

RECORDING REQUESTED BY AND WHEN
RECORDED MAIL TO:

TRANSBAY JOINT POWERS AUTHORITY
201 Mission Street Suite 2100
San Francisco, CA 94105
Attn: Executive Director

(Space Above This Line For Recorders Use Only)

LEASEBACK LEASE

Dated as of [June 1, 2016]

by and between

CITY AND COUNTY OF SAN FRANCISCO,

as Sublessor

and

TRANSBAY JOINT POWERS AUTHORITY,

as Sublessee

NO DOCUMENTARY TRANSFER TAX DUE. This Leaseback Lease is recorded for the benefit of the City and County of San Francisco and the recording is exempt under Section 27383 of the California Government Code and Section 11928 of the California Revenue and Taxation Code.

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LEASEBACK LEASE

THIS LEASEBACK LEASE, dated as of [June 1, 2016] (as amended, supplemented or modified from time to time, and as hereinafter further defined the “**Leaseback Lease**”), is entered into between the **CITY AND COUNTY OF SAN FRANCISCO** (the “**City**”), a charter city and county duly organized and existing under the laws and Constitution of the State of California, as sublessor, and the **TRANSBAY JOINT POWERS AUTHORITY** (the “**TJPA**”), a joint powers authority created under California Government Code Sections 6500 et seq., as sublessee.

RECITALS

WHEREAS, _____, a national banking association, solely in its capacity as Trustee (the “Trustee”) under the Trust Agreement – TJPA Property, dated as of [June 1, 2016] (the “TJPA Trust Agreement”) between the City and the Trustee, is the lessee of the Property (as hereinafter defined), pursuant to the terms and conditions set forth in the Site Lease – TJPA Property, dated of even date herewith, between the TJPA and the Trustee (the “TJPA Site Lease”);

WHEREAS, the City is the sublessee of the Property pursuant to the terms and conditions set forth in the Sublease – TJPA Property, dated of even date herewith, between the Trustee and the City (the “TJPA Sublease”);

WHEREAS, the City is also the sublessee of other property pursuant to the terms and conditions set forth in the Sublease – City Property, dated of even date herewith, between the Trustee and the City (the “City Sublease”);

WHEREAS, the City desires to sublease to the TJPA the Property, and the TJPA desires to sublease from the City the Property on the terms stated herein; and

WHEREAS, the City and TJPA are each authorized to enter into this Leaseback Lease pursuant to applicable law of the State.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

Section 1. Definitions. Unless the context otherwise requires, the terms defined in this Section 1 shall, for all purposes of this Leaseback Lease, have the meanings as set forth below.

“**AC Transit**” means the Alameda-Contra Costa Transit District, a special district created under Part 1, Division 10 of the California Public Utilities Code.

“**Additional Rental**” means, with respect to Additional Rental payments due from the TJPA, the amounts specified as such in Section 3.1(d) hereof and, with respect to Additional

Rental payments due from the City, the amounts specified as such under Section 3.1(g) of the TJPA Sublease and the City Sublease.

“Annual Capital Contributions” means the annual capital contributions required to be made by AC Transit pursuant to Section 5.1 of the Lease and Use Agreement using “Passenger Facility Charges” which shall include all passenger facility charges imposed by AC Transit on all passengers riding AC Transit originating and terminating from the Transbay Transit Center upon AC Transit’s commencement of service at the Transbay Transit Center or other sources of funding; provided, however, that the use of federal grant funds for this purpose shall be prohibited.

“Assumed Interest Cost” means, as of any date of calculation or for any period of time (a) with respect to all Lease Revenue Certificates, the amount that would accrue as interest during such period with respect to Lease Revenue Certificates Outstanding as of the date of such calculation assuming such Lease Revenue Certificates bore interest during the entirety of such period at the applicable Assumed Interest Rate for the Base Rental Period during which such date of calculation occurs, and (b)(i) with respect to Commercial Paper Certificates, the amount that would accrue as interest during such period with respect to Commercial Paper Certificates Outstanding as of the date of such calculation assuming such Commercial Paper Certificates bore interest during the entirety of such period at the applicable Assumed Interest Rate for the Base Rental Period during which such date of calculation occurs, (ii) with respect to Revolving Certificates, the amount that would accrue as interest during such period with respect to such Revolving Certificates Outstanding as of the date of such calculation assuming such Revolving Certificates bore interest during the entirety of such period at the applicable Assumed Interest Rate for the Base Rental Period during which such date of calculation occurs, and (iii) with respect to Direct Placement Revolving Certificates, the amount that would accrue as interest during such period with respect to such Direct Placement Revolving Certificates Outstanding as of the date of such calculation assuming such Direct Placement Revolving Certificates bore interest during the entirety of such period at the applicable Assumed Interest Rate for the Base Rental Period during which such date of calculation occurs.

“Authorized Representative” means the Executive Director of the TJPA, the Chief Financial Officer of the TJPA, or another official designated by any such officer and authorized to act on behalf of the TJPA under or with respect to this Leaseback Lease and all other agreements related hereto.

“Base Rental” means, with respect to Base Rental payments due from the TJPA, the amount payable as Base Rental under Section 3.1 hereof and, with respect to Base Rental payments due from the City, the amount payable as Base Rental under Section 3.1 of the TJPA Sublease and Section 3.1 of the City Sublease.

“Base Rental Payment Date” means each July 1 commencing July 1, 2017, during the Leaseback Lease Term (as hereinafter defined).

“Base Rental Period” means the period between one Base Rental Payment Date and the next Base Rental Payment Date, provided that the first Base Rental Period shall commence on the Closing Date (as hereinafter defined) and end on July 1, 2017.

“City Event of Default” means an event described as such in Section 12.3 hereof.

“Closing Date” means the date on which this Leaseback Lease is filed for recording in the official records of the City and County of San Francisco.

“Community Redevelopment Law” means the Community Redevelopment Law of the State of California (Health and Safety Code Sections 33000 *et seq.*).

“Component” means, as the context requires, any of the following or any property added thereto or substituted therefor pursuant to Section 7 hereof, but does not include any property released pursuant to Section 7:

- (i) [to come – make reference to Exhibit A]

“Cooperative Agreement” means the Cooperative Agreement, dated as of July 11, 2003, by and among the State, the City and TJPA, as the same may be amended, supplemented or otherwise modified from time to time.

“Fiscal Year” means the fiscal year of the City, which at the date of this Leaseback Lease is the period from July 1 to and including the following June 30.

“Lease and Use Agreement” means the Transbay Transit Center Program Lease and Use Agreement for the Temporary Terminal and Terminal, dated as of September 10, 2008, between TJPA and AC Transit, as the same may be amended, supplemented or otherwise modified from time to time.

“Leaseback Lease” means this Leaseback Lease, including any amendments or supplements hereto made or entered into in accordance with the terms hereof.

“Leaseback Lease Term” means the term of this Leaseback Lease, as provided in Section 2.2 hereof.

“Maximum Base Rental” means the amounts specified as such in Section 3.1 (a) hereof, as such amounts may be adjusted from time to time in accordance with the terms hereof, but does not include Additional Rental.

“Net Tax Increment Revenues” means all property tax increment revenues attributable to the State-owned Parcels, allocated to and received by the Successor Agency and pledged under the TIF Pledge Agreement as indebtedness to TJPA, but specifically excluding therefrom the following: (i) charges for San Francisco County administrative charges, fees, or costs; (ii) the portion of the tax increment revenues committed to the Successor Agency for fulfilling the Transbay Affordable Housing Obligation; (iii) a portion of the tax increment revenues equal to the percentage of such revenue that the Successor Agency is required to pay to all governmental entities as required by the Community Redevelopment Law; and (iv) the portion of the tax increment revenues equal to the percentage of such revenues that the State may mandate the Successor Agency to pay from time to time in the future, including, for example, any payments which the Successor Agency may be required to pay to the Education Revenue Augmentation Fund pursuant to Section 33681 *et seq.* of the Community Redevelopment Law.

“Pledged Revenues” means (i) Net Tax Increment Revenues, (ii) Annual Capital Contributions and (iii) all income from (i) and (ii) derived from the investments thereof.

“Property” means, collectively, all of the Components. “Property” also includes any property, or portion thereof, that by amendment hereto becomes subject to this Leaseback Lease and any property, or portion thereof, substituted for any of the Components pursuant to Section 7, but “Property” excludes any Component for which new property has been substituted, and any Component or property released, pursuant to Section 7 hereof.

“Rental Payments” means, with respect to Rental Payments due from the TJPA, all Base Rental and Additional Rental payable hereunder and, with respect to Rental Payments due from the City, all amounts specified as such in the TJPA Sublease and the City Sublease.

“Risk Manager” means the TJPA’s Chief Financial Officer or such other person or firm of favorable reputation, qualified and experienced in the field of insurance and risk management consultation as may from time to time be designated by the TJPA, and who may be employed by the TJPA.

“State” means the State of California.

“State-owned Parcels” means those parcels identified as “State-owned Parcels” under the Cooperative Agreement.

“Subleases” means, collectively, the TJPA Sublease and the City Sublease.

“Successor Agency” means the Successor Agency to the Redevelopment Agency of the City and County of San Francisco, also known as the Office of Community Investment and Infrastructure, a public body, organized and existing under the laws of the State.

“TIFIA Borrowing Conditions” means the conditions precedent to borrowing the TIFIA Loan under the TIFIA Loan Agreement.

“TIFIA Collateral Agency Agreement” means the Collateral Agency and Account Agreement, dated as of January 1, 2010, by and among TIFIA Collateral Agent, TJPA, and the TIFIA Lender, as amended by the First Amendment thereto, dated as of May 8, 2014, as further amended by the Second Amendment thereto, dated as of December 1, 2014, and as further amended, supplemented or otherwise modified from time to time.

“TIFIA Collateral Agent” means U.S. Bank National Association in its capacity as collateral agent under the TIFIA Collateral Agency Agreement (and any successor collateral agent appointed thereunder).

“TIFIA Lender” means the United States Department of Transportation, an agency of the United States of America, acting by and through the Federal Highway Administrator and acting as lender under the TIFIA Loan Agreement.

“**TIFIA Loan**” means the secured loan to be made by the TIFIA Lender to TJPA pursuant to the TIFIA Loan Agreement, subject to the satisfaction of the TIFIA Borrowing Conditions.

“**TIFIA Loan Agreement**” means the TIFIA Loan Agreement, dated as of January 1, 2010, as amended by the First Amendment thereto, dated as of May 8, 2014, by and between TJPA and the TIFIA Lender, as further amended by the Second Amendment thereto, dated as of December 1, 2014, [and the Third Amendment thereto, dated as of June 1, 2016,] and as further amended, supplemented or otherwise modified from time to time.

“**TIF Pledge Agreement**” means the Transbay Redevelopment Project Tax Increment Allocation and Sales Proceeds Pledge Agreement, dated as of January 31, 2008, by and among the City, the Successor Agency and TJPA, as the same may be amended, supplemented or otherwise modified from time to time.

“**TJPA Event of Default**” means an event described as such in Section 12.1 hereof.

“**Transbay Affordable Housing Obligation**” means certain affordable housing requirements, as described in Section 5027.1 of the California Public Resources Code, the Redevelopment Plan and the Implementation Agreement, and finally and conclusively determined by the California Department of Finance to be an enforceable obligation under Redevelopment Dissolution Law; this obligation requires that 25 percent of all dwelling units developed within the Project Area (as defined in the Redevelopment Plan) shall be available at affordable housing cost to, and occupied by, persons and families whose incomes do not exceed 60 percent of the area median income, and that at least an additional 10 percent of all dwelling units developed within the Project Area shall be available at affordable housing cost to, and occupied by, persons and families whose incomes do not exceed 120 percent of the area median income.

Section 2. Leaseback Lease; Term.

Section 2.1 Leaseback Lease. The City hereby subleases the Property to the TJPA and the TJPA hereby subleases the Property from the City on the terms and conditions hereinafter set forth. The TJPA shall take possession of the Property on the Closing Date. The TJPA hereby agrees and covenants that during the term hereof, except as hereinafter provided, it will use the Property for public purposes so as to afford the public the benefits contemplated hereby and so as to permit the City to carry out its agreements and covenants contained in the TJPA Sublease, and the TJPA hereby further agrees and covenants that during the term hereof that it will not abandon or vacate the Property.

Section 2.2 Term. Subject to the next succeeding paragraph of this Section 2.2, with respect to each Component, the term of this Leaseback Lease with respect to such Component shall begin on the Closing Date and end on the earliest of: (a) the date set forth with respect to such Component in Exhibit B hereto (and in the case of any Property which is added to or substituted for a Component pursuant to Section 7.2 hereof, the date set forth in Exhibit B with respect to such additional or substituted Component), (b) the date all Base Rental related to such Component is paid in full, (c) the date of termination of this Leaseback Lease with respect

to such Component due to casualty or condemnation in accordance with the terms of Section 5 or 6 hereof, (d) the date of release of such Component in accordance with the terms of Section 7.2 hereof, or (e) the date both the TJPA Site Lease and the TJPA Sublease terminate.

Notwithstanding anything to the contrary contained herein, including without limitation the provisions of Section 3.1 hereof, so long as the TJPA Site Lease and the TJPA Sublease remain in effect, the term of this Leaseback Lease with respect to each Component subject to the TJPA Site Lease and the TJPA Sublease at such time shall be extended until such date as neither the TJPA Site Lease nor the TJPA Sublease remains in effect and all obligations thereunder have been satisfied.

Upon the termination or expiration of this Leaseback Lease, all right, title and interest in and to the Property shall vest in the TJPA. Upon any such termination or expiration, the City shall execute such conveyances, deeds and other documents as may be necessary to affect such vesting of record.

Section 3. Rent.

Section 3.1 Rental Payments. The TJPA hereby agrees to pay to the City Base Rental (in an amount up to the Maximum Base Rental) and the Additional Rental with respect to each Component, as provided herein, for the use, occupancy and possession of the Property for which such Maximum Base Rental is payable, all on the terms and conditions set forth herein. The TJPA shall be obligated to pay the Minimum Required Rental Payment in advance, and any Minimum Supplemental Rental Payment and Additional Rental, on the terms, in the amounts, at the times and in the manner hereinafter set forth.

a. Maximum Base Rental. Subject to Section 2.2 above, the Maximum Base Rental for each Component for each Base Rental Period shall be the amount set forth in Exhibit B with respect to such Component and shall become due and payable annually in advance on each Base Rental Payment Date during the Leaseback Lease Term. The TJPA hereby agrees to pay, from legally available funds, to the City the aggregate Maximum Base Rental for all Components for each Base Rental Period on the respective Base Rental Payment Date subject to reduction pursuant to Section 3.1(b) hereof.

b. Other Base Rental Payments. If at any time the City determines, based on its Base Rental payments due under the TJPA Sublease and the City Sublease, that Base Rental due from the TJPA is different in time or amount from the Maximum Base Rental payable by the TJPA under Section 3.1(a) above, the City shall deliver to the TJPA five business days before payment is due an invoice for the amount of Base Rental due. Such invoice shall attach a calculation or certificate demonstrating the amount of the corresponding Base Rental due from the City under the TJPA Sublease and the City Sublease. The TJPA shall make such Base Rental payment to or upon the order of the City in immediately available funds not later than 12:00 noon California time on the due date shown in the invoice.

c. No Payments in Excess of Aggregate Maximum Base Rental. Under no circumstances shall the TJPA be required to pay to or upon the order of the City during any Base

Rental Period amounts exclusive of Additional Rental in excess of aggregate Maximum Base Rental for such Base Rental Period.

d. Additional Rental. In addition to the Base Rental payments set forth herein, the TJPA agrees to pay to the City as Additional Rental any and all amounts payable by the City as Additional Rental under the TJPA Sublease and the City Sublease.

Section 3.2 Consideration. The Base Rental and Additional Rental for each Base Rental Period or portion thereof during the Leaseback Lease Term shall constitute the total rental for such Base Rental Period or portion thereof and shall be payable by the TJPA to or upon the order of the City for and in consideration for the use and possession, and the continued quiet use and enjoyment, of the Property by the TJPA for and during such Base Rental Period or portion thereof. The parties hereto have agreed and determined that the Rental Payments payable in respect of any Component during each such Base Rental Period are not in excess of the total fair rental value of such Component for such Base Rental Period. In making such determination, consideration has been given to the costs of acquisition and construction of each such Component, the uses and purposes served by each such Component, and the benefits therefrom that will accrue to the parties by reason of this Leaseback Lease and to the general public by reason of the TJPA's use of each such Component.

Section 3.3 Budget. The TJPA hereby covenants to include all Rental Payment due hereunder in each Fiscal Year in its annual budget and to make the necessary annual appropriations for all such Rental Payments, subject to Section 3.5 hereof. The covenants on the part of the TJPA herein contained shall be deemed to be and shall be construed to be ministerial duties imposed by law and it shall be the ministerial duty of each and every public official of the TJPA who bears direct or indirect responsibility for administering this Leaseback Lease to take such action and do such things as are required by law in the performance of such official duty of such officials to enable the TJPA to carry out and perform the covenants and agreements on the part of the TJPA contained in this Leaseback Lease. The obligation of the TJPA to make Rental Payments does not constitute an obligation of the TJPA for which the TJPA is obligated to levy or pledge any form of taxation or for which the TJPA has levied or pledged any form of taxation. Notwithstanding anything to the contrary contained herein, the obligation of the TJPA to make Rental Payments does not constitute an indebtedness of the TJPA within the meaning of any constitutional or statutory debt limitation or restriction.

Section 3.4 Payment. Amounts necessary to pay Rental Payments shall be paid by the TJPA on the dates set forth in Section 3.1 hereof in lawful money of the United States of America, at such place or places as may be instructed by the City. Except as provided in Section 3.5 hereof, any amount necessary to pay any Rental Payments that is not so deposited shall remain due and payable until received by the City. Notwithstanding any dispute between the TJPA and the City hereunder, the TJPA shall make all Rental Payments when due and shall not withhold any Rental Payments pending the final resolution of such dispute or for any other reason whatsoever. The TJPA's obligation to make Rental Payments in the amount and on the terms and conditions specified hereunder shall be absolute and unconditional without any right of set-off or counterclaim, and without abatement, subject only to the provisions of Section 3.5 hereof.

Section 3.5 Rental Abatement. Rental Payments due hereunder shall be subject to abatement to the extent, in the amount, and for the period that the City's obligation to make Rental Payments under the TJPA Sublease are subject to abatement. In the event of any such abatement, this Leaseback Lease shall continue in full force and effect, except as set forth in Sections 5 and 6 hereof.

Section 3.6 Triple Net Lease. This Leaseback Lease is intended to be a triple net lease. The TJPA agrees that the rentals provided for herein shall be an absolute net return to the City free and clear of any expenses, charges or set-offs whatsoever.

Section 3.7 Power and Authority. The TJPA represents and warrants to the City that the TJPA has the full power and authority to enter into, to execute and deliver this Leaseback Lease, and to perform all of its duties and obligations hereunder and thereunder, and has duly authorized the execution and delivery of this Leaseback Lease, and the Property is zoned for use for governmental related facilities. The City represents and warrants to the TJPA that the City has the full power and authority to enter into, to execute and deliver this Leaseback Lease, and to perform all of its duties and obligations hereunder, and has duly authorized the execution and delivery of this Leaseback Lease.

Section 3.8 Grant of Security Interest. The TJPA hereby grants to the City, as collateral security for the prompt and complete payment or performance in full when due of all Rental Payments, a security interest and continuing lien on all of TJPA's right, title and interest in, to and under all of the following property described in clauses (a) through (d) of this Section 3.8, in each case whether now or hereafter existing or in TJPA now has or hereafter acquires an interest and wherever the same may be located:

- a. all Pledged Revenues;
- b. all accounts, general intangibles and contract or other rights to receive Pledged Revenues;
- c. the TIFIA Collateral Agency Agreement, including all of TJPA's rights and interests to and in the funds, money and securities held thereunder (excluding amounts used to pay fees of the TIFIA Lender and TIFIA Collateral Agent); and
- d. to the extent not otherwise included above, all proceeds, products, accessions, rents and profits of or in respect of any of the foregoing.

Section 4. Affirmative Covenants of the City and the TJPA. The City and the TJPA are entering into this Leaseback Lease in consideration of, among other things, the following covenants:

Section 4.1 Replacement, Maintenance and Repairs. The TJPA shall, at its own expense, during the Leaseback Lease Term, maintain each Component, or cause the same to be maintained, in good order, condition and repair and shall repair or replace any Component which is destroyed, damaged or taken to such an extent that there is substantial interference with the use and possession of such Component by the TJPA which would result in an abatement of Rental Payments or any portion thereof pursuant to Section 3.5 hereof, unless the TJPA elects

not to repair or replace such Component in accordance with clause (ii) of the following sentence. In the event of damage, destruction or taking which results in an abatement of Rental Payments or any portion thereof pursuant to Section 3.5 hereof, the TJPA shall be required either to (i) apply sufficient funds from the insurance proceeds (including self-insurance), condemnation award and other legally available funds, if any, to the replacement or repair of such Component which has been damaged, destroyed or taken, or (ii) apply sufficient funds from the insurance proceeds (including self-insurance), condemnation award and other legally available funds, if any, in the manner that will enable to City to comply with its obligations under Section 4.1 of the TJPA Sublease.

The TJPA shall provide or cause to be provided all security service, custodial service, janitorial service and other services necessary for the proper upkeep and maintenance of each Component. It is understood and agreed that in consideration of the payment by the TJPA of the Rental Payments herein provided for, the TJPA is entitled to possession of each Component and the City shall have no obligation to incur any expense of any kind or character in connection with the management, operation or maintenance of such Component during the Leaseback Lease Term with respect to such Component. The City shall not be required at any time to make any improvements, alterations, changes, additions, repairs or replacements of any nature whatsoever in or to any Component. The TJPA hereby expressly waives the right to make repairs or to perform maintenance of any Component at the expense of the City and (to the extent permitted by law) waives the benefit of Sections 1932, 1941 and 1942 of the California Civil Code relating thereto. The TJPA shall keep each Component free and clear of all liens, charges and encumbrances other than encumbrances of this Leaseback Lease, the TJPA Sublease, the TJPA Site Lease and such other encumbrances as are permitted under the TJPA Sublease, subject only to the provisions of Section 4.2 hereof.

Section 4.2 Taxes, Other Governmental Charges and Utility Charges. The City and the TJPA contemplate that each Component will be used for a governmental or proprietary purpose of the TJPA and, therefore, that each Component will be exempt from all taxes presently assessed and levied with respect to such Component. Nevertheless, the TJPA hereby agrees to pay during the Leaseback Lease Term with respect to each Component as the same respectively become due, all taxes, utility charges and governmental charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to each such Component; provided, however, that, with respect to any governmental charges that may lawfully be paid in installments over a period of years, the TJPA shall be obligated to pay only such installments as are accrued during such time as this Leaseback Lease is in effect with respect to such Component; provided, further, that the TJPA may contest in good faith the validity or application of any tax, utility charge or governmental charge in any reasonable manner which does not adversely affect the right, title and interest of the TJPA or the City in and to any Component or its rights or interests under this Leaseback Lease or subject any portion of any Component to loss or forfeiture. Any such taxes or charges shall constitute Additional Rental under Section 3.1(d) hereof and shall be payable directly to the entity assessing such taxes or charges.

Section 4.3 Insurance. The TJPA shall secure and maintain or cause to be secured and maintained at all times with insurers of recognized responsibility or through a

program of self-insurance to the extent specifically permitted in this Section 4.3, all coverage on the Property required by this Section 4.3. Such insurance shall consist of:

a. A policy or policies of insurance against loss or damage to any Component known as “all risk” including earthquake. Such insurance shall be maintained with respect to the Property at any time in an amount equal to the lesser of (i) the full replacement value of the Property, and (ii) the Maximum Principal Amount. The term “full replacement value” as used herein shall mean the cost of repair or replacement of the affected Component, without deduction for depreciation. Such insurance may at any time include a deductible clause providing for a deductible not to exceed \$1,000,000 for all losses in any year; provided, however, that the TJPA ‘s obligations under this clause (a) may be satisfied by self-insurance satisfactory to the City; provided further, however, that if the TJPA and the City determine that earthquake coverage is not available on commercially reasonable terms, then earthquake insurance on the Property or any component thereof shall not be required by this clause (a);

b. Comprehensive general liability insurance against damages occasioned by reason of the construction of improvements to, or operation of, the Property. The policy or policies will provide coverage in the following minimum amount: \$5,000,000 combined single limit for bodily and personal injury, death and property damage per occurrence. Such liability insurance may be maintained as part of or in conjunction with any other liability insurance coverage carried by the TJPA. Such policies will name the TJPA as an insured party, and will name the City and such other persons as shall be instructed by the City as additional insured parties;

c. Rental interruption insurance to cover loss, total or partial, of the use of any Component as a result of any of the hazards covered by the “all risk” insurance required to be secured and maintained pursuant to clause (a) of this Section 4.3, in an amount sufficient at all times to pay the total rent payable under this Leaseback Lease with respect to such Component for a period adequate to cover the period of repair or replacement. Such policy shall provide that the amount payable thereunder shall not be less than an amount equal to two year’s Maximum Base Rental for all of the particular Components to which such insurance applies; and

d. A CLTA policy or policies of title insurance for all Components in an amount not less than the such amount as is required of the CLTA policy or policies required under Section 4.3 of the TJPA Sublease. Such policy or policies of title insurance shall show title to the particular Component covered by such policy in the name of the TJPA, subject to the TJPA Site Lease, the TJPA Sublease, the Leaseback Lease and such other encumbrances as will not, in the reasonable opinion of the TJPA, materially affect the use, occupancy and possession of the Component and will not result in the abatement of Rental Payments payable by the TJPA hereunder with respect to such Component.

All policies or certificates issued by the respective insurers for insurance shall provide that such policies or certificates shall not be cancelled or materially changed without at least 30 days’ prior written notice to the City and such other persons as shall

be instructed by the City. A certificate of an Authorized Representative stating whether all policies or self-insurance required by this Section 4.3 have been obtained and are in full force and effect shall be deposited with the City and such other persons as shall be instructed by the City by the TJPA on the Closing Date and on or before each anniversary of the Closing Date.

All policies or certificates of insurance provided for herein (other than title insurance policies) shall name the TJPA as a named insured, and the City or such other persons as shall be instructed by the City as loss payee. All proceeds of insurance maintained under clauses (a), (c) and (d) of this Section 4.3 shall be deposited with the City or such other persons as shall be instructed by the City for application pursuant to the provisions of the Trust Agreement. All proceeds of insurance maintained under clause (b) of this Section 4.3 shall be deposited with the TJPA.

Notwithstanding the generality of the foregoing, except as to the coverage required under clause (c) of this Section 4.3, the TJPA shall not be required to maintain or cause to be maintained more insurance than is specifically referred to above or any policies of insurance other than standard policies of insurance with standard deductibles offered by reputable insurers at a reasonable cost on the open market.

Notwithstanding anything herein to the contrary, the TJPA has the right to adopt alternative risk management programs to insure against any of the risks required to be insured against under this Leaseback Lease, including a program of self-insurance (other than for rental interruption insurance pursuant to clause (c) and title insurance pursuant to subsection (d)), in whole or in part; provided that (i) any such alternative risk management program has been approved as reasonable and appropriate risk management by the Risk Manager and the City, and (ii) any reserves set aside for such program will be certified at least annually on each June 15, commencing June 15, 2017, as to their adequacy by the Risk Manager in a certificate delivered to the City and such other persons as shall be instructed by the City. The City will not be responsible for the adequacy, sufficiency or coverage of the insurance or self-insurance required or allowed by this Section 4.3.

Section 4.4 Liens. The TJPA will promptly pay or cause to be paid all sums of money that may become due for any labor, services, materials, supplies or equipment alleged to have been furnished or to be furnished to or for, in, upon or about any Component and which may be secured by any mechanic's, materialman's or other lien against such Component, or the interest of the Trustee or the City therein, and will cause each such lien to be fully discharged and released; except, that the TJPA, or the City (a) may contest any such claim or lien without payment thereof so long as such non-payment and contest stays execution or enforcement of the lien, but if such lien is reduced to final judgment and such judgment or such process as may be issued for the enforcement thereof is not stayed, or if stayed and the stay thereafter expires, then and in any such event the TJPA will forthwith pay and discharge such judgment or lien, or (b) delay payment without contest so long as and to the extent that such delay will not result in the imposition of any penalty or forfeiture. Additionally, the City and the TJPA will not create or suffer to be created any lien, charge or encumbrance upon the Property or upon any real or personal property essential to the operation of the Property, except encumbrances of this

Leaseback Lease, the TJPA Sublease, the TJPA Site Lease and such other encumbrances as are permitted under the TJPA Sublease. The City and the TJPA will not sell or otherwise dispose of the Property or any other property essential to the proper operation of the Property.

Section 4.5 Laws and Ordinances. The TJPA agrees to observe and comply with all rules, regulations and laws applicable to the TJPA with respect to the Property and the operation thereof. The cost, if any, of such observance and compliance shall be borne by the TJPA, and the City shall not be liable therefor. The TJPA agrees further to place, keep, use, maintain and operate all Property in such a manner and condition as will provide for the safety of its agents, employees, invitees, subtenants, licensees and the public.

Section 4.6 Performance of City's Duties and Responsibilities. The TJPA and the City agree that any and all administrative or ministerial actions or determinations that the City is required to do or make pursuant to this Leaseback Lease may be performed by the TJPA on behalf of the City.

Section 5. Application of Insurance Proceeds.

Section 5.1 General. Proceeds of insurance received in respect of destruction of or damage to any portion of any Component by fire, earthquake or other casualty or event shall be paid to or upon the order of the City for application in accordance with the provisions of the TJPA Sublease, unless the TJPA elects to apply such proceeds to the repair or replacement of the portion of any Component which has been damaged or destroyed, whereupon if there has been an abatement of Rental Payments pursuant to Section 3.5 hereof, then Rental Payments without any abatement shall again begin to accrue with respect thereto upon repair or replacement of such portion of such Component.

Section 5.2 Title Insurance. Proceeds of title insurance received with respect to any Component shall be paid to or upon the order of the City for application in accordance with the provisions of the TJPA Sublease.

Section 6. Eminent Domain.

Section 6.1 Total Condemnation. If any Component, or so much thereof as to render the remainder of such Component unusable for the TJPA's purposes under this Leaseback Lease, shall be taken under the power of eminent domain, then if, and only if, the TJPA Site Lease and the TJPA Sublease are terminated with respect to such Component, this Leaseback Lease shall terminate with respect to such Component as of the day possession shall be so taken or as of the date of entry of the interlocutory judgment, and Base Rental with respect to such Component will be abated. Notwithstanding the foregoing, the City may substitute other real property or improvements for such Component and Base Rental will again begin to accrue with respect thereto upon substitution of the Component.

Section 6.2 Partial Condemnation. If less than a substantial portion of any Component shall be taken under the power of eminent domain, and the remainder is useable for the TJPA's purposes, then this Leaseback Lease shall continue in full force and effect as to the remaining portions of such Component, subject only to such rental abatement as is required by Section 3.5 hereof. The TJPA and the City hereby waive the benefit of any law to the contrary.

Section 6.3 Condemnation Awards. Any award made in eminent domain proceedings for the taking shall be paid to or upon the order of the City for application in accordance with the provisions of the TJPA Sublease unless the TJPA elects to apply such proceeds to the replacement of the condemned portion of any Component, whereupon if there has been an abatement of Rental Payments pursuant to Section 3.5 hereof, then Rental Payments without any abatement shall again begin to accrue with respect thereto upon replacement of Component.

Section 7. Assignment and Sublease: Addition, Substitution or Release of Property.

Section 7.1 Assignment and Sublease. Except as permitted by Section 7.2, the TJPA shall not mortgage, pledge, assign or transfer any interest of the TJPA in this Leaseback Lease by voluntary act or by operation of law, or otherwise; provided, however, that the TJPA may sublease all Property or any Component thereof, may grant concessions to others involving the use of the Property or any Component, whether such concessions purport to convey a leasehold interest or a license to use such Property or Component; [provided, further, however, that such sublease or grant shall be subject to the terms hereof]. Subject to the limitations set forth herein and in the Trust Agreement, the TJPA shall at all times remain liable for the performance of the covenants and conditions on its part to be performed under this Leaseback Lease, notwithstanding any subletting or granting of concessions which may be made. Nothing herein contained shall be construed to relieve the TJPA of its obligation to pay Base Rental and Additional Rental with respect to each Component as provided in this Leaseback Lease or to relieve the TJPA of any other obligations contained herein.

Section 7.2 Addition, Substitution or Release of Property. Notwithstanding Section 7.1 above, the City and the TJPA may release or substitute Property subject to this Leaseback Lease to the same extent such Property is released or substituted in the TJPA Site Lease and TJPA Sublease.

Section 8. Additions and Improvements; Removal. The TJPA and any sublessee or licensee shall have the right during the Leaseback Lease Term to make any additions or improvements to any Component, to attach fixtures, structures or signs, and to affix any personal property to any Component, so long as the fair rental value of the Component is not thereby reduced. Title to all fixtures, equipment or personal property placed by the TJPA on any Component shall remain in the TJPA. Title to any personal property, improvements or fixtures placed on any Component by any sublessee or licensee of the TJPA shall be controlled by the sublease or license agreement between such sublessee or licensee and the TJPA, which sublease or license agreement shall not be inconsistent with this Leaseback Lease.

Section 9. Right of Entry. Representatives of the City shall, subject to reasonable security precautions, have the right to enter upon any Component during reasonable business hours (and in emergencies at all times) (a) to inspect the same, (b) for any purpose connected with the rights or obligations of the City under this Leaseback Lease, or (c) for all other lawful purposes.

Section 10. Quiet Enjoyment. The City covenants and agrees that the TJPA, upon keeping and performing the covenants and agreements herein contained, shall, at all times during the Leaseback Lease Term, peaceably and quietly have, hold, and enjoy the Property.

Section 11. Indemnification and Hold Harmless Agreement. To the extent permitted by law, the TJPA hereby agrees to indemnify and hold the City and its officers and employees harmless against any and all liabilities which might arise out of or are related to the Property, and the TJPA further agrees to defend the City and its directors in any action arising out of or related to the Property; provided that any such indemnification and obligation to defend shall not apply in the case of the negligence or willful misconduct of the City. The City and its officers, agents and employees, shall not be liable to the TJPA or to any other party whomsoever for any death, injury or damage that may result to any person or property by or from any cause whatsoever in, on or about any Component.

Section 12. Events of Default and Remedies.

Section 12.1 Default by TJPA. If the TJPA shall fail to pay to the City any Base Rental with respect to any Component as and when the same shall become due and payable, or shall breach any other terms, covenants or conditions contained herein and shall fail to remedy any such breach with all reasonable dispatch within a period of 60 days after written notice thereof from the City, or its assignee, to the TJPA, or, if such breach cannot be remedied within such 60-day period, shall fail to institute corrective action within such 60-day period and diligently pursue the same to completion, then and in any such event the TJPA shall be deemed to be in default hereunder.

Section 12.2 Remedies on Default by TJPA. Upon a failure or breach as described in Section 12.1, the City will have the right, without any further demand or notice, to enforce all of its rights and remedies under this Leaseback Lease, including the right to recover Base Rental payments as they become due under this Leaseback Lease pursuant to Section 1951.4 of the California Civil Code by pursuing any remedy available in law or in equity, other than by terminating the Leaseback Lease or reentering and reletting the Property or any Component thereof, or except as expressly provided herein. Notwithstanding any other provision of this Leaseback Lease, in no event will the City have the right to accelerate the payment of any Base Rental hereunder.

Each and every remedy of the City hereunder is cumulative and the exercise of one remedy shall not impair the right of the City to any or all other remedies. If any statute or rule of law validly shall limit the remedies given to the City, the City nevertheless shall be entitled to whatever remedies are allowable under any statute or rule of law.

Section 12.3 Default by City. The failure of the City to observe and perform any covenants, agreements or conditions on its part in this Leaseback Lease contained, including under Section 10 hereof, if such failure shall have continued for a period of 60 days after written notice thereof, specifying such failure and requiring the same to be remedied, shall have been given to the City, by the TJPA, shall constitute a City Event of Default under this Leaseback Lease; provided, however, that if in the reasonable opinion of the City the failure stated in the notice can be corrected, but not within such 60 day period, such failure shall not constitute a City

Event of Default if corrective action is instituted by the City within such 60 day period and the City shall diligently and in good faith cure such failure in a reasonable period of time. In each and every case upon the occurrence and during the continuance of a City Event of Default by the City hereunder, the TJPA shall have all the rights and remedies permitted by law.

Section 13. Waiver. The waiver by the City or its assignee of any breach by the TJPA, and the waiver by the TJPA of any breach by the City of any term, covenant or condition hereof shall not operate as a waiver of any subsequent breach of the same or any other term, covenant or condition hereof.

Section 14. DISCLAIMER OF WARRANTIES. NEITHER THE CITY NOR ANY PERSON ACTING ON ITS BEHALF HAS MADE OR MAKES ANY WARRANTY OR REPRESENTATION AS TO THE PAST, PRESENT OR FUTURE CONDITION OF THE PROPERTY NOT HEREIN EXPRESSED, AND THE TJPA HAS ENTERED INTO THIS LEASEBACK LEASE WITHOUT REPRESENTATIONS OR WARRANTIES WITH RESPECT THERETO ON THE PART OF THE CITY, ITS AGENTS, REPRESENTATIVES OR EMPLOYEES.

Section 15. Notices. All notices, requests, demands and other communications under this Leaseback Lease shall be in writing (unless otherwise specified herein) and shall be sufficiently given on the date of service if served personally upon the person to whom notice is to be given or on receipt if sent by telex or other telecommunication facility or courier or if mailed by registered or certified mail, return receipt requested, postage prepaid, and properly addressed as follows:

if to the City: City and County of San Francisco
City Hall, 1 Dr. Carlton B. Goodlett Place,
Room 316
San Francisco, California 94102
Attention: City Controller;

if to the TJPA: Transbay Joint Powers Authority
201 Mission Street, Suite 2100
San Francisco, CA 94105
Attention: Executive Director

or to such other address or addresses as any such person shall have designated to the others by notice given in accordance with the provisions of this Section 15.

Section 16. Validity. If anyone or more of the terms, provisions, promises, covenants or conditions of this Leaseback Lease shall to any extent be adjudged invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction; then each and all of the remaining terms, provisions, promises, covenants and conditions of this Leaseback Lease shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.

If for any reason this Leaseback Lease will be held by a court of competent jurisdiction to be void, voidable or unenforceable by the City or by the TJPA, or if for any reason it is held by such a court that any of the covenants and agreements of the TJPA hereunder, including the covenant to pay Base Rental and Additional Rental hereunder, is unenforceable for the full term hereof, then and in such event for and in consideration of the right of the TJPA to possess, occupy and use the Property, which right in such event is hereby granted, this Leaseback Lease will thereupon become and will be deemed to be a sublease from year to year under which the annual Base Rental payments and Additional Rental payments herein specified will be paid by the TJPA.

Section 17. Execution in Counterparts. This Leaseback Lease may be executed in several counterparts, each of which shall be deemed to be an original, and all of which together shall constitute but one and the same agreement.

Section 18. Law Governing. This Leaseback Lease is made in the State under the Constitution and laws of the State and is to be so construed.

Section 19. Amendment. This Leaseback Lease may be amended only by written agreement of the City and the TJPA.

Section 20. Excess Payments. Notwithstanding anything contained herein to the contrary, if for any reason, including but not limited to damage, destruction, condemnation, transfer, sale or disposition, the TJPA or the City receive payments, proceeds or awards with respect to any Component in excess of the amount necessary for the City to pay or provide in accordance with the TJPA Sublease, such excess shall represent the TJPA's equity interest in such Component and shall be paid to the TJPA.

Section 21. No Merger. If the TJPA's estates under this Leaseback Lease or the TJPA Site Lease or any other lease relating to any Component shall at any time by any reason become vested in one owner, this Leaseback Lease and the estate created hereby shall not be destroyed or terminated by the doctrine of merger unless the TJPA so elects as evidenced by recording a written declaration so stating, and, unless and until the TJPA, so elects, the City and the TJPA shall continue to have and enjoy all of their respective rights and privileges as to the separate estates.

Section 22. Further Assurances and Corrective Instruments. The TJPA and the City agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Property or any Component leased hereby or intended to be so leased or for carrying out the express intention of the Leaseback Lease.

Section 23. No Sovereign Immunity. The TJPA is subject to civil and commercial law in respect of its obligations under this Leaseback Lease, and the execution, delivery and performance of this Leaseback Lease constitutes a commercial act rather than a public or governmental act; however, (i) the substantive provisions and procedural requirements of California civil law and commercial law which apply to the TJPA are, in many respects, different

from the substantive provisions and procedural requirements which would apply to other persons under similar circumstances; (ii) California law limits the exercise of prejudgment and postjudgment remedies against public entities, including the TJPA; and (iii) a court may not strictly enforce certain covenants if it concludes that enforcement would be unreasonable under the circumstances. To the extent that the TJPA is entitled to any immunity from suit, it hereby waives such immunity to the fullest extent permitted by law.

Section 24. Omitted.

Section 25. Limited Liability. Nothing contained herein will be construed as creating any liability on any officer, director, or employee of the TJPA or the City, individually or personally, to perform any covenant, duty or obligation of any kind contained in this Leaseback Lease, and under no circumstances will any officer, director, or employee of the TJPA or the City be liable, individually or personally, for the payment of any fees, costs, indebtedness or expenses related to or arising from the Leaseback Lease or any documents related hereto.

Section 26. City Requirements. Additional requirements of the City with respect to this Leaseback Lease are attached as Exhibit C and are incorporated by reference herein, and, by executing this Leaseback Lease, the TJPA is agreeing to comply with those provisions.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties have executed this Leaseback Lease as of the date first above written.

CITY AND COUNTY OF SAN FRANCISCO, as Sublessor

By: _____
Director of Public Finance

APPROVED AS TO FORM:

By: _____
City Attorney

TRANSBAY JOINT POWERS AUTHORITY, as Sublessee

By: _____
Executive Director

APPROVED AS TO FORM:

By: _____
Legal Counsel

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

All that real property situated in the City and County of San Francisco, State of California, described as follows, and any improvements thereto:

[See attached pages]

EXHIBIT B

BASE RENTAL PAYMENT SCHEDULE

[See attached base rental schedules]

EXHIBIT C
CITY REQUIREMENTS