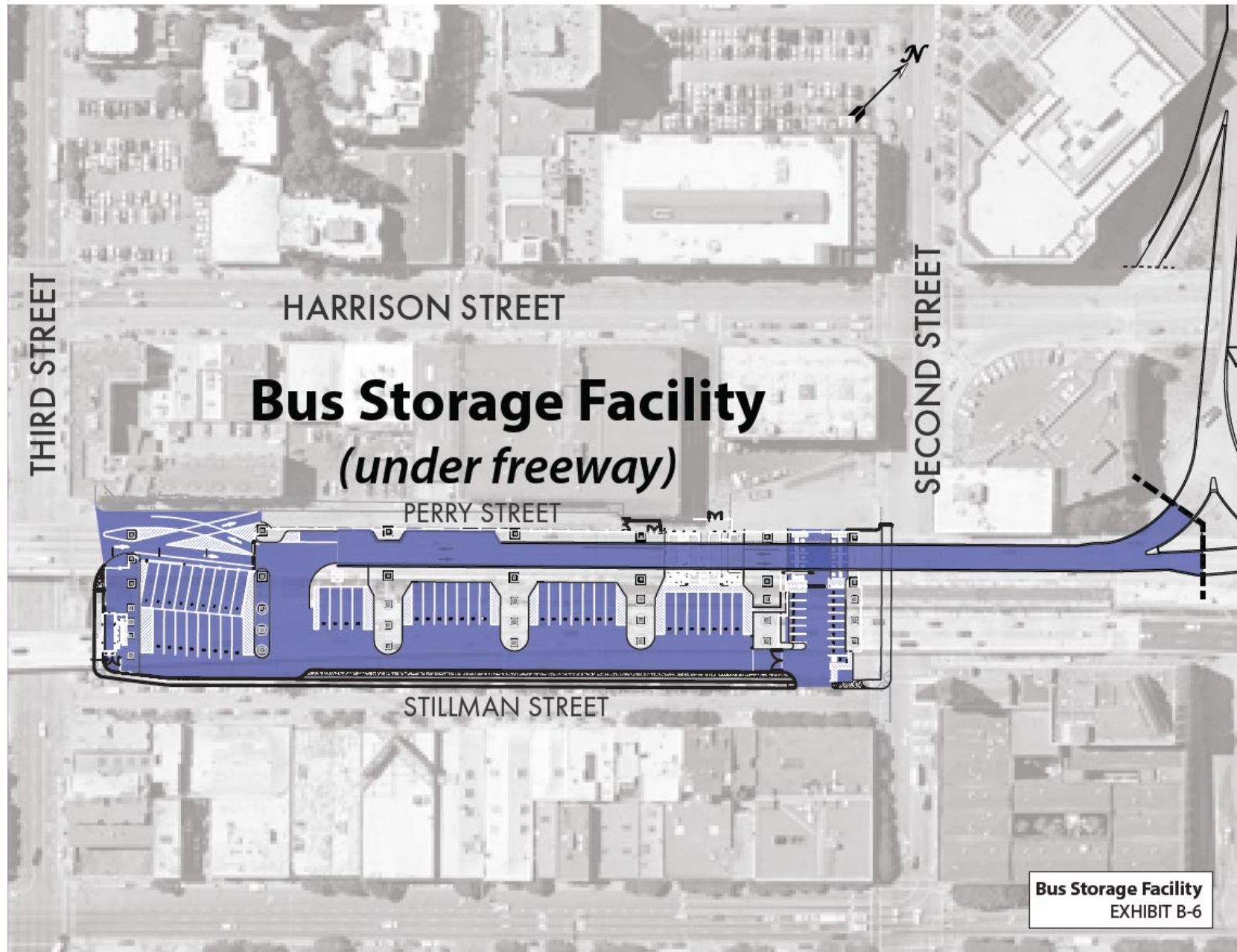
- General Advertising & Other Content
- On Premise Brands & Directory / Transit Info Only
- Directory Only
- New Assets
- Existing Assets with Modifications
- Existing Assets with No Change

**Transit Center Signage**  
 EXHIBIT B-5

**EXHIBIT B-6**

**BUS STORAGE FACILITY**

(see attached)



**EXHIBIT C**

**STAFFING PLAN**

	<b>Fully-Burdened Staff Cost (Annual)</b>	<b>Fully-Burdened Staff Cost (Hourly Rate)</b>
<b>Position</b>		
General Manager	on file	on file
Operations Manager		
Assistant Property Manager		
Property Accountant		
Property Administrator		
<b>Total</b>	<b>\$789,063</b>	<b>--</b>



## EXHIBIT D

### SCOPE OF SERVICES

#### 1. *Asset Management*

On an ongoing basis, Manager will perform all asset management responsibilities reasonably necessary and typical to manage the asset commensurate with the standard of care set forth in Section 6.1 of the Agreement, including:

- Hiring the appropriate staff with the sufficient capacity and expertise to create and implement the Scope of Services.
- Regular financial reporting to Owner.
- Regular performance and status reports to Owner.
- Bidding and execution of Subcontracts necessary to perform the Scope of Services, including renewing or procuring new Subcontracts as needed. Subcontracts shall meet the requirements of Section 5.1.1(h) and be procured in a manner consistent with Law and the terms of the Agreement. Owner reserves the right to request alterations to a Subcontract, in Owner's sole discretion.
- Managing staffing levels across the Premises, including managing Subcontractor agreements.
- Accounting and budgeting, including routine reporting to Owner.
- Monitoring the Center's performance, including routine reporting to Owner.
- Submitting appropriate incident reports to Owner and Owner's insurer, it being agreed that Owner shall be solely responsible for administering Owner Maintained Insurance, including processing and overseeing any insurance claims directly with Owner's insurer.
- Provide information and reports as reasonable requested by Owner in connection with Owner's preparation and delivering presentations and reports to Owner's Board of Directors and Owner responding to requests from Owner's Board of Directors.

#### 2. *Construction Management*

On an ongoing basis, Manager will perform all Construction management responsibilities reasonably necessary and typical for professional construction management services for properties comparable to the Center, including:

- Preparing for, budgeting, and managing Construction of (i) tenant improvements for Tenants as needed to fulfill Leases, and (ii) any Building Improvements necessary, as directed by Owner.

- Using diligent and good faith efforts to oversee the contractor's performance of the contractor's obligation under its construction contract to complete such improvements consistent with any schedule agreed to with or approved by Owner, in each instance subject to any Unavoidable Delays.
- Using diligent and good faith efforts to oversee the contractor's performance of the contractor's obligation under its construction contract to cause any Construction funded by Owner to be completed within the Capital Budget for same.
- Implementing Section 9 of the Agreement, including implementing Design Review in conformance with the Design Review Process, and supervising the architect's preparation of the Plans and Specifications in conformance with Design Guidelines and any other development criteria promulgated by Owner for the Center.
- Coordinating testing, inspections, and similar on Owner's behalf.
- Coordinating with and responding to requests from Tenants, contractors, and authority's having jurisdiction.

### 3. *Premises operations and maintenance*

On an ongoing basis, Manager will undertake activities reasonably necessary to manage operations, maintenance, and repair of the Premises, including the Park, in accordance with standards for a high quality project and the Operating Budget for same and commensurate with professional property management services for properties comparable to the Center, including:

- Performing routine janitorial, sanitation, and grounds keeping for the Premises.
- Performing routine repairs and maintenance for the Premises and the Building Improvements, including Base Signage and any hardware or fixtures that are part of the Promotional Platform.
- Performing routine 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.
- Coordinating with Owner and the Transit Agencies and Rail Operators to respond to service requests.
- Implementing training and maintenance manuals provided by Owner for all operations and maintenance responsibilities, or otherwise as reasonably prudent to maintain the Premises in a state of good repair.
- Maintaining all equipment deemed necessary for the operation and maintenance of the Premises, and replacing (through purchase or lease) such equipment, as needed.
- Implementing Owner's or Owner's Security Contractor's protocols and security practices for the Premises, as directed by Owner.

- 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.
- Planning for, budgeting, and implementing capital replacement and repair.
- Responding to emergencies and other unplanned occurrences and events at the Premises.
- Implementing Section 5.1.1 of the Agreement and the Maintenance Plan at **Exhibit L-1**.

Providing the services required under the Agreement is anticipated to require availability of Manager's management-level staff 24/7/365 (a) on site during business hours, (b) on-site during non-business hours (i) during known or anticipated events or incidents where Manager's on-site presence is reasonably required, or (ii) within two hours of Owner's request as necessary to respond to unanticipated incidents, and (c) otherwise by phone, and in the case of (b) and (c) all on a reasonable basis as reasonably necessary in accordance with professional property management services.

The following services for operation and maintenance of the Premises have been procured by Owner through contracts executed by Owner and are not part of Manager's Scope of Services:

- Wayfinding Gap Analysis and Associated Information Services
- Landscape Maintenance Services
- Fire Life Safety Sprinklers Testing Maintenance Services
- Security related services (including SFPD services, Unarmed Contract Security Services, Physical Security Systems Maintenance Services, Two Way Radios)
- IT Support Services (Transit Center)
- Vertical Transportation (elevator and escalator) maintenance services

Owner may request that Manager assist Owner with day-to-day management and administration of the services pursuant to these contracts commensurate with professional property management services for properties comparable to the Center.

All remaining services necessary and appropriate for the operation and maintenance of the Premises will be procured by Manager through Subcontracts executed by Manager consistent with the terms and conditions of this Agreement.

As to activities in the Park, Owner may require Manager to support Owner's consultation with The East Cut CBD on a reasonable basis commensurate with professional property management services for properties comparable to the Center.

4. *Commercial Usage Areas concept, leasing, and management*

On an ongoing basis, Manager (through its Leasing Subcontractor) will be responsible for securing and managing Leases for the Commercial Usage Areas commensurate with professional leasing agent services for properties comparable to the Center, including:

- Implementing and updating, as needed, the retail concept plan for the Commercial Usage Areas.
- Marketing and leasing spaces in the Commercial Usage Areas, including responding to potential Tenant inquiries, conducting due diligence on proposed Tenants, negotiating Lease terms consistent with market and Owner benchmarks to achieve favorable economic results for Owner, drafting Leases consistent with Section 5.1.2 of the Agreement and otherwise meeting the requirements of the Agreement, recommending Tenants and Leases to Owner, and managing Tenant turnover. Manager's marketing and leasing activities shall be conducted in a manner consistent with Law, generally accepted broker procedures, Owner's policies provided to Manager prior to the Effective Date (it being agreed that with respect to any changes hereafter made to policies provided to Manager prior to the Effective Date, then Manager's marketing and leasing activities will be conducted in a manner consistent with such changes that are hereafter provided to Manager to the extent such change in Owner's policies do not materially increase Manager's obligations, or decrease Manager's rights, under this Agreement after the Effective Date) and the Agreement.
- Conducting all new Tenant orientations for the Center.
- Monitoring Tenant compliance with all Leases and Leasing Guidelines.
- Responding to service requests from Tenants.
- Collecting all rents and other charges under Leases, and following up on past-due amounts.
- Preparing regular performance and status reports to Owner, including reporting on rents due, rents collected, and related.
- Implementing Section 5.1.1(g) and 5.1.2 of the Agreement.

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.

5. *Promotional Platform management:*

On an ongoing basis, Manager (through its Promotional Platform Subcontractor) will be responsible for managing the Promotional Platform, including:

- Designing, procuring, implementing, installing, and maintaining the Content Management System, including any necessary software to support the system.

- Ramping-up any technical support services that will be provided on an ongoing basis, including 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.
- Engaging in marketing activities for the sale of advertising, sponsorship and promotional events, but excluding Naming Rights Agreements unless otherwise expressly authorized by Owner. Manager will be responsible for the sale of advertising and the execution of agreements for sponsorship and promotional events
- Responding to service requests from Promotion Platform advertisers and other partners.
- Collecting all monies due under the Promotional Platform, and following up on past-due amounts.
- Managing all ongoing operations of the digital signage system including integration of all transit information and any other Owner-provided content.
- Implementing routine maintenance of the signage and other fixtures associated with the Promotional Platform.
- Implementing Section 5.1.3 of the Agreement.

All Promotional Platform content will be required to comply with the Signage Guidelines set forth in **Exhibit O**, the Digital Content Development Guidelines set forth in **Exhibit O-1**, and the TJPA's Advertising Policy.

*6. Park Programming:*

On an ongoing basis, Manager (through its Park Subcontractor) will undertake activities reasonably necessary to manage Park programming and activations, in accordance with standards typical for comparable projects and the Operating Budget for same, including:

- Implement the Park Programming Plan, including activation through events and programs, as described in **Exhibit D-3**.
- Implementing Section 5.1.1(c) of the Agreement.

Owner may require Manager to support Owner's consultation with The East Cut CBD on a reasonable basis commensurate with professional property management services for properties comparable to the Center.

*7. Event management:*

On an ongoing basis, Manager (through its Park Subcontractor) will undertake activities reasonably necessary to manage Center events in accordance with standards typical for comparable projects and the Operating Budget for same, including:

- Creating an event calendar and scheduling protocol for the Center, for review and approval by Owner.
- Implementing the event scheduling protocol and event calendar created for the Center.
- Implementing Section 5.1.4 of the Agreement.

Owner understands that Manager intends to Subcontract for these services. Owner may require Manager to support Owner's consultation with The East Cut CBD on a reasonable basis commensurate with professional property management services for properties comparable to the Center.

Additional Tasks and Activities:

- A. Minor Repair and Maintenance: Manager will perform minor maintenance and repair services for Owner Property in the vicinity of the Center but outside the Premises, as requested by Owner and subject to Owner's and Manager's mutual agreement on the terms and conditions relating thereto, including any compensation.
- B. Bus Storage Facility: Owner and Manager may enter a side agreement, in substantially the form attached as **Exhibit K-1**, consistent with the scope of work and budget attached hereto as **Exhibit K-2**, as mutually agreeable to Owner and Manager, relating to the terms and conditions for Manager to provide certain operations and maintenance services at the Bus Storage Facility. The need for such side agreement is conditioned on the prior approval of AC Transit in its sole discretion.
- C. Other: Owner may from time to time request Manager perform additional tasks and activities, which Manager will perform, subject to Owner's and Manager's mutual agreement on the terms and conditions relating thereto, including any compensation.

**EXHIBIT D-1**

PERFORMANCE REVIEW

(See attached.)

LPC - Commercial  
Salesforce Transit Center  
KPI Balanced Scorecard  
As of March 31, 2023

KPI Description	Metric	Frequency	Negative (1)	Neutral (2)	Positive (3)	Overall Weight	Score:	Comments
<b>Budget, Contractual, &amp; Financial</b>						50%	7.00	Of 9.0 possible points for Category, unweighted
Complete capital projects in a timely and cost effective manner	Capital items are kept under or at the agreed upon budget number	Monthly			3.00			Exemplar Data
Ensure that insurance certificates for all vendors, tenants, partners, neighbors and other parties entering the facility for business purposes are fully compliant	All items are compliant by each respective date	Monthly		2.00				
Ensure tenants/licenses adhere to all aspects of lease/license agreements, and provide timely notices to tenants.	All lease items and notices are enforced and adhered			2.00				
<b>Public Outreach, Communication, &amp; Coordination</b>						30%	3.00	Of 3.0 possible points for Category, unweighted
Manage the coordination of deliveries, servicing of equipment and fixtures	By complaints received, missed events such as appts, deliveries, etc.	Monthly			3.00			
<b>Safety</b>						20%	3.00	Of 3.0 possible points for Category, unweighted
Manage incidents, including collecting data, compiling reports, logging, filing, and informing TIPA and risk management providers	Six (6) or fewer incidents a year	Monthly			3.00			
<b>Box Score:</b>							<b>13</b>	<b>Out of 15 possible points</b>



## EXHIBIT D-2

### 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 with respect to leasing transactions where the tenant pays base rent:

- 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 to 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.

The Leasing Commission due in connection with Leases of the Commercial Usage Areas, or portions thereof, at the Center shall be calculated as follows with respect to leasing transactions where the tenant only pays percentage rent (and does not pay any Base Commercial Rent):

- 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 to five percent (5%) of the percentage 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 percentage 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 percentage 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 percentage 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.

Owner and Manager agree that in connection with each lease transaction where the tenant pays only percentage rent (and does not pay any Base Commercial Rent), Owner and Manager shall agree in advance as to whether the Leasing Commission will be calculated (i) based on the total percentage rent actually collected by Manager in connection with such lease (and in this event, Owner and Manager shall also agree in advance on a payment schedule, and if applicable, a reconciliation schedule, for the Leasing Commission), or (ii) based on a percentage rent projection which Owner and Manager mutually agree to deem as the percentage rent amount for purposes of calculating the Leasing Commission. As used herein, the term “percentage rent” means (a) in the case of clause (i) of this paragraph, the total percentage rent actually collected by Owner in connection with such Lease during the applicable Calculation Period, or (b) in the case of clause (ii) of this paragraph, the percentage rent amount mutually deemed by Owner and Manager for the applicable Calculation Period.

In the event that this Agreement is terminated without cause, Manager may submit to Owner, or cause its Leasing Subcontractor to submit to Owner, within ten (10) business days after the effective date of such termination, a list of prospective tenants with whom Manager and/or Manager’s Leasing Subcontractor has Pending and Active Negotiations (as hereinafter defined) (each a “Registered Tenant”). In the event that a Lease for space within the Commercial Usage Area is entered into by Owner with a Registered Tenant within one hundred twenty (120) days after the effective date of such termination (the “Post-Termination Period”), Manager shall be entitled to receive the applicable Leasing Commission stated above with respect to such Lease. As used herein, “Pending and Active Negotiations” means that Manager and/or Manager’s Leasing Subcontractor has (a) shown the Commercial Usage Area to the prospective tenant, (b) had at least one (1) other meeting with the prospective tenant to discuss the essential business terms and conditions of the prospective tenant’s proposed lease of space in the Commercial Usage Area, and (c) submitted to Owner a Lease Information Packet for the prospective tenant pursuant to Section 5.1.2(c) of this Agreement. If a Lease is not executed and delivered between Owner and a Registered Tenant prior to the expiration of the Post-Termination Period, then Owner shall have no obligation to pay any Leasing Commission with respect to any Lease subsequently entered into by Owner with a Registered Tenant and Owner shall be free to negotiate with any Registered Tenants on its own behalf or through another broker free of any

obligations to Manager or Manager's Leasing Subcontractor for any Leasing Commissions relating thereto.

Notwithstanding the foregoing, if prior to the expiration of the Post-Termination Period, a Lease Review Request Packet for a particular Registered Tenant is submitted to Owner pursuant to Section 5.1.2(c) of this Agreement and a Lease for space within the Commercial Usage Area is subsequently entered into by Owner with the applicable Registered Tenant, Manager shall be entitled to receive the applicable Leasing Commission stated above with respect to such Lease regardless of whether such Lease is entered into by Owner prior to or after the expiration of the Post-Termination Period.

## EXHIBIT D-3

### PARK PROGRAMMING PLAN

#### I. Park Programming

- 1) Develop and implement a diverse programming plan on a weekly, monthly, and seasonal calendar basis (see current Programming Schedule below).
- 2) Develop and manage relationships with programming partners/content providers.
  - a. Manage third-party event producers.
- 3) Develop Request for Qualifications bench of qualified and diverse programmers bi-annually.
- 4) Manage programming partners to provide park programming.
- 5) Procure Park amenities (e.g. games, art supplies, fitness equipment, etc.)
- 6) Hire, train, and manage in-park program attendants/customer service staff.
- 7) Attend and supervise park programs.
- 8) Ensure quality control of park programs and provide evaluation and metrics of programming attendance, etc.

#### II. Events

- 1) Manage the evaluation and processing of Programming Partner applications with LPC, in accordance with TJPA Event Policies and Guidelines.
- 2) Supervision and quality control of TJPA approved private events.
  - a. Includes planning, procurement, and executive supervision of private events; excludes labor for event setup, production, management, and breakdown.
- 3) Attend, coordinate, manage, and administer in-house events.

#### III. Marketing and Communications

- 1) Develop content and manage social media accounts (including Twitter, Instagram, and Facebook) and electronic newsletters.
- 2) Develop content for use on TJPA's website.
- 3) Coordinate community and government relations with TJPA.
- 4) Provide assistance in drafting press releases and coordination of media outreach.

#### IV. Brand partnerships

- 1) Fulfill sponsorship activations, including "experiential marketing" with final approval from TJPA through LPC.
  - a. Assist in the evaluation and processing of experiential marketing applications, including negotiation of fees and ensuring high quality experiential marketing and sponsorship activations.

## VI. General Administration

- 1) Development of an annual operating plan and budget.
- 2) Conduct weekly meetings with TJPA and LPC staff.
  - a. Including weekly status updates and monthly summary reports to TJPA and LPC.
- 3) Produce annual report on the previous year's operations and programming.
  - a. Including areas of success and need for improvement.

### **Current Programming Outline**

- Weekly Programs, for Summer (12-15 weekly) and Winter (7-10 weekly)
  - o Focused on:
    - Health and wellness
    - Family friendly and community building
    - Art, Comedy, Dance, and Musical performances
    - Interactive experiences
- Monthly Programs (3-5 monthly)
  - o Focused on:
    - Garden/Park Tours
    - Educational (music, art, writing, etc.,)
- Special/Seasonal Programs (1 per Quarter or Season)
  - o WinterFest (late Nov / early December)
  - o Spring Celebration (late March / early April)
  - o Summer/Fall Activities
  - o Other

More details available on TJPA's website:

<https://salesforcetransitcenter.com/events/>

<https://salesforcetransitcenter.com/salesforce-park/>

## EXHIBIT E

### FORM OF PERFORMANCE GUARANTY

#### GUARANTY

This **GUARANTY** (this “Guaranty”) is made and entered into by **LINCOLN PROPERTY COMPANY COMMERCIAL LLC**, a Texas limited liability company (“Guarantor”), in favor of **TRANSBAY JOINT POWERS AUTHORITY**, a joint exercise of powers agency duly created and existing under the Joint Exercise of Powers Act of the State of California, California Government Code Sections 6500 et seq. (“Owner”), in connection with that certain Asset Management Agreement, dated May \_\_\_ 2017 (the “Agreement Date”) and entered into by and between LPC West Transit Management LLC, a Delaware limited liability company (“Manager”) and Owner concurrently with this Guaranty (the “Asset Management Agreement”), pursuant to which Owner engaged Manager to perform certain services with respect to the management and operation of certain premises (as more particularly defined in the Asset Management Agreement) (“Premises”) within the Transbay Transit Center located in San Francisco, California. Terms used herein with initial capital letters not conforming to customary English language usage shall have the meaning ascribed to such terms in the Asset Management Agreement.

As a material inducement to and in consideration of Owner entering into the Asset Management Agreement (Owner having indicated that it would not enter into the Asset Management Agreement without the execution of this Guaranty), Guarantor hereby covenants and agrees as follows:

1. Guarantor unconditionally and irrevocably guarantees, as a primary obligor and not as a surety, the full, faithful and timely payment, performance and observance of any and all obligations and liabilities of Manager to Indemnify Owner and the other Indemnitees under the Article 15 of the Asset Management Agreement (collectively, the “Guaranteed Obligations”). Notwithstanding the foregoing, (a) Guarantor’s liability under this Guaranty shall only arise after Owner has delivered written notice to Manager and Guarantor requesting that Manager Indemnify Owner and the other Indemnitees under the applicable provisions of the Asset Management Agreement and Manager has failed to satisfy its obligation to Indemnify Owner and the other Indemnitees under the terms of the Asset Management Agreement (or commence to satisfy and thereafter diligently complete such obligation) within thirty (30) days after such notice or such earlier date as is reasonably required to prevent prejudice to Owner or such other Indemnitees in connection with the matters for which the Indemnity by Manager is sought, and (b) Guarantor’s liability under this Guaranty on account of the Guaranteed Obligations shall not exceed, in the aggregate, the then-applicable Limited Recourse Amount (as hereinafter defined). For purposes of this Guaranty, the “Limited Recourse Amount” shall be an amount equal to the greater of (i) Five Hundred Thousand and No/100 Dollars (\$500,000.00) and (ii) the total aggregate Fees paid to Manager by Owner under the Asset Management Agreement (excluding any Park Programming Fees and Leasing Commissions) through and including the date of Guarantor’s payment and performance under this Guaranty.

2. Guarantor agrees that, without the consent of, or notice to, Guarantor and without affecting any of the obligations of Guarantor under this Guaranty, (a) Owner and Manager may amend, compromise, release, or otherwise alter any term, covenant, or condition of the Asset Management Agreement, and Guarantor guarantees and promises to perform all the Guaranteed Obligations as so amended, compromised, released, or altered; (b) Owner may release, substitute, or add any guarantor of or party to the Asset Management Agreement; (c) Owner may exercise, not exercise, impair, modify, limit, destroy, or suspend any right or remedy of Owner under the Asset Management Agreement; (d) Owner or any other person acting on Owner's behalf may deal in any manner with Manager, any guarantor, any party to the Asset Management Agreement, or any other person; and (e) Owner may permit all or any part of the rights or liabilities of Manager under the Asset Management Agreement to be assigned, or assumed in accordance with the terms set forth in the Asset Management Agreement. This is a continuing guaranty, and Guarantor waives the benefit of the provisions of California Civil Code §2815.

3. Guarantor waives and agrees not to assert or take advantage of (a) any right to require Owner to proceed against Manager or any other person, or to pursue any other remedy before proceeding against Guarantor, subject to Section 1 above; (b) any right or defense that may arise by reason of the incapacity, lack of authority, death, or disability of Manager or any other person; (c) any right or defense arising by reason of the absence, impairment, modification, limitation, destruction, or cessation (in bankruptcy, by an election of remedies, or otherwise) of the liability of Manager, of the subrogation rights of Guarantor, or of the right of Guarantor to proceed against Manager for reimbursement; and (d) the benefit of any statute of limitations affecting the liability of Guarantor under this Guaranty or the enforcement of this Guaranty. Without in any manner limiting the generality of the foregoing, Guarantor waives the benefits of the provisions of California Civil Code §§2809-2810, 2819, 2820, 2821, 2839, 2845, 2847, 2848, 2849-2850 and 2855 and any similar or analogous statutes of California or any other jurisdiction. In addition, Guarantor waives and agrees not to assert or take advantage of any right or defense based on the absence of any or all presentments, demands (including demands for performance), notices (including notices of adverse change in the financial status of Manager or other facts that increase the risk to Guarantor, notices of nonperformance, and notices of acceptance of this Guaranty), and protests of each and every kind.

4. Until all of the Guaranteed Obligations are fully performed, Guarantor (a) will have no right of subrogation against Manager by reason of any payments or acts of performance by Guarantor under this Guaranty; and (b) subordinates any liability or indebtedness of Manager now or hereafter held by Guarantor to Manager's obligations under, arising out of, or related to the Guaranteed Obligations.

5. The liability of Guarantor and all rights, powers, and remedies of Owner under this Guaranty and under any other agreement now or at any time hereafter in force between Owner and Guarantor relating to the Asset Management Agreement will be cumulative and not alternative, and such rights, powers, and remedies will be in addition to all rights, powers, and remedies given to Owner by law or in equity.

6. This Guaranty applies to, inures to the benefit of, and binds all parties to this Guaranty, their heirs, devisees, legatees, executors, administrators, representatives, successors, and assigns (including any purchaser at a judicial foreclosure or trustee's sale or a holder of a

deed in lieu of foreclosure). This Guaranty may be assigned by Owner voluntarily or by operation of law.

7. Guarantor will not, without the prior written consent of Owner, commence (or join with any other person in commencing) any bankruptcy, reorganization, or insolvency proceeding against Manager. The obligations of Guarantor under this Guaranty will not be altered, limited, or affected by any proceeding, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation, or arrangement of Manager, or by any defense that Manager may have by reason of any order, decree, or decision of any court or administrative body resulting from any such proceeding. Unless and until all of the Guaranteed Obligations are fully performed, Guarantor will file in any bankruptcy, or other proceeding in which the filing of claims is required or permitted by law, all claims that Guarantor may have against Manager relating to any indebtedness of Manager to Guarantor, and Guarantor will assign to Owner all rights of Guarantor under these claims. Owner will have the sole right to accept or reject any plan proposed in such proceeding and to take any other action that a party filing a claim is entitled to take. In all such cases, whether in administration, bankruptcy, or otherwise, the person or persons authorized to pay such claim will pay to Owner the amount payable on such claim and, to the full extent necessary for that purpose, Guarantor assigns to Owner all of Guarantor's rights to any such payments or distributions to which Guarantor would otherwise be entitled; provided that Guarantor's obligations under this Guaranty will not be satisfied except to the extent that Owner receives cash by reason of any such payment or distribution. If Owner receives anything other than cash, it will be held as collateral for amounts due under this Guaranty.

8. TO THE EXTENT NOW OR HEREAFTER PERMITTED BY LAW, GUARANTOR AND OWNER, BY ACCEPTANCE HEREOF, EACH WAIVES THE RIGHT TO A JURY TRIAL OF ANY CAUSE OF ACTION, CLAIM, COUNTERCLAIM, OR CROSS-COMPLAINT IN ANY ACTION, PROCEEDING, OR OTHER HEARING IN CONNECTION WITH ANY MATTER ARISING OUT OF, OR IN ANY WAY CONNECTED WITH, THE ASSET MANAGEMENT AGREEMENT, THIS GUARANTY, THE RELATIONSHIP OF OWNER AND MANAGER, MANAGER'S MANAGEMENT OR OPERATION OF THE PREMISES, OR ANY CLAIM OF INJURY OR DAMAGE, OR THE ENFORCEMENT OF ANY REMEDY UNDER ANY LAW, STATUTE, OR REGULATION, EMERGENCY OR OTHERWISE, NOW OR HEREAFTER IN EFFECT.

9. As a further material part of the consideration to Owner to enter into the Asset Management Agreement with Manager, (a) Guarantor agrees that the law of the State of California will govern all questions with respect to this Guaranty; (b) Guarantor agrees that any suit, action, or proceeding arising directly or indirectly from this Guaranty, the Asset Management Agreement, or the subject matter of either will be litigated only in courts located within the City and County of San Francisco, California; (c) Guarantor irrevocably consents to the jurisdiction of any local, state, or federal court located within the City and County of San Francisco, California; and (d) without limiting the generality of the foregoing, Guarantor waives and agrees not to assert by way of motion, defense, or otherwise in any suit, action, or proceeding any claim that Guarantor is not personally subject to the jurisdiction of the above-named courts, that such suit, action, or proceeding is brought in an inconvenient forum, or that the venue of such action, suit, or proceeding is improper. Owner, by acceptance hereof,



(i) agrees that the law of the State of California will govern all questions with respect to this Guaranty; (ii) agrees that any suit, action, or proceeding arising directly or indirectly from this Guaranty, the Asset Management Agreement, or the subject matter of either will be litigated only in courts located within the City and County of San Francisco, California; (iii) irrevocably consents to the jurisdiction of any local, state, or federal court located within the City and County of San Francisco, California; and (iv) without limiting the generality of the foregoing, waives and agrees not to assert by way of motion, defense, or otherwise in any suit, action, or proceeding any claim that Owner is not personally subject to the jurisdiction of the above-named courts, that such suit, action, or proceeding is brought in an inconvenient forum, or that the venue of such action, suit, or proceeding is improper.

10. If a claim (a “Claim”) is made on Owner at any time (whether before or after payment or performance in full of any obligation of Guarantor, and whether such claim is asserted in a bankruptcy proceeding or otherwise) for repayment or recovery of any amount or other value received by Owner (from any source) in payment of, or on account of, any obligation of Guarantor under this Guaranty, and if Owner repays such amount, returns value, or otherwise becomes liable for all or part of such Claim by reason of (a) any judgment, decree, or order of any court or administrative body; or (b) any settlement or compromise of such Claim, then Guarantor will remain severally liable to Owner for the amount so repaid or returned or for which Owner is liable to the same extent as if such payments or value had never been received by Owner, despite any termination of this Guaranty, termination of the Asset Management Agreement, or cancellation of any document evidencing any obligation of Guarantor under this Guaranty.

11. This Guaranty will constitute the entire agreement between Guarantor and Owner with respect to the subject matter of this Guaranty and supersedes all prior agreements, understandings, negotiations, representations, and discussions, whether verbal or written, of the parties, pertaining to that subject matter. Guarantor is not relying on any representations, warranties, or inducements from Owner that are not expressly stated in this Guaranty.

12. No provision of this Guaranty or right of Owner under it may be waived, nor may any Guarantor be released from any obligation under this Guaranty except by a writing duly executed by an authorized officer or director of Owner.

13. When the context and construction so requires, all words used in the singular in this Guaranty will be deemed to have been used in the plural. The word “person” as used in this Guaranty will include an individual, company, firm, association, partnership, corporation, trust, or other legal entity of any kind whatsoever. “Owner,” whenever used in this Guaranty, refers to and means the Owner under the Asset Management Agreement specifically named and also any assignee of Owner, whether by outright assignment or by assignment for security, and also any successor to the interest of Owner or of any assignee of the Asset Management Agreement, whether by assignment or otherwise. “Manager,” whenever used in this Guaranty, refers to and means Manager under the Asset Management Agreement and also any assignee of the interest of Manager in the Asset Management Agreement and their respective successors in interest.

14. If any provision of this Guaranty is determined to be illegal or unenforceable, all other provisions will nevertheless be effective.

15. The waiver or failure to enforce any provision of this Guaranty will not operate as a waiver of any other breach of such provision or any other provisions of this Guaranty; nor will any single or partial exercise of any right, power, or privilege preclude any other or further such exercise or the exercise of any other right, power, or privilege.

16. Time is strictly of the essence under this Guaranty and any amendment, modification, or revision of this Guaranty.

17. If Guarantor is a corporation, limited liability company, partnership, or other entity, then each individual executing this Guaranty on behalf of that entity represents and warrants that he or she is duly authorized to execute and deliver this Guaranty on behalf of the entity in accordance with its governing documents, and that this Guaranty is binding on the entity in accordance with its terms.

18. Guarantor represents and warrants that (a) as of the date hereof, and after giving effect to this Guaranty and the contingent obligations evidenced hereby, Guarantor (i) is, and intends to be, solvent, (ii) has and intends to maintain assets which, fairly valued, exceed its obligations, liabilities (including contingent liabilities) and debts, and (iii) has and intends to have property and assets sufficient to satisfy and repay its obligations, liabilities (including contingent liabilities) and debts, including, without limitation, the Guaranteed Obligations, and (b) there is no existing or, to Guarantor's knowledge after diligent inquiry, pending or threatened claim, litigation, suit, action, or proceeding before any court or administrative agency affecting Guarantor that would, if adversely determined, materially adversely affect Guarantor's ability to perform under this Guaranty.

19. Guarantor represents and warrants that (a) Guarantor has full right, title, authority and capacity to execute and perform this Guaranty, (b) the execution and delivery of this Guaranty have been duly authorized by all requisite actions of Guarantor, (c) this Guaranty constitute the valid, binding, and enforceable obligations of Guarantor, and (d) neither the execution of this Guaranty nor the consummation of the transactions the same contemplate violates, or will result in any breach of, or constitute a default under, any agreement (including Guarantor's organizational documents), mortgage, deed of trust, lease loan, credit agreement, partnership agreement, or other contract, restriction or instrument to which Guarantor is a party or by which Guarantor may be bound.

20. Guarantor represents and warrants that it is familiar with, and has independently reviewed books and records regarding, the financial condition of Manager.

21. Guarantor represents and warrants that neither Owner nor any other party has made any representation, warranty or statement to Guarantor in order to induce Guarantor to execute this Guaranty.

22. If either party to this Guaranty participates in an action against the other party arising out of or in connection with this Guaranty, the prevailing party will be entitled to have and recover from the other party reasonable attorney fees, collection costs, and other costs incurred in, and in preparation for, the action, arbitration, or mediation.

23. Any notice, request, demand, instruction, or other communication to be given to any party under this Guaranty must be in writing and must be delivered in the manner provided in the Asset Management Agreement for delivery of notices (and will be deemed delivered in accordance with the time periods set forth in the Asset Management Agreement) and addressed to the party to be notified at the address set forth below, or to such other place as the party to be notified may from time to time designate by at least fifteen (15) days' notice to the notifying party.

If to Owner: Transbay Joint Powers Authority  
201 Mission St., Suite 2100  
San Francisco, CA 94105  
Attn: Executive Director

If to Guarantor: Lincoln Property Company  
Attn: Ginger Dunbar  
915 Wilshire Blvd., Suite 2050  
Los Angeles, CA 90017

24. If Guarantor is more than one (1) person, the obligations of the persons comprising Guarantor will be joint and several and the unenforceability of this Guaranty or Owner's election not to enforce this Guaranty against one (1) or more of the persons comprising Guarantor will not affect the obligations of the remaining persons comprising Guarantor or the enforceability of this Guaranty against such remaining persons.

25. Guarantor covenants and agrees to execute such other and further documents and do such further acts as may be reasonably required to effectuate the intent of the parties and carry out the terms of this Guaranty.

“Guarantor”

**LINCOLN PROPERTY COMPANY COMMERCIAL LLC,**  
a Texas limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT F**

FORM OF BUDGET

(see attached)

## **EXHIBIT G**

### **NOTICE ADDRESSES**

#### **MANAGER'S NOTICE ADDRESS:**

Lincoln Property Company  
Attn: Ginger Dunbar  
915 Wilshire Blvd., Suite 2050  
Los Angeles, CA 90017

#### **OWNER'S NOTICE ADDRESS:**

Transbay Joint Powers Authority  
425 Mission Street, Suite 250  
San Francisco, CA 94105  
Attn: Executive Director

**EXHIBIT H**

**FORM OF ESTOPPEL CERTIFICATE**

[Date]

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Re: Asset Management Agreement dated July 1, 2023 by and between Transbay Joint Powers Authority, a joint exercise of powers agency duly created and existing under the Joint Exercise of Powers Act of the State of California, California Government Code Sections 6500 et seq., as owner, and LPC West Transit Management LLC, a Delaware limited liability company, as manager (as amended from time to time, the “Agreement”).

Ladies and Gentlemen:

The undersigned certifies to Transbay Joint Powers Authority, a joint exercise of powers agency duly created and existing under the Joint Exercise of Powers Act of the State of California, California Government Code Sections 6500 et seq. (“Owner”) [and \_\_\_\_\_], as of the date hereof, as follows:

1. True and complete copies of the documents constituting the Agreement, including any and all amendments or modifications thereto, are attached hereto as Exhibit A. *All capitalized terms not otherwise defined herein shall have the meanings provided in the Agreement.*

2. Except as disclosed in Paragraph 1 above, the Agreement has not been modified, supplemented or amended in any way. The Agreement constitutes the entire agreement between the parties with respect to the matters set forth therein and is in full force and effect.

3. The Expiration Date (including any Renewal Term approved by Manager on or prior to the date hereof) is \_\_\_\_\_, 20\_\_.

4. Owner has paid all Fees due and owing to Manager under the Agreement as of the date hereof [*other than* \_\_\_\_\_].

5. To the best of the undersigned’s knowledge, Owner has to date performed all of its obligations, monetary and otherwise, under the Agreement, and is in full compliance with all of its respective obligations thereunder [*other than* \_\_\_\_\_].

6. To the best of the undersigned’s knowledge, neither Owner nor Manager is in default thereunder, and no event has occurred and no condition exists which, with the giving of notice or the passage of time, or both, will constitute a default under the Agreement [*other than* \_\_\_\_\_].

7. To the best of the undersigned's knowledge, there is no default by Owner, as landlord, under any Leases with respect to space within the Commercial Usage Areas, and no event has occurred and no condition exists which, with the giving of notice or the passage of time, or both, will constitute a default by Owner, as landlord, under any such Leases *[other than \_\_\_\_\_]*.

8. *[Other than Manager's right of first negotiation for the management of Phase II as set forth in Section 5.3 of the Agreement,]* Manager has no right of first offer, right of first refusal, or option to manage, lease or purchase all or any part of the Center or Premises.

9. The contracts with Manager's Primary Subcontractors are in full force and effect and have not been modified, supplemented or amended in any manner that would cause such contracts to violate the express requirements under the Agreement relating to the same (including, without limitation, any requirement to include certain provisions in such contracts pursuant to the express terms and conditions of the Agreement).

10. Manager has paid all fees and other amounts due and owing to Manager's Primary Subcontractors under the terms and provisions of the applicable contracts between Manager and such Primary Subcontractors as of the date hereof *[other than \_\_\_\_\_]*.

11. To the best of the undersigned's knowledge, neither Manager nor any of its Primary Subcontractors is in default under the terms and provisions of the applicable contracts between Manager and such Primary Subcontractors, and no event has occurred and no condition exists which, with the giving of notice or the passage of time, or both, will constitute a default under such contracts *[other than \_\_\_\_\_]*

The undersigned individual hereby certifies that he or she is duly authorized to sign, acknowledge and deliver this letter on behalf of the undersigned entity.

[Signature on Following Page]

This letter shall be binding upon the undersigned and its heirs, personal representatives, successors and assigns.

Very truly yours,

\_\_\_\_\_,  
a \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



Exhibit A

Agreement

[see attached]

## EXHIBIT I-1

### MANAGER'S PRIMARY SUBCONTRACTORS

#### Park Subcontractor

Name: Biederman Redevelopment Venture  
Address: 110 W. 40<sup>th</sup> St, Suite 2008  
New York, NY 10018  
Lead: Dan Biederman

#### Promotional Platform Subcontractor

Name: Pearl Media  
Address: 151 Forest St, Suite J  
Montclair, NJ 07042  
Lead: Josh Cohen

#### Leasing Subcontractor

Name: Colliers International  
Address: 101 Second St, 11<sup>th</sup> Floor  
San Francisco, CA 94105  
Lead: Ann Natunewicz

#### Leasing legal counsel

Name: Sheppard Mullin  
Address: Four Embarcadero Center, 17th Floor  
San Francisco, CA 94111  
Lead: Katharine Allen

## EXHIBIT I-2

### EXISTING SUBCONTRACTS

1. Short Form Contract Agreement between Manager and GSH Group dated May 22, 2023 for building engineering services (not yet executed).
2. Short Form Contract Agreement between Manager and ABM Industry Groups, LLC dated December 31, 2018 and amended pursuant to an Addendum executed as of December 28, 2022 for janitorial services.
3. Park Subcontracting Agreement between Manager and BRV Corp. dated April 2017 (undated) and amended pursuant to First Amendment dated February 15, 2021, Second Amendment dated June 2021 (undated), and Third Amendment dated July 1, 2022 for park programming.
4. Exclusive Sales Services Agreement dated April 27, 2017 between Manager and Pearl Media, LLC and amended pursuant to First Amendment dated May 3, 2023 for promotional platform management services.
5. Exclusive Leasing Agreement dated April 2017 (undated) between Manager and Collier's International CA, Inc. and amended pursuant to First Amendment (undated; 2021) for leasing agent services.

This list may subsequently be amended from time to time by mutual agreement of the parties.

## **EXHIBIT J**

### **ADDITIONAL INSUREDS**

Transbay Joint Powers Authority

The Member Agencies of the TJPA:

Alameda-Contra Costa Transit District  
California High-Speed Rail Authority  
City and County of San Francisco  
Peninsula Corridor Joint Powers Board – Caltrain  
State of California, Department of Transportation

The following entities involved in the naming rights for the transit center:

Salesforce.com and all legal entities controlling, controlled by, or under common control with, directly or indirectly, salesforce.com

And all of the officers, directors, agents, permitted assigns, and employees of each of the above.

The Additional Insureds listed in this Exhibit J shall also include such other parties as the TJPA may request from time to time.

**EXHIBIT K-1**

**FORM OF BUS STORAGE FACILITY SIDE AGREEMENT**

[to be inserted]

**EXHIBIT K-2**

**PROPOSED BUS STORAGE FACILITY BUDGET**

<b>Service</b>	<b>Annual Cost</b>
Janitorial	\$ 86,112.00
Waste Removal	\$ 6,037.00
Electrical Repairs	\$ 945.00
Graffiti	\$ 3,675.00
Landscaping	\$ 21,760.00
Pressure Washing	\$ 2,730.00
General Maintenance	\$ 57,330.00
FA Monitoring	\$ 1,025.00
FA Test & Inspect	\$ 5,998.00
Fire Extinguishers	\$ 300.00
Backflow Testing	\$ 472.00
Pest Control	\$ 6,690.00
Program Management	\$ 42,580.00
LPC Management Fee	\$ 30,000.00

**Total Annual Budget \$ 265,654.00**

## **EXHIBIT L**

### **LIST OF O & M GUIDELINES DOCUMENTS**

In accordance with both the Transit Asset Management (TAM) Plan and Capital Improvement Plan (CIP) Policy adopted in 2022, a set of O&M guidelines, plans, and documents is being updated in good faith between TJPA and LPC. These documents shall be reviewed and updated on an annual basis.

1. O & M Guidelines
2. Building Systems Overview
3. Security Guidelines
4. Art Conservation Guidelines
5. Construction Document Retail Guide
6. Signage Design Intent
7. MEP Systems Overview

Yearly Reports shall include:

1. Operations & Maintenance Report
2. Façade & Awning Maintenance Report, as needed
3. Fire & Life Safety Strategy and Maintenance Report
4. Non-Potable Water System Report, as needed

Additionally, the below documents will be shared with each party, and shared in good faith as updates are made.

1. Transbay Transit Center Operations and Maintenance Report - Utilities
2. Transbay Transit Center Operations and Maintenance Report - Insurance Estimates
3. Transit Center Construction Documents
4. Bus Ramp Construction Documents
5. East Cut Community Benefits District Management Plan
6. Transbay Transit Center Equipment Plan

**EXHIBIT L-1**

MAINTENANCE PLAN

(see attached)



## EXHIBIT L-2

### COMPARISON STORES

#### **Limited Service F&B/Grocery**

Arizmendi Bakery  
Bi-Rite Market  
Blue Bottle  
Coast Poke Counter  
Dandelion Chocolate  
Dean & DeLuca  
Eatsa  
Ike's Sandwiches  
La Panotiq Bakery Cafe  
North Beach Deli  
Organic Coup  
Pret a Manger  
Pressed Juicery  
Proper Food  
Shake Shack  
Smitten Ice Cream  
Sushiritto  
Sweetgreen  
Tartine Bakery

#### **Full Service F&B**

City Winery  
Fig & Olive  
Gary Danko  
Marengo  
Marlowe  
Michael Dellar  
Perry's  
Southern Pacific Brewing  
The Slanted Door

#### **Fitness**

Basecamp  
Blink  
Core Power Yoga  
Equinox  
Fitness SF

#### **Newstand/Sundries/Gifts**

Fog City News  
Flying Tiger  
In Water Flowers  
Lola of North Beach  
Papyrus  
Piq

**Beauty/Services/Health**

Aesop  
AIRE  
Art of Shaving  
Aveda  
CityMD  
DryBar  
L'Occitane  
MAC Cosmetics  
One Medical Group  
The Face Shop  
Warby Parker

**Dry Goods**

Apple  
City Lights Bookstore  
Everlane  
Kit and Ace  
lululemon  
Marine Layer  
Muji  
Patagonia  
Sur La Table  
Swatch  
Tumi  
Uniqlo  
Zara

## EXHIBIT L-3

### LEASING GUIDELINES

The Leasing Guidelines describe the procedures required for the Asset Manager to lease the Commercial Usage Areas within the Transit Center.

As described in the Scope of Services, the Commercial Usage Areas shall be used for commercial purposes with a preference toward retail and restaurant. The use of the Commercial Usage Areas by any Tenants shall at all times be a Retail Permitted Use under the following terms:

- Be in accordance with the Design Guidelines, the Commercial Standard and the Lease approval procedures set forth in Section 5.1.2(c) of the Agreement,
- Retail and restaurant uses will be of equal or better in quality of product and operations to the Comparison Stores included in Exhibit L-2.
- Restricted by the list of “Prohibited Uses and Users” included in Exhibit N.

Manager will execute the below set of steps, described in greater detail below, for leasing of the Commercial Usage Areas:

1. *Merchandising Plan:* Manager shall create and update the plan for leasing the Commercial Usage Space.
2. *Marketing and Recruitment:* Manager shall market and recruit the Commercial Usage Space to potential tenants.
3. *Lease Approval Procedure:* Manager will submit leases to TJPA for approval.
4. *Retail Tenant Fit-Out and Occupancy Approval Procedure:*

#### 1. *Merchandising Plan*

Manager prepared and Owner approved a Merchandising Plan for the Center, which is incorporated by reference into this Exhibit L-3. Manager shall make recommended updates and refinements to the Merchandising Plan for Owner’s approval, in its sole and absolute discretion, which, if approved, will be incorporated herein by reference.

#### 2. *Marketing and Recruitment*

Manager will prepare the following materials and provide to TJPA for approval before release to the public or individual potential Tenants:

- All marketing collateral (i.e. website, print advertisements).
- Comprehensive list of tenants for planned outreach.
- Plan for tenant outreach and marketing (i.e. direct contact, trade shows, advertisements) including the intended reach (local, regional, national).

Manager will provide regular updates to TJPA summarizing marketing and recruitment activity. Prior to reaching full occupancy (95% occupancy of Commercial Usage Space), Manager will provide bi-weekly updates to TJPA. Following facility stabilization, Manager will provide monthly updates to TJPA.

These updates may be submitted via email to Manager's primary point of contact with the TJPA, and Manager will be required to copy or retransmit to others at the TJPA's request. Manager will include the following elements in their leasing activity updates:

- A summary of Manager's marketing and leasing activities since the prior report.
- A summary of potential tenants which Leasing Subcontractor has had contact with including tenant name, tenant category, tenant type, and potential space and square footage.
- A summary of Tenants' feedback and interest in leasing within the facility.
- List of potential tenants for which Manager has given a tour of the facility.
- List of potential tenants with which Manager is conducting negotiations and brief updates on ongoing negotiations.

### *3. Lease Approval Procedure*

The Manager will be required to submit each potential Tenant to TJPA for approval prior to drafting of a Lease and again for final approval following drafting of a Lease. The Lease Approval Procedure is described in detail in section 5.1.2(c) in the Agreement. In addition to the information required under section 5.1.2(c), Manager should provide the following within the Lease Information Packet:

- Substantial information to illustrate whether and how the proposed Tenant meets the vision and plans laid out in the Merchandising Plan.
- Illustrative renderings, images, or photographs of other locations which provide a clear representation of tenant operational concept and design standards.
- Intended hours of operation.
- Any exceptions or major alterations that may be required to the standard form of Lease attached to these guidelines.

### *4. Retail Tenant Fit-Out and Occupancy Approval Procedure*

Following successful execution of a Lease, Manager will require each Tenant to create a Fit-Out and Occupancy Plan which will guide Tenant's work and schedule from Lease execution through to commencement of retail operations. Each Fit-Out and Occupancy Plan must be submitted to TJPA for approval within 30 days of Lease execution. The contents of the Fit-Out and Occupancy Plan should be proposed by Manager, but must include, at a minimum, the following:

- Anticipated tenant improvement budget broken down by trade category.
- Intended contractors by trade.
- Fit-out schedule, including hours of construction, noise mitigation procedures.
- Intended date for commencement of retail operations.
- Certificate of Insurance.

## *5. Design Review and Code Compliance*

All tenant designs for Commercial Usage Space are required to meet TJPA's standards for the quality of the physical facility and as such, must follow the Design Guidelines, provided in Exhibit M, and will be subject to TJPA's Design Review Process, as described in Exhibit M-1. Plans and Specifications will also be subject to a separate Compliance Review process as described in section 9.3(b) in the Agreement.

[Placeholder: Merchandising Plan to be appended by mutual agreement of the parties]

Standard form of Lease for Commercial Usage Areas

(see attached)

## EXHIBIT M

### DESIGN GUIDELINES

#### ***Introduction***

The Transbay Joint Powers Authority (TJPA) has established the following Design Guidelines for the commercial spaces within the Transbay Transit Center (Transit Center) to ensure that future tenant spaces adhere to the same high quality standards that formed the basis of the Transit Center design. The design principles are intended to:

- Guide the Manager and each Tenant to design solutions, which will enhance the shopping, dining, and commercial experiences in the Transit Center.
- Establish a framework for the Tenant to create its own identity and operations while conforming to the overall Transit Center design philosophy.
- Create a process for reviewing the Manager's and each tenant's design proposals.

The Manager is required to create Tenant Design Standards to review and acquire approval from the TJPA prior to distribution to tenants.

The Design Guidelines are an extension of, and supplement to, the Asset Management Agreement. As such, the Manager and each Tenant must be familiar with the intent, scope, and requirements of these documents, which will be further supplemented by the Tenant Design Standards to be produced by the Manager.

The Premises will be delivered to the Manager in the arrangements shown in the construction drawings attached to this RFP as Key Reference Document 10, Transit Center construction documents, and listed in Appendix 11. These plans include approximate spaces and are not intended for actual construction. The actual configuration and design of spaces within the Transit Center may vary in certain aspects from such renderings, drawings, and floor plans, and the Manager and/or Tenant is required to verify all as-built conditions.

The Manager is responsible for ensuring that tenant's fit-out designs include consideration of the code compliance and building systems information contained in Appendix 10. Requirements to coordinate with the TJPA during design and construction are outlined in Appendix 6.

#### ***Transit Center General Design Guidelines***

The Transit Center will be a multi-modal transportation hub in downtown San Francisco that is designed as an iconic, contemporary urban structure. State-of-the-art building materials and design and engineering strategies have been utilized throughout the building. The Transit Center is designed to operate using the most current technologies in support of the facility's intended goal to operate efficiently for decades to come.



In addition, the designs and materials used are supportive of low-maintenance and long-term durability, thereby keeping the facility clean and inviting to the general public. While the Transit Center building is transparent and permeable to access and egress by the public, stringent safety and security standards have been applied to the building design and construction which have resulted in a safe haven for the building occupants, users, and general public in times of an emergency. Wayfinding and people movement have been fashioned to be user-friendly and intuitive, further adding to the public perception that the facility is safe and inviting. The design of the Transit Center incorporates many sustainable strategies toward achieving a LEED Gold certification. Tenants are encouraged to incorporate sustainability aspects wherever possible.

Phase 2 of the Transbay Program will be designed with the same goals and objectives as Phase 1, and may be subject to specific design guidelines particular to the Phase 2 spaces.

The following are General Design Principles that should inform the design of the commercial areas:

- Visibility into and throughout commercial spaces open to the public.
- Upholding wayfinding and organization of the Transit Center so as to maintain the user experience and not impede building operations.
- Careful attention to the organization and appearance of displays, merchandise and associated casework and furnishings.
- Screening of work zones, storage, back of house or preparation areas from the public, as appropriate to the operation.
- Containment of the fit-out within the commercial usage areas, unless specifically allowed within the Master Lease (e.g., outdoor tables and seating for restaurants).
- Minimal to no interference with the base building architecture, structure or systems.

### *Design Control Zone*

The Design Control Zone (DCZ) has been established for the tenant-leased premises within which specific design criteria apply. The DCZ has been established based on the relationship of the project architecture to available commercial space locations and identifies distinct high quality design standards within that area subject to TJPA approval. The DCZ is defined as a 10-foot-wide band, measured from the lease line into the tenant-leased premises.

### *Street Level Storefront Projections (Retail Pop-Outs)*

Building facades, including the storefront system and entrance doors, will be provided with the base building. However, if desired, the street level tenants may request to alter the storefront within the retail “pop-out” zone, which will be subject to the same level of technical and security performance requirements as the base building. Such alterations, including the retail pop-out storefront and entrance doors, shall be designed and installed by the Manager and/or Tenant and approved by the TJPA.

### *Signage*

Tenants are required to design, fabricate, install, and maintain retail signs that exhibit creativity, high fabrication quality, and compatibility with adjacent and facing storefronts. Locations for retail signs have

been identified above entrance doors typically and on the storefronts as blade signs for the street level retail spaces. All signage for the leased premises is subject to TJPA's approval and must be located within the identified area.

### *Outdoor Seating*

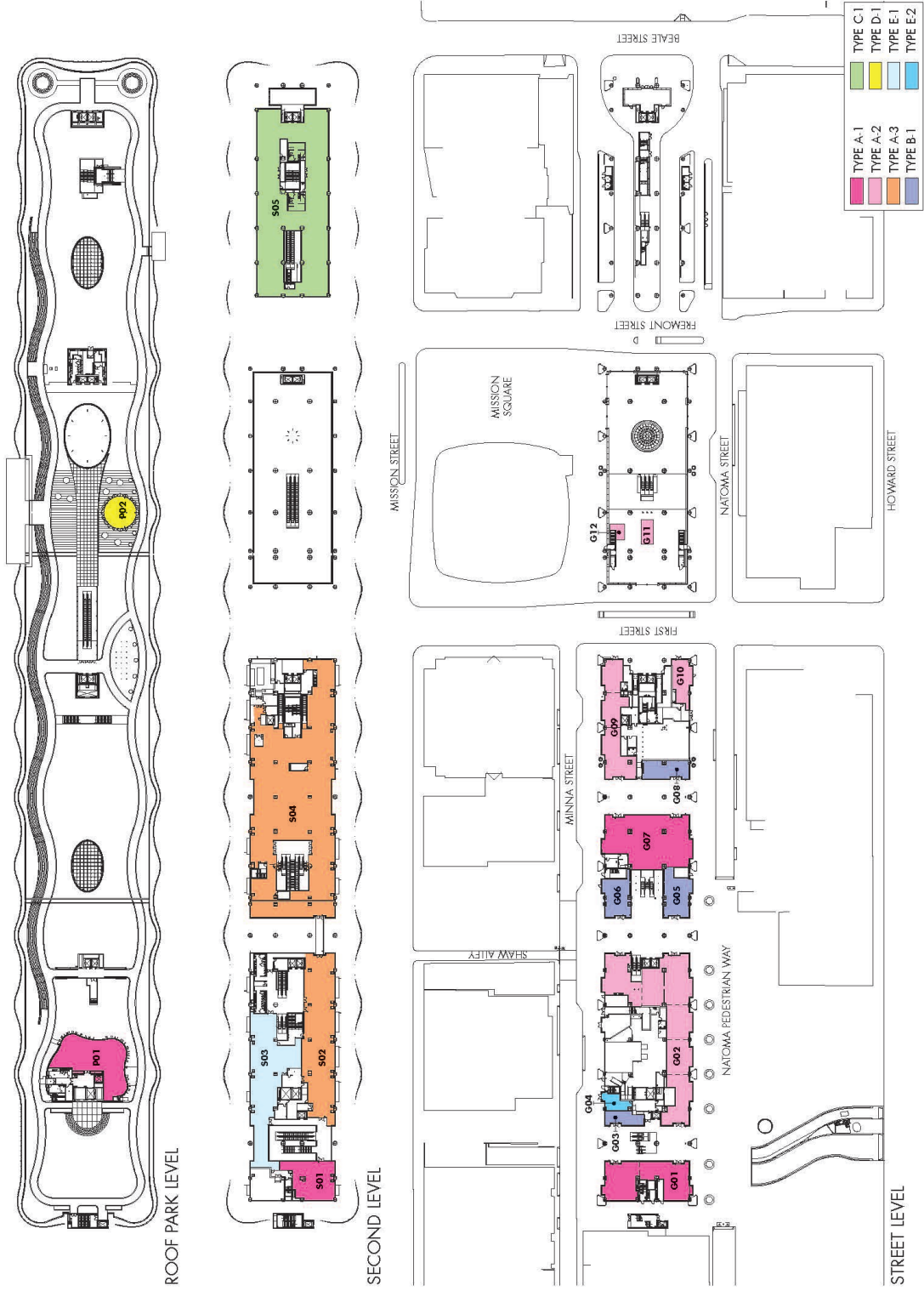
Outdoor seating areas have been provided for use by street level tenants. The Manager is to provide standardized furniture for the street level outdoor seating areas for a cohesive and organized design of the outdoor area. It is the Manager's responsibility to provide standardized movable railings and/or planters. Tenants will define outdoor seating areas along the Natoma Pedestrian Way. Tenants will be able to promote their identity by the color and graphic choices on their umbrellas. Outdoor barriers, furniture, and umbrellas shall be of high quality materials suitable for exterior exposure, shall complement the Transit Center's architecture and the surrounding hardscape design, and must be approved by the TJPA.

### *Transit Center Commercial Space Base Condition*

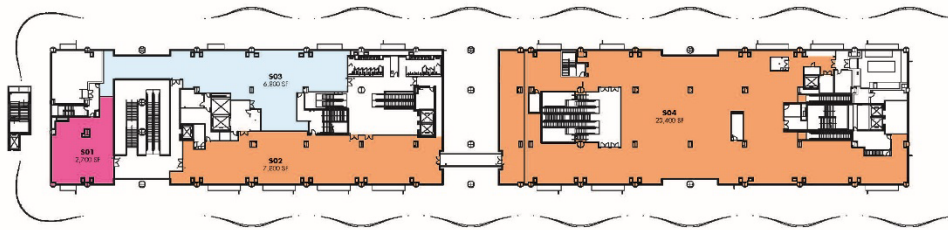
The Transit Center will have a variety of commercial spaces that are identified as type A, B, C, D, and E, depending on the base condition provided and tenant fit-out requirements. Refer to Figure 1 for location of each type of retail spaces. Below is the definition of the different types of commercial spaces in the Transit Center.

- **Type A-1:** Restaurant Space with Natural Gas, Venting, and Tenant Provided Scrubber (Kitchen Exhaust Filtration Unit) in the Individual Lease Space.
- **Type A-2:** Restaurant Space with Natural Gas, Venting, and Connection to a Common Landlord Provided Scrubber in the Individual Lease Space.
- **Type A-3:** Restaurant Space with Gas, Venting, and Connection to a Common Landlord Provided Scrubber in the Common Space.
- **Type B-1:** Standard Dry Retail and Restaurant with Warming Kitchen Only in the Individual Lease Space.
- **Type C-1:** Standard Dry Commercial Space.
- **Type D-1:** Standard Dry Retail and Restaurant with Warming Kitchen Only in the Individual Lease Space with No Core/Shell Provided as Base Building.
- **Type E-1/E-2:** Transit Program to be fit-out by Manager & Available as Additional Commercial Space in Phase 2.

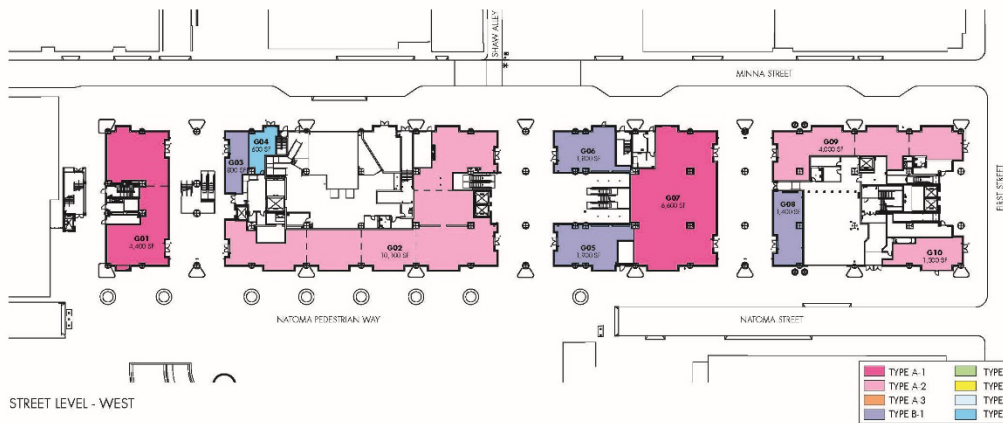
Figure 1: Retail Space Types Plan



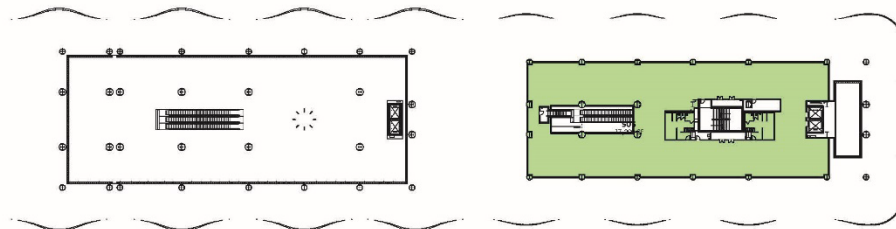
<b>GROUND LEVEL</b>		<b>SF</b>
G01		4,400
G02		10,100
G03		800
G04 (GXP)		600
G05		1,900
G06		1,800
G07		6,600
G08		1,400
G09		4,000
G10		1,300
G11		500
G12		300
<b>Subtotal: Ground</b>		<b>33,700</b>
<b>SECOND LEVEL</b>		
S01		2,700
S02		7,800
S03 (Greyhound Amtrak)		6,800
S04		23,400
S05		17,200
<b>Subtotal: Second Level</b>		<b>57,900</b>
<b>ROOFTOP PARK</b>		
P01		10,400
P02		1,300
<b>Subtotal: Rooftop</b>		<b>11,700</b>
<b>Total Commercial SF</b>		<b>103,300</b>



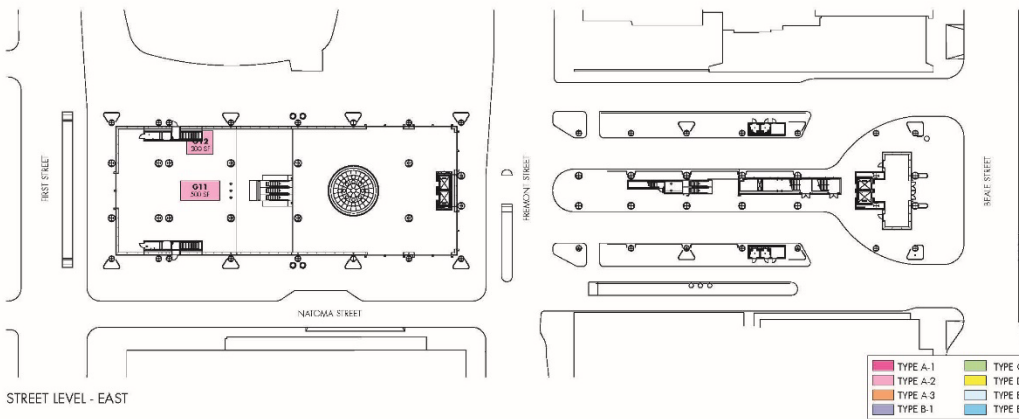
SECOND LEVEL - WEST



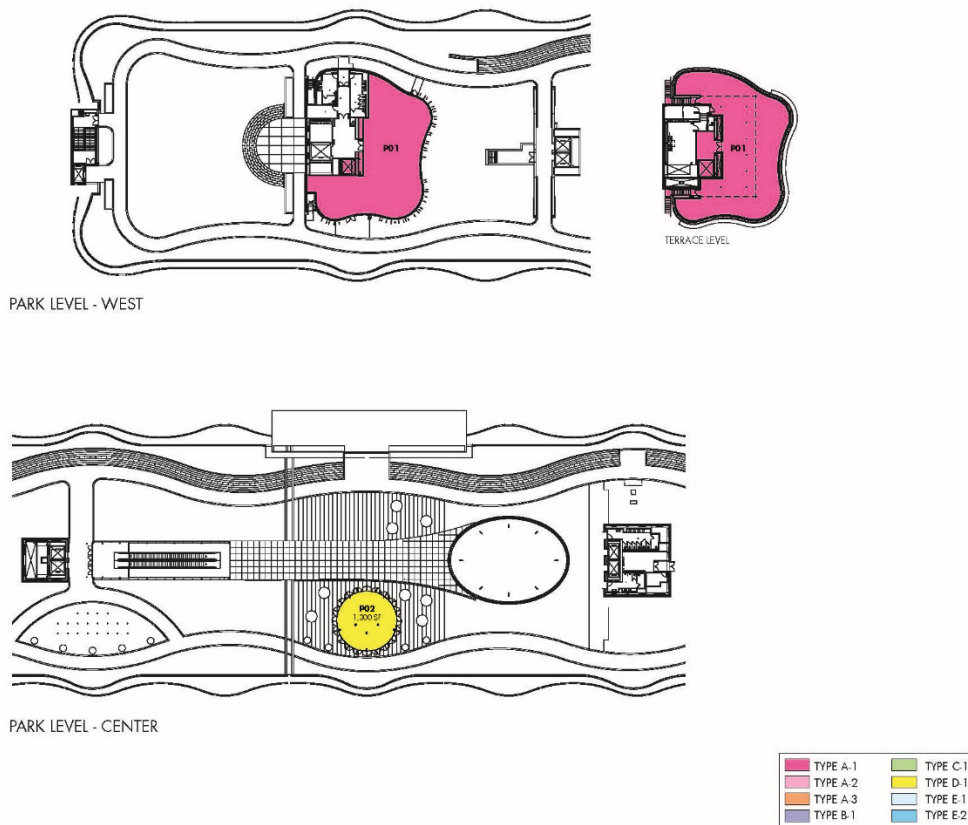
STREET LEVEL - WEST



SECOND LEVEL - EAST



STREET LEVEL - EAST



The TJPA will be responsible for constructing all base building improvements. The Base Building work shall be in accordance with the plans and specifications prepared by the TJPA's consultants and are linked as Key Reference Documents to this RFP as Key Reference Document 10, Transit Center construction documents, and Key Reference Document 11, Bus ramp construction documents. All finishes, tenant improvements and elements over and above those specifically shown on the drawings shall be at the Manager's and/or Tenant's sole cost and expense.

### *Type A, B, and C Retail Spaces – General Specifications*

**Storefront:** The TJPA will construct the building façade and storefront including the street level storefront projections/retail pop-outs. Any modifications to the retail pop-out area will be subject to TJPA's performance criteria and approval.

**Walls:** Demising walls between potential adjacent commercial spaces will not be provided in the base building to provide the Manager with flexibility in defining the individual lease space. Manager and/or the applicable Tenant will be required to provide a demising wall where needed that is one-hour rated in compliance with code requirement.

**Flooring:** Manager and/or Tenant shall be responsible for installing all interior floor finishes, including necessary topping slab, in order to properly align Tenant's finish floor with surrounding finish grade at each public or service entrance into Tenant space. For "wet" occupancy areas, tenant shall install waterproofing membrane under the floor build-up. The elevation of the base building structural slab varies relative to the surrounding exterior finish grade, so the Manager and/or Tenant must field verify elevations and incorporate all existing conditions into its design.

**Ceilings:** Manager and/or Tenant shall be required to adhere to the specific design requirements and quality within the DCZ. A hard ceiling (i.e., gypsum board) will be provided within the DCZ, which will be at a height no lower than the bottom mullion of the storefront glazed spandrel panel.

**HVAC:** The leased premises will be provided with a condenser water supply and return piping that will be capped and valved in the leased premises. Outside air ventilation ductwork will be stubbed-out to exterior louvers. General exhaust duct connection will also be stubbed-out to exterior louvers.

**Electrical:** Space for electrical utility meter in utility retail switchboard will be provided. Empty 2" conduit from 277/480V 3PH retail meter switchboard will be stubbed-out to the leased premises. The leased premises will be provided with a fire alarm strobe light connected to fire alarm network and emergency lighting fixture with connection to emergency power.

**Plumbing and Gas:** The leased premises will be provided with a domestic water service that will be capped and valved in the leased premises. The leased premises will be provided with fire protection sprinklers with upturned heads.

**Communications:** The leased premises will be provided with Category 6A cable for voice communications and high-speed data connectivity and will have access to secure Intermediate Distribution Frame (IDF) room for network equipment placement and distribution.

#### *Type A-1*

Type A-1 space is designed to allow for a full cooking kitchen with a tenant provided scrubber room in the leased premises. In addition to the general specifications described above, type A-1 retail spaces will be provided with welded black iron kitchen exhaust duct extending from the demising premises to the nearest common exhaust shaft. In addition, common waste and vent line for connection will be capped and valved in the lease premises. Space for a natural gas meter will be provided in the base building gas meter room and dedicated black iron gas line will extend from the building's gas meter room to the demising premises sized to supply natural gas at low pressure.

#### *Type A-2*

Type A-2 space is also designed to allow for a full cooking kitchen but will be connected to a common base building scrubber room from the leased premises. Similar to type A-1 retail space, type A-2 space will be provided with welded black iron kitchen exhaust duct extending from the demising premises to the nearest common exhaust shaft. In addition, common waste and vent line for connection will be capped and valved in the lease premises. Space for a natural gas meter will be provided in the base

building gas meter room and dedicated black iron gas line will extend from the building's gas meter room to the demising premises sized to supply natural gas at low pressure.

#### *Type A-3*

Type A-3 space is also designed to allow for a cooking kitchen in designated locations but will be connected to a common base building scrubber room from the leased premises. In addition to the general specifications described above, scrubber rooms and shafts routing to the building exterior will be provided in type A-3 retail spaces. Manager shall provide the filtration equipment (scrubbers) and extend welded black iron kitchen exhaust duct for extension by the tenant. Manager shall extend ductwork from the scrubber rooms to the building exterior in the shafts provided. In addition, common waste and vent line for connection will be capped and valved in the lease premises. Space for a natural gas meter will be provided in the base building gas meter room, and a dedicated black iron gas line will extend from the building's gas meter room to the demising premises and sized to supply natural gas at low pressure.

#### *Type B-1*

Type B-1 space is designed to allow for a food warming kitchen only in the leased premise, and is not designed to allow for a cooking kitchen. In addition to the general specifications described above, common waste and vent line for connection will be capped and valved in the leased premises for type B-1 space.

#### *Type C-1*

Type C-1 space is designed to be a dry non-food commercial space. In addition to the general specifications described above, type C-1 space will be provided with finished men's and women's restrooms with shower stalls and locker room.

#### *Type D-1 Retail Spaces – General Specifications*

Type D-1 space is designed to allow for a food warming kitchen in the leased premises; however, the core and shell of this space, including base building facade, structure, and systems, are to be provided by the Manager and/or Tenant.

Type D-1 space is designed to be located on the south side of the Main Plaza in the Park. All of the utility services will be stubbed to the interstitial area under the future leased premises. The vision of the building is as a glass jewel nestled within a park.

**Exterior Wall:** Manager and/or Tenant shall be responsible for installing the exterior enclosure of the building.

**Flooring:** Manager and/or Tenant shall be responsible for installing the interior floor finishes, including necessary topping slab, in order to properly align Tenant's finish floor with surrounding finish grade. For "wet" occupancy areas, tenant shall install waterproofing membrane under the floor build-up.

**HVAC:** The leased premises will be provided with a condenser water supply and return piping that will be capped and valved under the future leased premises.



**Electrical:** Empty conduit from 277/480V 3PH retail meter switchboard will be stubbed to the interstitial area under the future leased premises. The interstitial area under the leased premises will also be provided with a fire alarm network cable and emergency lighting conduit for extension by the Manager and/or Tenant.

**Plumbing:** Services will be provided to the demised area of the future leased premises including domestic water service, common waste and vent lines and fire protection sprinkler piping. Space for a gas meter will be provided in the base building gas meter room and a dedicated black iron gas line will extend from the building’s gas meter room to the demised area.

**Communications:** Category 6A cable for voice communications and high-speed data connectivity will be stubbed to the interstitial area under the future leased premises. The Manager and/or Tenant will also have access to the secure IDF room for network equipment placement and distribution.

*Type E Retail Spaces – General Specifications*

Type E spaces are designed for use and support of the transit program and/or the facilities program, and required to be fit-out by the Manager.

*Type E-1 (Intercity Bus Facility)*

Type E-1 space specifications for walls, flooring, ceilings, HVAC, electrical, plumbing and communications are the same as the general specifications for types A and B retail spaces.

*Type E-2 (Greyhound Package Express)*

Type E-2 space will be provided with a finished floor, ceilings and walls. The HVAC, electrical, plumbing, and communications systems will also be in place. Manager shall provide millwork and any other items to finish out the space for full operations.

**Base Building Materials and Finishes**

Table 1 shows the materials and finishes that have been specified and used in the Base Building Areas to ensure that the design and quality of the tenant areas are compatible with the Transit Center. The Manager and tenants shall consider the below finishes to ensure the spaces are complementary.

Table 1: Transit Center Material and Finishes

Level	Area	Floor Finish	Wall Finish	Ceiling Finish
Ground Floor	Beale Street Lobby	Polished Concrete	Glazing, Metal Panel	Corrugated Metal Panel
	Grand Hall	Terrazzo, Glazing	Glazing, Metal Panel	Corrugated Metal Panel
	Commercial Areas	Unfinished, Structural Concrete	Glazing	Exposed

Level	Area	Floor Finish	Wall Finish	Ceiling Finish
	Bus Plaza Passenger Waiting Area	Concrete	Glazing, Metal Panel	Corrugated Metal Panel
	Bus Plaza Drive Aisle	Concrete	-	Corrugated Metal Panel
Second Floor	Commercial Areas	Unfinished, Structural Concrete	Glazing, Metal Panel, Gypsum Board	Exposed
	Public Lobbies	Terrazzo	Glazing, Metal Panel	Metal Panel
	Public Restrooms	Porcelain Tile	Porcelain Tile	Gypsum
	Intercity Bus Passenger Waiting Area	Unfinished, Structural Concrete	Glazing, Metal Panel, Gypsum Board	Exposed
Third Floor Bus Deck	Passenger Waiting Area	Polished Concrete	Glazing, Metal Panel	Corrugated Metal Panel
	Bus Drive Aisle	Concrete	-	Corrugated Metal Panel
	Public Restrooms	Porcelain Tile	Porcelain Tile	Gypsum
Park	Main Plaza	Cobblestone, Glazing, Metal Grating, Stone	-	-
	Amphitheater	Lawn, Concrete Pavers, Stone	Terracotta	-
	Restaurant	Unfinished, Structural Concrete, Precast Pavers	Glazing, Corrugated Metal Panel & Trellis, Metal Panel, Terracotta	Exposed
	Public Restrooms	Porcelain Tile	Porcelain Tile	Gypsum
	Elevator Cores	Resin Paving	Corrugated Metal Panel & Trellis, Metal Panel	Glass & Metal Canopies
	Open Space	Landscaping, Glazing, Stone, Resin Paving	-	-

*Note: For a complete list of materials and finishes used in the Transit Center, refer to the Room Finish Schedule in the Architectural Construction Drawings on Sheets A1-9601 through A1-9610.*

The Manager and tenants are required to provide a complete, high quality, long lasting and durable interior environment. Interior finishes for flooring, walls, ceilings, lighting, cabinetry, furnishings and

décor are to be architectural grade (long lasting and of superior commercial quality), in keeping with the design established in the base building areas. All fixtures shall be new and of durable quality and their finish consistent with anticipated heavy duty public use.

### ***LEED***

TJPA is committed to achieving the goal of LEED Gold Certification for the Transbay Transit Center. The following commitments for the commercial space improvements will contribute toward achievement of this goal:

- Meet the requirements of WEp1 and WEc3 Water Use Reduction by reducing water consumption for regulated plumbing fixtures by at least 35% relative to the baseline allowance calculated per the LEED-CS v2009 Reference Guide. The “base” building uses 1.28 gallons per flush (gpf) high-efficiency water closets, 0.125 gpf urinals, 0.5 gallons per minute (gpm) automatic lavatory faucets, and 2.2 gpm kitchen-type faucets. However, because the base building plumbing fixtures do not cover all building users, the owner has recognized that retail tenant space must use fixtures with flow/flush rates equal to or better than those indicated above in order for the CS prerequisite and credit thresholds to be earned.
- If any new HVAC&R equipment is to be installed in retail tenant spaces, mechanical ventilation systems must be designed using the Ventilation Rate Procedure in Section 6.2 of ASHRAE Standard 62.1-2007. Ventilation systems must meet the requirements Sections 4 through 7, Ventilation for Acceptable Indoor Air Quality (with errata but without addenda).
- Meet the requirements of IEQc1 Outdoor Air Delivery Monitoring by ensuring that an airflow measurement device is installed at all outdoor air intakes. The device must measure the minimum outdoor air intake flow with an accuracy of plus or minus 15% of the design minimum outdoor air rate. As installation of an airflow measuring device may be cost prohibitive for some tenants, alternatively, retail tenants may install a carbon dioxide (CO<sub>2</sub>) monitor between 3 and 6 feet above the floor in all occupiable spaces. This is allowable per LEED Interpretation numbers 1830 and 1701, which may be referenced for greater detail. Tenant must configure monitoring equipment to generate an alarm via either a building automation system alarm to the building operator or a visual or audible alert to the space occupants when the airflow values or CO<sub>2</sub> levels vary by 10% or more from the design values
- If any new HVAC&R equipment is to be installed in retail tenant spaces, meet the requirements of EAp3 and EAc4 Fundamental and Enhanced Refrigerant Management by complying with one of the following options:
  - Do not use refrigerants
  - If refrigerants are used, do not use CFC based refrigerants, and ensure HVAC&R equipment complies with standards outlined in the LEED-CS v2009 Rating System.
- If additional fire suppression systems are installed in the retail tenant spaces, meet the requirements of EAc4 Enhanced Refrigerant Management by installing fire suppression systems that do not contain ozone-depleting substances such as CFCs, hydrochlorofluorocarbons (HCFCs) or halons.

## ***Commissioning***

The TJPA has adopted a total building commissioning process for verifying and documenting that the performance of the facility, systems, and assemblies achieves its objectives and criteria, as defined in this document. The Manager will be required to coordinate with the Transit Center commissioning process and provide LEED commissioning for the systems installed in the commercial spaces. The focus of the commissioning process is on key functional systems and assemblies, including:

- Lighting and daylighting control systems
- Heating, ventilating, and air conditioning (HVAC) systems
  - Air distribution systems
  - Passive ventilation systems
  - Mechanical ventilation system
  - Air circulation
  - Central building automation system
  - Radiant cooling slab
  - Geothermal-heat exchanger system
- Building envelope
- Electrical systems
- Communications
- Fire alarm, fire detection, fire fighting, fire annunciation, and other required fire life safety systems
- Plumbing
  - Domestic cold water system
  - Domestic hot water system
  - Stormwater system
- Sanitary waste system

## EXHIBIT M-1

### DESIGN REVIEW PROCESS

This procedure applies to the Manager and its tenants for tenant improvement projects for the Transit Center.

#### ***Manager & Tenant Responsibilities***

The Manager and tenants must follow the design review process outlined in this appendix for all work in the Transit Center. Manager and tenant improvements are subject to the TJPA's approval and shall conform to the Retail Design Guidelines, provided in Appendix 5, and all applicable governing codes, laws, statutes, ordinances, rules, orders, regulations and any other authorities unless exceptions are approved in writing by the TJPA or the authority having jurisdiction.

All architect/engineers of record must be registered in the State of California.

During all phases of plan development and prior to commencing design and again prior to construction, the Manager's architect/engineer of record shall make physical on-site inspections of the premises to verify physical dimensions of the space, utility locations, and "as-built" or existing conditions.

An on-site review meeting must also be held with the Manager's or tenant's architect/engineer of record and the TJPA to review the Design Guidelines, agree on design concepts and intentions, and review procedures and schedules prior to starting design.

The TJPA is not responsible for any delays or costs that result from the Manager's or tenants' failure to submit complete information, to address TJPA comments on submissions, to follow the criteria and procedures, or to submit information to the appropriate government agencies for review.

#### ***Design Review***

A design review is a thorough review of the project's design and contract documents for adherence to the Design Guidelines. Reviews shall occur at the completion of the schematic design phase and at the completion of the 95% construction documents phase.

Following each submittal, the TJPA will have approximately three weeks to review the submittal. A design review meeting with the Manager's technical (A/E) team and TJPA management will then be held to discuss the review findings.

The reviews should be appropriate to the complexity of the project, focusing on issues consistent with the level of development of the design. Reviewers will record their comments on a review comment sheet, which will be submitted to the Manager before the design review meeting.

During the design review meeting, the Manager's technical (A/E) team will brief the TJPA team thoroughly on the status of the design, the assumptions, how previous review comments were resolved (if applicable), and other relevant information.

The TJPA manager will brief the Manager and the A/E consultant on the results of the review. The A/E consultant will review comments, and the TJPA manager and the A/E consultant will discuss solutions to issues identified during the review.

The Manager shall schedule follow-up meetings with the TJPA to verify that the A/E consultant has brought all items to a satisfactory resolution.

## ***Submittal Requirements***

### ***Schematic Design Submittal***

The schematic design (SD) submittal should include full sets of architectural and engineering drawings with as much detail as possible. The Manager or tenant shall submit to the TJPA an electronic copy and three (3) sets of drawings and specifications showing the intended design, character, and finishes.

Drawings must be blue or black line prints on white background in 11" x 17" format, at a minimum, whenever practical.

The SD submittal shall include the following information at a minimum:

- Finish board consisting of materials and color chips firmly applied to an illustration board. All samples must be clearly labeled.
- Location plan. The first page of the submission should include a key map indicating location within the premises.
- Floor plans (scale: 1/4" = 1' - 0") indicating interior design, finishes, display, and space planning concept, including fixture layout. Lease lines and demising lines must be indicated on the plans.
- Reflected ceiling plans (scale: 1/4" = 1' - 0"). Include lighting specifications/cut sheets for all proposed lighting.
- Interior elevations and sections (scale: 1/2" = 1' - 0").
- Storefront, counter, and partition elevations and sections (scale: 1/2" = 1' - 0"), including graphics, display cases, signage, materials, and color of finish.
- Plan, section, and elevation (including signage and graphics) of storefront and counter fixtures (if applicable) (scale: 1/2" = 1' - 0").
- Detailed merchandising display plan and elevations including equipment selections.
- Schematic plumbing, HVAC, electrical and fire protection drawings (scale 1/4" = 1' - 0").
- Location and quantity of all items that require roof or floor penetration.
- Lighting plan (scale 1/4" = 1' - 0").
- Signage drawings indicating the following:
  - Sign size
  - Sign artwork (logo)

- Materials and colors
- Elevation showing mounting height (scale: 1/2" = 1' - 0")
- Plan showing mounting location (scale: 1/2" = 1' - 0")

Signage submittals are to be coordinated with other drawings.

The scale of all signage drawings should be at 3" = 1' - 0" unless otherwise noted.

#### *95% Construction Documents Submittal*

The 95% construction documents (CD) submittal should consist of revised architectural and engineering plans addressing all TJPA comments received during the SD review and include construction documents, project specifications, and bidding documents.

The Manager or tenant shall submit to the TJPA an electronic copy and three (3) sets of drawings for the Design Review process.

Drawings must be blue or black line prints on white background in 11" x 17" format, at a minimum, whenever practical.

The 95% CD submittal shall include the following information at a minimum, whenever practical:

- Interior finish schedule and finish board consisting of materials and color chips firmly applied to an illustration board. All samples must be clearly labeled.
- Location plan. The first page of the submission should include a key map indicating location within the Transbay Transit Center.
- Floor plans (scale: 1/4" = 1' - 0"), indicating storefront, counter, and partition construction; materials, colors, and finishes; location of partitions and type of construction; doors and swing of doors; placement of fixtures and equipment; and details of rolling shutters.
- Reflected ceiling plan (scale: 1/4" = 1' - 0") indicating any suspended ceiling, light fixture and color of lamps, sprinklers, and HVAC ducts and partitions. Interior elevations, sections, and details sufficient for construction (scale: 1/2" = 1' - 0").
- Storefront, counter and partition elevations, sections and details (scale: 1/2" = 1' - 0").
- Plan, section, and elevation (including signage and graphics) of storefront and counter fixtures (if applicable) (scale: 1/2" = 1' - 0").
- Detailed merchandising and display plan.
- Plumbing drawings (scale: 1/4" = 1' - 0").
- HVAC drawings (scale: 1/4" = 1' - 0").
- Electrical drawings (scale: 1/4" = 1' - 0").
- Telephone plans, including the layout and details of telephone connections.
- Fire protection drawings (scale: 1/4" = 1' - 0"), including the layout and details of sprinkler or chemical fire protection devices to be installed, including details of connections to existing lines.
- Tenant data sheet indicating the tenant utility load demands.

- Lighting plan (scale 1/4" = 1' - 0").
- Sign shop drawings by signage fabricators, including but not limited to:
  - Refined plan showing mounting location (scale: 1/2" = 1' - 0")
  - Refined elevation showing mounting height (scale: 1/2" = 1' - 0")
  - Mounting details
- Fabrication method Sign sample. Actual samples of prints and materials must be submitted. Paint samples shall be submitted on a sample of the actual sign material which shall be 12" long by the proposed height. A letter of the actual size, style, and color shall appear on the sample.

Signage submittals are to be coordinated with other drawings included in this submittal. The scale of all signage drawings should be at 3" = 1' - 0" unless otherwise noted.

### ***Extent of the TJPA's Design Review and/or Approval***

The TJPA's design review and approval of design documents does not relieve the Manager or its tenants of responsibility for compliance with lease documents, field verification of dimensions and existing conditions, discrepancies between working drawings or existing conditions for tenant spaces, or coordination with other trades and job conditions. No responsibility for proper engineering, safety, or the design of Manager or tenant work is implied or inferred on the part of the TJPA by this approval, and any such responsibility is hereby expressly disclaimed.

Manager and tenants shall have sole responsibility for compliance with all applicable governing codes, laws, statutes, ordinances, rules, orders, regulations and other authorities for all work performed by or on the behalf of the Manager or tenants. Approval of drawings and plans by the TJPA or its agents or representatives shall not constitute an implication, representation or certification that said working drawings or plans are in compliance with said codes, laws, statutes, ordinances, rules, orders, regulations, or other authorities. In instances where several sets of requirements must be met, the requirements of the TJPA's insurance underwriter or the strictest standard shall apply where not prohibited by applicable codes.



## 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. Fortune teller or palm reader or card reader.

## EXHIBIT O

### SIGNAGE GUIDELINES

#### *A. Digital Screens*

The base package of digital screens will include 274 individual screens of various sizes and configurations as well as one grand hall schedule board made up of 99 individual screens. The Manager may have the ability to add additional screens, subject to approval by the TJPA.

Digital screens will be provided as part of nine distinct signage types:

- **PD1 Bus Deck Bus Pylon:** Bus bay-adjacent pylon including four screens, with two screens on one side and two screens on the second side. Top screen to provide driver clock/time information with bus route name (i.e., AC Transit “J” Route) simultaneously. Lower screen to provide passenger bus route information, traffic announcement, building information, and advertising.
- **PD2 MUNI Bus Pylon:** Bus loading zone-adjacent pylon including one screen. Identifies Muni bus stop with specific route. Digital screen to provide Muni route information, other related transit information, general announcements, and building information.
- **SX1 Grand Hall Schedule Board:** Large board made up of 99 individual screens. Screens to provide departure/arrival information for all transit systems, weather, time, events, general announcements, building information, and advertising.
- **SM1 Wall Mounted Schedule Board:** Large schedule boards made up of 4 individual screens. Screens to provide departure/arrival information for all transit systems and advertising.
- **SS1 Wall Mounted Digital Display:** Single wall-mounted digital screens. Screens provide building information, general announcements, and Park regulations.
- **KC1.a Interactive Kiosk:** Two-sided kiosk with one screen on each side. The interactive screen provides transit information tailored to the specific user, general announcements, retail information, events, and other transit information. The second screen provides building information, events, general announcements, and advertising.
- **KC1.b Interactive Kiosk:** Two-sided kiosk in Muni bus plaza with one screen on each side. The two screens provide transit and wayfinding information tailored to the specific user, and general announcements on 67% of the screen and building information on 33% of the screen.
- **KP1.a One Sided Digital Display Kiosk with Speakers:** Kiosk with one digital screen which provides transit information, retail information, building information, events, general announcements, and advertising.
- **KP1.b One Sided Digital Display Kiosk with Speakers:** Kiosk with one digital screen which provides transit and wayfinding information and general announcements on 67% of the screen and building information on 33% of the screen.
- **KP3 Two Sided Digital Display Kiosk with Speakers:** Kiosk with one digital screen on each side which provide building information, events, general announcements, and advertising.

- **KM1 Static Map with Digital Display:** Kiosk with two digital screens on one side and one static map on the other side. Digital screens are outward-facing and may provide transit and wayfinding information and general announcements on 67% of the screen and building information on 33% of the screen.

Digital signage located on the ground floor will include six (6) PD2 Muni plaza bus ID and two (2) SM1 wall-mounted schedule boards located between Fremont and Beale streets; one (1) SX1 grand hall schedule board with ninety-nine (99)-46" displays, twenty-five (25) KC1 combined directory with digital displays and two (2) KM1 static map and digital display panels are placed at the central grand Hall; four (4) KP1 one-sided digital display panels are located near the Shaw Alley public lobby and retail space.












Digital signage located on the second floor will include one (1) SS1 wall-mounted digital display and three (3) KC1 combined directories and digital displays.

The third floor bus deck will include thirty-seven (37) PD1 bus deck dock IDs, five (5) SM1 wall-mounted schedule boards, ten (10) KC1 combined directories with digital displays, and one (1) KP3 information kiosk with digital display and speaker. These will be located around the passenger area.

Within the Park, five (5) SS1 wall-mounted digital displays will be located by elevators.

Figure 1 shows the screen specifications and projected advertising potential based on anticipated transit and wayfinding information needs for each signage type.

**Figure 1: Digital Signage Specifications and Advertising Potential**

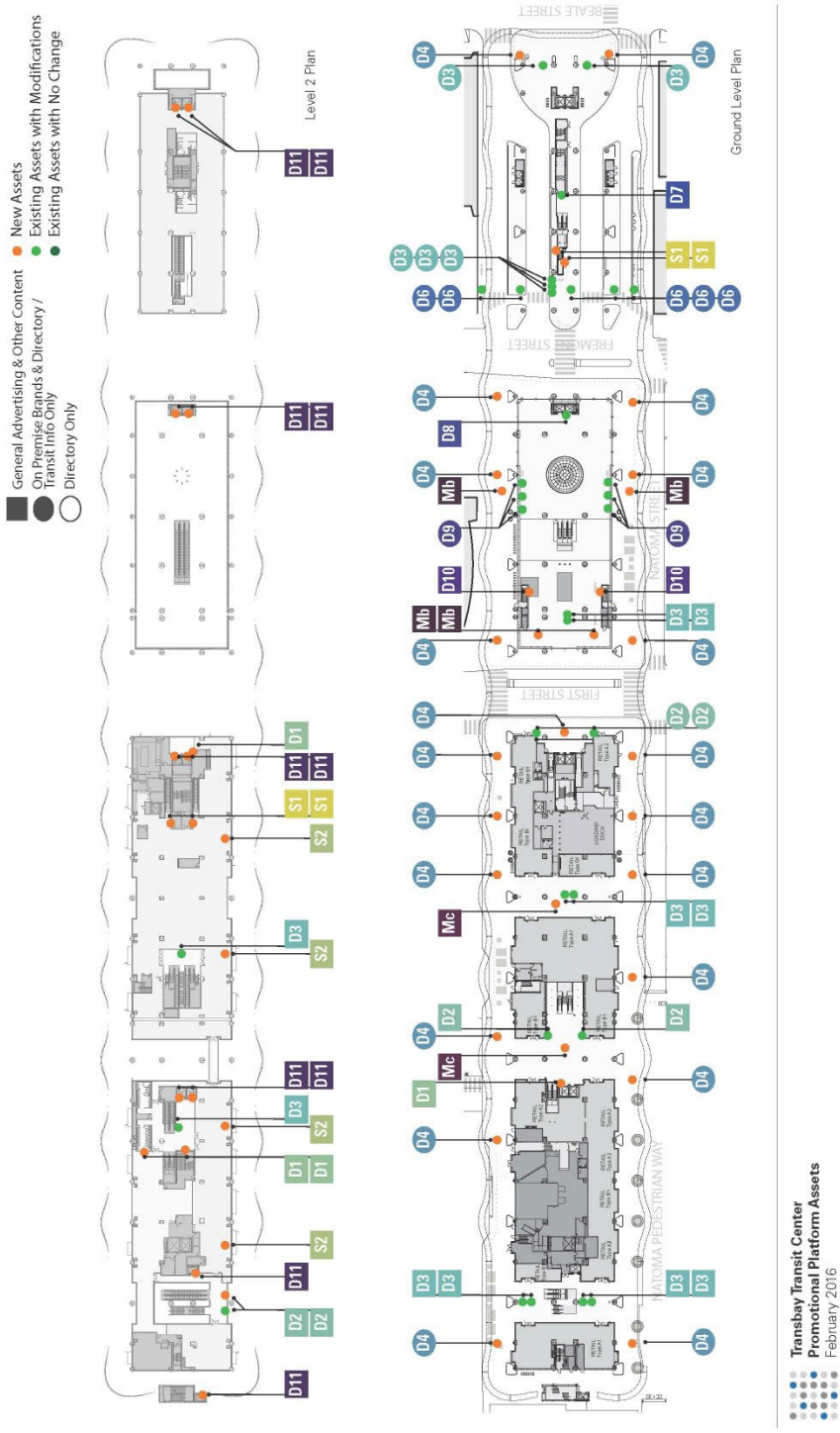
							Advertising Potential			
Signage Type	Plan Legend	Floor	Quantity	Screen #	Screen Dimensions	Interactive	No Advertising	100% Advertising	Advertising on Portion of Screen*	
KC1.a		1	20	1	27" X 47.75"	X		X		
				2	27" X 47.75"		X			
		2	3	1	27" X 47.75"	X		X		
				2	27" X 47.75"		X			
		3	10	1	27" X 47.75"	X		X		
				2	27" X 47.75"		X			
KC1.b		1	5	1	27" X 47.75"	X			X	
				2	27" X 47.75"				X	
PD1		3	37	1	19.5" X 35"			X		
				2	18.75" X 10.5"		X			
				3	19.5" X 35"		X			
				4	18.75" X 10.5"		X			
SM1		1	2	1	40" X 22.5"		X			
				2	40" X 22.5"		X			
				3	40" X 22.5"			X		
				4	40" X 22.5"			X		
		3	5	1	40" X 22.5"		X			
				2	40" X 22.5"		X			
				3	40" X 22.5"			X		
				4	40" X 22.5"			X		
PD2		1	6	1	19.5" X 35"		X			
SS1		2	1	1	40" X 22.5"		X			
		4	5	1	40" X 22.5"		X			
SX1		1	1	1-99	39.75" X 22.2"				X	
KP1.a		1	2	1	27" X 47.75"				X	
KP1.b		1	2	1	27" X 47.75"				X	
KP3		3	1	1	27" X 47.75"			X		
				2	27" X 47.75"			X		
KM1		1	2	1	27" X 47.75"				X	
				2	27" X 47.75"				X	

104 screens with advertising potential; 274 total screens. Does not include SX1 grand hall schedule board.

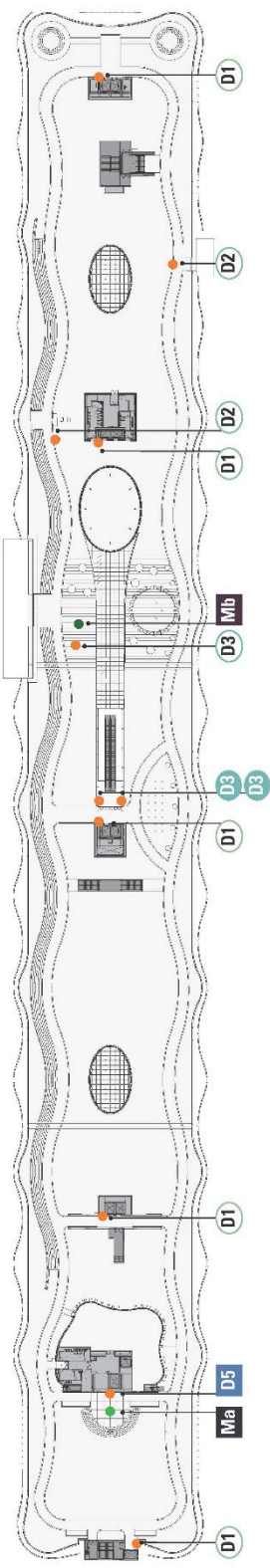
***B. Additional Digital Signage***

For the purpose of generating additional revenue through advertising beyond what is possible from the base package of digital screens, the Manager may install additional digital signage at its own expense, subject to approval by the TJPA. Digital screens will be allowed in specific zones within the facility as shown in Figure 2, Additional and modified digital signage asset renderings. The San Francisco Planning Department has reviewed the Additional Signage plans and finds them consistent with Planning Department sign policies and Planning Code regulations. Any deviation from the plans will have to be reviewed by the Planning Department and approved by the TJPA.

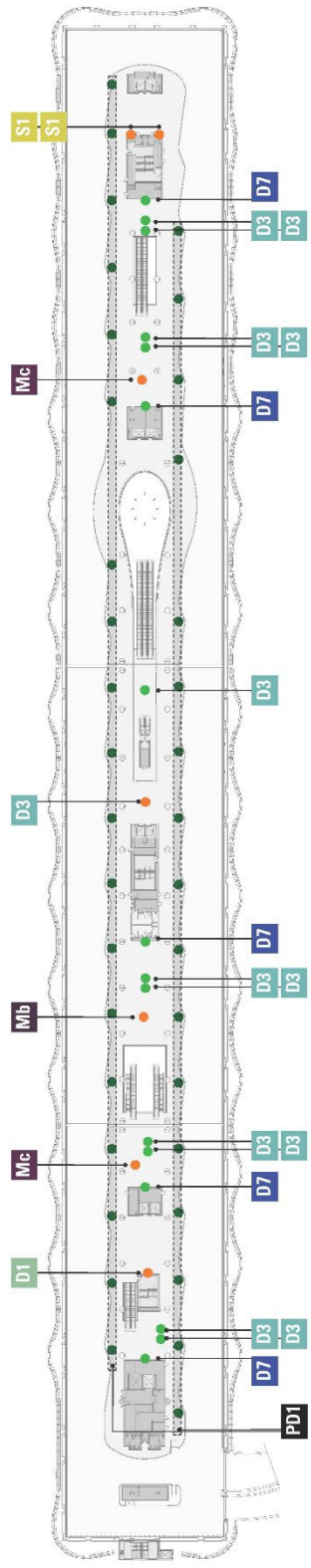
**Figure 2: Digital Signage Specifications and Advertising Potential**



- General Advertising & Other Content
- On Premise Brands & Directory / Transit Info Only
- Directory Only
- New Assets
- Existing Assets with Modifications
- Existing Assets with No Change



Roof Top Plan



Bus Deck Plan

Transbay Transit Center  
 Promotional Platform Assets  
 February 2016

Additions and modifications to the base package to support the promotional platform have been identified within Figure 2, and are as follows:

- **S1 Static Wall Mounted Displays:** Backlit static displays are framed and wall mounted to house sponsorship-related advertising.
- **S2 Static 2 Sided Kiosks:** Kiosks housing static displays on both sides for advertising. Locations are placeholders until the second floor retail program has been established.
- **D1 Digital Wall Mounted Displays:** SS1 displays, placed at elevators and dedicated to sponsorship-related advertising. Exterior Park D1 content is restricted to building directory and on-premises businesses' information.
- **D2 Digital 1 Sided Kiosks:** KP1 kiosks with touch screen capability modification. D2 content on the ground level of the building periphery is restricted to building directory and on-premises business advertising only, where advertising must be less than one third of the screen size. Exterior Park D2 content is restricted to building directory and on-premises businesses' information.
- **D3 Digital 2 Sided Kiosks:** KC1 and KP3 kiosks with touch screen capability modification. D3 content on the ground level of the building periphery is restricted to building directory and on-premises business advertising only, where advertising must be less than one third of the screen size. Exterior Park D3 content is restricted to building directory and on-premises businesses' information.
- **D4 Digital 2 Sided Business & Sponsorship Kiosks:** Kiosks located on the ground level of the building periphery within the property line must relate to the existing signage aesthetic. D4s should have touch screen capabilities. D4 content is restricted to building directory and on-premises business advertising only, where advertising must be less than one third of the screen size.
- **D5 Digital Large Format Video Wall:** Approximately 400 square feet of 8mm LED display will serve the amphitheater event space, e.g., movies, concert videos, event broadcasts.
- **D6 Digital Bus Pylon:** PD2 Muni bus pylon modification with additional screen, equal in size, on the other side. Additional screen provides transit and wayfinding on 67% of the screen and building information on 33% of the screen.
- **D7 Digital Wall Mounted Schedule Boards:** SM1 schedule board modification with two additional screens on either side of the schedule board for dedicated advertising space.
- **D8 Digital Grand Hall Schedule Board:** Approximately 42% of the top of the display should be dedicated to sponsorship-related advertising. Opportunity to wrap the sides of the elevator bank is strongly recommended for a greater presence of the sponsorship message.
- **D9 Digital Grand Hall Kiosks:** Grouping of the existing six (6) to seven (7) kiosks on the north and south side in the grand hall allows for three separated, larger displays, preferably 70" LCDs, facing outward. Exterior facing D9 content is restricted to building directory and on-premises business advertising only, where advertising must be less than one third of the screen size.
- **D10 Digital Medium Format Video Walls:** Approximately 120 square feet of 1.8-2.5 LED display wrapping the stair enclosures in the grand hall to provide a modern display for transit information, events, and sponsorship-related advertising.



- **D11 Digital Elevator Displays:** Digital displays mounted flush with the elevator panel showing sponsorship related advertising.
- **Ma Event Space – Large:** Amphitheater event space equipped with a media hydrant, lighting, lighting controls, speakers, and the D5 Video Wall. Media hydrants provide power, video in and outputs, and audio mix and output to feed events to the content management system to broadcast within the Transit Center.
- **Mb Event Spaces – Medium:** Open space equipped with a media hydrant for sponsorship related events. Media hydrants provide power, video in and outputs, and audio mix and output to feed events to the content management system to broadcast within the Transit Center.
- **Mc Event Spaces – Small:** Open space with power outlet for sponsorship-related events.

### ***C. Naming Rights Agreement***

Should the TJPA exercise its right to pursue the sale of naming rights through a separate agreement (the Naming Rights Agreement), Manager will be required to comply with any and all requirements related to signage within that agreement. This may include, without limitation:

- Respecting the exclusion of all Naming Rights from the Manager’s Promotional Platform.
- Respecting the inclusion of certain markings or logos on any and all signage within the Transit Center.
- Respecting the requirement to utilize certain markings or logos on any and all Transit Center materials, such as informational materials, facility staff equipment and clothing, etc., as deemed necessary by the TJPA.

## EXHIBIT O-1

### DIGITAL CONTENT DEVELOPMENT GUIDELINES

#### *A. Types of Digital Content*

Content to be displayed at digital signage and video wall locations throughout the Transit Center shall include the following types:

- **Transit Schedule Information:** Up-to-date information regarding arrivals, departures, estimated travel times, and delays for all transit authorities operating within the Transit Center. This information will be sourced from third-party databases including but not limited to 511, AC Transit, and Amtrak. This content will also include any notifications regarding changes to schedules, detours, and suggested alternate routes for travelers impacted by changes to regularly scheduled transit operations.
- **Advertising:** Dynamic marketing information originating from vendors within the Transit Center, as well as third-party organizations, with full integration with transit and facility operational information. For content distributed to fixed display locations, advertising content shall be dynamically updated based on current vendor activities and offers. For information distributed to traveler mobile devices, advertising content shall be dynamically adjusted based on traveler location, current vendor offers, current status of product orders and purchases executed through the application, estimated duration for delivery of services, current traveler traffic at each vendor location, as well as transit schedules, delays, and emergency notifications.
- **Wayfinding Information:** Visual and textual information providing travelers with intuitive, location-based information to support easy and efficient travel from their current location to points of interest. Wayfinding content should include use of maps with prominent operator and vendor logos, as well as standards-compliant graphics and pictograms. All visual content must be presented in a clear, simple, and easily interpreted format, and align with graphical styles and symbols used in the facility static signage. For content distributed to fixed displays, traveler interaction must be supported through the available touch-screen interfaces. For content distributed to traveler mobile devices, wayfinding content must be dynamically adjusted based on traveler location, ticketing purchases, transit schedules, and facility security information.
- **Scrolling News Feeds:** Textual information sourced from third-party news sources, including but not limited to RSS feeds. All text must comply with text sizing criteria, as well as image sizing and timing requirements, outlined in Appendix B of MTC Regional Transit Wayfinding Guidelines & Standards (link provided below).
- **Video Feeds from Event Spaces:** Visual content sourced from event spaces equipped with company switches or media hydrants. All content must comply with image sizing and timing requirements outlined in this RFP.
- **Video from Third-Party News Sources:** Visual content sourced directly from third-party visual media distribution agencies. All visual content must comply with image sizing and timing requirements outlined in this RFP.

- **Emergency Notifications:** Visual and textual information originating from the Emergency Mass Notification System, Physical Security Information Management system (PSIM), authorized facility security and operations personnel, as well as third-party news sources. Emergency notifications can be either pre-determined “canned” messages, or text inputted in real-time.

All graphical information distributed to fixed signage displays must comply with the standards outlined in the Metropolitan Transportation Commission’s [“Regional Transit Wayfinding Guidelines & Standards,”](#) release 2.0, dated February, 2012 (Guidelines). Visual pictograms used in transit schedule and wayfinding content must comply with the standards listed in Chapter 3 of the referenced Guidelines. Text information used in transit schedule and wayfinding content must conform to the recommended font and sizing criteria identified in Appendix B of the referenced Guidelines.

### ***B. Content Management System***

The Manager, directly or through its vendor, will be responsible for the development and installation of a complete, fully integrated turnkey content management system (CMS), inclusive of all end-device visual content, central control and management capabilities, monitoring interfaces, content modification interfaces, third-party data integration, and traveler mobile application implementation. This CMS will provide visual content to the Digital Signage System and a mobile application utilized on visitor mobile devices.

All content must be fully compatible with the digital signage system displays, media players, and control servers to provide optimal image quality and rapid content distribution. The Manager shall also be responsible for integrating all signage display touch-interactive capabilities into the content management system, in a manner that maximizes system responsiveness.

The content management system will need to satisfy the following general criteria:

- Control all digital signage content in the Transit Center. This CMS will be the sole source of control over updating the user interface of all mobile device application instances.
- Interface with all relevant transit management systems and databases including but not limited to 511, AC transit, and Amtrak. The system must be capable of receiving data from these third-party databases, consolidating this data into content for digital displays and mobile devices, and pushing content to end devices.
- Integrate with Transit Center PSIM system, emergency mass notification, and life safety systems, in a manner that allows for the immediate transmission of emergency facility or security information to visitors via signage displays and mobile device notifications.
- Integrate, schedule and play advertising content based on purchased demand consisting of any or all of the available input types.
- Manage live input from media hydrants across the facility which allow a production team to connect a camera which can be directly connected to a display for output.
- Integrate with third party news & advertising services to provide news feeds to signage displays and mobile devices.

- Provide point-of-sale (POS) functions to visitors for the full range of services within the Transit Center, including, but not limited to, food and beverage service and ticketing. The management system should be able to monitor each order in every stage from placement through delivery.
- Prioritize levels that allow for one-time programming without disrupting any long term scheduled content.
- Address all displays individually or within predetermined groups.
- Must be scalable so that adding new displays requires only a minimal amount of hardware and software configuration.
- Respond to multiple users and allow an administrator to set permission levels for each of those users interacting with the system.
- Identify visitors' locations within the facility to support wayfinding services through the mobile app, as well as traffic flow monitoring, and to assist Transit Center personnel in locating visitors who are reporting a security incident or are in need of assistance.
- Include an on-site Network Operations Center (NOC) to support operation of the Content Management System by Transbay Transit Center facility personnel. The NOC should serve as a central monitoring facility for macro-level information and status of specific functions to be easily observed through a dashboard-type system.
- Allow facility operators to modify system functions based on activity monitoring. For example, if services from a particular vendor or station are experiencing delays, current orders and purchases can be re-routed to other stations and notifications pushed through the CMS to alert customers of the change.

The following scenarios document anticipated methods of generating, manipulating, and broadcasting content.

- Content on the displays may be exclusively advertising or a combination of advertising and transit or wayfinding information.
- Brands will be able to purchase time on any combination of a variety of LED and LCD displays in standard and unique resolutions and aspect ratios.
- The feed will provide updated and information regarding delays, and the displays will react accordingly, e.g. the CMS must reflect, through content and formatting, changes in status based on information received through the scheduling feed.
- CMS outputs must be able to be tagged or programmed with location information so that displays at a terminal or track can show only information pertaining to those locations.
- CMS must have the ability to create layout templates so that multiple types of information can be displayed simultaneously on a display.
- Each portion of a layout must be individually addressable so that advertisements can be addressed and changed without affecting other information on the display.

### ***C. Intentionally Omitted.***

#### ***D. Description of Use of Screens for Emergency Information Notices***

The Emergency Communication System/Mass Notification System (ECS/MNS) will provide real-time information and instructions to people in a building, area, or site. The Manager will be required to ensure that digital signage and the mobile application are compatible with the ECS/MNS and easily operable in times of emergency.

The ECS/MNS will use intelligible voice communications along with emergency radio communications, visible signals (strobes), short message service (SMS) text, graphics (textual information on digital displays), and wireless communication methods. These communication modalities are intended for the protection of life by indicating the existence of an emergency situation and instructing people of the necessary and appropriate response and action.

The ECS/MNS will be integrated into the security operations center (SOC) and provide response and communication activities with the security systems, Building Management Control System, and PSIM software. The Manager will be responsible for coordinating with security staff and using the ECS/MNS to coordinate communications in the event of an emergency affecting the Transit Center and other Program elements. The ECS/MNS will be capable of automatic notification during specific emergencies.

ECS/MNS will be programmable via automatic control units (ACU) to effect specific manual and automatic actions/notifications and/or communications in the event of identified emergencies, based upon the Emergency Operations Plan. The primary and secondary ACUs will be configured to accommodate the functional control and integration to various sub-systems to provide the ECS/MNS communication/notification delivery methods to not only the Transit Center, but also all Program areas.

#### ***E. Advertising Guidelines***

If the Manager chooses to pursue the sale of digital advertising spots, the Manager and the TJPA must agree to the following requirements guiding the sale of digital content.

The TJPA maintains the right to limit the Manager's sale of advertising spots to any vendor based on conflicts of interest under sponsorship agreements. The TJPA also maintains the right to reserve time on digital signage which the Manager may not sell to advertisers for sponsor content.

All advertising should adhere to the TJPA Board's defined Advertising Policy, as the same may be updated and amended and delivered to Manager from time to time.

*I.*

## 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 (1-11) 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. **FRA** is the acronym for the Federal Railroad Administration, one of the operating administrations of the U.S. DOT.
- (f). **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.
- (g). **FTA** is the acronym for the Federal Transit Administration, one of the operating administrations of the U.S. DOT.
- (h). **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.

- (i). **Government** means the United States of America and any executive department thereof.
- (j). **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.
- (k). **Recipient** means the TJPA.
- (l). **Secretary** means the U.S. DOT Secretary, including his or her duly authorized designee.
- (m). **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.
- (n). **U.S. DOT** is the acronym for the U.S. Department of Transportation, including its operating administrations.
- (o). **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. 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.

## **9. 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.

## **10. 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 loading 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).

## **11. 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 (12) applies to Agreements exceeding \$10,000.**

**12. 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 (13) applies to Agreements exceeding \$25,000.**

**13. 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 (14-15) apply to Agreements exceeding \$50,000.**

**14. 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.

**15. 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 (16-19) apply to Agreements exceeding \$100,000.**

**16. 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.

**17. 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.

## 18. 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.

## 19. 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.

**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.