

Members of the Board

Jody Breckenridge, Chair
Jeffrey DelBono
Anthony J. Intintoli, Jr.
Nicholas Josefowitz
James Wunderman, Vice Chair

**SAN FRANCISCO BAY AREA
WATER EMERGENCY TRANSPORTATION AUTHORITY
BOARD OF DIRECTORS MEETING**
Thursday, June 7, 2018 at 1:30 p.m.
**San Francisco Bay Area
Water Emergency Transportation Authority**
Pier 9, Suite 111
San Francisco, CA

The full agenda packet is available for download at sanfranciscobayferry.com/weta

AGENDA

1. CALL TO ORDER – BOARD CHAIR
2. PLEDGE OF ALLEGIANCE/ROLL CALL
3. REPORT OF BOARD CHAIR **Information**
4. REPORTS OF DIRECTORS **Information**

Directors are limited to providing information, asking clarifying questions about matters not on the agenda, responding to public comment, referring matters to committee or staff for information, or requesting a report to be made at another meeting.
5. REPORTS OF STAFF **Information**
 - a. Executive Director’s Report on Agency Projects, Activities and Services
 - b. Monthly Review of Financial Statements
 - c. Legislative Update
6. CONSENT CALENDAR **Action**
 - a. Board Meeting Minutes – May 10, 2018
 - b. Overview of FY 2017/18 Financial Audit Scope and Process
 - c. Authorize the Executive Director to Execute a New Master Agreement for State Funded Transit Projects with the California Department of Transportation
7. DISCUSSION AND POTENTIAL ACTION ASSOCIATED WITH TIDELINE MARINE GROUP’S REQUEST TO CONDUCT SMALL VESSEL PRIVATE CHARTER LANDINGS AT THE HARBOR BAY FERRY TERMINAL **Information/Action**
8. AWARD OF A SOLE SOURCE CONTRACT WITH PACIFIC POWER GROUP FOR MAIN ENGINES COMPONENT PURCHASE FOR THE MV SOLANO **Action**

**Water Emergency Transportation Authority
June 7, 2018 Meeting of the Board of Directors**

- | | |
|--|---------------------------|
| 9. <u>AWARD CONTRACT TO CITY ID FOR SIGNAGE AND WAYFINDING DESIGN</u> | <i>Action</i> |
| 10. <u>DISCUSSION REGARDING THE OUTCOME OF THE JUNE 5 PRIMARY ELECTION VOTE ON THE REGIONAL MEASURE 3 BALLOT MEASURE</u> | <i>Information</i> |
| 11. <u>PUBLIC COMMENTS FOR NON-AGENDA ITEMS</u> | |

ADJOURNMENT

All items appearing on the agenda are subject to action by the Board of Directors. Staff recommendations are subject to action and change by the Board of Directors.

PUBLIC COMMENTS WETA welcomes comments from the public. Each person wishing to address the Board of Directors is requested to complete a Speaker Card. Please forward completed Speaker Card and any reports/handouts to the Board Secretary. Speakers will be allotted no more than three (3) minutes to speak and will be heard in the order of sign-up. Said time frames may be extended only upon approval of the Board of Directors.

Non-Agenda Items: A 15 minute period of public comment for non-agenda items will be held at the end of the meeting. Please indicate on your speaker card that you wish to speak on a non-agenda item. No action can be taken on any matter raised during the public comment period.

Agenda Items: Speakers on individual agenda items will be called in order of sign-up after the discussion of each agenda item.

WETA meetings are wheelchair accessible. Upon request, WETA will provide written agenda materials in appropriate alternative formats to individuals with disabilities. In addition, WETA will arrange for disability-related modifications or accommodations including auxiliary aids or services to enable individuals with disabilities to participate in public meetings. Please send a written request including your name, mailing address, telephone number and brief description of the requested materials in preferred alternative format and/or auxiliary aid or service at least five (5) days before the meeting. Requests should be made by mail to: Board Secretary, WETA, 9 Pier, Suite 111, San Francisco, CA 94111; by e-mail to: contactus@watertransit.org; or by telephone: (415) 291-3377.

MEMORANDUM

TO: WETA Board Members
FROM: Nina Rannells, Executive Director
DATE: June 7, 2018
RE: Executive Director's Report

CAPITAL PROJECT IMPLEMENTATION UPDATE

4 New Vessels – Central Bay

This project will construct four new 400-passenger high-speed 27-knot propeller vessels; two to replace the MV *Encinal* and *Harbor Bay Express II* and two to support the growing demand for WETA services.

The Board of Directors approved a contract with Aurora Marine Design (AMD) for vessel construction management services in December 2013, and with Kvichak Marine Industries - now Vigor Kvichak (Vigor) - in April 2015 for the construction of two new replacement vessels. Vessel construction began in September 2015. The first of these vessels, the MV *Hydrus*, was completed in March and put into revenue service in April 2017. The second of these vessels, the MV *Cetus*, was placed into revenue service in August 2017.

On October 6, 2016 the Board of Directors approved a contract award to Vigor for construction of two additional vessels. The first of these vessels, the MV *Argo* safely completed its trip from Seattle to San Francisco on May 18. The MV *Argo* will undergo its final U. S. Coast Guard (USCG) inspection on June 5 and could be available for service as early as June 6. Work continues on the fourth vessel, the MV *Carina*. The hull sections with major machinery and systems installed will be launched in July and taken to the Vigor Harbor Island facility in Seattle where the cabin module will be joined to the hull sections. The MV *Carina* is scheduled for completion in late December 2018.

3 New Vessels – North Bay

This project will construct three new 445-passenger high-speed 34-knot jet propulsion vessels to support WETA's Vallejo and North Bay services. In December 2015, the Board of Directors approved a contract with Fast Ferry Management for vessel construction management services. On September 1, 2016 the Board of Directors approved a contract award to Dakota Creek Industries for vessel construction. Vessel construction is in full swing.

The design and engineering work for the three new vessels is complete; all structural drawings have been approved by Det Norske Veritas (DNV) and are now under final review by the USCG. Piping and electrical drawings have also been submitted to the USCG. The second and third shipsets of main engines were successfully factory tested in late April. Main engine exhaust emissions testing was also completed and Environmental Protection Agency (EPA) Tier 4 compliance for gaseous emissions was demonstrated at the factory. An agreement between WETA, MTU, Pacific Power Group and Dakota Creek for field testing of these first-ever MTU

Tier 4 compliant engines has been finalized. MTU will be providing final CARB paperwork in July 2018 to document EPA Tier 4 or better exhaust emission levels.

The first shipset of waterjets will be installed into the vessel in early May. The hulls for the first and second vessels, the MV *Pyxis* and MV *Vela*, are 100% and 80% complete, respectively. The superstructure for MV *Pyxis* is nearing 100% complete as well. Hull framing for the third vessel, the MV *Lyra*, is also complete. The MV *Pyxis* is scheduled to roll out of the fabrication building for launch in July 2018. With MV *Pyxis* out of the fabrication building, the shipyard will start erection of MV *Lyra*. Initial sea trials for MV *Pyxis* are currently scheduled to begin in early October 2018.

MV *Peralta* Mid-Life Project – Phase Two

This project provides for a general refurbishment of the vessel. On December 7, 2017 the Board of Directors approved a contract award to Marine Group Boat Works. The Phase Two refurbishment includes: renovation of the passenger cabins, bathrooms and galley, exterior paint and coatings, navigation electronics, control systems upgrades, steering system replacement, stern hull section module. The MV *Peralta* arrived safely in San Diego on December 18. The stern hull sections have been replaced with new modules and are 90% complete. Major equipment overhauls of engines, drivetrain and steering is in process. The exterior coatings and windows have been removed with new finishes being applied. The cabin interior passenger spaces have been cleared and repainted and the overhead ceiling has been replaced. The main deck bar was removed; new flooring and counters are being installed. Control and navigation systems are being replaced. Deck coverings and seating will be added at the end of the project. The overall project is going well with a completion expected at the end of July.

Central Bay Operations and Maintenance Facility

This project will construct a new ferry operations and maintenance facility at Alameda Point to serve as the base for WETA's existing and future Central Bay ferry fleet and operations. The project is being constructed by Overaa/Power, a Joint Venture, and construction management is being provided by 4Leaf, Inc. The building exterior skin was recently installed, and the waterside installation of floats and piles was completed in 2017. The project is scheduled for completion with a phased move-in schedule throughout the summer of 2018. A facility ribbon-cutting will be planned for September once Blue & Gold Fleet has been able to complete their move.

Downtown San Francisco Ferry Terminal Expansion Project

This project will expand berthing capacity at the Downtown San Francisco Ferry Terminal in order to support new and existing ferry services to San Francisco. The project also includes landside improvements needed to accommodate expected increases in ridership, and to support emergency response capabilities. Project construction is being provided by Power Engineering under a Guaranteed Maximum Price contract, and construction management is being provided by CH2M Hill Engineers.

Site work began in February 2017, including the installation of construction fencing, site demolition, and placement of seismic, noise, vibration, and settlement monitoring devices. Dredging and pile driving work planned for 2017 was successfully completed within the six month regulatory window for in-water construction. The contractor will resume pile driving during the next six month regulatory work window that begins in June. In May, the contractor continued to build formwork, install rebar, and pour concrete to construct the new promenade which will provide access to future Gates F and G, scheduled to open for service by the end of 2018. The full project is scheduled to be completed in late 2019.

Richmond Ferry Terminal and Service

This project will construct a ferry terminal in Richmond to support new public transit ferry service between Richmond and San Francisco. Construction will consist of replacement of an existing facility (float and gangway) and a phased parking plan. Manson Construction is the main contractor and construction management is being provided by Ghirardelli Associates. New service will be operated with the support of Contra Costa County Measure J funds authorized by the Contra Costa County Transportation Authority in March 2015 and any remaining balance of RM2 operating funds not needed to support existing services.

Project dredging and pile removal was completed in October. The waterside pile installation was completed in November. Construction of the landside improvements commenced in February 2018. The estimated start date for Richmond operations is currently late October 2018.

SERVICE DEVELOPMENT UPDATE

Mission Bay Ferry Landing

The Port of San Francisco released an engineering feasibility and site selection study for a future Mission Bay ferry landing in March 2016. WETA staff participated in the study and provided input regarding ferry operations and potential service models. In December 2016, the Port of San Francisco awarded a contract to COWI/OLMM to complete preliminary design, permitting and entitlement activities, and began the process in partnership with WETA. To support the effort, the City and Port of San Francisco placed \$7 million in its capital budget. A project Memorandum of Understanding (MOU) between the Port and WETA was adopted by the WETA Board in January 2017. Staff has been working together with Port staff and their consultants on initial design and environmental testing activities. Port staff anticipates releasing an environmental document in Fall of 2018 along with public outreach to Mission Bay stakeholders. Provided that construction funds are made available, the Mission Bay terminal could be constructed and operational starting in 2020.

Alameda Seaplane Lagoon Ferry Terminal

In April 2016, the Alameda City Council and WETA Board of Directors adopted a MOU defining a future service concept for western Alameda and identifying the terms and conditions under which a new Seaplane Lagoon Ferry Service would be implemented. The MOU defines roles and responsibilities for each party pertaining to the proposed construction of a new ferry terminal along Seaplane Lagoon on the former Naval Air Station at Alameda Point, future operation of the service, and the pursuit of funds necessary to support the new service. Staff continues to work with the City to fulfill WETA's commitments under the MOU with the common goal of achieving the start of service by 2020.

On May 23, 2018, WETA staff attended a groundbreaking event for the Site A project, a 68-acre mixed use development that includes 800 housing units, commercial space, parks and the Seaplane Lagoon ferry terminal. The transfer of property from the City to the development team – Alameda Point Partners -- included a \$10 million contribution toward the Seaplane Lagoon Ferry Terminal. The City previously secured \$8 million from the Alameda County Transportation Commission for the terminal. The City has contracted with Marcy Wong Donn Logan Architects to complete the final design of the ferry terminal. WETA staff is participating in the design effort.

Redwood City Ferry Terminal

A Draft Redwood City Ferry Terminal site feasibility report was completed in 2012 in an effort to identify site opportunities, constraints and design requirements, and better understand project feasibility and costs associated with the development of a terminal and service to Redwood City. During the summer of 2016, staff from the Port of Redwood City (Port), WETA and Redwood

City met to redefine the project, shifting the development toward a public facility available to multiple ferry operators in advance of formal WETA service given the lack of project funds for such service at this time. This alternative development model would allow the Port and City to move forward with construction of a terminal, allowing time for WETA and the City to advocate for operational and vessel funding for eventual WETA service.

Redwood City has taken the lead role for implementation of the Ferry Terminal Project. The City was awarded \$450,000 in Measure A funds to prepare a Financial Feasibility Study and Cost Benefit Analysis Report for the Redwood City Ferry Terminal Construction and Service. The City is currently reviewing a draft MOU with WETA that defines agency roles and future operating conditions. The City will be entering a separate agreement with the San Mateo County Transportation Authority to develop and adopt the Feasibility Study and Business Plan. The MOU and release of a Request for Proposals are expected in summer 2018.

Board Chair Breckenridge and Vice Chair Wunderman participated in a site visit to the Port on May 25 that also included Port Commissioners, the Mayor of Redwood City, and Councilmembers from Redwood City and Burlingame. In addition, staff from multiple agencies and private sector stakeholders such as Google and Prop SF were in attendance. The two-hour site event consisted of a visit to an adjacent property to view a potential ferry terminal location and an hour of presentations and discussion among the group. Chair Breckenridge led the discussion, which covered the existing operation at the Port of Redwood City, future development plans for nearby parcels, and Redwood City's proposed scope for the upcoming feasibility study. WETA staff presented an outline of the Board-adopted system expansion policy and development process along with general information about the WETA system and the 2016 Strategic Plan.

Treasure Island Service

This project - which will be implemented by the Treasure Island Development Authority (TIDA), the San Francisco County Transportation Authority (acting in its capacity as the Treasure Island Mobility Management Authority), and Lennar Urban, the prospective developer - will institute new ferry service between Treasure Island and downtown San Francisco in connection with the planned Treasure Island Development Project. The anticipated start of operations would be 2023 given the current project schedule.

WETA staff is working with City of San Francisco staff to support development of this project. In that capacity, they are participating in regular meetings of the City's Technical Advisory Committee, convened to update and further develop the Treasure Island Mobility Management Program that will include a new ferry service to be provided in conjunction with the development project.

SYSTEM PLANS/STUDIES

Alameda Terminals Access Initiatives

The City of Alameda City Council authorized a residential parking permit program for the Harbor Bay Ferry Terminal area in February 2017. City of Alameda staff coordinated with the Harbor Bay Master Homeowner's Association to develop a strategy for implementing the residential permit and enforcement program, including outreach to surrounding communities and ferry riders. On June 27, the City began the outreach effort with cooperation from WETA through the Bay Alerts system. The City continued its outreach process through the end of August and began active enforcement in September 2017. To make up for the loss of parking, WETA began working with the City to develop strategies to enhance alternative access to the terminal, and

staff executed an agreement with AC Transit to offer a free transfer to ferry riders who take the bus to the ferry. In addition, bike lockers were upgraded and new bike racks were installed.

Recently, the City has submitted an application to allow on-street parking on Harbor Bay Parkway and Adelphian Way, two streets where BCDC has imposed no parking or limited parking rules. A group of Harbor Bay riders have submitted letters of support for the City proposal and WETA staff has also written to support the proposed change as a benefit to ferry riders.

At the request of the Harbor Bay Homeowner's Association and the City of Alameda, WETA has been considering a parking fee at the Harbor Bay lot. WETA staff has engaged CDM Smith to evaluate potential parking fee programs, not just for Harbor Bay but for the entire WETA system. A program of systemwide parking fee program policy goals was approved by the WETA Board in November 2016 that will be used to guide the development of a specific paid parking program for the Harbor Bay Terminal site. Staff anticipates bringing a recommendation for a parking fee program in summer of 2018.

At Main Street, WETA worked with City of Alameda staff beginning in spring 2015 to open the Officer's Club parking lot as an overflow lot for the many riders who had been parking on dirt lots or on the shoulders of Main Street. WETA funded a new crosswalk and minor improvements to the lot, which opened to ferry riders on May 24, 2016. In addition to the parking improvements, 20 bicycle lockers at the Main Street terminal -- funded through a grant from the Bay Area Air Quality Management District -- were installed on February 22, 2016. Staff shifted focus to identify additional access improvement possibilities - such as buses, shuttles, bicycles, and pedestrian improvements - after the parking improvements were underway, and recently met with private companies like Lyft, Chariot and Scoop in an effort to explore alternative options for improving transportation options for ferry riders in Alameda and elsewhere.

Berkeley Environmental Studies

The proposed Berkeley service will provide an alternative transportation link between Berkeley and downtown San Francisco. Staff has coordinated with Federal Transit Administration (FTA) staff to discuss the process for completion of the Final EIS/EIR. FTA has indicated that it will not be able to complete the NEPA process and issue a Record of Decision because a long-term operational funding source is not available for the service at this time. Staff has been working with City of Berkeley staff and its consultant, which is undergoing a master planning process for the Berkeley Marina and possible rehabilitation of the Berkeley Pier. Staff is in communication with Berkeley staff in an effort to identify opportunities to move this project forward in the near future.

Solano County Water Transit Plan and Financial Feasibility Study

The Solano Transportation Authority (STA) has begun a feasibility study of potential ferry and water transit routes in and around Solano County. WETA is a partner on the study by serving on a Technical Advisory Committee and funding the necessary ridership forecasting tasks, similar to the role WETA played in the 2014 Ferry Feasibility Study in Contra Costa County. The STA study is expected to be complete in the early part of 2019. Staff will provide the Board with updates as the study progresses.

Small Vessel Service Study and Landing Request

Staff is initiating a Small Vessel Service Study authorized by the Board on March 5, with guidance from a Board Subcommittee consisting of Board members Josefowitz and Intintoli. In the meantime, staff was approached by a private small vessel operator regarding establishing

regular private landings at the Harbor Bay terminal to transport employees from South San Francisco in the reverse commute direction on behalf of a private business. Staff has conducted three on-site vessel match-ups with the private vessel operator and crew, and will bring forward a discussion on this request at the June 7 Board meeting.

EMERGENCY RESPONSE ACTIVITIES UPDATE

WETA's enabling legislation directs the agency to provide comprehensive water transportation and emergency coordination services for the Bay Area region. Staff is currently working on the following emergency response related activities:

Vessel Mutual Assistance Plan and Oakland Airport Water Rescue Plan Validation Exercise:

On Saturday April 21, WETA participated in an exercise hosted by the USCG and Oakland International Airport to validate the Oakland Airport's Water Rescue Plan in the event of a water landing of a plane in the San Francisco Bay. Staff is continuing to plan for a fall exercise with the Oakland Airport and other ferry operators on the Bay. The exercise in the fall will also satisfy the exercise requirement for the Vessel Mutual Assistance Plan as required by USCG.

Central Bay Operations & Maintenance Facility Emergency Operations Center (EOC):

Staff is continuing to work on ordering emergency communications equipment for the Central Bay Operations & Maintenance Facility, and developing a functional layout for converting the conference room into an EOC during an event requiring EOC activation.

Staff Training and Exercise:

May 14, staff participated in the second lunchtime training session of the year to continue learning the responsibilities and duties of each person's assigned position in the EOC should WETA activate its EOC. On June 27 staff will participate in the first of two functional exercises scheduled for 2018. The scenario will take place during the second operational period and will focus on critical transportation, operational coordination and planning.

OTHER PROJECTS

Website Upgrades

Work is nearing completion on an upgrade to the San Francisco Bay Ferry and WETA website's content management framework. Site improvements include improved accessibility, security upgrades, and responsive design. The responsive design element will be the most apparent change to customers as WETA currently maintains separate mobile and desktop sites for San Francisco Bay Ferry service. The upgraded site will provide seamless access to visitors on mobile devices and enhance public access to agency information. The upgrades are anticipated to go live in early June pending final review.

Ridership Database

WETA has contracted with TransSight LLC to build a web-based Ridership Database and Reporting System to improve access to and use of ridership and other operating data from Blue & Gold Fleet's data systems. The new database will import data on a nightly basis directly from Blue & Gold Fleet's database, allow WETA to incorporate data not included in the existing database and improve staff's access to and aid interpretation of ridership data. It will also provide custom reports for staff use and generate inferred data for reporting as required by WETA's various funding partners. Additionally, the database will improve public access to ridership data via a portal on WETA's website. Work on the web-based Ridership Database and Reporting System is scheduled to be completed in June 2018.

Mobile Ticketing Platform

WETA is in the process of developing a mobile ticketing platform that will allow riders to use their mobile devices to buy tickets for the ferry. Visitors and other infrequent riders who do not have Clipper Cards will be the primary users of the mobile ticketing platform. WETA has contracted with on-call technical consultant BlinkTag, Inc. for assistance with market research and RFP development. WETA plans to launch the mobile ticketing platform in September 2018. Staff released the RFP on May 17, following board approval in the May 10 meeting.

OPERATIONS REPORT

Monthly Operating Statistics - The Monthly Operating Statistics Report for April 2018 is provided as **Attachment A**.

KEY BUSINESS MEETINGS AND EXTERNAL OUTREACH

On May 14, Chad Mason and Ernest Sanchez presented an update on the Richmond Ferry Terminal and Service to the Richmond Neighborhood Coordinating Council.

During the week of May 14, Nina Rannells attended the Bay Area Council's (BAC) annual trip to Washington, D.C. to meet with federal legislators and encourage future investment in ferry projects. Vice Chair Wunderman lead the BAC group and Chair Breckenridge was able to meet up with the group and attend separate WETA meetings with Executive Director Rannells to advocate on WETA's behalf.

On May 17, Kevin Donnelly and Lauren Gularte attended the Transportation Response Plan Committee meeting.

On May 23, WETA staff attended the City of Alameda's Alameda Point Site A groundbreaking. Development at the site will include the new Seaplane Lagoon ferry terminal.

On May 25, WETA held a joint meeting with the City of Redwood City and Port of Redwood City to view the Port's terminal area, discuss upcoming work to develop service parameters, and identify a preferred terminal site.

On May 29, WETA staff, Blue & Gold Fleet employees, and Chair Breckenridge hosted a tour of San Francisco Bay and an educational session for middle schoolers from the Oakland Military Institute aboard the MV *Hydrus*.

On June 5, Lauren Gularte will attend a planning meeting for the San Francisco Airport's Full Scale Exercise to test their Water Rescue Plan that is scheduled for September 19.

OTHER BUSINESS

Assembly Bill 1121 (Chiu)

Assemblymember David Chiu (D) San Francisco, introduced AB-1121 to make changes to WETA and enhance its ability to provide regional ferry services in the Bay Area. The bill, which passed to the Senate on May 18, 2017, includes language to increase the membership of the WETA Board of Directors to nine members, with five members to be appointed by the Governor, two members to be appointed by the Senate Committee on Rules, and two members to be appointed by the Speaker of the Assembly. This has been made into a two-year bill that can be considered by the State Legislature in 2018.

Regional Measure 3

Senate Bill 595 (SB 595), signed by the Governor on October 19, 2017, was introduced by Senator Beall on February 17, 2017 to authorize a new bridge toll measure (Regional Measure 3) to raise the tolls on the state-owned bridges to fund a program of regional transportation improvements, including WETA ferry projects, in the San Francisco Bay Area. The WETA Board adopted a Regional Measure 3 Principles and Investment Program at its June 2017 meeting and took a position of "support" for the bill at its meeting in July 2017.

On January 24, 2018, the Bay Area Toll Authority authorized moving forward to place Regional Measure 3 on the June 5, 2018 ballot. If approved by a majority of Bay Area voters, the measure would raise tolls by a total of \$3 over a six year period starting with a \$1 increase on January 1, 2019, followed by additional \$1 increases in January 2022 and January 2025.

The WETA Board of Directors adopted a resolution of support for Regional Measure 3 at their February 8, 2018 meeting. Regional Measure 3 will provide WETA with \$300 million in capital funds to support construction of WETA vessels, terminals and facilities and an annual operating subsidy to support enhanced and expanded ferry services that starts at \$10 million in the first year and grows to \$35 million annually by the fifth year. Operating funds not utilized in a given year will be set aside in a reserve by the Metropolitan Transportation Commission for use by WETA in future years.

A separate item has been placed on the June 7 meeting agenda to discuss the June 5 Primary Election vote on this regional measure.

Federal Transit Administration Review

WETA has received notification of the upcoming FTA Comprehensive Review scheduled to take place in 2018. Recipients of FTA funds are required to undergo this review every three years to assess management practices and program implementation and ensure that the recipient programs are administered in accordance with FTA requirements and objectives. Staff has submitted the required pre-audit materials to FTA and the on-site review is scheduled to take place on July 19-20.

END

Attachment A

Monthly Operating Statistics Report April 2018

| | | Alameda/ Oakland | Harbor Bay | South San Francisco | Vallejo* | Systemwide |
|--------------------------------|-------------------------------------|---------------------|------------|------------------------|----------|------------|
| Vs. last month | Total Passengers April 2018 | 108,041 | 27,337 | 12,435 | 89,555 | 237,368 |
| | Total Passengers March 2018 | 96,604 | 30,279 | 13,172 | 81,785 | 221,840 |
| | Percent change | 11.84% | -9.72% | -5.60% | 9.50% | 7.00% |
| Vs. same month last year | Total Passengers April 2018 | 108,041 | 27,337 | 12,435 | 89,555 | 237,368 |
| | Total Passengers April 2017 | 96,479 | 26,896 | 11,247 | 83,885 | 218,507 |
| | Percent change | 11.98% | 1.64% | 10.56% | 6.76% | 8.63% |
| Vs. prior FY to date | Total Passengers Current FY To Date | 1,058,919 | 275,577 | 119,093 | 855,835 | 2,309,424 |
| | Total Passengers Last FY To Date | 946,690 | 262,489 | 110,567 | 805,193 | 2,124,939 |
| | Percent change | 11.85% | 4.99% | 7.71% | 6.29% | 8.68% |
| Ops Stats | Avg Weekday Ridership April 2018 | 4,039 | 1,302 | 592 | 3,607 | 9,540 |
| | Passengers Per Hour | 159 | 175 | 76 | 145 | 147 |
| | Revenue Hours | 679 | 156 | 163 | 618 | 1,616 |
| Fuel | Revenue Miles | 9,399 | 3,336 | 2,594 | 18,722 | 34,051 |
| | Fuel Used (gallons) | 59,519 | 22,547 | 18,577 | 156,651 | 257,293 |
| | Avg Cost per gallon | \$2.61 | \$2.61 | \$2.61 | \$2.52 | \$2.56 |

* Includes backup bus boardings. April bus ridership totaled 92 for Vallejo.

MEMORANDUM

TO: Board Members

**FROM: Nina Rannells, Executive Director
Lynne Yu, Manager, Finance & Grants**

**SUBJECT: Monthly Review of FY 2017/18 Financial Statements for Ten Months
Ending April 30, 2018**

Recommendation

There is no recommendation associated with this informational item.

Summary

This report provides the attached FY 2017/18 Financial Statements for ten months ending April 30, 2018.

Operating Budget vs. Actual

| | Prior Actual | Current Budget | Current Actual |
|---------------------------------------|---------------------|---------------------|---------------------|
| Revenues - Year To Date: | | | |
| Fare Revenues | \$14,975,741 | \$15,698,560 | \$16,679,906 |
| Bridge Toll Revenues | 11,698,352 | 17,659,402 | 14,127,025 |
| Other Revenues | 2,625 | 606,334 | 13,210 |
| Total Operating Revenues | \$26,676,718 | \$33,964,296 | \$30,820,141 |
| Expenses - Year To Date: | | | |
| Planning & Administration | \$2,053,158 | \$2,498,630 | \$1,641,635 |
| Ferry Services | 24,623,560 | 31,465,666 | 29,178,507 |
| Total Operatings Expenses | \$26,676,718 | \$33,964,296 | \$30,820,141 |
| System-Wide Farebox Recovery % | 61% | 50% | 57% |

Capital Actual and % of Total Budget

| | YTD Actual | % of FY 2017/18 Budget |
|-------------------------------|---------------------|---------------------------|
| Revenues: | | |
| Federal Funds | \$15,344,328 | 59.34% |
| State Funds | 51,858,000 | 58.66% |
| Bridge Toll Revenues | 14,611,419 | 66.41% |
| Other Revenues | 903,687 | 36.83% |
| Total Capital Revenues | \$82,717,435 | 59.63% |
| Expenses: | | |
| Total Capital Expenses | \$82,717,435 | 59.63% |

Fiscal Impact

There is no fiscal impact associated with this informational item.

END

San Francisco Bay Area Water Emergency Transportation Authority
FY 2017/18 Statement of Revenues and Expenses
For Ten Months Ending 4/30/2018

% of Year Elapsed 83%

| | Current Month | Year - To - Date | | | Total FY 2017/18 Budget | % of Total Budget |
|---|--------------------|---------------------|---------------------|---------------------|-------------------------|-------------------|
| | | FY2016/17 Actual | FY 2017/18 Budget | FY 2017/18 Actual | | |
| OPERATING EXPENSES | | | | | | |
| <u>PLANNING & GENERAL ADMIN:</u> | | | | | | |
| Wages and Fringe Benefits | \$87,746 | \$1,150,282 | \$1,182,268 | \$888,512 | 1,419,500 | 62.6% |
| Services | 149,962 | 909,138 | 1,380,077 | 862,841 | 1,657,000 | 52.1% |
| Materials and Supplies | 7,380 | 38,790 | 71,794 | 35,947 | 86,200 | 41.7% |
| Utilities | 3,566 | 17,276 | 23,737 | 28,572 | 28,500 | 100.3% |
| Insurance | - | 1,178 | 21,655 | 1,201 | 26,000 | 4.6% |
| Miscellaneous | 11,219 | 230,587 | 215,965 | 172,074 | 259,300 | 66.4% |
| Leases and Rentals | 31,681 | 285,122 | 306,998 | 310,112 | 368,600 | 84.1% |
| Admin Overhead Expense Transfer | (66,801) | (579,215) | (703,864) | (657,623) | (845,100) | 77.8% |
| Sub-Total Planning & Gen Admin | \$224,753 | \$2,053,158 | \$2,498,630 | \$1,641,635 | 3,000,000 | 54.7% |
| <u>FERRY OPERATIONS:</u> | | | | | | |
| <u>Harbor Bay FerryService</u> | | | | | | |
| Purchased Transportation | 233,325 | \$1,243,190 | \$1,688,658 | \$1,690,355 | 2,027,500 | 83.4% |
| Fuel - Diesel & Urea | 58,811 | 238,040 | 426,350 | 363,619 | 511,900 | 71.0% |
| Other Direct Operating Expenses | 35,380 | 299,745 | 469,159 | 343,285 | 563,300 | 60.9% |
| Admin Overhead Expense Transfer | 8,447 | 73,748 | 89,284 | 83,209 | 107,200 | 77.6% |
| Sub-Total Harbor Bay Farebox Recovery | \$335,962 | \$1,854,723 | \$2,673,451 | \$2,480,468 | 3,209,900 | 77.3% |
| | 37% | 66% | 49% | 49% | 49% | |
| <u>Alameda/Oakland Ferry Service</u> | | | | | | |
| Purchased Transportation | \$666,461 | \$5,970,782 | \$7,144,250 | \$6,811,561 | 8,577,800 | 79.4% |
| Fuel - Diesel & Urea | 155,249 | 838,311 | 1,694,071 | 1,251,111 | 2,034,000 | 61.5% |
| Other Direct Operating Expenses | 127,493 | 903,537 | 1,472,359 | 1,068,769 | 1,767,800 | 60.5% |
| Admin Overhead Expense Transfer | 28,807 | 241,635 | 303,833 | 284,968 | 364,800 | 78.1% |
| Sub-Total Alameda/Oakland Farebox Recovery | \$978,011 | \$7,954,265 | \$10,614,514 | \$9,416,409 | 12,744,400 | 73.9% |
| | 61% | 60% | 47% | 61% | 47% | |
| <u>Vallejo FerryService</u> | | | | | | |
| Purchased Transportation | \$829,062 | \$8,487,751 | \$8,860,059 | \$9,355,240 | 10,637,900 | 87.9% |
| Fuel - Diesel & Urea | 395,443 | 2,895,553 | 4,449,311 | 3,462,431 | 5,342,100 | 64.8% |
| Other Direct Operating Expenses | 136,154 | 1,024,086 | 1,322,858 | 1,480,190 | 1,588,300 | 93.2% |
| Admin Overhead Expense Transfer | 25,069 | 222,608 | 261,856 | 315,133 | 314,400 | 100.2% |
| Sub-Total Vallejo Farebox Recovery | \$1,385,728 | \$12,629,999 | \$14,894,084 | \$14,612,994 | 17,882,700 | 81.7% |
| | 68% | 65% | 57% | 61% | 57% | |
| <u>South San Francisco FerryService</u> | | | | | | |
| Purchased Transportation | \$199,826 | \$1,538,683 | \$2,248,018 | \$1,957,158 | 2,699,100 | 72.5% |
| Fuel - Diesel & Urea | 48,456 | 292,103 | 485,567 | 335,936 | 583,000 | 57.6% |
| Other Direct Operating Expenses | 34,828 | 312,563 | 501,142 | 330,672 | 601,700 | 55.0% |
| Admin Overhead Expense Transfer | 4,478 | 41,224 | 48,890 | 44,869 | 58,700 | 76.4% |
| Sub-Total South San Francisco Farebox Recovery | \$287,588 | \$2,184,573 | \$3,283,616 | \$2,668,635 | 3,942,500 | 67.7% |
| | 32% | 37% | 26% | 33% | 26% | |
| Total Operating Expenses | \$3,212,042 | \$26,676,718 | \$33,964,296 | \$30,820,141 | \$40,779,500 | 75.6% |
| OPERATING REVENUES | | | | | | |
| Fare Revenue | \$1,750,985 | 14,975,741 | \$15,698,560 | \$16,679,906 | 18,848,600 | 88.5% |
| Regional - Bridge Toll | 1,460,656 | 11,698,352 | 17,659,402 | 14,127,025 | 21,202,900 | 66.6% |
| Regional - Alameda Tax & Assessment | - | - | 606,334 | - | 728,000 | 0% |
| Other Revenue | 400 | 2,625 | - | 13,210 | - | 0% |
| Total Operating Revenues | \$3,212,042 | \$26,676,718 | \$33,964,296 | \$30,820,141 | \$40,779,500 | 75.6% |

San Francisco Bay Area Water Emergency Transportation Authority
FY 2017/18 Statement of Revenues and Expenses
For Ten Months Ending 4/30/2018

| Project Description | Current Month | Project Budget | Prior Years Actual | FY2017/18 Budget | FY2017/18 Actual | Future Year | % of Total Project Budget |
|--|--------------------|----------------------|----------------------|----------------------|---------------------|----------------------|---------------------------|
| CAPITAL EXPENSES: | | | | | | | |
| FACILITIES: | | | | | | | |
| Terminal Construction | | | | | | | |
| Downtown Ferry Terminal Expansion - South Basin | \$2,056,674 | \$97,965,000 | \$15,787,480 | \$36,792,520 | \$22,469,005 | \$45,385,000 | 39% |
| Richmond Ferry Terminal | 523,852 | 20,000,000 | 2,590,699 | 12,409,301 | \$5,300,087 | 5,000,000 | 39% |
| Maintenance and Operations Facilities | | | | | | | |
| North Bay Operations & Maintenance Facility | 1,310 | 31,082,000 | 29,996,658 | 1,085,342 | 524,567 | 0 | 98% |
| Central Bay Operations & Maintenance Facility | 1,476,210 | 69,500,000 | 31,431,761 | 37,068,239 | \$27,055,382 | 1,000,000 | 84% |
| Terminal Improvement | | | | | | | |
| Terminal Dredging - Vallejo and SSF Terminals | 20,379 | 3,750,000 | - | 75,000 | 24,105 | 3,675,000 | 1% |
| FERRY VESSELS: | | | | | | | |
| Vessel Construction | | | | | | | |
| 400-Pax Replacement Vessels - M/V Hydrus & M/V Cetus | - | 33,951,000 | 31,175,793 | 2,775,207 | \$2,329,475 | - | 99% |
| 445-Pax Replacement Vessel - M/V Vallejo | 803,870 | 23,372,000 | 4,694,001 | 12,777,999 | \$6,007,504 | 5,900,000 | 46% |
| 445-Pax Expansion (Waterjet) Vessels - 2 vessels | 345,869 | 46,745,000 | 7,619,930 | 11,000,070 | \$6,641,712 | 28,125,000 | 31% |
| 400-Pax Expansion (Propeller) Vessels - 2 vessels | 34,567 | 33,400,000 | 17,552,573 | 10,847,427 | \$6,736,939 | 5,000,000 | 73% |
| New High-Speed Vessel | 2,581 | 14,000,000 | - | 750,000 | \$7,432 | 13,250,000 | 0% |
| Vessel Rehabilitation and Refurbishment | | | | | | | |
| Vessel Mid-Life Refurbishment Phase II - M/V Peralta | 13,862 | 5,117,000 | - | 5,117,000 | \$2,203,803 | - | 43% |
| Major Component Rehabilitation - M/V Solano | - | 780,000 | 8,503 | 771,497 | \$711,095 | - | 92% |
| Vessel Engine Overhaul - M/V Bay Breeze | 861 | 850,000 | - | 850,000 | \$392,414 | - | 46% |
| Vessel Qtr-Life Refurbishment - M/V Taurus | - | 2,500,000 | - | 2,500,000 | \$2,283,249 | - | 91% |
| Vessel Engine Overhaul - M/V Intintoli and M/V Mare Island | - | 3,000,000 | - | 15,000 | \$0 | 2,985,000 | 0% |
| Vessel Qtr-Life Refurbishment - M/V Scorpio | - | 2,500,000 | - | 2,500,000 | \$0 | - | 0% |
| CAPITAL EQUIPMENT / OTHER: | | | | | | | |
| CCTV and LCD Network Integration | - | 400,000 | - | 400,000 | \$609 | - | 0% |
| Purchase Lifesaving Equipment (IBAs) | 168 | 90,000 | - | 90,000 | \$504 | - | 1% |
| Purchase Spare Vessel Engine | - | 400,000 | - | 400,000 | \$0 | - | 0% |
| Purchase Service Vehicles | 27,088 | 500,000 | - | 500,000 | \$29,553 | - | 6% |
| Total Capital Expenses | \$5,307,291 | \$389,902,000 | \$140,857,399 | \$138,724,600 | \$82,717,435 | \$110,320,000 | |
| CAPITAL REVENUES: | | | | | | | |
| Federal Funds | \$661,667 | 85,324,816 | \$35,497,889 | 25,859,701 | \$15,344,328 | \$23,967,226 | 60% |
| State Funds | 3,096,197 | 234,349,000 | 81,530,443 | 88,410,720 | 51,858,000 | 64,407,836 | 57% |
| Regional - Bridge Toll | 1,106,487 | 63,201,032 | 19,915,315 | 22,000,779 | 14,611,419 | 21,284,937 | 55% |
| Regional - Alameda Sales Tax Measure B / BB | 2,772 | 5,437,152 | 3,913,752 | 1,523,400 | 462,573 | - | 80% |
| Regional - Alameda TIF / LLAD | 168 | 490,000 | - | 490,000 | 1,114 | - | 0% |
| Regional - San Francisco Sales Tax Prop K | 440,000 | 1,100,000 | - | 440,000 | 440,000 | 660,000 | 40% |
| Total Capital Revenues | \$5,307,291 | \$389,902,000 | \$140,857,399 | \$138,724,600 | \$82,717,435 | \$110,320,000 | |

TO: WETA Board Members

**FROM: Peter Friedmann, WETA Federal Legislative Representative
Ray Bucheger, WETA Federal Legislative Representative**

SUBJECT: WETA Federal Legislative Board Report – June 2018

This report covers the following topics:

1. WETA Awarded \$5 Million FTA Grant
2. WETA Travels to Washington, D.C.
3. Congressional Engagement in 2018

WETA Awarded \$5 Million FTA Grant

The Federal Transit Administration (FTA) awarded WETA \$5 million to upgrade and enhance the vessel *Solano*. WETA was the only California ferry system to receive funding through the FTA ferry grant program this year. Both Senators sent letters to DOT supporting WETA's application, as did Representatives Nancy Pelosi, Mike Thompson, Jared Huffman, Jackie Speier, Zoe Lofgren, Anna Eshoo, Barbara Lee, Mark DeSaulnier, Eric Swalwell and John Garamendi.

As discussed below, we are exploring options for increasing the amount of money available through this program in future years.

WETA Travels to Washington, D.C.

WETA Board member Jim Wunderman led the Bay Area Council (BAC) to Washington, D.C. in May for meetings on Capitol Hill, at the White House and with key Federal agencies. Peter and Ray set up additional meetings with the WETA Congressional delegation for Executive Director Nina Rannells, who participated in the BAC trip, and Board Chair Jody Breckenridge. The WETA meetings were designed to advocate for WETA interests, specifically additional funding for the FTA grant program, whether as part of a future infrastructure package or as part of the next surface transportation bill. The FTA program only provides \$30 million per year for the entire nation – we are advocating for increasing the amount of funding available every year so as to allow WETA to seek larger grant awards through this program in the future.

WETA meetings were focused on Congressional offices that will play an active role in the development of any transportation package (and can therefore provide tangible support for our efforts to increase funding for the FTA ferry grant program), including the offices of T&I Committee members – and Bay Area delegation members – Jared Huffman, John Garamendi, Mark DeSaulnier, as well as California Senator Dianne Feinstein and Washington Senator Patty Murray. We also sat down with House Transportation and Infrastructure (T&I) Committee Ranking Member Peter DeFazio and his top staff to discuss the need for additional funding for the FTA ferry grant program. As the top Democrat on the T&I Committee, DeFazio will play a key role in the development of any future transportation package.

The meetings were timely. There is serious discussion about Congress taking up an infrastructure bill in early 2019, after the midterm elections, and there are already discussions about the next surface transportation bill. Although the FAST Act does not expire until 2020,

Congressional committees will start their work next year. In fact, the American Association of State Highway and Transportation Officials (AASHTO) formally kicked off its FAST Act reauthorization effort this past month.

Congressional Engagement in 2018

During last month's meetings, we also discussed various opportunities to engage certain key members of Congress outside of Washington, D.C. This includes possibly getting Washington Senator Patty Murray to the shipyard in August for a photo-op; inviting Rep Barbara Lee to the opening of the Central Bay Maintenance Facility; inviting Rep Nancy Pelosi to the ribbon cutting for phase I of the Downtown Ferry Building project; and inviting Rep Mark DeSaulnier to the opening of the Richmond ferry building. We will be working with WETA staff on this engagement throughout the year.

Respectfully Submitted,

Peter Friedmann and Ray Bucheger

SAN FRANCISCO BAY AREA WATER EMERGENCY TRANSPORTATION AUTHORITY
MINUTES OF THE BOARD OF DIRECTORS MEETING

(May 10, 2018)

The Board of Directors of the San Francisco Bay Area Water Emergency Transportation Authority met in regular session at the Port of San Francisco, Pier 1 in San Francisco, CA.

1. CALL TO ORDER – BOARD CHAIR

Chair Jody Breckenridge called the meeting to order at 1:34 p.m.

2. ROLL CALL

Chair Breckenridge, Vice Chair James Wunderman, and Director Anthony Intintoli were in attendance.

3. REPORT OF BOARD CHAIR

Chair Breckenridge congratulated staff and WETA's federal representatives in Washington, D.C. on the recent \$5 million 2017 Passenger Ferry grant awarded to WETA by the Federal Transportation Administration (FTA) for the mid-life refurbishment of the MV *Solano*.

Chair Breckenridge noted that Directors had received three pieces of correspondence to review; a copy from Alameda resident Christine Lok of a letter she sent to the San Francisco Bay Conservation and Development Commission expressing her Harbor Bay Ferry Terminal parking concerns; a letter to WETA from Dana T. Aftab, Executive Vice President of Business Operations at Exelixis, Inc. requesting that WETA grant landing rights to Tideline Marine Group at its Harbor Bay Ferry Terminal to facilitate the company's private ferry service for the company's employees; and a letter from Shirley Quitugua, a passenger who left her purse behind on a WETA vessel, commending WETA and its contract operator, Blue & Gold Fleet, for the stellar customer service she had received during her retrieval process.

Chair Breckenridge said she will be traveling to Washington, D.C. to engage representatives on Capitol Hill and will report back on those efforts at the June Board meeting.

4. REPORTS OF DIRECTORS

Vice Chair Wunderman reported that he will also be traveling to Washington, D.C. with the Bay Area Council (BAC) the following week and he said he would be joined by WETA Executive Director Nina Rannels on the trip. He congratulated staff on the recent FTA \$5 million grant award.

Vice Chair Wunderman said that he had met with ferry administrators in New York since the last Board meeting, and he explained that the \$300 million program had grown to about a \$1 billion program. He explained that the system had substantial oversight now from the New York City Economic Development Corporation. Vice Chair Wunderman said that WETA's east coast counterpart was its ally in Washington.

Vice Chair Wunderman thanked BAC Director Emily Loper for her tireless work on water transit in the Bay Area and noted that more than 625 entities and prominent individuals - from all different walks of life - have endorsed Regional Measure 3 (RM3) and that more endorsements were expected soon. He said wide and far reaching support for the measure continued, and that absentee voters likely already had their ballots in hand.

Director Intintoli said that he and Ms. Rannells had made a presentation to the Vallejo City Council since the last Directors' meeting and that it had gone very well.

5. REPORTS OF STAFF

Ms. Rannells shared her written report with Directors and welcomed questions. She noted that it was Bike to Work Day and that the record set for bicycles onboard a WETA ferry was 89 bikes on a South San Francisco trip on March 9, 2018. She added that the highest average number of bikes that travel on current WETA routes was 55 on the Alameda/Oakland route. Director Intintoli said that passengers were very appreciative of having increased bicycle capacity on the newer WETA vessels.

Ms. Rannells said that there would be a small gathering to honor Charlene Haught Johnson at 11 a.m. on June 14 at the North Bay Maintenance and Operations Facility on Mare Island in Vallejo. She added that the U.S. Coast Guard (USCG) was expected to complete its initial sign-off of WETA's newest ferry, the MV *Argo*, soon and the vessel was expected to arrive in San Francisco the following week and begin service soon afterward.

Ms. Rannells said that she and Planning & Development Manager Kevin Connolly would meet the next day with Oakland A's President Dave Kaval to discuss the team's plans for a new ballpark.

Ms. Rannells introduced Program Manager/Analyst Lauren Gularte who shared an overview of a recent Oakland Airport emergency response training event that exercised the region's Vessel Mutual Assistance Plan and a mock water to ferry rescue in the bay. The exercise included WETA, Bay Area firefighters, the U.S. Coast Guard, and other regional ferry systems, and Bay Area agency emergency response partners, she said, and it tested the Oakland Airport's Water Rescue Plan by transporting mock airplane emergency survivors in the bay from life raft level up to a WETA freeboard ferry vessel. Ms. Gularte said the next step in this process was for the airports to create a checklist for ferry captains.

6. CONSENT CALENDAR

Director Intintoli made a motion to approve the consent calendar which included:

- a. Board Meeting Minutes – April 5, 2018
- b. Authorize Release of Request for Proposals for Mobile Ticketing Platform

With several minor and non-substantive edits to her report summary in the April Board Meeting Minutes, Chair Breckenridge seconded the motion and the consent calendar carried unanimously.

Yeas: Breckenridge, Intintoli, Wunderman. Nays: None. Absent: DelBono, Josefowitz.

7. APPROVE ADOPTION OF THE FY 2018/19 OPERATING AND CAPITAL BUDGET AND RELATED ACTIONS

Finance & Grants Manager Lynne Yu presented this item to approve adoption of the FY 2018/19 Operating and Capital Budget and related actions. Chair Breckenridge said she supported the item's attached agency organization chart and said she looked forward to seeing the study details for the compensation study recently completed for WETA staff so she can better understand the analytics involved in the results. She also commended Ms. Yu for her fine work on providing clarity with her assumptions and footnoting throughout the budget item.

PUBLIC COMMENT

An anonymous meeting attendee asked whether fares on WETA ferries are subsidized and Chair Breckenridge said yes. The attendee suggested that WETA add additional trips on the South San Francisco route for people who want to use the ferry recreationally, especially on weekends, as a means to better serve seniors and increase agency revenue. She asked if RM3 passes in June if it will provide

more funding for WETA to expand and increase service. Directors said the measure would certainly increase funding for the agency to increase and expand service well beyond its present offerings.

Vice Chair Wunderman made a motion to approve the item.

Director Intintoli seconded the motion and the item carried unanimously.

Yeas: Breckenridge, Intintoli, Wunderman. Nays: None. Absent: DelBono, Josefowitz.

8. AUTHORIZE FILING APPLICATIONS WITH THE METROPOLITAN TRANSPORTATION COMMISSION FOR FY 2018/19 REGIONAL MEASURE 1 AND REGIONAL MEASURE 2 OPERATING AND CAPITAL FUNDS

Ms. Yu presented this item to authorize filing applications with the Metropolitan Transportation Commission for FY 2018/19 Regional Measure 1 and Regional Measure 2 operating and capital funds.

Director Intintoli made a motion to approve the item.

Chair Breckenridge seconded the motion and the item carried unanimously.

Yeas: Breckenridge, Intintoli, Wunderman. Nays: None. Absent: DelBono, Josefowitz.

9. APPROVE PURCHASE OF COMMERCIAL INSURANCE POLICIES FOR FY 2018/19

Administration and Business Services Manager Melanie Jann presented this item to approve the purchase of commercial insurance policies for FY 2018/19. Ms. Jann introduced Seth Cole from Alliance Insurance Services who clarified the difference between a \$15,000 deductible for public official liability coverage of Board decisions in the recommended policy, and the \$20,000 deductible for the employment practices liability coverage. Mr. Cole also noted that \$15,000 was generally the minimum amount for a deductible in the industry for this coverage type.

Chair Breckenridge made a motion to approve the item.

Director Intintoli seconded the motion and the item carried unanimously.

Yeas: Breckenridge, Intintoli, Wunderman. Nays: None. Absent: DelBono, Josefowitz.

10. APPROVE AMENDMENT TO AGREEMENT WITH NEMATODE MEDIA, LLC FOR FERRY TICKET SALES AND INFORMATION SERVICES IN FY 2018/19

Public Information and Marketing Manager Ernest Sanchez presented this item to approve an amendment to the agreement with Nematode Media, LLC for ferry ticket sales and information services in FY 2018/19. Chair Breckenridge asked what measurement tools were used to monitor this work and said she would like to see some reporting on the Nematode results for WETA to show what the cost of this expense is providing for the public tax dollars WETA is spending.

PUBLIC COMMENT

Representing MARAD, Jerry Bellows said that employees working at the Bay Crossings store in the Ferry Building have provided him with excellent customer service.

Vice Chair Wunderman made a motion to approve the item.

Director Intintoli seconded the motion and the item carried unanimously.

Yeas: Breckenridge, Intintoli, Wunderman. Nays: None. Absent: DelBono, Josefowitz.

11. APPROVE FY 2019-2022 TITLE VI PROGRAM

Program Manager/Analyst Lauren Gularte presented this item to approve the FY 2019-2022 Title VI program.

Director Intintoli made a motion to approve the item.

Chair Breckenridge seconded the motion and the item carried unanimously.

Yeas: Breckenridge, Intintoli, Wunderman. Nays: None. Absent: DelBono, Josefowitz.

12. OVERVIEW OF ONBOARD RIDERSHIP SURVEY

Senior Planner Mike Gougherty presented this informational item and provided a slideshow overview of the WETA Onboard Ridership Survey that was administered in November 2017. He explained that the survey had been taken on vessels across all routes, had asked riders to rate various services, and had posed a series of questions on rider travel patterns, demographics, and attitudes.

Mr. Gougherty noted that the findings of the survey were consistent across all four of WETA's service routes and he highlighted some of its findings, including:

- Most WETA ferry riders are work commuters aged 25 to 54 years
- The majority of the passengers surveyed ride the ferry at least three days a week
- WETA ferry riders typically have higher median incomes than the average household in the communities the agency serves
- Fewer seniors, youth and disabled people utilize the ferry in comparison to other modes of regional public transit
- Typically, ferry riders' race/ethnicity is consistent with that demographic in the communities served
- Proportionately more passengers are either relatively new riders (fewer than three years) or long-time loyal riders (more than ten years)
- Overall passenger satisfaction remains high in relation to other major regional transit services
- The vast majority of riders who reach WETA terminals on bicycles bring their bikes onboard the ferry with them versus parking or storing their bikes at the terminal
- The most common method of reaching WETA ferry terminals is driving alone
- The ferry is rarely the only option for riders; most passengers choose it over riding BART, transbay buses, or driving alone
- Passengers want more frequent off-peak service, especially during late morning, midday, and late evening/night periods

Mr. Gougherty said that a final, more detailed report of the survey and its results will be provided within the next few weeks. He explained that the database with all of the raw survey data will also be accessible to cull any additional available information that might be of interest to Directors.

With the departure of Vice Chair Wunderman and Director Intintoli, the meeting lost quorum at 3:20 p.m.

PUBLIC COMMENT

Genentech Senior Transportation Program Manager Heather Salem asked if employer information had been captured in the survey results. Mr. Gougherty explained that it had not, and explained that the destination information would likely clarify the number of respondents traveling to or from Genentech.

An anonymous attendee asked if the slideshow presentation would be available online and Ms. Rannells said it will be posted.

13. OPEN TIME FOR PUBLIC COMMENTS FOR NON-AGENDA ITEMS

An anonymous attendee said the problem with spotty WiFi when vessels are out on the bay is like a domino effect during inclement weather. She asked if WETA wanted to keep WiFi low intentionally. She also said that she had tried to plan a trip to Tiburon the prior weekend but had found that the schedules changed, the website had not been updated, and only one trip was available to meet her needs.

All business having been concluded, the meeting was adjourned at 3:35 p.m.

- Board Secretary

END

MEMORANDUM

TO: Board Members

**FROM: Nina Rannells, Executive Director
Lynne Yu, Manager, Finance & Grants**

SUBJECT: Overview of FY 2017/18 Financial Audit Scope and Process

Recommendation

There is no required action associated with this informational item.

Background/Discussion

Section 106.6 of WETA's Administrative Code requires preparation of an annual financial audit report by an independent auditor consistent with California Government Code Section 66540.54. The firm of Maze & Associates (Maze) has been hired to perform the independent audit for FY 2017/18.

Maze is scheduled to begin the initial field work associated with the audit of WETA's FY 2017/18 financial statements on June 11, 2018, and to issue the final audit reports no later than December 2018. The Engagement Letter, provided as **Attachment A** to this report, describes the scope of their audit, audit objectives, responsibilities of management and audit procedures pertaining to the audit. In addition, Maze has included their most recent peer review report.

Fiscal Impact

There is no fiscal impact associated with this informational item.

END

Attachment A



May 22, 2018

Nina Rannells, Executive Director
San Francisco Bay Area Water Emergency Transit Authority
Pier 9, Suite 111
The Embarcadero
San Francisco, CA 94111

Dear Nina:

We are pleased to confirm our understanding of the services we are to provide for the San Francisco Bay Area Water Emergency Transit Authority for the year ended June 30, 2018. The services we have been engaged to provide are outlined below, but we are also available to provide additional services at your request:

1. Basic Financial Statements.
2. Testing for compliance with the Single Audit Act and applicable laws and regulations and issuance of our reports thereon.
3. Test Measure B funds for compliance with the Agreement for Distribution of Measure B Funds to Local Agencies and issue separate report thereon.
4. Test Measure BB funds for compliance and issue separate report thereon.

Accounting standards generally accepted in the United States of America provide for certain required supplementary information (RSI), such as management's discussion and analysis, to supplement the Organization's basic financial statements. Such information, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board who considers it to be an essential part of financial reporting for placing basic financial statements in an appropriate operational, economic, or historical context. As part of our engagement, we will apply certain limited procedures to the Organization's RSI in accordance with auditing standards generally accepted in the United States of America. These limited procedures will consist of inquiries of management regarding the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We will not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

If the Organization's financial statements are accompanied by supplementary information other than RSI, we will subject the supplementary information to the auditing procedures applied in our audit of the financial statements and certain additional procedures, including comparing and reconciling such information directly to the underlying accounting and other records used to prepare the financial statements or to the financial statements themselves, and other additional procedures in accordance with auditing standards generally accepted in the United States of America, and will provide an opinion on it in relation to the financial statements as a whole.

Other information accompanying the financial statements will not be subjected to the auditing procedures applied in our audit of the financial statements, and our auditor's report will not provide an opinion or any assurance on that information.

Audit Objectives

The objective of our audit is the expression of opinions as to whether your financial statements are fairly presented, in all material respects, in conformity with U.S. generally accepted accounting principles and to report on the fairness of the accompanying supplementary information when considered in relation to the financial statements as a whole. The objective also includes reporting on:

- Internal control related to the financial statements and compliance with the provisions of laws, regulations, contracts and grant agreements, noncompliance with which could have a material effect on the financial statements in accordance with *Government Auditing Standards*.
- Internal control related to major programs and an opinion (or disclaimer of opinion) on compliance with laws, regulations, and the provisions of contracts or grant agreements that could have a direct and material effect on each major program in accordance with the Single Audit Act Amendments of 1996 and Uniform Guidance, *Audits of States, Local Governments, and Non-Profit Organizations*.

The *Government Auditing Standards* report on internal control over financial reporting and on compliance and other matters will include a paragraph that states the purpose of the report is solely to describe the scope of testing of internal control and compliance and the results of that testing, and not to provide an opinion on the effectiveness of internal control or on compliance, and the report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering internal control and compliance. The Uniform Guidance report on internal control over compliance will include a paragraph that states that the purpose of the report on internal control over compliance is solely to describe the scope of testing of internal control over compliance and the results of that testing based on the requirements of Uniform Guidance. Both reports will state that the report is not suitable for any other purpose.

Our audit will be conducted in accordance with generally accepted auditing standards in the United States of America; the standards for financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States; the Single Audit Act Amendments of 1996; and the provision of Uniform Guidance, and will include tests of accounting records, a determination of major program(s) in accordance with Uniform Guidance, and other procedures we consider necessary to enable us to express such opinions. We will issue written reports upon the completion of our Single Audit. Our reports will be addressed to the Board of the Organization. We cannot provide assurance that unmodified opinions will be expressed. Circumstances may arise in which it is necessary for us to modify our opinions or add emphasis-of-matter or other-matter paragraphs. If our opinions on the financial statements or the Single Audit compliance opinions are other than unmodified, we will discuss the reasons with Organization management in advance. If, for any reason, we are unable to complete the audit or are unable to form or have not formed opinions, we may decline to express opinions or issue reports, or may withdraw from this engagement.

Audit Procedures - General

An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements; therefore, our audit will involve judgment about the number of transactions to be examined and the areas to be tested. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements. We will plan and perform the audit to obtain reasonable rather than absolute assurance about whether the financial statements are free of material misstatement, whether from errors, fraudulent financial reporting, misappropriation of assets, or violations of laws or governmental regulations that are attributable to the Organization or to acts by management or employees acting on behalf of the Organization. Because the determination of abuse is subjective, *Governmental Auditing Standards* do not expect auditors to provide reasonable assurance of detecting abuse.

Because of the inherent limitations of an audit, combined with the inherent limitations of internal control, and because we will not perform a detailed examination of all transactions, there is a risk that material misstatements or noncompliance may exist and not be detected by us, even though the audit is properly planned and performed in accordance with U.S. generally accepted auditing standards and *Government Auditing Standards*. In addition, an audit is not designed to detect immaterial misstatements, or violations of laws or governmental regulations that do not have a direct and material effect on the financial statements or major programs. However, we will inform the appropriate level of management of any material errors or any fraudulent financial reporting or misappropriation of assets that come to our attention. We will also inform the appropriate level of management of any violations of laws or governmental regulations that come to our attention, unless clearly inconsequential, and of any material abuse that comes to our attention. We will include such matters in the reports required for a Single Audit. Our responsibility as auditors is limited to the period covered by our audit and does not extend to any later periods for which we are not engaged as auditors.

Our procedures will include tests of documentary evidence supporting the transactions recorded in the accounts, and may include tests of physical existence of inventories, and direct confirmation of cash, investments and certain other assets and liabilities by correspondence with selected customers, creditors and financial institutions. We will request written representations from your attorneys as part of the engagement, and they may bill the Organization for responding to this inquiry. At the conclusion of our audit we will also require certain written representations from management about management's responsibilities for the financial statements; schedule of expenditures of federal awards; federal award programs; compliance with laws, regulations, contracts and grant agreements; and other responsibilities required by generally accepted auditing standards.

Audit Procedures - Internal Control

Our audit will include obtaining an understanding of the Organization and its environment, including internal control, sufficient to assess the risks of material misstatement of the financial statements and to design the nature, timing, and extent of further audit procedures. Tests of controls may be performed to test the effectiveness of certain controls that we consider relevant to preventing and detecting errors and fraud that are material to the financial statements and to preventing and detecting misstatements resulting from illegal acts and other noncompliance matters that have a direct and material effect on the financial statements. Our tests, if performed, will be less in scope than would be necessary to render an opinion on internal control and, accordingly, no opinion will be expressed in our report on internal control issued pursuant to *Government Auditing Standards*.

As required by Uniform Guidance, we will perform tests of controls over compliance to evaluate the effectiveness of the design and operation of controls that we consider relevant to preventing or detecting material noncompliance with compliance requirements applicable to each major federal award program. However, our tests will be less in scope than would be necessary to render an opinion on those controls, and accordingly, no opinion will be expressed in our report on internal control issued pursuant to Uniform Guidance.

An audit is not designed to provide assurance on internal control or to identify significant deficiencies or material weaknesses. However, during the audit, we will communicate to management and the Board internal control related matters that are required to be communicated under AICPA professional standards, *Government Auditing Standards*, and Uniform Guidance.

Audit Procedures - Compliance

As part of obtaining reasonable assurance about whether the financial statements are free of material misstatement, we will perform tests of the Organization's compliance with provisions of applicable laws, regulations, contracts, and agreements, including grant agreements. However, the objective of those procedures will not be to provide an opinion on overall compliance and we will not express such an opinion in our report on compliance issued pursuant to *Government Auditing Standards*.

Uniform Guidance requires that we also plan and perform the audit to obtain reasonable assurance about whether the Organization has complied with applicable laws and regulations and the provisions of contracts and grant agreements applicable to major programs. Our procedures will consist of tests of transactions and the applicable procedures described in the *Uniform Guidance Compliance Supplement* for the types of compliance requirements that could have a direct and material effect on each major program. The purpose of these procedures will be to express an opinion on the Organization's compliance with requirements applicable to each of its major programs in our report on compliance issued pursuant to Uniform Guidance.

Other Services

We will also assist in preparing the financial statements, schedule of expenditures of federal awards and related notes in conformity with U.S. generally accepted accounting principles and Uniform Guidance based on information provided by you. These nonaudit services do not constitute an audit under *Government Auditing Standards* and such services will not be conducted in accordance with *Government Auditing Standards*.

Management Responsibilities

Management is responsible for establishing and maintaining effective internal controls, including internal controls over compliance and for evaluating and monitoring ongoing activities, to help ensure that appropriate goals and objectives are met; following laws and regulations; ensuring that there is reasonable assurance that government programs are administered in compliance with compliance requirements; and ensuring that management and financial information is reliable and properly reported. Management is also responsible for implementing systems designed to achieve compliance with applicable laws, regulations, contracts, and grant agreements. Management is also responsible for the selection and application of accounting principles; for the preparation and fair presentation of the financial statements, schedule of expenditures of federal awards, and all accompanying information in conformity with U.S. generally accepted accounting principles; and for compliance with applicable laws and regulations and the provisions of contracts and grant agreements.

Management is responsible for making all financial records and related information available to us and for the accuracy and completeness of that information. Management is also responsible for providing us with access to all information of which management is aware is relevant to the preparation and fair presentation of the financial statements, additional information that we may request for the purpose of the audit, and unrestricted access to persons within the government from whom we determine it necessary to obtain audit evidence. We understand that the Organization will provide us with the Closing Checklist information required for our audit and that the Organization is responsible for the accuracy and completeness of that information.

Management's responsibilities also include identifying significant vendor relationships in which the vendor has responsibility for program compliance and for the accuracy and completeness of that information. Management's responsibilities include adjusting the financial statements to correct material misstatements and confirming to us in the management representation letter that the effects of any uncorrected misstatements aggregated by us during the current engagement and pertaining to the latest period presented are immaterial, both individually and in the aggregate, to the financial statements taken as a whole.

Management is responsible for the design and implementation of programs and controls to prevent and detect fraud, and for informing us about all known or suspected fraud affecting the Organization involving (a) management, (b) employees who have significant roles in internal control, and (c) others where the fraud could have a material effect on the financial statements. Management is also responsible for informing us of its knowledge of any allegations of fraud or suspected fraud or illegal acts affecting the Organization received in communications from employees, former employees, grantors, regulators, or others. In addition, management is responsible for identifying and ensuring that it complies with applicable laws, regulations, contracts, agreements and grants. Management is also responsible for taking timely and appropriate steps to remedy fraud and noncompliance with provisions of laws, regulations, contracts and grant agreements, or abuse that we report. Additionally, as required by Uniform Guidance, it is management's responsibility to follow up and take corrective

action on reported audit findings and to prepare a summary schedule of prior audit findings and a corrective action plan. The summary schedule of prior audit findings must be made available for our review.

Management is also responsible for identifying all federal awards received and understanding and complying with the compliance requirements and for the preparation of the schedule of expenditures of federal awards (including notes and noncash assistance received) in conformity with Uniform Guidance. Management agrees to include the audited financial statements with any presentation of the schedule of expenditures of federal awards in any document that contains and indicates that we have reported on the schedule of expenditures of federal awards. Management's responsibilities include acknowledging to us in the written representation letter that: you are responsible for presentation of the schedule of expenditures of federal awards in accordance with Uniform Guidance; that you believe the schedule of expenditures of federal awards, including its form and content, is fairly presented in accordance with Uniform Guidance; that the methods of measurement or presentation have not changed from those used in the prior period (or, if they have changed, the reasons for such changes); and you have disclosed to us any significant assumptions or interpretations underlying the measurement or presentation of the schedule of expenditures of federal awards.

Management is also responsible for the preparation of the supplementary information in conformity with U.S. generally accepted accounting principles. Management agrees to include our report on the supplementary information in any document that contains and indicates that we have reported on the supplementary information. Management also agrees to include the audited financial statements with any presentation of the supplementary information that includes our report thereon. Management's responsibilities include acknowledging to us in the representation letter that: management is responsible for presentation of supplementary information in accordance with GAAP; that management believes the supplementary information, including its form and content, is fairly presented in accordance with GAAP; that the methods of measurement or presentation have not changed from those used in the prior period (or, if they have changed, the reasons for such changes); and management has disclosed to us any significant assumptions or interpretations underlying the measurement or presentation of the supplementary information.

Management is responsible for establishing and maintaining of a process for tracking the status of audit findings and recommendations. Management is also responsible for identifying and providing report copies of previous financial audits, attestation engagements, performance audits, or other studies related to the objectives discussed in the Audit Objective section of this letter. This responsibility includes relaying to us corrective actions taken to address significant findings and recommendations resulting from those audits, attestation engagements, performance audits or studies. Management is also responsible for providing management's views on our current findings, conclusions, and recommendations, as well as your planned corrective actions, for the report, and for the timing and format for providing that information.

Management agrees to assume all management responsibilities relating to the financial statements, schedule of expenditures of federal awards, related notes, and any other nonaudit services we provide. Management will be required to acknowledge in the management representation letter our assistance with the preparation of the financial statements, schedule of expenditures of federal awards, and related notes and that you have reviewed and approved the financial statements, schedule of expenditures of federal awards, and related notes prior to their issuance and have accepted responsibility for them. Further, management agrees to oversee the nonaudit services by designating an individual, preferably from senior management, with suitable skill, knowledge, or experience; evaluate the adequacy and results of the services; and accepting responsibility for them.

Engagement Administration, Fees, and Other

We may from time to time, and depending on the circumstances, use third-party service providers in serving your account. We may share confidential information about you with these service providers, but remain committed to maintaining the confidentiality and security of your information. Accordingly, we maintain internal policies, procedures, and safeguards to protect the confidentiality of your personal information. In addition, we will secure confidentiality agreements with all service providers to maintain the confidentiality of your information and we will take reasonable precautions to determine that they have appropriate procedures in place to prevent the unauthorized release of your confidential information to others. In the event that we are unable to secure an

appropriate confidentiality agreement, you will be asked to provide your consent prior to the sharing of your confidential information with the third-party service provider. Furthermore, we will remain responsible for the work provided by any such third-party service providers.

At the conclusion of the engagement, we will complete the appropriate sections of the Data Collection Form that summarizes our audit findings. It is management's responsibility to submit the reporting package (including financial statements, schedule of expenditures of federal awards, summary schedule of prior audit findings, auditor's reports, and corrective action plan) along with the Data Collection Form to the federal audit clearinghouse. We will coordinate with you the electronic submission and certification. If applicable, we will provide copies of our report to you to include with the reporting package you will submit to pass-through entities. The Data Collection Form and the reporting package must be submitted within the earlier of 30 days after receipt of the auditors' reports or nine months after the end of the audit period, unless a longer period is agreed in advance by the cognizant or oversight agency for audits.

We will provide copies of our reports to the Organization; however, management is responsible for distribution of the reports and the financial statements. Unless restricted by law or regulation, or containing privileged and confidential information, copies of our reports are to be made available for public inspection.

The audit documentation for this engagement is our property and constitutes confidential information. However, subject to applicable laws and regulations, audit documentation and appropriate individuals will be made available upon request in a timely manner to a federal agency providing oversight of direct or indirect funding, or the U.S. Government Accountability Office for purposes of a quality review of the audit, to resolve audit findings, or to carry out oversight responsibilities. We will notify you of any such request. If requested, access to such audit documentation will be provided under the supervision of Maze & Associates personnel. Furthermore, upon request, we may provide copies of selected audit documentation to the aforementioned parties. These parties may intend, or decide, to distribute the copies or information contained therein to others, including other governmental agencies.

We will retain audit documentation for seven years after the report release date pursuant to state regulations. If we are aware that a federal awarding agency, pass-through entity, or auditee is contesting an audit finding, we will contact the party(ies) contesting the audit finding for guidance prior to destroying the audit documentation.

With regard to the electronic dissemination of audited financial statements, including financial statements published electronically on your website, you understand that electronic sites are a means to distribute information and, therefore, we are not required to read the information contained in these sites or to consider the consistency of other information in the electronic site with the original document.

We expect to begin our audit in June 2018 and to issue our reports no later than December 2018. Vikki Rodriguez is the engagement partner and is responsible for supervising the engagement and signing the report or authorizing another individual to sign it.

Our fees for these services are billed based on our contract with the Organization. Our standard hourly rates vary according to the degree of responsibility involved and the experience level of the personnel assigned to your audit. Our invoices for these fees will be rendered each month as work progresses and are payable on presentation. In accordance with our firm policies, work may be suspended if the Organization's account becomes thirty days or more overdue and may not be resumed until the Organization's account is paid in full.

These fees are based on anticipated cooperation from Organization personnel, the completion of schedules and data requested on our Checklists, and the assumption that there will be no unexpected increases in work scope, such as new Single Audit Act programs, new debt issues, etc., or delays which are beyond our control, as discussed on the Fees Attachment to this letter. If significant additional time is necessary, we will discuss it with Organization management and arrive at a new fee before we incur any additional costs.

We understand you will provide us with basic workspace sufficient to accommodate the audit team assigned to your audit. We understand the basic workspace will be equipped with a telephone and direct Internet access, preferably a temporary network outside of your network, a public IP address and a wired connection. We understand you will also provide us with access to a fax machine and read only access to your general ledger system.

Government Auditing Standards require that we provide the Organization with a copy of our most recent external peer review report and any subsequent peer review reports received during the period of the contract. Our most recent peer review report accompanies this letter.

We appreciate the opportunity to be of service to the Organization and believe this letter accurately summarizes the significant terms of our engagement. If you have any questions, please let us know. If you agree with the terms of our engagement as described in this letter, please sign the enclosed copy and return the entire copy to us.

Maze & Associates

Maze & Associates

RESPONSE:

This letter correctly sets forth the understanding of the Organization.

By:

Wine Rannells

Title:

Executive Director

Date:

May 24, 2018

**San Francisco Bay Area Water Emergency Transit Authority
Fees Attachment**

Our fees for the work described in the attached engagement letter will be as follows, unless they are adjusted for one or more of the items below.

| Service | Total |
|--|------------------------|
| Basic Financial Statements | \$12,000 |
| Single Audit Act (one program/cluster) | 5,000 |
| Measure B | 1,500 |
| Measure BB | <u>1,500</u> |
| | Total: <u>\$20,000</u> |
| Optional Services: | |
| TDA Report | 1,500 |

2018 Fees – Our fees have been based on our Proposal dated March 12, 2018.

Additional Services - The above fees are for audit and assurance services described in the accompanying engagement letter. They do not include fees for assisting with closing the books nor providing other accounting services. Should the Authority require assistance beyond audit services we will provide a cost estimate before proceeding.

Report Finalization - Our fee is based on our understanding that all information and materials necessary to finalize all our reports will be provided to us before we complete our year-end fieldwork in your offices. In the case of CAFRs, this includes all the materials and information required to print the CAFR. As in the past, we will provide final drafts of all our reports before we leave your offices. We will schedule a Final Changes Meeting with you for a date no more than two weeks after we complete our fieldwork. At that meeting, we will finalize all reports for printing. After that date, report changes you make and changes required because information was not received timely will be billed at our normal hourly rates.

Post-Closing Client Adjusting Entries - The first step in our year-end audit is the preparation of financial statement drafts from your final closing trial balance. That means any entries you make after handing us your closing trial balance must be handled as audit adjustments, or in extreme cases, by re-inputting the entire trial balance, even if the amounts are immaterial. If you make such entries and the amounts are in fact immaterial, we will bill you for the costs of the adjustments or re-input at our normal hourly rates.

Recurring Audit Adjustments - Each year we include the prior year's adjusting entries as new steps in our Closing Checklist, so that you can incorporate these entries in your closing. If we are required to continue to make these same adjustments as part of this year's audit, we will bill for this service at our normal hourly rates.

Single Audit Act - Additional programs will each cost \$5,000 in 2018, unless there are other factors which add to that program's cost; in that case, we will provide a cost estimate before proceeding.

Grant Programs Requiring Separate Audit - Grant programs requiring separate audits represent a significant increase in work scope, and fees for these audits vary based on the grant requirements. If you wish us to determine and identify which programs are subject to audit, we will bill you for that time at our normal hourly rates.

Changes in Authority Personnel - Our experience is that changes and /or reductions in Finance Department staff can have a pronounced impact on costs of performing the audit. If such changes occur, we will meet with you to assess their impact and arrive at a new fee before we begin the next phase of our work. However, we reserve the right to revisit this subject at the conclusion of the audit, based on your actual performance and our actual costs.



POWELL & SPAFFORD, INC.
CERTIFIED PUBLIC ACCOUNTANTS

Jessie C. Powell, CPA (Ret.)
Patrick D. Spafford, CPA

Licensed by the California Board of Accountancy
Member American Institute of Certified Public Accountants

SYSTEM REVIEW REPORT

To the Shareholders of
Maze & Associates Accountancy Corporation
and the Peer Review Committee of the CalCPA Peer Review Program

We have reviewed the system of quality control for the accounting and auditing practice of Maze & Associates Accountancy Corporation (the firm) in effect for the year ended May 31, 2014. Our peer review was conducted in accordance with the Standards for Performing and Reporting on Peer Reviews established by the Peer Review Board of the American Institute of Certified Public Accountants. As a part of our peer review, we considered reviews by regulatory entities, if applicable, in determining the nature and extent of our procedures. The firm is responsible for designing a system of quality control and complying with it to provide the firm with reasonable assurance of performing and reporting in conformity with applicable professional standards in all material respects. Our responsibility is to express an opinion on the design of the system of quality control and the firm's compliance therewith based on our review. The nature, objectives, scope, limitations of, and the procedures performed in a System Review are described in the standards at www.aicpa.org/prsummary.

As required by the standards, engagements selected for review included engagements performed under *Government Auditing Standards*.

In our opinion, the system of quality control for the accounting and auditing practice of Maze & Associates Accountancy Corporation in effect for the year ended May 31, 2014, has been suitably designed and complied with to provide the firm with reasonable assurance of performing and reporting in conformity with applicable professional standards in all material respects. Firms can receive a rating of *pass*, *pass with deficiency(ies)* or *fail*. Maze & Associates Accountancy Corporation has received a peer review rating of *pass*.

Powell & Spafford

August 27, 2014

MEMORANDUM

TO: Board Members

**FROM: Nina Rannells, Executive Director
Lynne Yu, Manager, Finance & Grants**

SUBJECT: Authorize the Executive Director to Execute a New Master Agreement for State Funded Transit Projects with the California Department of Transportation

Recommendation

Authorize the Executive Director to execute a new Master Agreement and all Program Supplements for State Funded Transit Projects and any Amendments thereto with the California Department of Transportation.

Background/Discussion

In order for a local transportation agency to secure state funds administered by the California Department of Transportation (Caltrans) for transportation projects, the State requires the agency to agree to general grant terms and execute a master agreement for funds.

WETA executed Master Agreement No. 64A0216 with Caltrans on July 21, 2008, and this agreement is set to expire at the ten-year mark on July 21, 2018. To maintain WETA's eligibility to receive state funds now or in the future for transportation projects, a new Master Agreement must be executed.

Staff and legal counsel have reviewed the new Master Agreement, provided as **Attachment A** to this report, and find it in keeping with WETA's practices for the management and maintenance of grant funded projects.

Fiscal Impact

There is no direct financial impact associated with this item. However, this action will allow WETA to be eligible to secure and use State grant funds to support its program of projects over the ten-year period of the agreement.

END

Attachment A

San Francisco Bay Area Water Emergency Transportation Authority
Master Agreement No. 64A0216 A01

Master Agreement State Funded Transit Projects



California Department of Transportation

DIVISION OF RAIL AND MASS TRANSPORTATION
1120 N STREET, ROOM 3300
P. O. BOX 942874, MS-39
SACRAMENTO, CA 94274-0001
PHONE (916) 654-8012

**STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION
DIVISION OF RAIL AND MASS TRANSPORTATION**

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**STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION
DIVISION OF RAIL AND MASS TRANSPORTATION**

**MASTER AGREEMENT
STATE FUNDED TRANSIT PROJECTS**

Effective Date of this Agreement: July 21, 2008
Termination Date of this Agreement: July 21, 2028
Recipient: San Francisco Bay Area Water Emergency Transportation Authority

**APPLICABLE FUNDING SOURCES COVERED BY THIS AGREEMENT WILL BE
IDENTIFIED IN EACH SPECIFIC PROGRAM SUPPLEMENT
ADOPTING THE TERMS OF THIS AGREEMENT**

- ◆ **General Fund**
- ◆ **State Highway Account**
- ◆ **Public Transportation Account**
- ◆ **Clean Air and Transportation Improvement Act of 1990 (PROP. 116) Bond Fund**
- ◆ **Traffic Congestion Relief Fund (TCR), GC 14556.40**
- ◆ **Proposition 1A, the Safe, Reliable High-Speed Passenger Train Bond Act**
- ◆ **Road Repair and Accountability Act of 2017, Senate Bill 1**
- ◆ **2018 Local Partnership Program**
- ◆ **Other State Funding Sources (Existing and Future)**

This AGREEMENT, entered into effective as of the date set forth above, is between the signatory public entity identified hereinabove, hereinafter referred to as **RECIPIENT**, and the STATE OF CALIFORNIA, acting by and through its Department of Transportation, hereinafter referred to as **STATE**.

ARTICLE I - PROJECT ADMINISTRATION

Section 1. Program Supplement

A. General

- (1) This AGREEMENT shall have no force and effect with respect to any PROJECT unless and until a separate PROJECT specific “PROGRAM SUPPLEMENT – STATE FUNDED TRANSIT PROJECT(S),” hereinafter referred to as “PROGRAM SUPPLEMENT,” adopting all of the terms and conditions of this AGREEMENT has been fully executed by both **STATE** and **RECIPIENT**.

- (2) **RECIPIENT** agrees to complete each defined PROJECT, or the identified PROJECT Phase/Component thereof, described in the PROGRAM SUPPLEMENT adopting all of the terms and conditions of this AGREEMENT.
- (3) A financial commitment of actual PROJECT funds will only occur in each detailed and separate PROGRAM SUPPLEMENT. No funds are obligated by the prior execution of this AGREEMENT alone.
- (4) **RECIPIENT** further agrees, as a condition to the release and payment of the funds encumbered for the PROJECT described in each PROGRAM SUPPLEMENT, to comply with the terms and conditions of this AGREEMENT and all the agreed-upon Special Covenants and Conditions attached to or made a part of the PROGRAM SUPPLEMENT identifying and defining the nature of that specific PROJECT.
- (5) The PROGRAM SUPPLEMENT shall include: a detailed Scope of Work conforming to the included Project Description, a Project Schedule, an Overall Funding Plan, and a Project Financial Plan as required by the applicable Program Guidelines.
 - a. The Scope of Work shall include a detailed description of the PROJECT and will itemize the major tasks and their estimated costs.
 - b. The Project Schedule shall include major tasks and/or milestones and their associated beginning and ending dates and duration.
 - c. The Overall Funding Plan shall itemize the various PROJECT Components, the committed funding program(s) or source(s), and the matching funds to be provided by **RECIPIENT** and/or other funding sources, if any [these Components include Environmental and Permits; Plans, Specifications and Estimates (PS&E); Right-of-Way (ROW); and Construction (including transit vehicle acquisition)].
 - d. The Project Financial Plan shall identify estimated expenditures for each PROJECT Component by funding source.
- (6) Adoption and execution of the PROGRAM SUPPLEMENT by **RECIPIENT** and **STATE**, incorporating the terms and conditions of this AGREEMENT into the PROGRAM SUPPLEMENT as though fully set forth therein, shall be sufficient to bind **RECIPIENT** to these terms and conditions when performing the PROJECT. Unless otherwise expressly delegated to a third-party in a resolution by **RECIPIENT**'s governing body, which delegation must be expressly assented to and concurred in by **STATE**, the PROGRAM SUPPLEMENT shall be managed by **RECIPIENT**.
- (7) The estimated cost and scope of each PROJECT will be as described in the applicable PROGRAM SUPPLEMENT. **STATE** funding participation for each PROJECT is limited to those amounts actually encumbered by **STATE** as evidenced in that applicable PROGRAM SUPPLEMENT. A contract awarded by **RECIPIENT** for PROJECT work in an amount in excess of said approved estimate or the PROGRAM SUPPLEMENT funding limit may exceed any said PROGRAM SUPPLEMENT cost estimate and the limits of **STATE**'s participation provided:
 - a. **RECIPIENT** provides the necessary additional funding, or

- b. A cost increase in **STATE**'s share of **PROJECT** funding is first requested by **RECIPIENT** (before the cost overrun occurs) and that increase is approved by **STATE** in the form of an Allocation Letter comprising the encumbrance document for that increased **STATE** funding level.
- (8) State programmed fund amounts may be increased to cover **PROJECT** cost increases only if:
 - a. Such funds are available;
 - b. **STATE** concurs with that proposed increase; and
 - c. **STATE** issues an approved Allocation Letter, Fund Shift Letter, or a Time Extension Letter with additional funding as stated in an executed amendment to that **PROGRAM SUPPLEMENT**.
- (9) When additional State programmed funds are not available, **RECIPIENT** agrees that reimbursements of invoiced **PROJECT** costs paid to **RECIPIENT** will be limited to, and shall not exceed, the amounts already approved in the **PROGRAM SUPPLEMENT** containing the **STATE** approved encumbrance documents and that any increases in **PROJECT** costs above that **STATE** supported funding level must be defrayed by **RECIPIENT** with non-State funds.
- (10) For each approved **PROGRAM SUPPLEMENT**, **RECIPIENT** agrees to contribute at least the statutorily or other required local contribution of appropriate matching funds (other than State funds) if any matching funds are specified within the **PROGRAM SUPPLEMENT**, or any attachment thereto, toward the actual cost of the **PROJECT** or the amount, if any, specified in an executed SB 2800 (Streets and Highways Code section 164.53) Agreement for local match fund credit, whichever is greater. **RECIPIENT** shall contribute not less than the required match amount toward the cost of the **PROJECT** in accordance with a schedule of payments as shown in a Project Financial Plan prepared by **RECIPIENT** as part of a **PROGRAM SUPPLEMENT**.
- (11) Upon the stated expiration date of this **AGREEMENT**, any **PROGRAM SUPPLEMENTS** executed under this **AGREEMENT** for a **PROJECT** with work yet to be completed pursuant to the approved Project Schedule shall be deemed to extend the term of this **AGREEMENT** only to conform to the specific **PROJECT** termination or completion date contemplated by the applicable **PROGRAM SUPPLEMENT** to allow that uncompleted **PROJECT** to be administered under the extended terms and conditions of this **AGREEMENT**.

B. Project Overrun

- (1) If **RECIPIENT** and **STATE** determine, at any time during the performance of a **PROJECT**, that the **PROJECT** budget may be exceeded, **RECIPIENT** shall take the following steps:

- a. Notify the designated **STATE** representative of the nature and projected extent of the overrun and, within a reasonable period thereafter, identify and quantify potential cost savings or other measures which **RECIPIENT** will institute to bring the Project Budget into balance; and
- b. Schedule the projected overrun for discussion at the next Quarterly Review meeting; and
- c. Identify the source of additional **RECIPIENT** or other third party funds that can be made available to complete PROJECT.

C. Scope of Work

- (1) **RECIPIENT** shall be responsible for complete performance of the work described in the approved PROGRAM SUPPLEMENT for the PROJECT related to the commitment of encumbered funds. All work shall be accomplished in accordance with the applicable provisions of the Public Utilities Code, the Streets and Highways Code, the Government Code, and other applicable statutes and regulations.
- (2) **RECIPIENT** acknowledges and agrees that **RECIPIENT** is the sole control and manager of each PROJECT and its subsequent employment, operation, repair and maintenance for the benefit of the public. **RECIPIENT** shall be solely responsible for complying with the funding and use restrictions established by (a) the statutes from which these funds are derived, (b) the California Transportation Commission (CTC), (c) the State Treasurer, (d) the Internal Revenue Service, (e) the applicable PROGRAM SUPPLEMENT, and (f) this AGREEMENT.

D. Program Supplement Amendments

PROGRAM SUPPLEMENT amendments will be required whenever there are CTC-approved changes to the cost, scope of work, or delivery schedule of a PROJECT from those specified in the original PROJECT Application and the original PROGRAM SUPPLEMENT. Those changes shall be mutually binding upon the Parties only following the execution of a PROGRAM SUPPLEMENT amendment.

Section 2. Allowable Costs and Payments

A. Allowable Costs and Progress Payment Vouchers

- (1) Not more frequently than once a month, but at least quarterly, **RECIPIENT** will prepare and submit to **STATE** (directed to the attention of the appropriate State District Transit Representative) signed Progress Payment Vouchers for actual PROJECT costs incurred and paid for by **RECIPIENT** consistent with the Scope of Work document in the PROGRAM SUPPLEMENT and **STATE** shall pay those uncontested allowable costs once the voucher is approved. If no costs were incurred during any given quarter, **RECIPIENT** is exempt from submitting a signed Progress Payment Voucher; but is still required to present a progress report at each Quarterly Review.

- (2) **STATE** shall not be required to reimburse more funds, cumulatively, per quarter of any fiscal year greater than the sums identified and included in the PROJECT Financial Plan. However, accelerated reimbursement of PROJECT funds in excess of the amounts indicated in the Project Financial Plan, cumulatively by fiscal year, may be allowed at the sole discretion of **STATE** if such funds are available for encumbrance to fulfill that need.
- (3) Each such voucher will report the total of PROJECT expenditures from all sources (including those of **RECIPIENT** and third parties) and will specify the percent of State reimbursement requested and the fund source. The voucher should also summarize State money requested by PROJECT component (environmental and permits, plans specifications, and estimates (PS&E); right of way; construction; rolling stock; or--if bond funded--private activity usage) and phase, and shall be accompanied by a report describing the overall work status and progress on PROJECT tasks. If applicable, the first voucher shall also be accompanied by a report describing any tasks specified in the PROGRAM SUPPLEMENT which were accomplished prior to the Effective Date of this AGREEMENT or the PROGRAM SUPPLEMENT with costs to be credited toward any required local contribution described in Article II, Section 1 of this Agreement (but only if expended pursuant to any applicable prior executed Agreement for Local Match Fund Credit between **RECIPIENT** and **STATE**).
- (4) An Indirect Cost Rate Proposal and/or Central Service Cost Allocation plan and related documentation approved under cognizant agency regulations are to be provided to **STATE** (Caltrans Audits & Investigations) annually for their review, and approval and filing prior to ADMINISTERING AGENCY seeking reimbursement of indirect costs incurred within each fiscal year being claimed for reimbursement.

B. Advance Payments (TCR Projects Only)

- (1) Advance reimbursements or payments by **STATE** are not allowed except in the case of TCR funded Projects, and only then when expressly authorized by the CTC.
- (2) In order to receive a CTC approved TCR payment advance, **RECIPIENT** must provide duplicate signed invoices to **STATE** requesting payment of that authorized advance.
- (3) For TCR Projects approved for advanced payment allocation by the CTC, said advance payment shall be deposited by **RECIPIENT** in an interest bearing account held by institutions with long-term credit ratings of “AA” or better from at least two nationally recognized credit rating agencies, or in instruments issued by and secured by the full faith and credit of the U.S. Government or by an agency of the U.S. Government. No TCR interest earnings may be spent on the PROJECT. Interest earned shall be recorded and documented from the time the TCR funds are first deposited in **RECIPIENT**’s account until all the approved TCR advance funds have been expended or returned to **STATE** together with all accrued interest. Interest earned shall be reported to **STATE**’s Project Coordinator on an annual basis and upon the final PROJECT payment when interest earnings, overpayments, and unexpended advanced TCR funds

shall be returned to **STATE** no later than thirty (30) days after **PROJECT** completion or termination of the **PROGRAM SUPPLEMENT**, whichever is first in time.

- (4) Advanced funds are to be expended only as indicated in the approved TCR Application. **RECIPIENT** must be able to document the expenditures/disbursement of funds advanced to only pay for actual allowable **PROJECT** costs incurred.
- (5) Except as expressly allowed hereinbelow, non-TCR funds and TCR project funds not authorized for advance payment can only be released by **STATE** as reimbursement of actual allowable **PROJECT** costs already incurred and paid for by **RECIPIENT** no earlier than the effective date of this **AGREEMENT** and not incurred beyond the **AGREEMENT/PROGRAM SUPPLEMENT** Termination Date.
- (6) Where advance payments are authorized in a **PROGRAM SUPPLEMENT**, **RECIPIENT** must report and document the expenditure/disbursement of funds advanced to pay for actual eligible **PROJECT** costs incurred, at least quarterly, using a Progress Payment Voucher to be approved by **STATE**'s District Project Administrator.

C. Expedited Payments

Should **RECIPIENT** have a valid Memorandum of Understanding (MOU) for "Expedited Payment" on file with **STATE**'s Accounting Service Center, **RECIPIENT** will, not more frequently than as authorized by that MOU, prepare and submit to **STATE** an Expedited Payment Invoice for reimbursements that are consistent with that MOU, this **AGREEMENT**, and the applicable **PROGRAM SUPPLEMENT**. Expedited Payments are subject to policies established in the Caltrans Accounting Manual. One time payments and final payments eligible for expedited pay pursuant to this Section will have ten percent (10%) of each invoice amount withheld until **PROJECT** completion and **STATE** has evaluated **RECIPIENT**'s performance and made a determination that all requirements assumed under this **AGREEMENT** and the relevant **PROGRAM SUPPLEMENT** have been satisfactorily fulfilled by **RECIPIENT**.

D. Advance Expenditure of Local Funds

Government Code section 14529.17 (AB 872) allows public agencies to expend their own funds on certain programmed projects prior to the CTC's allocation of funds, and, upon receipt of CTC approval, to then seek reimbursement for those allowable prior expenditures following execution of a **PROGRAM SUPPLEMENT** wherein **STATE** acknowledges and accepts those statutorily authorized prior expenditures as a credit towards a required **RECIPIENT** match, (if any) or as eligible **PROJECT** expenditures for reimbursement.

E. Travel Reimbursement

Payments to **RECIPIENT** for **PROJECT** related travel and subsistence expenses of **RECIPIENT** forces and its subcontractors claimed for reimbursement or applied as local match credit shall not exceed rates authorized to be paid rank and file State employees under current State Department of Personnel Administration (DPA) rules. If the rates invoiced by

RECIPIENT are in excess of those authorized DPA rates, then **RECIPIENT** is responsible for the cost difference, and any overpayments inadvertently paid by **STATE** shall be reimbursed to **STATE** by **RECIPIENT** on demand.

F. *Final Invoice*

The PROGRAM SUPPLEMENT Termination Date refers to the last date for **RECIPIENT** to incur valid PROJECT costs or credits and is the date that the PROGRAM SUPPLEMENT expires. **RECIPIENT** has one hundred and eighty (180) days after that Termination Date to make already incurred final allowable payments to PROJECT contractors or vendors, prepare the PROJECT Closeout Report, and submit the final invoice to **STATE** for reimbursement of allowable PROJECT costs before those remaining State funds are unencumbered and those funds are reverted as no longer available to pay any PROJECT costs. **RECIPIENT** expressly waives any right to allowable reimbursements from **STATE** pursuant to this AGREEMENT for costs incurred after that termination date and for costs invoiced to **RECIPIENT** for payment after that one hundred and eightieth (180th) day following the PROJECT Termination Date.

ARTICLE II – GENERAL PROVISIONS

Section 1. Funding

A. *Local Match Funds*

Subparagraphs “(1) and (2)” within this Section 1.A. apply only to those PROJECTS where the PROJECT funding is programmed to require a local match. (See individual Program Guidelines for specific funding requirements).

- (1) Except where specifically allowed by the applicable PROGRAM SUPPLEMENT, reimbursement of and credits for local matching funds will be made or allowed only for work performed after the Effective Date of a PROGRAM SUPPLEMENT and prior to the Termination Date unless permitted as local match PROJECT expenditures made prior to the effective date of the PROGRAM SUPPLEMENT pursuant to Government Code section 14529.17 or by an executed SB 2800 Agreement for Local Match Fund Credit.
- (2) **RECIPIENT** agrees to contribute at least the statutorily or other required local contribution of matching funds (other than State or federal funds), if any is specified within the PROGRAM SUPPLEMENT or any attachment thereto, toward the actual cost of the PROJECT or the amount, if any, specified in any executed SB 2800 (Streets and Highways Code Section 164.53) Agreement for local match fund credit, whichever is greater. **RECIPIENT** shall contribute not less than its required match amount toward the PROJECT cost in accordance with a schedule of payments as shown in the Project Financial Plan prepared by **RECIPIENT** and approved by **STATE** as part of a PROGRAM SUPPLEMENT.

B. *Funding Contingencies*

Delivery by **STATE** of all funds encumbered to reimburse allowable **PROJECT** costs pursuant to this **AGREEMENT** is contingent upon prior budget action by the Legislature, fund allocation by the CTC or the United States Department of Transportation, and submittal by **RECIPIENT** and approval by **STATE** of all **PROJECT** documentation, including, without limitation, that required by Government Code section 14085. In the event of the imposition of additional conditions, delays, or a cancellation or reduction in funding, as approved by the Legislature, the CTC or the United States Department of Transportation, **RECIPIENT** shall be excused from meeting the time and expenditure constraints set forth in the Project Financial Plan and the Project Schedule to the extent of such delay, cancellation or reduction and the **PROGRAM SUPPLEMENT** will be amended to reflect the resultant necessary changes in **PROJECT** funding, scope, or scheduling.

C. *Funds Movement*

RECIPIENT shall not make any proposed changes in any of the four **PROJECT** expenditure Components (Environmental and Permits, PS&E, Right-of-Way and Construction), including major equipment acquisitions without prior written **STATE** approval. **STATE** will also determine whether those proposed changes are significant enough to warrant CTC review. Specific rules and guidelines regarding this process may be detailed in the applicable CTC Resolutions, including, but not limited to, numbers G-06-04 and G-06-20 or their successors.

Section 2. Audits and Reports

A. *Cost Principles*

- (1) **RECIPIENT** agrees to comply with Title 2 Code of Federal Regulations 200 (2 CFR 200), Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards.
- (2) **RECIPIENT** agrees, and will assure that its contractors and subcontractors will be obligated to agree to follow 2 CFR 200 and it shall be used to determine the allowability of individual Project cost items. Every sub-recipient receiving Project funds as a contractor or sub-contractor under this agreement shall comply with 2 CFR 200.
- (3) Any **PROJECT** costs for which **RECIPIENT** has received payment or credit that are determined by subsequent audit to be unallowable under 2 CFR 200, are subject to repayment by **RECIPIENT** to **STATE**. Should **RECIPIENT** fail to reimburse moneys due **STATE** within thirty (30) days of demand, or within such other period as may be agreed in writing between the Parties hereto, **STATE** is authorized to intercept and withhold future payments due **RECIPIENT** from **STATE** or any third-party source, including but not limited to, the State Treasurer, the State Controller and the CTC.

B. *Record Retention*

- (1) **RECIPIENT** agrees, and will assure that its contractors and subcontractors shall establish and maintain an accounting system and records that properly accumulate and segregate incurred PROJECT costs and matching funds by line item for the PROJECT. The accounting system of **RECIPIENT**, its contractors and all subcontractors shall conform to Generally Accepted Accounting Principles (GAAP), enable the determination of incurred costs at interim points of completion, and provide support for reimbursement payment vouchers or invoices. All accounting records and other supporting papers of **RECIPIENT**, its contractors and subcontractors connected with PROJECT performance under this AGREEMENT and each PROGRAM SUPPLEMENT shall be maintained for a minimum of three (3) years from the date of final payment to **RECIPIENT** under a PROGRAM SUPPLEMENT and shall be held open to inspection, copying, and audit by representatives of **STATE**, the California State Auditor, and auditors representing the federal government. Copies thereof will be furnished by **RECIPIENT**, its contractors, and subcontractors upon receipt of any request made by **STATE** or its agents. In conducting an audit of the costs and match credits claimed under this AGREEMENT, **STATE** will rely to the maximum extent possible on any prior audit of **RECIPIENT** pursuant to the provisions of federal and State law. In the absence of such an audit, any acceptable audit work performed by **RECIPIENT**'s external and internal auditors may be relied upon and used by **STATE** when planning and conducting additional audits.
- (2) For the purpose of determining compliance with Title 21, California Code of Regulations, Section 2500 et seq., when applicable, and other matters connected with the performance of **RECIPIENT**'s contracts with third parties pursuant to Government Code section 8546.7, **RECIPIENT**, **RECIPIENT**'s contractors and subcontractors and **STATE** shall each maintain and make available for inspection all books, documents, papers, accounting records, and other evidence pertaining to the performance of such contracts, including, but not limited to, the costs of administering those various contracts. All of the above referenced parties shall make such AGREEMENT and PROGRAM SUPPLEMENT materials available at their respective offices at all reasonable times during the entire PROJECT period and for three (3) years from the date of final payment to **RECIPIENT** under any PROGRAM SUPPLEMENT. **STATE**, the California State Auditor, or any duly authorized representative of **STATE** or the United States Department of Transportation, shall each have access to any books, records, and documents that are pertinent to a PROJECT for audits, examinations, excerpts, and transactions, and **RECIPIENT** shall furnish copies thereof if requested.
- (3) **RECIPIENT**, its contractors and subcontractors will permit access to all records of employment, employment advertisements, employment application forms, and other pertinent data and records by the State Fair Employment Practices and Housing Commission, or any other agency of the State of California designated by **STATE**, for the purpose of any investigation to ascertain compliance with this AGREEMENT.

C. *Quarterly Review*

- (1) Subject to the discretion of **STATE**, **RECIPIENT** and **STATE** agree to conduct, on a quarterly basis, on-site reviews of all aspects of the progress of each **PROJECT**. **RECIPIENT** agrees, during each quarterly progress review, to inform **STATE** regarding:
 - a. Whether the **PROJECT** is proceeding on schedule and within budget;
 - b. Any requested changes to the Project Description, Scope of Work, Project Schedule, Overall Funding Plan, or Project Financial Plan contained in a **PROGRAM SUPPLEMENT**;
 - c. Major construction accomplishments during the quarter;
 - d. Any actual or anticipated problems which could lead to delays in schedule, increased costs or other difficulties;
 - e. The status of the **PROJECT** budget; and
 - f. The status of critical elements of **PROJECT**.
- (2) Quarterly reviews of **RECIPIENT** progress will include consideration of whether reported implementation activities are within the scope of the **PROJECT PROGRAM SUPPLEMENT** and in compliance with State laws, regulations, and administrative requirements.

Section 3. Special Requirements

A. *California Transportation Commission (CTC) Resolutions*

- (1) **RECIPIENT** shall adhere to applicable CTC policies, as may be adopted or amended from time to time, governing eligibility, project management, use of funds including, but not limited to the “Timely Use of Funds” as stated in Resolution G-06-04, adopted April 26, 2006, addressing the expenditure and reimbursement of TCR funds and Resolution G-09-11, adopted October 14, 2009, to provide guidance for the use of Proposition 116 and STIP funds. All CTC resolutions, and/or successor resolutions in place at the time a **PROGRAM SUPPLEMENT** is executed, shall be applicable to all state funded projects including, but not limited to Prop 116, STIP, TCR funds, Proposition 1A, and the Road Repair and Accountability Act of 2017, respectively.
- (2) **RECIPIENT** shall be bound to the terms and conditions of this **AGREEMENT**; the **PROJECT** application contained in the **PROGRAM SUPPLEMENT** (as applicable); and CTC Resolutions G-06-04, G-09-11 and/or their respective successors in place at the time the **PROGRAM SUPPLEMENT** is signed (as applicable) and all restrictions, rights, duties and obligations established therein on behalf of **STATE** and CTC shall accrue to the benefit of the CTC and shall thereafter be subject to any necessary enforcement action by CTC or **STATE**. All terms and conditions stated in the aforesaid CTC Resolutions and CTC-approved Guidelines in place at the time the

PROGRAM SUPPLEMENT is signed (if applicable) shall also be considered to be binding provisions of this AGREEMENT.

- (3) **RECIPIENT** shall conform to any and all permit and mitigation duties associated with PROJECT as well as all environmental obligations established in CTC Resolution G-91-2 and/or its successors in place at the time a PROGRAM SUPPLEMENT is signed, as applicable, at the expense of **RECIPIENT** and/or the responsible party and without any further financial contributions or obligations on the part of **STATE** unless a separate PROGRAM SUPPLEMENT expressly provides funding for the specific purpose of hazardous materials remediation.
- (4) **RECIPIENT** acknowledges when the PROGRAM SUPPLEMENT is executed the **RECIPIENT** is to comply with all CTC resolutions as adopted or currently amended as well as the guidelines, and policies applicable to state funded programs (or projects) including, but not limited to, Prop 116, STIP, TCR, Proposition 1A, and the Road Repair and Accountability Act of 2017.

B. *RECIPIENT Resolution*

- (1) **RECIPIENT** has executed this AGREEMENT pursuant to the authorizing **RECIPIENT** resolution, attached as Attachment II to this AGREEMENT, which empowers **RECIPIENT** to enter into this AGREEMENT and which may also empower **RECIPIENT** to enter into all subsequent PROGRAM SUPPLEMENTS adopting the provisions of this AGREEMENT.
- (2) If **RECIPIENT** or **STATE** determines that a separate Resolution is needed for each PROGRAM SUPPLEMENT, **RECIPIENT** will provide information as to who the authorized designee is to act on behalf of the **RECIPIENT** to bind **RECIPIENT** with regard to the terms and conditions of any said PROGRAM SUPPLEMENT or amendment and will provide a copy of that additional Resolution to **STATE** with the PROGRAM SUPPLEMENT or any amendment to that document.

C. *Termination*

- (1) **STATE** reserves the right to terminate funding for any PROGRAM SUPPLEMENT upon written notice to **RECIPIENT** in the event that **RECIPIENT** fails to proceed with PROJECT work in accordance with the PROGRAM SUPPLEMENT, the bonding requirements, if applicable, or otherwise violates the conditions of this AGREEMENT and/or the PROGRAM SUPPLEMENT or the funding allocation such that substantial performance is significantly endangered.
- (2) No such termination shall become effective if, within thirty (30) days after receipt of a Notice of Termination, **RECIPIENT** either cures the default involved or, if not reasonably susceptible of cure within said thirty (30)-day period, **RECIPIENT** proceeds thereafter to complete the cure in a manner and time line acceptable to

STATE. Any such termination shall be accomplished by delivery to **RECIPIENT** of a Notice of Termination, which notice shall become effective not less than thirty (30) days after receipt, specifying the reason for the termination, the extent to which funding of work under this AGREEMENT is terminated and the date upon which such termination becomes effective, if beyond thirty (30) days after receipt. During the period before the effective termination date, **RECIPIENT** and **STATE** shall meet to attempt to resolve any dispute.

- (3) Following a fund encumbrance made pursuant to a PROGRAM SUPPLEMENT, if **RECIPIENT** fails to expend TCR/GENERAL FUND monies by June 30 of any applicable Fiscal Year that those funds would revert, those funds will be deemed withdrawn and will no longer be available to reimburse PROJECT work unless those funds are specifically made available beyond the end of that Fiscal Year through re-appropriation or other equivalent action of the Legislature and written notice of that action is provided to **RECIPIENT** by **STATE**.
- (4) In the event **STATE** terminates a PROGRAM SUPPLEMENT for convenience and not for a default on the part of **RECIPIENT** as is contemplated in C (1) and (2) above of this Section 3, **RECIPIENT** shall be reimbursed its authorized costs up to **STATE**'s proportionate and maximum share of allowable PROJECT costs incurred to the date of **RECIPIENT**'s receipt of that notice of termination, including any unavoidable costs reasonably and necessarily incurred up to and following that termination date by **RECIPIENT** to effect such termination following receipt of that termination notice.

D. Third Party Contracting

- (1) **RECIPIENT** shall not award a construction contract over \$10,000 or other contracts over \$25,000 [excluding professional service contracts of the type which are required to be procured in accordance with Government Code Sections 4525 (d), (e) and (f)] on the basis of a noncompetitive negotiation for work to be performed under this AGREEMENT without the prior written approval of **STATE**. Contracts awarded by **RECIPIENT**, if intended as local match credit, must meet the requirements set forth in this AGREEMENT regarding local match funds.
- (2) Any subcontract entered into by **RECIPIENT** as a result of this AGREEMENT shall contain the provisions of ARTICLE II – GENERAL PROVISIONS, Section 2. Audits and Reports and shall mandate that travel and per diem reimbursements and third-party contract reimbursements to subcontractors will be allowable as PROJECT costs only after those costs are incurred and paid for by the subcontractors.
- (3) To be eligible for local match credit, **RECIPIENT** must ensure that local match funds used for the PROJECT meet the General Provisions requirements outlined in this ARTICLE II in the same manner as required of all other PROJECT expenditures.

- (4) In addition to the above, the preaward requirements of third party contractor/consultants with local transit agencies should be consistent with Local Program Procedures (LPP-00-05).

E. Change in Funds and Terms/Amendments

This AGREEMENT and the resultant PROGRAM SUPPLEMENTS may be modified, altered, or revised only with the joint written consent of **RECIPIENT** and **STATE**.

F. Project Ownership

- (1) Unless expressly provided to the contrary in a PROGRAM SUPPLEMENT, subject to the terms and provisions of this AGREEMENT, **RECIPIENT**, or a designated subrecipient acceptable to **STATE**, as applicable, shall be the sole owner of all improvements and property included in the PROJECT constructed, installed or acquired by **RECIPIENT** or subrecipient with funding provided to **RECIPIENT** under this AGREEMENT. **RECIPIENT**, or subrecipient, as applicable, is obligated to continue operation and maintenance of the physical aspects of the PROJECT dedicated to the public transportation purposes for which PROJECT was initially approved unless **RECIPIENT**, or subrecipient, as applicable, ceases ownership of such PROJECT property; ceases to utilize the PROJECT property for the intended public transportation purposes; or sells or transfers title to or control over PROJECT and **STATE** is refunded the Credits due **STATE** as provided in paragraph (4) herein below.
- (2) Should State bond funds be encumbered to fund any part of a PROJECT under this AGREEMENT, then, at **STATE**'s option, before **RECIPIENT** will be permitted to make any proposed change in use, **RECIPIENT** shall be required to first obtain a determination by Bond Counsel acceptable to the State Treasurer's Office and **STATE** that a change in the operation, proportion, or scope of PROJECT as originally proposed by **RECIPIENT** will not adversely affect the tax exempt status of those bonds.
- (3) PROJECT right-of-way, PROJECT facilities constructed or reconstructed on a PROJECT site and/or PROJECT property (including vehicles and vessels) purchased by **RECIPIENT** (excluding temporary construction easements and excess property whose proportionate resale proceeds are distributed pursuant to this AGREEMENT) shall remain permanently dedicated to the described public transit use in the same proportion and scope, and to the same extent as mandated in the PROGRAM SUPPLEMENT and related Bond Fund Certification documents, if applicable, unless **STATE** agrees otherwise in writing. Vehicles acquired as part of PROJECT, including, but not limited to, buses, vans, rail passenger equipment and ferry vessels, shall be dedicated to that public transportation use for their full economic life cycle, which, for the purpose of this AGREEMENT, will be determined in accordance with standard national transit practices and applicable rules and guidelines, including any extensions of that life cycle achievable by reconstruction, rehabilitation or enhancements.

- (4) (a) Except as otherwise set forth in this Section 4, **STATE**, or any other **STATE**-assignee public body acting on behalf of the CTC, shall be entitled to a refund or credit (collectively the Credit), at **STATE**'s sole option, equivalent to the proportionate **PROJECT** funding participation received by **RECIPIENT** from **STATE** if **RECIPIENT**, or a sub-recipient, as applicable, (i) ceases to utilize **PROJECT** for the original intended public transportation purposes or (ii) sells or transfers title to or control over **PROJECT**. If federal funds (meaning only those federal funds received directly by **RECIPIENT** and not federal funds derived through or from the State) have contributed to the **PROJECT**, **RECIPIENT** shall notify both **STATE** and the original federal source of those funds of the disposition of the **PROJECT** assets or the intended use of those sale or transfer receipts.
- (b) **STATE** shall also be entitled to an acquisition Credit for any future purchase or condemnation of all or portions of **PROJECT** by **STATE** or a designated representative or agent of **STATE**.
- (c) The Credit due **STATE** will be determined by the ratio of **STATE**'s funding when measured against the **RECIPIENT**'s funding participation (the Ratio). For purposes of this Section 4, the State's funding participation includes federal funds derived through or from **STATE**. That Ratio is to be applied to the then present fair market value of **PROJECT** property acquired or constructed as provided in (d) and (e) below.
- (d) For Mass Transit vehicles, this Credit [to be deducted from the then remaining equipment value] shall be equivalent to the percentage of the full extendable vehicle economic life cycle remaining, multiplied by the Ratio of funds provided for that equipment acquisition. For real property, this same funding Ratio shall be applied to the then present fair market value, as determined by **STATE**, of the **PROJECT** property acquired or improved under this AGREEMENT.
- (e) Such Credit due **STATE** as a refund shall not be required if **RECIPIENT** dedicates the proceeds of such sale or transfer exclusively to a new or replacement **STATE** approved public transit purpose, which replacement facility or vehicles will then also be subject to the identical use restrictions for that new public purpose and the Credit ratio due **STATE** should that replacement project or those replacement vehicles cease to be used for that intended described pre-approved public transit purpose.
- (1) In determining the present fair market value of property for purposes of calculating **STATE**'s Credit under this AGREEMENT, any real property portions of a **PROJECT** site contributed by **RECIPIENT** shall not be included. In determining **STATE**'s proportionate funding participation, **STATE**'s contributions to third parties (other than **RECIPIENT**) shall be included if those contributions are incorporated into the **PROJECT**.

- (2) Once **STATE** has received the Credit as provided for above because **RECIPIENT**, or a sub-recipient, as applicable, has (a) ceased to utilize the **PROJECT** for the described intended public transportation purpose(s) for which **STATE** funding was provided and **STATE** has not consented to that cessation of services or (b) sold or transferred title to or control over **PROJECT** to another party (absent **STATE** approval for the continued transit operation of the **PROJECT** by that successor party under an assignment of **RECIPIENT**'s duties and obligations), neither **RECIPIENT**, subrecipient, nor any party to whom **RECIPIENT** or subrecipient, as applicable, has transferred said title or control shall have any further obligation under this **AGREEMENT** to continue operation of **PROJECT** and/or **PROJECT** facilities for those described public transportation purposes, but may then use **PROJECT** and/or any of its facilities for any lawful purpose.
- (3) To the extent that **RECIPIENT** operates and maintains Intermodal Transfer Stations as any integral part of **PROJECT**, **RECIPIENT** shall maintain each station and all its appurtenances, including, but not limited to, restroom facilities, in good condition and repair in accordance with high standards of cleanliness (Public Utilities Code section 99317.8). Upon request of **STATE**, **RECIPIENT** shall also authorize State-funded bus services to use those stations and appurtenances without any charge to **STATE** or the bus operator. This permitted use will include the placement of signs and informational material designed to alert the public to the availability of the State-funded bus service (for the purpose of this paragraph, "State-funded bus service" means any bus service funded pursuant to Public Utilities Code section 99316).
- (4) Special conditions apply to any proposed sale or transfer or change of use as respects **PROJECT** property, facilities or equipment acquired with tax free State bond funds and **RECIPIENT** shall conform to those restrictions as set forth herein and in said bonds.

G. *Disputes*

STATE and **RECIPIENT** shall deal in good faith and attempt to resolve potential disputes informally. If the dispute persists, **RECIPIENT** shall submit to the **STATE**'s District Contract Manager or designee a written demand for a decision regarding the disposition of any dispute arising under this agreement. The District Contract Manager shall make a written decision regarding the dispute and will provide it to the fund **RECIPIENT**. The fund **RECIPIENT** shall have an opportunity to challenge the District Contract Manager's determination but must make that challenge in writing within ten (10) working days to the Mass Transportation Program Manager or his/her designee. [If the fund **RECIPIENT** challenge is not made within the ten (10) day period, the District Contract Manager's decision shall become the final decision of the **STATE**.] **STATE** and **RECIPIENT** shall submit written, factual information and supporting data in support their respective positions. The decision of the Mass Transportation Program Manager or his/her designee shall be final, conclusive and binding regarding the dispute, unless

RECIPIENT commences an action in court of competent jurisdiction to contest the decision in accordance with Division 3.6 of the California Government Code.

H. Hold Harmless and Indemnification

- (1) Neither **STATE** nor any officer or employee thereof shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by **RECIPIENT**, its agents and contractors under or in connection with any work, authority, or jurisdiction delegated to **RECIPIENT** under this AGREEMENT or any PROGRAM SUPPLEMENT or as respects environmental clean up obligations or duties of **RECIPIENT** relative to PROJECT. It is also understood and agreed that, **RECIPIENT** shall fully defend, indemnify and hold the CTC and **STATE** and their officers and employees harmless from any liability imposed for injury and damages or environmental obligations or duties arising or created by reason of anything done or imposed by operation of law or assumed by, or omitted to be done by **RECIPIENT** under or in connection with any work, authority, or jurisdiction delegated to **RECIPIENT** under this AGREEMENT and all PROGRAM SUPPLEMENTS.
- (2) **RECIPIENT** shall indemnify, defend and hold harmless **STATE**, the CTC and the State Treasurer relative to any misuse by **RECIPIENT** of State funds, PROJECT property, PROJECT generated income or other fiscal acts or omissions of **RECIPIENT**.

I. Labor Code Compliance

RECIPIENT shall include in all subcontracts awarded using PROJECT funds, when applicable, a clause that requires each subcontractor to comply with California Labor Code requirements that all workers employed on public works aspects of any project (as defined in California Labor Code §§ 1720-1815) be paid not less than the general prevailing wage rates predetermined by the Department of Industrial Relations as effective the date of Contract award by the **RECIPIENT**.

J. Non-Discrimination

- (1) In the performance of work under this AGREEMENT, **RECIPIENT**, its contractor(s) and all subcontractors, shall not unlawfully discriminate, harass or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age, marital status, family and medical care leave, pregnancy leave, and disability leave. **RECIPIENT**, its contractor(s) and all subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. **RECIPIENT**, its contractor(s) and all subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900 et seq.), and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, section 11000 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code section 12990 (a-f), set forth in

Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this AGREEMENT by reference and made a part hereof as if set forth in full. Each of **RECIPIENT**'s contractors and all subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreements, as appropriate.

- (2) Should federal funds be constituted as part of PROJECT funding or compensation received by **RECIPIENT** under a separate Contract during the performance of this AGREEMENT, **RECIPIENT** shall comply with this AGREEMENT and with all federal mandated contract provisions as set forth in that applicable federal funding agreement.
- (3) **RECIPIENT** shall include the non-discrimination and compliance provisions of this clause in all contracts and subcontracts to perform work under this AGREEMENT.

K. State Fire Marshal Building Standards Code

The State Fire Marshal adopts building standards for fire safety and panic prevention. Such regulations pertain to fire protection design and construction, means of egress and adequacy of exits, installation of fire alarms, and fire extinguishment systems for any State-owned or State-occupied buildings per section 13108 of the Health and Safety Code. When applicable, **RECIPIENT** shall request that the State Fire Marshal review PROJECT PS&E to ensure PROJECT consistency with State fire protection standards.

L. Americans with Disabilities Act

By signing this Master Agreement, **RECIPIENT** assures **STATE** that **RECIPIENT** shall comply with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA (42 U.S.C. 12101 et seq.).

M. Access for Persons with Disabilities

Disabled access review by the Department of General Services (Division of the State Architect) is required for all publicly funded construction of buildings, structures, sidewalks, curbs and related facilities. **RECIPIENT** will award no construction contract unless **RECIPIENT**'s plans and specifications for such facilities conform to the provisions of sections 4450 and 4454 of the California Government Code, if applicable. Further requirements and guidance are provided in Title 24 of the California Code of Regulations.

N. Disabled Veterans Program Requirements

- (1) Should Military and Veterans Code sections 999 et seq. be applicable to **RECIPIENT**, **RECIPIENT** will meet, or make good faith efforts to meet, the 3% Disabled Veterans Business Enterprises goals (or **RECIPIENT**'s applicable higher goals) in the award of every contract for PROJECT work to be performed under these this AGREEMENT.

- (2) **RECIPIENT** shall have the sole duty and authority under this AGREEMENT and each PROGRAM SUPPLEMENT to determine whether these referenced code sections are applicable to **RECIPIENT** and, if so, whether good faith efforts asserted by those contractors of **RECIPIENT** were sufficient as outlined in Military and Veterans Code sections 999 et seq.

O. *Environmental Process*

Completion of the PROJECT environmental process (“clearance”) by **RECIPIENT** (and/or **STATE** if it affects a State facility within the meaning of the applicable statutes) is required prior to requesting PROJECT funds for right-of-way purchase or construction. No State agency may request funds nor shall any State agency, board or commission authorize expenditures of funds for any PROJECT effort, except for feasibility or planning studies, which may have a significant effect on the environment unless such a request is accompanied with all appropriate documentation of compliance with or exemption from the California Environmental Quality Act (CEQA) (including, if as appropriate, an environmental impact report, negative declaration, or notice of exemption) under California Public Resources Code section 21080(b) (10), (11), and (12) provides an exemption for a passenger rail project that institutes or increases passenger or commuter services on rail or highway rights-of-way already in use.

ARTICLE III – SPECIAL PROVISIONS

Section 1. Bond Provisions (Applicable only to State Bond Funding encumbered against a specific Program Supplement).

A. *General Bond Provisions*

- (1) If **RECIPIENT** enters into a management contract with a private party (including AMTRAK) for operation of rail, ferry or other transportation services in connection with PROJECT, **RECIPIENT** will obtain prior approval from Bond Counsel acceptable to **STATE** that the terms of that management contract meet the requirements of Internal Revenue Service Revenue Procedure 97-13 (as supplemented or amended) or any successor thereto (dealing generally with guidelines for when management contracts may be deemed not to create a "private use" of bond-financed property) or are otherwise acceptable. **RECIPIENT** must also be prepared to certify, upon request of **STATE**, that the revenues which **RECIPIENT** (or its manager) will receive directly from the operation of transportation services in connection with PROJECT (but not including any subsidy of the transportation operation from taxes or other outside fund sources) are, for any fiscal year, less than the ordinary and necessary expenses directly attributable to the operation and maintenance of the transportation system (excluding any overhead or administrative costs of **RECIPIENT**).
- (2) Except as provided in this Article III, A (1), **STATE** and **RECIPIENT** agree that any costs of PROJECT acquired or constructed by **RECIPIENT** allocable to portions of PROJECT which are subject to any property interests held by a non-governmental

person(s) in connection with business activities, such as easements, leases, or fee interests, not generally enjoyed by the public (hereinafter referred to as “Non-Governmentally Used Property” or “NUP”) shall require the prior approval of **STATE** and the State Treasurer, as applicable. If **RECIPIENT** receives any revenues or profits from any NUP activities allowed pursuant to this Article (whether approved at this time or hereafter approved by **STATE**), **RECIPIENT** agrees that such revenues or profits shall be used exclusively for the public transportation services for which **PROJECT** was initially approved, either for capital improvements or operating costs. If **RECIPIENT** does not so dedicate those revenues or profits, a proportionate share shall (unless disapproved by Bond Counsel) be paid to **STATE** equivalent to the Ratio of **STATE**’s percentage of participation in **PROJECT**.

- (3) Notwithstanding the foregoing, **RECIPIENT** may be authorized to receive an allocation of bond proceeds for NUP activity, in an amount not to exceed the amount specified in the **PROGRAM SUPPLEMENT**, if **RECIPIENT** submits a certified bond certification questionnaire to the **STATE**, and both the **STATE** and the State Treasurer approve the private activities contained therein.
- (4) **RECIPIENT** shall not loan any portion of bond proceeds funding **PROJECT** to any private (including nonprofit) person or business. For this purpose, a “loan” includes any arrangement that is the economic equivalent of a loan, regardless of how it is named.
- (5) Delivery by **STATE** of any bond funds is contingent on the sale of bonds by the State Treasurer. **STATE** shall not be held liable for any resulting damage or penalty to **RECIPIENT** in the event bond sales are delayed, canceled, or downsized or other **AGREEMENT** funds are restricted, limited or otherwise conditioned by acts of Congress, the Internal Revenue Service, the United States Department of Transportation, the Legislature, or the CTC.
- (6) **RECIPIENT** shall, for the purposes of any State bond funded right of way acquisition which will become a permanent part of **PROJECT** (such acquisitions exclude temporary construction easements, property allocated to matching funds, and excess property purchased with State funds whose resale proceeds are returned or credited to **STATE**), maintain ownership of such **PROJECT** property for a minimum of twenty years or until the bonds have matured, whichever occurs first, before transferring or selling such property (subject to all refunds or Credits due **STATE** as provided hereinabove).
- (7) Where **RECIPIENT**’s **PROJECT** includes a commuter rail **PROJECT** within the meaning of Proposition 116, **RECIPIENT** shall coordinate and share with other public transit operators any rail rights-of-way, common maintenance services and station facilities used for intercity and commuter rail. Intercity and commuter rail services shall be coordinated with each other, with other providers and with freight traffic to provide integrated rail passenger and freight services with minimal conflict.

- (8) **RECIPIENT** agrees that all passenger vehicles, rail, and water borne ferry equipment, and all facilities acquired or constructed with Proposition 116 bond funds shall be accessible to persons with physical disabilities, including wheelchair users, at all stops, stations and terminals, whether or not staffed.
- (9) NUP shall, for accounting and bookkeeping purposes, first be allocated to funding sources other than the State bond funds. For purposes of making such allocations, the costs attributable to NUP involving a sale, easement, lease or similar arrangement shall be determined on the basis of a fair allocation of value, which may include determinations based upon square meters/feet of the area encumbered by the NUP lease or easement relative to the total area acquired or constructed if all such area is of approximately equal value.
- (10) NUP will include, but is not limited to, property which is sold (including sales of air and subsurface rights), and property subject to easements, leases or similar rights. A rail right of way will not be treated as NUP solely as a result of a Freight Use Easement retained by the seller of the right of way to **RECIPIENT**, provided that the sales agreement appropriately excludes the Freight Use Easement from the property or rights being acquired. Further, notwithstanding anything in this Article III to the contrary, **RECIPIENT** may allocate grant funds to the cost of any NUP if (a) neither **RECIPIENT** nor any other governmental entity will receive, directly or indirectly, any payments from or on behalf of the non-governmental user of the NUP, or (b) the payment from such user does not exceed the operation and maintenance costs fairly attributable or allocable to the non-governmental use of the NUP.
- (11) **RECIPIENT** shall request, in writing, **STATE**'s advance approval if PROJECT funds are to be allocated to any NUP except "incidental use" property described below. If property, the costs of which have previously been allocated to PROJECT funds, is to become NUP before the State bond funds are fully paid or redeemed, then **RECIPIENT** may allocate the costs of such property to another funding source as provided or obtain **STATE**'s approval that the allocation of the costs of such property to the bond funds may remain. It is anticipated that **STATE**'s approval will be granted if, taking into account the existing and expected uses of the proceeds of the State bonds, **STATE** determines that the continued tax-exempt status of the State bonds will not be adversely affected and that the use of the property is consistent with PROJECT and its described purpose.
- (12) For purposes of these fund source allocations, **RECIPIENT** does not have to consider NUP as including those "incidental uses" of PROJECT (for example, advertising billboards, vending machines, telephones, etc.) which meet the applicable requirements of federal tax regulations (IRS Notice 87-69 or any successor thereto). In general, such Notice requires that the incidental use not be physically separated from the rest of PROJECT and not comprise, in the aggregate, more than 2-1/2% of the total costs of PROJECT.

Section 2. TCRP PROJECTS

The TRAFFIC CONGESTION RELIEF (TCR) ACT OF 2000 (the “ACT”), was added (in Chapter 4.5, commencing with section 14556) to part 5.3 of Division 3 of Title 2 of the Government Code by AB 2928 and SB 406, as amended by SB 1662 and AB 1705. As directed by the ACT and the CTC established Guidelines (as set out in CTC Resolution G-06-04), and as those Guidelines may be amended prior to the execution of a future PROGRAM SUPPLEMENT, said Guidelines shall apply to each TCRP funded PROJECT. By this reference, those Guidelines are made an express part of this AGREEMENT and shall apply to each TCRP funded PROJECT. **RECIPIENT** will cause its specific TCRP mandated Resolution to be attached as part of any TCRP funded PROGRAM SUPPLEMENT as a condition precedent to the acceptance of TCR ACT funds for that PROJECT.

Section 3. PROJECT MANAGEMENT

- (1) **STATE’s** PROJECT administrator for this AGREEMENT shall be the chief of the State Transit Grants Branch of the Division of Rail and Mass Transportation. **RECIPIENT’s** General Manager, Executive Director or a Designee as named in writing to **STATE** following execution of this AGREEMENT shall be the administrator acting for **RECIPIENT**.
- (2) PROGRAM SUPPLEMENT administrators for **STATE** shall be the applicable District Division Chief for Planning and for **RECIPIENT**, the designee named in the applicable PROGRAM SUPPLEMENT.

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT by their duly authorized officers.

**STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION
DIVISION OF RAIL AND MASS
TRANSPORTATION**

**SAN FRANCISCO BAY AREA WATER
EMERGENCY TRANSPORTATION
AUTHORITY**

BY: _____
EZEQUIEL CASTRO, Chief
State Transit Grants Branch

BY: _____
NINA RANNELLS
Executive Director

APPROVED AS TO FORM AND PROCEDURE

**STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION**

BY: _____
Attorney, California Department of
Transportation

ATTACHMENT I

CTC RESOLUTION G-91-2

Passed by the CTC on February 21, 1991

**CALIFORNIA TRANSPORTATION COMMISSION
RESOLUTION G-91-2**

**Commission Policy Resolution for Hazardous Waste Identification
and Cleanup for Rail Right-of-Way**

WHEREAS, the Commission has programmed funding for rail right-of-way acquisition in the 1990 State Transportation Improvement Program and may allocate funds for rail right-of-way acquisition from the Clean Air and Transportation Improvement Act; and

WHEREAS, hazardous wastes, based upon federal and state statutes and regulations, include but are not limited to such categories as heavy metals, (e.g., lead), inorganic (e.g., excessive mineral levels) and organic compounds (e.g., petroleum products), and can occur on a property's surface and subsurface; and

WHEREAS, rail properties often have hazardous wastes exceeding State of California and federal hazardous waste standards; and

WHEREAS, such properties contaminated with hazardous wastes require mitigation prior to using them for rail purposes; and

WHEREAS, hazardous wastes discovered on rail property may significantly impact property value, project scheduling and future liability for the grant applicant; and

WHEREAS, the Commission must be assured that acquisition of rail properties have been fully reviewed by the grant applicant, and if warranted, the grant applicant has tested for hazardous wastes; and

WHEREAS, if hazardous wastes exist, the Commission must be assured that the hazardous wastes identified has either been cleaned up, or financial responsibility for the cleanup has been determined prior to title transfer to the grant applicant, or easement has been secured in lieu of purchasing the property, and the subsurface rights and liability for hazardous wastes remain with the property seller; and

WHEREAS, hazardous wastes identified subsequent to title transfer to the grant applicant will be cleaned up by the seller or a mechanism to recover clean-up-costs is established and executed as a condition prior to title transfer; and

WHEREAS, full due diligence is necessary in discovering hazardous waste and is an essential element in acquiring rail right-of-way properties by the grant applicant; and

NOW THEREFORE BE IT RESOLVED, that acquisition of all rail right-of-way properties will be fully investigated by the grant applicant to determine the absence/presence of hazardous wastes. Investigations shall be conducted in accordance to the standards and practices of the local, state and/or federal regulatory agencies having jurisdiction and by personnel adequately trained in hazardous waste investigation; and

-2-

BE IT FURTHER RESOLVED, that all properties, discovered with hazardous wastes, which exceed the federal/state standards, will be cleaned up to the satisfaction of the responsible local, state and/or federal regulatory agency. The appropriate regulatory agency shall certify to grant applicant that the cleanup has been completed; and

BE IT FURTHER RESOLVED, that the grant applicant will certify by formal resolution to the Commission that all reasonable steps have been completed to assure full due diligence in the discovery of hazardous waste has been achieved during the acquisition of rail right-of-way and the state is held harmless from cleanup liability or damages, both present and future; and

BE IT FURTHER RESOLVED, that the grant applicant will certify by formal resolution that it will not seek further state funding, for cleanup, damages, or liability cost associated with hazardous wastes on or below acquired property's surface; and

BE IT FURTHER RESOLVED, that the grant applicant will certify to the Commission:

- that all rail right-of-way acquisition properties have been investigated and have been found clean;
- or that the cleanup of discovered hazardous waste has been completed prior to acquisition of the property;
- or that the grant applicant has obtained permanent easement and the subsurface rights and liability and full responsibility to pay for and remove such hazardous waste remains with the seller in conformance with applicable State and Federal law;
- or if hazardous wastes are known to exist prior to acquisition and if the applicant determines that time is of the essence for acquisition, then and in that event, an enforceable agreement will be entered into requiring the responsible party(ies) to clean all hazardous wastes by a date certain, with the option of funds sufficient for the clean-up costs deposited in escrow by the seller.

In the event of failure to clean up by the date determined, the recipient of the grant will make full restitution to the **STATE** for its participation. This resolve does not preclude the recipient from requesting re-allocation not to exceed the refunded amount after the hazardous waste(s) have been fully removed from the subject site; and

BE IT FURTHER RESOLVED, that the grant applicant will certify to the Commission that the seller from whom properties have been acquired retain liability for any hazardous waste investigation and/or cleanup, and damages discovered subsequent to the transfer of title; and

BE IT FURTHER RESOLVED, the Commission declares all future liability resulting from hazardous wastes remain with the seller or the grant applicant, not the state, and the grant applicant has been indemnified by the seller for any costs resulting from failure to eliminate hazardous wastes; and

BE IT FURTHER RESOLVED, no state funds will be made available for any future costs associated with cleanup; damages, or liability costs associated with hazardous wastes on or below the acquired property's surface.

ATTACHMENT II

(INSERT AGENCY BOARD RESOLUTION)

See Sample at

<http://www.dot.ca.gov/dgmt/spstip.html>

under Forms

SAN FRANCISCO BAY AREA WATER EMERGENCY TRANSPORTATION AUTHORITY

RESOLUTION NO. 2018-20

**AUTHORIZATION FOR THE EXECUTION OF A MASTER AGREEMENT AND
PROGRAM SUPPLEMENTS FOR STATE-FUNDED TRANSIT PROJECTS**

WHEREAS, the San Francisco Bay Area Water Emergency Transportation Authority may receive state funding from the California Department of Transportation (Department) now or sometime in the future for transit projects; and

WHEREAS, substantial revisions were made to the programming and funding process for the transportation projects programmed in the State Transportation Improvement Program, by Chapter 622 (SB 45) of the Statutes of 1997; and

WHEREAS, the statutes related to state-funded transit projects require a local or regional implementing agency to execute an agreement with the Department before it can be reimbursed for project expenditures; and

WHEREAS, the Department utilizes Master Agreements for State-Funded Transit Projects, along with associated Program Supplements, for the purpose of administering and reimbursing presently available and future state transit funds to local agencies; and

WHEREAS, the San Francisco Bay Area Water Emergency Transportation Authority wishes to delegate authorization to execute these agreements and any amendments thereto to the Executive Director; now, therefore, be it

RESOLVED by the Board of Directors of the San Francisco Bay Area Water Emergency Transportation Authority that the fund recipient agrees to comply with all conditions and requirements set forth in this agreement and applicable statutes, regulations and guidelines for all state-funded transit projects; and be it further

RESOLVED that the Executive Director be authorized to execute the Master Agreement and all Program Supplements for State-Funded Transit Projects and any Amendments thereto with the California Department of Transportation.

CERTIFICATION

The undersigned, Board Secretary, does hereby certify that the foregoing is a full, true and correct copy of a resolution duly and regularly adopted at a meeting of the San Francisco Bay Area Water Emergency Transportation Authority held on June 7, 2018.

YEA:

NAY:

ABSTAIN:

ABSENT:

/s/ Board Secretary

2018-20

END

MEMORANDUM

TO: Board Members

FROM: Nina Rannells, Executive Director
Keith Stahnke, Operations Manager

SUBJECT: Discussion and Potential Action Associated with Tideline Marine Group's Request to Conduct Small Vessel Private Charter Landings at the Harbor Bay Ferry Terminal

Recommendation

There is no specific staff recommendation at this time. Staff requests Board of Director's input and direction on Tideline Marine Group's request for authorization to conduct small vessel private charter landings at the Harbor Bay Ferry Terminal.

Background

On March 7, 2018, the WETA Board of Directors authorized staff to move forward with a Small Vessel Service Study to explore the possibility of utilizing small vessels in WETA's service in a variety of ways possibly including to serve smaller markets, during off-peak periods of low demand, to serve areas inaccessible by standard WETA vessels, to provide capacity relief during overcrowding and to provide interim service to build up ridership in areas prior to construction of large vessel terminals.

Shortly thereafter, WETA staff was approached by Tideline Marine Group (Tideline) with a request to grant permission for Tideline to provide small vessel private charter landings at the Harbor Bay ferry terminal in order to shuttle employees of a private firm in the reverse-commute direction between South San Francisco and WETA's Harbor Bay ferry terminal. This service would include four one-directional landings per weekday, consisting of two morning trips to bring employees from a public landing site in South San Francisco to WETA's Harbor Bay terminal and two evening trips to take employees from WETA's Harbor Bay terminal back to South San Francisco. The request was for an initial six-month demonstration period with the potential to make this a long-term arrangement.

WETA has no precedent for allowing regularly-scheduled private landings at its facilities. Use of WETA's facilities by a private company is at WETA's discretion. It is under no legal obligation to do so and so a decision of this sort is fundamentally one of policy.

Discussion

Staff has identified a number of factors to be considered in reviewing Tideline's request that are largely grounded in safety, accessibility and operational compatibility. Since receiving the request, staff has worked to identify windows of opportunity for additional vessel landings during the morning and evening commutes that could be utilized without disrupting WETA's public ferry service. Additionally, staff met with Tideline Marine

Group on three separate occasions at the Harbor Bay Terminal to observe and examine how Tideline's small vessels fit up with WETA's fixed large ferry terminal facility. Further, staff developed a draft landing agreement to identify the potential terms and conditions that would be important and required in order to ensure that Tideline's service meets WETA's standards and requirements and provides adequate risk protection for both WETA and our authorized public service contract operator, Blue & Gold Fleet who maintains the Harbor Bay facility on WETA's behalf and is the entity responsible for the Maritime Security Plan for the terminal. Finally, staff has worked with our legal team at Hanson Bridgett to review Tideline's request, develop the draft landing agreement terms, and ensure that entering into a landing agreement is consistent with WETA's rights to use of the Harbor Bay ferry terminal facility as granted to WETA through our Ferry Service Operations Transfer Agreement with the City of Alameda (Transfer Agreement) and its obligations to Harbor Bay Isle Associates, the owner of the Harbor Bay terminal facility property, among other parties.

The draft license agreement developed by staff, provided as **Attachment A**, was structured to:

- Identify operational requirements and restrictions for the safe use of the shared terminal facility and its surrounding area;
- Require compliance with applicable U.S. Coast Guard regulations, Maritime Transportation Security Act requirements, Americans with Disabilities Act (ADA) accessibility requirements, and other applicable regulatory requirements;
- Identify special use requirements as passed down to WETA by the City of Alameda, Harbor Bay Isle Associates and Harbor Bay Business Park Association for use of this facility and surrounding property;
- Identify insurance and indemnity requirements for use of the facilities; and
- Identify landing fees and other payment requirements.

WETA staff has shared the draft license agreement with Tideline Marine Group and exchanged two rounds of comments. Based upon Tideline's feedback to the draft license agreement to date and further investigation on this matter, the following issues remain outstanding and are provided here for further discussion and consideration by the Board of Directors:

1. **Accessibility.** WETA staff has continuing concerns regarding the vessel proposed for use in service, the *Osprey*, as it is built for small boat marinas rather than large vessel facilities and, therefore, requires passengers to utilize stairs for access. **Attachment B** includes photographs of the *Osprey* and the most recent proposed access arrangements. While legal accessibility requirements under the ADA may be different for small private vessels than for public ferry services, Tideline's accessibility approach does not meet WETA standards. Whether to allow private operators to meet different standards of accessibility than WETA is a policy decision for this Board.

2. Coast Guard Compliance. The agreement will require Tideline to provide a current Coast Guard Certificate of Inspection for the *Osprey* and approvals of recent modifications made to create a loading platform on the back of the vessel. Staff has been told by Tideline that they have received Coast Guard approval for these modifications but has not yet received copies of approvals of the plan drawings or the final work. At a minimum, staff recommends that approval of any agreement with Tideline be conditioned upon provision of evidence of all required Coast Guard approvals.
3. Contract Terms. To date, Tideline has not agreed to contract provisions that staff and legal counsel agree are important including: (a) Most important is the right for WETA to terminate the agreement freely at any time for convenience—such a right would be standard for any public agency and is necessary in order to preserve WETA's ability to prioritize public service at the facility. (b) In addition, in order to protect WETA's excellent relationship with Blue & Gold Fleet, which is our authorized public contract operator, the entity responsible for maintaining the Harbor Bay float facility and the entity responsible for the Maritime Security Plan for the Harbor Bay Terminal, the draft agreement requires Tideline to indemnify Blue & Gold Fleet in addition to WETA so as not to expose Blue & Gold Fleet to any additional risk.
4. WETA's Underlying Rights. There are threshold legal issues regarding WETA's right to allow private service by a private operator at the facility. WETA's rights to the facility derive from a Transfer Agreement between WETA and the City of Alameda, which provides WETA license to operate at the Harbor Bay terminal. WETA's rights are also subject to terms of a number of easements and permitting agreements underlying that Transfer Agreement. After review of the agreements governing use of the facility, WETA's legal team has expressed the preliminary opinion that the City, and not WETA, controls access to the facility by private operators: however, the City may not grant such access without WETA consent. At a minimum, consultation and additional approvals by the City and by Harbor Bay Isle Associates may be necessary before WETA approves any landing agreement with a private operator for non-WETA service.
5. Financial. To date, Tideline has not agreed to pay the landing fees identified by staff in the draft agreement, which are a percentage share of the actual annual cost to maintain the terminal facility. Staff does not recommend discounting the proposed landing fee.
6. Timing. The Board has directed that WETA conduct a thoughtful study on small-vessel service. This study will allow analysis of the pros and cons of small vessel service and will help to identify suitable conditions and facilities for small vessel operations. Staff highly recommends completing this small vessel service study and conversation first, which should be able to help inform a decision on the use and appropriateness of small vessel use of WETA's large vessel facilities.
7. Customer Experience. Passengers will be using WETA facilities for this service. Ultimately, the quality of the customer experience may impact WETA even if the service is provided by someone else. The mismatch between Tideline's small vessels and WETA's large vessel facilities is both physically and

visually apparent and may subject WETA to criticism from passengers or the public, who may not distinguish between WETA and other operators using WETA facilities.

8. Prevailing Wage. WETA has had a long-standing commitment to the employment of a highly skilled workforce as evidenced by its prevailing wage requirement for vessel operations and its commitment to utilizing Project Labor Agreements for construction of large projects. There are legal complexities under the National Labor Relations Act that could prevent WETA from requiring permittees like Tideline to meet WETA's standards with regard to a unionized labor force. Outside the construction arena, requiring that a private third-party permittee pay its workers prevailing wages may be similarly problematic. Finally, WETA may lack the legal authority to require that a permittee like Tideline pay its workers a living wage. Whether to take these limitations into account in deciding whether to grant a permit to Tideline is part of the Board's policy determination.

The draft landing rights agreement reduces risk through indemnities and other contractual language. But given all of the above, there is still some level of legal and financial risk as mitigation measures are ultimately only as good as the contract and any insurance backing up Tideline. Whether allowing this private access is worth assuming such risk is fundamentally a policy decision for the WETA Board.

Staff is seeking direction from the Board of Directors on how to proceed with this matter at this time.

Fiscal Impact

There is no fiscal impact associated with this item.

END

Item 7 – Attachment A

LANDING RIGHTS AGREEMENT

**LICENSE TO LAND AT
HARBOR BAY FERRY TERMINAL**

LICENSE NO. _____

BY AND BETWEEN

**SAN FRANCISCO BAY AREA WATER EMERGENCY
TRANSPORTATION AUTHORITY**

AND

TIDELINE MARINE GROUP

LICENSE NO. _____
HARBOR BAY FERRY TERMINAL

BASIC LICENSE INFORMATION

| | |
|--|---|
| <i>License Date:</i> | _____, 2018 |
| <i>License Number:</i> | |
| WETA: | SAN FRANCISCO BAY AREA WATER EMERGENCY TRANSPORTATION AUTHORITY |
| <i>WETA's Address:</i> | Pier 9, Suite 111, The Embarcadero, San Francisco CA 94111 |
| <i>Licensee:</i> | Tideline Marine Group |
| <i>Licensee's Contact Person for Notices:</i> | [fill in] |
| <i>Licensee's Address for Notices:</i> | [fill in] |
| <i>Contact Information for Licensee's Agent for Service of Process (if Licensee is a corporation, LLC, or LP):</i> | [fill in] |
| <i>License Area:</i> | Ferry terminal space at the Harbor Bay Ferry Terminal as further described in and as shown in Exhibit A attached hereto and made a part hereof, together with any and all Improvements and Alterations thereto (" Landing Site "). The Harbor Bay Ferry Terminal Parking Lot is specifically excluded from the License Area. |
| <i>Length of License Term:</i> | This License is part of a WETA demonstration program approved by its Board on _____. The term of the demonstration program is until December 31, 2018. |
| <i>Commencement Date:</i> | _____ |
| <i>Expiration Date:</i> | December 31, 2018 |
| <i>Permitted Activity of Demonstration Program:</i> | The License Area shall be used solely for the non-exclusive right to Land the vessel(s) listed in Exhibit B for the purpose of passenger embarkation and debarkation at the Landing Site pursuant to the Schedule set forth in Exhibit C and for no other purpose. Exhibit B shall list all vessels which will land at the Landing Site, including the name, the US Coast Guard number, the length overall (LOA) and the capacity of the vessels and include a current copy of the US Coast Guard Certificate for each vessel. Each vessel listed in Exhibit B must comply with |

LICENSE NO. _____
HARBOR BAY FERRY TERMINAL

| | |
|--|--|
| | <p>the terms and conditions in Section 3 of this License. Changes to the vessel listed in <i>Exhibit B</i>, including without limitation the addition of back up vessels and special excursion vessels, may be made with written notice to WETA delivered to WETA not less than 24 hours prior to such change in vessel, which notice must include all of the information required by Section 3 of this License. <i>Exhibit B</i> and any additions thereto shall be subject to WETA's approval in its sole and absolute discretion.</p> <p>WETA, in its sole discretion, without incurring any liability to Licensee, shall have the right to permanently or temporarily close, revise or modify the Landing Site upon reasonable notice to Licensee and without amendment or modification of this License. Licensee shall comply with any such revisions or modifications and failure to do so will be a material default of this License.</p> <p>All activities under this License must be conducted in compliance with the operational requirements and restrictions set forth in Sections 7 and 8. Licensee shall assure compliance in respect to access and other requirements under ADA. Authority to use ramps not owned by WETA at a License Area is subject to the prior authorization of the owner.</p> <p>The following terms and conditions apply to each category described below:</p> <p><u>Commuter Landings at Ferry Terminals:</u> San Francisco Bay Ferry Commuter Ferries, defined as ferries that are providing scheduled service, shall conduct Landings and shall have the priority use of the Landing Site.</p> <p><u>Schedule.</u> Attached as <i>Exhibit C</i> is the schedule of approved landings of Licensee's vessel pursuant to this License. WETA may condition the Landing upon terms as specified by WETA, including, without limitation, times and duration for each such Excursion Landing. Licensee Landings are prohibited from Landing at the same time or within twenty (20) minutes of a scheduled Commuter Ferry and shall not otherwise interfere with any Commuter Landing or other licensees using the Landing Site.</p> <p>In no event shall the Licensee allow its patrons to park cars in the Harbor Bay Ferry Terminal Parking Lot. Licensee will provide parking for its patrons at an offsite parking facility and will provide a shuttle service to bring patrons to the ferry terminal.</p> |
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LICENSE NO. _____
HARBOR BAY FERRY TERMINAL

| Landing Fees | | |
|--------------------------------------|--|-------------|
| Type of Service | Fees | Payment |
| Landing Fee | Licensee shall pay a fee of \$28 ____ per Landing (" Base Fee "). | [Total TBD] |
| <i>Application Fee</i> | \$1,500 | |
| <i>Security Deposit:</i> | Five Thousand Dollars (\$5,000.00), which may be returned to Licensee in whole or part following WETA's survey of its facility following the License period. The cost of any necessary repairs caused by Licensee's operations, excluding normal wear tear, shall be deducted from the amount of the deposit. The retention of the deposit or any portion thereof is without prejudice to any claim for damages or injury caused by Licensee and is not a cap or any recovery. | |
| <i>Cure Period where applicable:</i> | 24 Hours | |
| <i>Mutual Cooperation:</i> | <p>Licensee shall cooperate with WETA, other licensees and users of the Landing Site and approaches thereto, and will not unreasonably interfere with their operations.</p> <p>Nothing in this License shall obligate WETA to provide a WETA representative at any Landing Site, nor shall such presence obligate WETA, its officers, employees or agents to take any action whatsoever. Licensee agrees that WETA, its officers, employees and agents shall not be responsible for regulating traffic or otherwise supervising or overseeing Licensee's activities at the Landing Site. In those instances where WETA, in its discretion, has provided an agent at the Landing Site, such agent shall have the discretion to order Licensee's vessel(s) to vacate the Landing Site if it exceeds the time allowed for an approved Landing or causes a disruption.</p> | |
| <i>Other Information:</i> | This License is conditioned upon receipt of approvals and permissions by the City of Alameda and the Harbor Bay Isle Associates, landowners of real property at or near the Landing Site. | |

LICENSE TO USE PROPERTY

1. BASIC LICENSE INFORMATION.

This License to Use Property, dated for reference purposes only as of the License Date set forth in the Basic License Information, is by and between the SAN FRANCISCO BAY AREA WATER EMERGENCY TRANSPORTATION AUTHORITY ("WETA"), as licensor, and **Tideline Marine Group** as licensee ("Licensee"). The Basic License Information and the Exhibits and Schedules attached hereto are hereby incorporated by reference into this License and shall be construed as a single instrument and referred to herein as this "License."

2. GRANT OF LICENSE. In consideration of the stated conditions and agreements, WETA hereby grants permission to Licensee to carry on the Permitted Activity within the License Area described in *Exhibit A*, using the vessel or vessels identified in *Exhibit B* and in accordance with the Schedule of Landings described in *Exhibit C*, which Exhibits are attached hereto ("Permitted Activity").

3. VESSEL OPERATION; SECURITY.

3.1. Coast Guard Certificates. The effectiveness of this License is expressly conditioned upon Licensee maintaining a US Coast Guard Certificate for each vessel to be landed at the Landing Site, including any back up vessel. If such certificates are not obtained by the Commencement Date or are revoked, terminated, or expire at any time thereafter, this License shall be null and void and of no effect as to any vessel for which the US Coast Guard Certificate has been revoked, terminated or expired (except for those provisions which, by their terms survive the expiration or earlier termination of this License) and *Exhibit B* will be amended to delete that vessel or vessels without further action by WETA.

Maritime Transportation Security Act of 2002. Licensee must operate in full compliance with the security requirements set forth in this section and in *Exhibit D*. In particular, and without limitation, Licensee must (i) submit the Declaration of Security form attached as *Exhibit E* as a condition of effectiveness of this License; (ii) at all times when operating under this License, any vessel to be landed at the Landing Site must have on board at least one crew member with a Transportation Security Worker Credential (TWIC); (iii) immediately report any security incidents to the designated representative of The Blue & Gold Fleet as set forth in *Exhibit D*. Licensee is responsible for ensuring that *Exhibit E* remains current, listing the Company Security Officer ("CSO") by name and position, cell phone number of the CSO and a 24-hour contact number.

3.2. Security. Licensee is solely responsible for providing security on each vessel and adjacent to the vessel extending to the entire Landing Site throughout the duration of each landing.

4. TERM; REVOCABILITY.

This License is a revocable, personal, non-assignable, non-exclusive, and non-possessory privilege to enter and use the License Area for the Permitted Activity only on a temporary basis that commences on the Commencement Date and expires on the Expiration Date specified in the Basic License Information ("Term") unless sooner terminated pursuant to the terms of this License.

Without limiting any of WETA's rights hereunder, by initialing below, Licensee agrees and acknowledges that WETA may, in its sole and absolute discretion, revoke or terminate this License at any time prior to the Expiration Date, without cause and without

obligation to pay any consideration to Licensee ("**WETA's Termination Right**"). Failure of Licensee to initial below shall in no way affect or hinder WETA's Termination Right.

Initials: Licensee

5. FEES.

5.1. Payment of Fees.

(a) Licensee shall pay the Fees in the amount and manner as set forth in the Basic License Information. All Fees shall be paid to WETA, without prior demand and without any deduction, setoff or counterclaim whatsoever. Without limiting its right to revoke or terminate this License or any of its other rights hereunder, WETA may increase any Fee at any time. The Base Fee for Excursion Landings and all other sums payable by Licensee, including without limitation, any additional charges and late charges, are referred to collectively as "**Fees**."

(b) Acceptance by WETA of any monies paid to WETA by Licensee as Fees based on any Monthly Statement or Annual Statement shall not be an admission of the accuracy of said Monthly Statement or Annual Statement or the amount of such payment.

6. PERMITTED ACTIVITY; SUITABILITY OF LICENSE AREA; OPERATIONAL REQUIREMENTS.

6.1. The License Area shall be used and occupied only for the Permitted Activity specified in the Basic License Information and for no other purpose. If the Basic License Information limits the times and location of the activities permitted hereunder, then Licensee shall not conduct the activity at times and locations other than at the times and locations hereinabove specified unless express prior written permission is granted by WETA. Persons subject to this License must comply with the directions of WETA's employees and agents.

6.2. Licensee acknowledges that WETA has made no representations or warranties concerning the Landing Site, including without limitation, its suitability for the Permitted Activity, or its seismological condition. By entering onto the License Area under this License, Licensee shall be deemed to have inspected the Landing Site and accepted them in their "**As Is**" condition and as being suitable for the conduct of Licensee's activity thereon. Licensee assumes all responsibility to ensure the safety and compatibility of the License Area for use with its vessels listed in Exhibit B.

6.3. WETA shall have the full right and authority to make, revoke, impose, and amend any rules and regulations pertaining to and reasonably necessary for the proper use, operation and maintenance of the Landing Site. If no rules and regulations currently exist for the Landing Site, Licensee agrees to be bound by any rules and regulations WETA later imposes on the Landing Site. Licensee also acknowledges that WETA's exercise of any of its rights regarding the License Area and other WETA property in the vicinity of the License Area will not entitle Licensee to any abatement or diminution of Fees.

6.4. Operational Requirements.

(a) Safety Notifications. Licensee will promptly notify WETA and WETA vessels using the facility if any situation at the facility presents a safety hazard to the vessels, personnel or passengers.

(b) Sufficient Personnel. Licensee shall have sufficient personnel to immediately and efficiently secure the vessel to the Landing Site, to control Licensee's passengers, to provide for safe embarkation and debarkation and to direct Licensee's passengers to and from the Landing Sites. Licensee must provide a staff member shoreside during operations at the Landing Site to monitor conditions at the Landing Site.

(c) Litter Trash and Spills. Licensee shall keep the Landing Site free and clean of litter, spills and other debris generated by the Licensee or the Licensee's passengers. Garbage/Litter containers at the facility are not to be used for disposal of refuse generated from the Licensee vessel. Licensee shall use its best efforts to ensure that there is no smoking, drinking, eating or loitering by Licensee or the Licensee's passengers at the Landing Site.

(d) Mooring. Licensee shall provide and use its own mooring lines secured to cleats, bitts and shackles. Mooring lines shall not interfere with WETA operations. Licensee is not to adjust or remove WETA mooring lines.

(e) Security Gates and Passenger float walkways and brow ramps. At the conclusion of each Landing, Licensee shall be responsible for closing security gates to the public and for properly securing the landing float walkways and brow ramps.

(f) Reporting Accidents. Licensee shall notify WETA in writing of any incident or accident involving personal injury or personal property damage which occurs on or in proximity of a Landing Site. Such notice shall be given within twenty-four (24) hours after said incident or accident occurs. Failure to timely report such incidents or accidents shall constitute a material default under this License.

(g) Licensee may not offer or provide regularly scheduled ferry service to the general public at any WETA facility, including the Landing Site.

(h) Licensee may not land at the Landing Site within 10 minutes (before or after) a regularly scheduled WETA departure. See *Exhibit C* for the permitted schedule of Licensee operations.

(i) Licensee may not operate on days where Licensee or WETA in its reasonable discretion determine that conditions are not safe for boarding or landing due to conditions including but not limited to king tides or inclement weather.

(j) Licensee's vessels will be outfitted with a boarding ramp that allows for direct alignment with the gangway at the Landing Site.

7. PROHIBITED USES; OPERATIONAL RESTRICTIONS.

7.1. *Prohibited Uses.*

(a) Licensee shall use the License Area solely for Permitted Activity and for no other purpose.

(b) Use that is not in accordance with Section 6.4 or otherwise in violation of this Permit is considered a Prohibited Use. In addition, the following are considered a Prohibited Use: waste, nuisance or unreasonable annoyance to WETA, its other licensees, tenants, or the owners or occupants of adjacent properties; any action or inaction that could cause damage to a Landing Site; interference with WETA's use of its property or obstruction of scheduled ferry service; and any activity which will in any way affect or cause a cancellation of, any insurance policy required under this License, or any part thereof.

(c) **Passenger Capacity.** Licensee shall not transport passengers in excess of the passenger capacity as stated in a vessel's U. S. Coast Guard Certificate of Inspection.

(d) In the event WETA determines that a Prohibited Use or Prohibited Uses are occurring, then Licensee shall immediately cease the Prohibited Use(s) and shall pay to WETA an additional charge in the amount of Three Hundred Dollars (\$300) upon delivery of written notice to Licensee to cease the Prohibited Use ("**Notice to Cease Prohibited Use**"). In the event WETA determines in subsequent inspection(s) of the License Area that Licensee has not ceased the Prohibited Use, then Licensee shall pay to WETA an additional charge in the amount of Four Hundred Dollars (\$400) for each additional Notice to Cease Prohibited Use delivered to Licensee. The parties agree that the charges associated with each Notice to Cease Prohibited Use, if applicable, represent a fair and reasonable estimate of the administrative cost and expense which WETA will incur by reason of Licensee's failure to comply with the applicable Notice to Cease Prohibited Use and that WETA's right to impose the foregoing charges shall be in addition to and not in lieu of any and all other rights under this License, at law or in equity, including WETA's right to terminate this License.

7.2. Operating Restrictions.

(a) SPECIFIC HARBOR BAY OPERATING RESTRICTIONS
REQUIRED BY CITY/HBBPA NEED TO BE ADDED HERE

8. COMPLIANCE WITH LAWS;

8.1. Compliance with Laws. Licensee, at Licensee's sole cost and expense, must comply with all federal, State, and local laws, rules, and regulations applicable to the License and the use of the Landing Site, including but not limited to all rules and regulations of WETA, all US Coast Guard regulations, and all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), commencing at 42 U.S.C. Section 12101; Section 504 of the Rehabilitation Act of 1973, as amended, codified at 29 U.S.C. Section 794; Section 16 of the Federal Transit Act; 49 U.S.C. Sections 5332; and implementing regulations, the Unruh Civil Rights Act and the California Disabled Persons Act, as such laws and regulations may be amended. Licensee must operate under this License in compliance with, and in a manner that does not subject WETA to liability under, state and federal laws protecting the rights of persons with disabilities. WETA strives to ensure accessibility to all public facilities and services for persons with disabilities, beyond the requirements of the law wherever possible. Therefore, the Licensee shall be responsible for operating under this License in a manner that complies with or exceeds the 2008 Revised Draft Passenger Vessels Accessibility Guidelines dated June 26, 2008. The obligations of the Licensee to indemnify, keep and save harmless, and defend WETA and the Indemnified Parties as set forth in section 12 of the License include, without limitation, the obligation to indemnify, keep and save harmless, and defend WETA and the Indemnified Parties against any third-party claims or enforcement proceedings alleging that Licensee's vessels and/or its operation under this License is inaccessible to persons with disabilities.

9. DAMAGES.

9.1. Damage.

(a) **Reporting Damage.** If the Licensee damages a Landing Site, Licensee shall take immediate steps to mitigate the damage to prevent injury or further

damage. Licensee shall notify WETA immediately but in no event more than three (3) hours after the occurrence of such damage.

(b) Licensee shall be responsible for any and all damage, other than normal wear and tear, incurred during the Term hereof which arises out of or in connection with Licensee's, its Agents', employees', contractors' or invitees', use of the Landing Site or approaches thereto. WETA may, in its sole and absolute discretion, elect to repair the same itself or require Licensee to repair the same, all at Licensee's sole cost and expense. Upon receipt of any invoice from WETA for costs incurred by WETA related to any repair performed by WETA in accordance with this Section, Licensee shall immediately reimburse WETA therefore. If the cost (including, but not limited to, salaries of WETA staff and attorneys' fees) of any such anticipation action made at Licensee's expense is in excess of Two Thousand Dollars (\$2,000), then Licensee shall pay to WETA an administrative fee equal to ten percent (10%) of the total "hard costs" of the work. "Hard costs" shall include the cost of labor and materials and installation, and shall include any costs associated with design, such as architectural fees. With respect to any work where the total hard costs of such work are less than Two Thousand Dollars (\$2,000) Licensee shall pay to WETA an administrative fee of Two Hundred Dollars (\$200).

(c) If WETA determines that Licensee must perform any needed repairs, Licensee may not make or cause or suffer to be made any repairs or other work for which a permit is required by an applicable building code, standard or regulation without first obtaining WETA's prior written consent and a permit therefore. This provision shall survive the expiration or earlier termination of this License.

10. INSURANCE.

10.1. *Required Insurance*

Licensee shall maintain throughout the Term, at Licensee's expense, insurance as follows:

(a) Worker's compensation insurance as required by Laws, U.S. Longshore and Harborworker's Act Insurance and Jones Act insurance with employer's liability limit not less than Five Million Dollars (\$5,000,000) for each accident, on employees eligible for each. Licensee's insurance must be from a carrier with an A M Best rating of A-7 or better; must be statutory in nature; must include USL&H on an "if any basis", with E L coverage of \$5,000,000.00. In the event Licensee is self-insured, it shall furnish Certificate of Permission to Self-Insure signed by Department of Industrial Relations, Administration of Self-Insurance, Sacramento, California.

(b) Comprehensive or commercial general liability insurance or Marine General Liability, with limits not less than Five Million Dollars (\$5,000,000.00) each occurrence combined single limit for bodily injury and property damage, including coverages for contractual liability, independent contractors, broad form property damage, wharfingers liability, terminal operators liability, personal injury, products and completed operations, fire damage and legal liability with limits not less than Two Hundred Fifty Thousand Dollars (\$250,000.00) and explosion, collapse and underground (XCU) coverage during any period in which Licensee is conducting any activity on or Alteration or Improvement to the License Area with risk of explosion, collapse or underground hazards. If a Comprehensive or Commercial General Liability policy is used, it shall not contain any marine exclusions.

(c) Comprehensive or Business Automobile Liability Insurance with limits not less than \$5,000,000 each occurrence Combined Single Limit for Bodily Injury

and Property Damage, including coverage for owned, non-owned and hired automobiles, as applicable, which insurance shall be required if any automobiles or any other motor vehicles are operated in connection with Licensee's activity on, in or around the License Area. If parking is a Permitted Activity under this License, Licensee must obtain, maintain, and provide to WETA upon request evidence of personal automobile liability insurance for persons parking vehicles at the License Area on a regular basis, including without limitation Licensee's Agents and Invitees.

(d) Watercraft Liability Insurance acceptable to WETA, with limits not less than Five Million Dollars (\$5,000,000) per each occurrence, including coverages for owned and non-owned watercraft.

(e) Vessel Pollution Liability Insurance with combined single limit of Two Million Dollars (\$2,000,000.00) each claim, Five Million Dollars (\$5,000,000.00) aggregate, and with coverage to include legal liability arising from the sudden and accidental release of pollutants, and no less than a one-year extended reporting period.

(f) Hull and Machinery Protection and Indemnity Insurance in a form and with limited acceptable to WETA.

(g) Bumpershoot liability in the amount of Nine Million Dollars (\$9,000,000.00) each occurrence in excess of the primary limits specified above covering all legal liability for personal injury, bodily injury or death to passengers and crew; property damage; and pollution and environmental liability, which may arise out of the services.

(h) Other Coverage. Such other insurance as required by Law or as WETA's Risk Manager may require which is reasonable and customary for comparable risks in similar circumstances.

10.2. Claims Made Policy. Should any of the required insurance be provided under a claims-made form, Licensee shall maintain such coverage continuously throughout the Term and, without lapse, for two (2) years beyond the expiration of this License, to the effect that, should occurrences during the Term give rise to claims made after expiration of this License, such claims shall be covered by such claims-made policies.

10.3. Annual Aggregate Limit. Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provide that claims investigation or legal defense costs be included in such annual aggregate limit, such annual aggregate limit shall be not less than double the occurrence limits specified above.

10.4. Additional Insureds. Liability policies shall be endorsed to name as additional insureds "WETA and the City of Alameda and their respective officers, directors, employees and agents, Harbor Bay Business Park Association (HBBPA) and Blue and Gold Fleet (BG)."

10.5. Payment of Premiums. Licensee shall pay all the premiums for maintaining all required insurance.

10.6. General Insurance Matters.

(a) All insurance policies shall be endorsed to provide thirty (30) days prior written notice of cancellation, non-renewal or reduction in coverage or limits to WETA at the address for Notices specified in the Basic License Information.

(b) All insurance policies shall be endorsed to provide that such insurance is primary to any other insurance available to the additional insureds with respect to claims covered under the policy and that insurance applies separately to each insured against whom claim is made or suit is brought, but the inclusion of more than one insured shall not operate to increase the insurer's limit of liability.

(c) Before commencement of activities under this License, certificates of insurance and brokers' endorsements, in form and with insurers acceptable to WETA, shall be furnished to WETA promptly upon request, along with complete copies of policies.

(d) All insurance policies required to be maintained by Licensee hereunder shall be issued by an insurance company or companies reasonably acceptable to WETA with an AM Best rating of not less than A-VIII and authorized to do business in the State of California. Licensee's compliance with this Section shall in no way relieve or decrease Licensee's liability under this License.

11. DEFAULT BY LICENSEE; REMEDIES.

11.1. *Event of Default.* The occurrence of any one or more of the following events shall constitute a default by Licensee:

(a) Failure by Licensee to pay when due any Fees and/or all other charges due hereunder; or

(b) Failure to perform any other provisions of this License, if the failure to perform is not cured within the Cure Period set forth in the Basic License Information after WETA has given notice to Licensee.

(c) Without the prior written consent of WETA, an assignment, or attempted assignment, of this License by Licensee;

(d) Either (i) the failure of Licensee to pay its debts as they become due, the written admission of Licensee of its inability to pay its debts, or a general assignment by Licensee for the benefit of creditors; or (ii) the filing by or against Licensee of any action seeking reorganization, arrangement, liquidation, or other relief under any Law relating to bankruptcy, insolvency, or reorganization or seeking the appointment of a trustee, receiver or liquidator of Licensee's or any substantial part of Licensee's assets; or (iii) the attachment, execution or other judicial seizure of substantially all of Licensee's interest in this License.

(e) Failure to report an incident or accident involving personal injury or personal property damage pursuant to Section 9.1 or Section 6.4(c).

(f) Failure to report to WETA any damage to the Landing Site or to perform or pay for such damage as directed by WETA acting in accordance with this License.

11.2. *WETA's Remedies.* Upon default by Licensee, WETA shall, without further notice or demand of any kind to Licensee or to any other person, and in addition to any other remedy WETA may have under this License and at law or in equity, have the ability to immediately terminate this License and Licensee's right to use the License Area. Upon notice of any such termination, Licensee shall immediately vacate and discontinue its use of the License Area and WETA may take any and all action to enforce Licensee's obligations.

12. INDEMNITY AND EXCULPATION.

12.1. Indemnity. Licensee shall Indemnify WETA, City of Alameda, Harbor Bay Business Park Association, Harbor Bay Isles Associates, Blue and Gold Fleet, and their officers, directors, employees and agents (collectively, the "**Indemnified Parties**") from, and, if requested, shall defend them against any and all liabilities, injuries, losses, costs, claims, judgments, settlements, damages, liens, fines, penalties and expenses, including without limitation, direct and vicarious liability of any kind (collectively, "**Claims**") arising directly or indirectly out of: (a) any injury to or death of any person, including but not limited to Agents and Invitees of Licensee, or damage to or destruction of any property occurring in, on or about the License Area, or any part thereof, or the approaches thereto from Licensee's exercise of its rights pursuant to this License, (b) any failure by Licensee in the observance or performance of any of the terms, covenants or conditions of this License, or (c) the use, occupancy or condition of the License Area by the Licensee, its Agents or invitees or the activities therein or the approaches thereto by Licensee or its Agents or Invitees. This Indemnity shall be enforceable regardless of the active or passive negligence of any of the Indemnified Parties, and regardless of whether liability without fault is imposed or sought to be imposed on any of the Indemnified Parties. This Indemnity shall be enforceable except to the extent that such Indemnity is void or otherwise unenforceable under applicable law in effect on, or validly retroactive to, the date of this License. This Indemnity includes all Claims, loss predicated in whole or in part, upon active or passive negligence of any of the Indemnified Parties. This Indemnity shall exclude Claims resulting solely and exclusively from the negligence or willful misconduct of WETA which is not contributed to by any act of, or by any omission to perform some duty imposed by Law or agreement on Licensee or its Agents or Invitees.

In addition to Licensee's obligation to Indemnify the Indemnified Parties, Licensee specifically acknowledges and agrees that it has an immediate and independent obligation to defend the Indemnified Parties from any claim that actually or potentially falls within this Indemnification provision, even if the allegations are or may be groundless, false or fraudulent. Licensee's obligation to defend shall arise at the time such Claim is tendered to Licensee by any of the Indemnified Parties and shall continue at all times thereafter.

The foregoing Indemnity obligation of Licensee includes Indemnification from all loss and liability, including attorneys' and consultants' fees, court costs, investigation and remediation costs, all other reasonable costs and expenses incurred by the Indemnified Parties, damages for decrease in the value of the License Area, and Claims for damages or decreases in the value of adjoining property. Licensee's Indemnification obligation shall begin from the first notice that any Claim or demand is or may be made. The provisions of this Section shall survive the expiration or earlier termination of this License.

12.2. Exculpation. Licensee, as a material part of the consideration to be rendered to WETA, hereby waives any and all Claims against the Indemnified Parties, and agrees to Indemnify the Indemnified Parties from any Claims for damages to goods, wares, goodwill, merchandise, equipment, business opportunities and persons in, upon or about the License Area for any cause arising at any time, including without limitation all Claims arising from the joint or concurrent, active or passive, negligence of the Indemnified Parties, but excluding any intentionally harmful acts committed solely by WETA .

12.3. Effect of Waivers. Licensee, on behalf of itself and its Agents, hereby fully and irrevocably releases, discharges, and covenants not to sue or to pay the attorneys' fees and other litigation costs of any party to sue, WETA, or any and all of the

Indemnified Parties with respect to any and all Claims arising directly or indirectly from the actual or alleged facts or circumstances of the process leading to this License prior to the Commencement Date.

Licensee understands and expressly accepts and assumes the risk that any facts concerning any and all Claims released in this License might be found later to be other than or different from the facts now believed to be true, and agrees that the releases in this License shall remain effective. Therefore, with respect to all Claims released in this License, Licensee waives any rights or benefits provided by Section 1542 of the Civil Code, which reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

BY PLACING ITS INITIALS BELOW, LICENSEE SPECIFICALLY ACKNOWLEDGES AND CONFIRMS THE VALIDITY OF THE RELEASE MADE ABOVE AND THE FACT THAT LICENSEE WAS REPRESENTED BY COUNSEL WHO EXPLAINED THE CONSEQUENCES OF THE RELEASE AT THE TIME THIS LICENSE AGREEMENT WAS MADE, OR THAT LICENSEE HAD THE OPPORTUNITY TO CONSULT WITH COUNSEL, BUT DECLINED TO DO SO.

Initials: Licensee: _____

12.4. Hazardous Materials Indemnification.

(a) In addition to its obligations under Section 12.1 (Indemnity), Licensee, for itself and on behalf of its Agents and Invitees, agrees to Indemnify the Indemnified Parties from any and all Claims and Hazardous Materials Claims that arise as a result of: (i) any Hazardous Material Condition, except where caused by the Indemnified Parties' sole willful misconduct; and (ii) Licensee's exacerbation of any Hazardous Material Condition.

(b) For purposes of this License, the following terms have the following definitions:

(i) **“Hazardous Material”** means any substance, waste or material that is now or in the future designated by any regulatory agency to be capable of posing a present or potential risk of injury to human health or safety, the environment or property. This definition includes anything designated or defined in any environmental law as hazardous, hazardous substance, hazardous waste, toxic, pollutant, or contaminant; any asbestos, ACMs, or PACMs, whether or not part of the structure of any existing improvements on the License Area, any improvements to be constructed on the License Area by or on behalf of Licensee, or occurring in nature; and other naturally occurring substances such as petroleum, including crude oil or any fraction, and natural gas or natural gas liquids.

(ii) **“Hazardous Material Claim”** means any environmental regulatory action or any claim made or threatened by any third party against the Indemnified Parties, or the License Area relating to damage, contribution, cost recovery compensation, loss or injury resulting from the presence or release of any Hazardous Materials, including, without limitation, losses based on common law. Hazardous Material Claims include without limitation, investigation and remediation costs, fines, natural resources damages, damages for decrease in value of the License Area or any other WETA property, the loss or restriction of the use of any amenity of the License

Area or any other WETA property, and attorneys' fees and consultants' fees and experts' fees and costs.

(iii) **"Hazardous Material Condition"** means the presence, release, or threatened release of Hazardous Materials in, on or about the License Area, or any other WETA property, or the environment, or from any vehicles or vessels Licensee, or its Agents or invitees uses during Licensee's occupancy of the License Area.

(c) Licensee's obligation to Indemnify the Indemnified Parties includes: (i) costs incurred in connection with any Investigation or Remediation requested by WETA or required by any Environmental Regulatory Agency and to restore the affected area to its condition before the Release; (ii) damages for diminution in the value of the License Area and other affected property; (iii) damages for the loss or restriction on use of rentable or usable space or of any amenity of the License Area and other affected property; (iv) damages arising from any adverse impact on marketing the space; (v) sums paid in settlement of Claims, Hazardous Materials Claims, Environmental Regulatory Actions, including fines and penalties; (vi) natural resource damages; and (vii) attorneys' fees, consultant fees, expert fees, court costs, and all other litigation, administrative or other judicial or quasi-judicial proceeding expenses. If WETA pays any costs within the scope of this Section, Licensee must reimburse WETA for WETA's costs, plus interest at the Interest Rate from the date WETA incurs each cost until paid, within three (3) business days after WETA's payment demand.

(d) Licensee's obligations hereunder shall survive the expiration or earlier termination of this License.

13. IMPROVEMENTS AND ALTERATIONS.

Licensee shall not make, nor suffer to be made, alterations or improvements to the License Area without the express written consent of WETA.

14. SURRENDER.

The License Area shall be surrendered clean, free of debris, waste, and Hazardous Materials, and free and clear of all liens and encumbrances.

If Licensee fails to surrender the License Area as required by this Section, Licensee shall Indemnify WETA from all damages resulting from Licensee's failure to surrender the License Area, including, but not limited to, any costs of WETA to enforce this Section and any Claims made by a succeeding licensee or tenant resulting from Licensee's failure to surrender the License Area as required together with, in each instance, reasonable attorneys' fees and costs.

Licensee's obligation under this Section shall survive the expiration or earlier termination of this License.

15. ATTORNEYS' FEES; LIMITATIONS ON DAMAGES.

15.1. *Litigation Expenses.* The prevailing party in any action or proceeding (including any cross complaint, counterclaim or bankruptcy proceeding) against the other party by reason of a claimed default, or otherwise arising out of a party's performance or alleged non-performance under this License, shall be entitled to recover from the other party its costs and expenses of suit, including but not limited to, reasonable attorneys' fees, which fees shall be payable whether or not such action is prosecuted to judgment. **"Prevailing party"** within the meaning of this Section shall include, without limitation, a party who substantially obtains or defeats, as the case may be, the relief sought in the action, whether by compromise, settlement, judgment or the abandonment by the other

party of its claim or defense. Attorneys' fees under this Section shall include attorneys' fees and all other reasonable costs and expenses incurred in connection with any appeal.

15.2. For purposes of this License, reasonable fees of attorneys shall be based on the fees regularly charged by private attorneys with an equivalent number of years of professional experience (calculated by reference to earliest year of admission to the bar of any state) who practice in San Francisco in law firms with approximately the same number of attorneys as employed by the attorneys performing the services.

15.3. *Limitation on Damages.* Licensee agrees that Licensee will have no recourse with respect to, and WETA shall not be liable for, any obligation of WETA under this License, or for any Claim based upon this License. Licensee's execution and delivery hereof and as part of the consideration for WETA's obligations hereunder Licensee expressly waives all such liability.

15.4. *Non-Liability of WETA Officials, Employees and Agents.* No elective or appointive board, commission, member, officer, employee or other Agent of WETA shall be personally liable to Licensee, its successors and assigns, in the event of any default or breach by WETA for any amount which may become due to Licensee, its successors and assigns, or for any obligation of WETA under this License. Under no circumstances shall WETA or its Agents be liable under any circumstances for any consequential, incidental or punitive damages.

15.5. *Limitation on WETA's Liability Upon Transfer.* In the event of any transfer of WETA's interest in and to a ferry terminal facility, WETA (and in case of any subsequent transfers, the then transferor), subject to the provisions hereof, will be automatically relieved from and after the date of such transfer of all liability with regard to the performance of any covenants or obligations contained in this License thereafter to be performed on the part of WETA, but not from liability incurred by WETA (or such transferor, as the case may be) on account of covenants or obligations to be performed by WETA (or such transferor, as the case may be) hereunder before the date of such transfer.

16. SIGNS AND ADVERTISING.

Licensee shall not have the right to place, construct or maintain any advertisement, notice, business signage, awning or other exterior decoration on the Landing Site or approaches thereto License Area without WETA's prior written consent. Nor may Licensee refer to WETA, or use any WETA logo for any commercial or public relations purpose without WETA's prior written consent. Licensee must submit for WETA advance approval all marketing materials describing service to the Landing Site and must in particular ensure that all such marketing materials accurately represents the service as charter or reservation-based water taxi service and not regularly scheduled ferry service open to the general public

17. MISCELLANEOUS PROVISIONS.

17.1. *California Law.* This License is governed by, and shall be construed and interpreted in accordance with, the Laws of the State of California. WETA and Licensee hereby irrevocably consent to the jurisdiction of and proper venue in the Superior Court for the City and County of San Francisco.

17.2. *Entire Agreement.* This License contains all of the representations and the entire agreement between the parties with respect to the subject matter of this License. Any prior correspondence, memoranda, agreements, warranties, or

representations, whether written or oral, relating to such subject matter are superseded in total by this License. No prior drafts of this License or changes from those drafts to the executed version of this License shall be introduced as evidence in any litigation or other dispute resolution proceeding by any party or other person, and no court or other body should consider those drafts in interpreting this License.

17.3. Amendments. No amendment of this License or any part thereof shall be valid unless it is in writing and signed by all of the parties hereto.

17.4. Severability. If any provision of this License or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this License, or the application of such provision to persons, entities or circumstances other than those as to which is invalid or unenforceable, shall not be affected thereby, and each other provision of this License shall be valid and be enforceable to the fullest extent permitted by law.

17.5. Interpretation of License.

(a) References in this License to Licensee's acts or omissions will mean acts or omissions by Licensee and its Agents and Invitees unless the context requires or specifically stated otherwise.

(b) Whenever an exhibit or schedule is referenced, it means an attachment to this License unless otherwise specifically identified. All exhibits and schedules are incorporated in this License by reference.

(c) Whenever a section, article or paragraph is referenced, it refers to this License unless otherwise specifically provided. The captions preceding the articles and sections of this License and in the table of contents have been inserted for convenience of reference only and must be disregarded in the construction and interpretation of this License. Wherever reference is made to any provision, term, or matter "in this License," "herein" or "hereof" or words of similar import, the reference will be deemed to refer to any reasonably related provisions of this License in the context of the reference, unless the reference refers solely to a specific numbered or lettered article, section, subdivision, or paragraph of this License.

(d) References to all Laws, including specific statutes, relating to the rights and obligations of either party mean the Laws in effect on the effective date of this License and as they are amended, replaced, supplemented, clarified, corrected, or superseded at any time during the Term or while any obligations under this License are outstanding, whether or not foreseen or contemplated by the parties. References to specific code sections mean San Francisco ordinances unless otherwise specified.

(e) The terms "include," "included," "including" and "such as" or words of similar import when following any general term, statement, or matter may not be construed to limit the term, statement, or matter to the specific items or matters, whether or not language of non-limitation is used, but will be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of the term, statement, or matter, and will be deemed to be followed by the phrase "without limitation" or "but not limited to."

(f) This License has been negotiated at arm's length between persons sophisticated and knowledgeable in the matters addressed. In addition, each party has been represented by experienced and knowledgeable legal counsel, or has had the opportunity to consult with counsel. Accordingly, the provisions of this License must be construed as a whole according to their common meaning in order to achieve the intents and purposes of the parties, without any presumption (including a presumption under

California Civil Code § 1654) against the party responsible for drafting any part of this License.

(g) The party on which any obligation is imposed in this License will be solely responsible for paying all costs and costs incurred in performing the obligation, unless the provision imposing the obligation specifically provides otherwise.

(h) Whenever required by the context, the singular includes the plural and vice versa, the masculine gender includes the feminine or neuter genders and vice versa, and defined terms encompass all correlating forms of the terms (e.g., the definition of "waive" applies to "waiver," "waivers," "waived," "waiving," etc.).

(i) References to days mean calendar days unless otherwise specified, provided that if the last day on which a party must give notice, respond to a notice, or take any other action under this License occurs on a day that is not a business day, the date by which the act must be performed will be extended to the next business day.

17.6. Successors. The terms, covenants, agreements and conditions set forth in this License shall bind and inure to the benefit of WETA and Licensee and, except as otherwise provided herein, their respective personal representatives and successors and assigns.

17.7. Counterparts. For convenience, the signatures of the parties to this License may be executed and acknowledged on separate pages which, when attached to this License, shall constitute as one complete License. This License may be executed in any number of counterparts each of which shall be deemed to be an original and all of which shall constitute one and the same License.

17.8. Authority. If Licensee signs as a corporation or a partnership, each of the persons executing this License on behalf of Licensee does hereby covenant and warrant that Licensee is a duly authorized and existing entity, that Licensee has and is qualified to do business in California, that Licensee has full right and authority to enter into this License, and that each and all of the persons signing on behalf of Licensee are authorized to do so. Upon WETA's request, Licensee shall provide WETA with evidence reasonably satisfactory to WETA confirming the foregoing representations and warranties.

17.9. No Implied Waiver. No failure by WETA to insist upon the strict performance of any obligation of Licensee under this License or to exercise any right, power or remedy arising out of a breach thereof, irrespective of the length of time for which such failure continues, and no acceptance of full or partial Fees during the continuance of any such breach shall constitute a waiver of such breach or of WETA's rights to demand strict compliance with such term, covenant or condition. WETA's consent to or approval of any act by Licensee requiring WETA's consent or approval shall not be deemed to waive or render unnecessary WETA's consent to or approval of any subsequent act by Licensee. Any waiver by WETA of any default must be in writing and shall not be a waiver of any other default (including any future default) concerning the same or any other provision of this License.

17.10. Attorneys' Fees. In the event of any action or proceeding in law or equity between WETA and Licensee to enforce any provision of this License or to protect or establish any right or remedy of either party to this License, the prevailing party shall be entitled to recover from the losing party reasonable attorneys' fees and costs of suit and, if such prevailing party shall recover judgment in any such action or proceeding, such costs, expenses and attorneys' fees shall be included in and as a part of such judgment. For purposes of this License, reasonable fees of attorneys shall be based on the fees regularly

charged by private attorneys with the equivalent number of years of professional experience who practice in San Francisco in law firms with approximately the same number of attorneys as employed by the attorneys performing the services.

17.11. *Time is of Essence.* Time is of the essence with respect to all provisions of this License in which a definite time for performance is specified.

17.12. *Cumulative Remedies.* All rights and remedies of either party hereto set forth in this License shall be cumulative, except as may otherwise be provided herein.

17.13. *Survival of Indemnities.* Termination or expiration of this License shall not affect the right of either party to enforce any and all indemnities and representations and warranties given or made to the other party under this License, the ability to collect any sums due, nor shall it affect any provision of this License that expressly states it shall survive termination or expiration hereof.

17.14. *Relationship of the Parties.* WETA is not, and none of the provisions in this License shall be deemed to render WETA, a partner in Licensee's business, or joint venturer or member in any joint enterprise with Licensee. Neither party shall act as the agent of the other party in any respect hereunder. This License is not intended nor shall it be construed to create any third party beneficiary rights in any third party, unless otherwise expressly provided.

17.15. *No Recording.* Licensee shall not record this License or any memorandum hereof in any Official Records.

17.16. *Additional Written Agreement Required.* Licensee expressly agrees and acknowledges that no officer, director, or employee of WETA is authorized to offer or promise, nor is WETA required to honor, any offered or promised credit, concession, abatement, or any other form of monetary consideration (individually and collectively, "**Concession**") without a written agreement executed by the Executive Director of WETA authorizing such Concession.

17.17. *Notices.* Except as otherwise provided herein, all notices must be in writing and delivered by hand delivery or overnight delivery by a nationally recognized courier. Notices to a party must be delivered to that party's mailing address for notices given to the other party in the manner provided above. All notices shall be deemed duly delivered on the date personal delivery occurs or the business day after the business day deposited for overnight delivery. Notices may not be given by facsimile or electronic mail.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

LICENSE NO. _____
HARBOR BAY FERRY TERMINAL

IN WITNESS WHEREOF, WETA and Licensee have executed this License as of the last date set forth below:

Licensee: **TIDELINE MARINE GROUP, a _____**

By: _____

Name: _____

Title: _____

Date signed: _____

By: _____

Name: _____

Title: _____

Date signed: _____

**WETA: SAN FRANCISCO BAY AREA WATER EMERGENCY
TRANSPORTATION AUTHORITY, a statutory regional agency**

By: _____

Name: Nina Rannells

Title: Executive Director

Date signed: _____

Approved as to Form:

By: _____

Name:

Title: Legal Counsel to Authority

Date signed: _____

Approvals to this License are granted by the following:

City of Alameda:

By: _____

Name: _____

Title: _____

Date signed: _____

Harbor Bay Isles Associates:

By: _____

Name: _____

Title: _____

Date signed: _____

LICENSE NO. _____
HARBOR BAY FERRY TERMINAL

EXHIBIT A

LICENSE AREA

HARBOR BAY FERRY TERMINAL MARINE FACILITIES
SPECIFICALLY EXCLUDING PARKING LOT

EXHIBIT B
PERMITTED VESSELS

[LIST VESSEL HERE]

EXHIBIT C
SCHEDULE
[INSERT LANDING SCHEDULE]

EXHIBIT D

SECURITY REQUIREMENTS

Communication and Notification

- A) **General** –A vessel communication policy should provide appropriate employees with a means of contacting the appropriate authorities and company officials in the event of a security incident. Emergency Contacts are located at the end of this document
- B) **MARSEC Level Notification and Compliance**
- The CSO/VSO/FSO must ensure that when operating within a port or prior to entering a port, all measures are taken to be in compliance with the MARSEC Level in effect for the port
- C) **Declaration of Security (DoS)**
- Each vessel owner or operator must ensure that there are measures for interfacing with facilities, docks and other vessels at all MARSEC Levels. A DoS is not required at MARSEC Level 1.
 - In the case of Public Access Facility, a Declaration of Security (DoS) may be executed between the VSO and the Facility. The DOS may be signed only by the Vessel Security Officer (VSO) if no one is available at the Facility, and placed in the Security Records or documentation of the vessel, acknowledging that the vessel is responsible for all security measures onboard and adjacent to the vessel throughout the time that the vessel is moored at the Facility.

Transportation Worker Identification (TWIC) Requirements

- A) **General** - The TWIC program goal is to prevent an unescorted individual from entering an area of a vessel or a facility that is designated as a secure or restricted area unless the individual holds a duly issued TWIC and is authorized to enter that vessel or facility.
- All persons seeking unescorted access to secure areas must present their TWIC for inspection before being allowed unescorted access, in accordance with 33 CFR 101.514:
 - Inspection must include a match of the photo on the TWIC
 - Verification of the validity of the TWIC
 - A visual check of the various security features on the card to ensure it has not been altered.

EXHIBIT E

[INSERT DoS FORM]

Item 7

Attachment B

**Photos of Tideline Vessel *Osprey* Match-Ups at
WETA Harbor Bay Terminal**

1. First Match-Up of Osprey at Harbor Bay Terminal



2. Osprey





3. Third Match-Up with Osprey at Harbor Bay Terminal

4. Third Match-Up with Osprey at Harbor Bay Terminal





5. Third Match-Up of Osprey at Harbor Bay Terminal



6. Third Match-Up of Osprey at Harbor Bay Terminal

MEMORANDUM

TO: Board Members

FROM: Nina Rannells, Executive Director
Keith Stahnke, Manager, Operations

SUBJECT: Approve the Award of a Sole Source Contract with Pacific Power Group for Main Engines Component Purchase for the MV *Solano*

Recommendation

Approve the award of a Sole Source Contract to Pacific Power Group (PPG) in an amount up to \$2,000,000 for the purchase of main engine components for the MV *Solano*, and authorize the Executive Director to negotiate and execute an agreement and take any other required actions to support this work.

Summary

The MV *Solano* will be the subject of a major rehabilitation/rebuild project that will span 10 to 12 months with work anticipated to begin in Summer 2019 and be completed in Spring 2020. Staff is in the early stages of planning for this significant project that includes the rebuild or replacement of major components throughout the vessel and an increase in passenger capacity to match the new North Bay vessels currently under construction. Implementation of this major renovation requires careful planning and timing in order to minimize the potential for disruption to scheduled Vallejo services while this major asset is out of commission. It is further complicated by California Air Resources Board (CARB) requirements to phase out older marine engines, such as those currently utilized on the MV *Solano*, within specific timeframes with new Tier 4 engines that are not yet available.

This item requests Board approval to award a sole source contract to PPG to purchase one complete shipset of MTU 16V4000M65L main propulsion engines: including all standard engine components and SCR system (the emissions control technology), factory testing, one year warranty, and delivery. This action is required now in order for WETA to meet CARB requirements for the MV *Solano* engines replacement.

Installation and testing of the main engine systems will occur as part of a separate shipyard contract that will be brought back to the Board for further discussion at a future meeting.

Background/Discussion

The CARB Harbor Craft Rules (17 CCR § 93118.5) identify Environmental Protection Agency (EPA) specific dates by which older Tier 1 marine engines must be replaced with new EPA Tier 4-compliant engines. These rules allow an operator due to replace their Tier 1 engines by December 31, 2018 to receive a six month operational extension provided that they:

- Place a purchase order for replacement engines by June 30, 2018; and

- Provide documentation to CARB that replacement engines are not available prior to the compliance date of December 31, 2018.

The two MTU 16V4000 EPA Tier 1 main engines on the MV *Solano* reach their mandatory CARB retirement date on December 31, 2018. Because Tier 4 engines are not currently available, WETA will need to seek a six month operational extension to the CARB engine replacement rules in order to allow the MV *Solano* to remain in service beyond December 31, 2018 and meet WETA's service needs while continuing to comply with CARB requirements.

Staff, working with its consultants Fast Ferry Management and Aurora Marine Design and with the original vessel naval architect, have determined that the only propulsion system that can meet CARB requirements (with the extension), physically fit in the vessel, and meet WETA's performance requirements is the MTU 16V4000M65L EPA Tier 4 engine, which is under final development and will be utilized as the first of its kind in WETA's new North Bay vessels currently under construction. MTU has provided documentation that these engines will not be available until the third quarter of 2019. This availability date complies with the CARB requirement and supports the overall schedule for the MV *Solano* project.

The new Tier 4 MTU engines will be compatible with the engines being installed on the three new North Bay ferries, the MVs *Pyxis*, *Vela*, and *Lyra* thereby raising the overall level of WETA fleet commonality. Given the July 2019 delivery date for the second of the three new North Bay ferries, the MV *Vela*, WETA's plan is to secure a waiver from CARB such that the MV *Solano* can remain in service until the delivery of the MV *Vela*.

The timing of this procurement is critical to ensure that there is no net decrease in the number of large fast ferries available to serve WETA's North Bay Vallejo route. In order to meet this timing, WETA must place a purchase order for the engines by June 30, 2018.

Sole Source Discussion

WETA staff and consultants have reviewed all available engine types and have concluded that the MTU 16V4000M65L Tier 4 engine is the only engine that will satisfy CARB emissions standards, and meet the Authority's power rating requirements, vessel space and weight limitations. The similarity of the 16V4000M65L engine to other engines installed in the WETA's fleet will lower the overhead burden by eliminating additional maintenance programs, spare parts, specialty tooling, and training requirements.

Additionally, WETA staff and consultants have determined that PPG is the only MTU dealership that can sell these engines to WETA and has the unique combination of experience and expertise to provide the necessary technical, engineering, logistical, and application support. PPG is currently a factory-assigned dealership for WETA as determined by MTU for the sale of engines, parts, and services. Because only this model of MTU engine will satisfy CARB environmental standards and meet WETA's technical requirements and because only PPG has the requisite technical application experience with this model of engine in terms of sales and engineering support, is committed to holding a \$300,000 reserve of spare parts for this model engine, and will have installed and commissioned a MTU 16V4000M65L Tier 4 engine with integrated SCR prior to December 2018, staff recommends a sole source award for new Tier 4 MTU engines for the MV *Solano* to PPG.

PPG is well qualified to complete this work as it has supported main propulsion engine sales to WETA on a large number of vessel procurement and vessel repower projects in the past. PPG performs ongoing service and repair to WETA's vessels and is also factory-assigned to provide sales, service and repair for Golden Gate Ferry vessels.

Staff has analyzed PPG's price proposal and finds it to be fair and reasonable as the price is in alignment with previous engine procurements for the *Pyxis* Class vessels using the same engine series. The recommended contract authorization amount of \$2,000,000 includes a base award, factory acceptance testing of the main engines, delivery, contingency, and California state use tax.

Because only MTU engines will satisfy CARB environmental standards and meet WETA's technical requirements, and because only PPG will sell WETA the needed MTU engines, procuring these engines from PPG meets the requirement for a sole source procurement under applicable federal regulations and is consistent with WETA's Administrative Code section 502.2(E) which allows WETA to procure items non-competitively when there is only a single source of supply available or only one contractor is qualified to provide the service or product.

Fiscal Impact

This purchase is included in the FY 2018/19 Capital Budget under the *Vessel Service Extension - MV Solano* project which is funded with a mix of Federal Transit Administration grant funds and Regional Measure 1 – 2% capital funds. Sufficient funds are available in the total project budget of \$13,000,000 to support the award of this contract.

END

SAN FRANCISCO BAY AREA WATER EMERGENCY TRANSPORTATION AUTHORITY

RESOLUTION NO. 2018-21

**APPROVE A SOLE SOURCE CONTRACT WITH PACIFIC POWER GROUP FOR
PROCUREMENT OF REPLACEMENT MAIN PROPULSION ENGINES FOR VESSEL
SOLANO AND AUTHORIZE THE EXECUTIVE DIRECTOR
TO NEGOTIATE AND EXECUTE THE AGREEMENT**

WHEREAS, the San Francisco Bay Area Water Emergency Transportation Authority (Authority) has identified the need for the replacement of main propulsion engines on the ferry vessel *Solano* in order to meet CARB Tier 4 engine requirements; and,

WHEREAS, the Authority has determined that Pacific Power Group is the MTU factory-assigned dealership for the sales, parts, and service of MTU Series 4000 engines in the Bay Area region; and,

WHEREAS, the Authority has determined that this procurement meets the requirements for sole source procurement under WETA and federal regulations and as set forth in the WETA's Administrative Code Section 502.2(E); and

WHEREAS, the Authority has identified Pacific Power Group as being both responsive and responsible in the provision of services; now, therefore, be it

RESOLVED, that the Board of Directors hereby approves entering into an agreement with Pacific Power Group in an amount up to \$2,000,000 which includes a 1.3% project contingency and authorizes the Executive Director to execute the agreement.

CERTIFICATION

The undersigned, Board Secretary, does hereby certify that the foregoing is a full, true and correct copy of a resolution duly and regularly adopted at a meeting of the San Francisco Bay Area Water Emergency Transportation Authority held on June 7, 2018.

YEA:

NAY:

ABSTAIN:

ABSENT:

/s/ Board Secretary

2018-21

END

MEMORANDUM

TO: Board Members

**FROM: Nina Rannells, Executive Director
Kevin Connolly, Manager, Planning & Development
Michael Gougherty, Senior Planner**

SUBJECT: Award Contract to City ID for Signage and Wayfinding Design

Recommendation

Award a contract to City ID to design signage for the Downtown San Francisco Ferry Terminal project in an amount not-to-exceed \$120,000 and authorize the Executive Director to execute an agreement and take any other required actions to support this work.

Background

WETA is under contract with Power Engineering to construct the Downtown San Francisco Ferry Terminal Expansion (FTX) project, which will provide two new gates (Gates F & G), reconstruct an existing gate (Gate E), and provide new deck areas for passenger waiting and queuing. As part of the overall project, WETA will provide informational signage to facilitate connections between the ferry and other transit modes and provide information about the ferries and nearby destinations.

Discussion

This item recommends Board of Directors award of a contract to City ID for design consulting services for signage at the Downtown San Francisco Ferry Terminal site which is on Port of San Francisco property, and is designated by the Metropolitan Transportation Commission as a Regional Transit Hub. Both MTC and the Port of San Francisco have worked with City ID to develop regional signage that will be featured in and around the Downtown San Francisco Ferry Building and terminal area, making it important for WETA's signage to be consistent with and complementary to these parallel efforts. City ID has significant experience in designing signage and wayfinding projects for international cities such as London, New York City, and Moscow, as well as local projects for the San Francisco Airport, City of San Jose, the San Francisco Municipal Transportation Agency (SFMTA) and the Metropolitan Transportation Commission (MTC).

Staff proposes that WETA piggyback on MTC's regional procurement with City ID to ensure that WETA's approach to signage is consistent with that being developed for the area by MTC and the Port of San Francisco, and to gain efficiencies that may result from City ID's ongoing experience and involvement in developing signage in this area. Awarding this contract to City ID without undergoing a separate competitive solicitation is permitted by State law and is consistent with WETA's Administrative Code which allows non-competitive procurements under limited conditions including, but not limited to, when the goods or services can be secured through another public agency's competitive process and when it is determined that a competitive procurement would not produce an advantage. Due to the need for a consistent approach to signage throughout the project area, as described in this report, staff believes that a competitive process would not produce an advantage to WETA, and, in fact, would not be in WETA's best interest. In addition, MTC selected City ID to provide signage

and wayfinding design services through a competitive RFQ procurement process that specifically allows cooperative use of this RFQ process and award by other public entities such as WETA.

Staff has developed a scope of work with City ID to design signage and wayfinding for the FTX project that is scalable to the entire WETA system, consistent with MTC signage standards, and complementary to new signage and wayfinding being developed by the Port of San Francisco. The budget for the proposed contract award would be for an amount not-to-exceed \$120,000, utilizing hourly rates previously negotiated by MTC as a part of its competitive RFQ bid process and award. Completion of this work will enable WETA to move forward with ultimately fabricating and installing the signage and wayfinding required for the FTX project.

Fiscal Impact

This work is included in the FY 2017/18 Capital Budget as part of the *Downtown San Francisco Ferry Terminal Expansion* project. The total project budget is \$97,965,000, funded as follows: \$66,197,422 State Proposition 1B (68%), \$21,968,210 Regional Measure 2 (23%), \$8,699,368 Federal (9%), and \$1,100,000 San Francisco Proposition K (1%) funds. Sufficient funds are included in the project budget to support the award of this contract.

END

SAN FRANCISCO BAY AREA WATER EMERGENCY TRANSPORTATION AUTHORITY

RESOLUTION NO. 2018-22

**APPROVE CONTRACT AWARD TO CITY ID FOR SIGNAGE DESIGN FOR THE
DOWNTOWN SAN FRANCISCO FERRY TERMINAL EXPANSION PROJECT**

WHEREAS, the San Francisco Bay Area Water Emergency Transportation Authority (Authority) has identified the need for professional services to design signage and wayfinding for the Downtown San Francisco Ferry Terminal Expansion (FTX) project; and,

WHEREAS, the Metropolitan Transportation Commission (MTC) has contracted with City ID, a firm pre-qualified by MTC through a competitive procurement process, to develop regional transit signage in coordination with the Port of San Francisco that will be featured at the Downtown San Francisco Ferry Terminal area; and,

WHEREAS, the Authority desires to ensure that its signage design is consistent with the approach being developed by MTC and the Port of San Francisco and to gain efficiencies that may result from City ID's involvement in the entire project; and,

WHEREAS, the Authority desires to award a contract to City ID through a piggyback on MTC's contract without undergoing a separate competitive solicitation because the necessity of a consistent approach means that a competitive process would not produce an advantage to the Authority, and in fact would not be in its best interest; and,

WHEREAS, the Authority has determined that this contract award is consistent with State law and the Authority's Administrative Code; and,

WHEREAS, the Authority staff recommends award of a contract to City ID in an amount not-to-exceed \$120,000, with actual expenditures to be authorized within this amount on a task order basis now, therefore, be it

RESOLVED, that the Board of Directors hereby approves entering into a contract with City ID to design signage for the FTX project for an amount not-to-exceed \$120,000 and authorizes the Executive Director to execute an agreement and take any other required actions to support this work.

CERTIFICATION

The undersigned, Board Secretary, does hereby certify that the foregoing is a full, true and correct copy of a resolution duly and regularly adopted at a meeting of the San Francisco Bay Area Water Emergency Transportation Authority held on June 7, 2018.

YEA:

NAY:

ABSTAIN:

ABSENT:

/s/ Board Secretary

2018-22

END

MEMORANDUM

TO: Board Members

FROM: Nina Rannells, Executive Director

**SUBJECT: Discussion Regarding the Outcome of the June 5 Primary Election
Vote on the Regional Measure 3 Ballot Measure**

Recommendation

There is no recommendation associated with this informational report.

Background

Strong economic growth in the San Francisco Bay Area has led to increased traffic congestion on the bridges and public transportation systems serving the Bay Area bridge corridors in recent years, including WETA's regional ferry system. Bridge tolls on the state-owned bridges in the Bay Area, provided through Regional Measure 1 and Regional Measure 2, have historically served as the primary mechanism to support the development and growth of WETA's regional ferry system. These funds are fixed and are fully utilized today to support WETA's existing system of ferry services, resulting in the need for WETA to seek new, dedicated funds to maintain, sustain, enhance and expand regional ferry services in the coming years.

Senate Bill 595 (Beall 2017) was developed by the State Legislature to authorize the Bay Area Toll Authority (BATA) to place a bridge toll increase measure, entitled Regional Measure 3 (RM3), of up to \$3 on the ballot in the nine Bay Area counties to fund a comprehensive program of projects to reduce traffic congestion and improve mobility in the Bay Area.

On January 24, 2018, BATA approved a resolution to place RM3 on the June 5, 2018, ballot for Bay Area voter consideration of a \$3 toll increase on the state-owned bridges in the San Francisco Bay Area, to be phased in over a six-year period. If approved by voters, funds would support a \$4.45 billion program of projects designed to reduce auto and truck traffic, relieve crowding on BART, unclog freeway bottlenecks and improve bus, ferry, BART and commuter rail service in the Bay Area. The measure would provide WETA with \$300 million for capital projects and an annual operating set-aside of up to \$35 million per year. The measure provides WETA the flexibility to set aside operating dollars not utilized in a given year for use in future years, providing WETA with the ability to create long-term fiscal stability.

Discussion

This item is a place-holder to discuss the outcome of the June 5, 2018 Primary Election vote on the Regional Measure 3 ballot measure at the June 7, 2018 WETA Board of Directors meeting.

END