

**STAFF REPORT FOR CALENDAR ITEM NO.: 10.6
FOR THE MEETING OF: June 14, 2018**

TRANSBAY JOINT POWERS AUTHORITY

BRIEF DESCRIPTION:

Authorize the Executive Director to finalize negotiations of and execute a lease agreement with National Railroad Passenger Corporation (“Amtrak”) for certain commercial space in the transit center for a 10-year term; execution contingent on Amtrak reaching separate license with AC Transit for Amtrak’s use of certain bus bays on the bus deck level of the transit center. The total stated rent value over the 10-year term is \$1,159,044.

EXPLANATION:

As construction work of the Salesforce Transit Center progresses toward completion, the TJPA is actively planning for operational readiness of the facility. One aspect of this planning is negotiation of lease and use agreements with transportation operators. The TJPA already has in place lease and use agreements with Alameda-Contra Costa Transit District (“AC Transit”) for the bus deck level and the bus storage facility, San Francisco Municipal Transportation Authority (“SFMTA”) for the bus plaza, and Greyhound Lines Inc. (“Greyhound”) for commercial space in the transit center to be used for ticketing, loading, passenger lounge, and office area.

The TJPA designed the new transit center to allow (1) Amtrak buses to operate from the bus deck level of the new facility, and (2) Amtrak to occupy certain commercial space on the second level of the new facility for ticketing, offices, staff amenities, and passenger lounge/waiting area. Amtrak recently indicated that it is only in a position to accept the passenger lounge/waiting area on a shared basis with Greyhound. The TJPA is actively pursuing alternate, revenue generating programming for the space that had been planned for Amtrak but which Amtrak no longer will be utilizing. The TJPA expects that hundreds of Amtrak riders will utilize the new Transit Center’s extensive amenities every day. The TJPA plans for Amtrak to eventually move the new Intercity Bus Facility when that facility is built and ready for occupancy (Phase 2 of the project).

With regards to Amtrak’s operation from the bus deck level, the TJPA expects Amtrak (as well as other operators, including SFMTA and Greyhound) to license (sublease) space from AC Transit. Under the terms of AC Transit’s 2008 Lease and Use Agreement for the transit center, AC Transit is a “primary tenant” of the bus deck level and AC Transit has certain rights and obligations to allow other transit operators to utilize portions of its space on the bus deck level.

By contrast, Amtrak’s use of commercial space on the second level of the facility is not within AC Transit’s leased area and so is subject to direct lease from the TJPA. In 2014, the TJPA and Amtrak entered a lease agreement for the Temporary Terminal. That lease is scheduled to terminate when the new Transit Center is ready for occupancy and use by Amtrak, and, thus, a new lease is required for the commercial space in the transit center.

TJPA staff has been negotiating a form of lease with Amtrak for its lease and use of the commercial space in the transit center (“Lease”). While Amtrak has recently engaged the negotiations in earnest and the parties have made significant progress in resolving issue areas,

Amtrak has not yet indicated its acceptance of (or comments on) the TJPA's last proposed version of the Lease, which is attached herewith.

The TJPA's last proposed form of Lease is based on the existing lease of the Temporary Terminal but revised to reflect the terms and conditions that are particular to the new transit center. The Lease is generally consistent with the lease the TJPA entered with Greyhound for commercial space in the transit center. Some of the material terms of the last proposed version of the Lease are:

Leased Space: The leased space consists of Amtrak's shared use with Greyhound of about 2,847 square feet of commercial space on the second level of the transit center for passenger waiting area/lounge on a fifty-fifty cost basis. (As noted above, AC Transit is expected to separately license bus bays on the bus deck level for Amtrak's bus operations.)

Commencement Date and Term: The Lease commences when all of the following have occurred: (1) the TJPA substantially completes construction of the transit center; (2) the commercial space subject to the Lease as well as the bus deck level are ready for occupancy and use by Amtrak; and (3) Amtrak and AC Transit have entered a license for Amtrak's use of the bus deck level. The TJPA expects all of these requirements to be in place so that Amtrak can begin operations from the new transit center in August 2018. The Lease terminates (a) in 10 years, or (b) when the new Intercity Bus Facility is ready for Amtrak's occupancy, or (c) if state funding that supports Amtrak's operations at the transit center require a termination or relocation of Amtrak's service in San Francisco, whichever is earlier.

Rent: Amtrak will pay \$4,272 per month (\$36 per square foot x 1,424 square feet, which is 50% of the 2,847 square-foot shared passenger lounge area) as base rent, and \$4,153 per month (\$35 per square foot x 1,424 square feet) as additional rent (covers Amtrak's share of expenses for use and maintenance of the rented space and common area), each of which will be escalated by 3 percent annually. Amtrak will also pay 50 percent of the actual cost to provide electric utilities and any unique/dedicated service or utilities to the shared passenger lounge. The rent is consistent with the rent charged to Greyhound for its lease of commercial space. (Under the license with AC Transit for the bus deck level, Amtrak is expected to also pay rent generally based on the number of bus bays it is allocated on the bus deck level of the transit center.)

The rent was established as follows. Because of the unique nature of the space and location the rent (comprised of both base and additional rent (as noted above) was derived from various perspectives. Taken into account was market office rent, market retail rent, and operating expenses. Market office rent – which includes expenses – is between \$71-\$74/per square foot annually. Retail rent comparables for similar second floor space was not readily available because the only other like location is the second floor of Embarcadero Center. The Colliers team obtained permission to reveal that a 5,000 square space was recently leased at \$36/per square foot NNN annually. The next step was to look at the transit center's operating expenses. Based on an estimated, partial year budget for FY17-18, adjusted expenses for second floor space came to about \$35/per square foot. As such, the combined rent of \$71 per square foot (\$36 base plus \$35 additional rent is consistent with the market.

The revenue the TJPA receives from Amtrak under the Lease will offset the operating costs of the facility, thereby reducing the transit operator contributions.

Reflecting the recent progress that the parties have made in the negotiations and in the interest of finalizing the Lease as soon as possible, the TJPA staff recommends that the Board authorize the Executive Director to complete the negotiations, modifying the attached form of Lease to the extent he finds reasonable, prudent, and consistent with the TJPA's obligations.

RECOMMENDATION:

Authorize the Executive Director to finalize negotiations of and execute a lease agreement with Amtrak for certain commercial space (about 2,847 square feet of shared use space) in the transit center for about \$4,272 base rent and \$4,153 additional rent each month over a 10-year term; execution contingent on Amtrak reaching separate license with AC Transit for Amtrak's use of certain bus bays on the bus deck level of the transit center.

ENCLOSURES:

1. Draft Lease
2. Resolution

**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 to design, build, and operate the Transbay Transit Center Program (“Transbay Program”); and

WHEREAS, The TJPA’s construction of the new transit center is nearing completion and the TJPA is actively planning for operational readiness of the facility, including negotiation of lease and use agreements with transportation operators; and

WHEREAS, The TJPA designed the new transit center to allow (1) National Railroad Passenger Corporation (“Amtrak”) buses to operate from the bus deck level of the new facility, and (2) Amtrak to occupy certain commercial space on the second level of the new facility for passenger lounge/waiting area; and

WHEREAS, The TJPA expects Amtrak to license space on the bus deck level of the transit center direct from AC Transit, as contemplated under the terms of AC Transit’s 2008 Lease and Use Agreement for the transit center; and

WHEREAS, TJPA staff has been negotiating a form of lease with Amtrak for its lease and use of the commercial space in the transit center (“Lease”); and

WHEREAS, The revenue the TJPA receives from Amtrak under the Lease will offset the operating costs of the facility, thereby reducing the transit operator contributions; now, therefore, be it

RESOLVED, That the TJPA Board authorizes the Executive Director to finalize negotiations of a Lease with National Railroad Passenger Corporation (“Amtrak”) for certain commercial space in the transit center, modifying the form of Lease to the extent he finds reasonable, prudent, and consistent with the TJPA’s obligations, and to execute the final Lease, which execution is contingent on Amtrak reaching a separate sublease with AC Transit for Amtrak’s use of certain bus bays on the bus deck level of the transit center; and, be it

FURTHER RESOLVED, That the TJPA Board authorizes the Executive Director to take all actions and execute all documents as he deems reasonably necessary to implement and effectuate the above approval.

I hereby certify that the foregoing resolution was adopted by the Transbay Joint Powers Authority Board of Directors at its meeting of June 14, 2018.

Secretary, Transbay Joint Powers Authority

**Transbay Joint Powers Authority,
National Railroad Passenger Corporation (“Amtrak”)**

Transit Center Lease

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TABLE OF CONTENTS

	<u>Page</u>
Section 1. Incorporation of Recitals; Leased Premises.....	2
Section 2. Commencement Date.....	3
Section 3. Termination Date	3
Section 4. Amtrak Obligation Upon Termination.....	4
Section 5. Surrender of Possession	4
Section 6. Relocation Costs	4
Section 7. Rent	5
Section 8. Ingress and Egress.....	7
Section 9. Responsibility for Improvements and Services	8
Section 10. Use of Premises.....	12
Section 11. Prohibited Uses	13
Section 12. Further Prohibited Uses Regarding Environmental Laws and Hazardous Materials	14
Section 13. Right of Entry to Inspect and Correct Prohibited Uses.....	16
Section 14. Concessionaires.....	17
Section 15. Quiet Enjoyment	18
Section 16. Indemnity	18
Section 17. Insurance.....	19
Section 18. Nondiscrimination.....	26
Section 19. Assignment and Subletting	26
Section 20. Encumbrances	27
Section 21. No Personal Liability	27
Section 22. Agreements with Governments.....	27
Section 23. Audit Rights	27
Section 24. Default.....	28
Section 25. Remedies.....	30
Section 26. Damage by Fire, Disaster or Other Casualty	31
Section 27. Governing Law	32
Section 28. Notices	32
Section 29. Waivers	33
Section 30. Force Majeure	33

Section 31.	Invalid Provisions	33
Section 32.	Headings	34
Section 33.	Withholding Required Approvals	34
Section 34.	Subordination of Lease	34
Section 35.	Successors and Assigns.....	35
Section 36.	Taxes, Assessments, and Liens	35
Section 37.	Utilities and Services	35
Section 38.	Corporate Authority	35
Section 39.	Recording.....	36
Section 40.	Time of Essence	36
Section 41.	Exhibits	36
Section 42.	Amendment.....	36
Section 43.	Entire Agreement	36
Section 44.	Accommodation of Additional Transportation Providers.....	36
Section 45.	Limitation of Liability.....	37

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**Amtrak
Transit Center Lease**

This Transit Center Lease (“Lease”) is made and entered into this _____ day of _____, 2018 (“Effective Date”) by and between the TRANSBAY JOINT POWERS AUTHORITY, a joint powers authority created under California Government Code Sections 6500 et seq. (“TJPA”), as lessor, and NATIONAL RAILROAD PASSENGER CORPORATION, a corporation organized under the former Rail Passenger Service Act and the laws of the District of Columbia, with offices at 30th Street Station, 5th Floor South Tower, Philadelphia, PA 19104 (“Amtrak”), as lessee, (each, a “party” and collectively, the “parties”).

RECITALS

A. The TJPA is developing the Transbay Transit Center Program in San Francisco (“Transbay Program”). The Transbay Program includes, among other things, a temporary terminal on the block bounded by Main, Howard, Beale, and Folsom Streets (the “Temporary Terminal”); a new transit center generally located at First and Mission Streets (“Transit Center”); and, in the future, an extension of the Caltrain commuter rail system and California High Speed Rail into the Transit Center, including a new Intercity Bus Facility.

B. Amtrak provides intercity and interstate passenger rail and thruway bus service. In 2014, Amtrak and the TJPA entered a lease and use agreement for Amtrak’s lease of portions of the Temporary Terminal. Amtrak’s lease of the Temporary Terminal generally terminates no later than the date on which the Transit Center is ready for occupancy and use as a transportation facility. Once the Transit Center is ready for

occupancy and use, Amtrak wishes to relocate to the Transit Center to make it a point of destination/departure for Amtrak buses that carry rail passengers to and from its trains.

C. Pursuant to a September 10, 2008 Transbay Transit Center Program Lease and Use Agreement (“AC Transit Lease”), the Alameda-Contra Costa Transit District (“AC Transit”) leases the Bus Deck Level of the Transit Center. Pursuant to its rights under the AC Transit Lease, AC Transit has agreed to license portions of the Bus Deck Level to Amtrak and TJPA hereby consents to such license to Amtrak.

D. Pursuant to a May 8, 2017 Asset Management Agreement (“Asset Management Agreement”), the TJPA has hired LPC West Transit Management LLC (“Asset Manager”) to provide operations and maintenance services for the Transit Center. TJPA represents that pursuant to the Asset Management Agreement, the Asset Manager is obligated to provide ongoing management of the Transit Center, including portions of the Transit Center leased to Amtrak under this Lease.

NOW, THEREFORE, in consideration of the covenants, terms, and conditions set forth herein, the TJPA and Amtrak do hereby agree as follows:

Section 1. Incorporation of Recitals; Leased Premises

A. The Recitals set forth above are an integral part of this Lease and, by this reference, are incorporated into and deemed a part of this Lease.

B. The TJPA leases to Amtrak, and Amtrak leases from the TJPA, the following areas of the Transit Center under this Lease:

1. Shared use with Greyhound Lines, Inc. (“Greyhound”) of approximately two thousand eight hundred forty seven (2,847) square feet of commercial space on the Second Level of the Transit Center, as labeled and identified in Exhibit A (“Shared Passenger Area”), for Amtrak’s and Greyhound’s shared passenger

waiting/lounge. The Shared Passenger Area includes designated space for two (2) Amtrak ticket machines. Amtrak's share for the purposes of allocating the associated rent and other amounts payable hereunder for the Shared Passenger Area shall be fifty percent (50%) of the area, or approximately one thousand four hundred twenty four (1,424) square feet. At no time shall Amtrak's share exceed fifty percent (50%) of the Shared Passenger Area. In the event that TJPA desires to permit additional carriers to use the Shared Passenger Area, Amtrak's share shall be reduced proportionately and the Lease shall be amended to reflect the reduction in Amtrak's percentage share.

C. The term "Premises" shall mean the Shared Passenger Area. The parties may modify the areas that Amtrak is permitted to use in the Transit Center by mutual written agreement at any time.

Section 2. Commencement Date

The Lease shall commence on the date on which the TJPA substantially completes construction of the Transit Center and the Improvements as discussed in Section 9(A) below, and the Premises are ready for occupancy and use by Amtrak and the public as a transportation facility ("Commencement Date"), provided that if the Premises are not ready for Amtrak's use and occupancy by August 15, 2018, Amtrak may terminate this Lease..

Section 3. Termination Date

The Lease shall terminate on the earliest of: (i) the tenth (10th) anniversary of the Commencement Date, or (ii) the date on which the new Intercity Bus Facility is ready for occupancy and use by Amtrak and the public as a transportation facility (provided that at least six- (6-) months' notice shall be given to Amtrak of TJPA's anticipated substantial completion date of the Intercity Bus Facility), and will not subject either Amtrak or the

public to any hazard, delay, or undue inconvenience, or (iii) thirty (30) days after Amtrak provides written notice to TJPA that Amtrak's rail passenger service to the City and County of San Francisco will relocate or cease as a result of state funding availability ("Termination Date").

Section 4. Amtrak Obligation Upon Termination

Upon the Termination Date, or earlier proper termination of this Lease pursuant to this Lease or a final unappealable decision by a court of competent jurisdiction, Amtrak shall peaceably and quietly leave, yield up to, vacate, and surrender the Premises to the TJPA in the condition required under Section 5 and 9. Amtrak acknowledges that in the event that Amtrak does not promptly vacate the Premises at the termination of this Lease, the TJPA may exercise all rights and remedies of the TJPA under applicable law relating to such a holdover.

Section 5. Surrender of Possession

Amtrak shall yield and deliver to the TJPA possession of the Premises at the termination of this Lease in good condition in accordance with its express obligation hereunder, except for damage or loss due to reasonable wear and tear, fire or other casualty, or other cause beyond Amtrak's control. Amtrak shall remove all fixtures and equipment and other property installed or placed by it in, on, or about the Premises. Such removal shall not damage the Premises.

Section 6. Relocation Costs

A. Amtrak acknowledges that the Premises are designed to provide facilities for transit and related operations on an interim basis only, pending the TJPA's completion of the Intercity Bus Facility component of the Transit Center. Amtrak further acknowledges that the TJPA is proceeding with development of Phase II of the Transbay

Program, which may necessitate changes to the layout or configuration of the Transit Center on a short or long term basis, which could affect the Premises. Finally, Amtrak acknowledges that this Lease is for a specified term. Accordingly, when Amtrak relocates from the Premises, Amtrak shall not seek compensation from the TJPA under the California Relocation Assistance Act (Cal. Gov. Code sections 7260 et seq.), 25 Cal. Admin 25 Cal. Admin. Ch. 6, the Uniform Relocation Assistance Act of 1970 (42 U.S.C. sections 4601 et seq.), 24 C.F.R. sections 92.353 et seq., or any other federal, state, or local relocation statute.

B. If, as reasonably determined by the TJPA, the Premises cannot be used by Amtrak because of a condemnation or sale in lieu of condemnation by any entity other than the TJPA, then this Lease shall automatically terminate. The TJPA shall be entitled to the entire proceeds for any total or partial condemnation, or sale in lieu thereof, including, without limitation, any award of proceeds for the value of the Premises, any and all improvements to the Premises, or leasehold estate/bonus value created by this Lease. Notwithstanding the foregoing, in the event of a condemnation by any entity other than the TJPA, Amtrak shall have the right to pursue recovery from a condemning authority for relocation assistance and for any taking of Amtrak's personal property.

Section 7. Rent

A. Base Rent. Amtrak shall pay the TJPA as base rent for the Premises, without deduction, setoff, prior notice, or demand, the sum of four thousand two hundred seventy two dollars (\$4,272.00) (one thousand four hundred twenty four (1,424) square feet of Shared Passenger Area at thirty six dollars (\$36) per square foot per year) in advance on the first (1st) day of each month ("Base Rent"), commencing on the Commencement Date and continuing for the duration of this Lease.

B. Additional Rent. Amtrak shall pay the TJPA as additional rent for the Shared Passenger Area, without deduction, set off, prior notice, or demand, the sum of four thousand one hundred fifty three dollars (\$4,153) per month (one thousand four hundred twenty four (1,424) square feet of Shared Passenger Area at thirty five dollars (\$35) per square foot per year) for use and maintenance of the Shared Passenger Area (including the provision of standard services and utilities) in advance on the first (1st) day of each month (“Additional Rent”), commencing on the Commencement Date and continuing for the duration of this Lease.

C. Pass-Through Fees. Amtrak shall pay the TJPA or directly to the service provider, as determined by the TJPA, the actual cost of (i) electric utility consumption (to the extent the Premises is separately metered from the remainder of the Transit Center) and (ii) any agreed upon dedicated/unique services or utilities Amtrak requires at the Premises in excess of the standard services and utilities provided by the TJPA (“Pass-Through Fees”). Amtrak’s obligation for any Pass-Through Fees shall be fifty percent (50%) of the total Pass-Through Fees for the Shared Passenger Area. For Pass-Through Fees payable to the TJPA, the TJPA agrees to provide Amtrak reasonable documentation substantiating such fees, and Amtrak shall pay the Pass-Through Fees within thirty (30) days after invoice from the TJPA and otherwise in the same manner as it pays the Rent. In the event that TJPA reasonably determines that unique/dedicated services or utilities are required for Amtrak’s operations, TJPA shall provide notice to Amtrak describing the basis for such determination and the expected Pass-Through Fees required to resolve such concerns in order to reach mutual agreement with Amtrak regarding the scope of such services. TJPA and Amtrak shall periodically review the necessity for any

unique/dedicated services or utilities, and in no event shall Amtrak be obligated for Pass-Through Fees for unique/dedicated services or utilities that do not arise directly and solely from Amtrak's operations or respond solely to Amtrak's operations and which have not been mutually agreed upon in writing by TJPA and Amtrak.

D. Payment. All Rent and any other sum due from Amtrak to the TJPA under any provision of this Lease shall be paid to the TJPA at the following address: Transbay Joint Powers Authority, Attention Executive Director, 201 Mission Street, Suite 2100, San Francisco, CA 94105. The Base Rent, Additional Rent, and Pass-Through Fees are together referred to as the "Rent."

E. Rental Adjustments. On each anniversary of the Commencement Date, the Base Rent and Additional Rent payable under this Lease shall be increased by three percent (3%).

Section 8. Ingress and Egress

A. Subject to the provisions of this Lease and effective on the Commencement Date, the TJPA grants to Amtrak and Amtrak's vehicles, machinery, equipment, passengers, guests, and invitees the rights and privileges of ingress and egress with respect to the Premises.

B. Amtrak's full and free right of ingress and egress provided for above shall not be used, enjoyed, or extended for any purpose or use in contravention of the provisions of Sections 11 and 12 unless expressly authorized in writing in advance by the TJPA, which authorization the TJPA may grant or withhold at its sole discretion.

C. When reasonably required for reasons of safety, security, or crowd control, the TJPA may limit Amtrak's access to the Premises. The TJPA will provide Amtrak forty-eight (48) hours prior written notice of its intent to limit access to the

Premises, describing the purpose, scope, and duration of any limitation of access, unless emergency circumstances make such notice unreasonable or infeasible. In all events under this Section 8(C), the TJPA shall use best efforts to minimize disruption and interference with Amtrak's operations at the Premises. In all events under this Section 8(C), except where the TJPA's limitation of Amtrak's access to the Premises is the result of Amtrak conduct, in the event that Amtrak suffers damages, lost business, or other impacts reasonably attributable to the TJPA's limitation on Amtrak's access beyond the duration specified in any written notice provided by the TJPA, then Amtrak shall have the right to terminate the Lease upon thirty (30) days' notice to the TJPA.

Section 9. Responsibility for Improvements and Services

A. TJPA's Responsibility.

1. On or before the Commencement Date, the TJPA, at its sole expenses, shall construct the improvements to the Premises described in Exhibit B (the "Improvements"). Except for the Improvements, the TJPA shall have no obligation to provide any improvements, additions, alterations, repairs, furniture, fixtures, or equipment to the Premises.

2. The TJPA warrants that as of the Commencement Date, the Premises complies with the Americans with Disabilities Act of 1990, as amended, and the regulations promulgated thereunder ("ADA") and that no further improvements are necessary to make the Premises fully ADA-compliant. The TJPA further warrants that the TJPA will not make any repairs or alterations to the Premises to render the Premises non-compliant with the ADA.

3. The TJPA, at its sole expense, shall prudently and efficiently maintain the Improvements, including the foundation, outside walls, floor beneath the

floor covering(s), roof, and utility systems (electrical, gas, clean water, waste water, and HVAC) of the Premises in good condition and repair, consistent with business and management practices at similar facilities in the United States, and in accordance with all applicable statutes, laws, rules, regulations, ordinances and codes.

4. The TJPA, at its sole expense, shall provide to the Premises standard (i) janitorial, maintenance, repair and security services, and (ii) electricity, gas, HVAC, internet, and waste collection utilities. The TJPA is not obligated to provide any dedicated/unique services or utilities to the Premises or for Amtrak's operations in the Transit Center.

5. The TJPA reserves the right, with at least thirty (30) days advance notice to Amtrak, to construct, reconstruct, install, repair, remove, replace, renew, operate, and use foundations, outside walls, floor beneath the floor covering(s), roof, and utility systems. In all events under this Section 9(A)(5), the TJPA shall use best efforts to minimize disruption and interference with Amtrak's operations at the Premises. In all events under this Section 9(A)(5) where the TJPA limits Amtrak's access to the Premises, except where the TJPA's limitation of Amtrak's access to the Premises is the result of Amtrak's conduct, in the event that Amtrak suffers damages, lost business, or other impacts reasonably attributable to the TJPA's limitation on Amtrak's access beyond the duration specified in any written notice provided by the TJPA, then Amtrak shall have the right to terminate this Lease upon thirty (30) days' notice to the TJPA. The TJPA shall indemnify, defend, and hold harmless Amtrak against all costs, damages, and claims arising from the TJPA's conduct under this Section unless the costs, damages, or claims

are proximately cause by the gross negligence or willful misconduct of Amtrak, its officers, directors, employees, agents, representatives, or invitees.

6. Notwithstanding the above, Amtrak acknowledges that Phase II of the Transbay Project involves excavation and construction of an underground rail tunnel, fit out of the train box in the subsurface levels of the Transit Center, and other construction work, and that such work may have noise, traffic, and other impacts to Amtrak's operations at the Premises. Notwithstanding anything to the contrary contained in Sections 9(A)(2) and 9(A)(5) hereof, Amtrak waives any claim or right to compensation resulting from damages, lost business, or other impacts that may result from the TJPA's Phase II activities; however, in the event that Amtrak suffers damages, lost business, or other impacts reasonably attributable to the Phase II activities, Amtrak shall have the right to terminate this Lease upon thirty (30) days' notice to the TJPA.

B. Amtrak's Responsibility.

1. While the TJPA is responsible for providing certain standard services and utilities to the Premises, as described in Section 9(A)(4), Amtrak shall take reasonable measures to keep, operate, and maintain the Premises in a neat, clean, safe, sanitary, and operating condition.

2. Amtrak will coordinate with the TJPA and Greyhound in matters as necessary for the Shared Passenger Area.

3. Amtrak, at its sole expense, shall be responsible for maintaining insurance as provided in Section 17.4. Except for the Improvements, Amtrak shall bear the cost and expense for any additional signage, operating equipment, furniture,

security equipment, fixtures, or other personal property on or to the Premises which Amtrak requires.

5. All Improvements and any other improvements to or of the Premises, except Amtrak-procured movable furniture, personal property, trade fixtures, and equipment, shall belong to the TJPA, and shall be surrendered with the Premises on or before the termination of this Lease. On or before the termination of this Lease, Amtrak shall remove all Amtrak-procured movable furniture, personal property, trade fixtures, and equipment.

6. Amtrak expressly waives all rights to make repairs at the expense of the TJPA or to vacate the Premises or terminate this Lease for failure by the TJPA to keep the Premises in good order, condition, or repair as provided for in sections 1941 and 1942 of the California Civil Code or any successor thereto.

7. Except as otherwise provided in this Lease, Amtrak shall comply with the Transit Center Rules & Regulations, and any other rules and regulations adopted by the TJPA for the operation, maintenance, security, and management of the Transit Center that are provided to Amtrak in advance and that TJPA applies in a non-discriminatory manner to all tenants.

8. Amtrak shall comply with the procedures, restrictions, and requirements developed by the TJPA related to implementation of its obligations under the July 24, 2017 Naming and Signage Rights Agreement between the TJPA and salesforce.com providing salesforce.com the right to name the new Transit Center the “Salesforce Transit Center” and receive certain other benefits, and the terms for Amtrak’s use of the name and logos associated with the Transit Center.

Section 10. Use of Premises

Subject to the terms and conditions of this Lease, the TJPA shall permit Amtrak to use the Premises to perform such operations and functions as are incidental, necessary, or proper to the conduct of Amtrak's business operations, including, but not limited to, the following:

A. Any and all purposes in connection with and incidental to the operation of a bus shuttle system incidental to a passenger rail transportation business consistent with the rules of Amtrak and federal and state law, including, without limiting the generality hereof, the movement, loading, and unloading of passengers and their personal belongings from buses; the ticketing of passengers; a waiting area for passengers; related mail, package, baggage, and express services; connecting bus service; office, mechanical, and/or engineering facilities; the installation, maintenance, and operation of radio and other telecommunications equipment and facilities; and operations incidental to Amtrak's businesses.

B. The positioning, stopping, parking, loading or unloading of Amtrak's vehicles and equipment (including any vehicles and equipment that are owned or leased by Amtrak contractors).

C. The loading and unloading of property and carriage by such manner of conveyance as Amtrak may desire or require in the operation of a transportation business.

D. The installation and operation of identification business signs advertising the services of Amtrak within the interior of the Premises; for the avoidance of doubt, Amtrak shall not be permitted to install any signage in the interior or exterior of the Premises or the Transit Center, except as expressly permitted by the TJPA or as required by federal law.

E. The use of the space at the Transit Center but outside the Premises to perform such operations and functions as are incidental, necessary or proper to the conduct of Amtrak's business operations, subject to the TJPA's approval, which will not be unreasonably denied, withheld, conditioned, or delayed.

Section 11. Prohibited Uses

Amtrak shall not use the Premises or cause or permit its employees or others to use the Premises for any purpose other than specified under the terms and conditions of this Lease. Without limiting the generality of the foregoing, Amtrak shall not do or cause or permit anything to be done, in or about the Premises, or bring or keep anything thereon which will in any way:

- A. increase the rate of fire insurance for the Transit Center, provided that Amtrak's use of the Premises as provided under this Lease is presumed to not increase the rate of fire insurance;
- B. conflict with any law, ordinance, rule, or regulation now in effect or which may hereafter be enacted or promulgated by any public authority affecting the condition, use, or occupancy of the Premises by Amtrak, to the extent that such law, ordinance, rule or regulation is applicable to Amtrak;
- C. create a nuisance as such has been defined in any law that is applicable to Amtrak;
- D. obstruct or interfere with the rights of other tenants in the Transit Center, including the shared portion of the Premises, provided that the exercise of any rights of Amtrak under this Lease shall be deemed not to obstruct or interfere with the rights of other tenants;

E. place any loads upon the floor, walls, or ceiling which endanger the structure of the Transit Center;

F. obstruct the sidewalk or other passageways of the Transit Center, including in front of, within, or adjacent to the Premises, provided that the exercise of any rights of Amtrak under this Lease shall be deemed not to obstruct or interfere with the rights of other tenants;

G. use or grant to anyone the right to use the Premises in violation of any laws that are applicable to Amtrak.

Section 12. Further Prohibited Uses Regarding Environmental Laws and Hazardous Materials

A. Amtrak shall at all times and in all respects comply with all laws, ordinances, rules, or regulations now in effect or which may hereafter be enacted or promulgated by any public authority regarding industrial hygiene, environmental protection, or the use, analysis, generation, manufacture, storage, disposal or transportation of any oil, flammable explosives, asbestos, urea formaldehyde, radioactive materials or waste, or other hazardous, toxic, contaminated or polluting materials, substances or wastes, including, without limitation, any “hazardous substances” under any such laws, ordinances, or regulations (collectively “Hazardous Materials Laws”) to the extent such Hazardous Materials Laws are applicable to Amtrak, or to the extent that such Hazardous Materials Laws affect the condition, use, or occupancy of the Premises by Amtrak and such Hazardous Materials Laws are applicable to Amtrak.

B. As used in this Lease, “hazardous materials” include any “hazardous substance” as that term is defined under federal law and any other material or substance

listed or regulated by any Hazardous Materials Law and posing a hazard to health or the environment.

C. Except as otherwise expressly permitted in this Lease, Amtrak shall not use, create, store, deposit, dispose, or allow any hazardous materials on the Premises, provided that the foregoing restriction shall not apply to fuel stored in a motor vehicle for the exclusive use in such vehicle.

D. Amtrak shall not install facilities for, nor operate on the Premises, a gasoline or petroleum supply station. Amtrak shall not permit on the Premises any vehicle used or designed for the transportation or storage of gasoline or petroleum products, except under temporary circumstances in the event of an Amtrak vehicle breakdown, or temporarily during other unforeseen or emergency circumstances.

E. All of the foregoing notwithstanding, the following hazardous materials may be brought onto or stored on the leased Premises:

1. Household products, necessary for routine cleaning and maintenance of the property may be kept on the Premises in quantities reasonable for Amtrak's or the TJPA's needs; and
2. Petroleum products carried on a service truck to be brought on the Premises only in an emergency to perform repairs on a bus: 18 gallons diesel #2, 10 gallons 30 wt engine oil and 5 gallons antifreeze.

F. The TJPA, or its agents or contractors, shall at all times have the right to go upon and inspect the Premises and the operations thereon to assure compliance with the requirements herein stated. This inspection may include taking samples of substances

and materials present for testing, and/or the testing of soils or underground tanks on the Premises.

G. In the event Amtrak breaches any of the provisions of this Section, and such breach continues for ten (10) days after Amtrak's receipt of written notice thereof from the TJPA (or such longer period that is necessary to cure such breach if Amtrak has begun and is diligently pursuing a cure within said ten (10) days), this Lease may be terminated immediately by the TJPA and be of no further force or effect. It is the intent of the parties hereto that Amtrak shall be responsible for and bear the cost of any cleanup and/or decontamination of the Premises, including removal and disposal of hazardous materials, to the extent the need for such clean up and/or decontamination is caused by Amtrak, its employees, or its contractors, after the Commencement Date. Amtrak shall not be responsible for or bear the cost of any cleanup and/or decontamination of the Premises, including removal and disposal of hazardous materials, to the extent the need for such cleanup and/or decontamination is caused by any party other than Amtrak, its employees or contractors prior to or after the Commencement Date. Amtrak shall further hold the TJPA and its officers and employees harmless from all responsibility, liability, and claims for damages resulting from the release or use of hazardous materials on the Premises by Amtrak, its employees or contractors during Amtrak's period of use and possession of the Premises.

Section 13. Right of Entry to Inspect and Correct Prohibited Uses

A. The TJPA and the Asset Manager, through their agents or representatives, shall have full right and authority to enter in and upon the Premises and any building or improvements situated thereon at any and all reasonable times during the term of this

Lease for the purpose of inspecting the same without interference or hindrance by Amtrak, its agents or representatives.

B. In the event Amtrak uses or maintains the Premises in a way prohibited by this Lease or that poses a risk to the health and safety of the public, the TJPA shall give Amtrak notice to do such acts as are reasonably required to comply with the Lease. If, within ten (10) business days after Amtrak receives written notice to comply sent by the TJPA, Amtrak fails to do the work and diligently proceed in good faith to comply, the TJPA shall have the right, but not the obligation, to enter the Premises and do such acts and expend such funds at the expense of Amtrak as are reasonably required to perform such work. Any amount so expended by the TJPA shall be paid by Amtrak promptly after demand from the date of completion of such work to date of payment. The TJPA shall have no liability to Amtrak for any damage, inconvenience, or interference with the use of the Premises by Amtrak as a result of performing any such work, unless the damage, inconvenience, or interference is the result of the TJPA's gross negligence, sole and direct willful misconduct or both.

Section 14. Concessionaires

Subject to the TJPA's prior written approval, which approval shall not be unreasonably denied, withheld, conditioned, or delayed, Amtrak may contract with an entity to provide food and beverage vending machines in the Shared Passenger Area ("Concessionaire"). The activities, functions, or services provided by the Concessionaire shall not interfere with the transit operations of Amtrak or Greyhound using the Premises, and shall conform with the Transit Center Rules & Regulations; any other rules and regulations adopted by the TJPA for the operation, maintenance, security, and management of the Transit Center; and the terms and conditions of this Lease.

Section 15. Quiet Enjoyment

The TJPA represents that it has the right to lease the Premises together with all the premises and facilities, easements, rights, licenses, and privileges granted in this Lease, and has full power and authority to enter into this Lease. The TJPA further covenants that Amtrak shall peaceably have and enjoy the Premises and the Improvements during the time this Lease is in effect. If and so long as Amtrak shall keep all the covenants and agreements required by it to be kept under this Lease, the TJPA covenants and agrees that it and anyone claiming by through or under the TJPA shall not interfere with the peaceful and quiet occupation and enjoyment of the Premises by Amtrak.

Section 16. Indemnity

A. Amtrak Indemnity. Amtrak shall indemnify, defend and hold harmless the entities identified on the attached Exhibit C (“Additional Insureds”) from and against any and all liability, loss, damage, expense, cost (including without limitation, costs and fees of litigation) due to bodily injury, including death, to any person, or loss or damage (including loss of use) to any property, only to the extent (i) arising from Amtrak’s use of the Transit Center, (ii) caused by an actual violation (as determined in a final, non-appealable decision of a court of competent jurisdiction) of any law, rule, or regulation now in effect or which may hereafter be enacted or promulgated by any public authority affecting the condition use, or occupancy of the Premises by Amtrak which Amtrak contends is applicable to Amtrak, (iii) caused by alleged violation of any law, ordinance, rule, or regulation now in effect or which may hereafter be enacted or promulgated by any public authority affecting the condition, use, or occupancy of the Premises by Amtrak which Amtrak contends is not applicable to Amtrak and which a court of

competent jurisdiction determines, after the exhaustion of all applicable appeals, are in fact applicable to Amtrak, or (iv) caused by alleged violation of any Hazardous Materials Laws which Amtrak contends are not applicable to Amtrak, except for any loss or damage or portion of loss or damage that is caused by the gross negligence or willful misconduct of the TJPA and/or AC Transit.

B. TJPA Indemnity. The TJPA shall indemnify, defend and hold harmless Amtrak, its officers, officials, employees and agents from and against any and all liability, loss, damage, expense, costs (including without limitation, costs and fees of litigation) due to bodily injury, including death, to any person, or loss or damage (including loss of use) to any property, caused by the gross negligence or willful misconduct of the TJPA, its officers, officials, employees or agents (i) in connection with this Lease, or (ii) in connection with the TJPA's failure to comply with any of its obligations contained in this Lease, or (iii) arising out of its ownership of the Transit Center, except for any loss or damage or portion of loss or damage that is caused by the gross negligence or willful misconduct of Amtrak.

Section 17. Insurance

A. Amtrak

(1) Without in any way limiting Amtrak's indemnification obligations under this Lease, and except as otherwise set forth in Section 17(A)(11), Amtrak must maintain in force, during the full term of this Lease, insurance coverages at least as broad as:

(a) Commercial General Liability Insurance on an "occurrence" basis, including products and completed operations, property damage, bodily injury, personal and advertising injury, contractual liability, and coverage for

employee injuries in compliance with the Federal Employers Liability Act (FELA) with limits not less than ten million dollars (\$10,000,000) each occurrence; and

(b) Automobile Liability Insurance with limits not less than twenty five million dollars (\$25,000,000) per accident for bodily injury (including death) and property damage arising out of the ownership, maintenance, or use of any owned, non-owned, and hired motor vehicle.

(2) Amtrak's Commercial General Liability Insurance policy must provide the following:

(a) Name as additional insured the entities identified in the attached Exhibit C; and

(b) That such policies are primary insurance to any other insurance available to the additional insureds, any insurance or self-insurance maintained by the additional insureds shall be excess of Amtrak's insurance and shall not contribute with it, and Amtrak's insurance applies severally and not collectively to each additional insured against whom claim is made or suit is brought.

(3) Amtrak hereby grants to the TJPA a waiver of any right to subrogation which any insurer of Amtrak may acquire against the TJPA by virtue of the payment of any loss under such insurance. Amtrak agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the TJPA has received a waiver of subrogation endorsement from the insurer.

(4) Should any of the required insurance be provided under a claims-made form, Amtrak shall maintain such coverage continuously throughout the term of

this Lease, and without lapse, for a period of five (5) years beyond the expiration of this Lease, to the effect that, should occurrences during the Lease term give rise to claims made after expiration of the Lease, such claims shall be covered by such claims-made policies.

(5) Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs are included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

(6) On or before the Commencement Date, except for those coverages that are self-insured in compliance with Section 17 (A) (11), Amtrak shall do the following: (a) furnish to the TJPA certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A.M. Best's A:VII or higher, that are authorized to do business in the State of California, and that are satisfactory to the TJPA, in form evidencing all coverages set forth above, and (b) furnish complete copies of policies promptly upon the TJPA's request.

(7) All policies shall be endorsed to provide thirty (30) days' advance written notice to the TJPA of material change in coverages, or nonrenewal of coverages, or cancellation of coverages for any reason. Notices shall be sent to the address specified in the Section entitled "Notices."

(8) Approval of the insurance by the TJPA shall not relieve or decrease the liability of Amtrak under this Lease. If Amtrak maintains broader coverage and/or higher limits than the minimums shown above, the TJPA requires and shall be

entitled to the broader coverage and/or the higher limits maintained by Amtrak. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the TJPA.

(9) Failure to maintain insurance shall constitute a substantial breach by Amtrak of this Lease.

(10) The TJPA reserves the right to require increases to the aforesaid limits as necessary upon the written demand of the TJPA, provided that the TJPA provides a written justification for the increase to Amtrak, and such coverage is reasonably available and affordable.

(11) As part of or in lieu of the insurance required in this Section, and subject to prior approval by the TJPA, Amtrak shall have the right to provide equivalent protection under a self-insurance program acceptable to the TJPA; provided, however, that the TJPA's approval shall not be unreasonably withheld. If Amtrak elects to self-insure, Amtrak shall be responsible for any losses or liabilities which would have been assumed by the insurance companies which would have issued the insurance required of Amtrak under this Lease. If Amtrak elects to self-insure, it shall provide the TJPA with at least thirty (30) days' prior written notice of such election and provide such information as TJPA reasonably requires.

B. Amtrak Contractors.

(1) Amtrak shall require that any contractor conducting Work or providing services to the Premises maintain in force, during the full term of its contracts, insurance coverages at least as broad as:

(a) Worker's Compensation, as required by the State of California in statutory amounts, and Employers' Liability Insurance with limits not less than one million dollars (\$1,000,000) each accident, injury, or illness; and

(b) Commercial General Liability Insurance on an "occurrence" basis, including products and completed operations, property damage, bodily injury, personal and advertising injury, and contractual liability, with limits not less than two million dollars (\$2,000,000) each occurrence; and

(c) Automobile Liability Insurance with limits not less than one million dollars (\$1,000,000) per accident for bodily injury (including death) and property damage, including owned, non-owned, and hired auto coverage, as applicable; and

(d) Professional Liability Insurance with limits not less than two million dollars (\$2,000,000) each occurrence or claim, with respect to negligent acts, errors or omissions, if applicable.

(2) Amtrak's contractors' insurance shall satisfy the terms and conditions specified in Section 17(A)(2) – (10), as appropriate.

C. TJPA.

(1) Without in any way limiting the TJPA's indemnification obligations under this Lease, the TJPA must maintain in force, during the full term of this Lease, insurance coverages at least as broad as:

(a) Worker's Compensation, as required by the State of California in statutory amounts, and Employers' Liability Insurance with limits not less than one million dollars (\$1,000,000) each accident, injury, or illness; and

(b) Commercial General Liability Insurance on an “occurrence” basis, including products and completed operations, property damage, bodily injury, personal and advertising injury, and contractual liability, with limits not less than two million dollars (\$2,000,000) each occurrence; and

(c) Automobile Liability Insurance with limits not less than one million dollars (\$1,000,000) per accident for bodily injury (including death) and property damage, including owned, non-owned, and hired auto coverage, as applicable.

(d) Property Insurance against all risks of loss, and Boiler & Machinery Insurance, sufficient to cover the values at risk for the Transit Center, including alterations and improvements to the premises leased to Amtrak . Such insurance shall provide for replacement costs, including increased cost of construction.

(2) The TJPA’s Commercial General Liability Insurance policy must name as additional insured Amtrak, and all of its officers, agents, and employees.

(3) All policies shall be endorsed to provide thirty (30) days' advance written notice to Amtrak of nonrenewal of coverages or cancellation of coverages for any reason. Notices shall be sent to the address specified in the Section entitled “Notices.”

(4) Should any of the required insurance be provided under a claims-made form, the TJPA shall maintain such coverage continuously throughout the term of this Lease, and without lapse, for a period of five (5) years beyond the expiration of this Lease, to the effect that, should occurrences during the Lease term give rise to claims made after expiration of the Lease, such claims shall be covered by such claims-made policies.

(5) Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs are included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

(6) On or before the Effective Date, the TJPA shall do the following:
(a) furnish to Amtrak certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A.M. Best's A:VII or higher, that are authorized to do business in the State of California, and that are satisfactory to Amtrak, in form evidencing all coverages set forth above, and (b) furnish complete copies of policies promptly upon Amtrak request. As a part of or in lieu of the insurance required herein and subject to prior approval by Amtrak, the TJPA may provide equivalent protection under a self-insurance program acceptable to Amtrak; provided, however, that Amtrak's approval shall not be unreasonably withheld.

(7) Approval of the insurance by Amtrak shall not relieve or decrease the liability of the TJPA under this Lease. If the TJPA maintains broader coverage and/or higher limits than the minimums shown above, Amtrak requires and shall be entitled to the broader coverage and/or the higher limits maintained by the TJPA. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to Amtrak.

(8) Failure to maintain insurance shall constitute a substantial breach by the TJPA of this Lease.

(9) Amtrak reserves the right to require increases to the aforesaid limits as necessary upon the written demand of Amtrak, provided that Amtrak provides a written justification for the increase to the TJPA, and such coverage is reasonably available and affordable.

Section 18. Nondiscrimination

In the performance of this Lease, Amtrak shall comply with all applicable federal, state, and local laws (including San Francisco Administrative Code Sections 12B.2 and 12C.3), and TJPA policies that prohibit discrimination against any Amtrak employee, TJPA employee working with Amtrak, applicant for employment with either party, and person seeking accommodations, advantages, facilities, privileges, services, or memberships in all business, social, or other establishments or organizations on the basis of fact or perception of a person's membership in a protected class, association with members of a protected class, or in retaliation for opposition to discrimination against a protected class.

Section 19. Assignment and Subletting

Amtrak shall not sublease the Premises or any part thereof or any of the privileges recited herein. Amtrak shall not assign or transfer this Lease or any part hereof in any manner whatsoever. Notwithstanding the foregoing, Amtrak shall have the right to assign all or any part of its rights and interests under this Lease to any successor to its services through consolidation or reorganization or transfer of substantially all of its assets, or as required by legislative action, and the consent of the TJPA thereto shall not be required, but due notice of any such assignment shall be given to the TJPA within sixty (60) days after such assignment hereunder. This provision does not release Amtrak from any of its obligations with respect to the terms hereof.

Section 20. Encumbrances

Amtrak shall not encumber the Premises in any manner whatsoever.

Section 21. No Personal Liability

No director, officer, agent or employee of either party shall be personally charged by or contractually liable to the other party under any term or provision of this Lease or because of any breach thereof or because of its or their execution or attempted execution.

Section 22. Agreements with Governments

Except for the payment of rentals provided for herein, this Lease is subject and subordinate to the provisions of any agreement and amendments thereto heretofore made between the TJPA and the United States or the State of California, relative to the construction, use, operation, funding, or maintenance of the Transit Center. However, any agreement or arrangement the TJPA makes with any federal, state, or local government, or any other entity or any agency thereof for the construction, use, operation, funding, or maintenance of the Transit Center, or any substantial part thereof, shall not substantially interfere with Amtrak's rights under this Lease.

Section 23. Audit Rights

Amtrak, its Office of Inspector General or the Federal Railroad Administration, their respective agents, designees and accountants shall have the right at any time or from time to time for up to five (5) years after this Lease is terminated and final payments of all sums due hereunder are made, and after advance notice to Landlord, to make any examination, inspection or audit of Landlord's books and records which relate in any way to this Lease, or to any payments of any sums of money due or paid pursuant to this Lease. If it is determined by any such examination, inspection, or audit that the Base Rent, the Additional Rent, the Pass-Through Fees, or any other charges paid by Amtrak

have, in error, been underpaid or overpaid, then, as applicable: 1) the party that has been underpaid shall be reimbursed the amount of such underpayment by the other party; or 2) the party that has been overpaid shall refund the amount of such overpayment to the other party.

Nothing in this Lease shall be construed to limit the rights, obligations, authority, or responsibilities of Amtrak's Office of the Inspector General pursuant to the Inspector General Act of 1978, as amended, including the right to seek information by subpoena. The TJPA agrees to cooperate with all audit activities. The audit rights of this Section 23 are not subject to arbitration.

Section 24. Default

A. Default by Amtrak. The occurrence of any of the following shall constitute a material breach and default of this Lease by Amtrak (each, an "Event of Default by Amtrak"):

1. Any failure by Amtrak to pay the Rent, or any other monetary sums required to be paid hereunder, where such failure continues for fifteen (15) days after written notice thereof has been given by the TJPA to Amtrak.
2. The abandonment or vacation of the Premises by Amtrak. Failure to occupy and operate the Premises for thirty (30) consecutive days following the receipt of written notice from the TJPA to Amtrak calling attention to the abandonment shall be deemed an abandonment or vacation.
3. The making by Amtrak of any general assignment or general arrangement for the benefit of creditors; the filing by or against Amtrak of a petition to have Amtrak adjudged bankrupt or of a petition for reorganization or arrangement under any law relating to bankruptcy (unless, in the case of a petition filed against Amtrak the

same is dismissed within sixty (60) days); the appointment of a trustee or receiver to take possession of substantially all of Amtrak's assets, where possession is not restored to Amtrak within forty-five (45) days; or the attachment, execution, or other judicial seizure of substantially all of Amtrak's assets, where such seizure is not discharged within thirty (30) days.

4. The failure by Amtrak to comply with any provision of any law, statute, zoning restriction, ordinance or governmental rule, regulation or requirement as set forth in Section 11, where such failure continues after thirty (30) days written notice from the TJPA to Amtrak.

5. The failure by Amtrak to comply with the requirements regarding (a) prohibited uses set forth in Section 11, where such failure continues thirty (30) days after written notice to Amtrak, or (b) Hazardous Materials Laws set forth in Section 12, where such failure continues ten (10) days after written notice to Amtrak.

6. The construction by Amtrak of any improvements on the Premises contrary to the provisions as set forth in Section 9(B) where such failure continues after thirty (30) days written notice from the TJPA to Amtrak.

7. The intentional failure by Amtrak to pay any tax, assessment, imposition, levy or charge of any kind as set forth in Section 36.

8. The failure by Amtrak to observe and perform any other provision of this Lease to be observed or performed by Amtrak, where such failure continues for thirty (30) days after written notice thereof by the TJPA to Amtrak.

Notwithstanding the foregoing, if the nature of such Event of Default by Amtrak is such that it cannot be reasonably cured within the specified time period, Amtrak shall

not be deemed to be in default if Amtrak shall within such period commence such cure and thereafter diligently prosecute the same to completion.

B. Default by TJPA. The occurrence of the following shall constitute a material breach and default of this Lease by the TJPA (“Event of Default by TJPA”): The failure by the TJPA to perform any covenant or obligation required to be performed by the TJPA under this Lease, where such failure continues for thirty (30) days after written notice thereof by Amtrak to the TJPA identifying such failure.

Notwithstanding the foregoing, if the nature of such Event of Default by the TJPA is such that it cannot be reasonably cured within the thirty (30) day time period, the TJPA shall not be deemed to be in default if the TJPA shall within such time period commence such cure and thereafter diligently prosecute the same to completion.

Section 25. Remedies

A. TJPA Remedies. In an Event of Default by Amtrak, the TJPA may at any time thereafter, without limiting the TJPA in the exercise of any right of remedy at law or in equity which the TJPA may have by reason of such Event of Default by Amtrak, at its sole option and discretion: (1) perform such covenant or obligation on behalf of Amtrak in which event Amtrak shall reimburse the TJPA all costs and expenses associated with the TJPA’s performance within twenty (20) days after the TJPA presents an invoice to Amtrak for such performance; (2) terminate this Lease; and/or (3) pursue any and all rights and remedies available at law or in equity.

B. Remedies of Amtrak. In an Event of Default by the TJPA, Amtrak may at any time thereafter, without limiting Amtrak in the exercise of any right of remedy at law or in equity which Amtrak may have by reason of such Event of Default by the TJPA, at

its sole option and discretion: (1) terminate this Lease; and/or (2) pursue any and all rights and remedies available at law or in equity.

Section 26. Damage by Fire, Disaster or Other Casualty

A. Destruction. In case of damage to the Transit Center by fire or other casualty, including an event of Force Majeure under Section 30, that is so extensive as to substantially amount to the total destruction of the Premises and that renders the Premises unsuitable for Amtrak's continued use as provided in this Lease, either Amtrak or the TJPA may terminate the Lease by written notice to the other party in their sole discretion, and the Rent shall be apportioned in relation to the time of the destruction. Alternatively, by mutual agreement of the parties, the TJPA may within the timeline and design standards agreed by the parties, rebuild the Premises or Transit Center to restore the Transit Center, including the Premises, to substantially the same condition as immediately before its destruction.

B. If the damage to the Transit Center has rendered the Premises untenable in part for the use permitted hereunder, Rent shall be abated in proportion to that part of the Premises on which Amtrak is unable to operate its bus services during the period of damage and repair, and the TJPA shall, within one hundred eighty (180) days after such damage, initiate the replacement or rebuilding of the Transit Center, including the Premises, and in such manner and according to such plans and specifications which would restore the Transit Center, including the Premises, to substantially the same condition as immediately before its destruction or substantial damage; or

C. During the period required to repair or replace the Transit Center or the Premises under Sections 26(A) and (B) above, Amtrak shall have no obligation to: (1) Pay any costs or expenses associated with the Transit Center, including the Premises,

required under this Lease; or (2) Provide any services including janitorial services to the Premises required under this Lease.

Section 27. Governing Law

This Lease shall be deemed to have been made in, and be construed in accordance with, the laws of the State of California. The parties agree that any 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 Lease and shall be the sole and exclusive forum in which to adjudicate any such dispute(s).

Section 28. Notices

All notices required to be given to Amtrak hereunder shall be in writing and given by a nationally recognized overnight courier service addressed to Amtrak as follows:

Amtrak
30th Street Station, 5th Floor South Tower
Philadelphia, PA 19104
Attn.: Assistant Vice President Real Estate Development

with copy to:

Amtrak
530 Water Street, Fifth Floor
Oakland, CA 94607
Attn.: Project Director, Real Estate Development

All notices required to be given to the TJPA hereunder shall be in writing and given by a nationally recognized overnight service addressed to the TJPA as follows:

Transbay Joint Powers Authority
Attn: Executive Director
201 Mission Street, Suite 2100
San Francisco, CA 94105

with copy to:

Shute, Mihaly & Weinberger LLP
396 Hayes Street
San Francisco, CA 94102
Attn.: Deborah Miller

Either party may designate in writing from time to time any changes in addresses or any addresses of substitute or supplementary persons in connection with said notices. The effective date of service of any such notice shall be two (2) business day after the date such notice is deposited with a nationally recognized overnight courier service by Amtrak, or to the TJPA. Any provision herein that one party shall notify the other of some matter is to be construed as a requirement that notice is to be given in accordance with the provisions of this Section.

Section 29. Waivers

No waiver of default by either party of any of the terms, covenants and conditions hereof to be performed, kept and observed by the other party shall be construed as, or operate as, a waiver of any subsequent default of any of the terms, covenants or conditions herein contained, to be performed, kept and observed by the other party.

Section 30. Force Majeure

Neither the TJPA nor Amtrak shall be deemed in violation of this Lease if it is prevented from performing any of its obligations hereunder by reason of strikes, boycotts, labor disputes, embargoes, shortages of material, acts of terrorism, riots, rebellion, sabotage or any other casualty which is not within its control (except financial inability); provided, however, that these provisions shall not excuse Amtrak from payment of Rent.

Section 31. Invalid Provisions

In the event any covenant, condition or provision herein contained is held to be invalid by a court of competent jurisdiction, the invalidity of any such covenant,

condition or provision shall in no way affect any other covenant, condition or provision herein contained, provided the invalidity of any such covenant, condition or provision does not materially prejudice either the TJPA or Amtrak in their respective rights and obligations contained in the valid covenants, conditions and provisions of this Lease.

Section 32. Headings

The headings of the several Sections of this Lease are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of any provisions of this Lease, and shall not be construed to affect in any manner the term and provisions hereof or the interpretation or construction thereof.

Section 33. Withholding Required Approvals

Whenever the approval of the TJPA or of Amtrak is required herein, no such approval shall be unreasonably refused, withheld, or delayed.

Section 34. Subordination of Lease

A. This Lease and all rights of Amtrak hereunder shall be expressly subject and subordinate to (i) the lien of any pledge, transfer, hypothecation, or assignment made at any time by the TJPA to secure its obligations, including those items described in the attached Exhibit E; and (ii) any matters of record pertaining to the Transit Center in the Official Records of the City and County of San Francisco, California. Amtrak shall execute, acknowledge, and deliver any instrument requested by the TJPA to evidence such subordination, but no such instrument shall be necessary to make such subordination effective.

B. Amtrak further agrees to subordinate its interest in this Lease to the lien of any future ground lessors or mortgagees encumbering the Premises, provided that the TJPA obtains, at its expense, a non-disturbance and attornment agreement that provides

to Amtrak all of the rights and obligations under this Lease from any mortgagee or ground lessor of the TJPA whose lien may have priority over this Lease. Such agreement will be in form and substance reasonably acceptable to Amtrak.

Section 35. Successors and Assigns

All of the terms, provisions, covenants, stipulations, conditions and considerations in this Lease shall extend to and bind the legal representatives, successors, and assigns of the respective parties hereto.

Section 36. Taxes, Assessments, and Liens

Amtrak agrees to pay and discharge promptly all lawful taxes properly levied and to which Amtrak is subject by law pursuant to 49 U.S.C. § 24301(l). Amtrak further agrees not to permit or suffer any liens to be imposed upon the Premises as a result of its activities without promptly discharging the same; provided, however, that Amtrak may, if it so desires, contest the legality of such taxes and liens without being in breach of this Lease.

Section 37. Utilities and Services

The TJPA shall not be liable in damages or otherwise for any failure or interruption of any utility service furnished to the Premises. No such failure or interruption shall entitle Amtrak to immediately terminate this Lease, unless such failure is due to the fault of the TJPA and is not remedied within five (5) days after written notice by Amtrak to the TJPA.

Section 38. Corporate Authority

Each party represents and warrants to the other that it has full right, authority, and capacity to execute and perform this Lease; the execution and delivery of this Lease has been duly authorized by all requisite actions of the party; the Lease constitutes a valid,

binding, and enforceable obligation of the party; and neither the execution of the Lease nor the consummation of the Lease violates any agreement, contract, or other restriction to which the party is bound.

Section 39. Recording

Neither the TJPA nor Amtrak shall record this Lease.

Section 40. Time of Essence

Time is of the essence of this Lease and each and every provision of the Lease.

Section 41. Exhibits

All exhibits referred to herein which may, from time to time, be referred to in any duly executed amendment hereto are (and with respect to future amendments, shall be) by such reference incorporated herein and shall be deemed a part of this Lease as fully as if set forth herein.

Section 42. Amendment

This Lease may be amended only by a duly executed, mutual agreement of the parties to this Lease in writing.

Section 43. Entire Agreement

This Lease, including the Exhibits attached, contains all the terms and provisions between the TJPA and Amtrak relating to the matters set forth herein, and no prior or contemporaneous agreement or understanding pertaining to the same will be of any force or effect.

Section 44. Accommodation of Additional Transportation Providers.

To facilitate and promote regional transportation facilities and to maximize the use of the substantial public investment in facilities at the Transit Center, Amtrak will notify the TJPA if Amtrak does not need any portion of the Premises for Amtrak's scheduled or

planned operations to allow the TJPA the option to rent that part of the Premises to another carrier.

Section 45. Limitation of Liability.

EXCEPT FOR THIRD-PARTY CLAIMS UNDER ANY INDEMNITY PROVISION HEREIN, IN NO EVENT SHALL THE TJPA OR AMTRAK BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT, INCIDENTAL OR PUNITIVE DAMAGES OR LOST PROFITS, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY (INCLUDING NEGLIGENCE) ARISING IN ANY WAY OUT OF THIS AGREEMENT, WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

Executed as set forth below in the City and County of San Francisco.

Execution Date: _____ TRANSBAY JOINT POWERS AUTHORITY

By: _____

Mark Zabaneh
Executive Director

APPROVED AS TO FORM

Shute, Mihaly & Weinberger LLP

By _____

Deborah L. Miller
Attorneys for the TJPA

Execution Date: _____ AMTRAK

By: _____

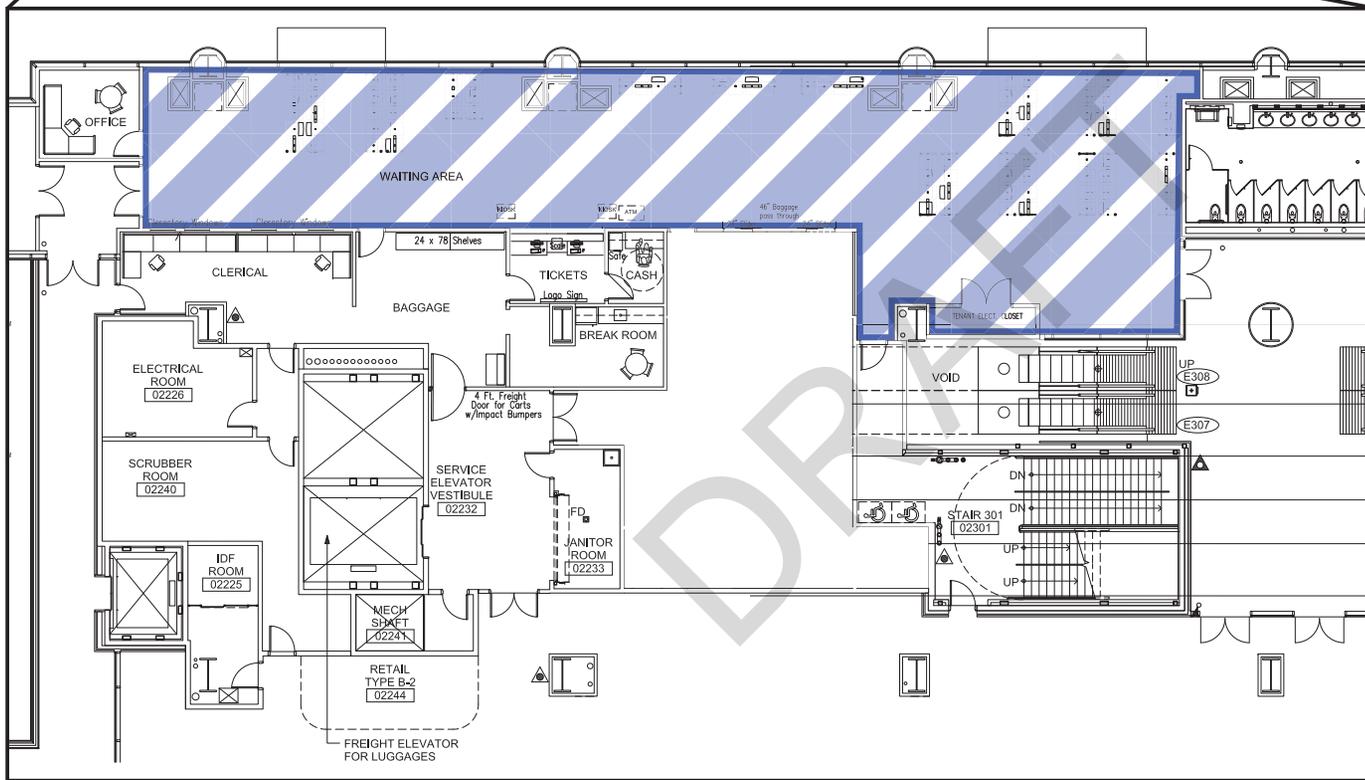
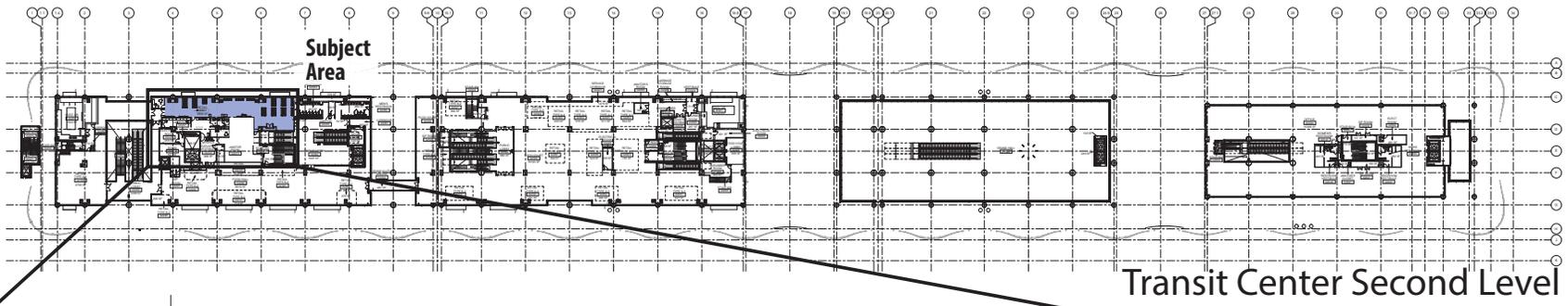
David Handera, Vice President, Stations,
Properties, and Accessibility

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Exhibit A

[map – premises]

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 SHARED PASSENGER AREA

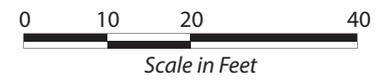


EXHIBIT A

SECOND LEVEL AMTRAK LEASE AREA

Exhibit B Improvements

Amtrak's Shared Passenger Area (depicted in Exhibit A): The areas are currently under design but the Improvements will be of a similar level of finish as the Temporary Terminal and will include all wall/ceiling/floor finishes, exterior wayfinding signage, HVAC, lighting, telecom/electrical, fire alarm/sprinklers, and access control.

Program elements within the Shared Passenger Area will include:

- Shared use area with shared seating relocated from Temporary Terminal, as well as electrical/data outlets for three vending machines, two Amtrak ticketing machines, ATM, wall mounted television monitors, and CCTV cameras
- Tenant Electrical Closet: electrical subpanel location located within Shared Passenger Area (approximately 50 sf.)

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Exhibit C
Additional Insureds

Transbay Joint Powers Authority

City and County of San Francisco

Alameda-Contra Costa Transit District

Peninsula Corridor Joint Powers Board - Caltrain

State of California, Department of Transportation

Trustee, the Series 1 Holders, the LC Banks and the Direct Placement Banks, and their officers, agents and employees, as those terms are defined in the “Sublease – TJPA Property, dated as of January 1, 2017, by and between U.S. Bank National Association, in its capacity as Trustee, as Sublessor, and City and County of San Francisco, as Sublessee” recorded in the official records of the City and County of San Francisco on January 17, 2017 as document number 2017-K395369

United States Department of Transportation, an agency of the United States of America, acting by and through the Executive Director of the Build America Bureau

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

All of the officers, directors, agents, representatives, permitted assigns, and employees of each of the above.

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

Exhibit D

[omitted]

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Exhibit E

Subordination

The Lease and all rights of Amtrak hereunder shall be expressly subject and subordinate to the following:

- TIFIA Loan Agreement, dated as of January 1, 2010, by and between the Transbay Joint Powers Authority and the United States Department of Transportation, as amended by the First Amendment thereto, dated as of May 8, 2014, the Second Amendment thereto, dated as of December 1, 2014, and the Third Amendment thereto, dated as of January 1, 2017.
- Site Lease – TJPA Property, dated as of January 1, 2017, by and between the Transbay Joint Powers Authority, as Lessor, and U.S. Bank National Association, in its capacity as Trustee, as Lessee, recorded in the Official Records of the City and County of San Francisco on January 17, 2017 as Document No. 2017-K395368.
- Sublease – TJPA Property, dated as of January 1, 2017, by and between U.S. Bank National Association, in its capacity as Trustee, as Sublessor, and City and County of San Francisco, as Sublessee, recorded in the Official Records of the City and County of San Francisco on January 17, 2017 as Document No. 2017-K395369.
- Leaseback Lease, dated as of January 1, 2017, by and between City and County of San Francisco, as Sublessor, and the Transbay Joint Powers Authority, as sublessee.