

**STAFF REPORT FOR CALENDAR ITEM NO.: 11
FOR THE MEETING OF: February 9, 2017**

TRANSBAY JOINT POWERS AUTHORITY

BRIEF DESCRIPTION:

Authorize the Executive Director to execute a Site License Agreement, in substantially the form attached, for the Transbay Transit Center (Transit Center) with Concourse Communications Group, LLC, a wholly owned subsidiary of Boingo Wireless, Inc. (Boingo), to provide neutral host distributed antenna system (DAS) services for a twenty-year term, with upfront payments to the TJPA totaling \$1,000,000, additional payments totaling a minimum \$2,500,000 and up to \$3,000,000 as carriers are signed, and minimum annual payments to the TJPA of 25% of gross revenue or \$125,000, whichever is greater.

EXPLANATION:

The DAS will provide enhanced cellular and radio coverage throughout the Transit Center, benefitting facility staff, tenants, and the public, and generating operating revenue for the TJPA.

As the DAS service provider, Boingo will fully design, install, implement, operate, and maintain the DAS at the Transit Center. Boingo will design the DAS to support multiple cellular carriers, including but not limited to AT&T, Sprint, T-Mobile, and Verizon. The DAS will, at a minimum, incorporate all current wireless communications and broadband data requirements for the four major wireless service providers. The DAS will also provide wireless radio frequency signals for frequencies other than those used by emergency responders. Anticipated frequencies include 160 MHz and 220 MHz, but the capability to expand will be included.

Boingo was selected for negotiations following a competitive procurement process. The TJPA issued Request for Proposals (RFP) 17-02 Neutral Host Distributed Antenna System Services on August 2, 2016. The RFP was sent to wireless service providers and firms with experience providing neutral host DAS services, as well as the contacts on the TJPA's contract opportunities mailing list. Proposals were received on September 13, 2016, from nine firms:

AT&T	American Tower	Boingo Wireless, Inc.
Crown Castle	DGP	ExteNet Systems
InSite Wireless Group	Mobilitie	Verizon Wireless

A five-member selection committee, composed of the TJPA Chief Financial Officer, TJPA Engineering Manager, subject matter experts from the TJPA's Program Management/Program Controls consultant and the Transit Center design team, and a staff member from the San Francisco Department of Technology, determined that seven firms fell into a competitive range and that those seven would be invited to interview.

Interviews were conducted with the seven shortlisted respondents on October 4 and 5, 2016. The selection committee's final scoring is shown in the following table. Three firms were then invited into negotiations: Boingo, ExteNet Systems, and Verizon Wireless, with Boingo ultimately selected as the partner whose proposal offered the best value to TJPA.

<u>Firm</u>	<u>Panelist A</u>	<u>Panelist B</u>	<u>Panelist C</u>	<u>Panelist D</u>	<u>Panelist E</u>	<u>Total Score</u>
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AT&T	105	93	91	117	94	500
Boingo Wireless, Inc.	108	98	108	114	110	538
Crown Castle	102	95	99	106	108	510
ExteNet Systems	108	92	105	108	120	533
InSite Wireless Group	107	80	91	106	109	493
Mobilitie	109	81	97	100	103	490
Verizon Wireless	118	95	101	112	113	539

While all firms are well qualified to provide the scope of services, Boingo's proposal for a 20-year term provides the greatest benefit to the Program. For a ten-year term, Boingo offered upfront payments totaling \$1,250,000, and \$1,500,000 at year ten for a ten-year renewal. For a twenty-year term, the upfront payments would be increased by \$1,000,000, in lieu of the \$1,500,000 payment at year ten. A net present value calculation indicates that the TJPA would need to achieve a 4% return per year on a \$1,000,000 investment to yield \$1,500,000 in ten years. However, in analyzing Boingo's 10- and 20-year options, staff considered not only the total dollar amount, but also the timing of the payments in relation to the operational revenue needs of the Program.

In addition to the upfront payment, additional payments totaling \$1,750,000 will be made as Boingo signs on the second, third, and fourth wireless service providers. On an ongoing basis, payments to the TJPA would be 25% of gross revenue or a minimum annual guarantee (MAG) of \$125,000, whichever is greater. The table below summarizes the financial proposals from the three firms:

	Boingo	ExteNet Systems	Verizon Wireless
Payment Structure	Revenue Share (\$125k MAG)	Revenue Share (\$125k MAG)	License Fee¹
Upfront Payment ¹	\$4,000,000	\$3,000,000	-
Estimated Minimum Annual Revenue	\$125,000	\$125,000	\$240,000
Ten-Year Estimated Annual Revenue Total ²	\$1,250,000	\$1,250,000	\$2,627,933
Twenty-Year Estimated Annual Revenue Total ²	\$2,500,000	\$2,500,000	\$5,831,369
Grand Total (Upfront Pmts + Annual Revenue)	\$6,500,000	\$5,500,000	\$5,831,369

¹ For comparison purposes, assumes four carriers are signed in the first year and uses MAG for Boingo and ExteNet versus revenue projections

² Totals for Verizon include annual escalation at 2%

The schedule of payments as agreed to by Boingo in the attached Site License Agreement are as follows:

- \$500,000 within 10 days of Site License Agreement execution
- \$500,000 within 45 days of Site License Agreement execution
- \$1,250,000 within 30 days of execution of a Carrier Agreement with the first carrier (or within 270 days of Site License Agreement execution, whichever is earlier)
- \$750,000 within 30 days of execution of a Carrier Agreement with the second carrier

- \$500,000 each within 30 days of execution of a Carrier Agreement with the third and fourth carriers

Given the above payment schedule, TJPA will receive at least \$2.25 million prior to the commencement of Transit Center operations. If the original 20-year term is renewed, an additional \$1.5 million will be paid upon commencement of the renewal term.

Boingo is a leader in the design, installation, operation, and management of both DAS and Wi-Fi networks. They are the largest independent provider of indoor DAS in the United States. The firm provides wireless services in half of North America's 50 largest airports, and manages and operates the DAS network in the busiest transit terminal in the nation—the Port Authority Bus Terminal in New York City—as well as at PATH subway stations and the new World Trade Center.

Key points in the Agreement include:

- The DAS will be installed and ready for carriers to connect no later than December 31, 2017.
- Should fewer than four carriers be signed five years from the effective date, Boingo guarantees carrier payments totaling \$2.5 million at that time.
- Boingo will maintain a monitoring center 24 hours a day, 7 days a week, and will respond to any outages within 20 minutes.
- The DAS will provide frequencies for operational and maintenance staff radios throughout the Transit Center.
- The DAS will be upgraded as improved technology is implemented for carrier use.
- Boingo's DAS equipment will not interfere with the TJPA's Wi-Fi system or emergency responders' communication system.

RECOMMENDATION:

Staff recommends that the TJPA Board of Directors authorize the Executive Director to execute the Site License Agreement in substantially the attached form for the Transbay Transit Center with Boingo Wireless, Inc., for a twenty-year term, with upfront payments to the TJPA totaling \$1,000,000, additional payments totaling a minimum \$2,500,000 and up to \$3,000,000 as carriers are signed, and minimum annual payments to the TJPA of 25% of gross revenue or \$125,000, whichever is greater.

ENCLOSURES:

1. Resolution
2. Site License Agreement
3. Selection Committee Report

**TRANSBAY JOINT POWERS AUTHORITY
BOARD OF DIRECTORS**

Resolution No. _____

WHEREAS, The Transbay Joint Powers Authority (TJPA) wishes to provide enhanced cellular and radio services to the operator, tenants, and other users of the Transbay Transit Center while generating revenue for the Program; and

WHEREAS, On August 2, 2016, the TJPA issued Request for Proposals 17-02 Neutral Host Distributed Antenna System (DAS) Services; and

WHEREAS, On September 13, 2016, the TJPA received nine proposals in response to the RFP, a selection committee convened to evaluate the proposals for technical merit, and seven firms were shortlisted and invited to interview; and

WHEREAS, The selection committee ranked Concourse Communications Group, LLC, a wholly owned subsidiary of Boingo Wireless, Inc. (Boingo), ExteNet Systems, Inc., and Verizon Wireless as the three highest-ranked respondents and determined that all three are well qualified to provide the scope of services; and

WHEREAS, Staff conducted additional due diligence and held discussions with the three highest-ranked firms and concluded that Boingo offers a payment structure that provides the greatest benefit to the Program; and

WHEREAS, Staff has negotiated a Site License Agreement with Boingo Wireless, LLC, for a twenty-year term, with upfront payments totaling \$1,000,000, additional payments totaling a minimum of \$2,500,000 and up to \$3,000,000 at the signing of the second, third and fourth wireless service providers, and payments to the TJPA of 25% of gross revenues or a minimum annual guarantee of \$125,000, whichever is greater; now, therefore, be it

RESOLVED, That the TJPA Board of Directors authorizes the Executive Director to execute a Site License Agreement in substantially the form attached to the staff report with Boingo Wireless, LLC, for a twenty-year term with the financial terms described above.

I hereby certify that the foregoing resolution was adopted by the Transbay Joint Powers Authority Board of Directors at its meeting of February 9, 2017.

Secretary, Transbay Joint Powers Authority

SITE LICENSE AGREEMENT

(DAS Services)

This Site License Agreement (the “**Agreement**”) entered into this ____ day of February, 2017, (the “**Effective Date**”) by and between Transbay Joint Powers Authority, located at 201 Mission Street Suite 2100, San Francisco, CA 94105 (“**TJPA**” or “**Licensor**”), Concourse Communications Group, LLC, a Delaware limited liability company and wholly owned subsidiary of Boingo Wireless, Inc., with offices located at 10960 Wilshire Blvd., 23rd Floor, Los Angeles, CA 90024, (“**Boingo**”) and Boingo Wireless, Inc., a Delaware corporation with offices located at 10960 Wilshire Blvd., 23rd Floor, Los Angeles, CA 90024 (“**Guarantor**”).

BACKGROUND:

Licensor is the owner and manager of the Transbay Transit Center located at 425 Mission Street, San Francisco, California (the “**Site**”) and desires to engage Boingo to implement a distributed antenna system(s) including equipment related thereto for cellular reinforcement (“**DAS**” or “**System**”) throughout the Site to support cellular service and;

Licensor desires Boingo to design, install, operate, manage and own the System throughout the Site on an exclusive basis (except as otherwise provided herein), and Boingo desires to do so and to provide the System and associated services to Licensor subject to the provisions of this Agreement.

AGREEMENT:

In consideration of the mutual covenants, terms, conditions, privileges and obligations in this Agreement and intending themselves to be legally bound hereby, Licensor and Boingo agree as follows

ARTICLE 1 DEFINITIONS

SECTION 1.01 DEFINITIONS

Unless otherwise specifically indicated in this Agreement, the following words and phrases shall be defined as follows:

“**Approved Plans**” shall have the meaning set forth in Section 3.03(c).

“**Assigned Areas**” means the area or areas within the Site that are designated on Exhibit A (as such Exhibit may be amended from time to time by the parties) for use by Boingo, including space allocated within equipment rooms, communications closets or portions thereof, rooftop space or enclosures, ingress and egress over and through the Site to provide utility services, antenna locations and any other areas that may be required to operate the System in accordance with the terms of this Agreement.

“**Carrier Agreement**” means an agreement between a Licensed Wireless Service provider and Boingo pursuant to which Boingo grants to such provider the right to use the DAS for providing Licensed Wireless Services at the Site.

“**Commencement Date**” means the date the System is installed and becomes fully operational (i.e.

capable of providing services to carriers providing Licensed Wireless Services) in accordance with this Agreement.

“**Coverage Area**” means those areas of the Site property as designated in the coverage maps, attached to this Agreement as Exhibit B, where the coverage of the DAS will be available.

“**Gross Revenue**” means all fees billed by Boingo for use of or in connection with the DAS, provided that Gross Revenue shall not include: (a) capital contributions and/or capital cost reimbursements, or similar payments received from a Licensed Wireless Service provider for the installation, construction, upgrade and relocation of the System (if required by the Licensed Wireless Services providers), (b) any sales tax or excise tax or similar taxes or government charges stated separately and collected from the customer for remittance to the taxing authority, or (c) refunds and rebates.

“**Licensed Wireless Services**” means wireless services operating in frequency bands for which a license from the Federal Communications Commission (“FCC”) is required.

“**Percentage Fee**” means the portion of Gross Revenue due to Licensor from Boingo based upon the Revenue sharing percentages in Section 4.01 during the Term.

“**RFP**” shall have the meaning set forth in Section 7.07.

“**RFP Response**” shall have the meaning set forth in Section 7.07.

ARTICLE 2 TERM, TERMINATION AND LICENSES

SECTION 2.01 TERM

- A. The term of this Agreement shall commence upon the Commencement Date and shall terminate twenty (20) years after the Commencement Date (the “**Initial Term**”), subject to such earlier termination as provided for elsewhere herein. Thereafter, this Agreement may be extended upon the same terms and conditions contained in the Agreement, for one additional ten (10) year period, subject to payment of the renewal fee set forth in Section 4.01(C) upon mutual agreement of the parties (the “**Renewal Term**”). The parties may agree to additional terms and conditions applicable to such renewal. Together, the Initial Term and Renewal Term (if any) constitute the “**Term**” of this Agreement.
- B. Upon expiration of the Term, Boingo shall cease operating the DAS. If Boingo remains in the Assigned Areas for more than ninety (90) days after the end of the Term without the permission of Licensor or after the effective date of a notice to terminate from Licensor in addition to any other rights or remedies Licensor may have, all of the obligations of Boingo and all rights of Licensor applicable during the Term shall be equally applicable during such holdover period (including such ninety (90) day period) until such time as Boingo vacates the Assigned Areas.

SECTION 2.02 TERMINATION

- A. Licensor may, at its option terminate this Agreement: (i) upon ten (10) days written notice to Boingo, if Boingo fails to make payment when due of any sum required to be made to Licensor pursuant to this Agreement, (ii) upon notice to Boingo; if Boingo or Guarantor seeks to take advantage of any bankruptcy, insolvency, assignment for the benefit of creditors or other similar law; (iii) upon notice to Boingo, if there is filed against Boingo or

Guarantor any bankruptcy, insolvency, assignment for the benefit of creditors or other similar proceeding, which is not stayed within thirty (30) days of its commencement; or (iv) upon thirty (30) days written notice to Boingo if Boingo is in default of any other material provision of this Agreement, provided that in the cases of clauses (i) and (iv), the default is not cured within the applicable notice period and provided; further in the case of a default described in clause (iv), if Boingo commences to cure the default within the thirty (30) day notice period and is diligently seeking to complete such cure, such thirty (30) day cure period shall be extended for up to an additional thirty (30) days.

- B. Boingo may, at its option, terminate this Agreement: (i) upon notice to Licensor, if Licensor seeks to take advantage of any bankruptcy, insolvency, assignment for the benefit of creditors or other similar law; (ii) upon notice to Licensor, if there is filed against Licensor any bankruptcy, insolvency, assignment for the benefit creditors or other similar proceedings which is not stayed or dismissed within thirty (30) days of its commencement; or (iii) upon thirty (30) days written notice to Licensor, if Licensor is in default of any other material provision of this Agreement, provided that in the case of clause (iii), the default is not cured within the thirty (30) day notice period, and provided further, in the case of clause (iii) if the Licensor commences to secure the default within the thirty (30) day notice period and is diligently seeking to complete such cure, such thirty (30) day cure period shall be extended for up to an additional thirty (30) days.

SECTION 2.03 LICENSES

- A. Licensor hereby grants to Boingo during the Term an exclusive license to design, install, operate and maintain a DAS at the Site and to use the Assigned Areas as provided in this Agreement, provided that Boingo acknowledges and agrees that Licensor will be providing Wi-Fi services for Licensor's use and the use of the public, and that there will be installed a separate DAS for the use of Emergency Responders and provided further that nothing herein contained shall prohibit or limit any transit operator from installing and/or operating its own wireless communications system in the Site. Boingo will coordinate the System operation to avoid interference with the other wireless systems permitted to operate by the terms of this Agreement at the Site. The right to use the Assigned Areas for the installation of the DAS hereby granted includes the right to install, repair, replace, upgrade, maintain, operate and remove equipment (provided that equipment that is removed shall be replaced with equipment of at least equivalent functionality or is otherwise approved by Licensor) within the Assigned Areas. The Assigned Areas shall include space, reviewed and approved by TJPA, in the MDF and IDF rooms as is required for Boingo's headend, provided that such space shall not exceed 1000 square feet. Boingo hereby accepts the license granted to it in this sub-Section A and agrees to design, install and operate the System and to use the Assigned Areas in accordance with the terms of this Agreement.
- B. Subject to the terms of this Agreement and applicable law, Boingo shall have the exclusive right to determine who has access to the System for the provision of Licensed Wireless Services. Except as provided in sub-Section A, Licensor shall not provide any wireless services itself in the Site, nor shall it appoint or authorize any other persons to provide any wireless services in the Site or connect to the System.
- C. The DAS installed by Boingo shall cover the Coverage Area during the Term and any additional areas of the Site that the parties may agree upon in writing from time to time.
- D. Commencing upon execution of this Agreement, Boingo agrees to use commercially reasonable efforts to: (i) market the System; and (ii) execute at least 4 carrier access

agreements (including with the 4 major carriers) on terms generally applicable to such types of agreements.

- E. Except as provided in Section 7.08, any use by Boingo of Licensor's name or the name of the Site or trademarks, trademarks or logos applicable thereto shall be subject to the written approval of Licensor, which approval shall not be unreasonably withheld.

ARTICLE 3 ASSIGNED AREAS

SECTION 3.01 ASSIGNED AREAS

- A. Licensor shall provide the Assigned Areas to Boingo for the installation, repair, replacement, upgrade, expansion, maintenance, operation and removal of the System and associated equipment. Licensor will not unreasonably withhold, condition or delay its consent to requests by Boingo for additional Assigned Areas to expand the System. The Assigned Areas may be shared spaces serving multiple functions and may also be used by third parties, provided, however, that Boingo shall have the right to secure its equipment in shared spaces using commercially reasonable measures.
- B. Licensor represents and warrants that to its knowledge, the Site is in compliance with Environmental Requirements. "Environmental Requirements" shall mean all laws relating to environmental matters, including, without limitation, those relating to fines, orders, injunctions, penalties, damages, contribution, cost recovery compensation, losses or injuries resulting from the release or threatened release of Hazardous Materials and to the generation, use, storage, transportation, or disposal of Hazardous Materials. Hazardous Materials means any hazardous or toxic substances, materials or wastes, defined or regulated as such or that could reasonably be expected to give rise to liability under, any applicable Environmental Requirement.
- C. Except as described in the Approved Plans, Boingo shall not make any alteration, addition or improvement to the Assigned Areas without the prior written consent of Licensor, which will not be unreasonably withheld, conditioned or delayed by Licensor, provided that nothing in this Section 3.01(c) shall limit Boingo's right to make additions and improvements to the System so long as it does not alter the Assigned Areas without Licensor's consent.
- D. Licensor and its authorized representative may enter those Assigned Areas to which Boingo has been granted the exclusive right to use at any time without the consent of Boingo in case of emergency or for security or maintenance purposes.
- E. Licensor reserves the right to require the relocation of all or any portion of the Assigned Areas only if the relocation is required by Licensor (acting in a commercially reasonable manner) to facilitate Licensor's operations at the Site. Any relocation requests shall be provided to Boingo in writing from Licensor at least at least ninety (90) days in advance of such needed action, and Boingo shall be provided with commercially reasonable alternate space sufficient to provide its DAS services and meet its obligations under this Agreement without additional out of pocket cost to Boingo. The out of pocket costs of any relocation performed pursuant to this Section shall be borne by Licensor, and shall include all direct out of pocket relocation costs plus technical and engineering out of pocket costs and other commercially reasonable out of pocket costs resulting from the relocation, provided that such costs shall not include the relocation costs of any carrier. Any minimum guaranteed payments shall proportionately abate for the period of time that Boingo is unable to provide

its DAS services. Notwithstanding anything contained in this Section 3.01, Licensor shall have no responsibility for the cost of the following relocations, the cost of which shall be borne by Boingo: (a) temporary or incidental moves prior to the Commencement Date, (b) costs of relocation of antennae and associated equipment, and (c) relocations in connection with the Phase 2 buildout.

SECTION 3.02 INGRESS AND EGRESS

Boingo and its designated contractors shall have the right of ingress to and egress from the Assigned Areas at all times, subject, however, to the security procedures and all other rules and regulations from time to time enacted or established by Licensor. The right of ingress and egress shall be used jointly with other concessionaires and patrons of the Site. Boingo shall not interfere with the rights and privileges of any other persons or entities using the Site. Licensor shall provide access to equipment, fixtures, wiring and other personal property owned, leased or operated by Boingo at all times as provided in this Agreement.

SECTION 3.03 INSTALLATION AND REMOVAL OF THE SYSTEM

System Plans and Specifications. Before Boingo installs or constructs the System, or any part thereof, Boingo shall comply with the following requirements:

- A. System Planning. Licensor understands and acknowledges that Boingo requires the following documents and/or information from Licensor to begin planning and design of the System, and agrees to provide such items to Boingo in an expeditious manner:
 1. Master construction schedule; it being understood that while the entire Phase 1 of the Site will open on the same date, individual shops will open as they are built out.
 2. Requirements and process for receiving badges, security and site access;
 3. Review of any building information models (“BIM”) with the model owner for the duration of the design phase;
 4. Request that the DAS program be incorporated into the master schedule and identified for coordination by the prime general contractor;
 5. Access to or copies of mechanical, electrical, plumbing, low voltage, telecom, life safety and first responder system shop drawings (in as-built format if available), provided that prior to any such access to any document containing sensitive security related information, Boingo will be required to execute a non-disclosure agreement or similar document in form and substance satisfactory to Licensor.
 6. Reflected ceiling plan shop drawings (in as-built format if available);
 7. Schedule of all ceiling finishes; and
 8. Identification of TJPA owned pathways, (i.e., cable trays, conduits, risers, pathways) if any, that may be utilized by Boingo to expedite the System installation.
- B. Construction of System. Boingo may not construct or install the System in whole or in part, or modify any improvements or infrastructure on the Assigned Areas, except in accordance with the Approved Plans or as Licensor shall otherwise approve in writing and only after all necessary permits, licenses and governmental approvals have been

obtained. Boingo shall design, construct, install, operate and maintain the System in accordance with this Agreement and all applicable laws and regulations. Unless otherwise agreed in writing by Licensor, such design, construction, installation and operation shall be in accordance with the terms set forth in the RFP as such terms may be expressly modified by this Agreement. The System shall be installed and ready for carriers to connect to no later than December 31, 2017 (the "**Installation Date**"). Licensor agrees to assist Boingo in seeking trade support on an as-needed basis to Boingo for the System installation.

- C. Design/Construction Review. In connection with the construction or installation of the System, or the modification of the Assigned Areas, Boingo shall submit plans and specifications for such work (which plans and specifications shall be consistent with the RFP with such changes as Licensor may have approved in writing) in advance to Licensor for Licensor's approval (which shall not be unreasonably withheld, conditioned or delayed). If Licensor approves Boingo's preliminary plans and specifications, Boingo may proceed to finalizing the design, consistent with such approved plans and specifications. Licensor shall reasonably consider plans and specifications submitted by Boingo and shall respond in writing as soon as practicable and will use its good faith efforts to respond within thirty (30) days of receipt thereof. If Licensor has not approved or denied approval of the plans and specifications in writing (along with a reasonably detailed explanation of the reasons for the denial) within thirty (30) days of submission by Boingo to Licensor of such plans and specifications, then the Installation's Date shall be extended by the number of days over thirty (30) that Licensor takes in providing such approval or denial. In the event Licensor denies such approval, Boingo shall modify the plans and specifications to satisfy Licensor's reasons for the denial and shall then resubmit them to Licensor for approval pursuant to the same process including time periods contained in this Section 3.03(c) as applied to Boingo's original submission. As they may be from time to time modified with the approval of the Licensor and Boingo, such plans and specifications, as approved by Licensor, are herein referred to as the "Approved Plans".
- D. As Built Plans. Within ninety (90) days following the Commencement Date, Boingo shall furnish Licensor with a complete set of as-built drawings for the System.
- E. Construction Standards. Construction or modification of improvements to the Assigned Areas shall be constructed in a good and workmanlike manner, utilizing good industry practice for the type of work in question, and in compliance in all material respects with all applicable laws, including applicable building, electric and construction codes.
- F. Title to the System; Taxes. The System and all related equipment shall remain the sole property of Boingo except that title to all cabling and conduits installed by Boingo shall automatically transfer to Licensor upon termination of this Agreement. Each party shall be responsible for its own taxes associated with the System. Boingo shall be responsible for any applicable possessor interest tax attributable to the System or its rights under this Agreement.
- G. Liens. Boingo shall not permit mechanics' liens, materialmen's liens or any other liens attributable to it or its subcontractors to be filed or continued against the Site in connection with the System or otherwise. If any such lien is filed, Boingo shall not be in breach of this Agreement if Boingo causes the release and discharge of such lien in the manner required by the law of the state in which the lien has been filed, promptly and in any event within thirty (30) days after Boingo receives notice of such lien. If Boingo fails to timely discharge any such lien, Licensor may, at its option, in addition to any other remedy, it may have discharge the lien, and Boingo shall reimburse Licensor for all costs of discharging the lien

immediately upon demand.

- H. Removal. Following the expiration of the Term or earlier termination of this Agreement, Boingo shall within ninety (90) days remove its equipment from the Site, unless Licensor agrees otherwise at that time. In performing such removal, Boingo shall restore the Site to the condition it was in prior to the installation of the System, reasonable wear and tear excepted, but Boingo shall not remove any of the fiber optic or other cabling, wiring or conduit installed by Boingo and instead shall leave them in place in a manner that complies with all applicable local and national building codes. In addition, Boingo shall coordinate removal of all Licensed Wireless Services providers' equipment upon the expiration or termination of this Agreement pursuant to such Carrier Agreements.

ARTICLE 4 PAYMENTS AND RECORDS

SECTION 4.01 PAYMENTS BY BOINGO

- A. Entrant Fee. Boingo shall pay Licensor the following fixed fees:
- (i) \$500,000 within ten (10) days of the execution of this Agreement;
 - (ii) \$500,000 within forty-five (45) days of the execution of this Agreement; and
 - (iii) \$1,250,000 within the earlier of (x) thirty (30) days of the execution of a Carrier Agreement with the first carrier and (y) two hundred seventy (270) days after the Effective Date of this Agreement; \$750,000 within: thirty (30) days of the execution of a Carrier Agreement with the second, carrier, and \$500,000 each within thirty (30) days of the execution of a Carrier Agreement with each of the third and fourth carriers, provided that if \$2,500,000 hasn't been paid pursuant to this clause (iii) by the fifth anniversary of the Effective Date, the difference between \$2,500,000 and the amount paid pursuant to this clause (iii) shall be paid within forty-five (45) days of such anniversary.
- B. Percentage Fee. Boingo shall pay to Licensor a Percentage Fee of Twenty-Five Percent (25%) of Gross Revenue during the Term. Payments, if applicable, shall be made monthly in arrears beginning with end of the first calendar month after the Commencement Date. Boingo shall make payment within twenty (20) days of the end of each calendar month for which a Percentage Fee payment is due and shall send with each payment a remittance advice which shows the calculation in reasonable detail of the Gross Revenue and Percentage Fee upon which such payment was based. Payments shall continue on a monthly basis during the remainder of the Term and any lawful extensions thereof. To the extent that the aggregate Percentage Payments for any year during the Term are less than \$125,000, Boingo shall pay the difference to Licensor within thirty (30) days of the close of such year.
- C. Renewal Fee. Boingo shall pay to Licensor a Renewal Fee of \$1,500,000 upon commencement of the Renewal Term.
- D. Payments to Licensor. Except as provided below, all payments are to be made by check payable to Transbay Joint Powers Authority and delivered or mailed, postage prepaid, to:

Company Name: Transbay Joint Powers Authority

Address: 201 Mission Street, Suite 2100
San Francisco, California 94105
Billing Contact Name: Chief Financial Officer
Billing Contact Phone Number: (415) 597-4620
Billing Contact Email: sdebord@transbaycenter.org

Alternatively with respect to the payments referred to in sub-Section A, Licensor may elect by notice to Boingo at least ten (10) days prior to the due date, to have any such payments made by wire transfer to an account designated by Licensor.

ARTICLE 5 OPERATION OF THE SYSTEM AND PROVISION OF DAS SERVICES

SECTION 5.01 OPERATION OF THE SYSTEM

- A. Licensor shall provide copies of existing Site drawings, if any, that include information regarding the cable plant, cable trays, equipment rooms, power sources, fiber routes, and any other technical information reasonably requested by Boingo related to the installation, maintenance and operation of the System for use by carriers pursuant to Carrier Agreements. For the avoidance of doubt, Boingo is required to install all equipment necessary for the installation and operation of the System.
- B. Boingo shall operate the System twenty-four (24) hours per day, seven days per week, with the exception of routine shutdowns for maintenance purposes which shall take place only between the hours of 12:00 a.m. and 5:00 a.m. and any shutdowns that may be required because of emergencies.
- C. Boingo shall provide all necessary equipment, tools and supplies required by its staff for the installation and operation of the System. Licensor will in no way be responsible for any loss of such equipment due to hazards, vandalism, theft or any other reason.
- D. Zero Cost to Licensor. Boingo shall provide and pay the expense of all utility charges for the System's utility consumption and service to the Assigned Areas and the System, including fiber optic cables, auxiliary data, repairs, electricity and HVAC services. If Licensor incurs costs for such utility charges directly related to the System, Boingo shall reimburse Licensor for such amounts within forty-five (45) days after receipt of invoice. If dedicated metering is not available or is impractical, the parties shall mutually agree to a formula that approximates a utility fee in lieu of dedicated metering. Boingo shall repair, maintain and replace all utility lines located within the Assigned Areas which were installed by Boingo. Boingo shall also repair any infrastructure or finishes damaged by Boingo.
- E. Upgrades. Boingo shall use commercially reasonable efforts to work with carriers to enhance, upgrade and refresh the System from time to time.
- F. Boingo shall operate the DAS so that the Licensed Wireless Services of the carriers who are party to a Carrier Agreement are available 99.9% of the time over 95% of the required Coverage Area. Maintenance periods under Section 5.01(B) above shall not be considered when determining availability of such Licensed Wireless Services. In addition, Boingo shall adhere to the SLA requirements set forth on Exhibit C hereto.

SECTION 5.02 PERMITS AND LICENSES; INTERFERENCE

Boingo shall procure all permits and licenses it is required to maintain for the installation and operation of the System, pay all charges and fees, and give all notices necessary and incident to its performance of its obligations under this Agreement. If, within six (6) months after the Effective Date, Boingo is unable to procure the necessary permits and licenses upon commercially reasonable terms, after receiving assistance from Licensor, then, notwithstanding anything to the contrary in this Agreement, Boingo may terminate this Agreement without any further obligation to Licensor other than the payment referred to in Section 4.01A(i). Except for equipment or networks that Licensor is aware of and of which Licensor has advised Boingo in writing, and those referred to in the first sentence of Section 2.03A, Licensor shall not install, or authorize the installation of any equipment or other network at the Site that it has reason to believe is likely to cause interference with the System. The parties will work in good faith to minimize interference with any pre-existing or known contemplated wireless networks.

SECTION 5.03 GOVERNMENTAL COMPLIANCE

Boingo, its officers, agents, servants, employees, invitees, concessionaires, and any other persons over which Boingo has control or right of control, shall comply with all present and future laws, ordinances, orders, directives, rules, and regulations of the United States of America, state and local governments, and the respective agencies, departments or authorities of the foregoing, applicable to or affecting directly or indirectly Boingo or its operations and activities on or in connection with the DAS, including all applicable Environmental Requirements.

SECTION 5.04 ADDITIONAL RESTRICTIONS

Except for Boingo or other persons who are permitted to do so with Boingo's written consent (and then only to the extent of Boingo's written consent), Licensor will not, nor will Licensor authorize any person on or with access to the Site to: (i) access, damage, alter, tamper with, repair, impair, breach the security of, or interfere with, the System, or the installation, operation or maintenance of the System; (ii) take any action that would impair the privacy of communications traveling across the System; or (iii) take any action that Licensor intends to interfere with, delay, or impose any additional cost or expense upon Boingo with respect to Boingo's performance of, or obligations under, this Agreement, it being understood and agreed that actions taken by Licensor affecting the Site in general but not specifically directed at Boingo are not precluded hereby.

Licensor shall: (1) provide floor plans (in AutoCAD format if available) for all areas of the Site in which Boingo must perform work relating to the System; (2) provide points of contact who will: (A) facilitate building access, and (B) provide coordination on work schedules; (3) upon the written request by Boingo or as otherwise required by this Agreement, provide: (A) floor and/or wall space as depicted in Exhibit A; and (B) the space to install the necessary conduit and cabling, antennas and all other associated equipment for the System; and (4) otherwise render cooperation and assistance as reasonably requested by Boingo and its subcontractors pertaining to the installation of the System.

ARTICLE 6 INSURANCE AND INDEMNIFICATION

SECTION 6.01 INSURANCE

Boingo shall procure and maintain for the term of this Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of this Agreement by Boingo, its agents, representatives, employees or

subcontractors.

MINIMUM SCOPE OF INSURANCE

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$2,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
2. **Automobile Liability:** ISO Form Number CA 00 01 covering any auto (Code 1), or if Boingo has no owned autos, covering hired, (Code 8) and non-owned autos (Code 9), with limit no less than \$1,000,000 per accident for bodily injury and property damage.
3. **Workers’ Compensation:** as required by the State of California, with Statutory Limits, and Employer’s Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.
4. **Property Insurance:** against all risks of loss to any of Boingo’s property, at full replacement cost with no coinsurance penalty provision.
5. **Technology Professional Liability:** (Errors and Omissions) Insurance appropriate to Boingo’s responsibilities hereunder and operation of the System, with limits not less than \$2,000,000 per occurrence or claim, \$2,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Boingo in this Agreement and shall include, but not be limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations.

If Boingo maintains broader coverage and/or higher limits than the minimums shown above, Licensor requires and shall be entitled to the broader coverage and/or higher limits maintained by Boingo.

Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

Additional Insured Status

Licensor, its officers, officials, board members, employees, members and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of Boingo including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to Boingo’s insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 forms if later revisions used).

Primary Coverage

For any claims related to this Agreement, Boingo's insurance coverage shall be primary insurance coverage at least as broad as ISO CG 20 01 04 13 as respects Licensor, its officers, officials, board members, employees, members and volunteers. Any insurance or self-insurance maintained by Licensor, its officers, officials, employees, or volunteers shall be excess of Boingo's insurance and shall not contribute with it.

Notice of Cancellation

Each insurance policy required above shall provide that coverage shall not be canceled, except with thirty (30) days advance notice to Licensor.

Waiver of Subrogation

Boingo hereby agrees to waive rights of subrogation which any insurer of Boingo may acquire from Boingo by virtue of the payment of any loss. Boingo agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of Licensor for all work performed by Boingo, its employees, agents and subcontractors.

Self-Insured Retentions

Self-insured retentions must be declared to and approved by Licensor. Licensor may require Boingo to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise approved by Licensor.

Verification of Coverage

Boingo shall furnish Licensor with original certificate of insurance and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by Licensor before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive Boingo's obligation to provide them. Licensor reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Special Risks or Circumstances

Licensor reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

SECTION 6.02 INDEMNIFICATION

Boingo shall indemnify, defend and hold harmless Licensor and its officers, officials, board members, employees, agents, members, representatives, successors and assigns ("**Indemnified Parties**"), from and against any and all suits, actions, claims, losses, damages, liabilities, costs and expenses (including reasonable attorneys' fees and experts fees), arising from the breach of this Agreement by Boingo or Guarantor as well as those arising in connection with loss of life, bodily and personal injury or loss, damage or destruction of property (real or personal, and

regardless of ownership), which the Indemnified Parties or any of them may sustain, incur or suffer, which may be asserted against any of them, or to which any of them may become subject, arising out of the negligent acts, errors, omissions or willful misconduct of Boingo, its officers, directors, employees, representatives or agents (the "**Indemnifying Parties**"). Boingo's obligations are subject to the following conditions and obligations of Licensor: (i) Licensor must notify Boingo promptly in writing upon knowledge of any claim for which it may be entitled to indemnification under this Agreement; (ii) Licensor must permit Boingo to have the sole right to control the defense (with counsel approved by Licensor, which approval shall not be unreasonably withheld) and settlement of any such claim or lawsuit, provided that any such settlement shall unless otherwise approved by Licensor in writing, be only for monetary payments to be made by Boingo; (iii) Licensor must provide reasonable assistance to Boingo, at Boingo's expense, in the defense of such claim or lawsuit; and (iv) unless Boingo shall fail or cease to defend such claim, Licensor must not enter into any settlement agreement or otherwise settle any such claim or lawsuit without Boingo's express prior consent or request.

ARTICLE 7 GENERAL PROVISIONS

SECTION 7.01 ASSIGNABILITY AND SUBLICENSING

This Agreement and the rights and obligations arising hereunder will be binding upon and inure to the benefit of the parties and to their respective successors and assigns. Boingo shall not transfer or assign any of its rights or obligations hereunder without the prior written consent of Licensor, which consent will not be unreasonably withheld, conditioned or delayed. Any unauthorized assignment will be null and void. Boingo is permitted to enter into agreements with third parties to utilize the System with respect to Licensed Wireless Services, provided that all such agreements are subject to Licensor's prior approval, which shall not be unreasonably withheld, delayed or conditioned. Except as otherwise provided, this Agreement shall bind and inure to the benefit of the parties and their respective successors, representatives, heirs, and assigns.

SECTION 7.02 BOINGO INDEPENDENT CONTRACTOR

Nothing in this Agreement is intended or shall be construed to in any way create or establish the relationship of co-partners between Licensor and Boingo or as constituting Boingo, the representative or agent of Licensor for any purpose whatsoever.

SECTION 7.03 FORCE MAJEURE

Neither party shall be liable to the other for any failure, delay or interruption in performing its obligations hereunder (except for payment obligations) due to causes or conditions beyond its control, including, without limitation, fire, flood, explosion, war, embargo, government requirement, acts of civil or military authorities, acts of God or by the public enemy, acts or omissions of common carriers, strikes, boycotts, picketing, slow-downs, work stoppages or labor troubles of any other type whether affecting the parties, their contractors, or subcontractors.

SECTION 7.04 SEVERABILITY

Licensor and Boingo agree that if any Section or provision of this Agreement or any portion of any Section or provision shall for any reason be held to be void, illegal or otherwise unenforceable, all other portions of this Agreement shall nevertheless remain in full force and effect.

SECTION 7.05 NOTICES

Except as expressly set forth in this Agreement to the contrary, any consents, demands and other notices permitted or required to be given hereunder will be in writing and be deemed validly given (a) upon delivery, if personally delivered with service fees prepaid, (b) upon delivery or refusal of delivery, if sent, with fees prepaid, by reputable overnight courier that provides proof of delivery, or (c) upon delivery or refusal of delivery, if sent by United States mail, first class, postage prepaid, certified or registered, and return receipt requested. The foregoing will be the only permitted mechanism for delivery of such communications, and the addresses set forth below will be the proper addresses for notices provided hereunder. Either party, by means of a notice properly given hereunder, may change its address for purposes of receiving future notices hereunder. For purposes of clarity, any notice properly sent to a party's address identified below (or such other address as a party may give notice of hereunder) will be deemed validly given under this Agreement for all purposes until such time as notification of a different address for notice purposes hereunder has been given.

To Boingo:

Concourse Communications Group, LLC
c/o Boingo Wireless, Inc.
10960 Wilshire Boulevard 23rd Floor
Los Angeles, CA 90024
ATTN: VP Business Development
with a copy to: Legal Department (same address)

To Licensor:

Transbay Joint Powers Authority
201 Mission Street, Suite 2100
San Francisco, CA 94105
ATTN: Contracts Compliance Officer
and a second copy to:
ATTN: Facility Manager

SECTION 7.06 DISPUTE RESOLUTION AND GOVERNING LAW AND VENUE

- A. The parties will attempt in good faith to resolve any and all controversies of every kind and nature between the parties to this Agreement arising out of or in connection with the existence, construction, validity, interpretation, meaning, performance, non-performance, enforcement, operation, breach, continuance or termination of this Agreement (each, a "**Dispute**") promptly by negotiations between senior executives of the parties who have authority to settle the Dispute. The disputing party shall give the other party written notice (the "**Notice**") of the Dispute. Within twenty (20) days after receipt of the Notice, the receiving party shall submit to the other a written response (the "**Response**"). The Notice and Response shall each include (a) a statement of the composing party's position and a summary of the material evidence and arguments then known to the respective party supporting its position, and (b) the name and title of the executive who will represent that party. The executives shall meet at a mutually acceptable time and place within twenty (20) days of the date of the disputing party's Response and thereafter as often as they reasonably deem necessary to exchange relevant information and to attempt to resolve the Dispute. In the event that either party determines at any time after the initial meeting of executives that such executives are unable to resolve the Dispute within such period, each party shall have the right to pursue any other legal recourse or remedies available to it.
- B. This Agreement, its performance, and legal actions or proceedings to enforce or interpret its terms shall be construed in accordance with the laws of the State of California. In any action, special proceeding, or other proceeding that may be brought under or arising out of or because of this Agreement, the laws of the State of California shall be applied and shall govern to the exclusion of the law of any other forum, without regard to the jurisdiction in which the action or special proceeding may be instituted. Any action or proceeding brought by any party against any other party arising out of or related to this Agreement

shall be brought exclusively in the City of San Francisco.

SECTION 7.07 INCONSISTENCY WITH ANY OTHER DOCUMENT; ENTIRE AGREEMENT, MODIFICATIONS

- A. The Request for Proposals No. 17 – 02 Neutral Host Distributed Antenna System issued by Licensor on August 2, 2016 (the "RFP") and Boingo's response dated September 13, 2016 to the RFP (the "RFP Response") are hereby incorporated into and made part of this Agreement. In the event of any inconsistency, discrepancy or conflict between this Agreement, including its recitals and all exhibits and schedules and the RFP and the RFP Response, the following order shall control: (a) this Agreement; (b) the RFP; and (c) the RFP Response.
- B. This Agreement, together with the RFP and RFP Response constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior written and verbal agreements, representations or understandings between the parties. Any amendments to this Agreement must be in writing and executed by the parties.

SECTION 7.08 PUBLICITY

Notwithstanding the restrictions set forth in this Section, during the Term either party may publicly refer to the other party, orally and in writing, as a customer or vendor of or to the other party, as the case may be, after first obtaining the written consent of the other for the specific instance and application, which consent shall not be unreasonably withheld, conditioned, or delayed. In addition, either party may issue a press release announcing the execution of this Agreement with the prior written consent of the other, which consent shall not be unreasonably withheld, conditioned, or delayed.

SECTION 7.09 GUARANTY

- A. The Guarantor does hereby absolutely, unconditionally and irrevocably guaranteed to Licensor the due and punctual payment of each financial obligation of Boingo hereunder and the performance by Boingo of each of its other obligations hereunder. With respect to any such payment obligation, this is an unconditional guaranty of payment and not of collection and upon any default by Boingo in making any such payment Licensor may, at its option, proceed directly and immediately, without notice, against Guarantor to collect and recover the full amount of such unpaid payment obligation.
- B. No failure on the part of Licensor to exercise, and no delay in exercising, any right, remedy or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise by the Licensor of any right, remedy or power hereunder preclude any other or future exercise of any right, remedy or power. Each and every right, remedy and power hereby granted to the Licensor or allowed it by law or other agreement shall be cumulative and not exclusive of any other and may be exercised by the Licensor at any time or from time to time.
- C. The obligations of the Guarantor hereunder shall remain in full force and effect without regard to, and shall not be affected or impaired by any of the following, any of which may be taken without the consent of, or notice to, the Guarantor: (a) any amendment, modification, addition, supplement, extension or acceleration of or to any part of this Agreement; (b) any exercise or non-exercise by the Licensor of any right or privilege under this Agreement; or (c) any bankruptcy, insolvency, reorganization, dissolution, liquidation or other similar proceeding relating to Boingo or any affiliate of either Boingo or the

Guarantor.

- D. The Guarantor hereby unconditionally waives: (a) notice of acceptance of this Guaranty and notice of any liability to which it may apply; (b) diligence, presentment, demand of payment, protest, notice of dishonor or nonpayment or notice of any kind in connection with this Guaranty; (c) any right to require Licensor to marshal assets or proceed against or exhaust its recourse against Boingo or Guarantor or to pursue any other remedy before being entitled to payment from Guarantor or before proceeding against Guarantor for payment or performance of any obligation hereunder; (d) any defense based upon an election of remedies; (e) any defense that may arise by reason of (i) the lack of authority of Boingo or Guarantor or any other person, or (ii) the revocation or repudiation hereof by Guarantor or the revocation or repudiation of this Agreement by Boingo.

[Signature page follows this page]

IN WITNESS WHEREOF, this Agreement is duly executed on the Effective Date, by the parties to this Agreement, intending themselves to be legally bound by this Agreement.

CONCOURSE COMMUNICATIONS GROUP, LLC

By: _____

Title: _____

BOINGO WIRELESS, INC.

By: _____

Title: _____

TRANSBAY JOINT POWERS AUTHORITY

Approved as to Form by:

Mark Zabaneh, Executive Director

TJPA Legal Counsel

Transbay Joint Powers Authority
Board of Directors
Resolution No. _____
Adopted: _____
Attest:

Secretary, TJPA Board

EXHIBIT A
ASSIGNED AREAS

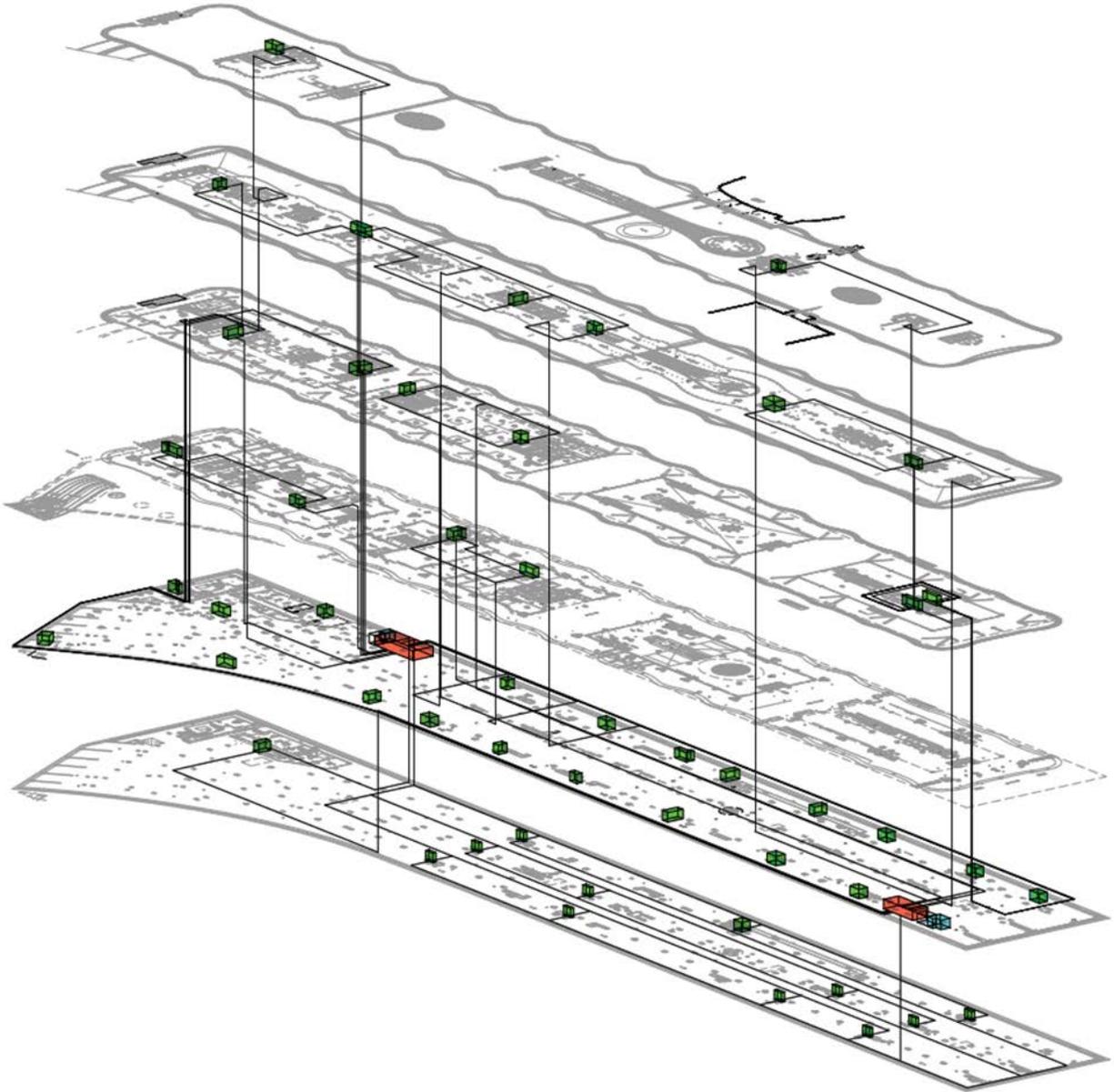


EXHIBIT B
COVERAGE AREA

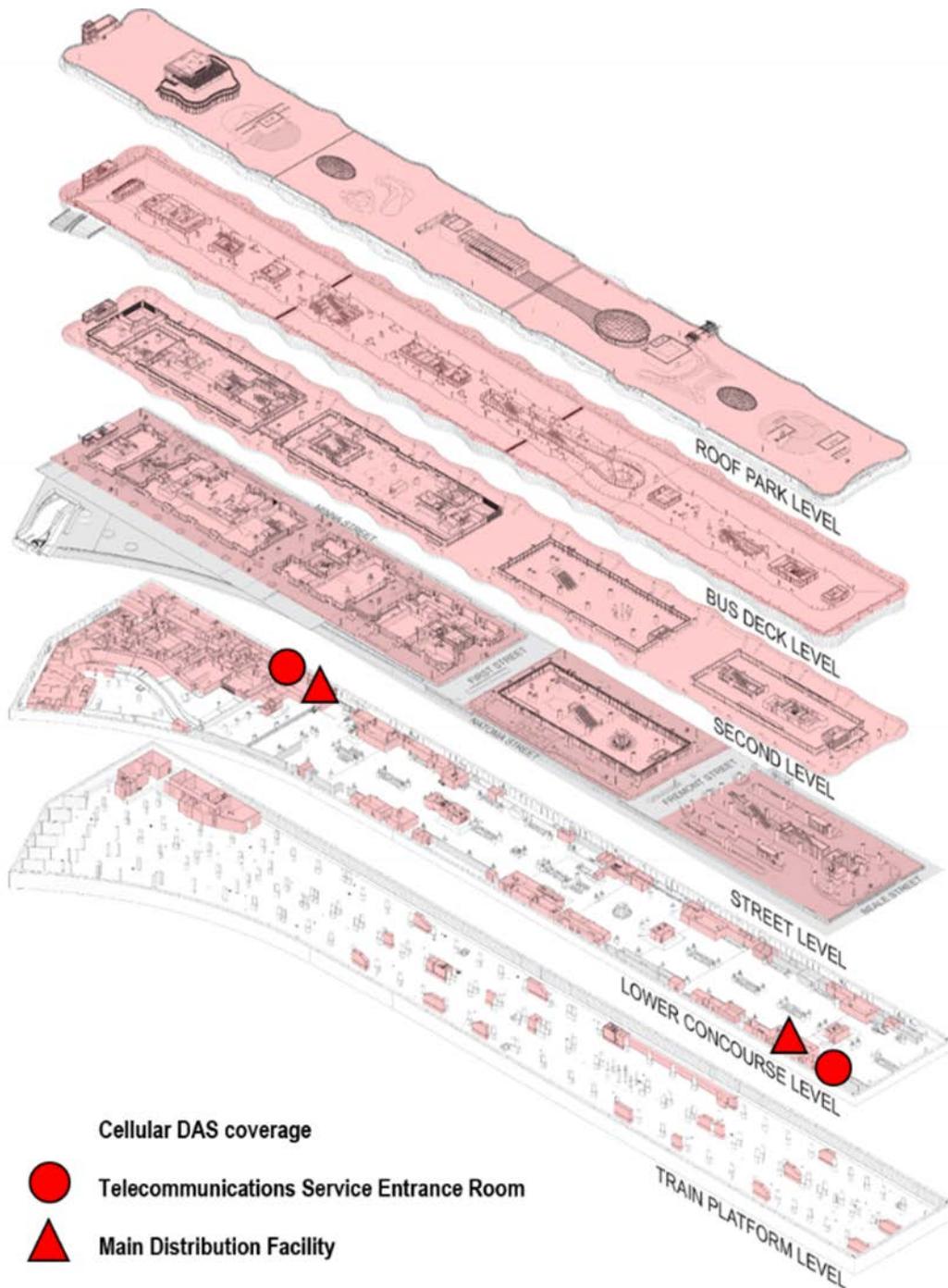


EXHIBIT C

SLA

1. System Availability

Boingo commits to having the System operational for use without degradation by all Carriers at least 99.9% of the time (0.999 x 24 hours/day x 365 days/year (and 366 days per leap year)). Boingo will follow [the procedures outlined in this Agreement to gain timely access to the System, as needed, to comply with the Alarm Notification and Resolution Times Matrix set forth in this Exhibit.

2. The Service Level Agreement applies to all owned and operated system components including components for Transbay operational frequencies and those that may be added in the future upon service operator request.

3. Operations Requirements

Boingo will maintain a twenty-four (24) hour per day, seven (7) day per week, three hundred sixty-five (365) day per year (and 366 days per leap year) System monitoring center and fault notification contact information (including a toll-free number) which will be provided to TJPA upon execution of this Agreement. The fault notification contact information will be utilized by TJPA or a designated party to report System issues and complaints from contractors, patrons or the Site staff that it becomes aware of. Boingo shall provide and maintain an equipment monitoring system which is satisfactory to all participating Carriers. Boingo must provide suitable telecommunications transport service for its equipment to accommodate remote monitoring of the System.

Boingo acknowledges and agrees that time is of the essence in the repair of any service impacting outages and that Boingo will use commercially reasonable efforts to perform the repairs as expeditiously as possible. Upon Boingo's receipt of a fault or alarm notification, Boingo will perform an initial remote diagnosis within twenty (20) minutes of the fault or alarm notification and determine the alarm priority according to the Alarm Priority Definitions and Schedule set forth below. In the event Boingo cannot promptly clear the fault or alarm notification, then Boingo will contact the Director of Operations and any other facilities personnel assigned to help troubleshoot the issue. If Boingo cannot clear the fault after such action, Boingo will perform a site visit. The purpose of the site visit would be to eliminate faults within the specified time required for the

criticality assigned. Upon confirmation of a maintenance related problem, Boingo will provide written notice to TJPA within 5 business days regarding the root cause of the problem and estimated time to repair.

4. Response Matrix for System

Alarm Notification and Resolution Times Matrix

CRITICAL	Issue Notify MTRR Ops Hours MTRR Non-Ops Hours Updates Escalate	70%-100% service outage at venue for any single Carrier 20 Minutes 6 hours 6 Hours Every 1 hour Immediately
HIGH	Issue Notify MTRR Ops Hours MTRR Non-Ops Hours Updates Escalate	30%-69% service outage at venue for any single Carrier 20 Minutes 12 hours 12 Hours Every 1 hour Immediately
MEDIUM	Issue Notify MTRR Updates Escalate	5%-29% service outage at venue for any single Carrier 20 Minutes 1 day Every 1 day 12 Hours
LOW	Issue Notify MTRR Updates Escalate	Single device outage (Amp, Antenna, RF>Fiber) 20 Minutes 5 days Every 1 day 2 Days

Severity Level Definitions

Critical:

Ability to provide service over the System has stopped altogether or more than 70% of the overall coverage has been lost or degraded. Critical problems will be worked on a 24 X 7 basis until resolved. TJPA may designate a primary contact to be the liaison to BOINGO within 2 hours of the initial notification available on a 24 X 7 basis to assess alternative solutions and discuss

System restoration.

Examples: System outage: primary power, generator or battery plant failures, inter-building fiber failure, RF interference or other related event.

High:

Service is seriously degraded affecting a large portion of the coverage area (30%-69%), but the System can process some traffic over the network. Severity High problems will be worked on a 24 x 7 basis until service is restored. Updates will be provided by Boingo to TJPA at a minimum of 12-hour intervals.

Examples: Carrier sector off line, IDF power failure affecting multiple sectors, main interface failure.

Medium:

Service is lost to 5%-30% of the coverage area. Medium Severity problems will be worked during regular local business hours, but will be resolved in accordance with the timeframe set forth in the response matrix.

Examples: Individual remote, antenna or coax damage or fiber / power infrastructure damage.

Low:

Minor issue or incident where some coverage area of System is affected, but operation of a majority of the System is intact. A definite problem is identified and will be resolved in accordance with the timeframe set forth in response matrix.

5. Availability

Boingo is required to provide 99.9% availability over 95% of the coverage area. Should any signals over the System become degraded for any reason, Boingo shall follow the processes and meet the standards outlined in Section 3 to bring the System back into operation. Availability is the percentage uptime of the System during a given time period, calculated as:

$$Availability = \left[1 - \left(\frac{Down\ Time}{Total\ Time} \right) \right] \times 100, \text{ followed by } \%$$

Where Total Time is the duration of the time period and Down Time is the total time of all Critical, High and Medium incidents. Incidents of Low priority and those outside of Boingo's control are excluded from Down Time.

As an example, for the case of a 30-day month, there will be a Total Time of 43,200 minutes with an acceptable Down Time of 43.2 minutes. Availability would be calculated as follows:

Availability (for calendar month x) = $[1 - (\text{Down Time} / \text{Total Time})] \times 100$, followed by %

Sample:

Total Time (for calendar month x) = 30 days = 43,200 minutes
 Down Time (for calendar month x) = 43.2 minutes
 Availability (for calendar month x) = $[1 - (43.2/43200)] \times 100$, followed by %
 =
 = **99.90%**

6. Service Credits

In the event that the service falls below the defined Service Availability, Boingo will pay to TJPA service credits for each month the Availability Percentage is not met based on the table below.

Availability Percent	Service Credit
99.89% to 99.5	Ten Percent (10%) of the Average Monthly Payment
99.49% to 99.0%	Twenty-Five Percent (25%) of the Average Monthly Payment
98.99% to 95.0%	Forty-Five Percent (45%) of the Average Monthly Payment
94.9% or less	One Hundred Percent (100%) of the Average Monthly Payment

For purposes hereof “Average Monthly Payment” shall mean the average of the monthly payments paid or payable to Licensor pursuant to Section 4.01(B) of this for the twelve preceding months in which the availability percentage was met, provided that for the first year following the Commencement Date, such average will be based on the number of preceding months in which the percentage was met.



Neutral Host Distributed Antenna System Selection Committee Report October 2016

Executive Summary and Recommendation

In response to Request for Proposals No. 17-02 for Neutral Host Distributed Antenna System, issued on August 2, 2016, the TJPA received nine proposals on September 13, 2016. A selection committee convened on September 21, 2016 to evaluate the proposals and shortlisted seven respondents. On October 4 - 5, 2016, the committee conducted oral interviews with the seven respondents and finalized its scoring.

Based on the criteria outlined in the RFP, the selection committee recommends that the TJPA move forward with additional due diligence and negotiations with the three highest ranked firms, **Boingo Wireless, Inc., ExteNet Systems and Verizon Wireless.**

Background

The TJPA issued a Request for Proposals (RFP) seeking proposals from qualified individuals and/or firms (Respondents) to enter into an exclusive licensing and services agreement for a Neutral Host Distributed Antenna System (Neutral Host DAS). The selected Respondent will fully design, install, implement, operate, and maintain the Neutral Host DAS. The Neutral Host DAS is intended to provide enhanced cellular and radio coverage throughout public and operations areas of the Transbay Transit Center (Transit Center), offering full operation and support to facility staff, tenants, and the public throughout the Transit Center.

The Services shall include the design of a Neutral Host DAS to support multiple cellular carriers including but not limited to AT&T, Sprint, T-Mobile, and Verizon. The Neutral Host DAS shall, at a minimum, incorporate all current wireless communications and broadband data requirements for procurement of these four major wireless service providers. The Neutral Host DAS shall also provide wireless radio frequency signals for frequencies other than those used by emergency responders. Anticipated frequencies include 160MHz and 220MHz, but the capability to expand shall be included.

Upon initial implementation, the Neutral Host DAS shall have the capacity to support the forecasted number of transit passengers, visitors, and operational staff. In addition, the forecasted growth of the region, passengers expected, emerging technology trends, and other elements must be factored into the initial design and implementation of the Neutral Host DAS.

Schedule

RFP advertised/posted	August 2, 2016
Pre-proposal Conference	August 11, 2016, 2:00 pm
Deadline for Submission of Questions	August 23, 2016, 5:00 pm
Answers to Written Questions Posted	August 30, 2016, 5:00 pm
Deadline for Confidentiality Agreement (optional)	September 7, 2016, 5:00 pm
Proposals Due	September 13, 2016, 4:00 pm
Notification of Interviews	September 22, 2016
Interviews	October 4-5, 2016

One addendum was issued, incorporating a confidentiality agreement requested by some proposers in order for them to release non-public financial information.

Selection Committee Members

Dan Bora, Moscone Center General Manager Facility Services*
David Buza, TJPA Design Team
Christopher Chamberlain, City and County of San Francisco Department of Technology
Sara DeBord, TJPA Chief Financial Officer
Mark Dylewski, TJPA Program Management/Program Controls (PMPC) IT Consultant
Ernest Orozco, AC Transit Electronic Systems Supervisor*
Edmond Sum, TJPA Engineering Manager

*Mr. Bora and Mr. Orozco participated in the initial evaluation of proposals, but were unable to attend the interviews due to personal scheduling conflicts, and thus did not score the proposers; however, their feedback was taken into consideration by the committee.

RFP Outreach

An announcement of the RFP appeared in the *San Francisco Examiner* on Tuesday, August 2, 2016; a copy of the announcement is Attachment A. On the same day, the TJPA posted the RFP on its website for the public to view and print and sent announcement of its availability to all interested parties who have signed up for TJPA updates/contracting opportunity notifications. In total, the announcement was sent to 15 targeted firms and an additional 510 contacts who have signed up for notice of all TJPA contracts.

The TJPA received nine proposals on or before the RFP submission date, from:

- AT&T
- American Tower
- Boingo Wireless, Inc.
- Crown Castle
- DGP
- ExteNet Systems
- InSite Wireless Group
- Mobilitie
- Verizon Wireless

Selection Committee Evaluation

The selection committee met on September 21 to review the written proposals and evaluate strengths and weaknesses using the criteria listed on the score sheet (Attachment B). Following the discussion, each committee member individually filled out scoring sheets. The PMPC Design Manager and the TJPA Contracts Compliance Officer tabulated and verified the scores. The Selection Committee determined that seven firms fell into a competitive range and that those seven would be invited to interview.

On October 4-5, the selection committee conducted oral interviews of the seven Respondents. Each firm was asked to begin the interview with a presentation of up to 15 minutes that covered their financial offer, any exceptions to the RFP scope, and physical space requirements for equipment in the Transit Center. After the presentation, each firm had 30 minutes to answer eight questions from the selection committee.

Following the interviews, the selection committee discussed the strengths and weaknesses of each Respondent firm, and then individually completed scoring sheets and submitted them to the PMPC Design Manager and TJPA Contracts Compliance Officer for tabulation. Based on its evaluation of the proposals and interviewing the firms, the selection committee recommended that the TJPA move forward with additional due diligence and negotiations with the three highest ranked firms in order to select one Respondent to enter into an exclusive licensing agreement: Boingo Wireless, Inc., ExteNet Systems and Verizon Wireless.

The three firms were asked to provide draft license agreements, updated financial offers, estimated implementation schedule, and a comprehensive description of proposed response to system downtime. Upon receiving these items, the selection committee (minus Mr. Chamberlain) had additional discussions with the firms, and subsequently agreed that all three firms were well qualified technically, but that the

financial offer from Boingo Wireless, Inc. offered the best value to TJPA. At this time, exclusive negotiations were entered into with Boingo Wireless, Inc.

All proposals submitted in response to this RFP are available for review at 201 Mission Street, Suite 2100 upon contacting the TJPA's Office Manager. Proposals will be retained for two years, except for the selected consultant's proposal which will be maintained on permanent record.

Attachments

Attachment A, RFP Announcement

Attachment B, Proposal and Interview Scoring Sheets

Attachment C, Scores

Reference

RFP 17-02 for Neutral Host Distributed Antenna System issued by the Transbay Joint Powers Authority on August 2, 2016.

Attachment A

ANNOUNCEMENT

REQUEST FOR PROPOSALS NO. 17-02 NEUTRAL HOST DISTRIBUTED ANTENNA SYSTEM

The Transbay Joint Powers Authority (TJPA) issues a Request for Proposals (RFP) for **NEUTRAL HOST DISTRIBUTED ANTENNA SYSTEM SERVICES** (Services) for the Transbay Transit Center Program (Program) from firms or individuals (Respondents) with expertise in design, implementation, operation, and maintenance of neutral host distributed antenna systems (DAS). The DAS will provide enhanced cellular and radio coverage throughout public and operations areas of the Transbay Transit Center (Transit Center), offering full operation and support to facility staff, tenants, and the public throughout the Transit Center.

The TJPA seeks proposals from qualified individuals and/or firms to act as a Service Provider for the enhanced cellular and radio coverage throughout the designated areas of the Transit Center. The selected Respondent will fully design, install, implement, operate, and maintain the DAS at the Transit Center.

A pre-proposal conference will be held at 2 p.m. Pacific Time on Thursday, August 11, 2016, at the TJPA offices, located at 201 Mission Street, Suite 2100, San Francisco, CA 94105. Submissions must be received by the TJPA no later than **4:00 p.m. Pacific Time on Tuesday, September 13, 2016**, at the same address.

Prospective Respondents may obtain copies of this RFP, including required forms, by visiting the TJPA's website: <http://www.transbaycenter.org> > TJPA > Doing Business with the TJPA > Current Contract Opportunities or by contacting the TJPA, 201 Mission Street, Suite 2100, San Francisco, CA 94105, (415) 597-4620, email: NeutralHostDAS@transbaycenter.org.

This announcement shall not create any legal rights or responsibilities. All terms of this offering shall be as set forth in the RFP and related materials. Without limiting the foregoing, any and all contracts will be contingent upon TJPA Board approval.

Attachment B

EVALUATION SCORE SHEET RFP 17-02: Neutral Host DAS Services

Name of Respondent: _____

Name of Panelist: _____

Signature of Panelist: _____

Criteria	Value	Reviewer Comment
<p>Introduction and Executive Summary (0 points)</p>		
<p>Qualifications and Experience of Respondent Firm (35 points maximum)</p> <p>Provide a brief description of the Respondent firm and include a summary of the firm's capabilities and experience in design, installation, implementation, operation, and maintenance of neutral host distributed antenna systems with an emphasis on public projects. Include the following information:</p> <p style="padding-left: 20px;">Background of Respondent's company, which may include information such as:</p> <ul style="list-style-type: none"> ▪ Company size ▪ Lines of business ▪ Technical resources ▪ Commissioning capabilities ▪ Facilities, research and development labs ▪ Date established ▪ Ownership type <p style="padding-left: 20px;">Total number of employees engaged in providing supporting products and services that are the subject of this RFP.</p> <p>Describe how the Respondent firm meets the minimum necessary qualifications described in Section 6. Provide any other pertinent information that demonstrates qualification to perform the Services.</p> <p>Provide the firm's experience and five references of comparably sized projects with similar complexity and needs. Provide detailed descriptions of how these five projects are in fact comparable to the Transit Center.</p> <p>Describe the Respondent firm's approach to providing the Services. Describe how the Respondent would tailor its Services to meet the needs of the TJPA. Include firm's approach to avoiding conflicts of interest and prioritizing client interests.</p> <p>Describe the proposed staff that will be used to provide the Services. Specifically, provide their names, titles, business addresses, phone numbers, and brief resumes describing the relevant qualifications and work experience. <i>(The lengths of résumés do not count against the maximum page limit established for the Proposal. All résumés should be included in one section as an attachment or appendix to the proposal.)</i> Describe the role each staff member would play in providing the Services. Clearly show the extent and nature of the involvement of the key team members who would provide the Services.</p> <p>Provide the project team's experience in managing and performing engagements of similar complexity and needs. The following information is to be included:</p> <ul style="list-style-type: none"> ▪ Years of experience ▪ Areas of responsibility as they relate to the RFP ▪ Division the person currently works for, and experience directly related to each segment of the scope of services. 		

Criteria	Value	Reviewer Comment
<p>Provide a list of the equipment and system vendors the Respondent has worked with as business partners.</p> <p>Submit a qualifications and experience statement for all subcontractors, if any, to be used for any portion of the scope of services. The following information should be submitted:</p> <ul style="list-style-type: none"> ▪ Name and address of subcontractor, vendor, or consultant ▪ Resume or biography of the owner ▪ Resume and biography of key employees who would work on the contract ▪ List of major clients for whom Respondent provided services similar to those required for this procurement for comparable facilities (i.e., half the size of the Transit Center or larger) with a comparable level of DAS devices (i.e., half the number of devices as the Transit Center or more) ▪ Areas of expertise with specific portion of the work to be performed on the contract <p>Include any additional information that demonstrates the Respondent's qualifications to perform the Services and successful completion of similar services for other public agencies.</p>		
<p>Financial Statements (15 points maximum)</p> <p>Provide evidence of the financial stability of the Respondent firm, include the following documents:</p> <ul style="list-style-type: none"> • Balance Sheet • Income Statement • Auditor's Report • Quarterly reports and annual reports to stockholders for the last two years • A copy of a letter from the Respondent's attorneys or in-house legal counsel regarding the status of all legal actions including but not limited to contract disputes, lawsuits, pending litigation, government arbitrations, and other adjudications for the most recent fiscal year, or if there are no lawsuits or pending litigation, a letter to that effect • A complete Dun and Bradstreet credit report dated no less than thirty (30) days prior to the proposal due date 		
<p>Project Schedule (0 points)</p> <p>Provide an overview of the process and potential timeline for completion once an Agreement is executed with the TJPA.</p> <p>Provide associated targets for procurement of the four major wireless service providers (AT&T, Sprint, T-Mobile, and Verizon), installation timeline and operation of system.</p>		
<p>References (20 point maximum)</p> <p>Provide references for at least five recent clients (preferably other public agencies) of the Respondent and/or any assigned key staff; include the reference names, addresses, telephone numbers, email addresses, and specific projects.</p>		
<p>Proposed License Agreement & License Fee Proposal (30 points maximum)</p> <p>Provide Respondent's standard license agreement or draft of proposed license agreement with TJPA. Provide the license fee amounts anticipated to be paid to the TJPA (Licensor) on the Fee Proposal Form (Attachment 3).</p>		

Total _____
(100 maximum total score possible)

FIRM NAME:

PANELIST:

DATE:

TRANSBAY JOINT POWERS AUTHORITY
INTERVIEW SCORE SHEET
RFP 17-02 Neutral Host DAS

	<i>Description</i>	<i>Score</i>	<i>Reviewer comment</i>
1.	Presentation (15 minutes maximum) (maximum 12 points) Asked to cover the following two points: <ul style="list-style-type: none"> • Be prepared to discuss the financial offer in your proposal and whether it is your best offer. If your firm has proposed an offer based on a percentage of revenue, please provide an estimate of what this could translate to in dollars on the low-end. You will not be held to such estimate, but the information will assist TJPA in comparing offers with different payment structures on an apples-to-apples basis. • Identify and be prepared to discuss any exceptions taken to the requirements of the RFP. Please note which items are negotiable and which are not. • Identify how much space will be required in telecommunication service entry rooms (TSER), main distribution facility (MDF) rooms, and/or intermediate distribution facility (IDF) rooms and whether you have reviewed drawings and specifications to verify adequacy of space and conditions in TSERs, MDFs, and IDFs. 		
2.	Responses to questions (maximum 8 points; 1 point/question) <ol style="list-style-type: none"> 1. TJPA period of performance is one five year term, with one 3-year option; how would this affect your fee proposal? 2. Which reference projects have the team members proposed for the Transbay DAS project worked on and describe their roles? 3. How do you intend to accommodate the radio frequencies as requested in the RFP? 4. Explain the construction/installation process and equipment that will be installed; how do you work to ensure that the system doesn't interfere with other technology? What method will you use to procure/provide installation? 5. Describe your experience coordinating DAS work in large new construction sites. 6. When and how will you verify wireless service providers' (carriers') requirements? 7. What is earliest time the neutral host DAS could be operational and when would access for installation be needed to achieve this delivery date? 8. What is the anticipated timeline to have four major wireless service providers participating in the Transit Center neutral host DAS? 		

TOTAL SCORE: _____
(20 points maximum)

Attachment C

Evaluation Scores (100 points max)

Firm	Panelist A	Panelist B	Panelist C	Panelist D	Panelist E	Total Score
AT&T	90	79	76	97	76	418
American Tower	88	72	68	66	65	359
Boingo Wireless, Inc.	90	82	91	98	90	451
Crown Castle	88	82	86	93	93	442
DGP	80	58	62	82	51	333
Extenet Systems	90	78	88	93	100	446
InSite Wireless Group	92	69	75	92	96	424
Mobilitie	91	69	82	89	90	421
Verizon Wireless	100	78	82	95	93	448

Interview Scores (20 points max)

Firm	Panelist A	Panelist B	Panelist C	Panelist D	Panelist E	Total Score
AT&T	15	14.15	14.75	20	18	82
American Tower						
Boingo Wireless, Inc.	18	15.85	17.5	16	20	87.35
Crown Castle	14	13	13	13	15	68
DGP						
Extenet Systems	18	17.25	16.5	15	20	86.75
InSite Wireless Group	15	11.10	15.5	14	13	68.6
Mobilitie	18	12.20	14.5	11	13	68.7
Verizon Wireless	18	17.35	19	17	20	91.35

Totals (rounded to whole numbers)

Firm	Panelist A	Panelist B	Panelist C	Panelist D	Panelist E	Total Score
AT&T	105	93	91	117	94	500
American Tower						
Boingo Wireless, Inc.	108	98	108	114	110	538
Crown Castle	102	95	99	106	108	510
DGP						
Extenet Systems	108	92	105	108	120	533
InSite Wireless Group	107	80	91	106	109	493
Mobilitie	109	81	97	100	103	490
Verizon Wireless	118	95	101	112	113	539